

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

CRA-D-919-DB-2003

Date of decision: 16.05.2017

Kuldeep Singh

.....Appellant

Versus

State of Punjab

.....Respondent

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

Present: Mr. Kewal Singh, Advocate as
Legal Aid Counsel for the appellant.

Dr. Deipa Singh, Addl. A.G., Punjab.

H.S. MADAAN, J.

This appeal has been preferred against judgment and order of sentence dated 06.09.2003 passed by the Court of learned Additional Sessions Judge, Sangrur, vide which he had convicted accused-Kuldeep Singh for an offence under Section 302 of the Indian Penal Code (“IPC” –

for short) and sentenced him to undergo imprisonment for life and to pay a fine of ₹20,000/- and in default of payment of fine, to undergo further rigorous imprisonment for two years.

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

Briefly stated, the prosecution story is that on 07.10.2001 a wireless message was received at Police Post Sular Gharat from SHO, Police Station Bhawnigarh to the effect that Gurdeep Singh son of Bhajan Singh, resident of Labh Singh Wali Gail, Near Bus Stand, Ward No.8, Mansa was admitted in the Civil Hospital, Bhawanigarh as a result of receiving injuries and some Investigating Officer be sent there. On receipt of that information ASI Baljinder Singh alongwith C-I Kashmir Singh from Police Post Sular Gharat went to Police Station Bhawanigarh, received written intimation from there and went to Civil Hospital, Bhawanigarh. He (ASI Baljinder Singh) moved an application there seeking opinion of the attending doctor regarding fitness of injured Gurdeep Singh to make statement, on which the doctor informed that injured had been referred to Rajindra Hospital, Patiala. Therefore, ASI Baljinder Singh accompanied by other police officials went to Rajindra Hospital and submitted an application there soliciting opinion of attending doctor as to whether Gurdeep Singh-injured was fit to make statement. The doctor gave opinion in affirmative, as such, ASI Baljinder Singh

recorded statement of Gurdeep Singh-injured as Ex.PQ; inter alia Gurdeep Singh-injured aged about 29 years stated that on 07.10.2001 at about 6:30 p.m. he along with Babli Singh son of Mohinder Singh, resident of Gujran was travelling in a mini bus bearing No.PB-13-A-8262; that he was sitting on the rear seat; the bus was going from Bhawanigarh towards village Gujran, when it reached at bus stand of Ghanaur Jattan near canal bridge Kuldeep Singh driver, stopped the bus, the complainant went to Kuldeep Singh from back side asking him as to why he had stopped the bus since it was already getting late. Hearing that Kuldeep Singh got angry and picked up a quarrel with the complainant, he lifted a *Chhura* (big knife) lying near the driver's seat and stabbed the complainant on his left flank. The complainant cried by saying "*Mai Marta Oye*" (I have been killed), then Babli Singh came towards injured and rescued him from clutches of accused. The injured was made to get down from the bus by Babli Singh. The accused fled away from the spot alongwith the mini bus, thereafter, Sukhjinder Singh son of Nachhatter Singh resident of Ghanaur Jattan came to the spot and removed Gurdeep Singh-injured to Civil Hospital, Bhawanigarh and got him admitted there for treatment. The doctor at Civil Hospital, Bhawanigarh gave first aid to injured and thereafter referred him to Rajindra Hospital, Patiala, where he was admitted and treated. The statement was signed by Gurdeep Singh in Punjabi, his signatures were attested by ASI Baljinder Singh (hereinafter referred to as the Investigating Officer/I.O.). The Investigating Officer found that offence under Section 324 was disclosed from statement of

injured and his MLR, therefore, the Investigating Officer appended his endorsement below such statement of injured-Gurdeep Singh and sent ruqa to police station through C. Ajitpal Singh, on the basis of which formal FIR Ex.PQ/2 was recorded at Police Station, Dirba, by ASI Mukhtiar Singh. ASI Mukhtiar Singh made an endorsement on the original ruqa and sent it back to the Investigating Officer alongwith copy of the FIR.

On 10.10.2001, police party led by ASI Baljinder Singh went to the spot, the Investigating Officer carried out spot inspection and prepared rough site plan of the place of incident as Ex.PR. He recorded statements of witnesses and searched for the accused. On 11.10.2001 the Investigating Officer received a telephonic message from Rajindra Hospital, Patiala about death of Gurdeep Singh-injured, as such, the Investigating Officer alongwith police officials went to said medical institute and on reaching there, he prepared inquest report Ex.PH with regard to dead body of Gurdeep Singh. Dead body was identified to the Investigating Officer by Nikki Kaur and Mukhtiar Kaur. The Investigating Officer got post-mortem examination conducted on dead body of Gurdeep Singh from Rajindra Hospital, Patiala. A parcel containing pant of deceased was handed over to Investigating Officer by the doctor who had conducted post-mortem examination. On return to the Police Station, Dirba the Investigating Officer deposited the said parcel with MHC Police Station, Dirba.

On 17.10.2001 Mohinder Singh-PW produced R.C. of the mini bus No.PB13-A-8262 Ex.P1 and route permit Ex.P2, which were taken into possession vide memo Ex.PF. On 20.10.2001 Inspector Swarn Singh arrested Kuldeep Singh from bus stand Gujran, necessary documents in that regard was prepared. During the course of investigation of the case, the Investigating Officer got prepared scaled site plan of the place of incident from Harbans Singh, Patwari. It may be mentioned here that initially case was registered under Section 324 IPC, however, on death of Gurdeep Singh, offence under Section 302 IPC was added.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Sunam. Copies of documents relied therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C..

Then finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, the Judicial Magistrate Ist Class, Sunam committed the case to the Court of learned Sessions Judge, Sangrur vide his order dated 08.01.2002, from where it was entrusted to the Court of learned Additional Sessions Judge, Sangrur.

On receipt of the case, finding a prima facie case, charge for the offence under Section 302 IPC was framed against the accused, to which he pleaded not guilty and claimed trial. Thereafter, the case

was fixed for evidence of prosecution.

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

PW-1 Kaish Kumar, Clerk, Office of DTO, Sangrur had brought the relevant record of registration of mini bus bearing No.PB-13-A-8262 in the name of Dhanmeet Singh son of Balbir Singh resident of Akbarpur and Paramjit Singh son of Chet Singh resident of Baladkalan, District Sangrur. He further proved registration certificate of vehicle as Ex.PA which had been issued by office of DTO, Sangrur and was duly entered in their office.

PW-2 Bikkar Singh son of Hardev Singh son of Pritam Singh, aged 29 years, lineman in PSEB resident of Khanpur Faqira deposed that on 14.12.1995, he alongwith his brother Jugraj Singh and Jaspal Singh had purchased mini bus bearing No.PB-13-A-8262 from Dhanmeet Singh and Paramjit Singh alongwith permit; that they had sold the said mini bus alongwith permit to Mohinder Singh son of Bachan Singh resident of Gujran on 06.11.1996 receiving total consideration on account of sale of mini bus and permit to Mohinder Singh; that they had given power of attorney also in favour of Mohinder Singh.

PW-3 Harbans Singh, Patwari Halqa, Ghanaur Jattan deposed that on 02.11.2001 he had prepared scaled site plan after visiting the spot using scale 1 inch = 40 Karams. He proved site plan as

Ex.PB stating that he had prepared such site plan under instructions of police.

PW-4 Chaman Lal, Senior Asstt. Office of RTA, Patiala had brought the summoned record of mini bus standing in name of Dharamjit Singh son of Balbir Singh and Paramjit Singh son of Chet Singh respectively with regard to bus No.PB-13-A-8262 having route from Bhawanigarh to Sular Gharat. He stated that the permit was valid upto to 08.09.2001.

PW-5 Dr. Gunjit Singh Sandhu, Medical Officer, Civil Hospital, Bhawanigarh stated that on 07.10.2001, he medico legally examined Gurdeep Singh son of Bhajan Singh, a male aged about 29 years and observed following injuries on his person:-

A stab wound 3 cm x 1 cm in size present over left lumbar region about 14 cm lateral and 4 cm above plane of umbilicus. Fresh bleed was present. Depth could not be ascertained as wound was not probed to avoid risk of injury to vital organ. He advised for surgical opinion regarding injury to vital organ.

The weapon of offence used for this injury was sharp edged. He proved copy of MLR as Ex.PC and pictorial diagram showing seat of the injury as Ex.PC/1. The probable duration of injury was, in his opinion within six hours. He had also proved bed head ticket as Ex.PD and ruqa Ex.PE sent to Police Station Bhawanigarh on

07.10.2001 at 7.20 p.m.. He added that Gurdeep Singh son of Bhajan Singh resident of Labh Singh Wala, Mansa had been brought to Civil Hospital, Bhawanigarh by Sukhjinder Singh. He stated that injury on the person of injured could be the result of a dagger blow.

PW-6 HC Ranjit Singh, Police Station, City Ahmadgarh, who on 17.10.2001, while posted at Police Post Sular Gharat was member of the police party headed by Baljinder Singh-ASI deposed that on that day Mohinder Singh son of Bachan Singh resident of Gujran had produced one RC Ex.P1 and one permit Ex.P2 of mini bus No.PB-13-A-8262, which were taken into possession by ASI vide recovery memo Ex.PF.

PW-7 Dr. S.S. Oberoi, Asstt. Professor, Department of Forensic Medicine, Rajindra Hospital, Patiala deposed that on 11.10.2001 at 11 a.m., he conducted post mortem on the body of Gurdeep Singh son of Bhajan Singh aged 29 years r/o ward No.8, Mansa. The body was brought by ASI Baljinder Singh and was identified by Nikki Kaur and Mukhtiar Kaur; that he had found following injuries on his body:-

- 1. A midline stitched incision extending from xiphisternum and going downward and ending 5 cm above the pubic symphysis (surgical incision).*
- 2. A stab wound 3 cm x 1 cm going inside the abdomen cavity with sharp margins and clear ends present on left*

side of abdomen 14 cm lateral and 4 cm above the level of umbilicus. On exploration of abdomen two stitched wounds first 1' away from duodeno jejuna flexure and second 2' away from duodeno jejuna flexure were present. The abdomen cavity contained about 600 ml. of foul smelling discharge.

3. Multiple about eight in number sharp cuts of varying sizes were present on left lateral abdomen wall and left lateral chest wall (as per treatment file these were surgical cuts). All the thoracic and abdomen organs were congested.

In his opinion the cause of death was septicemia shock as a result of injuries described, which were ante-mortem in nature and sufficient to cause death in due course of nature. The time between injuries and death was about three days and between death and post-mortem was 12 to 18 hours. He handed over to police dead body after post-mortem with its belongings. He proved carbon copy of MLR as Ex.PG and inquest report Ex.PH.

PW-8 Dharmmeet Singh stated that he along with Paramjit Singh son of Chet Singh had jointly purchased a mini bus bearing No.PB-13-A-8262; that its permit stand in their names. As per permit route of bus was Bhwanigarh to Sular Gharat, Rampura Raitgarh, Kapial, Ghanaur Sahib, Akbarpur, Bijalpur and Gujran. He proved

copy of registration certificate as Ex.PA. He further stated that they had sold the bus to Jugraj Singh, Bikkar Singh and Jaspal Singh son of Hardev Singh resident of Khanpur Faqiran alongwith permit; that they had received the entire payment and on 14.12.1992 they had entered into agreement regarding sale of bus in favour of Jaspal Singh.

PW-9 Inspector Swarn Singh deposed that on 20.10.2001 he had arrested accused-Kuldeep Singh preparing arrest memo Ex.PK in that regard.

PW-10 Dr. Ramnish Garg, Junior Resident, Department of Surgery, Government Rajindra Hospital, Patiala stated that on 09.10.2001 he was posted as such in Rajindra Hospital, Patiala, on that day on police application Ex.PL he examined injured-Gurdeep Singh and found him fit to make statement. He proved endorsement Ex.PL/1 dated 09.10.2001 at 6:40 p.m.

PW-11 Babli Singh, cited by prosecution as an eye-witness did not support the prosecution story at all and stated that on 07.10.2001 at 6.30 p.m. in the area of village Gujran Jattan nobody had caused any injury to Gurdeep Singh-deceased and he had not seen any occurrence; that he does not know if the occurrence was witnessed by Gurnam Singh. This witness was declared hostile at the instance of Addl. Public Prosecutor and Addl. Public Prosecutor was allowed to put questions to him in the form of cross-examination.

PW-12 Mohinder Singh deposed that he was owner of bus

No.PB-13-A-8262 and name of their transport company was Baba Fateh Singh; that he had purchased the bus from Bikkar Singh 6/7 years back, may be in the year 1994-95 making full payment to its previous owner Bikkar Singh; that in the month of October, 2001 he owned bus which was plying on the route Sular Gharat to Bhawanigarh and back vide village Gujran, Bijalpur, Akbarpur, Ghanaur, Kapial, Raitgarh, Rampura, Bhawanigarh etc.; that he had employed Kuldeep Singh-accused as its driver. He stated that he had produced the RC and route permit of mini bus before the police which had been received vide recovery memo Ex.PF. He proved RC of bus as Ex.PA and route permit as Ex.P2 and stated that bus used to leave Bhawanigarh at about 6 p.m. for Sular Gharat.

PW-13 Gurnam Singh denied that on 07.10.2001 he was travelling in the bus or any incident had taken place in his presence or that accused had caused any injury to Gurdeep Singh in his presence. This witness was also declared hostile as per request of Addl. Public Prosecutor with permission to put questions in the form of cross-examination, which he did.

PW-14 ASI Baljinder Singh who had carried out investigation in this case deposed in that regard proving various documents.

With that the prosecution evidence got concluded.

Statement of accused was recorded under Section 313

Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to him, but he denied the allegations contending that he is innocent and has been falsely involved in this case.

Accused did not lead any evidence in defence.

After hearing arguments, learned trial Court convicted and sentenced accused-appellant as mentioned above, which left him aggrieved and he has filed the present appeal.

We have heard learned counsel for the appellant and learned Additional Advocate General, Punjab, besides, going through the record.

In this case two witnesses who had been cited by the prosecution to prove the eye-witness account of the incident namely PW-11 Babli and PW-13 Gurnam Singh denied having seen any such incident, in which accused might have stabbed Gurdeep Singh-deceased causing him injury in the flank, to which he had succumbed. Both the PWs were got declared hostile witnesses by the Additional Public Prosecutor and Additional Public Prosecutor was allowed to put questions in the form of cross-examination but to no avail. It comes that they had deliberately resiled from the statements made before the police in order to help the accused in the trial so as to earn acquittal in this case. However, the most important piece of evidence in this case happens to be the statement made by Gurdeep Singh to the police, in which, he had categorically stated that he had been stabbed by Kuldeep

Singh-accused who was driving mini bus at the relevant time. The statement so made is detailed one giving the necessary particulars of the incident. The statement was recorded on 9.10.2001 when injured was declared to be fit by the doctor to make statement. Gurdeep Singh had succumbed to the injury suffered by him on 11.10.2001. This statement is signed by Gurdeep Singh in Punjabi and his signatures were attested by ASI Baljinder Singh. ASI Baljinder Singh while getting his statement recorded as PW-14 has narrated in detail about the same, he has categorically stated that he had recorded statement of Gurdeep Singh as Ex.PQ, it was read over to him and in token of its correctness he signed it on which he made endorsement and sent it to police station for registration of the case forming basis for the registration of FIR Ex.PQ/2. This statement is natural and inspires confidence. The same is admissible under Section 32 of the Indian Evidence Act, 1972, which provides that statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in several eventualities, one of which being that when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. It is further

provided that such statements are relevant whether the person who made them was or was not, at the time when those were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. Due sanctity is attached to such type of statement which is relied upon even when the maker of the statement had not been subjected to the test of cross examination. The reason for the same is that a person who is under expectation of death and about to leave this mortal world, would not normally tell a lie and as it is said truth rests upon the lips of a dying man. We find that such statement which is being treated as dying declaration of Gurdeep Singh, is genuine, true and not tainted with any doubts. There is nothing to show that Gurdeep Singh had been tutored to make such statement. The medical evidence in this case corroborated the ocular evidence. The investigation in this case appears to have been carried out in a fair and impartial manner. The Investigating Officer/IO had no reason to involve the accused in this case wrongly and then challan him falsely.

The motive in the incident comes out to be the protest lodged by deceased with accused-driver on making an unauthorized stop of the bus leading to its delayed running and accused getting angry and stabbing the deceased in the flank causing him injury at a very vital part with a dangerous sharp edged weapon. The intention of accused to cause death of deceased or at least such bodily injury which was likely to cause death clearly comes out to be there on the part of the accused. Learned counsel for the appellant has referred to various citations in support of his

contention that the offence which is disclosed against the accused is one under Section 304 Part II IPC and not under Section 302 IPC. Such authorities are as under:-

- i. *Jarnail Singh vs. State of Punjab, 1995(4) SimLJ 2814 (P&H).*
- ii. *Kailash vs. State of M.P., 2007(1) R.C.R. (Criminal) 229 (SC).*
- iii. *Jagtar Singh vs. State of Punjab, 1983 CriLJ 852 (SC).*

However, we do not find any merit in the contention. The very fact that the accused, a bus driver was carrying *Chhura* (dagger) with him near his seat and had stabbed Gurdeep Singh-deceased just for the reason that he had asked from him as to why he had stopped the bus which was already running late, goes to show the criminal bent of mind of the accused, in other way to say that he was carrying the dagger with him to be put to use in attacking some person on slightest provocation. It is not the case where the deceased was responsible for flaring up of the situation or he had given any grave or sudden provocation to the accused to attack him. There is nothing to show that the deceased had assaulted the accused or that accused had in turn stabbed the deceased exceeding his right of self-defence. As a matter of fact, no such plea has been taken by the accused. Therefore, it is neither a case of self-defence nor accused exercising right of self-defence. The accused had hit the deceased on the vital part. Merely because the injury did not result in immediate death of Gurdeep Singh and he had survived for a few days and had developed

septicemia, does not lessen the gravity of offence.

Authorities referred are not applicable due to different facts and circumstances and in view of the detailed discussion above, in our considered opinion the offence which is disclosed is Section 302 IPC and not Section 304 Part II IPC.

Section 300 IPC deals with offence of murder. It provides that culpable homicide is murder if the act by which the death is caused is done with intention of causing death or the act by which the death is caused is done with the intention of causing death or it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused or it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death or the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

The instant case is covered by first and second eventuality. The case is not covered by any of the exceptions to Section 300 IPC. *Exception No.1* provides that culpable homicide is not murder when the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. This exception is not applicable since it is neither alleged nor proved on file

that deceased had given any provocation to the accused what to talk of sudden and grave; *Exception No.2* provides that culpable homicide is not murder if the offender, in the exercise of good faith of the right of private defence of a person or property, exceeds the power given to him by law and causes the death of that person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence. Again, such exception is not applicable since no right of private defence is available to the accused. Similarly, *Exception No.3* is not applicable as offender in this case did not happen to be public servant or aiding a public servant acting for the advancement of public justice, or exceeding the powers given to him by law in that way causing death in good faith, believing the same to be lawful and necessary for due discharge of his duty as such public servant and without ill-will towards the person whose death is caused. *Exception No.4* is also not available since though the incident appears to have occurred suddenly but then it cannot be taken to be a fight because no use of force by the deceased towards the accused is shown to be there, rather the accused without any provocation had stabbed the deceased on a vital part.

Thus the prosecution had successfully proved its charge against the accused for offence under Section 302 IPC beyond a shadow of reasonable doubt. The trial Court was justified in convicting and sentencing the accused for offence under Section 302 IPC. There is no illegality or infirmity with the impugned judgment of conviction and order

of sentence. Those are upheld, whereas the appeal is found to be without any merit and is dismissed accordingly.

Necessary directions be issued to the quarter concerned.

16.05.2017	(T.P.S.MANN) JUDGE	(H.S. MADAAN) JUDGE
Gaurav Sorot		

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