

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-823-DB of 2003  
Date of decision : 1.5.2017

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Dharampal

.....Appellant

vs.

State of Haryana

.....Respondent

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

Present: Mr. Vinod Ghai, Senior Advocate with  
Mr. Simrandeep S. Sandhu, Advocate for the appellant

Mr. Praveen Bhadu, Assistant Advocate General, Haryana

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**H. S. Madaan, J.**

This appeal has been filed against judgment dated 9.10.2003 passed by the Court of Sessions Judge, Bhiwani, vide which he had convicted accused Dharampal for offence under Section 302 of Indian Penal Code (for short 'IPC') and order dated 11.10.2003 vide which the 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 six months, for the said offence.

The accused-convict, who is appellant before this Court, prays that the appeal be accepted, the impugned judgment of his conviction and order of sentence be set aside and he be acquitted of

the charge framed against him.

Briefly stated, the facts of the case as per prosecution version are that on 12.8.2001, complainant Jagdish, son of Daulat Ram, aged about 30 years, an agriculturist by avocation and Kumhar by caste, resident of Village Shikarpur, Police Station Sadar, Bhiwani, went to Police Station Siwani and got his statement Exhibit PA, recorded with ASI Yad Ram of the said Police Station. Inter alia in the statement, the complainant stated that his youngest sister, Maya Devi (since deceased) was married with Dharampal (accused), son of Pohkar of Kumhar community, resident of Village Barwa, about 9-10 years back. The couple was blessed with two sons. Maya Devi was leading happy marital life in her in-laws house and no complaint regarding any quarrel was received; that on 12.8.2001, Kurwha son of Baluram, Banwari son of Pohkar, residents of Village Barwa, came to their house at Shikarpur at about 1.00 P.M. and informed that Maya Devi was seriously ill and they should accompany them immediately. As such, he (the complainant) alongwith his cousin brothers Sadhu Ram and Amar Singh and some other persons from the village, proceeded towards Village Barwa. When they reached matrimonial home of Maya Devi, they found that her dead body was lying on the millet pullis (fodder), in the courtyard of the house. The body was covered with a blanket. According to the complainant, they had removed the blanket and found marks of scratches on her neck, clotted blood and marks of contusion on stomach and legs, besides marks of injuries on the forehead of the dead body; that they verified from the villagers about the death of Maya Devi. According to the

complainant, his cousin brother Hazari son of Keshav Ram, was already there in village Barwa and he told them that on that day Dharampal, Banwari and Sharavan, sons of Pohkar, residents of village Barwa, had killed Maya Devi over sudden dispute for not cutting millet leaves, after causing injuries and after strangulating her neck. According to the complainant, he had left Sadhu Ram and Sube Singh near the dead body and then accompanied by Amar Singh, had come to Police Station Siwani, to lodge report regarding the incident. Said statement was signed by complainant Jagdish. ASI Yad Ram, Investigating Officer/IO, had put his endorsement below said statement.

Then observing that offence under Sections 304/34 IPC appeared to have been committed, formal FIR Exhibit PB, was registered for those offences. Special reports were sent to Illaqa Magistrate and higher police officers. ASI Yad Ram, alongwith other police officials, accompanied by the complainant, proceeded to the spot for investigation. On reaching the spot, the Investigating Officer/IO carried out inquest proceedings with regard to dead body of Maya Devi, preparing report Exhibit PE in that regard, he recorded statements of the witnesses under Section 175 Cr.P.C. The Investigating Officer prepared rough site plan of the place of incident and recorded statements of witnesses. Offence under Section 201 IPC was added. ASI Yad Ram prepared application PD and sent dead body of Maya Devi for the purpose of getting post mortem examination conducted thereon. He summoned a photographer to the spot and got the photographs clicked of the place of occurrence.

During the course of investigation, the Investigating Officer/IO took into possession sealed parcel containing clothes and ornaments of deceased vide recovery memo Exhibit PG on 14.8.2001. SI/SHO Dharampal and Sh. Ram Kumar DSP, had verified the investigation being conducted by ASI Yad Ram.

On 15.8.2001 Rohtash, Panch of Village Barwa, had brought accused Dharampal, Subhash and Sarwan, and produced them before the Investigating Officer alongwith tractor. The tractor was taken into possession vide recovery memo Exhibit PH. All the three accused were interrogated separately and they had suffered disclosure statements Exhibit PJ, PK and PL, respectively and then in pursuance of such disclosure statements, all the accused jointly pointed out the place of occurrence. A memo in that regard was prepared as Exhibit PM. The Investigating Officer/IO prepared memo of demarcation/*nishandehi* as Exhibit PN. On return, he deposited the case property with MHC and put the accused in lock up. During the course of investigation, the Investigating Officer/IO recorded statements of various witnesses.

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

On presentation of challan in the Court of Judicial Magistrate Ist Class, Siwani, 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 304 IPC was exclusively triable by the Court of Sessions, the Judicial Magistrate

Ist Class, Siwani, committed the case to the Court of learned Sessions Judge, Bhiwani, vide commitment order dated 20.9.2001.

When the case was received in the Court of Sessions Judge, then finding prima facie charge for offence under Sections 304/201 read with Section 34 IPC was disclosed against the accused, learned Sessions Judge charge sheeted them accordingly, to which they 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 8 PWs, as per details below.

PW-1 Hazari Lal, son of Keshu Ram, aged 38 years, agriculturist, resident of Shikarpur, deposed that he is running a private school at Raipur and Daulat Ram is brother of his father; that his ancestral agricultural land falls within revenue estate of Village Chaudhary, was adjoining to revenue estate of Village Barwa; that Maya Devi daughter of his uncle Daulat Ram was married with Dharampal accused 9-10 years earlier (his statement was recorded on 18.2.2002); that on 12.8.2001, he left from Village Shikarpur on motorcycle at about 7.00 A.M. and thereafter left the fields in the revenue estate of Village Chaudhary at 8.00 A.M., thereafter went to Village Barwa to meet Maya Devi. On reaching there, he enquired from Rampal son of Maya Devi, about his mother, who informed that she had gone to fields and thereafter he went to the fields of accused Dharampal; that when he reached the fields of Dharampal, he saw that Maya Devi was lying on heap of bajra crop and one knee of accused Dharampal was on the abdomen of Maya Devi and he had

pressed her neck with both his hands and when he intervened saying what he (Dharampal) was doing, then Dharampal left Maya Devi. However, Maya Devi kept lying at the same place, whereas accused Dharampal fled from there. In his statement, the witness has stated that Maya Devi had died within his sight; that after about 45 minutes Sarwan Kumar and Subhash brought a tractor and removed dead body of Maya Devi to house of accused Dharampal at Village Barwa; that the accused tried to cremate the dead body, but he (this witness) protested that until he informed his family members, the dead body of Maya Devi would not be cremated; that after one and half or two hours, Daulat Ram, and other relatives reached Village Barwa, on being informed by Kurara Ram and Banwari. Then he alongwith Sadhu Ram and father Keshu Ram, stayed by the side of dead body, whereas Jagdish, Amar Singh and Om Parkash had gone to Police Station Siwani.

PW-2 Bhola Ram, photographer from Lovely Photo Studio, Old Bus Stand, Siwani Mandi, stated that on 13.8.2001, he had taken photographs of the places Exhibits P1 and P-2. He proved the negatives as Exhibits P-3 and P-4.

PW-3 Ishwar Singh, Patwari Halqa Ranila-I, District Bhiwani, deposed that on 29.8.2001, he was Halqa Patwari of Village Barwa-I and on the same day he had prepared scaled site plan Exhibit PA, at the demarcation of Hazari son of Kesho Ram, resident of Village Shikarpur, using the scale 40 karams = 1 inch.

PW-4 EHC Ramdhari, stated that on 12.8.2001, ASI Yad Ram had handed over to him special report Exhibit PB and he

delivered the same to Illaqa Magistrate, Siwani, which was received by him at 9.00 P.M. and copies of special report were also delivered to the senior police officers.

It may be mentioned here that charge under Section 304, 201 read with Section 34 IPC, initially framed against the accused was amended to one under Section 302, 201 read with Section 34 IPC. Counsel for the accused had made a statement the he did not want to cross examine any of the witnesses already examined, after addition/alteration of charge and they might not be recalled. His such statement was recorded in the Court on 11.12.2002.

PW-5 Jagdish – complainant, deposed as per his version given in the FIR recorded, on the basis of his statement.

PW-6 SI Dharampal, CID Hisar, who on 14.8.2001, was posted as SHO at Police Station, Siwani, deposed that he had verified the investigation of this case and after completion of legal formalities had prepared report under Section 173 Cr.P.C on 26.8.2001.

PW-7 Dr. Luv Sharma, Lecturer, Department of Forensic Medicine, PGIMS Rohtak, who was working on the same post and in the same department on 13.8.2001, stated that the dead body of Maya Devi wife of Dharampal, caste Kumhar, resident of Village Barwa, Police Station Siwani, was referred to their department for post mortem examination from G.H. Bhiwani; that the dead body was brought by Constable Atma Ram and Constable Ram Kumar and was identified by Sadhu Ram, a cousin brother of the deceased and Keshu, an uncle of the deceased; that the body had been brought from the house of Dharampal, Village Barwa, 6 km North of Police Station

Siwani. The doctor had observed following injuries on the dead body:-

“ 1. Head

- i) A diffuse contusion of size 5 x 4 cms over left fronto parietal area of scalp, 5 cm above centre of left eye-brow and 2 cm to the left of mid line. Underlying tissues were ecchymosed on dissection.
- ii) A diffuse contusion of size 7 x 5 cms on the right temporo parietal area of scalp situated 3 cms above tip of right pinna and 2.5 cms to the right of the mid-line. On dissection underlying tissues were ecchymosed.

2. Neck

- i) A reddish contusion of size 6 x 4 cms on the left side of neck situated just below ramus of mandible on the left side of neck 2 cm anterior to left angle of mandible and 3.5 cms left to mid-line. Underlying tissues were ecchymosed.
- ii) A reddish contusion of size 2.5 x 1.5 cm on the right side of neck situated just below right ramus of mandible and 3 cms right of mid-line. Underlying tissues were ecchymosed.

On dissection the neck structures were congested (namely larynx, glottic and



epiglottic area and posterior 1/3<sup>rd</sup> of the tongue. There was an inward compression fracture of right cornu of hyoid bone at junction of outer 1/3<sup>rd</sup> and inner 2/3 with infiltration of blood into trabeculae of fractured bone.”

This witness further stated that the dead body was of a young adult female individual; that the cause of death in this case was throttling and the head injuries described (which were ante mortem and sufficient to cause death in ordinary course of nature). The probable time that elapsed between death and post mortem examination was about two days.

PW-8 ASI Yad Ram, who had carried out investigation in this case, deposed in that regard, proving various documents.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against the accused were put to them but they denied the same stating that they were innocent and have been falsely involved in this case. Accused Sarwan and Subhash took up the plea that they were not present at the time of occurrence and that they have been falsely implicated in this case. Accused Dharampal came up with a plea that he alongwith his son Rampal, had searched his wife Maya Devi but she was not found in the village and they found her lying dead in his field and thereafter he brought the dead body in a rehra to his house and Kurara and Banwari informed the complainant party; that

thereafter Jagdish and Hazari made a false statement against him and he was falsely roped in this case.

During their defence evidence, the accused examined DW-1 Kurda Ram son of Balu Ram, aged 60 years, cultivator, resident of Village Barwa, who deposed that it was 12<sup>th</sup> of month, when people were present in the house of Dharampal, who told him that they should inform the relatives of Dharampal at Village Shikarpur; that dead body of Dharampal's wife was at his house having been brought by Dharampal there in a camel cart. The witness stated that he alongwith Banwari went to inform relatives of Dharampal at Village Shikarpur in a jeep; that 7-8 persons had accompanied them, which included Keshu, Sadhu, Jagdish etc.; that they returned to Village Barwa at 1.00 P.M., whereas police reached the village at about 4.00 - 5.00 P.M., though he expressed his inability to tell exact time. He stated that dead body might have been lifted at about 6.00 – 7.00 P.M.; that he know Hazari son of Kesho Ram, but he had not seen him at the house of Dharampal accused. He further stated that they had informed persons of Shikarpur that wife of Dharampal had died.

With that the defence evidence of the accused was closed.

After hearing arguments, the trial Court acquitted accused - Sarwan and Subhash of the charge framed against them, whereas accused – Dharampal was convicted and sentenced as mentioned above, which left him aggrieved and he has filed the present appeal praying that the impugned judgment of his conviction and sentence be set aside by way of acceptance of appeal and he be acquitted of the charge framed against him.

We have heard learned counsel for the appellant-accused, learned Assistant Advocate General, Haryana for the State, besides going through the record and we find that the incident as per prosecution story involving Dharampal accused stands established.

The star witness for the prosecution happened to be PW-1 Hazari, who provided eye witness account of the incident. Hazari is a close relative of the deceased and his village and agricultural land is situated near village Barwa, to which accused Dharampal belong and where the matrimonial home of the deceased was located. In that way, Hazari going to matrimonial home of the deceased on the fateful day and when not finding her there and as informed by her son going to fields of the accused, observing Dharampal assaulting deceased Maya Devi and strangulating her, comes to be natural and probable. Though, learned counsel for the appellant advanced an argument that he happened to be a chance witness and had no occasion to be at the spot at the relevant time, which fact is fortified from the conduct of this witness, in as much as, he did not try to intervene, so as to save Maya Devi from accused; he did not inform the police regarding the incident even, yet we are not impressed by this contention. It depends upon nature of a person whether to intervene in a fight or to remain away from it, such person himself being a weak hearted man of meek nature, apprehensive of suffering injuries on his person in the process would definitely not intervene. Therefore, merely because of the fact that Hazari did not intervene, so as to save Maya Devi from clutches of Dharampal, does not go to nullify his presence at the spot. Similarly, as it comes out from the record, he was waiting for family

members of deceased to arrive and then to set the machinery of law in motion, as per their decision to proceed further in the matter. One more thing which is to be taken note of is that Hazari had not allowed dead body of Maya Devi to be cremated till her family members on parental side arrived there. It is also to be taken note of that complainant Jagdish, brother of the deceased, in his statement to the police, which forms basis for registration of FIR, has categorically stated that his cousin brother Hazari had already arrived at Village Barwa and had seen the incident. Therefore, we have no doubt regarding presence of Hazari at the spot, at relevant time and his having seen the incident. PW-1 Hazari, while getting his statement recorded in the Court, had given detailed version thereof, categorically deposing in consonance with the prosecution story, as far as accused Dharampal having assaulted and strangled his wife Maya Devi. No motive was there for Hazari to depose falsely against the accused.

The testimony of Hazari is corroborated by several other facts and circumstances, including conduct of the parties. According to the defence version, Maya Devi was missing from home but no missing report was lodged by the accused with the police. No major efforts to locate her are shown to have been made. The incident had taken place in the agricultural land of the accused. Maya Devi had died an unnatural death having injuries on her person. Accused Dharampal is supposed to have special means of knowledge to tell as to how and under what circumstances, Maya Devi had suffered injuries and was done to death. But the accused has not come forth

with any such explanation as to how it so happened. It is neither alleged, nor proved that Maya Devi had been subjected to any sexual assault by some person and then done to death. The conduct of accused in not reporting the matter to police regarding Maya Devi missing from home, not making major serious efforts to locate her, rather bringing dead body home instead of letting it remain there and informing the police at the earliest and then trying to cremate the dead body hurriedly, though accused was refrained from doing so by Hazari, go to show guilty intention of the accused.

The medical evidence in this case corroborates the ocular evidence. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer/IO had no reason to involve the accused in this case wrongly or to challan him falsely. However, we are of the considered view that the offence committed by accused Dharampal comes out to be that of culpable homicide, not amounting to murder, in terms of Section 304 Part I, IPC. While saying so, we have taken into view several factors and considered the facts and circumstances of the case. In the FIR lodged by Jagdish, brother of the deceased, he had categorically mentioned that his youngest sister Maya Devi was married with Dharampal 9-10 years back and she was living happily in the matrimonial home and further till date no complaint regarding any quarrel was received. It is certainly not a case of harassment of a married woman on account of demand of dowry etc. No motive for committing murder of Maya Devi, by her husband Dharampal- accused, has been alleged or proved by the prosecution. In the FIR itself, the complainant has

contended that Maya Devi had been killed over a sudden dispute for not cutting the millet leaves. That means, the incident had happened all of a sudden and was not result of any pre-planning or pre-meditation. From perusal of her post mortem report, Exhibit PG and statement of doctor, who had performed post mortem examination i.e. PW-7 Dr. Luv Sharma, Lecturer, Department of Forensic Medicine, PGIMS Rohtak, it is suggestive of the fact that strangulation was done with one hand, though that is not much important. Two injuries on the head in the form of diffused contusions, had been detected. It is not the case of defence that such injuries had occurred while victim had fallen on the ground and her head had hit the ground and then she had rolled over. But then law is well settled that even in such an eventuality, the accused could not be said to have acted in a cruel manner. Learned counsel for the appellant-accused had referred to citation **Surinder Kumar vs. Union Territory, Chandigarh AIR 1989 Supreme Court 1094** by Hon'ble Supreme Court, wherein it was observed that to invoke Exception 4 to Section 300, four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion, and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. It was further observed that the cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault and further the number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger.

We find that the facts of the present case are almost similar to the facts of the authority in hand and as such offence which is disclosed against the appellant-accused is not that of murder punishable under Section 302 IPC, but that of culpable homicide, not amounting to murder, punishable under Section 304 Part 1 IPC. Therefore, the appeal is partly accepted. Conviction and sentence of accused-appellant for offence under Section 302 IPC is set aside. Instead, he is convicted under Section 304 Part I IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/-. In default of payment of fine, he shall undergo further rigorous imprisonment for six months.

The accused is stated to be on bail granted by this Court. His bail is cancelled. He be taken into custody and made to undergo remaining sentence.

|          | (T.P.S. Mann)<br>Judge      | ( H.S. Madaan )<br>Judge |
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| 1.5.2017 |                             |                          |
| chugh    | Whether speaking / reasoned | Yes/ No                  |
|          | Whether reportable          | Yes/ No                  |