



**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

Cr. Appeal No. 94 of 2018.

Reserved on: 26th February, 2021.

Date of Decision: 5th March, 2021.

Surjeet Singh

.....**Appellant.**

Versus

State of H.P.

...**Respondent.**

Coram

**The Hon'ble Mr. Justice Sureshwar Thakur, Judge.
The Hon'ble Mr. Justice Chander Bhusan Barowalia,
Judge.**

Whether approved for reporting? Yes.

For the Appellant:

Ms. Sheetal Vyas, Advocate.

For the Respondent:

Mr. Hemant Vaid, and, Mr. Narender Guleria, and, Mr. Ashwani Sharma, Additional Advocates General with Mr. Vikrant Chandel, Dy. A.G.

Per Sureshwar Thakur, Judge.

The accused/appellant herein, has through, the impugned judgement, rendered by the learned Additional Sessions Judge-1, Kangra at Dharamshala, District Kangra, H.P., upon, Session Case No.3-N/VII/2015, become convicted, for a charge drawn, against him, under Section 302 of the IPC, and, in consequence thereof sentence, of life imprisonment has been imposed upon him, and, he

has also been sentenced to pay a fine of Rs.10,000/-, and, in default of payment of fine amount, he was sentenced to further undergo simple imprisonment for a term of one year.

2. The convict/accused/appellant herein, becomes aggrieved therefrom, hence, through, casting the extant appeal before this Court, he has strived to beget reversal(s) of the afore made conviction, and, the afore consequent therewith sentence(s) hence imposed, upon him, under the afore verdict.

3. The genesis of the prosecution story, is, embodied in a statement made by the brother of the deceased Santosh Kumari, the legally married spouse of the convict/accused, statement whereof is embodied in Ex.PW1/A. In the afore exhibit, in pursuance whereof, formal FIR, embodied in Ex.PW13/B, became registered with the police station concerned, narrations are borne qua the deceased Santosh Kumari, being married, to accused Surjeet Singh, in the year 2004, and, though for a spell, of, time their inter se relations remained cordial. However, the convict in connivance with his sister, and, brother-in-law, after elapse of some time, commencing to raise demand of dowry, upon, the family of the deceased, in

pursuance whereof, a tractor was given to him. However, thereafter the convict/accused is narrated therein to also demand a sum of Rs.3 lacs, and, thereafter Rs. 2 lacs, through his deceased spouse Santosh Kumari. Even the afore demands were fulfilled, yet 4 to 5 months prior to the occurrence, the accused/convict again demanded Rs. Five lacs, and, as, the afore demand could not be fulfilled, for want of funds with the parents of the deceased, the convict/accused in league with his brother-in-law (jija) assaulted, the elder brother of the deceased with a knife, hence inside his house. However, in respect thereof, no complaint was lodged. Nonetheless about one month prior to the occurrence, the accused again demanded Rs. One lakh, from the father, of the deceased, for begetting repairs of his bus, and, it is narrated therein to be paid to the accused. On 6.10.2014, the deceased, is, narrated to visit her parental house, and, hers disclosing, that her sister-in-law, and, her husband again demanded Rs. Five lacs, for purchasing land, and, that the accused is threatening to do away with her life, if the afore demand is not fulfilled. Since, the father of the deceased meted an assurance to her that he would arrange the afore amount within 10 to 15 days, thereupon, it is narrated in Ex.PW1/A

that hence she had proceeded to her matrimonial home. On 7.10.2014, there was a Jagran at the matrimonial home of the deceased, but the family members of the deceased remained un-invited, as they, had not fulfilled the afore demands. Furtheronwards, on 8.10.2014, the family members of the deceased, were apprised, by the Pradhan, that the accused, and, his sister along with his brother-in-law, who reside at Thamkaur, murdered the deceased, and, the afore led the brother of the deceased to make the afore exhibit(s), before the police station concerned.

4. The entire prosecution case, is, squarely harboured, upon, circumstantial evidence, and, each of the links in the chain of circumstances, are to be unflinchingly proven, as, thereupon, alone the charge drawn against the accused under Section 302 of the IPC, would become efficaciously proven.

5. A perusal of the LINK evidence on record, as, became collected by the Investigating Officer, during the course of his conducting investigations, (i) unfolds that at the relevant time, from the site of occurrence, as, depicted in the site plan borne in Ex.PW22/B, his collecting on cotton swab, Ex.P-3, the blood, as had oozed, from the antemortem injuries, carried on the body of deceased

Santhosh Kumari. The afore collection(s), of blood, occurring at the site of occurrence, was enclosed in a plastic container, wheretowhich Ex.P-2 became designated, thereafter, it became enclosed in a cloth parcel whereto which Ex.P-7 became designated. The proceedings, drawn, under Section 174 of the Cr.P.C., are, embodied in Ex.PW2/C. Furthermore, the investigating officer concerned, collected from the site of occurrence, the alleged weapon of offence, inasmuch, as, "Pattara", wheretowhich, Ex.Px-3 became designated, and, the afore became enclosed in a cloth parcel wheretowhich Ex.P-4 became designated. The afore recoveries, as became effectuated, from the site of occurrence, by the investigating officer, were made, through recovery memos, respectively embodied in Ex. PW2/B, and, in Ex.PW4/A.

6. The body of deceased Santosh Kumari, was initially subjected to autopsy, by the doctor concerned, at Civil Hospital, Nurpur, hence, on 8.10.2014. However, in the relevant postmortem report, wheretowhich Ex.PW8/D became designated, no firm opinion becomes given, vis-a-vis, the exact, and, precise cause of demise of deceased Santosh Kumari, and, for the afore purpose, the body of

deceased, became referred to Government Medical College, Kangra at Tanda. The post mortem report, embodied in Ex.PW11/A, unfolds the antemortem injuries carried on the body of the deceased, as, became put to autopsy, by the doctor concerned at Government Medical College, Tanda. The antemortem injuries, as, became noticed by the doctor concerned, to, become borne on the body of the deceased, are extracted hereinafter:-

“ 1. An incised looking lacerated would measuring 10x7.2 cm inverted triangular ins hape was present over right side of forehead and frontal region of scalp. The lower end was 1cm lateral to lateral canthus of right eye and upper end 8 cm above pinna of right ear. Frontal bone was exposed. Clotted blood was present. Edges were not bruised.

2. An incised looking lacerated would, 4 x 0.6 x0.2 cm was present on left parietal region of skull obliquely 6.5 cm above pinna of left ear clotted blood was present and edges were not bruised.

3. Diffuse swelling along with ectopic contusion (black eye) was present around both eyes in an area of 5x3 cm on right side and 4 x2.5 cm on left side.

4. A reddish abrasion 1.5 x 1 cm was present on right side of face over angle of mandible and was 8 cm below pinna of right ear.

5. A reddish abrasion 0.2 x0.1 cm was present on the right side of the face 1.1 cm below angle of mouth.

6. Two red coloured contusions of size 0.2 x0.2 cm and 0.2 x 0.1 cm was present on inner mucosa of

High

lower lip towards right side and center of lip. No associated injury of gums, teeth and tongue was appreciable.

7. A bluish coloured bruise 4 x 4 cm was present on the back of left arm about its middle 7.2 cm above elbow prominence.

8. A Lacerated wound with clotted blood, measuring 1 x 0.2 cm was present on the palmar aspect of distal interphalangeal joint of right ring finger underlying bone was exposed and fractured. On dissection of neck there was no injury appreciable to soft tissue, bone and cartilages.

II. Cranium and Spinal Cord.

Scalp was soiled with blood. Subgaleal haematomas were present below injury No.1 and 2. Blood clots/Haematoma was present below injury No.1 on the right frontal area below scalp. There was no fracture of vault and base of skull. Diffuse subdural and subarachnoid haemorrhages were present in right frontal, parietal and temporal region (more than 100 ml). Blood clots were present at the base of skull/around brain stem with a contusion over it.

III. Thorax.

1. Walls ribs and cartilages.- As described there was no fracture of ribs, cartilages, sternum and clavicle.
2. Pleura.- Congested.
3. Larynx and Trachea.- congested.
4. Right Lung.- Both lungs were congested and on dissection find fourth came out of them.
5. Left Lung----
6. Pericardium, Heart, Large vessels.- Pericardial sac contained about 15 ml straw coloured fluid. Heart was full of dark fluid blood on right side. Coronaries were patent."

A perusal of the opinion carried therein, and, appertaining to the cause of demise of deceased Santosh Kumari, also fails to attribute the precise, and, exact cause of demise of the deceased, as, therein echoings occur, that the afore opinion being purveyable only, upon, the Chemical Examiner concerned, working at the RFSL concerned, making his opinion, upon, the items of the deceased, inasmuch, as, upon, bra, Ex.Px-8, salwar, Ex.Px-7, and, shirt, Ex.Px-7, of the deceased, and, also upon, his making an opinion, upon, vial of blood, Ex.Px-9, as, becomes reflected in Ex.PW11/A, to become collected from the body of deceased Santosh Kumari.

7. Be that as it may, through, road certificate, Ex.PW16/A, cotton swab, Ex.P-3, enclosed in a container, Ex.P-2, whereafter both became enclosed in a sealed cloth parcel, Ex.P-1, all whereof(s),, became collected, through, Ex.PW2/B, from the site of occurrence, (i) and, also the weapon of offence i.e. "Patra", and, wheretowhich Ex.P-3, became designated, and, as, became recovered from the site of occurrence through recovery memo, embodied in Ex.PW4/A, (ii) besides whereafter it became enclosed in a cloth parcel, Ex. Px-4, (iii) moreover, as, reflected in Ex.PW16/A, the shirt of the deceased, wheretowhich,

Ex.Px-6 became designated, and, her salwar, wheretowhich, Ex.Px-7 became designated, and, her bra, whereto which, Ex.Px-8 became designated, besides her blood, extracted from her body, and, as became, enclosed in a blood vial, wheretowhich Ex.Px-9 became designated, rather all the afore incriminatory pieces of evidence, hence, therethrough(s) became sent to the Chemical examiner working at the FSL concerned. The Chemical Examiner concerned in his report, embodied in in Ex. Px-2, has pronounced thereon(s), the hereafter extracted result:-

"Human blood of group 'AB' was detected in exhibit-2a (shirt, Santosh Kuari), exhibit-2b (salwar, Santosh Kumari), exhibit -2c (bra, Santosh Kumari), exhibit-5a, (pants, Surjeet Kumar), exhibit 5-b (shirt, Surjeet Kumar), exhibit-7 (blood lifted on cotton swab from the spot) and exhibit-8 (blood stained mini table-patra)."

Ex-facie, the afore extracted result, as, becomes carried, in the report of FSL, wheretowhich EX.Px-2, becomes designated, when remains uncontested, by cogent dislodging evidence, qua therewith, becoming adduced by the defence, and, comprised either in repelling thereto cross-examination becoming conducted, upon, the author thereof, (a) or upon the adduction of report(s) of any other FSL concerned, outside the State of Himachal Pradesh,

carrying judicially accepted probative vigour, and, evidentiary worth, higher than, as carried by the hererat report, of, the FSL concerned. However, both the afore endeavours, for, hence forestalling the efficacy of the afore extracted results, hence, carrying the ~~completest~~ tenacious overtones, vis-a-vis, the ~~incriminatory~~ participation, of, the accused, in the ~~relevant~~ assault, as, made upon Santosh Kumari, remained unrecoursed, thereupon, the utmost probative vigour, and, evidentiary solemnity, becomes enjoined to be meted thereto.

8. Be that as it may, the prosecution also, though, can make, the, completest reliance, hence, upon the afore extracted result, as, made by the Chemical Examiner working, at the FSL concerned, (i) however, it also becomes imperative, upon the prosecution, to sustain the prior thereto links, in the chain of circumstances, which, ultimately consummated, in the afore result, being pronounced by the FSL concerned, in its apposite report, (ii) inasmuch, as the prosecution became enjoined to prove Ex.PW2/B, (iii) wherethrough, from the site of occurrence, upon cotton swab Ex.P-3, the blood, as oozed from the fatal head injury, as became inflicted, upon the body of the deceased, by the accused through his

belabouring her with 'Patra", Ex.Px-3, hence, became collected. The witnesses, to, Ex.PW2/B are one Kamal Singh, and, one Raj Kumar. Both the afore stepped into the witness box respectively as PW-2, and, PW-3, and, during the course of their respective cross-examinations, both proved, the factum of their authentic signatures occurring thereon. Despite theirs being put to the ordeal, of, a rigorous cross-examination, no efficacious suggestion became put to them rather personificatory, vis-a-vis, therethrough the defence attempting to scuttle the narratives, as occur, in Ex.PW2/B. Sequel thereof, begets an inference qua Ex.PW2/B, becoming validly drawn and, also since the afore cotton swab, after being put inside a container, became ultimately enclosed in a cloth parcel, Ex.P-1, and, thereafter it through road certificate, embodied in Ex.PW16/A, became sent to the FSL concerned, and whereons, after making apposite matching, of, blood stains borne thereon(s), with the blood, of the deceased rather collected, in a vial, Ex.Px-9, by the doctor concerned, working at Government Medical College, Tanda, the author of the report of the FSL, borne in Ex.Px-2 (a) pronounced qua the cotton swab carrying the blood group of the deceased, (b) besides also sparks

an unflinching conclusion, that the unbroken, and, untampered, respective collections, and, dispatches thereof, to the FSL concerned, and, also obviously the result(s) pronounced thereons, by the FSL concerned, completely nailing the charge drawn against the accused.

9. The prosecution obviously ~~also~~ became enjoined to likewise prove qua Ex.Px-3, exhibit whereof, is the weapon of offence, inasmuch, ~~as, it,~~ after its collection through Ex.PW4/A, and, whereafter it, became enclosed in a sealed cloth parcel, Ex.Px-4, rather becoming validly collected, and, to ~~also~~ further prove the factum of its traveling from the malkhana concerned, in a unbroken, and, untampered condition, to the FSL concerned. The afore become sent to the FSL concerned, through road certificate, embodied in EX.PW16/A, and, thereon incriminatory findings adversarial to the convict/accused, became recorded by FSL concerned.

10. Dehors the above, the prosecution also became enjoined to prove the validity of preparation of Ex.PW4/A. In the afore endeavour, even though, the recovery from the site of occurrence, of the alleged weapon of offence, inasmuch, as, of Patra, Ex. Px-3, became effectuated through Ex.PW4/A, yet its recovery therethrough, was not

a sequel to proceedings undertaken or embarked upon, by the investigating officer concerned, through his recoursing, the mandate borne in Section 27 of the Indian Evidence Act, (i) yet the signatories thereof, are one Suresh Kumar, and, One Kripal Singh, (ii) and, both became enjoined, upon, theirs respectively stepping into the witness box to prove the efficacy of drawing of Ex.PW4/A, (iii) as, therethrough, dehors the non adherence by the Investigating Officer concerned, vis-a-vis, the mandate borne in Section 27 of the Indian Evidence, Act, the result pronounced on examination of blood stains occurring thereon, inasmuch, as, it appertaining to the blood group, of the deceased would comprise, the, best link evidence, for proving qua the convict/accused, hence, wielding Ex.Px-3, at the relevant time, and, with user thereof, his delivering fatal head injury(ies), upon, the deceased, and, as become reflected in the postmortem report, embodied in Ex.PW11/A. Though, Kripal Singh, witness to Ex.PW4/A turned hostile, and, even Suresh Kumar also likewise turned hostile, from his/their previously recorded statements in writing, by the Investigating Officer, (iv) however, upon theirs hence becoming declared hostile by the learned trial Court, upon a request being made by the

learned PP concerned, both acquiesced to theirs appending their signatures thereon, whereupon, the statutory estopping bar engrafted in Sections 91 and 92 of the Evidence Act, against their orally reneging from the scribed contents of Ex.PW4/A, whereon their admitted valid signatures exists, becomes attracted, (v)and, whereupons, their oral reneging from their previously recorded statements in writing, becomes underwhelmed, and, no legal probative vigour can be assigned thereto. Since, Ex. Px-3 became enclosed in a sealed cloth parcel, Ex.Px-4, and, it became sent through road certificate borne in Ex.PW16/A to the FSL concerned, and, thereons the chemical examiner concerned, working at the FSL concerned, made an opinion qua it carrying the blood stains of the deceased, hence, the afore incriminatory opinion rendered against the convict/accused, does completely prove the charge drawn against the accused. Consequently, the prosecution has discharged the burden, of, proving, the, valid collection of Ex.Px-3, the weapon of offence, and, has also proven, the valid drawings of Ex.PW4/A, wherethrough it became recovered.

11. As afore stated, and, as becomes reflected in postmortem report borne in Ex.PW11/A, the sealed cloth

parcel, Ex.Px-5, enclosing therewithin the shirt, Ex.Px-6, salwar Ex.Px-7, bra, Ex.Px-8, besides enclosing therewithin the blood vial, Ex.Px-9, as became extracted from the body of the deceased by PW-11, became sent, through R.C. borne, in Ex.PW16/A to the FSL concerned, and, thereons, the, Chemical Examiner concerned, made an opinion that all the afore carrying the blood group of the deceased.

12. Human blood of group 'AB' as detected in the exhibits, as, mentioned in the afore extracted result, hence, carried in the report of the FSL concerned, remains uncontested by the defence, to be not appertaining, to the blood group of the deceased, nor the defence, upon, conducting cross-examination, upon, PW-11, meted suggestions to him, qua the afore collections being ingenuously made, through a stratagem being deployed by him, hence, in connivance with the Investigating Officer, necessarily for ensuring a false report being made by the FSL concerned, upon, the items as became sent to the FSL, and, whereons the afore extracted result became pronounced by the FSL concerned. Moreover, since, the seals as became carried on the respective cloth parcels, upon their production in court, remained unquestioned, (i) thereupon, the items, as became, sent to the FSL

concerned, through road certificate, borne in Ex.PW16/A, and, whereons an incriminatory opinion, becomes recorded by the Chemical examiner working thereat, does unflinchingly, prove the charge drawn against the accused. ◇

13. The doctor concerned stepped into the witness box as PW-11, and, has proven the postmortem report Ex.PW11/A, and, has also during the course of his deposition, comprised in his examination-in-chief, has proven, all the contents borne therein, and, has also in corroboration, to the incriminatory opinion of the FSL, as, recorded against the accused, has, upon, the weapon of offence, becoming shown, to, him, in Court, during the course of recording of his examination-in-chief, has vividly pronounced, an opinion, that the antemortem injuries, as, becomes recorded in his report, being causable with user thereof.

14. In aftermath, though hence, the prosecution has been above to prove the *mens rea* or the apposite criminal intent carried by the accused, in his dispensing with the life of his legally wedded wife namely Santosh Kumari. However, the learned defence counsel, has proceeded to make a submission, before this Court, that since the motive, as becomes purportedly carried in

Ex.PW1/A, remains unproven by the prosecution, and, when the prosecution case, becomes completely rested upon circumstantial evidence, thereupon lack or want of proof of motive, does beget, the consequence, of the charge drawn against the accused, rather becoming completely staggered or jettisoned. The afore made argument, would carrying tenacity only, upon, the learned defence counsel, depending, upon valid evidence existing on records, for repulsing the afore extracted incriminatory result pronounced against the accused/convict, and, as, rather exists on record. Since, the afore evidence, for completely belying the afore extracted incriminatory opinion, recorded against the accused/convict, by the FSL concerned, remains unadduced into evidence, nor exists on record, thereupon, the lack of proof of motive by the prosecution, would become inconsequential, nor hence, the result/opinion recorded by the FSL concerned, would become either subsumed or underwhelmed.

15. For the reasons which have been recorded hereinabove, this Court holds that the learned trial Court has appraised the entire evidence, on record, in a wholesome and harmonious manner, and, the analysis thereof, by the learned trial Court, hence does not suffer,

from, any perversity or absurdity of mis-appreciation and non-appreciation, of evidence, on record.

16. Consequently, there is no merit in the extant appeal, and, it is dismissed accordingly. The impugned judgment is affirmed, and, maintained. All pending applications also stand disposed of. The records be sent down forthwith.

(Sureshwar Thakur)
Judge

(Chander Bhusan Barowalia)
Judge.

5th March, 2021.
(jai)

High
Court