

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

CRA-D-434-DB-2003(O&M)
Date of decision :- 14.11.2019

Harpreet Singh and others

....Appellants

Versus

State of Punjab

....Respondent

**CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Ms.G.K. Mann, Advocate
for the appellants.

Mr.A.A. Pathak, Addl.A.G., Punjab.

H.S. MADAAN, J.

Briefly stated, facts of the case as per prosecution version are that on 29.4.2001, a police party from Police Station Sultanwind, Amritsar headed by Sub-Inspector Nirlep Singh (hereinafter referred to as the Investigating Officer/I.O.) was present at bridge of canal in the area of Kot Mit Singh in connection with patrolling, when complainant Raj Kumar came

there and got his statement recorded, stating therein that, he is resident of Ishwar Nagar, Tarn Taran Road, Amritsar and running a business of sale of ice and cold drinks along with his father Harmesh Chander at Chowk Mangal Singh; that on the said day, which was Sunday, his brother Latti was also present with him and his father at their business premises and they were working there; at about 8/8:30 p.m., Babbu and Sikka, residents of Gujjarpura (Himmatpura), Amritsar, earlier known to them reached there; they were accompanied by another person not known to the complainant or his father earlier, though they could identify him if shown to them; on reaching there Sikka asked Latti that he would be taught a lesson for not allowing him to carry the gunny bags from the grain market; Babbu raised an alarm saying “*FHAR LAO IS NUN MANDI VICH CHAUDHAR KARAN DAA MAZAA DASS DEO*”; saying that Babbu caught hold of Latti from his neck and also started beating him; Sikka took out one *CHHURI* which was having a sharp edged end and was like a *KHANJAR* from his dub and gave a blow with it in the stomach of Latti, resultantly intestines of Latti came out and he fell down, then the third person (Harpreet Singh) caught hold of some broken cold drink bottle lying there and gave a blow with the same on the person of Latti; while Latti was lying down, the glass pieces hit him in the waist; on their raising hue and cry some persons from nearby shops came there; then the assailants escaped from the spot along with their respective weapons.

In the statement, the complainant further stated that electric light was on at the place of occurrence and the entire occurrence was seen by him and his father Harmesh Chander; that after arranging for a vehicle, they had removed Latti to Shri Guru Ram Dass Charitable Hospital, from where he was referred to Guru Nanak Dev Hospital; the injured was taken there, however on reaching that medical institute, he was declared brought dead; the dead body of Latti was left in Guru Nanak Devi Hospital, Amritsar, thereafter the complainant went for informing the police and on the way he came across the police party and got his statement recorded.

The motive for the incident was that some dispute had taken place between Latti and Sikka over the lifting and carriage of certain gunny bags in the grain market and for the said reason Sikka, Babbu and third person Harpreet Singh had murdered Latti.

The Investigating Officer recorded statement Ex.PL of the complainant and he appended his endorsement Ex.PL/1 below it, sending ruqa to the police station, on the basis of which formal FIR Ex.PL/2 was recorded at the police station. The police party accompanied by the complainant went to Guru Nanak Dev hospital, Amritsar and found dead body of Latti to be placed in the mortuary of the said hospital. He inspected the dead body of Latti, carried out inquest proceedings, preparing report Ex.PC in that regard. He had prepared injury report Ex.PF also. He got the postmortem examination conducted on the dead body of Latti by deputing the

police officials to get the needful done. The Investigating Officer carried out spot inspection. The blood stained newspaper found lying there was converted into a parcel, which was sealed by the I.O. with his seal having initials 'NS' and it was taken into possession vide recovery memo Ex.PM. Rough site plan Ex.PN of the place of occurrence was prepared. Statements of witnesses were recorded.

On 8.5.2001, the accused were arrested by the Investigating Officer from a place near Chowk Tarlok Janj Ghar. Accused Sanjiv Kumar @ Sikka was interrogated by the Investigating Officer, who suffered a disclosure statement stating therein that he had kept concealed a *Chhuri* in the cluster of eucalyptus trees near the railway line opposite Mohalla Dashmesh Nagar and he could get the same recovered. His such statement Ex.PO under Section 27 of the Evidence Act was recorded, which was signed by accused and attested by ASI Satnam Singh. Thereafter, the said accused while in police custody in pursuance of the disclosure statement made by him got *Chhuri* recovered from the disclosed place. The Investigating Officer prepared rough sketch of the recovered *Chhuri* and took the same into possession vide memo Ex.PO/2 attested by ASI Satnam Singh. Rough site plan Ex.PO/3 of the place of recovery of *Chhuri* was prepared. On return to the police station, the Investigating Officer deposited the parcels with seals intact with MHC of the police station.

On 30.4.2001, the clothes of the deceased were produced before the Investigating Officer by LC Labh Singh. Those were also converted into the parcels and sealed with seal of IO having initials 'NS' and were taken into possession vide recovery memo Ex.PR.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Chief Judicial Magistrate, Amritsar.

On presentation of challan in the Court of Chief Judicial Magistrate, Amritsar, he supplied copies of documents relied upon in the challan to all the accused free of cost as provided under Section 207 Cr.P.C. Then finding that offence under Section 302 IPC is exclusively triable by the Court of Session, learned Chief Judicial Magistrate, Amritsar vide his order dated 13.8.2001 committed the case to the Court of learned Sessions Judge, Amritsar.

When the case was received in the Court of learned Sessions Judge, Amritsar, he finding that prima-facie charge for the offence under Sections 302 IPC against accused Sanjiv Kumar and for the offence under Section 302 read with Section 34 IPC against accused Babbu and Sonu was disclosed, charge-sheeted them accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution

examined as many as ten witnesses i.e. PW1 Dr.Mukesh Bhardwaj, PW2 Dr.Gurmanjit Rai, PW3 Constable Gurmit Singh, PW4 Head Constable Sarwan Singh, PW5 Constable Arun Kumar, PW6 Constable Joginder Pal, PW7 Raj Kumar, PW8 Harmesh Chander, PW9 Inspector Nirlep Singh and PW10 Rachhpal Singh.

With that the prosecution evidence stood closed.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they are innocent and had been falsely implicated in this case.

However, the accused did not lead any evidence in defence.

After hearing arguments, learned trial Court vide judgment dated 12.4.2003 convicted accused Sanjiv Kumar alias Sikka for the offence under Section 302 IPC and accused Vijay Kumar alias Babbu and Harpreet Singh @ Sonu @ Dhobi for the offences under Sections 302 read with Section 34 IPC and sentenced them as under:

Name of accused	Under Section	Sentence Awarded
Sanjiv Kumar @ Sikka	302 IPC	Imprisonment for life and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of six months.
Vijay Kumar @	302/34	Imprisonment for life and to pay a fine

Babbu and Harpreet Singh @ Sonu @ Dhobi	IPC	of Rs.1,000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of six months each.
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The said judgment and order left the accused/convicts aggrieved and they have filed the present appeal, notice of which was given to the State.

We have heard learned counsel for the appellants-accused- convicts and learned Additional Advocate General for the State of Punjab besides going through the record.

We find that participation of accused Sanjiv Kumar @ Sikka in the incident is proved conclusively and affirmatively. He is very much named in the FIR and recovery of the weapon used by him in the incident was also effected. He had a motive to cause murder of the deceased, whereas it is not so with regard to accused Vijay Kumar @ Babbu and Harpreet Singh @ Sonu. Accused Harpreet Singh @ Sonu @ Dhobi is not named in the FIR also. During the investigation his name had cropped up and for the said reason he had been challaned. The fatal injury in this case is attributed to Sanjiv Kumar @ Sikka, who had got the weapon used i.e. knife recovered from his possession by making a disclosure statement. The said knife was found to be blood stained and as per report from FSL Ex.PR/1 that knife was found to be stained with human blood. Obviously he had a motive to cause injuries to Latti. The very fact that he by using knife, which is a dangerous weapon

had caused injuries to Latti repeatedly hitting him in the abdomen with the result his intestines had come out clearly shows that he had intention to kill Latti.

As far as involvement of other two accused, namely Harpreet Singh @ Sonu @ Dhobi and Vijay Kumar @ Babbu is concerned, we find it to be somewhat doubtful. Vijay Kumar @ Babbu himself is not shown to have any motive to cause injuries to the deceased. No injury has been attributed to him and as per the prosecution story, he had raised a exhortation and caught hold of Latti from his neck. With regard to Harpreet Singh @ Sonu @ Dhobi, who is not named in the FIR, he is shown to have caused injuries with a broken cold drink bottle. During the investigation, no such pieces of the bottle were collected and such broken glass bottle has not been recovered from the possession of the accused. Though PW2 Dr.Gurmanjit Rai has deposed that injury No.3 i.e. incised stab wound (skin deep) on the back of right side of the chest of the deceased, could be caused by a broken soda-water bottle, but the bottle in question was not shown to the doctor. At the same time there is no reference in the FSL report Ex.PR/1 of the corresponding cut on the shirt of the deceased. Further, the opinion of the doctor that injury No.3 (incised wound on the back of the right side of chest) and injury No.4 (incised stab wound in right side of front of abdomen) could be caused by one and the same weapon. In the absence of the fact that bottle was never shown to

the doctor nor it was recovered from the spot from appellant Harpreet Singh and the further clarification of the doctor convince us that appellant – Harpreet Singh did not cause injury as alleged by the prosecution.

Therefore, in our view it does not come out from the record that Harpreet Singh @ Sonu @ Dhobi and Vijay Kumar @ Babbu were also there at the spot at the time of incident and they had participated in the same. It has to be kept in mind that there is a tendency amongst people of this region to throw a net wide so as to rope in as many persons as possible of the opposite party in an incident of this nature.

In that way, the prosecution has successfully proved its charge against the accused Sanjiv Kumar @ Sikka for the offence under Section 302 IPC beyond a shadow of reasonable doubt, whereas it could not do so with regard to accused Vijay Kumar @ Babbu and Harpreet Singh @ Sonu @ Dhobi.

Thus, the appeal filed on behalf of appellant/accused Sanjiv Kumar @ Sikka stands dismissed, whereas the same is allowed qua appellants/accused Vijay Kumar @ Babbu and Harpreet Singh @ Sonu @ Dhobi and they are acquitted of the charge framed against them.

Sanjiv Kumar @ Sikka appellant – accused is stated to be on bail granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Amritsar

is directed to issue arrest warrant to get him arrested immediately
so as to make him undergo the remaining sentence.

	(JITENDRA CHAUHAN)	(H.S.MADAAN)
	JUDGE	JUDGE
14.11.2019		
Brij		

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