



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

**Cr. Appeal No. 248 of 2012.**

**Reserved on: 25<sup>th</sup> August, 2020.**

**Date of Decision: 31<sup>st</sup> August, 2020.**

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State of H.P.

.....Appellant.

**Versus**

Rattani @ Rajni

...Respondent.

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**Coram**

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

Whether approved for reporting? Yes.

**For the Appellant:**

Mr. Narender Guleria, Addl.A.G.  
with Mr. Vikrant Chandel, Dy.  
A.G.

**For the Respondents:**

Ms. Megha Kapur Gautam, Legal  
Aid Counsel.

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**Sureshwar Thakur, Judge.**

The instant appeal, is, directed by the State against, the pronouncement made by the learned Sessions Judge, Solan, H.P., upon, Sessions Trial No.6-S/7 of 2011, wherethrough, he acquitted, the accused/respondent herein, vis-a-vis, offences punishable, under, Section 302, and, under Section 201 of the IPC.

2. The genesis of the prosecution case, is, embodied in Ex.PW1/A, exhibit whereof embodies a statement of one Smt. Priti Devi, recorded under Section 154 of the Cr.P.C., wherein, she narrates, her suspicion, vis-a-vis, the demise of one Sat Pal, being caused by, the, accused/respondent herein. The accused, is, alleged to be, a regular visitor to the house of the deceased, and, also, is alleged to be, exclusively serving the mother of the deceased. Both, the accused, and, the deceased are alleged, to, on the fateful day, consume liquor, and, thereafter an altercation is alleged to erupt inter se both, and, in course thereof, the accused is alleged to, with user of iron pipe (phukna), Ex.P-5, hence recovered through Ex.PW3/B, and, preceding whereof a disclosure statement of the accused, borne in Ex.PW4/C became recorded, rather, inflict fatal blows, on various portions of the body of the deceased, and, as, become echoed, in, the postmortem report, embodied in Ex.PW19/B.

3. The learned Sessions Judge, while proceeding to record an order of acquittal, vis-a-vis, the charges framed against the accused, for his, committing offences punishable, under, Section 302, and, under Section 201 of the IPC, had anchored his reasoning, upon, (a) the mother

of the deceased, though, being available, at the relevant time, in the house, whereat, the demise/murder of the deceased one Sat Pal, had occurred, and, hence, despite hers being, a, material prosecution witness, yet hers neither being cited as a prosecution witness nor hers standing examined in Court, per se, thereupon, hence rendering the attribution of guilt to the accused, to, rather founder. (b) PW-3 and PW-4, the witnesses, to, the disclosure statement, made by the accused, and, as borne in Ex.PW4/C, and, in pursuance whereto, the recovery of weapon of offence, Ex.P-5 was made, under Ex.PW3/B, both resiling from their respectively recorded previous statements in writing, (c) and, thereupon, both, the disclosure statement, and, the apposite recovery memo, wherethrough Ex.P-5, the alleged weapon of offence, stood recovered, hence losing their apposite evidentiary worth. (e) No blood stains being reported in the report of the FSL, as, becomes embodied in Ex.PW25/P, to exist, on the duster/piece of cloth, with user whereof, the accused allegedly wiped the blood stains allegedly, borne on Ex.P-5, the alleged weapon of offence. (f) no stains of blood being reported in the report of the FSL, as, borne in Ex.PW15/A, to exist on Ex.P-5, the alleged weapon of

offence. (g) The motive for the commission of the alleged offence(s), inasmuch, as their existing illicit relations among the accused, and, the deceased, and, also bickerings amongst both, arising, and, rather sparked by financial dealings, remaining unproven by the prosecution.

4. Before proceeding to depart from or discard, all the afore assigned reasoning(s) hence by the learned Sessions Judge, for, his recording an order of acquittal, vis-a-vis, the afore charges framed against the accused, (i) it is imperative to delve deep into the testimony of PW-1, one Smt. Preeti Devi, who in her examination-in-chief has echoed, vis-a-vis, the accused being a regular visitor to the house of the deceased, for preparing meal(s), and, also for washing clothes etc., besides hers attending, upon, the mother of the deceased. She continues, to, depose in her examination-in-chief, vis-a-vis, the mother of the deceased, being aged about 82-85 years, and, hers remaining ill. In her cross-examination, she, feigns ignorance qua the friends of the deceased, visiting the latter's house, and, also qua his becoming used to consume liquor thereat. Thereafter, in her further cross-examination, though, she renege(s) from her previous statement, borne in Ex.PW1/A, inasmuch, as hers, denying

qua hers therein making a narration, vis-a-vis, hers suspecting the accused to inflict the fatal injuries, on the person of the deceased, (ii) yet the afore reneging(s) rather become inconsequential, as, her previous statement, as, borne in Ex.PW1/A, stand(s) deposed, by her in her cross-examination, to carry her signatures, and, also, upon, hers failing, to, in her cross-examination, rather make communication(s), vis-a-vis, hers becoming pressurised by the police, to, make her signatures, upon, Ex.PW1/A. Obviously, from the afore narrations, as, borne in the testification, hence, rendered by PW-1, no firm inference can become erected, vis-a-vis, on anvil(s) thereof, this Court becoming constrained, to, render findings of conviction, upon, the accused, (iii) as, she neither, IS, an eye witness to the occurrence nor a witness to the relevant recoveries, rather she is merely an informant to the police, vis-a-vis, the, commission, of, the charged offences. However, since the investigating machinery, became galvanized, hence, on her previous statement, borne in Ex.PW1/A, (iv) thereupon, the afore disclosures, as, made by her, in her testification, enables this Court, to, garner inference(s), qua the accused being a regular visitor to the house of the deceased, and, also qua

hers attending, upon, the mother of the deceased aged about 82-85 years, and, also a further inference is erectable, vis-a-vis, the mother of the deceased remaining ill, given all the afore echoings occurring in her examination-in-chief, remained unscathed of their vigour, as, no cross-examination, vis-a-vis, them has been conducted, upon, PW-1.

5. Be that as it may, the afore narrated proven factum, inasmuch, as, of the accused being a regular visitor to the house of the accused, yet may not carry any evidentiary potency, hence, for this court, merely on anvil thereof, making a firm conclusion qua at the relevant time, the accused, being available at the house of the deceased. It is but obvious for this Court, to, discern, for existence, on record, of the afore evidence, and, in the afore endeavour, an allusion is enjoined to be made to the testimony rendered by PW-11. PW-11 in his examination-in-chief, has deposed with aplomb, vis-a-vis, his on the relevant/fateful day, inasmuch, as on 12.3.2011, hence, sighting the accused to visit the house of the deceased, (a) and, he has further deposed that on the succeeding day, his becoming apprised, vis-a-vis, the deceased one Sat Pal alias Pala, being found dead in his house. Even though, in his cross-

examination, he feigns ignorance qua whether on the relevant day, it was Rattani Devi or some other lady, who, became sighted by him, to, visit the house of the deceased, (b) and, thereafter though he also stated that he is receiving treatment, from, a psychiatrist, for, the preceding two years, (c) and, though, upon the afore deposition, as, borne in the cross-examination of PW-11, the defence makes an attempt to scuttle, the, afore incriminatory factum, existing in the examination-in-chief of PW-11, inasmuch, as, the latter sighting the accused to visit, the, house of the deceased rather on the fateful day, (d) yet all the effects thereof become subsided by (e) his in the opening of his examination-in-chief, confidently disclosing, vis-a-vis, his being aware, of, the identity of the accused, namely Rattani alias Rajni; (f) thereupon unless, through the learned defence counsel rather confronting, PW-11, with the accused present in court, and, obtaining elicitation from him, vis-a-vis, his not recognizing Rattani Devi, to be person, whom he states, in his examination-in-chief, to visit the house of the deceased, on, the fateful day, (g) and, thereafter, upon, an opportunity being granted, to, the learned Public Prosecutor, to, mete apposite suggestion(s), for overcoming the afore factum,

rather would disable, the, vigour of his afore made echoings, in, his examination-in-chief. However, the afore endeavour remained unrecoursed, by the defence, hence, the effect of the afore vague feigning(s) by PW-11, vis-a-vis, his not being sure, whether he sighted the accused, to, visit the house, of, the accused on 12.3.2011, rather not carrying relevant evidentiary worth, for hence nailing, a firm inference qua his testification, occurring in his examination-in-chief, being amenable, for being slighted, (h) nor the factum of his undertaking treatment from a psychiatrist, can benumb, his statement, occurring in his examination-in-chief, (i) as, the potency, and, vigour of his mental ailment, has been omitted to be brought on record, by the defence, through the latter adducing best expert evidence qua therewith, for, hence, therefrom deducing the factum, of, his being totally deprived of cognitive faculties, and, hence, his testimony in his examination-in-chief, becoming faulty in its entirety. In aftermath, his testification, is, rather working, for erecting an inference, vis-a-vis, the accused being incriminatingly sighted , to, visit the house, of, the accused, on, the relevant/fateful day.

6. PW-12 Satish Kumar, in his examination-in-chief, makes echoing therein, vis-a-vis, on 13.03.2011, i.e. the day succeeding the fateful day, rather the accused visiting his shop, at about 9.15 a.m., and, making a disclosure to him qua the accused not waking, and, his thereafter querying her whether he had consumed liquor, in the preceding night, and, hence, was unable to wake up. However, no answers thereto, are deposed by PW-12, to become meted thereto, by the accused, rather PW-12 deposes, vis-a-vis, his being requested by the accused to visit, the, house of the deceased, request(s) whereof, he deposes to hence become declined by him. The afore echoings, as, borne in the examination-in-chief of PW-12, remained unshattered, vis-a-vis, their efficacy, and, the stark inference hence ensuring therefrom, is qua, even on the day succeeding the fateful day, hence, accused Rattani Devi visiting the house, of, the accused. However, she did not report the incident, to, the police rather enigmatically reported the relevant incident only to PW-12. The afore enigma clouds, and, shrouds her conduct with incriminatory quilt.

7. The defence while cross-examining, PW-25 strives to espouse a defence, vis-a-vis, the deceased in the

company of his friends, and, at his house, whereat his dead body was found, rather consuming liquor, on 12.03.2011, and, thereafter on, a, scuffle occurring amongst them, at the house of the deceased, the latter during course thereof, suffering fatal injuries. However, the afore defence, as, meted through a suggestion being purveyed, to, PW-25, became denied by him. Nonetheless, the inference which emerges therefrom is qua despite, the, accused, as aforestated, visiting the house of the deceased, on the relevant day, and, also despite hers being, a, regular visitor, to the house of the accused, and, hence, being aware, of, the identity of the friends, of, the deceased, with whom, he was purportedly habituated to consume liquor, at his house, hers neither making disclosure(s) qua therewith to the police, through, prompt reporting(s), vis-a-vis, the incident, nor hers making any communication qua therewith to PW-12, on 13.3.2011, especially when on the later day, she had visited the shop of PW-12, AND, had rather merely made a disclosure to him, vis-a-vis, deceased Sat Pal not waking up. All the afore lapses on the part of the defence, and, more specifically, the, afore unshattered deposition(s), as, occur(s) in the examination-in-chief of PW-12, when

becomes combined with the deposition rendered by PW-11, inasmuch as the accused visiting the house of the deceased Sat Pal, on the fateful day i.e. on 12.3.2011, bolsters an inference, vis-a-vis, the accused attempting to enigmatically cover up, the, factum of hers not visiting the house of the deceased rather on the fateful day, hence, only for camouflaging her guilt.

8. In the testification, as, borne in the cross-examination of PW-9, though echoings occur, vis-a-vis, the mother of the deceased being not in a position to walk properly, however, merely on the afore disclosure, no firm inference can become erected, vis-a-vis, the mother of the deceased being totally disabled to move from one place, to, the other, (a) as, PW-1 in her examination-in-chief has made articulations, vis-a-vis, the mother of the deceased, hence, on the day, whereat the body of the deceased, became discovered inside the house of the deceased, rather being sighted, in the courtyard of the house, of, the deceased, (b) whereupon, an inference is erectable, vis-a-vis, the mother of the deceased holding, the, capacity to walk. Though, from the afore erected inference, the defence would erect, a, submission, for validating the assigning, of, reasoning(s) by the learned Sessions Judge,

qua hence, though hers being a material prosecution witness, yet, hers becoming omitted to be cited, as, a prosecution witness, thereupon, the entire prosecution case, as, built against the accused becoming engulfed, in, grave suspicion. However, for adding weight, and, vigour to the afore reasoning, there was an imperative necessity, of, further evidence existing on record, and, suggestive, vis-a-vis, the rooms connecting or connecting with the room, whereat the body, of, the deceased was discovered, being unlatched or unbolted, at the relevant time, hence facilitating the ingressing(s) thereinto, of, the mother of the deceased, and, the concomitant sighting(s), by her, of the commission of offence, by the accused. However, the afore evidence, is, abysmally amiss on record, and, renders weak, and, emaciated the reasoning, as, assigned by the learned Sessions Judge, to, hence make an order of acquittal, upon, the accused. Even though, for, wants, of, adduction of, afore evidence, the mother of the deceased may not become facilitated, to ingress into the relevant room, existing inside the house of the deceased, yet the prosecution version, vis-a-vis, their occurring, a, scuffle inter se the accused, and, the deceased, did necessitate, the emergence of outcries from the deceased, and, theirs

being heard by the mother, of, the deceased, and, thereupon, at least the latter became amenable to be sighted, as, a prosecution witness. However, even though, the afore proposition put forth by the prosecution, though may not be prima facie sustainable, through, any firm evidence, in consonance therewith hence existing on record, nonetheless any failure(s) of the afore proposition, as, projected by the prosecution would not per se set at naught, the, charges framed against the accused. The reason for making the afore inference stand rested, upon, the report of the FSL, borne in Ex.PW19/F, wherein, it becomes unraveled, vis-a-vis, the blood sample, of, the deceased being found to contain 247.80 mg% alcohol, and, thereupon, per se, it appears that the accused was in a highly inebriated state, and, hence, became defacilitated to raise shrieks and cries, upon, his becoming belaboured by the accused. The concomitant corollaries thereof, are vis-a-vis, the mother, of, the deceased neither sighting the occurrence of the incident, hence, on the relevant day, nor hers hearing any purported shrieks and cries, as, purportedly emanated, from, the room of the deceased, whereat his dead body was found. Reiteratedly, the further apt sequitur therefrom is qua hers neither being an

eye witness, vis-a-vis, the relevant occurrence, nor a material witness to the prosecution case, and, any omission to cite her as a prosecution witness, hence, not causing any fatal damage, to, the charges framed against the accused.

9. It appears that hers being sighted in the courtyard of the house of the deceased, rather on the day succeeding, the fateful day, was but a sequel, of, a false intimation, vis-a-vis, cause of the demise, of, the deceased hence becoming purveyed to her by the accused. Furthermore, it also appears that the afore false intimation, vis-a-vis, the reason for the demise of the accused, as, made, by the accused, to the mother of the deceased, was made only on the day succeeding the fateful day, and, was obviously made, to, camouflage the genuine incriminatory reason, for, the occurrence of the demise, of, the deceased.

10. The overturning, vis-a-vis, the depositions of PW-3, and, of, PW-4, hence by the learned Sessions Judge, in his, hence, making an order of acquittal, upon, the accused, is, also unworthy of merit, as both the afore are witnesses to disclosure statement, as, borne in Ex.PW4/A, and, as become made by the accused to the police, and, in

pursuance whereto, recovery of weapon of offence, borne in Ex.P-5, became effectuated through recovery memo, borne in Ex.PW3/B, and, whereon(s) both PW-3 and PW-4 hence appended their signatures. It appears that the learned Sessions Judge, in discarding the probative efficacy, of, the depositions of PW-3 and PW-4, hence, has hinged his reasoning, upon, both the witnesses resiling from their previous statements recorded in writing. The resting(s) by the learned Sessions Judge, of, the afore reasoning, upon, the factum of PW-3 and PW-4, respectively renegeing from their previous statements recorded in writing, is, legally fallible, and, concomitantly unworthy of acceptance, by this Court, inasmuch, (a) both PW-3 and PW-4 make categorical admission(s) in their respective depositions, vis-a-vis, each appending their signatures, on, the relevant memos; (b) both make confident echoings, vis-a-vis, theirs not becoming pressurised by the police, hence, to append their signatures thereon(s). The concomitant effects, of, the afore admissions, as, made by both PW-3 and PW-4, is qua the mandate of Sections 91, and, 92, of, the Indian Evidence Act, becoming operationalised, and, with the latter provisions rather barring the receipts of oral

evidence, in digression(s), vis-a-vis, the proven authentic signed recital(s), as, borne in the apposite memos, and, whereon(s), their proven authentic signatures stand borne/appended, (a) thereupon, this Court becoming estopped to rely, upon, their respective oral digressions, vis-a-vis, theirs voluntarily authored, hence through their proving all apposite signed recitals, rather as become borne in Ex.PW4/A, Ex.PW3/A, Ex.PW3/B, and, in Ex.PW3/C, (b) conspicuously, and, reiteratedly when each of them, in their depositions, respectively make hence with complete firmness, and, formadibility, rather echoings, vis-a-vis, theirs appending their signatures thereons rather voluntarily, and, without any pressure becoming exerted upon each by the police, hence, concomitantly, the defence becomes estopped, to coax, this Court to rely, upon, their oral digressions, vis-a-vis, the apposite voluntarily recorded recitals, as, respectively made by PW3, and, PW-4, hence as marginal witnesses, to, the apposite memos. In summa, all the recitals, borne in Ex.PW4/A, Ex.PW3/A, Ex.PW3/B and Ex.PW3/C carry, the, fullest evidentiary weight, thereupon, the guilt of the accused becomes pronounced with aplomb, as, her thumb impression(s), rather borne thereon, remain undenied by

her, whereupon, she becomes estopped to challenge the truth or veracity, of, the recitals as become borne, in, the afore memos, wherethrough, she enabled the efficacious recoveries, of, the apposite incriminatory articles.

11. The afore efficaciously proven links, in, the chain of the circumstances, do clinchingly nail the guilt of the accused. Further thereonwards, the apt effect(s), of, the recovery, of, the carry bag of the accused, carrying therein(s) her belongings, hence, from the house, of, the deceased, and, made under memo Ex.8/A, though became reneged by witness thereto. However, the effect, if any, of the witnesses to Ex.PW8/A, making minimal digression, from the recitals, borne, in, Ex.PW8/A, becomes starkly subsided, given his, in his examination-in-chief, making clear echoing(s), vis-a-vis, his authentic signatures becoming borne therein, (i) and, whereupon, his minimal digression(s), appertaining to narrations or echoings, borne therein, rather being purportedly contrived or invented, at the instance, of, the Investigating Officer, all lose their efficacy, (ii) as the mandate borne in Section 91 and Section 92, of, the Indian Evidence Act, estops him as also this Court to rely, upon, the afore deviations or departures, vis-a-vis, proven through his admitted

signatures, hence, all recitals, as, become borne in Ex.PW8/A. The further erectable inference therefrom is qua the making, of, efficacious recoveries of the personal belongings, of, the accused, from inside the house of the deceased, and, through the validly proven recovery memo, Ex. PW8/A, rather being suggestive, vis-a-vis, her presence inside, the, house of deceased, rather on the fateful day, (iii) AND unless evidence, was, brought froth hence suggestive that rather on a day before the ill-fated day, she left it thereat or had led firm evidence suggestive, qua it becoming planted thereat or had proceeded to deny the authenticity of her thumb impression(s) rather borne on Ex.PW8/A, evidence whereof is starkly amiss, thereupon, the defence becomes disabled, to, negate, the therefrom, ensuring inference, of, the guilt of the accused. Since, one of the afore, capitalisable defences hence became canvassed by the accused, thereupon, combining the afore inference, vis-a-vis, the immediately preceding thereto inference, hence, garner an inference qua hers being guilty, of, the charge put to her.

12. More so, the absence of blood stain(s) either on the weapon of offence, Ex.P-5, and, upon, the piece of cloth, used by the accused to wipe the blood stains, upon,

Ex.P-5, is also inconsequential, as, the afore formidable inference(s), per se, do render, the charges to hence become efficaciously proven against the accused. The postmortem report borne in Ex.PW19/B, carries the hereinafter extracted communication(s):-

“In our provisional opinion the cause of death in this case is irreversible hemorrhagic shock as a result of injuries described herewith, all injuries described are antemortem in nature and caused by blunt weapon. However, final opinion will be given after receipt of chemical examiner report”

Upon the weapon of offence being shown to the author, of, Ex.PW19/B, the latter opined qua the injuries existing, on the dead body of the deceased, hence becoming causable with its user, whereupon, the apt harmony inter se medical evidence, and, the afore links, hence, becomes firmly proved. However, in his cross-examination, no suggestion became put to him, hence suggestive, vis-a-vis, the injuries being causable by fall, given, the highly inebriated condition of the accused. The omission(s), of, meteings, of, afore suggestion to PW-19, has, a, telling effect, vis-a-vis, the accused also not carrying forth any plausible defence, vis-a-vis, the inebriated condition, of, the accused hence leading to his fall, and, thereupon(s),

injuries as become pronounced in the postmortem report rather becoming, gained thereons. Since, all the afore links in the chain of circumstantial evidence, clinchingly prove the guilt of the accused, thereupon, even if the motive, if any, attributed to the accused, for, murdering the deceased, may not become clinchingly proven, thereupon, also the charge against the accused does not falter. Consequently, this court concludes that the prosecution has proved the guilt, of, the accused beyond all reasonable doubt.

13. For the reasons which have been recorded hereinabove, this Court holds that the learned trial Court, has not appraised, the entire evidence on record in a wholesome and harmonious manner, apart therefrom, the analysis of the material, on record, by the learned trial court, hence, also suffers from a gross perversity or absurdity of mis-appreciation, and, non appreciation of germane thereto evidence, on record.

14. Consequently, the instant appeal is allowed, and, the judgment impugned before this Court is set aside. In sequel, accused/respondent is convicted for hers committing offences punishable under Section 302, and, under Section 201 of the IPC. The accused/convict be

produced before this Court on **14<sup>th</sup> September, 2020** for  
hers being heard on quantum of sentence.

**(Sureshwar Thakur)**  
**Judge**

**(Chander Bhusan Barowalia)**  
**Judge.**

**31<sup>st</sup> August, 2020.**  
**(jai)**

High Court of HP