

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-1073-DB of 2009

DATE OF DECISION: FEBRUARY 10, 2015

BALJINDER SINGH

...APPELLANT

VERSUS

STATE OF HARYANA

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. KANWALJIT SINGH, SR.ADVOCATE
WITH MR. B.B.S.RANDHAWA, ADVOCATE
FOR THE APPELLANT.

MS. TANISHA PESHAWARIA, DAG, HARYANA.

MR. R.K.AGNIHOTRI, ADVOCATE FOR THE COMPLAINANT.

M. JEYAPPAUL, J.

1. Accused Baljinder Singh, the husband and accused Kuldeep Kaur, the mother-in-law of deceased Jasbeen Kaur @ Jyoti faced the trial before the trial Court under Section 304-B/302 IPC. Accused Kuldeep Kaur was acquitted of the charge under Section 302/304B IPC. Accused Baljinder Singh who was convicted under Section 302 IPC has challenged the judgement of conviction and sentence passed by the trial Court.

2. PW11 Harinder Pal Singh was the uncle of the deceased Jasbeen Kaur @ Jyoti. He set the law in motion by lodging the first information report alleging that accused Baljinder Singh who married Jasbeen Kaur @ Jyoti on 22.11.2000 pressurized her to bring money from her parents. About six months prior to the occurrence, accused Baljinder

Singh gave beatings to his wife, deceased Jasbeen Kaur @ Jyoti, as a result of which she left for her parents' house at Alwar. The accused proceeded to Alwar and beat his wife. The father of the deceased lodged a complaint with Mahila Mandal, Alwar. Thereafter, Jasbeen Kaur @ Jyoti was sent back to her matrimonial house on the assurance of the father of accused Baljinder Singh. But accused Baljinder Singh went on beating his wife. On 20.2.2007, PW11 received a call from the neighbour that Jasbeen Kaur @ Jyoti had died.

3. PW6 Dr.Ramesh Kumar alongwith Dr.Vineet Gupta conducted post mortem examination on the dead body of Jasbeen Kaur on 21.2.2007 at 12.00 noon and found that there was a ligature mark of 15cms x 1.5cms to 1.2cms broad in length starting from 2cms from right side of midline and 2.5cms behind chin extending towards left side of the neck. On dissection, he found the underlying tissue was pale and glistening. There was no mark of any other external injury on the person on the dead body. In his opinion, Jasbeen Kaur died due to asphyxia on account of hanging which was ante mortem in nature and sufficient to cause death in the normal course of life. In his cross-examination, he was definite that it was not a case of death by strangulation, but it was a case of death by hanging.

4. PW9 Dr.Basant Lal Sirohiwal alongwith Dr.P.K.Paliwal conducted re-post mortem examination in the aftermath of the complaint lodged by the complainant on 22.2.2007 on the dead body of Jasbeen Kaur @ Jyoti and found the following external and internal injuries:-

“External injuries:-

1. Ligature mark partly stitched which was cut by the

earlier autopsy surgeon on left side of neck situated in transverse fashion on left side 8 cms. below the left side mastoid process and then going backwards horizontally situated 10.8 cms below the external occipital protuberance. The ligature on the back of the neck was more prominent on left side as compared to right side. In frontal aspect the ligature mark was situated just below the thyroid prominence. The width of the ligature mark was 1-1.5 cms. at places. The underneath tissues were ecchymosed more so on the left side. The trachea was congested and inner of the thyroid cartilage area above trachea was showing haemorrhage spots.

2. *Contused abrasion situated on the upper middle aspect of right neck just below the chin 4 x 2.5 cms with effusion underneath reddish bluish in colour.*

3. *Contusion 6 x 4.5 cms situated on the front middle aspect of scalp 5 cms above the hair line more so in the left side. Underneath scalp was showing reddish bluish effusion of blood.*

4. *Contusion 4 x 1.5 cms situated on the outer middle aspect of left arm obliquely placed, reddish bluish in colour.”*

Internal injuries:-

The scalp was found stitched over the forehead region along the hair line. Skull was not found opened by the earlier autopsy. The scalp was showing effusion of blood below injury No.3. The brain was found normal. The cartilages were found cut open by earlier autopsy. The larynx and trachea were

congested. Both the lungs were congested. The abdomen was not opened completely only skin was found cut and stitched. All the organs were not opened in the earlier autopsy except the liver which was showing a cut. The stomach was containing 150 cc. Of muscoid fluid and gases. Mucosa was healthy. The stomach was not opened by the earlier dissection. The small intestines were containing digested food material and gases. Walls were normal. Large intestines were containing faecal matter and gases and walls were normal. Liver, spleen and kidneys were found congested and healthy. The bladder was containing clear urine and walls normal. Organs of general were found normal and uterus was showing menstruation blood.”

5. As per the opinion of PW9 Dr.Basant Lal Sirohiwal, Jasbeen Kaur had died due to constricted force around the neck by the ligature which was ante mortem and recent in duration. All the injuries also were ante mortem and recent in duration.

6. PW10 Jagjit Singh who was the neighbour of accused Baljinder Singh deposed that on the fateful day, he found someone knocking at the doors of Baljinder Singh at about 11.00 a.m. Deceased Jasbeen Kaur was inside the room. People were calling her out. Thereafter, somebody broke the latch key on the inner side of the door with a brick-bat and opened the house. He, alongwith other persons collected over there, witnessed Jasbeen Kaur @ Jyoti hanging from ceiling fan with duppatta.

7. PW12 Charanjit Singh was the brother of the deceased. He

also spoke about the cruel treatment meted-out to his sister at the hands of the accused Baljinder Singh. As the accused used to give beatings to Jasbeen Kaur @ Jyoti, his father and sister complained to Mahila Mandal, Alwar, he has deposed.

8. PW17 Anju Sharma was the Counselor, Women Counselling and Protection Centre, Ajmer. She spoke about the complaint Ex.PV received from Jasbeen Kaur against her husband Baljinder Singh. Baljinder Singh did not turn up for enquiry in spite of the notice, she has deposed. Ex.PV would disclose that Jasbeen Kaur was under tremendous pressure on account of the beatings given by the accused. She apprehended danger to her life. As her husband was an angry, cruel and quarrelsome person, he may even kill her, she had alleged.

9. In the statement under Section 313 Cr.P.C., accused Baljinder Singh contended that he was innocent and a false case was foisted on him. He lived alongwith his wife and children on the first floor of the house. Being highly sensitive, Jasbeen Kaur felt depressed as she was not blessed with any son whereas, she was blessed only with two daughters. Her parents got her treated for depression at Alwar.

10. The trial Court having adverted to the evidence on record, chose to convict accused Baljinder Singh under Section 302 IPC.

11. Mr. Kanwaljit Singh, learned senior counsel appearing for the appellant, would vehemently submit that there are two self-contradictory medical opinions on file; one report would disclose that it was a case of hanging while the other report would disclose that it was a case of strangulation to death. The report which is beneficial to the accused, in

such circumstances, will have to be considered by the Court. Referring to the evidence of PW11 and PW12, he would submit that the deceased was under depression and was taking treatment. Referring to the evidence of PW10 Jagjit Singh, he would submit that the appellant lived with his wife happily. A case of suicide was portrayed as a case of strangulation to death. Therefore, it is his submission that the accused is entitled to acquittal.

12. Learned DAG for the State of Haryana would vehemently submit that the evidence of PW9 Dr.Basant Lal Sirohiwal would go to establish that it was a case of strangulation. Referring to the evidence of PW11 and PW12, in the background of Ex.PV marked through PW17 Anju, she would submit that the accused who was an angry man used to beat his wife Jasbeen Kaur. Their evidence would support the medical evidence that the victim was strangled to death. Therefore, the trial Court has rightly convicted the accused under Section 302 IPC, she submitted further.

13. Beforever taking up the diametrically opposite medical opinions expressed by PW6 Dr.Ramesh Kumar and PW9 Dr.Basant Lal Sirohiwal in their respective post mortem reports, let us first deal with the evidence of PW10 Jagjit Singh which throws some light on the fact situation. PW10 was a neighbour to accused Baljinder Singh. He found some people knocking at the door of accused Baljinder Singh. People started calling out Jasbeen Kaur who was inside the house. As there was no positive response from inside the house, someone managed to open the door by breaking the latch key on the inner side with a brick-bat. Thereafter, all of them entered into the house and found Jasbeen Kaur @ Jyoti hanging from a ceiling fan with duppata.

14. It is to be noted that the above version of PW10 that Jasbeen Kaur was found hanging from a ceiling fan with a duppata was not at all challenged by the prosecution. We also note the stand of the prosecution that it was a case of strangulation to death. In other words, it is not the version of the prosecution that Jasbeen Kaur was first strangled to death and thereafter she was hanged from the ceiling fan with a duppata.

15. It is also very much important to refer to the evidence of PW16 Inspector Madan Lal who admitted that a brick Ex.P26 and a hook Ex.P27 were recovered from the scene of the crime. The above evidence would categorically disclose that the accused was not inside the house, whereas victim Jasbeen Kaur having locked the house from inside was found hanging from a ceiling fan with a duppata. The above unassailable testimony adduced on the side of the prosecution, goes to fortify the opinion expressed by PW6 Dr.Ramesh Kumar.

16. PW9 had noted down certain injuries on the person of the deceased. Those injuries might have been given by the accused Baljinder Singh or the same might have been sustained by the victim in the process of dropping the dead body from the ceiling fan. PW9 has come to a conclusion that it was a case of strangulation by hand, only based on the ligature mark found transversely over the neck. Even in a case of hanging, ligature mark running transversely cannot be completely ruled out. Further, in a case of strangulation, nail impression would be found near the neck as the victim would have struggled to wriggle out of the manual strangulation. PW9 would categorically admit that there was no finding given by him that there was any finger impression near the neck except the ligature mark and a

contusion below the chin.

17. In view of the above, we have no hesitation to come to a conclusion based on the evidence of PW6 Dr.Ramesh Kumar, in the background of corroborative evidence of PW10 Jagjit Singh, that it was a case of suicide by hanging.

18. The Court will have to find out whether there was any abetment on the side of accused Baljinder Singh driving the victim to commit suicide by hanging. The evidence of PW11 and PW12, the uncle and brother of the deceased, would go to establish that accused Baljinder Singh had treated his wife cruelly. The documentary evidence Ex.PV exhibited through PW17 Anju would go to establish that the victim, about 6 months prior to the occurrence, lodged a complaint to the Officer Incharge of Women Counselling and Protection Centre, Alwar, alleging that her husband used to beat her in closed room. She was leading the life with great hardship. She apprehended danger to her life at the hands of accused Baljinder Singh who was an angry, cruel and quarrelsome person.

19. The evidence of PW11 and PW12, corroborated by the documentary evidence Ex.PV, cannot be ignored by the Court. The above evidence would establish without any pale of doubt that the accused had infact beaten his wife mercilessly and abetted her to commit suicide.

20. Of course, even as per the own version of the victim, she was under depression on account of the drugs administered to her by her husband. In our view, there is no evidence to show that the depression was the cause for the suicide committed by the victim. Even otherwise, accused Baljinder Singh was the root cause for the depression encountered by the

victim. Therefore, we have no hesitation to hold, based on the above evidence on record, that the prosecution has established beyond reasonable doubt that accused Baljinder Singh abetted his wife Jasbeen Kaur to commit suicide.

21. The complainant had also filed an affidavit to the effect that accused had taken care of children left behind by the deceased. In other words, the complainant had struck a compromise with the accused. Therefore, in our view, minimum sentence for the offence under Section 306 IPC would meet the ends of justice.

22. In view of the above, the judgment of conviction and sentence passed by the trial Court as against the accused-appellant under Section 302 of the Indian Penal Code stands set aside. Instead, he is convicted under Section 306 of the Indian Penal Code and sentenced to 5 years, 8 months and 22 days which is the period already undergone by him. The fine and the default sentence imposed for the offence under Section 302 of the Indian Penal Code by the trial Court is maintained for the offence under Section 306 IPC under which the appellant has been convicted by this Court. With the above modification in the matter of conviction and sentence, the appeal is partly allowed. On payment of fine, the accused be released forthwith if his custody is not required in connection with any other case.

(M. JEYAPPAUL)
JUDGE

February 10, 2015
Gulati

(DARSHAN SINGH)
JUDGE