

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-667-DB-2010 (O&M)

Date of decision: 07.09.2015.

Beera

..... 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. Manvinder Singh Sidhu, Advocate
for the appellant.

Ms. Manjari Nehru Kaul, Additional Advocate General, Punjab

RAJ RAHUL GARG.J.

This appeal is directed against the judgment dated 11.06.2010 rendered by learned Sessions Judge, Ferozepur, whereby the appellant-accused Beera was convicted for committing offence punishable under Section 302 of Indian Penal Code (for short 'IPC'). Vide order of sentence dated 14.06.2010, he was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 3,000/-. In default of payment of fine, he was further undergo RI for one year.

Sukhpal @ Sukha lodged the FIR of this case with the police stating that on 27.04.2009 at about 8:30/8:45 P.M., his uncle Prem (deceased) had gone to the Grain Market in connection with his work. He (Sukhpal) had also gone to that area. Accused Beera was inimical towards

Prem as his wife had started living with Prem. He was also present near Gate No.1 of the Grain Market. He was having a '*CHHURI*' (small dagger) with him. He was accompanied by Jatinder @ Bagga and Dharminder. Each one of them was also having a '*CHHURI*'. Jatinder raised a *lalkara* and, thereafter, Jatinder and Dharminder caught hold of Prem by his arms, whereas Beera gave two successive blows with '*CHHURI*' on the left side of abdomen of Prem.

On hearing shouts, Gabber reached the spot. Sukhpal and Gabber also raised alarm whereupon the assailants had fled away from the spot towards Rakhri road on red colour motorcycle. Prem was immediately taken to Civil Hospital, Ferozepur, where he died. On receipt of *ruqa* (Ex.P6) regarding death of Prem, ASI Harbhajan Singh, along with police officials went to Civil Hospital, Ferozepur and recorded the statement of complainant Sukhpal as Ex.P7. On the basis of this statement, formal FIR Ex.P7/B was got recorded. Inquest proceedings were completed. Post-mortem of the dead body of Prem was got conducted. Sonu and Tinka identified the dead body of deceased.

On 28.04.2009, rough site plan of the spot was prepared as Ex.P8. A bicycle make Hero was taken into police possession vide memo. Ex.P9. Parcel containing wearing apparels of the deceased, given by doctor to H.C. Darshan Singh, was also taken into police possession by ASI Harbhajan Singh vide memo. Ex.P10.

On 29.04.2009, accused Beera was arrested. On interrogation, he gave disclosure statement, having kept concealed '*CHHURI*' near gate No.2 in front of Dhawan Clinic in the plants of poppy about which he alone

knew and could get the same recovered. In pursuance with this disclosure statement, he got recovered '*CHHURI*' from the aforesaid place which was taken into possession vide memo. Ex.P13. Before that, rough sketch plan of '*CHHURI*' was prepared as Ex.P12 and it was converted into a sealed parcel. Case property was deposited with the MHC of the Police Station with the seals intact. Statement of witnesses were recorded. After completion of necessary investigations, the challan was put in the Court.

Accused was charge-sheeted for committing offence punishable under Section 302 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 prosecution allegation and pleaded his innocence. After hearing both the sides and appraising the entire material and evidence coming on record, the impugned judgment of conviction was recorded by learned Sessions Judge, Ferozepur and order of sentence was passed as mentioned in the earlier part of this judgment.

We have heard learned counsel for the appellant and learned State counsel besides appraising the entire material and evidence coming on record.

Firstly, it was argued by learned counsel for the appellant-accused that in fact Sukhpal (PW5), complainant of this case, was not present at the spot. This is evident from the statement of Sukhpal (PW5) itself as Sukhpal deposed that Beera-accused gave two successive blows with '*CHHURI*' on the left side of abdomen of Prem where as per Dr. Rohit Singal (PW1), five injuries were found on the person of deceased. This

doctor proved the post-mortem report of deceased as Ex.P1. Even otherwise, as per the prosecution case, the incident was of 8:30/8:45 P.M. As such, on account of darkness as well, it was not possible for the complainant to identify the assailants of Prem. Even Gabar (PW6), the alleged eye witness, did not support the prosecution case. As such, the prosecution case cannot be said to be free from doubt and the accused is entitled to acquittal.

It is the case in which complainant Sukhpal in the complaint itself made a mention about the root cause of enmity between accused Beera and Prem. He, when appeared as witness, fully corroborated his statement Ex.P7/B made to the police, which is FIR of this case, and categorically stated that Prem (deceased) is his uncle. He was married to Mindo, daughter of Manna, who had died 6 years ago i.e. 6 years from the date of lodging of complaint. The house of Beera (accused) is opposite to the house of Prem (deceased). Prem developed illicit relations with Khurshaid wife of Beera. Panchayat was also held in that regard and it was decided in the Panchayat that Khurshaid shall reside with Prem. Under these circumstances, Prem along with Khurshaid started living in a rented house, located at Zira Gate.

Under these circumstance, Beera-accused had a grudge against Prem. Complainant also deposed that accused had already quarrelled with Prem and that matter was compromised. With this evidence on record, it is evident that appellant-accused was well known to the complainant. Even otherwise, there is nothing on record to show that it was complete dark at that time or there was no source of light. Sukhpal (PW5) deposed during the course of his cross-examination that there was lot of rush in the Grain Market as it was *Hari* season. The agricultural produce had reached in

the Grain Market which necessitated the complainant to have a round of the heap of agricultural produce as he was working with Ashok Kumar, Commission Agent.

Agricultural produce was there in the Grain Market and there was lot of rush in the Grain Market, the electricity lights must have also been there and even otherwise when the appellant-accused was well known to the complainant, he could even identify him with his voice as well.

It is of course true that complainant deposed that appellant-accused gave two successive blows with '*CHHURI*' on the left side of abdomen of Prem whereas doctor, who conducted the post-mortem examination of dead body of Prem, reported 5 injuries on the person of deceased. As per post-mortem report Ex.P1, doctor Rohit Singal (PW1) deposed in the Court and also reported that the shirt of deceased had corresponding holes to injuries No.1 to 5 and *banian* had corresponding holes to injuries No.3 to 5. All the clothes were smeared with blood.

Corresponding injuries found by the doctor on the clothes of the deceased as well on his person, proves the factum of injuries suffered by the deceased. He also gave the cause of death of deceased as shock and hemorrhage due to injury to multiple organs including vital organ i.e. lung. He also deposed that the injuries were ante-mortem in nature and were sufficient to cause death in ordinary course of nature. With this medical evidence on record, even if the complainant deposed that the appellant-accused gave two successive blows with '*CHHURI*' on the person of deceased, would not make any difference and would not give a cause to give benefit on this account to the accused. It is settled proposition of law that

corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Gabar (PW6), is the one whose sister Mindo was married to Prem (deceased). Even Gabar did not support the prosecution version, then only on this account, acquittal of accused cannot be recorded. It is settled proposition of law that the testimony of a solitary witness can be made the basis of conviction. The credibility of the witness requires to be tested with reference to the quality of his evidence which must be free from blemishes 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 the one in which testimony of Sukhpal (PW5) gets corroboration from the testimony of Dr. Rohit Singal (PW1). The medical evidence corroborates the ocular evidence on the file. Medical evidence is a very strong type of evidence. As such, the statement of Sukhpal (PW5), whose testimony is supported by medical evidence, can well be made the basis of conviction of accused in this case.

It is also the settled proposition of law that the evidence of the witnesses has to be weighed and not accounted inasmuch as the quality matters more than quantity.

It was next argued by learned counsel for the appellant-accused that in this case motive to commit crime remained unproved on the file. As such, for this very reason as well, the prosecution case cannot be said to be free from doubt.

This contention of learned counsel for the appellant is again not sustainable as it is the settled proposition of law that where the ocular evidence is proved to be trustworthy and reliable and finds corroboration

from the medical evidence, the finding of guilt can safely be recorded even if the motive for commission of crime has not been proved. The motive, however, strong, merely creates a suspicion and suspicion cannot take the place of proof of guilt. The statement of Sukhpal (PW5) that Prem deceased has started living with the wife of appellant-accused gave him a cause to commit this crime by having a grudge against Prem (deceased); is believable. Might be, the Panchayat, got settled this matter but the very fact that after the decision of Panchayat, Prem was residing with the wife of appellant-accused, would always be a disturbing factor for the appellant-accused. With this evidence on the file, it cannot be said that accused is entitled to any benefit on this account.

The learned counsel for the appellant-accused also raised a point that since Sukhpal (PW5) is the relation witness, therefore, his testimony is not reliable and at least conviction cannot be based on the testimony of relation witnesses.

This contention of learned counsel for the appellant, is again not sustainable as it is the settled proposition of law that ordinarily, a close relative would not screen the real culprit and falsely implicate innocent person.

The delay in lodging the FIR was also raised a ground for acquittal of the accused contending that in case of cognizable offence if the FIR is delayed, it not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of coloured version, exaggerated account or concocted story, as a result of deliberation and consultation. In this case, as per prosecution story, the alleged occurrence took place on

27.04.2009 at about 8:30/8:45 P.M whereas the FIR was lodged at 11:00 P.M. Special report reached the Judicial Magistrate at 2:45 P.M. As such, since there is delay in lodging the FIR, therefore, there is always a room for false implication of the accused.

The above contention of learned counsel for the appellant-accused is not sustainable as in this case, there is only delay of 2/3 hours in reporting the matter to the police. The aforesaid time taken by the complainant is reasonable to shift the injured from the spot to the Hospital and then sending *ruqa* by the doctor to the police; then reaching of the police at the Hospital and then recording the FIR of this case. In fact, this much time taken by the complainant or by the police cannot be said to be in any way unreasonable or the recording of FIR, is delayed one.

Lastly, it was contended that the alleged place of recovery of '*CHHURI*' is accessible to all. As such, it cannot be said that the accused was in exclusive possession of '*CHHURI*' in question. This contention is again devoid of any merit as there is no material on the file to show that the place of concealment of '*CHHURI*' was visible to all and sundry in the poppy bushes. Accused-appellant concealed the weapon of offence i.e. '*CHHURI*'. It was within his exclusive knowledge and it is he who led the police party to the aforesaid place and got recovered the same by giving *nishandehi*. The aforesaid '*CHHURI*', when recovered, was blood-stained and the report FSL Ex.P17 says that the blood on the aforesaid '*CHHURI*' was human blood, even otherwise in view of the natural, wholly truthful and convincing statement of Sukhpal (PW5) which is corroborated by medical evidence, the prosecution case is said to be proved beyond reasonable

doubt.

For the reasons recorded above, finding no merit in this appeal, maintaining the impugned judgment of conviction dated 11.06.2010 and order of sentence dated 14.06.2010, the appeal is ordered to be dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

September 07,2015
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