



IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

204

CRA-D-339-DB-2015 (O&M)

Date of Decision: 23.09.2025

Jaswant alias Makhan

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RAMESH KUMARI**

Present: Mr. Ashwani Bhardwaj, Advocate
for the appellant.

Mr. Varun Gupta, Deputy Advocate General, Haryana.

RAMESH KUMARI, J.

1. The appellant (hereinafter referred as 'accused') namely, Jaswant alias Makhan has filed this appeal against judgment of conviction dated 30.08.2014 and order of sentence dated 02.09.2014 whereby the accused named above had been held guilty and sentenced to undergo rigorous imprisonment for life besides payment of fine of Rs.10,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of six months for the commission of offence punishable under Section 302 of Indian Penal Code in case FIR No. 171 dated 07.08.2013 under Section 302 of the Indian Penal Code registered at Police Station Sadar Dabwali.

FACTS OF THE CASE

2. On 07.08.2013, PW-8 Inspector Bhartender Kumar, received telephonic information on mobile number from SI Suraj Bhan, Incharge, Police

Post, Chautala that accused Jaswant Singh committed murder of his wife Kavita by causing injuries on her head and face. On the basis of this information, he along with other officials reached at the house of accused Jaswant Singh, where SI Suraj Bhan along with other officials were already present. Complainant Mangi Lal was also present there. PW-1 complainant Mangi Lal had made a statement, Ex.PA, before police authorities to the effect that he runs a grocery shop and on the intervening night of 06.08.2013/07.08.2013 at about 11.30 PM, he received a telephonic call from his niece, Anjali (PW2) that her uncle (*Mausa*) i.e. the accused was causing injuries on the head of her aunt (*Mausi*) Kavita with an iron rod and accused had ousted them from the house. PW-1 complainant also stated in Ex.PA that marriage of his sister Kavita was solemnized in the year 2002 with accused and they had three children. His niece Anjali (PW2) was residing with Kavita for the last two years in village Chautala and was studying there. After receipt of information of causing hurt to Kavita, he (complainant) and his cousin Mahender (real brother of Kavita) reached the village and saw that Anjali and her three children were in the house of neighbour. When they entered the house, they saw that dead body of their sister Kavita was lying on a cot in the verandah in a pool of blood and injuries were appearing on her head, caused by an iron rod. They then informed about this incident to their family members and thereafter informed the police. He further stated that accused was habitual of consuming liquor and other intoxicants and he was consuming liquor for the last three days and was quarrelling with Kavita deceased. On 06.08.2013, at about 9.00/10.00 PM, when accused was consuming liquor, Kavita asked him to consume liquor outside the house and let them sleep but accused started quarrelling with Kavita.

Thereafter Kavita had gone to sleep and while she was sleeping, she was murdered by the accused causing injuries on her head and face.

INVESTIGATION

3(i). After recording statement Ex.PA of PW-1 Mangi Ram PW-8 Inspector Bhartender Kumar made endorsement Ex.PO, sent the same to Police Station, on the basis of which FIR Ex.PM was recorded by ASI Bhoop Singh. PW-8 Inspector Bhartender Kumar photographed with his digital camera the place of occurrence where the dead body was lying and took photographs Ex.P1 to Ex.P6. Dead body of Kavita was lying on the cot and PW-8 Inspector Bhartender Kumar separated piece Ex.P-8 of blood stained pillow cover, Ex.P-9 of Dari, Ex.P-10 of Jute of cot parceled and sealed the same. Blood lying on the floor and blood stains on the walls were lifted with the help of cotton and converted into parcel and sealed in box Ex.P-11; one blood stained iron rod Ex.P-7 lying near the dead body and blood stained hair was stuck to it, the blood stained iron rod Ex.P-7 and hair Ex.P-12 were also separately parceled and sealed with seal BK and all these parcels were taken into possession vide recovery memo Ex.PB. PW-8 Inspector Bhartender Kumar prepared the rough site plan Ex.PP and also prepared inquest proceedings Ex.PJ.

3(ii) PW-8 Inspector Bhartender Kumar handed over application Ex.PH and dead body of Kavita to ASI Krishan Kumar for conducting autopsy on the dead body of Kavita. Before sending the dead body of Kavita for autopsy, sleeve-ring (*bajuband*) of silver, golden ring, two golden rings, one golden nose pin were removed from the body at request of relatives and handed over to PW-1 complainant Mangi Ram vide memo Ex.PC. PW-8 Inspector Bhartender Kumar

recorded statements of witnesses, namely, Dimple and Anjali under Section 161 Cr.P.C. and supplementary statement of PW-1 Mangi Ram.

3(iii) On the same date, PW-8 Inspector Bhartender Kumar alongwith other police officials on receipt of secret information arrested the accused while he was going on Chetak Road, Dabwali. Accused was holding a bag in his hand. On interrogation, accused disclosed that clothes which he was wearing at the time of commission of crime, having blood stains were in the bag. Thereafter, Ex.P-13 one shirt of black colour and Ex.P-14 jeans of blue colour having blood stains were taken out of bag and converted into parcel sealed with seal BK and taken into police possession vide memo Ex.PN.

3(iv) After postmortem, ASI Krishan Kumar handed over clothes of the deceased, which were taken into possession vide memo Ex.PQ. The case property was deposited with MHC and accused was locked up.

3(v) On 08.08.2013 accused was taken out of lockup and he suffered disclosure statement Ex.PR describing the manner in which the crime was committed by him and he also stated that he could demarcate the place where crime was committed. Thereafter, accused led the police party to the disclosed place and demarcated the same vide demarcation memo Ex.PS.

3(vi) HC Mohan Lal, Draftsman, on the direction of PW-8 Inspector Bhartender Kumar reached at the place of occurrence and inspected the same.

3(vii) During the course of investigation PW-8 Inspector Bhartender Kumar recorded the statements witnesses under section 161 Cr.P.C. After completion of investigation, report under Section 173 Cr.P.C. was submitted in the Court of learned Illaqa Magistrate for trial of the accused.

CHARGES

4. Learned Illaqa Magistrate supplied copies of challan and other documents to the accused free of cost and on 23.09.2013 committed the case to court of sessions.

On 03.10.2013, charge under Section 302 of the Indian Penal Code was framed against the accused, to which he had pleaded not guilty and claimed trial.

During trial, prosecution examined as many as ten witnesses and also tendered in evidence reports of FSL, Madhuban as Ex.PF and Ex.PG.

STATEMENT OF ACCUSED

5. Statement of accused under Section 313 Cr.P.C. was recorded wherein he had denied all the incriminating evidence recorded against him and stated that he had been falsely implicated in the present case as father of Anjali was pressurizing him to transfer his land in the name of Kavita deceased. However, no evidence was led in defence.

6. After hearing learned counsel for parties and perusal of oral as well as documentary evidence placed on record, learned trial Court held that prosecution has succeeded in proving the charges levelled against appellant-accused and therefore, appellant-accused was convicted and sentenced to undergo life imprisonment as stated in para No.1 of the judgment.

We have heard learned counsel for parties and have carefully scrutinized the record with their able assistance.

CONTENTION OF LEARNED COUNSEL FOR APPELLANT

7. Learned counsel for appellant-accused has challenged the judgment and order of sentence passed by learned trial Court, inter-alia, on the grounds that

as per statement Ex.PA of PW-1 complainant Mangi Lal, FIR Ex. PM and statement of eye-witness PW-2 Anjali and PW-10 Dimple, accused was consuming liquor continuously for three days, the murder was committed when he was not in his senses and was under insanity, therefore, he is entitled for the benefit of Section 86 of the IPC.

CONTENTION OF LEARNED COUNSEL FOR RESPONDENT/STATE

8. After referring to statements of prosecution witnesses, learned Deputy Advocate General appearing for respondent-State of Haryana contended that conviction of appellant by learned trial Court does not suffer from any infirmity or perversity, therefore, he vehemently prayed for dismissal of the appeal.

PROSECUTION EVIDENCE

9. As observed earlier, prosecution has examined 10 witnesses.

9 (i) **PW1 Mangi Lal** complainant while deposing fully supported the prosecution version and deposed as per his statement given to the police Ex.PA. He further deposed that the police had lifted blood stained pillow, mat, iron rod and blood stains from the wall and the same were taken in possession vide recovery memo Ex.PB after sealing them separately.

ii) **PW2 Anjali**, is eye witness of the occurrence, who informed PW-1 that accused was hitting his wife. She specifically stated on oath that she was residing with her maternal aunt (Mausi) for the last two years and was studying in 10th class in village Chautala. She also deposed that she was brought by her Mausi as her uncle was a drug addict and was admitted in Rehabilitation Centre. She stated that her uncle i.e. accused used to quarrel with her Mausi Kavita (deceased) under the influence of liquor. On 06.08.2013, accused was regularly taking liquor and at about 9.00/10.00 PM, her aunt Kavita asked accused Jaswant

Singh to consume the liquor while sitting outside and not to come and go out of the room and due to this, accused started quarreling with her aunt. Thereafter, they all went to bed lying in the verandah. On the first cot, her aunt Kavita and her son Manish were sleeping and on the next cot she was sleeping and on the next cot Dimple and Sanjana were sleeping. At about 11.00 P.M. on the noise raised by Manish, they all woke up and saw that accused Jaswant Singh was causing injuries on the head of Kavita with the help of an iron rod. On this sight, they all due to fear took shelter in the house of their neighbour Arvind and she called her real maternal uncle Mahender on mobile but failed to contact him. Thereafter, she made a call to her other maternal uncle Mangi Lal (PW-1 complainant) and disclosed all the facts to him. Her uncles Mahender and Mangi Lal reached at the spot. Her statement was recorded by the police.

9 (iii) **PW10, Dimple**, aged about 10 years, daughter of deceased and accused also corroborated the statement of her cousin PW-2 Anjali. Before recording her testimony the Court put a question to her to determine her capacity to understand and after she was declared competent witness, her testimony was recorded. She specifically deposed that Anjali, daughter of her aunt used to reside with them. Her father was a drunkard and on 06.08.2013 in the evening, her father was consuming liquor and her mother asked him to sit at a particular place where he could drink and not to disturb other members, upon which her father Jaswant Singh replied that the house belonged to him and he would do whatever he wanted and thereafter they all had gone to sleep in the verandah. She further deposed that her brother Manish was sleeping with her mother Kavita while Anjali was sleeping on a separate cot and on the next cot, she alongwith her sister Sanjana was sleeping. They woke up on hearing noise of his brother Manish and woke up

and noticed that her father Jaswant Singh was giving blows on the head of her mother Kavita with an iron rod and blood was oozing out of injuries. On seeing that, they all got frightened and took shelter in the house of their neighbour Arvind. She further deposed that Anjali made a call to her parents about this incident. Her mother died at the spot due to the injuries.

9 (iv) **PW8 Inspector Bhartender Kumar** is the Investigating Officer and he deposed about various steps taken during investigation of the case. He deposed that on 07.08.2013, he received a telephonic information on his government mobile from SI Suraj that accused-appellant had committed murder of his wife Kavita by causing injuries on her head and face. He reached at the spot and got statement of Mangi Ram complainant Ex.PA and after making his endorsement Ex.PO, sent the same to Police Station, on the basis of which FIR Ex.PM was recorded. He further deposed that the place of occurrence was got photographed and the photographer took photographs Ex.P1 to Ex.P6. He also deposed that the dead body of Kavita was lying on the cot. Piece of blood stained pillow-cover, Dari, jute of cot were separated and converted into sealed parcels. Blood on the floor was lifted and converted into separate parcel. Blood stains on the walls were also lifted with the help of cotton and converted into separate parcel. Blood stained iron rod lying near the dead body was also taken into possession and converted into separate parcel as well as the iron rod having blood stained hair stuck on it. All the said parcels were sealed with the seal of 'BK' and taken into possession vide recovery memo Ex.PB. He also prepared site plan Ex. PP of the place of occurrence. He conducted inquest proceedings Ex.PJ of the dead body and recorded statements of witnesses. He scribed application PH and sent the dead body through ASI Krishan Kumar for post-mortem. Before sending the dead body

for post-mortem, on the request of relatives of the deceased, sleeve-ring (*baaju-band*) of silver, golden ring, two golden rings, one golden nose pin were removed from the body and handed over to PW-1 vide memo Ex.PC. He also recorded statement of Arvind Sharma, who was a neighbour of accused Jaswant Singh, where the children of deceased were present. He recorded the statement of Dimple and Anjali under Section 161 Cr.P.C. As per his statement, he arrested the accused on the same day on the basis of secret information at Sangria By-pass. Accused was found carrying a bag in his hand. On checking, one shirt of black colour and jeans of blue colour, stained with blood were found in it and these were converted into parcel and sealed with seal 'BK' and taken in possession vide memo Ex.PN. After post mortem, parcel of clothes of the deceased were taken in police possession vide memo Ex.PQ. He deposited the case property with MHC. He further submitted that disclosure statement Ex.PR of accused, demarcation memo Ex. PS of the place of occurrence were prepared site plan was also prepared. Site plan was also inspected by HC Mohan Lal, Draftsman.

At the time of recording of his statement, case property was produced in the Court, which is as under:-

- a) Iron rod Ex.P-7,
- b) Piece of pillow Ex.P-8,
- c) Piece of dari Ex.P-9
- d) Jute Ex.P10,
- e) Box Ex.P-11 containing blood,
- f) Box containing hair of deceased Ex.P-12.
- g) T-shirt Ex.P-13,
- h) Jeans Ex.P-14.

9(v) **PW7 SI Suraj Bhan** corroborated the testimony of PW-8 as he is attesting witness of memo of recoveries Ex.PB and Ex. PN.

9(vi) **PW5 Dr. Bharat Bhushan, Medical Officer**, tendered in his evidence duly sworn affidavit Ex.PL wherein he stated about conducting of post-mortem examination on the dead body of deceased Kavita on application Ex.PH and duly proved copy of post mortem report as Ex.PK. He also described the condition and nature of injuries on the dead body.

Cause of death was stated to be due to shock and head injuries. He also stated that injuries so described are antemortem in nature and sufficient to cause of death in normal course of life. Probable time between injuries and death was variable and between death and post-mortem examination was within 6 to 24 hours.

PW3 SI Balwant Singh and PW9 HC Subhash Chander tendered in their evidence their duly sworn affidavits Ex.PD and Ex.PT in order to complete the chain of link evidence to the effect that till the time the sealed parcels containing belongings of the deceased and accused remained in their possession, they did not tamper with the same.

9(vii) **PW4 HC Mohan Lal, Draftsman**, proved the scaled site-plan Ex.PE of the place of occurrence.

9(viii) **PW6 Constable Vijay Kumar** stated the special report Ex.PM sent to the Illaqa Magistrate and senior police officers on 07.08.2013.

DISCUSSION

10(i) Daughters of deceased and accused PW-10 Dimple and PW-2 Anjali, who were staying with accused and deceased at the relevant time, in their testimonies before learned trial Court specifically stated that on 06.08.2013 in the evening accused was consuming liquor and was repeatedly coming in and going outside the house. The deceased asked him to sit at a particular place where he

could drink and not to disturb other members, but accused told her that the house belong to him. A quarrel ensued. Thereafter, when they had gone to sleep inside the *verandah*, at night time, on hearing the noise of Manish son of deceased and accused, other children i.e. PW-2 Anjali and PW-10 Dimpal woke up and noticed that accused Jaswant Singh was giving blows on the head of Kavita with an iron rod and blood was oozing out of injuries. This testimony proves that accused was infuriated because his wife asked him to sit at one place and the accused at the dead of night gave her fatal blows by means of an iron Rod (Ex. P7) which resulted into her death. Simply because the accused was under the influence of liquor does not mean that he was suffering from any kind of insanity as has been urged by learned counsel for appellant.

10ii) Accused is charged with the commission of offence of murder of his wife. Section 300 IPC defines murder as under:-

“Section 300: Murder- *Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-*

Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

10(iii) If the death is caused while in a state of intoxication, Section 86 IPC comes into picture, which reads as under:-

“86. Offence requiring a particular intent or knowledge committed by one who is intoxicated.—In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.”

10(iv) In ***Nanhe Versus State of U.P., Crl. Appeal No. 2791 of 2023, decided on 21.11.2023,*** Hon'ble Apex Court has held that in applying the above provision, the following twin conditions have to be satisfied. The first that the accused was administered a thing which intoxicated him without his knowledge or against his will. Secondly, the intoxication has to be of the level which incapacitated him of knowing the nature of the act committed or likely to be committed by him. It is further held in ***Nanhe's*** case (supra) as under:-

*“20. The above provision of Section 86 IPC had come up for consideration before this Court in the case of **Basdev vs. State of Pepsu AIR 1956 SC** and it was held that where no evidence was led to show that the accused was incapacitated to form requisite intention due to the influence of the drink, the killing of a person would be an offence of murder. In short, the ratio is that not only the accused be intoxicated but also the level of his intoxication be such as to render him incapable of knowing and understanding what he is doing or likely to do. Therefore, evidence to prove his incapacity to understand the nature of his action is mandatory to reduce the criminality of the accused.*

*21. In a celebrated case **The King vs. Meade (1909) 1.K.B.** it was opined that a person charged with a crime of violence may*

show or rebut the presumption that he intended the natural consequences of his acts, that he was drunk and that he was incapable of knowing what he was doing was dangerous. The law was thus summed up as under:

(i) The insanity, whether due to drunkenness or otherwise is a defence in a crime;

(ii) The evidence of drunkenness which renders the accused incapable of forming any opinion or intention ought to be considered with the surrounding facts and circumstances so as to come to the conclusion whether or not he had intention to do the said act; and

(iii) The drunkenness of the accused must be sufficient to render him incapacitated to form any intention to commit the crime.”

In para No.25 in **Nanhe's** case (supra) it is further observed that,

“25. It may be true that the deceased may have been killed accidentally by the appellant in the state of intoxication but there is no iota of evidence to establish that due to intoxication he was incapable of knowing the nature of his act or that the act which he was doing or likely to do was so dangerous so as to cause death of any person. Thus, in the absence of such evidence, coupled with the fact that it is not the case of the appellant that he was administered intoxication without his knowledge or against his will, the provision of Section 86 IPC would not be applicable and he would not be entitled to reduction of sentence from 302 IPC to one falling under Part-II of Section 304 IPC.”

10(v) Coming back to the facts of this case, during post mortem examination PW5 Dr. Bharat Bhushan found following four injuries on the body of deceased Kavita, which is also stated by him in his affidavit Ex.P-7 and post-mortem report, Ex.PK:-

“(i) 14.3x3.5 cm lacerated wound obliquely place over right side forehead and front parital region of skull. Underlying bone of skull is fractured. Underlying brain tissue grossly lacerated and congested and brain cavity is full of blood.

(ii) 4.0x0.5 cm lacerated wound present over lateral side of right eyebrow. Underlying bone is fractured. Underlying brain tissue grossly lacerated and congested.

(iii) 3.5x0.5 cm lacerated wound 4 cm below the inj. no. 02 present over right side of face. Underlying bone is fractured. Brian tissue is exposed.

(iv) 6.0x0.5 cm lacerated wound place just in front of upper of right pinna. Underlying bone of skull is fractured. Underlying tissue is massively lacerated and exposed.”

11. The weapon of offence i.e. iron road Ex.P-7 was also found lying near the dead body and along with other case property were taken into police possession vide memo Ex.PB. There were hair of deceased stuck to the iron rod which were separated and parcelled in Ex.P12. This proved that accused hit his wife mercilessly on the vital part of the body, i.e. right side of forehead and frontal parietal region of the skull; lateral side of right eyebrow wherein under lying bone was found fractured; right side of face and just in front of upper of right Pinna. Thus, all the injuries are inflicted on face and head. This clearly proves that intention of accused was to murder his wife leaving no chance of survival. Nature of injuries/blows prove that his endeavour was to kill his wife and he inflicted injuries in a cruel and brutal manner taking advantage of darkness of the night. There is nothing on record to show that accused was administered intoxicant/liquor without his knowledge and against his will and there is further no evidence on record from which it can be concluded that his intoxication was of a level which incapacitated him of knowing the nature of act committed by him.

Rather inflicting injuries with iron rod Ex.P7 on the forehead and head of his wife proved that he had knowledge that if injuries are inflicted on vital part of body, it is likely to cause death. Intention of appellant is writ large and appellant has been rightly convicted by learned trial Court under Section 302 IPC. Provision of Section 86 IPC is not applicable to the facts and circumstances of the case. Accused is thus not entitled for conversion of conviction from one under Section 302 IPC to part II of Section 304 IPC as is argued by learned counsel for appellant. Prosecution has proved commission of offence punishable under Section 302 IPC beyond reasonable doubt.

12. Learned counsel for appellant is unable to point out any infirmity, irregularity or illegality in impugned judgment of conviction dated 30.08.2014 passed by learned Sessions Judge, Sirsa.

13. No other issue or contention is raised.

CONCLUSION

14. Keeping in view the facts and circumstances as above, this appeal being devoid of any merit is dismissed.

(LISA GILL)
JUDGE

(RAMESH KUMARI)
JUDGE

23.09.2025

pooja Saini/‘om’

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No