

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

CRA-D-1048-2019 (O&M)
Reserved on: 05.12.2022
Date of decision: 09.12.2022

INDAL

...Appellant

Versus

STATE OF HARYANA

...Respondent

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

Present: Ms. Nidhi Garg, Advocate for the appellant.

Mr. Pradeep Prakash Chahar, DAG, Haryana

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict drawn on 22.08.2019, upon Sessions Case No.14 of 2017, by the learned Additional Sessions Judge, Karnal. Through the above verdict, the learned Additional Sessions Judge concerned, in respect of offences punishable under Sections 302, 34 of IPC made a verdict of acquittal *qua* co-accused Pappu and Inder Dev @ Pawan. However, through the above drawn verdict the learned trial Judge concerned, convicted appellant-convict Indal, in respect of a charge drawn, for an offence punishable under Section 302 of IPC. Moreover, through a separate sentencing order of even date, the learned trial Judge imposed, upon the convict (supra), the sentence of life imprisonment in respect of an offence punishable under Section 302 of IPC, and, also imposed upon him sentence of fine comprised in a sum of Rs.5,000/-. Further in default of payment of fine amount, he convicted the convict to undergo rigorous imprisonment for a period of two years. However, the period spent in custody by the convict during investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., ordered to be

set off from the above imposed substantive sentence of imprisonment. There is no material on the record suggestive that, the aggrieved concerned, has preferred any appeal against the verdict of acquittal, as made in respect of the above co-accused Pappu and Inder Dev @ Pawan, therefore, the above verdict of acquittal as becomes recorded *qua* co-accused Pappu and Inder Dev @ Pawan, does acquire conclusive and binding effect.

2. The convict (supra) becomes aggrieved from the above made verdict of conviction, besides becomes aggrieved from the consequent therewith sentence(s) (supra), as became imposed upon him, thus he is led to institute thereagainst the instant appeal (supra) before this Court.

FACTUAL BACKGROUND

3. The genesis of the prosecution case is embodied in the FIR to which Ex.P3 is assigned, thereins, it is narrated that on 15.3.2017, Babu Lal Chaudhary son of Manu Chaudhary, resident of Village Kajifattu Chak P.S. Barbodha, District Sheikhpura (Bihar) now working as labourer in Brick Bhatta Manpura Ballah, P.S. Assandh, District Karnal got recorded his statement to the police alleging therein that he, alongwith his family members, was doing work at Dadakhera brick Bhatta Manpura Ballah for the last 3-4 months and living on said bhatta. It is further alleged that Salender son of Nagi Paswan belongs to his village was also living at this Bhatta alongwith their family members. He is having five children out of which two children are living in village, two daughters Sangeeta and Kavita and one son Amarjit is living with him. On this bhatta other persons belonging to Bihar were also living in Jhugis except them and were doing the labour work. Inder Dev @ Pawan son of Musafir, resident of Kumra, District Patna and son-in-law of Inder Dev namely Pappu son of Kumhar, resident of Kurmi Chak, District Patna (Bihar) and Indal son of Bhago,

resident of Amanatpur, District Shekhpura (Bihar) were also living there alongwith their family members. On 14.03.2017, in the morning, a quarrel took place in between his wife Babita Devi and wife of Inder Dev and girls whose name is not known to him. On the same day, at about 7/7.30 p.m., his wife and children were cooking in Jhuggi, in the meantime, Pappu and his wife came at their Jhuggi and started abusing them and asked why they are giving abuses. In the meantime, Indal came having “Binda” of Kassi in his hand and gave a blow to him and his son made a noise. Indal also gave “Binda” blow to his son Amarjit and he fell down on earth and thereafter, Indal gave 5-6 “Binda” blows to his son. Inder Dev and his wife and girls also gave brick blows and when other persons came there they ran away from the spot. Munim Sumer and Dinesh owner of bhatta came there and took his son in Civil Hospital, Assandh, where the doctor declared his son 'dead'.

INVESTIGATION

4. On the basis of this statement, present case was registered under Sections 302, 34 IPC in Police Station Assandh, Karnal. Investigation was conducted. Statements of witnesses u/s 161 Cr.P.C were recorded. Photographs of the site were obtained. Postmortem of the dead body was got conducted. During investigation, accused Indal, Pappu and Inder Dev were arrested. On completion of investigation, challan was submitted.

COMMITTAL PROCEEDINGS

5. Since the afore offences were exclusively triable by the Court of Session, thus vide committal order dated 09.06.2017 the learned Judicial Magistrate Ist Class, Assandh, 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 the 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 for the convict-appellant, has made a vigorous submission before this Court that, the impugned verdict of conviction suffers from a gross taint of gross mis-appreciation and non appreciation of evidence germane to the charge. Thus, she argues that the impugned verdict be quashed and set aside by this Court.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

8. Contrarily, the learned State counsel has argued that, the verdict challenged before this Court is well merited, and, does not warrant its becoming interfered with, by this Court.

THE PROSECUTION CASE IS RESTED UPON THE TESTIFICATIONS OF TWO OCULAR WITNESSES WHO HAVE RESPECTIVELY STEPPED INTO THE WITNESS BOX AS PW-9 AND PW-10.

9. PW-9 in his examination-in-chief speaks that, on the relevant day, at the crime site, convict Indal arriving with “Binda”, and, with the user thereof, his striking a blow at him, which resulted in his falling on the floor. On the above event, he speaks that his son came outside and protested against the accused Indal, hence belabouring him. The above is spoken by him to result in convict Indal, proceeding to deliver “Binda” blows on the ribs of his son Amarjeet, which resulted in the said Amarjeet falling on the floor, but yet convict Indal continuing to deliver 5-6 “Binda” blows on Amarjeet. Thereafter,

he testifies that the accused concerned, flung bricks and roda on them. The owner of the Bhatta namely Dinesh is stated by him to take the injured to government hospital Assandh, in his private vehicle, where the doctor declared Amarjeet as dead. During the course of his examination-in-chief he has, as such proven his previous statement recorded in writing to which Ex.P1 is assigned. However, merely upon the above disclosures by PW-9 in his examination-in-chief, no firm conclusion can be formed, that absolute sanctity is to be assigned thereto, unless his testification occurring his cross-examination is also closely read. On making a deep reading of the cross-examination of PW-9, it transpires that, he has spoken therein, that after receiving "Binda" blow he fell, on the ground and that thereafter, he did not know what happened, but yet he echoed in his cross-examination, that when he stood up, he then noticed that his son had fallen on the ground, and that he had seen Indal to be belabouring his son with the "Binda". The above speakings, as occur in the cross-examination of PW-9 do catapult an inference, that the inculcation, as made by him, in his cross-examination rather becoming conceded by the defence. The reason for forming the above inference ensues, from the factum that, the above speakings did not come to be contested by the defence counsel, through his meteing to him any further suggestions nor when answers favourable to the defence emanated from PW-9. Therefore, it is but to be concluded, that the above omission, as above stated, does garner a firm inference, that the attribution of an incriminatory role to convict Indal by PW-9 hence in his examination-in-chief, does acquire, the utmost evidentiary sanctity. Moreover, the further effect thereof, is that, even if owing to darkness prevailing at the relevant site, PW-9 in his cross-examination, did voice, that it caused an inability, to recognize persons present at the Bhatta,

from the huts inhabited by PW-9, yet the said voicing rather in the least affects the inculcation made by PW-9.

10. Moreover, the effect of the same, is that the defence, has accepted the participation of the convict Indal in the relevant crime event, irrespective of assumingly, the convict being not previously known to PW-9. However, though then, there became enjoined a dire necessity, upon the investigating officer concerned, to conduct a valid test identification parade, to enable PW-9, to there identify the accused, hence for his subsequently becoming enabled to make an identification of the convict, in Court. Nonetheless, the above failure of the investigating officer concerned, to conduct a valid test identification parade, during the course of investigations, hence to enable PW-9 to then identify the convict Indal, for thereafter PW-9 becoming ably facilitated, to identify the convict Indal in Court, does not yet render, the identification in Court of convict Indal by PW-9, to be either frail or lacking in any probative vigor. The reason for making the above inference becomes again comprised in the omission (*supra*), resulting in a natural inference, qua thereupon the defence conceding the participation of convict Indal in the relevant crime event.

11. PW-10 in his examination-in-chief has completely supported, the version *qua* the prosecution case, as became narrated by PW-9. She also therein did attribute an incriminatory role to convict Indal. A deep reading of her cross-examination reveals, that she has spoken therein about her seeing convict Indal coming in his Bhatta with the “Binda”. The above speaking has remained unrebutted. Therefore, it is to be concluded that it became conceded by the defence. Consequently, it has to be concluded that “Binda” became used by convict Indal, to cause fatal blows on the head of deceased Amarjeet. As the said

“Binda” became recovered through a validly drawn memo embodied in Ex.P10, preceding wherewith a valid disclosure statement as carried in Ex.P8, became also recorded by convict Indal. Thus evidentiary vigor is to be assigned to the memos, as he has not been able to either ably deny his signatures as occur on Ex.P8 and on Ex.P-10, nor has been able to prove the apposite denial. Moreover, since he has also not been able to bring forth tangible evidence to suggest that the recoveries are either contrived or invented. Thus, evidentiary sanctity is to be assigned to the above memos.

12. The further effect of the above omission of the defence, hence to make any cross examination upon PW-10, to erode the efficacy of the above incriminatory speakings, is that, any darkness prevailing at the relevant time, and, it being spoken by PW-10, to disable any person to recognize the accused concerned, does become completely waned, and, has also becomes blunted. The further result of the above unrebutted speakings made by PW-9, and, by PW-10, in their respective cross-examinations, is that, the participation as a principal offender in the relevant crime event, of convict Indal, does most unflinchingly surge forth. Therefore, the charge drawn against the convict becomes clearly established.

DISCLOSURE STATEMENTS OF ACCUSED AND CONSEQUENT THEREWITH RECOVERIES

13. During the course of the custodial interrogation of accused Indal, he made a signed disclosure statement as comprised in Ex.P8, contents whereof become extracted hereafter.

“xxx

Disclosure statement of accused Indal

Today on dt 18-03-2017 in the present case accused Indal S/o Bhago. Caste Majhi, R/o Amanatpur, PS Kusumbah Distt Sheikhpura Bihar, at present Labourer JDKK Brick bhatta Ballah,

PS Assandh. Karnal, in the police custody had disclosed without any fear. pressure, temptation." That on 14-03-2015 on JDKK Brick, Bhatta Ballah in Karnal. We took a quarrel with Babu Lal Chaudhary S/o Sh. Manu Chaudhary Caste Peshi R/o Village Kajifattu Chak PS Barbiga, Distt sheikhpura Bihar. In this Quarrel I and my father-in-law Inder Dev @ pawan S/o Musafir caste Manjhi R/o Kumra PS Goshwari Distt Patna, Bihar attacked on the jhugi of Babu Lal. I took the wooden Kassi Linda (wooden Rod) from my Jhugi. And when I hit Babu Lal with that kassi Binda then his son Amarjit started shouting seeing him scream I gave a Binda blow on the ribs to Amarjit S/o Babu Lal. Due to Binda blow Amarjit Fell Down, when he fell down I did many blows with binda to him. Other Labourers also came there from the nearby jhugis. I. my Father-in-Law, Inder Dev and my Brother-in-Law (Sadhu) and other family members ran away from the place of occurrence. I have Kept conceal that wooden binda in the brick bhatta, near my jhugi, to which no one knows except me. After demarcation of that place and Bricks can be recovered that Binda. Disclosure of accused was written. On this accused marked his thumb impression and witness signed his signature.

Accused: Indal LTI of Indal

Witness:- ASI Lakhbir, 445

Choki Ballah, PS Assandh, Karnal

Sd/- (in English)

Sd/- INSP/SHO, PS: Assandh, Karnal, Dt. 18.03.2017"

14. A reading of the above extracted signed disclosure statement as made by accused Indal, reveals that he had therein not only confessed his guilt, but had also disclosed that he can ensure the causings of recovery of "Binda" Ex.P10, to the investigating officer concerned, from the place of his hiding, and, concealing it, the same being exclusively known to him. Since in pursuance thereof through a recovery memo Ex.P10, he caused the recovery of "Binda".

Thus evidentiary vigor is to be assigned to the above memos, as he has not been able to either ably deny his signatures as occur on Ex.P8 and on Ex.P10, nor has

been able to prove the apposite denial. Moreover, since he has also not been able to bring forth tangible evidence to suggest that the recoveries are either contrived or invented. Thus, evidentiary sanctity is to be assigned to the above drawn memos. Resultantly, corroboration therethroughs is acquired by the credible ocular account rendered *qua* the crime event by PW-9 and by PW-10.

MEDICAL EVIDENCE (POST MORTEM REPORT)

15. The post mortem upon the body of deceased Amarjeet was conducted on 15.03.2017 by PW-14. PW-14 has proven *qua* his, authoring Ex.P23, as relates to the autopsy as made upon the body of deceased Amarjeet.

16. Moreover, he has proven that the cause of death of deceased Harbans Singh, was owing to Hypovolumic Shock due to hemorrhage caused by the injuries mentioned in the Post Mortem Report, which are stated to be ante mortem in nature, and which are stated to be sufficient to cause death in the ordinary course of nature. The relevant ante mortem injuries as noticed by PW-14 on the body of deceased are extracted hereinafter.

“1. Bruise of Size 4 cm x 2 cm was present on Anterolateral aspect of right thigh.

2. Abrasion and contusion of size 10 cm x 4 cm was present on right side of face and forehead starting from hair line of right side of forehead upto right lateral to upper lip with fracture of frontal bone with 700 ml to 900 ml of hemocranium.”

17. On Ex.P10 becoming shown to him, in Court, he opined *qua* the possibility of causings of the above extracted injuries on the body of the deceased, hence through users thereon of Ex.P10. The above speakings made by PW-14, in his examination-in-chief also led the learned trial Judge concerned, to aptly conclude, that the prosecution has been able to prove the user of Ex.P10, by the accused concerned, in the causings of fatal wounds on the body of the deceased.

FSL REPORT

18. Though blood stained incriminatory items became transmitted through memo No.50-SPL dated 04.04.17 to the FSL concerned. However, as revealed by the report of FSL to which Ex.PX is assigned, the respective examinations, resulted in the emergence of the hereinafter extracted opinion.

“RESULTS OF EXAMINATION***1. No common poison could be detected in exhibit-1a, 1b and 1c.”***

19. Though, in the wake of the prosecution cogently establishing, the charges drawn against the convict, through the stepping into the witness box of credible eye-witness to the occurrence. Moreover, also though the prosecution has been able to prove the charge, through the validly drawn memos (supra), besides from the medical evidence (supra). Therefore, since the cause of demise of the deceased, is on account of ante mortem injuries, as, caused by user of Ex.P10, thus when the cause of demise of deceased concerned, is not on account of consumption of poison nor on account of forcibly administration thereof rather by the accused. Thus the factum of no poison being detected in the viscera of the deceased becomes completely irrelevant.

FINAL ORDER

20. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes recorded, and, imposed, upon convict by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of 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, as imposed upon him be ensured to be 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.

21. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

09.12.2022

(KULDEEP TIWARI)
JUDGE

Ithlesh

Whether speaking/reasoned:- Yes/No
Whether reportable: Yes/No