

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

**CRA-S-611-SB of 2003
Date of Decision : 2.12.2015**

Bhola Ram

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. Navratan Singh, Advocate for
Mr. Vikas Singh, Advocate
for the appellant.

Mr. A.S. Klar, AAG, Punjab.

GURMIT RAM, J.

The above-said appellant has challenged in this appeal the judgment of conviction dated 10.3.2003 and order of sentence dated 12.3.2003 passed by learned Court of Additional Sessions Judge, Barnala vide which he was held guilty for the offence punishable u/S 306 of the IPC in criminal case bearing FIR No.53 dated 9.5.2001, u/Ss 304-B, 306 and 201, IPC, Police Station Dhanaula, District Sangrur.

2. The prosecution case in brief as presented before the learned trial Court was that on 8.5.2001, ASI Bhajan Singh of Police Station

Dhanaula along with other police officials was present at bus stand, village Daangarh. There came to him complainant Malkiat Ram son of Dev Raj, resident of Rajomajra and made a statement before him which was as under:-

“He was a labourer. His daughter Rimpi Rani was married with Bhola Ram son of Sohan Lal, resident of Kattu about seven years back. He gave dowry articles in her marriage according to his capacity. After the marriage, two sons were born to his daughter but her husband Bhola Ram and his other family members started harassing and maltreating her for bringing more dowry. A day before yesterday i.e. on 6.5.2001, his daughter informed him telephonically that her in-laws had been beating her. Upon this, he assured her that he would come to her in-laws house and make them understand. Today in the morning, he was informed that his daughter Rimpi Rani is seriously ill and perhaps she is to be taken to Ludhiana or Patiala for her treatment. Upon this, he along with his wife Sunaina Devi and his brother Kewal Krishan reached at village Kattu where they were told that his daughter Rimpi was admitted in some private hospital at Dhanaula. Then they reached in the said hospital where they were informed that Rimpi had died. Then they reached at village Kattu and requested the in-laws of his daughter not to cremate her. Despite of their protest, the in-laws of her daughter had performed her cremation in the cremation ground of village Kattu.”

After recording this statement of the complainant, it was read over to him which he had thumb marked after admitting it to be correct. ASI Bhajan Singh made his endorsement on the above-said statement of complainant and sent ruqqa to the police station for recording the DDR. Thereafter, this police official conducted inquest proceedings under

Section 174, Cr.P.C. in respect of Rimpi Rani (since deceased). Further he picked up burnt bones and ashes of deceased from cremation ground of village Kattu and took the same into his possession vide a memo.

On 9.5.2001, one application bearing No.742 dated 8.5.2001 was received from the office of S.S.P., Barnala through routine DAAK. On the basis of this application, inquiry was conducted by S.P. (Headquarter), Barnala on the basis of which the instant case was registered. Accused was apprehended. Statements of witnesses were recorded. During investigation, it was found that Rimpi Rani had ended her life by consuming some poisonous substance on account of the maltreatment and harassment caused to her on the part of her husband. On the completion of investigation, challan against accused Bhola Ram was presented in the Court of learned Illaqa Magistrate, who after making compliance of the provisions of Section 207 of Cr.P.C. committed this case to the Court of learned Additional Sessions Judge, Barnala for the trial.

3. Finding a prima facie case for the offences punishable u/Ss 304-B in the alternative 306 and 201 of IPC against accused Bhola Ram, he was charge-sheeted accordingly vide order dated 30.8.2001, to which, he pleaded not guilty and claimed trial.

It is pertinent to mention here that after examination of one prosecution witness, an application under Section 319, Cr.P.C. for summoning Kalawanti, Parkash Ram and Satya Devi as additional accused had been filed, which was allowed vide order dated 30.10.2001 and they (Kalawanti, Parkash Ram and Satya Devi) were summoned as

additional accused. On their appearance, copies of requisite documents were supplied to them in compliance of the provisions of Section 207 of Cr.P.C.

Thereafter, on finding a prima facie case for the offences punishable u/Ss 304-B in the alternative 306 and 201 of IPC against all the accused including Bhola Ram (charge against whom was earlier framed), they were charge-sheeted accordingly vide order dated 7.1.2002, to which, they pleaded not guilty and claimed trial.

4. During trial of the case, prosecution examined seven witnesses in all to prove its case.

5. Thereafter, the accused were duly examined as per the provisions of section 313, Cr.P.C. During their examination, the entire incriminating evidence brought against them during the trial of the case was put to them, which was denied by them. Further they pleaded their innocence and false implication in this case. In addition to this, accused Bhola Ram also took the plea that his father-in-law Malkiat Ram borrowed from him a sum of Rs.30,000/- in cash. He had been residing separately along with his wife from the other members of his family since the year 1999. This plea was also taken by his co-accused namely Satya Devi, Parkash Ram and Kalawanti.

6. In defence, the accused examined five witnesses to prove their innocence and also to rebut the version of prosecution.

7. After hearing the learned counsel for both the parties and going through the record, the learned trial Court held accused Bhola Ram guilty for the offence punishable under Section 306 of the IPC vide the

impugned judgment of conviction and sentenced him thereunder as detailed below:-

under Section 306, IPC.	To undergo rigorous imprisonment for a period of six years and to pay a fine of Rs.1,000/- and in default of payment of fine, accused shall suffer further rigorous imprisonment for one month.
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But anyhow vide this judgment accused Bhola Ram was acquitted of the charges u/Ss 304-B and 201 of the IPC, whereas his co-accused were acquitted of all the charges framed against them u/Ss 304-B, 306 and 201, IPC.

8. Appellant(accused) Bhola Ram being dissatisfied with the impugned judgment of conviction and order of sentence has approached this Court vide the instant appeal, notice of which was given to the respondent – State. Trial Court record was also requisitioned.

9. I have heard the learned counsel for the appellant, learned State counsel and have also gone through the record with their able assistance.

10. Learned counsel for the appellant has contended that prosecution during trial of the case did not bring on the record any evidence with regard to the delay in lodging the FIR which as such is quite detrimental to the case of prosecution. Then it is further his contention that vide the impugned judgment co-accused of the present appellant were acquitted, but the prosecution did not prefer any appeal qua their acquittal and this act on the part of prosecution also creates a serious doubt about the genuineness of its version. Then it is also his contention that in the case in hand, no post-mortem was conducted on the dead body of the deceased and as such the cause of death of the deceased

had remained unascertained on record, the benefit of which is to be given to the appellant. Then it is also contended on behalf of the appellant that evidence on the record is quite lacking in order to constitute an offence u/S 306 of the IPC and as such the impugned judgment has no substance for its sustainability in the eyes of law. Lastly, he has prayed that in the interest of justice, the sentence of the appellant may be reduced to the extent he has already undergone, if this appeal is to be dismissed ultimately.

11. But on the other hand, learned State counsel has vehemently denied the above contentions of learned counsel for the appellant and contended that appellant has rightly been held guilty for the offence u/S 306, IPC, on the basis of the evidence available on the record. There is no substance/material on the file to warrant any kind of interference in the impugned judgment of conviction.

12. For the proper appreciation of above rival contentions of both the parties, I deem it necessary to analyse their evidence in some brief as available on the record which is as under:-

Malkiat Ram complainant as PW1 vividly narrated the version of prosecution as stated by him before the police vide his statement Ex.PB as well as in his application Ex.PA presented by him to S.S.P., Barnala for taking action against the accused persons. Then he proved the memo Ex.PC vide which bones and ashes of the deceased lifted from the cremation ground were taken into police possession after preparing their parcel.

PW4 Kewal Krishan was the brother of complainant PW1

Malkiat Ram. He also supported the prosecution version by corroborating the statement of PW1. Then it was also in his statement that in-laws of the daughter of PW1 cremated her dead body despite their request not to do so without performing any post-mortem examination.

PW6 ASI Bhajan Singh, Investigating Officer stated that he recorded the statement of complainant Malkiat Ram Ex.PB on 8.5.2002 upon which he made his endorsement Ex.PB/1, on the basis of which DDR No.23 dated 8.5.2001 was registered. Then it is further in his statement that thereafter he along with the complainant and other police officials reached at cremation ground of village Kattu from where he lifted the bones and ashes of deceased Rampi and took the same into his possession vide memo Ex.PC after preparing a parcel thereof duly sealed with his seal of 'BS'. Then he also proved the inquest proceeding Ex.PG and deposed about the arrest of accused

PW7 Inspector Gurpreet Singh was the SHO of Police Station Dhanaula on the relevant date. He proved the FIR Ex.PM which was recorded on the basis of order Ex.PL of S.S.P., Barnala as well as report of S.P.(Headquarter), Barnala Ex.PL/1 made on the basis of complaint Ex.PA. Further he proved the rough site-plan Ex.PN of the place of occurrence. Besides this, he also proved the photographs Ex.P1 to Ex.P3 pertaining to the marriage of deceased with accused Bhola Ram which were taken into police possession vide memo Ex.PO.

13. Then in this case, it came on the record in the statement of DW3 Dr.Parkash Chand Mittal that Rimpi Rani daughter of the complainant was admitted in his hospital at Dhanaula as indoor patient on

7.5.2001 at about 5:30 p.m. who expired on 8.5.2001 at about 3:40 A.M. Ex.DE is the attested photocopy of the relevant entry of indoor patient register of his clinic pertaining to admission and treatment of deceased. Then the matter was reported to the police in this regard on the next day at about 4:30 p.m. as per the endorsement Ex.PB/1 made on the above statement of complainant. It is the case of prosecution that in-laws of the daughter of the complainant had cremated her dead body despite their protest. So keeping in view the fact that deceased had died at about 3:40 A.M. on 8.5.2001 and the other attending circumstances of the present case, it is difficult to say that there was any inordinate delay in lodging the report.

So far the acquittal of co-accused of the present appellant is concerned, that also does not help him from any point of view in this case since the learned trial Court has rightly convicted him on the basis of evidence on record by separating the grain from the chaff.

Then it is the case of prosecution that dead body of deceased was cremated by the appellant and others despite the protest of the complainant party without conducting the post-mortem. So in such a situation, the appellant cannot be permitted to take benefit of his own wrong/omission.

14. The evidence on the record is found to be quite consistent and complete to make out a case u/S 306 of the IPC against the appellant beyond any shadow of doubt. So, the above contentions of learned counsel for the appellant are declined and disposed of accordingly.

15. Then on the plea of sentence already undergone by the

appellant, the learned counsel for the appellant has referred to bunch of case laws which are as under:-

1. *Satto and others Versus State of Punjab, 2003(4) R.C.R. (Criminal) 878;*
2. *Dharam Pal Versus State of Punjab, 2010(4) R.C.R. (Criminal) 920;*
3. *Rajinder Kumar and others Versus State of Punjab, 2010 (4)R.C.R.(Criminal) 872; and*
4. *Bhanuben and anr. Versus State of Gujarat, 2015(4) R.C.R.(Criminal) 326.*

16. In the case in hand, the alleged occurrence took place in the month of May, 2001. At that time, the present appellant was of about 33/35 years of the age, so by this time, he may be around 48/50 years of the age. Then it has also come on the record that deceased delivered birth to two male children after this marriage. So, now the appellant is to look after them also. Further, he has also faced the agony of protracted trial as well as of appeal in this case for a period of about 14 years.

17. Then as per the custody certificate produced by the learned State counsel, the present appellant has already undergone the sentence of 11 months and 28 days which includes remission period of 15 days. Meaning thereby, he has undergone the actual sentence of 11 months and 13 days. Then it is also stated by DW4 – Joginder Singh, Member Panchayat that he, Bhola Ram, and other members of his (Bhola Ram's) family got admitted Rimpi in Civil Hospital, Dhanuala on 7.5.2001.

18. In the light of the above discussion, there is nothing on the file to make any kind of interference in the impugned judgment of conviction, **so this appeal to this extent being devoid of merits stands**

dismissed. But anyhow in the interest of justice and in the light of principles laid down in the case laws cited supra and facts of this case, the sentence of the appellant is reduced to the extent, he has already undergone.

The present appeal is, accordingly, disposed of.

A copy of this order be sent to the quarter concerned for strict compliance.

2.12.2015
Brij

(GURMIT RAM)
JUDGE

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes