

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Crl. Appeal No.1532-DB of 2013

Date of Decision: 24.02.2015

Lallu @ Lal Mohan

..... APPELLANT

VERSUS

State of Haryana

..... RESPONDENT

PRESENT: - Mr. Rajesh Bhardwaj, Advocate as Amicus Curiae for the appellant.

Mr. Randhir Singh, Additional Advocate General, Haryana for the respondent.

CORAM: **HON'BLE MR. JUSTICE T.P.S. MANN**
 HON'BLE MR. JUSTICE SHEKHER DHAWAN

- 1) Whether Reporters of the 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?

SHEKHER DHAWAN, J.

The present appeal is directed against the judgment of conviction dated 10.10.2013 and order of sentence dated 11.10.2013 whereby appellant Lallu @ Lal Mohan has been held guilty and convicted and sentenced as

under:

<i>Conviction</i>	<i>Sentence</i>
Under Section 302 IPC	The convict is sentenced to undergo life imprisonment and to pay a fine of ₹5,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one year.

Briefly, the prosecution case is that on 02.02.2013 at about 9.30 P.M. Mukand (since deceased) was found murdered in his residential quarter in a stud farm, Sultan Singh near Westend Vatika in the area of Police Station Sohna, Gurgaon. Complainant Kali Munda reported to the police that he was resident of stud farm Sultan Singh and Mukand was also living there along with his wife Shukni, daughter of brother of his wife and originally resident of Village Ghora Ghat Police Station Lohan, District Jaspur, State Chhatisgarh. They had been doing labour work from last 5-6 months. The relations were strained between the couple i.e. Smt. Shukni and Mukand. As appellant Lallu @ Lal Mohan was staying with Shukni and Mukand and appellant was aware that Shukni was being given ill treatment by her husband and, as such, he had committed the murder of his 'Jija' (sister's husband) with

'Farsa'. As per complainant, accused fled away from the spot after committing the murder.

During the trial stage, charge was framed against the appellant for commission of offence under Section 302 IPC on 22.04.2014 to which he pleaded not guilty and claimed trial.

The prosecution examined 14 witnesses in all.

Accused was examined under Section 313 Cr.P.C. However, no witness in defence was examined.

Learned trial Judge while placing reliance upon testimony of prosecution witnesses dis-believed the defence version, held the appellant guilty for commission of offence under Section 302 IPC and convicted and sentenced him thereunder.

Being aggrieved of passing of said judgment of conviction and order of sentence, the appellant is before this Court.

The appeal was originally filed by Mr. Surender Deswal, Advocate but on 21.02.2015 none had put in appearance for the appellant. Since appellant was in custody, this Court appointed Mr.Rajesh Bhardwaj, Advocate as Amicus Curiae.

We have heard Mr. Rajesh Bhardwaj, Advocate as Amicus Curiae and Mr. Randhir Singh, Additional Advocate

General, Haryana besides perusing the record.

Learned trial Judge has passed the judgment of conviction and order of sentence while placing reliance upon testimony of PW-5 Kali Munda, complainant of this case, who is close relative of deceased as well as accused person. Deceased Mukand was married to Shukni, who is daughter of brother-in-law (sala) of Kali Munda (PW-5). All of them were residing at stud farm house and used to do labour work. PW-5 Kali Munda deposed that accused Lallu had gone to the quarter of Shukni and at that time Mukand was lying in the pool of blood. At that time Shukni disclosed that accused killed her husband with 'Farsa' and after committing the offence, he fled away from the spot. Accordingly, he had made complaint Ex.PW5/A to the police. PW-14 Smt. Shukni wife of deceased Mukand also supported the prosecution version in toto that she was living with her husband and children in stud farm house. On the fateful day i.e. 02.02.2013 Lallu @ Lal Mohan killed her husband with 'Gandasa' in his quarter. Her husband used to beat her and her children frequently after consuming liquor and the same was not to the liking of her brother, who is now appellant before this Court. On the same night at about 10-11 P.M., her husband was killed by accused with 'Gandasa' and, thereafter, accused fled away after leaving

'Gandasa' on the spot. PW-2 Sanjay also supported the prosecution version that on intervening night of 2/3.2.2013, he was informed that Mukand had received injuries which were caused by Lallu @ Lal Mohan. On receipt of said information, he rushed to the spot and found that Mukand was lying in the pool of blood. As per PW-2, murder was committed by the appellant as Mukand used to give beatings to his sister and her children and accused could not tolerate the same. PW-1 A.K. Rao also made the similar deposition.

The eye witness version is supported and corroborated by medical evidence by way of statement of PW-3 Dr. Sudhir Chaudhary, who had conducted the post-mortem examination. Apart from that the prosecution case is based upon testimony of PW-6 Prem Singh and PW-4 Surender Singh, SI, who had investigated the matter. PW-9 Anil Kumar photographer proved the photographs Exs.P-12 to P-22. PW-10 Naresh Kumar, draftsman had prepared the site plan Ex.PW10/A. PW-8 HC Satish Kumar and PW-11 Constable Raja Ram are the formal witnesses of this case, who had tendered their affidavits Ex.PW8/A and PW11/A about safe custody of case property. PW-7 Constable Harish Chand had delivered special report of this case to Illaqa Magistrate and senior police officers. PW-12 HC Parmod

Kumar had completed the investigating proceedings whereas PW-13 Inspector Anil Kumar had prepared final report under Section 173 Cr.P.C. after completion of investigation.

Against the plea of denial as put forward in the statement under Section 313 Cr.P.C., accused simply took the plea that the prosecution case is false and he has been falsely implicated in this case whereas he is innocent. However, the plea of innocence was not believed by the trial Judge and, accordingly, he was held guilty and convicted and sentenced for the offence under Section 302 IPC.

At the time of arguments, Mr. Rajesh Bhardwaj, learned Amicus Curiae representing the appellant took the plea that the prosecution case is not believable at all. PW-14 Smt. Shukni cannot be relied upon as she was deposing merely because the death of her husband had taken place. PW-5 Kali Munda complainant of this case had reached at the place of occurrence after the incident had taken place and as such, he was not able to depose anything that who had caused the murder of Mukand. Similarly, testimonies of PWs 1 and 2 are not of any help for the prosecution. However, the learned trial Judge has placed reliance upon the same whereas the evidence is wholly unreliable and the same was based on hearsay.

While arguing on these points, Mr. Randhir Singh, Additional Advocate General, Haryana, took the plea that it was a case of eye witness account and there is nothing to disbelieve the testimony of PW-14 Shukni. The victim and deceased in this case is none else but husband of Smt. Shukni and 'Jija' of accused. There is no doubt about identity of the accused. All of them were living in the same quarter. The remaining witnesses have also supported and corroborated the prosecution case in toto and there is nothing to disbelieve eye witness account and medical evidence as well as remaining evidence by way of investigating proceedings.

We have considered the rival contentions having been raised by learned counsel for the parties.

The most important point involved in this case is that the trial of the case had taken place before learned Additional Sessions Judge, Gurgaon. At that time, no plea was raised that appellant-accused Lallu @ Lal Mohan is juvenile. However, subsequently that plea was raised before this Court during the appeal proceedings and order dated 24.02.2014 was passed thereby directing the Juvenile Justice Board, Gurgaon to hold inquiry about the age of the appellant. Pursuant to the said order dated 24.02.2014, Juvenile Justice Board, Gurgaon held the inquiry and

concluded that the appellant was juvenile on the date of commission of the offence. Accordingly, the appellant was declared as Juvenile in conflict with law as per order of this Court dated 15.01.2015.

The main point to be considered was whether appellant-accused required to be tried or to face inquiry before Juvenile Justice Board of Gurgaon or this Court while dealing with appeal can decide the matter in controversy.

Similar matter had gone before Hon'ble Supreme Court in case of **Jitendra Singh @ Babboo Singh and others Vs. State of U.P.**, (2013) 11 SCC 193 and Hon'ble the Supreme Court upheld the conviction. However, certain directions were issued to all the trial Magistrates. Hon'ble Supreme Court also held that while upholding the judgment of conviction and for awarding punishment, case of **Ashwani Kumar Saxena Vs. State of M.P.**, 2012(4) RCR(Crl.) 391 can be followed, which lays down that if conviction is upheld, the matter can be placed before Juvenile Justice Board for awarding suitable punishment. It was also laid down that if accused is convicted only the 'punishments' not greater than those postulated by the Juvenile Justice Act, 1986 ought to be awarded to him.

In the light of above law laid down by Hon'ble the Supreme Court; facts of this case; evidence available on file

and while considering the submissions raised by learned counsel for the parties, we are of the considered view that trial Judge had passed the judgment of conviction dated 10.10.2013 based on eye witnesses account, which is duly supported and corroborated by medical evidence and investigation done by police officials. There is no reason to disbelieve the testimony of PW-14 Smt. Shukni as well as testimony of PW-5 Kali Munda complainant in this case especially when the defence version is just plea of denial. Same finds support and corroboration from testimonies of PW1 and PW-2, who visited the spot immediately after the incident.

Learned trial Court has rightly held the appellant guilty for commission of offence under Section 302 IPC and convicted him thereunder and appeal against judgment of conviction is without any merit and the same stands dismissed.

There is absolutely no bar that such a plea of appellant being juvenile cannot be raised for the first time during arguments of first appeal or even in the second appeal before Hon'ble the Supreme Court. Such a law was laid down by Hon'ble Court in case of **Ashwani Kumar Saxena Vs. State of M.P.(supra)**. Hon'ble Supreme Court had also observed in case of **Vijay Singh Vs. State of**

Delhi, 2012(4) RCR(Criminal) 532 that if accused had committed the offence more than 10 years ago, there was no point remitting the matter back to the Juvenile Justice Court.

Now coming to the point of sentence, if any, to be awarded to the appellant, learned trial Judge had sentenced the appellant to undergo life imprisonment and pay a fine of ₹5,000/-. There is no dispute that the said sentence cannot be awarded to the appellant, who has already been held to be juvenile in conflict with law. As per provisions of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000 the appellant who is juvenile in conflict with law can be awarded the following sentence:

"XXX XXX XXX

(g) make an order directing the juvenile to be sent to a special home for a period of three years.

xxx xxx xxx''

In the case in hand, the appellant has already spent a period of about two years while remaining in custody. Considering all the relevant factors, the interest of justice would be met suitably if the appellant is ordered to remain in special home for a period of 02 years and 06 months and pay fine of ₹5,000/- and in case he fails to

make the payment of fine, he shall have to stay in special home for another period of one month. The period already spent by him in custody during inquiry, investigation, trial and appeal of this case shall be set off against the said period of 02 years and 06 months.

In view of the above, the present appeal is accordingly partly accepted. The appeal against judgment of conviction dated 10.10.2013 stands dismissed whereas the appeal against order of sentence is modified as above.

(T.P.S. MANN)
JUDGE

(SHEKHER DHAWAN)
JUDGE

February 24, 2015
jt