

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

(1) **CRA-D-566-DB-2018(O&M)**

OmbirAppellant

Versus

State of Haryana ... Respondent

(2) **CRA-S-2300-SB-2018(O&M)**

Rajender @ Dhammal ... Appellant

Versus

State of Haryana ... Respondent

Date of Decision:-11.12.2023

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE GURBIR SINGH**

Present:- Mr. Shokeen Singh Verma, Advocate for the appellant
in CRA-D-566-DB-2018.

None for applicant-appellant
in CRA-S-2300-SB-2018.

Mr. Karan Sharma, DAG, Haryana.

GURVINDER SINGH GILL, J.

1. The appellant Ombir (in CRA-D-566-DB-2018) and Rajender @ Dhammal
(in CRA-S-2300-SB-2018) assail judgment and order dated 30.4.2018 passed

by learned Additional Sessions Judge, Jhajjar wherein they have been held guilty of having committed offences under Indian Penal Code and have been ordered to undergo sentence as under:

Ombir

Offence	Imprisonment	Fine	In default of fine
302 IPC	Imprisonment for life	Rs. 20,000/-	R.I. of six months
201 IPC	R.I. for two years	Rs. 5,000/-	

Rajender @ Dhammal

Offence	Imprisonment	Fine	In default of fine
201 IPC	R.I. for two years	Rs. 5,000/-	R.I. of two months

2. The matter arises out of FIR No. 157 dated 30.3.2017 lodged under Sections 302, 201/34 IPC at Police Station Sadar Bahadurgarh (Ex. PW-12/A) at the instance of Ranbir wherein he alleged that he is an agriculturist. His cousin Jeet had expired. He had two daughters and a son. The complainant had solemnized marriage of his cousin’s elder daughter Monika with Ombir and they had been blessed with three children. However, the relations between Monika and her husband were strained since long, as had been disclosed to the complainant by Monika several times and she had also disclosed that her husband had even threatened to kill her. The complainant alleged that he had come to know that his niece Monika had been set on fire and had been cremated in the cremation ground Dulehera on the night intervening 28.3.2017 and 29.3.2017 by her husband Ombir and his associates after murdering her.

3. Pursuant to receipt of said information, the police went to the cremation ground where the last remains in the nature of ashes and some pieces of unburnt bones were found, which were taken into possession. Statements of witnesses were recorded. Ombir was arrested on 2.4.2017. During his interrogation on 3.4.2017, he confessed his guilt as regards having murdered his wife Monika by strangulating her and also stated that his friend Dhammal (@ Rajender) had assisted him in cremating the dead body of Monika.
4. It is further the case of prosecution that pursuant to the aforesaid disclosure statement made by Ombir, he led the police party to the spot where Monika had been murdered from where some vomited matter was found lying on the ground, which was taken into possession. The tractor-trolley which had been used for taking the dead body to the cremation ground was also taken into possession. Statements of witnesses were recorded under Section 161 Cr.P.C. Upon conclusion of investigation, challan was presented against the accused on 25.7.2017 before the Illaqa Magistrate who upon *prima facie* finding that an offence under Section 302, 201/34 IPC was made out, which is exclusively triable by the Court of Session, committed the case to the Court of Session.
5. The trial Court, upon finding a *prima facie* case that accused had committed an offence punishable under Section 302, 201/34 IPC framed charges accordingly against the accused on 8.8.2017 to which the accused pleaded not guilty and claimed trial.
6. The prosecution, in order to substantiate its case examined as many as 19 prosecution witnesses. PW-1 Ranbir (complainant), while in the witness box did not support the case of prosecution and rather stated that his niece had

died a natural death and it was, thereafter, that the dead body had been cremated. The said witness was declared hostile and was cross-examined by the prosecution but nothing substantial could be elicited during cross-examination, so as to support the allegations against the accused.

7. PW-2 Meena, whose statement has been recorded under Section 161 Cr.P.C., wherein she had stated that Ombir used to give beatings to Monika and that she had been murdered on the night intervening 28/29.3.2017 by Ombir, did not utter a word while in the witness box to this effect and completely resiled by stating that she has no knowledge about the present case. The said witness was also declared hostile and was cross-examined by the prosecution but nothing substantial could be elicited during cross-examination, so as to support the allegations against the accused.
8. PW-3 Saroj Bala, who in her statement recorded under Section 161 Cr.P.C., had stated that she is aunt of Monika and that Monika used to disclose that her husband used to give beatings to her and had been threatening to kill her and that Monika had been murdered by Ombir, also did not say a word to support the case of prosecution while in the witness box and was declared hostile and was cross-examined by the prosecution but nothing substantial could be elicited during cross-examination, so as to support the allegations against the accused.
9. PW-4 Jagbir @ Kala and PW-5 Nanha also resiled from their statements recorded under Section 161 Cr.P.C. and did not state a word to support the case of prosecution.
10. PW-6 Ajay Kumar, Naib Tehsildar stated that on 30.3.2017, upon receiving an order from SDM, he visited the cremation ground alongwith SI Jora Singh

and SHO Jasbir Singh where SI Jora Singh lifted burnt ashes and pieces of bones, which were taken into possession and that he had affixed his seal on the parcels so prepared.

11. PW-7 Ms. Neetu, SSO/SOC, MFSU Jhajjar stated that on 30.3.2017 upon request of Inspector Jasbir Singh, she alongwith her team had visited the cremation ground and had prepared a report (Ex.PW-7/A) and had handed over the report to Inspector Jasbir Singh. She further stated that on 4.4.2017, she visited the house of Monika (deceased) and prepared her report Ex.PW-7/B and handed over to SI Jora Singh.
12. PW-8 ASI Jai Chand who had prepared the scaled site plan of the place of occurrence proved the same as Ex. PW-8/A. PW-9 Constable Sachin, PW-10 ASI Ramesh Kumar and PW-11 Constable Ashok Kumar are formal witnesses who have deposed about the safe keeping and safe handling of the case property taken into possession during the course of investigation and regarding deposit of the same in the office of FSL Madhuban.
13. PW-12 ASI Jagbir who had recorded the formal FIR (Ex.PW-12/A) and had sent the special reports has stated in respect of the same. PW-13 Head Constable Sandeep stated that on 4.4.2017, he had accompanied SI Jora Singh and vomited matter found at the spot was taken into possession as Ex.PW-13/A and that a tractor-trolley was also taken into possession.
14. PW-14 Constable Surender stated that on 12.4.2017 he was associated with investigating officer Jora Singh when accused Dhammal (Rajender) was interrogated who made disclosure statement PW-14/A admitting his involvement in the commission of offence. He further stated that the accused,

pursuant to his disclosure statement, got demarcated the place of occurrence and had taken them to cremation ground.

15. PW-15 SI Jora Singh, who is the investigating officer in the present case stated in detail about the investigation conducted in the matter including the arrest of the accused and their disclosure statements. PW-16 ASI Azad Singh stated that on 30.3.2017, he was present alongwith Inspector Jasbir, the then SHO P.S. Sadar Bahadurgarh and other co-officials - SI Jora Singh and Constable Rakesh and that pursuant to receipt of information regarding occurrence, they had proceeded to the cremation ground from where ashes and parched remains of bones were lifted and were taken into possession. PW-17 Minu is the registered owner of the tractor who stated that he had already sold off his tractor about 10-12 years ago to his cousin but the ownership in the registration certificate continued in his name. PW-18 Constable Surender who is official photographer proved the photographs which had been clicked by him. PW-19 Inspector Jasbir Singh, who had accompanied SI Jora Singh, ASI Azad Singh and Constable Rajesh and had also remained associated with the investigation stated that on completion of investigation, report under Section 173 Cr.P.C. was presented against Ombir and Rajender.
16. Upon closure of prosecution evidence, the statement of accused were recorded in terms of Section 313 Cr.P.C. wherein the entire incriminating evidence was put to the accused/appellants to enable them to explain the same but the appellants denied the entire prosecution case in toto and took a plea that they have been falsely implicated. The accused, however, did not lead any evidence.

17. The trial Court, upon considering the evidence led by the prosecution and also the contentions of the prosecutor and the defence counsel came to a conclusion that it is appellant Ombir who had murdered his wife Monika and that he alongwith co-accused Rajender had hurriedly cremated her dead body. The Trial Court was mainly swayed by the fact that neither the sisters of Monika nor the other two witnesses of the locality i.e. PW-2 Meena and PW-3 Saroj Bala stated anything as regards the performance of any rites and rituals at the time of cremation of the dead body and that the same would necessarily indicate that the accused, after murdering Monika, had hurriedly cremated her dead body and had later been able to win over the witnesses. The learned Trial Court observed that it remained unexplained as to why the persons who would normally have been present at the time of cremation i.e. the residents of the village or the relatives of the deceased did not state a word about the last rites performed at the time of cremation. The Trial Court also noticed that there is no defence version and no explanation had been put forth to explain recovery of the vomited matter or the factum of death of Monika. The Trial Court, thus, held that while it is the accused Ombir who had murdered his wife Monika, the dead body was cremated by Ombir with the help of co-accused Rajender and as such while the accused Ombir was held guilty of having committed offences under Section 302, 201 IPC, the accused Rajender was held guilty of having committed offence under Section 201 IPC and were sentenced accordingly vide judgment dated 30.4.2018, which has been assailed before this Court.
18. The learned counsel for the appellant submitted that the present case is a case based totally on circumstantial evidence and that as a matter of fact even the

complainant and other witnesses of the locality had absolutely resiled and in these circumstances, there was nothing on record to connect the accused with the alleged offence.

19. Opposing the petition, the learned State counsel has submitted that the facts on record clearly show that Monika i.e. wife of appellant Ombir had been done to death and had been hurriedly cremated. It has been submitted that it was for the appellant - Ombir to have come up with some justifiable explanation as regards death of his wife and in absence of the same, the factum of cremation of his wife in a hurried manner itself establishes the guilt of the appellants. It has further been submitted that the circumstances lead to no other inference but that it is the accused Ombir who had murdered his wife and had disposed of her dead body with the help of co-accused Rajender.
20. This Court has considered rival submissions addressed before this Court.
21. First of all, it needs to be noticed that there is no evidence on record to show that the deceased had died an unnatural death. The only evidence is in the shape of the recovered vomited matter, which the police claims to have taken into possession on 4.4.2017. While it could be said that in case of strangulation, the victim may vomit but there is nothing on record to show that the recovered vomited matter had infact been vomited by the deceased as neither there is any eye-witness to the occurrence nor there is any scientific evidence to connect the vomited content with the deceased. The report of FSL (Ex.PY) with respect to recovered ash and bones does not disclose presence of any poison. The factum of death of Monika is not in dispute, but the facts do suggest that her dead body was cremated in a hurried manner. There is nothing on record to show that the cremation had been attended by

the residents of the village. The said circumstance is indeed a suspicious circumstance. However, in the absence of any other evidence to connect the said suspicious circumstance with the allegations of murder, the said suspicious substance *ipso facto* would not justify conviction of the appellants. In the instant case, not only the complainant but even the other witnesses with regard to the nature of relations between the deceased and her husband (Ombir) had turned hostile and did not state a word to even show that the relationship between the deceased and the appellant Ombir were strained much less anything to show that Ombir had murdered the deceased or that he alongwith Rajender had disposed off her dead body to destroy evidence.

22. Under these circumstances, this Court is of the opinion that the findings of guilt as recorded by the trial Court are not based on any convincing evidence and are based more on suspicions and surmises and as such are unsustainable. The appeals, as such, merit acceptance and are hereby accepted. The impugned judgment and order of sentence dated 30.4.2018 are hereby set aside. The accused are acquitted of the charges framed against them. Case property be dealt with under the rules after expiry of limitation for availing relief from higher Court. Accused be set free, if not wanted in any other case.
23. Pending application, if any, stands disposed of as well.

(GURVINDER SINGH GILL)
JUDGE

11.12.2023
kamal/Vimal

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No