

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

Criminal Appeal No.D-891-DB of 2002(O&M)

Date of Decision : 06.12.2017

Kanwal Singh

..... Appellant

Versus

State of Haryana

..... Respondent

**CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI**

Present : Ms. Baljit Kaur Mann, Advocate
for the appellant.

Mr. Samarth Sagar, Addl. A.G., Haryana.

RAJ SHEKHAR ATTRI, J.

Abovenamed appellant has come up in this appeal by assailing the judgment of conviction dated 10.10.2002 and order of sentence dated 12.10.2002, passed by the learned Addl. Sessions Judge, Rewari, vide which he has been convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of two years under Section 302 IPC and rigorous imprisonment for a period of two years and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for a period of six months under Section 25 of the Arms Act.

Briefly stated, it is a case of prosecution that on 02.04.1999

p.m., his father Nadar Singh (hereinafter to be referred as 'the deceased') returned home. He disclosed that on the way, he had an altercation with appellant Kanwal Singh, who accused the deceased of cutting a 'keekar' tree from the common land. Although, the deceased had denied any interest in the said tree yet Kanwal Singh gave a threat to teach him a lesson.

It is further the case of the prosecution that on 02.04.1999 at about 4:30 p.m., deceased Nadar Singh was going towards his old house. When he reached near the house of appellant Kanwal Singh then the appellant appeared before him and exhorted that he would not spare the life of Nadar Singh. At that time, Smt. Santra and Bhoop Singh, wife and brother of appellant respectively, were also there. Bhoop Singh caught the deceased and pulled him forcibly to their house. Deceased raised alarm. As such, Lila Ram (complainant) and one Ram Phal rushed towards the spot. They had witnessed that Kanwal Singh swiftly fired a shot with a pistol in his hand which hit deceased Nadar Singh in the chest. As a result, the deceased fell down. Then appellant Kanwal Singh, his wife Smt. Santra and his brother Bhoop Singh dragged the deceased from their *Baithak* to Harijan *Panghat* well. Thereafter, the appellant escaped towards the field alongwith the pistol. Lila Ram and Ram Phal had noticed that Nadar Singh had died.

FIR was lodged by Lila Ram alias Naseeb, who has categorically stated that his father Nadar Singh has been murdered by appellant, his wife Smt. Santra and his brother Bhoop Singh in furtherance of their common intention. He also disclosed that the motive behind the offence was an altercation between the deceased and appellant Kanwal

Singh about the cutting of 'keekar' tree from the common land. Statement of Lila Ram was recorded and on the basis of said statement, formal FIR Ex.PJ was registered under Section 302 IPC and Section 25 of the Arms Act and the police swung into action.

Appellant Kanwal Singh was arrested. While in custody, he suffered disclosure statement Ex.PK on 06.04.1999 to the effect that he handed over the pistol with which the bullet was fired to his brother Bhoop Singh. As such, Bhoop Singh was also arrested from Military Hospital, Delhi. He suffered disclosure statement Ex.PL and disclosed that the pistol was handed over to him by appellant and that said pistol alongwith magazine and bullets was concealed in debris of stone pebbles by lifting a big stone which was lying near the boundary of tubewell of Bhim Singh and he has exclusive knowledge of that. Bhoop Singh was taken to the disclosed place where he himself got recovered one pistol from debris of stones (Pathar Roda) by lifting a big stone which was lying near the boundary of tubewell of Bhim Singh and handed over the said pistol to the police. Said pistol was loaded. Its magazine contained three live cartridges. A sketch Ex.PM/1 of the pistol was prepared. The pistol and cartridges were taken into possession vide memo Ex.PM. During the investigation, the pistol was sent to Forensic Science Laboratory alongwith the bullets and it was reported that the pistol 7.63 mm mauser (Marked W/1 in the Forensic Science Laboratory) was found in working order and that the fired cartridges case (marked C/1) and 7.63 mm fired bullet (marked BC/1) was fired from the said pistol (W/1).

The dead body of Nadar Singh was sent for postmortem

examination. After conducting the postmortem examination, the worn clothes of the deceased i.e. '*kurta-dhoti*' were handed over to the police vide memo Ex.PN. The police visited the spot and prepared the inquest report.

During the investigation, on 03.04.1999, abovesaid Bhoop Singh also suffered a statement to the police to the effect that on 02.04.1999, he was working in his field and at about 5:00 p.m., his brother Kanwal Singh(appellant) had come to him,who confessed to committing the murder of Nadar Singh as the deceased was abusing him. However, Bhoop Singh pacified him and took the pistol from him. He advised appellant Kanwal Singh to immediately go to the police and report the matter which he did as advised. However, Bhoop Singh accompanied by his nephews Sombir and Parveen had also set out to the police station to report the matter and to hand over the pistol but on the way, at about 5:30 p.m. they were way-laid by Kale, Vijay and Lila Ram, sons of Nadar Singh, who were riding on a tractor. They caught hold Sombir and Bhoop Singh. However, in the meanwhile, Lila Ram son of Nadar Singh had given rod blows on the person of Bhoop Singh and he was exhorting his companions to eliminate him as well as Sombir. They also snatched the pistol from Bhoop Singh. Bhoop Singh was badly injured. He fell down and they left the place after inflicting the injuries by thinking that he had died. However, Bhoop Singh had got himself admitted in the military hospital Delhi Cantonment. He categorically stated that injuries to him as well as his nephews Sombir were inflicted by Kala Ram, Vijay, Lila Ram alias Nasib and Dilbag. His statement was recorded on the basis of which DDR No.14-A dated 03.04.199 was registered and the police investigated as a cross case

under the same FIR.

After completion of investigation, final police report was submitted only against appellant Kanwal Singh. During the pendency of trial, Bhoop Singh had died whereas Smt. Santra was found to be innocent. Though, an application under Section 319 Cr.P.C. for summoning Smt. Santra was filed but the same was rejected.

On receipt of final police report, learned Committing Magistrate had committed the case and trial was initiated by the learned Addl. Sessions Judge.

In order to prove its case, prosecution examined **PW1** Lila Ram, **PW2** Ram Phal, **PW3** Constable Naresh Kumar, **PW4** Constable Maha Singh, **PW5** Dr. M.K.Garg, **PW6** Sub Inspector Ram Singh, **PW7** Constable Ajmer Singh, **PW8** Joginder Singh, **PW9** Puran Chand and **PW10** ASI Omdutt.

On closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C. with an opportunity to explain the incriminating evidence against him. He pleaded false implication. He also pleaded that he had no dispute with deceased about the tree; that the said tree belonged to Sheo Dutt; he was not present at the time of occurrence and that deceased Nadar Singh was a victim of bad habits and he had tried to outrage the modesty of the wife of Bhoop Singh who shot dead the deceased; and that weapon of offence was recovered from Bhoop Singh.

In defence, appellant examined **DW1** Amar Singh, **DW2** Vijay and **DW3** Sheodutt.

On appreciation of evidence, the accused was convicted and

sentenced, as stated above.

We have heard learned counsel for the parties.

Learned counsel for the appellant vehemently contended that presence of both eye witnesses Lila Ram and Ram Phal at the spot is doubtful and this fact has been duly proved by PW8 Joginder Singh, (photographer); that the appellant was not even present at the time of occurrence; the place of occurrence is doubtful as there was no trail of blood from the house of appellant to the place of occurrence; that infact the deceased had outraged the modesty of the wife of Bhoop Singh and in retaliation Bhoop Singh has committed the murder but learned trial Court has failed to properly appreciate the evidence on the record and wrongly recorded the judgment of conviction.

On the other hand, learned State counsel has submitted that the presence of accused as well as of complainant party is well established; the defence taken by the accused stands falsified; that during the lifetime of Bhoop Singh, they made an unsuccessful endeavour to create a counter version and for this purpose, statement of Bhoop Singh was recorded on 03.04.1999 and on that basis DDR was entered but after the death of Bhoop Singh, the appellant had adopted another plea regarding outraging the modesty of the wife of Bhoop Singh; that the best evidence is the evidence of wife of Bhoop Singh but she was not examined and that the defence evidence is an afterthought and not reliable. According to him, the prosecution proved the charges against the appellant beyond shadow of reasonable of doubt and also that the learned trial Court has rightly appreciated the evidence. He urged for dismissal of the appeal.

We have considered the rival contentions and carefully

examined the evidence on record.

In this case, the death of Nadar Singh by firearm injury is not disputed. Rather, the same is admitted one. PW5 Dr. M.K.Garg, who alongwith Dr. Gajender Yadav conducted the autopsy on the dead body of Nadar Singh on 03.04.1999 and vide report Ex.PH, the medical Board found wound 1½ cm present on right side of upper chest, ½ cm below the clavicle. The edges were inverted and thus was blackening around the edges. Another wound 2 x 1 cm was present on the left side of back. The medical board has found that injury No.1 traverse through upper part of lung, left hilum of lung, tearing all major blood vessels and through the left lung and communicate with injury No.2. In the opinion of the medical board, the death was due to haemorrhage and shock as a result of gun shot injury which was ante mortem in nature and sufficient to cause death in ordinary course of nature. Thus, the medical evidence fully establishes that death was caused due to gun shot injury.

In the cross-examination, the doctor (PW5) has categorically stated that the shot was fired from near distance i.e. from the distance of approximately 5 to 6 feet from upward to downward and that there was blackening of skin around the edges of the wound. He further explained the blackening was due to gun powder.

The medical evidence fully corroborates the case of the prosecution. However, the appellant has also admitted the gun shot injury on the person of deceased but he took the plea that it was Bhoop Singh, who shot dead Nadar Singh.

Now coming to the presence of PW1 Lila Ram and PW2 Ram

Phal at the spot, both of them have stated that at about 4:30 p.m., deceased Nadar Singh was going towards his old house and both the witnesses were following him, which seems quite natural as in the evening, people go around in the village for different chores.

The direct evidence further establishes that when Nadar Singh (deceased) reached near the house of Kanwal Singh, Kanwal Singh fired a shot which hit on the chest of the deceased. Even at that time, the present appellant threatened PW1 Lila Ram and PW2 Ram Phal. When Nadar Singh fell down on receipt of the gun shot injury he was dragged. He was picked up by Santra and Bhoop Singh from the neck and taken near the *Harijan Panghat* well which is in front of the house of Bhoop Singh.

Both PW1 Lila Ram and PW2 Ram Phal have categorically stated that it was only the appellant who fired a shot with the pistol on the person of deceased. Both of them have been cross examined at length. Their evidence is consistent and it establishes that it was the appellant who inflicted gun shot injury on the person of deceased. Their evidence is criticized on behalf of appellant solely on the ground that PW8 Joginder Singh, photographer had stated that infact he visited the spot at about 3:00/4:00 p.m. on 02.04.1999 and police came to him at about 2:00 p.m. on the same day. This Court has considered this contention but it carries no weight. In the inquest report, it is mentioned that photographer was called at the spot. Inquest report Ex.PW11/F was prepared at the spot on 02.04.1999 by the Investigating Officer on his arrival to the place of occurrence. The statement of PW8 Joginder Singh was recorded on 16.07.2001 i.e. more than 02 years and 03 months after the occurrence. He

has simply clicked the photographs Ex.P5 to P-12 and did nothing else. He has stated approximate time in his cross examination. According to him, he visited the spot at about 3:00/4:00 p.m. and further stated that the police official came to him at 2:00 p.m. and thereafter he accompanied him. To the mind of this Court, such a discrepancy may occur after lapse of time but those do not go to the root of the prosecution evidence. However, one thing is established by the said witness that he visited the spot on the request of the police and clicked the photographs Ex.P5 to P12.

The presence of both PW1 and PW2 at the spot is well proved and their statements were reduced into writing and on the basis of which formal FIR was recorded which was completed and entered in the roznamcha on 02.04.1999.

Now coming to the argument with regard to non-establishment of the place of occurrence, learned counsel for the appellant has vehemently contended that the dead body was recovered from the village common land which is adjacent to Harijan *Panghat* well and not from the *baithak* (sitting room) of the appellant. He further submitted that there is no evidence of drag marks from the *baithak* of the appellant to the spot from where the dead body was recovered. This Court has considered this argument but the same is without substance. It was always the version of the prosecution that deceased was taken inside the *baithak* of the appellant where he was murdered and then his dead body was dragged in the common place in front of his house. In the FIR, it has been specifically stated that the appellant had taken Kanwar Singh, his wife Santra and his brother Bhoop Singh caught hold the deceased Nadar Singh and pulled him forcibly towards

their house where he was murdered and then he was dragged from the *baithak* of appellant to *Harichand Panghat* well.

After arrival at the spot, the Investigating Officer had called PW8 Joginder Singh, photographer, who clicked the photographs Ex.P5 to Ex.P12. A bare perusal of the photographs transpires that there are blood spots inside the *baithak* of appellant. Photograph Ex.P5 shows the blood drops which were fallen inside the room. The photograph Ex.P11 clearly shows the dragging marks on the earth. Thus, the photographs fully establishes that the occurrence had taken place inside the *baithak* of appellant which is abutting to the *Harichand Panghat* well.

Inquest report Ex.PW11/F was also prepared at the spot. A bare perusal of the same transpires that the occurrence had taken place in the *baithak* of the appellant. In the inquest report, the Investigating Officer has given details of the spot inspection where it has been specifically stated that from the door of the *baithak* of the appellant to the spot, where the dead body was lying, there were marks of dragging which are about 10 steps long and the earth was blood stained. This fact establishes that dead body was dragged. At the time of making recovery memo of blood stained earth, a pair of shoes was also recovered which was taken into possession vide memo Ex.PB. It is specifically mentioned in Ex.PB that dead body of the deceased was dragged and marks of dragging were visible and blood is scattered on the earth. From this port, blood stained earth was lifted and put in a container for the purpose of evidence. Lateron, the same was sent to Forensic Science Laboratory. After analysis, it was reported that it was stained with human blood. This fact also establishes that the

dead body was dragged.

Now coming to the plea of appellant with regard to committing murder of Nadar Singh by Bhoop Singh. A specific suggestion was given to PW2 Ram Phal during his cross-examination that Nadar Singh was man of loose habits. He entered the house of Bhoop Singh and misbehaved his wife, as such Bhoop Singh fired a shot on Nadar Singh in the *baithak* of Kanwar Singh and Bhoop Singh. Similar plea has been taken by him in his statement under Section 313 Cr.P.C. wherein he has stated that the deceased tried to outrage the modesty of the wife of Bhoop Singh. Apart from it, to prove this fact, the appellant has produced DW2 Vijay, who has stated that he heard blast from the house of Bhoop Singh. When he came there, he had seen that Smt. Sudesh wife of Bhoop Singh was present there and Nadar Singh had molested her and Nadar Singh had fallen in the *baithak* of Bhoop Singh. At that time, Bhoop Singh told him(DW2) that Nadar Singh was misbehaved with his wife.

In cross-examination, he has stated that this fact was stated by him to the police but his statement was not recorded. No such fact was brought to the notice of the Investigating Officer. But in cross-examination, he further stated that he had seen the dead body of Nadar Singh in the *baithak* of Bhoop Singh. This witness is not trustworthy. He deposed this fact first time before the Court after about three years from the date of occurrence. Apart from it, his evidence remained uncorroborated. Rather, the same is contrary to the evidence available on the record. House of Bhoop Singh is adjoining to the house of Kanwal Singh. The occurrence took place inside the *baithak* of Bhoop Singh. Immediately the dead body

was dragged and brought to the open place of *Harichand Panghat* well. It is nobody's case that occurrence had taken place in the house of Bhoop Singh or if the dead body was ever lying there. It seems that DW2 Vijay had not visited the spot. Rather, he had concocted a story narrated much after the date of occurrence. There is no other evidence that Bhoop Singh had murdered the deceased. Thus, the argument of learned counsel for the appellant that infact Bhoop Singh had murdered the deceased is of no avail.

Apart from it, there is direct evidence that after committing the murder, the appellant with the help of Bhoop Singh and Smt. Santra had dragged the dead body from the *baithak* of the appellant towards *Harichand Panghat well*. The spot from where the dead body of Nadar Singh was lying is shown as Mark 'A' in the site plan prepared at the time of making inquest report. Thus, it is well established that the occurrence had taken place near the door of the *baithak* of the appellant as shown in photograph Ex.P5.

Surprisingly, the present appellant took a specific plea with regard to place of occurrence in his house while putting specific question (question no.52) to PW2 Ram Phal. It is specifically stated on behalf of appellant that Bhoop Singh had shot dead deceased Nadar Singh in the *baithak* of Kanwal Singh and Bhoop Singh. Thus, the argument of learned counsel for the appellant that there is no drag mark and prosecution has failed to establish the place of occurrence are unfounded. This argument is contrary to the evidence available on the record.

The direct evidence, produced by the prosecution, establishes the following facts:-

- (i) That there was an ill will between appellant Kanwal Singh and deceased Nadar Singh with regard to cutting of a tree from the Panchayat land;
- (ii) That on 02.04.1999 between 4:30 to 5:00 p.m. Kanwal Singh shot dead the deceased in his *baithak* from where he was dragged to the place where the dead body was recovered by the police;
- (iii) That after the occurrence, appellant had handed over the pistol to his brother Bhoop Singh;
- (iv) That the pistol was recovered from the possession of Bhoop Singh alongwith its magazine and three live cartridges.

The occurrence had taken place in the house of appellant. Thereafter, he made unsuccessful attempt to change the place of occurrence by dragging the dead body from the *baithak* to the open area of *Harichand Panghat* well. His plea that infact deceased misbehaved or tried to outrage the modesty of Smt. Sudesh wife of Bhoop Singh is found to be false and unacceptable.

On a careful analysis of evidence, we are of the considered view that the prosecution evidence is cogent, reliable and acceptable. We are satisfied that it was appellant who shot dead the deceased in his *baithak* then dragged the dead body of Nadar Singh from his house to the open place. The enmity between the appellant and deceased was over cutting of a tree from the panchayat land. The choice of the weapon of offence i.e. Pistol is itself establishes the intention of the appellant to commit the

ghastly murder. Thus, the conviction of the appellant is well founded and the judgment of the learned trial Court is well reasoned and there is no scope of interference. Consequently, this appeal is devoid of merits and the same is dismissed. The judgment of conviction and order of sentence stand upheld. The sentence imposed upon the appellant stands maintained.

(MAHESH GROVER)

JUDGE

06.12.2017
mamta-M

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No