
(2006) 07 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 385-DB of 2004

Lakhwinder Kaur

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 19-07-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2006) 07 P&H CK 0019

Hon'ble Judges : R.S. Madan, J;K.S. Garewal, J

Bench : Division Bench

Advocate : U.S. Sawhney, for the Appellant; Rita Kohli, D.A.G. Punjab, for the Respondent

Final Decision : Allowed

Judgement

K.S. Garewal, J.—Lakhwinder Kaur (36) of Badshahpur Kaleki was tried by the learned Sessions Judge, Patiala, for the murder of her husband. The learned trial Judge found Lakhwinder Kaur guilty on March, 2004 and sentenced her to rigorous imprisonment for life u/s 302 IPC and also to pay fine of Rs. 10,000/- in default of payment to further undergo rigorous imprisonment for one year.

2. It was on September 3, 2001 that Lakhwinder Kaur (36) had presented herself at Police Station Samana at 10 a.m. before ASI Deva Singh (PW-8) and handed over a blood stained takua. Swaran Singh-I (son of Ajit Singh), who was to appear at the trial as PW-6, was sitting with ASI Deva Singh. Swaran Singh-I heard what Lakhwinder Kaur confessed to ASI Deva Singh that she had murdered her husband Balwinder Singh at about 3 a.m., while he was asleep on a cot in the Courtyard of their house, by inflicting takua blows on his forehead, eyes and neck.

3. ASI Deva Singh recorded Swaran Singh-I's statement in respect of what he heard and on its basis a case u/s 302 IPC was registered against Lakhwinder Kaur. Swaran Singh-I was married to Balwinder Singh's sister and had known

that Lakhwinder Kaur used to quarrel with her husband Balwinder Singh. She had twice or thrice also threatened to cut him into pieces.

4. After the case was registered Lakhwinder Kaur's blood stained takua was taken into possession. Thereafter, ASI Deva Singh accompanied by Swaran Singh-I went to the spot, to the Courtyard of the farm house of Balwinder Singh and Lakhwinder Kaur in Badshahpur Kaleki, which was located in the fields. At the spot the Investigation Officer lifted blood stained earth and also got the dead body photographed by Jagtar Singh (PW -4), the photographer who had accompanied the police to the spot. The Investigating Officer conducted inquest proceedings on the dead body, prepared the site plan of the place of occurrence and took into possession the cot, mattress (dari) and shoes of the deceased. Post-mortem examination of the dead body was conducted at Civil Hospital, Samana, at 4.45 PM by Dr. Rajpal Singh (PW -1). The following injuries were found on the person of the deceased:

1. There was incised wound 5x 1 cm on the middle of the frontal region of scalp.
2. There was incised wound 4 x 1 cm on the right side of the fore-head which was 4 cm above the right eye brow.
3. There was incised wound 4.5 x 1 cm on the left side of the forehead and it was obliquely placed.
4. There was incised wound 2 cm x 0.5 cm in the medial side of the right eye-brow.
5. There was incised wound 10 cm x 2 cm on the bridge of the nose and extending towards left upper eye-led on one side and was extended to right cheek below the right lower eye-led. The wound was obliquely placed and the underlying bone was cut.
6. There was incised wound 7 cm x 2 cm which was 2 cm below the injury No.5, cutting the nose and extended towards the right side of the cheek. The underlying bone was cut.
7. There was incised wound 2 cm x 1 cm on the left submandibular region which was 4 cm below the left ear pinna.

5. On dissection of scalp and skull, the Medical Officer saw subcutaneous haemorrhage and fracture of the underlying bone under injuries No. 1 and 2. There was also extensive subdural haematoma. The other organs were healthy. In the opinion of the Medical Officer, the death was due to extensive subdural haematoma, haemorrhage and shock which was sufficient to cause death in ordinary course of nature. The probable time between the injuries and death was immediate and between death and post-mortem it was about 24 hours. After conclusion of the investigation, Lakhwinder Kaur was sent up for trial.

6. At the trial charges were framed against Lakhwinder Kaur u/s 302 IPC to which she pleaded not guilty and claimed trial. The prosecution examined Dr.

Rajpal Singh (PW-1), C. Gurdeep Singh (PW -2), Draftsman Indresh Khanna (PW -3), Jagtar Singh (PW -4), C. Baldev Singh (PW-5), Swaran Singh-I (PW -6), Swaran Singh-II (PW -7) ASI Deva Singh (PW -8) and AMHC Paramjit Singh (PW -9) and closed the evidence. Accused was examined without oath u/s 313 Cr.P.C. She denied all the aspects of the prosecution evidence including the fact of her own surrender before the police. Lakhwinder Kaur stated as follows:

I have not committed any murder of my husband. We were having strained relations with brothers of my husband, who wanted to grab the property of my husband at village Nandgarh. On the intervening night of 2/3.9.2001, we were lying asleep inside the room and Balwinder Singh was not at home at that time when we went to sleep. Swaran Singh son of Sunder Singh, who is complainant, was not on visiting terms with us as he is from the relations of brother of Balwinder Singh deceased. He never came at our farm house (Dera). My husband Balwinder Singh might have been murdered by the brothers of my husband or by some unknown persons. I have been falsely implicated by the police in this case in connivance with brothers of my husband, so that they may grab our property at village Nandgarh in Haryana.

I never went to the police station to make any statement nor I produced any takua in the police station. The entire case has been foisted against me, which is false one.

7. When called upon to enter defence, Lakhwinder Kaur examined Amar Singh (PW- 1), SSO of 66 KVA Sub Station, P.S.E.B. Gajju Majra to testify that there was 3-phase electric supply to the motor of Swaran Singh-II (PW-7) from 14.30 hours to 20.30 hours on September 2, 2001 and again from 21.20 hours to 24.00 hours. For the remaining period, the motor got single phase electric supply. On September 3, 2001, the power supply was given to the motor was from 00 hours to 5.00 hours and from 14.20 hours to 15.40 hours. SI Manjinder Singh, Finger Print Expert, appeared as DW-2. He testified that Investigating Officer had produced the takua before him. He had checked the handle of the weapon but found no finger print. Lakhwinder Kaur's daughter Paramjit Kaur (20) was examined as DW-3. Paramjit Kaur stated that on September 2, 2001 her father had left the house at 5PM and had not returned till she went to sleep at 8 P.M. She further stated that her parents had cordial relations and no quarrel had taken place in her presence. When she got up at 7 AM, she saw her father lying dead in the Courtyard and on seeing the dead body she and her mother raised a hue and cry.

8. The learned Trial Judge examined the evidence and concluded that the prosecution case was based on circumstantial evidence and the circumstances were that Lakhwinder Kaur had been quarrelling with her husband, had been so seen by Swaran Singh-II, on the night of the occurrence, and again seen by him carrying a takua after the occurrence. She had gone to the Police Station with the weapon of offence. She and her husband were in the house when the occurrence took place. The injuries on the dead body were proved to have been

caused by takua which was recovered from Lakhwinder Kaur immediately after the occurrence. The learned Court discussed the evidence of Swaran Singh-I and Swaran Singh II in detail, and came to the conclusion that u/s 106 of the Evidence Act the burden to prove would be on the accused because the fact of death was in her exclusive knowledge. Lakhwinder Kaur had pleaded that the deceased may have been murdered by his brothers with whom he had a land dispute. To ASI Deva Singh (PW -8), a suggestion was given that it was a blind murder and some unknown person had killed Balwinder Singh while he was asleep. The accused had not placed on record any document relating to the land dispute. The brothers of the deceased lived in a different village and if they had any guilt in their mind they would not have come to the house of the deceased after hearing about his death. No report had been lodged by the accused against the brothers of the deceased nor had she approached any authority against her false implication. Therefore, the learned Trial Court came to the conclusion that there was a complete chain of evidence which showed that no one but the accused had committed the crime. The circumstances were conclusive in nature and excluded every possible hypothesis except the one that had been proved. The accused had failed to disprove any of the circumstances and had also failed to prove the defence plea set up by her.

9. The evidence against the appellant is indeed very strong that she had done her husband to death. On the morning of September 3, 2001, after the occurrence had taken place, the appellant had herself voluntarily and without any delay, surrendered before the police. She had handed over the takua used in committing the offence. At the time of surrender, Swaran Singh-1 was also present at the Police Station and testified in that regard. Swaran Singh- II (PW-7) testified that on September 2, 2001 at 11 PM, while passing near the appellant's farm house, he had seen the appellant and the deceased quarrelling with each other. When he intervened, Lakhwinder Kaur told him that he should not come in their way as it was their personal affair and that he should carry on to his own field. On the following morning at 6AM, when he was returning home and again passed near Lakhwinder Kaur's house, he saw her going on a bicycle carrying a blood stained takua with her. When he called out to Lakhwinder Kaur and asked where she was going, she did not reply and carried on. He further testified that he got perturbed after seeing the blood stained takua so he went inside the farm house and saw Balwinder Singh lying dead. He met Paramjit Kaur who told him that her mother had killed her father with a takua. Balwinder Singh's brothers were informed on the telephone and thereafter the brothers, Harjinder Singh, Gulzar Singh and Sukhwinder Singh, along with Sarpanch of Nandgarh reached Badshahpur.

10. Swaran Singh-I and Swaran Singh-II are both important witnesses. Swaran Singh-I had given a valid reason for being present at Samana on September 2, 2001. He worked with DCW at Patiala and was a resident of Bakshiwala, District Patiala. He was married to Balwinder Singh's sister. On the date of occurrence he had come to Samana to see his own sister as her husband had a dispute with

their neighbours. He also admitted in cross- examination that Balwinder Singh lived in his in-laws' house while his brothers live in Nandgarh, Tehsil Guha, Haryana. They had 18/20 kallas of land. Swaran Singh-II, on cross- examination, gave the details of the brothers of the deceased whom he had called on telephone. They had come on scooters from Nandgarh which was at the distance of about 20 minutes from Badshahpur. He denied the various suggestions put to him to the effect that the deceased had a dispute with his brothers who never gave him the lease money and did not allow him to cultivate the land. It was also suggested to him that the deceased had been murdered by his brothers at some other place and brought his dead body at the house of the accused to falsely implicate her.

11. The present is a rare case in which the accused surrendered before the police and handed over the murder weapon even before information about the incident had reached the police. This is a very important circumstance in the case because a person who commits a murder very rarely gives himself up easily. Murders are carefully planned. Weapons are stealthily procured, if not already available in the house. Murders are committed at night because at that time there may be no witnesses. After the murder, the murderer goes into hiding in order to escape

12. In the present case, the above typical ingredients of murder are absent. A wife planning to murder her husband would have many opportunities and much time to execute her plan because after all they live together in the same house. It is unfortunate that Lakhwinder Kaur elected to remain silent about the crime and did not give any counterversion but the circumstances of the case seem to positively indicate that the murder was committed by her on some provocation. Balwinder Singh was like a resident son-in-law (gharjawai). The prosecution has not established any motive for Lakhwinder Kaur to commit the crime except that she and her husband would frequently quarrel. Domestic quarrels are a part of married life and would not be sufficient motive unless the quarrel is coupled with something more. Balwinder Singh may be addicted to alcohol, drugs or other vices or carrying on with another woman or being a waster did not give sufficient money to his wife for household expenses or may be Lakhwinder Kaur was carrying on with another man which Balwinder Singh may have found out. None of the above additional circumstances seem to exist in the present case. What was the immediate cause of quarrel was neither disclosed during the investigation nor elicited at the trial. Therefore, mystery persists as to why Lakhwinder Kaur had hacked her husband to death. Lakhwinder Kaur had a right to remain silent but the circumstances of the case, on close examination, seem to show that something had driven this mother of 5 children to kill her husband and then immediately surrender to the police.

13. Under exception 1 of Section 300 IPC culpable homicide is not a murder if the offender is deprived of the power of self- control by grave and sudden provocation under exception 4 culpable homicide is not murder if it is committed

without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

14. An Appellate Court's task in, considering" the applicability of various exceptions to murder is easy if the accused has himself decided to seek shelter under one of the exceptions. In such cases, the accused would have cross-examined witnesses in such a way that his defence is strengthened. Accused also make a detailed under Section-313 Cr.P.C. to substantiate their defence and frequently lead defence evidence as well. In such circumstances, the Court can bring the case under one or the other exceptions to Section 300 IPC. However, where the accused has chosen to maintain silence on the issue, hoping to earn a clean acquittal instead of a conviction for a lesser offence, the Court ought to, in an Appropriate case, consider the entire gamut of prosecution evidence and the attending circumstances to see if the case falls under any the exceptions. In the present case, Balwinder Singh was hacked to death while lying asleep. The couple had a quarrel earlier in the night. There was nothing to indicate what the quarrel was about. However, a wife killing her husband without any motive, simply because of a routine domestic quarrel, shows that the quarrel was provocative enough to deprive her of the power of self-control.

15. After the quarrel the deceased lay down while the accused waited for him to slip into deep sleep before striking at him. It could be said that grave and sudden provocation cannot come from a sleeping man, therefore, the act of the accused was pre-meditated and she had not been deprived of the power of self-control. This line of reasoning does not consider the plight of women in rural households who suffer much agony and continue to suffer silently at the hands of their husbands, without protest or complaint. Such suffering keeps multiplying and a stage is reached when it becomes unbearable. If at this stage the husband has a fight with his wife, the wife's patience and self-control may collapse, and the moment she gets a chance she could strike to kill him. We do not know what provoked Lakhwinder Kaur to kill her husband but we can imagine that she had been sufficiently provoked and had acted in the heat of passion after a quarrel with her husband whilst being deprived of the power of self-control. Therefore, the act of the appellant was not covered u/s 302 IPC but u/s 304 Part-I IPC.

16. In view of the above, this appeal is partly allowed. Conviction of the appellant is converted from Section 302 IPC to Section 304 Part-I IPC.

17. Lakhwinder Kaur's sentence is reduced to rigorous imprisonment for 5 years and to fine of Rs. 10,000/-, in default of payment of fine she shall undergo further rigorous imprisonment for 6 months.