

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

**CRA-D-9-DBA-2003 (O&M)
Date of decision : 15.10.2019**

State of Punjab

...Appellant

Versus

Kulwant Singh

...Respondent

**CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MR. JUSTICE H.S. MADAAN**

Present: Mr. A.A. Pathak, Addl.A.G., Punjab.

Mr. Sunil Chadha, Sr. Advocate,
with Mr. Saurav Kanojia, Advocate,
for the respondent.

JITENDRA CHAUHAN, J.

Challenge in this appeal, preferred by the State of Punjab is to the judgment dated 02.08.2002, passed by learned Additional Sessions Judge, Hoshiarpur, thereby, acquitting the accused-respondent of the charge framed against him under Section 306 of the Indian Penal Code (for short, 'the IPC') in FIR No.142 dated 22.12.2000, registered under Section 306 IPC, at P.S. Mukerian.

Brief facts of the present case as noticed in the opening paragraphs of the impugned judgment are as under:-

“Briefly stated, the case of the prosecution is that Paramjit Kaur, deceased, sister of PW. Gurdev Singh was married to accused Kulwant Singh in the year 1985 at village Mohri Chak P.S. Mukerian. Out of the wedlock of Paramjit Kaur and Kulwant Singh, one male child namely Amandeep Singh aged 15 years and female child namely Jyoti aged 7 years were born. The accused is a Drawing Master and posted at Govt. High School of village Gera Distt. Hoshiarpur

2. *The character of the accused Kulwant Singh was not good and he was keeping illicit relations with Sarabjit Kaur, brother's wife of PW Gurdev Singh. The accused Kulwant Singh used to visit Jalandhar to meet Sarabjit Kaur and Paramjit Kaur his sister remained preventing him from visiting Jalandhar and on that account there remained a dispute between the accused and Paramjit Kaur.*

3. *On 21.12.2000, Paramjit Kaur gave a telephone call at about 8.30 P.M. to PW Gurdev Singh that accused Kulwant Singh resided with Sarabjit Kaur at Jalandhar on the intervening night of 20.12.2000/21.12.2000 and come back on 21.12.2000. When Paramjit Kaur inquired from the accused Kulwant Singh regarding his stay at Jalandhar, then the accused gave beatings to Paramjit Kaur. PW Gurdev Singh told Paramjit Kaur that he would visit her on the next morning. PW Gurdev Singh gave a telephone call to his mother's brother's son PW Tajinderpal Singh and also called him on the next morning. PWs Gurdev Singh and Tajinder Pal Singh went to village Mohri Chak to the house of sister of Gurdev Singh. PWs*

Gurdev Singh and Tajinderpal Singh have seen the signs of beatings on the body of Paramjit Kaur and she was vomiting. There were black signs near her eyes. PW Gurdev Singh enquired from Paramjit Kaur as to what is the matter and she told Gurdev Singh that on the previous night, accused Kulwant Singh gave beatings to her and on the next morning, he had administered poisonous substance to her. PWs Gurdev Singh and Tajinderpal Singh took Paramjit Kaur in a Maruti car to a private Hospital at Mukerian. The father-in-law of Paramjit Kaur also accompanied them. They took Paramjit Kaur to Dr. Surinder, Surindera Hospital, Mukerian and the condition of his sister became serious. The doctor had advised them that Paramjit Kaur is serious and may be taken to Civil Hospital, Mukerian and when they took Paramjit Kaur to Civil Hospital Mukerian but she expired in the way. The dead body of Paramjit Kaur was taken to the house of her inlaws. PW Gurdev Singh left Tajinderpal Singh to guard the dead body of Paramjit Kaur and Gurdev Singh went to his village Behram. He informed his relatives that after leaving his relation at village Mohri Chak, PW. Gurdev Singh went to police and made statement at 'T' Point Talwara where the police met him. This case has been registered on his statement Ex.PA. During the investigation of the case, post mortem examination on the dead body of Paramjit Kaur was conducted by Dr. V.P. Singh who found two injuries on the person of Paramjit Kaur. After the receipt of report of Chemical Examiner Ex.PE the cause of death in this case was opined aluminium phosphide

poisoning. After completing the investigation the accused was challaned.....”

A charge under Section 302 IPC and in the alternative, charge under Section 306 IPC was framed, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution has examined Gurdev Singh as PW-1; Tajinderpal Singh as PW-2; Dr. V.P. Singh as PW-3; Constable Dalip Singh as PW-4; MHC Dawinder Singh as PW-5; Constable Paramjit Singh as PW-6; HC Darshan Singh as PW-7; ASI Baldev Singh as PW-8; Harinder Singh Draftsman as PW-9; and ASI Balbir Singh PW-10

When examined under Section 313 Cr.P.C., the accused denied all the incriminating circumstances which appeared against him and pleaded false implication. He stated that his relations with his wife were cordial and they were leading a happy life with two loving children. The story of illicit relations of the accused with Sarabjit Kaur is false. In-laws of the accused were annoyed with him as he helped Sarabjit Kaur on humanitarian ground to get land in lieu of her maintenance. During the night of 20/21.12.2000, he had stayed with his sister Surjit Kaur at Village Lohlan and came back in the morning to his Village at about 8.00 a.m. and then left for his school at 8.30 a.m. On 21.12.2000 at night time there was altercation between him and his wife and she told that he had stayed during the previous night with Sarabjit Kaur at Jalandhar. The accused tried to convince that he had stayed with his

sister at village Jehlan. Next morning i.e. on 22.12.2000, the accused left for school, whereas, his son Amandeep Singh was in the house. During the absence of the accused, Paramjit Kaur took some poisonous substance. Father of the accused was in the house. He removed Paramjit Kaur to a private hospital and when she was being taken to Civil Hospital, Mukerian, she died on the way. Dead body of Paramjit Kaur was brought to the village. Father of accused informed Gurdev Singh on telephone and then he and others came to the village who reached after his wife had already died. In defence, the accused examined Amandeep Singh as DW1 and closed the defence evidence.

After hearing learned counsel for the parties, learned trial Court vide the impugned judgment dated 02.08.2002, acquitted the appellant from the charges framed against him.

Hence, the instant appeal.

Learned State counsel has argued that the delay, if any, has been sufficiently explained by the prosecution. It was natural for PW-1, Gurdev Singh, brother of the deceased first to take care of the dead-body and inform the family members/relatives. Further, there was no occasion with the complainant for consultations as the deceased had already informed him before her death that some poisonous substance had been administered to her by her husband Kulwant Singh and it was Kulwant Singh alone who had been named in the FIR. Learned counsel has further argued that the trial Court fell in error while discarding the evidence of two natural witnesses i.e.

PW-1 Gurdev Singh and PW-2 Tajinderpal Singh. To the contrary, the evidence of Amandeep Singh, DW-1 was under the influence of his paternal grandfather. There was a strong motive with the accused to eliminate the deceased as he had developed illicit relations with Sarabjit Kaur.

On the other hand, learned Senior counsel appearing on behalf of the accused-respondent has contended that the well reasoned judgment of acquittal does not suffer from any perversity being based on correct appreciation of the evidence led by the parties. The son of the deceased and accused-respondent, Amandeep Singh, though cited as witness but was not examined by the prosecution. While appearing as DW-1, this witness has unfolded the factual position. To the contrary, both Gurdev Singh and Tajinderpal Singh are interested witnesses.

Heard learned counsel for the parties and carefully perused the record with their able assistance.

As per the prosecution version, the accused administered poison to the deceased in the morning of 22.12.2000. PW-1 Gurdev Singh and PW-2 Tajinderpal Singh reached the house of the deceased at about 10.30 a.m. She was initially removed to Surindra Hospital, Mukerian, however, as her condition was serious, she was referred to Civil Hospital, Mukerian. She died on the way. The dead-body was taken to Village Mohri Chak at about 1.00 p.m. Thereafter, PW-1 Gurdev Singh went to village Behram and reached there at about 3.00 p.m. The FIR came to be registered at 7.30 p.m. whereas, it reached the Area Magistrate at 11.10 p.m. Therefore, there is a

considerable delay of about 12 hours in lodging the FIR and the same has not been explained. It is true that the delay in lodging the FIR itself is not a ground to discard the entire prosecution version, however, it is equally true that in such cases, the evidence has to be appreciated by the Court with extra caution.

The prosecution case hinges on the alleged dying declaration made by the deceased before her brother, complainant Gurdev Singh, PW-1. It has been alleged that the deceased was objecting to the illicit relations maintained by the accused-appellant with one Sarabjit Kaur, an estranged widow of his late brother. However, the stand of the accused-respondent is that the story has been concocted as the complainant's family was nursing a grudge against the accused for helping said Sarabjit Kaur in the maintenance proceedings. The complainant has admitted in his cross-examination that he had to part with three acres of land in favour of Sarabjit Kaur, tentative value whereof was around ₹4,50,000/-. Thus, the veracity and authenticity of the alleged oral dying declaration is doubtful.

Further, there is no cogent and trustworthy evidence on record to prove the factum of alleged illicit relations between the accused and Sarabjit Kaur. Even otherwise, the marriage in question was solemnized in the year 1985. Till the date of incident, there was no complaint at all against the projected bad character of the accused. To the contrary, the prosecution despite citing the son of deceased and the accused as a witness, did not examine him. Whereas, while appearing as DW-1, Amandeep Singh has

stated in his cross-examination that it is wrong to suggest that his father was having illicit relations with Sarabjit Kaur and the deceased, his mother, was fed up with the same. Therefore, the entire prosecution story becomes doubtful.

Admittedly, the cause of death in the instant case is poisoning. The story propounded by the prosecution is that the deceased was forcibly administered poison by the accused-respondent. However, it has been consistently held by this Court as well as Hon'ble the Supreme Court in a catena of judgments that Aluminum Phosphide cannot be forcibly administered. Even otherwise, there were no visible signs of any kind of violence on the dead-body of the deceased except bluish and reddish signs below her eyes.

As against the case set up by the prosecution, the version put forth by the defence appears more probable. It is specific stand of the accused that complainant-Gurdev Singh, PW-1, was nursing a grudge against the accused. This witness has admitted in his cross-examination that he had to par with three acres of land in favour of Sarabjit Kaur which valued approximately ₹4,50,000/-. Thus, the assertion that the FIR has been got registered by an interested person and a chance witness cannot be said to be unfounded. Therefore, an adverse inference has rightly been drawn against the prosecution by learned trial Court.

The sum and substance of the above discussion is that the prosecution has failed to prove its case against the accused-respondent

beyond shadow of reasonable doubt. The findings returned by learned trial Court are based on correct appreciation of the facts and circumstances pleaded and the material placed before it in support thereof. Hence, this Court is not inclined to interfere in the well-reasoned judgment of acquittal recorded by learned trial Court, which is, hereby, affirmed. As a result, the instant appeal fails and is thus, dismissed.

(JITENDRA CHAUHAN)
JUDGE

15.10.2019
atulsethi

(H.S. MADAAN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No