

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

Crl. Appeal D-188-DB of 2010

Date of Decision : December 08, 2016

Raju

.....Appellant

VERSUS

State of Punjab

.....Respondent

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

Present : Mr. Deepak Sabherwal, Advocate
for the appellant.

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

T.P.S. MANN, J.

The appellant was tried for committing the offences punishable under Sections 302 and 342 IPC for committing the murder by intentionally causing the death of his mother-in-law Mohinder Kaur and wrongful confining his wife Anju in a locked room. Vide judgment and order dated 23.9.2009, learned Sessions Judge, Bathinda convicted him for the aforementioned offences and sentenced him as below:-

- i) imprisonment for life and to pay a fine of R.5,000/- under Section 302 IPC and in default of payment of fine, to further undergo rigorous imprisonment for two years; and
- ii) rigorous imprisonment for nine months under Section 342 IPC.

Both the sentences were ordered to run concurrently.

The period already undergone by him was ordered to be set off

against the substantive sentences.

Aggrieved of his conviction and sentence, the appellant filed the present appeal which was admitted and notice issued to the State. Trial Court record was also requisitioned.

According to the prosecution, Smt. Anju, wife of the appellant made statement Ex.PA before ASI Jugraj Singh, Incharge, Police Post Wardhman, Bathinda on 11.9.2008 at 8.30 a.m., on the basis of which FIR No.700 dated 11.9.2008 (Ex.PA/2) was registered against the appellant at Police Station Kotwali, Bathinda by ASI Harnek Singh under Sections 302 and 342 IPC. The statement of Smt. Anju is re-produced here-below:-

“Statement of Smt. Anju wife of Raju son of late Dalip Singh caste Sirki Bandh, Street No.1, Amarpura Basti, backside Theka, Bathinda, aged 18 years, Mobile No. 9217882857.

Stated that I am resident of above address and do household work. My marriage was solemnized about 10 months ago with Raju son of late Dalip Singh caste Sirki Bandh, street No.1, Amarpura Basti, Bathinda. I and my husband live together. Yesterday on 10.9.2008 my mother Mohinder Kaur had come to meet me at noon. My husband is a rickshaw puller. My husband had returned after pulling rickshaw at about 6.00 p.m and at about 9.00 p.m., I asked my husband Raju to take meal, but he replied that he has not to take meal and that he is earning for them. Thereafter he started quarreling with me and my mother and my

husband picked Bodkin (sua) meant for breaking ice and gave sua blow in the abdomen, chest and on front side towards left side of head of my mother. My mother raised alarm and fell down in the courtyard after sustaining injuries and she died at the spot. After threatening me, my husband forcibly confined me in a room and bolted the door from outside. I continued to raise alarm from inside. Today in the morning, my maternal uncle Kulwant Singh r/o Bathinda came and opened the bolt of the room and I told entire occurrence to my maternal uncle. The cause of grudge is that my husband Raju was suspecting that I was giving his earning to my parents. Due to this reason, my husband has murdered my mother. After leaving my brother Bittu near dead body, I alongwith my maternal uncle Kulwant Singh was going to Police Station where my statement was recorded, which is correct. Action be taken.

Attested
Sd/- Jugraj Singh ASI,
I/c PP Wardhman,
Bathinda.”

Sd/- Anju

During the investigation of the case, ASI Jugraj Singh prepared inquest report Ex.PH on the dead body of Mohinder Kaur and, thereafter, got the post-mortem conducted. He visited the spot and prepared rough site-plan Ex. PJ. Scaled site-plan Ex.PE was also got prepared. Blood stained earth and simple earth were lifted from the spot vide memo. Ex.PK. Chappal, chunni and one specs lying near the dead body were taken into

possession through recovery memo Ex.PL. The clothes of the deceased were also taken into possession. The appellant was arrested on 16.9.2008. On interrogation, he suffered disclosure statement Ex.PQ that he had kept concealed the sua used in the crime beneath the bricks near the bathroom of his residential house and could get the same recovered. Accordingly, he led the police party and got recovered sua Ex.P3 from the designated place, which was taken into possession vide recovery memo Ex.PS. Rough sketch Ex.PR of the sua was prepared and so also site-plan Ex.PU of the place of its recovery.

After completion of investigation, challan was presented in the Court. The appellant was, thereafter, charged for the offences under Sections 302 and 342 IPC to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined complainant-Anju as PW1, who deposed about the manner in which the occurrence had taken place.

PW2 Dr. Vireshwar Chawla, Medical Officer, Civil Hospital, Bathinda testified that he conducted post-mortem on the dead body of Mohinder Kaur on 11.9.2008 at 12.55 p.m. and found the following injuries:-

- “1. There was a stab wound 0.5 x 0.3 cm in the epigastrium 8 cm above umbilicus.
2. Stab wound 0.5 x 0.3 cm present on the right side of chest 5 cm away from the nipple

towards medial side, clotted blood was present.

3. Stab wound 0.5 x 0.3 cm present on the right side of chest 1.5 cm below injury No.2 and 3.5 cm from the right nipple. Clotted blood was present.
4. Stab wound 0.5 x 0.3 cm present on the right side of chest 9 cm above right nipple and 10 cm below the tip of right shoulder. Clotted blood was present.
5. Stab wound 0.5 x 0.3 cm present on the left side of chest 4 cm from the nipple towards medial side. Clotted blood was present.
6. Stab wound 0.5 x 0.3 cm present on the left side of chest 7 cm above the injury No.5. Clotted blood was present.
7. Stab wound 0.5 x 0.3 cm present on the left side of chest 8 cm from the injury No.6 and 9 cm above the nipple. Clotted blood was present.
8. Stab wound 0.5 x 0.3 cm present on the left upper arm 2 cm below the left shoulder. Clotted blood was present.
9. Stab wound 0.5 x 0.3 cm present on the posterior aspect of left chest 9 cm from the mid-line and 15 cm below tip of the left shoulder. Clotted blood was present.
10. Lacerated wound 1 cm x 0.5 cm on left side of scalp, 10 cm above left ear. It was skin deep and clotted blood was present.

Scalp, skull, vertebrae, meninges and brain and spinal cord were healthy. Walls,

ribs and cartilages were congested. There were area of hemorrhage seen bilaterally on dissection of chest wall. Both the pleural cavities were congested. Haemothorax was present on both the sides. Multiple cuts were present on both the lungs. There was haemopericardium and perforation in anterior wall of the heart. Peritonium was congested and blood was present in the peritoneal cavity. Rest of the viscera were normal.”

The cause of death in his opinion was haemorrhage and shock due to the injuries which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. The time between death and post-mortem was within 24 hours whereas injuries and death within 10 minutes. He also opined that the injuries sustained by Mohinder Kaur could be caused by sua Ex.P3.

PW3 Rajinder Kumar Gupta, Draftsman proved the scaled map Ex.PE with its correct marginal notes.

PW4 HC Jaspal Singh tendered in evidence his affidavit Ex.PF by way of examination-in-chief.

PW5 HC Gurcharan Singh tendered in evidence his affidavit Ex.PG as part of his statement.

PW6 ASI Jugraj Singh deposed about the various steps taken by him during the investigation of the case.

After giving up PW Kulwant Singh, ASI Harnek Singh and Inspector Devinder Singh as unnecessary and Bittu Singh as having been won over by the accused, learned Public Prosecutor closed the prosecution evidence.

When examined under Section 313 Cr.P.C., the appellant denied the incriminating circumstances appearing against him in the prosecution evidence and claimed himself to be innocent. According to him, his parents had already expired. He had married complainant-Anju, who was still minor. In order to grab his property, his mother-in-law was killed by her sons as she had a shady reputation. He was falsely implicated in the case. He did not commit the murder of his mother-in-law. The statement of the complainant was tutored one having been made at the instance of her brothers.

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

After hearing learned counsel for the parties and on going through the record, learned trial Court convicted and sentenced the appellant, as mentioned above.

This Court has heard learned counsel for the appellant and learned State counsel besides scanning the evidence with their able assistance.

The star witness of the prosecution is PW Anju, who is none less but the wife of the appellant and daughter of deceased

Mohinder Kaur. About ten months prior to the occurrence, she was married with the appellant. On 10.9.2008, her mother Mohinder Kaur had come to see her in her house. The appellant, who is a rickshaw puller, returned home at about 6.00 p.m. Some time later i.e. at about 9.00 p.m., the complainant asked her husband to take meals but he refused. The appellant started quarrelling with the complainant and her mother saying that he was feeding them with his earnings. He picked up sua Ex.P3 meant for cutting ice and inflicted blows with the same in the abdomen, chest and head of the deceased, who fell down in the courtyard after the receipt of injuries and died. The complainant raised an alarm. She had also made an attempt to rescue her mother but the appellant caused injuries to her as well and put her in the room and, thereafter, bolted the room from outside. Only in the next morning that Kulwant Singh, maternal uncle of the complainant came to her house and opened the room that she narrated the incident to him. She then left her brother near the dead body and alongwith her maternal uncle, approached the police and made statement Ex.PA.

When the dead body of Mohinder Kaur was subjected to post-mortem, as many as ten injuries were found. Nine of them were stab wounds while one was a lacerated wound. PW2 Dr.Vireshwar Chawla, who had conducted post-mortem, opined that the injuries sustained by the deceased could be caused by

sua Ex.P3. Merely because the doctor did not notice any blood stains on the sua is no ground to hold that the injuries were not caused by the said weapon as the weapon of offence was recovered after about a week of the occurrence when it was lying concealed from underneath the bricks. Even otherwise a bare perusal of the injuries noticed on the dead body would indicate that the same were result of a sua which in normal course would have caused stab injuries and as many as nine out of the ten injuries were found to be stab.

According to the complainant, she was 18 years of age. However, in her cross-examination, it came out that she was born on 6.10.1999 and as such, she was about 19 years. Even otherwise nothing turns on the fact that she was major or minor at the time of the occurrence. The factum of the complainant being his wife is not disputed by the appellant. Rather, he admitted that he had married the complainant though she was minor. He also admitted the fact that deceased Mohinder Kaur was his mother-in-law being the mother of complainant-Anju. The place of occurrence is also not disputed by the appellant. Rather, it happened to be the house of the appellant and under these circumstances, he was under a duty to explain as to under what circumstances his mother-in-law Mohinder Kaur had received injuries in his house.

The occurrence in question had taken place on

10.9.2008 at 9.00 p.m. While the appellant was said to be causing injuries to his mother-in-law Mohinder Kaur, his wife Anju had made an attempt to rescue the deceased. In order to ensure that his wife did not intervene and protect her mother from assault, the appellant had detained his wife Anju inside the room and, thereafter, bolted the door of the said room from outside. Throughout the night, Anju was confined in a room of her house. It was only in the next morning that her maternal uncle Kulwant Singh came and freed her. She then started for lodging the report with the police and came across ASI Jugraj Singh before whom she made statement on 11.9.2008 at 8.30 a.m. FIR came to be recorded on the basis of the said statement at 9.00 a.m. As the FIR stood registered for the offence under Section 302 IPC, the special report was forwarded to the Ilaqa Magistrate, who received the same at 11.30 a.m. There was, thus, no inordinate delay in lodging of report with the police. Whatever delay occurred stands duly explained. Even otherwise, it is a case of solitary accused and the occurrence is witnessed by his wife. Substitution of accused is very rare and in the present case, it stands established that it was the appellant alone, who had caused injuries to Mohinder Kaur which proved fatal. Besides, the appellant had illegally confined Anju. It is true that Kulwant Singh maternal uncle of the complainant had allegedly opened the door of the room in which Anju was confined but during the

trial of the case, he could not be examined as being unnecessary he was given up. At the same time, there is a ring of truth in the statement of PW1 Anju whose presence in the house has not been denied by the appellant. She was subjected to lengthy cross-examination by the defence but despite the same no material could be brought on record from which it could be said that she had not witnessed the occurrence or had falsely implicated the appellant, who happened to be her husband.

As regards the plea of the defence that in order to grab the property of the appellant, the present case had been planted against him, is highly improbable. The complainant alongwith her husband had been living in the house and there was no need for the complainant to grab the same.

In view of the above, no ground is made out to interfere in the findings arrived at by the learned trial Court whereby the appellant stood convicted and sentenced.

The appeal is, thus, devoid of any merit and, therefore, dismissed.

**(T.P.S. MANN)
JUDGE**

December 08, 2016
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**(GURMIT RAM)
JUDGE**