

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Appeal No.D-755-DB of 2018 (O&M)
Date of Decision: 26.09.2023
Reserved on: 12.09.2023

Jai Parkash Mishra ... Appellant

Versus

State of Punjab ... Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Ms. Monita Mehta, Advocate and
Ms. Jyotsna Saini, Advocate,
for the appellant.

Mr. Alankar Narula, AAG, Punjab.

MANISHA BATRA, J.

1. The present appeal has been preferred by the appellant-convict-accused Jai Parkash Mishra against judgment of conviction and order on quantum of sentence both dated 27.07.2018 passed in Sessions Case No.15 of 2015 titled as State v. Jai Parkash Mishra arising out of FIR No.12 dated 27.01.2015 registered under Sections 302, 376 and 404 IPC at Police Station City Gurdaspur whereby the learned Additional Sessions Judge, Gurdaspur had held the appellant guilty for commission of offences punishable under Sections 302, 376 and 404 of IPC and had sentenced him to undergo imprisonment for ten years for commission of

Neutral Citation No. 2023:PHHC:130310-DB

offence punishable under Section 376 of IPC, imprisonment for life for commission of offence punishable under Sections 302 IPC and rigorous imprisonment for a period of three years for commission of offence punishable under Section 404 of IPC and apart from imposing fine for commission of the aforementioned offences, had directed payment of compensation to the tune of Rs.10 lacs to the parents of the deceased.

2. The broad contours of the case as set up by the prosecution in this case are that on 27.01.2015, the complainant Jagjit Singh reached at the police station and informed that the victim (name withheld) who was his younger daughter, had been previously working in Vardhman Mills, Ludhiana with his elder daughter but had left the job about six months back. She had disclosed to his wife and himself about her having familiarity with the accused Rakesh Kumar @ J.P. Mishra and that he had been following her. He stated that the victim was doing some Computer Course at Hanuman Chowk, Gurdaspur. On the same day, she had left her house but did not come back. At about 6:30 PM, a message received in the mobile phone of his wife, was read by his youngest daughter which disclosed about death of the victim having taken place in Room No.202 of Hotel Regalia. The complainant along with his wife and some other persons immediately rushed towards the hotel and met the owner of the hotel PW-5 Gaurav Kohli who took them to Room No.202 wherein the dead body of the victim was found lying on a bed. A dupatta was found tied with a knot around her neck and she appeared to have been strangled to death. Her mobile phone was found missing. He raised suspicion that the victim had been murdered by

Neutral Citation No. 2023:PHHC:130310-DB

the accused Rakesh Kumar @ J.P. Mishra. On the basis of this statement, a case under Section 302, 376 and 404 of IPC was registered. Inquest proceedings and postmortem examination of the dead body of the victim was conducted. On 10.02.2015, the accused was arrested. He suffered a disclosure statement admitting his involvement in the subject crime and got recovered the silver chain and locket removed from the dead body of the victim. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court for trial of the accused.

3. Copies of challan were supplied to the accused free of cost. The case was committed to the Courts of Sessions. On finding a prima facie case for commission of offences punishable under Section 376, 302 and 404 of IPC, the accused had been charge-sheeted accordingly. He pleaded not guilty to the charges and claimed trial.

4. To substantiate its case, the prosecution examined as many as 16 witnesses besides relying upon documentary evidence and thereafter its evidence was closed by learned Public Prosecutor.

5. Statement of accused under Section 313 of Cr.P.C. was recorded separately wherein he abjured his guilt and pleaded innocence. However, he did not produce any evidence in his defence despite opportunity being granted.

6. After hearing the contentions raised by the prosecution and the accused and on appraising the evidence produced on record, the learned trial Court vide judgment of conviction and order on quantum of sentence dated

Neutral Citation No. 2023:PHHC:130310-DB

27.07.2018, held the accused guilty and sentenced him in the manner as indicated above.

7. Feeling aggrieved, the present appeal has been filed by the appellant-accused.

8. It is submitted in the grounds of appeal and it was vehemently argued by learned counsel for the appellant-accused that the findings as given by learned trial Court were liable to be set aside as the same were based on conjectures and surmises. There was no direct evidence to show as to how the victim had died. The case rested upon circumstantial evidence. The chain of circumstantial evidence was, however, not complete at all and the prosecution had miserably failed to connect the appellant with the murder of the victim. The medical evidence did not prove that rape had been committed upon the victim. The disclosure statement allegedly suffered by the accused was not admissible in evidence. A false recovery had been planted upon him. The statements of the material witnesses were inconsistent in material particulars and were unnatural and created a doubt about the veracity of the prosecution case. The statements of PW-5 Gaurav Kohli and PW-15 Sanjiv Singh (wrongly mentioned as PW-14 at the time of recording evidence) were also not trustworthy. The spermatozoa allegedly detected from the vaginal swabs of the victim could not be connected with the accused as no DNA profiling was done. With these broad submissions, it was urged that the impugned judgment was liable to be reversed, the conviction of the appellant for commission of offences punishable under Sections 302, 376 and 404 of IPC was liable to be set aside and further that

Neutral Citation No. 2023:PHHC:130310-DB

the appellant deserved to be acquitted of the charges as framed against him.

9. Per contra, it was argued by Public Prosecutor for the respondent-State that the findings as given by learned trial Court were well reasoned. There was overwhelming evidence on record to prove that it was the appellant-accused and none else who had taken the victim to Room No.202 of Hotel Regalia, Gurdaspur on the date of occurrence and after committing rape upon her, killed her by strangulating her with a dupatta. It was proved to be a case of homicidal death. The silver chain and locket worn by the victim had been recovered at the instance of the accused and this fact not only connected him with the crime of murder of the victim but also qua the charge under Section 404 of IPC. Accordingly, it was urged that the appeal was devoid of any force and it was stressed that the same was liable to be dismissed.

10. We have given due deliberations to the contentions as raised by learned counsel for the appellant and learned State counsel and have minutely scrutinized the evidence placed on record of learned trial Court.

11. The case as set up by the prosecution is that on 27.01.2015, the appellant-accused who was having relations with the victim met her in a room of Regalia Hotel, Gurdaspur and after committing rape upon her, he had killed her by strangulating her with the help of dupatta worn by her and had escaped by removing silver chain and locket worn by the victim. So far as the allegation that the victim had been murdered is concerned, the medical evidence produced on record in the form of postmortem report Ex.PW12/B coupled with the testimony of PW-13 Dr. Jatinderpal Singh

Neutral Citation No. 2023:PHHC:130310-DB

(wrongly mentioned as PW-12) who had prepared this report, is sufficient to prove that the victim had died a homicidal death caused due to asphyxia as a result of ligatures strangulation which was sufficient to cause death in the ordinary course of nature. The testimony of PW-13 to this effect had remained un rebutted and as such there is no reason to disbelieve the same. As such, it stands proved that the victim had been murdered and it was not a case of suicide as pleaded by the appellant-accused in his statement recorded under Section 313 of Cr.P.C. and as suggested to the witnesses of the prosecution.

12. Further, with regard to the allegations that the victim was subjected to sexual intercourse before her death, it may be mentioned that as per the FSL report, Ex.PW12/C, spermatozoa was detected in the vaginal swabs as taken from the dead body of the victim. PW-13 deposed that finding of spermatozoa in the vagina of the victim was suggestive of her being subjected to sexual intercourse and his statement to this effect had also remained unchallenged and as such, it can certainly be stated that the sexual intercourse was committed with the victim prior to her death.

13. Now the question that arises for consideration is as to whether it was the accused who had committed the act of sexual intercourse with the victim and whether it was a forcible act amounting to rape and further that whether it was he who had murdered the victim? Before delving on these points, it may be stated that there was no direct eye-witness to the offence of murder and rape and the prosecution has rested its case in this regard on circumstantial evidence. The well settled proposition of law with regard to a

case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances must be conclusive in nature unerringly pointing towards the guilt of the accused and that all the circumstances taken cumulatively should form a complete chain and there should be no gap left in the chain of evidence. Then, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. The aforesaid principles have been reiterated and re-affirmed by Hon'ble Supreme Court in **Trimukh Maroti Kirkan v. State of Maharashtra**, (2006) 10 SCC 681, **State of Rajasthan v. Kashi Ram**, (2006) 12 SCC 254, **Ganesh Lal v. State of Rajasthan**, (2002) 1 SCC 731 and **State of Himachal Pradesh v. Raj Kumar**, 2018 (2) SCC 69.

14. In the light of the above guiding principles, we have to examine this case. The trial Court had relied upon the following circumstances:-

- (1) The accused having booked Room No.202 of Hotel Regalia on the evening of 26.01.2015 and having been seen by PW-5 Gaurav Kolhi at that time.
- (2) The accused having been lastly seen with the victim in Room No.202 of Hotel Regalia by PW-15 Sanjiv Singh.
- (3) Disclosure statement of accused leading to recovery of silver chain and locket belonging to the victim.

15. So far as the circumstance of the appellant-accused having been seen with the victim in Room No.202 of Hotel Regalia on 27.01.2015 is

Neutral Citation No. 2023:PHHC:130310-DB

concerned, it was not the case of prosecution that the victim was forced or induced by the accused to go there on that day. Though it was not alleged in clear words in the statement of PW-1 Jagjit Singh, father of the victim that there were relations between the victim and the appellant-accused and he simply stated that his daughter had informed him that she was familiar with the accused and he used to follow her but in his sworn deposition, he admitted that the victim had told him that she had relations with the accused and also stated that he had disclosed so in his statement before the police. Therefore, as per complainant's own saying, the victim and the accused were in relation with each other. To prove the allegation that the appellant-accused had booked a room in Regalia Hotel, Gurdaspur on the evening of 26.01.2015 and was seen with the victim in the said room in the morning of 27.01.2015 and thereafter her dead body was found therein, the prosecution had relied upon the statements of PW-5 Gaurav Kohli ,owner of Regalia Hotel and PW-15 Sanjiv Singh @ Sanjay, a waiter of the said hotel. PW-5 Gaurav Kohli produced in evidence, the register maintained by the hotel containing record of check in and check out of the persons staying in his hotel. He deposed that the appellant had visited his hotel previously on 09.11.2014 and 06.01.2015 and proved entries Ex.PW5/B and PW5/C made in the register in this regard. He further proved Ex.PW-5/E entry made regarding arrival of the appellant in his hotel on 26.01.2015 at 4 PM. The original registers have been perused by us and the entries made as Ex.PW5/B, Ex.PW5/C and Ex.PW5/E as made in these registers reveal that same signatures were shown to be appended against the name of J.P. Mishra

Neutral Citation No. 2023:PHHC:130310-DB

as shown in these entries. PW-5 deposed that on 26.01.2015, the accused had come to him and had booked Room No.202 of his hotel and had taken keys from him. He further deposed that on 12.02.2015, he had identified the accused and also identified him in the Court. He also deposed that on 27.01.2015, when he had come to his hotel at about 11:30 AM, PW-15 Sanjiv Singh, waiter had informed him that he had gone to serve tea in room No.202 and one female was found present there along with the accused. He further deposed about the complainant and his family members coming to the hotel at about 6-6:30 PM on the same evening and then about checking the room No.202 and finding the dead body of the victim.

16. PW-15 Sanjiv Singh corroborated the version given by PW-5 and deposed that on 27.01.2015, he had gone to room No.202 to serve tea and had seen a girl sitting on the bed while wailing and telling the accused to take her along with him and about the accused responding to her and further about finding the dead body of the victim later on. Though during cross-examination, this witness improved his version by saying that it was he who had firstly seen the victim lying dead on the bed when he had knocked at the door of room No.202 and had pushed the door when the same was found unlocked and by saying that as no response was received from inside and further about informing the management about this fact though as per PW-5, it was on arrival of the complainant that they had gone to the room No.202 but the substratum of the statements of both these witnesses to the effect that the appellant-accused had booked the room No.202 of Regalia Hotel at 4 PM on 26.01.2015 and was found present with

Neutral Citation No. 2023:PHHC:130310-DB

the victim in the next morning, had remained unshattered and unblemished and in the considered opinion of this Court, there is no reason to disbelieve their statements. Both of them were disinterested and independent witnesses. No motive whatsoever had been attributed to either of them by the appellant as to why they would depose falsely against them. The testimonies of PW-5 and PW-15 prove that the appellant had been visiting and staying in Regalia Hotel previously also and that is why PW-15 had recognized him in the Court as well as earlier also. The statements of both these witnesses coupled with the entries made in the register maintained by PW-5 in the regular and ordinary course of business of his hotel, go a long way to prove that it was the appellant and none else who had got the Room No.202 booked in the said hotel on 26.01.2015 and it was the same room from where the dead body of the victim had been recovered.

17. Further, as discussed above, the appellant was proved to be the occupant of room No.202 with the victim on 27.01.2015. He left this room without giving any intimation to PW-5. Once his presence in the said room along with the victim was established then it was for him to explain as to how and in what circumstances, the death of the victim had taken place. The plea taken by the appellant that it was a case of suicide has no legs to stand in view of the fact that there is clinching evidence on record to prove that it was a case of murder. Therefore, the circumstance that the appellant stayed with the victim in a room of hotel of PW-5 on 27.01.2015 and later on she was found to be dead was obviously a material incriminating circumstance which in itself was sufficient to prove that it was the appellant who had

Neutral Citation No. 2023:PHHC:130310-DB

killed the victim and none else and this very circumstance connected the appellant with her murder.

18. The prosecution had further relied upon the circumstance of recovery of silver chain and locket belonging to the victim at the instance of the appellant in pursuance of disclosure statement stated to have been suffered by him. The prosecution case was that while being in the custody of police and after his arrest, the appellant suffered disclosure statement vide memo Ex.PW9/B in the presence of PW-10 SI Paramjit Kumar (wrongly mentioned as PW-9) and PW-14 SI Prem Kumar, Investigating Officer (wrongly mentioned as PW-13) on 13.02.2005 and in pursuance thereof, he led the police officials to Jahaj Chowk area from where he got Ex.MO/10 silver chain and locket belonging to the victim recovered which were taken into custody by the police vide memo Ex.PW9/C. Learned counsel for the appellant had argued that the case of prosecution with regard to recovery of Ex.MO/10 rested upon the statements of police officials which had not been corroborated by any independent and disinterested evidence and, therefore, the same could not be relied upon. However, on perusal of statements of both these witnesses, we are not inclined to accept this argument in view of the fact that both of them had deposed in unison about the factum of suffering disclosure statement by the accused and then taking them towards the place from where he got recovered the chain and locket Ex.MO/10. They were subjected to incisive questions of cross-examination but nothing could be extracted from their statements, on the basis of which it could be assumed that they were deposing falsely and that

Neutral Citation No. 2023:PHHC:130310-DB

no such recovery was effected. No doubt, these witnesses were police witnesses but it is a well settled proposition of law that prima facie, the public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground of their status and on the ground that they are interested in the success of the case.

19. At this juncture, it may also be mentioned that undoubtedly, Sections 25 and 26 of the Indian Evidence Act, 1872 (For short “Evidence Act”) mandate that no confession made by an accused to a police officer while being in custody of police can be proved against an accused but Section 27 of the Evidence Act is in the nature of a proviso to these sections which is based on the view that if a new or distinct fact is actually discovered in consequence of information given, then some guarantee is afforded thereby that the information is true and it can be safely allowed to be given in evidence. The fact that the silver chain and locket belonging to the victim were concealed beneath a tree in Jahaj Chowk area was, within the exclusive knowledge of the appellant and obviously not within the knowledge of the police officials. The evidence as to recovery of Ex.MO/10 at the instance of the appellant from that area can thus certainly be considered to be admissible evidence and is an important link to connect the appellant with the crime of murder of the victim and in our opinion, the learned trial Court had rightly considered this circumstance as a material one.

20. In our opinion, another link in the chain of circumstances

Neutral Citation No. 2023:PHHC:130310-DB

connecting the appellant with the crime, is his disappearance from Room No.202 after the incident. This room was booked in his name on 26.01.2015. He was found present with the victim in this room by PW-15 and thereafter was found to be missing when the dead body of the victim was recovered, without giving any information to the owner or any other employee of Regalia Hotel. No explanation whatsoever has been rendered by him in this regard and this circumstance also can be accepted as a material one to link him with the murder of the victim.

21. One more point is important. The entire incriminating material and circumstances including the confession/disclosure made by the appellant before police witnesses had been put to him while recording his statement by learned trial Court under Section 313 of Cr.P.C. He merely denied most of the circumstances without offering any explanation qua the same. With regard to the death of the victim, he had stated that the victim had committed suicide under mysterious circumstances without any overt act played by him but the Investigating agency had falsely registered case against him on the basis of fake record at the behest of parents of the deceased. He stated that he had not stayed in Hotel Regalia on the day of occurrence. The plea as taken by him to the effect that the victim had committed suicide has been found to be untrue on the face of it in view of the medical evidence produced on record which proved that it was a case of homicide. The dead body of the victim was found lying on the bed and it was not a case that it was found to be hanging. The explanation having offered by the appellant on this point being found to be untrue, in our

opinion, the same has certainly become an additional link in the chain of circumstances to make it complete.

22. Learned counsel for the appellant had raised one more argument to the effect that the prosecution had not been able to attribute any motive to the appellant as to why he would kill the victim though in a case of circumstantial evidence, motive was required to be proved and argued that this fact itself was sufficient to break the chain of circumstantial evidence pointing towards the guilt of the accused. We are, however, not able to accept this argument. Undoubtedly, in case of circumstantial evidence, motive bears important significance. However, it is also well settled that the failure to discover the motive of offence does not signify the non-existence of the crime. The failure to discover motive by appropriate clinching evidence might be a weakness in the proof of the prosecution case, but it is not necessarily fatal as a matter of law. Proof of motive is never an indispensable factor for conviction. Even in the case of circumstantial evidence, absence of motive which may be one of the strongest links to connect the chain would not necessarily become fatal, provided the other circumstances would complete the chain and connect the accused with a commission of offence, leaving no room for reasonable doubt, even from the proved circumstances. Reference in this regard can be made to **Ganeshlal v. State of Maharashtra**, (1992) Criminal Law Journal, 1545, wherein the Apex Court had made similar observations. Reference can also be made to **Mulakh Raj v. Satish Kumar**, AIR 1992 SC 1175, wherein it was observed by Hon'ble Supreme Court that the motive remains

locked up in the mind of the accused and some times it is difficult to unlock. The failure to prove motive is not fatal as a matter of law. Proof of motive is never indispensable for conviction. When facts are clear, it is immaterial that no motive has been proved. It was accordingly held that absence of proof of motive did not break the link in the chain of the circumstances connecting the accused with the crime, nor militates against the prosecution case.

23. On applying the above discussed position of law to this case, where the incriminating circumstances as pointed out by the prosecution have been established beyond doubt, we are of the opinion that notwithstanding the fact that the exact motive on the part of the appellant to eliminate the victim could not be established, this Court has still to presume the existence of certain facts which may be inferred from proved facts by exercising a process of reasoning as from that presumption a logical conclusion as to the most probable decision can be exercised by this Court. In our opinion, it was not necessary for the prosecution to prove by any affirmative evidence, the motive which impelled the appellant to commit the murder. However, the circumstances as narrated above have formed an unbroken chain of events unerringly pointing towards the guilt of the accused for commission of offence of murder of the victim. Hence, it is held that the findings as recorded by learned trial Court as to guilt of the appellant for commission of offence punishable under Section 302 of IPC deserved to be upheld.

24. With regard to the conviction of the appellant for commision

Neutral Citation No. 2023:PHHC:130310-DB

of offence punishable under Section 376 of IPC, as discussed above, spermatozoa was found on the vaginal swabs taken from the dead body of the victim. Undoubtedly, no DNA profiling of the spermatozoa as detected on the vaginal swabs was done and compared with the blood samples of the appellant to prove that it was of the appellant or not. However, the fact that the evidence led by PW-5 and PW-15 is reliable enough to prove that the appellant had booked Room No.202 in Hotel Regalia on 26.01.2015 and was seen in the said room with the victim in the next morning and thereafter dead body of the victim was recovered from the same room in the evening, coupled with forensic evidence as to finding of spermatozoa on the vaginal swabs of the dead body, undoubtedly points out that it was the appellant who had subjected the victim to sexual intercourse and none else. More so, it was not the version of the appellant that it was a case of consensual sexual intercourse or that some body else had ravished the victim. Several incised wounds on the right arm and one injury near eye were found on the dead body of the victim apart from the ligature injury found on her neck which resulted into her death. These injuries were sufficiently indicative of the fact that it was a case of forcible sexual intercourse i.e. rape by the appellant upon the victim. The injury on her person can certainly be considered to be marks of struggle/resistance. The learned trial Court had, therefore, rightly recorded the findings as to guilt of the appellant under Section 376 of IPC and we see no reason to differ with the same.

25. Lastly coming to the argument raised by the appellant's counsel to the effect that the charge under Section 404 of IPC as framed against the

Neutral Citation No. 2023:PHHC:130310-DB

accused had not been established beyond doubt. In order to find a person guilty under Section 404 of IPC, the prosecution is required to prove that a particular property was in the possession of a deceased person at the time of his/her death and that it is not since been in possession of any person legally entitled to such possession and further that it was found to be in possession of the accused by way of dishonest misappropriation or conversion to own use. As already discussed, the evidence led by PW-10 and PW-14 proved that the silver chain and locket Ex.MO/10 were recovered at the instance of the appellant. In the complaint itself, the father of the victim had reported that the silver chain worn by the victim and her mobile phone were missing. The recovery of the chain and locket Ex.MO/10 from the appellant indicated that he had retained the same without being legally entitled to do so and hiding this chain amounted to criminal misappropriation of the same on his part. As such, no fault can be found with the findings recorded by learned trial Court as to guilt of the appellant under Section 404 of IPC.

26. As per the discussion made above, we are inclined to hold that the prosecution had produced sufficient, cogent, convincing and reliable evidence of such nature on record which could be acted and relied upon beyond doubt to prove that the victim had been subjected to rape and then killed and it was the appellant and none else who had done so and further that he had also misappropriated the silver chain and locket possessed by the victim at the time of her death. Therefore, conviction of appellant for commission of offences punishable under Sections 302, 376 and 404 of IPC as recorded by learned trial Court is well reasoned and warrants no

Neutral Citation No. 2023:PHHC:130310-DB

interference. Accordingly, finding no merit in the appeal, the same is dismissed.

27. Criminal Miscellaneous application(s), if any, also stand disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

26.09.2023
manju

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