

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

CRA-D-201-DB-2011

Date of Decision:18.08.2017

Yogesh Kumar

... Appellant

Versus

State of Punjab

... Respondent

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

Present: Ms. Sai Geeta Srivastava, Advocate,
as Legal Aid Counsel for the appellant

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

MAHABIR SINGH SINDHU, J.

1. Sole convict-appellant has preferred the present appeal against the impugned judgment of conviction and order of sentence dated 21.01.2011, vide which he has been convicted under Section 302 of Indian Penal Code (for short 'IPC') and sentenced to undergo imprisonment for life and to pay a fine of ₹10,000/- alongwith a default clause of two years imprisonment for non-payment of fine on account of committing murder of his wife-Sunita Rani, d/o Kalu Ram.

2. Brief facts of the case are that an FIR No.218, dated 18.09.2008 was registered under Sections 302/307 IPC at Police Station City Barnala, on the basis of a statement dated 18.09.2008 (Ex.PB) made by complainant-Kalu Ram son of Banarasi Dass (PW-2) (father of the deceased), which is as under:-

“I am resident of Ward No.4, Sukhdev Nagar, Ahmedgarh. I have four daughters and one son. Eldest daughter namely Sunita Rani aged about 25 years was married with Yogesh Kumar s/o Sukhdev Raj, resident of Anandpur Basti, in

front of Railway Station, City Barnala about 5 years back. Other children are younger. I am running a vegetable rehri. My son-in-law Yogesh Kumar used to quarrel with my daughter Sunita Rani from very beginning regarding which gathering took place 4-5 times; but all the times we used to send Sunita Rani with Yogesh Kumar after making them understand. A civil litigation for maintenance is pending in a Civil Court at Malerkotla between them. Last night I along with my wife Charanjit Kaur had gone to meet our daughter Sunita Rani who is residing in the house of Mahesh Chaudhary son of D. Chaudhary, resident of Sarabha Nagar, Barnala on rent for the last about 6-7 months. When we reached the house at Barnala we saw that Yogesh Kumar was abusing our daughter Sunita Rani. It was about 9.00 p.m. We were just in front of the gate of the house when Yogesh Kumar attacked our daughter Sunita Rani with kirpan and in our presence Yogesh Kumar gave kirpan blow from its sharp side on the back side of neck of Sunita Rani; but she raised her hand to rescue herself. Thereafter, Yogesh Kumar gave another kirpan blow on the right hand palm due to which little finger of Sunita Rani got chopped off and Sunita Rani fell down in the street. Thereafter, Yogesh Kumar gave another kirpan blow on the right side of her neck. Again, blow was given on her neck and he continued giving blows on her. Thereafter we raised alarm which attracted Balwinder Singh son of Gorakha Singh, Ramdasia, r/o Gill Kalan, near Rampura, came

there and he also tried to rescue Sunita Rani from Yogesh Kumar. Yogesh Kumar gave kirpan blow to Balwinder Singh on his forehead. Thereafter, when Shinder Kaur wife of Mela Singh intervened, Yogesh Kumar gave kirpan blow on her right hand. Yogesh Kumar had caused injuries on the person of Balwinder Singh as well as Shinder Kaur with intention to kill them. Thereafter we saw that our daughter succumbed to injuries and Yogesh Kumar s/o Sukhdev Raj fled away with his kirpan from the spot. At that time electric bulb in the street was on. Leaving my wife Charanjit Kaur to guard the dead body of Sunita Rani at the spot, I was going to Police Station for giving information when you met me. I have made my statement which I have heard and is correct.”

3. After investigation, the report under Section 173 Cr.P.C. was submitted by the police. Thereafter case was committed to the Court of Sessions on 3.1.2009. Learned trial Court on perusal of record found that a prima facie case was made out under Sections 302/307 IPC against the accused and accordingly, charges were framed against the convict-appellant, to which he pleaded not guilty. To prove its case, prosecution examined 11 witnesses.

4. Statement of the accused was recorded under Section 313 Cr.P.C., and he pleaded false implication and in his defence he examined three defence witnesses, namely, Shinder Kaur (DW-1), Manpreet Singh (DW-2), and ASI Ajit Singh (DW-3). After taking into consideration the material on record, learned trial Court convicted and sentenced the appellant to undergo imprisonment for life and imposed

a fine of Rs.10,000/-.

5. Learned counsel for the appellant argues that there is delay of eight hours in lodging the FIR and it is only a concocted story. PW-2 and PW-3 were not present at the place of occurrence at the time of alleged occurrence and they were summoned by giving a phone call. She further argues that the deceased and the appellant were living separately on account of their matrimonial differences as it is apparently clear from the fact that matrimonial case between them had been filed which was dismissed on 5.02.2008. It is also argued that there are material contradictions in the statements made by PW-2 and PW-3 and being the parents of the deceased they are the interested witnesses. It is also argued that medical evidence is contrary to the ocular version given by the prosecution witnesses as is apparently clear from the cross-examination of the doctor (PW-5), wherein he had admitted that injuries no.1 and 2 on the body of the deceased were of different dimensions and can be caused by two different weapons. In support of this, learned counsel for the appellant has cited judgment of the Hon'ble Supreme Court in the case of Mahavir Singh Vs. State of Madhya Pradesh, 2017(1) RCR (Criminal) 414.

6. We have heard the learned defence counsel as well as State counsel and gone through the case file carefully.

7. Kalu Ram (PW-2) and his wife Charanjit Kuar (PW-3), parents of the deceased, are the eye witnesses to the occurrence. Kalu Ram (PW-2) has clearly deposed that the appellant used to quarrel with his daughter from the very beginning of their marriage and they were also in litigation as a case was pending between them

regarding maintenance. He has further deposed that on previous night i.e. on 17.09.2008 he along with his wife had gone to meet his daughter-deceased at Barnala where she was residing with her husband in a rented accommodation for the last 6-7 months and when they reached at the house at about 9.00 p.m., they saw that accused was abusing the deceased. When they reached at the entrance of the house, the convict-appellant started beating their daughter and he was armed with a kirpan and gave a kirpan blow from sharp edged side on the back of Sunita Rani upon which she raised her hands to save herself and thereafter, the appellant gave another kirpan blow on right hand palm due to which little finger of the deceased was chopped off and she fell down in the street. Even thereafter the appellant gave another kirpan blow on the right side of her neck and he further repeated the kirpan blow on the neck, upon which they raised alarm which attracted Balwinder Singh son of Gorakha Singh, Ramdasia, r/o Gill Kalan near Rampura and Shinder Kaur wife of Mela Singh. Balwinder Singh tried to rescue deceased from the convict-appellant; but he gave a kirpan blow to him also on his forehead. When Shinder Kaur tried to intervene, the convict-appellant gave a kirpan blow on her right hand. Thus, the convict-appellant caused injuries to Balwinder Singh as well as to Shinder Kaur also with an intention to kill them. Thereafter instantly, their daughter succumbed to injuries and the convict-appellant fled away from the spot along with his kirpan. PW-3 Charanjit Kaur has also deposed in the same terms and corroborated the version of PW-2.

8.**Post-mortem examination (Ex.PK) of the dead body of the**

deceased was conducted on 18.9.2008 by Dr. Rajesh Chander (PW-5) along with Dr. Sunita Goel (PW-4) and found the following six injuries on her dead body:-

- “i) Incised wound approx. 4x3 c.m on the right side of the neck 4 cm below the lower end of right ear. Clotted blood present on dissection underlying blood vessel incised (carotids, Jagular);
- ii) Incised wound approx. 2c.m.x1c.m below the injury no.1 (approx. 4 cm below) clotted blood over the wound (right side of neck) on dissection underlying muscles and vessels cut.
- iii) Incised wound approx. 2.5cmx2cm on the base and back of the neck at the centre of the neck. On dissection muscles found cut.
- iv) Incised wound approx. 5cmx2cm on palmer aspect of the right hand at the base of the fingers. Little finger partially hanging. On dissection muscle and tendons found cut.
- v) Incised wound approx. 3cmx2 cm on the dorsum of left hand. Wound is superficial and clotted blood. On dissection superficial fascia cut.
- (vi) Incised wound on the web space of dorsum of left hand in between middle and index finger. Wound is superficial (1cmx0.5cm) clotted blood over wound. On dissection superficial fascia cut.”

9. As per the opinion of the doctor cause of death was hemorrhage and shock due to injury no.1, which was sufficient to cause death in ordinary course of nature. The doctor opined that all

the injuries were ante-mortem in nature and the probable time between death and post-mortem examination was 24 hours. Ex.PK/1 is the pictorial diagram showing the injuries.

10. PW-8 Mahesh Chaudhary is the landlord of the house, where the convict-appellant as well as the deceased were residing on rent. He has clearly deposed that the deceased used to reside in the rented room along with her husband-Yogesh Kumar in the year 2008 and she was murdered near the gate of the house.

11. PW-11 Inspector Harmeeek Singh deposed that on 18.9.2008 he was posted as SHO at Police Station Barnala and he recorded the statement Ex.PB made by Kalu Ram and sent it to Police Station through Constable Charanjit Singh and on the basis thereof a formal FIR Ex.PA/2 was registered by SI Bharat Singh. He has also deposed that a rough site plan Ex.PA/3 was prepared by him after reaching the spot. He lifted blood stained earth and simple earth from the spot and prepared two separate parcels duly sealed with the impression HS and the same were taken into possession vide recovery memo Ex.PC. Parcel of blood stained earth is Ex.P-2 and simple earth is Ex.P-3. He has also proved the inquest report Ex.PL.

12. PW-9 ASI Iqbal Singh has stated in his statement that convict-appellant suffered disclosure statement Ex.PR, which led to the recovery of one blood stained kirpan and which was taken into possession vide recovery memo Ex.PT after preparing its sketch Ex.PS and converted the same into parcel duly sealed with the impression IS. He has also deposed that he prepared the site plan of

place of the recovery Ex.PU.

13. A perusal of the paper book reveals that in the present case occurrence had taken place on 17.09.2008 at about 9.00 P.M and the statement of PW-2 (Ex.PB) was recorded on 18.09.2008 at about 4.30 A.M and the FIR (Ex.PA/2) was recorded on 18.09.2008 at 4.50 A.M. PW-2 has clearly deposed that after causing injuries to the deceased, the appellant ran away from the spot. He tried to follow him; but could not apprehend and ultimately, he proceeded towards Police Station and left his wife at the spot with the dead body. He has also stated that thereafter, his statement was recorded by the Police at about 4.30 A.M. Thus in the facts and circumstances of the case, delay in lodging the FIR is not fatal. The prosecution case cannot be dislodged only on the ground that there is a delay of 7½ hours in lodging the FIR. Moreover, the complainant had lost his daughter and every father will be shocked and shattered when he has seen such an occurrence as in the present case. Thus, the delay is properly explained. In this case, Balwinder Singh was also injured but unfortunately he died on 21.5.2010 during trial. Merely that PW-2 and PW-3 happen to be the parents of the deceased and being closely related with deceased their statements cannot be discarded altogether as the law is well settled that relatives of deceased are not disqualified to be witnesses and their testimony cannot be discarded when the same is closely scrutinized by the Court and particularly in view of the fact that there is a consistency between the statement of PW-2 and PW-3. Minor discrepancies are always bound to happen after a lapse of 2-3 years. The argument of the learned counsel for the appellant

that injuries might have been caused with different weapons on the body of the deceased; but there is no definite opinion by the doctor that these injuries have been caused by different weapons. So this argument is also not supporting the case of the appellant in any manner. Even otherwise PW-2 Kalu Ram and PW-3 Charanjit Kaur are eye witnesses of the occurrence and their statements are absolutely corroborated by the medical evidence. The Hon'ble Supreme Court in State of U.P. Vs. Hari Chand, (2009) 13 SCC 542, has held that where eye witness account is found credible and trustworthy, medical opinion appended to alternative possibility is not accepted as a conclusive evidence and it has also been further laid down that witnesses are the eyes and ears of the justice. Thus, the cross-examination of Dr. Rajesh Chander to the effect that injuries No.3 and 4 "can be caused by two different sharp edged weapon" does not mean that these injuries have been caused by two different weapons and thus, the same cannot be construed to discard the ocular version of PW-2 and PW-3 being eye witnesses.

14. Although the prosecution has not examined Shinder Kaur; rather she has been produced as DW-1 by the convict-appellant and she deposed that no occurrence took place; but she was given up by the prosecution as being won over and a statement of Public Prosecutor dated 19.3.2009 was duly recorded to that effect. Shinder Kaur (DW-1) also suffered injuries in this very occurrence and she was medically examined by Dr. Sunita Goel (PW-4) on 17.09.2008 who found two injuries on her person which were kept for x-ray examination and probable duration of injuries was within six hours and weapon

used was sharp edged. She has also deposed that after x-ray examination, fracture was found in injuries no.1 and 2 and same were declared as grievous in nature. Therefore, it is apparently clear that she was rightly given up by the prosecution being won over by the accused and she was produced as a defence witness but her testimony is not helpful for the convict-appellant in view of the law laid down by the Hon'ble Supreme Court in State of Rajasthan Vs. Udai Lal, (2008) II SCC 408, that wherein independent witness was given up being won over by the prosecution and he/she appears as a defence witness, no reliance can be placed on his/her statement. Even DW-1 Shinder Kaur has admitted in her examination-in-chief that Sunita Rani was killed on 17.09.2008. She has further stated that she had received injuries in the incident in which Sunita Rani was killed. Although she also stated that Yogesh Kumar was not present at the place of occurrence but her statement to this effect has rightly been discarded by the learned trial Court as she was trying to save the present appellant and this Court is fully in agreement with the learned trial Court.

15. DW-2 Manpreet Singh is the record keeper, who has brought the summoned file of case titled as State Vs. Harwinder Singh, decided on 9.3.2008 and as such, his deposition is also not much relevant.

16. DW-3 ASI Ajit Singh deposed that Ex DW-2/D pertaining to arrest and information memo and DW-2/E pertaining to recovery of motorcycle, were signed by him as one of the attesting witnesses.

Therefore, testimony of this witness is also not useful for the convict to

challenge his conviction.

17. Even Balwinder Singh had also suffered injuries which were although opined to be simple in nature by Dr. Sunita Goel (PW-4) as per medico legal examination (Ex.PD).

18. The motive in this case is clearly proved in view of the fact that the relations between the deceased and the appellant were not cordial; rather they were having strained relationship and the litigation was pending between them regarding maintenance.

19. The judgment in *Mahavir Singh's case (supra)* cited by learned counsel for the appellant is not applicable to the facts of the present case. In the said case, the evidence of doctor revealed that when the deceased sustained bullet injury, he might have been in a standing position and the bullet would have entered from left side and exited from right side of the body and this fact was corroborated with the evidences of two prosecution witnesses; but the other two PWs did not support the same. Further more, there were contradictions between the statement of doctor and that of the eyewitnesses regarding the distance and height of the assaulter while inflicting the grievous injury to the deceased and whether the deceased was standing on the platform (Chabutara) or came down from it while receiving the bullet injury. The Hon'ble Supreme Court found from the statement of doctor in that case that it was not clear and definite to say exactly from what position and distance the assaulter could have fired the gun and reference in this regard can be made to para 20 of the judgment.

“20. We have thoroughly examined the

evidence of expert witnesses as well as other ocular witnesses. The evidence of Dr. A.K. Upadhyaya (PW-12) reveals that when the deceased sustained bullet injury, he might have been in a standing position and the bullet would have entered from left side and exited from right side of the body. This fact, however, corroborated with the evidences of PW-7 (Gambhir Singh) and PW-8(Shanti Devi), but the statements of PW-9 (Madho Singh) and PW-11(Bir Singh) do not support it. Similarly, there were contradictions between the statements of Dr. Upadhyaya (PW-12) and that of the eyewitnesses as to the distance and height of the assaulter while inflicting the grievous injury to the deceased and whether the deceased was standing on the platform (Chabutara) or came down from it while receiving the bullet injury. We find from the statement of Dr. Upadhyaya (PW-12) that he was not clear and definite to say exactly from what position and distance the assaulter could have fired the gun.”

20. Thus, the factual position in that case for doctor's opinion was entirely distinguishable from the present case

21. In the case in hand, the injuries were caused by the kirpan from sharp edged side and the kirpan was duly recovered in pursuance to disclosure statement of the appellant. As per the FSL report (Ex.PA/8), the kirpan was found to be stained with human blood and as such, the same is duly connected with the commission of the offence and there is no escape from the conclusion that the convict-

appellant committed the murder of the deceased Sunita Rani on the fateful night of 17.09.2008. Thus, learned trial Court has rightly convicted and sentenced him.

22. In view of the discussion made hereinabove, this Court is fully agreed with the reasoning given by the learned trial Court and there is no scope for taking another view in the matter. The judgment of conviction passed by the trial Court is well reasoned and based on proper appraisal of evidence as per law. There is no illegality or infirmity therein as well as order of sentence. The said judgment of conviction and order of sentence are upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

18.08.2017
monika

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No