

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

CRA-D No.691-DB of 2010

Date of Decision: 20.01.2016.

Ram Avtar

....Appellant.

VERSUS

State of Haryana

....Respondent.

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE SNEH PRASHAR**

1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present: None for the appellant.

Mrs. Shubhra Singh, Additional Advocate General, Haryana.

SNEH PRASHAR, J.

Appellant-accused Ram Avtar was held guilty and was convicted for the commission of offence under Section 302 of the Indian Penal Code (for short, "I.P.C.") and was sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/- and in default of payment of fine to further undergo Rigorous Imprisonment for a period of six months vide judgment of conviction dated 05.03.2010 and order on quantum of sentence dated 08.03.2010. It was ordered that the period of custody undergone by convict during investigation, enquiry and trial shall be set off against the substantive sentence.

The complaint which led to registration of the instant case, arrest and initiation of criminal proceedings against the appellant was

lodged by Sanjay son of Mam Chand, resident of Railway Colony, Hisar in the morning on 10.09.2008 before Inspector/SHO Bhagwan Dass at the spot where dead body of Suman was lying in Balmiki Basti, Patel Nagar, Hisar. The allegation of Sanjay-complainant was that his sister Suman, younger to him, was married to Ram Avtar son of Om Parkash nine years ago. They had three children. Ram Avtar worked as labourer but was addicted to liquor. He used to harass Suman under the influence of liquor. Three months prior to that day i.e. 10.09.2008 Suman was turned out of the matrimonial home by Ram Avtar. Since then Suman was residing with her father's sister (Bua) Kailash Devi wife of Roshan Lal at D-33, Railway Colony, Hisar. On 09.09.2008, a day prior to the day of occurrence, Ram Avtar was called and after being given counselling Suman was sent with him.

The complainant further stated that on that day i.e. on 10.09.2008 at about 4:00/5:00 a.m., he received a telephonic call from a neighbour of Ram Avtar who informed him that Ram Avtar had murdered Suman. He alongwith his paternal aunt Kailash Devi reached the house of Ram Avtar and found the dead body of Suman lying there on a cot. On enquiry, he learnt that Ram Avtar had quarreled with Suman on the previous night under the influence of liquor and had injured her by giving brick blows on the head. While being shifted to the hospital, Suman succumbed to the injuries and died. The complainant added that Ram Avtar had murdered Suman.

The appellant-accused was arrested on 11.09.2008 and on

completion of investigation was challaned and sent to the Court for trial. He was charge-sheeted for the commission of offence under Section 302 I.P.C., to which he pleaded not guilty and claimed trial.

As many as 12 witnesses were examined by the prosecution to substantiate the charges.

After closure of prosecution evidence, in his statement under Section 313 of the Code of Criminal Procedure (for short, "Cr.P.C."), the appellant-accused denied all allegations of the prosecution and pleaded innocence. He stated that Suman was mentally upset and she fell down from the roof of the house and that he did not cause any injury to her.

Considering the arguments advanced by the learned Public Prosecutor for the State and counsel representing the appellant-accused, learned trial Court held the appellant guilty and convicted and sentenced him as indicated above.

Feeling aggrieved, the convict (appellant) preferred the instant appeal.

Heard the submissions made by Mrs. Shubhra Singh, Additional Advocate General, Haryana.

Admittedly deceased Suman was wife of appellant Ram Avtar. The two material witnesses of the prosecution PW9 Sanjay, brother (complainant) and PW2 Kailash Devi, paternal aunt, of deceased Suman unequivocally deposed that Suman was married to Ram Avtar about 10/11 years ago. They had three children out of the wedlock. Ram Avtar was a habitual drunkard and used to physically assault Suman under the influence

of liquor. Suman was thrown out of the matrimonial home about three months prior to her death whereafter she was residing with her paternal aunt (PW2 Kailash Devi) and just a day before she died, Ram Avtar alongwith his family members had come and on being given counselling, he had brought Suman with him back to the matrimonial home.

Importantly, in his statement recorded under Section 313 Cr.P.C., appellant Ram Avtar admitted presence of deceased Suman in his house on the day of occurrence. To explain the mysterious circumstance in which Suman died at his house, he stated that she was mentally upset and she died as she fell from the roof of the house.

In addition to the deposition of PW9 Sanjay and PW2 Kailash Devi, who consistently stated that the appellant and the deceased were not enjoying cordial relations and there used to be frequent incidents of beatings to Suman by the appellant under the influence of liquor, the allegation of the prosecution that the deceased was murdered by the appellant rested on number of other circumstances also.

After the investigation commenced, the scene of crime was inspected by Dr. Ajay Kumar, Incharge Scene of Crime team IGP Office, Hisar Range Hisar (PW8) who gave his report Ex.P15. He stated that there was a Kutcha house having a single room with single entry gate and the dead body of a young female was lying on a cot outside the door of the room. There were two wounds on the head near the temple and left eye respectively. Inside the room of the house one folding cot (Charpai) was lying. Bloodstain of size approximately 1'x1' was noticed on one side of the

cot and another bloodstain of size 3'x2' was noticed on the Kutcha floor just under the bloodstain on the cot. One bloodstained veil (Chunni) was lying on the cot. One pair of ladies Chappal and a pair of shoes were lying under the cot. An electric heater with a 'Patila' having cooked vegetable was noticed near the door of the room. One brick was found lying inside the room near the gate which was also stained with blood. On the basis of his observations, he opined that it was a case of homicide.

Neither in the report Ex.P15 prepared on inspection of site of crime by PW8 Dr. Ajay Kumar nor in the rough site plan Ex.P37 of the Investigation Officer PW12 Inspector Bhagwan Dass or in the scaled site plan Ex.P4 prepared by PW5 Subhash Chand, Draftsman existence of a staircase in the house for going to the roof top was mentioned. No medical prescription slips etc. could be produced by the appellant to support his contention that the deceased was mentally upset. The floor of the house inside and outside was Kutcha and there is no mention of any hard object lying anywhere on the floor which could prove that the two injuries on the head of the deceased could have been sustained by fall from the roof.

Moreso, as is proved from the statement of Dr. Dalel Singh (PW11) who conducted postmortem examination on the dead body, there were only two injuries on the head of the deceased and there was no other injury on any part of the body which could support the theory of fall from the roof. There is no mention in the postmortem report Ex.P30 that either the hair of the deceased or any portion of her clothes were smeared with mud. According to the report Ex.P15 of PW8 Dr. Ajay Kumar, inside the

room of the house of the appellant, a folding *Charpai* was lying, the plastic *Niwar* of which had bloodstains. There was also a bloodstain on one side of the *Charpai* and a bloodstain on the Kutcha floor just under the stain of the *Charpai*. Had the deceased fallen from the roof, the appellant should have been in a position to explain how there were bloodstains on the cot lying inside the room and the Kutcha floor of the room. For all the said reasons, the version of the appellant that Suman fell from the roof of the house and died can easily be rejected.

PW1 Surinder Kumar, before whom the appellant was alleged to have made an extrajudicial confession, did not support the prosecution story. He denied that he had produced Ram Avtar before the police after he had disclosed to him that he had killed his wife Suman with a brick under the influence of liquor. On request of learned Public Prosecutor that the witness was suppressing the truth, he was allowed to cross examine him but to no better result. PW1 expressed complete ignorance about the cause of death of Suman and also denied that he had made the statement i.e. Ex.P1 before the police.

However, the fact remains as proved by PW2 Kailash Devi and PW9 Sanjay that a day prior to the occurrence the appellant had brought his wife to the matrimonial home from the house of her paternal aunt. It is not the version of the appellant that he was not at home on the night the occurrence took place. Since Suman died during the night the presumption is that at that time she was with her husband-appellant in the house which had a single room. The theory presented by the appellant that his wife

suffered injuries and died due to fall from the roof has already been ruled out. Therefore, the presence of the brick with bloodstains inside the room where bloodstains on the cot as well as underneath the cot and also by the side of it were found, go a long way to establish the allegation of the prosecution that the deceased was hit on head with the brick by the appellant twice which led to grave injuries and she died.

There is another relevant circumstance which goes against the appellant. PW12 Bhagwan Dass, Inspector arrested the appellant on 11.09.2008. He testified that during interrogation the appellant suffered a disclosure statement Ex.P20 in pursuance of which he got recovered his jean pants Ex.P26 and shirt Ex.P27 which he was wearing at the time of occurrence and were stained with blood. The clothes were taken in possession by PW12 vide memo Ex.P21. The fact that the appellant concealed his bloodstained clothes in a briefcase kept in a *Jhuggi* near his residential house and that he fled away from the spot after his wife had suffered injuries which led to her death, assign a strong reason to believe that the appellant had caused injuries to the deceased.

Having come to the conclusion that it was a case of culpable homicide, the vital question that comes up for determination is whether it was murder or was culpable homicide not amounting to murder. It is established from the deposition of PW9 Sanjay, brother and PW2 Kailash Devi, paternal aunt of the deceased that there used to be frequent incidents of quarrel between the appellant and the deceased, his wife. Both the witnesses stated that the appellant was habitual drunkard and often used to

give beatings to his wife under the influence of liquor. Three months prior to the occurrence Suman was turned out of the house by the appellant. She was residing with her paternal aunt and just a day prior to the occurrence she was brought home by the appellant. The circumstances indicate that on the fatal night also a quarrel had taken place between the appellant and his wife (deceased) which as usual provoked him for giving beatings to her. Unfortunately, he got hold of a brick lying in the room and hit with the same on the head of the deceased.

Section 300 I.P.C defines murder. It reads as under:-

*“**Murder.**—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—*

(Secondly)—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly)—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly)—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

The exceptions given under Section 300 I.P.C. are as under:-

*“Exception 1.—**When culpable homicide is not murder.**—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the*

provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

(First)—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

(Secondly)—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

(Thirdly)—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

<i>Exception 2.</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>
<i>Exception 3.</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>
<i>Exception 4.</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>
<i>Exception 5.</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>

Apparently, Exception No.1 postulates that culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The test of “grave and sudden” provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control.

Admittedly, the appellant was an uneducated person and was labourer by occupation. He was a habitual drunkard and used to give beatings to his wife under the influence of liquor but they had three children

which means there was no major dispute or ill will between them. Complainant Sanjay (PW9) mentioned in the First Information Report itself that when he reached the house of Ram Avtar he came to know from the people present there that during the night intervening 09/10.09.2008 Ram Avtar had quarreled with his wife Suman under the influence of liquor and had inflicted injuries on her head by giving brick blows. It appears that sudden eruption of quarrel between the appellant and his wife caused excitement and provocation to him which led to the violent rage. There is nothing to indicate that the appellant had the intention to kill his wife or that he had knowledge that the injuries caused by him can result in her death.

Considering the above facts, it is held that the appellant was guilty of commission of culpable homicide not amounting to murder. Accordingly, his conviction is converted from under Section 302 I.P.C. to under Section 304 I.P.C. and the judgment of conviction recorded by learned trial Court is modified.

The appellant had three small children who were less than 10 years of age at the time of occurrence. One or two of them still may not have attained the age of majority. Thus, the sentence of rigorous imprisonment awarded to the appellant is reduced to 10 (ten) years. He will be entitled to the benefit of Section 428 I.P.C. The appeal is partly allowed.

(HEMANT GUPTA)
JUDGE

20.01.2016
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(SNEH PRASHAR)
JUDGE