

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

CRA-D-628-DB-2003
Date of decision:27.04.2017

Khushi Mohammad and Others

.....Appellants

Versus

State of Punjab

.....Respondent

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

Present: Mr. Kapil Aggarwal, Advocate
for the appellants.

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

H.S. MADAAN, J.

This appeal is directed against judgment and order dated 23.07.2003 passed by the Court of Additional Sessions Judge, Fast Track Court, Sangrur vide which he had convicted accused Khushi Mohammad, Mohammad Jamil son of Ibrahim, Mohammad Yasin and Mohammad Jamil son of Abdul Gafoor for offences under Section 302 read with

Section 34 of the Indian Penal Code and sentenced them to undergo imprisonment for life and to pay a fine of ₹2,000/- each and in default of payment of fine to undergo further rigorous imprisonment for a period of one year. Out of fine if recovered, ₹5,000/- was ordered to be paid to widow of deceased.

The accused-convicts, who are appellants before this Court by way of filing the present appeal submit that their appeal be accepted, the impugned judgment of their conviction and order of their sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the prosecution story is that on 18.03.2001 at 11.55 p.m. a written intimation from Civil Hospital, Malerkotla alongwith MLR was sent to Police Station, Malerkotla regarding arrival of injured Mohd. Hanif son of Kaka Khan, resident of Jamalpura there. On receipt of that information, a police party headed by ASI Vir Singh went to Civil Hospital, Malerkotla. ASI Vir Singh sought opinion of attending doctor regarding fitness of the injured to make statement on which the doctor gave the opinion in negative and informed that due to deterioration in condition of the injured he had been referred to New D.M.C. Hospital, Ludhiana. Thereafter, statement of the injured could not be recorded and police party came back to the police station. On the next day i.e. 19.03.2001, police party headed by ASI Vir Singh went to New D.M.C. Hospital, Ludhiana and sought opinion of Doctor regarding fitness of the injured, again opinion was in negative, however, police party came across Abdul Mazid son of Kaka Khan, resident of Malerkotla who got his

statement recorded that on 18.03.2001 he and his brothers Mohd. Hanif and Umar Din were going to their fields on foot, Mohd. Hanif was going five or six karams ahead of them. When they took a turn to the *PAHI* (passage) from the Gurudwara Sahib of Kukian Road, it was about 9 P.M., the light of the Gurudwara on road side was on. In the meantime Khushi Mohd. and his brother Jamil Mohd. sons of Ibrahim, armed with *SOTIES* (sticks), Mohd. Yasin son of Khushi Mohd. armed with *GANDASA* (*axe*) resident of Jamalpura and Mohd. Jamil son of Abdul Gafoor resident of Mohalla Bhumsi Malerkotla armed with a hockey stick came there from opposite direction. Just then Khushi Mohd. raised a *LALKARA* (exhortation) that his son Mohd. Yasin had not been betrothed and the complainant side be taught a lesson for that today. Hearing that Mohd. Yasin gave a *GANDASA* blow from its blunt side with force hitting Mohd. Hanif on his head. His brother fell down. While Mohd. Hanif was lying down on the ground, Mohd. Jamil son of Gafoor gave a hockey stick blow to him hitting in the center of his forehead and Mohd. Jamil son of Ibrahim gave a *SOTI* blow on the forehead of Mohd. Hanif towards right side and Khushi Mohd. gave a *SOTI* blow hitting Mohd. Hanif on the back. The complainant stated that he and his brother Umardin standing near raised alarm *Na-Maaro, Na-Maaro* (do not hit), he will die. Khushi Mohd. standing nearby had been proclaiming that whosoever came forwarded would be killed. According to the complainant all the assailants had caused injuries to Mohd. Hanif with the intention to kill him and that all the assailants lifted up his brother Mohd. Hanif from arms and legs and

took him away to the *PAHI* near their house; on their raising alarm the assailants ran away with their respective weapons. The motive for the incident is that Mohd. Yasin wanted to marry the daughter of complainant's brother Ahmad forcibly.

After the incident Umar Din took Mohd. Hanif to Civil Hospital Malerkotla and got him admitted there, however when his condition having become precarious, the doctor, referred the injured to New DMC, Hospital, Ludhiana.

ASI Vir Singh (hereinafter referred to as Investigating Officer/I.O.) appended his endorsement Ex.PA/1 below such statement of complainant Abdul Mazid and sent ruqa to police station through C. Harbaksh Singh, on the basis of which formal FIR Ex.PA/2 was registered by Pritpal Singh MHC. Then the police party came to the place of occurrence. The Investigating Officer inspected the spot and prepared the site plan Ex.PW11/A at the instance of Umer Din. Blood stained earth was lifted from two places, and two separate parcels were prepared, duly sealed with seal of the Investigating Officer bearing initials 'VS' and these were taken into possession vide memos Ex.PW5/A and Ex.PW5/B. The Investigating Officer also recorded the statement of Umer Din and other PWs. On return to the police station, the Investigating Officer deposited the case property with MHC Pritpal Singh.

On 29.03.2001, accused namely Khushi Mohd., Mohd. Jamil and Mohd. Yasin and their search memo Ex.PW11-B was prepared. On 02.04.2001, accused Mohd. Yasin made a disclosure statement that he had

concealed one *GANDASA* used by him in the incident and one Bamboo Soti used by his father Khushi Mohd. in the incident and which was later on handed over to him in the new graveyard Jamalpur, duly concealed place, about which only he had knowledge, and could get the same recovered. His statement, Ex.PW11/C was recorded. Then the accused leading the police to the specified place, got recovered the weapon, of offence, viz. from the bushes in the area of new graveyard. These were taken into possession vide memo Ex.PW11/D. Site plan of the place of recovery Ex.PW11/E was also prepared.

On 04.04.2001 the Investigating Officer received a QST message from Police Station Habobal, District, Ludhiana about the death of Mohd. Hanif. As such he alongwith other police officials went to DMC Ludhiana. He prepared the inquest report of the dead body of Mohd. Hanif. The dead body was identified by Abdul Mazid and Mohd. Zameel. He also recorded the statements of witnesses under Section 175 Cr.P.C. Then he had brought the dead body to Civil Hospital, Malerkotla and submitted application Ex.PD to SMO, Civil Hospital, Malerkotla, for conducting post-mortem on the dead-body. The doctor conducted the post-mortem examination on the dead-body of Mohd. Hanif and handed over to him the parcel containing the belongings of the deceased which was taken in possession vide memo Ex.PW11/F. On return to the police station he had deposited the case property with the MHC.

After completion of investigation and other formalities challan against the accused Khushi Mohd. Mohd. Jamil son of Ibrahim,

Mohd. Yasin son of Khushi Mohd. was prepared and filed in the Court of learned Sub-Divisional Judicial Magistrate, Malerkotla..

On presentation of *challan* in the Court of learned Sub-Divisional Judicial Magistrate, Malerkotla, copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C.. Thereafter finding that offence under Sections 302 IPC is exclusively triable by the Court of Sessions, the learned Sub-Divisional Judicial Magistrate, Malerkotla vide his order dated 06.10.2001 committed the case to the Court of Sessions Judge, Sangrur.

When the case was received in the Court of learned Sessions Judge, Sangrur finding a prima facie case, charge for offence under Section 302 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.

The prosecution examined complainant/eye-witness Abdul Nazir (Mazid) as PW-1 and then the Addl. P.P. moved an application under Section 319 Cr.P.C. for summoning of Abdul Jamil son of Gafoor as additional accused. The said application was allowed and Mohd. Jamil son of Gafoor put in appearance as an accused. Then the charge was amended and fresh charge for offence under Section 302 read with Section 34 of the Indian Penal Code was framed against all the present accused, to which they pleaded not guilty.

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

PW-1 Abdul Nazir son of Kaka Singh son of Barkat, a brother of deceased, while providing ocular version of the occurrence, toed the prosecution lines.

PW-1 Dr. Ravinder Singh, Medical Officer, Civil Hospital, Malerkotla stated that on 18.03.2001 while posted as such, he had conducted medico legal examination of patient-Hanif son of Kaka Khan, resident of Basti Jamalpura, Khanna Road, Malerkotala at 10.45 pm and his observations were as follows: -

- 1. Patient was unconscious with bleeding wound on vertex of skull in middle about 1" backwards from hair line and 1 ½ inch long with rough margins X-ray to be done.*
- 2. Abrasion ½ inch long on forehead at the midline ½ inch above the eye-brow.*
- 3. Depressed fracture skull on right temporal bone area of the skull for X-ray examination.*
- 4. Abrasion on left side of back of chest along the 7th rib about 1 ½ inch away from midline.*

The injuries 1, 2 and 3 were kept under observation and injury No.4 was simple in nature. The probable duration of the injuries was fresh. The weapon used for all was blunt.

He proved carbon copy of the MLR Ex.PA, pictorial

diagram Ex.PA/1 showing seats of injuries, police request Ex.PB and endorsement Ex.PB/1 vide which he had opined that patient was unconscious and was not fit to make statement. He further deposed that the head injury could be possible with the reverse side of *GANDASA* and injury on forehead could be possible with *SOTI*, hockey or blunt weapon just like *SOTI*.

PW-2 Dr. Charanjit Singh, deposed that on 04.04.2001 he was posted as Medical Officer in Civil Hospital, Malerkotla. On that day he conducted post-mortem examination on the dead body of Hanif Mohd. son of Kaka Khan Kamboj resident of Jamalpura. The dead body was brought and identified by Mohd. Jamil son of Noor Mohd. and also by Abdul Mazid son of Kaka, residents of Malerkotla.

The patient was received by Dr. R.S. Thind on 18.03.2001 and treated at D.M.C. Ludhiana. As per information supplied by police, death was due to the injuries.

The length of body was 170 cm and it was body of an average built and nourished man wearing underwear colour light blue. Rigor mortis was present. Post-mortem staining was present on back of body. Tracheostomy hole was there in front of neck. Bedsores were present on back of buttock area. He noted the following injuries:-

- 1. Healed wound mark on top of skull going towards right side slightly, fracture of underlying bone.*
- 2. Healed abrasion mark ½ inch long on forehead in*

midline ½ inch above eye-brow.

- 3. Diffused swelling right side of scalp with fracture of underlying bone. Collection of blood outside and inside the skull cavity.*
- 4. Diffused swelling left side of skull with fracture of underlying bone. Collection of blood outside and inside the skull cavity. Whole of brain matter edematous.*
- 5. Healed abrasion back of left side of chest along seventh rib 1 ½ inch away from midline.*

Walls ribs and cartilages-crade fractured 7th rib on back of left side, chest, right side healthy. Pleurae-left pleural cavity contained 1.5 lts. of serious fluid. Right side healthy; larynx and trachea congested and described. Both lungs congested. Pericardium was healthy. Heart healthy both ventricles contained blood. Organs of abdomen were healthy. Stomach congested and contained 70 ml of fluid. Small intestines contained fluid and gases and large intestines contained faecal matter and gases. Liver was congested.

In his opinion all the injuries were ante-mortem in nature and were sufficient to cause death in ordinary course of nature. Death was due to injury to brain. The probable time that elapsed between injuries and death was about 16 days and between death and post-mortem within 24 hours.

This witness proved carbon copy of post-mortem report

Ex.PC, pictorial diagrams showing seats of injuries Ex.PC/1, transport slip of dead body from DMC Ex.PC/2, police request Ex.PD for post-mortem which was marked to him by Dr.V.P.Goel the then CMO.

PW-3, Dr. Gurjeet Singh, Dhatt, PG. resident, Department of Surgery, DMC and Hospital Ludhiana deposed that on 19.03.2001 he was posted at casualty ward when patient Hanif son of Kaka was brought to the hospital by Umar Din at 1.18 a.m. on 19.03.2001 with the alleged history of assault at 8.00 pm on 18.03.2001. As per history, patient was unconscious and was bleeding from scalp. On examination by him, patient Glasgow coma scale was E2 V2 M2 with pupils bilateral 3mm reacting to light. Patient had two wounds on scalp. One linear wound 8 cm over scalp in occipital area. Second wound 4 cm cut lacerated wound over frontal region with linear fracture of parietal bone with bone chips present in the wound. Patient's CT scan was done on 19.03.2001 at 1.50 a.m. the report being Ex.PE. The witness stated that the patient was then shifted to ICU/NORR and was managed conservatively, but patient's condition deteriorated and patient expired on 03.04.2001 at 9:00 p.m..

PW-4 Dr. Manoj Kumar Singla, Registrar, Department of Surgery, DMC and H, Ludhiana deposed that on 19.03.2001, on police request Ex.PF vide his Endst. Ex.PF/1, he opined that patient Mohd. Hanif son of Kaka was unfit to make statement at about 9.30 a.m. On police application Ex.PG vide his Endst. Ex.PG/1 he opined that patient

Mohd. Hanif was unfit to make statement on 29.03.2001 at about 1.30 p.m..

PW-5 HC Gurmej Singh, Police Station City Malerkotla who was associated with the investigation of this case conducted by ASI Vir Singh deposed regarding what had transpired in his presence.

PW-6 Ajay Kumar, Patwari, Halqa Jamalpura deposed that on 25.04.2001 he prepared the scaled map Ex.PW6/A at the instance of Abdul Mazid with correct marginal notes. The scale used was 1" = 40 karams.

PW-7 C. Gurmail Singh No.311, Police Station City, Malerkotla, a formal witness tendered into evidence his affidavit Ex.PW7/A.

PW-8 Pritpal Singh, MHC P.S. Amargarh, a formal witness tendered into evidence his affidavit Ex.PW8/A.

PW-9 Abdul Mazid son of Kaka son of Barkat Khan, agriculturist resident of Malerkotla, a brother of the deceased, who had set the machinery of law into motion by reporting the matter to the police by making statement Ex.PA, providing eye-witness account of the incident supported the prosecution version on material aspects, so, did his other brother, Umer Deen, appearing as PW-10.

PW-11 SI Vir Singh, Police Station, Patran District Patiala, the Investigating Officer of this case deposed regarding the investigation conducted by him proving various documents.

PW-12 HC Shivinder Singh, Police Station, City Malerkotla, who was associated with the investigation of this case conducted by ASI Vir Singh deposed regarding what had transpired in his presence.

The Public Prosecutor had tended into evidence report of Chemical Examiner Ex.PX.

With that the prosecution evidence got concluded.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them, but they denied all the allegations submitting that they are innocent and have been falsely involved in this case and took the plea that due to Sahidan episode all of their family members have been involved falsely in this case for ulterior motive.

During their defence evidence accused examined six witnesses.

DW-1 C. Mohinder Singh, Police Station City Malerkotla had not brought the summoned record.

DW-2 Mohammad Khalid son of Abdul Mazid son of Hazi Abdul Nafid, resident Malerkotla deposed that he is a commission agent and his shop No.22 is situated in Sabzi Mandi, Malerkotla; that he did not know Abdul Majid and Umar Din son of Kaka Khan son of Barkat Khan resident of Malerkotla. He stated that he never gave a loan of ₹40,000/- to them.

DW-3 Mohammad Hanif son of Chaudhary Labhu Ji, Nambardar, Jamalpura, Malerkotla deposed that his agricultural land adjoins the land of accused Khushi Mohd. In the day, he worked in his fields and went to his house in the evening. No path way goes to village Mahuana through his fields and fields of accused. In his fields, no murder took place. The police never summoned him in connection with any murder case, during the last 2/3 years. Police never picked up blood stained earth from his fields in his presence.

DW-4 SI Sukhdev Singh, SHO, Sadar Police Station Barnala deposed that in June, 2002 he was working as SHO Police Station City Malerkotla. One Ahmed Din, gave application regarding kidnapping of Saida Parveen, by accused Yashin. He summoned both the parties and they compromised the matter. Saida Parveen gave in writing that she had gone with Yashin with her own will. A compromise deed was written which was signed and thumb-marked by the parties and Panches. The original application and original compromise deed were placed in the compromise file. The witness stated that after the prescribed time, the documents are destroyed in accordance with orders. Ordinarily, a photostat copy of compromise is supplied to the parties. Mark "B" was the photostat copy of the compromise deed.

DW-5 Hazi Suleman son of Badardin, aged 45 years, shopkeeper, Malerkotla deposed that he belongs to Congress Party and

is General Secretary of Block Congress Party, Malerkotla. He is also member of Minority Cell of Congress Party, Punjab. The then MLA Smt. Razia Sultan is his sister's daughter. He was known to Ahmeddin, father of Saida Parveen. Ahmeddin gave application to the police that his daughter Saida Parveen had eloped with Yashin. He told him about this fact. The police called them. The Panchayat got the matter compromised. A compromise deed was written which was signed and thumb-marked by the Panchayat. When shown compromise deed, he further added that it was written in his presence and its two copies were prepared and one copy was given to the parties and original was given to SHO Sukhdev Singh.

DW-6 HC Sukhchain Singh, 260, AMHC, Kotwali, Malerkotla deposed that he had not brought the summoned record as the same had been destroyed because the application which are given dasti and no case was registered after enquiry.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above.

We have heard learned counsel for the appellant-convicts and learned Assistant Advocate General for the State besides going through the record.

Appellant-accused Khushi Mohammad has expired during the pendency of the appeal. Verification report prepared by SHO, Police Station, City Malerkotla along with Annexures has been

submitted by the Additional Advocate General, Punjab. In view of the same appeal filed relating to Khushi Mohammad would be disposed of as having abated.

As far as happening of the incident is concerned the prosecution has successfully proved the same by bringing enough cogent and convincing ocular evidence on record in the form of examining PW-9 Abdul Mazid and PW-10 Umer Deen, both brothers of deceased. The presence at the spot of both the PWs appears to be natural and probable and account of the incident given by them comes out to be credit worthy. During the course of investigation as deposed by PW-11 SI Vir Singh, accused-Yasin had suffered a disclosure statement on 02.04.2001 while in police custody and had got *GANDASA* used by him and *SOTI* used by Khushi Mohd. in the incident recovered from his possession. Although all the weapons used in the incident had not been recovered but that could be due to any number of reasons, such weapons having been disposed of or destroyed or no recoveries being effected due to lapse in the investigation. However, keeping in view the facts and circumstances of the case that does not have much bearing on the case in hand. The involvement of all the accused in this case stands established.

Though the motive for the incident is not clearly proved on the file but the motive is something which is hidden in the mind of a criminal and it is very difficult to dig it out. Sometimes a crime is

committed without any visible reasons. Even otherwise in the case of direct evidence, motive pales into insignificance. From the medical evidence brought on file it stands established that the deceased had succumbed to the injuries suffered by him in the incident i.e. to say that injuries inflicted by the accused on person of the injured were direct and proximate cause of his death.

The trial Court has convicted the accused for offence under Section 302 read with Section 34 IPC. There is no doubt and rather it stands proved on file that all the accused-assailants shared a common intention for attacking the deceased and causing him injuries and it is a case of culpable homicide. The crucial question to be seen is as to whether the accused-assailants have committed offence of murder or culpable homicide not amounting to murder. Though the trial Court has come to the conclusion that accused-assailants shared the common intention and had committed murder of the deceased but we find ourselves in disagreement with the trial Court on that point since in our considered view the offence which is made against accused-assailants is culpable homicide not amounting to murder under Section 304 Part II IPC. The reasons for our arriving at this inference are that firstly of the four assailants, Khushi Mohammad and Mohammad Jamil son of Ibrahim are stated to be armed with sticks. Such types of sticks are usually there with the people engaged in avocation of agriculture whereas Mohammad Jamil son of Abdul Gafoor was stated to have

been armed with hockey stick which is normally not taken to be a weapon of offence. Only Mohammad Yasin was stated to be armed with *GANDASA*. But then even as per prosecution story, Mohammad Yasin had given only one blow to deceased though hitting him on head but that was from reverse side of *GANDASA*. Only single blow each has been attributed to remaining accused-assailants. If the intention of the accused-assailants had been to commit murder death of the deceased then they could easily have achieved their purpose by giving blow to him from sharp side of the *GANDASA* and repeating the blows with their respective weapons. When as per prosecution story after attacking the deceased and injuring him he was taken to place at the little distance and dropped near cattle shed of the accused, the deceased was alive at that time and he was taken to hospital. He had breathed his last after 16 days. The assailants are not shown to have acted in a cruel or unusual manner.

We are of the view that under the circumstances the injuries had been caused by the assailants with the knowledge that such injuries were likely to cause death but without any intention to cause death or to cause such bodily injury as was likely to cause death. The offence committed comes within four corners of Section 304 Part II IPC dealing with punishment for culpable homicide not amounting to murder and does not get covered by the definition of murder under Section 300 IPC punishable under Section 302 IPC.

Therefore, conviction and sentence of the appellants-accused namely Mohd. Jamil son of Ibrahim, Mohd. Yasin son of Khushi Mohd. and Mohd. Jamil son of Abdul Gafoor is set aside for offence under Section 302 read with Section 34 IPC. Rather, they are convicted under Section 304 Part II IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of ₹2,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for a period of one year each. In that way the appeal is allowed partly, qua these appellants-accused/convicts, whereas it stands abated in respect of accused-convict/Khushi Mohd. on account of his death during the pendency of the appeal.

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

27.04.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

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