

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

**Criminal Appeal No. D-380-DB of 2012**

**Date of Decision: 09.09.2015**

**Deepak Kumar**

**...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? Yes
3. Whether the judgment should be reported in the Digest?

**Argued By: Mr. D. S. Randhawa, Advocate for the Appellant.**

**Mr. Vivek Saini, Assistant Advocate General, Haryana.**

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**Raj Rahul Garg, J.**

This appeal is directed against the judgment dated 31.01.2012 rendered by learned Sessions Judge, Kurukshetra whereby appellant-accused Deepak Kumar was convicted for offence under Section 302 IPC. Vide order on sentence of the even date, he was sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 5000/-. In default of payment of fine, he was ordered to further undergo rigorous imprisonment for a period of one year.

On receipt of Ruqqa, Ex. P10, on 15.06.2010, from Community Health Center, Shahabad regarding death of Vinay Chobey, Inspector Jai Pal Singh reached there and recorded the statement of complainant Daya Shankar @ Kripa Shankar Tiwari which is Ex. P-28. Complainant alleged that he was employed as driver in Gati Company. Vinay (deceased) was also employed as driver in the same company on container-1110 bearing registration No. UP-70-AT-3934. Subhash Pandey was second driver on the aforesaid vehicle. After loading postal parcels in the aforesaid container, they started for Gati Transport, Mohri, District Kurukshetra from Allahabad. The second driver Subhash Pandey had to go somewhere for his personal work so he was spared by the complainant at Lucknow (U.P.). Complainant and Vinay reached Gati Transport, Mohri on 14.06.2010 around 7.00 PM. At about 8.30 PM, they unloaded the postal parcels and after taking dinner, parked the vehicle in the street and they had gone to sleep in a room meant for drivers. Some other drivers were also sleeping in that room. At about 12.00 in the night, when Vinay was urinating near the room, accused-Deepak started abusing him and exhorted to teach a lesson for urinating there. Exchange of hot words had taken place between them. They started giving slaps and fist blows to each other. While fighting, both of them came in front of the godown. When complainant ran to separate them, accused-Deepak picked up a *Danda*, which was lying there, and gave blow on left costal margin and left shoulder of Vinay, due to which he fell down. While Vinay was lying on the ground, accused had also caused injuries to him. Thereafter, complainant raised alarm. On hearing the shouts, security guards

Sandeep Kumar and Vikram Singh reached there whereas accused-Deepak had fled away from the spot along with the *Danda*. Vinay was got admitted in Government Hospital, Shahabad where he was declared as brought dead. On the basis of aforesaid statement, Ex. P-28, formal FIR, Ex. P-28/1, was registered. Inquest proceedings, Ex. P-34, were conducted. Dead body of Vinay and place of occurrence were got photographed (Ex. P-11 to Ex. P-20). Post-mortem examination of the dead body of Vinay was got conducted. Post-mortem report is Ex. P-22. Doctor, who conducted the post-mortem, handed over a sealed parcel containing wearing apparels of the deceased-Vinay which was taken into possession, vide recovery memo Ex. P-29. Rough site plan of the place of occurrence was prepared as Ex. P-35. The blood stained earth was lifted from the place of occurrence and converted into sealed parcel and then was taken into possession, vide recovery memo Ex. P-4. Blood stains were also lifted from the spot and after converting into a sealed parcel, police took into possession, vide recovery memo Ex. P-5. Pieces of glass, having blood stains lying at place of occurrence, were also lifted and converted into sealed parcel and then taken into possession, vide recovery memo Ex. P-6.

On 16.06.2010, accused-Deepak was arrested. On interrogation, he gave disclosure statement, Ex. P-7, in pursuance with which, he led the police party to bridge, G.T. Road, Mohri and got recovered *Danda*, Ex. P-36. It was taken into possession, vide recovery memo Ex. P-8. After converting the same into sealed parcel, rough sketch of *Danda* was prepared as Ex. P-8/1. Rough sketch plan of the place of recovery of *Danda* was also

prepared as Ex. P-37. Thereafter, accused was got medico-legally examined. Sealed parcels were sent to Forensic Science Laboratory, Haryana, Madhuban, Karnal for analysis. Scaled site plan of the place of occurrence was got prepared as Ex. P-1. Statements of witnesses were recorded. After completion of necessary investigations, Challan was put in the Court.

Accused was charge-sheeted for offence punishable under Section 302 IPC. After taking entire prosecution evidence, statement of accused, under Section 313 Cr.P.C., was recorded, wherein, each allegation of the prosecution was denied by the accused and pleaded his innocence and further that he has been falsely implicated in this case.

We have heard Mr. D. S. Randhawa, Advocate for the Appellant and Mr. Vivek Saini, Assistant Advocate General, Haryana for the State of Haryana besides going through the entire record.

It was argued by learned counsel for the appellant-accused that PW-12 Sandeep Kumar and PW-13 Vikram Singh, Security Guards of Gati Transport, alleged eye-witnesses, did not support the prosecution case at all. As such, only on the basis of statement of PW-15 Daya Shankar @ Kripa Shankar, conviction cannot be based. The statement of Daya Shankar is not consistent with the prosecution case. The complainant Daya Shankar deposed that he had got recorded the statement before the police at about 1.30/2.00 AM i.e. the very night of occurrence but Ex. P-8 shows that his statement was recorded by the police at 12.05 PM. Besides this discrepancy in the statement of complainant; on account of delay in lodging the FIR, the possibility of after thought version, introduction of colored version,

exaggerated version or concocted story after due considerations and deliberations cannot be ruled out. It was further contended that just after recording of statement of Daya Shankar PW-15, in the court, DW-1 Harish Dheer, brother of the accused, had a conversation with him and at that time Daya Shankar informed him that he did not witness the alleged occurrence and he had deposed only due to pressure of his village brotherhood. Apart from above, even the injuries as stated by complainant on the person of Vinay do not co-relate with the injuries mentioned in the post-mortem report of Vinay by the doctor. Even doctor gave the cause of death due to throttling whereas the complainant nowhere stated so. With this evidence on record, it was argued by learned counsel for the appellant-accused that it would not be safe to base conviction on the solitary testimony of PW-15 Daya Shankar.

It is, of course, true that PW-12 Sandeep Kumar and PW13 Vikram Singh, Security Gurds of Gati Transport, did not support the prosecution case so far as causing of injuries to Vinay by appellant-accused is concerned. The Court cannot lose sight of the fact that these two witnesses did not support the prosecution case as they were won over by the accused. The efforts put in by the accused in this regard are writ large when DW-1 Harish Dheer, brother of the accused, had tried to record the conversation of complainant Daya Shankar PW-15 with him. PW-15 Daya Shankar when came out of the court after making his deposition, DW-1 Harish Dheer did not spare him. In order to negate his testimony which he had already given, he wanted to show complainant as not truthful witness and, therefore, he recorded the conversation of Daya Shankar with him. The transcription of

alleged conversation, Ex. DW-1/C, in fact is of no value for the case of accused. The voice test was not got conducted so as to know as to if the person alleged as Daya Shankar in the audio cassette was that of PW-15 Daya Shankar-complainant. Even otherwise, in the aforesaid conversation Daya Shankar PW-15 did not state that he did not witness the occurrence or that he was not present at the time of the occurrence. PW-15 categorically deposed that at Gati Transport, Mohri in the records, entry is being made whenever they enter in the company and entry is also made when they return. On the day of occurrence, an entry was duly recorded in the records of the company. Accused did not make any effort to bring on record, records of the Gati company so as to show that complainant was not in fact present at the spot. Even otherwise, when PW-12 Sandeep Kumar and PW-13 Vikram Singh also deposed that on hearing the shouts they reached the spot, it was quite natural for the complainant PW-15 also to be present at the spot. There is further nothing on record to show that PW-15 Daya Shankar was having any enmity with the accused to implicate him falsely in this case. In this case FIR is quite prompt. Dr. R. L. Arya, Medical Officer, CHC, Shahabad as PW-6 deposed that during the intervening night of 14/15.06.2010 he sent Ruqqa, Ex. P-10, at 2.10 AM. Inspector Jai Pal Singh, PW-14, Investigating Officer of the case, deposed that he cannot recollect the time when the Ruqqa was received in the police station. Under these circumstances, if the statement of Daya Shankar-complainant was recorded at 12.05 PM, it cannot be said that it is the result of after thought or that the appellant-accused has been falsely implicated in this case. There is also no

material on the file to show as to why the eye-witness of the case i.e. Daya Shankar-complainant would leave the real culprit.

The next contention of learned counsel for the appellant-accused is regarding variance in ocular as well medical evidence on record. If we peruse the statement of PW-15 Daya Shankar as well the statement of Dr. Deepali Goel, who conducted the post-mortem on the person of Vinay Kumar, we can conclude that in fact the ocular as well as medical evidence cannot be said to be discrepant so as to create doubt in the present case. PW-15 Daya Shankar deposed that at about 10.00 PM they reached in drivers' room for sleeping. At about 12.00 at midnight, Vinay-deceased got up for urination. In the FIR, Ex. P-28, it finds mention that Vinay started urinating nearby the room, upon which Deepak started abusing Vinay and told that he would be taught a lesson for passing urine at that place. On this, an altercation took place between both of them and they started giving fist and kicks to each other. While fighting, both of them reached in front of godown. Complainant also chased them for separating. Deepak-accused then picked up a *Danda* from the spot and started causing injuries on the left ribs and left shoulder of Vinay. Vinay then fell down. Accused-Deepak caused injuries to Vinay even while he was lying on the ground. In the scaled site plan Ex. P-1 as well in the rough site plan of the spot Ex. P-35 mark 'A' has been shown as the place where Vinay and Deepak started quarreling and mark 'B' has been shown as place where they reached fighting with each other and where *Danda* blows were also given to deceased. Mark 'A' is the drivers' room. Mark 'B' is in front of godown. As such while giving fist blows, slaps and

kicks etc., they reached at place mark 'B'. At that time if accused-Deepak also throttled Vinay, there is every possibility for PW-15-complainant for not having notice of that. There is clear cut medical evidence on the file. In view of the statement of Dr. Deepali, PW-8, and her affidavit Ex. P-21 that the cause of death in this case was due to throttling associated with shock and hemorrhage, which was due to multiple injuries described above. All the injuries were reported as ante-mortem in nature and sufficient to cause death in normal course of events. As such, if throttling has also been given as cause of death which is of course associated with shock and hemorrhage due to multiple injuries on the person of deceased, it cannot be said that simply because complainant did not speak about throttling of deceased by the accused, appellant-accused Deepak is entitled to acquittal. In such like fights, where the accused and deceased were scuffling and were giving fist blows, slaps, kicks etc. to each other for sometime and then gave *Danda* blows to deceased and even giving *Danda* blows when he was lying on the ground, it is not expected of the witness, who is stated to have witnessed the occurrence, to give each minute detail in a parrot like manner. It is the settled principle of law that corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor variations should not render the evidence of eye-witness unbelievable. As such in criminal trial, the quantity of evidence is not to be considered to be a test for deciding a case. Emphasis of the court is always on the quality of the evidence. In ***Bhimappa Chandappa vs. State of Karnataka (2006) 11 SCC 323***, it was observed that testimony of a solitary witness can be made the basis of conviction. The

credibility of the witness requires to be decided 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 court has no hesitation in recording the conviction solely on his uncorroborated testimony. The presence of PW-15 Daya Shankar at the place of occurrence was natural. He has given the true kind of occurrence as witnessed by him. He has categorically stated about giving of fist blows, slaps, kicks etc. to each other by accused and the deceased and thereafter infliction of injuries on the person of deceased by the accused by giving him *Danda* blows. The oral testimony of complainant is not contradictory to the medical evidence so as to disbelieve the statement of PW-15. As such, the statement of PW-15 Daya Shankar inspires confidence in the mind of the Court regarding guilt of the accused and this court is satisfied that the testimony of PW-15 is natural, wholly truthful and convincing so as to record conviction solely on his uncorroborated testimony.

It was also argued by learned counsel for the appellant-accused that if at all, this court confirms the view that the case is proved against the accused in that eventuality, as accused-appellant was not having an intention to kill the deceased, therefore, the offence under Section 302 IPC is not made out as at best it would be an offence under Section 304 part 1 of the IPC. By giving blow of *Danda* on the person of deceased, it cannot be said that accused-appellant was having any intention to kill deceased.

The above contention of learned counsel for the appellant-accused is again not sustainable as it is a case where it cannot be said that

suddenly a quarrel broke out and the accused had picked up a *Danda* from the spot and gave a single blow to the deceased with which he had died. It is a case in which accused had tried to kill deceased by throttling. He had given fist blows, slaps, kicks to him and thereafter picked up a *Danda* from the spot and caused injuries on the vital organs of the deceased like neck and ribs i.e. costal margin. Not only this, even when Vinay had fallen down on the ground and was lying on the ground, accused kept on giving *Danda* blows on him. In such like circumstances, it cannot be said that accused-appellant was having no intention to kill him. The intention can be formed even at the spot. The manner in which offence has been committed and the nature of injuries go to show that the appellant-accused was having an intention to kill the deceased.

For the reasons recorded above, finding no merit in this appeal, maintaining the impugned judgment dated 31.01.2012 and order on sentence of the even date, this appeal is ordered to be dismissed.

**(Hemant Gupta)**  
**Judge**

**(Raj Rahul Garg)**  
**Judge**

**09.09.2015**  
*Waseem Ansari*