

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-708-DB-2017 (O&M)

Date of decision: 11.02.2019

Jangir Singh

.....Appellant

versus

State of Punjab

.....Respondent

**CORAM: Hon'ble Mr.Justice Rajiv Sharma
Hon'ble Mr.Justice Kuldeep Singh**

Present: Mr.Rajiv Vij, Advocate for the appellant
Mr.S.P.S.Tinna, Additional Advocate General, Punjab

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J.

Appellant Jangir Singh has filed this appeal against the judgment of conviction and order of sentence dated 27.5.2014, passed by learned Additional Sessions Judge, Fazilka, whereby, he was convicted under Section 302 IPC and sentenced to life imprisonment and fine of Rs.5,000/-, in default thereof, to undergo further rigorous imprisonment for one year. The period of detention already undergone by the accused was ordered to be set off against the substantive sentence.

Case of the prosecution is that on 14.11.2012, Avtar Singh (PW8) was present in his house along with his family. His younger sister Sheela Bai (PW9), who was married at village Nawan, district Hanumangarh (Rajasthan) had come to meet them. At about 6.00 p.m., his

father Jangir Singh had a quarrel with Dharmo Bai, mother of the complainant, as Dharmo Bai was stopping Jangir Singh from drinking liquor. Thereafter, Avtar Singh and his sister resolved the matter. Avtar Singh complainant along with his wife and mother Dharmo Bai and sister Sheela Bai slept in one room. Jangir Singh slept alone in one room. At about 9.00 p.m., mother of the complainant Dharmo Bai came out from the room for urinating. Thereafter, accused Jangir Singh came out of his room carrying an iron rod. He threw Dharmo Bai on ground and started giving iron rod blows on the face, head and both arms of Dharmo Bai. Light of the courtyard was on. As Dharmo Bai raised alarm *Marta Marta*, Avtar Singh and Sheela Bai got up. Sheela Bai got released her mother from her father. Jangir Singh ran away from the spot alongwith iron rod. Avtar Singh then made a phone call on phone number 108 and called Ambulance. Dharmo Bai was shifted to Civil Hospital, Fazilka. However, considering her serious condition, she was referred to Medical College and Hospital, Faridkot, where she ultimately succumbed to injuries on 23.11.2012.

On 15.11.2012, on receiving a wireless message from PS City Fazilka, a police party led by ASI Kartar Singh visited Civil Hospital, Fazilka, where they obtained MLR of injured Dharmo Bai, in which, eight injuries were shown with blunt weapon. All the injuries were kept under observation for expert opinion and X-ray. However, police party was informed by the doctor that the injured has been referred to Medical College, Faridkot. Police accordingly recoded DDR on 15.11.2012 (Ex.PF). Thereafter, on 16.11.2012, ASI Kartar Singh along with fellow officials visited Medical College and Hospital, Faridkot, where doctor opined that Dharmo Bai is unfit to make statement. However, Avtar Singh

complainant met the investigating officer and told him that it is a family dispute and that they will get statement of his mother recorded after her recovery. Police party again returned back and recorded the Daily Diary Report in their register. On 23.11.2012, a telephonic message was received from Mukhtiar Singh son of Jangir Singh accused that Dharmo Bai has died. Whereupon, Inspector Darshan Singh accompanied by the fellow officials visited Medical College and Hospital, Faridkot, where, Avtar Singh son of Jangir Singh made a statement (EX.PN), which formed the basis of formal FIR (EX.PB). Inquest report (EX.PQ) was prepared. Postmortem of the dead body was got conducted. Site plan (Ex.PS) of place of occurrence was also prepared.

Accused Jangir Singh was arrested by the police on 26.11.2012. He suffered a disclosure statement (Ex.PL), wherein, he stated that he has kept concealed the iron rod used in the crime near the wall of his house buried under the soil. He can get the same recovered. In pursuance to the same, he got recovered the said iron rod, which was buried under the sand near the wall. After completion of investigation, challan was presented in the Court.

Accused was charge sheeted by learned Additional Sessions Judge, Fazilka under Section 302 IPC, to which, he pleaded not guilty.

In support of its case, prosecution examined PW1 Dr.Neel Chugh, Medical Officer, Civil Hospital, Fazilka, PW2 Devi Lal, Draftsman Tehsil Complex, PW3 Dr.Prem Pal Bhatti, Medical Officer, Junior Resident Surgery Ward 2 Guru Gobind Singh Medical College, Faridkot, PW4 ASI Kartar Singh, PW5 ASI Pargat Singh, PW6 Investigating Officer Inspector Darshan Singh, PW7 HC Ram Sarup, PW8 complainant Avtar Singh, PW9

eye witness Sheela Rani, PW10 Dr.Rajiv Joshi, Professor and Head, Department of Forensic Medicine, G.G.S. Medical College, Faridkot. Thereafter, Additional Public Prosecutor closed the prosecution evidence.

When examined under Section 313 Cr.P.C., accused denied as incorrect the evidence led against him and claimed that he has not committed murder of his wife. He has been falsely involved.

Accused did not lead any evidence in defence.

After hearing the prosecution, learned defence counsel and going through the evidence, learned Additional Sessions Judge, Fazilka convicted and sentenced the accused as aforesaid.

We have heard learned counsel for the appellant, learned State counsel and have also carefully gone through the file.

First of all, it is necessary to look into the injuries received by Dharmo Bai, deceased.

Dr.Neelu Chugh, Medical Officer, Civil Hospital, Fazilka (PW1) stated that when she examined Dharmo Bai on 14.11.2012 at 10.00 p.m., she found the following eight injuries on her person:-

- 1. A lacerated wound of size 5.5 cm x 1.0 cm on forehead left side, oblique, 2 cm above left eyebrow.*
- 2. A lacerated wound of size .5 cm x 0.5 cm on root of nose. Fresh and clotted blood on surface. Advised X-ray. ENT/ Surgeon opinion.*
- 3. A lacerated wound of size 1 cm x 0.5 cm on nose, middle, fresh and clotted blood on surface. Advised X-ray. ENT/Surgeon opinion.*
- 4. A lacerated wound of size 3 cm x 0.5 cm on right cheek, fresh and clotted blood on surface. Advised X-ray. Surgeon opinion.*
- 5. A lacerated wound of size 3.5 cm x 1.5 cm on right*

hand, thenar aspect, anterior fresh and clotted blood on surface. Advised X-ray. Ortho opinion.

6. A lacerated wound of size 9 cm x 1.5 cm on scalp, at top, frontal and both parietal area fresh and clotted blood on surface. Advised X-ray. Surgeon opinion.

7. Swelling and lacerated wound of size 1.5 cm x 1.5 cm on left elbow. Fresh and clotted blood on surgeon. Advised X-ray. Ortho opinion.

8. A lacerated wound of size 3.5 cm x 1 cm on proximal phalanx, posterior, right little finger, fresh and clotted blood on surface. Advised X-ray. Ortho opinion.

As per statement of Dr.Rajiv Joshi, Professor, Forensic Medicine, G.G.S. Medical College, Faridkot (PW10), who conducted the postmortem of the dead body, regarding injury nos.5 and 6, fractures were found, which are reproduced as under:-

5. Stitched wound with 4 stitches intact present on right side of face. Length of wound is 2.5 cm.

On dissection of cranial cavity:-

Diffuse subgaleal hemorrhage is present on opening of scalp. On further dissection depressed fracture of right parietal bone, fracture of bilateral pterygoid plates, fracture of posterolateral wall of orbit with soft tissue swelling, fracture of right maxillary sinus on further removal of skull bone, dura, subarachnoid hemorrhage diffusely present on occipital area of brain. Base of brain contain clotted blood. Mild subarachnoid hemorrhage is also present on right parietal to be of brain. Sulci widened and gyri flattened.

On dissection of facial area:-

Fracture of bilateral nasal bone fracture of bilateral zygomatic arch is present.

Dislocation of maxilla is present.

6. Sticked wound measuring 4 cm in length with 4 stitches intact present in right hand. Injury 4 cm below wrist. On dissection fracture of proximal phalanx of thumb present.

Apparently, head injury, ultimately proved fatal.

Now, coming to the ocular version, it comes out that there are two material witnesses of the occurrence, namely, Avtar Singh son of the accused and Sheela Bai daughter of the accused. Accused has two sons, namely, Avtar Singh and Mukhtiar Singh. Statement of Avtar Singh shows that he supported the prosecution case. He stated that on 14.11.2012, his younger sister Sheela Bai, who is married at village Nawan, district Hanumangarh (Rajasthan) had come to meet them. At about 6.00 p.m. his father Jangir Singh had quarrel with his mother Dharmo Bai, as she was stopping his father from drinking liquor. They resolved the matter and they slept in separate rooms. At about 9.00 p.m., his mother came out from the room for urinating. His father also came out of his room carrying iron rod and started beating his mother and gave blows of iron rod on the head of his mother, who was lying on the ground. Then they called Ambulance on phone number 108 and took her to Civil Hospital, Fazilka.

Evidence of Dr. Neelu Chugh, Medical Officer, Civil Hospital, Fazilka shows that the injured was promptly shifted to Civil Hospital, Fazilka and she was medico legally examined at 10.00 p.m. i.e. within one hour of the occurrence. Sheela Bai (PW9) also stated that she is married and come to see her family at village Shajrana. At about 6.00 p.m., her father had quarrel with her mother Dharmo Bai. Her mother was stopping her father from drinking liquor. Then they resolved the matter and slept in separate rooms. At about 9.00 p.m., her mother came out for

urinating. Then her father also came out of his room carrying iron rod and started beating her mother with iron rod. He gave blows of iron rod on head, face and arms of her mother. Then she along with his brother Avtar Singh caught hold of her mother, who was lying on the ground and then her brother called Ambulance on phone number 108 and removed the injured to Civil Hospital, Farilka, from where, she was referred to Medical College and Hospital, Faridkot. Her mother succumbed to injuries after eight days.

Learned counsel for the appellant has vehemently argued that cross-examination of Avtar Singh and Sheela Bai shows that both of them did not see occurrence. Learned counsel has made reference to the cross-examination of Avtar Singh, wherein it is stated that after dispute at 6.00 p.m., at about 9.00 p.m., his father and mother slept in a separate room. He along with his wife, mother and son and sister Sheela Bai slept in a separate room. They slept at 7.00-8.00 p.m. Injuries was caused at 9.00 p.m. He further stated that they were sleeping when their mother came out of the room. They were in deep sleep, when their mother came out. They got up when their mother raised alarm of *Mar Dita Mar Dita*. Firstly, he came out of room (Mark A) and when he reached the spot, his father had already run away from the spot. He started taking care of his mother. His sister came out of the room after him. Rod was thrown on the roof of house by his father and was located by the police. However, Sheela Bai in cross-examination, has stated that she was awake when her mother went outside for urinating. His mother was in the process of urinating when his father started beating her with iron rod. His brother is a Mason. The rod used in the offence belongs to his brother which is normally used for bending iron rod. She stated that when she went to the spot, her father had already given

blows of iron rod thrice or four times. She put herself on the body of her mother but her father told her to get up and allow him to beat the deceased to death. Then his father ran away from the spot. Her brother came to the spot just after running away of the father. Iron rod was lying under the bed of the room.

We are of the view that much reliance cannot be placed on the admission of Avtar Singh in cross-examination that his sister came after him and that when he came, his father had already run away. It appears that Avtar Singh, being the son, had still some soft corner for his father, for the apparent reason. Avtar Singh has already lost his mother and also lost his father Jangir Singh, who has been imprisoned for life. However, statement of Sheela Bai is categorical. She was awake when her mother went outside for urinating. Avtar Singh though sleeping in the same room but was on the separate bed, therefore, he could not know whether the other members of the family are actually asleep fast or are still awake. Therefore, the statement of Sheela Bai is to be believed that she was awake when her mother went out for urinating. When her mother was attacked, she raised alarm. Statement of Sheela Bai is to be believed that she immediately rushed out but at that time, her father had already given 3-4 iron rod blows. She specifically asserted that she put herself on the body of her mother but her father told her to get up and allow her to beat Dharmo Bai to death. Thereafter, her father ran away. She has specifically asserted that Avtar Singh came at the spot just after the running away of the father.

We are of the considered opinion that there is nothing to disbelieve the statement of Sheela Bai, daughter of the accused and deceased that in order to save her mother, she lay on the body of her mother.

Her father, apparently, did not want to hurt his daughter and asked his daughter Sheela Bai to get away to allow him to cause more injuries to Dharmo Bai. Both Avtar Singh and Sheela Bai are un-interested witnesses. They were present in the house. Moreover, in this case, it is clear from the statement of both the witnesses that Jangir Singh father after committing crime, ran away from the spot. The conduct of the accused in running away from the spot after the crime and not returning back to get his injured wife admitted in hospital to save her life is admissible in evidence as *res gestae*. Presumption is also to be raised under Section 106 of the India Evidence Act. Accused has not explained as to who caused injuries to his wife. In the statement under Section 313 Cr.P.C., he has simply stated that he did not kill his wife. At the time of crime, accused and his deceased wife Dharmo Bai, his son Avtar Singh, daughter Sheela Bai and wife of Avtar Singh were present in the house. Therefore, the absence of any explanation by the accused and the support of prosecution version by the statements made by Avtar Singh and Sheela Bai regarding commission of crime by the accused is sufficient to prove the prosecution case beyond all reasonable doubts.

So far as the recovery is concerned, as per statement of investigating officer, accused made disclosure statement and got recovered the iron rod, which was buried under the sand outside wall of the house.

We are of the view that even if it is assumed that iron rod was later on found in the house and was lying in the house and claimed by both Avtar Singh and Sheela Bai, it is immaterial. The fact remains that there are two independent stamped witnesses available to state about the commission of crime by the accused Jangir Singh.

It being so, we do not find any illegality or infirmity in the

judgment of conviction and order of sentence dated 27.5.2014, passed by
Additional Sessions Judge, Fazilka. Appeal is, accordingly, dismissed.

(Rajiv Sharma)
Judge

(Kuldip Singh)
Judge

11.02.2019
gk

Whether speaking/ reasoned:	Yes
Whether Reportable:	Yes