

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-D-52-DB-2018 (O&M)

Date of Decision: 05.12.2023

Manish

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE GURBIR SINGH**

Present: Mr. Hitesh Verma, Advocate for the appellant.

Mr. Karan Sharma, Sr. Deputy Advocate General, Haryana.

GURVINDER SINGH GILL, J.

1. The appellant Manish assails judgment dated 25.10.2017 as well as order dated 26.10.2017 passed thereto by learned Additional Sessions Judge, Gurugram vide which the appellant has been held guilty for having committed an offence punishable under Section 302 IPC and has been sentenced to undergo imprisonment for life and has also been imposed fine of Rs. 5,000/-.
2. The FIR (Ex. P-9) was lodged on the basis of statement of Bhushan Singh wherein it is alleged that his brother Pintu Singh has been working as a Driver in Hindustan Transport Company for the last about 6 years. The complainant alleged that on 14.9.2016 at about 9-9:30 p.m., Manish a co-villager committed murder of his brother Pintu Singh by hitting him with an iron rod on his head after having picked up a quarrel with him in 'Trolla Parking' in Sharma's Garage and had thereafter absconded. It is further

alleged that said Manish had been working as a Helper in Hindustan Transport Company and even on previous occasions had picked up quarrel with his brother Manish. Complainant alleged that although he had tried to intervene but Manish gave him a push, on account of which he fell down.

3. Pursuant to lodging of FIR, inquest proceedings were conducted. Post-mortem examination was conducted on the dead body of Pintu Singh (deceased). The matter was investigated by the police. Blood stained soil was collected from the place of occurrence near the dead body. Manish was arrested on 20.10.2016. Upon a disclosure statement made by him, an iron rod was recovered from the place demarcated by him.
4. Upon conclusion of investigation, challan was presented against the accused on 28.11.2016 before the Illaqa Magistrate who upon *prima facie* finding that an offence under Section 302 IPC was made out, which is exclusively triable by the Court of Session, committed the case to the Court of Session.
5. The Trial Court upon finding sufficient grounds to presume that accused had committed an offence punishable under Section 302 IPC, framed charges accordingly against the accused on 18.2.2017 to which the accused pleaded not guilty and claimed trial.
6. The prosecution, in order to substantiate its case examined as many as 12 prosecution witnesses. PW-1 Amarjit Verma stated that he was working as Chowkidar in Maruti Trola Parking with one Sharmaji and that on the day of occurrence, he had seen two persons fighting with each other and out of which he knew one of them namely Pintu who was working as a Driver with one Trola. He stated that the other person was beating Pintu with an

iron rod and that after giving beatings, the said persons had run away from the spot after throwing the iron rod. He deposed that Pintu died on the spot on account of the injuries sustained by him. However, he did not identify the accused to be the one who had inflicted injuries and was consequently declared hostile.

7. PW-2 SI Bijender Singh stated that on 14.9.2016, he was posted as S.I. Police Station Palam Vihar and upon receipt of the information regarding murder, he proceeded to the spot and conducted the preliminary investigation including preparation of rough site plan, lifting of blood stained soil and also conducted the inquest proceedings before the dead body was sent to the hospital for post-mortem examination. PW-3 ASI Onkar Singh stated that on 15.9.2016, he was posted as ASI at Police Station Palam Vihar and that a special report was sent to Illaqa magistrate and to other higher police officials through Constable Sanjay. He stated that on 21.10.2016, he interrogated accused Manish, who suffered disclosure statement (Ex.P-12) and got an iron rod recovered from the bushes near the Trolla parking. He also stated regarding having recorded statements of some official witnesses under Section 161 Cr.P.C.
8. PW-4 Constable Kapil stated that SI Bijender Singh had handed over a 'ruqa' to him by registration of FIR and he accordingly took the same to the police station and after getting recorded the FIR handed over a copy to SI Bijender Singh. He further stated regarding the Doctor having handed over a parcel to S.I. Bijender Singh which contained clothes and slippers of deceased Pintu Singh which were taken into possession. PW-5 ASI Girish Kumar is a Draftsman, who had prepared the scaled site plan of the place of occurrence. PW-6 ASI Paras Singh deposed that on 15.9.2016, he was

posted as '*Malkhana Moharar*' in Police Station Palam Vihar and had handed over blood stained soil and other articles to Constable Ajay for the purpose of depositing the same with FSL.

9. Prosecution examined Dr. Yudhvir Singh as PW-7 and later he also stepped into the witness box as PW-11. The said PW-7/PW-11 Dr. Yudhvir Singh, who had conducted the post-mortem examination, had produced the post-mortem report wherein the injuries have been described as under :-

“1. Lacerated wound, 5 x 1 cm over middle of forehead, muscle deep.

2. Lacerated wound, 4 x 1 cm over 2 cm left Lateral to injury No. 1, muscle deep.

3. Lacerated wound, 5 x 1 cm over 3 cm right Lateral to Injury no. 1, muscle deep.

4. Lacerated wound, 4 x 1 cm over 5 cm right Lateral injury No. 1, muscle deep.”

He further opined that the cause of death in this case is head injury following Ante-Mortem Blunt force impact diverted towards the body, external injuries and their internal consequences were sufficient to cause death in normal course of nature.

10. PW-8 Constable Ajay tendered his affidavit Ex.P-20 in evidence wherein he deposed that he had been entrusted with the parcel containing clothes and slippers of deceased which was duly sealed and he submitted the same with FSL Madhuban without any delay and that as long as the property remained with him, he never tampered with the same.

11. PW-9 Pardeep Chaudhary deposed that he is working as Maintenance Incharge in Hindustan Transport Company, Maruti Truck Parking, Kartarpuri Road, Gurugram and that on the day of occurrence when he was

at his home, he received information and that some untoward incident had taken place in connection with their truck and that he had not seen the incident with his own eyes. The said witness was declared hostile by the prosecution.

12. PW-10 Head Constable Satender Kumar stated that he remained associated with investigation of the case with ASI Onkar Singh and that the accused Manish had been produced before the Investigating Officer by his father on 20.10.2016 and that upon interrogation, he suffered disclosure statement on 21.10.2016 leading to recovery of an iron rod from bushes near the Trolla Parking.
13. PW-12 Ram Parkash Singh stated that he had been working as '*Munshi*' in Hindustan Transport Company and that on 15.9.2016, when after duty hours he went home, he was informed by someone that Driver Pintu Singh had sustained injuries in the Trolla Parking and that he did not know who had inflicted the said injuries. The said witness was also declared hostile by the prosecution. The prosecution gave up PW Sandeep, Inspector/SHO and PW Constable Vikash, being unnecessary and after tendering report of FSL as Ex.P-16 closed its evidence on 3.7.2017.
14. Upon closure of prosecution evidence, the statement of accused was recorded in terms of Section 313 Cr.P.C. wherein the entire incriminating evidence was put to the accused/appellant to enable him to explain the same but the appellant denied the entire prosecution case in toto and took a plea that he has been falsely implicated. The accused, however, did not lead any evidence. The trial Court framed the following points for determination :-

- (1) As to whether accused had murdered Pintu son of Bachha Singh by giving iron rod blow in his head and thereby committed an offence punishable under Section 302 IPC?
 - (2) Whether the accused has succeeded in probablizing his defence?
15. Upon considering the evidence and the submissions made before the trial Court, the accused was held guilty of having committed an offence under Section 302 IPC and was sentenced accordingly vide judgment dated 26.10.2017, which has been assailed before this Court.
16. The learned counsel for the appellant submitted that it is a case where there is no evidence at all to substantiate the allegations levelled by the prosecution and that apart from the fact that the complainant Bhushan Singh was not examined, who was stated to have expired, the other alleged eye-witnesses namely PW-1 Amarjeet Verma, PW-9 Pardeep Chaudhary and PW-12 Ram Parkash Singh did not support the case of the prosecution at all. While PW-1 Amarjeet Verma did state that he had seen the occurrence but did not identify the accused to be the assailant. It is further submitted that the remaining two witnesses i.e. PW-9 Pardeep Chaudhary and PW-12 Ram Parkash Singh stated that they were not present at the spot and were present at their respective homes when they received information about the occurrence in question.
17. Other than the above referred ocular evidence, the prosecution mainly banks upon the factum of recovery of an iron rod at the instance of the appellant and also upon the fact that the said iron rod as well as the blood stained soil collected from the spot and also the slippers and clothes of the deceased which were all found to be blood stained were found to be of the

same blood group i.e. the blood group of the deceased. The said fact weighed heavily with the trial Court while holding the accused guilty.

18. It is, however, worth noticing that while PW-1 Amarjeet Verma in his examination-in-chief stated that the accused/appellant after causing injuries ran away from the spot after throwing away the iron rod but somehow the said iron rod was not recovered from the spot although the police had reached at the spot and had lifted blood from the spot. The iron rod is stated to have been recovered subsequently upon a disclosure statement made by the appellant which somehow raises some kind of suspicion about the factum of recovery of the said iron rod at the instance of the appellant, from his exclusive possession.
19. Though, it is correct that as per the report of the FSL, all the articles - the iron rod as well as the slippers, the clothes and the blood lifted from the spot were found to be of the same group i.e. Blood Group 'A' and which would be good corroborative piece of evidence but the same could only be helpful to the prosecution in case there was any other substantive evidence or even reliable circumstantial evidence to lend corroboration to the case of the prosecution which otherwise is bereft of any support from the oral evidence. Unfortunately, the complainant who was the eye-witness could not be examined as he had expired and the other alleged witnesses namely PW-1 Amarjeet Verma, PW-9 Pardeep Chaudhary and PW-12 Ram Parkash were declared hostile. Under these circumstances, the mere matching of the blood group as found on the iron rod and blood stained soil collected from the spot and on the clothes of the deceased would not *ipso facto* be sufficient to hold the appellant guilty. As such, the findings of the

trial Court as regards conviction of the appellant for offence under Section 302 IPC cannot sustain and deserve to be set aside.

20. In these circumstances, we find that the findings of guilt as recorded by the trial Court are hereby set aside. Consequently, we set aside judgment dated 25.10.2017 as well as order dated 26.10.2017 passed thereto by learned trial Court and acquit the appellant Manish of the charges framed against him. His bail bonds and surety bonds shall stand discharged. Case property be dealt with under the rules after expiry of limitation for availing relief from higher Court.
21. Pending application, if any, stands disposed of as well.

(GURVINDER SINGH GILL)
JUDGE

05.12.2023
kamal

(GURBIR SINGH)
JUDGE

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