

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

CRA-D No.982-DB of 2013

Reserved on : December 03, 2018

Date of decision: December 13, 2018

Gauri Shankar

...Appellant

Versus

State of Punjab

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Sanjiv Sharma, Advocate for the appellant.

Mr.Rajesh Bhardwaj, Senior Deputy Advocate
General for the respondent – State of Punjab.

Harinder Singh Sidhu, J. :

This appeal is directed against the judgment and order dated 1.7.2013 of the Sessions Judge, Fatehgarh Sahib in Sessions case No.10 of 2013, whereby, the appellant was charged with and tried for offence under Section 302 of the Indian Penal Code. The appellant has been convicted and sentenced to imprisonment for life, which would mean the remainder of the natural life of the appellant and a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for two years.

The case of the prosecution, briefly, is that Complainant- Anju was married six years back with Ajay Kumar son of Sajjan Singh resident of New Delhi. From the said marriage, one son Vijay Kumar @ Bittu aged about 4 years and daughter Muskan, aged about 2 years were born. Ajay Kumar was addicted to liquor and other intoxicants and had died two years

back. Accused Gauri Shanker was residing on rent in the neighbourhood of Anju at Delhi. He enticed Anju and brought her along with her two children to Punjab. At first, they resided for one year on rent in the house of Balbir Singh s/o Gurdial Singh r/o Dadheri. For the last 1½ months, they were residing in the house of Jagdev Singh s/o Harnek Singh at Dadheri in a small room where cattle were also housed. The appellant used to quarrel with Anju and frequently beat the children. He used to proclaim that he did not like the children as they were not his own and that some day he will kill them both. About a month and half before the incident, he had fractured the arm of Vijay @ Bittu. On 18.3.2013 at about 7.30 am, Anju went to the temple for prayers. At that time, the children were sleeping in the house and Gauri Shanker was present. When she returned from the temple, she saw both her children lying on the cot struggling for life. Gauri Shanker went away telling the complainant that he had given poison to both the children. The complainant raised alarm. Jagdev Singh, the landlord and his nephew Kamaldeep Singh arrived. Both the children were taken to Civil Hospital, Mandi Gobindgarh, where they died. The police was intimated. Statement of the complainant Anju was recorded and FIR was registered. The bodies were sent for postmortem examination. The viscera was sent for chemical examination. After completion of investigation challan was presented in Court.

Initially, the appellant pleaded guilty and did not claim trial. He admitted that he administered poison to the children as a result of which they died within 15-20 minutes. However, after the examination of the complainant and the landlord Jagdev Singh, he moved an application on

14.5.2013 stating that he had no concern with the crime and that he had been misled by Government counsel to make a wrong statement admitting his guilt.

The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. He denied that he had committed the crime. However, he did not lead any evidence in his defence.

The appellant was convicted and sentenced as referred to above. Hence, this appeal.

We have heard learned counsel for the parties and have gone through the judgment and record.

PW1 Anju- the complainant testified that she was married with Ajay Kumar six years back. From the marriage, two children namely, Vijay @ Bittu aged about 4 years and a daughter Muskan aged 1½ years were born. Ajay Kumar used to take intoxicants and he died 1-2 years back. Accused Gauri Shanker was living in their neighbourhood in a rented room. He practiced witchcraft and enticed her and brought her along with the children to Punjab. At first, they lived at Prem Nagar in Gobindgarh. They shifted to village Dadheri 4-5 months back and started living in the house of Jagdev Singh @ Jaggi Bhaiya. The accused used to beat her and the children. He used to call them “*Harami*” and “*Haramkhor*” and used to threaten to kill them as they were not his children. About a month back when they were coming by train from UP he had twisted the arm of her son, which caused fracture and the arm had to be got plastered. She said that sometimes she used to leave the children

with the accused while going to Mata Rani for prayers. On 18.3.2013, she left the children with the accused in the morning and went to Mata Rani for prayers. While she was returning, she met the accused, who was riding a cycle. He looked puzzled. When asked, whether the children sleeping or awake, he got puzzled and did not give a straight answer. On reaching, she found the room bolted from outside. Inside the room she found that Muskan was unconscious. Bittu had vomitted. He informed her that Gauri Shanker had given them Parshad. Gauri Shanker had run away. She asked the landlord Jaggi Bhaiya to contact a doctor. The doctor arrived and advised that the children be taken to a hospital. They were taken to Government Hospital where they were declared 'dead'. She stated that the appellant had administered poison to the children and caused their death. In cross-examination, she clarified that the accused had met her on cycle near her room. She stated that the accused was arrested on 18.3.2013.

PW2 Jagdev Singh deposed that about three months back Gauri Shanker had taken on rent one room of his house. He was accompanied by Anju and two children. On 18.3.2013, Anju came running to him and disclosed that the children were in serious condition and that he should come immediately. It appeared that Muskan was asleep but she was breathing with difficulty. He along with Anju and another person took the children to Civil Hospital, Mandi Gobindgarh. They were administered oxygen. However, they died in 15-20 minutes.

PW3 Kamaldeep Singh stated that a month prior to the incident, Gauri Shanker along with Anju and two children started residing on rent in a small room built in the cattle-shed of his uncle Jagdev Singh.

He deposed that he could not tell about his behaviour with Anju and the children. He stated that Anju had not disclosed anything to him. He along with his uncle was present in the house, when Anju came there weeping and was saying that something abnormal has happened to the children. Then, he along with his uncle Jagdev Singh took the children to Civil Hospital, Mandi Gobindgarh, where they died. He stated that Anju had not disclosed anything else. He was declared hostile. During cross-examination by the Public Prosecutor, he admitted that Gauri Shanker had once caused injury to his son resulting in his arm being fractured and that he used to quarrel with his wife Anju. He also admitted that once Gauri Shanker had told him under the influence of liquor that he would kill the children of Anju and beget his own children. He also stated that Gauri Shanker had initially gone away, but he returned in the afternoon. A number of people were present there. Without being asked, he started saying that he had not killed the children. He was apprehended by the people present and thereafter the police was informed.

PW4 Dr.T.S.Nagra, Medical Officer, Civil Hospital, Gobindgarh proved the postmortem reports of the children. He stated that POP Slab bandage was present on the left forearm of deceased Vijay @ Bittu. Old fracture in healing stage of bones of left forearm was present. The cause of death in case of both the children was Aluminium Phosphide insecticide ingestion. No external injury mark was seen on their bodies. He also proved the chemical reports Ex.P-6 and P-7, respectively and the Histopathology reports Ex.P-8 and P-9. In cross-examination, he stated that it is extremely unlikely that a small child of 4 or 2 years, would voluntarily

consume the insecticide tablets. The possibility is that Aluminium Phosphate which is in the form of a tablet might have been given to the children on the pretext of candy or toffee. Even one tablet of Aluminium Phosphate is fatal for adults. The death in case of Aluminium Phosphate is between 15-20 minutes, if the tablet is new or unused.

PW8 ASI Paramjit Singh deposed that on 18.3.2013 when he was posted at Police Station Mandi Gobindgarh, a ruqa was received from the Civil Hospital, Mandi Gobindgarh about the admission in the hospital of Vijay and Muskan and their death. He along with other police officials went to the hospital, where complainant- Anju along with her landlord Jagdev Singh met him. Anju got her statement Ex.P17 recorded, on basis whereof, FIR Ex.19 was recorded by SI Suresh Kumar. He visited the spot and prepared site plan Ex.P20. On the next day i.e. 19.3.2013, the accused was arrested at Bus Stand Mandi Gobindgarh. He was identified by PW Jagdev Singh. He made disclosure statement Ex.P-27 that he had administered celphos powder by mixing in water to the son and daughter of Anju and that the remaining celphos powder along with pouch had been kept concealed by him under the bricks near his living room and that he could get the same recovered. He led the police party to the disclosed place in the cattle shed and got recovered one black coloured polythene envelope which was tied with the envelope itself. On opening the envelope, a pouch of blue green colour bearing the print "Celphos (Net Contents 10 g)", with 'Zehar' written in Punjabi, 'Poison' in English and 'Vish' in Hindi was found. There was another polythene pouch in the said envelope, which contained powder of brown colour. The envelope bore the

inscription "Celphos". Both the pouches were cut from a corner with scissors. Accused also got recovered a bottle, in which he had mixed celphos powder with water. A parcel of the powder of celphos was prepared, which was sealed.

In his statement under Section 313 CrPC, accused stated that on 18.3.2013, he had left Anju with the children and gone to work. He stated that he was not married with Anju. Anju had eloped with him and he was living with Anju and children without marriage in the house of Jagdev Singh. He did not know whether some people were coming to Anju, but she had turned against him. He used to go to work at 6.00 am and return at 7/8.00 pm. He stated that if he had committed any crime, he would have run away. He stated that if Anju could wrongly describe her husband who was alive as dead she could also falsely blame the accused. The previous day, Anju had threatened him that she would administer poison to him. He wanted to go home and was willing to state in writing that he would not come to Punjab, Delhi and Haryana. However, he did not lead any evidence in defence.

From the above evidence, it is clear that Anju was previously married with one Ajay Kumar. They had two children - Vijay @ Bittu aged 4 years and Muskan, aged about 2 years. After the death of Ajay Kumar, Anju started living with Gauri Shanker. They were not formally married. The accused disliked the children as they were from the previous marriage. He used to beat the children and call them "*Harami*", "*Haramkhor*". About a month back, he had twisted the arm of Vijay resulting in its fracture. PW4 Dr.T.S.Nagra, who conducted the

postmortem examination found a POP slab bandage on the left arm of deceased Vijay @ Bittu. PW3 Kamaldeep Singh in his cross-examination stated that once under the influence of liquor Gauri Shanker had told him that he would kill the children of Anju from her previous marriage and beget his own children. He also stated that initially, Gauri Shanker had run away, but he returned in the afternoon. Without being asked, he started saying that he had not killed the children. He was apprehended by the people present and handed over to the Police. PW1 Anju stated that on 18.3.2013, she had left for prayers in the morning. The children were asleep and accused was present in the room. When she came back, she met the accused on the way. On being asked, whether the children were still asleep, he looked puzzled and did not give a straight answer. She went to the room. It was bolted from outside. Her son Vijay had vomitted. He told her that Gauri Shanker had given them Prashad.

During his interrogation, the accused disclosed that he had administered celphos powder by mixing it with water to the children. He got recovered a polythene envelope in which pouch of blue green colour bearing print Celphos (Net Contents 10 g), with 'Zehar' written in Punjabi, 'Poison' in English and 'Vish' in Hindi was found. This recovery was effected on 19.3.2013. At that time, the cause of death of the children was not known. It was only on 14.5.2013 that the report of the Chemical Examiner was received, as per which Aluminium Phosphide insecticide was detected in the stomach and intestines of the deceased. This corroborated that celphos (aluminium phosphide insecticide) had been administered to the children which caused their death.

The prosecution has been able to prove the case beyond all reasonable doubt.

Accordingly, there is no merit in the appeal, the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

December 13, 2018

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No