

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

CRA-D-171-DB of 2004
Decided on:-July 06, 2017.

Mehtab Singh.

.....Appellant.

Versus

State of Haryana.

.....Respondent.

***CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE HARI PAL VERMA.***

Present:- Ms. Anju Arora, Advocate
for the appellant-accused.

Mr. Praveen Bhadu, Assistant Advocate General, Haryana
for the respondent-State.

HARI PAL VERMA, J.

The present appeal has been filed by the sole convict Mehtab Singh son of Chalu Ram, resident of village Hassanpur challenging the judgment of conviction and order of sentence dated 15.01.2004 passed by learned Additional Sessions Judge (Adhoc), Jhajjar.

Vide the aforesaid judgment and order of sentence, learned trial Court had convicted the appellant under Section 302 IPC for having committed the murder of his brother Balwan Singh and sentenced him to undergo the imprisonment for life and to pay a fine of Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for six months.

As per prosecution, on 04.06.2002, a police party headed by ASI

Om Parkash of Police Station Jhajjar along with HC Suraj Bhan, EHC Vikram Singh and Constable Krishan Kumar was on patrolling duty. At about 07.00 AM, when these police officials were present at the Bus Stand on Kosli Road, complainant Savita wife of deceased Balwan Singh appeared before them. She was accompanied with Ram Chander Sarpanch of the village. She reported to ASI Om Parkash that the complainant and her elder sister Kamini were married in the year 1988. While Kamini was married with accused Mehtab Singh (appellant herein), the elder brother of deceased Balwan Singh, the complainant (Savita) was married to Balwan Singh. But after the marriage, Mehtab Singh and Kamini developed some differences and, therefore, Kamini had obtained a decree of divorce against Mehtab Singh. Kamini had taken back the dowry articles which she had brought at the time of her marriage. However, when Kamini was in the process of lifting her dowry articles, accused Mehtab Singh asked his younger brother (deceased Balwan Singh) that he should also leave his wife i.e. complainant Savita and her dowry articles should also be loaded along with the dowry articles as being lifted by Kamini. However, Balwan Singh did not pay any heed to it and accused Mehtab Singh got annoyed with him. He started nursing a grudge against him.

The complainant had two children i.e. a son named Amit aged about 13-14 years and a daughter aged about 12 years. She was residing with her husband peacefully in the same house where accused Mehtab Singh was also residing, but in a different portion. The house had a courtyard in front of it and a four-wall.

On the intervening night of 3/4 June, 2002, accused Mehtab

Singh entered the house in a drunken condition. He started abusing Balwan Singh (deceased) blaming him for spoiling his matrimonial life, whereas Balwan Singh was leading a peaceful life. Therefore, the accused declared that he would spoil his matrimonial life also. On the fateful night i.e. the night intervening 3/4 June, 2002, while the complainant, her husband Balwan Singh and children went to sleep inside their house after taking their meal, it being hot inside the room, her husband Balwan Singh took his cot outside in the courtyard. The complainant though warned her husband that the accused was in a drunken condition and, therefore, he should be careful about him as it is not safe to sleep in the courtyard. There was electric light in the courtyard.

At about 12.00 in the midnight, when the complainant had gone outside the house along with her son Amit, as he wanted to make water and, thereafter, she came back to her cot. While she was still awake, the accused came to the cot of Balwan Singh with an axe in his hand and started inflicting axe blows to Balwan Singh at his neck and chest when he was sleeping on the cot. He gave numerous blows to Balwan Singh with the axe. The complainant and her son Amit had seen the occurrence through the Jangla (window) of their room. They both raised an alarm. Thereafter, the accused rushed out of the house in the street with the axe in his hand. The complainant opened the door and rushed out of the room along with her son Amit and found that Balwan Singh had expired on account of the injuries sustained by him.

On hearing the alarm of the complainant and her son, the persons sleeping in the neighbouring houses woke up and some of them turned up, including the Chowkidar and the Sarpanch of the village. Her mother-in-law Chhoti Devi, who was residing with accused Mehtab Singh in the other

portion of the house also woke up and came at the spot. Thereafter, the complainant left the dead body in the care and custody of Chowkidar of the village and while she was going to the Police Station for reporting the matter accompanied by Ram Chander Sarpanch of the village, she met ASI Om Parkash along with other police officials at Bus Stand Kosli Road, Jhajjar.

The statement (Ex.PC) of the complainant was recorded and was read over to her, who put her signatures thereon after admitting the same as correct. In this manner, a formal FIR (Ex.PC/1) was recorded by ASI Satya Narain (PW10) at Police Station Jhajjar on 04.06.2002 at 07.40 AM. The special report dated 04.06.2002 was submitted at 10.00 AM by Constable Dalbir Singh (PW13) at the residence of the Magistrate within one hour. The Assistant Sub Inspector accompanied the complainant to the spot of occurrence and inspected the site and had seen the dead body of Balwan Singh lying on the cot. He arranged a photographer, so as to take the photographs of the dead body. Thereafter, he prepared inquest report Ex.PQ of the dead body which was identified by Hajari Lal and Nahar Singh and their statements were recorded. The statements of Amit and Chhoti Devi were also recorded. ASI had picked up the blood stained earth from the spot which was sealed in a Dibbi (small box) and was taken into possession vide recovery memo Ex.PB in the presence of witnesses of the spot of occurrence i.e. courtyard of the house of Chalu Ram son of Nandar, where the dead body of Balwan Singh son of Chalu Ram was lying on the cot. The blood stained earth was sealed after converting it into a parcel. The recovery memo of blood stained earth (Ex.PD) and recovery memo of Guddar (bedding) of one of cot (Ex.PE) were taken into possession. The memos Ex.PD and Ex.PE were

attested by Ram Chander Sarpanch and Dheer Singh Chowkidar. Rough site plan of occurrence was prepared with marginal notes in the hand. The dead body of deceased was sent to Civil Hospital, Jhajjar for post-mortem examination through HC Suraj Bhan and EHC Vikram Singh with his application Ex.PA/2 seeking doctor's opinion. The application was addressed to the doctor for conducting the post-mortem examination of the deceased. The SHO Mahender Singh and DSP Narender Singh also visited the spot and had verified the investigation made by the ASI. Ex.PA is the post-mortem report of deceased Balwan Singh, wherein the doctor had opined the cause of death of the deceased as haemorrhage and shock as a result of injuries described, which are ante-mortem in nature and are sufficient to cause death in due course.

The ASI took the sealed parcel in possession vide recovery memo of parcel Ex.PG along with an envelope containing sealed impressions. The recovery memo was attested by EHC Vikram Singh and ASI Om Parkash of Police Station Jhajjar. After completing the spot investigation, ASI Om Parkash had gone towards the turn of village Surhati and at that place, the accused was found lying in a Kotha. On inquiry by the police official, he told his name as Mehtab Singh. Therefore, he was arrested in the case. His clothes were having blood stains. The police officials made arrangement for separate clothes for him and his vest (Koti), shirt and Pyjama were obtained and sealed in a parcel with a seal vide recovery memo Ex.PF attested by Hawa Singh and Nahar Singh. On interrogation by ASI Om Parkash, the accused made a disclosure statement (Ex.PJ) that 'in the intervening night of 3/4.6.2002, I had committed murder of Balwan Singh with an axe while he was sleeping on the

cot. I have kept concealed axe in a blank bag of a Tat in the Kothera of tubewell. None except me knows about that. I can get recovered the same after demarcation.'

Pursuant to the disclosure statement, the accused led the police party and the witnesses to the tubewell Kotha and got recovered the Kulhari (axe) from there. The axe was sealed and taken into possession vide recovery memo Ex.PJ after preparing its rough sketch Ex.PK (Khaka of axe). The recovery memo was attested by the witnesses. The sealed parcel of Kulhari (axe) was handed over to the MHC for safe custody and on 06.06.2002, ASI Om Parkash obtained the sealed parcel of Kulhari (axe) from MHC for obtaining the opinion of the doctor. He produced the same before the doctor, who vide report Ex.PA/3 had opined that the injuries on the person of the deceased could be possible with that Kulhari (axe).

The police conducted investigation and submitted a report as provided under Section 173 Cr.PC. Accordingly, the accused was challaned. On receipt of the Challan, the case was committed to the Court of Session by learned Magistrate. On the basis of documents relied upon by the prosecution, the trial Court found a *prima facie* case under Section 302 IPC having been made against the accused. Accordingly, he was charged for the offence under Section 302 IPC to which he did not plead guilty and, rather, claimed trial.

The prosecution has examined as many as 14 witnesses.

Dr. Aruna Sangwan, who conducted the post-mortem examination on the dead body of Balwan Singh on 04.06.2002, had appeared in the witness box as PW1. She found as many as 15 injuries on the person of

deceased Balwan Singh. The probable time between the death and post-mortem was 24 hours and she conducted the post mortem examination on the police request Ex.PA/1. On police request Ex.PA/2 dated 06.06.2002 and on showing the axe (Kulhari), the doctor gave her opinion Ex.PA/3 that all the injuries shown in the post-mortem report on the person of Balwan could be possible with the weapon shown to her. In her cross-examination, PW1 deposed that different type of injuries can be caused depending upon the angle of the axe while using it. The blunt injuries found on the body of the deceased could be possible with the wooden handle of the axe or in those cases the injuries could have been given with the reverse side.

Since complainant Savita (wife of deceased Balwan Singh) and Amit (minor son of deceased Balwan Singh) were the eye-witnesses of the occurrence, they were examined as PW4 and PW5 respectively.

Complainant Savita (PW4) had deposed that in the year 1988, she and her sister Kamini were married at one common ceremony with Balwan Singh and Mehtab Singh respectively. However, after marriage, accused Mehtab Singh and his wife Kamini could not pull on well as the accused was in the habit of taking liquor and used to beat his wife. He also used to burn his wife with lighted Biris. Therefore, she obtained divorce and their marriage was dissolved by a decree of divorce. Kamini took away her dowry articles and this annoyed the accused. He, rather, asked his younger brother Balwan Singh (deceased) that he should also throw away the dowry articles received at the time of his marriage and to leave his wife. But Balwan Singh did not agree with him and paid no heed to his utterances.

On the intervening night of 03/04.06.2002, the accused entered

the house with an axe in his hand and started inflicting axe blows at Balwan Singh. This witness (PW4) and Amit (PW5) had seen the occurrence through the Jangla (window) of their room. They raised an alarm, but the accused ran away along with the axe. The complainant and Amit came out of the room and found Balwan Singh dead with injuries on his neck, chest and hands. On raising their alarm, some persons from neighbourhood rushed to the spot, which include the Sarpanch and Chowkidar of the village. Her mother-in-law Chhoti Devi, who was residing with the accused in another portion of the house also rushed to the spot. Leaving the Chowkidar on the spot, she met the police party along with Ram Chander Sarpanch. Accordingly, her statement Ex.PC was recorded which led to the registration of the FIR.

Amit (PW5) has also deposed on similar lines as deposed by complainant Savita (PW4). He has stated that they had seen the occurrence from the Jangla (window) of their room and had seen that accused Mehtab Singh was giving axe blows to his father Balwan Singh, who was lying on the cot in the courtyard. After giving axe blows, the accused ran away along with the axe. Thereafter, his mother (PW4) accompanied by the Sarpanch had gone to the police for reporting the matter.

Ram Chander (PW6), who was Sarpanch of the village and accompanied the complainant to the Police Station has also supported the prosecution version.

The accused in his statement under Section 313 Cr.PC had stated that he was falsely implicated in the case as he had divorced his wife Kamini, who is real sister of complainant Savita. Kamini is employed in the Haryana Police and at the relevant time, she was posted in S.P. Office, Jhajjar.

Therefore, in collusion with the local police and her sister Savita got him (accused) falsely implicated in the present case and the murder of Balwan was committed by some unknown person.

After going through the evidence brought on record, the trial Court held the appellant-accused guilty of the charge framed against him and he was sentenced for the period mentioned hereinabove.

It is in these circumstances, the present appeal has been preferred by the appellant-convict challenging his conviction and the sentence awarded.

Learned counsel for the appellant-convict has argued that the prosecution has failed to explain the injuries sustained by the deceased. The prosecution is required to explain the injuries attributed to the accused. He has further contended that firstly, there is an inordinate delay in reporting the matter to the police. There is no plausible explanation for delayed FIR. The conduct of the complainant-wife, mother and children of the deceased is doubted for the reason that they had noticed the injuries on the person of the deceased, but he (deceased) was not taken to the hospital by these family members. Further, no efforts were made by the complainant or her son Amit to save the life of deceased Balwan from the clutches of appellant Mehtab Singh. Neither the fingerprints were taken from the axe nor blood group was matched.

He has further submitted that the mother of the deceased, namely, Chhoti Devi was staying in the same premises, but she was not examined by the prosecution. The only witnesses on the basis of whom the conviction is based are interested witnesses having motive in their mind.

On the other hand, learned State counsel has vehemently argued that there was no delay in lodging the FIR by the complainant. She had raised an alarm and the persons from the locality reached the spot. The matter was immediately reported to the police. Considering the nature of injuries so inflicted upon the deceased, who had apparently died on the spot, there was no occasion for them to take the deceased to the hospital.

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

As per the case of prosecution, after marriage, appellant-convict Mehtab Singh and his wife Kamini could not pull on well and some differences had taken place between them. For such differences, Kamini had obtained a decree of divorce against the appellant and their marriage was dissolved. Kamini had also taken back her dowry articles which she had brought at the time of her marriage. The appellant got annoyed on that account. He, rather, asked his younger brother Balwan Singh (deceased) that he should also throw away the dowry articles received at the time of marriage and also to leave his wife i.e. complainant Savita. Appellant had asked Balwan Singh (deceased) that the dowry articles of Savita be also lifted along with the dowry articles of Kamini. Since Balwan Singh did not pay any heed to it, the appellant got annoyed and started nursing a grudge against him. The appellant declared that he would spoil the matrimonial life of Balwan Singh (deceased) as well.

The appellant-convict had been residing in the same building, though in a separate portion and on the intervening night of 03/04.06.2002, he entered the house in a drunken condition and started abusing Balwan Singh

(deceased) that his matrimonial life should also be spoiled as he was residing peacefully with his wife Savita. The complainant along with her husband and children were sleeping inside their room after taking their meal. At about 11.00 PM, Balwan Singh (deceased) took his cot outside in the courtyard by saying that he was feeling hot inside the room. The complainant warned him that the appellant was in a drunken condition and, therefore, he should be careful about him. At about 12.00 in the midnight, Amit son of deceased Balwan Singh woke up as he wanted to go out to make water and the complainant accompanied him. She was still awake when the appellant entered the house with an axe in his hand and started inflicting axe blows on the person of Balwan Singh (deceased). The entire incident was noticed by the complainant and her son Amit through the Jangla (window) of their room and both of them had raised an alarm.

After inflicting the injuries on Balwan Singh (deceased), the appellant rushed out of the house in the street with the axe in his hand. The complainant (PW4) and Amit (PW5) came out of the room and found that Balwan Singh had expired because of injuries sustained by him. The complainant raised an alarm and on hearing the same, some persons from neighbourhood rushed to the spot including the Chowkidar and Sarpanch of the village. Even the mother of appellant and deceased Balwan Singh, namely, Chhoti Devi, who was residing with the appellant in the other portion of the house also woke up and arrived at the spot.

Dr. Aruna Sangwan, who had conducted post-mortem examination on the body of deceased Balwan Singh, while appearing in the witness box as PW1 deposed that she found the following injuries on the body

of deceased:

- “1. *There was incised wound 8X3 cm. red colour just below right pinna with right ear lobule cut underlying ramis of mandible fracture was seen through the wound.*
2. *There was an incised wound of red colour of 6x5 cm. on right side of neck. 3 cm. below injury No.1.*
3. *There was an incised wound of 7x3 cm. situated just above the right clavical. 5cm. below injury No.2 on cut section of injury No.1,2,3. The underlying muscles and sub cutaneous tissues were cut. Trachea and oesophagus were out through and throughout.*
4. *There was an incised wound of 8x2 cm in super sterna region in midline underlying structures and sub cutaneous tissues were cut.*
5. *There was an incised wound of 3x1 cm. on left side of manubrium sternoid. 7cm. from midline.*
6. *There was lacerated wound of 1.5x5cm.1cm. above angle of mandible.*
7. *There was lacerated wound of 6x2 cm. under the chin.*
8. *Incised would of 7x3cm. on the midline 3cm above supra sternal notch was present.*
9. *There was incised wound of 3x2 cm on the left side of sternum at 2nd costochongreal junction. All vessels were cut.*
10. *Lacerated wound of 4x2 cm on anterior aspect of left shoulder was present.*
11. *There was abrasion of 6x1 cm at the tip of left shoulder.*
12. *There was a abrasion of 7x2 cm on right side of chest, 6 cm above right nipple.*
13. *There was an incised wound of 2x5 cm and 1.8x4 cm at the base of dorsume of left index finger.*
14. *There was incised wound of 3x4 cm. on middle phalynx in upper 1/3rd.*

15. *There was an incised wound of 2x5 cm. at the base of left.”*

This witness had opined that the cause of death of the deceased was haemorrhage and shock as a result of injuries described which were antemortem in nature and sufficient to cause death in due course. In her cross-examination, she has specifically stated that the blunt injuries found on the body of the deceased could be possible with the wooden handle of the axe or in these cases the injuries could have been given with the reverse side.

Interestingly, Chhoti Devi, who is mother of the appellant-convict and deceased Balwan Singh, could have been examined by the appellant-convict, but he did not examine any witness in his defence, whereas the prosecution in support of his case has examined as many as 14 witnesses including two eye-witnesses i.e. complainant Savita as PW4 and Amit as PW5 whose evidence is quite consistent. The ocular evidence in the case is also corroborated by the medical evidence produced on behalf of the prosecution, which is sufficient to prove the guilt of appellant Mehtab Singh.

Therefore, this Court does not find any illegality in the well reasoned judgment of conviction passed by the trial Court, which is based upon proper appraisal and appreciation of evidence and correct interpretation of law. Similarly, there is no illegality or infirmity in the impugned order of sentence.

Accordingly, the impugned judgment of conviction and order of sentence dated 15.01.2004 passed by learned Additional Sessions Judge (Adhoc), Jhajjar are upheld, whereas the present appeal is found to be without any merit and the same is dismissed.

The bail granted to the appellant-convict by this Court vide order dated 01.10.2007 is cancelled. The Chief Judicial Magistrate, Jhajjar is directed to issue warrant of arrest of the appellant so as to make him undergo the remaining part of his sentence.

July 06, 2017 Yag Dutt	(T.P.S. MANN) JUDGE	(HARI PAL VERMA) JUDGE
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Whether speaking/reasoned:	√ Yes/No
Whether Reportable:	√ Yes/No