

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

CRA D-20-DB of 2004

Date of Decision: November 7, 2017

Pintoo	Versus	Appellant
State of Haryana		 Respondent

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

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

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

T.P.S.MANN, J.

The present appeal is filed by convict Pintoo son of Naresh Chand, aged 18 years, resident of Neeknampur Namhi, District Gaziabad whereby he has challenged the judgment and order dated 14.10.2003 passed by Additional Sessions Judge (Adhoc) Faridabad. Vide impugned judgment and order, learned trial Court convicted the appellant under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.20,000/- and in default of payment of fine, to undergo further rigorous imprisonment for one year. The entire amount of

fine, if and when recovered, was ordered to be paid to PW4 Hari Pal as compensation.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted on 23.2.2004. Subsequently, vide order dated 13.11.2006, the Court had suspended his sentence of imprisonment and released him on bail.

According to the prosecution, Hari Pal complainant was resident of Jhariya Colony, Sarai Khawaja, Faridabad and working in LIC at Delhi. He had four daughters and one son. Four boys, namely, Pintoo appellant, Bali, Pritam and Amit also resided in his house. They belonged to the village of his wife Kamlesh. On 28.8.2000 at about 9.00 a.m., the complainant left his house for going to office duty. At about 12.00 noon, he received a telephone call made by Amit who asked him to reach home immediately as something had happened with his aunt (bhua). The complainant returned home and saw his wife Kamlesh in the kitchen with face towards ground, left side of her head was burnt and there was blood lying in the room. Amit told him that he and Pintoo had gone to gas agency at about 9.30 am. to bring cylinder. Pintoo came back to the house whereas he, i.e Amit stayed there. Amit had asked Pintoo as to why he was returning to the house but he did not say anything. At about 11.30 a.m. Amit returned home with

a cylinder and saw Pintoo coming out of the house and his clothes and hands were stained with blood. He was having a plier (Plass) and knife in his hand. Amit had tried to stop Pintoo but he could not do so. When Amit went inside he saw his bhua lying dead in the kitchen and her face was towards the ground. Her head was burnt and blood lying scattered in the room. Amit was satisfied that it was Pintoo who had murdered his aunt Kamlesh as 10/15 days ago his (Amit's) amount of Rs.1400/- was stolen and he had brought this fact to the notice of his aunt Kamlesh. She had asked from all of them and had a suspicion against Pintoo. For that reason, Pintoo had murdered his aunt Kamlesh. Amit, thereafter, told the above facts to the complainant who left for the police station to lodge a report and met SI Jaibir Singh at Toshi Chowk where he got recorded his statement Ex.PD, which was recorded on 28.8.2000 at 2.30 p.m. SI Jaibir Singh then prepared ruqa and sent the same through Constable Raj Kumar to Police Station Sarai Khawaja where on it basis FIR Ex. PG under Section 302 IPC was registered against the appellant on 28.8.2000 at 2.40 p.m. by ASI Siri Bhagwan. Special report sent through Constable Mahesh Kumar was received by the Ilaqa Magistrate, Faridabad at his residence on 28.8.2000 at 7.50 p.m.

During the investigation of the case, SI Jaibir Singh visited the spot and prepared rough site plan Ex.PH. He lifted

blood stained earth from the spot alongwith broken glass bangles, two gold ear rings and one silver chutki, which were taken into possession vide memo Ex.PJ. Thereafter, he prepared inquest report Ex.PK and moved application Ex.PL for conducting post-mortem. He recorded the statements of the witnesses under Section 161 Cr.P.C. The appellant was arrested on 29.8.2000 and produced before the Ilaqa Magistrate on 30.8.2000 when his police remand was obtained for one day. Pursuant to disclosure statement Ex.PE, the appellant got recovered knife which he had kept concealed near Tilpat Road, Ashoka Enclave. On 28.8.2000 SI Jaibir Sing had taken into possession gas cylinder and rubber pipe vide memo Ex.PM. On 8.9.2000, he moved application Ex.PN before the Medical Officer V.K. Hospital, Faridabad regarding the opinion about the weapon as to whether the injuries could be caused with the same and the doctor opined that the injury could be caused by knife. Scaled site plan Ex.PA was prepared by Manoj Kumar Draftsman on 23.9.2000. After the completion of the investigation and presentation of final report under Section 173 Cr.P.C., the case was committed to the Court of Sessions where the appellant was tried for the offence under Section 302 IPC to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined eleven witnesses.

PW1 Manoj Kumar, Draftsman, testified that on 23.9.2000, he prepared scaled site plan Ex.PA on the asking of SI Jaibir Singh.

PW2 Head Constable Surender Singh tendered in evidence his affidavit Ex.PB regarding sending of the case property to the Forensic Science Laboratory.

PW3 Girraj Singh, Photographer, testified that on 28.8.2000, he had taken photographs of the spot. The positives were Ex.P1 to Ex.P11 while the negatives P12 to P22.

PW4 Hari Pal testified in terms of the statement Ex.PL made by him before SI Jaibir Singh on the basis of which FIR was registered. He also testified about the interrogation of the appellant who admitted his involvement in the case. However, he did not state about suffering of disclosure statement by the appellant leading to recovery of plass and knife at the instance of the appellant and, accordingly, after getting him declared hostile, learned Public Prosecutor cross-examined him.

PW5 Savita, daughter of Hari Pal complainant, who was aged 18 years and student of 1st year at Sarai Khawaja testified that in the year 2000, she was doing private job in computer centre in Old Faridabad. On 28.8.2000, she left her house in the morning at 8 O'clock and on reaching the office learnt that due to death of someone, a holiday had been

declared. Accordingly, she returned home at 11.00 a.m. and found smoke coming out from the kitchen of the house. When she went there, she noticed the appellant holding a knife and giving a blow with the same to her mother Kamlesh. There was fire on the floor where her mother was lying. She also deposed that the appellant was also giving blows by means of plass, which he was having in his hand to his mother and when she raised an alarm, the appellant escaped from the spot after giving her a push. In the meantime, her brother Amit had reached the house, who also tried to stop the appellant but could not do so.

PW6 Constable Rajinder Singh tendered in evidence his affidavit Ex.PF regarding taking of case property to the Forensic Science Laboratory.

PW7 Constable Mahesh Kumar deposed that on 28.8.2000, M.H.C., P.S. Sarai Khawaja handed over to him special report, which he delivered to the Ilaqa Magistrate and others.

PW8 SI Siri Bhagwan testified that on 28.8.2000, when he was posted as ASI at Police Station Sarai Khawaja, he had recorded formal FIR Ex.PG on receipt of ruqa Ex.PC.

PW9 SI Jaibir Singh testified about the various steps taken by him during the investigation of the case.

PW10 Dr. S.K. Khurana, Medical Officer, B.K.

Hospital, Faridabad testified that on 29.8.2000, he conducted post-mortem on the dead body of Kamlesh wife of Hari Pal. It was a body of well built female. Rigor mortis was present all over the body. It was wearing white painted shirt, green petticoat and red sari. Clothes were torn and partly burnt. Following injuries were found:-

- “1. Lacerated injury 2cm x ½ cm x bone deep on the left parietal region. Semi clotted blood was present and underlying bone was fractured.
2. Two lacerated injuries on the margin of pinna of right ear through and through measuring ¾ cm.
3. Burns over scalp, face, neck, left arm, part of chest, lower part of abdomen, buttocks, external genitalia and upper 2/3rd of left thigh. Smoke was present. There was no redness, no bullae and no echymosis.
4. Contusion on the right side of face and forehead”.

In his opinion cause of death was head injury. Injuries were ante mortem in nature. He further opined that death was instantaneous and time between death and post-mortem was less than 24 hours. He further deposed that on the application Ex.PN submitted by the police, he gave his opinion Ex.PN/1 that injury No.2 could be result of knife whereas injuries No. 1 and 4 by plier

(plass).

PW11 Amit Chauhan son of Rishi Pal Chauhan testified that on 28.8.2000, he was staying with his aunt Smt. Kamlesh. The appellant was residing with them. In the morning, he woke up and so did the appellant. They had slept in separate rooms. He alongwith the appellant went to bring a gas cylinder but the supply had not been received by then. He kept sitting at the gas agency whereas the appellant told him that he would come back after 15 minutes and, accordingly left, but he did not return. After the cylinder became available, he carried the same to the house of his aunt where he saw the appellant running away. At that time, he himself was at a distance of about 150 paces from the house of his aunt. The appellant was holding tools like plass etc. and his buttons had come off and shirt stained with blood. The appellant was apprehended by the persons, who had collected there. He, i.e. Amit Chauhan went to the house of his aunt and saw her lying dead in the kitchen of the house. There were blood stains in the room and also on the roof and the stairs. He telephoned his relatives and the police arrived. He made statement before the police. The gas pipe attached with the cylinder in the kitchen had been cut and there was a fire. The police brought the fire in control. The bangles and chutki of the deceased were taken into possession by the police vide memo

Ex.PJ.

Before closing the prosecution case learned Public Prosecutor tendered in evidence report Ex.PX of the Forensic Science Laboratory.

When examined under Section 313 Cr.P.C., the appellant denied the prosecution allegations. According to him, it was a false case and PWs had deposed falsely. He was innocent. No recovery was made at his instance and the police had falsely implicated him. In his defence, the appellant did not examine any evidence.

After hearing learned counsel for the parties and on going through the evidence available on the record, learned trial Court accepted the prosecution case and convicted and sentenced the appellant, as mentioned above.

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

According to the prosecution PW5 Savita and PW11 Amit Chauhan were the eye witnesses of the occurrence in question in which Smt. Kamlesh was done to death. PW5 Savita happened to be the daughter of the deceased. She had left her house on the day of the incident at about 8.00 a.m. so as to be at her place of work in Old Faridabad. When she reached her office,

she learnt that due to death of someone it had been declared a holiday. Accordingly, she returned home and reached there at 11.00 a.m. She found smoke coming out from the kitchen of her house. When she went there she noticed the appellant having a knife and giving a blow with the same to her mother Kamlesh. There was also fire on the floor where her mother was lying. She had also seen the appellant giving blows by means of plass to her mother. When she raised an alarm, the appellant gave her a push and escaped from the spot. In the meantime, her cousin Amit had also reached the spot, who tried to apprehend the appellant but could not do so. During her cross-examination, she stated that it took her about 15 mintues from Old Faridabad to reach Sarai Khawaja. When she had reached there, none from the neighbourhood was present nor at the time when she raised alarm. She had noticed the clothes of the appellant, which were stained with blood. When she had reached home, the appellant remained there for five mintues and, thereafter, he escaped. She also deposed that when she returned home, she had noticed the appellant holding gas pipe in his hand and due to the flames her mother was burning. She went on to add that since she had become unconscious due to the incidence, she did not know when her father arrived from his office. She had regained consciousness at 3.00 p.m. or so on that day. She denied the

suggestion that she did not see any incident or that she was introduced as false witness or that the appellant did not cause any injury to her mother.

PW11 Amit Chauhan deposed that he was staying with Kamlesh, his aunt in relation in Jhariya Colony, Sarai Khawaja, Faridabad. The appellant was also residing with them. On the day of the incident, he woke up in the morning and so did the appellant. Both of them left the house for bringing a gas cylinder. The supply had not been received by that time. He kept sitting at the gas agency whereas the appellant left after saying that he would return after about 15 minutes but he did not return. Later on after collecting the cylinder he reached the house of his aunt and saw the appellant running away. At that time, the appellant was at a distance of 150 paces from the house of his aunt and was holding tools like plass etc. His shirt buttons had come off and the shirt was also stained with blood. The appellant was apprehended by the persons, who had collected there. The witness then went inside the house and found Smt. Kamlesh lying dead in the kitchen and there were blood stains in the rooms and also on the roof and stairs. The gas pipe attached with the cylinder in the kitchen had been cut and there was fire which was brought under control by the police. He had telephoned his relatives and when the police arrived he made statement before

the police. In his cross-examination, he testified that he used to work as an employee at the workshop of Sandeep Arora in Lajpat Nagar. Distance between Sarai Khawaja and Lajpat Nagar was about between 15 minutes. The gas agency was at a distance about 1/2 kilometre from the house of the deceased. When he reached inside, he did not find anyone excepting the dead body. He also did not see any person causing injuries to the appellant when he was apprehended because he rushed towards the house. The clothes of the appellant were smeared with blood. The appellant was son of his uncle and they resided in the house of the deceased without paying any rent. Though he claimed that the appellant was apprehended by the persons, who had collected there yet he was duly confronted with statement Ex.DA where it was not so recorded. He had also not mentioned in the statement Ex.DA that blood was lying on the roof and the staircase. He denied the suggestion that the appellant did not go to the gas agency with him or that he did not leave that place. He also denied about his not staying in the house of his aunt or he has not seen the appellant running away.

During his examination-in-chief PW11 stated that he had telephoned his relatives after the occurrence and when the police had arrived his statement was recorded. PW4 Hari Pal, husband of the deceased testified that after receiving telephone

call from Amit informing him about the incident, he had reached home and found a large gathering outside his house. When he went inside, he saw his wife lying in the kitchen with face downwards. There was some head injury and burning on neck portion. He had then made statement Ex.PC before the police. He also testified about the appellant admitting his involvement in the crime when he was interrogated in the police station. He, however, did not support the prosecution regarding suffering of disclosure statement by the appellant and pursuant thereto getting plass and knife recovered which he had kept concealed. However, that fact is not sufficient to reject his testimony as regards the occurrence in question. Moreover, the defence did not cross-examine him on the material aspects of the case. Only thing suggested to him was that Amit had not informed him on telephone or he had not met him at his house or he had not disclosed anything in respect of the occurrence.

PW10 Dr. S.K. Khurana, who had conducted post-mortem on the dead body of Kamlesh had noticed as many as four injuries. Two of them were lacerated injuries on the left parietal region and pinna of right ear. Apart from them there was a contusion on the right of face and forehead besides burns over scalp, face, neck, left arm, part of chest, lower part of abdomen, buttocks, external genitals and upper 2/3rd of thigh. Smoke was

present. The cause of death was head injury. The injuries were ante mortem in nature and sufficient to cause death in ordinary course of life. He further testified that injury No. 2 could be result of knife whereas Injuries No. 1 and 4 by plass. As mentioned above, injury No. 3 was burns practically all over the body of the deceased. The death had taken place instantaneously whereas the time between death and postmortem was less than twenty four hours. On combined reading of statements of the eye witnesses, i.e. PW5 Savita and PW11 Amit Chauhan on the one hand and PW10 Dr. S.K.Khurana on the other, it can safely be concluded that the deceased had received injuries caused by knife and plass besides the burn which she had suffered soon after she had succumbed to the other injuries. The appellant was shown to be present at the place of occurrence while carrying knife Ex.P1 and plass (plier) Ex.P2. The said knife and plier were later on got recovered by the appellant subsequent to making disclosure statement. The occurrence in question had taken place on 28.8.2000 at about 12.00 noon. The postmortem was conducted on 29.8.2000 at 12.10 p.m. The opinion of the doctor that the time that had elapsed between death and postmortem was within 24 hours, thus, stands duly corroborated.

On going through the statements of PW5 Savita and PW11 Amit Chauhan, this Court finds that both of them had

practically deposed similarly about the manner in which the occurrence had taken place. Both of them had seen the appellant while carrying knife Ex.P1 and plier Ex.P2 in his hands. At that time, the shirt worn by the appellant was stained with blood and so were his hands. Merely because in the report Ex.PX of the Forensic Science Laboratory it stood mentined that the blood could not be detected on knife and traces of blood were too small for serological analysis for detection of traces of blood on plier is no ground to reject the prosecution case outrightly especially when the prosecution has led direct, cogent and convincing evidence showing the involvement of the appellant in the commission of the crime.

It may be worthwhile to mention here that PW9 SI Jaibir Singh had arrested the appellant on 29.8.2000 who was produced before the Ilaqa Magistrate on 30.8.8.200 when his police remand was obtained for one day, whereas PW11 Amit Chauhan testified that the appellant was apprehended at the spot itself by the persons who had collected there. However, that again may not be sufficient to set aside the conviction of the appellant. It appears that SI Jaibir Singh in order to give the colour of discovery to simple recovery of the weapon in question went overboard to depose that the appellant was arrested on 29.8.2000 whereas PW11 Amit Chauhan had categorically

deposed that the appellant was apprehended at the spot soon after the occurrence. So much so PW4 Hari Pal also did not support the prosecution case regarding suffering of disclosure statement by the appellant leading to recovery of knife and plier as according to him the appellant was not interrogated nor he had suffered disclosure statement nor got recovered the plier and knife. Though he admitted his signatures on disclosure statement Ex.PE and recovery memo Ex.PE/1 but according to him his signatures were obtained in the police station.

It is the prosecution case that about 10/15 days earlier to the incident, some cash belonging to PW11 Amit Chauhan was stolen and when this fact was brought to the notice of the deceased, she had asked from all the occupants of the house but the suspicion was on the appellant. Feeling offended the appellant on finding a suitable opportunity had launched the assault on the deceased and causing injuries with knife and plier to her. Even otherwise, it being a case of direct evidence, absence or otherwise of motive would not be sufficient to reject the prosecution case as most of the time motive lies in the mind of the accused and it is very difficult to lead direct evidence in that direction.

The cause of death was head injury, i.e. injury to the brain. Injuries other than the burns were ante mortem in nature

whereas burns were postmortem. The ante mortem injuries were sufficient to cause death in ordinary course of life. As such, it can safely be concluded that the appellant caused the murder of Smt. Kamlesh by intentionally causing her death and, thus, committed the offence under Section 302 IPC.

In view of the above, no case is made out for any interference in the impugned judgment of conviction and sentence passed by the learned trial Court. The appeal is without any merit and therefore dismissed.

The appellant is presently on bail. His bail bonds and surety bonds are cancelled. He be taken into custody forthwith to serve his remaining sentence of imprisonment.

(T.P.S. MANN)
JUDGE

November 7, 2017
amit rana

(MAHABIR SINGH SINDHU)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No