

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Criminal Appeal D-588-DB of 2009

Date of Decision : May 21, 2015

Rajinder

....Appellant

Versus

State of Haryana

.....Respondent

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN**

Present: Mr. Ashwani Bhardwaj, Advocate
for the appellant.

Mr. Anil Kumar Yadav, Addl. Advocate General, Haryana.

Mr. Subhash Godara, Advocate
for the complainant.

T.P.S. MANN, J.

Appellant-Rajinder and his wife Suman were tried for committing offences punishable under Section 302 read with Section 34 IPC on the allegations that on 17.8.2007 at about 8.30 a.m. both of them in furtherance of their common intention committed the murder of Manphool Singh son of Lalu Ram. Vide impugned judgment and order dated 9/12.5.2009, learned Additional Sessions Judge, Hisar acquitted Suman of the charges against her. The appellant was, however, convicted under Section 302 IPC and sentenced to undergo life imprisonment and to pay a

fine of Rs. 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.

According to the prosecution, on 17.8.2007 at 12.40 p.m., Smt. Girdawari wife of Manphool Singh, since deceased, got recorded her statement Ex. PH before SI Suraj Kumar, SHO, Police Station Adampur in the area of village Bhodia Bishnoian wherein she stated that she was resident of Dhani Bhodia Bishnoian and doing agriculture work. She had two sons, namely, Subhash and Rajinder (appellant) and six daughters. All of them were married. She and her sons were residing in the Dhani. Her younger son Rajinder was residing on the backside of the Dhani by opening the door. They had 14 acres of land out of which her husband had given 3½ acres to Rajinder whereas she herself alongwith her son Subhash was cultivating the remaining land. Her son Rajinder wanted more land. He also used to quarrel with her husband that they did not allow the persons, who came to meet him. On 17.8.2007 at about 8.30 a.m. she was working in front of the Dhani whereas Subhash was irrigating cotton field. Her husband went towards the backside of the Dhani where Rajinder was residing. On hearing an alarm that he was being attacked, she went towards the backside and saw that Rajinder was armed with a kulhari (rapri) and inflicting injuries to her husband. Suman wife of Rajinder was also causing injuries to her husband. As a

result her husband Manphool Singh fell down. On hearing the noise, Subhash also reached the spot. On seeing him, Rajinder ran away from the spot while carrying kulhari with him. On account of injuries sustained on his head and neck, Manphool Singh breathed his last at the spot. Accordingly, Smt. Girdawari sought taking of legal action against Rajinder and Suman.

As the statement of Smt. Girdawari revealed commission of offences under Sections 302/34 IPC, the same was sent to Police Station Adampur where on its basis FIR No. 230 (Ex.PA) was registered on 17.8.2007 at 1.10 p.m. by ASI Sadhu Ram. Special report sent through EHC Ram Chander was received by the Ilaqa Magistrate on 17.8.2007 at 5.30 p.m.

Further case of the prosecution is that SI Suraj Kumar inspected the spot, prepared inquest report Ex. PM, prepared sough site-plan Ex. PS, lifted blood stained parna and blood stained earth from near the dead body, recorded the statements of the witnesses under Section 161 Cr.P.C. and sent the dead body of Manphool Singh through HC Bhoop Singh for post-mortem. After post-mortem, the clothes of the deceased were taken into possession. SI Suraj Kumar arrested the appellant on 18.8.2007. During interrogation, the appellant suffered disclosure statement Ex. PE pursuant to which he got recovered kulhari, pajama and baniyan. Statements of the witnesses were recorded qua

recoveries and after completion of investigation, final report under Section 173 Cr.P.C. was submitted against the appellant. However, accused-Suman was found innocent and her name was placed in column No. 2 of the final report. Subsequent to commitment of the case, the trial Court framed charge against the appellant for the offence punishable under Section 302 IPC to which he pleaded not guilty and claimed trial. After examining three witnesses including complainant-Smt. Girdawari, an application under Section 319 Cr.P.C. was moved by the prosecution for summoning Suman as an additional accused which was allowed by the trial Court. Subsequent thereto, the appellant and his wife Suman were charged for the offence punishable under Section 302 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 EHC Ram Chander, who deposed that on 17.8.2007, he delivered special report of this case to the Ilaqa Magistrate and various police officers.

PW2 EHC Sant Lal tendered in evidence his affidavit Ex.PB wherein he deposed about taking the sealed parcels to the FSL, Madhuban.

PW3 Dinesh Kumar, Patwari Halqa testified that on 27.8.2007 he visited the spot and prepared scaled site-plan Ex.PC.

PW4 HC Bhoop Singh testified that he joined investigation which was conducted by SI Suraj Kumar. The dead body of Manphool Singh was handed over to him for being taken to Civil Hospital, Hisar alongwith inquest for post-mortem. The sealed parcel containing clothes of the deceased which was handed over to him by the doctor after post-mortem was produced by him before SI Suraj Kumar, who took the same into possession on 19.8.2007. The appellant suffered disclosure statement Ex. PE and pursuant to the same got recovered one axe Ex. P1, baniyan Ex. P2 and pajama Ex. P3 which were taken into possession vide memo. Ex. PF.

PW5 SI Sadhu Ram deposed that on receipt of statement/ruqa Ex. PH, he recorded formal FIR Ex. PA and, thereafter, sent special report through EHC Ram Chander to the Ilaqa Magistrate and higher police officers.

PW6 HC Raj Kumar deposed that he was posted as MHC and had kept various articles in the malkhana and, thereafter, handed them over to Constable Sant Lal on 23.8.2007 for depositing with the FSL, Madhuban.

PW7 Dr. Ashish Rana, Medical Officer, General Hospital, Hisar testified that on 17.8.2007 at 4.00 p.m., he conducted post-mortem on the dead body of Manphool and found the following injuries:-

- “1. Incised wound on right side of head starting from near the vertex till below the pinna. Ear cartilage was cut vertically. Underlying bone was cut open. Length of wound was 18cm x 3cm at the widest part. Underlying brain matter was coming out. Subcutaneous ecchymosis was present.
2. Incised wound 10 cm x 3 cm, parallel to and 3cm behind injury No. 1 was present. Underlying bone was cut and brain matter was coming out.
3. Superficial incised wound 5cm x 1cm on the right side of neck was present.
4. There was a superficial incised wound 5cm x 1cm on the extensor aspect of right wrist.
5. There was deformity of left fore arm. On dissection, fracture of both the bones of the fore arm was noted. Blood was present in the tissue planes.”

The cause of death, in his opinion, was injuries to vital organ (brain) which were ante-mortem in origin and sufficient to cause death in ordinary course of nature. The probable time that elapsed between injury and death was instantaneous and between death and post-mortem examination it was within 24 hours. He did not rule out the possibility of death of Manphool Singh taking place at 8.30 a.m. on 17.8.2007. He

further opined that injuries No.1 to 4 were possible by sharp side of rapri Ex.P1, injury No. 4 possible by any sharp edged weapon including gandasi and injury No.5 possible by reverse blow from rapri Ex.P1 or by any blunt weapon or reverse side of any sharp edged weapon having long wooden handle like lathi.

PW8 Smt. Girdawari, wife of deceased-Manphool Singh reiterated the facts as were earlier stated by her in her statement Ex. PH on the basis of which FIR was registered.

PW9 Subhash son of Manphool Singh testified that on the date of the occurrence at about 8.00 a.m. his mother was doing household job in front portion of the Dhani while he was watering the narma fields. On hearing the noise of his father from rear side of house of Rajinder that he was being attacked, he went running and found his mother at a distance of 10 paces from the spot towards the Dhani whereas his father was lying on the ground and blood coming out from his head and neck. The appellant was armed with rapri whereas Suman armed with gandasi. Both the accused were causing injuries to his father.

PW10 SI Suraj Kumar testified about recording statement Ex. PH of Smt. Girdawari on 17.8.2007 in the area of village Bhodia Bishnoian and sending the said statement to the Police Station for registration of the case. He also deposed about

the various steps taken by him during the investigation of the case including inspecting the spot, preparing inquest report, preparing rough site-plan, lifting blood stained earth and blood stained parna from nearby the dead body, recording the statements of the witnesses, arresting the appellant on 18.8.2007 and recovering kulhari Ex. P1, baniyan Ex. P2 and pajama Ex.P3 pursuant to the disclosure statement Ex.PE and after completion of investigation, preparing final report under Section 173 Cr.P.C.

When examined under Section 313 Cr.P.C., the appellant pleaded his innocence and false implication. According to him, his mother wanted him to separate from his wife Suman to which he did not agree. His father Manphool Singh and brother Subhash quarrelled with each other in which Manphool Singh received injuries and died while being taken to the hospital. Even a month prior to the death of Manphool Singh, an altercation had taken place between Manphool Singh and Subhash as Manphool Singh had changed his Will and for that reason Manphool Singh was murdered by Subhash. Similarly, Suman claimed that she was innocent. She was declared innocent by the police. According to her, her mother-in-law Smt. Girdawari and brother-in-law Subhash were having grudge as she had filed a complaint against them regarding demand of dowry and maltreatment. She was having strained relations with her mother-in-law, who wanted

to get her separated from her husband to which her husband did not agree. On that account, she and her husband were falsely implicated in the case.

In defence, the accused examined DW1 Rajinder Parshad, Registration Clerk, office of Sub Registrar, Adampur, who produced original register No. 3 i.e. of Will Register for the years 2003 and 2007. At serial No. 47/4.6.2003 a Will was executed by Manphool Singh and at serial No. 92/6.7.2007 a Will was again executed by Manphool Singh. He proved certified copies of the two Wills as Exs. DW1/A and DW1/B.

DW2 Nihal Singh testified that he was neighbour of deceased-Manphool Singh. Manphool Singh was having good terms with his son Rajinder. However, Rajinder was not on good terms with his mother and elder brother Subhash. Manphool Singh used to visit the house of his son Rajinder. About one or 1³/₄ months prior to the death of Manphool Singh, he had seen Subhash, Manphool Singh and mother of Subhash quarrelling with each other on account of water course passing by the side of the Dhani of Manphool Singh. On being asked Subhash disclosed that there was some land dispute between them on account of Will. At that time, Subhash was armed with a lathi and he was proclaiming that he would kill Manphool Singh. On 17.8.2007 at about 5.30 a.m. the witness was going to the milk dairy in the

village and saw that Subhash and his mother were putting Manphool Singh in a jeep. He tried to stop them. However, he was told that they would not be going by the side of milk dairy and, hence, could not provide him a lift. They also disclosed that Manphool Singh had sustained some injury and they were taking him to the hospital. They also disclosed that Manphool Singh had received injury by harrow.

After hearing learned counsel for the parties and going through the evidence brought on record, the trial Court acquitted Suman of the charges against her. However, the appellant was held guilty and convicted and sentenced, as mentioned above.

Learned counsel for the appellant has submitted that the prosecution has failed to establish the motive for the appellant to commit the crime. It is also submitted that only interested and relation witnesses have been examined by the prosecution in regard to the ocular account. No attempt has been made to associate independent witnesses. Even the medical evidence does not corroborate the ocular account. It is also submitted that there was inordinate delay in lodging of the FIR. Even the recovery of the weapon of offence is not supported by independent witness. Finally, it is submitted that the witnesses examined by the accused in defence have testified regarding the innocence of the accused.

Learned State counsel as well as learned counsel for the complainant have vehemently opposed the various arguments raised on behalf of the appellant. They have submitted that the prosecution has led sufficient evidence to connect the appellant with the commission of crime.

Having heard learned counsel for the parties and on going through the evidence with their able assistance, this Court finds that Manphool Singh owned 14 acres of land out of which 3½ acres have already been given to the appellant. Despite the same, the appellant wanted more land as his share of the land. However, this was not agreed to by Manphool Singh and appellant-Rajinder. The appellant also used to quarrel with his father on the ground that he had not been allowing his visitors to reach his house whereas the appellant asserted that his visitors be permitted to come to him without any hitch. The defence has not been able to bring any material on record that the appellant was satisfied with the 3½ acres of land which his father had given to him for cultivation. Similar was the position in regard to the visit of the people connected with the appellant coming to his portion of the Dhani in order to meet him. So much so neither PW8 Girdawari nor PW9 Subhash, who also used to reside in the same Dhani, was suggested that there used to be no quarrel between the appellant and the deceased in regard to the share of the land and

the people connected with the appellant not being allowed to visit him in his portion of the Dhani. On the other hand, the appellant made an attempt to show that he was very close to his father and mother and the dispute was only regarding his parents asking him to leave his wife which was not acceptable to him. It was also sought to be suggested that the appellant's father Manphool Singh had earlier executed a Will in favour of his brother Subhash but on account of the quarrel between Manphool Singh and Subhash that Manphool Singh changed the Will and executed a new Will in its place. However, the fact remains that Subhash continued to live with his father deceased-Manphool Singh whereas the appellant and his wife Suman had set up their separate unit though in the same Dhani and he had also taken 3½ acres of land from his father out of 14 acres which his father owned. It is true that earlier deceased-Manphool Singh had executed a Will in favour of Subhash but later on he executed a new Will in which he named his wife Girdawari and son Subhash as the beneficiaries. In the process, Subhash was not totally disinherited from the property of his father. In any case after the death of his father, Subhash was to own the remaining land of Manphool Singh in equal shares with his mother Smt.Girdawari. In any case that would not have impelled Subhash to commit the murder of his father. Rather, it is the consistent case of the prosecution that Subhash used to live

with deceased-Manphool Singh and mother Smt. Girdawari and beneficiary in equal share with his mother for the remaining land of deceased-Manphool Singh. The appellant also suggested to his mother Smt. Girdawari and brother Subhash that a month or so before the occurrence, a quarrel had taken place between Manphool Singh and Subhash. This fact was specifically denied by PW9 Subhash. On the other hand, the appellant did not bring on record any material from which it could be inferred that Subhash was inimical towards his father-Manphool Singh and had also caused injuries to him. Merely because, DW2 Nihal Singh testified that he had seen Subhash, Manphool Singh and Smt. Girdawari quarrelling with each other about a month or 1 $\frac{3}{4}$ months prior to the death of Manphool Singh on account of water course passing by the side of their Dhani, it cannot be said that Subhash was inimically disposed towards his father-Manphool Singh. DW2 Nihal Singh claimed that his fields were in the neighbourhood of that of the deceased but in cross-examination, he admitted that his Dhani was at a distance of 5/6 acres from that of Manphool Singh. He also deposed that he had no knowledge as to what was the dispute relating to Will and who had executed that Will and when. He also had no knowledge about the dispute between them. Under these circumstances, it cannot be said that the appellant had no motive to commit the murder or that it was

Subhash who had committed the murder of Manphool Singh and not the appellant.

It is the prosecution case that on 17.8.2007 at about 8.30 a.m. when Smt. Girdawari was doing household work and Subhash was irrigating cotton field near the Dhani, that Manphool Singh went to the rear portion of his Dhani where he was assaulted by the appellant, who was armed with a rapri and appellant's wife Suman, who was armed with a gandasi. As a result of the injuries caused at the hands of the assailants, Manphool Singh had died at the spot. In the meantime, on hearing the alarm raised by Manphool Singh that he was under an attack, Smt. Girdawari as well as Subhash reached the spot and saw the occurrence. Both of them have testified in clear terms that it were the appellant and his wife Suman, who were causing injuries to Manphool Singh and after causing injuries, the two accused had decamped from the spot with their respective weapons. Manphool Singh had received injuries on his head and neck. Afterwards when the police arrived, Smt. Girdawari got recorded her statement Ex. PH and on its basis, FIR Ex. PA was registered against the assailants. Merely because, PW8 Smt. Girdawari happened to be the wife of the deceased and PW9 Subhash being son of the deceased is no ground to hold that they had been falsely set up as eye witnesses. In her statement Ex. PH, Smt. Girdawari had stated that the occurrence was

witnessed by her and her son Subhash. She did not state that apart from them, any other person from the neighbourhood had witnessed the occurrence. Under these circumstances, lack of independent corroboration regarding the occurrence is not sufficient to reject the prosecution case in its entirety.

As regards the stand of the appellant that neither Smt.Girdawari nor Subhash made an attempt to save the deceased which fact would belie their presence at the spot, it may be worthwhile to notice here that while appellant-Rajinder was armed with a rapri (kulhari) and his wife Suman was armed with a gandasi and they had launched murderous assault upon Manphool Singh and causing various injuries to him. In view of the fact that the accused were armed with deadly weapons, neither Smt.Girdawari nor Subhash who were unarmed could have intervened to rescue Manphool Singh.

The occurrence in question had taken place on 17.8.2007 at 8.30 a.m. in village Bhodia Bishnoian. Soon after the occurrence, information was conveyed to the police. Pursuant to the same, SI Suraj Kumar reached the field of the appellant and recorded statement Ex. PH of Smt. Girdawari which was completed at 12.40 p.m. On its basis, FIR Ex.PA came to be recorded in Police Station Adampur which was at a distance of 13 kms from village Bhodia Bishnoian, at 1.10 p.m. and its recording

was completed at 2.40 p.m. Special report was handed over to EHC Ram Chander, who delivered the same to the Ilaqa Magistrate at Hisar at 5.30 p.m. In his deposition, PW1 EHC Ram Chander stated that the distance between Adampur and Hisar was 40 kms which could be covered by bus in one hour. Apparently, there was no delay in lodging of the FIR or it being ante-timed. Whatever delay occurred has been satisfactorily explained by the prosecution.

Coming to the stand of the appellant that the medical evidence did not corroborate the ocular account, suffice it to say that PW7 Dr. Ashish Rana had noticed as many as five injuries on the dead body. Four of them were incised in nature whereas the fifth one was deformity of left fore arm. The doctor opined that injuries No. 1 to 4 on the dead body were possible by sharp side of rapri Ex. P1 whereas injury No. 4 was also possible by any sharp edged weapon including gandasi while injury No. 5 was possible by blow from the reverse side of rapri Ex. P1 or any blunt weapon or reverse side of any sharp edged weapon having long wooden handle like lathi. It was the prosecution case that the appellant was armed with rapri (kulhari) Ex. P1 at the time of the occurrence. Four of the five injuries noticed on the dead body were possible to have been caused with the same as has been opined by PW7 Dr. Ashish Rana. Merely because in his cross-examination

Dr.Ashish Rana stated that injuries No. 1 to 4 were possible by one sharp edged weapon containing a long handle and having blunt side as well is not sufficient to hold that the medical evidence did not corroborate the ocular account. Even otherwise when this Court is convinced about the presence of PW8 Smt. Girdawari and PW9 Subhash at the time of the occurrence and, that too, in their common Dhani in which the appellant also lived, no benefit whatsoever can be extended to the appellant.

It is the prosecution case that on 18.8.2007, the appellant was arrested when he was produced by his father-in-law at Sadalpur Bus Stand. He was lodged in police lock up on that day. On 19.8.2007, the appellant suffered disclosure statement Ex.PE that he had kept concealed kulhari, pajama and baniyan near a culvert of Sadalpur Dhand road and he could get the same recovered. Pursuant to the disclosure statement, the appellant led the police party and got recovered the aforementioned articles vide memo Ex.PF. Merely because, no independent witness was joined by SI Suraj Kumar at the time of arrest of the appellant and recording his disclosure statement is no ground to hold that the recovery of the articles especially the weapon had been planted upon the appellant. As regards the recovery of the aforementioned articles which was effected from near the culvert of Sadalpur Dhand road, SI Suraj Kumar testified that no body was found near

the place of recovery and, accordingly, he could join none. He also testified that the place of recovery was about 50 yards from the metalled road and the articles were lying in the bushes which was not visible from outside.

In view of the above, no case is made out for any interference in the conviction of the appellant as recorded by the trial Court. At the same time, this Court finds that the fine of Rs.10,000/- imposed upon the appellant is on the higher side.

Resultantly, the conviction of the appellant under Section 302 IPC and his sentence of life imprisonment are upheld. The sentence of fine is reduced from Rs. 10,000/- to Rs. 1,000/- and in default thereof, the appellant shall further undergo rigorous imprisonment for six months.

But for the modification in the quantum of sentence of fine as indicated above, the appeal fails and is, therefore, dismissed.

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

**(MAHAVIR S. CHAUHAN)
JUDGE**

May 21, 2015
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