

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

**Criminal Appeal D-767-DB of 2003
Decided on : February 23, 2017**

Gurjant Singh

....Appellant

Versus

State of Punjab

....Respondent

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr. Vinod Ghai, Senior Advocate with
Mr. Harmandeep S. Brar, Advocate
for the appellant.

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

H.S. MADAAN, J.

This appeal has been preferred against the judgment dated 31.7.2003 passed by learned Additional Sessions Judge, Fast Track Court, Ludhiana vide which he had convicted and sentenced accused Gurjant Singh as follows:-

Offence under Section	Sentence Awarded
302 IPC	Rigorous imprisonment for life and to pay a fine of ₹5,000/, in default thereof, to further undergo rigorous imprisonment for two years.
201 IPC	Rigorous imprisonment for one year and to pay a fine of ₹1,000/, in default thereof, to further undergo rigorous imprisonment for four months.

Both the sentences were ordered to run concurrently.

The accused-convict, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of conviction and sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story is that on 19.8.2001, complainant Suresh Pal son of Hukma, resident of village Bhogi Majra, District Mujaffarnagar (U.P.) then residing at Chhabra Colony, village Dad, District Ludhiana got his statement recorded with SI Ramandeep Singh, Station House Officer, Police Station Sadar, Ludhiana (hereinafter referred to as Investigating Officer/IO), who along with other police officials was present at Phullanwal Chowk, Ludhiana in connection with patrol duty, wherein he stated that he had been working in houses of residents of village Dad while having his residence in a house near G.S. Marble factory; that on the said day at about 10:00 A.M., he along with his maternal uncle Zila Ram was going to village Dad in connection with his work; that when they proceeded towards Pakhowal Road, they found a plastic bag lying on left hand side of the road at a distance of about 100 yards from his house, which was emitting bad smell and on going close to the bag, they found that it contained dead body of a woman in the age group of 30 to 35 years, who was wearing a *salwar* (trouser) of green colour and a printed shirt, with a head injury. Complainant stated that it was dead body of some unknown woman, which had been thrown there by some unknown person. This statement Ex.PM was signed by complainant Suresh Pal. SI Ramandeep Singh had appended his endorsement Ex.PM/1 below such

statement and sent ruqa to police station, on the basis of which formal FIR Ex.PM/2 was recorded by SI Jarnail Singh.

Thereafter, the police party accompanied by complainant went to the spot. Investigating Officer found the dead body lying there. He carried out inquest proceedings, preparing a report Ex.PN in that regard. He prepared site-plan Ex.PO of the place of recovery of the dead body. He deputed HC Chanchal Singh to get post-mortem examination conducted on dead body of the unknown woman by handing him over written request Ex.PA/2 in that regard. HC Chanchal Singh accordingly complied with the directions and after post-mortem examination, he handed over *salwar* and shirt of the deceased to the Investigating Officer, the latter converted those clothes into a parcel sealing that with his seal bearing impression 'RS' and then the said parcel was taken into police possession vide memo Ex.PK attested by HC Chanchal Singh.

On that very day, Surinder Singh – PW identified the dead body to be that of Jagroop Kaur wife of accused Gurjant Singh. A memo of identification Ex.PP was prepared in that regard which was attested by Surinder Singh and HC Chanchal Singh. The Investigating Officer along with other police officials went to place of occurrence i.e. the house where the accused and his wife Jagroop Kaur were residing as tenants under Balbir Singh. He observed a *TALAI* (mattress) stained with blood on the cot lying in the room. The Investigating Officer converted that *TALAI* into a parcel sealing it with his seal bearing impression 'RS'. Thereafter, the said parcel was taken into possession vide memo Ex.PC attested by Surinder Singh and Balbir Singh. The

household articles lying in said rented accommodation were also taken into possession vide memo Ex.PE. The IO came across an album in the room containing photographs of accused and deceased, which was seized vide memo Ex.PD.

During the course of investigation on 23.8.2001, scooter bearing No.PBO-6860 was taken into possession from the accused at the time of his arrest vide memo Ex.PF. One cycle tube was recovered from the dickey of the scooter. The Investigating Officer had prepared rough site-plan of the place of incident as Ex.PQ.

On 25.8.2001, accused Gurjant Singh, while in police custody on being interrogated, suffered a disclosure statement that he had kept concealed a hammer used by him in the incident near culvert of the canal in the area of Dhapai, regarding which he had exclusive knowledge and could get the same recovered. The IO recorded his statement as Ex.PH, which was signed by the accused and attested by ASI Dalbir Singh. Thereafter, accused Gurjant Singh, while in police custody, led the police party to the disclosed place and got the hammer recovered from the place specified by him in his disclosure statement. The hammer was found to be stained with blood. The IO prepared a parcel of the said hammer sealing it with his seal having impression 'RS' and said parcel was taken into possession vide memo Ex.PH/1 attested by ASI Dalbir Singh. The IO prepared rough site-plan of place of recovery as Ex.PH/2.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of

Judicial Magistrate, Ludhiana.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Ludhiana, he supplied copies of documents relied upon in the challan to the accused free of cost as provided under Section 207 Cr.P.C. Then finding that offence under Section 302 IPC is exclusively triable by Court of Sessions, learned Judicial Magistrate Ist Class, Ludhiana vide his order dated 10.1.2002 committed the case to the Court of Sessions.

On commitment, case was entrusted to the Court of learned Additional Sessions Judge, Fast Track Court, Ludhiana. Finding a prima-facie case, charge for the offences punishable under Sections 302/201 IPC was framed against the accused, to which, he pleaded not guilty and claimed trial. The case was fixed for evidence of prosecution.

During the course of its evidence, the prosecution examined as many as nine witnesses, namely, PW1 Dr. Mohinder Singh, Medical Officer, Civil Hospital, Ludhiana, PW2 Balbir Singh, PW3 HC Rajinder Singh, PW4 ASI Dalbir Singh, PW5 HC Chanchal Singh, PW6 Harjinder Singh, PW7 Nirmal Singh, PW8 SI/SHO Ramandeep Singh and PW9 Surinder Singh.

PW1 Dr. Mohinder Singh, Medical Officer, Civil Hospital, Ludhiana stated that on 19.8.2001, he along with Dr. Navpreet Kaur had conducted post-mortem examination on the dead body of an unknown female aged about 35 years brought by HC Chanchal Singh of Police Station Sadar, Ludhiana at about 5:15 p.m. According to him, it was dead body of a female at advanced stage of putrefication, wearing

salwar and *kameez* and maggots were present all over the body along with foul smell. Rigor mortis was absent; that they had observed fracture on the left temporal and parietal bone of skull. He further stated that in their opinion the cause of death was due to head injury which was sufficient to cause death in ordinary course of nature and all the injuries were ante-mortem in nature. He further added that the probable time that elapsed between injury and death was immediate and between death and post-mortem was about 5 to 7 days. He proved copy of the post-mortem report as Ex.PA and pictorial diagram showing the seat of injury as Ex.PA/1.

PW2 Balbir Singh, a *kiryana* merchant doing his business at Shaheed Karnail Singh Nagar deposed that he has got a residential house in that very area which is at a distance of about half kilometer from his shop and the said house was given on rent to Gurjant Singh – accused. The witness further stated that Gurjant Singh – accused was living in that house along with his wife - Jagroop Kaur and he used to pay Rs.700/- as rent to him; that he had gone to the house of accused on 5.8.2001 to receive the rent but he did not pay the same and promised that rent would be paid on 17/18.8.2001; that on 18.8.2001 at about 8:00 p.m. when he was present at his shop, he observed that accused - Gurjant Singh was going on his scooter having a plastic bag on it; that he called accused but he did not stop the scooter and replied that he would come after some time; that the foul smell was coming from the plastic bag when accused passed near him on his scooter. The witness further deposed that he came to know from the people that foul smell

was coming from the rented house in the morning. Accordingly, he went to the house, door of which was locked. In the meanwhile, police reached there. Lock of the house was broken and it was found that *gadella* (mattress) of the bed was smeared with blood and household articles were lying in the room. The police had taken that *gadella* (mattress) into possession vide memo Ex.PC attested by him and PW Surinder Singh; that the police also collected photographs which were seized vide memo Ex.PD. The household articles were taken into possession vide memo Ex.PE. All the memos were attested by him and PW – Surinder Singh; that on 23.8.2001, the police had recovered scooter bearing registration No.PBO-6860 along with cycle tube, which was taken that into possession vide memo Ex.PF.

PW3 HC Rajinder Singh, a formal witness tendered in evidence his affidavit Ex.PG.

PW4 ASI Dalbir Singh deposed that on 23.8.2001 investigation of this case was entrusted to him; that he had laid a picket at Phullanwal Chowk when Gurjant Singh accused came from the side of Jodhan on a scooter and on identification of PW Balbir Singh, Gurjant Singh was arrested. He further deposed that on 25.8.2001, he had joined the police party headed by SI Ramandeep Singh – SHO, who had interrogated the accused after taking him out of the police lock-up and accused had suffered a disclosure statement that he had concealed a hammer near the canal bridge in the area of village Dhapai about which only he had exclusive knowledge and could get the same recovered. The disclosure statement of accused was recorded as Ex.PH signed by

the accused and attested by this witness and thereafter accused while in police custody got the hammer recovered from his possession; that the Investigating Officer had converted the recovered hammer which was blood stained into a parcel and that parcel was taken into possession vice memo Ex.PH/1 attested by him.

PW5 HC Chanchal Singh stated that on 19.8.2001, he was member of the police party headed by SI Ramandeep Singh and they were present at Phullanwal Chowk, where Suresh Kumar met them; that his statement was recorded by SI Ramandeep Singh. Thereafter, they had gone to the spot where dead body was lying. The dead body was taken into possession which was later on identified by Surinder Singh. The witness stated that SI Ramandeep Singh had deputed him to get the post-mortem conducted on the dead body and he accordingly got the needful done. After post-mortem from Civil Hospital, Ludhiana, the doctor had handed over to him a glass vial along with an envelope duly sealed with the seal of the doctor and a *salwar* as well as shirt of the deceased. He stated that after the post-mortem examination, he took the dead body to cremation ground and got it cremated whereas sealed vial, envelope and clothes of deceased which were handed over to him were produced by him before SI Ramandeep Singh, who converted the shirt and *salwar* into a parcel sealing it with his seal bearing impression 'RS' and took the three parcels into possession vide memo Ex.PK attested by him. He further stated that on 21.8.2001, MMHC Rajinder Singh handed over to him the sealed envelope along with sealed glass vial and he deposited them into the office of Chemical Examiner, Patiala. On return

to the police station, he had handed over receipt to MMHC.

PW6 Harjinder Singh stated that he is running *kiryana* shop in Phullanwal Chowk, Ludhiana and accused Gurjant Singh is known to him; that on 18.7.2001 at about 8:00 p.m. while he (this witness) was standing outside his shop then the accused had come from the side of his house on a scooter and a plastic bag had been placed by him on the pillion of the scooter. He had gone towards village Dad. The witness added that when the accused passed by his side, some foul smell was coming from the bag; that he had inquired from the accused as to what he was carrying, the accused told him that he would tell him after coming back. The witness concluded his examination-in-chief by stating that he came to know from SI Ramandeep Singh that wife of Gurjant Singh had been murdered.

PW7 Nirmal Singh stated that he is *Sarpanch* of village Phullanwal and in his such capacity, he visits the police station quite often; that Gurjant Singh is known to him; that on 21.8.2001 at about 6/7:00 p.m., accused had come to his house telling that he had given a hammer blow on the head of his wife Jagroop Kaur as he was not having good relations with her on account of the fact that he had contracted a second marriage which fact had come to the knowledge of Jagroop Kaur. According to this witness, the accused had further told him that he was taking Jagroop Kaur to the hospital but she had died on the way and that he had caused hammer blow to his wife on the same day i.e. 21.8.2001 and that he had brought the dead body of his wife to his house; that the accused had requested him to produce him before the

police but he asked him to come again. However, accused did not turn up. The witness stated that the accused had not told him the date of causing hammer blow to his wife whereas he took an impression that he had done so on the same very day i.e. 21.8.2001. Further, he could not say if he had caused the occurrence on 14.8.2001. He was declared a hostile witness at the instance of Additional Public Prosecutor, who was allowed to put questions to him in cross-examination. During the course of cross-examination by the Additional Public Prosecutor, this witness started toeing the line of the prosecution on most of the aspects.

PW8 SI/SHO Ramandeep Singh, who had carried out investigation of this case deposed in that regard.

PW9 Surinder Singh deposed that he is carrying the work of white-washing as well as painting etc.; that in July, 2001, Gurjant Singh accused had come to him for the purpose of getting his house at Karnail Singh Nagar, Ludhiana white-washed to which he agreed and the amount was settled at 1,500/- as charges for doing the task out of which a sum of 500/- was given by Gurjant Singh to him and he had agreed to pay the remaining amount after a few days. The witness deposed that on 1.8.2001, he had gone to the house of accused - Gurjant Singh to get the remaining amount, but the accused was not present there; that wife of accused was present, who had asked him to come after 5/7 days; that after about a week, he again went to the house of accused, who was not available; that after about one week more i.e. 14/15.8.2001, he went to the house of accused. Accused was found to be there at home sitting near his scooter; that the accused was having an

argument with his wife - Jagroop Kaur and when Jagroop Kaur caught Gurjant Singh from his neck, he (Gurjant Singh) gave a push to her. He was holding a hammer which perhaps struck on her head. Further, on a second thought he stated that accused had given a blow in his presence. He was declared a hostile witness at the instance of Additional Public Prosecutor who was allowed to cross-examine the witness. During the cross-examination by the Additional Public Prosecutor, he admitted having made statement to the police stating therein that he had gone to the house of accused on 14.8.2001 at about 4:00 p.m. and that Jagroop Kaur had caught Gurjant Singh from his neck and started abusing him upon, which Gurjant Singh got annoyed and threw Jagroop Kaur on a cot by giving her a push; that Gurjant Singh was holding a hammer which struck upon the head of Jagroop Kaur as a result of which she started bleeding. He admitted it to be correct that on 19.8.2001, he had gone to Civil Hospital, Ludhiana for treatment of his wife and he had identified the dead body of Jagroop Kaur from the clothes worn by her. He further accompanied SI/SHO Ramandeep Singh to the house of the accused from where a blood stained *TALAI* (mattress) was picked up by SI/SHO Ramandeep Singh which was converted into a sealed parcel and taken into possession vide memo Ex.PC attested by him and Balbir Singh. Similarly, other household articles were taken into possession vice memo Ex.PE.

With that the evidence of the prosecution was closed.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against

him were put to him but he denied the allegations contending that he does not know Jagroop Kaur and a false case has been planted upon him. During his defence evidence, he examined Gurmail Singh, resident of village Rajgarh as DW1 who deposed that on 20.8.2001, the police had gone to the residence of Gurjant Singh – accused where the police had called him being member panchayat; that he had asked from the police officer as to what was the matter to which the police officer replied that Gurjant Singh was to be interrogated and for that purpose he was being taken to the police station. However, police officer had not disclosed the details of interrogation. According to this witness, he had gone to police station but the accused was not discharged and this case was planted upon him.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he has filed the present appeal.

We have heard learned counsel for the appellant – accused-convict and learned Additional Advocate General for the State besides going through the record.

The accused in his statement under Section 313 Cr.P.C. has denied being acquainted with deceased Jagroop Kaur. However, this denial is meaningless, in view of the overwhelming evidence brought on file by the prosecution. Firstly in that regard, a reference may be made to the testimony of PW2 Balbir Singh, who categorically stated that he had given his residential house located at Shaheed Karnail Singh Nagar, Ludhiana on rent to Gurjant Singh where Gurjant Singh along with his

wife Jagroop Kaur started residing and he had gone to that house to take rent from accused. From the testimony of PW9 Surinder Singh, it can safely be gathered that accused along with deceased had been residing in rented accommodation at Shaheed Karnail Singh Nagar, Ludhiana. Thus, he (accused) cannot deny being acquainted with the deceased, rather it is established on the file that he had been residing with the deceased as husband and wife in rented accommodation at Shaheed Karnail Singh Nagar, Ludhiana as tenant under Balbir Singh. It is also apparent from the evidence adduced by the prosecution that Jagroop Kaur had died an unnatural death. From the statement of PW1 – Dr.Mohinder Singh who was member of the team which had carried on post-mortem examination on the dead body of deceased, it comes out that a fracture was found to be there on the left temporal and parietal bone of skull and death was caused due to such injury sufficient to cause death in ordinary course of nature. The dead body had been identified by PW9 Surinder Singh as deposed by him in the Court. From his testimony, it also comes out that on the fateful day, a quarrel had taken place between accused and deceased during the course of which the accused had given hammer blow to the deceased on head. Then accused had admitted the incident in the extra-judicial confession made by him before PW7 – Nirmal Singh, Sarpanch of village Phullanwal, a respectable person in whom the accused could repose confidence so as to lighten the burden of guilt he might be carrying due to killing of his wife - Jagroop Kaur since he is not shown to be a hardened criminal who could commit crime without any sense of remorse. Furthermore,

he could reasonably expect himself to be saved from police torture if produced before the police by Nirmal Singh. We do not see any reason to disbelieve the testimony of PW7 Nirmal Singh, who has categorically stated that accused had come to him and had confessed having caused death of his wife Jagroop Kaur by giving a hammer blow to her. Then from the statement of PW8 – SI/SHO Ramandeep Singh, it comes out that on 25.8.2001, accused Gurjant Singh while in police custody had suffered a disclosure statement and got a hammer recovered from a place near culvert of canal in the area of Dhapai and that hammer was stained with blood. PW4 – ASI Dalbir Singh has supported SI/SHO Ramandeep Singh in that regard. The recovery of the blood stained mattress from the residential house also supports the prosecution version. Thus the prosecution story stands fortified.

From the deposition of PW2 - Balbir Singh and PW5 HC Chanchal Singh, it comes out that on 18.8.2001, the accused was found carrying a plastic bag on his scooter which was emitting foul smell and he got perplexed when inquired about the same, not stopping his scooter and giving his satisfactory reply. Dead body of Jagroop Kaur was found to be lying in the plastic bag by Suresh Pal – complainant who had lodged report regarding the same by making statement to SI/SHO Ramandeep Singh on 19.8.2001. Furthermore, in terms of Section 106 of the Indian Evidence Act, it is for the accused – husband to explain as to how and under what circumstances death of his wife Jagroop Kaur had taken place since that fact is supposed to be within his knowledge but he had failed to render any explanation. Rather he has denied having

known Jagroop Kaur what to talk of rendering explanation as to how and under what circumstances she had been done to death. Therefore, accused has failed to discharge the burden placed upon him in terms of Section 106 of the Indian Evidence Act.

Keeping in view all the facts and circumstances, the prosecution has successfully proved that on 14.8.2001, it was Gurjant Singh who had caused death of Jagroop Kaur by giving a hammer blow on her head and fully aware of having committed a criminal act, attempted to cause evidence of that act to disappear by removing the dead body of Jagroop Kaur from his house to some other place with an intention to screen himself from legal punishment.

The plea taken by the accused in his statement under Section 313 Cr.P.C. is obviously wrong. The witness examined by him in defence DW1 Gurmail Singh does not come out to be creditworthy and his deposition does not help the accused in advancing his case.

However, keeping in view the facts and circumstances of the case, it comes out to be a case of sudden fight while accused was sitting near his scooter having a hammer with him when Jagroop Kaur had caught him from his neck and started abusing him. Resultantly, Gurjant Singh got annoyed and threw Jagroop Kaur on a cot by giving a push and then struck her on the head with a hammer. Resultantly, bleeding was started. This has been so stated by PW9 Surinder Singh in his statement to the police and while appearing in Court as prosecution witness. Therefore, in our considered view though it is a homicidal death but the offence falls within four corners of Section 304 Part 1 IPC

and not under Section 302 IPC since intention to commit murder is not found to be there. Accordingly, appeal filed by accused-convict-appellant – Gurjant Singh is allowed partly, resultantly his conviction and sentence under Section 302 IPC is set aside and he is convicted for the offence under Section 304 Part 1 IPC and sentenced to undergo rigorous imprisonment for 10 years, in addition to paying fine of ₹5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for two years. Whereas his conviction and sentence for the offence punishable under Section 201 IPC is maintained. Substantive sentences of imprisonment shall run concurrently.

Since the accused-convict-appellant is on bail in terms of the order passed by this Court on 26.10.2006 suspending his sentence of imprisonment, he is ordered to be taken into custody so as to undergo remaining part of sentence. Necessary direction in that regard be issued to Chief Judicial Magistrate, Ludhiana.

	(T.P.S. MANN)	(H.S.MADAAN)
	JUDGE	JUDGE
23.2.2017		
Brij		

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No