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

**CRA-D-30-DB of 2012
Date of Decision: 20.05.2024**

Vikas ...Appellant

Vs.

State of Haryana ...Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present: Mr. Sameer Sachdeva, Advocate, for the appellant.

Mr. Munish Sharma, DAG, Haryana.

N.S.SHEKHAWAT, J.(Oral)

1. By way of the present appeal, the appellant has challenged the judgment dated 19.08.2011 and order dated 23.08.2011 passed by the Additional Sessions Judge, Sonipat, whereby, he had been convicted for the offences punishable under Sections 302 and 377 IPC and was sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- alongwith default stipulation under Section 302 IPC and was further sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs. 5,000/- alongwith default stipulation under Section 377 IPC.

2. The proceedings in the present case, initially commenced



on the basis of the statement Ex.PA made by Suresh son of Dulia, wherein, he alleged that he had two children. Out of them, elder son was Ankit, aged 09 years, who was studying in first class. Younger to him was Sonia, his daughter. At about 06.00 p.m., his son Ankit had gone to a STD booth for making a call to his aunt (Bua), who was married in village Jamani. He did not return home for a long period and he alongwith his family members started searching for him in the village. However, despite best efforts, no clue was found. At about 01.30/2.00 a.m. (night) on 12.03.2009, they came to know that the dead body of his son Ankit was lying in a room (Kotha) situated in the courtyard (Gher) of Ramesh son of Phool Singh resident of their village. He alongwith his brother Tek Ram and other family members reached at the spot and found that his son Ankit was murdered by strangulation with the help of a rope and his dead body was lying on a cot. He made inquiry also at his own level. He was sure that Vikas son of Ramesh had committed sodomy with his son Ankit and, thereafter, strangulated him with rope. He prayed for taking legal action against him.

3. On the strength of the statement made by Suresh, complainant, the FIR in the present case was registered by the police. After registration of the FIR Ex.PH/1, the inquest report Ex.PL/1 was prepared and the postmortem on the dead body of Ankit, aged about 09 years was conducted on 12.03.2009. After conducting the



investigation, the final report under Section 173 Cr.P.C. was presented before the Area Magistrate. After the committal, the appellant/accused was charge sheeted for the commission of the offences punishable under Sections 302/377 IPC. However, the appellant did not plead guilty and claimed trial.

4. During the course of the trial, the prosecution examined Jabhal son of Matu Ram as PW1, who stated that at about 06.30 p.m. on 11.03.2009, he was going from his house to his fields. He saw Ankit (deceased) and Vikas, appellant in front of the house of Ramesh. Thereafter, he went to his fields and the next morning, he found many persons gathered in front of the house of Ramesh son of Phool Singh. On inquiry, he came to know that Ankit had been hanged to death. He was questioned by the police and he had made a statement to the police. In his cross-examination, he admitted that it was Holi festival on that day and he had crossed the appellant and Ankit (since deceased), just near to them. He spent night in the fields and came back home at about 05.00 a.m. The police met him at Gohana at 07.00 a.m. Still further, the prosecution examined Shri Krishan as PW2, who stated that on 15.03.2009, the appellant came to him and told him that he had committed blunder with son of Suresh. He asked him to help him and he took the appellant to the police, which met him in the chowk and he handed over the appellant to the police. He further stated that the accused had told him that he had



committed bad work with son of Suresh and had hanged him to death. The police had recorded his statement. In his cross-examination, PW2 Shri Krishan admitted that the complainant was not his relative, but he was from his village. He had never been the Sarpanch or Panch of the village, however, he had relations with the police officials. The prosecution further examined Constable Umesh Kumar as PW3, who had taken the photographs Ex.P-1 to Ex.P-5. The prosecution further examined PW4 complainant Suresh, who reiterated the allegations levelled by him in the FIR in the present case. In his cross-examination, he stated that at about 01.30 a.m., when they were searching for Ankit, some villagers had told that the dead body of Ankit was lying in the Gher of Ramesh. The prosecution further examined PW5 HC Ishwar Singh, PW6 Constable Ram Dhan and PW7 Constable Vikas Kumar and their testimonies are formal in nature.

5. The prosecution examined PW8 Dr. Adarsh Sharma, who alongwith Dr. Sanjay Chhikara had conducted the postmortem on the dead body of Ankit son of Suresh, aged 09 years. He stated that the dead body was a male, moderately built and nourished, wearing white kurta pajama. The eyes were closed and mouth was opened. Tongue was protruding and clinched between the teeth. The eyes and face were congested and cyanosed (blue). A rope with two turns around the neck was present tightly with sliding knot on the left sub



mandibular area. The rope was removed and sealed. He further stated as under:-

“Postmortem staining was present on back and fixed rigormortis was present all over the body. Frothy secretions were present in the mouth and nasal cavities. Saliva dribbling spots were present at right corner of mouth.

On removing the rope around the neck a dry hard brownish and depressed ligature mark was present all around the neck at the level of thyroid cartilage of width 1.5 x 2 cm. Knot sign was present on the sub mandibular area. Petechial hemorrhages and ecchymosis were present in the skin and subcutaneous tissue around the ligature mark and underneath the ligature. Underline neck muscles and blood vessels were lacerated.

In the perianal area a small laceration of size 0.5 x 0.5 cm present at 6.00 'O' clock position and a small abrasion of size 0.5 x 0.5 cms was present in the 11 'O' clock position. Rectal cavity full of semi-clotted blood. Two rectal swabs were taken and sent for semen analysis. Faecal matter was present on the inner surface of pyjama alongwith few patches of blood.

Internal organs were healthy and congested. In the heart left ventricle was empty and right ventricle was full of blood. The cause of death of deceased was asphyxia as a result of strangulation which was antemortem in nature and sufficient to cause death in normal course of life. Possibility of sodomy can not be ruled out. Probable time between injury and death was within few minutes and probable time between death and postmortem was



within 24 hours.

Following were handed over to police after postmortem examination:

- 1. Well stitched dead body after postmortem examination*
- 2. Copy of PMR*
- 3. Police papers numbering 1 to 18 duly initialled by me.*
- 4. A sealed parcel bearing 8 seals containing ligature i.e., rope.*
- 5. A sealed envelop bearing six seals containing forwarding letter to Director FSL, sample of seal used and copy of PMR.*
- 6. A sealed envelop bearing six seals containing two rectal swabs with one seal on each rectal swab.*
- 7. A sealed parcel bearing eight seals containing clothes of deceased.*
- 8. Two separate samples of seal used.*

As per my record Ex.PF is the true carbon copy of the original MLR which bears my signatures.

On 18.3.2009 I gave my opinion Ex.PF/1 on police request to the effect that ligature mark found on the body of Ankit was compatible with the ligature i.e., rope tied around the neck which was sealed earlier. (At this stage one sealed parcel containing rope is opened) Ex.P1 is the same rope which was removed by me from the neck of deceased. (At this stage another sealed envelop containing clothes of the deceased Ankit opened) Ex. P2 and Ex. P3 are the Kurta Pajama of the deceased which he was wearing at the time of postmortem”.

6. On 15.03.2009 at about 06.00 p.m., he also medico legally examined Vikas son of Ramesh, who was brought by the



police for examination as an accused. He gave his opinion that there was nothing to suggest that the accused was incapable of doing sexual intercourse and he exhibited his report Ex.PF/2. He had sealed a parcel containing underwear of the accused.

7. The prosecution further examined EASI Mahender Singh as PW9, who had delivered the special report to Area Magistrate. EHC Rajesh Kumar had prepared the scaled site plan at the spot. PW11 ASI Balwan Singh had recorded the formal FIR Ex.PH/1 and he sent special report to the Area Magistrate and other higher police officers. The statement of PW12 EASI Rajpal was formal in nature. The prosecution further examined PW13 Rajesh son of Tek Ram, who was the cousin of Ankit, deceased. As per him, at about 06.30 p.m., Ankit had gone to STD booth to make a call to his Bua, but he did not return home. At about 01.30 a.m., they had gone in search of Ankit, but did not find him. On 12.03.2009, some persons of the village came to him and on asking they disclosed that dead body of a young boy was lying in the Gher of Vikas son of Ramesh and went to the spot and found the dead body of Ankit. They had informed the police and the police had reached there. They had taken the dead body of Ankit to the Civil Hospital Gohana where the postmortem was conducted and he alongwith Tek Ram had received the dead body of Ankit vide receipt Ex.PK. The prosecution further examined PW14 SHO Ishwar Singh, who had investigated the matter initially. He had



completed the report under Section 174 Cr.P.C. and had obtained medical opinion in the present case.

8. After closure of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and he stated that he had been falsely implicated in the present case. On 11.03.2009, he had gone to the house of Dalbir. When he returned from the house of Dalbir at about 11/11.30 p.m., he found the dead body of Ankit lying on the cot in the Gher. He told this fact regarding dead body of Ankit to his neighbour Mahabir Singh son of Dhoop Singh and Dhoop Singh Sarpanch of his village. Thereafter, he alongwith Dhoop Singh and Mahabir went to the house of the complainant and told the said fact to him also. Dhoop Singh Sarpanch had called the police. He stated that he was arrested on 12.03.2009 by the police from his house. His parents had already died and in order to grab his property, he had been falsely involved by Suresh in collusion with his uncle Nafe Singh and he had not committed the offence. The accused tendered in evidence the photocopy of a letter from FSL Madhuban to EHC Balganand of Police Station Baroda as Mark DA.

9. While initiating the arguments on behalf of the appellant, learned counsel submitted that the case of the prosecution is primarily based on three circumstances, i.e., (i) The dead body of Ankit (since deceased) was recovered from the room (Kotha) in the courtyard of the house of the accused, (ii) the appellant was allegedly seen at about



06.30 p.m. with Ankit (since deceased) by PW1 Jabhal and (iii) the appellant had allegedly suffered an extra judicial confession in the presence of Shri Krishan PW2.

10. Learned counsel vehemently argued that in the present case, PW1 Jabhal was related to Suresh, complainant PW4 and the trial Court had committed grave error in placing reliance on such a related witness. Still further, it has been wrongly alleged that the appellant had suffered extra judicial confession in the presence of PW2 Shri Krishan, who was neither a Panch nor a Sarpanch and the appellant had no reason to go to him and disclose the facts to him unnaturally. Thus, the conduct of such a witness was highly unnatural and trial Court had wrongly placed reliance on such a witness. Apart from that, the appellant is an orphan and he had gone to the house of the Dalbir. However, when he returned at about 11.30 p.m., he found the dead body of Ankit (since deceased) in his courtyard on a cot and it was he, who had informed Dhoop Singh (Sarpanch) and Mahabir Singh son of Dhoop Singh about the dead body of Ankit. Thereafter, Dhoop Singh Sarpanch had called the police and the police was falsely informed by Suresh, complainant in collusion with his uncle Nafe Singh, in order to grab his property. Thus, it was vehemently argued that the appellant was made a scapegoat and was falsely involved in the present case.

11. On the other hand, learned State counsel vehemently



argued that in the present case, it has been wrongly argued that PW1 Jabhal is related to Suresh PW4, complainant. In fact, no such suggestions were given to PW1 Jabhal by the accused. Apart from that, PW2 Shri Krishan was neither Sarpanch or Panch of the village, but he was definitely a person, who wielded influence in the society. In his cross-examination, PW2 Shri Krishan, who was aged 70 years, had stated that he had relations with the police officials. Consequently, the appellant might have thought that Shri Krishan would help him after commission of the crime. Apart from that, in the present case, soon after the occurrence, the appellant had fled from the village and he could be arrested by the police on 15.03.2009. Even, his post crime conduct would also show that he was involved in the crime. Further, recovery of dead body from the courtyard of the accused proved the involvement of the accused in the crime. Thus, he prayed that the impugned judgment and order may be ordered to be upheld.

12. We have given the conscious consideration to the rival submissions made by the learned counsel for the parties and have perused the record.

13. In the present case, the defence has assailed the testimony of PW1 Jabhal on the ground that he happened to be related to PW4 Suresh. However, from a perusal of the testimony of PW1 Jabhal, it is apparent that his testimony is natural and believable and



even his testimony could not be shattered even by way of detailed cross-examination on the said witness. He clearly deposed that at about 06.30 p.m. on 11.03.2009, he had seen Ankit (since deceased) and Vikas appellant in front of the house of the appellant itself. Next morning, when he returned from his fields, he found that several persons had gathered in front of the house of Ramesh and on inquiry, he came to know Ankit had been hanged to death. Immediately thereafter, he appeared before the police and stated the facts. Further, even if, it is assumed for the sake of arguments that Jabhal was related to PW4 Suresh, complainant, still, it is not a ground to discard his testimony, when a glance over his testimony, would inspire confidence and he had made a statement to the police at the earliest possible opportunity. Even, he was subjected to lengthy cross-examination, but nothing to the advantage of the accused could be found. Still further, another strong circumstantial evidence against the present appellant was in the form of extra judicial confession, which he had suffered in the presence of PW2 Shri Krishan. In the present case, no doubt, PW2 Shri Krishan had admitted that he was neither a Panch nor a Sarpanch of the village. However, he admitted that he had relations with police officials. Even, the trial Court was justified in observing that the appellant had asked PW2 Shri Krishan to help him and, thereupon, he took the appellant to the police, which met him in chowk and he had handed over the appellant to the police.



This witness had also stated that he was told by the appellant that he had committed bad act with son of Suresh, complainant, and had hanged him to death. Even the said witness was cross-examined and he had withstood the test of cross-examination. No doubt, the extra judicial confession is considered to be weak piece of evidence, however, when supported with other evidence showing the involvement of the accused, the said piece of evidence can very well be relied upon by the Courts. In the present case, the appellant was last seen in the company of Ankit (since deceased) by PW1 Jabhal and soon thereafter, the dead body of Ankit was recovered. Apart from the above referred evidence, the most material evidence against the present appellant is recovery of dead body from the room (Kotha) in the courtyard of the appellant. PW4 Suresh, complainant, clearly stated that he alongwith other family members had been searching for Ankit (deceased) since long and at mid night, they got information that dead body of Ankit was lying in the Gher of the appellant and the dead body was found there. The statement of PW4 Suresh has been corroborated by PW13 Rajesh, cousin of Ankit. He had also accompanied PW4 Suresh to the courtyard of the appellant, where the dead body was recovered by the police. Thus, in the present case, the prosecution had been able to lead such circumstantial evidence, which was conclusive in nature and it was so complete and consistent, which unerringly established the guilt of the appellant. Apart from the above



circumstances, even the testimony of PW8 Dr. Adarsh Sharma also lent support to the ocular account in the present case. PW7 Dr. Adarsh Sharma had conducted the postmortem on the dead body of Ankit and had found a rope with two turns around his neck and the rope was removed and sealed. He stated that in the perianal area, a small laceration of size 0.5 x 0.5 cm present at 6.00 'O' clock position and a small abrasion of size 0.5 x 0.5 cms was present in the 11 'O' clock position. Rectal cavity full of semi-clotted blood. Faecal matter was present on the inner surface of pyjama alongwith few patches of blood. He clearly stated that the cause of death of deceased was asphyxia as a result of strangulation which was antemortem in nature and sufficient to cause death in normal course of life. He also pointed that the possibility of sodomy can not be ruled out and the probable time between injury and death was within few minutes and probable time between death and postmortem was within 24 hours.

14. Even, the said doctor was cross-examined by the learned defence counsel, however, only certain formal questions were put to him. In the present case, it was argued on behalf of the learned counsel for the appellant that the human origin blood was found on pyjama Ex.P-3, shirt Ex.P-2 and rectal swabs of the deceased. Similarly, human semen was detected on the rectal swab of the deceased as well as underwear of the accused Ex.P-4. However, the DNA test was not conducted by the prosecution in the present case.



However, the said argument is meritless in view of the fact that the FSL report even corroborates the version of the prosecution. The FSL report clearly proves that human semen was found on rectal swabs of the deceased as well as underwear of the accused Ex.P4 and these circumstances established the involvement of the accused in the present case.

15. In fact, in the present case, even though, the case of the prosecution is entirely based on the circumstantial evidence. However, the circumstances have been fully proved by the prosecution by leading cogent and unimpeachable evidence and such circumstances are conclusive in nature. From the evidence led by the prosecution, the guilt of the appellant can very well be proved. All the circumstances in the present case are complete, forming a chain and above referred proved circumstances are consistent with the hypothesis of the guilt of the appellant.

16. In view of the above discussion, we find no substance in the arguments raised by the learned counsel for the appellant and the appeal is, accordingly, ordered to be dismissed.

17. Sequally, the impugned judgment of conviction dated 19.08.2011 and order of sentence dated 23.08.2011 passed by the Additional Sessions Judge, Sonipat, are upheld.

18. A copy of this judgment may be sent to the concerned CJM, who shall commit the appellant to custody, if on bail, to serve



the remaining part of the sentence.

19. All pending applications, if any, are disposed off, accordingly.

20. Trial Court record be sent back to the trial Court.

(GURVINDER SINGH GILL)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

20.05.2024
amit rana

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