

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

CRA No.D-384-DB of 2010(O&M)

Date of decision:25.8.2015

Balwinder Singh

....Appellant

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Ms. Aditi Girdhar, Advocate Amicus Curiae.

Ms. Manjari Nehru Kaul, Additional A.G. Punjab.

HEMANT GUPTA, J.

The present appeal is directed against an order passed by learned Sessions Judge, Gurdaspur on 07.01.2010 whereby the present appellant was convicted for an offence under Section 302 of Indian Penal Code (for short 'IPC') for causing death of Nirmal Singh and also for the offences under Section 324 and 326 of IPC for causing grievous injuries to Mandeep Kaur, wife of deceased-Nirmal Singh, and also for an offence under Section 450 of IPC for house trespass. He was sentenced to undergo life imprisonment and the varying terms of sentence in respect of other offences.

The prosecution case was set in motion on the statement of Mandeep Kaur made to Station House Officer Sawinder Singh, Police Station Dera Baba Nanak on 07.09.2008 (Ex.PA) to the effect that on the

midnight of 6/7.09.2008 there was an altercation between her husband and his uncle Balwinder Singh in connection with electric wire. The said dispute was settled with the intervention of the neighbours - Wazir Singh and Sucha Singh. However, during night at about 1:15 AM Balwinder Singh armed with *datar* entered their house from the roof and started giving *datar* blows on her husband-Nirmal Singh, which hit on the head and face of her husband. At that time, electric bulb was on in the courtyard. In order to save himself, her husband raised his left hand but his hand was partially cut. She came forward to save her husband from Balwinder Singh but he gave *datar* blows on her person which hit on her right arm. On raising noise, residents of the neighbourhood started gathering but Balwinder Singh ran away from the spot with his *datar*. Such statement was given at about 8:30 AM at village Shahpur Jahan. On the basis of said report, ruqa (Ex.PA/1) was sent and First Information Report (Ex.PA/2) was recorded.

The Investigating Officer Sub Inspector Swinder Singh PW9 visited the place of occurrence and prepared the inquest report (Ex.PV). He took into possession blood-stained hair (Kesh) vide memo Ex.PQ and sent the dead body for postmortem examination vide request Ex.PK. The accused was arrested vide memo Ex.PX on 07.09.2008. The accused suffered a disclosure statement (Ex.PN) and got recovered *datar* (Ex.PY); one bloodstained Banyan; one bloodstained T-shirt (Ex.P5) and bloodstained Chaddar (Ex.P6). Such articles were taken into possession vide memo Ex.PZ. The postmortem report has been produced on record as

Ex.PJ whereas the affidavit of the Dr. Karan Sagar is Ex.PH. PW3 Dr.

Karan Sagar found the following injuries:-

- i) An incised wound over right temporal region of head 3 cm above right ear pinna .7 x 1.5 cm in size. On dissection, right temporal bone is fractured meninges underneath ruptured clotted blood is administered with meninges and brain matter.
- ii) An incised wound over right side of face 2 cm below right eye 5 x 1.5 cm in size. Clotted blood is present over wound.
- iii) An incised wound over middle of right cheek 7 x 1.5 cm in size clotted blood is present over wound.
- iv) An incised wound over right side of the neck 2 cm below inferior border of mandible 8 x 1.5 cm in size. Clotted blood is present over the wound.
- v) An incised wound over right side of the neck 5 cm below inferior border of mandible 8 x 1.5 cm in size. All the blood vessel and nerves and muscles on right side of neck are cut. Clotted blood is present over the wound.
- vi) Left fore-arm is cut 3 cm above wrist joint. Both the ulna and radius is cut. All the blood vessel and nerves and muscles of left fore-arm is cut. The left hand is attached to left fore-arm with some part of skin only.

In the cross-examination, he stated that the police did not produce weapon which was used for causing injuries before him.

The medico legal report of the injuries suffered by Mandeep Kaur, wife of the deceased-Nirmal Singh, was proved by PW3 Dr.

Karan Sagar as Ex.PC, who has given his opinion Ex.PD to the effect that injury No.(ii) on the person of Mandeep Kaur was declared grievous. As per the MLR issued the following three injuries were found:-

- i) An incised wound on an antero lateral and posterior surface of right fore-arm U shape 10 x 1.5 cm in size. 9 cm above right wrist joint. Oozing of blood is present. (Advised x-ray).
- ii) An incised wound over posterior surface of right arm .2 cm above right elbow joint 7 x 1.5 cm in size. Oozing of blood is present. Advised x-ray.
- iii) An incised wound over medial and interior surface of left index finger at proximal phalanax 2 x .75 cm in size. Oozing of blood is present. Advised x-ray.

The articles recovered in pursuance of disclosure statement (Ex.PN) were sent for forensic examination. Forensic Science Laboratory has given its report (Ex.PL) and found that exhibits in parcel A, B, C and D are stained with human blood. Parcel 'A' consists of Khes; parcel 'B' consists of shirt, pant, vest and underwear; parcel 'C' consist of bloodstained *datar* and parcel 'D' consist of T-shirt and chadderra. The prosecution also examined other formal witnesses to complete the chain of circumstances and to examine other circumstances.

The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure where he denied all the allegations and alleged false implication. The accused did not lead any defence evidence. After considering the evidence of Mandeep Kaur and other

incriminating circumstances, learned trial Court convicted the appellant as mentioned above.

Learned counsel for the appellant has vehemently argued that the prosecution has not examined any independent witness. The sole independent witness Sucha Singh examined as PW-2 has not supported the prosecution case. He turned hostile. The Forensic Science Laboratory has given its own marking rather than referring to the marking given by the prosecution which does not correlate with the articles recovered and sent for examination. It is also argued that the injuries on Mandeep Kaur could be self-inflicted and that prosecution has not proved any motive in taking life of Nirmal Singh.

We have heard learned counsel for the parties and find no merit in the present appeal. The motive in the trial based on direct eye-witness account loses significance. Mandeep Kaur has deposed that Balwinder Singh, the present appellant, is uncle of the deceased-Nirmal Singh, and there was altercation between them over electric wire. She has deposed that Balwinder Singh came from upstairs and caused injuries. The postmortem report shows numerous injuries on the person of the deceased. The eye-witness account as deposed by Mandeep Kaur is corroborated by the medical evidence when she deposed that deceased was given blows on the head and to ward off the blow, the deceased received injuries. Mandeep Kaur has also deposed that when she tried to save her husband, she was also given injuries.

The argument of learned counsel for the appellant that injury can be self-inflicted is not acceptable. The fracture is on the right arm.

Such fracture and that too on the right arm could not be self-inflicted. There are three injuries suffered by Mandeep Kaur, out of which one i.e. injury No.(ii) is grievous. Therefore, the injuries on Mandeep Kaur are not proved to be self-inflicted but rather are proved to be caused by the appellant. Mandeep Kaur is an eye-witness. Her presence cannot be doubted at the time of occurrence as it was midnight and has received injuries in the occurrence as well.

Though, Sucha Singh is said to be person to have intervened in settling dispute between Nirmal Singh-deceased and the appellant but even if Sucha Singh has turned hostile, it is of no consequence as he is not an eye-witness of the occurrence. The occurrence has taken place in the four walls of the house of the deceased wherein Mandeep Kaur was the only natural occupant.

The argument that Jagdev Singh, father of the deceased, has not been examined is again not relevant for the reason that it is the statement of Mandeep Kaur that he was sleeping upstairs and came down only after the appellant ran away from the place of occurrence. Therefore, the evidence of the father of the deceased is not an evidence of an eye-witness.

The *datar* recovered in pursuance of the disclosure statement (Ex.PN), chaddar and the clothes worn by the appellant are found to be stained with human blood. The argument of learned counsel for the appellant is that there is no blood matching, therefore, it cannot be said that blood was of the deceased. The said argument does not merit any acceptance because it is not the case of the appellant that these articles

were not recovered from him or any other explanation as to how human blood appear on clothes and on the weapon of offence in any other plausible manner.

We find that the learned trial Court has examined the entire prosecution evidence in minute details. It cannot be pointed out that any evidence has been misread or not taken into consideration.

Consequently, we do not find any merit in the present appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

AUGUST 25, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE