

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA No.D-635-DB of 2011 (O & M)
Date of decision: 6.05.2016.

Arjinder SinghAppellant

Vs.

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.P.S. Hundal, Senior Advocate with
Mr. Dinesh Trehan, Advocate for the appellant.

Mr. P.P.S.Thethi, Addl. AG, Punjab
for the State.

Mr. P.S. Ahluwalia, Advocate for the complainant.

S.S.SARON,J.

This appeal has been filed by the appellant-Arjinder Singh against the judgment and order dated 28.05.2011 passed by the learned Additional Sessions Judge, Tarn Taran whereby he has been convicted for the offence punishable under Section 302 Indian Penal Code ('IPC' – for short) for committing the murder of his wife Kulwinder Kaur and has been sentenced to undergo life imprisonment; besides, pay a fine of Rs.10,000/- and in default thereof undergo rigorous imprisonment for one year. The other accused namely Iqbal Singh and Bhupinder Singh, father and brother respectively

of the appellant have, however, been acquitted.

FIR No.38 dated 18.06.2007 (Ex.PF) was registered at Police Station Sarai Amanat Khan, District Amritsar on the statement of Smt. Manjit Kaur wife of Gurcharan Singh for the offence under Section 306/34 IPC. The complainant Manjit Kaur made a statement (Ex.P1) that she was resident of Kalgidhar Colony, Naraingarh, Chheharta and was aged 55 years. She was a housewife and had three daughters; besides, a son who were all married. Her elder daughter Kulwinder Kaur (deceased in the case) wife of Arjinder Singh (appellant) son of Iqbal Singh (since acquitted) resident of Kasel was married in the year 1995. From the marriage between Kulwinder Kaur and Arjinder Singh, they had two daughters and a son. Their elder daughter namely Ramandeep Kaur was aged about 11 years. Younger to her was Amandeep Singh (son) aged about 9 years and daughter namely Harmandeep aged about 5 years. The son-in-law of the complainant i.e. the appellant Arjinder Singh had retired from the Army about one and a half years earlier from the lodging of FIR by the complainant on 18.06.2007. The appellant, it is alleged, used to take drinks since his marriage and as and when he came on leave from the Army, he used to beat the daughter of the complainant and illtreat her under the influence of liquor. When they

came to know about such acts of her son-in-law, they used to make their daughter understand that good sense would prevail upon him. However, her son-in-law namely Arjinder Singh (appellant) did not mend his ways. When he came on pension from the Army, the complainant got her niece namely Kulwant Kaur daughter of Charan Singh resident of Mehta married to Bhupinder Singh (since acquitted), the brother of Arjinder Singh (appellant). He also used to drink liquor with his brother i.e. the appellant and he used to beat Kulwant Kaur under the influence of liquor. They, however, dissolved their marriage by getting a divorce keeping in view the behaviour of Bhupinder Singh. Now her son-in-law Arjinder Singh, his brother Bhupinder Singh and their father Iqbal Singh son of Amar Singh used to drink liquor late in the night and pressurize their daughter to cook food late at night. When their daughter stopped them from consuming liquor and refused to cook food for Bhupinder Singh, they used to beat her. On the date of incident i.e. 18.06.2007 at about 10.00 am, Kulwinder Kaur (deceased) made a telephone call to the complainant that on the previous night all the three accused after consuming liquor beat her and pressurized her to cook food for Bhupinder Singh and their father Iqbal Singh as well. The complainant made her daughter Kulwinder Kaur understand that such trivial

matters occur in the family and she should not worry about them; besides, she would come and meet her in the evening. The complainant Manjit Kaur and her husband Gurcharan Singh went to see their daughter at about 3.30 pm. At that time Arjinder Singh (appellant) husband of Kulwinder Kaur, Bhupinder Singh, husband's younger brother and Iqbal Singh father-in-law respectively of Kulwinder Kaur were present. They informed the complainant and her husband Gurcharan Singh that Kulwinder Kaur had committed suicide by hanging herself from the ceiling fan with the help of a 'dupatta' (veil) as she did not want to prepare food. The husband of the complainant i.e. Gurcharan Singh complained that had she committed suicide then why did they not inform them. The complainant and her husband Gurcharan Singh had full belief that since the accused used to pressurize Kulwinder Kaur to prepare food for Bhupinder Singh, she had committed suicide in anger due to which she died. She left her husband near the dead body to guard it and was proceeding to lodge a report with the police. The police met her on the way and her statement was recorded. She asked for action to be taken against the accused and justice be given to her. The complainant signed her statement in Punjabi, which was attested by SI Jagdish Chander Police

Station Sarai Amanat Khan.

Police proceedings were recorded by SI Jagdish Chander to the effect that he along with other police officials were in a Government 'Balero' vehicle with registration No. PB-02-AS-5732 which was being driven by HC Sukhwinder Singh. They were in the vehicle in connection with checking and were present at Bus Stand Dhand Kasel, where Manjit Kaur (complainant) came and got her statement recorded with SI Jagdish Chander. The statement was read over to the complainant, who after admitting the contents to be true signed the same in Punjabi, which he had attested. From the statement of the complainant, offence under Section 306/34 IPC appeared to be made out. The statement was sent through HC Balwinder Singh for registration of a case. After registration, the number of the FIR was asked to be intimated and information was asked to be flashed on the wireless and control room. Special reports were also asked to be issued to the concerned officers. SI Jagdish Chander along with officials was busy in the investigation. He was proceeding towards the spot along with the complainant. The police proceedings were recorded at 6.30 pm on 18.06.2007 at Bus Stand, Dhand Kasel by SI Jagdish Chander, Police Station, Sarai Amanat Khan. On the basis of the statement (Ex.PF) that was received, FIR No.38 dated

18.06.2007 for the offence under Section 306/34 IPC was registered at Police Station Sarai Amanat Khan vide report No.23/24 at about 6.55/7.55 PM on 18.06.2007 by ASI Gurbachan Singh. The FIR was received by the Judicial Magistrate Ist Class Duty on 19.06.2007 at 5.40 am.

SI Jagdish Chander accompanied Manjit Kaur complainant to the place where the incident had occurred. The place of occurrence was inspected. Kulwinder Kaur (deceased) was lying on a bed and inquest report (Ex.PG) was prepared; besides, statements of the witnesses were recorded. An apron of the deceased Kulwinder Kaur was taken in possession vide memo Ex.PB by preparing a parcel (Ex.M/1) which was sealed with the seal of impression 'JC'. The possession memo Ex.PB was attested by Gurcharan Singh and HC Hardeep Singh. DSP Jagdip Singh Sidhu was requested to reach the spot. He after reaching the spot verified the facts of the case. The dead body of Kulwinder Kaur was taken in possession and handed over to HC Rattan Singh and Constable Harpal Singh vide memo Ex.PH. Rough site plan Ex.P1/A of the place of occurrence was prepared.

Arjinder Singh (appellant) and Iqbal Singh (since acquitted) were arrested on 19.06.2007. Memos of their arrests Ex.PI and Ex.PJ were prepared. HC Rattan Singh on

19.06.2007 produced before SI Jagdish Chander the clothes worn by deceased Kulwinder Kaur, which consisted of a 'salwar', 'kameej' and a 'parna', which were converted into a parcel and sealed with the seal impression of 'JC'. The parcel was taken in possession vide memo Ex.PK, which was attested by HC Sukhdev Singh and C. Harpal Singh. Bhupinder Singh accused was arrested on 26.06.2007 vide memo Ex.PL. After completing the investigation, the accused were sent up for trial ('challaned') by SI/SHO Kanwaljit Singh, whose signatures SI Jagdish Chander identified.

The learned Judicial Magistrate Ist Class, Tarn Taran before whom the police report ('challan') was filed considered the facts and circumstances of the case and in his order dated 19.09.2007 observed that from the documents placed on the file, a prima facie case for the offence under Section 302 IPC was made out against the accused. As the offence punishable under Section 302 IPC was exclusively triable by the Court of Session, the case was committed to the Court of learned Additional Sessions Judge, Tarn Taran for trial. The accused who were in custody were directed to be produced before the said Court.

The learned Additional Sessions Judge, to whom the case was assigned framed charges under Section 306 IPC

against all the three accused on 18.01.2008. The accused pleaded not guilty to the charge and claimed trial. The examination in chief of Manjit Kaur complainant (PW-1) was recorded on 18.07.2008 and her cross-examination was deferred. The statement of Dr. Kirpal Singh (PW-2) was recorded on 17.10.2008. The cross-examination of Manjit Kaur (PW-1) was recorded and concluded on 05.12.2008. Besides, the statement of Gurcharan Singh (PW-3) father of the deceased Kulwinder Singh was also recorded on the same day.

The complainant had filed Criminal Revision No.378 of 2008 in this Court against the charge that was framed by the learned trial Court on 18.01.2008. It was contended that an offence under Section 302 IPC in fact was prima facie made out against the accused in view of the statement of the mother (Manjit Kaur) of the deceased as well as the medical evidence that had been gathered during investigation, if appreciated in the context of the provisions of Section 106 of the Evidence Act. The said revision petition was disposed by this Court on 27.01.2009 with the observation that if on the basis of the statement made before the trial Court, the complainant/prosecution was of the opinion that the charge deserves to be altered, it would be open to the petitioner or the prosecuting agency to file

an application in terms of Section 216 of the Code of Criminal Procedure (Cr.P.C. - for short) for alteration/addition of the charge depending on the circumstances existing.

The complainant then on 27.02.2009 filed an application under Section 216 Cr.P.C. for altering the charge from Section 306 read with Section 34 IPC to Section 302 read with Section 34 IPC. The learned trial Court vide order dated 01.05.2009 dismissed the application holding that no case was made out for altering the charge. The complainant aggrieved against the said order dated 01.05.2009 passed by the learned trial Court filed Criminal Revision No.1424 of 2009 in this Court in which notice of motion was issued on 30.05.2009. The revision petition was allowed by this Court on 23.02.2010 (reported as 'Manjit Kaur v. Arjinder Singh' 2010 (2) Law Herald 910) and the order dated 01.05.2009 passed by the learned trial Court dismissing the application of the complainant for amendment of the charge was set aside as a prima facie case for the offence under Section 302 read with Section 34 IPC was made out against the accused. The learned trial Court was directed to alter the charge against the accused from Section 306 read with Section 34 IPC to Section 302 read with Section 34 IPC.

In view of the order dated 23.02.2010 passed by

this Court allowing the revision petition and ordering the alteration of the charge, the learned trial Court vide order dated 23.04.2010 amended/alterd the charge. The appellant Arjinder Singh as also his father Iqbal Singh and brother Bhupinder Singh were charged on the allegation that on 18.06.2007 at about 10.00 am in the area of village Kesal in furtherance of their common intention, they committed murder by intentionally and knowingly causing the death of Kulwinder Kaur and thereby committing an offence punishable under Section 302 read with Section 34 IPC. The accused were directed to be tried of the said offence.

In view of the amendment of the charge, the accused prayed for further cross-examination of the witnesses already examined. The Additional PP for the State submitted at the bar that he did not want to re-examine witnesses already examined. The witnesses at serial No.1 and 2 were summoned for 07.05.2010. The accused Arjinder Singh was in custody. The other two accused it was ordered shall remain on bail for the offence under Section 302 IPC. Manjit Kaur (PW-1) and Gurcharan Singh (PW-3) were further cross-examined by the accused after amendment of the charge. The accused wanted to further cross-examination of PW-2 Dr. Kirpal Singh and

PW-6 SI Jagdish Chander. They were also accordingly summoned. The cross-examination of Dr. Kirpal Singh was concluded on 03.12.2010; besides, the accused made a statement on the said day that they did not want to further cross-examination of SI Jagdish Chander (PW-6).

It was noticed that after amendment of the charge the accused had further cross-examined PW-1 to PW-3 and made statements that they wanted to (sic. did not want to) further cross-examine SI Jagdish Chander or any other witness. Accordingly, the prosecution evidence was closed.

The appellant in his statement under Section 313 CrPC pleaded that he was innocent and had been falsely implicated in the case. Kulwinder Kaur (deceased) it was stated was suffering from serious disease and committed suicide in his absence. He broke open the ventilator and brought down the dead body of Kulwinder Kaur with her 'chunni' tied around her neck.

In defence, Dr. Adarsh Kumar, DW-1 Professor and Head of Cardiology Department, Govt. Medical Guru Nanak Dev Hospital was examined. He stated that he had not brought the summoned record pertaining to Palwinder Kaur (sic. Kulwinder Kaur) wife of Arjinder Singh (appellant) allegedly relating to her admission dated 7.6.1999 and her discharge on 19.6.1999 as the record had been destroyed as

per rules. Letter Ex.DW1/A was submitted regarding the record being destroyed.

Sukhwinder Singh (DW-2) was examined who is the brother of the appellant Arjinder Singh. The house of Arjinder Singh (appellant) is four houses away from his house. The house of Bhupinder Singh accused (since acquitted) adjoins the house of Arjinder Singh. His father Iqbal Singh (since acquitted) at his discretion used to reside with them. According to him, about three and a half years earlier to his deposition, which was made on 7.12.2010, when he reached his house, the police and villagers had collected at the house of Arjinder Singh (appellant). Statement of Amandeep Singh son of appellant Arjinder Singh was being recorded. Then DSP asked Arjinder Singh (accused) to pass through the ventilator from which he entered the room after breaking the ventilator. They were asked to go out by the police. When Bhupinder Singh was arrested, he (DW-2) came to know that the statement of Amandeep Singh was not brought on record. Then they submitted two-three applications to the higher authorities. He identified his signatures on the application (Ex.D1) addressed to the learned Sessions Judge, Tarn Taran. It is stated that the deceased used to remain ill as she was a patient of asthma and heart problem. In cross-examination,

he stated that he could not produce the copy of statement of Amandeep Singh. He voluntarily stated that the copy was not supplied to them. They did not submit any application to the higher police authority about the fact that they were asked to go out by the DSP. No resolution was passed by the Gram Panchayat in that regard. It is stated as incorrect that the deceased was hale and hearty. They had got medical record about the ill-health of the deceased.

Amandeep Singh (DW-3) student of 6th class was a minor and he was also examined in defence. The learned trial Court recorded that it had put certain questions to the witness who gave rational answers and it was satisfied that he was a competent witness. He (DW-3) stated that the Arjinder Singh (appellant) was his father. His mother died about 3-4 years back. In the morning, his mother felt pain in her chest. His father brought medicine for her. After taking medicines, his mother felt some relief. Then his mother gave some money to his father for the purchase of some articles for his 'karyana' (grocery) shop. His father went away. Then his mother gave some money to his grandfather for paying the electricity bill. She asked him to shut the knob of the gas stove after sometime and went inside the room and bolted the door from inside. After two-three hours, his father came back and asked him to call his

mother in order to unload the articles brought by him. He knocked at the door and also called his mother but there was no response and he told this fact to his father. Then he and his father went down and knocked at the door but again there was no response. Then his father peeped through the spaces in the door and then he brought a ladder and broke the ventilator and went inside the room through the ventilator and then he opened the door and brought down his mother who had hanged herself from the ceiling fan. He took her to the hospital where the doctor declared her dead. Then they informed his maternal grandmother on telephone who brought the police and some people to the house. His statement was recorded by the police. Then his father was asked to pass through the ventilator by the police who did so twice/thrice. The relations between his parents, it is stated, were cordial. His mother was having the heart problem. He had come back from the house of his maternal uncle two-three days prior to the occurrence. The accused did not beat his mother at any time. In cross-examination it is stated that at the time of occurrence, he was a student of third standard. They used to reside at Chheharta also. It is stated as incorrect that they used to reside at Chheharta on account of strained relations between his parents. It is stated as incorrect that the accused used to maltreat his

mother. He went to the house of his maternal grandmother and stayed there for about nine days. He had two sisters, one was elder to him by one year and the other was younger to him. He and his sisters had gone to the house of his maternal grandmother. It is stated as incorrect that they went away on account of strained relations of his mother with his father. After the occurrence, he had never gone to the house of his maternal grandmother, which he had not gone on his own will. He voluntarily stated that he did not visit the house of his maternal grandmother as they had implicated his father in this case. It is stated as incorrect that he was a tutored witness. It is stated as incorrect that he was not present at the house on the date of occurrence. It is stated as incorrect that his maternal grandmother did not bring the police with her when she came to their house. Their house was single story. It is stated as incorrect that he has deposed falsely being related to the deceased.

Dr. Adarsh Kumar, Head Cardiology Department, Medical College, Amritsar (DW-4) was also examined in defence. He stated that the original hospital file as per Medical Superintendent's office was not traceable. Besides, as per the statement of Registrar CRO Office of the Hospital, the concerned record had already been destroyed being

very old. The original discharge slip of the patient supplied to him in the Court appeared to be issued by their Department under the signatures of some junior doctor but as per the record of the slip, he had also examined this patient in the follow up and that bears his signatures. The same, it is stated, is Ex.DW-4/A and Ex.DW-4/B. In cross-examination it is stated that the details of the discharge slip were not written by him including the prescription on the medicines and history on the date of discharge i.e. 19.6.1999. It is stated that on Ex.DW-4/B in the follow up of the patient, echo test was done. The patient was advised treatment on that day on the basis of that very report. It is stated that whenever a discharge is given they do not note down the persons' name to whom it is given. It is voluntarily stated that in cases of prisoners they used this system when the patient was discharged. As per the discharge slip, the patient was seen for the last time only on 31.7.1999. It is stated as wrong that he never checked the patient in question as per discharge slip record and it was wrong that he intentionally did not produce the relevant record of the patient. It was wrong that the record was not destroyed and he had deposed falsely in order to avoid production of the record.

The learned Additional Sessions Judge, Tarn Taran

after considering the evidence and material on record by his impugned judgment and order acquitted Bhupinder Singh and Iqbal Singh, brother and father respectively of the appellant Arjinder Singh; however, appellant Arjinder Singh was convicted for the offence under Section 302 IPC by holding that he committed the murder of Kulwinder Kaur and tried to make it a case of suicide. He has been sentenced to undergo life imprisonment, besides, pay a fine of Rs.10,000/- and in default thereof, undergo rigorous imprisonment for one year. The said judgment and order passed by the learned Additional Sessions Judge, Tarn Taran is assailed by the appellant Arjinder Singh in this appeal.

Sh. Puran Singh Hundal, learned Senior Advocate with Sh. Dinesh Trehan, Advocate has contended that the case is one of suicide by Kulwinder Kaur and not one of murder. The learned Additional Sessions Judge had erred in holding it to be a case of murder. There is overwhelming evidence on record to show that Kulwinder Kaur had committed suicide. It is submitted that the minor boy namely Amandeep Singh (DW-3) who is the son of the appellant and also the deceased stated before the Court that the when his father came from the market they found the door bolted from inside and the dead body of his mother hanging from the ceiling fan. His father in order to save his mother cut the 'dupatta' and put the body on the bed but she had died by then.

It is submitted that the view taken by the learned trial Court that

cause of death was by manual strangulation is not tenable as there were no marks of violence on the body of the deceased Kulwinder Kaur which discredits the theory of the case being homicidal. It is also submitted that the learned trial Court erred in not accepting the case to be one of suicide by calculating the length of the 'dupatta' hanging from the ceiling fan as also the length of the body which according to the learned trial Court would not have been possible had the body been hanging from the ceiling fan with the 'dupatta'. It is submitted that the case is one of suicide and the appellant in any case cannot be said to have abetted the commission of suicide and there is no evidence in this regard.

In response, Mr. P.P.S.Thethi, Addl. AG, Punjab for the State and Mr. P.S. Ahluwalia, Advocate for the complainant have opposed the stand of the learned Senior Counsel of the appellant. It is submitted that the prosecution has established and proved its case against the appellant beyond shadow of doubt. It is submitted by counsel for the complainant that Kulwinder Kaur (deceased) was the wife of the appellant and therefore, it is for him to show as to how she died and it is within his special knowledge for which he is liable to offer an explanation which would lead the Court to draw an inference different from that of murder as the death has been opined by medical evidence on record to be homicidal in nature. A reference has been made to the provisions of Section 106 of the Evidence Act.

We have given our thoughtful consideration to the

contentions of the learned Counsel for the parties and with their assistance gone through the records of the case.

The fact that Kulwinder Kaur died an unnatural death is not much in dispute and the only dispute is as to whether the death was homicidal or whether she committed suicide in which case it would require further consideration as to whether the appellant Arjinder Singh had abetted the same.

In order to ascertain the facts whether the case is homicidal one or that of suicide the medical evidence may be noticed.

Dr. Kirpal Singh (PW-2) in his deposition stated that he was posted as Medical Officer at Govt. Medical College, Amritsar on 19.6.2006. He conducted the post mortem examination of Kulwinder Kaur deceased on that day. The dead body was brought to the mortuary at 1.05 p.m. by HC Rattan Singh and C. Harpal Singh. It was identified by Gurcharan Singh (PW-3), i.e. husband of the complainant Manjit Kaur (PW-1) and also by Hardeep Singh. The examination of the body started at 2.10 p.m. It is mentioned as a dead body of a female, moderately built and nourished wearing red florated (sic. floral) 'salwar' and 'kameez', white brazier. Eyes and mouth were closed. Rigor mortis was present in toes and fingers only. Post-

mortem staining was present on the back of trunk and extremities sparing contact pressure areas, circumference of the neck was 31.2 cms. The following injuries were found:-

"1. 4.2 x 2.3 cm abraded bruise on left side of neck 2.6 cm above the medial end of clavicle, radish blue contusion 9.4 x 2.1 cm running obliquely on the right side of neck was present at the level of thyroid cartilage on dissection the underline muscle of left and right side were injured, infiltration of blood was present, sub cutaneous tissues were ecchymosed.

The injuries were ante-mortem in nature. The cause of death in this case in my opinion was asphyxia as a result of strangulation which was sufficient to cause death in the ordinary course of nature."

It is further stated that probable time that elapsed between injury and death was rapid and death and post-mortem examination was about 24 to 36 hours. He had brought the original post-mortem report and correct carbon copy of the original was Ex.P2. In cross-examination it is stated by Dr. Kirpal Singh (PW-2) that strangulation cannot be by hanging. He could not say if as per Modi's

Jurisprudence, strangulation can be caused by hanging. It is stated as correct that the manner of strangulation is not recorded in his report dated 24.7.2007 and 1.8.2007. It is voluntarily stated that the manner was not asked by the police. Both the injuries on the right and left side of neck were non-continuous. Possibility of said injuries, it is stated, having been received by hanging could not be ruled out. The ligature material was not produced before him which was mentioned in the inquest report at serial No.23. It is stated as correct that in case of hanging, the abrasion around the ligature mark are rarer. It is stated as correct that injuries to the muscles are there in case of hanging. Possibility of such injuries in case of suicide being common could not be ruled out. It is stated as correct that in suicidal case, the ligature mark would be horizontal, or transverse, continuous around the neck low down below the thyroid, but in this case the ligature is non-continuous. The possibility of fingers and hand marks in case of manual strangulation on the neck could not be ruled out. It is stated as correct that if it is manual strangulation then in that case the injuries as mentioned by him could not be possible. The possibility of injuries on the face, neck and other parts of the body in case of a healthy and conscious female in manual strangulation could not be ruled out. It is further stated

that the fracture of larynx and trachea was not present. It is stated as correct that in case of strangulation it is common. It is further stated as correct that in this case if it is strangulation by hanging then there is a possibility of absence of abrasion stated by him in the case of suicidal death. It is stated as correct that in case of hanging the face would be usually pale and petechiae. In case of strangulation cases, it is stated, face would be cyanosed as a result of asphyxia. But in this case these signs were not present. External signs of asphyxia, it is stated, usual not well marked in case of hanging as in this case. The bleeding from ear, nose and mouth in case of hanging is rare as compared to strangulation. But in this case there were no such signs. Possibility of the present case being self hanging could not be ruled out. Possibility of injury No.1 mentioned in the report as a result of 'chunni' could not be ruled out. It is stated as incorrect to suggest that his opinion was wrong. He had not sent the viscera of the deceased to Chemical Examiner to determine if the patient was under some intoxicant or was made unconscious before these injuries on her person.

After amendment of the charge Dr. Kirpal Singh, Lecturer Medical College, Amritsar (PW-2) was further cross-examined in which he stated that asphyxia could be

due to hanging, strangulation and throttling. If the throttling is manual then possibility of nail marks and finger impressions could not be ruled out on the neck i.e. the affected part. If throttling is by way of ligature, ligature as a result of 'dupatta' etc. there can be mark of complete ligature around the neck and in that case neck cannot be elongated i.e. stretched out.

The above evidence of Dr. Kirpal Singh, Lecturer (PW-2) shows that he had given two reports dated 24.7.2007 and 1.8.2007 during investigation. The trial Court record shows that an application dated 18.7.2007 was submitted by the CIA Staff by one Harmanjit Singh, ASI CIA Staff, Amritsar stating that on 19.6.2007 post-mortem examination on the dead body of Kulwinder Kaur (deceased) had been conducted by the Forensic Medical Department and that it be specified as to whether the death of Kulwinder Kaur had been caused by putting a rope or her murder had been committed by pressing her neck by some other person. It was requested that the report be given. On the said application, it is recorded by Dr. Kirpal Singh (PW-2) on 24.07.2007 as follows; "On going through the post-mortem report No.KSA/53 dated 19.6.2007, the cause of death has already been mentioned i.e. strangulation". On the said application, it is further recorded by Harmanjit Singh ASI,

CIA Staff, Amritsar that according to the post-mortem report of deceased Kulwinder Kaur, the cause of death had been mentioned as asphyxia due to strangulation and that it be informed whether the strangulation was homicidal or suicidal as the complainant in her statement alleged that it was due to strangulation by 'chunni'. On this application, Dr. Kirpal Singh (PW-2) on 1.8.2007 recorded; "On going through PMR No. KSA/53 dated 19.6.2007 (in c/o Kulwinder Kaur wife of Harjinder Singh) the cause of death is asphyxia as a result of strangulation. As per query strangulation should be assumed to be homicidal." It may, however, be mentioned that the said query raised by Harmanjit Singh ASI CIA Staff, Amritsar on which report dated 24.7.2007 and 1.8.2007 are recorded by Dr. Kirpal Singh (PW-2) are not exhibited on record. Therefore, these cannot be read in evidence. In any case, it is appropriate to note that the police report (challan) was filed under Section 302 read with Section 34 Indian Penal Code. The learned Judicial Magistrate Ist Class, Tarn Taran in his order dated 19.9.2007 while committing the case to the Court of Sessions recorded that the accused in the case had been sent for commitment proceeding for offences punishable under Section 302/34 IPC. The learned Additional Sessions Judge, Tarn Taran, however, at the time of framing charge

on 18.01.2008 recorded that initially the present FIR was registered under Section 306 IPC on the basis of the statement of Manjit Kaur, mother of deceased Kulwinder Kaur. Thereafter, the offence had been converted to that under Section 302 IPC. He had gone through the medico legal evidence collected by the Investigation Agency and the case prima facie fell under Section 306 IPC as there was no direct and cogent evidence in order to make out a case under Section 302 IPC. Charge was ordered to be framed under Section 306 IPC. Charge was framed accordingly. The said charge was already noticed was ordered to be re-framed by this Court vide order dated 23.2.2010 passed in Manjit Kaur v. Arjinder Singh and others, CRR No.1424 of 2009 (supra). Thereafter, the charge was modified by the learned Additional Sessions Judge to that under Section 302 read with Section 34 IPC on 23.4.2010.

During deposition in Court, Dr. Kirpal Singh (PW-2) is quite specific that the cause of death in this case in his opinion was asphyxia as a result of strangulation, which was sufficient to cause of death in the ordinary course of nature. In the cross-examination he states that strangulation cannot be by hanging. He then goes on to say that both the injuries on the right and left side of the neck are non-continuous and that the possibility of the said injuries

having been received by hanging could not be ruled out. Besides, the ligature material was not produced him before him which was mentioned in the inquest report at serial No.23. The inquest report (Ex.PG) on record and column 23 thereof reads as follows:-

"23. Things recovered from near the dead body	One dupatta, hanging from ceiling fan taken into police possession after preparing parcel.
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The ligature material, therefore, comprised of a 'dupatta' only. The 'dupatta' though should have been sent by the prosecution to the doctor so as to ascertain whether the mark on the neck corresponds with its thickness and in case of hanging whether it was strong enough to bear the weight of the body and in case of strangulation that of a sudden strain. However, the same is not of much consequence as in the Textbook of Medical Jurisprudence and Toxicology by Modi (24th Edition 2011) difference between hanging and strangulation has been given in a tabulated form in Chapter 19 at page 456. It is inter alia mentioned that hanging is mostly suicidal where as strangulation is mostly homicidal. The ligature mark in case of hanging is mentioned as; "Oblique, non-continuous placed high-up in the neck between the chin and the larynx,

the base of the groove or furrow being hard, yellow and parchment-like.” In the case of strangulation it is mentioned as “horizontal or transverse continuous round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.” It is further mentioned that in case of hanging; “abrasions and ecchymosis round about the edges of the ligature mark, rare.” In the case of strangulation it is mentioned; “abrasions and ecchymosis round about the edges of the ligature mark, common.”

As already noticed the injuries that were noticed were 4.2 x 2.3 cm abraded grooves on left side of neck 2.6 cm above the medial end of clavicle, radish blue contusion 9.4 x 2.1 cm running obliquely on the right side of neck was present at the level of thyroid cartilage on dissection the underline muscle of left and right side were injured, infiltration of blood was present, sub cutaneous tissues were ecchymosed. Therefore, it may be noticed that though in case of hanging, the ligature mark is oblique and non-continuous but in the present case it is mentioned as running obliquely but it is not mentioned as non-continuous or placed high-up in the neck between the chin and the larynx. Besides, the underline muscle on the left and right side were injured, infiltration of blood was present and sub-

cutaneous tissues were ecchymosed which is common in the case of strangulation and rare in the case of hanging. The parameters as given by Modi, therefore, suggest more to be a case of death due to strangulation and death by hanging could safely be ruled out.

According to learned counsel for the appellant, the version of strangulation by hanging had been disbelieved on the ground that the height of the roof was ten feet and the pipe of the ceiling fan was about three feet, height of the deceased was about five feet two inches and the height of the bed from the floor was about two feet and in this manner, a mechanical decision had been taken. It is submitted that a human being cannot conceive as to how a particular step of suicide is taken by a victim and in this case even if the length of 'dupatta' is taken into consideration, the height of body was five feet two inches and if the deceased had tightened the noose against the neck with her 'dupatta' while standing on the bed, a little step by her away from the bed could have caused her death and this is what had happened in the present case. The mode of process of hanging it is submitted could not be imagined like a mechanical process and precision. It may however, be noticed that the case is based on circumstantial evidence and the circumstances appearing in the case are to

be considered to reach a conclusion as to whether the death was suicidal or homicidal. The fact that a person had even an inch to avoid death at the last moment would have impelled her to not kill herself as it is quite difficult to take one's own life. The position indeed has been brought in the deposition of the Investigating Officer SI Jagdish Chander (PW-6) and the height of the room has been mentioned as ten feet with the bed of about two feet in height. The length of the dead body was five feet two inches. The pipe from which the ceiling fan was hung was about three feet and the hook was about six inches. The 'chunni' was about four to four and a half feet. Doctor Kirpal Singh (PW-2) has mentioned the circumference of the neck was 31.2 cms (i.e. 12.5 inches) plus some length of the 'dupatta' was consumed for tying the knot, which would make the 'dupatta' to be say about 2 feet. In this manner, if the height of the room is 10 feet and the bed beneath the fan from where the dead body was hanging was 2 feet, i.e. the distance between the roof and the bed would be about 8 feet; besides, the pipe from which the fan was hanging was 3 feet, the hook about 6 inches, the height of deceased was about 5 feet 2 inches and the length of 'dupatta' about 2 feet, it would have made the total length between the roof and the bed to be more than 10 feet. This would evidently

discount a case of hanging to be made out.

A further aspect that may be noticed is that the learned trial Court noticed that the height of the room, the length of the dead body, the length of the 'chunni' and also the height of the bed which was below the ceiling if taken together would be such that Kulwinder Kaur could not have hanged herself. In the cross-examination of SI Jagdish Chander (PW-6) the Investigating Officer, he stated that the roof of the room where Kulwinder Kaur was lying on a bed was 10 feet. The length of the 'chunni' was about 4 to 4.5 feet. The pipe with which the fan was hung was about 3 feet and the hook must be about 6 inches. The height of the deceased was about 5 feet 2 inches. It was noticed that as per inquest report Ex.PG and also the rough site plan Ex.P1/A, the bed was underneath the fan at point B and if the bed was underneath the fan, the height of the bed can be said to be approximately 2 feet. If the said distances were taken into account and the bed was beneath the fan as had been shown in the rough site plan Ex.P1/A, as also the plan on the inquest report Ex.PG where the bed is shown to be beneath the fan, then indeed Kulwinder Kaur could not have hanged herself and her feet would touch the bed and she would have tried to save herself.

The Draftsman namely Rishi Ram (PW-4) has drawn

site plan Ex.PC. In his deposition before the Court it is stated he along with Manjit Kaur (PW-1) went to the place of occurrence on 10.8.2007 and after inspecting the place of occurrence, he prepared the site plan Ex.PC which bears his signatures and the site plan was in his hand. He used the scale of one inch is equal to 10 feet. His statement was recorded. In cross-examination he stated as wrong to suggest that he did not visit the place of occurrence and prepared the site plan while sitting in his office. In the site plan (Ex.PC), the room measures 10 feet by 12 feet and point 'A' is depicted as the place where the double bed was lying in the room with the dead body of Kulwinder Kaur and mark 'B' is the place where the 'dupatta' was tied with the ceiling fan.

Learned Counsel for the appellant has, however, laid considerable emphasis on the fact that the minor boy namely Amandeep Singh (DW-3) in his deposition had stated that on the fateful day in the morning his mother i.e. the deceased Kulwinder Kaur felt pain in her chest. His father i.e. the appellant brought medicine for her. After taking medicine, his mother felt some relief. Then she gave money to his father for purchase of articles for his 'karyana' (grocery) shop. His father went away. Then his mother gave some money to his grandfather for paying the

electricity bill. His mother asked him to shut the knob of the gas stove after sometime and went inside the room and bolted the room from inside. After two-three hours, his father came back and asked him to call his mother in order to unload the articles brought by him. He knocked at the door and also called his mother but there was no response and he informed his father. Then he (DW-3) and his father went down and knocked at the door but again there was no response. Then his father peeped through the spaces in the door and then he brought a ladder and broke the ventilator and went inside the room through the ventilator. Then he opened the door and brought down his mother who had hanged herself from the ceiling fan. He took her to the hospital where the doctor declared her dead. Then they informed the maternal grandmother of Amandeep Singh (DW-3) who brought the police and some people to their house. From the said deposition, it is contended that when the appellant Arjinder Singh returned home, Kulwinder Kaur had hanged herself.

It may, however, be noticed that the defence has also examined Sukhwinder Singh brother of the appellant Arjinder Singh. He inter alia stated that about three and a half years back from the date of his deposition on 17.12.2010, at about 3.00/3.30 p.m. when he reached his

house, the police and villagers had collected in the house of Arjinder Singh (appellant). Statement of Amandeep Singh (DW-3) it is stated was being recorded by the police. Then DSP asked Arjinder Singh (appellant) to pass through the ventilator after breaking the ventilator. They were asked to go out by the police. From this statement, it appears that Arjinder Singh was asked by the DSP to pass through the ventilator and after breaking the ventilator he entered the room. However, according to Amandeep Singh (DW-3), his father Arjinder Singh (appellant) entered the room after breaking the ventilator and brought down his mother from the ceiling fan and the police came later when his grandmother was informed who came with the police.

The defence cross-examined SI Jagdish Chander (PW-6) in this regard and he stated as correct that Arjinder Singh (appellant) told him that when he came outside, the door of the house was chained from inside and he had to break open the ventilator and he entered the room and brought down Kulwinder Kaur after having cut the ligature (sic.) 'chunni'. It is further stated as incorrect to suggest that when he did not believe his statement, he (Arjinder Singh – appellant) demonstrated by entering through the ventilator.

Therefore, according to the learned Senior Counsel

appearing for the appellant, the deposition of Sukhwinder Singh (DW-2) is on account of demonstration that he carried out for entering the room in the presence of DSP. However, it is to be noticed that Sukhwinder Singh (DW-2) states that DSP asked Arjinder Singh (accused) 'to pass through ventilator after breaking the ventilator he entered the room.' In case, this was a demonstration there was no need to ask him to break the ventilator or for him to break the ventilator as he had already broken it before the police came. There is, therefore, some variance as to whether Arjinder Singh (appellant) entered the room after breaking the ventilator in the presence of the police or whether he entered before the police came. The depositions of the defence witnesses though are not to be relied for recording a finding of guilt, however, the circumstances appearing in the case to reach a just and proper decision cannot entirely be ruled out and these can be referred to ensure ones self that the the circumstances further show the guilt of an accused.

It may also be noticed that in the site plan (Ex.P1/A) prepared by SI Jagdish Chander (PW-6), the site plan (Ex.PG) on the inquest report and the site plan (Ex.PC) prepared by the Draftsman, there is no mention of any ventilator in the room from which Arjinder Singh (appellant) is stated to have entered. The notes on the said site plan

even do not mention any ventilator being depicted in the room in which the dead body was hanging and from which Arjinder Singh is stated to have entered, besides, there is no cross-examination of SI Subhash Chander of there being a ventilator. The cross-examination of SI Subhash Chander (PW-6) mentions that it is correct that Arjinder Singh (accused) told him (PW-6) that when he came from outside, the door of the house was chained from inside and he had to break open the ventilator to enter the room. Besides, he stated as incorrect to suggest that when he did not believe his statement, he demonstrated by entering through the ventilator. SI Jagdish Singh (PW-6) was not cross-examined with respect to the site plan (Ex.PG) and whether there was a ventilator in the room in which the dead body of Kulwinder Kaur was found hanging from the ceiling fan. Neither was Rishi Ram, Draftsman (PW-4) who prepared the site plan (Ex.PG) cross-examined with regard to there being a ventilator in the room from which Arjinder Singh (appellant) entered to bring down the dead body of Kulwinder Kaur. A party is liable to put to each of his opponent's witness so much of his case as it concerns that particular witness and if no such questions are put the Courts presume that the witnesses' account has been accepted. Besides, in Jit Singh v. State of Punjab, AIR 1976

SC 1421 it has been held that the notes on the site plan prepared by the investigating office in accordance with the various situations pointed out to him by the witnesses are statements recorded by the Police Officers in the course of investigation and are hit by Section 162. These notes can be used only for the purpose of contradicting the prosecution witnesses concerned in accordance with the provisions of Section 145 Evidence Act, and for no other purposes. Therefore, where this was not done, and the witnesses were never confronted and contradicted with this record, the notes on that site plan cannot be used to contradict the account given by the witnesses in Court in regard to the distances from which they saw the occurrence. Therefore, for the failure to confront and contradict the witness with regard to there being a ventilator in the room where the dead body of Kulwinder Kaur was lying, would show that the case set up by the appellant that he entered the room by breaking open the ventilator and brought down the dead body of Kulwinder Kaur is not tenable and is an after thought. This is more so for the reason that it is not shown in the site plans referred to above that there was a ventilator in the room in which the dead body was lying leave alone it being broken. Otherwise, the witnesses were liable to be cross-examined on this aspect.

The other contention raised by the learned Senior Counsel for the appellant is that there are no marks of violence on the person of Kulwinder Kaur on any delicate parts like cheeks and lips etc. of the deceased and there were no finger marks or smothering on the face and the neck of the dead body which circumstances establish that it was a case of strangulation by hanging. It may appropriately be noticed that the doctor (PW-2) has not mentioned this as a case of manual strangulation and he has stated the cause of death in his opinion was asphyxia as a result of strangulation which was sufficient to cause death in the ordinary course of nature. In a Textbook of Medical Jurisprudence and Toxicology by Dr. Modi (24th Edition 2011) at page 451 strangulation has been defined as compression of the neck by a force other than hanging. Weight of the body has nothing to do with strangulation. It is mentioned that ligature strangulation is a violent form of death which results from constricting the neck by means of a ligature or by any other means without suspending the body. The types of strangulation are mentioned as:-

- 1) Ligature strangulation.
- 2) Throttling (manual strangulation-compressing with hand).
- 3) Bansdola (wooden stick is used to compress

the neck).

4) Garroting (a rope or a loincloth and a wooden stick as a lever to tighten the ligation is used).

5) Accidental strangulation (can arise in the course of a person's occupation when a neck tie or scarf is caught in moving machinery or belts as in mill workers or in an epileptic or an intoxicated person who may be helpless in extricating himself from such tight encirclement of the neck or in utero when the movements of the foetus cause the umbilical cord to be wound round into neck.”

Ligature strangulation is described as a violent form of death which results from constricting the neck by means of ligature or by other means without suspending the body. It is mentioned that when constriction is produced by the pressure of the fingers and palms upon the throat, it is called as throttling. When strangulation is brought about by compressing the throat with a foot, knee, bend of elbow, or some other solid substances, it is known as mugging (strangle hold). The doctor has not mentioned the case to be of throttling so as to show that there may be some finger marks on the throat and neck as is sought to be contented by learned Senior counsel for the appellant. In fact it is a

case of asphyxia as a result of strangulation and with the 'dupatta' being recovered, the strangulation can safely be said was with it. The compression of the neck with a 'dupatta' would not leave any marks of injury on other parts of the body as the deceased Kulwinder Kaur could not have been in a position to resist or fight back being a lady.

Another aspect that is to be noticed is that the death of Kulwinder Kaur had occurred in the house of the appellant Arjinder Singh and she was under the care and custody of the appellant. Therefore, he had the special knowledge as to how the death had occurred for which he is liable to offer an explanation. This is in consonance with the provisions of Section 106 of the Indian Evidence Act which carves out an exception to the general rule that prosecution has to prove its case. In Shambhu Nath Mehra v. State of Ajmer, AIR 1956 SC 404 it has been held that Section 106 Evidence Act is an exception to Section 101. The latter with its illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the

accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. Therefore, it is to be noticed that the only explanation that has been offered by the appellant is that his wife Kulwinder Kaur committed suicide which it has been held is not tenable. Apart from this, there is no other explanation. The appellant did not inform the police about the unnatural death of his wife. It is when the mother of Kulwinder Kaur (deceased) namely Manjeet Kaur came that she informed the police and lodged a FIR against the accused who had harassed him.

In Balram Prasad Agrawal v. State of Bihar, (1997) 9 SCC 338 it was held that initial burden is on the prosecution to substantiate its charge. But once that burden is discharged it is for the accused to prove the fact especially within his knowledge. In the said case, the death of a housewife had occurred by drowning in a well in the courtyard of the house of her in-laws. At the time of incident, only the victim and the accused were in the house. The willful conduct of cruelty of the accused against the deceased spreading over years was established. It was held that the burden lay on the accused to prove what happened on that night which resulted in her death. In the facts, the

said burden was not discharged by the accused. Accordingly, the conviction of the accused by the Courts below was upheld.

In the present case as well, the prosecution has discharged its initial burden of establishing its case. The deceased Kulwinder Kaur was subjected to cruelty during her lifetime which is established from the deposition of Manjeet Kaur (PW-1) and her husband Gurcharan Singh (PW-3). Manjeet Kaur (PW-1) in her deposition has brought out the ill-treatment meted out to her daughter Kulwinder Kaur (deceased). It is stated that one and a half year prior to the present occurrence of 18.6.2007, Arjinder Singh (appellant) used to remain drunk and used remain awake till late night. Iqbal Singh, father-in-law of her daughter; Bhupinder Singh, brother-in-law (husband's younger brother) ('devar') of her daughter and Arjinder Singh (appellant), husband of her daughter used to compel her daughter to prepare meals late at night after consuming liquor. It is stated that Bhupinder Singh was got married by them with her niece namely Kulwant Kaur. However, due to ill-treatment of her niece by Bhupinder Singh that marriage ended in divorce. The daughter of Manjeet Kaur (PW-1) used to inform her that the accused while compelling her to prepare late night meals also used to beat her and pull her

hair whenever she objected to their consuming liquor. It is stated that on 18.6.2007 at about 10.00 a.m. she received a telephone call from her daughter Kulwinder Kaur (deceased) and she informed that all the three accused had again given a beating to her in a similar manner. She requested them to take her along to her parental house. Manjeet Kaur (PW-1) told Kulwinder Kaur that let her father come home and both of them would take her to her parental house. On the same day, Gurcharan Singh (PW-3) husband of Manjeet Kaur came home at about 2.00 p.m. and they went to the matrimonial home of Kulwinder Kaur at village Kasel. Kulwinder Kaur, daughter of the complainant was lying dead on a cot and all three accused present there informed them that Kulwinder Kaur had committed suicide by hanging from the ceiling fan. They stated that her dead body was taken down by them. Manjeet Kaur (PW-1), complainant noticed a 'chunni' hanging with a ceiling fan and she suspected that Kulwinder Kaur had not strangulated (sic. hanged) herself. She suspected that the accused persons had themselves killed her daughter. She asked her husband (PW-3) to take care of the dead body of Kulwinder Kaur. She was going to inform the police of Police Station Sarai Amanat Khan. On the way the police met her at a Check Post ('naka') near bus stand Dhandi and she gave information to them.

Gurcharan Singh (PW-3) husband of the complainant Manjeet Kaur (PW-1) and father of the deceased Kulwinder Kaur has supported the prosecution case. He stated that Arjinder Singh (appellant) was in the Army and whenever he came on holiday to the village, on the instigation of his father Iqbal Singh and brother Bhupinder Singh used to beat his daughter Kulwinder Kaur. Whenever they intervened on such an occasion, Arjinder Singh (appellant) used to apologize before them and they took no action. Kulwant Kaur, the daughter of his sister-in-law was married to Bhupinder Singh but due to her being given frequent beating by Bhupinder Singh, she obtained a divorce in the Panchayat. It is stated that about one and a half years earlier to the occurrence, Arjinder Singh (appellant) came to the village on his retirement. Thereafter, all the three accused used to take liquor in their house till late in the night and his daughter Kulwinder Kaur kept waiting for their meals. She was being harassed and compelled to keep awake till late at night. She was also beaten by the accused. The accused used to compel her to cook meals for Bhupinder Singh but she refused on the ground that Bhupinder Singh had left her cousin sister Kulwant Kaur. A day earlier to the occurrence during the night the accused gave a beating to Kulwinder Kaur. On the

next day in the morning i.e. on 18.06.2007 at about 10.00 a.m. they received a telephone message from his daughter Kulwinder Kaur. His wife Manjeet Kaur (PW-1) attended the call and his daughter narrated to her that she was ill-treated and given a beating on the previous night. She also disclosed that she apprehended that she would be killed by the accused. Gurcharan Singh (PW-3) along with his wife Majeet Kaur (PW-1) reached the matrimonial house of Kulwinder Kaur at village Kasel at about 3.00 p.m. on the same day. They entered the room and found that Kulwinder Kaur was lying dead on the cot. The accused disclosed that Kulwinder Kaur had hanged herself from the ceiling fan. They got suspicious as no damage was done to the ceiling fan. They got photographs taken. He stayed at the house taking care of the dead body and his wife Manjeet Kaur (PW-1) informed the police. The police reached the spot and took possession of the 'chunni' of different colours. He did not know if any parcel of the same was made. Memo Ex.PB in this regard bears his signatures. The police obtained his signatures and thereafter his statement was recorded. Gurcharan Singh (PW-3) was cross-examined, however, nothing was brought out so as to dislodge the ill-treatment that was alleged against his daughter.

From the above facts and circumstances, it is to be

noticed that death by strangulation of Kulwinder Kaur had occurred in the house of the appellant-Arjinder Singh and despite his having special knowledge as to the circumstances leading to the unnatural death, nothing has been brought out to show the circumstances that led to the death even though, he ought to have special knowledge of the same. Besides, the facts and circumstances show that the appellant was responsible for the death of his wife which he committed by strangulating her from the neck. There is no such circumstance so as to dislodge the findings and conclusions reached at by the learned trial Court.

For the foregoing reasons, the appeal of the appellant is dismissed. However, no compensation is being awarded as the children of the deceased are to be looked after by the appellant being their father.

(S.S. SARON)
JUDGE

(AMOL RATTAN SINGH)
JUDGE

May 6, 2016
A.Kaundal/amit