

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

CRA-D-797-DB of 2009 (O&M)
Reserved on : August 21, 2019
Date of Decision: October 18, 2019

Sita Devi

...Appellant

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Surender Deswal, Advocate for the appellant.

Mr. Vivek Saini, Deputy Advocate General, Haryana.

HARINDER SINGH SIDHU, J.

1. This appeal is instituted against the judgment and order dated 31.07.2009/04.08.2009 rendered by the Additional Sessions Judge, Fast Track Court, Gurgaon in Sessions Case No.109 of 2007 whereby the appellant, who was charged with and tried for offence punishable under Section 302 read with Section 34 of the Indian Penal Code (in short 'the IPC') has been convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo further RI for two years.

2. The case of the prosecution in a nutshell is that on 20.06.2007 Inspector Sunil Kumar of P.S. Sector 5, Gurgaon received information regarding a murder being committed in village Gurgaon. The inspector along with other police officials reached the spot where they met Radha wife of Kanwaljeet Singh resident of Palasali, PS Tijara now resident of Najafgarh Delhi who got recorded

her statement Ex. PD to the effect that they had been residing at Najafgarh as tenants for about last 15 years. For the last one year her sister Sita wife of Pujari also started living there. Her sister and her brother-in-law Pujari (her sister's husband) wanted that the marriage of her daughter Soni aged about 20 years be performed with their son Vicky. But she and her husband refused. Then Sita, Pujari and their son got annoyed with them. She performed the marriage of her daughter somewhere else upon which they got enraged and even gave beatings to her son and her husband and even threatened to kill them. The family of Pujari started living at Gurgaon and whenever the complainant and her family came to Gurgaon Pujari and his family used to threaten them. On 20.06.2007 during the day, the complainant, her husband Kanwaljeet and their grandson aged about 5 years came to Gurgaon to meet the mother of the complainant. At about 7.30/8.00 PM they were all sitting after taking their meals. All of a sudden Sita, Pujari, Vicky and one Attar Singh son of Siri Ram came. They started abusing the complainant and her family. They caught hold of Kanwaljeet. Sita gave blows with iron pipe on his head and feet. Vicky gave knife blows on his chest, head, hands and feet. When the complainant ran to rescue her husband, Sita inflicted blows with iron pipe on her. The husband of the complainant died due to the injuries sustained by him. The accused then fled away. On her statement FIR u/s 302/ 34 IPC was registered. Police visited the spot. Site plan was prepared. The body was sent for post mortem examination. Inquest proceedings were conducted. Accused Sita Devi was arrested. She suffered disclosure statement and got recovered the iron pipe. The other accused could not be arrested. On completion of investigation the challan was put up against Sita Devi.

3. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. She denied the allegations levelled against her and pleaded innocence. She stated that the proposal of the marriage as alleged by the prosecution was absolutely wrong and false. She stated that Kanwaljeet and Pujari were inimical to each other from the very beginning. They both belonged to U.P. She stated that she had no connection with Pujari. A divorce had taken place between them about 18 years ago. In her defence, she examined DW1 Smt. Prem wife of Vicky and DW2 Godawari.

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

5. We have heard learned counsel for the parties and have gone through the judgment and record.

6. PW1 Dr. M. Parkash, SM, GH Gurgaon stated that on 21.06.2007 he conducted the post mortem examination on the dead body of Kanwaljeet Singh son of Puran Singh. It was body of male 5 foot 7 inch in length as average built and nourished and wearing light brown strip shirt, black pant with red strip pocket cloth inside, black underwear, eyes and mouth were closed. Clothes were torn and having cuts at places and were blood soaked. Post mortem staining on the back was present. The following injuries were found on the body:

“1) Lacerated wound behind left ear vertical 8cm x 1.5 cm bone deep.

2) Lacerated wound on the left side of head 4cm above the left eye brow 4.5 x 2 cm. Clotted blood was present.

3) Incised wound just below the left nipple 4 x 1.5 cm eliplical, fat tissue was coming out and clotted blood was present. Cut on

clothes are present.

4) *Stab wound with incised margin just lateral to the sternum on the left side 8cm medial to the left nipple going into chest through which blood was coming out and the size was 3 x 1cm.*

5) *Triangular stab below left shoulder 3.5 x 3 x 2.5 cm having mixed margins clotted blood was present and was going deep in muscle.*

6) *Incised wound below left Axilla on arm. Medially 4 x 4cm x 8mm tailing posteriorly clotted blood was present.*

7) *Two small stab wound above injury No.6, 1.5 x 1cm and 1 x 1cm clotted blood was present.*

8) *Incised wound below left elbow laterally 4x2cm clotted blood was present.*

9) *Incised wound on the right deltoid region 3 x 1cm.*

10) *Incised wound below the left knee laterally 4.5 x 1.5 cm. Clotted blood was present.*

11) *Two incised wound horizontal on posterior part of the left side chest tailing medially 5 x .3 cm and 2 x .4 cm Clotted blood was present.”*

7. On exploration of skull subcutaneous hemorrhage and hematoma were present around injury No.1 and 2 and there was no fracture of skull.

8. On exploration of skull injury No.3 and 11 was limited to the chest wall only while injury No.4 was going into the chest cutting the pericardium and anterior surface of the heart (right ventricle) Pericardium was full of blood and blood clots were present in pleural cavity and below sternum. Corresponding ribs were having cut. Injury No.6 was going in the left shoulder joint and rest were

limited to the skin and subcutaneous issue.

9. In abdomen there was semi- digested food in stomach. Rest of the organs were healthy and had their normal content.

10. The cause of death was opined to be injury to the vital organ, i.e, heart leading to haemorrhage, shock and death, which was sufficient to cause death in natural course of life. All the injuries were ante-mortem in nature. The time elapsed between injury and death was within few minutes and between death and post mortem was within 12 to 24 hours.

11. PW2- Lakhi Ram stated that he had a plot in village Gurgaon near Sector 6. He had constructed seven rooms covered with tin sheds and same were rented out to one Sham Lal. On 20.06.2007 at about 8/8.30 p.m daughter of Sham Lal came to him and told that one person had been killed in the plot. He went to the spot and noticed that a person was lying dead in front of shamlat room. He advised them to give information to the police of Sector 5. Police enquired about the matter from him and he narrated the whole story to them.

12. PW3- HC Manoj Kumar Sec 5 Old Gurgaon stated that on 20.06.2007 he received information about the occurrence. He along with SHO Sunil Kumar and Constable Mukesh Kumar came to the spot. He noticed that dead body of Kanwaljeet was lying there. He along with the other police officials took the dead body from the spot and brought it to the dead house Gurgaon for post mortem examination. The Medical Officer handed over to him one parcel containing clothes of deceased duly sealed which he handed over to SHO Sunil Kumar.

13. PW4- Constable Sushil Kumar stated that on 21.06.2007 he along with SHO Sunil Kumar went to the spot where SHO Sunil Kumar lifted blood

stained earth from the spot and converted it into sealed parcel which was taken into possession vide recovery memo Ex.PC.

14. PW5- Head Constable Rajbir Singh, Sector 5 Gurgaon stated that on 20.06.2007 SI Sunil Kumar deposited in the police station one parcel containing blood stained earth duly sealed, one parcel containing clothes of deceased Kanwaljeet duly sealed and one sample seal. On 10.07.2007 one iron rod containing six seals was deposited. On 14.09.2007 he sent the same to FSL Madhuban vide RC No.459 dated 14.09.2007 through C. Rajesh Kumar. On 20.09.2007 Shri Radhey Sham SHO received the aforesaid iron rod from him for seeking opinion of the Medical Officer. He then re-deposited it the same day.

15. PW6- Sunil Kumar Inspector PS Sector 5 stated that on 20.06.2007 he along with constables Sushil Kumar and Mukesh Kumar was on patrolling duty in Sector 5 in government jeep. A telephonic message was received that murder has been committed in the plot of Master Lakhi Ram. He reached there immediately. Complainant Radha met him there and got recorded her statement Ex.PD. He recorded his police proceedings Ex.PD/1 based whereon formal FIR Ex PE was recorded at the police station. He prepared rough site plan of the place of occurrence which is Ex.PF.

16. He got the dead body photographed. He lifted blood stained earth from the spot and converted it into a parcel and sealed it with seal BP. He prepared inquest report of deceased Kanwaljeet, which is Ex.PG. He also recorded statements of Akha Devi and Geeta u/s 175 Cr.P.C. The dead body was sent to the Civil Hospital for Post Mortem Examination which was conducted on 21.06.2007. One parcel containing clothes of the deceased duly sealed with ten seals of Civil

hospital (mortuary) was taken into possession. After completion of the investigation challan under Section 173 Cr.P.C. was submitted by Radhey Sham Inspector/SHO.

17. PW7 Manoj Kumar Draftman stated that on 25.09.2007, he went to the spot in village Gurgaon and prepared scaled site plan Ex.PH.

18. PW8 Vijay Saini, Proprietor of Saini Photo Studio, Gurgaon stated that on 20.06.2007 he was summoned by the police on the spot. He took three photographs of the spot with the dead body. He proved the photographs as Ex.P.1 to Ex.P.3 and the negatives Ex.P.4 to Ex.P.6.

19. PW9- Rajesh Kumar Constable deposed that on 14.09.2007 MHC Rajbir Singh handed over to him two parcels vide RC No.459 for depositing the same with FSL Madhuban. He deposited the same and handed over receipt to the MHC.

20. PW10- HC Neeraj Kumar, Naib Reader CP, Gurgaon stated that on 10.07.2007 he joined this investigation with Inspector SHO Surender Singh. Accused Sita was interrogated before him. She suffered disclosure statement Ex.PJ to the effect that she had kept concealed/thrown the iron pipe, which was used by her in committing murder, in the bushes near the place of occurrence and she could get it recovered. Pursuant to her disclosure statement she got recovered iron pipe from the bushes in the nearby plot. It was converted into parcel and sealed with seal IS. Sketch of the pipe Ex.PL was prepared before converting into parcel. The accused also got demarcated the place where she along with the co-accused committed murder of Kanwaljeet. Demarcation memo Ex.PM was prepared.

21. PW11- Radha w/o Kanwaljeet Singh stated that on 20.06.2007 she had come to her mother Okha Devi in village Gurgaon. Her grand son Veeru and her husband Kanwaljeet were with her. They took dinner at about 6.00 p.m. and were talking with each other. At about 8.00 pm Vicky s/o Pujari, Pujari s/o Kali Ram, Attar Singh s/o Siri Ram and Sita came there. Pujari caught hold of her husband by the shoulder, Attar Singh caught hold of his leg. Sita gave an iron pipe blow on the head and leg of her husband. Vicky gave knife blows on his chest and abdomen. She raised alarm but Sita inflicted pipe blow on her. On hearing her cries the house owner came to the spot. The accused fled away. Her husband Kanwaljeet died at the spot. She identified Sita accused in the Court. The motive for the accused to commit murder of her husband was old enmity as they had demanded and wanted to get her daughter Soni married with Vicky accused. But the complainant and her family had not agreed to their demand. She identified her signatures on her statement Ex.PD made to the police.

22. In cross examination by the defence counsel she stated that at the time of occurrence they were the only five persons in the room. There was no outsider in the room. There were about ten labourers from Bihar who were cooking their meals at the time of occurrence at a distance of about 10 or 20 feet outside the room. They all absconded on seeing the blood on the body of her husband.

23. PW12- Geeta w/o Chandan r/o Surat Colony, Gurgaon stated that on 20.06.2007 she was present at her residence Sector 5, Gurgaon. Her grandmother Okha Devi was also present. Her bua(father's sister) Radha Devi and her husband Kanwaljeet were also present. After taking meal they were sitting together. In the meantime, Attar Singh, Pujari, Vicky and Sita came there. Kanwaljeet was sitting

on a cot. Pujari caught hold of his hand. Vicky gave knife blow on the various parts of his body. One blow with iron pipe was given by Sita on the head of Kanwaljeet and he died at the spot. She kept herself concealed in the house (room) due to fear. She stated that the accused had murdered Kanwaljeet as the accused wanted to arrange marriage of Soni with Vicky but the mother and father of Soni declined the same. She identified Sita in court.

24. In cross examination by the defence counsel she stated that at the time when the accused came only four persons were present in the room i.e., she herself, her grandmother and her bua Radha and Fufa (uncle) who had been murdered. She stated that when the occurrence started there were about ten labourers including their women folk who were cooking meals in front of their household which was about 15 to 20 feet from the place of occurrence but they ran away.

25. PW13- Inspector Radhey Sham stated that on 25.09.2007 he was posted as SHO/Inspector, Sector 5, Gurgaon. On that day he got prepared scaled site plan of the place of occurrence from Manoj Kumar. He recorded statements u/s 161 Cr.P.C. of Manoj Kumar, the photographer, MHC Rajbir Singh and Constable Rajesh.

26. On 28.09.2007 he moved an application Ex.PA/3 to the MO General Hospital Gurgaon alongwith one iron pipe in sealed condition with seal IS for seeking opinion of the doctor. Dr. M. Parkash tendered his opinion Ex.PA/4 after examination of the pipe which was then resealed. After completion of the investigation, he got prepared challan u/s 173 Cr.P.C against the accused Sita Devi under Section 173 Cr.P.C. Three accused namely Pujari, Vicky son of Pujari and

Attar Singh were not arrested till then. Hence they were placed in column No.2 of the challan. He identified the iron pipe Ex. P 7 in court.

27. PW14- Surender Singh Inspector/SHO, PS Mahendergarh stated that on 10.07.2007 he was posted as SHO/Inspector Sector 5 Gurgaon. On that day investigation of this case was assigned to him. On that day accused Sita Devi was arrested by him from railway station Gurgaon. On interrogation she suffered disclosure statement Ex.PJ pursuant to which she got recovered the iron pipe which was taken into possession vide memo Ex.PK. He got prepared the rough site plan of the place of recovery Ex.PN. Sketch of the iron pipe is Ex.PL He identified the accused in court. On 11.09.2007 he sent the parcel to the FSL after preparing docket of the same.

28. DW1- Smt. Prem wife of Vicky r/o New colony Gurgaon stated that she knew Vicky since five years as he usually visited her village Ram Nagar in Alwar (Rajasthan). Vicky had good relations with her brother Badal and also used to stay at her home. She fell in love with Vicky. Their family arranged their marriage in 2006 before Raksha Bandhan. After marriage she became pregnant but had a miscarriage in June 2007. She along with Vicky visited her parental house at Alwar. Sita, mother of Vicky also visited to see her at Alwar during that period. She stayed with them for twenty days from 10th June to 31st June. A telephonic message was received from Sham Lal her maternal uncle that a case has been registered against Sita Devi at Gurgaon. On receipt of this message, Sita Devi went back to Gurgaon. Later it was learnt that Sita Devi was arrested by the police in this case. She stated that the police had falsely implicated Sita Devi her mother-in-law.

29. DW2- Smt. Godawari, w/o Mangal r/o Ram Nagar, Katchi Bast, Alwar (Rajasthan) stated that Vicky generally visited Alwar in connection with sale of household items, i.e, TV Cover, Fridge Cover etc. Relations between her son Suresh and Vicky became cordial during that period. Vicky also stayed with them some times for a week or fifteen days. She and her daughter liked Vicky. Hence, she got her daughter Prem Wati married with Vicky about three years ago. Vicky started residing with them. Her daughter had a miscarriage in June 2007. Because of this Sita mother of Vicky visited to them and stayed with them for two months.

30. The present case is a case of eye-witness account. The deceased Kanwaljeet Singh is the husband of PW11 Radha and uncle of PW12 Geeta, the two eye witnesses to the incident. Accused Sita Devi is the sister of PW11 Radha.

31. PW11-Radha w/o Kanwaljeet Singh stated that on 20.06.2007 she had come to her mother Okha Devi in village Gurgaon. Okha Devi was residing with her son Shyam Lal. PW11 was accompanied by her grand son Veeru and her husband Kanwaljeet. They took dinner at about 6.00 p.m. and were talking with each other. At about 8.00 pm Vicky s/o Pujari, Pujari s/o Kali Ram, Attar Singh s/o Siri Ram and Sita came there. Pujari caught hold of her husband by the shoulder, Attar Singh caught hold of his leg. Sita gave an iron pipe blow on the head and leg of her husband. Vicky gave knife blows on his chest and abdomen. She raised alarm but Sita inflicted pipe blow on her. On hearing her cries the house owner came to the spot. The accused fled away. Her husband Kanwaljeet died at the spot. The motive for the accused committing murder of her husband was old enmity as they had demanded and said they wanted to get her daughter

Soni married with Vicky accused. But the complainant and her family had not agreed to their demand. PW12 Geeta daughter of the Shyam Lal brother of Radha (PW11) who also witnessed the occurrence has corroborated PW11 on all material particulars.

32. Immediately after the incident PW2-Lakhi Ram the owner of the plot in which the rooms had been constructed in one of which Shyam Lal brother of PW 11 was a tenant was informed. He went to the spot and noticed that a person was lying dead in front of the room. He advised them to give information to the police of sector 5. The police on being informed immediately reached the spot. PW2 narrated the whole story to the police. Statements of PW11 Radha, PW12 Geeta were recorded. FIR Ex PG was registered promptly.

33. The medical evidence has corroborated the ocular evidence. As per PW1-Dr. M. Parkash, SMO, GH Gurgaon who conducted the post mortem examination on the dead body of Kanwaljeet Singh there were as many as 14 injuries on the deceased. The time elapsed between the injuries and death was within a few minutes. The clothes of the deceased were torn and having cuts at places and were blood soaked.

34. The accused Sita Devi was arrested on 10.07.2007. On basis of her disclosure statement the weapon of offence used by her (iron rod) was recovered. The motive for the murder was that Sita Devi and her husband Pujari wanted the deceased to marry his daughter Soni with their son to which the deceased and the complainant were not agreeable. When the daughter of the deceased was married to some other person the accused became more inimical and even threatened the complainant and the deceased with dire consequences.

35. The plea of alibi raised by the accused by producing DW1 Smt. Premwati and DW2 Smt. Godawari, who claimed to be the wife and mother-in-law respectively of accused Vicky, that accused Sita Devi and Vicky were at Alwar, the parental house of Premwati on the date when Kanwaljeet was murdered as she had suffered a miscarriage is not supported by any evidence other than their oral assertion and has rightly been disbelieved by the Trial Court. If Premwati had indeed had a miscarriage they could have produced some medical evidence in support thereof. There is no evidence even of the marriage of Vicky with Premwati and of her pregnancy.

36. Accordingly, in our view the prosecution has proved the case against the appellant accused beyond reasonable doubt. The appeal is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

October 18, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No