

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

Criminal Appeal-D -169-DB of 2003
Date of Decision: April 06, 2015

Satnam Singh

--- Appellant

Versus

State of Punjab

---Respondent

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

Present: Mr. Vikas Mohan Gupta, Advocate,
for the appellant.

Mr. S.S. Dhaliwal, Additional Advocate General, Punjab,
for the respondent-State.

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1. *Whether Reporters of local papers may be allowed to see the Judgment? Yes/No*
 2. *To be referred to the Reporter or not? Yes/No*
 3. *Whether the judgment should be reported in the Digest? Yes/No*
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MAHAVIR S. CHAUHAN, J.

Court of learned Additional Sessions Judge (Adhoc), Fast Track Court, Patiala (here-in-after referred to as 'the trial court'), vide judgment/order dated June 05, 2002, having convicted and sentenced him to imprisonment for life and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for fifteen days under Section 302 of the Indian Penal Code, 1860 (here-in-after referred to as 'IPC') for having committed murder of his wife, Baljit Kaur, aged about 22 years (here-in-after referred to as 'the deceased'), convict Satnam Singh (here-in-after referred to as 'the appellant') has brought this appeal to challenge the impugned judgment/order and to claim his acquittal.

Fact Situation:

02. As per prosecution story, it was just two years before her demise that the deceased was married to the appellant and six months before the

occurrence had delivered a child, who, unfortunately, died immediately after birth. This resulted into appellant's continuous violent behaviour towards the deceased and resultant nerve-racking atmosphere in the house. On the fateful day, viz. April 14, 1999, PW8 Veeru (or say Beeru), father of the deceased (here-in-after referred to as 'the complainant') went to the house of the deceased to know her well being. After taking their evening meals appellant and deceased went to sleep in a room while the complainant slept in the courtyard of the house. At or around 02.00 a.m. on April 15, 1999, on hearing a noise from inside the room wherein the appellant and the deceased had gone to sleep, the complainant woke up and saw that door of the room was open and light inside the room was on. Appellant, while sitting over deceased's body, had gagged her mouth with his left hand and had pierced a sickle in her chest, near the neck, with his right hand. On being pushed aside by the complainant, appellant pulled the sickle out of deceased's body; gave a push to the complainant; and fled the scene. On hearing the noise residents from the neighbouring houses converged on the scene. Within minutes, the deceased bid adieu to this cruel world. Harchand Singh alias Guddu, who had mediated the marital alliance between the appellant and the deceased, also reached the spot. Accompanied by Karnail Singh, complainant set out for the police station but on Rohti bridge came across a police party headed by SI Parshottam Singh (PW10) (here-in-after referred to as 'the investigating officer') and narrated before him the entire sequence of events which was reduced into writing (*Exhibit PL*) and based thereon a formal First Information Report (for short, 'FIR'), Exhibit PW10/B, was recorded by ASI Gulzar Singh at Police Station, Sadar, Nabha.

Investigation:

03. Investigating officer reached the scene of occurrence; prepared inquest report, *Exhibit PC*; recovered a blood stained mattress, pillow and towel vide memorandum, *Exhibit PH*; got the spot photographed; prepared a rough site plan, *Exhibit PW10/C/1*, of the place of occurrence; got dead body of the deceased subjected to autopsy; recorded statements of witnesses; and on April 18, 1999 arrested the appellant.

04. When interrogated while in police custody, appellant suffered a disclosure statement, *Exhibit PK*, and pursuant thereto got recovered a sickle, *Exhibit P1*, as also his pants and shirt, vide memorandum, *Exhibit PK/1*.

Proceedings before the courts below:

05. On completion of investigation a report in terms of sub-section (2) of Section 173 of the Code of Criminal Procedure, 1973 (for short, 'CrPC') was presented before the learned Area Magistrate. After the case was committed to the Court of Session, learned Additional Sessions Judge, Patiala, on hearing the prosecutor and the defence and perusal of the report, found a prima facie case, triable under Section 302, IPC, to be made out against the appellant and charged him accordingly. Appellant pleaded not guilty to the charge and claimed to be tried.

06. During trial Dr. Sanjay Mathur (PW1) proved *Exhibit PA*- Post Mortem Report ('PMR', for short), and *Exhibit PD/1*-his opinion that 'the nature of injury causing the death of Baljeet Kaur was such that it could have caused her death immediately' and deposed to say that on examination, at 04.40 p.m. on April 15, 1999, he found following injuries on the dead body of the deceased:

01. *A 1.0" x 1/2" vertical stab wound in the region of sternal notch, slightly towards right side*

of midline with clotted blood at the margins and dried blood over whole of the chest and neck;

02. *A ½" superficial horizontal incised wound one inch lateral to upper end of injury No. 1;*

03. *Ruptured pleurae on the right side right pleurae cavity filled with blood;*

04. *Heart was empty and healthy. There was injury of major artery (brachio cephalic trunk) which was completely transected beneath the lower part of right sternoclavicular joint.*

According to Dr. Sanjay Mathur (PW1), in the stomach of the deceased 200 mls. of semi-fluid material with food particles was found ; and cause of death of the deceased was haemorrhage and shock as a result of injury to major artery (brachiocephalic) which was ante-mortem in nature and was sufficient to cause death in the normal course of nature.

07. Complainant Veeru (PW8) re-asserted the prosecution version on oath. Bhupinder Singh Sidhu (PW3) proved the scaled site plan of the place of occurrence, *Exhibit PF*. Manoj Kumar (PW7) proved photographs, *Exhibits P1 to P4* and negatives, *Exhibits P1/A to P4/A*. Investigating Officer, SI Parshottam Singh (PW10), Constable Rajinder Pal (PW9), ASI Inderjit Singh (PW6), ASI Dharam Dev (PW11), PHG Chand Singh (PW4), Constable Samay Singh (PW5) and MHC Baljinder Singh (PW2) brought on record various stages and aspects of investigation of the case.

08. On hearing the Public Prosecutor and the defence and appraisal of evidence, learned trial court found the prosecution to have proved appellant's guilt to the hilt and, accordingly, convicted and sentenced him as here-in-before stated.

In criticism and defence of the impugned judgment/order:

09. We have heard learned counsel for the parties besides examining the record of the case.

10. Learned counsel representing the appellant has strenuously argued

that case of the prosecution is based on the testimony of solitary witness, namely Veeru (PW8) who happens to be father of the deceased and in, thus, a highly interested witness and whose presence on the spot at the time of the occurrence has remained unproved while Harchand Singh (PW) who, as per case of the prosecution, had mediated the matrimonial tie-up between the deceased and the appellant and was present on the spot at the time of the occurrence, has been kept away from the witness stand for no justifiable reason. Learned counsel has also argued that the prosecution has failed to prove that the appellant had a motive to kill the deceased-who happened to be his wife and the FIR has been recorded at 12.50 p.m. on April 15, 1999 while the occurrence is stated to have taken place at or around 02.00 a.m. on that very day and the delay in lodging the FIR, which has remained unexplained, is fatal to the prosecution case; and, above this all, the appellant has not been afforded adequate opportunity to defend himself during the trial.

11. On the contrary, learned State counsel has defended the impugned judgment/order by submitting that case of the prosecution has been established beyond reasonable doubt in the testimony of Veeru (PW8) whose presence on the spot at the time of occurrence stands proved and was natural. According to the learned State counsel, PW Harchand Singh was given up as he was won over by the appellant and, even otherwise, his non-examination is inconsequential as he reached the spot after the occurrence had taken place. Learned State counsel has also argued that it being a case based on eye-witness account or say direct evidence, proof of motive behind the occurrence is of little consequence and record of the learned trial court would reveal that the appellant was given fullest opportunity to defend

himself. Delay in lodging the FIR, according to the learned State counsel, has been sufficiently explained.

12. No other or further point has been urged on either side.

Presence and interestedness of sole witness of occurrence, Veeru:

13. It is not in dispute that cause behind end of the deceased was haemorrhage and shock as a result of injury to major artery (brachiocephalic) which was ante-mortem in nature and was sufficient to cause death in the normal course of nature. The only question that survives is – “Is it the appellant who killed the deceased?”

14. Undisputedly, the deceased was married to the appellant just two years before her death and except for the duo none else was residing in the house. Complainant Veeru, while appearing as PW8, has been very categorical in stating that the appellant, whose parents have already died, was living alone with the deceased in the house. Further, a very specific statement made by the complainant (as PW8) is that on the fateful evening the appellant and the deceased had gone to sleep in a room, and a statement made by SI Parshottam Singh (PW10) and ASI Inderjit Singh (PW6) that dead body of the deceased was recovered from inside a room of the house of the appellant, have remained undisputed as the defence has neither cross-examined these witnesses with regard to these portions of their statements nor have they been confronted with a suggestion to the contrary. It is needless to state that if a party cross examining a witness elects not to avail himself or herself of the opportunity to put his/her essential and material case in cross-examination, it must follow that he/she believes that the testimony given by the witness could not be disputed at all.

15. Complainant Veeru (PW8) has picturesquely described the

occurrence by saying that on the fateful night, while sleeping in the courtyard of the house of the appellant he heard a noise from inside the room wherein the deceased and the appellant were asleep and found that door of the room was open, light in the room was on, the appellant while mounting over the body of the deceased had gagged her mouth with one hand and had pierced a sickle in her chest, near the neck, with the other and that when he (PW8) pushed him (the appellant) aside he (the appellant) pulled out the sickle from the body of the deceased and after giving a push to this witness, made good his escape, carrying the sickle along. Sickle, *Exhibit P1*, has been recovered vide memorandum, *Exhibit PK/1*, pursuant to disclosure statement, *Exhibit PK*, made by the appellant. Defence has not cross examined Veeru (PW8) as regards the manner of occurrence but has only disputed presence of PW8, Veeru on the spot at the time of the occurrence. From the record it comes out that except for confronting him with a suggestion that he did not witness the occurrence and was summoned later on, PW8, Veeru has not been cross examined to shatter his statement with regard to his presence there on the spot as also the manner of occurrence. It may not be out of place to reiterate here that presence of the appellant with the deceased in the room during the fateful night has remained undisputed and so has remained the fact that except for the appellant and the deceased, no one else was present there in that room. Had Veeru (PW8) been not present there, the appellant, in all probability, would have either destroyed or concealed the dead body and the very fact that in spite of being alone by the side of the deceased, the appellant could not do so lends guarantee to the presence of Veeru (PW8) there on the spot when the occurrence took place. It is not unnatural or abnormal for a father to visit

his daughter on a festive day like Baisakhi in this part of the world and recovery of sickle, Exhibit P1, pursuant to disclosure made by the appellant lends assurance to what has been stated by this witness.

16. Merely because the eye-witness, viz. PW8, Veeru, is father of the deceased, his evidence cannot *per se* be discarded. When there is allegation of interestedness, the same has to be established. Relationship, as such, is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person that too his own son in law. Foundation has to be laid if plea of false implication is made. A bare statement that being relative of the deceased PW8, Veeru is likely to falsely implicate the appellant cannot be a ground to discard his evidence which is otherwise cogent and credible and the witness has passed the acid test of cross examination successfully. Therefore, the contention that Veeru (PW8) being a close relative of the deceased and consequently a partisan witness, should not be relied upon, has no substance. Such a plea was repelled by Hon'ble Supreme Court as early as in **Dalip Singh and Ors. v. The State of Punjab**, AIR 1953 SC 364 in which surprise was expressed over the impression that relatives were not independent witnesses and it was laid down as under:

“A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person.”

17. The above decision has since been followed in **Guli Chand and Ors. v. State of Rajasthan**, 1974(3) SCC 698 in which **Vadivelu Thevar v. State of Madras**, AIR 1957 SC 614 was also relied upon. In **Masalti and**

Ors. v. State of U.P., AIR 1965 SC 202 Hon'ble Supreme Court observed as follows:

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

18. It may be added here that not only has PW8, Veeru been able to stand the test of cross examination, defence has also failed to bring on record any material to show that this witness by falsely implicating the appellant has either gained or is about to gain any benefit for himself or for any one else whom he may be interested in or that he has been inimically disposed towards the appellant.

19. Another contention raised on behalf of the appellant is that only PW8, Veeru, father of the deceased has been examined as a witness and the prosecution has not examined any independent witnesses and, therefore, it has failed to establish its case beyond reasonable doubt. This argument also is without substance. There is no bar in law in examining a family member, or any other person as a witness. Besides, when the statement of a witness, who is relative or is known to the affected party, is credible, reliable, trustworthy, and admissible in accordance with law, there would hardly be any reason for the Court to reject such evidence merely on the ground that the witness was family member or interested witness or person known to the affected party. There may be cases where it would be but inevitable to examine such a witness, because, as the events occurred, he/she was the

natural or the only eye witness available to give the complete version of the incident. In this regard, we may refer to **Namdeo v. State of Maharashtra, (2007) 14 SCC 150**, wherein Hon'ble Supreme Court drew a clear distinction between a chance witness and a natural witness by holding as under:

“28. From the aforesaid discussion, it is clear that Indian legal system does not insist on plurality of witnesses. Neither the legislature (Section 134 of the Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eyewitness, therefore, has no force and must be negated.”

29. It was then contended that the only eyewitness, PW 6 Sopan was none other than the son of the deceased. He was, therefore, “highly interested” witness and his deposition should, therefore, be discarded as it has not been corroborated in material particulars by other witnesses. We are unable to uphold the contention. In our judgment, a witness who is a relative of the deceased or victim of a crime cannot be characterised as “interested”. The term “interested” postulates that the witness has some direct or indirect “interest” in having the accused somehow or the other convicted due to animus or for some other oblique motive.”

20. Non-examination of Harchand Singh is hardly a circumstance that should hold the attention of this court even for a moment for the simple reason that as per case of the prosecution he reached the spot after the occurrence had taken place and his examination as a witness would only have added to multiplication of witnesses which would have been contrary to the dictum of Section 134 of the Indian Evidence Act, 1872 and the principle which says evidence has to be weighed and not counted. Be that as

it may, it is not unknown that where serious offences like the present one are committed, attempts are made either to terrorize or win over prosecution witnesses, and if the prosecutor honestly and bona fide believes that some of his witnesses have been won over, it would be unreasonable to insist that he must tender such witnesses before the Court. No adverse inference can be drawn against the case of the prosecution only because PW Harchand Singh has been given up because such witnesses being human beings are quite exposed and vulnerable to human feelings of yielding, browbeating, threats and inducements and, as such, giving up of such witnesses, as won over, is fully justified. If the appellant was so sure that PW Harchand Singh alone was aware of the "truth" and his evidence could demolish the case set up by the prosecution against him, he could be examined as a witness of defence but the appellant was not audacious enough to bring him before the Court as a witness in defence.

Delay in reporting the matter to the police:

21. FIR has been recorded at 12.50 p.m. on April 15, 1999 while the occurrence is stated to have taken place at or around 02.00 a.m. on that very day. Learned counsel representing the appellant has contended that the delay in lodging the FIR has remained unexplained and is fatal to the prosecution case. However, delay in lodging the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are, one cannot expect rustic villagers, as PW Veeru is, to act mechanically with all the promptitude and rush to the police station to lodge a report immediately after the occurrence. His loving daughter was brutally killed in front of his eyes by none else but her husband who was responsible for her safety and well being. There were no acquaintances around. The

persons who converged on the scene after the occurrence belonged to the neighbourhood of the appellant and their proximity with the appellant might have dissuaded PW Veeru from relying on them. He, therefore, sent PW Harchand Singh alias Guddu to his village Mardaheri to call his relatives. It was in the morning that some relatives, including Jeet Singh and Karnail Singh, son and nephew, respectively, of PW Veeru reached the spot and leaving the relatives there to guard the dead body, he, accompanied by his nephew Karnail Singh, set out for the Police Station to lodge a report. The scene, even otherwise, was so horrendous as to leave PW Veeru, father of the deceased, dumb-founded. Being grief-stricken because of the calamity it may not have immediately occurred to him that he should report the matter to the police. After all it was but natural in the given circumstances for him to take some time to regain composure to go to the police station to report the matter. It may be added here that in cases arising out of acute factions there is a tendency to falsely implicate persons belonging to the opposite faction but the case in hand does not belong to that genus. Above this all, the witness (PW Veeru) has stood the test of cross examination successfully and it is nobody's case that false witnesses have been introduced or the occurrence took place in a manner different from the one put up on behalf of the prosecution and it has been given a different colour by using the delay. The contention, therefore, fails and is rejected.

Proper opportunity to defend:

22. An effort has been made on behalf of the appellant to project that he was not allowed proper opportunity to defend himself at the trial. The effort, in our view, lacks force. Perusal of record of the learned trial court reveals that a counsel was provided to the appellant at State expense by

Punjab State Legal Services Authority. It also comes out from the record that on January 22, 2002, Mrs. Neena Kaushal, Advocate, the legal aid counsel exhibited her inability to continue as defence counsel whereupon Shri H.P.S. Verma, Advocate was appointed counsel for the appellant. As such, the plea raised has no ground to substantiate and is rejected.

Motive:

23. As regards motive behind killing of the deceased by the appellant, it is noticed that about six months before her death, deceased had given birth to a child who died immediately after birth. This proved to be an irritant in the relationship of the deceased and the appellant. The latter exhibited a violent attitude towards the former and on account thereof atmosphere in the house became traumatic. Still, assuming that this evidence is insufficient to establish the motive for murder but that by itself is insufficient to lead to an inference adverse to the case of the prosecution. Absence of motive, even if it is accepted, does not come to the aid of the accused because it is not always possible to disinter the mental transaction of the accused which would have impelled him to act in a particular manner. No proof can be expected in all cases as to how the mind of the accused worked in a particular situation. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eye-witnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eye-witnesses

is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eye-witnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.

(See **State of U.P. Vs. Kishanpal & Ors., (2008) 16 SCC 73**, and **Ranganayaki v. State, AIR 2005 SC 418:(2004) 12 SCC 521**).

Conclusion:

24. In view of the above, we do not find any reason to interfere with the impugned judgment of conviction and order of sentence. As a consequence, the appeal fails and is dismissed.

[T.P.S.Mann]
Judge

[Mahavir S. Chauhan]
Judge

April 06, 2015
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