

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

Cr.Acq. Appeal No.60/2013

Date of Decision:22/04/2013

State of J&K VS Deepak Kumar

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Hon'ble Mr. Justice Bansi Lal Bhat, Judge

Appearing Counsel:

For Appellant(s) : Mr.Gagan Basotra, Sr.AAG.

For Respondent(s) :

Whether approved for reporting in law journals?	: Yes/No
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Whether approved for publishing
in Press/Media ? : **Yes/No/Optional**

Per Bansi Lal Bhat-J

1. This appeal is directed against the judgment formulated by learned 3rd Additional Sessions Judge, Jammu on 30th November, 2012 in case File No.61/TADA titled **“State Vs. Deepak Kumar”** by virtue whereof appellant/accused (for short, accused) has been acquitted of offence punishable under Section 302 RPC. State has filed the instant appeal questioning legality and correctness of the impugned judgment on the ground that the learned Trial Court has failed to appreciate the prosecution evidence and ignored the material evidence which was sufficient to record conviction of accused thereon.
2. Heard learned Senior Additional Advocate General at the admission stage and perused the record. Since we

are of the opinion that the case can be disposed of at this stage, we have taken up the appeal for final consideration.

3. The factual matrix referable to the genesis of occurrence in the case in hand is that on 20th September, 2009, PW- Ganesh Sharma approached Police Station - Akhnoor with a written report laying information that he had noticed foul smell emanating from the Sarkanda bushes in his land situated in village Danda lying at a distance of one and a half kilometers from his village Lehar and when he zeroed in, he found a badly decomposed body of a young lady with her neck fastened with a Dupatta and tied with the branch of a tree. The report was recorded and a case under FIR No.180/2009 was registered for offence punishable under Section 302 RPC. Investigation was embarked upon which revealed that the accused was in illicit relationship with the deceased for a pretty long time. Further the relationship between the accused and his wife turned sour, when she came to know about the illicit connection of accused with the deceased. Being fed up with the deceased, the accused hit upon a plan to do away with the life of deceased. The accused found a mobile set (Nokia-1650) having SIM No.9622091726 at

village Bias Pur, Parlah. Same belonged to one Karan Kumar, who had misplaced it. The accused remained in touch with the deceased on the aforesaid mobile phone. Allegedly, he called the deceased to Miran Sahib after taking leave from his work place. It happened on 12th September, 2009. They met at Miran Sahib and from there they went to Akhnoor. The accused switched off his mobile having No.9797493721 after receiving the call from his house. He also persuaded the deceased to switch off her mobile phone. Thereafter, both of them boarded a Matador and reached at the place of occurrence. The accused had sexual intercourse with the deceased there and acting upon his plan, he committed murder of deceased by strangulating her with a Dupatta. Thereafter, he fled away from the spot alongwith Motorola mobile phone bearing SIM No.9858952182. While traveling to R.S. Pura in Bus bearing registration No.JK02D-1670, the accused threw away the aforesaid SIM Number of the deceased in the Bus. He had concealed the Motorola mobile set of the deceased in bushes by the side of a defence canal situated at Alawal Chak. The investigation further revealed that the accused broke the SIM card No.9622091726 and threw it away. He exchanged the

mobile set Nokia-1650 with one Surinder Kumar for his Chinese Mobile set. Police seized the Dupatta, one bundle of hair, one salwar of blue colour, besides plain and blood stained clay which were sealed on spot and sent to FSL (Forensic Science Laboratory) for Expert opinion. A plastic bag of red and white colour, one pair of chappal and lady's purse were also seized on spot. The body of the deceased was shifted to hospital for postmortem. Statements of witnesses under Section 161 Cr.PC were recorded. Body of deceased lady was identified as that of Rani Devi-wife of Subash Chander. Call details of Mobile phone No.9858952182 of deceased were obtained. The accused was arrested and subjected to interrogation.

4. On the disclosure statement of accused, Motorola mobile set of deceased was recovered from a site near defence canal at Alawal Chak. Same was identified by the husband of deceased. SIM No.9858952182 of deceased was produced by cleaner - Sat Pal of the aforementioned Bus. Nokia-1650 belonging to Karan Kumar was seized from Surinder Kumar and the same was identified by Karan Kumar. The body of deceased in the shape of a skelton was exhumed from the graveyard at Akhnoor after obtaining orders from

Deputy Commissioner, Jammu and cremated with religious rites.

5. The investigation culminated in filing charge-sheet against accused under Section 302 RPC. The trial conducted in the case pursuant to order of commitment drawn up by the learned Judicial Magistrate Munsiff Akhnoor culminated in acquittal of accused as aforestated.
6. The prosecution relied upon circumstantial evidence as the only mode of proof at the trial. It is well settled that for establishing complicity of an accused by adopting circumstantial evidence as mode of proof, prosecution must establish incriminating circumstances forming a chain of events with no link missing and such circumstances must give rise to the only conclusion, namely, it is the accused and accused alone, who committed the crime. The probabilities emerging from circumstantial evidence must be compatible only with the guilt of accused and must clearly point out the accused as the only author of crime excluding all reasonable probability of anybody else other than the accused being the perpetrator of crime. It is in the backdrop of this settled legal position that evidence

brought on record by prosecution during trial has to be re-appreciated.

7. It is not in controversy that deceased - Rani Devi died a homicidal death. PW-Dr. Suman Kant Gupta proved the postmortem report of deceased marked EXT-P22. According to his testimony, the deceased died due to cardio respiratory arrest because of Haemorrhagic shock due to fracture femur left. Identity of the highly decomposed dead body recovered from Sarkanda bushes on the outskirts of village Danda has been established as that of deceased - Rani Devi by her husband - Subash Chander from the articles found lying near the dead body. In so far as motive is concerned, PW-Sansar Chand, father-in-law of the deceased deposed that deceased would frequently go out with the accused. He even claimed to have found the deceased and accused in a compromising position. His advice fell on deaf ears and he was so fed up with the immoral conduct of the deceased that he did not hide his inner desire to commit murder of deceased. Even the husband of the deceased admitted that the deceased used to move in the company of accused. However, no evidence has been brought on record by prosecution to establish that the relations between the accused and his

wife had got strained on account of extra-marital relations of accused with the deceased which impelled the accused to take the extreme step of eliminating the deceased to salvage his own matrimonial sinking ship. No event has been brought out by evidence on record to demonstrate that the *inter se* relationship between the accused and his wife had reached at a critical point which acted as a catalyst to drive the accused to do away with the deceased. In absence of any evidence to establish deterioration of relations between the accused and his wife on account of illicit relationship of accused with the deceased, it is difficult to believe that the accused would have taken the extreme step of committing murder of deceased with whom he had amorous relationship.

8. In so far as linking of accused with recovery of Motorola Mobile Phone of deceased at the former's instance is concerned, this mode of proof would have relevance only, if it was established that the said mobile phone belonged to the deceased. The husband of deceased has not deposed that the deceased was having a Motorola mobile set with her. No proof of ownership of the said mobile phone has been brought on record to establish the factum of deceased being its owner. Thus, proof of

recovery of said mobile phone on disclosure statement of accused is of no consequence. Be it seen that PWs- Kewal Krishan and Dharam Pal deposed at the trial that this mobile set had earlier been found by one Deep Kumar – son of PW-Kewal Krishan near defence canal, but he again placed the same there in the same condition. It happened around a month before its recovery. Thus, the discovery of said mobile phone cannot be attributed exclusively to accused. The situation has been made worse by deposition of Kewal Krishan, who admitted that the information about discovery of said mobile by his son was brought to the notice of Investigating Officer - who subsequently brought the accused on spot and effected recovery of the Motorola mobile set. This being the nature of evidence, it is difficult to hold that the recovery of Motorola mobile phone was effected in pursuance of disclosure statement emanating from the accused. Police had the prior information about the location where Motorola mobile phone was placed. Thus, no fact can be said to have been discovered as a corollary to information given by the accused, if at all, the same is believed to have been established. Evidence of prosecution witnesses qua the disclosure statement of accused and

consequential recovery, is of no value and the same has rightly been discarded by the learned Trial Court. Prosecution has not relied upon any other mode of proof and no evidence other than the discussed one has been adduced in support of prosecution case.

9. Having carefully evaluated the evidence brought on record by prosecution, we find no “substantial and compelling reasons” to depart from the finding recorded by learned Trial Court that prosecution has failed to establish the complicity of the accused beyond reasonable doubt. We are of the considered opinion that the circumstances relied upon by prosecution do not establish a nexus between the alleged occurrence and the person of accused. The impugned order of acquittal is a well reasoned order and cannot be termed erroneous, much less perverse. There is no merit in this Appeal and the same deserves dismissal.

10. The Criminal Acquittal Appeal on hand is, accordingly, **dismissed.**

(Bansi Lal Bhat)
Judge

(Mohammad Yaqoob Mir)
Judge

Jammu
22.04.2013
Varun Bedi