

2023:PHHC:149039

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

CRA-D-480-DB-2018 (O&M)

Reserved on 02.11.2023

Pronounced on: 2.12.2023

Iqbal Singh

.... Appellant

Versus

State of Punjab

.... Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE GURBIR SINGH**

Present: Mr. Tarun Deep Kumar, Advocate, for the appellant.

Mr. Amit Rana, Senior DAG, Punjab.

GURBIR SINGH, J.

1. This appeal has been filed against the judgment and order of sentence dated 17.02.2018 passed by learned Sessions Judge, Bathinda, whereby the appellant, namely, Iqbal Singh has been convicted under Section 302 of Indian Penal Code and has been sentenced to undergo imprisonment for life and to pay fine to the tune of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years.

2. Briefly stated, an FIR No.153, dated 28.07.2016 was registered under Section 302 of IPC at Police Station Maur, District Bathinda, on the statement (Ex.P-1) of complainant-Mintu Singh son of Darshan Singh alias Nanak Singh, with the allegations that his sister Jaswinder Kaur was married with the appellant and the appellant has committed the murder of his wife Jaswinder Kaur. It was stated that his sister (since deceased) was married to

the appellant about 12-13 years ago. They were blessed with a son, namely, Shammi Singh, who was 10 years of age at that time, and a daughter, namely, Khushi, aged about 8 years at that time. There used to remain a dispute between the appellant and his sister. The appellant was habitual of taking intoxicants. On 27.07.2016, illicit liquor was recovered by the police from the house of appellant and due to which, a quarrel took place between the appellant and Jaswinder Kaur, his sister. She disclosed the incident to the complainant, who assured her that he would come in the morning. On 28.07.2016 at about 6.00 A.M., the complainant received a call from his nephew Shammi Singh, who narrated that his father Iqbal Singh confined him and his sister Khushi in a room and put a cloth on the window of the room and thereafter, committed the murder of his mother Jaswinder Kaur, while she was lying on a cot, by causing injuries on her head by means of a crow-bar (*sabal*) and by placing a wooden stick (*danda*) on her neck. On the basis of said statement, FIR (Ex.P-22) was registered. Investigation was initiated and inquest report (Ex.PW-4/G) was prepared. Blood-stained crow-bar, wooden stick, soaked jute of the cot as well as soaked bed-sheet were taken into possession. The dead-body was subjected to autopsy by a duly constituted Board of Doctors and after postmortem examination, the dead-body was handed over to the complainant. The accused-Iqbal Singh was arrested on 29.07.2016. Challan was presented against the accused in the Court of Judicial Magistrate, who committed the case to the Court of Session. Prima facie, the accused was charged under Section 302 IPC, to which he pleaded not guilty and claimed trial. The prosecution, in order to substantiate its version, examined eight witnesses, viz. PW1-Mintu Singh,

complainant; PW2-Darshan Singh, father of the victim; PW3-Shammi Singh, eye witness; PW4-Dr. Rasleen Kaur, who conducted post-mortem; PW5-HC Balbir Singh, who was present with the Investigating Officer at the time of preparing inquest report and who got conducted the post-mortem examination; PW7-ASI Jagsir Singh, Investigating Officer; and PW8-HC Kewal Singh, formal witness. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure. The accused pleaded that he was innocent and has been falsely implicated. He had not committed the murder of his wife. She was murdered by some unknown persons. His son Shammi Singh had deposed in the Court at the instance of his in-laws. He also pleaded that on the day of occurrence, he was not present in the house as he had already left the house after registration of a case against him under the Excise Act. In defense, the accused examined HC Jaswinder Singh as DW-1 and his daughter Khushi as DW2 to prove the fact that on the day of occurrence, he was not present at the spot and was on the run in a case that was registered against him under the Excise Act on 27.07.2016.

3. The argument of learned counsel for the appellant is that at the time of occurrence, the appellant was not present at the spot. The trial Court has committed error in not considering the evidence so produced by the appellant in support of his plea of alibi. The version of his daughter Khushi-DW2 that at the time of occurrence, her father was not at home, was wrongly discarded. Some other unknown persons had committed the murder of his wife. The star witness his son, namely, Shammi Singh, PW3 had deposed against him at the instance of his in-laws. He is a tutored witness. No independent, uninterested witness has been examined. The court below has

wrongly placed reliance on the testimony of Shammi Singh, PW3.

4. It is further argued by learned counsel for the appellant that registration of a case against the appellant on 27.07.2016 under the Punjab Excise Act is duly proved. PW3-Shammi Singh, during his cross-examination, stated that the appellant ran away from the house after registration of the case. He further stated that police came to his house at about 6.00 PM regarding the case under the Excise Act, whereas the said case was registered at 9:51 PM on 27.07.2016. Thereafter, the police raided his house. So, the presence of Shammi Singh in the house in the evening of 27.07.2016 is also doubtful. Moreover, Khushi DW2 deposed that on 28.07.2016, her brother Shammi Singh and her father Iqbal Singh were away from the house. She further deposed that two unidentified persons came to their house and told her mother to give her belongings to them and on refusal, those persons gave rod blow on the head of her mother. The fact of two assailants is further corroborated from the recovery memo Ex.P2, as one crow-bar and one thick wooden stick, which were stained with blood, were recovered from the spot. Said fact corroborates the version of DW2-Khushi that two assailants had come to the house. PW1-Mintu Singh stated that Shammi Singh stayed with them for about 1- 1 ½ years and obeyed to them, whereas PW2-Darshan Singh stated that Shammi Singh stayed with them for about 4-5 years. No recovery was effected from the convict. The only evidence against him is the statement of Shammi Singh, PW3, whose presence at the spot is doubtful. Reliance is placed on the case in ***Nirmal Kumar Versus State of U.P., (1992) AIR (SC) 1131*** that evidence of child witness should be examined cautiously and court should find some

corroboration.

5. On the other hand, learned State counsel has argued that the appellant had committed heinous crime by committing the murder of his wife. The Court below has rightly convicted the appellant and he does not deserve any concession.

6. We have heard the submissions of learned counsel for the appellant, learned State counsel and have gone through the case file.

7. As per the copy of post-mortem report (Ex.PW-4/E), there were four injuries on the person of deceased, out of which, three were head injuries. All the injuries were ante-mortem in nature. Cause of death, as per the opinion of the Board of Doctors, is head injury leading to haemorrhage and shock which is sufficient to cause death of a person in ordinary course of nature.

8. The judgment passed by the learned trial Court is assailed on the grounds as under:-

- i) the reliance could not be placed on the testimony of Shammi Singh, PW3;
- ii) Statement of Khushi, DW2, is worthy of credit and has been wrongly ignored;
- iii) the murder was committed by two unknown persons;
- iv) the appellant was not present at the house at the time of occurrence;

9. PW3-Shammi Singh is the son of the appellant and deceased. He was about 10 years old at the time of occurrence. DW2-Khushi is daughter of

appellant and deceased. She was about 8 years old at the time of occurrence. Shammi Singh, PW3, was subjected to questioning by the trial Court. From the answers given by him, the trial Court gave a definite finding that he was of mature understanding. Since he even could tell the mobile numbers of his father as well as grandfather and was remembering the said numbers by heart, so it can be safely concluded that he is of mature understanding and his statement can be taken into consideration. The occurrence had taken place in the early morning hours and in normal course, child is naturally present in the house at that time. He narrated that his father put a cloth on the window and confined him and his sister in a room and his father caused injuries with a crow-bar and with a wooden stick at his mother. He had deposed against his father and not against a stranger or distant relative. On the other hand, Khushi, DW2, was given up by the prosecution being won over by the accused. She, after the occurrence, started residing with the paternal family. Her statement was recorded under Section 161 Cr.P.C. She had stated that her statement was not recorded by the police. Since her statement was recorded after long time in defence and she made a statement that PW3-Shammi Singh was not present at the time of occurrence, but it was not explained who had informed the occurrence to the complainant whereas she did not inform the occurrence to anyone. So, we hold that she made the statement under the influence of her paternal family. Moreover, a son would not depose against the father unless he has seen his father murdering his mother and he needs sufficient courage and conviction to name his own father for the murder of his mother. In case ***Harbans Singh Versus State of Punjab, 1995(2) R.C.R. (Criminal) 717***, it is held by a Division Bench of

this Court that a son had no reason to make false deposition against his father unless he had seen his father murdering his mother. PW-3 Shammi Singh had duly deposed in the Court and there is no ground to discard his statement and learned trial Court has correctly relied upon his statement being worthy of credit and ignored the statement of DW2-Khushi.

10. Since both weapons i.e wooden stick and crow-bar are generally found in a house in village and when a person is determined to kill his own wife, then he can use whatever weapon is before him. So using of both crow-bar and wooden stick by the appellant cannot be considered as exceptional circumstance which can cause any dent in the story propounded by the prosecution.

11. The appellant has taken the plea of alibi. In case ***Kamal Prasad and others Versus the State of Madhya Pradesh (now State of Chhattisgarh), Criminal Appeal No.1578 of 2012, decided on 10.10.2023***, the Hon'ble Supreme Court laid down principles regarding plea of alibi. The relevant extract of said judgment reads as under:-

“19. The principles regarding the plea of alibi, as can be appreciated from the various decisions of this Court are:

19.1 It is not part of the General Exceptions under the IPC and is instead a rule of evidence under Section 11 of the Indian Evidence Act, 1872.

19.2 This plea being taken does not lessen the burden of the prosecution to prove that the accused was present at the scene of the crime and had participated therein.

19.3 Such plea is only to be considered subsequent to the prosecution having discharged, satisfactorily, its burden.

19.4 The burden to establish the plea is on the person taking

such a plea. The same must be achieved by leading cogent and satisfactory evidence.

19.5 It is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the spot of the crime. In other words, a standard of 'strict scrutiny' is required when such a plea is taken."

It is further held that for the plea of alibi to be established, something other than a mere ocular statement ought to have been present. There is only statement of Khushi DW2, daughter of appellant, who stated that neither appellant nor PW3-Shammi Singh was present in the house at that time. As discussed in the earlier part of the judgment, the statement of DW2-Khushi cannot be relied upon. There is no other evidence to establish the plea of alibi raised by the appellant. Even the appellant did not disclose about his whereabouts. He did not tell whether he was in the village or at some other place at that time. He even did not disclose when he got information regarding the murder of his wife. He has not explained why did not return to the house when he came to know that his wife has been murdered. Moreover, the appellant was not prevented to return to his house any time. He was arrested on the next date in the area of Village Ramgarh which was not far away from the house of the appellant. The appellant has miserably failed to prove by cogent evidence that he was not present in the house at the time of occurrence. It was the appellant who had caused injuries at his wife and none else and she was not killed by unknown persons. The plea of alibi raised by the appellant is an afterthought. Thus, we are of the considered view that the appellant has failed to prove the plea of alibi.

12. Since the murder had taken place in the house, committed by none else but by the husband in the presence of his children and his son had deposed against him, so neither any independent corroboration is required nor any further corroboration is required to rely on the testimony of Shammi Singh-PW3.

13. We have carefully considered the evidence on record and we do not find any reason for interference in the well reasoned findings recorded by the trial Judge finding the appellant guilty of commission of offence. Thus, the conviction of the appellant and sentence awarded to him are hereby affirmed. The appeal stands dismissed.

14. Pending application, if any, shall also stand disposed of.

(GURVINDER SINGH GILL)
JUDGE

(GURBIR SINGH)
JUDGE

December 2nd 2023

sanjeev

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No