

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

Cr.Acq.Appeal No.13/2004

State of J&K Vs. Mohinder Singh and anr.

Coram:

Hon'ble Mr.Justice Hasnain Massodi, Judge
Hon'ble Mr. Justice Bansi Lal Bhat,Judge.

Appearing counsel:

For the Appellant(s): Mrs.Neeru Goswami, Dy.AG

For the respondent(s): Mrs.Surinder Kour, Sr.Advocate
With Ms. D.P.S.Kour, Advocate.

Per Bansi Lal Bhat-J

1. Respondents-accused were tried for charge under Sections 302/34 RPC in case titled "State Vs. Mohinder Kumar and anr." arising out of FIR No.25/2000 of Police Station Nowshera. The trial culminated in Acquittal of Respondents-accused as not proved. Aggrieved of the judgment of acquittal recorded by learned Sessions Judge Rajouri, State has filed the instant appeal in terms of provisions of Section 417 CrPC.

2. It is alleged that the Respondent-accused Ajit Kour frequently used to quarrel with the deceased Gurmeet Kour as there existed a dispute in regard to

pathway and passage of cattle. On 11.03.2000 at 11.am, a fight ensued between Respondent-accused Ajit Kour and deceased Gurmeet Kour. In the scuffle, both suffered injuries. Respondent-accused Mohinder Singh, on his arrival back from Rajouri, admonished the ladies. The deceased, out of fear, confined herself in her residential room. Respondent-accused Ajit Kour, having planned to kill her on account of enmity, kept a vigil on her movements and was waiting for her to come out of the room. At about 10.PM, the deceased came out of her room to urinate and while she was tying the string of her trousers after urinating outside her Verandah, Respondent-accused Ajit Kour arrived there and gave 3/4 strikes on backside of her head with a "danda". Resultantly, Gurmeet Kour fell down on the ground. Ajit Kour brought Mohinder Singh on spot, who on finding the deceased lying on the ground went inside the house of the deceased, picked up the 12- bore rifle of complainant, loaded it and with intention to kill fired shots in the belly of Gurmeet Kour from a close range, thus, committed her murder. Allegedly both the Respondents-accused carried away

the dead body of the deceased to another place, brought it back at 3/4 O' clock and along with rifle placed it in the residential room of complainant. They are also alleged to have threatened Jaswinder Kour-daughter of the deceased who had been stationed by her mother on the door of her room with a big torch in her hand as the deceased had gone out for urinating.

- 3.** Prosecution adduced evidence at the trial to bring home the guilt of Respondents-accused. On consideration of evidence so adduced, learned Sessions Judge found it unsafe to rely on uncorroborated testimony of the child witness Jaswinder Kour and acquitted the Respondent-accused.
- 4.** Heard the rival sides and waded through the record.
- 5.** There is no direct evidence except testimony of Jaswinder Kour. The prosecution entirely rests upon testimony of PW-Jaswinder Kour, 10 years old daughter of the ill fated deceased Gurmeet Kour. It emerges from evidence on record that the Respondent-accused were harbouring ill will against the deceased and they were looking for an opportune time to settle scores. The deceased and her daughter

were staying alone in the house as the husband of the deceased, serving in Defence Forces, was away at Hyderabad. PW-Jaswinder Kour, declared competent to depose at the trial, claimed to have watched the gruesome murder of her mother Gurmeet Kour helplessly. It emerges from her account that the deceased was sleeping with her three children in the room and since she was scared, she asked Jaswinder Kour to hold the torch for her in the door when she went out to urinate. It further transpires from her account that while the deceased was tying the string of her trousers, Respondent-accused Ajit Kour repeatedly struck her on the back of her head with "danda" in consequence whereof she fell on the ground whereupon Ajit Kour brought Respondent-accused on spot and found the victim dead. She has further deposed that Mohinder Singh had gained entry to the house of Swarn Singh her father, picked up a rifle and fired upon Gurmeet Kour. Thereafter, her dead body was carried by the Respondent-accused and then thrown in the house of deceased together with rifle. When Jaswinder Kour called her

mother, Respondent-accused caught hold of her by hair and threatened to eliminate her if she disclosed the facts to anyone. Prosecution witnesses Joginder Singh, Tirath Singh, Rangeel Singh, Kartar Singh and Karan Kour, who are the uncle, grand paternal uncle, Lamberdar, grand father and grand mother of petitioner Jaswinder Kour, when enquired from Jaswinder Kour as to how her mother had died, got reply that she did not know. Thus, the witness did not disclose facts attending upon the murder of her mother to these witnesses who included her closest relatives.

- 6.** PW-Swarn Singh is the husband of the deceased. He was away on duty at Hyderabad. He received message of death of his wife on 14.03.2000. On obtaining leave for two months, he arrived in his home on 17.03.2000 in the evening. He claimed that after observing ceremonies relating to death of deceased, he intended to take his children along to the place of his posting and when he expressed his intention to PW-Jaswinder Kour, she declined to go along and disclosed about the occurrence. According to him, it was on the basis of information derived from

Jaswinder Kour that he lodged a complaint leading to registration of the case. It is therefore, emphatically clear that PW-Jaswinder Kour neither disclosed the facts within her knowledge to her kith and kin immediately after the occurrence nor revealed the same to her father Swarn Singh when he arrived from Hyderabad on 17.03.2000. The learned Sessions Judge has taken note of these facts. What is more astonishing is that the witness did not react by raising an alarm or rush inside her house to wake up her brothers and sisters after having witnessed the murder of her mother. The fact that the witness neither reacted to the killing of her mother nor disclosed the same to her kith and kin then and there and to her father when he arrived from Hyderabad and even until expiry of one month thereafter despite her father's attempt to elicit the cause of death of deceased from her, impelled the learned Sessions Judge to observe that the testimony of PW-Jaswinder Kour did not inspire confidence and the same was not worthy of implicit faith being reposed thereon.

- 7.** Dr. Swatantar Singh who conducted autopsy on the body of the deceased,

opined that death was due to hemorrhage and shock on account of gun shot wound. Lack of external bleeding from gun shot injury could be attributed to unconsciousness or death. This implies that the deceased was either lying unconscious or had suffered death when she was fired upon. Queerly enough Jasvinder Kour has not spoken about the use of "Danda" by either of the accused while deposing at the trial but her father, who claims to have derived knowledge about the occurrence exclusively from her, attributed to her that Ajit Kour had used "Danda" in giving strikes on the backside of the head of the deceased. This is a major contradiction on material particulars of alleged occurrence and it is difficult to attach credit to the testimony of Swarn Singh in regard to use of Danda by accused Ajit Kour in inflicting injury on the person of the deceased.

- 8.** On consideration of evidence, we find no reasons to differ with the trial Judge. Had PW-Jaswinder Kour watched the occurrence, as tried to be projected by prosecution, there was no reason for her to keep all necessary facts close to her chest. Assuming that the degree of

horror to which she was exposed on watching the gruesome murder of her mother coupled with the threat to her life was severe enough to seal her lips, it is quite unnatural and repugnant to normal human behaviour that she would not have broken down when her father arrived there on 17.03.2000. Viewed in this context, deriving of knowledge from her on 15.04.2000 has to be viewed with suspicion, more particularly as her father has candidly admitted that he had every reason to believe that Respondents-accused were responsible for causing death of the deceased. Apart from the fact that evidence adduced is too fragile and unconvincing, testimony of solitary eye witness being highly unreliable and not inspiring confidence, we find no "substantial and compelling reasons" to adopt a view different than the one taken by the learned trial Court. There is no merit in this appeal, the same is accordingly dismissed.

(Bansi Lal Bhat) (Hasnain Massodi)
Judge Judge

Jammu:11-09-2013
RSB,Secy.