

In the High Court for the States of Punjab and Haryana
at Chandigarh

CRA No.D-478-DB of 2003
Date of Decision:-July 21, 2017

Madan Kumar @ Manoj Kumar

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Anmol Partap Singh Maan, Advocate and
Ms. Aditi Girdhar, Advocate, amicus curiae,
for the appellant.

Ms. Ruchika Sabharwal, Assistant Advocate General, Punjab.

Gurvinder Singh Gill J.

1. Madan Kumar alias Manoj Kumar, who has been convicted under Section 302 IPC for having murdered his wife Rubal Rani vide judgment dated 13.1.2003 passed by Sessions Judge, Ludhiana has challenged the same by filing the present appeal.
2. The FIR no.102 dated 12.4.2001 u/s 302 IPC, Police Station Focal Point, Ludhiana (Ex.PW-9/B) was lodged on the basis of '*ruqa*' (Ex.PW-6/A) in the shape of statement of complainant Mahesh Kumar (father of deceased) recorded by ASI Ranjit Singh on 12.4.2001. The complainant has stated therein that his daughter Rubal Rani (deceased) was married to Madan Kumar alias Manoj Kumar about one and a half year prior to the occurrence

but the accused started maltreating Rubal Rani shortly after the marriage and used to give beatings to her and had even turned Rubal Rani out of matrimonial home about 2 months prior to the occurrence and then she stayed at her parental home for about a month. He has stated that when his son-in-law realized his mistake then he had sent his daughter Rubal Rani along with him to her matrimonial home. It is stated therein that on 11.4.2001, the wife of complainant went to see her daughter Rubal Rani in her matrimonial home and returned back in the evening and disclosed that the accused had again started maltreating and beating Rubal Rani. The complainant has stated that he along with Jugal Kishore went to see his daughter Rubal Rani in her matrimonial home and when they entered her house at about 5:00 P.M., they saw Madan Kumar alias Manoj Kumar standing in the front room. He was hurling abuses at Rubal Rani and was holding a '*seru*' (wooden baton) in his hand and in their presence he gave a blow with the said wooden baton on the head of his daughter Rubal Rani which hit on the back of her head towards left side, as a result of which she fell down on the ground. It is further alleged that the accused thereafter gave 2-3 kick blows to Rubal Rani while she was lying on the floor and when they rushed forward to attend to Rubal Rani and raised alarm saying '*mar-ditta mar-ditta*' then the accused fled away from the spot throwing the wooden baton on the ground. Rubal Rani died at the spot. The complainant has further stated that his son-in-law Madan Kumar alias Manoj was unemployed and was addicted to intoxicants and when his daughter tried to dissuade him from intoxicants, he used to give beatings to her. The complainant, while leaving Jugal Kishore near the dead body of his

daughter, went to lodge report with the police.

3. Pursuant to aforesaid statement(Ex.PW-6/A) of the complainant, formal FIR (Ex.PW-9/B) was recorded. After conclusion of Inquest proceedings the dead body was sent for getting the post-mortem examination conducted. The accused was arrested on the same night at 10 P.M. After conclusion of investigation, challan was presented against the accused Madan Kumar alias Manoj in the Court of CJM, Ludhiana on 3.7.2001, who committed the case to the Court of Sessions vide order dated 27.8.2001. The Sessions Judge, Ludhiana upon finding sufficient grounds to presume that the accused had committed an offence punishable under Section 302 IPC framed charges against the accused on 3.9.2001 to which the accused pleaded not guilty and claimed trial.
4. The prosecution in order to establish the charges framed against the accused examined PW-1 Dr. R.S.Grewal who had conducted the post-mortem examination on the dead body of the accused and who has proved the post-mortem report as Ex.PC. PW-2 Constable Tarlochan Singh, PW-3 Head Constable Amrik Singh, PW-4 Head Constable Kuldip Singh and PW-5 Constable Rafiq Shah are all formal official witnesses who have deposed regarding deposit of the case property in the malkhana; depositing the blood stained clothes and wooden baton in the office of Chemical Examiner for analysis etc. PW-6 Mahesh Kumar who is the complainant stated in detail in tune with the allegations levelled by him in '*ruqa*' (Ex.PW-6/A). PW-7 Jugal Kishore, who is an eye witness who had accompanied the complainant to the house of the deceased stated in corroboration to the statement of the

complainant regarding the manner of occurrence.

5. PW-8 Constable Gurdial Singh is another formal witness who stated regarding submitting the special reports to the Illaqa Magistrate and other officers concerned. The Investigating Officer Inspector Santokh Singh has stepped into the witness box as PW-9 and stated in detail in respect of the entire investigation conducted in the present case right from the recording of the statement (Ex.PW-6/A) of the complainant upto filing of the challan against the accused.
6. After conclusion of the prosecution evidence, entire incriminating evidence appearing against the accused was put to him to enable him to explain the same but the accused in his statement recorded under Section 313 Cr.P.C. pleaded false implication and has further taken a stand that his wife Rubal Rani used to remain ill and giddy and had fallen on the ground and sustained injuries and that there was not dispute between him and his wife.
7. The accused in his defence examined DW-1 Balwant Singh who stated that he is President of Gurmit Nagar Mohalla Sudhar Committee, Ludhiana for the last five years and that the accused is also residing in the said '*mohalla*'. He never received any complaint from wife of the accused or from her parents against the accused during the said period. He has further stated that neither the parents of the deceased Rubal Rani nor any other member of their family was present on the day of occurrence as he had reached the house of the accused immediately after 10-15 minutes from the death of Rubal Rani.

8. The learned Trial Court upon perusal of the evidence on record held that the accused had murdered his wife Rubal Rani and thus convicted the accused for having committed an offence punishable under Section 302 of IPC vide impugned judgment dated 13.1.2003. Aggrieved by the same, the accused has filed the present appeal challenging his conviction.
9. The learned counsel for the appellant while assailing the impugned judgment has first of all submitted that the presence of PW-6 Mahesh Kumar and of PW-7 Jugal Kishore at the spot is highly doubtful inasmuch as their names nowhere figure in the inquest report(Ex.PB). The learned counsel has further submitted that the prosecution version does not inspire confidence inasmuch as it remains unexplained as to why the complainant and PW-7 Jugal Kishore did not try to catch hold of the accused who was not even armed with any deadly weapon. The learned counsel in order to support his aforesaid submissions has also referred to the testimony of DW-I Balwant Singh who has also stated that the none from the family of the deceased was present at the spot. The learned counsel has further submitted that in fact the entire case has been concocted which would be evident from the fact that the inquest proceedings are shown to have been conducted at 6:45 P.M. whereas '*ruqa*' (Ex.PW-6/A) came to be recorded by 7:35 P.M. and on the basis of which FIR was recorded at 8:10 P.M. It has also been submitted that the dead body as per Inquest Report(Ex.PB) has been identified by one Harish Chander and Vipin Kumar, both sons of Chaman Lal and that in case the complainant, who is father of the deceased was actually present at the spot then the dead body would have been got identified from him and not from

any other person. The learned counsel has further pointed out that the very fact that the special report in the present case was received on the next day at 3:10 P.M. by JMIC, Ludhiana goes a long way to show that a concocted version has been put forth by the complainant in connivance with the police. The learned counsel for appellant has thus submitted that the judgement of trial Court can not sustain and has prayed for acceptance of his appeal and for setting aside the impugned judgment and for acquittal of the accused.

10. On the other hand the learned counsel representing the State has submitted that the evidence led by prosecution especially the consistent statements of PW-6 Mahesh Kumar and PW-7 Jugal Kishore coupled with the medical evidence leaves no room to doubt the case of prosecution. The learned State counsel has submitted that the defence plea put forth by the accused that the deceased used to remain unwell and had fallen down on her own due to giddiness is not substantiated from any credible evidence since no medical evidence has been led by accused to establish the aforesaid medical state of the deceased. The learned State counsel has thus submitted that there is no infirmity in the findings of conviction as recorded in the impugned judgment and has thus prayed for dismissal of the appeal.
11. This rival submissions addressed before this Court have been considered in context of the evidence on record. The complainant PW-6 Mahesh Kumar, while in the witness box specifically stated that his daughter was married to the accused about two and a half years prior to the occurrence but the accused had started maltreating his daughter Rubal Rani after about 2-3 months of the marriage and he was addicted to intoxicants. Though he and

his wife advised the accused several times to abstain from intoxicants but to no avail. He further stated that about two months prior to the occurrence, his daughter Rubal Rani had been turned out of the matrimonial home after giving her beatings. She then stayed with them for about a month. Thereafter when the accused apologized, they sent their daughter Rubal Rani with the accused to his house. PW-6 Mahesh Kumar further stated that on 11.4.2001, his wife went to see his daughter in her matrimonial home and upon returning, she informed that there was no improvement in the conduct of the accused and he continued taking intoxicants and giving beatings to his daughter. PW-6 Mahesh Kumar further stated that on 12.4.2001, he along with his friend PW-7 Jugal Kishore went to the house of the accused and when they entered the house of the accused at about 5 P.M. they saw the accused with a wooden baton in his hand, beating his daughter, and in their presence the accused gave a blow with the said wooden baton to his daughter Rubal Rani on the back of her head on the left side and as a result of which his daughter fell on the ground. He further deposed that the accused gave kick blows to his daughter while she was lying on the ground. PW-6 Mahesh Kumar stated that when he and Jugal Kishore raised alarm and were attending to his daughter, the accused ran away from the spot throwing the wooden baton at the spot. It is stated that Rubal Rani died at the spot and the complainant while leaving Jugal Kishore near dead body proceeded to lodge report to the police.

12. PW-7 Jugal Kishore corroborated the statement of PW-6 Mahesh Kumar and specifically stated that on 12.4.2001, he along with Mahesh Kumar went to

the house of the accused and when they entered his house at about 5:00 P.M. they saw the accused abusing and beating Rubal Rani with a wooden baton and he gave a blow with wooden baton to Rubal Rani on her head in their presence, as a result of which she fell on the ground and while she was lying on the ground, the accused gave her kick blows as well.

13. Both the aforesaid witnesses were cross-examined at length on behalf of the accused, but nothing substantial could be elicited during the course of cross-examination so as to doubt their credibility. The ocular version put forth by the aforesaid witnesses finds ample corroboration from the medical evidence led by the prosecution in the shape of testimony of PW-1 Dr. R.S.Grewal who stated that he had conducted the post-mortem examination on the dead body of Rubal Rani and has proved post-mortem report as Ex.PC. He described the injuries found on the dead body of Rubal Rani as follows :-

“(1) 3” x 1” lacerated wound present over left occipital region, 2” behind and medial to left ear. Underlying bone was fractured. Brain was lacerated. Cranial cavity contained blood.

(2) Lacerated wound 2.5” x 1/2” present over vertex 1” left lateral from midline, over occipito parietal region. There was big haematoma present subcutaneously and subdurally.

(3) Bruise 2 cm x 3/4 cm over right mandibular region.

(4) Multiple small bruises were present over left side of mandibular region and neck, left side and front.

(5) Bruise 1 cm x 1 cm over left side of elbow joint.

(6) *Bruise irregular 2" x 1" on left shoulder*

(7) *Bruise 3-1/2" x 3" over left hand dorsum and wrist.*

(8) *Abrasion 2 cm x 1 cm over left knee."*

14. PW-1 further opined that the cause of death was due to shock and haemorrhage as a result of multiple injuries sustained by deceased and that injury No. 1 and 2 were sufficient to cause death in the ordinary course of nature. During the course of cross-examination, he has stated that the possibility of injury no.1 and 2 having been suffered due to fall on the ground including hard surface cannot be ruled out.

15. The seat of injury no. 1 is left occipital region behind the left ear and wherein the underlying bone was found fractured. The seat of injury is absolutely in tune with the version put forth by the complainant. Injury No. 1 and 2 as well as the remaining injuries are in the nature of lacerated wounds, bruises and abrasions which are again in tune with the prosecution version as the weapon used for inflicting injuries is a blunt edged weapon. The laceration, bruises and abrasions can be caused with a blunt edged weapon like a stick, as has been used in the present case. PW-1 while opining regarding the cause of death has stated that injury No. 1 and 2 were sufficient to cause death in the ordinary course of nature.

16. Though, during the course of arguments, the learned counsel for the accused argued that the existence of injury No. 2 is not in tune with the version put forth in the 'ruqa' wherein only one injury is stated to have been caused by accused, but this Court finds it is the specific case of

the prosecution that after receipt of blow on the head of the deceased, she fell down on the ground and PW-1 Dr. R.S.Grewal, during the course of cross-examination has stated that the possibility of injury No.1 and 2 having been suffered due to fall on the ground including hard surface cannot be ruled out. As such, it can not be said that the medical evidence is not in tune with the prosecution version.

17. As regards the submission regarding inconsistency in the time of lodging FIR and inquest proceedings, a perusal of the Inquest Report(Ex.PB) does show that there is inconsistency as regards recording of time inasmuch as while the inquest proceedings are shown to have been conducted at 6:45 P.M., the statement of accused (Ex.PW 6/A) was recorded by 7:35 P.M. This Court finds that the said discrepancy has not been explained by the prosecution but the said discrepancy cannot be said to be so fatal so as to hold that it is a case of false implication especially when it is a case where direct evidence of occurrence is available. The Hon'ble Supreme Court in a judgement reported as 2002(7) SCC 11 Hardeep Vs. State of Haryana has held that every contradiction or discrepancy may not necessarily be fatal to the prosecution case and that in case the evidence of prosecution witnesses is above board and unimpeachable and inspires confidence, then some discrepancies and contradictions here and there may have no value.

18. Further, the mere fact that the identification of dead body of deceased during Inquest proceedings was not got done from the complainant

himself cannot be of much significance as the complainant, under normal circumstances, would have been in a state of shock for having lost his daughter. There is no such mandate of law that the identification of dead body has to be done only by parents or blood relations of deceased. Though, the learned counsel for the accused in this context has also referred to testimony of DW-1 Balwant Singh who had stated that he had reached the place of occurrence immediately after 10-15 minutes of the occurrence and that none of the members of family of the deceased was present at the spot but the presence of the said witness itself is rather doubtful inasmuch as it remains unexplained as to why the police did not record his statement and how he reached the spot just in 10-15 minutes of the incident. He has nowhere disclosed as to who had informed him about the occurrence. During the course of cross-examination, he has stated that he was not on visiting terms with the accused. DW-1 was a President of the '*mohalla*' and as such, he should not have shirked from getting his statement recorded if he was really concerned about the welfare of the residents of his '*mohalla*'. The very fact that his name nowhere figures in the police proceedings goes a long way to show that he has been simply introduced as a witness by the accused and was never present at the spot.

19. During the course of arguments, the learned counsel also attempted to assail the case of the prosecution on the basis of the conduct of PW-6 and PW-7 who did not try to apprehend the accused despite the fact that the accused was not accompanied by anybody else and was not armed

with any deadly weapon but this Court finds that the conduct of PW-6 and PW-7 in immediately attending to deceased cannot be said to be highly unnatural as a father would be more concerned about the safety of his daughter and to attend to her injuries rather than to make an attempt to apprehend the accused. In any case the identity of the accused is not in question. The aforesaid submission is thus devoid of merits and is hereby repelled.

20. As regards the contention regarding delay in sending special reports, the Hon'ble Supreme Court, in a judgement reported as 2016(2) SCC 607 State of Rajasthan Vs. Daud Khan, while discussing the effect of delay in sending special reports to Magistrate held as follows:

“26. The interpretation of Section 157 of the CrPC is no longer res integra. A detailed discussion on the subject is to be found in Brahm Swaroop v. State of U.P., 2010(4) R.C.R.(Criminal) 898 : (2011) 6 SCC 288, which considered a large number of cases on the subject. The purpose of the "forthwith" communication of a copy of the FIR to the Magistrate is to check the possibility of its manipulation. Therefore, a delay in transmitting the special report to the Magistrate is linked to the lodging of the FIR . If there is no delay in lodging an FIR, then any delay in communicating the special report to the Magistrate would really be of little consequence, since manipulation of the FIR would then get ruled out. Nevertheless, the prosecution should explain the delay in transmitting the special report to the Magistrate. However, if no question is put to the investigating officer concerning the delay, the prosecution is under no obligation to give an

explanation. There is no universal rule that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable. In other words, the facts and circumstances of a case are important for a decision in this regard.

27. The delay in sending the special report was also the subject of discussion in a recent decision being Sheo Shankar Singh v. State of U.P., 2013(4) R.C.R.(Criminal) 897 : 2013(6) Recent Apex Judgments (R.A.J.) 305 : (2013) 12 SCC 539 wherein it was held that before such a contention is countenanced, the accused must show prejudice having been caused by the delayed dispatch of the FIR to the Magistrate.”

21. In the present case, there is no such delay in lodging the FIR so as to render the prosecution doubtful. Nor the accused been able to show that any prejudice had been caused to him by the fact that there is some delay in sending the special reports. Further, neither the Investigating Officer of the case nor the Constable(PW-8) who had delivered the special reports was asked any question during cross-examination as regards delay in transmission of special reports. In these circumstances the delay would not be fatal to the case of prosecution.
22. No other point has been raised or urged before this Court to assail the conviction of the accused. The depositions of PW-6 and PW-7, as already discussed above, coupled with the medical evidence in the shape of his testimony of PW-1 Dr. R.S.Grewal who had conducted the postmortem examination and also to the fact that the wooden baton recovered from the spot was found to be stained with blood, as per

report (Ex.PC) of Chemical Examiner, fully establishes the case of the prosecution that the accused had caused an injury on the head of the deceased with a baton resulting in her death.

23. During the course of arguments, the learned counsel for accused has submitted that even if it is held that the accused had given a blow with wooden baton, still it is a case which could at best attract an offence under section 304 Part-1 IPC and that no offence under section 302 IPC can be said to be made out as it is a case of single injury with blunt weapon without any intention on the part of the accused to kill the deceased. On the other hand, learned State counsel has submitted that the intention of the accused to kill the deceased is borne out from the facts of the case and that the mere fact that the very first blow proved fatal would not take the act out of mischief of section 302 IPC.
24. The pivotal question in order to determine whether the offence falls under Section 302 IPC or 304 Part-1 IPC, is the intention of the accused and the weapon with which injury has been caused. Intention and knowledge are a man's state of mind and direct evidence thereof is not available unless the accused confesses about the same. Thus, it is from the surrounding circumstances that intention of accused has to be gathered. In other words, these are matters for inference from all the circumstances of the case such as the motive, the preparations made; the declarations of the offender; the weapon used; the persistence of the assault, and the nature of the injuries actually inflicted as also their location.

25. The Hon'ble Apex Court in a case reported as (2007) 1 Supreme Court Cases 500 Pulicherla Nagaraju alias Nagaraja Reddy vs. State of A.P., enumerated various factors to be taken into consideration while deciding the question of 'intention'. The Hon'ble Apex Court observed as under :-

" Therefore, the court should proceed to decide the pivotal question of intention with care and caution as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters – plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. Infact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other circumstances :-

- (i) nature of the weapon used;*
- (ii) whether the weapon was carried by the accused or was picked up from the spot;*
- (iii) whether the blow is aimed at a vital part of the body;*

- (iv) *the amount of force employed in causing injury;*
- (v) *whether the act was in the course of sudden quarrel or sudden fight or free for all fight;*
- (vi) *whether the incident occurs by chance or whether there was any premeditation;*
- (vii) *whether there was any prior enmity or whether the deceased was a stranger;*
- (viii) *whether there was any grave and sudden provocation, and if so, the cause for such provocation;*
- (ix) *whether it was in the heat of passion;*
- (x) *whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;*
- (xi) *whether the accused dealt a single blow or several blows.*

The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may. ..."

26. The present case is such where the complainant in the first version as recorded in the FIR has alleged that when he along with PW-7 Jugal Kishore reached the house of the accused, the accused gave a blow with a wooden baton on the head of the deceased and thereafter gave some kick blows and ran away from the spot. To similar effect are the statements recorded in the Court. It is not the case of prosecution that the accused after inflicting blow on the back of head of deceased with a wooden baton had caused any other injury with the wooden baton on any vital part of body of the deceased. Though as per the Post-Mortem

Report, the injury No.2 was found on the dead body which is in the shape of lacerated wound on the left occipital region but PW-1 Dr. R.S.Grewal, during the course of cross-examination has stated that the possibility of injury No.1 and 2 having been suffered due to fall on the ground including hard surface cannot be ruled out. It is the specific case of the prosecution that after receipt of blow on the head of the deceased, she fell down on the ground. As such, the injury no.2 was possibly a result of the fall when the deceased fell down after having received blow on her head.

27. It is the case of the prosecution that the accused was addicted to intoxicants and that the deceased used to dissuade him from taking intoxicants but the accused did not stop taking intoxicants and rather gave beatings to her due to her dissuading.
28. In this backdrop and keeping in view the fact that the weapon of offence is a blunt edged weapon i.e. a wooden baton('seru') commonly found in rural household and the fact that a single blow had been caused by accused and thereafter no other blow with the baton was inflicted or attempted to be inflicted by him it cannot be said that the accused had an intention to cause death or to inflict such bodily injury to the deceased likely to cause death.
29. In this context, a reference may be made to a judgement reported as 2009(14) SCC 532, *Indrasan v. State of U.P.* wherein in a case of single blow by accused on head of deceased with stick, which proved fatal, conviction under section 302 IPC was altered to 304 Part I IPC and

sentence was reduced to R.I for ten years. The relevant extract reads as follows:

11. When on the very next day morning i.e. 14.10.1979, the accused-appellant saw the face of the deceased he simply picked up his lathi and with that gave one blow on the head of the deceased. The said blow was so forceful that as a consequence of which the deceased died within an hour and before he could be taken to the hospital. There is a direct nexus between the blow of lathi and death of the deceased which is immediately caused after giving the blow.

12. We, therefore, are of the considered opinion that although it is a case of culpable homicide not amounting to murder, but considering the nature of the injuries which was caused on a vital part of the body, we are of the considered view that there was intention on the part of the accused-appellant to cause death of the deceased.

13. We, therefore, alter the conviction of the appellant from Section 302 Indian Penal Code to Section 304 Part I Indian Penal Code.

30. In view of our aforesaid discussions and in the light of the judgment referred to above, we are of the opinion that the facts established on record do not make out a case under section 302 IPC, but certainly make out a case under section 304 Part-I IPC. Consequently, the conviction of the appellant Madan Kumar alias Manoj is altered from Section 302 IPC to Section 304 Part-1 of IPC and he is sentenced to undergo rigorous imprisonment for 10 years. The sentence of fine as

imposed by the Trial Court shall, however, remain the same.

31. The appeal stands partly allowed with the aforesaid alteration in conviction and consequent modification in sentence.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

July 21, 2017

kamal

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No