

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

Criminal Appeal No.96-DB of 2003

Date of Decision: 26 - 9 – 2017

Shamsher Singh

.....Appellant

v.

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI**

Present: Mr.M.S.Sidhu, Advocate
for the appellant.

Mr.H.S.Sullar, DAG, Punjab.

RAJ SHEKHAR ATTRI, J.

Appellant Shamsher Singh assailed the judgment of conviction and sentence dated 6.11.2002 passed by the learned Sessions Judge, vide which he was convicted and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,000/- for offence under Section 450 IPC and in default of payment of fine to further undergo rigorous imprisonment for one month; and for the offence under Section 302 IPC, he was to undergo rigorous imprisonment for life and a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months. Both the substantive sentences were ordered to run concurrently.

Briefly stated, it is the case of the prosecution that on 16.11.2000 at about 10.30 a.m., Manjit Kaur alias Nikki, aged 17 years (hereinafter to be referred to as 'the deceased') was sitting on a chair in the courtyard of her house. Her father Ajmer Singh (PW5) and her maternal uncle Sukhwant Singh (PW6) were also there. In the meanwhile, appellant Shamsher Singh armed with a naked small-sword came there. He had inflicted blows with the weapon in hand on the left side of the chest of the deceased. Her father Ajmer Singh and cousin Sukhwant Singh raised alarm. They had overpowered and apprehended the assailant at the spot. Then Ajmer Singh telephonically informed the police and in pursuance thereof, the Investigating Officer ASI Deva Singh (PW8) entered the telephonic information in the daily diary register and on its basis formal FIR (Ex.PL) was registered under Sections 302/450 IPC. The Investigating Officer himself set out to the place of occurrence along with posse of police officials. The accused along with the weapon of offence was handed over to him. The weapon of offence i.e. sword Ex.P1 was taken into possession and put in a parcel. The Investigating Officer took the dead body of the deceased into possession and prepared the inquest proceedings. He recorded the statements of PW5 and PW6 and also collected the blood stained earth from the spot and put the same into a container. The blood stained chair on which the deceased was sitting at the time of occurrence was also taken into possession and all these articles were taken in to possession vide memo Ex.PG. The bicycle of the accused was also taken into possession from the spot. Rough site plan of the place of occurrence was prepared.

The dead body of the deceased was sent to Civil Hospital for conducting the postmortem examination. The doctor, on completion of the

postmortem examination handed over the salwar Ex.P4, shirt Ex.P5 and underwear Ex.P6 of the deceased to the Investigating Officer which were taken into possession and later on these articles were sent to the Forensic Science Laboratory along with the sword. The Chemical Examiner vide report Ex.PQ opined that all these articles were stained with human blood. After completion of the investigation, the challan was presented in the Court of area Magistrate, who committed the case for trial to the Court of Sessions.

During the trial, the prosecution produced Dr.Sanjay Kumar as PW1, C-I Malkiat Singh as PW2, Bhupinder Singh Draftsman as PW3, HC Sukhpal Singh as PW4, Ajmer Singh complainant as PW5, Sukhwant Singh as PW6, C-II Rajinder Pal as PW7 and the Investigating Officer ASI Deva Singh as PW8. Statement of the accused was recorded under Section 313 Cr.P.C. Wherein he took the plea of false implication.

On appreciation of evidence, learned Sessions Judge has convicted the accused-appellant as aforesaid.

We have heard learned counsel for the parties and gone through the record.

Learned counsel for the appellant has vehemently contended that there is delay in lodging the FIR; that the FIR was ante-timed; that the appellant was not present at the spot; that later on he was detained and falsely implicated in this case; that prosecution is not able to establish any motive; that there are contradictions between the ocular and medical evidence and the prosecution evidence is not trust worthy, rather same is full of contradictions and improvements. According to learned counsel for the appellant, the trial Court has failed to appreciate the evidence.

On the other hand, learned counsel for the State has vehemently contended that presence of the accused is well established; that he along with the weapon of offence was apprehended at the spot and handed over to the Investigating Officer; and there is no contradiction between the ocular and the medical evidence as is evident from the statement of PW6 Sukhwant Singh.

We have given thoughtful consideration to the rival contentions and carefully gone through the record.

The following points have arisen for consideration in this appeal-

- i) What was the cause of death of the deceased?
- ii) Whether the ocular and the medical evidence are at variance?
- iii) Whether motive has been established?
- iv) Whether the prosecution has been able to prove its case beyond any shadow of doubt?

First of all coming to the cause of death. Dr.Sanjay Kumar (PW1) who conducted the postmortem examination of the deceased had found the following injuries on the dead body:-

1. *A stab wound 3cm x 1.25 cm (in the centre) placed obliquely on the lower part of sternal area of the chest slightly to the left of mid line, 9 cm below and medial to left nipple. The margins of the wound were inverted, clean cut and curved to each other on probing and dissection, the wound was directed posteriorly, superiorly and to the left injuring the sternum which is fractured, pericardium, left ventricle of heart,*

pericardium, pleura, middle lobe of left lung, pleura, fracturing the 5th rib posteriorly and producing a wound of exit which is injury No.3 which measures 2.5 cm x 1 cm (in the centre) which was placed obliquely on the back of left side of chest just below the lower end of scapula. The margins of this wound were clean cut, everted and curved to each other. The pericardial cavity and left pleural cavity were full of blood. Clotted blood was present in and around the wounds of entry and exit.

2. A stab wound 2 cm x 1.25 cm with inverted and clean cut edges curved to each other placed obliquely on the right lateral wall of chest in line with the anterior axillary line.- 10.5cm below and posterior to right nipple. On probing and dissection the wound was directed backward, downward and medially injuring the intercostal muscles, pleura, lower lobe of right lung and upper part of right lobe of liver and producing a wound of exit which is injury No.4 measuring 1 cm x .5 cm with everted and clean cut edges curved to each other which is placed in the lower part of the back of chest slightly to the right of vertebral column, 26.5 cm above and medial to top of right iliac crest. The right pleural cavity and a part of peritoneal cavity on right side were full of blood. Clotted blood was present in and around the wounds of entry and exit. There were four cuts in the Kameej worn by the deceased corresponding to the entry and exit wounds of injury No.1,2,3 & 4.

The doctor has categorically stated that cause of death was hemorrhage and shock as a result of injuries described and all the injuries were sufficient to cause death in the ordinary course of nature.

Even, the appellant has not disputed the cause of death. He himself took the plea that it was the father (PW5) and maternal uncle Sukhwant Singh (PW6) of the deceased who committed her murder. This version shall be discussed at the later stage of this judgment, however, it has been established that deceased died because of the injuries on her body. Thus, it is well established that cause of death was hemorrhage and shock as a result of the injuries which were sufficient to cause death in the ordinary course of nature and were ante mortem.

Learned counsel for the appellant has submitted that there is a conflict in the versions given in the FIR and in the medical evidence. According to him, in the FIR it is stated that appellant had inflicted single injury but the postmortem report shows two. We have considered this contention but it carries no weight. The version given in the FIR is recorded by the Investigating Officer on the basis of a telephonic message through PW5 Ajmer Singh. The Investigating Officer had arrived at the spot and during the inquest proceedings he had recorded the statement of PW5 Ajmer Singh wherein he (PW5) has categorically stated that the accused had given two blows on the person of the deceased with a sword in his hand - the first cut on the chest and the second on the right side flank of the deceased. Even injuries No.1 and 2 were given in the postmortem report which corroborated the statement of PW5 Ajmer Singh recorded at the spot on 16.11.2000.

The appellant has placed much reliance upon the cross-examination of PW5 Ajmer Singh, wherein he was confronted with the FIR.

Surprisingly PW5 Ajmer Singh was confronted with the FIR which was reduced into writing by the Investigating Officer but his statement under Section 175 Cr.P.C. recorded by the police at the spot during the inquest proceedings though available on record was not put to PW5 in his cross-examination for the reasons best known to the appellant.

PW6 Sukhwant Singh had also suffered statement Ex.DB before the Investigating Officer at the spot on the day of occurrence wherein he has categorically stated that the appellant had given first blow with the sword on the left portion of chest of the deceased and another blow on her right side flank.

PW1 Dr.Sanjay Kumar has stated that both the wounds were through and through. In the pictorial diagram he has shown the exit wound as injuries Nos. (3) and (4). The first wound which is on the lower part of sternal area of the chest is slightly on the left side of the middle line posteriorly and it caused exit wound i.e. injury No.(3) as shown in the pictorial diagram. The first blow had injured the sternal, left ventricle of the heart pericardium-pleura middle lobe of the left lung. The second wound which is on the right lateral wall of chest, below and posterior to right nipple, was directed backward, downward injuring right lung and upper part of the right wall of the liver which is shown as injury No.(4) in the pictorial diagram.

Both PW5 Ajmer Singh and PW6 Sukhwant Singh have categorically stated in their respective depositions that in fact two blows were given with the sword by the appellant on the body of the deceased and their version fully corroborates the medical evidence. Thus, there is absolutely no contradiction between the ocular and the medical evidence.

So far as defence plea is concerned, the appellant has failed to prove the same. PW5 Ajmer Singh in the cross-examination has stated that the deceased was not agreeing to marry the boy with whom she was betrothed but PW5 had denied the suggestion that Manjit Kaur deceased had ever told him to this effect. This Court would like to reproduce said part of his statement which hereunder:-

“.....The engagement of Manjit Kaur and other daughter had taken place about a year prior to the occurrence. It is correct that my daughter Manjit Kaur was not agreeable to marry the boy where she was engaged. It is wrong to suggest if my daughter Manjit Kaur had ever told me that she was not agreeable to marry the boy whom she was engaged. It is wrong to suggest if myself and my Sala Sukhwant Singh were adamant to marry Manjit Kaur at the same place. It is incorrect to suggest if we have killed Manjit Kaur for the reason that she was not agreeable to marry the boy whom she was engaged.”

It seems that PW5 Ajmer Singh being a rustic witness could not properly understand the version put to him while put to cross-examination. But he has categorically denied the suggestion that deceased Manjit Kaur had ever disclosed if she was not interested to marry the boy with whom she was engaged. There could be numerous reasons to refuse marriage with a particular boy, albeit, the appellant has not adduced any evidence if PW5 Ajmer Singh or PW6 Sukhwant Singh had murdered the deceased solely for the reason that she was not interested in marriage. This is a bald allegation, without any foundation and hence not accepted.

Now coming to the motive, it is well settled principle of law that the establishment of motive is not a *sine qua non* for proving the prosecution case because the motive always remains hidden in the mind of the culprit. Motive for the commission of an offence, no doubt assumes great importance in cases resting on circumstantial evidence, than those in which direct evidence regarding commission of offence is available. However, in such a situation, the Court is required to evaluate the evidence carefully. In the present case, the deceased was a young girl of 17 years of age. She was brutally murdered in the presence of her father and maternal uncle. Appellant was apprehended at the spot. He put allegations upon the father and the maternal uncle of the deceased for committing the crime but he has miserably failed to establish the said plea. This Court has critically examined the evidence on record and is of the considered opinion that the same is trustworthy. In these circumstances, the presence or absence of a strong motive pales into insignificance.

Now coming to the plea with regard to the delay in lodging the FIR. The occurrence had taken place at about 10.30 a.m. The incident was telephonically reported to the police. DDR No.11 dated 16.11.2000 was recorded at 11.30 a.m. and the police reached at the spot thereafter. The FIR was registered promptly without any delay. Thus, the appellant failed to establish if the FIR was ante timed or if there is unexplained delay.

On independent analysis of the evidence, this Court has come to the conclusion that the prosecution evidence is cogent, reliable, without any blemish and the same is trustworthy. Thus, the prosecution has proved the charges against the appellant without any shadow of doubt and the conviction is well founded.

Consequently, this appeal is devoid of any merit and the same is hereby dismissed. Resultantly, the impugned judgment and the order of conviction stand upheld. The sentence imposed by the learned trial Court is maintained. The bail bonds and surety stand forfeited and the Chief Judicial Magistrate, Patiala is directed to take into custody the appellant forthwith and send him to jail.

(MAHESH GROVER)
JUDGE

(RAJ SHEKHAR ATTRI)
JUDGE

September 26th , 2017

RC

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>