

IN THE HIGH COURT OF PUNJAB AND HARYAN AT
CHANDIGARH

CRA-D-5-DB-2003

Hans Raj

....Appellant

Versus

State of Haryana

Respondent

Date of decision: 09.02.2015

**CORAM: HON'BLE MR JUSTICE ASHUTOSH MOHUNTA
HON'BLE MRS JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters?
3. Whether the judgment should be reported in the Digest?

Argued by: Ms. Aditi Girdhar, Advocate for the appellant.

Ms. Kirti Singh, DAG, Haryana.

Ms. Pratibha Yadav, Advocate and
Mr. Saurav Dalal, Advocate for the complainant.

RAJ RAHUL GARG, J.

By instituting the present appeal, appellant has impugned the judgment dated 29.11.2002 and the order on quantum of sentence dated 30.11.2002 respectively passed by the learned Additional Sessions Judge, Rohtak whereby appellant has been convicted for the offence under Section 302 IPC and sentenced to undergo RI for life and for a fine of Rs.8,000/-, in case of default of payment of fine, he shall have to further undergo RI for a period of two years.

In nutshell, the case of the prosecution is this that on 10.6.2002, a V.T Message (Ex.PT) from Police Post, PGIMS Rohtak was received to the effect that Hem Raj son of Tara Chand was brought dead. SI Neki Ram

(PW-15) reached casualty of PGIMS Rohtak. He collected medical ruqa Ex.PU and had gone to the hospital where he met Balbir Singh (PW10) and recorded his statement (Ex.PF). Balbir Singh stated that he makes his both ends meet by driving a Mule cart. Tara Chand, who lives in his neighbourhood, has seven daughters and a son, namely, Hem Raj, aged about 23 years (since deceased). About 15 to 20 days back, accused-appellant Hans Raj, who lives in their locality along with his family, had a dispute with his son Ravinder as two persons brought their mules to the house of Hans Raj for shearing purposes, but Ravinder had refused to do so. Thereafter, Ravinder being annoyed with his father had left the house and started doing labour work on the tractor trolley of Hem Raj. At this, accused-appellant Hans Raj started nursing a grudge against Hem Raj. He raised a dispute with him telling as to why was he getting labour work from his son on his tractor trolley. Due to this ill-will, on the day of occurrence at about 10.00 PM, while appellant Hans Raj was standing in his shop, called Hem Raj. As soon as Hem Raj reached there, Hans Raj, all of a sudden, inflicted a blow on the chest of Hem Raj with a knife like sharp edged object. Hem Raj cried "HAI MAR DIYA". At that time, he himself (Balbir Singh) was standing at a distance of about 4 to 5 paces from them. He witnessed the occurrence in the light of electric bulb and immediately rushed to brother's son Hem Raj, who came on the road, holding his chest by his hand and fell down. Balbir Singh raised alarm shouting "Mar-diya Mar-diya" whereupon Lok Ram (PW11), Satish (PW9) and Dharambir son of Raghbir residents of the same locality, rushed there running and took injured Hem Raj to PGIMS, Rohtak on a motorcycle. Dr. Declared Hem Raj brought dead.

SI Neki Ram, sent ruqa (Ex.PF) through Constable Baljit Singh to the police station, with his Endorsement (Ex.PF/1) whereupon formal FIR (Ex.PG) was recorded by ASI Rajender Singh (PW2) after making his Endorsement (Ex.PF/2). Special report was sent to Illaqa Magistrate and senior police officer through EHC Tarif Singh. SI Neki Ram then prepared inquest report (Ex.PB) and sent the dead body for post mortem examination with application (Ex.PA) through Constable Ajit Singh. He then reached the place of occurrence, along with Balbir Singh complainant, lifted bloodstained earth from the spot and sealed it with the seal of NR and took the same into police possession vide memo Ex.PN. Same was attested by the complainant-Balbir Singh (PW10) and HC Randhir Singh (PW14). SI Neki Ram also prepared rough site plan of the spot as Ex.PX. After post mortem examination, Baljit Singh Constable handed over one sealed parcel containing clothes of deceased with sample seal to SI Neki Ram, which was taken into police possession vide recovery memo (Ex.PH).

Upon post mortem examination, Dr. Hari Om Manchanda (PW1) vide post mortem report (Ex.PB) observed that in his opinion, the cause of death of the deceased was due to haemorrhage shock as a result of injury to heart which was ante-mortem and sufficient to cause death in ordinary course of nature.

Accused-appellant was arrested on 14.6.2002. On interrogation, appellant suffered disclosure statement (Ex.PR) having kept concealed one blade of scissors in his fields near Chamaria turning and further that he alone knows about and get the same recovered. On the basis of this disclosure statement, one blade of scissors (Ex.P1) was got recovered on the next day i.e 15.6.2002. Its sketch (Ex.PO) was prepared.

Ex.P1 was sealed in a parcel with seal RS and was taken into possession vide recovery memo (Ex.PQ). Ex.PY site plan of the place of recovery was prepared.

On 25.6.2002, vide application (Ex.PC), sealed parcel of Ex.P1, was produced before Dr. Hari Om Manchanda (PW1), who after opening the sealed parcel and seeing the weapon, gave his opinion (Ex.PE) to the effect that possibility of above weapon in causing the injury to deceased as mentioned in the post mortem report cannot be ruled out. Doctor then re-sealed this weapon with his own seal and returned it to the police. Prior to it, the Doctor had also prepared sketch (Ex.PD) of weapon (Ex.P1).

On 17.06.2002, scale site plan (Ex.PJ) was got prepared from the Draftsman Samit Kumar PW-5, on pointing out the place by PW-Balbir Singh.

During investigation, it was also found that Lok Ram PW-11, while witnessing the occurrence had tried to rescue Hem Raj, from accused Hans Raj. When Lok Ram asked accused as to what was he doing, he also tried to attack him with the blade of scissors. Then in order to save himself, he hurled a chair on the accused, however, Hans Raj moved backward and thus the chair did not hit him. Hans Raj gave another blow with the blade of scissors, which hit the left side of chest of Hans Raj. Thereafter, when Hans Raj Fell down, Balbir-complainant shouted "Mar-diya", which attracted witnesses, then accused gave a blow with glass bottle to Lok Ram and then fled away along with blade of scissors. In the hospital, Doctor declared Hem Raj dead. Thereafter Lok Ram started feeling unwell and subsequently became unconscious. He was taken to the clinic of a private Doctor Ramesh Kumar Satija (PW12). Investigating Officer Neki Ram on

05.07.2002 visited the clinic of that Doctor and obtained copies (Ex.P4 and Ex.P.5) of register and recorded his statement. Aforesaid sealed parcels of the clothes of the deceased, sealed parcel of the weapon (Ex.P1), sealed parcel of bloodstained earth were deposited with MHC Ram Kumar (PW7). Report of FSL Ex.PZ and Ex.PZ/1 show that human blood was found on Banian (Ex.P3), underwear (Ex.P2) and bloodstained earth except the weapon i.e plank of Scissors (Ex.P1).

After completion of necessary investigation, challan was put in the Court.

Finding a prima facie case against the appellant for committing offence punishable under Section 302 IPC, he was charge sheeted accordingly to which he did not plead guilty but claimed trial.

After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C was recorded wherein accused denied all the incriminating circumstances appearing against him in the prosecution evidence and claimed to be innocent. Accused alleged that in fact, some unknown persons had caused injuries to Hem Raj (deceased) in the darkness and later on in connivance with the police, he was falsely implicated in this case. There was earlier ill-will between him and Lok Ram, who formed Youth Club in which Hem Raj (since deceased) was member. Lok Ram was President and he was Vice-President and due to party faction in the Club, he was falsely implicated.

After hearing both the sides and appraising the entire evidence and material coming on record, the learned trial Court recorded the judgment of conviction dated 29.11.2002 and order of sentence dated 30.11.2002 whereby the accused was sentenced as mentioned in the earlier

part of this judgment.

We have heard Ms. Aditi Girdhar, Advocate for the appellant, Ms. Pratibha Yadav, Advocate and Mr. Saurav Dalal, Advocate for the complainant and Ms. Kirti Singh, DAG, Haryana for the State and appraised the entire material available on record.

First of all, it was argued by learned defence counsel Ms. Aditi Girdhar, Advocate that Balbir Singh (PW10)-complainant of this case and Satish Kumar (PW9) have materially improved their statements when appeared in the Court. Balbir Singh did not state before the police in his report (Ex.PF) that he and Hem Raj were standing in front of his house when appellant called Hem Raj to his shop. In fact, this discrepancy cannot be termed as material discrepancy appearing in the statement of PW10. The fact remains is this that the appellant as well as the witnesses are the residents of the same locality. Their businesses is also in the same locality. The occurrence is of 10.00 PM. The presence of Balbir Singh-complainant and eye witnesses Satish (PW9) and Lok Ram (PW11) cannot be doubted at the spot. It is also a fact that Hem Raj had gone to Hans Raj on his calling while Hans Raj appellant was standing in his shop.

It was further pointed out by learned defence counsel that Balbir Singh did not state in his statement (Ex.PF) that the appellant-Hans Raj gave blow on the left side of the chest of Hem Raj. As such, the statement of Balbir Singh is not believable and even his presence at the spot becomes doubtful.

This contention of learned counsel for the appellant is again devoid of any force as the seat of injuries is proved to be the left part of chest of deceased. Medical evidence also corroborates this fact. PW1-Dr.

Hari Om Manchanda, who conducted the post mortem examination of the dead body of Hem Raj described the injuries on the person of Hem Raj, which are as follows:

“1. An incised wound 2.8 cm x 1.2 cm on left side of chest just below and medial to left nipple in the fifth intercostal space. It was 15 cm below clavicle and 6cm from midline. Wound was going downwards at 90 degree and entering into left ventricle of the heart anteriorly.

2. An incised wound 1.2 cm x 0.8 cm on left side of chest in the sixth intercostal space in the anterior axillary line. It was 11 cm from left nipple. Wound was only superficial and upto the muscle of chest wall only.

Right lung was healthy and pale. Left lung was healthy but whole of the left thoracic cavity was full of blood. Heart had already been described. Rest of the organs were healthy and pale.”

These two injuries clearly show that the blow was given on the left side of the chest of Hem Raj. Not only this, even as per this Doctor corresponding to wound, there was tear in the banian also. Regarding second injury also corresponding to wound, there was tear in the banian. It does not make any difference if Balbir Singh deposed that the blow was given in the left side of the chest or not. The deposition of word 'left' in the facts and circumstances of the present case, is immaterial and does not go to the root of the case so as to discard the testimonies of eye witnesses, which prove the guilt of the accused.

It was further pointed out by learned defence counsel that the statement of Balbir Singh (PW10) Ex.PF is silent on the point of giving of second blow by the appellant to Hem Raj and also on the point of hurling of chair by Lok Ram on the appellant and further giving of blow from glass

bottle by the appellant to Lok Ram. He was duly confronted on this aspect. As such, the improvements made by Balbir Singh in his statement before the Court makes his presence doubtful at the spot and also makes his statement untrustworthy.

Of course, there is no mention about these details in the statement (Ex.PF) yet on this account, statement of Balbir Singh cannot be discarded. The second blow given by the appellant on the left side of chest of Hem Raj stands proved with the help of medical evidence on record as discussed above. Deceased is the nephew of Balbir Singh. On witnessing the occurrence particularly when Hem Raj was profusely bleeding, it was quite natural for Balbir Singh to be perplexed. It was not expected of Balbir Singh in such circumstances to give each and every minute detail of the incident, which were not significant for the case. The presence of Lok Ram is established on the file as Balbir Singh-complainant in statement (Ex.PF) clearly mentioned about his presence at the spot. Even Satish PW9, another eye witness of the case spoke about the presence of Lok Ram at the spot. Lok Ram has also narrated the incident in question as eye-witness by appearing in the court as PW11. If Lok Ram had hurled a chair on the accused, which did not hurt him, it was not necessary for the complainant to make a mention of that very fact in the FIR (Ex.PF). It is the settled proposition of law that when an eye-witness is examined at length, it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant detail. Perhaps, an untrue witness, who is well tutored can successfully make his testimony totally non-discrepant. Too serious a view to which adopted on mere variation falling in the narration of an incident (either as between the evidence of two

witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny. The discrepancies which do not shake the basic version of the prosecution case cannot be discarded. Discrepancies, which are due to normal error of perception or observation should not be given importance. The witnesses now-a-days go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the Court. As such, the courts should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy. If Balbir Singh did not make a mention about the second blow given to Hem Raj in the statement (Ex.PF), is not very material as Balbir Singh might not have exactly noticed the second blow inflicted on the same side of chest of Hem Raj but in the anxiety to do better, he might have deposed so when appeared in the Court. In fact, there is no doubt about the second injury on the person of Hem Raj as it is duly proved by PW1-Dr. Hari Om Manchanda and the factum of hurling of chair on the accused by Lok Ram in his self defence is clearly mentioned by Lok Ram (PW11) to the police as well when he appeared as witness in the Court. There is no discrepancy on this point in the statement of PW11-Lok Ram. Even otherwise, some variation or exaggeration are bound to be there in such like cases and the prosecution case, which is otherwise fully proved cannot be thrown out only on the basis of minor discrepancies, improvements, which are immaterial.

In **Sukhdev Yadav Vs. State of Bihar 2001 (4) RCR**

(Criminal) 257, the Apex Court has held as under:

“There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical

niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore should not render the evidence of eye-witnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence.”

The contention of learned defence counsel about the discrepancies appearing in the statement of PW9 that he did not mention in his statement (Ex.DA) that he was present at his shop whereas in the statement (Ex.DA), the factum of running a retail shop of provision articles find mention, is not sustainable. It hardly matters if PW9 deposed that he was running a Kiryana shop at Salaria Mohalla, Rohtak which is the spot or he said that he was present at his shop. The presence of Satish Kumar is proved on the file with the statements of eye witnesses. Even otherwise, there is no material on the file to doubt the presence of Satish Kumar at the spot.

There was in fact, no reason for the complainant to implicate appellant falsely in this case as there was no previous enmity between the parties. Hem Raj suffered fatal injury tearing his heart. There is no reason appearing on the file, which could give a solid ground for sparing the real culprit or to substitute the appellant for him. Of course, it is on record that the appellant was having ill-will against Hem Raj as he was getting labour work on his Tractor trolley from Ravinder son of Appellant, who had gone to him, after having a dispute with his father. So, the cause was with the appellant-accused and not with the complainant party.

It was next argued by learned counsel for the appellant that as per FIR, the appellant had called Hem Raj in his shop so the occurrence must have taken place inside the shop but bloodstained earth was lifted from outside the shop as such the witnesses either did not witness the

occurrence or the genesis of the occurrence has been suppressed. This argument of learned defence counsel is devoid of any force. It is a fact stated by all the eye witnesses that accused-appellant while standing in a shop had called Hem Raj and when Hem Raj had gone to the appellant, he gave a blow with single plank of blade of scissors on the chest of Hem Raj. There is nothing on record to show that the aforesaid blow was given by the accused to Hem Raj inside his shop. Site plan of the spot (Ex.PX) clearly shows the place of occurrence as outside the shop of Hans Raj as such only on the basis of suppositions, it cannot be said that since accused while standing in his shop called Hem Raj deceased, therefore the injury was also caused by him inside his shop.

Learned defence counsel further raised the argument that the report of FSL (Ex.PZ/1) shows that no blood was found on the blade of scissors (Ex.P1), therefore it cannot be termed as a weapon of offence.

After commission of the crime, weapon of offence remained with the accused-appellant. What he did with that was known to him. Whether he washed the same or not is also within his knowledge. Recovery was effected on 14.6.2002. There is nothing on record to show that when Ex.P1 was got recovered, it was having bloodstain. Possibility of washing of Ex.P1 before hiding the same in the soil near the stone with the inscription "Chamarian" near road in the fields of Village Chamarian cannot be ruled out. This very weapon was shown to the Doctor. The opinion of the Doctor was obtained as to if the injuries on the person of deceased could be caused by the aforesaid weapon or not to which Doctor gave his opinion (Ex.PE) to the effect that the possibility of Ex.P1 used cannot be ruled out. The aforesaid weapon of offence was got recovered by

accused himself vide memo Ex.PQ in pursuance of disclosure statement (Ex.PR). PW14-HC Randhir Singh and PW13-Chandan Singh and Investigating Officer (PW15)-Neki Ram proved the recovery of Ex.P1 from the possession of accused-appellant as such even if no blood was found on the weapon of offence at the time of its recovery is not very material.

It was next argued by the learned defence counsel that Lok Ram remained admitted in the clinic of Dr. Ramesh Kumar Satija. If accused-appellant had given a blow with glass bottle to Lok Ram, he would have received some injuries. He did not get medicolegally examined and this fact makes his presence doubtful at the spot.

This contention of learned defence counsel is not sustainable as there is nothing on record to show that Lok Ram received injury on account of glass bottle blow. Lok Ram (PW1) did not state that he received any injury on that account. After the declaration of death of Hem Raj, Lok Ram (PW11) started feeling unwell and later on he found himself in the clinic of Doctor Ramesh Kumar Satija-PW12. Doctor Ramesh Kumar Satija-PW12 categorically stated that Lok Ram was not having any injury, thus since Lok Ram became unconscious, therefore his relatives had chosen to take him to a private Doctor-PW12. As such, if Lok Ram did not get himself medicolegally examined, it is immaterial.

No other point was urged before us.

For the above said reasons, maintaining the judgment of conviction dated 29.11.2002 and order of sentence dated 30.11.2002, this appeal is ordered to be dismissed. If the appellant is on bail, his bail bonds, shall stand cancelled and he be taken in custody for serving the remaining period of sentence. The concerned Chief Judicial

Magistrate, shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Criminal Procedure Code, and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The District & Sessions Judge, Rohtak, shall ensure that the directions are complied with, within the time frame, and the compliance report is submitted immediately thereafter.

The Registry shall keep track of the submission of compliance reports, and put up the papers whether the reports are received or not, within the time frame, immediately after the expiry thereof.

(ASHUTOSH MOHUNTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

09.02.2015
manoj/Ashwani