

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D No. 1562-DB of 2015 (O&M)

Reserved on : 4.2.2019

Date of decision : 8.2.2019

Tarsem Singh alias Semi Appellant

versus

State of Punjab ... Respondent

Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Anupinder Singh Grewal

Present Mr. Roopak Bansal, Advocate, for the appellant.
Mr. S. P. S. Tinna, Additional Advocate General, Punjab.

Rajiv Sharma, J.

1. The present appeal is instituted against the judgment dated 21.8.2015 and order dated 24.8.2015, rendered by learned Sessions Judge, Sangrur, in Sessions Trial No. 1 of 12.1.2015, vide which appellant Tarsem Singh alias Semi, who was charged with and tried for the offence punishable under Sections 302 and 450 IPC, was convicted and sentenced as hereunder:-

<i>Under Section</i>	<i>Sentence</i>
302 IPC	Imprisonment for life and to pay fine of ₹ 5,000/-. In default of payment of fine, to undergo further RI for six months.
450IPC	Rigorous imprisonment for three years and to pay fine of ₹ 1,000/-. In default of payment of fine, to undergo further RI for two months.

2. The case of the prosecution in a nutshell is that complainant Rajwinder Singh lodged the complaint, Ex.PA, on 29.9.2014, to the effect that he was resident of village Mahorana. He along with his mother Hanso, brother Amrik Singh was present in the house. His wife Rekha was cleaning the utensils in the courtyard of the house. They were watching televisions in the rooms. At About 10.00 A.M., Tarsem Singh alias Semi son of Sinder Singh came on bicycle and scuffled with his wife Rekha. She rushed and entered in the house of neighbour Balvinder Ram. But she was chased by accused Tarsem Singh. He also reached there after hearing the commotion. He saw accused Tarsem Singh inflicting *dah* (sharp edged agricultural instrument used for cutting) blow on the head of Rekha with an intention to kill her. Rekha collapsed. He tried to apprehend accused Tarsem Singh but he threatened him to inflict injury. Accused fled away from the spot along with weapon. His brother Amrik Singh also reached the spot. Motive behind the murder was that about 3-4 months ago an altercation took place between him and Tarsem Singh, due to which Tarsem Singh inflicted injuries on the person of his wife Rekha. FIR, Ex.PA/1, was registered. The dead-body was sent for post-mortem examination. The blood stained *dah* was also recovered. Investigation was completed and challan was put up after completion of all the codal formalities.

3. The prosecution examined a number of witnesses in support of the case. The statement of the accused was also recorded under Section 313 Cr.P.C. He denied the case of the prosecution. The accused was convicted and sentenced, as noticed above. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellant vehemently argued that the prosecution has failed to prove its case. Learned

counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

5. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

6. PW1 Rajwinder Singh deposed that he along with his brother Amrik Singh and mother Hanso were present in the house. Accused Tarsem Singh @ Semi trespassed in their house. His wife Rekha was cleaning the utensils in the courtyard. Accused Tarsem Singh just after entering the courtyard of the house, entered into scuffle with his wife. He was armed with *dah*. She in order to save herself from accused Tarsem Singh rushed out from courtyard of her house to take shelter in the house of Balwinder Ram, which was situated in front of his house across the lane. Accused followed his wife and entered the house of Balwinder Ram with *dah*. He saw accused Tarsem Singh inflicting *dah* blow on the head of his wife. She collapsed. He tried to catch hold of accused Tarsem Singh, however, he threatened him to inflict injury on his person with *dah*. Thereafter, accused Tarsem Singh came out of the house of Balwinder Ram. He escaped on bicycle. His brother Amrik Singh also followed him to the house of Balwinder Ram. He has also witnessed the occurrence. His wife Rekha was taken by the two ladies of village along with his father for treatment to CHC, Amargarh. The complainant and his brother Amrik Singh were proceeding to inform the police when the police party met them at T Point, Chaundawala turning point, where his statement was recorded by the police, Ex.PA. In his cross-examination, he deposed that he reached Rajindra Hospital, Patiala, at about 3.00 P.M. after receiving the information that his

wife Rekha was referred from CHC, Amargarh, to Rajindra Hospital, Patiala. Bhajno wife of Bashir and Zeero wife of Billa took her to the hospital.

7. PW2 Balwinder Ram testified that on 29.9.2014 at about 10.00 A.M., he was present in the house. He saw Rekha wife of Rajwinder Singh running to his house and entering his courtyard. He saw accused Tarsem Singh armed with *dah*. He also came to the courtyard. Rajwinder Singh also followed them. Accused Tarsem Singh after entering courtyard of his house inflicted *dah* blow which struck at the back side of her head. She collapsed on the spot. They raised alarm. Accused Tarsem Singh rushed towards Rajwinder Singh with *dah*. Thereafter, he escaped. In his cross-examination, he admitted that he did not chase accused Tarsem Singh. He did not accompany Rekha to CHC, Amargarh.

8. PW3 Dr. Amandeep deposed that on 29.9.2014 he was posted as Junior Resident, Department of Surgery, Rajindra Hospital, Patiala. He sent intimation in respect of death of patient at 12.45 P.M. to the police.

9. PW4 Amrik Singh is the real brother of PW1 Rajwinder Singh. He testified that on 29.9.2014 he was present in his house. His brother Rajwinder Singh and mother Hanso were also present. Rekha wife of Rajwinder Singh was cleaning the utensils in the courtyard of the house. At about 10.00 A.M., accused Tarsem Singh came on a bicycle. He parked the bicycle outside the house. He entered their residence and started physically assaulting Rekha. She in order to save herself went outside the house and entered the house of Balwinder Ram. They also followed them. In the house of Balwinder Ram, accused Tarsem Singh gave 4-5 blows with *dah* on the head of Rekha. She collapsed on the spot. Accused Tarsem Singh ran away

from the spot. His father Ichhar Ram took Rekha with the help of two ladies of village to the hospital. He accompanied Rajwinder Singh to inform the police. In his cross-examination, he admitted that the street in front of their house was approximately 17-18 feet wide.

10. PW5 Dr. Ravinder Pal Singh deposed that the entry regarding admission of Rekha was made in the register of the hospital at emergency no. 1719 dated 29.9.2014.

11. PW6 Dr. A. D. Aggarwal had conducted the post-mortem examination on the dead-body of deceased Rekha wife of Rajwinder. He noticed the following injuries on the person of deceased:-

Five incised wounds on back of head, bone deep.
13 x 1 cm on back of left side of head vertically.
5x1 cm on left side of head 2 cm from first wound.
6x1 cm on middle 5 cm from first wound.
7x1 cm on left side horizontally below first wound.
8x1 cm on right side of head back obliquely.

He proved the post-mortem examination report, Ex. PH. The cause of death was head injury. The injury was ante-mortem in nature and sufficient to cause death in the ordinary course of nature. Time between injury and death was found to be within few hours and between death and post-mortem within six hours.

12. PW9 ASI Gulshan Singh testified that PW1 Rajwinder Singh got his statement recorded vide Ex.PA. He made the endorsement, Ex.PA/1. Thereafter, FIR No. 129 dated 29.9.2014, Ex.PA/2, was registered. He accompanied the complainant PW1 Rajwinder Singh and his brother Amrik Singh to the spot i.e. village Mahorana. DSP Gurmeet Singh also reached the spot. He took into possession from the spot blood-stained earth in a

small plastic container. He recorded the statements of the witnesses under Section 161 Cr.P.C. They went to Rajindra Hospital, Patiala. However, on the way, they received information that Rekha was already dead. The inquest report was prepared. The body was sent for post-mortem examination. The accused was apprehended from the bus-stand. Personal search of the accused was carried out. He was taken out from the police lockup and was interrogated. He made disclosure statement vide Ex.PV. The accused got the blood-stained *dah* recovered from the bridge of canal by the side of embankment of canal minor leading to village Salar. Rough sketch of the *dah* was prepared. In his cross-examination, he admitted that no public witness or the complainant was associated during the course of interrogation even after accused offered to make a disclosure statement. After interrogation for about half an hour^{3/4} hour, accused expressed his desire to make disclosure statement. The place of recovery was situated by the side of passage leading to the fields and accessible to public at large. He did not call the complainant or any other independent witness before effecting the recovery at the instance of the accused.

13. PW10 HC Balbir Singh also deposed that on 3.12.2014 the accused was interrogated. He made disclosure statement, Ex.PV, on the basis of which *dah* was recovered from the hidden place.

14. FSL report is Ex.P2. The exhibits contained in parcels 'A' and 'B' were stained with human blood and the result regarding blood group was inconclusive.

15. The prosecution version is that the accused had entered the house of PW1 Rajwinder Singh. He entered into scuffle with his wife. He was armed with *dah*. Rekha in order to save herself rushed towards the

house of PW2 Balwinder Ram, which was situated in front of his house across the lane. Accused chased her. He gave multiple blows on the head of Rekha. Rekha collapsed on the spot. The accused ran away from the spot on bicycle along with weapon. The weapon i.e. *dah* was recovered on the basis of the disclosure statement made by the accused, Ex.PV. Recovery was effected vide recovery memo, Ex.PX/1.

16. We have gone through the site plan, Ex.PL. Mark 'A' is stated to be the place where the deceased was cleaning utensils and scuffle took place. Mark 'A' is the place from where Rekha rushed to point 'B' and reached point 'D' after crossing point 'C'. Blood stained earth was lifted from point 'D', which was taken in police possession through memo, Ex.PM. Distance between point 'A' and 'B' in the site plan is 28 feet. Distance between point 'B' to 'C' is 18 feet and distance from 'C' to 'D' is 20 feet. Width of street is 12 feet.

17. It is not believable that Rekha would rush to the house of her neighbour, when members of her family were present in the house. She reached from point 'A' to point 'D', after crossing the street as per the prosecution. The distance between point 'A' to 'D' is about 66 feet. She should have rushed inside her house knowing fully well that her family members were present there.

18. The case of the prosecution is also that scuffle had taken place at point 'A'. If at point 'A', she had raised the alarm, it would have attracted the attention of PW1 Rajwinder Singh and PW4 Amrik Singh and her mother-in-law Hanso. She collapsed in the house of PW2 Balwinder Ram. PW1 Rajwinder Singh and PW4 Amrik Singh had not taken her to the hospital. She was taken to the hospital by two ladies and Ichhar Ram father

of PW1 Rajwinder Singh. Their instinct would have been to save the life of Rekha. They should have taken her to the hospital. It has come in the statement of PW1 Rajwinder Singh that he reached Rajindra Hospital, Patiala, only at 3.00 P.M., whereas the occurrence took place at 10.00 A.M.

19. PW2 Balwinder Ram had seen the accused giving *dah* blow on the head of Rekha but did not chase him. According to him, the accused had given only one *dah* blow on her head, whereas as per the version of PW4 Amrik Singh, accused Tarsem Singh gave 4-5 *dah* blows on her head. He had also not accompanied Rekha to the hospital.

20. The motive attributed to the accused is that about 3-4 months ago a scuffle took place between PW1 Rajwinder Singh and accused Tarsem Singh, due to which Tarsem Singh inflicted injuries to Rekha. In case he was bearing grudge about that incident with PW1 Rajwinder Singh, his first target would have been PW1 Rajwinder Singh and not his wife Rekha.

21. The recovery has been made on the basis of disclosure statement made by the accused, Ex. PV. The weapon *dah* was recovered vide recovery memo, Ex.PX1. The police has not associated any independent witness at the time of recovery of blood-stained *dah*. PW9 ASI Gulshan Singh admitted in his cross-examination that no independent witness or the complainant was associated during the course of interrogation or even thereafter. It has also come in the statement of PW9 ASI Gulshan Singh that place of recovery was situated by the side of passage leading to the fields. It was accessible to general public.

22. It is also not believable that the accused would trespass in the house of PW1 Rajwinder Singh that too at 10.00 A.M. knowing fully well that the family members would be present in the house.

23. The conduct of PW1 Rajwinder Singh and PW4 Amrik Singh was unusual. They should have protected Rekha from the clutches of the accused. They should have taken her to the hospital instead of going to lodge the report. PW2 Balwinder Ram had neither taken Rekha to the hospital, nor he chased the accused and also not accompanied PW1 Rajwinder Singh and PW4 Amrik Singh to the police station. As per their version, she was alive when she was taken to CHC, Amargarh. Thereafter, she was referred to Rajindra Hospital, Patiala, where she succumbed to the injuries. Though the accused was armed with weapon *dah*, yet they should have challenged the accused. It casts doubt on the prosecution story. Therefore, conviction on the basis of this evidence, cannot be sustained.

24. Their Lordships of Hon'ble the Supreme Court in Anil Phukan vs State of Assam 1993 (30) ACC 316 (SC), have held as under: -

"The unnatural conduct of Ajoy P.W. 3 which has come to our notice from the record is that though he was present alongwith the deceased at the time of occurrence, on March 21, 1976, at about 8.00 p.m., he made no attempt to save his uncle from the assault. He did not even continue to stay there, though of course according to him, he ran for his life on being advised so by his uncle. He was not assaulted though both he and his uncle were unarmed. Even if Mahendra was engaged in assaulting the deceased, Anil, who was also allegedly armed neither made an attempt to assault Ajoy P.W. 3 nor even chased him. P.W. 3 Ajoy did not himself lodge the F.I.R."

25. Their Lordships of Hon'ble the Supreme Court in Bhimappa Jinappa Naganur vs State of Karnataka 1993 (30) ACC 265 (SC), have held as under: -

“It also appears to us that the behaviour of P.W. 1, wife of the deceased, was not natural in the sense that she merely rests by offering water to her deceased husband who was breathing his last. She did not try to nurse him or offer him any other help which would have shown her presence at the time of the death of the deceased at the site of the incident.”

26. In view of the aforesaid discussed evidence, the prosecution has failed to prove the case against the appellant beyond reasonable doubt. Accordingly, the appeal is allowed. The judgment 21.8.2015 and order dated 24.8.2015, are set aside. The appellant is acquitted of all the charges framed against him. He be released forthwith, if not required in any other case.

(Rajiv Sharma)
Judge

8.2.2019
vs

(Anupinder Singh Grewal)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No