



CRA-D-477-DB-2003

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-477-DB-2003
DATE OF DECISION: May 06, 2024

Babloo ChauhanAppellant

VERSUS

State of PunjabRespondent

CORAM HON’BLE MR. JUSTICE GURVINDER SINGH GILL
HON’BLE MR. JUSTICE GURBIR SINGH

Present Mr.H.S.Baidwan, Amicus Curiae, Advocate,
for the appellant.

Mr. I.P.S.Sabharwal, DAG, Punjab.

GURBIR SINGH, J

1. Appellant/convict Babloo Chauhan has filed this appeal against the judgment of conviction and order of sentence dated 11.02.2003 in case FIR No. 64 dated 10.03.2001, Police Station Division No.6, Ludhiana under Section 302 I.P.C passed by learned Sessions Judge, Ludhiana in Sessions Case No.13 of 21.05.2001, whereby, he has been convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months.

2. In brief, the case of the prosecution is that Puttan Singh (since deceased) was younger brother of PW Lal Bahadur. He was cloth cutter and working in Krishna Suiting and Shirting Factory, plot No.103 Industrial Area, Ludhiana. He was married to Meeran and was living in the premises of the said factory along with his wife Meeran and her brother Gudu. On 10.03.2001, the said factory was closed due to Holi festival. Lal Bahadur, her jeth (elder brother of husband) had come to their house at about 02:00 pm to meet him. Within 4/5 minutes thereof, Babloo Chauhan, who was living in Jagdish Plastic Factory, plot No.108, Industrial Area, Ludhiana came there.

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He took Puttan Singh with him to plot no.108 on the pretext that they were to go for some work. They did not return till 05:00 p.m. PWs Lal Bahadur, Meeran and Gudu went to plot No.108 to search Puttan Singh. At about 05:30 PM, they entered the factory premises and saw that Puttan Singh was being beaten by the accused Babloo Chauhan, who had fallen Puttan Singh on the ground. The accused was saying at loud voice that he would not leave him alive as he was having illicit relations with his wife. PW Meeran started crying and asked the accused not to beat Puttan Singh. The accused picked up a *silbatta* (grinding stone) and threw it on the head of Puttan Singh in their presence. Puttan Singh died at the spot. PWs Lal Bhadur and Gudu caught hold of the accused. PW Meeran accompanied by Raj Kumar went to lodge report with the police. SI Dogar Ram alongwith other police authorities was present at Cheema Chowk, Ludhiana. Statement Ex.PC of PW Meeran was recorded by PW SI Dogar Ram. After admitting the statement to be correct, PW Meeran put her signatures and PW SI Dogar Ram put his endorsement Ex.PC/1 and sent the same to the police station for registration of the case and on its basis FIR Ex.PC/2 was registered. PW3 Meeran accompanied by police officials came at the spot. Inquest Report Ex.PD of the dead body of Puttan Singh was prepared and dead body was sent for the postmortem examination with application Ex.PV through Constable Deshraj. Blood stained *silbatta* (grinding stone) Ex.P1 was also taken into possession. Blood stained earth from spot was also picked up and same was put into a parcel which was sealed and was taken into possession vide recovery memo Ex.PF. Site plan Ex.PJ was prepared. PW SI Surinder Singh, Finger Print Expert, lifted finger prints from glass tumbler and a nip of liquor, which were put into a parcel which was sealed and was taken into possession vide recovery memo Ex.PW5/A. Kamaldeep Singh, Photographer took photographs of the place of occurrence and also of dead body of Puttan Singh. Accused was arrested. Memo of personal search EX.PK was prepared.

Blood stained shirt of the accused was got put off, sealed into a parcel and was taken

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into possession vide recovery memo Ex.PL, which was attested by PWs Ramji Dass and Raj Kumar. After postmortem examination, clothes of the deceased were taken into possession vide recovery memo Ex.PM. Statements of the witnesses were recorded. Case property was deposited with the MHC. After completion of the investigation and necessary formalities, challan was presented, which was committed to the Court of Session.

3. On consideration, prime facie charge under Section 302 IPC was framed against the accused, to which he pleaded not guilty and claimed trial.

4. In order to substantiate its case, prosecution has examined PW1 Dr.S.K.Sharma, who conducted the postmortem examination of the dead body of deceased Puttan Singh and proved the copy of postmortem report Ex.PA, pictorial diagram Ex.PWA/1 showing the seat of injury. One injury was found on the dead body of the deceased. Said injury was that head was crushed and all the bones were fractured, the brain was coming out.

5. Prosecution also examined PW2 Constable Desh Raj, PW3 Constable Partap Singh, PW4 ASI Avtar Singh, PW5 Kamaldeep Singh, PW6 Lal Bahadur, PW7 Meeran, PW8 Constable Avtar Singh, PW9 Constable Krishan Lal, PW10 HC Rachhpal Singh, PW11 SI Surinder Singh and PW12 SI Dogor Ram.

6. Statement of the accused under Section 313 Cr.P.C was recorded in which incriminating evidence appearing against him was put to him but he denied the same and pleaded that he was innocent and was implicated in this case on the basis of suspicion.

7. No defence evidence was produced.

8. Learned counsel for the appellant has argued that it was a day of Holi festival. PW-6 Lal Bahadur had come to the house of his brother-Puttan Singh to meet him. Had he been there, the deceased would not have gone with the appellant. PW6

Lal Bahadur stated that the accused was suspecting that deceased had illicit relations

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with the wife of the accused. The motive for committing the crime is not proved. PW6 Lal Bahadur stated that he had known before the occurrence about the dispute between his brother and the accused. No one would accompany a person with whom he had a dispute of such a nature that he was suspecting that he was having illicit relations with his wife.

9. Learned counsel for the appellant has further argued that PW6 Lal Bahadur and PW7 Meeran are the witnesses to the occurrence. They were not present at the spot. It is most unnatural that at about 05:30 pm they went to the house of the accused in the factory premises and in their presence, the accused was beating the deceased and struck a *silbatta* on the head of the deceased and they did not intervene to save the deceased.

10. It was a case of blind murder that is why Investigating Officer called the Finger Print Expert and took the photographs of the spot. The medical evidence is not in consonance with the ocular evidence. As per postmortem report, head of the deceased was crushed, all the bones were fractured and brain was coming out. Such an injury is not possible by throwing the *silbatta* (grinding stone) on the head of the person. It is a case of single injury so case does not fall under Section 302 I.P.C but at the most it would be case of culpable homicide not amounting to murder.

11. Learned State counsel has submitted that there was prompt lodging of the FIR. The deceased had gone with the accused at 02:00 pm. When he did not return then his wife, her brother and Lal Bahadur-brother of deceased had gone for search of the deceased and they reached at the house of the accused in the factory premises. Deceased was being beaten by the accused/appellant and in their presence, accused/appellant threw a *silbatta* on the head of the deceased. The identity of the accused/appellant is not in doubt. The presence of the witnesses at the spot is most natural. The medical evidence is in consonance with the ocular evidence. Learned trial Court has rightly convicted the appellant and sentenced.

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12. We have heard the submissions of the learned counsel for the appellant and learned State counsel and have gone through the record.

13. Having scrutinised the evidence on record, we do not find any ground to interfere in the judgment passed by the learned trial Court.

14. The appellant as well as deceased originally belonged to Uttar Pradesh and they were doing job in the separate factories situated nearby and they were residing in their respective factories. The deceased was residing in the factory premises in Plot No. 103 whereas appellant was residing in the factory premises situated in Plot No. 108. The visit of elder brother of deceased was his house at 2:00 P.M on that day was normal, since it was a holiday and everyone was free on said day. It is specific case of the prosecution and duly proved by PW-6 Lal Bahadur and PW-7 Meeran that appellant came to their house and he took the deceased with him for some work. When a person is known to someone then he would definitely go with them if he comes to take him for some work. The statements of PW-6 Lal Bahadur and PW-7 Meeran are consistent. They saw the appellant beating the deceased saying that deceased was having illicit relationship with his wife and giving injury on the deceased with *silbatta*. Ordinarily a close relation could be last to screen the real culprit and falsely implicate an innocent person. No doubt when there is a personal enmity then possibility of dragging an innocent person and accusing him that he committed the crime cannot be ruled out but the same is only possible if there is personal cause of enmity between such innocent person and the witness. In the case in hand, there was no ground to falsely implicate the appellant. The test is whether witnesses passed through the test of cross-examination and there is nothing to impeach their credit and if believed their testimony, their testimony is sufficient to prove the prosecution case. In case *M.Nageswara Reddy Vs. State of Andhra Pradesh and Others : 2022(2) SCC(Crl) 470* passed by the Hon'ble Supreme Court that merely because witnesses were relatives of deceased, their evidence cannot be

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discarded solely on that ground. Since both the eye-witnesses are consistent in their statements and stood, the test of cross-examination and defence failed to impeach their credit, so there is no ground to disbelieve their version being relative of the deceased.

15. It was a holiday. Factories were closed. Occurrence had taken place in the factory premises where appellant was residing and under such circumstances, it was not possible to join independent witness. Moreover, the appellant was known to the deceased and the witnesses and appellant was arrested at the spot. The mere calling of the finger print expert by the investigating officer is not a ground to consider that it was a blind murder. Since appellant was arrested at the spot and there is tendency to gather as much evidence as possible so that no innocent is implicated in the case so calling of finger print expert at the spot is not a circumstance which has any adverse effect on the case of prosecution. Even the shirt of the accused was found stained with blood and on examination the same was found to have human blood. So hardly any doubt is left that crime was committed by someone else and appellant was implicated on the basis of suspicion. Since PW- Lal Bahadur and Gudu caught hold of the appellant and send the complainant, a lady to lodge report with the police. A lady could lodge the report but could not keep the accused confined till arrival of police. It is not necessary to examine each and every witness, who had seen the occurrence so, non-examination of Gudu, who is also brother of the complainant, has no adverse effect on the case of prosecution.

16. Although the witnesses themselves heard that appellant while beating the deceased was saying that he had illicit relation with his wife so, there was sufficient motive to take revenge from the deceased. Since there is direct evidence that appellant had committed the crime then motive itself is of little relevance. In case ***Shivaji Genu Mohite v. State of Maharashtra, AIR 1973 SC 55***, it was held that it is a well-settled principle in criminal jurisprudence that when ocular testimony inspires



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the confidence of the court, the prosecution is not required to establish motive. Mere absence of motive would not impinge on the testimony of a reliable eye-witness. Motive is an important factor for consideration in a case of circumstantial evidence. But when there is direct eye witness, motive is insignificant. This is what was held:

“In case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eye-witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eye-witnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye-witness is rendered untrustworthy” The principle that the lack or absence of motive is inconsequential when direct evidence establishes the crime has been reiterated by this Court in [Bikau Pandey v. State of Bihar](#), (2003) 12 SCC 616; [Rajagopal v. Muthupandi](#), (2017) 11 SCC 120; [Yogesh Singh v. Mahabeer Singh](#), (2017) 11 SCC 195.”

17. It is a case of murder which falls under Section 302 I.P.C and not under Section 304 part II of I.P.C. As per post-mortem report, the following injury was found on the deceased:

(i) *Head was crushed. All the bones were fractured and the brain was coming out. Other organs were healthy. Stomach was empty.*

18. The deceased was already fallen on the ground. Under such circumstances, if blow with *silbatta* (grinding stone) is given on the head of the deceased and it caused injury in such a manner that all the bones are fractured and brain was coming out. Injury was given on the head which is vital part of the body and it led to instant death. Only inference which can be drawn is that the intention of the appellant was to cause death or to cause such body injury, which was sufficient injury to cause death. In case ***Jagrup Singh Vs. State of Haryana, AIR 1981***



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Supreme Court 1552 elaborating the legal position regarding single blow injury, the Apex Court observed as under:-

“ There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under s. 304, Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron 'rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negating a the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either Clause Firstly or Clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death.”

19. In the light of the above discussion, the findings recorded by the learned trial Court do not deserve any interference. The appeal is without merit and the same is dismissed.

(GURBIR SINGH)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

May 06, 2024
Mamta/renu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No