

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 07.09.2015

CRA No.886-DB of 2010

Darbara Singh @ Dalbara Singh

...Appellant

Versus

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?

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

Mrs. Manjari Nehru Kaul, Addl. AG, Punjab.

HEMANT GUPTA, J.

The present appeal is directed against the judgment of conviction and order of sentence dated 07.07.2010 rendered by the learned Additional Sessions Judge, Fatehgarh Sahib, whereby the appellant was convicted for an offence punishable under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/-. In default of payment of fine, the appellant to further undergo rigorous imprisonment for one year.

The prosecution case was set in motion on the statement of Jagminder Singh son of Karamjit Singh (deceased) resident of Village Fatehpur made to SI Sewa Singh, P.S.Mulepur on 26.07.2009. In his statement (Ex.PE), Jagminder Singh stated that his sister Jasvir Kaur was married to Darbara Singh son of Gurmail Singh resident of Chanarthal

Darbara Singh used to beat his sister Jasvir Kaur. He alongwith his father Karamjit Singh and his cousin Randhir Singh, on receipt of telephonic message, from her sister to the effect that she has been beaten up by her husband, went to the house of Darbara Singh at Chanarthal Khurd in order to make him understand. However, they came to know that he had gone to his shop, which was situated near the Gurdawara Sahib. Thereafter, at about 4.30/5.00 PM, he alongwith his father and Randhir Singh went to the shop of his brother-in-law. He alongwith his cousin Randhir Singh were standing outside the shop near the scooter, whereas his father Karamjit Singh went inside the shop in order to make Darbara Singh understand and to enquire that why he gave beating to his daughter. In the meanwhile, Darbara Singh got annoyed and after picking up a screw driver, which was lying near with him, gave blow on the left side of chest of his father. He stated that when he and his cousin brother went inside the shop to get them free, his brother-in-law fled away from the spot. Thereafter, he alongwith his cousin removed his father Karamjit Singh in injured condition to Civil Hospital, Fatehgarh Sahib on their motor-cycle, but his father died in the meantime. On the basis of such statement, *ruqa* (Ex.PE/1) was sent to the Police Station for registration of an FIR. On receipt of *ruqa*, FIR (Ex.PE/2) was lodged on the same day under Sections 302 & 498A IPC.

Thereafter, SI Sewa Singh – the Investigating Officer, went to the Civil Hospital, Fatehgarh Sahib, where the dead body of Karamjit Singh was lying in the mortuary and prepared inquest report Ex.PM. Since post-mortem examination could not be conducted on that day, SI Sewa Singh after deputing HC Karanjit Singh to take care of the dead body went to the place of occurrence and prepared rough site plan Ex.PN. Pursuant to application Ex.PD, post-mortem examination on the dead body of Karamjit

Singh was conducted on 27.07.2009. It was on 31.07.2009, Darbara Singh – accused was arrested. During interrogation, accused suffered a disclosure statement (Ex.PH) to the effect that he had kept concealed a screw driver underneath the clothes at his shop. In pursuance of such statement, accused got recovered a screw driver stained with blood, which was taken into possession vide recovery memo Ex.PK. On completion of necessary formalities, report under Section 173 Cr.P.C. was filed against the present appellant.

To prove its case, apart from tendering into evidence report of the Forensic Science Laboratory, Chandigarh (Ex.PX), the prosecution has examined as many as 10 witnesses. PW-1 Dr. Kulmit Singh Gill, Medical Officer, Civil Hospital, Fatehgarh Sahib proved the post mortem report as Ex.PB. He deposed that possibility of the injury on the person of deceased with screw driver cannot be ruled out. In his cross-examination, PW-1 Dr. Kulmit Singh Gill stated that no weapon was shown to him by the police at the time of post mortem examination and that there was one blow (injury) on the left side of the chest. He stated that the death is the result of shock and hemorrhage due to puncturing of heart.

While appearing in the witness-box, PW-2 Jagminder Singh – author of FIR, has reiterated its earlier version. In his cross-examination, he stated that since his father was having a chat with Darwara Singh, they had not entered the shop. After the injury was inflicted to his father by the accused, he alongwith Randhir Singh immediately entered the shop, which has only one shutter. He stated that he did not notice, if Darwara Singh was holding screw driver in his hand, when they entered the shop after the occurrence, as they became busy in providing assistance to his father.

PW-3 Randhir Singh son of Gurmail Singh also deposed in the same terms as has been deposed by PW-2 Jagminder Singh. In his cross-examination, he stated that his house is situated at a distance of 3/4 hours from the house of Jagminder Singh in Village Fatehpur. His uncle Karamjit Singh came to their house and had a talk with his father. Thereafter, his uncle asked him to accompany them to Chanarthal Khurd. He stated that he has no knowledge regarding the beatings given to Jasvir Kaur by the accused prior to the day of occurrence or that she had visited village on account of that reason. He stated that accused and Karamjit Singh had not grappled with each other and that they were talking with each other in a normal way.

All the incriminating circumstances appearing in the prosecution evidence were put to the accused in his statement recorded under Section 313 Cr.P.C. He denied the prosecution allegations and pleaded false implication. In his defence, he also examined Bachan Singh, Lamberdar as DW-1, Harjit Singh as DW-2, Harjinder Singh DW-3 and Mewa Singh as DW-4.

After going through the evidence on record, learned trial Court convicted and sentenced the accused-appellant, as mentioned above, whereas acquitted him of the charges levelled under Section 498A IPC.

Before this Court, learned counsel for the appellant has argued that no independent witness has been joined though the place of occurrence is shop near the Gurudwara Sahib. The recovery of screw driver on the basis of disclosure statement is again by not after associating any independent witness, which also throws doubt on the story set up by the prosecution. It is also argued that the place of occurrence is a shop and the weapon of offence is not any lethal weapon, but a screw driver. Therefore, the single blow with such screw driver is without any premeditated mind and without any

intention to cause death. It appears to be a case of sudden fight. Thus, it is a case where the conviction for an offence punishable under Section 302 IPC is not sustainable, but it can be said to be at best a case of conviction for an offence punishable under Section 304 IPC.

We have heard learned counsel for the parties at length and with their assistance have gone through the record carefully. The argument that no independent witness has been joined though the place of occurrence is a thoroughfare is not tenable. PW-2 Jagminder Singh, author of FIR, has categorically stated that no other person was present at the spot nor any employee of Gurdwara or Granthi was present at the spot. In his cross-examination, he admitted that the shop, where the occurrence had taken place is a thoroughfare, but nobody passed the place of occurrence at that time. He also stated that his father had a talk with Darbara Singh for about five minutes only before the occurrence. Such statement of PW-2 stands corroborated by PW-3 Randhir Singh, when he stated that the street in front of the shop is a thoroughfare, but no person was seen at that time. Therefore, non-joining of independent witnesses cannot be made basis to doubt the prosecution version.

Similarly, the argument that at the time of recovery of screw driver from the shop of the appellant, no independent witness has been joined is again without merit. The recovery of weapon of offence i.e. screw driver is from the tailor shop of the appellant pursuant to his disclosure statement (Ex.PH). The said fact cannot be doubted only for the reason that no independent has been examined, when such fact is proved by the Investigating Officer.

We find that the statement of PW-2 Jagminder Singh that Darbara Singh @ Dalbara Singh, the present appellant, stabbed a screw

driver on the left side of chest of his father Karamjit Singh (deceased), is a statement of reliable and trustworthy witness, given soon after the occurrence. In case of near relation appearing as a witness, the Court is required to appreciate the evidence with more care and caution. But the evidence cannot be rejected only on the ground that the witness is related to the deceased. Mere fact that PW-2 Jagminder Singh is son of the deceased is not sufficient to discard his testimony, when he has stood the test of cross-examination. His statement is corroborated by the medical evidence. There is no defence version that the deceased was the aggressor or that he was armed, who came to the shop of the appellant with intention to harm the accused. Therefore, the prosecution has proved beyond reasonable doubt that it was appellant alone, who has stabbed screw driver on the left side of chest of the deceased Karamjit Singh.

However, the prosecution is required to prove that such injury was intended to be inflicted with intention to cause such bodily injury which was likely to cause death. We find that as per the testimonies of PW-2 Jagminder Singh and PW-3 Randhir Singh, Karamjit Singh (deceased) went inside the shop in order to make Darbara Singh understand and to enquire that why he gave beating to his daughter. Both of them have deposed that Karamjit Singh and the present appellant were talking in normal voice and that they were hearing the discussion between them while standing outside the shop. This is more so when the place of occurrence is a shop of the appellant, where he is doing the work of tailoring. It appears that during the course of arguments, which took place on the date of occurrence, in the heat of passion, the appellant lifted the screw driver and stabbed on the chest of the deceased. Such sudden blow without any pre-meditated mind is without any intention of causing death to the deceased. Therefore, it falls within

Exception 4 of Section 300 of the Indian Penal Code, which contemplates that culpable homicide is not a murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. There is no evidence that there was any premeditation. It is a case of sudden fight in the shop premises of the accused, when the accused inflicted single blow with screw driver. Such screw driver is commonly available. He has not acted in a cruel or unusual manner. In the present case, there is no evidence that there was any intention or premeditation in the mind of the appellant to inflict such injury to the deceased, as was likely to cause death in the ordinary course of nature.

Thus, we find that the appellant is liable to be convicted for an offence falling under Part I of Section 304 IPC rather than under Section 302 IPC.

Consequently, we partly allow the present appeal by setting aside the conviction of the appellant under Section 302 IPC, but convict him under Section 304 Part I IPC. As a result thereof, the appellant is directed to undergo rigorous imprisonment for a period of ten years under Section 304, Part I IPC. However, the sentence of fine of Rs.10,000/- and in default of payment of fine to undergo further rigorous imprisonment for one year, shall remain same.

(HEMANT GUPTA)
JUDGE

07.09.2015
Vimal

(RAJ RAHUL GARG)
JUDGE