

(2009) 05 P&H CK 0085

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 117-DB of 2001

Amrik Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: May 28, 2009**Citation:** (2009) 3 RCR(Criminal) 308**Hon'ble Judges:** Nawab Singh, J and K.S.Garewal, J**Advocate:** Mr. A.S. Virk, Advocate. Mr. H.S. Sran, Addl. A.G. Haryana., Advocates for appearing Parties

Judgement

Nawab Singh, J.

1. The accusedappellant, above named, was tried by learned Additional Sessions Judge, Kaithal for the offence punishable under Section 302 of Indian Penal Code (for short `the IPC"). He was convicted thereunder and sentenced to undergo imprisonment for life by judgment of conviction and order of sentence dated December 1st, 2000.

2. The accusedappellant preferred the appeal.

3. The husband is the appellantaccused and the wife is the deceased in this case. According to the prosecution case, on the intervening night of January 11th/12th, 1999, the appellant caused injuries on the forehead and parietal region to the deceased with kulhara (axe). Kala Ram (PW1) brother of the deceased, on receipt of the information about the death of his sister, reached the house of the accused and found his sister lying dead in a room of the house having multiple injuries on her person. He informed the Police. His statement (Exhibit PA) was recorded by Randhir Singh (PW13) Assistant Sub Inspector, Police Station Guhla. He appended his endorsement Exhibit PA/3. First Information Report No. PA/2 was recorded. Investigator reached the spot. Inquest (Exhibit PE) was held. He prepared the rough site plan (Exhibit PN) of the scene of occurrence. The dead body was sent for postmortem examination. Dr. R.K. Grover (PW3) conducted the postmortem.

4. On January 30th, 1999, appellant made extrajudicial confession before Shankar Ram (PW12) maternal uncle of the deceased to the effect that on the intervening night of January 11th/12th, 1999 at about 10.30 PM, he had a quarrel with his wife as she was of quarrelsome nature and he caused injuries to her with a kulhara at his house. Shankar Ram produced the appellant before Mange Ram (PW14) Inspector C.I.A. Staff, Kaithal. Accused was arrested and interrogated. He made disclosure statement (Exhibit PK) that he murdered his wife with the kulhara and after committing the murder, he kept concealed the kulhara under the wheat chaff in his house and could get the same recovered. In pursuance thereto, he got recovered the same vide seizure memorandum (Exhibit PK). On completion of investigation and other formalities, the accused was arraigned for trial.

5. Charge, in respect of commission of offence punishable under Section 302 IPC was framed against the accused. He pleaded not guilty and claimed trial.

6. In support of its case, prosecution examined fourteen witnesses in all viz. Kala Ram (PW1), Piara Ram (PW2), Dr. R.K. Grover (PW3), Satbir Singh (PW 4), Bansa (PW5), Gulzar Singh Inspector (PW6), Hanso Devi alias Bansa (PW 7), Rishi Pal Draftsman (PW8), Joginder Singh (PW9), Ashok Kumar (PW10), Bhira (PW11), Shankar Ram (PW12), Randhir Singh Assistant SubInspector (PW13) and Mange Ram (PW14).

7. In his examination recorded under Section 313 of the Code of Criminal Procedure, the accused denied the allegations and pleaded that he was falsely implicated in this case due to party faction in the village.

8. Counsel for the accused appellant and the State have been heard

9. Dr. R.K. Grover (PW3) along with Dr. B.P. Kakar conducted the postmortem examination on the dead body of the deceased and found the following injuries on her person :

"1 A 6 x 1 cm bone deep lacerated wound over left side of forehead near hairline. Frontal bone was visible through it and clotted blood was over it. It was caused by blunt weapon.

2. Two incised wounds of size 7 x 3 cm and 5 x 1 cm bone deep over left parietal region of scalp with underlying bone cut and injuries adjacent to each and 7 cm above left pinna. Both were caused by sharp weapon.

A 32 x 2.5 cm brownish ligature mark all around the neck with knot mark on left side. The ligature mark was in between chin and thyroid cartilage. Skin was hard and parched. On dissection, congestion of subcutaneous tissue was seen. Congestion was also seen on tracheal mucosa."

He has proved the postmortem examination report (Exhibit PC). It was opined by him that death occurred on account of head injuries and asphyxia due to strangulation.

10. There is no eye witness of the occurrence and the case of the prosecution rests on circumstantial evidence. The accusedappellant was seen causing injuries to the deceased by Hanso Devi alias Banso (PW7) aunt (father's sister) of the deceased. Hanso Devi was also married in the same village but she did not support the prosecution case in relation to witnessing the occurrence but has deposed that on the fateful day, the appellant was present at his house. The evidentiary value of this portion of statement made by Hanso Devi will be discussed in the later part of this judgment.

11. The second circumstance appearing against the accused is the statement of Shankar Ram (PW12) before whom accusedappellant made extrajudicial confession and confessed his guilt.

12. Thirdly, the dead body of deceased with multiple injuries was found in the house of the accused.

13. Fourth is the recovery of kulhara (Exhibit P6) at the instance of the accusedappellant.

14. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.

15. If an offence takes place inside the privacy of a house and in such circumstances where the assailant has all the opportunity to plan and commit the offence at the time and in circumstances of his choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon by the Courts. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. To take care of such an eventuality, Section 106 of Evidence Act has been engrafted which postulates that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

16. Coming to the case on hand, when the dead body of Smt. Gunna (deceased) was recovered from the house of the accused then per Section 106 of Evidence Act, a duty is cast on the accused who is inmate of the house to give a cogent explanation as to what happened to the deceased. He cannot get away by simply keeping quiet

and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution. It is a strong circumstance which indicates that the appellant committed the crime. Besides, the medical evidence showed that Smt. Gunna had died on account of injuries and asphyxia due to strangulation. The accusedappellant in his statement under Section 313 Cr.P.C did not offer any explanation as to how she received the injuries which were found on her body. Then Recovery of kulhara was made at the pointing out of the appellant. It is another circumstance which is a pointer towards the guilt of the accused. So far as the evidentiary value of statement of Hanso Devi is concerned, it is trite law that evidence of a hostile witness also can be relied upon to the extent to which it supports the prosecution version. Evidence of such a witness cannot be treated as washed off the record. It remains admissible. So, the statement of Hanso Devi to the extent that on the fateful day, the appellant was present at his house is very much admissible and bridges the gap.

17. As regards the confessional statement made by the accused before Shankar Ram (PW12), there is no water tight rule that extrajudicial confession cannot be relied upon at all rather, if it is voluntary, it can be relied upon along with other evidence. No infirmity is pointed out in the extrajudicial confessional statement made by the accused before Shankar Ram.

18. The aforesaid circumstances complete the chain, which inevitably leads to the conclusion that the murder of Smt. Gunna was committed by the accused appellant. There is no circumstance compatible with the hypothesis of innocence of the accusedappellant. The case has been proved beyond any shadow of doubt against him.

19. For the reasons aforesaid, the evidence on record clearly establishes the commission of the offence by the accusedappellant. Therefore, the conviction and the sentence as imposed by learned trial Judge do not suffer from any infirmity to warrant interference.

20. The appeal is dismissed.

21. Amrik Singh accusedappellant was released on bail by this Court during the pendency of the appeal. His bail/surety bonds are cancelled. He be arrested and sent to jail to undergo the remaining part of sentence. Learned trial Judge is directed to comply with this order forthwith under intimation to this Court.