

219 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-143-DB-2013 (O&M)
Date of decision : 16.12.2019

Kulwant Singh
..... Appellant

versus

State of Punjab
..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE VIVEK PURI

Present : Ms. Pooja Chopra, Advocate
for the appellant.

Mr. H.S.Sullar, DAG, Punjab.

AJAY TEWARI, J. (Oral)

1. This appeal has been filed against the judgment of conviction and order of sentence dated 21.11.2012 passed by the Additional Sessions Judge, Moga whereby the appellant had been convicted under Section 302 IPC in FIR No.12 dated 23.1.2009 registered at Police Station Mehna, District Moga. The sentence awarded to the appellant is as under:-

Under Section	Sentence awarded
302 IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine, he shall further undergo Rigorous Imprisonment for a period of three months.

2. As per the complainant (father of the deceased), about three-

four months prior to the occurrence the appellant (son-in-law of the complainant) had given beatings to his wife-deceased (Paramjit Kaur) and turned out of the house because he suspected her character. The deceased had come to her parents house; thereafter a Panchayat was convened and ultimately, the marriage was rehabilitated. On 23.1.2009, the complainant received news that his daughter had been murdered. He along with his wife, son and some other persons went over there and found this news to be indeed so. The appellant was missing since then. On the complaint of the father of the deceased, the above said FIR was registered. The body of the deceased had the following injuries :-

- 1. Incised wound 13x3 cm in size obliquely placed on lower part of forehead and upper part of face, bone deep involving right eye and directed upward from right side. Clotted blood was present.*
- 2. Incised wound 6.5x3.5 cm on left side of face extending into the buccal cavity.*
- 3. Incised wound 5.3 cm on left side of neck 3 cm from mid line with underlying vessels and muscles cut in direction of wound.*
- 4. Incised wound 4x3 cm on left shoulder on its upper part.*
- 5. Incised wound 4x3 cm on medial surface of left leg. On dissection: Skull bone underlying the injury No.1 was fractured and brain matter was lacerated.*

3. Ultimately, the appellant was arrested after 10 ½ months and on the basis of his disclosure, the police got recovered 'kulhari' with which he had allegedly murdered his wife.

4. The appellant was sent up for trial and in the course of the trial, as many as 11 prosecution witnesses were examined. The accused-appellant was examined under Section 313 Cr.P.C. in the course of which

he took the plea of being falsely implicated in the offence alleged and made a statement that he is innocent. No defence witness was examined. Thereafter, at the conclusion of the trial the learned trial Court on consideration of the evidence and material on record, passed the impugned judgment and order convicting and sentencing the appellant as mentioned above.

5. We have gone through the record and considered the judgment and order under challenge and the evidence of the prosecution witnesses apart from hearing the learned counsel for the appellant and learned Deputy Advocate General, Punjab. The important witnesses being PW-2 and PW-3 (parents of the deceased), their testimony would have to be examined closely. Both of them have testified on similar lines, viz. that the appellant was married to the deceased; that he had unjustified doubt about her character; that three months prior thereto he had beaten her wife and she came to their house; that thereafter a Panchayat was convened and ultimately, the marriage was rehabilitated.

6. The Trial Court held the appellant guilty on the basis of the recovery of the weapon and after invoking Section 106 of the Evidence Act, 1872 in view of his unexplained long abscondance.

7. Learned counsel for the appellant has argued that no objective evidence was led that the 'kulhari' which was recovered was actually used for the crime because no traces of blood etc. were found thereon. As per her, the recovery of this 'kulhari' was foisted upon the appellant only to create the case. She has further argued that Section 106 of the Evidence Act cannot be invoked in a vacuum and before invoking the same, the primary requirements of Section 101 of the Evidence Act

have to be met and has argued on the basis of a catena of judgments including the judgment of the Supreme Court in the matter of ***Joydeb Patra and others vs. State of West Bengal 2014(12) SCC 444*** that the prosecution would first have to make out a prima facie case against the appellant and only then could invocation of Section 106 of the Evidence Act be justified. In ***Joydeb Patra*** case (supra) the Supreme Court held as follows : -

“7. Learned counsel for the State, Mr. Bijan Ghosh, vehemently submitted that since the death took place in the house of the appellants, burden was on the appellants to prove as to how the death of the deceased actually took place. He submitted that the death of the deceased obviously took place under very mysterious circumstances and when the medical facilities were very near to the place of occurrence, the appellants should have availed the medical facilities but have not done so and this conduct of the appellants has given scope to the prosecution to believe that they were guilty of the offence under [Section 302/34, I.P.C.](#)

8. We are afraid, we cannot accept this submission of Mr. Ghosh. This Court has repeatedly held that the burden to prove the guilt of the accused beyond reasonable doubt is on the prosecution and it is only when this burden is discharged that the accused could prove any fact within his special knowledge under [Section 106](#) of the Indian Evidence Act to establish that he was not guilty. In *Sucha Singh Vs. State of Punjab* (2001) 4 SCC 375, this Court held:

“We pointed out that [Section 106](#) of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where prosecution has succeeded in proving facts for which

a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference.”

Similarly, in ***Vikramjit Singh Vs. State of Punjab (2006) 12 SCC 306***, this Court reiterated:

“Section 106 of the Indian Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule, e.g., where burden of proof may be imposed upon the accused by reason of a statute.”

9. *As the prosecution has not been able to discharge its burden of establishing beyond reasonable doubt that the deceased died due to poisoning, in our view, the trial court and the High Court could not have held the appellants guilty just because the appellants have not been able to explain under what circumstances the deceased died.*

10. *We accordingly allow this appeal and set aside the impugned judgment of the High Court as well as the judgment of the Trial Court and direct that the bail bonds of the appellants will stand discharged.”*

8. In the present case, no evidence either of the children or of the landlord had come on the record to show that on the fateful night of 22/23.1.2009 the appellant was even at home. As regards his abscondance, it is her case that when the appellant came to know that his wife had been murdered and the case was being foisted upon him, he

absconded out of fear.

9. Learned Deputy Advocate General is not in a position to deny that neither the children nor the landlord nor anybody else testified to the fact that on the intervening night of 22/23.1.2009 the appellant and the deceased were present in the house. Once that is so, the only objective evidence which can possibly link the appellant with the crime is recovery of the 'kulhari' but it cannot be lost sight of that there is no evidence that that particular 'kulhari' was actually used for the crime because no traces of blood etc. were found thereon. In the case of anonymous weapons like 'kulhari/sword/knife' the mere recovery cannot lead to the conclusion that weapon has been used for an offence unless there is some objective evidence linking it to the same. In such circumstances, to base a conviction only on the factum of the abscondance of the accused and Section 106 of the Evidence Act, in our opinion, would be unjustified.

10. Consequently, the appeal is allowed and impugned judgment of conviction and order of sentence dated 21.11.2012 is set aside. Since, the appellant is in jail, he is ordered to be released forthwith, if not required in any other case.

11. Since the main case has been decided, the pending CRM, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(VIVEK PURI)
JUDGE

16.12.2019
anuradha

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No