

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

Crl. Appeal No.D-238-DB of 2003 (O&M)
Date of Decision: February 27, 2018

Mohan Singh

...Appellant

VERSUS

State of Haryana

...Respondent

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

Present: Ms.Geeta Sharma, Advocate
for the appellant.

Mr.Kuldip 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 02.12.2002 and order of sentence dated 4.12.2002, passed by the learned Sessions Judge, Sirsa, whereby he was convicted and sentenced to undergo imprisonment for life and to pay a fine of ₹5000/- under Section 302 IPC and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.

The brief facts of the case are that the FIR in the present case has been registered on the statement of Geeta Devi, who got recorded her statement to Inspector Ujjagar Singh on 19.02.2001. Complainant Geeta Devi stated that for the last about three years, she along with her husband Mahabir Parshad and children, was residing in a house constructed in ward No.6, Ellanabad and her husband is running a grocery shop in the house itself. Mohan Singh also resides in their mohalla, who purchases goods on

credit and he already owes amount of credit. On that day at 9.00 a.m.,

Mohan Singh came to the shop to fetch goods. At that time, her (complainant) brother Raj Kumar, who resides in Ward No.9, Ellanabad and used to visit her to meet her and Swaran Singh, who is their neighbor, were present at the spot. Her husband refused to give goods on credit to Mohan Singh on the plea that he has not paid the amount which is already outstanding against him, upon which, Mohan Singh got enraged and inflicted gandasi blow, which he was carrying in his hand, on the head of Mahabir Parshad on his left side and then dragged him outside the shop and he became unconscious on receiving the injuries. He was shifted to hospital for treatment and complainant went to police station to lodge the report. Complainant also stated that Mohan Singh has inflicted injuries to her husband Mahabir Parshad with an intention to kill him. In the meantime, Mahabir Parshad died. Ruqa was sent to the police station, upon which, FIR No.45 dated 19.02.2001 was registered at about 10.00 a.m. Inquest proceedings were conducted. Post-mortem examination on the dead body was got conducted. Site plan was prepared. Statements of witnesses were recorded. Accused was arrested on 21.02.2001 and he was interrogated by the SHO. Accused made disclosure statement Ex.PK that he had kept concealed the gandasi in his residential house and could get the same recovered. As per his disclosure statement, accused got recovered gandasi, which was taken into police possession. After necessary 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 Constable Satbir Singh, formal witness, who tendered into evidence his affidavit Ex.PA. PW-2 Constable Mohan Lal, proved the scaled site plan Ex.PB. PW-3 Geeta Devi, complainant, deposed as per prosecution version. PW-4 Raj Kumar, brother of the complainant, also deposed as per prosecution version. PW-5 Inder Sain, another brother of complainant, mainly deposed that after receiving information regarding the occurrence, he reached on the spot where Mahabir Parshad was lying in an injured condition. He brought injured to General Hospital, Sirsa, from where he was referred to PGIMS, Rohtak. On the way to Rohtak, Mahabir Parshad succumbed to his injuries. PW Head Constable Om Singh and PW Swaran Singh, were given up by learned Public Prosecutor being won over by the accused. PW-6 Dr.V.K.Mahipal, mainly deposed that he along with Dr.C.P.Dhadhitch, conducted post-mortem examination on the dead body of Mahabir Parshad on 20.02.2001 and found following injuries:-

1. *An incised wound of 4cms x 2cms, lying 3 cms above left pinna. On dissection effusion of blood in sub-cutaneous tissue was present. Underlying bones were fractured and brain matter was protruding through it.*
2. *Incised wound of 6.5 x 2 cms on left parietal region of skull, 3 cms above injury no.1. It was bone deep. On dissection, effusion of blood was present in sub-cutaneous tissue. Underlying bone fractured and brain matter was present in the wound.*
3. *Incised wound of 7 cms x 2 cms over lower part of left side of occipital area of skull. On dissection effusion of blood in sub-cutaneous tissue was present. Bone fractured and brain matter present in the wound.*

In the opinion of the doctors, the cause of death in this case was

due to haemorrhage and shock as a result of injuries to vital organs. The

injuries were ante-mortem in nature and sufficient to cause death in the ordinary course of nature. The time that elapsed between injuries and death was variable and between death and post-mortem was within 24 hours. PW-7 Dr.Yogesh Sangwan, deposed that he medico-legally examined Mahabir Parshad on 19.02.2001 and found following injuries:-

1. *Left black eye with peri-orbital swelling. X-ray was advised.*
2. *An incised wound, lying 3 cms above the left pinna transversely placed, above and behind the pinna. It was 4 cms x 2 cms. Brain matter was protruding from the wound. Fresh bleeding was present. X-ray and Surgeon's opinion were asked for.*
3. *There was an incised wound 6 cms x 2 cms lying over the left parietal region, 3 cms above injury no.2 and in front of it. It was bone deep and fresh bleeding was present. X-ray was advised.*
4. *There was an incised wound 7 cms x 2½ cms lying over the occiput on the left side, transversely placed, 4 cms behind the pinna. It was bone deep. Fresh bleeding was present. X-ray was advised.*

PW-8 ASI Gharsa Ram deposed that he joined the investigation and also deposed regarding disclosure statement made by the accused and recovery of gandasi as per the disclosure statement. PW-9 Head Constable Rajinder Singh mainly deposed that on receiving ruqa Ex.PG, he visited General Hospital, Sirsa and moved application Ex.PM, on which the doctor opined that the patient had been referred to PGI, Rohtak. PW-10 Inspector Ujjagar Singh, Investigating Officer, mainly deposed regarding investigation conducted by him in the present case. PW-11 Head Constable Mian Singh and PW-12 Constable Bhagat Singh, who are formal witnesses, tendered into evidence their affidavits Ex.PO and Ex.PQ respectively.

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 Mahabir Parshad, deceased, was indulged in *satta khaiwali* (Gambling). Bittu, who resides in the ward of deceased, owed some money to deceased. On account of non-payment of said money, Bittu committed murder of Mahabir Parshad and news to this effect was published in Dainik Tribune, Punjab Kesari and other newspapers. He has been falsely involved in this case at the instance of Dalip Singh, Municipal Councillor of ward No.6, by way of substitution.

In defence, accused examined DW-1 Sham Lal, who mainly brought the record of criminal complaint which has been got dismissed as withdrawn and brought the photocopy of Dainik Tribune, which is Mark D1. DW-2 Swaran Singh deposed that on 19.02.2001, he was present in his house. He has not seen anything in his mohalla. He further deposed that no murder took place in their mohalla on that day.

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 accused-appellant has been falsely implicated in this case. The presence of PW-4 Raj Kumar on the spot is doubtful. She next argued that though in the FIR, it is stated that Swaran Singh was present on the spot but he was not examined by the prosecution, rather, he was examined by the accused-appellant in his defence, who stated that he has not seen any such

occurrence in his mohalla nor any murder took place in the mohalla. She next contended that Mahabir Parshad was killed by one Bittu due to some *satta* transaction qua which the news was also published in the newspaper and present accused-appellant has been falsely implicated by the police. 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 it is case of eye witness account. Two eye witnesses i.e. PW-3 Geeta Devi, complainant and PW-4 Raj Kumar have consistently deposed regarding prosecution version. There are no material contradictions or improvements in their statements. Their statements have been duly supported and corroborated by medical evidence and further from recovery of gandasi from the accused as per his disclosure statement. He next argued that prosecution has duly proved the guilt of the accused-appellant beyond reasonable doubt. 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 it is a case of eye witness account. PW-3 Geeta Devi, complainant is the wife of deceased Mahabir Parshad and her presence on the spot is natural. The shop was in one room of the residential house. Nothing has been argued regarding her presence on the spot. Learned counsel for the appellant has argued only regarding presence of PW-4 Raj Kumar. The perusal of the record shows that Raj Kumar is brother of Geeta Devi and he resides in the

same City. As per Geeta Devi, Raj Kumar had come to their house to meet her and there is nothing on the record to make presence of Raj Kumar doubtful on the spot. Even, learned State counsel argued that there is not even a suggestion to PW-3 Geeta Devi regarding the fact that Raj Kumar was not present on the spot. The presence of both the PWs on the spot is natural and there is also nothing to doubt the presence of PW-4 Raj Kumar on the spot.

The perusal of statements of both these witnesses show that they have consistently deposed regarding prosecution version. Even no material contradictions or improvements have been pointed out by learned counsel for the appellant, which may go to the root of the case. The statements of both these witnesses have been duly supported and corroborated by medical evidence. Further, as per statement of Investigating Officer, the accused suffered disclosure statement and got recovered gandasi, which was Ex.P1, which further supports and corroborates the prosecution version.

As regarding non-examination of Swaran Singh, we find that learned Public Prosecutor by giving statement has given up Swaran Singh having been won over by the accused. Swaran Singh appeared as DW-2 and he deposed that no occurrence took place in their *mohalla* but it is admitted fact that injuries were caused to Mahabir Parshad, who later on succumbed to injuries. Therefore, no reliance can be placed upon the statement of Swaran Singh. Furthermore, the version of accused that some Bittu has caused the murder, is also not believable, firstly, because there is no such cogent evidence on record to prove this fact. The Dainik Tribune report has

not been proved as per law, which is a marked document; secondly, the

author of the report in the newspaper has not been examined to prove the report; thirdly, there is only one accused in this case and nobody would leave actual culprit to falsely implicate other person.

From the perusal of the cross-examinations of the PWs, we find that there is nothing in their cross-examinations, which may make their statements unreliable. The ocular evidence is duly supported by medical evidence and investigation of the case. The PWs are reliable witnesses.

Therefore, from the evidence on record, we find that 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.

In view of the above discussion, we find that the impugned judgment of conviction dated 02.12.2002 and order of sentence dated 4.12.2002 passed by the learned Sessions Judge, Sirsa, 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 Mohan Singh 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

February 27, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
No