

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

**Crl. Appeal No.D-89-DB of 2003
Date of Decision: January 19, 2018**

Sombir alias Sonu

...Appellant

VERSUS

State of Haryana

...Respondent

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

Present: Ms.Rivayat Hayer, Advocate
for the appellant.

Mr.Kuldeep Tiwari, Addl. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction dated 11.01.2003 and order of sentence dated 14.01.2003, passed by the learned Addl. Sessions Judge, Sonapat, whereby he was convicted and sentenced to undergo life imprisonment and to pay a fine of ₹5000/- under Section 302 IPC.

The brief facts of the case are that the FIR in the present case has been registered on the statement of Ishwar Singh, who got recorded his statement to ASI Ishwar Chander on 22.05.2001. Complainant Ishwar Singh stated that they are five brothers. The eldest brother is Satbir, then he, followed by Jagbir, Ranbir and Karambir. His brother Jagbir was driver on a truck. On that day, at about 10 O'clock, in the morning, his brother

brought the truck bearing registration No.HR-46A-8989 loaded with coal from Guwahati to Shanker Bhatta Company situated in village Jalalpur Kalan. Sombir @ Sonu, who was working as conductor with his brother, came to him. At about 11 O'clock, his brother, he (complainant), Krishan and conductor Sombir @ Sonu went to Shanker Bhatta Company by sitting in the same truck. His brother Jagbir unloaded the truck at Shanker Bhatta and took ₹20,000/- from the Bhatta owner. Then they started for their village Kheri Damkan. At about 9.00 p.m., when they reached ahead from village Butana towards Gohana near the water channel, the complainant asked his brother Jagbir to stop the truck as he wanted to get fresh. Complainant and Krishan went towards the water channel for answering the call of nature. Complainant's brother Jagbir and conductor Sombir @ Sonu remained in the truck. After some time, they heard noise of the truck which collided with trees on the left side of the road. Then they reached at the spot. The complainant found his brother in pool of blood. Jagbir (now deceased) told him that conductor Sombir @ Sonu had hit him on the head with an iron rod for the lust of money and he had fled away after taking money and injuring him. The complainant was waiting for a vehicle to take his brother to a hospital but Jagbir died on the spot. Then the complainant went to police post to report the matter. On the basis of this statement, ruqa was sent to the police station at 11.40 p.m., upon which, FIR was registered at 12.15 a.m. Special report was sent to the officers. ASI Ishwar Chander reached the spot along with police officials. The spot was inspected. Inquest proceedings were conducted. Dead body of Jagbir was sent for post mortem examination. Site plan was prepared. The statements of the

investigation, challan was presented against the accused-appellant.

On presentation of challan, copies of challan and other documents were supplied to the accused-appellant under Section 207 Cr.P.C. Finding prima facie case, the appellant was charge-sheeted under Section 302 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Ishwar, complainant, who deposed as per prosecution version. PW-2 Krishan, is formal witness. PW-3 Dalbir deposed that about 11 months back, he had gone to Medical College Hospital, Rohtak, where Sonu was lying injured. Police was interrogating him. He also joined the investigation. He further deposed that accused made disclosure statement Ex.PC that he has kept concealed the Gotti (rod), some blood stained clothes and ₹20,000/- on Gohana-Jind road and could get the same recovered. Thereafter, the accused went in jeep along with police and him to the spot and got recovered blood stained clothes in pursuance of his disclosure statement and got demarcated the place of occurrence. The recovered articles were taken into possession vide memo Ex.PE. He had seen the articles i.e. rod (Gotti) Ex.P1, pant and shirt Ex.P2 and Ex.P3, ₹20,000/- Ex.P4 and Ex.P5 (two bundles containing ₹10,000/- each). PW-4 Dr.Rani mainly deposed that patient Sonu, truck conductor by occupation, was brought by police on 24.05.2011 and she medically examined him at 11.40 a.m. and found following injuries:-

1. *Stab wound of size 3 x 2cm present over the umbilicus. Wound is deep and reaching the peritoneal cavity. Fresh bleeding present. This injury was advised for surgeon opinion.*
2. *A stab wound of size 3 x 2cm present over the right side*

- of abdomen. Probing could be done up 4-5 cm. Fresh bleeding was present advised surgeon opinion.*
3. *Incised wound of size 3 x 2 cm present over right side of abdomen fresh bleeding present.*

In the opinion of the doctor, probable duration of injuries was six hours. The weapon used was sharp. In her opinion, the injuries can be caused by a broken bottle. PW-5 Dr.Satpal, Medical Officer mainly deposed that on 23.05.2001, he along with other doctors, conducted post-mortem examination on the dead body of Jagbir Singh brought by police officials of Police Post Butana and found following injuries:-

1. *A lacerated wound 3cmx1cm into bone deep on the right side of forehead.*
2. *A lacerated wound of the size 4cmx1cm into bone deep parallel to Ist injury on the right side of forehead.*
3. *A lacerated wound 6 cmx1.5 cm into bone deep on left side of parieto-occipital bone.*
4. *A lacerated wound 8 cmx2.5 cm into bone deep left parietal bone.*
5. *Fracture of parieto-frontal bone was found.*
6. *A lacerated wound 5.2 cm into bone deep, on the occipital region under lines bones were found fracture.*
7. *A lacerated wound 2cmx1cm into bone deep on left side of oxiput with fracture underlying bone.*
8. *A lacerated wound 7 cmx3cm into bone deep on left side of oxiput with fracture under line bone.*
9. *A lacerated wound 4x2cm into bone deep on left side of occipital region. Under lines bones were found fracture.*
10. *A lacerated wound 4cm x 1cm into bone deep on the left occipital region.*

He further deposed that there were multiple fractures of scalp

parietal occipital region with intra cerebral haemorrhage. Membranes of brain were found punctured and brain was found compressed. In the opinion of the doctors, the cause of death in this case was head injury with multiple compound fracture of scalp in parietal or occipital region with intra cerebra haemorrhage leading to compression of brain tissues and cardio respiratory arrest and death. All the injuries were ante mortem in nature and were sufficient to cause death in normal course of events. The doctors further opined that the possibility of suffering injuries with rod Ex.P1 cannot be ruled out. The probable time elapsed between injury and death was half an hour and between death and post-mortem was within 24 hours.

PW-6 Head Constable Naresh, Motor Mechanic, mainly proved the mechanical report of the truck. PW-7 Head Constable Shisan Kumar mainly deposed regarding registration of formal FIR Ex.PJ. PW-8 Constable Subash deposed regarding taking of iron rod to the FSL Madhuban. PW-9 Constable Jagbir Singh deposed regarding preparing of site plan Ex.PK. PW-10 Constable Rajesh Kumar deposed regarding handing over the special report to Illaqa Magistrate etc. PW-11 SI Ram Kishan deposed regarding partial investigation conducted by him in the present case i.e. preparing of rough site plan, inquest report and regarding taking of blood stained earth from the spot. He further deposed that on 24.05.2001, the accused self inflicted a broken bottle in his abdomen to create private defence. PW-12 SI Balwant Singh and PW-13 Inspector Ranbir Singh mainly deposed regarding partial investigation conducted by them in this case. PW-14 Ishwar Singh, who was running a brick kiln at Jalalpur Kalan mainly deposed that on 22.05.2001, he got truck loaded with coal from Guwahati at brick kiln. However, he does not know the

registration number of the said truck in which coal was brought but the owner of the truck was from Gohana. He further deposed that Sombir driver brought the coal in the said truck. One conductor whose name was not known and one other person were also in the truck. He also deposed that Sombir driver of the truck took charges of ₹30,000/- from him and remaining charges were to be paid later on. PW-15 Rakesh Kumar, who is owner of the truck, deposed that on 22.05.2001, Jagbir was working as a driver on the said truck and cleaner was Sonu @ Sombir, who is present in the Court. He further deposed that he had sent the truck to Guwahati to bring coal for Jind. The said truck came back on 22.05.2001. On 23.05.2001, he came to know that driver of the truck was hospitalized at Gohana and Sombir conductor had inflicted iron rod on his (driver) head, as a result of which, he succumbed to his injuries. PW-16 Head Constable Om Parkash also deposed regarding the investigation of the case. PW-17 ASI Ishwar Chander deposed regarding initial investigation conducted by him in this case.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent. He further pleaded that he has been falsely implicated in this case due to mere suspicion. He was not a cleaner of the truck in question on the day of alleged occurrence. All the public witnesses have deposed falsely as they are interested witness being related with the deceased.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence,

convicted and sentenced the accused-appellant as stated above.

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that appellant has been falsely implicated in the present case. He was not cleaner on the truck on that day. The witnesses are not reliable witnesses and have deposed falsely. She further argued that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Learned counsel for the appellant, therefore, argued that there being merit in the present appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that prosecution has duly proved its case by leading cogent evidence. He argued that the complainant Ishwar Singh who can be treated as eye witness to occurrence and was accompanying the deceased at that time in the truck, has consistently deposed regarding prosecution version. He further argued that the prosecution version is believable and supported and corroborated by oral dying declaration of the deceased which he made to complainant Ishwar Singh. Learned State counsel also contended that recovery of iron rod and blood stained clothes of the accused as well as recovery of ₹20,000/-, further support the prosecution version. He next contended that accused later on also caused injuries to himself for making private defence and those injuries have been duly proved. He also argued that ocular version is duly supported by medical evidence, investigation of the case and recovery from the accused. Learned State counsel, therefore, argued that accused-

appellant has been rightly convicted and there being no merit in the present

appeal, the same should be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record, we find that no material contradictions or improvements have been pointed out in the statements of the witnesses. There is nothing on the record to show any improbability in the version of the prosecution. PW-1 Ishwar, complainant, consistently deposed regarding prosecution version and no material contradiction has been pointed out in his statement. This witness has duly supported and corroborated the prosecution version. He is the person who had gone for sometime to answer the call of nature and heard noise and came immediately on the spot and found that cleaner Sombir @ Sonu fled from the spot and injured Jagbir Singh (now deceased) told him that cleaner had given injuries with iron rod. This fact has been duly supported by recovery of iron rod from the accused as per his disclosure statement. The prosecution version is also supported and corroborated by oral dying declaration. There is nothing on the record to show as to why this evidence produced by the prosecution be not relied upon. The perusal of the cross-examinations of PWs also shows that there is nothing on the record to disbelieve the statements of the PWs. The recovery of weapon and currency notes, further supports the prosecution version. The fact that accused himself later on caused injuries to him and injuries have been duly proved by the prosecution, further supports and corroborates the prosecution version that the accused caused injuries to himself to create private defence. Otherwise also, there is nothing on the record which shows that Ishwar Singh was not present on the spot. The owner of the truck has duly proved

employed as cleaner on the said truck on that day. The version that the coal was brought in the truck and it was unloaded at Shanker Bhatta Company is also duly proved by the prosecution.

The ocular evidence is supported by medical evidence as well as investigation of the case. The prosecution has duly proved its case by leading cogent evidence and no reasonable doubt exists in the prosecution version. The findings have been given by learned trial Court while appreciating the evidence in right perspective. There are no material contradictions or improvements in the statements of the witnesses. The witnesses are reliable witnesses.

In view of the above discussion, we find that the impugned judgment of conviction dated 11.01.2003 and order of sentence dated 14.01.2003, passed by the learned Addl. Sessions Judge, Sonapat, are correct, as per evidence and law and do not require any interference from this Court.

Therefore, finding no merit in the present appeal, the same is dismissed.

As appellant Sombir @ Sonu is on bail, his bail bonds stand cancelled and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

(A.B.CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

January 19, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
No