
(21) In view of the above, the writ petition is allowed. Impugned orders (Annexures P-4, P-8 and P-10) are quashed. The respondents are directed to release the entire amount claimed by the petitioner within a period of two months of the receipt of a certified copy of this order. We are, however, not inclined to accept the prayer of the petitioner for grant of interest from the date when the claim was submitted till the decision of this writ petition. However, in case the amount claimed by the petitioner is not paid within the period stipulated in this order, the respondents shall also be liable to pay interest at the rate of 9% per annum.

(22) Copy of this order be given *dasti* on payment of requisite charges.

R.N.R.

BEFORE MEHTAB S. GILL AND PRITAM PAL, JJ

SUKHDEV RAJ,—*Appellant*

- *versus*

STATE OF PUNJAB,—*Respondent*

Criminal Appeal NO. 315/DB OF 1997

28th September, 2005

Indian Penal Code, 1860—Ss. 302 & 304 Part II—Trial Court finding the appellant guilty of committing murder and punishing him under section 302 IPC— At the time of murder appellant was in an inebriated condition— Sudden quarrel between appellant and deceased when both were under the influence of liquor— No previous enmity or any ill-will of the appellant against the deceased— Appellant guilty for culpable homicide not amounting to murder and he could not be convicted under section 302 IPC— Order of trial Court convicting the appellant under section 302 IPC converted to that of under section 304 Part II IPC.

Held, that it is there in the statements of the eye witnesses and also in the medical evidence that the appellant was medically examined on the date of occurrence itself and smell of alcohol was

found from his mouth. It is evident on the file that during investigation, it was established that before the occurrence, the appellant and the deceased had taken liquor. It is also proved that they both were armed with S.L.R. (Rifles) and ammunition. Further, it is also well established from the evidence of the prosecution that there was a sudden quarrel between them while they were under the influence of liquor and ultimately, the appellant had opened fire from his rifle, which hit on the back portion of Ranjit Singh deceased. Admittedly, there was no previous enmity or any ill-will of the appellant against the deceased. All these facts established on the file, go a long way to show that the incident in question took place without pre-meditation, rather it all happened in a sudden quarrel and in the heat of passion, that too, when the appellant was in an inebriated condition. Thus, we do not think that the learned trial Court has properly appreciated this aspect of the prosecution case when it found the appellant guilty of murder and punished him under Section 302 IPC. The appellant could only be found guilty for culpable homicide not amounting to murder, which is punishable under Section 304 Part II of IPC.

(Paras 14 & 15)

R.S. Ghai, Senior Advocate with Bipan Ghai and Mandip Kaushik, Advocates, *for the appellant.*

A.S. Virk, Additional A.G. Punjab, *for the respondent*

JUDGMENT

PRITAM PAL J.

(1) Appellant, Sukhdev Raj, has filed this appeal against judgment and order dated 10th March, 1997, passed by the learned Session & Judge, Faridkot, whereby he was convicted under Section 302 of I.P.C. and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 1,000 and in default of payment of fine to undergo further R.I for three months under Section 302 of I.P.C. He was also sentenced to undergo R.I. for three years and to pay a fine of Rs. 300 and default of payment of fine to undergo further R.I. for one month under Section 27 of the Arms Act. However, both the substantive sentences were ordered to run concurrently.

(2) In nut-shell, prosecution case, as described and established before the learned trial Court, is like thus:—

(3) On 18th September, 1993, at about 3.00 p.m., Raj, appellant and Ranjit Singh, since deceased being Punjab Home Guard employees, were armed with 7.62 bore S.L.R. (Rifles). On that date, they were directed to guard the Punjab & Sind Bank in village Mallan at 8.30 a.m.,—Vide D.D.R. No. 3 dated 18th September 1993 (Ex.PS). At the aforesaid given time, complainant Head Constable Malkiat Singh (PW 6) Constable Hardev Singh (PW &) and Constable Gurinder Singh, who were sitting outside the Police Post, Kotli Ablu, heard a noise of rifle shorts from the side of the village. There upon, they got up and saw that at a distance of about 200 yards, Ranjit Singh was seen falling on the ground. On seeing so, they raised an alarm, “do not kill,” “do not kill” and they also rushed towards the place of occurrence. Within their sight, appellant Sukdev Raj fired four shots at Ranjit Singh. They caught hold of him (Sukhdev Raj) alongwith his rifle and cartridges. It also transpired that while on duty, they both had taken liquor together. Under the influence of liquor, there was an altercations between them. After this occurrence, Head Constable Malkiat Singh, who is complainant in this case, sent a wireless message to Police Station, Kot Bhai. Thereafter, Ranjit Singh injured was removed in a jeep to Civil Hospital, Mukatsar, where he was declared “brought dead”. From the hospital, *ruqa* (Ex.PH) was also sent to the Police Station. On receipt of the *ruqa*, ASI Balkar Singh (PW 13), who is the Investigating Officer in this case, reached the Civil Hospital, Mukatsar and there statement (Ex.PJ) of Head Constable Malkiat Singh (PW 6) was recorded at 5.15. p.m. in the above narration of facts. He then made his endorsement (Ex.PJ/1) and sent the same to the Police Station. Ultimately, formal FIR (Ex.PJ/2) was recorded at 7.00 p.m. under Section 302 of I.P.C. and Sections 25 and 27 of the Arms Act by ASI Kimti Lal and Special Report was received by the Judicial Magistrate Ist Class, Gidderbaha on the same date at 8.15. p.m. Investigation of this case was taken into hand by Balkar Singh ASI (PE 13). He prepared inquest report (Ex.PB) and then got the post mortem conducted on the dead body of Ranjit Singh. Thereafter, on the same date, he reached the place of occurrence. Accused/appellant Sukhdev Raj was there in the custody of Constable Hardev Singh, so, he was arrested. Rifle (Ex.P32) and cartridges (Ex.P 7 to P 31) were taken into possession vide recovery memo Ex.PL.

He then inspected the place of occurrence and prepared the rough site plan Ex.PX with correct marginal notes in his hand. He also took into possession blood stained earth vide recovery memo Ex.PN. Five empties (Ex.P33 to Ex.P37) were also taken into possession vide recovery memo Ex.PM. The Investigating Officer then got appellant Sukhdev Raj medically examined at Civil Hospital, Gidderbaha. On his examination, smell of alcohol was found from the mouth of appellant Sukhdev Raj, but there was no injury on his person. He then also took into possession clothes of the deceased and other items handed over by the doctor vide recovery memo Ex. PK. On return to the Police Station, case property was deposited with the MHC. After completion of the formal investigation, the appellant was challaned for having committed the offence punishable under Section 302 of I.P.C. and 27 of the Arms Act.

(4) The appellant was charge-sheeted under Sections 302 of I.P.C. and Section 27 of the Arms Act by the learned trial Court,—vide its order dated 3rd February, 1994 to which he pleaded 'not guilty' and claimed trial.

(5) The prosecution in order to substantiate its case, examined as may as 13 witnesses, namely, PW1-Dr. S.K. Jindal, he proved the post mortem report Ex.PA and in all, found four injuries on the person of the deceased; PW-2 Dr. M.M. Singla, he proved the medical opinion Ex.PD of appellant Sukhdev Raj, who was also found smelling *alcohol*; PW-3 Head Constable Chander Mohan, he has placed on file his affidavit Ex.PF; PW-4 Head Constable Gurprit Singh, he has also placed on file his affidavit Ex.PG; PW-5 Dr. K.S. Sandhu, who, on arrival of the dead body of the deceased in the hospital, had sent *ruqa* Ex.Ph to the Police Station; PW-6 Head Constable Malkiat Singh, he is the complainant and eye witness in this case; PW-7 Constable Hardev Singh, is another eye witness to the occurrence; PW-8 Constable Chaman Lal, he had taken the special report to the Judicial Magistrate Ist Class, Gidderbaha and proved his affidavit Ex.PO; PW-9 Head Constable Dilbag Singh and PW-10 Head Constable Major Singh, have proved the postings of the witnesses as well as the deceased and the appellant at the relevant time in Police Post Kotli Ablu; PW-11 Ajit Sharma, he prepared the scaled site plan Ex.PR of the place of occurrence; PW-12 LC Rachhpal Singh, he proved the DDR relating to the duty hours of the deceased and the appellant and PW-13 ASI

Balkar Singh, is the Investigating Officer in this case. The prosecution also relied upon Exs. PY and PZ, the reports of Forensic Science Laboratory, to prove the link evidence.

(6) After closure of the prosecution evidence, the appellant was examined in terms of Section 313 Cr.P.C., where-in, the entire incriminating evidence appearing against him was put to him, to which he denied in toto. In his defence, he also examined DW-1 Sharvinder Singh and DW-2 Parmod Kumar.

(7) The learned trial Court after appraisal of the prosecution evidence and hearing learned counsel for the parties, convicted and sentenced the appellant, as indicated in the opening part of this judgement. This is how feeling aggrieved, the appellant has come up in this appeal.

(8) We have heard the learned counsel for the parties and with their assistance have gone through the file carefully.

(9) The main plank of arguments of learned counsel for the appellant was that as per the prosecution case, the appellant and the deceased had taken liquor while sitting together immediately before the occurrence of this case. As per the medical evidence, the appellant was found smelling *alcohol*. During investigation, it was also transpired that at the time of occurrence, the appellant was not having a *turban* or shoes, whereas they both (the appellant and the deceased Ranjit Singh) were on official duties. In this regard, learned counsel also made a reference to the statement of Head Constable complainant Malkiat Singh (PW-6) and ASI Balkar Singh (PW 13). Then it was also argued that they both had quarrelled with each other under the influence of liquor. At the fag end of his arguments, the learned counsel submitted that injuries on the person of the deceased are on the back side of his body. There was also no motive or any ill-will behind the occurrence. In fact, the occurrence had taken place when the deceased and the appellant were under the influence of liquor.

(10) After putting-forth the aforesaid points of arguments, the learned counsel contended for altering the conviction and sentence from under Section 302 I.P.C., to that of Section 304 Part II of I.P.C. In support of his above submissions, reliance was also placed in case of **Manke Ram versus State of Haryana (1)**.

(11) On the other hand, learned Additional A.G. appearing on behalf of the State of Punjab, has supported the impugned judgment and order passed by the learned trial Court and submitted that in the instant case, ocular version consisted in the statements of PW-6 Malkiat Singh complainant and PW-7 Hardev Singh (both eye witnesses), finds corroboration from the medical evidence as well as the reports Exs.PY and PZ of the Forensic Science Laboratory. He then contended for upholding the impugned judgment and order of sentence passed by the learned trial Court.

(12) We have given our thoughtful consideration to the aforesaid points of arguments raised on behalf of the parties.

(13) In this case, PW-6 Head Constable Malkiat Singh complainant and PW-7 Constable Hardev Singh, are the eye witnesses to the occurrence. They both, being the police officials, were sitting outside Police Post Kotli Ablu, at the time of occurrence. Their distance from the place of occurrence was about 200 yards. After hearing noise of fire shots, they raised an *Alarm* and then rushed towards the place of occurrence. It is further in their statement that they were at a distance of about 12/13 *karams*, when appellant Sukdev Raj had fired four shots from his rifle towards Ranjit Singh. It is also evident that the appellant was over-powered there and then at the spot. Both the star witnesses, namely, Head Constable Malkiat Singh-complainant (PW-6) and Constable Hardev Singh (PW-7) were cross examined at length, but nothing fruitful could be elicited from their mouths, which could favour the appellant. There is no *animus* or bias alleged or proved against any of the aforesaid eye witnesses. Not only that, the version brought on the file by the prosecution also finds corroboration from the statements of PW-1 Dr. S.K. Jindal, PW-2 Dr. M.M. Singla and PW-5 Dr. K.S. Sandhu. Besides that, link evidence as per reports Exs PY and PZ of the Forensic Science Laboratory also goes a long way to connect the appellant with the commission of crime of this case.

(14) In this view of our foregoing discussion and keeping in view the aforesaid points of arguments raised on behalf of the appellant, the short point for our determination centres around the question as to whether the case of the appellant falls under any of the exceptions to Section 300 of I.P.C., to punish the appellant for culpable homicide not amounting to murder, as defined under Section 304 Part II of I.P.C. ?

It is there in the statements of the eye witnesses and also in the medical evidence that the appellant was medically examined on the date of occurrence itself and smell of *alcohol* was found from his mouth. It is also evident on the file that during investigation, it was established that before the occurrence, the appellant and the deceased had taken liquor. It is also proved that they both were armed with S.L.R. (Rifles) and *ammunition*. Further, it is also well established from the evidence of the prosecution that there was a sudden quarrel between them while they were under the influence of liquor and ultimately, the appellant had opened fire from his rifle, which hit on the back portion of Ranjit Singh deceased. Admittedly, there was no previous enmity or any ill will of the appellant against the deceased. All these facts established on the file, go a long way to show that the incident in question took place without pre-meditation, rather it all happened in a sudden quarrel and in the heat of passion, that too, when the appellant was in an inebriated condition. Thus, we do not think that the learned trial Court has properly appreciated this aspect of the prosecution case when it found the appellant guilty of murder and punished him under Section 302 of I.P.C.

(15) Having considered the material on record, we are of the considered view that the appellant could only be found guilty for culpable homicide not amounting to murder, which is punishable under Section 304 Part II of I.P.C.

(16) In this view of our foregoing discussions, we allow this appeal to that extent, and set aside the impugned judgement and order passed against the appellant under Section 302 of I.P.C., and award a sentence of 10 years' R.I. with a fine of Rs.50,000/- and in default of payment of fine, he shall further suffer R.I. for four years under Section 304 Part II of I.P.C. Further, we maintain the order of conviction and sentence under Section 27 of the Arms Act recorded by the learned trial Court. The substantive sentences passed under Section 304 Part II of I.P.C. and Section 27 of the Arms Act, shall run concurrently.

(17) Before parting with this judgment, it is made clear that out of the amount of fine, if realised, Rs.45,000/- shall be paid as compensation to the legal heirs of Ranjit Singh deceased.