

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-1119-DB-2013 (O&M)

Reserved on: 16.12.2024

Date of Decision: 18.01.2025

JAI PAL KUMAR

.....Appellant

Versus

STATE OF PUNJAB

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Ms. Rakhi Sharma, Advocate (Legal Aid Counsel) and
Mr. J.S. Bains, Advocate
for the appellant.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 26.08.2013, upon sessions case bearing number S.C. No.16291/2012, by the learned Additional Sessions Judge, Jalandhar, wherethrough in respect of charges drawn against the accused qua an offence punishable under Section 302 of the IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellant-convict. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the appellant-convict in the hereinafter extracted manner.

“xxx

So, in order to meet both ends of justice, he is sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.2,000/- under Section 302 of Indian Penal Code.”

2. The accused-convict become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal, before this Court.

Factual Background

3. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex.PA/2 is assigned. The narrations carried in Ex.PA/2 are, that Smt. Urmila Devi wife of Ganga Ram, resident of Udras Poorva, Police Station Dhomolia, District Faizabad, presently resident in the area known as Pardeep De Vehra, Globe Colony, Jalandhar had made her statement Ex.PA before SI Jastinder Singh stating therein, that she has two daughters, elder one is aged twelve years and younger one is aged six years. On that day, her elder daughter Neelam had gone out of the house for purchase of household articles. She had returned to her house at about 12:00 noon/1:00 p.m. and after entering into room, she had seen accused Jai Pal Kumar son of Munna Lal, resident of Kosa Bazar Gaon, Police Station Bikapur, District Faizabad (Uttar Pradesh), who was also on visiting terms with them was present in the room. Her younger daughter Khushboo had been opposing his acts. In her view, Jai Pal Kumar accused had put a Chunni around the neck of Khushboo and strangulated her, as a result of which she had fallen down. She had raised alarm for her safety, which attracted her neighbour Bachi Devi wife of Murli Dhar, resident of Mahadev Simria, Police Station Sikandra, District Mungher (Bihar), who was also residing in the area known as Pardeep Da Vehra, Globe Colony, Jalandhar. She had also witnessed the said occurrence. Then both of them had raised alarm, upon

which the accused had succeeded to flee away. She and Bachi Devi rushed to Khushboo and found that she had already died due to strangulation with Chunni. Motive for this occurrence as stated by her is that accused Jai Pal Kumar had been asking her for some money on loan, but she had refused to it and being angry on her refusal, he has killed her daughter Khushboo. She had thumb marked that statement.

Investigation

4. Thereafter, Investigating Officer Jastinder Singh had made endorsement Ex.PA/1 on her statement Ex.PA and sent it to Police Station, where formal FIR, copy of which is Ex.PA/2, was registered against the accused. Investigating Officer had visited the place of occurrence, prepared rough site plan Ex.PW7/A with correct marginal notes, got prepared scaled site plan Ex.6/A and also prepared inquest report on the dead body of Khushboo. He had arranged for autopsy on dead body. Postmortem report Ex.PB and belongings of Khushboo were taken into police possession vide memo Ex.PW7/C. Dead body after postmortem was entrusted to Smt. Urmila Devi-complainant, vide receipt Ex.PW7/C/1. He had recorded statements of formal witnesses under section 161 of Criminal Procedure Code and formally apprehended accused on 5.7.2012. After usual investigation, challan was put in the Court of Ilaqa Magistrate for trial.

Committal Proceedings

5. Since the offences punishable under Section 302 of the IPC, were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 21.7.2012, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

6. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against accused, for the commission of an offence punishable under Section 302 of the IPC. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

7. In proof of its case, the prosecution examined 7 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. However, he did not lead any evidence.

Submissions of the learned counsel for the appellant-accused

8. The learned counsel for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, consequent thereto order of sentence, thus require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

9. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convict-appellant, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the appeal, as preferred by the convict-appellant, be dismissed.

Analysis of the deposition of eye witness to the occurrence who stepped into the witness box as PW-1

10. The witness (supra), in her deposition, as comprised in her examination-in-chief, ascribed to the convict-appellant, thus the charged incriminatory role, inasmuch as, with the users of dupatta his strangulating the deceased.

11. It is evident on a reading of deposition of the above witness, that she was aware of the identity of the convict-appellant. Resultantly, when there is also no efficacious cross-examination made upon the eye witness (supra), thus suggesting, that the present convict-appellant was unknown to her nor when any affirmative answer thereto became meted, thus by the eye witness (supra). Therefore, the first time identification, by her, thus in Court vis-a-vis the identity of the convict, rather even without prior thereto any valid test identification parade being held, rather does not make the appositely rendered identification, only in Court, thus to be lacking in any evidentiary vigor.

12. Be that as it may, an incisive and wholesome reading of the deposition of the said eye witness to the occurrence unfolds that; a) she did not either grossly improve nor grossly embellished upon her previously recorded statement in writing, b) she, in respect of the crime event, thus made a version, thus in complete alignment with the version embodied in the FIR, c) she has narrated an ocular account vis-a-vis the crime event which is but free from any taint of any *inter se* or *intra se* contradiction. Resultantly, therebys the eye witness account as became rendered by PW-1 vis-a-vis the crime event, rather is to be assigned the completest evidentiary vigor, wherebys the prosecution has been able to cogently establish the charge drawn against the accused.

13. Be that as it may, the other witnesses' to the occurrence rather did not, upon their stepping into the witness box hence render in their respective examination-in-chief, thus a version in alignment with their previously recorded statements in writing.

14. The said eye witnesses are PW-4 (Bachi Devi) and PW-5 (Pardeep Kumar). However, the said eye witnesses, thus upon their resiling from their previously made statements in writing, but with the leave of the Court become declared hostile and resultantly therebys the learned Public Prosecutor concerned, rather was permitted to cross-examine them. However, though during the course of theirs becoming subjected to a scathing cross-examination by the learned Public Prosecutor concerned, yet they still adhered to the resilings as become made by them, from their respectively recorded previous statements in writing by the police officer concerned.

15. However, even if the learned Public Prosecutor concerned, made a weak effort, thus upon his subjecting the witnesses (supra) to cross-examine, rather in making incriminatory unearthings from them, but qua the accused, wherebys though their apposite resilings in their respective examinations-in-chief, hence from their respectively recorded statement in writing, thus do remain unbelied. However, the said prima facie inference rather would not at all impact the credible confidence inspiring testification rendered by the other eye witness to the occurrence, who stepped into the witness box as PW-1.

16. The reason for so stating generates from the hereinafter extracted portion, which become carried in the cross-examination, as made made by the learned defence counsel upon the PW-1.

“Xxx

I had seen accused strangulating neck of my daughter with Dupatta at 1.00 p.m. in the room of house. That room has only one door and no window. It is rented accommodation. I had taken that accommodation from one Pardeep. Pardeep had witnessed this occurrence. There are ten/twelve tenants in same courtyard. Prominent out of them are Sita, Kaula daughter in law of Bachhi Devi and Lallan. More than 50-60 persons had collected at the scene of occurrence. Police had recorded statement of Visal my son in law at spot.

Xxx”

17. The (supra) extracted echoings as occur in the cross-examination of the (supra) witness, when do invincingly suggest, that therebys the defence, thus has acquiesced to the witness concerned, eye witnessing the accused strangulating the neck of the deceased with the dupatta, thus at the relevant time and at the relevant crime site.

18. Now, if the accused through the (supra) echoings as occur in the cross-examination of PW-1, thus acquiesce to the rendition of a credible eye witness account vis-a-vis the crime event, therebys the said acquiescence(s), thus negates the exculpatory impact, if any, of the other eyewitnesses rather resiling from their respectively made previous statement in writing thus to the police officer concerned. Consequently, therebys the prosecution has, thus succeeded in invincingly proving the charge drawn against the accused.

MEDICAL EVIDENCE (POST MORTEM REPORT)

19. The autopsy upon the body of deceased Khushboo, was conducted on 01.03.2012, by PW-2. PW-2 has proven *qua* his, authoring Ex.PC/1, as relates to the autopsy as made upon the body of deceased.

20. Moreover, he has proven that the cause of death of deceased Khushboo, arose from asphyxia owing to strangulation. The injuries were declared to be ante mortem and were also declared to be sufficient to cause death in ordinary course of nature. The relevant ante mortem injuries as

noticed by PW-2 on the body of deceased are extracted hereinafter.

“1. Neck circumference was 22 cms. Reddish brown contusion present all around the neck 22 cms x 3 cms size. It was place and dry hard parchment like.”

21. The above medical evidence also supports the (supra) proven incriminatory link (supra), as banked upon the (supra) incriminatory credible eye witness account rendered vis-a-vis the crime event, whereby the charges drawn against the accused become invincingly proven.

FINAL ORDER

22. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the appellant-convict by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the appeal, and, the same is dismissed. If the appellant is on bail, thus he is ordered to be forthwith taken into custody through the learned trial Judge concerned, forthwith drawing committal warrants against the accused. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

23. Records be sent down forthwith.

24. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

January 18th, 2025

Ithlesh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No