

2024:PHHC:118056-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CRA-S-1024-SB-2005
Reserved on: 02.09.2024
Pronounced on: 06.09.2024

Satnam SinghAppellant

Versus

State of PunjabRespondent

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

Argued by: Mr. Aditya Pratap Singh, Advocate
for the appellant.

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed by the convict-appellant, against the verdict of conviction, as made on 19.05.2005, by the learned Additional Sessions Judge (Adhoc), 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 326/323/34 IPC.

2. Moreover, through a separate sentencing order drawn on 19.05.2005, the learned trial Judge concerned, proceeded to impose

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upon the convict (supra) both sentence(s) of imprisonment as well as of fine, but in the hereinafter extracted manner :-

“..... After hearing Satnam Singh, accused-convict and his counsel and ld. APP in the matter of sentence, he u/s 326 IPC is sentenced to undergo R.I. for 7 years and also to pay fine of Rs. 2000/- and in default to undergo R.I. for two months and also sentenced to six months R.I. u/s 323 IPC. Both the sentences shall run concurrently....”

3. 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 instant appeal before this Court.

Factual background

4. 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

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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 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 the 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

5. 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

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into possession. The site plan of the place of the occurrence which was prepared by him is Ex. PT. Co-accused Sikander Singh, Jagtar Singh and Amarjit Singh were arrested. However, the accused-appellant could not be arrested and he was declared as proclaimed offender. The trial against co-accused Sikander Singh, Jagtar Singh and Amarjit Singh stood concluded and accused Sikander Singh and Amarjit Singh were convicted vide judgment dated 09.12.2003, whereas the accused Jagtar Singh was acquitted of the charges drawn against him.

6. The appellant-Satnam Singh was arrested subsequently. Thereafter, the Investigating officer concerned, instituted supplementary challan, before the learned Committal Judge concerned.

Committal proceedings

7. 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 11.09.2004, committed the case for trial to the Court of the learned Sessions Judge, Amritsar.

Trial Court Proceedings

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

9. 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

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Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. The accused examined four witnesses in his defence.

10. 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.

Submissions of the learned counsel for the convict-appellant.

11. 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.

Submissions of the learned State Counsel

12. 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 the accused while delivering a knife blow had caused serious injury on the vital parts of the body of the deceased, which led to cause his demise. Therefore, he has argued that the accused be convicted and sentenced for an offence punishable under

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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-4 and PW-5.

13. 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-4 and PW-5.

14. PW-4 Major Kumar (complainant) in his examination-in-chief testified that on 06.03.2002, Kuldip Kumar was to appear in examination of matriculation at Bhilowal at Govt. High School. He and his grandfather had accompanied Sandip Kumar to the Centre. PW-4 echoed that the accused was not seen by him there. The deceased Ravi Kumar had met them outside the examination Centre. PW-4 further testified that the accused Satnam Singh was also present there outside the examination Centre. Satnam Singh and Ravi Kumar had a quarrel and they exchanged hot words at 9.30 A.M. Thereafter, at 10.30 A.M. Satnam Singh, Sikander Singh, Amarjit Singh came back at that place. Sikander Singh and Amarjit Singh raised lalkara that Ravi Kumar be caught hold for quarreling with Satnam Singh.

15. PW-4 testified that Amarjit Singh caught hold right arm of Ravi Kumar and Sikander Singh caught hold his left arm, and, then accused Satnam Singh took out dagger from his *dab* and attacked Ravi with that dagger. PW-4 further testified that accused Satnam gave a stab

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blow on the right side of the abdomen of the deceased. Ravi Kumar after suffering injuries fell down. They raised alarm.

16. PW-4 further testifies that Jagtar Singh @ Buta and some other persons with him gave him fist blows on his right eyes. After causing injuries, they ran away. The deceased was taken by them to Amritsar but on the way near Ram Tirath, he succumbed to his injuries. Thereafter, he went to Chogawan where SHO met him, who recorded his statement Ex. PA.

17. PW-4 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, contrived. Therefore, credence is to be assigned to the deposition of PW-1.

Corroboration lent to the statement of PW-4 by the deposition of PW-5 and analysis of the testification(s).

18. The statement of PW-4 is fully corroborated by the deposition of PW-5. 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.

19. 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

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respectively recorded previous 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

20. The doctor who conducted an autopsy on the body of the deceased stepped into the witness box as PW-6. During the course of 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 PD. 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.

21. 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.

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

23. Since in the credible testifications rendered by the eye witnesses (supra), there is no suggestion put to either of them by the learned defence counsel, thus personificatory that thereby the defence has propagated an espousal qua the offence committed, thus falling within the exceptions to an offence of culpable homicide amounting to murder, exceptions whereof become embodied in Section 300 of the IPC, exceptions whereof become extracted hereinafter.

“300. Murder.-

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly)- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly)- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1.- *When culpable homicide is not murder.— Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos:—*

(First)- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

(Secondly)- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

(Thirdly)- That the provocation is not given by anything done in the lawful exercise of the right of private defence.

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Explanation.— Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2 - *Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.*

Exception 3 - *Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.*

Exception 4 - *Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.*

Explanation.— It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5 - *Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”*

24. Moreover, besides when no answers favourable to the accused became meted by the ocular witnesses to the crime event. Resultantly when neither the espousal (supra) became well propagated, nor became supported by any cogent evidence. In sequitur, it was completely inapt for the learned trial Judge concerned, to declare that the accused had proven the exceptions (supra), to the offence relating to the commission of an offence of culpable homicide amounting to murder, nor thereby it was apt for the learned trial Judge concerned, to record a finding of conviction against the accused only for offences punishable under Sections 326/323/34 of the IPC.

Final Order of this Court.

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25. The result of the above discussion, is that, this Court does not find any merit in the appeal filed by the accused-appellant, and, is constrained to dismiss it. Consequently, the appeal No. **CRA-S-1024-SB-2005** is dismissed.

26. However, for all the reasons stated (supra), 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, is quashed, and, the same is modified to the extent that the accused-appellant is held guilty for an offence punishable under Section 302/34 of the IPC, in addition to the offence(s) for which the appellant stand already convicted.

27. The accused-appellant is directed to be produced in custody before this Court on 16.09.2024 for his being heard on the quantum of sentence.

28. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. Records be sent down forthwith. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

06.09.2024

kavneet singh

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No