

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

**Criminal Appeal No.463-DB of 2017
Date of Decision: 29th March, 2022**

Mohd. Sabir

....Appellant

Versus

State of Punjab

....Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present:- Ms. Subhpreet Kaur, Amicus Curiae
for the appellant.

Mr. H.S.Grewal, Additional Advocate
General, Punjab.

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MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment and order on sentence dated 03.03.2017 handed down by learned Additional Sessions Judge, Sangrur, in the criminal case arising out of the FIR bearing No.20 dated 03.03.2015 registered at Police Station City-I, Malerkotla, under Sections 302, 307, 324 IPC whereby the above-named appellant has been held guilty and has been sentenced to undergo life imprisonment and to pay a fine of Rs.25,000/- and in default of payment of the fine, to further undergo rigorous imprisonment for one year, for committing the offence under Section 302 IPC and also to undergo imprisonment for seven years and to pay a fine of Rs.15,000/- and in default in payment thereof, to further undergo rigorous imprisonment for eight months for

the commission of the offence under Section 307 IPC, he has chosen to prefer the instant Criminal Appeal.

Bereft of unnecessary details, the allegations, as levelled by complainant-injured Shehnaz against the appellant, are that she was married to the appellant about three years before the date of occurrence and a son had born out of this wedlock. She along-with her husband, i.e appellant, had been residing at her parental house as she was the only child of her parents and both of them had been working at Shorab Factory. However, the appellant had been maltreating her and he used to forcibly take away her earnings and to beat her. For the last two months, he had been residing at his mother's place. On 03.03.2015, she, along-with her father, was going to Saraud Chowk on a bicycle to board a bus for the Factory. Her uncle Mohd. Habib was following them on another bicycle. When they reached ahead of Saraud Octroi, they saw that the appellant was already standing there and he took out the knife from his 'Dub' (fold of the lower) and gave its blows in the abdomen and on the left arm of her father and when she intervened, he gave the knife blows on her both arms, abdomen, chest, neck and left leg. The appellant also sustained injury on his face while they were trying to save themselves. On their raising an alarm, the appellant ran away from the spot along-with the said weapon. Her father succumbed to the injuries at the spot. The appellant had killed her father and had caused injuries to her also because of her refusal to hand over her earnings to him.

On completion of the necessary investigation, the Challan

was presented in the Court. On 04.06.2015, the charges were framed against the appellant under Sections 302, 307 and 324 IPC and he pleaded not guilty to the same and claimed trial.

To substantiate its allegations against the appellant (accused), the prosecution examined as many as 12 witnesses namely Shehnaz as PW-1, Mohd. Habib as PW-2, Shashi Kanta as PW-3, Dr. Daljinder Singh as PW-4, Dr. Shivanshu as PW-5, Devinder Kumar as PW-6, Dr. Inderjit Singh Bagga as PW-7, Constable Navdip Singh as PW-8, SI/SHO Harinder Singh as PW-9, SI Majid Khan as PW-10, HC Inderjit Singh as PW-11 and ASI Sukhwinder Singh as PW-12. Thereafter, the Additional Public Prosecutor for the State tendered the report of the Forensic Science Laboratory as Exhibit PZ and closed the prosecution evidence. Then, the appellant was examined under Section 313 Cr.P.C to explain the circumstances/incriminating material appearing against him in the prosecution evidence on the record wherein he has stated that deceased Abdul Sattar, his father-in-law, humiliated him and pushed him and thus, picked up a quarrel with him and Shehnaz also scuffled with him and they fell down on the iron scrap lying there and sustained the injuries. In his defence evidence, the appellant examined his brother Mohd. Halim as DW-1. After appreciating and evaluating the evidence as led on the record during the course of the trial and hearing the Additional Public Prosecutor for the State as well as the defence counsel, learned trial Court recorded the conviction of the appellant and awarded the sentence to him as detailed

in the opening para of this judgment.

We have heard learned counsel for the appellant as well as learned State counsel in the present appeal and have also perused the record carefully.

Learned counsel for the appellant points out that while appearing as PW-1, the complainant-injured has deposed during her cross-examination that in routine, she did not take the bus from the place of occurrence and he contends that this fact itself shows that the alleged occurrence resulting into the death of the above-named victim, i.e the father-in-law of the appellant and the injuries on the person of the complainant, was not pre-meditated and rather, it was an outcome of the sudden provocation to the appellant at the hands of the deceased and the complainant which led to a quarrel between them and the appellant and during the scuffle that ensued, they fell down on the iron scrap lying at the spot as some iron factories were located near the same and it being so, the offence in present case squarely falls under Exceptions 1 and/or 4 as appended to Section 300 IPC and is punishable under Section 304 IPC, instead of Section 302 IPC. She has placed reliance upon **Sridhar Bhuyan vs. State of Orissa 2004(3) RCR(Criminal) 909.**

Per-contra, learned State counsel argues that the appellant was having strained relations with the complainant-injured, his wife and had been nurturing a grudge against her as well as her father on this score and due to this reason, he caused fatal injuries to the above-named deceased and the injuries to the complainant attracting the offence under

Section 307 IPC and in such circumstances, the present appeal deserves dismissal.

Admittedly, the appellant is the husband of the complainant and the son-in-law of the deceased and he was having strained relations with the complainant and had been residing with his mother since about two months prior to the date of the occurrence. As regards the contention qua the deceased as well as the complainant having sustained injuries on account of their having fallen on the iron scrap lying at the spot, it is pertinent to mention here that a perusal of Exhibit PW-9/F, i.e the site plan of the place of occurrence (at pages No.91-92 in the Trial Court Record), reveals that the places where the body of the deceased was lying and the complainant is stated to have sustained injuries are marked as 'A' and 'B' therein which happen to be the middle of the metalled road. It seems highly improbable that the iron scrap would have been left lying in the middle of the road which is supposed to be frequented by several vehicles everyday. Moreover, in the said site plan, no iron scrap is shown to have been found lying at the spot. Further, during their cross-examination, PW-2 Mohd. Habib, an eye-witness to the said occurrence as well as PW-10 SI Majid Khan, who accompanied the Investigating Officer to the place of occurrence, have categorically denied the suggestion that the iron-scrap was lying near/at the place of occurrence. In these circumstances, the afore-discussed contention does not inspire any confidence.

So far as the contention qua the said occurrence having

taken place due to the sudden provocation and without pre-meditation, is concerned, it is again worth-while to mention here that though, PW1 injured-complainant has stated during her cross-examination that in routine, she did not get the bus from the place of occurrence but these depositions, can, by no stretch of imagination, be construed to infer that she had never boarded the bus from the said place and moreover, the appellant is alleged to be carrying a knife with him and to have attacked the deceased and the afore-named PW-1 with the same. The very factum of his having carried the knife at that time, in itself, negates his version regarding the occurrence in question having taken place due to sudden provocation/heat of passion and without any pre-meditation because in normal course of events, no law abiding person can be expected to be carrying a knife which could be used for causing fatal injuries to any one.

The observations, as made by Hon'ble Supreme Court in **Sridhar Bhuyan (supra)**, are of no avail to the appellant because the facts and circumstances of the afore-cited case are distinguishable from those of the present one. In the above-said case, the deceased had gone to the house of the appellant to sort out the matter regarding the eve-teasing of his cousin sister by his (appellant's) brother but a quarrel took place there and the appellant went inside his house and came out with a knife and caused injuries to the deceased with the same whereas in the present case, the appellant was already present at the place of occurrence and was having the knife, i.e the weapon of offence, with

him.

As a sequel to the fore-going discussion, it follows that the impugned judgment and order on sentence, as handed down by the trial Court, do not suffer from any illegality, infirmity, irregularity or perversity. Hence, the same are upheld. Resultantly, the appeal in hand, being *sans* any merit, stands dismissed.

(RITU BAHRI)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

29.03.2022.

seema

Whether speaking/reasoned:

Yes

Whether Reportable:

No