

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-581-DB of 2012

Date of decision : 15.5.2017

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Harbans Singh

.....Appellant

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice T.P.S. Mann
Hon'ble Mr. Justice H. S. Madaan

Present: Mr.Gurinder Singh Goraya, Advocate for the appellant

Mr. S.S. Dhaliwal, Additional Advocate General, Punjab.

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H. S. Madaan, J.

This appeal has been preferred against judgment and order dated 13.1.2012, passed by the Court of Sessions Judge, Mansa, vide which he had convicted accused Harbans Singh for offence under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo further rigorous imprisonment for two months.

Such accused - convict, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story is that on 12.6.2010, SI Dalbir Singh, SHO, Police Station Jhunir, heading a police party was on duty in connection with patrolling. When the police party, travelling in official vehicle, reached near dera of Baba Dhian Dass, it came across complainant Dana Khan, chowkidar of Village Khiali Chahilan Wali, accompanied by Gurlal Singh. Complainant Dana Khan, aged about 60 years, got his statement Exhibit PE, recorded with SI/SHO Dalbir Singh, wherein he stated that accused Harbans Singh alongwith his wife (Manjit Kaur – deceased), had been residing in a house belonging to Telu Ram son of Bhura Mal Mahajan, of their village, which Harbans Singh had taken on rent. Harbans Singh was engaged in doing labour work in Punjab Convent School, situated on Sirsa-Mansa Road, but he was not spotted in the village for the last about 10 days. On that very day at about 12.05 afternoon, when complainant was passing near the rented house of Telu Ram, then he felt smell of dead body coming out from that house. As such the complainant alongwith Gurlal Singh, went inside the house and found that dead body of wife of Harbans Singh, in decomposed condition was lying in a room on the eastern side of the house. Blood was spilled near head of the dead body. Then complainant and Gurlal Singh left Bhola Singh Panch near the dead body and were going to Police Station, Jhunir to lodge report in that respect, on the way they came across the police party and complainant got his statement recorded with the Investigating Officer, seeking taking of necessary action in the matter. The statement was thumb marked by complainant Dana Khan. His such left thumb impression

was attested by the Investigating Officer. The Investigating Officer appended his endorsement Exhibit PW 6/A, below such statement and then finding that from the contents of statement, offence under Section 302 IPC was disclosed, the Investigating Officer sent *ruqa* to Police Station, Jhunir, through PHG Avtar Singh at 1.15 p.m., on the basis of which formal FIR Exhibit PW 6/B was recorded by SI Gurdev Singh. SI Gurdev Singh put his endorsement on the original *ruqa* and sent it back to the Investigating Officer alongwith copy of the FIR.

The police party headed by SI/SHO Dalbir Singh and accompanied by complainant Dana Khan and Gurlal Singh, proceeded towards the spot. The Investigating Officer carried out spot inspection and observed dead body of Manjit Kaur lying there with a *chunni* tied around both her hands. He carried out inquest proceedings with regard to the dead body and got prepared inquest report Exhibit PF, in that regard from ASI Gurdeep Singh, on his directions. He had taken photographs of the dead body with his mobile camera, which were later on got developed, the same being Exhibits P1 to P10. The dead body was identified by Gurlal Singh and Bhola Singh Panch. Their statements were recorded under Section 175 Cr.P.C. The Investigating Officer sent dead body of the deceased to Civil Hospital, Sardulgarh, through HC Mukhinder Singh and Constable Mohan Singh, for getting post mortem examination conducted thereon, handing over application Exhibit PW 4/A, to HC Mukhinder Singh. He collected blood stained earth and simple earth, besides a hair clip, which was lying near the dead body,

preparing separate parcels thereof, sealing those with his seal having impression DS and then those parcels were taken into possession vide recovery memo Exhibit PW 6/C. He prepared rough site plan of the place of occurrence as Exhibit PW 6/D and recorded statements of witnesses. After getting the post mortem examination conducted on the dead body, HC Mukhinder Singh and Constable Mohan Singh handed over post mortem report alongwith a parcel containing clothes of deceased, sealed with seal of doctor, which was taken into possession vide recovery memo Exhibit PW 6/E. On return to the police station, the Investigating Officer, handed over the case property to MHC Lakha Singh.

On 17.6.2010, Prem Singh, Ex-Sarpanch of Village Khiali Chahilan Wali, came to SI/SHO Dalbir Singh and told that accused Harbans Singh had approached him to cause his appearance before the police. Then SI/SHO Dalbir Singh alongwith other police officials, accompanied by Prem Singh, Ex-Sarpanch, went to the house of latter and arrested accused Harbans Singh from there, preparing necessary documents in that regard. The accused was interrogated and he suffered a disclosure statement under Section 27 of the Indian Evidence Act, that he had hidden a wooden *danda*, used by him in the incident, in the wheat chaff room of his house underneath the wheat chaff, regarding which he had exclusive knowledge and he could get the same recovered. Such disclosure statement of the accused Exhibit PA, was signed by him and attested by witnesses. The Investigating Officer called the police photographer HC Subhash Kumar, from CIA, Mansa, for the purpose

of video graphing the proceedings of recovering *danda* and then accused Harbans Singh, while in police custody, led the police party to the disclosed place and got recovered wooden *danda* Exhibit MO-1, from the specified place, which was taken into possession vide recovery memo Exhibit PB. The Investigating Officer had prepared rough site plan of the place of recovery as Exhibit PW 6/F. Later on HC Subhash Kumar had produced CD of the proceedings Exhibit MO-8, which was taken into possession vide recovery memo Exhibit PW 6/G.

On 21.6.2010, photocopy of the relevant extract of attendance register of the contractor, where accused used to do labour work was produced by Gurmeet Singh, Munshi of the contractor, showing that Harbans Singh was absent from his duty after 31.5.2010, copy of relevant extract being Exhibit PW 6/H. It was taken into possession vide recovery memo Exhibit PW 6/I. During the course of investigation, the Investigating Officer recorded statements of witnesses. Parcels of simple earth and blood stained earth were sent to the Forensic Science Laboratory, Punjab, Chandigarh, for analysis and report from there Exhibit PW 6/J, was received. On 28.7.2010, the Investigating Officer, vide application Exhibit PW 4/E had enquired from the doctor, as to whether the injury could be caused with *danda*. The doctor vide his endorsement Exhibit PW 4/F, had given the opinion in affirmative.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Sub Divisional Judicial Magistrate, Sardulgarh.

On presentation of challan in the Court of Sub Divisional Judicial Magistrate, Sardulgarh, copies of documents relied upon therein were supplied to the accused free of costs as provided under Section 207 Cr.P.C. and then finding that offence under Section 302 IPC was exclusively triable by the Court of Sessions, he vide commitment order dated 23.9.2010, committed the case to the Court of Sessions Judge, Mansa.

When the case was received in the Court of Sessions Judge, Mansa, then finding that prima facie charge for offence under Sections 302 IPC was disclosed against the accused, he charge sheeted the accused accordingly, to which he pleaded not guilty and claimed trial and the case was fixed for evidence of the prosecution.

During the course of evidence of the prosecution, the prosecution examined, as many as 11 PWs, as per details below.

PW-1 Prem Singh, aged about 38 years, agriculturist, resident of Village Khiali Chahilan Wali, stated that he is Ex-Sarpanch of his village; that he was running an Ahata (approved place for taking of liquor), at Jhunir Bus Stand. He stated that Harbans Singh came to him about 15 days prior to 6.12.2010 (date wrongly given, it was subsequently corrected by the witness as 12.6.2010); that Harbans Singh was drunkard and he told him that his wife was of immoral character and he would kill her; that he tried to make him understand that he should not do so. According to this witness, he thought that since Harbans Singh was drunkard, he was saying so casually. However, on 12.6.2010, when he came to know that accused had killed his wife, he went to the police rather as a matter of fact.

Police met him in the village itself and he narrated those facts before the police officer, by way of getting his statement recorded, so that some innocent person might not get entangled. Going further, the witness stated that probably on 17.6.2010, accused Harbans Singh came to him at his house and told that he had murdered his wife in his house and he requested the witness to produce him before the police so that police might not harass him. As per this witness, then he went to the police station and came back with police and got the accused arrested, while he was present in his house. Then the police took the accused to his rented house. The accused had also made statement that he had hidden a *danda* used by him in the incident in the wheat chaff room, which he could get recovered and then in pursuance of this disclosure statement Exhibit PA, he got the same recovered while being in police custody and it was taken into possession vide recovery memo Exhibit PB, *danda* being Exhibit MO-1. The entire proceedings were video-graphed. Necessary documents had been prepared at the time of arrest of the accused.

PW-2 Dana Khan – complainant, supported the prosecution story, deposing on the lines of the statement made by him to the police, which formed basis for registration of the FIR.

PW-3 Gurlal Singh, aged about 40 years, an agriculturist, resident of Village Khiali Chahilan Wali, stated that he knew Harbans Singh accused, who was staying with his wife in the house of Telu Ram in Village Khiali Chahilan Wali; that about 8 months earlier (his statement was recorded on 10.3.2011), he was informed by the chowkidar that there was foul smell coming from house of Telu Ram,

where accused was residing, then he alongwith chowkidar went there and saw dead body of wife of Harbans Singh lying at that place. He stated that he had identified the dead body during inquest proceedings and had signed the inquest report Exhibit PF.

PW-4 Dr. Manav Jindal, Medical Officer, Sub Divisional Hospital, Sardulgarh, stated that on 12.6.2010, while posted as such, on police request, Exhibit PW 4/A, he had conducted the post mortem examination on the dead body of a lady, wife of Harbans Singh. The dead body was brought from Village Khiali Chahilan Wali, by HC Mukhinder Singh and Constable Mohan Singh and was identified by Gurlal Singh son of Gurnam Singh and Bhola Singh son of Jora Singh, residents of Village Khiali Chahilan Wali. He stated that his observations were as follows :-

“It was a body of young female, 5 feet in length, which was putrefied and swollen and having foul smell. Skin peeled off at many places. Maggots were crawling over the body. Both hands were tied with red coloured Chuni and it was wearing red kurta and salwar. Eyes and mouth were closed.

Following injury was found on the dead body.

1. Lacerated wound 5 cm x 2 cm present over right temporo-parietal region. On dissection underlying clotted blood was present in the tissues and right temporal and parietal bones were fractured. Underlying dura matter lacerated and clotted blood was present in cranial cavity. Brain matter was

liquified.

Lungs, peritoneum, small intestine, large intestine, liver, spleen, kidneys, bladder were putrefied. Small and large intestines were distended. Large intestine contained foul smelling gases. Stomach was healthy and empty.”

This witness has opined that cause of death in this case was shock and hemorrhage, resulting from the injury already described, which was ante mortem in nature and sufficient to cause death in ordinary course of nature. He further stated that probable time that elapsed between injury and death was within few hours and between death and post mortem from one to two weeks; that after examination he handed over to police dead body alongwith its belongings, copy of post mortem report and police inquest papers No. 1-20, duly signed by him, including carbon copy of inquest report Exhibit PF. He proved copy of post mortem report as Exhibit PW 4/C, pictorial diagram showing seat of injury as Exhibit PW 4/D.

The witness further stated that on 28.7.2010, on police request PW 4/E, he vide his endorsement PW 4/F, opined that relevant injury could be caused with *danda* Exhibit MO-1.

PW-5 Pritam Singh, aged about 47 years, agriculturist, resident of Village Tatargang, Tehsil Puranpur, District Pilibhit (U.P.), deposed that deceased Manjit Kaur was his daughter, who was married with Harbans Singh accused, about one year prior to the occurrence; that couple was not having any child; that during cotton season, the couple had come to Village Khiali Chahilan Wali to do

labour work, ultimately, they settled there. Going further, the witness stated that accused is a habitual drunkard and he used to beat up and harass his daughter under the influence of liquor; that he had telephonic talk with his daughter twice and she informed him that accused was beating and harassing her and threatened to kill her; that he used to advise her to settle the matter by herself, assuring her that he would come and would sort out the things. According to this witness, he suddenly came to Village Khiali Chahilan Wali, 8 days after the death of her daughter in a routine manner, where he was told that his daughter had been murdered by her husband. He proved photographs Exhibits P1 and P2, stating that those were of his daughter Manjit Kaur – deceased.

PW-6 SI Dalbir Singh, who had carried out investigation in this case, testified in that regard proving various documents.

PW-7 Gurmeet Singh, aged about 40 years, resident of Sardulgarh, stated that he is a mason by profession and Harbans Singh accused had been working with him from 1.4.2010 to 31.5.2010 as per entries in the relevant attendance register. He stated that he had handed over to the police photocopy of the relevant pages Exhibit PW 6/H, which had been seized vide recovery memo Exhibit PW 6/I, adding that except from 1.4.2010 to 31.5.2010, accused Harbans Singh did not come for labour with him and after 31.5.2010, he did not report for doing labour work.

PW-8 HC Simbal Singh, a formal witness, tendered in evidence his affidavit Exhibit PW 8/A.

PW-9 ASI Gurdeep Singh, who was associated in this

investigation, from 12.6.2010 onwards, deposed regarding his part.

PW-10 ASI Lakha Singh, who on 12.6.2010, was posted as MHC at Police Station, Jhunir, being a formal witness submitted his affidavit Exhibit PW 10/A.

PW-11 HC Subhash Kumar, from CIA Staff, Mansa, deposed that on 17.6.2010, he was called by SI Dalbir Singh and accordingly went to Village Khiali Chahilan Wali and prepared CD by way of videography. After preparing it, he had handed it over to SI Dalbir Singh, who had taken it into possession vide recovery memo Exhibit PW 6/G.

With that the evidence of the prosecution got concluded.

Statement of accused was recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against the accused were put to him, but he denied the allegations contending that he is innocent and has been falsely involved in this case. He took up the plea that he had gone to meet his parents at his native Village Raghavpuri (U.P.) and after about 12-13 days when he returned to Village Khiali Chahilan Wali, he found his wife lying murdered in his rented room and thereafter he went to police to report the matter, but the police instead of taking action against the actual culprit, falsely involved him in this case; that he and his wife were living peacefully; that he never harassed his wife nor gave her beatings; that he was not addicted to liquor; that he never went to village Sarpanch Prem Singh nor made any confession; that nothing was recovered from him and the alleged recovery of *danda* had been planted upon him by the police; that the police had procured false

witnesses to depose against him.

The accused did not lead any evidence in defence inspite of availing of opportunity for that purpose.

After hearing arguments, the trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he has filed the present appeal praying that the impugned judgment of his conviction and sentence be set aside by way of acceptance of appeal and he be acquitted of the charge framed against him.

We have heard learned counsel for the appellant/accused/convict, learned Additional Advocate General for the State of Punjab, besides going through the file and we are of the considered view that there is absolutely no merit in the appeal.

Although there is no eye witness account of the incident available on the record and the case is based upon circumstantial evidence, but then the chain of events and circumstances is complete, which is compatible with the hypothesis of the guilt of the accused. A strong motive for committing murder has also come out to be there.

The first and foremost incriminating circumstance against the accused is that death had taken place in the matrimonial home i.e. rented accommodation at Village Khiali Chahilan Wali, where the accused and deceased used to reside and there was none else putting up with them. Manjit Kaur, wife of the accused having died an unnatural death, it was for the accused to explain the circumstances under which his wife got killed. However, accused has been unable to render any explanation. It is certainly not a case of burglary or some

intruder coming to the house to commit some sexual assault on the deceased and in the process deceased getting killed. The accused has woefully failed to discharge the burden imposed upon him, in view of Section 106 of the Indian Evidence Act. The accused has taken up a plea in his statement under Section 313 Cr.P.C. that he had gone to meet his parents at his native Village Ragavpuri (U.P.) for about 12-13 days and when he returned to Village Khiali Chahilan Wali, he found his wife murdered in his rented room; that he had gone to the police to report the matter, but the police rather involved him in this case. He stated that he and his wife were living peacefully and he neither used to harass his wife, nor gave her beatings; that he was not addicted to liquor; that he had not gone to Village Sarpanch Prem Singh and had not made any confession before him; that no recovery was got effected from him. However, this explanation does not seem convincing. If accused was to go to meet his parents at his native place in U.P., then under normal circumstances, he would not have left his young wife alone in rented accommodation for so many days, exposing her to danger and risk of various types from different quarters and he would normally have taken her alongwith him. Nevertheless, nothing has been brought on record to show that what was so much urgent for the accused to rush to his native place for so many days. From the record maintained by his employer and which was produced by Gurmit Singh, Mason as PW-7, it comes out that accused did not report for work after 31.5.2010. There is nothing on record to show that accused had requested his employer to grant him leave for going to his native place. Accused stopping reporting for

work abruptly, goes to show that he was on a run for several days pointing out that it was he who had committed murder of his wife.

Another very important piece of incriminating evidence against him is testimony of PW-1 Prem Singh, Ex-Sarpanch, who stated that 15 days prior to 12.6.2010, accused, who is a drunkard had come to his Ahata and after taking liquor, had declared that since his wife was of immoral character, he would kill her. This witness had informed the police in that regard also. Thereafter, it was he who was contacted by the accused and before whom he had made a confession of his having committed murder of his wife, pleading that he be produced before the police so as to save him from police harassment and torture. Then this witness had brought the police to his house, where the accused was present and arrested. Prem Singh being Ex-Sarpanch of the village, as such a respectable man, at whose liquor vend the accused used to take liquor, it is quite natural that he would have reposed faith in him, so as to make a clean breast of his guilt, hoping that Prem Singh being an influential person, having contacts with police, could save him from police torture and harassment. He was in fact arrested from house of Prem Singh, that corroborates the fact that he had gone there and made an extra judicial confession before Prem Singh.

Then he had made a statement under Section 27 of the Indian Evidence Act, regarding concealment of *danda* used by him in the incident in the wheat chaff room of his rented accommodation and then getting the same recovered, which was taken into police possession. As opined by doctor Manav Jindal, PW-4, injury on the

person of deceased could be caused with a *danda*. That also corroborates the prosecution story. The entire proceedings of the recovery of *danda* at the instance of accused were video-graphed and this fact also lends credence to the fact of accused having suffered a disclosure statement and getting the *danda* recovered from his possession.

From the testimony of PW-2 Dana Khan, it comes out that accused had been on run after the incident since dead body of his wife Manjit Kaur, was found in the room of rented accommodation. If accused had not done anything wrong, then there was no question of his fleeing from the place without any intimation. From statement of PW-5 Pritam Singh, father of Manjit Kaur deceased, it comes out that accused was a habitual drunkard and used to beat and harass his wife Manjit Kaur under the influence of liquor and Manjit Kaur had even informed her father Pritam Singh, witness, in that regard and also the fact that accused was threatening to kill her. In his cross examination, the witness stated that quarrels used to take place between his daughter and accused, as accused was addicted to liquor. Thus it comes out that accused had committed murder of his wife for that reason. The medical evidence in this case duly corroborates the ocular evidence. The investigation in this case has been carried out in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly and to challan him falsely. The accused has failed to render any reasonable or plausible explanation for his alleged false implication in this case.

From the facts and circumstances of the case and evidence

adduced by the prosecution, it comes out that the incident in which the accused had caused death of his wife Manjit Kaur, had not taken place at the spur of moment, but it was as a result of pre-planning and pre-meditation; use of weapon, the site selected for causing injury to the deceased i.e. on head, which is most vital part of the body, clearly shows that intention of the accused was to ensure death of the deceased.

The prosecution has successfully proved its charge against the accused beyond a shadow of reasonable doubt. The judgment of conviction and sentence recorded by the trial Court is based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity in such judgment. The same is upheld. The appeal is found to be without any merit and is dismissed accordingly.

(T.P.S. Mann)
Judge

(H.S. Madaan)
Judge

15.5.2017

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No