

2024:PHHC:074103-DB



**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRA-D-160-DB-2012 (O&M)
Date of Decision:-24.5.2024

Tota Ram ... Appellant

Versus

State of Haryana ... Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present:- Mr. Tarundeep Kumar, Advocate (Legal Aid Counsel),
for the appellant.

Mr. Munish Sharma, DAG, Haryana.

GURVINDER SINGH GILL, J.

1. Appellant – Tota Ram assails judgment dated 14.10.2011 passed by learned Sessions Judge, Panchkula vide which he has been held guilty for having committed offence punishable under Sections 302 of Indian Penal Code and has been sentence to undergo rigorous imprisonment for life and to pay a fine amounting to Rs.20,000/-
2. The FIR (Ex.PA/3) was lodged at the instance of Ravinder Kumar, wherein it is alleged that his father Kali Ram was aged about 80 years and he used to go from his house in Saketri everyday to Hanumaan Temple while strolling on



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Mahadevpura Road near Sukhna Choe. It is alleged that on 13.9.2010 at about 06:00 P.M. in the evening, when he was sitting at a tea shop constructed near Saketri School, then Raju son of Ram Kumar resident of Manav Colony, Saketri came there and informed him that a boy wearing black coloured clothes was beating complainant's father mercilessly with his '*khundi*'. Upon receipt of said information, the complainant alongwith Raju rushed to the spot and saw that a boy, who lives in a hut near Saketri, was beating his father mercilessly with a '*khundi*'. In the meantime, Dev son of Balwant Singh and Ram Kumar son of Jeevan also came at the spot and when they challenged the assailant, he upon seeing them, ran away from the spot alongwith his '*khundi*'. The complainant noticed that his father was bleeding from his head and there were injury marks on his legs and waist. The name of said boy came to be known later as Tota Ram son of Dharam Pal. The complainant's father was taken to Government Hospital, Sector 6, Panchkula, from where he was referred to Post Graduate Institute of Medical Education and Research, Chandigarh, where he breath his last on 14.9.2010. The complainant alleged that the said boy namely Tota Ram owed an amount of Rs.500/- to complainant' father having borrowed the same a few days back and that Tota Ram had done his father to death as he was demanding back his money.

3. Pursuant to registration of FIR, the matter was investigated by the police. Inquest proceedings were conducted. The dead-body was got subjected to post-mortem examination. The police visited the place of occurrence and prepared a rough site plan and also lifted blood stained cap found lying there. The accused was arrested on 15.9.2010. Upon interrogation, he suffered a



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disclosure statement (Ex.PM), pursuant to which he led the police party to the disclosed place and got recovered the '*khundi*' allegedly used for commission of offence. Upon conclusion of investigation, challan was presented in the Court of Area Magistrate on 1.12.2010. The Area Magistrate committed the matter to the Court of Sessions vide commitment order dated 6.12.2010. Learned Sessions Judge, Panchkula framed charges against the accused for offences under Sections 302 of Indian Penal Code vide order dated 9.2.2011.

4. The prosecution, in order to establish its case, examined as many as 10 PWs, who broadly stated to the following effect:-

PW-1 Ravinder Singh is the complainant and stated in tune with the version got recorded by him in the FIR, broadly to the effect that the accused had inflicted injuries to complainant's father with the help of a '*khundi*' on 13.9.2010 ultimately leading to his death.

PW-2 Raju is an eye-witness and has stated that on 13.9.2010, when he noticed the accused giving beatings to Kali Ram, father of complainant Ravinder Kumar, who was known to him, he immediately rushed to call Ravinder Kumar and then he alongwith Ravinder Kumar came to the spot and although they tried to catch hold of the accused, but he managed to escape.

PW-3 Ramesh Kumar, Halqa Patwari, Chandimandir stated that he had prepared the scale site plan of the place of occurrence and proved the same as 'Ex.PD'.

PW-4 Constable Jarnail Singh & **PW-5** MHC Rakesh Kumar are formal witnesses and tendered their affidavits in evidence as Exhibits 'PF' and 'PG'.



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PW-6 Dr. Munish Wadhawan, Senior Resident, Forensic Medicine, PGI, Chandigarh, who had conducted the post-mortem examination on the dead body of Kali Ram and proved the same as 'Ex.P1'. He further stated that the cause of death was craniocerebral damage.

PW-7 Dr. Kumar Jayant, Junior Resident, PGI, Chandigarh had stated that he had issued the death certificate in respect of death of Kali Ram. He also proved the medical certificate (Ex.PK/1) issued by him as regards the cause of death, wherein the cause of death has been specified as cardiac failure.

PW-8 S.I. Balwant Singh stated that on 14.9.2010 he was posted as SI/SHO Police Station Mansa Devi Complex, Panchkula and that on the said day Ravinder Kumar, son of Kali Ram, got his statement recorded Ex.PA on the basis of which FIR was registered. He stated that he alongwith complainant went to the place of occurrence from where a blood stained cap was recovered, which was taken into possession. He also prepared a rough site plan of the place of occurrence as Ex.PL and recorded statements of witnesses. He stated that the accused was arrested on 15.9.2010 and was interrogated and upon interrogation, he suffered disclosure statement Ex.PM leading to recovery of 'khundi', which had been kept concealed in bushes near Baba Balak Nath Mandir at Village Kaimbawala.

PW-9 ASI Pawan Singh had remained associated with the investigation and had conducted inquest proceedings and proved the same as Ex.P-1/2. He further stated that pursuant to interrogation by SI Balwant Singh, accused



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Tota Ram had made disclosure statement Ex.PM, which had been attested by him leading to recovery of '*khundi*'.

PW-10 ASI Tarsem Singh stated that on 13.9.2010, he was posted at Police Station Mansa Devi Complex and upon receipt of an intimation from PGI, Chandigarh regarding arrival of Kali Ram, he went to PGI, Chandigarh on 14.9.2010 and sought opinion of the doctor as regards fitness of Kali Ram, but he was declared unfit to make statement.

5. Upon conclusion of evidence of prosecution, statement of accused in terms of provisions of Section 313 Cr.P.C. was recorded, wherein he denied the prosecution case in *toto* and pleaded false implication. The accused further took a stand that Kali Ram was aged about 83 years and had died due to cardiac failure and that he was having atrial flutters with fast ventricular rate. The accused, however, did not lead any evidence in his defence.
6. Learned counsel for the appellant submits that the appellant has falsely been implicated in the present case and that in order to pressurize him so as to extract money from him. It has been submitted that as a matter of fact, the deceased, who was aged about 83 years, had died a natural death due to cardiac failure as has also been opined to be cause of death in the medical certificate (Ex.PK/1) issued by PGI, Chandigarh. Learned counsel further submits that the story put forth by the complainant does not inspire confidence inasmuch as while the total number of injuries found on the dead-body was 5, but as per the case of prosecution after PW-2 Raju had seen the accused inflicting injuries to deceased, he rushed to inform the complainant, who was found to be sitting at a tea shop and then he alongwith complainant

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Ravinder Kumar came to the place of occurrence and even at that time, the accused was giving beatings. It has been submitted that in case the accused had been giving beatings to a man aged about 83 years for about 5-10 minutes, the number of injuries would have been much more and would not have been restricted to 5 injuries only as were found on the dead body. It has further been submitted that the alleged motive that the accused owed some amount to the deceased is not established and that there is nothing on record to suggest that the deceased had advanced any loan to the accused.

7. Learned counsel representing the appellant next submitted that even if the allegations as levelled are taken to be correct, then given the fact that the injuries are in the nature of abraisons apparently having been caused with some blunt edged weapon and only one of the injury is on the head, the offence would not fall within the mischief of Section 302 of Indian Penal Code and at best it would be an offence under Section 304 of Indian Penal Code.
8. Opposing the petition, learned State counsel submitted that it is a case where the complainant as well as PW-2 Raju have stated consistently as regards the manner of incident and that the ocular version is in tune with the medical evidence, which clearly shows that the deceased had sustained as many as 5 injuries including injury on his head and, as such, the findings of guilt as recorded by the Trial Court in respect of offence under Section 302 IPC do not warrant any interference.
9. This Court has considered rival submissions addressed before this Court.



10. Since the allegations are specific to the effect that the accused had inflicted injuries to the deceased with the help of a '*khundi*', it is apposite to refer to the medical evidence so as to ascertain as to whether the dead-body was indeed found to be bearing some injuries and as to whether the injuries could have been caused with the weapon of offence i.e. '*khundi*'.
11. The weapon of offence i.e. '*khundi*', as per the recovery memo, was found to be 3 feet and 10 inches in length with a circumference of 3½ inches. A '*khundi*' as known in common parlance is a thick wooden stick with one edge slightly arched.
12. Coming to the injuries found on the dead-body, PW-6 Dr. Munish Wadhawan, Senior Resident, Forensic Medicine, PGI, Chandigarh, who had conducted the post-mortem examination has described the same as under:
 - “1. Lacerated wound 3.5 X .8 cm X bone deep in right parietal region. .5 cm lateral to midline and 10 cm above medial end of right eye brow. Vertically placed with dried blood clots.
 2. Multiple reddish abrasions in an area of 5 X 4 cm on anterior aspect of left knee joint.
 3. Reddish bruise 6 X 4 cm on lateral aspect of left thigh 5 cm above knee joint.
 4. Reddish abrasion 2 X 1 cm on anterior aspect of right leg 8 cm below knee joint.
 5. Reddish bruise 7 X 6 cm on anterior aspect of right knee joint.
 6. Linear fracture 7 cm long of left temporoparietal bone with blood extravasation in surrounding tissues. Contusion over left temporoparietal diffuse thin film of subdural haemorrhage over



left cerebral hemisphere. Brain stem haemorrhages brain matter congested and oedemature.

7. Fracture of 2nd to 8th ribs of right side and 2nd to 11th ribs of left side in midclavicle line with blood.”
13. A perusal of the aforesaid description of injuries would show that the same were either in the nature of a lacerated wound or abrasions/contusions. In other words, the same apparently have been caused with some blunt edged weapon. A ‘*khundi*’, as per its description in recovery memo is in the nature of a thick stick. The description of the said weapon can also be discerned from the report of FSL, wherein the said weapon i.e. ‘*khundi*’ is described as under:
- “II. 3-B.S. It contained exhibit-2.
- Exhibit-2. One bamboo Danda stated to be “*khundi*” bent at one end (approx. 117 cm).”
14. As such, it can be safely said that the medical evidence is in tune with the allegations to the effect that the deceased had been inflicted injuries with a ‘*khundi*’, which is a blunt edged weapon.
15. Learned counsel representing the appellant has, however, vehemently argued that it is not a homicidal death but a natural death since the deceased was aged about 83 years and had died due to cardiac failure.
16. It is no doubt correct that in the medical certificate (Ex.PK/1) issued by PW-7 Dr. Kumar Jayant, Junior Resident, PGI, Chandigarh regarding cause of death, the same is stated to be due to cardiac failure, but a perusal of description of injuries would show that the injuries had apparently been



caused with an intention to cause death inasmuch as not only two of the injuries were on the head, but one of the said injuries also resulted in fracture of temporoparietal bone. Further, even the ribs were found fractured. A young man inflicting injuries with such force to an old person aged about 83 years can safely be attributed with a knowledge that his such act would result in death of the victim.

17. Still further, the case of prosecution would also find some strength from recovery of a blood stained cap, which as per the report of chemical examiner, was stained with human blood.
18. As a sequel to the discussion made above, this Court finds that the evidence led by prosecution in the shape of statements of PW-1 Ravinder Singh and PW-2 Raju is consistent on all material aspects of the case. The story spelt forth by the said witnesses is duly corroborated by the medical evidence. Although the cause of death is mentioned as 'cardiac failure' in the medical certificate (Ex.PK/1), but the said cause is apparently a secondary effect of the injuries, which had been inflicted with a great force on vital parts leading to fracture of the head as well of ribs of the deceased, who was aged about 83 years. Under these circumstances, it goes without saying that the accused had inflicted injuries to the deceased knowing fully well that the same would result in death of Kali Ram (deceased).
19. In view of the discussion made above, we do not find any infirmity in the findings of guilt as recorded by the Trial Court and the same are hereby affirmed. Finding no merit in the appeal and the same is hereby dismissed.



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20. Since the substantive sentence of imprisonment as imposed upon appellant – Tota Ram had been suspended during pendency of the appeal, he be arrested immediately to undergo his remaining part of the sentence. Intimation be sent to the quarters concerned.

(GURVINDER SINGH GILL)
JUDGE

24.5.2024
Pankaj

(N. S. SHEKHAWAT)
JUDGE

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