

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-392-DB of 2015

Date of Decision : September 14, 2015

Paramjit Kaur @ Gurpal Kaur

....Appellant

VERSUS

State of Punjab

....Respondent

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

Present : Mr. Bikramjit Singh Randhawa, Advocate
for the appellant.

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

T.P.S. MANN, J.

The appellant, namely, Paramjit Kaur @ Gurpal Kaur, wife of Jarnail Singh, permanent resident of village Thathiala and residing in village Bichhauri, Police Station Balachaur, District Nawanshahr, was tried for committing the offence punishable under Section 302 IPC on the allegations that on 7.2.2006 at about 10.15 a.m., in the area of village Bichhauri, she committed murder by intentionally causing the death of Gurdev Kaur. Vide judgment and order dated 18.11.2010, learned Sessions Judge, Shaheed Bhagat Singh Nagar convicted her for the aforementioned offence and sentenced her to undergo rigorous imprisonment for life and to pay a fine of Rs.3,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months. The period already undergone by her was ordered to be set off against the substantive sentence awarded.

Aggrieved of her conviction and sentence, the appellant

preferred the present appeal which stood admitted. Vide order dated 12.3.2005, the Court directed the Registry to call for the records forthwith and list the appeal for final hearing for the reason that she had already undergone an actual sentence of about nine years.

According to the prosecution, complainant Chuhar Singh, husband of Gurdev Kaur deceased made statement Ex.PA before SI Ranjit Singh, Station House Officer, Police Station, Balachaur, whom he came across at Adda Chankoya. In his statement, the complainant averred that he was an agriculturist by profession. He had one son and three daughters and all were married. His son Jasbir Singh was running a medical store in one room of the house, whereas his wife Gurdev Kaur used to do household work. On 7.2.2006, at about 10.15 a.m., when his son was at his medical store and after irrigating the fields, he himself returned home, he saw the appellant Paramjit Kaur, who was his sister and residing with them, having felled Gurdev Kaur in the kitchen and gave beatings to her with iron pipe (Bhookna) on her head. The complainant ran into the kitchen and saw that his sister had already given injuries to his wife Gurdev Kaur with the iron pipe. As a result blood started oozing out. When the complainant tried to take care of his wife, the appellant, while carrying iron pipe ran away. The complainant informed his son Jasbir Singh at his shop about the incident. Thereafter, the complainant, alongwith Surjit Singh lifted Gurdev Kaur and put her in a car. His son Jasbir Singh took her to Raja Hospital but before reaching the hospital, she died due to the injuries. His son brought back the dead body of Gurdev Kaur. According to the complainant, appellant Paramjit Kaur @ Gurpal Kaur got enraged on account of something and caused injuries to Gurdev Kaur, as a result of which she died. The complainant after leaving

his son and Surjit Singh with the dead body and in the company of Manohar Singh Chatha, Sarpanch of village Kharod started for the Police Station to lodge the report and came across SI Ranjit Singh at Adda Chankoya. After recording the statement, SI Ranjit Singh made endorsement Ex.PA/2 on 7.2.2006 at 5.00 p.m. on the same and sent it to Police Station Balachaur, where on its basis FIR Ex.PA/3 came to be registered by ASI Gurmukh Singh on 7.2.2006 at 5.25 p.m.

During the investigation of the case, SI Ranjit Singh reached the spot and prepared inquest report and rough site plan. He recovered one scarf and gunny bag stained with blood and took it into possession. After her arrest, the appellant got recovered iron pipe, which was made into parcel and taken into possession. The dead body was sent for post-mortem. Statements of the witnesses were recorded. On completion of the investigation, final report under Section 173 Cr.P.C. was submitted against the appellant. The case was, thereafter, committed to the Court of Sessions, where charge under Section 302 IPC was framed against the appellant, to which she pleaded not guilty and claimed trial.

In support of its case, the prosecution examined complainant Chuhar Singh as PW1, who deposed about the ocular account. PW2 Surjit Singh testified that on 7.2.2006 at about 10.00 a.m., he, alongwith Jasbir Singh, took Gurdev Kaur to Raja Hospital, Nawanshahr, where she was declared dead on arrival. He identified the dead body at the time of inquest.

PW5 Jarnail Singh testified that on 7.2.2006, he, alongwith Chuhar Singh, was present at the house of Chuhar Singh when they heard that Gurdev Kaur had been killed. They, alongwith ladies of the

village, started searching for the appellant, who was found present in the bed room. She was having with her blood stained iron pipe. The appellant was taken to the house of Jasbir Singh, then to the house of Santokh Singh, Nambardar and finally produced before the police.

PW7 Kamalgurpreet, Draftsman deposed about preparing scaled site plan Ex.PG of the place of occurrence.

PW9 Dr. J.P. Singh testified that on 8.2.2006 at 11.00 a.m. He conducted postmortem on the dead body of Gurdev Kaur. There was no appearance of any symptom of poison or disease. Length of the body was 5'-3". There was no mark of ligature on neck. The dead body was of an old aged lady, well built, well nourished, stout with eyes and mouth closed, bearing printed light pink salwar, white kamiz, white vests, white bra, blue coloured underwear. Rigor mortis was present. Post mortem lividity was present on the dependent parts. Following injury was noticed on the dead body :-

“A lacerated wound of scalp measuring 7 cm. x 2 cm. present on the right parietal region of skull extended upto right eye-brow with underlying fracture of skull bone, extended deep into the brain.”

The doctor also found fracture of the skull. Laceration of brain was present. Walls, ribs and cartilages, pleura, larynx and trachea, right lung and left lung were healthy. Pericardium heart vessels were healthy. Left side of the heart was empty. Right side was full of blood. The abdomen walls, perineum, mouth, larynx and esophagus, large intestines and their contents, liver, spleen, kidneys, bladder, organs of generation, external and internal were healthy. Stomach and its contents were

healthy, contained food particles. Small intestines and their contents were healthy and contained chyme. There was no disease of deformity and dislocation. Fracture of the skull bone was present. In his opinion, the cause of death was head injury which was sufficient to cause death in normal course. The injury was ante-mortem in nature. The probable time that elapsed between injury and death was immediate and between death and postmortem 19 hours.

The investigation part of the case was brought on record by the prosecution by examining PW3 ASI Surinder Singh, PW4 ASI Darbara Singh, PW6 Constable Satpal and PW8 SI Ranjit Singh.

When examined under Section 313 Cr.P.C., the appellant denied the allegations of prosecution and stated that she was innocent and falsely implicated in this case by the police at the instance of her brother Chuhar Singh but had been himself guilty and had taken the benefit of her mental condition as she was suffering from schizophrenia since her childhood and for this reason her husband had also deserted her since long. She had remained under treatment and dependent upon her brother Chuhar Singh for the basic necessities of life and treatment without any help from anyone. She herself was the victim and none cared for her except Gurdev Kaur.

In her defence, the appellant examined DW1 Dr. Kuldeep Sharma, Professor and Head, Department of Psychiatry, Rajindra Hospital, Government Medical College, Patiala, who deposed that the appellant was brought to him by the jail authorities on 30.5.2008 and he conducted the investigation of medical and psychological aspects of the patient regarding the unsoundness of mind of Paramjit Kaur @ Gurpal

Kaur. She remained admitted in the hospital from 30.5.2008 to 6.6.2008. He proved the original report Ex.DA and record Ex.DB of Paramjit Kaur @ Gurpal Kaur. The appellant was suffering from chronic mental illness schizophrenia due to which the thinking becomes bizarre and the patient becomes of illogical behaviour. The illness continues and there may be exaggeration and remission in the course of the deceased.

After hearing learned counsel for the parties and on going through the evidence brought on the record, the trial Court after holding that the prosecution had been successful in proving the charge against the appellant, convicted and sentenced her, as mentioned above.

This Court has heard Mr. Bikramjit Singh Randhawa, Advocate for the appellant and Mr. S.S. Dhaliwal, Additional Advocate General, Punjab and with their able assistance scanned the evidence minutely.

Primary issue to be decided in the present appeal is as to whether the appellant was suffering from any mental disorder, i.e. schizophrenia at the time of the occurrence or not.

DW1 Dr. Kuldip Sharma did testify that the appellant was suffering from chronic mental illness, i.e. schizophrenia and he based his findings on the reports Ex.DA and Ex.DB. Report Ex.DA pertains to the appellant being referred to Psychiatric Department, PGI, Chandigarh. However, on account of the appellant being not cooperative during the assessment sessions, the psychological tests could not be completed. However, on the basis of interviews conducted, it was found that possibility of her suffering from a mental disorder, i.e. schizophrenia could not be ruled out. Report Ex.DB is in the question answer form which the

doctor had put to the appellant and on its basis, it was concluded that possibility of suffering from schizophrenia was there. At the same time from both the reports i.e. Ex.DA and Ex.DB, it cannot be said that the appellant was suffering from long standing illness. During his cross-examination DW1 Dr. Kuldeep Sharma admitted that he had no case history of accused before 30.5.2008. Accordingly, he could not comment as to what was the mental condition of the appellant before that date. Even the appellant did not opt to bring any record about her mental condition as on the date of occurrence or whether she was taking any treatment of her mental illness. During the trial, the appellant was referred to Mental Hospital, Amritsar and vide report dated 15.1.2010, Dr. Manjit Singh reported that she had recovered sufficiently and fit to stand trial in the Court of law.

Further, as per Modi's Medical Jurisprudence and Toxicology, illness of simple schizophrenia begins when the patient is young. With the passage of time, there is gradual loss of interest in the outside world from which he withdraws. There is an all round impairment of mental faculties and emotionally becomes flat and apathetic. Modi has referred to about six types of schizophrenia from which the individual could suffer. Modi further records that although a person may be suffering from a psychotic disorder before, during or after a killing, it does not mean that the act itself was a result of, or even influenced by his mental disorder. The link between the two is required to be established as to whether mental study is to form a defence or it was only a mitigating circumstance. The accused was required to establish that at the time of the alleged occurrence she was suffering from such a mental disorder that she could commit the crime of Gurdev Kaur. As no such link has been established,

the appellant cannot get the benefit that she committed murder of Gurdev Kaur as she was suffering from schizophrenia.

The occurrence in question had taken place in the kitchen of the house belonging to complainant Chuhan Singh. His wife Gurdev Kaur used to do household work in the kitchen. After irrigating the fields when the complainant returned home at about 10/10.30 a.m., he saw the appellant mercilessly beating his wife Gurdev Kaur. The appellant is none other than his real sister. She was carrying an iron pipe which she wielded in giving injury on the head of Gurdev Kaur. The presence of complainant Chuhan Singh at the time of the occurrence cannot be termed to be unnatural or improbable. When he tried to take care of his injured spouse, the appellant escaped from there alongwith iron pipe. Complainant Chuhan Singh then summoned his son Jasbir Singh who was running a medical store in one room of the house. Surjit Singh son of Tarsem Singh, resident of the village also reached the spot. All three of them then lifted Gurdev Kaur and put her in the car and an attempt was made by Jasbir Singh to take her to Raja Hospital for getting her treatment but before they could reach the hospital, the injured died due to the injury. The dead body was then brought back to the village and, thereafter, complainant Chuhan Singh left for the Police Station to lodge the report. On the way, he came across SI Ranjit Singh who recorded his statement Ex.PA on 7.2.2006 at 5.00 p.m. and on its basis, FIR Ex.PA/3 was recorded on 7.2.2006, at 5.25 p.m. Special report was sent to the Ilaqa Magistrate, who received the same on the same evening at 7.05 p.m. Going by the fact that after the occurrence, the injured was taken to Raja Hospital but before the injured could be attended to, she succumbed to her injury and, thereafter, the dead body was taken to the village and

subsequently, Chuhan Singh left for the Police Station to lodge a report and at Adda Chankoya, he came across SI Ranjit Singh before whom he made a statement Ex.PA, there was no delay in the lodging of the FIR. Whatever delay occurred stands duly explained.

It has come in the statement of PW5 Jarnail Singh that on 7.2.2006, he alongwith Chuhan Singh was present at the house of Chuhan Singh where they heard about the killing of Gurdev Kaur. Thereafter, both of them alongwith ladies of the village started searching for the appellant and ultimately, when he returned to his house he saw the appellant present in his house and had covered herself with the quilt. She was having iron pipe stained with blood with her. When the police came from the Police Station, she was produced and duly arrested. In his cross-examination, he testified that the house of Chuhan Singh was at a distance of 4/5 houses from his house. He had been attending the occasions of sorrow and happiness at the house of Chuhan Singh and, accordingly, their families were close to each other.

The iron pipe (Bhookna) which was recovered by the police at the time of arrest of the appellant, was sent to the Forensic Science Laboratory, Punjab and vide report Ex.PG it was found to be stained with human blood.

As per the deposition of PW9 Dr. J.P. Singh, there was one injury on the dead body which was a lacerated wound on the scalp measuring 7 cms. x 2 cms. on the right parietal region. The medical evidence fully corroborates the ocular account.

In view of the above, this Court has no other option but to hold that it was on account of the injury caused by the appellant that Gurdev

Kaur, wife of complainant Chuhar Singh had died. However, the issue remains as to whether the conviction of the appellant under Section 302 IPC can be sustained. It is the prosecution case that the appellant was not armed with any conventional weapon. Rather she had used an iron pipe (Bhookna) in causing an injury on the head of the deceased. Such an iron pipe is generally used in the kitchen in order to start the fire. There is no allegation that the appellant tried to give another blow with the iron pipe to the deceased. Further, while lodging the FIR, the complainant had stated that the appellant had caused the injury after she felt enraged. Under these circumstances, it cannot be said that the appellant intended to commit the murder of Gurdev Kaur. Rather, she intended to cause an injury which was likely to cause death, making her responsible for committing the offence under Section 304 Part I IPC.

Resultantly, the appellant is acquitted of the charge under Section 302 IPC and her sentence of imprisonment for life and fine are set aside. Instead, she is convicted under Section 304 Part I IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.3,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.

The appeal is, accordingly, disposed of.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

September 14, 2015
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