

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

**1. CRA-D-698-DB-2013
Date of decision:10.03.2017**

Mohd. Wakil

.....Appellant

Versus

State of Punjab

.....Respondent

2. CRA-D-1170-DB-2014

Sher Mohd.

.....Appellant

Versus

State of Punjab and another

.....Respondents

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. Mohd. Yousaf, Advocate
for the appellant in **CRA-D-698-DB-2013**.

Mr. Baljinder Singh, Advocate
as Legal Aid counsel
for the appellant in **CRA-D-1170-DB-2013**.

Ms. Ritu Punj, Addl. A.G., Punjab.

Mr. P.S. Ahluwalia, Advocate
for respondent No.2 in **CRA-D-1170-DB-2013**.

H.S. MADAAN, J.

Vide this judgment we propose to dispose of two appeals i.e. **CRA-D-698-DB-2013** filed by accused-convict **Mohd. Wakil** against **State of Punjab** and **CRA-D-1170-DB-2013** filed by complainant **Sher Mohd.** against **State of Punjab and another** challenging judgment dated 31.05.2013 passed by the Court of Additional Sessions Judge, Sangrur vide which accused-Mohd. Wakil was convicted for an offence under Section 302 of the Indian Penal Code ("IPC" for short) and sentenced to undergo rigorous imprisonment for life and to pay fine of ₹5,000/- and in default of payment of fine to undergo further rigorous imprisonment for one year whereas his co-accused Neeta alias Anita Rani was acquitted of the charge framed against her. Appellant/accused-convict Mohd. Wakil prays that the appeal be accepted and he be acquitted of the charge framed against him. Whereas appellant-complainant Sher Mohammad prays that appeal filed by him be accepted, judgment of acquittal passed against accused Neeta alias Anita Rani be set aside and she be convicted and

sentenced of the charge framed against her.

In nutshell the prosecution story as it came out during the trial is that on 12.12.2007, Incharge, Police Post, DMC, Ludhiana sent wireless message at Police Station, Ahmedgarh with regard to death of Khurshedhan, wife of Mohd. Wakil, resident of Jitwal Khurd, at that institute due to poisoning. On receipt of that information a police party led by SI-Maghar Singh (hereinafter referred to as the Investigating Officer/I.O.) went to Daya Nand Medical College and Hospital, Ludhiana and collected dead body of Khurshedhan from there. The dead body of Khurshedhan was brought to Civil Hospital, Malerkotla where the police party came across complainant-Sher Mohd., son of Mozudeen, resident of Idgah Road, Malerkotla, father of deceased Khurshedhan, who got his statement Ex.PA recorded with the Investigating Officer stating therein that his daughter Khurshedhan was married with Wakil Mohd.-accused about 15 years earlier and the couple was blessed with two daughters and a son. Wakil Mohd. had illicit relations with a woman, namely, Neeta alias Anita of village, Kanganwal, to which Khurshedhan used to object and due to that reason Wakil Mohd. used to beat up his wife Khurshedhan. He did not mend his way despite being counselled by respectables. On 10.12.2007 since Khurshedhan had got ill, then his wife Jano went to inquire about that returning home on 11.12.2007 in the evening. Sher Mohd. further stated that on the previous night at about 8:00 p.m. his son-in-law had

telephonically informed him about sickness of Khurshedhan asking them to come at Octroi post on Matoi road, Malerkotla. Accordingly the complainant alongwith his wife Jano and son Sudagar Ali reached near Octroi post so told to them where they found that Wakil Mohd. had came there in his car alongwith Khurshedhan. At that time froth was coming out from mouth of Khurshedhan. Khurshedhan was taken to a private hospital namely 'Singla Hospital', Malerkotla from where she was referred to Civil Hospital, Malerkotla and then to Daya Nand Medical College and Hospital, Ludhiana (DMC). However, Khurshedhan died at DMC, Ludhiana. Mohd. Wakil had killed her by administering poison to her. On the basis of statement of Sher Mohd., being police proceeding Ex.PW7/A, formal FIR Ex.PW7/B was registered against the accused. The Investigating Officer had carried out inquest proceedings with regard to unnatural death of Khurshedhan preparing inquest report Ex.PW6/D attested by Nazir Mohd. and Saudagar Ali. The Investigating Officer had deputed HC Gorakh Nath to get post-mortem conducted on dead body of Khurshedhan from Civil Hospital, Malerkotla handing over application Ex.PW6/C to him. Senior Medical Officer (SMO) Civil Hospital, Malerkotla had deputed Dr. Gurwinder Singh vide his endorsement Ex.PW7/C for the said purpose. Dr. Gurinder Singh, accordingly, carried out post-mortem examination on dead body of Khurshedhan.

The police party went to the spot, the Investigating Officer

prepared site plan of place of incident as Ex.PW7/F on demarcation of Saudagar Ali. A cooking vessel (*PATILA*) having *SAAG* (green leaves) vegetable, serving spoon (*KARCHI*), stained with *SAAG* recovered from the house of Mohd. Wakil were taken into possession after being converted into parcel sealed with seal of Investigating Officer having impression 'MS', that parcel was taken into possession vide memo Ex.PW7/H attested by witnesses. Investigating Officer recorded statements of witnesses. HC Gorakh Nath handed over to the Investigating Officer a copy of post-mortem report alongwith document, a parcel of viscera sealed with seal of doctor bearing impression 'GS' and parcel of clothes of deceased-Khurshedan alongwith sample seal and a sealed envelope bearing seals of doctor having impression 'GS'. The parcels were taken into possession vide memo Ex.PW7/J attested by HC Gorakh Nath and ASI Gurmail Singh. HC Gorakh Nath had handed over the dead body of deceased to one Liaqat Ali against receipt Ex.PW7/K. On return to the police station, the Investigating Officer deposited the case property with MHC-Gulzar Singh. On 15.12.2007, accused-Mohd Wakil was arrested in this case. While doing so his personal search was conducted, which resulted in recovery of currency note of ₹100/-. A memo in that regard Ex.PW7/L was prepared, signed by accused-Mohd. Wakil and attested by HC Gursewak Singh and ASI Gurmail Singh. Arrest-cum-information memo of accused-Mohd. Wakil was also prepared as Ex.PW7/M, which was

signed by the accused, attested by witnesses aforesaid. Information regarding arrest of accused had been given to his neighbour on mobile phone.

Accused-Neeta alias Anita Rani was arrested in this case on 08.03.2008. Her personal search was got conducted and a memo Ex.PW7/O was prepared, which was signed by accused Neeta alias Anita Rani and attested by Lady C. Jaswinder Kaur and ASI Gurmail. Her arrest-cum-information memo Ex.PW7/P was also prepared and signed by such accused, attested by witnesses aforesaid. Information regarding her arrest was given to her husband-Rajinder Kumar. During the course of investigation, the Investigating Officer got prepared scaled site plan Ex.PB. Chemical Examiner report Ex.PW7/N was also received on 01.03.2008.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Malerkotla.

On presentation of the challan in the Court of Judicial Magistrate Ist Class, Malerkotla, copies of documents relied therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C.. Thereafter, finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, the Judicial Magistrate Ist Class, Malerkotla committed the case to the Court of learned Sessions Judge, Sangrur vide order dated 31.03.2008. It was entrusted to the

Court of Additional Sessions Judge, Sangrur.

On receipt of the case, finding a prima facie, charge for the offences under Sections 302 read with Section 34 was framed against the accused. Accused pleaded not guilty and claimed trial. Thereafter, the case was fixed for evidence of prosecution.

During the course of evidence of prosecution, it examined as many as nine (09) witnesses as per details below:-

PW-1 Sher Mohammad, father of deceased, who had set the machinery of law into motion by reporting the matter to the police by making statement Ex.PA, supported the prosecution version on material aspects, so, did his wife, Jano, appearing as PW-2 and Anwari, a sister-in-law (wife's sister) as PW-3.

PW-4, Amrik Singh Bhangu, Draughtsman who on 14.01.2008 had gone to the spot and prepared scaled plan Ex.PB on demarcation of Sher Mohd. deposed in that regard.

PW-5, HC Gulzar Singh, a formal witness tendered in evidence his affidavit as Ex.PW5/A.

PW-6, Dr. Gurvinder Singh deposed that on 12.12.2007 while he was posted as Medical Officer at Civil Hospital, Malerkotla, on that date he carried out post-mortem examination on the dead body of Khurshedani wife of Mohd. Wakil, Muslim, 38 years old, female resident of village Jitwal Khurd, District, Sangrur. Rigor Mortis was present complete in upper limbs, partial in lower limbs. Blood staining

of nostrils was present. Larynx and trachea contained frothy fluid blood stained. Left lung was dark bluish while right lung was pale pinkish, left lung was boggy odematous with clotted blood in the pulmonary vessels. Scalp, skull vertebrae, meninges and brain and spinal cord, walls, ribs and cartilages were normal. In the abdomen, stomach, small intestine and large intestine were healthy and pale, liver, spleen, kidney, bladder and uterus were normal.

The cause of death in this case was kept pending for report of Chemical Examiner to Govt. of Punjab. Probable time between injury and death and between death and postmortem was kept pending subject to viscera report by Chemical Examiner. He proved copy of post-mortem report as Ex.PW6/A.

PW-7, Maghar Singh, Inspector (since retired), the Investigating Officer of this case deposed regarding the investigation conducted by him proving various documents.

PW-8, HC Gorakh Nath who on 12.12.2007 on being deputed by SI-Maghar Singh had got the post-mortem examination on dead body of deceased-Khurshedan from Civil Hospital, Malerkotla deposed in that regard stating that he had handed over the parcel of viscera and parcel of clothes of deceased-Khurshedan to SI-Maghar Singh, which were taken into possession by him vide Ex.PW7/J attested by him and ASI Gurmail Singh. He also tendered in evidence his duly sworn affidavit Ex.PW8/A.

PW-9 Dr. Gurmeet Kaur, Civil Hospital, Mohali stated that on 12.12.2007, while she was posted as Junior Resident at Daya Nand Medical College and Hospital, Ludhiana. Injured-Khurshedan was admitted in the said institute and she had sent written intimation Ex.PW9/A to SHO. She had proved indoor patient file of injured as Ex.PW9/B, Death form Ex.PW9/C, X-ray film Ex.PW9/D, ECG Ex.PW9/E and death summary Ex.PW9/F.

With that the prosecution evidence stood concluded.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them, but they denied the allegations contending that they are innocent and have been falsely involved in this case at the instance of complainant party.

During their defence evidence accused examined-Shehnaz, who stated that Khurshedan, deceased was her mother and they are two sisters and one brother, that their family was residing happily, her father Mohd. Wakil was taking care of them; that her father and mother had no dispute with each other; that she does not know Anita alias Neeta, who never came to their house; that her mother fell ill about 5 ½ years back and her father used to get her treated from the doctor; that her mother consumed some poisonous tablet due to mistake, then her father removed Khurshedan (her mother) to the hospital at Malerkotla. Later on, her maternal grand-father by concocting a false story, implicated

her father in this case; that there was no discord / dispute between her mother and father. At last she stated that her father Mohd. Wakil (accused) looks after them.

With that the defence evidence of the accused stood concluded.

After hearing the arguments, learned trial Court convicted and sentenced accused-Mohd. Wakil for offence under Section 302 IPC whereas his co-accused Neeta alias Anita Rani as mentioned above was acquitted. Hence the two different appeals as detailed above.

We have heard learned counsel for the parties, besides, going through the record.

Coming to the appeal bearing **CRA-D-698-DB-2013** filed by Mohd. Wakil-accused/convict first. After considering the facts and circumstances of the case and going through the file, we find that the trial Court fell in error in convicting the accused for offence under section 302 IPC. The trial Court has relied upon Section 106 of the Indian Evidence Act, 1872 for coming to the conclusion that it was Mohd. Wakil-accused who had committed the murder of his wife-Khurshedan. In our view the approach was misconceived. Though Mohd.-Wakil being husband of deceased and residing in the same house was required to prove the facts within his special knowledge as to how and under what circumstances Khurshedan had consumed poison but merely for the reason that he could not give satisfactory explanation

for the same and to be more precise that the explanation rendered that she was unwell and she had taken poison by mistake considering it to be medicine has not been found believable, that does not lead to be inference that the charge for offence under Section 302 IPC stands proved against him *ipso-facto*. The trial Court seems to have lost sight of the fact that no marks of any external injury were found on person of deceased. PW-6 Dr. Gurvinder Singh, who had performed post-mortem examination on dead body of Khurshedan had admitted in his cross-examination that there was no external mark of injury or struggle found on body of deceased. If accused had tried to administer poison to the deceased per-force then, some marks of struggle or signs of injury would definitely have been there, especially near the mouth and nose of the deceased. Which means that there is little possibility of accused Mohd. Wakil administering poison to his wife forcibly. As regards the chances of accused Mohd. Walik quietly making her consume the poison after mixing in any tablet etc., that possibility also stand ruled out since PW-6 Dr. Gurvinder Singh stated in his cross-examination that if the tablet is mixed in any vegetable etc. then it will omit pungent smell and same can be easily detected. Furthermore, a cooking vessel containing SAAG and serving spoon with SAAG sticking to it (vegetable) had been sent to Chemical Examiner and as per the report received from there no sign of the poison was found therein. Therefore, possibility of accused administering poison to his wife by mixing it

with some eatable also stands ruled out. It means that it was not a homicidal death. That leaves us with two other possibilities; one of which being a case of suicide and other of the victim taking the poison accidentally by mistake. As regards the second possibility of the victim taking the poison accidentally by mistake, there is very rare possibility of the same. Firstly, though celphos tablets are used by the people in the region so as to prevent the food-grains from being affected by insects, but then tablets are put in containers in which the food-grains are stored and are not kept casually in residential area of the house especially in bedroom, drawing room etc. where it could be picked up and consumed by any child or other person even accidentally since such type of poison is fatal. The incident relates to month of December, it is highly unlikely that at that time celphos tablets would be kept in the house when the storage is done mostly in the month of April/May. Therefore, question of accidental consumption is also not there. Rather it comes out to be case of suicide. It seems that the deceased was upset over extra marital affair of her husband and she was driven to commit suicide for the said reason. If we see the FIR then it comes out that complainant-Sher Mohd. has made mention in that respect therein. It comes out that accused-Mohd. Wakil had abetted such suicide by his wife. Some other factors supporting this theory are there which ought to be taken into view i.e. conduct of accused-Mohd. Wakil inasmuch he had informed the parents of deceased regarding Khurshedan having

taken poison, it was he who had removed his wife-Khurshedan to hospital firstly to private one, then taking her to Daya Nand Medical College and Hospital, Ludhiana. If he had in fact committed murder of Khurshedan then his conduct and behavior would have been otherwise.

Thus we find that accused-Mohd. Wakil is guilty of offence under Section 306 IPC i.e. abetment to suicide of his wife-Khurshedan, though he is not shown to have committed her murder as such is not guilty of offence under Section 302 IPC.

Coming to appeal **CRA-D-1170-DB-2013** filed by complainant-Sher Mohd. vide which he had challenged acquittal of accused Anita alias Neeta. We find that trial Court by giving sound and convincing reasoning has arrived at the conclusion that the charge against her for offence under Section 302 IPC was not proved. The trial Court has observed that even as per prosecution story Neeta alias Anita was not accompanying accused-Mohd. Wakil when deceased was brought to hospital and no evidence led by prosecution that she was present at house of accused-Mohd. Wakil prior to taking Khurshedan by him to the hospital at Malerkotla. Therefore Section 106 of the Evidence Act does not become applicable in her case. She was thus not required to explain the facts especially within her knowledge. The observations made by trial court while acquitting Anita alias Neeta cannot be termed as perverse or erroneous, rather the reasoning is based upon proper appreciation of evidence and correct interpretation of law.

We are not inclined to upset such judgment of acquittal passed against Neeta alias Anita Rani-accused.

Resultantly, appeal filed by appellant-Mohd. Wakil is allowed partly inasmuch as his conviction and sentence under Section 302 IPC is set aside. Rather, he is convicted for offence under Section 306 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay fine of ₹5,000/-, in default of payment of fine to undergo rigorous imprisonment for one year whereas appeal filed by appellant-Sher Mohd. (complainant) stands dismissed.

10.03.2017
Gaurav Sorot

**(T.P.S.MANN)
JUDGE**

**(H.S. MADAAN)
JUDGE**

- | | | |
|----|------------------------------|-----|
| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |