

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

CRA-D-1289-DB-2013 (O&M)

Reserved on: 31.10.2022

Date of decision: 03.11.2022

**SUBHASH**

...Appellant

Versus

**STATE OF HARYANA**

...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR**

**HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present: Ms. Raminder Pratap Kaur, Advocate (Legal Aid Counsel)  
for the appellant.

Mr. Anmol Malik, DAG, Haryana.

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**SURESHWAR THAKUR, J.**

1. The instant appeal is directed against the verdict recorded on 29.08.2013, upon Sessions Case No.31 of 2012, by the learned Sessions Judge, Hisar, wherethrough in respect of charges drawn qua offences punishable under Sections 302/323 of IPC, he recorded a verdict of conviction against the accused. Moreover through a separate sentencing order drawn on 30.08.2013, the learned Sessions Judge, Hisar proceeded to sentence the convict to undergo life imprisonment in respect of an offence punishable under Section 302 of IPC, besides imposed in respect thereto, the sentence of fine comprised in a sum of Rs.1 lac. Moreover, on default of payment of fine amount, the convict became sentenced, to undergo rigorous imprisonment for a period of three years.

2. The convict becomes aggrieved from the verdict of conviction besides also becomes aggrieved from the imposition of sentence(s) (supra), upon him. Resultantly, through his instituting the instant appeal before this Court, he strives to seek annulments thereof.

**FACTUAL BACKGROUND**

3. The genesis of the prosecution case is embodied in the appeal FIR to which Ex.P8 is assigned. It is recorded therein, that on 31.08.2011, the complainant Amar Singh, made a statement to the police to the effect, that he has four brothers and that all of them are living separately with their families. Jogi Ram is stated by him to be his eldest brother and qua his fathering three sons and two daughters. Subhash son of Jogi Ram is stated by him to be residing in the village along with Jogi Ram. He records therein, that after taking drugs and liquor the convict-Subhash used to quarrel with his family members. It was during the night intervening 30/31.08.2011, when Jogi Ram was taking rest, on a cot lying in the Chabutra situated in front of their house, that then convict-Subhash was watching television. He recites therein that it was late in the night when Jogi Ram asked Subhash to switch off the television, whereupon Subhash got enraged and picked up an iron pipe from the Bhaithak, and attacked Jogi Ram. Upon hearing the cries of Jogi Ram, he (complainant), Murti Devi, Rama Devi, Ram Kali etc., reached the spot. They tried to rescue Jogi Ram, but Subhash attacked them also, and caused injuries to Murti Devi and Rama Devi. Jogi Ram had owing to abovesaid injuries died at the spot itself. Accused Subhash fled from the spot alongwith the iron-pipe, towards the agricultural fields. The complainant sought suitable action by the police against the culprit. Thereupon, the requisite FIR No.303 dated 31.8.2011, Police Station, Barwala under Section 307/323 of Indian Penal Code, was registered by the police.

**INVESTIGATION**

4. During investigation postmortem examination on the dead body of Jogi Ram was got conducted from the Medical Officer, General Hospital, Hisar. Statements of the witnesses were also recorded by the police under Section 161

of Code of Criminal Procedure. The accused had been arrested by the police during the investigations. Thereafter, the accused in pursuance to his disclosure statement got recovered the iron-pipe as became used by him in the commission of crime. The blood stained clothes of the accused were also taken into possession by the police. After completing the investigations, the police filed before the learned Committal Court, the requisite police challan against the accused for offences constituted under Section(s) 302/323 of the Indian Penal Code.

### **COMMITTAL PROCEEDINGS**

5. Since the afore offences were exclusively triable by the Court of Session, thus vide committal order dated 09.01.2012, the learned Judicial Magistrate Ist Class, Hisar, committed the accused to face trial before the Court of Session.

### **TRIAL PROCEEDINGS**

6. The prosecution examined as many as 14 witnesses and, subsequently, the public prosecutor closed prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, he did not choose to lead any defence evidence.

### **SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT**

7. The learned counsel appearing for the convict-appellant has argued that the impugned judgment is ridden with grave vices of gross mis-appreciation and non-appreciation of evidence germane to the charge. Therefore, she contends that the impugned judgment be quashed, and, set aside.

**SUBMISSIONS OF THE LEARNED STATE COUNSEL**

8. The learned State counsel has argued that the impugned verdict of conviction, and, consequent therewith sentence (*supra*), as became imposed upon the convict by the learned trial Judge concerned, is merit worthy, and, that it does not require any interference.

**OCULAR EVIDENCE COMPRISED IN THE TESTIFICATIONS OF PW-9 AND PW-10**

9. PW-9 and PW-10 are respectively the real mother and the real sister of the convict. In their respectively recorded examinations-in-chief, they consistently deposed in respect of the genesis of the prosecution case, as becomes encapsulated in the appeal FIR, to which Ex.P8 is assigned. Though, they thereafter became also subjected to the ordeal of an exacting , and, rigorous cross-examination, but they remained unscathed in the said ordeal. Resultantly, they are to be concluded to be ocular witnesses to the occurrence. Thus, they are also to be inferred to render a credible eye-witness account in respect of the charge drawn against the convict.

10. The effect, of the real mother and the real sister of the convict deposing with *inter-se* harmony, besides each of them deposing without any gross improvements or embellishments vis-a-vis their respectively recorded previous statements in writing, is that, their respectively made testifications are obviously taint free. Thus, grave probative vigor is to be assigned to their testifications, especially when they attribute to the convict the incriminatory role of his making a lethal assault with an iron pipe on the person of deceased Jogi Ram.

**DISCLOSURE STATEMENT AND CONSEQUENT THEREWITH RECOVERIES**

11. Though this Court has hereinabove concluded, that the real mother and the real sister of the convict, did make taint free depositions, with respect to

the convict making an assault with an iron pipe on the person of deceased Jogi Ram. Nonetheless, it was but incumbent upon the prosecution to also ensure the eruption of cogent proof in respect of valid recovery of the incriminatory iron pipe rather becoming effected, at the instance of the convict, to the investigating officer concerned.

12. In the above regard, the apposite evidence rather corroborative to the above credible eye-witness account rendered in respect of the prosecution case, hence becomes comprised in the disclosure statement made by the convict before the police officer, and, to which Ex.P15 is assigned. The contents of Ex.P-15 are *ad-verbatim* extracted hereinafter.

“Xxx

***Disclosure statement of accused.***

*In the presence of following witnesses, aforesaid accused Subhash son of late Sh. Jogi Ram, during police custody, without any fear or lust, at his own sweet will himself disclosed that “I being habitual of drinking liquor, my father Jogi Ram used to persuade me and by frightening and threatening me used to prohibit me from drinking liquor, but I did not give up liquor. On 30.8.2011, due to excess consumption of liquor, I became intoxicant and my father while abusing threatened me which I could not tolerate. I picked up iron pipe lying in the house and caused injuries to my father Jogi Ram in head and other parts of the body with the iron pipe. On hearing the noise of quarrel, my uncle Amar Singh and other family members reached the spot and on seeing them I tried to run away alongwith the iron pipe then my sister Prem Kali and mother Murti Devi etc. tried to catch hold of me, upon which I also caused injuries to them and then ran away from the spot alongwith the iron pipe. The iron pipe used in the quarrel, has been kept concealed by me in the cotton field of Hari Singh son of Soni, caste Kumhar, resident of Dhani Garan, near katcha passage in the field, which fact is not known to any body except me. By accompanying can get recovered. Disclosure statement of accused stands recorded. On the memo of disclosure, accused and witnesses have put their respective signatures. Memo of disclosure stands completed.*

Witness: HC Inder Singh 315  
P.S. Barwala.

Sd.- (In Hindi)  
Subhash accused

Witness: Amar Singh son of Laxmi Narain  
Caste Kumhar, resident of Dhani Garan Sd/- (In Hindi)

Sd/- (In English)  
Krishan Lal, SI/SHO,  
P.S. Barwala, dated 2.9.2011”

13. A reading of the hereinabove extracted disclosure statement of the convict which carries his signature, reveals that, he has therein confessed his guilt. Moreover, an incisive reading thereof further reveals that, he had also confessed that with user of an iron pipe he had hence made a lethal assault on the person of his deceased father Jogi Ram. A reading of Ex.P-15 also reveals qua his willingness to cause the recovery of the iron pipe from the place of its keeping, and, hiding by him, which he has narrated therein to be known only to him.

14. Since Ex.P-15 is signed by the convict, resultantly grave evidentiary vigor is to be assigned thereto, unless evidence surged forth rather revealing, that he had validly denied his signatures as carried thereon, and, also evidence emerged, but with revelations that, he had also ably proven the apposite denial. However, evidence in respect of convict Subhash ably denying his signatures, as carried on Ex.P-15 rather has not surged forth nor obviously any cogent evidence, has surfaced in respect of proof of his above denial, if any. Consequently, the confession of guilt as made therein does acquire utmost probative sanctity.

15. Furthermore since in pursuance to the making of Ex.P-15, the convict through recovery memo to which Ex.P-15/A is assigned, caused the recovery of incriminatory iron pipe, to the investigating officer concerned. Therefore, the confession of guilt as made by the accused in Ex.P-15, does not become a bald simpliciter confession of guilt nor is hit by the statutory bar contemplated in Section 25 of the Indian Evidence Act. Contrarily the effectuation of recovery of iron pipe in pursuance to the making of Ex.P-15, thus, makes Ex.P-15 to be an admissible confession of guilt by the convict to the

investigating officer concerned, rather during the course of the latter taking his police remand.

16. Moreover, since the recovery of iron pipe as became effected through recovery memo to which Ex.P-15/A is assigned, has not been established to be either a fake or a fictitious recovery. Resultantly, sanctity is to be assigned to the recovery of iron pipe, as became made through recovery memo Ex.P-15/A. Thus, the above made inference in respect of the valid drawings of Ex.P-15, and, of Ex.P-15/A, does constrain this Court to make a firm inference, that therethroughs the credible ocular account rendered in respect of the prosecution case, rather becoming cogently proven, besides receiving the fullest corroboration.

#### **MEDICAL EVIDENCE (POST MORTEM REPORT)**

17. Dr. Puneet Loona who drew post mortem report to which Ex.P-13 is assigned, has during the course of his stepping into the witness box proven the same. The recorded observations as made by PW-8, during the course of his holding an autopsy on the body of deceased Jogi Ram, are *ad-verbatim* extracted hereinafter.

*“1. Right Leg was found to be fractured below knee. There was present a lacerated wound of size 3x4 cm with ragged edges;*

*2. Left leg was found to be fractured, over knee joint showing a wound with 2x3 cm with ragged edges.*

*3. Left index finger found to be fractured.*

*4. Right big finger was found to be fractured.*

*5. Skull was found to be crushed with right temporo parietal frontal and occipital bone found to be fractured. Brain membranes were seen to be ruptured. Brain matter was turning out of the skull. Nasal bone and right orbit was found to be fractured.”*

18. Moreover, the reason for the cause of demise of deceased Jogi Ram, has been opined by PW-8, to arise from multiple injuries of hemorrhage and

shock owing to multiple ante mortem injuries caused to the brain of deceased Jogi Ram. The above cause of demise of deceased Jogi Ram, does connect the same with the user of the incriminatory weapon of offence, on the person of the deceased, by the convict. Resultantly the cause of demise of deceased Jogi Ram corroborates, the credible ocular evidence relied upon by the prosecution, and, also does corroborate the validly made recovery of the iron pipe through recovery memo Ex.P-15/A. Therefore, this Court is constrained to conclude that the charge drawn against the convict becomes cogently established.

### **SUMMARIZATION OF PRINCIPLES**

1. Credence is to be assigned to the testified eye-witness account but subject to the same being free from taints of grave or gross improvements or embellishments, upon, the apposite respectively recorded previous statments in writing.
2. The recovery of the weapon of offence, is required to be also effected through a validly drawn recovery memo, but prior whereto a validly recorded disclosure statement of the convict, is to be drawn, with revelations therein qua confession of guilt besides, the willingness of the accused, to cause recovery of the weapon of offence to the investigating officer, from the place of its keeping, and, hiding, rather known only to him.

### **FINAL ORDER**

19. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the convict by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of any gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the

appeal, and, the same is dismissed. If the accused is on bail, thereupon the sentence(s), as imposed upon him, be ensured to be forthwith executed by the learned trial Judge concerned, through his forthwith drawing committal warrants qua him. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

- 20. Records be sent down forthwith.
- 21. Pending miscellaneous application(s), if any, stand(s), disposed of.

**(SURESHWAR THAKUR)**  
**JUDGE**

**03.11.2022**  
Ithlesh

**(N.S. SHEKHAWAT)**  
**JUDGE**

|                                    |                      |
|------------------------------------|----------------------|
| <b>Whether speaking/reasoned:-</b> | <b>Yes/No</b>        |
| <b><i>Whether reportable:</i></b>  | <b><i>Yes/No</i></b> |