

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-661-DB of 2003

Date of Decision : December 20, 2016

MahenderAppellant

Versus

State of HaryanaRespondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE HARMINDER SINGH MADAAN

Present : Mr. B.S. Saroha, Advocate
for the appellant.

Mr. Praveen Bhadu, Assistant Advocate General, Haryana.

T.P.S. MANN, J.

The appellant, namely, Mahender, alongwith his sister Smt. Bimla and her husband Sat Parkash was tried for committing offences punishable under Section 302 read with Section 34 IPC and Section 201 read with Section 34 IPC. Vide judgment and order dated 8/9.8.2003, learned Sessions Judge, Bhiwani acquitted Smt. Bimla and Sat Parkash of the charges against them. The appellant was, however, convicted under Section 302 IPC and sentenced to undergo 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. He was also convicted under Section 201 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for two months. Both the substantive sentences were ordered to run

concurrently. The period of detention already undergone by him during investigation and trial was ordered to be set off against the sentence imposed upon him.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted on 22.3.2003.

The case of the prosecution is that on 11.9.2000, complainant-Balwan Singh son of Phool Singh, barber by profession and resident of Village Mithi submitted an application Ex.PE before the Station House Officer, Police Station City, Bhiwani on the basis of which, FIR Ex.PB under Sections 302/201/34 IPC was registered against the appellant and his co-accused on 11.9.2000 at 12.30 p.m. In the said application/complaint, the complainant mentioned that his elder sister Manita was married to the appellant about ten years ago. From their wedlock, no child was born. The appellant was serving in the Civil Court at Bhiwani and resided with his wife in a rented room near Ravi Dass Mandir. Smt. Bimla and Sat Parkash, who happened to be the sister and sister's husband of the appellant also resided in an adjoining house. All the three accused used to maltreat and harass the deceased for not giving birth to a child. They used to address her as a barren lady and, accordingly, threatening to kill her and perform the second marriage of the appellant. The complainant and his relatives used to counsel the accused for the last 2/2½ years that deceased would give birth to a child but they did not mend their ways. On 7.9.2000, the complainant and his uncle Ram Lal went to the house of deceased where she told

them that all the three accused would kill her. At that time they consoled the deceased that accused would not cause any harm to her. The complainant also asked his uncle Mange Ram, who used to reside at Bhiwani in Halu Bazar that he should take care of the deceased. It was also mentioned in the written complaint that on 9.9.2000 at about 6.30 p.m. PW Mange Ram was going to the shop of a barber for getting his scissors sharpened. The room of the deceased was located on the way. When he reached near that room, he heard the cries of weeping. Peeping through the window, he saw Manita lying dead on a cot. He also noticed the presence of all the three accused there. The room was bolted from inside. Seeing PW Mange Ram, all the three accused ran away through the back door. PW Mange Ram came to the village of the complainant and informed him that Manita was killed by the accused by strangulating her. On getting this information, the complainant and other persons reached the house of the accused but the dead body of Manita was not lying there. The neighbours told them about the dead body having been taken to village Milkpur. The complainant, alongwith others, went to village Milkpur and came to know that the accused had already cremated the dead body of Manita deceased. They asked the accused but they could not give any satisfactory reply. When the accused were asked as to why the dead body had already been cremated, they replied that the dead body was not such a thing which was to be preserved. The complainant also enquired about the death of his sister from village Milkpur and Mohalla Ravi Dass Mandir and felt convinced that the accused had killed the deceased by strangulation.

During the investigation of the case SI Sheotaj Singh, Station House Officer, Police Station City, Bhiwani went to the spot where Inspector Ram Mehar also arrived and took over the investigation. He prepared rough site plan of the place of occurrence, took into possession the broken bangles and bed sheet cover and also seized the ashes/bones from the cremation ground. Scaled site plan of the place of occurrence was got prepared. Statements of the witnesses were recorded.

It is also the prosecution case that on 12.9.2000, the appellant, namely, Mahender went to the house of Mahender Singh, Sarpanch of village Milkpur where Ram Kishan, maternal uncle of the deceased also reached and enquired about Manita. Mahender Singh, Sarpanch enquired from the appellant who disclosed that Manita was done to death by him. The appellant also told them that Bimla and Sat Parkash were his accomplices. He also disclosed that while they were taking meals, a quarrel had taken place between him and the deceased and, thereafter, he strangulated her with his hand. The appellant, accordingly, requested the Sarpanch to help him. Subsequently, the appellant and his co-accused were arrested. After the completion of the investigation and presentation of challan, which was followed by commitment of the case to the Court of Sessions, the appellant and his co-accused were charged, as mentioned above, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as nine witnesses.

PW1 Amir Chand Taneja, Draftsman testified about preparing scaled site plan Ex.PA of the place of occurrence on the demarcation of Balwan Singh.

PW2 Contable Janak Raj testified that he had delivered special report of this case to the Ilaqa Magistrate and other higher police officers.

PW3 Constable Rajbir Singh tendered in evidence his affidavit Ex.PC regarding carrying the various articles to the Forensic Science Laboratory.

PW4 MHC Kartar Singh also tendered in evidence his affidavit Ex.PD regarding sending the case property to the Forensic Science Laboratory.

PW5 Balwan Singh, brother of deceased Manita testified in terms of what he had mentioned in his written complaint Ex.PE, on the basis of which FIR Ex.PB was registered at Police Station City, Bhiwani. He also deposed that the police in his presence had taken into possession broken pieces of bangles and bed sheet vide recovery memo Ex.PF and, thereafter, he accompanied the police to village Milkpur where ashes and bones from the place of cremation were taken into possession by the police vide recovery memo Ex.PG.

PW6 Mange Ram, who happened to be uncle of the deceased and resident of Halu Bazar, Bhiwani deposed that on 7.9.2000,

Balwan and Ram Lal had told him about the accused harassing Manita and they asked him to look after her. On 9.9.2000, while he was going to Bawri Gate, Bhiwani and passing by the house of Manita, he heard cries from inside the room and when he peeped through the window, he saw Manita lying dead on a bed. The appellant alone was present in the room. Thereafter, he left for village Mithi and informed about the occurrence to his brother Ram Lal, Balwan etc. Next morning, they reached Bhiwani by bus but could not find the dead body of Manita in the house of the appellant. From there they went to village Milkpur and on enquiry learnt that the dead body of Manita had already been cremated.

PW7 Anup Kumar, Photographer testified that on 11.9.2000, he went to the spot and took four snaps. The photographs were Ex.P1 to Ex.P4 and their negatives Ex.P5 to Ex.P8.

PW8 Inspector Ram Mehar deposed about the various steps taken by him during the investigation of the case.

PW9 Ram Kishan deposed about the extra judicial confession made by the appellant when he alongwith Mahender Singh, Sarpanch had gone to the house of the appellant.

While closing the prosecution evidence, the learned Public Prosecutor tendered in evidence reports Ex.PJ and Ex.PJ/1 of the Forensic Science Laboratory.

When examined under Section 313 Cr.P.C., appellant-Mahender pleaded his innocence. According to him, his wife died a

natural death. The complainant party had attended the cremation at his village and, later on, in order to grab the money which was taken by the complainant party from him, a false case was registered against him and his relatives. Smt. Bimla and Sat Parkash, co-accused of the appellant while claiming to be innocent pleaded that they were not on visiting terms with the appellant or his parents for the last many years and on the day of the occurrence neither they were at village Milkpur nor they had attended the cremation of wife of the appellant.

In defence, the accused examined DW1 Mahender Singh, Sarpanch of village Milkpur, who deposed that Smt. Bimla and Sat Parkash were not on visiting terms to the house of the appellant for the last about 3/4 years. Further, the cremation of the wife of the appellant took place in the village at about 10.00/11.00 a.m. The entire village had participated in the said cremation. Even the parents of the deceased were present at the time of cremation. Smt. Bimla and Sat Parkash did not participate in the cremation. He also deposed that none of the accused visited his house in order to confess their guilt.

DW2 Roshan Lal deposed about the plea of alibi taken by Sat Parkash accused.

After hearing learned counsel for the parties and on going through the record, learned trial Court acquitted Smt. Bimla and Sat Parkash of the charges against them. The appellant was, however, convicted and sentenced, as mentioned above.

This Court has heard Mr. B.S. Saroha, Advocate for the appellant and Mr. Praveen Bhadu, Assistant Advocate General, Haryana and with their able assistance, minutely scanned the evidence.

It is not in dispute that the marriage of Smt. Manita Mahender accused was performed about ten years prior to her death which occurred on 9.9.2000. However, it is to be seen as to whether Smt. Manita died a natural death in the house of her in-laws or the accused committed her murder and cremated the dead body in order to screen themselves from legal punishment.

PW5 Balwan Singh, brother of deceased Manita, testified that his sister could not bear a child although she was married to the appellant for ten years. The appellant used to work in the Courts at Bhiwani and resided with the deceased in a rented room near Ravi Das Mandir. The accused used to maltreat and harass her for not giving birth to a child. They used to threaten her that she would be killed and the appellant would get married second time. The complainant and his relatives used to counsel the in-laws of his sister. So much so that on 7.9.2000, the complainant and his uncle Ram Lal went to the house of the deceased where she told them that the accused wanted to kill her. They, however, assured her that the accused would not cause any harm to her. On 9.9.2000 at about 6.30 when PW6 Mange Ram was going to the shop of a barber for getting his scissors sharpened and reached near the room of the deceased which was located on the way, he heard the cries and on peeping through the window, he saw that Manita was lying dead on a cot. The accused were present there in the room, which

was bolted from inside. Noticing the presence of PW6 Mange Ram, the accused fled away through the rear door. PW Mange Ram then met complainant Balwan Singh and informed him about the killing of Manita by the accused by strangulating her. The complainant reached the house but did not find the dead body of Manita. They were told by the neighbours that the dead body had been taken to village Milkpur. The complainant and others reached Milkpur and came to know that the accused had already cremated the dead body of Manita. On being asked, the accused could not give any satisfactory reply. The accused were also asked as to why the dead body had already been cremated, to which they replied that dead body was not such a thing to be preserved. This was followed by PW5 Balwan Singh submitting application Ex.PE to the police on the basis of which FIR Ex.PB came to be registered on 11.9.2000 at 12.30 p.m. at Police Station City, Bhiwani under Sections 302/201/34 IPC.

It is also the prosecution case that Mahender accused had made extra judicial confession before Mahender Singh, Sarpanch and Ram Kishan. Mahender, Sarpanch was not examined by the prosecution and given up as having been won over. He was, however, produced by the accused in their defence as DW1. At the same time, Ram Kishan was examined by the prosecution as PW9, who supported the prosecution case qua the making of extra-judicial confession by Mahender accused. Despite being subjected to lengthy cross-examination, his testimony could not be shattered. Mahender accused had confessed before him and Mahender Singh, Sarpanch that he had strangulated his wife with his hands. He also admitted that Manita was

his sister's daughter. He had come to know about the death of Manita on 11.9.2000 at about sunset. Thereafter, he reached Bhiwani and met Raju, who was son of his mother's sister. On the next morning, he alongwith Raju went to the house of Mahender Singh, Sarpanch in order to know about the death of Manita. Then they went to the house of Mahender accused, who confessed his guilt.

Admittedly, Smt. Manita died in the house of Mahender accused, who was her husband. The dead body was seen in the bed room of the house. The bed sheet recovered therefrom was stained with blood. Even broken bangles were lying at the spot which were taken in possession.

The occurrence in question which had taken place on 9.9.2000 at about 6.30 p.m. was witnessed by Mange Ram, who was examined by the prosecution as PW6. The place of occurrence was house of Mahender accused at Bhiwani. After noticing the incident and finding that the accused had escaped from the rear door of the house, PW Mange Ram went to the village of Balwan Singh, brother of the deceased, it was already mid-night by that time. On the next morning, the complainant and others went to the house of the accused but did not find the body there. On coming to know that the dead body had been taken to Milkpur, the village of the accused, the complainant reached there but by that time the dead body had already been cremated. On the following day, PW5 Balwan Singh visited Police Station City, Bhiwani but by that time the police had locked the residence of the deceased and asked him to submit written application. It was only on 11.9.2000 that

PW5 Balwan Singh moved typed application Ex.PE, on the basis of which the FIR came to be registered at 12.30 p.m. Though there is some delay in recording of the FIR yet that will not be sufficient to reject the prosecution case in its entirety. At the most, for whatever delay that had occurred in the registration of the FIR, some benefit could be given to the sister and sister's husband of Mahender accused which exercise has already been done by the learned trial Court by giving them benefit of doubt being close relatives of Mahender accused. However, no case is made out for any interference in the impugned judgment to the extent of convicting Mahender appellant under Sections 302 and 201 IPC. The conviction of Mahender is based upon cogent and convincing evidence examined by the prosecution in support of its case. Even on re-appreciation of the evidence, this Court finds that no case is made out for upsetting the conviction and sentence of the present appellant.

Resultantly, the appeal is without any merit and, therefore, dismissed.

	(T.P.S. MANN)	(HARMINDER SINGH MADAAN)
December 20, 2016	JUDGE	JUDGE
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Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO