

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 13.10.2015

CRA-D No.332-DB of 2010

Chandgi Ram

...Appellant

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
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 or not?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Birender Khehar, Advocate as Amicus Curiae,
for the appellant.

Ms. Palika Monga, DAG, Haryana,
for the respondent.

HEMANT GUPTA, J.

The present appeal is directed against the judgment of conviction dated 17.09.2009 and order of sentence dated 18.09.2009 rendered by the learned Additional Sessions Judge (FTC), Karnal, whereby the appellant was convicted for an offence punishable under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/-. In default of payment of fine, the appellant to further undergo rigorous imprisonment for six months.

The prosecution case was set in motion on the statement of Gurnam Singh son of Joga Ram resident of Village Bhauji Khalsa made to SI/SHO Bhim Singh, P.S. Indri on 14.09.2008. In his statement (Ex.PA), Gurnam Singh stated that yesterday i.e. 13.09.2008, his father Joga Ram (deceased) consumed heavy quantity of liquor. His uncle namely Chandgi

Ram son of Shugan Chand also consumed liquor with his father. Under the influence of liquor, a quarrel took place between them. He stated that after persuading his father Joga Ram not to quarrel, he laid his father on cot to rest in Panchayat Bhawan at about 2.30 AM in the night, where he used to sleep daily. Chandgi Ram, who used to sleep besides his father in the Panchayat Bhawan, also laid down on his cot to rest, when he made him understand. Thereafter, he went to sleep in his house alongwith his wife Jeeto and children. At about 3.00 AM, upon hearing loud voice of his father and Chadgi Ram, he asked his wife Jeeto to go there and make them understand. Thereafter, his wife Jeeto went to Panchayat Bhawan, which is near their house. She advised them not to quarrel. He stated that in the presence of his wife Jeeto, Chandgi Ram cut bites on the chest and shoulder of his father Joga Ram and also gave a brick blow on the head of his father while he was lying on the cot. He stated that on hearing alarm raised by his wife Jeeto that Chandgi Ram had caused injuries to his father, he and his brother Jangsher ran towards Panchayat Bhawan and saw that his father was lying unconscious on the cot smeared with blood. He stated that Chandgi Ram ran away from the spot after inflicting injuries. After some time, his father succumbed to the injuries. He stated that after the death, they shifted the dead body of his father to *verandah* of their house from Panchayat Bhawan. On the basis of such statement, *ruqa* (Ex.PK) was sent to the Police Station for registration of an FIR. On receipt of *ruqa*, FIR (Ex.PA/2) was lodged on the same day under Section 302 IPC.

Thereafter, SI Bhim Singh – the Investigating Officer, reached at the spot. He inspected the place of occurrence and prepared rough site plan Ex.PL. He also informed the Crime Team as well as DSP Surinder Singh Voria. SI Bhim Singh also took into possession *dari*, pillow cover

and sign of blood from the wall and doors. All the articles were converted into separate sealed parcels and taken into possession vide memo Ex.PM. After preparing inquest report, he sent the dead body of Joga Ram to General Hospital, Karnal for post-mortem examination through Constable Shamsher Singh and EHC Naresh Kumar.

Thereafter, pursuant to a secret information to the effect that accused Chandgi Ram is present across the bridge in Village Hinori, he was arrested on the same day. During interrogation, accused suffered a disclosure statement (Ex.PG) to the effect that he had kept concealed the brick, with which he caused the death of Joga Ram, near the place of occurrence. In pursuance of such statement, accused got recovered a brick, which was taken into possession. Rough site plan Ex.PO of the place of recovery was also prepared. On completion of necessary formalities, report under Section 173 Cr.P.C. was filed against the present appellant.

To prove its case, apart from tendering into evidence report of the Forensic Science Laboratory, Haryana, Madhuban, Karnal (Ex.PE) and report of Scene of Crime Visit (Ex.PF), the prosecution has examined as many as 12 witnesses. PW-1 Dr. Rakesh Mittal, RMO, General Hospital, Karnal, who conducted the post mortem examination on the dead body of Joga Ram on 14.09.2008 at about 3.45 PM, proved the post mortem report as Ex.PJ. He opined that cause of death was haemorrhage and shock as a result of injuries to vital organs. All the injuries were ante mortem in nature and sufficient to cause death in a normal course of life.

While appearing in the witness-box, PW-4 Gurnam Singh, son of the deceased and author of FIR, has reiterated its earlier version (Ex.PA). In his cross-examination, he stated that Panchayat Bhawan is at a distance of 30/40 feet from his house. He stated that he himself had not seen Chandgi

Ram causing injuries to his father Joga Ram and that he alongwith his brother Jangsher, who is residing in the adjoining house, had gone to the scene of occurrence on hearing the noise of his wife. He stated that Chandgi Ram was not there, when he and his brother Jangsher reached the scene of occurrence and that he had already fled away. He further stated that when they reached the scene of occurrence and saw the condition of his father, he had summoned the doctor namely Jai Narain through his brother Satyawar. However, before arriving the doctor, his father had already expired.

PW-5 Jeeto Devi wife of Gurnam Singh, an eye-witness, also supported the prosecution case in its entirety. She deposed that when she reached at Panchayat Bhawan at about 3.00 AM, she observed that her father-in-law Joga Ram was lying on the cot and accused Chandgi Ram was biting him on his left shoulder. Then accused lifted a brick and gave its blow on the head of her father-in-law upon which profuse bleeding started from the head. She deposed that Chandgi Ram had run away, when she raised hue and cries. In her cross-examination, she stated that on the day of occurrence, they woke up after hearing the noise of her father-in-law and Chandgi Ram and that her husband had desired her to go there to pacify them, as they would at least feel ashamed before her. She had stated that she saw the occurrence from a distance of 15/16 feet. She tried to catch hold him (Chandgi Ram), but he ran away.

PW-11 SI Bhim Singh – the Investigating Officer, deposed with regard to the investigations carried out by him.

All the incriminating circumstances appearing in the prosecution evidence were put to the accused in his statement recorded under Section 313 Cr.P.C. He denied the prosecution allegations and pleaded false implication. He stated that no occurrence took place between

him and the deceased. The deceased Joga Ram is his real elder brother and that he has never quarreled with deceased Joga Ram.

After going through the evidence on record, learned trial Court convicted and sentenced the accused-appellant, as mentioned above.

Before this Court, learned counsel for the appellant has argued that the prosecution case is full of infirmities, inconsistencies and lacks credibility. It is pointed out that PW-4 Gurnam Singh, son of the deceased, deposed that he saw accused escaping from the place of occurrence with brick in his hand, but PW-5 Jeeto, the alleged eye-witness, has deposed that the brick was left at the place of occurrence. However, as per the disclosure statement (Ex.PG), the brick was concealed under the heap of other bricks near the place of occurrence. Thus, it is argued that the alleged eye-witness account is contradictory and it is impossible to conceal the brick in the manner suggested. Therefore, the prosecution has failed to prove the recovery of brick pursuant to the disclosure statement of the appellant. It is also argued that the occurrence has not been witnessed by PW-5 Jeeto. She is a made up witness, as it is unbelievable that a lady would go out of her house alone at about 3.00 AM, when her husband and other relatives are at home. More so, the distance between the house, where PW-4 Gurnam and PW-5 Jeeto reside, and Panchayat Bhawan, where the deceased was sleeping, is around 60 feet. It is also argued that the place of occurrence is Panchayat Bhawan and the weapon of offence is not any lethal weapon, but a brick. Therefore, it is a case of sudden fight, where a single blow on the head of the deceased with brick has been inflicted without any premeditated mind and when both deceased and the accused were in drunkard condition. Thus, it is a case where the conviction for an offence punishable under

Section 302 IPC is not sustainable, but it can be said to be at best a case of conviction for an offence punishable under Section 304 IPC.

We have heard learned counsel for the parties at length and with their assistance have gone through the record carefully.

A perusal of the statement of PW-4 Gurnam, son of the deceased and author of FIR, shows that he was not present at the place of occurrence at about 3.00 AM, when his wife Jeeto alone was at the place of occurrence. The statement given by PW-4 Gurnam in the first version i.e. Ex.PA, the basis of FIR as well as the manner of evidence in the examination-in-chief relating to causing of injuries, are based upon the information given to him by his wife Jeeto. In fact, in his cross-examination, he candidly admitted that he himself had not seen Chandgi Ram causing injuries to his father Joga Ram and that he went to the scene of occurrence on hearing the cries of his wife. He also stated that Chandgi Ram was not there when he and his brother Jangsher reached the scene of occurrence and that he had already fled away. Thus, his testimony is not that of an eye-witness of the occurrence. His testimony is relevant of the circumstances before the occurrence and thereafter.

While stepping into witness box, PW-5 Jeeto has deposed that on the day of occurrence i.e. 13/14.09.2008, her father-in-law Joga Ram and Chandgi Ram had consumed liquor together. Some altercation took place between them and that her husband namely Gurnam Singh went to Panchayat Bhawan at about 2.30 AM in the night and made them understand and after putting them on their cots, he returned to the house. She deposed that after some time, they again started quarrelling with each other. On this, her husband Gurnam Singh asked her to go to Panchayat Bhawan to make them understand. She deposed that when she reached at the place of

occurrence at about 3.00 AM, she observed that her father-in-law Joga Ram was lying on the cot, whereas accused was biting him on his left shoulder and Joga Ram was crying. Then accused lifted a brick and gave its blow on the head of her father-in-law. She further deposed that on raising hue and cry, her husband and Jangsher reached there. In his cross-examination, she stated that her father-in-law Joga Ram and Chandgi Ram used to drink together and that earlier also, both of them used to quarrel after taking liquor. She stated that her husband had desired her to go there to pacify them, as they would at least feel ashamed before her. Thus, we find that PW-5 Jeeto is not a made up witness. She saw the occurrence from a distance of 15/16 feet, when her husband desired her to go there to pacify them, as they would be at least feel ashamed before her. Gurnam Singh and his wife Jeeto could hear the noise of both of them at their house which is nearby, i.e. at the distance of 40-50 feet.

We do not find any merit in the argument that there are contradictions in the manner of recovery of brick from the appellant. Though PW-4 Gurnam Singh has deposed that the accused ran away from the place of occurrence with the brick, but PW-5 Jeeto, his wife and an eye-witness, has deposed that the brick was left at the place of occurrence. As per the prosecution, the brick was got recovered from near the place of occurrence pursuant to the disclosure statement of the accused. Gurnam Singh reached place of occurrence after the appellant has fled away from the scene. Therefore, his statement that the appellant ran with the brick is meaningless. Whether the brick was concealed or not, the fact remains that the brick was recovered from near the place of occurrence. Such brick was found to be stained with human blood as per the report of the Forensic Science Laboratory (Ex.PE). Therefore, such minor contradiction is not

sufficient to discard the prosecution story in respect of recovery of brick on the basis of disclosure statement of the accused. Even otherwise, in view of the natural, wholly truthful and convincing statements of PW-4 Gurnam and PW-5 Jeeto, which is corroborated by medical evidence, the prosecution case is proved beyond reasonable doubt.

As per FIR (Ex.PA/2) and statement of PW-5 Jeeto, apart from a single brick blow on the head of the deceased, there are allegations of accused biting the deceased on the shoulder and chest. However, as per medical evidence rendered by PW-9 Rakesh Mittal, RMO, General Hospital, Karnal, he found an abrasion of 1.5 x 1.0 cm present on the left chest. Such abrasion cannot be possible by biting. Such abrasion might be sustained during the scuffle, which took place between the accused and the deceased at about 2.30 AM under the influence of liquor before the alleged incident. Thus, we find that only one fatal brick blow was inflicted by the accused on the head of the deceased. However, the prosecution is required to prove that such injury was intended to be inflicted with intention to cause such bodily injury which was likely to cause death. We find that as per the testimonies of PW-4 Gurnam Singh, son of the deceased and PW-5 Jeeto, after making understand, Joga Ram and Chandgi Ram were laid on their respective cots at Panchayat Bhawan at about 2.30 AM. It appears that after some time, the appellant in the heat of passion lifted a brick and gave a single blow on the head of the deceased. Such sudden blow in drunkard condition without any pre-meditated mind is without any intention of causing death to the deceased. Therefore, it falls within Exception 4 of Section 300 of the Indian Penal Code, which contemplates that culpable homicide is not a murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken

undue advantage or acted in a cruel or unusual manner. There is no evidence that there was any premeditation. It is a case of sudden fight, when the accused under the influence of liquor inflicted single brick blow, which is commonly available. He has not acted in a cruel or unusual manner. In the present case, there is no evidence that there was any intention or premeditation in the mind of the appellant to inflict such injury to the deceased, as was likely to cause death in the ordinary course of nature. Thus, we find that the appellant is liable to be convicted for an offence falling under Part I of Section 304 IPC rather than under Section 302 IPC.

Consequently, we partly allow the present appeal by setting aside the conviction of the appellant under Section 302 IPC, but convict him under Section 304 Part I IPC. As a result thereof, the appellant is directed to undergo rigorous imprisonment for a period of ten years under Section 304, Part I IPC. However, the sentence of fine of Rs.10,000/- and in default of payment of fine to undergo further rigorous imprisonment for six months, shall remain intact.

(HEMANT GUPTA)
JUDGE

13.10.2015
Vimal

(RAJ RAHUL GARG)
JUDGE