

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-2-DB-2010 (O&M)
Date of Decision:06.09.2022
Reserved on: 26.08.2022

Surinder Pal ... Appellant

Vs.

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present: Ms. Meena Bansal, Advocate
for the appellant.

Ms. Ishma Randhawa, Additional Advocate General, Punjab.

N.S.SHEKHAWAT, J.

1. Feeling aggrieved and dis-satisfied with the judgment of conviction and order of sentence dated 29/30.10.2009, passed by the Court of Sessions, Jalandhar, whereby the appellant was held guilty under Sections 302 and 201 of the IPC and was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2,000/- under Section 302 of IPC, in default thereof, to further undergo rigorous imprisonment for six months and was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- under Section 201 of IPC, in default thereof, to further undergo rigorous imprisonment for three months, the appellant has preferred the present appeal under Section 374 of Criminal Procedure Code (for short 'Cr.P.C.') with a prayer to set aside the impugned judgment of conviction and order of sentence dated 29/30.10.2009 and to acquit him of the charges.

2. In the instant case, the law was set in motion with the recording

of the statement of Shakuntla w/o the appellant (Ex.PA) and the same is reproduced below:-

"It is stated that I am resident of aforesaid address and am doing labour work. I have four sons and three daughters. The name of my elder daughter was Gurpreet Kaur, who was aged about 16 years. My husband Surinder Pal is an habitual drinker and is an idle. I used to earn our livelihood by doing labour work alongwith my daughters. On 08.09.08 at about 2.30 p.m. I alongwith my daughters Gurpreet Kaur and Amandeep Kaur had gone to the fields of Kulwinder Ram son of Ram Krishan resident of Raipur for cutting fodder from the land which is situated near our village and we had returned to our house in the evening at about 6.00 p.m. after cutting the fodder. On return to the house, I saw that my husband, Surinder Pal had purchased a bottle of liquor after selling the wheat and was consuming the same. I restrained him from taking liquor but he started giving me beating. My elder daughter Gurpreet Kaur after lifting a stick (Danda) gave its blow on the flank of my husband and asked him as to why he is beating my mother. My husband after leaving me started giving beating to my daughter with stick and due to fear, she entered inside and my husband chased her and started giving beating to my daughter and throttled her neck and Gurpreet Kaur died at the spot. I started weeping loudly. Then my husband Surinder Pal threatened me and my children if you raised shouting or narrated this occurrence to any body then he will also treat them like Gurpreet Kaur. I along with my children passed the night while sitting and weeping out of fear. In the morning, my husband told the neighbours that Gurpreet Kaur had died due to heart attack. This incident was then widely known in the village and many people gathered there. At about 8.00 p.m. in the morning when Gurpreet Kaur was being bathed for carrying her to cremation ground then

Veena wife of Buta Ram, Jatinder Kaur wife of Ranjit Kumar and Bimla wife of Kewal Ram resident of Daduwal noticed injuries on the person of Gurpreet Kaur and there was mark of throttling on her neck. They disclosed this fact to the respectable who restrained Surinder Pal not to perform funeral of Gurpreet Kaur at present. On returning of respectable, Surinder Pal put the dead-body of Gurpreet Kaur on a cot and carry it to the cremation ground after threatening my younger daughters Satkar, Deepa, Amarjit and Jagdish son of Resham Lal, where Surinder Pal had already collected wood and performed the funeral of Gurpreet Kaur. My husband Surinder Pal had disposed of the dead-body of Gurpreet Kaur after giving her injuries and throttling her neck. I alongwith my brother Naresh Kumar son of Jamuna Dass resident of village Dheena who had come to my house after coming to know about the incident was proceeding to the Police Station for giving intimation when you have met me at the Bus Stand of village Daduwal. I have gone recorded my statement. I am the complainant. Legal action be taken. I have heard my statement and admit the same to be correct/ Naresh Kumar son of Shakuntla wife of Surinder Pal.”

3. After the reporting of the matter to the police at 12.30 p.m. on 09.09.2008, the FIR was registered in the instant case. The police party visited the spot, prepared rough site plan Ex.-PB, Scaled site plan Ex.-PH of the place of occurrence. On 11.09.2008, SI Pritam Singh, PW-4 went to the cremation ground and collected the ashes and bones, which were converted into a parcel and the parcel was sealed with the seal ‘PS’ and took the same into possession vide memo Ex.-PC. The said memo was attested by Prithi Raj Singh, Shakuntla PW-2/complainant and Naresh Kumar, PW-1. Later, he arrested the appellant/accused and upon disclosure statement by him, Pritam Singh, SI recovered a danda from him, which was kept concealed in

the bushes by the site of the canal in the limits of village Daduwal. The sketch was attested by Prithi Raj Singh, HC and he prepared the rough site plan of the place of recovery Ex.-PF. The danda so recovered from the accused was MO-1. On completion of the investigation, the challan under Section 173 Cr.P.C. was presented in the Court of the Area Magistrate. The Court of Sessions Judge, Jalandhar ordered framing of charges against the appellant under Sections 302 and 201 of IPC and the trial formally commenced. During the course of trial, the prosecution relied upon the testimonies of the eight witnesses, namely, Naresh Kumar PW-1, Shakuntla PW-2, Jaswinder Kaur PW-3, SI Pritam Singh PW-4, HC Surjit Singh PW-5, HC Shamsher Singh, PW-6, MHC Kuldip Singh PW-7 and Kirpal Singh PW-8.

4. During his examination under Section 313 of Cr.P.C., the accused denied all the incriminating circumstances appearing in the prosecution evidence against him. On an application under Section 315 Cr.P.C. by the accused, the permission was granted to him to appear as a defence witness and he appeared as DW-1 and closed the evidence thereafter. Ultimately, the trial Court held the appellant guilty under Sections 302 and 201 of IPC and was sentenced to various imprisonments, as mentioned above.

5. We have heard learned counsel for the appellant and learned State counsel at length and have perused the evidence on record.

6. On marshalling the entire evidence and the documents on record, we do not agree with the view taken by the trial Court. There were many serious infirmities in the case of the prosecution and consequently, no reliance can be placed on the prosecution witnesses to hold the appellant

guilty of the charges under Sections 302 and 201 of IPC.

7. After hearing both the sides, the following points emerge for consideration by this Court to determine whether the charges against the accused are proved or not. Even the arguments raised by both the sides are also centered around these following issues:-

- A) *Whether the material witnesses produced by the prosecution are reliable and trustworthy?*
- B) *Whether the death of Gurpreet Kaur was homicidal?*
- C) *Whether the recovery of 'Danda' connects the accused with the commission of crime or not?*

(A) **Whether the material witnesses produced by the prosecution are reliable and trustworthy?**

In order bring whom the guilt of the appellant, the prosecution primarily relied upon the testimonies of PW-1 Naresh Kumar, PW-2 Shakuntla, PW-3 Jaswinder Kaur and PW-4 SI Pritam Singh, who was the Investigating Officer. The prosecution has placed heavy reliance on the testimonies of the aforesaid witnesses to contend that the charge under Sections 302 and 201 of IPC is made out against the appellant. Consequently, we would deal with the testimonies of these following witnesses.

(i) **PW-2 Shakuntla:-** PW-2 Shakuntla, who is wife of the appellant and mother of Gurpreet Kaur (deceased) is the most material witness of the prosecution. She stated that when the appellant/accused was confronted as to why he has purchased the liquor, he has started beating Shakuntla PW-2 and Gurpreet Kaur (Deceased). Shakuntla PW-2 started weeping and her daughter- Gurpreet Kaur came forward to save her. The accused picked a danda and gave blow in her flank. Then, the

accused left her and started beating Gurpreet Kaur. The accused bolted the door from inside and started beating her. When she raised alarm, the accused threatened her to face the same consequences.

From the site plan and the admission of various witnesses, it is apparent that the family of the appellant and Shakuntla PW-2 was residing in a house, which is surrounded by many houses in a village. She could have very well called the neighbours or could report the matter to the police, as the accused had bolted himself with Gurpreet Kaur in a room. Her testimony further shows that in the morning people from the locality had collected, still nobody preferred to report the matter to the police. Still further, Shakuntla PW-2 stated that before cremating the dead body of Gurpreet Kaur, her dead body was given a bath by Veena, Bimbo and Bimla and they told her that infact Gurpreet Kaur had been strangulated to death. Firstly, the said three ladies were the most material witnesses, but none of them was examined. Again it is observed that many persons had gathered at the spot and three ladies, who had given bath to the dead body, did not report the matter to anyone in the village, even though it was a homicidal death. Shakuntla-PW-2 further stated that the accused with the help of her sons, had cremated the dead body, in spite of protests by the villagers. Again the testimony does not inspire confidence as the age of all the sons of appellant was less than 16 years and they were small children, who would not be in a position to

oppose the villagers. Still further, PW-2 Shakuntla admitted that there were number of residential houses around her house and people from those houses had come to the spot. Still further, even after the accused bolted the door from inside, she had not called anyone from the neighbour nor she reported the matter to the police at that time. The other five children were with her, but they had also not raised any alarm on account of fear of the accused. Again the conduct of PW-2 Shakuntla is unnatural and unbelievable. After all, PW-2 Shakuntla was the mother of Gurpreet Kaur and even Gurpreet Kaur was eldest of all the children. It is unbelievable that the complainant preferred not to call anyone from the neighbourhood nor reported the matter to the police, even though, it was a thickly populated area. Even admittedly, when PW-2 Shakuntla came to know about beating of her daughter, she did not raise any alarm nor sent any intimation to anyone. Even, she did not call any doctor nor even call her brother Naresh Kumar PW-1, who was residing nearby in the same district. Rather she admitted that the appellant/accused had himself given a message to Naresh Kumar PW-1 on telephone and on receipt of the said message, he came. She further admitted that the neighbours had been stopping him from taking the dead body for cremation but he cremated the dead body with the help of his children. Over all, the testimony of PW-2 did not inspire confidence. She had ample opportunity for several hours to report the matter to the villagers as well as the police. However, she

waited till cremation and within 3-4 hours of the cremation, she reported the matter to the police. Even when the accused had bolted himself inside a room, she remained a mute spectator and neither made a telephone call to her brother nor called her neighbours or the police.

(ii) PW-1 Naresh Kumar:- Again it is observed that the testimony of PW-1 Naresh Kumar is a self-contradictory. He did not depose with regard to the material particulars of the crime. Though, he claims that Shakuntla is his sister, but he did not remember the name of any of her daughter. He did not depose with regard to the date and time of occurrence, even though he is stated to be a government employee. Still further, he stated when he asked the accused about the cause of death, he was told that she was ill and died. Whereas the villagers had been saying that the accused himself had killed his daughter. He was declared hostile by the learned Public Prosecutor and was also cross-examined by the learned Public Prosecutor. Even his cross-examination did not advance the case of prosecution in any manner. Rather, his evidence is more of hear-se nature and appears to be shaky.

(iii) PW-3 Jaswinder Kaur:- As per the complainant, the dead body of Gurpreet Kaur was given bath by Veena, Bimbo and Bimla and they told Shakuntla PW-2 that infact Gurpreet Kaur had been strangulated to death. The prosecution did not examine the said three witnesses and introduced Jaswinder Kaur PW-3 as one of the witness, who had given bath to the

dead body of the deceased- Gurpreet Kaur. She deposed that she came to know that the accused had killed his daughter. When she along with other ladies gave a bath to the girl, she found that there were bluish, bruises and abrasion on the dead body. She came out and informed the Panchayat that the girl had died due to injuries. Surprisingly even she did not inform the police. Still further, it is unbelievable that the Panchayat members had come to know about the death of the girl due to injuries and nobody reported the matter to the police till her cremation was over. Even her testimony does not help the case of prosecution in any manner.

(iv) PW-4- SI Pritam Singh:- SI Pritam Singh, PW-4 was the most material witness of the prosecution with regard to the process of investigation. He stated that on 09.09.2008, he along with other police officials had gone to the Village Dhanni in connection with patrolling and Prithi Raj HC and other police officials met him at that place. From them, again he came to know that some girl had died in village Daduwal under mysterious circumstances. He went to the place of occurrence and inspected the spot and even prepared the rough site plan Ex.PB. Again a perusal of rough site plan EX.-PB would reveal that no incriminating evidence was found at the place of occurrence. It is apparent from the testimony of PW-4 SI Pritam Singh and rough site plan Ex.PB that nothing has been recovered from the spot and even no signs of resistance etc. were found at the spot. Still further two well built rustic ladies

i.e. the complainant and the deceased were beaten up allegedly by the appellant, but any bangles etc., pieces of cloth, torn cloths etc. were not recovered by the police from the place of occurrence. Even the accused was arrested on 11.09.2008 and the evidence is silent with regard to any injuries suffered by him. Shakuntla PW-2 is a rustic lady and even her daughter was aged more than 16 years. However, as per the prosecution, there were no injuries on the person of the appellant. Consequently, even his testimony does not help the case of prosecution in any manner.

The prosecution examined HC Surjit Singh as PW-5, HC Shamsher Singh as PW-6, MHC Kuldip Singh as PW-7 and Kirpal Singh as PW-8. The testimony of the said witnesses is formal in nature.

(B) *Whether the death of Gurpreet Kaur was homicidal?*

In the impugned judgment, the learned Sessions Judge has held on the basis of the above testimonies that the death of Gurpreet Kaur was homicidal. To prove the charge under Section 302 of IPC, the prosecution is obliged to prove that the death of Gurpreet Kaur was homicidal and the prosecution had utterly failed in discharging the said burden. As observed above, PW-1 Naresh Kumar, PW-2 Shakuntla and PW-3 Jaswinder Kaur had ample opportunity to report the matter to the police. Even admittedly, the place of occurrence was situated in a thickly populated area and the appellant was an ordinary labourer. However, no one chose to report the matter to the police nor restrained the appellant from cremating the dead body till the arrival of the police. Rather the dead body was cremated on the

next day at about 8.00 am in the morning and even the ladies of the village had noticed that there were bruises and injuries on the person of Gurpeet Kaur (deceased). Still further, the matter was immediately reported to the police after 2-3 hours of the cremation. Still further, no post-mortem examination of the dead body was conducted and it is unsafe to hold only on the basis of oral testimonies of the witnesses that the death was homicidal in the instant case. Still further, as per PW-4 Pritam Singh SI, bones and ashes were collected from the cremation ground and the parcel was sent to the office of Chemical Examiner. However, the prosecution had not tendered the report of chemical examiner. In absence of any medical reports, forensic report or any other related evidence, it cannot be held that the death in the instant case was homicidal. More so, as discussed above, the evidence led by the prosecution is not found to be creditworthy.

(C) *Whether the recovery of 'Danda' connects the accused with the commission of crime or not?*

That the prosecution examined PW-4 SI Pritam Singh, who conducted the investigation initially and had visited the place of occurrence. During his testimony, he stated that he had recovered the danda. Later on, the accused was arrested and he made a disclosure statement that he had kept concealed the danda in bushes by the site of canal in the limits of village Daduwal. The sketch of the danda was prepared. However, PW-4 Pritam Singh admitted that he had not found any blood stain on the danda MO-I. Even he had not taken any finger impressions from the danda, even though the same was recovered on 11.09.2008. Still further, it is a matter of common knowledge that in this part of the country, danda is found in almost every house in a village and the recovery of danda from the appellant cannot be construed as an incriminating circumstance.

8. The Hon'ble Supreme Court in **Criminal Appeal No.1699 of 2007** titled as "**Paramjeet Singh @ Pamma Vs. State of Uttarakhand**", decided on 27.09.2010 has held as under:-

*"11. A criminal trial is not a fairy tale wherein one is free to give flight to one's imagination and fantasy. Crime is an event in real life and is the product of an interplay between different human emotions. In arriving at a conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case, in the final analysis, would have to depend upon its own facts. The court must bear in mind that "human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions." Though an offence may be gruesome and revolt the human conscience, an accused can be convicted only on legal evidence and not on surmises and conjecture. The law does not permit the court to punish the accused on the basis of a moral or suspicion alone. "The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence." In fact, it is a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused. The fact that the offence was committed in a very cruel and revolting manner may in itself be a reason for scrutinizing the evidence more closely, lest the shocking nature of the crime induce an instinctive reaction against dispassionate judicial scrutiny of the facts and law. (Vide : **Kashmira Singh v. State of Madhya Pradesh**, AIR 1952 Supreme Court 159; **State of Punjab v. Jagir Singh Baljit Singh & Anr.**, AIR 1973 Supreme Court 2407; **Shankarlal Gyarasilal Dixit v. State of Maharashtra**, AIR 1981 Supreme Court 765; **Mousam Singha Roy & Ors. v. State of West Bengal**, (2003) 12 SCC 377; and **Aloke Nath***

Dutta & Ors. v. State of West Bengal, 2007(1) RCR (Criminal) 468 : 2007(1) R.A.J. 24 : (2007) 12 SCC 230.

12. In Sarwan Singh Rattan Singh v. State of Punjab, AIR 1957 Supreme Court 637, this Court observed :

"Considered as a whole the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence [before an accused can be convicted]."

9. We have considered the entire evidence and the documents on record and hold that the view taken by the trial Court is certainly not a possible and plausible view. In view of the observations made above, in our considered opinion, the conclusions drawn by the trial Court are wholly unsustainable and contrary to the settled principles of law. Extending the benefit of doubt to the appellant, he is ordered to be acquitted of the charges.

10. Accordingly, the present appeal is allowed and the judgment of conviction and order of sentence dated 29/30.10.2009, passed by the Court of Sessions, Jalandhar, is set aside. The appellant stands acquitted and his bail /surety bonds are discharged. The appellant is ordered to be released forthwith if not requirement in any case. Case property, if any, be disposed off as per law, after expiry of period of limitation. The trial Court record be sent back.

(SURESHWAR THAKUR)
JUDGE

06.09.2022
hemlata

Whether speaking/reasoned : Yes
Whether reportable : Yes

(N.S.SHEKHAWAT)
JUDGE