

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-668-DB-2010 (O&M)

Date of decision: 15.09.2015.

Tek Singh @ Gurtek Singh

..... Appellant

Vs.

State of Punjab

..... Respondent

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Argued by: Mr.Mandeep Kaushik, Advocate
for the appellant.

Ms. Manjari Nehru Kaul, Additional Advocate General, Punjab

RAJ RAHUL GARG.J.

This appeal is directed against the judgment dated 03.06.2010 rendered by the then learned Sessions Judge, Faridkot whereby appellant-accused Tek Singh was held guilty for committing offence punishable under Section 302 of Indian Penal Code (for short 'IPC'). Vide order of sentence dated 04.06.2010, he was sentenced to undergo life imprisonment and to pay a fine of Rs.1,50,000/-. In default of payment of fine to further undergo rigorous imprisonment for 5 years. It was further stipulated that if an amount of fine is recovered then a sum of Rs. 1 lac out of the total fine of Rs. 1,50,000/- shall be equally distributed amongst two sons and the husband of the deceased.

Briefly, the prosecution case is like this; that on 29.07.2009

Mohinder Singh lodged report Ex.PA with the police to the effect that he is a labourer. He has two sons and a daughter. The daughter is eldest and married. Both the sons namely Sukhwinder Singh and Manohar Singh are bachelor. His son Manohar Singh had gone to Pune. As per complainant, he and Sukhwinder Singh were present in the house. Tek Singh (accused) was on visiting terms with them. On the day of the occurrence Tek Singh had gone to their house in the morning. At about 12:30 P.M., his son Sukhwinder Singh was taking bath whereas the complainant was sitting at his retail shop in his house. At that time they heard the shrieks of his wife Charanjit Kaur from their residential room. He and his son Sukhwinder Singh rushed to the room. There, Tek Singh was causing injuries on the head of his wife with the crusher (*Ghotna*). On their raising alarm “marta-marta”, Tek Singh pushed him and ran away from the spot with the crusher. When he and his son Sukhwinder Singh attended her, the face of his wife Charanjit Kaur was smeared with blood and she had died. Complainant gave the cause of grievance like this; that Tek Singh was suspecting that complainant's wife had illicit relations with some other person and for this reason he has killed his wife by causing injuries on the head. After leaving Sukhwinder Singh at the spot, complainant had gone to the police and lodged the present complaint as Ex.PA. After making endorsement Ex.PA/1 on this complaint SI Gurjant Singh sent ruqa to the police station for registration of the case whereupon FIR Ex.PA/2 was recorded by ASI Jaspal Singh. Police inspected the spot in the presence of Mohinder Singh complainant. After spot inspection, inquest report Ex.P8 was prepared. Post-mortem of the dead body was got conducted. Davinder Singh and

Pardeep Kumar identified the dead body. Photographs of the spot were obtained. Samples of the plain earth as well as blood stained earth were taken from the spot. The same were made into a duly sealed parcels sealed with the seal of 'GS' and the same were taken into police possession vide memo Ex.P9. At Sadiq Chowk, ASI Rachhpal Singh handed over the belongings of the deceased, duly sealed in a parcel containing seal impression of the doctor to SI Gurjant Singh which were taken into police possession vide memo Ex.P12. Case property was deposited with the MHC. On 30.07.2009 accused was arrested on the pointing of complainant.

On interrogation, accused gave disclosure statement having kept hidden *Ghotna* (thick wooden baton) in the 'Sarkandas' lying at the back of Medical College Campus about which he alone knew and can get the same recovered. This disclosure statement is Ex.P6. In pursuance with this disclosure statement accused led the police party to the aforesaid place and got recovered *Ghotna* which was made into a parcel and sealed with the seal of 'GS' and then taken into police possession vide memo Ex.P7. *Ghotna* is Ex.MO1. *Ghotna* was blood stained. Scaled site plan of the spot was got prepared as Ex.P1. After completion of necessary investigations, the challan was put in the Court.

Finding a prima facie case against the accused he was charge-sheeted for committing offence punishable under Section 302 IPC to which he did not plead guilty but claimed trial.

After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein accused denied each prosecution allegation and pleaded his innocence as well his false

implication. The defence taken by the accused is this; that he has been falsely implicated on account of land dispute with Nasib Singh. As the complainant Mohinder Singh is go between of the marriage of Nasib Singh therefore, at his instance, the complainant has falsely implicated him in this case. In defence accused examined Vinod Kumar Sharma, Advocate, District Courts, Faridkot as DW1 who scribed the agreement to sell dated 19.02.2005 executed between Tek Singh (accused) and Nasib Singh.

After hearing both the counsel for the parties and appraising the entire evidence and material coming on record, learned trial Court convicted the accused for committing offence punishable under Section 302 IPC and sentenced accordingly, as mentioned in the earlier part of this judgment.

We have heard learned counsel for the appellant and learned State counsel besides appraising the entire material and evidence coming on record.

First of all, it was argued by learned counsel for the appellant-accused that in this case FIR is delayed one. This delay is of more than 3 hours between the occurrence and the registration of the case. As per prosecution version, occurrence took place at about 12:30 P.M. whereas FIR Ex.PA/2 was got registered at 15:40 hours and the Special Report was received by the Magistrate at 6:30 P.M. Delay of 3 hours is said to be sufficient for the relation witnesses for concoction of stories, coloured version and false implication of accused, as a result of consultations and deliberations. In fact, the prosecution version is not believable that the accused would be allowed to sit with the deceased alone in the house belonging to complainant itself. It is not believable that the accused would

commit murder of deceased with *Ghotna* in her own house.

The above argument of learned counsel for the appellant-accused is devoid of any force as the present case is based on eye witnesses account. Eye witnesses are none else but the husband and son of the deceased. Sukhwinder Singh as PW5 narrated the circumstances under which the present offence was committed by the accused. He categorically deposed that on 29.07.2009 at about 12:30 Noon, he along with his father, mother and accused Tek Singh were present in their house. Accused was on visiting terms with them. He had gone to take bath whereas his father was sitting in their shop which is in their house itself. Under these circumstances, his mother Charanjit Kaur was sitting in the room of his house whereas accused was present in their house. When they heard shrieks of their mother, they rushed and saw accused Tek Singh hitting his mother on the head by means of a wooden *Ghotna*. Sukhwinder Singh (PW5) deposed that all the blows landed on the head of his mother and when they raised alarm accused ran away along with his weapon after giving a push to his father. Mohinder Singh as PW6 fully corroborated the statement of PW5. In the FIR, as well, when PW5 and PW6 appeared as witnesses categorically stated that the accused suspected infidelity of Charanjit Kaur and on account of this grudge, he had killed her. All these go to show that accused was having relations with Charanjit Kaur and as he was suspecting her fidelity and could not tolerate her waywardness, he committed her murder by giving *Ghotna* blows on her head. Both the eye witnesses were present at the spot. They witnessed accused giving blows with *Ghotna* on the head of Charanjit Kaur. With this kind of evidence on record, it cannot be said that within a

short span of 3 hours from the time of occurrence they could concoct the false story against accused. Even otherwise, after the occurrence, sometime must have been taken in reporting the matter to the police and then police must have also taken sometime in taking action. Taking of 3 hours in all that, cannot be said to be unreasonable or that the FIR in this case is delayed one or that the delay could not be explained sufficiently by the prosecution.

Accused taken the defence in his statement recorded under Section 313 Cr.P.C. that he has been falsely implicated on account of land dispute with Nasib Singh. Complainant Mohinder Singh mediated the marriage of Nasib Singh. As such, at the instance of Nasib Singh complainant has falsely implicated the accused in this case. The aforesaid defence was never put to PW5 as well to PW6. Even, there is nothing on record to prove the same. It is also otherwise not believable that simply because a person was mediator of somebody's marriage, would falsely involve the other in a murder case at the instance of that person whose marriage was mediated by him. Of course, accused gave suggestions to PW5 and PW6 that since they were suspecting the fidelity of Charanjit Kaur, therefore, she had committed suicide by jumping from the roof yet this defence was not taken by the accused when his statement under Section 313 Cr.P.C. was recorded. Not only this, in this case, accused suffered disclosure statement Ex.P6 and, thereafter, in pursuance with the aforesaid disclosure statement, he got recovered blood stained *Ghotna* from the 'Sarkandas' lying at the back side of the Medical College Campus, Faridkot vide memo Ex.P7. The aforesaid *Ghotna* was sent to FSL for examination vide report FSL Ex.P18. Human blood was reported on that *Ghotna*. As

such, recovery of blood stained *Ghotna* from the exclusive possession of accused, also connects him with this crime. In this regard, it was argued by learned counsel for the appellant-accused that PW2 H.C.Balwant Singh deposed that the place of recovery is accessible to all and sundry. As such, even if *Ghotna* was got recovered by the appellant-accused, it cannot be said to be in his exclusive possession. As such, he cannot be connected with the present crime. This arguments is not sustainable as *Ghotna* was not visible from the naked eye. Accused made disclosure statement Ex.P6 to the effect that he had kept concealed *Ghotna* Ex.MO1 in the 'Sarkandas' lying at the back side of Medical College Campus, Fridkot. Unless accused kept concealed the same, he was not supposed to be having any knowledge about its concealment. As such, getting recovery of blood stained *Ghotna* effected by the accused, further proves the involvement of accused in this crime. Dr. Shilekh Mittal (PW4), who conducted the post mortem on the dead body of Charanjit Kaur also reported that the injuries on her person were caused by blunt weapon. As such, the injuries on the person of deceased are also inconsonance with the weapon of offence got recovered by the accused at his instance.

The contention of learned counsel for the appellant-accused that the blood grouping was not got done regarding blood found on the weapon of offence i.e. *Ghotna*; therefore, it cannot be said that blood on the *Ghotna* was that of deceased; is again not sustainable as if the blood grouping was not got done that would not make any difference. It is reported by FSL vide report Ex.P18 that the blood found on the *Ghotna* was human blood. After committing of crime, *Ghotna* remained in possession of

accused and it is the accused who had kept concealed the same in the 'Sarkandas' lying at the back side of Medical College Campus, Faridkot.

It was next argued by learned counsel for the appellant-accused that the presence of eye witnesses Mohinder Singh is unreliable as it is not free from suspicious circumstance. During the course of his cross-examination, he admitted that he was to appear in the Court of CJM, Faridkot in a Excise case against him. As such, he cannot be said to be present at the spot at the relevant time. This argument of learned counsel for the appellant-accused is not sustainable as Mohinder Singh (PW6) deposed that he attended the Court of CJM, Faridkot on that day but he left the Court at 10:30 A.M. the present occurrence had taken place at 12:30 P.M. As such, Mohinder Singh (PW6) could very well be present at the place of occurrence at the relevant time. There is in fact no material on the file to show that after leaving the Court at 10:30 A.M., it was not possible for complainant Mohinder Singh to be present at the place of occurrence.

Learned counsel for the appellant-accused also raised argument regarding no independent corroboration of the statements of relation witnesses PW5 and PW6. Of course, independent corroboration to the evidence led by the prosecution would certainly support the prosecution case but in the case in hand PW5 and PW6 deposed that after the murder public gathered at their house. Thus when nobody from the neighbour has witnessed the occurrence, there was no point for the Investigating Officer to keep neighbour as witness in this case.

On the other hand statements of PW5 and PW6 are consistent and also inconsonance with the medical evidence available on record,

inspiring confidence in the mind of the Court regarding guilt of the accused.

For the reasons recorded above, finding no merit in this appeal, maintaining the impugned judgment of conviction dated 03.06.2010 and order of sentence dated 04.06.2010, this appeal is ordered to be dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

September 15,2015
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