

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

CRA-D-No.814-DB OF 2009
DATE OF DECISION : 15th JANUARY, 2019

Joginder Singh alias Pappu

.... Appellant

Versus

State of Haryana

.... Respondent

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

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Present : Ms. Anju Arora, Advocate for the appellants.

Mr. Vivek Saini, Deputy Advocate General, Haryana.

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A. B. CHAUDHARI, J.

1. Being aggrieved by the judgment and order dated 14.01.2009 passed by Sessions Judge, Fatehabad in Sessions Case No.23 of 2007, by which the appellant Joginder Singh alias Pappu was convicted for offences punishable under Sections 302 and 201 IPC and sentenced to undergo rigorous imprisonment for life and fine, the present appeal was filed by him.

FACTS:

2. In brief the case of the prosecution is that PW-9 Roshni the wife of the accused-appellant testified that she had two sons and the deceased Chhinderpal was eldest son aged about 15 years old at that time. On 20.09.2007 deceased had gone towards the fields around 2/2.30pm for cutting wood. He was however followed by her husband Joginer Singh and Joginder Singh came back home at about 3.30pm alone. She made a search for her son but when he did not come back she

lodged a missing report in the police station. On the next morning when she enquired with her husband repeatedly he had told her that he had killed Chhinderpal and had thrown his body in the canal. On the information she along with her jeth Rajender and other reached the canal and got the dead body out from the canal. The earth as well as the grass leaves near the canal, were blood stained. There was a deep injury near the neck above the right clavicle with 4th cervical vertebra fractured and cut with lacerated spinal cord. She testified that her husband had been suspecting her fidelity and used to quarrel with her stating/commenting that Chhinderpal was not his son and therefore was sometimes giving beatings to her. The police swung into action and thereafter arrested the accused-appellant. After registration of FIR the investigation was undertaken and the challan was ultimately filed in the trial court. Finally the trial court convicted the appellant. Hence this appeal.

ARGUMENTS:

3. The learned counsel for the appellant at the outset argued that the evidence of PW-9 Roshni itself indicated that at the time of commission of the offence of murder the appellant was of unsound mind and therefore the trial could not have taken place. However, according to her, despite knowing the evidence of PW-9 Roshni, the trial court did not take steps in accordance with law in respect of the fact that the accused was of unsound mind. She then contended that she had filed application in this Court in this appeal for doing so. By separate order this court has rejected her said application for the reasons stated in the said order. We, therefore, need not to go into that aspect of the matter.

4. Learned counsel for the appellant then submitted that the evidence of PW-10 Ramesh Kumar and her jeth Rajender Singh, examined in the trial court, will have to be rejected as they were interested witness against the appellant and they had grudge against the appellant. They being interested witnesses their evidence ought to have been rejected by the trial court. She, therefore, prayed for acquittal of the appellant.

5. *Per contra*, learned counsel for the State opposed the appeal and submitted that there is evidence in the form of extra judicial confession of the appellant to PW-9 Roshni and PW-10 Ramesh Kumar. The deceased was son of Roshni and for repelling her evidence regarding motive, the appellant did not bring any evidence on record. The motive was thus fully established. Even otherwise, PW-9 Roshni the wife of the appellant stated that Chhinderpal was born from her three years after the marriage and therefore there was no reason for the appellant to suspect her character by saying that Chhinderpal did not take birth from his loins. However, the appellant remained a suspicious person and continued to harass her. The counsel for the State therefore, submitted that there is ample evidence on record to dismiss the appeal.

CONSIDERATION:

6. With the assistance of learned counsel for the rival parties, we find that there were two injuries on the person of the deceased Chhinderpal which we quote hereunder from para 6 of the judgment of the trial court:

“(i) An incised wound 2 cms. x 1.5 cms. right
shoulder joint anteriorly and medially.

Corresponding cut was present on the shirt. On dissection underlying muscle and bone were cut and infiltration of blood was seen under subcutaneous tissues.

(ii) An incised wound 6.5 cms. x 3 cms. right side of the neck 3 cms. above the right clavicle anterior lateral aspect with tapering edges. On dissection, infiltration of blood was seen under the subcutaneous tissues and underlying muscles and blood vessels and 4th cervical vertebra was fractured and cut with laceration of spinal cord.”

7. Perusal of the aforesaid injuries shows that injury No.2 appears to be serious injury causing death of Chhinderpal.

8. With the assistance of learned counsel for the rival parties we have gone through evidence of PW-9 Roshni and PW-10 Ramesh Kumar. PW-9 Roshni is the wife of the appellant while Ramesh Kumar is his cousin. We have carefully seen the cross-examination of both these witnesses but we do not find any dent in their evidence. On the contrary, we are convinced that PW-9 Roshni, being wife of the appellant and PW-10 Ramesh Kumar being close relative of the appellant, have spoken up the truth that the appellant had made extra judicial confession to them about the murder of Chhinderpal. It is not necessary that every time the court should ignore or decline to accept the extra judicial confession. That would depend on facts and circumstances of each case. But here is a case where PW-10 Ramesh Kumar his close relative and appellant's wife who had other children also from the appellant, have deposed

truthfully against the appellant. There is corroboration to their evidence that the appellant indicated as to where he had committed the murder and thrown the body. Accordingly on the spot the villagers and sarpanch had gone to the canal and the body was recovered with the injuries. Thus it was the appellant Joginder Singh who discovered the dead body and it was he alone who had the knowledge about it, pursuant to which the dead body and the blood stained earth etc. were found. The appellant's shirt as well as the weapon were found in the bushes. We thus find that the testimony of PW-9 Roshni and PW-10 Ramesh Kumar is corroborated by the above strong circumstantial evidence as the blood found is human blood on the weapon, for which the appellant does not have any explanation. We are, therefore, convinced that the appellant assaulted the deceased and threw his body in the canal.

9. The next question is what offence has been proved by the prosecution. The appellant was held guilty of offence of murder under Section 302 IPC but then we find that there was only one serious injury i.e. injury No.2 which proved to be fatal. The appellant did not cause any other serious injury. The custody record of the appellant shows that he did not avail of parole even once and has spent entire period of custody without coming out of the jail. It, therefore, clearly appears that appellant-Joginder Singh was not supported by his family members, including mother and father. Be that as it may, what we find from the record is that he did not have the requisite intention or prior plan or intention to eliminate his son Chhinerpal. We, therefore find that the appellant cannot be held guilty of the offence of murder as such. Hence

the order of conviction and sentence is required to be modified. The net result of the above discussion is that the following order is inevitable.

ORDER

- (i) Criminal Appeal i.e. CRA-D-No.814-DB OF 2009, is partly allowed.
- (ii) The impugned judgment and order dated 14.01.2009 passed by Sessions Judge, Fatehabad in Sessions Case No.23 of 2007 convicting the appellant-Joginder Singh @ Pappu for the offence punishable under Section 302 IPC, is set aside and same is modified holding the appellant guilty of offence under Section 304 Part-I and 201 IPC. He is sentenced to undergo rigorous imprisonment for both the offences which he has already undergone. He be released forthwith if not required in any other case.
- (iii) The order of sentence of fine is set aside.

(A. B. CHAUDHARI)
JUDGE

15th JANUARY, 2019
‘raj’

(HARNARESH SINGH GILL)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No.</i>