

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

Crl. Appeal No.D-960-DB of 2002 (O&M)
Date of Decision: January 29, 2018

Harbans Singh

...Appellant

VERSUS

State of Punjab

...Respondent

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

Present: Ms.H.K.Dhillon, Advocate
for the appellant.

Ms.Ruchika Sabharwal, Asstt. Advocate General, Punjab
for the respondent-State.

Ms.Harpreet Kaur, Advocate
for the applicant (in CRM No.27117 of 2011)

INDERJIT SINGH, J.

The present appeal has been filed by the appellant Harbans Singh against the judgment of conviction and order of sentence dated 10.10.2002, passed by learned Addl. Sessions Judge, Moga, whereby appellant was convicted and sentenced to undergo imprisonment for life and to pay fine of ₹5000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one year under Section 302 IPC.

The brief facts of the case are that the FIR in the present case has been registered on the statement of Karnail Kaur, who got recorded her statement to SI Malkit Singh on 23.10.1999. Complainant Karnail Kaur stated that her husband Jugraj Singh died about 15 years ago. She has one son namely Harjinder Singh, who is about 18-19 years and he runs a milk dairy in the village. On 22.10.1999, at about 8.00 p.m., Bhupinder Kaur came to her house. She was married to Harbans Singh about 15 years ago

and she has one son namely Harpreet Singh aged about 10-12 years.

Bhupinder Kaur got divorce from Harbans Singh about 4-5 years back and she used to get maintenance from Harbans Singh. When Bhupinder Kaur came to her house, her son was also with her. She and her son stayed at her house during that night. Complainant's son Harjinder Singh had gone to work on his dairy. Bhupinder Kaur went to the house of Harbans Singh to receive maintenance allowance. At about 8.00 a.m., Bhupinder Kaur came running to her house and she was being chased by Harbans Singh, who was armed with *dah*. He started causing *dah* blows to Bhupinder Kaur in the kitchen of complainant's house. Before the complainant reached the place, Bhupinder Kaur had fallen on the ground and died on the spot. There were marks of injuries on her neck, mouth, hands and blood was oozing out. The son of Bhupinder Kaur was also in the house and on seeing the occurrence, he became frightened and ran away from the house. The complainant raised alarm and then Harbans Singh ran away from her house along with *dah*. On hearing the alarm, Jit Singh, Member, Gurdeep Singh, Member and Pritam Singh, Sarpanch, reached at complainant's house, to whom the complainant narrated the whole story. The motive behind the occurrence is that there was a divorce between Bhupinder Kaur and Harbans Singh and the Court had fixed the maintenance allowance. When Bhupinder Kaur had gone to get the maintenance amount, Harbans Singh had objected to her coming to his house and upon this, an altercation took place between them. Bhupinder Kaur came running to complainant's house and Harbans Singh caused her injuries with sharp-edged weapon and committed murder of Bhupinder Kaur. The complainant left Gurdeep Singh, Panch at the spot to guard the dead body and went towards police station along with Pritam Singh, Sarpanch and Jit Singh, member to report the matter. On the way, SI Malkit

Singh met the complainant and statement was recorded. Ruqa was sent to the police station, on the basis of which, FIR was registered. Special report was sent to the officers concerned. Thereafter, SI Malkit Singh went to the spot of occurrence along with other police officials and recorded the statements of the witnesses. Thereafter, the investigation was handed over to SI Sandeep Kumar. Accused was arrested and on his disclosure statement, *dah* was recovered. After necessary investigation, challan was presented against the accused-appellant.

On presentation of challan, copies of challan and other documents were supplied to the accused-appellant under Section 207 Cr.P.C. Finding prima facie case, the appellant was charge-sheeted under Section 302 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Dr.V.J.S. Dhillon, Medical Officer, who conducted post-mortem examination on the dead body of Bhupinder Kaur and found following injuries:-

1. *Index and middle fingers of R. hand chopped off in about middle.*
2. *The whole of right palm (12 x 3 cm) was cut. Underlying bone was cut.*
3. *Incise wound 4 x 1 cm of front of Right thumb of base.*
4. *Incise wound 10 x 1½ cm. front of L. hand starting from face of little finger to lateral side of wrist.*
5. *Incise wound 20 x 3 cm. front of neck. Trachea was cut. Blood vessels was cut.*
6. *Incise wound 15 x 5 cm on back of neck. Underlying bone was cut.*
7. *Incise wound 3 x 1 cm on upper part of (L) external near.*
8. *Incise wound 16 x 2½ cm in right side of face/starting*

from mid point of chain upto right ear.

9. *Incise wound 2 x 2 cm on back of left index finger. Underlying bone was cut.*
10. *Incise wound 3 x ¾ on left cheeks 2 cm lateral and below to left eye.*
11. *Two incise wound on back of left forearm just below elbow about 2 x 1 cm each.*
12. *Multiple incised wound on left scapula region.*
13. *Incise wound 8 x 1'2 cm on right side of skull 5 cm. from middle and 12 cm. from an H.L. All the organs were healthy. Heart was empty.*

In the opinion of the doctor, death in this case is due to shock and haemorrhage caused by injuries to the vital parts which were antemortem in nature and sufficient to cause death in ordinary course of nature. The doctor further deposed that time between injuries and death was instant and between death and post-mortem was about 24 hours. He also deposed regarding handing over of clothes removed from the body. PW-2 Karnail Kaur, complainant deposed that about 1¼ years ago, Bhupinder Kaur now deceased had come to her house and nobody else was with her. After taking the meals, she slept. On next morning, after taking bath and tea, she (Karnail Kaur) had gone to Gurdwara Sahib and when she returned from Gurdwara, she found Bhupinder Kaur lying dead. She further deposed that nothing happened in her presence. PW-2 Karnail Kaur has not supported the prosecution version and was declared hostile. She was cross-examined by learned APP for the State. In cross-examination, she stated that police got her thumb impression which has been shown to her, but she does not know as to what was written in the papers. She was cross-examined at length but nothing came out in favour of the prosecution. PW-

3 Constable Baxi Ram, formal witness, tendered into evidence his affidavit Ex.PG. PW-4 SI Malkiat Singh (Retd.) mainly deposed regarding recording of FIR Ex.PF/1 on receiving ruqa Ex.PF. He also stated that he went to the spot along with other police officials and recorded statements of Harpreet Singh, Pritam Singh, Sarpanch and Gurdeep Singh correctly without making any addition or alteration. PW-5 Jagdeep Singh, who is father of the deceased, mainly deposed that about five years back, Harbans Singh accused had divorced his daughter Bhupinder Kaur and thereafter, she started residing with him along with her son Harpreet Singh. He further deposed that Harpreet Singh was getting maintenance from the accused by order of Court of learned JMIC, Patiala. He produced the certified copy of divorce decree Ex.P1 etc. PW-6 Head Constable Partap Singh mainly deposed that he joined the investigation headed by ASI Balwinder Singh. PW-7 MHC Gursewak Singh, PW-8 Consatable Jaswinder Singh and PW-9 Constable Nirmal Singh, formal witnesses, tendered into evidence their affidavits Ex.PJ, Ex.PK and Ex.PL respectively. PW-10 Harpreet Singh, son of deceased and accused, aged about 12 years at that time, deposed that village of his father was Deena. His mother namely Bhupinder Kaur was married to accused Harbans Singh, who is his father. Harbans Singh and Bhupinder Kaur had divorced each other. After the divorce, he and his mother, started living in village Dhanetha at the house of his maternal grand father. He further deposed that after the divorce, he was getting maintenance from his father on the orders of the Court. On 22.10.1999, he and his mother Bhupinder Kaur had come to village Deena to get the maintenance from his father Harbans Singh. On that night, they stayed at the house of Karnail Kaur. In the morning at about 7-8.00 a.m., his mother

had gone to the house of accused to get the maintenance after leaving him at the house of Karnail Kaur. The house of Harbans Singh accused was at a distance of 3-4 houses from the house of Karnail Kaur. He further deposed that after 4-5 minutes, his mother Bhupinder Kaur came running to the house of Karnail Kaur and she was followed by his father Harbans Singh, who was armed with 'dah'. His mother tried to enter the room of the house of Karnail Kaur but same was closed and Harbans Singh accused caught hold of his mother in the open kitchen and gave a dah blow which hit on her hand when she tried to ward off the blow. Thereafter, Harbans Singh gave another dah blow which hit on her neck. His mother fell down. Then accused gave more dah blows on the neck of her mother. At that time, he was standing near the door of the room of the house and he had seen the accused causing injuries to his mother. Due to fear, he went on the roof top of the house. PW-11 Gursewak Singh, Draftsman, proved the scaled site plan Ex.PM. PW-12 ASI Balwinder Singh deposed regarding investigation of the case. He deposed that on 23.10.1999, he joined Investigating Officer of this case. In his presence, SI Sandeep Kumar, interrogated Harbans Singh accused and he suffered disclosure statement that he had kept concealed one *dah* underneath the dry fodder lying in his house and only he knew about it and could get the same recovered. PW-13 SI Sandeep Kumar, Investigating Officer, deposed regarding investigation conducted by him in the present case. He also proved various documents on record. PW-14 ASI Balwinder Singh, who was earlier Investigating Officer of this case, deposed that he recorded statement of complainant Karnail Kaur and he also inspected the spot etc.

examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that prosecution has failed to prove the guilt of the accused beyond doubt. She argued that the complainant Karnail Kaur, who is eye witness and who got recorded the FIR, has not supported the prosecution version. She further argued that presence of PW-10 Harpreet Singh, on the spot, is also doubtful. He has been called by the police later on and was cited as eye witness to the occurrence. She next contended that even otherwise, as per FIR as well as statement of PW-10 Harpreet Singh, due to fear, he ran away from the house, therefore, he cannot be held as eye witness. Learned counsel for the appellant also contended that there is no document on the record to show any maintenance order passed by learned JMIC granting maintenance to Harpreet Singh. It is further argued that no independent witness was joined by the police at the time of recovery of '*dah*'. The recovery of '*dah*' has been planted by the police upon the accused-appellant. Learned counsel for the appellant, therefore, argued that there being merit in the present appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that case of the

prosecution is duly proved beyond reasonable doubt against the accused. PW-10 Harpreet Singh, who is son of the deceased and accused, has consistently deposed regarding prosecution version. PW-10 Harpreet Singh has been cross-examined at length but nothing came out from his cross-examination which may make his statement unreliable. Learned State counsel further argued that motive for causing the occurrence is there. Even PW-2 Karnail Kaur has supported the prosecution version to the extent that Bhupinder Kaur had come to her house and stayed at night in her house and murder took place in her house. Though, regarding other facts, she turned hostile. It is also argued that even in the FIR, which was recorded just after 3-4 hours of the occurrence, it is mentioned that Harpreet Singh had accompanied Bhupinder Kaur to the house of Karnail Kaur on the previous evening of the day of occurrence. She also contended that PW-10 Harpreet Singh, who is eye witness to the occurrence, has deposed against his father. There is no reason or ground for the child to falsely implicate his father. The statement of PW-10 Harpreet Singh has been duly supported and corroborated by the medical evidence and also from the investigation of the case as well as recovery of '*dah*'. Learned State counsel, therefore, argued that accused-appellant has been rightly convicted and there being no merit in the present appeal, the same should be dismissed.

We have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

From the record, we find that prosecution in this case has duly proved the guilt of the accused beyond reasonable doubt. PW-10 Harpreet Singh, who is eye witness to the occurrence, has consistently deposed regarding prosecution version. He was about 12 years of age when he

deposed in the Court. He deposed against his father and there is no reason or ground for him to falsely depose against his father. Furthermore, the child witness has been cross-examined at length by the defence counsel but no material contradiction or improbability or material improvement has been found in his statement. The perusal of the cross-examination of PW-10 Harpreet Singh shows that there is nothing in it, which may make his statement unreliable. Moreover, PW-10 Harpreet Singh has stated that he and his mother Bhupinder Kaur had come to the village of his father to get the maintenance, which was granted to him by learned JMIC. This statement regarding grant of maintenance by JMIC remained unchallenged and unrebutted on the record. Even father of the deceased has stated that maintenance was granted to Harpreet Singh by the Court. Again, that statement was not challenged. Even if, no document has been placed on record by the prosecution regarding the maintenance order, even then, it will not create any doubt as this evidence regarding grant of maintenance has not been challenged by the defence.

Further, from the evidence on record, we find that even in the FIR, this fact has been mentioned that Bhupinder Kaur along with her son had come to the house of Karnail Kaur complainant. Furthermore, the fact of coming of Bhupinder Kaur to the house of Karnail Kaur, is admitted by PW-2 Karnail Kaur in her statement. Oral statements of PWs are duly supported and corroborated by the medical evidence. Further, the official PWs have duly proved the recovery of blood stained '*dah*' by the accused as per his disclosure statement under Section 27 of the Evidence Act. Mere fact that no independent witness was joined at the time of recovery of '*dah*'

got recovered by the accused from his house, which he kept concealed and no other person was knowing about the same. Furthermore, nothing has been pointed out regarding enmity or motive of the police officials to falsely plant the weapon upon the accused. As per FSL report, '*dah*' was stained with human blood. This fact further supports and corroborates the prosecution version.

Further, we find that there is no delay in recording the FIR. There was no time to concoct false version or to implicate false person. Otherwise also, it looks unnatural that complainant party will leave the actual culprit and falsely implicate other person. There is no evidence on the record to show that PW-10 Harpreet Singh was not present on the spot. He himself has stated that he has seen the occurrence as he was in the house and due to fear, he ran away to the roof of the house. In no way, it can be held that PW-10 Harpreet Singh has not seen the occurrence.

From the evidence on record, we find that prosecution has duly proved the guilt of the accused beyond reasonable doubt. No material contradictions or material improvements have been pointed out in the statements of the PWs by learned counsel for the appellant. There is also nothing in the cross-examination of the PWs, which may make their statements unreliable. The ocular evidence is supported by medical evidence and further from the recovery of weapon of offence by the accused.

In view of the above discussion, we find that the impugned judgment of conviction and order of sentence dated 10.10.2002, passed by learned Addl. Sessions Judge, Moga, are correct, as per evidence and law and do not require any interference from this Court.

Therefore, finding no merit in the present appeal, the same is

dismissed.

As appellant Harbans Singh is on bail, his bail bonds stand cancelled and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

As regarding CRM No.27117 of 2011 filed by applicant-Harpreet Singh, we find that no income or property of the accused has been shown. Rather, perusal of the record shows that even the criminal appeal has been filed through Jail Superintendent and in the letter, it has been written that appellant is a poor person and unable to engage a counsel and a request was made to provide Advocate as an Amicus Curiae.

Applicant-Harpreet Singh, as per prosecution version, was getting maintenance from accused Harbans Singh as per order of the Court below.

Keeping in view the above facts and circumstances and in view of the fact that accused Harbans Singh is a poor person and no details of the property owned by him have been given, we grant compensation of ₹50,000/- payable to applicant Harpreet Singh to be paid by accused Harbans Singh.

CRM No.27117 of 2011 stands partly allowed in above terms.

(A.B.CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

January 29, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
No