

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

Crl. Appeal D-867-DB of 2003

Date of Decision : August 11, 2017

Sanjay Kumar @ Indian

.....Appellant

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Randeep Singh Rana, Advocate
as legal aid counsel for the appellant.

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

T.P.S. MANN, J.

Convict-Sanjay Kumar @ Indian son of Mithan Lal, aged 23 years, resident of Karnal has filed the present appeal against the judgment and order dated 5/7.12.2002 passed by learned Additional Sessions (Adhoc), Karnal vide which he was convicted under Section 302 IPC for committing the murder by intentionally causing the death of Sohan Lal @ Soma and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.500/- and in default of payment of fine, to undergo further rigorous imprisonment for three months.

According to the prosecution, on 31.8.2001 at about 10.30 p.m., complainant-Billu son of Sunder Lal was sitting in his rickshaw at Tonga stand on Railway Road, Karnal. His uncle's son Sohan Lal-deceased and appellant-Sanjay Kumar @ Indian were consuming liquor near the gate of Karnal park. In the

meantime, an altercation took place between them on some matter. The appellant started abusing the deceased which was objected to by the deceased. The appellant took a knife from his trouser and gave a blow with the same in the abdomen of the deceased. On sustaining the blow, the deceased started running while keeping his hand on his abdomen. The appellant chased him for a short distance but ran away due to fear. The deceased fell down near Surinder Vaishno Dhaba on the railway road. People took him to Civil Hospital, Karnal. Next day, the complainant visited Civil Hospital and enquired about the deceased. He learnt about the deceased having been referred to PGI, Chandigarh. Out of fear of being killed by the appellant, he did not go to the Police Station. However, as his cousin Sohan Lal had been attacked by the appellant by giving a knife blow in his abdomen, he could not restrain himself and started for reporting the matter with the police and met HC Jagdish Chander near the fish market. He got recorded his statement Ex.PE on 2.9.2001 at 5.00 p.m. on the basis of which FIR Ex.PE/2 under Section 324 IPC was registered at Police Station City, Karnal by ASI Krishan Chand on 2.9.2001 at 5.15 p.m.

It is also the prosecution case that after registration of the FIR, HC Jagdish Chander visited the place of occurrence and prepared its site-plan. Investigation of the case was then entrusted to ASI Hari Naraian, who on receipt of message about

the death of Sohan Lal in PGI Chandigarh on 6.9.2001, went to PGI Chandigarh alongwith HC Jagdish Chander, complainant-Billu and one Mukesh. He moved an application for post-mortem of deceased Sohan Lal @ Soma after preparing inquest report. The investigation was subsequently conducted by Inspector Mohar Singh, Station House Officer, who arrested the appellant on 16.9.2001. The accused was interrogated, who suffered a disclosure statement in furtherance of which he got recovered a knife which was taken into possession. The Inspector also recorded the statements of the witnesses. On completion of investigation, final report under Section 173 Cr.P.C. was prepared, which was presented in the Court for trial of the accused. Upon commitment, the appellant was charged under Section 302 IPC to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined thirteen witnesses.

PW1 Dr. Ravinder Arora the then Medical Officer, General Hospital, Karnal on 31.8.2001 at 11.55 p.m. medico-legally examined Soma son of Babu Lal resident of Sadar Bazar, Karnal brought by Mukesh son of Balwinder Yadav of Karnal and he found two incised wounds, one on the right side of upper lip and the other on chest and he then sent ruqa to the police of Police Post within the hospital premisses at 12.10 a.m. on

1.9.2001.

PW2 HC Randhir Singh, PW3 Constable Lakhwant Singh and PW7 HC Ram Sarup tendered their affidavits Exs.PC, PD and PM, respectively.

PW4 Billu, cousin of the deceased and an eye-witness of the occurrence deposed on the lines of the prosecution.

PW5 HC Jagdish Chander deposed that on receipt of telephonic message regarding admission of the deceased in an injured condition, he went to General Hospital, Karnal where he was handed over the ruqa and medico-legal report of the deceased. He moved application Ex.PF to find out the fitness of the deceased to make statement. The Medical Officer stated that the deceased had been referred to PGI, Chandigarh on 1.9.2001 at 1.20 a.m. Accordingly, he and ASI Hari Naraian went to PGI, Chandigarh for recording statement of the deceased. However, he could not be traced in PGI, Chandigarh. On 2.9.2001, he accompanied by Constable Manoj Kumar had proceeded from Police Post Sadar Bazar, Karnal for Railway Road, Karnal in order to enquire about the address and whereabouts of injured and when he reached near fish market, he met PW Billu, who recorded his statement Ex.PE. He then inspected the place of occurrence and prepared rough site-plan Ex.PG.

PW6 ASI Hari Naraian stated that on 6.9.2001, he

accompanied by HC Jagdish Chander, PW Billu and one Mukesh went to PGI, Chandigarh and after obtaining the relevant facts from Police Post PGI, Chandigarh, he moved an application Ex.PH for post-mortem on the dead body after preparing inquest report Ex.PJ. However, post-mortem could not be conducted as it had grown dark. On 7.9.2001, the post-mortem was conducted by a team of doctors. The offence was, thereafter, converted into Section 302 IPC.

PW8 Inspector Mohar Singh deposed about the various steps taken by him during the investigation of the case.

PW10 Constable Prem Kumar, Draftsman proved the scaled site-plan Ex.PP of the place of occurrence.

PW11 Dr. Deepak Puri deposed from the record wherein it was mentioned in the death summary that the patient was brought as unknown male with CR No.264019/49978 on 1.9.2001, expired on 6.9.2001. According to the death summary, CTVS consultation was taken for stab injuries left 5.6 intercostal space and hemothorax for which left intercostal drain was placed which drained 300 mls blood. The patient was kept under CTVS observation and no further CTVS intervention was done.

PW12 Nichhatar Sigh, Clerk, Central Registration Department, PGI Chandigarh produced the record pertaining to post-mortem report No.6597 dated 7.9.2001 CR No. 264019 of

deceased Sohan Lal @ Soma.

PW13 Dr. Chander Parkash, Assistant Professor, Department of Forensic Medicine deposed that on 7.9.2001, he was working as Senior Resident in the Department of Forensic Medicine, PGI, Chandigarh and on that day he conducted post-mortem on the dead body of Sohan Lal @ Soma and found the following injuries:-

“1. Oblique stitched incised wound of size 3.2x0.5x0.6 cm present over right upper lip, margin of the wound clean cut and wound is directing downward, forward and medially.

2. Oblique stitched stab wound of size 3x0.5 cm on cutting the stitches wound was 3x0.5 cm chest cavity deep margin of the wound was clean cut, inner angle acute and outer angle obtuse direction of the wound was downward, backward and medially present over 5-6 th intercostal space 3.5 cm below and 1 cm lateral from the left nipple. The track of the wound cutting skin soft tissues parietal and visceral pleura and penetrating to the left lung over lower lobe making wound of size 2x0.4 cm x0.8 cm and ending there.”

In his opinion the cause of death was due to shock and haermorrhage as a result of injury to left lung via injury No.2 and all the injuries were ante-mortem in nature and could be caused by single sharp edged cutting and stabbing weapon. The probable time between injury and death was around six days and

between death and post-mortem it was seventeen hours and forty five minutes.

When examined under Section 313 Cr.P.C., the appellant claimed himself to be innocent and falsely implicated.

In defence, the appellant examined DW1 Ashwani Kumar, Ahlmad, who had produced summoned file "State Vs. Sanjay son of Mithu" pertaining to FIR No. 1196 dated 17.12.1998 under Section 379 IPC, Police Station City, Karnal. The said case was fixed for prosecution evidence for 5.12.2002. The appellant was in judicial custody in the said case. The appellant also examined DW2 Jaswant Rai, Additional Ahlmad, who produced the file of case FIR No. 31 dated 22.1.2001 under Section 25 of the Arms Act, Police Station City, Karnal and also the file of FIR No.630 dated 19.8.2000 under Section 25 of the Arms Act, Police Station City, Karnal titled "State Vs. Sanjay". He proved the copy of report under Section 173 Cr.P.C. Ex.DC and statement of the complainant Ex.DD. Both the cases were pending for prosecution evidence for 11.12.2002.

After hearing learned Public Prosecutor for the State, learned counsel for the appellant and going through the evidence brought on record, the trial Court believed the prosecution version and convicted and sentenced the appellant, as mentioned above.

This Court has heard learned counsel for the appellant

and learned State counsel besides scanning the evidence with their able assistance.

Not only in the statement Ex. PE made on 2.9.2001 on the basis of which FIR Ex. PE/2 was registered but also when he appeared in the witness box as PW4, complainant-Billu deposed of having witnessed the infliction of a knife blow by the appellant in the abdomen of the deceased. Fearing that the appellant might kill him, the complainant, who was cousin of the deceased, had run away. So much so that he did not even report the matter to the police. It was only on 2.9.2001 at 5.00 p.m. that he became emboldened and proceeded for reporting the matter to the police and on the way near fish market he met PW5 HC Jagdish Chander with whom he got recorded his statement Ex.PE. As mentioned above, he explained the delay in lodging of the FIR. However, he has fully supported the prosecution version. According to him, he was sitting on a rickshaw near Tonga stand, Karnal and at about 10.30 p.m. noticed the appellant and the deceased drinking together at the gate of Karnal park. It resulted into an altercation. The appellant took out a knife from the pocket of his trouser and gave blow with the same in the left flank of the deceased. On receipt of the blow, the deceased started running, who was chased by the appellant. The appellant, thereafter, ran away towards the Railway Road. The deceased fell down in front of Vaishno Dhaba of Surinder and some people of that Dhaba

took the deceased to the hospital. On the following day, the complainant learnt that his cousin had been referred to Chandigarh. He then lodged the report with the police on 2.9.2001. After 4/5 days, the deceased expired at Chandigarh.

The FIR is not to be an encyclopedia that it should contain all the facts in detail. It is enough if the substratum of the prosecution is mentioned therein. That being the law, the testimony of PW4 complainant-Billu cannot be disbelieved for not mentioning in his initial statement Ex.PE that he did not state that after the altercation, the appellant and the deceased had started running. Whenever there is an altercation, both the parties would start getting up, if already sitting and it can also be expected of them to start running if one of them would pull out a weapon in order to cause an injury. Merely because complainant-Billu happened to be a close relative of the deceased i.e. his cousin, his testimony cannot be rejected for being an interested witness. He was cross-examined at length by the learned defence counsel but despite the same, no material could be brought on record from which it could be said that he was deposing falsely or had falsely implicated the appellant.

As regards the defence plea that the appellant had been falsely implicated as he was already facing the criminal trial in various cases, suffice it to state that all those cases appeared

to be fictitious as they were still pending against the appellant. Possibility cannot be ruled out of the appellant committing the crime in those other cases as charges stood framed against him.

In view of the above, this Court has no other option but to hold that it was the appellant, who had caused injuries in the abdomen of the deceased to which he had subsequently succumbed.

However, the question is as to whether the appellant intended to commit the murder of Sohan Lal @ Soma-deceased making him liable under Section 302 IPC or causing injuries which were likely to cause the death of Sohan Lal @ Soma-deceased making him liable under Section 304 IPC. From the facts and circumstances of the case, it stands established that the appellant and the deceased were taking liquor together at about 10.30 p.m. while sitting near the gate of Karnal park. This was followed by an altercation between them. The appellant then took out a knife from the pocket of his trouser and wielded the same in inflicting a solitary injury. There was no previous enmity whatsoever between the deceased and the appellant. The occurrence was outcome of a petty altercation. Thus, there would be neither any motive nor intention or knowledge on the part of the appellant to commit the murder of Sohan Lal @ Soma. The death had resulted after about a week of the occurrence. Under these

circumstances, the appellant is not liable to be convicted and sentenced under Section 302 IPC as he did not intend to commit the murder of Sohan Lal @ Soma. Instead, he is to be held liable under Section 304 Part I IPC for having committed the offence of culpable homicide not amounting to murder as he intended to cause injuries, which were likely to cause death of Sohan Lal @ Soma.

Resultantly, the appellant is acquitted of the charge under Section 302 IPC and his sentence of life imprisonment is set-aside. Instead, he is convicted under Section 304 Part I IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.500/- and in default of payment of fine, he shall undergo further rigorous imprisonment for three months.

The appeal is partly allowed to the extent indicated above.

**(T.P.S. MANN)
JUDGE**

August 11, 2017
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**(MAHABIR SINGH SINDHU)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No