

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRA-D-85-DB of 2013 (O&M)

Date of Decision: September 23, 2017

Pappu

.....Appellant

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.

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Present: Mr. Sanjeev Sharma, Legal aid counsel for the appellant.

Ms. Bhavna Gupta, DAG, Punjab.

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M.M.S. BEDI, J.

The appellant has preferred this appeal against the judgment of Sessions Judge, Sri Muktsar Sahib, dated October 16, 2012 convicting the appellant for having murdered his wife Santosh Rani by inflicting injuries with knife in presence of his son Som Nath, PW4 and Sarwan Kumar, PW1, sister's son of deceased Santosh Rani. The appellant has been sentenced to undergo RI for life and to pay a fine of Rs.5000/- in default whereof to undergo RI for 3 months under Section 302 IPC.

FACTS:

The machinery of prosecution was set into motion on receipt of information Ex.PW5/C from Dr. Pooja, PW5 informing the SHO, Police Station , Malout that Santosh Rani had been brought to the hospital with

injuries on July 22, 2011 and was referred to Medical College, Faridkot after giving first aid and conducting MLR but she had died on same day at 12.45 p.m. The said information was received by Inspector Harinder Singh, PW9, who was posted as SHO, Police Station, Malout. On receipt of above said information, Ex.PW 5/C regarding death of Santosh Rani due to injuries, he visited Civil Hospital, Malout along with police officials. Sarwan Kumar, who was son of sister of deceased got recorded his statement Ex.PW1/A, which was as follows:-

“Statement of Sarwan Kumar son of Ram Kumar, caste Balmeek Near Balmeek Mandir, Ward No.9, Indra Basti, Malout, aged about 32 years.

It is stated that I am resident of above said address and doing the work of sanitation at Nagar Council, Malout. My maternal aunt Santosh Rani was married with Pappu son of Dharam Chand caste Balmeek about 24/25 years ago. They are residing in our street. My uncle (Masar) has doubted on the moral character of my maternal aunt Santosh Rani and due to this he frequently quarreling with her. Settlement was made by me and my father Ram Kumar between them. Today, time is at about 11.30 AM, I and my maternal aunt's son Som Nath son of Pappu were going on foot through Birla Road to the office of Nagar Council, Malout. When we reached near the office of Bharat Gas Agency at Birla Road, Malout then we saw that my maternal aunt Santosh Rani

was coming from the opposite side on foot. When my maternal aunt reached near the street of Bajrang Bhawan, then my uncle (Masar) came out of the street towards the side of railway track and having a knife/ dagger in his right hand and on our seeing my uncle (Masar) inflicted the dagger blow on Santosh Rani which hit on the right side of her breast. My aunt fell down and my uncle (Masar) sat on the abdomen region of her and inflict dagger blows continuously which hit on right arm, right leg, chin etc. we raised alarm Marditta-Marditta, then my uncle (Masar) along with dagger fled away from the spot. I and Som Nath made arrangement of vehicle and admitted my aunt Santosh Rani to the Civil Hospital, Malout for treatment where she died. The motive behind this is that my uncle (Masar) was having a doubt on the character of my maternal aunt. Statement has been recorded which is heard, admitted and is correct. I am the complainant, action be taken.

Attested. Sd/- Sarwan Kumar above,
Harinder Singh, Sd/- Sarwan Kumar.
SHO, PS City Malout,
Dated: 22.7.2011.”

The above said statement was attested by the investigating officer vide endorsement Ex.PW9/A and it was sent through HC Jarnail Singh to Police Station on the basis of which FIR Ex.PW9/B was recorded

under the signatures of SI Balkar Singh. The investigating officer conducted the inquest proceedings and prepared the inquest report Ex.PW9/C. The dead body was identified by Veeru and Sandeep Kumar. He recorded the statements of the witnesses and prepared the request Ex.PW6/A for conducting the post mortem examination and the dead body along with request was handed over to HC Balkaran Singh and HC Sukhmander Singh for post mortem examination. Thereafter the investigating officer along with police officials and the complainant went to the place of occurrence, inspected the spot and prepared the site plan Ex.PW9/D depicting the correct position as on the spot. The marginal notes were prepared by him. The blood stained as well as plain earth were lifted from the spot and converted into separate parcels sealed with seal impression 'HS' and taken into possession vide recovery memo Ex.P1/H. The parcel of blood stained earth and parcel of plain earth MO1 and MO2 were prepared by the investigating officer. He also recorded the statements of the witnesses and on return to the police station deposited the parcels with MHC Gurmeet Singh. On July 23, 2011 HC Balkaran Singh, during the course of investigation, produced the clothes of deceased which were converted into parcel MO3 and sealed with seal bearing impression 'HS' and taken into possession vide recovery memo Ex.PW2/A.

The investigating officer received a secret information that the accused was present at Railway Station, Malout for boarding a train as such he along with police officials and Sarwan Kumar reached at Railway Station, Malout and arrested the appellant on identification of Sarwan Kumar. The personal search of the appellant was conducted vide memo

Ex.PW1/C but nothing was recovered. The arrest of the appellant was effected and memo Ex.PW 9/E was prepared regarding his arrest. He was identified vide memo Ex.PW1/D. The accused was interrogated and he disclosed that he had concealed the blood stained dagger behind the Kikkar trees near the cremation ground adjoining the railway track which was exclusively in his knowledge and that he could get the same recovered. His disclosure statement Ex.PW1/E was recorded which was signed by ASI Tarlok Chand and Sarwan Kumar. Pursuant to the disclosure statement, the accused got recovered the dagger from the disclosed place. The sketch Ex.P1/F of the dagger MO4 was prepared and converted into a parcel sealed with seal impression 'HS' and taken into possession vide recovery memo Ex.PW1/G. ASI Tarlok Chand and Sarwan Kumar had put their signatures as witnesses on the sketch and recovery memo Ex.PW9/F which is the site plan depicting the place of recovery.

On July 26, 2017, the accused was again interrogated. He disclosed that he had concealed his clothes worn at the time of occurrence after putting the same in a polythene bag near the Water Works Tank near cremation ground and railway track which fact was in the exclusive knowledge of the accused and he could get the same recovered. The disclosure statement Ex.PW2/C was reduced into writing and was signed by accused. ASI Tarlok Chand and HC Balkaran Singh had put their signatures thereupon. Pursuant to the disclosure statement, the accused got recovered his blood stained clothes from the disclosed place which were converted into parcel MO5 and sealed with the seal bearing impression 'HS' and taken into possession vide recovery memo Ex.PW2/D. The investigating officer

prepared the site plan depicting the place of recovery as Ex.PW9/G. He had deposited the case property with MHC Gurmeet Singh without tampering with the same and had recorded the statements of the witnesses.

On receipt of report of chemical examiner Ex.PW9/H and after completion of investigation, the challan was presented in the Court of Illaqa Magistrate. The copy of the challan along with documents was supplied to the accused as per the requirement of Section 207 Cr.P.C. Pursuant to the commitment order by SDJM, Malout, dated November 2, 2011, the offence being punishable by Sessions Court, the case was committed to the Court of Sessions.

The trial Court framed charges against the accused under Section 302 IPC and explained the same to him but he pleaded not guilty and claimed trial.

The prosecution produced nine prosecution witnesses and permitted them to produce the documentary evidence also. After recording the statements of the prosecution witnesses the entire incriminating evidence produced on the record was put to the appellant in his statement under Section 313 Cr.P.C.. The appellant pleaded that he was innocent and had not committed any offence and that the police had falsely implicated him at the instance of Sarwan Kumar as Sarwan Kumar and his father did not have cordial relations with him. He also stated that in fact his wife Santosh Rani had no dispute with him and she died in a roadside accident. At the time of her road accident he was present in the house along with other family members. He denied any recovery of any weapon from him and pleaded that police has falsely planted weapon upon him in order to create false

prosecution evidence. The appellant, however, did not opt to lead any defence evidence.

The prosecution agency in order to substantiate the charge of murder levelled against the appellant has produced the evidence which for the sake of convenience has been split into the following different categories for fair appreciation in context to the arguments raised by counsel for the appellant:-

- i) Medical evidence;
- ii) Direct evidence;
- iii) Evidence of motive;
- iv) Evidence of investigation and recovery;
- v) Circumstantial evidence;

i) **Medical Evidence:-**

As per the allegations of the prosecution, Santosh Rani was taken by Sarwan Kumar, PW1 and Som Nath, PW4 to Civil Hospital, Malout where she was medico legally examined by Dr. Pooja, PW5 who found the following injuries, as per the MLR Ex.PW5/B:--

- “1. Incised wound 6.3 cm x 1.2 cm on the chest on the lower part of the right breast, 3 cm lateral to midline, wound not explored. Fresh bleeding was present. Advised surgeon opinion.
- 2. Incised wound 6 cm x 1.2 cm on right arm transversely placed 5 cm from shoulder joint, bone deep. Fresh bleeding was present. Advised orthopedic surgeon opinion.

3. Incised wound 6.5 cm x 1.2 cm vertically placed, 5 cm from injury No.2, bone deep. Fresh bleeding was present. Advised orthopedic surgeon opinion.
4. Incised wound 6.5 cm x 1.0 cm on right forearm on flexor aspect, 4 cm from the cubical fossa, muscle deep. Fresh bleeding was present. Advised orthopedic surgeon opinion.
5. Incised wound 7 cm x 1.2 cm on right hand thenar eminence. Bone deep. Fresh bleeding was present. Advised orthopedic surgeon opinion.
6. Incised wound 6.5 cm x 1.2 cm on right forearm on medial border, 7 cm from wrist joint, bone deep. Fresh bleeding was present. Advised orthopedic surgeon opinion.
7. Incised wound 4.5 cm x 1.2 cm on right leg anterior surface, 5 cm below right knee joint. Advised orthopedic surgeon opinion.
8. Incised wound 4.5 cm x 1.2 cm on chin in its middle obliquely placed.”

PW5 had kept the above said injuries under observation. A copy of the pictorial diagram is Ex.PW5/B depicting the seats of the injuries. Santosh Rani had died on the same day regarding which intimation Ex.PW5/C was sent by Dr. Pooja. She produced her affidavit Ex.PW5/D giving the details of the observations. Dr. Sunil Bansal, PW6 had

conducted the post mortem examination of the deceased alongwith Dr. Pooja and found the following injuries:--

- “1. Stitched wound on right lower part of chest 3 cm lateral midline. On opening wound, wound going upward of size 6.3 cm x 1.2 cm. right lung and pleura were badly lacerated. Right pleural cavity was full of dark colour blood. Bone was fractured.
2. Stitched wound of right arm transversely placed 5 cm from right shoulder joint of size 6 cm x 1.2 cm muscle deep. Clotted blood was present on opening the wound.
3. Stitched wound of size 6.5 cm vertically placed, 5 cm from injury No.2, bone deep. On opening the wound, clotted blood was present.
4. Stitched wound of size 6.5 cm on right forearm on flexal aspect, 4 cm from the cubical fossa, muscle deep. Clotted blood was present on dissection.
5. Stitched wound of size 7 cm on right hand on ventral side of right hand in the middle. On dissection muscle deep, clotted blood was present.
6. Stitched wound of size 6.5 cm on right forearm on medial border, 7 cm from wrist joint. On dissection muscle deep, clotted blood was present.
7. Stitched wound of size 4.5 cm on right lower leg of anterior surface, 5 cm below the right knee

joint. On dissection, muscle deep, clotted blood was present.

8. Stitched wound of size 4.5 cm on chin in the middle obliquely placed. On dissection muscle deep, clotted blood was present.”

Dr. Sunil Bansal, PW6 had given the opinion that death was due to the heamorrhage and shock due to injury No.1 which alone or in combination of other injuries was sufficient to cause death in the ordinary course of nature. He deposed that the post mortem examination was conducted by the Board which was constituted by Dr. Jagdip Chawla, vide his endorsement Ex.PW6/A/1. The post mortem report Ex.PW6/D and Ex.PW6/C (Pictorial diagram) had been prepared to depict the seats of the injuries. Dr. Sunil Bansal produced his affidavit Ex.PW6/D. HC Balkaran Singh produced the clothes of the deceased which were converted into parcel MO 3 sealed with seal bearing impression ‘HS’ and taken into possession vide recovery memo Ex.PW2/A. The above said medical evidence indicates that death of Santosh Rani was caused by shock and hemorrhage due to injury No.1 which was an incised injury on the chest on the lateral to midline. The said injury had caused the laceration on the right lung and pleura. The right pleural cavity was full of dark colour blood and even bone was fractured. The cause of death was established to be with the incised wound found on the body of Santosh Rani, who had been taken to hospital and ultimately died.

ii) **Ocular Evidence:-**

In order to substantiate the culpability of appellant, the prosecution agency had examined two eye-witnesses i.e. complainant Sarwan Singh and Som Nath who appeared as PW1 and PW4 respectively. Sarwan Singh PW1 stated that on July 22, 2011 at about 11.30 a.m. when he along with Som Nath (son of the deceased) was coming from Bharat Gas Agency Birla Road Malout, he saw Santosh Rani coming on foot from the opposite side. When they reached near Bajrang Bhawan, the appellant was seen by them coming from the opposite side with chhuri (dagger) in his hand. The appellant inflicted a dagger blow on the right breast of Santosh Rani, his wife as a result of which she fell down and the appellant sat on the abdomen region of Santosh Rani and inflicted dagger blows continuously which hit on her right arm, right leg, chin etc. They raised alarm Marditta-Marditta. They tried to apprehend the appellant but he managed to escape along with the dagger. Santosh Rani, the maternal aunt of PW1 and mother of PW4 was brought to Civil Hospital, Malout where she died. Since the appellant had doubt regarding the character of deceased, he had killed her. Statement of Sarwan Kumar, PW1 was recorded in the hospital and the same was read-over to him by the police. He signed the same after affirming the contents to be correct. His statement is Ex.PW1/A. PW4 Som Nath has stated on oath that the appellant is his real father and that there used to remain quarrel between his father and mother as the appellant doubted the moral character of his mother. He has also stated that on July 22, 2011, he along with son of his maternal aunt, namely, Sarwan Singh had met at Birla Road, near Bharat Gas Agency when they found Santosh Rani, mother of Sarwan Singh coming from the front side at about 11.30 a.m. When

Santosh Rani reached near Hanuman Temple, the appellant who was identified in the Court, was spotted coming from the front side with knife in his hand. He gave knife blow on the right side of breast of my mother. She fell down on receipt of knife blow on her right breast. The appellant gave two more knife blows on her which landed on her right arm and right leg. Thereafter the appellant fled away from the spot causing injuries along with knife. Both of them had taken Santosh Rani to Civil Hospital, Malout, where she succumbed to her injuries. Both the witnesses were cross-examined at length with an objective to bring about the contradictions between their statements to establish that they were not present on the spot. The only suggestion put to Som Nath was that there were strained relations between the appellant and Ram Kumar, maternal uncle and Sarwan Kumar, son of Ram Kumar and at their instance he had falsely deposed against the appellant.

Counsel for the appellant Mr. Sanjeev Sharma has vehemently urged that there are contradictions in the ocular version given on oath and the medical evidence. He has referred to eight injuries in the MLR Ex.PW5/B and the testimony of the witnesses and urged that there are eight injuries as per the medical report but only four injuries have been specified by the witnesses and that the seat of the injuries does not coordinate with the injuries explained by eye-witnesses.

We have carefully gone through the statements of both the witnesses and the medical evidence, the MLR as well as the post mortem report. The seat of the injuries on the right breast, right arm, on the right forearm and right hand and right forearm, shown as injuries No.1 to 6 and 8

clearly coincide with the statements of the witnesses. Injury No.7 is incised wound on the right leg on the interior surface 5 cm below the right knee joint. The extent of said injury on the knee is not significant enough to arrive at a conclusion that the witnesses have not proved the injuries having been inflicted by the appellant. Both the witnesses have got no enmity towards the appellant. The minor contradiction regarding one of the injuries is not sufficient enough to doubt the credibility of the witnesses who are neither interested witnesses nor any such contradiction has been proved.

We have also considered the contention of learned counsel for the appellant that place of occurrence has not been established and that the injuries suffered by deceased Santosh Rani are not proved to have been caused with the weapon which was allegedly recovered from the appellant.

Counsel for the appellant has argued that it is proved on the record that the place of occurrence is a metalled road and the blood could not have been lifted from the spot.

We have, with the assistance of State counsel as well as counsel for the appellant, gone through the record and the investigation file. The rough site plan having been prepared by PW2 ASI Tarlok Chand was established by producing PW8 Dalip Singh Sachdeva, Draftsman, who had prepared the site plan on October 10, 2011. The scaled site plan prepared by him is Ex.PW8/A, at the instance of Sarwan Kumar, complainant. The preparation of site plan has also been proved by PW9 Inspector Harinder Singh who was SHO at the relevant time. He had inspected the spot and prepared the site plan Ex.PW9/D which depicts the correct position. The marginal notes were proved by him.

The statements of PW1 Sarwan Kumar and PW4 Som Nath are in the nature of direct evidence and corroborate the medical evidence. Said corroborative evidence is sufficient enough to arrive at the conclusion regarding the credibility of the witnesses and the truthfulness of the version by the complainant whose enmity, in any manner with the appellant, could not be established despite detailed cross-examination.

iii) **THE EVIDENCE OF MOTIVE:**

The motive attributed for present murder has been disclosed by PW1 and PW4. Both Sarwan Kumar and Son Nath cannot be disbelieved for having the knowledge regarding the fact that the appellant suspected the character of deceased Santosh Rani who happens to be the maternal aunt of PW1 Sarwan Kumar and mother of PW4 Som Nath. PW4 Som Nath has also established the motive by stating that there used to remain quarrel between the appellant and Santosh Rani as the appellant doubted the character of the deceased whereas the witnesses PW1 and PW4 had persuaded the appellant not to unnecessarily doubt the moral character of the mother of Som Path.

The above said motive is a strong motive for a husband to kill his wife.

We do not find any force in the contention of counsel for the appellant that the prosecution agency has failed to establish the motive. Rather the motive stands proved by testimonies of the close relations of the deceased and the appellant. The credibility of the said witnesses could not be impeached despite lengthy cross-examination.

iv) **EVIDENCE OF INVESTIGATION AND RECOVERY:**

As detailed hereinabove, the investigation in the present case was undertaken by ASI Tarlok Chand PW2 as well as Inspector Harinder Singh, PW9. Inspector Harinder Singh had conducted the investigation from recording the statement Ex.PW1/A till the presentation of challan.

After perusal of the statements of PW2 and PW9 and statements of the eye-witnesses PW1 and PW4, it is established beyond doubt that the investigating officer did not have any personal grudge against the appellant. The appellant on his arrest was searched vide memo PW1/C. After the accused was arrested and interrogated he made a disclosure statement that blood stained dagger had been kept by him behind kikkar trees near cremation ground adjoining railway track which fact was in his exclusive knowledge and he got the same recovered. Disclosure statement Ex.PW1/A was recorded and it was attested by ASI Tarlok Chand and Sarwan Kumar who had appended their signatures and pursuant to that disclosure statement, the appellant got the dagger recovered from the disclosed place. Sketch of dagger Ex.PW1/F was prepared and the dagger MO4 was converted into a sealed parcel with seal impression 'HS' and it was taken into possession vide recovery memo Ex.PW1/G. The appellant had also made disclosure statement and got his clothes recovered from the place disclosed by him. The clothes were converted into a parcel MO5 and sealed with seal bearing impression 'HS' and taken into possession vide recovery memo PW2/D. Ex.PW9/G is depicting the site plan of the place of recovery. The investigation has been conducted in accordance with the procedure prescribed under Chapter XII of the Cr.P.C.

v) **CIRCUMSTANTIAL EVIDENCE:**

In the present case the motive that the appellant had doubt regarding the character of his wife stands established from the statements of witnesses PW1 and PW4 who are closely related to the appellant. Both the witnesses have not been given any suggestion regarding the vindictiveness or enmity of the appellant with the deceased. The direct evidence and medical evidence along with evidence of motive and recovery of the weapon of offence having been effected pursuant to the disclosure statement, this Court has got no option except to hold the appellant guilty, in view of the cogent and clear evidence available against the appellant.

In view of the totality of the above said evidence in the shape of medical evidence, direct evidence, evidence of motive and evidence of investigation and recovery, the circumstances are sufficient enough to uphold the conviction. Conviction under Section 302 IPC is accordingly upheld.

We have heard the counsel for the appellant regarding quantum of sentence. The offence of murder committed by appellant of his wife is a serious offence and the charge of murder having been established, as discussed hereinabove, it is still not a case which could be said to be a case of extraordinary circumstances warranting death sentence. The sentence of life imprisonment appears to be sufficient punishment. The appellant has also been heard on quantum of sentence. The circumstances do not warrant grant of death sentence. Life imprisonment appears to be sufficient punishment. The sentence of life imprisonment and the fine is thus also upheld.

Resultantly, the appeal is dismissed.

(M.M.S. BEDI)
JUDGE

September 23, 2017
sanjay

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.