

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

CRA-D-No.1922-DB of 2014 (O&M)
DATE OF DECISION : 30th MAY, 2018

Rajan

.... Appellant

Versus

State of Haryana

.... Respondent

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

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Present : Mr. D. M. Bhalla, Advocate for the appellant.

Mr. Vivek Saini, Deputy Advocate General, Haryana.

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A. B. CHAUDHARI, J.

1. Being aggrieved by the judgment and order dated 11.09.2014 passed in Sessions Case No.50 of 2014 (RBT) by Sessions Judge (Exclusive Court), Jhajjar, by which the appellant-Rajan son of Kailash @ Kanhiya was convicted for the offences punishable under Sections 302 and 449 IPC and sentenced to undergo rigorous imprisonment for life and fine, the present appeal was filed by him in this Court.

FACTS:

2. The case of the prosecution is that on 08.07.2013 information was received from control room Jhajjar that Sahil son of Manoj had been hospitalized in General Hospital, Bahadurgarh. On this information HC Mandeep along with Constable Naveen reached the hospital where they came to know that Sahil was referred to PGIMS,

Rohtak. They went to PGIMS, Rohtak and found that Sahil had succumbed to the injuries. Ruqua was prepared. As per MLR three injuries were noticed upon the person of Sahil. Injury No.1 has been opined to have been inflicted by sharp weapon while injury Nos.2 and 3 were opined to have been inflicted by blunt weapon. The police recorded the statement of Manoj Kumar father of the deceased. He stated in his statement that he was working in a private factory at Rohad. He has one daughter and two sons. Sahil was his eldest son aged about 16 years old and studying in 8th standard. On 07.07.2013 at about 11.30 a.m. his daughter Mansi was playing with balloon in the street in front of the house of his uncle Dilbag, Vicky son of Ravi Shankar burst her balloon to which Mansi objected and then Vicky and Ashu sons of Ravi Shankar beaten her. Mansi returned home in tears and narrated the incident to her mother Pramilla. When Pramilla went to the house of Ravi Shankar she was abused by children of Ravi Shankar namely Vicky, Ashu and Suchita. She came back. When he returned from his duty at about 5.00pm his wife told him the whole incident. He made a telephone call to Ravi Shankar and told him everything then Ravi Shankar assured him that he would counsel his children and thereafter meet him. However, Ravi Shankar did not meet him in the evening. On the next day i.e. 08.07.2013 at about 8.30am he therefore, went to the house of Ravi Shankar. Ravi Shankar's children were in the house. When he inquired from the children as to why Mansi was beaten by them, the children misbehaved with him. He gave a slap to Vicky intending to make him understand not to repeat such type of mistake in future and he came back

to his house. At 11.00 am when Manoj and his family was taking meal at their house, suddenly Ravi Shankar his brother Anand and their nephew Rajan and father of Rajan-appellant entered their house. They bolted the door of the room from inside and started beating them. Rajan tried to stab him with knife but his son Sahil came between and the knife hit forehead of Sahil on the right side. Wife and children of Manoj raised alarm. People gathered on the spot. Sahil was taken to the hospital where he expired as stated above. The police conducted investigation and after that filed the challans in the Court. The knife was recovered at the instance of appellant-Rajan. The trial Court heard the evidence and thereafter convicted the appellant as stated above.

ARGUMENTS:

3. Learned counsel for the appellant submitted that the prosecution has relied on the evidence of witnesses who were all interested witnesses and their evidence should have been rejected by the trial Court. The evidence of the alleged eye witness i.e. PW-1 Manoj Kumar/complainant, who lodged report immediately after Sahil was taken to the hospital, PW-2 Mansi and PW-3 Sunil, should have been disbelieved as all are interested witness. It is then argued that there were so many neighbours who had came to the spot since the incident took place in the morning itself and none of them was examined and the prosecution was guilty of withholding the examination of independent witnesses and therefore the appellant deserves to be acquitted.

4. *Per contra*, the learned counsel for the respondent-State of Haryana vehemently opposed the appeal and submitted that the

prosecution case itself has been proved to the hilt and there is no reason why the evidence of eye witness could be doubted in any manner. The testimony of the interested witness is required to be appreciated with caution and can always be accepted as truthful. In the present case the trial Court has acquitted Ravi Shankar, Anand and Kailash of the charges under Section 302 and 449 IPC, having found that there was insufficient evidence against them. However, insofar as the present appellant-Rajan is concerned, he had given a knife blow which landed on the forehead of the deceased Sahil which resulted into his death. The appellant was, therefore, rightly held guilty of the commission of offence of murder of Sahil.

CONSIDERATION:

5. We have heard learned counsel for the rival parties. We have perused the entire record, including the evidence produced by the prosecution.

6. Looking at the evidence of the eye witness, examined by the prosecution, we are fully satisfied that the appellant had assaulted the deceased-Sahil in his attempt to assault Manoj Kumar/complainant. The evidence of the complainant Manoj Kumar PW-1 and Mansi PW-2 is clearly believable as their evidence was not at all shattered in the cross-examination. Instead of repeating the evidence of these two witnesses, it would be appropriate for us to quote the discussion about these witnesses made by the trial Court. We quote paragraph 42 in respect of PW-1 Manoj Kumar, which reads thus:

“42. During cross-examination by the defence side, complainant PW1 Manoj Kumar had candidly emphasized that he did complain only to the family of accused Ravi Shankar that Vicky had destroyed the balloon of his daughter Mansi. The accused had forcibly entered his house at about 11.00 a.m. and they remained inside the house for 10/15 minutes. When he had lifted his son, his clothes had got smeared with blood of Sahil. They left their house for hospital at about 11.30/11.40 a.m. and reached General Hospital, Bahadurgarh at 12.00 noon. He had asked his brother and father to intimate the police. They informed the police telephonically. They left General Hospital, Bahadurgarh for PGIMS, Rohtak at 12.20 p.m. in an ambulance vehicle and reached PGIMS, Rohtak at about 1.00 p.m. The police met him at about 4.00/4.30 p.m. for the first time in PGIMS, Rohtak at the gate of Emergency Ward. The police officials talked to him for about 15/20 minutes. That police official went to see his son in the Emergency Ward accompanied by himself. His statement was recorded by the police at 6.00/6.15 p.m. in PGIMS, Rohta on 7.7.2013. His brother Sunil, son Gaurav, wife Pramilla and father Om Parkash were not present with him when his

statement was recorded. PW1 Manoj Kumar denied the suggestion that he was not present in PGIMS, Rohtak on 7.7.2013 till 7.00 p.m. The police official who had obtained his signatures was having a star on his police uniform. He volunteered on his own accord that the name of the police official was Pawan Kumar. The length of knife was equal to his palm. The injury with the knife was inflicted on the right temporal region adjacent to the eye-brow. His daughter Mansi, aged 10 years, used to study at Government School, Sankhol. The incident had taken place on Sunday. PW1 Manoj Kumar denied the suggestion that his son Sahil came out of the room immediately after the opening of gate by his daughter. Five/six boys entered into his house after unbolting the door by his daughter. On the date of occurrence, he was on night duty. PW1 Manoj Kumar denied the suggestion that a quarrel had taken place in between his son and some unknown boys in the street or that his son had sustained injury at the hands of those unknown boys. PW1 Manoj Kumar denied the suggestion that after due conspiracy, he had implicated the accused. PW1 Manoj Kumar denied the suggestion that none of the accused had caused any injury to Sahil. PW1 Manoj Kumar

denied the suggestion that story of balloon was concocted one. PW1 Manoj Kumar denied the suggestion that their relative was employed in Haryana Police or that he had lodged this case against the accused in consultation with him or that thereafter with due consultation of the Head Constable and other police officials and after due deliberations, the accused have been falsely booked in this case. PW1 Manoj Kumar denied the suggestion that the accused were not present at the spot at the time of occurrence and they had been booked in the case at the instance of some one else. PW1 Manoj Kumar denied the suggestion that he was inimical towards accused Ravi Shankar or that he had falsely implicated accused Ravi Shankar and other accused who are his relatives.”

7. Insofar as PW-2 Mansi is concerned we find that her evidence has been discussed in paragraph 43 of the impugned judgment which we quote hereunder:

“43. PW2 Mansi, when cross-examination on behalf of accused Anand, maintained that the police had interrogated her. No body tutored her to make the statement in the Court. She had deposed before the Court whatever she had seen at the spot. Her uncle Sunil and grand-father Om Parkash had

reached at the spot before her brother Sahil had been caused the knife blow. She admitted that it was correct that Sunil and Om Parkash reached at the spot when she raised the cries of “Mar Diya Mar Diya” second time. PW2 Mansi, denied the suggestion that accused Anand was not present at the spot at the time of present occurrence. PW2 Mansi, denied the suggestion that Anand did not give any fist blow to Sahil. PW2 Mansi, denied the suggestion that accused Anand had been falsely implicated in the present case by her father Manoj or that she was deposing falsely at the instance of her father. When further cross-examined on behalf of accused Ravi Shanker, Kailash and Rajan, PW2 Mansi denied the suggestion that she did not see accused Rajan and Kailash prior to the occurrence. PW2 Mansi denied the suggestion that her brother Sahil was playing in the street, he had fallen upon a sharp-edged stone, he had suffered injury and had died on account of the same. PW2 Mansi denied the suggestion that accused Rajan, Ravi Shankar and Kailash were not present at the spot. PW2 Mansi denied the suggestion that she herself was not present at the time of occurrence. When further cross-examined, PW2 Mansi categorically stated that

it was around 11.00 a.m., when the four accused entered their house. She saw Sahil being inflicted the knife blow. Her brother Sahil had got the knife blow on the right side of his forehead. After Sahil had been inflicted the knife blow, he went out of the house and fell in the street. Her brother Sahil had become unconscious. PW2 Mansi denied the suggestion that she had been cited as false witness. PW2 Mansi denied the suggestion that nothing had happened in her presence. PW2 Mansi denied the suggestion that her statement had been introduced by the police in collusion with her parents for false involvement of the accused. PW2 Mansi denied the suggestion that it was a blind murder in the street by some one. PW2 Mansi denied the suggestion that the name of the accused was given after due deliberations at the instance of some one else.”

8. Having compared the evidence of these two eye witnesses and the reasons given by the trial Court for believing them, we are inclined to agree with the trial Court for accepting the evidence of these eye witnesses which we do. We, therefore, agree with the finding of the trial Court that the appellant had inflicted knife blow towards PW-1 Manoj Kumar-complainant but Sahil came in between and suffered the knife injury on his forehead. We, therefore, maintain the finding of the

conviction of the appellant for the assault made by the appellant by means of knife.

9. The next question is that what offence is proved by the prosecution against the appellant.

10. Looking to the evidence as stated above, it is clear that complainant PW-1-Manoj Kumar had gone to the house of Ravi Shankar and had also slapped Vicky. It was at that point of time the accused side party got enraged and went to the house of PW-1/complainant for teaching them a lesson. It is also important to note that in fact appellant-Rajan wanted to inflict knife blow to PW-1-Manoj Kumar but then the said knife blow landed on the forehead of the deceased-Sahil on his right side of the head because he came in between. It is not the evidence that Rajan repeatedly made stab blows to anybody or to Sahil. In other words, the appellant did not intend to commit murder of Sahil but accidentally the knife blow landed on his forehead resulting into his death in hospital. Thus it can be safely said that the appellant had a knowledge that the knife blow given by him would result into death but we find complete absence of any evidence on his part to commit murder as such. He had given only one blow and that accidentally fell on forehead of Sahil. We are, therefore, of the view that no offence of murder is proved by the prosecution and in the nature of evidence as discussed above by us, the offence under Section 304 Part-I IPC has been proved by the prosecution. We are, therefore, convinced that the conviction under Section 302 IPC is required to be set aside and modified by holding the appellant-Rajan guilty of offence under Section 304 Part-I

IPC and we do so. As far as the sentence is concerned with think that the rigorous imprisonment for ten years, including the remission would serve the interest of justice. In the result we make the following order:

ORDER

- (i) CRA-D-No.1922-DB of 2014 is partly allowed.
- (ii) The judgment and order of conviction dated 11.09.2014 passed in Sessions Case No.50 of 2014 (RBT) by Sessions Judge (Exclusive Court), Jhajjar, convicting the appellant-Rajan for offence punishable under Section 302 IPC is set aside and modified and the appellant is convicted for offence punishable under Section 304 Part-I IPC.
- (iii) The order of sentence dated 15.09.2014, imposing rigorous imprisonment for life for offence under Section 302 IPC is also set aside and modified and the appellant is sentenced to undergo rigorous imprisonment for a period of ten (10) years including remission. However, the sentence of fine and the default clause shall remain same.

(A. B. CHAUDHARI)
JUDGE

30th MAY, 2018
'raj'

(B. S. WALIA)
JUDGE

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