

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No.D-376-DB of 2018 (O&M)
Date of Decision : 23.05.2018.

Vasudev

...Appellant

Versus

UT Chandigarh

...Respondent

CORAM : HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Gurbir Singh Sandhu, Advocate for the appellant.

Mr. Rajeev Anand, Advocate for UT Chandigarh.

B.S.WALIA, J.,

1. Appeal has been filed against judgment dated 14.12.2011, passed in case FIR No.121 dated 15.03.2011, U/S's 307, 302, Indian Penal Code, Police Station Sector-34, Chandigarh, convicting the appellant and sentencing him to undergo imprisonment for life and to pay fine of ₹10,000/- and in default of payment of fine to undergo further imprisonment for a period of six months.

2. Brief facts of the case as per prosecution story are that the appellant-convict inflicted iron rod blows on the head of Mahesh Kumar since deceased, (hereinafter referred to as the victim) on 15.03.2011 whereupon he was taken to the Government Medical College and Hospital, Sector-32, Chandigarh (hereinafter referred to as the 'GMCH') by his wife Reshma and brother-in-law Surinder Kumar (PW1) where he was declared

unfit to make a statement, whereupon Surinder Kumar (PW1) met ASI Sohan Singh and got his statement recorded

3. On receipt of ruqa, formal FIR u/s 307 Indian Penal Code was registered against the accused. However, on account of death of the victim on 16.03.2011 at the GMCH, offence u/s 302 Indian Penal Code was added and accused Vasudev was arrested on 17.03.2011. On finding a prima facie case, charge u/s 302 Indian Penal Code was framed against the accused, vide order dated 02.07.2011, to which, the accused pleaded not guilty and claimed trial.

4. PW-1 (Surinder Kumar/complainant) deposed on oath that he along with his family were residing in Jhuggi No.723, K-Block, Colony No.5, Chandigarh, his sister was married to the victim and they had two children i.e. one boy and girl, that they were residing in Jhuggi No.712/4, K-Block, Colony, No.5, Chandigarh where the victim was running a grocery shop and that he used to lend a helping hand to the victim at his shop in the morning as well as evening and on 15.03.2011, at about 07:30 a.m., he was at the shop of the victim who was taking a bath at a common tap situated in front of his house as also of other inhabitants. In the meantime he saw accused Vasudev who was residing adjacent to the house of the victim come out from his house along with an iron rod while exhorting that today he would kill the victim where after he started inflicting iron rod blows on the head of the victim and thereafter fled from the spot. He further deposed that the victim received serious head injuries whereupon he along with his sister took the victim to the GMCH for treatment where the victim succumbed to his injuries on the night intervening 15/16.03.2011. He also joined inquest proceedings and made statement Ex.P2.

5. PW-2 (Vinod Kumar) eye-witness to the occurrence deposed on oath that the victim was residing in the house adjoining his house and that on 15.03.2011 at about 07:30 a.m., while he was taking breakfast in his room, the victim came to the common tap situated in front of the his house for taking bath accompanied by his son and at that time he was present outside his room and the victim was taking bath while his son was pumping the hand pump where after he went inside his room. After some time, he heard the cries of the child of the victim and presumed that the victim might have given beating to his child. However, on coming out of the room he saw accused Vasudev running away along with an iron rod though he did not see him inflicting injuries on the head of the victim. On the request of the Public Prosecutor, PW2 was declared hostile.

6. PW-3 (HC Yash Pal) prepared scaled site plan Ex.P4 while PW-4 (Dr. Shikha Sood) testified on oath that on 15.03.2011, at about 08:05 A.M., she medically examined the victim who was brought by his wife with alleged history of assault by known persons on 15.03.2011 at around 07:30 a.m and that on examination, she found the following injuries on the victim :

- i) Patient was unconscious.
- ii) History of nasal bleeding was present.
- iii) Lacerated wound on occipital region measuring 6cmx0.5cm
- iv) There was no history of vomiting.

She further deposed that probable duration of injury was fresh, kind of weapon used, was blunt. She also proved carbon copy of MLR Ex. P-5 and stated that the same had been prepared by her and contained her signatures.

7. PW-6 (ASI Sohan Singh) deposed that complainant-Surinder Kumar met him at GMCH and got his statement (Ex.P1) recorded, on which endorsement Ex.P6 was made where after he sent Constable Mandeep Kumar to the police station for registration of FIR, upon which, vide endorsement Ex.P-7, FIR Ex.P-8 was registered, which bore signature of SI Pardeep Kumar and rough site plan of the place of occurrence was prepared at the instance of the complainant. Supplementary statement of the complainant was also recorded.

8. PW-7 (Dr. Himanshu) testified on oath that he along with Dr. Ajay Kumar conducted post mortem on the dead body of Mahesh Kumar on 16.03.2011 and as per examination on external appearance dried blood clot was present in bilateral nostrils as also bleeding from left ear besides both eyes were black. The following external injuries were noted :

- i) Stitched lacerated V-shape wound measuring 11 cm, long arm 8 cm, short arm 3 cm, tissue breezes across the floor seen in wound in left temporo parietal region 5 cm from tip of left ear.
- ii) stapled lacerated wound measuring 6 cm in length in left occipital low 6 cm to the left of mid line present.
- iii) Blush red bruise measuring 2x.5cm present over right forehead 2 cm above inner aspect of right eyebrow.
- iv). Bluish red bruise measuring 1x.5cm present over left forehead 2 cm above inner aspect of left eyebrow.
- v). Reddish abrasion measuring 2.5cmx2.7cm over right cheek present.
- vi) Bluish bruise measuring 0.5x0.5cm over right lower lip 0.5 cm to the right of mid line.

vii) Reddish abrasion 1.3x1 cm over bridge of nose present.

Scalp, Skull and Vertebrae- Haematoma 20x18 cm covering left temporo parieto occipital lobe. Fracture of left temporal bone, left occipital bone and base of left middle cranial fossa present.

Meninges and Brain- EDH over left occipital lobe present. SDH over left temporal lobe present. SAH and contusion of left temporo arietal occipital lobe and right fronto temporo parieto lobe and cerebellum present.

He further stated that cause of death was due to head injury as a result of blunt force impact by use of blunt weapon. Probable time between death and post mortem examination was given as about 1/3rd of day and between injury and death as per record. Blood sample on a gauze piece and packet containing one underwear in a sealed parcel with the seal of GMCH FM CHD along with the sample seal were handed over to SI Chiranji Lal. He proved on record carbon copy of post mortem report as Ex.P-10 and inquest papers as Ex.P-11.

9. PW-9 (Constable. Puran Chand) stated on oath that accused Vasudev was arrested from his Jhuggi No.712/3, K-Block Colony No.5, Chandigarh and his personal search was carried out vide memo Ex.P-14. Upon interrogation, accused Vasudev suffered disclosure statement Ex.P-15 that on 15.03.2011 in the morning he had inflicted iron rod blow on the head of the victim while he was taking bath and thereafter he had concealed the said iron rod near the bushes of Government Tubewell, Sector 50-B, Chandigarh and that he had exclusive knowledge of the same and could get the same recovered. Pursuant to the disclosure statement, the accused led the police party, headed by SI Chiranji Lal to the disclosed place and took out iron rod stained with blood and produced the same before the police party.

The police party after preparing its sketch and by using a bandage preserved the blood stains on the iron rod and after converting the same into sealed parcel with seal of 'CL' at three places vide memo Ex.P-16 took the same into police possession. PW-9 further deposed that on 22.03.2011, MMHC Paramjit Singh vide RC No.18/11 handed over to him three sealed parcels out of which two were sealed with the words 'GMCH FM CHD' while the third parcel was sealed with the seal 'CL' for depositing the same with CFSL-36, Chandigarh. Accordingly, he deposited the said samples in intact condition with CFSL-36, Chandigarh. He further deposed that during the period the sealed parcels and sample remained with him, neither he nor anybody else was allowed to tamper with the same.

10. PW-10 (ASI Chiranji Lal/Investigating Officer) deposed that after conducting the post mortem examination on the dead body of the victim, Dr. Himanshu handed over two sealed parcels, one containing underwear and the other containing blood sample of deceased which were bearing the seal 'GMCH-FM' along with sample seal to the police which were taken into police possession vide memo Ex.P-13. He further deposed that on the basis of secret information, accused Vasudev was arrested on 17.03.2011 from his Jhuggi No.712/3, K-Block, Colony No.5, Chandigarh and was personally searched vide memo Ex.P-14. On 18.03.2011, during investigation, accused Vasudev suffered disclosure statement Ex.P-15 that on 15.03.2011 at about 7:30 a.m., in the morning, he had inflicted iron rod blows on the head of the victim while he was taking bath and thereafter, he concealed the said iron rod near bushes at Government Tubewell, Sector 50-B, Chandigarh and was having exclusive knowledge of the same having concealed the same. Pursuant to the disclosure statement, the accused got

recovered the iron rod from the disclosed place and after preparing its sketch Ex.P-17 and preserving the blood stained rod with bandage, the same was taken into police possession after converting it into sealed parcel with the seal of 'CL' at three places vide memo Ex.P-16. The sealed parcels were deposited in the Malkhana along with sample seal. On 22.03.2011, the case property along with sample seal was deposited with CFSL-36, Chandigarh through C. Puran Chand. During the course of investigation, statements of witnesses were recorded and after completion of investigation, challan was presented before the Court by Inspector/SHO, Kirpal Singh.

He also identified the rod Ex.P24 which was recovered pursuant to disclosure statement of accused and was got examined from CFLS-36, Chandigarh as well as GMCH. On completion of investigation, supplementary challan was prepared by Inspector Kirpal Singh.

11. PW-11 (Dr. Sunita Verma) testified that on testing and analysis, she arrived at the conclusion that human blood group 'B' was detected on Ex.1, whereas human blood group on Ex.2 and Ex.3 was found to be inconclusive.

12. P-12 (Dr. Ajay Kumar) testified that on 16.03.2011, he being member of the Board along with Dr. Himanshu conducted the post mortem examination on the dead body of the victim and detailed report in respect thereof was Ex.P-10. He further deposed that on 09.11.2011, SI Chiranji Lal produced one iron rod before him sealed with seal of CFSL-36, Chandigarh along with request application Ex.P-22 for giving opinion regarding injuries on the person of deceased with said iron rod. The sealed pulanda was labeled with the detailed particulars of the case signed by Incharge Police Post-49, Chandigarh and bore No. 957/11 encircled and labeled BIO/12/11 and P-3

on the back of Pulanda. On opening the Pulanda an iron stained iron rod bearing BIO/12/11 Ex.P3 with seal of CFSL and signed by Sunita were found. He further deposed that after going through detailed post mortem report and conducting examination of weapon of offence i.e. iron rod of total length 51.2 cm, circumference 7.2 cm, outer diameter 2.1 cm and thickness of size 3 MM with one end having iron elbow of length 4.1 cm and maximum diameter of 3.5 cm at the end with cement and brownish red stains besides black paint stains and yellow label bearing BIO/12/11, he was of the opinion that the injuries mentioned in the post mortem could possibly be inflicted by the weapon under examination and after examination, the weapon of offence i.e. iron rod was sealed in a parcel along with the original seal pulanda cover and paper bearing 12/11 Ex.P3.

13. On the basis of aforementioned evidence, the learned trial Court convicted the appellant for the offence punishable under Section 302 and imposed punishment as per details given in paragraph No. 1.

14. Learned counsel for the appellant contended that the learned trial Court failed to take into consideration relevant evidence, instead based its finding on irrelevant evidence. PW-1 Surinder Kumar could not have been relied upon being an interested witness on account of deceased being his brother-in-law, PW2-Vinod Kumar, who was an eye-witness of the incident had made a statement that he had not seen the accused/appellant inflicting injuries on the person of the deceased and was declared hostile by the State, recovery of rod made was from a open place easily accessible to the general public and the evidence of PW-1 Surinder Kumar was contradictory in as much as he stated that he saw accused-Vasudev inflicting

iron rod injuries on his brother in law and on the other hand he deposed that the tap could not be seen from the shop.

15. Learned counsel for the UT on the other hand, reiterated the reasoning given by the learned Trial Court for convicting the accused/appellant.

16. We have heard learned counsel for the parties and with their able assistance have gone through the record.

17. Prosecution through evidence of PW-1 Surinder Kumar proved the act of the appellant-convict inflicting iron rod blows on the head of the deceased victim as also of PW-1 taking the victim to the GMCH. Statement of PW-1 was duly corroborated by PW-2 Vinod Kumar, who stated that on 15.03.2011 at about 7:30 a.m., he saw the victim along with his son taking a bath on the common tap in front of the house of the victim and other inhabitants and that the son of the victim was pumping the hand pump. Thereafter, he went inside the room to take breakfast, however, after some he heard noise of the child of the victim and presumed that the victim might have given beating to his son, he came out and saw the accused-Vasudev running away with a iron rod in his hand. PW-10 SI Chiranji Lal recorded the disclosure statement (Ex.P-15) of accused-appellant in pursuance whereof the accused got recovered iron rod stained with blood from Bushes situated near Government Tubewell, Sector 50-B, Chandigarh, whereas PW-12, Dr. Ajay Kumar stated that after going through the detailed post mortem examination and after examining the weapon of offence, he was of the opinion that the injuries mentioned in the post mortem report could possibly be inflicted by the weapon under examination. PW-7 Dr. Himansu, who conducted the post mortem examination on the dead body of the victim

stated that the cause of death in the case was head injury as a result of blunt force impact and the weapon used was blunt. PW-1 Surinder Kumar categorically stated that on 15.03.2011 at about 07:30 a.m., he was present on the shop of Victim-Deceased who was taking a bath at the common tap, whereupon accused-Vasudev came out of his house and exhorted that today he would kill the victim and started giving iron rod blows on the head of the victim and thereafter ran away from the spot. PW-1 along with his sister took the victim to GMCH, where the victim succumbed to the injuries on the night intervening 15/16.03.2011. No doubt, PW-2 Vinod Kumar was declared hostile but in his examination in chief he categorically stated that on 15.03.2011 at about 7:30 a.m., he saw the victim along with his son taking a bath on the common tap in front of the house of the victim and other inhabitants and that the son of the victim was pumping the hand pump. Thereafter, he went inside the room to take breakfast, however, after some time he heard the noise of child of the victim and presumed that the victim might have given beating to his son and when he came out he saw the accused running away while holding a iron rod in his hand. Thus, the statement of PW-1, Surinder Kumar, finds support from the statement of PW-2 Vinod Kumar. Apart from the above, the iron rod which was used in the commission of the offence was recovered from the possession of the accused-appellant pursuant to his disclosure statement. Likewise, PW-10, SI Chiranji Lal/Investigating Officer of the case deposed that disclosure statement Ex.P15 made by the appellant-accused was reduced into writing and in pursuance of which the accused led the police party to the specified place and got recovered the iron rod from the bushes situated at Government Tubewell, Sector 50-B, Chandigarh. Further, PW-12, Dr. Ajay Kumar,

Assistant Professor, Government Medical College & Hospital, Sector-32, Chandigarh stated that on 09.11.2011, SI Chiranji Lal produced one iron rod before him sealed with seal of CFSL-36, Chandigarh along with the request application Ex.P-22 for giving opinion regarding injuries on the person of deceased with said iron rod. He further deposed that after going through the detailed post mortem examination and after examining the weapon of offence, he was of the opinion that the injuries mentioned in the post mortem report could possibly be inflicted by the weapon under examination. Likewise, PW-7, Dr. Himanshu, who conducted the post mortem examination on the dead body of deceased-victim, deposed that cause of death in the case was due to head injury as a result of blunt force impact.

18. Thus, from the evidence of the prosecution, it is clear that the accused-appellant inflicted repeated iron rod blows on the head of the deceased-victim, where after he ran away from the spot while holding a iron rod in his hand, which was later on got recovered by the accused-appellant pursuant to his disclosure statement. PW-12, Dr. Ajay Kumar made it clear that injuries mentioned in the post mortem report could possibly be inflicted by the weapon under examination. Besides PW-7 Dr. Himanshu stated that cause of death in the case was due to head injury as a result of blunt force impact. As regards the plea of place of occurrence not being visible from the shop of the victim, it needs mentioning that PW-1 Surinder Kumar made it clear in his cross-examination that tap was not visible from the shop, however, the same was visible from the house and the shop was situated within the house having access to each other. The shop is having separate door, house is also having separate door but one could have access from the house as well as both the doors. He further stated that he was taking

Agarbati from the shop and going towards the room and from there the tap was visible. He further made it clear that the tap was visible from the room where he was present. Moreover, C. Yash Pal, who prepared the scaled site plan Ex.P-4, was examined as PW-5, but no such question was put to him in his cross-examination to contradict the stand taken by PW1 Surinder Kumar or that the incident could not have been witnessed from the alleged place. Likewise ASI Sohan Singh, who prepared the rough site plan Ex.P9 of the place of occurrence was examined as PW-6, but he was not put even a single question by the defence as to whether the place of occurrence was visible from the spot and the house of the victim. Accordingly, the aforementioned plea being bereft of merit is rejected. Moreover, testimony of PW1 Surinder Kumar cannot be discarded merely on the ground that he is closely related to the deceased. Apparently, PW1 has no occasion to falsely implicate the accused leaving the real culprits at large. The plea that the blood group on Exhibit P-3 i.e. stained sanitary pipe with socket at one end was found to be inclusive, no finger prints from the said iron rod were lifted by the Investigating Agency during the investigation of the case, recovery of the said rod was allegedly made from the bushes near Government Tubewell, Sector 50-B, Chandigarh, which was an area open to the general public all have no merit since PW1 Surinder Kumar categorically stated that he had seen the accused inflicting injuries on the head of the victim with an iron rod, besides PW-2 Vinod Kumar had seen the accused-appellant running away while carrying an iron rod in his hand, recovery of iron rod was made pursuant to disclosure statement suffered by accused-appellant from a tubewell where public entry is restricted. Thus, it is clear that it was the accused-appellant who had the exclusive knowledge of the iron rod which he

himself kept concealed in the bushes near the tubewell and accordingly he cannot derive benefit of the fact that finger prints from the iron rod were not lifted by the Investigating Agency at the time of its recovery.

19. In the circumstances, we find no reason to interfere with the well reasoned judgment passed by the learned trial Court convicting the appellant-accused under Section 302 of the Indian Penal Code, consequently sentencing him to undergo imprisonment for life and to pay a fine of ₹10,000/- and in default of payment of fine to further undergo imprisonment of six months. Resultantly finding no merit in the appeal, the same is dismissed.

(A.B. CHAUDHARI)
JUDGE

(B.S.WALIA)
JUDGE

23.05.2018.
rajesh.k.khurana

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No