

**CRA-D-192-DB-2007****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRA-D-192-DB-2007
Date of Decision: 10.12.2024****AMAR SINGH****... Accused/Appellant****Versus****STATE OF PUNJAB****...Respondent****CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH****HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Sant Pal Singh Sidhu, Advocate with
Mr. Ankit Bhinchar, Advocate
for the appellant.

Mr. Kuljit Singh, Addl. A.G., Punjab.

**********JASJIT SINGH BEDI, J.**

The present appeal has been filed against the judgment of conviction and order of sentence dated 21.11.2006 passed by the Addl. Sessions Judge, Ferozepur.

2. The FIR was registered on 08.07.2002, the judgment of conviction and order of sentence passed by the Addl. Session Judge, Ferozepur is dated 21.11.2006, the appeal was filed in the year 2007 and the matter is being taken up for hearing now after 22 years of the registration of the FIR.

3. As per the prosecution case, the complainant-Rai Singh son of Ram Lal was a resident of Village Jodkian and a labourer. He had two brothers and youngest of them was Amar Singh (deceased), who was

**CRA-D-192-DB-2007****-2-**

working as a driver on a truck No.RJ-31-G-0931. On 07.07.2002 he along with Tej Ram, Hans Raj and deceased Amar Singh went on the truck to attend the marriage ceremony of Bhajan Lal son of Poora Ram. They were staying in the house of Bhajan Lal. During the night at about 8/9 PM his cousin brother also named as Amar Singh alias Dhut (accused) came there and took complainant's brother (Amar Singh deceased) to his house. At about 1/1.30 AM, he received a message that his cousin brother Amar Singh alias Dhut and his brother Amar Singh had entered into a scuffle. He along with Hans Raj and Tej Ram went to the house of Amar Singh alias Dhut accused. When they reached there, they saw his brother Amar Singh was lying there while the accused was inflicting Kehi (spade) blows on his head. He raised a Raula whereupon accused Amar Singh alias Dhut fled the scene stating that he had taught a lesson to Amar Singh for having illicit relations with his wife. Amar Singh succumbed to his injuries at the spot. Based on this statement, formal FIR (Ex.P28) came to be recorded under Section 302 IPC.

4. The investigation of this case was conducted by A.S.I. Gurinderjit Singh who visited the place of occurrence, prepared the rough site plan Ex.P31, took into possession, bloodstained and plain soil vide memo Ex.P29. He also took into possession a cot, pillow, Kurta, Pajama, Shirt, driving licence stained with blood vide another memo Ex.P30. Inquest report Ex.P21 of the deceased was prepared. Postmortem of the deceased was also got conducted through ASI Indraaj PW10 by moving an application Ex.P22. After postmortem of the deceased, his wearing apparels were taken

**CRA-D-192-DB-2007****-3-**

into possession vide memo Ex.P23. Photographs of the deceased at the place of occurrence were also taken.

5. The accused was arrested. During the course of his interrogation, he suffered a disclosure statement Ex.P24, which led to the recovery of the spade (Kehi) used by him in the commission of the offence vide a memo Ex.P25. Rough sketch Ex.P26 of the spade was also prepared. Rough site plan of the place of recovery Ex.P23 was prepared. Nothing else was recovered from or at the instance of the accused and to that effect a memo Ex.P27 was prepared. Photographs taken at the spot were also taken into possession vide memo Ex.P34.

6. After completion of the investigation and on receipt of the report of the Forensic Science Laboratory Ex.P25, challan in the case was presented in the Court for trial of the accused under Section 302 IPC.

7. On commitment, charge under Section 302 IPC was framed against the accused/appellant to which he pleaded not guilty and claimed trial.

8. The prosecution examined Jaswant Singh, draftsman (PW1), Chand Ram, photographer (PW2), Dr. M.L. Madan (PW3), complainant-Rai Singh (PW4), alleged eye-witness, Tej Ram (PW5), Constable Bhajan Dass (PW6), Clerk D.T.O. Office Bhanwar Lal (PW7). H.C. Iqbal Singh (PW8), Constable Mukhtiar Singh (PW9), S.I. Indraj Singh (PW10), ASI Gurinderjit Singh (PW11) and MHC Balwinder Singh (PW12) and closed the case after giving up Rajwant Singh PW as won over by the accused and remaining witnesses including Hans Raj as unnecessary.



CRA-D-192-DB-2007

9. After closing of the prosecution evidence and in accordance with the mandate contained in Section 313 Cr.P.C. the statement of the accused was recorded so as to enable him to explain the incriminating circumstances appearing against him. While admitting the said occurrence he took up the stand that he was innocent. According to him, both the witnesses examined by the prosecution were not present at the time and place of occurrence. They were stated to be inimical to him having reason to depose against him. It was explained that the deceased was having illicit relations with his wife. On the night of occurrence, when he had gone out in connection with work and got back at night, he found the deceased and his wife in a compromising position on the same cot and on account of sudden provocation he had caused injuries to him. However, he did not lead any evidence in defence.

10. Based on the evidence led, the accused/appellant came to be convicted and sentenced vide judgment dated 21.11.2006 passed by the Addl. Sessions Judge, Ferozepur as under:-

Offence Sections	under	Sentence	Fine	In default of fine
302 IPC		Imprisonment for life	Rs.10,000/-	RI for 03 months

11. It is the aforementioned judgment, which is under challenge in the present appeal.

12. The learned counsel for the accused/appellant contends that the prosecution version is extremely doubtful. As per PW4-Rai Singh (complainant) and PW5-Tej Ram, an unknown person had come to their house at night and had informed them that the deceased was having an

**CRA-D-192-DB-2007****-5-**

altercation with the accused/appellant at the house of the accused/appellant. However, the name of this source was not disclosed by either of the witnesses and did not come forth during the course of investigation. As per the prosecution case, the wife of the accused/appellant was in an illicit relationship with the deceased. This being the case, it was highly improbable that the accused/appellant would have asked the deceased to accompany him to his (appellant's house) and even more surprising is the fact that the deceased accompanied him (accused/appellant). This also creates a doubt in the prosecution case. There is a significant delay in the registration of the FIR. The occurrence purportedly took place between 1/2 AM on the intervening night of 7/8.7.2002. However, the special report reached the Magistrate only at 02.30 PM on 08.07.2002. This delay has been used to falsely implicate the accused/appellant. The case of the defence appears to be more probable inasmuch as in his statement under Section 313 Cr.P.C, the accused/appellant took the stand that while he was away for work, the deceased had come to his house. When he (accused/appellant) returned, he saw the deceased and his (accused's) wife in a compromising position on the cot and caused injuries to the deceased on account of grave and sudden provocation. This defence of the accused/appellant finds corroboration from the inquest report as per which the deceased was found only in his underwear and his clothes were lying on the side. PW4-Rai Singh (complainant) has also admitted this fact in his cross-examination that the deceased was found in his underwear. He, therefore, contends that the prosecution witnesses could not be believed and the defence version appear to be probable. If the

**CRA-D-192-DB-2007****-6-**

defence version was to be considered correct then the conviction could be recorded under Section 304 Part 1 IPC and not under Section 302 IPC, as the accused/appellant had committed the offence on account of grave and sudden provocation as defined under Section 300 IPC (exception 1). It is thus, contended that the conviction and sentence be modified as prayed for.

13. A Custody Certificate dated 09.12.2024 has been filed on behalf of learned State counsel. The same is taken on record as per which, the accused/appellant has undergone actual custody of 05 years, 04 months and 18 days and total custody of 06 years, 06 months and 11 days including remission. He contends that no fault could be found with the impugned judgment of conviction. PW4-Rai Singh (complainant) and PW5-Tej Ram have duly supported the prosecution case. The medical evidence was totally in consonance with the ocular account. There is no evidence that the wife of the accused/appellant was in an illicit relationship with the deceased. The recovery of the weapon had been effected from the accused/appellant. He, therefore contends that the appeal is liable to be dismissed.

14. We have heard the learned counsel for the parties and examined the record.

15. A perusal of the statement of PW4-Rai Singh (complainant) and PW5-Tej Ram would show that their version of the occurrence cannot be believed. As per their version, they had received information from an unknown person regarding an altercation taking place between the accused and the deceased. However, for reasons best known to them, they did not disclose the name of such person. In fact, even during the course of

**CRA-D-192-DB-2007**

-7-

investigation, no name was coming forth as to who had disclosed this fact to these witnesses and as to how they had come to know about the deceased being assaulted by the accused/appellant.

16. As per the prosecution case, the deceased was in an illicit relationship with the wife of the accused/appellant. This being the case, it does not stand to reason that the accused/appellant had taken away deceased to his house on the night of the occurrence and the deceased had willingly accompanied him in the presence of PW4-Rai Singh (complainant) and PW5-Tej Ram. This also makes the prosecution case doubtful.

17. It would be pertinent to mention here that there is a significant delay in the registration of the FIR. The occurrence purportedly took place on the intervening night of 7/8.7.2002 between 1/2 AM. However, the special report reached the Magistrate at 02.30 PM on 08.07.2002. The explanation furnished by the PW4-Rai Singh (complainant) that he was scared to go out at night and sat in the house of the accused/appellant accompanied by PW5-Tej Ram cannot be believed. On the contrary, it appears that this delay of approximately 12 hours between the occurrence and the receipt of the special report by the Magistrate has been used to set up a false case against the accused/appellant.

18. The defence of the accused/appellant of him seeing the deceased in a compromising position with his wife and thereafter assaulting him on account of grave and sudden provocation appears to be more probable. A perusal of the inquest report would show that when the body of the deceased was discovered, he was only wearing an underwear. This fact has also been

**CRA-D-192-DB-2007****-8-**

admitted by PW4-Rai Singh (complainant) in his cross-examination. It is not believable that the deceased would be present in the house of the accused/appellant in his underwear alone. Therefore, the state of undress of the deceased shows that he might have been seen in a compromising position with the wife of the accused/appellant leading to him being given fatal injuries.

19. In view of the aforementioned discussion, the impugned judgment of conviction and order of sentence under Section 302 IPC is set aside and the accused/appellant is ordered to be convicted under Section 304-I IPC on account of the injuries being caused in the circumstances as envisaged under Section 300 IPC (exception 1) and sentenced to the period of imprisonment already undergone by him (05 years, 04 months and 18 days) and to pay a fine of Rs.20,000/-. In default of which, he would further undergo rigorous imprisonment for 03 months.

20. Disposed of in the above terms.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

10.12.2024

JITESH

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