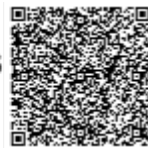


2024:PHHC:071581-DB



**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRA-D-140-DB-2003 (O&M)
Date of Decision:-21.5.2024

Vikash @ Ajay and another ... Appellants

Versus

State of Haryana ... Respondent

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

Present:- Appeal qua appellant No.1 – Vikash @ Ajay stands abated,
vide order dated 18.10.2023.

Mr. Gursharan Singh, Legal Aid Counsel,
for appellant No.2 – Sushil @ Wakil.

Mr. Munish Sharma, DAG, Haryana.

GURVINDER SINGH GILL, J.

1. While the instant appeal had been filed by two of the convicts namely Vikash @ Ajay and Sushil @ Wakil, but appellant No.1 – Vikash @ Ajay has already been expired and proceedings qua him stand abated as recorded in order dated 18.10.2023. Consequently, the instant appeal survives only qua appellant No.2 – Sushil @ Wakil, wherein he challenges his conviction as recorded vide judgment dated 13.12.2002 and order of sentence dated 16.12.2002



passed by learned Additional Sessions Judge, Gurugram convicting him for having committed offences punishable under Sections 302 read with Section 34 of Indian Penal Code and Section 324 read with Section 34 of Indian Penal Code in a trial arising out of FIR No.589, dated 3.10.2000 registered at Police Station Sadar, Gurugram, under Sections 302, 324, 325 and 34 of Indian Penal Code.

2. The FIR (Ex.PM) was lodged on the basis of statement made by complainant-Vidhyawati, wherein she alleged that she alongwith her husband Ambika Parshad and their children have been residing at Batra Poultry Farm House, Garhi Harsaru since the last about 3 years and that her husband had been looking after the chickens in the poultry farm. Sushil, Hori, Ajay and Vikash @ Ajay, who were original residents of Assam, used to work as labourer in the said poultry farm. On 2.10.2000 at about 11:00 P.M., when she alongwith her husband was present in a room, then Gopal and his companions, who also work at the poultry farm, came at the farm accompanied by Sushil, Hori, Ajay and Vikash, who were drunk, and started consuming liquor at the farm. Since some of the chickens had been killed by some dogs at the poultry farm her husband Ambika Parshan blamed Sushil, Hori, Ajay and Vikash @ Ajay for not having discharged their duties and rather having consumed liquor. The complainant's husband said that he would make a complaint to the owner of the poultry farm. However, the complainant intervened and brought Ambika Parshad to her room and reasoned out with him not to quarrel with Sushil etc. It is alleged that in the meantime, Sushil came inside the room armed with an axe accompanied by Ajay, who was carrying a dagger. Hori, Vikas and Gopal



were empty handed. They dragged Ambika Parshad out of the room and took him near hand pump. The complainant alleged that Hori, Vikas and Gopal caught hold of Ambika Parshad, while Sushil inflicted blows with axe and Ajay inflicted dagger blows on face, head and abdomen of Ambika Parshad, who died at the spot. The complainant further alleged that after inflicting injuries to her husband, the said accused inflicted injuries to the complainant as well on her forehead and on her abdomen and then went away alongwith their weapons. The complainant further stated that she being injured could not report the matter to the police or to the neighbours and it was on the morning on the next day that Ramphal and Lal Singh, upon hearing her cries, came there and she narrated the entire incident to them. They also informed the owner of poultry farm telephonically and it was thereafter that the police came at the spot and recorded her statement (Ex.PJ) leading to lodging of the FIR.

3. Pursuant to lodging of FIR, the police conducted requisite investigation. The place of occurrence was photographed. Inquest proceedings were conducted and report (Ex.PG) was prepared. The dead-body of Ambika Parshad was got subjected to post-mortem examination. Blood stained soil was lifted from the place of recovery of dead body and also from the place, where the complainant was lying. The complainant was got medicolegally examined. The accused Vikash @ Ajay and Sushil @ Wakil were arrested on 22.10.2000, who upon interrogation, suffered disclosure statements Exs. PQ and PP as regards concealment of weapons and later got the same recovered from the nominated places. The remaining accused namely Suresh @ Suraj @



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Karti, Gopal, Ajay and Hori could not be arrested and consequently it is aforesaid two accused namely Vikash @ Ajay and Sushil @ Wakil against whom challan was presented before the Illaqa Magistrate on 5.1.2001, who committed the matter to the Court of Sessions vide commitment order dated 24.1.2001. Learned Additional Sessions Judge, Gurugram, to whom the case was entrusted, framed charges against the accused for offences under Sections 302/34 and 324/34 of Indian Penal Code vide order dated 24.4.2001. The prosecution, in order to establish its case, examined as many as 14 PWs. The gist of statements of witnesses is as under:-

PW-1 Constable Tirath	Head Ram	He is a formal witness, who tendered his affidavit Ex.PA in evidence.
PW-2	Inder Singh	He is a photographer and has proved the photographs Exs.P-1 to P-3.
PW-3	Constable Ramjas	He is another formal witness, to whom sealed parcels of clothes of deceased, post-mortem report etc. had been handed over by the doctors at the hospital after the post mortem had been conducted.
PW-4	Sarwan Kumar, Draftsman	He proved the scaled site plan of the place of occurrence as Ex.PC.
PW-5	Dr. Suman Verma, Medical Officer, C.H.C. Farrukhnagar	Dr. Suman Verma, Medical Officer, who had medicolegally examined Vidyawati (complainant) stated in respect of the injuries found on her person and proved the MLR as Ex.PD.
PW-6	Dr. S.K. Sharma	He had conducted the post-mortem examination of the dead-body of Ambika Parshad and proved his report as Ex.PF and opined that the cause of death was hemorrhage and shock on account of the injuries sustained by the deceased on his head, face and chest, which were sufficient to cause death in ordinary course of nature.



PW-7 Head Constable Birender Singh	He is another formal witness, who had delivered special reports to Area Magistrate.
PW-8 Inspector Randhir Singh	Inspector Randhir Singh had remained associated with the investigation and had recorded statements of Draftsman, MHC and Constable Joginder Singh under Section 161 Cr.P.C. He further stated that the challan prepared in the case bears his signature.
PW-9 Vidyawati	She is the complainant, who stated in tune with the version got recorded by her in the FIR.
PW-10 G.L. Batra	He is owner of poultry farm, where the occurrence had taken place, and stated that Ambika Parshad was a senior worker at his farm and that he had employed four other persons namely Sushil, Vikas, Ajay and Hori, who were residents of Assam. He identified the accused, who were present in the Court.
PW-11 Sub Inspector Babu Lal	He had stated that upon receipt of ‘ruqa’, he had recorded formal FIR Ex.PM.
PW-12 Constable Joginder Singh	Constable Joginder Singh stated that he had been entrusted with five sealed parcels by MHC and as per directions issued to him, he deposited the same in the office of FSL, Madhuban.
PW-13 DSP Fateh Singh	He is the Investigating Officer in the present case and stated in detail in respect of the investigation conducted by him.
PW-14 SI Gyan Singh	SI Gyan Singh, who also remained partly associated with the investigation, to whom investigation had been handed over by DSP Fateh Singh, stated that on 19.10.2000 he had arrested Vikash and Sushil and that on 22.10.2000 they had made disclosure statements Ex.PP and PQ and that pursuant to which the accused got recovered ‘kulhari’ and a knife, which they had kept concealed in the bushes.



4. Upon conclusion of evidence of prosecution prosecution, statements of accused in terms of provisions of Section 313 Cr.P.C. were recorded, wherein they denied the prosecution case in *toto* and pleaded false implication. However, the accused did not lead any evidence in their defence.
5. The Trial Court, upon marshalling the evidence led by the prosecution and upon considering the statements made on behalf of the State as well as on behalf of the accused, held that the evidence led by prosecution fully established the charges framed against the accused and consequently convicted both the accused for having committed offences punishable under Sections 302/34 and 324/34 of Indian Penal Code vide impugned judgment dated 13.12.2002, which is being assailed before this Court.
6. Learned counsel for the appellants submitted that it is a case based on the solitary statement of the complainant, which is bereft of any independent corroboration and, under these circumstances, it is not safe to rely upon a statement of a solitary witness. Learned counsel further submits that there is absence of any strong motive, which could have prompted the accused to commit a crime as heinous as murder and that the motive alleged in the FIR i.e. the deceased having threatened the accused that he would inform the owner of the poultry farm that the accused were not discharging their duties properly, even if admitted, is a very weak type of motive and would not prompt any prudent man to commit murder. Learned counsel submitted that the Trial Court has placed undue reliance upon the factum of alleged disclosure statements and the recoveries stated to have been effected thereupon and that such like disclosure statements or the recoveries would



lose significance when the Serologist has not even opined regarding the blood group stated to have been found on the allegedly recovered weapons and in the absence of any such evidence regarding matching of blood group, it could not be said that the weapons were smeared with blood of the deceased.

7. Opposing the appeal, learned State counsel submitted that no doubt it is a case mainly based on the statement of complainant, but the version of the complainant finds ample corroboration from the medical evidence not only as regards the injuries found on the body of deceased, but also as regards the injuries sustained by complainant herself. It has been submitted that the testimony of complainant, being a stamped witness, rests on a high pedestal and unless there is something credible to impeach her testimony, there is no reason to doubt the same. Learned State counsel submits that the impugned judgment does not suffer from any infirmity and that the conviction of the appellants does not deserve to be interfered with.
8. This Court has considered the aforesaid submissions and has also gone through the impugned judgment as well as the record of the case.
9. Since it is a case where the complainant alleges that her husband had been done to death by the accused with the help of an axe and a knife by inflicting injuries, it is apposite to first of all refer to the medical evidence in the shape of post-mortem report. PW-6 Dr. S.K. Khanna, S.M.O., GH Gurgaon, who had conducted post-mortem examination stated that the dead-body was found to be bearing the following 4 injuries:



- “1. Cut laceration in the scalp on right side paramedian area. It was slightly oblique. There was an underlying cut of skull traversing through right parieto frontal area. It was of the full thickness of the skull and gave an appearance of fissured fracture. Right side cerebral hemisphere and a corresponding cut. It was 14 cm long (approximated).
 2. A 14 cm long (approximated) 6 cm deep chopped wound on the left side of the face. It was oblique extending from left side outer angle of the mouth 2 cm below and slightly backwards to left ear lobule. It had cut of the underlying mandible and tongue in the same plane. Soft tissue and blood vessels were cut in the same plane. The wound was gapping and had a side triangular shape.
 3. A chopped wound (defence cut) on the upper outer front of the right palm measuring 7 cm, vertically down and gapping had a width of 3 cm. Underlying carpal and metacarpal bones had a corresponding cut.
 4. A 7 cm (approximated), oblique, incised wound on the right side lower inner back of the chest. It was spine deep. Inner end was almost to the mid-line while the outer end was slightly at upper level and 24th cm below the upper boarder of right shoulder. The underline spine and adjoining rib had a corresponding cut.”
10. PW-6 Dr. S.K. Khanna further opined that the cause of death was hemorrhage and shock consequent upon receipt of injuries by the deceased on his head, face and back of chest, which were sufficient to cause death in ordinary course of nature. He further deposed that the weapons of offence i.e. axe and knife had been shown to him and upon examination he had opined that the injuries could have been caused with a heavy weapon like axe and that injury No.4 could have been caused with a knife. The said witness was cross-examined at length, but nothing substantial could be elicited during the



course of his cross-examination, so as either to doubt his veracity or his opinion.

11. The aforesaid medical evidence would lend corroboration to the case of prosecution to the effect that the deceased had been done to death with the help of an axe and a knife as is alleged by the complainant Vidyawati, who is wife of the deceased and who herself was injured.
12. Coming to the testimony of complainant Vidyawati, she while in the witness-box, stated absolutely in tune with the version put forth by her at the time of lodging of FIR to the effect that the accused had inflicted injuries with the help of an axe and a knife. Despite lengthy cross-examination by the accused, the complainant remained firm on her statement and her testimony could not be shattered on any count. Still further, the instant case is a case where the complainant herself sustained injuries at the hands of the accused. The factum of receipt of injuries by the accused stands duly proved from the testimony of PW-5 Dr. Suman Verma, who stated that she had medico legally examined Vidyawati on 3.10.2001 and had found the following 3 injuries on her person:

- “1. An incised wound illiptical in shape placed obliquely on the back of right shoulder 3 cm x 2 cm x muscle deep tailing of upwards and medially.
2. A similar wound of the size 5 cm x 3 cm x muscle deep tailing of medially.
3. Incised wound tringular in shape approximately 2 cm x 1 cm x muscle deep present on the right frontal prominence.”



13. While proving the MLR Ex.PD, PW-5 Dr. Suman Verma opined that the injuries though simple, were caused with sharp edged weapon. The witness was not subjected to any effective cross-examination. Rather during the course of cross-examination, the witness stated that the injuries could have been caused by two different weapons as is also the case of the prosecution.
14. The factum of the complainant also having sustained injuries would fully establish her presence at the spot. It is well settled that a testimony of a stamped witness lies on a very high pedestal. In this context, a reference may be made to a judgment of Hon'ble the Supreme Court in Balwan and others versus State of Haryana (2014)13 SCC 560, wherein it has been held as follows:-

“It is trite law that the evidence of injured witness, being a stamped witness, is accorded a special status in law. This is as a consequence of the fact that injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness would not want to let the actual assailant go unpunished.”

15. Having regard to the testimony of the stamped witness i.s. the complainant Vidyawati, which also finds ample corroboration from the medical evidence, it goes without saying that there is no reason to cast any doubt as regards the veracity of her statement. It is not in every case that the Courts would insist upon corroboration of the statement of complainant, which is basically a rule of prudence and not a rule of law. It is well settled that it is the quality of the



witnesses which matters. Hon'ble the Supreme Court in 2017 (5) SCC 817 titled as S.P.S. Rathore Vs. CBI and another, held that it is the quality and not the quantity of the witnesses that matters and evidence is weighed and not counted and that evidence of even a single eye witness, if found truthful, consistent and inspiring confidence is sufficient for maintaining conviction.

16. While it is correct that there is no other witness other than the complainant, who is closely related to the deceased being his wife, but at the same time her presence at the spot would also be natural. Hon'ble the Supreme Court in a case reported as (2013) 15 SCC 284, Guiram Mondal vs. State of West Bengal, held that merely because witness is a relative of deceased is not a reason for discarding his evidence and that testimony of a relative can be acted upon if the Court finds it reliable and trustworthy. The aforesaid principle has been reiterated by Hon'ble the Supreme Court in a case reported as (2016) 4 RCR (Criminal) 753 Yogesh Singh vs. Mahabeer Singh and others.
17. In view of the discussion made above, this Court finds that the complainant is an absolutely truthful witness and her testimony finds ample corroboration from medical evidence. The evidence led by prosecution fully establishes the allegations levelled by complainant in the FIR. No other argument has been raised before this Court on behalf of the accused so as to assail the impugned judgment.
18. In view of the discussion made above and in light of the ratio of the judgments cited above, this Court does not find any ground to interfere with the impugned judgment and the same is hereby upheld. Finding no merit in the present appeal and the same is hereby dismissed.



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19. Since substantive sentence of imprisonment as imposed upon appellant No.2 – Sushil @ Wakil had been suspended during pendency of the appeal, he be arrested immediately to undergo their remaining part of the sentence. Intimation be sent to the quarters concerned.

(GURVINDER SINGH GILL)
JUDGE

21.5.2024
Pankaj

(N. S. SHEKHAWAT)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No