

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-884-DB of 2003

Date of Decision : April 22, 2015

Kalawati

.....Appellant

VERSUS

State of Punjab

.....Respondent

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

Present : Mr. B.R. Gupta, Advocate

Mr. S.S. Dhaliwal, Additional A.G., Punjab.

T.P.S. MANN, J.

This appeal has been filed by Kalawati for challenging the judgment and order dated 23.10.2003 passed by the Additional Sessions Judge, Patiala, whereby she was convicted under Sections 302/34 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/-. In default of payment of fine, she was ordered to further undergo rigorous imprisonment for three months. The period already undergone by her during the investigation and trial was ordered to be set off against the substantive sentence of imprisonment imposed upon her.

The facts leading to the filing of the appeal are that on 12.5.2002 SI Raj Kapur, Incharge, Police Post Tripuri, Patiala received a telephone call from Bakhshish Singh, resident of House No.36-A, New Green Park Colony, Patiala that Dharamvir Singh, resident of House No. 52, New Green Park Colony, Patiala had been murdered and some police officer be sent at the spot. Upon this, SI Raj Kapur,

alongwith fellow officials, reached the spot where Bakhshish Singh was found present who got recorded his statement Ex.PF to the effect that he was working as Assistant Storekeeper at Verka Milk Plant, Hassanpur, while Dharamvir Singh deceased was working as Fitter in the Verka Milk Plant. Dharamvir Singh was residing in House No.52, New Green Park Colony, Patiala with his wife Kalawati (appellant), daughter Monisha and sons Vikas and Vishal. Dharamvir Singh was fond of taking liquor and on that account there usually remained dispute between him and his wife. On that day i.e. 12.5.2002 at about 4.30 a.m., Bakhshish Singh, as per his routine, started for the morning walk. While passing in front of the house of Dharamvir Singh, he noticed his dead body lying inside the gate of his house which was besmeared with blood. Bakhshish Singh pressed the bell switch but there was no reply from inside nor anyone opened the door. He, accordingly, woke up Amarjit Singh Kharoud, resident of House No.46 and Baldev Singh resident of House No.44 of New Green Park Colony and alongwith them, went inside the house after opening the gate. They saw Dharamvir Singh lying dead inside the gate and there were injuries on his left ear and head. On account of excessive bleeding, he had died. Blood stains were found present on the floor of the lobby. According to Bakhshish Singh, Dharamvir Singh had been murdered by his wife Kalawati.

Further case of the prosecution is that after making endorsement Ex.PF/1 on the statement Ex.PF on 12.5.2002 at 6.00 a.m., SI Raj Kapur sent the same to Police Station Civil Lines, Patiala

and on its basis FIR No.164 dated 12.5.2002 (Ex.PF/2) was registered at 6.25 a.m. by SI Harpreet Singh. During the investigation of the case SI Raj Kapur inspected the spot and prepared rough site plan Ex.PM. He took into possession blood stains from the spot with the help of cotton. The officials of mobile Forensic Science Laboratory and photographer reached the spot. The photographer took the photos. SI Maninder Singh made an attempt to obtain finger prints but those were not available. SI Raj Kapur prepared inquest on the dead body of Dharamvir Singh and recorded the statement of Suresh Kumar, brother of Dharamvir Singh and Sunehra Lal, father of Dharamvir Singh. The dead body was, thereafter, sent to Rajindra Hospital, Patiala for post-mortem. Afterwards, the dead body was handed over to the aforementioned relatives of the deceased.

It is also the prosecution case that on 13.5.2002 SI Raj Kapur raided the house of Kalawati but she was not available there. On 16.5.2002, Suresh Kumar brother of the deceased appeared before SI Raj Kapur and stated that Kalawati and her son Vikas had come to his house on 15.5.2002. Kalawati told him that she, alongwith her son Vikas, had committed the murder of Dharamvir Singh. Accordingly, Suresh Kumar produced Kalawati and Vikas and they were taken into custody. During her interrogation, Kalawati suffered disclosure statement Ex.PG, pursuant to which she got recovered a Danda (log of wood) Ex.P2, shirt of Vikas Ex.P16 and her Jumper Ex.P15, from near wall of a godown. Vikas was also interrogated and suffered disclosure statement Ex.PH, pursuant to which he got recovered one iron Dat

Ex.P1. After completion of the investigation, final report under Section 173 Cr.P.C. was submitted against the appellant Kalawati. Her son Vikas was found to be juvenile and, accordingly, proceedings against him were segregated. The appellant was charged under Section 302 IPC, to which she pleaded not guilty and claimed trial.

In support of its case against Kalawati, the prosecution examined PW1 Dr. S.S. Oberoi, Assistant Professor, Rajindra Hospital, Patiala, who deposed that he conducted post-mortem on the dead body of Dharamvir Singh on 12.5.2002 at 2.00 p.m. and found following injuries on the dead body:-

- "1. Incised wound 4 x 0.2 cm. across the upper part of left pinna.
2. Incised wound 5 x 0.5 cm. bone deep placed longitudinally on the left side of forehead starting 4 cm. above the medial end of left eyebrow.
3. Incised wound 4 x 0.5 cm. 2 cm., to right and parallel to injury No.2.
4. Incised wound 2 x 0.5 cm. bone deep in the centre of forehead placed longitudinally 2 cm. above the glabella.
5. Y shaped incised wound breadth 0.5 cm. bone deep present on the right side of forehead in the upper part 3 cm. to the right and parallel to injury No.3. On exploration the underlying bone was cut making a corresponding cut in the underlying part of brain and 150 ml. of blood was present around the injured part of the brain.

6. Incised wound 3 x 0.5 cm. bone deep placed transversely in the posterior part of left parietal region of the head.
7. Incised wound 4 x 0.5 cm. obliquely placed 6 cm. to the left and below injury No.6.
8. Incised wound 6 x 0.2 cm. on the right shoulder joint."

In the opinion of the doctor, the cause of death was due to head injury, which was sufficient to cause death in the ordinary course of nature. All the injuries were ante-mortem in nature. The time between injury and death was immediate and between death and post-mortem , it was about 12 to 24 hours.

PW2 Darshan Singh proved the photographs Ex.P1 to Ex.P7 and their negatives Ex.P8 to Ex.P14.

PW3 Amarjit Singh deposed that on 11.5.2002 at about 11.00 p.m. when he was taking a walk outside, Kalawati and her son went past him. Kalawati was also accompanied by her two other children. He enquired from Kalawati if she had a quarrel with Dharamvir Singh. Kalawati did not reply and proceeded further. He further testified that in the morning at about 4.00/4.30 a.m. he was called by Bakhshish Singh and then he, alongwith Baldev Singh, went to the house of Dharamvir Singh where he was found lying dead in a pool of blood. He also stated that Kalawati used to have a dispute with her husband before the occurrence.

PW4 Chanan Singh, Draftsman proved on record the scaled site plan Ex.PC of the place of occurrence which he had prepared at the instance of Bakshish Singh and Amarjit Singh.

PW5 Suresh Kumar, brother of deceased Dharamvir Singh, testified that his brother Dharamvir Singh was married with Kalawati and they had three children, namely Monisha, Vikas and Vishal. On 15.5.2002, when he was present in his village, Kalawati, alongwith her children came there and told him that she had a dispute/quarrel with Dharamvir Singh who had come home under the influence of liquor. He further deposed about Kalawati telling him that she, alongwith her son Vikas had committed the murder of her husband. While she had given an injury on the head of Dharamvir Singh with a Danda, Vikas had given injuries with a Dat. Subsequently, he brought Kalawati to Patiala and produced her before SI Raj Kapur.

PW6 Bakhshish Singh reiterated his version given in his statement Ex.PF. He also testified that Kalawati and Dharamvir Singh used to quarrel as the latter would come home under the influence of liquor. He had a suspicion that Dharamvir Singh was murdered by Kalawati and her son Vikas. He also testified about making of disclosure statement by Kalawati and Vikas leading to recovery of Danda, Dat, shirt and Jumper.

PW7 HC Balkar Singh, PW8 HC Sukhpal Singh, PW9 HC Balwant Singh and PW10 Constable Jarnail Singh tendered in evidence their respective affidavits.

PW11 SI Raj Kapur testified about the various steps taken by him during the investigation of the case.

When examined under Section 313 Cr.P.C., appellant Kalawati denied the prosecution allegations. According to her, she had not committed the murder of her husband. She, alongwith her son Vikas, was falsely implicated in the case at the instance of Suresh Kumar, Mahavir Singh, Amarjit Singh and Bakhshish Singh. The brother of deceased Dharamvir Singh, namely, Suresh Kumar was inimical towards her. Suresh Kumar, Bakhshish Singh and deceased Dharamvir Singh had quarrelled after taking liquor. The matter was reported by the appellant to the police but no action was taken. Dharamvir Singh died due to negligence and non-action of the police. Suresh Kumar was inimical towards the appellant as Dharamvir Singh had purchased property in her name. After she was sent in judicial custody, Suresh Kumar visited her in Central Jail and also met her in the Bakshikhana many times. He had been repeatedly demanding money and transfer of property in his name. On her refusal to do so, he threatened to depose against her. She also denied making extra-judicial confession before Suresh Kumar. However, in support of her plea, the appellant did not examine any evidence.

After hearing learned counsel for the parties and going through the evidence, the trial Court believed the prosecution version and, accordingly, convicted and sentenced the appellant, as mentioned above. Hence, the present appeal.

This Court has heard Mr. B.R. Gupta, Advocate on behalf of appellant and Mr. S.S. Dhaliwal, Additional Advocate General, Punjab and perused the evidence with their able assistance.

According to the prosecution, Dharamvir Singh used to quarrel with his wife i.e. the appellant whenever he came home under the influence of liquor and for that reason the appellant and her son Vikas committed his murder. The taking of liquor by deceased Dharamvir Singh has also not been challenged by the defence. So much so that according to the appellant, even during the intervening night of 11/12.5.2002, deceased Dharamvir Singh, while in the company of his brother Suresh Kumar and neighbour Bakhshish Singh, had taken liquor and quarrelled with each other. Therefore, it stands established that the deceased was used to taking liquor and while under its effect used to quarrel with the appellant. By taking the plea that there was some quarrel amongst the deceased his brother Suresh Kumar and neighbour Bakhshish Singh, the appellant practically admitted her presence in the house on the night of the occurrence. In addition, PW3 Amarjit Singh, who lived in the close vicinity of the deceased testified that on 11.5.2002 at about 11.00 p.m. when he was taking a walk, the appellant and her son Vikas went past him. The two other children of the appellant were also with her. When he enquired from the appellant whether she had a quarrel with the deceased, she did not reply and proceeded further. From this, it can safely be held that the appellant had motive to commit the crime by inflicting injury to her husband with a Danda and in the said act, injuries were also caused

with a Dat.

The defence has tried to argue that though the appellant was said to be carrying a blunt weapon, i.e. a Danda which she had wielded in causing injury to her husband Dharamvir Singh yet PW1 Dr. S.S. Oberoi, who had conducted post-mortem, observed only sharp edged injuries on the dead body. No blunt weapon injury was found on the dead body of Dharamvir Singh. On first blush, the argument appears to be convincing. However, it may be noticed that six of the nine injuries found on the dead body were on the skull portion, where even an injury caused with blunt weapon would give the appearance of an incised wound. Moreover, the defence suggested to PW1 Dr.S.S. Oberoi that the injuries on the head of the deceased could have resulted from a fall from a height. The suggestion was denied. However, fact remains that even the defence expected incised wounds on the head of the deceased after falling from a height.

PW6 Bakhshish Singh, who was the first one to notice the dead body of Dharamvir Singh lying inside the gate of his house and making statement Ex.PF before SI Raj Kapur suspected the involvement of the appellant in the commission of the crime as despite his pressing the bell switch from outside the house, there was no reply from inside nor anyone opened the door. Even PW3 Amarjit Singh deposed about the appellant and her children leaving her house on 1.5.2002 at about 11.00 p.m. Apparently, by that time the occurrence had already taken place and the appellant, after killing the deceased, left the house alongwith her children.

The prosecution is relying upon the circumstance of extra-judicial confession which the appellant made to PW5 Suresh Kumar, who is none-else but the brother of her deceased husband. Said Suresh Kumar testified that on 15.5.2002 when he was present in his village Gatauli situated in District Jind, the appellant, alongwith her children, came there. The appellant told him that she had dispute/quarrel with her husband who had come home under the influence of liquor. The appellant further told him that she, alongwith her son Vikas, had committed the murder of her husband. While she had given an injury on the head of Dharamvir Singh with a Danda, her son Vikas had given injuries with a Dat. The witness then brought the appellant and her son Vikas to Patiala and produced them before SI Raj Kapur who arrested them. In cross-examination, he stated that he was a labourer. His brother Dharamvir Singh was married in the year 1978-80. At that time Dharamvir Singh was staying in the village and studying. After 2/3 years of marriage, Dharamvir Singh shifted to Sonipat. The witness also testified that he and his brother had got only a house in the village and had no other property. Dharamvir Singh had shifted to Patiala about 15/16 years ago. He stated that he had never been to the house of his brother Dharamvir Singh where he died. He learnt about the death of Dharamvir Singh on 12.5.2002 when one Mahavir came to his village at about 6.00 a.m. Alongwith Mahavir, he reached the house of Dharamvir Singh on 12.5.2002 at about 9.00/9.30 a.m. where he met the police. He stayed in the house of the deceased upto 10.00 a.m. and then went to the Rajindra Hospital, Patiala. He did not offer to the police that his statement be recorded. He further

deposed that he returned to his village at about 6.00 p.m. after identifying the dead body in the hospital. Thereafter, he came to Patiala on 16.5.2002. He denied that the appellant had not come to his village alongwith her children or she had not suffered any extra-judicial confession before him. Merely because he was said to be eying the property of the appellant and for that reason he met the appellant in Central Jail, Patiala after her arrest is not sufficient to reject his testimony. He, however, denied that he had met the appellant in the lock-up in Patiala Court Complex on any of hearing. PW5 Suresh Kumar is the brother of deceased Dharamvir Singh and, thus, brother-in-law of the appellant. On account of their relationship *inter se*, he would have been approached by the appellant. Under these circumstances no adverse influence can be drawn against PW5 Suresh Kumar that he had deposed against the appellant as the later had refused to part with her property in his favour. Merely because PW5 Suresh Kumar was the brother of deceased Dharamvir Singh is also not sufficient to conclude that the appellant would not have gone all the way to his village in District Jind and made extra-judicial confession before him.

In view of the above, this Court has no other option but to hold that the appellant had caused injury with a Danda to her husband Dharamvir Singh. However, it is still to be considered as to whether the appellant can be held guilty under Section 302 IPC or she is to be convicted for a lesser offence.

On account of the drinking habits of Dharamvir Singh, there used to remain quarrel between him and his family i.e. the appellant, who was his wife and their children. From the photographs available on the record it is apparent that by the side of the bed, a bottle of liquor was present there. Therefore, even during the night intervening 11/12.5.2002, the deceased had been drinking and as was the routine some quarrel might have taken place between the deceased and the appellant. Out of the three children of the appellant, Vikas was the elder one and noticing the miserable condition of his mother, joined her in launching an assault upon Dharamvir Singh. However, at no point of time, did anyone of them intended to commit the murder of Dharamvir Singh. They had caused injuries which they knew were likely to result in death of Dharamvir Singh. The proceedings under the Juvenile Justice Act against Vikas have already resulted in his exoneration of the charge against him. The appellant was said to be carrying a Danda at the time of the occurrence which she wielded only once in inflicting injury on the head of the deceased. Under these circumstances, she can, at the most, be held guilty for committing the offence punishable under Section 304 Part II IPC. Therefore, her conviction under Section 302 IPC on the charge of murder can not be maintained.

From the records it is made out that the appellant, after being arrested on 16.5.2002, remained in jail throughout the trial of the case. Subsequently, when she filed the appeal, her sentence of imprisonment was suspended only on 11.7.2006. According to learned defence counsel, the appellant could not furnish bonds immediately

thereafter and continued to remain behind the bars. Ultimately, on 27.7.2007, after arranging sureties, she furnished necessary bonds and was released on bail. In all, she has undergone a period of five years, two months and eleven days. This factual position has not been disputed by the learned State counsel after obtaining necessary instructions on phone from the jail authorities.

In view of the above, the conviction of the appellant under Sections 302/34 IPC and her sentence of life imprisonment are set aside. Instead, she is convicted under Sections 304 Part II/34 IPC and sentenced to the period already undergone by her. She shall, however, pay a sum of Rs.1,000/- as fine and in default of its payment, she shall further undergo rigorous imprisonment for three months.

The appeal is partly allowed to the extent indicated above.

(T.P.S. MANN)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

April 22, 2015
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