



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRA-D No.683-DB of 2014
Date of Decision:04.08.2025**

Rajesh @ Banti

...Appellant

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present:- Ms. Geeta Singhwal, Advocate,
Amicus Curiae for the appellant.

Ms. Mamta S. Talwar, Deputy Advocate General,
Haryana for the respondent-State.

MEENAKSHI I. MEHTA, J.

By way of the instant appeal, the appellant has laid challenge to the judgment and order on sentence dated 21.01.2014 handed down by learned Special Judge (under the Commission for Protection of Child Rights Act, 2006), Kurukshetra (for short 'the trial Court) in the criminal case arisen out of the FIR bearing No.85 dated 26.03.2013 registered at Police Station Pehowa, under Sections 302, 452 and 323 IPC, whereby he has been held guilty for committing the above-described offences and has been awarded the sentences as under:-

Offence

Sentence

*Under Section 302
of the Indian Penal
Code, 1860*

*To undergo life imprisonment and to
pay a fine of Rs.50,000/- (Rs.Fifty
thousand) and in case of default in
payment of fine, to undergo simple
imprisonment for a period of six
months.*



Under Section 452 of the Indian Penal Code, 1860 *To undergo two years and to pay a fine of Rs.10,000/- (Rs. Ten thousand) and in case of default in payment of fine, to undergo simple imprisonment for a period of one month.*

Under Section 323 of the Indian Penal Code, 1860 *To undergo rigorous imprisonment for a period of six months.*

Fine, if recovered, would go to the complainant.

2. Bereft of unnecessary details, the allegations levelled against appellant (accused) in the present case, are that on 26.03.2013, on receipt of written intimation as sent by the Doctor from Community Health Centre, (CHC) Pehowa at the afore-said Police Station, Inspector Raj Singh, along-with some other police officials, reached at the CHC and he recorded the statement of complainant Kiran who stated that about 7/8 years ago, her marriage was solemnized with the appellant and two sons and one daughter had born out of their wedlock. About three years before the day of occurrence, she had gone to her parental house due to some matrimonial discord between her and the appellant and had started living with her parents. She had moved an application against the appellant and her parents-in-law in the Women Cell, Kurukshetra and then, a Panchayati compromise had been arrived at between them to the effect that she would not stay with her husband, i.e the appellant. She had also made a statement in the Court of SDM, Pehowa that she wanted to live with Kewal Masih and she had been residing with him for the last one year and a male child named Anmol (for short 'the victim') was born to her from his (Kewal Masih's) loins. On that day, her husband (Kewal Masih) and two brothers-in-law had gone out of the house in connection with some work and she, her mother-in-law Jinnat, sister-in-law Manpreet and the victim, who was aged about one month, were present in the house. At about 5.30 PM, the



appellant entered into their house and started hurling filthy abuses upon her and when on being inquired, she disclosed to him that the victim was her son, he (appellant) got angry/enraged and forcibly snatched the victim from her. Though, she, along-with her mother-in-law and sister-in-law, tried to rescue the victim but appellant pushed them away and killed the victim by hitting him hard on the floor and thereafter, he ran away from the spot. On the basis of this statement, the above-referred FIR was registered. Further investigation was, then, carried out and on the completion thereof, Challan/Final Police Report under Section 173(2) Cr.P.C. was presented in the Court against the appellant.

3. After perusing the Challan/Police Report and hearing learned Public Prosecutor for the State and learned defence counsel, learned trial Court framed the charges against the appellant for commission of offences punishable under Sections 302, 452 and 323 IPC. He (appellant) pleaded not guilty to the charges and claimed trial.

4. To substantiate its allegations against the appellant (accused), the prosecution examined as many as thirteen (13) witnesses namely Gurbachan Singh as PW-1, Smt. Sindro as PW-2, Smt. Kiran (Complainant) as PW-3, Dr. Gurpreet Singh as PW-4, Dr. S.S. Arora as PW-5, Assistant Sub-Inspector Mukesh Kumar as PW-6, Assistant Sub-Inspector Krishan Kumar as PW-7, Head Constable Ashish Kumar as PW-8, Head Constable Virender Singh as PW-9, Manpreet as PW-10, Sub Inspector Manish Kumar as PW-11, Inspector Raj Singh as PW-12 and Constable Kashmir Singh as PW-13. Thereafter, the appellant was examined under Section 313 Cr.P.C so as to explain the incriminating material/circumstances appearing against him in the prosecution evidence led on the record, wherein he pleaded innocence and his



false implication. He further stated that in fact, it was complainant Kiran herself who had thrown the victim in his presence, at the instance of the mother of Kewal Masih.

5. Learned trial court, upon considering the evidence on record as well as the facts and circumstances, convicted the appellant for commission of the afore-mentioned offences and sentenced him, as detailed in the foregoing paras, vide the impugned judgment and order dated 21.01.2014. Aggrieved therefrom, the appellant has filed the present appeal.

6. We have heard learned *Amicus Curiae* for the appellant as well as learned counsel for the State in this appeal and have also gone through the record carefully.

7. Learned counsel for the appellant has contended that complainant Kiran is the legally wedded wife of the appellant but she started living with Kewal Masih without securing divorce from the appellant and the victim was born out of their above-said relationship and the appellant did not kill the victim and rather, the complainant had thrown him (victim) on the ground/floor and the injuries, thus suffered, had proved fatal for him and in these circumstances, it becomes explicit that the appellant is innocent and has been falsely involved in the instant case.

8. Learned counsel for the appellant has further contended that the mother of the complainant has appeared as DW4 and has made depositions in favour of the appellant, which indicates his innocence. Moreover, the ocular version is not supported by medical evidence on the record and there is no evidence to show/prove that the appellant had repeatedly hit the victim on the ground as alleged by the complainant. Furthermore, PW1 Gurbachan Singh



and PW2 Sindro have not supported the prosecution version and they were declared hostile and therefore, this appeal deserves to be allowed and the impugned judgment and order are liable be set aside.

9. Learned counsel for the State has refuted the contentions raised by learned counsel for the appellant and has argued that the prosecution has led clear, cogent and succinct evidence on the record to prove that the appellant is guilty of committing the afore-said offences and he has sought the dismissal of the present appeal.

10. Learned counsel for the appellant has laid much stress upon the factum of the complainant being the legally wedded wife of the appellant and her illicit relationship with Kewal Masih, to buttress her contention regarding false implication of the appellant. However, we do not find this contention to be tenable and the same is rejected because it is not the validity or legality of their relationship which is relevant or is to be adjudicated upon in the instant appeal. Rather, the question for adjudication in the present proceedings, is as to whether guilt of the appellant is proved by the evidence on record.

11. It is a matter of record that the complainant, while testifying as PW3, has clearly deposed about the incident that took place on 26.03.2013 and has stated that on that day, she, along-with her mother-in-law Jinnat and sister-in-law Manpreet, was present in the house and she was sitting with her son Anmol (victim), aged about one month, in her lap. Appellant came to their house and started abusing her and inquired about the child (victim) and when she replied that he (victim) was her son, the appellant snatched him from her lap and she, along-with Jinnat and Manpreet, tried to rescue the victim but they were unsuccessful. The appellant threw the victim on the ground with



force twice over, thereby killing him and then, he fled away from the spot. Post-mortem Report, Exhibit P-10, is on the record. PW5 Dr. S.S. Arora, Medical Officer, LNJP Hospital, Kurukshetra, who conducted the post-mortem examination along-with Dr. Nitin Gupta, has proved the injuries on the body of the victim. The injuries, as described in his affidavit Exhibit P-9, read as under:-

- “i. Abrasion of size 2cm x 1cm on forehead left side. On dissection underlying frontal bone fractured. Subcutaneous tissue and muscle were injured.*
- ii. Abrasion of size 2cm x 1cm on left cheek.*
- iii. Abrasion of size 0.5cm x 0.2cm irregular oblique present on bridge of nose.*
- iv. Abrasion of size 1cm x 0.5cm on right cheek.*
- v. Diffused swelling on occipital region of scalp right side. On further dissection subcutaneous collection of blood with underlying inters parieto-occipital suture was dislodged and underlying occipital bone was fractured. Underlying brain lobe lacerated and contused.*
- vi. Abrasion of size 2cm x 1cm on left knee joint interiorly. Both lungs, liver, spleen and both kidneys were congested. All other organs were healthy.”*

It was opined by the above-named PW5 that the cause of death in this case was ante-mortem head injury which was sufficient to cause death in due course. In view of the afore-given facts and circumstances, there is no merit in the contention raised by learned counsel for the appellant that the ocular version is not supported by the medical evidence on record. The allegation levelled by the complainant against the appellant to the effect that he had hit the victim forcefully on the ground twice, rather, stands duly proved by the above-discussed medical evidence.

12. PW4 Dr. Gurmeet Singh, Medical Officer, has deposed that he had medico-legally examined complainant-Kiran on 26.03.2013 and Exhibit



P-5 is the correct copy of her MLR. Alleged history of the incident is recorded therein as an assault at her home at Pehowa at about 5.30 P.M. on 26.03.2013. Injuries on the person of the complainant, as reported by the afore-said PW4 in MLR Exhibit P-5, read as under:-

- “1. Complaining of pain over left side of abdomen and chest. On examination-there is no sign of external injury seen. Advised X-ray chest and USG-whole abdomen, Surgical opinion.*
- 2. Lacerated wound of size 1x0.2cm present over inner side of left wrist, oozing of blood present. Advised X-ray of left wrist and orthopedic opinion.”*

It is to be noted that the complainant has stated that she had sustained injuries on her wrist as her bangles were broken in the process of trying to save the victim. Eleven pieces of broken bangles were recovered from the spot vide recovery memo Exhibit P-16. Thus, the injuries on the person of the complainant stand proved. Learned counsel for the appellant has not been able to point out anything on the record which impinges upon the credibility of the complainant.

13. Further, the factum of PW1 Gurbachan Singh and PW2 Smt. Sindro having been declared hostile, is entirely irrelevant because these witnesses have only testified about the marital status of the complainant. They have merely deposed that they were not aware of any dispute between the appellant and his wife, i.e the complainant and had not stated before the police that mutual divorce had taken place in the Panchayat between them or that the complainant had solemnized marriage, thereafter, with Kewal Masih and was living with him.

14. It is worth-while to mention here that in his statement recorded under Section 313 Cr.P.C, appellant has categorically admitted his presence at



the spot, i.e in the house of the complainant and Kewal Masih, at the time of occurrence in question. Though, he has stated that the complainant herself had thrown the victim at the asking of her mother-in-law (mother of Kewal Masih) but it is pertinent to point it out here that DW-4 Prito Devi has deposed that the appellant ran to the house of the complainant and the boy (victim) had fallen down and sustained injuries on his head. The above-mentioned material contradiction in the version/plea of defence of the appellant and depositions of DW-4, regarding the manner of death of the victim, eats into the vitals of the veracity/truthfulness thereof and hence, the same cannot be relied upon at all. Even if the complainant was living in relationship with Kewal Masih and the victim was born out of the same, even then, the fact remains that in normal course of events, no mother can be expected to kill her own child, just to falsely implicate her husband, from whom she had parted ways and neither there is any evidence on record to prove the same.

15. Learned counsel for the appellant has relied upon the testimony of DW4 Prito Devi to contend that though she happens to be the mother of the complainant but she has deposed as the defence witness and this fact proves the false implication of the appellant. However, in view of the foregoing discussion, the testimony of the afore-named DW-4 does not, in any manner, come to the aid of the appellant to prove his innocence. Rather, her above-referred depositions establish the factum of presence of the appellant at the spot at the time of occurrence in question.

16. Though the appellant has examined three more witnesses namely SI Kusum Lata as DW-1, Som Nath as DW-2 and EASI Ram Pal as DW-3 besides DW-4 Prito Devi but DW-1 to DW-3 have only testified regarding the record pertaining to the matrimonial dispute between him (appellant) and the



complainant and none of them is an eye-witness to the alleged occurrence. It being so, their testimonies are of no help/avail to the appellant to prove his plea qua the complainant having thrown the victim on the ground and thereby, causing his death.

17. As a sequel to the fore-going discussion, it follows that impugned judgment as well as order on sentence dated 21.01.2014, as passed by learned trial Court, do not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court and the same are, accordingly, upheld.

18. No other argument has been raised.

19. Resultantly, the present appeal, being *sans* any merit, stands dismissed.

(LISA GILL)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

August 04, 2025
pooja

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No