
(2011) 05 P&H CK 0015

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 979-DB of 2002

Zora Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: May 30, 2011

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Hon'ble Judges: Hemant Gupta, J; A.N. Jindal, J

Bench: Division Bench

Judgement

Hemant Gupta, J.

Zora Singh son of Jang Singh is in appeal aggrieved against the judgment dated 22.11.2002 passed by the learned Sessions Judge, Fatehgarh Sahib, vide which the Appellant was convicted inter alia for the offence punishable u/s 302 IPC and sentenced to undergo for imprisonment for live and to pay a fine of Rs. 1000. In default of payment of fine, the Appellant was directed to undergo further rigorous imprisonment for a period of six months.

2. The prosecution case was set in motion on the basis of statement of Santokh Singh @ Kaka Singh son of Hazara Singh, resident of Bathan Kalan made to SI/SHO Bhupinder Singh on 02.06.2000 at about 6.15 am in respect of death of Jinder Kaur daughter of Piara Singh. In his statement (Ex.PA), Santokh Singh stated that they are three brothers. Jasbir Singh son of Sadhu Singh, who is his cousin being uncle's son, married Jinder Kaur of village Tadewal about 15 years ago. He stated that his brother Jasbir Singh has four sons, but he died about 11/2 years ago in an accident. Jinder Kaur along with her four children was staying in Village Bathan Kalan, i.e. village of her in-laws. About 10-12 days back, Jinder Kaur along with her children has gone to her parental home at Village Tadewal, but came back alone on 31.05.2000. He stated that yesterday i.e. 01.06.2000 at about 8.00 pm, Zora Singh son of Jang Singh, Bajigar, also came to Tadewal, who used to visit Jinder Kaur earlier. He stated that at about 4.00 pm, his Bhabhi Jinder Kaur and Zora Singh went towards Village Ucha Pind Sanghol and returned at about 7.00 pm. He

stated that around 10.00 pm, when he and Teja Singh son of Rulia Singh were sitting in the street in front of their house and were conversing, they heard shrieks of Jinder Kaur. She was asking for help. Then both of them reached Jinder Kaur's house from the street and saw that Zora Singh was strangulating Jinder Kaur with the help of parandi. On seeing them, Zora Singh got perplexed and ran away. When they went inside the room, they found that their Bhabhi Jinder Kaur has died and that Parandi was still around her neck. After leaving Teja Singh near the dead body, he went to lodge the report about the death of Jinder Kaur. On the basis of such statement, FIR (Ex.PA/2) was lodged on 02.06.2000 at about 6.45 am. The special report was delivered to the Magistrate on the same day at about 12.30 pm.

3. Thereafter, SI/SHO Bhupinder Singh reached the place of occurrence and got the place of occurrence photographed. He also prepared rough site plan Ex.PW-13/A with correct marginal notes. After completing the inquest proceedings, he sent the dead body of Jinder Kaur to Civil Hospital, Bassi Pathana, for post-mortem examination. The post-mortem examination on the dead body of Jinder Kaur was conducted by Dr. Amarjit Singh on 02.06.2000. After conducting post-mortem examination, Dr. Amarjit Singh handed over belongings of the deceased i.e. shirt, salwar, underwear and chuni to the Police, which were taken into possession vide recovery memo Ex.PW13/B.

4. After arresting the accused on 10.06.2000 and on completion of necessary formalities, the accused was made to stand trial for an offence punishable u/s 302 IPC.

5. During trial, the prosecution has examined PW-10 Dr. Amarjit Singh, who conducted post-mortem examination on the dead body of Jinder Kaur. He proved the post-mortem report Ex.P-10. In his opinion, the cause of death was due to asphyxia resulting from strangulation. In his lengthy cross-examination, the Doctor denied the suggestion that possibility of death by hanging. He also denied that in this case death is due to hanging.

6. Apart from the medical evidence and other formal witnesses, the prosecution has also examined PW-2 Santokh Singh, author of the FIR, PW-5 Balwant Singh, before whom the accused is said to have suffered extra judicial confession, but the said witness turned hostile. The prosecution also tendered into evidence scaled site plan Ex.PG prepared by Sadhu Singh and report of the Chemical Examiner Ex.PX to the effect that no poison was detected in the contents of viscera.

7. After going through the evidence on record, learned trial Court convicted and sentenced the Appellant, as mentioned above.

8. Learned Counsel for the Appellant has vehemently argued that the cause of death of Jinder Kaur was hanging and not strangulation. It was a case of suicide and that Jinder Kaur has not died homicidal death. It is contended that as per PW-10 Dr. Amarjit Singh, the external examination reflected that eyes were closed, mouth was semi-opened, tongue was swollen, blood stained froth was coming out from nostrils and ligature mark

was present. The Doctor has found bruise on the left maxillary region, on the infra clavicular region of chest on the right side and multiple bruises on the front and sides of the neck. In his cross-examination, PW-10 Dr. Amarjit Singh stated that in case of strangulation, ligature mark is horizontal and almost complete, whereas in case of hanging, the ligature mark is obliquely placed. He stated that in case of death by hanging, there would be no injury on the back of the neck and that he has not mentioned against injury No. 3 either to be horizontal or oblique. Injury No. 3 i.e. multiple bruises were visible on the front and sides of the neck to the naked eye. On the basis of post-mortem report Ex.P-10 and the fact that the ligature mark was not through and through i.e. on the rear side of the neck, learned Counsel for the Appellant vehemently argued that it was a case of suicide by hanging and, thus, the Appellant has been wrongly charged for the offence punishable u/s 302 IPC.

9. We do not find any merit in the said argument. As per Modi's Medical Jurisprudence & Toxicology, 22nd Edition, page 270, in the case of death by hanging, neck is stretched and elongated. It also states that bleeding from nose, mouth and ears is very rare in the cases of death by hanging. In the present case, from the post-mortem report Ex.P-10, it cannot be found that the neck is stretched or elongated. There is bleeding from nostrils. The said circumstances clearly rule out the factum of death by hanging, but it is a case of death by strangulation. PW-10 Dr. Amarjit Singh is categorical that in this case the cause of death is not by hanging. Therefore, we do not find any merit in the argument raised by the learned Counsel for the Appellant that it is a death in this case is suicidal and not homicidal.

10. But even if the death is homicidal, it is argued that as per prosecution witnesses, PW-2 Santokh Singh, author of FIR, has found the Appellant strangulating the neck of the deceased at about 10.00 pm, but he reached to the Police Station at about 6.00 am, which is about 6 kms from the place of occurrence. The statement, basis of FIR was recorded at about 6.15 am i.e. after a delay of 8 hours. As per PW-2 Santokh Singh, he was sitting in the street outside his house and talking with Teja Singh. As per the site plan Ex.PW-13/A, prepared by the Investigating Officer PW-13 SI Bhupinder Singh, the house of Santokh Singh is bounded on two sides by metalled road and is situated on the north of the house of Jinder Kaur. On the southern side of the house of Jinder Kaur, there is road and also vacant land of Santokh Singh. There is only one door to enter into the one room residential house of Jinder Kaur after crossing two verandahs. Firstly, we find it difficult to believe that PW-13 Santokh Singh could hear shrieks of Jinder Kaur sitting in a street, when Jinder Kaur is in her room. Even if, he could make an attempt to enter in the residential room of Jinder Kaur alongwith Teja Singh, it is impossible for the assailant to scale wall and run away. The height of the wall adjoining metalled road from the verandah of the house of Jinder Kaur has not come on record. Still further, PW-13 Santokh Singh was not alone, but with Teja Singh and with only one exit from the room of Jinder Kaur, it was impossible for the assailant to run away from the place of occurrence. The fact of delay in lodging of FIR and the story of hearing of shrieks by PW-13 Santokh Singh does

not inspire confidence. The prosecution has not examined Teja Singh, the other person, who is said to have accompanied Santokh Singh. Balwant Singh, before whom the accused is said to have suffered extra judicial confession, has not supported the prosecution case and when confronted with his previous statement, he denied the same. PW-2 Santokh Singh deposed that he has gone to the Police Station on a scooter on 02.06.2000 along with Harinder Singh. The said Harinder Singh has also not been examined by the prosecution. In his cross-examination, PW-2 Santokh Singh denied that he knows to ply scooter. Still further, in his cross-examination, it has come on record that Zora Singh used to bear daily expenses of Jinder Kaur and her children and that Jinder Kaur used to say that Zora Singh is her brother. The prosecution witness has been cross-examined to the effect that after the death of husband of Jinder Kaur in an accident, kareva marriage was performed with Bhima, the brother of the deceased's husband, but after some time Bhima was got married. In these circumstances, the deceased has sought rehabilitation from Bhima. It is also suggested that the house of Santokh Singh falls on the northern side of the room of Jinder Kaur, whereas southern side beyond street again there is a vacant plot of Santokh Singh. From the said location, it is sought to be inferred that the motive in eliminating Jinder Kaur was with the complainant and not with the deceased as he was the brother of the deceased and supporting her.

11. It is not the case of the prosecution that Jinder Kaur had any illicit relation with the accused. In fact, from the testimony of PW-2 Santokh Singh, it has come out that, in fact, the Appellant was being treated as brother of the deceased. Therefore, there is no motive for the Appellant to take life of Jinder Kaur, who is treated as his sister.

12. The unexplained delay in lodging of FIR; suspicious conduct of the complainant Santokh Singh consequent to the recovery of dead body; non-examination of supporting witnesses namely Teja Singh and Harinder Singh; and PW-5 Balwant Singh, the witness of extra judicial confession having turned hostile, we find that the prosecution has miserably failed to prove the complete chain of circumstances to link the Appellant and Appellant alone, who has committed the crime. Neither the prosecution has proved any motive nor the circumstances which may lead to the inference of commission of crime by the Appellant.

13. In view of the above, by granting him benefit of doubt, we acquit Appellant of the charges framed against him. He shall be set at liberty forthwith, if not required in any other case.