

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

Crl. Appeal D-927-DB of 2003

Decided on: 09.10.2017

Karambir and others

.....Appellants

vs.

State of Haryana

....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

**Present: Mr. S.S. Walia, Advocate,
for the appellants.**

Mr. Praveen Bhadu, Asstt. A.G. Haryana.

MAHABIR SINGH SINDHU, J.

Three convicts-appellants, namely, Karambir, Jasbir and Channo, have filed the present appeal against the judgment of their conviction and order of sentence dated 27.10.2003 and 01.11.2003 respectively passed by learned Additional District Judge (Ad-hoc), Hisar, under Section 302 read with Section 120-B IPC as well as under Section 498-A IPC for committing the murder of Smt. Saroj wife of Karambir-convict/appellant No.1.

2. In brief, the case of the prosecution is that on the basis of statement dated 30.03.2002 (Ex.PF) made by Jagmant son of Balwant (PW7), an FIR No.71 dated 30.03.2002 was registered under Section 302/34 and 498-A IPC at Police Station Sadar, Hansi and the English translation of the statement reads as under:-

“Statement of Jagmant son of Balwant, caste
Dhanak, resident of village Karela, Police Station Julana,
District Jind, aged 30 years.

Stated that I am resident of the above address and do labour work. I have two sisters. The elder sister is Saroj, who was married to Karambir son of Jasbir caste Dhanak and the younger, namely, Sudesh who was married to Dharambir son of Jasbir, caste Dhanak, resident of Bhatla, about 13/14 years ago according to Hindu rites and rituals, with the consent of my parents. My sister Saroj is having three sons and the eldest son is Naveen aged about 9/10 years, younger to him is aged about 6/7 years and the youngest of all is Kapil, who is aged about 4 years. After the marriage, husband of Saroj, namely, Kamarbir used to harass my sister Saroj and she used to tell the said incident of harassment whenever she came to our village Karela, but we always made her understand and sent her back. About 6 months earlier too, the husband of my sister harassed her at home and my elder brother Jaipal reached village Bhatla on the invitation of my sister, then my sister told him the whole story weepingly. My brother Jaipal due to the said reason of harassment, brought my sister Saroj to village Karela. Thereafter, father-in-law of Saroj, Shri Jasbir son of Sher Singh and sister-in-law (Nanad) Roshni came to our house and apologized for their act and conduct of harassment and assured us that whosoever will harass the girl, they would be responsible for that and we sent our sister with them. Yesterday night i.e. 29.03.2002, Ram Kumar son of Sher Singh, Taisara (elder brother of father-in-law) of Saroj, came to our village Karela and told that Saroj had consumed some spray etc. at day time about 5/6 hours and is admitted in Hansi Hospital and on this information, I and my elder brother Jaipal, my uncle Attar Singh son of Dharma, my grandfather Baru son of Chhotu and my mother Suraj Kaur and many other women went to village Bhatla and

reached the house of Karmabir son of Jasbir where we found that in the sitting room, my sister Saroj was lying on the bed sheet and was in the dead condition. We asked Karmabir and other members of his family about the incident of her death, but they could not satisfy us. When I asked my sister Sudesh about the death of Saroj, she told that yesterday about 6.00 p.m. in the evening, Karambir was having a kassi in his hand and he was giving blows with the handle of kassi on the face of Saroj and she snatched the kassi from his hands and then Karambir ran away from the spot. In the meantime, Ram Kumar, Karambir, Rajbir @ Sethi sons of Jasbir and Jasbir with his wife Channo came to the spot. My sister Sudesh also came to the spot and Saroj abruptly calling 'Maa' breathed her last and was having vomiting. My sister Saroj was compelled to consume some poisonous substance by Ram Kumar, Karambir, Rabjir @ Sethi sons of Jasbir, father-in-law Jasbir and mother-in-law Channo due to their common intention and due to this reason she has died. I was going to inform you but you have met me at Kulana bus stand. I have been pressurized for the compromise so far. I have got recorded my statement to you, which I have heard and is correct”.

3. Thereafter, the police investigated the matter and report under Section 173 Cr.P.C. was submitted against five accused. The case was committed by learned Judicial Magistrate to the Court of Sessions vide order dated 07.06.2002. learned trial Court framed charges under Sections 147, 302 read with Section 149 and 498-A IPC against all the five accused, namely, Karambir son of Jasbir, Jasbir son of Sher Singh, Rajbir son of Jasbir, Ram Kumar son of Sher Singh, Channo wife of Jasbir to which they pleaded not guilty and claimed trial. The prosecution examined 11 witnesses and brought on record the other documentary evidence to prove its case.

After completion of prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded. On the other hand, the accused examined DW-1 Yudhvir in their defence.

4. Learned trial Court after taking into consideration the material available on record, convicted the present convicts-appellants, but acquitted other two co-accused, namely, Rajbir son of Jasbir and Ram Kumar son of Sher Singh.

5. Hence, the present appeal.

6. It is argued by learned counsel for the appellants that there is no evidence available on record to prove the charges under Section 302 read with Section 120-B and 498-A IPC against the convicts-appellants, but the learned trial Court has recorded the findings only on the basis of surmises and conjectures.

7. It is further argued that undisputedly the deceased-Saroj was married with convict-appellant No.-1 (Karambir) about 13/14 years back from the date of alleged occurrence and as such there was no question of harassment and more particularly there were three children from their wedlock. He has also argued that there are material contradictions between the ocular version as well as the medical evidence and as such the appellants deserve their acquittal.

8. On the other hand, learned State counsel has opposed the contention of learned Counsel for the appellants and submitted that there is sufficient material available on record to prove the guilt of the convicts-appellants and the prosecution has successfully proved its case beyond reasonable doubt on the basis of oral as well as documentary evidence including the FSL report (Ex. P-L) and the present appeal deserves to be

dismissed.

9. Heard learned counsel for both sides and perused the paper book alongwith record carefully.

10. In the present case, the prosecution is initiated on the basis of statement of PW-7 Jagmant son of Balwant, who is the real brother of deceased-Saroj.

PW-8 Sudesh, happens to be the eye witness and she is the younger sister of deceased-Saorj and married with Dharambir (younger brother of convict/appellant No.1-Karambir).

PW-11 Dr. Love Sharma conducted the post mortem examination of the deceased and report of post mortem is Ex.P-J/1.

Rest of the PWs are the police officials including PW-10, SI Balbir Singh, who is the Investigating Officer of this case.

11. PW-8 Sudesh is claimed to be the eye witness of the occurrence and she deposed that on the date of occurrence at about 5/6 p.m., when convict-Karambir was inflicting injuries on the face of deceased with the handle of Kassi, she was there and she intervened. After 2-3 minutes all the accused entered the room. Jasbir and Ram Kumar caught hold of hands of deceased-Saroj, whereas Rajbir caught hold of her feet and Channo sat on her chest. Karambir started strangulating the Saroj and she uttered the word 'Maa' and then she died. PW8 has further deposed that her brother Jagmant and other family members reached at the place of occurrence at about 9.00 am on the next day and her brother had asked the accused about the death of Saroj but they could not give any satisfactory explanation. This witness has further deposed that then she narrated the above version to Jagmant and other family members. In her cross-examination, she deposed that convict-

Karambir used to take liquor and on some occasion entered into quarrel with his parents as they were fed up with him. She has further stated that she used to live on the upper portion (Chaubara) of the house, while Rajbir used to live in the adjoining upper portion (Chaubara) of the same house alongwith his wife Sheela, but Karambir and Saroj used to reside on the ground floor of this very house which is consisting of total 6 rooms. She has also stated that her in-laws also used to stay in the rear portion of the house near a fodder room as they had a buffalo also.

12. PW-7 Jagmant has supported the prosecution case in clear terms to his initial version to the effect that the deceased Saroj was married with Karambir about 13-14 years back whereas her younger sister Sudesh was married with Dharmabir, the younger brother of convict-appellant No.1. This witness has further stated that the deceased was being harassed and subjected to beatings by convict-appellant No.1 and she used to complain whenever she visited her parental house, but they always persuaded her and used to send her to matrimonial home with assurance. It is further stated that about 6 months prior to her death, she had sent a message to them that she was subjected to beatings by her husband under the influence of liquor and on this, his brother Jaipal went to village Bhatla and Jaipal had brought her back to their home in village Karela. It is further stated that about 15 days prior to her death, convict/appellant No.2-Jasbir alongwith Nanad (sister-in-law) of Saroj, namely, Roshni visited them and apologized and consequently assured that Karambir would not harass her in future and thus they sent Saroj back to her matrimonial home alongwith them. He has further deposed that on 29.03.2002 at about 12.30 in the night, Ram Kumar son of Sher Singh, residents of village Bhatla came to their house and

informed that Saroj has consumed insecticide and she is admitted in Civil Hospital Hansi. Upon this, he (PW-7) alongwith his brother Jaipal and other family members went to the house of the convicts-appellants and found that dead body of his sister was lying on the floor of bethak (drawing room) over a bed sheet. On their asking, the convicts-appellants could not give any satisfactory explanation and Sudesh, his sister was also present there and he narrated the version as deposed by Sudesh.

13. PW-10 Balbir Singh Sub Inspector deposed that on 13.03.2002 at about 11.00 a.m., he alongwith police officials was present at Kulana-Mor (Turn), when Jagmant Singh (PW-7) made his statement Ex.PF and after endorsment the same was sent through constable Kundan to the police station for registration of the FIR. He has further deposed that inquest report (Ex.PG) was prepared by him in the presence of Jagmant (PW-7) as well as Jaipal and recorded the statements of Jaipal and others. The dead body of Saroj was sent for post mortem and on 31.03.2002, he arrested Jasbir and Karambir from their village. He has further deposed that he had taken into possession the clothes as well as viscera of the deceased and specimen of the seals vide memo Ex.P-I attested by Randhir Singh ASI. He has further deposed that on 01.04.2002, he went to PGIMS Rohtak and made application (Ex.PJ) for seeking opinion of the doctor for cause of the death of Saroj. On 02.04.2002, he arrested Ram Kumar and Rajbir accused from their village. During cross-examination, this witness has deposed that they started from police station at 10.00 am on 30.02.2002 and Kulana Mor (Turn) is about the distance of 8 kilometers and from where the village Bhatla is about 12/13 kms. When they were present on the bus stand of Kulana Mor, Jagmant met them and made his statement Ex. PF. This

witness has further deposed that at the relevant time, he was posted as SHO P.S. Sadar Hansi and he made enquiry from Sudesh regarding occurrence and then the inquest report was prepared and he remained there for about three hours.

14. PW-11 Dr. Love Sharma, Lecturer, Department of Forensic Medicine, PGI Rohtak deposed that on 31.03.2002, he conducted the post mortem on the dead body of deceased-Saroj, referred from General Hospital, Hansi and brought by ASI Randhir Singh and Head Constable Roshan Lal. Jaipal and Jagmant, both sons of Balwant, brothers of the deceased identified the dead body. He has further deposed that rigor mortis was fully developed in the lower limbs and post mortem staining was present over the back. Slight greenish coloration was seen over the right iliac fossa and found the following injuries:-

“1. Multiple small bruises over the lower lip of size between 0.25 X 0.5 and 0.5 to 1 cm on dissection under lying tissues were echymosed.

2. Defuse contusion on front of the neck on the left side of size 6 X 4 cms situated 2.5 cms to the left of mid line of the neck and 3.5 cms below ramus of mandible. (which is obliquely placed on dissection underlying tissues of neck were deeply congested).

3. A defuse contusion on the right side of neck on the front of size 3.5 X 2.5 cms situated to 4 cms in the mid lines of the neck and 2.5 cms below right ramus. On dissection underlying tissues of neck the deeply congested the hyoid was intact.

The final opinion regarding cause of death will be opined after receipt of chemical examiner's report as viscera had been preserved for the same.”

15. PW-11 has further deposed that sealed envelop with five seals

containing forwarding memos were sent to the Director, FSL alongwith copy of post mortem report (Ex.PJ/1). After receiving the report of FSL (Ex.PL), the cause of death in his opinion was found to be 'manual strangulation coupled with administration of organo phosphorous pesticide to the victim'. The possibility of death being caused at 6.00 p.m. on 29.03.2002 was also noted. During the cross-examination, the witness has deposed that he had mentioned in the opinion part that cause of death was 'manual strangulation'; but he has stated that the final opinion regarding cause of death will be given after receipt of report of chemical examination. During cross-examination, this witness has categorically stated that after going through the report of FSL, the cause of death is not only the consumption of organo phosphorous compound, but also manual strangulation and this is based upon the nature of injuries described in the PMR. He has further stated in his cross-examination that congestion of the tissues of the neck mentioned in PMR was due to strangulation and not because of the consumption of poison and it is not always that on manual strangulation, the eyes of the victim will blaze out and there will be bleeding from the nose and mouth and he has further stated that the tongue does not come out in each and every case.

16. Karambir-convict/appellant No.1 in his statement under Section 313 Cr.P.C. has explained that he was not present at the house and the deceased consumed spray (pesticides) and he is innocent.

17. Jasbir-convict/appellant No.2 in his statement stated that he is innocent and falsely implicated.

18. To the same effect is the statement of Channo.

19. The plea of defence is not acceptable in view of the injuries found on the body of the deceased as well as testimonies of PW-7 and PW-8. As discussed above in para Nos. 11 and 12, after taking into consideration, the post mortem report (Ex. PJ), testimony of Dr. Love Sharma PW-11 and FSL report Ex.PL it clearly reveals that cause of death in this case was 'manual strangulation coupled with administration of organo phosphorus pesticide to the victim' and as such the testimony of DW-1 is rejected.

20. The relevant part of the FSL report (Ex.PL) reads as under:-

“An organo phosphorous pesticide was detected in Exhibits-1, 2a, 2b and 2c.

21. So far as Ex. 2a, 2b 2c are concerned, these were the viscera of deceased i.e. Stomach and its contents, loops of small and large intestines and pieces from liver, spleen and kidneys but Ex.1 is a red coloured chunni, a multi coloured lady's Jumpher and salwar having some brownish stains at several places, some pieces of light green-blue coloured glass bangles, a white metallic “pajeb”, two white metallic “chutkis” and a yellow metallic ear ring.

22. Therefore, it is apparently clear that pesticides was administered forcibly to the deceased and that is the precise reason that it has come in the FSL report on the exhibit-1, otherwise there was no occasion to find the poisonous substance on the above articles/organs if she had consumed the same at her own. This fact is further corroborated with the injuries mentioned in the post mortem report of the deceased. Even the doctor who conducted the post mortem has clearly and in unequivocal terms deposed that cause of death in this case was 'manual strangulation coupled with administration of organo phosphorus pesticide to the victim'.

Therefore, the plea of the convict-appellant No.1 that she ended her life by consuming pesticide and he is innocent, is not acceptable and same is liable to be rejected, rather in view of the evidence available on record, i.e. in view of the oral testimony of PWs especially 7 and 8 as well as the deposition of Dr. PW-11 and medical evidence (PMR) coupled with FSL report, this court has come to the definite conclusion that it is the convict/appellant-Karambir, who committed the murder of Saroj.

23. DW-1 Yudhvair Singh has tried to support the case of the convicts-appellants by deposing that Karambir is working as a labourer (siri) in his fields for the last 3 years and residing separately from his parents. He has further stated that they have sown fenugreek (methi) and wheat crop and pesticide (spray) was sprinkled on the methi crop on 28.03.2003 and Saroj died on account of consumption of insecticides.

24. So far as the case of the prosecution against convicts-appellants No.2 and 3 i.e. Jasbir and Channo are concerned, the same is not proved beyond reasonable doubts in view of the fact that in the initial version (Ex. PF), it has been stated by Jagmant (PW-7) that on the basis of the information given by his sister Sudesh (PW-8) the deceased was compelled to consume some poisonous substance by Ram Kumar, Karambir, Rajbir @ Sethi, Jasbir and Channo. So far as Ram Kumar and Rajbir @ Sethi are concerned, both have been acquitted by learned trial Court and no appeal has been preferred against their acquittal and so far as Jasbir and Channo are concerned, the only allegation was that deceased was compelled to consume some poisonous substance but there is no evidence to prove the allegations against these two appellants.

25. PW-8 Sudesh while recording her statement under Section 161

Cr.P.C. (Ex.DA) had not alleged that Jasbir caught hold of hands of Saroj and Channo sat on her chest. Similarly, PW-7 Jagmant was also confronted during his cross-examination that while recording his statement under section 161 Cr.P.C. (Ex.PF) he had not mentioned that Jasbir caught hold of the hands of deceased and Channo was sitting on her chest. Therefore, this seems to be the improved version just to implicate the entire family members and thus the prosecution has failed to prove that convicts-appellants No.2 and 3 are guilty beyond reasonable doubt.

26. Even as per the testimony of PW-8 Sudesh also, her in-laws i.e. convicts-appellants no.2 and 3 used to stay in the separate room, the rear portion of the house situated near fodder room as they had kept a buffalo. It means the in-laws of deceased were residing separately although in the same house. Whereas the deceased alongwith her husband and three children were residing on the uppar part (chaubara) of the same house. Therefore, in these circumstances, it cannot be construed that in-laws i.e convicts-appellants No.2 and 3 would have shared a common intention to commit the murder of the deceased-Saroj without there being any cause especially when the marriage of convict-appellant No.1 and deceased had taken place 13-14 years back prior to the date of occurrence. Although there may be reason(s) for harassment at the hands of convict/appellant No.1-Karambir but this Court has doubt about the complicity of convicts-appellants No.2 and 3 Jasbir and Channo and as such they both are entitled to the benefit of doubt and consequently acquitted of the charges levelled against them.

27. In view of the above, the appeal of the convict-appellant no.1 Karambir is dismissed and his conviction is converted to Section 302 IPC instead of Section 302 read with Section 120-B, whereas his conviction

under section 498-A is maintained and convicts-appellants No.2 and 3 Jasbir and Channo are ordered to be acquitted of the charges of them.

28. It transpires that convict/appellant No.1-Karambir had been granted bail by this Court vide order dated 04.10.2007. His bail bonds stand cancelled. He shall surrender within 15 days from the date of this judgment before the Chief Judicial Magistrate, Hisar who shall send him to jail to undergo the remaining part of the sentence. If he fails to surrender, the learned Chief Judicial Magistrate, Hisar shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

29. Appeal is partly allowed in the above terms.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

09.10.2017

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No