

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. D-818-DB of 2011 (O&M)

Date of decision : 15.05.2015

Jasbir Masih

.....Appellant

Versus

State of Punjab

....Respondent

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. D.S. Pheruman, Advocate
for the appellant.

Ms. Manjari Nehru Kaul, Additional AG, Punjab.

LISA GILL, J.

This appeal has been filed by appellant - Jasbir Masih impugning judgment and order dated 07.07.2011 passed by the learned Sessions Judge, Amritsar. Appellant has been convicted for the offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life besides to pay a fine of ₹10,000/- and in default thereof to undergo rigorous imprisonment for one year.

Prosecution was set in motion on the statement, Ex. PD, of Amarjit @ Vicky, brother of the deceased Mahesh Kumar @ Sonu. When his statement was recorded on 24.08.2009 he revealed that he alongwith his family members was residing in the area of Mustafabad, Amritsar for the last 15/16 years. He has four brothers, who live in village Kaler Kalan. As per his routine, he was engaged in

labour work when he received a telephonic call from Mahesh Kumar @ Sonu deceased that he alongwith his friend Jasbir Masih - appellant were coming to meet him. When he reached home at about 6.00 p.m. his brother Mahesh Kumar @ Sonu and appellant Jasbir Masih @ Laddi also came present. After some time both of them went out at about 7.30 p.m. saying that they would be back after some work. A little while thereafter complainant came to know that two persons were quarreling with each other near the place of Dera Ghore Shah wali. He reached the spot and saw his brother Mahesh Kumar @ Sonu and his friend Jasbir Masih – appellant quarreling with each other. He also saw police party come there. Within his sight, appellant - Jasbir Masih took a dagger from his dub (waist) and started inflicting blows on his brother, who got covered in blood. Complainant raised alarm on which Jasbir Masih tried to flee. Police party, however, managed to apprehend him alongwith dagger. His brother succumbed to his injuries.

On this statement, formal FIR No. 347 dated 24.08.2009 Ex. PD/2 was registered. PW7, SI Neeraj Kumar, SHO Police Station Vijay Nagar, Amritsar was on patrolling in the area when he received information about a quarrel taking place in Mustafabad. Police party rushed towards the place. PW7 also disclosed infliction of injuries by the appellant upon deceased Mahesh Kumar @ Sonu with dagger. Mahesh Kumar @ Sonu was taken to Guru Nanak Dev Hospital, Amritsar where he was declared dead. Rough site plan of the place of occurrence, Ex. PG as well as sketch of blood stained dagger Ex.

PH, was prepared. Accused was arrested vide memo Ex. PK.

Post mortem of the deceased was conducted on 25.08.2009 by

PW6 Dr. Kirpal Singh, Government Medical College, Amritsar.

Following injuries were found on the body of the deceased Mahesh

Kumar @ Sonu:-

- “1. Incised stab wound 2 x 1.8 cms x 3.2 cms on right side of chest at 6 o'clock position to nipple, clotted blood was present.
2. Incised stab wound 4 x 2 cms x 3.1 cms on left side of chest at 5 o'clock, clotted blood was present.
3. Stab wound 2 x 1.7 cms on right side of abdomen, 7 cms above ASIS, clotted blood was present.
4. Stab wound 2.2 x 1.7 x 1.3 cms on left hypochondrian region, clotted blood was present.”

It was further observed as under:-

“ On dissection of injury Nos. 1 and 2, lungs were lacerated, directions were upward and backward, clotted blood was present along with track. On dissection of injury no. 3, underlying colon was torn, clotted blood was present, 500 CC of clotted blood was present on peritoneal cavity.

Cause of death in this case, in my opinion, was laceration of lungs (vital organs) as a result of injury Nos. 1 and 2, which was sufficient to cause death in ordinary course of nature. Probable time that elapsed between injury and death was immediately and between death and post mortem examination was within about 12 to 24 hours.”

On completion of investigation, report under Section 173

Cr.P.C. was presented against the accused. Charge was framed on 27.01.2010 to which the accused pleaded innocence and claimed trial.

Prosecution examined seven witnesses to prove its case. Accused while denying incriminating material/evidence put to him pleaded innocence and false implication in his statement under Section 313 Cr.P.C. He specifically submitted that no occurrence as stated by the prosecution had taken place. In fact he alongwith deceased met two or three persons with covered faces, who demanded money from them. When they refused, said persons started beating them mercilessly. One of them took out a dagger and started giving blows to the deceased. He stated that he himself suffered several injuries on his body. One Ashok Kumar came to the spot, raised alarm, informed the police as well as brother of the deceased about the occurrence. On hearing the alarm, accused persons fled from the spot. He became unconscious and was arrested by the police. One witness Ashok Kumar, DW1 was examined in defence.

Learned trial Court on appreciating the evidence on record, facts and circumstances of the case concluded that the prosecution had proved its case beyond reasonable doubt and found the appellant guilty of the offence as charged. Consequently, accused was convicted for the offence punishable under Section 302 IPC and sentenced as mentioned above. Aggrieved therefrom present appeal has been preferred.

Learned counsel for the appellant has argued that the conviction and sentence imposed upon the appellant is unjustified, illegal and liable to be set aside as the trial Court has committed a grave error in not appreciating the evidence on record. There is no evidence which connects the appellant with the commission of offence. While referring to the testimony of Amarjit @ Vicky, PW4 i.e. brother of the deceased, it is submitted that the appellant and the deceased were in fact on friendly terms. They were together. There was no motive nor any reason for the accused to have inflicted said injuries upon the deceased. Furthermore, when the appellant and the deceased left the complainant's house there is nothing to suggest that the appellant was carrying a dagger with him. They were neither under influence of any intoxicant nor had any dispute with regard to any girl as per the testimony of PW4. Therefore, prosecution version is highly improbable.

Furthermore, it is urged that defence version has not been considered inasmuch as specific evidence has been led on record to show that the deceased as well as the appellant were attacked by two or three persons. Appellant had also received injuries, which proves defence version. Reference is made to photograph of the appellant, Ex. D1 which is stapled on the FIR and duly admitted by PW3, SI Neeraj Kumar.

Learned counsel for the appellant further contends that all the four injuries are not possible to be inflicted with one weapon, therefore, the appellant is indeed entitled to the benefit of doubt in

such circumstances.

In the alternate and without prejudice to the submissions made above, learned counsel for the appellant argues that in the absence of any motive on the part of the appellant, said injuries may have been caused in self defence in the light of sudden altercation which may have taken place between the deceased and the appellant. He seeks to justify this on the basis of injuries received by the appellant as reflected in Ex. D1. He submits that there was in any case no intention on the part of the appellant to cause death of Mahesh Kumar @ Sonu, therefore, no offence punishable under Section 302 IPC is made out.

Learned counsel for the State while refuting the above said contentions prays for upholding the impugned judgment and order. She submits that there is clear and cogent evidence in the form of eye witness account as well as apprehension of the appellant on the spot along with the weapon of offence. Thus, no ground is made out for acquittal of the appellant.

We have heard learned counsel for the parties and gone through the record. It clearly emerges from the evidence on record that PW4, Amarjit @ Vicky as well as PW7, SI Neeraj Kumar, then SHO Police Station Vijay Nagar, Amritsar, have given a graphic account of the events leading to death of Mahesh Kumar @ Sonu. Both these witnesses saw the appellant and the deceased Mahesh Kumar @ Sonu quarreling with each other and the appellant taking out a dagger from his dub (waist) and inflicting injuries upon Mahesh

Kumar @ Sonu. When the appellant tried to flee from the spot, he was apprehended by the police along with the blood stained weapon, Ex. PP. As per FSL report, Ex. PP i.e. the said dagger was found to be stained with human blood. Medical evidence corroborates the ocular version completely. No benefit can be derived by the appellant from the observation of PW6 Dr. Kirpal Singh in his cross examination that possibility of these injuries having been inflicted by several persons cannot be ruled out.

Contention of learned counsel for the appellant that absence of motive proves the appellant's innocence is devoid of any merit. It is a settled position that in the face of direct evidence which is trustworthy, motive loses its importance or significance. Reference in this respect can be gainfully made to the judgment of Hon'ble Supreme Court in Yousuf Mussa Chauhan and others versus State of Maharashtra 1996 (3) JT 10. In the instant case, there is a trustworthy eye witness account duly corroborated with medical evidence as well as apprehension of the accused on the spot. Thus, absence or otherwise of motive is irrelevant in these circumstances.

Eye witness account rendered by PW4, Amarjit @ Vicky and PW7 SI Neeraj Kumar inspires confidence and is trustworthy. There is nothing on record which would impinge upon their credibility. There is no reason why Amarjit @ Vicky, who is the real brother of the deceased would falsely implicate the accused and allow the actual culprits go scot-free. He is a witness, who would indeed be

interested in bringing the actual culprits to book. He has no enmity with the appellant. Similarly, PW7 SI Neeraj Kumar, an official witness, has no axe to grind against the appellant. There is no discernible reason for him to falsely inculcate the appellant in this case. SI Neeraj Kumar was patrolling in the area alongwith other officials and reached the spot immediately on receiving information of the quarrel. His presence is natural and probable.

Another material aspect is that the appellant was apprehended at the spot itself along with the weapon of offence. Plea that recovery of weapon is suspect is noticed only to be rejected in the face of overwhelming and cogent evidence qua said recovery. As noted earlier blood on the dagger was reported to be human blood as per the FSL report, Ex. PP.

Similarly, the defence sought to be raised by the appellant is not borne out from the record. Testimony of DW1, Ashok Kumar does not inspire any confidence. The theory of the appellant and the deceased having been attacked by three or four unidentified persons is not borne out from the record.

Contention raised by learned counsel for the appellant that the injuries on the person of the deceased are not possible with one weapon is infact contradictory to the stand of the defence itself inasmuch as DW1, Ashok Kumar states that one of the three unknown persons gave knife blows to the deceased in his presence. Accused in his statement under Section 313 Cr.P.C. also states that one of the alleged assailants inflicted all the injuries. Furthermore,

presence of injuries on the appellant proves his presence at the spot rather than improve his case as urged by the learned counsel for the appellant. Defence raised is not plausible or probable.

Alternate plea raised on behalf of the appellant apart from being contradictory to the stand of the defence is not tenable in the facts and circumstances of the case. Four injuries were inflicted by the appellant on the person of the deceased with dagger, which is a deadly weapon. It cannot be said in any manner that the appellant would be guilty of lesser offence as he had no intention to commit murder of Mahesh Kumar @ Sonu. Prosecution has indeed succeeded in proving the case against the appellant beyond reasonable doubt. We find no illegality or infirmity in the conviction of the appellant vide impugned judgment and order dated 07.07.2011 passed by the learned Sessions Judge, Amritsar

Consequently, this appeal is dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

May 15, 2015
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