

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

**Criminal Appeal No.D-88-DB of 2003 (O&M)
Date of Decision : 21.11.2017**

Amar Singh and another Appellants

Versus

State of Haryana Respondent

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

Present : Mr. Ashwani Talwar, Advocate
Mr. K.D.S.Hooda, Advocate and
Mr. Akshay Bansal, Advocate
for the appellants.

Mr. Samarth Sagar, Addl. A.G. Haryana.

RAJ SHEKHAR ATTRI, J.

Both the convicts namely Amar Singh and his wife Smt.Rano Bai have come up in this appeal assailing the judgment of conviction dated 27.11.2002 and order of sentence dated 29.11.2002, passed by the learned Sessions Judge, Hisar, vide which they have been convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/- each under Section 302 read with Section 34 IPC and in default of payment of fine to further undergo rigorous imprisonment for a period of three months each.

Briefly stated, it is a case of the prosecution that on 27.09.2000 at about 1:30 p.m., Bagga Singh (hereinafter referred to as 'the deceased') left his house for the shop of Amar Singh-appellant. However, after a short

while, his mother Smt. Budha Bai (PW6) and his sister Smt. Chhilla Bai (PW7) heard his shrieks from the nearby house of appellant-Amar Singh. They rushed towards that place and entered in the house of appellant. They found that deceased was raising noise 'maar dia-maar dia' (killed-killed) from the rear room abutting the street of the house of appellant Amar Singh. When both of them reached in front of the room of said house, in their presence, the appellant while having a blood stained knife in his hand accompanied his wife Rano Bai came out from the room. They ran away from that spot after giving a push to PW6 and PW7. When both Budha Bai and her daughter Smt. Chhilllo Bai had gone inside the house, they found Bagga Singh in serious injured condition and was having knife injuries on the front of stomach, other parts of the body and also a 'chunni' was lying tied around his neck. Bagga Singh succumbed to injuries in their presence.

Then PW6 had proceeded to the house of Sarpanch to inform the incident. Thereafter, the Sarpanch also arrived at the spot. While keeping PW7 at the spot Smt. Budha Bai accompanied with the Sarpanch had left to inform the police accompanied. However, the police met them on the way where her statement were recorded. She has categorically stated that motive behind the crime was that deceased had illicit relation with Smt. Rano Bai and appellant Amar Singh could not digest the same.

The statement of Smt. Budha Bai was completed at 3:35 p.m. On the basis of which, formal FIR EX.PW10/A was registered and the police machinery swung into action.

Place of occurrence was inspected. Inquest report Ex.P17 and rough site plan were prepared at the spot. The blood soaked soil was

collected and the same was put in a container which later on sent to Forensic Science Laboratory and found to be having soaked with human blood. A photographer was also called at the spot who snapped photographs Ex.P2 to Ex.P4.

The dead body was sent to the hospital for the purpose of conducting the postmortem examination. The doctor, after conducting the autopsy, had handed over the wearing clothes of the deceased along with other articles to the police. The clothes of the deceased were also sent to the Forensic Science Laboratory and found to be stained with human blood.

The appellants were arrested on 28.09.2000. Smt. Rano Bai suffered disclosure statement Ex.P20 to the effect that she had kept concealed her wearing clothes which were stained with human blood. In pursuance thereof, one '*jumper*' (Ex.P23) and '*salwar*' (Ex.P24) were recovered. Appellant Amar Singh also suffered a separate disclosure statement and in pursuance thereof, one knife, one shirt and pant were recovered. Those were sent to Forensic Science Laboratory and found to be stained with human blood.

After completion of investigation, challan was presented before the area magistrate, who, opined that the case is exclusively triable by the Court of Sessions. Therefore, vide order dated 03.01.2001, he committed the case to the Court of Sessions. Learned Sessions Judge framed the charges for the offence under section 302 read with section 34 IPC and initiated the trial.

In order to prove its case, prosecution examined **PW1** Raju Draftsman, **PW2** Head Constable Miya Singh (photographer), **PW3**

Constable Sharwan Kumar, **PW4** MHC Hans Raj, **PW5** Constable Kulbir Singh, **PW6** Budha Bai, **PW7** Sheelo Bai, **PW8** Sub Inspector Balwan Singh, **PW9** Jai Singh and **PW10** Dr. Gopal Bhardwaj.

At the close of prosecution evidence, the appellants-accused were examined under section 313 Cr.P.C. in order to afford them opportunity to explain the incriminating evidence appeared against them. They pleaded their false implication. However, they took the plea that dead body of the deceased was lying in the street and in front of the door of their house. On appreciation of evidence, the appellants were convicted and sentenced, as aforesaid.

We have heard learned counsel for the parties and have scanned the evidence available on the record.

First of all coming to the cause of death of deceased Bagga Singh. **PW10**-Dr. Gopal Bhardwaj- had conducted the postmortem examination on his dead body and found the following injuries:-

1. Multiple cuts elliptical under right hypochondrium five in number numbered A, B, C, D, E size 2.5 c.m. X 1.5 c.m., 2.5 cm x 1.5 cm., 2.5 cm x 1.5 cm, 3.5 cm x 1.5 cm, 2.5 cm x 1.5 cm. On dissection, underlying tissues were cut with effusion of blood in tissues, peritoneum. On further dissection, direction revealed injuries No.B and C were penetrating liver and liver was showing cuts with blood in peritoneal cavity. Partly clotted and fluid. Injuries No.D and E were penetrating with cuts seen in cut portion with faecal matter coming out. Directions of B and C was medially and slightly upwards and backwards and D and E was medially and backwards.

2. Corresponding cuts on mid anterior margin on right sub costal region, 2.5 c.m. X 1.5 cm. Each. Underlying tissues

were cut with effusion of blood and cuts were seen in pleura and lungs and hemothorax. Directions were medially and backwards.

3. Two correspondent cuts seen infra mammary region on right side 5th and 6th intercostal space. Underlying tissues were cut with effusion of blood and pleura and right lung showed cuts with hemothorax. Directions medially backwards.

4. One incised cut on right supra clavicular region 3.5 x 1 cm. with cut in the underlying tissues and vessels. Correspondent cuts was seen in the shirt with reddish clotted blood.

5. An incised cut on left scapular region 3.5 x 1.5 cms., with reddish clotted blood, correspondent cut was seen in shirt.

6. Superficial cut on left lower back. Reddish clotted blood with correspondent cut was seen in the shirt.

He opined that the cause of death was due to haemorrhage and shock as a result of multiple injuries described above and that all the injuries were ante-mortem in nature and sufficient to cause death in ordinary course of nature. The said witness further stated that there was possibility of death occurred at 1.30 p.m. on 27.09.2000. Thus, from the analysis of the medical evidence, it has been well established that Bagga Singh died due to the abovesaid injuries.

Now coming to the place of occurrence. The appellants have taken a specific plea that infact the dead body was lying in front of their house in the street; and that the same was spotted in the morning at 8:00 a.m on 27.09.2000. We have considered this contention but the same carries no weight. In the FIR, it is specifically stated that Bagga Singh was murdered in the house of appellant Amar Singh. At the spot, inquest report

was prepared. A bare perusal of the same makes it abundantly clear that the death of Bagga Singh was caused and dead body was found in the house of appellant Amar Singh. This is the earliest version which was recorded on the arrival of the police. Even sketch of the place of occurrence was also prepared at the same time. Apart from it, photographs Ex.P-2 to P-4 also establish that the occurrence had taken place inside the house of appellant Amar Singh. The rough sketch prepared at the spot also points out that the occurrence took place inside the rear room abutting the street of his house. Apart from it, Smt. Budha Bai (PW6) and Smt. Chhilla Bai (PW7) have categorically testified that it was the same house wherein the occurrence had taken place. The blood stained earth was also collected from inside the house of Amar Singh. Thus, on analysis of the evidence, we are of the view that the occurrence had taken place inside the room of house of appellant Amar Singh. As such, the plea adopted by the appellants-accused to the effect that the dead body was recovered from outside his house is without foundation.

So far as the ocular version is concerned, Budha Bai (PW6) and Smt. Chhilla Bai (PW7) are the natural witnesses. In the cross-examination, Smt. Chhilla Bai (PW7) has stated that when she heard the shrieks of deceased. At that time, they were near the house of Amar Singh as they had gone to fetch water from the public tap. Otherwise also, their house is near to the house of Amar Singh. Thus, their presence at the spot is natural.

Both Budha Bai (PW6) and Smt. Chhilla Bai (PW7) have categorically deposed that when they entered the house of appellant Amar

Singh, they witnessed Amar Singh-appellant while inflicting injuries with the knife on the person of Bagga Singh. This part of their evidence has been criticized by the learned counsel for the appellants on the ground that this fact is not mentioned in the FIR as well as in the police statement of PW7 Smt. Chhillai Bai. We have considered this contention but it carries no weight. In the rough site plan Ex.P17 as well as in the site plan drawn to scale (Ex.P1) at point 'A' one kachha room (kotha in common parlance) of the house of appellants is shown where the dead body of Bagga Singh was lying. Point 'C' is the spot from where PW6 and PW7 had seen the occurrence. This is the same point from where the appellants had given a push to the eye witnesses at the time of their escape. Point 'C' is exactly in front of the door of the room of occurrence. The length of the room is about 11 feet 10 inches. The site plan (P-17) transpires that Budha Bai (PW6) and Smt. Chhillai Bai (PW7) were in front of the door and at a distance of about 7 feet from the dead body. In the peculiar circumstances of the case, if they failed to state in the FIR or police statement that they had seen appellant-accused inflicting injuries, is immaterial. Otherwise also, nobody was in the room except both the appellants and both the PWs i.e. Budha Bai (PW6) and Smt. Chhillai Bai (PW7) had seen a knife in the hand of Amar Singh at the same time.

In the facts and circumstances of the present case, which are compelling and undisputed that the dead body was recovered from the house of the appellant Amar Singh. Thus, all these circumstances were in special knowledge of appellant Amar Singh but he kept mum and failed to furnish any explanation regarding the same. Rather, he had taken a false

plea that the dead body was lying in front of the gate of his house in the street. If we go through the site plan Ex.P1, no symptom is visible even to assume that the dead body was lying in the street.

Section 106 of the Indian Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

When appellant Amar Singh failed to explain under what circumstances the deceased came to his house and his dead body thereafter came to be recovered from his house. The appellant offers no explanation whatsoever to these questions. Once the prosecution established a prima facie case that the appellant was seen inflicting injuries and also running from the crime scene having a blood stained knife in the hand and that the said knife was recovered from him; his clothes were drenched with blood, the onus to discharge the burden under Section 106 of the Indian Evidence Act shifted to the appellant. He has completely failed to discharge the same. In **(2006) 10 SCC 681, Trimukh Maroti Kirkan v. State of Maharashtra**, it was observed as follows :-

"15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

Similar view has been taken in case of **State of Rajasthan v. Kashi Ram AIR 2007 SC 144** as follows :-

"23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when

he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so, he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in **Naina Mohd., Re. (AIR 1960 Mad 218).**"

As regarding the contention of delay in lodging the FIR is concerned, the same is without substance. The occurrence had taken place at about 1:30 p.m. on 27.09.2000. Immediately, thereafter, both the eye witnesses namely Smt. Budha Bai and Smt. Chhilla Bai noticed that the deceased was no more. Thereafter, Smt. Budha Bai had left to the house of Sarpanch and then proceeded to the police station to inform the police while leaving PW7 at the spot. Police met her at Bus stand Piranwali, Bagla Road, Hisar where her statement was recorded. After recording her statement, the Investigating Officer made endorsement Ex.P10 thereunder and the proceedings were completed at 3:35 p.m. on the same day. It is evident that she had reported the matter to the police within two hours of the occurrence. In our view, the FIR has been recorded promptly.

On the careful examination of the evidence, this Court is of the considered opinion that the evidence of Budha Bai (PW6) and Smt. Chhilla Bai (PW7) is trustworthy, it inspires confidence and the same is acceptable. The ocular evidence is also corroborated by medical evidence as well as by the recovery of blood stained knife and blood stained clothes of appellant Amar Singh and also the weapon of offence from his possession.

Thus, we are of the opinion that the prosecution has proved its case beyond shadow of doubt reasonable doubt against appellant Amar Singh and the judgment of conviction passed against him is well founded.

Now coming to the role attributed to appellant Smt. Rano Bai. Prosecution has relied upon to circumstances to arrain her with the crime:

- a) PW7 has stated that she was tying the chunni around the neck of the deceased
- b) Her wearing clothes i.e. 'Jumphur' (Ex.P23) and 'Salwar' (Ex.P24) were stained with blood.

We have considered these pleas but the same do not carry much water. It is not the case of the prosecution that either she had caught hold the deceased or inflicted injuries to him, instead, it is the case of the prosecution that she had extra marital relations with the deceased. It has also come in evidence that Amar Singh was running a tailoring shop and deceased Bagga Singh was learning stitching from him for the last about one year. However, it is not a case of strangulation, rather, the deceased died due to the injuries inflicted by appellant Amar Singh with the knife in his hand. Apart from it, the version of tying '*chunni*' around the neck of the deceased was not stated by PW6. Only PW7 has stated that Smt. Rano was seen tying '*chunni*' around the neck of the deceased. But when she was confronted with her police statement Ex.D1 this part of her deposition was found missing. It appears to be an improvement but the same is not corroborated by any other evidence. Even a bare perusal of the pictorial diagram Ex.P-32 transpires that there was incised cut on the right clavicular region. Except this, there was no symptom or injury on the neck to infer

that deceased Bagga Singh was strangled. Thus, the plea with regard to putting the '*chunni*' around the neck of the deceased is without substance.

The other circumstance that the '*Jumper*' and '*Salwar*' recovered in pursuance of disclosure statement of Smt. Rano Bai were stained with blood, ipso facto, is not sufficient to record her conviction. Even if it is assumed that she was present at the spot then blood stains may fell on her clothes as the deceased had suffered more than six incised cuts on different parts of his body and also that the length of room is not too much. These circumstances create the possibility that stains of blood may fell on her clothes without her participation in the crime.

It has also come into evidence that the buttons of the shirt worn by the deceased were lying open, similarly, the blood was seen only on her jumper (Ex.P23) which is generally worn by the ladies inside the shirt. No shirt stained with blood was recovered from her. It corroborates the prosecution version to the effect that she was stealthly maintaining affairs with the deceased.

On the critical examination of the evidence qua the role of appellant Rano Bai, two views are possible, firstly, she and the deceased were alone in the room when were seen by Amar Singh appellant who immediately opened the attack on the deceased and she had intervened to save her paramour, secondly while she alongwith Amar Singh had made her escape by giving a push to PW6 and PW7 she sustained stains of blood on her jumper and salwar from the clothes of her co-appellant. Otherwise, no role has been attributed to her in the crime. Thus, she is entitled to the benefit of doubt.

In this view of the matter, we are of the considered opinion that the prosecution failed to prove its case against Smt. Rano Bai beyond shadow of reasonable doubt.

As a sequel to our discussion, this appeal is partly accepted qua Smt. Rano and she is acquitted of the charges framed against her. She is stated to be on bail. Her bail bonds stand discharged. However, this appeal qua appellant Amar Singh stands dismissed. The judgment of conviction passed against him is upheld and order of sentence stands maintained.

(MAHESH GROVER)
JUDGE

21.11.2017
mamta-M

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No