

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-166-DB of 2010

Date of Decision : August 10, 2017

Saroj BegumAppellant

Versus

State of PunjabRespondent

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

Present : Mr. Robin Dutt, Advocate for
Mr. Deepak Kaushal, Advocate
for the appellant.

Mr. Sandeep Vermani, Additional A.G., Punjab.

T.P.S. MANN, J.

Convict-Saroj Begum, aged 22 years, wife of Nazar Khan @ Billu, r/o Khokhar Kalan, Police Station Lehra has filed the present appeal against the judgment and order dated 4/5.12.2009 passed by learned Sessions Judge, Sangrur whereby she was convicted under Section 302 IPC and sentenced to undergo imprisonment for life.

In brief, the prosecution case is that on 9.4.2008, Buta Singh, Chowkidar of village Khokhar Kalan returned to the village from Tohana at about 6.00 p.m. and learnt that on that day at about 2.30 p.m. the appellant had committed the murder of Arsh Khan, aged about three years, son of Sabar Khan, elder brother of her husband by strangulating him with the help of a string (nala). He also learnt

that the relatives of Arsh Khan had buried the deceased in the courtyard. The complainant, being the Chowkidar of the village made statement Ex.PD before Inspector Indervir Sharma, Station House Officer, Police Station Lehra, whom he met at the Bus Stand of the village. According to the complainant, the appellant was not happy with the nephew of her husband, Accordingly, he requested for taking action in the matter.

It is further the case of the prosecution that as statement Ex.PD made by the complainant revealed commission of offences under Sections 302/201/120-B IPC, Inspector Indervir Sharma made endorsement Ex.PD/1 thereon on 9.4.2008 at 8.30 p.m. and sent the same to the Police Station Lehra, on the basis of which FIR Ex.PD/2 came to be registered during the same night at 9.10 p.m. Special report sent through Constable Najar Singh was delivered to the Ilqa Magistrate during the same night, i.e. on 10.4.2008 at 1.00 a.m.

It is also the prosecution case that Inspector Indervir Sharma visited the house of Budhu Khan, grandfather of the deceased and recorded supplementary statement of complainant Buta Singh who stated that he had earlier stated the name of the appellant's husband as Billu Khan but the same was learnt to be Nazar Khan, who was known in the village as Billu Khan. Inspector Indervir Sharma came to know that the occurrence had been witnessed by Budhu Khan who was lying unconscious. The appellant disclosed that the deceased had fallen from the roof and as a result,

the vertebra bone of his neck broken which resulted in his death and believing her, the dead body had been buried. At that time the people were not aware about the exact cause of death of the deceased. As there was no eye-witness to the occurrence, Inspector Indervir Sharma could not make any spot inspection but deployed security guard in the courtyard.

It is further the case of the prosecution that on 10.4.2008, Inspector Indervir Sharma visited the spot where he met Budhu Khan, who got his statement recorded that he had two sons. Both of them resided with him. The elder was Sabar Khan, while the younger was Nazar Khan @ Billu Khan. Both were married. His son Sabar Khan had two sons. The elder was three years old, namely Arsh Khan while the younger only twenty days old. The wife of Sabar Khan was away to village Rajomajra for the delivery. His son Nazar Khan @ Billu Khan was married to Saroj Begum about 7/8 months back. Saroj Begum used to reside with them in the village. Since her marriage, she used to be jealous with Arsh Khan. On 9.4.2008 Budhu Khan alongwith his wife Smt.Ralli Begum, daughter-in-law Saroj Begum and his younger daughter Rani was harvesting the wheat crop in nearby land belonging to Leela Khan. At about 2.00 p.m., Saroj Begum complained of exhaustion and, accordingly, Budhu Khan asked her to leave for the house and feed the cattle. She left for the house followed by Arsh Khan, who was present there and playing. After sometime, Budhu Khan without telling his wife, left for the house so as to bring back Arsh Khan, his grandson and when he reached in the

courtyard of his house at about 2.30 p.m, he found Saroj Begum strangulating Arsh Khan in the Verandah with the help of a string, while Arsh Khan was lying on a cot. On his calling, Saroj Begum hurriedly entered the room. When he approached his grandson Arsh Khan, he noticed that he had already breathed his last on account of strangulation. On seeing his grandson, who was very much loved by him, he fell down and became unconscious. He regained consciousness on the next day. He was told by his son Sabar Khan and members of the family that Arsh Khan had been killed by Saroj Begum by strangulating him. They also stated that on the previous day Saroj Begum had manipulated the story about Arsh Khan falling from the roof and accepting her version, the deceased was buried in the graveyard by the residents of the locality and the relatives treating the same to be an accidental death. He also learnt that on the previous night, Saroj Begum was upset for having committed the sin and uttered loudly that she had committed the murder of Arsh Khan by strangulating him with a piece of string. He had seen the occurrence but taking advantage of his unconsciousness, she had removed the string from around the neck and manipulated a false story and got the deceased buried in the courtyard.

It is further the case of the prosecution that Inspector Indervir Sharma got the dead body exhumed in the presence of DSP Balkar Singh and Naib Tehsildar-cum-Duty Magistrate from the graveyard and the proceedings were videographed and photographed. The dead body was identified by Sabar Khan, father

of the deceased and Budhu Khan, grand-father of the deceased. Inquest report Ex.PC was, thereafter, prepared and the dead body sent to the Civil Hospital, Sunam for post-mortem. The post-mortem was conducted by Dr. Dinesh Gupta, alongwith Dr. Sanjay Bansal and Dr. Sushma Prabha, who found as under :-

"On examination, we found that length of the body was 92 cms and it was good built, good nourished male child. The dead body was covered with white cloth having a hole in between. Rigor mortis was just at appearing stage. Postmortem stainings were present. Fine froth was present in the nostril. Ligature mark 12.5 cm. x 1 cm. was present in the centre of the neck encircling whole of neck except in the centre of the back in vertebral column region. Ecchymosis was present. On dissection, trachea was found torn. They found following injuries on the dead body:-

- "1. 2 cm. x 0.5 cm. abrasion (bluish) was present on posterior aspect of left shoulder,
2. 0.5 cm. x 1 cm. abrasion was present in the middle of chin 1 cm. below the lower lip,
3. 1.5 cm. x 0.5 cm. abrasion was present, 1.5 cm. lateral and below right angle of mouth."

In the opinion of Board of Doctors, cause of death was due to asphyxia on account of strangulation which was sufficient to cause death in ordinary course of nature. The injuries described were ante-mortem in nature. The probable time that elapsed between injury

and death was immediate and between death and post-mortem, was within twenty four hours. The ligature mark injury could be caused by way of strangulation with string (nala) of the salwar. Injuries No.1 to 3 were possible if the victim tried to resist the strangulation or by fall.

Further case of the prosecution is that when on 9.4.2008 Inspector Indervir Sharma inspected the place of occurrence, it had become dark. However, he prepared rough site plan Ex.PM at the demarcation of Sabar Khan and also inspected the graveyard and prepared rough site plan Ex.PN regarding the place from where the dead body was recovered. On 10.4.2008, Saroj Begum was produced by Labh Singh, Member Panchayat of village Kaleka before Inspector Indervir Sharma and she was arrested. During her interrogation, she suffered disclosure statement with regard to having concealed one string (nala) in the pillow lying on the bed in her residential house. Pursuant thereto, she got recovered one string of the length of 5'-9" from the disclosed place. Rough site plan Ex.PS of the place of recovery of string was also prepared.

Upon completion of investigation, the challan was presented against the appellant. The case was, thereafter, committed to the Court of Sessions, where the appellant was charged for committing the offence punishable under Section 302 IPC, to which she pleaded not guilty and claimed trial.

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

PW1 Dr. Dinesh Gupta, Medical Officer, Civil Hospital, Sunam deposed about the post-mortem conducted by him and the Board of Doctors, as mentioned above.

PW2 Buta Singh, Chowkidar of the village stated about learning of the incident and reporting the matter to the police. He proved his statement Ex.PD.

PW3 Budhu Khan, eye-witness in the case, deposed on the lines of the prosecution case.

PW4 Sabar Khan, father of the deceased and PW5 Ralli Begum, grand-mother of the deceased also supported the prosecution case.

PW6 Jaswinder Singh, Naib Tehsildar deposed about exhuming the dead body of a child from a graveyard.

PW7 Ajit Pal Singh, Clerk to Shri R.P.S. Walia, Sub Divisional Magistrate, Lehra proved the photocopy of the order Ex.PF vide which the Sub Divisional Magistrate deputed Jaswinder Singh Kohli, Naib Tehsildar to go to village Khokhar Kalan for exhuming the dead body. He identified the signatures of the Sub Divisional Magistrate on the original order as he worked under him and had seen him writing and signing.

PW8 Sham Lal, Photographer proved the photographs Ex.PG/1 to Ex.PG/4 which he had clicked at the spot with the help of digital camera after going to village Khokhar Kalan.

PW9 Gurbax Singh, Patwari Halqa Gaga proved the scaled site plans Ex.PH, Ex.PJ and Ex.PK, which he had prepared on 31.5.2008 after visiting the spot.

PW10 Inspector Indervir Sharma and PW11 ASI Darshan Singh disclosed about the various steps taken by them during the investigation of the case.

The appellant during her examination under Section 313 Cr.P.C., denied all the incriminating circumstances appearing against her in the prosecution evidence. She took up the plea that she had been falsely involved in the case by Budhu Khan in connivance with the police and she and her husband had been living separately from Sabar Khan. Budhu Khan and Sabar Khan involved her in this case out of jealousy so as to destroy her. However, no evidence was led by her in defence.

After hearing learned Public Prosecutor for the State and learned defence counsel besides going through the evidence on record, learned trial Court came to the conclusion that the prosecution had established beyond a shadow of doubt that it was the accused who had committed the murder of deceased Arsh Khan by strangulating him with the help of the string of the salwar and, accordingly, convicted and sentenced her, as mentioned above.

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

Learned counsel for the appellant has submitted that the presence of PW3 Budhu Khan at the time of the occurrence was highly doubtful. He was the sole eye-witness of the case and there is no independent corroboration to his testimony. It is also submitted that no such incident of strangulation of Arsh Khan had taken place. On the other hand, the deceased had suffered injury by falling from the roof of the house. The appellant had no motive to commit the murder of Arsh Khan. There were contradictions in the statement of the witnesses regarding her arrest. Therefore, the appeal be accepted and she be acquitted of the charge against her.

Learned State counsel has submitted that the prosecution has led cogent, convincing and sufficient evidence to connect the appellant with the commission of the crime and, therefore, there is no merit in her appeal.

The star witness of the prosecution is PW3 Budhu Khan, who claimed to be present at the time when the appellant was in the process of strangulating three years' old Arsh Khan, who was nephew of her husband. According to him, on 9.4.2008 he alongwith his wife Ralli Begum, daughter-in-law Saroj Begum and daughter Kirna had been harvesting the crop of wheat on a contract basis. At about 2.00 p.m., Saroj Begum told that she was tired and wanted to go home. He told her that she should go to the house and feed fodder to the cattle. His grandson Arsh who was playing there also followed Saroj Begum to the house. At about 3.00 p.m., when he came to the

house, he found his grandson Arsh lying dead in the verandah while Saroj Begum was standing by his side and on seeing him, she entered into the room. He found a ribbon and a string (nala) to have been put around the neck of the deceased. Since Saroj Begum was standing by the side of the deceased Arsh, he could say that ribbon and the string had been put around the neck of the deceased by Saroj Begum. When he took care of his grandson, he was found to have breathed his last and his tongue was protruding. Thereafter, Budhu Khan became unconscious. His relatives had buried Arsh in the graveyard. Sabar Khan, father of the deceased was away to the brick kiln who had come back to the house at about 6.00/7.00 p.m. Thereafter, the police had come to their village. He agreed with the police for getting the dead body retrieved from the graveyard. It is stated that the dead body of Arsh Khan was retrieved by the police on the next day of the occurrence at about 11.00 a.m. He had identified the dead body of his grandson and the police obtained his thumb impressions on the document prepared regarding recovery of dead body Ex.PE. It has also come in the statement of the witness that at the time of occurrence, Saroj Begum was present alone in the house and she had opened the lock with the key.

Sabar Khan, father of deceased Arsh Khan was examined by the prosecution as PW4. He deposed that he has one brother, namely, Nazar Khan who worked as a labourer in the same brick kiln where he used to work in village Chauhnth Kheri, Tehsil Samana. His brother Nazar Khan was married with the accused about 7-8

months prior to the occurrence. Saroj Begum is his wife. He was blessed with two sons, namely, Arsh Khan, who was aged about three years at the time of the occurrence and Kuldeep who was aged about 20 days at the time of occurrence. His wife had gone to her parental house due to the birth of the second son at the time of the occurrence. On the 9th of the month about 7-8 months before his examination, he had received a telephone call at the brick kiln that his son Arsh Khan had died. He and his brother reached home at 9.00/10.00 p.m. His son had been buried before they arrived in the house. On the next day, he had come to know that his son had been murdered by Saroj Begum. His father was lying unconscious at the time when they reached the house. On the next day of the occurrence, the police got the dead body of his son exhumed from the burial ground with their approval. He identified the dead body of his son when the police prepared the inquest report Ex.PC on the dead body of the deceased. There was a ligature mark on the neck of the deceased.

Ralli Begum, the grand-mother of deceased Arsh Khan had stepped into the witness-box as PW5 who deposed that in the season of last haari, her husband Budhu Khan, she herself, her daughter Kirna and accused Saroj Begum had been harvesting the wheat crop near to their house at a distance of three kilas. It was about 2.00 p.m. Accused said that since she was feeling exhausted, she was going home. Her grandson Arsh Khan went to the house accompanying Saroj Begum. About 30-45 minutes thereafter, her

husband left for the house. About 45 minutes thereafter, she also left for the house as they had not come back to the land. When she reached the house, she found her grandson Arsh Khan and her husband Budhu Khan lying unconscious. When after some time, her husband regained consciousness, he told her that Arsh Khan had been strangled by Saroj Begum and thereafter, Arsh Khan had died. She further deposed that they had buried the deceased Arsh Khan in the graveyard. They had not informed the police because they were very much upset on the death of Arsh Khan.

PW10 Inspector Indervir Sharma has got proved the statement Ex.PD of Buta Singh, Chowkidar of Village Khokhar Kalan recorded by him on 9.4.2008 at the Bus Stand of Village Khokhar Kalan on the basis of which formal FIR Ex.PD/2 was registered. Then, he deposed with regard to his having visited the house of Budhu Khan, the grandfather of the deceased where he recorded his statement and came to know about the dead body having been buried in the graveyard. He deployed a security guard in the graveyard. The witness then deposed about the proceedings conducted by him regarding the dead body retrieved from the graveyard on 10.4.2008 in the presence of Shri Tarun Rattan, DSP Lehra and Jaswinder Singh, Naib Tehsildar, Lehra and deposed about the other investigation conducted by him. It is also the statement made by this witness that on 10.4.2008, the accused was produced before him in the village by her parents who was disclosed the grounds of arrest vide memo Ex.PP before effecting her arrest. He also deposed that the accused

on her interrogation, suffered disclosure statement Ex.PQ with regard to her having concealed one string behind the bed in her house and got it recovered and that the string Ex.P1 was taken into possession vide recovery memo. Ex.PR, after having converted the same into a parcel and sealed with the seal bearing impression 'IV'.

From the statement made by PW3 Budhu Khan it is quite discernible that he had found the appellant present by the side of the deceased when he had come back to the house from the fields. On seeing him, the appellant had entered the room. PW3 Budhu Khan found a ribbon and string around the neck of the deceased. It has also come in the evidence that the house was lying locked and the same was opened with the help of key provided by the appellant. Thus, the appellant was alone to be present in the house when the occurrence had taken place. It is also the case of PW3 Budhu Khan that on seeing the appellant strangulating his grandson, he had become unconscious. While he lay unconscious, his daughter-in-law, i.e. the appellant was successful in convincing the villagers and relatives that Arsh Khan had fallen from the roof and suffered injuries due to which he had died. Feeling convinced, the relatives and friends buried the dead body of Arsh Khan. However, being a responsible person in the village, PW2 Buta Singh, who was the Chowkidar informed the police by making statement Ex.PD stating therein that he had suspicion as to the manner in which Arsh Khan had died. Accordingly, after the police came to know about chances of strangulation of the deceased leading to his death, Inspector Indervir

Sharma made necessary arrangements for getting the dead body exhumed. Pursuant to the same, PW6 Jaswinder Singh, Naib Tehsildar got the dead body exhumed. Said Jaswinder Singh had been instructed by the Sub Divisional Magistrate, Lehra to carry out the exhuming of dead body and PW7 Ajit Pal Singh, Reader to the Sub Divisional Magistrate proved the order Ex.PF passed in this regard. The act of exhuming the dead body was photographed by PW8 Sham Lal, who had taken photographs Ex.PG/1 to Ex.PG/4 with the help of a digital camera.

From the medical evidence, it is apparent that there was a ligature mark 12.5 cm x 1 cm present in the centre of the neck encircled whole of neck except in the centre of the back in vertebral column region. On dissection, trachea was found torn. Apart from the ligature mark, three injuries were found on the dead body. All of them were abrasions on left shoulder, left lip and mouth. In the opinion of the Board of Doctors, cause of death was asphyxia due to strangulation, which was sufficient to cause death in ordinary course of nature. The injuries were ante-mortem in nature. The probable time between injury and death was immediate and between death and post-mortem, it was within 24 hours. It was also opined that ligature mark injury could be caused by way of strangulation with string (nala) of the salwar, whereas injuries No.1 to 3 were possible if the victim tried to resist strangulation or by fall. Merely because injuries No.1 to 3 could be by fall is not sufficient to accept the plea of the appellant that the deceased had died on account of falling from the roof and in

the process, the neck vertebral bone got broken. Had there been no ligature mark around the neck of the deceased, the Court could have believed the plea of the appellant. The ligature mark had encircled whole of the neck except in the centre of the back. Trachea was also found torn and for these reasons the Board of Doctors had given opinion about death being caused due to asphyxia on account of strangulation which was sufficient to cause death in ordinary course of nature.

It is true that PW3 Budhu Khan did not depose about the motive which induced the appellant to commit the murder of his grandson Arsh Khan. However, he had no reason to falsely depose against the appellant who happened to be his daughter-in-law and the marriage of the appellant with his son Nazar Khan @ Billu Khan was solemnized only 7/8 months ago.

PW10 Inspector Indervir Sharma and PW11 ASI Darshan Singh have deposed that on 10.4.2008 itself the appellant was produced before them in the village by her parents. She was arrested after being informed the grounds of her arrest and on interrogation, she made disclosure statement Ex.PQ of having concealed a string behind the bed in her house. Pursuant to the same, she led the police party to the disclosed place and got recovered string from behind the bed. The string was found to be 5'-9" long. It was taken into possession vide memo. Ex.PR.

Admittedly, PW3 Budhu Khan was the sole witness of the

occurrence. That by itself is not sufficient to ignore his testimony, which is duly corroborated by circumstantial evidence as well as medical evidence.

In view of the above, this Court finds that the learned trial Court has appreciated the prosecution evidence in its proper perspective to come to the conclusion that the appellant had committed the offence under Section 302 IPC by intentionally committing the murder of Arsh Khan, minor son of her brother-in-law Sabar Khan by strangulating him.

Resultantly, the appeal is without any merit and, therefore, dismissed.

August 10, 2017	(T.P.S. MANN) (MAHABIR SINGH SINDHU)
satish	JUDGE JUDGE

Whether reasoned/speaking : YES / NO

Whether reportable : YES / NO