

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

CRA-D-79-DB-2018 (O&M)

Reserved on 04.12.2023

Pronounced on: 15.12.2023

Balvir Singh

.... Appellant

Versus

State of Punjab

.... Respondent

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

Present: Mr. Varinder Singh Rana, Advocate (Legal Aid Counsel),
for the appellant.

Mr. Amit Rana, Senior DAG, Punjab.

GURBIR SINGH, J.

1. This appeal has been filed against the judgment of conviction and order of sentence dated 17.11.2017 passed by learned Additional Sessions Judge-I, Sangrur, whereby the appellant, namely, Balvir Singh has been convicted under Section 302 of IPC and has been sentenced to undergo imprisonment for life and to pay fine to the tune of Rs.20,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of four months.

2. Briefly stated, an FIR No.157, dated 14.11.2016 (Ex.PJ/1) was registered under Sections 302/201 of IPC at Police Station Dirba, District Sangrur, against the appellant-Balvir Singh for the commission of offence of murder of his father Suraj Mall. The case of the prosecution is that on 14.10.2016, Inspector Harmanpreet Singh along with ASI Jagdev Singh, ASI

Hans Raj, HC Balvir Singh, HC Bikkar Singh, Constable Bittu Singh on a private vehicle was present near Government Hospital, Dirba in connection with patrolling and checking of suspected persons, an information was received by Inspector Harmanpreet Singh to the effect that the accused-Balvir Singh has committed the murder of his father Suraj Mall by giving blows of wooden log (*ghotna*) on his head and after committing murder, the accused fled away from the spot and the dead body has been shifted to Civil Hospital, Sunam, by arranging a vehicle by the villagers. The information being reliable, ruqa (Ex.PJ) was sent to the police station through Constable Bittu Singh for registration of case against accused Balvir Singh and on the basis of which, SI Satnam Singh registered the case against the accused. On the demarcation of Makhan Singh, resident of Village Khanal Kalan, the place of occurrence was inspected and rough site plan was prepared. Thereafter, Inspector Harmanpreet Singh along with other police officials reached at Civil Hospital, Sunam, in the mortuary and inspected the dead body, but on that day, due to odd hours, postmortem could not be conducted. Statements of witnesses under Section 161 Cr.P.C. were recorded. The next day i.e. 15.10.2016, Inspector Harmanpreet Singh prepared the inquest report (Ex. PG/1) and recorded the statement of witnesses under Section 175 Cr.P.C. and form 25.35 was filled in. ASI Hans Raj was deputed to get the postmortem examination of the dead body conducted and after the postmortem examination, the dead body was handed over to the legal heirs of the deceased by ASI Hans Raj. On that very day, the accused was produced by Bimaljit Singh, Ex. Sarpanch of Village Khanal Kalan before the police and he was arrested. On the disclosure statement of accused, wooden log

(*ghotna*) was recovered from the room of his house and the same was taken into police possession. On completion of investigation, challan was presented against the accused. The case was committed to the Court of Session by the learned Judicial Magistrate Ist, Class, Sunam. Finding a prima facie case under Section 302 of IPC, charge was framed against the accused accordingly, to which, the accused pleaded not guilty and claimed trial.

3. The prosecution examined eight witnesses i.e. PW1-SI Jagdev Singh; PW2-ASI Nirmal Singh; PW2 (re-numbered) Sunil Kumar, brother of the accused; PW3-Om Patti, mother of the accused; PW4- Dr. Balwinder Singh Bhatti, Medical Officer, Civil Hospital, Sunam; PW5-Draftsman Dharminder Singh; PW6 Bimaljit Singh; PW7-Inspector Harmanpreet Singh, Investigating Officer; PW8- ASI Hans Raj.

4. Statement of the accused under Section 313 of Cr.P.C. was recorded. He pleaded innocence and stated that he had been falsely implicated in the instant case at the instance of his brother Sunil Kumar, PW2, who wanted to usurp the property. He and his father always lived peacefully and happily and never quarreled with each other. He never indulged in any intoxicants.

5. After appreciating the evidence led on file, the trial Court found that the prosecution has proved that on 14.10.2026 in the area of village Khanal Kalan, the accused committed the murder of his father Suraj Mall by way of giving blows of wooden log (*ghotna*) on the head of the deceased and accordingly, appellant was convicted under Section 302 IPC and was sentenced.

6. Learned counsel for the appellant has argued that the appellant has been convicted only on the basis of presumption. Since he was in the habit of consuming liquor, it was presumed that under the influence of liquor, he might have committed the murder of his father. There is no evidence to prove the case against the appellant.

7. *Per contra*, learned State counsel has argued that the appellant had committed heinous crime by committing the murder of his father merely for not giving him money for the purchase of intoxicants. The Court below has rightly convicted the appellant and he does not deserve any concession.

8. We have heard the submissions of learned counsel for the appellant, learned State counsel and have gone through the case file.

9. The star witnesses in this case are PW2-Sunil Kumar, who is the elder brother of accused, and PW3-Om Patti is the mother of accused. Both these witnesses in their statements have reiterated that accused Balbir Singh was a quarrelsome person and was addicted to intoxicants. On the unfortunate day of 14.10.2016, the accused in their presence, in a drunken condition, at about 11:00 AM, inflicted *ghotna* blows on the person of his father. The accused was asking for money from his father for the urge of intoxication, but when refused, he attacked his father with *ghotna*. Both these witnesses tried to save the deceased, but the accused also attacked on them.

10. There is another witness i.e. PW6-Bimaljit Singh, who was Ex-Sarpanch of the Village Khanal Kalan, who deposed that on 15.10.2016, the accused came to his residence and disclosed how he murdered his own father on 14.10.2016. The accused further disclosed that he has committed a sin and

since PW6 has cordial relations with the Dirba Police, the accused asked him to produce before the police and accordingly, he produced the accused before the police and police formally arrested him vide memo Ex.PA and his personal search Ex.PB was also conducted. He deposed that both these memos bears his signatures. He further deposed that on the disclosure statement of accused, *ghotna* was recovered which was kept underneath the iron box in his house.

11. PW2 and PW3 are none else to the accused but having blood relations. They were not inimical towards accused. Neither brother can depose against his brother nor mother can depose against her son unless something serious is done which pricks the conscience. The accused committed the crime in their presence and their statements cannot be discarded. They stood the test of cross-examination. Moreover, the accused failed to discard their version on account of any animosity or hostility, so their statement is worthy of credit. Moreover, the disclosure statement of the appellant himself on the basis of which, recovery of wooden log, the weapon of offence, was effected further corroborates the testimony of the prosecution witnesses and is sufficient to come to the conclusion that the offence was committed by the appellant and none else.

12. The plea of the appellant that he was under the influence of liquor so he was not in a position to know the nature of the act, is of no help since it is not the case of the appellant that thing which intoxicated him was administered to him without his knowledge or against his will. As per Section 85 of Indian Penal Code, nothing is an offence which is done by a

person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or in case thing which intoxicated him was administered to him without his knowledge. So, the case of the appellant does not fall under the general exception of the Indian Penal Code.

13. The further argument of learned counsel for the appellant is that the appellant had no intention to kill his father and his act was not so dangerous that the same was sufficient to cause death. The case of the appellant does not fall under the definition of 'murder' as defined under Section 300 IPC.

14. We have considered said submission of the learned counsel for the appellant. The appellant used a *ghotna* which is generally available in the house. As per postmortem report, there were six injuries on the person of the deceased. PW4-Dr. Balwinder Singh Bhatti, who had tendered his affidavit Ex.PW4/A, dated 31.08.2017, explained the injuries as follows:-

“Injury No. 1. A lacerated wound of size 3 cm x 1 cm x bone deep present 4 cm above the lateral end of Left eyebrow, underlying bones fractured. Brain tissue and meninges contused. Clotted blood present.

Injury No.2. A lacerated wound of size 4 cm x 1 cm 3 cm posterior to injury no. 1. Clotted blood present, underlying bones fractured. Brain tissue and meninges contused.

Injury No.3. A lacerated wound of size 7 cm x 1.5 cm present 3 cm above the medial end of Left eyebrow. Clotted blood present, underlying bones fractured. Brain tissue and meninges contused.

Injury No.4. A ligature mark of 1 cm wide horizontally placed on the anterioro lateral part of both sides of neck

with abraded surface. Hyoid bone intact. Underlying tissue contused.

Injury No.5. An abrasion of size 2 cm x 2 cm present on the anterior aspect of the Left knee joint. Clotted blood present.

Injury No. 6. An abrasion of size 1 cm x 1 cm present on the medial malleoli of Right leg.”

15. As per medical opinion, the cause of death in this case is coma as a result of head injury attributed by asphyxia as a result of vomitus material in the larynx and trachea which is sufficient in ordinary course of nature to cause death. Injuries No.1 to 3 are on the forehead near eyebrow. Injuries No.5 and 6 are abrasion on left knee joint and right leg. Injury No.4 is ligature mark placed on anterioro lateral part of both sides of neck.

16. The deceased was the father of the appellant who was asking money from him for intoxication. When his father refused to give money to him, then appellant started beatings him. There was no premeditation to cause death. The occurrence had taken place on the spur of the moment. The cause of death is actually the presence of vomitus material in the larynx and trachea, which was the result of head injuries and same led to asphyxia.

17. In case ***Jagtar Singh Versus State of Punjab, (1983) 2 SCC 342***, the accused on the spur of the moment inflicted a knife-blow on the chest of the deceased. The injury proved to be fatal. The doctor opined that the injury was sufficient in the ordinary course of nature to cause death. The Hon'ble Supreme Court observed that:

“8. ... The quarrel was of a trivial nature and even in such a trivial quarrel the appellant wielded a weapon like a knife and

landed a blow in the chest. In these circumstances, it is a permissible inference that the appellant at least could be imputed with a knowledge that he was likely to cause an injury which was likely to cause death. ...”

The Hon'ble Apex Court altered the conviction of the appellant from Section 302 IPC to Section 304 Part II IPC and sentenced the accused to suffer rigorous imprisonment for five years.

18. In case ***Jawahar Lal Versus State of Punjab, (1983) 4 SCC 159***, the accused hit the deceased with a knife blow in front of left side of his chest and as per the autopsy report, the injuries were found sufficient in an ordinary course of nature to cause death. The Hon'ble Supreme Court took a view that the accused could be attributed the knowledge that he was likely to cause an injury which was likely to cause death. The relevant paras of the said judgment is reproduced as under:

“17.....we should also not further dilate on this point in view of the decision of this Court in Jagrup Singh v. State of Haryana : 1981 Cri LJ 1136. In that case after referring to the evidence, this Court held that the appellant gave one blow on the head of the deceased with the blunt side of the gandhala and this injury proved fatal. The Court then proceeded to examine as to the nature of the offence because the appellant in the case was convicted for an offence under Section 302. Undoubtedly, this Court said that there is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting in death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304, Part II of the Code. The Court then proceeded to lay down the criteria for judging the nature of the offence. It may be

extracted;

The whole thing depends upon the intention to cause death, and the case may be covered by either clause Firstly or clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstance attendant upon the death.

18. We may point out that decision in Jagrup Singh's case 1981 Cri LJ 1136 was subsequently followed in Randhir Singh @ Dhire v. State of Punjab Decided on September 18, 1981 and in Kulwant Rai v. State of Punjab Decided on August 7, 1981 (Criminal Appeal No. 630 of 1981).

19. Having kept this criteria under view, we are of the opinion that the offence committed by the 1st appellant would not be covered by clause Thirdly of Para 3 of Section 300 and therefore, the conviction under Section 302 I.P.C. cannot be sustained.

20. What then is the offence committed by the 1st appellant? Looking to the age of the 1st appellant at the time of the occurrence, the nature of the weapon used, the circumstances in which one blow was inflicted, the time of the day when the occurrence took place and the totality of other circumstances, namely, the previous trivial disputes between the parties, we are of the opinion that the 1st appellant could be attributed the knowledge that he was likely to cause an injury which was likely to cause death. Accordingly, the 1st appellant is shown to have committed an offence under Section 304, Part II of the Indian Penal Code and he must be convicted for the same and sentenced to suffer rigorous imprisonment for five years maintaining the sentence of fine."

19. In case ***Pratap Singh @ Pikki Versus State of Uttarakhand, (2019) 7 SCC 424***, the deceased had suffered total 11 injuries and the

appellant had been convicted for offence under Section 304, Part-II, Section 34 IPC apart from other offences. The Hon'ble Supreme Court upheld the conviction and sentenced the appellant for the period already undergone for the offence under Section 304, Part-II, Section 34 IPC.

20. In case ***Anbazhagan Versus the State represented by the Inspector of Police, 2023 Live Law (SC) 550***, the Hon'ble Supreme Court has held if there is no 'guilty intention' on the part of the accused but there is 'guilty knowledge' that he is likely to cause death, then case falls under Section 304, Part-II of the IPC. The relevant extract of said judgment reads as under:-

“62. Looking at the overall evidence on record, we find it difficult to come to the conclusion that when the appellant struck the deceased with the weapon of offence, he intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. The weapon of offence in the present case is a common agriculture tool. If a man is hit with a weed axe on the head with sufficient force, it is bound to cause, as here, death. It is true that the injuries shown in the post mortem report are fracture of the parietal bone as well as the temporal bone. The deceased died on account of the cerebral compression i.e. internal head injuries. However, the moot question is – whether that by itself is sufficient to draw an inference that the appellant intended to cause such bodily injury as was sufficient to cause death. We are of the view that the appellant could only be attributed with the knowledge that it was likely to cause an injury which was likely to cause the death. It is in such circumstances that we are inclined to take the view that the case on hand does not fall within clause thirdly of Section 300 of the IPC.

63. In the aforesaid view of the matter and more particularly bearing the principles of law explained aforesaid, the present appeal is partly allowed. The conviction of the appellant under Section 304 Part I of the IPC is altered to one under Section 304 Part II of the IPC. For the altered conviction, the appellant is sentenced to undergo rigorous imprisonment for a period of five years.”

21. In the case in hand, injuries given to the deceased were not sufficient in the ordinary course of nature to cause death but generally speaking, same were likely to cause death. Said act was done by the appellant with the knowledge that death was likely to ensue but without intention to cause death or injuries likely to cause death.

22. So, in these circumstances, we are inclined to take a view that the case in hand falls under clause 3 of Section 299 of the IPC.

23. In the aforesaid view of the matter, the appeal is partly allowed. The conviction of the appellant under Section 302 IPC is altered to one under Section 304, Part II of IPC. For the altered conviction, the appellant is sentenced to undergo rigorous imprisonment for a period of 10 years.

24. Pending application, if any, shall also stand disposed of.

(GURVINDER SINGH GILL)
JUDGE

(GURBIR SINGH)
JUDGE

December 15, 2023

sanjeev

Whether speaking/reasoned: **Yes**

Whether reportable: **Yes**