

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.580 OF 2010**

ASHWANI KUMAR & ANR. . . . APPELLANT(S)

VERSUS

THE STATE OF PUNJAB . . . RESPONDENT(S)

JUDGMENT

K.M. JOSEPH, J.

1. The appeal by special leave is directed against the judgment of the High court of Punjab & Haryana in Criminal Appeal No.103 of 2000 dismissing the appeal filed by the appellants, confirming the conviction and sentence under

Section 302 read with Section 34 of the Indian Penal Code.

2. Heard the learned counsel for the parties.

3. The prosecution case is that on 18.9.1998 the Assistant sub-inspector along with Head Constable of police and other police officials were on patrol duty and while so at about 1.30 p.m., they heard shrieks from one room of the house, which was bolted from the inside. From the gaps in the door of that room, the Assistant sub-Inspector peeped inside the room and found that one man was sitting on the chest of the lady, who was made to lie on the ground and he was pressing her neck. One lady was standing near that place and holding a pucca brick, in her hand. She gave two blows with the said brick on the person of the lady lying on the ground. She told the man, the co-accused that the said lady who was being assaulted was insulting her before others who was his wife. She also exhorted the man that he should finish her,

thereupon the man lifted a 'khourpa' and gave blows with it. After killing her, both man and the woman came out and they proclaimed that they have accomplished their job. It is this man and woman who are appellants before us.

4. The murdered lady was the wife of the first appellant. The prosecution advanced its case through the sub-inspector who was examined as P.W.2 and Head Constable who was examined as P.W.3 Under Section 313 Cr.P.C. the first appellant has given the following written statement:

"On the day of occurrence, I left my house for going to Amritsar. On the way, I found that I have left my purse at my house. As such, I returned back to take my purse. I saw a man holding my wife in his arms and my wife also holding him. On seeing me, he ran away. In a rage, I gave push to my wife and her head struck against wall. My wife started saying that I cannot satisfy her sexually and continued to say that my six months old son is not from my loins but is from the loins of this person. She told that she will have other child from loins of her lover also. I lost control over myself and under this provocation caused injuries to

my wife. I had extreme love with my child. I myself had appeared before police and informed about the occurrence. The police made out a false case against me later on and police men became false witnesses."

5. The second appellant in her 313 statement claimed that she was innocent and was not present at the time of the alleged occurrence.

6. The Trial Court on the basis of the evidence accepted the prosecution version and convicted the appellants. The High Court also reposed confidence in the prosecution version.

7. Learned counsel for the appellants impugned the prosecution version and drew our attention to the evidence of D.W.1. D.W.1 has *inter alia* stated as follows:

Many persons had collected there at the place. He asked first appellant as to what he had done, thereupon the first appellant disclosed that he suspected that somebody was present in his house

along with his wife and the doors were closed and out of sudden provocation, he had killed his wife. He informed this incident to C. Karam Singh and SPO Kultar Singh who came on a scooter at the place of occurrence. He would say that before their arrival no other police official arrived at the spot. C. Karam Singh and SPO Kultar Singh then took the first appellant to the police station. In his cross examination he has stated that he did not move any application regarding this incident to the higher police authorities or executive authorities. He denied that ASI who had come as prosecution witness and other police officials had arrested both accused. As many as 12 stab wounds have been noted. This is besides 3 lacerated wounds. According to the doctor, the death in this case was due to haemorrhage and shock as a result of stab injuries which was sufficient to cause death in the ordinary course of nature. There is a case for the appellant that the conduct of P.W.2 in not breaking

open the door and only watching the occurrence for five minutes renders the evidence suspect.

8. We are not persuaded to overturn the concurrent findings of the courts below. As observed by the High Court, there is no motive for the police officials to falsely implicate the appellants. The case of the second appellant is one of alibi. She has not discharged her burden to show that she was elsewhere. On the other hand, there is evidence of the police officials that after committing the crime, the appellants came out and proclaimed that they have accomplished what they wanted. They were apprehended. In such circumstances, we see no reason to allow the appellants to rely upon the statement of the first appellant under Section 313 Cr.P.C or upon the deposition of D.W.1. No doubt, the High Court has taken the view that D.W.1 has not given complaint to the higher police officers. The High Court no doubt also finds fault with the first appellant in

not disclosing the name of the person with whom his wife was found to be in a compromising position. Even proceeding on the basis that he may not have known the name of the person it still does not detract from us reposing confidence in the testimony of the police officer. The presence of the second appellant and her being apprehended by the police officers, has been believed by both the Courts and this is completely inconsistent with the case set up by the appellants. In such circumstances, we see no reason to interfere. The appeal fails and stands dismissed.

.....CJI.
(Ranjan Gogoi)

.....J.
(K.M. Joseph)

New Delhi;
November 28, 2018