

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

CRA-D-No.382-DB OF 2003 (O&M)
DATE OF DECISION : 19th APRIL, 2018

Munna alias Sanjay

.... Appellant

Versus

The State

.... Respondent

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

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Present : Mr. Hitesh Ghai, Advocate for the appellant.

Mr. Sukant Gupta, APP, U.T. Chandigarh.

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A. B. CHAUDHARI, J. (ORAL)

1. Feeling aggrieved, by judgment and order dated 17.02.2003 passed by Additional Sessions Judge, Chandigarh in Sessions Case No.30 of 31.05.2000/25.07.1998, the present appeal was filed by appellant Munna alias Sanjay, since he was convicted by the trial Court for offence punishable under Section 302 read with Section 34 IPC and was sentenced to undergo imprisonment for life and fine in the sum of ₹3000/- and in default of payment of fine he has to undergo rigorous imprisonment for a further period of six months.

Facts:

2. In brief, the story of the prosecution case was that the appellant and the co-accused, who used to live in colony No.5, Chandigarh, attacked deceased Lalu Ram son of Bhagwati Din originally resident of Village Ramgarh, District Pratapgarh, Uttar Pradesh, who used to work in show room of Subhash Arora in Sector 26, Chandigarh

and used to sleep in the verandah of the shop at the relevant time. On 13.03.1998 at about 12 to 12.30 pm on the day of Holi festival the appellant Munna alias Sanjay, Naresh Kumar (now dead) and Vijay Kumar (juvenile) attacked the deceased Lalu Ram and inflicted grievous injuries on his chest, shoulder etc. with a sword and as a result he died on the spot. The deceased was seen shouting in loud voice and was running, who was being followed by all the three accused. Naresh Kumar obstructed his way and was caught by Vijay Kumar and thereafter appellant Munna @ Sanjay inflicted number of injuries by means of sword on chest, shoulder etc. The sword pierced through his ribs and due to these injuries he died on the spot. The occurrence took place in the presence of eye witnesses Ram Udhit and Ram Kumar. Ram Udhit was washing his clothes in the street while Ram Kumar was returning from the house of his friend. Thereafter, the FIR was registered and the police conducted inquest/*punchnama* and the dead body was sent for post-mortem. Earth containing blood was taken in possession so also the Shirt, Banian, underwear and Jeans Pant were taken in possession and were sent to CFSL, Chandigarh along with sword, which was discovered at the behest of appellant Munna @ Sanjay. All the three accused persons, including Munna had confessed their guilt before Gulab Singh, Lamberdar of the village Burail, who produced them before the police. Finally chargesheet was filed in the Court after completion of investigation and the accused were sent on trial. Vijay Kumar was tried by Juvenile Court. Appellant-Naresh Kumar died during the pendency of

the present appeal. The trial Court convicted the appellant Munna @ Sanjay as stated above. Hence this appeal.

Arguments:

3. In support of the appeal filed by appellant-Munna @ Sanjay the learned counsel for the appellant vehemently argued that though the trial Court has recorded the conviction on the testimony of PW-13 Ram Udhit and the evidence of PW-14 Gulab Singh, it had ignored the material contradictions and omissions in their evidence rendering their evidence untrustworthy. The trial Court committed a serious error in believing their evidence by ignoring the inconsistencies and the improvements in the prosecution case. He submitted that PW-12 Ram Kumar turned hostile and did not support the prosecution case and therefore, what remained on the record was the solitary testimony of PW-13 Ram Udhit. The testimony of Ram Udhit was liable to be rejected as he himself stated that on the day of incident i.e. 13.03.1998 itself, he had disclosed the incident to the concerned inspector but his statement was not recorded by him and that his statement was recorded thereafter on 16.03.1998, as against the evidence, the concerned police inspector PW-15 Nanha Ram claimed to have recorded the statement on the same day i.e. 13.03.1998. He, therefore, submitted that there is major inconsistency in the evidence of these two witnesses. It was risky for the trial Court to accept the single testimony of the witness PW-13 Ram Udhit. The learned counsel for the appellant-Munna @ Sanjay then submitted that no independent witness was examined on the alleged discovery/recovery of the sword and as such the said discovery/recovery

was liable to be rejected and could not be utilized against the appellant as evidence. The counsel for the appellant then submitted that the prosecution has not proved any motive in the present case and the benefit of doubt ought to be extended to the appellant.

4. *Per contra*, learned counsel for the respondent-State supported the impugned judgment and order of conviction and submitted that the trial Court did not make any mistake in convicting the appellant for the offence of murder. The trial Court has convicted appellant Munna @ Sanjay, who was the main accused inflicted sword blows after blows and not only that the deceased was running forward and the appellant and other accused persons were following him with a concrete intention to commit his murder. The learned counsel for the respondent-State invited our attention to the discussion made by the trial Court in respect of motive and the CFSL report showing that there was human blood of blood group B on the sword recovered at the instance of appellant Munna @ Sanjay, which tallied with the blood group of the blood that was collected from where the dead body was lying. The learned State counsel submitted that the evidence of eye witness PW-13 Ram Udhit is trustworthy so also that of PW-14 Gulab Singh. He prayed for dismissal of the appeal.

Consideration:

5. We have heard learned counsel for the rival parties at length. We have perused the evidence of witnesses, including the eye witnesses. We have also seen the reasons given by the trial Court for recording the order of conviction.

6. It is true, as contended by learned counsel for the appellant, that first eye witness PW-12 Ram Kumar appeared before the trial Court and deposed in the examination-in-chief supporting the prosecution case. We however, find that his cross-examination was deferred and thereafter he never appeared before the Court to face the cross-examination. There is a detailed order made by the trial Court for closing his evidence, which we have seen and we are satisfied that the trial Court could not be blamed as the prosecution did not produce PW-12 Ram Kumar though an number of opportunities were given. We, therefore, find that the evidence of PW-12 Ram Kumar cannot be considered as evidence as he did not face the cross-examination. The trial Court has, therefore, held that evidence of PW-12 Ram Kumar can not be read in evidence and we also do the same.

7. The next question is regarding testimony of PW-13 Ram Udhit. We have carefully perused his evidence in entirety. At the outset we find that Ram Udhit son of Ram Dev Yadav, is a natural witness. He was washing his coloured clothes near the house of his brother near the street. He saw the deceased running and shouting to save his life and he was being followed by three other boys. Munna Lal-appellant inflicted blows by means of sword thrice on the front side of the body of the deceased i.e. on the chest and shoulder. He was cross-examined at length. We find from his cross-examination that his evidence has not at all been shaken on material particulars. On the contrary, his cross-examination shows that he was cross-examined on the points which were of no relevance. In cross-examination he claimed that he knew Munna

personally. Thus there was no doubt about identification also. The contradictions and omissions pointed out by learned counsel for the appellant are of too minor nature and we do not think that his evidence could be discarded for such omissions. The counsel for appellant submitted that he did not try to save the deceased if he was really an eye witness. It does not appeal to us. He explained that he did not try to save because the accused were armed with *lathis*, sword and also threatened him. Thus reading of the entire evidence of the witness inspires full confidence. Not only that the FIR was recorded immediately after the incident i.e. within an hour and his statement under Section 161 Cr.P.C. was also recorded on the same day i.e. 13.03.1998. There was therefore, no scope for him to improve his testimony in any manner. In order to find out the correctness of the submission made by learned counsel for the appellant about the date of recording of his statement, we have perused the statement of this witness and we find that the date '13.03.1998' has been mentioned below the signatures of the officer who recorded the statement. It is true that he has stated in the cross-examination that his statement was not recorded on the same day but was recorded on 16.03.1998, which is contrary to the record, as stated above by us. But then he deposed after 4 years, and so there was likelihood of him giving a wrong date about the recording of his statement. We do not find that this could be said to be major omission. Apart from that it is clear from the cross-examination that his statement was recorded on 13.03.2018. We have, therefore, no doubt about the disclosure made by him to the police on the date of murder. It is nobody's case that PW-13

Ram Udhit was interested witness either for accused or for complainant. On the contrary, it was found that he was the natural witness who was washing his coloured clothes near the house of his brother near the street and he saw the deceased running and accused persons following him and appellant-Munna @ Sanjay giving sword blows. There is, therefore, no hesitation in holding that PW-13 is a truthful and trustworthy witness. We accept the evidence of PW-13 Ram Udhit.

8. The next witness is PW-14 Gulab Singh. We have perused his evidence carefully. His evidence is regarding extra-judicial-confession made by the accused persons to him and who took them to the police station and produced before the police officers. The concerned police officer also corroborate this part of evidence that accused was produced before him by PW-14 Gulab Singh. The extra-judicial-confession is a weak piece of evidence but then we find from the evidence of PW-14 Gulab Singh that the same is reliable as accused persons have themselves made his use to surrender to the police since they were on the run. They were arrested on 17.03.1998 i.e. four days after the murder was committed and their names were disclosed by PW-13 Ram Udhit. There is nothing in cross-examination of this witness to disbelieve him. We, therefore, find that evidence of PW-14 Gulab Singh fully corroborates the evidence of PW-13 Ram Udhit and we would, therefore, believe his evidence.

9. The next important piece of the evidence against the appellant-Munna @ Sanjay is the discovery/recovery of the sword made by him. There is no reason why the discovery/recovery made by him

should be rejected. There is evidence of the police officer PW-15-Nanha Ram, who has deposed that the discovery of the sword was made at the behest of the appellant-Munna @ Sanjay and there is no reason for us to disbelieve his testimony. Apart from that FSL report shows that the sword was stained with human blood with the blood group 'B' which was the same blood group found on the earth containing blood that was seized by the police officer immediately on the same day from the spot where the dead body of deceased was lying. It is in this background we find that the evidence regarding the culpability of the appellant-Munna @ Sanjay is voluminous.

10. In the result, we find that no merit in the present appeal. Hence we make the following order.

ORDER

- (i) CRA-D-No.382-DB OF 2003 is dismissed.
- (ii) Appellant-Munna @ Sanjay is directed to surrender before the concerned jail, within a period of two weeks, for serving the remaining sentence awarded to him. Failing which the concerned police station officer shall take him in custody.
- (iii) The fine amount imposed by the trial Court, which was stayed by this Court vide order dated 01.05.2003, be deposited by the appellant within a period of eight weeks from.

19th April, 2018
'raj'

(A. B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>