

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

CRA-D No. 1167-DB of 2012 (O&M)

Reserved on : 18.12.2018

Date of decision : 21.12.2018

Sukhdev Raj alias Sukhdev Lal

.... Appellant

versus

State of Punjab

... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice B. S. Walia**

Present Ms. Isha Goyal, Advocate, for the appellant.
Mr. Rajesh Bhardwaj, Sr. Deputy Advocate General, Punjab.

Rajiv Sharma, J.

1. The present appeal is instituted against the judgment and order dated 12.11.2012, rendered by Sessions Judge, Amritsar, in Sessions case No. 93 of 2011 (Sessions Trial No. 183 of 2011), vide which appellant Sukhdev Raj alias Sukhdev Lal was charged with and tried for the offence punishable under Section 302 IPC. He was convicted and sentenced under Section 302 IPC to undergo life imprisonment and to pay fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.

2. The case of the prosecution in a nutshell is that on 2.1.2006, SI Dilbagh Singh along with other police officials was present at T Point Chawinda Devi Road, Kathu Nangal, in connection with patrolling. Amrik Singh son of Bachan Singh (complainant) came across him and got his statement (Ex.PG) recorded. According to the averments contained in the statement, on 1.1.2006, he along with his children was present in the house.

At about 10.00 P.M., an alarm was heard from the house of Avtar Singh, upon which Joginder Singh went to the house of Avtar Singh. Amrik Singh complainant followed him. Accused Sukhdev Raj alias Kaka, Kashmiri Lal and Sukhbir Lal alias Tanny were hurling abuses on Avtar Singh. Light was on. Joginder Singh asked the accused as to why they were hurling abuses on Avtar Singh. Sukhdev Raj and Sukhbir Lal raised a *lalkara* as to who he was to stop them from abusing and that he be taught a lesson. At that time Sukhdev Raj @ Sukhdev Lal and Kashmiri Lal were armed with cricket bats and Sukhbir Lal alias Tanny was armed with a wicket. Accused Sukhbir Lal alias Tanny gave 2-3 blows of wicket on the head of Joginder Singh. Thereafter, Sukhdev Lal alias Kaka and Kashmiri Lal gave bat blows on the arms, head and legs of Joginder Singh. They raised alarm. On this, the accused fled away from the spot along with their respective weapons. They could not take the injured to the hospital due to poverty. In the morning, while removing to the hospital, the injured succumbed to the injuries. FIR was registered. The dead-body of Joginder Singh was identified by Amrik Singh. It was sent for post-mortem examination. The Investigating Officer conducted raids at the house of the appellant, but he could not be arrested. The appellant was declared proclaimed offender. On 14.6.2011, Inspector Rajbir Singh, while heading a police party was present at Bus-stand Kathu Nangal where he received a secret information that accused Sukhdev Raj @ Kaka was coming from the side of Baba Budha Sahib Gurdwara, towards Kathu Nangal. He apprehended him. Intimation of his arrest was given to his brother Sukhbir Lal. On 16.6.2011 accused was interrogated. He made disclosure statement, Ex.PM, that he had got the cricket bat concealed below the wooden bed in the haveli of Shri Sawinder Singh. Cricket bat was

recovered. Investigation was completed and challan was put up after completion of all the codal formalities.

3. The prosecution examined a number of witnesses in support of the case. The statement of the accused was also recorded under Section 313 Cr.P.C. He denied the case of the prosecution. He was convicted and sentenced, as noticed above. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellant vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubts and supported the judgment and order of the learned Court below.

5. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

6. PW1 Dr. Puneet Khurna has conducted the post-mortem examination on the body of Joginder Singh (deceased). He noticed the following injuries on his body:-

- “1. A lacerated wound 6.9 x 0.7 cm present on left parietal region of head 11.2 cm from left hair pinna obliquely placed clotted blood present. Margins were inflamed.
2. On dissection: on reflecting scalp subgaleal haematoma was present over right and left parietal regions, right temporal region of head. A linear fracture of left parietal bone extending to the right parietal bone and right temporal bone was present. Infiltration of blood was present. Clotted blood was present. On opening cranial cavity membranes were found tense, subdural haematoma was present over both cerebral hemispheres. About 80

cmm of fluid and clotted blood was present at the base of skull.

3. A reddish brown abrasion 0.6 x 0.4 cm present on the back of left hand 6.2 cm from left wrist joint.
4. A reddish brown abrasion 1.1 x 0.6 cm present on the front of left leg 4.2 cm below left tibial tuberosity.

The cause of death was compression of brain as a result of Subdural haematoma due to injury no.1. It was sufficient to cause death in ordinary course of nature. He opined that probable time that elapsed between injury and death was within 12 hours and between death and post-mortem was less than 12 hours.

7. PW3 HC Rajinder Kumar has tendered his evidence by filing affidavit, Ex.PE. He deposed that he handed over the wearing clothes of the deceased to SI/SHO Dilbagh Singh.

8. PW4 ASI Dilbagh Singh has tendered his evidence by filing affidavit, Ex.PF. He was deputed to get the post-mortem examination conducted.

9. PW5 Amrik Singh testified that he was a truck driver. On 1.1.2006, he along with his brother Joginder Singh was present in his house. At about 10.00 P.M. an alarm was heard from the house of Avtar Singh. Joginder Singh went to the spot. He followed Joginder Singh. He found that Sukhdev Raj alias Kaka, Tanny alias Sukhbir Lal and Kashmiri Lal were abusing Avtar Singh. Light was available. Joginder Singh intervened. On this, accused Sukhdev Lal @ Sukhdev Raj raised a *lalkara* as to who he was to stop them from abusing and extorted other accused to teach him a lesson. Sukhdev Lal alias Sukhdev Raj and Kashmiri Lal were armed with cricket bat and Tanny was armed with wicket. Tanny gave 2-3 wicket blows on the

head of Joginder. Accused Sukhdev Lal and Kashmiri Lal gave blows with cricket bats on his arms, head and legs. He and Avtar Singh raised alarm. Joginder Singh died on the way at about 8.30 A.M.

10. Statement of PW5 Amrik Singh was duly corroborated by PW6 Avtar Singh. Avtar Singh has also deposed that on 1.1.2006 at about 10.00 P.M. when Joginder Singh asked the accused why they were hurling abuses on Avtar Singh, Sukhdev Lal alias Sukhdev Raj raised lalkara exhorting other accused to teach him a lesson. Thereafter, Joginder Singh was given beatings by three of them. Joginder Singh received injuries. He died while taking to the hospital.

11. PW9 SI Subhash Chander deposed that on 16.6.2011, accused Sukhdev Raj alias Kaka was interrogated. He made a disclosure statement on the basis of which cricket bat was recovered from the wooden bed from the haveli of Shri Sawinder Singh.

12. What emerges from the discussion of the evidence hereinabove is that the appellant along with his co-accused had gone to the house of Avtar Singh. They were hurling abuses on Avtar Singh. Joginder Singh accompanied by his brother Amrik Singh reached the spot. Joginder Singh asked the accused not to hurl abuses to Avtar Singh. Thereafter, he was administered beatings. The incident had taken place at 10.00 P.M. He could not be removed to the hospital due to poverty. He died on the way to the hospital. The cause of death was compression of brain as a result of Subdural haematoma due to injury no.1 as per the statement of PW1 Dr. Puneet Khurna. PW5 Amrik Singh and PW6 Avtar Singh have testified that the accused were hurling abuses. Joginder Singh went to the spot with PW5 Amrik Singh. He asked the accused as to why they were abusing on Avtar

Singh. Thereafter accused gave beating to him. He was given blows with bat and wicket.

13. It was not premeditated act. Joginder Singh was preventing the accused from hurling abuses on Avtar Singh. The atmosphere was surcharged on the spot. It was an act of a sudden provocation. The deceased was trying to intervene in the matter and there was no intention of the accused to kill him. Thus, this case would not fall within the ambit of Section 302 IPC but would be covered under Section 304, Part-I IPC. The accused have inflicted injuries to the deceased on his vital organs and one of the injuries i.e. injury no.1, proved fatal.

14. Accordingly, the appeal is partly allowed and the conviction and sentence of the appellant under Section 302 IPC is converted to Section 304 Part-I IPC. The State is directed to produce the accused in Court on 14.1.2019 to be heard on quantum of sentence under Section 304 Part-I IPC.

(Rajiv Sharma)
Judge

21.12.2018
vs

(B. S. Walia)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No