

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-755-DB-2005
Reserved on : 26.02.2020
Date of decision : 04.03.2020

Baljit Masih alias Happy

... Appellant

Versus

State of Punjab

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU***

Present: Mr.Nirmal Singh, Advocate (Legal Aid Counsel)
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 04.08.2005 rendered by the Sessions Judge, Hoshiarpur, in Sessions Trial no.43 of 07.10.2004 whereby, the appellant was charged with and tried for the offence punishable under Section 302 of the Indian Penal Code (in short 'IPC'). The appellant was convicted thereunder and sentenced to undergo imprisonment for life.

2. The case of the prosecution in a nutshell is that Reeta wife of Bhajan Singh, resident of village Dhanoa, Police Station Mukerian, District Hoshiarpur, made statement Ex.PA. It was recorded by SI Jaspal Singh on 09.06.2004. Reeta disclosed that she had two sons and five daughters. Elder son Joginder Singh was of 19 years. Younger son was of 7/8 years. She was known to Baby wife of Surjit Masih, resident of Garhdiwala. The husband

of Baby, namely Surjit Masih had died. Baby had borrowed Rs.1000/- from her. She did not return the same. On 08.06.2004 she along with her husband Bhajan Singh and son Joginder Singh reached Garhdiwala. Baby was not present in her house. Her son Baljit Masih alias Happy was also not present there. She, her husband and son stayed in their house. Baljit Masih alias Happy came back with his horse cart on 08.06.2004 at 9.30 PM. He cooked meals. They took meals. Her son Joginder Singh talked about money with Baljit Masih alias Happy. Baljit Masih alias Happy abused her son. He also told why he visited his house in his absence and also keeping bad eye on his (accused) sister. They grappled. When she and her husband were about to separate them, in the meantime Baljit Masih alias Happy gave a forceful push to her son. Her son fell on the bed. Accused picked up an iron rod (saria) and gave blow on the head of her son. Her son collapsed. Accused ran away from the spot along with iron rod (saria). Her son died on the spot. She raised alarm. On the basis of statement Ex.PA, FIR Ex.PA/2 was recorded. Police visited the spot. Two white buttons of a shirt, pair of shoes, blood stained earth, hair lying in the right hand fist of the deceased were taken into possession. SI Jaspal Singh prepared inquest report Ex.PB. The body was sent for post-mortem examination. Accused was arrested. He made disclosure statement. 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. He denied the case of prosecution. He examined one witness 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-3 Dr.Shivraj Rekhi conducted the post-mortem examination on the dead body of Joginder Singh. He noticed following injuries on his person:-

“1. Lacerated wound 6 cm x 2 cm on the left side of the forehead, obliquely placed. It starts from 1 cm above the lateral end of left eye brow and extends upwards, medially upto frontal hair line. On dissection underlying bone was found fractured and into multiple pieces some of which are pushed into underlying meninges and brain tissue causing multiple lacerations in brain. Semi clotted blood was present around wound margins, between skin and subcutaneous tissues, subcutaneous tissues and skull, skull and meninges, meninges and brain and brain matter itself.

2. Reddish brown abrasion 7 cm x 1.5 cm on the lateral and posterior aspect of left side of neck. It starts 4 cm below and 3 cm posterior to lobule of left ear and extends posteriorly.

3. Reddish abrasion 2 cm x 2 cm on the front of right

side of chest near midline, 1 cm above xiphisternum.”

In his opinion, the cause of death was head injury (brain injury) which was sufficient to cause death in an ordinary course of nature. All the injuries were ante mortem in nature. The time elapsed between injury and death was instantaneous and between death and post-mortem was 12 to 24 hours. Injury no.1 could be possible with iron rod Ex.P1. He proved post-mortem report Ex.PC.

8. PW-1 Reeta deposed that her husband Bhajan Singh used to sell vegetables. She had two sons and five daughters. Elder son Joginder Singh was about 19 years of age. Baby mother of accused was known to her. She borrowed a sum of Rs.1000/- from her. On 08.06.2004, she along with her husband and her son Balwinder Singh again said Joginder Singh went to the house of Baby at Garhdiwala for getting back money. She was not present in the house. However, her son was found present in the house. Accused served them with meal. Thereafter, she demanded money from the accused. He remarked that on that day he would send them back after giving money to them. Her son Joginder Singh also demanded money from the accused. Thereafter, accused and her son Joginder Singh grappled with each other. They both fell on the bed. Accused by picking up an iron rod (saria) gave blow on the left side of head of Joginder Singh. He died on the spot. She raised alarm. She went to police. Police recorded her statement Ex.PA.

9. PW-2 Bhajan Singh corroborated the statement of PW-1 Reeta the manner accused had inflicted iron rod (saria) blow on the head of the deceased.

10. PW-7 SI Jaspal Singh recorded the statement of Reeta vide Ex.PA on the basis of which FIR Ex.PA/2 was recorded. He visited the spot.

Two white buttons of a shirt, pair of shoes and blood stained earth were taken into possession. The deceased was carrying hair in his right hand fist of the accused. Accused was arrested on 09.06.2004. He was interrogated. He made disclosure statement that he had kept concealed one shirt and iron rod with which Joginder Singh was killed. Accused got recovered the iron rod Ex.P2 and shirt Ex.P10.

11. DW-1 Rani is the sister of accused. According to her, Joginder Singh demanded money from her brother. Her brother refused to give money as he was not having money at that time. Then he abused him in the name of his sister. Accused could not tolerate. They grappled with each other. She and her mother tried to rescue him. Both of them fell towards the opposite side. The deceased fell down towards bed and struck against the pole of the bed and died.

12. The case of the prosecution is that PW-1 Reeta and PW-2 Bhajan Singh alongwith Joginder Singh had gone to the house of Baby to get back money. The fight ensued between deceased and accused. The deceased fell on the bed. Thereafter, accused administered injury on his head with iron rod (saria).

13. Accused admitted his presence on the spot. DW-1 Rani also admitted the presence of accused (his brother) in the house.

14. According to PW-1 Reeta and PW-2 Bhajan Singh, only one injury was inflicted by the accused. The cause of death was head injury (brain injury) which was sufficient to cause death in an ordinary course of nature. All the injuries were ante mortem in nature. It was urged before the trial Court that this case falls under Section 304 Part II IPC and not under Section 302 IPC. The same plea has been raised before us by the learned

counsel appearing on behalf of the appellant. There is merit in the contention. It was a case of sudden fight without pre-meditation and design. This case does not fall under Section 302 IPC. The appellant had knowledge that in case injury is inflicted on the head that to with an iron rod it will result in death.

15. Accordingly, the appeal is partly allowed. The conviction of the appellant is converted from Section 302 IPC to Section 304 Part II IPC.

16. The appellant is on bail. He is directed to appear in Court on 25.03.2020 to hear him on quantum of sentence under Section 304 Part II IPC.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

March 04, 2020.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No