

Gurbax Singh
2018-01-30 17:00

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

**CRA No. D-346-DB of 2005
Date of decision: January 30, 2018**

**Kashmira Singh S/o Khazan Singh, Jat Sikh, r/o Village Adhoi, P.S.
Barara.**

.....Appellant

Vs.

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present: Ms. Aditi Girdhar, Legal Aid counsel for the appellant.
Ms. Mamta Singla Talwar, DAG, Haryana.

Ajay Kumar Mittal,J.

1. This appeal has been filed through jail by appellant-accused Kashmira Singh against the judgment and order dated 16.02.2005 passed by the Court of Additional Sessions Judge, Ambala convicting and sentencing him to undergo rigorous imprisonment for life and to pay a fine of ₹ 200/- under Section 302 IPC and in default of payment of fine, to further undergo imprisonment for a period of two months. The appellant-accused has also been convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of ₹ 100/- and in default of payment of fine, to undergo further imprisonment for a period of one month for offence under Section 449 IPC. Both the sentences have been ordered to run concurrently.

2. Briefly, the facts of the case as available on the record may be noticed. Case of the prosecution is that on 21.04.2002, at about 3.15 p.m., statement, Ex.PB, of complainant Gurmeet Kaur wife of Balbir Singh (since deceased) was recorded by SI/SHO Jai Ram, wherein it was stated by her that she was having two sons and two daughters. Her one son, namely Amarjit, was residing in Malaysia and the other son, namely Inderjit alias Kala, was working as driver on a truck. She had already married-off her daughter Sarabjit Kaur. On that day, at about 12.00 noon, she, her husband Balbir Singh, Simranjeet Kaur, wife of her son Inderjit alias Kala and her daughter Gurvinder Kaur, were present in the house. Her husband Balbir Singh was sleeping on the cot in the *verandah* of the house. Simranjeet Kaur was washing the clothes. Her brother-in-law (Dewar) Kashmira Singh, who was armed with a *gandasa*, reached there and said that he would finish all of them, as they were not giving him the land. Previously also, they were having a dispute with Kashmira Singh, regarding partition of the land. The matter was got compromised by the relatives, about six months back. Kashmira Singh hit her husband, who was sleeping, on his mouth twice and also caused injuries to him on his neck with the *gandasa*, which he (Kashmira Singh) was having in his hand and thereafter he (Kashmira Singh) hit Simranjeet Kaur, who was washing the clothes, on her neck and head with the *gandasa*, several times. Alarm was raised by her and her daughter Gurvinder Kaur, whereupon, Gurmukh Singh son of Fateh Singh and Inderjit Singh son of Singara Singh, residents of Adhoi, reached the spot. On seeing them, Kashmira Singh left the spot, alongwith the *gandasa*. While leaving the spot, *lalkaras* were also given by him. Her husband Balbir Singh and daughter-in-law Simranjeet Kaur had succumbed to the injuries suffered by them, at the spot. Injuries were caused by Kashmira

Singh with *gandasa* to her husband Balbir Singh and daughter-in-law Simranjeet Kaur, because of enmity, regarding partition of the land. On this statement, FIR No.73 dated 21.04.2002, under Section 302 IPC was recorded at Police Station Barara, on the same day, at 4.00 p.m. Accused Kashmira Singh was arrested on 22.04.2002. During investigation of the case, disclosure statement of accused Kashmira Singh was recorded and in pursuance of the same, the *gandasa* was got recovered by him, on his identification. After completion of the investigation and other formalities, accused Kashmira Singh was challaned by the Police, under Sections 302 and 449 IPC.

3. Accused Kashmira Singh was charge-sheeted, under Sections 302 and 449 IPC, by the Sessions Court, Ambala, vide order dated 13.09.2002, to which he pleaded not guilty and claimed trial.

4. The prosecution, in order to prove its case examined PW-1 Manohar Lal, Constable, PW-2 Sahi Ram, ASI, PW-3 Jagadish Chand, Constable, PW-4 OM Parkash, HC, PW-5 Subhash Chand, Constable, PW-6 Gurmeet Kaur, PW-7 Raj Kumar, ASI, PW-8 Jai Ram, SI, PW-9 Dr. Narender Garg, PW-10 Parvesh Kumar, PW-11 Gurmukh Singh and PW-12 Gurvinder Kaur. PWs Santokh Singh and Constable Sukhdev Singh were given up as unnecessary by the learned PP for the State, vide his statement dated 11.02.2003 whereas PW Tarsem Singh was given up as unnecessary by the learned PP for the State, vide his statement dated 19.03.2004. PW Dr. Poonam Jain was given up by the learned PP for the State, vide his statement dated 15.01.2005. The report of FSL, Ex.PZ was tendered in evidence and thereafter, the prosecution evidence was closed by the learned PP for the State.

5. During his statement, under Section 313 Cr.P.C, the accused denied the prosecution allegations and pleaded false implication. It was also stated by him that the family members of the complainant wanted to grab his residential house and also the agricultural land, measuring two Kanals. Balbir Singh was dealing in the sale of poppy husk and in this connection, he was having some dispute with some persons of Uttar Pradesh. Balbir Singh and Simranjit Kaur might have been murdered by such persons. The complainant party forcibly took possession of his house and the agricultural land, after his arrest in this case. No evidence was adduced by the accused in his defence, though, opportunity for this was given to him.

6. After examining the entire documentary and oral evidence on record, the Sessions Court held the accused Kashmira Singh guilty under Sections 302/449 IPC and sentenced him to undergo rigorous imprisonment for life and to pay a fine of ₹ 200/-, under Section 302 IPC and in default of payment of fine, to undergo imprisonment for a further period of two months. Under Section 449 IPC, the appellant-accused was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹ 100/- and in default of payment of fine, to undergo further imprisonment for a period of one month. Both the sentences were ordered to run concurrently. Hence the instant appeal by the appellant-accused before this Court.

7. Learned counsel for the appellant-accused submitted that the family members of the complainant wanted to grab the house of the accused and, therefore, he was falsely implicated. Learned counsel further submitted that Balbir Singh, deceased used to deal in poppy husk and that he had some dispute with few persons of Uttar Pradesh regarding money

transaction and the possession of the land had been taken. It was also argued by learned counsel that re-appreciation of the evidence of PW 6 Gurmeet Kaur, PW-11 Gurmukh Singh and PW-12 Gurvinder Kaur is required who were interested witnesses. There was motive to falsely implicate the appellant-accused. Statement of PW-12 Gurvinder Kaur under Section 161 of the Code of Criminal Procedure (in short, Cr.P.C.) was not recorded. It was lastly submitted that recovery of *gandasa* was from open space.

8. On the other hand, learned counsel for the State supported the impugned judgment and order passed by the Sessions Court. It was submitted that motive was not relevant though property dispute was the motive. The story put-forth by the accused was not believable. Kashmira Singh, accused had children. He was a drug addict. There was no evidence of business with the people of Saharanpur. The name of PW-12 Gurvinder Kaur was there in the statement of PW-6 Gurmeet Kaur in the FIR Ex.PB. Thus, it was not mandatory to have recorded the statement of PW-12 Gurvinder Kaur under Section 161 Cr.P.C. No acquittal on that basis was permissible. It was further submitted that the *gandasa* was recovered on the disclosure statement of the accused Ex.PG.

9. We have heard learned counsel for the parties.

10. We proceed to examine the evidence produced by the prosecution in support of its case. In his statement as PW.1 Manohar Lal, Constable stated that on 08.05.2002, he was posted as draftsman in S.P. Office, Ambala City. On the request of S.H.O. Police Station, Barara, he visited the place of occurrence and prepared the rough notes at the instance of the complainant Gurmeet Kaur and on the basis thereof, he prepared the

site plan Ex.PA. PW-2 Sahi Ram, ASI stated that on 21.04.2002, he was posted in Police Station Barara. On that day, rukka Ex.PB, which was written by SI/SHO Jai Ram was received by him through Constable Subhash Chand. On the basis thereof, FIR Ex.PB/1 was recorded by him. Endorsement PB/2 was made by him on the rukka. PW-3 Jagdish Chand, Constable stated that on 21.04.2002, he was posted in Police Station Barara. On that day, ASI Sahi Ram handed over to him the special report of the case at about 5:30 pm. He delivered the copy of FIR to the Illaqa Magistrate, S.P. Ambala City and D.S.P. Naraingarh without any delay. PW-4, Om Parkash, Head Constable and PW-5 Subhash Chand tendered into evidence their respective affidavits i.e. Ex.PD and Ex.PE respectively. The main witness i.e. PW-6 Gurmeet Kaur stated that on 21.04.2002 at about 12.00 noon, her husband Balbir Singh was sleeping on the cot which was lying in *verandah* of their house. Her daughter Gurminder Kaur was also present in the house at that time. Her daughter-in-law Smt. Simranjeet Kaur was washing the clothes. Accused-Kashmira Singh who was having a *gandasa* in his hand reached there and asked as to why land of his share was not given to him. He also threatened to eliminate all of them. Accused-Kashmira Singh gave a *gandasa* blow on the face of her husband (Balbir Singh) in her presence. He also gave another *gandasa* blow from the sharp edge side of the *gandasa* on the neck of her husband. He further gave *gandasa* blows on the neck and head of her daughter-in-law Simranjeet Kaur and alarm was raised by her and her daughter Gurminder Kaur whereupon Gurmukh Singh and Inderjit Singh reached on the spot. On seeing them, accused-Kashmira Singh ran away from the spot alongwith the *gandasa*. The witness further stated that the accused had committed the murder of her husband and daughter-in-law as he was nourishing a grudge

against them in connection with the partition of the agricultural land. Previously, there was a dispute between them and the accused regarding partition of the land. However, that matter was settled with the intervention of the relatives. Balbir Singh and Simranjeet Kaur had succumbed to their injuries at the spot. Both of them died on the spot due to the injuries inflicted upon them by the accused with *gandasa* blows. She stated that her husband used to take care of children of the accused who used to take some drugs. Simranjeet Kaur, deceased was hit by the accused by *gandasa* blow on the back side of her neck. There was no civil suit or criminal case of any sort with the accused prior to the occurrence.

11. In his statement as PW-11 Gurmukh Singh stated that about 3 years back around 12:00 noon, he was standing outside the house of Balbir Singh with Inderjit Singh and was talking to Lachman Dass, when he heard the noise of 'Maar Diya Maar Diya' from the house of Balbir Singh. He alongwith Inderjit Singh ran towards the house of Balbir Singh and entered his house. They saw Balbir Singh was lying injured on the cot in the verandah and the accused-Kashmira Singh inflicted *gandasa* blow on the backside of the neck of the daughter-in-law of Balbir Singh; that the accused after inflicting *gandasa* blow to the daughter-in-law of Balbir Singh had run away from the place of occurrence alongwith *gandasa* in his hand. He had seen the *gandasa* Ex.P3 with which the accused had caused injury to Balbir Singh and his daughter-in-law Simranjeet Kaur. In her statement as PW-12 Gurvinder Kaur daughter of Balbir Singh deceased, it was admitted that her father and Kashmira Singh were real brothers, and that her father used to take care of children of Kashmira Singh. It was denied that forcible possession of the house as well as land of Kashmira Singh was taken. Compromise between the parties was not denied.

12. PW-9 Dr. Narender Garg alongwith Dr. Poonam Jain on 22.04.2002 conducted the post mortem on the body of Balbir Singh and the following injuries were found by them:-

“(1) There was an incised wound 15cm x 3cm starting from right ala of the nose extending horizontally and laterally reaching upto a point 3 cm below the lobe of right ear. The soft tissues were blood stained and there was fracture of underlying facial bones, blood vessels and upper teeth.

(2) There was an incised wound 8cm x 2cm which was bone deep on the chin. There was fracture of underlying mandible and teeth.

(3) There was incised wound 1cm x 0.25cm which was soft tissue deep and present on the front of neck.

(4) There were multiple linear abrasions bluish pink in colour measuring 7cm and 6cm on front of the neck and 3cm on the top of right shoulder.”

On the same day, the above mentioned Doctors conducted post mortem examination of the body of Simranjit Kaur and the following injuries were found by them:-

“(1) An incised wound 8.5 cm x 1cm which was bone deep and present on the back of the neck. Soft tissues were blood stained and there was fracture of sixth cervical vertebra.

(2) An incised wound 10cm x 1cm. it was skull cavity deep in the right occipito temporal area of the head. There was fracture of underlying right occipital and temporal bones. The posterior cranial fossa contained blood. Meninges and brain tissues were contused.

(3) Linear abrasions, pinkish blue in colour measuring 8cm, 5cm and 6cm on the right upper arm and 15cm, 10 cm and 6cm on the right shoulder.”

In their opinion, the cause of death was haemorrhage and shock associated with injuries to the vital organs. The injuries were ante mortem in nature and sufficient to cause death. It was further stated by the doctors that the injuries could be caused with *gandasa* Ex. P.3.

13. We have perused the oral, documentary and medical evidence on record. With regard to the contention that the family members of the complainant wanted to grab the house of the accused and to falsely implicate him, it may be noticed that in the statement of PW6 Gurmeet Kaur wife of deceased Balbir Singh, it has been categorically stated that there was a case for partition of land between them and the accused. However, that dispute was settled by intervention of relatives. The compromise dated 20.11.2012 Ex.DA is on record. In cross examination, PW6 stated that her husband used to take care of the children of the accused as he used to take drugs. There was no civil suit or criminal case of any sort with the accused prior to the occurrence. They used to cultivate their land separately. They were residing separately in separate houses with their families. Even in her statement as PW12 Gurminder Kaur, daughter of deceased Balbir Singh stated that her father and accused were real brothers and her father used to take care of the children of the accused. They had not taken forcible possession of the house as well as land measuring 2 kanals of the accused. The statements of all the eye witnesses who were present at the time of occurrence i.e. PW6 Gurmeet Kaur, PW11 Gurmukh Singh and PW12 Gurminder Kaur are on record which are consistent. The said statements speak themselves. There is no justifiable reason for them to depose falsely implicating Kashmira Singh and to allow the real culprit to go free. On re-appreciation or re-appraisal of evidence, the irresistible conclusion is that Kashmira Singh accused had caused death of Balbir

Singh and his daughter-in-law Simranjit Kaur with *gandasa* Ex-P3. Consequently, it is held that there was no motive to falsely implicate the accused. Rather, the accused having land dispute with his brother, though compromised, had a grudge to kill him. Thus, the contention of the appellant in this regard cannot be accepted.

14. With regard to the contention that the deceased Balbir Singh used to deal in poppy husk, it may be noticed that there is no evidence on record under NDPS that he was dealing in such kind of business or he was having some money dispute with some persons of Saharanpur (UP). Nothing has been produced on record by the learned counsel for the appellant to substantiate the claim made in this regard. The name of Gurvinder Kaur PW12 was there in the statement of PW6 Gurmeet Kaur in the FIR Ex.PB. Thus, it was not mandatory to have statement of PW12 Gurvinder Kaur under Section 161 Cr.P.C. No acquittal on that basis is permissible. As regards the contention that *gandasa* was recovered from the open space, it may be noticed that on the disclosure statement by the accused Ex.PG, the weapon was recovered. It cannot, thus, be said that the weapon was not recovered though it may be from open space.

15. In addition to the above, the medical evidence is also very clear. PW9 Dr. Narender Garg alongwith Dr. Poonam Jain conducted post mortem on the bodies of Balbir Singh and Simranjit Kaur. In their opinion, the cause of death was haemorrhage and shock associated with injuries to the vital organs. According to them, the injuries were ante mortem in nature and sufficient to cause death which could be caused with *gandasa* Ex.P3.

16. Thus, the entire oral, documentary and medical evidence is against the accused.

17. The trial Court examined the entire documentary and oral evidence on record including the medical record. On appreciation of the entire evidence by this Court as noticed hereinbefore, the conclusions drawn by the trial court which were summarized as under could not be faulted:-

- i) the occurrence had taken place on 21.4.2002 at 12 noon. The statement Ex.PB of PW6 Gurmeet Kaur, wife of the deceased was recorded at 3.15 PM by the police. The same was received by the Illaqa Magistrate on the same day at 8.50 PM on the basis of which FIR was recorded by the police.
- ii) the wife and daughter of the deceased i.e. PW6 Gurmeet Kaur and PW12 Gurvinder Kaur were present in the house at the time of occurrence. PW11 Gurmukh Singh also witnessed the occurrence.
- iii) the testimony of PW12 Gurvinder Kaur could not be disbelieved only because her statement under section 161 Cr.PC was not recorded by the police as her name was mentioned in the statement Ex.PB on the basis of which FIR was recorded.
- iv) PW12 Gurvinder Kaur in her statement admitted that her father used to take care of the children of accused Kashmira Singh because he used to take drugs. It also came in evidence that the accused was having dispute with his brother Balbir Singh in connection with partition of the agricultural land. Thus, it could not be said that the accused had no motive to kill his real brother Balbir Singh and his daughter in law Simranjit Kaur.
- v) there was also no evidence on the record that the deceased Balbir Singh was indulging in any illicit trade of poppy husk and qua that, he was having some money dispute with some persons of Saharanpur. There was no evidence of offence under NDPS Act, 1985.

vi) the *gandasa* was recovered on the disclosure statement of the accused Ex.PG.

No error or perversity could be demonstrated by learned counsel for the appellant on the basis of any material on record that the conclusions drawn by the trial court and as affirmed by this Court are contrary to the evidence. Thus, the accused-appellant is guilty of offence under Sections 302 and 449 IPC.

18. In view of the above, we do not find any ground to differ with the reasoning given by the trial court holding the appellant-accused guilty of offence under sections 302 and 449 IPC. Consequently, the conviction and sentence awarded by the trial court qua the appellant-accused is confirmed. The appeal stands dismissed. The appellant-accused is on bail granted by this Court vide order dated December 06, 2007. In view of the dismissal of the appeal, the bail bonds furnished by the appellant-accused stand forfeited and he be taken into custody forthwith.

(Ajay Kumar Mittal)
Judge

January 30, 2018
'gs'

Whether speaking/reasoned
Whether reportable

(Arvind Singh Sangwan)
Judge

Yes
Yes