

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

Crl. Appeal D-130-DB of 2003

Date of Decision : August 31, 2015

Bahadur Singh

.....Appellant

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. H.S.Randhawa, Advocate
as amicus curiae for the appellant.

Mr. Dhruv Dayal, Deputy A.G., Haryana.

T.P.S. MANN, J.

The appellant was charged for committing the offence punishable under Section 302 IPC on the allegations that on 16.9.1999, in the area of village Asmanpur, Police Station Pehowa, he committed the murder by intentionally causing the death of his wife Smt. Sukhwinder Kaur @ Satvinder Kaur. Vide judgment and order dated 5/7.8.2002, learned Additional Sessions Judge, Kurukshetra convicted him for the aforementioned offence and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for six months.

Aggrieved of his conviction and sentence, the appellant filed the present appeal which stands admitted and

notice issued to the State. Trial Court record has also been requisitioned.

According to the prosecution, in the morning of 16.9.1999, Smt. Sukhwinder Kaur @ Satvinder Kaur-deceased, aged 21 years, resident of Asmanpur, District Kurukshetra had an altercation with her husband. Annoyed of the same, her husband administered some medicine to her forcibly, as a result of which, she became unconscious. Later on, her husband removed her to Saraswati Mission Hospital, Pehowa where she was admitted with history of ingestion of some poisonous liquid by her and she was unconscious at that time. Smell of insecticide was coming from her breath. On examination by Dr. Sudarshan Chug, both her pupils were found pin-pointed. Froth was coming from her mouth. She was having difficulty in respiration. There was sweating and crepitations from the chest. Treatment was started. Ruqa Ex.PA was sent to Police Station Pehowa. Pursuant to the same, HC Didar Masih reached the hospital and submitted application Ex.PB to find out the fitness of the patient to make statement. The doctor gave opinion Ex.PB/1 that she was not fit to give statement. The deceased became conscious at 11.00 a.m. HC Didar Masih moved application Ex. PG before Judicial Magistrate, Pehowa for recording the dying declaration of the deceased. Sh. Anil Gaur, Sub Divisional Judicial Magistrate, Pehowa vide order Ex.PG/1 asked Shri Phalit Sharma, Judicial Magistrate 1st Class,

Pehowa to do the needful. Accordingly, Shri Phalit Sharma accompanied HC Didar Masih to Mission Hospital, Pehowa and asked Dr. Sudarshan Chug whether she was fit to make statement. The doctor gave opinion Ex.PB/2 that she was fit to make statement. The Judicial Magistrate recorded proceedings Ex.PH/1 to this effect at 2.10 p.m. and he also found the deceased to be fit to make statement. He recorded her statement Ex.PH without any addition or omission and obtained her right thumb impression thereon. The Judicial Magistrate also appended his signatures Ex.PH/2 regarding recording of statement at 2.40 p.m. certifying that she had made statement voluntarily and spontaneously without any inducement, threat or pressure and none else was present in the room. Throughout the recording of her statement by the Judicial Magistrate, the deceased remained conscious. HC Didar Masih also moved application Ex.PJ for obtaining copy of the statement Ex.PJ/1 and made an endorsement Ex.PJ/2 thereon and sent it to Police Station Pehowa where FIR Ex.PJ/3 under Sections 328/323 IPC came to be recorded against the appellant on 16.9.1999 at 4.15 p.m.

Statement Ex.PJ made by the deceased which was recorded by the Judicial Magistrate, Pehowa is reproduced here-below:-

“Statement of Smt. Satvinder Kaur wife of
Bahadur Singh, 21 years, resident of village

Asmanpur, District Kurukshetra.

Q.1 What is your name?

Ans. Satvinder Kaur.

Q.2 Are you married?

Ans. Yes Sir, Name of my husband is Bahadur Singh, resident of Asmanpur. I have also a son.

Q.3 What do you want to state?

Ans. Today in the morning there was an altercation between me and my husband. Being annoyed on this count my husband administered some medicine forcibly and after that I became unconscious. I do not know what happened thereafter, and who brought me to the hospital. Before administering the medicine, my husband gave beating to me. Besides it, I have nothing to say.

Q.4 Whether you have given the aforesaid statement in your senses?

Ans. Yes Sir. I have given my statement while I was fully conscious. I have heard and understood the aforesaid statement and it is correct.

RO&AC.

R.T.I. Smt. Satvinder Kaur
16.9.1999.

Sd/-English
Phalit Sharma
Judicial Magistrate
Ist Class, Pehowa.”

It is also the case of the prosecution that ASI Simru Ram after recording FIR Ex.PJ/3, went to the hospital and recorded the statement of PW Amarjeet Kaur. He then went to

the Dera of Beant Singh with whom the appellant was employed and where the appellant resided with the deceased. He inspected the room of the appellant and found an empty plastic bottle of anucron monocrotophos 36% SL with smell of medicine from which poisonous medicine was said to have been administered to the deceased. The plastic bottle was seized vide memo Ex.PO. Rough site-plan of the place of occurrence was also prepared.

It is further case of the prosecution that on 16.9.1999 at 11.00 p.m. the deceased expired. Ruqa Ex.PQ regarding her death was sent to the Police Station. Thereupon DDR Ex.PQ/1 was recorded and offence under Section 302 IPC was added by Sub Inspector Dharam Singh. Copy of FIR was sent as special report to the Ilqa Magistrate through Constable Ranjit Singh. Sub Inspector Dharam Singh went to the hospital and prepared inquest report Ex.PK/2 and recorded statements of Ranjit Singh and Balbir Singh, brother and father of the deceased. The dead body was sent for autopsy with application Ex.PK through Constables Shamsher Singh and Madan Lal. Panel of doctors comprising S.C.Grover, G.D. Mittal and Jagmal Singh of Lok Nayak Jai Parkash Hospital, Kurukshetra conducted post-mortem on the dead body on 17.9.1999 at 11.30 a.m. and found as under:-

“The dead body was 4' 10” in length. It was dead body of a young moderately nourished female.

The eyes and mouth were found semi-open. Secretion was found present in the oral cavity and nostrils. The dead body was wearing Salwar and Kamij, pink coloured Chunni. The rigor mortis was found present in the upper and lower limbs and in the neck. Ear rings were found present in both the ears. Even one Koka was found present in the left nostrils, which was of metallic yellow colour. Ten glass bangles of red colour were found present on the right wrist and a metallic Kada was also found present. In the left wrist, metallic bangles were found present which were eleven in number. postmortem staining was found present on the back.

No injury was found present on the scalp and skull. Brain was healthy and a part of the same was taken for chemical analysis.

No injury was found present on the walls, ribs and cartilage and the same were healthy. The plurae were found congested. Secretion was found present in the larynx and trachea. Both the lungs were found healthy and a part of the same was taken for chemical analysis.

Pericardium was found healthy. Heart was healthy and blood was found present in both of its chambers. Blood of the same was taken for chemical analysis.

Secretion fluid was found present in the stomach and stomach with its contents was taken for chemical analysis. Parts of large and small intestines were also taken for chemical analysis. Parts of liver, spleen and kidneys were also taken

for chemical analysis. Rest of the organs were found healthy and no injury was seen on any one of the same.”

The doctors kept the cause of death pending. However, at the trial of the case, PW8 Dr. S.C. Grover, after seeing the report Ex.PL of Chemical Examiner opined that cause of death was due to poisoning by insecticides of carbomate group of compounds.

It is also the case of the prosecution that the investigation was handed over to CIA staff. The appellant was arrested on 21.9.1999.

Upon completion of investigation, the police presented the challan for trial of the appellant for the aforementioned offence. The appellant was charged under Section 302 IPC to which he pleaded not guilty and claimed trial.

Dr. Sudarshan Chug, PW-1 broadly stated according to the prosecution version that on 16.09.1999 Sukhwinder Kaur was admitted in his hospital with history of ingestion of some poisonous liquid by her husband. She was brought there unconscious by her husband. Smell of insecticide was coming from her breath. Both pupils were found pin-pointed. Froth was coming from her mouth. There was sweating and difficulty in respiration. There was crepitation in the chest. Treatment was started. Ruqa Ex.PA was sent to Police Station Pehowa. Patient

became conscious at 11:00 a.m. and again became serious at 4:00 p.m. She ultimately expired at 11:00 p.m. for which ruqa was sent to the Police Station. In the meantime on police application Ex.PB Dr. Chug had given opinion Ex.PB/1 at 2.10.1999 that Sukhwinder Kaur was fit to make statement. He also gave certificate Ex.PB/2 at the same time to Sh. Phalit Sharma, Judicial Magistrate, Pehowa, who had arrived in the hospital that patient was fit to make statement. Sh. Sharma recorded statement of Smt. Sukhwinder Kaur and all throughout her statement she was conscious.

Constable Sudeep Kumar, Draftsman, PW-2 stated that he inspected the spot at the pointing of Balbir Singh and prepared the scaled site plan Ex.PC.

Head-Constable Phool Singh PW-3 and Constable Sukhwinder Singh, PW-4, tendered their respective affidavits Exhibits PD and PE into evidence. Affidavit Ex.PM of Constable Ram Kishan was also tendered in evidence. These affidavits have been produced to show that the sealed parcels of viscera, vials and bottle recovered from the spot were not tampered with and that copies of FIR were delivered as special report without delay.

Constable Shamsheer Singh, PW5 stated that he alongwith Constable Madan Lal got conducted postmortem on the dead body of Sukhwinder Kaur alias Satvinder Kaur and the

sealed parcels given to them by the doctors were handed over by them to MHC Phool Singh, without any tampering and same were seized by S.I./SHO Dharam Singh vide recovery memo Ex.PF.

A.S.I. Didar Masih, PW-6, stated that on receipt of ruqa Ex.PA, he went to Mission Hospital, Pehowa and moved application Ex.PB, on which the doctor gave opinion Ex.PB/1 that Sukhwinder Kaur was fit to make statement. He moved another application Ex.PG before the Magistrate for recording her dying declaration. Shri Phalit Sharma accordingly came to the hospital and asked the doctor, who told that aforesaid patient was fit to make statement. Then Shri Phalit Sharma recorded her statement Ex.PH. Didar Masih moved application Ex.PJ and obtained copy Ex.PJ/1 of the statement at 3:45 p.m. and after making his endorsement Ex.PJ/2, forwarded it to Police Station Pehowa for recording FIR.

Sh. Phalit Sharma, Judicial Magistrate, PW-7 stated that application Ex.PG was marked to him by Sh. Anil Gour, S.D.J.M. Pehowa, for recording statement of Satvinder Kaur vide order Ex.PG/1. He went to the hospital and obtained certificate Ex.PB/2 from Dr. Sudarshan Chug that Sukhwinder Kaur was fit to make statement. Shri Phalit Sharma recorded it in his order/proceedings Ex.PH/1. He also found that Satvinder Kaur was fit to make statement. Then he recorded her statement Ex.PH, without any addition or omission. She thumb marked it in

token of its correctness. Shri Sharma appended certificate Ex.PH/2 that she was fit to make statement and her statement Ex.PH contained correct and faithful record and that none else was present in the room and she deposed voluntarily, spontaneously and without any inducement, threat or pressure.

Dr. S.C. Grover, PW-8 stated that he alongwith Dr.G.D. Mittal and Dr. Jagmal Singh, on police request Ex.PK conducted postmortem on the dead body of Sukhwinder Kaur alias Satvinder Kaur and gave parts of stomach etc. (viscera), blood from heart, preservative in separate parcels to the Constables. Cause of death was to be ascertained on receipt of report of Chemical Examiner. After perusing the report of Chemical Examiner Ex.PL, Dr. Grover stated that in his opinion the cause of death in this case was poisoning by carbamate compound group of insecticides. He proved postmortem report Ex.PK/1. He also stated that they had initialed the inquest report Ex.PK/2.

Jagdish Chander, Retired Inspector, PW-9 stated that on 21.09.1999 he arrested Bahadur Singh in this case. Subsequently, he collected scaled site plan prepared by Sudeep Kumar and recorded his statement and also recorded the statements of other formal witnesses.

Amarjit Kaur PW 10 is mother of the deceased. She has also stated according to prosecution version that the

deceased was married with accused about two years before her death and a few months after marriage she learnt that the accused had been maltreating and beating her under the influence of liquor. Her husband went to the accused and told him not to maltreat the deceased. On 'Teej' festival she was brought to parental home, where she delivered a male child. After about one month the accused took her alongwith the child. Then after few days it was learnt that the accused had administered some poisonous substance to their daughter. Thereupon Amarjit Kaur and her husband went to private hospital at Pehowa, where she was admitted. She was unconscious. After some time she regained unconscious and told that accused Bahadur Singh had administered some poisonous liquid to her and then got her admitted in the hospital. She died in the night.

A.S.I. Simru Ram PW-11 stated that on receipt of statement Ex.PJ/1 with endorsement Ex.PJ/2, he recorded FIR Ex.PJ/3 and went to the hospital and recorded statement of Amarjit Kaur. Then he went to the spot and prepared rough site plan Ex.PN and seized empty plastic bottle of insecticide vide memo Ex.PO after preparing sealed parcel thereof and deposited the same with Moharrir Head-Constable. He also stated that Balbir Singh, father of the deceased, has since died.

S.I. Dharam Singh PW-12 stated that on receipt of ruqa Ex. PQ regarding death of Sukhwinder Kaur alias Satvinder

Kaur, he added offence under Section 302 IPC vide DDR Ex.PQ/1 and sent copies of FIR as special report to Illaqa Magistrate and Police Officers. Then he went to Saraswati Mission Hospital, Pehowa, and prepared inquest papers Ex.PK/2 and sent the dead body for postmortem with request Ex.PK. He also recorded statements of PWs Ranjit Singh and Balbir Singh. On 18.09.1999 he took into possession sealed parcels of viscera etc. vide memo Ex.PF and recorded statements of concerned Constables and MHC. On completion of investigation he prepared final report under Section 173 of the Code of Criminal Procedure.

F.S.L. report Ex.PR was also tendered in evidence.

When examined under Section 313 Cr.P.C., the appellant denied the incriminating circumstances appearing against him in the prosecution evidence and pleaded that he had been falsely implicated in the case. He had never maltreated the deceased and kept her with love and affection. After delivery of the child, she was suffering from depression and taking medicine. He was in the fields when he came to know that she was not well. He immediately removed her to the hospital and remained there throughout. He had never given any beatings to her.

In his defence, the appellant did not lead any evidence.

After hearing learned Public Prosecutor for the State assisted by complainant's counsel and learned defence counsel

besides perusing the case file, the trial Court accepted the prosecution case and convicted and sentenced the appellant, as mentioned above. Hence, the present appeal.

This Court has heard Mr. H.S.Randhawa, Advocate, who had been appointed as amicus curiae for the appellant and Mr. Dhruv Dayal, Deputy A.G., Haryana besides going through the evidence with their able assistance.

From the statement made by PW10 Amarjeet Kaur, mother of the deceased, before the trial Court, it is made out that the deceased was married with the appellant about two years before her death. A few months after the marriage, she learnt that the appellant was maltreating and beating her under the influence of liquor. She went to the appellant and told him to desist from maltreating the deceased. On the occasion of Teej festival, she was brought to her parents' home where she delivered a male child. A month later, the appellant took her alongwith the child. After a few days, she learnt that the appellant had administered some poisonous substance to her daughter. Thereafter, she alongwith her husband went to Pehowa hospital where she was lying admitted. She was unconscious. After some time, she regained consciousness and told her and her father about some poisonous substance having been administered to her by the appellant and, thereafter, getting her admitted in the hospital. The same very night the deceased had died while in the hospital. The

defence tried to challenge the testimony by cross-examining her at length but could not bring any material on record to show that she was falsely deposing against husband of the deceased.

PW7 Shri Phalit Sharma, Judicial Magistrate, has deposed that application Ex.PG was marked to him by the Sub Divisional Judicial Magistrate, Pehowa for recording statement of the deceased. He went to the hospital and obtained certificate Ex.PB/2 from Dr. Sudarshan Chug that the deceased was fit to make statement. He also certified vide Ex.PH/1 that she was fit to make statement. He then recorded her statement Ex.PH without any addition or omission. In the said statement, she had stated that on that very day in the morning there is an altercation between her and her husband. Being annoyed on this account her husband administered her some medicine forcibly as a result of which she became unconscious. She did not know what happened thereafter and who brought her to the hospital. Before administering medicine, her husband had given beatings to her. She also stated that she had made statement before the Judicial Magistrate while fully conscious.

PW1 Dr. Sudarshan Chug, Incharge, Saraswati Mission Hospital, Pehowa has testified that on 16.9.1999, the deceased was brought to his hospital with history of ingestion of some poisonous liquid by her husband. She was brought to the hospital by her husband. She was unconscious at the time of her

admission. There was smell of some insecticide coming from the breath of the patient. After examining the patient and giving initial treatment, he sent ruqa Ex.PA to Police Station Pehowa. The police moved application Ex.PB to find out as to whether she was fit to make statement or not. Thereupon he gave his opinion Ex.PG/1 that she was fit to make statement. This certificate was given by him on 16.9.1999 at 2.10 p.m. He further deposed that Shri Phalit Sharma, Judicial Magistrate arrived in the hospital at about 2.10 p.m. and sought opinion about the fitness of the patient. He opined that patient was fit to make her statement. Shri Phalit Sharma then recorded the statement of the deceased. Throughout her statement she was conscious. He had furnished separate certificate Ex.PB/2 in this regard. He also deposed that the patient again became serious at 4.00 p.m. All resuscitative arrest measures were taken. Patient had cardio-respiratory arrest at 10.50 p.m. and was finally declared dead at 11.00 p.m. on 16.9.1999.

From the above, it is made out that two dying declarations were made by the deceased. One was written dying declaration made by the deceased to Shri Phalit Sharma, Judicial Magistrate while the other was oral made by the deceased to her parents. In both the dying declarations, it stood specifically mentioned by the deceased that it was her husband Bahadur Singh, who had administered poisonous substance to her. There

is no reason on the file to rule out the two dying declarations especially when there is ring of truth and voluntariness in the same.

It has also come in the evidence that the appellant had been maltreating the deceased. Even at the time of the occurrence, before the appellant administered some poisonous substance to her, he had given beatings to her. So from all this evidence, the prosecution has been successful in proving its case against the appellant beyond reasonable doubt.

It is true that the Investigating Officer did not join any person from the Dera where the deceased and the appellant lived especially when other families also resided there. However, ASI Simru Ram deposed that he enquired from the families residing there but none was joined as a witness. Apparently, nobody residing there could have furnished any information as to what had been happening inside the accommodation provided to the appellant by his employer at the Dera. Therefore, the prosecution case cannot be rejected on account of non-joining of the witnesses living in the neighbourhood of the appellant.

There is no denial that the appellant was the one, who had removed the deceased to Saraswati Mission Hospital, Pehowa and got her admitted there. Even in his examination under Section 313 Cr.P.C., he stated that at the time of the occurrence, he was in the fields but on coming to know that she

was not well, he immediately took her to the hospital and remained with her throughout. The occurrence had taken place on 16.9.1999 in the morning. The deceased was admitted in the hospital at 6.00 a.m. There was smell of insecticide coming from her breath. Both pupils were found pin-pointed. Treatment was immediately started. Ruqa Ex.PA was, thereafter, sent by PW1 Dr. Sudarshan Chug to the police at 11.00 a.m. PW1 Dr. Sudarshan Chug explained the delay in sending the ruqa by deposing that he remained busy in attending her and only at 11.00 a.m., the deceased had regained some conscious. He also deposed that some other patients were admitted in his hospital and he remained busy in attending them and only because of the same, prior to 12.00 noon, he could not inform the police about the admission of the deceased in hospital. Therefore, the appellant is not entitled to any benefit on account of so called delay in sending the ruqa.

Certain cuttings below order Ex.PG/1 by Sub Divisional Judicial Magistrate, Pehowa on the dates in the proceedings Ex.PH/1, statement Ex.PH of the deceased and certificate Ex.PH/2 given by Shri Phalit Sharma, Judicial Magistrate have been pointed out by the learned defence counsel. However, Shri Phalit Sharma while deposing before the trial Court explained those cuttings by stating that wrong date came to be written and he corrected and initialed the same and even wrote

the correct date again. Therefore, the correction in the date had been mentioned then and there.

An attempt is made by learned counsel for the appellant to challenge the evidence of fitness of the deceased to make statement and remaining so throughout recording of her statement. However, PW1 Dr. Sudarshan Chug had opined the deceased fit to make statement vide his opinion Ex.PB/1 as well as certificate Ex.PB/2 in this regard at 2.10 p.m. Immediately, thereafter, the dying declaration was recorded by Shri Phalit Sharma, Judicial Magistrate who had also found the declarant fit to make statement. This fact was also noted by him in his proceedings Ex.PH/1. Merely because Dr. Sudarshan Chug stated that he did not remain present during the recording of statement, it cannot be stated that Dr. Sudarshan Chug was not present when the dying declaration made by the deceased was being recorded by Shri Phalit Sharma, Judicial Magistrate. From the report Ex.PL of the Chemical Examiner, it is clearly indicated that the samples of stomach, small and large intestine, heart, liver, lungs, spleen, kidney, brain as well as blood from the heart gave positive test for carbamate compound group of insecticides. Merely because PW4 Constable Sukhwinder Singh had stated in his affidavit that he had initially taken the sample on 24.9.1999 but it was returned with some objection which fact was not mentioned by him in his statement Ex.DA made during the investigation of

the case is not sufficient to hold that he had made an improvement. Similarly, PW8 Dr. S.C.Grover, who alongwith two other doctors had conducted post-mortem, had not mentioned the letter number and date of dispatch in the forwarding letter and the columns were left blank. Possibility cannot be ruled out that the forwarding letter did not have any dispatch number and date. Even otherwise, such like discrepancies are minor and immaterial especially when the fact remains that the death of Smt.Sukhwinder Kaur @ Satvinder Kaur on account of ingestion of poisonous substance has not been challenged at any stage. Infact, the factum of death by poisoning stands admitted.

In view of the above, it cannot be said that the learned trial Court wrongly appreciated the evidence while convicting and sentencing the appellant. The entire evidence has, once again, been appreciated by this Court and from the evidence, this Court finds that it was the appellant, who had committed the murder of his wife by administering poisonous substance to her.

Resultantly, the appeal is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

August 31, 2015
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(GURMIT RAM)
JUDGE

Whether speaking/non-speaking : YES / NO
Whether reportable : YES / NO