

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

CRA-D-1812-DB-2014

Date of decision : January 27, 2015

Jarnail Singh

.....Appellant

Versus

State of Punjab and others

.....Respondents

**CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MR.JUSTICE GURMIT RAM**

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

Present : Mr. P.K. Longia, Advocate,
for the appellant.

S.S. SARON, J.

Jarnail Singh, who is father of deceased Rajdeep Singh has filed this appeal seeking modification of the judgment dated 16.09.2014 and order of sentence dated 18.09.2014 passed by the learned Additional Sessions, Judge, Ludhiana to the extent that Bikramjit Singh alia Boofer (respondent No.2) and Mandip Singh alias Ladi (respondent No.3) be held guilty for the offence punishable under Section 302 of the Indian Penal Code ("IPC" for short) and for awarding death sentence to them. It is further prayed that Bikramjit Singh alias Tiger (respondent No.4) and Jasvir Singh alias Meengi (Respondent No.5) be also held guilty for the offence punishable under Section 302 IPC and they be awarded death penalty.

The FIR in the present case was registered on the complaint of Jaswant Singh whose statement was recorded by SI Jangjit Singh.

According to the complainant-Jaswant Singh his nephew Rajdeep Singh (deceased in the case) was a student of GNE (Guru Nanak Engineering) College situated at village Gill. The complainant received a telephone message from his brother-in-law Jarnail Singh (appellant) on 14.05.2008 stating that he wanted to discuss something with the complainant regarding the marriage of his niece Rattandeep Kaur. Jarnail Singh (appellant) asked the complainant to come to his village Kuhli Kalan and while coming the complainant should bring his son Rajdeep Singh (deceased) from GNE college. The complainant-Jaswant Singh reached the canteen of GNE college at about 11:45 a.m. on 14.05.2008 and he saw that Mandeep Singh @ Ladi (respondent No.3) had over-powered his nephew Rajdeep Singh (deceased) and he had caught hold of him. Bikramjit Singh alias Boofer (respondent No.2) inflicted a dagger blow on the back side of the left thigh of his nephew. The dagger had come out of the front portion of the thigh. The nephew of the complainant was drenched with blood and he fell down on the ground by raising an alarm of "*Maar Ditta- Maar Ditta*". At a short distance from the said place Mandeep Singh alias Dicky, Harjot Singh alias Jyoti, Patti, Lehri and Gurpartap Singh (not sent up for trial) were causing injuries to Sumit Inder Singh (injured) with sharp edged weapons'. Sumit Inder Singh was a friend of Rajdeep Singh (deceased) nephew of the complainant and he was also a student of GNE College. The said Sumit Inder Singh was also drenched with blood and he was also crying for help. Thereafter all the aforesaid persons kicked Rajdeep Singh (deceased) and Sumit Inder Singh who were lying on the ground. The accused then went

away from the place of occurrence by raising '*Lalkaras*'. According to the complainant, all the accused were previously known to him as he used to often visit GNE college to meet his nephew Rajdeep Singh (deceased) and all the accused used to meet him in the college. Then Rajdeep Singh (deceased) was got admitted in the DMC (Dayanand Medical College) Hospital with the help of other college students. However, Rajdeep Singh (deceased) was declared dead by the doctors. According to the complainant, he came to know that Sumit Inder Singh had been taken to Civil Hospital, Ludhiana for his treatment. The complainant also stated that his nephew (deceased) had been informing him for the last few days that Mandeep Singh @ Ladi (respondent No.3) and other persons as mentioned above had formed a group and they used to act in a high handed manner in the college and he used to oppose them. Due to the said reason they were inimical towards him. On account of the said enmity the accused had caused injuries to Rajdeep Singh (deceased) and Sumit Inder Singh. SI Jangjit Singh after recording the statement and making an endorsement on it, sent the 'ruqa' (memo) to the Police Station through Constable Raj Kumar upon which formal FIR was registered against the accused. Investigation in the case was carried out and during investigation statement of injured Sumit Inder Singh was also recorded. Bikramjit Singh alias Boofer (respondent No.2) and Mandip Singh alias Ladi (respondent No.3) were arrested in the case. The other accused namely Jasvir Singh, Bikramjit Singh alias Vicky, Lavdeep Singh, Gurpartap Singh, Harjot Singh and Ravi Inder Singh were found innocent and their names were kept in column No.2 of the police

report ('challan'). After completion of investigation police report ('challan') against accused Bikramjit Singh alias Boofer and Mandip Singh alias Ladi (respondents No.2 and 3) was prepared and filed in Court. During further investigation supplementary police report ('challan') against accused Bikramjit Singh alias Tiger (respondent No.4) and Jasvir Singh alias Meengi (respondent No.5) was also filed.

The learned Judicial Magistrate keeping in view the fact that offences under Sections 302 and 307 IPC were exclusively triable by the Court of Sessions, committed the case to the learned Sessions Judge, Ludhiana. The learned Sessions Judge assigned the case to the Court of the learned Additional Sessions Judge, Ludhiana.

The learned Additional Sessions Judge, Ludhiana after going through the material on record, came to the conclusion that there were sufficient grounds to proceed against the accused for the offence under Sections 304 Part II read with Section 34 IPC. Accordingly the accused (respondents N.2 to 5) were charged for the said offences. After considering the evidence and material on record, the learned Additional Sessions Judge, Ludhiana has convicted Bikramjit Singh alias Boofer and Mandip Singh alias Ladi (respondents No.2 and 3) for the offences punishable under Sections 304 Part II read with Section 34 IPC respectively and they have been sentenced to undergo rigorous imprisonment for seven years, besides, pay a fine of ₹10,000/- each and in default thereof, to further undergo rigorous imprisonment for three months. The other two accused namely Bikramjit Singh alias Tiger and Jasvir Singh alias Meengi

(respondents No.4 and 5) were acquitted.

Learned counsel for the appellant has contended that in fact there are sufficient grounds to convict respondents No.2 to 5 for the offence punishable under Section 302 IPC and the learned Additional Sessions Judge, Ludhiana has erred in convicting respondents No.2 and 3 for the lesser offence under Section 304 Part II read with Section 34 IPC and in acquitting respondents No.4 and 5.

We have given our thoughtful consideration to the contention of learned counsel for the appellant and perused the material on record, but find no merit in the same. It may be noticed that the accused who were attributed injuries to Sumit Inder Singh were not sent up for trial. Sumit Inder Singh whose statement was recorded was not examined during trial as a prosecution witness. There is a statement of Dr. Varun Saggar (PW-3) who deposed that a board of Doctors was constituted by the then SMO Dr. Harvinder Singh on 16.05.2008. Dr. Varun Saggar (PW-3) along with Dr. R.K. Karkara and Dr. Pardeep conducted post-mortem examination on the dead body of Rajdeep Singh and they found following injuries:-

(1) 2"x1" spindle shape wound on the posterior aspect of left thigh. 7" above popliteal forssa (left) in the mid line.

(2) 1/2" x 1/4" spindle shaped wound on the anterior medical aspect of thigh 8" above left patella. Injuries No.1 and 2 communicate with each other underlying muscles, fascia and major vessels are cut and completely

transacted.

The cause of death according to Dr. Varun Saggar (PW-3) in this case was due to haemorrhage and shock, as a result of injuries No.1 and 2 which were sufficient to cause death in the ordinary course of nature. The injuries were ante-mortem in nature. It may be noticed that injuries No.1 and 2 as noticed by the Doctor communicate with each other, underlying muscles, fascia and major vessels are cut and completely transacted. The injuries on the person of Rajdeep Singh (deceased) were as a result of the fight which had taken place in the GNE (Guru Nanak Engineering) college and; according to the complainant, his nephew (deceased) had been informing him for the last few days that Mandeep Singh @ Ladi (respondent No.3) and other persons mentioned above had formed a group and they used to act in a high-handed manner in the college and the nephew of the complainant used to oppose them. Due to the said reason they were inimical towards Rajdeep Singh-nephew of the complainant. However, the complainant-Jaswant Singh (PW-2) during his deposition in Court did not support the prosecution case and he was declared hostile by the prosecution.

The learned Additional Sessions Judge, after considering the evidence and material on record held that the prosecution had succeeded in establishing its case for the offence under Section 304 Part II read with Section 34 IPC. Gurdarshan Singh (PW-4) was present with the police party of SI Jangjit Singh on 18.05.2008 at the Gill Canal bridge. On secret information being received, Bikramjit Singh alias Boofer (respondent No.2) was arrested there vide memo Ex.PW4/A. A disclosure statement

(Ex.PW4/D) was made by Bikramjit Singh alias Boofer (respondent No.2) in pursuance of which a blood stained 'churra' (knife) was got recovered from the place that was disclosed. Jagminder Singh (PW-5) who was a third year student of GNE College supported the prosecution case. He stated that there was a rush of students at the Tuck shop and when he reached near the gathering, he saw that a 'churra' (knife) blow had been inflicted on the person Rajdeep Singh (deceased). At that time Mandeep Singh alias Ladi (respondent No.3) and Bikramjit Singh alias Boofer (respondent No.2) were around Rajdeep Singh and they inflicted the dagger blow on the person of Rajdeep Singh who fell on the ground. He also saw other boys along with knife following Sumeetinder Singh the other student of the college. It is also stated that during the occurrence, maternal uncle (i.e. the complainant) of Rajdeep Singh visited the campus and he took Rajdeep Singh from the college. Students of the college took Sumeetinder Singh to the hospital in a car.

The contention of learned counsel for the appellant, that offence under Section 302 IPC is made out, is devoid of merit. As already noticed the charge in the case was framed for the offence punishable under Section 304 Part II read with Section 34 IPC. The prosecution, complainant or the victim never objected to framing of the charge for the said offence. Even after the evidence was led, they did not seek amendment of the charge to that of an offence under Section 302 IPC. It was only after conviction was recorded in respect of Bikramjit Singh alias Boofer and Mandip Singh alias Ladi (Respondents No.2 and 3), while Bikramjit Singh alias Tiger and

Jasvir Singh alias Meengi (respondents No.4 and 5) were acquitted as nothing under Section 304 Part II IPC was made out, it is sought to be contended that in fact an offence under Section 302 IPC is made out. Even otherwise from the nature of the injury received by Rajdeep Singh (deceased) it cannot be said that the offence under Section 302 IPC is made out. The injury as already noticed, is on the thigh of Rajdeep Singh, which a non-vital part of the body. Besides, it is a single blow and death had occurred due to that. The parties to the fight were college students and it cannot be said that there was any intention to commit murder of Rajdeep Singh. In fact the case is one of a sudden fight in the college canteen and no motive is shown by the prosecution or the complainant, for the respondents No.2 and 3 to commit the murder of Rajdeep Singh. According to the prosecution case, the accused used to indulge in high-handedness in the college, which was objected to by Rajdeep Singh and due to the said reason, injury on the thigh was inflicted on him in the college canteen where they met. The case is one which falls within Exception 4 to Section 300 IPC, which envisages that culpable homicide is not murder if it is committed without pre-meditation 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. In term of Explanation to said Exception 4, it is provided that it is immaterial in such cases which party offers the provocation or commits the first assault. The incident had occurred without any prior planning and in a sudden quarrel that occurred in the college canteen in the heat of passion. Besides, respondents No.2 and 3 did not take

undue advantage and nor did they act in an unusual manner. Besides, it is immaterial as to which party offered the provocation or committed the first assault. Therefore, the case would be one of culpable homicide not amounting to murder and with the knowledge that the act of the respondents No.2 and 3 was likely to cause death but without the intention to cause death.

Nothing has been shown as regards the involvement of respondents No.4 and 5. In fact their names were not mentioned in the initial FIR. Besides, no injury is attributed to them on the person of Rajdeep Singh (deceased). There is no evidence that they had conspired with respondents No.2 and 3 to cause hurt or in any case participate in the fight, which resulted in the death of Rajdeep Singh (deceased). Therefore, the learned trial Court held that the prosecution had failed to connect respondents No.4 and 5 with the commission of crime. Jaswant Singh- Complainant who turned hostile, stated that he did not know the person in the Court and no injury was inflicted to Rajdeep Singh (deceased) in his presence. Reliance was placed on the deposition of Jagminder Singh (PW-5) who identified the accused namely Bikramjit Singh alias Boofer and Mandip Singh alias Ladi (respondents No.2 and 3) but he did not know the other accused. It was noticed that as per the prosecution version Bikramjit Singh alias Tiger and Jasvir Singh alias Meengi (respondents No.4 and 5) had made extra judicial confession before Paramjit Singh (PW-10). However, when this witness namely Paramjit Singh (PW-10) stepped in the witness box, he did not support the prosecution case. He rather stated that

accused never confessed anything regarding murder of Rajdeep Singh (deceased). Paramjit Singh (PW-10) was declared hostile by the prosecution and cross-examined. However, nothing was found to connect respondents No.4 and 5 with the commission of crime and they were accordingly acquitted. There is nothing on record to show that the finding reached at by the learned trial Court with regard to acquittal of respondents No.4 and 5 is liable to be dislodged. In the facts and circumstances, we find no merit in the appeal and the same is accordingly dismissed.

However, nothing stated herein or observations made shall be construed as an expression of opinion with the merit of the appeal, if any, filed by respondents No.2 and 3 against their conviction and order of sentence. The observations made herein are only for the purpose of disposal of the appeal filed by Jarnail Singh.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

January 27, 2014

Gaurav Sorot