

A.F.R.

Reserved On : 15.03.2023

Delivered On : 11.04.2023

Court No. - 44

Case :- CRIMINAL APPEAL No. - 6495 of 2017

Appellant :- Rajveer Singh

Respondent :- State of U.P.

Counsel for Appellant :- Kamlesh Tripathi, Man Bahadur Singh, Noor Mohammad

Counsel for Respondent :- G.A.

and

Case :- CRIMINAL APPEAL No. - 6497 of 2017

Appellant :- Rahisuddin

Respondent :- State of U.P.

Counsel for Appellant :- Man Bahadur Singh

Counsel for Respondent :- G.A.

Hon'ble Dr. Kaushal Jayendra Thaker, J.

Hon'ble Arun Kumar Singh Deshwal, J.

Delivered by Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Man Bahadur Singh, learned counsel for the appellant and learned AGA for the State.

2. Present two appeals were filed against the judgement and order dated 28.10.2017 passed by learned Additional District & Sessions Judge (FTC), Court No.3, Bulandshahr in Sessions Trial No.271 of 2012 (State Vs. Rajveer Singh and another) by which both the appellants were awarded life imprisonment along with fine of Rs.20,000/- each, under

Section-302 read with Section 34 IPC and in case of non-payment of fine they would further undergo two years incarceration. Appellants were also imposed six months imprisonment along with fine of Rs.10,000/- each under Section-201 IPC and in case of non-payment of fine, they would further undergo one year imprisonment.

Prosecution Case

3. As per the prosecution case, first informant Harbir Singh Arya Advocate (PW-1) had given a *Tehrir* dated 20.10.2011 to Station House Officer, Police Station-Narora, District-Bulandshahr stating therein that his son Lavkesh was married to Pooja, daughter of Rajveer resident of village-Kamalpur in the year 2009. Since, the date of marriage Smt. Pooja refused to live with his son Lavkesh and she has also lodged case under dowry prohibition act as well as for maintenance against him as well as his family. On 18.10.2011 at 9:30 pm, he received a phone call from Gajraj Singh, son of Banshi Singh, resident of Ganaura Nagli that his daughter-in-law Smt. Pooja has been killed by her parents, brother and Rahisuddin by forcibly administering poison to her and just to falsely implicate him, they initially planned to bring the dead body of Pooja at his house. When they could not get chance, they disposed off the dead body of Pooja by burning it. After receiving the aforesaid information, first informant, Harbir Singh had given information of this incident to SP Sri R.S. Rathore on his mobile phone. It was further mentioned that he could not register the case because of the fear of accused persons.

4. After receiving the aforesaid information, FIR was

registered in case crime no.252 of 2011, under Sections-302, 201 IPC on 20.10.2011 at 10:50 am against Rajveer as well as mother and brother of Pooja and also against Rahisuddin.

5. During investigation, police prepared site plan of place of incident where the deceased was administered poison as well as the place where ashes and bone of dead body of Pooja was recovered from and recovery memo for recovering the ashes and bone was also prepared and thereafter, ashes and other remains along with soil of the place of incident was also sent for chemical examination and thereafter, on the basis of available evidence, charge-sheet dated 20.01.2012 under Sections-302 and 201 IPC was filed against the present appellants and charge-sheet against the other co-accused persons namely Pawan and Roopwati was also filed on 21.03.2012, under Sections-302 and 201 IPC before the concerned court. Appellants were committed to Sessions court on 13.03.2012 and also the case of other co-accused persons on 22.07.2012. Thereafter, the Sessions court summoned the accused persons and these accused persons also appeared before the Sessions court. Thereafter, after hearing the Assistant District Government Counsel as well as Defence counsel, charges were framed against the present appellants under Section-302 read with Sections-34 and 201 IPC in Sessions Trial No.271 of 2012. The charges were also framed against other co-accused persons namely, Pawan and Smt. Roopwati, under Section-302 read with Sections- 34 and 201 IPC on 27.01.2014 for which accused persons denied and demanded trial.

Prosecution Evidence

6. To prove its case, prosecution produced first informant Harbir Singh as PW-1, Budhh Pal Singh as PW-2, Nanak as PW-3, Bishan Singh as PW-4, SI Tezvir Singh as PW-5, (chik FIR and GD writer), SI Naresh Kumar (Investigating Officer) as PW-6 and documentary evidence, the Tehrir report (Ext Ka-1), chik FIR (Ext Ka-2), GD (Ext Ka-3), site plan where the poison was administered to Pooja (Ext ka-4). Site plan where the ashes of the dead body of Pooja recovered (Ext Ka-5), memo of recovery of ashes and bone of body of Pooja (Ext ka-6), charge-sheet no.01 of 2012 against the accused appellants- Rajveer and Rahisuddin in Sessions Trial No.271 of 2012 (Ext. Ka-7). Charge-sheet No.01A of 2012 against co-accused Pawan and Smt. Roopwati (accused of Sessions Trial No.555 of 2012) (Ext Ka-8) and also the report of Forensic Science Laboratory (Paper No.19A) showing no opinion about the bone and ashes. Prosecution completed this defence on 07.09.2017, thereafter, statement of accused under Section 313 Cr.P.C. were recorded in which they denied from the incident in question.

Statement of Accused under Section 313 Cr.P.C.

7. Appellant-Rajveer stated that he has been falsely implicated just to pressurize him to enter into compromise with the first informant Harbir because his daughter Pooja as well as he lodged criminal cases against the first informant as well as against his family members under Sections-498A, 323, 504, 506 IPC and $\frac{3}{4}$ Dowry Prohibition Act and also the case for maintenance under Section 125 Cr.P.C. and his daughter Pooja has died due to natural death while bringing her to the

clinic of doctor as she was suffering from high fever and diarrhea.

8. Similarly appellant-Rahisuddin also stated in his statement under Section 313 Cr.P.C. that he has been falsely implicated in the present case by the first informant only because he is the witness of the case registered by Pooja against the first informant and his family members and because of his false implication, first informant want to pressurize him to enter into compromise and not to pursue the case on behalf of Smt. Pooja. Statements of other co-accused namely, Smt. Roopwati and Pawan were recorded under Section 313 Cr.P.C. in Sessions Trial No.555 of 2012 are not relevant as both of them were acquitted in that case.

Evidence of Defence

9. In support of defence, Sanjay Singh was examined as DW-1, Dr. Rameshwar Singh was examined as DW-2 and in documentary evidence, original copy of two medical certificates dated 14.10.2011 (Paper No.-93A) and 18.10.2011 (Paper No.93B) and charge-sheet submitted in NCR No.25/10 under Sections-504, 506 IPC, Police Station-Narsena, District-Bulandshahr against Lavkesh son of Harbir (Paper No.99B), copy of the order dated 23.07.2011 passed by the Additional Civil Judge (Junior Division)/Judicial Magistrate, Court No.2, Bulandshahr in Miscellaneous Case No.06 of 2010 (Smt. Pooja Vs Lavkesh) under Section-125 Cr.P.C. (Paper No.100B), certified copy of the order dated 22.05.2017 passed by Additional Chief Judicial Magistrate, Court No.3, Bulandshahr in Case No.2040 of 2012 (State Vs. Lavkesh and others) (Paper No.101B). Certified copy of chik FIR of Case

No.2040 of 2012 (Paper No.102 B) as well as certified copy of order dated 20.05.2017 passed in Case No.2040 of 2012 (Paper No. 103-B).

Discussion on Prosecution Evidence

10. PW-1 Harbir Singh stated in his statement that he knows and recognizes accused Rajveer, Smt. Roopwati, Pawan and Rahisuddi. Rajveer is my samdhi and Smt. Roopwati is my samdhan and accused Pawan is son of Rajveer and accused Rahisuddin is friend of accused Rajveer. Lavkesh is my son who got married with Pooja, daughter of Rajveer on 01.12.2019. Pooja on the investigation of Roopwati refuses to live with my son Lavkesh just after the marriage. Pooja also filed case in the Bulandshahr court for maintenance and court also granted her maintenance. After the compromise in dowry case, Pooja refused to take maintenance. In mediation centre where the cousin of Pooja, Budhh Pal Singh was present, she expressed her desire to him to go to our village Habauda. Pooja also lodged a case under Section 406 IPC against my wife Rajni, my son Lavkesh and my sister Krishna under the pressure of accused Rajveer. Though, subsequently, summoning order passed by CJM was set aside in revision in that case. He also lodged an FIR against Rajveer and others but stay was granted by Hon'ble High Court. I have also filed complaint case in Court at Garhmukteshwar, under Sections-452, 323, 504, 306 IPC, Police Station-Sambhawali, against accused Rajveer but stay was granted in favour of Rajveer by the Hon'ble High Court. On 11.05.2010, accused Rajveer brought Pooja at Garhmukteshwar in the office of Sub-Registrar where Pooja executed deed for dissolution of

marriage which was registered and Rajveer also received Rs.1,10,000/- in lieu of that. This act of Rajveer was against the wishes of Pooja. In the night of 18.10.2011 at 10:30 pm, Gajraj Singh informed me on my phone that his daughter-in-law Pooja has been killed by his father Rajveer, Roopwati and brother Naresh and Pawan along with Rahisuddin by forcibly administering her poison and they are planning to bring the dead body of Pooja in his village- Habauda but driver Laxman refused to come here, thereafter accused person disposed of the dead body by burning the same at their agriculture land. He had also confirmed the above incident from Budhh Pal Singh on mobile. This incident was witnessed by Gajraj Singh, Banshi Singh, Sanjay, Budhh Pal Singh and Nanak and he also intimated the same to SSP Bulandshahr through phone. He did not go to Police Station-Narsena, on that date, because of fear of accused persons. He has given written report on 20.10.2011 in Police Station-Narsena which is before me as Ext No. Ka-1 in my writing and signature. Subsequently, he came to know that accused Rajveer wanted to fix second marriage of Pooja with Udayveer of village-Bhadaura after taking money, for which ceremony of *godhbharai* was also conducted on 06.10.2011 in which Gram Pradhan of village-Habauda, Sri Bishan Singh was also present and date for marriage was also fixed as 05.11.2011. Pooja had refused for this marriage. She wanted to come back at our village and for this reason the accused persons mercilessly killed her.

11. In his cross-examination, PW-1 stated that he received information about the death of Pooja on 9:30 pm through phone and at that time, he was in his village- Habauda, Police

Station-Sambhawali, District-Hapur. At that time, he was practising as an Advocate in Garhmukteshwar court. On 19.10.2011, he did not go to Garhmukteshwar court for practice. He was not aware whether there was a holiday on 19.10.2011 or not.

On 19.10.2011, he went to Hapur to take medicine for his wife. On 19.10.2011 at 6:00 am, he along with his wife went to Hapur to visit doctor through motor cycle. In Hapur, he consulted with doctor in Tara Chand Government Hospital and returned back at 11:00 am to his house. He did not have any medical prescription or any receipt of purchasing the medicine.

He is also aware that at that time, Senior Police Officer as well as Administrative officers used to sit in Hapur and probably office of DSP was situated there. He did not give any information (or application) regarding the murder of Pooja to any Senior Police Officer or Administrative Officer on 19.10.2011, because I had already informed on 18.10.2011 to SSP Bulandshahr through Telephone. He informed SSP Bulandshahr on 18.10.2011 at 9:40 pm but he did not remember the number on which I talked to SSP Bulandshahr. At the time of calling to SSP Bulandshahr, my wife and my children were also present with me. He did not mention the mobile number of SSP Bulandshahr in his report. He also did not tell the phone number of SSP to Investigating Officer because I have not asked for the same. I am not aware whether I had called on personal or Government mobile number of SSP. I cannot tell P & T personal number or Government number of then SSP. My village is 7 Km from Police Station-Sambhawali. When any person goes from my village to Hapur

then we go through police station-Sambhawali because police station-Sambhawali is situated at main road. I have not given any information to Police Station-Sambhawali on 19.10.2011.

On 20.10.2011, I along with Jitendra Pradhan went to Police Station-Syana, District-Bulandshahr. Police Station-Syana is 16 to 17 km far from my village. I have not submitted any report on 19.10.2011 or 20.10.2011 in Police Station-Syana. Jitendra Singh Pradhan returned back to his village from police station-Syana. In Syana, Budhh Pal Singh met me. I went to police station-Narsena along with him. Narsena is 28-30 km from my village. On being asked question, why he did not go to police station-Narsena on 19.10.2011 and why he went there on 20.10.2011 then in his reply, he stated that my wife was ill on 19.10.2011 and I went to take medicine for her. I remained with her. Therefore, I did not submit any report on 19.10.2011. I have not mentioned this fact in my report that my wife was ill and I went to take her medicine and for this reason, there was a delay in submitting report. This fact is correct that I have mentioned in my report that because of fear of accused persons, not because of illness of my wife there was a delay in submitting report. I had lodged report after preparing the same on 20.10.2011.

I have not mentioned in my FIR that driver Laxman was not ready to bring Car to his village and this information had spread in the village. But on reading his statement recorded under Section 161 Cr.P.C., he states that Investigating Officer has not recorded above statement. I cannot tell the reason for the same. I have neither mentioned in my FIR that dead body was burnt in agriculture land nor informed to Investigating

Officer but he mentioned in FIR as well as stated in his statement that the dead body has been disposed off by burning the same. I have not seen the accused persons disposing the dead body by burning the same. I have not mentioned in FIR that second marriage of Pooja was fixed by accused Rajveer against her wishes with Udayveer after taking money and date of marriage was also fixed for which Pooja had refused, therefore, the accused had killed Pooja. I got the above information after 2 to 2 ½ month after the above incident and thereafter, he informed the police in writing but he does not remember on which date he has intimated to police and also he does not have any receipt for submitting any information to police. He also did not remember in which month he had given information to police about the incident. I have not mentioned in the FIR that I have verified the incident of murder of Pooja through mobile from Budhh Pal Singh and this incident was seen by Gajraj Singh, Ravi, Sanjay, Budhh Pal Singh, Nanak, though I have stated in the statement to Investigating Officer. On perusal of his statement recorded by Investigating Officer, he states that I.O. has not recorded the aforesaid thing in his statement because of local political pressure. Therefore, I have also made a complaint to SSP Bulandshahr personally but I did not have receipt of the same. I have not filed any copy of that complaint in the Court till date. It is also correct that he has mentioned the name of Gajraj Singh as witness in his first information report and one of witness driver Laxman, but names of Budhh Pal Singh, Ravi, Sanjay, Nanak were not mentioned in FIR because he was not aware about these witnesses till lodging of the FIR. He has told the name of the above witnesses to Investigating Officer in his statement but

he has not written the name of those witnesses except the name of Gajraj. I know the name of Budhh Pal but he did not mention his name in the FIR because he is relative of Rajveer. At present, relation of Budhh Pal with Rajveer is not cordial.

It is correct that Rajveer has lodged case against me and my family for the harassment of his daughter Pooja under Section 498A IPC which is still pending in the court. In that case, accused Rahisuddin is not the witness. Rajveer has also lodged the case for threatening against me and my family which is still pending in the court which was registered prior to present case under Section 302 IPC. It is correct that accused Rahisuddin is witness in that case. Second marriage of Lavkesh was consummated with Pooja daughter of Raghuraj resident of village-Gangeshwari, district-Amroha and Lavkesh has been residing with me.

On being asked question whether second daughter-in-law has been residing with him. He did not reply to the same on the ground that the same is not concerned to present case. On being questioned that his second daughter-in-law lodged a case under Section-354 IPC against him, he replied that Yes that case was registered but after investigation, final report was submitted which was accepted in the court also. The cases which I have registered against Rajveer and others were registered subsequent to the registration of cases by Rajveer against him and anothers under Sections-498A, 406 IPC.

12. Buddh Pal Singh was examined as PW-2. In his statement, PW-2 stated that accused Rajveer Singh is his maternal uncle and Smt. Roopwati is my maami who is wife of the accused Rajveer. Accused Pawan is son of accused

Rajveer. The name of other son of accused Rajveer is Naresh. Accused-Rahisuddin is friend of accused Rajveer Singh. He also knows first informant Harbir Singh and his son Lavkesh.

Daughter of Rajveer namely, Pooja got married with son of Harbir Singh, Lavkesh on 01.12.2009 but because of non-adjustment between two families, their marriage could not proceed further and both parties started lodging cases against each other. I went with my maternal uncle Rajveer for panchayat at the house of Harbir, village-Habauda because I was mediator of marriage. In panchayat, goods and articles given in dowry were returned, which was brought by him and Rajveer after five months of marriage, by loading it in *jugaad*. After five to six days of bringing the goods and articles of dowry, I and Rajveer along with Pooja went to the Registry office Garhmukteshwar. There marriage of Pooja and Lavkesh was annulled. Harbir Singh had given Rs.1,10,000/- to my maternal uncle Rajveer and Rajveer, after receiving the money executed notary affidavit. Thereafter, Rajveer Singh, Harbir Singh and I returned back to their houses. Subsequently, I came to know that Rajveer wanted to get marry to his daughter in village-Bhadaura but Pooja had refused for that and Pooja wanted to go at Harauda. During conciliation proceedings, Pooja also told me *bhaisahab* please arrange for sending me to Harauda.

On 08.10.2011, I and Nanak who belongs to my village, had reached Kamalpur at the house of my maternal uncle Rajveer at 3:00 pm. There, I had seen that Rajveer, Roopwati, son of Rajveer Pawan and Naresh as well as friend of Rajveer Rahisuddin had surrounded Pooja. Rahisuddin was having

glass full of poison, Rajveer opened the mouth of Pooja and Rahisuddin forcibly administered her poison from that glass, thereafter, Pooja fainted. We went to our houses because of fear and reached at 5:00 pm and in the night at about 9 or 9:30 pm, he received phone call of Harbir Singh, who asked him whether there occurred any incident. Thereafter, I obtained information from the son of my maternal uncle Subhash about the status of the above incident who informed me that Pooja has died. Then, we told Harbir Singh that *Vakil sahab* Pooja has died. Rajveer Singh, Rahisuddin, Arjun and Deepak, they had come to my village 10 to 15 days earlier and threatened me not to give any witness because he is their relative. Otherwise, we will tell you.

13. In the cross-examination, PW-2 retracted from his statement given in examination-in-chief and did not support the prosecution story and clearly stated that he had not seen the incident because he was staying at 400 metres away from the house of Rajveer. When he reached at the house of Subhash then he got information about the incident which occurred with Pooja. He did not remember who told him about the incident at the house of Subhash. After receiving information, Subhash and several other people of village went to the house of Rajveer where about 250-300 persons were already assembled but I am not in a position to tell the name and place. I have not seen any incident of surrounding Pooja by Rajveer, Pawan, Naresh, Roopwati and Rahisuddin and I have also not seen any glass containing poison in the hand of Rahisuddin. I have also not seen Ramveer opening the mouth of Pooja and Rahisuddin administering the poison from glass

in the mouth of Pooja. I have told whatever the villagers told me. I don't remember which villager told me about the said incident. I have not told any of the incident of village-Kamalpur to any of the person. When I received the call of Harbir Singh, I don't remember where I was at that time. The incident of Kamalpur dated 18.10.2011 did not happen before me. I have not seen deceased Pooja in Kamalpur on 18.10.2011. On that day, I did not go to the house of Rajveer in village-Kamalpur. As PW-2 did not support the prosecution story, therefore, prosecution declared him hostile and also cross-examined PW-2. In his cross-examination, PW-2 stated that statement given by him on 08.11.2016 was given by him on the basis of information received from villagers. He cannot tell the name of villagers who had given him the information. Accused Rahisuddin is friend of Rajveer. This is correct that after lodging of the present case, Harbir and accused persons entered into compromise. This is incorrect that I have seen Rajveer, Roopwati, Pawan, Naresh and Rahisuddin surrounding Pooja.

14. Nanak was examined as PW-3 but he did not support the prosecution story, therefore, he was declared hostile at the request of prosecution and put to cross-examination. In his cross-examination, PW-3 stated that it is incorrect, that he had gone to the house of Rajveer on 18.10.2011 along with Budhh Pal Singh and it is also incorrect that on that day, he had seen Rajveer, Pawan, Naresh, Roopwati and Rahisuddin surrounding and catching hold of Pooja. He is not aware how Pooja has died. He did not tell anything about the death of Pooja to Harbir Singh.

15. Bishan Singh was examined as PW-4 but he did not support the prosecution story, therefore, he was also declared hostile by the prosecution and prosecution was also allowed to cross-examine him. In his cross-examination, PW-4 stated that it is incorrect that he participated in *godhbharai rasam* of second marriage of daughter of Rajveer, Pooja. PW-5 was formal witness who was Sub-Inspector Tejveer Singh, who proved the chik FIR and carbon copy of GD. PW-6 was Sub-Inspector of Naresh Kumar who was an Investigating Officer of Case Crime No.252 of 2011, under Sections-302 and 201 IPC. In his statement, he stated that after arresting Rajveer and Rahisuddin, he had taken them in the jungle (agriculture filed). He stated that Rajveer and Rahisuddin in presence of SDM, Kunwar Bahadur Singh gave information about the place where ashes and burnt bone of dead body of Pooja were found and memo of recovery was prepared on the spot as per the direction of SDM in presence of witnesses. He proved above memo of recovery (Ext Ka-6) which was signed by SDM as well as witnesses. He also proved sealed bundle containing two small containers. One is having normal soil and other is having ashes and bone of deceased. On opening the sealed bundle, he stated that this is the same soil and ashes as well as bones which I have sent for Forensic Science Laboratory after sealing the same. Normal soil was marked as Ext No.1, ashes on small container was exhibit as Ext No.3 and bone were exhibited as Ext No.4. The container containing the ashes and bone was marked as Ext No.5. In cross-examination, PW-6 stated that it is correct that he is telling first time in the court about the information by Gajraj to first informant through phone, though same was not mentioned by him in case diary.

He did not go to the house of Rajveer between 3 pm to 7:30 pm. He went to the place of incident (agriculture land) along with Rajveer and Rahisuddin at 5:55 pm. When he reached at the house of Rajveer then he found Rajveer, Rahisuddin were there and immediately after reaching at their house, he recorded the statement of Rajveer and Rahisuddin. Memo of recovery (Ext Ka-6) does not have signature of accused Rahisuddin and Rajveer.

First informant did not tell me his mobile number. First informant did not tell me in his statement that his wife was ill and he went to take medicine for his wife and for this reason, lodging of the FIR was delayed. First informant also did not tell him why driver Laxman was not ready to bring the dead body of the deceased at his village. First informant also did not tell him in his statement that Rajveer has fixed the second marriage of Pooja with the son of Udayveer, resident of village-Bhadaura after taking money with him for which *godhbharai rasam* was fixed for 08.10.2011 and at that time, village Pradhan of Bhadaura, Sri Bishun Singh was present. First informant did not tell him that he has verified about the incident through mobile from Buddh Pal Singh, PW-2 and Budhh Pal Singh and Nanak has seen this incident. During investigation also, first informant did not inform him that Budhh Pal and Nanak had seen this incident. Budhh Pal and Nanak are also not witnesses in charge-sheet. First informant did not tell in his statement the name of any other witness except the Gajraj. I have submitted charge-sheet against the four accused. It is correct that there is a *Rajwaha* (canal) adjacent to the agriculture land of Rajveer. Report of Forensic

Science Laboratory regarding ashes and bone, sent by me is available and this report did not express any opinion about the origin of piece of burnt bone and ashes.

Discussion on Evidence of Defence

16. Defence produced Sanjay Singh as DW-1, who belongs to the village of accused Rajveer. DW-1 stated that Pooja has died. On the day when Pooja had died, Budhh Pal and Nanak did not come to his village and neither he met with them. Pooja had died because of illness. Pooja was not murdered by anybody. I have not seen any person either committing the murder of Pooja or administering her poison. At the time of last rites of Pooja at the bank of ganga, 200-250 persons had participated in her last rite. In cross-examination by the prosecution, DW-1 stated he belonged to the caste of accused Rajveer and he used to go to the house of Rajveer. I was not present at the time of incident. I have not seen any incident. Therefore, I cannot tell that Pooja has died because of illness. Pooja was suffering from fever. He is not aware which doctor treated Pooja.

17. Dr. Rameshwar Singh was examined as DW-2 by the defence. He stated in his statement that he completed his BMS degree in the year 1980-81 from Kanpur. On perusal of Paper No.94B/2, he stated that this prescription was issued by my clinic and as per this prescription, Pooja had come at my clinic on 14.10.2011 and at that time Pooja was suffering from diarrhea, acidity and fever of 101-102 degrees. I had treated her and given medicine. Paper No.94B/2 was issued in my writing and signature and my seal is on that prescription. This paper was marked as Ext Kha-1. On perusal of Paper No.94B/

1, it is stated that this paper was written in my writing and signature. Both these papers were prepared at the time of examination of Pooja. Paper No.94B/1 was marked as Ext. Kha-2. As per Paper No.94B/1, Pooja came to my clinic on 18.10.2011 and at that time she was suffering from Pyranca Gastritis. Condition of patient was very poor, therefore, on the basis of her condition at 2:30 pm, he referred her for Kailash Hospital. Dehydration is possible because of the illness of patient. Severe dehydration may cause death. On cross-examination by the prosecution, he stated my signature on Ext No. Kha-1 and Kha-2 were not different. Patient Pooja came to me in normal condition. He does not know Pooja personally.

Contention of Appellant

18. Appellant contended that FIR was highly belated, ante-dated, ante-timed and prepared after due consultation and afterthought. Inquest memo dated 20.10.2011 sent by Investigating Officer to SDM contains a blank space for writing case crime number and that goes to show that FIR was not in existence even up to the time of alleged recovery of remains of body of Pooja. As per the prosecution case, first informant is said to have received information from one Gajraj Singh, alleged eye witness about the incident at 9:30 pm on 18.10.2011 but first informant had lodged first information report on 20.10.2011 at 10:50 am and reason for delay for lodging the FIR, as mentioned in FIR is that due to fear of accused, first informant could not come to police station whereas in his evidence PW-1 has stated that FIR was delayed due to illness of his wife. It was further submitted there is false implication of appellant-Rajveer because appellant-Rajveer

and deceased had lodged criminal cases against the first informant and his family under Sections-498A, 406, 323, 504, 506 IPC as well as under Section 125 Cr.P.C. and first informant also lodged criminal cases against the deceased as well as the appellant-Rajveer and his family members. Relationship between the deceased and her husband (son of first informant) was dissolved by mutual agreement and two families were not having cordial relation with each other. Therefore, first informant grabbed the opportunity to settle his personal scores and launched present malicious prosecution in active connivance of Investigating Officer/SHO against whom appellant- Rajveer had preferred a complaint dated 19.10.2011 before SSP, Bulandshahr. Appellant- Rahisuddin was a witness in a criminal case filed by the deceased against the first informant, therefore, he was also falsely implicated on that ground. It was further contended by learned counsel for the appellant that Pooja had died due to illness which was absolutely natural death and there is no evidence that Pooja has died due to unnatural death by poisoning. Deceased Pooja was suffering from loose motion and diarrhea and she was treated by DW-2 who also proved his medical prescription dated 14.10.2011 as well as 18.10.2011 and Pooja died on her way to Kailash Hospital, where she was referred to by DW-2 considering her critical condition. Last rite of Pooja was conducted in presence of 100 villagers at the bank of river ganga on 18.10.2011. Learned counsel for the appellants also submitted that the alleged eye witness of FIR had given his statement under Section 161 Cr.P.C. but he was not produced before the trial court. Similarly, name of Kharak, Ravi and Sanjay were mentioned in charge-sheet as eye witnesses but

they were not examined as prosecution witnesses before the trial court and even the charge-sheet witness, Sanjay instead of supporting the case of prosecution appeared as DW-1 as a defence witness and clearly stated that cremation of Pooja was conducted at river Ganga in presence of 100 villagers. It was further contended that witness of motive, Udayveer was not produced before the court and even the prosecution witness, Gram Pradhan, Bishan Singh, PW-4 was said to be present in the *godhbharai* of second marriage of Pooja and Udayveer did not support the prosecution case while examined as PW-4. Recovery memo was not proved by Sub-Divisional Magistrate who witnessed the recovery. Even the alleged two independent witnesses of recovery, namely, Ram Lal Singh and Khadhak Singh were not produced before the trial court to prove the recovery of remains of deceased Pooja from the agriculture land of appellant- Rajveer. This case is based on circumstantial evidence but chain of circumstances is not complete and conviction of the appellants is solely on the basis of recovery of remains of body of deceased which was not proved nor supported by forensic evidence as well as on the basis of presumption under Section-106 of the Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act'), despite the fact that appellants have been fully discharged their burden regarding the death of Pooja by their statement under Section 313 Cr.P.C. as well as examining the defence witnesses, DW-1 and DW-2. Therefore, it was submitted by the appellant that order of trial court is absolutely erroneous and without any evidence and deserves to be set aside and appellants are entitled to be acquitted.

Contention of State

19. Learned AGA contended that from the evidence of PW-1, it is established that accused, just to falsely implicate the first informant as well as because of annoyance with Pooja who refused to get second marriage under the pressure of appellant Rajveer, had murdered Pooja. It was further contended that recovery memo of the remains of deceased Pooja shows that ashes and burnt parts of bones of deceased Pooja were recovered from the agriculture land of appellant Rajveer on the basis of information given by the appellant. It was further contended by learned AGA that it is the common practice among hindus that after the cremation, the ashes of dead bodies is emerged in river but in the present case, ashes of dead body of deceased Pooja was recovered from the agriculture land of the appellant- Rajveer, which establishes that after committing the murder of Pooja, had concealed the ashes of her dead body in his agriculture land after digging a pit in it. Therefore, there is no illegality in the judgement of trial court and same deserves to be affirmed.

Analysis and Conclusion

20. Sole basis of lodging the FIR on part of the first informant (PW-1) is the information received by him from Gajraj Singh regarding the murder of deceased Pooja. Subsequently, during trial PW-1 had stated that the incident of causing death was also witnessed by Budhh Pal Singh, Ravi, Nanak and Sanjay apart from Gajraj Singh. During trial, Budhh Pal Singh (PW-2) and Nanak (PW-3) did not support the prosecution story and were declared hostile. The sole witness (Gajraj) mentioned in the FIR who was the main

source of information regarding the murder of Pooja was not produced before the trial court to support the prosecution story. Apart from this, another witness Ravi, who as per the statement of PW-1 had seen the incident, was not produced before the court by the prosecution. Even the witness of motive for causing the murder of Pooja, Bishan Singh (PW-4) did not support the prosecution story, therefore, he was declared hostile.

21. The recovery memo for recovery of ashes and burnt bones of deceased Pooja on the basis of information given by the appellants which was marked as Ext No. Ka-6 was not signed by any of the appellants and the witnesses who signed this recovery memo namely, Ram Lal Singh and Kadhak Singh, were not produced before the court to prove the aforesaid recovery memo (Ext Ka-6). The above evidences shows the entire prosecution story is based on hearsay evidence of PW-1 as well as circumstantial evidence. Even the Forensic Science Laboratory report which was marked as Paper No.19A did not give any opinion about the origin of recovered ashes and burnt bones. PW-1 in his statement clearly admitted that the appellant- Rajveer as well as his daughter deceased Pooja had lodged criminal cases against PW-1 and, PW-1 had also subsequently lodged cases against appellant no.1-Rajveer, prior to lodging the present case and this fact was also admitted to PW-1 that appellant- Rahisuddin was also the witness of one of the cases lodged by the appellant- Rajveer. Learned Sessions Judge while passing the impugned judgement also observed that if deceased Pooja was died because of illness then there was no occasion on the part of the

appellants to dump the ashes and burnt bones in his agriculture land by digging the pit and he has not given any information to police. Though, as per the hindu customs rites, ashes and bones should be emerged in ganga or any river. Therefore, learned Sessions Judge on the basis presumption under Section 106 of the Evidence Act convicted the appellants.

22. The appellants in support of the cause of death of deceased Pooja produced DW-1 and DW-2. DW-1 Sanjay Singh, though as per the statement of PW-1, was a witness of murder of deceased Pooja but he appeared before the court as defence witness and denied the prosecution story and on the other hand stated that Pooja has died due to her illness. DW-2 who was the doctor, proved the medical prescription of Pooja issued by his clinic regarding her illness and duly proved that Pooja was seriously ill and he referred her to Kailash hospital considering her critical condition and also proved that Pooja could have died because of dehydration. In their statement under Section 313 Cr.P.C., both the appellants namely, Rajveer and Rahisuddin, clearly stated that they have been falsely implicated just to pressurize them to enter into the settlement in the cases which were lodged by the appellant- Rajveer and her daughter Pooja. Basis of conviction of the appellants was circumstantial evidence as well as presumption under Section 106 of the Evidence Act, though chain of circumstances is itself not complete because there was no eye witness of the incident and entire prosecution case is based on the statement of PW-1 who himself was not the witness of incident but his information was based on the information received from Nanak (PW-3) and Budhh Pal Singh (PW-2) and Gajraj,

though neither PW-2 nor PW-3 supported the prosecution story and Gajraj was not produced before the Court in support of prosecution case. Therefore, the evidence of PW-1 is simply a hearsay evidence which has no relevancy as per the Evidence Act. PW-1 also could not prove the motive on the part of appellants to murder Pooja. On the other hand, the appellants had proved the motive on the part of PW-1 to falsely implicate them.

23. Hon'ble Supreme Court in the judgement of **Ravindra Singh alias Kaku Vs. The State of Punjab in Criminal Appeal No.1307 of 2019** decided on **04.05.2022** clearly held that in case where conviction is only based on circumstantial evidence then inconsistencies in the testimony of important witnesses cannot be ignored to uphold the conviction. Similarly, Hon'ble Supreme Court in the judgment of **Indrajit Das Vs. The State of Tripura in Criminal Appeal No.609 of 2015** decided on **28 February, 2023**. Relevant part of paragraph no.10 of the said judgement is quoted hereinunder :

*“10. The present one is a case of circumstantial evidence as no one has seen the commission of crime. The law in the case of circumstantial evidence is well settled. The leading case being **Sharad Birdhichand Sarda vs. State of Maharashtra 1984 (4) SCC 116**. According to it, the circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; 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 his innocence. The said principle set out in the case of **Sharad Birdhichand Sarda (supra)** has been consistently followed by this Court. In a recent case – **Sailendra Rajdev Pasvan and Others vs. State of Gujarat Etc. AIR 2020 SC 180**, this Court observed that in a case of circumstantial evidence, law postulates two-fold requirements. Firstly, that every link in the chain of*

circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt and secondly, all the circumstances must be consistent pointing out only towards the guilt of the accused. We need not burden this judgment by referring to other judgments as the above principles have been consistently followed and approved by this Court time and again.”

24. Hon’ble Supreme Court in the judgment of **Nagendra Sah Vs. State of Bihar** reported in (2021) 10 SCC 725. Relevant part of paragraph nos.17, 22 and 23 of the said judgement is quoted hereinunder :

*“17. As the entire case is based on circumstantial evidence, we may make a useful reference to a leading decision of this Court on the subject. In **Sharad Birdhichand Sarda v. State of Maharashtra 1984 4 SCC 116**, in paragraph 153, this Court has laid down five golden principles (Panchsheel) which govern a case based only on circumstantial evidence. Paragraph 153 reads thus : -*

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

*It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and “must be or should be proved” as was held by this Court in **Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793** wherein the following observations were made:*

“19..... Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

(emphasis added)

22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the Court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused.”

25. The above judgements of Hon'ble Supreme Court clearly observe that conviction on the basis of circumstantial evidence is not proper unless the chain of circumstances is complete but, in the present case, there is no evidence which connects the appellants with the death of deceased Pooja. As PW-1 was not the eye witness and other alleged eye witness who were the source of information to PW-1 did not support the prosecution story and even there is no documentary evidence which could establish the alleged recovered ashes and burnt bones belong to Pooja. Even, the memo of recovery (Ext Ka.6) of ashes and part of the burnt bones is not reliable because same was not signed by the appellants even same was

not proved by the SDM under whose direction and supervision the above memo recovery was prepared. Prosecution has also failed to establish the complete chain of circumstances.

26. In view of the above fact, the judgement of Sessions Judge dated 28.10.2017 is not based on any conclusive evidence but, simply on the basis of presumption and circumstantial evidence which itself was not sufficient. Therefore, we are of the considered opinion that prosecution could not prove its case against the appellants beyond doubt. Therefore, judgement and order dated 28.10.2017 passed by the learned Additional District & Sessions Judge (FTC), Court No.3, Bulandshahr is set aside and appellants are acquitted from the charges under Sections-302/34, 201 IPC in case crime no.252 of 2011, Police Station-Narsena, Bulandshahr. Therefore, appellants namely, Rajveer and Rahisuddin be immediately be released if they are not wanted in any other cases.

27. Accordingly, both the appeals are **allowed**.

Order Date :- 11.04.2023

S.Chaurasia