

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

CRA-D-925-DB-2009 (O&M)

Date of decision : August 11, 2015

Nirbhai Singh

..... Appellant

Versus

State of Punjab

..... Respondent

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE GURMIT RAM**

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present : Ms. Saumya Ahluwalia, Advocate with
Mr. P.S. Ahluwalia, Advocate
for the appellant.

Mr. S.S. Dhaliwal, Addl. A.G., Punjab.

GURMIT RAM, J.

1. This appeal is preferred by appellant-herein Nirbhai Singh (accused) against the judgment dated 08.09.2009 and order of sentence dated 09.09.2009 passed by the Court of learned Sessions Judge, Sangrur in criminal case bearing FIR No.169 dated 27.12.2007, Police Station, Sadar Sangrur, under Section 302, IPC, vide which the appellant (accused) was convicted for the offence under Section 302, IPC and sentenced to undergo imprisonment for life with no order as to fine.

2. The case as put-forth by the prosecution before the learned trial Court in brief was that on 27.12.2007 SI/SHO Harvinder Singh of Police

Station, Sadar, Sangrur along with ASI Gurjant Singh and other police officials was present in the area of Bus Adda, Julamgarh in connection with patrolling on a Government vehicle bearing No.PB-12-G-8542. There came to him complainant-Smt. Malkiat Kaur widow of Mohinder Singh resident of Lala Pati Ladda, Police Station, Dhuri along with one Virinder Singh, Ex-Panch of village Saron. She made her statement before him which was recorded as under: -

“Her parental village is Saron. She has five brothers namely Malkiat Singh, Maghar Singh, Mithu Singh, Darshan Singh and Joginder Singh. Her brother Malkiat Singh is married, whereas her brother Maghar Singh is unmarried, who is residing with his brother Malkiat Singh in one house. Her brother Mithu Singh is also unmarried, who is residing separately in his house. Her abovesaid brothers Darshan Singh and Joginder Singh are also residing separately. Yesterday on 26.12.2007, she came to her parental village Saron to see her brothers. At about 8:00 P.M. she was making conversation with her brother Mithu Singh in the house of her brother Malkiat Singh. At that time her nephew Nirbhai Singh son of Malkiat Singh came from outside, who asked her brother Maghar Singh as to what he is doing in their house and directed him to go out of the house. Upon this, said Maghar Singh replied that he is working in their house since long like a servant (Siri), now where he should go. Her nephew Nirbhai Singh started grappling with her brother Maghar Singh. She

and her brother Mithu Singh tried to prevent said Nirbhai Singh, but he took out a knife from the fold of his pent in their presence and caused a knife blow to Maghar Singh, which hit in the left side of his chest in the courtyard of his house. On receiving this injury said Maghar Singh had fallen and assailant Nirbhai Singh fled away from the spot along with the weapon. She and her brother Mithu Singh started taking care of Maghar Singh, but unfortunately he succumbed to the injury. Her nephew Nirbhai Singh had committed murder of her brother Maghar Singh for the reason that he was having suspicion that said Maghar Singh is having illicit relations with his mother Surjit Kaur. They did not come to Police Station in last night due to late night hour. The above noted statement of complainant after its recording was read over to her, which was thumb marked by her after admitting it to be correct and attested by abovesaid SI/SHO.”

On this statement of the complainant, the said Police Officer also made his endorsement and sent the *Ruqa* to the Police Station for registration of the case and accordingly on its basis, the instant case was registered against the accused (appellant-herein).

3. Thereafter, SI/SHO Harvinder Singh along with his police officials, complainant-Malkiat Kaur and Virinder Singh Ex-panch came to the spot of occurrence in village Saron and inspected the same. Inquest report with regard to dead body of the deceased was prepared. Statements under Section 175, Cr.P.C. of the concerned persons were also recorded.

Thereafter, he sent the dead body of the deceased to Civil Hospital for the post-mortem through HC Teja Singh. Site plan of the place of occurrence was prepared. Blood stained earth was lifted from the spot, which was converted into a parcel by putting the same in the *Dabbi Tin*, duly sealed by him with his seal of "HS". During investigation of the case, accused-Nirbhai Singh was apprehended in this case on 27.12.2007. During interrogation he got recovered blood stained knife (*Kard*), wrapped in a glazed-paper. Its rough sketch was prepared and the same was taken into police possession. During his personal search, currency note of ₹50/- was recovered, which was also taken into police possession vide a memo. Accused was formally arrested in this case and grounds of arrest were also disclosed to him. Abovesaid parcels containing blood-stained earth and knife (*Kard*) were sent to the Forensic Science Laboratory, Chandigarh for the chemical analysis. Photographs of the place of occurrence were also taken. Statements of witnesses were recorded. On receipt of report of Chemical Examiner and on the completion of investigation, challan in this case was presented against the accused in the Court of learned Illaqa Magistrate, Sangrur, who further committed this case for trial to the Court of learned Sessions Judge, Sangrur after making compliance of the provisions as envisaged under Section 207, Cr.P.C.

4. Finding a prima facie case punishable under Section 302 IPC against the accused, he was charge-sheeted accordingly by the learned trial Court vide order dated 24.04.2008 to which he pleaded not guilty and claimed trial.

5. During the trial, the prosecution examined its seven witnesses

in order to bring home the guilt of the accused.

6. Thereafter, the accused was duly examined as required under Section 313 Cr.P.C. during which the entire incriminating evidence as well as circumstances brought on record by the prosecution during trial of the case was put to him, which was denied by him entirely. Further, he took the plea that he had been involved in this case since Malkiat Kaur and Mithu Singh PWs were inimical to his family members. Maghar Singh, who was just like his father had executed a Will regarding his entire property in his favour, but said Malkiat Kaur and Mithu Singh were compelling him to revoke this Will. The mutation of his land was also got sanctioned by them in their favour from Tehsildar. He filed an appeal before Collector (SDM), Sangrur, in which mutation was sanctioned in his favour. Litigation is still going on between them regarding inheritance of Maghar Singh. Neither Malkiat Kaur nor Mithu Singh was present in their house. He was sleeping at 8:00 P.M. and dead body of Maghar Singh was noticed in the early hours on 27.12.2007. Police came at the spot, who called Malkiat Kaur from village Ladda. He had been enmeshed in this case falsely by said Malkiat Kaur and Mithu Singh in connivance with each other in order to grab the property of Maghar Singh. Even he had denied that Maghar Singh had died or murdered in their house. Further, he had pleaded innocence, but did not lead any evidence in his defence except tendering copy of order dated 29.07.2009 Ex.DB passed by Assistant Collector Ist Grade, Sangrur and copy of mutation No.3744, Ex.DC.

7. The learned trial Court after hearing counsel for both the parties and perusing the record as well held the accused guilty for the offence

punishable under Section 302, IPC and sentenced him thereunder vide the impugned judgment and order of sentence.

8. The appellant-accused being not satisfied with the impugned judgment and order of sentence approached this Court by filing the instant criminal appeal, notice of which was given to respondent-State. Record of learned trial Court was also requisitioned.

9. Counsel for the appellant as well as respondent were heard. Record was also scanned with their eminent assistance.

10. Learned counsel for the appellant has contended that as per the case of the prosecution, the alleged occurrence took place on 26.12.2007 at about 8:00 P.M and the FIR with regard to this occurrence was lodged on 27.12.2007 at 9:30 A.M. There is a delay of about 13/14 hours in lodging of the FIR in this case and the same had been used by the complainant party to falsely implicate the accused in this case, since there was no explanation on the part of the prosecution qua this delay. Then it is further her contention that complainant-Malkiat Kaur (PW-1) was not on visiting terms with the family of the appellant and as such, she was inimical towards the family of the appellant. Herein, she has referred to the cross-examination of this witness, wherein she has stated that parents of the appellant were not invited in the marriages of her daughters. She also did not join the marriage of this appellant, due to strained relations between her and family of the appellant. In this context, the counsel for the appellant has also contended that the very presence of this witness at the spot at the time of alleged occurrence is also highly doubtful as well as unreliable, since she, as abovesaid, was not on speaking terms with the family of the appellant.

Then it is also contended that deceased had executed a Will regarding his entire property in favour of the appellant and that both the complainant-Malkiat Kaur (PW-1) and Mithu Singh (PW-2) were compelling him to revoke this Will and on this count also, the statements of these two star witnesses of prosecution are not credible being having an element of suspicion and tainted with ulterior motive for the reasons abovementioned. Then it is her further contention that prosecution has also failed to prove any motive, in the case in hand. Then the prosecution had deliberately not produced the clothes of the deceased in the Court during trial of case, which were allegedly worn by the deceased at the time of occurrence. Then she has also pointed out some improvements as well as contradictions which had occurred in the statements of PW-1 (Malkiat Kaur) and PW-2 (Mithu Singh).

11. But on the other hand, learned counsel for the State has denied the above contentions of the learned counsel for the appellant vociferously and contended that the case of prosecution as alleged has duly been proved on the record on the basis of cogent and reliable evidence led during trial of the case.

12. For the proper appreciation of above rival contentions of both the parties, the evaluation of the evidence as led by both the parties during trial of the case is held to be essential which is discussed as under:-

PW-1, Malkiat Kaur is complainant as well as eye-witness to the alleged occurrence in this case. Her statement as made by her before the Court in precise is that on 26.12.2007, she had come to her native village Saron to meet her brothers. At about 8:00 P.M. she was having

conversation with her brother Mithu Singh in the house of her brother Malkiat Singh. At that time, her nephew Nirbhai Singh, accused present in the Court came there, who at once started beating her brother Maghar Singh (Bachelor) and asked him to go out of the house. On this Maghar Singh answered that he had been working in the house like *Siri* since long, now where he should go. Then the accused took out knife from the fold of his pent and gave a knife blow into left flank of Maghar Singh. On receipt of this injury, Maghar Singh fell down and accused slipped away from the spot. They started caring injured Maghar Singh, who anyhow died. The cause behind this occurrence as stated by her is that the appellant-accused was under suspicion that Maghar Singh had illicit relations with his mother and as such, he had murdered him. Then it is also in her statement that she got recorded her statement to the Police Ex.PA on the next day of the occurrence.

PW-2 Mithu Singh is brother of deceased Maghar Singh and he was present at the spot at the time of alleged occurrence and had seen the same. He had supported the version of prosecution tooth-and-nail by corroborating statement of complainant-Malkiat Kaur (PW-1).

PW-3, Dr.Sanjiv Kumar Aggarwal, Medical Officer had conducted post-mortem examination on the dead body of deceased Maghar Singh on 27.12.2007 at about 01:50 P.M. on police request Ex.PC, which was marked to him by the Senior Medical Officer vide endorsement Ex.PC/1. During post-mortem examination, he noted the following injuries:-

“There was a stab wound on the left side of chest

in the mammary area. The wound was obliquely placed in the 4th intercostal space about 3 cm. lateral to the border of mid sternum. The wound was 2.5 cm. in length, 0.25 cm. in width and 5 cm. deep. The wound had obliquely traversed the whole thickness of intercostal space and has entered the left ventricle cutting the full thickness of ventricle and entering its cavity. The whole of pericardial sac and mediastinum full of blood.”

In his opinion, cause of death in this case was shock and haemorrhage due to stab injury which was ante-mortem in nature and sufficient to cause death in the ordinary course of nature. Further he had proved the carbon copy of the post-mortem report as Ex.PB and pictorial diagram showing the seat of injury as Ex.PB/1. Further on opening of sealed parcel, same was found to be containing a knife (*Kard*) Ex.PI.

PW-7, SI Harvinder Singh, Investigating Officer of this case was posted as SHO at Police Station, Sadar Sangrur on the date of alleged occurrence. He recorded the statement of complainant Ex.PA, upon which he made his endorsement Ex.PA/1, on the basis of which FIR Ex.PA/2 was recorded in this case with regard to the alleged occurrence. Then further he visited the spot of occurrence and prepared the inquest report Ex.PD on the dead body of Maghar Singh. Then he lifted the blood stained earth from the spot and took the same into his possession vide memo Ex.PH by preparing its parcel duly sealed with his seal of “HS”. Further he proved the rough site plan of the place of occurrence Ex.PJ. Then he deposed about the arrest of the accused and recovery of one knife (*Kard*) Ex.PI during his search, rough sketch Ex.PL of which was prepared and took the same into his

possession vide memo Ex.PK after preparing its parcel. Then he also proved the memo Ex.PM with regard to personal search of the accused. Vide memo Ex.PN grounds of arrest were disclosed to the accused. He also proved memo Ex.PQ vide which a parcel Ex.P4 containing clothes of the deceased bearing seal of the Doctor "SK" was taken into police possession after the post-mortem. On returning to Police Station, he deposited the case property with the MHC in intact condition. Then he also proved another memo Ex.PE vide which photographs Ex.P2 and Ex.P3 produced before him by C.Amrik Singh were taken into police possession. Then he recorded the statements of witnesses and after completion of investigation, accused was challaned in this case.

C.Amrik Singh appeared as PW-4. He stated that he took the photographs Ex.P2 and Ex.P3 on 27.12.2007 by visiting the spot of occurrence, which were produced by him before the SHO Sadar, Sangrur, who took the same into possession vide memo Ex.PE.

PW-6, HC Darshan Singh was the MHC in P.S. Sadar Sangrur on the relevant date. He stated that he recorded FIR Ex.PA/1 in this case on receipt of *Ruqa* Ex.PA. Further he had tendered in his statement his duly sworn affidavit Ex.PG as the part of his statement.

PW-5, HC Gurtez Singh was also posted as a Constable in the abovesaid Police Station on 14.1.2008. He deposited the case property of the instant case in the office of CFSL Chandigarh on 14.01.2008 after getting it in sealed condition from the MHC. His affidavit in this regard is Ex.PF.

13. So far as the question of delay is concerned, the alleged

occurrence took place in a village situated in the rural area during night hours in the month of December on 26th in the year 2007. It is a hard fact that in the northern part of this country there becomes extreme cold followed by thick fog during this season. Then it had not come on the record during investigation that either any landline telephone connection was installed in the house where the alleged occurrence took place or any member of family residing in this house was having any mobile phone connection on the date of alleged occurrence. The matter with regard to the present occurrence was reported to the Police on the next date at about 09:30 A.M.. Then it is also a fact that sun during this season also rises late by 7:30/8:00 A.M. due to extreme cold and thick fog. So, the abovesaid delay in lodging the FIR in this case for the reasons abovementioned is held to be genuine as well as reasonable. If complainant-Malkiat Kaur (PW-1) and Mithu Singh (PW-2) had to implicate anybody in this case falsely, then they could have done so by implicating some more other members of his (appellant's) family. So there is nothing on the record to say that the abovesaid delay of 14 hours in lodging the FIR in this case has been used by complainant to involve the accused in this case falsely.

14. Regarding the alleged material contradictions in the statements of PW-1 and PW-2, learned counsel for the appellant has contended that according to PW-1, the dog had licked the blood of the deceased and whereas PW-2 on this point had deposed that dogs did not lick the flesh and blood of the deceased. Then according to PW-1, after the alleged occurrence, Surjit Kaur ran after accused and whereas PW-2, had shown his ignorance as to whether Surjit Kaur had run after the accused after the

occurrence or not. Then further according to PW-1, the Police had collected the flesh from the spot again-said from the drain in front of the house and whereas PW-7 the Investigating Officer of this case on this point stated that he did not notice any blood in the drain nor he tried to locate the same. But it had come in the statement of PW-7 that he had lifted the blood-stained earth from the spot which was converted into parcel. The above discrepancies in the statements of PWs are found to be minor in nature having no material impact on the case of prosecution. Such like contradictions are somewhat natural and bound to occur with the lapse of time. Two or more persons cannot state about the prosecution story in identical words like a parrot.

15. Regarding the alleged improvements made by PW-1 (Malkiat Kaur) learned counsel for the appellant has referred to her cross-examination wherein she stated that she got recorded in her statement Ex.PA that accused had grappled with Maghar Singh and they scuffled, but while confronted with her statement Ex.PA, then it was not found so recorded in it. But as per the record, it is mentioned in Ex.PA that Nirbhai Singh tried to expel Maghar Singh out of the house by giving him push blow. Then further she pointed out from the cross-examination of this witness wherein she stated that she got recorded in her said statement that accused took out knife from the fold of his pent worn by him, but same is found to be so recorded in her statement Ex.PA, while confronting her with her said statement. Then further she has contended that this witness has stated in her cross-examination that she got recorded in her said statement that police had met them at bus-stand of village Julamgarh, but while

confronting her with her alleged statement Ex.PA, then this fact was not found to be so mentioned in it. But in the endorsement Ex.PA/1 made by SI/SHO below her statement Ex.PA it is found recorded that complainant along with one Virinder Singh Ex-Panch had met the police party at bus stand of Julamgarh.

So, in the light of the above discussed statement of PW-1 nothing has come on the record to hold that this witness had made any material and gigantic improvement in her statement while appearing in the Court to prove the alleged prosecution version.

Similar is the fate of statement of PW-2 (Mithu Singh). Learned counsel for the appellant has failed to bring to the notice of the Court any material improvement in the statement of this witness while appearing in the Court.

16. Then it is established on record that litigation with regard to inheritance of Maghar Singh (since deceased) is pending between the parties. It was the plea of the accused that Maghar Singh had executed a registered Will in his favour qua his property and that both PW-1 and PW-2 were pressing him to revoke this Will. But this litigation cannot be held to be a ground to implicate the present accused in this case falsely. If PW-1 is not on visiting terms with the appellant and his family members, then that also cannot be treated to be a ground to discard her statement or to hold that the appellant has been involved in this case falsely by her in connivance with PW-Mithu Singh. Then it has also come in the statement Ex.PA of complainant-Malkiat Kaur that PW-Mithu Singh is also unmarried. So in this situation he has nothing to do with the property of his brother Maghar

Singh (since deceased) or to involve the appellant in the instant case falsely for the murder of Maghar Singh.

17. So far as the parcel containing clothes of deceased is concerned, the same was produced in the Court as Ex.P4. The learned defence counsel did not make any request to the Court for the opening of this parcel at the relevant time in order to ascertain as to whether there was any cut in the cloth of the deceased corresponding to the injury found on the deadbody during post-mortem. So the plea of the appellant that clothes of the deceased were not produced in the Court during trial of the case is also found to be not tenable being the result of some mis-conception.

18. So far as the motive part is concerned, it has not come on record that Maghar Singh (since deceased) was having illicit relations with the mother of the appellant. At the time of alleged occurrence, he came to his house from outside where PW-1 and PW-2 were already present while making some conversation. The appellant asked from Maghar Singh as to what he had been doing in his house, upon which he replied now where he should go, as he is working in his house like a servant (*Siri*). On this in a fit of anger and being over-swayed under the impression that he (Maghar Singh) is having illicit relations with his mother, which nobody in our society generally tolerates, accused took out a knife from the fold of his pent and gave a knife blow to Maghar Singh, which hit on the left side of his chest and proved fatal to him.

So it was a case of sudden and grave provocation leaving no time for the assailant to retain his power of self control. Then appellant had also given a single knife blow to the deceased and ran away from there.

The alleged knife was like *kard* which is usually used in the kitchen for cutting vegetables etc. etc.

19. In the light of above circumstances of this case, the present case is covered within the provisions of Exception I of Section 300 of IPC. So this case falls within the ambit of provisions of Section 304 Part-I, IPC.

Certain case laws on this point are discussed as under:-

(a) **Mahabir Singh vs. State of Haryana, 2013(2) Law**

Herald 1070. In this case law, the deceased did not serve food to appellant personally which caused provocation and the appellant picked up an axe and killed the deceased. It was held that it is a case of culpable homicide not amounting to murder and falls within exception 1 of Section 300, IPC.

(b) **Satpal vs. State of Haryana 2014(5) Law Herald 4213.**

In this case, the accused proceeded to the house after the work and found his brother lying on a cot. He suddenly got enraged over the reply given by the deceased that he had no idea to work in the field during summer. He picked up a Kulhari from the house and launched a sudden attack on his brother which proved fatal. It was held that in this case, the accused had committed an offence under Section 304 Part-I of the IPC and the sentence was reduced.

20. Then it is also a fact that if somebody gives a knife blow in the chest of the victim then his intention in doing so is none else but to cause

such bodily injury to him as is likely to cause death.

21. In the light of the above discussion, the conviction and sentence of imprisonment of appellant under Section 302, IPC is set aside. Instead, he is convicted under Section 304(1), IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of ₹10,000/-, and, in default of payment of fine, to further undergo rigorous imprisonment for one year.

The appeal stands disposed of accordingly.

August 11, 2015.
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(GURMIT RAM)
JUDGE