

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

CRA-D-No.824-DB OF 2009
DATE OF DECISION : 14th JANUARY, 2019

Baldev Singh

.... Appellant

Versus

State of Haryana

.... Respondent

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

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Present : None for the appellant.

Mr. Vivek Saini, Deputy Advocate General, Haryana.

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A. B. CHAUDHARI, J.

1. Being aggrieved by judgment and order dated 22/25.08.2009 passed by the Additional Sessions Judge, Karnal in Sessions Case No.35 of 2009 by which the appellant was convicted for offence of murder punishable under Section 302 IPC and sentenced to undergo rigorous imprisonment for life, the present appeal was filed by the appellant.

FACTS:

2. In brief the case of the prosecution is that Harbhagwan son of Assa Ram made a statement to SI/SHO Varinder Singh on 07.03.2009 and stated that he had four sons and two daughters. His eldest son was Ashok Kumar and Ramesh alias Kamma aged about 34/35 years was younger to him. Ramesh was married and used to live separately and he had two sons and two daughters. Baldev son of Chaina was his neighbour. Ramesh always used to consume liquor in the evening and after consuming liquor used to trouble his neighbour Baldev almost

everyday and therefore Baldev nursed grudge against him. On 07.03.2009 at about 9.45 p.m. again Ramesh consumed liquor when the complainant was standing in front of his house tying animals. Baldev armed with a *kulhara* reached there and gave a blow by *kulhara* from behind on the neck of Ramesh proclaiming that Ramesh made his life miserable. Ramesh fell down on the ground and died on the spot. The complainant made cries and tried to nab the Baldev but he ran away. The police thereafter took the body in possession and sent it for post mortem examination and arrested the accused who made disclosure statement on 15.03.2009 and discovered *kulhara* and *chadar*. Site plan was prepared. The statement was recorded. Opinion of doctor was obtained and finally the chargesheet was filed. The trial court heard the evidence and thereafter convicted the appellant. Hence this appeal.

ARGUMENTS:

3. The learned counsel for the appellant submitted that the discovery of weapons etc. is planted and should have been rejected by the trial Court. He then submitted that the evidence of the complainant being of interested witness should have been rejected by the trial Court. The trial Court, however, relied upon the evidence of PW-7 Harbhagwan-complainant. PW-6 Ramesh Chand deposed about the extra judicial confession made by Baldev on 12.03.2009 at about 7/7.30 p.m. that he was afraid of the police as he had committed murder of Ramesh on 07.03.2009. The trial Court should not have relied on the extra judicial confession which is a weak piece of evidence. Finally learned counsel for the appellant prayed for acquittal of the appellant. In the alternative, the learned counsel for the appellant contended that the prosecution failed

to prove evidence of murder under Section 302 IPC as according to prosecution itself there was a single injury allegedly given by the appellant.

4. *Per contra*, learned counsel for the State opposed the appeal and supported the impugned judgment and order and reasons recorded therein. He submitted that the appellant had no business to commit murder by taking law in his hands even if he was really everyday tortured by the deceased. At any rate the nature of blow given by the appellant to the deceased was such that the offence of murder only could be said to have been proved by the prosecution and not any lower offence. He, therefore, prayed for dismissal of the appeal.

CONSIDERATION:

5. We have heard learned counsel for the rival parties and perused the judgment and reasons recorded by the trial Court and the evidence produced by the prosecution.

6. At the outset we quote the injuries caused to the deceased.

Which read thus:

“1. There was an incised wound present on the base of skull posteriorly 2cm. below occipital protuberance starting from angle of mandible right side upto just below mastoid process left side 26 x 5 cm size. Multiple pieces of skull bone was there and brain matter was also coming out.

2. There was an incised wound 1 cm. above injury No.1 starting 1 cm. above right angle of mandible going posteriorly, 8x3 cm. size with

underlying fracture of skull bone deep upto brain matter. Bilateral pleura, right and left lungs, larynx, trachea were pale. Pericardium was healthy. All chambers of heart were empty. Blood from large vessels sent for alcohol estimation to FSL, Madhuban. The abdomen wall and peritoneum was health. Mouth, pharynx and esophagus were pale and healthy. Stomach contained semi digested food material. Small intestine contained chyme and gases. Large intestine contained faecal matters and gases. Liver spleen and kidneys were pale and healthy. The urinary bladder contained 100 ml. Urine. Organs of generation were healthy.”

7. It is thus clear that injury was fatal which resulted into death of deceased-Ramesh. This Court cannot be oblivious of the fact on the admitted evidence on record that right from the beginning, including the lodging of report by Harbhagwan that Ramesh the deceased used to consume liquor everyday in the evening and used to make *tamasha* and hurling abuses at the appellant-Baldev. That was his everyday programme. This fact is deposed by almost all the witnesses. We would like to quote the relevant paragraph from the discussion of the learned trial Court about it. Which reads thus:

“PW7 Harbhagwan stated that he had four sons and two daughters. Deceased Ramesh was residing separately from him in the same village. Baldev accused and Ramesh were neighbours and had a

common wall intervening their houses. On 7.3.2009 at about 9.30/9.45 p.m., his son Ramesh was consuming liquor and he was tying animals in his house. Baldev Singh went up to Ramesh and told him that he had made his life miserable. He gave a blow with 'kulhara' on his neck from the back side. Ramesh fell on the grounds. He raised cries. He and Dharam Singh, his neighbour, reached and they both ran after Baldev for about two killas but could not catch him. So, they came back near Ramesh. Ramesh, member Panchayat was found near the dead body of Ramesh. He left them behind and went to the police station to report the matter. Police recorded his statement which he thumb marked.

8. Then the evidence of PW-6, which has also been discussed by the trial Court reads thus:

“PW6 Ramesh Chand son of Nihal Chand stated that accused, who was earlier residing in village Chundipur, was residing in their village for the last 10-15 years. He was Panch of village Mugal Majra. Deceased Ramesh was also resident of their village and both accused and deceased were known to him. Deceased used to consume liquor and after consuming liquor, Baldev and Ramesh often quarreled. On 12.3.2009 at about 7/7.30 p.m. Baldev came to his house and asked to produce him in the police station. He told him that he feared the

police and told him that on 7.3.09, he had committed murder of Ramesh. He also told him that they had consumed liquor together and the quarrel occurred in front of house of Ramesh and that he committed murder of Ramesh with 'kulhara', after which he ran away."

9. Not only that the Doctor who conducted post mortem, found 149.5 mg % ethyl alcohol from the blood of Ramesh the deceased. That is clear from the FSL report Exhibit P-24. We quote the relevant discussion about it as under:

"xxx.... xxx.... xxx.... The FSL report Ex.P24 shows that the sealed glass vial containing 8 ml. Blood of Ramesh extracted by the doctor at the time of post mortem examination had ethyl alcohol in strength of 149.5 mg %. xxx.... xxx.... xxx...."

10. Thus it is clearly proved on record that the deceased Ramesh was a drunkard and used to trouble the appellant, his neighbour almost everyday by hurling abuses etc. The fact that on the day of incident also he consumed liquor, is corroborated by the FSL report as stated above with heavy quantity of liquor. Thus the prosecution evidence itself shows that it was the deceased who was at fault and even on the date of incident he heavily consumed alcohol and abused the appellant-Baldev with his regular feature of abusing him and troubling him. That is why the prosecution witness honestly supported the case that before assaulting, appellant stated that Ramesh made his life miserable. We are fully satisfied that the appellant was put to sufferance by everyday vicious conduct of the deceased-Ramesh so also on the date of incident also when he was heavily drunk. In that view of the matter, we are

inclined to alter the conviction to the one under Section 304 Part-I IPC in place of Section 302 IPC. He has undergone sentence of 15 years with remissions. Hence we make the following order:

ORDER

- (i) Criminal Appeal i.e. CRA-D-No.824-DB OF 2009, is partly allowed.
- (ii) The impugned judgment and order dated 22/25.08.2009 convicting the appellant for offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for life, is set aside and modified.
- (iii) Instead the appellant is held guilty of offence under Section 304 Part-I IPC and sentenced to undergo the sentence which he has already undergone. Sentence of fine shall remain intact.
- (iv) The appellant be released forth with from jail, if not required in any other case.

(A. B. CHAUDHARI)
JUDGE

14th JANUARY, 2019
‘raj’

(HARNARESH SINGH GILL)
JUDGE

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