

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-1053-DB-2010
Reserved on : 29.01.2019
Date of decision : 01.02.2019

Kapoor Singh

... Appellant

Versus

State of Punjab

... Respondent

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

Present: Mr. Laghuinder Singh Sekhon, Advocate
for the appellant.

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

RAJIV SHARMA, J.

This appeal is instituted against the judgment and order dated 07.10.2010 rendered by the learned Sessions Judge, Mansa, in Sessions Case No.13 dated 06.08.2009 whereby the appellant, who was charged with and tried for offence punishable under Section 302 IPC, has been convicted thereunder and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.2000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months.

2. The case of the prosecution in a nutshell is that on 04.03.2009 a ruqa was received from the Civil Hospital, Mansa, regarding a dead body of Darshan Kaur wife of Kapoor Singh, resident of Thuthianwali Road, Mansa. ASI Gursewak Singh reached the Civil Hospital, Mansa. They told ASI Gursewak Singh that son of deceased Darshan Kaur was studying at

Chandigarh. They were waiting for him. The statement would be recorded after his arrival. On 05.03.2009 SI Balbir Chand along with ASI Gursewak Singh and other police officials reached the Civil Hospital, Mansa. Harmanpreet Kaur along with her maternal uncle Balkaran Singh met them near the gate of the Civil Hospital. She got recorded her statement to the effect that she was student of 10+2 class. Her father was a Government Teacher posted at village Burj Hari Ke. Her mother was posted at Government Dispensary at Thuthianwali. The relations between her parents were not cordial. Her father used to doubt the fidelity of her mother. Her father talked with her mother in nasty manner on 03.03.2009. She informed her maternal uncle. Her maternal uncle Balkaran Singh came to their house on 04.03.2009 at 4.00 P.M. Her uncle tried to pacify her parents. However, her father raised *lalkara* and proclaimed that she would be taught a lesson for having extra marital affairs. He lifted wooden 'Ghotna'. He gave two blows on the backside of head of her mother. Her mother collapsed. Her father ran away. Her mother was moved to the hospital. Her mother died on the way. Thereafter inquest report was prepared. The body was sent for post-mortem examination. The case property was deposited in the police malkhana. The challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statement of accused was recorded under Section 313 Cr.P.C. He denied the case of prosecution. The appellant was convicted and sentenced, as noticed hereinabove. Hence the appeal.

4. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

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

7. PW-2 Dr. Avtar Singh conducted the post-mortem examination.

He had noted the following injuries on the body of the deceased:-

1. *A lacerated wound 6.5 cm x 1.5 cm x bone deep about 9 cm above the left ear.*
2. *A lacerated wound 2.5 cm x 1 cm x bone deep about 2 cm below the injury No.1.*
3. *A reddish bruise measuring 7.5 cm x 4.5 cm was present on the right side of scalp in parieto temporal region 3.5 cm above the right ear, obliquely placed.*
4. *Reddish brown abrasion 1.2 cm x 1 cm over the centre of left knee."*

According to him, the cause of death was intra cranial haemorrhage as a result of cumulative effect of all the injuries of skull (injuries No.1 to 3) which were sufficient to cause death in the ordinary circumstances. The probable time that elapsed between injuries and death was within few hours and between death and post-mortem was within 12 to 24 hours. He proved the post-mortem report Ex.PB.

8. PW-3 Harmanpreet Kaur is the eye witness. She deposed that she was student of 10+2 class. Her father was employed as teacher. Her mother was employed as A.N.M. in Government Dispensary, Thuthian Wali. Her father used to doubt the fidelity of her mother. He used to give beating to her mother. On 03.03.2009 the accused abused her mother. She telephonically informed her maternal uncle. Maternal uncle Balkaran Singh reached there at about 4.00 P.M. Balkaran Singh tried to pacify both the

parties. Then her father suddenly hit her mother with *ghotna*. Her mother collapsed. She was moved to Sidhu Hospital, Mansa. In cross-examination, she told that her mother and father were having dispute in the Courts. Her father was not paying any expenses of her education and of her elder brother. Mother was bearing all the expenses. When her father hit her mother, she tried to stop him. Her maternal uncle also tried to stop him. He ran away after inflicting the injuries.

9. PW-4 Balkaran Singh deposed that the deceased was his real sister. He was informed by Harmanpreet Kaur telephonically about the quarrel between accused and Darshan Kuar. On 04.03.2009 at 4.00 P.M. he visited their house. He tried to settle the matter. However, the accused started abusing his sister. Accused told them that he would teach a lesson to his sister for maintaining illicit affairs. The accused lifted a *ghotna* from nearby. He gave two blows on the back side of her head. Her sister became unconscious. She was moved to the hospital. Police came on the spot. Police prepared rough site plan. In his cross-examination, he deposed that his sister was brought in the hospital by him and by his niece. Kapoor Singh had never told him about the infidelity of his sister. However his sister had told him that the accused was suspecting her character. His sister had filed maintenance petition against accused. He did not know about any other case. His sister filed a complaint in the police station long time back. He did not remember the date and month. They convened the Panchayat number of times. They tried to persuade his sister as well as the accused to live peacefully. A dispute regarding house was also going on. According to him, the accused lifted the *ghotna* from the kitchen. He could not save his sister from the accused because he suddenly hit his sister twice or thrice. His

sister was washing her head. She was about 5-10 karams away from him. He and accused were sitting in a hall. *Ghotna* was got recovered at the instance of Kapoor Singh.

10. PW-8 Sub Inspector Balbir Chand deposed that the statement of Harmanpreet Kaur was recorded vide Ex.PF. He made endorsement Ex.PF/1, on the basis of which formal FIR Ex.PF/2 was recorded. He inspected the spot. From the courtyard of the house of Kapoor Singh, stains of blood were collected. Rough site plan was prepared. He arrested the accused. The accused was interrogated. He confessed that he had kept one wooden *ghotna* concealed in 'Sarkanda' (elephant grass). He could get it recovered. *Ghotna* Ex.P7 was recovered.

11. According to PW-3 Harmanpreet Kaur, the relations between her mother and her father were strained. Her father used to abuse her mother. On 03.03.2009 her father said nasty words to her mother. She informed her maternal uncle. Her maternal uncle Balkaran Singh reached the spot. In their presence, the accused gave two blows of *ghotna* on her head. She collapsed. She was taken to Sidhu Hospital. The motive attributed to the appellant is that he was doubting the fidelity of his wife. However, PW-4 Balkaran Singh admitted in his cross-examination that the accused had never complained to him earlier about the fidelity of his sister. Though he has clarified that his sister had told him that the accused was suspecting her character. It has also come on record that the litigation was going on between the parties. The cause of death was due to intra cranial haemorrhage as a result of cumulative effect of injuries No.1 to 3.

12. The incident had happened all of a sudden. According to PW-3 Harmanpreet Kaur, her father had hit her mother in fit of anger with *ghotna*.

He inflicted two blows on her head. It can be gathered from the circumstances that since the deceased's brother had also come, the atmosphere was surcharged. The appellant in a fit of anger hit his wife on head. He had no intention to kill her since the weapon used was only *ghotna*. PW-3 Harmanpreet Kaur and PW-4 Balkaran Singh had not tried to intervene effectively in the matter. Though the appellant had no intention to kill his wife but he had the knowledge that if the injuries were inflicted with *ghotna* on her head, it might result in her death.

13. Accordingly the appeal is partly allowed and the conviction of the appellant is converted from Section 302 IPC to Section 304 Part II IPC. The appellant is in custody. Appellant/convict be produced in Court on 14.02.2019 to hear him on quantum of sentence under Section 304 Part II IPC.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

February 01, 2019.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No