

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-443-DB of 2011

Date of Decision : October 09, 2015

Bhupinder Singh @ Tinka @ RebboAppellant

VERSUS

State of Punjab ...Respondent

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

Present : Mr. H.S. Batth, Advocate
for the appellant.

Mr. S.S. Dhaliwal, Additional Advocate General, Punjab.

T.P.S. MANN, J.

The appellant, namely, Bhupinder Singh @ Tinka @ Rebbo son of late Kuldip Singh, resident of Gali Kahne Wali, Kot Mit Singh, Tarn Taran Road, Amritsar was tried for committing the offence punishable under Section 302 IPC for committing the murder by intentionally causing the death of Bali Ganja on 24.10.2008 at about 6.35 p.m. in the area of Gian Ashram School, Amritsar. Vide judgment and order dated 10.12.2010, learned Sessions Judge, Amritsar after holding that the appellant had committed the murder by intentionally causing the death of Bali Ganja, a rickshaw puller, convicted him under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months. The period of detention already undergone by him during investigation and trial, was ordered to be set off against the substantive sentence awarded to him.

According to the prosecution, SI Sarabjit Singh, Station House Officer, Police Station 'C' Division, Amritsar was present at the Police Station on 24.10.2008 and at about 6.35 p.m., he received a telephone call from an unknown person that dead body of a young man was lying in the drain near the wall of Gian Ashram Senior Secondary School, Amritsar and covered with a cloth sheet. On this, he, alongwith his fellow police officials, reached the school on a government jeep where dead body of a young man, aged about 25/30 years, height 5' 4/5", black complexion and covered with a cloth sheet was found near the wall of the school. On examining it, he noticed an injury with a sharp edged weapon in his left flank and intestines were coming out. As a result thereof, he had died. There was no blood stain near the dead body. It appeared that the young man had been murdered with sharp edged weapon by an unknown person at some other place and his dead body after being covered with a cloth sheet placed there. From these circumstances, commission of offences under Sections 302/201/34 IPC was made out. Accordingly, SI Sarabjit Singh prepared ruqa Ex.PJ at 7.30 p.m. and sent it through Constable Warkha Singh to the Police Station. On its basis, FIR Ex.PJ/1 came to be registered at Police Station 'C' Division, Amritsar on the same day at 7.40 p.m. Special report was sent through Head Constable Balwinder Singh to be delivered to the Ilaqa Magistrate and senior officers. During the investigation of the case, SI Sarabjit Singh conducted inquest proceedings. Rough site plan of the place, where the dead body was lying, was prepared. Photographer was called, who took nine photographs of the dead body. SI Sarabjit Singh tried to locate the family members of the deceased but in vain. The dead body was then sent for post-mortem.

Further case of the prosecution is that during investigation, SI Sarabjit Singh recorded statement of one Vikram Singh, who stated that the deceased was killed by the appellant in his presence. Resultantly, the house of the appellant was raided but it was found locked. On 25.10.2008, the photographs of the deceased were handed over to SI Sarabjit Singh, who showed them to persons of nearby locality. One Amandeep Singh @ Kali identified the deceased as Bali Ganja, a rickshaw puller, who also stated that the murder was committed by the appellant. Amandeep Singh also identified the dead body. Once again, the house of the appellant was raided but he could not be arrested. After post-mortem, the wearing apparels of the deceased were taken into possession.

It is also the case of the prosecution that on receipt of a secret information, the police party headed by SI Sarabjit Singh laid a naka at Sharma Colony, near railway crossing and apprehended the appellant when he was coming on his motorcycle bearing No.PB-02-AV-5763. Arrest memo and personal search memo of the appellant were prepared. The motorcycle was taken into possession and the entire case property was deposited with the MHC. Statements of the witnesses were recorded. The appellant suffered disclosure statement that he had kept concealed the kirch in the earth on the bank of drain in the area of Sakattari Bagh, Amritsar regarding which he had exclusive knowledge and he could get the same recovered. Pursuant to the same, the appellant got recovered kirch from the disclosed place, which was taken into possession. Rough sketch of the kirch and rough site plan of the place of recovery of kirch were also prepared and statements of the witnesses were recorded. The wearing apparels of the deceased were sent to Forensic Science Laboratory, Punjab, Chandigarh.

On receipt of report of the Forensic Science Laboratory and after completing the investigation, final report under Section 173 Cr.P.C. was submitted before the Ilaqa Magistrate. After the case was committed to the Court of Sessions, the appellant was charged for committing an offence under Section 302 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Constable Parduman Kumar; PW2 Constable Balwinder Singh, both formal, witnesses; PW3 Constable Harjinder Singh, Photographer, who took photographs of the dead body and of the place where the dead body was lying near Gian Ashram School, Amritsar; PW4 ASI Bhagwan Singh, who accompanied the SHO to the place where the dead body was found; PW5 Vikram Singh, complainant; PW6 Dr. Kirpal Singh, Lecturer of Government Medical College, Amritsar, who conducted post mortem on the dead body of unknown person, who was later on identified as Bali Ganja, a rickshaw puller; PW7 SI/SHO Sarabjit Singh, Investigation Officer of the case and PW8 Amandep Singh, also an eye witness of the occurrence.

When examined under Section 313 Cr.P.C., the appellant denied all the allegations appearing in the prosecution evidence against him and pleaded that he was innocent and falsely implicated in the case at the instance of Vikram Singh.

However, in his defence, the appellant did not lead any evidence. He only tendered into evidence photocopy of FIR mark 'A'.

After hearing learned counsel for the parties and on going through the evidence produced by the prosecution, the learned trial Court accepted the prosecution case and convicted and sentenced the appellant, as mentioned above. Aggrieved of the same, he has filed the present

appeal, in which he is in custody.

Having heard learned counsel for the parties and on going through the evidence with their able assistance, this Court finds that PW5 Vikram Singh and PW8 Amandeep Singh have deposed that on 24.10.2008 at about 4.00/5.00 p.m. when they were passing by the side of Gian Ashram School, Amritsar, the appellant, whom Vikram Singh knew previously, came on his motorcycle and stopped his motorcycle close to Bali Ganja, a rickshaw puller, who was known to Amandeep Singh. The appellant started demanding from the deceased the return Rs.5,000/- there and then. The deceased told the appellant that he was not carrying that much money on that day and he would return the amount to him on some other day. The appellant started hurling abuses upon the deceased and there ensued an altercation between them. Later on, the appellant took out kirch from his dub and gave blow with the same in the left side of the chest of the deceased. As a result the deceased fell down on the ground. Amandeep Singh tried to intervene in order to stop the appellant from inflicting the injuries but the appellant ran after him as well and, accordingly, he saved his life by running away from there. On account of the injury received by him, the deceased died at the spot. The appellant started dragging the dead body towards the wall of the school. After taking the dead body near the wall, the appellant put a piece of cloth on the same. Subsequently, he fled away from the spot on his motorcycle.

PW6 Dr. Kirpal Singh, Lecturer, Medical College, Amritsar had conducted post-mortem on the dead body on 25.10.2008 at 3.35 p.m. The following injury was noticed on the dead body :-

“Incised stab wound 3.2 x 1.2 cms. x 9.3 cms. on left

side of abdomen in lower lateral part, the underlying colon part was coming out, CBP”.

On dissection, colon was found torn whereas CBP and peritoneal cavity contained faecal matter with blood stained fluid, about 500 CC, The cause of death was haemorrhage and shock as a result of the injury, which was sufficient to cause death in ordinary course of nature. Probable time that elapsed between injury and death was a few minutes to few hours and between death and postmortem about 12/24 hours.

From the testimonies of PW5 Vikram Singh and PW8 Amandeep Singh, it stands duly established that it was the appellant who first demanded the return of his money from the deceased and when the deceased stated that such a huge money was not available on that day and he would return the same on some other day, the appellant hurled abuses, which led to an altercation. Later on, the appellant took out kirch and gave blow with the same in the left side of the abdomen of the deceased. When PW8 Amandeep Singh tried to intervene in order to restrain the appellant from inflicting injuries, he chased him away. On account of the injury received, the deceased died at the spot. The appellant, thereafter, dragged the dead body to a place near the wall of the school and after placing it there, put a piece of cloth on it.

The objection of the defence that the prosecution had failed to prove any motive on the part of the appellant to commit the crime, is palpably wrong as the deceased owed a sum of Rs. 5,000/- to the appellant and when the appellant asked him to return the said amount, the deceased express his helplessness in doing so as, according to him, it was a big amount and he was not carrying that much sum at that time. This resulted

into altercation and the appellant then gave a solitary kirch blow in the abdomen of the deceased. Thus, it cannot be said that he appellant did not have any motive to commit the crime.

According to learned counsel for the appellant, if PW5 Vikram Singh and PW8 Amandeep Singh had witnessed the occurrence, they were required to report the matter to the police immediately. Instead of doing so, they thought it proper to go to their houses. It was only when some unknown persons had given a telephonic call at the Police Station that SI Sarabjit Singh, who was the Station House Officer, reached the spot and found the dead body of unknown person lying over there. In fact, it was a case of blind murder and the prosecution witnesses, namely PW5 Vikram Singh and PW8 Amandeep Singh were, later on, set up as eye-witnesses.

It is the case of the prosecution that when PW5 Vikram Singh and PW8 Amandeep Singh were present near the place of occurrence, the appellant, after abusing the deceased and entering into an altercation with the deceased, took out kirch from his dub which he wielded in causing an injury in his abdomen. An attempt was made by PW8 Amandeep Singh to stop the appellant from inflicting injuries but instead of doing so, the appellant chased him away. If that was the approach of PW8 Amandeep Singh, PW5 Vikram Singh would also have adopted similar course and instead of reporting the matter to the police, run away fearing any backlash from the appellant. Under these circumstances, it can not be said that PW5 Vikram Singh and PW8 Amandeep Singh had not witnessed the occurrence.

It is the admitted case of the prosecution that only one kirch blow was caused by the appellant to the deceased and as a result thereof, the deceased died at the spot. No attempt was made by the appellant to

cause another injury to the deceased. Further, when the deceased expressed his helplessness in returning the amount, which he owed to the appellant, the latter started abusing him which led to an altercation between them. It appears that the dispute between appellant and the deceased reached the flash point and the appellant caused one blow in the heat of passion to the deceased. At that point of time, the appellant had caused a solitary knife blow in the abdomen of the deceased. Under these circumstances, it cannot be said that the appellant ever initiated to commit the murder of deceased Bali Ganja.

On the other hand, he intended to cause the solitary injury in the abdomen of the deceased which was likely to cause death, making him responsible for committing the offence of culpable homicide, not amounting to murder.

Resultantly, the conviction and sentence of the appellant under Section 302 IPC is set aside. Instead, he is convicted under Section 304 Part I IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo rigorous imprisonment for six months.

The appeal is partly allowed to the extent indicated above.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

October 09, 2015
satish