

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

Crl. Appeal No.D-88-DB of 2005

Date of Decision:-07.10.2017

Balkar Singh

....Appellant

vs.

State of Haryana

....Respondent

**CORAM:- HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present:- Mr. Rajiv Vij, Advocate,
for the appellant.
Mr. Kapil Bansal, DAG, Haryana.

Surya Kant, J. (Oral)

This appeal is directed against the judgment dated 1.12.2004 passed by learned Sessions Judge, Jind, whereby the appellant has been convicted under Section 302 IPC and sentenced to undergo imprisonment for life with a fine of ₹ 3,000/-, in default of payment whereof, he is further required to undergo imprisonment for six months.

2. The prosecution case, in brief, is that the appellant was married to Kanta (deceased). They stayed together for about 9 years in Village Kanhari and two children were born out of the wedlock. The appellant was allegedly in the bad habit of drinking and had even sold his house to continue with his bad habits. He used to torture his wife Kanta and owing to

his relentless behaviour, Kanta returned to her parents' house at Village Sunderpura. The appellant came to Village Sunderpura on the date of occurrence i.e. 15.11.2003 and insisted upon Kanta to accompany him to his Village Kanhari but when she refused to do so, the appellant attacked her with a wooden log (Barga) resulting in her instant death. The incident happened around 4:30 P.M. Nafe Singh son of Jogi Ram (PW-2) was the first person who had spotted the appellant at Village Sunderpura and informed about it to Virender, brother of the deceased. Bhalle Ram s/o Desh Raj also witnessed the occurrence along with Virender and Nafe Singh. All the three arranged a Tractor and took Kanta to General Hospital, Narwana, where she was got admitted around 6:30-7:00 P.M. but the Doctor declared her brought dead. Virender, brother of the deceased, witnessed the incident and reported the matter to the police while he was in hospital. Sub Inspector Ram Phal, SHO, P.S. Sadar Narwana, reached the hospital at about 7.30 P.M. which was far away from the police station and recorded the statement of Virender whereupon FIR No. 204 dated 15.11.2003 under Section 302 IPC was registered at Police Station, Sadar Narwana at 8:10 P.M.

3. Further, case of the prosecution is that the appellant was arrested on 17.11.2003 and pursuant to the disclosure statement made by him, the wooden log (Barga) was got recovered underneath the heap of *pullies* of *Bajra* lying on the plot situated adjacent to the road leading from Village Sunderpura to Baddowal. The dead body of Kanta was taken to Civil Hospital, Narwana, where post-mortem examination was conducted on 16.11.2003. Dr. B.R. Kayat, Medical Officer, Civil Hospital, Narwana, who

conducted the post-mortem examination, has also stepped into witness-box as PW-9. After conclusion of investigation, challan was presented and as the appellant pleaded not guilty, charges were framed. The prosecution examined as many as 11 witnesses. The appellant was also examined under Section 313 Cr.P.C., where he denied the allegations of prosecution and pleaded innocence. No evidence in defence, however, was produced by him.

4. On appreciation of the evidence including the eye-witness account, learned Trial Court held the appellant guilty and consequently sentenced him.

5. We have heard learned counsel for the appellant as well as learned State counsel at a considerable length and gone through the entire record with their able assistance.

6. It is urged by learned counsel for the appellant that;

- (i) It is highly improbable that the appellant would have run away from the spot after committing the murder of his wife when admittedly he was not having any vehicle and was walking on foot;
- (ii) The prosecution has failed to connect that 'V' shaped chappal, containing blood stains recovered from the spot, belonged to the appellant;
- (iii) Recovery of the wooden log (Barga) allegedly at the instance of the appellant, is a totally planted story;
- (iv) The eye-witness account is concocted as if all the three family members of the deceased witnessed the occurrence, which allegedly took place during day time, they would have surely made an attempt to catch hold the appellant or made a hue and cry to attract crowd at

the scene;

(v) The appellant was arrested after two days and the arrest memo is totally vague as it does not disclose where and how the appellant was arrested.

7. Having given our thoughtful consideration to the submissions, we do not find any merit therein.

8. The first question which falls for consideration is whether the occurrence was witnessed by Virender and Nafe Singh and if so, whether there is any discrepancy of such a serious nature that their depositions are liable to be discarded? The statement of Virender S/o Kalia (PW1) bears out that Kanta was married to the appellant about 15 years ago. Her marital life was not smooth as the appellant was stated to be addicted to liquor and had other bad habits for which he sold his house. Kanta, therefore, came to Village Sunderpura and started living with her father and brothers. Nafe Singh (PW-2) is cousin of Virender and he stated that the appellant was spotted in Village Sunderpura. Since, he told this fact to Virender, they along with Bhalle Ram went towards the house of Virender's family and saw that Kanta and appellant were indulging in heated exchange where the appellant was pressurizing her to accompany him to village Kanhari but she refused, whereupon the appellant attacked her with a wooden log (Barga) causing injury on her head as a result of which Kanta fell down on the ground. The witness along with his uncle and cousin arranged a vehicle and brought Kanta to Civil Hospital, Narwana, but the doctor declared her dead. He called the police and got recorded his statement Ex.-PA.

9. The appellant's contention that why the alleged eye-witnesses

made no attempt to catch hold of him, has been well explained by Virender PW-1, as according to him, their first priority was to rush Kanta to Civil Hospital and for this reason alone they did not even stop on the way to inform the police. The witness stood the test of lengthy cross-examination as nothing could be extracted from him to cause dent to the prosecution case. Merely because the witness happened to be brother of the deceased, is not a sufficient circumstance to discard his version. There is no suggestion to Virender that the appellant was having cordial relations with his wife or that the motive attributed to him, is false. The defence plea appears to have been taken by the appellant is that the deceased fell down from stairs in her house and suffered the injuries. It is so discernible from the suggestion given to Virender (PW-1).

10. Statement of Nafe Singh (PW-2) is also consistent and fully supports the prosecution case. It was Nafe Singh, who spotted the appellant in Village Sunderpura. There is no suggestion to the witness that he did not know the appellant or that the appellant was never present in Village Sunderpura and that his statement to this effect was false.

11. The eye-witness account of Virender and Nafe Singh, has been fully corroborated by the medical evidence, as following injuries were noticed by Dr. B.R. Kayat (PW-9) on the person of the deceased:-

- “1. A lacerated wound of size 4 cm x 1 cm x bone deep on left parietal region in posterior part. Clotted blood was present.
2. A contusion of size 8 cm x 2 cm on right parietal region in middle and posterior part. Diffuse swelling was present.

On dissection echymossed blood was present on both parietal region under scalp. Fracture of left parietal bone extending from posterior part of left parietal bone to left tempore-mandibular region oblique and transverse in direction was found. Fracture of right parietal bone extending from posterior part of right parietal bone to right temporo-mandibular region was found. Blood oozing was found from both fractured sides. On further dissection, an interdural haematoma of fist size on both cerebellum region was found. Shifting of median line (mid line) was present.”

12. PW-09 Dr. B.R. Kayat has further opined that the cause of death in this case was due to head injury described in his statement, which was ante-mortem in nature and was sufficient to cause death in ordinary course of nature. He has further opined that the probable duration between injury and death was few minutes only. The suggestion given on behalf of the appellant to Dr. B.R. Kayat that these injuries could be caused due to fall from staircase was explicitly denied by the witness, who has in no uncertain terms has deposed that “these injuries were not possible by fall from the staircase”. As per the FSL report (Ex.PQ), the clothes worn by the deceased as well as the wooden log (Barga) with which she was attacked were found to have blood stains.

13. Faced with this, learned counsel for the appellant urged that as

per the FSL report, the blood stains on the clothes as well as the wooden log (Barga) has been found to be “inconclusive”, hence the prosecution has failed to establish that the blood stains found on the clothes and wooden log (Barga) were that of the deceased. We are, however, not impressed by the contention. A plain reading of the FSL report suggests that the 'human blood' was detected on all exhibits and it was further subjected to serological test to determine its species of origin and group. Though the human blood was found but its group could not be established due to which there are remarks of “inconclusive”. Such a remark was but natural for the reason that the report is dated 15.9.2004. The samples were taken in November, 2003 and were, thus, analysed after more than 10 months and by that time it was quite possible that the group of the blood could not be conclusively determined.

14. The appellant's next plea is that as per the Post Mortem Report, the deceased was found to have suffered two injuries, whereas, the prosecution case is that he caused a single head injury with a wooden log and thus, there is inconsistency between the medical evidence and the oral version. Once examined minutely, the contention is bereft of any merit as it has been satisfactorily explained by the prosecution that when the deceased was hit hard with the wooden log on one side of the head, she fell down and suffered the second injury as a result of fall on the ground. The nature of the second injury on the head fully supports the prosecution version in this regard.

15. As regards to the appellant's plea that his confessional statement or the resultant recovery of wooden log at his instance is highly improbable

or it does not inspire confidence, suffice to observe that the Investigating Officer Ram Phal (PW-11) as well as ASI Rajinder Singh (PW-10), who was Head Constable at the relevant time have very well explained as to how the appellant got recovered the wooden log (Barga) with which he attacked the deceased. It is not the appellant's case that the wooden log, referred to by the prosecution, was planted on him, for there are human blood stains on the Barga got recovered from the appellant. The nature of injury found on the person of the deceased also clearly suggests that it was caused with a blunt weapon but with a forceful hit.

16. Faced with this, learned counsel for the appellant urges that the case in hand squarely falls within the ambit of Section 304 Part I IPC and, as such, the appellant ought to have been punished for committing 'culpable homicide not amounting to murder'. We have pondered over the submission. It stands established on record that the appellant came to Village Sunderpura empty handed; he was not armed with any weapon; he, thus, had no premeditated intention to kill his wife. It is also on record that he insisted his wife to accompany him to his Village Kanhari but she refused and started abusing him for his bad habits and for having sold the house. There were heated exchange between the husband and wife whereupon the appellant picked up the wooden log (Barga) and hit her on the head. The medical evidence as well as the eye witness account unequivocally suggests that the appellant gave a single blow to the deceased and did not repeatedly attacked her on any other vital part of the body but the solitary hit was so forceful that it virtually smashed the entire skull causing multiple fractures as well as the shifting of the mid-line. Even while under provocation, it

cannot be said that the appellant intended to kill his wife. It, thus, appears that the appellant had no intention to cause the death of his wife. In the absence of any premeditation and the injury having been caused in the heat of passion as a result of sudden quarrel between the deceased and the appellant, we are satisfied that the instant case falls within the ambit of Exception 4 of Section 300 IPC and the appellant is, thus, guilty of committing culpable homicide not amounting to murder and is thus liable to be punished under Section 304 Part I, IPC.

17. In the light of the above discussion, the appeal is allowed in part; the appellant is held guilty of committing the offence of culpable homicide not amounting to murder and he is ordered to be sentenced under Section 304 Part I IPC instead of Section 302 IPC. The appellant is directed to undergo rigorous imprisonment for a term of 10 years with a fine of ₹ 10,000/-. In the event of his failure to pay the fine, he shall undergo RI for six months.

18. The appellant is on bail. His bail and surety bonds are ordered to be cancelled. He is directed to surrender and be taken into custody to undergo the remainder of his sentence.

**(SURYA KANT)
JUDGE**

**October 07, 2017
poonam**

**(SUDHIR MITTAL)
JUDGE**

Whether Speaking/Reasoned

Yes

Whether Reportable

No