

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-965-DB of 2010

Date of Decision : January 12, 2016

Heera Lal

.....Appellant

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present : Mr. Aman Dhir, Advocate
as Legal Aid Counsel for the appellant.

Mr. S.S. Dhaliwal, Additional Advocate General, Punjab.

T.P.S. MANN, J.

The appellant was tried for committing offence punishable under Section 302 IPC on the allegation that he committed the murder of Rajat s/o Balraj by intentionally causing his death on 1.12.2008 at about 7.30 a.m. in the area of Maur Mandi. Vide judgment and order dated 25/26.5.2010, learned Sessions Judge, Bathinda convicted him for the aforementioned offence and sentenced him to undergo imprisonment for life. Hence, the present appeal for setting aside the aforementioned judgment of conviction and sentence.

According to the prosecution, on 1.12.2008 at 11.00 a.m. complainant Asha Ram, alongwith Tejinder Pal met SI Amarjit Singh, SHO, Police Station Maur at Ram Nagar Chowk, Maur and got recorded statement Ex.PL that he was a resident of Uttar Pradesh and at that time

working in Jai Santoshi Cotton Factory, Maur Mandi as labour contractor for the last about one year. His brother's son Rajat s/o Balraj was also working there for the last one year. His sister's son Heera Lal s/o Kailash and about 15 other persons were working with him for the last about 5/6 days. On that day at about 7.30 a.m., he, alongwith Rajinder Kumar was taking water from the hand-pump. In the meantime, his nephew Heera Lal hit his other nephew Rajat on his head with brick while in the room. On raising of hue and cry, Heera Lal threw the brick and ran away. Rajat died due to striking of brick on his head by Heera Lal. Accordingly, after leaving Rajinder Kumar at the spot for taking care of the dead body, the complainant, alongwith Tejinder Pal, who worked as Munshi in the factory left for the Police Station for lodging the report. According to the complainant, deceased Rajat, who was his brother's son and appellant Heera Lal, who was his sister's son had quarelled on the previous days regarding work. He had tried to make them understand. However, his sister's son Heera Lal committed the murder of his brother's son Rajat by causing injuries on his head with the brick.

On the basis of statement Ex.PL, formal FIR Ex.PL/2 was registered by AMHC Arjan Singh at Police Station, Maur on 1.12.2008 at 11.15 a.m. under Section 302 IPC against the appellant. During the investigation, SI Amarjit Singh visited the place of occurrence and prepared inquest report Ex.PF in respect of deceased Rajat. Photographs of the dead body were also clicked. The dead body was, thereafter, handed over to HC Kapoor Chand and Constable Kuldip Singh for taking it to Civil

Hospital, Maur for postmortem. The appellant was arrested and on completion of the investigation, challan was presented against him in the Court of Ilqa Magistrate. This was followed by commitment of the case to the Court of Sessions. Subsequently, the appellant was charged for committing the offence under Section 302 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Constable Amrik Singh, who tendered into evidence his affidavit Ex.PA.

PW2 Rajinder Kumar testified that he was working in Jai Santoshi Cotton Factory, Maur Mandi and on 1.12.2008 at about 7.30 a.m., when he, alongwith Asha Ram was taking water from the hand-pump, they saw the appellant giving blows with brick on the head of Rajat who was lying on the ground. He further testified that on an alarm being raised, people gathered there but the appellant managed to ran away. On account of the injuries, Rajat had died at the spot. He further deposed that he had accompanied the police during the investigation and the police had taken photographs of the place of occurrence and also lifted bricks in his presence. Blood was also lifted from the spot. One brick Ex.P1 was stained with blood while the other brick Ex.P2 was not stained blood. He also deposed that when he was accompanying the police party and was standing near the Truck Union, Maur the appellant was seen coming and on his identification, he was apprehended.

PW3 Dr. Sadhu Singh, Medical Officer, Civil Hospital, Maur testified that on 1.12.2008 at 3.00 p.m., he conducted postmortem on the dead body of Rajat and found the following injuries :-

- "1. Head and face : Lacerated wound 25 cm. x 20 cm present on both parietal, temporal and frontal area of skull, underlying bones fractured and coming out from the wound. Wound was crushed type. Brain matter and membranes were crushed. Blood clots present with oozing blood.
2. Both eyes and nose crushed. Blood clots present underlying bones of upper jaw fractured."

The doctor testified that in his opinion death was due to injury to the vital organ, i.e. brain and haemorrhagic shock. All the injuries were ante-mortem in nature and sufficient to cause death in ordinary course of nature. Probable time that elapsed between injury and death was immediate and between death and postmortem was within 20 hours.

He also testified that he had given opinion Ex.PH/1 to the effect that possibility could not be ruled out about the injuries on the person of deceased being caused with bricks.

PW4 HC Arjan Singh tendered in evidence his affidavit Ex.PK.

PW5 SI Amarjit Singh deposed that on 1.12.2008, he alongwith the police officials, left Police Station, Maur vide DDR No.10 dated 1.12.2008 at 9.00 a.m., in connection with patrolling and checking

of suspected persons and when they reached Ram Nagar Chowk, Maur, complainant Asha Ram met him and made statement Ex.PL. He was accompanied by Tejinder Pal. After making an endorsement Ex.PL/1, SI Amarjit Singh had sent the statement Ex.PL through HC Jagdip Singh to the Police Station and accordingly, FIR Ex.PL/2 was registered by AMHC Arjan Singh. He also testified about the various steps taken by him during the investigation of the case.

PW6 Asha Ram, complainant in the case, testified that on 1.12.2008 at about 7.30 a.m., he, alongwith Rajinder Kumar was bringing water from hand-pump and in the meantime they heard sound of hitting of brick from room No.3 occupied by appellant Heera Lal and deceased Rajat and when they went there they found the door closed. They knocked at the door. It was the appellant who was empty handed and after opening the door, ran away from the spot. His clothes were stained with blood. He found his nephew Rajat dead. He found that on the left side of the head of Rajat there was injury caused by brick blow. He, however, testified that he had not seen the appellant hitting Rajat with bricks because the door was closed.

As PW6 Asha Ram was resiling from his previous statement, learned Public Prosecutor got him declared hostile and duly cross-examined him, wherein he deposed that he had stated before the police about appellant Heera Lal giving brick blows to Rajat deceased. He had also stated before the police that Heera Lal had run away from the spot

after throwing the brick. He further deposed that after leaving Rajinder Kumar at the spot, he left for informing the police. He admitted it as correct that on the previous day, the appellant and the deceased quarrelled with each other on account of dispute of work. He identified his signatures on his statement Ex.PL. His statement was correct to the effect that the door was closed and brick was lying at the spot and from this he made out that the appellant had killed the deceased with brick blows. He also deposed that he had made correct statement Ex.PL before the police which was read over to him and after admitting it to be correct, he had signed the same.

PW7 Tejinder Pal, who had accompanied complainant Asha Ram for lodging the report to the police testified that he had been working as an accountant in Jai Santoshi Maa Traders, Maur Mandi and on 1.12.2008, he was present in his house and received a telephone from the factory. He then reached there, where he was told by complainant Asha Ram that appellant Heera Lal had committed the murder of Rajat. He then accompanied Asha Ram for going to report the matter to the police and when they met police at Ram Nagar Chowk, Maur in his presence Asha Ram made statement Ex.PL.

PW8 Amrit Pal, Photographer testified that he had taken photographs Ex.PY/1 and Ex.PY/2 of the dead body on 1.12.2008 with the help of digital camera.

Besides examining the aforementioned witnesses, the prosecution also tendered into evidence report Ex.PZ of the Forensic Science Laboratory, Punjab, Chandigarh before closing its evidence.

When examined under Section 313 Cr.P.C., the appellant stated that he was innocent. It was his uncle Asha Ram who had got Rajat murdered at the instance of his wife because the deceased had developed illicit relations with the niece of his wife. He also stated that he was falsely involved in connivance with Tejinder Pal, Muneem and his Seth (employer) to save himself.

After hearing learned counsel for the parties and on going through the evidence brought on the record, the trial Court accepted the prosecution version and convicted and sentenced the appellant, as mentioned above.

Having heard learned counsel for the parties and on scanning the evidence with their able assistance, this Court finds that the occurrence in question had taken place on 1.12.2008 at about 7.30 a.m., in the premises of Jai Santoshi Cotton Factory, Maur Mandi, where deceased Rajat and appellant Heera Lal, used to work. Complainant Asha Ram, an eye-witness of the occurrence, worked there as labour contractor. After the occurrence complainant Asha Ram alongwith Tejinder Pal, who had been working as Muneem, went for informing the matter to the police and when they reached Ram Nagar Chowk, Maur, they came across SI Amarjit Singh, who recorded statement Ex.PL of complainant Asha Ram on the

same day at 11.00 a.m. On the basis of statement Ex.PL, FIR Ex.PL/2 came to be registered at Police Station, Maur soon thereafter, i.e. 11.15 a.m. Special report was handed over to HC Darshan Singh, who delivered the same to the Ilaqa Magistrate at Talwandi Sabo at 3.30 p.m. At the trial of the case, the prosecution had examined complainant Asha Ram as PW6 and Rajinder Kumar, who had also seen the occurrence, as PW2. Both of them described in detail the manner in which the occurrence had taken place, viz. appellant Heera Lal giving blows with the brick on the head of deceased Rajat. Merely because PW2 Rajinder Kumar stated in his cross-examination that complainant Asha Ram had informed the occurrence to Tejinder Pal and he made a phone call to their Seth, who called the police, pursuant to which the police came in 25 minutes and the police thereafter recorded the statement of complainant Asha Ram, is not sufficient to hold that complainant Asha Ram had not gone to the police for lodging the report. Rather, he had informed about the occurrence to the Seth, who also made a call to the police and summoned it to the spot. In his examination-in-chief, he clearly deposed that after Heera Lal had run away from the factory after killing Rajat, complainant Asha Ram left him near the dead body and himself went to call the police. Even PW7 Tejinder Pal, who worked as Muneem in the factory, testified that on receiving telephone call he reached the spot, where complainant Asha Ram told him that Heera Lal had committed the murder of Rajat. Thereafter, Asha Ram took him along for reporting the matter to the police and they came across the police at Ram Nagar Chowk, Maur where statement Ex.PL of Asha Ram

was recorded by the police. He also deposed that after Asha Ram had put his signature in Hindi on the statement Ex.PL, he himself attested the same by putting his signature on statement Ex.PL. Going by the chronology of the events, it is proved that after the occurrence which had taken place on 1.12.2008 at 7.30 a.m., wherein appellant Heera Lal had caused injuries to deceased Rajat with a brick and the occurrence was witnessed by PW6 Asha Ram and PW2 Rajinder Kumar, and soon after the occurrence, PW6 Asha Ram, alongwith PW7 Tejinder Pal, left for informing the police and contacted SI Amarjit Singh at Ram Nagar Chowk, Maur where statement Ex.PL was made by Asha Ram on 1.12.2008 at 10.00 a.m. and on its basis FIR Ex.PL/2 came to be registered at 11.15 a.m. Even the special report was in the hands of the Ilaqa Magistrate at 3.30 p.m. There was no delay in lodging of the FIR and whatever delay occurred, has been satisfactory explained by the prosecution.

Learned counsel for the appellant has tried to pick holes in the testimony of PW2 Rajinder Kumar who deposed that the accused had already given 5/6 blows of the brick by the time he had reached the quarter and even at that stage the appellant was holding the brick and hitting the deceased. On the other hand, PW6 Asha Ram testified that on hearing the sound of hitting with brick from quarter No.3 occupied by appellant Heera Lal and deceased Rajat and when he reached there, he found the door to be closed. When a knock was given at the door, it was opened and appellant Heera Lal was empty handed but was having blood on his clothes.

It may be worthwhile to notice here that PW6 Asha Ram is none-else but the maternal uncle of appellant Heera Lal. Though he happened to be paternal uncle of deceased Rajat, he seemed to have developed soft corner for appellant Heera Lal by testifying in examination-in-chief that on 1.12.2008 at about 7.30 a.m., he, alongwith Rajinder Kumar, was bringing water from hand-pump and they heard sound of hitting by brick from quarter No.3 occupied by appellant Heera Lal and deceased Rajat. He also deposed that when they reached there they found the door closed. They knocked at the door. When the door was opened, appellant Heera Lal was found there who was empty handed. Blood was there on his clothes. He ran away from the spot. He also deposed that he had not seen appellant Heera Lal hitting with the bricks because the door was closed. As he was resiling from his previous statement, learned Public Prosecutor got him declared hostile and in his cross-examination, which followed, he turned around to state that he had stated before the police about appellant Heera Lal giving brick blows to deceased Rajat. He had also stated to the police that Heera Lal had run away after throwing the brick. He had admitted that after leaving Rajinder Kumar at the spot, he went to inform the police. He admitted it to be correct that a day earlier, appellant Heera Lal and deceased Rajat quarrelled with each other on account of dispute of work. However, he half heartedly testified that his statement was correct to the effect that the door was closed and from the brick lying at the spot, he made out that it was the appellant who had killed Rajat by giving brick blows. The

statement of PW6 Asha Ram, when read in conjunction with the testimony of PW2 Rajinder Kumar clearly establishes that it was the appellant who had attacked deceased Rajat by causing him injuries with a brick and the occurrence was witnessed by PW6 Asha Ram and PW2 Rajinder Kumar.

It is pleaded on behalf of the appellant that the investigating officer did not try to collect documentary evidence to show that appellant Heera Lal as well as deceased Rajat used to work in the factory. However from the testimonies of PW2 Rajinder Kumar, PW6 Asha Ram and PW7 Tejinder Pal it stands amply established that the deceased used to work in the factory. Even the appellant, alongwith his elder brother and another person had come to the factory about 6/7 days prior to the occurrence for employment and while the elder brother of the appellant and the other person left, the appellant stayed back. During his cross-examination by the learned Public Prosecutor, PW6 Asha Ram testified that a day earlier to the occurrence appellant Heera Lal and deceased Rajat had quarrelled with each other. The defence also did not lag behind and suggested to PW6 Asha Ram that it was he who had brought Heera Lal for purpose of employment. Though the suggestion was denied yet its tenor indicates that the appellant practically admitted his employment in Jai Santoshi Maa Cotton Factory.

Learned counsel for the appellant has also submitted that there was no motive for the appellant to have committed the murder of deceased Rajat. However, PW6 Asha Ram deposed before the trial Court

during his cross-examination by the learned Public Prosecutor that a day earlier to the occurrence there was a quarrel between appellant Heera Lal and deceased Rajat on account of dispute of work. That incident appears to have culminated into appellant Heera Lal using brick in inflicting injuries upon deceased Rajat who was none-else but his first cousin. Even otherwise, the prosecution is not under a duty to establish the motive in case. The motive remains confined in the mind of the offender. The Court can go into the circumstances resulting into the commission of the offence. It may be worthwhile to notice here that in the statement Ex.PL, PW6 Asha Ram, who happened to be the maternal uncle of appellant Heera Lal, categorically stated that the appellant had inflicted injuries upon deceased Rajat on account of previous day's quarrel. It is case of single accused and PW6 Asha Ram would not have falsely implicated the appellant in the commission of the crime by substituting him for the real offender. The promptitude with which the machinery of law was put into motion is another pointer to the fact that it was the appellant, who on account of previous day's quarrel, had caused injuries with bricks to deceased Rajat.

From the spot SI Amarjit Singh had taken into possession two bricks Ex.P1 and Ex.P2. Going by the nature of injuries it appears that repeated blows were caused by the appellant to the deceased which resulted into lacerated wounds on both parietal, temporal and frontal area of skull. Underlying bones were found fractured and coming out from the wound. The wound was crushed type. All the injuries were declared to be ante-mortem and sufficient to cause death in ordinary course of nature.

Probable time that elapsed between injury and death was immediate. Further, from the report Ex.PZ of the Forensic Science Laboratory, Punjab, Chandigarh, it stands established that the two bricks in question were found stained with human blood.

In view of the aforementioned material available on the file, this Court is of the view that the prosecution has been successful in establishing the guilt of the appellant under Section 302 IPC. Therefore, no case is made out for any interference in the impugned judgment of conviction and sentence passed by the trial Court.

The appeal is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

January 12, 2016
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