

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

**CRA-S-932-SB of 2003
Date of Decision: April 29, 2015**

Manoj

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Karan Pathak, Advocate
for the appellant.

Mr. Munish Sharma, AAG, Haryana.

FATEH DEEP SINGH, J.

This is an appeal by the convict appellant challenging his conviction under Section 304 Part-II IPC, whereby, he has been sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹5000/- and in default thereof to further undergo rigorous imprisonment for one year which findings were passed by the Court of learned Additional Sessions Judge, Faridabad through impugned judgment order of sentence dated 7.5.2003.

Heard at length learned counsel for the parties and perused the records of the case with the invaluable assistance of the counsel for both the sides. As the story and the allegations of the prosecution goes it is alleged that on 31.3.2000 around 12.30 a.m. after receipt of medical ruqa Ex.PD along with copy of MLR of complainant Poppy Ex.PE, ASI Mahender Singh PW8 went to General Hospital, Ballabgarh and met complainant Poppy and

recorded his statement Ex.PH, wherein, the complainant stated that he was a labourer, resident of village Chandawali and that on that very day around 6 p.m. his brother PW 7 Rameshwar had come to him and at that point of time accused Manoj came to the house of the complainant and abused Rameshwar and at that time while accused was hitting Rameshwar with his belt, Rameshwar who was holding complainant's three years old male child Rohit in his lap fell down on the ground upon which accused ran away. Injured Rameshwar was also medically examined by way of Ex.PF and intimation Ex.PC was sent regarding death of the child, who was brought dead and his post mortem examination by way of Ex.PA was conducted on police request Ex.PB/1 along with inquest proceedings Ex.PB. The Investigating Officer got recorded FIR Ex.PH/2 and after necessary formalities prepared rough site plan of place Ex.PK with scaled site plan Ex.PG. On arrest of the accused through memo Ex.PI/1 the accused was taken into police custody. Upon completion of investigations, the accused was charged under Sections 304 Part-II ,323 IPC to which he denied and claimed trial.

The prosecution examined nine witnesses and the accused in his statement under Section 313 Cr.P.C. denied the allegations and in his defence examined two witnesses leading to his conviction and passing of impugned judgment.

The first leg of submissions that has been invoked by the appellant's counsel revolves around the very improbability of the occurrence due to contradiction in the ocular version and the medical evidence. Though, on behalf of the State Mr. Munish Sharma has sought to rake up the immaterial

consistencies and, thus, appreciating the same the very testimony of PW1 Dr. Manu Kishore, who conducted the post mortem examination of the dead body of the child has established the fact that it was a dead body of a well built male child aged around three years and the body was wearing white and red frock and nothing on the lower limbs. The most important observation that has come in his examination-in-chief is that the doctor has remarked “no external injury mark was seen over the body” and has further illustrated that on dissection of the scalp there was linear fracture over right parietal region and clotted blood was seen under the skin. Thus, is in itself suggestive of the fact that no injury has been caused to the deceased by any weapon including belt in question. Scrutinising the fact as per the own allegations of the complainant PW6, father, Poppy and eye-witness PW7 Rameshwar, brother of the complainant shows that Rameshwar was holding the child in his lap and, therefore, in view of the literal meaning of term “lap” it can be easily construed to be the flat area between the waist and knees of a seated person. Even PW9 Rajwati alleged eye-witness and mother of the deceased child accepts that the floor where the child was fallen is a *katcha* one. Assuming it to be so, as it is stated by the witness then had the child fallen from a lap firstly there ought to be some sort of external injury on the body including the head, the portion which as per the allegations has struck the ground but the own testimony of the doctor belies this as there is no mark of external injury. Further, it does not convinces a prudent mind by such a fall there would be a linear fracture of the skull leading to instantaneous death and it is accepted that by fall on a hard

surface a blunt injury ought to be there and, therefore, question of a linear fracture is certainly raising doubts over the version that has been put forth.

As has been pointed out in the cross-examination of the complainant PW6 Poppy, he admits that Rohit (deceased child) received injury on the right side of the ear and there was swelling on that part and further states that this was an injury caused by belt and it is further stated by him that Rohit was admitted in Ballabgarh Hospital for complete one day when the medical ruqa states that child was brought dead to the hospital at Ballabgarh and which is well illustrated in Ex.PC. Moreover, to the very specific query of this Court, the learned State counsel squarely accepts that there is no medical evidence of the Hospital regarding treatment or admission of Rohit prior to his death and the contention that this witness further states that Rohit was referred from Ballabgarh Hospital to B.K. Hospital for treatment and, thus, from this, it stands illustrated as to the falsehood of this stand of the complainant, who is an alleged witness of this occurrence. Even PW7 Rameshwar in his cross-examination contradicts the complainant Poppy PW6 and states that Rohit did not receive injury from the buckle of the belt and though has taken the stand that the accused did not hit the child who received injury by falling down but further volunteer to say in his cross-examination that he did not see injury on the part of the body of the child and, thus, by this material contradiction between the eye-witnesses account and the medical evidence a lurking doubt creeps up in the mind of the Court as to the truthfulness of these allegations.

The second most contentious issue that has sought to be assailed by the learned counsel for the appellant is over the history of previous enmity between the parties as it is well illustrated by way of documents Ex.DA, Ex.DB, Ex.DD that prior to present occurrence on 26.6.2000 PW7 Rameshwar and PW6 Poppy alleged to have caused injuries to the accused side and this fact is adequately proved from the records by DW2 Harkesh Kumar, Ahlmad based on the Court proceedings of this case, wherein, PW6 Poppy, complainant and PW7 injured Rameshwar along with others were facing trial in a criminal case which contains allegations that the present accused was beaten up by the present complainant side and, thus, puts the Court on its guard to scrutinise the evidence with more care and caution to rule out any false implication. To further adds to the woes of the prosecution, it is the stand of PW6 Poppy and of his brother PW7 Ramehswar that Poppy did not receive any injury in this occurrence when his own MLR Ex.PE establishes it otherwise and rather the medical ruqa proved on the record purported to have been sent by the Government Hospital regarding MLR of Poppy proved by way of Ex.PE and Ex.PD respectively leaves no scope to doubt that he has also received injuries and by this intentional falsehood both these witnesses who are real brothers are trying to suppress the truth from the Court and which is further corroborated from their cross-examination, wherein, they have been confronted with the criminal case so registered against them in which mother of the present accused was beaten up leaves no scope that both PW6 Poppy and PW7 Rameshwar are not truthful witnesses.

Another material contradiction is there in the

testimony of alleged witness Rajwati PW9, who happens to be the wife of complainant Poppy and states that no blood oozed out of the injury of the deceased child but blood was there on the person of PW7 Rameshwar on his injury when Rameshwar denies this fact of there being blood on his injury. Thus, these material contradictions certainly goes to the roots of the case of the prosecution.

Though, not a mandatory prerequisite but having regard to the fact that such an incident as alleged happened to take place in a *basti* and the only witnesses are two brothers Poppy PW6, Rameshwar PW7 and PW9 Rajwati mother of the deceased child and the prosecution having failed to examine any independent witness from the vicinity certainly adds to the distress of prosecution case as in view of these improbabilities it is necessary and essential to corroborate the same and due to lack of which a lurking suspicion remains in the mind of the Court over the truthfulness of these allegations. As if it was not enough, the very cross-examination of the material witness PW8 Investigating Officer, Mahender Singh ASI, which further illustrates when confronted with a statement Ex.DD, whereby he accepts that no injury as per the statement was attributed to the accused having given to eye-witness Poppy and that as per the proceedings before the doctor Ex.PC date of occurrence finds mentioned as 13.1.2000 and arrival at the hospital as 9.35 p.m. and he further accepts that the observations of the doctor are in contradiction of what he has mentioned in the inquest report further adds to the chaos of the prosecution case.

Thus, in the totality of this nature of the

evidence of the prosecution and the testimony of DW1 Khazan Singh, who has sought to support the defence and there being a material evidence brought from the judicial records by DW2 Harkesh Kumar, Ahlmad as to the factum of criminal case having been filed against the present complainant by the accused just prior to this occurrence are matters which have a debilitating effect on the case of the prosecution.

The learned trial Court has failed to take notice of the fact that neither there was any element of any intention, even if the allegations of the prosecution are taken on the face of it nor there is any cogent evidence to bring about the factum that the accused had the requisite knowledge that by his act would cause death of the child in the lap of the Rameshwar nor there is any impeccable evidence to show that startled over the act of the accused has led to the slipping away of the child from the lap of the Rameshwar and, thus, the learned trial Court merely on conjectures and surmises has jumped to this conclusion holding the accused guilty for commission of an offence under Section 304 Part-II IPC without there being any reliable and substantive evidence in this regard. The prosecution has failed to discharge its onus.

Thus, the impugned findings are certainly wrong appreciation of the evidence and the law and needs to be set aside by way of acceptance of the instant appeal.

(FATEH DEEP SINGH)
JUDGE

April 29, 2015
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