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

CRA-D-291-DB of 2003

Date of decision: January 30, 2018

Prem Kumar and another

.....Appellants

Versus

State of Haryana

....Respondent

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

Present: Ms. Baljit Mann, Advocate for the appellants.

Mr. Kuldeep Tewari, Addl. AG Haryana.

A.B. CHAUDHARI, J (Oral)

Being aggrieved by the judgment and order dated 17.03.2003 in Session Case No.30 of 2001, passed by the learned Sessions Judge, Narnaul, by which appellant No.1-Prem Kumar was convicted for offence punishable under Section 302 of Indian Penal Code, 1860 (for short 'IPC'), whereas, appellant No.2-Kartar Singh was convicted for offence punishable under Sections 302 read with Section 34 IPC and they were sentenced to undergo life imprisonment and to pay fine in the sum of ₹500/- each; in default of payment of fine, to further undergo rigorous imprisonment for one month, the present appeal was filed by the appellants.

FACTS

Briefly stated, the prosecution case is that Balwan Singh, the deceased was resident of village Satnali. On 07.06.2001 at about 9:00 P.M., he was sleeping on the roof of his house. Appellant No.1-Prem Kumar was

due for marriage a few days ahead and a procession with the band playing was passing in front of the house of the deceased, in connection with the *banwara*. The complainant got up from the sleep due to the sound raised by playing of band. He found that cattle tethered by him in front of his house had become restive on account of the heavy sound of the band. He, therefore, came down and asked band people to stop playing it as buffalos were getting restive. Appellant No.1-Prem Kumar and Kartar Singh his uncle who were in the procession got annoyed and they came running towards Banwan Singh. Kartar Singh caught hold Balwan Singh from backside while Prem Kumar was having a knife in his hand gave a blow with it straight in the left side of abdomen just below his rib cage. The complainant raised alarm which attracted his father Ramji Lal and Nihal Singh son of Ram Lal. Prem Kumar and Kartar Singh both ran away. Balwan Singh was unconscious and taken to the Hospital at Mahender Garh. He was medico-legally examined by Dr. Ashok Yadav and referred him to PGIMS, Rohtak and also sent information to the Police Station, Mahender Garh, on telephone on 08.06.2001. Police party arrived and collected the medico-legal report of Balwan Singh and medical *ruqa*. They went to the PGIMS, Rohtak. ASI-Dilbagh Singh made application to the doctor to know the evidence of Balwan Singh for making a statement, but he was declared unfit. On 09.06.2001, again he did the same thing and this time, Balwan Singh was declared fit to make statement. Accordingly, ASI-Dilbagh Singh recorded his statement which was read over to Balwan Singh and was signed by him in token of its correctness. Balwan Singh made an endorsement on the said statement and he himself visited the Police Station Satnali and

recorded the formal FIR. The doctor opined that the opinion could be given only after going through the treatment record of Balwan Singh. Thereafter, investigating officer started investigation, recorded the statement of witnesses, visited the place of occurrence and prepared a rough site-plan. Initially, he registered FIR and thereafter, added Section 307 IPC. However, on 04.07.2001, he received a message about the death of Balwan Singh in PGIMS, Rohtak. Therefore, he visited the Hospital, prepared inquest report and also got post-mortem conducted of the dead-body of Balwan Singh. He then added Section 302 IPC. The investigation was handed over to Rameshwar Dayal, SHO. On 07.07.2001, Prem Kumar surrendered before the Court at Mahender Garh and joined investigation. He disclosed about *katari* (daggar) under a tin shelter covered with earth inside his house. Thereafter, spot was got inspected and site-plan of the *katari* was sketched. Kartar Singh was also arrested on 03.09.2001 and then they were produced before the Court. Investigation was completed and the challan was filed on 13.09.2001.

Thereafter, the prosecution examined as many as 10 witnesses and completed its evidence. The defence did not examine any witness after recording of statement under Section 313 of Code of Criminal Procedure, 1973. The trial Court convicted the appellants as above. Hence, the present appeal.

ARGUMENTS

In support of the appeal, Ms. Baljit Mann, learned counsel for the appellants submitted that the alleged dying-declaration could not be relied upon as dying-declaration looking to the fact that Balwan Singh

expired after a period of about one month from the date of incident and therefore, the said statement was required to be kept out of consideration. She, then submitted that the evidence of PW8-Ramji Lal is unbelievable and his testimony is of interested witness and could not be relied upon. The prosecution did not examine independent witnesses in the neighbourhood, but chose to rely upon only the related witnesses. The story of the prosecution was highly improbable inasmuch as Prem Kumar was to get married and therefore, it was unbelievable that he would stab Balwan Singh for the reasons stated. It appears to be a case where there was a scuffle by some persons and in this scuffle, the deceased fell on some sharp object and received injury. That is why the prosecution case could not be relied upon and at any rate, the benefit of doubt ought to have been given to the accused persons. She then submitted that the role attributed to Kartar Singh who was working as a BSF *jawan* at the relevant time was highly doubtful. He had come for marriage of appellant No.1-Prem Kumar and it was improbable to believe that he would commit such offence. The name of Kartar Singh has been deliberately involved and therefore, the trial Court ought to have acquitted the appellants. Appellant No.2-Kartar Singh has been dismissed from the service and thus, has suffered sufficient punishment.

Per contra, learned counsel for the respondents submitted that there was evidence of father of the deceased PW8-Ramji Lal and PW9-Nihal Singh. Both the witnesses have been rightly believed by the trial Court they being the eye-witnesses. The evidence of the witnesses has been corroborated by the medical evidence. There is no substance in the appeal and therefore, the appeal deserves to be dismissed.

CONSIDERATION

Heard learned counsel for the rival parties. Perused the entire evidence of the prosecution witnesses. Having gone through the evidence of PW8-Ramji Lal and PW9-Nihal Singh and the cross-examination of these two witnesses, they have deposed that on 07.06.2001 at 09:00 P.M., when the band was being played in front of the house of PW8-Ramji Lal, it stopped all of a sudden and a commotion was heard outside the house on the road. These two witnesses, therefore, came out and saw that Balwan Singh was being caught hold by Kartar Singh while Prem Kumar stabbed knife to Balwan Singh in the left side of abdomen just below his rib cage. When Ramji Lal rushed towards them, both the accused ran away with the weapon. The weapon was dagger that was used by Prem Kumar. The evidence of both these two witnesses is consistent and there is no dent caused in the cross-examination of both these witnesses. We, therefore, believe the evidence of both these witnesses as truthful and trustworthy. The evidence of these two witnesses has been fully corroborated by medical evidence given by PW1-Dr. Ashok Yadav, PW6-Dr. Udit Bhan and PW7-Dr. Neelam Thapar. The cause of death has been given as complications caused as a result of the injury that was ante-mortem, namely the injury that was caused by appellant No.1-Prem Kumar. In view of the said corroboration, we do not find anything wrong with the trial Court's finding. The law is trite that the evidence of interested witnesses can be believed but what is required is only the deepest scrutiny thereof. Having done so, there is nothing to disbelieve these witnesses. We, therefore, uphold the finding of conviction of the appellants.

The next question that arises for our consideration is what is the offence for which the appellants should be convicted. We have carefully thought over the matter. We find from the background facts that the appellants got annoyed at the complaint made by the deceased that buffalos were getting restive due to the sound of the band party and therefore, both the appellants rushed on the deceased-Balwan Singh. Appellant No.1-Prem Kumar gave only a single blow by means of knife and as such, we find that there was no intention to commit murder of Balwan Singh. However, Prem Kumar had knowledge that the injury that was caused by him may result into death. This Court also finds that the deceased was treated in the Hospital at PGI and was alright after the treatment was given to him and the surgery was performed on him. But then, the complications developed and ultimately, he died on 04.07.2001, i.e. after almost one month from the date of incident. The single injury that was caused to him was responsible for his death and that injury was caused by Prem Kumar. The submission made by learned counsel for the appellants that Kartar Singh had no intention and could not be convicted with the aid of Section 34 IPC does not appeal to us as Kartar Singh performed overt act by catching hold of the deceased from backside to facilitate Prem Kumar to assault him. In that view of the matter, we think that with the aid of Section 34 IPC, Kartar Singh was equally responsible as he caught hold of the deceased from the backside to facilitate Prem Kumar to attack on him. In the result, we find that the appellants could be guilty of the offence under Section 304 Part-II of IPC since they had knowledge that death could be caused but they did not have requisite intention. Hence, they are held guilty of culpable homicide not amounting to murder under Section

304 Part-II of IPC. The appellants have undergone sufficient sentence for the aforesaid offence and therefore, we find that the sentence is required to be modified to the one they have already undergone. In the result, we make the following order:-

ORDER

- (i) CRA-D-291-DB of 2003 is partly allowed;
- (ii) The judgment and order dated 17.03.2003 in Session Case No.30 of 2001, passed by the learned Sessions Judge, Narnaul, convicting the appellants for offences punishable under Section 302, 34 IPC, is set aside and modified and the appellants are convicted for the offence punishable under Section 304 Part-II of IPC;
- (iii) The impugned judgment and order of sentence is set aside and modified to the one which both the appellants have already undergone.

(A.B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

January 30, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No