

2024:PHHC:118070-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 02.09.2024
Pronounced on: 06.09.2024

1. CRA-D-694-DBA-2004

State of PunjabAppellant
Versus
Sikander Singh @ Rinku and othersRespondents

2. CRA-S-2381-SB-2003

Sikander SinghAppellant
Versus
State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

Mr. Aditya Pratap Singh, Advocate
for respondent No. 1 (in CRA-D-694-DBA-2004) &
for the appellant (in CRA-S-2381-SB-2003).

Mr. S.S.Bhullar, Advocate for
Ms. Ishima Randhawa, Advocate
for respondent No. 2 (in CRA-D-694-DBA-2004).
(leave to appeal qua respondent No. 2 - Jagtar Singh
already declined vide order dated 09.08.2004).

SURESHWAR THAKUR, J.

1. Since both the criminal appeals (supra) arise from a common judgment, therefore, they are amenable for a common verdict becoming recorded thereons.
2. CRA-S-2381-SB-2003 is directed by the convict-appellant-Sikander Singh, against the verdict of conviction, as made on 09.12.2003, by the learned Additional Sessions Judge (Adhoc),

2024:PHHC:118070-DB



Amritsar, wherethrough in respect of charges drawn against the accused-appellant, thus, the learned trial Judge concerned, proceeded to record a finding of acquittal against the accused qua offences punishable under Sections 302/34 IPC. However, the appellant-convict was ordered to be convicted under Sections 326/34 IPC and under Section 323 IPC.

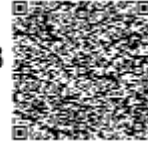
3. Moreover, through a separate sentencing order drawn on 09.12.2003, the learned trial Judge concerned, proceeded to impose upon the convict (supra) both sentence(s) of imprisonment as well as of fine, but in the hereinafter extracted manner :-

“..... I have heard Sikander Singh and Amarjit Singh and their ld. Counsel in the matter of sentence and taking into consideration their submission of lenient view, each of them is awarded seven year R.I. And fine of Rs. 2000/- and in default, two months R.I. u/s 326/34 IPC, and six months R.I. u/s 323 IPC. Both the sentences shall run concurrently....”

4. The convict-appellant becomes aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentences of imprisonment, and, of fine as became imposed upon him, by the learned convicting Court concerned, and hence has chosen to institute thereagainst the criminal appeal bearing No., **CRA-S-2381-SB-2003**, before this Court.

5. The State of Punjab, has also instituted criminal appeal bearing No. **CRA-D-694-DBA-2004** with a prayer that the impugned verdict (supra) of the learned trial Court be modified, and, the accused be also convicted and sentenced for the commission of an offence punishable under Section 302/34 IPC.

2024:PHHC:118070-DB

**Factual background**

6. The brief facts of the prosecution case are that on 06.3.02, Sandip Kumar cousin brother of Major Kumar was to appear in English paper of matriculation examination and his examination centre was in Govt. High School of Bhilowal Pacca. Major Singh and Ravi Kumar (since deceased) accompanied Sandip Kumar to the examination centre. After the commencement of the examination, Major Kumar and Ravi Kumar were present near the compound of the wall of the school, where Satnam Singh s/o Kashmir Singh resident of V. Veroke came in connection with the paper of some other person. Satnam Singh and Ravi Kumar had verbal dispute over the passing of the slips in the examination hall. Satnam Singh became enraged and left the place by challenging him that he would see him. At about 10.30 A.M. Major Singh, Ravi Kumar and Satpal son of Sohan Lal r/o V. Awan Lakha Singh were present there and were talking with each other when Satnam Singh accompanied by Amarjit Singh and Sikandar Singh and some other boys came there. Amarjit Singh and Sikander Singh raised lalkara that Ravi Kumar be not allowed to go away, as he had intimidated Satnam Singh earlier to go away when he was alone. Amarjit Singh and Sikander Singh respectively caught hold right and left arm of Ravi Kumar. Satnam Singh took out dagger from his *dab* and gave a blow on the abdomen of Ravi Kumar, owing to which, he fell down. When Major Kumar and Sat Pal tried to intervene, Amarjit Singh and other accused gave him fist blows. On raising noise by Major

2024:PHHC:118070-DB



Kumar and Satpal, the accused ran away. Major Kumar and Sat Pal were taking Ravi Kumar in injured condition to the hospital at Amritsar, but on the way, he succumbed to his injuries. The statement of Major Kumar was recorded by Jarnail Singh SHO near the crossing of Chogawan, which is Ex.PA and on the basis of that F.I.R. Ex. PA/3 was registered.

Investigation proceedings

7. S.I. accompanied by Major Kumar went to the place of the occurrence. He conducted the inquest proceedings and prepared report Ex. PF. The dead body was sent to mortuary for the purpose of post mortem through HC Jasbir Singh and C. Baljit Singh. He went to the place of occurrence and recovered from there blood stained earth which was sealed in a parcel and was seized vide memo Ex. PE. After the post mortem on the dead body, the clothes of the deceased were also taken into possession. The site plan of the place of the occurrence which was prepared by him is Ex. PT. The accused were arrested.

8. After completion of investigations by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C., before the learned Committal Judge concerned.

Committal proceedings

9. Finding the offence punishable under Section 302 of the IPC, to be exclusively triable by the Court of Session, thus the learned committal Court vide order dated 03.07.2002, committed the case for

2024:PHHC:118070-DB

**Trial Court Proceedings**

10. On finding a *prima facie* case, charges under Sections 302/323/34 of the IPC became framed, against the accused concerned, to which they pleaded not guilty, and, claimed trial.

11. In support of the prosecution case, the prosecution examined ten witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge, Amritsar, drew proceedings under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. The accused examined Swinder Singh as DW-1 in their defence.

12. After conclusion of the trial, as, became entered into the FIR (supra), by the learned Additional Sessions Judge, Amritsar, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the appellant(s).

Submissions of the learned counsel for the convict-appellant.

13. The learned counsel for the aggrieved convict-appellant herein, has vigorously argued before this Court, that the impugned verdict of conviction, and consequent therewith sentences (supra), as imposed, upon the convict-appellant, both become ridden with a gross infirmity of gross mis-appreciation, and non-appreciation of the evidence, existing on record. Therefore, he has argued that the appeal be accepted, and, the verdict, as challenged before this Court, be quashed, and set aside.

2024:PHHC:118070-DB

**Submissions of the learned State Counsel**

14. On the other hand, the learned State counsel has argued before this Court, that the learned trial Court has erred in not appreciating the fact, that both the accused (supra) had common intention in causing the death of Ravi Kumar (since deceased). Therefore, he has argued that the appeal preferred by the State be accepted and the accused be convicted and sentenced for an offence punishable under Section 302/34 IPC. Moreover, he has also argued that the appeal, as preferred by the convict-appellant be dismissed.

Case dependent upon the testimony of eye witnesses PW-1 and PW-3.

15. For proving the charges (supra) drawn against the convicts, the prosecution made reliance upon the depositions of ocular witnesses to the occurrence, who respectively stepped into the witness box, as PW-1 and PW-3.

16. PW-1-Major Kumar (Complainant) in his examination-in-chief testified that Sandip Kumar is the son of his uncle Ashok Kumar. On 06.03.2002, he was to appear in English paper (matriculation examination) in Govt. High School Bhilowal Centre. He alongwith Ravi Kumar son of Parveen Kumar had accompanied Sandip Kumar to the Centre at Govt. High School Bhilowal. The paper commenced at 09.00 A.M. and Sandip Kumar went inside to appear in the said paper. PW-1 testified that he (complainant) and Ravi Kumar (deceased) stood outside the room. PW-1 further testified that Satnam Singh r/o village Vairoke had also come to the Centre alongwith his candidate. Satnam

2024:PHHC:118070-DB



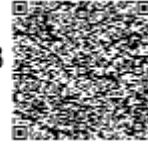
Singh had some altercation with Ravi Kumar regarding some slips. Satnam Singh then went away remarking that Ravi Kumar would be seen.

17. PW-1 further echoed that when at about 10.30 A.M., he alongwith Ravi Kumar were having a conversation with Satpal, then, Satnam Singh, Amarjit Singh, Sikander Singh and Jagtar Singh came there. PW-1 identified all the accused except Satnam Singh who were present in the Court on the relevant day. Amarjit Singh and Sikander Singh @ Rinku raised *lalkara* that Ravi Kumar should not be spared. Accused Amarjit Singh caught hold of Ravi Kumar from his right arm while accused Sikander Singh caught hold of his left arm. Accused Satnam Singh took out a dagger from his *dab* and with the said dagger, he gave a blow in the abdomen of Ravi Kumar. He (complainant) and Satpal went forward and tried to save Ravi Kumar. Accused Jagtar Singh and others also gave him fist blows on his back, nose and face. Thereafter, he and Satpal raised alarm. The accused persons fled with their respective weapons.

18. PW-1 further testified that a vehicle was arranged and Ravi Kumar was brought to Amritsar but he succumbed to his injuries. He then reported the matter to the police by making his statement Ex. PA.

19. PW-1 also suffered the ordeal of an exacting cross examination, and, yet during the course thereof, the defence counsel failed to elicit from him, any echoing qua the deposition(s) (supra), as, comprised in his examination-in-chief rather being engineered, false, or,

2024:PHHC:118070-DB



contrived. Therefore, credence is to be assigned to the deposition of PW-1.

Corroboration lent to the statement of PW-1 by the deposition of PW-3 and analysis of the testification(s).

20. The statement of PW-1 is fully corroborated by the deposition of PW-3. He too, has spoken therein qua his witnessing the commission of the penal act by the accused upon the victim. Even during the ordeal of a rigorous cross-examination, to which he was subjected to, he remained unscathed.

21. A conjoint analysis of the testification(s), as made by the ocular witnesses (supra), to the relevant occurrence suggests, that their respectively made statements are not ridden with any taint of theirs making any gross improvements or embellishments vis-a-vis their respectively recorded statements in writing. Moreover, their respectively made testification(s) are also free from any taint of any intra-se contradiction(s) intra-se their respectively made testification(s). Moreover when they also render unblemished inter-se corroboration(s) to their respectively rendered ocular accounts qua the penal occurrence. Thus, completest credence is to be meted to their respectively made testification(s). Therefore, on the basis of the respectively made testification(s), by the credible ocular witnesses to the occurrence, thus, the charge against the accused but stands fully established.

Medical Evidence

22. The doctor who conducted an autopsy on the body of the deceased stepped into the witness box as PW-4. During the course of

2024:PHHC:118070-DB



his examination-in-chief, he proved the post mortem report, as became authored by him. He also proved the existence thereons of his valid signatures. The post mortem report is assigned Exhibit PU. The relevant observations, as become narrated in Exhibit (supra) are extracted hereinafter.

“ 1. 2.5 x 1 cm incised stab wound was present on right side of abdomen, 9 cm away from umbilicus at 7 o' clock position. The wound was elipical in shape and obliquely placed. Margins were clean cut and clotted blood was present.

23. Further, the doctor concerned opined that the cause of death of deceased was owing to shock and hemorrhage as a result of injury no. 1 (supra) to the vital organ. All the injuries were declared to be ante mortem in nature and also were declared to be sufficient to cause death in the ordinary course in nature.

24. Since the medical account but corroborates credible eye witness account therebys the charge against the accused is concluded to be efficaciously proven.

25. The learned trial Judge concerned appears to become led to convict and consequently sentence the accused for an offence punishable under Sections 326/323/34 IPC, thus, on the premise that the principal offender was absconding accused Satnam Singh, against whom sessions trial commenced in the year 2004, thus after his surrendering before the trial Court concerned. Furthermore, therebys the learned trial Judge concerned, segregated the incriminatory roles of the principal offender (supra) and the ones attributed to the present appellant.

2024:PHHC:118070-DB



26. Since the principal offender delivered a fatal stab blow on the abdomen of the deceased, whereas, the present convicts/appellants did respectively hold the left and right arm of the deceased, thereby, it was concluded that the incriminatory role (*supra*) attributed to the present applicants did not make them vicariously liable for the offence of murder committed by the principal offender one Satnam Singh.

27. The said made segregation of incriminations against the principal offender and the present accused-appellants, is an ill made segregation, as thereby the principal of vicarious criminal liability founded upon Section 34 IPC but becomes completely eclipsed.

28. Moreover, since the present accused-appellants did in the above manner incriminatorily facilitate the principal offender to deliver the fatal stab blow on the stomach of the deceased, thereby, they did make themselves liable to become convicted, and, also became liable to be sentenced for an offence punishable under Section 302/34 IPC.

Final Order of this Court.

CRA-S-2381-SB-2003

29. In consequence, subject to the decision made in ***CRA-D-694-DBA-2004***, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the appellants-convicts by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the

2024:PHHC:118070-DB



evidence on record. In consequence, there is no merit in the apposite appeal, and, the same is dismissed.

CRA-D-694-DBA-2004

30. Accordingly, in view of the above, the instant appeal is allowed. Consequently after allowing the instant appeal filed by the State of Punjab, this Court quashes the impugned verdict of acquittal, as made by the learned trial Judge concerned, wherethrough, he made a finding of acquittal in respect of a charge drawn for an offence punishable under Section 302 of the IPC, and modifies the same to the extent that respondent No.1 is held guilty for an offence punishable under Section 302 of the IPC, read with Section 34 of the IPC, in addition to the offence(s) for which respondent No.1 stand already convicted.

31. The accused/respondent No. 1 is directed to be produced in custody before this Court, on 16.09.2024 for his being heard on the quantum of sentence.

32. Records of the Court below, be sent down forthwith. Case property, if any, if not required, be dealt with, and, destroyed after the expiry of the period of limitation. Miscellaneous application(s), if any, is/are, also disposed of.

33. A photocopy of this order be placed on the file of other connected case.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

06.09.2024

kavneet singh

Whether speaking/reasoned
Whether reportable

: **Yes/No**
: **Yes/No**