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HIGH COURT OF PUNJAB AND HARYANA
Bench: Justices Sudhir Singh and Harsh Bunger
Date of Decision: 14th May 2024

Case Number: CRM-A-184-2020 (O&M)

State Chandigarh Administration, Chandigarh …..Appellant

Versus

Mohammad Israr & Anr. …. Respondents

Legislation and Rules:
Section 120-B, 302 of the Indian Penal Code (IPC)
Section 161 of the Code of Criminal Procedure (CrPC)

Subject: Application seeking leave to appeal against the acquittal of respondents for charges under Section 302 and 120-B IPC by the Additional Sessions Judge, Chandigarh.

Headnotes:

Criminal Law – Acquittal under Sections 302 and 120-B IPC – Leave to appeal dismissed by High Court – Prosecution failed to establish motive and link in the chain of circumstantial evidence – Alleged harassment for dowry not substantiated by evidence – No eye witnesses, case relied on circumstantial evidence – Last seen theory and recovery of material exhibit (chunni) deemed unreliable – Medical evidence indicated hanging, not strangulation – Delay in FIR registration unexplained [Paras 1-16].

Evidence Evaluation – High Court upheld trial court's finding of doubt on the testimony of key witnesses – Material improvements and inconsistencies in statements – Medical evidence did not conclusively support prosecution's theory of strangulation – PMR indicated hanging as cause of death – No supporting forensic evidence to link accused with the crime [Paras 9-13].

Decision – Dismissal of Appeal – Held – Application for leave to appeal is dismissed – High Court found no illegality or perversity in trial court's judgment – Prosecution's evidence insufficient to overturn acquittal – Appellate court emphasized on limited scope of interference with acquittal unless findings are perverse or wholly unsustainable [Paras 14-16].

Referred Cases:

- Surinder Pal Jain vs. Delhi Administration, AIR 1993 SC 1723
- State of Goa vs. Sanjay Thakran & Anr., (2007) 3 SCC 755
- Jaswant Gir vs. State of Punjab, (2005) 12 SCC 438
- Trimukh Maroti Kirkan vs. State of Maharashtra, (2006) 10 SCC 681
- Mrinal Das vs. State of Tripura, (2011) 9 SCC 479
- Ghurey Lal vs. State of Uttar Pradesh, (2008) 10 SCC 450

Representing Advocates:

Mr. Y.S. Rathore, Additional Public Prosecutor, U.T. Chandigarh, assisted by Mrs. Sudha Singh and Mr. Yuvraj Rathore, Advocates for the applicant

SUDHIR SINGH ,J.

The instant application seeking leave to appeal is preferred against the judgment dated 26.08.2019 passed by the learned Addl. Sessions Judge, Chandigarh, whereby the respondents have been acquitted of the charges under Section 302 and 120-B IPC.

2. Vide order dated 19.09.2023, the lower Court record was called for. The same was received on 07.03.2024.

3. The prosecution case, as per the complaint (Ex. P14) of the complainant-Dilsher (PW-7), is that the complainant's sister, namely, Imrana (deceased), had been married to Israr (Respondent no. 1) about 17 years ago. The deceased was living in House No. 114-A, Phase-3, BDC, Sector 26, Chandigarh along with her husband (Israr), who was working as a tailor; his brother Intezar(Respondent No. 2) and sister-in-law Anjum (absconding). It was alleged that for a long time, the respondents, along with Anjum, used to pressurize the deceased (Imrana) to bring an amount of Rs. 2.5 lakh from her family to enable the respondents to start their own business. The respondents would hurl abuses upon the deceased and used to beat her and even threaten

to kill her. It was further stated that on 24.03.2017 around 9.30 PM, upon hearing the alarm raised by the deceased, the complainant's nephew, Noor Mohammad (PW-5), went to the room of the deceased and saw the respondents abusing and threatening to kill the deceased for not bringing the said amount of Rs. 2.5 lakh and that the said Noor Mohd. Spoke to Israr etc. and reasoned with them and went back to his room. It was further alleged that the next morning at around 5.45 AM, when the complainant's nephew knocked at the door of respondents to ask them to accompany him for the morning *Namaz,* Anjum opened the door, and he saw that the deceased had been lying dead in the room. Further, he saw that the respondents were holding a rope in their hands, and when he tried to raise the alarm, the respondents threatened to kill him. The respondents thereafter took the body of the deceased to their village Nangal Rajput for burial, and the complainant, along with his family members, reached the said village. Based on the said complaint, FIR No. 143 (Ex. P49) dated 25.03.2017 under Section 302 IPC at P.S. Gangoh, District Saharanpur was registered. The criminal case was transferred from Saharanpur to Chandigarh whereupon FIR No. 71 (Ex. P16) dated 15.05.2017 was registered at P.S. Sector 26,Chandigarh. After investigation, the charge-sheet was submitted, and cognizance was taken. Thereafter, charges under Section 302 read with 120-B IPC were framed against the respondents, to which they pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined nineteen witnesses, namely, Khurshid Ahmed- taxi driver (PW-1), Dr. Vinod Kumar (PW-2), Surinder Kumar, AEE, Electricity operation (PW-3), Constable Hitesh Singh Rana (PW-4), Noor Mohammad (PW-5), HC Hari Om (PW-6), Dilsher (PW-7), HC Yash Pal (PW-8), SI Om Parkash (PW-9), Sr. Constable Rakesh Kumar (PW-10), HC Malook Singh (PW-11), HC Mahe Singh (PW12), Munish Bindra, Nodal Officer, BSNL (PW-13), SI Yashvir Singh (PW-14), C. Vinod Kumar (PW-15), Inspector Yogesh Sharma as PW-16. In support of its case, the prosecution had also produced evidence in the form of Ex.P1 Postmortem Report, Ex. P2 FSL Report, Ex. P3Electricity Bill, Ex. P4Statement, Ex. P5 Electricity Bill, Ex. P6,Ex. P7Reports, Ex. P8,Ex. P9 Personal Search Memo, Ex. P10, Ex. P11Arrest memos, Ex. P12 Seizure Memo, Ex. P13, Ex. P14 Letter, Ex. P15 Scaled Site Plan, Ex. P16 FIR, Ex. P17 to P37 Photos, Ex. P38 Rough Site Plan, Ex. P39 RSP of Recovery, Ex. P40 Seizure Memo, Ex P42 Customer

Application form, Ex. P43, Ex. P44 Call Statements, Ex. P45 S. 65-B Certificate, Ex. P46 Covering Letter, Ex. P47 *Panchnama* Report, Ex. P48 Entry in *Malkhana* Register, Ex. P49 FIR, Ex. P50 Diary Report and Ex. P51 Report. The defence examined four witnesses, namely, Mufti Mohd. Anas (DW-1), Mohd. Anisu Rehman (DW-2), Jasbir Singh, Psychiatric Social Worker (DW-3), and Dr. Rajbir Singh as DW-4 in support of its case. After the conclusion of the trial, the learned Trial Court acquitted the accused person.

5. The grounds considered by the learned Trial Court for acquitting the Respondent are as follows:-

i) No complaint was ever moved by the deceased-herself or any family member of the deceased qua the alleged harassment and cruelty meted out to her on her inability to fulfill the illegal demands of the accused. Dilsher (PW-7) even categorically admitted the same in his cross-examination. Furthermore, nothing was brought on record by the Investigative Agencies to prove any harassment or torture meted out to the deceased in the past by the accused.

ii) The testimony of the material witnesses to the case, i.e., Noor Mohammad (PW-5) and Dilsher (PW-7), was considered doubtful as there were improvements in it. iii) The recovery of the material exhibit i.e. *Chunni,* allegedly used to strangulate the victim, was also not effected as per the proper procedure. The *Mufti* of the mosque, in whose presence the *Chunni* was stated to have been recovered, was not cited as a witness for recovery of *Chunni*, however, he was examined as DW1 and he denied giving any lock or key of the main gate of the house of the accused to the Investigating Officer and denied accompanying the police to open the lock of the house and recover the *Chunni.*

iv) The PMR (Ex. P1) and the testimony of Dr. Vinod Kumar (PW-2), indicated the cause of the death of the deceased as hanging and not strangulation.

v) There was a delay of more than 50 days in the registration of FIR and the commencement of the investigation and the said delay remained unexplained.

6. The learned Addl. Public Prosecutor, U.T., Chandigarh, while assailing the judgment of acquittal passed by the trial Court, has argued that when there is testimony of witnesses corroborating the entire occurrence whereby the accused had been named to be last seen in the company of the deceased, then there was no occasion for the trial Court, to discard the prosecution case. He has further submitted that the medical evidence on record, establishes

that the hyoid bone of the deceased was found fractured, which is a conclusive proof of strangulation, coupled with the recovery of the *chunni* used as a weapon of crime, proves the prosecution's case. It is further argued that the motive for committing the murder of the deceased as non-fulfilling the illegal demand of Rs.2.5 lacs raised by the respondents, was clearly attributed to the accusedrespondents and thus, the motive coupled with the evidence on record clearly points towards the complicity of the respondents in the crime.

7. After hearing the arguments advanced by the learnedAdditional Public Prosecutor, U.T., Chandigarh and upon examining the material available on the record, the following issues arise for consideration before this Court:- i) Whether the prosecution has led sufficient evidence to prove the motive on the part of the respondents? ii) Whether the evidence brought on record coupled with the medical report proves the prosecution’s case beyond reasonable doubt?

8. From a perusal of the entire material available on therecord, it is apparent that there is no eye witness to the alleged occurrence. Thus, the entire case of the prosecution is based on circumstantial evidence and rests on the oral testimony of one Noor Mohammad (PW-5) and complainant-Dilsher (PW-7). The Courts have time and again held that in cases involving circumstantial evidence**,** establishing the motive becomes crucial in providing a plausible explanation for the prosecution's claims and enables the Court to draw reasonable inferences. The Hon'ble Supreme Court in Surinder Pal Jain vs. Delhi Administration, AIR 1993 SC 1723, has held as under:-

“In a case based on circumstantial evidence, motive assumes pertinent significance as existence of the motive is an enlightening factor in a process of presumptive reasoning in such a case. The absence of motive, however, puts the Court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof.”

The prosecution has tried to establish that the accused used to force the deceased to bring an amount of Rs. 2.5 lakh from her family to enable them to set up their own business. The accused used to harass and torture the deceased, both mentally and physically, and threaten to kill her if she failed to get the said amount, and this was the motive behind killing the deceased.

Noor Mohammad (PW-5), in his statement as well as his testimony, stated that he had seen the accused quarreling with and demanding money from the deceased the night before the alleged occurrence, and on the following day, he had seen the accused holding the *Chunni* in their hands along with the body of the deceased, who had died due to strangulation. These facts were further corroborated by the complainant (Dilsher-PW7), who is the brother of the deceased. He had deposed that an amount of Rs. 1.00 Lac was paid by the deceased's family to the accused on an earlier occasion. However, the factum of payment of Rs.1.00 lac does not find any mention in the complaint (Ex. P14), which was moved before the Police or in the testimony of Noor Mohammad (PW-5). In their cross-examination, both the material witnesses, i.e., PW-5 and PW-7, denied knowledge with respect to the contents of the complaint (Ex.P14). Furthermore, we do not find that the finding of the trial Court regarding absence of motive in the instant case, suffers from any illegality. It was found that the marriage between the accused and the deceased had been 20 years old and even the children from the said marriage were grown up and further, there was no complaint moved before any authority at any point of time by the deceased or any of her family members concerning the alleged acts of cruelty, torture or harassment due to non-fulfillment of the demand of money. Thus, the motive for the alleged occurrence, as alleged by the prosecution against the accused by the prosecution, seems to be quite improbable.

10. Thus, the prosecution has failed to lead any cogent evidence on record to prove establish the motive on the part of the respondents. Issue No.I is decided accordingly.

11. Moving to the issue No. II, the present case had beeninstituted on the basis of the complaint filed by the brother of the deceased. From the evidence brought forth on behalf of the prosecution, admittedly, the present case is based oncircumstantial evidence of last-seen theory. It is well settled that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established. It has been so held by the Hon’ble Supreme Court in State of Goa Vs. Sanjay Thakran & Anr., (2007) 3 SCC 755. The Hon’ble Supreme Court in Jaswant Gir Vs. State of Punjab, (2005) 12 SCC 438, further observed that in the absence of any other links in the chain of circumstantial evidence, it is not possible to convict the appellant solely on the basis of the ‘last seen’ evidence, even if the version of the complainant is believed.

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12. In view of the given facts of the case and also the evidence on record, it becomes evident that there are many improvements in the testimony of Noor Mohammad (PW-5). In the cross-examination of PW-5, several omissions were brought on record by drawing his attention to his previous statement given to the Police under Section 161 Cr.PC. It has come in the evidence that PW-5 had omitted to state in his Section 161 statement that: (a) An amount of Rs. 1 Lac was earlier paid to the accused by the family of the deceased; (b) After seeing the body of the deceased, he had tried to call his family members but the accused snatched his mobile and confined him in a room; (c) the accused were holding the *chunni* and they threw the *chunni* on seeing him. Thus, owing to such conduct, the entire testimony of PW-5 becomes doubtful and cannot be safely relied upon to believe that the accused were holding a rope made of *chunni* and had, thus, strangulated the deceased with the same. The motive for committing the alleged crime was not established. Per contra, even if we consider the fact that the deceased was last seen with the accused to be accurate, it is only one chain in the whole circumstances on the basis of which conviction cannot be recorded. Notably, the *chunni* used as a rope to allegedly strangulate the deceased was not recovered as per the procedure. The *Mufti* of the mosque, who was reportedly present at the time of recovery, was not made a witness to the recovery of the *chunni*. HC Hari Om (PW-6) had further deposed that the alleged recovery was made from the washing machine in the house and the same was not in the shape of a rope. The fingerprints of the accused were never even matched with the fingerprints on the recovered *chunni*. These discrepancies undermine the prosecution's case as they could not substantiate these facts and establish the connection between the chains of circumstances. In this context, it is relevant to refer to the decision in Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 10 SCC 681 in paragraph 12, wherein it was observed that:

“... ... ...The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that 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 they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.” Lastly, moving to the medical evidence,

i.e., PMR (Ex. P1), and Testimony of Dr. Vinod Kumar (PW-2), the factum of death occurring due to strangulation has also not been proved. As per the report -

I) There was dribbling of saliva out of the mouth.

II) Ligature marks were obliquely placed.

III) The subcutaneous tissue under the mark was white, hard, and glistening.

IV) The Trachea-Hyoid bone was found fractured *(though denoted with a different ink in the PMR)*

As per medical jurisprudence as well as the testimony of the medical officer, all the points mentioned above lead to the conclusion that the death of the deceased was a result of asphyxia due to hanging and not strangulation. Furthermore, there was no evidence of bleeding from the nose, mouth, and ears of the deceased; there were no signs of struggle on the neck or any parts of the body. The said fracture, though rare, could even occur in cases of death by hanging. All these findings only substantiate the finding qua hanging.

13. Thus, in light of the factual matrix of this case and considering the established legal position as discussed above, this Court is of the view that the prosecution has utterly failed to prove the case beyond reasonable doubt. Accordingly, the issue is decided in negative.

14. In criminal appeal against acquittal what the appellate Court has to examine is whether the finding of the learned Court below is perverse and prima facie illegal. Once the appellate Court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the caused is further strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court passed in the case of <u>Mrinal Das</u> versus <u>State of Tripura</u>, (2011) 9 SCC 479, it has been observed that:

"13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final Court of fact, is fully competent to reappreciate, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or

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condition on exercise of such power and the appellate Court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent Court. If two reasonable views are possible on the basis of the evidence on record, the appellate Court should not disturb the findings of acquittal.

14. There is no limitation on the part of the appellate Court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate Court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate Court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. ... ...”

In the case of Ghurey Lal Vs. State of Uttar Pradesh, (2008) 10 SCC 450 in para no. 75, the Hon'ble Supreme Court re-iterated the said view and observed as follows:

"75. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate Court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable."

15. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the appellate Court must not take a different view only because another view is possible. It is because the trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not be upset in the absence of strong and compelling grounds.

16. view of the above, we do not find any illegality and perversity in the findings recorded by the trial Court. Accordingly, the present application is dismissed and leave to appeal is declined.

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