In the High Court of Punjab and Haryana at Chandigarh

CRA-D-964-DB-2009 (O&M)
Reserved on: 25.8.2022
Date of Decision: 30.8.2022

Anil .....Appellant

Versus

State of Haryana .....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present: Mr. H.S.Ghuman, Advocate
for the appellant.

Mr. Anmol Malik, AAG, Haryana.

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SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 20.1.2009, by the learned Additional Sessions Judge, Hisar, upon Sessions Case No. 26-SC. Through the verdict (supra), the learned trial Judge concerned, convicted the accused for a charge drawn against him, for an offence punishable under Section 302 of the IPC. Moreover, vide a separate sentencing order, drawn on 27.1.2009, the learned trial Court, proceeded to impose, upon the convict, the sentence of life imprisonment, and, also imposed, upon him, a sentence of fine of Rs. 1000/-, besides in default of payment of fine, the convict became sentenced to undergo rigorous imprisonment for a further period of 30 days.

2. Obviously, the convict becomes aggrieved from the above recorded verdict of conviction, and, also, from the consequent therewith sentence(s) of imprisonment, and, of fine, as became imposed, upon him, and, hence becomes led to constitute thereagainst the instant appeal before

this Court.

3. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. P-34 is assigned. The informant has thereins made narrations, that he is a resident of Saitpura, Police Station Goria Kothi, District Siwan, Bihar, and, that he has two brothers namely Munna @ Bhuwar @ Krishan (now deceased), and, Bidesher, and, that they used to run ice cream rehri. He has further narrated thereins that they are living in Hisar city for the last 25 years. About two months prior to this occurrence at about 8.00/9.00 P.M., Anil Naik who lives in the quarters of Railway Department, situated near Surya Nagar, Hisar, came to his Rehri and ate six eggs from his rehri, and, when he demanded money, he refused to make the payment, and, rather took out a knife from his pocket in order to kill him, however, the matter was patched up. Thereafter Anil started nourishing a grudge against them. On 27.6.2007 at about 9.00/9.15 P.M., he saw accused Anil and his brother Munna going towards Plates. At that time accused Anil was having a bottle of country made liquor, and, a knife, and, though he asked his brother to come back but his brother stated to him that he would come soon. Thereafter he became busy in his work, and, subsequently he went to his house. In the morning he came to know that his brother Munna had not come in the house on that night, and, thereafter they searched for their brother but he was not found there. Consequently, they went towards Plates where Anil, and, his brother were seen going on the previous night, and, there they saw a crowd, and, police on the station, and, noticed there the dead body of Munna. He has further mentioned, that he is fully assured, that his brother has been killed by Anil accused.

4. After registration of the FIR (supra), the investigating officer

concerned, launched investigations into the appeal FIR, and after conclusion of investigations thereinto, he proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned. However, since the afore offence was exclusively triable by the Court of Session, as such, the learned committal Court concerned, proceeded to commit the accused for facing trial to the Court of Session.

5. Consequently, the learned Additional Sessions Judge concerned, proceeded to draw a charge against the accused, for an offence punishable under Section 302 of the IPC, and, also put the afore charge to the accused, but he pleaded not guilty, and, claimed trial.

6. In support of the prosecution case, 11 prosecution witnesses stepped into the witness box, and, subsequently, the learned trial Judge concerned, proceeded to draw proceedings, under Section 313 of the Cr.P.C., but thereins, the accused claimed false implication, and, pleaded innocence. Though, the accused claimed the granting of leave to him, for leading defence evidence, but the above granted leave never became availed by him.

7. The learned trial Judge concerned, after appraisal of the evidence, adduced before him, proceeded to record a verdict of conviction, and, also proceeded to draw the consequent therewith sentence(s) (supra), against the accused.

8. The learned counsel for the aggrieved convict-appellant herein, has vigorously argued before this Court, that the impugned verdict of conviction, and, consequent therewith sentence (supra), as imposed, upon the convict-appellant, both become ridden with a gross infirmity of gross misappreciation, and, non-appreciation of the evidence, existing on record.

Therefore, he has argued that the appeal be accepted, and, the verdict, as challenged before this Court, be quashed and set aside.

9. On the other hand, the learned State counsel has argued before this Court, that the judgment, as challenged before this Court, is well merited, and, does not warrant any interference.

10. The instant case is not anchored, upon any direct evidence, and/or, upon ocular evidence, but is made dependant, upon circumstantial evidence.

11. The primary link in the chain of circumstances, connecting the accused in the charged offence, is, comprised in the deposition of PW-3. In his examination-in-chief, he has deposed that since the last 20-25 years, he is staying at Hisar, along with his family, and, that his deceased brother Munna, and, Bidesher were also residing with him. Deceased Munna, as deposed by him, is aged 27 years. He further deposed that he, and, his brother Bidesher were running an ice cream, and, egg rehri at the railway station, Hisar. Furthermore, he deposed that about two months prior to the occurrence, accused Anil came to his rehri, and, demanded six eggs, and, had consumed them, but when he demanded money, he had taken out a knife from his pocket, and, since at that time many people gathered at the spot, as such, the matter was compromised, and, subsequently accused Anil left the spot. However, he deposed that yet accused Anil nursed a grouse against him, and, his other brothers. It was on 27/28.6.2007, at about 9.00 P.M., that he had seen Anil to be holding a bottle of liquor in his hand, and, his holding a knife in his other hand, and, his also seeing that his brother was following him. Though, he asked his brother to come back, but his deceased brother told him, that he would come back soon, and, then he

(PW-3), subsequently proceeded to attend to his avocation, and, thereafter left for his house along with his brother Bidesher. However, since his brother Munna did not return home, on the night of the said day, as such, he searched for his brother, but in vain. Moreover, he deposed that he proceeded to the direction where he had last seen Anil, and, his brother, and, it was then that he noticed there, that a crowd had gathered at the station, and, that then his there seeing the dead body of his brother Munna near the platform, and, also noticing that the police officials were present there. He has deposed that he is fully convinced that his brother was murdered by Anil. In his examination-in-chief, he hence has proven his previous statement, carried in Ex. P3.

12. Though, the above deposition, as carried in the examination-in-chief of PW-3, is completely consistent with his previous statement, recorded in writing, and, as becomes embodied in Ex. P3, and, therethrough he proves, the primary incriminatory link of his last seeing his deceased brother, in the company of the accused. Moreover, since the last watching or seeing by PW-3, of the deceased Munna, in the company of accused Anil, was almost close to his discovering the dead body of his deceased brother, at the platform of the railway station, and, though hence the above primary incriminatory link in the chain of incriminatory circumstances, does also become cogently established. However, merely upon the examination-in-chief of PW-3, no complete reliance can be placed, unless during the course of his cross-examination, he had not made any stark contradictions, from the version qua the prosecution case, as became spelt by him, in his examination-in-chief.

13. In the above regard, a closest reading of his cross-examination

reveals that though, the purported motive (supra), leading to the crime event, did not become recorded by him, in his previous statement, in writing, but when excepting the above, yet he has rather successfully withstood the rigour of an exacting cross-examination, to which he became subjected to, and, has thereins completely denied all the suggestions, as made to him, and, squarely appertaining to the relevant factum of his last seeing his deceased brother in the company of the accused. Therefore, the prosecution version appertaining to the primary incriminatory link of PW-3 last seeing the deceased, in the company of the accused, does become efficaciously proven.

14. Be that as it may, yet when the causings of lethal wounds on the person of the deceased, were not witnessed by PW-3, therefore, the lethal injuries, as became inflicted on the person of the deceased, were required to be proven, (a) by the post mortem report; (b) the recovery of the incriminatory weapon offence, at the instance of the accused, to the investigating officer concerned.

15. In so far as the post-mortem report is concerned, the same becomes proven by PW-5. PW-5, in her examination-in-chief, has proven the post-mortem report, to which Ex. P-12 is assigned, and, thereins she has made the hereinafter extracted echoings.

1. *Sharp clean wound 1 inch in size present just over the umbilicus with intestines protruding out.*
2. *1 cm x ½ cm x ½ cm sharp penetrating wound present just below the next and sternum with blood present.*
3. *Sharp wound 1 cm x 1 ½ cm present just over left axilla.*
4. *On further dissection blood filled in the chest cavity and abdomen cavity.*
5. *Left pleurse punctured left side with blood filled in pleural cavity and left lung punctured and blood present.*

6. *In abdomen, stomach small intestines and large intestines puncutred peritoneum with blood in peritoneum cavity. Other organs pale and healthy.*
7. *Parts of viscera sent to chemical examiner, Karnal for chemical examination.*

16. In addition, during the course of her examination-in-chief, she has though testified that, upon hers perusing the report of FSL, to which Ex. P-15 is assigned, she agrees with the disclosures thereins qua positive test for ethyl alcohol estimated as 161.0 mg, being present in the viscera of the deceased, but yet she since has deposed that the cause of demise of the deceased, was on account of multiple injuries to internal organs, hence leading to shock, and, hemorrhage. Therefore, the apposite opinion with respect to the cause of demise of the deceased, as carried in Annexure P-18, and, as becomes extracted hereinafter, becomes the predominant cause of demise of the deceased concerned, than the presence of ethyl alcohol in the viscera of the deceased.

> "*In PMR No. RJ/MKG/21/07 of Munna/Bhooper s/o hakur conducted on 28.6.2007, Chemical analysis Viscera was sent and report received and seen on 5.3.2008 which show positive test for Ethylalchol and was estimated as 161 mg%. Hence forth the cause of death in this case in our opinion is multiple injuries to internal organs lead to shock and haemorrhage were antimortem and sufficient to cause death in normal course of life.* "

17. Moreover, PW-5 has also deposed that the ante-mortem injuries, as noticed by her, to be occurring on the body of the deceased, could be possibly caused by knife Ex. P-19, which became produced before her, during the course of hers testifying before the learned trial Judge concerned.

18. Though, the crime knife Ex. P-19, becomes assigned by PW-5, to be causing the lethal ante-mortem wounds on the person of the deceased, but corroboration thereto, was also required to be meted by the prosecution through the makings of efficacious recovery of knife Ex. P-19, rather through validly drawn apposite memos. In the above regard, the investigating officer concerned, has drawn the disclosure statement of the accused, to which Ex. P-22 is assigned, whereins the accused has not only confessed his guilt qua his committing the murder of the deceased, through his delivering knife blows, on the relevant portion on the body of the deceased, but has also made a vivid disclosure thereins, that he had kept the crime weapon, and, his clothes, which he was wearing at the relevant time, rather in the toori of his house, and, has also disclosed that the place of their keeping, and, hiding, is not known to anyone but is known only to him, and, that he can get them recovered. The above disclosure statement is signatured by the accused, and, it led to the makings of relevant recoveries at his instance, to the investigating officer concerned, from the place which became disclosed in Ex. P-22, qua theirs becoming hidden or concealed by him. The recovery memo is carried in Ex. P-24. The confession of guilt, as made in Ex. P-22, is not a bald confession, but also encloses therein, the user by him, of the crime weapon, besides encloses therein echoings, that he had concealed it, at a place known only to him., and, also since thereafter he had caused, all the relevant recoveries, to the investigating officer concerned. Resultantly, both Ex. P-22, and, Ex. P-24 become admissible in evidence, as consequent to the confession of guilt, rather the relevant recoveries became effected, at the instance of the accused, to the investigating officer concerned. If so, both Ex. P-22, and, Ex. P-24, are

construed to be validly drawn, but each would lose, their sanctity, only if the accused had denied his signatures on Ex. P-22, and, Ex. P-24, and/or, had successfully ensured eruption of evidence, qua the recovery of the crime knife, and/or, of the clothes worn by him, at the relevant time, rather were false, and/or fictitious, besides and/or, were planted onto him, by a stratagem deployed by the investigating officer concerned.

19. In the above regard, a perusal of the evidence reveals, that the accused has not denied his signatures, as carried in Ex. P22, therefore, all the incriminatory contents, as carried thereins, do acquires apt evidentiary worth. Moreover, the accused has also not ensured eruption of any evidence, suggestive that Ex. P-24, was not validly drawn nor has ensured eruption of any evidence suggestive that the recovery of the incriminatory items, as made through Ex. P-24, were false, or contrived, and/or, were ingeniously planted onto him, by the investigating officer concerned. In consequence, both memos Ex. P-22, and, Ex. P-24, acquire the gravest evidentiary vigour, and, obviously connect the accused in the commission of crime event, besides also corroborate the primary link (supra), comprised in the prosecution ably propagating through PW-3 qua the latter last seeing the deceased, in the company of the accused.

20. Even though, the learned counsel for the appellant has argued, that since the report of the FSL, as carried in Ex. P-16, is not enclosing thereins any conclusive opinion rather about the blood, carried on the relevant items, as sent to it, for their examination, rather belonging to the blood group of the deceased, therefore, he contends that the report of the serologist when becomes not connected with the seizure of the crime knife, and/or, with its user in the relevant fatal crime assault, resulutantly he makes

an argument qua findings of acquittal being recorded. However, yet the above inconclusivity of opinion, by the serologist concerned, does not, erode the efficacy of the above proven incriminatory links in the chain of incriminatory circumstances. The reason becomes comprised in the factum, that only if the investigating officer concerned, had collected the FTM card, revealing the blood group of the deceased, rather from the latter's family members, thereupon alone, the serologist concerned, would become facilitated to make an apposite best comparison(s) or matchings, otherwise not, and, if yet an opinion favourable to the accused hence arose, thereupon may be a finding of acquittal was renderable. However, since the investigating officer concerned, has not done so, resultantly, the inconclusivity of opinion, if any, by the serologist concerned, about the blood stains thereons', rather not relating to the blood group of the deceased, rather not foisting any firm conclusion that hence any exculpatory finding, is required, to be made qua the convict. Contrarily the making of opinion (supra), becomes completely irrelevant.

21. The result of the above discussion, is that, this Court does not find any merit in the appeal, and, is constrained to dismiss it.

22. Consequently, the appeal is dismissed. The impugned verdict of conviction, and, the consequent therewith sentence, as becomes imposed upon the convict-appellant, by the learned convicting Court, is maintained, and, affirmed. If the convict is on bail, thereupon, the sentence of life imprisonment, as imposed, upon the convict-appellant, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, after the expiry of the period of limitation for the filing of an

appeal.

23. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

August 30th, 2022
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No