

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-348-DB-2010 (O&M)

Date of decision: 10.09.2015.

Devinder Kumar

..... Appellant

Vs.

State of Punjab

..... 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?

Argued by: Mr. Sandeep Majithia, Advocate
for the appellant.

Ms. Manjari Nehru Kaul, Additional Advocate General, Punjab

RAJ RAHUL GARG.J.

This appeal is directed against the judgment dated 23.01.2010 rendered by learned Additional Sessions Judge, Hoshiarpur, whereby appellant-accused was convicted under Section 302 of Indian Penal Code (for short 'IPC') for committing murder of Amarjot Kaur daughter of Surjit Singh. He was also convicted under Section 309 IPC for attempt to suicide. Vide order of sentence dated 25.01.2010, the appellant-accused was sentenced to undergo life imprisonment for committing offence punishable under Section 302 IPC alongwith fine of Rs. 5,000/-. In default of payment of fine, he was further ordered to undergo rigorous imprisonment for a period of 6 months. Appellant-accused was also sentenced to undergo RI for a period of one year for committing offence punishable under Section 309

IPC.

On the statement of Sandeep Singh, this case was registered on 07.08.2007. Complainant stated before the police that he is a student of MA History, studying at Government College, Hoshiarpur. He is the President of the Student Union. On 07.08.2007, at 10:00 A.M., he was present in the college premises alongwith other students in front of library. Kamaljit was also standing with him. While they were talking, some girl students also came there and stood near them. One of them was Amarjot Kaur daughter of Surjit Singh. She was studying in BA-III. At that time, accused Devinder, another college student came there. He appeared to have eaten some poisonous substance. The moment he came there, he gave two dagger blows to Amarjot Kaur in her chest. Those blows were given on the left and right side of the chest, thereafter, accused Devinder gave 4/5 more dagger blows which hit Amarjot Kaur on her right hand, fingers and back-side of the hand. Kamaljit, tried to save her then accused Devinder inflicted injuries upon him as well. Sandeep-complainant alongwith his other friends over powered Devinder along with dagger. Both Amarjot Kaur and Devinder were taken to Civil Hospital. Even the college staff also reached civil hospital. After first-aid to Kamaljit, he left for his home. Amarjot Kaur, succumbed to her injuries. Accused Devinder, who had consumed some poisonous substance, remained admitted in the hospital. He handed over the blood-stained dagger used in the commission of this crime and rough site plan of the dagger was prepared as Ex.PA and the same were taken into police possession vide recovery memo. Ex.PB. Parents of Amarjot Kaur also reached the hospital. The entire incident was witnessed by complainant and Kamaljit. Complainant also told the police that accused Devinder was

harassing Amarjot Kaur for the last 2/3 days and Amarjot Kaur was trying to stop him. It was out of this grudge that Devinder attacked Amarjot Kaur.

On the basis of statement of complainant, formal FIR Ex. PC/2 was recorded. Investigations were conducted. Inquest proceedings were completed. Post-mortem of dead body of Amarjot Kaur was got conducted. Thereafter, the dead body was handed over to the relative of the deceased Amarjot Kaur. Parcel of the belongings of deceased Amarjot Kaur were taken into possession vide memo. Ex.PO. Photographs of the spot were got obtained from different angles. SI Onkar Dutt lifted blood-stained earth from the place of occurrence and the same was sealed into a parcel and then taken into the possession vide memo Ex.PD. A pair of lady sandals was also taken into possession by the police from the place of occurrence vide memo Ex.PE. Rough site plan of the place of occurrence was prepared as Ex.PQ. As accused Devinder was undergoing treatment in the hospital, therefore, a police guard was deputed at civil hospital. On 10.08.2007, accused Devinder was discharged from the hospital and was arrested. Three parcels containing dagger, clothes of the deceased and blood-stained earth were sent to Forensic Science Laboratory, Chandigarh for chemical examination. After completion of necessary investigations, the challan was put in the Court.

Accused was charge-sheeted for offence under Sections 302 and 309 IPC 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 he denied each allegation of the prosecution and pleaded his innocence. It is the defence of the accused that; he is innocent and has been falsely implicated in this case. He did not commit the murder

of Amarjot Kaur. In fact, on the day of occurrence, the students had assembled in front of library of Government College, Hoshiarpur and were discussing the election issues. He was contesting the election against complainant Sandeep Singh. In the meantime, before the library, some hot words were exchanged between two groups of the students. A scuffle had taken place with each other. During this scuffle, knife blows were exchanged between the students. Amarjot Kaur, who was also present there, sustained knife blow from unknown student when in the panic students ran for their rescue and started taking shelter here and there. It was not known actually who had stabbed her but complainant-Sandeep Singh, against whom he was contesting the election, falsely implicated him in this case. No weapon of offence was recovered from him nor he was holding any weapon as alleged. He had no motive to kill Amarjot Kaur as alleged by the prosecution nor he was having any enmity or ill-will against her. He completed his graduation while he was lodged in jail in this case. He took exams of BA final with the permission of the Court and passed his exams with good marks. In his defence, he examined Ms. Nisha, Lecturer (History), Government College, Hoshiarpur as DW1, Ms. Gurprit Kaur, Lecturer in Hindi, Government College, Hoshiarpur as DW2, Mrs. Parmjit Kaur Jassal, Lecturer in English, Government College, Hoshiarpur as DW3 and Harminder Singh as DW4.

After hearing both the sides, the learned trial Court recorded the impugned judgment of conviction dated 23.01.2010 and order of sentence dated 25.01.2010 as mentioned above.

We have heard learned counsel for the appellant and learned

State counsel besides appraising the entire material and evidence coming on record.

Learned counsel for the appellant-accused argued that Sandip Singh (PW1) was not present at the place of occurrence. He was not the class fellow of Amarjot Kaur (deceased). Sandip Singh was a student of M.A. History. Class room of M.A. History is at a long distance from the spot. As such, there was no chance of Sandip Singh to be present near the library. He also referred the statement of Nisha, Lecturer (History), Government College, Hoshiarpur (DW1) who deposed that on 07.08.2007, Sandip Singh (PW1) was present in the first period of the class and the first period finished at 9:45 A.M. She further deposed that M.A. block is far away from the library and it takes 4/5 minutes to reach the library by foot. This argument of learned counsel for the appellant is not sustainable as from the statement of Nisha, Lecturer (DW1), it becomes evident that within a period of 4/5 minutes, one can reach from M.A. Block to library. The present occurrence had taken place at 10:00 A.M. History period of Sandip Singh finished at 9:45 A.M. As such within the gap of aforesaid time, Sandip Singh could well reach the place of occurrence. It cannot be said that within the aforementioned time gap, it was impossible for Sandip Singh to be present at the spot so as to negate his presence.

In this case, Sandip Singh (PW1) and Sapna Saini (PW2), categorically stated that on 07.08.2007 at 10 A.M. when they were standing in front of the library of the Government College, Hoshiarpur, along with other students, accused Devinder armed with '*CHHURA*' (dagger) came there and gave two blows with dagger on the chest of Amarjot Kaur.

Thereafter, he gave 4/5 blows which hit on the fingers and the dorsal side of right hand of Amarjot Kaur. Kamaljit, another student, tried to save Amarjot Kaur but he himself received injuries in this incident. Accused Devinder was apprehended at the spot by Sandip Singh and other students along with 'CHHURA'. Both Amarjot Kaur and Devinder were shifted to civil hospital, Hoshiarpur. They also deposed that Devinder was taken to civil hospital because after the occurrence, he started vomiting and it appeared that he had consumed some poisonous substance, therefore, his condition became serious. Thus with these statements of eye witnesses, the prosecution case stands established beyond reasonable doubt.

Learned counsel for the appellant-accused has tried to create doubt in the prosecution case by arguing the case from different angles but failed to do so.

It was argued that Kamaljit injured is the stamp witness of the case. He has not been examined as witness by the prosecution for the reasons best known to it. This very fact is sufficient to create doubt regarding genuineness of the prosecution case but this argument though carries some force yet not sufficient to discard the above-discussed consistent statements of eye witnesses Sandip Singh (PW1) and Sapna Saini (PW2) which are further corroborated by the medical evidence.

The prosecution has given up Kamaljit as having been won over by the accused. Kamaljit is the student of the same college. It is no denying a fact that nobody would like to earn enmity for others, may be a class fellow, every one is avoiding to stand a witness in such like cases. Had the occurrence not taken place in the manner it is put by the prosecution, the appellant-accused would have examined Kamaljit as his witness, which he

did not choose to do so. By now, it is settled proposition of law that testimony of solitary witness can be made the basis the conviction. The credibility of the witness requires to be tested with reference to the quality of his evidence which must be free from blemish or suspicion and must impress the Court as natural, wholly truthful and so convincing that the Court has no hesitation in recording the conviction solely on his uncorroborated testimony.

The present case is not the one in which there is a sole eye witness. In this case, eye witness is the president of the student union i.e. Sandip Singh (PW1). Sapna Saini (PW2) corroborated his statement. The oral evidence is corroborated by the medical evidence. Both the aforesaid eye witnesses were cross-examined at length but nothing material could be extracted from them. Appellant-accused was apprehended at the spot with dagger. He was also taken to civil hospital, Hoshiarpur. At that very time, dagger was recovered from his possession vide memo. Ex.PB. As such, the evidence led by the prosecution against the accused is consistent and convincing so as to inspire confidence in the mind of the Court regarding guilt of the accused.

It was next argued by learned counsel for the appellant-accused that statement of Sapna Saini (PW2) is not believable because her statement was recorded after a gap of about 1 ½ months . Secondly, Sapna Saini, is not the student of this college. She is an introduced witness. Her real name is Surinder Kaur. Ex.DX, her admission form, says her name as Surinder Kaur. No where in the record of the college or in the admission form or in the identity card, it finds mention that Surinder Kaur is also known as Sapna

Saini and further nowhere the name of Surinder Kaur has been written as alias Sapna Saini. With this evidence on the record, as Sapna Saini is an introduced witness and was not present at the spot at the relevant time, therefore, her testimony cannot be taken into consideration and if we leave the testimony of Sapna Saini, then we will be left with the statement of Sandip Singh (PW1) alone, who being president of the student union, had previous enmity with appellant-accused Devinder. Devinder had also been contesting election against him.

The above argument raised by counsel for the appellant-accused is devoid of any force. Of course, statement of Sapna Saini was recorded by the police after about 1-½ months but Sapna Saini, when appeared as PW2, categorically stated that earlier she did not give statement to the police as Devinder-accused was also admitted in the hospital. Later on, when she came to know that Devinder was lodged in jail, she gave statement to the police. This clearly shows that out of fear of appellant-accused Devinder and further that Sapna Saini must not be wanted to earn enmity of Devinder, she did not go before the police. We have already discussed that in such like cases to stand as a witness against the accused is a herculeans tasks. In fact, when Sapna Saini, appeared as PW2, her statement was not challenged on the ground that she was not the student of aforesaid college. No suggestion was given to her that she was not studying in the aforesaid college or was not the classmate of Amarjot Kaur (deceased) or that she was studying in some other college. Sapna Saini (PW2) re-called for her examination by the prosecution. At that time, she categorically stated that she is known by two names i.e Sapna Saini and

Surinder Kaur. She further deposed that her name Sapna Saini is not mentioned in the college register, where her name Surinder Kaur alone is mentioned. She further deposed that she had told the police both of her names but the police recorded her name as Sapna Saini. She also deposed that her nick name is Sapna Saini. Admission form Ex.DX and identity card Ex.DY are on the record. Photographs of PW2 are there on the aforesaid two documents. It was not put to the witness that it is not her photographs. In the aforesaid two documents, the name finds mention as Surinder Kaur. Thus with this evidence on the file, we find no illegality in the findings of the learned trial Court, whereby, it was held that Sapna Saini and Surinder Kaur is one and the same person and further that she was a student of government college, Hoshiarpur, in B.A. final, in the session 2007-08.

It was the next argument of learned counsel for the appellant-accused that there is delay of 3 hours in registration of the FIR. The occurrence had taken place at 10:00 A.M. whereas FIR was lodged at 12:45 P.M. This delay in FIR gave room to the complainant party to implicate accused falsely in this case, as a result of thoughtout stories, deliberations and consultations.

The above argument is again devoid of any merit. In this case, in fact, there is no delay in lodging the FIR. Amarjot Kaur had expired at 12:05 P.M. on 07.08.2007 and the FIR of this case was registered at 12:45 P.M. As such, it cannot be said that there is any delay in lodging the FIR. From the place of occurrence, Amarjot Kaur and Devinder were taken to civil hospital. The information to the police was sent and, thereafter, the police came to the hospital and if Amarjot Kaur, died at 12:05 P.M., it

cannot be said that lodging of FIR at 12:45 P.M. was a result of thoughtout stories, consultations or deliberations or is coloured version. In fact, in such a short span, it is not at all possible for Sandip Singh (PW1) or anybody else to deliberate or consult anybody, particularly when Amarjot Kaur, had expired at 12:05 P.M. They must not have even come out of the shock of the aforesaid incident so as to make any kind of deliberation or consultation.

It was next argued by counsel for the appellant that prosecution has failed to bring on record any convincing motive on the part of the accused Devinder to attack and kill Amarjot Kaur. No previous enmity between the two, has been proved by the prosecution. It was further argued that although motive is not very important in criminal case, however, where specific stand has been taken by the prosecution, it is supposed to produces some evidence, during trial, with regard to the motive also.

It is the case based on eye witness account. Witnesses are the students of the college of the deceased. Sandip Singh (PW1) and Sapna Saini (PW2) deposed that accused used to tease and harassed deceased Amarjot Kaur and she used to ask him not to do so. On this, he developed grudge against her. Appellant-accused not only intend to kill Amarjot Kaur but he has also taken steps for committing suicide. Dr. Des Raj (PW4) deposed that Devinder was brought to the hospital as a case of suspected poison. He further deposed that if he had not been brought to the hospital, he might have died. Even both PWs i.e. PW1 and PW2 stated that accused had consumed some poisonous substance when he attacked Amarjot Kaur. All these go to show that on the day of the occurrence, accused came to the college, armed with dagger, with a planing to attack Amarjot Kaur and then

to commit suicide. All these facts show the mind of the appellant-accused that with a motive to kill Amarjot Kaur, he inflicted injuries on her person with dagger. Even otherwise as per *Nagarjit Ahir Vs. State of Bihar, 2005 (2) RCR (Crl.), 26*, Hon'ble Apex Court has held that when the offence is proved by direct evidence of eye witnesses, it is not necessary to search for the exact motive which motivated the appellant to commit the offence.

It was further contended by Mr. Sandeep Majithia, Advocate, counsel for the appellant that Dr. Des Raj (PW4) did not make a mention in the MLR of deceased that there were corresponding injuries on the clothes of Amarjot Kaur. Thus the doctor has left the material fact which makes the prosecution case doubtful. This argument is again devoid of any force. Firstly, for the reason that mentioning of corresponding injuries on the clothes of the injured, simply lends corroboration to the injuries on the person of injured. The present case is the one in which there are two eye witnesses whose testimonies are consistent and convincing to prove the guilt of the accused. Secondly, it is the case in which Dr. Jaswinder Singh (PW3), who conducted the post-mortem of Amarjot Kaur, clearly made a mention about the corresponding cut on the clothes of Amarjot Kaur while describing each injury. Dr. Des Raj (PW4), clearly admitted that he had not noted down the corresponding injuries on the clothes of injured at the time of conducting MLR. However, injured was wearing clothes at the time of examination. Dr. Jaswinder Singh (PW3), by making a mention of corresponding cuts on the clothes of the deceased for injuries No.1 to 3 lends corroboration to the ocular evidence. As such, it cannot be said that there were no corresponding injuries on the clothes of deceased.

It was next argued by learned counsel for the appellant-accused that Dr. Des Raj (PW4) during the course of his cross-examination deposed that Devinder was brought to the hospital in a very critical/serious condition. He further admitted that in such a condition, one cannot commit any violent act. Under these circumstances, it is not believable that Devinder could cause afore-discussed injuries on the person of Amarjot Kaur. In fact, on the day of occurrence, students had assembled in front of the library of Government College, Hoshiarpur. The fight took place between two groups in which knife blows were exchanged, as a result, students panicked and ran helter skelter. In that process Amarjot Kaur sustained knife blows from an unknown student and fell on the ground.

The above argument is again devoid of any merit as the defence put up by the appellant-accused remains unproved on the file. There is absolutely no evidence on record in this regard. Even otherwise, if at all, there had been any quarrel between students of two groups, they do not hurt the female students and even the female students immediately get away and do not go near the fighting groups. So far as the possibility of causing fatal injuries by appellant-accused on the person of Amarjot Kaur, is concerned, his state of mind cannot be said to be the same, when Amarjot Kaur was attacked and when accused was examined by doctor Dr. Jaswinder Singh (PW3). Accused was taken to the hospital as suspected case of poison with the passage of time, his condition was bound to deteriorate on account of effect of the poison. Testimonies of eye witnesses Sandip Singh (PW1) and that of Sapna Saini (PW2), cannot be brushed aside on the basis of supposition, conjectures and surmises. The fact remains is that the

appellant-accused caused fatal injuries to Amarjot Kaur with dagger.

It was next argued that since finger prints of accused Devinder were not lifted from the dagger Ex.MO-1, therefore, accused cannot be connected with this crime.

In the case in hand Devinder along with dagger was over-powered by PW1 and other students. Devinder himself handed over the dagger to the police. Under these circumstance, when direct evidence was available regarding possession of dagger as that of Devinder, there was no need for the prosecution to lift his finger prints from the dagger.

It was also argued by learned counsel for the appellant that when so many students were present at the time of occurrence, it is not believable that no one would make an attempt to over-power Devinder before he could attack Amarjot Kaur. As per prosecution story, accused-Devinder, came at the spot with dagger in his hand. This circumstance further creates doubt in the prosecution case.

Sandip Singh (PW1) deposed that he had noticed the accused only when he started causing injuries to Amarjot Kaur. Thus, there is no evidence on the file to show that accused came to the spot brandishing dagger or that the students of the college had seen the accused coming with dagger towards them or towards Amarjot Kaur. If accused came to the spot and suddenly started giving injuries with dagger to Amarjot Kaur, there was no time for anybody to over-power him before he could open the attack. Sandip Singh (PW1) has specifically stated that he had noticed the accused only when he started causing injuries to Amarjot Kaur. As such, there was no time for him to over-power Devinder before attack.

For the reasons recorded above, finding no merit in this appeal,

therefore, maintaining the impugned judgment of conviction dated 23.01.2010 and order of sentence dated 25.01.2010, this appeal is ordered to be dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

September 10,2015
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