

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

Crl. Appeal D-967-DB of 2009
Date of Decision : August 30, 2017

Sukhbir Singh and othersAppellants

VERSUS

State of PunjabRespondent

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

Present : Mr. R.S. Cheema, Senior Advocate with
Mr. Arshdeep Singh Cheema, Advocate
for the appellants.

Mr. Jagmohan Ghumman, Deputy A.G., Punjab.

T.P.S. MANN, J.

The accused, namely, Sukhbir Singh, his father Balbir Singh, mother Harbhajan Kaur and sister Jasbir Kaur were charged under Section 120-B IPC having agreed with each other to do an illegal act, wit to commit the murder of Amrit Kaur by beating and giving poison to her. They were also charged under Section 302 IPC for committing murder by causing death of Amrit Kaur. Vide judgment and order dated 21/22.10.2009, learned Sessions Judge, Fatehgarh Sahib acquitted Jasbir Kaur accused of the charges against her. The appellants were convicted under

Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months. They were also convicted under Section 120-B IPC and sentenced to undergo imprisonment for two years and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months. Both the sentences of imprisonment awarded to them were ordered to run concurrently.

Aggrieved of their conviction and sentence, the appellants filed the present appeal, which stands admitted and notice issued to the State. Trial Court record has also been requisitioned.

According to the prosecution, on 24.3.2004 at about 6.30 p.m., SI Hans Raj, Station House Officer, Police Station Khamano was present at Bus Stand of Khamano in connection with patrolling, where Gurpal Singh son of Bant Singh resident of village Manupur, Police Station Sadar, Khanna, father of deceased Amrit Kaur came and got recorded his statement to the effect that he was residing at the above-said address and an agriculturist. Besides, he was running shops at Bus Stand of Barwali Khurd, which were owned by him. He had seven children, five of them were daughters while two were sons. His daughter

Amrit Kaur @ Bhupinder Kaur was married to Sukhbir Singh son of Balbir Singh, resident of village Barwali Khurd for the last 8/9 years. He had been receiving information regarding maltreatment and beating of his daughter in her matrimonial home by her husband. Being father of the girl, he kept mum. About a year back, his son-in-law Sukhbir Singh came to his shop at Barwali Khurd and proclaimed that he had beaten his daughter. Despite this, he kept quiet. Later on, his daughter Amrit Kaur told him that she was insulted and beaten by her husband. When he went to her house, he noticed many injuries on her body. His daughter also told him that her husband Sukhbir Singh, father-in-law Balbir Singh, mother-in-law Bhajan Kaur and sister-in-law Bholi had been maltreating her and they have been instigating Sukhbir Singh to beat her. He collected his relatives. On this, Sukhbir Singh assured him that in future his daughter would be kept in the matrimonial home properly and she would not be given any beating. Once again, Sukhbir Singh gave beatings and maltreated his daughter. The complainant called the relatives of Sukhbir Singh but they did not come. On 22.3.2004, the complainant's daughter Jaswinder Kaur told him about receiving a telephone call from Amrit Kaur that her husband Sukhbir Singh was threatening to kill her. On that day, at 2.30/3.00 p.m., Balbir Singh and Jit Singh resident of Barwali Khurd told the complainant after

coming present at his shop at Barwali Khurd to reach the residence of his daughter at Barwali Khurd immediately. He reached the house of Sukhbir Singh and saw dead body of his daughter lying on a cot. He was fully convinced that his daughter Amrit Kaur after being harassed and beaten by her husband Sukhbir Singh, father-in-law Balbir Singh and mother-in-law Bhajan Kaur and sister-in-law Bholi had ended her life by hanging herself. Accordingly, he prayed for taking appropriate action.

It is also the case of the prosecution that on the basis of aforementioned statement Ex.PW4/A, FIR Ex.PW10/C under Sections 306, 34 IPC was registered on 24.3.2004 at 6.40 p.m. at Police Station Khamano against the appellants and their co-accused Jasbir Kaur @ Bholi. Special report sent through Constable Jagdish Singh was received by the Ilaqa Magistrate. It is also the case of the prosecution that on reaching the place of occurrence Inspector Hans Raj prepared the inquest report Ex.PW10/D. The dead body was sent for postmortem, which was conducted by Dr. Sarabjit Singh, who observed the condition of the dead body as follows:-

“There was sign of dribbling of saliva from right angle of mouth, face pale. There was a mark of ligature around the neck between thyroid cartilage and chin running from thyroid cartilage directed obliquely upward and backward towards both mastoid

processes behind the ears. Width of the ligature was 2 cms. There was no abrasion around the ligature mark. The ligature mark was absent in occipital region. Ligature mark was dark brownish in colour. On dissection of ligature mark subcutaneous tissue under the ligature mark was glistening white with few small hemorrhages. Platysma and sternomastoid muscles were lacerated under the mark. Epiglottis congested. Rigor mortis was present all over the body. Postmortem staining was present on the buttocks, arms, legs and back. The hands clenched with purple nail. No external injury was present on the body except the injury above described”.

In the opinion of doctor, the cause of death was asphyxia due to hanging. The poisoning was an associated factor. There was no extension of length of neck as per postmortem report. He further opined that if any person is hanged after giving poison, then such type of injuries as mentioned in this report could occur. The victim was alive at the time of hanging, though she may be unconscious due to poisoning.

It is further the case of the prosecution that viscera was sent to the Chemical Examiner and vide report Ex.PW2/B, chloro-compound group of insecticides was detected in the viscera. Dr. Sarabjit Singh gave his supplementary report

Ex.PW2/C that cause of death was due to asphyxia resulting from hanging. However, viscera were sent to the Chemical Examiner to rule out poisoning.

It is also the case of the prosecution that Sukhbir Singh appellant was arrested on 29.3.2004 whereas the other accused were found innocent. The challan was presented only against Sukhbir Singh appellant. Dissatisfied with the investigation conducted by the appellants, complainant Gurpal Singh instituted a separate complaint. In that complaint, the trial Court summoned all the accused for the offences punishable under Sections 302 read with Section 120-B IPC. After the presentation of the challan, the case was committed to the Court of Sessions. A prima-facie case for an offence punishable under Section 306 IPC was found against Sukhbir Singh appellant and he was charge-sheeted accordingly. An application under Section 319 Cr.P.C. was, thereafter, moved by the prosecution. Vide order dated 18.10.2005, learned trial Court summoned Balbir Singh, Harbhajan Kaur and Jasbir Kaur as accused. The complaint filed by Gurpal Singh was also committed to the Court and vide order dated 7.11.2006, the same was ordered to be clubbed with the State case/challan and, accordingly, charge for the offences under Sections 120-B and 302 IPC was framed against the appellants and Jasbir Kaur, to which, they pleaded not guilty and

claimed trial.

In support of its case, the prosecution examined as many as twelve witnesses.

PW1 HC Swaran Singh, Photographer, proved the photographs Ex.P9 to Ex.P16 and negatives Ex.P1 to Ex.P8, which he had handed over to the police.

PW2 Dr. Sarabjit Singh, Medical Officer, Civil Hospital, Bassi Pathanan deposed that on 25.3.2004 at 10.00 a.m., he conducted postmortem of Amrit Kaur @ Bhupinder Kaur wife of Sukhbir Singh, aged about 30 years. The details of his deposition have already been mentioned above.

PW3 Jaswinder Kaur, sister of Amrit Kaur deceased deposed that the accused used to maltreat and harass Amrit Kaur. On 22.3.2004, i.e. 2 days prior to the incident, she received a telephone call from her sister that accused were threatening to eliminate her. She went to the house of her father on 24.3.2004 and was informed about the murder of her sister by her in-laws. She has stated that after the receipt of telephone call on 22.3.2004, she had talked with her husband. She also tried to contact her father on telephone, but could not get his number.

PW4 Gural Singh complainant deposed that after the marriage, the accused had been raising demand of dowry and taunting his daughter. They were not satisfied with the dowry

articles given in the marriage and used to misbehave and maltreat the victim. Accused Sukhbir Singh had been giving beatings to victim. Even 4/5 months before her death, he had come to his shop and had threatened that he will give beatings to the victim. Lateron, neighbours of Sukhbir Singh accused informed the complainant that he had given beatings to the victim. The complainant took the Panchayat and found abrasion marks on the person of the victim, but the matter was compromised with the accused on their promise that they will not misbehave or maltreat her. After one month, accused again gave beatings to his daughter. The complainant called Gurdev Singh, a relation of the accused and aunt of Sukhbir Singh, but they did not turn up.

PW5 Harbhagat Singh, brother of complainant Gurpal Singh, stated that accused used to quarrel with the victim and he had gone several times to advise and persuade the accused not to quarrel with the victim or to give her beatings. On 24.3.2004, he had gone with the complainant to the house of the accused, where dead body of Amrit Kaur was lying on the cot. When they removed the quilt, with which the dead body had been covered, they found signs of injuries around her neck, on the frontal part of her body, chest, abdominal region and legs. Some smell was also coming from the mouth of the victim as if she had been administered some drugs.

PW6 Rajinder Singh stated that the victim was his niece. He had gone to the house of the accused on receipt of information regarding the death of Amrit Kaur. He had also noticed some injuries on the neck and other parts of the body of victim.

PW7 Jasmer Singh, husband of one of the sisters of the deceased stated that he reached the house of the accused on receiving the information from accused Sukhbir Singh that the victim had fallen ill due to the beatings given to her. He was asked to reach for her cremation. They further proclaimed that mother's brother of Sukhbir Singh was in Chief Minister's security and he will save and protect the accused.

PW8 Head Constable Nirmal Singh, PW10 SI Hans Raj, PW11 ASI Vijay Singh and PW12 Head Constable Inderjit deposed about the various steps taken by them during the investigation of the case.

PW9 Gurjit Singh, Record Keeper, Daily Ajit produced the summoned record, i.e. original newspaper of 22.4.2004 and photocopy of page No. 5 of the same was taken on the judicial file as Ex.PW9/A.

When examined under Section 313 Cr.P.C., Sukhbir Singh appellant claimed himself to be innocent and pleaded that he has been falsely implicated in the case by complainant Gurpal

Singh for the demise of his wife Amrit Kaur @ Bhupinder Kaur.

His plea in detail is reproduced below:-

“I am innocent. I have been falsely involved in this case by complainant Gurpal Singh for the sad demise of my wife Bhupinder Kaur @ Amrit Kaur. I am the only son of my parents. I am engaged in the work of agriculture alongwith my father Balbir Singh. My marriage was solemnized with Bhupinder Kaur @ Amrik Kaur in the year 1996 and I was blessed with a son. The marriage of my sister Jasbir kaur @ Bholi was also solemnized one day prior to my marriage. Myself or my parents or my sister Jasbir Kaur never maltreated Bhupinder Kaur @ Amrit Kaur for bringing less dowry. My mother Harbhajan Kaur was a patient of arthritis. She was admitted in Jeewan Jot Clinic, Khanna of Dr. Amarbir Singh on 20.3.2004 due to her illness. My father Balbir Singh and sister Jasbir Kaur @ Bholi used to remain present in the Jeewan Jot Clinic to look after my mother. My sister Jasbir Kaur used to remain there to look after my mother being a lady. I used to bring meal from my village for my mother Harbhajan Kaur, father Balbir Singh and sister Jasbir Kaur daily. Our relatives also used to come to

the hospital to know well being of my mother. Even Gurpal Singh, my father-in-law came to the hospital to enquire about the health of my mother on 23.3.2004. My mother remained admitted in the hospital from 20.3.2004 to 23.3.2004 upto 11.00/12.00 p.m. I came to my village from Khanna after delivering meal to my mother, father and sister and when I reached the village I saw that our cattle were standing in the sun and due to this asked my wife Bhupinder Kaur @ Amrit Kaur that you should have taken these cattle from the sun to any varanda and due to this, she lost temper. Thereafter, I left for tubewell and made the cattle to drink water and took all cattle to the nearby varanda. At 2.30 p.m., my mother Harbhajan Kaur alongwith father Balbir Singh and sister Jasbir Kaur and her children came to our village in the car of Amrik Singh. After parking the vehicle in the courtyard of our house, Harbhajan Kaur came out of the car and when Jasbir Kaur my sister entered the room of our house, she saw that my wife Bhupinder Kaur @ Amrit Kaur was hanging with the ceiling fan with Chuni. She cried and then Balbir Singh, Amrik Singh and myself brought down Bhupinder Kaur @ Amrit Kaur, removed

dupatta from her neck and put her on a cot. Amrik Singh and Balbir Singh brought doctor from the village Bus Stand for providing medical aid to my wife. Then Balbir Singh alongwith Ajit Singh my uncle, brought Gurpal Singh, my father-in-law from Bus Stand Barwali Khurd. Doctor Sarao came and examined my wife and declared her dead. The incident was unfortunate. After the death of my wife, my father-in-law Gurpal Singh got this false case registered against whole of our family members. We moved the higher authorities for inquiry and four different inquiries were conducted by four different officers. SHO of Police Station, Khamano conducted the inquiry on 12.4.2004 who found Harbhajan Kaur, Balbir Singh and Jasbir Kaur as innocent and this inquiry was endorsed by DSP Circle, Khamano on 22.4.2004. Thereafter, inquiry was conducted by SP/HQ Fatehgarh Sahib on 14.5.2004 on the basis of application of Daljit Singh Behniwal through Gurbachan Singh, Councilor, High Commission, India and during the course of that inquiry, he declared Balbir Singh, Harbhajan Kaur and Jasbir Kaur as innocent. One inquiry was also conducted by S. Didar

Singh, DSP, Crime Wing, Punjab, Chandigarh dated 24.6.2004 on the application of complainant Gurpal Singh, who also came to the same conclusion. Thereafter, complainant Gurpal Singh again moved an application and enquiry was conducted by Sh. K. Sharma, ASP, Patiala City and he also came to the same conclusion, which came in earlier inquiry. As in the earlier enquiries Harbhajan Kaur, Balbir Singh and Jasbir Kaur were found innocent, thus, they were not challaned in this case and only challan against me was submitted in the Court under Section 306 IPC. I have committed no offence nor I ever abetted the commission of crime in which I have been implicated. The PWs have deposed falsely. The complaint was falsely filed by complainant Gurpal Singh due to vindictiveness”.

Similar pleas were taken by Balbir Singh, Harbhajan Kaur and Jasbir Kaur.

In their defence, the accused examined two witnesses.

DW1 Dr. Amarbir Singh, Incharge Jeewan Jyot Hospital, Pir Khanna Road, Khanna deposed that he was running the aforementioned hospital and treating the patients who come

to his hospital. He produced the record of the treatment of Harbhajan Kaur, who was admitted in his hospital as indoor patient for the treatment of depression, Poly Arthritis and left upper limb pain on 20.3.2004 and she was discharged on 24.3.2004. He also produced photocopy of the prescription slip of the discharge of the patient and follow up treatment on 27.3.2004. He also proved the prescription slip of Jasbir Kaur who came to his hospital on 24.3.2004. She was given treatment for Acid Peptic disease. Jasbir Kaur had come to his hospital for check up on 24.3.2004 and 27.3.2004 in the OPD and he had issued discharge slips. He identified Harbhajan Kaur and Jasbir Kaur accused present in the Court. He also identified Balbir Singh, who was accompanying Harbhajan Kaur and had made the payment while seeking discharge of his wife on 24.3.2004. He had discharged Harbhajan Kaur from the hospital in between 11.00 a.m. and 1.00 p.m.

DW2 Amrik Singh, who was employed as Cashier in Cooperative Agriculture Service Society, Kalal Majra deposed that Balbir Singh accused was his father's younger brother. On 20.3.2004, Harbhajan Kaur wife of Balbir Singh had fallen ill. She was taken to Khanna and got admitted in Jeewan Jyot Hospital. She remained admitted upto 24.3.2004. He had got her admitted and was also visiting her in the hospital. Jasbir Kaur had been

attending upon Harbhajan Kaur in the hospital and staying with her alongwith Balbir Singh. Sukhbir Singh had been taking the meals for them from the village in the mornings and evenings. On 24.3.2004, he was told by Balbir Singh that Harbhajan Kaur may be discharged on that day and he should come to the hospital to take them in his car. After taking leave from office at about 12.00 noon, he reached the hospital. Balbir Singh, Jasbir Kaur and Sukhbir Singh were present in the hospital. After getting Harbhajan Kaur discharged, they returned to village Barwali Khurd at the house around 2.30/3.00 p.m. On reaching house of Balbir Singh while they made Harbhajan Kaur alight from the car and made her lie on the cot in the varandah, Jasbir Kaur went inside and raised an alarm that Amrit Kaur had hanged herself. Accordingly, he alongwith Balbir Singh rushed inside. In the meantime, Sukbir Singh also returned from the fields. They found that Amrit Kaur had hanged herself with her dupatta by tying it with the ceiling fan. A stool was lying below her. Amrit Kaur was brought down and placed on a cot. He and Balbir Singh went to Sarao Clinic to call the doctor. He brought the doctor. Balbir Singh went to inform Gurpal Singh complainant. The doctor after checking Amrit Kaur declared her dead. He further deposed that Amrit Kaur was daughter of mother's sister of his wife. His wife was a mediator in the marriage of Amrit Kaur and Sukhbir Singh.

Sukhbir Singh was the only son of his parents. The entire family of Sukhbir Singh had cordial relations with Amrit Kaur and had never harassed her.

After hearing learned counsel for the parties and on going through the evidence available on the record, the trial Court acquitted Jasbir Kaur accused of the charges against her as she was already married and her marriage was solemnized a day prior to the marriage of Sukhbir Singh appellant. She had no concern with the demand of dowry from the wife of her brother and it was quite probable that she had been involved just to create more pressure on the accused party. Accordingly, she was acquitted by giving her benefit of doubt. However, the appellants were convicted and sentenced, as mentioned below.

This Court has heard Mr. R.S. Cheema, Senior Advocate with Mr. Arshdeep Singh Cheema, Advocate for the appellants and Mr. Jagmohan Ghumman, Deputy Advocate General Punjab and scanned the evidence with their able assistance.

In his statement Ex.PW4/A, complainant Gurpal Singh after mentioning about maltreatment and giving of beatings to his daughter Amrit Kaur at the hands of the accused stated that he was convinced about his daughter having been murdered by the accused or she had hanged herself due to their maltreatment and

beatings. Accordingly, FIR under Sections 306/34 IPC was registered. The dead body of Amrit Kaur was subjected to postmortem by PW2 Dr. Sarabjit Singh, who noticed a mark of ligature around the neck between thyroid cartilage and chin running from thyroid cartilage directed obliquely upward and backward towards both mastoid processes behind the ears. Width of the ligature was 2 cms. There was no abrasion around ligature mark. The ligature mark was absent in occipital region. In his opinion, the cause of death was due to asphyxia resulting from hanging. The injuries were antemortem in nature and sufficient to cause death in ordinary course of nature. The poisoning was an associated finding. Accordingly, viscera from liver, spleen, kidney, lung, heart, stomach and small intestine besides blood were taken and sent to the Chemical Examiner, who vide report Ex.PW2/B declared that chloro-compound group of insecticides was detected in the aforementioned exhibits. After receipt of the report from the Chemical Examiner, PW2 Dr. Sarabjit Singh again declared the cause of death to be due to asphyxia resulting from hanging. However, viscera was sent to Chemical Examiner to rule out poisoning. In his cross-examination, he stated that as per the inquest papers, it was a case of death due to hanging. He also stated that if any person was hanged after giving poison, then such type of injury

could occur but the person must be alive at the time as in this case though he may be unconscious due to poisoning. He further stated that excepting ligature mark, there was no external injury on the dead body. ‘

It is true that after the victim takes poison, he could hang himself but the victim must be alive at the relevant time though he might be unconscious due to poisoning. Further, the quantity and percentage of chloro-compound group of insecticides was not mentioned in the report of the Chemical Examiner. However fact remains that after the receipt of the report from the Chemical Examiner, Dr. Sarabjit Singh stated that as per his opinion, the death was due to asphyxia.

Going by the ligature mark, which was around the neck but absent in the occipital region, it cannot be said that the deceased was strangled. Rather, it was the deceased, who had hanged herself. The presence of the insecticide in the viscera is not conclusive to hold that the death was on account of consumption of the poisonous substance. The cause of death still remained asphyxia resulting from hanging. Possibility of the deceased taking the poison and, thereafter, hanging herself, thus, cannot be ruled out. Therefore, the conviction of the accused under Section 302 IPC cannot be sustained.

In the statement Ex.PW4/A, on the basis of which, the

FIR was registered, complainant Gurpal Singh had levelled allegations primarily against Sukhbir Singh appellant. Even otherwise, the presence of Balbir Singh and Harbhajan Kaur in the house stands ruled out from the testimonies of DW1 Dr. Amarbir Singh and DW2 Dr. Amrik Singh. DW1 Dr. Amarbir Singh deposed about the admission of Harbhajan Kaur in his hospital known by the name of Jeewan Jot Hospital, Khanna, on 20.3.2004 as she was suffering from depression, poly arthritis and left upper limb pain and she was discharged on 24.3.2004 between 11.00 a.m. and 1.00 p.m. He also stated that Balbir Singh appellant was accompanying Harbhajan Kaur and it was he who had made payment and sought the discharge of his wife on 24.3.2004. In his cross-examination, he stated that he knew the patients, who came repeatedly or as regular patients. Harbhajan Kaur was a regular patient. DW2 Amrik Singh deposed that Balbir Singh appellant was his uncle. On 20.3.2004 Balbir Singh's wife Harbhajan Kaur had fallen ill. She was taken to Khanna and got admitted in Jeewan Jot Hospital. She was admitted in the hospital and remained there upto 24.3.2004. He had got her admitted and had been visiting her in the hospital. Balbir Singh appellant used to stay in the hospital. On 24.3.2004 after taking lift from his nephew at about 12.00 noon, he had reached the hospital. After getting Harbhajan Kaur discharged, they returned to village of the

accused in village Barwali Khurd around 2.30/3.00 p.m. He also stated that Amrit Kaur was daughter of mother's sister of his wife. His wife was the mediator in the marriage of Amrit Kaur with Sukbir Singh.

From the above evidence, this Court finds the involvement of Balbir Singh and Harbhajan Kaur appellant to be doubtful. Probability of their false implication in order to put pressure on the accused party cannot be ruled out.

Resultantly, the conviction and sentence of Balbir Singh and Harbhajan Kaur appellants under Sections 302 and 120-B IPC is set-aside. The conviction and sentence of Sukhbir Singh appellant under Sections 302 and 120-B IPC is also set-aside. Instead, he is convicted under Section 306 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- and in default of payment of fine, he shall further undergo rigorous imprisonment for six months.

The appeal is, accordingly, disposed of.

**(T.P.S. MANN)
JUDGE**

August 30, 2017
amit rana

**(MAHABIR SINGH SINDHU)
JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No