

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1297-SB-2004(O&M)

Reserved on: 08.12.2022

Date of Pronouncement:16.12.2022

Mewa Singh and another

...Appellants

vs.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Balram Singh, Advocate as Amicus Curiae
for the appellants.

Mr. Vipin Pal Yadav, Additional Advocate General, Punjab.

N.S.Shekhawat J.

The present appeal is directed against the judgment of conviction and order of sentence dated 26.05.2004, passed by the learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana, whereby, the appellants were convicted under Sections 304/34 of Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- each. In default of payment of fine, they were to further undergo rigorous imprisonment for a period of one month.

The brief facts of the case are that the FIR in the instant case was got registered by Mohd. Punnu, by alleging that Mohd. Punnu, Ganpati Rishi Dev and Rajan Punnu had shifted to Punjab from Bihar to plant paddy in the fields of Gurdial Singh of Village Gopalpur. At about 2.00 p.m. on 12.06.2000, Manoj Rishi Dev was bringing their meals on his bicycle and was crossing the

fields of Mewa Singh and Ranjit Singh, both appellants/accused. They objected to this. Mewa Singh strangulated Manoj Rishi Dev by holding his hands, whereas, Ranjit Singh started beating him. Manoj Rishi Dev raised a noise to save him and on hearing the same, Mohd Punnu, Rajan Punnu and Ganpati Rishi Dev reached there. They saved Manoj Rishi Dev from the clutches of the assailants. After they reached at the spot, Ranjit Singh and Mewa Singh along with parna (piece of cloth) ran away from the place of occurrence. Mohd. Punnu, Rajan Punnu and Ganpati Rishi Dev shifted Manoj Rishi Dev to their residential place and provided him treatment. On 14.06.2000, the condition of Manoj Rishi Dev deteriorated and they were in the process of shifting the injured to Civil Hospital, Ludhiana and on the way, Manoj Rishi Dev breathed his last. By leaving Santokh Singh, Ganpati Rishi Dev and Rajan Punnu near the dead body, Mohd. Punnu and Gurdial Singh proceeded towards the police station and reported the matter to ASI Jagpal Singh at Mattewal Chowk. After recording the statement, ASI Jagpal Singh made his endorsement and sent the writing to the police station for registration of the FIR. On the basis of the statement made by the complainant, the FIR was registered under Section 304/34 of IPC and the inquest proceedings were conducted. After the necessary investigation, the accused were arrested and after completing the investigation, the challan under Section 304/34 of IPC was presented in the Competent Court by the police.

After the case was committed to the Court of Sessions, the learned trial Court ordered framing the charge under Section 304/34 of IPC against the accused, to which they pleaded not guilty and claimed trial.

In support of the prosecution case, seven witnesses were examined. Dr. Harjap Singh was examined as PW-1, who along with Dr. U.S. Sooch conducted the post-mortem examination of the dead body on 15.06.2000 and noted the following injuries:-

“Defused swelling all around the neck. On exploring big clotted blood was present all around the neck in the subcut, tissue in between muscles of neck. Big clotted blood was present around larynx laryngeal oedema was present. Small B. vessels of the neck found ruptured anteriorly.”

He sent the blood sample from the heart to chemical examiner at Patiala and also sent the viscera. As per the doctor, the cause of death was asphyxia as a result of massive internal haemorrhage around the larynx and neck and the oedema of larynx was sufficient to cause of death in ordinary course of nature and was ante mortem in nature. He also exhibited the copy of the post-mortem report as Ex.PA. He further stated that as per the report, no poison was detected in the contents and he forwarded the report to the SHO. In his cross-examination, he admitted that in a case of asphyxia, death occurs immediately in the case of hanging. He could not comment if immediate treatment was necessary of the person suffering from asphyxia. He further stated that in case of asphyxia to treat the patient, first of all, the cause of asphyxia should be released immediately and the other ruscitation measures may be taken. The ruscitation includes oxygen therapy, intubation and life saving medicines, and the treatment should be given to such a patient as early as possible. HC Manjit Singh was examined as PW-2, who had deposited the sealed parcel containing viscera with the Chemical Examiner, Patiala. Constable Ravinder Singh delivered the special report and was examined as

PW-3. Karan Jaspal Singh, Patwari Halqa Dakha was examined as PW-4. Jarnail Singh, HC was examined as PW-5, who was part of the initial investigation conducted by the police. The prosecution further examined ASI Jagpal Singh as PW-6, who had recorded the statement of the complainant and made his endorsement Ex.PF/1 on the said statement, on the basis of which, formal FIR Ex.PC was recorded by SI Kuldip Singh. Gurdev Singh, ASI was examined as PW-7, before whom Beant Singh, Member Panchayat had produced the accused Mewa Singh and Ranjit Singh and they were formally arrested and then Ex.PG was prepared in this regard. He also conducted the personal search of the accused vide memo Ex.PJ. Further, Ganpati Rishi Dev was examined as PW-8. He clearly stated that the deceased Manoj Rishi Dev was his elder brother and they both had come to Punjab for plantation of paddy. About 2 ½ years back, his brother was bringing their meals and when he was passing through the fields of accused, the accused objected, upon which he begged pardon. The accused started giving *danda* blows to him and also gave fist blows. The accused also strangled him by means of a *parna*. He was taken to the hospital, but he died on the way. In his cross-examination, he stated that he cannot tell the names of the accused present in the Court and they had been coming to Punjab for about 2 years prior to the occurrence. They had been going to other villages also for plantation of paddy. The prosecution further examined PW-9 Mohd. Punnu and PW-10 Razaq Mohd., who turned hostile and did not support the case of the prosecution. After examining the said witnesses, the prosecution evidence was ordered to be closed.

After the examination of prosecution witnesses was over, the statement of the accused under section 313 Cr.P.C. was recorded and both the

accused pleaded false implication in the present case. Even no specific reason was assigned for falsely implicating the accused in the instant case. The accused opted not to lead any defence evidence. Vide the impugned judgment, the learned trial Court convicted and sentenced the appellants as mentioned above.

I have heard learned counsel for the parties and with their able assistance; I have gone through the trial Court record carefully.

Learned counsel for the appellants vehemently argued that the case is based on the solitary statement of PW-8 Ganpati Rishi Dev, who is the real brother of Manoj Rishi Dev (since deceased). The testimony of the said witness clearly shows that he is interested in the success of the case and was liable to be discarded by the learned trial Court. However, I find no substance in the said argument. Relationship of a witness with the deceased is no ground to reject the testimony of a witness, if it otherwise inspires confidence. In the instant case, neither by way of suggestions nor in the statement under Section 313 Cr.P.C., the accused have attributed any motive to PW-8 Ganpati Rishi Dev to depose falsely against the accused and to involve them in a false case. The complainant, the deceased and the other witnesses were migratory labourers from Bihar and had no enmity with the accused, who were the residents of Punjab. Even otherwise, PW-8 Ganpati Rishi Dev is the real brother of the deceased and he would be the last person to involve an innocent person in a criminal case and to spare the real accused. Even otherwise, the said witness was subjected to a lengthy cross-examination and nothing material could be elicited from him and the testimony of PW-8 is found to be credible.

Learned counsel further submitted that the alleged occurrence had taken place on 12.06.2000, whereas the FIR in the instant case was got registered by the complainant on 14.06.2000 after unexplained delay. Even the occurrence was witnessed by the complainant and other two witnesses; still the matter was not reported to the police. This Court finds no substance in the arguments raised by the learned defence counsel. The prosecution was based on the testimony of certain migratory labourers from Bihar and the family was busy in providing the treatment to the injured and their first priority was to provide the medical treatment to the injured. Consequently, it cannot be held that the delay had caused any prejudice to the accused and as observed above, the complainant had no axe to grind and the delay in reporting the matter was inconsequential. Still further, I find no force in the argument raised by the learned counsel for the appellants that the two witnesses, namely PW-9 Mohd. Punnu and PW-10 Razaq Mohd. had turned hostile as the testimony of PW-8 Ganpati Rishi Dev inspires confidence and was sufficient to base the judgment of conviction by the learned trial Court. Even the testimony of PW-8 Ganpati Rishi Dev was duly supported by the evidence of PW-1 Dr. Harjap Singh, who had conducted the post-mortem examination of the dead body on 15.06.2000 and as per him, the cause of death was asphyxia as a result of massive internal haemorrhage around larynx and neck and the oedema of larynx was sufficient to cause of death in ordinary course of nature and was held to be *ante mortem* in nature. He further opined that any other contributory factor in the cause of death was kept pending till the receipt of the report of the chemical examiner. The viscera was sent to the Chemical Examiner, Patiala and after receipt of the report of the chemical examiner, Ex.PB, no poison was detected in the contents

and consequently, the injuries caused by the appellants were held to be the reason for causing death of Manoj Rishi Dev. Thus, it stands established that the ocular account of PW-8 is duly supported by the medical evidence and thus, the impugned judgment of conviction and order dated 26.05.2004 is liable to be upheld by this Court.

During the court proceedings, the learned State counsel had submitted the custody certificates of both the appellants. As per custody certificates, Mewa Singh, appellant No.1 has undergone 02 years, 02 months and 21 days of total sentence; whereas, Ranjit Singh, appellant No.2 has undergone 01 year, 09 months and 05 days of total sentence. The sentence imposed upon the appellants was ordered to be suspended on 25.07.2005 and both the appellants did not indulge in any criminal activity. Only one FIR No. 192/2003, under Sections 379/411 of IPC, Police Station Shimlapuri, Ludhiana, is stated to have been registered against Mewa Singh. However, in the last sixteen years, they had not involved in any other criminal case. Apart from that, they are facing the agony of trial/appeal since, June 2000.

Consequently, ends of justice will be suitably met if their sentence is reduced to the period already undergone by them. However, the amount of fine is increased to total Rs.2,00,000/- (i.e. Rs.1,00,000/- each) from Rs.1,000/- each and the appellants are directed to deposit the said amount with the learned trial Court within a period of three months from today, failing which, they shall further undergo rigorous imprisonment for a period of two years. The Chief Judicial Magistrate concerned is directed to inform the legal representatives of the deceased. The amount of compensation shall be disbursed to the legal representatives of the deceased-Manoj Rishi Dev.

In view of the above, the impugned judgment of conviction dated 26.05.2004, passed by the learned Additional Sessions Judge, (Adhoc), Fast Track Court, Ludhiana is upheld and order of sentence is modified to the extent indicated above.

With the above modifications, the present appeal stands partly allowed in the above terms. Pending application(s), if any, shall also stand disposed of. The trial Court record be sent back.

I record my appreciation for Mr. Balram Singh, learned Amicus curiae, who had rendered able assistance to this Court.

16.12.2022
hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes