

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

648

CRA-D-1044-DB-2009 (O&M)
Date of Pronouncement: 27.3.2019

SADHU RAM

... Appellant

Vs.

STATE OF HARYANA

... Respondent.

**CORAM:- HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr. B.S. Khehar, Legal Aid counsel
for the appellant.

Ms. Tanisha Peshawaria, DAG, Haryana.

ANUPINDER SINGH GREWAL, J.

This appeal has been preferred against the judgment of conviction and the order of sentence dated 5.10.2009 whereby the appellant has been convicted for the offence punishable under Section 302 IPC and sentenced to undergo rigorous imprisonment for life.

It is the case of the prosecution that when Inspector/SHO Surender Pal of Police Station Agroha along with other police officials was present at bus stand Nangthala while patrolling, information was received that a murder had taken place at the house of Sadhu Ram. The Inspector along with other police officials went in a private vehicle to the house of Sadhu Ram son of Mangat Ram resident of Nangthala and on reaching there, Sumit Kumar son of Surender son of Sumer son of Chunni Lal met him and the statement of Sumit Kumar son of Sadhu

Ram, aged 12 years was recorded wherein he had stated that he was a resident of village Nangthala and a student of 8th standard. He had a younger brother who was a student of 5th class and his father was a labourer while his mother used to do a private job with a doctor at Barwala. At 2:30 p.m., his mother had told him that they both should go out and play because she wanted to sleep. After some time, his father came inside the house and he saw that his father was telling his mother that on the pretext of going to Barwala, she had been going to other places and he was going to teach her a lesson. He was holding a '*gandasi*' in his hand and he inflicted '*gandasi*' blow on the neck of his mother twice while one blow was inflicted on her hand. Then he raised alarm and a number of persons from the area gathered there. His mother died at the spot while his father threw away the '*gandasi*' and ran from the spot. He then telephoned his maternal uncle Surender who along with his maternal grandfather reached the spot. He also stated that his mother had been murdered by his father and action be taken against him.

After receiving this information, endorsement Exhibit P-12 was made by the Inspector at 8:30 p.m. for registration of an FIR under Section 302 IPC. FIR was registered at 9:50 p.m. and it was received by the Duty Magistrate at 12:05 a.m. on 8.5.2008. The accused was arrested on 9.5.2008 and a shirt along with other articles was recovered from him which was sent to the chemical examiner.

Upon presentation of the '*challan*', the accused was charge-sheeted for offence punishable under Section 302 IPC to which he pleaded not guilty and claimed trial.

The prosecution examined Dr. Rajiv Joshi as PW-1. He had conducted post mortem examination on the body of the deceased Sushma and found the following injuries on her body:-

1. 4.5x1 c.m. incised wound was present on left side of head 3 c.m. above left eyebrow. Depth of wound was upto bone (frontal) underlying frontal bone showing cut fracture.
2. 15.5x3 c.m. chop wound was present on middle of the neck extending towards left side of neck 6.5 c.m. proximal to sterna notch. Depth of wound was extending up to anterior part of vertebra. On dissection it was found that underlying neck muscles and blood vessels was found severed. Fracture of the anterior part of the body of survival third vertebra was present. Clotted blood was present.
3. 4x3 c.m. chopped wound with 1 c.m. depth was present at dorsal aspect of left wrist joint exposing underlying bone. On dissection fracture of carpel bone was present.
4. 6x3 c.m. chopped wound with depth of 1 c.m. was present on dorsal surface of left hand 1.5 c.m. distal to injury No.3, underlying metacarpals were found fractured.

In thorax larynx was found severed. Other organs in thoracic cavity was found pale. In abdominal cavity wall of the abdomen was found normal. Stomach was empty and wall was normal. All the other organs were found healthy and normal. Small intestine contain chime and large intestine contain fecal material.

The cause of death in this case in my opinion was due to hemorrhage and shock which is sufficient to cause death in ordinary course of nature. All the injuries were ante mortem in nature. Probable time that elapsed between

injury and death was immediate and between death and post mortem was within 12 to 24 hours.”

Constable Raju, who had prepared the site plan Exhibit P-11 at the instance of Leela son of Mangat Ram, was examined as PW-2. PW-3 Raghbir Singh, SI recorded formal FIR Exhibit P12/1 and stated that he had sent special report to the higher officers. PW-4 MHC Ramesh Chander tendered his affidavit Exhibit P-13 with regard to handling of the case property. PW-5 Shanti Saroop, who is a photographer, proved negatives Exhibit P-14/1 to Exhibit P14/8. The complainant Sumit was examined as PW-6 and the trial court, after being convinced of his understanding and maturity, had recorded his statement. PW- 7 Surender is the maternal uncle of Sumit and brother of the deceased. He corroborated the version given by Sumit with regard to information received by him and his arrival along with his father at the place of occurrence. PW-8 Constable Satpal tendered his affidavit Exhibit P-19 regarding handling of the case property. PW-9 ASI Mahender Singh partly investigated the case and had arrested the appellant on 8.5.2008. PW-10 Surender Pal, Inspector, who was subsequent Investigating Officer, was also examined.

The prosecution tendered various documents including articles Ex. P-4 to Ex.P-10, Ex. P-16 and Ex.P-21/A and thereafter, prosecution evidence was closed.

The appellant in his examination under Section 313 Cr.P.C. pleaded innocence and stated that he has been falsely implicated at

the instance of the brother and the father of the deceased. He also stated that his son Sumit resides with his maternal uncle at Hisar and was studying in God Public School. He further stated that he was not present in the house when the occurrence took place and he came on the next day as he was away to Punjab. In support of his case, he had examined his brother Leela son of Mangtu Ram resident of Nanthala as DW-1, who had stated that the accused was away to Punjab in connection with threshing of wheat as he was a labourer. He also stated that the accused was not present at the spot and has been falsely implicated. PW-1 Sumit had supported the averments made in the complaint which he had made to the police leading to the registration of the FIR.

Learned counsel for the appellant has contended that the appellant has been falsely implicated in the case at the behest of the father and the brother of the deceased. Sumit, who is the complainant in the case, was not present at the time of incident and he had been brought to the place of occurrence by the brother and the father of the deceased to falsely implicate the appellant. He also contended that there are several discrepancies in the prosecution case, especially, in the evidence of PW-6 which would not warrant the conviction of the accused as the prosecution had not been able to prove its case beyond reasonable doubt.

Per contra, the learned State counsel has contended that the evidence of PW-6 was trustworthy and convincing, which in the light of the other evidence led by the prosecution, was sufficient to convict the appellant.

We have heard the learned counsel for the parties and examined the evidence.

The complainant is the son of the deceased and the appellant. He was stated to be about 12 years old at the time of the incident and about 13 years at the time of his examination in Court. The trial court has recorded its satisfaction about his maturity to understand the situation and depose in Court. He has reiterated his version in the complaint whereupon the FIR was lodged. He has stated that he was present at the occurrence when he saw his father while expressing his anger at his mother saying that she used to go to various places on the pretext of attending to her job and had also given her blows which resulted in her death. Although in the complaint, he had stated that he saw his father giving two injuries on the neck of his mother and one on the hand while deposing in Court, he stated that his father had hit her four times. This by itself would not be a material contradiction as a witness, especially a child, who has seen his mother being hit by his father, may not remember the exact number of times the injuries were inflicted.

The contention of the learned Counsel for the appellant that Sumit was studying in a school at Hisar and was not present at the place of occurrence cannot also be accepted. PW-6 Sumit has withstood the elaborated and the extensive cross-examination. He has categorically stated that he was earlier a student of God Public School at Hisar and had been withdrawn from the school for admission in the school at their village Nangthala. His maternal uncle was to collect the transfer certificate from the school but after this

incident of death of his mother, he returned back to Hisar and took admission in the school where he was studying. He had got readmitted in 8th class in the same school. The testimony of PW-6 appears to be trustworthy, credible and inspires confidence. One can well understand that after the death of his mother at their house in village, it would be difficult for this witness to study there and thus he had sought readmission in the school at Hisar. We do not find any reason for him to falsely implicate his father for the death of his mother, even though he may have been earlier studying at Hisar while residing with his maternal uncle and maternal grandfather. The plea of false implication would not cut much ice especially when motive with regard to the appellant suspecting the character of his wife and causing her death appears to be plausible. DW-1, who is stated to be the brother of the appellant had stated that it was the third marriage of the deceased and they had suspected her character. The appellant had even informed the brother of the deceased about her conduct and the matter was also reported to the Sarpanch, who had advised her to improve her behavior. The matter had been reported to the police but the police had refused to take any action.

Consequently, we do not find any merit in this appeal, which stands dismissed.

(A.B. CHAUDHARI)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

27 .3.2019.

SwarnjitS

Whether speaking/reasoned :
Whether reportable :

YES/NO
YES/NO