

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

CRA-D-1150-DB-2012 (O&M)

Reserved on: 14.11.2022

Pronounced on : 23.11.2022

Karambir

. . . Appellant

Versus

State of Haryana

. . . Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR  
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. Sanjeev Manhas, Advocate  
Legal Aid Counsel for the appellant.

Mr. Anmol Malik, DAG, Haryana.

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**Kuldeep Tiwari, J.**

Present appeal is directed against the judgment of conviction dated 30.07.2012 and order of sentence dated 31.07.2012 passed by the Court of Sessions Judge, Gurugram whereby, appellant was convicted for commission of offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life with fine of Rs.10,000/- and in default of payment of fine, was ordered to further undergo rigorous imprisonment for a period of ten months.

**Factual Matrix**

The appellant – Karambir was convicted for committing murder of his own six year old son. In fact, criminal machinery was set rolling by present appellant himself. He made a complaint Ex.PA to the police stating therein, that on intervening night of 28/29.09.2011 when he was coming back to his home from Jagran (a Hindu ritual consisting of all night vigil and puja in

honour of a deity), he heard cry of his mother. When he reached near his house, he saw that a young boy, aged about 18/19 years and about 5 feet in height, was running out from his house. That boy was also seen by his neighbour Parkash s/o Kalu Ram. However, that young boy escaped by taking the benefit of darkness. Thereafter, he and his wife found that their six year old son Nawal was lying dead on the cot. He had been murdered after pressing throat by an unknown person. On the basis of above-said statement of the appellant, FIR No.324 dated 29.09.2011 was registered under Section 302 IPC at Police Station Sohna (Gurugram).

The Investigating Officer prepared the inquest report and thereafter, dead body was shifted to Mortuary for conducting the postmortem examination. After postmortem, the doctor opined the cause of death as injury to vital organ i.e. Spinal cord due to fracture of C1-C2 vertebrae.

During the course of investigation, on 22.10.2011 the wife of appellant namely Kanta got recorded her statement under Section 161 Cr.PC wherein, she alleged that her husband (appellant) was a devotee of 'Maa Kali' and used to talk about giving a sacrifice to 'Maa Kali'. On intervening night of 28/29.09.2011, there was a 'Jagran' in their locality and all the inhabitants of their locality had gone to attend the same. On that night, she along with her husband, her mother-in-law Murti Devi, and her son Nawal (since deceased) was present at home. At about 12.00 midnight, she and her mother-in-law were awake and saw that her husband was standing beside the cot on which her son Nawal was sleeping and was uttering the word 'Jai Maa Kali' 'Jai Maa Kali' and pressed the throat of his son. She and her mother-in-law tried to desist the appellant from doing so but he threatened

them and separated them and finally, while uttering words 'Jai Maa Kali' murdered his son Nawal by pressing throat. The appellant put them under the fear of death and that is why, they did not disclose the said fact to the police. She further stated that when her brother – Jai Bhagwan (PW-4) came to their house for paying condolence, she disclosed all these facts to him. Her husband also accepted his guilt before her brother and Sarpanch of the village Chiranji Lal (PW-7) and admitted that under the misconception to have 'sidhi' in 'tantra-mantra', he had committed murder of his own son.

On the basis of above-said statement, appellant-accused was transposed as an accused and further investigation was carried out. The police recorded the statement of Jai Bhagwan-brother-in-law of the appellant, Murti Devi-mother of the appellant and Chiranji Lal-Sarpanch of the village under Section 161 Cr.PC.

After completion of investigation, final report was filed before learned Illaqa Magistrate against the present appellant to face trial under Section 302 IPC. Being the offence triable by the Court of Session, learned Illaqa Magistrate committed the case to the Court of Sessions vide order dated 03.02.2012. To prove its case, the prosecution examined as many as 10 witnesses. Learned Public Prosecutor vide its statement dated 01.06.2012 gave up Lekh Ram, Ved Parkash and Constable Manoj being unnecessary and closed the prosecution evidence.

The statement of the appellant was recorded under Section 313 Cr.PC. All the incriminating evidence were put to the appellant to which he denied the allegations, however, he only stated that he is an innocent and

falsely implicated in the present case.

Learned trial court observed that the prosecution fully proved its case against the appellant-accused and passed the verdict of conviction dated 30.07.2012. Appellant being aggrieved against the verdict of conviction, filed the present appeal.

We have examined the entire record with the able assistance of learned counsel for the appellant and the counsel for the State.

**Submissions by learned counsel for the parties**

Learned counsel for the appellant has vehemently argued that the prosecution is miserably failed to prove its case. Referring to the statement of PW-6 Kanta-wife of the appellant, PW-4 Jai Bhagwan and PW-7 Chiranji Lal, learned counsel has submitted that these witnesses were declared hostile at the behest of public prosecutor as they did not support the prosecution case. Learned counsel further submits that the findings recorded by the trial court are perverse and liable to be set aside. He also makes endeavour to discredit the statement of PW-3 Dr. Vikramjit Singh, who conducted the postmortem of deceased Nawal.

Per contra, learned counsel for the State while opposing the submissions made by counsel opposite has submitted that Murti Devi-mother of the appellant, Kanta-wife of the appellant and Jai Bhagwan-brother-in-law of the appellant were examined by the prosecution and they fully supported the prosecution case. He further submits that the said witnesses were put to pointed and lengthy cross-examination but nothing material was extracted to discredit the statements of the most natural witnesses. Therefore, learned trial Court has rightly convicted the appellant

for commission of offence under Section 302 IPC.

**Reason**

It is very unfortunate case, where a father is before us, who sacrificed his own six year old son to placate 'Maa Kali' under the influence of black magic rituals. Therefore, we examined the entire ocular and documentary evidence threadbare and heard both the counsels for the parties at length.

**Ocular evidence**

The prosecution placed heavy reliance upon Smt. Murti Devi (PW-8), mother of the present appellant who was an eye-witness of the occurrence. Initially, she opted to remain silent, however, when her conscience pricked her, she stepped out and reported the entire incident to the police. Not only that, she also supported the prosecution case, when she stepped into the witness box and was examined as PW-8. She was put to cross-examination by the defence but in fact they demolished their own case. Being the most natural and credible witness, she stood by the test of cross-examination. We would like to reproduce the relevant extract of her examination in chief and cross-examination, which is as under:

*“That I am illiterate. That I do not recollect the date. It was night and it was 12.00 in the night. In that night, Karambir my son today present in the Court murdered my grand son Nawal in my presence. He sacrificed him to placid 'Maa Kali' and he also tried to strangle me. Thereafter, I got fainted. I was threatened by the accused Karambir, therefore, I did not disclose the true facts to the police at the time of occurrence. Later on accused confessed his guilt for the*

*murder of his son in police station and also repented for his act. My statement was recorded by the police.”*

*Cross-examination by the counsel for the accused*

*It is correct that I and my grand son was sleeping on our respective cots. I was awake at that time whereas my grand son Nawal was sleeping. It is incorrect to suggest that accused Karambir never murdered my grandson or he never tried to kill me. It is further incorrect to suggest that I was sleeping at the time of occurrence and I did not witness the occurrence. It is further incorrect to suggest that I do not know who killed my grand son Nawal. It is further incorrect to suggest that accused never confessed before me about his guilt. It is further incorrect to suggest that some unknown person had killed my grand son and in this regard my son Karambir had got lodged FIR in the police station.”*

A perusal of above statement clearly shows that the mother of the appellant fully supported the prosecution version and while stepping into the witness box, she narrated the entire incident in detail. She is the most natural and credible eye-witness with the prosecution, who fully corroborated their version. She was cross-examined by the defence, however, nothing could be elicited to impeach her credibility. This witness, who is mother of the appellant, collected courage to step out and depose against her own son knowing well that her statement will decide the fate of her son and he may be punished with either death penalty or punishment for life.

For that, we can place reliance upon the judgment of Hon'ble Supreme Court in *Vadivelu Thevar vs. The State of Madras 1, 1957 AIR*

**614** wherein Supreme Court had observed as follows:

*“.....Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:*

*a) wholly reliable*

*(b) wholly unreliable and*

*(c) neither wholly reliable nor wholly unreliable.*

*When the witness is 'wholly reliable' the Court should not have any difficulty inasmuch as conviction or acquittal could be based on the testimony of such single witness. Equally, if the Court finds that the witness is 'wholly unreliable' there would be no difficulty inasmuch as neither conviction nor acquittal can be based on the testimony of such witness. It is only in the third category of witnesses that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”*

In view of the above parameters laid down by Hon'ble Supreme Court, we find this witness wholly reliable and her sole testimony is sufficient enough to bring home the guilt of the appellant-accused.

The prosecution also examined PW-6 Smt Kanta, wife of the appellant, however, defence counsel argued that she was declared hostile by the public prosecutor, therefore, her statement cannot be relied upon.

We have perused her examination-in-chief and cross-examination conducted by the public prosecutor and defence counsel. The witness was declared hostile by the public prosecutor simply because she did not come out with complete detail as per case of prosecution and when

she was cross-examined by the public prosecutor and rightly so, she further supported the prosecution case. The test to ascertain the credibility of the witness is through cross-examination. We have considered her entire statement and found that since she passed this test successfully, therefore she is a credible witness upon whose testification reliance is to be placed. There is no motive attributed by the defence, to this witness for false implication, more so, when she is wife and dependent upon the appellant.

The next witnesses examined by the prosecution was PW-4 Jai Bhagwan and PW-7 Chiranji Lal, who were the witnesses of extra judicial confession. The relevant extract of these witnesses is reproduced as under:

*“Cross-examination of Jai Bhagwan by the counsel for the accused*

*Karambir is my real brother-in-law(jija). I came to know about the death of my nephew Nawal the very next day at about 8.00 pm.*

*On 01.10.2011 I along with my mother and neighbourer reached at the house of my sister in village Kherla at 9.00 AM. All family members and relatives were present in the house of my sister. I inquired from my sister that how Nawal died. My sister told the name of accused Karambir as murderer. It is incorrect to suggest that Karambir never confessed before me or Sarpanch Chiranji Lal regarding his involvement in the murder of Master Nawal (since deceased). It is incorrect to suggest that my sister never told me that her husband Karambir was involved in the murder of Master Nawal. The accused Karambir confessed in the house of my sister Kanta itself. I was present along with Sarpanch, my sister and mother of the accused at the time of confession on 01.10.2011 at about 10.30 am.*

*Cross-examination of Chiranji Lal, Sarpanch by the counsel for the accused.*

*It is correct that upto 23.10.2011 nobody in the village Kherla know that who killed Master Nawal. Brother-in-law of accused Karambir called me at about 7/7.30 Am on 23.10.2011 and I reached at the house of accused Karambir within 5 minutes. The accused confessed before us in the house of Karambir itself and later on in police station also. It is incorrect to suggest that accused Karambir never confessed before me or before his family members at his house or in the police station. It is correct that Karambir had lodged FIR against unknown youth for the murder of his son. It is incorrect to suggest that accused is falsely implicated in this case at the behest of his wife and her brother Jai Bhagwan.”*

All four witnesses discussed above have fully proved the case of prosecution beyond any shadow of doubt.

### **Medical evidence**

In order to corroborate the ocular testimony, prosecution examined Dr. Vikramjit Singh as PW-3, who proved postmortem report Ex.PC/1 with regard to the death of Master Nawal (6 year). According to the postmortem report, the cause of death was injury to the vital organ i.e. Spinal cord due to fracture of C1-C2 vertebrae. He further proved that there were abrasion marks on the face of the deceased. Defence also made endeavour to discredit this witness by putting him to cross-examination, however, miserably failed.

**Conclusion**

As discussed above, the medical evidence clearly corroborate the ocular testimony. The most natural and credible witness PW-8 Murti Devi, mother of the appellant and PW-6 Smt Kanta, wife of the appellant also deposed against the appellant and proved the prosecution case beyond reasonable doubt. Therefore, we do not find any merit in the present appeal and same is dismissed accordingly. The impugned verdict of conviction dated 30.07.2012 and order of sentence dated 31.07.2012 is maintained as it is.

**(SURESHWAR THAKUR)**  
**JUDGE**

**(KULDEEP TIWARI)**  
**JUDGE**

23.11.2022  
sonia

Whether speaking/non-speaking?  
Whether reportable?

Yes/No  
Yes/No