

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

CRA-S-871-SB-2007 (O&M)

Date of pronouncement: 04.08.2022

Gurmej Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. R.P. Dhir, Advocate for the appellant.

Mr. Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. This appeal is directed against judgment dated 01.02.2007, passed by Sessions Judge, Amritsar, vide which he had convicted accused Gurmej Singh for an offence under Section 304 Part I IPC and in terms of the order passed on that very day, sentenced him to undergo rigorous imprisonment (RI) for 10 years and to pay a fine of Rs.3000/-; in default of payment of fine, to undergo further RI for one year.

2. Briefly stated the facts of the case, as per prosecution story are that accused Gurmej Singh was married with Baljit Kaur-deceased about 15 years prior to the incident and the couple was blessed with two sons namely Parminder Singh and Manmeet Singh, who were aged about 13 years and 11 years respectively at the time of incident; about three

years prior to the occurrence, the deceased had developed illicit relations with one Vicky son of Avtar Singh; all the family members of deceased including her sister Jasbir Kaur-complainant felt bad about that; they tried to persuade Vicky not to proceed further in that relationship but to no effect; on the day of incident i.e. 28.08.2005, Vicky had come to meet the deceased; the accused stopped him from doing so at which Vicky ran away from the spot after abusing the accused; all those facts were disclosed to the complainant by the accused himself; at about 8 PM, the deceased along with her son had gone to the house of complainant and narrated the incident to her; the complainant told the deceased that Vicky was reason for all the problems and the deceased should snap her relations with him; the deceased told the complainant that Vicky had threatened her that in case she did not marry with him, then either he would commit suicide or would kill her; in the meanwhile, the accused also came there; the complainant served meals to all of them and after counselling the deceased, saw off the deceased, her son and husband; at about 9 PM, the deceased was going ahead being followed by her husband the accused who suddenly took out a small knife from his pocket and started giving blows therewith to the deceased; the deceased raised her right hand to save herself, in the process she received injuries on the palm; the second blow given by the accused hit her on right wrist; thereafter, the accused gave her 2-3 blows on left side of her chest; the deceased fell down; the accused left the spot with his knife; after arranging conveyance, the injured was taken to Civil Hospital Tarn Taran;

her brother Ranjit Singh had also arrived in the meanwhile, where she succumbed to her injuries; while the complainant was going to the police station to lodge report regarding the incident, she came across a police party headed by SI Balbir Singh on bridge of Rohi; the complainant got her statement Ex.PE recorded with SI/SHO Balbir Singh, by that time the next day i.e. 29.08.2005 had arisen; SI Balbir Singh appended his endorsement Ex.PE/1 below the statement of the complainant and sent ruqa to the police station, on the basis of which, formal FIR Ex.PE/2 was recorded against the accused for offences under Section 302/34 IPC; then the police party accompanied by the complainant went to Civil Hospital Tarn Taran, where dead body of deceased was lying; SHO carried out inquest proceedings with regard to unnatural death of deceased preparing report Ex.PF in that respect; dead body was sent for post mortem examination by moving an application Ex.PH; the said post mortem examination was accordingly got conducted; after post mortem examination, belongings of the deceased were produced before the IO which were converted into a sealed parcel having seal of IO bearing impression 'BS'; that parcel was taken into police possession vide recovery memo; thereafter the police party accompanied by the complainant went to the place of occurrence, which was accordingly inspected; the IO prepared rough site plan; on 30.08.2005, the police party while being present at Bath chowk received a secret information with regard to location of the accused; the police party went at the disclosed place and arrested the accused preparing memo of his arrest

Ex.PK; after arrest, the accused was produced before Magistrate and his police remand was obtained; on 01.09.2005, the accused was taken out of the lockup and interrogated by the IO, during the course of which he suffered a disclosure statement that he had kept concealed the knife below the iron box meant for keeping the clothes lying in his residential house, about which only he knew and could get the same recovered; the disclosure statement was attested by ASI Sukhdev Singh and Constable Gurmit Singh; thereafter, the accused, while in police custody got the knife recovered from the disclosed place; the IO prepared rough sketch thereof and thereafter converted it into a parcel, which was sealed by him with his seal having impression 'BS'; rough site plan of the place of recovery was prepared; on return to the police station, the parcel of the knife was deposited with MHC; the parcel of clothes of deceased which's he was wearing at the time of incident and which had been given to the IO after post mortem examination, besides the blood stained knife got recovered by the accused were sent to FSL, Punjab, Chandigarh on 06.10.2005 through Constable Jasbir Singh who had delivered those at that place with seals intact; after examination it was reported by Deputy Director of the Laboratory vide report Ex.PP that all the articles were stained with human blood; scaled map of the place of incident was got prepared from Rishi Ram, Draftsman.

On completion of the investigation and other formalities, challan against the accused was prepared and filed in the Court of SDJM, Tarn Taran, who after finding that the offence was triable by the Court of Sessions committed the case to the Court of Session Judge, Amritsar.

3. On appearance of the accused in the Court after supplying him with copies of documents in terms of Section 207 Cr.P.C., finding a prima facie case, charge for an offence under Section 302 IPC was framed against the accused, to which he pleaded not guilty and claimed trial.

4. During the course of prosecution evidence, prosecution examined the following witnesses:-

PW-1 Dr. Jaspal Singh, PW-2 Constable Jaswant Singh, PW-3 Rishi Ram, Draughtsman, PW-4 MHC Jaspal Singh, PW-5 HC Baljinder Singh, PW-6 HC Gurnam Singh, PW-7 Constable Jasbir Singh, PW-8 Jasbir Kaur, complainant, PW-9 Parminder Singh, PW-10 Inspector Gurmeet Singh, PW-11 SI Balbir Singh, report of FSL Ex.PP was tendered, and thereafter, the prosecution evidence was closed.

5. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in prosecution evidence against the accused, were put to him but he denied the same, contending that he is innocent and has been falsely involved in this case; that his wife Baljit Kaur was having illicit relations with Vikramjit Singh @ Vicky and inspite of his best efforts, she did not snap her links with that Vikramjit Singh @ Vicky; on 29.08.2005, he along with the deceased and their son Parminder Singh was going, when

Vikramjit Singh @ Vicky came there; his wife started going with Vikramjit Singh @ Vicky by saying that she was not to live with the accused; on that account a quarrel took place between three of them; during the exchange of hot words and as a result of grave provocation she was caused injuries; there was no intention on his part to murder her at that time; he further stated that it is only on account of her illicit relations with Vicky that the said occurrence took place.

During his defence evidence, the accused examined Sh. Ram Singh as DW-1 and Mahant Yadwinder Singh as DW-2.

6. Learned trial Court had formulated the following points for determination:-

- i. Whether Baljit Kaur, deceased wife of the accused had illicit relations with Vikramjit Singh @ Vicky?
- ii. Whether reliance is to be placed upon the statements of Jasbir Kaur complainant (PW8) and Parminder Singh (PW9)?
- iii. Whether the accused gave blows with a knife to the deceased with the intention to cause his death?
- iv. Whether it was a result of sudden and grave provocation that the accused gave blows with the knife to the deceased?
- v. Whether the act of the accused falls under Section 302 IPC or under Section 304 Part-II IPC?

7. After hearing arguments, the trial Court decided point No.1 holding that Baljit Kaur deceased had illicit relations with Vikramjit Singh @ Vicky and the accused had been objecting to the same but she

had not been acting upon his advise. Points No.2 to 5 were decided holding that the accused accompanied by the deceased/ his wife and his son were coming after taking meals from the house of complainant when Vikramjit Singh @ Vicky appeared on the scene and the deceased tried to accompany him. Such act on the part of wife is bound to provoke the husband to do such like acts. From the evidence produced on record, it stood proved that provocation so given by the deceased was sudden. It was result of sudden and grave provocation that the accused was deprived of his self-control and caused death of the deceased. Thus, it is a case of culpable homicide not amounting to murder. The accused was held guilty for an offence under Section 304 Part-I IPC and convicted accordingly as detailed above.

The appellant felt aggrieved by the judgment of his conviction and order of sentence and has filed the present appeal. It came up for hearing on 30.04.2007 when the appeal was admitted and recovery of fine stayed. On an application having been filed under Section 389 Cr.P.C., the remaining sentence of the appellant was suspended during the pendency of the appeal and bail was granted to him vide order dated 24.04.2008. Now the appeal has come up for final hearing.

8. I have heard learned counsel for the appellant/accused, learned State counsel besides going through the record.

9. At the very outset, it may be stated that the incident in this case is not denied which is clear from the fact that during cross-examination of PW-8 complainant Jasbir Kaur, a suggestion had been

given that deceased wanted to go with Vicky and was prevented by the accused from doing so and on her refusal, he killed her. Similarly suggestion in that regard has been put to another eye witness PW-9 Parminder Singh. The incident in this case is more or less admitted and learned counsel for the appellant has not seriously disputed the incident. He has laid much stress on the point that at the most, the offence which is disclosed against the accused is under Section 304 Part-II IPC and not Section 304 Part-I IPC for which he has been convicted. According to learned counsel for the appellant, it was out of sudden and grave provocation that the appellant had attacked his wife. According to him, intention of causing death of deceased or of causing such bodily injuries as were likely to cause death was not there and at best, it could be said that the act was done with the knowledge that it was likely to cause death but without any intention to cause death or to cause such bodily injury as was likely to cause death.

10. A perusal of the impugned judgment goes to show that accused while being examined under Section 313 Cr.P.C., had stated that he had caused death of his wife as a result of sudden and grave provocation. The trial Court in view of the facts and circumstances of the case and evidence available on the record concluded in para No.21 as under:-

“That story as already discussed above and which emerges in this case, is that the accused accompanied by the deceased/his wife and son were coming after taking meals from the house of the complainant when Vikramjit Singh alias Vicky appeared on the scene and the deceased tried to accompany him on account of her illicit relations with him. Such act on the part of

the wife is bound to provoke the husband to do such like act. From the evidence produced on the record it stands proved that the provocation is so given by the deceased was sudden and none of the abovesaid provisos are applicable. It was the result of sudden and grave provocation that the accused was deprived his self control and caused the death of the deceased. Thus it is a case of culpable homicide not amounting to murder. Therefore, the offence will not fall under section 302 IPC but falls under Section 304 Part-I IPC. All these points are decided accordingly.”

11. I am in agreement with the trial Court that on account of sudden and grave provocation the accused was deprived of his self control and he had attacked his wife with knife causing her multiple injuries to which she had succumbed. In normal course a husband observing his wife in company of her paramour trying to accompany the paramour leaving her husband and children behind, blood of that husband would certainly boil and he would behave in such a manner in all likelihood. However, I find that intention of the accused to cause death of his wife does not appear to be there considering the fact that the first injury inflicted by him was on the palm of right hand of the deceased and second one was on her right wrist and thereafter blow in the chest had been given. If intention of the accused was to cause death of his wife, he would have straightway inflicted injuries to her on vital parts. In my considered view at the most knowledge can be attributed to him that he was likely to cause death of his wife by attacking her with a knife. It is certainly not the case where the accused had attacked his wife without any rhyme or reason, rather, grave provocation had come from the side of deceased resulting into the accused getting infuriated and in a fit of anger suddenly attacking her.

12. In my considered view, the offence committed by the accused is one under Section 304 Part-II IPC. Such offence carries punishment extending to 10 years. As per custody certificate filed on behalf of the State, the accused has already undergone total imprisonment of 02 years, 10 months and 01 day which includes remissions. He is not shown to be involved in any other criminal case. He is stated to be only earning member of the family, looking after his children. Under the circumstances, the substantive sentence of imprisonment awarded to the accused is reduced to 05 years of rigorous imprisonment, whereas, fine imposed of Rs.3000/- is kept as intact. In default of payment of fine, to undergo rigorous imprisonment for a period of one year. The appellant who is on bail having been granted the concession of suspension of sentence and released on bail, vide order dated 24.04.2008, such order stands recalled; bail/surety bonds are cancelled. The appellant is directed to surrender before Chief Judicial Magistrate, Amritsar within a week from today, failing which CJM, Amritsar would issue warrants of arrest against him, so as to get him arrested and send him to Central Jail, Amritsar to undergo the remaining sentence.

13. With such modification, the appeal stands disposed of.

14. A copy of this judgment be sent to CJM, Amritsar for necessary compliance.

04.08.2022

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No