

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

CRA-D-582-DB-2010

Date of decision:05.05.2017

Sanjay

.....Appellant

Versus

State of Haryana

.....Respondent

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

Present: Mr. Rajesh Gupta, Advocate
for the appellant.

Mr. Parveen Bhadu, Asstt. A.G., Haryana.

H.S. MADAAN, J.

This appeal has been filed against the judgment dated 21.04.2010 passed by the Court of Addl. Sessions Judge, Bhiwani vide which he had convicted accused-Sanjay for an offence under Section 302 of the Indian Penal Code (“IPC” – for short) and order dated 23.04.2010 vide which such accused-convict was sentenced to undergo rigorous

imprisonment for life and to pay fine of ₹1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for ten days.

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

Briefly stated, the prosecution story as it emerged during the trial is that complainant Attar Singh son of Sheopal, resident of Narsingwas, aged about 45 years, a labourer by avocation, was having five daughters and two sons. On 04.12.2007 at about 8:00 p.m. accused Sanjay son of Nathu Ram resident of that very village took away Sunder, son of the complainant to his house. When Sunder did not return home for about half an hour, then complainant went to house of Sanjay-accused to inquire about the same. When he had reached near house of accused-Sanjay, then he heard cries of his son-Sunder coming from house of accused-Sanjay. When complainant reached near door of that house, he observed his son Sunder coming out of the house of accused-Sanjay while crying whereas accused-Sanjay was having some weapon in his hand which complainant could not see clearly due to darkness. However, the accused caused a blow of that weapon hitting Sunder on left hip. As a result Sunder fell down in front of house of accused, whereas accused-Sanjay fled from the spot with his weapon. When complainant rushed near his son to take care of him, he found that Sunder was having serious injuries on his chest, waist, near naval, left hip and blood was oozing out of those injuries. Sunder became unconscious. In the meanwhile Suraj

son of Nagar of village Narsingwas came to the spot, complainant and Sheoraj arranged a conveyance and took Sunder-injured to Bhiwani for treatment, however, on the way Sunder breathed his last. Therefore, complainant and Sheoraj brought dead body of Sunder to their village. According to the complainant the motive for the incident was that 5/6 months earlier accused-Sanjay had outraged modesty of a girl in the village, he (complainant-Attar Singh) had stated that such type of persons should not remain in the village. Out of that grudge, accused-Sanjay had caused injuries to his son Sunder by taking him to his house and Sunder had succumbed to those injuries. Complainant had left Vijay son of Om Parkash and Mange Ram son of Banwari of his village near the dead body of his son Sunder and he himself accompanied by Sheoraj went to Police Station, Sadar Dadri to lodge report regarding the incident. On the basis of his statement Ex.PF formal FIR Ex.PO for an offence under Section 302 IPC was registered by Sharif Singh Inspector/SHO of Police Station, Sadar Dadri (hereinafter referred to as Investigating Officer/I.O.). Special reports were sent to the concerned authorities. Then the police party led by Inspector-Sharif Singh and accompanied by the complainant and Sheo Raj went to the spot. The Investigating Officer observed dead body of Sunder having multiple injuries on his person. The Investigating Officer carried inquest proceedings in that regard preparing report Ex.PC. The Investigating Officer deputed HC Bhudev for the purpose of post-mortem examination of Sunder-deceased and handed over application Ex.PA to him for that purpose. The

Investigating Officer lifted blood stained earth from the spot taking it into police possession vide memo Ex.PG. He prepared rough site plan of the place of incident as Ex.PQ. After getting the post-mortem examination conducted, HC Bhaudev returned to the spot alongwith dead body of Sunder and it was handed over to his family members for the purpose of cremation. HC Bhudev submitted post-mortem report of Sunder alongwith parcel containing belongings of the deceased, besides, the sample seals, which were taken into possession vide a memo. The police tried to apprehend the accused but in vain, as such, police party returned to the police station.

On 06.12.2007, complainant Attar Singh made a supplementary statement to the police, in which he had named Anjana wife of Nathu Ram being also responsible for murder of his son Sunder, as such, Section 34 of the IPC was added in the case on 09.12.2007. Accused-Anjana was arrested, she was interrogated on 10.12.2007, during the course of which, she suffered a disclosure statement Ex.PH stating that the clothes which had become stained with blood in the incident had been concealed by her in the room meant for storing wheat and in pursuance of that statement she got recovered those clothes which were converted into a sealed parcel and taken into possession vide memo Ex.PJ. On 11.12.2007 Section 201 IPC was added in the case.

On 13.12.2007 accused Sombir and Sonu were arrested for committing offence under Section 201 IPC; that accused-Sanjay was

arrested in this case on 10.01.2008, on the next day, he was interrogated during the course of which he made a statement under Section 27 of the Indian Evidence Act Ex.PK regarding concealment of knife used by him in the incident and then while in police custody he got the knife recovered from the specified place which was taken into police possession vide memo Ex.PL. During the course of investigation, the Investigating Officer got scaled site plan of the place of occurrence prepared and took into possession photographs of the spot which he had got clicked from the photographer.

After completion of investigation and other formalities challan against accused Sanjay and Anjana was prepared and filed in the Court of Judicial Magistrate Is Class, Charkhi Dadri, whereas other two accused namely Sombir and Sonu being juveniles, separate proceedings against them were initiated before Juveniles Justice Board.

On presentation of challan in the Court of learned Judicial Magistrate Ist Class, Charkhi Dadri, copies of documents relied upon therein were supplied to the accused free of costs as provided under Section 207 Cr.P.C.. Thereafter finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, the learned Judicial Magistrate Ist Class, Charkhi Dadri vide his order dated 04.03.2008 committed the case to the Court of Sessions at Bhiwani.

When the case was received in the Court of learned Additional Sessions Judge, Bhiwani by way of entrustment, finding a prima facie case charge for offences under Sections 302, 201 read with

Section 34 IPC was framed against the accused, to which they pleaded not guilty and claimed trial. The case was fixed for evidence of the prosecution.

During the course of evidence of the prosecution it examined as many as ten witnesses as detailed below:-

PW-1 Dr. Ishwar Singh, Medical Officer, General Hospital, Charkhi Dadri, who on 05.12.2007 while posted as such alongwith Dr. Anita Gulia, Medical Officer, General Hospital, Dadri on police request Ex.PA had conducted post-mortem examination of dead body of deceased Sunder son of Attar Singh deposed that it was dead body of well built male wearing white *BANIYAN*, grey pant and a grey underwear. Eyes and mouth were closed, rigor mortis all over the body was present. Post-mortem staining over the back was present. On examination following injuries were observed:-

- 1. A sharp edged wound size 1.5 x 1 cm x cavity deep, elliptical in shape, oblique on left side of chest just adjacent to the sternum at the level of fourth rib. On dissection echymosis was present, fourth rib on left side was fractured, anterior chest wall, pericardium and anterior wall of left ventricle of heart was punctured, clotted blood was present in the chest cavity.*
- 2. A sharp edged wound size 2 cm x 1.5 cm x cavity deep on epigastric region of abdomen. On dissection echymosis was present, anterior wall of abdomen and*

- anterior wall of stomach was punctured. Clotted blood was present.*
- 3. A sharp edged wound size 1 cm x 0.7 cm x muscle deep, oval in shape on left side of middle of lower abdomen present. On dissection echymosis was present.*
 - 4. A red abrasion size 5 cm x 1 cm, oblique on right side of mammary region was present. On dissection echymosis was present.*
 - 5. A sharp edged wound size 2 cm x 1 cm, oblique on left side of paralumber region just below the costal region in the middle. On dissection echymosis was present, posterior wall of left side of paralumber region was punctured up to cavity deep. Clotted blood was present.*
 - 6. A sharp edged wound size 3 cm x 2 cm x muscle deep, elliptical shape, oblique on left side of gluteal region was present. On dissection echymosis was present. Gluteal muscles were cut, clotted blood was present.*
- Rest organs were healthy and pale.*

He stated that in their opinion cause of death was haemorrhagic shock, which was due to injury to the vital organ i.e. heart and was sufficient to cause death in ordinary course of nature. All the injuries were ante-mortem in nature. The probable time that elapsed between injury and death was within minutes and such time between death and post-mortem examination was within 24 hours. He proved

copy of post-mortem report as Ex.PB. He further added that on 17.01.2008 on police request Ex.PD, he had given his opinion Ex.PD/1 that injuries No.1 to 6 on the body of the deceased could be caused by the knife, which knife had been shown to him.

PW-2, EHC Ranbir Singh, who on 05.12.2007 while posted at Police Station, Sadar, Dadri had taken special reports of this case for delivering the same to higher Officers under directions of MHC Sajjan Kumar stated that he had delivered those reports without any delay on his part.

PW-3 Kanwar Pal, Draughtsman, Court Compound, Bhiwani deposed that he had gone to village Narsingwas at request of Attar Singh and on instructions he prepared site plan Ex.PE.

PW-4 Inderjeet son of Shri Hira Singh, photographer, Warehouse Road, Charkhi Dadri, stated that on 05.12.2007 he had gone to village Narsingwas, where he took photographs of dead body of Sunder lying on the cot in the house, such photographs being Ex.P1 to Ex.P4. He proved the negatives as Ex.P5 to Ex.P8.

PW-5 Attar Singh son of Sheo Pal, aged 48 years, Labourer resident of village Narsingwas complainant-eyewitness gave the ocular version of the incident deposing as per prosecution story.

PW-6 Sheoraj son of Nagar aged 50-55 years, Labourer resident of Narsingwas, District Bhiwani stated that on 04.12.2007 at about 7/8 p.m. he was going to his old house, then he heard a noise of Sunder and saw that Attar Singh was holding his son Sunder near the

house of Nathu. Anjana, Sombir and Sonu were present there, whereas accused-Sanjay had already fled from the spot. He further deposed regarding what he has seen and done by him with respect to this case.

PW-7 ASI Sajjan Singh had produced the summoned record, pertaining to DDR No.36 dated 05.12.2007 proving its copy Ex.PN and photocopy of DDR No.38 Ex.PN/1.

PW-8 Sharif Singh, Investigating Officer of this case testified regarding investigation conducted by him.

PW-9 EHC Ranbir Singh a formal witness tendered his affidavit Ex.PU.

PW-10 HC Sajjan Singh another witness submitted his affidavit Ex.PV.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against the accused were put to them, but they denied the same pleading innocence and alleging false implication.

Accused-Sanjay took up a plea that he has no concern whatsoever with the death of Sunder; it was a blind occurrence; he was implicated in this case due to party faction in the village, the deceased was found dead in the street. Such accused further stated that he never outraged the modesty of any girl; that he never made disclosure statement; his signatures were obtained on blank papers forcibly, however nothing was recovered from his possession.

Accused-Anjana took up the plea that police wanted to arrest her son Sanjay in this case, who was not traceable as he left the village due to fear from police. For that reason, under pressure of complainant-party, she was falsely implicated in this case on the basis of ante dated and ante timed statements of police; that nothing was recovered from her possession as alleged; she was illegally detained by police; she had no concern with the death of Sunder; the dead body of Sunder was lying in the street, she alongwith other neighbours helped family members of deceased in removing dead body to their house. It was a blind occurrence.

The accused did not lead any evidence in defence.

After hearing arguments, learned trial Court convicted and sentenced accused-Sanjay mentioned above, whereas his mother and co-accused/Anjana was acquitted of the charge framed against her, as such, accused-Sanjay has brought the present appeal.

We have heard learned counsel for the appellant-convict and learned Assistant Advocate General for the State of Haryana, besides, going through the record and we find that there is no merit in the appeal.

This case is based upon the ocular evidence of the incident provided by PW-complainant/Attar Singh, father of deceased, who got his statement recorded as PW-5. He supported the prosecution story on material aspects. He was cross-examined at length on behalf of the accused, but he remained unshattered and could not be shaken on any

major point. No reason has been suggested or proved prompted by which, he might have involved the accused in this case wrongly. Attar Singh having lost his young son there is least possibility of his trying to shield the actual culprit and substitute the accused in his place without any rhyme or reason. Normally in such type of cases it is earnest endeavour of a close relation to ensure that person responsible for death of his near and dear is brought to the book and is punished suitably rather than trying to shield the actual culprit and involve some innocent person in his place without any visible reason. Furthermore, house of accused and that of the complainant are situated nearby in the same village. Son of the complainant namely Sunder having been taken alongwith him by the accused on 04.12.2007 at about 8:00 p.m. and Sunder not returning home after a lapse of about 1 ½ hours, it would have been natural that anxiety arose in the mind of his father Attar Singh-complainant to find his whereabouts and there is nothing unusual in his proceeding towards house of accused in that regard. Therefore, he can certainly be not labeled as a chance witness and case in hand does not come out to be that of a blind murder.

We find presence at the spot of Attar Singh at relevant time to be natural and probable and account given by him to be creditworthy. According to him, when he had reached near house of accused he had heard noise *MAR GYA-MAR GYA* ("I am being killed") in low tone which was of Sunder and when he reached in front of that house, Sunder started coming towards him being chased by Sanjay-accused

who gave a stab injury on hip of Sunder and thereafter fled away. In that scenario it can safely be inferred that it was Sanjay who had inflicted injuries on person of Sunder, to which Sunder had succumbed. Though Attar Singh claims to have seen the infliction of last injury only but in view of Section 6 of the Evidence Act it can be taken that rest of the injuries were also inflicted by Sanjay since the incident had mainly taken place in his house with no other family member alleged to be armed with weapon who could have inflicted such injuries, rather role attributed to mother of accused Sanjay, namely, Anjana Devi of holding Sunder while Sanjay gave injuries to him has been disbelieved by the trial Court and she being acquitted of the charge framed against her. The role attributed to two younger brothers of Sanjay namely Sombir and Sonu was of trying to wipe out the evidence of murder by removing the blood stains regarding which they had been sent to Juvenile Justice Board to face proceedings there. As such no doubt is left in the mind that it was Sanjay-accused who had inflicted all the injuries on person of Sunder.

After the incident Attar Singh had called Sheoraj to arrange some vehicle for taking Sunder to hospital and then both of them took Sunder to hospital, however, on the way Sunder succumbed to the injuries near village Jharwai, as such, body of Sunder was brought back to the village and thereafter complainant had gone to police station to lodge report regarding the incident. Under the circumstances there cannot be said to be unexplained delay in reporting the matter to the

police, Attar Singh could not possibly have left his son Sunder-injured unattended at the spot and himself going to the police station first to report the matter regarding the incident. His natural reaction and instinct would have been to take his injured son to hospital so as to make effort to save his life and he did act in that manner. When Sunder succumbed to the injuries on the way to hospital his dead body was brought back and placed at home and thereafter Attar Singh proceeded towards the police station reporting the matter there and statement was completed at 6:30 a.m.. It has to be kept in mind that incident had taken place in the month of December, when winter is at its peak with foggy conditions, most of the time, the sun sets early and at about 8:00 p.m. it is quiet dark. Therefore, conduct of the complainant in going to the police station on the next day in the early morning hours cannot be said to be unnatural giving rise to any suspicion. Therefore, delay in reporting the matter to the police stands explained satisfactorily.

As already discussed, complainant had no reason to involve the accused in this case falsely though on the other hand motive was there with the accused to commit murder of Sunder since his father Attar Singh had condemned accused-Sanjay for outraging modesty of a girl of their village. Even otherwise motive lies hidden in the mind of a criminal and it is very difficult to dig it out, sometimes a very heinous crime is committed without justifiable reasons. Nevertheless in case of availability of direct evidence of incident then motive loses much of importance. PW Sheoraj has lent corroboration to the prosecution story

on many important points. The medical evidence in this case corroborates ocular evidence, 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 wrongly and to challan him falsely.

Accused-Sanjay on being arrested and interrogated had suffered a disclosure statement which led to recovery of knife, that knife was taken into police possession, it was sent to FSL, Madhuban, Karnal, Haryana and as per report received therefrom Ex.PM the knife was found to be blood stained. That goes to show that it had been used in the incident by the accused. During the post-mortem examination of deceased as much as six injuries were found on his person, injury No.1 in chest piercing the heart; injuries No.2 and 3 in the abdomen. Though there is solitary statement of Attar Singh providing the eye-witness account but then it is nowhere provided that the Court cannot act upon statement of a single witness so as to base conviction of an accused. Corroboration is a rule of prudence and is not requirement of law. In the instant case, the incident had taken place at night time during winter season when conditions are mostly foggy, and further there is nothing on file to show that any other person had seen the incident. Even otherwise people hesitate to get involved in such type of matters lest the criminal turns towards them causing any damage to such type of people and then nobody usually wants to take trouble of going to the police station in connection with investigation of a case and attending hearings

in the Court of law. Therefore, we find that solitary statement of Attar Singh regarding the incident is worthy of credence and reliance.

Keeping in view the number of injuries, their dimensions and situs of injuries caused with a dangerous sharp edged weapon like knife, the intention of the accused-Sanjay to cause death of victim-Sunder clearly comes out to be there. Thus prosecution has successfully proved charge against accused-Sanjay beyond the shadow of reasonable doubt. The judgment of conviction and order of 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 order of sentence is upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

Necessary direction in that regard be issued to the quarter concerned.

05.05.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

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| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |