

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-138-DB of 2013

DATE OF DECISION: FEBRUARY 8, 2017

SUBHASH

...APPELLANT

VERSUS

STATE OF HARYANA

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI.**

PRESENT: MR. BIJENDER DHANKAR, ADVOCATE FOR THE APPELLANT.
MR. KAPIL AGGARWAL, ADDL. A.G., HARYANA.

M. JEYAPPAUL, J.

1. Accused Subhash has challenged the impugned judgement passed by the trial Court vide which he was convicted under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of ₹10,000/- and in default of payment of fine, to undergo a further period of 2 months. He was also convicted under Section 307 IPC and was sentenced to undergo R.I. for 5 years and to pay a fine of ₹5000/-, and in default of payment of fine, to undergo a further period of 1 month.

2. The case of the prosecution is that on 17.11.2010 at about 5.30 a.m., PW4 Munni Devi, the sister of Kamla Devi (since deceased), heard a noise emanating from the room of accused Subhash. She went inside and found accused Subhash causing injuries to Kamla Devi with a Kulhari. Ram Saroop, a resident of the same village, came to the spot. Accused Subhash caused injuries to Ram Saroop as well with Kulhari. Thereafter, PW4 raised hue and cry. A number of persons were attracted to the spot.

Accused Subhash ran away from the house with Kulhari.

3. PW5 Dr. Dalel Singh conducted post mortem examination on the dead body of Kamla Devi on 17.11.2010 at about 4.15 p.m. He found incised wounds on the forehead, left side face, eyebrow, left temporo frontal region of skull, left temporo occipital region of skull and the medial aspect of right forearm.

4. PW8 Dr. B.L.Bagri medico-legally examined Ram Saroop and found a lacerated wound on the posterior part of right parietal region, the medial of the above injury and supra orbital region on the medial part.

5. In the statement under Section 313 Cr.P.C., accused Subhash set up a defence that on 17.11.2010 at about 4.00 p.m., he found his wife Kamla with Ram Saroop lying on the bed in his house in a compromising position. He protested and raised an objection. They tried to assault him. He having got enraged lost self control and attacked both of them and caused injuries with a Kulhari lying in the room.

6. We heard the submissions made on either side.

7. The evidence of PW4 Munni Devi establishes the case of the prosecution that the accused not only attacked his wife Kamla Devi with a Kulhari and caused her death, but also attacked Ram Saroop, resident of same village and caused injuries to him. The medical evidence also lends support to the case of the prosecution. The accused-appellant also admitted that he, in fact, caused injuries not only to Kamla Devi, but also to Ram Saroop. It is held that the prosecution established beyond reasonable doubt that it was only accused Subhash who attacked his wife Kamla Devi with

Kulhari and caused her death and attacked Ram Saroop on the vital parts of his body and caused injuries.

8. The only question that survives for consideration is whether the appellant committed murder or he committed culpable homicide not amounting to murder in terms of Exception 1 to Section 300 IPC.

9. In order to bring home the defence plea within the ambit of Exception I, the accused has to establish a probable theory that there was a grave and sudden provocation provided by the deceased and as a result of which he lost his self control, attacked the deceased and caused his death.

10. The entire evidence was completely scanned by us. Ram Saroop was a neighbour of the accused. It is not the version of PW4, the sole eye witness to the occurrence, that Ram Saroop made an attempt to save Kamla Devi from the vehement attack launched by the accused with Kulhari. Rather, the prosecution had not let-in any evidence to demonstrate as to why the accused had launched merciless attack on Ram Saroop. Of course, a person who was enraged and started delivering blows on a person, would resist any attempt that is made by an intervenor. But such a resistance would not culminate in such vehement attacks on vital parts of the body. Further, Ram Saroop was not examined by the prosecution to challenge the defence set up by the accused. Even if Ram Saroop was won over, the same should have been tested before the trial Court. The silence on the part of the sole eye witness as regards the reason for launching such attacks by the accused on Ram Saroop, the failure on the part of the prosecution to lead any evidence to demonstrate that Ram Saroop arrived at

the scene of crime only to save the deceased, the nature of injury sustained by Ram Saroop and his non-examination by the prosecution before the trial Court cumulatively lend support to the defence projected throughout by the accused that he attacked the deceased who was his wife and Ram Saroop who was his neighbour when he found to his shock that they were in a compromising position in his bedroom at 4.00 a.m.

11. It is a settled position of law that charges framed as against the accused, of course, will have to be established beyond reasonable doubt. But the defence set up by the accused need not be established beyond reasonable doubt. If the defence set up by the accused probalises the theory put forth by him, the Court of Law can very well accept his defence version. The above facts and circumstances probablises the defence theory that the accused who had been to the fields returned at about 4.15 a.m. and witnessed, to his surprise, his wife lying on his bead in a compromising position with Ram Saroop and he having lost his self-control collected a Kulhari lying there and attacked his wife on her vital parts and caused her death and also attacked Ram Saroop on his vital parts with Kulhari and caused him injuries.

12. A person who saw his wife in a compromising position would normally lose his self control. He cannot be expected to remain calm and cool on witnessing such a horrible scene. The beastly instinct will definitely grip the man and as a result of which he will lose his sublime human qualities.

13. In the above facts and circumstances, we are of the considered

view that the trial Court has fallen in error in convicting the accused under Section 302 IPC and sentencing him to life imprisonment.

14. It was submitted by learned counsel appearing for the appellant that the charge under Section 307 IPC framed against the accused stood not established by the prosecution inasmuch as Ram Saroop who allegedly sustained injury was not examined.

15. We do not find any merit in the above submission made by learned counsel appearing for the appellant. In our considered view, the prosecution should not have withheld the evidence of material witness, namely, Ram Saroop who sustained grievous injuries on vital parts of his body on the ground that he was won over by the accused. The question is whether the prosecution has established, despite the non-examination of injured witness Ram Saroop, the charge that he made an attempt to cause the death of Ram Saroop. The eye witness account, the admission made by the accused in his statement under Section 313 Cr.P.C., the medical evidence on record, the seat of injuries, the depth of injuries and the weapon used by the accused, go to establish beyond reasonable doubt that despite non-examination of Ram Saroop, the accused in fact attacked Ram Saroop and made an attempt to cause his death.

16. In the result, the judgement of conviction and sentence passed by the trial Court under Section 302 IPC stands set aside. But the accused is convicted under Section 304 Part I IPC and is sentenced to undergo 7 years R.I. and to pay a fine of ₹1000/- and in default, to undergo a further period of 2 months. The conviction and sentence passed by the trial Court under

Section 307 IPC stand confirmed.

17. The appeal stands disposed of accordingly.

(M. JEYAPPAUL)
JUDGE

February 8, 2017
Gulati

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether Speaking/Reasoned : Yes

Whether Reportable : No