

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-563-DB of 2003

Date of Decision : August 24, 2016

Dinesh

....Appellant

VERSUS

State of Haryana

...Respondent

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

Present : Mr. R.S. Cheema, Senior Advocate with
Mr. Arshdeep Singh Cheema, Advocate
for the appellant.

Mr. M.S. Sidhu, Additional Advocate General, Haryana.

T.P.S. MANN, J.

The appellant was charged for committing an offence punishable under Section 302 IPC on the allegations that on 7.1.2001 at 7.00 p.m., he caused injuries to Samunder Singh, which resulted in his death. Vide judgment and order dated 26.5.2003, learned Additional Sessions Judge (*Ad hoc*), Fast Track Court, Sonapat convicted him for the aforementioned offence and sentenced him to undergo imprisonment for life and to pay an amount of Rs.5,000/- as fine.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted on 15.7.2003 and recovery of fine from him was stayed during its pendency.

The case of the prosecution is that on 8.1.2001 at 7.00 a.m., complainant Mohinder Singh got recorded his statement Ex.PF before ASI Bachan Singh at Jaipur Golden Hospital, Delhi that he was resident of village Badhkhalsa, Police Station Rai, District Sonapat and working as a transporter. He has four brothers and four sisters and all of them were married. Rajpal was his elder brother, whereas Samunder Singh, Jaipal and Naresh were his younger brothers. His brother Samunder Singh had engaged Rajesh Kumar, younger brother of appellant Dinesh as driver on Tata 407 No.HR-10-6877. 15 days before the occurrence Dinesh Kumar came to Samunder Singh for collecting the salary of his brother Rajesh Kumar. The complainant's brother refused by stating that he would give the salary only to Rajesh Kumar. At this, Dinesh Kumar abused Samunder Singh and threatened to see him. On 7.1.2001 at about 7.00 p.m., the complainant's brother Rajpal, who was serving in the Haryana Sheet Class Factory in Sevli village was returning home on a bicycle and at that time, the complainant, alongwith his uncle Ran Singh was returning from the grocery shop of Baljit Nambardar after purchasing household articles. Dinesh accused pushed the bicycle of Rajpal, who fell down on the ground. Samunder Singh, who was coming from the side of the house came running to the spot and advised the accused not to do so. The accused proclaimed that he would teach him a lesson for not giving the salary of his brother Rajesh Kumar. He was holding a knife in his hand and gave a blow with the same on the left side of the chest of Samunder Singh. As a result, Samunder Singh fell down on the ground. The complainant and his uncle Ran Singh

tried to catch hold of the accused but he managed to escape from the spot alongwith the knife. The complainant put his injured brother Samunder Singh in Tata 709 vehicle and took him to Government Hospital, Sonapat, where the doctor gave first aid to him. Thereafter, Samunder Singh was taken to Jaipur Golden Hospital, Delhi for treatment where he expired during the night at 12.30 a.m. According to the complainant, Dinesh accused while nursing a grudge on account of non-payment of the salary of his brother Rajesh, had committed the murder of his brother Samunder Singh by giving him an injury with a knife.

Further case of the prosecution is that during the night intervening 7/8.1.2001 a VT message was received at Police Station, Rai from Incharge, Control Room, Sonapat to the effect that Samunder Singh was lying admitted in an injured condition in Government Hospital, Sonapat. Accordingly, ASI Bachan Singh alongwith HC Sultan Singh reached Government Hospital, Sonapat where he learnt that the injured had been shifted to Jaipur Golden Hospital, Delhi. He also collected ruqa from Constable Mahesh Chander, Police Post, Government Hospital, Sonapat as well as medico-legal report dated 7.1.2001, besides a parcel containing clothes of Samunder Singh. He then went to Jaipur Golden Hospital, Delhi where he came across complainant Mohinder Singh and recorded his statement. The statement revealed commission of offence under Section 302 IPC and, accordingly, vide ruqa Ex.PF/2, he sent the statement Ex.PF of complainant Mohinder Singh to Police Station Rai where on its basis, FIR Ex.PF/1 came to be registered by

ASI Daya Nand on 8.1.2001 at 8.30 a.m., under Section 302 IPC. Special report sent through Constable Mohd. Musatqueem was received by the Ilaqa Magistrate on the same day at 12.45 p.m.

It may be mentioned here that after Samunder Singh was taken to General Hospital, Sonapat, he was medico-legally examined by Dr. Rajiv Sethi on 7.1.2001 at 7.30 p.m., where following injuries were noticed on his person :-

- “1. There was an incised wound 2 cms x 1.5 cm present on the left side of chest lower part in anterio lateral surface. The omentum like tissue was coming out of the wound. Fresh bleeding was present. Injury was referred to Surgeon and X-ray advised.
2. A linear reddish abrasion 4 cms x 0.2 cm was present in front of injury No.1.
3. There was a reddish abrasion 0.3 cm x 0.2 cm in front of left side of chest 5 cms below the left nipple.”

During the investigation of the case, SI Bhagwan Singh of Police Station, Rohini conducted inquest proceedings Ex.PH/2 on the dead body of Samunder Singh. The dead body was then subjected to post-mortem by Dr. Sameer Pandit, Medical Officer, Department of Forensic Medicines, Sanjay Gandhi Memorial Hospital, Mangolpuri, Delhi, who found the following injuries on the dead body :-

- “1 There was a mid-line stitched surgical incision with about 13 stitches, present on the anterior

abdominal wall which was 18 cms. in length starting from xiphoid process. The same incision was continued and extended to left side below the sub-costal margins measuring about 12 cms. having 10 stitches.

2. One drainage incision in left 11th inter-costal space in mid axillary line.

On internal examination, the abdomen contained about 500 mls. of clotted blood. Spleen was absent but traces of splenic tissue with mesentery stitched having about 25 stitches. Rest of the organs were pale and healthy.”

In the opinion of Dr. Sameer Pandit, the cause of death was shock and haemorrhage.

It is also the case of the prosecution that ASI Bachan Singh after inspecting the spot prepared rough site plan Ex.PR on 8.1.2001. Inspector Naval Singh arrested Dinesh accused on 12.1.2001 and took into possession the pant worn by him. The pant had some blood stains. On 14.1.2001, Inspector Naval Singh recorded disclosure statement Ex.PA of the accused that he had kept concealed a knife in the cattle shed underneath the bricks. Pursuant to the same the accused led the police party and got recovered the knife Ex.P1, which was seized vide recovery memo. Ex.PB. The case property was deposited with MHC Ramesh Chander, who forwarded the same to Forensic Science Laboratory, Madhuban, Karnal. Vide report Ex.PG, the Assistant Director (Serology), Forensic Science

Laboratory, Haryana opined that shirt and baniyan of the deceased and the pant of the accused were stained with human blood having group 'A'. However, blood could not be detected on the knife.

Upon completion of the investigation and presentation of the challan, followed by commitment of the case to the Court of Sessions, the accused was charged for the aforementioned offence, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined 15 witnesses.

PW1 Rajbir proved the disclosure statement Ex.PA suffered by the accused leading to recovery of knife from underneath the bricks on the roof of his house, which was taken into possession vide recovery memo. Ex.PB. He also proved sketch of knife Ex.PC.

PW2 Mohd. Musatqueem testified that on 8.1.2001, he handed over the special report of this case to the Ilaqa Magistarte at 12.45 p.m.

PW3 Constable Inderpal deposed that on 5.3.2001, he prepared scaled site plan Ex.PD on the identification of complainant Mohinder Singh.

PW4 Constable Mahesh Chander testified that on 8.1.2001, he had handed over a sealed parcel containing the clothes of the deceased, which was taken into possession by ASI Bachan Singh vide recovery memo. Ex.PE.

PW5 SI Rajinder Singh testified that on 3.3.2001, he had prepared and submitted the final report under Section 173 Cr.P.C.

PW6 ASI Daya Nand deposed that he had recorded formal FIR Ex.PF/1 on 8.1.2001 on receipt of ruqa Ex.PF from ASI Bachan Singh.

PW7 Dr. Sameer Pandit testified about the post-mortem on the dead body of Samunder Singh.

PW8 Dr. Rajiv Sethi deposed about the medico-legal examination of Samunder Singh.

PW9 Inspector Naval Singh testified about taking into possession the pant of the accused vide recovery memo. Ex.PM, making of disclosure statement Ex.PA by the accused leading to recovery of knife Ex.P1 vide memo. Ex.PB and preparation of its sketch Ex.PC. He also deposed about preparing rough site plan Ex.PC/1 of the place of recovery of knife.

PW10 HC Ramesh Chander, who stood posted as MHC, Police Station, Rai testified that one sealed parcel containing clothes of the deceased was deposited with him on 8.1.2001. One sealed parcel containing knife was deposited with him on 14.1.2001. He handed over the sealed parcels to ASI Bachan Singh on 27.1.2001 for taking expert opinion, which were deposited back with him on the same day. On 7.2.2001, he sent all the parcels to the Director, Forensic Science Laboratory, Madhuban through Constable Satbir Singh, who deposited the same on the same day and produced

receipt issued in that regard.

Complainant Mohinder Singh was examined by the prosecution as PW11 and he deposed about the manner in which the occurrence had taken place in his presence. He also deposed about transporting of Samunder Singh in an injured condition to Civil Hospital, Sonapat for treatment and from there taking him to Jaipur Golden Hospital, Delhi where he succumbed to his injuries. He also stated about making statement Ex.PF before the police at Jaipur Golden Hospital, Delhi.

PW12 Ran Singh, uncle of complainant Mohinder Singh and Samunder Singh, since deceased, corroborated the testimony of PW11 Mohinder Singh.

PW13 ASI Bachan Singh deposed about receiving VT message from Control Room, Sonapat and proceeding to General Hospital, Sonapat where he learnt about the shifting of Samunder Singh to Jaipur Golden Hospital, Delhi. He further stated that at Jaipur Golden Hospital, Delhi he recorded statement Ex.PF of complainant Mohinder Singh and sending the same to Police Station Rai on the basis of which FIR Ex.PF/1 was recorded by ASI Daya Nand. He further deposed about inquest proceedings Ex.PH/2 having been conducted by SI Bhagwan Singh of Police Station Rohini, Delhi. He further deposed that he had reached the spot and prepared rough site plan Ex.PR. He also deposed that on 12.1.2001, he had joined investigation with Inspector Naval Singh, who had taken in possession the pant of the accused vide recovery memo. Ex.PM. He also

deposed that on 27.1.2001, he had sought opinion of the doctor about the weapon, i.e. knife as to whether injuries on the person of the deceased were possible with the same or not. In response to the same, the doctor gave opinion Ex.PK/1 that the possibility of injury No.1 being caused by the same could not be ruled out.

PW14 UGC Satbir Singh, who had taken the various articles to the Forensic Science Laboratory tendered in evidence his affidavit Ex.PS.

PW15 SI Bhagwan Singh, who was posted in Police Station Rohini, Delhi on 8.1.2001 testified that after receiving information about the death of Samunder Singh, he went to Jaipur Golden Hospital, Delhi and held inquest proceedings Ex.PH/2 on his dead body.

Before closing its evidence, the prosecution gave up Rajpal Singh, Subh Ram, Dinesh, Ram Kishan and Raghbir Singh as unnecessary. Report Ex.PG of Forensic Science Laboratory was also tendered in evidence.

When examined under Section 313 Cr.P.C., the accused denied the prosecution allegations and claimed that it was a false case and he was being implicated as Samunder Singh owed a sum of Rs.20,000/- to him. It was a blind murder and the dead body was lying in the outskirts of the village. However, he had been implicated to extract the money.

In his defence, the accused did not examine any evidence.

After hearing learned Public Prosecutor, learned defence counsel and going through the evidence brought on record, the trial Court accepted the prosecution case and convicted and sentenced the appellant, as mentioned above.

This Court has heard learned counsel for the parties and perused the evidence with their able assistance.

From the prosecution evidence, it is made out that the occurrence in question had taken place in the main street in village Badhkhalsa. On the said street there is a shop of Baljit Nambardar besides his house and residential house of one Ram Kishan towards the south and houses of Tek Chand, Dharam Pal and Jaipal towards the north. In front of the house of Ram Kishan on the southern side and that of Jaipal on the northern, incident in question had taken place. At the time of the occurrence, Rajpal Singh, brother of complainant Mohinder Singh was going on a bicycle when he was confronted by the appellant, who pushed his bicycle as a result of which, he fell down on the ground. At that time, Samunder Singh, who was coming from his house reached there and advised the appellant not to do so. At this, the appellant proclaimed that he would teach him a lesson for not giving the salary of his brother Rajesh Kumar. The appellant was carrying a knife which he used in inflicting an injury on the left side of the chest of Samunder Singh. As a result Samunder Singh fell down on the ground. At that time complainant Mohinder Singh and his uncle Ran Singh were present at the shop of Baljit Nambardar. The distance between said place and the place

where Samunder Singh was caused an injury was 40/50 feet and there was sufficient light available in which complainant Mohinder Singh and his uncle Ran Singh could see infliction of injury by the appellant. Under these circumstances, it cannot be said that it was a case of blind murder and, that too, at the outskirts of the village where none other than the deceased was present. Merely because Rajpal, who, according to the prosecution, had been made to fall by the appellant by pushing his cycle, was not examined by the prosecution is no ground to reject the prosecution case outrightly.

The occurrence in question had taken place on 7.1.2001 at 7.00 p.m. in village Badhkhalsa. Immediately, after the occurrence, Samunder Singh was removed in an injured condition to General Hospital, Sonapat where he was medico-legally examined by PW8 Dr. Rajiv Sethi at 7.30 p.m. As there was corresponding cut found present on the shirt and baniyan of the injured, they were converted into a sealed parcel and handed over to Constable Mahesh Chander, who further handed over the same to PW13 ASI Bachan Singh, who reached there and after coming across complainant Mohinder Singh recorded his statement Ex.PF. Subsequently, on 12.1.2001, PW9 Inspector Naval Singh had arrested the appellant and took into possession his pant vide recovery memo. Ex.PM. The pant was having some blood stains. The case property, including the shirt and baniyan of the deceased and pant of the appellant were, thereafter, sent through UGC Satbir Singh to the Forensic Science Laboratory. Vide report Ex.PG, it was opined that the said three articles were having human blood stains, which belonged to group 'A'. This further

establishes that it was the appellant who had caused injury to the deceased.

Further, the statement Ex.PF of complainant Mohinder Singh PW11 was recorded at Jaipur Golden Hospital, Delhi on 8.1.2001 at 7.00 a.m. by ASI Bachan Singh and on its basis, FIR Ex.PF/1 came to be registered on the same day at 8.30 a.m. under Section 302 IPC. Special report of the case was handed over to PW2 Mohd. Musatqueem who delivered the same to the Ilaqa Magistrate on 8.1.2001 at 12.45 p.m. There was no inordinate delay in the lodging of the FIR. Whatever delay occurred stood satisfactory explained. Even otherwise after the occurrence had taken place at 7.00 p.m. on 7.1.2001, the first anxiety of the complainant was to shift the injured to the hospital. After being taken to General Hospital, Sonapat where he was medico-legally examined at 7.30 p.m., he was shifted to Jaipur Golden Hospital, Delhi for better treatment where he expired on 8.1.2001 at 12.40 a.m. This also lends corroboration to the prosecution case.

In view of the above, this Court has no other option but to hold that it was the appellant who had wielded the knife in inflicting the injury to Samunder Singh as a result of which he had died later on.

As regards the nature of offence, it may be noticed that the occurrence started with the appellant pushing the cycle of Rajpal and making him fall therefrom. This attracted Samunder Singh to the spot and when he reached there he was assaulted by the appellant, who caused one knife injury on the left side of his chest. PW7 Dr. Sameer

Pandit, Medical Officer, Sanjay Gandhi Memorial Hospital, Delhi, who had conducted post-mortem on the dead body of Samunder Singh had opined the cause of death to be shock and haemorrhage. He did not state a single word that the injury caused by the appellant was sufficient to cause death in the ordinary course of nature. Further, at the time of medico-legal examination, PW8 Dr. Rajiv Sethi had noticed as many as three injuries on the person of Samunder Singh. Injury No.1 was an incised wound on the left side of the chest in its lower part with omentum coming out whereas injuries No.2 and 3 were reddish abrasions in front of injury No.1 and in front of left side of chest. It is also the case of the prosecution that after receiving the solitary blow on his person, Samunder Singh had fallen down on the ground. In his cross-examination PW8 Dr. Rajiv Sethi apparently conceded that injuries No.2 and 3 were on one side and could be caused by a single fall.

It is the case of the prosecution that Samunder Singh was not the target of the appellant in the first instance. Rather, the target was Rajpal, who was coming on a bicycle which was pushed by the appellant as a result of which Rajpal fell down on the ground. For reasons best known to the prosecution, Rajpal Singh, who was a material witness, has not been examined by the prosecution in support of its case. Rather, he was given up as unnecessary. Further, once Samunder Singh had seen his brother Rajpal Singh being assaulted by the appellant, he reached the spot and asked the appellant not to do so. At that point of time, the appellant proclaimed that he would teach a lesson to Samunder Singh for not paying the

salary of his brother Rajesh Kumar. Rajesh Kumar had been hired by the deceased to ply his vehicle and some time before the occurrence, the appellant had demanded the wages of his brother Rajesh Kumar from the deceased. However, the deceased insisted that he would pay those wages to Rajesh Kumar and not to the appellant. Even on the day of the occurrence, the appellant had proclaimed that he would teach a lesson to the deceased for not paying the wages of his brother. This makes Samunder Singh an intervenor who got injured in the bargain. He was not the target in the first instance as the appellant had simply pushed the cycle of Rajpal Singh, brother of the deceased. Though PW11 complainant Mohinder Singh had testified that the appellant had raised a lalkara to teach a lesson to Samunder Singh yet PW12 Ran Singh did not state so. He simply mentioned that 15 days prior to the occurrence the deceased had refused to pay the wages of Rajesh Kumar to the appellant and at that time the appellant had extended a threat to the deceased.

Admittedly, it is a case of causing of only one injury by the appellant to Samunder Singh, which ultimately proved to be fatal. However, taking into consideration the totality of the circumstances, this Court finds that the appellant did not intend to cause the death of Samunder Singh. Rather, it was Samunder Singh who had come in between the appellant on the one hand and Rajpal Singh on the other. This makes the appellant responsible for intentionally causing an injury which was likely to cause death. Moreover, the injury in question was not declared to be sufficient to cause death in ordinary course of nature. PW7 Dr. Sameer Pandit had given his opinion that cause of

death was shock and haemorrhage. Therefore, it cannot be said that the injury in question was sufficient to cause death in the ordinary course of nature.

In view of the above, it cannot be said that the appellant intended to commit the murder of Samunder Singh. Rather, he intended to cause an injury which was likely to cause death which would make him liable for committing the offence under Section 304 Part I IPC, instead of Section 302 IPC.

Resultantly, the conviction of the appellant and his sentence of imprisonment and fine under Section 302 IPC is set aside. Instead, he is convicted under Section 304 Part I IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year.

The appeal is partly allowed to the extent indicated above.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

August 24, 2016
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No