KULWINDER SINGH

*v.*

STATE OF PUNJAB

AUGUST 6, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

*Penal Code, 1860; Sections 302 and 366:*

*Murder—Accused allegedly attempted to commit rape and then strangulated sister of the complainant and also gave gandasi blows on his grandmother—Both the injured succumbed to injuries—Trial Court found the accused guilty of committing murder sentencing him to death—Maintaining conviction of the accused u/s. 302, High Court set aside death sentence and remitted the matter to trial Court for reconsideration on quantum of sentence—On appeal, Held: Oral evidence of complainant-PW6 that accused inflicting gandasi blow on the neck of his grandmother and his sister lying with injuries on the floor of the room are credible—Even assuming that more than one person attacked the deceased, the accused was certainly one of them—From the facts, it appears that the accused first wanted to rape/molest the sister of the complainant and on her resistance he killed her—Later, when the grandmother of the victim came, the accused also eliminated her so as to leave no witness—The crime weapon, the Locket and the clothes recovered at the instance of the accused and finger prints thereon point to his guilt—Hence, the conviction u/s. 302 upheld—However, the sentence reduced to life imprisonment since the crime committed does not fall within the category of rarest of rare cases.*

*Maxims:*

*Maxim 'falsus in uno falsus in omnibus'—Applicablity of—Held: Not applicable in criminal cases in India.*

**According to the prosecution, on the fateful day when PW6 was going from his house towards his Haveli for feeding his cattle, he heard the shrieks of 'Bachao-Bachao' of his grand-mother from the fodder room in the Haveli. He saw the accused inflicting gandasi blows on the neck of his grandmother. On seeing him, the accused ran away from the spot carrying the gandasi with**

A him. In the room, he also found that his sister was lying in the injured condition writhing in pain. Both the injured narrated about the incident that accused had entered the room for committing rape upon his sister, and on her resistance, the accused had put her chuni around the neck and strangulated her. Soon after making the statement, both the injured succumbed to their injuries. An FIR was lodged by the complainant in the B police station. Accused was arrested by the police and sent for medical examination. On completion of the investigation, the accused was charged for committing the offence punishable under Section 302 of the Indian Penal Code. The trial court held that the presence of the complainant (PW6) at the spot was established beyond doubt and that the case against the accused proved C beyond doubt and found him guilty of committing the murder. On the quantum of sentence, the Court observed that the conduct of the accused depicted him as a person who constituted a threat to ordered society and that he had forfeited his right to life by his barbarity and accordingly sentenced him to death. The Court forwarded the reference to the High Court under Section 366 of the Code of Criminal Procedure for confirmation of the death sentence. The High D Court maintained the conviction of the appellant under Section 302 IPC, but set aside the death sentence and remitted the matter to the trial Court to reconsider the matter on quantum of sentence. Hence the present appeal.

Accused-appellant contended that the complainant is the sole witness E and he cannot be regarded as a truthful witness; that in the FIR the complainant stated that both the deceased had made dying declarations to him, but in the evidence he stated that only her sister had done so, however, she was not in a position to speak on account of the extensive injuries on her body; and that there were 14 injuries on the body of sister of the complainant and 16 injuries on the body of his grandmother and that could not possibly be F made by one person, thus, there were more than one person who attacked the deceased.

Disposing of the appeal, the Court

HELD: 1.1. Even if the dying declarations are disbelieved, yet the oral G evidence of the Complainant to the extent that he saw the appellant inflicting gandasi blows on the neck of his grandmother, one of the deceased, and that he saw his sister, another deceased, lying with injuries on tne floor of the room are credible. [Para 8] [896-B]

1.2. The maxim *falsus in uno falsus in omnibus* (false in one false in H all) does not apply in criminal cases in India. A witness can be partly truthful

**and partly false. Hence even if that part of the evidence of the complainant where he stated that his grandmother and sister made dying declarations to him implicating the accused, is disbelieved, this Court is inclined to accept his deposition where he stated that he saw the appellant inside the cattle shed attacking his grandmother with a gandasi and he further saw the body of his sister lying in the room. [Para 9] [896-C]**

**1.3. Even assuming that there were more than one person who attacked the deceased, the appellant was certainly one of them. Hence this theory does not help the appellant. Moreover, there is nothing in the evidence of any witness and any material on record to show that there were more than one person who attacked the deceased in the cattle shed.**

**[Para 11] [896-E-F]**

**1.4. It seems that the appellant first wanted to rape or molest the sister of the complainant and when she resisted he killed her. Thereafter when his grandmother came to the cattle shed, the appellant also killed her so as to leave no witnesses. [Para 12] [896-G]**

**1.5. The fingerprints, the locket, the weapon and clothes recovered at the instance of the appellant also point to his guilt. [Para 13] [897-A]**

**2. While upholding the conviction of the appellant under Section 302 IPC, the sentence is restored to life imprisonment since it appears that the crime was committed in a fit of passion and does not come within the category of 'rarest of rare' cases. [Para 14] [897-B]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 116 of 2006.

From the Judgment and Order dated 20.9.2004 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 891-DB of 2003.

WITH

Crl A.No. 113 of 2006.

K.B.S. Sinha, Kawaljit Kochar and Kusum Chaudhary for the Appellant.

Kuldip Singh, R.K. Pandey, Sanjay Katyal, T.P. Mishra and Sanjay Jain for the Respondent.

A The Judgment of the Court was delivered by

**MARKANDEY KATJU, J.** *Criminal Appeal No. 116/2006*

1. This appeal is directed against the impugned judgment and order dated 20.9.2004 of the Punjab & Haryana High Court in Criminal Appeal No. B 891-DB of 2003.

2. Heard learned counsel for the parties and perused the record.

3. The prosecution case is that at about 2.30 P.M. on 4.8.2002, Sarabjit Singh (PW6) son of Avtar Singh, a resident of village Basiala was going from C his house towards his Haveli for feeding his cattle when he heard the shrieks of 'Bachao-Bachao' of his grand-mother Joginder Kaur from the fodder room situated in the Haveli. He rushed to that side and saw Kulwinder Singh accused, resident of village Sujjon, whose maternal parents resided in village Basiala inflicting gandasi blows on the neck of Joginder Kaur. On seeing him, Kulwinder Singh ran away from the spot carrying the gandasi with him. On D going closer, Sarabjit Singh found that his sister Hardip Kaur was also lying injured in the room writhing in pain. On enquiry, both Hardip Kaur and Joginder Kaur allegedly told Sarabjit Singh that Kulwinder Singh had entered the room for committing rape upon Hardip Kaur and on her resistance, he had put her chuni around her neck and strangulated her. Soon after making the E statement, both Joginder Kaur and Hardip Kaur, who had received very serious injuries died. After leaving his father Avtar Singh at the spot to guard the dead bodies, Sarabjit Singh left for the police station, but came across a police party headed by Inspector Maninder Bedi and made a statement to him at about 5.30 P.M. leading to the lodging of the First Information Report at 6.40 P.M. The Police Inspector visited the place of incident and made the F necessary enquiries and on 9.8.2002 arrested the accused, and sent him for medical examination. On completion of the investigation, the accused was charged on two counts under Section 302 of the Indian Penal Code and as he pleaded not guilty, was brought to trial.

G 4. The trial court in its judgment held that the presence of Sarabjit Singh (PW6) was established beyond doubt and the mere fact that he had not attested some of the documents prepared at the spot, was of no consequence. The trial court also observed that though in the FIR Sarabjit Singh had said that both the deceased had made dying declarations to him, but in the course of evidence had qualified his statement by stating that only Hardip Kaur had H done so. This was a discrepancy which could be ignored being inconsequential.

Likewise it was observed that merely because Sarabjit Singh was not clear as to the exact number of blows that he had witnessed when he had entered the kotha, this was to be expected under the circumstances, considering the awful scene that he had come upon. The court also observed that as both the deceased had perhaps been immobilized by the very severe attack made on them, it would perhaps have not been possible for them to put up any resistance, more so as both the deceased were women, one a young girl and the other an old woman and the accused was a young man of 26 years of age. The court also held that the recovery of the danda, Exh. P1 and the gandasi, Exh.P2, the alleged murder weapons at the instance of the accused stood proved, and the two sets of injuries that had been found on him when he had been subjected to a medical examination on 10.8.2002 was again a corroborative circumstance. The Court found further corroboration from the fact that the finger prints lifted from the mirror lying in the room where the murders had been committed, had been found to be those of the accused. The defence version given by the accused was rejected by observing that no attempt had been made by Surjit Singh (DW2), the real brother of the accused to approach the higher authorities to complain that his brother had been involved in a false case or the plea of alibi. The court accordingly held the case against the accused as proved beyond doubt vide its judgment dated 21.10.2003. The court then took up the matter for consideration on the quantum of sentence and observed that the conduct of the accused depicted him as a person who constituted a threat to ordered society and that he had forfeited his right to life by his barbarity and accordingly sentenced him to death. The Sessions Judge forwarded the reference to the High Court under Section 366 of the Code of Criminal Procedure for confirmation of the death sentence.

5. The High Court maintained the conviction of the appellant under Section 302 IPC, but set aside the death sentence and remitted the matter to the Sessions Judge to reconsider the matter of quantum of sentence. Against the said judgment the appellant has come up to this Court by way of special leave.

6. We have gone through the FIR, the oral evidence as well as the post mortem report and other materials on record.

7. Learned counsel for the appellant submitted that Sarabjit Singh is the sole witness and he cannot be regarded as a truthful witness. He submitted that in the FIR Sarabjit Singh stated that both the deceased i.e. Joginder Kaur and Hardip Kaur had made dying declarations to him, but in the evidence he

A stated that only Hardip Kaur had done so. He further submitted that Hardip Kaur was not in a position to speak on account of the extensive injuries on her body.

8. We are of the opinion that even if the dying declarations are disbelieved, yet the oral evidence of Sarabjit Singh to the extent that he saw B the appellant inflicting gandasi blows on the neck of Joginder Kaur, and that he saw Hardeep Kaur lying with injuries on the floor of the room are credible.

9. It may be stated that the maxim *falsus in uno falsus in omnibus* (false in one false in all) does not apply in criminal cases in India. A witness can be partly truthful and partly false. Hence even if we disbelieve that part of C the evidence of Sarabjit Singh where he stated that Joginder Kaur and Hardip Kaur made dying declarations to him implicating the accused we are inclined to accept his deposition where he stated that he saw the appellant Kulwinder Singh inside the cattle shed attacking Joginder Kaur with a gandasi and he further saw the body of Hardip Kaur lying in the room.

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10. Learned counsel for the appellant submitted that there were 14 injuries on the body of Hardip Kaur and 16 injuries on the body of Joginder Kaur and hence that could not possibly be made by one person. Hence he alleged that there were more than one person who attacked Joginder Kaur and Hardip Kaur.

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11. Even assuming that there were more than one person who attacked the deceased, we are of the opinion that the appellant was certainly one of them. Hence this theory does not help the appellant. Moreover, there is nothing in the evidence of any witness and any material on record to show that there were more than one person who attacked the deceased in the cattle F shed.

12. It seems to us that the appellant first wanted to rape or molest Hardip Kaur, and when she resisted he killed her. Thereafter when Joginder Kaur came to the cattle shed, the appellant also killed her so as to leave no witnesses.

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13. We repeatedly asked the learned counsel for the appellant whether there was any good reason for Sarabjit Singh to falsely implicate the appellant, but he could not point out any such good reason. Hence we see no reason to disbelieve the evidence of Sarabjit Singh where he stated that he saw the H appellant attacking Joginder Kaur inside the cattle shed and Hardip Kaur

lying there with injuries. The fingerprints, the locket, the weapon and clothes recovered at the instance of the appellant also point to his guilt. A

14. However, while upholding the conviction of the appellant under Section 302 IPC, we reduce the sentence to life imprisonment since it appears to us that the crime was committed in a fit of passion and does not come within the category of 'rarest of rare' cases. The appeal stands disposed of accordingly with the observations made above. B

*Criminal Appeal No. 113/2006*

15. Criminal Appeal No. 113/2006 stands disposed of in terms of the decision made above in Criminal Appeal No. 116/2006. C

S.K.S. Appeal disposed of.