

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Appeal D-156-DB of 2014
Date of Decision: 20.06.2016

Meena Devi

....Appellant

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Sanjeev Sharma, Advocate,
as Legal Aid Counsel for the appellant.

Mr. M.S.Sidhu, Additional A.G., Haryana.

T.P.S. Mann, J.

The appellant, namely, Meena Devi wife of Parvinder, resident of village Assaudha Todran, District Jhajjar, was charged for committing an offence punishable under Section 302 IPC on the allegations that on 4.12.2011 at about 2.30/3.00 p.m. and in the area of village Assaudha Todran, she committed murder of her son Harsh. Vide judgment and order dated 6/7.12.2013, learned Sessions Judge, Jhajjar, convicted her for the aforementioned offence

and sentenced her to undergo imprisonment for life and to pay a fine of Rs.1,000/- and, in default of payment of fine, to undergo rigorous imprisonment for three months. The period of detention already undergone by her during the investigation and trial was ordered to be set off against the substantive sentence awarded to her.

According to the prosecution, complainant-Satbir, father-in-law of the appellant, met SI Manoj Kumar, Incharge, Police Post, Assaudha on 4.12.2011 at 7.00 p.m., and made statement Ex.P1 to the effect that he was resident of village Assaudha Todran. He had two sons and one daughter. All of them were married. Dharminder was his elder son while Parvinder was the younger. He used to reside with Parvinder, who had two children, Harsh (son) aged about 7-1/2 years and Khushi (daughter) aged about 4 years. Harsh was studying in 2nd Standard. On that day, it was a holiday, being Sunday. Harsh returned home at about 1.30 p.m., after getting his hair cut from the barber. His daughter-in-law, Meena, the present appellant, was present in the House. Harsh went to his mother, who was present on the first floor. His mother then went to gher (plot) for taking care of and feeding the animals after locking the house. About one hour later, she returned home. After unlocking the house, she entered and prepared tea. She then went to the roof to serve tea to Harsh. She saw that

Harsh was unconscious and lying on the sofa. She picked him up and brought him downstairs. The appellant started proclaiming that Harsh had died. Many people from the neighbourhood reached the spot. On seeing string mark around the neck of Harsh, the complainant was of the view that Harsh had been killed by some unidentified person by putting a string around his neck and pulling the same. However, at that time, they did not have any doubt against anyone as they had no enmity with any person. He, however, requested for taking legal action in the matter.

As the statement Ex.P1 made by complainant-Satbir disclosed commission of offence under Section 302 IPC, SI Manoj Kumar, made an endorsement Ex.P17 and thereafter, sent the statement through Constable Balwinder to the Police Station for registration of the case. Accordingly, on its basis, FIR Ex.P14 came to be registered at Police Station Sadar, Bahadurgarh by ASI Krishan Kumar on 4.12.2011 at 7.30 p.m.

During the investigation of the case, SI Manoj Kumar, inspected the spot and conducted inquest proceedings under Section 174 Cr.P.C. The dead body was subjected to autopsy. The Doctor opined that the death was due to asphyxia caused by constriction force encircling the neck/trachea. On 8.12.2011, the appellant made extra-judicial confession before Mahender @ Banda, Ex-Sarpanch

and Jai Singh. After recording their statements, the police arrested the appellant, who made disclosure statement Ex.P3 that she had committed the murder of her son by strangulation with the help of scarf (chunni), which she had concealed in the box of the bed in her house and nobody else was aware of the same. Pursuant to her disclosure statement, she got recovered the scarf (Ex.P5). After completion of the investigation and presentation of challan followed by commitment of the case to the Court of Session, the appellant was charged under Section 302 IPC to which she pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1-Satbir, father-in-law of the appellant and grandfather of deceased-Harsh. He testified that on 4.12.2011 at about 1.30/2.00 p.m., the deceased had come back to the house after a haircut. At that time, he was not present in the house. At about 1.15 p.m., the appellant left for gher (plot) after bolting the house. He left for the house of his nephew Jagmender. The appellant returned home at 2.15 p.m., and after unbolting the door, went upstairs to serve tea to her son. However, her son was lying unconscious. The appellant brought him downstairs and started crying that something had happened to her son Harsh. People of the street gathered there. He saw ligature mark on the neck of Harsh. The Doctor was called, who after examining Harsh stated

that he had been murdered by strangulation. He also deposed that the appellant in the presence of Mahender, Ex-Sarpanch, a lady Constable, whose name he did not know, and one Vijay Dahiya confessed that the death of Harsh had taken place due to her blunder. The appellant also produced ligature material i.e. Chunni, which she had used at the time of strangulating Harsh. He also deposed that 5/6 days prior to the death of Harsh, there was some altercation between his son Parvinder and appellant-Meena on a trivial matter. Deceased Harsh had grappled with his father. After Parvinder had slapped the appellant, she stated that she would ruin his family. The witness pacified them and diluted the matter. The appellant had caused death of Harsh for the aforementioned reason. However, at that time his son Parvinder was present in the field and irrigating it.

PW2-Dhanpati, mother-in-law of the appellant and grandmother of the deceased, deposed that on 4.12.2011, she was present at the gher. The appellant had reached the gher to serve fodder to the cattle but looked perturbed and returned home soon thereafter. The appellant had left the house after bolting it from outside. On her return home, the appellant had unbolted the door. Her husband Satbir was at the house of Jagmender, while she was still at the gher. She received the information about the

death of her grandson Harsh. On reaching home, she found many persons present there. She also deposed that 2/3 days prior to the death of Harsh, an altercation had taken place between Parvinder and Meena on a trivial matter. At the time of altercation, the appellant had stated that she would ruin the family of her husband Parvinder. The appellant was intending to go to the house of her parents, but it was Parvinder, who had stopped her. However, the dispute was resolved amicably. She did not know as to who had forced the appellant to commit the blunder.

PW3-Jai Chand, Draftsman, proved scaled site plan Ex.P2, which he had prepared on 5.1.2012 after visiting the place of occurrence.

PW4-Lady Constable Rani, testified that on 8.12.2011, SI Manoj Kumar, joined her in the investigation. In her presence, SI Manoj Kumar, interrogated the appellant, who disclosed that on the day of occurrence, when her son Harsh was sitting on a sofa on the first floor of her house, she wrapped her Chunni around his neck and pulled the ends of the same, which resulted in his death. She also disclosed that she had sent her daughter Khushi to fetch pitcher of water. The appellant then made disclosure statement Ex.P3 pursuant to which she got recovered Chunni Ex.P5 used in the commission of the

crime, which was taken into possession by the police vide recovery memo Ex.P4.

PW5-Sunil Kumar deposed that on 4.12.2011 ASI Krishan Kumar had handed over to him the special report which he had delivered to the Illaqa Magistrate at 11.00 p.m.

PW6-Narender Kumar, Photographer deposed that on 8.12.2011, he went to the house of complainant Satbir and in the presence of Mahender, he prepared a C.D. regarding the conversation between the appellant and Mahender and handed over the same to the police. He proved CD Ex.P7 and Cassette Ex.P6, which were handed over to the police by him.

PW7-Mahender @ Banda, testified that he remained Sarpanch of village Assaudha for about 20 years. He was familiar with the appellant. About 5/6 months back, he along with Jai Singh and some other persons, was present at his house. The nephew of Satbir Singh, came to his house and informed that Satbir had called him to his house. Accordingly, he and Jai Singh went to the house of Satbir, who asked him to enquire from appellant-Meena as to how her son had died. The appellant disclosed that her husband Parvinder used to harass her and she wanted to commit suicide. However, her son Harsh had asked her not to do so. In a fit of anger, she had murdered her son. She

also disclosed that she had made him to sit on the Sofa and tied her Chunni around his neck and pulled both the ends of the Chunni. She begged for help.

PW8-Dr. Vikram Singh, Medical Officer, General Hospital, Bahadurgarh, testified that on 5.12.2011 at 11.50 a.m., he and Dr. Dharambir Singh had conducted autopsy on the dead body of Harsh and noticed as under:-

“A dead body of 117 c.m. moderately built and moderately nourished, wearing a blue upper shirt and grey pant, mouth partially open, eyes partially open, bleeding from nostrils, face cyanosed. There is ligature mark of 0.8 c.m. in width and 11 c.m. in length encircling the neck from right side of angle of mandible to left side up to left mastoid process. Right side mark is below 0.8 c.m. from right angle of mandible. There are minor scratches/abrasions over neck all over. Rigor mortis present in all limbs.

Scalp, skull and vertebrae-healthy.

Membranes-brain, spinal cord-healthy.

Thorax-lungs and trachea-congestion present.

Other structures healthy.

Abdomen-stomach contained normal food matter, mucosa healthy.

Rest of the structure healthy.”

In his opinion, the cause of death was due to asphyxia caused by constriction force encircling the neck/trachea and sufficient to cause death in routine course of life. The injuries were ante-mortem in nature. The time between injuries and death was variable.

PW9-EASI Ranbir Singh deposed that on 3.1.2012, when he was posted as Naib Moharrir Malkhana at Police Station Sadar, Bahadurgarh, Jagmal Singh, Moharrir Malkhana handed over to him a sealed parcel containing chunni (scarf) to be deposited in FSL, Madhuban.

PW10- Inspector Vijay Singh deposed that he was posted as SHO, Police Station Sadar, Bahadurgarh and on completion of investigation of the case, prepared the report under Section 173(2) Cr.P.C.

PW11-ASI Krishan Kumar testified that he had registered FIR Ex.P14 on receiving ruqa Ex.P1 which bore endorsement Ex.P1/A of SI Manoj Kumar. He also sent special reports to the Illaqa Magistrate and senior police officers through Constable Sunil Kumar.

PW12-ASI Jagmal Singh deposed that he was working as Moharrir Malkhana, Police Station Sadar, Bahadurgarh, and on 8.12.2011, SI Manoj Kumar, had deposited with him the case property. He also deposed that

he had sent the case property through EASI Ranbir to FSL, Madhuban.

PW13-Parvinder son of complainant Satbir, father of deceased Harsh and husband of the appellant deposed that he got married to the appellant about 10/11 years back. Deceased Harsh was his son. About 5/6 days prior to the occurrence, an altercation had taken place between him and his wife (appellant-Meena) over some trivial matter. The appellant was insisting for going to her parents' house. However, his father persuaded her not to go. She dropped the idea of going to her parents' house. However, she had threatened that she would ruin his family. On 4.12.2011, he was in his fields for some agriculture work. While present there, he learnt that his son Harsh had been murdered. His parents were also at the gher at that time. On rushing back home, he found Harsh dead. The dead body was lying on the sofa on the Chaubara. The dead body was shifted to General Hospital, Bahadurgarh for autopsy. He deposed that it was the appellant, who had murdered Harsh and at the time of occurrence, the appellant and deceased Harsh were present in the house. After committing the murder, the appellant had bolted the Chaubara from outside and left for the gher. On return, she unbolted the door of her house. After 10 minutes, she started raising cries that someone had

murdered her son Harsh. In his cross-examination, this witness stated that he was not present in the house at the time of occurrence. He denied that he had beaten the appellant on the intervening night of 3/4.12.2011.

PW14-Rishipal testified that on 8.12.2011 SI Manoj Kumar had interrogated the appellant in the presence of lady Constable Rani. During interrogation, the appellant disclosed that her husband had been beating her for the last one week under the influence of liquor and sulpha. She also disclosed that a day prior to the occurrence, she had told her husband that she was going to her parental house with the children. However, her father-in-law had restrained her from leaving the house. Though she dropped the idea of going to her parents' house, yet she told her husband that if he continued to beat her, she would ruin his family. The appellant also disclosed that on the intervening night of 3/4.12.2011, Parvinder had reached home in an inebriated condition and abused her and, thereafter, she made up her mind to finish his family. Accordingly, on 4.12.2011, when all the family members were away, she brought her children on the first floor of the house. After sending her daughter Khushi downstairs for fetching water, she made Harsh to sit on the sofa and strangulated him with Chunni and thereafter, she came downstairs and concealed the Chunni in the box of a bed.

She came out of the house and after bolting the same from outside left for the gher. After returning from the gher, she unbolted the door and went upstairs and she then started raising cries, which attracted her neighbours. She then made disclosure statement Ex.P3 pursuant to which she got recovered the Chunni Ex.P5, vide recovery memo Ex.P4.

PW15-SI Manoj Kumar testified that on 4.12.2011, he along with his fellow police officials was patrolling the area and present at Assaudha turn, where complainant Satbir met him and he recorded his statement Ex.P1. After making endorsement, he sent it through Constable Balwinder Singh, for registration of the case. He along with other police officials reached the spot and prepared inquest report Ex.P9. He also recorded the statements of the witnesses. He had prepared application Ex.PA and handed over the same to EASI Jeet Singh along with inquest report for getting autopsy conducted on the dead body of Harsh. He had prepared the rough site plan Ex.P18. The FSL team also reached the spot and prepared its report. Parvinder, father of deceased, Satbir, grandfather and Dhanpati, grandmother of the deceased, suspected that it was the appellant, who had murdered Harsh. On 8.12.2011, he along with lady Constable Meena had reached the bus stand of Assaudha, where he found Mahender @ Banda and Jai Singh. The appellant was with

them. Mahender @ Banda disclosed that Meena had confessed before him of having committed the murder of her son Harsh. Accordingly, he arrested her and interrogated, who disclosed that 5/6 days prior to the occurrence, her husband Parvinder had a quarrel with her. She also disclosed that Parvinder used to beat her and she wanted to leave the matrimonial home. However, her father-in-law and mother-in-law, had requested her not to leave the house. At that time, she had threatened him that if he continued to beat her, she would ruin his family. The appellant also disclosed that her son Harsh had come back after having a hair cut. She took him to the first floor of the house and after sending her daughter Khushi downstairs to fetch a glass of water, she made her son Harsh to sit on sofa and strangulated him with chunni and she then came downstairs and went to gher to serve fodder to the cattle and an hour later, she returned home and after preparing tea, went upstairs and started raising cries. She had also made disclosure statement Ex.P3, pursuant to which she got recovered chunni vide recovery memo Ex.P4.

When examined under Section 313 Cr.P.C., the appellant stated that she was innocent and falsely implicated in the case by the police. She had neither confessed her guilt before anyone nor she suffered any

disclosure statement nor also got recovered any chunni. The said recovery had been planted upon her.

In her defence, the appellant did not examine any witness.

After hearing learned counsel for the parties and on going through the record, the trial Court disbelieved the factum of recovery of chunni at the instance of the appellant. However, while relying upon the extra-judicial confession made by her before PW7-Mahender @ Banda, the trial Court convicted the appellant under Section 302 IPC and sentenced her, as mentioned above.

Learned counsel for the appellant has submitted that the conviction of the appellant on the sole testimony of PW7-Mahender @ Banda before whom the appellant was stated to have made extra-judicial confession, cannot be relied upon as he admitted that he was previously known to complainant Satbir. It is also submitted that extra-judicial confession is a weak type of evidence and cannot be made the basis for conviction. Therefore, the appeal be accepted, impugned judgment of conviction and sentence be set aside and the appellant be acquitted of the charge against her.

Per-contra, learned State counsel, has submitted that merely because the trial Court has disbelieved the recovery of chunni at the instance of the appellant, is not sufficient to exonerate her of the charge under Section 302

IPC, especially when PW7-Mahender @ Banda had testified before the trial Court that the appellant had come to him and made clean breast of her guilt. It is also submitted that the extra-judicial confession is an admissible piece of evidence and can be used for conviction as the confession was voluntary, truthful, trustworthy and inspires confidence. PW7-Mahender @ Banda had no axe to grind by coming out with a false version of the appellant approaching him and confessing about having murdered her son Harsh. It is also submitted that there is no material on the record from which it could be indicated that the confession made by the appellant was not voluntary, truthful, trustworthy and not inspiring confidence. Prayer has accordingly been made for upholding the conviction and sentence of the appellant and for dismissal of her appeal.

Having heard learned counsel for the parties and on scanning the evidence with their able assistance, this Court finds that PW7-Mahender @ Banda, who had remained Sarpanch of the village for about 20 years and personally knew complainant-Satbir, had testified before the trial Court that about 5/6 months back when he was present at his house, nephew of complainant Satbir came there and told him that he was being called to the house of complainant-Satbir. He accompanied him and went to the house of complainant Satbir where Satbir told him to ask

his daughter-in-law as to how her son Harsh had died. At this, he asked the appellant to disclose the truth so that he might help her. On his asking she disclosed that her husband used to harass her and, therefore, she was thinking of committing suicide, but it was her son, who asked her not to do so. She also disclosed that in a fit of anger, she committed the murder of her son after making him to sit on the sofa and putting a chunni around his neck, which she pulled from its ends. She also disclosed that the sofa was lying in the room on the first floor of the house. After confessing her guilt, she begged for help. She was then handed over to the police. In his cross-examination, Mahender @ Banda testified that he could not tell the date, month and the year of the incident. He, however, stated that after reaching the house of complainant-Satbir, appellant met him and told that she wanted to narrate something before him and it was only then that he asked her to state whatever she wanted to say. The appellant then disclosed about committing the murder of her son by strangulating him with chunni around his neck. He also stated that the police was not present at that time. Rather the police was called later on. He denied that the appellant did not disclose any such fact before him. He also denied the suggestion that he had deposed falsely just to help the complainant-party.

On analyzing the statement of PW7-Mahender @ Banda, it is made out that when the appellant had made extra-judicial confession before him, at that time, the police was not present. Apart from complainant-Satbir, PW7-Mahender @ Banda and one Jai Singh, had also accompanied PW7-Mahender @ Banda to the house of complainant-Satbir, to find out from his daughter-in-law, as to how her son Harsh had died. He also asked her to disclose the truth so that he might help her. It was on that assurance that the appellant disclosed as to what had prompted her to commit the murder. According to her, her husband used to harass her and she wanted to end her life by committing suicide. However, it was her son Harsh, who had been asking her not to do so. In a fit of anger, she had committed the murder of her son after making him to sit on the sofa and putting the chunni around his neck and then pulling both ends of the chunni. Being Sarpanch of the village for about 20 years, PW7-Mahender @ Banda, can be labelled as a responsible person in the village, who could even use his status to help the villagers and in the present case, the appellant against whom there had been needle of suspicion as there used to remain some quarrel between her and her husband Parvinder and being fed up on account of her harassment at the hands of her husband that she had threatened to ruin his family. PW7-Mahender

@ Banda, had nothing to gain by coming up with a false version, so much so that no suggestion was put to him as to why he would be deposing falsely against the appellant. Mere suggestion that he had deposed falsely just to help the complainant party is not enough. Even in her statement under Section 313 Cr.P.C., the appellant simply stated that she had been falsely implicated in the case by the police. During cross-examination PW15-SI Manoj Kumar was not put even a single question about the police falsely implicating the appellant in the commission of the crime. On the other hand, it was suggested to him that the case had been registered at the instance of complainant Satbir. It is another thing that said suggestion had been denied by him.

If complainant Satbir was to falsely implicate the appellant in the commission of the crime, he could have stated in his initial statement Ex.P1 before SI Manoj Kumar that the appellant was the one who had killed her son Harsh. On the other hand, he simply stated that they did not have any doubt against anyone.

PW13-Parvinder, husband of the appellant, testified that about 5/7 days prior to the occurrence, some altercation had taken place between him and his wife on a petty matter. However, the matter was sorted out on the persuasion of his father Satbir. In cross-examination, he

admitted that in his statement to the police he had stated that on 3.12.2011, he had reached home under the influence of intoxicant and picked up a quarrel with his wife Meena. From this fact, it is decipherable that it was deceased Harsh, who at a very young age of 7-1/2 years had been impressing upon her not to commit suicide because of the harassment at the hands of her husband Parvinder. On the other hand, in a fit of anger, she had taken the step of putting a chunni around the neck of her son and pulling it from its two ends, which resulted in the death of her son. It was an expression of anger which was in her mind against her husband, but somehow it got misdirected. She was being harassed by her husband, whereas her son Harsh had not provided her with any cause to end his life. So much so that PW1-Satbir stated in his examination-in-chief that 5/6 days prior to the death of Harsh, there was some altercation between the appellant and her husband on a petty matter and it was Harsh, who had grappled with his father.

Taking into consideration the totality of the circumstances, this Court is of the view that the appellant never intended to commit the murder of her son Harsh. However, she intended to commit the offence of culpable homicide not amounting to murder, which makes her liable for committing the offence under Section 304 Part-I IPC.

Resultantly, the appellant is acquitted of the charge under Section 302 IPC and her sentence of life imprisonment and fine of Rs.1,000/- is set aside. Instead, she is convicted under Section 304 Part-I IPC and sentenced to undergo rigorous imprisonment for 8 years and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for three months. The period already undergone by her during the investigation and trial of the case shall be set off against the substantive sentence of imprisonment being awarded to her.

The appeal stands partly allowed to the extent indicated above.

(T.P.S. Mann)
Judge

(Ritu Bahri)
Judge

20.06.2016
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