

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

CRA-D-616-DB-2010 (O&M)
Pronounced on : 07.12.2022

Dev Chand @ Deba

. . . Appellant

Versus

State of Punjab

. . . Respondent

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

Argued by: Mr. M.S.Teji, Advocate
Amicus Curiae for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab.

Kuldeep Tiwari, J.

The appellant has challenged the verdict of conviction and order of sentence dated 22.02.2010 passed by the Court of Sessions Judge, Kapurthala whereby, appellant was convicted for commission of offence punishable under Section 302 IPC and sentenced to undergo rigorous 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 six months.

Factual Matrix

The story of prosecution was unfolded through the statement of complainant Gurpreet Singh, brother of deceased Amarjit Kaur @ Bholi. The statement of complainant was recorded by SI Dalbir Singh wherein, complainant stated as under:

“I am resident of above-said address and working as mason. We are two brothers and two sisters. My father had

expired about 1¼ years prior to the occurrence. My eldest sister was married for the last twelve years with Dev Chand @ Deba son of Munshi caste Balmiki resident of village Koalpur and she had three daughters. There was generally quarrel of my sister's husband with my sister Bholi for his drinking habit as my sister raise objection over his drinking and now my sister had come to us because of dispute with her husband. My sister's husband never give any money to my sister for running the house-hold expenditure and due to this, they have dispute. However, later on matter was settled and on 09.03.2009 Monday, I sent my sister along with her husband Dev Chand @ Deba to village Koalpur after settlement and he promised not to drink in future. On 10.03.2009, I and my younger brother Jasbir Singh @ Jassa gone to the village Koalpur to see our sister. The time was 9.00 pm. We were sitting in the house after taking the meal and at that time, my sister's husband Dev Chand @ Deba, who works of cutting woods, came to the house from the outside in a drunken condition. He had an axe in his hand. My sister Bholi said that he had come after drinking and my sister's husband Deba started abusing loudly and said that you defamed me. I would not spare you today and on my seeing, my sister's husband gave two axe blows on my sister Amarjit @ Bholi, which hit underneath the left ear upon the neck of my sister Bholi, who raised loud cries to save and I and my brother Jassa immediately came forward to stop him. My sister's husband Deba fled away from the spot along with axe. This incident was witnessed by me and my brother

Jasbir Singh @ Jassa and my sister died due to these injuries. I left my younger brother Jasbir Singh @ Jassa near the dead body and was going to inform the police.”

On the basis of above statement, FIR No.40 dated 11.03.2009 under Section 302 IPC was registered against the present appellant. The police prepared the inquest report and thereafter, site plan was prepared. The postmortem of the deceased Amarjit Kaur @ Bholi was conducted on 12.03.2009. The accused-appellant was arrested by the police. During investigation, the appellant suffered a disclosure statement Ex.PE. Consequently, he got recovered the axe, which was used by the appellant-accused in commission of crime.

In order to prove its case, the prosecution examined as many as 11 witnesses and also placed on record various documentary evidence that include postmortem report and recovery memo of weapon of offence. Learned Public Prosecutor gave up PW Hardish Kaur, HC Jasbir Singh, PW Jagir Kaur, Inspector Sarabjit Rai, SI Som Nath and DSP Bahadur Singh being unnecessary and closed the prosecution evidence.

The statement of the appellant was recorded under Section 313 Cr.PC. All the incriminating evidence collected during investigation were put to the appellant to which he denied and stated that he is an innocent and falsely implicated in the present case on the behest of brothers of deceased Amarjit Kaur, who actually committed the present murder. The defence examined one witness DW-1 Joginder Singh s/o Faqir Singh in order to support their version whereas, counsel for the appellant gave up the witness Jagir Kaur being unnecessary.

Learned trial court after examining the evidence observed that the prosecution fully proved its case against the appellant-accused and recorded the verdict of conviction dated 22.02.2010. 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 parties.

Submissions by learned counsel for the parties

Learned counsel for the appellant while relying upon the statement of DW-1 Joginder Singh submitted that it is in fact the complainant and his brother Jasbir Singh @ Jassa, who killed their own sister as she had not mend her ways despite she was rebuked number of times by them. He further submitted that the deceased was not having good character and number of panchayats were convened due to which brothers felt ashamed and hence, killed their sister. He further highlighted the discrepancies in the statements of star witnesses of prosecution i.e PW-1 Gurpreet Singh and PW-2 Jasbir Singh @ Jassa.

On the other hand, learned State counsel placed heavy reliance on the statements of PW-1 Gurpreet Singh and PW-2 Jasbir Singh @ Jassa, who were eye-witnesses to the occurrence and fully supported the prosecution version. It was further submitted by the State counsel that the ocular testimony of the prosecution was supported by the medical evidence and the defence failed to cause any dent into the prosecution version. Therefore, the present appeal deserves to be dismissed.

Reason

PW-1 Gurpreet Singh, complainant while stepping into the

witness box had categorically stated that her sister was married to the appellant-accused 12 years back. The appellant, who was a wood cutter by profession, was a habitual drunkard and spent all his money in drinking alcohol. Out of the wedlock of appellant and deceased Amarjit Kaur, three children were born and the appellant never cared about them and waste his entire money for drinking alcohol. On the fateful day, complainant and his brother Jasbir Singh @ Jassa were present in the house of the appellant when he came in the late evening at about 9.00 pm at home. He was under the influence of liquor and at that time, Amarjit Kaur told him as to why again he had come to the house in a drunkard condition despite a day prior, he promised to leave the same. Then, appellant in anger all of sudden gave two axe blows, which was already with him, on the person of Amarjit Kaur, which hit underneath her left ear upon the neck. She immediately succumbed to injuries and the appellant alongwith axe fled away from the spot. We examined the entire ocular and documentary evidence threadbare.

Medical and Ocular evidence

The postmortem on the dead-body of the deceased was conducted by PW-7 Dr.Narinder Singh, Medical Officer, Civil Hospital, Kapurthala. He found the following injuries on the person of the deceased Amarjit Kaur :

- (i) An incised wound 9 cm x 3 cm x 5 cm deep on the left side of upper part of neck oblique across lower part of left ear. Ear lobule and underlying mastoid bone were cut and thrust into the wound great vessels of neck carotid vessels and

other vessels of the neck were cut at underlying in the wound. Tissues in the wound were congested.

- (ii) Reddish blue contusion 7 cm x 1 cm over the left cheek oblique extending to angle of mandible and neck. Underlying tissues were congested.
- (iii) Incised wound 2 cm x ½ cm skin deep on top of left shoulder joint. Underlying tissues were congested.
- (iv) Incised wound 4 cm x 1 cm skin deep over dorsum of left hand. Underlying tissues were congested and bones were intact.

When PW-7-Dr. Narinder Singh stepped into the witness box, the weapon of offence was shown to him and according to the doctor, injuries No.1 to 3 could be caused with the weapon, which was recovered by the appellant-accused.

So far as contention with regard to false implication at the behest of complainant and his brother Jasbir Singh @ Jassa is concerned, we also examined their ocular testimonies, the statement of appellant-accused under Section 313 Cr.PC and the statement of DW-1 Joginder Singh.

In the statement recorded under Section 313 Cr.PC, appellant-accused had not stated that his wife Amarjit Kaur @ Bohli was not having a good character. Further, the deceased Amarjit Kaur was living in her matrimonial home for the last 12 years and both her brothers were living in different village. Therefore, they had no concern with the character of their

sister, who was living in a different village.

During investigation, appellant-accused suffered a disclosure statement on 12.03.2009. In his disclosure statement, he disclosed that he murdered his wife with axe and concealed the same under the heap of stubble in the backside of his house and could get the same recovered. On his demarcation, the said axe (Ex.P3) was recovered and same was taken into possession by Ex.P4. The recovery memo Ex.P4 was also attested by Balwinder Singh, who was examined as PW-3. The axe, which was got recovered by the appellant was sent to FSL, Chandigarh. As per FSL report, the axe was stained with human blood. Balwinder Singh PW-3 was an independent witness and defence could not attribute any motive to him for false implication of the present appellant.

Further, a perusal of the rough site plan prepared by Dalbir Singh, SI PW-10 clearly depict that the dead-body of the deceased was lying in the house of the appellant. The blood stained earth was also removed by the investigating officer from the spot and sent to the FSL, Chandigarh. As per the FSL report, the earth was stained with human blood.

This facts clearly proved that the murder of the deceased Amarjit Kaur was committed in the house of the appellant and the same was committed with the axe, which was got recovered by the appellant-accused. Further prosecution also examined one Sucha Singh, Ex Sarpanch of the village as PW-5, who categorically proved the reason of dispute between the appellant and his wife Amarjit Kaur now deceased. He stated that the appellant was habitual drunkard and because of this reason there used to remain dispute between them. Therefore, the motive was also clearly

proved by the prosecution.

DW-1 Joginder Singh in his statement never stated that Amarjit Kaur @ Bholi was killed by her brothers Gurpreet Singh and Jasbir Singh @ Jassa because they were ashamed of her misdeeds. Here it would be relevant to reproduce the relevant extract of his deposition, which is as under:

“I know Dev Chand accused present in the Court since he is my co-villager. I am punch of the village at present. I had been sarpanch of the village. Dev Chand was married 13 years back with Bholi of village Tashpur. I know this Bholi also. Bholi was not having good character and the panchayat was convened regarding this factum on the request of Dev Chand. The brothers of Bholi were also called to make understand. Her brothers had also been revoking her for defaming them. They had been telling her if she does not mend her ways she will have to face dire consequences. I have been suggesting Dev Chand that if she does not mend her ways then he should take divorce from her but he refused for the same since he was having small children and if divorce is taken their career would be ruin. Now the children are in the custody of their grand parents.”

It is further relevant to mention that when PW-1 Gurpreet Singh/eye-witness stepped into the witness box, no suggestion was put to him regarding this aspect that it is in fact he and his brother, who had committed the murder of his own sister. PW-3 Balwinder Singh was also examined by the prosecution, who was a witness to the disclosure statement of the appellant-accused. Interestingly, no such suggestion was also put to

him. It seems that it is an after thought version of the appellant-accused and no credible and cogent evidence was produced before the Court to establish this plea. It is strange that DW-1 Joginder Singh, who was a panch of the village and also remained as sarpanch of that village, never made any complaint to any higher authority regarding the false implication of the present appellant. The eye-witnesses i.e. PW-1 and PW-2 were put to lengthy cross-examination by the defence, however, nothing material could be extracted by the defence. We find the statements of both eye-witnesses credible and sufficient to hold the appellant guilty of present offence.

In view of above, we are unable to accept the plea of counsel for the appellant. The prosecution was able to prove the motive.

Conclusion

As discussed above, the medical evidence clearly corroborate the ocular testimony. Therefore, we do not find any discrepancy or illegality in the prosecution version. Prosecution is successful to bring home the guilt of the appellant-accused. Accordingly, the present appeal stands dismissed. The impugned verdict of conviction and order of sentence dated 22.02.2010 is maintained as it is.

Case property, if any, be dealt with and destroyed after the expiry of the period of limitation. Trial Court record be sent back.

(SURESHWAR THAKUR)
JUDGE

07.12.2022
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Whether speaking/non-speaking?
Whether reportable?

(KULDEEP TIWARI)
JUDGE

Yes
Yes