

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-740-DB-2003

Reserved on : 03.07.2019

Date of decision : 05.07.2019

Joga Singh

... Appellant

Versus

State of Punjab

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU***

Present: Ms. Baljeet Kaur Mann, Advocate
for the appellant.

Mr. Aayush Sarna, AAG, Punjab.

RAJIV SHARMA, J.

The appeal is instituted against the judgment and order dated 27.08.2003 rendered by the Additional Sessions Judge, Fast Track Court, Ludhiana, in Sessions Case no.58 of 22.01.2002 whereby the appellant was charged with and tried for offence under Section 302 IPC. He was convicted thereunder and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.5000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years.

2. The case of the prosecution, in a nutshell, is that on 08.10.2001 Rau Singh son of Jagir Singh resident of Naraingarh, Police Station Sadar Khanna made a statement to the police that they were five brothers. They were joint in cultivation. One Jeet Singh was to use the combine for harvesting the paddy crops. On 07.10.2001 he required the tractor trolley for

this purpose. Jeet Singh asked the complainant's brothers to supply tractor trolley in his fields. Jasbir Singh deceased took the tractor trolley and at about 9.00/10.00 P.M. he came with the tractor trolley loaded with paddy. He came near the house of the complainant. He parked the tractor trolley on the main road and asked the complainant to take care of the tractor trolley. Narang Singh and Darbara Singh, who were residing in the same locality, were present on the spot. They were talking with each other. When Jasbir Singh had just covered 13/14 karams away from them and was near the house of Jaswinder Singh, Joga Singh accused came there with kirpan in his hand from the vacant plot of Narang Singh. He gave a kirpan blow on the left lateral abdomen side of Jasbir Singh. Jasbir Singh raised hue and cry. He collapsed. Accused Joga Singh proclaimed that Jasbir Singh had an altercation with him in the field of Jeet Singh on that day. Accused ran away from the spot along with kirpan. FIR was registered. Inquest report was prepared. The body was sent for post-mortem examination. Kirpan was got recovered on the basis of disclosure statement made by accused. Investigation was completed. Challan was put up after completing all the codal formalities.

3. Prosecution examined a number of witnesses. The statement of appellant was recorded under Section 313 Cr.P.C. He had denied the case of the prosecution. The appellant had examined one witness in support of his defence. The appellant was convicted and sentenced as noticed hereinabove. Hence this appeal.

4. Learned counsel appearing for the appellant has vehemently argued that the prosecution has failed to prove the case against the

appellant.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. PW-2 Dr.N.K.Singla had conducted the post-mortem examination. He noticed following injury on the body of deceased:-

“1. There was a penetrating wound measuring 3 cm x 1 ½ cm (in the centre) with decreasing width, situated on the left iliac fossa area, 20 cm. towards left and 8 cm. below from the umbilicus, placed horizontally mainly and slightly oblique. The proximal margins were sharp and distal margins were irregular, as shown in the diagram.”

The cause of death was due to haemorrhage and shock resulting from the injury which was sufficient to cause death in ordinary course of nature. The probable time elapsed between the injury and death was immediate and between death and post-mortem examination was 6 to 18 hours.

8. PW-4 Darbara Singh testified that he along with Rau Singh and Narang Singh was standing in the street near the house of Narang Singh at about 10.00 P.M. They were talking with each other. Jasbir Singh asked his brother Rau Singh that a trolley loaded with paddy was standing on the road and he should take care of the same. Jasbir Singh started going towards his house. In the meantime, Joga Singh accused came from a vacant plot. He was armed with a kirpan. He gave kirpan blow to Jasbir Singh on his left flank. Joga Singh had not uttered anything. Joga Singh ran away from the spot. Jasbir Singh was moved to hospital. In his cross-examination, he admitted that the house of Jasbir Singh was situated at a distance of 50/60

yards from the spot where he had parked trolley. He went to the spot where Jasbir Singh was lying. He was unconscious. He was gasping for breath. They tried to administer water in the mouth of Jasbir Singh. However he could not swallow the same. They left for hospital within 5 minutes of the occurrence.

9. PW-5 Rau Singh is brother of the deceased Jasbir Singh. He testified that on 07.10.2001 at about 9.00/10.00 PM, he, Narang Singh and Darbara Singh were talking to each other. In the meantime, his brother Jasbir Singh came there along with tractor trolley. He told him that trolley loaded with paddy was parked there and he should take care of the same. Jasbir Singh started moving towards his house. In the meantime, Joga Singh accused armed with a kirpan came there. He saw in the tube light Joga Singh accused inflicting kirpan blow on the left flank of Jasbir Singh. Jasbir Singh raised alarm. Jasbir Singh collapsed. He rushed towards Jasbir Singh. Narang Singh and Darbara Singh also rushed towards Jasbir Singh. He challenged Joga Singh accused to stop. Joga Singh accused told them that Jasbir Singh had quarrelled with him in the fields of Jeet Singh. Jasbir Singh was taken to hospital. Doctor declared him dead. In his cross-examination, he admitted that he was not present in the fields of Jeet Singh when Jasbir Singh and accused had quarrelled. He had also categorically admitted that Jasbir Singh and accused had no dispute before the present incident.

10. PW-10 SI Banarasi Dass deposed that Rau Singh along with his brother Baljinder Singh came to the police station. FIR Ex.PW5/A was recorded. Blood stained earth was taken into possession. He prepared rough site plan Ex.PH. Accused was interrogated on 14.10.2001. He made disclosure statement Ex.PL. Accused got the kirpan recovered from the

electric motor room belonging to his uncle Ajmer Singh. In his cross-examination, he testified that the lower portion of the kirpan was blunt and the upper portion was slightly sharp.

11. PW-2 Dr.N.K.Singla had noticed one injury on the body of deceased. The cause of death was haemorrhage and shock. The motive attributed to the appellant is that while fleeing from the spot, he had told PW-5 Rau Singh, brother of the deceased that he and deceased had picked up quarrel in the field of Jeet Singh and he wanted to teach him a lesson.

12. According to PW-5 Rau Singh, PW-4 Darbara Singh as well as Narang Singh went near the body of deceased. According to PW-4 Darbara Singh, Joga Singh accused gave kirpan blow to Jasbir Singh. He has admitted that accused did not utter anything. In his cross-examination, he admitted that after injury inflicted to Jasbir Singh, he had gone near him. He was unconscious at that time. PW-5 Rau Singh though stated that the appellant proclaimed that he had quarrelled with Jasbir Singh and he wanted to teach a lesson to him. However, in the cross-examination, he admitted that he was not present in the field of Jeet Singh when accused and Jasbir Singh had quarrelled. PW-5 Rau Singh had specifically deposed that Jasbir Singh and accused had no dispute before the present occurrence. The weapon was recovered on the basis of disclosure statement made by the accused. It has come in the statement of investigating officer that kirpan was blunt on the lower side and was slightly sharp on the upper side. There is contradiction in the testimonies of PW-4 Darbara Singh and PW-5 Rau Singh.

13. Learned counsel appearing for the appellant has vehemently argued that this case falls within the ambit of Section 304 Part II IPC. We

do not agree with the submission of learned counsel for the appellant. Though even single blow had been given on the person of deceased but it proved fatal. Injury was caused with kirpan. The appellant had intention to cause death of Jasbir Singh even though he had given single blow to deceased on the vital part of the body.

14. Accordingly, the appeal is partly allowed and the conviction of the appellant is converted from Section 302 IPC to Section 304 Part I IPC. The State is directed to produce the appellant in Court on 16.07.2019 to hear him on quantum of sentence under Section 304 Part I IPC.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 05, 2019.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No