

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-648-DB-2017 (O&M)
Reserved on: 31.05.2023
Date of decision: 02.06.2023

GURDEEP SINGH @ NEETU

...Appellant

Versus

STATE OF PUNJAB

...Respondents

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

Present: Mr. Parminder Singh, Advocate
for the appellant.

Mr. Anurag Bansal, AAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict drawn on 13.10.2011, upon Sessions Case No.02, instituted on 24.01.2011, by the learned Additional Sessions Judge, Patiala, wherethrough, in respect of a charge drawn for an offence punishable under Section 302 of IPC, she recorded a verdict of conviction against the convict. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, imposed, upon, the convict both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner.

Under Section	Sentence
U/s. 302 IPC	To undergo imprisonment for life and to pay a fine of Rs.5000/- (Rupees five thousands only) and in default whereof, to further undergo imprisonment for a period of six months.

2. The period spent in prison by the convict, during investigation or trial, was, in terms of Section 428 of Cr.P.C., ordered to be set off from the above imposed substantive sentence(s) of imprisonment, upon the convict.

3. The convict becomes aggrieved from the above drawn verdict of conviction besides also becomes aggrieved from the above drawn order of sentence, thus, he is led to institute thereagainst the instant appeal before this Court.

FACTUAL BACKGROUND

4. The genesis of the prosecution case is embodied in the appeal FIR to which Ex.PA/2 is assigned. It is recorded thereins, that on 02.10.2010, at about 8:00 p.m., Gurdeep Singh @ Neetu son of Jagir Ram, who is also residing in the same street, as that of the complainant Harjit Singh, had entered into an altercation with Ranjit Singh, brother of the complainant with regard to installation of electric wire and Gurdeep Singh @ Neetu had abused the family of the complainant. Regarding the same, on 3.10.2010, Santro Devi, mother of the complainant and his father Ram Karan, had proceeded to PS Julkan, to file an application against Gurdeep Singh. Then, Ranjit Singh, brother of the complainant, after doing some domestic work, was returning to his house. At about 10:00 a.m., Gurdeep Singh @ Neetu, had encircled Ranjit Singh, opposite the house of Geja Ram, son of Munshi Ram and also started abusing him, upon which, complainant Harjeet Singh and his paternal aunt Bilaso, wife of Geja Ram, had come forward, to rescue Ranjit Singh. Then, Gurdeep Singh @ Neetu, had given kirpan blow on the left side of chest of Ranjit Singh. When, Harjeet Singh, complainant, came forward, then Gurdeep Singh @ Neetu had fled away, from the spot, along with the kirpan. The complainant started taking care of his brother. Then, the complainant and his paternal aunt Bilaso had raised alarm. Thereafter, brother of the complainant had succumbed to his injury, at the spot. Gurdeep Singh @ Neetu, had committed murder of Ranjit Singh. Motive for causing the occurrence is that, on the night of 2.10.2010, an altercation had taken place between the families, regarding illegal extraction of electricity, on

account of which, Gurdeep Singh, in a fit of rage, had committed murder of Ranjit Singh.

INVESTIGATION

5. Proceedings were initiated in the present case and case was registered, on the basis of the statement got recorded by Harjeet Singh, son of Ram Karan, when Inspector Jagbir Singh, SHO, had reached the spot, in pursuance of the information regarding murder having been passed on to him by MHC Avtar Singh, while he was present at Bus Stand, Devigarh, in connection with patrolling duty. After registration of the case, dead body was sent for the purposes of conducting of postmortem examination. Site plan of the spot of occurrence was prepared. Even, blood stained earth and simple earth, were lifted from the spot and parcels of the same were prepared and taken into possession. Various other proceedings were conducted at the spot. Upon information received about kirpan having been thrown by the assailant in the vacant space, the same was also recovered and taken into possession. On that very day, Rulda Ram, Sarpanch, had produced the accused Gurdeep Singh, who was arrested in the present case. Parcels of the blood stained earth and simple earth as well as pair of chappals stained with blood, were sent to the Finger Print Bureau, Phillaur. On completion of investigation, accused was to sent up to face trial for the commission of an offence under Section 302 IPC by PS Julkan.

COMMITTAL PROCEEDINGS

6. Since the afore offence was exclusively triable by the Court of Session, thus vide committal order dated 10.01.2011 the learned Magistrate concerned, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

7. The prosecution examined as many as 10 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

8. (a) The learned counsel appearing for the convict has argued, that the recovery of the incriminatory weapon of offence, as made through recovery memo Ex.PC, thus was an inefficacious recovery thereof. The above argument is premised, on the ground that since the marginal witness thereto one Gurbax Singh, who stepped into the witness box as PW-2, thus, in his cross-examination, making a statement that he proceeded to perform the duties of his avocation at 8:00 a.m., whereas, with PW-2 also admitting in his cross-examination, that he had made his previous statement Ex.DA at 10:00 a.m., thus at the crime site, thereby the recovery of weapon of offence, through Ex.PC rather is an engineered or a tainted recovery. Therefore, he argues that since the recovery of incriminatory weapon of offence has not been cogently established. Resultantly, he argues that the charge drawn against the accused thus remaining not unflinchingly proven.

(b) He has also argued that since apparently, the purported ocular witness to the occurrence, who stepped into the witness box, as, PW-1, is an interested witness. Therefore, no credence can be placed upon his testification.

(c) The further submission made before this Court, by him, is rested, upon the factum that since during the course of examination-in-chief another eye witness to the occurrence, one Bilaso Devi who stepped into the witness box, as PW-4, thus resiling from her previously made statement in writing. Therefore, he further submits, that since also during the course of her cross-examination by the Public Prosecutor concerned, hers making no speakings therein, thus to support the charge. Therefore, he argues that the

effect of the above, is that, even the testification of PW-1, thus loses its creditworthiness.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

9. The learned State counsel has argued that the impugned verdict of conviction, and, consequent thereto sentence (supra), as became imposed upon the convict by the learned trial Judge concerned, is merit worthy, as the same does not suffer from any taint of any gross mis-appreciation or non-appreciation of any evidence germane to the charge. Therefore, he contends that the impugned verdict of conviction be maintained, and, affirmed by this Court.

PROSECUTION CASE BASED ON DIRECT EVIDENCE OF OCULAR WITNESSES TO THE OCCURRENCE, WHO RESPECTIVELY STEPPED INTO THE WITNESS BOX AS PW-1, PW-2, AND, PW-3.

ANALYSIS OF THE DEPOSITION OF ABOVE WITNESSES

10. PW-1 in his examination-in-chief, has testified in corroboration to his previously made statement to the police officer, and, to which Ex.PA is assigned, thereby he has completely supported the charge drawn against the accused. Nonetheless, yet an incisive scrutiny of his cross-examination is also required to be made, rather for unearthing therefrom, thus whether he has during his cross-examination, made rife embellishments or material improvements, from his previously made statement in writing, as, thereby the creditworthiness of the testification, as, made by the said witness, in his examination-in-chief, rather may become paled or may become eclipsed.

11. In the above endeavour, a thorough reading of the cross-examination, as made by PW-1 reveals, that no able suggestions became meted then to him by the learned defence counsel, whereby an attempt was made to score off, the inculpatory speakings, as made by him in his examination-in-chief. Therefore, the inculpatory speakings, as, made by PW-1, in his examination-in-chief, thus do acquire evidentiary vigor.

12. Be that as it may, even if assumingly PW-1, is an interested witness yet the mere factum of his purportedly being an interested witness, would not lead to a further conclusion, that his testification is to be discarded. The reason being, that unless a wholesome reading of his testification, but reveals, that he has made material, dire or blatant improvements or embellishments, over his previous statement in writing, and/or, if he has during the course of his cross-examination made echoings, thus belying his being an eye witness to the occurrence, thereby rather sanctity is to be assigned to his testification. In the above endeavour, since a wholesome reading of his testification, thus for reasons (supra), does make imminent bespeakings, that he has neither made gross, dire improvements, over his previously made statement in writing, nor when he has during his cross-examination, made any echoings therein, whereby a conclusion may become fostered, that he was not an eye witness to the occurrence. In sequel, credence is to be assigned to the inculpatory testification, as made by PW-1.

ANALYSIS OF THE DEPOSITION OF PW-2

13. PW-2, in his testification comprised in his examination-in-chief, has made speakings, about his sighting the convict running from the street along with the blood stained kirpan, and, despite his attempting to stop the convict, yet the convict throwing the kirpan, in the vacant plot near the electric pole, and, thereafter his fleeing from the crime site, and, further speaks that he had shown the crime site to the police, and, also had shown to the police, the place where the kirpan was thrown by the convict. Furthermore, he has deposed that the incriminatory kirpan, was recovered through recovery memo Ex.PC, whereons his signature as an attesting witness thereto thus occur. He also proceeded to identify the accused in Court.

14. Though he was subjected to the ordeal of a rigorous, and, exacting cross-examination, and, therein a suggestion was meted to him, that he proceeds to work at 8:00 a.m., Also a further affirmative suggestion was meted to him, that his previous statement Ex.DA was made at 10:00 a.m., whereby, the learned counsel for the convict has argued, that since he was performing the duties of his avocation at 8:00 a.m., thus his making Ex.DA at 10:00 a.m., rather becomes *ipso facto* belied. Therefore, the learned counsel for the convict has also argued, that thus no reliance can be placed upon the testification of PW-2 nor any reliance can be placed upon recovery memo Ex.PC, thus wherethrough the incriminatory weapon of offence became recovered.

REASONS FOR REJECTING THE ABOVE SUBMISSION

15. However, the above made arguments are ridden with a gross misunderstanding of the import of the cross-examination (*supra*), as became meted upon PW-2. Though, in his cross-examination, he has admitted a suggestion, that he proceeds for performing the duties of his avocation at 08:00 a.m. Moreover, though he has also further stated, that on the relevant day, his previous statement Ex.DA became recorded at 10:00 a.m. Nonetheless, the mere factum of his stating in his cross-examination, that he proceeds to perform the duties of his avocation at 08:00 a.m., and, his also speaking that he made his previous statement Ex.DA, thus at 10:00 a.m., rather cannot as such purvey any able leverage to the learned counsel for the convict to argue, that thereby Ex.DA is ridden with an aura of suspicion, and/or, the same is engineered, nor also he can argue that the efficacy of drawing of recovery memo Ex.PC rather comes under a cloud of suspicion. The reason for forming the above inference, becomes grooved in the factum, that even if PW-2, has stated that he normally proceeds, to perform the duties of his avocation at 08:00 a.m., but then merely on the above basis, it cannot be said that his previous statement Ex.DA, thus

was not recorded at 10:00 a.m., nor thereby it can be said that he is not a marginal witness to the relevant recovery nor it can be said that he becomes disabled to prove the recovery memo, thus as an able marginal witness thereto, especially when the best evidence in the above regard has remained unadduced. The best unadduced evidence in the above regard, was comprised in the employer of PW-2 stepping into the witness box, and, his stating that the said witness had on the relevant day joined work at 08:00 a.m., and/or, became comprised in the best electronic evidence, as, comprised in the biometric machine, thus relating to the ingressings by PW-2 into the establishment concerned, thus at 10:00 a.m. In consequence, merely on the basis of PW-2 making a bald statement in his cross-examination, that he normally proceeds to work at 08:00 a.m., but cannot lead to a further inference, that on the relevant day he had joined his duties at 10:00 a.m., nor also it can be said that Ex.DA rather was not amenable to be recorded at 10:00 a.m., nor thereby the said Ex.DA loses its creditworthiness. Furthermore, no further conclusion can also become engendered, that thereby PW-2 became disabled to prove the recovery memo Ex.PC whereons exist his signatures, as a marginal witness thereto.

ANALYSIS OF THE DEPOSITION OF PW-4

16. Bilaso Devi, is also an eye witness to the occurrence who while stepping into the witness box as PW-4, rather resiled from her previously made statement in writing. However, she was with the leave of the trial Court declared hostile, and, was permitted to be cross-examined by the learned Public Prosecutor concerned. During the course of cross-examination being conducted, upon PW-4, by the learned Public Prosecutor concerned, she was confronted with her previous statement Ex.DA, and, in the said event she proceeded to, admit hers making Ex.DA. She also then proceeded to identify the accused in Court. Though, in the further part of her cross-examination, she has denied, that

she was an ocular witness to the occurrence, but the said effect of the said denial rather completely fades, as an affirmative suggestion became meted to her appertaining to the kirpan blow being delivered on the left flank, and, whereto an affirmative answer emanated from PW-4. The effect of the above, is that, thereby the defence conceding to PW-4 eye witnessing the relevant crime event. Resultantly, the cumulative effect of PW-4 during her cross-examination by learned Public Prosecutor concerned, admitting hers making Ex.DA, besides the effect of the above affirmative answer (supra), being meted by her, to the above affirmative suggestion, is that, any speakings made by PW-4 in her cross-examination, whereby she negated the factum of her eye witnessing, the occurrence, thus becomes completely underwhelmed. Contrarily, she is to be concluded to be eye witnessing the occurrence, and, also is to be concluded to ably corroborate the testifications of PW-1, and, PW-2.

17. As above stated, the recovery of the incriminatory weapon of offence become effected through recovery memo Ex.PC. The said memo has also been proven by the investigating officer concerned, and, also by PW-2. Therefore, thus the evident sightings by PW-2, of flingings of the incriminatory weapon of offence by the convict, onto the fields adjoining the crime site, which subsequently led to the recovery therefrom of the incriminatory weapon, but at the instance of PW-2, thus does purvey immense evidentiary vigor to the prosecution case. Resultantly, this Court becomes coaxed to conclude, that the charge drawn against the convict becoming unflinchingly proven.

MEDICAL EVIDENCE (POST MORTEM REPORT)

18. The autopsy upon the body of deceased Ranjit Singh was conducted on 03.10.2010 by PW-6. PW-6 has proven *qua* his, authoring Ex.PG, as relates to the autopsy as made upon the body of deceased.

19. Moreover, he has proven that the cause of death of deceased Ranjit Singh, was owing to hemorrhagic shock as a result of injury to the heart caused by ante mortem injuries. All the injuries were declared to be ante mortem and were also declared to be sufficient to cause death in ordinary course of nature. The relevant ante mortem injuries as noticed by PW-6 on the body of deceased are extracted hereinafter.

“1. A spindle shaped stab wound measuring 3 x 1.5 cms with sharp edges and clean ends placed obliquely on the left side of front of chest -3 cms below and inner to the left nipple. On dissection the underlying rib was found cut along with the soft tissues. On examination of heart, the above said wound was found entering the left ventricle on its anterior wall by making a cut measuring 2.5 x 0.5 cms. Both the pleural cavities had about half litre of blood in each.

2. A reddish abrasion 3.5 x 2.5 cms was present on the right side of face, 3 cms below the inner canthus of right eye. All the body viscera was pale.”

20. Even though, the incriminatory weapon of offence was not shown to PW-6, during the course of his making testification(s), before the learned trial Judge concerned. However, yet the said factum does not in the least detract from the efficacy of the proven memos (supra) nor does in the least eclipse the inculpatory effect of the well rendered ocular account qua the crime event, hence by PW-1, PW-2, and, PW-4.

21. The investigating officer concerned, during the course of his examination-in-chief, has proven the makings of able recovery of weapon of offence, thus through Ex.PC. Since during the course of his examination-in-chief, the incriminatory weapon of offence Ex.PC, became brought in a sealed cover parcel before the learned trial Judge concerned, and, on the same becoming retrieved therefrom, the same became shown to the investigating officer concerned, who then spoke about the said produced in Court, thus the incriminatory weapon of offence, rather being the same as became recovered,

through recovery memo Ex.PC. Consequently, in the above manner, the prosecution has led cogent evidence in proof of the recovery of incriminatory weapon of offence being made through recovery memo Ex.PC.

22. In sequel, the above production of the weapon of offence in Court, does also corroborate the testification of the above eye witnesses, and, also corroborates the opinion, as made by the doctor, who drew post mortem report, as relates to the cause of demise, inasmuch as, the ante mortem injuries, as reflected in the post mortem report, to occur on the body of the deceased, do occur on those regions, of his body which are spoken to be delivered blows by the convict, thus with a sharp edged weapon.

FINAL ORDER

23. 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 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 appellant is on bail, he is ordered to be forthwith taken into custody through the learned trial Judge concerned, forthwith drawing committal warrants against the accused. 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.

24. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

02.06.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No