

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-802-DB of 2003

Date of decision : 11.5.2017

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Mehar Singh

.....Appellant

vs.

State of Haryana

.....Respondent

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

Present: Mr. Namit Sharma, Advocate for the appellant

Mr. Praveen Bhadu, Assistant Advocate General, Haryana.

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H. S. Madaan, J.

This appeal has been preferred against judgment dated 25.8.2003, passed by the Court of Additional Sessions Judge, Panipat, vide which he had convicted accused Mehar Singh for offence under Section 302 IPC, as well as order of sentence dated 27.8.2003, in pursuance of which such accused – convict was sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one month.

The 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, as it came out during

the trial is that on 22.8.2000, a telephonic message was conveyed by Dharamender son of Ishwar Singh Khati, resident of Patti Kalyana, regarding murder of Tara Devi wife of Braham Parkash, Caste Jhinwar resident of Vilage Patti Kalyana. On receipt of that information, a police party headed by ASI Tikka Ram, went to the spot, i.e. house of the deceased (Tara Devi). Kuldeep Singh, minor son of deceased was not available at home as he had gone to Village Baliyana (Rohtak), to call his maternal uncle, as told by the neighbours. When he returned home alongwith his maternal uncles, namely, Dev Singh and Ramesh, then he got his statement Exhibit P1, recorded with ASI Tikka Ram. In the said statement, complainant Kuldeep Singh, aged about 14 years, stated that he was student of 8th class in Patel High School, Patti Kalyana; that his family had been residing in a rented accommodation owned by Sultan Lamberdar, son of Kala Singh, Gujjar, of that village for the last 3-4 months; that Braham Parkash, father of the complainant had expired in a roadside accident on 1.9.1999 and his 1st death anniversary fell on that very day. In the statement, the complainant stated that he has got two younger sisters; that after death of his father, his uncle Mehar Singh @ Billu son of Bhana, Jinwar, resident of Village was residing with them; that on the said day, i.e. 22.8.2000, he (complainant) and his sisters had gone to school. However, since he had not taken breakfast, for that purpose he returned home at about 10.00 a.m., and at that time his mother Tara Devi and uncle Mehar Singh @ Billu were present there. The complainant further stated that at about 10.15 a.m., he again left for his school; that at about 11.25 a.m., daughter of Buta

Singh, barber, their neighbour, came to him in the school and told that his mother had died, as such he immediately returned home and found that his mother was lying dead near entrance of the room with a *dupatta* tied along her neck; that Mehar Singh @ Billu was found missing. The complainant further stated that he had a suspicion that Mehar Singh @ Billu had murdered his mother Tara Devi by strangulation, since there was some altercation between them on the previous night regarding some money matter; that after dead body of his mother was found, several persons from village came there and he went to the place of his maternal uncles Dev Singh and Ramesh, at Village Baliyana (Rohtak), to call them, as such he returned home alongwith them and made statement before the police. Said statement was signed by complainant Kuldeep Singh. Dev Singh and Ramesh had also put their signatures on that statement and their signatures were attested by ASI Tikka Ram. ASI Tikka Ram, put his endorsement below such statement of complainant Kuldeep Singh and sent *ruqa* to Police Station, through Constable Bahadur Singh, on the basis of which formal FIR Exhibit P3, was registered at Police Station, Samalkha, by ASI Harnarain who made an endorsement on *ruqa* and sent it back to the Investigating Officer, alongwith copy of the FIR.

The Investigating Officer carried out inquest proceedings with regard to dead body of deceased Tara Devi, preparing inquest report Exhibit P-24, in that regard. He summoned photographer to the spot and got the photographs of the dead body clicked. The Investigating Officer had prepared rough site plan of the place of

incident. The Investigating Officer got the post mortem examination conducted on the dead body. Thereafter, a sealed parcel containing belongings of the deceased was produced before the Investigating Officer, which parcel was taken into possession vide recovery memo. On 29.8.2000, the investigation of the case was marked to Inspector Khushal Singh, from CIA Staff, Samalkha. He alongwith other police officials went to the place of incident and recorded statements of Mahabir son of Zile Singh and Mahabir son of Barhma Nand.

On 30.8.2000, while Inspector Khushal Singh was present at CIA Staff, Samalkha, Zile Singh, Ex-Sarpanch of Village Patti Kalyana, brought accused Mehar Singh @ Billu and produced him before Inspector Khushal Singh, informing that accused had confessed his guilt before him. The Investigating Officer recorded statement of PW Zile Singh under Section 161 Cr.P.C. and arrested the accused in this case, preparing necessary documents. Then accused was interrogated in presence of Zile Singh and HC Ram Phal. During the course of such interrogation, he suffered a disclosure statement confessing about the incident. As such his statement Exhibit P-21 was recorded.

After completion of investigation and other formalities, challan against accused was prepared and filed in the Court of Additional Chief Judicial Magistrate, Panipat.

On presentation of challan in the Court of Additional Chief Judicial Magistrate, Panipat, copies of documents relied upon therein were supplied to the accused free of cost 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 23.11.2000, committed the case to the Court of Additional Sessions Judge, Panipat.

When the case was received in the Court, then finding prima facie charge for offence under Section 302 IPC was disclosed against the accused, the learned Additional Sessions Judge, Panipat, 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 prosecution, the prosecution examined, as many as 10 PWs, as per details below.

PW-1 Kuldeep Singh – complainant, stated that the accused was living with them; that on 22.8.2000, which was death anniversary of his father, he and his sisters had gone to school, whereas his mother and accused stayed back; that at about 10.00 a.m., he came back home and his mother served him meals, however the accused had left the house by that time; that after taking the meals, he again went to school; that at about 11.00 a.m. a girl aged 6-7 years came to him in school and informed that his mother had hanged herself; that he returned home and found that his mother was in hanging position and when he entered home, accused was not present. He further stated that he had not stated before the police that he was having suspicion on any person, including accused. He was declared hostile at the instance of Additional Public Prosecutor who was allowed to put questions to him in the form of cross examination, which opportunity he availed of.

PW-2 ASI Har Narian, who on 22.8.2000, while posted as such, at Police Station Samalkha, on receipt of ruqa Exhibit P1, had recorded formal FIR Exhibit P3 and had made endorsements Exhibit P2 and P3, deposed in that regard.

PW-3 Constable Rajesh Kumar, Draughtsman, stated that he had prepared site plan Exhibit P4, at the instance of Kuldeep Singh on 5.9.2000.

PW-4 SI Shamsher Singh, deposed that on 11.10.2000, while he was posted as SI/SHO at Police Station Samalkha, on that day after completion of investigation of this case, he had submitted challan against the accused under his signatures.

PW-5 Ram Singh, photographer, of Poonam Photo Studio, Samalkha, deposed that on 22.8.2000, he had gone to Patti Kalyana, at the house of late Braham Parkash and had taken photographs of dead body lying in the said house. He proved photographs Exhibits P-5 to P-10 and their negatives Exhibits P-11 to P-16.

PW-6 Constable Shri Krishan, a formal witness, tendered in evidence his affidavit Exhibit P-17.

Learned Public Prosecutor tendered in evidence affidavit of Constable Nafe Singh Exhibit P-18 and reports of FSL Exhibits P-19 and P-20. The accused had stated that he did not want to cross examine Constable Nafe Singh.

PW-7 Zile Singh, stated that he had been Sarpanch of Village Panchayat of Patti Kalyana for about 25 years and at that time his wife was Sarpanch of the Village Panchayat; that on 30.8.2000, at about 2.00 p.m., he was present at his home, then accused Mehar

Singh @ Billu came to him and stated that he had murdered Tara Devi, widow of Braham Parkash; that accused happened to be a cousin brother of Braham Parkash. According to this witness, accused had further stated that on 22.8.2000, Tara Devi was preparing meals in the house and he was present there with her; that a dispute arose between him and Tara Devi over making payment for photographs of Braham Parkash, her husband and then he gave a push to Tara Devi which resulted in her head striking with the *Chokhat* (door frame) and thereafter he strangulated her to death with her own *chunni* and he tied the *chunni* on the *shankal* of the door to give an impression as if she had committed suicide and that thereafter he had dismantled the roof of the room, to give an impression that he had made an effort to save Tara Devi and thereafter he ran away from the house towards the school and remained for about two days at Jain's farm and thereafter went to his maternal uncle's house. This witness further submitted that accused had requested him to produce him before the police, as such he did so. Accused was interrogated by Inspector Khushal Singh of CIA Staff, Samalkha, wherein he had also admitted the incident.

PW-8 Dr. Jai Parkash, Medical Officer, Civil Hospital, Panipat, deposed that on 23.8.2000, he alongwith Dr. R.K. Garg, had conducted the post mortem on the dead body of Tara Devi wife of late Braham Parkash, Jhiwar by caste, resident of Patti Kalyana, Police Station Samalkha and observed the following :-

“There was a ligature mark encircling the neck.

Transversely complete, placed low down the neck

below thyroid cartilage. It was of breath 1.25 inch base of ligature mark was pale with reddish and echymosed margins groove was dry and hard. On cut section extra vasation blood in subcutaneous tissue and adjacent muscle of neck. Muscle were lacerated cornua and rings of trachea were found fractured.

The doctor observed following injuries on the dead body:-

1. A reddish abrasion 1.5 cm x 1 cm present over inferior surface of chin. 2 cm posterior to chin.
2. An abrasion 1 cm x 0.5 cm over back chest right infra scapular region was smeared with clotted blood.
3. An abrasion 2 cm x 6 m over right side back lumber region.

Larynx and tracheae was as described and congested. Both the lungs were congested. Heart right side contained blood and left side was empty. Liver spleen kidney were congested. Rest all the organs were healthy. In their opinion, cause of death in this case was asphyxia due to strangulation which was ante mortem in nature and was sufficient to cause death in ordinary course of nature.

PW-9 Inspector Khushal Singh (Retired), who had carried out investigation in this case on 29.8.2000 onwards, deposed in that regard, proving various documents, saying that ASI Tikka Ram had since expired. He proved several documents signed by ASI Tikka Ram.

PW-10 Mahabir son of Zile Singh, did not support the

prosecution story, as regards his having seen the accused coming out of the house of Sultan Numberdar of Village Patti Kalyana, on 22.8.2000 at about 10.00 a.m. or any knowledge with respect to this case. He was declared a hostile witness as per request of Public Prosecutor who was allowed to put questions to him in the form of cross examination.

With that the evidence of the prosecution was concluded.

Statement of the 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 had taken up the plea that he had no concern with the alleged occurrence; that Zile Singh has deposed falsely due to political enmity since he did not cast vote in Panchayat election in his favour; that there was a dispute regarding his wages with Zile Singh and he has deposed against him and has been falsely implicated in this case on that account. However, the accused did not lead any evidence in defence.

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 same be accepted, the impugned judgment of conviction and sentence be set aside and he be acquitted of the charges framed against him.

We have heard learned counsel for the appellant, learned Assistant Advocate General for the State of Haryana, 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 direct evidence regarding accused having committed murder of Tara Devi, however, circumstantial evidence adduced by the prosecution lead to the irresistible conclusion that it was the accused who had committed murder of Tara Devi. Chain of events is complete and no link in the chain is missing. The first and foremost circumstance against the accused is revealed from the statement of PW-1 Kuldeep Singh – complainant, which is to the effect that the accused had been residing with family of Tara Devi, after death of her husband in a roadside accident and on the fateful day also he was at their home when children had gone to school. In that way only deceased and accused were at home. There are no allegations of any intruder coming there and committing murder of Tara Devi. Although Kuldeep Singh, while getting his statement recorded as PW-1, tried to help the accused by deviating from his earlier statement made to the police, which formed basis of registration of FIR, but then he did state that accused had been living with them after death of his father and on 22.8.2000 death anniversary of his father fell, on that day he and his sisters had gone to school, whereas his mother and accused stayed at home. In an attempt to save the accused, he stated that when he came home to take breakfast, which was served to him by his mother, the accused had left the house but that contention obviously comes out to be wrong keeping in view totality of circumstances and other evidence on the file. Since it is established on record that accused had been residing with family of Tara Devi after death of her husband, for almost one

year and he was last seen in company of the deceased by PW-1 Kuldeep Singh, with no allegation of any outsider coming there and strangulating Tara Devi to death.

It was for the accused to explain as to how it so happened, in terms of Section 106 of the Indian Evidence Act. He has miserably failed to render any such explanation and to prove facts especially within his knowledge. Rather the version that Tara Devi had committed suicide comes out to be palpably wrong. It is clear case of homicidal death as is evident from the medical evidence. PW-8 Dr. Jai Parkash, who alongwith Dr. R.K. Garg, had conducted post mortem examination on the dead body of Tara Devi, had observed a ligature mark encircling the neck, besides three other injuries on her person. He had opined that the cause of death was asphyxia due to strangulation which was ante mortem in nature and was sufficient to cause death in ordinary course of nature. It was definitely a homicidal death and not a case of suicide. Presence of other injuries points towards struggle between the victim and the assailant, resulting in her violent end.

Then there is extra judicial confession made by the accused before PW-7 Zile Singh, a village elder, aged about 65 years, as stated by him. He had remained Sarpanch of Village Gram Panchayat, for about 25 years and thereafter, his wife got elected as Sarpanch, with no motive being proved, prompted by which he might have deposed falsely against accused. Keeping in view his social status, age and credibility, due weightage is to be given to his testimony and it comes out that that accused had made a clean breast of his crime

before him. That also provides strength to the prosecution case.

The medical evidence duly corroborates the ocular evidence.

The Investigating Officer had no reason to involve the accused in this case wrongly and to challan him falsely. Though, PW-10 Mahabir did not support the prosecution story, as regards his having seen the accused coming out of the house on the fateful day at about 10.00 a.m. and he was declared a hostile witness, but it seems that he had succumbed to some sort of pressure, so as not to depose against the accused. But even if his testimony is kept apart, there is enough cogent and convincing evidence available on the record to prove that it was the accused who had committed murder of Tara Devi.

The motive in the instant case comes out to be dispute between Tara Devi and accused regarding spending money in connection with death anniversary of Braham Parkash.

Thus we find that there is no illegality or infirmity in the impugned judgment and order, which is well reasoned one based upon proper appraisal and appreciation of evidence and correct interpretation of law. The appeal is found to be without any merit and is dismissed accordingly.

(T.P.S. Mann)
Judge

(H.S. Madaan)
Judge

11.5.2017

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No