

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA No.D-367-DB of 2004

DATE OF DECISION: OCTOBER 26, 2017

RAJU @ KAILASH

...APPELLANT

VERSUS

STATE OF HARYANA

...RESPONDENT

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

**PRESENT: MR. ASHWANI BHARDWAJ, ADVOCATE
LEGAL AID COUNSEL FOR THE APPELLANT.**

MR. PRAVEEN BHADU, AAA, HARYANA.

MAHABIR SINGH SINDHU, J.

1. Appellant Raju @ Kailash has filed the present appeal against the judgement passed by learned Sessions Judge, Hisar dated 13.6.2003/14.6.2003 vide which he was convicted under Section 302 IPC for committing the murder of his wife Raj Kumari Devi and sentenced to undergo imprisonment for life and to pay a fine of ₹2000/- and in default thereof, to undergo a further period of R.I. for three months. He was also convicted under Section 309 IPC for attempt to commit suicide and was sentenced to undergo S.I. for 1 year. Both the sentences were ordered to run concurrently.

2. Briefly, the case of the prosecution was unfolded on the statement dated 17.12.2020 (Ex.P1) made by Neelam, daughter of the deceased and the accused which is as under:-

“Stated that I am a student of 10+1 Class, and we are three Sisters and Brother; younger to me is my brother Kamal Kishore, aged 15 Years; who is studying in 9th class; and Youngest brother is Neel Kamal, who is 9 years old and studies in the 5th class; My father Raju son of Mann Singh Sharma carries on the Rehri (hand-cart) of Gol-Gappas; while my mother Raj Kumari, used to carry on the work of washing clothes and cleaning utensils in Uklana Mandi in the Houses; our family originally hails from U.P., and we have been living at Uklana Mandi, for the last 7/8 years: I have no knowledge about the whereabouts of my native village: My father did not give rent of the house, and School tuition fee of sisters and brothers, and also expenses of the house: On that count there used to be tussle between my mother and father, and last evening also there had been a quarrel on this count there had been a quarrel on this count there used to be tussle between my mother and father; and last evening also there had been a quarrel on this count between them;

Today in the morning at about 9.30 A.M., I, my mother and my father, were all present at the house; while my both brothers had gone to the school: A quarrel again ensued between my mother and father, about house-hold expenses and my father had given beating to my mother and all of a

sudden be took out Chhuri (long Knife) from the almirah; and attacked my mother twice, one injury was caused on the right side on neck of my mother, and other injury was inflicted on her abdomen; I tried to rescue my mother and on being relieved my mother tried to run away form the house; and as soon as she emerged out of the house, she fell down and on not sustaining the haemorrhage of injuries, she breathed her last. In the meanwhile my father also caused injury to himself by inflicting knife blow; in the meanwhile the neighbouring people collected there and they also called my brother Kamal Kishore from the school; my brother Kamal Kishore alongwith other persons took away my father to Hospital for treatment. My mother Raj Kumari Devi has been caused Chhura blows by my father for not paying the household expenses to my mother and thereby he has murdered her. Action may be taken against him. I have got my statement recorded which I have heard and the same is correct.”

3. On the basis of the above statement, a formal FIR (Ex.PJ/2) dated 17.12.2002 under Section 302 IPC at P.S. Uklana, District Hisar was registered. PW11 SI Bimla went to the spot. Inquest report (Ex.PB) was prepared. The knife (Ex.P1) lying in the veranah was lifted from the spot and was taken into possession vide recovery memo Ex.PK/1. Blood stains were lifted from the spot with the help of cotton swab and were

taken into possession vide recovery memo Ex.PL. Rough site plan (Ex.PQ) was prepared. Vide application (Ex.PA) post mortem examination of deceased Raj Kumari Devi was got conducted by Dr. Dinesh Kumar, PW1. Blood stained clothes of the deceased were taken into possession vide recovery memo Ex.PR. MLR (Ex.PD) of the accused was collected from Dr. Anant Ram, Janta Hospital. Application (Ex.PF) was moved to the Medical Officer regarding his fitness to record his statement, but vide opinion (Ex.PF/1) Dr. Subhash Sethi declared the accused unfit to make a statement. Blood stained clothes of the accused were taken into possession vide recovery memo Ex.PP. On 21.12.2002, PW111 SI Bimla arrested the accused on his discharge from the hospital.

4. After completion of investigation, report under section 173 Cr.P.C. was submitted. Accused was charge-sheeted for the offence under Section 302 and 309 IPC by learned trial Court to which he pleaded not guilty and claimed trial.

5. The prosecution, in support of its case, examined 11 witnesses.

6. The accused set up a plea in his statement under Section 313 Cr.P.C. that he was innocent, but a false case has been foisted on him.

7. The trial Court having relied upon the statement suffered by PW5 Neelam, in the background of medical evidence on record, recorded conviction against the accused.

8. Hence the present appeal.

9. Learned counsel for the appellant contended that the

occurrence was not pre-meditated and rather, the same happened in spur of a moment. Had there been any intention to kill Raj Kumar Devi, he would not have chosen the time and place which would go against him. It was only in a fit of rage and he also inflicted injuries on his person too. Learned counsel further submitted that keeping in view the aforesaid circumstances the offence alleged against the appellant is not made out.

10. Learned counsel for the State submitted that the prosecution has fully proved its case beyond reasonable doubt. As the appellant attacked the deceased on her vital organs, it shows that the appellant had clear intentions to kill his wife and therefore, the appellant deserves no leniency.

11. Heard learned counsel on both sides and have gone through the record carefully.

12. PW5 Neelam, who is daughter of the deceased and convict has given a graphic account of the whole occurrence. She has categorically stated that there used to be quarrel between the deceased and the accused-appellant on financial matters. The deceased used to pay the rent of house and maintain the children while serving as a maid in different houses. On 17.12.2012 at 9.30 a.m., while she was present in the house, again a quarrel ensued between the deceased and the convict and he brought a knife from the room and caused injuries on the neck as well as on the abdomen of the deceased. While deceased Raj Kumari having freed herself from the clutches of the accused tried to ran away towards the gate, but she fell down and died. Thereafter, the accused inflicted

injuries to himself also with the said knife. Her brother Kamal Kishore was called from the school and he alongwith neighbours removed the accused to hospital.

13. PW1 Dr.Dinesh Kumar Gijwani, Medical Officer, General Hospital, Hisar conducted the post mortem examination(Ex.PC) on the dead body of Raj Kumari on 18.12.2002 and found the following injuries:-

“1. There was a punctured clean cut wound of the size 3 x .5 cm on the right side of the neck; just above the medical part of the right clavicle. On probing wound leading to right throacic cavity. On dissection, haematoma on underlying tissues was seen. On opening the chest, there was 1.5 litre of blood on the right side of thorax. There was a laceration of the upper part of the right lung.

2. There was punctured clean cut wound of the size 2 x 1 cm just below left costal margin, 3 c.m. Lateral to mid abdominal line. On probing, it was leading to abdominal cavity. On dissection, there was a haematoma underlying tissue. On opening the abdomen, there was cut in spleen and perforation in the proximal of jejunum. There was .5 litre of blood and small faecal matter in the peritoneal cavity.”

PW1 opined that the death was caused due to excessive bleeding and shock due to injuries described above which were ante mortem in nature and were sufficient to cause death in the ordinary course of nature. PW1

also opined that the injuries described above were possible with knife.

14. PW2 Dr. Subhash Sharma, General Surgeon, Anant Ram Janta Hospital, Barwala medico-legally examined the accused on 17.12.2002 at about 10.15 a.m. and found the following injuries on his person:-

“1. There were multiple sharp edged wounds over chest wall.

2. A vertically placed wound with sharp edges situated to the right of Xiphisterunum medial to the right costal margin measuring 1-1/2 cm vertically 1/2 cm wide and quite deep. The wound explored with artery forcep which is going obliquely downwards (quite deep). The wound was bleeding moderately.

3. A small edged vertical wound placed over xiphisternum in the anterior median plane measuring about x cm x 1/4 cm x 1.4 cm.

4. A sharp edged vertically placed wound on right side and slightly above the level of xiphisternum measuring about 1 cm in vertical direction x 1/4 cm x 1/4 cm”

PW2 opined that the duration of injuries was within 6 hours. The weapon was sharp. This witness further opined that the aforesaid injuries were possible with the tip of knife and could be self-suffered because of suicidal tendency and were simple in nature.

15. The FSL report Ex.PS would go to further establish that the

knife used as weapon of offence was found stained with human blood of AB group and the clothes of the deceased as well as of the accused were also found with human blood of AB group vide serological report Ex.PS/1. In other words, the blood stains found on the knife matched with the blood group found on the clothes of the deceased.

16. PW4 Mewa Singh, Inspector, Food & Supply Department, Uklana through his deposition produced the Ration Card (Ex.PI) containing photograph of the family and testified that the accused and the deceased alongwith three children were residing at the same address.

17. PW9 Kamal Kishore deposed that on 17.12.2002, he alongwith his brother Neel Kamal had gone to attend the school. He was informed about the incident by his school teacher. While reaching home, he found that his mother was lying dead and the accused was also having injuries on his person. He alongwith other persons removed the accused-appellant to Janta Hospital.

18. PW11 SI Bimla deposed that on 17.12.2002, she was posted as SI/SHO at Police Station Uklana. PW5 Neelam met her and got recorded her statement Ex.PJ, on the basis of which a formal FIR Ex.PJ/2 was recorded. She prepared the inquest report Ex.PB, lifted the knife Ex.P1 and took the same into possession vide Ex.PK/1. PW9 also lifted blood stained from the spot and took the same into possession vide recovery memo Ex.PL. Post mortem of deceased Raj Kumari was got conducted. On the same day, she went to Janta Hospital and collected the MLR of the accused-appellant. An application Ex.PF with regard to

fitness of the accused was made to the Doctor on which Dr. Jagdish Sethi vide his opinion Ex.PF/1 declared the accused unfit to make a statement. The clothes of the accused-appellant were handed over by Dr. Subhash Sharma of Janta Hospital which were taken into possession vide recovery memo Ex.PP. On 21.12.2002, PW9 arrested the accused on his being discharged from the hospital.

19. The case of the prosecution rests primarily on the eye witness account. PW5 Neelam has given a graphic account of the occurrence and consistently deposed before the learned trial Court. Even a detailed cross-examination failed to shake her testimony. PW9 Kamal Kishore also supported the prosecution case while deposing that he found her mother lying dead in her house whereas, the accused was suffered with injuries and he alongwith other persons removed the accused to Janta Hospital, Barwala. The medical evidence also clearly established that the deceased died of excessive bleeding. The vehemence with which the attack was launched and the seat of injuries would go to establish the intention of the accused.

20. The FSL report would disclose that the knife recovered was found stained with human blood. No explanation was forthcoming from accused as to how the knife recovered contained human blood. The above clinching evidence also corroborates the case of the prosecution.

21. It was never the case of the convict-appellant that it was someone else who attacked him and his wife Raj Kumari Devi with knife. The occurrence took place in the presence of PW5 Neelam. PW9 Kamal

Kishore also found the convict-appellant suffering from injuries and admitted him to Janta Hospital. The convict-appellant had deliberately attacked the vital organs of Raj Kumari, i.e. neck and abdomen, as he had clear intentions to cause her death. Nothing was forthcoming in the statement of the convict-appellant recorded under Section 313 Cr.P.C. as to why PW5 Neelam would depose against him.

22. In view of the above facts and circumstances, we are of the considered view that the prosecution has established beyond reasonable doubt that accused Raju @ Kailash has committed the offence punishable under Section 302 and 309 IPC and the learned trial Court has rightly convicted and sentenced the accused having thoroughly evaluated the evidence on record. Therefore, confirming the conviction and sentence passed by the trial Court, the appeal stands dismissed.

23. Appellant Raju @ Kailash is on bail. His bail bond stands cancelled. He shall surrender forthwith before the learned 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.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

October 26, 2017
Gulati

Whether Reportable	:	Yes
Whether Speaking/Reasoned	:	Yes