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MALTI SAHU

v.

RAHUL & ANR.

(Criminal Appeal No. 471 of 2022)

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JULY 11, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ]

- Penal Code, 1860: s. 302 – Murder – Prosecution case that respondent committed murder of brother and sister – Complaint by the mother – Conviction and sentence of the respondent u/s. 302 for committing the murder of the brother and sister by the trial court – However, the High Court set aside the order – On appeal, held: Prosecution witness had seen the accused alongwith the deceased going to their house – Though he turned hostile but his evidence can be considered to that extent – Prosecution established and proved the motive as regards the accused – Recovery of the knife in three pieces, having blood stains recovered from the place of occurrence, was used for commission of the offence, and establishes the guilt of the accused – Also proved that it was accused who purchased the said knife – Recovery of Loi having blood stains of the deceased as well as of the accused, was on the basis of the disclosure statement made by the accused himself – Further the accused failed to explain the injury on him – Thus, High Court erred in holding that the prosecution failed to prove the link evidence, which could establish and bring home the guilt of the accused – Findings of the High Court perverse – High Court did not properly appreciate the entire evidence on record – Thus, the order passed by the High Court acquitting the accused not sustainable, and is quashed and set aside.*

Allowing the appeals, the Court

- G HELD:** 1.1 Though, PW-8 initially made a statement before the Police that he had seen the accused alongwith the deceased going to their house, but before the court, he turned hostile. However, during the course of cross-examination, he stated that K-deceased, a few days before the incident had disclosed to him that accused R had made some obscene gestures at her. As per H the settled position of law, even the evidence of a hostile witness

can be considered to the extent, it supports the case of the prosecution. Therefore, prosecution has established and proved the motive as regards the accused. [Para 7][448-E-G] A

1.2 Another link in the evidence, which establishes and brings home the guilt of the accused person is the recovery of the knife in three pieces, having blood stains recovered from the place of occurrence, which was used for commission of the offence. The prosecution was successful in establishing and proving that it was the accused, who purchased the said knife from PW-9 who not only identified the knife purchased by the accused, but also clearly stated that the knife, found in three pieces is the same, which was purchased by the accused. He has also identified the accused. As per the medical report and the post-mortem report, the cause of death was a result of hemorrhage and shock consequent upon slitting of the throat. Thirteen ante mortem injuries were found on the person of G and eight injuries on the body of K. It was opined that the same could have been caused by a sharp-edged weapon. PW-3, doctor who conducted the post-mortem stated in her evidence that the injuries could be possible with the weapon examined when taken as a whole-single weapon. She stated that even the throat injury was possible with three pieces and it was possible that the weapon might have broken during the process. It has been established and proved that during the use of weapon-knife, in commission of the offence, the same might have been broken. [Para 7.1][448-H; 449-A-E] B

1.3 The next link in the chain of evidence is the recovery of Loi having blood stains of the deceased K as well as of the accused, which Loi was recovered on the basis of the disclosure statement made by the accused himself. Though, Panchas to the recovery panchnama/disclosure panchnama had turned hostile, still the prosecution has proved the same through the I.O. However, unfortunately, the High Court has doubted the DNA/CFSL report on grounds, which are not germane, namely, the human hair in the hands of K was not examined; blood stains were not properly presented. However, the High Court has not gone in the detailed discussion of the CFSL Report on record. Having gone through the CFSL Report as well as the depositions of the witnesses from the CFSL, the blood on the Loi was found C D E F G H

- A **to be matching with that of K and the accused. [Para 7.2][449-E-H]**

1.4 One another circumstance, which will go against the accused would be that an injury on the ring finger of the left hand of the accused was found, which was treated by PW-20, doctor

- B **who stated that on seeing the injury, he found it could be due to a sharp-edged weapon. The accused has failed to explain the injury on him. On the contrary, he came out with a false case that the injury was caused by some iron bar, which has not been established and proved. [Para 7.3][450-A-C]**

- C **1.5 Considering the said facts of the case and evidence on record, the High Court committed a grave/serious error in observing that the prosecution has failed to prove the link evidence, which could establish and bring home the guilt of the accused. The findings recorded by the High Court are perverse.**

- D **The High Court has not properly appreciated the entire evidence on record, more particularly, the findings recorded by the trial court, which as such were on appreciation of the entire evidence on record. Under the circumstances, the impugned judgment and order passed by the High Court reversing the conviction and consequently acquitting the accused is unsustainable and the**

- E **same is quashed and set aside. The judgment and order of conviction and sentence imposed by the trial court on the accused for the offence u/s. 302 IPC is restored. [Para 8, 8.1, 9][450-C-F]**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 471 of 2022.

- F **From the Judgment and Order dated 01.10.2019 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. D-635-DB of 2014.**

With

- G **Criminal Appeal No. 472 of 2022.**

Neeraj Kumar Jain, Sr. Adv., Sanjay Singh, Umang Shankar, Sarad Kr. Singhania, Ms. Swaroopama Chaturvedi, Ms. Ruchi Kohli, Ms. Preeti

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Rani, Bhuvan Kapoor, Gurmeet Singh Makker, Jasmeet Singh, Advs. A
for the Appellant.

Aditya Dhawan, Ms. Kiran Dhawan, Chander Shekhar Ashri,
Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

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1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Punjab & Haryana at Chandigarh in CRAD No. 635 of 2014 by which the High Court has allowed the said appeal preferred by the respondent – accused – Rahul and has quashed and set aside the judgment and order of conviction and sentence passed by the Trial Court convicting the accused for the offence under Section 302 IPC for committing the murder of one Kavita Sahu and Gaurang Sahu, the State as well as the original complainant/informant – mother of the deceased have preferred the present appeals.

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2. On the statement of one Malti Devi, which got recorded on 16.12.2011, in which she stated that she and her husband were Teachers by profession. That her husband was posted at Mewat, Haryana and she was posted in Sector-17, Panchkula. They had two children, i.e., elder daughter Kavita, about 17 years of age, who was the student of Guru Nanak Public School, Sector-36, Chandigarh, whereas her younger son Gaurang Sahu was the student of Govt. Model Senior Secondary School, Sector-37, Chandigarh. On that day, she had left the home at 8.30 A.M. for duty and both the children were at home, it being their holiday. On her return at about 3.00 P.M., she found her daughter in a pool of blood with a cut on her neck and when she went upstairs, she found her son also in a pool of blood and his neck also had a cut. All the articles in the room were lying scattered.

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2.1 On the said statement/complaint, the case was registered and initially the investigation was carried out by the local police station. Special reports were sent and investigation was commenced. The Investigating Officer collected the incriminating material from the spot. They were converted into parcels and sealed with seal of “CS”. The dead bodies were sent to the General Hospital, Sector – 16, Chandigarh for post-mortem examination. During the course of the investigation, the statements of the witnesses under Section 161 Cr.P.C. were recorded

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- A including the statement of PW-8, Sidharth Vashisht, who, at the relevant time, disclosed that he had seen the accused Rahul alongwith Kavita and Gaurang coming from the side of Shivalik Public School on foot going towards their locality wearing a blue colour sweater and while returning, he (Rahul) was not wearing the said blue colour sweater and rather, he had covered himself with a brown coloured shawl or *Loi*.
- B 2.2 On the basis of the statement made by PW-8, Sidharth Vashisht, the police started to search for the culprit - Rahul. Later the case was transferred to the Crime Branch (SIT), Chandigarh and the investigation was commenced by Inspector Amanjot Singh. During the investigation, the sealed parcels were sent to CFSL, Sector 36, Chandigarh. As noted hereinabove, Rahul was suspected of commission of offence on the basis of statement of PW-8, Sidharth Vashisht and therefore, a search was launched for him. He was found missing from his house. He was later arrested on 17.01.2012 from Village Saha, District Ambala and produced in the Court.
- D 2.3 On the basis of his disclosure statement, under Section 27 of the Evidence Act, a bag containing blood-stained clothes was recovered. That during the course of the investigation, one sweater was recovered from the crime scene and the said sweater was sent to CFSL. One blood-stained *Loi* and the clothes were recovered from the black bag, which was recovered on the basis of disclosure statement made by the accused.
- E The Investigating Officer also recorded the statements of other witnesses and during the course of investigation on the basis of the disclosure statement, the Investigating Officer recorded the statement of PW-20, Dr. Davinder Kapil from whom the accused took the first aid in respect of the injury sustained by him on the ring finger of his left hand. On the basis of the disclosure statement made by the accused, the statement of PW-9, a shopkeeper was recorded and according to him, the accused had purchased the knife (used in commission of the offence). That after the conclusion of investigation, the Investigating Officer filed the charge sheet against the accused for the offence under Section 302 IPC.
- G 2.4 As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions for trial. Plea of the accused was recorded. He pleaded not guilty and therefore he came to be tried by the Sessions Court for the offence under Section 302 IPC for having committed the murder of Kavita Sahu and Gaurang Sahu.

2.5 To bring home the charge against the accused, the prosecution examined in all 21 witnesses as under:-

	<u>Name</u>	<u>Deposition</u>
PW-1	Dr. Ajay Kumar	Who conducted the post mortem
PW-2	Dr. Vimukti Chauhan, CFSL,	
PW-3	Dr. Parijat, EMO	One another member of the Board, who conducted the post-mortem
PW-4	Sunita, Senior Scientific Officer, CFSL	Who conducted serological analysis for human blood group and on 24 sealed parcels received by CFSL
PW-5	Dr. Bhumika Bisht, Demonstrator, Department of Pathology,	
PW-6	Anita Rawat	
PW-7	HC Yash Pal	Involved in investigation of the case with Inspector Charanjit Singh
PW-8	Sidharth Vashisht	
PW-9	Ravi Mittal	A businessman, who sold the knife to the accused
PW-10	Kirpa Dutt	
PW-11	Avtar Singh	
PW-12	Dr. Ashok Kumar, EMO, GMSH	Who examined the accused on 25.01.2012
PW-13	Joginder Singh	
PW-14	Inspector Charanjit Singh	
PW-15	Malti Devi	Mother of the deceased and original complainant
PW-16	Head Constable Ramesh Kumar	
PW-17	MMHC Sukhchain Singh	
	S.I. Shadi Lal	Who was involved in the investigation of the case with Inspector Amanjot Singh
PW-18	S.I. Rajbir Singh	Who delivered 29 sealed parcels for testing CFSL
PW-19	C. Jagroop Singh	Photographer
PW-20	Dr. Davinder Kapil	Who gave first aid to the accused in respect of injury on ring finger of his left hand
PW-21	Inspector Amanjot Singh	Who investigated the case after the investigation was handed over to the Crime Branch (SIT), Chandigarh

2.6 Through the aforesaid witnesses, the prosecution brought on record the relevant documentary evidences. After closure of the prosecution evidences, further statement of the accused under Section 313 Cr.P.C. was recorded. The case of the accused was of a total denial. The accused did not lead any evidence in his defence.

2.7 On conclusion of the trial and on appreciation of evidences, the Trial Court held the accused guilty of the offence under Section 302 IPC for having killed Kavita Sahu and Gaurang Sahu and sentenced him to undergo imprisonment for life, i.e., till the rest of his natural life and also to pay a fine of Rs. 25,000/. The learned Trial Court also ordered that the substantive sentences shall run concurrently.

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- A 2.8 Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence passed by the Trial Court convicting the accused for the offence under Section 302 IPC, the accused preferred an appeal before the High Court and by the impugned judgment and order, the High Court has acquitted the accused by observing that it is a case of circumstantial evidence and there is no direct evidence and that prosecution has not established the complete chain of circumstances to prove the guilt of the accused beyond reasonable doubt. While acquitting the accused, the High Court also observed that the prosecution has failed to prove the link in the evidence, which could establish and bring home the guilt of the accused.
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- C 2.9 Feeling aggrieved and dissatisfied with the impugned judgment and order of acquittal passed by the High Court quashing and setting aside the order of conviction and sentence passed by the Trial Court convicting the accused for the offence under Section 302 IPC for having killed Kavita Sahu and Gaurang Sahu, the original complainant – mother
- D of the deceased (Kavita Sahu and Gaurang Sahu) and the State have preferred the present appeals.

3. Shri Neeraj Kumar Jain, learned Senior Advocate appearing on behalf of the mother of the victim and Ms. Ruchi Kohli, learned counsel appearing on behalf of the State have vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in acquitting the accused by observing that the prosecution has failed to prove the necessary link in the evidence which could establish and bring home the guilt of the accused.

3.1 It is vehemently submitted on behalf of the appellant that in the present case the prosecution has been successful in proving the motive of the respondent to kill the deceased. That even from the deposition of PW-8 (though he turned hostile), the prosecution has been able to establish and prove that the accused was harassing the deceased (Kavita Sahu).

3.2 It is further submitted by the learned counsel appearing on behalf of the appellants that the High Court has not properly appreciated and considered the fact that the knife used in the commission of the offence, which was recovered from the place of occurrence was purchased by the accused, which has been established and proved by the prosecution by examining the relevant witness- shopkeeper – PW-9.

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It is submitted that the Shopkeeper (PW-9) has clearly stated in his deposition that the knife (three pieces of knife), which was recovered from the place of occurrence having blood stain was the very knife, which was purchased by the accused and the shopkeeper also identified the accused. It is further submitted by the learned counsel appearing on behalf of the appellants that even the *Loi*, which was recovered at the instance of the accused was having blood stains of the same blood group of that of the accused and the accused has failed to explain the same. It is further urged by the learned counsel appearing on behalf of the appellant that even the accused sustained an injury on ring finger of his left hand, which was detected immediately after the occurrence of the incident and the accused had failed to explain the same. It submitted that the prosecution has been successful in proving the injury on the accused by examining Dr. Davinder Kapil, PW -20. It is contended that therefore, when the accused failed to explain the above incriminating material found against him namely, the *Loi* having blood stains, which was recovered at his instance and the knife having blood stains, recovered and found from the place of occurrence, which was purchased by him prior to the commission of the offence and even from the statement/deposition of the hostile witness – PW -8, the motive has been established and proved and hence, the High Court has committed a grave/serious error in acquitting the accused.

3.3 Making above submissions and relying upon the depositions of PW-8, PW-9 and PW-20 and the medical evidence, it is vehemently submitted by the learned counsel appearing on behalf of the appellant that the prosecution has successfully proved the link evidence, which establishes and brings home the guilt of the accused.

4. Present appeals are vehemently opposed by Shri Aditya Dhawan, learned counsel appearing on behalf of the respondent – accused. It is vehemently submitted by the learned counsel appearing on behalf of the respondent that in the present case, on appreciation of the entire evidence on record, the High Court has specifically recorded the findings that the prosecution has failed to prove the link evidence which could establish and prove the guilt of the respondent - accused.

4.1 It is submitted that cogent reasons have been given by the High Court not to believe the circumstances, which were held against the accused by the Trial Court. It is contended that the present case is based on circumstantial evidence and that PW-8 had turned hostile. It is

- A further contended that it has not been established and proved that the *Loi* having blood stains belonged to the accused.

4.2 It is further urged that even the prosecution has failed to prove the motive by leading cogent evidence. It is submitted that so far as the injury found on the ring finger of the accused is concerned, it was an old

- B injury. It is contended that therefore when the case is based on the circumstantial evidence and there is no direct evidence to prove the guilt of the accused, no error has been committed by the High Court in acquitting the accused. That when by giving cogent reasons, the High Court has reversed the conviction and thereby has acquitted the accused, it is prayed not to interfere with the same in exercise of the powers under Article 136 of the Constitution of India.

5. We have heard the learned counsel appearing on behalf of the respective parties at length.

6. We have perused, considered and gone through the judgment and order passed by the Trial Court convicting the accused for the offence under Section 302 IPC and the impugned judgment and order passed by the High Court acquitting the accused.

7. In the present case, the prosecution has been successful in proving the motive so far as the accused is concerned. Though, PW-8 initially made a statement before the Police that he had seen the accused

- E alongwith the deceased going to their house, but before the Court, he turned hostile. However, he had been cross-examined by the Public Prosecutor and during the course of cross-examination, he has stated that Kavita Sahu - deceased alias Kimi, a few days before the incident had disclosed to him that accused Rahul had made some obscene gestures at her. He has further stated that Kavita alias Kimi used to often confide with him regarding her personal matters. He has also stated that he felt bad when Kimi disclosed to him about the activities of Rahul. He has also stated that Kimi disclosed to him about the behaviour of accused Rahul on 4th and 5th December, 2011.

- G As per the settled position of law, even the evidence of a hostile witness can be considered to the extent, it supports the case of the prosecution. Therefore, prosecution has established and proved the motive to that extent.

7.1 Another link in the evidence, which establishes and brings home the guilt of the accused person is the recovery of the knife in three

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pieces, recovered from the place of occurrence, which was used for commission of the offence. During the course of investigation and on a thorough inspection of the spot, a knife in three pieces was found lying on the floor in the room, where dead body of Kavita was lying. On the knife, the word "Glare" was engraved. The prosecution has been successful in establishing and proving that it was the accused, who purchased the said knife from one Ravi Mittal, PW-9. The witness PW-9 had not only identified the knife purchased by the accused, but he has also clearly stated that the knife (which was found in three pieces) is the same, which was purchased by the accused. He has also identified the accused. As per the medical report and the post-mortem report, the cause of death was a result of hemorrhage and shock consequent upon slitting of the throat. Thirteen ante mortem injuries were found on the person of Gaurang and eight injuries on the body of Kavita. It was opined that the same could have been caused by a sharp-edged weapon. PW-3, who was one of the members of the Board, which conducted the post-mortem also stated in her evidence that the injuries could be possible with the weapon examined when taken as a whole. i.e., single weapon. She stated that even the throat injury was possible with three pieces and it was possible that the weapon might have broken during the process.

The knife in three broken pieces was recovered from the place of occurrence having blood stains and it has been established and proved that during the use of the weapon, i.e., knife, in commission of the offence, the same might have broken.

7.2 The next link in the chain of evidence is the recovery of *Loi* having blood stains of the deceased Kavita as well as of the accused, which *Loi* was recovered on the basis of the disclosure statement made by the accused himself. Though, Panchas to the recovery panchnama/ disclosure panchnama had turned hostile, still the prosecution has proved the same through the I.O. However, unfortunately, the High Court has doubted the DNA/CFSL report on grounds, which are not germane, namely, the human hair in the hands of Kavita was not examined; blood stains were not properly presented. However, the High Court has not gone in the detailed discussion of the CFSL Report on record.

Having gone through the CFSL Report as well as the depositions of the witnesses from the CFSL, we are of the opinion that the blood on the *Loi* was found to be matching with that of Kavita and the accused.

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- A 7.3 One another circumstance, which will go against the accused would be that an injury on the ring finger of the left hand of the accused was found, which was treated by PW-20, Dr. Davinder Kapil. He stated in his evidence that “accused came to his clinic in December, 2011 and disclosed his name; he had injury over ring finger of his left hand and came to him for first aid; the finger was already covered by accused with handkerchief; on removing the same, he found an injury over ring finger of his left hand; when he asked about the injury, he disclosed that he suffered the aforesaid injury by some iron bar. He also stated that on seeing the injury, he found it could be happened due to a sharp-edged weapon.” The accused has failed to explain the injury on him. On the contrary, he has come out with a false case that the injury was caused by some iron bar, which has not been established and proved.

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- D 8. Considering the aforesaid overall facts of the case and evidence on record, the High Court has committed a grave/serious error in observing that the prosecution has failed to prove the link evidence, which could establish and bring home the guilt of the accused. The findings recorded by the High Court are perverse. The High Court has not properly appreciated the entire evidence on record, more particularly, the findings recorded by the Trial Court, which as such were on appreciation of the entire evidence on record.

- E 8.1 Under the circumstances, the impugned judgment and order passed by the High Court reversing the conviction and consequently acquitting the accused is unsustainable and the same deserves to be quashed and set aside.

- F 9. In view of the above and for the reasons stated above, present appeals succeed. The impugned judgment and order passed by the High Court acquitting the accused is hereby quashed and set aside. The judgment and order of conviction and sentence imposed by the Trial Court convicting the accused for the offence under Section 302 IPC is hereby restored.

- G Now, the respondent - accused to surrender before the concerned Jail Authority/concerned Court to undergo the sentence imposed by the Trial Court.

Present appeals are allowed accordingly.

Pending application, if any, also stands disposed of.