

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

CRA-D No. 492-DB of 2010 (O&M)

Date of decision : September 21, 2016

Ramesh Kumar @ Pappu

.....Appellant

Versus

State of Haryana

....Respondent

**CORAM:- HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Rajesh Gupta, Advocate
for the appellant.

Mr. Surender Singh Pannu, DAG, Haryana.

LISA GILL, J.

Appellant – Ramesh Kumar @ Pappu, has been convicted for the offence punishable under Section 302 IPC by the learned Additional Sessions Judge, Fatehabad vide judgment dated 16.02.2010. The appellant has been sentenced to undergo rigorous imprisonment for life, besides, pay a fine of ₹10,000/- and in default thereof undergo simple imprisonment for a period of 2½ years for commission of the offence punishable under Section 302 IPC, vide order dated 17.02.2010. Aggrieved from his conviction and sentence, the appellant has preferred this appeal impugning judgment dated 16.02.2010 and order dated 17.02.2010 passed by the learned Additional Sessions Judge, Fatehabad convicting him under Section 302 IPC and sentencing him as above.

Brief facts of the case are that FIR No. 500 dated

16.11.2008 (Ex. P19) was registered against the appellant on the statement (Ex.P7) of Parkash Chand. It was stated by Parkash Chand that he had three brothers. Two of them were alive and his eldest brother Dayal Chand had passed away. Dayal Chand's children were brought up by the complainant. The marriage of Kalo Bai (deceased), the youngest daughter of Dayal Chand was performed by him as Dayal Chand had no son and his wife had also left the home. Kalo Bai was married to the appellant - Ramesh Kumar @ Pappu about 20 years ago at village Babalpur Theri. She was residing with her husband as well as their children at village Hamja Pur for the last 4/5 years after constructing a house. Kalo Bai and the appellant had six children. Out of the six children, five are daughters and one is a son aged about 18 days. The complainant stated that on 16.11.2008 at about 3.00 a.m. in the morning, Pappu Ram son of Shira Ram resident of his village woke him up. Pappu Ram told him that the complainant's niece Kalo Bai had been murdered by her husband at village Hamja Pur.

On receipt of this information, the complainant alongwith his son Raj Kumar and Ram Chand (son of the complainant's uncle) etc. reached village Hamja Pur and saw that Kalo Bai was lying dead on the ground in a room of her matrimonial home. Injuries were present on her neck. The complainant's grand daughter Reena (PW3) (daughter of the deceased and the appellant) disclosed that the appellant was quarrelling with Kalo Bai and she was thrown on the ground by him. The appellant then lifted an iron gandasi lying nearby and gave a blow on Kalo Bai's neck due to which she died on

the spot. The complainant - Parkash Chand stated that he did not know why Ramesh had murdered Kalo Bai but he wanted action to be taken against the appellant.

The statement of the complainant - Parkash Chand, was recorded by Inspector Rajkaran, SHO, Police Station Ratia (PW13) and FIR (Ex. P19) was recorded at 6.40 a.m.. Special report was received on 16.11.2008 at 9.15 a.m. Inquest report (Ex. P21) was prepared. Photographs (Exs. P1 to P6) of the spot as well as the dead body were taken. The blood stained earth was lifted from the spot and was taken in police possession vide memo Ex. P8. Rough site plan (Ex. P-11) of the place of occurrence was prepared. The dead body was sent to the General Hospital, Fatehabad for conducting the post mortem examination through EASI Kanhiya Lal.

The police made efforts to search for the accused. It is disclosed by PW13 Inspector Rajkaran that when the police party was standing near the canal at village Ahrawan on 16.11.2008 alongwith Sarpanch Kulbir Singh, a person was detected standing near the school. Kulbir Singh, Sarpanch pointed out the person to be the appellant - Ramesh Kumar @ Pappu. The appellant was, thus, arrested on 16.11.2008 itself. A disclosure statement (Ex.P9) was suffered by the appellant wherein he admitted his guilt and disclosed that the gandasi used in the crime had been kept concealed by him under cotton sticks lying near the northern side of Government School, Hamja Pur. The appellant was arrested vide memo (Ex.P9/A). Consequent to his disclosure statement (Ex.P9), the gandasi was recovered from under the cotton sticks as pointed out

by the appellant. Rough sketch of the gandasi (Ex. P10) was prepared and it was taken in possession vide memo (Ex. P10/1). Rough site plan (Ex. P22) of the place of recovery was prepared. Clothes worn by the deceased Kalo Bai, duly sealed by the doctor, were handed over to Kanhiya Lal EASI and were taken in possession vide memo (Ex. P14). Post mortem of the dead body was conducted by Dr. O.P. Dehmiwal (PW11) on 16.11.2008. Three injuries were found on the dead body of Kalo Bai. The cause of death was haemorrhage and shock as a result of injuries which were ante mortem in nature and sufficient to cause death in natural course of life.

On completion of investigation, report under Section 173 Cr.P.C. was presented. The charge for the offence punishable under Section 302 IPC was framed against the appellant on 05.03.2009. The appellant pleaded innocence and claimed trial.

Thirteen(13) witnesses were examined by the prosecution to prove its case against the appellant. The incriminating material and evidence against the appellant when put to him was denied by the appellant in his statement under Section 313 Cr.P.C. He pleaded innocence and false implication. No evidence was led in defence.

Learned trial Court on the basis of evidence on record found that the prosecution had successfully proved its case against the appellant beyond the shadow of doubt for having committed the murder of his wife Smt. Kalo Bai on 16.11.2008 in the presence of Reena (PW3), their own daughter.

Consequently, the appellant was convicted for the offence

punishable under Section 302 IPC and sentenced as detailed above.

Aggrieved from his conviction and sentence, the appellant has filed this appeal.

Learned counsel for the appellant has vehemently argued that the entire prosecution case rests on the testimony of Reena (PW3), who is a mere child of 12/13 years. It is vehemently argued that the young child has been tutored by the complainant, who is grand maternal uncle (cousin Nana). The complainant had reached the place of occurrence at about 4.00/5.00 a.m. He was present at the spot when the statement of the child (Ex.D1) was recorded. Furthermore, there is no explanation as to why the statement of the son, who was 18 years old, was not recorded. As per the statement of Reena (PW3), the son of the deceased and the appellant was sleeping in the same room as his parents, therefore, he would have been the best witness. Thus, the testimony of Reena (PW3) who is a child witness is not worthy of any credence.

The statement/evidence of the complainant Parkash Chand, is argued to be inadmissible being hearsay evidence. Parkash Chand was not an eye witness of the alleged occurrence, thus, no reliance should be placed on his version, which is dependant on the version revealed by PW3, Reena.

It is further submitted that there is a delay in lodging the report with the police as the death of Kalo Bai took place at 10.00 p.m. Reference is made to the statement (Ex.D1) of Reena (PW3) (Ex. D1) where she has stated the time of incident to be 10.00 p.m.

In her testimony before the Court she has given different time i.e.

1.00 a.m. This material discrepancy in itself shows that the prosecution version is an afterthought and a mere concoction put forth by the complainant to falsely implicate the appellant.

Learned counsel for the appellant also submits that it was for the prosecution to have proved the presence of the appellant in matrimonial home at the time of occurrence. There is no evidence worth its name to indicate that the offence was committed by the appellant. The primary burden of proving its case has not been discharged by the prosecution. Therefore, the absence of any explanation on the part of the appellant and pleading innocence and false implication by him cannot lead to any adverse influence against the appellant. It was for the prosecution to have led sufficient evidence to prove its case beyond reasonable doubt. No reliance can be placed on the disclosure statement (Ex.P9) suffered by the appellant. Recovery of the gandasi was itself suspect. The chain of events pointing solely to the guilt of the accused is missing. It is, thus, prayed that the impugned judgment and order be set aside and the appellant be discharged of the charge under Section 302 IPC.

Learned counsel for the State, however, submits that there is clear cut and cogent evidence on record to prove that the appellant has murdered his wife in a ruthless manner by inflicting gandasi blows on her. There is no reason to disbelieve the testimony of Reena (PW3). She was 12/13 years old at the time of the incident. She had cleared her 6th standard. She was very well aware of the ground realities and there is no question of her being tutored by the complainant. It is submitted that there is no delay in lodging of the

FIR as alleged by the learned counsel for the appellant. The information regarding the death of Kalo Bai was received at 3.00 a.m. on 16.11.2008 by the complainant. He reached the spot at about 4.00/5.00 a.m. and the FIR was recorded at 6.40 a.m. on 16.11.2008 itself. It is submitted that the prosecution had proved its case beyond reasonable doubt. Therefore, the impugned judgment and order should be maintained.

We have heard learned counsel for the parties and have carefully gone through the record.

The complainant - Parkash Chand (PW2) has deposed that his elder brother Dayal Chand had died a number of years ago and his children were look after by him. The mother (wife of Dayal Chand) had also left the matrimonial home. Dayal Chand's daughter Kalo Bai was got married to the appellant – Ramesh about 18-20 years ago. Kalo Bai's marriage was performed by the complainant. The appellant and Kalo Bai were living in village Hamja Pur for the last 4/5 years alongwith their children. They had five daughters and a son about 18 days/one month old. Information about the murder of Kalo Bai by her husband was received by the complainant from Pappu Ram son of Shira Ram on 16.11.2008 at about 3.00 a.m. in the morning. The complainant alongwith others rushed to Kalo Bai's matrimonial home and found her lying dead in a room with injuries on her neck. He was told by Kalo Bai's daughter Reena, that the appellant had quarrel with Kalo Bai, pushed her to the ground and thereafter inflicted gandasi blows on her neck. She had died on the spot.

As per Dr. O.P. Dehmiwal (PW11) following injuries were found on the dead body of Kalo Bai:-

1. Incised wound of size 10 x 2.5 cm present on neck. Bleeding was present on dissection underlying structure were cut.
2. Incise wound present on lower neck size 12.5 x 4.5 cm on dissection left clavical bone was fractured, vessel were cut, thyroid gland and trachea were cut.
3. Incise wound was present on right of upper chest and neck on dissection underlying muscle, vessel and bone fractured.

The cause of death was haemorrhage and shock as a result of injuries which were ante mortem in nature and sufficient to cause death in natural course of life.

As per the FSL Report dated 29.12.2008 (Ex.P18) traces of human blood were found on the gandasi recovered at the instance of the appellant.

The various grounds raised by the learned counsel for the appellant to impugn the appellant's conviction and sentence are crystallised and discussed as hereunder :-

- (i) No reliance can be placed upon the evidence of Reena (PW3) as she was a minor and a tutored witness.
- (ii) Parkash Chand (PW2), the complainant was not an eye witness. Thus, his evidence being hearsay evidence is inadmissible.
- (iii) The son of the appellant and the deceased, who was sleeping in the same room was not examined.
- (iv) There was delay in lodging of the FIR, which creates a

doubt on the prosecution version.

(v) It was for the prosecution to have proved its case beyond reasonable doubt and not for the appellant to have given an explanation for the death of Kalo Bai. Therefore, failure to furnish any explanation cannot be held against the appellant.

(i) **No reliance can be placed upon the evidence of Reena (PW3) as she was a minor and a tutored witness.**

In respect to the evidentiary value of the testimony of a child witness, the Hon'ble Supreme Court in **State of Karnataka v. Shantappa Madivalappa Galapuji and others, 2009 (12) SCC 731** has held that:

“The Indian Evidence Act, 1872 (in short “the Evidence Act”) does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old, disease – whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto.

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Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that

there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.”

It is further observed by the Hon'ble Supreme Court in the abovementioned judgment that the decision on the question of the child witness possessing sufficient intelligence rests primarily with the trial Judge. The trial Judge notices the child's manners, apparent possession or lack of intelligence. The trial Judge may resort to any examination which will tend to disclose the capacity and intelligence of the child witness as well as his understanding of the obligation of an oath. The evidence of a child witness cannot be rejected per se, but the court as a rule of prudence can consider such evidence after a close scrutiny. If the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of the child witness.

In the case of **Suryanarayana v. State of Karnataka,** **AIR 2001 SC 482**, the only eye witness of a murder was a four year old child. The child's testimony was found to be reliable and trustworthy. It was observed by the Hon'ble Supreme Court that the evidence of a child witness cannot be rejected per se but would be subjected to greater scrutiny. Moreover, minor discrepancies in the child's deposition would not invite discredit and the prosecution can rightly claim a conviction based on the child's testimony.

In this case, Reena (PW3) was 12-13 years old. She had passed her 6th standard examination. The learned trial Court had duly certified that she was a competent witness to depose before the Court. Relevant questions were put to her to reach such a

conclusion. It is only after recording its satisfaction in this regard that the testimony of PW3, Reena was recorded. Therefore, there is no merit in the contention that reliance cannot be placed upon the testimony of Reena (PW3). She has specifically stated that the appellant, her father (the appellant) was a habitual drunkard. He started quarrelling with the deceased Kalo Bai on 16.11.2008 at about 1.00 a.m. She asked her father not to quarrel with her mother. The appellant pushed her mother on which she fell down on the ground. The appellant then picked up a gandasi lying nearby and inflicted 2/3 blows on her neck due to which her mother died on the spot. She came out of the house and raised alarm which attracted a neighbour. Thereafter, the Sarpanch of the village also came there. The police recorded her statement and she narrated the whole incident. The motive was stated to be that the appellant was demanding money for alcohol. He was demanding money which Kalo Bai had kept from her father's pay. When the deceased refused to give him the money, the appellant murdered her. The appellant was earning a sum of Rs. 3500/- per month as salary by working as a Sweeper in the village. Reena (PW3) has also stated that her father used to beat the deceased everyday for having given birth to girls.

Learned counsel for the appellant has stated that Reena (PW3) in her cross examination has admitted that she gave a statement as tutored by the complainant. Therefore, the entire evidence led by her is untrustworthy and should be discarded. We do not find any merit in this argument as Reena (PW3) is a most natural witness in the facts and circumstances of the case. She is the

daughter of the deceased and the appellant, living in the same house. She has given a consistent version of the turn of events as they unfolded. The incident is narrated promptly after the incident on 16.11.2008. Reena (PW3) has stated that she alongwith her siblings were not living with the complainant. The villagers were providing food and clothes and one of her aunts was also giving food and clothes to them. The possibility of embellishment and tutoring does not arise. Minor discrepancies which might creep in while testifying before the trial Court are not sufficient or material to discredit the entire testimony of Reena (PW3).

In response to a Court question, Reena (PW3) has specifically deposed that she had seen the appellant, her father killing her mother Kalo Bai with a gandasi.

It is relevant to note at this stage that Kulbir Singh son of Amar Singh (PW4) was the Sarpanch of village Hamja Pur i.e. the village in which the appellant and his wife were residing. He has deposed that he reached the house of the appellant at about 2.00/2.30 a.m. on 16.11.2008. A neighbour of the appellant had informed him about the incident. He has further revealed that the disclosure statement, Ex. P9 was suffered by the appellant on 16.11.2008. The blood stained gandasi was got recovered by the appellant from under the heap of wooden sticks of cotton crop at Government School, Hamja Pur. The evidence of Kulbir Singh (PW4) is consistent with the testimony of Reena (PW3) and further cements the prosecution case. The testimony of Reena (PW3) is credible, trustworthy and reliable.

(ii) **Parkash Chand (PW2), the complainant was not an eye witness. Thus, his evidence being hearsay evidence is inadmissible.**

The complainant Parkash Chand was admittedly not an eye witness to the occurrence in which Kalo Bai lost her life. He received the information regarding Kalo Bai's murder at about 3.00 a.m. Her murder had taken place in the intervening night of 15th and 16th November, 2008 at about 1.00 a.m. Parkash Chand reached Kalo Bai's matrimonial home at about 4/5 a.m. on 16.11.2008. The sequence of events which led to the death of Kalo Bai at her husband's (appellant) hands was narrated by PW3, Reena who is none other than the daughter of the deceased and the appellant. The statement (Ex. P7) of the complainant was promptly recorded at 6.15 a.m. and the FIR (Ex. P19) was registered at 6.40 a.m. on 16.11.2008 itself. Thus, the statement of Parkash Chand is admissible in evidence in view of Section 6 of the Evidence Act, which is an exception to the general rule regarding hearsay evidence. Hearsay evidence becomes admissible when the statement in question is established to be made either contemporaneously with the act or immediately thereafter. There is no such interval which would allow fabrication. The principle of 'res gestae' is applicable in the present case. The spontaneity and promptness of the complainant's statement clearly brings it within the ambit of Section 6 of the Evidence Act. This argument raised by the learned counsel for the appellant is, thus, ill-founded and hence rejected.

(iii) **The son of the appellant and the deceased, who was**

sleeping in the same room was not examined.

The contention of learned counsel for the appellant that the son of the appellant and the deceased was not examined is extremely misconceived for the simple reason that the son was an infant of about 18 days at the time of the occurrence. It is incorrectly stated by learned counsel for the appellant that the son was 18 years old. This contention is opposed to the record. We have perused the translated version of the statement (Ex. P7) of the complainant - Parkash Chand as well as its vernacular wherein the child is mentioned to be 18 days old. In his testimony before the Court Parkash Chand has mentioned the son to be about one month old. Thus, there is no question of an infant being examined.

(iv) **There was delay in lodging of the FIR, which creates a doubt on the prosecution version.**

As noted above, in the foregoing paras, information regarding the death of Kalo Bai was received by the complainant at 3.00 a.m. on 16.11.2008. He reached the place of incident at about 4.00/5.00 a.m. The FIR was recorded at 6.40 a.m. and the special report was received at 9.15 a.m. The appellant cannot avail of any benefit by the difference in the time of death in the statement (Ex. D1) of Reena (PW3) to the effect that the incident took place at 10.00 p.m. and in her deposition before the Court where she has stated that the occurrence took place at 1.00 a.m. Such a discrepancy is immaterial and irrelevant in the facts and circumstances of the case.

The complainant (PW2) had reached the spot at about 4.00/5.00 a.m. itself and the events as they unfolded were revealed

to him by Reena (PW3). The evidence of all the witnesses is trustworthy credible and reliable. They are the most natural witnesses in the facts and circumstances of the case. There is no delay whatsoever in the intimation to the police or in the recording of the FIR which can even dent the prosecution version, much less prove fatal for it.

(v) **It was for the prosecution to have proved its case beyond reasonable doubt and not for the appellant to have given an explanation for the death of Kalo Bai. Therefore, failure to furnish any explanation cannot be held against the appellant.**

In case of death occurring within the confines of the matrimonial home, the Hon'ble Supreme Court while dismissing an appeal against a conviction under Sections 302/498A IPC in the judgment titled **Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681**, has observed that:-

“The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.”

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

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Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.”

In the present case, failure on the part of the appellant to offer any explanation for the death of his wife in the matrimonial home is merely an additional factor to show his culpability. There is a trustworthy and reliable eye witness account duly corroborated by the

evidence on record including medical evidence, which cogently establishes the guilt of the appellant beyond any reasonable doubt. It is evident that in this case the appellant's failure to offer an explanation for the death of his wife in the matrimonial home is not the foundation of his conviction. Therefore, this ground also falls to the ground.

Learned counsel for the appellant is unable to point out any infirmity or illegality, which calls for any interference in the judgment dated 16.02.2010 and order dated 17.02.2010. The conviction and sentence of the appellant vide above said judgment and order is, thus, upheld. This appeal being devoid of any merit is dismissed.

(S.S. Saron)
Judge

(Lisa Gill)
Judge

September 21, 2016
rts/om

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No