

Before Rajiv Sharma & Harinder Singh Sidhu, JJ.

MUKESH AND OTHERS—Appellants

versus

STATE OF HARYANA—Respondents

CRA-D No.609-DB of 2018

December 11, 2018

Indian Penal Code, 1860—S. 201, 302, 147, 149 and 120-B—“Circumstantial evidence”—“conviction cannot be based on suspicion”—Application submitted by Om Prakash sarpanch of village to police that appellants murdered their sister by strangulation after putting celphos tablets in her mouth as they found her in compromising position with a co-villager—Body cremated—F.I.R. registered—Challan filed—During trial Om Prakash denied contents of complaint—Appellants tried and convicted by trial Court—Appeal filed—Allowed—Held—Case is based on circumstantial evidence—PW1 did not support prosecution’s case—No independent witness was joined when disclosure statements were recorded—No reason assigned for not joining of independent witnesses—Further held, chain of events is not complete—Appellants could not be convicted merely on the basis of suspicion—Suspicion cannot take place of proof—Further held, statements of official witnesses can be believed but the same are required to be corroborated—Prosecution failed to prove case beyond reasonable doubt—Appeal allowed.

Held that the case is based entirely on circumstantial evidence. The FIR was registered on the basis of complaint Ex.PW1/A lodged by Om Parkash. Om Parkash had appeared as PW-1. He has not supported the case of the prosecution. He has denied the contents of Ex.PW1/A. He was declared hostile and cross-examined by learned Public Prosecutor. Now as far as Ex.PW1/A is concerned, the contents are not believable. How he knew that the appellants had given celphos to Preeti and thereafter strangulated her and burnt her body. PW-3 Inder Singhas also not supported the case of prosecution. He has denied the contents of Ex.PW3/A as well as Ex.PW3/B. PW-4 Inder Singh also deposed that no investigation was carried out in his presence. The disclosure statements of the appellants have been recorded in police custody. No independent witness was joined when the disclosure statements were made by the appellants. No reason was assigned why independent witnesses were

not joined when the recoveries were made.

(Para 16)

Further held that There is no eye witness in this case. The chain is not complete. The complainant himself has not supported the case. The appellants could not be convicted merely on the basis of suspicion. The suspicion can not take place of proof. The statements of official witnesses can be believed but the same are required to be corroborated. Consequently, the prosecution has failed to prove the case against the appellants beyond reasonable doubt.

(Para 16)

Ashit Malik, Advocate
for the appellants.

Shubhra Singh, Addl.A.G. Haryana.

RAJIV SHARMA, J.

(1) Though CRM no.25197 of 2018 seeking suspension of sentence was listed, but learned counsel for the appellants requests to argue the main appeal.

(2) This appeal is instituted against the judgment and order dated 16.05.2018 and 18.05.2018 rendered by learned Additional Sessions Judge, Sonapat, in Sessions case no.09 of 2017 whereby the appellants were charged with and tried for offence punishable under Sections 201, 302, 147, 149, 120-B IPC. The appellants were convicted and sentenced by the trial Court as under:-

Name of convict	Offence U/s	Period of sentence (RI)	Fine imposed	Period of sentence in default of payment of fine. (RI)
Mukesh	302 read with Section 149 IPC	Life imprisonment	Rs. 20,000/-	-
	201 read with Section 149 IPC	Seven years	Rs.5000/-	Three months

	147 IPC	Three years	Rs.5000/-	One month
	120-B read with Section 302 IPC	Life imprisonment	Rs. 20,000/-	-
Sandeep	302 read with Section 149 IPC	Life imprisonment	Rs. 20,000/-	-
	201 read with Section 149 IPC	Seven years	Rs.5000/-	Three months
	147 IPC	Three years	Rs.5000/-	One month
	120-B read with Section 302 IPC	Life imprisonment	Rs.20,000/-	-
Sonu	302 read with Section 149 IPC	Life imprisonment	Rs.20,000/-	-
	201 read with Section 149 IPC	Seven years	Rs.5000/-	Three months
	147 IPC	Three years	Rs.5000/-	One month
	120-B read with Section 302 IPC	Life imprisonment	Rs.20,000/-	-
Krishan	302 read with Section 149 IPC	Life imprisonment	Rs.20,000/-	-
	201 read with Section 149 IPC	Seven years	Rs.5000/-	Three months
	147 IPC	Three years	Rs.5000/-	One month
	120-B read with Section 302 IPC	Life imprisonment	Rs.20,000/-	-
Rajbala	120-B read	Life	Rs.20,000/-	-

	with Section 149 IPC	imprisonment		
	201 read with Section 149 IPC	Seven years	Rs.5000/-	Three months
	147 IPC	Three years	Rs.5000/-	One month

(3) The case of the prosecution in a nutshell is that on 07.09.2016, Om Parkash came to the police. He submitted an application to the effect that he is resident and Ex-Sarpanch of village Bindhal. Ranbir was his co- villager. He had three sons and five daughters. His youngest daughter Preeti was 17 years old. She was unmarried. On 05.09.2016 Preeti was caught red handed in compromising position with Ajay son of Badal resident of Bidhal in her own house by her brothers Mukesh, Sandeep and Sonu. The matter was patched up. On 06.09.2016 at about 8.30 P.M., the appellants Mukesh, Sandeep and Sonu in connivance with his cousins strangled Preeti after putting celphos tablet in her mouth. They cremated the body. On the basis of this statement, FIR was registered. The challan was put up after completing all the codal formalities.

(4) The prosecution examined as many as seven witnesses in support of its case. Statements of the appellants were recorded under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they have been falsely implicated. The appellants were convicted and sentenced as noticed hereinabove. Hence this appeal.

(5) Learned counsel appearing for the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

(6) Learned counsel appearing on behalf of the State has supported the judgment and order dated 16.05.2018 and 18.05.2018.

(7) We have heard learned counsel for the parties and have gone through the judgment and record very carefully which was produced by the learned counsel during the course of hearing.

(8) PW-1 Om Parkash is the material witness. According to him, he was Sarpanch of village Bindhal. His house was situated on the main road in the village. The police reached the spot. He was standing in front of his house. Police asked him about the death of daughter of Ranbir Pandit. He told the police that one daughter of Ranbir Pandit died due to heart attack on previous day. She was cremated at about

6.00/6.30 P.M. in the cremation ground of their village. He did not know anything about this case except what he had stated in his examination-in-chief. The daughter was not murdered by anybody. He was declared hostile and was cross-examined by the learned Public Prosecutor. He has admitted his signatures on the complaint Ex.PW1/A. According to him, the signatures were obtained by the police on blank papers. He denied the contents of complaint. He denied that on 05.09.2016 Ajay son of Badal was caught red handed with Preeti in the house of Ranbir by her brothers and thereafter the matter was patched up. He has also denied that Preeti was murdered by her brothers by administering celphos and thereafter strangulating her. He has also denied the contents of statement Ex.PW1/B.

(9) PW-2 Constable Dal Singh has proved his statement vide affidavit Ex.PW2/A. He had taken the case property from Malkhana and deposited the case property with FSL, Madhuban.

(10) PW-3 Inder Singh testified that he came to know that daughter of Ranbir was dead. He was called by the police in the police station after one week of the incident. Police inquired from him how Preeti died. He told the police that he did not know how she died. Police did not conduct any proceeding in his presence. His signatures were obtained on blank papers. He was declared hostile and was cross-examined by the learned Public Prosecutor. He had not made statement Ex.PW3/A, though admitted his signatures on Ex.PW3/B as well as Ex.PW3/C.

(11) PW-4 Inder Singh also did not support the case of the prosecution. According to him, no proceeding was conducted in his presence. He was declared hostile. He also denied making of statement Ex.PW4/A.

(12) PW-5 Ravinder Malik has prepared the Aks shajra Ex.PW5/A.

(13) PW-6 ASI Ramesh Chander joined the investigation. According to him, they reached the cremation ground in village Bidhal. Police picked up some bones and ashes from the pyre. These were taken into possession vide memo Ex.PW3/B, PW3/C and PW4/B. He joined the investigation on 08.09.2016 as well. Mukesh made disclosure statement Ex.PW6/B. He confessed about the commission of crime along with co-accused by hatching conspiracy. Mukesh killed Preeti by strangulating her. Sandeep also made disclosure statement Ex.PW6/C. He also admitted commission of crime. According to him, Preeti was administered poison (celphos) by Krishan. Mukesh

strangled her. Krishan gagged her mouth. Thereafter the body was disposed of. Mukesh had got the area demarcated. Raj Bala also made disclosure statement Ex.PW6/H. She confessed the commission of offence. Krishan also made disclosure statement Ex.PW6/K. He had administered poison to Preeti. Mukesh strangled her. The empty bottle containing celphos was recovered. It was taken into possession. Sonu also made disclosure statement vide Ex.PW6/P on 15.09.2016. He and Mukesh pressed the neck of Preeti near Pal Pir. He was called for further examination also. In cross-examination he deposed that they got the information at about 6.00 P.M. on 07.09.2016. They did not sign rapat roznamcha regarding their departure. He did not remember the registration number of the vehicle in which they reached the spot. Krishan was arrested on 10.09.2016. No independent person was associated at the time of interrogation. No independent witness was associated at the time of making recovery. No independent witness was also associated when Sonu was interrogated. No independent witness was joined when Raj Bala made disclosure statement.

(14) PW-7 Phool Kawar stated that Om Parkash had lodged the complaint Ex.PW1/A. Thereafter FIR Ex.PW7/A was registered. Mukesh and Sandeep were arrested. They were taken out from the lock up. Their disclosure statements Ex.PW6/B and PW6/C were recorded. Raj Bala also made disclosure statement Ex.PW6/H. Krishan also made disclosure statement Ex.PW6/K. One empty bottle of celphos tablet was recovered from the spot. Sonu was also taken out from the lock up. He had made disclosure statement Ex.PW6/P. In cross-examination, he had deposed that Mukesh and Sandeep were arrested from the village at 10.00 P.M. They were not interrogated on the day of arrest. No independent witness was joined during the interrogation of Mukesh and Sandeep on the next day. Raj Bala was arrested at about 3.00 P.M. on 08.09.2016. He also admitted that no independent witness was joined at the time of demarcation of place and also at the time when they were interrogated. Similarly no independent witness was joined when the disclosure statements made by Krishan, Sonu and Raj Bala.

(15) According to the FSL report Ex.PX, Aluminium Phosphide was detected in exhibit-4. Kerosene, petrol, diesel and their residues could not be detected in exhibit-3. As far as exhibit-4 is concerned, it was without cap with a label of "Aluminium Phosphide 56% celphos".

(16) The case is based entirely on circumstantial evidence. The FIR was registered on the basis of complaint Ex.PW1/A lodged by Om Parkash. Om Parkash had appeared as PW-1. He has not supported the

case of the prosecution. He has denied the contents of Ex.PW1/A. He was declared hostile and cross-examined by learned Public Prosecutor. Now as far as Ex.PW1/A is concerned, the contents are not believable. How he knew that the appellants had given celphos to Preeti and thereafter strangulated her and burnt her body. PW-3 Inder Singh has also not supported the case of prosecution. He has denied the contents of Ex.PW3/A as well as Ex.PW3/B. PW-4 Inder Singh also deposed that no investigation was carried out in his presence. The disclosure statements of the appellants have been recorded in police custody. No independent witness was joined when the disclosure statements were made by the appellants. No reason was assigned why independent witnesses were not joined when the recoveries were made. When celphos bottle was sent for FSL examination, it was without a cap. It is also not believable that in case Ajay was found in compromising position with Preeti, this conduct could not be condoned by the brothers by patching up the matter. There is no eye witness in this case. The chain is not complete. The complainant himself has not supported the case. The appellants could not be convicted merely on the basis of suspicion. The suspicion can not take place of proof. The statements of official witnesses can be believed but the same are required to be corroborated. Consequently, the prosecution has failed to prove the case against the appellants beyond reasonable doubt. Accordingly, the appeal is allowed, the judgment and order dated 16.05.2018 and 18.05.2018 are set aside. The appellants are in jail. Registry is directed to prepare jail warrants for release of the appellants.

J.S. Mehndiratta