

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

(1) CRA-D-293-DB of 2003

Balwan Singh

.... APPELLANT

Versus

State of Haryana

..... RESPONDENT

(2)

CRR-1670 of 2003

Joginder Singh

.... PETITIONER

Versus

Balwan Singh and others

..... RESPONDENTS

Reserved on : 07.03.2019
Date of decision : 12.03.2019

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Rahul Garg, Advocate,
for the appellant in CRA-D-293-DB of 2003.

Mr. K.S. Dhaliwal, Advocate,
for the petitioner in CRR No. 1670 of 2003.

Mr. Vishal Garg, Addl. A.G., Haryana.

* * *

RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in CRA-D-293-DB of 2003 and CRR No. 1670 of 2003, therefore, these are taken up together and being disposed of by a common judgment.

2. This appeal and revision are instituted against the judgment dated 18.02.2003 and order dated 20.02.2003, rendered by learned Additional Sessions Judge (Adhoc), Fast Track Court, Sonapat, in Sessions Case No. 37 of 2000, whereby appellant Balwan Singh, who was charged with and tried for the offences punishable under Section 302 of the Indian Penal Code and Section 25 of the Arms Act, 1959, was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/- for the commission of offence under Section 302 of the Indian Penal Code. In default of payment of fine, he was sentenced to further undergo rigorous imprisonment for a period of two months. He was also convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 1,000/- for the commission of offence under Section 25 of the Arms Act. In default of payment of fine, he was sentenced to further undergo rigorous imprisonment for a period of one month.

3. The case of the prosecution, in a nutshell, is that PW.13 Joginder Singh made statement vide Ex.PG on 13.09.2000 at 11.00 PM to the effect that he was resident of village Nahri. They were four brothers and sisters. Name of his younger brother was Deepak. On 13.09.2000 at 11.00 AM, Deepak was playing in the street in front of their house situated at village Nahri. Deepak pinched the cheek of Ankit son of Jagdish, aged 3 years. Ankit went away towards his house weeping. Balwan Singh came on the spot with a knife in his hand. He was hurling abuses. He gave a blow in the middle of chest of Deepak. He ran away from the spot. They took Deepak to a hospital situated at Narela. However, the doctor refused to admit Deepak. Thereafter, they took him to Lok Nayak Jai Parkash Narain

Hospital, Delhi. He succumbed to the injuries caused by knife within four hours of his admission in the hospital. Body was sent for post-mortem examination. FIR was registered. The investigation was completed and challan was put up after completing all the codal formalities.

4. The prosecution examined a number of witnesses in support of its case. The accused was also examined under Section 313 Cr.P.C. He denied the case of the prosecution. He examined one witness in his defence.

5. The appellant was convicted and sentenced, as noticed above. Joginder Singh filed Criminal Revision (CRR No. 1670 of 2003) seeking enhancement of sentence and grant of compensation.

6. Learned counsel appearing on behalf of the appellant vehemently argued that the prosecution has failed to prove its case against his client. Learned counsel appearing on behalf of the State has supported the judgment and order of the learned Court below. Learned counsel appearing on behalf of the complainant has argued that the sentence be enhanced and family of the deceased be awarded adequate compensation.

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

8. PW.1 Inspector Sohanvir Singh deposed that he was posted as SHO at Police Station Narela, Industrial Area, on 13.09.2000. He received information vide Ex.PA from Lok Nayak Jai Parkash Narain Hospital, Delhi, regarding injuries on the person of Deepak. ASI Umed Singh and Head Constable Kishan Lal went to the Hospital. He was informed that condition of the patient was serious. He went to Lampur border to enquire about the matter. He also went to Lok Nayak Jai Parkash Narain Hospital,

Delhi. He came to know that the incident was not pertaining to their area, rather it was of village Nahri, District Sonapat. The injured died due to injuries.

9. PW.2 Dr. Anil Kumar deposed that he conducted post-mortem examination on the body of Deepak on 14.09.2000. He found the following injuries :-

1. Incised stab wound 3.5 cm x 1.5 cm x chest cavity deep present on left upper front of chest, just outer to mid line on left side. The wound was placed obliquely with upper outer end being 9 cm above and inner to the left nipple and 5.4 cm below the upper border of medial end of left collar bone. Both margins clean cut and both angles were acute. There was oozing of blood from the wound. No other external injury was present on the body.

In his opinion, the death was due to haemorrhage and shock. He proved the post-mortem report Ex.PB. The injuries mentioned in the post-mortem report were possible with knife Ex.P1, which was shown to him in the court. In his cross-examination, he deposed that there were two surgical wounds also to drain out the blood but the main injury was not operated at all.

10. PW.4 Devender Singh deposed that on 13.09.1999 (sic), Inspector had come to the village. In the meantime, they came to know that accused Balwan Singh was present in his house. He was apprehended. He made statement Ex.PD. He signed the same. He disclosed that he had concealed the knife. Thereafter, accused Balwan Singh took knife from the corner of the room. Parcel of the knife was prepared. Knife is Ex.P1. This

witness was declared hostile and was cross-examined by the learned Public Prosecutor. He admitted in his cross-examination carried by the learned Public Prosecutor that when accused Balwan Singh was arrested, his shirt was also taken into possession vide Ex.PE. He identified the shirt Ex.P2. He was cross-examined by the learned defence counsel. In cross-examination, he deposed that accused Balwan Singh told about the knife to the Inspector at his house, only when he was asked about the same.

11. PW.5 HC Somvir deposed that on 13.09.2000, he was posted as Head Constable at Police Post Barota under Police Station Kundli. He along with ASI Anup Singh and Constable Bijender went to Lok Nayak Jai Parkash Narain Hospital, Delhi. PW Joginder met them there. His statement Ex.PG was recorded. The statement was also signed by PW. It was attested by ASI Anup Singh. In his cross-examination, he deposed that the brick was picked up from the street lying in front of the house of Joginder.

12. PW.9 Dr. Sudha deposed that on 13.09.2000, Deepak son of Sahab Singh was brought to Lok Nayak Jai Parkash Narain Hospital, Delhi, with alleged history of stabbed wounds. On examination, one injury was found on his person, which was already stitched by the doctor. The patient was referred for expert management. She issued MLR vide Ex.PM.

13. PW.10 Dr. Himanshu Chauhan deposed that on examination, one injury was found on the person of Deepak, which was already stitched by the doctor at Narela. It was not opened by them. The patient was referred to the surgical specialist for expert management.

14. PW.11 ASI Anup Singh deposed that on 13.09.2000, information was received at 9.00 PM to the effect that Deepak had received

injury in a scuffle. He died. Investigation Officer was sent. Thereafter, he along with Constable Bijender and Head Constable Sombir reached the spot. Statement of Joginder was recorded vide Ex.PG. Post-mortem examination was got conducted on 14.09.2000. He prepared the rough site plan Ex.PN. Half portion of the brick stained with blood was also lifted from the spot.

15. PW.13 Joginder is the eye witness. He is the brother of the deceased. He deposed that on 13.09.2000 at about 11.00 AM, his brother Deepak was playing in front of the house. Ankit aged about 3 years was going through the street. Deepak gave a pinch on the cheek of Ankit. Ankit went to his house while weeping. Thereafter, accused Balwan Singh, present in the court, was seen coming. He was proclaiming that he would teach a lesson. He was carrying knife in his hand. They also came out. They saw the accused giving a knife blow on the chest of his brother Deepak. He ran towards his brother. The accused ran away from the spot. They took his brother Deepak to Lok Nayak Jai Parkash Narain Hospital, Delhi. His brother died within four hours after his admission in the hospital at Delhi. His statement was recorded vide Ex.PG. In his cross-examination, he admitted that their house was in the residential locality of the village and was surrounded by so many houses. His father was in the house when the incident took place. Blood did not spill on their clothes while taking Deepak to the hospital. It might have taken about 20 minutes from their village to go to hospital at Narela. Police Post was at village Barota.

16. PW.14 Inspector Ram Kalan deposed that on 17.09.2000, he was posted as Inspector at CIA Staff, Sonapat. He went to the house of

accused. Accused was arrested. He made a disclosure statement that he had concealed a knife in the cattle shed of his house. His statement is Ex.PD. The knife was got recovered. The blood stained shirt Ex.P2 was also recovered.

17. DW.1 Kartar Singh deposed that the accused was his sister's son. The accused was present at the house of this witness situated at village Kair on 13.09.2000. Accused was working as a driver and was staying at his house since long. He along with accused Balwan Singh went to village Nahri on 13.09.2000 for purchasing a buffalo. Accused remained with him throughout the day on 13.09.2000. In his cross-examination, he admitted that Balwan Singh used to drive vehicle of a resident of Uttam Nagar but he did not know the name of the owner of that vehicle. He had purchased one buffalo from father of Balwan Singh accused and one buffalo was purchased from some other person, whose name he could not tell.

18. PW.13 Joginder deposed that his younger brother Deepak had pinched on the cheek of Ankit. The appellant came on the spot armed with knife. Appellant gave knife blow on the chest of Deepak. He was taken to Narela. The doctor refused to admit him. Thereafter, Deepak was referred to Lok Nayak Jai Parkash Narain Hospital, Delhi. He died within four hours of his admission in that hospital. The cause of death was opined to be haemorrhage and shock. The post-mortem was conducted by PW.2 Dr. Anil Kumar. He had noticed stab wound 3.5 cm x 1.5 cm x chest cavity deep on the left upper front of chest just outer to the mid line. The wound was oblique. No other external injury was present on the body. It has come on record that there were two surgical wounds to drain out the blood. The

appellant got recovered the knife Ex.P1 on the basis of his disclosure statement.

19. PW.9 Dr. Sudha has also deposed that on examination, one injury was found on the person of Deepak, which was already stitched by the doctor. To the similar effect is the statement of PW.10 Dr. Himanshu Chauhan. PW.2 Dr. Anil Kumar had categorically deposed that there were two surgical wounds also to drain out the blood but the main injury was not operated by them.

20. The FIR should be lodged promptly. However, in this case, the family was disturbed since the young boy was stabbed. He later on succumbed to his injuries. The delay in lodging the FIR is not inordinate. The same has been explained.

21. As per the Forensic Science Laboratory Ex.PR, blood was found on white shirt (exhibit-1a). Brick (exhibit-2) was also stained with blood stains. Traces of blood too small for serological analysis were detected on knife/*chhuri* (exhibit-4).

22. The prosecution has proved its case against the appellant beyond reasonable doubt. There is no reason for us to interfere with the well reasoned judgment of the learned trial court. The appeal is, accordingly, dismissed. The appellant is on bail. His bail bond and surety bond are cancelled. He is directed to surrender before the concerned Chief Judicial Magistrate within a period of seven days to undergo remaining part of his sentence.

23. The appellant has been awarded adequate sentence by the learned trial court. However, since the deceased was only 18 years old, his

family members are required to be compensated. The revision filed by the complainant is partly allowed to the extent that the appellant is directed to pay compensation of Rs. 3,00,000/- to the family of the deceased. However, the sentence of imprisonment and fine awarded by the learned trial court is maintained.

(RAJIV SHARMA)
JUDGE

March 12, 2019
ndj

(KULDIP SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No