

2024:PHHC:138405-DB



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

CRA-D-268-DB-2014

Date of Decision: 22.10.2024

JASWINDER SINGH

.....APPELLANT

VERSUS

STATE OF PUNJAB

....RESPONDENT

**CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. Jasbir Mor, Legal Aid Counsel
for the appellant.

Mr. Aftab Singh Khara, Sr. DAG, Punjab.

ANUPINDER SINGH GREWAL, J (ORAL)

[1]. This appeal is directed against the judgment of conviction dated 13.12.2013 and order of sentence dated 16.12.2023 whereby the appellant has been convicted under Section 302 IPC and sentenced to undergo life imprisonment with fine of Rs.50,000/- and in default of payment of fine, to further undergo rigorous imprisonment for five years.

[2]. It is a case of the prosecution that the complainant Ashok Pal (PW-10) was travelling about 50 yards behind his son and when they were bringing fodder on bicycle, he saw the appellant push his son due to which, he fell from cycle and the appellant gave him 2-3 datar blows; chopping off the neck of his son (deceased). He raised alarm, people gathered there and nabbed the appellant. The incident was immediately reported to the police and an FIR was registered within an hour. The appellant was arrested on the same day and



the blood-stained datar recovered from his possession was sent for FSL examination.

[3]. The prosecution had examined 10 witnesses to prove its case. PW-1 Lal Singh (MHC) stated that in his presence, the IO had duly sealed the parcels of the items which formed the part of case property, PW-2 ASI Bhupinder Singh, had accompanied the Investigating Officer to the place of occurrence and witnessed various memos including the recovery of blood-stained datar, PW-3 Balbir Singh, Sarpanch had come to the spot after commission of the offence and saw headless body of the deceased, PW-4 Dr. Balwinder Kumar had conducted the postmortem of the deceased, PW-5 Varinder Kumar Patwari had produced copy of Shajra Aks Ex.P22 of the place of occurrence, PW-6 K.S. Randhawa, DSP was the investigating officer of the case, PW-7 Naresh Kumar had taken the articles for FSL examination and ensured that the articles were in intact condition, PW-8 Balwant Singh, from whom the complainant had purchased the dry fodder, PW-9 Surjit Ram was an eyewitness to the occurrence and PW-10 Ashok Pal was the father of the deceased and complainant/eye-witness to the occurrence.

[4]. The prosecution evidence was put to the appellant who denied the same, but led no evidence in his defence.

[5]. The trial Court after examining the evidence, had held that the prosecution case against the appellant had been duly established and he was convicted under Section 302 IPC.

[6]. Learned counsel for the appellant submits that the prosecution case against the appellant could not be established inasmuch as PW-9 Surjit Ram



who is stated to be an eyewitness did not support the prosecution case qua the involvement of the appellant as he had categorically stated that he did not see the appellant killing the deceased. He further submits that in the alternative, even if, the prosecution case against the appellant is established, the offence would fall under Section 304 IPC and not under Section 302 IPC as the appellant had committed the act without any premeditation and the act had been committed on sudden provocation as the deceased and his father had been repeatedly told not to cross the fields of the appellant. He has referred to **Maresh Vs. State of M.P. (1996) 10 SCC 668** in support of his contention.

[7]. Learned State counsel, however, submits that there is sufficient evidence to bring home the guilt of the appellant in the form of statement of the complainant and other material witnesses who have duly supported the prosecution case. The victim was a 10 year old child who was brutally murdered and therefore, the offence would fall under Section 302 IPC and not under Section 304 IPC.

[8]. Heard.

[9]. It is manifest that the FIR had been registered at the behest of the complainant (PW-10) who was also the father of the deceased and eyewitness to the occurrence. He had duly stated that the deceased was travelling 50 yards ahead of him when he saw the appellant push his son (deceased), as a result of which, he fell down from cycle and thereafter, the appellant gave him several blows with a datar, chopping off the neck of the deceased. He had been cross-examined at length, but no material inconsistency had emerged therefrom.

PW-3 Balbir Singh, Sarpanch of the village had stated that he had visited the



place of occurrence immediately as there was a hue and cry and he saw headless body of the deceased. PW-8 Balwant Singh had stated that he gave his land to the complainant in exchange of payment and it was therefore, established that the deceased had been using his land for collection of fodder and used to pass through the land of the appellant. The ocular version is supported by the medical evidence presented by PW-4 Dr. Balwinder Kumar who had conducted the postmortem examination of the deceased on 19.04.2013 and had found following injuries on the person of the deceased:-

- i) Head is separated from the body at the level of neck, cut was oblique fashion, posteriorly involving the hair line from the occipital region running obliquely toward the mid level of neck anteriorly. The margins of were clean inflicted by sharp weapon. On posterior aspect. There were multiple cuts lying adjacent to each other. Soft tissues muscles, bone and wall underlying structure were cut.*
- ii) Multiple incised wound size varying 2.5 to 5 cms with abression on superior aspect of left shoulder lying adjacent to each other.*
- iii) Incision wound 4.5 x ½ cm on posterio lateral aspect of neck 3 cm below injury No.1.*
- iv) Incision wound 4 ½ cm on anterior aspect lying parallel at 4 cm above clavicle.*
- v) Incision wound 4 ½ cm on lateral aspect at RT thumb.*
- vi) Incision wound 1 ½ cm present on proximal interphlenged joint at RT middle finger on posterior aspect.*
- vii) Lacerated wound 2x1 cm on middle of RT finger on posterior aspect.*

[10]. The cause of death was opined as haemorrhage and shock due to infliction of injury to vital structure of neck like oesophagus trachea, spinal



cord and other structure like blood vessels. Thus, it is apparent that the ocular version has been corroborated by the medical evidence.

[11]. Learned counsel for the appellant has laid much emphasis on the fact that PW-9 who is stated to be an eyewitness did not support the prosecution case. It is true that PW-9 was cited as an eyewitness, but did not support the prosecution case and had stated in his examination-in-chief that he did not see the appellant killing the deceased. However, after being declared hostile he was cross-examined by the Public Prosecutor in which he had stated that he was travelling behind his brother and could not see the occurrence clearly, but he had also stated that he saw the appellant giving 2-3 blows with a datar on the neck of the deceased. However, in the facts and circumstances of the case, especially in view of consistent testimony of PW-10 Ashok Pal complainant/father of the deceased, the statement of PW-9 would not dent the prosecution evidence, which otherwise is consistent and trustworthy pointing to the guilt of the appellant.

[12]. We do not find any merit in the contentions of the learned counsel for the appellant that even if, the prosecution case is taken in toto, the offence would fall under Section 304 IPC and not under Section 302 IPC for the reason that the deceased was a young boy of 10 years. Reference can be made to Exception 4 to Section 300 IPC, which provides that 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. In the instant case, the appellant has caused three blows to the deceased with a datar which resulted in



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severing of his neck. He had thus, acted in a cruel manner and therefore, benefit of Exception 4 would not enure. The deceased was unarmed and riding a bicycle after obtaining fodder, therefore, there was no provocation on his part which could have compelled the appellant to mercilessly inflict 2-3 datar blows leading to severing of the neck of the deceased. The judgment of the Supreme Court in **Mahesh case (supra)** is distinguishable on facts and is not applicable to the instant case as in that case, the accused therein had given a single blow with a pharsa while in the instant case, several blows had been caused to the deceased severing his neck.

[13]. In view of above, we do not find any merit in this appeal and the same stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

(LAPITA BANERJI)
JUDGE

22.10.2024
Prince

Whether speaking/ reasoned	:	Yes/No
Whether Reportable	:	Yes/No