

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 569 OF 2014

PREM SINGHAPPELLANT(S)

VERSUS

STATE OF HARYANARESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

The appellant herein is convicted for committing offence under Section 354, 302, 404 of the Indian Penal Code by the Session Court vide judgment and conviction dated 11.09.2001 followed by order of sentence dated 13.09.2001. His conviction and sentence has been upheld by the High Court vide judgment dated 12.07.2010 and it is this judgment which is impugned in the present proceedings.

- 2) Unfolding the prosecution case, we find that Jaibir (PW-12), complainant, who is the father of deceased Sunita, had made a complaint at PS Sadar, Hansi stating that he was an agriculturist and had two sons and one daughter (Sunita). He had married his

daughter, who was aged 24-25 years, to one Rajesh, s/o Chhanna, at Village Dhantan, Hisar. She had come to the parental house about 8-9 days prior to the incident and was staying with the complainant. On 03.03.1999 at about 9/10 a.m., she went to the field to bring Barseem (green fodder) but did not return till 3/4 p.m. on that day. Then, complainant's daughter-in-law Murti (PW-8) went to the field to look for Sunita. When she reached there, she found Sunita lying dead in the field of Barseem. There was a cut mark on the left side of the neck of deceased. Murti returned home and informed the complainant about the same. After hearing the news of the death of Sunita, the complainant and his brother Mahavir and one Chhajju, s/o Buta, went to the field and they found dead body of Sunita lying there with cut mark on her neck. The blood had oozed out and there was one teeth bite mark on her right cheek, which was an indication that some unknown person had tried to molest her. Complainant then lodged the complaint.

- 3) FIR was registered on the basis of the said complaint and police started investigation. The blood stained earth and a pair of chappels were taken into possession from the spot. Rough site plan regarding the place of occurrence Ex. PO and inquest report

were prepared. Thereafter, the statement of certain witnesses in the case were recorded wherein name of the appellant surfaced as a suspect. The post mortem on the dead body of Sunita was conducted in the General Hospital, Hansi. The clothes of the deceased and other parcels were handed over by the doctor after conducting post mortem report.

- 4) The appellant, Prem Singh, was arrested on 07.03.1999 who made a disclosure statement Ex.PJ on 08.03.1999. After the disclosure statement, a pair of earrings and one dhol (jewellery article of gold which is worn around the neck of the women) and sickle was recovered at the instance of the appellant. Site plan Ex.PR was prepared regarding place of recovery. On the same day, one Balraj was also arrested. With this exercise undertaken by the police, the investigation was completed. A challan under Section 173 Cr.P.C. was filed before the concerned Area Magistrate. The Area Magistrate sent the challan after observing the formalities and produced before the trial court.
- 5) The charges under Sections 302, 404 and 354 of IPC were framed against the accused Prem Singh. Charges were also framed against accused Balraj under Section 109 read with Section 302 of IPC. The trial court examined PW-1 Jagdish

Chander Assistant Sub Inspector, PW-2 Ramji Das Patwari, PW-3 Dr. O.P. Charaya, PW-4 Head Constable Subhash, PW-5 Kharati Lal Sub Inspector, PW-6 Krishan Kumar Assistant Sub Inspector, PW-7 Ramesh Kumar Constable, PW-8 Murti Devi, wife of Sushil Kumar, PW-9 Sushil Kumar son of Jaibir, PW-10 Subhash son of Balbir Singh, PW-11 Shamsher Singh Constable, PW-12 Jaibir Singh son of Chandgi Ram, PW-13 Mahabir son of Chandgi Ram, PW-14 Shivdan Singh Inspector. After completion of the evidence of the prosecution witnesses, the statement of the appellant/accused was recorded under Section 313 Cr.P.C., wherein the appellant pleaded that he was innocent and falsely framed in the case.

- 6) The learned Additional Sessions Judge, after hearing the arguments of both the counsel and going through the record of the case, delivered his judgment dated 11.09.2001, finding the appellant guilty of offences under Section 302, 404 and 354 of IPC and sentenced him on 13.09.2001. Accused Balraj was acquitted. Appellant was convicted for life imprisonment and fine was imposed of Rs.2,000/- for committing the offence under Section 302 of IPC. In default of payment of fine, the appellant was directed to undergo rigorous imprisonment for a period of

four months. For committing the offence punishable under Section 404 IPC, he was sentenced to rigorous imprisonment for a period of two years and was directed to pay a fine of Rs.500/-, in default to serve for one month. For committing the offence under Section 354 of IPC he was sentenced to undergo rigorous imprisonment for a period of one year.

- 7) In appeal, the High Court has, vide impugned order dated judgment dated 12.07.2010, affirmed the aforesaid conviction and sentence, thereby dismissing the appeal. From the evidence of PW3, Dr. O.P. Charya, Medical Officer, General Hospital, Hansi who conducted the post mortem on the dead body of Sunita, it becomes apparent that the cause of death was due to hemorrhage and shock and injury No.1 in the post mortem report i.e. incised wound on the neck anteriorly 10" x 25" into muscle deep extending latterly on both the sides and more towards the left side along with cutting of trachea, oesophagas all the major vessels starno claido mastoid muscle on the left side was sufficient to cause the death in due course of nature. According to PW-3, there was a possibility of subjecting the victim to sexual intercourse before murder. He admitted in his cross-examination that as per the report of chemical examiner Ex.PD semen was not

detected on the pubic hair and swabs. However, he opined that it is not necessary in every case that semen must be detected on the swabs as it depends on the discharge of semen. He also stated that in the present case, the semen was discharged and it was detected on the salwar of the deceased.

- 8) Though, the appellant has questioned the opinion of PW-3 about the possibility of sexual intercourse before murder, it is not disputed that Sunita had died unnatural death which was the result of murder. It is also not a case where there is any eye-witness. It becomes clear from the narration of prosecution story that it is a case of blind murder. Therefore, the only question to be examined is as to whether the findings of the courts below finding appellant guilty of murder are legally sustainable or not.

- 9) The appellant became a suspect allegedly for the reason that Murti Devi wife of Sunil Kumar (daughter-in-law of the complainant) who had gone to the fields in search of Sunita and saw her lying dead there, had made a statement under Section 161 of the Code of Criminal Procedure to the effect that one day prior to Holi festival, when the deceased returned to the house after bringing fodder, she had told her that the appellant was a

bad person and had winked at her on that day while she was lifting fodder. The deceased had also disclosed to her that even prior to this incident, the appellant was behaving like this everyday. Brother of the deceased (PW-9) had also mentioned about the appellant in his statement. It is because of this reason that when PW-8 and PW-9 named him in their statements, the appellant was arrested. Further, after his arrest, his disclosure statement was recorded which led to recovery of sickel which was soiled with some sand. Some gold ornaments were also recovered which were identified to be that of the deceased by PW-8 and PW-10 Subhash s/o Balbir Singh who had joined the investigation when appellant was in custody of police and being taken to the fields for the recovery of the sickel and gold ornaments. The courts below have accepted the testimony of these witnesses and other witnesses as well as recovery of sickel and ornaments at the instance of the appellant and named the appellant on the basis of this evidence holding that his charge stands proved beyond reasonable doubts.

- 10) Mr. Dhanda, learned counsel appearing for the appellant submitted that there were inherent contradictions in the depositions of the material witnesses; the recoveries were not proved in accordance with law and could not be connected with

the crime. He argued that these aspects have been ignored leading to wrong conviction. He submitted that from the testimonies of PW-8 (sister-in-law of the deceased) and PW-9 (brother of the deceased), it would become clear that they have improved upon their version in the statements made in the Court which were not there when their statements were earlier recorded, during investigation, under Section 161 of the Cr.P.C. He further submitted that it was a case of blind murder wherein there was no eye-witness and the appellant is found guilty on the basis of circumstantial evidence. However, whatever circumstances have been stated to be proved against the appellant are not sufficient to form a complete chain of events leading to the guilt of the appellant. He, therefore, pleaded for the release of the appellant as according to him he was innocent. Learned counsel for the respondent, on the other hand, took us to the analysis of the findings as done by the trial court and the High Court and submitted that there was no infirmity in the findings arrived at by the courts below.

- 11) The incident in this case took place on 03.03.1999. Within few hours thereafter and without loss of any time, the complainant Jaibir (PW-12) lodged the report with the police at about 7.15 pm on the same day. Even the copy of the FIR was sent to the *ilaka*

Magistrate on the same day at 9 pm. As would be noticed later while discussing the testimonies of PW-8 and PW-9, suspicion about the involvement of the appellant was nurtured from the very beginning. He was arrested on 07.03.1999 i.e. within four days of the occurrence. On the very next day, i.e. on 08.03.1999, he made the disclosure statement (Ex.PJ) before Shri Shivdan Singh, the investigating officer in presence of Head Constable Krishan Kumar and Constable Mahender Singh. Though, it is a confessional statement which records his admission that he had murdered Sunita, since this part of the statement is not admissible in view of Section 25 and Section 26 of the Evidence Act, we are not supposed to take the confessional part into account. He, however, also stated that he removed the golden earrings and one dhol and after wrapping the same into a wax paper, he concealed underneath the earth after digging in a pit in the onion fields (Kayari) which was taken by him on share basis. He also stated that he threw the sickle in the field of Barseem and he could get these things recovered after pointing out the same. Pursuant to the aforesaid disclosure statement, the appellant got recovered two earrings and dhol made of gold as well as sickle in the presence of Subhash (PW-10) and Mahavir (PW-13).

12) Parna, Shirt, Salwar, Dupatta, Brassier, Swabs from the body of the deceased as well as blood stained earth were taken possession of and sent to Forensic Science Laboratory. The report (Ex.PD) was received on the said articles stating that they were found to be blood stained. It was also stated that human semen was detected on the salwar. Post-mortem on the body of the deceased was conducted by Dr. O.P. Charya (PW-3) who opined that cause of death was due to hemorrhage and shock and injury No.1 was sufficient to cause death in the ordinary course of nature. All these injuries were ante-mortem in nature. This doctor was also of the opinion that probable time that elapsed between the injury and death was variable and it happened within 24 hours. On the basis of report Ex.PD of chemical examiner and report (Ex.PD/1) of Serologist, this witness gave his opinion that possibility of victim having been subjected to sexual intercourse before the murder could not be ruled out.

13) The aforesaid evidence clearly proves that death of the deceased was unnatural and she was murdered. It also proves that before the murder either she was molested. Further, it also stands established that sickle was the weapon of murder.

- 14) Insofar as circumstances leading to connecting the appellant with the said murder are concerned, following evidence has come on record:
- (i) Brother of the deceased i.e. PW-9 had seen the appellant working in the fields which are adjacent to the fields of victim's family where Sunita had gone to collect Barseem.
 - (ii) The appellant was keeping an evil eye on the deceased.
 - (iii) The sickle, weapon used in the murder, was recovered on the disclosure statement made by the appellant and at his instance.
 - (iv) The deceased was wearing earrings and dhol which were also recovered from the appellant.

If the aforesaid aspects are treated to have been duly proved, in our opinion, they form a complete chain of circumstantial evidence unequivocally pointing out accusing finger at the appellant. The question is as to whether the evidence of the prosecution on the aforesaid aspects is trustworthy and reliable.

- 15) Apart from the testimonies of Doctor, Investigating Officer and other police officials etc., testimonies of various witnesses and, in particular, Murti Devi, sister-in-law of the deceased (PW-8), Sushil

Kumar, brother-in-law of the deceased (PW-9), complainant Jaibir, father of the deceased (PW-12) have been discussed in detail by the trial court as well as the High Court. After detailed discussion and analysis of the evidence on record, the courts below have accepted the version of PW-8, PW-9 and PW-12. The recovery of the jewellery belonging to Sunita and sickle with which Sunita was murdered at the instance of the appellant is also believed.

16) Since Mr. Dhanda had argued that there are some contradictions in the depositions of some of these witnesses, we are required to do a diagnostic of sorts, with limited purpose to examine as to whether High Court has faltered in the same very exercise done by it so seriously that its findings are rendered perverse. We may say at the outset that great pains are taken by the learned counsel for the appellant to show the lacuna and loopholes in the prosecution version, but regrettably, the record does not substantiate it.

17) As it has come in the testimony of PW-8 that appellant was having an evil eye on the deceased which deceased had told her, we would first look into the deposition of PW-8 to find out as to whether the aforesaid fact stands established. She has stated in her examination in chief about this fact, accusing appellant as well

as Balraj. It is stated that both appellant and Balraj had misbehaved with Sunita as well as this witness (PW-8). She has also stated that a day prior to the occurrence, both of them had teased Sunita and Sunita had informed her about this. However, they kept mum on account of the family pride and also feared that it may not lead to fight between the two families. In the cross-examination, she was confronted with her statement under Section 161 of Cr.P.C. She stated that though she had told the police that appellant and Balraj had teased Sunita as told by her earlier and these facts were not disclosed to anyone in the family as it would result in fight between the two families. However, this was not so recorded specifically in her statement under Section 161 Cr.P.C. At the same time, it is specifically recorded in the earlier statement as well that deceased had complained to her about the misbehaviour of the appellant. Thus, the only thing which is not recorded in the statement made by her during investigation is that she and Sunita kept quiet and did not inform the family members about the behaviour of Prem Singh in order to save family pride or the possible fight. That by itself is not sufficient to discredit the version of PW-8 on the conduct of the appellant who was having an evil eye on the deceased, inasmuch as, on this aspect this witness is consistent. It would be pertinent

to mention here that even PW-9 Sushil Kumar had stated in his statement under Section 161 Cr.P.C. as well as in his deposition in the Court that the appellant had teased Sunita a day prior to occurrence and she has disclosed this fact to this witness. He also stated that he did not disclose these facts to anyone in the family fearing that it would result in fight between the menfolk. When he was confronted with his earlier statement made during investigation (Ex.DA), the only thing which was not recorded in that statement was related to reason why he did not disclose. However, even in his earlier statement, it is specifically recorded that deceased had complained to Murti Devi (PW-8) about the appellant having teased Sunita a day prior to *Holi*. Thus, on this aspect, both PW-8 and PW-9 are consistent and there is no reason to disbelieve.

- 18) PW-9 has also specifically mentioned that he had gone to his fields in the early morning, which are close to the fields of one Hoshiar Singh, and the appellant was cultivating the land. He also used to operate the tubewell of Hoshiar Singh. When he had gone to his fields on 03.03.1999 in the morning, he had seen the appellant and Balraj near his fields who was operating the tubewell. He further stated that when he was returning from his

fields, he met his sister Sunita who was going towards their fields to bring Barseem. She was carrying sickle (darati) and a palli. She was wearing pair of earrings and dhol made of gold on her person. He further specifically stated that when Sunita had gone to the fields, only Prem and Balraj were present there. He has, thus, deposed about the earrings and dhol which the deceased was wearing. When these articles were recovered on the disclosure statement and at the instance of the appellant, these are identified to be the same earrings and dhol which deceased was wearing. On this aspect, namely, Sunita was wearing the aforesaid articles, there is no cross-examination at all.

- 19) We would like to point out here that when PW-8 and PW-9 were confronted with their statements recorded earlier under Section 161 Cr.P.C. by the counsel who appeared for Balraj, what is found is that name of Balraj was missing which has surfaced later. It is for this reason insofar as Balraj is concerned, he was given benefit of doubt and acquitted by the trial court itself. However, as far as appellant is concerned, there are no contradictions by the witnesses on the aforesaid aspects. Even if there are some contradictions, those are of minor nature and it would be foolhardy to discard the version of these witnesses on miniscule variations which have no bearing at all.

20) Having regard to the above, we are of the considered view that there is clinching evidence against the appellant and he is rightly convicted under Sections 354, 404 as well as 302 IPC. The High Court has summed up the analysis of the evidence in the following words with which we are entirely agree:

“Thus, from the aforementioned discussion, it is clear that accused Prem Singh had cast an evil eye upon deceased Sunita. He had teased her, a day prior to the occurrence and had also winked at her on previous occasions. The report of post mortem as well as the Forensic Science Laboratory (Ex.PD/1) shows that there was a teeth bite mark on the right cheek of the deceased and also human semen was detected on the salwar of the deceased. When the attempt to commit rape upon the deceased failed, the accused committed the murder of Sunita with the sickle which she was having for cutting fodder (Barseem). As per the FSL Report, human blood was detected on the sickle. As per the statement of PW-9 Sushil Kumar, he had seen accused Prem Singh operating the tubewell of Hoshiar Singh which was near his fields. The deceased had gone to the fields of Hoshiar Singh to cut fodder. This witness had last seen the accused on the date of occurrence in the same fields where Sunita had gone for cutting fodder. Thus, the prosecution has been able to prove last seen evidence.

Apart from the above, the recoveries of sickle and gold earrings which the deceased was wearing were effected upon a disclosure statement made by the accused. It was accused Prem Singh, who got recovered the earrings and dhol of gold by digging the earth from the field of Hoshiar Singh Master. Thus, the prosecution has been able to establish that the recoveries were effected at the instance of accused Prem Singh, as per his disclosure statement and the same belonged to the deceased. The recoveries

were effected in the presence on PW-10 Subhash and Mahavir PW-13. The post mortem report also corroborates the case of prosecution as according to Dr. O.P. Charaya (PW-3), injury No.1 was sufficient to cause death in the ordinary course of nature. The Doctor had also noticed a bite mark on the cheek of the deceased. All the aforementioned circumstances clearly and unequivocally point towards the fact that it was Prem Singh who had firstly intended to outrage the modesty of Sunita and thereafter had committed her murder. The evidence of the prosecution witnesses is trustworthy and reliable and furthermore, all the links in the chain are complete which point to the guilt of the accused.”

21) Learned counsel for the appellant had cited certain judgments in support of his submission that suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved and something that 'will be proved'. However, in the present case, as we found that the guilt of the appellant is conclusively established with the credible material, those judgments have no application. We find the appeal bereft of any merits which is accordingly dismissed.

.....J.
(A.K. SIKRI)

.....J.
(UDAY UMESH LALIT)

**NEW DELHI;
MAY 29, 2015.**