

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

**CRA-D-585-DB of 2003 (O&M)
Date of Decision: 25.11.2019**

Sanjay

.....Appellant

VS.

State of Haryana

.....Respondent

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mr. Justice H.S. Madaan.**

Present : Mr. Sandeep Ghangas, Advocate and
Ms. Shruti Rathore, Advocate,
for the appellant.

Mr. Vikrant Pamboo, DAG Haryana.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment dated 11.06.2003 and order dated 14.06.2003 passed by Additional Sessions Judge, Panipat, vide which the accused/appellant was convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.5000/- and in default of payment of fine to further undergo RI for three months.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 2 are reproduced as under:-

“2. Brief facts of the prosecution case are as under: that on 13.12.2000, ASI Bharat Bhushan, was present at Police Post, Sector 29, HUDA, Panipat, when he received V.T. message from P.S.Chandni Bagh, Panipat, about the receipt of dead body of Noshed in General Hospital,

Panipat, and then he alongwith other police officials reached there and there he met Yameen son of Yaseen Ansari, Musalman, resident of Karanpur, District Muradabad (U.P.), complainant, who got recorded his statement, Ex.PA, to the effect “that he was resident of the above said address and was doing the work of contractor in Sectors-25-29 and that he and Noshad were residing in the room on rent in Anjali Factory; that on that night i.e. on 12.12.2000, at about 8.30 p.m. he, his Tau and Noshad were returning to his room after taking party from his factory-owner and when they reached behind the Power House, Sector-29, they found four boys roaming and that they (complainant side) told them (boys) they were thieves and vagabond upon which the said boys abused them and told that why they were calling them thief and then a quarrel took place and they (complainant side) raised noise on hearing of which people came from the factories side; that then three boys fled from there and one was caught hold by Noshad whose name came to be known later on Sanjay son of Moji Ram, Brahman, resident of Nangal Kheri; that Sanjay gave knife blow in the abdomen of Noshad upon which Noshad fell down and the mob of labour started beating Sanjay; that during this Sanjay succeeded in fleeing; that then he and his Tau, took Noshad to one-two private Hospital but the doctors were not met and then he was shifted to Civil Hospital, Panipat and got him admitted there; that Sanjay caused injuries to Noshad with knife with intention to kill him and that action be taken against him.”

On the basis of statement of the complainant, Ex.PA,

formal FIR Ex.PA/3 was recorded. Noshad was thereafter referred to

PGI, Rohtak. The investigation was carried out. On the same day Noshad succed to his injuries. Inquest proceedings Ex.PE/3 were conducted and the postmortem examination vide PMR Ex.PE was conducted on the dead body of Noshad. After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court. As the offence under Section 302 IPC is triable by Court of Session, the case was committed to the said Court.

Charge under Section 302 IPC was framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1 Yamin, complainant, PW-2 Abdul Rahim, PW-3 HC Jai Singh, PW-4 HC Suresh Kumar, PW-5 Dr. Arun Sehgal, PW-6 Dr. Y.P. Singhmar, PW-7 Constable Rajesh Kumar, PW-8 SI Mohinder Singh, PW-9 Salaudeen, PW-10 Constable Sat Narain, PW-11 SI Nathu Ram, PW-12 SI Bharat Bhushan and closed the evidence.

The statement of the accused under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to him to which he denied and pleaded false implication. The accused took the plea of *alibi*.

In defence the accused had examined DW-1 Subhash son of Gordhan.

After appraisal of evidence, the learned trial court vide impugned judgment and order, convicted the accused/appellant under Section 302 IPC and sentenced him to undergo imprisonment for life

and to pay fine of Rs.5000/- and in default of payment of fine to further undergo RI for three months.

Thus, the present appeal has been filed by accused/appellant Sanjay.

It is contended by the learned counsel for the accused/appellant there was no motive for the accused/appellant to commit murder of Noshad. The accused and deceased had no prior enmity nor were they known to each other. No human blood was detected on the knife, which is alleged to have been used in the commission of crime. It is further contended that PW-9 Salaudeen, who is allegedly a witness of the recovery, has not supported the case of the prosecution, therefore, the alleged recovery of knife at the instance of accused cannot be fastened upon the accused.

Lastly, it is contended that at best it is a case falling under Section 304-II IPC as there was no intention on the part of the accused to kill Noshad. The death has occurred without any premeditation, in a sudden fight in the heat of passion upon a sudden quarrel.

Learned counsel relies upon Arjun and another vs. State of Chhattisgarh 2017(1) Recent Apex Judgments (RAJ) 658 (SC) to contend that when there is intent and knowledge, then the same would be a case of Section 304 Part-I IPC and if it is only a case of knowledge and not intention to cause murder and bodily injury, then the same would be a case of Section 304 Part II IPC.

On the other hand, on behalf of the State, it is contended

the learned trial Court has rightly convicted and sentenced the accused/appellant Sanjay under Section 302 IPC and sentenced him to undergo imprisonment for life. The name of the accused is mentioned in the FIR. There is a direct eye witness account coming from the mouth of Yameen PW-1 and PW-2 Abdul Rahim.

We have heard the learned counsel for the parties and have gone through the case file.

It is a case of direct evidence. The occurrence was witnessed by PW-1 Yamin and PW-2 Abdul Rahim. Both of them have stated categorically that on 12.12.2000 Yamin along with his uncle Noshad had gone to the factory of Mr. Malik for Ramjan feast and were on their way to residence at about 8.00/8.30 p.m, they came across four persons roaming over there. The accused stopped them and wanted to extort money and there arose a scuffle with them and that his uncle Abdul Rahim was also with them who raised hue and cry which attracted some persons from the nearby factories upon which those four persons tried to run away but Noshad caught hold of one of them. The remaining three persons fled away from the spot and the person who was caught hold by Noshad had taken out a knife and had given a blow in his abdomen and that the name of that person was Sanjay who was present in the Court at the time of making deposition by the witness. They shifted Noshad to hospital and the persons collected there had given beatings to Sanjay accused and the said persons had gone to the Police to lodge report and that they went to the hospital and

that Noshad expired at about 2/3 a.m on 13.12.2000. The complainant got recorded his statement Ex.PA. Further, a suggestion was put to the witness that accused was returning after easing himself and that there arose a dispute between Naushad and Yusuf. The suggestion was denied by the witness. However, it suggests that the defence has admitted the presence of accused Sanjay on the spot. The statement made by PW-1 Yamin is corroborated by the testimony of PW-2 Abdul Rahim who deposed on the same lines as that of Yameen. Immediately after receiving injuries, Noshad was examined by PW-5 Dr. Arun Sehgal, Medical Officer, Civil Hospital, Panipat who found following injury on the person of Noshad:-

“An incised wound on the left side of abdomen in its lower part. A loop out gut was coming out of it. Fresh bleeding was present. Size could not be measured. X-ray and Surgeons opinion advised.”

The postmortem examination on the dead body of Noshad was conducted by PW-6 Dr. Y.P.Singhmar, Civil Hospital, Panipat who described the injury as under:-

“An incised wound 4.0 c x. 1.5 cm spindle shaped present in left iliac fossa of abdomen. Wound was obliquely placed underlying muscles, blood vessels, peritoneus and small gut showed corresponding cut. Blotted blood was present.”

Copy of the PMR was proved on record as Ex.PE. The doctor had opined that the cause of death was injury to gut leading to heamorrhage and shock. Injuries were ante-mortem in nature and

sufficient to cause death. The medical evidence and ocular evidence qua the seat of injury and the weapon used have been found in sync with each other.

As regards the contention of the learned counsel for the appellant that there was no motive behind the occurrence, it is to be seen that it is a case of direct evidence. In the presence of direct eyewitness account, motive pales into insignificance. So far as the factum of PW-9 Salaudeen turning hostile is concerned, the testimony of PW-9 suggests that he has admitted the disclosure statement Ex.PJ/1, recovery memo Ex.PJ/2, sketch of knife Ex.PJ/3 and also admitted his thumb impression and the signatures of Irshad over the same. He has also admitted that the contents of Ex.PJ/1, Ex.PJ/2, Ex.PJ/3 were read out to him and after admitting the contents of the same, he had affixed his thumb impression. In view of this evidence, the argument of the learned counsel for the appellant deserves to be rejected. Further as per the recovery memo and report of the FSL Ex.PG, there was no blood on the knife but that does not cause any dent in the case of the prosecution particularly in the presence of testimonies of eye witnesses. The accused must have removed the blood from the knife.

As regards the contention that it was a case of free fight and there was no intention to cause death, it emerges from the record that the accused had carried with him a spring actuated knife. Had he not had the intention to cause death, he would not have carried with

him a spring actuated knife. So, from the weapon of offence and the seat of injury i.e. abdomen, the intention to cause death is pronounced and manifest.

The judgment relied upon by the learned counsel for the appellant is distinguishable from the facts of the present case.

In view of the above, the present appeal is dismissed. The accused/appellant is stated to be on bail. He be taken into custody to serve the remaining part of the sentence.

(JITENDRA CHAUHAN)
JUDGE

(H.S.MADAAN)
JUDGE

25.11.2019
SN

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No