

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Decided on:- 4th April, 2024

(1)

CRA-D-500-DB-2013 (O&M)

KunalAppellant

Versus

State of Haryana ...Respondent

(2)

CRA-D-551-DB-2013

BrijeshAppellant

Versus

State of Haryana ...Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. A.P.S. Deol, Senior Advocate with
Mr. Vishal R. Lamba, Advocate and
Ms. Trnum Preet Kaur, Advocate
for the appellant in CRA-D-500-DB-2013.

Mr. A.P.S. Deol, Senior Advocate (Amicus Curiae) with
Mr. Vishal R. Lamba, Advocate and
Ms. Trnum Preet Kaur, Advocate
for the appellant in CRA-D-551-DB-2013.

Mr. Sukhdeep Parmar, Senior DAG, Haryana.

AMARJOT BHATTI, J.

1. Both appeals i.e. CRA-D-500-DB-2013 and CRA-D-551-DB-2013 as referred above arising out of common judgment of conviction and order of sentence passed by learned Additional Sessions Judge, Gurgaon

were taken up together for hearing and adjudication with the consent of learned counsel for the appellants, as they arise out of a common judgment of conviction and order of sentence.

2. Appellants/convicts Kunal and Brijesh have filed their respective appeals against judgment of conviction dated 24.04.2013 and order of sentence dated 27.04.2013 passed by learned Additional Sessions Judge, Gurgaon in Sessions Case bearing No. 18 of 2011, titled as “State Vs. Kunal and another” vide which both are sentenced as under:-

Name of convict	Offence U/s	Sentence of Imprisonment
Kunal	302 read with Section 34 of IPC	Imprisonment for life and fine of Rs. 10,000/-. In default of payment of fine or a part thereof further imprisonment for a period of six months.
	392 of IPC	Rigorous Imprisonment for ten years and fine of Rs. 5,000/-. In default of payment of fine or a part thereof further imprisonment for a period of three months.
	376 of IPC	Rigorous Imprisonment for a period of seven years and fine of Rs. 5,000/-. In default of payment of fine or a part thereof further imprisonment for a period of three months.
Brijesh	302 read with Section 34 of IPC	Imprisonment for life and fine of Rs. 10,000/-. In default of payment of fine or a part thereof further imprisonment for a period of six months.
	392 of IPC	Rigorous Imprisonment for ten years and fine of Rs. 5,000/-. In default of payment of fine or a part thereof further imprisonment for a period of three months.

3. For both convicts, all sentences are ordered to run concurrently.

4. Brief facts as per prosecution case are that on 25.01.2011, a telephonic message regarding murder of one lady in House No. 1017A Maruti Vihar, Chakkarpur, Gurgaon was received by police present at DLF Qutab Enclave, Gurgaon. On this, ASI Mahavir Singh alongwith other police officials reached aforementioned house where he met complainant V. Karukkuvel Rajan, who gave his written complaint to police. In his complaint, he stated that he got married with victim X (name of victim

withheld and hereinafter to be referred as 'X'), daughter of XX in month of May, 2010. On 25.01.2012, at around 09:50 am to 10:00 am, he left home for office. He contacted his wife at about 02:07 pm on phone and talked to her for about five minutes. He again called her on her mobile phone around 06:25 pm but same was switched off. He then called her on landline number but she did not pick up the phone. When he reached home, he found front main door locked from inside, whereas, another door from staircase was slightly open. All the lights were switched off. He entered the house through that door and saw that iron and wooden door of balcony was lying open. When he entered in his bedroom, he saw that his wife victim X lying dead in a corner with a cut on her neck and she was undressed. He covered her with a saree and came out screaming. Thereafter, he called neighbourers etc and also informed his sister and in-laws. He informed police immediately that his wife was murdered by unknown person.

5. On this complaint, formal FIR No. 16 dated 25.01.2011 was registered under Sections 302, 201 of Indian Penal Code, 1860 (for short 'IPC'). Investigation was commenced. Supplementary statement was suffered by complainant on 25.01.2011 itself that when he inspected his residence subsequently he found that two laptops and two mobile phones were also missing. Blood stained knife, blood stained double bed sheet and one pyjama were lifted from place of occurrence. Inquest proceedings were prepared and statements of witnesses were recorded. Postmortem examination of deceased was conducted. Thereafter, on 28.05.2011, investigation was handed over to SI Jasvir Singh, Incharge Cyber Cell. On the basis of call details of mobile phone of deceased and location, accused Kunal alias Monti and Brijesh were nominated and arrested on 14.07.2011 from Varanasi and were produced before learned Illaqa Magistrate on

15.07.2011. They were taken to Forensic Science Laboratory (FSL) Madhuban on 18.07.2011 to draw samples of blood. All seized articles from the scene of crime, samples handed over after postmortem examination and blood samples of both accused were sent to FSL Madhuban for the purpose of testing. During interrogation, both accused suffered disclosure statements and led police party to recovery of looted articles and accordingly, laptop make HP, mobile phones make Soni Ericson and one hard disk were recovered from possession of accused Kunal, whereas, laptop make HP, one mobile phone make Reliance were recovered from possession of accused Brijesh. Said articles were taken in police possession. As accused allegedly gang raped the deceased victim and looted her belongings, offences under Section 392 and 376(2)(g) of IPC were accordingly added. After completion of investigation, challan was presented in the Court of Illaqa Magistrate at Gurgaon.

6. Both accused were supplied complete set of copies of challan report as provided under Section 207 of Cr.P.C. Since the offence under Sections 302 and 376(2)(g) of IPC are exclusively triable by the Court of Sessions, learned Chief Judicial Magistrate, Gurgaon committed the case to the Court of learned Sessions Judge, Gurgaon for trial, vide commitment order dated 02.11.2011.

7. Learned Additional Sessions Judge, Gurgaon, after hearing the arguments, framed charge-sheet against both accused under Sections 302, 201, 392, 376(2)(g), 34 of IPC, which was read over and explained to them in simple language to which they pleaded not guilty and claimed trial.

8. In order to prove the facts of the case, prosecution examined Girish Kumar, Draftsman as PW1, Ponaada Naveen Babu as PW2, Constable Anand Pal as PW3, EASI Bheem Singh as PW4, SI Jagdish Parshad as PW5,

ASI Raj Kumar as PW6, Constable Vikram as PW7, complainant Karukkuvel Rajan V as PW8, Rajender Singh Retd. SI as PW9, ASI Mahabir Singh as PW10, Rajeev, Alternate Nodal Officer, Reliance Communication Limited as PW11, Surinder Kumar, Assistant Nodal Officer, Idea Cellular Limited as PW12, Israr Babu, Alternate Nodal Officer, Vodaphone Mobile Services Limited as PW13, Dr. Hazari Lal, Medical Officer, General Hospital, Gurgaon as PW14 (his statement was not recorded completely and subsequently given up), Dr. Akanksha Setya, Medical Officer, General Hospital, Gurgaon as PW15, Dr. Anurag Verma as PW16, HC Ranbir Singh as PW17, SI Rajesh Kumar as PW18 and SI Jasvir Singh as PW19.

9. Statements of both accused were recorded under Section 313 Cr.P.C. While denying all incriminating evidence put to them, they pleaded innocence and false implication.

10. In defence, accused examined Rajeev Ranjan as DW1. Accused Kunal DW2 himself appeared as a defence witness in terms of Section 315 Cr.P.C.

11. After hearing arguments advanced by learned Public Prosecutor for the State and learned counsel representing the accused persons, accused Kunal and Brijesh were convicted and sentenced under Section 302 read with Section 34 of IPC and Section 392 of IPC, whereas, accused Kunal was further convicted and sentenced under Section 376 of IPC, vide judgment of conviction dated 24.04.2013 and order of sentence dated 27.04.2013 passed by learned Additional Sessions Judge, Gurgaon in Sessions Case bearing No. 18 of 2011. Feeling aggrieved of this judgment of conviction and order of sentence, present appeals have been filed by the convicts.

12. It is to be noted at this stage that both these appeals when listed for hearing on 15.01.2024, were adjourned to 15.02.2024. Arguments in

CRA-D No.500-DB of 2013 were heard. As learned counsel for appellant in CRA-D No.551-DB of 2013 had not appeared, Mr. APS Deol, Senior Advocate was appointed as Amicus Curiae to assist this Court and both these appeals were adjourned to 16.02.2024. Arguments were then heard on 16.02.2024 and judgment reserved.

13. Learned counsel for both appellants/convicts took the stand that prosecution had failed to prove guilt of both appellants/convicts beyond the shadows of reasonable doubt. There was no eye witness to the occurrence. It was a blind murder case. SI Jasvir Singh had falsely implicated both appellants for the murder of victim X. They were arrested from Varanasi on 14.07.2011 and were brought to Gurgaon. Prosecution had tried to connect appellants/convicts on the basis of call detail record which is not proved on record. Trial Court has relied upon call detail Mark-A of mobile phone number 918960846223 which cannot be read into evidence. There is no convincing evidence on record to establish that either Kunal contacted deceased victim nor there is convincing evidence on record to show that Kunal or Brijesh were in touch with each other. There was no convincing link evidence on record to connect them with murder of deceased victim. In fact, they were wrongly arrested on 14.07.2011 and false recoveries were planted on them. Reports of FSL cannot be relied upon. Samples were drawn by taking them to FSL Madhuban forcibly without following rules and procedure. They were beaten up by CIA Staff and were forced to sign on certain documents. Defence raised by appellants was wrongly ignored by trial Court.

14. In support of aforesaid defence, one of the appellant/convict Kunal had stepped into witness box as DW2 and deposed that he was a married man having a son. On 14.07.2011, while he was returning home

after dropping his son to school, he was arrested by SI Jasvir Singh for the purpose of investigation. He along with Brijesh were brought to CIA office Gurgaon and they were forced to sign on blank documents. False medical record was prepared. They did not suffer any statement before Investigating Officer. They were medically examined at General Hospital, Gurgaon but they were not allowed to say anything to Medical Officer. They were taken to FSL Madhuban where blood samples, sample of hair from their private parts and underwear having stains of semen were forcibly taken and thereafter, they were brought back to Police Station Gurgaon. Allegations of murder and rape of victim X were denied by appellant/convict Kunal as DW2.

15. Learned counsel further submitted that witnesses examined to prove medical record were not rightly appreciated. Dr. Anurag Verma, Medical Officer examined as PW16 categorically stated that stab incised wounds on person of deceased victim were of different dimensions, therefore, same were not caused with one weapon. The weapon of offence was never shown to doctor to seek his opinion if the injuries were caused to deceased victim with said weapon. As per prosecution case, initially Kunal tried to strangle victim and she became unconscious. Thereafter, Brijesh was called who found that victim was still alive and he told Kunal that she had to be murdered and on this Brijesh picked up a knife and caused several incised wounds including on her neck, resulting into her death. However, in Postmortem Report, there is no finding by doctor that victim was strangled. Therefore, prosecution version is not supported from medical record proved on file.

16. It was further pointed out that recovery of laptops and mobile phones was falsely planted on them by SI Jasvir Singh of CIA Staff by

procuring the same from complainant V. Karukkuvel Rajan. Complainant did not level any allegation against them nor parental family of victim suspected anybody for the occurrence. There was no reason to ignore the statement of Kunal DW2. Facts of the case and evidence led by prosecution were not correctly appreciated by learned trial Court holding both of them guilty for the offences punishable under Section 302 read with Section 34 of IPC and Section 392 of IPC, whereas, Kunal was further held guilty for the offence punishable under Section 376 of IPC and were convicted thereunder. Judgment of conviction and order of sentence passed by learned trial Court is not on sound footing, therefore, same is liable to be set aside by accepting present appeals and both appellants/convicts deserve acquittal.

17. On the other hand, learned counsel representing State argued that facts of the case and evidence led by prosecution are rightly appreciated by learned trial Court. Complainant V. Karukkuvel Rajan had stepped into the witness box as PW8 to prove the occurrence. On 25.01.2011, when he returned home i.e. House No. 1017A, Maruti Vihar, Chakkarpur, Gurgaon, he found main door of the house closed, whereas, door towards stair case was slightly open and iron door of balcony was also open. All the lights were off. He went inside the bedroom and noticed that dead body of his wife was lying partially naked in corner of room and there was a cut on her neck. He was perplexed and came out, called his neighbour as well as their house dealer Naresh and other office colleagues. Police was informed. Family of his wife was also informed about the occurrence. Said occurrence is also confirmed by Ponaada Naveen Babu as PW2, even though he was declared hostile pertaining to recovery of articles which were lying near the dead body. Recoveries of weapon of offence i.e. knife, blood stained bed sheet and pyjama were effected from the scene of crime and were taken in police

possession vide recovery memo Ex.PE. Initial investigation conducted on spot was proved on file by SI Rajesh Kumar PW18 along with recovery witness ASI Raj Kumar PW6 as well as Constable Vikram examined as PW7. Link evidence is also proved on record by examining relevant witnesses i.e. Anand Pal PW3 and EASI Bheem Singh PW4.

18. Both accused were nominated during the course of investigation carried out by SI Jasvir Singh PW19, on the basis of call details. Call detail record of mobile phone number 9310186199 used by deceased victim as well as of Kunal bearing mobile number 9305947228 were proved on record by examining Rajeev, Alternate Nodal Officer, Reliance Communication Limited as PW11. Call detail record of mobile phone number 8960846223 was proved by examining Surender Kumar, Assistant Nodal Officer, Idea Cellular Limited as PW12. Call detail record of co-accused Brijesh was proved by Israr Babu, Alternate Nodal Officer, Vodaphone Mobile Services Limited as PW13. Apart from call detail record, accused Kunal is further connected with crime on the basis of report of DNA prepared by FSL Madhuban dated 07.12.2011 Ex.PA/4. Postmortem Report was proved on record by examining the doctors of Medical Board namely Dr. Akanksha Setya as PW15 and Dr. Anurag Verma as PW16. Appellants/convicts are also connected with crime on the basis of their disclosure statements recorded by SI Jasvir Singh PW19. Disclosure statement of Kunal is Ex.PD/PW18/A on the basis of which recovery of one laptop make HP model DV-270 TX, one mobile phone make Sony Ericson P1I and one hard disk make SEAGATE was effected vide recovery memo dated 17.07.2011 Ex.PW18/C, whereas, disclosure statement of Brijesh @Vikki is Ex.PC/PW18/B on the basis of which recovery of laptop make HP, Pavilion TX-200 S.I.r. CNF 8124 H.K.S. and one mobile phone make Reliance LG

was effected vide recovery memo Ex.PW18/D. The aforesaid articles were duly identified by the complainant vide identification memo Ex.PW19/C.

19. It was argued that from the evidence led by prosecution, guilt of both appellants/convicts was duly proved on record. All aspects of the case were rightly appreciated by trial Court and Kunal was held guilty under Sections 302 read with Section 34 of IPC, 392 and 376 of IPC, whereas, Brijesh was held guilty under Sections 302 read with Section 34 of IPC and 392 of IPC and they were rightly convicted thereunder. Defence raised by appellants/convicts is afterthought. Both appeals, it was submitted, deserve dismissal.

20. We heard arguments advanced by learned counsel for appellants/convicts and learned counsel representing the State and have gone through the record carefully with their able assistance. FIR Ex.PK/1 was lodged on written application of complainant V. Karukkuvel Rajan addressed to SHO, Police Station Gurgaon which is proved on record as Ex.PE. Complainant stated that he got married with victim X daughter of XX, Varanasi on 05.05.2010. It was an arranged marriage. He was staying in House No. 1017A, Maruti Vihar, Chakkarpur, Gurgaon since October, 2010. On the day of occurrence, on 25.01.2011 he left for his office at around 09:50/10:00 am. He called his wife at about 02:07 pm and he talked with her for about five minutes. He called his wife at about 06:25 pm but her mobile phone was switched off. He also called on landline number but nobody picked up the phone. When he reached home, he found that main door was locked from inside and door towards stair case was open and iron gate leading to balcony was also open. All lights were switched off. He entered bedroom and noticed half naked dead body of his wife lying in the corner of room. He was baffled and came out to inform his neighbour. He further

called his colleague and family members. Police was informed. Aforesaid facts are proved on record by examining complainant V. Karukkuvel Rajan as PW8. It is pertinent to note at this stage that the complainant in his supplementary statement recorded on the same day categorically stated that two laptops HP make, i.e. DV-270TX-I (No.4) and Pavilion TX-200 S/N CNF8124HK.5(I) (No.5) alongwith two mobile phones – one Sony Ericsson and other Reliance LG brand were missing from his home. Complainant stated that when he had recorded his statement earlier in the day, he had not checked his residence for any missing items. The same had been discovered by him later and brought to the notice of the police authorities. Therefore, the argument that recovery of the said laptops and mobile phones is a contrived one or planted, is devoid of any merit. At the time of recording of the said statements, the police authorities did not have any clue of the persons responsible for crime. It is only at a subsequent stage after investigation by PW19 SI Jasvir Singh on the basis of call details records, that culpability of the appellants came to light.

21. The occurrence is also admitted by another witness namely Ponaada Naveen Babu as PW2. He confirmed during his cross-examination that he was called by V. Karukkuvel Rajan at about 06:30/06:45 pm and he had reached there after 15 minutes. He had seen dead body lying in the room. He also confirmed that police had also reached at the scene of crime. Therefore, it is proved on record that victim was murdered in her own house on 25.01.2011 and this fact was noticed for the first time by her husband V. Karukkuvel Rajan who lodged the report with police immediately.

22. Initially investigation was carried out by SI Rajinder Singh examined as PW9. He confirmed that he had prepared rough site plan of place of occurrence Ex.PH. He had lifted knife, pyjama of deceased and

blood stained bed sheet which were sealed in separate parcels with his seal bearing impression 'JS' and were taken in police possession vide seizure memo Ex.PE. He had prepared inquest report Ex.PJ and dead body was sent to General Hospital, Gurgaon for postmortem examination. After postmortem, dead body was handed over to family of deceased. Sealed parcels received from doctor after postmortem examination were also taken in possession vide recovery memo Ex.PF. ASI Raj Kumar as PW6 and Constable Vikram as PW7 confirmed aforesaid facts. Articles which were lifted from scene of crime i.e. knife Ex.P1, bed sheet Ex.P2 and pyjama Ex.P3 were also produced in Court during the course of recording evidence.

23. Postmortem of deceased victim is proved on record by Dr. Anurag Verma, PW16. He has proved on record postmortem report Ex.PR, according to which he along with Board of Doctors consisting of Dr. Hazari Lal and Dr. Aakanksha Setya medically examined the victim a female aged 28 years and found following injuries on her person :-

- “1. Stab incised wound of size 2x2mm, obliquely placed over neck with acute edge medially and rounded edge laterally, seen on mid line of neck, obliquely placed over neck with acute edge medially cavity deep and dark red partially clotted blood and 8 cm below chin.
2. Stab incised wound of size 1.5x1 mm, obliquely placed over neck with acute edge medially, cavity deep and dark red partially clotted blood which is 10 cm below chin.
3. Stab incised wound of size 1x1mm, obliquely placed over neck with acute edge medially, cavity deep and dark red partially clotted blood which is 10 cm below and anterior to right ear lobule.
4. Stab incised wound of size 2x2 mm, obliquely placed over neck with acute edge medially, cavity deep and dark red clotted blood which is 11 cm below and anterior to left ear lobule.

5. Incised superficial wound of size 2x1 mm skin deep, obliquely placed over neck with tapering seen anteriorly, left side of neck below 8 cm and anterior to left ear lobule.
6. 2x1 cm bruise over left thigh mid 1/3rd, laterally dark reddish in colour.
7. 1x0.5 cm bruise over left side of lower abdomen above 10 cm from umbilicus laterally.
8. 05x0.5 cm bruise over left side of abdomen below 11 cm from umbilicus laterally.
9. 3x1 cm contusion over medial aspect of thigh and 10 cm from genital area.
10. 3x2 cm, contusion over lateral side of right breast.
11. 3x2 cm contusion over lateral side of left breast.

On dissection all neck wound seen cutting the subcutaneous tissue, trachea associate with muscle and neurovascular tissue, surrounding with a diffuse extravasation of blood into the muscles sheaths and lumen of trachea and esophagus.

All the internal organs were pale & four vaginal swabs were taken and sent for semen analysis. Whitish discharge present in vagina. Vagina admitted two fingers easily. Hymen margins irregular.

The cause of death in this case was shock and hemorrhage following multiple sharp weapon injury to the body, external injury no. 1-5 were sufficient to cause death in normal course of nature.

All the external sharp weapon injuries are consistent with single edged sharp weapon and external injuries 6-11 are bruises signifying blunt force diverted towards the body. Viscera has been preserved to rule out associated intoxication.

POSSIBILITY OF SEXUAL INTERCOURSE CANNOT BE RULED OUT.

Time between death and PMR, approx. 36-48 Hrs.”

24. Sealed parcels were opened which contained a saree Ex.P3, jersey Ex.P4 and chunni Ex.P5 which were handed over by him to police after postmortem examination of deceased victim.

25. Dr. Aakanksha Setya, Medical Officer examined as PW15 also filed her affidavit Ex.PW15/A where she confirmed that they had conducted vaginal examination of deceased victim and their observation was as under :-

“Pubic hair present, external genitalia normal, No external marks of injury, Four vaginal swabs taken and send for semen analysis. Whitish discharge present in vagina. Vagina admitted two finger easily, hymen margins irregular.”

26. Apart from the aforesaid medical record, prosecution has proved on record report of FSL dated 12.08.2011 Ex.PA, according to which cotton wool swabs in plastic jar exhibit-3 and one sealed parcel containing dirty black and gray pyjama exhibit-6 tested in laboratory contained human semen.

27. There is report of FSL dated 01.09.2011 Ex.PA/1, according to which one gauze piece stained with dark brown stains exhibit-2, one knife stained with dark brown stains exhibit-4, one multicolored striped bed sheet stained with dark brown stains exhibit-5 and one black pyjama exhibit-6 were also tested in laboratory and it was observed that aforesaid exhibits were stained with blood.

28. There is report of FSL dated 31.03.2011 Ex.PA/2, according to which viscera of deceased was sent for chemical analysis to detect any kind of poison and it was observed that no common poison could be detected in exhibits 1a, 1b, 1c and 1d.

29. Result of serological analysis of blood dated 25.01.2011 Ex.PA/3 showed human blood of group A on gauze piece, knife and bed sheet, whereas, on pyjama human blood was detected but blood group was inconclusive.

30. In the case in hand, two sealed parcels with seals intact one containing four cut cotton wool swabs marked as item no. 3, a torn dirty

black gray colour pyjama marked as item no. 4 were subjected to DNA testing with blood samples collected from two persons i.e. Kunal and Brijesh item No. 1 and item No. 2 respectively. DNA was extracted from item No. 1, 2, 3, 4 and subjected to Autosomal STR analysis by using identifier kit. There was no amplification of DNA in items no. 3. DNA profile obtained from item no. 4 was compared with DNA profile of item no. 1 and 2. The allelic pattern of item no. 4 matched with allelic pattern of item no. 1 and did not match with allelic pattern of item no. 2. Conclusion report is as under :-

“The Autosomal STR analysis indicates that the DNA profile of seminal stains on source of item no. 4 (pyjama) is matching with the DNA profile of Kunal Jotwani (source of item no. 1) and conclusively proves that they are of same biological origin and is not matching with the DNA profile of Brijesh Chaurasia (source of item No. 2) and conclusively proves that they are not of same biological origin.”

31. The aforesaid medical record along with reports of FSL clearly indicated that deceased victim was raped and murdered.

32. In the case in hand, there is no eye witness to said occurrence. Case of prosecution is based on circumstantial evidence i.e. call detail record, medical record coupled with reports of FSL Madhuban and recovery of articles belonging to complainant on the basis of disclosure statements of appellants/convicts. Hon'ble the Supreme Court of India in case title “**Aftab Ahmad Ansari versus State of Uttaranchal**”, 2010(2) SCC 583 emphasized the facts and evidence which are to be considered while dealing with the case based on circumstantial evidence. In para no. 4 of the judgment, it was held as under :-

“..... Admittedly, the whole case against the appellant rests on circumstantial evidence. The law relating to circumstantial evidence is well settled. In dealing with circumstantial evidence,

there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion howsoever strong cannot be allowed to take place of proof and, therefore, the Court has to judge watchfully and ensure that the conjectures and suspicions do not take place of legal proof. However, it is no derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturization of actual incident but the circumstances cannot fail. Therefore, many a times, it is aptly said that "men may tell lies, but circumstances do not". In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact must be proved individually and only thereafter the Court should consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of the guilt. If the combined effect of all the facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts, by itself/themselves, is/are not decisive. The circumstances proved should be such as to exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution case succeeds in a case of circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever extravagant and fanciful it might be. There must be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. Where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. If the circumstances proved are consistent with the innocence of the accused, then the accused is entitled to the benefit of doubt. However, in applying this principle, distinction must be made between facts called primary or basic on the one

hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence and decide whether that evidence proves a particular fact or not and if that fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences or presumptions, the Court must have regard to the common course of natural events, and to human conduct and their relations to the facts of the particular case.”

33. It is matter of record that present appellants/convicts were not named by complainant or any family member of deceased victim. Prosecution was clueless in the beginning. Investigation of this case was then entrusted to SI Jasvir Singh PW19 who was Incharge, Cyber Cell, Sector 51, Gurgaon. It is on the basis of call details of mobile phone of deceased victim and further investigation that appellants/convicts Kunal and Brijesh were nominated on their culpability coming to light. Complainant V. Karukkuvel Rajan was having home town at Karaikudi, Tamil Nadu. He got married with deceased victim belonging to Varanasi on 05.05.2010 by way of arranged marriage. Complainant along with his wife was residing in House No. 1017A, Maruti Vihar, Gurgaon where occurrence took place on 25.01.2011. It is matter of record that Kunal and Brijesh both belonged to District Varanasi. Appellant Kunal stepped into witness box in defence as DW2 and during his cross-examination he admitted that deceased victim belonged to Varanasi and she was known to him since his college days. Thus appellant Kunal knowing the deceased victim X is confirmed from his statement.

34. Prosecution has examined witnesses to prove call detail record of deceased victim as well as appellants/convicts by examining relevant concerned witnesses. Prosecution examined Rajeev, Alternate Nodal Officer, Reliance Communication Limited as PW11 who has proved on record customer application form of mobile phone number 9310186199, standing in the name of Karukku Rajan Ex.PL. Call detail record for the period 03.11.2010 to 25.01.2011 is Ex.PL/1. There is customer application form of mobile phone number 9305947228 in the name of Kunal Jotwani, which is Ex.PL/2 and call detail record is Ex.PL/3. Certificate under Section 65-A and 65-B of Indian Evidence Act is Ex.PL/4. Call detail record of mobile phone number 9310186199 indicates that from this number calls were made on mobile phone number 9305947228 on 10.11.2010, 11.11.2010, 29.11.2010, 02.12.2010, 17.01.2011, 19.01.2011, 20.01.2011 and 21.01.2011 and call time and duration are also mentioned in call detail record Ex.PL/1. Aforesaid calls are also confirmed from call detail record of Kunal which is Ex.PL/3. During this period, mobile phone of B party was on roaming. PW13 Israr Babu, Alternate Nodal Officer, Vodaphone Mobile Services Limited has proved on record customer application form of mobile phone number 9839147863 in the name of Vinod Kumar Chaurasia Ex.PN, call detail record from 24.01.2011 to 25.01.2011 as Ex.PN/2 and certificate given by him under Section 65B(4)(c) of Evidence Act, 1872 is Ex.PN/3. Vinod Kumar is none else but father of appellant/convict Brijesh. Prosecution had also examined PW12 Surender Kumar, Assistant Nodal Officer, Idea Cellular Limited who has proved on record call detail record of mobile phone number 8960846223 for the period 24.01.2011 and 25.01.2011, which is Ex.PM/1, showing inter-see calls on 24.01.2011 and 25.01.2011 between mobile phone numbers 8960846223 and 9305947228.

Aforesaid call detail record clearly shows that deceased victim wife of V. Karukkuvel Rajan was in constant touch with Kunal appellant/convict much prior to date of occurrence as well as on the day of occurrence. Both appellants/convicts were also in touch with each other on 24.01.2011 and 25.01.2011. It has come in cross-examination of PW11 Rajeev, Alternate Nodal Officer, Reliance Communication Limited that mobile phone number 9305947228 was found under same tower from 18.01.2011 to 31.01.2011. He further conceded that on every second or third day, location of said mobile phone was under same tower. It has further come in his cross-examination that since 01.10.2010 to 10.10.2010 again location was under same tower. Aforesaid call detail record coupled with admission of Kunal DW2 during his cross-examination clearly shows that deceased victim and Kunal were known to each other and they both were in constant touch. Both appellants/convicts are proved to be in touch with each other with Kunal being in touch with deceased victim.

35. Prosecution has proved on record Postmortem Report of deceased victim by examining Dr. Anurag Verma, Medical Officer, General Hospital, Gurgaon as PW16. Postmortem Report is Ex.PR, according to which there were as many as 11 injuries on the body of deceased victim out of which there were five stab incised wounds and others were bruises and contusions. Observation on dissection of neck was as under:-

“On Dissection all neck wound seen cutting the subcutaneous tissue, trachea associate with muscle and neurovascular tissue, surrounding with a diffuse extravasation of blood into the muscles sheaths and lumen of trachea and esophagus.

All the internal organs were pale and four vaginal swabs were taken and sent for semen analysis. Whitish discharge present in vagina. Vagina admitted two fingers easily. Hymen margins

irregular.

The cause of death in this case was shock and hemorrhage following multiple sharp weapon injury to the body, external injury no. 1-5 were sufficient to cause death in normal course of nature.

All the external sharp weapon injuries are consistent with single edged sharp weapon and external injuries 6-11 are bruises signifying blunt force diverted towards the body. Viscera has been preserved to rule out associated intoxication.

Possibility of sexual intercourse cannot be ruled out.”

36. Dr. Aakanksha Setya, Medical Officer PW15 alongwith Board of Doctors examined body of deceased victim and lifted four vaginal swabs which were sent for semen analysis. Whitish discharge present in vagina. Vagina admitted two finger easily, hymen margins irregular.

37. Learned counsel for appellants/convicts raised the issue that SI Jasvir Singh had forcibly taken them to FSL Madhuban and blood samples etc. were drawn forcibly without following rules and procedure. In this regard, reference can be made to the provisions of Section 53A of Cr.P.C. which deals with examination of person accused of rape by medical practitioner. This provision was inserted by Act 25 of 2005 and according to this provision DNA profiling has now become part of investigation. It relates to examination of person arrested on a charge of committing an offence of rape or an attempt to commit rape and when there is reasonable ground for believing that examination of said person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner to examine the arrested person and to use such force as is reasonably necessary for that purpose. In a similar way, Section 164A has been inserted by Act 25 of 2005 which deals with the medical examination of victim of rape. Considering the aforesaid provisions, DNA profiling from

samples drawn from the accused and victim is permissible under the law in case of rape. Hon'ble Supreme Court of India in Selvi and others versus State of Karnataka, AIR 2010 Supreme Court 1974 has held that taking and retention of DNA samples which are in the nature of physical evidence does not face constitutional hurdles. Therefore, the protection guaranteed under Article 20(3) of Constitution of India does not extend for protecting an accused from being compelled to give his sample of blood etc. for the purposes mentioned in Section 53 and 53A of Cr.P.C. during the investigation into an offence. Therefore, in light of the above, objection raised by learned counsel for appellants/convicts does not hold any ground.

38. Reports of FSL Madhuban are Ex.PA to Ex.PA/4. It was observed that all articles lifted from place of occurrence were stained with human blood. No poison was detected as per viscera test report Ex.PA/2. On the arrest of both appellants/convicts, their blood samples were taken and DNA profiling was done. DNA profile of seminal stains on pyjama matched with DNA profile of Kunal from source item No. 1 i.e. blood sample and it conclusively proved that they were of same biological origin. However, there was no matching with DNA profile of Brijesh. Aforesaid medical record clearly indicated that deceased victim was raped by Kunal and thereafter, both appellants/convicts murdered her.

39. Other material link to connect appellants/convicts with said crime are disclosure statements given by appellants/convicts before SI Jasvir Singh during the course of investigation. SI Jasvir Singh as PW19 categorically stated that both Kunal and Brijesh were arrested from Varanasi on 14.07.2011. During course of interrogation, both suffered their respective disclosure statements. Disclosure statement of Kunal is Ex.PW18/A and disclosure statement of Brijesh is Ex.PW18/B. In pursuance of disclosure

statement of Kunal, one laptop make HP model DV-270 TX, one mobile phone make Sony Ericson P1I and one hard disk make SEAGATE were recovered from his bed. Recovery memo in this regard is Ex.PW18/C and rough site plan is Ex.PW19/A. On the disclosure statement of Brijesh, one laptop make HP of Pavilion TX-200 S.I.r. CNF 8124 H.K.S. and one mobile phone make Reliance LG were recovered from wooden almirah of his room which were taken in police possession vide recovery memo Ex.PW18/B and rough site plan of place of recovery is Ex.PW19/B. Aforesaid recoveries were effected on 17.07.2011. Said articles were duly identified by complainant V. Karukkuvel Rajan on 10.10.2011 vide recovery memo Ex.PW19/C. Regarding aforesaid recoveries, learned counsel for appellants/convicts raised arguments that appellants did not suffer any disclosure statements before SI Jasvir Singh and false recoveries were planted on them by procuring said laptops and mobile phones from complainant. To this effect Kunal has also stepped into witness box as DW2 and levelled allegations against SI Jasvir Singh for falsely implicating them in this blind murder case.

40. We have considered aforesaid points raised by learned counsel for appellants/convicts and have also evaluated evidence on record. Firstly, SI Jasvir Singh was Investigating Officer posted at Cyber Cell, Gurgaon, whereas, both appellants/convicts belonged to District Varanasi. Therefore, there is no question of previous enmity between Investigating Officer and appellants/convicts who were nominated as accused during course of investigation. It has come in cross-examination of Kunal as DW2 that he did not lodge any complaint before any higher authority regarding faulty investigation carried out by SI Jasvir Singh. Complainant did not name any of accused but he categorically identified his laptops, mobile phones

recovered from the possession of appellants/convicts. Said laptops and mobile phones were duly reported to be missing on 25.01.2011 itself by complainant in his supplementary statement recorded on said date. Therefore, testimony of complainant as well as Investigating Officer cannot be brushed aside on the basis of baseless and unsubstantiated allegations levelled by Kunal appellant/convict. Defence raised by Kunal appears to be afterthought.

41. Therefore, considering the entire evidence on record, it is clear that both appellants/convicts were nominated as accused on the basis of call detail record of deceased victim. Call detail record of both appellants/convicts prove their presence in the area where deceased victim was murdered. Connection between deceased victim and appellant/convict Kunal is further confirmed from call detail record as well as from cross-examination of Kunal as DW2. Medical record clearly indicated that deceased victim was firstly raped and then murdered. DNA profiling was done in FSL Madhuban which duly matched with appellant/convict Kunal. Both appellants/convicts are further connected on the basis of their disclosure statements and recovery of laptops, mobile phones effected from their possession, belonging to complainant. Therefore, all the aforesaid facts and evidence on record connects appellants/convicts with murder of deceased victim. Argument raised on behalf of appellant – Brijesh that his presence is not proved, is devoid of any merit in the wake of cogent evidence on record. Facts of the case and evidence on record was rightly appreciated by trial Court holding appellant/convict Kunal guilty under Sections 302 read with Section 34 of IPC, 392 and 376 of IPC, whereas, appellant/convict Brijesh was rightly held guilty under Sections 302 read with Section 34 of IPC and 392 of IPC. Therefore, judgment of conviction dated 24.04.2013

passed by learned Additional Sessions Judge, Gurgaon does not require any interference.

42. Keeping in view facts and circumstances of the matter, judgment of conviction dated 24.04.2013 and order of sentence dated 27.04.2013 passed by learned Additional Sessions Judge, Gurgaon are accordingly, upheld and both appeals preferred by appellants/convicts Kunal and Brijesh as referred above, are accordingly, dismissed.

43. Pending application(s) if any, also stands disposed of accordingly.

44. Original/photocopy of trial Court record be sent back to the concerned quarter.

(AMARJOT BHATTI)
JUDGE

(LISA GILL)
JUDGE

April 4, 2024
'lalit'/'om'

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