

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-61-DB of 2004

Reserved on : 05.02.2019

Date of decision : 08.02.2019

Balkar Singh

.... APPELLANT

Versus

State of Punjab

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. M.S. Sidhu, Advocate,
for the appellant.

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

* * *

RAJIV SHARMA, J.

1. This appeal is instituted against judgment dated 01.12.2003 and order dated 03.12.2003, rendered by learned Additional Sessions Judge, Kapurthala, in Sessions Case No. 11 dated 06.02.2002, whereby the appellant, who was charged with and tried for the offence punishable under Section 302 of the Indian Penal Code, was convicted and sentenced to undergo imprisonment for life and to pay fine of ₹ 2,000/-, and in default of payment of fine to undergo further rigorous imprisonment for a period of one month under Section 302 IPC.

2. The case of the prosecution, in a nutshell, is that Balwinder Ram (PW.4), brother of the deceased, was resident of village Begowal. His

youngest sister Rani alias Jaswinder Kaur was married to Balkar Singh. Jaswinder Kaur could not bear any child. Balkar Singh, brother-in-law of Balwinder Ram, used to quarrel with Jaswinder Kaur. He wanted to get rid of her. He also wanted to contract second marriage. Jaswinder Kaur used to tell her parents about the maltreatment meted out to her by her husband. About one month prior to 24.12.2001, Balwinder Ram, his father Gurdial Ram, Municipal Councillor Baldhar Ram and Municipal Councillor Mohinder Pal had gone to the house of Balkar Singh. They prevailed upon Balkar Singh and requested him to rehabilitate Jaswinder Kaur. On 23.12.2001, Balwinder Ram visited village Tajpur. However, he went to the house of Balkar Singh, to enquire about the welfare of his sister, at about 10.30 P.M. The door was bolted from inside. However, the lights were on. He heard the voice from inside. He pushed the door. Door opened. He entered the room. He saw that Balkar Singh had put a string (rope) around the neck of Jaswinder Kaur alias Rani. Balkar Singh was pulling the same with an intention to kill her. Jaswinder Kaur alias Rani died. Balkar Singh ran away. He went to his village. His statement Ex.PB was recorded. The dead body was sent for post-mortem examination. Site plan Ex.PH was prepared. Inquest report is Ex.PJ. FIR Ex.PC was registered and challan was put up after completing all the codal formalities.

3. The prosecution has examined a number of witnesses. Accused was also examined under Section 313 Cr.P.C. He denied the case of the prosecution and took the defence that he had very cordial relations with his wife. He never maltreated her. She could not bear a child, due to which she remained under constant pressure. He used to console her. She committed suicide. He was not present in the house on the day of occurrence. When he

came, he informed Balwinder Ram (PW.4) and father of Balwinder Ram regarding the suicide committed by the deceased. In his defence, the accused examined Jarnail Singh (DW.1).

4. The appellant was convicted and sentenced, as noticed above. Hence, this appeal.

5. Learned counsel appearing on behalf of the appellant vehemently argued that the prosecution has failed to prove its case against the appellant. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case against the appellant beyond reasonable doubt and supported the judgment and order of the learned Court below.

6. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

7. PW.6 Dr. Gian Chand Mangat deposed that a Medical Board, consisting of himself, Dr. Subhash Chander and Dr. Harinder Kaur, conducted post-mortem examination on the dead body of Jaswinder Kaur @ Rani, on 24.12.2001. The Board noticed the following injuries on her body :-

1) Ligature mark :- A well defined depressed ligature mark was present in upper part of neck above thyroid cartilage between larynx and chin and reddish brown in colour and was dry hard and parchment like, directed obliquely upward along the line of mandible on both sides of neck and was extending on to occipital region of right side and upto mastoid process on left side measuring 24 cm x .5 cm in max. dimensions.

Ligature mark was absent on back of the neck. Hyoid bone, thyroid cartilage

and tracheal rings were intact. The cause of death was asphyxia as a result of injury on the neck as described at injury No.1, which was sufficient to cause death in ordinary course of nature. The duration between injury and death was within few minutes and the time that elapsed between death and post-mortem was within 12 to 24 hours. The post-mortem report is Ex.PF. In his cross-examination, he admitted that there was no injury on the back of the dead body. The likely cause of asphyxia was hanging.

8. PW.4 Balwinder Ram is brother of the deceased. According to him, his sister Jaswinder Kaur was aged 22 years, when she was married with the accused. Sufficient dowry was given at the time of the marriage. His sister was issueless. The accused was harassing her. He wanted to get rid of her. He further deposed that his sister used to disclose that the accused was harassing her. They had visited her house. They tried to prevail upon the accused not to harass Jaswinder Kaur. On 23.12.2001, he had gone to the house of the accused at about 10.30 PM. The light was on. When he reached near the door, he heard the voice “Mar Ditti-Mar Ditti” of his sister coming from inside. He opened the door. The accused was pulling the rope, which was tied around the neck of his sister. Thereafter, the accused ran away. His sister was dead. He came back to his village. Thereafter, FIR was registered. In his cross-examination, he deposed that he had gone to the house of his sister all alone. He had started from Begowal at about 9.00 PM. The accused were four-five brothers. They were not living jointly. He denied the suggestion that he got a telephonic message on 24.12.2001 that his sister had died by hanging.

9. PW.5 Baldhar Ram deposed that he was Municipal Councillor of Municipal Committee, Begowal. The deceased had told him and other

members of the family that the accused used to chide her as she could not bear a child. They had gone to the house of the accused. The accused had assured that he will keep the deceased properly. On 23.12.2001, Balwinder Ram told them at 11.30 PM that the accused had killed his sister.

10. PW.8 Jagtar Singh deposed that he was Halqa President of BSP. On 25.12.2001 at about 9.00 AM, Balkar Singh came to his house. He confessed before him that he had committed murder of his wife Jaswinder Kaur @ Rani. He further told that he had committed a mistake by doing so. He further told that Balwinder Ram, brother of the deceased, came to the spot, when he was committing murder of his wife. He ran away from the spot after committing the crime.

11. PW.9 Balbir Singh SI deposed that on 24.12.2001, he was present at Chowk Subhanpur. Balwinder Ram along with some other person came to him. Statement Ex.PB was recorded. He visited the spot. The dead body of Jaswinder Kaur was lying on a cot. The site was inspected. The body was sent for post-mortem examination. Site plan Ex.PH was prepared. Post-mortem was got conducted. Accused was produced before him on 26.12.2001.

12. PW.10 Gurdial Ram deposed that deceased Jaswinder Kaur was his daughter. She could not bear a child. There used to be quarrel between his daughter and the accused. He along with few persons went to the house of the accused. They tried to prevail upon the accused to treat his daughter properly.

13. DW.1 Jarnail Singh deposed that he was Member Panchayat of his village. He knew the accused. He was married to the deceased. There was no tension between husband and wife. The accused was not present on

the day of occurrence. In the morning, they came to know that the deceased had committed suicide. Balwinder Ram, brother of the deceased, did not come to the village during night of the day of occurrence. In the cross-examination, he admitted that he had not given anything in writing to the police or to higher officials.

14. The accused had made extra-judicial confession before PW.8 Jagtar Singh. PW.4 Balwinder Ram, brother of the deceased, is the eye witness. He had seen the accused strangulating his sister. The cause of death is asphyxia due to injury on the neck, which was sufficient to cause death. The duration between injury and death was within few minutes and the time that elapsed between death and post-mortem examination was between 12 to 24 hours. PW.6 Dr. Gian Chand Mangat had noticed a well defined depressed ligature mark on the upper part of neck above thyroid cartilage between larynx and chin and reddish brown in colour. It was directed obliquely upward along the line of mandible on both sides of neck and was extending to occipital region of right side and upto mastoid process on left side measuring 24 cm x .5 cm in maximum dimensions.

15. Learned counsel appearing on behalf of the appellant has vehemently argued that the deceased has committed suicide. The appellant was not present in his house on the day of occurrence.

16. Though the appellant has taken the plea of alibi, but he has not proved the same. Since he has taken the plea by way of exception, it was for him to prove where he was on the day of occurrence. DW.1 Jarnail Singh has also not stated where the appellant was on the day of occurrence, if he was not present in his house. The plea of alibi is a double edged weapon. In case the accused fails to prove the plea of alibi, his presence at the spot

cannot be ruled out.

17. In order to prove plea of alibi, their Lordships of Hon'ble the Supreme Court in **Binay Kumar Singh vs State of Bihar** (1997) 1 SCC 283, have held that once the prosecution succeeds in discharging the burden, it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. Their Lordships have held as under :-

"22. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (a) given under the provision is worth reproducing in this context:

"The question is whether A committed a crime at Calcutta on a certain date; the fact that on that date, A was at Lahore is relevant."

23. The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the

*accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions (vide *Dudh Nath Pandey v. State of U.P.* (1981) 2 SCC 166; *State of Maharashtra v. Narsingrao Gangaram Pimple* AIR 1984 SC 63)."*

18. The dead body was found in the house of the appellant. This circumstance was specific within his knowledge. In case, the deceased had committed suicide, ligature was bound to be found on her body hanging from height. It is not the case of the appellant that when he came back, he brought down the body. The ocular statements are duly corroborated by

medical evidence. It has come on record that the appellant used to maltreat his wife since she was not able to bear a child. The respectable persons of the area had gone to the village of the accused to prevail upon him to treat his wife Jaswinder Kaur alias Rani decently. Since he was seen by PW.4 Balwinder Ram killing his wife, the plea raised by learned counsel for the appellant that it is a case of suicide is not believable. The case of the appellant is that his wife used to remain under depression. However, he had not got his wife examined from any doctor.

19. The prosecution has proved its case against the appellant beyond reasonable doubt. There is no occasion for us to interfere with the well reasoned judgment and order of the learned trial Court. Accordingly, the appeal is dismissed. The appellant is on bail. His bail bond and surety bond are cancelled. He is directed to surrender before the concerned Chief Judicial Magistrate within seven days to undergo remaining part of his sentence.

(RAJIV SHARMA)
JUDGE

February 08, 2019
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No