

(2010) 04 P&H CK 0157

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Balwant Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: April 20, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 313
- Penal Code, 1860 (IPC) - Section 306

Citation: (2010) 5 SLR 284

Hon'ble Judges: Tej Pratap Singh Mann, J

Bench: Single Bench

Judgement

T.P.S. Mann, J.

The judgment and order dated 7.11.1998 passed by Additional Sessions Judge, Faridkot, while convicting the appellant u/s 306 IPC and sentencing him to undergo rigorous imprisonment for three years and to pay a fine of Rs. 2,000/-, has been challenged by him by filing the present appeal.

2. Sukhdev Kaur, since deceased, was married to the appellant about 15/16 years before the occurrence,¹ which had taken place on 15.4.1994. From the said wedlock, three daughters and a son were born. According to the prosecution, the appellant, his mother Gurnam Kaur, sister Bhupinder Kaur and sister's husband Boota Singh used to maltreat the deceased and beat her. On account of the maltreatment received by her, the deceased had been visiting her parental house. However, her father Jarnail Singh used to leave her at her in-laws' house after making requests to the accused. The deceased had been staying at her parental house for about 2/3 months and during her stay, she had been apprising her parents and Jalour Singh, who was mediator in her marriage, about her maltreatment by the accused. On 15.4.1994 at about 11.30 AM, Jarnail Singh, Jalour Singh and one Hukam Singh went to the house of the accused, where they found the dead body of Sukhdev Kaur lying

on a cot. According to the prosecution, the deceased had committed suicide by consuming some poisonous substance as she used to be maltreated by the accused.

3. FIR was registered on the basis of a statement made by Jarnail Singh, father of deceased Sukhdev Kaur. The investigation was taken up by Inspector Kashmir Singh, who proceeded to the spot and prepared inquest report. The dead body was sent for post mortem examination. Rough site plan of place of the occurrence was prepared. Statements of the witnesses were recorded and the belongings of the deceased taken into possession. The appellant, alongwith his mother and sister was arrested on 22.4.1994, while Boota Singh, brother-in-law of the appellant, was arrested on 24.5.1994. On receipt of report of the Chemical Examiner, the cause of death was given by the doctor to be on account of presence of carbamate group of insecticide in the lungs, heart, intestines, liver, spleen and kidneys of the deceased. Once the investigation was completed, final report u/s 173 Cr.P.C. was presented against the four accused. It was followed by commitment of the case and vide order dated 3.9.1994, Additional Sessions Judge,

4. Faridkot charged the appellant and his co-accused for the offence u/s 306 IPC, to which they pleaded not guilty and claimed trial.

5. In support of its case, the prosecution had examined PW-1 Dr Mukesh Gupta, PW-2 Jarnail Singh, PW-3 Hukam Singh, PW-4 Pritam Singh, PW-5 Iqbal Kaur, PW-6 LC Gurmel Singh, PW-7 Inspector Kashmir Singh, PW-8 HC Sukha Singh, PW-9 ASI Raj Singh, PW-10 Jarnail Singh, Deputy Superintendent of Police and PW-11 C. Gurdev Singh.

6. When examined u/s 313 Cr.P.C, all the accused were confronted with the material allegations levelled by the prosecution. They pleaded innocence. According to them, they had never maltreated the deceased and despite the death of Sukhdev Kaur being natural, they were falsely implicated. When called upon to produce evidence in their defence, they examined DW-1 Nachhatar Singh and DW-2 Dharam Pal Singh.

7. After hearing learned Counsel for the parties and going through the evidence available on the file, learned trial Court held that the death of Sukhdev Kaur was un-natural and she committed suicide by taking carbamate group of insecticide. It was the appellant, who had been maltreating the deceased by giving her beatings and turning her out from the house. Accordingly, the appellant was held guilty u/s 306 IPC, whereas his mother, sister and sister's husband were acquitted, primarily, on the ground that they might have been involved just to teach a lesson to the appellant and therefore, guilt of the three co-accused of the appellant, did not stand proved beyond any shadow of doubt.

8. I have heard learned Counsel for the parties and scanned the evidence with their able assistance.

9. In regard to the maltreatment of Sukhdev Kaur, since deceased, the prosecution had examined her father Jarnail Singh as PW-2, her father's cousin Hukam Singh as PW-3, her mother Iqbal Kaur as PW-5, besides Pritam Singh, Ex-Sarpanch and Lambardar of village, Bhana as PW-4. From their testimonies, it stands established that the accused had been giving beatings to Sukhdev Kaur, soon after her marriage with the appellant and even demand for gold ring was made from her. Whenever Sukhdev Kaur used to go to her parents' house after being turned out by the accused, she had been staying there for 2/3 months. She had been apprising her parents and Jalour Singh, mediator, about the maltreatment suffered by her at the hands of the accused. Even on the day of the occurrence, Jarnail Singh, Jalour Singh and Hukamb Singh went to the house of the accused to find out about the welfare of the deceased and when they reached there, they found Sukhdev Kaur lying dead on a cot and smell of poison was coming from her mouth. As per the testimony of PW-4 Pritam Singh, Ex-Sarpanch and Lambardar of Bhana, village of the complainant party, about 6 ♦ years earlier, Sukhdev Kaur was turned out from her in-laws' house by the accused after giving her beatings. At that point of time, the appellant, alongwith Baldev Singh, Sarpanch of village of the appellant came to him and assured that Sukhdev Kaur would not be maltreated in future. It was on the assurance of said Baldev Singh that Sukhdev Kaur was sent to her in-laws' house. However, Sukhdev Kaur had been stating that she did not want to go to the house of her in-laws as the accused maltreated her.

10. The post mortem examination on the dead body of Sukhdev Kaur was conducted by PW-1 Dr Mukesh Gupta, who found the following injury on her person:

Contusion 3 x 2 cms was present on the right side of abdomen 8 cm above the anterior iliac spine. Contusion was reddish in colour. On dissection, clotted blood was present in sub cutaneous tissues.

11. Larynx and trachea were congested. Lungs were healthy and congested. Heart was healthy and right side was full of dark coloured blood, whereas left side was empty. Stomach was healthy and congested and contained about 300 grams of liquid material. Similarly, small and large intestines, liver, spleen and kidneys were also healthy. The major organs of the deceased were sent for chemical analysis. The injury found on the dead body of Sukhdev Kaur was declared ante-mortem in nature, whereas the cause of death was to be given after receiving Chemical Examiner's report. On receipt of report of the Chemical Examiner Ex.PC, the aforementioned doctor gave his opinion Ex.PD that the cause of death was because of carbamate group of insecticide poison. It, thus, shows that the death of Sukhdev Kaur was not natural, but on account of consumption of poisonous substance by her before her death.

12. Mere fact that the three co-accused of the appellant against whom same and similar evidence was led by the prosecution have since been acquitted is no ground to extend the similar concession to the appellant, who is none else than the

husband of the deceased.

13. The occurrence relates to April 1994. As per the prosecution, the appellant was arrested on 22.4.1994. According to the learned Counsel for the appellant, his client earlier remained behind the bars as undertrial for a period of 2 months and 20 days before he was released on bail. It is also stated that the three daughters of the appellant have since been married off, whereas his son, who is aged about 18 years, is living with him. Gurmail Kaur, appellant's mother is more than 80 years of age and there is no one in the family to look after her, other than the appellant, as the younger brother of the appellant has since died. The appellant has already deposited the fine of Rs. 2,000/- with the trial Court vide receipt No. 26 dated 7.11.1998. In case, the appellant is sent behind the bars once again so as to serve the remaining sentence of imprisonment, that is likely to bring severe hardship to him and his family members. Therefore, substantive sentence of imprisonment of the appellant be reduced to that already undergone by him.

14. Learned State counsel has opposed the prayer made on behalf of the appellant by submitting that it was on account of the maltreatment meted out by him to the deceased that the latter had no other option but to end her life by consuming some poisonous substance.

15. It may be that the mother of the appellant is more than 80 years of age, but the son of the appellant is now a grown up person, who is aged about 18 years and he can very well look after his grand mother. Similarly, though the appellant has remained on bail for the last about 16 years and has been sentenced to three years' imprisonment, yet that is no ground to reduce his substantive sentence of imprisonment to that already undergone by him. Taking into consideration the totality of the circumstances, the Court is of the view that the ends of justice would be amply met if the substantive sentence of imprisonment is reduced to two years.

16. Resultantly, the conviction of the appellant u/s 306 IPC is up-held. However, his substantive sentence of imprisonment is reduced to two years. The fine imposed upon the appellant by the trial Court, alongwith its default clause is maintained.

17. But for the modification in the quantum of sentence of imprisonment, as indicated above, the appeal fails and, therefore, dismissed.