

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

CRA-D No. 755-DB of 2008 (O&M)

Reserved on : 2.3.2020

Date of decision : 3.3.2020

A. P. Selbum Appellant
versus

State of Haryana ... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. H. S. Grewal, (Advocate) Amicus Curiae, for the appellant.
Mr. Vivek Saini, Deputy Advocate General, Haryana.

Rajiv Sharma, J.

1. This appeal is instituted against the judgment dated 29.8.2008 and order dated 1.9.2008, rendered by learned Sessions Judge, Ambala, in Session Case No. 23 of 14.11.2007. Appellant A. P. Selbum was convicted and sentenced to undergo imprisonment for life under Section 302 IPC and to pay a fine of ₹ 5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of six months.

2. The case of the prosecution in a nutshell is that PW7 Mukesh Kumar lodged a report, Ex.PA, with ASI Sube Singh to the effect that he was resident of Lal Kurti Bazar, Ambala Cantt. He was running a watch repair shop at Lal Kurti Bazar. He had let out two rooms on 2nd floor of his residential house. One room was let out to A. P. Selbum (accused) and the other to A. P. Yadav. Both of them were in Army. Accused was residing with his wife Krishna Marry and a daughter. Accused was habitual of drinking. The accused under the influence of liquor used to quarrel with his wife. He used to advise him not to maltreat his wife. On 22.8.2007 at about 10.00 P.M., accused came to his house and started abusing his wife. He was

about to beat his wife. His wife started crying. On hearing noise, complainant Mukesh Kumar along with his mother Ramesh Rani went upstairs. The accused was seen abusing his wife. Mukesh Kumar and his mother after making them silent, came down. At about 10.30 P.M., Co-tenant A. P. Yadav called Mukesh. He told that the accused had bolted the door from inside and their daughter was crying and he should reach upstairs. Mukesh Kumar and his mother immediately rushed upstairs. The accused had bolted the door from inside. The door was got opened. He noticed that Krishna Marry, wife of the accused, was hanging. Their daughter was weeping while sitting on the floor and the accused was sitting by the side of the bed. FIR, Ex.PB, was registered. The photographs were taken. The dead-body was taken to Civil Hospital for post-mortem examination. The 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 its case. The statement of the accused was also recorded under Section 313 Cr.P.C. He denied the case of the prosecution. He examined two witnesses in his defence. He 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 trial Court.

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

6. PW3 Dr. Satish Kumar had conducted the post-mortem examination. According to him, the ligature mark was present all around the neck with knot on the right side of the neck under mastoid process/ nature 1 to 1½ inch thick. The ligature groove was very deep. Underlying skin was abraded and contused deeply, pinkish red in colour. Underlying muscles were found to be contused and torn. In his opinion, the cause of death was due to asphyxia due to hanging. The injuries were ante mortem in nature and were sufficient to cause death in ordinary course of nature. The probable duration between injuries and death was within few minutes and between death and post-mortem was within twenty four hours.

7. PW1 ASI Sube Singh had registered the FIR, Ex.PB.

8. PW5 Vijay Taneja had taken the photographs, Ex.P6 to P11.

9. PW7 Mukesh Kumar deposed that he had rented out two rooms of his house to different tenants. One of the tenants was A. P. Selbum. The tenant in the other room was A. P. Yadav. On 22.8.2007 at about 10.00 P.M., accused A. P. Selbum came back from his duty. He had consumed liquor. In the meantime, A. P. Yadav came and told him that the accused and his wife were quarreling with each other. He and A. P. Yadav went upstairs in the room of A. P. Selbum. The accused was pacified. The accused bolted the room from inside. He came back to his residential house. After about 15 minutes, he heard the cries of the daughter of the accused. He went upstairs and got the door unbolted from the accused and found that Krishna Marry was hanging with the rope, Ex.P1. He informed the police. Police came to the spot. He was declared hostile and was cross-examined by the learned Public Prosecutor. He was confronted with portion A to A of his statement, Ex.PA. In his cross-examination by the learned defence counsel,

he deposed that there was a normal heated talks between the accused and his wife. On that day, the accused did not talk to him when he had gone upstairs. The accused and his wife understood Hindi to some extent.

10. PW8 Ramesh Rani deposed that her husband was running a watch repairing shop at Lal Kurti Bazar, Ambala Cantt. Accused A. P. Selbum was their tenant. He was working in the Army. Accused used to keep his wife properly. She was declared hostile and was cross-examined by the learned Public Prosecutor. She denied her statement, Ex.PH. She was confronted with portion A to A of statement, Ex.PH. She had not stated to the police that on that day at 10.00 A.M., accused A. P. Selbum came to his house and he started beating his wife. She was confronted with portion C to C of her statement, Ex.PH.

11. PW10 Alok Kumar deposed that he was in Army. He was posted as Sepoy. One Selbum was residing as tenant in the upper portion of the house of Roshan Lal. He was also living in the upper portion of the house. In the Month of August, 2007 at about 7.30/7.45 P.M., he had come to his house. He had taken his meal. He had seen the wife of Selbum hanging. He became nervous. He rushed down stairs and raised noise. When they entered in his house, the accused was present there in a state of shock. His wife was hanging. He was declared hostile and was cross-examined by the learned Public Prosecutor. He denied the statement, Ex.PJ. He was confronted with portion A to A of statement, Ex.PJ.

12. PW11 ASI Shish Pal deposed that on 22.8.2007, he received a telephonic call of complainant Mukesh Kumar. He went to the spot. Mukesh Kumar got his statement, Ex.PA, recorded. He made endorsement, Ex.PA/2. Photographs were taken. He informed SHO Rajneesh Kumar. He inspected

the spot. He took the dead-body to Civil Hospital, Ambala Cantt, for post-mortem examination. The accused was arrested at 12.30 P.M. He denied the suggestion that no witness had given any statement under Section 161 Cr.P.C. before him.

13. Lt. Col. M. P. Singh appeared as DW1. According to him, the accused was posted as Cook in the hospital. There was no complaint against him. He used to drink occasionally.

14. DW2 D. K. Selvan deposed that he was the family friend of accused A. P. Selbum. Accused had cordial relations with his wife.

15. According to PW3 Dr. Satish Kumar, the cause of death was due to asphyxia due to hanging. We have gone through Photographs, Ex. P6 to Ex.P11. The photographs suggest that the ligature mark was present all around the neck. The length of ligature material was 7 feet. The body was in half standing position and on the bed, which would make it more than 5 feet. The legs were touching the bed. Thus, it was not possible that death was due to hanging. It has come on the record that the accused had bolted the room from inside. According to the prosecution witnesses, there was nobody in the room except, the accused, his wife and their daughter.

16. According to the site plan, the occurrence had taken place in the tenanted premises. It is a case where provision of Section 106 of the Indian Evidence Act, 1872 is attracted. The accused had not explained how his wife has committed suicide when her knees were touching the bed and the length of ligature was 7 feet. Though PW7 Mukesh Kumar, PW8 Ramesh Rani and PW10 Alok Kumar have not supported the case of the prosecution entirely but they have deposed that accused was living with his

wife and daughter in the tenanted premises.

17. It has also come on the record that the accused had quarreled with his wife after consuming liquor. According to PW7 Mukesh Kumar on 22.8.2007 at about 10.00 P.M., accused A. P.Selbum returned from his duty after taking liquor. A. P. Yadav had called PW7 Mukesh Kumar and told that the accused and his wife were quarreling with each other.

18. It has also come in the statement of PW3 Dr. Satish Kumar that the ligature mark was present all around the neck with knot. Underlying skin was abraded and contused deeply, pinkish red in colour. Neck was swollen. The body was in standing posture. No suggestion was put to any of the witness that it was a case of suicidal death. The accused had killed his wife and tried to make it a case of hanging. In view of overwhelming evidence brought on record, it is a case of strangulation and not of hanging, as opined by the doctor.

19. The prosecution has proved the case against the appellant beyond reasonable doubt. Accordingly, there is no merit in the present appeal. The same is hereby dismissed.

20. The sentence of the appellant was suspended vide order dated 5.11.2012. His bail bonds are cancelled. He be committed to jail to undergo his remaining part of sentence.

(Rajiv Sharma)
Judge

3.3.2020
vs

(Harinder Singh Sidhu)
Judge

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