

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

Crl. Appeal D-919-DB of 2010
Date of Decision: August 25, 2015

Bhola Yadav Appellant

Versus

State of Punjab Respondent

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

Present: Ms. Geeta Sharma, Advocate as Amicus Curiae,
for the appellant.

Mr. S.S. Dhaliwal, Addl. A.G., Punjab.

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest?

GURMIT RAM, J.

This appeal has been preferred by the appellant-herein (accused) against the judgment and order of sentence dated 22.05.2010 passed by learned Sessions Judge, Rupnagar in case bearing FIR No.62 dated 06.10.2009, Police Station, Railway Police, Sirhind vide which the appellant-herein was convicted under Section 302, IPC and sentenced thereunder.

2. The case of prosecution before the Trial Court in brief was that on 06.10.2009 at about 7.00 A.M., PPHC Jagjit Singh No.1374/GRP, Anandpur Sahib Police Post, alongwith PPHC Amarjit Singh No.774 was present at Platform, Railway Station Kiratpur Sahib near the office of ASM for checking of suspects and saboteurs. At that

time, they detected two persons of 'Sadhu' type quarrelling with each other on platform at a distance of about 150 meters towards the northern side of the railway station. On hearing their voice, said Jagjit Singh alongwith his colleague proceeded towards them for pacifying them and when they were at a distance of about 30 meters, they noticed that one person who has since been murdered was saying to the other person who had killed him "Bhola why are you beating me, I will give money to you". At the same very moment, the said person Bhola threw down the other person by jostling him and picked up a big stone lying nearby and struck the same on his head. As a result thereof, the said person started crying due to pain. The complainant started caring him, who anyhow breathed his last within few seconds. The assailant was captured by PPHC Amarjit Singh who on interrogation disclosed his identity as Bhola Yadav, s/o Pirthi Yadav, resident of Anantpur, Police Station Janjia Bazar, District Saharsa (Bihar). The person, since deceased, was of the age of 45/50 years, moderately built, 5 feet 8/9 inches in height, wearing a Kurta and chadra of black colour. In the meantime, railway employee Ram Lal, point indicator, of Railway Station, Kiratpur Sahib also reached at the spot. In his presence also, the said Bhola Yadav was uttering that he has been done to death for demanding money.

The above statement was made by complainant, PPHC Jagjit Singh before ASI Hem Raj, Incharge, PP GRP Anandpur Sahib, on the basis of which the instant case was registered. Blood stained floor cement alongwith blood stained stone was lifted from the spot and the same were taken into possession by converting them into two

different parcels sealed with the seal of 'HR'. The said parcels alongwith sample seal were further handed over to SI/SHO Harish Kumar, Police Station, Railway Police, Sirhind who took the same into his possession. The post mortem on the dead body of above said deceased was got conducted from Civil Hospital, Anantpur Sahib. Site plan of the place of occurrence was prepared. Statements of witnesses were recorded. On receipt of report of Chemical Examiner and on completion of investigation, Challan was presented before the Court of Ld. CJM, Rupnagar, who further committed this case for trial to the Court of Sessions Judge, Rupngar after supplying the copies of documents in compliance of the provisions of Section 207 of Cr.P.C.

3. Finding a prima-facie case under Section 302 of IPC against the accused, charge was framed accordingly by Court of Learned Sessions Judge, Rupnagar against the appellant-accused to which he pleaded not guilty.

4. Then during trial of the case, the prosecution in order to substantiate its version examined as many as 12 witnesses.

5. Then the accused was duly examined as required under the provisions of Section 313 of Cr.P.C. during which the entire incriminating evidence brought on record against him was put to him, but he denied the same in toto. No evidence was produced in defence despite the opportunity granted.

6. The learned Trial Court after hearing learned counsel for both the parties, convicted the accused for the charge under Section 302 of IPC and sentenced him thereunder with life imprisonment alongwith fine of Rs.5,000/- vide impugned judgment and order of

sentence dated 22.5.2010.

7. Appellant (accused) being not satisfied with the impugned judgment and order of sentence has come up before this Court by way of the instant criminal appeal.

8. The learned counsel for the appellant has contended that the accused as well as person since deceased were unknown to both PW5 and PW6, so as such the person since deceased had remained unidentified. The prosecution had cremated the unidentified dead body on the very next day of the alleged occurrence i.e. on 07.10.2009. In doing so, they did not follow procedure as prescribed under the law. Herein, she has also contended that no notice by way of publication of photo of dead body was made in order to ensure the whereabouts of deceased which act on the part of prosecution was stated to be illegal.

The learned counsel for the appellant has also contended that according to the prosecution story, PW5 and PW6 had seen the alleged occurrence, but they did not prevent the assailant from committing the crime either by nabbing him or by use of physical force. Lastly, she contended that in the case in hand, the prosecution had failed to bring home the guilt of the appellant-herein/accused beyond the shadow of doubt and as such the impugned judgment and order of sentence are liable to be set aside by accepting the instant appeal.

9. But on the other hand, the learned State counsel contended that prosecution has succeeded to prove its case against appellant-herein/accused beyond the shadow of doubt by bringing on the record cogent, consistent and confidence inspiring evidence.

10. Now, let us have a glance of the evidence of prosecution in

brief as led during the trial of the case.

PW5, PPHC Jagjit Singh, complainant was present at Platform, Railway Station Kiratpur Sahib on 06.10.2009 at 7.00 A.M. in connection with his official duty alongwith PW6 PPHC Amarjit Singh. Both of them had seen the alleged occurrence. His statement Ex.PE containing the entire account of alleged occurrence was recorded. He and PPHC PW6 Amarjit Singh captured the assailant, who on interrogation disclosed his identity as Bhola Yadav, resident of Saharsa (Bihar). PW6 PPHC Amarjit Singh also supported the version of prosecution by corroborating the statement of PW5.

PW7 ASI Hem Raj No.691 was the Investigation Officer in this case. His statement is to the effect that on 06.10.2009, he was posted as Incharge PP GRP Anandpur Sahib. On that day, HC Jagjit Singh and HC Amarjit Singh were deputed at Railway Station, Kiratpur Sahib for checking purpose at the said railway station. At about 07.30 a.m., he received telephonic call from HC Jagjit Singh regarding murder of one person by another person with stone. He visited the place of occurrence where he recorded the statement (Ex.PE) of HC Jagjit Singh, complainant upon which he made proceedings (Ex.PE/1), on the basis of which FIR (Ex.PC) was registered in this case. Further he prepared rough site plan of the place of occurrence (Ex.PM) and rough sketch of stone (Ex.PN). Then he also stated that blood stained stone alongwith floor cement blood stained was taken into possession from the place of occurrence by converting the same into two different parcels sealed with seal of 'HR' vide memo (Ex.PF) and he further handed over the same to SI Harish Kumar vide memo (Ex.PG). Further

memo (Ex.PH) with regard to arrest of accused and memo (Ex.PJ) with regard to his personal search were also prepared by him. After post mortem on 07.10.2009, parcel of clothes of deceased was produced by Amarjit Singh before SHO which was taken into possession vide memo Ex.PK. PW5 PPHC Jagjit Singh and PW6 PPHC Amarjit Singh also proved the above said memos i.e. Ex.PF, Ex.PG, Ex.PH, Ex.PJ and Ex.PK. Further the Ex.MO/1 is the parcel of stone used in commission of offence, Ex.MO/2 is the parcel of the clothes of deceased and Ex.MO/3 is the parcel of blood stained cement.

PW11 SI Harish Kumar was posted as SHO GRPS, Sirhind on the relevant date and he also visited the place of occurrence where ASI Hem Raj alongwith HC Jagjit Singh and HC Amarjit Singh were also present. ASI Hem Raj prepared the inquest report as Ex.DA. Then he also proved the memo (Ex.PG) vide which parcels of stone blood stained and cement blood stained sealed with seal of 'HR' were taken into possession by him. Statements of witnesses were also recorded by him. Request (Ex.PR) for post mortem of the deceased was also sent by him on 07.10.2009.

PW8 Dr. Swaranjit Singh was the medical officer who conducted post mortem on the dead body of deceased and he tendered in his statement his duly sworn affidavit Ex.PO as part of statement. Further, he also brought the original post mortem register and proved the carbon copy of post mortem report of deceased as Ex.PP.

PW10 Gurcharan Singh was the photographer. He snapped photographs Ex.P1 and Ex.P2 by visiting the spot on the date of occurrence i.e. 06.10.2009 and handed over the same to police.

PW1 HC Devinder Singh deposed that special reports in this case were taken by him to the office of AIG GRP, Punjab, Patiala and DSP GRP, Punjab, Patiala on 06.10.2009 which were received by him from MHC GRP PS Sirhind and tendered in his statement his duly sworn affidavit Ex.PA.

PW2 HC Baldev Singh was posted at GRP Sirhind on 06.10.2009. He tendered in his statement his duly sworn affidavit Ex.PB to the effect that he delivered the special reports in this case to CJM, Rupnager and SSP Rupnagar on the said date.

PW3 Inspector Krishan Kumar recorded the FIR (Ex.PC) in this case on receiving the statement of PPHC Jagjit Singh, complainant and endorsed his statement at Ex.PD.

PW9 HC Amritpal Singh No.761/GRP was posted as MHC at P.S. GRP Sirhind on 07.10.2009. He tendered in his statement his duly sworn affidavit Ex.P-Q. As per his statement, SI Harish Kumar deposited case property of this case duly sealed with him alongwith sample seal on the said date. He got the case property of this case deposited in intact condition through PPHC Amarjit Singh in the office of FSL, Chandigarh on 13.10.2009 which fact is also justified by the said Amarjit Singh, PPHC who appeared as PW6, vide his affidavit Ex.PL.

PW 12 Kamaljit was posted as Section Engineer works, Northern Railway, Ropar and he proved scaled map Ex.PS as prepared by him.

PW 4 Mewa Singh was posted as Executive Officer, Anandpur Sahib. He received one application from Railway Police, Anandpur Sahib for the cremation of dead body of one unidentified

person which was marked by him to Sanitary Inspector to do the needful. Cremation of that dead body was done as per rules and Sanitary Inspector made report to that effect and entry was made in the register.

11. Photograph of deceased is (Ex.P2) on which there is an endorsement made by SHO Harish Kumar on 07.10.2009 thereby giving information to the general public to give any intimation to the police, Railway Station, Sirhind, if anybody from the public identifies the person who is shown to be dead in this photograph. Two mobile phone numbers were also written thereunder to contact the concerned police station with regard to identification of the person shown to be dead in this photograph.

Then after the post mortem, the clothes of said deceased were sealed and secured by preparing a parcel thereof Ex.MO/2 which was taken into police possession. So in the case in hand, the police of concerned Police Station had done all the necessary formalities which were required for giving information to the general public with regard to the identification of the person who was shown to be dead in photograph Ex.P2.

12. Then as per case of prosecution PW5 and PW6 detected two persons of 'Sadhu' type quarrelling with each other from the distance of 150 meters towards the northern side from the railway station, Kiratpur Sahib. PW5 alongwith PW6 had proceeded towards them to settle the matter and when they were at the distance of about 30 meters, then the appellant had pulled down the other person by giving him a push and further picked up a big stone lying nearby and

struck the same on the head of other person, who breathed his last within few seconds then and there.

So in these circumstances, it cannot be said that PW5 and PW6 had done nothing to protect the above said person since deceased from the clutches of accused. Initially they might have thought to separate them on reaching to them, but when they were at the distance of about 30 meters from them, then all of a sudden, accused/appellant took up a big stone lying nearby and hit the same on the head of victim, which they might have never thought/expected from the assailant.

13. Then, in the case in hand, both PW5 and PW6 were the employees of Railway Police and both of them were deputed to discharge their duties at the platform of Railway Station, Kiratpur on 06.10.2009, the date when alleged occurrence took place. They had no animosity or any ill will of any sort to implicate the appellant in this case falsely. As already discussed, the appellant is a resident of State of Bihar and there was no nexus between him and the said PWs. Presence of PW5 and PW6 at the spot at the time of alleged occurrence was natural as well as lawful. So in the case in hand, there is nothing on the record to say that the appellant was involved in this case falsely.

14. So far as the motive is concerned, there was some dispute of sinews of war between the deceased and present appellant as per the evidence which has come on the record during the trial of the case. Both the appellant as well as the deceased were leading Sadhu type life. They were not the big owners of any property either in kind or in cash. So motive in such like case does not carry any much significance.

15. Then in this case, the assailant firstly threw the victim on the ground by jostling him and then picked up a stone lying nearby and hit the same on the head of victim. So, it cannot be said that there was any pre-meditated plan on the part of assailant to commit the murder of victim in the alleged occurrence. It was a case of sudden fight in the heat of passion upon a sudden quarrel giving no time to the appellant to cool down.

16. Then it is well established on record that the assailant had given a single blow on the head of the deceased. Then PW8 Dr. Swaranjit Singh who had conducted post mortem examination of deceased has given the opinion that if a person is hit by big stone by any one, then crush injury is not possible.

All the injuries referred in post mortem report can be caused by one blow of big stone.

Then if the assailant gives a blow with a big stone on the head of victim, then his intention towards the victim is none else, but to cause him such a bodily injury as is likely to cause his death.

17. In the light of above discussed entire circumstances of this case, the present case falls within the scope of provisions of Exception IV, Section 300 of the IPC being a case of sudden fight in the heat of passion upon a sudden quarrel without any premeditation leaving no time for assailant to cool down.

Then there are certain case laws on this point which are discussed as under:-

(i) **Mahabir Singh vs. State of Haryana, 2013(2) Law Herald 1070.** In this case law, the deceased did not serve

food to appellant personally which caused provocation and the appellant picked up an axe and killed the deceased. It was held that it is a case of culpable homicide not amounting to murder and falls within exception 1 of Section 300, IPC.

(ii) **Nanak Ram vs. State of Rajasthan, 2014 (2) Law Herald 1468, SC.** In this case law, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. Out of the 9 injuries, only injury No.1 was held to be of grievous nature, which was sufficient to cause death of the deceased in the ordinary course of nature. One of the accused inflicted injury with Barchhi on head of deceased in heat of passion resulting in his death. Conviction of accused under Section 304 Part II was set aside and he was convicted and sentenced under Section 304 Part-I, IPC.

(iii) **Satpal vs. State of Haryana 2014(5) Law Herald 4213.** In this case, the accused proceeded to the house after the work and found his brother lying on a cot. He suddenly got enraged over the reply given by the deceased that he had no idea to work in the field during summer. He picked up a Kulhari from the house and launched a sudden attack on his brother which proved fatal. It was held that in this case, the accused had committed an offence under Section 304 Part-I of the IPC and the sentence was reduced.

18. In the light of above circumstances of the case in hand and the principles laid down in case laws cited (supra), it is held that the

case in hand falls within purview of Section 304 Part-I of IPC, so the appellant-herein stands acquitted of the charge under Section 302 of the IPC and rather he is held guilty for the lesser offence under Section 304 part-I, IPC and sentenced thereunder with rigorous imprisonment for 10 years. Sentence of fine is upheld. Impugned judgment and order of sentence are ordered to be modified accordingly.

The appeal is partly accepted to the extent indicated and disposed of accordingly.

The intimation be sent to the quarter concerned for compliance immediately.

August 25, 2015

Dinesh

(T.P.S. MANN)

JUDGE

(GURMIT RAM)

JUDGE