

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

CRA-D-No.922-DB OF 2009
DATE OF DECISION : 22nd JANUARY, 2019

Surinder

.... 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 : Mr. Namit Sharma, Advocate 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 of sentence dated 14/15.09.2009 passed by the learned Additional Sessions Judge, Panipat in Sessions Case No.12 of 2009 by which the appellant was convicted for offences punishable under Sections 302 & 392 Indian Penal Code and sentenced to undergo rigorous imprisonment for life and seven years respectively with fine, the present appeal was filed by appellant-Surinder.

FACTS:

2. In brief, the prosecution case is that on 02.11.2008 Sultan Singh-complainant made statement to police that he was telephonically informed that the body of his brother-Rohtash son of Chhote Ram was lying on *kacha* path behind Mini Secretariat, Panipat. Rohtash son of Fateh Singh, who was employed as a salesman at a liquor vend at Panipat disclosed that on 01.11.2008 Rohtash son of Chhote Ram along with Satish came to his liquor vend and consumed liquor. Rohtash (deceased)

son of Chhote Ram requested Rohtash son of Fateh Singh to keep ₹16,000/- which he was carrying with him but he refused to keep that amount. Thereafter Rohtash son of Chhote Ram and Satish left that place. The amount of ₹16,000/- carried by Rohtash son of Chhote Ram was found missing from his dead body. The complainant, therefore, suspected that Satish had committed murder of his brother Rohtash son of Chhote Ram. Accordingly FIR No.831 dated 02.11.2008 was registered with Police Station City Panipat. Post-mortem report was obtained. Site plan was prepared. Accused was arrested. Investigation was completed and thereafter the challan was filed in the trial Court. The prosecution examined as many as 15 witnesses in support of its case. The defence was of denial. The appellant did not lead any evidence. Learned trial Court after hearing the evidence and arguments of both the parties convicted the appellant. Hence this appeal.

ARGUMENTS:

3. In support of the appeal the learned counsel for the appellant vehemently argued that the entire prosecution story is unbelievable, highly improbable and the benefit of doubt must be given to appellant Surinder. According to him the prosecution case is false and baseless and the alleged eye-witness, in fact, appears to be culprit as admitted that he had gone along with Rohtash son of Chhote Ram and consumed liquor with him. But the FSL report shows absence of ethyl alcohol in the viscera report falsifying his version. He, therefore, submitted that the prosecution made a cock and bull story and innocent person was convicted by the trial Court.

4. *Per contra*, learned counsel for the State vehemently opposed the appeal and supported the impugned judgment and the reasons recorded therein by the trial Court. He submitted that the eye-witness account of Satish PW-7 and the prosecution story was fully proved by the evidence on record. No fault can be found with the impugned judgment and order of sentence. He, therefore, prayed for dismissal of the appeal.

CONSIDERATION:

5. We have heard learned counsel for the rival parties and carefully perused the record as well as the evidence tendered by the prosecution.

6. At the outset, before going to the evidence of the alleged eye-witness Satish PW-7, it would be appropriate to read the evidence of complainant Sultan Singh PW-9 the brother of the deceased. It will be appropriate to quote the relevant portion of his evidence, which reads thus:

“xxx.... xxx.... xxx..... After enquiry from Rohtash I came to know that on 1.11.2008 at about 9.00 P.M. my younger brother Rohtash and PW Satish alias Kala had come to Rohtash s/o Fateh Chand at liquor vend situated on Jatal Road, Panipat. Rohtash s/o Fateh Chand was employee at the liquor vend. My younger brother since deceased and Satish took liquor in the “Ahata” adjoining the said liquor vend and also took meals. Thereafter my younger brother (since deceased) requested Rohtash s/o Fateh Chand to keep

Rs.16000/- which were with him but said Rohtash refused to keep above said amount. Thereafter my brother and Satish proceeded on foot from the shop of Rohtash. I have seen that both hands of dead body of my brother Rohtash were tied with the plastic rope and his neck was tied with a cloth. A visiting card of Dahiya Tractor was also lying near the dead body. One pair of ear rings was also in the pocket of T-shirt of dead body. Two pairs of plastic chappals of black colour were also lying near the dead body. I had also seen that blood was oozing from his mouth. Rs.16,000/- were also missing from his pocket. xxx.... xxx.... xxx.... It is correct that in statement Ex.PW5/A I named PW Satish as murderer of my brother Rohtash. It is correct that PW Satish had not informed us about the death of my brother Rohtash. About the death of my brother. I was informed by Sub Inspector Balwan Singh on telephone on 2.11.2008 at about 10.00 A.M. and I reached at the spot at about 11.15 A.M. My statement Ex.PW5/A was recorded by Sub Inspector Balwan Singh at the spot on 2.11.2008. The golden ear rings belonged to wife of my brother Rohtash. My brother Rohtash was not drunkard.”

7. Perusal of the above evidence clearly shows that it was Satish with the deceased who had consumed liquor in heavy quantity and was last seen with the deceased. The cross-examination of this witness

also shows that he has named Satish and further stated about the conduct of Satish in not informing him about the death of his brother at any point of time. He further stated that his brother was not a drunkard.

8. Let us now turn to the evidence of Satish PW-7. The relevant portion of his examination-in-chief reads thus:

“Stated that on 1.11.2008 Rohtash s/o Chhote Ram met me at Madlauda and requested me to accompany him to Panipat for collecting some payment from Rohtash s/o Fateh Singh. I accompanied Rohtash s/o Chhote Ram to Panipat as requested by him. Rohtash s/o Fateh Singh failed to make the requisite payment to Rohtash s/o Chhote Ram at Panipat. We consumed some liquor at the shop of Rohtash s/o Fateh Singh. Thereafter, we proceed in a rikshaw towards bus stand, Panipat. We consumed more liquor near the bus stand, Panipat. Thereafter we proceeded towards the Mini Secretariat, Panipat in said rikshaw. xxx.... xxx.... xxx....”

9. From the above examination-in-chief of Satish PW-7 it is clear that he himself stated that he had gone along with the deceased to Panipat and both of them consumed some liquor at the shop of Rohtash s/o Fateh Singh. He then stated that he along with the deceased again consumed more liquor near the bus stand Panipat. He then stated that the appellant and his companions attacked him. There is no investigation

about the companions. He then stated that accused and his companions caused serious injuries. However there is no medical evidence about him on record. He then stated that the appellant along with his companions robbed him of mobile phone and pair of gold ear rings and ₹16,000/- in cash from the dead body of Rohtash son of Chhote Ram. The appellant was plying rikshaw. In other words the appellant is a rikshaw wala. The relevant portion from his cross-examination of Satish PW-7 is reproduced below:

“xxx.... xxx.... xxx.... We proceeded from the liquor shop of Rohtash at about 7.30 p.m. through rikshaw towards Panipat bus stand and reached there at about 8.00 P.M. We took about 45 minutes to consume liquor near bus stand Panipat. We took liquor near bus stand Panipat on the rikshaw of accused present in the court. Thereafter accused took us towards back side of Mini Secretariat. Rikshaw was hired by us for Ujha village. No fare was paid to accused. We were under the influence of liquor. We consumed two bottles of liquor. Mini Secretariat building is situated about half kilometer away from Panipat bus stand towards Karnal side. We reached at about 9.30 P.M. at the back side of Mini Secretariat. It was already dark when I regained my consciousness. I was badly beaten by the accused and his co-accused. I do now know the exact time when I regained my consciousness. Both hands of deceased Rohtash were tied with the rope and a cloth was tied around

the neck. After regaining consciousness I returned to Grain Market Madlauda. Police official came to me at about 12.00 Noon on 2.11.2008.”

10. From the perusal of the cross-examination, it is clear that the deceased and Satish PW-7 had consumed two bottles of liquor which is obviously a heavy quantity of alcohol and that they consumed alcohol for about 45 minutes near bus stand and they were under the influence of alcohol. It is significant to note the conduct of Satish PW-7, who did not at all inform the police and did not get himself medically examined immediately. The trial Court relied on the disclosure statement of the appellant and alleged recovery of ₹16,000/-, which is wholly unreliable and in any case the appellant could not have been convicted on such recovery of money or disclosure statement. As a matter of fact, the conduct of Satish PW-7, in our opinion in not informing the police or the brother of the deceased Sultan PW-9 immediately after the incident and soon not getting himself medically examined in the wake of the fact that he was last seen with the deceased, his evidence became suspicious and unreliable.

11. It is significant to note the report regarding alleged injury to the witness Satish PW-7 by Dr. Alok Jain states thus:

“On 4/11/08, I, medicolegally examined Satish s/o Surat Singh, 30 yrs. Male r/o Atawala, at 12:05pm. There was h/o assault on 1/11/08 at about 10:00pm. O/E general condition of the person was fair. He had three injuries on his person.

1. Contusion over both orbits, Right eye congested, advised eye surgeon opinion and x-ray.

2. Scabbed abrasion over front of neck.
3. C/o pain front of chest, advised surgical opinion and x-ray.

Injury no.1 and 3 were kept under observation and no.2 was declared simple in nature. All injuries were caused by blunt weapon and in a probable duration of about 48 to 72 hrs. The person came by himself for MLR and the quarrel allegedly took place at the site of mini secretariat, Panipat.”

12. It is clear from the above statement of Dr. Alok Jain that Satish PW-7 himself had gone for MLR and was examined with injuries found to be simple in nature on 04.11.2008 when the incident allegedly took place on 01.11.2008 at about 10.00 pm. There is no explanation as to why he did not get medically examined via police but he himself later got examined. These simple injuries must be self-inflicted. Thus the entire prosecution case is highly doubtful. The benefit of doubt must be given to the accused-Surinder. In the result we make the following order:

ORDER

- (i) Criminal Appeal CRA-D-No.922-DB OF 2009, is allowed.
- (ii) The impugned judgment and order of sentence dated 14/15.09.2009 passed by the learned Additional Sessions Judge, Panipat in Sessions Case No.12 of 2009 convicting the appellant-Surinder and sentencing him to undergo rigorous imprisonment for life and to pay a fine of ₹20,000/- for offence punishable under Section 302 IPC and rigorous imprisonment for seven years and to pay a fine of ₹10,000/- for offence punishable under Section 392 IPC, is set aside.

(iii) The appellant-Surinder is acquitted of the charges framed against him. He be released forthwith from the jail, if he is not required in connection with any other case.

(A. B. CHAUDHARI)
JUDGE

22nd 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>