

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Crl. Appeal No.D-993-DB of 2004 (O & M)
Date of Decision: 06.02.2015

Hardev Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. Sanjiv Sharma, Advocate (Amicus Curiae)
for the appellant.

Ms. Rajni Gupta, Additional AG, Punjab
for the State.

S.S. SARON, J.

This appeal has been filed by Hardev Singh-appellant against the judgment and order dated 25.10.2004 passed by the learned Sessions Judge, Amritsar whereby the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code ('IPC'-for short) and sentenced to undergo life imprisonment; besides, pay a fine of Rs.5000/- and in default thereof to undergo rigorous imprisonment for two years.

FIR (Ex.PH/2) has been registered on the statement (Ex.PH) of Jasbir Kaur (deceased) recorded on 20.07.2001 by SI Surjit Singh (PW-12) at Guru Ram Dass Hospital, Amritsar in the presence of Dr. Nitin Arora (PW-10). According to Jasbir Kaur, she was a resident of Shaheed Udham Singh Nagar, Amritsar and did the work of embroidering 'dupatas' (veils). A period of about 18 years had lapsed since she was married. She had two sons

and one daughter (Harpreet Kaur PW-7). Her husband Hardev Singh (appellant) was habitual in consuming intoxicating tablets, alcohol and other intoxicants. He used to often fight with her. A day earlier to her statement i.e. on 19.07.2001, it was at about 10.00 am during the day, she and her daughter (Harpreet Kaur PW-7) were present at their home. At that time, her husband (appellant) came from outside and started beating her. Her daughter was saving her (Jasbir Kaur) from him but he did not leave her. Then the husband of Jasbir Kaur took out poisonous medicines from his pocket and forcibly put them in her mouth and closed her mouth with his hands. On this Jasbir Kaur fainted and she did not know who brought her to the hospital. She stated that her husband had forcibly administered poisonous tablets and attempted to kill her. Legal action was asked to be taken against him. The statement was signed by Jasbir Kaur in English and attested by Inspector Surjit Singh (PW-12), who was posted as Sub Inspector, Police Station B-Division, Amritsar. The statement was recorded in the presence of Dr. Nitin Arora (PW-10). Police proceedings were recorded by SI Surjit Singh (PW-12) on 20.07.2001 to the effect that on the said date, he along with HC Major Singh, Constable Jatinder Singh and SPO Tarsem Singh had come to Guru Ram Dass, Hospital, Amritsar for recording the statement of Jasbir Kaur. A written application (Ex.PJ) was submitted to the doctor as to whether the injured was fit to make a statement or not. On this, Dr.Nitin Arora (PW-10) vide endorsement Ex.PJ/1 declared that the injured was fit to

make a statement. SI Surjit Singh (PW-12) in the presence of the doctor recorded the aforesaid statement of Jasbir Kaur, which was read over and explained to her. She after admitting the same as correct, signed it in English. From the statement, offence under Section 307 IPC was found to be made out. For registration of a case, the writing was sent through Constable Jasbir Singh to the police station. After registering the case, the number was asked to be intimated and special reports were asked to be sent. The SHO of police station was asked to be informed through the control room on wireless. SI Surjit Singh (PW-12) proceeded to the spot where the incident had occurred along with the police officials. The writing was recorded at the boundary of Guru Ram Dass Hospital, Amritsar at 11:40 am on 20.07.2001. On receipt of the report, FIR No.113 dated 20.07.2011 (Ex.PH/2) was registered at Police Station, B-Division, Amritsar.

SI Surjit Singh (PW-12) went to the place of occurrence along with Harpreet Kaur (PW-7), the daughter of the appellant and Jasbir Kaur (complainant) and inspected the spot. Rough site plan (Ex.PL/1) with correct marginal notes was prepared. The statement of Rashhpal Singh (PW-8), brother of Jasbir Kaur was recorded at the spot. On return to the police station, SHO was apprised of the facts and the file was handed over to him. SI Swaran Singh (PW-11) was posted as SHO Police Station B-Division, Amritsar on 22.07.2001. On that day, he received a telephone message from Guru Ram Dass Hospital, Amritsar regarding the death of Jasbir Kaur. He (PW-11) then

visited the hospital where inquest report (Ex.PK) in respect of the dead body of Jasbir Kaur was prepared. The dead body along with police request (Ex.PK/1) was sent for postmortem examination through Constable Virsa Singh and HC Tarsem Singh. Later, the postmortem report was produced before him (PW-11) by HC Tarsem Singh, which was taken in possession along with the clothes of the deceased after making a parcel of the same. The clothes were 'Kamij' (Ex.P1) and 'salwar' (Ex.P2); besides, an iron 'karra' (Ex.P3). The parcel was sealed with seal bearing impression 'SS' and was taken in possession vide memo Ex.PF. The parcel with seals intact was deposited in the police station on the same day. Hardev Singh (appellant) was arrested on 22.07.2001. Statement of formal witnesses were recorded upto 10.08.2001. After completion of the investigation, police report (challan) was presented by Major Singh, Inspector in the Court.

The learned Chief Judicial Magistrate vide order dated 3.12.2011 found a prima facie case punishable under Section 302 IPC to be made out against the appellant. The case was accordingly committed to the Court of Session, Amritsar for trial. The learned Sessions Judge, Amritsar framed charge against the appellant on 09.01.2002. It was alleged that on 19.07.2001 at about 10.00 am in the area of Shahid Udham Singh Nagar, Amritsar, Hardev Singh appellant did commit murder intentionally and knowingly by causing the death of his wife and thereby committed an offence punishable under Section 302 IPC, which

was within the cognizance of the Court. The appellant, it was directed, be tried by the Court for the said charge. The contents of the charge were read over and explained to the appellant in simple Punjabi which he fully understood. He pleaded not guilty and claimed trial.

The prosecution in order to prove its case examined Dr. Amarjit Singh, Junior Resident, Department of Forensic Medicine, Govt. Medical College, Amritsar (PW-1). He had conducted the postmortem examination on the dead body of Jasbir Kaur on 22.07.2001 at 12.50 pm. It was mentioned that the alleged cause of death of Jasbir Kaur to be due to homicidal poisoning. Bluish discolouration was present on lips and nails. The cause of death was kept pending till the receipt of report from Chemical Examiner to Punjab Government, Patiala. The probable time between death and postmortem examination was within 12 hours. A sealed box containing viscera of the deceased, sample of blood and sample of preservatives addressed to Chemical Examiner, Punjab Government, Patiala was given. Carbon copy of the post mortem report Ex.PA was tendered in evidence. The Chemical Examiner, Punjab in its report Ex.PM opined that organo phosphorous compound, a group of insecticide was found in the contents of exhibits No. I to III i.e. a sealed jar said to contain stomach and its contents as well as piece of small intestine alongwith its contents, a sealed jar said to contain piece of liver, spleen and half of each kidney and a sealed bottle said to contain sample of blood of Jasbir Kaur deceased.

On going through the postmortem report (Ex.PA) and the Chemical Examiner report (Ex.PM), Dr. Amarjit Singh (PW-1) vide report Ex.PB determined that the cause of death of Jasbir Kaur was organo phosphorous compound poisoning which was sufficient to cause death in the ordinary course of nature.

Dr. Arvinderpal Singh, Guru Ram Dass Hospital, Amritsar (PW-2) deposed that on 19.07.2001, he was on duty in ICU at Sri Guru Ram Dass Hospital, Amritsar. On that day, police moved an application (Ex.PC) seeking opinion regarding the condition of Jasbir Kaur patient. On that application, he (PW-2) recorded that the patient was unfit for making statement. Ex.PC/1 was his opinion. A perusal of Ex.PC/1 shows that it was recorded by Dr. Arvinderpal Singh (PW-2) at 11.05 pm that the patient was unfit for making statement and was disoriented and drowsy.

Constable Rajinder Kumar, Police Station, B-Division, Amritsar (PW-3) tendered in evidence his affidavit Ex.PD which is to the effect that on 20.07.2001, ASI Bhagwan Singh of Police Station B-Division, Amritsar (PW-9) had handed over to him special reports of the present case in an enclosed envelope for delivering the same to the Area Magistrate and higher officers which he delivered to the Area Magistrate and higher officials. Then on 22.07.2001 in the present case SI/SHO Swaran Singh (PW-11) had handed over to him special reports in respect of the offence under Section 302 IPC which he delivered in favour of the higher officers and the Judge Sahib well in time.

Constable Virsa Singh, Police Station B-Division, Amritsar (PW-4) tendered in evidence his affidavit Ex.PE which is to the effect that he alongwith HC Tarsem Singh (PW-5) and other officials of the police station were joined in the investigation of the case on 22.07.2001 under SI/SHO Sawran Singh, Police Station B-Division, Amritsar (PW-11). The dead body of Jasbir Kaur was handed over to him and HC Tarsem Singh (PW-5) on 22.07.2001 for getting the postmortem examination conducted. After postmortem examination from Forensic Medicines Department, Amritsar, the dead body was handed over to the heirs of the deceased and viscera of the deceased contained in a parcel duly sealed by using the seal ten times and one parcel in a closed envelope regarding the case of Jasbir Kaur PMR No.AS/FM 2/2001 was obtained and was entrusted to Head Moharrir Constable Mangal Singh. The said parcel containing the viscera along with the closed envelope was given to him on 02.08.2001 by MHC Mangal Singh vide rod No.389/21 after taking it out in an intact condition from the police malkhana for depositing the same in the office of Chemical Examiner, Patiala. After depositing the same with the Chemical Examiner, Patiala on the same day, he delivered the receipt to MHC Mangal Singh. So long as the dead body and viscera of the deceased as also the closed envelope remained with him, he did not tamper with the same nor allowed anyone else to do so.

HC Tarsem Singh, Police Station B-Division, Amritsar (PW-5) tendered in evidence his affidavit (Ex.PF) which is to the

effect that he was a member of the police party along with Constable Virsa Singh (PW-4) and other police officials of the Police Station under SI/SHO Swaran Singh (PW-11) on 22.07.2001. On the said date SI/SHO Swaran Singh (PW-11) had handed over to him (PW-5) and Constable Virsa Singh (PW-4), the dead body of Jasbir Kaur for getting the postmortem examination conducted from the Forensic Medicines Department, Medical College, Amritsar. After getting the postmortem examination of the dead body of Jasbir Kaur, the dead body was handed over to the heirs of the deceased. The clothes of the dead body were converted into a parcel and duly sealed with seal 'SS' of Swaran Singh SI/SHO (PW-11) and sample seal was also prepared and taken in possession vide separate recovery memo. Seal after use was handed over to him (PW-5). The memo was attested by him (PW-5) and Constable Virsa Singh (PW-4). So long as the dead body and the clothes of the dead body remained in his possession, he did not tamper with them nor let anyone else tamper with the same.

Rishi Ram, Draftsman, District Courts, Amritsar (PW-6) prepared the scaled site plan (Ex.PG) at the instance of Harpreet Kaur (PW-7).

Harpreet Kaur (PW-7), daughter of the appellant Hardev Singh and deceased Jasbir Kaur supported the prosecution case. She stated that the family was residing together in the same house. Her father (appellant) was an addict and used to consume liquor daily and also used to consume other

intoxicants. Her mother used to pick up quarrels over trifles. Her father did not give any money to her mother to run the household expenses. She, her mother and father were present in the house on 19.07.2001 at about 10.00 am. Her brother and sister were not present in the house at that time. The appellant immediately on entering the house had started beating her mother. She was requesting him not to beat her and was trying to save her but the appellant did not stop beating her. Then he took out something poisonous from his pocket and forcibly put the same in the mouth of her mother and closed her mouth with his hands. A hue and cry was raised by her. Rashhpal Singh (PW-8) who is her maternal uncle had reached there. He (PW-8) resides at Amritsar. The appellant then fled away. They had taken her mother to Guru Ram Dass Hospital, Amritsar and got her admitted there. Her mother was alive for three days and then she expired. In cross-examination, it is stated that the house of her maternal grand parents was at a distance of 200 yards from their house. Her maternal uncle Rashhpal Singh (PW-8) was residing in that house. She was not studying at the time of occurrence and had stopped her studies after 8th standard about three years back. She was further cross-examined from which no benefit was derived by the appellant.

Rashhpal Singh (PW-8), who is the brother of the deceased Jasbir Kaur, also supported the prosecution case. He stated that the appellant was a habitual drunkard and used to consume other intoxicants. He did not provide any money to his

sister to run the household expenses; besides he used to maltreat and beat her. He was going towards the house of the appellant on 19.07.2001 and when he entered the house, he saw the appellant closing the mouth of his sister with his hands after putting something poisonous in her mouth. Harpreet Kaur (PW-7) his niece was trying to rescue her mother. On seeing him (PW-8), the appellant had run away from the house. Jasbir Kaur, his sister fell unconscious. They rushed her to Guru Ram Dass Hospital, Amritsar where she died after two days. His statement was recorded by the police. The distance between his house and the house of the appellant was about 5 minutes walk on foot. He used to visit the house of his sister off and on in routine. The behaviour of the appellant with his sister was not cordial right from the beginning of the marriage. One day prior to the present occurrence, the appellant had quarreled with his sister. On the date of occurrence also he had visited the house of the appellant and had tried to bring about some settlement between him and his sister. On the day of occurrence, he had gone to the house of his sister to know about the outcome of the compromise effected between her and her husband (appellant). Rashhpal Singh (PW-8) was cross-examined at considerable length. However, the appellant could not derive any benefit from his cross-examination.

ASI Bhagwan Singh (PW-9) was posted at Police Station B-Division, Amritsar on 19.07.2001. On that day, on receipt of information regarding the admission of Jasbir Kaur in

Guru Ram Dass Hospital, Amritsar, he visited the hospital and sought opinion of the Medical officer on duty as to whether Jasbir Kaur was in a fit condition to make her statement. On the police request (Ex.PC), the Medical Officer (Dr. Arvinderpal Singh PW-2) vide his endorsement Ex.PC/1 at 11.05 pm declared her to be unfit to make a statement. Again on 20.07.2001, he was present at the police station. Statement of Jasbir Kaur, which was recorded by SI Surjit Singh (PW-12) and was endorsed by him, was received at the police station. He identified the signatures of Surjit Singh (PW-12) on the statement as well as on the endorsement. On the basis of the statement (Ex.PH) of Jasbir Kaur, he (PW-9) recorded FIR (Ex.PH/1) which was signed by him. In cross-examination, he stated that SI Surjit Singh (PW-12) was not with them on 19.07.2001 when he visited the hospital. The information was received at the Police Station at about 10.00 pm on 19.07.2001. It is stated that some persons were present in the hospital while attending Jasbir Kaur but they did not say anything about the occurrence to him (PW-9). It is stated as incorrect to suggest that the FIR was ante timed.

Dr. Nitin Arora, Guru Ram Dass Hospital, Amritsar (PW-10) deposed that on 20.07.2001 he was posted in the emergency ward. Jasbir Kaur was admitted in the emergency ward of the hospital on 19.07.2001 when he was on duty. On the application Ex.PJ filed by the police on 20.07.2001, he made an endorsement Ex.PJ/1 at 10.40 am that Jasbir Kaur was fit to make a statement. The endorsement was in his hands and under

his signatures. The statement of Jasbir Kaur was then recorded by the police in his presence on her dictation. The contents of the statement were read over and explained to Jasbir Kaur by the police. After admitting and understanding it to be correct, Jasbir Kaur had signed on it. During the time the statement of Jasbir Kaur was being recorded, she was conscious and was in a fit condition to make a statement. The endorsement Ex.PH/3 was made by him (PW-10) and under his hands and signatures. He was cross-examined by learned counsel for the appellant. It is stated that time of admission of Jasbir Kaur in the hospital on 19.07.2001 was not written. According to the history sheet of the patient, she was conscious when she was brought to the hospital. He was the junior doctor on duty. He did not remember the name of the senior doctor on duty in the emergency ward. Many persons did accompany Jasbir Kaur to the hospital but he did not know their names and parentage. Some of the treatment record of the patient was in his hand which was of 20.07.2001 at 9.45 am. The name of senior doctor was written there was Dr. Gurinder Mohan, Assistant Professor. Police had contacted him only because he was the doctor on duty. He did not recall if some attendant of Jasbir Kaur were also present when her statement was recorded by the police. He could not recall the name of the police official who had recorded the statement of Jasbir Kaur. He did not recall if the police officer was recording the statement in his own hands or was getting it recorded at his dictation. He did not remember the time spent in recording the

statement. As per record, the information regarding admission of Jasbir Kaur in the hospital was given to Mangal Singh Munshi at 10.05 am. It is stated as incorrect to suggest that no such statement was recorded in his presence and his endorsement was obtained by the police later on. The attested copies of the bed head ticket was Ex.DA.

SI Swaran Singh (PW-11) had conducted the inquest proceedings. The inquest report Ex.PK was prepared by him. The dead body was sent for postmortem examination with police request Ex.PK/1 through Constable Virsa Singh (PW-4) and HC Tarsem Singh (PW-5). He arrested the accused (appellant) on 22.07.2001 and recorded statements of formal witnesses upto 10.07.2001. After completing formalities of investigation, police report (challan) was presented by Major Singh, Inspector in the Court.

Inspector Surjit Singh (PW-12) had conducted investigation in the case. He was posted as Sub Inspector, Police Station B-Division, Amritsar on 20.07.2001. On the said day, he along with HC Major Singh and other police officials went to Guru Ram Dass Hospital for recording the statement of Jasbir Kaur. He moved an application Ex.PJ for seeking opinion regarding fitness of Jasbir Kaur to make a statement. She was vide endorsement Ex.PJ/1 declared by the doctor fit to make a statement. He then recorded the statement (Ex.PH) of Jasbir Kaur in the presence of Dr. Nitin Arora (PW-10). The statement was read over to Jasbir Kaur and she after admitting and understanding the contents

thereof to be correct, signed the same at point Ex.PH/3. He made his endorsement Ex.PH/1 and sent the same for registration of case through Constable Jatinder Singh. On that basis formal FIR (Ex.PH/2) was registered by ASI Bhagwan Singh (PW-9), whose signatures he identified. He then recorded the statement of Dr.Nitin Arora (PW-10) and Harpreet Kaur (PW-7) in the hospital. He then went to the place of occurrence along with Harpreet Kaur (PW-7) and prepared rough site plan Ex.PL/1 with correct marginal notes. He recorded the statement of Rashhpal Singh (PW-8) at the spot and on return to the police station, the facts were disclosed to the SHO and the file handed over to him. In cross-examination, he stated that he did not visit the hospital on 19.07.2001. Harpreet Kaur (PW-7) also did not meet him on that day. He visited the hospital on 20.07.2001 at 10.10 am. He had visited the place of occurrence that day at about 1.00 pm.

The statement of the appellant in terms of Section 313 of the Code of Criminal Procedure ('Cr.P.C.' - for short) was recorded in which the incriminating evidence appearing against him was put to him. He filed written statement in his defence which he stated that all the allegations against him were false. Actually his wife was under great shock and depression as people who had put committees were torturing her. He too scolded her for this. She was in her parents' house when she consumed something. A false case had been made against him.

In defence, the appellant examined Gurbachan Singh (DW-1), who stated that Jasbir Kaur used to do stitching

and embroidery. She had dispute with some other ladies in the 'mohalla' regarding amount of committees. Rashhpal Singh (PW-8), it is stated, is the brother of Jasbir Kaur. About three years back from the date of his deposition i.e. 04.05.2004 at about 10.00 am, he happened to be present in front of the house of Rashhpal Singh (PW-8) where Jasbir Kaur had come two days earlier. He (DW-1) had seen mother of Jasbir Kaur taking Jasbir Kaur in a rickshaw from her residence when Jasbir Kaur was not feeling and behaving well. He (DW-1) asked mother of Jasbir Kaur as to what had happened and she informed him that Jasbir Kaur had consumed some tablets and was being taken to the hospital. The house of the parents of Jasbir Kaur was at a distance of 500/600 yards from the house of the appellant. He had narrated this story before the police also in the hospital. In cross-examination it is stated that he was not related to the appellant. He himself had not participated in any committee in which Jasbir Kaur was already participating. He did not know the particulars of the committees and the members thereof and the particular dates on which the committee amounts were given by Jasbir Kaur. He did not know the house number of the house of the accused. He did not remember the date and month when Jasbir Kaur was allegedly being taken to the hospital by her mother who was taken to Guru Ram Dass Hospital. It is stated as incorrect to suggest that he had never seen the mother of Jasbir Kaur taking her to the hospital and he was never informed by the mother of Jasbir Kaur that Jasbir Kaur had taken tablets in

her house. It is stated as incorrect that the appellant had severely beaten Jasbir Kaur in his own house and then put some poisonous substance forcibly in her mouth. It is stated as incorrect that he having good relations with the appellant had made a false deposition.

The learned Sessions Judge, Amritsar after considering the evidence and material on record has convicted the appellant for the offence punishable under Section 302 IPC and sentenced him to undergo imprisonment for life; besides, pay a fine of Rs.5000/-.

Mr. Sanjeev Sharma, Advocate amicus curiae appearing for the appellant has contended that the entire prosecution case is false. It is submitted that had the appellant forcibly administered something in the mouth of the deceased Jasbir Kaur in a scuffle then there would have been some injury or injuries on the person of Jasbir Kaur. However, the prosecution has not shown any injuries to have been suffered by Jasbir Kaur; besides, it is submitted that Harpreet Kaur (PW-7), who is the daughter of the appellant, has deposed under the influence of her maternal uncle Rashhpal Singh (PW-8) as he has influence over her. Moreover, Rashppal Singh (PW-8) is an interested witness being brother of the deceased. Therefore, their evidence is of no consequence and is not liable to be taken into consideration. In any case it is submitted that it is a case of a sudden fight as according to the prosecution when the appellant had come in the house, he is alleged to have started beating

Jasbir Kaur. Therefore, according to learned counsel the incident can be said to have occurred in the heat of passion upon on a sudden quarrel without the appellant taking any undue advantage or acting in a cruel or unusual manner. Therefore, the appellant in any case is liable to be convicted for the offence under Section 304 Part II IPC only.

In response Ms. Rajni Gupta, Addl. AG, Punjab for the State has submitted that the prosecution has proved its case by leading cogent and convincing evidence. It is submitted that Harpreet Kaur (PW-7) is none else than the daughter of the appellant and she has truthfully deposed against her own father. It is submitted that the daughter of the appellant namely Harpreet Kaur (PW-7) has her own independent mind and there is no question of her being under the influence of her maternal uncle Rashhpal Singh (PW-8) as alleged. The evidence of the prosecution is corroborated by the medical evidence and FSL report Ex.PM on record. It is submitted that it is not a case of a sudden quarrel as contended by learned counsel for the appellant inasmuch as the appellant had come with prior planning and premeditation by carrying the poisonous tablets in his pocket which he forcibly put in the mouth of his wife Jasbir Kaur. Besides, it cannot be said that the appellant had not taken undue advantage or had not acted in a cruel or unusual manner.

We have given our thoughtful consideration to the contentions of the learned counsel for the parties and with their assistance perused the record of the case.

As has already been noticed, the case of the prosecution is that the appellant had forcibly administered some poisonous tablets in the mouth of his wife Jasbir Kaur on 19.07.2001 at about 10.00 am. The incident was witnessed by daughter of the appellant and Jasbir Kaur (deceased), namely Harpreet Kaur (PW-7). She has stated that her mother used to pick up quarrel over trifles. The appellant who is her father did not give any money to her mother to run the household expenses. Her mother, she herself as also her father were present at their house on 19.07.2001 at about 10:00 am. At that time her brother and sister were not present at home. The appellant immediately on entering the house had started beating her mother. She was requesting him not to beat her and was trying to save her but the appellant did not stop beating her. Then the appellant suddenly took out something poisonous from his pocket and forcibly put the same in the mouth of her mother and he closed her mouth with his hands. A hue and cry was raised by her. Rashhpal Singh (PW-8) who is the brother of Jasbir Kaur and maternal uncle of Harpreet Kaur (PW-7) also came there. Rashhpal Singh (PW-8) is residing at some distance only from the house of the appellant. He used to frequently visit his sister Jasbir Kaur. Rashhpal Singh (PW-8) in his deposition has deposed that the appellant was a habitual drunkard and used to consume other intoxicants. He did not provide any money to his sister to run the household expenses; besides, he used to maltreat her and beat her. He was going towards the house of

the appellant on 19.07.2001 and when he entered the house, he saw the appellant closing the mouth of his sister with his hands after putting something poisonous in her mouth. Harpreet Kaur (PW-7) his niece was trying to rescue her mother. On seeing him (PW-8), the appellant had run away from the house.

The postmortem examination on the dead body was conducted by Dr. Amarjit Singh (PW-1) who after receipt of the Chemical Examiner report Ex.PM opined that the cause of death in the case was organo phosphorous compound poisoning which was sufficient to cause death in the ordinary course of nature.

The FIR (Ex.PH/2) is registered on the statement (Ex.PH) of Jasbir Kaur which was recorded by SI Surjit Singh (PW-12) on the dictation of Jasbir Kaur and in the presence of Dr. Nitin Arora (PW-10). Jasbir Kaur in her statement (Ex.PH) has stated that she was married about 18 years earlier to the incident that occurred on 19.07.2001 and her statement was recorded on 20.07.2001. According to Jasbir Kaur, her husband Hardev Singh (appellant) was habitual in consuming intoxicating tablets, liquor and indulging in other intoxicants and he used to often fight with her. She was present at her house with her daughter Harpreet Kaur (PW-7) on 19.07.2001 at about 10.00 am during the day. At that time her husband came from outside and started beating her. Her daughter (Harpreet Kaur PW-7) was rescuing her from him but he did not leave her (Jasbir Kaur). Then her husband took out some poisonous medicines from his pocket and forcibly put it in her mouth and with his hand, he closed her mouth, on

which she lost consciousness. Later she did not know how she came to the hospital. The statement is signed by Jasbir Kaur in English and is attested by Inspector Surjit Singh (PW-12), Police Station B-Division, Amritsar. The statement of Jasbir Kaur is attested by Dr. Nitin Arora (PW-10) who has supported the prosecution case a reference to which has been made above.

Therefore, it is to be noticed that there is eye witness account of Harpreet Kaur (PW-7) daughter of the deceased Jasbir Kaur and Rashhpal Singh (PW-8), brother of the deceased, who have stated regarding administration of poison by the appellant to his wife Jasbir Kaur. There is also the dying declaration Ex.PH of Jasbir Kaur deceased who has stated that poison was administered to her. This is corroborated by the Chemical Examiner's report Ex.PM and the opinion of Dr. Amarjit Singh (PW-1) that cause of death in the case was organo phosphorous compound poisoning which was sufficient to cause death in the ordinary course of nature.

In the face of the cogent and convincing evidence, the contention of learned counsel for the appellant that there was no injury on the mouth of Jasbir Kaur in the scuffle that is said to have occurred, is inconsequential. The appellant had put the poisonous tablets in the mouth of his wife Jasbir Kaur and then closed her mouth with his hands. In this process even if some force was used, it may not have leave any sign because Jasbir Kaur may not have been in a position to resist the force, which did not result in any injury to her; besides, she had fainted and

lost her conscious in the process the poisonous tablets were administered. Jasbir Kaur herself did not know how she reached the hospital. Harpreet Kaur (PW-7) her daughter stated that they had taken her mother to Guru Ram Dass Hospital and got her admitted there. Therefore, mere fact that there is no injury on the person of deceased Jasbir Kaur in the scuffle between the appellant and her, is of no consequence.

The fact that Harpreet Kaur (PW-7) is under the influence of her maternal uncle Rashhpal Singh (PW-8) is also inconsequential as Jasbir Kaur herself in her dying declaration Ex.PH has stated that she was administered some poison by the appellant which is corroborated by the FSL report Ex.PM and opinion of Dr. Amarjit Singh (PW-1). The learned trial Court had considered the fact regarding there being delay in lodging the FIR. It was held that there admittedly was delay in reporting the matter to the police, however, that by itself was not fatal to the prosecution case and it cannot be said that the delay had remained unexplained in this case. The first endeavour on the part of the relative of the injured is to save the life of the injured instead of approaching the police. Besides, it is well known that prompt lodging of a FIR is not an unmistakable guarantee of the truthfulness of the prosecution case and neither is delay always fatal. In the facts and circumstances of the present case, the delay if any is inconsequential.

The prosecution has produced direct evidence against the appellant and there is dying declaration of the

deceased. The deposition of Gurbachan Singh (DW-1) does not support the case of the appellant as he had no knowledge about the committees which Jasbir Kaur is stated to have been putting or her being tortured. The defence of the appellant that Jasbir Kaur was indulging in committees and he had scolded her in this regard is not established. In fact no question in regard to Jasbir Kaur indulging in committees was put to any prosecution witness. A party is liable to put to each of his opponent's witnesses so much of his case as concerns that particular witness or witnesses. If no such questions are put, the Court is to presume that the witness or witnesses account has been accepted. No question whatsoever was put to Harpreet Kaur (PW-7) or Rashhpal Singh (PW-8) that Jasbir Kaur was indulging in committees and he had scolded her for this. Therefore, mere assertion of the appellant in his written statement made in terms of Section 313 Cr.P.C. that his wife was under great shock and depression as people who had put committees were torturing her and he had also scolded her in this regard, is without any basis or substance especially when the same is even without oath and is not corroborated by Gurbachan Singh (DW-1).

The contention of the learned counsel for the appellant that it is a case of sudden quarrel in which the appellant acted in the heat of passion is not tenable as the appellant had poisonous tablets in his pocket which he administered to his wife Jasbir Kaur. The fact that he was carrying poisonous tablets in his pocket is indicative of the fact

that he had come with the pre-determined and premeditated mind to administer the same to his wife, which he did despite his daughter stopping him from doing so. In the facts and circumstances of the present case, it can be said that the appellant had acted in a cruel and unusual manner by putting poisonous tablets in the mouth of his wife and then closing her mouth by clasping it with his hands so that she is unable to spit them out and save herself. Therefore, the benefit of sudden quarrel to make out a case under Exception 4 of Section 300 IPC is not made out and the case is one in which the appellant committed the murder of his wife Jasbir Kaur.

In the circumstances, the learned trial Court has rightly convicted and sentenced the appellant and there is no infirmity in the order that has been passed.

The appellant has caused the death of Jasbir Kaur, which has resulted in loss and damage to Harpreet Kaur (PW-7) who is daughter of the appellant and Jasbir Kaur. It has also come in evidence that Harpreet Kaur (PW-7) had a brother and a sister who were not at home when the incident had occurred. Therefore, all the three children of the appellant and Jasbir Kaur (deceased) are victims on account of the act of the appellant. Grant of compensation to victims is now held to be an integral part of criminal justice system. The power of the Courts to award compensation to victims in terms of Section 357 Cr.P.C. has been held is not ancillary to other sentences but in addition thereto and grant of compensation is dependent on relevant

factors. Before issuing direction to pay compensation the capacity of the convict to pay the same is to be judged. The Supreme Court in Ankush Shivaji Gaikwad v. State of Maharashtra, 2013 (2) RCR (Criminal) 1036 has laid down guidelines for the award of compensation. One of the factor that was considered in which whole or any part of fine recovered to be applied towards compensation is, to any person who had suffered loss or injury by the offence, when in the opinion of the Court, such compensation would be recoverable by such person in a Civil Court. In the present case, Harpreet Kaur (PW-7) and her brother and sister are the children of deceased Jasbir Kaur. They have suffered on account of the demise of their mother Jasbir Kaur, which death has been caused by the appellant Hardev Singh. For the said death of their mother, Harpreet Kaur (PW-7) also her brother and sister would be entitled to claim compensation in a Civil Court and/or in accordance with the provisions of the Fatal Accidents Act, 1855. While appearing in the Court of Sessions Judge, Amritsar on 07.08.2003, Harpreet Kaur (PW-7) has given her age as sixteen years. Therefore, she was quite young at the time when her mother Jasbir Kaur died and her brother and sister must also be young. It has come in evidence that Jasbir Kaur used to do the work of embroidering 'dupptaas' (veils). However, there is no mention as to what income was being earned by her. There is also no evidence as to what income was being earned by the appellant. There is no evidence regarding loss of earning and financial capacity of the

appellant. The learned trial Court has imposed fine of Rs.5000/- on the appellant. In the absence of evidence as regards the financial capacity of the appellant and also the loss of earning which Harpreet Kaur (PW-7) as also her brother and sister have suffered, it is quite difficulty to assess the quantum of damage. However, keeping in view the fact that Jasbir Kaur was embroidering dupattas, she must be earning some amount. Besides, the appellant himself would be earning more than what his wife Jasbir Kaur was earning. Therefore, in the facts and circumstances, it would be just and expedient that the appellant shall pay a sum of Rs.1 lac to his children towards compensation for the death of Jasbir Kaur.

Consequently, there is no merit in the appeal and the same is accordingly dismissed. The appellant is on bail and he be taken in custody to serve his sentence of imprisonment as imposed by the learned trial Court; besides, the appellant shall pay a sum of Rs.1 lac as compensation for the death of Jasbir Kaur to his children.

(S. S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

06.02.2015
A.Kaundal

Note: Whether to be referred to the Reporter : Yes/No