

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

Crl. Appeal D-496-DB of 2003

Date of Decision : November 30, 2016

Harjinder Singh @ Kala

.....Appellant

VERSUS

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM**

Present : Mr. S.S.Siao, Advocate
for the appellant.

Mr. S.S.Dhaliwal, Addl. A.G., Punjab.

T.P.S. MANN, J.

The appellant was charged under Section 302 IPC for committing the murder by intentionally causing the death of Santosh @ Toshi. Vide judgment and order dated 12.4.2003, learned Sessions Judge, Patiala convicted him for the aforementioned offence and sentenced him to undergo rigorous imprisonment for life 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 of detention already undergone by him during the investigation/trial of the case was ordered to be set off against the period of sentence awarded to him.

Aggrieved of his conviction and sentence, the appellant filed the present appeal which was admitted and notice issued to the State. Trial Court record was also requisitioned.

According to the prosecution, on 15.11.2001 at 11.00 a.m., complainant Roop Singh, husband of deceased Santsoh @ Toshi made statement Ex.PL before Inspector Didar Singh at 11.00 a.m. within the limits of Rai Majra on the basis of which FIR Ex.PL/2 under Section 302 IPC came to be registered against the appellant at Police Station Kotwali, Patiala on 15.11.2001 at 11.30 a.m. The said statement of complainant-Roop Singh is reproduced here-below:-

“Statement of Roop Singh son of Khushi Ram Caste Balmik, resident of Balochan Mohalla, Sanaur, Police Station Sadar, Patiala, aged about 38 years.

Stated that I was married with Toshi daughter of Mehnga Ram, resident of Khanna in the year 1982. I have three children, out of them one is daughter and two are sons. My wife fell in bad habits for quite some time and had developed illicit relations with many people. I was fed up from her bad habits. She was out of control from me. As usual, my wife stated at noon time that she was going to her parental house and will come soon. I enquired from Khanna. She had not gone there. Today I came to know that a dead body of woman was lying near Baddi Nadi, Rai Majra. Reaching there, I noticed the dead body of my wife Toshi. She has been killed with sharp edged weapon. There are sufficient injuries on the dead body of Toshi. Statement got recorded which is heard and is correct.

Sd/-Roop Singh, attested/Didar Singh Inspector,
SHO, P.S. Kotwali, 15.11.2001.”

During the investigation of the case, Inspector Didar Singh prepared inquest report and sent the dead body for post-mortem. The appellant was arrested and on interrogation, he suffered disclosure statement pursuant to which, he got recovered kirpan which was the weapon of offence. After completion of investigation, challan was presented against the appellant. The appellant was, thereafter charged for the aforementioned offence to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Dr.B.S.Bhullar, Senior Medical Officer, Department of Forensic Medicine, Government Medical College, Patiala, who deposed that on 15.11.2001 at 4.30 p.m. he had conducted post-mortem and found the following injuries on the dead body:-

- “1. Multiple stab wound with sharp margins of 2-3 cms in length, muscle deep, were present on front and left side of chest. One stab wound entering chest cavity with injuries to left lung and heart corresponding to the injuries. Chest cavity was full of blood.
2. Stab wound with sharp margins 2.5 cm x 2 cm muscle deep on front of left shoulder.
3. Stab wound with sharp margins 3 x 1 cms muscle deep on chin.
4. Multiple stab wounds with sharp margins, skin

to muscle deep ranging 2 to 3 cms were present in both upper limbs.

5. Incised wound 4 x 1-1.5 cm muscle deep in front of lower part of left thigh.
6. Elliptical stab wound with sharp margins 2 x 1-1.5 cm on left side of chest 3 cm from midline and 6 cm below nipple line underneath lung was injured.
7. Elliptical stab wound with sharp margins 2 x 1-1.5 cm on left side of abdomen, 6 cm from mid-line and 7 cm below injury No.6.
8. Stab wound 2.5 x 2 cm on left side of abdomen. 5 cm from mid-line and 6 cm below injury No.7.
9. Stab wound 2.5 x 2 cm on left side of abdomen at level of umbilicus, 12 cm from mid-line.
10. Stab wound 2.5 x 1.5 cm on mid-line abdomen 3 cm above umbilicus.”

He also took vaginal swabs for chemical examination.

According to him, the cause of death was haemorrhage and shock due to the injuries which were ante-mortem in nature and sufficient to cause death in the ordinary course of nature. On receipt of report of the Chemical Examiner, he had opined that there was presence of semen on both the vaginal swabs which suggested sexual intercourse before her death. He also testified that the injuries found on the dead body could be caused by kirpan Ex.P5.

PW2 MHC Sukhpal Singh proved his affidavit Ex.PD as part of his statement.

PW3 Tarsem Lal deposed that one day after the last Diwali, he was present in his house. The house of Roop Singh was situated near his house. He has seen the appellant in the house of Roop Singh, who used to come there quite often. The deceased was wife of Roop Singh but he did not know if the appellant had any relations with her. He further deposed that Toshi had died but he did not know as to how she had died. He further deposed that the dead body of Toshi was lying on the bridge of Baddi Nadi. He had not seen the dead body but had heard about it. He was declared hostile. He denied having made statement to the police.

PW4 Raghbir Singh deposed that he knew Roop Singh and his wife Toshi and so also the appellant, who used to visit the house of Roop Singh. He used to have illicit relations with the deceased and they lived as husband and wife. On 16.11.2001, he was present in his house and heard that Toshi was lying dead near the Baddi Nadi in the bushes. He did not see her dead body lying there. However, he heard that Toshi had eloped with the appellant two days before the Diwali in the year 2001, although he did not know as to who had murdered her but he heard about the appellant killing her.

Baby, daughter of complainant-Roop Singh stepped

into the witness box as PW5 and deposed that she knew the appellant, who had illicit relations with her mother. The appellant used to come to her house frequently and even used to stay for the night. Her mother was not obeying the orders of her father Roop Singh nor she used to agree with them. The appellant used to give clothes and money to her mother. Her mother had illicit relations with other persons also and the appellant used to quarrel with her on knowing about her illicit relations with others. Her mother used to take oaths that she will not go to any other persons other than the appellant. She then deposed that on the day of Diwali, the appellant had come to her house. He had brought fruits and sweets. She was all alone in the house. The appellant told her that her mother would come on the next day. The appellant was wearing blue colour sweater while leaving her house. Her father came home in the evening and she told him about the occurrence. On the next day, her father told her that her mother had been murdered and her dead body was lying near the Baddi Nadi. Then her father brought the dead body of her mother to his house. She further deposed that she was called by the child of Pappu to his house. Pappu was the Municipal Councillor of that area. The child told her that there was a telephone call for her. When she went to the house of Pappu to attend to the call, the appellant was on the line, who told her that whatever had happened, had happened and he promised to give

money to her for their maintenance. He told her that her father should not inform about the occurrence to any one. She told the appellant that he should speak to her father and she would also tell her father. She told about the occurrence to her father after the cremation of the dead body. Her statement was recorded by the police.

PW6 Constable Balkar Singh tendered in evidence his affidavit Ex.PF as part of his statement.

PW7 Bhim Singh deposed that in the month of November 2001, three or four days prior to Diwali, he was present in his shop in the morning. The appellant met him at the Baddi Nadi when he was going from his house to his shop. The appellant asked him to accompany him to the Police Station. The appellant used to visit the house of his neighbour Toshi, who was wife of complainant-Roop Singh. The appellant did not tell anything else but was nervous. He did not know about the relationship of the appellant with Toshi. The appellant did not tell him if he had committed the murder of Toshi. The witness was, thereafter, got declared hostile and cross-examined by the learned Public Prosecutor.

PW8 Roop Singh, complainant in the case, deposed that Toshi was his wife and they were married in the year 1982. Two sons and one daughter were born to her. His wife was beyond his control and used to go to many persons for illicit

relations. He had quarreled with her many a time but she did not mend her ways. He came to know on the day next to Diwali in the year 2001 that the dead body of a lady was lying near the Baddi Nadi. He went there and identified the dead body to be of his wife. The police was already standing there. His statement Ex. PL was recorded and he identified his signatures underneath the same. He did not know if his wife had illicit relations with the appellant. This witness was also got declared hostile and cross-examined by the learned Public Prosecutor. He identified the photographs Exs. P6 to P8 of his wife.

Inspector Didar Singh, who appeared as PW9 deposed that on 15.11.2001 he alongwith other police officials was present at Sanauri Adda, Patiala in connection with general checking. He received an information about the dead body of some lady lying near the bank of Baddi Nadi. He went there and recorded statement Ex.PL of the complainant, who met him there. He made endorsement Ex.PL/1 on the same and sent it to Police Station Kotwali, Patiala where FIR Ex.PL/2 was registered. He deposed about the lifting of blood stained earth and glass bangles from the spot. He also prepared site-plan Ex. PN besides inquest report Ex. PO of the dead body. The dead body was, thereafter, sent for post-mortem. He arrested the appellant on 18.11.2001 when he was produced before him by Bhim Singh. One joint photograph of the appellant with the deceased was recovered

from the personal search of the appellant. Upon being interrogated the appellant suffered disclosure statement Ex.PG that he had kept concealed a knife (chhura) and own blood stained jacket in a trunk on the first floor of his house. The appellant then led the police party to the disclosed place and got recovered chhura Ex.P5 and jacket Ex.P9 vide memo Ex.PH. He also deposed about the clothes Exs.P1 to P4 of the deceased, which were received by him from the doctor after post-mortem.

The prosecution tendered in evidence report Ex. PS of the Forensic Science Laboratory and closed its evidence.

When examined under Section 313 Cr.P.C., the appellant termed the prosecution case to be false and claimed that he was innocent. According to him, his father was known to Roop Singh, husband of the deceased for the last many years and as such, his family was on visiting terms with the family of Roop Singh. The photographs proved in the case were taken on the birthday of the complainant's daughter and also of the deceased. The appellant, however, did not lead any evidence in his defence.

After hearing learned Public Prosecutor and learned defence counsel, learned trial Court held that sufficient evidence had been led by the prosecution to prove the charge against the appellant, and, accordingly, convicted and sentenced him, as mentioned above.

This Court has heard learned counsel for the appellant, learned State counsel and scanned the evidence with their able assistance.

The case of the prosecution was based upon circumstantial evidence. In order to prove that the deceased had illicit relations with the appellant, the prosecution examined PW3 Tarsem Lal, neighbour of the deceased, who deposed that he had seen the appellant coming to the house of the deceased. Though he deposed in that regard by stating that he had seen the appellant in the house of the deceased yet he feigned ignorance about the appellant having any relations with the deceased. He deposed that though Toshi had died but he did not know as to how she had died. Neither he had seen the dead body nor he had heard about it. He went on to state that the appellant often used to visit the house of the deceased. However, as he did not support the prosecution case about illicit relations of the appellant with the deceased, he was declared hostile and cross-examined by the learned Public Prosecutor wherein he stated that neither it was a fact nor he had made statement Ex.PE to the police. He was, however, not cross-examined by the defence as regards seeing the appellant in the house of the deceased on the day of the incident.

PW4 Raghbir Chand deposed about knowing the deceased and her husband on the one hand and the appellant,

on the other. According to him, the appellant used to visit the house of the deceased as he had illicit relations with her and they used to live as husband and wife. He went on to depose that he had heard about the deceased lying dead in the bushes but he had not seen her dead body. He further deposed that he had heard about the deceased eloping with the appellant two days prior to Diwali. Further, though he did not know as to who had murdered the deceased but he had heard that it was the appellant, who had committed the murder. When cross-examined, he testified that his house adjoined the house of the deceased. Merely because he did not object to the appellant coming to the house of the deceased is no ground to reject his testimony.

PW8 Roop Singh, husband of the deceased, deposed that his wife was beyond his control and she used to go with many persons as she had illicit relations with them. He had also quarreled with her many times but she did not mend her ways. However, as he denied about the deceased having illicit relations with the appellant, he was got declared hostile. Despite being cross-examined, he did not toe the prosecution case.

From the testimonies of PW3 Tarsem Lal and PW4 Raghbir Chand, it stands established that the deceased had illicit relations with the appellant and as such, the appellant had the motive to commit her murder. Merely because PW8 Roop Singh

did not support the prosecution case regarding the deceased having illicit relations with the appellant is no ground to absolve the appellant of the commission of the crime.

Apart from the aforementioned circumstance of motive, the prosecution tried to prop up its case by way of extra judicial confession, said to have been made by the appellant. PW5 Baby, the 17 years' old daughter of the deceased testified that the appellant had illicit relations with her mother and he used to come to her house frequently. He would also stay for the night in her house. Her mother was not obeying the commands of her father nor she used to agree with her. The appellant used to give clothes and money to her mother, who had illicit relations with other persons as well. Even on the day of Diwali in the year 2001, the appellant had come to her house and brought fruits and sweets. At that time, she was alone in the house. He told her that her mother would come on the next day. The appellant left the house. In the evening her father came back and she told him about the occurrence. On the next day, her father told her about the murder of her mother. The dead body was, thereafter, brought to the house. She was called to the house of Pappu, who was Municipal Councillor of the area. On reaching the house of Pappu, she was made to talk with the appellant on telephone received from the appellant, who was on the other side. The appellant told her that whatever had happened, had happened

and he promised to give money for her maintenance. He also told her that her father should not narrate the occurrence to anyone else. She had, however, told the appellant to speak to her father and she was also told to talk to her father in that regard. Thereafter, she told the entire occurrence to her father.

Though PW8 Roop Singh, husband of the deceased had not supported the prosecution case as he denied about the deceased having illicit relations with the appellant yet PW5 Baby has clearly deposed that it was the appellant, who had been coming to her house frequently as he was having illicit relations with her mother. Further, it was the appellant, who had tried to contact her by calling her on phone at the house of the Municipal Councillor and it was the appellant, who admitted his guilt of committing the murder of her mother and in order to ensure that she did not talk about the occurrence with anyone else, he promised to give money for her maintenance. Though she stated that she did not remember the time when Pappu's son had called her to attend to the telephone call yet according to her it was evening time and she was alone while attending to the telephone call from the appellant.

Similarly PW7 Bhim Singh, who also used to live in the neighborhood of the deceased testified that 3/4 days prior to Diwali when he was going from his house to his shop, the appellant met him, who asked him to accompany him to the

Police Station. He also stated that the appellant used to visit the house of the deceased, who was his neighbour. Though the appellant did not tell her anything else yet he was nervous. The witness did not know about the illicit relations nor he had told him about committing the murder. After getting him declared hostile, learned Public Prosecutor cross-examined him wherein he deposed that the police had recorded his statement and also obtained his signatures. He further stated that the appellant did not make any statement before the police but he identified his signatures on Ex.PG. He also identified his signatures on Ex.PH but the appellant had not got recovered any article. The police had searched the appellant and search memo Ex.PJ was prepared which was attested by him. He then deposed that he had not accompanied the appellant to the Police Station but had gone to the Police Station later on. He also identified his signatures on Ex.PK. His signatures were obtained on the documents by the police when they were writing the papers.

From the testimony of PW7 Bhim Singh, it stands established that the appellant used to visit the house of the deceased and though the appellant did not tell him anything yet he was nervous when he met him on the bridge of Nadi while going from his house to his shop. Even in his cross-examination by the learned Public Prosecutor, he identified his signatures on various documents, viz, Exs. PG, PH, PJ and PK. The conduct of

the appellant and his expression of being nervous when he met PW7 Bhim Singh indicated his guilty mind and, thus, can be used as a circumstance to link the appellant with the commission of the crime.

In view of the above, it can safely be concluded that the prosecution has led cogent and convincing evidence to connect the appellant with the commission of the crime. Even on re-appreciation of evidence by this Court, it stands established that it was the appellant and the appellant alone, who had committed the crime, making him liable for committing the offence under Section 302 IPC.

Resultantly, the appeal is devoid of any merit and, therefore, dismissed.

**(T.P.S. MANN)
JUDGE**

November 30, 2016
ajay-1

**(GURMIT RAM)
JUDGE**