

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

**CRA-AD-328-2019
DECIDED ON: 08.03.2022**

SUNIL KUMAR

.....APPELLANT

VERSUS

STATE OF HARYANA AND ANR.

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Nipun Vashist, Advocate
for the appellant.

SANDEEP MOUDGIL, J.

The present appeal is being disposed of, arisen out of judgment dated 21.11.2018, whereby the accused Munni Lal @ Munia was acquitted in FIR No.179 dated 03.07.2017, under Section 304 of the Indian Penal Code, registered at Police Station Khol, District Rewari.

The prosecution began in the case with the initiation of DDR No.10 lodged on behalf of one Sonu son of Balbir, Caste Valmiki, resident of Rajpura Istmurar, Police Station Khol, on 01.07.2017. It is the case of the prosecution that father of Sonu namely Balbir went in the neighborhood to attend a function at around 06:00 p.m. on the date of occurrence i.e. 01.07.2017 but did not return thereafter. The father of the complainant could not be traced despite efforts to search him and later on, he finally came to know that the dead body of his father i.e. Balbir is lying in Panchayat land with injuries on his neck, knees, head and other parts of the body and having suspicion of murder, called upon the villagers and informed the Police.

The dead body of Balbir was taken to the General Hospital, Rewari by the Police and postmortem examination was conducted. At that

stage, Rapat No.10 was registered after the postmortem examination for the reason that nothing suspicious was found.

However, blood-stained earth was lifted from the spot where the dead body of deceased Balbir was found lying which was converted into a parcel with a seal 'MK' and taken into possession vide memo Ex. P-1. The currency amounting to Rs.30 was also recovered from the pocket of the deceased Balbir. Apart from that one 'miraj' pouch was also lying near the head, which was converted into a parcel and taken into possession vide memo Ex. PJ. Inquest proceedings under Section 174 Cr.P.C. was conducted.

It was on 03.07.2017, Sunil Kumar submitted a complaint Ex.PW-1/D to the Police with the allegations that on 01.07.2017, his father returned home after grazing the goats and had consumed liquor. At around 06:30 p.m., deceased Balbir went to the house of Rampat, Chowkidar in a function of 'Chatti' but did not return thereafter. On the next day, at around 07:00 a.m., when he was removing bricks from the walls of his house, his cousin Bharat Lal informed him that the dead body of his father Balbir was lying in the Panchayat land on which he rushed to the spot and found villagers gathered there in large number. The body of the deceased Balbir had suffered numerous injuries including at thigh, left ear, back, head, legs, chest and ribs.

The police was informed by the village Sarpanch, who took the body to the hospital and postmortem was got conducted in which it was recorded that deceased Balbir had suffered serious injuries on the head and other parts of the body. It is averred by the complainant that assailants caused injuries to his father, who was also accompanied by Kishori Lal son of Udhmi at the time of occurrence and requested for legal action qua the accused Munni

Lal @ Munia son of Ram Narayan.

The prosecution relied upon the documentary evidence as

detailed hereinbelow:-

- (i) DDR No.10- Ex. PW1/A
- (ii) Ruqa- Ex. PW1/B
- (iii) FIR No.179 dated 03.07.2017- Ex. PH
- (iv) Rough site plan- Ex. PW1/C
- (v) A parcel containing a pair of slippers of the deceased with seal 'LC' Ex.PW1/E.
- (vi) Disclosure statement of accused- Ex. PW1/G.
- (vii) Demarcation of place of occurrence vide memo- Ex. PW1/H.
- (viii) Scaled site plan of the place of occurrence- Ex. PW1/J prepared by Halqa Patwari.
- (ix) Post Mortem Report- Ex. PD.
- (x) Sealed parcels along with 'miraj' pouch were sent to FSL and report of Chemical Examiner- Ex. PE.
- (xi) Histopathology- Ex. PK.

After completion of investigation, the final report under Section 173 Cr.P.C. was filed to conduct trial against the accused Munni Lal @ Munia and the case was committed to the Court of Sessions vide order dated 13.12.2017 passed by the then learned Judicial Magistrate Ist Class, Rewari.

Apart from the above mentioned documentary evidence, the prosecution examined 20 witnesses namely:-

- (i) PW-1 ASI Bhagirath,
- (ii) PW-2 ASI Ran Singh,
- (iii) PW-3 Ravi Kumar,
- (iv) PW-4 Shakti Singh,
- (v) PW-5 Bharat Lal,
- (vi) PW-6 Dr. Ravinder Singh,

- (vii) PW-7 ASI Narender Singh,
- (viii) PW-8 EHC Sri Bhagwan,
- (ix) PW-9 Harish,
- (x) PW-10 EASI Kailash Chand,
- (xi) PW-11 Rampat Chowkidar,
- (xii) PW-12 SI Dharmbir Singh,
- (xiii) PW-13 LC Vijeta,
- (xiv) PW-14 ASI Manoj Kumar,
- (xv) PW-15 Dr. Nitish Kumari,
- (xvi) PW-16 EHC Ajaypal,
- (xvii) PW-17 Kishore,
- (xviii) PW-18 Sunil,
- (xix) PW-19 EASI Krishan Kumar,
- (xx) PW-20 HC Jitender Singh.

The prosecution evidence was closed on 29.08.2018 and the accused was examined under Section 313 of Cr.P.C. and pleaded innocence and denied the prosecution evidence in entirety alleging the case of his false implication. However, no evidence was led by him in defence.

The prosecution tested the evidence to prove its case as discussed hereinbelow:-

“PW1 ASI Bhagirath is the Investigating Officer. He deposed that on 03.07.2017, he was posted as Incharge, Police Post Kund. On 02.07.2017, DDR No.10 Ex.PW1/A was got recorded by complainant Sunil. Inquest proceedings were conducted by ASI Manoj Kumar and on 03.07.2017, he received postmortem report of deceased. Sunil Kumar came present in the police post Kund and

moved application Ex.PW1/D on which he made endorsement Ex.PW1/B and sent ruqa to the police station for registration of FIR. He reached the place of occurrence and prepared rough site plan of place of occurrence Ex.PW1/C and recorded statements of witnesses. A pair of Slippers of deceased was found lying at the spot which was converted into a parcel and sealed with seal LC and taken into possession vide memo Ex.PW1/E. He informed SHO Bijender Kumar and DSP Gajender Kumar for verification of facts of the case. On 07.09.2017, he arrested accused vide arrest memo Ex.PW1/F. On interrogation, accused suffered disclosure statement Ex.PW1/G and in pursuance thereof, accused demarcated the place of occurrence vide demarcation memo Ex.PW1/H. On 04.10.2017, he got prepared scaled site plan from the Halqa Patwari Ex.PW1/J and recorded witnesses.

PW2 ASI Ran Singh had partly investigated the case and had recorded the statements of ESI Krishan Kumar, LC Vijeta and MHC Narender Singh.

PW3 Ravi Kumar had identified the dead body of his uncle Balbir and he tendered the inquest report Ex.PA.

PW4 Shakti Singh, Halqa Patwari has proved the scaled site plan of place of occurrence Ex.PW1/J and scaled site plan of the place from where dead body was recovered Ex.PB.

PW5 Bharat Lal is the nephew of deceased and has deposed as to how the dead body was found lying in the fields.

PW6 Dr. Ranvir Singh had conducted postmortem examination along with other members of Board and has proved the PMR Ex.PD.

PW7 ASI Narender Singh deposed that on 03.07.2017, a tehrir written by ASI Bhagirath was received in the police station through Constable Kishore Singh and he had registered formal FIR Ex.PH.

PW8 EHC Shri Bhagwan had delivered the special report to the Area Magistrate and senior police officers.

PW9 Harish stated that on 02.07.2017, he was Sarpanch of village Rajpura and had seen the dead body of Balbir lying in the field and informed the police.

PW10 EASI Kailsh Chand had remained associated during investigation of the case with ASI Manoj.

PW11 Rampat Chowkidar deposed that on 01.07.2017 there was a ceremony of "Chhati" in his house. He had met with an accident and was not able to walk and was present in the house. Balbir and Kishore who were drunk had attended the ceremony and Munni Lal accused might have also attended the ceremony.

PW12 SI Dharamvir deposed that on 08.11.2017, he had prepared the final report under section 173 Cr.P.C. against accused and presented the same in the Court for trial.

PW13 LC Vijeta deposed that on 09.09.2017, MHC handed over sealed parcels to her vide RC No.407 and same were deposited PGIMS Pathology Rohtak and she returned the receipt to MHC, She further stated that neither she nor

anyone else tampered with the parcels.

PW14 ASI Manoj Kumar also deposed that on 02.07.2017, a call was received that dead body of Balbir was lying in the fields of panchayat on which he along with EASI Kailash and EHC Satbir reached the spot. Complainant Sunil presented application Ex.PL on which he made endorsement Ex.PL/1 and sent tehrir to police station Kund for recording of rapat through EASI Kailash Chand and SHO was informed by him. He lifted blood stained earth from the place where dead body was lying in a small plastic box and sealed plastic box with seal of MK and took the same into possession vide memo Ex. PI. A sum of 30/- was found lying in the pocket of deceased while one 'miraj' pouch was lying near the dead body which were taken into possession vide memo Ex.PJ. He clicked the photographs of place and dead body of Balbir which are Ex P1 to Ex.P11 and the copy of rapat no.10 dated 02.07.2017 is Ex.PW1/A. He conducted inquest proceedings Ex.PA and recorded the statements of witnesses. Thereafter, he moved application Ex.PC before Medical Officer, General Hospital, Rewari for postmortem examination and the Board of doctors conducted postmortem vide postmortem report Ex.PD. After postmortem examination, doctors handed over one sealed parcel containing viscera, an envelope addressed to RFSL Sunaria, a box containing heart, an envelope addressed to Director PGIMS Rohtak along with clothes of deceased in a sealed parcel sealed

with seal of DV and same were taken into possession vide memo Ex.PK and the dead body was handed over to the relatives. On 30.11.2017, he recorded statements of Rampat Chowkidar and Harish. He tendered blood stained earth in plastic box as Ex.MO4, pouch of 'miraj' Ex MO8, three currency notes of denomination 10/- each Ex.P5 to Ex.P7, T-shirt Ex.MO1, lower Ex.MO2 and underwear Ex.MO3.

PW15 Dr. Nitish Kumari, Department of Pathology, PGIMS Rohtak deposed that on 23.12.2017, she was posted as Resident, Department of Pathology PGIMS Rohtak and she submitted pathology report Ex.PX/Ex.PF with regard to heart, lung, liver, kidneys and spleen of deceased Balbir and stated that all the reports bear her signatures. During cross-examination, she stated that coronary artery of deceased was completely blocked and possibility of having been a symptom of heart failure cannot be ruled out.

PW16 EHC Ajay Pal remained associated during investigation with ASI Bhagirath and he has corroborated his version.

PW17 Kishore is an eye witness whose evidence shall be discussed in detail in later part of the judgment.

PW18 Sunil is the author of FIR whose evidence shall also be discussed in later part of judgment

PW 19 EASI Krishan Kumar deposed that he had deposited the sealed parcels at FSL Madhuban which were

handed over to him by MHC on 24.10.2017/06.11.2017 and returned the receipt to MHC.

PW20 HC Jitender Singh deposed that on 02.07.2017, HC Narender Singh has working as MHC, Police Station Khol who is unable to speak as he was undergone surgery and the opinion of the doctor is Mark A. He stated that he has brought the register pertaining to Malkhana and as per record, ASI Bhagirath had deposited one sealed parcel containing blood stained earth sealed with seal MK, one parcel containing clothes of deceased sealed with seal DV and once parcel containing viscera sealed with seal DV on 02.07.2017 in the Malkhana. On 09.09.2017, MHC handed over one sealed parcel containing viscera to LC Vijeta vide RC No.407 for depositing the same with chemical examiner who deposited the parcel at PGIMS Rohtak on the same day and returned the receipt to MHC. On 24.10.2017, MHC handed over one parcel sealed with seal DV containing viscera (stomach), forwarding letter vide RC No.362 to ESI Krishan Kumar for depositing the same at FSL, Sunaria. On 06.11.2017, MHC handed over another sealed parcel sealed with seal DV containing blood stained earth and parcel containing clothes of deceased vide RC No.485 sealed with seal MK to ESI Krishan Kumar for depositing the same at FSL Madhuban and he deposited the same on the same day and returned the receipt to MHC.”

on behalf of the defence, the trial Court examined the prosecution story with the following points:-

(i) Whether the death was homicidal and due to the injuries mentioned in the PMR?

(ii) Whether accused caused the injuries resulting in the death of Balbir, since deceased?

(iii) What is the effect of delay in lodging the FIR?

The learned trial Court acquitted the accused of the charges under Section 304 of IPC and ordered his release from custody with the finding that the prosecution case is not that the accused caused any such injuries to the deceased Balbir on his fight with him.

It is against the aforesaid acquittal vide impugned judgment dated 21.11.2018, the present appeal has come up for hearing before this Court.

Before proceeding further, we deem it necessary to examine the medical evidence to discuss and ascertain the cause of death of deceased Balbir. The postmortem on the dead body of deceased Balbir was conducted by PW6- Dr. Ravinder Singh, Medical Officer, General Hospital, Rewari, on an application dated 02.07.2017 moved by the police Ex. PC. It was a Board consisting of PW6- Dr. Ravinder Singh, Dr. Lokesh Chand and Dr. Anshu, who found the following injuries on the body of the deceased Balbir:-

(i) Lacerated wound of .5X.5 cm over left pinna.

(ii) Lacerated wound of 1X0.5 cm lateral side of left eye.

(iii) Abrasion left Shin of 2X0.5 cm.

(iv) Abrasion 4X0.5 cm over right leg medical side (1/3rd upper side).

(v) Clotted blood was present over the nose.

(vi) Multiple superficial abrasion present over back and

trunk suggestive of insect bite.

Scalp, Skull:-

Scalp hematoma present bilateral tempo-parietal region with underlying hematoma.

Thorax:-

There was ribs fracture anterior lateral left side second, third, fourth, right side second, third, forth, fifth with overlying muscle hematoma.

Heart as a whole and viscera were sealed in separate sealed Jar and were sent for histopathological and chemical examination respectively.

He proved postmortem report as Ex. PD bearing his signatures and that of Dr. Lokesh Chand and Dr. Anshu. He also deposed that the deceased was a chronic heart patient as per Histopathology and no common poison was detected but ethyl alcohol was found in the viscera. It was opined by PW6- Dr. Ravinder Singh that injuries were ante-mortem in nature and were sufficient to cause death in normal course of life, further adding that the cause of death in this case was injuries mentioned in the PMR and complicated Atherosclerosis Super imposed with chronic heart diseases.

PW6- Dr. Ravinder Singh has also not ruled out the possibility as is evident from perusal of PMR Ex. PD that the referred injuries on the person of deceased are possible by fist blows.

On a further perusal of cross-examination of PW6- Dr. Ravinder Singh, nothing could be extracted different from the stand as was in the examination-in-chief to the effect that the deceased died as a result of injuries mentioned in the PMR, which were ante-mortem in nature and sufficient to cause death. Therefore, the trial Court below, has rightly believed the

testimony of PW6- Dr. Ravinder Singh being the most trustworthy witness specifically to the effect that the injuries mentioned in the postmortem report were ante-mortem in nature and sufficient to cause death in ordinary course, making it a case of homicidal death.

Now, next point gains importance i.e. to ascertain as to whether the accused caused injuries on the person of the deceased resulting in his death.

According to prosecution, PW17- Kishore son of Udhmi is the material witness upon whom much weight is put being an alleged eye-witness. He deposed that accused had slapped the deceased and pushed him as a result of which Balbir fell down and suffered injury on his forehead. In the cross-examination also, said witness admitted that the accused pushed Balbir, who fell down on stone and might have suffered injuries in the ribs in that process. However, neither any stone was seen lying outside the house of Rampat, Chowkidar nor any such stone was taken into possession by the Investigating Agency. Even PW1- ASI Bhagirath has also not deposed with regard to any stone having taken into possession and the site plan as prepared by the Investigating Officer PW1- ASI Bhagirath do not reflect any stone at the alleged place of occurrence and, therefore, the version of PW-17 raises doubts and cannot be believed.

It is worth considering the version of PW18- Sunil Kumar son of deceased Balbir, who did not suspect the hand of anyone and on his statement alone, DDR No.10 dated 02.07.2017 had been lodged. At the spot, PW17- Kishore had also arrived and did not state about the deceased to be pushed and slapped by accused, which is a clear case of an improvement as an afterthought.

During the cross-examination, PW17- Kishore also stated that

application Ex. PW1/D, which is the basis of FIR, was scribed by police at police post Kund on its own, which did not bear his signatures.

Interestingly, PW-17 admitted that police has mentioned in said application Ex. PW1/D that the deceased Balbir had received injuries on his chest and both sides of ribs, which makes it crystal clear that the FIR was lodged only after postmortem examination and no witness infact came forward prior to that informing the police about the alleged factum of pushing and slapping the deceased Balbir by the accused.

Another aspect, which makes this Court to disbelieve the version of PW-17 is that while stating in examination-in-chief, deceased Balbir walked comfortably at around 09:00 p.m. at the house of Rampat, Chowkidar, where he was attending a function of 'Chatti' and after some distance, went towards his house. It shows that till 09.00 p.m., the deceased Balbir did not suffer any multiple fractures or injuries in his ribs. PW-17 volunteered at that stage that someone called Balbir and he went back to the function, which is also an afterthought inasmuch as no such statement ever came on record during the course of investigation.

At the same time, even if such concoction of story is to be believed, prima facie the possibility of some other person having caused injuries particularly in the light of the fact that the deceased went back to the function, cannot be ruled out.

Further, examining the testimony of PW17- Kishore, qua slapping once and pushing the deceased also raises doubt that such act is not sufficient to cause injuries of such a greater magnitude, making us to reach a conclusion that the deceased suffered injuries at later point of time after having left the function and PW17- Kishore parted ways from him leading towards their respective homes.

We have given a thoughtful consideration and examined the evidence on record with the help of learned counsel for the appellant. As a sequel of discussion made hereinabove, we do not find any reason to interfere with the findings of the learned trial Court and hold that the prosecution as well as the complainant have failed to prove the guilt against the accused Munni Lal @ Munia beyond reasonable doubt and, therefore, is acquitted of the charges under Section 304 of the Indian Penal Code.

Appeal is dismissed.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

08.03.2022
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No