

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-986-DB-2004
Reserved on : 05.02.2020
Date of decision : 07.02.2020

Jaswant Singh @ Para

... Appellant

Versus

State of Punjab

... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE VIVEK PURI**

Present: Mr.K.S.Dhillon, Advocate
for the appellant.

Mr.H.S.Grewal, Addl.A.G. Punjab.

RAJIV SHARMA, J.

This appeal has been instituted against the judgment and order dated 28.09.2004 rendered by the Sessions Judge, Jalandhar, in Sessions Trial no.14 of 2002 whereby the appellant was charged with and tried for the offence punishable under Section 302 of the Indian Penal Code (in short 'IPC'). He was convicted thereunder and sentenced to undergo imprisonment for life and to pay a fine of Rs.2000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months.

2. The case of the prosecution in a nutshell is that PW-7 Gurmail Singh lodged a complaint to the effect that on 22.12.2001 at about 4.00 P.M. he had gone to meet his brother-in-law (Jija) Manjit Singh in village Lallian Kalan to bring a compromise between his brother-in-law Manjit Singh and brother of his brother-in-law namely Jaswant Singh alias Para. It was about

4.30 P.M. Gurmail Singh brought the compromise between the two brothers. However, on 22.12.2001 itself at about 5.30 P.M. Gurmail Singh complainant, his sister Sukhwinder Kaur and his brother-in-law Manjit Singh were discussing the matter. Jaswant Singh accused came there. He was holding a wooden balla in his hand. He hurled abuses and gave wooden balla blows with both hands on the head of Manjit Singh (his brother-in-law). Manjit Singh collapsed. Jaswant Singh escaped from the spot. Manjit Singh was put in the car and was taken to Jalandhar. Thereafter, he was admitted in DMC Hospital, Ludhiana. Manjit Singh succumbed to injuries on 23.12.2001 at about 11.05 A.M. The offence was converted into Section 302 IPC. Police reached at the spot. Post-mortem examination was conducted. Accused was arrested. Investigation was completed. Challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statement of the appellant was recorded under Section 313 Cr.P.C. According to him, he was falsely implicated. The appellant examined three witnesses in his defence. The appellant was convicted and sentenced, as noticed hereinabove. Hence, this appeal.

4. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

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

7. PW-1 Dr.Naresh Kumar conducted the post-mortem

examination. He observed as under:-

“Right mortis and post mortem staining were present, bleeding from nose was present; Right eye was bluish.

Big haematoma was present over the scalp between skin and scalp bone.

Oblique fracture line was seen (6 cm) on the right parietal region. On further exploration cranial cavity was full of clotted blood.”

The cause of death in his opinion was due to haemorrhage and shock due to described injuries. All the injuries were ante mortem in nature. These were sufficient to cause death in the ordinary course of nature.

8. PW-2 Dalip Singh had prepared site plan Ex.PD.

9. PW-5 Dr.Abhishek Bansal deposed that on 23.12.2001 he was posted in Surgery department in DMC, Ludhiana. Manjit Singh was admitted in mid night. He died in the hospital at 11.05 A.M. on 23.12.2001. Intimation was sent to the police.

10. PW-6 Dr.Gulzar Gupta had attended Manjit Singh on 23.12.2001. The patient was unconscious. The patient was advised urgent C.T. Scan. The patient was treated in the hospital. However, he died at 11.05 A.M. on 23.12.2001. In his cross-examination, he admitted that he had not given the date and time of arrival of the patient in the hospital.

11. PW-7 Gurmail Singh was the eye witness. According to him, on 22.12.2001 at about 4.00 P.M. he had gone to meet his brother-in-law Manjit Singh. There was dispute between Manjit Singh and appellant Jaswant Singh. He along with Manjit Singh, Jaswant Singh and his sister Sukhwinder Kaur was present at the well of Manjit Singh. He advised both

the brothers and effected reconciliation. Jaswant Singh left the spot. However, at about 5.30 P.M. Jaswant Singh came to the well. He was carrying wooden balla in his hand. Jaswant Singh gave two balla blows on the head of Manjit Singh. Manjit Singh collapsed on the ground. He was taken to the hospital. Initially he was taken to Satyam Hospital, Jalandhar. Thereafter he was taken to DMC, Ludhiana. In his cross-examination, he deposed that occurrence took place at 5.30 P.M. They reached DMC at 11.30 P.M. Blood was oozing out from the nose and ear. The place of occurrence was about 120 meters from the village.

12. PW-8 Sukhwinder Kaur, sister of PW-7 Gurmail Singh, has corroborated the statement of PW-7 Gurmail Singh. According to her, there was a dispute between accused Jaswant Singh and deceased Manjit Singh. On 22.12.2001 at about 4.00 P.M. his brother Gurmail Singh came to her village to effect compromise. At about 4.30 P.M. compromise was effected between Jaswant Singh and Manjit Singh. However, at about 5.30 P.M., she, her husband Manjit Singh and Gurmail Singh were present at tubewell. Jaswant Singh came to the spot. He was carrying wooden balla in his hand. He hurled abuses to Manjit Singh. Thereafter he gave two balla blows on the head of her husband Manjit Singh. Her husband collapsed. Thereafter, her brother and she took the injured to Satyam Hospital, Jalandhar. Thereafter, he was taken to DMC Hospital. He died on the next day, i.e. 23.12.2001.

13. PW-11 Kuldip Singh testified that he was posted as ASI, Police Station Lambra on 23.12.2001. The complainant met him. He made statement Ex.PK/1 on the basis of which FIR Ex.PK/3 was recorded. He went to the spot. He inspected the spot. Blood stained earth was taken into

possession. One wooden balla stained with blood was lying on the spot. It was taken into possession. Balla is Ex.P1. He also took into possession the clothes of the deceased. All the articles were stained with blood. He also prepared inquest report. The dead body was sent for post-mortem examination. Accused was arrested.

14. DW-1 Surjit Kaur was the wife of accused Jaswant Singh. According to her, Manjit Singh was younger brother of her husband. Manjit Singh was married. He had one daughter. Manjit Singh had strained relations with his wife Sukhwinder Kaur. Manjit Singh wanted to have second marriage. Manjit Singh had never quarreled with her husband Jaswant Singh over the land or for any other matter. There was a school nearby and frequent traffic on the road. Her husband was in Delhi. She had heard noise. She went to the spot. In her cross-examination, she admitted that her husband was wearing turban in photograph Ex.DW1/PB.

15. DW-3 Dr.H.S.Kahlon medically examined accused Jaswant Singh. He proved report Ex.DW3/A. As per X-ray report, it was a case of healed fracture of his right thigh.

16. There are two eye witnesses in this case namely PW-7 Gurmail Singh and PW-8 Sukhwinder Kaur. There was no occasion for them to falsely implicate the accused. They had seen the accused inflicting balla blow on the head of Manjit Singh. Manjit Singh was rushed to the hospital on the same day, i.e. 22.12.2001. He died on 23.12.2001. According to PW-1 Dr.Naresh Kumar, the cause of death was shock and haemorrhage. The injury was ante mortem in nature. PW-5 Dr.Abhishek Bansal and PW-6 Dr.Gulzar Gupta had stated that the deceased was brought to the DMC, Ludhiana, where he was treated. However, he died. According to PW-7

Gurmail Singh, he had gone to the village of his sister to effect compromise between the brothers. The compromise was effected. However, accused Jaswant Singh again came back armed with wooden balla and inflicted two blows on the head of Manjit Singh. PW-8 Sukwhinder Kaur also saw accused inflicting injury on her husband. Balla was recovered from the spot as per statement of PW-11 SI Kuldip Singh.

17. Though as per statement of DW-1 Surjit Kaur, accused was not present at the spot but had gone to Delhi but the fact of the matter is that there is no evidence that Jaswant Singh was not present on the spot. The plea of alibi taken by accused through DW-1 Surjit Kaur is not proved. It is a settled law that when the plea of alibi is not proved, there is strong presumption that accused was present on the spot.

18. The FSL report is Ex.PAA. According to the report, exhibits Kameez, koti and parna as well as wooden balla and soil were stained with human blood.

19. Though, learned counsel for the appellant has vehemently argued that the accused was not supporting turban but it has come in the statement of DW-1 Surjit Kaur that in the photograph Ex.DW1/PB he was supporting a turban.

20. The prosecution has proved that there was a dispute between the brothers. PW-7 Gurmail Singh had patched up the matter. However, accused Jaswant Singh again came on the spot and hurled abuses to Manjit Singh. He inflicted two wooden balla blows on the head of Manjit Singh. The prosecution has proved the case against the appellant beyond reasonable doubt.

21. Accordingly, there is no merit in the appeal and the same is

dismissed. The appellant is on bail. His bail bonds and surety bonds are cancelled. The police is directed to take him into custody to undergo remaining sentence imposed by the trial Court.

(RAJIV SHARMA)
JUDGE

(VIVEK PURI)
JUDGE

February 07, 2020.
Davinder Kumar

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