

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. D-289-DB of 2003

Date of Decision : December 19, 2015

Pavitar Singh

.....Appellant

VERSUS

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE GURMIT RAM**

Present : Mr. D.S. Pheruman, Advocate
for the appellant.

Mr. S.S. Dhaliwal, Additional Advocate General, Punjab.

T.P.S. MANN, J.

The appellant, along with Daljit Kaur, was tried for committing offences punishable under Sections 302/34 IPC for committing the murder by intentionally causing the death of Rajwant Kaur alias Gorkhi on 1.5.1999 in the area of village Kotli Surat Malhi. Vide impugned judgment and order dated 11.3.2003, learned Sessions Judge, Gurdaspur acquitted accused Daljit Kaur of the charges framed against her, whereas the appellant was held guilty under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.

According to the prosecution, on 1.5.1999 at 9.30 a.m.

Surjit Kaur, mother of deceased Rajwant Kaur alias Gorkhi made statement Ex.PD before SI Kulbir Singh, Station House Officer, Police Station Kotli Surat Malhi, wherein she stated that she was resident of village Dhesian and a house wife. She had six daughters. Out of them, Rajwant Kaur alias Gorkhi was married with Suba Singh alias Babu son of Bachan Singh, caste Jat, resident of village Kotli Surat Malhi about 12/13 years back. After about nine years, Rajwant Kaur alias Gorkhi gave birth to a son. Six months after the birth of the child, Suba Singh expired. The complainant re-married her daughter with her devar Pavitar Singh alias Neetu, brother of Suba Singh. Her daughter used to apprise her after coming to village Dhesian that her husband had illicit relations with his brother's wife Daljit Kaur and both of them used to harass and beat her. Daljit Kaur used to threaten her by saying that she would not allow her to settle in the house of Pavitar Singh. The complainant would console her daughter that since her husband had already died, she should somehow or the other adjust herself in the house of Pavitar Singh. On 1.5.1999 at about 7.00 a.m. when the complainant was present in her house, she learnt that her daughter Rajwant Kaur alias Gorkhi had been killed during the night by her husband Pavitar Singh and her brother-in-law's wife Daljit Kaur. Accordingly, the complainant, along with her husband Harbans Singh, brother-in-law Virsa Singh and son-in-law Karamjit Singh reached the house of her daughter in village Kotli Surat Malhi. The dead body of her daughter was lying on a cot. There were marks of rope on her neck.

She was also having abrasions on the right lower leg and left ankle. There were reddish brown abrasions on her back and left cheek. She was firmly of the belief that her daughter Rajwant Kaur alias Gorkhi had been killed by her husband Pavitar Singh and her husband's elder brother's wife Daljit Kaur by strangulating her and also by inflicting her injuries. She, accordingly, prayed for taking legal action against the accused.

After making endorsement Ex.PD/1 on the statement Ex.PD made by complainant Surjit Kaur, SI Kulbir Singh forwarded it to Police Station Kotli Surat Malhi where on its basis FIR Ex.PD/2 under Sections 302/34 IPC was registered on 1.5.1999 at 10.30 a.m by ASI Gurmit Singh, which was completed at 11.25 a.m.

During the investigation of the case, SI Kulbir Singh inspected the spot in village Kotli Surat Malhi and prepared inquest report Ex.PF on the dead body of Rajwant Kaur alias Gorkhi. The dead body was, thereafter, sent for post-mortem to Civil Hospital, Batala. The dead body was, thereafter, subjected to autopsy by PW1 Dr. Kulwant Kumar Singh, Medical Officer, Civil Hospital, Batala on 1.5.1999 at 5.45 p.m. and following injuries were noticed on the dead body:-

- “1. Ligature mark reddish brown in colour, 25 x 1½ cms. on the upper part and front of neck. Went upto laterally 3½ cms. below the left ear, 3½ cms. below the right ear. Lies transversely, knot was on right side.

On dissection, underlying subcutaneous tissue

was ecchymosed. Clotted blood was present around the vessels.

2. Reddish brownish colour 7 x ¼ cm. on the front and lower part of right leg.
3. Reddish brownish abrasion 5 x 2 cms. on the outer side of right ankle joint.
4. Reddish brownish abrasion 2 x 1 cm. on the lateral side of left wrist joint.
5. Reddish brownish abrasion 2 x 1 cm. on the back of right scapula."

In the opinion of the doctor, the cause of death was due to asphyxia. All the injuries were ante-mortem and were sufficient to cause death in ordinary course of nature. Probable time elapsed between injury and death was immediate and between death and post-mortem it was within twenty four hours.

During further investigation, SI Kulbir Singh took into possession one plastic string Ex.P1, measuring 5 feet from near the dead body, one gold ear ring lying near the feet of the deceased under the cot with words 'DK' inscribed on the same, prepared rough site plan Ex.PK of the recovery, took into possession one shirt Ex.P3 and salwar Ex.P4 of the deceased, arrested the accused on 2.5.1999 and recovered one gold ear ring Ex.P5 with words 'DK' inscribed on it from accused Daljit Kaur.

Upon completion of investigation and presentation of challan, followed by commitment of the case, the appellant and his co-

accused Daljit Kaur were charged for the offences under Sections 302/34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Dr. Kulwant Kumar Singh, who deposed about conducting autopsy on the dead body of Rajwant Kaur alias Gorkhi on 1.5.1999 at 5.45 p.m.

PW2 Janak Singh Dhanjal, Draftsman proved scaled site plan Ex.PB prepared by him after visiting the spot and on the pointing out of complainant Surjit Kaur on 16.5.1999.

PW3 HC Kuldip Singh tendered in evidence his affidavit Ex.PC to the effect that the shirt and salwar of the deceased were handed over to him by the doctor after conducting autopsy which he further handed over to SI Kulbir Singh on 1.5.1999.

PW4 Surjit Kaur, mother of deceased Rajwant Kaur alias Gorkhi, reiterated what she had earlier stated before SI Kulbir Singh in her statement Ex.PD.

PW5 MHC Sohan Lal tendered in evidence his affidavit Ex.PE wherein he testified about keeping the case property in the Malkhana.

PW6 SI Kulbir Singh deposed about various steps taken by him during the investigation of the case.

PW7 Constable Gurnam Singh tendered in evidence his affidavit Ex.PN to the effect that on 1.5.1999 he had taken special report and delivered the same to the Ilaka Magistrate, Batala and to

the Senior Police Officers.

PW8 Harbans Singh, father of deceased Rajwant Kaur alias Gorkhi corroborated the testimony of his wife PW4 Surjit Kaur.

When examined under Section 313 Cr.P.C., the appellant pleaded that he was innocent. According to him certain unknown and unidentified persons had killed the deceased. When he went to report the matter to the police, he was detained and falsely implicated in the case. To the same effect was the plea of accused Daljit Kaur. However, no evidence was led by them in their defence.

After hearing learned counsel for the parties and on going through the evidence brought on the record, the trial Court doubted the involvement of accused Daljit Kaur in the commission of the crime and, accordingly, acquitted her of the charge against her. However, the prosecution case against the appellant was held to be credit-worthy and, accordingly, he was convicted and sentenced, as mentioned above.

Having heard learned counsel for the parties and on going through the evidence with their able assistance, this Court finds that deceased Rajwant Kaur alias Gorkhi was earlier married to Suba Singh alias Babu and after about nine years of the said marriage, the couple was blessed with a child. However, six months later, Suba Singh alias Babu expired. Suba Singh's elder brother was Mangal Singh, whose wife Daljit Kaur was co-accused of the appellant. According to the prosecution though after the death of her husband Suba Singh,

Rajwant Kaur alias Gorkhi was married to the appellant, who was her devar but the appellant used to have illicit relations with Daljit Kaur wife of his elder brother Mangal Singh. Apparently, the deceased must have objected to her husband Pavitar Singh having illicit relations with his elder brother's wife and for that reason, the accused used to harass and beat her. The deceased had been apprising her parents about the relationship of her husband with his sister-in-law but her parents had been consoling her by stating that since her husband had already died, she should somehow adjust herself in the house of her second husband, i.e. the appellant. So much so that even Daljit Kaur used to tell the deceased that she would not allow her to live with the appellant. Thus, the appellant had reason to commit the murder of his wife so that nothing came in between him and his elder brother's wife in having illicit relations.

It was the case of the prosecution that on 1.5.1999 at about 7.00 a.m. the parents of the deceased learnt in their native village Dhesian that their daughter had been killed during the night by her husband Pavitar Singh and elder brother-in-law's wife Daljit Kaur. Accordingly, PW4 Surjit Kaur, mother of the deceased and PW8 Harbans Singh, father of the deceased came to the maternal home of their daughter and on reaching there, saw her dead body lying on a cot. Both of them noticed ligature mark on her neck and also marks of injuries on other parts of her body. From near the dead body, plastic string Ex.P1 measuring about 5 feet was recovered by PW6 SI Kulbir

Singh vide memo. Ex.PH. After preparing inquest report Ex.PF SI Kulbir Singh sent the dead body for post-mortem to Civil Hospital, Batala for post-mortem. PW1 Dr. Kulwant Kumar Singh while conducting post-mortem noticed ligature mark, reddish brown in colour, measuring 25 x 1½ cms., 3½ cms. below the left ear and 3½ cms. below the right ear. It was placed transversely with a knot on the right side. Apart from the ligature mark, reddish brownish abrasions, four in number, were noticed on the front of lower part of right leg, outer side of right ankle joint, lateral side of left wrist joint and back of right scapula. In the opinion of Dr. Kulwant Kumar Singh, the cause of death was asphyxia. Further, all the injuries were ante-mortem in nature and also sufficient to cause death in ordinary course of nature. Going by the ligature mark being transversely placed and on the upper part and front of neck, which was 3½ cms. below the left ear and 3½ cms. below the right ear, it can safely be concluded that the death of Rajwant Kaur alias Gurkhi was homicide and not suicidal. Learned defence counsel tried to build the theory of commission of suicide by hanging on account of the ligature mark being in the upper part of the neck. However, merely because the ligature mark was in the upper part of the neck is not indicative of the fact that the death was on account of commission of suicide by hanging, especially when the ligature was transverse in nature and 3½ cms. below left ear and again 3½ cms. below the right ear. Even otherwise, during his examination under Section 313 Cr.P.C., the appellant in reply to question No.11 had stated

that his wife had been killed though according to him it was act of certain unknown and unidentified persons. Further more, the appellant admitted that after the death of her first husband, Rajwant Kaur alias Gurkhi deceased had married him. When the appellant and the deceased were living under one roof and there is no material on the file to indicate if some stranger had entered the house, the appellant was under a duty to explain as to under what circumstances his wife had died. There is no explanation whatsoever by the appellant in that regard.

It is true that none had seen the actual occurrence in which Rajwant Kaur alias Gurkhi had died on account of strangulation. However, from the very beginning PW4 Surjit Kaur and PW8 Harbans Singh, mother and father, respectively of the deceased, had pointed out the accusing finger towards the appellant. On 1.5.1999 at about 7.00 a.m., both of them while present in their native village Dhesian, started for the house of the accused where they reached at about 8.00 a.m. On seeing the dead body of their daughter lying on a cot with ligature mark around her neck and injuries on other parts of the body, Surjit Kaur suffered statement Ex.PD before SI Kulbir Singh on 1.5.1999 at 9.30 a.m. On its basis, FIR Ex.PD/2 came to be registered on 1.5.1999 at 10.30 a.m. and completed at 11.25 am. Special report sent through PW7 Constable Gurnam Singh was received by the Ilqa Magistrate during the same evening at 7.10 p.m. The prompt reporting of the matter to the police rules out any deliberation and manipulation

by the complainant party.

In view of the above, no case is made out for any interference in the impugned judgment passed by the trial Court while convicting and sentencing the appellant.

The appeal is without any merit and, therefore, dismissed.

**(T.P.S. MANN)
JUDGE**

**(GURMIT RAM)
JUDGE**

December 19, 2015
satish