

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

Crl. Appeal No.D-29-DB of 2016 (O&M)

Date of Decision: January 29, 2020

Ram Sanjeevan

...Appellant

VERSUS

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Parveen Chauhan, Advocate
for the applicant-appellant.

Mr.A.A.Pathak, Addl. Advocate General, Punjab
for the respondent-State.

ARCHANA PURI, J.

Challenge in the present appeal, is to the judgment of conviction and order of sentence dated 30.09.2015 passed by learned Addl. Sessions Judge, Jalandhar, vide which appellant was held guilty and convicted under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life and to pay fine of ₹5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.

The background facts in nutshell are, as follows:-

That, complainant Seeta Ram s/o Ram Jass, is serving as Asstt. Line Man in Electricity Board. He has four children. Elder one is Krishna Bharti aged about 22 years, who was a photographer. Ram Sanjeevan and

Ram Khilawan, both son of Ram Dulara, resident of village Alawalpur, P.S.

Udaypur, Partapganj, U.P., are tenants in the quarter of Rakesh, who is neighbour of the complainant. On 04.07.2013, at about 3.00 p.m., both Ram Sanjeevan and Ram Khilawan had come to the house of the complainant and had raised the allegation about Krishna Bharti, son of the complainant along with one Shankar, to have kidnapped Geeta (wife of Ram Khilawan). When Krishna Bharti had told them that he does not know anything about Geeta, then both of them (Ram Sanjeevan and Ram Khilawan) had went away. Thereafter, at 5.30 p.m., when the complainant was standing near the gate of Power Station, he heard screams of his son Krishna Bharti and he was screaming not to beat him. Then, the complainant had rushed towards the place of occurrence and he saw Ram Khilawan and Ram Sanjeevan, causing injuries to Krishna with an iron rod and knife. Ram Khilawan caused injury on the arm of Krishna and Ram Sanjeevan had hit Krishna with an iron rod. In the meantime, the police had reached the spot and apprehended Ram Sanjeevan along with the iron rod. However, Ram Khilawan, managed to run away from there by scaling over the wall. Ram Sanjeevan and Ram Khilawan had killed Krishna in front of the complainant. The motive behind the murder of Krishna Bharti was that accused were suspecting Krishna and Shankar having kidnapped Geeta.

The proceedings in the present case were initiated on the basis of the statement got recorded by Seeta Ram to ASI Vijay Kumar and on the basis thereof, FIR was registered under Section 302/34 IPC.

However, during the course of investigation, Ram Khilawan could not be arrested and ultimately, he was declared Proclaimed Offender.

On completion of investigation, challan was presented against

accused Ram Sanjeevan.

On presentation of challan, compliance of Section 207 Cr.P.C. was made and thereupon, case was committed to the Court of Session.

In pursuance of the commitment proceedings, on the basis of material coming forth, charge under Section 302/34 IPC was framed against the accused, to which he pleaded not guilty and claimed trial.

In endeavour to establish its case, the prosecution examined as many as 9 witnesses, besides adducing documentary evidence.

PW-1 Mangu Ram, is the eye witness, who deposed as per prosecution version. **PW-2 Seeta Ram**, is the complainant and eye witness to the occurrence, at whose instance the proceedings in the prosecution case were initiated. He has also deposed as per prosecution version. **PW-3 Head Constable Gurvinder Singh**, **PW-4 Dr.Indu Bala**, who conducted post-mortem examination on the dead body of Krishan Bharti. **PW-5 Inspector Bimal Kant**, **PW-6 ASI Satwinder Singh**, **PW-7 Constable Sukhwinder Singh**, **PW-8 Jagdish Kumar** and **PW-9 Head Constable Gurnam Singh**.

Thereafter, learned Public Prosecutor closed the evidence.

On closure of the prosecution evidence, all the incriminating circumstances, appearing in the prosecution evidence were put to accused Ram Sanjeevan in his statement under Section 313 Cr.P.C. The accused denied those allegations and pleaded innocence. However, no evidence was led in defence.

After hearing learned Public Prosecutor, learned defence counsel and on appraisal of the evidence brought on record, vide judgment of conviction and order of sentence dated 30.09.2015, accused-appellant

was held guilty, convicted and sentenced, as already detailed aforesaid.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, the appellant-convict has filed the present appeal.

In pursuance of notice issued by the Court, learned State counsel made appearance on behalf of the State. Even the lower Court record was requisitioned.

We have heard learned counsel for the appellant as well as learned State counsel and have perused the record.

At the very outset, learned counsel for the appellant has submitted that prosecution has miserably failed to establish the guilt of accused Ram Sanjeevan. In fact, false eye witnesses have been padded up by the prosecution. Even, complainant Seeta Ram is an interested witness being father of the deceased. It is further submitted that the version, so put forth by the prosecution qua arrival of the police at the spot, is highly improbable. Thus, summing up his arguments, learned counsel for the appellant has made a prayer for acceptance of the appeal while setting aside the judgment of conviction and to acquit the appellant.

On the contrary, learned State counsel has resisted the claim of the appellant. He submits that learned trial Court has rightly appraised the evidence coming on record. In fact, PW-2 Seeta Ram, who is father of the deceased, has given very vivid account of the manner of causing of the occurrence by the appellant along with his companion, who fled away from the spot. In fact, the version of the prosecution also gains strength from the fact of appellant having been arrested at the spot along with the weapon of offence, which was also later on found to be smeared with human blood. In fact, the version of the prosecution gains strength from the testimony of

PW-1 Mangu Ram, who was present at the spot and has also deposed about

Ram Sanjeevan to have been apprehended by the police at the spot along with iron rod. It is also submitted by learned State counsel that eye witness account, so given by Seeta Ram and Mangu Ram, also gains strength from the medical evidence coming on record as PW-4 Dr.Indu Bala, has clearly stated about the detail of the injuries, found on the person of the deceased and that the cause of death in the case was head injury, which was sufficient to cause death in the ordinary course of nature. In the light of such evidence coming on record, it is submitted that the direct evidence, so coming forth, inspires confidence and duly establishes the incriminating role of the appellant. As such, learned State counsel has made for the dismissal of the appeal.

So far as the fact of death of Krishna Bharti is concerned, the same stands amply established from the medical evidence brought on record. The prosecution has examined PW-4 Dr.Indu Bala, who was one of the member of the board of doctors. Besides deposing about herself and Dr.Satinder Kaur and Dr.Hardev Singh, being the members of the board of doctors, she has also deposed that they conducted post-mortem examination on the dead body of Krishna Bharti on 05.07.2013. Besides deposing about the detail of the clothing of the deceased, the said witness has given the detail of the external injuries found on the dead body, which are detailed as herein given:-

- “1. Lacerated wound approximately 5 cm x 2 cm present at the outer canthus of left eye, underlying bone fractured.*
- 2. Fracture mandible on the right side. On dissection and exploration underline muscle lacerated blood vessels crushed.*
- 3. Lacerated wound 2 cm x 2 cm present on the left ear.*

Ear split into two pieces.

4. *Lacerated wound approximately 10 cm x 2 cm present in the centre of skull in the parietal region, approximately 10 cm behind hairline. Underlying bone fractured, brain lacerated, blood clots present.*
5. *Right sided split ear.*

On internal examination:-

Scalp, skull, meninges and vessels and brain were already described. Vertebrae and spinal cord were not exposed. Mouth, pharynx and oesophagus were swollen and mouth was filled with blood. Other internal organs in the region of neck, thorax and abdomen were found to be healthy.”

She also deposed that concurrent opinion of the members of the board of doctors was that cause of death in this case was head injury, which was sufficient to cause death in the ordinary course of nature. The probable time that elapsed between injury and death would have been immediate and between death and postmortem examination was 24 hours. She proved the postmortem report, which is Ex.PW4/B. In the light of the testimony of the said witness and postmortem report, so coming on record, the fact of death of Krishna Bharti, stands amply established.

Now, it has to be ascertained, as to whether, the death of Krishna Bharti, was due to homicidal violence or not. To so establish, the prosecution banks upon the testimony of two eye witnesses. The star witness of the prosecution is PW-2 Seeta Ram, at whose instance, the proceedings were initiated. He is father of deceased and as per version of the prosecution, he had witnessed the occurrence. Throughout the arguments, much emphasis has been laid upon, Seeta Ram to be an interested witness, as he is father of deceased Krishna Bharti. Learned

deceased, as such, his testimony does not inspire confidence. However, the aforesaid submission is not tenable.

Relationship is not a factor to effect the credibility of a witness. It is more often than not that relation would conceal actual culprit and make allegations against an innocent person. Ordinarily, a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, then there is a tendency to drag in an innocent person against whom, a witness has a grudge, along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. Every case has to be adjudicated in the backdrop of its own factual position and the Courts have to adopt a careful approach and analyse the evidence to find out, whether it is cogent and reliable. *Solely, on account of eye witness being related to the victim, do not create a ground to disbelieve his testimony in toto.* Keeping in view this caution in mind, it is pertinent to mention that testimony of Seeta Ram, as such, is not to be discarded. However, it has to be appraised and seen, as to whether, it inspires confidence. In the light of the same, it is pertinent to mention that PW-2 Seeta Ram, apart from deposing about his relationship with Krishna Bharti, has categorically stated that Ram Sanjeevan and Ram Khilawan sons of Ram Dulara of village Alawalpur, who were living in quarter of Rakesh, on 04.07.2013, had come to his house and told him that Krishna Bharti and Shankar had abducted their wife Geeta. Further, they asked from Krishna Bharti regarding whereabouts of Geeta and Krishna denied this allegation. The said witness has further deposed that at about

shrieks of his son Krishna, who was saying '**don't kill me**'. Then he reached there and had seen Ram Sanjeevan alongwith iron rod, giving injuries to his son on his head and Ram Khilawan having caught hold of his son. In the meantime, police had come there and they apprehended Ram Sanjeevan along with iron rod, at the spot and Ram Khilawan had run away from the spot. The said witness has categorically stated further that his son was killed by both these accused. He identified Ram Sanjeevan, who was present in the Court. He also deposed about recording of his statement by the police, which is Ex.PW2/A.

PW-1 Mangu Ram, is contractor in Railway and serves puris at railway platform. He has categorically deposed that on 04.07.2013, at about 5.30 p.m., when he along with Krishan Chan, was preparing puris, then Ram Sanjeevan and Ram Khilawan, who were living in next quarter, were fighting with Krishna Bharti. Both of them intervened and stopped them from fighting and thereafter, they started working again. He further deposed that after some time, they listened some *raula* and came to know that Krishna Bharti was killed by both of them (Ram Sanjeevan and Ram Khilawan). The police had come there and caught Ram Sanjeevan from the spot along with iron rod. The said witness also deposed that his statement was recorded.

Thus, from the testimony of the PW-2 Seeta Ram, coupled with testimony of PW-1 Mangu Ram, it becomes amply established that they had witnessed the occurrence caused by Ram Sanjeevan and his companion, who had fled away.

Another material witness of the prosecution is PW-9 Head

was posted at Beat No.25, a phone call was received from Police Control Room regarding quarrel between some persons having taking place near Electricity House, Bashirpura. Thereafter, he along with his companion Head Constable Rakesh Kumar, while on motorcycle, had reached the spot at about 6.15 p.m. and saw that some persons were quarreling. He also deposed about one of them, who had managed to run away. He also deposed that ASI Jagtar Singh, Incharge of Police Post Surya Enclave and Head Constable Savinder Singh, having reached there and they had apprehended one of the person, who was handed over to ASI Jagtar Singh along with iron rod. He also deposed that one person was lying dead at the spot. Though, the said witness, has deposed that he does not remember the name of the person, who was apprehended but he belonged to State of Uttar Pradesh. He also stated that he does not remember the name of the person, who escaped from the spot. However, he identified the accused present in the Court to be the same person, who was apprehended by them. Furthermore, he has also proved the memo of arrest of the person, who was apprehended at the spot i.e. Ram Sanjeevan. Besides the aforesaid, even PW-5 Inspector Bimal Kant, has stated about having received information from Control Room about quarrel having taking place near Bijli Ghar Bashirpura on 04.07.2013. Then, he along with his companions, had reached there and he met Seeta Ram as well as ASI Jagtar Singh and Head Constable Savinder Singh. He also deposed that even Head Constable Gurnam Singh and Head Constable Rakesh Kumar were present there. He also stated that Ram Sanjeevan was already apprehended by ASI Jagtar Singh and other police officials and he was having a blood-stained iron rod.

the basis whereof, FIR was registered. Furthermore, he has given the detail of the manner of further investigation conducted at the spot and also about the parcel of iron rod, having prepared and taken into possession vide separate memo. Further, he deposed about having facilitated conducting of the postmortem examination on the dead body. He also proved the photographs of the dead body clicked at the spot, which are Ex.PA to Ex.PD, which were taken into possession, vide separate memo. Also, he proved the report of Chemical Examiner Ex.PZ, which states about watch, iron rod and pair of chappal and clothes, to be smeared with human blood.

Now, it is submitted by learned counsel for the appellant that arrival of the police, at the spot, while alleged occurrence was being caused, is highly improbable and appears to be a stage-managed show. However, the aforesaid submission is not tenable. The prompt action on the part of the police, was only on account of information having been passed to the police, about taking place of the occurrence. PW-9 Head Constable Gurnam Singh, has categorically deposed that he was posted at Beat No.25, when a phone call was received from Police Control Room. Thus, in the light of the information having been passed on the police at an appropriate time, the police had reacted promptly and solely on account of prompt action by the police, the conduct of the police, as such, cannot be said to be stage-managed show. Also, it has been pointed that there is nothing, as such, coming on record, as to who made a phone call to the police. May it be so, it is a matter of common knowledge that as and when, such kind of quarrel take place, people nearby do pass on the information to the police, so as to avoid ugly situation arising out of the quarrel. It is a matter of common knowledge that people present at the spot of occurrence, do not intend to

involve themselves to such an extent, so as to be labelled as participant of the occurrence and only on this account, the information is passed on, in a discreet manner. So, on this account, the version of the prosecution, as such, is not rendered doubtful.

As already detailed aforesaid, eye witnesses have given very vivid and candid account of causing of the occurrence by the appellant. The testimonies of PW-2 Seeta Ram, father of the deceased as well as PW-1 Mangu Ram, who carries on his avocation near the spot of occurrence, are quite natural and inspires confidence.

Additional credence is lent to the version of the prosecution, from the very fact of appellant having been arrested at the spot and iron rod, which is weapon of offence has been recovered from him at the spot, which was smeared with blood at the relevant time. Even, the FSL report states about the said weapon to be smeared with human blood, which definitely establish about the use of said weapon in the occurrence in question, by the accused. Though, the appellant had taken the plea of himself being innocent and has been falsely implicated in the present case, but there is no evidence relating to this plea and no evidence of any kind has been led to establish this plea of false implication. No witness, as such, has been examined by the accused, to establish this plea. Even, while conducting cross-examination of the prosecution witness, no defence version, as such, has been put forth, about his false implication. Thus, the plea of false implication has been is hollow one and same has been raised, as an after-thought, only to claim innocence.

Considering the evidence in entirety, learned trial Court has

established the guilt of the accused beyond shadow of doubt. As such, the impugned judgment merits no interference.

As such, appeal sans merit and the same is hereby dismissed.

The criminal misc. application bearing No.26936 of 2019, which has been filed for suspending the sentence of the accused-appellant, is rendered infructuous, as the main appeal has been decided.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

January 29, 2020
Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No