

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1976-MA-2016

Decided on: 20.11.2017

Bhim Singh

.....Applicant

vs.

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present: Ms. Rahish Pahwa, Advocate,
for the applicant.

MAHABIR SINGH SINDHU, J.

The applicant-Bhim Singh has filed the present application seeking leave to appeal against the impugned judgement and order of conviction dated 16.08.2016 and 19.08.2016 respectively, passed by learned Addl. Sessions Judge, Kaithal, for short 'Trial Court' vide which private respondents No.2 to 5 have been convicted under Section 304 Part-II instead of Section 302/34 of Indian Penal Code (for short 'IPC').

2. The brief facts of the case are that an FIR No.58 dated 24.04.2015 under Sections 302/34 IPC was registered at Police Station Rajound on the basis of the statement (Ex.PA) made by Bhim Singh (PW-1) to the effect that they are agriculturists having three brothers and two sisters. Krishan was the eldest and Kasturi was the youngest, who died one year ago and all are living separately. On the intervening night of 23/24.04.2015, complainant was sleeping in his house and his elder brother, i.e. Krishan called him at about 11.00 p.m. When he came out of his house, he heard noise of fighting from the adjoining house of Sanjay son of Kartar Singh. Then, he alongwith Birbal son of Shanu Ram his elder uncle

reached there and they found that Krishan was lying on the ground and Sanjay son of Kartar Singh, Karam Chand son of Hari Singh, Pardeep @ Kala and Ashok Kumar, both sons of Karam Chand were beating him with kicks and fist blows. On seeing us, they escaped from the place of occurrence and in the meanwhile, his mother, Jagmati wife of Krishan and Parveen son of Krishan reached there and they arranged a vehicle to shift the injured to hospital, but he died before reaching the hospital.

It is stated that motive behind the crime is animosity between Krishan and accused Karam Chand due to the water pipeline going to his house and which was leaking in the field of Krishan and he requested the accused persons to do the needful, but they did not listen and in this regard, an altercation had taken place at about 5/6.00 p.m. on that day. Krishan had gone to the house of Sanjay to lodge the protest but they murdered him.

3. After registration of the FIR, investigation was conducted and accused were arrested and thereafter report under Section 173 Cr.P.C. was submitted against all the accused. Thereafter, the case was committed to the Ld. Sessions Court by Illaqa Magistrate and Ld. Trial Court prima-facie found that accused have committed the offence under Section 302 read with Section 34 IPC and, accordingly, they were charge sheeted for the same to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined twelve witnesses and also brought on record documentary evidence in support of their case. On the other hand respondents No.2 to 5 did not lead any evidence except their plea under Section 313 Cr.P.C. in which they claimed innocence.

After evaluating the evidence on record, Ld. Trial Court came to a conclusion that charge under Section 302/34 IPC was not proved, but under Section 304-II.

5. Hence, the present application for leave to appeal.

6. Learned counsel for the applicant has contended that Ld. Trial Court committed a grave error of law while convicting the private respondents under Section 304-II instead of Section 302 IPC. He further argued that there is sufficient material available on record to prove the charges under Section 302 read with Section 34 IPC and as such, the impugned judgment is not legally sustainable.

7. Heard Ld. counsel for the applicant and perused the paper book, but this Court does not find any merit in the submissions due to the following reasons.

8. Bhim Singh-applicant/complainant was examined as PW-1 and supported the version made in his statement Ex.PA. He has also deposed that he, as well as his brother Kasturi Lal were residing near transformer chowk in the village, whereas his brother Krishan was residing behind the school of the village. He has also deposed that on the intervening night of 23/24.04.2015 at about 11/11.30 p.m. when he was sleeping in his house, then his brother Krishan called him and when he came out, he heard cry near the house of Sanjay son of Kartar. Upon hearing the cry, he alongwith Birbal son of Shanu Ram reached there and saw that his brother Krishan was lying in the gallery of Sanjay and Karam Chand son of Hari Singh, Ashok son of Karam Chand and Parveen son of Karam Chand and Sanjay son of Kartar were beating Krishan with fists and kick blows. Upon reaching there, they made hue and cry and on seeing them all the four assailants fled away from the place of occurrence. Thereafter, his mother and Jagmati wife of Krishan and his son Parveen and other family members also reached there and tried to take Krishan to his house for shifting him to hospital, but he died due to injuries received by him. Sanjay was the

plumber and he was doing work in the field of Karam Chand. Police reached there at about 1.30 a.m.

During his cross-examination, PW-1 stated that house of Birbal was situated at a distance of about half kilometer from the house of accused Sanjay. He also stated that his brother Kasturi had sold 2 kanals of land to accused Karam Chand in the year 2013 and upon some portion of the same, Karam Chand had constructed his house and remaining 15 marla of the land was lying vacant. PW-1 has further stated that no incident had taken place in his presence between accused and his brother in the field on that day at about 5 or 6.00 p.m., but he voluntarily stated that Bittu witnessed the said incident. However, Bittu had not disclosed this fact about the incident in the day time nor Krishan disclosed to anyone. He has further stated during cross-examination that Krishan never consumed liquor during his lifetime and he was doing labour work in the timber market at Assandh. He has further stated that he did not notice any blood or injury on the body of his brother when he reached on the spot in the night of 23/24.04.2015 at about 11.30 p.m. He has also stated that the clothes of Krishan were not torn when he met at the spot. Police was called in the mid night by Sarpanch of the village. Police remained there till 4.30/5.00 a.m. and, thereafter, dead body was shifted to Government Hospital, Kaithal from the house of Sanjay. He has further stated that he did not see any danda in the hand of Sanjay when he reached the spot and several persons were also present. He did not notice any blood stain on the spot.

9. PW-2 Birbal deposed that he came to the village at about 10.00 p.m. to take medicine for his daughter Jyoti from one Raj Kumar and after taking medicine, he left the house of Raj Kumar at about 11.00 p.m. and he was present at the chowk where Krishan was calling his brother Bhim and

then he moved towards the house of Sanjay. In the meantime, Bhim came out of his house and the light was on. He alongwith Bhim reached at the place of occurrence and found that quarrel was going on between the accused and Krishan in the house of Sanjay. When they reached, they saw that accused were causing injuries to Krishan in gallery of the house of Sanjay and upon seeing them, they ran away from the spot. Inquest proceedings Ex.PB were conducted by the police in his presence.

10. PW-3 Dr. Vivek deposed that he was the member of the Board of Doctors constituted for post mortem examination of the dead body of Krishan. He proved the copy of post mortem report (Ex.PF) and found that there was positive test of ethyl alcohol estimated as 80.5% MG in blood from heart of deceased and there was positive test of ethyl alcohol in heart, stomach and small as well as large intestine. Cause of death in this case was opined to be shock and hemorrhage due to injuries on vital organs like liver and spleen.

During cross-examination, this witness has admitted that none of the injuries was visible on liver and spleen and if a person was under influence of liquor and some animal hit that person, injury on liver and spleen was possible. All the injuries were opined to be possible due to fall.

11. PW-5 Ram Niwas, draftsman, prepared the scaled site plan Ex.PJ with correct marginal notes and during cross-examination, he admitted that place of occurrence was situated in abadi.

12. PW-6 Bittu deposed that in the evening of 23.04.2015, he alongwith Rajbir and Binder were working on a thresher in fields of Ishwar. They heard a noise at 09.30 p.m. and rushed to the spot. They saw that Sanjay, Ashok, Pardeep and Karma were beating Krishan with fist and kick blows. They intervened and Krishan was rescued from clutches of those

persons and they left him at a turning point of school of their village and thereafter, they went to their work place. In the morning, he came to know that Krishan had expired.

During cross-examination, PW-6 has stated that he was real nephew of deceased Krishan and his house was just 2/3 acres away from the house of Krishan and field of Krishan was at a distance of 4-5 acres from his house. This witness has admitted in his cross-examination that Krishan used to consume liquor. He stayed at the spot for about two three minutes and then went to his place of work. He further stated that on the next day at about 07.00 a.m., he came to know about the death of Krishan and at that time, police was present there. He alongwith several other persons reached at place where police was making inquiries, but he did not disclose anything to the police at that time. He also stated that police came to their village several times, but they never met him. This witness has further stated that when accused were beating Krishan at 09.30 p.m., he alongwith Rajbir and Binder were there and nobody from village Khurda except them was present there. He has further stated that no street light was installed there.

13. PW-8 Inspector Angrej Singh investigated the case and he supported the prosecution case by proving the recovery memo and identified the case property, i.e. wooden stick (Ex.MOI), danda attached with iron blade in shape of spear (Bhalla).

During his cross-examination, PW-8 stated that Sunder Devi and Parveen made statement during investigation that Krishan was shifted to his house on motor-cycle and after death, his dead body was shifted to gallery of house of Sanjay. He also stated during cross-examination that on the statement of witnesses and investigation from several persons, no cogent evidence of involvement of Karam Chand, Ashok and Pardeep came out.

This witness has further admitted in his cross-examination that it came to his knowledge during investigation that at the time of occurrence, Ashok and Pardeep were not present at the spot; rather Ashok had gone to deliver medicines and Pardeep was present at his house. He also stated that during investigation, it was found that Karam Chand and his two sons, namely, Pardeep and Ashok were not present at the house of Sanjay at the time of alleged occurrence and that was the reasons, they were found innocent during investigation. He has also stated that in the verification of Joginder Singh, DSP there was only one house of Baragi Community of Karam Chand in village Khurda and complainant Bhim and his family members had named Karam Chand, Ashok and Pardeep as accused due to the dispute over a plot purchased from Karam Chand.

14. PW-12 Sub Inspector Subhash Sheokand deposed that on 24.04.2015, he was informed by control room, Kaithal that an information was received from Sarpanch of village Khurda about quarrel of Jhimar Community and death of a person. On this information, he alongwith EASI Dalbir Singh, HC Balbir Singh and constable Subhash reached village Khurda in a private vehicle where dead body of Krishan son of Miya Singh was lying in gallery of Sanjay son of Kartar. Many persons were present there and Bhim Singh brother of deceased Krishan got recorded his statement Ex.PA and after endorsement as (Ex.PA/1) was sent to Police Station, Rajound through constable Subhash 705 for registration of the FIR.

During his cross-examination, PW-12 stated that on 26.04.2015, he recorded the statement of Prithi @ Gunga son of Telu Ram and he told that occurrence took place at 09.00 p.m. on 23.04.2015 and Bittu son of Jiya Lal told that time of alleged occurrence was 09.00/10.00 p.m. This witness has also stated during cross-examination that PW Shish Pal disclosed time of alleged occurrence as 08.00/08.30 p.m. This witness

further stated that during investigation, it came to his notice that firstly, Krishan was shifted to his house from street and after death, his dead body was shifted to gallery of house of accused Sanjay and he has also stated that no blood stains on earth was noticed in the gallery of house of Sanjay.

15. As per the testimony of PW-1, occurrence has taken place at 11.00 p.m. On the other hand, PW-6 Bittu has stated that occurrence has taken place at 09.30 p.m.

16. As per the medical evidence, the deceased was found highly under the influence of liquor as the doctor noticed 80.5% MG of ethyl alcohol in the blood of deceased. There is no evidence that accused person had used any weapon to cause injuries to the deceased; rather as per the testimony of PW-1 and PW-2 also, the accused were beating the deceased with fist and kick blows. Even medical evidence also does not suggest that any weapon was used for causing the injuries to the deceased. Therefore, there was no intention of the accused person to commit the murder. On the other hand, it has come in the post mortem report that deceased died as a result of rupture of spleen.

17. Therefore, the Ld. Trial Court has rightly come to the conclusion that there was no intention of the accused to commit the murder; rather it is a case of causing the bodily injuries which were sufficient to cause death without any intention and thus, the Ld. Trial Court has adopted the very correct approach while convicting the accused-respondent under Section 304 Part-II IPC instead of 302 IPC. The view formed by the Ld. Trial Court is the possible view and there is no other material available on record to prove the intention of the accused for committing the murder of the deceased.

18. In view of the above, no ground is made out to grant leave to file the appeal against acquittal of the accused under Section 302 IPC.

Consequently, the application under Section 378 Cr.P.C. for leave to file the appeal against the judgement and order of conviction dated 16.08.2016 and 19.08.2016 respectively, passed by Ld. Trial Court is hereby dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

20.11.2017

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No