

Neutral Citation No.2023:PHHC:162785-DB

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

CRA-D-225-DB-2017 (O&M)

Reserved on:16.11.2023

Pronounced on : 19.12.2023

Daya Singh

... Appellant

Versus

State of Punjab

.. Respondent

**CORAM :HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE KIRTI SINGH**

Present:- Mr. Ashish Handa, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Harmandeep Singh Sullar, Senior DAG, Punjab.

Anupinder Singh Grewal, J.

This criminal appeal has been preferred by the appellant-Daya Singh against the judgment of conviction dated 02.01.2017 and order of sentence dated 04.01.2017 passed by the Sessions Judge, Sangrur, whereby he was held guilty and convicted for the commission of offence punishable under Section 302 IPC in case FIR No.86 dated 29.10.2015, registered at Police Station Sadar Ahmedgarh and sentenced to undergo rigorous imprisonment for life; to pay a fine of Rs.25,000/- and in default thereof, to undergo rigorous imprisonment for 02 years.

2. It is the case of the prosecution that the complainant Mohammad Khurshid made a statement to the police that he was a rickshaw puller by occupation. He alongwith his wife Nazni Khatoon, aged about 26 years, daughter Saheen aged 3 years, son Anush alias Ahmed, aged about 1½ years, mother Mehroon, aged 60 years and niece Roshni (daughter of his brother

Mohammad Alam) aged about 4-5 years, were residing in the house built in the fields owned by Sardool Singh (PW-3). In that house, Daya Singh (appellant herein) was also residing alongwith his mother Harbans Kaur, in one room who were doing labour work in the fields. On 29.10.2015 at about 5.00 p.m. when he was returning home, he heard his mother raising an alarm '*na mar na mar*' and he saw Daya Singh (appellant), who was carrying a hammer in his right hand, suddenly came from the courtyard and gave a hammer blow on the head of his niece Roshni who was sitting in the toilet. Daya Singh (appellant) fled away from the spot with his weapon. When the complainant went to the toilet, he saw that his niece-Roshni had already expired. He then went to the courtyard and saw that his wife was lying dead in a pool of blood and he was told by his mother that Daya Singh (appellant) had murdered his wife Nazni Khatoon and both children, namely, Saheen and Anush by inflicting blows of hammer on their heads. The dead body of his daughter Saheen was lying in the courtyard while dead body of his son Anush was lying on the bed in the room. Daya Singh (appellant) had murdered his wife, both children and niece mercilessly with the blow of a hammer and the grudge which Daya Singh had was that he had a bad eye upon his wife-Nazni Khatoon and she had been resisting his advances. She had even informed him about this and he had also tried to counsel Daya Singh (appellant) in this regard. He left his mother near the dead bodies and came to the police station for reporting the matter. He (the complainant) had met the police party at the bus stand of village Dulma where his statement was recorded and on the basis thereof, FIR was registered under Section 302 of the Indian Penal Code. The Investigating Officer alongwith other police officials accompanied the complainant to the place of occurrence. The place of occurrence was photographed by Parvez Bhatti, Photographer

(PW-5). The Investigating Officer prepared inquest reports on the dead bodies of Nazni Khatoon, Roshni, Saheen and Anush. The dead bodies were sent for post mortem examination to Civil Hospital, Malerkotla. On 30.10.2015 upon secret information, the appellant-Daya Singh was arrested. During interrogation, appellant-Daya Singh made a disclosure statement that he had kept concealed the hammer used in the commission of crime and his blood stained shirt, behind the residential house of Sardool Singh at village Badshahpur Mandiala, in the fields underground near the electric pole. The appellant-Daya Singh led the police party to the disclosed place where the blood stained hammer and blood stained shirt were recovered.

3. After completion of investigation, challan was presented in the Court and finding a *prima facie* case, the appellant was chargesheeted for the commission of an offence punishable under Section 302 IPC to which he pleaded not guilty and claimed trial.

4. The prosecution examined as many as fourteen witnesses, namely, complainant Mohammad Khurshid PW-1, PW-2 Mehroon, PW-3 Sardool Singh, PW-4 Jagdev Singh, Patwari, PW-5 Parvez Bhatti, Photographer, PW-6 Noor Din, PW-7 Didar Singh, Patwari, PW-8 Head Constable Nirmal Singh, PW-9 Constable Harjinderpal Singh, PW-10 Head Constable Mohinder Singh, PW-11 Dr. Saurabh Singla, Medical Officer, Civil Hospital, Malerkotla, PW-12 Dr. Amanpreet Kaur, Medical Officer, Civil Hospital, Malerkotla, PW-13 DSP Harinder Singh Maan (the Investigating Officer) & PW-14 ASI Gaurakh Nath.

5. The complainant Mohammad Khurshid, who was examined as PW1, reiterated his version in the FIR and had duly supported the prosecution case.

6. PW-2 Mehroon, who is the mother of the complainant (PW-1), had stated that about 5-6 months ago, at about 5-00 p.m., when her daughter-in-law was cooking food and she was sitting outside the house, her daughter-in-law had an altercation with Daya Singh (appellant) and the appellant had given a '*hathora*' blow on her head. Her grandson had also reached the spot and the appellant gave a '*hathora*' blow on the head of her grandson, Anush and later he gave another '*hathora*' blow on the head of her granddaughter, who was sitting on the cot in the Varandah. The appellant, who was carrying *hathora*, also went towards Roshni, who was in the toilet and gave '*hathora*' blow on her head as well. She lost her senses and the appellant ran away from there. Her son had reached there and she told him that all the victims were killed by the appellant. She also stated that her son, who is the complainant, had reached the place of occurrence when the appellant had given a blow on the person of Roshni.

7. PW3 Sardool Singh had stated that he is the owner of the agricultural land situated within the revenue limits of village Badshahpur Mandiala. His house is situated in the fields and he had given one room to appellant-Daya Singh, who was living with his mother. He had also given one room to Khurshid Mohammad, who was living there alongwith his mother, wife, two children and a niece. He had gone to the place of occurrence and had seen the dead body of wife, children and niece of the complainant. Later he had come to know that Daya Singh (appellant) had committed the murder of the deceased with a hammer.

8. Jagdev Singh, Patwari, Halqa Saraud, who was examined as PW-4, had stated that he had visited the agricultural land of PW-3 where a house had been constructed and he prepared the site plan of the place of occurrence.

9. PW5 Parvez Bhatti, who was the photographer, had visited the

place of occurrence on 29.10.2015 on the direction of SHO, Police Station Sadar Ahmedgarh and had clicked the photographs with a digital camera. The photographs were exhibited as Ex.MO-2 to Ex.MO-15. He had also handed over photographs to ASI Gorakh Nath on 30.11.2015, which were taken into police possession vide memo Exhibit PF.

10. PW6 Noor Din, had stated that he had taken the adjoining agricultural land on lease and had learnt that on 29.10.2015, Daya Singh (appellant), who was residing in the house along with his mother, situated in the agricultural land of Sardool Singh had committed the murder of the wife of the complainant, two children and a niece with hammer. The hammer had been thrown by the appellant near the electric pole installed in his land which was recovered by the police on the demarcation of the appellant.

11. PW7 Didar Singh, who was Halqa Patwari, Malerkotla, had proved the ownership of the land of Baljeet Singh s/o Karnail Singh, which was mortgaged with Bhagwant Kaur w/o Jarnail Singh. He had produced the jamabandi Exhibit PG prepared by him.

12. PW-8 Head Constable Nirmal Singh had tendered his affidavit, Exhibit PH and deposed that he was MHC in Police Station Sadar, Ahmedgarh. On 29.10.2015, the Investigating Officer deposited with him three sealed parcels containing blood stained soil lifted from near the dead body of Nazni, Saheen and Roshni, respectively, duly sealed with the seal bearing impression "HS". These articles were kept in the Malkhana. On 30.10.2015, the Investigating Officer deposited with him sealed the parcel containing blood stained shirt of black white colour duly sealed with seal bearing impression "HS", another sealed parcel containing blood stained hammer and clothes of deceased Nazni Khatoon, Roshni, Saheen and Anush sealed in separate parcels

with the seal of doctor bearing impression “JS”. On 05.11.2015, he handed over these articles in an intact condition to Constable Harjinderpal Singh with the direction to get the number on the letter received from the office of SSP, Sangrur and to deposit the articles with the Forensic Science Laboratory, Mohali the following day. After compliance, the abovesaid sealed parcels were deposited in the laboratory and receipt was also handed over to him. He further deposed in his affidavit Exhibit PH that on 09.11.2015, he handed over sealed parcel of vaginal slides and swabs sealed with seal of doctor bearing impression “JS”, in intact condition to Head Constable Mohinder Singh for depositing the same in the office of Chemical Examiner, Kharar. The abovesaid sealed parcel was deposited in the laboratory and receipt was also handed over to him. He also stated that as long the case property remained in his hand, it remained in intact condition.

13. PW9 Constable Harjinderpal Singh and PW-10 Head Constable Mohinder Singh had tendered their affidavits, (Exhibits PJ and PK) confirming the facts deposed by the PW8 Head Constable Nirmal Singh.

14. Dr. Saurabh Singla, PW-11 had deposed that on 30.10.2015, he was posted as Medical Officer, Civil Hospital, Malerkotla. On that day, the then SMO deputed him alongwith Dr. Jaswinder Singh and Dr. Amanpreet Kaur to conduct post mortem examination on the dead bodies of Nazni Khatoon, Roshni, Saheen and Anush. The Board of Doctors conducted postmortem examination on the aforesaid dead bodies and found injuries on the person of deceased.

15. He further deposed that in their opinion, the cause of death in all the above cases was due to head injury which was sufficient to cause death in the ordinary course of nature. The time elapsed between injury and death was

immediate and the weapon used was blunt. He also deposed that Dr.Amanpreet Kaur also examined the dead body of Nazni Khatoon for the purpose of detection of spermatozoa and accordingly vaginal swabs and slides were collected from the vagina of deceased Nazni Khatoon and same were sent to the office of Chemical Examiner. The report of Chemical Examiner Exhibit PT as per which spermatozoa were detected in Exhibit 1 and 2.

16. Dr. Amanpreet Kaur, while appearing as PW-12, corroborated the testimony of Dr. Saurabh Singla, PW-11. She further deposed that in her opinion, act of sexual intercourse had occurred because as per report of Chemical Examiner, Kharar, Exhibit PT, spermatozoa were detected in vaginal swabs and slides of deceased Nazni Khatoon.

17. PW-13 DSP Harinder Singh Maan, who was the Investigating Officer, had deposed that he was posted as Inspector/SHO at Police Station Sadar, Ahmedgarh on 29.10.2015. He alongwith other police officials were present at the Bus Stand, Dulma in connection to their patrolling duty, where at about 6:15 p.m. Mohammad Khurshid (complainant) met him and his statement (Ex.PA) had been recorded before him. The said statement was thumb marked by the complainant. After admitting its contents to be true, he had attested the statement and made his endorsement Exhibit PA/1 and sent the same to the police station through Head Constable Jagdeep Singh for registration of the case and on its basis, formal FIR (Exhibit PA/2) was registered by ASI Jaspal Singh, whose signatures he had identified. He had called the photographer who took photographs of the place of occurrence which were Exhibit MO/2 to Exhibit MO/15. He had also recorded the statement under Section 175 Cr.P.C. after preparing inquest report and the dead bodies of Nazni Khatoon, baby Roshni, baby Shaheen, baby Anush alias Ahmed were sent for post mortem

examination to Civil Hospital, Malerkotla through Head Constable Mohinder Singh vide applications Exhibit PL/1, Exhibit PM/1, Exhibit PN/1 and Exhibit PO/1. He prepared the site-plan (Exhibit PY). Thereafter, blood stained earth was lifted from the place of occurrence where the dead bodies of Shaheen, Nazni Khatoon and Roshni were lying. He had put the same into three plastic containers and converted into parcels and sealed it with his seal bearing impressions "HS", which were taken into police possession vide separate recovery memos Exhibit PB, Exhibit PC and Exhibit PD. The said memos were witnessed by the complainant and ASI Gaurakh Nath. He had carried out the investigation and recorded the statements. On 30.10.2015, during investigation, he received secret information that appellant-Daya Singh was present in the fields/motor kotha of Khalil Khan alias Kala, situated at Jamalpura. On receipt of this information, he alongwith police party conducted a raid at the fields of Khalil Khan and apprehended Daya Singh (appellant). Upon interrogation, the appellant had disclosed that he had kept concealed the iron hammer and blood stained shirt near his residential house in the paddy fields. The disclosure statement was signed by the appellant and witnessed by ASI Gaurakh Nath and ASI Avtar Singh which is as Exhibit PAA. Thereafter, the appellant led the police party to the place in terms of the disclosure statement where one iron hammer and one blood stained shirt were recovered which was sealed by him with his seal bearing impressions "HS".

18. PW14 ASI Gorakh Nath, is the recovery witness and had supported all the aforementioned facts as stated by PW-13 DSP Harinder Singh Maan.

19. After closure of prosecution evidence, statement of the appellant under Section 313 Cr.P.C. was recorded whereby all the incriminating

circumstances against him were put to him, which he denied and reaffirmed his innocence by taking categorical plea that he has been falsely implicated in this case.

20. On appreciation of evidence, learned Sessions Judge, Sangrur convicted and sentenced the appellant vide judgment of conviction and order of sentence dated 02.01.2017 and 04.01.2017 respectively.

21. Learned counsel for the appellant submitted that the presence of the complainant on the spot is doubtful as he did not intervene to save the victims. His statement also indicates that his version is based on hearsay evidence as he had been informed by his mother (PW-2) about the occurrence. The complainant and PW-2, who is the mother of the complainant, were interested witnesses and there is no corroboration to the prosecution version. The alleged recovery of hammer on the basis of disclosure statement does not inspire confidence as there is no independent witness to the recovery. He also submitted that the alleged motive that the appellant had an evil eye on the wife of the complainant is too weak considering that the wife of the complainant, their two children and a niece of the complainant had been done to death.

22. Learned State counsel, however, submitted that the complainant and the appellant were known to each other as they were residing in the same house built in the fields of PW3 Sardool Singh, who had categorically deposed that both Daya Singh (appellant) and the complainant were living in his house situated in his fields. The appellant, in his statement under Section 313 Cr.P.C., has not explained anything qua his presence or non-presence on the spot at the time of occurrence or why was he falsely implicated. The postmortem report specifically indicates that the time between injury and death is immediate. He also submitted that in the postmortem report, the cause of

death was mentioned as head injury which was caused by a blunt weapon. The specific motive has been attributed to the appellant and he has been rightly convicted by the trial Court.

23. Having considered the submissions of the learned counsel for the parties and after careful perusal of the record, we are of the considered opinion that the prosecution evidence is cogent and reliable.

24. It is rather an unfortunate case where the complainant had lost his wife, two children and a niece in the incident. The complainant had deposed that he was a rickshaw puller. On 29.10.2015 at about 5.00 p.m. when he was returning home, he heard his mother raising hue and cry and he saw Daya Singh (appellant), who was carrying a hammer in his right hand, suddenly came from the courtyard and gave a hammer blow on the head of his niece Roshni who was sitting in the toilet. He saw Daya Singh (appellant) fleeing away from the spot with his weapon. Then he entered the courtyard of his house, he saw his wife, children and niece lying dead and his mother (PW-2) told him that they had been brutally murdered by the appellant. He promptly lodged the FIR at about 5.45 PM on that very day. PW-1 was cross-examined at length but there was no material contradiction in his statement.

25. The statement of PW-1 had been further corroborated by PW-2, who was the eye-witness to the entire incident. She is an elderly lady and had raised hue and cry when the appellant-Daya Singh was giving hammer blows to the victims. PW-1 had also arrived at the spot and she (PW-2) had narrated the entire incident to him. She had also been extensively cross-examined but there does not appear to be any inconsistency in her version.

26. The ocular version is duly corroborated by the medical evidence.

PW-11 Dr. Saurabh Singla, who had conducted the postmortem examination,

had reiterated the injuries on the head of the victims as stated in the prosecution case. The postmortem was conducted at 11.45 AM on 30.10.2015. The time between injuries and death was opined as immediate while the time between death and postmortem was within 16 hours. As per the postmortem report, following injuries were found on the person of deceased Nazni Khatoon :-

“Lacerated wound 7x3 cm on temporal area of right head with underlying fractured depressed area with brain matter crushed exposed.”

The injury on the person of Roshni was found as under:-

“Lacerated wound 10x3 cm on frontal and inter parietal area of head with underlying bone fractured with brain mater crushed and exposed.”

Following injuries were found on the person of Saheen:-

- “1. Lacerated wound with depressed area 7x3 cm on frontal area of head with underlying fracture present with brain matter exposed.
2. Lacerated wound on left temporal area of head with fracture bone exposed.”

The injuries on the person of Anush were found as under:-

- “1. Brown coloured contusion left side of lateral angle of eye.
2. Depressed area on both side of temporal area of head with underlying fracture.”

27. It is apparent from the nature of aforementioned injuries on the four deceased that they could be caused by a hammer. The appellant had been arrested and in pursuance to his disclosure statement, hammer and blood stained shirt had been recovered. According to Forensic Science Laboratory report, Exhibit DA, contents of parcels A to G, H-1 and H-3 and I i.e. clothes worn by the victim, shirt of accused, hammer and soil lifted from near the dead bodies were all stained with human blood.

28. Furthermore, PW3 Sardool Singh and PW6 Noor Din had stated that the appellant was residing in one room in the house of PW-3 Sardool Singh situated in the fields where the complainant and his family members were also residing.

29. It is, thus, manifest that the prosecution case is supported by the ocular and medical evidence and in such an eventuality, there is no necessity to establish the motive. However, in the instant case, the motive as per the prosecution case is that the appellant had an evil eye on the complainant's wife which has been put forth by the complainant in his deposition as PW-1 and has been corroborated by PW-2, who is the mother of the complainant. PW-2 had also stated that the appellant was quarrelling with the victim (wife of the complainant) and thereafter, he had committed the crime.

30. In view of the above, we are of the considered view that the prosecution case against the appellant has been duly established beyond reasonable doubt. Consequently, the appeal stands dismissed. Pending application(s), if any, shall stand disposed of accordingly.

(ANUPINDER SINGH GREWAL)
JUDGE

(KIRTI SINGH)
JUDGE

19.12.2023
A. Kaundal

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