

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

Crl. A. No. S-2296-SB of 2003

DATE OF DECISION : 24.09.2016

Mohinder Singh and another

.... APPELLANTS

Versus

State of Haryana

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sumeet Goel and Mr. Krishan M. Vohra, Advocates,
for appellant No.1.

Mr. Rahul Gautam, Advocate,
for appellant No.2.

Mr. Gaurav Bansal, AAG, Haryana.

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RAMENDRA JAIN, J.

1. Appellants Mohinder Singh and Gopal Krishan alias Billu have filed this appeal against the judgment dated 17.11.2003 and order of sentence dated 18.11.2003 passed by the court of learned Additional Sessions Judge, Kaithal, whereby they were convicted under Section 304 Part-II read with Section 34 IPC, and sentenced to undergo rigorous imprisonment for four years and to pay fine of ₹ 5,000/- each, in default to further undergo rigorous imprisonment for two months.

2. The case of the prosecution is based upon the statement (Ex.PC) made by Sheela Devi (PW.4), to Sadhu Ram SI (PW.7) on 20.08.2001. In her statement, she alleged that for the last two years, her eldest son Parkash Kumar was employed with accused Mohinder Singh at

attend his duties due to his illness and had also gone to bring Kanwar from Haridwar. On that day, i.e. on 20.08.2001 at about 12.30 PM, appellants-accused Mohinder Singh and Gopal Krishan alias Billu came to the house of the complainant. Accused Mohinder Singh asked Kamal Kumar (husband of the complainant) as to why his son Parkash Kumar was not coming on duty, due to which his work was suffering. Kamal Kumar stated that his son Parkash Kumar was not feeling well and they would settle their accounts with folded hands. At this, accused Mohinder Singh got annoyed. He caught hold and pressed the neck of Kamal Kumar with one hand; and with the other hand, he caught hold the hair of Kamal Kumar and started giving him blows. On this, when the complainant tried to rescue her husband Kamal Kumar, accused Gopal Krishan alias Billu pushed her away and threatened her. The complainant then raised alarm, which attracted her neighbourer Bhagwanti (PW.5) and Parkash Kumar, who rescued Kamal Kumar from the clutches of the accused. Both the accused ran away while extending threats to the complainant party. On taking care of Kamal Kumar, he was found dead. Action may be taken against the appellants-accused.

3. After recording the aforesaid statement, Sadhu Ram SI made his endorsement (Ex.PC/3) and sent ruqa to the Police Station, on the basis of which formal FIR (Ex.PC/1) was recorded. Thereafter, Sadhu Ram SI reached the place of occurrence, prepared inquest proceedings (Ex.PJ) and the rough site plan of the place of occurrence (Ex.PK), recorded the statements of the witnesses and sent the dead body of Kamal Kumar to Civil Hospital, Kaithal, for post mortem examination, vide application (Ex.PH/2).

Further investigation of the case was handed over to Puran Chand,

Inspector/SHO (PW.11), who recorded the supplementary statements of complainant Sheela Devi and eye witnesses Bhagwanti and Parkash Kumar. Complainant Sheela Devi, in her supplementary statement, stated that when accused Mohinder Singh and Gopal Krishan were running away from the spot, accused Veena Rani asked them to hide in her house and she would put a lock outside. On the basis of this statement, offences under Sections 302 and 212 IPC were added. On 21.08.2001, all the three accused was arrested in this case. On the same day, the case property was deposited with MHC. Scaled site plan of the place of occurrence was got prepared from Constable Ram Niwas (PW.8).

4. After completion of investigation, the challan was filed. Charge under Section 304 read with Section 34 IPC was framed against accused Mohinder Singh and Gopal Krishan (appellants herein), and their co-accused Veena Rani was charge sheeted under Section 212 IPC. All the accused did not plead guilty and claimed trial.

5. In support of its case, the prosecution examined eleven witnesses.

6. PW.1 Prithvi Raj Head Constable, PW.2 Constable Sunil Kumar, PW.3 Surat Kant SI, PW.8 Constable Ram Niwas, PW.9 Haweli Ram and PW.10 Constable Virender Singh are the formal witnesses.

7. PW.4 Sheela Devi (complainant), who is wife of the deceased, reiterated the entire version, as stated by her in her statement (Ex.PC), which was made by her on 20.8.2001.

8. PW.5 Bhagwanti, neighbourer of the complainant, is the eye witness of the occurrence. She fully supported the prosecution version.

9. PW.6 Dr. B.B. Kakkar, who along with two other doctors, conducted autopsy on the dead body of deceased Kamal Kumar, proved the post mortem report of the deceased as Ex.PE. He stated that after receipt of the report of FSL (Ex.PF) and the report of Pathology department (Ex.PG), he and his accompanying two doctors, on the application of the police (Ex.PH) vide opinion (Ex.PH/1) opined that the possibility of death due to cardio-genic shock could not be ruled out.

10. PW.7 Sadhu Ram SI, who conducted the initial investigation of the case, proved statement of the complainant (Ex.PC), his endorsement on the same (Ex.PC/1), formal FIR (Ex.PC/2), inquest proceedings (Ex.PJ), rough site plan of the place of occurrence (Ex.PK) and the application (Ex.PH/2) vide which the dead body of deceased Kamal Kumar was sent to Civil Hospital, Kaithal, for post mortem examination.

11. PW.11 Puran Chand Inspector, who conducted the further investigation of the case, also supported the case of the prosecution regarding adding of offences under Sections 302 and 212 IPC, on the basis of supplementary statements of complainant Sheela Devi, and eye witnesses Bhagwanti and Parkash Kumar, recorded by him. He further stated about arrest of accused Veena Rani and also proved the other documents prepared by him during investigation.

12. In their statements recorded under Section 313 Cr.P.C., all the accused denied the incriminating evidence appearing against them and pleaded their innocence. They took the plea that Kamal Kumar died an unnatural death and they have been falsely implicated in this case to grab the money.

13. In defence, the accused examined Ram Pal, Warden, Sub Jail, Kaithal, as DW.1, who produced the register regarding the visitors who were allowed to meet the jail inmates.

14. After hearing learned Public Prosecutor and learned defence counsel, and considering the evidence available on record, while relying upon the medical evidence, which proved that possibility of death of Kamal Kumar due to cardiogenic shock could not be ruled out; and statements of complainant Sheela Devi as well as eye witness Bhagwanti; and other link evidence, the trial court convicted and sentenced the appellants, as mentioned in the first para of the judgment. However, accused Veena Rani was acquitted of the charge, while observing that version of complainant Sheela Devi that accused Veena Rani came on the spot and harboured the appellants when they were running away after committing the crime is an improvement, as there is no evidence on the record that accused Veena Rani had the knowledge that the appellants had committed the offence of culpable homicide not amounting to murder.

15. I have heard learned counsel for the appellants and learned Assistant Advocate General, Haryana, and have perused the record of the case.

16. Learned counsel for the appellants contended that according to the deposition of PW.6 Dr. B.B. Kakkar, at the time of conducting post mortem examination on the dead body of Kamal Kumar, no marks of external injuries were seen on his body. At the time of taking out shirt from the body of the deceased, it was not in a torn condition, which is contrary to the deposition of PW.4 complainant Sheela Devi, who stated that shirt of

her husband Kamal Kumar was torn by the appellants. This contradiction shows that the incident did not happen in the manner, as narrated by the prosecution which creates doubt in the prosecution case. More so, as per the report of Pathology department (Ex.PG), the deceased was suffering from heart disease. He further contended that there was no motive for the appellants to kill Kamal Kumar, as they were not having previous enmity with him. There are various discrepancies and improvements in the statements of the prosecution witnesses. PW.4 complainant Sheela Devi testified that appellant No.2 caught hold of Kamal Kumar from the neck, and appellant No.1 started giving fist and blows to him. Contrary to this, PW.5 Bhagwanti deposed that appellant No.1 had caught hold the throat of Kamal Kumar, who was lying on the bed, and appellant No.2 was giving fist and blows to him. Accused Veena Rani was introduced by complainant Sheela Devi later on by making a supplementary statement, and for that reason, finding no substance in the prosecution story, she was acquitted by the trial court.

17. With regard to the quantum of sentence, learned counsel for the appellants argued that the appellants are law abiding citizens having no criminal record. No other criminal case, except the present one, is pending against them. They are facing protracted trial for more than 15 years. They are running in the middle of their life. Therefore, if conviction of the appellants is upheld, a lenient view be taken while considering the impugned order of sentence passed by the learned trial court.

18. The incident in this case took place in the year 2001. The background of the case is that for the last two years, Parkash Kumar son of

the complainant was working at the Cable Network of appellant No.1, and for a period of about one month, he was not attending his duty without any intimation to appellant No.1. On the day of incident, i.e. on 20.08.2001, the appellants went to the house of the complainant Sheela Devi and her husband Kamal Kumar to know the reason of their son Parkash Kumar not attending his duty, as the Cable Network business of appellant no.1 was suffering. From the above prosecution story, it is evident that before going to the house of the complainant, both the appellants had no mens rea to commit any criminal act. It is also evident from the statement of PW.4 complainant Sheela Devi that her son Parkash Kumar had to pay some money to the appellants and for that reason, her husband Kamal Kumar assured them that he would settle their accounts with folded hands. If the entire matter is looked into and considered carefully, then the only conclusion which can be drawn is that deceased Kamal Kumar might be a heart patient and may have died due to his heart ailment, because as per the report of Pathology department (Ex.PG), representative microsections examined from different areas of heart showed changes of chronic ischemic heart disease. Aorta and coronary arteries showed moderate to marked atherosclerotic changes. But the ill fated luck of the appellants took them to the house of the complainant and her husband Kamal Kumar to know the reason of their son Parkash Kumar not attending his duty and a minor altercation took place, during which the appellants might have given a push and some blows to Kamal Kumar, which resulted into exaggeration of his heart ailment leading to his death. Though they may not be directly responsible for the death of Kamal Kumar, but cannot escape of their

attribution in his death. Therefore, in the considered opinion of this court, the impugned judgment convicting the appellants under Section 304 Part-II read with Section 34 IPC does not require any interference.

19. Undisputedly, both the appellants have no criminal background and are not facing criminal proceedings in any other case, except the present one. While going to the house of the complainant and her husband Kamal Kumar (deceased), as discussed above, they were having no mens rea to enter into any criminal activity. A perusal of the interlocutory order dated 20.08.2004, whereby sentence of both the appellants was suspended by this court, reveals that they have already undergone 14 months of actual sentence. They might have earned some remission also. They are facing protracted trial for the last about 15 years. Considering all these factors, I am of the opinion that the ends of justice would be met if their sentence of imprisonment is reduced to the period already undergone, by directing them to make payment of some compensation to the bereaved family. Accordingly, in view of the facts and circumstances of the instant case, both the appellants are directed to make payment of ₹ 1.50 lacs each as compensation to the complainant, who is widow of deceased Kamal Kumar, within a period of two months from the date of pronouncement of this judgment, failing which the instant appeal shall stand dismissed.

20. Consequently, the appeal is disposed of with the modification in the impugned order of sentence, to the extent that the sentence of imprisonment awarded to the appellants by the trial court is reduced to the period already undergone, subject to their making payment of ₹ 1.50 lacs each as compensation to complainant Sheela Devi (widow of deceased

Kamal Kumar) within a period of two months from the date of pronouncement of this judgment.

September 24, 2016
ndj

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes