

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

CRA-D-791-DB of 2011

DATE OF DECISION :- December 01, 2016

Gurpal Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Tarun Deep Kumar, Advocate for the appellant.

Mrs. Manjri Nehru Kaul, Additional Advocate General, Punjab.

M.JEYAPPAUL, J.

1. Appellant Gurpal Singh has challenged the conviction recorded by the trial Court under Section 302 of the Indian Penal Code and the sentence of life with fine imposed thereunder.

2. The case in brief of the prosecution is that on 1.11.2008 at about 7.30 A.M. at village Sarli Khurd, appellant Gurpal Singh attacked his wife Simarjit Kaur with pestle on her forehead and face and caused her instantaneous death. PW2 Sahib Singh, son of the appellant, who returned to his house along with his grand father witnessed the occurrence.

3. PW2 Sahib Singh, who is the son of the deceased as well as appellant was the star witness in this case. He has deposed that on 1.11.2008 at about 7.30 A.M. when he and his grand father returned to his house, his father Gurpal Singh, who was armed with pestle, attacked on forehead and

face of his mother and as a result of which, she fell down and died. Accused ran away from the spot with pestle in his hands. His grand father remained with the dead body of his mother. He proceeded along with Sarpanch to the Police Station, but on the way he met the police at bus stand of Sarli village and suffered statement which was recorded and later on registered as First Information Report.

4. PW6 Satnam Singh, Inspector has deposed that on 10.2.2009, he received a secret information that accused Gurpal Singh was going towards Khakh. He proceeded along with police party and arrested accused Gurpal Singh. Based on the disclosure statement suffered by the accused, the pestle which was kept hidden under the heap of paddy straw in the field was recovered. The Chemical Examiner having subjected the blood stained pestle to chemical examination returned a finding that the wooden log contained human blood.

5. PW1 Dr. Jagjit Singh who conducted post mortem examination on the dead body of Simarjit Kaur found the following injuries :-

1. A contusion of 5 x 10 cm in size with multiple lacerated wounds at the margin was present on the right side of face, involving right eye brows, right eye and right maxillary region and right side of the nose. Semi clotted blood was present. In dissection, right frontal right nasal bone and flows of right orbit was fractured and pushed inwards causing injury to brain tissue and blood vessels. Anterior cavity was full of blood.
2. An lacerated wound of 5 x 5 cm in size was present in the middle of scalp in the interparietal region 14 cms from the root of nose. Semi clotted blood was present. On dissection both the parietal bones were broken into small

fragments and was pushed inwards causing injuries to brain tissues and blood vessels. Middle and posterior forsa full of blood.

All the abdominal organs were normal.

6. He has opined that the deceased has died due to the injury on vital organs on account of haemorrhage and shock which was sufficient to cause death in the ordinary course of nature.

7. Accused-appellant has set up a plea in his statement under Section 313 Cr.P.C. that he was innocent but he was falsely implicated in the case. There was no dispute with his wife and he did not murder her.

8. The trial Court having evaluated the ocular testimony of PW2 in the background of recovery of pestle and the medical evidence available on record returned, a verdict of conviction as stated supra.

9. Learned counsel appearing for the appellant vehemently submitted that the name of the grand father was referred as Ajit Singh in the First Information Report lodged by PW2, whereas in his testimony, he has referred the name of his grandfather as Bakhshish Singh. PW2 has deposed before the Court that he suffered statement to the police when he was at his house, whereas in the First Information Report, he has stated that he proceeded along with the Sarpanch to Adda Sarli Khurd where the police recorded his statement. No motive was attributed for the murder. At the most, it may be a case where appellant having lost his temper in the quarrel with his wife, attacked her with a pestle lying in his house and caused her death. In other words, it is the submission of the learned counsel appearing for the appellant that the case of the prosecution may fall under the ambit of Section 304 Part 1 or 2 and not under Section 302 of the Indian Penal Code.

He also cited a decision of the Hon'ble Supreme Court in ***Gurdev Raj versus The State of Punjab 2007(4) R.C.R. (Criminal) 666*** to strengthen his argument that the death of the wife caused by the husband by delivering a blow with the weapon collected at the scene of crime in the aftermath of a quarrel that preceded the occurrence would fall under the ambit of Section 304 Part 1 of the Indian Penal Code.

10. Learned Additional Advocate General for the State of Punjab submitted that the evidence of PW2 completely establishes the case of the prosecution. The recovery of pestle with blood stains also corroborates the version of the prosecution. The medical evidence also supports the case of the prosecution. Minor discrepancies cannot be blown out of proportion by the appellant, it was submitted by the learned Additional Advocate General for the State of Punjab.

11. PW2, the son of the appellant and the deceased was the star witness in this case. The entire case of the prosecution hinged on the ocular testimony of PW2. There was no reason for PW2 aged 17/18 years to attribute the murder of his mother to his father, if at all his father was innocent. It is totally against nature that the son of the deceased would point his accusing finger to his father, if some body else had committed murder of his mother. The evidence of PW2 is found to be quite natural. He had gone to the field with his grand father in the early morning. When he returned along with his grand father, he witnessed his father who was armed with pestle attacked his mother and caused her instantaneous death. He had also spoken about the motive for murder. His father was addicted to intoxicants. His mother used to restrict him in taking intoxicants. On an earlier occasion,

his father beat his mother which culminated in lodging of a criminal complaint.

12. It is true that there is some discrepancy as regards the name of the grand father of PW2. In the First Information Report, he has stated that he returned to the house along with his grand father Ajit Singh whereas in his testimony, he deposed that he returned to his house along with his grand father Bakhshish Singh. The material point to be considered by the Court is whether he witnessed the occurrence having returned from the field along with his grand father. He has categorically stated that he returned along with his grand father to his house and witnessed the occurrence. Therefore, the minor discrepancy as regards the name of his grand father does not go to the root of the case.

13. During the course of cross examination, PW2 has stated that he suffered a statement when he was at his house. Deposition of a witness during the course of cross examination cannot be segregated from his evidence in chief examination as well as his prior statement. In the First Information Report as well as in his examination-in-chief, PW2 has categorically stated that he proceeded along with the Sarpanch leaving his grand father to guard the dead body at his house and met the police at bus stand of Sarli village and suffered the statement. Such a version of PW2 found in the First Information Report as well as in the examination-in-chief is found to be credible and trustworthy.

14. Let us now take up the submission of the learned counsel appearing for the appellant that motive for the murder was not established by the prosecution. PW 2 has categorically deposed that his father used to

take intoxicants and the same was seriously objected to by his mother which culminated in quarrel. A criminal complaint was lodged by his mother as against his father. Therefore, it cannot be said that there was no motive for the murder. Even assuming for the sake of argument that there was no evidence adduced by the prosecution to establish motive for the murder, the case of the prosecution which rested on eye witness account cannot be thrown overboard. It is a well settled proposition of law that the motive for the murder pales into insignificance, in a case where credible and trustworthy eye witness account is available on record.

15. Based on the disclosure statement suffered by the accused-appellant, weapon of offence, namely pestle, which was blood stained was recovered by PW6. The Chemical Examiner has given a finding that human blood was found on the weapon of offence.

16. It is true that PW6 deposed that the recovery of pestle was made in the open place accessible to public. But it is to be noted that the location from where the pestle was recovered may be accessible to public but the prosecution has established that the recovery of pestle was effected from inside the heap of paddy straw which location can never be accessible to public. Therefore, in our considered view, the recovery of material object and the human blood found over there also lend corroboration to the case of the prosecution.

17. The medical evidence discloses that the deceased Sarbjit Kaur had received multiple lacerated wounds on the right side of her face involving right eye brow, right eye, right maxillary region and right side of the nose. The right frontal nasal bone was found fractured and pushed

inwards causing injury to brain tissues and blood vessels. The anterior cavity was found with full of blood. A lacerated wound was also found on the middle of the scalp from the root of nose. Both the parietal bones were found to be broken into small fragments and were pushed inwards causing injuries to brain tissues and blood vessels. The above lethal injuries found on the deceased by PW1 Dr. Jagjit Singh matched with the ocular testimony of PW2.

18. In Gurdev Raj (supra), the Hon'ble Supreme Court has held as follows :-

“16. But so far as the nature of offence is concerned, in our opinion, there is substance in what the learned counsel for the appellant urged. As is clear, even according to the prosecution, there were frequent quarrels between the husband and wife. Rajani Bala had left matrimonial home and was staying with her parents. An application was filed with Women Cell and due to intervention of Rajwinder Kaur, Assistant-Sub-Inspector, In-charge of Women Cell, compromise had been recorded and Rajani Bala had gone to matrimonial home. Thereafter, she had again gone to her parental home and on the date of incident, because of telephonic call by the appellant that he was not well that she along with her mother and brothers wife, went to see the appellant-accused. There also there was altercation between the parties. According to the evidence of PW5-Dr. Tejwant Singh, three injuries were sustained by the deceased. Out of three injuries, injury Nos. 1 and 2 were sufficient in the ordinary course of nature to cause death. The High Court, in the impugned judgment, has observed that both the injuries could be caused 'with one blow'. If it is so, in our opinion, taking into account totality of facts and circumstances, it can be said that

the appellant had committed an offence punishable under Section 304 Part I, Indian Penal Code. His conviction, therefore, ought to have been under the said provision and not for an offence of murder, punishable under Section 302 Indian Penal Code.”

19. That was a case where, during the quarrel accused picked up an iron Mungli lying over there and administered blows on the head of the deceased. It was opined that both the injuries found on the deceased could have been caused with one blow. Considering the sudden quarrel and the delivery of one blow with the weapon lying over there, the Hon'ble Supreme Court observed that the offence committed by the accused would fall under Section 304 Part I of the Indian Penal Code.

20. In the instant case, PW2 attributed motive for the murder. That apart, two lethal blows had been delivered by the accused. The vehemence with which he attacked his wife leaves no doubt in the mind of the Court that he having intended to cause the death of his wife attacked with all vehemence with pestle and caused her death. Further, it is found that the appellant had repeated his blow with the lethal weapon. In the F.I.R., PW2 has not stated that he found his father quarreling with his mother prior to launching of attack but of course, in his testimony, he has deposed that his father quarrelled with his mother armed with a wooden log and hit her on her forehead and head. The case of the prosecution does not fit in a situation where a sudden quarrel preceded the occurrence and the accused having lost his temper, delivered only one blow to cause the death of the victim without taking advantage of the situation. Therefore, the observation made by the Hon'ble Supreme Court in the above facts and circumstances does not apply

to the case in hand.

21. In the light of the above, we are of the considered view that the trial Court has rightly evaluated the entire evidence on record and convicted the accused under Section 302 of the Indian Penal Code and passed the sentence thereunder. There is no scope for interference with the well merited judgment of the trial Court. Hence, the appeal stands dismissed.

(M. JEYAPPAUL)
JUDGE

(TEJINDER SINGH DHINDSA)
JUDGE

December 01, 2016

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No