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

CRA-D-210-DB of 2003

Date of decision: March 12, 2018

Heera Lal

.....Appellant

Versus

State of Haryana

....Respondent

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

Present: Mr. B.S. Saroha, Advocate for
Mr. Gorakh Nath, Advocate for the appellant.

Mr. Vivek Saini, DAG Haryana.

A.B. CHAUDHARI, J

Being aggrieved by the judgment and order dated 20.02.2003 passed by the learned Additional Sessions Judge (Adhoc), Faridabad, in Sessions Case No.162 of 06.01.2003, by which the learned trial Judge held the appellant guilty for commission of offence under Section 302 of Indian Penal Code, 1860 (for short 'IPC') and sentenced him to undergo Rigorous Imprisonment for life and to fine in the sum of ₹20,000/-; in default of payment of fine, to further undergo Rigorous Imprisonment for one year, the present appeal was filed by the appellant.

FACTS

Briefly, stated the case of the prosecution was that Moti Lal, complainant made a report that he used to sell vegetables as a hawker and resided in *jhuggi* with his brother-Vijay Mal Gupta and others. One room was under their occupation and the other room was given on rent in which

Buttan from Bihar was residing. Heera Lal, brother of wife of Buttan and Uma Shankar were staying with him for 5/7 days during the month of February 2000. In the evening of 28.02.2000 at about 9:15 PM, the complainant-Moti Lal, Dalip Gupta and Vijay Mal Gupta were present in their *jhuggis*. At that time, Urmila wife of Buttan was raising shouts and as such the complainant-Moti Lal and his brother Vijay Mal Gupta came out of their room and saw that Buttan, Heera Lal and Uma Shankar were quarrelling among themselves outside their room. Complainant and his brother Vijay Mal Gupta asked them not to quarrel in front of their room, but Vijay Mal Gupta was taken into their grip by Buttan and Uma Shankar and Heera Lal who was holding a knife gave a blow on the right thigh of Vijay Mal Gupta. He fell down on receiving the injury and all of the three accused ran away. Vijay Mal Gupta was taken to Sunflag Hospital, Faridabad, where, he died as a result of said injury.

After recording of the *ruqa* Exhibit PC, Suraj Bhan, ASI went to the Police Station and registered the FIR. Thereafter, inquest proceedings were conducted and two incised wound were found on the dead body and the cause of death was opined to be shock and hemorrhage. Statements of the witnesses were recorded. Place of occurrence was inspected and the blood stained earth was taken and sealed. Appellant-Heera Lal was arrested on 02.03.2000 and his disclosure statement lead to the recovery of knife Exhibit P1. Accused Buttan and Uma Shankar were declared proclaimed offenders. The trial Court framed the charge as aforesaid. The prosecution examined as many as 11 witnesses while defence examined two witnesses, namely DW1-Banwari Lal and DW2-Rajan. Finally, after hearing the evidence, the learned

trial Judge convicted the appellant as stated above. Hence, this appeal.

ARGUMENTS

In support of the appeal, learned counsel for the appellant assailing the impugned judgment and order, submitted that the trial Court made an error in convicting the appellant when there was no truthful evidence before it. Learned counsel contended that the prosecution has failed to prove its case beyond reasonable doubt and hence, should have acquitted the appellant. He submitted that there was delay in lodging the FIR since the occurrence had taken place in the evening on 28.02.2000 while *ruqa* was recorded on the next morning. Thereby, the prosecution case became doubtful and the colored version was, in fact, given by the complainant. At any rate, PW3-Moti Lal Gupta was the interested witness being real brother of the deceased and therefore, his testimony should not have been accepted by the trial Court. Similarly, the testimony of PW4-Smt. Greesha Devi also could not be accepted for the same reason. No neighbourer was examined by the prosecution in order to believe the prosecution case as truthful. The non-examination of neighbouring witnesses would lead to the conclusion that the prosecution withheld the truth from the Court. There was no corroborative medical evidence also. Finally, learned counsel for the appellant prayed for acquittal. In the alternative, learned counsel for the appellant submitted that the appellant cannot be held guilty of offence of murder as has been held by the trial Court.

Per contra, learned State counsel opposed the appeal and supported the impugned judgment and order and the reasons recorded therein by the learned trial Judge while convicting the appellant guilty of

commission of offence under Section 302 IPC. He submitted that the ocular testimony of the witnesses has rightly been believed by the trial Court as their evidence was not at all shaken in the cross-examination. He then submitted that the appellant inflicted injury on the vital part of the body cutting the major blood vessel of the thigh and as such, the appellant was guilty of offence of murder. Hence, the judgment of the trial Court needs to be confirmed. He prayed for dismissal of the appeal.

CONSIDERATION

We have seen the entire evidence and heard the submissions made by the learned counsel for the rival parties. We have also gone through the reasons recorded by the learned trial Court. At the outset, we find that there was ocular evidence in this case regarding accused Buttan and Uma Shankar that they were holding the deceased and that appellant-Heera Lal gave a knife blow on the thigh of Vijay Mal Gupta. Both these witnesses Moti Lal and his wife indeed are close relatives of the deceased. But then the law is trite that the testimony of interested witnesses can be believed even if they are close relative but their evidence is required to be examined carefully. In the present case, we find from the evidence of PW3 and PW4 that their evidence is in consistent and is not shaken in any manner whatsoever. There are no material contradictions which would render their evidence untrustworthy. Not only that, evidence of these two witnesses is trustworthy, but the same is fully supported by the medical evidence. The trial Court has recorded the reasons regarding the medical evidence, in Para 27 of impugned judgment, which we quote hereunder:-

“27. It has been argued that there is contradiction in the

ocular account and the medical evidence in so far as only one knife blow was given by accused Heera Lal to the deceased while he was taken into grip by the other two accused (Proclaimed offenders Buttan and Uma Shankar) and the post-mortem report Ex.PD and the statement of PW 8 Dr. D.S. Rathi, show that there was two injuries. It is worth noting that the second injury was on the right side of testes and both the injuries could result from one knife blow. The said doctor was never asked whether the two injuries were result of two separate blows or one blow. How so ever the grievous the injury may be there always remains a possibility of survival by timely and specialised medical aid. If PW 8 Dr. D.S. Rathi had stated that there was possibility of survival if there was timely medical aid it is merely a reiteration of the aforesaid. If the victim died it does not mean that accused are entitled to any benefit. It is well known that blood vessels running through the thigh if cut, would lead to serious loss of blood leading to syncope. Haemorrhage and shock were suffered by the victim and the injury was such and given by a deadly weapon like a knife that the act of causing the death squarely falls within the definition of murder U/s 300 IPC and punishable U/s 302 IPC.”

Eye witnesses have also stated that there was sufficient light as the electric bulb was on when the incident had taken place and at any rate, the witnesses and the accused persons were knowing each other and therefore, the objection regarding identification must be rejected. In so far as the alleged delay in lodging the FIR is concerned, it has to be noticed that the deceased was taken to the Hospital and PW3-Moti Lal's first concern was to provide medical aid to his brother who was seriously injured. In our opinion, he made no mistake in attending his brother for medical assistance rather than first lodging the report with the police station. At any rate, the

delay in lodging the FIR cannot be said to be inordinate as the report was lodged on the next morning. The submission about the delay in lodging the FIR is rejected. At any rate, the evidence of PW3 and PW4 has rightly been believed by the trial Court and that has been corroborated by the medical evidence.

In the light of the above discussion, we hold that it was the appellant-Heera Lal who had assaulted the deceased giving blow with a knife on his thigh.

The next question is what offence was committed by the appellant? We find that the prosecution allegation against the appellant is that he had given a single blow on the thigh of the deceased and thereafter, all of the accused persons ran away from the spot. Injury on the thigh cannot be said to be injury on such a vital part which will result in death. Therefore, the appellant-Heera Lal very well knew that the injury caused by him to the deceased on his thigh would not result into death of Vijay Mal Gupta. The requisite intention to commit murder as such cannot be inferred. However, there was requisite intention to injure the deceased and that is why the appellant cannot be held guilty of offence of murder, but he will have to be held guilty of offence of culpable homicide not amounting to murder. It is in this context, it will have to be seen that PW8-Dr. D.S. Rathi also stated that there was possibility of survival of the deceased with the timely medical aid. We, therefore, find that the conviction of the appellant will have to be altered to the one under Section 304 Part-I of IPC and the sentence also will have to be awarded accordingly. We think, the appellant should be awarded the sentence of 7 years looking to the nature of offence that has been

committed. In the result, we make the following order:-

ORDER

- (i) CRA-D-210-DB of 2003 is partly allowed;
- (ii) The impugned judgment and order dated 20.02.2003 passed by the learned Additional Sessions Judge (Adhoc), Faridabad, in Sessions Case No.162 of 06.01.2003, is set aside and is modified and the appellant-Heera Lal is convicted for commission of offence under Section 304 Part-I IPC and is awarded sentence to undergo Rigorous Imprisonment for 7 years with fine in the sum of ₹20,000/- and in default of payment of fine, he would undergo further imprisonment for 3 months;
- (iii) The period undergone by the appellant shall be given set off.

(A.B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

March 12, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No