



In the High Court of Punjab and Haryana at Chandigarh

CRA-D-244-DB-2000 (O&M)
Reserved on: 30.7.2024
Date of Decision: 07.8.2024

Raju Mandal Appellant

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Pardeep Prakash Chahar, Advocate
Legal Aid Counsel for the appellant.

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 7.3.2000, upon Sessions Case No. 158 of 5.6.1996, by the learned Additional Sessions Judge, Ludhiana, wherethrough in respect of charges drawn against the convict-appellant qua offences punishable under Sections 452, 302, 397, 325 read with Section 34 IPC and under Section 342 of the IPC, the learned trial Judge concerned, proceeded to record a finding of conviction against the convict-appellant. However, accused-appellant Raju Mandal was acquitted for the charges framed against him qua commission of offence punishable under Sections 459 and 324 of the IPC.
2. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the convict-appellant to undergo life imprisonment, for the commission of an offence punishable under



Section 302 IPC, besides also imposed, upon the convict-appellant sentence of fine, comprised in a sum of Rs. 1000/-, and, in default of payment of fine amount, he sentenced the convict to undergo rigorous imprisonment for a period of four months. Moreover, the learned convicting Court also sentenced the convict-appellant to undergo rigorous imprisonment for a period of seven years, for the commission of an offence punishable under Section 397 of the IPC, and, also imposed, upon him the sentence of fine, comprised in a sum of Rs. 500/-, besides in default of payment of fine amount, it sentenced the convict to undergo rigorous imprisonment for a period of two months. In addition, the learned convicting Court also sentenced the convict-appellant to undergo rigorous imprisonment for a period of two years, for the commission of an offence punishable under Section 452 of the IPC, and, also imposed, upon him the sentence of fine, comprised in a sum of Rs. 500/-, besides in default of payment of fine amount, it sentenced the convict to undergo rigorous imprisonment for a period of one two months. Moreover, the learned convicting Court also sentenced the convict-appellant to undergo rigorous imprisonment for a period of two years, for the commission of an offence punishable under Section 325 read with Section 34 of the IPC, and, also imposed, upon him the sentence of fine, comprised in a sum of Rs. 500/-, besides in default of payment of fine amount, it sentenced the convict to undergo rigorous imprisonment for a period of one two months. The convict-appellant was also sentenced to undergo rigorous imprisonment for a period of six months, for the commission of an offence punishable under Section 342 of the IPC.



Factual Background

3. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PC/2 is assigned. The narrations carried in Ex. PC/2 are, that Gurbinder Kaur made a statement to the investigating officer concerned, that she is the daughter of Ajit Singh, and is the resident of village Sultan Khan Wala. Her father Ajit Singh and her mother Mohinder Kaur were posted as Headmaster and Headmistress respectively. Varinder Singh and Bhupinder Singh are her brothers. On 16-7-95 they were studying at Chandigarh. The complainant was the student of M.A. Part-II. After she had taken the examination, she had come to the house of her father constructed in the fields in the area of Sultan Khan Wala. Her father Ajit Singh had employed the accused for agricultural purposes. Raju Mandal and Ramesh Shah were employed about 1½ month prior to 16-7-1995. The remaining accused were employed about 15 days before 16-7-1995. Accused were living in the room constructed in the fields where electric motor was installed. House of Ajit Singh was also near that room. On 16-7-1995 Gurbinder Kaur, her mother Mohinder Kaur and her father Ajit Singh were sitting in their bed room and were watching television. At about 9.30 P.M. Ramesh Shah gave a call to Ajit Singh and took him at the place where electric motor was installed. Gurbinder Kaur and her mother came out and saw that accused Raju Mandal, Ramesh Shah and the other two employees of Ajit Singh had caught hold of Ajit Singh and were beating him. Electric light was on at that place. Ajit Singh was raising hue and cry. Ramesh Shah had Dah in his hand. He gave two Dah blows to Ajit Singh, which landed on the right side of his neck and on the nose. Accused Raju Mandal gave dagger blow to Ajit Singh on the left side of his fore-head. Another dagger blow was



given by Raju Mandal on the backside of the left shoulder of Ajit Singh. Thereafter, all the four accused threw Ajit Singh in the deep pit of the tubewell. Gurbinder Kaur and her mother were raising hue and cry. Out of fear from the accused they started running towards their house. Raju Mandal and his companions started chasing them. They were caught hold near the door of their bedroom. Raju Mandal, Ramesh Shah and their two companions directed them to hand over to them whatever was in their possession. They replied that nothing was in their possession. Accused Ramesh Shah gave blows with Dah on the left side of head, right eye-brow, right cheek, nose and fingers of left hand of Mohinder Kaur. She fell down. When, Gurbinder Kaur tried to save her mother, accused Raju Mandal gave dagger blow on her right arm. Gurbinder Kaur was confined in bathroom by the accused. She went out of the bathroom through another door and came out. She raised hue and cry. Harbans Singh Sarpanch and Dalip Singh came there and the accused fled away with their weapons. Harbans Singh and Dalip Singh went in the bedroom and found that Mohinder Kaur was lying unconscious. On checking, it came to light that one pair of earrings of gold from the ears of Mohinder Kaur weighing about 10 grams, 2 bangles of gold from her hands weighing about 2 Tolas and one ring of gold weighing about 4 grams were taken away by the accused. One attach case was also taken away by them from the bedroom. Thereafter, Gurbinder Kaur, Harbans Singh and Dalip Singh went at the tubewell and in the deep pit (Khuhi) where electric motor was installed, dead body of Ajit Singh was lying. Gurbinder Kaur and Mohinder Kaur were brought to New Dayanand Medical College & Hospital, Ludhiana by Jaspal Singh and Dr. Gurbachan Singh in a jeep. After giving first aid to Gurbinder Kaur, she was discharged.



Mohinder Kaur was admitted in the hospital. Harbans Singh and Dalip Singh Numberdar remained near the dead body.

4. On 17.7.1995 Mewa Singh SI, incharge Police Post Lohat Radi, P.S.Raikot, came to know about the murder of Ajit Singh. He went at the place of occurrence. Thereafter, he came to New Dayanand Medical College & Hospital, Ludhiana. Constable Satpal Singh and SPO Satnam Singh were left near the dead body. On the basis of the said statement, ruqa Ex. PC/1 was sent to the police station on the basis of which, the appeal FIR was registered.

Investigation proceedings

5. During the course of investigations, the investigating officer went to the place of occurrence, where the dead body was lying, and, prepared the inquest report (Ex-P8) on the dead body of Ajit Singh. The dead body was sent to Civil Hospital, Jagraon, for post-mortem examination. Rough site plan was prepared of the place of occurrence where injuries were inflicted to Mohinder Kaur. Blood stained earth was lifted from the spot and became put in a plastic container which was made into a parcel, which was sealed with seal bearing impression 'MS'. The said parcel was taken into possession vide recovery memo Ex. PJ. Two pairs of chappals were taken from the spot, which were taken into police possession vide recovery memo Ex. PK. Another pair of chappals were taken into police possession vide recovery memo Ex. PL. Blood stained earth was lifted from the bedroom which was put into a plastic container, and, was converted into a parcel, which was sealed with seal bearing impression 'MS', and, the same taken into police possession vide recovery memo Ex. PM. Moulds of footprints were lifted from the spot, which were taken into possession vide recovery



memo Ex. PN. Statements of the witnesses were recorded. Accused-appellant Raju Mandal was arrested on 14.2.1996. However, the remaining accused were declared proclaimed offenders. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

6. Since the offence under Section 302 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 23.5.1996, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against accused-appellant for the offences punishable under Sections 302, 397, 459, 325 read with Section 34 IPC and under Sections 324, 342 of the IPC. The afore drawn charges were put to the accused-appellant, to which he pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 12 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

9. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused-appellant pleaded innocence, and, claimed false implication.



10. As above stated, the learned trial Judge concerned, proceeded to convict the accused-appellant for the charges (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the accused-appellant.

Submissions of the learned counsel for the appellant

11. The learned counsel for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. He support the above submission on the ground, that they are based on a gross misappreciation, and, non-appreciation of evidence germane to the charge. He rests the above submissions on the ground, that the MLR of the complainant (PW-2), who is the injured eye witness, has not been placed on record. Moreover, as per the said witness, upon raising alarm by her, Sarpanch Harbans and Dalip Singh Nambardar rather came at the spot, however, both the said persons were not examined by the prosecution. He has further submitted, that neither any disclosure statement was recorded by the investigating officer concerned, nor recovery of any incriminatory weapon of offence, pursuant to the said disclosure statement, became effected from the accused-appellant. In addition, he has also argued, that the blood stained earth taken from the spot, three pairs of chappal and foot prints rather were never sent to the FSL concerned. He has further argued that there is an unexplained delay of more than five hours in recording the statement of the complainant, inasmuch as, the occurrence took place at about 9.30 P.M. on 16.7.1995, however, SI Mewa Singh (PW-7) has admitted in his cross-examination that complainant met him on 17.7.1995 at about 2.00 A.M.



Submissions of the learned State counsel

12. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convict, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict-appellant be dismissed.

Reasons for allowing the instant appeal

13. For the reasons to be assigned hereinafter the contentions (supra), as become raised before this Court, by the learned counsel for the appellant rather are worthy of acceptance, and, therebys they are accepted. Consequently, finding merit in the instant appeal, the same is hereby allowed, and, the verdict of conviction and consequent thereto sentence(s) (supra), as made by the learned trial Court, is quashed and set aside.

**Analysis of the depositions of the eye witnesses to the occurrence,
who respectively stepped into the witness box as PW-2 and PW-3**

14. Complainant Gurbinder Kaur, stepped into the witness box as PW-2, and, in her examination-in-chief, she thus made an articulation, that on the fateful day, at about 9.30 P.M., when she along with her parents were present in her house, accused Ramesh, who was residing in the room constructed in the fields near the tubewell, knocked the door of their house on which her father went outside. She further deposed that when her father did not return after 2-4 minutes, she along with her mother went out. They saw that four accused, namely Raju, Ganesh Manda, Resham Shah and Ramesh were present there. Accused Ramesh was armed with Dah and accused Raju was armed with Chura. Accused Ramesh from the sharp side



accused Raju Mandal gave chura (knife) blows on the left side of the head and on the back of the left shoulder of her father. She further deposed that the other accused were also helping them to catch hold of her father. She also deposed that all the accused had thrown the body of her father in the tubewell bore, which was at a distance of about 30-40 yards from their house. She further deposed that while they were running towards their house, all the accused chased them. Thereafter they caught hold of them and demanded whatever they had. She further deposed that accused Ramesh inflicted injuries upon the head, nose, right cheek, forehead and left hand of her mother with dah. Thereafter, accused Raju gave a chura blow on her right arm and locked her in the bathroom. However, by using the second door of the said bathroom, she went outside. Thereafter she met her uncle Harbans Singh and Lamberdar Dalip Singh who came with her to their residence. In her examination-in-chief, the said witness has voiced a narrative, qua the genesis of the prosecution case, which is in complete tandem with her previously made statement, in writing, and, to which Ex. PC becomes assigned. Though, she was subjected to the ordeal of a grilling cross-examination by the learned counsel for the accused, but she remained unscathed in the said ordeal.

15. Though, a wholesome reading of her testification, as carried in her examination-in-chief, and, in her cross-examination, does not unfold, qua thereins rather becoming carried any rife improvements or embellishments viz-a-viz her previously recorded statement, in writing, nor when her testification suffers from any further taint of its being ridden with any *intra se* contradiction, thus *intra se* her examination-in-chief, and, her cross-examination, therefore, thereby though the utmost sanctity is to be



assigned to her testification.

16. Moreover, though the depositions, as made by PW-2 are supported by the deposition of the other injured eye witness to the occurrence, namely Mohinder Kaur, who stepped into the witness box as PW-3. Significantly, though the echoings occurring in the examination-in-chief of PW-3 are in complete harmony with the echoings, as became rendered in respect of the crime event by PW-2. In sequel, the testifications rendered by PW-2, and, PW-3 vis-a-vis the crime event, when rather are in complete inter se alignment, as such, their respectively made testifications were amenable to become relied, upon, as aptly done by the learned trial Court concerned.

17. However, for the reasons to be assigned hereinafter, the credible ocular account, as rendered vis-a-vis the crime event yet does not constrain this Court to validate the impugned verdict of conviction and the consequent thereto sentence(s). The reasons for forming the above view are:-

(a) That the depositions, made by the eye witnesses (supra) vis-a-vis the accused using the weapons of offence, and, as such inflicting injuries on the person of the injured witnesses as well as on the person of the deceased, did entail a necessity upon the investigating officer concerned, to during the course of his holding the accused to custodial interrogation (i) to ensure the making of a signed disclosure statement by the accused concerned, wherein, after their confessing their guilt in the crime event, their showing their readiness and willingness to cause the recovery(ies) of the weapon(s) of offence, (ii) and subsequent thereto relevant valid recovery(ies) of the weapon(s) of offence being made to the investigating



officer concerned, thus at the instance of the accused concerned.

(b) The above recorded signed disclosure statements, and, consequent thereto recovery(ies), but would have lent the fullest succor to the depositions of the eye witnesses, inasmuch as, thereby the ocular version spelt by the ocular witnesses (supra) to the crime event, vis-a-vis, the relevant users at the instance of the accused concerned of the incriminatory weapons of offence, thus becoming tellingly corroborated through the above respectively made disclosure statements, and, the consequent thereto recovery(ies).

(c) Enigmatically, the investigating officer concerned, completely failed to during the course of his holding the accused to custodial interrogation, ensure the recordings at their respective instances, their respective signed disclosure statements, wherein, they may have thus confessed their guilt in the crime event, besides may have revealed their willingness to cause the efficacious recovery(ies) of the incriminatory weapon(s) of offence, to the investigating officer concerned. The above omissions rather to a substantial extent, has eroded the credibility of the eye witnesses concerned, as only upon the said memos becoming drawn, and, also becoming proven, thus thereby alone corroboration thereto would rather have assuredly come-forth at the instance of the prosecution. Resultantly, the omissions (supra), have but only smothered the emergence of the above best scientific evidence to corroborate the eye witness account rendered qua the crime event.

(d) Therefore, the effect of the omission (supra), to the considered mind of this Court has also a telling consequential effect upon the validity of the verdict of conviction, and, the consequent thereto sentence(s). The



above is a sequel of slipshod, inept and sketchy investigations becoming made by the investigating officer concerned, but for reasons best known to him.

18. Moreover, the blood stained soil was picked up from the place(s) of occurrence, and, after putting the same in plastic containers, the same became sealed with the seal bearing impression 'MS', and, subsequently, the same was taken into police possession vide recovery memos, to which respectively Ex. PW-10/B and Ex. PW-10/D are assigned.

19. Similarly, the foot prints of the accused were allegedly found at the crime site, which were lifted with the help of plastic powder, and, were taken into police possession vide recovery memos Ex. PN and Ex. PW/10-E.

20. However, the above said recovered blood stained soil as well as the foot prints never became sent to the FSL concerned, for their apposite matchings at the FSL concerned.

21. In addition, though the investigating officer concerned, had also recovered three pairs of chappals (footwears) which were taken into possession vide recovery memo Ex. PW-10/C, and, also recovered another pair of chappal (footwear), which was also taken into possession vide recovery memo Ex. PW-11/A. Moreover, a blood stained parna belonging to deceased Ajit Singh, lying at the crime site, was also taken into possession vide recovery memo Ex. PW-10/A. However, the said recovered items were also not sent to the FSL concerned, for obtaining thereons a report from the FSL concerned, thus revealing that the said recovered items were related to the deceased or the accused concerned. Importantly also the recovered items (supra) were not produced in Court. The effect of the omissions (supra), are but naturally that the investigating officer concerned, has completely failed



to carry a scientific/forensic evidence in respect of the crime event, whereas, after the collection(s) being made of the above referred incriminatory items, thus they were required to be forthwith deposited to the FSL concerned, for thereons an opinion becoming rendered by the FSL concerned, and, if the said opinion of the FSL concerned, was found incriminatory in nature, thereby this Court would be led to conclude, that irrespective of non-recordings of memo (supra), thus relating to the making of disclosure statement(s), and/or, relating to valid recovery(ies) in pursuance thereof becoming made, rather the prosecution through adduction of best scientific and forensic evidence but has established the charge against the accused. Significantly, the omissions (supra) do with aplomb constrain this Court to conclude, that the verdict of conviction, as rendered by the trial Court concerned, requires interference.

Post-mortem report

22. The post-mortem report, to which Ex. PA is assigned, became proven by PW-1. PW-1 in his examination-in-chief, has deposed that on his making an autopsy on the body of deceased Ajit Singh, thus his noticing thereons the hereinafter ante mortem injuries-

“1. Oblique incised wound 12 cm x 6 cm and deep upto the right lateral side of cervical vertebrae present on right side of neck in posterior triangle of neck extending from the upper posterior part of right sternocleidomaistoid muscle to the just above inner part of right clavicle. Posterior part of sternocleidomaistoid muscle, splenous, levator scapulae, scalenus anterior inferior belly of omohyoid plexus and transverse process of 4th and 5th cervical vertebrae were cut under the wound. Transverse cervical artery were cut. There was partial cut of the subclavian vessels. The right clavicle was fractured in the middle. Blood was present in the wound.



2. *Transverse incised wound 6 cm x 1.5 cm x 2.5 cm on the bridge of external nose in the middle wound extending on the both cheeks and nasal septum had also been cut. Blood was present in the nasal cavity and pharynx.*
3. *Left black eye was present.*
4. *Two lacerated wound each measuring 1.75 x .5 cm x bone deep on left side of forehead just above outer part of left eyebrow. Clotted blood was present. There was bluish bruise 1 cm around the wound. Wounds were 0.5 cm apart.*
5. *Reddish blue bruise 7 cm x 2.5 cm on left cheek. There was blood and lacerated tissue present underneath.*
6. *Reddish blue bruise 5 cm x 3 cm on right cheek. There was blood and lacerated tissue present underneath.*
7. *Oblique incised wound 8 cm x 1.5 cm x 3cm on backside of left chest in the upper part. Underlying muscles were cut. Upper part of scapula, acromion process had been cut partially. Blood was present in the wound.*
8. *Abrasion 5.5 cm x 1 cm on top of left shoulder. There was blood underneath.*
9. *Reddish blue abraded bruise 6 cm x 4 cm on right outer side of chest in the middle. There was blood and lacerated tissue present underneath.*
10. *Incised wound 2.5 cm x 0.5 cm x bone cut deep on the left proximal phalanx of middle finger. Left hand in inner and posterior part. Blood was present.*
11. *Incised wound 1.75 cm x 0.25 cm x bone cut deep on the proximal phalanx of left index finger on back. Blood was present.*
12. *Abrasion 3.5 cm x 1.5 cm on the back of proximal part of left hand outer part.*
13. *Two abrasions 2.5 cm, 1 cm each and 0.5 cm apart on the outer side of left lower leg in its upper part.*



14. *Incised wound 1.5 cm x 0.25 cm muscle deep on the inner side of the lower half of the left lower leg. Blood was present.*

15. *Abraded bruise 10 cm x 5 cm on inner side of left ankle and extending to inner side of left foot.*

23. Furthermore, PW-1 also made a speaking in his examination-in-chief, that the cause of demise of the deceased was owing to shock and haemorrhage as a result of injuries (supra), which were stated to be ante mortem in nature, and, also sufficient to cause death in the ordinary course of nature. The witness in his cross-examination also deposed that the injury on the head of the deceased could be the result of single forcible blow over the skull.

24. However, the opinion recorded in the above post-mortem report, for the reasons (supra) but is not linked to the incriminatory role, as such the opinion qua the cause of demise of the deceased, as voiced in the post-mortem report (supra), is also inconsequential for returning a finding of guilt against the accused-appellant.

Final order

25. The result of the above discussion, is that, this Court finds merit in the instant appeal, and, is constrained to allow it. Consequently, the instant appeal is allowed. The impugned judgment of conviction and the order of sentence(s), as recorded by the learned trial Judge, concerned, are quashed, and, set aside. Appellant Raju Mandal is acquitted of the charges framed against him. The fine amount, if any, deposited by accused-appellant, be, in accordance with law, refunded to him. The personal, and, surety bonds of the accused-appellant shall stand forthwith cancelled, and, discharged. The case property be dealt with, in accordance with law, but



after the expiry of the period of limitation for the filing of an appeal. The appellant, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

- 26. Records be sent down forthwith.
- 27. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

August 07, 2024
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No