

341

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

CRA-D-197-DB of 2003

Date of decision: February 20, 2018

Kuldip Singh and another

.....Appellants

Versus

State of Punjab

....Respondent

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr. Anupam Sharma, Legal Aid Counsel with
Mr. Raj Kumar Gupta, Advocate for the appellants.

Ms. Ruchika Sabharwal, AAG Punjab.

A.B. CHAUDHARI, J (Oral)

The appellants-Kuldip Singh and Surjit Kaur have put to challenge the judgment and order dated 05.02.2003 passed by the Sessions Judge, Fatehgarh Sahib, by which they were convicted for offences punishable under Sections 302/34 of Indian Penal Code, 1860 (for short 'IPC') and sentenced to undergo Rigorous Imprisonment for life and appellant No.1-Kuldeep Singh to pay fine of ₹5,000/- and appellant No.2-Surjit Kaur to pay fine of ₹2,000/- and in default of payment of fine, to further undergo Rigorous Imprisonment for one year each.

FACTS

In brief, the prosecution case was that Mandeep Kaur wife of Kuldip Singh-appellant No.1 died in her matrimonial home on 22.03.1996 at about 4:00/5:00 A.M. at village Nanuwal Khurd. Appellant No.2-Surjit Kaur is her mother-in-law. The deceased was aged about 24-25 years married with Kuldip Singh 7 years before and having a son and a daughter with aged 4 and

2-1/2 years respectively. Her name was changed to Gurmit Kaur after marriage. On 22.03.1996 at about 4:00-5:00 A.M., appellant No.1-Kuldip Singh had visited the house of complainant and told that Gurmit Kaur had set herself on fire by sprinkling kerosene and committed suicide. Complainant, his wife Mohinder Kaur and Sarpanch Malkiat Singh went to the village Nanuwal Khurd and saw Gurmit Kaur lying in burnt condition. The motive projected by the prosecution was that appellants wanted the hand of Jasbir Kaur, sister of the deceased for marriage with the brother of Kuldip Singh, namely Baljit Singh. But the parents of Jasbir Kaur did not agree and that lead to the harassment of deceased-Mandeep Kaur/Gurmit Kaur. Being perplexed, the mother of the deceased made a statement Exhibit DD before the ASI Balwinder Singh claiming that she did not suspect any foul play in the death of her daughter. Police were of the view that due to mental illness of the deceased, she ended her life and as such, DDR was registered. The postmortem was got conducted and cause of death was as a result of shock caused by extensive burns. One tub empty kerosene oil can, pair of *chappals* from the spot were recovered. The father of the deceased was carpenter by profession and he had gone to Doha Katar for earning his livelihood. On receipt of information, he came to India and he was present in the house when the police party came in the village. He made a statement Exhibit P8 and suspected that his daughter ended her life due to ill-treatment by the accused persons. His statement was recorded by DSP Ranjit Singh Dhillon and accordingly, case under Section 306 IPC was registered. Investigation was carried out by ASI Manjit Singh who recorded supplementary statement of mother of the deceased and other witnesses. The appellants were arrested. However, Baljit Singh, brother of Kuldip Singh was found innocent during investigation. Usual formalities were completed and

thereafter, final report was filed before the trial Court. The charge was framed under Section 306, 302 read with Section 34 IPC against both the accused. The prosecution examined 10 witnesses and also exhibited number of documents. The trial Court, thereafter, heard the parties and finally came to the conclusion that the appellants were guilty for the offences for which they were charged, namely 302/34 IPC. Hence, this appeal.

ARGUMENTS

In support of the appeal, learned counsel for the appellants submitted that the prosecution had ultimately framed charge under Section 302 read with Section 34 IPC. Thus, the prosecution had intended to prove that the appellants had committed murder of Gurmit Kaur. Learned counsel therefore, contended that the prosecution did not have any direct evidence and for that murder even the indirect evidence and had merely relied upon the factum of the deceased living in the house and nothing more. According to the learned counsel, the factum that the deceased was living in the house with the children is not in dispute. But then, by itself could not be raised as a circumstance to hold that he had committed murder of the deceased. At any rate, according to the learned counsel for the appellants, no details as to how the murder had been committed are forthcoming. Even the motive that has been alleged by the prosecution is highly improbable and there is no allegation of even any demand of dowry or as the case may be so as to harass the deceased for any reasons. Except saying that the appellants wanted hand of the sister of the deceased to be given to the brother of appellant No.1, there is absolutely no motive against the appellants for alleged commission of murder. Learned counsel then contended that the complainant was already present in the village and he was not examined because he had died during investigation. There is however,

evidence on record to show that in a very short time, he was in the village and there are material inconsistencies regarding the delay on the part of the prosecution in cooking up the story of murder. There is evidence on record about the compromise that was said to have been arrived at. To say that the compromise was not notarized, is absurd and what is relevant is the factum of the compromise. According to the learned counsel for the appellants, there is absolutely thus, no evidence about the commission of murder and on the contrary, what is seen is that because of the operation of the deceased, there was always abdominal pain to her and she committed suicide having been fed up with the same. Learned counsel for the appellants, therefore, prayed for allowing the appeal and acquittal of the appellants.

Per contra, learned State counsel supported the impugned judgment and order made by the learned trial Court. She contended that it were the appellants who were bound to explain the cause of death of the deceased to the satisfaction of the Court. According to her, having not given any explanation as to how the injuries were seen on the body of the deceased, they were guilty of the offence of murder. She then contended that the documents of compromise that were inserted by the defence, have been rightly rejected by the trial Court as the same were not notarized nor any authenticity could be attached to the said documents of compromise. Learned State counsel submitted that the reasons given by the learned trial Court are legal, correct and proper and based on evidence and there is no need to interfere with the impugned judgment and order. She then, prayed for dismissal of the present appeal.

CONSIDERATION

We have heard learned counsel for the rival parties at length. We

have perused the impugned judgment and order made by the trial Court. We have carefully seen the entire evidence tendered by the prosecution in support of its case. It is not in dispute that the complainant-Ram Singh, father of the deceased had gone to Doha for earning his livelihood, on 22.03.1996. PW1-Malkiat Singh Sarpanch of the Village deposed accordingly and he further stated that he returned after 10 days of the occurrence. The occurrence took place on 22.03.1996, which means that Ram Singh had returned on 01/02.04.1996. He supported the prosecution case about the motive, but then in the cross-examination, it is seen that his entire evidence regarding motive which he wanted to buttress was in the form of omissions amounting to contradictions. Hence the evidence is not trustworthy. At any rate, regarding motive, he stated that Ram Singh was telling him about the motive to the effect that it was Kuldip Singh, appellant No.1 who was demanding the hand of sister of the deceased. His statement was recorded by the police on 22.07.1997 as against the incident of 22.03.1996. In his evidence, he admitted certain facts, which, in our opinion are also relevant. We quote the following portion from his cross-examination at record Pages 115-116 regarding the compromise etc.:-

“.....It is correct that on 5.5.1996 we had made Balwant Singh father of Kuldip Singh accused to deposit Rs.10,000/- each in the bank in the name of the daughter and son of Mandeep Kaur deceased through Ram Singh and the said compromise between them was reduced into writing in the court premises at Fatehgarh Sahib and I had signed that compromise deed. The said compromise is also signed by Ram Singh, father of the deceased, Gian Parkash ex-sarpanch, Kakrala, Manjeet Singh, Sukhvair Singh, Gurdev Singh member Panchayat Nanuwal, Nachattar Singh Lambardar Thikriwala, Gurdeep Singh brother of the deceased. Mehar Singh, Pal Singh Ex-sarpanch Khamano Kalan, Malkiat Singh of Nanuwal and Gurdev Singh Ex-sarpanch

Nanuwal, Kulvir Singh Sarpanch resident of village Khamanon. It may have been written in the compromise deed that we did not suspect anybody regarding the death of Mandeep Kaur and we do not want any legal action to be taken. The compromise deed was read over to us before I signed. Copy of the compromise deed is Ex.DA (objected to)."

Thus, in the month of May that is almost one and a half month, steps were taken to deposit the money as stated by him.

PW3-Gurdeep Singh, brother of the deceased deposed as under in his evidence (record page-129):-

".....On 22.3.1996 we were sleeping at our house at village Thikriwal when my brother in law Kuldeep Singh came to us at 6-00 a.m. and he told us that Gurmeet Kaur had sprinkled kerosene and she had set herself ablaze and she has died. I my mother Mohinder Kaur and our village Sarpanch Malkiat Singh then went to village of the accused Nanowal khurd and saw my sister in burnt condition lying in the Tub which was in a bath room and smoke was emitting out of the body my sister Gurmeet Kaur and by the side of bath room a burnt quilt was also lying there in the house of the accused. The quilt was in such a position that it appear to have been wrapped to the burnt body of Gurmeet Kaur and some pieces of her flesh stuck to the quilt."

His evidence that the deceased-Gurmit Kaur was being harassed by the accused for the said alleged motive, is in the form of omission amounting to contradiction. He further admitted that the only cause of death of Gurmit Kaur was maltreatment and harassment. He admitted that she was operated for tubectomy six months prior to her death. He admitted the contents of compromise Exhibit P8.

PW4-Mohinder Kaur was the mother of the deceased who deposed about the health conditions of the deceased as under (record pages 149-151):-

“.....It is correct that before the death of my daughter she was operated for tubectomy and that operation was done with the consent of the accused. This operation was done about 6 months prior to the death of the deceased Gurmeet Kaur. My daughter never told me that due to operation she was feeling pain in her abdomen/waist or she was continuously running temperature. As I was not in my senses, I do not know whether in my statement before the police I had stated that due to operation or due to some other ailment she continued having pain and fever. Confronted with portion A to A1 in her statement Ex.DD dated 22.3.1996 wherein this fact is recorded. I do not know whether my daughter had tonsel in the throat. I did not state so to the police. Confronted with her statement Ex.DD from portion B to B1 wherein it is so recorded. I had stated to the police that my son in law used to get my daughter Mandeep Kaur medically treated as and when she is lying ill. It is correct that about 9/10 days prior to her death my daughter Gurmeet Kaur alias Mandeep Kaur had come to our village Thikriwala from Khamano. As I was not in my senses I do not know whether in my statement before the police I had stated to the police or not that from the date of marriage of my daughter till her death her in laws never beating and they demanded any dowry and there was nothing serious dispute and my daughter did not disclose to me and she was living happily in her house. Confronted with her portion C to C1 in her statement Ex.DD wherein it is so recorded.”

She also stated in her cross-examination that after the death of her daughter Gurmit Kaur, her husband came back from Doha three days after the incident, which means her husband had reached on 25/26.03.1996. Ram Singh, her husband made a complaint on which offence was registered. The following portion from her evidence is also relevant (record page 155):-

“..... From the date of marriage with Kuldeep Singh till her death we have not filed any complaint against the accused

regarding the harassment at the hands of the accused. People from the nearby villages had told us that the accused have burnt my daughter but I cannot tell the name of the villages. I did not state to the police till today that we have come to know that my daughter was burnt by the accused persons.....”

PW2-Dr. Avtar Singh stated that cause of death was shock due to extensive burns. The burn injuries were ante-mortem. She was almost 100% burnt. The police had reported that it was the case of accidental death.

Apropos, the evidence discussed above, what is seen is that the occurrence of 22.03.1996 was reported on first time on 18.07.1996 by the complainant Ram Singh who had arrived three days after the death and was with his family members. The compromise so was arrived at was for the benefit of children. The prosecution failed to explain the delay in such a serious matter when the allegations regarding murder were being made. The registration of offence itself was on 18.07.1996, i.e. almost four months thereafter. It is true that Ram Singh died. But then burden to prove the case of murder cannot in any case be diluted and it is for the prosecution to prove its case beyond reasonable doubt. In so far as the custody of the deceased in the house of the accused is concerned, there may not be any doubt about it, but then the question is whether mere custody would be enough to draw inference about the commission of murder by the appellants. The prosecution has not relied on any theory of weapons being used and the manner of commission of murder. At any rate, we find that even the motive that has been projected by the prosecution does not appear to be probable and trustworthy. There is no allegation about demand of dowry or harassment. On the contrary, it appears that the deceased was suffering from abdominal pain after surgery of tubectomy was done which, perhaps, was not successful and therefore, she was always in deep pains. That

is the probability and benefit of doubt would obviously go to the accused persons and not the prosecution. We are, therefore, of the firm opinion that the appellants are required to be extended the benefit of doubt and it would be risky to convict them for the offence of murder. In the result, we make the following order:-

ORDER

- (i) CRA-D-197-DB of 2003 stands allowed;
- (ii) Impugned judgment and order dated 05.02.2003 passed by the Sessions Judge, Fatehgarh Sahib, in Sessions Case No.45T/5.11.96/8.6.2001 by which appellants were convicted for offences punishable under Sections 302/34 of IPC and sentenced to undergo Rigorous Imprisonment for life and appellant No.1-Kuldeep Singh to pay fine of ₹5,000/- and appellant No.2-Surjit Kaur to pay fine of ₹2,000/- and in default of payment of fine, to further undergo Rigorous Imprisonment for one year each, is set aside;
- (iii) Appellants are acquitted of the charge levelled against them.

(A.B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

February 20, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No