

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-660-DB-2005 (O&M)
Date of decision : 16.12.2019

SEMA SINGH

...Appellant

Versus

STATE OF PUNJAB

...Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI

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

Mr. A.A. Pathak, Addl.A.G., Punjab.

JITENDRA CHAUHAN, J.

By way of the instant appeal, the appellant has laid challenge to the impugned judgment of conviction and order of sentence dated 19/20.05.2005, passed by learned Additional Sessions Judge, Moga (for short, 'the trial Court'), whereby, the accused-appellant has been convicted and sentenced as under:-

Conviction	Sentence	In default
Section 302 IPC	Life imprisonment along with fine of ₹5,000/-	RI for one year
Section 309 IPC	RI for nine months along with fine of ₹500/-	RI for one month

However, both the substantive sentences were ordered to run concurrently.

Brief facts of the present case, as noticed in paragraph No.2 of the impugned judgment, are as under:-

“2. *Prosecution story in brief as extracted from report under Section 173 Cr.P.C. is that on 17.5.2003 ASI Swaran Singh of Police Post, Kishanpur alongwith his co-officials on private jeep was going towards Jhiri (grave) Baba Sharif Indergarh when Sema Singh son of Sunder Singh resident of Darapur having blood over his body met them. He got recorded his statement before ASI Swaran Singh. As per his statement he was resident of Darapur and was plying rickshaw. About two months before he had enticed away Amarjit Kaur wife of Thana Singh resident of Darapur with whom he had illicit relations and brought her to Moga. She has got three or four children. He and Amarjit Kaur started residing at Sadhan Wali Basti, Moga by taking a room on rent. On that day at about 1.30 p.m. he and Amarjit Kaur came by bus from Moga to Jhiri Sharif Indergarh to pay obeisance. They paid obeisance before all the graves there. It was about 5 p.m. Hardial Singh Ex. Sarpanch son of Puran Singh resident of Indergarh had also come to pay obeisance. He was already knowing him. He met them. He was conversing with him. In the meantime Thana Singh, Kulwinder Singh alias Gujjar, Darshan Singh sons of Nazar Singh residents of Darapur came from side of road. They (Sema Singh and Amarjit Kaur) had seen them. On seeing them they tried to avoid their sight by walking towards Jhiri. They*

all three came running after them. Thana Singh gave lalkara by shouting that on that day he should be taught the taste for enticing away his wife. Thana Singh, Darshan Singh and Kulwinder Singh alias Gujjar all three were armed with knives. Firstly, Thana Singh gave blows with his knife straight on breast of Amarjit Kaur. Darshan Singh had also given blows with his knife on Amarjit Kaur. Amarjit Kaur fell down and dies. Then they all three had given 4/5 blows with their respective knives on his chest and belly. When he and Hardial Singh raised hue and cry they all three with their respective knives fled away from scene of occurrence. Motive behind occurrence was that he had enticed away Amarjit Kaur wife of Thana Singh who was sister-in-law (Bharjaee) of Kulwinder Singh and Darshan Singh about two months before as he was having illicit relations with her. Due to that grouse they all three brothers in furtherance of their common intention had murdered Amarjit Kaur and caused injuries to him. He desired action to be taken. On basis of such statement of Sema Singh FIR was lodged for offence punishable under Sections 302/307/34 IPC. Injured Sema Singh was sent for getting his medico-legal examination done under supervision of HC Resham Singh 807 alongwith Jagtar Singh son of Nan Singh, Jangir Singh son of Pritam Singh residents of Indergarh from Civil Hospital, Moga. In the meantime SI Kirpal Singh, SHO police station, Dharamkot had reached at the spot and took over investigation in his hands from ASI Swaran Singh. He had prepared inquest report regarding Amarjit Kaur in the presence

of Shiv Singh son of Nazar Singh resident of Lal Singh Road, Moga. Gurpal Singh son of Harnek Singh resident of Mohalla Mukand Puri, Jagraon. Dead body of Amarjit Kaur was entrusted to HC Sukhwinder Singh alongwith C. Devinder Singh for getting its postmortem examination done from Civil Hospital, Moga. Postmortem examination of dead body of Amarjit Kaur was got conducted from Civil Hospital, Moga. Hardial Singh Ex.Sarpanch son of Puran Singh resident of Indergarh arrived on the spot who had got recorded his statement under Section 161 Cr.P.C. On 18.5.2003 spot was inspected in the presence of Hardial Singh Ex.Sarpanch and ASI Swaran Singh. At the time of spot inspection blood stained soil was lifted from place of occurrence. A blood stained knife was also lifted from nearby. Their parcels were prepared. Such parcels were sealed by SI Kirpal Singh with his seal of description KS. Outline sketch of knife was prepared. Sample seal was prepared. Parcels were taken into possession vide different recovery memos. Outline sketch of knife and memos were witnessed by witnesses. Rough site plan of place of occurrence was prepared. Statements of witnesses under Section 161 Cr.P.C. were recorded. On reaching at village Darapur statements of witnesses under Section 161 Cr.P.C. were recorded. During investigation Thana Singh, Kulwinder Singh @ Gujjar and Darshan Singh were found innocent. No offence under Section 307/34 IPC was found. Rather offence under Section 309 IPC was found and such offence was accordingly added. HC Sukhwinder Singh produced clothes wore on the person of dead body of

Amarjit Kaur before SI near gate of police station. Parcel of such clothes was prepared and such parcel was sealed by SI with his seal of description KS. Such parcel was taken into possession vide recovery memo which was witnessed by witnesses. Copy of postmortem report and other documents were also produced before SI. As per opinion of doctor, Amarjit Kaur died due to injuries she had sustained. From open and secret investigation it was found that Sema Singh and Amarjit Kaur were having illicit relations from 9/10 years. 2 or 2 ½ months before the occurrence Sema Singh had enticed away her. Amarjit Kaur was desiring to go back to her house. Sema Singh was also disowned by his family. Sema Singh was annoyed from Amarjit Kaur because she was desiring to go back. Firstly he had murdered Amarjit Kaur by giving knife blows then he attempted to commit suicide though he survived. On 8.6.2003 Malkiat Singh Sarpanch and Jugraj Singh Ex.Sarpanch residents of Darapur had produced Sema Singh before SI Kirpal Singh. Sema Singh had also produced his blood stained clothes before him. Their separate parcel was prepared which was sealed by SI with his seal of description KS. Sample seal was prepared. Such parcel was taken into possession vide recovery memo. On finding evidence for offences under Sections 302 and 309 IPC against Sema Singh he was taken into custody. A personal search memo was prepared. Information memo was also prepared. Statements of prosecution witnesses under Section 161 Cr.P.C. were recorded. Various items were sent to Forensic Science Laboratory, Punjab, Chandigarh for

getting analysis reports. Their analysis reports were obtained....”

Upon completion of investigation charges under Sections 302 and 309 IPC were framed, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined Dr. R.S. Sandhu, Medical Officer, Civil Hospital, Moga as PW-1; Dr. VJS Dhillon, Medical Officer, Civil Hospital, Moga as PW-2; HC Sukhwinder Singh as PW-3; Constable Amarjit Singh as PW-4; HC Kulwant Singh as PW-5; Harbans Kaur as PW-6; Karnail Singh as PW-7; Jasvir Singh as PW-8; ASI Swaran Singh as PW-9; Hardial Singh as PW-10; Surjit Singh as PW-11; Jugraj Singh as PW-12; HC Kulwinder Singh as PW-13; Constable Jaswinder Singh as PW-14; Chintu Chawla, Clerk, CR Office of GGS Medical College and Hospital, Faridkot as PW-15; Ms. Satwinder Kaur, Patwari, Halqa Indergarh as PW-16; Thana Singh as PW-17; SI Kirpal Singh, the Investigating Officer as PW-18; Constable Devinder Singh as PW-18A; HC Sulinder Singh as PW-19; MHC Jagsir Singh as PW-20; Mst. Annu Sharma, Ahlmad in the Court of Judicial Magistrate, 1st Class, Moga as PW-21; and Mst. Kuldeep Kaur as PW-22. PWs Angrej Kaur, Malkiat Singh, ASI Darshan Singh, Ajaib Singh, Sadhu Singh, Shankar Singh, Gurbachan Singh, Jagtar Singh, Jagir Singh, Dr. S.K. Singla, Bhola Singh, HC Resham Singh, Shiv Singh, Gurlal Singh, Lyakat Ali, Balwinder Singh were given up being unnecessary, whereas, PW Karamjit Kaur was given up being won

over by accused.

When examined under Section 313 Cr.P.C., the accused denied all the incriminating circumstances appearing against him and pleaded false implication. It was stated that Thana Singh, husband of the deceased, Kulwinder Singh and Darshan Singh, sons of Nazar Singh, had given knife blows to Amarjit Kaur and him. Amarjit Kaur succumbed to the injuries received by her. He did not cause any knife injury to Amarjit Kaur and did not commit her murder. He alleged that the murder of Amarjit Kaur was committed by Thana Singh, Kulwinder Singh and Darshan Singh. He also denied of having attempted to commit suicide. In defence, the accused examined Kuldeep Singh as DW-1 and Pritam Singh as DW-2.

After hearing learned counsel for the parties, the accused-appellant Sema Singh was convicted and sentenced by learned trial Court vide judgment dated 19.05.2005, as detailed at the outset of this judgment.

Heard learned counsel for the parties and carefully perused the record with their able assistance.

In the instant case, the criminal law was set in motion on the statement of the appellant. He was smeared in blood when he met ASI Swaran Singh, who was going on a private jeep. He got recorded his statement, Ex.PM, attributing charges against Thana Singh, Kulwinder Singh @ Gujjar and Darshan Singh, sons of Nazar Singh. On the basis of said statement, the instant FIR was got registered. However, there is no explanation as to what prompted the complainant, after allegedly killing

Amarjit Kaur, deceased and inflicting six injuries on his person in a bid to commit suicide, to search for the police and report the matter. Had the appellant in such a good state of mind so as to concoct a story falsely implicating the original accused after committing the murder of Amarjit Kaur, there was no necessity for him to commit suicide after self-inflicting as many as six injuries. To the contrary, had the appellant actually committed the crime as per the prosecution story, there was no reason for him to go to the police and report the matter. Thus, the prosecution story becomes highly improbable in this regard.

As regards the medical evidence, it has come on record that the appellant suffered as many as following six injuries:-

1. Incised punctured wound 2 X ½ cm just above umbilicus. Fresh bleeding was present.
2. Incised punctured wound 2 X ½ cm on left side of abdomen and about 5 cms from umbilicus. Portion of intestines were protruded out. Fresh bleeding was present. Injury was kept under observation for treatment.
3. Incised punctured wound 2 X ½ cm on left side of abdomen about 5 cms lateral and 2 cm above from injury no.2. Intestines were protruded out.
4. Incised punctured wound 3 X ½ cms on front of chest at midline near sternum. Fresh bleeding was present. Injury was kept under observation.
5. Two incised punctured wound on left side of front of chest at lower half. Fresh bleeding was present. Injury was kept under observation.

6. Incised punctured wound 2 ½ X ½ cm on right side of chest at lower 1/3rd. Fresh bleeding was present.

PW-2, Dr. VJS Dhillon, who prepared the MLR of the appellant has declared injury Nos.2 and 3 as dangerous to life while rest of injuries were kept under observation. All the injuries were caused with a sharp-edged weapon. He has also deposed that the possibility of committing suicide attempt in a fit of anger or under effect of alcohol or due to guilty conscience or fear of law could not be ruled out since all the injuries were found on vital parts of the body of the accused. However, in his cross-examination, he has stated that since the injuries were on vital parts, therefore, they could not be caused by a friendly hand. To the contrary, the condition of the appellant was so serious that he was given transfusion and administered life saving drugs. He was also referred to some super speciality hospital for treatment. Considering the above, particularly the number and the seat of injuries suffered by the appellant, the story propounded by the prosecution with regard to attempt to commit suicide by the appellant is also rendered doubtful.

It is to be further noted that the version of the appellant has been throughout consistent with regard to the description of the culprits. He has specifically named Thana Singh, husband of the deceased, as well as his two brothers, i.e. Kulwinder Singh @ Gujjar and Darshan Singh, as perpetrators of the crime. For the sake of argument, even if the motive behind the

occurrence as projected by the prosecution is taken to be true, the appellant could have a grudge against the husband of the deceased, Thana Singh and there was no reason with him to falsely implicate two brothers of said Thana Singh. The first version on record i.e. statement Ex.PM, recorded by the appellant specifically finds mentioned the names of Thana Singh and his brothers Kulwinder Singh and Darshan Singh. This is a clear pointer to the truthfulness of the defence version.

As regards the alleged extrajudicial confession of the appellant before Jagraj Singh, Ex-Sarpanch, recorded on 08.06.2003, the same is also not proved on record as said Jagraj Singh, while appearing as PW-12, did not support the prosecution version. He deposed that Sema Singh, appellant, never came to confess the crime regarding murder of Amarjit Kaur. Further, his cross-examination also could not fetch anything fruitful. Otherwise also, the extrajudicial confession is a weak type of evidence and requires appreciation with great deal of care and caution. Reliance in this regard can be placed on the judgment of Hon'ble the Supreme Court in ***Balbir Singh Vs. State of Punjab, 1999(4) R.C.R. (Criminal) 51***, which has laid down as under:-

“3. *The only evidence against the appellant was a extrajudicial confession stated to have been made by the appellant before the Sarpanch of the village, the dying declaration of Sukhwinder Kaur recorded by the Police on 10.12.1990 and the dying declaration recorded by the Judicial Magistrate on 11.12.1990. Both the Trial Court and the High Court rectified upon the two dying*

declarations and also the extrajudicial confession for the purpose of convicting the accused. It was submitted by the learned counsel for the appellant that the Courts below have committed a grave error in relying upon the extrajudicial confession as it was highly improbable that in absence of any relationship with the Sarpanch or for any other good reason, the appellant would have gone to the Sarpanch and confessed that he had purchase the poisonous tablets which led to the death of Sukhwinder Kaur. If what the Sarpanch has deposed was really true, the investigating officer would have then tried to find out from whose shop the tablets were purchased. No such attempt was made. The evidence of Sarpanch is not such as could have been accepted without any independent corroboration. Even the trial Court and the High Court have not considered the extrajudicial confession as sufficient to prove the guilt of the appellant. It has been regarded as a piece of evidence furnishing independent corroboration to the dying declarations. An extrajudicial confession even if believed is considered a very weak piece of evidence and ordinarily is not accepted without independent corroboration. In this case, it was of a doubtful character and therefore it was wrong to rely upon it and hold that it afforded good corroboration to the dying declarations.”

Similarly, Kuldeep Kaur, sister of the deceased, who was staying in the vicinity of Amarjit Kaur and Sema Singh, also did not support the prosecution case. She did not identify the accused in the Court. She also

showed her innocence about the relationship of Amarjit Kaur with Thana Singh.

It is the settled principle of criminal jurisprudence that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. Only after the initial burden is discharged by the prosecution, the onus shifts on the accused to rebut the presumption. Such burden can only be discharged by leading cogent evidence by the prosecution. In the case of ***Md.Faizan Ahmad @ Kalu v. State of Bihar, 2013 (2) SCC 131***, Hon'ble the Supreme Court has observed as under:

“11. Criminal Courts recognize only legally admissible evidence and not farfetched conjectures and surmises. The High Court's observation that there was a preconceived plan to abduct the children would not be applicable to the appellant because there is nothing on record to establish that the appellant met the co-accused and planned a strategy to abduct the children and demand ransom. His case stands on a different footing from that of other accused. The case of the other accused will have to be dealt with on its own merit. The High Court was carried away by the heinous nature of the crime and, in that, it lost sight of the basic principle underlying criminal jurisprudence that suspicion, however grave, cannot take the place of proof. If a Criminal Court allows its mind to be swayed by the gravity of the offence and proceeds to hand out punishment on that basis, in the absence of any credible evidence, it would be doing great violence to the basic

tenets of criminal jurisprudence. We hope and trust that this is just an aberration."

Thus, this Court is of the considered opinion that the version put forth by the defence is more probable in this case. In ***Bhagwan Singh & Others v. State of M.P. (2002) 4 SCC 85***, Hon'ble the Supreme Court reiterated another fundamental principle of criminal jurisprudence that if two views are possible upon appreciation of the evidence adduced, i.e. one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. It was observed as under:-

"7. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. Such is not a jurisdiction limitation on the appellate court but a Judge made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided."

In view of the above discussion, we are convinced that the prosecution has failed to bring out the true genesis of the occurrence and has miserably failed prove its case against the accused-appellant beyond the shadow of reasonable doubt.

Consequently, the instant appeal is allowed; the impugned judgment of conviction and order of sentence dated 19/20.05.2005, passed by learned trial Court are set aside; and the appellant is acquitted of the charges framed against him. The appellant is stated to be on bail. His bail bonds shall stand discharged.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

16.12.2019
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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No