

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CRA No.D-111-DB-2003.

Date of decision: 08.01.2015.

Hari Ram

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM:- HON'BLE MR. JUSTICE M.JEYAPPAUL
HON'BLE MR. JUSTICE DARSHAN SINGH**

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr.Sudhir Sharma, Advocate for the appellant.

Mr.Dhurv Dayal, DAG, Haryana.

DARSHAN SINGH J.

The present appeal has been preferred against the judgment of conviction dated 02.01.2003, vide which appellant Hari Ram has been held guilty and convicted for the offence punishable under Section 302 Indian Penal Code ('IPC' for short) and the order of sentence dated 07.01.2003, vide which the appellant has been sentenced to undergo imprisonment for life and to pay a fine of Rs.5000/-, in default of payment of fine to further undergo rigorous imprisonment for a period of six months.

2. The sequence of events and catalogue of facts giving rise to this prosecution can be summed up as under:-

That on 24.06.1998, PW4 complainant Rattan Singh made his statement Ex.PH to PW8 ASI Narain Chand, stating therein that he was working as an Operator in S.K. Foils Factory, Bhiwani. His duty hours were from 08:30 p.m. to 08:30 a.m. He and Hari Ram Verma, the present appellant, were working on one machine. PW6 Vijaypal and deceased Baldev Kumar were working on another machine. PW5 Subhash was on duty as Supervisor. On the night of 24.06.1998, at about 02:00/02:15 a.m., an altercation took place between deceased Baldev Kumar and accused-appellant Hari Ram Verma. Accused said "*Baldev you have got an unexperienced man Vijaypal like you. What work you will do?*" At this, deceased Baldev Kumar asked to the accused as to why he had stated so. Thereupon, an altercation in hot words took place between them. The complainant and other labourers separated them. At that very moment, deceased Baldev Kumar went to drink water. Appellant Hari Ram suddenly being furious lifted an iron strip lying there and inflicted the blow by that iron strip in the stomach of Baldev Kumar. The complainant and other labourers ran towards them. PW5 Subhash Supervisor also came running at the spot. Within their sight, Hari Ram accused gave another blow of iron rod to Baldev Kumar on the right side of the abdomen. Deceased tried to catch hold the iron rod which accused Hari Ram was having and he also received injuries on his hands. Baldev fell down. Accused Hari Ram ran away along with iron strip. The complainant and PW5 Subhash Supervisor lifted Baldev Kumar, who had become unconscious. He was bleeding from the injuries. After giving

information on the main gate and arranging a conveyance, they took the deceased to the Government Hospital, Bhiwani for treatment. But he succumbed to the injuries in the way on reaching hospital Baldev Kumar was declared dead. On the statement of complainant Rattan Singh, the formal FIR Ex.PL was registered and investigation was started.

3. PW8 ASI Narain Chand, the Investigating Officer, carried out the proceedings under Section 174 Cr.P.C. Ex.PB. The dead body was sent for getting the post-mortem examination conducted thereupon vide application Ex.PC. After the post-mortem examination, the doctor handed-over a sealed parcel containing the clothes of the deceased, which was taken into possession vide memo Ex.PN. Thereafter, the Investigating Officer inspected the place of occurrence. He took into possession the blood stains vide memo Ex.PJ. He also prepared the rough site plan of the place of occurrence Ex.PQ. Accused Hari Ram was produced before the police by his father Ram Bhagat. During interrogation, he produced the blood stained clothes worn by him, which were kept in a sealed parcel and were taken into possession vide memo Ex.PR. Accused submitted the disclosure statement Ex.PS and in pursuance thereof, he got recovered the iron strip that is the weapon of offence, which was taken into possession vide memo Ex.PU, after preparing the sketch Ex.PT. Thereafter, on completion of the formalities of the investigation, the report under Section 173 Cr.P.C. was presented in the Court.

4. Accused appellant was charge sheeted for the offence

punishable under Section 302 IPC, vide order dated 16.11.1998, to which he pleaded not guilty and claimed trial.

5. In order to substantiate its case, prosecution examined as many as eight witnesses.

6. When examined under Section 313 Cr.P.C., the accused-appellant pleaded false implication. However, no evidence was led by him in his defence.

7. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused-appellant was held guilty and convicted for the offence punishable under Section 302 IPC and was awarded the sentence as mentioned in the upper part of the judgment.

8. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

9. We have heard Shri Sudhir Sharma, Advocate, learned counsel for the accused-appellant and Shri Dhruv Dayal, learned Deputy Advocate General for the State of Haryana and have meticulously examined the record of the case.

10. Initiating the arguments, learned counsel for the appellant contended that there is nine hours delay in lodging the FIR, which has not been explained at all and is fatal to the prosecution case.

11. He further contended that the prosecution witnesses were the interested witnesses being the co-workers of the deceased. PW5 Subhash Supervisor was present in his office at the time of this

occurrence and is not an eye witness of the occurrence but even then he projected himself as a witness to the occurrence. He contended that such interested witness should not be relied upon. They have also made certain improvements in their testimonies.

12. He further contended that the offence punishable under Section 302 IPC is not made out at all. Even as per the prosecution version, the occurrence has taken place as a result of sudden fight in the heat of passions. There was no premeditation for the commission of the offence. The appellant has also not taken any undue advantage nor acted in a cruel or unusual manner. He further contended that PW4 Rattan Singh complainant has admitted in cross-examination that the deceased and accused had grappled. They abused each other. So, the occurrence is a result of a sudden fight. Thus, he pleaded that the case of the appellant is squarely covered under Exception 4 to Section 300 IPC and will attract only under Section 304 Part-II IPC. To support his contention, he relied upon **Chaitu and others Vs. State of Uttar Pradesh 2014(3) RCR (Criminal) 248**. Thus, he contended that the appellant has been wrongly convicted for the offence punishable under Section 302 IPC by the learned trial Court.

13. On the other hand, learned State counsel contended that there is no inordinate delay in lodging the FIR. The occurrence has taken place in the factory shed. The co-workers of the deceased as well as the accused were the natural witnesses. They cannot be described as interested witnesses. They have given the truthful version of the

occurrence. The FIR is not an encyclopedia to contain all the minute details. If at the time of statement the witnesses have given some clarification that cannot be considered to be an improvement in their statements. He further contended that the ingredients of Exception 4 to Section 300 IPC are not made out in the present case. After the altercation they were separated and pacified. They even started working on their machines and, thereafter, the accused lifted the iron strip and caused injuries on the vital part of body of the deceased. He has also taken the undue advantage as the deceased was unarmed. Thus, he contended that the appellant cannot take the benefit of Exception 4 to Section 300 IPC and has been rightly convicted for the offence of murder by the learned trial Court.

14. We have duly considered the aforesaid contentions.

15. As per the prosecution version, the occurrence had taken place on 24.06.1998 at about 02:00/02:15 a.m. Immediately after the occurrence, the injured was taken to the General Hospital, Bhiwani. The doctor had sent the memo Ex.PK to the police. Thereafter, the police came into action and the statement of complainant Rattan Singh Ex.PH was recorded at 11:00 a.m. on 24.06.1998. Even the FIR was registered on the same day at 11:15 a.m. So, there is no inordinate delay in lodging the FIR. In case **Dalip Singh Vs. State of Punjab 2014(4) RCR (Criminal) 151**, there was delay of one day in lodging the FIR. The Division Bench of this Court held that when there is unimpeachable and positive evidence of the complicity of the accused in the commission of

crime, the delay in lodging the FIR is rendered inconsequential.

16. The case of the prosecution is based on the statement of PW4 Rattan Singh complainant, PW6 Vijaypal eye-witness of the occurrence and PW5 Subhash another witness of the occurrence. There is absolutely no reason to consider these witnesses as interested witnesses. If they were the co-workers of the deceased, they were also the co-workers of the present appellant. The accused-appellant and deceased Baldev Kumar were also the co-workers. The present appellant was working with complainant Rattan Singh on one machine, so, the prosecution witnesses were equally related to the appellant as well as the deceased. Thus, it cannot be stated that they were inimical or biased towards the accused and were in any way interested for his false implication.

17. The occurrence had taken place inside the factory premises. PW4 complainant Rattan Singh was working as a Machine Operator in the said factory. PW5 Subhash Singh was working as Supervisor in that factory and PW6 Vijaypal was also the worker of the factory. So, the presence of these witnesses at the scene of crime is natural and free from any doubt. As the occurrence has taken place inside the factory premises, it does not expected that any outsider will be the witness of occurrence.

18. It is settled principle of law that the FIR is not an encyclopedia to contain all the minute details of the occurrence. If the witnesses have given some clarification or explanations at the time of

their testimonies in the Court, which is consistent with the basic story of the prosecution, those cannot be considered to be the improvements in their statements to render their testimonies unworthy of credence.

19. Learned counsel for the appellant, in alternative, has vehemently contended that the appellant cannot be held guilty for the offence of murder and the case will be covered under Exception 4 to Section 300 IPC. Exception 4 to Section 300 IPC reads as 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's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.- It is immaterial in such cases which party offers the provocation or commits the first assault."

The requirements of this exception are :

- (a) without premeditation in a sudden fight;
- (b) in the heat of passion upon a sudden quarrel;
- (c) the offender has not taken undue advantage; and
- (d) the offender has not acted in a cruel or unusual manner.

Where these requirements are satisfied, culpable homicide would not be murder.

20. We have to evaluate the evidence on record to see as to whether the requirements of Exception 4 to Section 300 IPC are fulfilled or not in this case. On the point of occurrence, the statement of three witnesses is relevant. They are PW4 Rattan Singh complainant, PW5 Subhash the Supervisor and PW6 Vijaypal the witness of occurrence. PW4 Rattan Singh has deposed that on 24.06.1998, he was working in

the factory. On that day, his duty shift was from 08:30 p.m. to 08:30 a.m. next morning. He and Hari Ram accused were working on one machine. Baldev Singh deceased and Vijaypal PW6 were working on other machine. Subhash Supervisor was on duty at that time. At about 02:15 a.m., in the night, Hari Ram told to Baldev Singh with whom Vijaypal was working that since Vijaypal was untrained, what help he can render to him. On this aforesaid count, there was an altercation between accused Hari Ram and Baldev deceased. Then he with the help of other persons, made them separated and, thereafter, all started working on their respective machines. He also went to check strip, which was moving in the machine at the backside. Baldev deceased with his hand on the abdomen moved towards the office of the factory. Baldev had sustained injuries on his abdomen. He does not know as to how Baldev sustained injuries on the abdomen. Thereafter, he deposed that he had seen Hari Ram running and Baldev running ahead of him. Accused Hari Ram was holding an iron strip in his hand. In his presence and that of Subhash, accused Hari Ram had given a blow on the right side in between chest and abdomen of Baldev deceased with aforesaid iron strip. Then they removed Baldev at the main gate of the factory as he had fallen down on the ground on receipt of blows. In the meantime, accused fled away from the spot. Baldev injured was removed in a vehicle to the General Hospital, Bhiwani. In the hospital, he was declared dead. No doubt in the cross examination, he has admitted that both Baldev (deceased) and Hari Ram grabbed with each other and also abused each other. He also

admitted that accused deceased gave fist and kicks blows to each other while they were grappling but all these facts narrated to him relates to the initial quarrel between the appellant and accused before they were separated by the complainant and other workers and they resumed the operation of their machines. PW5 Subhash is the witness to the second aspect of the occurrence, when the appellant has given the iron strip blows to the deceased. The statement of PW6 Vijaypal is very material. He is the person due to whom the quarrel has taken place between the appellant and deceased Baldev. He deposed that on 24.06.1998 his duty was from 08:30 p.m. to 08:30 a.m. next day. He was working in other plant of the factory. Subhash Supervisor approached him and brought two person for the help of Baldev Kumar since deceased. He then helped Baldev Kumar in his working. Accused taunted that what kind of help would be rendered by him to Baldev Kumar. Thereupon, an altercation took place between the accused and deceased Baldev Kumar. Baldev Kumar snubbed accused for doing his own work at the machine. Thereafter, he stated that they were pacified and they again started doing their business at their respective machines. Then after some time Baldev left for taking water. In the meantime, the accused picked up an iron strip and then caused injuries on the person of the deceased. In the meanwhile, Subhash Supervisor reached there. But in the meanwhile, accused gave 3-4 blows with his strip on the person of Baldev Kumar, who was lying on the ground.

21. From the aforesaid evidence i.e. testimonies of PW4

Rattan Singh and PW6 Vijaypal, it comes out that at the first instance the quarrel and altercation took place between deceased Baldev Kumar and present appellant Hari Ram. The co-workers including complainant Rattan Singh intervened and separated them. They were pacified. They resumed their work on their respective machines and thereafter, when Baldev Kumar deceased was going to drink water the present appellant lifted the iron strip and caused him the fatal injuries.

22. Learned counsel for the appellant has pleaded that the version of these witnesses that the appellant and deceased were pacified and they started working on their machine, does not find mentioned in the FIR recorded on the statement of PW4 Rattan Singh and in the statement of PW6 Vijaypal recorded under Section 161 Cr.P.C. But this plea of learned counsel for the appellant has no substance as both these witnesses were not confronted with the aforesaid portions of their testimonies, as required under Section 145 of the Indian Evidence Act. Both these witnesses have given the consistent version about this fact. Hence, their testimonies on this aspect cannot be ignored. There are two stages of this occurrence. The initial occurrence was which resulted in the altercation and quarrel between the appellant and the deceased ensued as a result of taunting by the appellant about the efficiency to work of the deceased as well as PW6 Vijaypal but that quarrel came to an end when both appellant and deceased were separated and pacified by complainant Rattan Singh and their co-workers and, thereafter, even they started working on their respective machines. The second incident had taken

place, thereafter, when the deceased was going to drink water towards the office, at that point of time appellant Hari Ram lifted the iron strip and caused the fatal injuries. As per the medical evidence the following injuries were found on the person of deceased:

1. An incised wound was present on posterior aspect of right forearm 10 cms. from wrist line. It measured 5 x 3 cms. and was muscle deep. It was obliquely placed.
2. An incised wound 5 x 3 cms. was present on the interior surface of right fore-arm 7 cms. from wrist line. It was oblique and muscle deep.
3. An incised wound 5 x 4 cms. was present on left side of the chest anteriorly 10 cms. below left nipple. It was going deep upto 10 cms. through the 8th intercostal space.
4. An incised wound 5 x 4 cms. was present on the right flank. Loops of gut were coming out.

On dissection, it was found as follows:

1. Left plural cavity was full of dark fluid blood. Stomach and gut loops were present in the plural cavity through a cut in the left dome of the diaphragm.
2. There was a cut in the anterior wall of the stomach, which was empty. The cut was 4 cms. long.
3. There was a tear in the spleen near its hylum.
4. The peritoneal cavity was full of dark fluid blood.”

23. In the opinion of PW1 Dr.Ishwar Singh Nashir, who conducted the post-mortem examination on the dead body of Baldev Kumar, the cause of death was haemorrhage and shock following injuries described above.

24. In order to attract Exception 4 to Section 300 IPC there must be sudden fight. In case **Ghopoo Yadav and others Vs. State of M.P. 2003 (1) RCR (Criminal) 827** “sudden fight” implies mutual provocation and blows on each side. So, there must be two to make a fight when the fatal injuries were caused to the deceased by the appellant. There was actually no fight. The deceased was going to drink water unarmed. The appellant lifted the iron strip and inflicted the fatal injuries with that strip on the vital parts of his body. The fatal injuries caused to deceased Baldev Kumar by the appellant were also not in the heat of passion. Heat of passion requires that there must be no time for the passion to cool down and the parties have worked themselves into a fury on account of verbal altercation or quarrel. In the instant case from the consistent testimonies of PW4 Rattan Singh complainant and PW6 Vijaypal the witness of the occurrence, it comes out that with their intervention the appellant and deceased were separated. They were pacified. They even started working on their machines. So, there were sufficient time to cool down the heat of passion. Thus, it cannot be stated that the causing of the fatal injuries by the appellant to the deceased were in the heat of passion upon a sudden quarrel. To support this view reference can be made to the cases **Dharampal Singh Vs. State 2000(87) DLT 319, Ghopoo Yadav and others Vs. State of M.P. (supra) and Pappu Vs. State of Madhya Pradesh 2006(3) RCR (Criminal) 737.** The appellant has also taken the undue advantage as he has caused injuries with a pointed iron strip to the deceased who was unarmed.

25. Thus, in our view Exception 4 to Section 300 IPC has no application to the facts of the case and the offence committed by the appellant will attract Section 302 IPC. Case **Chaitu and others Vs. State of Uttar Pradesh** (supra) relied upon by learned counsel for the appellant has no application to the facts of the case as in that case even for the second time there was another altercation between the two sides which accelerated into a fight over share of water. It was in the course of that fight that deceased was injured and led to his death. But in the instant case as already discussed, at the time of second incident, there was actually no altercation and no fight between the appellant and the deceased. It was purely and simply a unilateral act on the part of the appellant to cause fatal injuries on the vital part of body of deceased with an iron strip.

26. Thus, keeping in view our aforesaid discussion we do not find any infirmity in the conviction of the appellant recorded by the learned trial Court and the sentence awarded to him, so the same stand affirmed. Consequently, the present appeal has no merits and same is hereby dismissed. The bail bonds furnished by the appellant shall stand cancelled. The appellant be taken into custody to undergo the remaining part of his sentence.

(M. JEYAPPAUL)
JUDGE

08.01.2015
sunil yadav

(DARSHAN SINGH)
JUDGE