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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-256-DB-2004 (O/M)

Reserved on : 18.3.2019

Date of decision : 27.3.2019

Kulwinder Kaur alias Simro

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vinod Ghai, Senior Advocate, with,
Mr. Amrit Singh Kang, Advocate,
for appellant.

Mr. S.P.S. Tinna, Additional A.G. Punjab.

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KULDIP SINGH, J.

Appellant Kulwinder Kaur alias Simro has directed this appeal against judgment of conviction dated 5.2.2002 and order of sentence dated 7.2.2002, passed by learned Sessions Judge, Jalandhar, vide which she was convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/-, in default thereof, to undergo rigorous imprisonment for three months.

Brief facts of case, as gathered from judicial file, are that Darshan Kaur, wife of Udham Singh, resident of EK 18-19, Mohalla Shiv Raj Garh, Jalandhar, aged about 80 years, was brought by a rickshaw puller to emergency in the Civil Hospital, Phillaur, on 16.9.1998 at about 11.15 AM. On checking, she was declared brought dead. The doctor accordingly sent intimation (Ex.PH) to police. On 17.9.1998, at about 10.00 AM, ASI Santokh Singh, Police Station Phillaur, was present at Chowk

Committee Ghar, Phillaur, where Major Ram, Member Panchayat, resident of Sidhwa Mutsaddi, Police Station Nur Mahal, approached him and made statement (Ex.PA) wherein he stated that he is a Member Panchayat of village Sidhwa Mutsaddi, Police Station Nurmahal. Today, on 17.9.1998, he was present in his house in village when he came to know that Darshan Kaur, resident of his village had died and that her dead body is lying in Civil Hospital, Phillaur. On this, he alongwith Kewal Singh, Member Panchayat, Raghbir Singh, Member Panchayat and Gural Singh son of Ujjagar Singh, reached Civil Hospital, Phillaur and confirmed about death of Darshan Kaur at their own level. They came to know that she had suffered a natural death yesterday in the Court. Nobody was at fault for her death, nor they suspected anybody else. He further stated that Darshan Kaur has died a natural death and they do not want any legal action against anyone. Upon this, police made endorsement (Ex.PA) and conducted proceedings under Section 174 Cr.P.C. The inquest report was prepared. The post mortem (Ex.PJ) of dead body was got conducted wherein the doctor reported that cause of death will be given after receipt of report of Chemical Examiner. Later on, report of Chemical Examiner (Ex.PK) was received on 23.12.1998 wherein the doctor found phosphide, a constituent of aluminum phosphide in the stomach and in the small and large intestines of deceased. No poison was detected in the remaining part of viscera. Accordingly, the doctor gave opinion (Ex.PL) that cause of death is due to aluminum phosphide, a pesticide.

On 15.10.1998, Harbans Kaur alias Banso, resident of village Upper Jagir, Tehsil Phillaur, Police Station Nurmahal, District Jalandhar, moved application (Ex.DA) to Senior Superintendent of Police, Jalandhar,

wherein she alleged that her mother Darshan Kaur was residing at EK18-19, Mohalla Shivraj Garh, Jalandhar, for last so many years. Her mother was handicapped and could only walk with the help of crutches. Some cases of her mother were pending in New Courts, Jalandhar. She alongwith her husband used to frequently visit house of her mother Darshan Kaur and her mother Darshan Kaur also used to visit her house quite often. She had never given any power of attorney in favour of anybody else during her life time, nor executed any sale deed in respect of said house in favour of anybody else. Darshan Kaur was not feeling comfortable in her life, because she was having fear that person with whom she was having litigation which include Kulwinder Kaur alias Jawinder Kaur alias Simro, widow of Rana, whose parents are at village Siddwan and who is married in Lamba Pind, in association with other persons, may commit her murder to grab her house. Harbans Kaur alias Banso further alleged that on 15.9.1998, when she alongwith her husband went to New Courts to appear in some other case, she came to know that somebody had forcibly taken possession of property of her mother. When she made inquiry about the whereabouts of her mother Darshan Kaur, it could not be known. On 16.9.1998, police told the heirs of Darshan Kaur that her dead body was lying in Phillaur Civil Hospital and they could come and take away same. On 17.9.1998, she alongwith other heirs of Darshan Kaur brought her dead body and performed last rites on 18.9.1998. Harbans Kaur alias Banso further alleged that on inquiry, she came to know that on 15.9.1998, Kulwinder Kaur alias Simro had taken away her mother Darshan Kaur from her house and kept her in Lamba Pind in the night and on 16.9.1998, committed her murder in association with other persons and that she got executed sale deed

of house of her mother Darshan Kaur to grab the house in collusion with the vendees. She further alleged that said persons are Amrit Lal son of Sant Ram, resident of EJ-221, Chahar Bagh, Jalandhar. She further alleged that these persons have grabbed the household articles alongwith gold and money. Alongwith said persons, other persons with whom her mother had litigation, might have joined the conspiracy to murder her mother. She further alleged that Kulwinder Kaur alias Simro had got executed a forged sale deed showing wrong name and wrong address in favour of Amrit Lal and had committed murder. Therefore, she requested for inquiry into the matter. Police accordingly conducted the inquiry and inquiry report (Ex.PU) was submitted by Inspector Harbans Singh on 5.11.1998, in which he held Kulwinder Kaur alias Simro, was not available in her house and appears to be guilty. Therefore, he requested for further action in the matter after obtaining opinion of District Attorney (Legal). Thereafter, after obtaining the opinion of District Attorney (Legal), FIR No. 141, dated 5.10.1999 under Section 302 IPC read with Section 34 IPC was registered at Police Station Phillaur. Police prepared rough site plan.

Kulwinder Kaur alias Simro was arrested on 30.10.1999. On her interrogation, she suffered disclosure statement and got recovered Rs. 25,000/- out of sale consideration.

During investigation, police also recorded statement of one Resham Singh, who claimed that on 16.9.1998, he was going from Adda Nawanshahr, Phillaur, to Courts when in a kiosk, Kulwinder Kaur alias Simro wife of Balbir Ram alias Rana, resident of Lamba Pind, Jalandhar, and Kamal Kumar alias Lada, resident of Bambianwala, Jalandhar, son of Tara Chand and Fauji Ram son of Amar Singh Adarmi, resident of

Rattanpur, Phagwara, were taking tea and near them Darshan Kaur, wife of Udham Singh was also sitting and taking tea. Thereafter, he came to know that Darshan Kaur was found unconscious in the Court and had died. Now, he has come to know that her death had occurred due to consumption of some poisonous substance. He is of belief that Darshan Kaur has been killed by administering poison in her tea.

During investigation, on 27.10.1999, statement of one Surjit Singh, Ex Sarpanch of village Uppal Jagir, was also recorded, who claimed that Kulwinder Kaur alias Simro, Kamal Kumar alias Lada and Fauji Ram had approached him and had admitted before him that Kulwinder Kaur alias Simro, after becoming general power of attorney of Darshan Kaur, wanted to grab the house of Darshan Kaur and thereafter all said three persons, at the asking of Simro, had administered some poisonous substance in her tea outside Civil Courts, Phillaur, and then, sent her to Courts by making her sit on a rickshaw, as a result of which Darshan Kaur had expired. Later on, police also arrested co accused Kamal Kumar alias Lada and presented challan against accused Kulwinder Kaur alias Simro and Kamal Kumar alias Lada, whereas other co accused Fauji Ram was declared proclaimed offender. The general power of attorney executed in favour of Kulwinder Kaur alias Simro and sale deed executed in favour of Amrit Lal were also taken into possession. After the compliance of provisions of Section 207 Cr.P.C., case was committed to the Court of Sessions for trial.

In support of its case, prosecution examined Parshotam Singh Gill, Advocate, (PW1), Gurminder Kaur, Staff Nurse, Civil Hospital, Phillaur (PW2), ASI Santokh Singh (PW3), HC Amarjit Singh (PW4), HC

Satpal (PW5), Amrit Lal (PW6), Kewal Singh, Member Panchayat (PW7), Dr. Sarbjit Singh (PW8), Dr. Usha Kumari (PW9), Constable Tarvinder Kumar (PW10), Tara Singh (PW11), Hussan Lal (PW12), Harbans Kaur alias Banso (PW13), Swaran Lata (PW14), Surjit Singh (PW15), ASI Inderjit Singh (PW16), Gurdev Singh (PW17), SI Sarbjit Rai, (PW18) and closed the evidence.

When examined under Section 313 Cr.P.C., accused pleaded innocence and claimed that they have been falsely implicated. Accused did not lead any evidence in defence.

After hearing prosecution, learned defence counsel and going through evidence, the learned Sessions Judge, Jalandhar, convicted and sentenced accused Kulwinder Kaur alias Simro, as aforesaid. Co-accused Kamal Kumar alias Lada was acquitted of charge framed against him, granting him benefit of doubt.

We have heard learned counsel for parties and have also carefully gone through case file.

To know the manner in which occurrence took place, statement of Gurwinder Kaur, Staff Nurse, Civil Hospital, Phillaur, who had appeared as PW2, is relevant. She has deposed that she was on duty in emergency with Dr. Sarabjit Singh on 16.9.1998. At about 11.15 AM, one rickshaw wala brought a lady to hospital. On checking by Dr. Sarabjit Singh, it was found that she is already dead. The rickshaw wala had left the place. They came to know that she was brought from Civil Courts, Phillaur. From the identity card recovered from dead body, they came to know that name of lady was Darshan Kaur. They accordingly sent intimation to police.

Parshotam Singh Gill, Advocate, (PW1) has deposed that

Darshan Kaur was her client. A civil suit titled as Darshan Kaur Versus Harpreet Kaur etc. was pending in the Court of Sub Judge, Phillaur. Darshan Kaur used to visit his office in Civil Courts at Phillaur. Said case was fixed for 15.10.1998, on which date, he came to know that she had died while she had come to court premises and later on taken to Civil Hospital, Phillaur. This would mean that on 16.9.1998, no case of Darshan Kaur was fixed before Civil Court, Phillaur. Said rickshaw wala, who had taken her to Civil Hospital, Phillaur, was apparently not traced and not even cited as witness.

Now, coming to allegations against accused, it is alleged that she alongwith co-accused had administered aluminum phosphide while mixing it in tea served to Darshan Kaur while sitting in a kiosk near Civil Courts, Phillaur, when Darshan Kaur had come to attend civil court. Then, they sent Darshan Kaur to Civil Hospital, Phillaur, by making her sit in a rickshaw where she was reported to be brought dead. As per statement of Dr. Usha Kumari, Medical Officer (PW9), no mark of injury was found on the dead body. She was recorded to be aged about 80 years. The viscera was sent to chemical examiner and declaration of cause of death was deferred till receipt of report of chemical examiner. After receipt of report of chemical examiner, doctor opined that cause of death was due to ingestion of aluminum phosphide, which is a pesticide. She has further deposed that quantity of aluminum phosphide is not mentioned in the report of chemical examiner.

Hussan Lal (PW12) has deposed that some lady with crutches used to come to her (Simro's) house.

Harbans Kaur (PW13) complainant while appearing as PW13

reiterated contents of her complaint. She stated that when she went to house of her mother, she found the house to be locked. She also claimed in her statement that Amrit Lal had taken possession of house of Darshan Kaur. However, it is not so recorded in her complaint (Ex.DA).

Amrit Lal (PW6) is stated to have purchased house for Rs. 2,40,000/-.

Surjit Singh, Ex-Sarpanch had stated before police that accused made extra judicial confession before him. When examined as PW15, he turned hostile and stated that accused never came to him.

ASI Inerjit Singh (PW16) has proved recovery of Rs. 25,000/- from Kulwinder Kaur alias Simro in pursuance to disclosure statement.

Same is statement of PW18 SI Sarabjit Rai. SI Sarabjit Rai has admitted in his cross examination that he has not inquired about genuineness of power of attorney executed in favour of Kulwinder Kaur alias Simro. No evidence came to his notice that power of attorney is not genuine.

Amrit Lal, who has purchased house of Darshan Kaur, appeared as PW6 and stated that on the basis of power of attorney in favour of Kulwinder Kaur alias Simro, executed by Darshan Kaur, he purchased house from Kulwinder Kaur alias Simro for Rs. 2,40,000/-, vide sale deed Ex.PD. He further disclosed that Sood Property Dealer had come to him on 2/3.9.1998 and had informed him that an old lady having 4 marla house in Mohalla Shivraj Garh, Jalandhar, and that lady cannot walk. Kulwinder Kaur alias Simro and Kamal Kumar had accompanied him. Kulwinder Kaur alias Simro had claimed that she has document in her favour and proposed vendee is in her house. He had seen the power of attorney. He

had shown the papers to his advocate and thereafter, sale deed was executed.

Gurdev Singh (PW17), husband of complainant Harbans Kaur alias Banso made similar statement as made by Harbans Kaur alias Banso. The sale deed 9.9.1998, executed in favour of Amrit Lal, is Ex.PD. The house belonging to Darshan Kaur was sold for Rs. 2,40,000/-. It is also recorded that there was a case regarding said house which has been decided in favour of vendor.

The power of attorney in question dated 10.8.1998 is Ex.PQ. This has been executed by Darshan Kaur in favour of Kulwinder Kaur widow of Rana (stated to be) daughter of her son. This is attested by Bachan Singh, Numberdar, Patti, Todarpur and Sukhwinder Singh, resident of 18-19, Shiv Raj Garh, Jalandhar. Darshan Kaur is also shown to be resident of Mohalla Shivraj Garh, Jalandhar.

It is apparent that after execution of power of attorney on 10.8.1998, sale deed was executed about a month later on 9.9.1998.

First of all, this Court is to examine as to whether death of Darshan Kaur is homicidal or not ?

As per prosecution case, Darshan Kaur was allegedly given poison in tea outside Civil Court, Phillaur. The tea vendor was not examined during investigation to find out as to whether Darshan Kaur ever came to her. Resham Singh, who saw Darshan Kaur taking tea with accused and some other persons, was not examined in Court. The fact remains that Darshan Kaur was taken by rickshaw puller to Civil Hospital, Phillaur. She was aged about 80 years. The chemical examiner on chemical analysis found aluminum phosphide which is a pesticide, in her intestines and

stomach. The quantity of aluminum phosphide was not mentioned in the report of chemical examiner.

Now, this Court is to examine as to whether aluminum phosphide can be served in tea by somebody ?

In this case, no other injury was found on the dead body, meaning thereby that no force was used. The tea was allegedly served during day time. In case, aluminum phosphide is mixed in tea, the foul smell of pesticide can be detected by consumer of said contents. Therefore, said pesticide can either be consumed voluntarily or by use of force. In this case, there is evidence of use of force.

The symptoms, doses and fatal period, as mentioned in **Modi's Medical Jurisprudence and Toxicology, 25th Edition**, are reproduced as under :-

'Symptoms.-All patients with acute toxicity of aluminum develop encephalopathy myoclonus and seizures. Patient may be confused and disoriented. This commonly occurs during chronic renal failure when aluminum containing phosphate binders in chronic kidney disease (CKD) patients. On ingestion of alum, symptoms are burning pain in the mouth, throat and stomach, vomiting mixed with blood, dyspnea and rapid pulse. In the solid form, alum acts as a corrosive in the mouth and throat as it precipitates proteins. Patients with aluminum phosphide poisoning present with severe metabolic acidosis, myocarditis leading to intractable hypotension. Severely poisoned patients may develop renal failure, capillary leak and altered mentation.

Fatal Dose.- Fatal dose is about 10 g of alum and 3-5 g of aluminum phosphide.

Fatal Period.- Fatal period is about 24 hours.'

It goes to show that fatal dose, which is not known in present case, is 10 gram of alum and 3-5 gram of aluminum phosphide. Unluckily, in this case, dose is not mentioned in the report of chemical examiner.

Further, if aluminum phosphide has been administered, fatal period is about 24 hours.

Initially, everybody believed death of Darshan Kaur to be natural death. Darshan Kaur was of 80 years of age. Therefore, mere consumption of aluminum phosphide, presumption of murder cannot be drawn, considering that quantity of dose is not mentioned in the report of chemical examiner. Therefore, it is doubtful that Darshan Kaur will immediately die after alleged consumption of aluminum phosphite by deception as she was taken to Civil Hospital, Phillaur, by a rickshaw wala. The rickshaw wala was a material witness, who could tell as to whether Darshan had herself boarded the rickshaw or it was Kulwinder Kaur alias Simro and others, who put her in rickshaw. Before the doctor, rickshaw puller did not disclose as to how Darshan Kaur boarded his rickshaw. Therefore, from the medical evidence, it cannot be concluded that death of Darshan Kaur is homicidal.

Now, we will come to evidence connecting the accused with alleged crime. The only evidence against Kulwinder Kaur alias Simro is that Darshan Kaur had executed power of attorney in her favour on 10.8.1998 and that on 9.9.1998, she sold house of Darshan Kaur to Amrit Lal (PW6). It is alleged by complainant that sale deed was executed to grab the house of Darshan Kaur. The trial Court just from the fact that there was a power of attorney in favour of Kulwinder Kaur alias Simro and that she had sold house of Darshan Kaur to Amrit Lal, took presumption that she must have killed Darshan Kaur to grab her money. Admittedly, in the power of attorney, a wrong recitation is there that Kulwinder Kaur alias Simro is wife of son of Darshan Kaur, whereas it is not so. However, in

order to prove, charge of murder, positive evidence is required to show that accused intentionally committed the murder. Except, fact that there was power of attorney in favour of Kulwinder Kaur alias Simro and she sold house about 6 days prior to present occurrence, there is no evidence that Kulwinder Kaur alias Simro administered poison to Darshan Kaur, as a result of which she died. Therefore, merely on the basis of conjectures and surmises, it cannot be concluded that Kulwinder Kaur alias Simro administered poison to Darshan Kaur and thereafter, put her in rickshaw and sent her to Civil Hospital, Phillaur, where she was found dead. The medical evidence does not suggest that death took place in the manner alleged by prosecution.

As a result of foregoing discussion, we are of the view that charge against appellant under Section 302 IPC is not proved beyond reasonable doubts. Accordingly, we grant benefit of doubt to appellant and acquit her of charge framed against her. Consequently, appeal is allowed and judgment of conviction dated 5.2.2002 and order of sentence dated 7.2.2002, passed by learned Sessions Judge, Jalandhar, are set aside. Appellant was on bail. Her bail bond stands discharged. Fine paid, if any, be refunded to her.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

27.3.2019
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No