

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA D-746-DB of 2010

DATE OF DECISION: DECEMBER 13, 2017

BALDEV SINGH

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

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

PRESENT: MR. KAMAL NARULA, ADVOCATE
FOR THE APPELLANT.

MR. V.G. JAUHAR, SR.D.A.G., PUNJAB.

MAHABIR SINGH SINDHU, J.

1. Convict Baldev Singh has filed the present appeal for challenging the judgement of conviction and order of sentence dated 22.1.2008, passed by learned Addl. Sessions Judge, Muktsar, whereby he was convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of ₹5000/- and in default thereof, to undergo a further period of 1 year, for committing the murder of his wife Sarabjit Kaur.

2. The prosecution was launched on the basis of statement (Ex.PA) made by PW1 Lakhwinder Singh on dated 11.3.2005, which is as under:-

“Stated that I am resident of abovesaid address. We are two brothers and two sisters. The elder sister Jaswinder Kaur and younger sister Sarabjit Kaur are married with Baltej Singh son of Surjit Singh caste Ramdasia r/o Thandewala and with

Baldev Singh @ Nikka son of Surjit Singh, caste Ramdasia r/o Thandewala, respectively about 10 years back. My sister Sarabjit Kaur gave birth to son Lovepreet Singh aged about 8/9 years and one daughter Kirandeep Kaur aged about 6/7 years. My brother-in-law (Jija) Baldev Singh used to beat my sister Sarabjit Kaur for the last about 4/5 years and suspected about the character of my sister and often he used to beat her after drinking more liquor. About this oral and written compromise was effected so many times. Despite that we used to leave my sister at village Thandewala after making her understand. Yesterday, in the evening, my sister told us on the telephone that her husband is beating her more after consuming liquor. You bring me back or to effect some compromise between them. We told that we will come in the morning. Today, at about 10.30/11.00 a.m. in the morning, I accompanied Natha Singh son of Nihal Singh resident of Sarainaga, mediator of my sister and Gura Singh Panch r/o Dhilwan Kalan and reached the house of my sister Sarabjit Kaur at village Thandewala, where the outer door was closed. On opening the same we entered inside. After closing the residential room my brother-in-law Baldev Singh was applying hot press on the body of my sister Sarabjit Kaur after tying her legs and arms and was beating with danda (stick). My sister was loudly shrieking. We all raised alarm and pushed the door.

Then Baldev Singh opened the door from inside and ran away from the spot. We saw the entire occurrence from the window of the residential room to which only grill is fitted. Then I took my sister to Government dispensary of Thandewala where the Doctor gave first aid and advised us to take her to Civil Hospital, Muktsar. In the meantime, our relative Zora Singh and other relatives reached. Then, we after arranging conveyance, alongwith Zora Singh, we were taking my sister to Civil Hospital, Muktsar for treatment and on the way my sister Sarabjit Kaur died by succumbing to the injuries. My brother-in-law Baldev Singh @ Nikka has murdered my sister Sarabjit Kaur by beating and applying hot press. Cause of grudge is that my brother-in-law Baldev Singh suspected the character of my sister. So my sister has been murdered by causing injuries. I am the complainant. Action be taken.”

3. On the basis of aforesaid complaint, FIR No.81 dated 11.3.2005 under Section 302 IPC (Ex.PA/2) was registered at Police Station Sadar Muktsar. The spot was inspected, site plan was prepared, material objects, i.e. Iron press, danda and chaddar (bed sheet) were taken into police possession vide memo Ex.PB. Inquest report was prepared, statement of witnesses were recorded and the dead body of the Sarabjit Kaur was sent for post mortem examination. On 12.3.2005, the accused was arrested from bus stand, Charewaan.

4. After completion of investigation, report under Section 173

Cr.P.C. was presented and charge for the offence under Section 302 IPC was framed against the accused to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined 9 witnesses and brought on record documentary evidence.

6. In his statement under Section 313 Cr.P.C. accused Baldev Singh stated that he was innocent and claimed false implication. He also examined Zora Singh as DW1 in his defence.

7. The trial Court after considering the material evidence available on record convicted the accused as stated above.

8. Hence, the present appeal.

9. Learned counsel for the appellant vehemently contended that as there was no electric connection installed in the house of the accused hence the question of applying hot electric press on the person of the deceased does not arise and the complainant has levelled vague allegations. It was contended that as the accused used to work in day and night shifts, therefore, the deceased used to spend her nights outside her house in his absence and the injuries present on the person of the deceased were already there prior to the date of occurrence. Learned counsel further argued that the trial Court has erred in convicting and sentencing the accused by ignoring material discrepancies in the case of the prosecution.

10. On the other hand, learned counsel for the State submitted that the prosecution has been able to prove its case beyond reasonable doubt and no ground is made out to set aside the well merited judgement passed by the learned trial Court.

11. PW1 Lakhwinder Singh was the complainant in the present case who set the law in motion. He reiterated the stand taken in his initial complaint.

12. PW2 Gaura Singh deposed that he alongwith Lakhwinder Singh and Natha Singh went to the house of the accused and heard shrieks and saw through grill of the room of the house that the accused was holding an electric press in his hand. He was also holding one danda in his hand and hands of the deceased were tied with chadra (cloth). They pushed the outer door open and raised raula (cry). However, the accused succeeding in running away after opening the door from inside. While they were putting on salwar to deceased, Sarabjit Kaur became unconscious. Thereafter, she was taken to Govt. Dispensary at village Thandewala where first aid was given and it was advised by the Doctor to shift Sarabjit Kaur to Civil Hospital, Muktsar. But, as soon as they reached near the hospital, she expired. He further deposed that relations of accused with the deceased were strained.

13. PW5 Dr. N.R.Duggal, Medical Officer, Civil Hospital, Muktsar deposed that he conducted post mortem examination on the dead body of Sarabjit Kaur on 12.3.2005 and found the following injuries:-

“1. Bluish discolouration on the front of nose 3cm x 3cm.

On dissection N.A.D.

2. Reddish blue contusion 3 x 1 cm just above the outer third of right eyebrow. On dissection N.A.D.

3. Scabbed abrasion 2cm x 2cm over right cheek area 4cm

from midline. 4 cm from back of right eye. Red line present. On dissection N.A.D.

4. *Bluish contusion 5cm x 5cm on the back of left elbow. On dissection N.A.D.*
5. *Bluish contusion 7cm x 7cm on the back of right elbow with an abrasion 1cm x 1 cm in its middle. On dissection on N.A.D.*
6. *Multiple abrasion contusion of different size was present in an area of 50cm x 87 cm on the back of chest and trunk 30 to 35 in number. There were also multiple scabbed abrasion of 1 to 2 cm in size present in the same area. On dissection collection of blood present in some area.*
7. *Multiple abrasion contusion on the back of buttock and thigh on both side going lower upto middle of calf on each side in an area of 75cm x 35cm on each side. 50 in number. Multiple scabbed abrasion of 1 to 2 cm in size present over the same area 28 in number. On dissection collection of blood seen under the skin all over the area.*
8. *Multiple scabbed abrasion of 1 to 2cm of size present in front of right knee in an area of 5cm x 5cm 10 in number. On dissection N.A.D.*
9. *Multiple scabbed abrasion of 1 to 2cm in size present in front of left knee in an area of 5cm x 5cm 7 in number.*

On dissection N.A.D.

10. *Multiple abrasion contusion in an area of 50cm x 20cm on the antero lateral side of left thigh. On dissection N.A.D.*

11. *Multiple abrasion contusion in area of 50cm x 20cm on the antero lateral side of right thigh. On dissection N.A.D.*

12. *Multiple abrasion contusion in an area of 25cm x 10cm in size on the antero lateral side of left leg in its middle. On dissection N.A.D.”*

14. This witness opined that the cause of death was due to Cardio Respiratory arrest as a result of shock due to collective effect of multiple injuries which were ante mortem in nature and were sufficient to cause death in the ordinary course of nature.

15. PW9 Inspector Bikramjit Singh deposed that on 11.3.2005, he was posted as SHO, P.S. Sadar Muktsar. A ruqa was received from Civil Hospital, Muktsar on which he visited the same and recorded statement of PW1 Lakhwinder Singh, on the basis of which FIR (Ex.PA/2) was registered. He went to the spot, prepared the inquest report, recorded statements of witnesses, sent the dead body of Sarabjit Kaur for post mortem examination, prepared inquest report and took into possession material objects from the spot. He arrested the accused on 12.3.2005 from bus stand, Charewan.

16. A perusal of the aforesaid ocular testimonies of PW1 and PW2

duly corroborated by the medical evidence points towards the guilt of accused. PW1 and PW2 have given a graphic account of the occurrence occurred on 11.3.2005. Both these witnesses have deposed that when they reached the house of the accused, the accused was beating the deceased whose arms and legs were tied with the help of bed sheet. She was taken to Government Dispensary in village Thandewala in an unconscious condition where she was given first aid and then taken to Civil Hospital, Muktsar, where on the way she died. Even the lengthy cross-examination of PW1 by the defence counsel failed to shake his stand.

17. It has come in evidence that the prosecution recovered an electric press from the place of occurrence. PW8 HC Sukhpal Singh, Photographer stated in his deposition that he went to the place of occurrence and took photographs of the same and also tendered the same in evidence as Ex.PK/1 to Ex.PK/3. A perusal of the Ex.PK/1 to Ex.PK/3 (photographs) shows that apart from the electric press, the accused had a TV and other electrical items also in his house. Had there been no electric connection in the house, there would have been no reason to place those items, being unnecessary. In a village setting, an electric connection is very well arranged through kundi connection for which no document or permission is required to be sought and so was the reason for failure of the prosecution in proving that the accused had an electric connection. Therefore, the argument of learned counsel for the appellant that the accused had no electric connection installed in his house, in no way, favours the accused.

18. The accused took a stand that in his statement under Section

313 Cr.P.C. that the deceased used to spend nights outside in his absence. He further stated that he noticed injuries on her person about two days prior to the occurrence to which the deceased failed to disclose anything. He also called DW1 Zora Singh to inquire from the deceased as to how she received injuries, but the deceased did not disclose anything to him also. On 11.3.2005, finding the deceased nowhere in the house, he went in her search and informed his mother-in-law also and while coming back to his village, he came to know about the death of Sarabjit Kaur at the tubewell of Hoshiar Singh, ex-sarpanch. Whereas, DW1 Zora Singh stated that while inquiring about the injuries from the deceased, Jaswinder Kaur, sister of the deceased and Baltej Singh, brother of accused were present. He further stated that he, alongwith the accused and Jaswinder Kaur went in search of the deceased and on coming to know that the deceased was lying in an unconscious condition, he alongwith Jaswinder Kaur, sister of the deceased and his sister took her to Civil Hospital, Muktsar.

19. The accused in his statement under Section 313 Cr.P.C. has nowhere mentioned the names of Jaswinder Kaur and his brother Baltej Singh to be present at the time of enquiry by DW1 Zora Singh with regard to injuries on the person of the deceased. The accused had also failed to examine Baltej Singh and Jaswinder Kaur, who were none other than the real brother and sister-in-law of the accused in his defence for the reason best known to him. Baltej Singh and Jaswinder Kaur were the best witnesses for the accused to prove his innocence.

20. It has been further stated by the accused in his statement under

Section 313 Cr.P.C. that while returning back to his village he came to know about the death of Sarabjit Kaur. DW1 Zora Singh also made a statement that “someone” told him that Sarabjit Kaur was lying in an unconscious condition at the tubewell of former Sarpanch. In a village setting, people are mostly known to each other, if not by name, by face then. It is hard to digest that DW1 Zora Singh failed to identify or name the person in his deposition who told him of condition of Sarabjit Kaur. The non-examination of said “someone”, major contradictions in the statements of the accused and DW1 Zora Singh and the failure to bring on record the evidence of close relatives, shakes the very defence led by the accused. The statement of DW1 Zora Singh also cannot be taken to be trustworthy for the reason that earlier Zora Singh was projected as a prosecution witness, but was later on given up as won over.

21. Therefore, keeping in view the ocular testimony of the witnesses, medical evidence and the contradictions occurred in defence of the accused, we are of the view that the prosecution has been able to prove its case that it was the accused-appellant who committed the offence punishable under Section 302 IPC. Consequently, the appeal is dismissed.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

December 13, 2017
Gulati

Whether Reportable	:	Yes
Whether Speaking/Reasoned	:	Yes