

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

1. **Crl. Appeal-D No. 830-DB of 2013**
Date of Decision: August 6 , 2015.

Manjit Kumar APPELLANT(s)

Versus

State of Punjab RESPONDENT (s)

2. **Crl. Appeal-D No.658-DB of 2010**

Manjit Kumar APPELLANT(s)

Versus

State of Punjab RESPONDENT (s)

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

Present: Mr. P.S.Goraya, Advocate
for the appellant.

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

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?

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LISA GILL, J.

This order shall dispose of CRA-D No.830-DB of 2013 (Manjit Kumar v. State of Punjab) and CRA-D No.658-DB of 2010 (Manjit Kumar v. State of Punjab).

Appellant – Manjit Kumar has filed CRA-D No.658-DB of 2010 through jail and CRA-D No.830-DB of 2013 through counsel impugning his conviction under Section 302 IPC by learned Additional Sessions Judge, Nawanshahr and consequent sentence of rigorous imprisonment for life, besides, fine of ₹5,000/- and in default thereof, rigorous imprisonment for three months vide judgment and order dated 19.08.2009. Learned counsel for the appellant prays that CRA-D No.830-DB of 2013 be taken up for hearing as only one appeal is maintainable.

Prosecution was set in motion on the statement, Ex.PD of PW2 Sham Lal son of Harmesh Lal. He revealed that he is a mason by profession. His mother Mohindo Devi aged about 50 years was proceeding to the fields in order to attend the call of nature on 02.11.2007. PW2 Sham Lal and his paternal uncle's son, PW3 Parveen Kumar were following behind her. At about 5.15 p.m. his mother was passing in front of the house of appellant Manjit Kumar, who was standing there, spat towards his mother. His mother reprimanded appellant – Manjit Kumar and said that he should not indulge in this act. Upon this Manjit Kumar again spitted on his mother. His mother scolded the appellant for a while. Appellant, in the presence of Sham Lal and Parveen Kumar, took out a kitchen knife from his pocket and repeatedly caused injuries on left and right side of her chest and thighs. His mother fell down and was in a pool of blood. While Sham Lal and Parveen Kumar were attending to Mohindo Devi, appellant made good the escape alongwith the knife. They arranged a conveyance and took her to Civil Hospital, Balachaur where she ultimately succumbed to her injuries. Action was prayed for against the

appellant.

On the basis of abovesaid statement, formal FIR No.172 dated 02.11.2007, Ex.PD/2 was registered. Inquest report, Ex.PB was prepared. Dead body of Mohindo Devi was sent for post-mortem examination. Site plan, Ex.PE was prepared. Blood stained earth was lifted and was taken in possession vide recovery memo Ex.PG. Post-mortem report, Ex.PA was received. Five injuries were detected on the body of deceased – Mohindo Devi , which are recorded as under:-

- “1. An incised wound 1cm x 0.4cm oblique in direction on the middle of line joining the anterior superior iliac spine and the public tubercle. On probing the wound, it led to the femoral sheath cutting the skin, facia and the femoral blood vessels.
2. Incised wound 1.5cm x 0.5cm x sub-cutaneous tissues and defacia on probing, 1cm lateral to injury No.1, oblique in direction.
3. Incised wound 1cm x 0.5cm on the left upper and outer quadrant of left breast. On probing the wound, it led to intercostal blood vessels, cutting the skin, superficial facia, intercostal muscles, clotted blood was present.
4. An incised wound 1cm x 0.4cm transversely placed, 1cm below the aureola of left breast. On probing, it led to superficial tissues, after cutting the skin and facia, clotted blood was present.
5. An incised wound 1cm x 0.4cm transversely placed, 1cm medial to the aureola of right breast, on probing the wound, it led to intercostal muscles cutting the skin, superficial facia and the underlying muscles. Clotted blood was present.”

Cause of death was hemorrhage and shock as a result of injuries to the femoral and intercostal blood vessels, which was sufficient to cause death in

the ordinary course of nature. All injuries were anti mortem in nature. Time which elapsed between the injuries and death was within one to two hours and between death and post-mortem was within 24 hours.

Accused Manjit Kumar was arrested on 04.11.2007. During investigation, he suffered disclosure statement, Ex.PK and got recovered the weapon of offence i.e., knife from the bushes in his own fields. Blood stained knife was taken in possession vide memo Ex.PM. As per FSL report, Ex.PN, human blood was found on the knife and the earth lifted from the spot.

On conclusion of investigation, report under Section 173 Cr.P.C. was presented. Charge was framed against the accused for the offence punishable under Section 302 IPC on 24.04.2008 to which accused pleaded innocence and claimed trial.

Prosecution examined seven witnesses to prove its case. Accused while denying the incriminating evidence put to him pleaded innocence and false implication in his statement recorded under Section 313 Cr.P.C. No evidence was led in defence.

Learned trial court on consideration of the facts and circumstances concluded that the prosecution has proved its case against the appellant beyond reasonable doubt thereby, convicting and sentencing him as detailed above. Aggrieved therefrom, appellant has preferred this appeal.

Learned counsel for the appellant vehemently argues that the appellant has been falsely implicated in this case which is apparent from the unnatural conduct of the witnesses. It is submitted that the presence of PW2 Sham Lal and PW3 Parveen Kumar at the spot is suspect. It is not possible and

probable that they would not have taken any action to prevent the appellant from causing the said injuries. In case Mohindo Devi had, in fact, been attacked in their presence, they would have made some attempt to avert the attack.

Furthermore, both PW2 Sham Lal and PW3 Parveen Kumar are interested witnesses being the son and nephew of the deceased. Therefore, no reliance can be placed on their account. It is submitted that no independent witness has been examined by the prosecution to corroborate the version given by the said witnesses. It is also urged that as per PW2 Sham Lal, they had taken Mohindo Devi to the Civil Hospital, Balachaur on a Qualis car owned by nephew of the accused, namely, Sodhi. It is not possible that nephew of the accused would have taken Mohindo Devi to the hospital if the appellant had in fact attacked her.

In the alternate, it is pleaded that the accused had no intention to cause the death of Mohindo Devi. Incident, if any, occurred at the spur of the moment. There was no premeditation on the part of the accused. Therefore, he would not be guilty of the offence punishable under Section 302 IPC but a lesser offence.

Learned counsel for the State while refuting the abovesaid arguments submits that there is clear-cut and cogent evidence on record which proves the guilt of the accused beyond reasonable doubt. There is no ground whatsoever to set aside the conviction and sentence imposed upon the appellant.

We have heard learned counsel for the parties and gone through the evidence on record with their assistance.

Present is a case where a clear, cogent and faithful eye-witness account has been rendered by PW2 Sham Lal and PW3 Parveen Kumar. Sham

Lal, PW2 as well as Parveen Kumar, PW3 have testified in one voice that when Mohindo reached near the house of accused, he spitted on her. She rebuked the accused for his said conduct. Instead of being apologetic, accused again spitted on her. She started reprimanding the accused upon which he took out a knife from his pocket and gave successive knife blows on the chest and other parts of the body of deceased. Both these witnesses have given a consistent version and nothing material could be elicited in favour of the appellant from their cross-examination. Occular version given by these witnesses is duly corroborated by medical evidence on record. Five incised wounds were detected on Mohindo Devi's body. Cause of death was hemorrhage and shock as a result of the said injuries, which were sufficient to cause death in the ordinary course of nature.

Presence of the said witnesses is normal and natural in the peculiar facts and circumstances of the case where Mohindo Devi had gone to answer the call of nature and the said witnesses were a little distance behind her. It is relevant to note that the incident took place at about 5.15 p.m. Mohindo Devi was taken to the hospital immediately by Sham Lal and Parveen Kumar as is borne out by the record. Statement, Ex.PD by Sham Lal was recorded with promptness at 7.30 p.m. itself in the hospital. There is no evidence whatsoever to doubt the presence of the said witnesses at the place of occurrence.

Contention of learned counsel for the appellant that Mohindo Devi could not have been taken in the hospital in a Qualis car belonging to the nephew of the accused is clearly untenable and fallacious in the light of the admitted facts that the deceased Mohindo Devi and appellant are related to each other. Appellant is the brother-in-law (Devar) of the deceased. It is revealed in

the cross-examination of PW3 Parveen Kumar that accused is a bachelor. Other members of the family of the accused are residing jointly but the accused has separate mess though they have a common courtyard. Therefore, owner of the Qualis car, namely, Sodhi is obviously related to the deceased as well. In these circumstances it cannot be said that it is improbable or unnatural for the said nephew to have brought the deceased to the hospital in his vehicle. On the contrary it lends credence to the prosecution version.

It is urged that it was only a kitchen knife which was used by the appellant. However, it is to be noted that the appellant was carrying this knife in his pocket and inflicted multiple injuries upon the chest of the deceased which were sufficient to cause death.

A suggestion has been put to the witnesses that the appellant was of unsound mind. However, no evidence was led in this respect and there is nothing on record to arrive at such a conclusion. Evidence on record clearly establishes the commission of offence punishable under Section 302 IPC by the appellant beyond any shadow of doubt. Learned counsel for the appellant is unable to point out any ground or circumstance which creates even on iota of doubt in regard to the culpability of the appellant in this case.

Argument of learned counsel for the appellant that his conviction under Section 302 IPC may be converted to a lesser offence, is not made out in the facts and circumstances of this case. It cannot be concluded by any stretch of imagination that the appellant did not have any intention to cause death of Mohindo. Multiple injuries with a knife have been inflicted by him on the chest of the deceased leading to her death.

Keeping in view the facts and circumstances as discussed above, we do not find any ground for setting aside the conviction of the appellant for the offence punishable under Section 302 IPC and his subsequent sentence.

Consequently, this appeal is dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

August 6 , 2015.
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