

(2009) 03 P&H CK 0291

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 452-SB of 1994

Karnail Kaur

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 26, 2009**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 304

Citation: (2010) 1 RCR(Criminal) 395**Hon'ble Judges:** Sham Sunder, J**Bench:** Single Bench**Advocate:** A.P.S. Deol, with Mr. Devinder Singh, for the Appellant; Manjari Nehru Kaul, D.A.G., Punjab, for the Respondent**Final Decision:** Dismissed

Judgement

Sham Sunder, J.

This appeal is directed against the judgment of conviction, and the order of sentence, dated 19.09.94, rendered by the Court of Sessions Judge, Bathinda, vide which it convicted Karnail Kaur, accused (now appellant), for the offence, punishable u/s 304 (part II) of the Indian Penal Code, and sentenced her to undergo rigorous imprisonment for a period of 5 years, and to pay a fine of Rs. 500/-, in default thereof, to further undergo rigorous imprisonment for a period of 2 months, whereas, it acquitted Bhura Singh, accused.

2. The facts, in brief, are that the father of Thandu Singh, namely Pritam Singh, had already died. His mother Jarnail Kaur (since deceased), used to live with him, and his brother Kala Singh. Accused Bhura Singh (since acquitted), is the real uncle of Thandu Singh, complainant. Karnail Kaur, accused, is the wife of Bhura Singh, accused. Thandu Singh, was working, as an agricultural labourer (Siri) with one Sukhdev Singh of the same village. On 30.10.92, Thandu Singh, and his brother Kala Singh, went from their house, for irrigating the land of Bikker Singh, brother of

Sukhdev Singh, with whom he was working. They started from the house, at about 10.00 PM. As the law and order situation, due to terrorism, in the State of Punjab, was bad they left their mother Jarnail Kaur (since deceased), in the house of Bhura Singh, accused. Thandu Singh, and his brother Kala Singh, remained busy in irrigating the land aforesaid, upto 2.00 AM. When they came back to the house of Bhura Singh, accused, in order to take their mother with them, it was noticed by Thandu Singh, that in one room, a lantern was lying. In one room, Bhura Singh, accused was found sitting, on the chest of his mother, who was lying, on the ground. He was pressing the neck of his mother, by a dang, by holding it with his two hands. Karnail Kaur, accused, was holding a ghotna (a hard wooden piece). She gave two ghotna blows to Jarnail Kaur (since deceased). Hue and cry was raised by Thandu Singh, and his brother, which attracted Nambardar Jagroop Singh, whose house was located, in the same street, opposite the house of the accused. Both the accused then fled from the house, alongwith their weapons. The matter was not reported to the Police, during night, as Nambardar Jagroop Singh, advised them that they would report the same in the morning, as it was not proper to go outside, during the night due to the fear of the terrorists. Thandu Singh, and Nambardar Jagroop Singh, then went towards the Police Station, to make a report. On the way, at bus stand of village Hari Rai Pur, the Police met them. The statement of Thandu Singh, was recorded, on the basis whereof, the first information report was registered. The Police then accompanied them to the place of occurrence. The dead-body of Jarnail Kaur (since deceased), was found lying there. Inquest report of the dead-body of Jarnail Kaur, was prepared. The dead-body was sent for post-mortem examination. The statements of the witnesses were recorded. After the completion of investigation, the accused were challaned u/s 302 read with Section 34 of the Indian Penal Code.

3. On their appearance, in the Court of the Committing Magistrate, the accused were supplied the copies of documents, relied upon by the prosecution. After the case was received by commitment, Charge u/s 302 read with Section 34 of the Indian Penal Code, was framed against the accused, which was read-over and explained to them, to which they pleaded not guilty, and claimed judicial trial.

4. The prosecution, in support of its case, examined Dr. B.S. Dhaliwal, Medical Officer, Civil Hospital, Bathinda (PW1), who conducted the post-mortem examination on the dead body of Jarnail Kaur wife of Pritam Singh, resident of village Jandanwala, Police Station Nehianwala. The dead-body was brought by Gurtej Singh, Head Constable, and Ajaib Singh, Punjab Home Guard Volunteer. The dead-body was identified by Kala Singh, and Kulwant Singh. He found the following injuries, on the person of the deceased:-

(i) Reddish bruise 4 cms x 1-1/2 cm on front of lower neck on the both medial clavical ends underlying skin echymosed. Clotted blood was present.

(ii) Lacerated wound 4 cms x 1-1/2 cm on right eye brow. Clotted blood was present obliquely placed.

(iii) Lacerated wound 2-1/2 cms x 4 cms obliquely placed on right parietal region of head. Clotted blood was present. Underlying bone was fractured. Membranes and brain mater was coming out. On dissection ante or cranial fossa was full of blood clots. In the opinion of the doctor, the death was due to shock and hemorrhage, on account of the injuries, which were ante- mortem, in nature, and sufficient to cause death, in the ordinary course of nature. According to him, the probable time, between injuries, and death was immediate and between death and post-mortem was 12 to 24 hours. The doctor opined that injuries No. 1 to 3, on the person of the deceased, could be caused by blunt weapon like ghotna P1.

5. Thandu Singh (PW2), is the complainant, whereas, Jagroop Singh (PW3), is an eye-witness.

6. Gurbhej Singh, Assistant Sub Inspector (PW4), the Investigating Officer, conducted the investigation, and proved various documents, on record.

7. The Public Prosecutor for the State, tendered into evidence affidavits PT and PU of Constable Gurbachan Singh, and Head Constable Harcharan Singh, respectively, PM, report of the Chemical Examiner, and PQ, report of the Serologist. Thereafter, he closed the prosecution evidence.

8. The statements of the accused, u/s 313 of the Code of Criminal Procedure, were recorded. They were put all the incriminating circumstances, appearing against them, in the prosecution evidence. They denied all the allegations. It was further stated by them that they were innocent. They, however, submitted their separate written statements of defence. Karnail Kaur, accused, in her written statement of defence, took the following plea :-

Statement U/s 313 Cr.P.C., Karnail Kaur w/o Bhura Singh resident of V. Jhandawala.

That Jarnail Kaur deceased was a lady of loose character and did not enjoy good reputation in the village. Her husband Pritam Singh had died about 2 years ago and Jarnail Kaur used to visit our house off & on being a close relative and neighbourer. On the night intervening 30/31st October, 1992, I was sleeping in the residential room of my house and when I got up to urinate at about 12 midnight I found my husband missing from the residential room. I came out in the "kandholi" when I heard some whisper from the side of our store room which is separate from our residential room. I went inside the store room and saw Jarnail Kaur my Jethani sitting in the lap of my husband Bhura Singh and they were embracing and kissing each other. Thus upon seeing Jarnail Kaur my jethani embracing and kissing my husband, I lost my power of self control and under grave and sudden provocation lifted a ghotna lying in the room gave a blow which incidentally hit the head of Jarnail Kaur as a result of which the ghotna slipped out of my hand and hit Jarnail

Kaur on her chest and forehead.

On seeing me my husband felt ashamed and came out of the room. Thandu Singh, Kala Singh, and Jagrup Singh, did not witness any occurrence.

My husband went to the Police Station and narrated the entire incident and the Police came to the spot in the morning and falsely implicated me and Bhura Singh in this case after suppressing the truth and after procuring the presence of the eye-witnesses. We were detained by the Police on the same day.

9. Accused Bhura Singh (since acquitted), submitted his written statement of defence, as under:-

Statement U/s 313 Cr.P.C. of Bhura Singh s/o Arjan Singh, resident of V. Jhandawala.

That Jarnail Kaur was my Bhabi and she developed sexual relations with me and used to visit me at night for sexual purpose. On the night of occurrence also Jarnail Kaur, came to my house at about mid night after her sons had gone out for irrigating the land. Jarnail Kaur was sitting in my lap and we were embracing and kissing each other in the separate store room of the house when we were surprised by my wife Karnail Kaur, who saw us embracing and kissing and upon seeing us she under grave and sudden provocation lost her self control and picked up a ghotna and gave a blow which incidentally landed on the head of Jarnail Kaur and thereafter slipped out of her hand and hit on her fore-head and chest.

I went to the Police Station and reported the matter to the Police and the Police came to the spot in the morning and falsely implicated me and my wife Karnail Kaur in this case at the instance of Jagrup Singh, Lambardar, who was inimical towards me.

Bhura Singh, accused, however, tendered into evidence DC certified copy of the judgement dated 29.03.1941 of this Court. He also produced certified copy of the Warabandi DD. Thereafter, both the accused, closed the defence evidence.

10. After hearing the Counsel for the parties, and, on going through the evidence, on record, the trial Court, convicted and sentenced Karnail Kaur, accused, and acquitted Bhura Singh, accused, as stated above.

11. Feeling aggrieved, the instant appeal, was filed by Karnail Kaur, appellant.

12. I have heard the Counsel for the parties, and have gone through the evidence and record of the case, carefully.

13. The Counsel for the appellant, submitted that the trial Court, after due appreciation of the evidence of Thandu Singh, PW2, and Jagroop Singh, PW3, came to the conclusion, that the same was not reliable. He further submitted that the trial Court, rightly disbelieved the evidence of these witnesses. He further submitted that since the prosecution miserably failed to prove its case, against the accused, merely

on the basis of the written statement of defence, submitted by Karnail Kaur, accused, she could not be convicted. He further submitted that the written statement of defence, forming part of the statement, u/s 313 of the Code of Criminal Procedure, submitted by the accused, could not be construed as legally admissible evidence. He further submitted that, in the written statement of defence, Karnail Kaur, accused, only explained the circumstances and the answers given by her to the questions put to her, in the statement u/s 313 of the Code of Criminal Procedure, could not incriminate her. He further submitted that the trial Court, was, thus, wrong in relying upon the written statement of defence of Karnail Kaur, for recording her conviction and awarding her sentence.

14. On the other hand, the Counsel for the respondent, submitted that the trial Court, though disbelieved the evidence of Thandu Singh, and Jagroop Singh, yet was right, in relying upon the written statement of defence, submitted by Karnail Kaur, accused, wherein, she confessed that she caused injuries on the person of Jarnail Kaur (now deceased), with ghotna, resulting into her death. She further submitted that the trial Court, relying upon that confession, could convict her. She further submitted that the written statement furnished u/s 313 of the Code of Criminal Procedure, did not explain the circumstances only, but amounted to confessing the guilt by Karnail Kaur, accused. She further submitted that the trial Court, was, thus, right in recording conviction, and awarding sentence to Karnail Kaur, accused.

15. After giving my thoughtful consideration, to the rival contentions, raised by the Counsel for the parties, in my considered opinion, the contentions advanced by the Counsel for the respondent, being correct, deserve to be accepted, for the reasons to be recorded, hereinafter. No doubt, the trial Court, after due appreciation of the evidence of Thandu Singh, and Jagroop Singh, came to the conclusion that the same was not reliable and acceptable, and, thus, was right in discarding the same. The prosecution failed to prove through cogent, convincing and reliable evidence that Karnail Kaur, accused, caused injuries, on the person of Jarnail Kaur (since deceased) resulting into her death. However, at the same time, Karnail Kaur, submitted written statement of defence, extracted above, wherein, she confessed her guilt, that she caused injuries on the person of Jarnail Kaur (since deceased) resulting into her death. She explained the circumstances, as to under which, she caused injuries on the person of Jarnail Kaur (since deceased) resulting into her death. It was stated by her, in the written statement of defence, that when she saw Jarnail Kaur, her elder sister-in-law (jethani) sitting in the lap of her husband Bhura Singh, and they were embracing and kissing each other, she lost her power of self control, and, under grave and sudden provocation lifted a ghotna, lying in the room, gave a blow, which incidentally hit the head of Jarnail Kaur, as a result whereof, it slipped out of her hand and hit Jarnail Kaur, on her chest and fore-head. The trial Court, took the entire written statement of defence, furnished by Karnail Kaur, into consideration, and, ultimately, came to the conclusion, that it amounted to confession of guilt by her and was sufficient to convict her. The trial Court took into consideration the grave

and sudden provocation, under which, Karnail Kaur, caused injuries, on the person of Jarnail Kaur (since deceased), resulting into her death, and that was why she was not convicted for the offence, punishable u/s 302 of the Indian Penal Code, but was convicted for the offence, punishable u/s 304 (part II) of the Indian Penal Code. In *Narain Singh v. The State of Punjab*, 1964 (1) Cri. L.J. 730, a case decided by three Hon'ble Judges of the Apex Court, relied upon by the Counsel for the respondent, the principle of law, laid down, was to the effect, that examination u/s 342 of the Code of Criminal Procedure, 1898 (now Section 313 of the Code of Criminal Procedure, 1973), is primarily to be directed to those matters on which evidence has been led for the prosecution, to ascertain from the accused his version or explanation, in respect of the incident, which forms the subject matter of the charge and his defence. By sub Section (3) the answers given by the accused may be taken into consideration at the enquiry or trial. If the accused person, in his examination, u/s 342 confesses to the commission of the offence, charged against him, the Court may, relying upon that confession, proceed to convict him, but if he does not confess and, in explaining circumstances, appearing in the evidence, against him, sets up his own version, and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety. It is not open to the Court to dissect the statement and to pick out a part of the same, which may be incriminative, and then to examine whether the explanation, furnished by the accused, for his conduct, is supported by the evidence, on record. If the accused admits to have done an act, which would, but for the explanation, furnished by him be an offence, the admission cannot be used against him divorced from the explanation. The principle of law, laid down, in the aforesaid case, is fully applicable to the facts of the present case. In the instant case, as stated above, the written statement of defence, furnished by Karnail Kaur, as extracted above, was taken into consideration, by the trial Court, in its entirety. It was not that the trial Court, dissected the same into two parts, and the part, relating to the admission of guilt was acted upon, and the part explaining the circumstances, was discarded. When the entire written statement of defence, furnished by Karnail Kaur, accused, was taken into consideration, including the factors, which gave rise to sudden provocation, under which she caused injuries, on the person of Jarnail Kaur (since deceased) with ghotna and ultimately the trial Court, came to the conclusion that it amounted to the confession of guilt, by the accused, in my opinion, relying upon the principle of law, laid down, in *Narain Singh's* case (supra), it (trial Court) was right, in recording conviction and awarding sentence to Karnail Kaur, accused, for the offence, punishable u/s 304 (part II) of the Indian Penal Code. The findings of the trial Court, in this regard, being correct, are affirmed. The submission of the Counsel for the appellant being devoid of merit is rejected.

16. The Counsel for the appellant, however, placed reliance on [State of Maharashtra Vs. Sukhdeo Singh and another Vs. State of Maharashtra Through C.B.I. Vs. Sukhdev Singh alias Sukha and others](#), , in which, it was observed as under :-

That brings us to the question whether such a statement recorded under S. 313 of the Code can constitute the sole basis for conviction. Since no oath is administered to the accused, the statements made by the accused will not be evidence *stricto sensu*. That is why sub-section (3) says that the accused shall not render himself liable to punishment if he gives false answers. Then comes sub-section (4) which reads :

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

Thus the answers given by the accused in response to his examination u/s 313 can be taken into consideration in such inquiry or trial. This much is clear on a plain reading of the above sub-section. Therefore, though not strictly evidence, sub-section (4) permits that it may be taken into consideration in the said inquiry or trial. See [State of Maharashtra Vs. Dr. R.B. Chowdhary and Others](#), . This Court in the case of [Hate Singh Bhagat Singh Vs. State of Madhya Bharat](#), held that an answer given by an accused under S. 313 examination can be used for proving his guilt as much as the evidence given by a prosecution witness. In [Narain Singh Vs. State of Punjab](#), this Court held that if the accused confesses to the commission of the offence with which he is charged the Court may relying upon that confession, proceed to convict him. To state the exact language in which the three-Judge Bench answered the question it would be advantageous to reproduce the relevant observations at pages 684-685 (of SCR) : (at p.733 of Cri LJ) :

Under S. 342 of the Code of Criminal Procedure by the first sub- section, insofar as it is material, the Court may at any stage of the enquiry or trial and after witnesses for the prosecution have been examined and before the accused is called upon his defence shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Examination u/s 342 is primarily to be directed to those of matters on which evidence has been led for the prosecution to ascertain from the accused his version or explanation - if any, of the incident which forms the subject-matter of the charge and his defence. By sub-section (3), the answers given by the accused may "be taken into consideration" at the enquiry or the trial. If the accused person in his examination under S.342 confesses to the commission of the offence charged against him the Court relying upon that confession, proceed to convict him, but if he does not confess and in explaining circumstance appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety.

From the principle of law, laid down, in the State of Maharashtra's case (supra), extracted above, it is evident that the answers given by an accused, u/s 313 of the Code of Criminal Procedure Code, can be used for proving his guilt, as much as the

evidence given by the prosecution witnesses. It was also held that if the accused confesses to the commission of offence, with which he/she is charged, the Court may, relying upon that confession, proceed to convict him/her. No help, therefore, can be drawn by the Counsel for the appellant, from State of Maharashtra's case (supra). The principle of law, laid down, in State of Maharashtra's case (supra), on the other hand, strengthens the case of the prosecution. The submission of the Counsel for the appellant, therefore, being without merit, must fail, and the same stands rejected.

17. The Counsel for the appellant, last of all, submitted that Karnail Kaur, is a lady and has already undergone rigorous imprisonment for a period of 2 years. He further submitted that the appellant has been facing the agony of protracted criminal proceedings since 31.10.92, when the case was registered, against her. He further submitted that her sentence be reduced to the period already undergone. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. The trial Court, taking into consideration the facts and circumstances of the case, and the nature of offence, awarded appropriate sentence to the accused (now appellant). The sentence awarded cannot be said to be either harsh or excessive. It is commensurate with the proved guilt of the appellant. Undue sympathy to impose inadequate sentence, would do harm to the justice system, to undermine the public confidence, in the efficacy of law, and the society could no longer endure under such serious threats. It is, therefore, the duty of every Court, to award proper sentence, having regard to the nature of offence, and the manner, in which, it was executed or committed. In case, in such like heinous offences, inadequate sentence is awarded or the sentence awarded by the trial Court, is reduced, that would amount to the mockery of justice system. No ground, whatsoever, therefore, is made out, to reduce the sentence, awarded to the accused, by the trial Court. The submission of the Counsel for the appellant, being devoid of merit, is rejected.

18. No other point, was urged, by the Counsel for the parties.

19. In view of the above discussion, it is held that the judgment of conviction, and the order of sentence, are based on the correct appreciation of evidence, and law, on the point. The same do not warrant any interference, and are liable to be upheld.

20. For the reasons recorded above, the appeal, being devoid of merit, is dismissed. The judgment of conviction, and the order of sentence, rendered by the trial Court, are upheld. If the appellant is on bail, his bail bonds shall stand cancelled. The Chief Judicial Magistrate, is directed to comply with the judgment, keeping in view the applicability of the provisions of Section 428 of the Code of Criminal Procedure, and submit compliance report within a period of 2 months, from the date of receipt of a copy thereof.