

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

**Crl. Appeal No.D-618-DB of 2005
Date of Decision: December 12, 2019**

Major Singh

...Appellant

VERSUS

The State of Punjab

...Respondent

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

Present: Mr.Om Pal Sharma and Mr.Anish Verma, Advocates
for the appellant.

Mr.A.A.Pathak, Addl. Advocate General, Punjab
for the respondent-State.

ARCHANA PURI, J.

Challenge in the present appeal, is to the judgment dated 04.06.2003 passed by learned Sessions Judge, Ludhiana, vide which appellant Major Singh was held guilty and convicted for the commission of offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life and to pay fine of ₹10,000/- and in default thereof, to further undergo rigorous imprisonment for six months.

The background facts in nutshell are as follows:-

That Nachhattar Singh, complainant is resident of village Kotla Bhai Ka, District Fatehgarh Sahib and he is Sarpanch of the village. His sister Paramjit Kaur alias Nachhatro was married with Major Singh s/o

Pritam Singh, resident of village Rahaun, for the last about 20-22 years. For

about 17-18 years, the relationship between them remained cordial and thereafter, there used to remain dispute between them. His brother-in-law Major Singh started drinking excessively and after intake of liquor, he often used to subject his sister Paramjit Kaur alias Nachhatro to beatings. The complainant as well as his paternal uncle's sons namely Davinder Singh and Bhupinder Singh had several times prevailed upon him (Major Singh) and tried to make understand Major Singh and they had even persuaded their sister but Major Singh did not refrain from subjecting his sister Paramjit Kaur alias Nachhatro to beatings. On 20.07.2004, at about 8.00 a.m., complainant received telephonic call from his nephew Amandeep Singh, who disclosed that his father had killed his mother. The complainant Nachhattar Singh along his relatives, had reached village Rahaun, where he found the dead body of his sister Paramjit Kaur alias Nachhatro hanging in the shed of cremation ground. The motive of causing the occurrence is that Major Singh used to suspect the character of Paramjit Kaur alias Nachhatro and on this account, he has strangled her.

The proceedings in the present case, were initiated on the basis of statement of Nachhattar Singh got recorded to SI Balwinder Singh, SHO, Police Station Khanna, on the basis whereof, FIR was registered.

During the course of investigation, inquest report was prepared. From the spot, *parna*, pair of chappals and a rope were taken into possession, after converting into parcel. Even, site plan was prepared. The dead body was sent for the post-mortem examination. Accused Major Singh was arrested in the present case. Various memos relating to his arrest and personal search were prepared. During the course of interrogation, accused

had made disclosure statement, on the basis whereof, he had also got

recovered one *chunni*, which was taken into possession, vide separate memo.

On completion of investigation, accused Major Singh was sent up to face trial for commission of offence punishable under Sections 302 IPC.

On presentation of challan, compliance of Section 207 Cr.P.C. was made and thereupon, case was committed to the Court of Session.

In pursuance of the commitment proceedings, on the basis of material coming forth, charge was framed against the accused Major Singh under Section 302 IPC, to which he pleaded not guilty and claimed trial.

In endeavour to establish its case, the prosecution examined as many as 8 witnesses, besides adducing documentary evidence.

The witnesses, so examined are PW-1 Dr.Jaswinder Kaur, PW-2 Nachhattar Singh, PW-3 ASI Malkiat Singh, PW-4 Kulwant Singh Patwari, PW-5 Durga Dass, PW-6 SI Balwinder Singh, PW-7 Bhupinder Singh and PW-8 Darshan Singh. Thereafter, learned Public Prosecutor, tendered into evidence, report of Pathologist Ex.PX and report of Chemical Examiner Ex.PY and closed the the evidence on behalf of the prosecution.

On closure of the prosecution evidence, all the incriminating circumstances, appearing in the prosecution evidence were put to the accused in his statement under Section 313 Cr.P.C. However, the accused denied those allegations and pleaded innocence. For the convenience of discussion, the plea so taken by accused Major Singh, is reproduced in verbatim, as herein given:-

“I am innocent. I have been falsely implicated in this case at the instance of Gurdit Singh and his wife. Gurdit Singh in my

Sandu, my wife's sister's husband. My wife was away from the house two days earlier from her death with Gurdit Singh and Dalbir Singh ex-sarpanch. I was arrested on 20-7-2004 from my house and kept in the police station and have been falsely implicated in this case. Gurdit Singh is a dismissed police official.”

However, the accused did not lead any evidence in defence.

After hearing learned Public Prosecutor, learned defence counsel and on appraisal of the evidence brought on record, vide judgment dated 04.06.2005 learned Sessions Judge, Ludhiana, convicted and sentenced the accused-appellant, as already detailed aforesaid.

Feeling aggrieved by the aforesaid judgment, the appellant-convict has filed the present appeal.

In pursuance of notice issued by the Court, learned State counsel made appearance on behalf of the State. Even the lower Court record was requisitioned.

We have heard learned counsel for the appellant as well as learned State counsel and have perused the record.

At the very outset, learned counsel for the appellant has assiduously submitted that the prosecution has miserably failed to establish the guilt of the appellant. In fact, learned counsel for the appellant has painstakingly drawn our attention to various aspects of the case, which according to him, demolish the very substratum of prosecution case. He has emphatically submitted that the cause of death in the present case, has not been duly established, which raises a question mark of it, being homicidal violence, which in itself, gives a fatal blow to the prosecution version.

Further, learned counsel for the appellant has submitted that there are yawning gaps, in between, which in all human probability, do not link the accused, to the commission of crime. At the maximum, it is pointed out that the evidence coming on record, can be taken to raise suspicion but it does not conclusively prove the guilt of the appellant. Thus, summing up his arguments, learned counsel for the appellant has made a submission that prosecution has failed to establish the guilt of the appellant, beyond shadow of reasonable doubt and therefore, he made prayer for the acceptance of the appeal and to set aside the judgment rendered by the trial Court.

In refutation, learned State counsel has submitted that the trial Court has rightly appreciated and linked through evidence the appellant to the commission of crime. The evidence brought on record, unerringly point the needle towards the guilt of the appellant. Considering the same, learned trial Court has rightly held the appellant guilty and convicted him under Section 302 IPC. As such, learned State counsel has made prayer for dismissal of the appeal.

In the light of aforesaid contentions, with the able assistance of learned counsel for the appellant as well as learned State counsel, we have gone through the trial Court record.

In a criminal trial, however, intriguing may be the facts and circumstances of the case, the charges made against the accused must be proved, beyond all reasonable doubt and the requirement of proof, cannot lie, in the realm of surmises and conjectures.

Undisputedly, in the case in hand, there is no eye witness to the occurrence in question. It is a case of circumstantial evidence. That being

so, it is required that all the circumstances must be fully established and all

the facts, so established, must be consistent only with the hypothesis of the guilt of the appellant. The circumstances, so established, should exclude every possible hypothesis except the one, sought to be proved. The circumstances must be conclusive in nature. The circumstantial evidence is a close companion of factual matrix, creating a fine network, through which, there can be no escape for the accused, primarily because the said facts, when taken as a whole, do not permit the Court to arrive at any other inference, but one indicating the guilt of the accused.

Admittedly, deceased Paramjit Kaur alias Nachhatro was wife of Major Singh. Also, the proceedings were initiated at the instance of PW-2 Nachhatar Singh, who is brother of the deceased. The said witness, besides deposing about relationship of the appellant with his sister Paramjit Kaur, has also deposed that his sister Paramjit Kaur alias Nachhatro was married to accused for the last 22 years and from the said wedlock, four children were born. He also deposed that for about 17-18 years, the relations between the two, remained cordial but however, due to domestic dispute, the relations, thereafter, became strained. He also deposed that accused was in the habit of taking liquor and deceased used to prevent him from doing so and thus, there used to remain quarrel between them. This witness further deposed that he along with his first cousin Davinder Singh and Bhupinder Singh used to make the accused understand. Accused used to threaten the deceased to kill her, while quarreling with her.

The said witness further deposed that on 20.07.2004, while he was present in his house, he received telephonic message from his nephew Amandeep Singh, son of accused, that his father had killed his mother. He

also deposed that when they went to the village of accused, they came to

know from the residents of the village that the accused, after killing deceased, had hung her dead body in the shed of cremation ground. The accused used to suspect the deceased to be characterless and for that reason, he has put an end to her life. This witness further deposed that he met police on the periphery of the village and he got recorded his statement, which is Ex.PB. He identified accused present in the dock, who had killed his sister Paramjit Kaur alias Nachhotro.

Another material witness examined by the prosecution is **PW-7 Bhupinder Singh**, who is cousin of complainant Nachhattar Singh. He has also deposed that Paramjit Kaur alias Nachhotro deceased, was daughter of his father's elder brother. He also deposed about the factum of marriage of Paramjit Kaur alias Nachhattro with Major Singh and four children having born from their wedlock. He also deposed that they were married about 22 years back and they resided happily and their relations were cordial. However, one year before the occurrence, some dispute started remaining between deceased and accused. The accused used to level allegations against the deceased that she was of bad character. He further deposed that they had counseled accused Major Singh. He also deposed that accused used to take liquor in excess quantity and under the influence of liquor, he used to give beatings to deceased as she used to prevent him from taking liquor. He further deposed about his visits to the village of the accused to make him understand the things. Also, this witness deposed that on 20.07.2004, in pursuance of telephone call, made by Amandeep Singh about accused having killed his wife, he together with relatives including Nachhattar Singh and Devinder Singh had gone to the house of the accused to Rahaun, from where, they went to cremation ground of village Rahaun

and he saw the dead body of the deceased hanging from girder. The said dead body was of his cousin sister Paramjit Kaur alias Nachhatro. A *parna* was found looped around the neck of the deceased apart from a rope. He also deposed about his statement, having been recorded.

Besides the testimonies of the aforesaid witnesses, there is also medical evidence, coming on record. **PW-1 Jaswinder Kaur** has deposed about constitution of the Board of Doctors, which consisted of herself as well as Dr.Ravi Dutt and Dr.M.S.Bhasin, to facilitate the conducting of post-mortem examination on the dead body Paramjit Kaur alias Nachhatro. Further, the said witness also deposed about conducting of the post-mortem examination at 5.45 p.m. on 20.07.2004 and deposed about details of the injury, found on the dead body, which are as follows:-

1. *Mark of ligature 13" x 1/2" present around neck depressed groove. Surrounding area abraded on left side. Mark extending from right mastoid process to left mastoid process going obliquely along the mandible. On careful layer by layer dissection, platyama, sterno mastoid were torn. Thyroid, cartilage were fractured. Hyperemia of tracheas and epiglottis was present. Dissection of ligature mark revealed dry and glistening band of subcutaneous tissue along with petechial haemorrhage. Fracture and dislocation of cervical vertebra C-3 was present.*
2. *Bleeding from the nose was present. Dribbling of saliva was present on angel of mouth.*
3. *Bruise 5 x 5 cm present on left side of the face at angle of jaw.*
4. *Contusion present on left side of eye brow left cheek and ramus of right mandible.*

She also deposed that stomach and its contents were normal and healthy. Small intestines and large intestines were congested. Liver,

Spleen, kidneys were normal and healthy. Bladder was healthy and normal

and all these were sent to chemical examiner. She further deposed that that uterus was also sent for histopathological examination. The cause of death in this case was kept pending for want of reports of chemical examiner and histopathologist. She further deposed that they received the said reports and that as per chemical examiner report, no poison was detected in the contents. As per the report of histopathologist, no remarkable pathology was observed. So, in her opinion, the cause of death in this case was due to asphyxia. The injuries on the dead body of the deceased were ante-mortem in nature.

Looking at the aforesaid evidence, it is evident that there is compatibility between the ocular version, coming forth in the testimonies of PW-2 Nachhattar Singh and PW-7 Bhupinder Singh and the medical evidence, so proved by PW-1 Dr.Jaswinder Kaur.

Further credence is also lent to the prosecution version from the extra judicial confession made by Major Singh appellant to Darshan Singh, who has stepped into witness box as PW-8. Before adverting to the testimony of Darshan Singh PW-8, it is necessary to note that throughout the arguments, learned counsel for the appellant, has submitted that 'extra judicial confession' is a weak type of evidence and it would be unsafe to rely upon extra judicial confession to base conviction of the accused. However, the aforesaid submission is not tenable.

It is settled law that an extra judicial confession, if voluntary and true and made in the fit state of mind, can be relied by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the

veracity of the witness, to whom it has been made. The value of the

evidence as to the confession depends on the reliability of the witness, who gives evidence. It is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend upon the nature of the circumstances, the time when the confession was made and the credibility of the witness, who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon, if the evidence about the confession comes from the mouth of witness, who appears to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out, which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra judicial confession can be accepted and can be the basis of a conviction, if it passes the test of credibility.

In this backdrop, now adverting to the case in hand, it is important to make mention that **PW-8 Darshan Singh**, who is Ex-Sarpanch of village Rahaun, has categorically stated that on 20.07.2004, while he was present in his house, Major Singh had come and confessed before him that he had committed murder of his wife Nachhatro and asked him to produce before the police. He also deposed that that he made him sit on his scooter and took him to police station Sadar, Khanna. He further deposed about the interrogation of Major Singh to have been conducted in his presence, whereupon, accused Major Singh had made disclosure statement about having kept concealed *chunni* in the cattle shed of his house, on the basis whereof, his disclosure statement Ex.PD was recorded, which was attested by him also. He also deposed that from the disclosed spot, accused Major

into possession, vide memo Ex.PD/1, which was also attested by him. The said witness has been subjected to lengthy cross-examination but nothing material elicited out, to dislodge his version and precisely, on this account, the testimony of this witness, passes the requisite test of credibility, vis-a-vis, acceptance of extra judicial confession. Even, PW-3 ASI Malkiat Singh has deposed about conducting of part investigation in the present case. He has deposed about the disclosure statement, so made by the accused and the recovery, having effected on the basis thereof, which also strengthens the prosecution version.

'Men may tell lies, but circumstances do not'. This goes well with the photographs of the dead body clicked during the course of investigation. Before coming to the same, it is pertinent to mention that accused Major Singh has taken the defence that he has been falsely implicated in this case, at the instance of his Sandu (wife's sister's husband) and his wife and that his (accused) wife (referring to the deceased Paramjit Kaur alias Nachhatro) was away from the house two days earlier from her death with Gurdit Singh and Dalbir Singh, Ex-Sarpanch and that he was arrested on 20.07.2004 from his house and kept in the police station. However, even though, this defence plea has been taken in the statement under Section 313 Cr.P.C. but however, no evidence of any kind, has been led by the accused to so substantiate this plea. In the light of the same, it has to be inferred that deceased was present in the house before she was done to death and thus, onus was upon the appellant to prove as to how the deceased had died. However, regarding the same, there is no such evidence, coming on record. Considering the same, now it is important to make

reference to the photographs of the dead body, which are Ex.P5 to Ex.P12.

Close perusal of these photographs reveal about the feet of the deceased to be touching the ground. Even photographs Ex.P8 and P9 depict about blood to be oozing from the nostrils and hair of the deceased to be disheveled. Besides the rope, even the *parna* has been securely tightened around the neck. Also these photographs reveals there to be long gap between the iron girder and the neck of the deceased. In any case, the deceased is not established to have committed suicide. In this regard, it is also pertinent to mention that **Modi's Medical Jurispudence and Toxicology**, gives the difference between hanging and strangulation in tabulated form and the distinction therein, do amply establish about the strangulation, being there in the case in hand as the ligature marking is around the neck in the present case and also the left side was abraded. Besides the same, there was contusion present on the dead body on the left side of eye brow, left cheek and ramus of right mandible. Even, there was bruise present.

Keeping in view the same, the ligature marking around the neck, gains weight in the present case and definitely, it point towards the same, being not result of hanging. In fact, considering the height of the pillars, on which, the girder is resting, by no stretch of imagination also, it can be expected about the deceased, to have climbed the same with the purpose to tie the rope for committing suicide. Moreover, it is pertinent to mention that while conducting of cross-examination of Balwinder Singh, SHO, PW-6, a suggestion has been given about Paramjit Kaur to have died natural death and brother of deceased, being inimical towards accused, in association with Sarpanch of village, a false story was concocted and dead body was shown to be hanging with girder of cremation ground shed and

this suggestion has been specifically denied. However, giving of this

suggestion shows that as per the claim of the accused, the deceased has died a natural death, which in itself is incompatible with medical evidence, so coming on record. In fact, PW-1 Dr.Jaswinder Kaur has opined that death in this case was due to asphyxia. Thus, considering the evidence in entirety, it is evident that deceased Paramjit Kaur alias Nachhatro was first strangled on ground and then she was hung up from the girder by rope and *parna*. The commission of suicide though feebly pleaded does not stand established.

Furthermore, learned counsel for the appellant has also submitted that Amandeep Singh, son of deceased and accused, who, as per version of the prosecution, has informed the complainant about his father to have killed his mother, has not been examined. It is submitted that even though, as admitted by PW-8, Amandeep Singh was 18 years old at the relevant time, but however, he has not been examined and thereafter, this is grave omission, on the part of the prosecution and thus, benefit of the same, ought to be given to the accused. However, the aforesaid submission is not tenable. It has been rightly observed by learned trial court that even though, it is the version of the prosecution about information regarding killing of deceased Paramjit Kaur alias Nachhatro to have been given to Nachhattar Singh by Amandeep Singh but however, it is nowhere the version of the prosecution that occurrence was in fact witnessed by Amandeep Singh and that being so, his non-examination is immaterial. At the most, it can be taken to be omission on the part of the investigating agency. In this regard, it is important to make reference to the decision of the Hon'ble Supreme Court in '*Sheo shanker Singh Vs. State of Jharkhand and Anr.*', 2011(2)

investigation, by way of omissions and lapses, on the part of investigating agency, cannot in themselves justify a total rejection of the prosecution case”. Even, in the same, reference was also made to the decision rendered by the Hon'ble Apex Court in case '*Ram Bihari Yadav Vs. State of Bihar and Ors*', 1998(2) *Apex Court Journal*, 331 (SC), wherein, while dealing with the effect of shoddy investigation of the cases, it was held that “if primacy was given to such negligent investigation or to the omissions and lapses, committed in the course of investigation, it will shake the confidence of the people not only in the law enforcing agency, but also in the administration of justice. Considering the same, even if non-examination of Amandeep Singh is taken to be a lapse, on the part of investigating agency, considering the role assigned to him, it matters not much and no benefit, as such, can be drawn by the appellant, on this count.

In the light of the aforesaid discussion, learned trial Court has rightly held appellant Major Singh guilty and convicted him under Section 302 IPC. Thus, the appeal sans merit and the same is hereby **dismissed**.

Accused-appellant namely Major Singh, is stated to be on bail. A copy of the judgment be sent to concerned Chief Judicial Magistrate, to get the accused-appellant arrested, so as to serve the remaining part of the sentence.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

December 12, 2019

Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No