

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : Crl. Appeal No.789-SB of 2000

Date of Decision : January 31, 2007.

Kulmit Singh @ Ghokri and another Appellants

Vs.

State of Punjab Respondent

Coram : Hon'ble Mr.Justice Mahesh Grover

* * *

Present : Ms.Monica Jalota, Advocate
as Amicus Curiae, for the appellants.

Mr.B.S.Sewak, DAG, Punjab.

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MAHESH GROVER, J. :

This is an appeal against the judgment of Additional Session Judge, Ferozepur dated 11.4.2000, awarding the sentence to the appellants as under :-

<u>"Name of the accused</u>	<u>Offence U/S</u>	<u>Sentence</u>
<i>Kulmit Singh</i>	<i>307 IPC</i>	<i>To undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1000/-. In default of payment of fine, he shall further undergo RI for two months.</i>
<i>Kulmit Singh</i>	<i>459 IPC</i>	<i>To undergo</i>

rigorous imprisonment for a period of five years and to pay a fine of Rs.1000/-. In default of payment of fine, he shall further undergo RI for two months.

Kulmit Singh

201 IPC

To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500/-. In default of payment of fine, he shall further undergo RI for one month.

Gurmit Singh

307/34 IPC

To undergo RI for five years and to pay a fine of Rs.1000/- and in default of payment of fine, he shall further undergo RI for two months.

Gurmit Singh

459 IPC

To undergo RI for five years and to pay a fine of Rs.1000/-. In default of payment of fine, he shall further undergo RI for two months.

Gurmit Singh

201 IPC

To undergo RI for two years and to pay a fine of Rs.500/-. In default of payment

of fine, he shall further undergo RI for one month.”

The prosecution's case in brief is that on 30.04.1998, SI Jaswant Singh received a copy of MLR, pertaining to Preeto Bai, wife of Kala Singh, a resident of Village Khu Mohar Singh Wala, upon which he along with other police officials visited Civil Hospital, Ferozepur and after obtaining the opinion of the doctor, recorded the statement of Preeto Bai, who reported that on the intervening night of 29/30.04.1998, she along with her husband Kala Singh was sleeping on the roof of their house. In the midnight, due to storm, they had to come down to sleep in the courtyard. It was hot and they were unable to sleep. At about 4:00 A.M., accused Kulmit Singh @ Ghokri and Gurmit Singh @ Miti, armed with *datar* and *kirpan* respectively, entered into their house and came near the cot of the complainant. Accused Kulmit Singh gave *datar* blow on the left leg of the complainant and severed her left leg. Kala Singh, husband of the complainant tried to catch hold of the accused but they fled away from the spot. They also took away her severed leg. She was removed to the hospital. The motive behind the occurrence was that the complainant Preeto had got a case registered against both the accused persons under Section 376 IPC, in which she had alleged that both the accused persons had committed rape upon her. That case was pending.

On the statement of Preeto Bai as above, SI Jaswant Singh put his endorsement and FIR was registered under Section 459/201 IPC. The investigation was conducted by SI Jaswant Singh and the accused were arrested. The *datar* and *kirpan* used in the commission of the offence were recovered through separate disclosure statements of the respective accused persons. Rough sketch of the site as also the place from where recovery was affected, was prepared.

During investigation, it was concluded that the accused had

intention to kill the complainant Preeto Bai and had attacked her with a sharp edged weapon with an intention to kill her. The challan under Section 307/456/201 read with Section 34 IPC was presented in the court.

The Chief Judicial Magistrate had found that the accused had committed an offence punishable under Section 307/456/34 IPC and committed the case to the court of learned Sessions Judge, Ferozepur, who charged the accused persons for having committed the aforesaid offence.

Both the accused persons pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1 Dr.Jagbir Singh Sandhu who medico legally examined the complainant Preeto, PW-2 Tilak Raj, Junior Engineer of PSEB, PW-3 ASI Ashok Kumar who recorded the FIR of the case, PW-4 ASI Jassa Singh who accompanied the Investigating Officer Jaswant Singh to the place of occurrence in whose presence blood stained earth and blood stained *chunni* of the complainant were taken into possession by the Investigating Officer vide separate parcels through recovery memo, PW-5 MHC Amarjit Singh who proved the FIR No.289 dated 17.8.1996, PW-6 Preeto Bai who is the complainant, PW-7 Kala Singh who is the husband of the complainant and PW-8 SI Jaswant Singh who investigated the case.

Both the accused persons in their statement under Section 313 Cr.P.C. pleaded false implication but failed to adduce any evidence in their defence. The trial court, after perusing the evidence before it, convicted both the appellants as aforesaid.

It was contended by the learned counsel for the appellants that the appellants have been falsely implicated. In fact, there was no motive to commit the offence. The fact of the matter was that Preeto Bai had borrowed a sum of Rs.5,000/- from the appellants. When they demanded the money back, she got registered a false case against them under Section 376 IPC and then subsequently the present one under Section 307 IPC. No evidence was led by the accused persons.

On the other hand, learned counsel for the State has contended that there was overwhelming evidence against the appellants as the motive and the consequent commission of the offence has been adequately established by the evidence on record.

I have heard learned counsel for the parties.

PW-1 Dr.Jagbir Singh Sandhu had deposed that on 30.4.1998, at about 6:30 P.M., he had medico legally examined Preeto Bai and found the following injuries on her person :-

“1. Left leg was amputated through its middle, with a stump of 10 inches, incised wound was present around whole of left leg. Fresh bleeding was present.”

The injury was declared grievous in nature and the weapon used was sharp and as per the information of the doctor, the probable duration of the injury was within six hours. He also opined that the injury given to the complainant was dangerous to life in ordinary course of nature because she could have died on account of excessive bleeding. The doctor also testified that the injury was possible because of the *datar* which was recovered from Kulmit Singh.

Concededly, the case under Section 376 stood registered against the appellants at the behest of the complainant, prior to the present occurrence. A perusal of the statement of the injured-complainant and her husband Kala Singh reveals that the accused persons who were on bail, had been threatening them with dire consequences. They were also under pressure to compromise the matter with the appellants. But the complainant and her husband had refused to bow to such pressure and had also refused any compensation which was being offered to them by the accused persons.

Nothing has been shown in the cross-examination of these two witnesses that they were deposing falsely or with an ulterior motive. Their testimony is inspiring and trustworthy.

On the other hand, the factum of the registration of a case under Section 376 provides a motive which was sufficient for the appellants to commit this heinous crime. The brutality is writ large as after severance of the leg, the appellants took away the severed leg and disposed it of in a river. There could have been no dispute about the identity of the accused-appellants as they were already known to both – the complainant and her husband.

Besides, the recovery of the respective weapons at the instance of the appellants have also been established beyond any doubt.

It was then contended by the learned counsel for the appellants that the injuries have been attributed to Kulmit Singh and Gurmit Singh has not been attributed any injury. Therefore, he could not be convicted under Section 307 and at best, he could have been convicted under the provisions of Section 452 IPC.

I am afraid this argument must necessarily fail. Both the appellants were accused in an earlier offence under Section 376 which was lodged at the behest of complainant Preeto Bai. Both the appellants therefore shared the common intention and the same motive to eliminate the complainant. They had accordingly trespassed into her house with the aforesaid intention and motive. Therefore the common intention is apparent on the face of it and so, the case of Gurmit Singh cannot be distinguished from that of Kulmit Singh.

Consequently the prosecution has managed to establish its case beyond any reasonable doubt against the appellants and the appeal being devoid of any merit is dismissed as such.

January 31, 2007

monika

**(MAHESH GROVER)
JUDGE**