

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-982-SB of 2003

DATE OF DECISION: MARCH 18, 2015

HARBANS SINGH

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. P.S.BHANGU, ADVOCATE FOR THE APPELLANT.
MRS. RITU PUNJ, ADDL.A.G., PUNJAB.

M. JEYAPPAUL, J.

1. Accused Harbans Singh, Punjab Singh and Dara Singh @ Darbara Singh were sent up for trial before the Addl.Sessions Judge, Patiala who chose to convict accused Harbans Singh alone under Section 304 Part II IPC and sentence him to 5 years rigorous imprisonment. Accused Harbans Singh has challenged the above judgement of conviction and sentence passed by the trial Court.

2. It is the case of the prosecution that on 1.12.2001 at about 7.30 p.m., accused Harbans Singh with the common intention shared by co-accused Punjab Singh and Dara Singh, committed culpable homicide not amounting to murder by causing the death of Pala Singh and thereby accused Harbans Singh committed the offence under Section 304 IPC and the other accused Punjab Singh and Dara Singh committed the offence punishable under Section 304/34 IPC.

3. PW2 Jaipal, who was the author of the first information report

deposed that on 1.12.2001 at about 7.30 p.m., he reached in front of the house and shop of accused Harbans Singh alongwith his brother Pala Singh after finishing work in their fields. Accused Punjab Singh and Dara Singh also were standing over there. Pala Singh who was the brother of PW2 Jaipal demanded liquor from accused Harbans Singh who felt offended and started grappling with Pala Singh. The other two accused also tried to hackle Pala Singh. All the three accused thrashed Pala Singh by raining fist blows. In the meantime, accused Harbans Singh brought an iron weight from inside his shop and attacked Pala Singh on his head and chest and caused injuries. Pala Singh was rescued from the clutches of the accused and was brought home. As the condition of Pala Singh started deteriorating, he was removed to Rajindra Hospital, Patiala, where he was declared as brought dead.

4. PW3 Jai Singh was an eye witness to the occurrence. He also supported fully the version of PW2 Jaipal.

5. PW1 Dr.S.S.Oberoi conducted post mortem examination on the dead body of Pala Singh on 2.12.2001 and observed the following injuries:-

“1. *Abrasion 0.5 x 0.5 cm with defused swelling present on the right side of the forehead. Just above the lateral and of right eye brow. On exploration there was diffused sub-dural haemorrhage on the right frontal lobe of brain and multiple small haemorrhagic spots in the right parietal and occipital lobes and adjoining part of Medulla oblongata.*

2. *Dotted linear abrasion 13 x 0.5 cms horizontally placed*

in the left side of front of chest in his upper part starting from the eternal notch and going to the left side.

3. *Abrasion 0.5 x 0.2 cms right to the sternal notch of the chest.*

4. *Two abrasions each 0.5 x 0.2 cms, 0.5 cms apart present on the chest left side 2 cms from midline and 5 cms from the sternal notch."*

6. He has opined that Pala Singh had died due to head injury which was sufficient to cause death in the ordinary course of nature.

7. When the material witnesses had already been examined, the accused suffered following confessional statement pleading guilty of the charge before the learned trial Court:-

"I am the victim of the circumstances. I confess my guilt to the charge framed against me. I have seven children including 6 daughters and the old parents to support. Lenience be shown to me on the points of sentence."

8. The trial Judge having felt that there was no necessity to question accused Harbans Singh under Section 313 Cr.P.C., questioned the other accused under Section 313 Cr.P.C.

9. The trial Court having relied upon the ocular testimony in the background of the medical evidence and the confession of guilt made by the accused, after the material witnesses supporting the case of the prosecution examined before the trial Court, convicted and sentenced the accused-appellant Harbans Singh as stated supra.

10. PW2 Jaipal was the author of the first information report. PW3

Jai Singh was an eye witness to the occurrence. Both of them have categorically deposed before the trial Court that accused Harbans Singh who felt offended by the asking of liquor from him by Pala Singh, retrieved an iron weight from his shop and attacked Pala Singh on his head and chest thereby causing him injuries as noted down by PW1 Dr.S.S.Oberoi.

11. True it is that PW2 was the brother of Pala Singh. Just because PW2 was a related witness, the Court cannot reject his testimony. If the related witness passes the test of trustworthiness and credibility, there is no embargo to place reliance upon such testimony. Further, in the instant case, it is found that PW3 Jai Singh, an independent witness to the occurrence has completely corroborated the ocular testimony of PW2 Jaipal. The presence of PW2 Jaipal in front of the house and shop of accused Harbans Singh is found to be natural.

12. The ocular testimony adduced by the prosecution establishes beyond reasonable doubt that it was only accused Harbans Singh who was perturbed by solicitation for liquor made by deceased Pala Singh before him brought out an iron weight and attacked him on the head and chest and caused his death. The medical evidence also would go to show that the injury found on the head of the deceased proved fatal. Of course, the trial Court having weighed the evidence has rightly come to the conclusion that the case of the prosecution falls under the penal provision under Section 304 Part II IPC framed as against the accused.

13. Learned counsel appearing for the appellant would vehemently submit that two other eye witnesses, namely, Chuhar Ram and Sahib Singh were not examined by the prosecution. Learned Addl.A.G., Punjab would

contend that two eye witnesses have been examined to establish the case of the prosecution and therefore, non-examination of the other witnesses does not weaken the case of the prosecution.

14. It is not the quantity of evidence, but the quality of evidence that matters. Not one, but two witnesses have been examined by the prosecution to establish its case. Therefore, examination of the other two witnesses has become redundant as contended by learned Addl.A.G., Punjab.

15. Learned counsel appearing for the appellant would further submit that the investigating officer Karansher Singh was not examined. In my view, non-examination of the investigating official in a case where eye witnesses completely establish the case of the prosecution does not in any way vitiate the trial of the case. The trial Judge had thought it fit not to examine the investigating officer as material ocular testimony was available on record and the accused also had confessed to the crime.

16. It was submitted by learned counsel appearing for the appellant that PW2 and PW3 would not have witnessed the occurrence as they had not made an attempt to rescue the deceased.

17. The evidence of PW2 would go to establish that they made an attempt to rescue the deceased from the attack launched by accused Harbans Singh. In the above factual scenario, the above submission made by learned counsel appearing for the appellant merits no consideration.

18. Referring to the evidence in cross-examination of PW2, learned counsel appearing for the appellant would submit that not only the deceased, but PW2 also had allegedly demanded liquor. It is his submission

that there is self-contradiction in the testimony of PW2.

19. It is true that PW2 originally deposed that it was only Pala Singh who demanded liquor from accused Harbans Singh. During the course of cross-examination, he has deposed that not only Pala Singh, but he himself also demanded liquor from accused Harbans Singh.

20. The question is whether the accused attacked Pala Singh and caused injury on account of the quarrel that emanated at the scene of crime. It is totally unimportant whether deceased Pala Singh alone demanded liquor or PW2 also joined Pala Singh in demanding liquor from the accused.

21. The first information report was not exhibited during the course of trial. It may be a lapse on the part of the prosecution. When the evidence on record would go to establish the commission of crime charged as against the accused, the failure to exhibit the first information report pales into insignificance.

22. It was submitted by learned counsel appearing for the appellant that failure to give timely treatment, rushing the injured to the hospital, had culminated in his death and therefore, the appellant cannot be convicted under Section 304 IPC.

23. Explanation 2 to Section 299 IPC provides a straight answer to the above argument submitted by learned counsel appearing for the appellant. Where death is caused by bodily injury, the person who caused such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skillful treatment the death might have been prevented.

24. It is submitted that there was a delay in lodging the first

information report. True it is that there was some delay in lodging the first information report. In a case where eye witnesses have spoken to the occurrence, the delay in lodging the first information report would not falsify the case of the prosecution.

25. We also find that the accused has infact confessed the crime and pleaded for leniency in the matter of awarding sentence. Such a confession can also be taken as a supportive material to the ocular testimony available on record to convict the accused. But the confession made during the course of trial, not at the time when he was questioned on framing of charges, can be the sole basis for convicting the accused.

26. It was contended by learned counsel appearing for the appellant that the accused was not questioned under Section 235(2) Cr.P.C. before awarding the sentence after conviction. On a perusal of the trial Court records, I find that in spite of the confession made by the accused-appellant pleading leniency in sentence after the confession of the crime, the learned trial Judge was pleased to question him on the quantum of sentence to be awarded to him. Thereafter, the trial Court was pleased to award the sentence of 5 years R.I. Therefore, the above submission made by learned counsel appearing for the appellant is found to be factually incorrect.

27. Learned counsel appearing for the appellant lastly submitted that the conviction of the accused based on the confession made during the course of trial is completely vitiated. He referred to the decision of the Hon'ble Bench of Allahabad High Court in **Ram Kumar vs. State of U.P., 1998 (1) RCR (Criminal) 816.**

28. On a perusal of the above judgement, I find that on the date

fixed for recording of the prosecution evidence, the accused had confessed to the crime. The trial Court chose not to examine any of the witnesses on the side of the prosecution. It straight away convicted the accused based on such confession made during the course of trial. But, in the instant case, material eye witnesses to the occurrence had been examined. The medical evidence was also adduced by the prosecution. The confession was referred as corroborative piece of evidence by the trial Court in the instant case. Therefore, I do not find any irregularity in the conviction recorded by the trial Court, not only based on the eye witness account and the medical evidence, but also on the confession made by the accused.

29. In the result, the judgement of conviction and sentence passed by the trial Court is confirmed and the appeal stands dismissed.

30. The accused-appellant is on bail. His bail bond stands cancelled. He shall surrender within 15 days from the date of this judgement before the Chief Judicial Magistrate, Patiala, who shall send him to jail to undergo the remaining part of the sentence. If he fails to surrender, the learned Chief Judicial Magistrate, Patiala shall take coercive steps to secure his presence.

March 18, 2015
Gulati

(M. JEYAPPAUL)
JUDGE