

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

Crl. Appeal D-196-DB of 2003
Date of Decision : May 12, 2015

Mohinder Singh

.....Appellant

VERSUS

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN**

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

Mr. Anil Kumar Yadav, Additional A.G., Haryana

T.P.S. MANN, J.

Appellant-Mohinder Singh, who was tried for committing culpable homicide not amounting to murder by causing the death of his brother Balbir Singh and, thereby, committing an offence punishable under Section 304 IPC, has filed the present appeal for challenging the judgment and order dated 1.2.2003 passed by the learned Additional Sessions Judge (I), Kaithal whereby he was convicted for the aforementioned offence and sentenced to undergo imprisonment for life and to pay a fine of Rs. 2,000/- and in default of payment of fine, to further undergo imprisonment for three months.

The machinery of law was set into motion by Babli

wife of deceased Balbir Singh, who, on 16.6.2002 at about 11.40 a.m. made statement before SI Mohinder Singh at Rajound chowk, Rajound. In her statement, she mentioned that her husband was one of the six brothers. Giani Ram was the eldest, who had died about 17 years ago. Satpal Singh, Baldev Singh, Balbir Singh (deceased), Pala Ram and Mohinder Singh (appellant) were younger to him in that order. All of them had been living separately. The plots of her brother-in-law Pala Ram and Mohinder Singh-appellant were adjacent to her house. Though the plots had been partitioned at the instance of the brotherhood yet Pala Ram and Mohinder Singh used to have dispute on the issue of partition. The complainant used to tether her cattle in the plot of Pala Ram with his consent. On 15.6.2002 at about 8.00 p.m., the complainant and her husband Balbir Singh were standing at the main gate of their house. In the meantime, the appellant came in the street and after calling bad names, asked as to why the cattle had been tethered in the plot. The deceased replied that the cattle had been tethered in the plot of Pala Ram with his permission. Upon this, the appellant caught hold of Balbir Singh from his neck and took him in the vacant plot after giving him slaps and fist blows. In the meantime, Pala Ram also reached the spot. On seeing the complainant and Pala Ram, the appellant pushed Balbir Singh, who struck against the wall. Balbir Singh fell down on the ground. The appellant, after

giving the push fled from the spot. The complainant and her brother-in-law Pala Ram took Balbir Singh to her house where after one hour he succumbed to the injuries received by him as a result of pushing and also slaps and fist blows. However, before he died, he was complaining of pain in the chest. When all the relatives gathered, the complainant alongwith her brother-in-law Pala Ram started for the Police Station for lodging the report. Accordingly, she prayed for taking legal action against the appellant.

Further case of the prosecution is that on the basis of aforementioned statement suffered by complainant-Babli, FIR No. 62 dated 16.6.2002 under Section 304 IPC was registered by ASI Jagdish Lal in Police Station Rajound at 11.50 a.m. During the investigation of the case, SI Mohinder Singh prepared rough site-plan of the place of incident, recorded the statements of the witnesses, completed inquest proceedings and after collecting sufficient evidence arrested the appellant. Upon completion of the investigation, challan was presented in the Court of Illaqa Magistrate. Since the offence under Section 304 IPC was exclusively triable by the Court of Sessions, the Illaqa Magistrate supplied copies thereof to the appellant and committed the case for trial. The appellant was then charged for committing the offence under Section 304 IPC to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Dr. B.B.Kakkar, Medical Officer, General Hospital, Kaithal, who deposed that on 16.6.2002 at about 2.00 p.m., he conducted post-mortem on the dead body of Balbir Singh and observed as under:-

“The length of the dead body was 5'-6”. It was dead body of a male aged about 35 years, wearing Navy blue kachha, moderately built, Mouth was semi open. Eyes were closed. Mouth was closed. Rigor mortis was present in extremities. Post mortem on the back. No mark of external injury seen. Only clotted blood was present in nostrils. Diffused swelling 4 x 4 cm on the left parietal bone. On exploration, there was a fracture of occipito parietal bone area with sub-dural haematoma. On exploration of neck, fracture was seen on the cervical vertebrae of second. There was no hyoid bone fracture.”

In the opinion of the doctor, the cause of death was due to shock and haemorrhage as a result of injuries No.1 and 2 which were ante-mortem in nature and sufficient to cause death in the ordinary course of nature.

PW2 SI Vijay Pal testified that he partly investigated the case and recorded the statement of the photographer under Section 161 Cr.P.C.

PW3 Constable Ram Niwas, Draftsman, proved the scaled site-plan Ex. PD prepared by him at the instance of

complainant-Babli after inspecting the spot.

PW4 Babli deposed about the ocular account.

PW5 Pala Ram, brother of appellant-Mohinder Singh and deceased-Balbir Singh did not support the case of the prosecution and turned hostile.

PW6 SI Mohinder Singh deposed about the various steps taken by him during the investigation of the case.

When examined under Section 313 Cr.P.C., the appellant pleaded innocence and false implication.

In defence, he examined his brother Sat Pal as DW1, who testified that deceased-Balbir Singh had fallen down from the stairs of the house and sustained injuries on his back due to which he had died later on.

The trial Court, after hearing learned counsel for the parties and on going through the evidence held that the evidence led by the prosecution comprising of the testimony of PW4 Babli as well as the medical evidence and other technical evidence confirmed and proved on the file beyond all shadow of doubt that on 15.6.2002 at about 8.00 p.m., the appellant had committed culpable homicide not amounting to murder by causing the death of Balbir Singh and, thereby, committed the offence punishable under Section 304 IPC. Accordingly, after holding the appellant guilty of the said offence, the trial Court sentenced the appellant, as mentioned above.

This Court has heard learned counsel for the appellant as well as learned State counsel and perused the evidence with their able assistance.

In support of ocular account, the prosecution had cited Babli, wife of the deceased, and Pala Ram, brother of the deceased, as its witnesses as in their presence, the appellant after catching hold of the deceased from his neck, had taken him in the vacant plot, given slaps and fists blows to him and then giving a push to the deceased, who struck against the wall and fell down. An hour later, the deceased succumbed to the injuries received by him. Pala Ram stepped into witness box as PW5 but did not support the prosecution case. According to him, he was out of station on the day of the occurrence and the appellant had not given any beatings to his brother. After getting him declared hostile, the Public Prosecutor cross-examined him but he did not toe the line of the prosecution. He even denied making statement Ex. PF to the police. He, however, deposed that his sister-in-law Babli had told him about the appellant having caused internal injuries by giving fists blows to the deceased, who had died in consequence thereof. Under these circumstances, it is established that PW5 Pala Ram had not witnessed the occurrence.

Now the Court is left with the testimony of PW4 Babli, wife of the deceased. In her examination-in-chief, she stated that

on the day of the occurrence and in the evening time, she, alongwith her husband, was sitting on the roof of her house. She came down the stairs and started cooking meal. She saw the appellant giving fists blows to her husband. However, when she went upstairs, she found that her husband had died. She testified that she had not seen the appellant giving fists blows to her husband. However, it was on account of her feeling scared on seeing the police that she narrated the incident by making statement on the basis of which the FIR was registered. The fact remains that in her statement Ex. PE, Babli had narrated that the appellant after catching hold of her husband from his neck and giving slaps and fists blows to him, had taken him to the adjacent plot. However, it was her stand before the trial Court that she had not seen the appellant giving fists blows to her husband. According to the prosecution, the second part of the occurrence had taken place when the appellant had given a push to the deceased, who struck against the wall of the plot. However, this was not her stand when she appeared before the trial Court as PW4 as she stated that her husband had died upstairs. She also did not state about the appellant having given a push to her husband who could have struck against the wall as a result thereof. Therefore, it stands established that PW4 Babli had not seen giving of fists blows to her husband nor giving of push to her husband as a result whereof her husband struck against the wall.

The place where the incident of giving of a push had taken place was the vacant plot, as so stated by Babli in statement Ex. PE but no mention was made about the said fact when Babli appeared before the trial Court as PW4 as she only stated that when she went upstairs she found her husband dead. At no stage of the occurrence did the husband of Babli had come down stairs or was present in the vacant plot. All the time, the deceased had remained upstairs and his dead body was also noticed at that place. According to the testimony of PW1 Dr. B.B.Kakkar, who had conducted post-mortem on the dead body, the time that elapsed between the injuries and death was within one hour. Taking into consideration the said fact, it can safely be concluded that only after an hour of the incident when Babli went upstairs, she found her husband dead. In case, she had witnessed the occurrence, she would have made arrangement to immediately remove her injured husband to some hospital for providing him necessary treatment. As she had noticed that her husband had already dead, it can safely be presumed that she was not where present when the occurrence had taken place about an hour earlier. Thus, this Court has no other option but to hold that neither PW4 Babli nor PW5 Pala Ram had witnessed the occurrence.

Other than the testimonies of PW1 Dr. B.B.Kakkar, PW4 Babli and PW5 Pala Ram, this Court is left with the

testimonies of PW2 SI Vijay Pal, PW3 Constable Ram Niwas and PW6 SI Mohinder Singh, who testified about the various steps taken by them during the investigation of the case. However, from their testimonies, it cannot be said that it was the appellant, who had caused injuries to Balbir Singh as a result whereof the latter had died.

In view of the above, the impugned judgment of conviction and order of sentence passed by the trial Court cannot be sustained. As a natural corollary thereof, the appeal is accepted, conviction and sentence of the appellant is set-aside and he is acquitted of the charge under Section 304 IPC.

The appellant is on bail. Bonds furnished by him and his sureties shall stand discharged.

**(T.P.S. MANN)
JUDGE**

May 12, 2015
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**(MAHAVIR S. CHAUHAN)
JUDGE**