

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

**CRA-D-465-DB of 2010
Date of decision:-14.3.2017**

Mohd.Adrish @ Machhi

....Appellant

Versus

State of Punjab

....Respondent

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr. Gurinder Singh Lalli, Advocate
as legal aid counsel for the appellant.

Mr.S.S. Dhaliwal, Additional A.G., Punjab.

H.S. MADAAN, J.

This appeal is directed against judgment and order dated 5.2.2010 passed by the Court of learned Sessions Judge, Sangrur vide which he had convicted accused Mohd. Adrish alias Machhi for an offence under Section 302 IPC and sentenced him to undergo imprisonment for life whereas fine was not imposed in the light of order dated 13.5.1999 passed by Hon'ble Apex Court in Criminal Appeal No.601 of 1999 arising out of SLP (Crl.) No.289 of 1999 titled '*Ajaib Singh Versus State of Punjab*'.

The accused-convict, who is appellant before this Court prays that the appeal be accepted, the impugned judgment and order of his conviction and sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story as it unfolded during the trial is that on 13.8.2008 at about 9:45 p.m., complainant Tanveer Ahmed son of Mohd. Nazir, caste Rajput, Mohammedan, resident of Mohalla Vaidan, near Kamal Cinema, Malerkotla aged 25 years along with his neighbour and friend Mohd. Asgar son of Mohd. Akhtar was returning home after offering prayers at Jama Masjid, Malerkotla. They were on foot. When they were about 30 feet short of Chandni Market, then they observed that Mohd. Wasim, brother of complainant – Tanveer Ahmed was way laid by accused Mohd. Adrish alias Machhi in front of tea stall of Billa. Such accused Mohd. Adrish had been working with Mohd. Sharif at his lottery shop at Chandni Market. At that time, Mohd. Sharif was standing in front of his lottery shop and electric lights were glowing in the market. Mohd. Sharif had raised *lalkara* (exhortation) that Mohd. Wasim should not go scot free as he had beaten the accused earlier. Hearing that, accused Mohd. Adrish @ Machhi carrying a *chhuri* (knife) in his right hand gave a blow with it hitting Mohd. Wasim on the left side of chest. After suffering that injury Mohd. Wasim was covered with blood and fell down. The complainant and his friend Mohd. Asgar raised alarm of *NA MARO – NA MARO*. Then accused Mohd. Adrish @ Machhi ran away from the spot along with his *chhuri* (knife) whereas Mohd. Sharif fled towards the backside of lottery

shop. Complainant and Mohd. Asgar rushed near the injured and took him to Civil Hospital, Malerkotla on a motorcycle where he was declared brought dead. The motive for the incident was that a quarrel had taken place between the deceased and accused earlier, in which accused had suffered injuries and he remained admitted in Civil Hospital, Malerkotla, though later on the matter had been compromised with the intervention of respectables.

From the Civil Hospital, Malerkotla, an intimation was sent to Police Station City, Malerkotla regarding bringing of Mohd. Wasim in dead condition to said hospital. On receipt of that information, Inspector Darshan Singh, Station House Officer, Police Station City, Malerkotla (hereinafter referred to as Investigating Officer/IO) along with other police officials went to Civil Hospital, Malerkotla, where he came across complainant Tanveer Ahmed, who got his statement Ex.PA recorded, which was signed by him (Tanveer Ahmed) in Urdu. His signatures were attested by the Investigating Officer. By that time, the next day i.e. 14.8.2008 had fallen. The Investigating Officer appended his endorsement Ex.PA/1 below that statement and sent ruqa to the police Station through Constable Amrik Singh, on the basis of which formal FIR Ex.PA/2 was recorded at Police Station City, Malerkotla. Thereafter, the Investigating Officer carried out inquest proceedings with regard to unnatural death of Mohd. Wasim, preparing a report Ex.PE in that regard. Dead body was identified to him by Mukhtiar Ahmed and Abdul Wahid, who had attested the inquest report. The Investigating officer deputed HC Kashmira Singh to get the post-

mortem examination conducted on the dead body of Mohd. Wasim handing over written request Ex.PD along with inquest report Ex.PE to him. Thereafter, the police party accompanied by complainant - Tanveer Ahmed and Mohd. Asgar went to the spot, where the Investigating Officer carried out spot inspection. He lifted blood from the spot, placing it in a container and then converted it into a parcel sealing it with his seal having impression 'DS' and said parcel was taken into possession vide memo Ex.PB attested by complainant - Tanveer Ahmed and ASI Joginder Singh. He recorded supplementary statement of complainant - Tanveer Ahmed and ASI Joginder Singh. The Investigating Officer prepared rough site plan of the place of incident as Ex.PL on pointing of Tanveer Ahmed and Mohd. Asgar. Then the police launched a manhunt for the accused. At Delhi Gate, HC Kashmira Singh met the police party, who produced a parcel containing clothes of deceased which was sealed by doctor with his seal having impression 'JS'. This parcel was seized vide memo Ex.PM attested by ASI Joginder Singh and HC Kashmir Singh. The Investigating Officer recorded statement of HC Kashmir Singh and supplementary statement of ASI Joginder Singh. On return to the police station, he (IO) deposited the case property with MHC Nirmal Singh.

On 15.8.2008, he (IO) searched for the accused but they could not be arrested. On 17.8.2008, the Investigating Officer along with other police officials again launched a search for accused and police party reached Truck Union, Malerkotla where he came across Mohd. Nadeem, who promised to produce the accused before him. After some

time Mohd. Nadeem brought accused Mohd. Adrish alias Machhi and produced him before the police party which was present near Vinod Paper Mills, Malerkotla. Such accused was formally arrested in this case. Grounds of arrest were furnished to him and a memo Ex.PK was prepared in that regard, which was thumb marked by the accused and attested by Mohd. Nadeem and ASI Joginder Singh. An intimation regarding his arrest was given at his residence through Constable Joginder Singh. Memo in that regard was prepared as Ex.PN which was thumb marked by Ms.Shakeelan wife of Mohd. Bashir and Ms.Sarvari wife of Abdul Wahid. Personal search of accused was conducted but nothing was recovered as a result thereof. A memo Ex.PJ in that regard was prepared which was thumb marked by such accused and attested by witnesses. On return to the police station, accused was put in the lock-up. On 18.8.2008, accused was produced in the Court and he was remanded to police custody. On 19.8.2008 accused while being interrogated suffered a disclosure statement that he had kept concealed iron *chhurri* (knife) on Thandi Sarak opposite to Alf La School in a vacant place in the heap of bricks after wrapping the same in a glazed paper which was in his exclusive knowledge and he could get the same recovered. His disclosure statement Ex.PO was recorded, which was thumb marked by the accused and attested by the witnesses. Thereafter, the accused led the police party to the pre-disclosed place and got the *chhurri* recovered after taking out the same from the heap of bricks. It was wrapped in a glazed paper and was blood stained. The Investigating Officer prepared rough sketch Ex.PQ of *chhurri* Ex.P1, which was

attested by the witnesses and thereafter converted it into a parcel sealing it with his seal bearing impression 'DS'. The said parcel was taken into possession vide memo Ex.PR attested by the witnesses. The Investigating Officer had prepared rough site plan of the place of recovery as Ex.PS. He recorded statements of witnesses. On return to police station, he deposited the case property with MHC Nirmal Singh. During the course of investigation, the Investigating Officer got scaled site-plan of the place of incident prepared from Jarnail Singh, Draughtsman and recorded statements of various witnesses. The Investigating Officer launched a search for accused Mohd. Sharif and obtained his warrants of arrest but he could not be arrested. Later on, Mohd. Sharif was found to be innocent in an inquiry conducted by a senior police officer and as such he was got discharged from the Court of learned Sub Divisional Judicial Magistrate, Malerkotla.

After completion of investigation and other formalities, challan against the accused Mohd.Adrish @ Machhi was prepared and filed in the Court of Sub Divisional Judicial Magistrate, Malerkotla.

On presentation of challan in the Court of Sub Divisional Judicial Magistrate, Malerkotla, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that offence under Section 302 IPC, for which the accused had been booked was exclusively triable by Court of Sessions, Sub Divisional Judicial Magistrate, Malerkotla vide his order dated 19.11.2008 committed the case to the Court of Sessions Judge, Sangrur.

When the case was received in the Court of learned Sessions Judge, Sangrur, he finding that prima-facie charge for the offence under Section 302 IPC was disclosed against the accused, charge-sheeted him accordingly, to which, he pleaded not guilty and claimed trial. The case was fixed for evidence of prosecution.

During the course of its evidence, the prosecution examined as many as seven witnesses as per details below:

PW1 Tanveer Ahmed – complainant provided the eye-witness account.

PW2 Mohd. Asgar another eye-witness also gave the ocular version of the incident.

PW3 Dr.Gurvinder Singh, who on 14.8.2008 while posted as Medical Officer at Civil Hospital, Malerkotla was member of board of doctors, the other member being Dr.Jaswinder Singh, Medical Officer, at 9:00 A.M. had conducted post-mortem examination on the dead body of Mohd. Wasim, deposed that the dead body was wearing *kurta pyjama* of light blue colour and the same was stained with blood. Rigor mortis was present. Post-mortem staining on the back of dead body were present. Following injury had been observed on the dead body:

1. Spindle shaped wound, incised and perforated wound measuring 1.5. cm x 1 cm x 6 cm present on the chest 5 cm left to the midline 8 cm above the left nipple. On dissection, clotted blood was present in the fiscal planes and in the retrosternal spaces of mediastinum. Third left rib

was fractured. Incised wound was present near the root of ascending aorta. Fluid blood was pooled in the mediastinum.

Pericardial cavity was full of blood. Perforated injury as described above to the ascending aorta near the root was present. In their opinion, the cause of death in this case was due to haemorrhage and shock as a result of injury to the ascending aorta which is a major vessel. Injury was ante-mortem in nature and was sufficient to cause death in ordinary course of nature. The probable time that elapsed between injury and death was immediate and between death and post-mortem within 24 hours. The witness proved copy of the post-mortem report as Ex.PC. When the *chhuri* recovered from the possession of the accused which was in the form of sealed parcel was shown to the witness after opening of the parcel, then he stated that injury on the person of deceased was possible with *chhuri* Ex.P1.

PW4 HC Nirmal Singh, who was posted as MHC at Police Station City, Malerkotla, a formal witness tendered in evidence his affidavit Ex.PG submitting that the same may be read as a part of his statement.

PW5 HC Gurmeet Singh, another formal witness tendered in evidence his affidavit Ex.PH submitting that the same may be read as a part of his statement.

PW6 ASI Joginder Singh, who had joined investigation of this case on various dates deposed regarding what had transpired in his presence.

PW7 Inspector, Darshan Singh, the Investigating Officer of this case testified regarding the investigation conducted by him proving various documents.

The Public Prosecutor tendered in evidence report of FSL as Ex.PT and closed the evidence of prosecution.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him, but he denied the allegations contending that he is innocent and has been falsely involved in this case. He took up a plea that he has not committed any offence. In fact, Mohd. Wasim, Tanveer Ahmed, Mohd. Asgar, Mukhtiar Ahmed and some other persons had attacked at his house in his search and when he had not met them at his house, then they had found him at Chandni Market. As he had been alone and empty handed at that time, all of them, had attacked upon him with different kinds of weapons and Mohd. Wasim might have sustained injury in the scuffle; that he was not having any intention to commit any offence; and that whatever had happened, that was merely an accident and due to fault of Wasim and his associates as mentioned above.

During his defence evidence, accused examined HC Raj Kumar from Police Station City, Malerkotla as DW1, who had brought original FIR register pertaining to Police Station City, Malerkotla for the period 2.6.2009 to 28.6.2009 and proved copy of FIR No.129 dated 7.6.2009, under Sections 452, 427, 323, 506 and 147 IPC on the basis of statement of complainant Ms.Sabri wife of Abdul Wahid, resident of Malerkotla as Ex.DA and copy of FIR No.133 dated 15.6.2009, under

Sections 325, 323, 506, 427/34 IPC, on the basis of statement of complainant Ms.Sabri as Ex.DB.

DW2 Zahoor Ahmed, a resident of the area, where the accused has got his residential house deposed that on 13.8.2008, Wasim, Tanveer and some other persons came to the house of Mohd. Adrish (accused) so as to attack upon him. At that time, Wasim, Tanveer and other persons were armed with weapons like *soties*, knife etc. Mohd. Adrish was not present in his house at that time. Thereafter, the assailants went near Shishmehal, where they might have scuffled with accused Mohd. Adrish. Going further, the witness stated that he had come to know from *mohalla* that Wasim had died and on the next day, a lot number of people attacked the house of Mohd. Adrish. At that time, he was present at his house. However, he cannot name any particular person who had attacked the house of Mohd. Adrish. The witness further deposed that 8-9 months after the death of Wasim, a relative of the deceased had got married and at that time several persons had attacked house of Mohd. Adrish though he could not say about identity of those persons.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court convicted and sentenced the appellant-accused-convict as mentioned supra, which left him aggrieved and he has filed the present appeal praying that the same be accepted, the impugned judgment and order of his conviction and sentence be set aside and he be acquitted of the charge framed against him.

We have heard Sh.Gurinder Singh Lalli, learned counsel for the appellant-accused-convict and Sh.S.S. Dhaliwal, learned Additional Advocate General, Punjab besides going through the record and we find that there is absolutely no merit in the appeal.

It is pertinent to mention here that while being examined under Section 313 Cr.P.C., accused Mohd. Adrish @ Machhi has virtually admitted the incident though he has stated that Mohd. Wasim (deceased), Tanveer Ahmed, Mohd. Asgar, Mukhtiar Ahmed and some other persons had attacked him with different kind of weapons while he was alone and empty handed and in that scuffle Mohd. Wasim might have sustained injury. He let the cat out of bag when he stated that he was not having any intention to commit any offence and whatever had happened, that was merely an accident and due to fault of Wasim and his associates. In that way indirectly he admitted injury to deceased having been caused at his hands. However, from the cogent and convincing ocular evidence adduced by the prosecution in the form of examining complainant – Tanveer Ahmed (PW1) and Mohd. Asgar (PW2), it comes out that as a matter of fact accused had attacked deceased with a knife thrusting it in his chest, resultantly a vital blood vessel was cut. In that way, accused had committed murder of the deceased. We find presence at the spot of PW1 – Tanveer Ahmed and PW2 – Mohd. Asgar at the relevant time to be natural and probable since according to them they were coming back after offering prayers at Jama Maszid, when they saw accused stabbing the deceased. The place of incident located in Chandni Market is just near Jama Maszid. After

the incident, injured had been taken to Civil Hospital, Malerkotla by complainant – Tanveer Ahmed and Mohd. Asgar as deposed by them while appearing as PW1 and PW2, respectively. The incident is said to have taken place at 10:30 p.m. Thereafter, the injured was removed to Civil Hospital, Malerkotla where he was declared brought dead. An information from Civil Hospital, Malerkotla was sent to Police Station City, Malerkotla in that regard, on receipt of which a police party headed by Inspector Darshan Singh went to Civil Hospital, Malerkotla. Inspector Darshan Singh recorded statement of complainant – Tanveer Ahmed and then he appended his endorsement below it and sent ruqa to police station at about 12:30 A.M. i.e. within two hours of the incident. Some time must have been consumed in taking injured to Civil Hospital, Malerkotla, giving information regarding bringing of injured to said hospital though he had been declared brought dead, arrival of the police party at Civil Hospital, Malerkotla, recording statement of complainant and the Investigating Officer appending his endorsement below it. Therefore, there is no delay in reporting the matter to the police which rules out possibility of any fabrication or concoction of version after due deliberations and consultations and the danger of false implication creeping in. The complainant – Tanveer Ahmed has given detailed version of the incident in his statement to the police mentioning that the incident had been seen by his friend and neighbour Mohd. Asgar also, therefore, presence at the spot of complainant – Tanveer Ahmed and Mohd. Asgar at the relevant time stands established. Their depositions which are in consonance with the prosecution version are also found to

be without blemish and are creditworthy since despite the lengthy cross-examination, they could not be shattered on any material point. Tanveer Ahmed – complainant having lost his real brother would have been the last person to try to screen the actual culprit and involve the accused in this case falsely since it is always the earnest endeavour of a close relative to ensure that the person responsible for death of his near and dear is brought to book and is punished suitably rather than attempting to shield the actual culprit and involve some innocent person in his place without any rhyme or reason. The motive for the incident is also established being earlier quarrel between the deceased and accused in which the accused had suffered injuries. PW1 – Tanveer Ahmed and PW2 Mohd. Asgar have deposed in that regard. Even from the defence version, the earlier enmity between the deceased and accused can certainly be inferred.

The medical evidence in this case duly corroborates the ocular version. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case falsely, challan him wrongly and then to depose against him to secure his conviction. From the statement of PW7 Inspector Darshan Singh, it comes out that accused Mohd. Adrish @ Machhi, while in police custody during the course of interrogation on 19.8.2008 had suffered a disclosure statement Ex.PO to the effect that he had kept concealed an iron *chhurri* (knife) on Thandi Sarak opposite to Alf La School in a vacant place in the heap of bricks after wrapping the same in a glazed paper which was in his exclusive knowledge and he

could get the same recovered and thereafter such accused in pursuance of his disclosure statement had got the *chhurri* (knife) recovered which was blood stained. It was taken into possession by the Investigating Officer after preparing a sealed parcel. Thereafter, the parcel had been sent to Forensic Science Laboratory, Punjab (Chandigarh) and it was found to be stained with human blood vide report Ex.PT. Thus it comes out that accused had used this knife in causing injury to the deceased.

Learned counsel for the appellant – accused during the course of arguments submitted that since it is a case of single injury and only one blow was given which was not repeated, therefore, at the most offence under Section 304 IPC is disclosed and the accused was wrongly convicted by the trial Court for the offence under Section 302 IPC.

This argument was countered by the learned State counsel submitting that the accused had chosen a very vital area of the body to stab the deceased with a dangerous weapon and dimensions of the injury which were 1.5. cm x 1 cm x 6 cm, location 5 cm left to the midline 8 cm above the left nipple and the fact that the stab wound had resulted in third left rib fracture and damaging a vital blood vessel i.e. aorta clearly goes to show that his intention was to cause death of the deceased.

After hearing the rival contentions, we find that keeping in view the dimensions of the injury, its location, the weapon used, the intention of the accused in committing murder of deceased clearly comes out to be there and the offence falls within definition of murder dealt with by Section 300 IPC punishable under Section 302 IPC and not

within Section 304 of the Indian Penal Code.

The judgment of conviction and sentence passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and sentence is upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

14.3.2017
Brij

(T.P.S. MANN)
JUDGE

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No