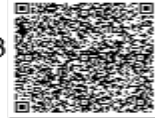


IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

2025:PHHC:047144-DB



CRA-AD-356-2023 (O&M)

Date of decision:03.04.2025

Ramesh

... Appellant

Vs.

State of Haryana & another

... Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH.
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Pooja Jaglan, Advocate for the appellant.

Mr. Parveen Chauhan, Additional Advocate General, Haryana.

...

SUKHVINDER KAUR, J.

CRM-46984-2023:

1. For the reasons given in the application, delay of 269 days in filing of the present appeal is condoned.
2. CM stands disposed of.

CRA-AD-356-2023:

Appellant/complainant has preferred the instant appeal against judgment dated 27.10.2022, passed by learned Additional Sessions Judge, Panipat, vide which accused/respondent No.2 - Ravinder has been acquitted of the charges under Sections 364, 302 and 201 IPC.

2. Factual scenario, as highlighted by prosecution is that on 28.08.2014, complainant Ramesh presented a complaint at Police Station

Samalkha alleging therein that he was having six children and was resident of village Chuklana, Tehsil Samalkha, District Panipat. His eldest daughter, namely, Rita was employed as Constable in Chandigarh Police. She had come to village Chuklana on 07.06.2014 and had left for Chandigarh on 08.06.2014. His daughter used to make phone call to him within 2-3 days. When complainant tried to make phone call to his daughter, the mobile phone of his daughter was found to be switched off. Complainant along with 2-3 other persons went to Police Station Sector-17, Chandigarh to know about the whereabouts of his daughter. He was told that Rita had not come to police station for the last many days. He reported the matter to Police Station Sector-17, Chandigarh, but he was not satisfied with the proceedings conducted by them. It was alleged that on 08.06.2014, his daughter had left from village Chuklana for Chandigarh for joining her duty, but she did not reach there. He suspected that Constable Ravinder R/o of village Naru Kheri had kidnapped his daughter and prayed that action be taken against him. He also disclosed the number of mobile phone being used by his daughter.

3. On the basis of aforesaid complaint, FIR was registered against the accused. During the investigation, statement of witnesses were recorded under Section 161 Cr.P.C. Site plan of place of occurrence was prepared. During the investigation, offence under Sections 302/201 IPC were added. Accused was arrested. On completion of investigation, report under Section 173 Cr.P.C. was submitted before the Court of learned Area Magistrate, Panipat against the accused.

4. On finding a prima facie case punishable under Sections

364/302/201 IPC against the accused, he was charge sheeted accordingly, to which he pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution has examined as many as 21 witnesses – PW1 Ramesh complainant, PW2 Parmod Kumar, Patwari, PW3 retired SI Brij Pal, PW4 HC Dinesh, PW5 SI Hoshiyar Singh, PW6 Pawan, PW7 ASI Satish Kumar, PW8 HC Sanjeev Kumar, PW9 ASI Dinesh Kumar, PW10 Constable Anita Kumari, PW11 Retired Inspector Narender Singh, PW12 retired HC Amal Kumar, PW13 Constable Sonia, PW14 Sanjay Kumar, Junior Telecom Officer, Outdoor, BSNL, PW15 Nirmal Dass, Gauge Reader, Western Yamuna Canal, Karnal, PW16 retired Inspector Mahender Singh, PW17 Geeta sister of deceased, PW18 SI Singh Raj, PW20 DSP Satish Kumar and PW21 retired SI Satish Kumar.

6. Statement of accused under Section 313 Cr.P.C. was recorded while putting incriminating evidence against him. He pleaded innocence and false implication. However, no evidence in defence was led by the accused.

7. After considering the evidence on record, learned trial Court found the same to be insufficient to convict the accused, who was accordingly acquitted of the offences for which he had been charge sheeted vide judgment dated 27.10.2022.

8. Aggrieved of the said decision dated 27.10.2022, present appeal has been filed by the appellant/complainant challenging acquittal of accused/ respondent No.2.

9. Learned trial Court acquitted the accused vide impugned

judgment *inter alia* on the following grounds:

(i) The extra judicial confession allegedly suffered by the accused made before PW6 Pawan Kumar was not corroborated with any material evidence. PW6 was not a reliable witness. At the time of suffering of alleged extra judicial confession on 07.07.2016, accused was already in custody. PW6 did not accompany the accused to the police station after suffering of aforesaid confession and did not disclose this fact to the complainant on that day.

(ii) There were material contradictions in the testimonies of prosecution witnesses. The complainant and his family members had suspicion against accused as accused had talk on phone with deceased for about 300 times in one year. Admittedly, as accused was doing duty at PCR with the deceased, so no such inference could be drawn merely due to the fact that he used to talk to her on phone.

(iii) Accused was never seen with the deceased on or after 08.06.2014.

(iv) Disclosure statement Ex.PM suffered by accused was not admissible in evidence and was not in consonance with the testimony of PW1 father of deceased.

(v) During investigation by PW20 DSP Satish Kumar, conduct of complainant father of deceased and Rohit brother of deceased was found suspicious as they did not tell the police about recovery of bag of deceased from Mannat

Dhaba by some migrant labour while reporting the matter for the first time.

(vi) There were considerable delay in intimating to the police regarding missing of deceased by complainant and chain of circumstantial evidence was not complete.

10. Learned counsel for the appellant/complainant vehemently contended that the accused suffered an extra judicial confession before PW6 Pawan Kumar, who is an independent witness and no doubt can be raised upon his testimony. He further contended that in his disclosure statement dated 09.07.2016, accused disclosed the facts regarding meeting the deceased on 08.06.2014 in Karnal and picking her up at Meerut Chowk, Karnal and taking her to canal and pushing her into it and he also got recovered the motorcycle, which he had used for picking up the deceased. Respondent No.2 had pre-planned everything and as per his planning, on the date of occurrence, he used other phone number of deceased i.e., 8901133366 and the last location of both the numbers of deceased was in Karnal and at that relevant time, accused/respondent No.2 was also in Karnal. All these facts were not taken into consideration by learned trial Court. He argued that in the present case, dead body of deceased was never found and mainly for this reason, respondent No.2 was wrongly acquitted. He has relied upon '**Rama Nand & others Vs. State of Himachal Pradesh, (1981) 1 SCC 511**'. He urged that the chain of circumstantial evidence is complete in the present case and prayed that the impugned judgment dated 27.10.2022 be set aside and accused be convicted for the offences charged with and be punished as per law.

11. We have heard learned counsel for the appellant and have also gone through the record of the case.

12. The issue that arises for determination in the present case is that whether the finding of acquittal recorded by learned Trial Court requires any interference by this Court.

13. The present case is based on the circumstantial evidence and there is no direct evidence in this case. It is well settled law that conviction can solely be based upon the the circumstantial evidence if there is no missing link in the chain of circumstantial evidence. Hon'ble Supreme Apex Court in **Padala Veera Reddy Vs. State of A.P. and others (AIR 1990 Supreme Court 79)**, elaborately discussed 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.

14. Gainful reference can also be made to a decision of the Apex Court in **Navaneethakrishnan Vs. The State by Inspector of Police,**

Criminal Appeal No.1134 of 2013 decided on 16.04.2018, wherein it was 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.”

15. Now adverting to the facts of the present case, as per the prosecution story, accused took away Rita by inducing her in a deceitful manner with intention to commit her murder by throwing her into a canal and caused evidence to disappear in order to screen himself off the legal punishment.

16. As per statement of PW1 Ramesh complainant father of deceased on 07.06.2014, Rita had came to village Chuklana at their house.

On 08.06.2014, his son Rohit had dropped her at railway station for catching a train for Chandigarh. On 09/10.06.2014, they made phone calls to Rita but her phone was switched off. On 15.06.2014, Sonu their neighbour came to their house and told that a bag belonging to Rita containing her Ration card, her clothes and empty box was found at Mannat Dhaba by a migrant labour.

17. As per PW1 complainant, deceased was last seen with his son Rohit at railway station where she was allegedly dropped by him. There is no evidence to the effect that the accused was ever seen with deceased on or after 08.06.2014. Case of the prosecution against accused is based upon his disclosure statement Ex.PM, allegedly suffered by the accused, which is not admissible in evidence. It is also not in consonance with testimony of complainant. PW1 stated during his cross-examination that his nephew Sompal was also employed in Chandigarh police and he was residing at Chandigarh at the time of incident. He deposed that he had called his nephew Sompal 2/3 days after 08.06.2014 and he told him that Rita was in Chandigarh and was alright. Said Sompal was not joined in the investigation to ascertain regarding aforesaid fact being told to complainant or to prove that Sompal had seen the deceased after 08.06.2014 at Chandigarh.

18. There was also considerable delay on the part of the complainant in informing the police regarding missing of his daughter. Learned trial Court has rightly observed that this delay and manner of giving the intimation raises suspicion that complainant and his family members were hiding something from the police and they disclosed the

fact regarding missing of their daughter only after her bag was found at Mannat Dhaba by a migrant labour on 15.06.2014. There is no evidence on record that any effort was made by the complainant or his family members to trace her when she did not remain in contact with them from 08.06.2014 to 15.06.2014. In the initial complaint made by the complainant, he had not raised any suspicion upon accused and accused was named by the complainant for the first time only on 28.08.2014 when he presented complaint Ex.PA to police at Samalkha. The edifice upon which suspicion was based is also very weak that accused had been talking with deceased on phone for about 300 times in a year in view of the fact that admittedly deceased was having duty at PCR along with accused. It has also not been explained by the prosecution that while giving information about missing of deceased by the complainant to the police, this fact was not disclosed that bag of deceased had been found at Mannat Dhaba by some migrant labour.

19. The allegations of prosecution against the accused are just based on suspicion and lacks the concrete evidence. Chain of circumstantial evidence is completely broken that accused was involved in taking away of deceased or then pushing her into the canal. Mannat Dhaba, the place from where the bag of deceased was found by a migrant labour is also far away from the alleged place of occurrence. It is also to be noted that as per call location of the accused procured by the Investigation Officer and as per report of GM, BSNL, Karnal, mobile of accused was in range of tower of village Kutail and the possibility of accused being in his village at the alleged time occurrence was not ruled

out.

20. So far as the extra judicial confession allegedly made by accused before PW6 Pawan Kumar is concerned, it is a very weak kind of evidence, when it is lacking corroboration from other material evidence. Otherwise also, when PW6 was neither relative of accused nor his close confidant, then there was no occasion for the accused to suffer confession before him. Learned trial Court has rightly pointed out that the time and manner in which the alleged confession was made, also raises suspicion over the same. PW6 has stated that on 07.06.2016, he had gone to CIA-I, Panipat and when he was returning and reached at toll plaza at about 3:15 p.m., the accused made confession before him. As per the prosecution, the accused was arrested on 07.07.2016 at 1:00 p.m. So in that eventuality at the time of suffering alleged extra judicial confession, the accused was in police custody, being already arrested.

21. Conduct of PW6 Pawan Kumar also does not appear to be normal when after making of alleged confession by accused before him he neither accompanied the accused to the police station nor told this fact to the complainant on that day, despite being in close proximity with the complainant. As such, conviction of the accused cannot solely be based upon aforesaid extra judicial confession.

22. Besides that the prosecution witnesses are contradictory on some material facts. As per PW1 complainant Ramesh, Sompal was his nephew who was also posted at Chandigarh as a Constable and from him 2/3 days after 08.06.2014 he had inquired about whereabouts of deceased and he had told him that deceased was at Chandigarh and alright. Whereas

PW17 Gita Devi daughter of complainant stated that she did not know any person in the name of Sompal who was employed in Chandigarh police and this material discrepancy has not be reconciled by the prosecution.

23. 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”.

24. In the present case, the chain of circumstantial evidence is not so complete to link the accused with the commission of offences, so as to point conclusively to the hypothesis of guilt of the accused and to no other conclusion.

25. 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 Nathekhan 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 27.10.2022, which calls for any interference.

26. 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 he has been rightly acquitted by learned trial Court.

27. No other argument was raised.

28. In view of the above, the appeal being bereft of any merit is dismissed with impugned judgment dated 27.10.2022 passed by learned trial Court being upheld.

29. Pending applications, if any, shall also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

(SUDHIR SINGH)
JUDGE

03.04.2025

harjeet

Whether speaking/reasoned?
Whether reportable?

Yes/No
Yes/No