

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. S-1088-SB of 2002

Date of Decision : November 08, 2017

Manjit Singh

.....Appellant

VERSUS

State of Punjab

.....Respondent

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

Present : Mr. Veneet Sharma, Advocate
for the appellant.

Mr. Gaurav Garg Dhuriwala, Senior D.A.G., Punjab.

T.P.S. MANN, J.

The appellant was tried for committing the offence punishable under Section 304 IPC for committing culpable homicide not amounting to murder of his colleague Bhupinder Singh. Vide judgment and order dated 7.5.2002, learned Sessions Judge, Faridkot convicted him for the said offence and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year. The period already spent by him in detention during investigation and trial was ordered to be deducted from the period of substantive sentence imposed upon him.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted on 15.7.2002. Subsequently, vide order dated 20.1.2003, a Co-ordinate Bench of this Court suspended his sentence of imprisonment and ordered his release on bail.

The case of the prosecution, in nutshell, is that the appellant and Bhupinder Singh deceased were posted as Constables in Commando Battalion, Commando Post, Panj Grain Kalan. They were good friends. A month before the occurrence, Rs.3,800/- belonging to the deceased was stolen from his tin box who suspected the involvement of the appellant and the amount was duly returned. On 23.5.1998, the deceased proceeded on leave for two days. He was to return on 26.5.1998 but due to some urgent work, he did not return. It was only on 28.5.1998 that he did return. Since he apprehended that on ground of his late arrival, he may not be accused by his Incharge, he took his maternal uncle Chanan Singh with him. At about 10.00 a.m. when they reached on the turning of Deviwala road, where the Commando Battalion was stationed, they came across the appellant, who signalled the deceased to stop the scooter. After the deceased stopped the scooter, Chanan Singh went to urinate, whereas the deceased started talking with the appellant and asked him as to why he had brought disrepute to him by levelling false allegations of theft. The appellant grappled with the deceased and started giving fist blows on his neck and head who fell down on the ground. The appellant then gave kick blows in his abdomen. On raising hue and cry by the deceased, Chanan Singh came and with his intervention, the deceased was rescued from the clutches of the appellant. Then the appellant left towards village Panj Grain Kalan. Chanan Singh started the scooter to go back to his village. On the way, the deceased, who was on the pillion seat of the scooter, felt pain in his abdomen due to injuries. On

reaching Zira, they met Jagir Singh, Sarpanch and disclosed him about the occurrence, who helped them in getting the deceased admitted in Civil Hospital, Zira. However, the Medical Officer referred him to Guru Gobind Singh Medical College/Hospital, Faridkot. The deceased was shifted to Faridkot where Head Constable Nirmal Singh reached and sought opinion of the doctor regarding fitness of the deceased to make statement. After being declared fit, the deceased made statement Ex.PD wherein he mentioned about the manner in which the occurrence had taken place. However, as no cognizable offence was made out according to the medico-legal report, DDR Ex.PQ was made. On 3.6.1998, message was received from the Medical College/Hospital, Faridkot that the deceased had died. Accordingly, SI Mukhtiar Singh registered the FIR Ex. PV against the appellant under Section 304 IPC.

It may be worthwhile to mention here that Dr. K.K. Aggarwal, Assistant Professor, Forensic Science Medicine, GGS Medical College, Faridkot had medico-legally examined the deceased on 28.5.1998 at 6.00 p.m. and found the following injuries on his person :-

- "1. Reddish brown abrasion 3 cms. x 2.5 cm. on right side of face just below outer angle of right eye.
2. Reddish brown abrasion 2 cm. x .5 cm. on right side of forehead.
3. Two reddish brown abrasions 1 cm. x 1 cm. on the left side of forehead.
4. Reddish contusion 9 cms. x 1 cm. on left side of neck on its lower aspect.

5. Reddish brown abrasions 2 cms. x .5 cm. on the back of left forearm.
6. Complained of pain in the abdominal region. Generalised tenderness was present. Difficulty in respiration."

Further, on 3.6.1998, after the deceased had expired, post-mortem on his dead body was conducted at 3.45 p.m. and the following injury was noticed on the dead body :-

"On dissection of abdomen, there was a contusion on the anterior aspect of spleen in an area of 9 cms. x 5 cms. There was a haematoma in an area of 8 cms. x 6 cms in sub capsular region. Multiple clots of blood were present near the inner surface of spleen. Rest of the organs were normal."

The doctor declared all the injuries to be ante-mortem in nature and result of blunt weapon. According to him, Bhupinder Singh died as a result of haemorrhagic shock on account of injury to the spleen, which was sufficient to cause death in ordinary course of nature. The time elapsed between injury and death was about 5 to 7 days and between death and post-mortem, it was within 24 hours.

Having heard learned counsel for the parties and on going through the impugned judgment of conviction, this Court finds that PW8 Chanan Singh had given details of the occurrence in which the appellant had given kick and fist blows to the deceased. Merely because he happened to be the maternal uncle of the deceased is no ground to reject his testimony. He had no axe to grind by deposing

falsely so as to rope in the appellant. In addition to the testimony of PW8 Chanan Singh, the prosecution has brought on record the statement Ex.PD made by the deceased before his death and as it related to his cause of death, it may safely be held to be dying declaration in view of the provision of Section 32 of the Evidence Act. In the said dying declaration, Bhupinder Singh had stated in detail about the occurrence in which he had received injuries on account of giving of kick and fist blows by the appellant.

In view of the above, no case is made out for any interference in the conviction of the appellant.

As regards the question of sentence, it may be noticed that the appellant is facing the agony of criminal prosecution for the last more than 19 years. The appellant, who stood posted as a Constable with the Commando Battalion is reported to have since been dismissed from service. He was not shown to be armed with any weapon or instrument. On the other hand, he had given fist and kick blows on the sensitive parts of the body of the deceased. As per the custody certificate produced by the learned State counsel, the appellant has already undergone an actual sentence of two years, seven months and twenty six days, besides earning remission of one year, one month and two days. The total sentence undergone by him, thus, comes to three years, eight months and twenty eight days. It is also mentioned therein that apart from the present case, he was involved in two other criminal cases, one under Section 379 IPC while the other under Sections 380 and 457 IPC. However, in both those cases, he stood acquitted.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the appellant behind the bars, once again, for undergoing his remaining sentence of imprisonment. Ends of justice shall be suitably met if his substantive sentence of imprisonment is reduced to the one already undergone by him.

Resultantly, the conviction of the appellant under Section 304 IPC is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. The fine of Rs.5,000/- imposed upon him by the learned trial Court is, however, enhanced to Rs.25,000/-. The fine amount shall be deposited by him in the Court of Chief Judicial Magistrate, Faridkot within a period of three months from today, failing which he shall be required to undergo rigorous imprisonment for one year. The entire amount of fine, if deposited by him or recovered from him, shall be disbursed in favour of the legal heirs of deceased Bhupinder Singh as compensation.

The appeal is, accordingly, disposed of.

November 08, 2017
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO