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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 24.09.2024.

Piyush (minor) through his Guardian

....Appellant.

Versus

State of Haryana and others

...Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Mr. Sumit Sangwan, Advocate
for the appellant.

Sukhvinder Kaur, J.

1. Appellant-Piyush has preferred the instant appeal against judgment dated 13.05.2022, passed by learned Sessions Judge, Bhiwani, vide which respondents 2 and 3/accused have been acquitted of the offences punishable under Sections 302, 201/34 IPC and 120-B IPC.

2. The factual scenario, as projected by prosecution, is that FIR in the present case was registered at the instance of Rajbala @ Bala, (who was later on arrayed as accused). She alleged that she was living along with her husband Narender and two children. Her parents-in-law had already died and her husband was the only son of his parents. On 06.04.2018, they all were present in their house. At about 10.00 p.m., her husband Narender went outside while leaving his mobile phone at home. He did not return during the whole night and in the morning, she came to know that he had

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been murdered and his dead body was lying in the bushes behind Government Girls School near railway line. Then she along with her relatives and respectable persons of village reached at the spot and found that dead body of her husband Narender was lying in the bushes near railway line and there were marks of injuries on his head and blood was lying around the spot. It was alleged that some unknown persons have committed murder of her husband after causing him injuries and thereafter they had thrown his dead body in the bushes, to conceal the commission of offence. On these allegations, FIR No.95 dated 07.04.2018, under Sections 302, 201 read with Section 34 of Indian Penal Code, 1860 was registered.

Investigation proceedings were started. On 29.04.2018, Jogi Ram son of Ishwar Singh, resident of Bawani Khera (cousin of deceased-Narender), submitted an application with the police alleging that on the night of 06.04.2018, his cousin Narender @ Bhunda son of Ranjit was murdered and now he had come to know that Narender had been murdered by his friend Parveen son of Jagbir @ Jagal, as he had neither attended the cremation of Narender nor he had visited his house to mourn his death. Thereafter, accused Parveen son of Jagbir @ Jagal was arrested. On the basis of his disclosure statement, offence under Section 120-B IPC was added and accused Rajbala @ Bala widow of deceased Narender was arrested. Offence under Section 34 IPC was deleted. Post-mortem of dead body of deceased was conducted. Site-plan of the place of occurrence was prepared. Statements of the witnesses were recorded. After completion of investigation, challan was presented before the Court of learned Judicial Magistrate Ist Class, Bhiwani and thereafter the case was committed to the

Court of Sessions for trial.

3. Finding a prima facie case, charge for offences punishable under Sections 302, 201 read with Section 34 and 120-B IPC was framed against the accused, to which they pleaded not guilty and claimed trial.

4. As many as 13 witnesses were examined by the prosecution to prove its case. Statements of accused under Section 313 Cr.P.C. were recorded while putting incriminating evidence against them. However, no evidence in defence was led by the accused.

5. After considering the evidence on record, learned trial Court found the same to be woefully insufficient to convict the accused, who were accordingly acquitted of the offences for which they had been charge-sheeted, vide impugned judgment dated 13.05.2022.

6. Aggrieved of the said decision, present appeal has been filed by appellant challenging acquittal of accused/respondents No.2-Parveen and respondent No.3-Rajbala @ Bala.

7. Learned counsel for the appellant has opened up his arguments while contending that learned trial Court has not properly looked into the material prosecution evidence produced on record and has ignored ample circumstantial evidence on record which is sufficient to prove guilt of the accused. He has further contended that the chain of events is complete and supported by testimonies of prosecution witnesses. Accused have been acquitted on flimsy and whimsical grounds. He urged that from the oral evidence as well as medical opinion/ evidence on record, guilt of the accused persons stands proved. Once witnesses in question have deposed in consonance with their earlier statements, their testimonies cannot be

discarded on the ground that they are interested witnesses or that independent witnesses should have been examined. It is well established principle of criminal jurisprudence that Court is to see the cumulative effect of statements of witnesses and not to appreciate them in piecemeal. There was no reason for falsely implicating the accused. Complainant, who initially lodged the FIR in the present case, has faced trial as an accused. This action on her part indicates the deceitful participation in the crime. It is, thus, prayed that this appeal be accepted, judgment dated 13.05.2022 be set aside and accused be convicted for the offences as charged with and punished accordingly.

8. To prove its case, prosecution has examined PW1 Dharmender, Draftsman, who visited the place of occurrence and prepared scaled site-plan Ex.PA on demarcation of SI Desh Raj.

PW2-Anil Kumar, Registration Clerk, SDM Office, Bhiwani, produced the registration record of motorcycle bearing registration No.HR-16R-1529 and as per the said record, Narender Tanwar son of Ranjit Singh Tanwar, resident of Bawani Khera was registered owner of said motorcycle.

PW3-Jogi Ram is a material witness of the prosecution, who deposed that deceased Narender was his cousin brother. On 07.04.2018, at about 10.30 A.M., he received telephonic information that dead body of his cousin Narender was lying in the bushes near the railway line. He along with other villagers reached there and noticed blood at the spot and dead body of Narender was having multiple injuries on neck, head and other parts of the body. Police was already present there. Police lifted the blood from the spot, vide recovery memo as Ex.PC. On 29.04.2018, he submitted

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application Ex.PD at Police Station Bawani Khera. Accused Parveen neither came for paying condolence at deceased's house nor he attended the cremation of his cousin Narender. The villagers suspected that Parveen had committed murder of his cousin Narender. He also made enquiries and found that Parveen had committed murder of his cousin Narender along with his co-accused and thereafter he submitted the aforesaid application Ex.PD with the police. He deposed that he also came to know that accused-Rajbala @ Bala was involved in committing the murder of his cousin Narender.

PW4-HC Amit Kumar registered the formal FIR Ex.PG on 17.04.2018 and made endorsement Ex.PG/1.

PW5-Inspector (Retired) Deshraj partly investigated the case and deposed in detail regarding the investigations proceedings conducted by him.

PW6-HC Surjit Singh remained associated in the investigation of the present case with ASI Madan Lal, Investigating Officer and has deposed about the investigation proceedings conducted by him.

PW7-HC Satish Kumar deposed that he deposited the case property with FSL, Sunaria, in intact condition.

PW8-ASI Anil Kumar arrested accused Parveen and interrogated him. During interrogation, accused Parveen suffered disclosure statement Ex.PW5/B and in pursuance of his disclosure statement, he got recovered wooden *Danda (Kutka)* Ex.MO/1, which had been kept under a box, lying in a room in the house of deceased, which was converted into sealed parcel and was taken in possession vide recovery memo Ex.PW5/D.

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In pursuance of disclosure statement, accused Parveen also got recovered motorcycle from a room in the house of deceased, which was also taken in possession, vide recovery memo Ex.PW5/E. He further deposed that on 06.06.2018, accused Rajbala @ Bala was interrogated by ASI Neelam in his presence as well as in the presence of LSPO Naresh. On interrogation, accused Rajbala @ Bala suffered disclosure statement Ex.PW8/A and pointed out the place, where she and Parveen had burnt their bloodstained clothes.

PW9-EHC Rajender Singh, Mohrir Malkhana deposed that case property of this case was deposited with him, which was kept in intact condition.

PW10-ASI Neelam also partly investigated this case and deposed about investigation proceedings conducted by her.

PW11-HC Pawan Kumar, deposed about depositing of case property with FSL, Madhuban, in intact condition.

PW12-Dr. Neeraj deposed that on 07.04.2018, he along with Dr.Vikas Rewaria conducted Post-mortem examination on dead body of Narender Singh. He produced on record Post-mortem Report as Ex.PH. He further deposed that after going through the chemical examiner report Ex.PX and seeing Ex.PX/1, he was of the opinion that cause of death in this case was due to combined effect of asphyxia as a result of ante-mortem strangulation and head injury. He stated that on 11.05.2018, SHO Desh Raj moved application Ex.PW5/J before him along with wooden *Danda (Kutka)* Ex.MO/1 and on the same day, he gave his opinion Ex.PK.

PW13-SI Madan Singh also partly investigated the case and

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deposed about the investigation proceedings conducted by him.

9. After having heard learned counsel for the appellant at length and having perused the impugned judgment as well as other relevant record, we are of the considered opinion that prosecution in the instant matter was unable to prove its case against the accused beyond reasonable doubt.

10. It is evident from the evidence on record that it is not a case of direct evidence as there is no independent witness to the alleged occurrence. It is well settled position that conviction can be based solely upon circumstantial evidence, provided chain of circumstantial evidence is complete and there should be no missing link in the chain of evidence.

11. In ***Padala Veera Reddy Vs. State of A.P. and others (AIR 1990 Supreme Court 79)***, it was laid down by the Hon'ble Apex Court that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:-

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established,
- (2) those circumstances. should be of a definite tendency unerringly pointing towards guilt of the accused.
- (3) the circumstances. taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any. other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

12. In ***Navaneethakrishnan Vs. The State by Inspector of Police,***

Criminal Appeal No.1134 of 2013 decided on 16.04.2018 the Hon'ble

Supreme Court held as under:

“The law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. In a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. When the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubt. The court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. There is a long mental distance between ‘may be true’ and ‘must be true’ and the same divides conjectures from sure conclusions.”

13. Evidence in the present case is to be tested on the touchstone of aforesaid principles. Initially, in the present case, FIR Ex.PG was registered on the statement Ex.PF suffered by accused Rajbala @ Bala widow of deceased Narender, who stated that on 06.04.2018 at about 10 P.M., her husband Narender had gone outside the house after leaving his mobile phone in the house. He did not return during the whole night and in the morning, she came to know that he had been murdered and his dead body was lying behind Government School near railway line. When she reached at the spot along with others, she found marks of injuries on his head and

blood had oozed out. She stated the some unknown persons had murdered him and thrown his dead body in the bushes to conceal the commission of offence. Upon this statement of hers, inquest proceedings were conducted by the police authorities under Section 174 Cr.P.C.

14. Statement of Jogi Ram, cousin of Narender was recorded on 07.04.2018 under Section 175 Cr.P.C. He did not raise any suspicion on anyone in the said statement and for the first time pointed finger towards accused Parveen in the application dated 29.04.2018 (Ex.PE), the alleged friend of Narender, on the ground that despite being present in village, he neither attended cremation of Narender nor visited his house to mourn his death.

15. During his cross-examination while appearing as PW3, this witness deposed that one motorcycle was lying at the spot when he reached there. Narender (since deceased) and accused Parveen were friends as per the public opinion. He further stated that he might have visited Police Station Bawani Khera for about 3-4 times in between 07.04.2018 to 29.04.2018 and prior to 29.04.2018, but he did not disclose the name of Parveen as accused of this case, to police. It has not been explained that why he did not express any doubt about involvement of Parveen in murder of deceased Narender from 07.04.2018 to 29.04.2018, when even during this period, he was well aware that accused Parveen had not attended cremation of Narender and had not come to the house of Narender to mourn his death. As admittedly, he had visited the Police Station Bawani Khera 3-4 times during this period, it has not been explained as to why he did not disclose the name of Parveen as accused to the police at the earliest and

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what prompted him to suddenly name him as accused only on 29.04.2018.

16. As per case of prosecution, deceased Narender used to remain intoxicated, had sold his five acres of land and on this account, his wife was disturbed. When Narender suffered an injury on his foot, he was unable to move and accused Parveen used to bring intoxicating material for him and during this period, he developed physical relations with Rajbala @ Bala wife of Narender and then hatched conspiracy to eliminate Narender. However said allegations are not substantiated by evidence on record. PW5 Inspector Deshraj (Retired) categorically stated that it had not come in his investigation that there were illicit relations between accused Parveen and Rajbala @ Bala. He further stated that as per statement of Jogi Ram and Ram Singh also, there were no illicit relations between the accused persons. PW10-ASI Neelam has also deposed that nothing about any illicit relations between accused Rajbala @ Bala and Parveen had surfaced in her investigation. As such, sufficient evidence has not been brought on record by the prosecution to prove that there were illicit relations between the accused persons, which led to a conspiracy being hatched between them, ultimately leading to murder of Narender. Thus, motive attributed by the prosecution is not proved in the present case. The Investigating Officers, while appearing as prosecution witness, have denied about any illicit relationship between the accused, during their investigation. Thus it cannot be said that illicit relations between the two provided the motive for murdering Narender.

17. There is scant evidence on record to indicate commission of offence as alleged. Evidence on record is woefully, insufficient to connect

the accused with the offence in question in a decisive and conclusive manner. Last seen evidence is lacking in the present case. PW3 Jogi Ram stated in his cross-examination that he did not notice accused Parveen and Narender (since deceased) together on 06/07.04.2018. PW13-SI Madan, who partly investigated the case, during his cross-examination stated that some unknown persons had murdered Narender. As per PW8-ASI Anil Kumar, nothing was recovered from accused Rajbala @ Bala in pursuance of her disclosure statement.

18. Reference has been made to FSL Report (Ex.PZ) to argue that clothes of Narender (since deceased) were stained with blood having blood group 'B' and wooden *Danda (Kutka)* alleged to be recovered from the house of Narender, in pursuance of disclosure statement of accused Parveen was also found to be stained with blood having blood group 'B', so in all probability, the accused, in criminal conspiracy with each other, murdered Narender. As per PW8-ASI Anil Kumar, the said wooden *Danda (Kutka)* was recovered from house of accused in pursuance to his disclosure statement Ex.PW5/B. This witness further stated that accused Parveen also got recovered one motorcycle from a room in the house of deceased Narender, in pursuance to his disclosure statement. Jogi Ram while appearing as PW3 has categorically stated that when he visited the spot, one motorcycle was also lying at the spot, which falsifies this version of the prosecution that the said motorcycle was got recovered by accused Parveen in pursuance to his disclosure statement. When alleged recovery of motorcycle in pursuance to disclosure statement suffered by accused Parveen does not appear to be genuine in view of the afore-quoted statement

of PW3-Jogi Ram, then it certainly creates doubt regarding recovery of the wooden *Danda (Kutka)* allegedly used for commission of crime, in the manner as alleged by the prosecution. Moreover, blood grouping of blood of Narender (since deceased) was not done and the blood, which was lying near his dead body, was also not got tested. Learned trial Court has, thus, rightly held that only on the basis of presence of blood group 'B' on the clothes of Narender (since deceased) and weapon of offence i.e. wooden *Kutka*, criminal liability can not be fastened upon the accused.

19. Prosecution is under obligation to prove each and every ingredient of offence beyond any doubt. It was held by Hon'ble the Supreme Court in *Datar Singh Versus State of Punjab 1974 CrL L.J. 908* that, “the judicial process can only operate on the firm foundations of actual and credible evidence on record. Mere suspicion or suspicious circumstances cannot relieve the prosecution of its primary duty of proving its case against an accused person beyond reasonable doubt. Courts of justice cannot be swayed by sentiment or prejudice against a person accused of the very reprehensible crime of patricide. They cannot even act on some conviction that an accused person has committed a crime unless his offence is proved by satisfactory evidence of it on record”.

20. Gainful reference can also be made to *Narain Versus State of Madhya Pradesh 2004(1) RCR(Criminal) 837* wherein Hon'ble the Supreme Court held that “where genesis of the incident, place of incident and the manner in which the incident took place, was found not to have been established by cogent and creditable prosecution evidence, accused are entitled to be acquitted”.

21. It was held in *Swaran Singh Versus The State of Punjab 1957 AIR 637 (SC)* that, “the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence”.

22. In the instant case, as already observed, that there are gaping holes in the chain of link evidence. Chain of circumstantial evidence is not so complete to link the accused with the commission of offence so as to point conclusively to the hypothesis of guilt of the accused and to no other conclusion.

23. It is a settled proposition of law that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where impugned findings are perverse, unreasonable and convincing material on record is ignored unjustifiably by the trial Court. Merely because another view may be possible is not sufficient to cause interference. Reference in this regard can be made to judgment of Hon'ble the Supreme Court in *'Mahamadkhan Nathekhhan vs. State of Gujarat' 2014 (14) SCC 589*. Learned counsel for the appellant was unable to point out any illegality, infirmity or perversity in the impugned decision dated 13.05.2022, which calls for any interference.

24. After analyzing the evidence on record, it can safely be concluded that prosecution has failed to prove its case against the accused beyond reasonable doubt. Evidence on record is indeed insufficient to convict the accused of the offence as charged with and they have been

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rightly acquitted by learned trial Court.

25. No other argument was raised.

26. There is a delay of 218 days in filing the appeal with various grounds being raised. As the appeal itself has been adjudicated upon on merits, decision on the application (CM-13443-2023) for condonation of delay is rendered academic.

27. In view of the above, the appeal being bereft of any merit is dismissed and impugned judgment dated 13.05.2022 passed by learned trial Court is upheld and application seeking condonation of delay is disposed of accordingly.

28. Pending applications, if any, stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

(LISA GILL)
JUDGE

24.09.2024.

Komal

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