

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No.1394-DB of 2015(O&M)

Date of Decision: December 16, 2019.

Sukhbir

.....Appellant

versus

State of Haryana

.....Respondent

CORAM:HON'BLE MR.JUSTICE AJAY TEWARI.

HON'BLE MR.JUSTICE VIVEK PURI.

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

Ms.Palika Monga, Deputy Advocate General, Haryana.

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Vivek Puri, J.

[1] The present appeal is against the judgment of conviction dated 16.07.2015 and order of sentence dated 17.07.2015, passed by the learned Sessions Judge, Kaithal, vide which the accused-appellant has been convicted and sentenced under Section 302 IPC to undergo life imprisonment with a fine of Rs.2000/- and in default of payment of fine, to further undergo RI for two months, in case FIR No.159 dated 08.10.2014, registered at Police Station Kalayat under Section 302 IPC.

[2] Briefly, the facts as put-forth by the prosecution are to the effect that the deceased-Pinki had married with the accused-appellant-Sukhbir in the year 2008 and thereafter she started residing with the accused-appellant in her matrimonial house. Three children, namely, Khushi

(daughter) aged 4 years, Mahi (son) aged 1½ years and Mahak (daughter)

aged 2 months, were born out from the wedlock. The appellant was addict and used to give beatings to the deceased. During the night of 07.10.2014 at about 11.00 p.m., a telephonic message was received by Mamu Ram, brother of the deceased from Sukhwinder, brother of the accused-appellant, who informed that the appellant has caused injuries to the deceased and she was being taken to General Hospital, Kaithal. On the receipt of information, the complainant-Mamu Ram alongwith his brother Rajesh, cousin Tej Pal, Jai Bhagwan and some neighbours came to General Hospital, Kaithal where dead body of the deceased was found lying in the mortuary with many injuries on her neck. On the basis of statement of the complainant-Mamu, the present FIR was registered.

[3] The accused-appellant faced trial. During the trial, the prosecution has examined fourteen witnesses. Statement of the accused under Section 313 Cr.P.C. was recorded but no defence evidence was led by the accused-appellant. He was convicted and sentenced by the learned Sessions Judge, Kaithal, as mentioned in para No.1 of this judgment.

[4] Aggrieved from the aforesaid judgment, the present appeal has been preferred by the appellant.

[5] The case of the prosecution mainly hinges upon the statement of PW-1 Dr.Kavita Goel, who conducted the post-mortem examination on the dead body of the deceased and as per her statement following injuries were found on the person of the deceased:-

- “1. Multiple lacerations were present on whole body. One laceration was round in shape. It was 5 cm deep, 2 cm wide and 1 cm long present on left side of neck. It was penetrating in nature.
2. One another deep laceration on medial side of above laceration. It was 4 cm in deep, 1 cm wide, 1 cm long. It

was also penetrating in nature.

3. One abrasion of size 1 x 2 cm on right pinna and laceration of size 3 x 2 cm present on left pinna of ear.
4. 3 x 5 cm incised wound present on left side of upper chest.
5. .2 x .5 cm size laceration present on left shoulder.
6. 3 x 1½ cm x ½ cm lacerated wound present on right hand below thumb. It was muscle deep and present on palmar aspect.
7. Superficial abrasion of size 2 x ½ cm present on right side of neck. On deep dissection, trachea was found teared. Trachea and thoracic cavity were full of blood and blood clots. There was rupture of superior medial aspect of upper log of left lung and aorta. All lacerated wounds were blood stained and dark red in colour.
8. Laceration of size ½ x ½ cm present on left hand.”

[6] Further, the complainant-Mamu-PW-2 is brother of the deceased. PW-3 Antu Ram and PW-4 Sukhwinder are the father and brother of the accused, respectively. PW-5 Tej Pal is the cousin of the deceased. PW-8 Rajesh is also brother of the deceased. PW-9 Ram Dhari is the uncle of the appellant who is witness of the recovery of blood stained knife and clothes which were recovered at the instance of appellant. PW-14-SI Subhash Chander has conducted the investigation of the case.

[7] Assailing the judgment of learned trial Court, it has been contended by learned counsel for the appellant that the entire case mainly hinges upon the deposition of Antu Ram-PW-3 who is father of the appellant, who has not seen the crime being actually committed by the appellant. He has testified against the appellant because his daughter was married to the brother of the deceased and to save the matrimonial life of his daughter, he has been pressurized to depose against

the appellant during the course of trial. It has been argued that PW-4-

Sukhwinder, brother of the appellant has not supported the prosecution version. There is no direct evidence connecting the appellant with the commission of crime.

[8] On the contrary, while supporting the judgment of the learned trial Court, it has been contended by the learned Deputy Advocate General, Haryana, that presence to PW-3 Antu Ram in the house of the appellant is quite natural as the occurrence took place in his residential house during the night hours. Further, no reason is made out to depose and falsely implicate the appellant who is his son. Further argument is that even if one of the witness has not supported the case of the prosecution, it cannot be termed to be a circumstance to efface the entire prosecution version. Antu Ram-PW-3, on hearing the noise of his grand-daughter Khushi, rushed towards the room of the appellant which was found bolted from the inside. He broke open the door of the room and saw that accused-appellant was holding his wife and when Antu tried to intervene, the deceased fell down on the ground and injuries were already there on her neck.

[9] We have heard learned counsel for the parties, perused the record and are of the considered view that the conviction, as recorded by the trial Court, is bound to be upheld. It is no doubt that it is emerging in the statement of Antu Ram PW-3 that he has not seen the accused while inflicting injuries on the person of the deceased but he has specifically stated that the accused-appellant alone would have inflicted the injuries. It may be recapitulated that the accused-appellant had bolted the room. It was found during the trial that the occurrence took place in the room where the appellant was residing with the deceased. In such circumstances, the provisions of Section 106 of the Indian Evidence Act come into play. No

explanation has been put-forth that the accused-appellant has not inflicted the injuries on the person of the deceased. Furthermore, the case of the prosecution mainly hinges upon the deposition of PW-3 Antu Ram who is father of the appellant. No reason is made out as to why a father will depose against his son to falsely implicate him in the serious crime of murder. The argument sought to be put forth on behalf of the appellant that Antu Ram PW-3 has deposed against the appellant to save the matrimonial life of his daughter who is married to the brother of the deceased, cannot be accepted. No such case has been sought to be put forth during the course of cross-examination of PW-3 Antu Ram that he has been deposing falsely to save the matrimonial life of his daughter. The presence of Antu Ram PW-3 in his residential house during the night hours is quite natural. The version put forth by him with respect to occurrence appears to reliable and convincing. There is lack of material to indicate that he has deposed falsely against the appellant who is his son, for any reason. The injuries were inflicted by the appellant on the person of the deceased by means of knife in a closed room in the presence of very young children. There was no other person in the room. The father of the appellant broke opened the door and found the appellant with the deceased in injured condition. In such circumstance, it can only be appellant who would have inflicted injuries upon the deceased. Besides, an additional credence is also available to the case of prosecution as blood stained knife and clothes of the appellant have been recovered at his instance in pursuance of his disclosure statement.

[10] Faced with this situation, learned counsel for the appellant has sought to raise an alternative plea to the effect that the appellant was under the influence of liquor when the offence was committed and in such

circumstances, the offence under Section 304, Part-II is made out.

[11] On the contrary, it has been argued by the learned Deputy Advocate General, Haryana, that there is nothing to suggest that the appellant was not in a position of decipher the act and the possible consequence of the crime being committed by him on account of intoxicant state of mind.

[12] In this regard, it may be mentioned here that there is no reasonable explanation on the part of the appellant that crime was committed in such an intoxicated the intoxicant state of mind that he was not aware of the possible consequence of the act. The requisite intention on the part of the appellant in committing the murder of his wife is evident on record. Moreover, no such plea has been put forth in the statement under Section 313 Cr.P.C. that the murder was committed in the state of intoxication.

[13] For the aforesaid reasons, the judgment of the learned trial Court does not suffer from any illegality or irregularity which may warrant interference by this Court. The appellant has been correctly convicted and sentenced by the learned trial Court. Accordingly, the judgment of conviction and order of sentence are upheld.

[14] The present appeal stands dismissed.

(AJAY TEWARI)
JUDGE

(VIVEK PURI)
JUDGE

December 16, 2019
mohinder

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

