

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

**CRA-S-579-SB of 2004.
Date of Decision: 01.09.2016.**

Saleem

....APPELLANT.

VERSUS

STATE OF HARYANA

....RESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Ayush Arora, Advocate for the appellant.
Mrs. Aditi Girdhar, Legal Aid Counsel
for the appellant.

Mr. Ashok Muthreja, Deputy Advocate General, Haryana.

SNEH PRASHAR, J.

This appeal was preferred by appellant Saleem, assailing the judgment of conviction dated 23.02.2004 and order of sentence dated 24.02.2004 recorded by learned Additional Sessions Judge, Kurukshetra, in Sessions Case No.21 of 2001 based on First Information Report No.19 dated 25.01.2001 registered at Police Station Shahbad, by virtue of which he (appellant) was convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay fine of Rs.2000/- and in default of payment of fine to further undergo imprisonment for one month, for commission of offence punishable under Section 304 of the Indian Penal Code (for short, "I.P.C.").

The story of the prosecution as it emerges from the record was that Shakuri (since deceased) sister of complainant Akhtar Ali son of Zamil Ahmed, resident of Kotarkhana was married to Saleem (appellant) of village Dadlu and out of the said wedlock two sons and three daughters were born. In his complaint lodged with the police on 25.01.2001 complainant Akhtar Ali stated that his brother-in-law Saleem was a habitual drunkard and used to quarrel and give beatings to his sister under the influence of liquor. His sister was maintaining the children by doing labour work. A number of times his sister, after being beaten, had been sent to his house but every time he used to send her back to her matrimonial home. On 24.01.2001 he and Nazar Ali son of Mohammad Husain had gone to the house of his sister to meet her. His sister told him that her husband Saleem wanted to sell off her milch goat but she was not willing to do so and on that matter an altercation had taken place between her and her husband. At about 2:00/2:30 p.m., when he and Nazar Ali were still at the house of his sister, Saleem came home and asked Shakuri why she had not handed over the goat to the purchaser and started giving leg blows in the stomach of Shakuri and she fell unconscious. He (complainant) and Nazar Ali took Shakuri to Shahbad, but she died on the way and was brought back to village Dadlu. He left Nazar Ali near the dead body and went to village Kotarkhana to inform the family. The complainant added that his sister died due to the leg blows given in her stomach by the appellant.

On the basis of complaint of Akhtar Ali, a case under Section 304 IPC was registered and investigation commenced. Proceedings under Section 174 of the Code of Criminal Procedure (for short, "Cr.P.C.") were

conducted at L.N.J.P. Hospital, Kurukshetra. The appellant was arrested and on completion of investigation and other formalities, a final report was filed before the Court.

The appellant was charge-sheeted and subjected to face trial for commission of offence punishable under Section 304 I.P.C.

To substantiate the charge, the prosecution examined as many as seven witnesses namely PW1 Nazar Ali, PW2 Akhtar Ali, PW3 Sub Inspector Paras Kumar, PW4 Head Constable Mukesh Kumar, PW5 ASI Ram Dutt, PW6 Dr. R.P. Anthal and PW7 ASI Baldev Singh.

After closure of evidence of the prosecution, in his statement recorded under Section 313 Cr.P.C., the appellant denied the case of the prosecution and pleaded falsely implication. He further pleaded that his wife Shakuri was physically very weak and she died a natural death by falling in the court yard of his house in his absence and his father informed his in-laws on telephone.

No evidence was led by the appellant in his defence.

Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the appellant-accused, learned trial Court convicted and sentenced the appellant, as indicated above.

Feeling aggrieved by the impugned judgment of conviction dated 23.02.2004 and order of sentence dated 24.02.2004 passed by learned trial Court, the appellant preferred the instant appeal.

The submissions made by Mr. Aryush Arora, Advocate for the appellant, Mrs. Aditi Girdhar, legal aid counsel for the appellant and Mr.

have been heard and record perused.

Complainant Akhtar Ali, brother of deceased Shakuri and an eyewitness of the occurrence stepped into the witness box as PW2. He gave a detailed narration of the occurrence as incorporated in his statement Ex.PA which formed the basis of First Information Report. He testified that on 24.01.2001 when he alongwith his brother Nazar Ali was in the house of his sister Shakuri, the appellant came and asking Shakuri why she did not permit him to sell the goat, had started giving kick blows in the stomach of Shakuri. Hearing the shouts, he and Nazar Ali ran towards the spot but in the meantime the appellant managed to escape from the spot and his sister became unconscious. While being taken to the hospital she died on the way. PW1 Nazar Ali, the other eyewitness of the occurrence fully corroborated the testimony of PW2 Akhtar Ali on all material aspects.

Assailing the credibility of the prosecution witnesses, learned counsel for the appellant argued that as stated by PW1 Nazar Ali and PW2 Akhtar Ali the occurrence had taken place at around 2:00/2:30 p.m. on 24.01.2001 whereas the statement (Ex.PA) of PW2 Akhtar Ali, was recorded at 1:15 p.m. on 25.01.2001. There is a considerable long time gap between the occurrence and the lodging of the First Information Report which remained unexplained by the prosecution witnesses. Had complainant Akhtar Ali, brother of the deceased, been present in the matrimonial home of deceased Shakuri at the time of occurrence, he would not have delayed his complaint to the police by almost 20 hours. According to PW1 and PW2 when Shakuri died on the way to the hospital, they brought the dead body back to village Dadlu. PW2 Akhtar Ali leaving PW1 Nazar Ali near the dead body had gone to village Kotarkhana. He returned to the spot next day

on 25.01.2001. Nazar Ali remained with the dead body the whole night. Neither PW1 nor PW2 offered any explanation for not immediately informing the police about the occurrence and remained busy doing things which could have been done later. Also no independent person of village Dadlu was examined to support the said facts. Both PW1 and PW2 were interested witnesses and were residents of different village, therefore not only the story presented by them appears to be improbable, their presence at the time of occurrence is also highly suspicious.

Further, referring to the statement of PW6 Dr. R.P. Anthal, who was member of the Board of Doctors which conducted the postmortem examination on the dead body of Shakuri on 26.01.2001, learned counsel pointed out that it was stated by the doctor that no external mark of injury was found on the dead body. The cause of death given by the Board of Doctors was “haemorrhage and shock due to spleen injury which was ante mortem in nature and sufficient to cause death in ordinary events of nature”. Importantly, PW6 Dr. R.P. Anthal stated that in this case the spleen was enlarged. He further stated that if the spleen is enlarged even severe cough, strain or sneezing can cause the rupture of the spleen. He also stated that the rupture of the spleen can take place if a lady with an enlarged spleen stumbles and falls on the ground.

Learned counsel asserted that as stated by the appellant in his statement under Section 313 Cr.P.C., deceased Shakuri was physically very weak and she died a natural death due to fall in the courtyard in absence of the appellant. PW6 Dr. R.P. Anthal also stated that the dead body was of a poorly nourished female. The medical evidence corroborated the version of the appellant that the deceased was physically very weak. It was not in the

knowledge of the appellant that her spleen was enlarged. The doctor proved that rupture of spleen can take place if a lady with an enlarged spleen falls on the ground. Absence of any external injury on the dead body establishes that the spleen of the deceased, which was enlarged, got ruptured due to fall which led to her death. To support his argument, learned counsel relied upon *State of Gujarat vs. Babu Kava, 2003(4) CCR 25* and *Sri Parkash vs. The State, 1989(2) Crimes 379.*

Indeed, the two eyewitnesses of the occurrence PW1 Nazar Ali and PW2 Akhtar Ali, examined by the prosecution, were near relations of the deceased. They were residents of village Kotarkhana whereas the matrimonial home of the deceased, where the occurrence took place, is in village Dadlu. However, as in the First Information Report Ex.PD/1, PW2 Akhtar Ali (complainant) stated that on 24.01.2001 he alongwith Nazar Ali had gone to village Dadlu to meet his sister Shakuri. At her house Shakuri told them that her husband wanted to sell off her milch goat but she was not willing to do so and on the said matter a quarrel had already taken place between her and her husband. When they were still present in the house, the appellant came and asking Shakuri why she had not let him sell the goat, had given leg blows in her stomach which ultimately led to her death. PW1 Nazar Ali corroborated his version on all material particulars.

It cannot be said that the presence of the brothers of the deceased in her matrimonial home was improbable. It is a sheer coincidence that when PW1 and PW2 were present in the house, the appellant came home and being offended of resistance on part of the deceased to his decision to sell the milch goat, he became violent and gave kick blows in

when the appellant came home, he knew about presence of the witnesses in the house. Both the witnesses stated that the deceased was sitting in the courtyard when the appellant came and questioning her (deceased) why she had not allowed him to sell the goat, had started giving kick blows in her stomach. Both PW1 and PW2 stated that they were in the sitting room (Baithak) and hearing the shouts as they rushed towards the spot, the appellant fled away.

The appellant was the brother-in-law of the witnesses (PW1 and PW2). Out of the wedlock of the deceased and the appellant they had two sons and three daughters. In such circumstances, the witnesses, brothers of the deceased, would be the last persons to falsely implicate their brother-in-law for the death of their sister, if at all, it was a natural death.

It cannot be said that the time gap of about 20 hours between the occurrence and the lodging of the First Information Report was not explained by the prosecution. PW2 complainant Akhtar Ali stated that after they brought the dead body of his sister back to her matrimonial home, he left Nazar Ali near the dead body and went to his village to inform his family members. When he returned with other family members to the house of the deceased, he accompanied by PW1 Nazar Ali went to the police station but on their way they met the police at Brara Chowk where itself he lodged the complaint. The police then accompanied them to the place where the dead body was lying for taking necessary action. The decision of PW2 Akhtar Ali to first immediately go home, which was in the other village, to inform his family members about the occurrence, was natural. To guard the dead body he had left Nazar Ali with the same. It is after he came back to the house of the deceased with other family members that leaving them with

the dead body he alongwith Nazar Ali went to lodge a report to the police. In said set of facts, the delay, if any, in lodging of the First Information Report is of no importance. The Hon'ble Supreme Court in **Bhajan Singh @ Harbhajan Singh & ors. vs. State of Haryana, (2011) 7 Supreme Court Reports** observed that the delay in lodging of the First Information Report is not always fatal to the case of the prosecution.

The occurrence took place in the matrimonial home of the deceased. She died due to the kick blows given in her stomach by her husband. It is commonly seen that the neighbours/ residents of the village avoid becoming witness in such matters fearing hostility of their co-villager. Otherwise also, when the brothers of the deceased were eyewitness to the occurrence, no other person was required to be examined and it is not the case that any other person had also witnessed the occurrence. The statement of PW1 Nazar Ali and PW2 Akhtar Ali is consistent and cogent. No such discrepancy could be pointed out by learned counsel for the appellant which could create doubt in the authenticity and veracity of their deposition. Minor variations are bound to occur in the statement of the witnesses when they are examined after lapse of long time from the occurrence. There appears no reason to disbelieve the deposition of PW1 and PW2 made in a natural flow.

As mentioned in the postmortem report Ex.PG and stated by PW6 Dr. R.P. Anthal, a Board of Doctors, of which PW6 was a member, conducted postmortem examination on the dead body of Shakuri. The opinion of the Board of Doctors as regards cause of death was as under:-

“haemorrhage shock due to spleen injury which is ante mortem in nature and sufficient to cause death in ordinary events of nature”.

It is important to note that in the postmortem report, the Board of Doctors mentioned the spleen as “ruptured”, but not a word was spelt out in the report to say that the spleen was enlarged. It is for the first time when PW6 Dr. R.P. Anthal appeared in the witness box that while giving his opinion 'that the rupture of spleen which was detected during the postmortem examination can occur if kick blows were given in the abdomen by another person that he stated that the spleen in this case was enlarged. As observed above, in the postmortem report the size of the spleen or that it was enlarged was not mentioned. PW6 also did not state the size of the spleen in his deposition. For the said reason, the addition made by PW6 Dr. R.P. Anthal not supported by the report of the Board of Doctors fails to inspire confidence.

Otherwise also, the facts of Babu Kava and Sri Parkash's cases (supra) are distinguishable from the facts in hand. As stated by the appellant himself in his statement under Section 313 Cr.P.C. the deceased was physically very weak. Even if it is accepted that the spleen of the deceased was enlarged and that was not in the knowledge of the appellant, yet the fact is that knowing well that the deceased was physically very weak the appellant gave kick blows in her abdomen which is a vital organ. There may not be any external injury visible on the dead body but the cause of death as proved by the Board of Doctors was 'shock and haemorrhage on account of spleen injury' and the doctor admitted that the rupture of spleen can occur, if kick blows are given in the abdomen by another person. The statement of the prosecution witnesses was thus, corroborated by the medical evidence.

In the above premise, it is held that the evidence led by the

appellant had committed culpable homicide not amounting to murder by causing death of the deceased.

Accordingly, the judgment of conviction recorded by learned Trial Court is upheld. As regards sentence awarded to the appellant, it appears to be adequate. Thus, there being no merit in the appeal, it is hereby dismissed.

The appellant is on bail in this case, his bail/ surety bonds shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convict arrested and commit him to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The Registry shall keep track of the submission of compliance report and put up the papers, whether the reports are received or not within the time frame, immediately after the expiry thereof.

(SNEH PRASHAR)
JUDGE

01.09.2016.

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Whether speaking/ reasoned : **Yes**

Whether Reportable : **Yes**