

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

1. Crl. Appeal-D No. 107-DB of 2003(O&M)
Date of Decision: March 11, 2015.

Hari Krishan APPELLANT (s)

Versus

State of Punjab RESPONDENT (s)

2. CrI. Revision No.1346 of 2003(O&M).

Subhash Gupta PETITIONER (s)

Versus

State of Punjab and others RESPONDENT (s)

CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Kuldeep Sanwal, Advocate
for the appellant.

Ms. Manjari Nehru Kaul, Addl.A.G., Punjab.

Mr. S.K.Garg Narwana, Senior Advocate with
Mr. Naveen Gupta, Advocate
for the petitioner in CRR No.1346 of 2003
for the complainant in CRA-D No.107-DB of 2003.

LISA GILL, J.

This order shall dispose of CRA-D No.107-DB of 2003 (Hari Krishan v. State of Punjab) and CRR No.1346 of 2003 (Subhash Chand v. State of Punjab and others).

CrI.Appeal-D No.107-DB of 2003 has been preferred by appellant –

Hari Krishan son of Roshan Lal impugning the judgment of conviction dated 30.09.2002 and order of sentence dated 08.10.2002 whereby he has been convicted for the offence punishable under Section 302 IPC and sentenced to undergo rigorous imprisonment for life, besides, pay a fine of ₹2,000/- and in default thereof, to further undergo rigorous imprisonment for two months by the learned Additional Sessions Judge (Adhoc), Patiala.

Crl. Revision No.1346 of 2003 has been filed by complainant – Subhash Gupta praying for conviction of accused Jai Krishan, Versha Rani and Satya Devi.

Prosecution case is unfolded on the statement (Ex.PF) of complainant – Subhash Gupta. It is stated by Subhash Gupta that his sister Manju Rani wife of appellant – Hari Krishan was married to him in the year 1980 according to Hindu rites and customs. A sum of ₹3,00,000/- was spent on the marriage but his sister was harassed by her husband – Hari Krishan (appellant) and mother-in-law Satya Devi a few days after the marriage on account of demand of dowry. After one month of the wedding, a television and fridge were handed over to the accused persons. They still continued to ill-treat his sister. Appellant-accused would maintain his calm for some days after being given some money but then again he would start raising demands for money. Three children, namely, Navita, Pardeep and Pankaj were born out of this wedlock. Appellant allegedly poisoned the mind of his children against their mother by saying that she was mentally unwell. A sum of ₹1,50,000/- was given after five years of marriage. Arrangements were made in the year 1990 to settle the appellant and his family in Delhi. A sum of ₹7,00,000/- was invested but

appellant could not carry on the business successfully. After three years, he returned to his parents at Patiala alongwith his family. In the year 1993, appellant broke his sister's arm by beating her. Appellant's mother, brother and brother's wife also used to exhort the appellant to trouble his sister. They used to harass her as well. Two months prior to the occurrence, appellant told the complainant that he should take away his sister or else he will kill her. His sister's mother-in-law, daughter, brother-in-law and brother-in-law's wife alongwith the appellant hatched a conspiracy to kill his sister.

He received a telephonic call from Hari Krishan on 21.07.2000 that his sister had died due to a heart attack. He alleged that his sister had been done to death by the appellant, his mother, younger brother, younger brother's wife and the appellant's daughter Navita.

On his statement FIR No.393 dated 21.07.2000 (Ex.P10B) was registered against the appellant as well as accused Jai Krishan (brother-in-law), Varsha Rani (wife of Jai Krishan), Satya Devi (mother-in-law), Navita and Pankaj (daughter and son of the appellant and deceased).

Statement of Krishan Gopal (PW7) was recorded on 21.07.2000 to the effect that he had reached the house of Hari Krishan (appellant) on 20.07.2000 at about 6.45 p.m. When he tried to enter the house, he saw deceased Manju Rani on the ground. Pardeep (son of the appellant and Manju Rani) was holding her from her ankles. Navita (daughter of the appellant and Manju Rani) had pressed her hands on the ground. Appellant – Hari Krishan was sitting on Manju Rani's chest and pulling down the two ends of the cloth tied around the Manju Rani's neck. He out of fear went to the house of his in-laws. On

gathering courage, he went towards the house of appellant on 21.07.2000 and noticed that the brothers of the deceased had already reached there and police was also present. His statement was recorded by the police on the spot on 21.07.2000.

Appellant Hari Krishan allegedly made an extra judicial confession before Yadwinder Singh (PW9) to the effect that in-laws of the appellant were well off and he had asked his wife to bring more money from her parents for starting a business. Her parents helped him earlier but he was not successful because of inclement stars. However, appellant's wife was refusing to bring any money from her parents or brothers on the plea that she would not demand any money from her parents for all times and stated that she would rather die of starvation than to ask her parents to give money. She was upset on that account. His children would ask her mother to seek help from her parental home. On 20.07.2000 their son Pankaj came to the appellant weeping and complained that he had been beaten by her mother (deceased). Thereafter the appellant and the other accused conspired to finish Manju Rani as otherwise the dispute would continue. He was sanguine about getting away with murder of Manju Rani as his children were also on his side. He gave the details of the manner in which Manju Rani was done to death. Appellant confessed to the crime before PW9 Yadwinder Singh and asked for his help for being produced before the police. Appellant was produced by Yadwinder Singh (PW9) before the police on 28.07.2000, was arrested and investigation was carried out.

As per post mortem report (Ex.PA) cause of death was asphyxia due to strangulation.

Challan/report under Section 173 Cr.P.C was presented on completion of investigation and the matter was committed to the court of Sessions vide order dated 04.12.2000 by Chief Judicial Magistrate, Patiala. Charges were framed against the accused persons.

Learned Additional Sessions Judge, Patiala on appreciation of the evidence, convicted the appellant for the offence punishable under Section 302 IPC and sentenced him as mentioned above while extending the benefit of doubt to three co-accused, namely, Satya Devi, Jai Kishan and Varsha Rani acquitted them of the charges against them. Two the accused i.e., children of the appellant and the deceased were tried separately being juvenile at the time of occurrence.

Learned counsel for the appellant vehemently argues that the version put forth by the prosecution is highly improbable and opposed to normal behaviour or conduct of a reasonable person. He submits that marriage of the appellant took place with the deceased in the year 1980 and the alleged occurrence took place in the year 2000. Therefore, it is unbelievable that for a period of twenty (20) years no complaint was ever been made either by the deceased or the complainant in respect to the allegations of harassment, demand of dowry and physical abuse as are being levelled now.

It is further contended that the fact of appellant's children also being implicated, points to the false implication of appellant as well as other accused. Complainant – Subhash Gupta has tried to make improvements while appearing as a witness before the trial court inasmuch as he raises ridiculous allegations about the appellant having illicit relations with his daughter.

Learned counsel for the appellant stresses that there is nothing on

record to connect the appellant with the alleged offence. There was no reason or motive with the appellant to have killed his wife. This is so especially in view of marriage being twenty years old. No reliance can be placed on the statement of PW7 Krishan Gopal. He has been introduced as a witness at a later stage. In case he had actually witnessed the occurrence, he would not have run away from the spot. Similarly, no reliance can be placed on the statement of PW9 Yadwinder Singh. No question was put to the appellant in respect to the testimony of PW7 Krishan Gopal and PW9 Yadwinder Singh at the time of recording his statement under Section 313 Cr.P.C. There was no occasion for the appellant to have confessed to the crime before him. Acquittal of the other co-accused shows that the prosecution case is false.

It is further contended that all the circumstances on the basis of which the appellant has been convicted have not been put to him while recording his statement under Section 313 Cr.P.C. This is a fatal flaw and trial stands vitiated on this account.

Per contra, learned counsel for the State argues that that the prosecution has proved its case beyond reasonable doubt. There is ample evidence on record which justifies the conviction of the appellant. All the witnesses have rendered a truthful account of the offence. The ocular version is corroborated by the medical evidence on record. Letters written by the deceased have been proved on record which show maltreatment of the deceased at the hands of appellant. Substantial circumstances have been duly put to the appellant while recording his statement under Section 313 Cr.P.C.

We have heard learned counsel for the parties and perused the

record.

Undoubtedly, marriage of the appellant was solemnized with the deceased in the year 1980. The prosecution has produced certain letters of the deceased written to her parents in respect of demand of dowry and of harassment. But such letters are prior to 1995. It can however not be ignored that Manju Rani died an unnatural death in her matrimonial home on 20.07.2000. As per the post-mortem conducted by PW4 Dr. D.S.Bhullar, Department of Forensic Medicine, Medical College, Patiala the cause of death was asphyxia resulting from strangulation. The relevant part of his testimony reads as under:-

“XX XX XX XX

..... Finger nails and lips were cyanosed, eye balls were prominent and showing sub-conjunctural petechial haemorrhage. Clotted blood was present on nose. Blood stained froth was visible on the nostril. Tongue was bruised. Clotted blood was present in the right ear.

No visible external injury was seen on neck except swelling on left side. On dissection sub cutaneous neck tissues showed extravasation of blood. Laryngeal cartilage and hyoid bone were fractured. Base of tongue was contused. Lung surface showed petechial haemorrhage lungs were congested. Pericardium was congested and showing petechial haemorrhage.”

Medical evidence shows the cause of death to be asphyxia due to strangulation. Plea of the learned counsel for appellant that Manju Rani may have committed suicide is untenable and rejected. The post mortem negates the theory of suicide. Neither the cross examination nor in the defence, there is such stand of the appellant. In his statement under Section 313 Cr.P.C., he simply pleads innocence and false implication. Dr. D.S.Bhullar (PW4) who conducted

the post-mortem upon the deceased has not been cross-examined on this aspect. There is not even a suggestion to the effect that death of Manju Rani was due to hanging. No explanation has been furnished in respect to the death of Manju Rani which admittedly took place in her matrimonial home.

Needless to say, it is the prosecution which has to prove its case beyond reasonable doubt but it is equally well settled that in case an accused withholds information which is in his special knowledge, an adverse inference necessarily has to be drawn against him. Section 106 of the Evidence Act is categorical in respect to the burden of proof of a fact in the special knowledge of a person. It has been proved on record that the deceased died of asphyxia due to strangulation, when she was in matrimonial home living with the present appellant. There is not even a whisper as to how Manju Rani met with an unnatural death in her matrimonial home.

Letters written by the deceased to her father have been placed on record as Ex.P13 to Ex.P16. Ex.P18 to P20 written by appellant Hari Krishan have also been placed on record. Ex.PW11/B and PW11/C a diary maintained by the deceased has been placed on record to indicate the harassment faced by her.

Evidence of PW7 Krishan Gopal who has given a graphic detail of the manner in which deceased Manju Rani was done to death and that of PW9 Yadwinder Singh an independent witness before whom appellant gave an extra-judicial confession, is sought to be attacked on the ground that their evidence is inadmissible as no question in this regard to the appellant was put to him while recording his statement under Section 313 Cr.P.C. This argument holds no weight in the peculiar facts and circumstances of the case. Undoubtedly, recording of the statement of the accused under Section 313 Cr.P.C. is not an

empty formality. The accused is made aware of the incriminating evidence being used against him and given an opportunity to explain the circumstances. However in the instant case, there is ample evidence apart from the testimonies of PW7 Krishan Gopal and PW9 Yadwinder Singh which establishes the culpability of the appellant. Thus, even if this evidence is ignored no benefit can accrue to the appellant.

Keeping in view the facts and circumstances we find no infirmity or perversity in the impugned judgment of conviction and order of sentence passed by the learned Additional Sessions Judge (Adhoc), Patiala vide which the appellant has been sentenced to undergo rigorous imprisonment for life for the offence punishable under Section 302 IPC for committing the murder of his wife Manju Rani.

Appeal is accordingly dismissed.

Bail bonds and surety bonds of the appellant stand cancelled and learned Chief Judicial Magistrate, Patiala is directed to take steps to take the appellant in custody to undergo the rest of the sentence imposed upon him.

It is informed that Subhash Gupta (petitioner in CRR No.1346 of 2003) has since passed away. It is also informed that Satya Devi (respondent No.4) is also stated to have passed away.

Keeping in view the facts and circumstances as above, CRR No.1346 of 2003 is dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

March 11, 2015.
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