

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

CRA-D-597-DB of 2003
Date of decision:- 22.11.2016

Gurmeet Singh and another

...Appellants

Versus

State of Haryana

...Respondent

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE GURMIT RAM**

Present: Mr.R.S. Mamli, Advocate
for the appellants.

Mr. Praveen Bhadu, Assistant A.G., Haryana.

GURMIT RAM, J.

The above noted criminal appeal at the instance of
aforementioned appellants (accused) Gurmeet Singh and Baljit Kaur has
been preferred against the judgment of conviction and order of sentence
dated 17.7.2003 passed by the Court of learned Additional Sessions
Judge, Jagadhri in criminal case bearing FIR No.257 dated 11.6.2001
under Sections 323 and 302 read with Section 34 of the Indian Penal
Code (for short – 'IPC'), Police Station City, Yamuna Nagar, vide which

they were held guilty for the offence punishable under Section 302 read with Section 34 of the IPC and each of them were awarded the sentence of rigorous imprisonment for life.

2. Concisely stated, the case of prosecution as presented before the learned trial Court was that on 11.6.2001, on receipt of a telephonic message from ASI Suraj Bhan, Incharge Police Post Rampura, Inspector/SHO Arun Kumar, Police Station City, Yamuna Nagar reached at Civil Hospital, Yamuna Nagar where he came across complainant Neelam Rani wife of Subhash Chander, resident of House No.156, Gali No.1, Gandhi Dham, Jagadhri. She made her statement Ex.PF before him, which was recorded as under:

“That her husband Subhash Chander used to sell lotteries. Accused Gurmeet Singh, who was friend of her husband, had been visiting their house frequently. About one year back, said Gurmeet Singh took a loan of ₹1,00,000/- from her husband. On that day, at about 5:00 p.m., accused came to their house and took her husband along with him. At about 8:00 p.m., Ram Raj, Watch Mechanic and one Kaka, resident of Chhota Model Town, Yamuna Nagar came to her house and told her that her husband has been murdered by accused Gurmeet Singh and his wife Baljit Kaur near Rana Partap Park by giving beatings to him with *danda* and fist blows. Upon this, she along with her husband's elder brother (JETH) Bishambar Dass and Rajesh

Rathore, Municipal Councillor, Jagadhri reached at Civil Hospital, Yamuna Nagar, where she found her husband dead. About one month back, there took an altercation between her husband Subhash Chander and Gurmeet Singh - accused regarding payment of money. Accused Gurmeet Singh and Baljit Kaur had murdered her husband by giving beatings with 'danda' and fist blows. A request was made to take legal action against the culprits.”

After recording the abovesaid statement of complainant, it was read over to her and she had signed the same after admitting it to be correct. Inspector/SHO Arun Kumar made his own endorsement Ex.PF/2 on her abovesaid statement and sent ruqa to the police station, on the basis of which the FIR Ex.PF/1 was recorded at police station qua the alleged occurrence. Site-plan of the place of occurrence was prepared. Inquest proceedings in respect of the dead body of deceased were conducted and inquest report in this regard was prepared. Post mortem on the dead body of deceased was got conducted on the next day of the occurrence. Accused were arrested in this case on 13.6.2001. Accused Gurmeet Singh got recovered *danda* which was used in the alleged occurrence and the same was taken into police possession. Statements of the witnesses were recorded. On the completion of investigation, challan was presented in the Court of learned Area Magistrate, who further committed this case to the Court of learned Sessions Judge, Yamuna Nagar for trial, after making compliance of the provisions of Section 207 of Code of Criminal Procedure (for short – Cr.P.C.) vide order dated 10.8.2001.

3. Finding a prima-facie case punishable under Section 302 read with Section 34 of the IPC against both the accused, they were charge-sheeted accordingly vide order dated 3.1.2002, to which, they pleaded not guilty and claimed trial.

4. The prosecution during the trial of the case, in order to discharge its obligation to prove the guilt of the accused, examined as many as eleven witnesses in total.

5. Then the accused were duly examined as required under Section 313 of Cr.P.C. Entire incriminating evidence and other culpable circumstances as brought and appearing on the file against them were put to them, which they denied entirely. Both the accused also took the plea of their innocence and false implication in this case at the instance of one Ram Raj, who was inimical towards them. Further, accused Baljit Kaur took the plea that at the time of the alleged occurrence, she was confined to bed due to delivery of a child who was hardly of the age of 1 ¼ months at that time. In such a condition, it was not possible for her to come out of her house by running.

In defence, the accused also examined two witnesses.

6. The learned trial Court after hearing the learned Public Prosecutor, learned defence counsel and perusing the record as well held both the accused guilty for the offence punishable under Section 302 read with Section 34 of the IPC and awarded them sentence as mentioned above in para No.1 of this judgment.

7. The appellants - herein (accused) being not satisfied with the impugned judgment of conviction and order of sentence have approached this Court by way of instant appeal, notice of which was given to the

respondent – State. Record of the learned trial Court was also requisitioned.

8. We have heard the learned counsel for both the parties at length and made appraisal of the evidence as available on the record with their assistance.

9. Qua the prosecution version, complainant – Neelam Rani as PW7 made her statement before the Court on the same lines as per her statement Ex.PF made by her before the police on 11.6.2001 in the premises of Civil Hospital, Yamuna Nagar. Further, she specifically stated that Ram Raj, Watch dealer and Kaka had informed her that her husband Subhash Chander had been killed by accused Gurmeet Singh and his wife Baljit Kaur present in the Court by causing him injuries with *danda* and fist blows etc. near Partap Park.

From her statement, one thing is clearly established that both accused Gurmeet Singh and Subhash Chander since deceased were friends and the accused used to visit the house of the deceased off and on for the last about 4-5 years. It has been found recorded specifically in her cross-examination that the accused refused to refund the money, despite the demand of her husband on the plea that he was not having any money, but the accused continued to visit their house as they were not inimical to each other. Nothing else has come out from her cross-examination either to hit the prosecution version adversely or to support the defence version.

Abovesaid Ram Raj appeared as PW8. His statement in nutshell was that on 11.6.2001 at about 7 p.m., he and PW Kaka were sitting in Rana Partap Park, Yamuna Nagar and near to them accused

present in the Court and Subhash Chander (since deceased) were sitting on another bench, who were talking regarding dispute over payment of some money. Deceased was demanding money from accused Gurmeet Singh who was showing his inability to pay the same which resulted into exchange of hot words between them. On hearing this commotion, accused Baljit Kaur also came there while armed with a bamboo stick (*danda*) as they (accused) were residing in a house opposite to said park. On perceiving that Baljit Kaur was coming with a *danda*, the deceased tried to run away to whom the accused followed by calling him a thief. The deceased fell down on the ground near Partap College, after being hit against some substance and on reaching there, accused Gurmeet Singh started causing injuries to the deceased with 'danda' while he was lying on the ground whereas accused Baljit Kaur caused him injuries with fist blows and leg blows. They both (Ram Raj & Kaka) took the injured Subhash Chander to the hospital where he was declared dead by the doctor. Thereafter, they informed the wife of deceased qua this occurrence. Then it was further in his statement that on 13.06.2001 he and Ashok Kumar were joined in the investigation of this case by the Investigating Officer and they all reached at the house of the accused, where both the accused were found present and arrested by the police. During interrogation, accused Gurmeet Singh produced a *danda* Ex.P1 before the police, rough sketch Ex.PJ of which was prepared and the same was taken into police possession vide memo Ex.PH, after converting it into a sealed parcel.

Abovesaid Kaka was examined by the prosecution as PW9.

Initially, he stated that the alleged occurrence took place on 21.6.2001 in

the evening. In his presence, the accused did not cause any injury to the deceased. Then he was declared hostile and cross-examined by the prosecution. During the cross-examination made by Public Prosecutor, he stated in clear terms that he deposed the date of occurrence as 21.6.2001 in his examination-in-chief inadvertently. The occurrence in fact took place on 11.6.2001. He supported the prosecution version as per his statement made by him before the police on 12.06.2001 during investigation of the case.

Then in his cross-examination made on behalf of the accused, it came on record in answer to a query that he and Ram Raj at about 6:00 p.m. were talking with each other with regard to business. Accused Gurmeet Singh and Subhash Chander (since deceased) were already sitting in the park when they reached there. So from this cross-examination of this witness, it was established on the record that this witness and PW8 were present at the spot when the alleged occurrence took place and that they had seen the same. Then it was also established from his this cross-examination that even deceased and the accused were also present there in the park prior to the alleged occurrence.

PW11 Inspector Arun Kumar was posted as SHO, Police Station City, Yamuna Nagar on the date of alleged occurrence. On receipt of a telephonic message from ASI Suraj Bhan of Police Post Rampura that dead body of Subhash was lying at Civil Hospital, Yamuna Nagar, he went to that hospital. There he recorded statement Ex.PF of complainant - Neelam Rani which was signed by her after admitting it to be correct. After making his endorsement Ex.PF/2 on her statement, he sent the same to the police station, on the basis of which, formal FIR Ex.PF/1 was

recorded by PW4 ASI Naib Singh. He also conducted inquest proceedings in respect of the dead body of deceased and prepared the inquest report Ex.PD. Then he deputed ASI Suraj Bhan to get the post mortem conducted on the dead body of deceased vide application Ex.PB. Then he also visited the place of occurrence on 12.6.2001 and prepared its rough site-plan Ex.PK after inspecting the same. He recorded the statements of witnesses.

Further investigation of this case was conducted by PW10 ASI Suraj Bhan aforementioned. On the relevant date, he was posted as Incharge, Police Post, Rampura. He went to the house of the accused on 13.6.2001 along with PWs Ram Raj and Ashok Kumar and apprehended both the accused in their presence. He interrogated accused Gurmeet Singh regarding the weapon used in the commission of crime, upon which he brought out *danda* made of bamboo from his house and produced the same before him, the rough sketch Ex.PJ of which was prepared and the same was taken into police possession vide memo Ex.PH after preparing its parcel. Then he moved an application Ex.PE before the doctor along with a sealed parcel containing *danda*, who on seeing the same after opening this parcel gave opinion Ex.PE/1.

Then in the medical evidence PW1 Dr.Dinesh Goel stated that on 11.6.2001, he was posted as Medical Officer at Civil Hospital, Yamuna Nagar. He examined patient Subhash Chander and found him already dead who was brought in the casualty ward of their hospital at 7:55 p.m. In this connection, he sent ruqa Ex.PA to Police Post, Rampura.

PW2 Dr.Neenu Kalra along with Dr.Rajiv Aryan conducted post-mortem examination on the dead body of deceased on 12.6.2001 on

police request Ex.PB and observed as under:

“It was dead body of averagely built male wearing off white purple stripe shirt, brownish pant. He was 5' 9” in length. There was no mark of ligature seen around his neck. Rigor mortis was present on dependent part. Rigor mortis was present in limbs and neck.

The following injuries were observed:

- 1. There were two abrasions on right cheek 3 cm long.*
- 2. There was one abrasion 2 cm long on right elbow.*
- 3. There were two abrasion of size 3 x 4 cm on the chin.*
- 4. An abrasion of size 6 x 2 cm on the left anterior part of the chest in the infra clavicular region horizontally placed.*
- 5. Bluish discolouration of size 3 x 2 cm just below umbilicus.*
- 6. An abrasion of size 3 x 2 cm just below left olecranon process.*
- 7. An abrasion of size 6 x 1 cm horizontal just above the right gluteal region.*

Scalp, skull and vertebrae were found to be healthy.

Brain, membranes and spinal cord were also found to be healthy.

On examination of thorax:

On examination of walls, ribs and cartilages of thorax, it was found that there was fractured ribs of left side of second, third, fourth and fifth ribs. Right chest was found to be normal. Left pleural cavity was full of blood and clots. Right pleural cavity was normal. Larynx and trachea were healthy. Right lung was healthy. Left lung was

collapsed and soaked with blood and clots. It was bluish red in colour. Pericardium was healthy. On examination of heart it was found that right chamber was full of blood. Left chamber was empty. Heart was healthy. Large vessels were normal.”

Further she stated that the cause of death in their opinion was shock due to massive left haemothorax. The injuries were ante-mortem in nature and sufficient to cause death in the ordinary course of events. The probable time that elapsed between the injury and death was within few minutes. Further, she proved the carbon copy of the post-mortem report of the deceased as Ex.PC. Then she also stated that on police application Ex.PE, she and Dr.Rajiv Aryan gave opinion Ex.PE/1 after seeing the *danda* which was taken out after opening a sealed parcel. Their opinion was that possibility of injury on the chest on the person of deceased by this *danda* (stick) cannot be ruled out. Then she also stated that it is the same *danda* which was produced by the police for getting their abovesaid opinion Ex.PE/1.

10. Learned counsel for the appellants – herein (accused) has chiefly argued that as per the facts and circumstances of the case in hand, no offence under Section 302 of the IPC is made out. Rather this case is covered under the provisions of Exception 4 annexed to Section 300 of the IPC and hence the offence, if any, falls within the purview of Section 304-Part I of the IPC and not beyond that. Herein he has contended that the alleged occurrence took place upon a sudden fight in the heat of passion without any premeditation.

11. But on the other hand, learned State counsel denied the

above contention of the learned counsel for the appellants – herein (accused) and has contended that in the light of the facts of the case and evidence brought on the file by prosecution, a clear cut case under Section 302 read with Section 34 of the IPC stands established and duly proved on the record against both the appellants – herein (accused) and as such they were rightly convicted by the learned trial Court for the offence under Section 302 read with Section 34, IPC vide the impugned judgment of conviction and order of sentence.

12. Now let us see the evidence on record in order to find out as to how far the above rival contentions of learned counsel for the appellants -herein(accused) and learned State counsel are correct and which one is to prevail upon other.

As per prosecution version PW8 Ram Raj and PW9 Kaka were the eye-witnesses of the alleged occurrence. It came on record in the depositions of both these witnesses that at the time of alleged occurrence Subhash Chand since deceased and accused Gurmeet Singh were sitting together on a bench in Rana Partap Park. The deceased was demanding his money from accused Gurmeet Singh which he had allegedly borrowed from him as a loan and the accused was showing his financial incapacity to return the same. Due to this reason, there occurred exchange of hot words between the two. On hearing this uproar, accused Baljit Kaur who was residing in a house opposite to this park proceeded towards the spot where her husband accused Gurmeet Singh and Subhash Chander (since deceased) were brabbling in the park and on seeing her coming with a *danda*, the deceased attempted to flee away, but unfortunately deceased

fell down while running due to striking against some object. In the meantime, both the accused also reached there and accused Gurmeet Singh inflicted injuries to him with *danda*, whereas accused Baljit Kaur caused him fist blows and leg blows. This is the entire ocular version with regard to causing of injuries to the deceased.

In this regard, the appreciation of the medical evidence also, as came on record, is found to be expedient. As per the rough site-plan Ex.PK of the place of occurrence, the dead body of deceased was found lying almost in the middle of the metalled road at point A. It was also admitted case of the prosecution that deceased fell down on the road while fleeing away due to some obstruction caused by some object. It is the matter of common knowledge that if some body falls on metalled road while running away due to any obstruction, then certainly he is to suffer some sort of injury on the parts of his body which struck against the road while falling. Then PW2 – Dr.Neenu Kalra in her further cross - examination dated 5.6.2002 had also given her opinion that injuries except injury No.4 may possibly be caused if a person had fallen repeatedly and on different angles. So in the light of above evidence, the possibility of injuries No.1 to 3 and 5 to 7 on the person of deceased as displayed in his post mortem report Ex.PC due to striking against the metalled road cannot be ruled out. Since it is admitted case of prosecution that deceased fell on the road with his face downwards while running away, so the accused accelerated the cause of his death by inflicting more injuries to him with *danda*, fist blows and leg blows. So looking from all the angles, this case comes within the ambit of the provisions of abovesaid Exception 4 annexed to Section 300 of the IPC. Consequently, the above

contention of learned counsel for the appellants – herein (accused) is held to be tenable and same is to prevail upon the above contention of learned State counsel.

13. Then some of the other vital facts of the case are also to be noted. As per the statements of PW8 and PW9 and entry made in FIR Ex.PF/1, the alleged occurrence took place at about 7:00 p.m. on 11.6.2001. Injured Subhash Chander after this occurrence was taken to Civil Hospital, Yamuna Nagar at 7:55 p.m. where on medical examination, he was found to be already dead and ruqa Ex.PA in this regard was sent to the concerned police. Upon this, Inspector/SHO Police Station City, Yamuna Nagar went to this hospital and recorded statement Ex.PF of complainant and sent ruqa Ex.PF/2 to police Station at 10:30 p.m. and the FIR Ex.PF/1 was registered at 11:00 p.m. on the same day. Copy of the special report was also sent to Illaqa Magistrate promptly which was received by him/her on 12.6.2001 at 00:45 A.M. during night. Hence in this case every relevant proceeding with regard to the alleged occurrence was quite prompt and spontaneous leaving no room to emanate any kind of suspicion about the genuineness of the prosecution version as alleged or to raise the presumption of false implication of the accused in this case.

14. The plea that accused were involved in this case falsely due to their enmity with one Ram Raj has also not been established on the record. Said Ram Raj appeared as PW8 and it came on the file in answer to a query in his cross-examination that he was not inimical towards accused Gurmeet Singh.

15. No other point raised. Hence there is no need to discuss the

testimony of defence witnesses.

16. In the light of above discussion, the conviction and sentence of the appellants – herein (accused) for the offence under Section 302 read with Section 34 of the IPC are set aside. Rather they are held guilty for the offence punishable under Section 304-Part I read with Section 34 of the IPC and their sentence is modified as under:

Name of the appellant/accused	U/Section	Sentence	In default of payment of fine
Gurmeet Singh	Section 304-Part I read with Section 34 of the IPC	Rigorous imprisonment for 10 years and to pay a fine of ₹50,000/- .	In default of payment of fine, the appellant/accused (convict) shall undergo rigorous imprisonment for a further period of two years.
Baljit Kaur	Section 304-Part I read with Section 34 of the IPC	Rigorous imprisonment for 5 years and to pay a fine of ₹25,000/- .	In default of payment of fine, the appellant/accused (convict) shall undergo rigorous imprisonment for a further period of one year.

Entire amount of fine, if paid, be disbursed to LR's of the deceased as compensation.

With the above modification qua the conviction and sentence of the appellants – herein (accused), this appeal is accepted partly to that extent and disposed of accordingly.

22.11.2016
Brij

(T.P.S.MANN)
JUDGE

(GURMIT RAM)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No