

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

CRA-S-5070-SB of 2015 (O&M)

Date of decision: 17.11.2018

Kulwant Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Vibhu Agnihotri, Advocate for
Ms. Tanu Bedi, Legal Aid Counsel
for the appellant.

Ms. Bhavna Gupta, DAG, Punjab.

Jitendra Chauhan, J.

The present appeal is directed against the judgment of conviction and order of sentence dated 07.10.2015, passed by Addl. Sessions Judge, SAS Nagar, Mohali, vide which the accused/appellant was convicted for the offence punishable under Section 323 of the Indian Penal Code (hereinafter called as 'IPC') and sentenced him to undergo rigorous imprisonment for a period of six months and further was sentenced to undergo rigorous imprisonment for a period of five years under Section 307 IPC and to pay a fine of ₹10,000/- or in default of payment thereof, to further undergo RI for three months.

The brief facts of the case as noticed in para No.2 of the judgment of trial Court is as under:-

“The FIR against the accused was registered on the complaint of Amandeep Kaur alleging that she was working in Godrej, Mohali. She met accused Kulwant Singh and they started meeting often with each other. The accused told her that his first wife had expired due to heart attack and he proposed her for marriage. On being asked by the complainant regarding his family he told her that he was having one son Bhavanpreet Singh living with him but he is residing separately from the other members of his family. The reason behind living separately from them was stated to be harassment caused by his family to his first wife, due to which a case was also registered against his family. The complainant believed the accused and gave her consent for the marriage. The marriage between complainant and accused was solemnized in Gurudwara Baba Jiwan Singh Ji Bora Gate, Nabha. She started living with the accused and his son at Raipur Khurd. After some days, Kulwant Singh started harassing and beating her. On 16.04.2014 at about 8.30/9 p.m accused Kulwant Singh asked her to speak to her father on his mobile. Subsequently he closed the door of the room and raised the volume of television. He got her signatures on already typed paper and also forced her to write a suicide note on the reverse of that paper that she was committing suicide as she had apprehension from Gurmit Singh and his family. He disclosed that he had killed his first wife Sandeep Kaur and got registered a false case against her family members because he was not given his share in the land. He told her that he would kill her and then get a case registered against his brother Gurmit Singh and would take his share. Thereafter he threw her on the ground and gagged her mouth with dupatta to prevent her from raising alarm. He then started strangulating her neck with dupatta. Just then the accused received a call on his mobile. He answered the call and started talking on the phone. In the meanwhile complainant escaped out of the room and ran away from there and hid herself in the fields. After reaching Mohali in the morning, she called her father who came there and she went along with him to Nabha. It is further alleged that her husband Kulwant Singh attacked her with an intention to kill her. On her statement FIR was registered and investigation was initiated. Rough site plan was prepared and the dupatta and bunch of hair of the complainant were taken into police possession. The complainant was got medically examined. Accused was arrested and the suicide note was taken into police possession. Statements of the witnesses were recorded under Section 161 Code of Criminal Procedure, 1973 (Cr.P.C. in short). On completion of investigation challan was presented against the accused.”

On commitment, the accused was charged under Sections 323 and 307 of the Act, to which the accused/appellant pleaded not guilty and claimed trial.

In support of the case of prosecution, it examined the following witnesses:-

PW-1 Nachhattar Singh is the father of the complainant who proved the factum of marriage of the complainant with the accused/appellant.

PW-2 Amandeep Kaur, complainant herself stepped into the witness box and testified the whole prosecution story.

PW-3 Gurcharan Singh had brought original marriage invitation card of marriage of accused with the complainant.

PW-4 Dr. Harkirat Kaur Sandhu had proved the MLR of the complainant.

PW-5 Karamjit Singh also proved the factum of marriage.

PW-6 ASI Paramjit Singh deposed regarding the manner of investigation.

PW-7 Jatinder Kumar brought the original file and placed on record copy of the judgment in sessions case No.RT-6.

PW-8 HC Harvinder Singh corroborated the version of Investigating Officer.

PW-9 Nodal Officer Bharti Airtel proved on record the

copy of call detail of the accused.

PW-10 HC Balwinder Singh proved on record the original FIR registered against the accused under Section 307 IPC.

The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication. However, he did not lead evidence in his defence.

After hearing the Addl. Public Prosecutor for the State, counsel for the accused, and after going through the evidence, on record, the trial Court convicted and sentenced the accused/appellant, as stated hereinbefore.

Aggrieved against the judgment of conviction and the order of sentence passed by the trial Court, the instant appeal was filed by the accused/appellant which was admitted on 02.12.2015. The sentence of accused/appellant was suspended on 10.08.2016.

Learned counsel appearing on behalf of the appellant has contended that in the instant case, the ingredients of Section 307 IPC have not been established as no deadly weapon was used in the alleged offence and there was no intention to kill the complainant. As per testimony of the complainant, accused stopped his action of strangulating the complainant only to receive a phone call and while he started talking on the phone, the complainant came out from the room and ran away. Moreover, the accused did not try to run after the complainant to achieve his goal as per his plan. There is a delay

in lodging the FIR; the occurrence took place on 16.10.2014 whereas the FIR came to be registered on 18.10.2014. There is a further delay of two days in filing the special report before the magistrate. Learned counsel has submitted that even the medical evidence does not corroborate the prosecution version. In this context, learned counsel refers to the testimony of PW-4 Dr. Harkirat Kaur Sandhu who opined that the injuries suffered by the complainant were simple in nature and the weapon used was noticed as blunt for all the injuries. Lastly, learned counsel submits that the appellant is the sole bread winner of his family and has suffered a protracted trial as the FIR was registered on 18.10.2014; he never misused the concession of bail during the pendency of the present appeal. There was no injury caused to the complainant. Thus, the learned counsel prays for a lenient view on the quantum of sentence imposed by the trial Court.

On the other hand, the learned State counsel opposed the prayer of appellant/accused and supported the judgment of conviction and order of sentence passed by the trial Court.

I have heard the arguments of the learned counsel for the parties and have carefully gone through the record of the case.

In the present case, the accused/appellant was charge sheeted under Section 307 IPC on the complaint of the complainant, Amandeep Kaur, the wife of the appellant. The main allegations against the appellant is that on 17.10.2014, at about 5 a.m., a

telephonic call was made by the complainant to her father that she had been given beatings by the accused who had tried to kill her, however, the complainant escaped from the clutches of the accused. The statement of the complainant was recorded by the police which is Ex.PW2/A whereby she deposed that after her marriage with the accused, she came to know that he was drug addict and she took the accused to the de-addiction center for his treatment. The accused had no love and affection for his son from first the wife who was taken care by her. She had further stated that on the day of occurrence, the accused made her talk to her father but immediately after that started assaulting her by giving slaps and blows to her which caused injuries on her shoulders, abdomen, stomach and knees. Furthermore, the injuries suffered by the complainant had been duly proved by PW-4, Dr. Harkirat Kaur Sandhu, though, the injuries were simple in nature, however, the intention of accused to kill his wife has been duly established by way of medical evidence. The accused had also stated in his statement recorded under Section 313 Cr.P.C., that his wife used to be busy in talking to someone on mobile for long hours due to which he used to pick up quarrels with her. The statement of the complainant has been duly corroborated by her father i.e. PW-1, Nachhattar Singh. From the above, the intention of the accused to kill her wife is amply proved and this Court, finds no flaw in the unassailed judgment of conviction. There is no merit in this appeal

which is hereby dismissed.

However, keeping in view the fact that the appellant has suffered agony of protracted trial as the FIR pertains to the year 2014 and as per the custody certificate dated 02.02.2017, he has undergone total sentence of 02 years, 04 months and 18 days (including remissions). In view of the above, the prayer made on behalf of the appellant is accepted. The sentence awarded to the appellant is ordered to be reduced to the period already undergone. The bail/surety bonds furnished by the appellant stands discharged.

Ordered accordingly.

The appeal is partly allowed in the manner indicated above.

17.11.2018
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No