

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-738-DB of 2003

DATE OF DECISION: OCTOBER 4, 2017

ARJAN RAI

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN.
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.**

PRESENT: MR.GURCHARAN DASS, ADVOCATE
FOR THE APPELLANT.

MR. GAURAV GARG DHURIWALA, SR.DAG, PUNJAB.

MAHABIR SINGH SINDHU, J.

1. Convict-appellant Arjan Rai has filed the present appeal against the judgement passed by the trial Court dated 25.7.2003 vide which he was convicted and sentenced by learned Addl. Sessions Judge, Ludhiana under Section 302 IPC for committing the murder of Smt. Meena Rai (hereinafter referred to as “deceased”).

2. The case of the prosecution was unfolded on the statement dated 1.2.2002 (Ex.P1) made by Rajinder Sharma, brother of the deceased which is as follows:-

"Statement of Rajinder Sharma son of Ram Subhag Sharma, village Rampura, Police Station Kansli Simli, District Darbhanga, Bihar, at present resident of Anand Vihar Colony, Sogripur Crossing, Karnal, Haryana, aged 42 years.

The marriage of my sister Meena Rai was solemnized with Arjan Rai s/o Jatho Rai, village Pakri, Police Station Katra, District Muzaffarpur, Bihar, now residing at House No.

1348/19-A, Gali No.8, Basti Haibowal about 18/20 years back, who is working on temporary basis in PAU, Ludhiana. They have one son Deepak aged 13 years, one daughter Ruchi, aged 14 years, who are studying in Navyug Public School. Since last one year, my brother-in-law Arjan Rai started harassing my sister and asking her to leave her job with the Corporation, which she had on temporary basis. Due to that there used to remain a quarrel in their house. On various occasions I went to their house in order to make him understand but he did not listen. Even I sent my wife Manju Devi a month back so as to impress upon him to mend his ways. I also sent my sister Rani wife of Sham, resident of Madanpuri, Gali No.7, Gurgaon to make him understand, who went back after making him understand a day before yesterday, i.e. on 30.1.2002. On 31.1.2002 at about 4.00 p.m., my nephew Deepak called my wife Manju Devi on telephone and told her that his father had killed his mother and she should immediately reach their house. My wife called me on telephone at R.S. Paras Cinema at Kurukshetra, where I am working and told me about the telephone call received from Deepak from Ludhiana that Arjan Rai had killed Meena Rai by putting a dupatta around her neck and strangled her and we should return home immediately as we have to go to Ludhiana. I reached Karnal from where I alongwith my son Ajit Kumar and my wife reached the house of my sister at Ludhiana. We saw that my sister Meena Rai was lying on the floor in a room and there were signs of

strangulation around her neck. Regarding this, I, my son and my wife asked from Arjan Rai, who stated that at 10.30 a.m. when Meena Rai was ironing the clothes, he had killed her by strangulating her with the help of a dupatta around her neck. Further, we should not inform the police as he had committed a mistake for which he should be forgiven. Now, I have come to lodge the report. Arjan Rai has killed my sister by strangulating her with the Chunni on account of domestic quarrel. Action be taken."

3. PW1 Rajinder Sharma set the law in motion and on his statement recorded at 12.05 a.m. on 1.2.2002 (Ex.P1) DDR No.30 was registered which was later on converted into FIR No.36. PW8 ASI Gurmail Singh visited the spot. The spot was inspected and Chunni (Ex.P2) was taken into possession vide recovery memo Ex.PA. He also took into possession one salwar, one chunni, one khes and one iron press which were lying near the dead body Ex.P3 to P6 vide recovery memo Ex.PB. Rough site plan (Ex.PG) was prepared and the dead body of Meena Rai was sent to Civil Hospital, Ludhiana for post mortem examination.

4. PW9 Shanker Dass, Inspector arrested accused Arjan Rai on 1.2.2002. From the documents and material placed on file, a prima facie case under Section 302 IPC was made out. Accordingly, charge under Section 302 IPC was framed against the accused to which he pleaded not guilty and claimed trial.

5. The prosecution examined as many as 11 witnesses and placed on record documentary evidence to prove its case.

6. In the statement under Section 313 Cr.P.C., all the incriminating material was put to the accused, to which he denied and claimed innocence and false implication. No evidence was led by the accused in his defence.

7. Learned trial Court after considering the material available on record convicted the accused under Section 302 IPC and sentenced him for life imprisonment.

8. Hence the present appeal.

9. Learned counsel for the appellant has contended that learned trial Court has convicted the appellant primarily only on the basis of statement made by PW1 Rajinder Sharma only on 1.2.2012 at 12.05 a.m. whereas, as per the allegation, the incident occurred at 10.30 a.m. on 31.1.2002. It has been argued that there was a huge delay in lodging the FIR. It has further been contended that no independent witness was examined by the prosecution and the witnesses who deposed against him were all interested witnesses being close relatives of the deceased. It has further been contended that the prosecution relied upon the testimony of PW5 Deepak who was only 13 years of age at the time of occurrence. It is further contended that the the appellant was convicted and sentenced solely on circumstantial evidence. It has further been argued that there is no sufficient evidence to prove the charge under Section 302 IPC levelled against the appellant by the prosecution beyond reasonable doubt.

10. Learned State counsel, on the other hand, submitted that it is a fit case for conviction as the appellant had made a confession that it was he only who strangled Meena Rai with a duppatta around her neck and murdered her. Learned trial Court has rightly convicted and sentenced the

appellant and the appeal deserves to be dismissed.

11. Heard learned counsel for both the parties and perused the record carefully.

12. PW1 Rajinder Sharma (complainant) who is none other than the brother of deceased Meena Rai set the law in motion. On the statement of PW1 Rajinder Sharma FIR was recorded and investigation was started. It has been categorically stated by PW1 Rajinder Sharma that on 31.1.2002, while he was working at Kurukshetra, his wife PW2 Manju Sharma called him on telephone that Deepak (PW5) had informed her about his mother Meena Rai having been murdered by the appellant and requested them to reach Ludhiana at once. It was then that PW1 Rajinder Sharma left for his residence at Karnal and took PW2 Manju Sharma and his son Ajit alongwith and reached Ludhiana and found that the convict-appellant was sitting outside his house and his sister Meena Rai was lying dead in the room. On enquiry, convict-appellant told him that he strangled Meena Rai to death by putting chunni around her neck. Thereafter, PW1 reported the matter to the police and on his statement FIR (Ex.P1) was recorded at 12.05 a.m.

13. In view of the chain of circumstances, the contention raised by the counsel for the appellant that there was a huge delay in lodging FIR pales into insignificance, as it has been specifically stated by PW1 Rajinder Sharma that it was on a telephone call received at Kurukshetra that he started from Kurukshetra to Karnal and then covered a long distance to reach Ludhiana. It has also come in evidence that PW5 Deepak had not informed any other relative who could reach the place of occurrence and lodge the FIR and set the law in motion. It was only the family of PW1

Rajinder Sharma who was informed at the very first instance and who reached Ludhiana at once and set the law in motion. It is a general human tendency that in these like cases where there is no responsible person available to act upon, usually, no neighbour or friend comes forward to initiate action and there exists every reason to wait and consult the close relatives to take further action.

14. It is not the number of witnesses, but the quality of evidence adduced by the prosecution that will have to be weighed by the Court of law. No independent corroboration is required in the instant case. PW5 Deepak deposed that on 31.1.2002 at about 2.00 p.m. when he and his sister on finding Meena Rai lying dead in the house enquired from the convict-appellant about her death, he disclosed that he murdered Meena Rai by strangulation by putting a duppatta around her neck. As per the deposition of PW1 Rajinder Sharma, the convict-appellant also made a confession before him that it was only he who had murdered Meena Rai by strangulating her with chunni around her neck.

15. PW5 Deepak was none other than the real son of the convict-appellant. Neither it was the case of the defence nor it has come in the evidence of the convict-appellant under Section 313 Cr.P.C., that either his own son PW5 Deepak or PW1 Rajinder Sharma was inimical to him or had any reason to implicate him falsely. PW5 Deepak was aged 13 years at the time of occurrence and was studying in a school. This Court is the view that a son, having no ill-will against his father, would be the last person to depose falsely against him in the event of losing his mother too. PW5 has categorically deposed that the convict-appellant made a confession before

him that he murdered Meena Rai by strangulation by putting a duppatta around her neck. It has also come in evidence that the convict-appellant was unemployed. Therefore, the presence of the convict-appellant at the place of occurrence, in the absence of any explanation by him disputing the same, cannot be doubted.

16. In **State of Rajasthan vs. Thakur Singh, 2014(12) SCC 211**, the Hon'ble Supreme Court has held as under:-

“22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.”

17. As far as the age of PW5 Deepak is concerned, the trial Court has observed that on the day of examination, PW5 Deepak was 14 years of age and the trial Court had satisfied itself that he could understand each and every thing.

18. PW7 Dr.S.K.Sharma, Medical Officer, Civil Hospital, Ludhiana had conducted post mortem examination on the dead body of Meena Rai on 1.2.2002 and found the following injury:-

“Ligature marks 12” x 3/4” on the front and lower part of the neck upto back of neck. It was transversely placed.”

On exploration of ligature there was extravasation of blood below the ligature and echymosis present. The hyoid bone was

fracture. The larynx and trachea was congested. Both lungs were congested. Other organs were healthy.

19. PW7 opined that the death had occurred due to asphyxia as a result of strangulation which was ante mortem and sufficient to cause death. It was further opined that the probable time between injuries and death was immediate and between death and post mortem was within 24 hours.

20. Thus, the medical evidence also corroborates with the alleged confession made by the convict-appellant before PW5 Deepak and PW1 Rajinder Sharma and supports the case of the prosecution.

21. PW5 Deepak has deposed that the convict-appellant, who was unemployed, used to beat and harass the deceased and was compelling her to leave her job whereas, the deceased was not ready for the same as she was bearing the whole household expenses and feeding them. PW1 Rajinder Sharma also deposed that the convict-appellant used to quarrel with deceased and around 15/20 days prior to the occurrence, PW2 Manju Devi came to their house at Ludhiana and persuaded them not to quarrel. On 28.1.2002, her sister Rani also went to Ludhiana and stayed there for 2 days and persuaded them to live in peace.

22. PW2 Manju Devi corroborated the version of PW1 Rajinder Sharma to this effect.

23. PW3 Rani deposed that two days prior to the occurrence, she visited the house of deceased to persuade the convict-appellant not to beat the deceased.

24. Therefore, this Court is of the view that the prosecution has also been able to prove the motive part also behind the occurrence.

25. In view of the above, it is held that prosecution has come out with cogent evidence to prove its case against the appellant beyond reasonable doubt. Therefore, we uphold the judgement of conviction and sentence passed by the trial Court against the convict-appellant and dismiss the appeal filed by him with an amendment in the fine clause to be paid by the appellant.

26. The appellant is hereby directed to pay a fine of ₹1000/- only instead of ₹2000/- as ordered by the trial Court and in default of payment of fine, to undergo a further period of 1½ months rigorous imprisonment.

27. Convict-appellant Arjan Rai is on bail. His bail bond stand cancelled. He shall surrender forthwith before the Chief Judicial Magistrate, Ludhiana who shall send him to jail to undergo the remaining part of the sentence. If he fails to surrender, the learned Chief Judicial Magistrate, Ludhiana shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

October 4, 2017
Gulati

Whether Reportable : Yes

Whether Speaking/Reasoned : Yes