

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

CRA-D-105-DB-2017

Date of Decision : **17.07.2023**

JAGIR SINGH @ JOHNY

.....Appellant

VERSUS

State of Punjab

.....Respondent

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

Present : Mr. Pradeep Parkash Chahar, Advocate,
Legal Aid Counsel for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab.

KULDEEP TIWARI. J.

The instant appeal has been preferred against the judgment of conviction dated 8.9.2016 and the order of sentence of even date passed by the learned Additional Sessions Judge/Exclusive Court, Amritsar whereby, the appellant has been convicted for committing an offence punishable under Section 302 IPC, and has been sentenced to undergo rigorous imprisonment for life. Moreover, he has been sentenced to pay a fine amount comprised in a sum of Rs.10,000/-, and, in default whereof he has been sentenced to undergo rigorous imprisonment for a period of 6 months.

FACTUAL MATRIX

The prosecution story as unfolded from a statement which was recorded by Ashwani Kumar, who was lateron examined as PW1, at Police Station Chheherata, Amritsar. The statement which unfolded the prosecution version reads as under:-

“Ashwani Kumar son of late Amarnath, caste Kabir Panthi, resident of Pipal Wali Gali, Near Pannu Chowk, village Dhapai, P.S Chheharta, Amritsar, aged about 45 years, stated that I am resident of said address, doing job at the flour mill known as Chachi di Chakki. I have two brothers and one sister. My younger brother namely Johny doing labour work and my sister Suman, who was married about 12 years ago at Rodey Shah Colony, Dhapai, and Suman was blessed with a daughter and thereafter, our sister got divorce and about four years ago, we got second marriage of Suman performed with Jagir Singh alias Joney son of Mohinder Singh, resident of Street no.16, Near Dr.Choudhary Hospital, Gurbakash Nagar, Jhabhal Road, Amritsar, but Jagir Singh used to raise disputes with her without any cause and used to throw her out from her matrimonial house. About six months ago, our brother in law Jagir Singh beaten up our sister and ousted her and then our sister Suman accompanied by daughter Komal aged about 11 years, had been residing with us and was pulling cart of her life and our brother in law Jagir Singh visited us off and on. Today in the morning, Jagir Singh came to meet our sister and both of them started quarrelling without any reason and I left them after making them understand at about 8.30am for my work and our niece also went to school. in the house, both my sister Suman and brother in law Jagir Singh were present. At about 9.00 a.m I suddenly came to my house and saw there were shrieks coming out of the room on first floor of my sister Suman. I went there and saw that Jagir Singh had thrown my sister Suman on the floor and he was strangulating her with the help of a dupatta while sitting on her and my sister was crying with

pain, but he strangled her to death and I tried to save her but he threw me away and on my raising hue and cry, Jagir Singh fled away from the spot. Then I move my sister but by that time, she had died. In the meantime, my younger brother Johny also came there in the house. I left him to guard Suman and was going to report the matter to you, but you met me. Action be taken.”

On the basis of the above statement, an FIR No. 279 was registered on 24.11.2015 under Section 302 IPC against the appellant-accused Jagir Singh @ Johny, who is the husband of deceased-Suman. After recording the statement, Inspector/SHO Arun Sharma (PW11) went at the spot. He reached on the first floor of the house, where the dead body of Suman was lying and prepared the site-plan (Ex.P8) at the spot. A wale (chhuni) was tied around the neck of the deceased, which was removed and got converted into parcel duly sealed with the seal of 'AS' and taken into possession vide recovery memo Ex.PW6/A. The inquest proceeding was also carried out at the spot by the Inspector/SHO in the presence of one Johny (PW2) son of Amar Nath and Vijay Kumar. Thereafter the photographer was called at the spot and the photographs of the place of occurrence were clicked. The statements of other witnesses, who were present at the spot were recorded under the provisions of Section 174 Cr.P.C. On the next day i.e. 25.11.2015, the post-mortem of the deceased was conducted in Civil Hospital, Amritsar by the Board of Doctors. After post-mortem, HC Ranjit Singh produced the clothes of the deceased before the Investigating Officer which were taken into possession vide recovery memo Ex.PW6/B after sealing the same with

the seal 'AS'. Thereafter the dead body was handed over to the relatives of the deceased for last rituals. The statements of official witnesses were recorded. Thereafter on 27.11.2015, the appellant-accused was arrested by ASI Satnam Singh (PW10). Thereafter the SHO/Inspector submitted the final report before the learned Ilaqa Magistrate.

COURT PROCEEDING

The learned Ilaqa Magistrate finding the case exclusively triable by the Court of Session vide order dated 14.3.2016 committed the same to the Court of Session. Thereafter finding a prima facie case under Section 302 IPC, the appellant-accused was charge-sheeted vide order dated 28.3.2016 accordingly and to which he pleaded not guilty and claimed trial.

The prosecution in order to substantiate the allegations against the appellant-accused examined as many as twelve witnesses.

The prosecution gave up PW(s) Vijay Kumar, ASI Gulshan Lal, Dr. Hardeep Kaur, Dr. Rajan Chaudhary, HC Nirmal Singh and HC Ravinder Kumar being unnecessary and finally the prosecution closed its evidence on 17.8.2016.

Thereafter the appellant-accused was examined under Section 313 Cr.P.C. in which he denied all the allegations levelled against him by the prosecution and raised a bald plea of innocence and false implication.

The appellant-accused did not lead any evidence. However, he tendered copy of judgment dated 21.1.2015 as Ex.D2.

The learned trial Court having placed reliance upon the statements of PW1 Ashwani Kumar and PW2 Johny and the other circumstantial evidence proved on record by the prosecution, convicted the appellant-accused for commission of murder of Suman and sentenced, as stated above.

SUBMISSIONS BY COUNSEL FOR THE PARTIES.

Learned counsel for the appellant-accused vehemently argued that the star witness of the prosecution i.e. complainant/eye witness did not support the case of the prosecution and, therefore, he was declared hostile. In these circumstances his statement could not have been taken into consideration, whereas, the learned trial Court has wrongly placed reliance upon his statement. He further submitted that the other witness i.e. PW2 Johny is not an eye-witness, and, there are material improvements made by this witness in his statement. Therefore, his statement was discardable. It is further argued that PW12 Komal is an introduced witness and there is a material improvement in her testification vis-a-vis to the previously made statement in writing. As per her statement (Ex.D1) recorded under Section 161 Cr.P.C. by the Investigation Officer, when she reached her house at 12 noon after school hours where she was informed that her step-father (appellant-accused) has committed the murder of her mother, whereas, when she stepped into the witness box, she claimed herself to be a witness to the occurrence and stated that she came from the school at about 9/9.15 a.m. He further submitted that both PW1 Ashwani Kumar and PW2 Johny did not mention in their statements that Komal was present at the time of

occurrence. Therefore, from the facts, it is proved that Komal was introduced lateron by the Investigating Agency in order to complete the chain of incriminatory circumstance and fill up the lacunae in the investigation. Further submissions which were made by the learned counsel for the appellant is that as per the FIR, the occurrence took place at about 9.00 a.m. on 24.11.2015, whereas, an intimation was given to the police at about 12.30 p.m. on 24.11.2015. Therefore, there is more than 3 hours of delay in the lodging of the FIR which has not been explained by the prosecution. Since it is a sheer case of concoction and fabrication, thus, the appellant-accused deserves the benefit of doubt.

Per contra, the learned State counsel while placing reliance upon the statement of PW1, who is an eye-witness stated, that his statement has to be read wholesomely and not in a piecemeal manner. Since in his cross-examination, he categorically admitted that he saw the accused while strangulating his sister on the fateful day and he even tried to rescue his sister but failed. Therefore, credence is to be assigned to the testification made by PW-1 in his examination-in-chief. Above all, PW2 Johny, who saw the accused person immediately after the commission of the offence is also one of the incriminatory evidence, against the accused qua which he has offered no explanation. Further she submitted that the step-daughter of the appellant-accused stepped into the witness box as PW12, and, she is an eye-witness and, therefore, her statement alone is sufficient to bring home the guilt of the appellant-accused. She further submitted that the medical evidence, as, adduced by the prosecution fully

corroborates the ocular version as narrated by the eye-witness concerned. Therefore, she argues that the judgment of conviction and order of sentence, as, passed by the learned trial Court does not suffer from any illegality or perversity, therefore, the present appeal be dismissed.

ANALYSIS

We have threadbare examined the entire record and the prosecution evidence and find no merit in the present appeal for the reasons described hereinafter.

PW1 Ashwani Kumar who is the complainant and the eye-witness to the fateful occurrence, upon his stepping into the witness box, made a narration in respect of penal occurrence which is in tandem with his previously made statement to the police. According to him, they were two brothers and a sister and his deceased sister Suman was previously married which was an unsuccessful marriage and one daughter was born out of that wedlock. The said marriage was dissolved. 5-6 years prior to the occurrence, deceased Suman got married with the appellant-accused Jagir Singh. He used to give beatings to deceased and used to quarrel with her. Thereafter she was thrown out of her matrimonial home. His deceased sister started living with him on the first floor of his house. Recently, the appellant-accused again started visiting his house to beat his sister. He had come during night hours of 13.11.2015 and had gone back. On the fateful day, he again came at 8.00 a.m. and started quarrelling with his sister and at about 9.00 a.m., his sister and the accused were alone at his house. However, he came back from his work

at about 9/9.30 a.m. and found that his sister had died, and, the accused Jagir Singh had caused the death of his sister with her chunni (wale) and thereafter the accused fled from the house. The witness was subsequently declared hostile and the learned trial Court allowed the Public Prosecutor to put him to cross-examination. However, during cross-examination, he admitted that when he returned home, he heard the cries of his sister Suman from the upper portion of the house and he immediately went to the room situated on the upper portion, and, saw that Jagir Singh had brought down his sister on the floor, and was strangulating her with a chunni, and, states that though he tried to rescue her but the accused pushed him and thereafter Jagir Singh fled from the crime site. The relevant extract of his statement reads as under:-

“It is correct that I had recorded in my statement Ex.P1 that at about 9 AM suddenly I returned back to home from my work and I have heard the cries of my sister Suman from upper portion of house. I immediately went to room situated at upper portion and saw that Jagir Singh had fell down my sister on the floor and was strangulating her with chunni and my sister was wriggling and he strangulated her neck with chunni. I tried to rescue my sister but accused gave push to me and I raised noise and Jagir Singh ran away from the spot. It is correct that I got recorded in my statement Ex.P1 that my sister had died at the spot. My brother Johny also came there after the occurrence.”

A collective reading of the examination-in-chief and cross-examination of this witness reveals that, it was the accused who had

strangled the deceased with chunni and subsequently to the occurrence, her brother Johny (PW2) had also reached the house. The defence was unable to impeach the credibility of this witness rather it was suggested to the witness that the deceased had committed suicide owing to property dispute with the complainant. There was no cross-examination made by this witness with respect to the fact as narrated by him in his examination-in-chief that he had eye-witnessed the occurrence. Therefore, but obviously immense credence is to be assigned to the testification of PW-1.

The another star witness who stepped into the witness box as PW2, is also the brother of the deceased Suman. He narrated the entire story and supported the version of PW1 Ashwani Kumar. According to him, at about 8/8.30 a.m., the accused came to their house. Thereafter he went to drop his niece (PW12) to school, on a rickshaw which he was plying and when he returned to the house at about 9.30 a.m. for taking his meals, he saw that Suman had died due to strangulation and his elder brother Ashwani Kumar (PW1) was weeping. He further submitted that he saw the accused fleeing on a cycle. Since the appellant was fleeing from the crime site after committing the penal occurrence, and evidently PW2 Johny on entering his house, witnessed his sister to succumb to death due to strangulation besides, when he also evidently states that he then noticed his brother Ashwani Kumar to be weeping. Consequently, the above unrebutted testification, as made by PW-2 Johny does corroborate the testification of PW-1 Ashwani Kumar about his being

available at the crime site at the stage when the penal offence was committed by the accused.

Be that as it may, the above facts spoken remained unbelied even during the course of PW-2 becoming put to an ordeal of an exacting cross-examination. Therefore, the imperative factum spoken therein remained unimpeached, thereby grave evidentiary worth is to be assigned to his testification.

The next witness who was examined by the prosecution as an eye-witness is PW12 Komal, the daughter of deceased Suman. When she was examined, she was 11 years' old. After getting satisfied that she is able to well understand the surroundings and is also able to well grasp the sanctity of oath, thereupon the learned trial Judge permitted her to make her testification. In her examination-in-chief she stated that on the fateful day, she went to school at about 8.00 a.m. and her Mama (maternal uncle) i.e. PW2 Johny dropped her at the school. However, having stomach ache, she came back at about 9/9.15 a.m. and when she came home, she saw that accused-Jagir Singh was quarrelling with her mother. She witnessed that the deceased was made to lie down on the floor and her step-father was strangulating, her deceased mother with a chunni. She raised hue and cry. She also deposed that for some time, legs of her mother were shaking but thereafter her legs stopped to shake. She has thereafter spoken that her step-father left the place and ran away.

We have examined the record and found that the statement of Komal (PW12) under Section 161 Cr.P.C. was recorded much after the

occurrence i.e. on 18.2.2016. The reading of the statement depicts that she came from school at about 12 p.m. and when she reached home she was informed that her step-father had committed the murder of her mother by strangulating her. Therefore, it can be safely concluded that she made material improvements from the earlier version of her statement. According to her statement Ex.D1, she was infact not an eye-witness, rather reached the spot of occurrence at 12 p.m. Further, both the witnesses i.e. PW1 Ashwani Kumar and PW2 Johny never stated that Komal was present at the time of occurrence. We have no doubt to conclude that she is infact, an introduced witness just to complete the chain of circumstance therefore, her statement cannot be relied upon.

We have also gone through the observation of the learned trial Court wherein, the learned trial Court has recorded that the statement of this witness i.e. PW12 Komal under Section 161 Cr.P.C., has not been recorded. Therefore, her statement cannot be read against the accused.

Nonetheless the non-assigning of creditworthiness to the statements of the witness(es) (supra) yet does not affect the inferences drawn (supra) qua the testification(s) of PW-1 and of PW-2 rather enjoying immense evidentiary solemnity.

MEDICAL EVIDENCE

To support the version that the accused committed the murder by strangulating the deceased, the prosecution examined Dr.Maninder Singh, Medical Officer, Civil Hospital, Amritsar as PW3, who was one of the members of the Board of Doctors. On his stepping

into the witness box he proved the post mortem report Ex.PW3/B, and, also proved his signatures as carried thereon, besides also proved the signatures thereon of Dr. Rupam Chowdhary and Dr. Hardeep Kaur, who were joined by him to conduct autopsy on the body of the deceased. In his examination-in-chief he proved that the team of doctors while making an autopsy on the body of the deceased, noticed thereon, the hereinafter extracted injuries:-

“(1) There was a ligature mark of 28 cm X 4 cm encircling the neck was present which was horizontally placed at the level of thyroid cartilage, bluish bruise present on left side of neck below left side of mandible about 1 cm x 2 cm. Upper part of chest, shoulders, upper limbs and face was congested.

(2) Abrasions of 0.2 cm X 1 cm approximately, three in number on lateral aspect of neck below the ligature mark on both left and right side with reddish blue discoloration of surrounding skin.”

After conducting the post-mortem, as per the opinion of the Board of Doctors, the cause of death was opined to arise from asphyxia owing to ligature strangulation which was sufficient to cause death in ordinary course of nature. The Histopathology report dated 13.2.2016 was also put to the Doctor and he stated, that there is nothing to add to the cause of death from the one which has already been assigned in the post mortem report. The defence during cross-examination has put specific suggestion to the doctor that the deceased could have died owing to suicide by strangulation which was however denied by the witness.

The relevant extract of the statement reads as under:-

“It is wrong to suggest that deceased could have died due to suicide by strangulation. It is wrong to suggest that deceased was not having any other injury except the ligature mark.”

The Investigating Officer who stepped into the witness box as PW10 has categorically stated that when he reached the spot of occurrence he removed the chunni (which was tied around the neck of the deceased) and also took the same into possession. PW1 Ashwani Kumar also supported the same version that the accused committed the murder of the deceased by strangulating through chunni. PW6 HC Ranjit Singh who was associated by the Investigating Officer during investigation also supported that the chunni was recovered from the neck of the deceased Suman by the Investigating Officer. A collective reading of all the statements and the medical evidence, it is clearly established that the deceased had died because of strangulation by chunni and it is not a case of suicide by strangulation but homicidal death.

So far as the delay in lodging of the FIR is concerned, we do not find any substance in this argument. The present incident has occurred between 9/9.15 a.m. and the statement of the complainant was recorded at about 12.30 p.m. on the very same day. The delay of 3 hours in recording the statement, that too, in a case where murder of a close relative of the complainant i.e. sister of complainant, has occurred, in front of his eyes, is thus minimal, and, is completely inconsequential, thus we do not find that such delay is an inordinate delay. The accused has not even cross-examined the Investigating Officer or PW1 complainant-

Ashwani Kumar that owing to delay, they have concocted or fabricated the present story. No doubt, the FIR has its own vital value and prompt lodging of FIR at the first available opportunity is essential for overruling any possibility of any fabrication at the instance of the police. However, as stated above, since the delay is minimal, therefore, it is inconsequential thereby, no argument can be raised before this Court that the genesis of the prosecution case as hinged upon FIR, is but fabricated and false. Predominantly also when for reasons stated above, thus the charge drawn against the accused has been proven to the hilt. The Hon'ble Supreme Court in **Kanyaiya Lal and others Vs. State of Rajasthan, Criminal Appeal No. 1108 of 2006, decided on 22.4.2013** has held as under:-

“It is settled in law that mere delay in lodging the First Information Report cannot be regarded by itself as fatal to the case of the prosecution. However, it is obligatory on the part of the court to take notice of the delay and examine, in the backdrop of the case, whether any acceptable explanation has been offered, by the prosecution and if such an explanation has been offered whether the same deserves acceptance being found to be satisfactory.”

In view of the above legal proposition as well as the factual circumstances, this Court does not find any illegality or perversity in the impugned judgment of conviction and order of sentence dated 8.9.2016. The present appeal is, accordingly, dismissed being devoid of merit. Consequently, the impugned judgment of conviction and order of sentence dated 8.9.2016 are affirmed.

Ordered accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

17.07.2023

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