

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

CRA-D-920-DB of 2017 (O&M)
Date of decision: January 18, 2019

Ehsanullah

.....Appellant

Versus

State of (U.T.) Chandigarh

....Respondent

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

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep S. Sandhu, Advocate
for the applicant-appellant.

Mr. Yashwant Singh Rathore, Additional Public Prosecutor
for U.T., Chandigarh.

A.B. CHAUDHARI, J

Being aggrieved by the judgment/order dated 22.09.2017/25.09.2017, in Sessions case No.134 dated 16.07.2016, passed by the learned Sessions Judge, Chandigarh, by which the learned trial Court convicted the appellant for commission of offence punishable under Section 302 of the Indian Penal Code, 1860 (for short 'IPC') and sentenced him to undergo rigorous imprisonment for life and to pay fine in the sum of ₹5,000/-; in default of payment of fine, to further undergone rigorous imprisonment for a period of six months, the present appeal has been preferred by him.

2. The prosecution case, in brief, is that on 21.03.2016, Sub Inspector Nar Singh (Investigating Officer), Police Station Sector 34, Chandigarh received a message that a stabbing incident has taken place in

Government Post-Graduate College, Sector 46, Chandigarh. He reached at the spot and saw that inside class-room of the said college, there were blood stains and it was revealed that injured Sanaullah was taken to GMCH, Sector 32, Chandigarh. He went to GMCH, Sector 32, Chandigarh and made a request to Doctor to issue certificate regarding the condition of the injured and the Doctor stated that he was unfit. PW1-Didar (complainant) eye witness of the incident then met the Investigating Officer to get his statement recorded. He stated that on the date of incident, he along with his friend Ahmad Seyar were standing in the college outside the class-room and the deceased Sanaullah was inside the class-room. He along with Ahmad Seyar entered the classroom while accused Ehsanullah who was ahead of them after entering the class-room attacked Sanaullah and gave him fist blow who was sitting on chair and fell him on the ground and then took out a knife and gave a stab blow in the left side of his stomach. The complainant Didar and Ahmad Seyar intervened and in the process, Ahmad Seyar caught hold of Ehsanullah from his arm and took him to one side, while complainant Didar caught Sanaullah and noticed that blood was oozing from the stomach of Sanaullah and he took him to the dispensary and then he was admitted in the Hospital. Ehsanullah and Sanaullah had a dispute on certain matter in the *Masjid* (Mosque) of Sector 45, Chandigarh and due to the said grudge, he made a attack on him. Initially, offence under Section 307 of IPC was registered by the police. Thereafter, police officer took necessary steps to collect evidence including the blood samples, clothes etc. In the meanwhile, there was information that Sanaullah expired and as such, offence under Section 302 of IPC was added. The usual investigation was

conducted so also the postmortem of the dead-body and thereafter, investigation was completed. Blood stained knife was recovered. Challan was filed before the trial Court. In the trial Court, prosecution examined PW1-Didar, eye witness, PW2-Ahmad Seyar and other witnesses. The prosecution proved documents in the trial. The appellant-Ehsanullah denied the charge. The learned trial Court after hearing the parties convicted the appellant as stated above. Hence, this appeal.

ARGUMENTS

3. In support of the appeal, learned Senior counsel for the appellant vehemently argued that the appellant received incised injury and that is a dent in the genesis of the prosecution case not being brought before the Court since the said fact has been suppressed or withheld from the Court. Even during investigation, it was found that there was incised injury on the person of the appellant, but then there is nothing disclosed by the prosecution witnesses about the same. Learned Senior counsel therefore, submitted that there is possibility of sudden quarrel and rather Sanaullah was aggressive and first attacked the appellant and therefore, the appellant could not be held guilty of the offence of murder as such. There is evidence on record to show that they were good class-mates and had cordial relations. There is absence of motive, as to why the incident happened when they were from the same Country, to commit the offence in question as alleged by the prosecution. The appellant also examined DW1-Shreya in his defence, but that evidence has not been considered in correct perspective by the trial Court. In the alternative, he submitted that the offence of murder has not at all been proved by the prosecution and the appellant could be held guilty

of some lower offence. He, therefore, prayed for allowing the appeal.

4. *Per contra*, learned counsel for the U.T., Chandigarh vehemently opposed the appeal and supported the impugned judgment/order and the reasons for conviction of the appellant given therein by the learned trial Court. he submitted that there is a reason why the appellant could have attacked the deceased. The injury caused by the appellant was such that ultimately Sanaullah succumbed to the injury. The injury was made on the vital part of the body and therefore, the appellant cannot be held guilty of lower offence. He, therefore, prayed for dismissal of the appeal.

CONSIDERATION

5. We have heard learned counsel for the rival parties. We have also perused the evidence of the eye witness and other corroborative evidence relied upon by the prosecution. At the outset, having gone through the evidence of two eye witnesses and in particularly, the eye witness, namely PW1-Didar (Complainant) who was common friend of the appellant and the deceased and carefully perusing his cross-examination, we do not find any reason much less single reason to disbelieve him. It is important to note that PW1-Didar is also an Afganistani national who was studying with them and for him both the deceased and the appellant were the friends and were of the same nationality. He has furnished the motive that there was dispute amongst the deceased and the appellant regarding *Masjid* (Mosque) and the appellant suddenly attacked him in the class-room. We believe his evidence completely and find that the prosecution has fully proved its case since there is no dent in his cross-examination. Similarly is the case with another witness PW2-Ahmad Seyar. We have also gone through his

examination-in-chief and cross-examination and we have absolutely no reason to disbelieve his evidence as well.

6. There is corroborative evidence in the form of stains of blood and the knife and other material evidence brought by the prosecution which fully corroborate the prosecution evidence. The FIR was immediately lodged after the incident and there was no delay in it. We, therefore, hold that it was the appellant who had stabbed Sanaullah in his abdomen. The submission about defence evidence that her evidence was not considered in the correct perspective will have to be rejected. It was stated that initially Ehsanullah received stab wound in his hand and then Sanaullah was stabbed. In our view, it is a cock and bull story to save the appellant. She never made such statement to the authority or the police. Thus, we reject this submission.

7. The next question is what offence is proved by the prosecution. We have carefully considered this alternate plea and the question what we find is that Ehsanullah had suddenly given a blow to the deceased in his abdomen, but thereafter, he had not repeated the blow nor had made any attempt to do so. We, therefore, find absence of intention to commit murder as such. However, we find that in order to teach him lesson Ehsanullah gave a stab blow to the deceased which damaged renal vessel and after complications, he died in the Hospital due to overflow of the blood. We are of the opinion that in the light of the fact that single blow was given by him and considering the depth of the injury and since the appellant is deemed to have knowledge about the fact that injury caused by him may prove vital, offence under Section 304 Part-II of IPC was proved by the prosecution rather than 302 of IPC. In that view of the matter, we are inclined to modify

the conviction of the appellant from Section 302 of IPC to one Section 304 Part-II of IPC and accordingly, award sentence to him to the extent of 5 years which would subserve the interest of justice. In the result, we make the following order:-

ORDER

- (i) **CRA-D-920-DB of 2017** is partly allowed;
- (ii) The impugned judgment/order dated 22.09.2017/25.09.2017, in Sessions case No.134 dated 16.07.2016, passed by the learned Sessions Judge, Chandigarh, is set aside and modified; and the appellant is held guilty and convicted for commission of offence punishable under Section 304 Part-II of IPC and sentenced to undergo rigorous imprisonment for a period of 5 years;
- (iii) Sentence of fine and in default thereof, shall remain intact;
- (iv) After completion of above sentence, the appellant-Ehsanullah be deported to his Country.

(A.B. CHAUDHARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

January 18, 2019
mahavir

Whether speaking/ reasoned: **No**

Whether Reportable: **No**