

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

CRA-D No.147-DB of 2015

Reserved on : April 12, 2019

Date of decision: May 14, 2019

Shamsher Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr. Sanjiv Sharma, Advocate for the appellant.

Mr. S.P.S.Tinna, Addl. Advocate General, Punjab.

Harinder Singh Sidhu, J. :

This appeal is directed against the judgment and order dated 17.09.2014 of the Sessions Judge, Fatehgarh Sahib in Sessions case No.6 of 2014, whereby, the appellant was charged with and tried for offence under Section 302 of the Indian Penal Code. The appellant has been convicted and sentenced to imprisonment for life and to pay a fine of Rs.20,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months.

2. The case of the prosecution which was registered on the statement of Gurpreet Kaur d/o Shamsher Singh (appellant) was that she was residing with her family at Bassi Pathana for the last about two years. Divorce had taken place between her mother Paramjit Kaur and her father Shamsher Singh about ten years back. Maintenance was awarded by the

Court. The accused used to come to Bassi Pathana from Rajpura to pay maintenance allowance to her mother and used to stay for two/three days at their house. On 25.5.2014 her father Shamsher Singh had come in the evening to their house at Bassi Pathana to pay the maintenance allowance. That night after taking food she slept in a room at the ground floor. Her mother and father slept in a room on the first floor. At about 4.00 AM she heard the cries of her mother that Shamsher Singh was causing injuries to her. Complainant immediately rushed upstairs and saw her father holding a *Sota* (wooden baton meant for smashing spices) and giving a blow on the head of her mother. He then threw the *Sota* and took a big knife and gave knife blows at the head and chin of her mother causing blood to ooze out. The complainant became nervous and ran towards the street. After inflicting injuries her father ran away. As per the complainant her father suspected the character of her mother and had caused injuries with an intention to kill her. After arranging a vehicle the complainant took her mother to Civil Hospital, Bassi Pathana, from where she was referred to Government Medical College and Hospital, Sector-32, Chandigarh. She succumbed to her injuries at 7.00 AM the same day.

3. After registration of case, the matter was investigated by the Police. Finger-print expert was called at the spot, the place of occurrence was photographed, the *sota*, the knife, one blood stained ear ring and the turban of the accused were taken into possession. Blood stained earth was lifted from the spot in a sealed parcel. Bed-sheet stained with blood was also taken into possession. The accused was arrested on 29.5.2014. After completion of the investigation challan was presented in the Court.

4. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. He denied that he had committed the crime. He pleaded that he had never visited the house of the deceased nor paid any maintenance to her and that he had no concern or connection with the family of the deceased. However, he did not lead any evidence in his defence.

5. The appellant was convicted and sentenced as referred to above. Hence, this appeal.

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

7. PW1 ASI Rajwant Singh stated that on 27.5.2014 he was posted as Incharge, Police Post Bassi Pathana. He along with the Investigating Officer Inspector Jaswant Singh and other police officials had gone to Medical College and Hospital, Sector-32, Chandigarh on receipt of information regarding death of Paramjit Kaur. Gurpreet Kaur got recorded her statement before Inspector Jaswant Singh. He sent ruqa through Constable Sukhbir Singh. The Investigating Officer prepared the Inquest Report after recording statements of Gurpreet Kaur and Mohan Lal. Postmortem examination was got conducted through Board of Doctors. After the postmortem the dead body of Paramjit Kaur was handed over to Gurpreet Kaur and Mohan Lal. On 28.5.2014 he along with other police officials went to GMCH Sector-32, Chandigarh where doctors handed over two sealed parcels to him, one of which contained the clothes of Paramjit Kaur. The sealed parcels were deposited with the MHC.

8. PW2 Dr.Ajay Kumar Assistant Professor, Department of

Forensic Medicine, GMCH Sector-32 stated that on 27.5.2014 he along with Dr.Satender Kaur Cheema had conducted the postmortem of Paramjit Kaur. As per information given by the Police it was a case of assault by her husband at about 4.00 AM on 27.5.2014. The following injuries were found on her person:-

- “1. 7 cm long sutured lacerated wound, present over right side of head about 6.5. cm above right tip of pinna vertically placed and 4 cm to right of midline.*
- 2. 9 cm long sutured lacerated wound present above injury No.1 over the vertex 19 cm above right eye brow and 2 cm to right of mid line.*
- 3. 4 cm long sutured lacerated wound present posteriorly 5 cm below injury no.1 vertically placed.*
- 4. 11 cm long sutured lacerated wound over middle of forehead and involving the medial half of right eye brow.*
- 5. 19 cm long crescentric shaped sutured lacerated wound starting from out one third of left eye brow and going upto the middle of head in the vertex region 14 cm above the level of eye brow.*
- 6. 9 cm long sutured lacerated wound present over left side of forehead starting from outer one third of left eye brow and going upto 4 cm above the inner end of left eye brow.*
- 7. 10 cm long sutured lacerated wound on the left temporal region 7 cm above the tip of left pinna, going backwards ending at a point 6 cm to left of midline.*
- 8. Multiple suture lacerated wounds over vertex of head varying in size from 4 cm to 10 cm in length in an area of 15 cm x 15 cm over the vertex region.*
- 9. Lacerated wound 2.8 cm x 0.3 cm x 1 cm, obliquely*

placed over the chin, outer end 1.8 cm to the right of mid line going upto mid line of the chin.

10.Lacerated wound 1 cm x 0.5 cm x 0.5 cm over outer angle of right eye.

11.Lacerated wound 3 cm x 1 cm x full thickness of the pinna, over the lobule of the right Pinna.

12.Stab wound 1.2 cm x 0.5 cm x 1.8 cm placed obliquely over the front of right leg placed 15 cm below lower end of patella and 3 cm to left of mid line. The upper outer angle is blunt and is showing fishtailing and the lower inner angle is blunt.

13.Sutured lacerated wound 3.8 cm x 0.5 cm x 0.5 cm over left cheek.

14.Lacerated wound 4 cm x 0.8 cm x 0.8 cm over the dorsal aspect of middle phalynx of right index finger.

15.Patterned reddish blue bruise in the form of four lines measuring 1.5 cm, 1.5 cm, 1.5 cm and 1 cm in width and 7 to 10 cm in length over right side of neck from above downwards starting from 0.5 cm to right of mid line and going posteriorly to the right side of the neck. On fine dissection of the neck bruising of the right side muscles of the neck along with fracture of the superior horn of the thyroid cartilage of the right side.

16.Crescentric abrasion 1 cm x 0.2 cm placed 3 cm to the right and 1 cm above the suprea sternal notch.

17.Reddish bluish bruise over right side of neck 10 cm x 6 cm just right to injury no.15 over the nape of neck.

18.Reddish blue bruise 8 cm x 4 cm over anterior aspect right shoulder.

19.Crescentric abrasion 1 cm x 0.5 cm placed 6 cm to left of mid line and 7 cm below left angle of mandible.”

9. The cause of death was the combined effect of head injury and

manual strangulation which was sufficient to cause death in ordinary course of nature both individually and collectively. The injuries were ante-mortem in nature. The kind of weapon for Injury No.12 was single edged sharp weapon. Injury No.15 was due to manual strangulation. Rest of the injuries were caused due to blunt weapon. The probable time between death and postmortem was 8 to 12 hours.

10. PW3 Sadhu Singh draftsman stated that he had visited the spot and prepared the scaled map on 3.7.2014 at the instance of Gurpreet Kaur d/o Shamsheer Singh. Her younger sister was also present at the spot at that time.

11. PW4 ASI S.K.Singh (Fingerprint Bureau) SSP Office Fatehgarh Sahib stated that he had gone to find out the finger prints from inside the house at the spot. Chemical powder was applied to all suspected articles handled by the culprit, but no impression was found in good quality for photography and comparison. As such a NIL report Ex.P6 was given.

12. PW5 Head Constable Kashmir Singh stated that on 27.5.2014 he had visited the place of occurrence and clicked nine photographs.

13. PW6 Head Constable Harminder Singh tendered in evidence his affidavit Ex.P16 regarding handing over articles to Constable Prince Singh.

14. PW7 MHC Prince Singh submitted affidavit Ex.P17 regarding receiving the articles from Harminder Singh and depositing the same with FSL.

15. PW9 Inspector Jaswant Singh Investigating Officer proved the investigation conducted by him. He deposed that on 27.5.2014 he was posted as SHO, Police Station Bassi Pathana. On receipt of a telephonic

message from Government Medical College and Hospital, Sector-32, Chandigarh that Paramjit Kaur w/o Shamsheer Singh had expired, he along with other police officials reached there, where they met Gurpreet Kaur d/o Shamsheer Singh who got recorded her statement Ex.P18. He sent ruqa through Constable Sukhbir Singh on the basis of which FIR Ex.P20 was recorded by SI Gurmeet Singh. He stated that the dead body was identified by complainant and Mohan Lal. He prepared the Inquest Report Ex.P21. He handed over the documents and the dead body of Paramjit Kaur to ASI Rajwant Singh for getting conducted postmortem examination. Then, he along with the complainant and other police officials reached the place of occurrence at Bassi Pathana. The fingerprint expert ASI S.K.Singh and photographer HC Jasmeet Singh had also arrived. The photographer clicked photographs of the place of occurrence and the fingerprint expert checked the articles lying there. The wooden baton (*sota*) was lying there which was taken into possession vide recovery memo Ex.P22. He also lifted blood stained earth from the spot, put the same in a plastic container, converted the same into parcel and took into possession vide recovery memo Ex.P23. One long knife (*kard*) whose blade was 8¼ inches and wooden handle was 5 inches which was lying at the spot was also taken into possession vide recovery memo Ex.P24. One blood stained double bed sheet was lying on the bed. He cut the blood stained part of it and took it into possession vide recovery memo Ex.P25. The remaining bed sheet was separately taken into possession vide memo Ex.P26. One blood stained ear ring which was lying on the floor near the double bed was taken into possession vide recovery memo Ex.P27. One turban which was lying

on the bed and was identified by the complainant to be of her father Shamsher Singh was taken into possession vide recovery memo Ex.P28. All the said parcels in intact condition were deposited with MHC Harminder Singh on the same day. On 29.5.2017 the accused was arrested from bus stop Bassi Pathana after being identified by the complainant. In cross-examination he stated that the complainant had identified the turban to be of the accused. He stated that he had enquired from the landlord who had told him that accused Shamsher Singh was on visiting terms to the house of the deceased. He stated that he had not recorded the statement of the landlord. He further stated that he did not know the location of the house of the landlord.

16. PW10 Gurpreet Kaur deposed that she was MA, B.Ed. She along with mother Paramjit Kaur and younger sister Dilpreet Kaur were residing at Bassi Pathana for the last two years. Her mother and father had been divorced about 10-12 years back. The accused used to reside in Rajpura. He used to come to her mother in Bassi Pathana to pay maintenance after about seven days. Sometimes, he used to stay at their house for two to three days and then return to Rajpura. On 25.5.2014 in the evening the accused had come to their house at Bassi Pathana to pay maintenance to her mother. He stayed at their house on the night of 25.5.2014 and 26.5.2014. He had to return to Rajpura on 27.5.2014. After taking dinner the accused along with her mother slept in one room at the first floor. The complainant went to sleep in the room on the ground floor. Her younger sister was not present as she had got married. On 27.5.2014 at about 4.00 AM the complainant was called by her mother who was

screaming that Shamsheer Singh was beating her. The complainant rushed upstairs and saw her father holding a *sota* and beating her mother. He then took a big knife and hit her mother on her chin and head. The complainant was scared and rushed downstairs and raised hue and cry. Many people gathered there. The accused ran away from the spot. She took her mother to Civil Hospital to Bassi Pathana on a bike after taking help of a passer by. Her mother was referred to GMCH Sector-32, Chandigarh where she succumbed to her injuries. She stated that her mother had been killed by her father as he suspected her character. In cross-examination, she stated that divorce had taken place as her father used to consume liquor and beat her mother. She stated that she did not know if her mother had filed any petition or application for claiming maintenance from her father in any court. She also stated that the only basis of her statement that her father was having doubt about the character of her mother was that he was not allowing her to talk to any person or to go anywhere. Except this there was no ground.

17. PW11 Sukhwinder Singh, Record Keeper, Judicial Record Room, Fatehgarh Sahib proved the judgment in the divorce case titled “Paramjit Kaur vs. Shamsheer Singh” decided on 1.2.2003 as Ex.P32.

18. The prosecution case is based on the sole testimony of PW 10 Gurpreet Kaur who stated that though her father and mother had been divorced about 10-12 years back but her father who was residing at Rajpura used to visit them at Bassi Pathana after about seven days to pay maintenance. Sometimes he used to stay in their house for two-three days and then return back. On 25.5.2014 in the evening the accused had come to

their house at Bassi Pathana to pay maintenance to her mother. He stayed at their house on the night of 25.5.2014 and 26.5.2014. He had to return to Rajpura on 27.5.2014. After taking dinner the accused along with her mother slept in one room at the first floor. The complainant went to sleep in the room on the ground floor. On 27.5.2014 at about 4.00 AM the complainant was called by her mother who was screaming that accused Shamsher Singh was beating her. The complainant rushed upstairs and saw her father holding a *sota* and beating her mother. He then took a big knife and hit her mother on her chin and head. The complainant was scared and rushed downstairs and raised hue and cry. Many people gathered there. The accused ran away from the spot. She took her mother to Civil Hospital at Bassi Pathana on a bike after taking help of a passer by. Her mother was referred to GMCH Sector-32, Chandigarh where she succumbed to her injuries. She stated that the accused had killed her mother as he suspected her character. The only basis for this assertion that her father doubted the character of her mother was that he was not allowing her to talk to any person or to go anywhere. This appears totally unbelievable. The parents of the complainant had been divorced in 2003. They were staying separately in different places, the complainant and his mother at Bassi Pathana and the father (appellant) at Rajpura. How could the father control the movement or activity of his divorced wife and object to her talking to any person or going anywhere? The alleged motive does not appear to be credible.

19. The testimony of PW 10 that the accused used to visit their house to pay maintenance after every seven days and sometimes used to stay there for 2-3 days also does not inspire confidence. The divorce

between the accused and mother of the complainant had taken place on 1.2.2003. In the judgment of divorce it is recorded that pendente lite maintenance of Rs.750/- per month was granted vide order dated 18.02.202. Litigation expenses of Rs.1000/- were also granted. However Shamsher Singh (respondent in the divorce petition) stated on oath that he was unable to pay the maintenance and the litigation expenses. Consequently his defence was struck off. It is unbelievable that a person who thus chose to get his defence struck off in the divorce petition would after the divorce visit his divorced wife to pay maintenance every week. No order of any court directing the payment of maintenance was placed on record. In cross examination the complainant herself stated that she did not know if her mother had filed any petition or application for claiming maintenance from her father in any court. The complainant further admitted in cross examination that her younger sister was married about 4-5 months prior to the alleged incident but her father had not attended the marriage. If the father of the complainant was such a frequent visitor to the house of the complainant and even resided there for two-three days almost every week, then his not attending the marriage of his younger daughter is inexplicable. Moreover no independent person has been examined to prove that the appellant was a frequent visitor to the house of the complainant or was ever seen there. Though PW 9 Inspector Jaswant Singh the Investigating Officer stated that he had enquired from the landlord who had told him that accused Shamsher Singh was on visiting terms to the house of the deceased but he admitted that he had not recorded the statement of the landlord.

20. Though the alleged weapons of assault namely the *sota* and the knife were recovered from the spot and PW4 ASI S.K.Singh (Fingerprint Bureau) SSP Office Fatehgarh Sahib had visited the spot to collect the finger prints from the articles handled by the culprit, but no impression was found in good quality for photography and comparison. As such a NIL report Ex.P6 was given. Thus it could not be proved that the appellant in fact was the assailant. The turban that was recovered from the spot was only identified by PW10 as belonging to the appellant. It had no distinctive mark connecting it with the appellant.

21. The prosecution has failed to prove the case against the appellant beyond reasonable doubt. Accordingly, the appeal is allowed. The appellant is acquitted of all the charges framed against him by giving him benefit of doubt. The appellant be released forthwith, if not required in any other case.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 14, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No