

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

**CRA-D-1702-DB-2015
and MRC-1-2016
Date of Decision: April 20, 2023**

Ikram ...Appellant

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. R.S. Rai, Senior Advocate assisted by
Mr.Gautam Dutt, Advocate for the appellant.

Mr. Ankur Mittal, Addl.AG, Haryana and
Mr. Saurabh Mago, AAG, Haryana and
Ms. Kushaldeep K. Manchanda, Advocate for State.

HARINDER SINGH SIDHU, J.

1. Vide judgment and order dated 10.12.2015 of the Ld. Sessions Judge, Mewat accused/convict Ikram was convicted under Section 302 IPC for the murder of his daughter (Sahiba) and awarded the death penalty subject to confirmation by this Court. Murder Reference Case No.1 of 2016 for confirmation of death sentence was filed by the State of Haryana. Accused-appellant Ikram filed CRA-D-1702-DB-2015 challenging the judgment of conviction and order of sentence. Appeal was heard by a Division Bench and vide judgment dated 27.02.2018, one of the members of the Bench (A.B. Chaudhari, J.) allowed the appeal filed by the convict-appellant and acquitted him of the charges levelled against him and dismissed the Murder Reference. The second Hon'ble Judge (Inderjit Singh, J.) while upholding the judgment of conviction modified the sentence

to imprisonment for life instead of death penalty and also imposed fine of Rs.10,000/- and in default of payment of fine, he was to undergo RI for a period of six months. The Murder Reference was thereby declined. But in view of the difference of opinion among the members of the Bench on the aspect of conviction, the appeal has been listed before this Bench in accordance with the provisions of Section 392 Cr.P.C.

2. The case of the prosecution in a nutshell is that on 15.02.2014 a telephonic information was received at Police Station, Punhana that a quarrel had taken place in Village Manota. Immediately on receiving the information the Inspector Allah Bux went to the village. Convict- Ikram submitted an application to him. The contents of the application are as under:

“It is submitted that I Ikram son of Yusuf caste Kureshi am resident of village Manota. Sir, today 15.02.14 morning at 8.00 I alongwith my brother Imran were at our house. After some time my father also reached home. Nasru son of Imrat caste Meo resident of Manota made us to slaughter a cow to serve meat to his relatives. Regarding quality of meat there was exchange of hot words between us, upon which Nasru son of Imrat, Hakmudeen son of Imrat, Khursheed son of Nijjar, Irshad son of Imrat all residents of village Manota came to our house duly armed with lathi, Pharsa and knives etc. and they surrounded us and after breaking open eastern wall of the house, all of them came on first floor of our house. I myself saw Chhuri (big knife) in the hand of Nasru son of Imrat. Said knife either belongs to us or to Nasru son of Imrat and with the help of the said knife Nasru son of Imrat gave a blow on the throat of my daughter Saiba aged about 7

years and as a result of said injury Saiba met with death on the spot.

Nasru gave me a lathi blow on my right hand and gave a brick blow on finger of my left hand Hakmudeen son of Imrat and Irshad son of Imrat caught hold of me and then after releasing me they fled away.

Thereafter, Saibu son of Shorab Khan came to spot and Halima wife of Mishru also climbed on the roof. Sd/- Ikram”

3. On the basis of this application FIR was registered and investigation started. During the investigation, the version of Ikram was not found to be correct. It was found by the Investigating Officer that Ikram himself had committed the murder of his minor daughter and in order to mislead the police and take revenge against Nasru, Hakmuddin, Irshad, Saibu and Halima, he had filed a false complaint. Accused was produced before the police by one Aziz on 20.03.2014 and he was arrested. On his disclosure knife and bloodstained clothes were recovered. Statement of witnesses were recorded. After investigation, challan was presented against him.

4. Prosecution examined number of witnesses in support of its case. Accused examined one witness i.e DW1-Aziz. Statement of accused Ikram under Section 313 Cr.P.C was recorded. He stated that he was innocent and had been falsely implicated. One witness Aziz was examined in defence. The accused was convicted and sentenced as stated above.

5. PW1- Dr. Parveen Raj Tanwar, Medical Officer, General Hospital, Mandikhera tendered in evidence his affidavit Ex.PW1, wherein, he stated that on 15.02.2014, he was posted at General Hospital,

Mandikhera. He conducted post mortem examination on the dead body of Sahiba daughter of Ikram, aged 7 years. The body was examined on 15.02.2014 at 4.30 p.m. The following findings were recorded:

“1. Remarks by Medical Officers: In our opinion, cause of death in this case was injury, which was a chop wound at anterior aspect of neck involving skin, trachea, esophagus, both carotid artery and jugular vein upto vertebra, which was homicidal in manner and sufficient to cause death in ordinary course of nature. Injury was ante-mortem in nature.

2. Probable time that elapsed:

i. Between injury and death was minutes.

ii. Between death and postmortem examination was within 06 to 36 hours.”

6. PW2-Dr. Mohd Rizwan Alam tendered his affidavit Ex.PW2/A, wherein, he deposed that he conducted the post mortem examination on the dead body of deceased Sahiba. Contents of his affidavit were identical to the affidavit submitted by PW1-Dr. Parveen Raj Tanwar.

7. PW-5 Dr. Raman Kapil, Medical Officer, General Hospital, Gurugram who was also one of the members of the Board of Doctors which conducted post-mortem examination of deceased Sahiba tendered his affidavit Ex.PW5/A on the similar lines as the affidavits of PW1 and PW2.

8. PW3- Head Constable Dharampal, Draftsman, S.P. Office Mewat deposed that on 03.04.2014 on the request of Inspector/SHO, P.S. Punhana, he visited the spot and prepared scaled site plan Ex.PW3/A.

9. PW4-Constable Vijender Kumar deposed regarding handing over the special report to the Illaqa Magistrate and senior Police Officer on

15.02.2014.

10. PW6- Gajender Kumar deposed that on 20.03.2014 he was posted as Head Constable at Police Station, Punhana and was associated with the investigation of this case. Ajij son of Yakub produced accused Ikram before Inspector Allabux. Ajij got recorded his statement before Inspector Allabux in which he stated that Ikram had confessed to him that on 15.02.2014, he and his father Isab had slaughtered a cow. Information regarding slaughtering of cow was given by Sarpanch Khursheed and others to the police. Police reached his house and recovered some weapons of slaughtering and mouth of cow. Due to this reason, he (Ikram) had strong enmity with Khursheed Sarpanch and others and in order to teach them a lesson, he murdered his daughter by cutting her neck with the help of a knife. He requested Ajij to produce him before the police. PW6 further deposed that during interrogation Ikram made disclosure statement Ex.PW6/A and got recovered one bloodstained knife, one trousers of black colour having white lines, one blood-stained shirt of sky blue colour having white lines from room of his house in his village Manota. The knife and clothes were converted into two separate parcels, sealed with the seal of monograms of A.B and were taken into possession vide recovery memo Ex.PW6/C. He identified the bloodstained metallic knife (Chhuri) Ex.P1, one bloodstained trouser of black colour having white lining Ex.P2 and one bloodstained shirt of sky-blue colour having white lining Ex.P3 as the same, which were recovered on the disclosure of accused. In cross examination, he stated that Aziz met him at about 11.00 p.m as he was produced by Assistant Sub- Inspector Hadi Khan before Inspector Allabux. No public

person was present at that time in the Police Station. Accused was produced in the office of SHO. Apart from him, Inspector Allabux, Assistant Sub-Inspector Hadi Khan, accused and Aziz were present in the office of SHO. He further stated that the Investigating Officer did not take fingerprints from the alleged knife Ex.P1. There was open space of Yakub in the northern side of room from which recovery was effected.

11. PW7-Head Constable Ram Kumar deposed that on 15.02.2014 he was posted as such at P.S Punhana. On that day, he was associated with Inspector/SHO Allabux, Head Constable Mohan Lal and Constable Sarjit in the investigation of the case. Bloodstained earth which was lying near the dead body of Sahiba was lifted with the help of cotton and was filled in a plastic container. Bloodstained earth from a big plate like utensil (*parat*) lying near the dead body was lifted and sealed in a plastic container. Bloodstained bowl (*katora*) was also lifted and sealed. All the articles were taken into possession by the police vide recovery memo Ex.PW7/A. He identified the bloodstained lumps of earth and loose earth in a small plastic container Ex.P4. Bloodstained silver bowl soiled with earth/mud Ex.P5 and bloodstained cotton swab Ex.P6 as being the same that have been recovered from the spot.

12. In cross examination he stated that the police party had reached village Manota at about 10.30 A.M. Some villagers including Ikram and Sarpanch Khursheed were found present there. Ikram handed over an application to Sub-Inspector Allahbux.

13. PW8-HC Jai Parkash deposed regarding deposit of the case property in the police Malkhana and that on 01.04.2014, he took out the case

property from the police Malkhana and handed over the same to special messenger HC Mohan Lal for being deposited with the FSL Madhuban.

14. PW9-Khursheed deposed that his wife Jarina was Sarpanch of Gram Panchayat of Village Manota. There is ban on cow slaughtering and selling of beef in the village. On 15.02.2014, at about 8.00 a.m, Ahru and Sehju of his village informed that Ikram, Irfan and Imran sons of Yusuf of his village had slaughtered a cow in the yard of their house and thereby violated the ban of cow slaughtering imposed in the village. He informed the police in this regard. Police arrived at the spot and registered FIR No.47 dated 15.02.2014 against them. Police arrested Yusuf and also took the beef with them. Due to this enmity, Ikram murdered his daughter Sahiba in the room at first floor of his house in order to involve him (Khursheed), Nasru, Hakmuddin, Irshad, Sehju and Halima in a false case of murder of his daughter. On 16.02.2014, the police officials came to the village and investigated the matter. After verifying the facts, it came to light that accused Ikram had murdered his daughter. In cross examination, he stated that the police verified the facts from the villagers including Amin, Ash Mohammad, Ali Mohammad and Isab. After 16.02.2014 police visited the village twice and stayed at the house of Mubarik, Ex-Sarpanch. On 16.02.2014 police verified the facts while sitting in the *baithak* of Mubarik. After 16.02.2014 also police called him, Nasru, Hakmuddin, Irshad, Sehju and Halima for verification of the case. Police verified the facts for about one or one and half hours. He did not remember whether Ikram, Imran and Irfan were present during investigation by the police on 16.04.2014. At that time, more than 100 persons had gathered. Information regarding cow

slaughter was given to him by Ashru and Sehju at about 7.00/8.00 a.m. He informed the SHO of Police Station Punhana telephonically between 7.00 or 8.00 a.m. Firstly, he reached the spot and then informed the police. Police reached the spot after about 45 minutes of giving information and remained there for about 10-15 minutes. He denied that there was any function in the house of Nasru on 15.02.2014. He also denied the suggestion that Nasru, Hakmuddin, Irshad, Sehju and Halima quarrelled with the members of family of Ikram and others and during the said quarrel, Nasru murdered Sahiba by knife. The murder took place at about 10.00 a.m. He denied that there was any quarrel between him and the accused with regard to beef of slaughtered cow.

15. PW10-Hadi Khan, Assistant Sub- Inspector, Gurugram deposed that on 20.03.2014, in the case arising out of FIR No.47 dated 15.02.2014 for offence under Sections 3/8, 5/8 and 2/80 of the Punjab Prohibition of Cow Slaughter Act, accused Ikram was interrogated by him. Accused suffered disclosure statement and admitted his involvement in the present case.

16. In cross examination, he stated that the written information was received by him at 11.55 AM. Accused Ikram was produced in Police Station Punhana by Aziz son of Yakub at about 10.10 PM in the case arising out of FIR No.47 dated 15.02.2014 under the Punjab Prohibition of Cow Slaughter Act. He was arrested at about 10.40 PM. He was interrogated for about one and half hours.

17. PW11-Inspector Sanjay Kumar deposed that on 16.02.2014, he was posted as Inspector/SHO, Police Station Punhana. On that day, he along

with Sub- Inspector Allabux, Constable Dinesh and others went to village Manota for investigation of this case. He verified the facts from the villagers and found Nasru son of Imrat, Hakmuddin son of Nijjar, Irshad son of Imrat, Sehju son of Sarab Khan, Halima wife of Mishru and Khursheed son of Nijjar innocent. Complainant Ikram was found as accused in this case as he had murdered his daughter and filed false complaint against the above said persons, who were found innocent during investigation. He had recorded the statements of witnesses under Section 161 Cr.P.C. In cross examination, he stated that on 16.02.2014, he along with other members of police team reached village Manota at about 10.10 a.m. They remained in village Manota for two hours. He admitted that he did not know any person of village Manota. They reached the house of Ikram straight. He did not remember the names of persons who had gathered at the house of Ikram at that time. He called Sarpanch, member panchayat, lambardar and respectable persons of the village through the mobile of Sub-Inspector Allabux. Out of 100 persons, he recorded statements of about 24/25 persons under Section 161 Cr.P.C but he could not tell their names. Accused persons named in the complaint made by Ikram were found innocent during investigation.

18. PW12-Inspector Allabux deposed that on 15.02.2014, he was posted at Police Station Punhana. He received telephonic message that a quarrel had taken place at Village Manota. Thereafter, he along with police team went to village Manota where Ikram presented written application Ex.PW12/A. After making his endorsement he sent the same to the Police Station Punhana for registration of the case. He inspected the place of

occurrence and prepared rough site plan Ex.PW12/C. He also deposed about lifting bloodstained earth and bloodstained katora from the spot. The dead body of the deceased Sahiba was inspected. He prepared inquest report Ex.PW12/D. He recorded the statements of witnesses under Section 161 Cr.P.C. He sent the body to the Government Hospital, Mandikhera for postmortem examination. On 16.02.2014, he along with Inspector/SHO Sanjay Kumar went to Village Manota and verified the facts of the case. On verification, complainant Ikram was found as accused in the case and persons named in the complaint were found innocent. On 20.03.2014, accused Ikram, who was already in custody in case FIR No.47 of 2015 for offence under the provisions of the Punjab Prohibition of Cow Slaughter Act, 1980 was interrogated. During interrogation, he suffered disclosure statement Ex.PW6/A in pursuance of which he got recovered bloodstained clothes and one bloodstained knife from his house.

19. In his cross examination, he stated that he had received information at about 10.00 a.m with regard to quarrel in village Manota. After receiving the information, he went to village Manota and reached there at about 10.15 a.m. When he along with the police party reached the spot at village Manota, number of villagers had already gathered there. He knew many persons of village Manota by face. He knew Khursheed and Nasru by name. The police party remained there for about three hours. He did not remember the names of persons from whom he inquired the facts but inquiry was made from about 20 persons. However, the statements were recorded only of witnesses who identified dead body of deceased and other family members of accused Ikram. He orally and secretly made inquiry from other

persons also during the period of his stay. Accused Ikram moved application at about 10.15 a.m. When Ikram submitted application, respectable persons of the village namely Khursheed, Nasru and others were present there on the ground floor while Ikram was in the room at first floor of his house. On 16.02.2014, he along with Inspector Sanjay Kumar went to village Manota for investigation at about 10 AM. So many persons of village Manota were present there, however, he could not recollect their names. He did not remember whether Khursheed and Nasru were present there or not. He and Inspector Sanjay Kumar remained in village for about three hours. Statements of witnesses under Section 161 Cr.P.C were recorded by Inspector Sanjay Kumar who verified the facts of the case. He stated that he was the only Investigating Officer of the case. After 16.02.2014, he visited village Manota many times in connection with some other matters but not for the present case. Volunteered that during these visits he also made inquiries regarding the present case. On 20.03.2014 he interrogated accused Ikram at about 2.00 PM. He did not send the knife for examination from Finger Print Expert. No independent witness was present at the time of recovery except the police officials. The door of the house from which the recovery of knife was effected opens towards southern side. There was main passage in the southern side. Towards the northern, there was open space.

20. PW13 Israil, resident of village Manota deposed that on 15.02.2014 he and Ikram (accused) identified the dead body of Sahiba. After post mortem examination the dead body was handed over to them.

21. In cross-examination he stated that on 15.02.2014 he was present in the village. He heard that Nasru, Khursheed, Halima and others

had murdered Sahiba with the help of a knife.

22. PW Aziz was given up as having been won over by the accused.

23. In his statement under Section 313 Cr.P.C, accused Ikram stated that Lallu, husband of his father's sister is residing in a village close to his village. Lallu had slaughtered some cows at their village. Beef was demanded by the Sarpanch Khursheed of their village for serving his guests. Lallu did not meet this demand of Khursheed. An attack was launched by about 50 persons at his house because husband of his father's sister had run to his house when the attack was launched upon him by the members of group of Sarpanch somewhere out side their house. In that attack, his daughter was killed and injuries were also caused to him.

24. He further stated that he was residing at Punhana and had come to village Manota in view of marriage of son of his paternal uncle. Their family had only one house in the village and thus were in minority. He was falsely implicated in this case. He was innocent and witnesses have deposed falsely against him.

25. DW1-Aziz stated that on 15.02.2014 at about 9.30 a.m, quarrel took place between accused Ikram and Nasru, Halima, Khursheed and their family members in village Manota. Khursheed was having lathi in his hands and Nasru was having knife. Nasru murdered Sahiba daughter of Ikram with the help of knife. On 16.02.2014, police called him to the Police Station, Punhana and joined him in the investigation and obtained his signatures on blank papers. He deposed that accused Ikram was falsely implicated in this case. During cross-examination by the Public Prosecutor, he admitted that Ikram was his brother-in-law. He had gone to Police Station Punhana on

16.02.2014 but the police did not enquire about the matter from him. Voluntarily stated that the police had obtained his signatures on blank papers.

26. Mr. Dutt, Ld. counsel for the accused-convict Ikram argued that Ikram has been falsely implicated in the case. There are serious gaps and infirmities in the version of the prosecution some of which he highlighted as under:

(i) As per the prosecution, PW11- Inspector Sanjay Kumar had gone to village Manota on 16.02.2014 in connection with the investigation of this case. There he had examined about 24-25 villagers from out of about 100 persons who were present there. He has not mentioned the name of any villager who was examined by him nor has he produced any record of the statements under Section 161 Cr.P.C. of any of them. He has not explained as to how he came to the conclusion that the persons named by the appellant-convict were innocent and the convict Ikram was in fact the culprit.

(ii) The appellant has been shown to be arrested on 20.03.2014 in case FIR No.47 dated 16.02.2014 registered under the Punjab Prohibition of Cow Slaughter Act. It is claimed that he was produced before the police by one Aziz. It was during interrogation that he admitted his involvement in the present case and made disclosure statement which led to the recovery of blood stained

knife and blood stained clothes on 21.03.2014 from the room in his house. As the police had concluded on 16.02.2014 that the appellant -Ikram was in fact the culprit why was no effort made to arrest him between 16.02.2014 and 20.03.2014 on which date he was produced before the police by one Aziz? It is not claimed by the prosecution that the appellant was absconding.

(iii) Aziz before whom the appellant is alleged to have made extra judicial confession and who produced him before the police was given up by the prosecution. He was instead examined in defence.

(iv) The version regarding the recovery of knife and blood stained clothes on 21.03.2014 is wholly unbelievable. The recovery has been planted on the appellant. On 15.02.2014 the spot where the dead body of Sahiba was lying had been thoroughly inspected. Blood stained earth, *katora* filled with blood and other items were taken into possession from the spot. It is inexplicable that as to why the blood stained knife and blood stained clothes of the appellant could not be recovered on 15.02.2014 and 16.02.2014 when the police again went to the village in connection with the investigation of the case and why the house where the dead body was found was not thoroughly searched.

(v) There was no motive for the appellant to kill his daughter merely to implicate those whom he held responsible for having named him in the case of cow slaughter, and

(vi) There is no eyewitness to the incident. The appellant could not have been convicted only on the basis of recovery of blood stained knife and clothes on his alleged disclosure. There was no basis to raise the presumption under Section 106 Evidence Act against the appellant.

27. On the other hand, Sh. Ankur Mittal, Ld. Additional A.G. Haryana has argued that the case had been proved by the prosecution beyond reasonable doubt. The prosecution had proved the motive of the accused-convict to murder his daughter to implicate the persons who had got registered an FIR under the Punjab Prohibition of Cow Slaughter Act against him and his father on the morning of 15.02.2014. The case is based on circumstantial evidence and the chain of circumstances is complete leaving no doubt that it is only the appellant who had murdered his daughter. Presumption u/s 106 of the Evidence Act has been correctly raised against him and it was for him to explain as to how his daughter died in his house on the morning of 15.02.2014. The version of the appellant in his complaint (Ex.PW12/A) and in his statement under Section 313 Cr.P.C. are inconsistent.

28. Having heard learned counsel for the parties, I am of the view that the prosecution has failed to prove the case against appellant-convict beyond reasonable doubt and the order of his conviction cannot be sustained.

29. The death of daughter of appellant took place in the morning on 15.02.2014. As per the deposition of PW12-Inspector Allabux, on receipt of telephonic message that a quarrel had taken place at Village Manota he along with police team went to village Manota where Ikram presented written application Ex.PW12/A. He inspected the place of occurrence and prepared rough site plan Ex.PW12/C. He lifted blood-stained earth and blood-stained *katora* from the spot. The dead body of the deceased Sahiba was inspected and sent for post mortem examination. He prepared inquest report Ex.PW12/D. He recorded the statements of witnesses under Section 161 Cr.P.C. On 16.02.2014, he along with Inspector/SHO Sanjay Kumar went to Village Manota and verified the facts of the case. On verification, complainant Ikram was found as accused in the case and persons named in the complaint were found innocent.

30. In his cross examination, he stated that he had received information at about 10.00 a.m with regard to quarrel in village Manota. He reached village Manota at about 10.15 a.m. When he along with the police party reached the spot at village Manota, number of villagers had already gathered there. The police party remained there for about three hours. Inquiry was made from about 20 persons. However, the statements were recorded only of witnesses who identified dead body of deceased and other family members of accused Ikram. Accused Ikram moved application at about 10.15 a.m. When Ikram submitted application, respectable persons of the village namely Khursheed, Nasru and others were present there on the ground floor while Ikram was in the room at first floor of his house.

31. Certain facts which emerge from his deposition are that

information about the quarrel was received in the police station at about 10.00 AM on 15.02.2014. The police party arrived at the spot at about 10.15 AM when Ikram submitted the application Ex.PW12/A in which he gave the names of the persons who had allegedly come to his house, assaulted him and caused death of his daughter. The police party remained there for about three hours. Inquiry was made from about 20 persons. However, statements only of witnesses who identified dead body of deceased and other family members of accused Ikram were recorded.

32. Significantly, no statement of any family member of accused Ikram is on record. Nor has any family member of Ikram been cited as a witness. His family members would be the best persons to depose about the circumstances of the death of the daughter of Ikram as admittedly her body was found in the room on the first floor of the house. There is no explanation for their non-examination.

33. Moreover, as per PW12 when Ikram submitted application, respectable persons of the village namely Khursheed, Nasru and others were present there on the ground floor while Ikram was in the room at first floor of his house. If, according to Khursheed who appeared as PW9 Ikram was the actual culprit why did he not state so before PW12 on that very day. There is nothing in the deposition of PW12 Allabux or PW9 Khursheed to throw light into this aspect.

34. As per PW11-Inspector Sanjay Kumar on 16.02.2014, he along with Sub- Inspector Allabux, and others had gone to village Manota for investigation of this case. He verified the facts from the villagers. He called Sarpanch, member panchayat, lambardar and respectable persons. Out of

about 100 people he had recorded the statements of about 20-25 persons under Section 161 Cr.P.C. He found that Nasru, Hakmuddin, Irshad, Sehju, Halima and Khursheed, who were named by appellant-Ikram in his complaint, were innocent, whereas, Ikram was the actual culprit and he had murdered his daughter. No such statement is there on the record. The record of his investigation was not produced and proved before the Trial Court. No explanation has been furnished for this omission.

35. Another very intriguing aspect of the case is that if during the investigation it had emerged as early as on 16.02.2014 that Ikram was the actual culprit why was no effort made to arrest him. There is nothing in the deposition of PW11 Sanjay Kumar or PW12 Allabux that any effort was made to apprehend Ikram and that he could not be traced and was absconding. PW12 Allabux had deposed that after 16.02.2014, he visited village Manota many times in connection with some other matters. He stated that during these visits he also made inquiries regarding the present case. During these visits, why did he not inquire about the whereabouts of Ikram the sole accused of the present case, is not explained.

36. PW9-Khursheed deposed that his wife Jarina was Sarpanch of Gram Panchayat of Village Manota. On 15.02.2014, at about 8.00 p.m, Ahru and Sehju of his village informed him that Ikram (appellant), Irfan and Imran sons of Yusuf had slaughtered a cow in the yard of their house. He informed the police which arrived at the spot and registered FIR No.47 dated 15.02.2014 against them. Yusuf father of appellant Ikram was arrested. Due to this enmity, Ikram murdered his daughter Sahiba in the room at first floor of his house in order to involve him (Khursheed), Nasru, Hakmuddin,

Irshad, Sehju and Halima in a false case of murder of his daughter.

37. According to him, information regarding cow slaughter was given to him by Ashru and Sehju at about 7.00/8.00 a.m. He informed the SHO of Police Station Punhana telephonically between 7.00 or 8.00 a.m. Firstly, he reached the spot and then informed the police. Police reached the spot after about 45 minutes of giving information and remained there for about 10-15 minutes. The murder took place at about 10.00 a.m.

38. Certain aspects are strange and unexplained. When there were specific allegations of cow slaughter against Ikram (appellant), Irfan and Imran sons of Yusuf why was only Yusuf arrested and not the others? Were they not present at home when the police arrived?

39. The prosecution has not explained as to what was the outcome of case FIR No.47 dated 15.02.2014 regarding cow slaughter registered against the appellant, his father and brothers. The findings in that case would have been relevant in the present case as well and would have shed light on certain aspects which have remained unexplained.

40. The motive propounded by the prosecution is also not convincing. It defies imagination that a person would kill his minor daughter to wreck vengeance to implicate those who had named him in a case of cow slaughter. First, it is elementary that merely levelling an allegation does not automatically result in conviction. The guilt would have to be established after investigation and trial. Surely, the appellant would be not so naïve to believe that a mere accusation would result in conviction of those named by him.

41. As per the deposition of PW12-Inspector Allabux telephonic

message received by the police was that a quarrel had taken place at Village Manota, whereafter, the police party went to village Manota where Ikram presented written application Ex.PW12/A. In the application Ikram had mentioned about a fight having taken place between him and those named by him in the complaint. There is nothing in the investigation to indicate the nature of the quarrel, where the quarrel took place, between whom, did those named by the appellant Ikram go to his house as alleged or not and whether there was any quarrel at all. All this remains unexplained.

42. The recovery also is doubtful. If the inquiry had revealed as early as on 16.02.2014 that the appellant was the actual culprit why was no attempt made to search the house of the appellant for any incriminating evidence? PW12 Inspector Allahbux had gone to the village number of times thereafter during which he also made enquiries regarding this case but made no attempt to search the house. Again a glaring omission which remains unexplained.

43. The appellant cannot be convicted merely on the basis of recovery of blood stained clothes and knife from a room in the house on his disclosure about one month and five days after the incident. Apart from the appellant, there were other members of his family residing there. Soon after the alleged incident number of persons had gathered there. There is nothing on record to indicate as to what led the police to believe that the appellant was guilty. There is no reference to any act or conduct of the appellant which pointed the needle of suspicion towards him. It would be unsafe to invoke the presumption under Section 106 of the Evidence Act against the appellant in these circumstances. The prosecution has not been able to discharge the

initial burden to raise this presumption. Situation would have been different if soon after the incident he had been seen with the blood stained knife near the dead body or some such similar circumstance.

44. It is well settled that the burden to prove the guilt is always on the prosecution and never shifts. The presumption under Section 106 of the Evidence Act can be used only in exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience.

45. In **Arvind Singh v. State of Maharashtra, (2021) 11 SCC 1** it was opined as under :

“79. The most important aspect in the present appeals is presumption under Section 106 of the Evidence Act. This Court has examined the scope of Section 106 of the Evidence Act in Shambu Nath Mehra v. State of Ajmer, State of W.B. v. Mir Mohammad Omar, Sucha Singh v. State of Punjab, Rajender v. State (NCT of Delhi). In Shambu Nath Mehra, this Court held that Section 106 must be considered in a commonsense way; and the balance of convenience and the disproportion of the labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the ease with which the accused could prove them, are all matters that must be taken into consideration. The section cannot be used to undermine the well-established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts. This Court held as under : (AIR p. 406, para 11)

“11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that

46. For these reasons, it is held that the prosecution has not been able to establish the case beyond reasonable doubt. The appeal is allowed. The judgment of conviction is set aside and the appellant acquitted of the charges.

April 20, 2023

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No