GURDEV RAJ

v.

THE STATE OF PUNJAB

OCTOBER 9, 2007

[C.K. THAKKER AND DALVEER BHANDARI, JJ.]

Penal Code, 1860; Ss. 302 and 304 Part-I:

Murder—Accused allegedly attacked his mother-in-law with an iron mungli in the presence of his wife, PW4 and another relative, PW1—Mother-in-law succumbed to injuries—FIR—Investigation—Believing the testimony of PW4 and PW1, eye-witnesses, trial Court found accused guilty of committing offence punishable u/s.302 IPC and sentenced him to life imprisonment—Affirmed by High Court—On appeal, Held: Courts below did not commit any error in believing evidence of PW1 and PW4—Delay in filing FIR has been properly explained—Trial Court rightly held that though PW4 and PW1 were relatives of the deceased but they could not be treated as interested witnesses—Medical Officer opined that out of the three injuries inflicted by the accused, injury Nos. 1 and 2 were sufficient, in the ordinary course of nature, to cause death—High Court found that both the injuries could be caused with one blow—Taking into account totality of facts and circumstances, the accused committed an offence punishable u/s.304 Part-I IPC—Hence, conviction of accused-appellant altered from Section 302 IPC to an offence punishable u/s. 304 Part-I IPC—Testimony of relative eye-witnesses—Interested witnesses.

According to the prosecution, since marriage of appellant and PW4, relations between them were not cordial. Because of frequent quarrels between them, PW4 was taken by her father at her parental home. A complaint was also made to the Women Cell of Police by the father of PW4 against the appellant. Later, because of intervention of In-charge, Women Cell, a compromise was entered

A into between them. Pursuant to the said compromise, PW4 went back to her husband. Before about a week of the incident, she came back to her parent's house with the consent of her husband, the appellant. On receipt of a message from her husband that he was not well, PW4 along with her mother and sister-in-law, PW1, came to her husband's B house to enquire about his health. There, a quarrel ensued between PW4 and her mother on the one side and the appellant on the other side. The appellant got picked up an iron mungli lying inside the room and inflicted blows on the head of his mother-in-law. As a result of those injuries, she died at about 6.30 p.m. on that day. Both, PW4 C and PW1, raised hue and cry, but nobody from the neighbourhood came to their rescue. In the meanwhile, accused fled away with the weapon of crime. Both PW4 and PW1 got frightened, they left the dead body of the deceased in the house itself and locked the house. Then, PW4 along with PW1 went back to her father's house to inform D him about the incident. On the next day, she along with her father reached the place of incident and lodged an FIR in the Police Station. After completion of investigation, the case was committed to the Sessions Court and charges for committing the offence punishable under Section 302 IPC were framed. Believing the testimony of PW1 E and PW4, the eye-witnesses, and taking into consideration opinion of the Medical officer in the post-mortem report, trial Court found accused-appellant guilty of committing the offence punishable u/s. 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 500/-. Aggrieved, appellant preferred an appeal F before the High Court. Division Bench of the High Court upheld the conviction and sentence of the accused. Hence the present appeal.

Accused-appellant contended that there was gross and unexplained delay in filing the FIR which went to the root of the matter and he was entitled to acquittal; that neither PW4, his wife G nor PW1, sister-in-law of PW4, could be said to be an eye-witness as they were subsequently brought by the prosecution to give evidence to support the case against him; that there were material contradictions in their evidence which went to show that they had not seen the incident and their evidence, therefore, could not have H been relied upon; that according to the prosecution case, the incident

took place at about 6.30 p.m. in a locality where several houses were there and neighbours were staying in those houses, in spite of that, no independent witness had been examined by the prosecution; that both the Courts were in error in not relying upon the affidavits said to have been sworn by PW4 and PW1; and that even according to the prosecution, relations between PW4 and the appellant, (husband and wife), were strained. There were frequent quarrels. The Assistant Sub-Inspector of Women Cell had to intervene and a compromise was arrived at. Even on the day of incident, there was altercation between PW4 and the deceased on the one side and the appellant on the other side. In the circumstances, the case could not be said to be covered by Section 302, IPC and at the most, it would fall within Section 304, Part-II or Part-I IPC and to that extent, the appeal deserves to be allowed.

Partly allowing the appeal, the Court

HELD: 1.1. It cannot be said that by believing evidence of PW4 and PW1, either the trial Court or the High Court had committed any error of fact or of law. Both the witnesses deposed that quarrel ensued between PW4 and the deceased on one side and the appellant on the other side and appellant caused injuries to the deceased.

[Para 12] [843-H; 844-A, B]

1.2. As far as delay in lodging FIR, both the Courts were right in holding that delay had been properly explained. The incident took place at about 6.30 p.m. at Taran Taran. Both the witnesses, PW1 and PW4, were obviously very much frightened. They raised hue and cry but no body from the neighbouring locality came there. The accused ran away. They, in the circumstances, locked the house and went to Amritsar to inform the husband of the deceased but he was not available. He came back late at night and it was not possible thereafter to go to Police Station. Obviously, therefore, on the next day morning, they went to the Police Station and lodged FIR at about 11.25 a.m. Therefore, it could not be said that there was unexplained delay on the part of the prosecution in lodging FIR.

[Para 13] [844-C, D]

A **1.3. The evidence clearly shows that hue and cry was raised by both the ladies but nobody came forward, presumably because they were aware of frequent quarrels between husband and wife. Moreover, they did not want to unnecessarily indulge in the matter. If it is so, obviously there was no question of non-examination of**
B **witnesses. In any view of the matter, no body was present at the time of incident. Therefore, the prosecution cannot be blamed for not examining an independent witness from the neighbourhood so far as the actual incident is concerned. [Para 13] [844-E, F]**

C **1.4. It also cannot be said that since PW4 and PW1 were closely related to the deceased, their version could not have been believed. The trial Court was wholly right in holding that they were no doubt relatives of the deceased but they could not be termed as *'interested'* witnesses. The Court was also right in further stating that close relatives would be most reluctant to spare the real assailant and**
D **would falsely implicate an innocent person. After seeing the demeanour of witnesses, the trial Court believed both of them. The High Court again considered their evidence and confirmed the finding recorded by the trial Court. No infirmity is found in the approach of the trial Court as well as of the High Court. It, therefore,**
E **cannot be said that by believing these two witnesses, any illegality was committed by the Courts below. [Para 14] [844-G, H; 845-A, B]**

1.5. From the evidence of all the three defence witnesses, it was clearly established that they had not identified that the affidavits
F **were sworn by PW4 and PW1. The Courts were also right in holding that the affidavits were sworn on May 22, 2000 whereas the substantive evidence of both the witnesses was recorded on oath in Court on August 17, 2000 (PW1) and April 11, 2001 (PW4). The alleged affidavits were thus prior in point of time. They were said to**
G **have been executed outside the Court. Substantive evidence of these witnesses in Court subsequent to the date of affidavits was rightly referred to and relied upon by the Courts. [Para 15] [845-C, D, E]**

1.6. According to the evidence of PW5, the Medical Officer, three injuries were sustained by the deceased. Out of three injuries,
H **injury Nos. 1 and 2 were sufficient in the ordinary course of nature**

to cause death. The High Court, in the impugned judgment, has observed that both the injuries could be caused "with one blow". If it is so, taking into account totality of facts and circumstances, it can be said that the appellant had committed an offence punishable under Section 304, Part I IPC. His conviction, therefore, ought to have been under the said provision and not for an offence of murder, punishable under Section 302 IPC. [Para 16] [846-A, B]

1.7. So far as conviction recorded against the appellant for causing death of the deceased is concerned, there is no infirmity and both the Courts were right in coming to the conclusion that it was the appellant who had caused the death of the deceased. But, in view of totality of circumstances, the appellant ought to have been convicted by the Courts below for an offence punishable under Section 304, Part I and not under Section 302 IPC. Hence, conviction of the appellant for an offence punishable under Section 302 IPC is converted to an offence punishable under Section 304, Part I IPC and he is ordered to undergo rigorous imprisonment for ten years. [Para 17] [846-C, D, E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1388 of 2007.

From the Judgment and final Order dated 10.8.2005 of the High Court of Punjab and Haryana at Chandigarh in Crl. A. No. 789-DB/2002.

Rachana Joshi Issar (SCLSC) for the Appellant.

Kuldip Singh, R.K. Pandey, H.S. Sandhu and T.P. Mishra for the Respondent.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. Leave granted.

2. The present appeal is filed by the appellant-accused against the judgment and order passed by the Sessions Judge, Amritsar on August 12, 2002 in Sessions Case No. 53 of 1999 convicting him for an offence punishable under Section 302 of the Indian Penal Code (IPC) and confirmed by the High Court of Punjab and Haryana at Chandigarh on

August 10, 2005 in Criminal Appeal No. 789-DB of 2002.

3. The case of the prosecution was that one Rajani Bala—PW4 was married to appellant Gurdev Raj before about one year of the incident which took place on July 5, 1999. According to the prosecution, relations between Rajani Bala and her husband Gurdev Raj—appellant herein were not cordial. The appellant was doing labour work. He, however, used to pick up quarrels with his wife Rajani Bala over petty matters. Because of frequent quarrels, Rajani Bala was taken by her father at her parental home, Amritsar. An application was also made to the Women Cell, Taran Taran against the appellant. 15 to 20 days prior to the date of incident, because of intervention of Assistant Sub-Inspector—Rajwinder Kaur, In-charge, Women Cell, a compromise was entered into between the parties, i.e. the appellant-accused and the father of Rajani Bala. Pursuant to the said compromise, Rajani Bala went back to her husband's house. Before about a week of the incident, Rajani Bala had again gone to the house of her parents at Amritsar with the consent of the appellant. On July 5, 1999, a message was received by Rajani Bala from her husband (appellant herein) that he was not well. PW4-Rajani Bala (wife of the appellant-accused), PW1-Pooja (brother's wife of Rajani Bala) and Bhushan Lata (mother of Rajani Bala and mother-in-law of the appellant-accused) (since deceased) came to Taran Taran to enquire about the health of the appellant. It was said that in the evening of that day, a quarrel ensued between Rajani Bala and her mother Bhushan Lata on the one side and the appellant Gurdev Raj on the other side. The appellant got angry and picked up an iron *mungli* lying inside the room and administered blows on the head of Bhushan Lata (his mother-in-law). As a result of those injuries, Bhushan Lata died. It was about 6.30 p.m.

4. According to the prosecution, both Rajani Bala and Pooja raised hue and cry, but no body from the neighbourhood came to their rescue as they were aware of strained relations between the husband and wife. Gurdev Raj, taking *mungli* with him, fled away in the meanwhile. Both the ladies got frightened, they left the dead body of Bhushan Lata in the house itself, locked the house and went back to Amritsar to inform Janak Raj, husband of the deceased Bhushan Lata, father of Rajani Bala and father-in-law of Pooja. They reached Amritsar at night. Janak Raj was

not in the house at that time. He came back quite late at night and at that time he was told about the incident by both the ladies. Since it was very late, they could not come back to Taran Taran. On the next day i.e. on July 6, 1999, Rajani Bala, along with her father, went to Taran Taran in the morning. Rajani Bala's statement was recorded by PW9-Baldev Singh, Sub-Inspector/Station House Officer, on the basis of which formal First Information Report (FIR), Ex.PD/2, was registered at about 11.25 a.m. Special report was thereafter sent to *Ilaka* Magistrate which was received by the Magistrate at about 1.00 p.m. Usual investigation was made. The case was committed to the Sessions Court. Charge for an offence punishable under Section 302, IPC was framed. The accused pleaded not guilty and claimed to be tried.

5. The prosecution, in order to establish the guilt of the accused, *inter alia*, examined PW4-Rajani Bala, wife of appellant accused, as eye-witness. She was also the informant as well as the complainant. PW1-Pooja was another eye-witness. PW5-Dr. Tejwant Singh, Medical Officer, Civil Hospital, Taran Taran proved injuries sustained by the deceased. He had performed post mortem. Other police witnesses were also examined.

6. In defence, the appellant examined one Naresh Kumar Soni, Advocate as DW1, Rajesh Sharma, Tehsildar as DW2 and Amarjit Singh, Reader to Tehsildar as DW3.

7. The trial Court, on the basis of evidence of PW4-Rajani Bala and PW1-Pooja, eye-witnesses to the incident, came to the conclusion that both the witnesses were reliable and truthful witnesses and they had seen the incident. In their presence, the appellant-accused caused injuries to deceased Bhushan Lata which were proved fatal and she died of those injuries. There was no reason to disbelieve them. The Court also held that the injuries were proved by the evidence of PW5-Dr. Tejwant Singh. The deceased sustained three injuries. Injury Nos. 1 and 2 were sufficient in the ordinary course of nature to cause death. The weapon used was an iron *mungli*. The appellant was responsible for causing death of deceased Bhushan Lata. He thereby committed an offence punishable under Section 302, IPC. The Court also held that it was not proved that affidavits were filed by PW4-Rajani Bala (Ex. DC) and PW1-Pooja (Ex.

A DB) that the appellant-accused had not committed the offence in question and hence defence version and the evidence of DW1-Naresh Kumar Soni, Advocate practising in District Court, Amritsar, DW2-Rajesh Sharma, Tehsildar, Amritsar and DW3-Amarjit Singh, Reader to Tehsildar was of no help to the appellant. Accordingly, the appellant was held responsible
B for causing death of deceased Bhushan Lata. After recording an order of conviction, an opportunity was afforded to the appellant on the question of sentence and after hearing the parties, the Court observed that the accused was a poor man and was the only bread winner in the family. He prayed for mercy and keeping in view the entirety of facts, the Court
C felt that it was appropriate if the accused would be ordered to undergo imprisonment for life and to pay fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for a period of three months. Accordingly, an order was passed by the trial Court.

8. Being aggrieved by the order of the trial Court, the appellant
D preferred appeal before the High Court of Punjab and Haryana and the Division Bench of the High Court upheld the order observing that no illegality was committed by the trial Court in convicting the appellant and sentencing him. Accordingly, the appeal was dismissed by the High Court.

E 9. Notice was issued by this Court on March 9, 2007 and we have heard learned counsel for both the sides.

10. The learned counsel for appellant submitted that both the Courts were in error in holding the appellant guilty of an offence punishable under Section 302, IPC. It was submitted that there was gross and unexplained
F delay in filing the FIR which went to the root of the matter and the appellant was entitled to acquittal. It was also submitted that neither Rajani Bala-PW4 nor Pooja-PW1 could be said to be an eye-witness. They were subsequently brought by the prosecution to give evidence to support the case against the appellant. There were material contradictions in their
G evidence which went to show that they had not seen the incident and their evidence, therefore, could not have been relied upon. It was also urged that according to the prosecution case, the incident took place at about 6.30 p.m. in a locality where several houses were there and neighbours were staying in those houses. In spite of that, no independent witness had
H been examined by the prosecution and two closely related persons, one

being daughter of the deceased and the other being daughter-in-law of the deceased, were brought before the Court. Their evidence could not have been relied upon by the Courts below in absence of material corroboration from independent witnesses, particularly when such evidence could have been adduced by the prosecution. A grievance was also made that both the Courts were in error in not relying upon the affidavits said to have been sworn by PW4-Rajani Bala and PW1-Pooja. The Courts ought to have considered those affidavits, particularly, when in support of such affidavits, the appellant examined three witnesses who were not in any way connected with the appellant-accused; DW1-Naresh Kumar Soni, an Advocate, DW2-Rajesh Sharma and DW3-Amarjit Singh, Tehsildar and Reader to Tehsildar respectively. They were neither relatives of the accused nor they had any axe to grind against the prosecution. Their evidence, therefore, ought to have been relied upon. By not doing so, the Courts had acted illegally and were in error in convicting the appellant. Finally, it was submitted that even according to the prosecution, relations between Rajani Bala and the appellant, (husband and wife), were strained. There were frequent quarrels. The Assistant Sub-Inspector of Women Cell had to intervene and a compromise was arrived at. Even on July 5, 1999, there was altercation between Rajani Bala and the deceased on the one side and the appellant on the other side. In the circumstances, the case could not be said to be covered by Section 302, IPC and at the most, it would fall within Section 304, Part II or Part I, IPC and to that extent, the appeal deserves to be allowed.

11. The learned counsel for the respondent-State, on the other hand, supported the order passed by the trial Court. He submitted that both the Courts were right in holding the appellant guilty of offence of murder and no interference is called for. He also submitted that all the contentions raised by the appellant in this Court had been raised before both the Courts and were negatived by them. He, therefore, submitted that the appeal deserves to be dismissed.

12. Having heard learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. So far as the incident is concerned, it cannot be said that by believing evidence of PW4-Rajani Bala and PW1-Pooja, either the trial Court or the High Court had committed any

A error of fact or of law. Both the witnesses had stated that pursuant to information received from the appellant on July 5, 1999 that he was not keeping good health, they proceeded from Amritsar to Taran Taran along with deceased Bhushan Lata. Both of them deposed that quarrel ensued between Rajani Bala and Bhushan Lata on one side and the appellant-
B accused on the other side and appellant-accused caused injuries to Bhushan Lata.

13. As far as delay in lodging FIR, both the Courts, in our opinion, were right in holding that delay had been properly explained. The incident took place at about 6.30 p.m. at Taran Taran. Both the ladies were
C obviously very much frightened. They raised hue and cry but no body from the neighbouring locality came there. The accused ran away. They, in the circumstances, locked the house and went to Amritsar to inform Janak Raj but he was not available. He came back late at night and it was not possible thereafter to go to Police Station. Obviously, therefore,
D on the next day morning i.e. on 6th July, 1999, they went to the Police Station and lodged FIR at about 11.25 a.m. In our opinion, therefore, it could not be said that there was unexplained delay on the part of the prosecution in lodging FIR. It was immediately forwarded to the Magistrate. It was not a case wherein independent witnesses were present
E who had seen the incident and yet they were kept back by the prosecution and were not examined. The evidence clearly shows that hue and cry was raised by both the ladies but no body came forward, presumably because they were aware of frequent quarrels between husband and wife. Moreover, they did not want to unnecessarily indulge in the matter. If it is
F so, obviously there was no question of non examination of witnesses. In any view of the matter, no body was present at the time of incident. Therefore, the prosecution cannot be blamed for not examining an independent witness from the neighbourhood so far as the actual incident is concerned.

G 14. It also cannot be said that since Rajani Bala and Pooja were closely related to deceased Bhushan Lata, their version could not have been believed. In our opinion, the trial Court was wholly right in holding that Rajani Bala and Pooja were no doubt relatives of the deceased but they could not be termed as *'interested'* witnesses. The Court was also
H

right in further stating that close relatives would be most reluctant to spare the real assailant and would falsely implicate an innocent person. After seeing the demeanour of witnesses, the trial Court believed both of them. The High Court again considered their evidence and confirmed the finding recorded by the trial Court. We see no infirmity in the approach of the trial Court as well as of the High Court. It, therefore, cannot be said that by believing these two witnesses, any illegality was committed by the Courts below.

15. We are also not impressed by the argument of the learned counsel for the appellant that the so called affidavits said to have been filed by Rajani Bala and Pooja could have been relied upon for acquitting the appellant-accused. Both the Courts have considered this aspect and negatived the argument advanced on behalf of the appellant-accused. From the evidence of all the three defence witnesses, it was clearly established that they had not identified that the affidavits were sworn by PW4-Rajani Bala and PW1-Pooja. The Courts were also right in holding that the affidavits were sworn on May 22, 2000 whereas the substantive evidence of both the witnesses was recorded on oath in Court on August 17, 2000 (PW1-Pooja) and April 11, 2001 (PW4-Rajani Bala). The alleged affidavits were thus prior in point of time. They were said to have been executed outside the Court. Substantive evidence of these witnesses in Court subsequent to the date of affidavits was rightly referred to and relied upon by the Courts. Even that aspect, therefore, does not help the appellant.

16. But so far as the nature of offence is concerned, in our opinion, there is substance in what the learned counsel for the appellant urged. As is clear, even according to the prosecution, there were frequent quarrels between the husband and wife. Rajani Bala had left matrimonial home and was staying with her parents. An application was filed with Women Cell and due to intervention of Rajwinder Kaur, Assistant Sub-Inspector, In-charge of Women Cell, compromise had been recorded and Rajani Bala had gone to matrimonial home. Thereafter, she had again gone to her parental home and on the date of incident, because of telephonic call by the appellant that he was not well that she along with her mother and brother's wife, went to see the appellant-accused. There also there was

A altercation between the parties. According to the evidence of PW5-Dr. Tejwant Singh, three injuries were sustained by the deceased. Out of three injuries, injury Nos. 1 and 2 were sufficient in the ordinary course of nature to cause death. The High Court, in the impugned judgment, has observed that both the injuries could be caused "with one blow". If it is so, in our B opinion, taking into account totality of facts and circumstances, it can be said that the appellant had committed an offence punishable under Section 304, Part I, IPC. His conviction, therefore, ought to have been under the said provision and not for an offence of murder, punishable under Section 302, IPC.

C 17. For the foregoing reasons, the appeal deserves to be partly allowed. So far as conviction recorded against the appellant for causing death of deceased Bhushan Lata is concerned, there is no infirmity and both the Courts were right in coming to the conclusion that it was the appellant who had caused the death of the deceased. But, in view of D totality of circumstances, in our opinion, the appellant ought to have been convicted by the Courts below for an offence punishable under Section 304, Part I and not under Section 302, IPC. The appeal is, therefore, partly allowed and conviction of the appellant for an offence punishable under Section 302, IPC is converted to an offence punishable under E Section 304, Part I, IPC and he is, therefore, ordered to undergo rigorous imprisonment for ten years.

18. The appeal is accordingly allowed to the extent indicated above.

S.K.S. Appeal partly allowed.

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