

**(2013) 10 P&H CK 0262**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 1101-SB of 2003

Baldev Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Oct. 10, 2013

**Hon'ble Judges:** Mehinder Singh Sullar, J

**Bench:** Single Bench

**Advocate:** Aditi Girdhar, Amicus Curiae, for the Appellant; K.S. Aulakh, AAG Punjab, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Mehinder Singh Sullar, J.

The pith and substance of the facts & evidence, unfolded during the course of trial, culminating in the commencement, relevant for deciding the instant appeal and emanating from the record, as claimed by the prosecution, are that, complainant Manohar Lal (PW5) (for brevity "the complainant"), his son Rahul Arora (PW6) and father Hari Chand (deceased) were running a provision-store (grocery shop) in village Talwandi Madho. The appellant-convict Baldev Singh @ Deba son of Karnail Singh (for short "the appellant"), used to purchase household articles (ration) from their shop on cash & credit basis. An amount of Rs. 400/- was outstanding against him. Although, the appellant was requested, but he refused to pay the balance amount. The case of the prosecution further proceeds that on 31.10.2001 at about 7.30 PM, as soon as, the complainant, his son Rahul Arora and father Hari Chand were present in the shop, in the meantime, the appellant came there and asked them to provide him household articles. Hari Chand asked that he had again come and they would not give him articles/ration, unless the previous amount was paid to them. On hearing this, the appellant raised a "lalkara" that he would teach a lesson for refusing to provide him ration. They came out of the shop on the platform and the appellant started abusing them. Meanwhile, he gave a stick (Danda) blow on the head of Hari Chand, father of the complainant. He felled on the platform and blood

started oozing out from his head. They raised a noise and tried to catch, but the appellant threatened them to kill and decamped from the place of occurrence. On hearing the noise, Ravinder Kumar (PW) came there. Hari Chand succumbed to his injury at the spot. The complainant telephonically informed the police about the incident.

2. Leveling a variety of allegations and narrating the sequence of events, in all, the complainant claimed that the appellant inflicted a stick (Danda) blow, which landed on the head of his father Hari Chand, culminating into his death. In the background of these allegations and in the wake of statement (Ex. PG) of the complainant, the present criminal case was registered against the appellant, vide FIR No. 388 dated 31.10.2001 (Ex. PG/2), on accusation of having committed an offence punishable u/s 302 IPC, by the police of Police Station Shahkot, District Jalandhar, in the manner depicted here-in-above.

3. After completion of the investigation, the final police report (challan) was submitted by the police. Having completed all the codal formalities, he was accordingly charge-sheeted for the commission of indicated offence. As, he did not plead guilty and claimed trial, therefore, the case was slated for evidence of the prosecution by the trial Court.

4. Sequelly, the prosecution, in order to substantiate the crime against the appellant, examined complainant Manohar Lal as PW5, who has deposed in the following terms:-

We were running a shop of grocery (Karyana) in village Talwadi Madho. My father Hari Chand, my son Rahul and myself used to sit on the shop. The shop was taken on rent from Pritam Singh of village Talwandi Madho. Baldev Singh accused present in court is known to me. He belongs to village Talwandi Madho. We are residents of Talwandi Madho. Baldev Singh accused used to purchase the articles of Karyana from our shop. Some times he used to pay in cash and some times, he used to take the articles on credit. Gradually, he took house-hold goods amounting to Rs. 4,00/- prior to the occurrence. We requested Baldev Singh to pay the balance amount once or twice prior to the occurrence. Baldev Singh had been saying that he is not going to leave the village he will pay the balance in an angry mood. On 31.10.2001, at about 7.30 PM, I along with my father Hari Chand and son Rahul were present at the shop. Baldev Singh accused present in court came there. He was having a danda in his hand. At that time, electric bulb inside the house as well as outside the shop were litting and there was sufficient light there. Baldev Singh asked my father to give them house hold goods. My father replied that he had not returned the previous balance to him and my father refused to give the articles demanded by the accused, at which Baldev Singh got angry and threat to my father "Tano Badai Shah Noo Sauda Naa Den Da Maza Das Thaina Ha". I and my father and my son were standing on the platform made in front of the shop. Baldev Singh started abusing us and within our view Baldev Singh gave Danda blow on the head of my father Hari

Chand, which fell on the right side of his head and my father had fallen on the platform on account of Danda blow given by the accused. Blood started oozing out from the injury. We (I and Rahul) raised alarm and we tried to capture Baldev Singh accused. He also threatened us that if we proceeded towards him he will kill us. On hearing our raula, Raghbir Singh, Jagan Nath, Bikker Singh came to the spot. There is a shop of PCO near the place of occurrence which is run by Ravinder Kumar. He also came to the spot and witnessed the entire occurrence. Even Ravinder Kumar tried to capture the accused, but the accused ran away after throwing away the Danda (dang). We tried to save our father but he died at the spot due to the injuries caused by the accused. We took the dead body to our house. We then informed the police on telephone and police came to my house and recorded my statement and thereafter went to the spot. Ex. PG is my statement, which was read over to me. I then signed after admitting its contents to be correct.

5. Likewise, PW6 Rahul Arora (son of the complainant) has also supported the prosecution version. Instead of reproducing his entire statement and in order to avoid the repetition, suffice it to say that he has fully corroborated the statement of his father (PW5) on all vital counts.

6. Now adverting to the medical evidence, PW1 Dr. Dharampal has conducted the post-mortem examination on the dead-body of Hari Chand son of Sunam Dass Arora on 01.11.2001 at about 9.45 AM, vide post-mortem report (Ex. PA) on police request (Ex. PB) accompanied by inquest report (Ex. PC) and noticed the following injury:-

A lacerated wound measuring 9 cm x 0.75 cm on the right parietal region, 11 cm above the pinna of right ear. The parietal bone showed a crack. The wound was horizontally placed and bone deep. The scalp was lifted from the periosteum. On dissection and opening the skull, there was a big haematoma on the parietal surface of the brain. Brain showed laceration, meninges showed laceration. CSF was blood stained.

7. He (PW1) opined that the cause of death was on account of injury No. 1 on the head and skull, which was sufficient to cause death in an ordinary course of nature because of neurogenic shock.

8. Similarly, PW-2 HC Gurpal Singh, PW-4 C. Gurdev Lal, PW-7 C. Sarwan Singh and PW8 C. Bakhshish Singh, are the formal witnesses, who have tendered their respective affidavits (Ex. PD, Ex. PF, Ex. PH & Ex. PJ) to complete the chain of link evidence. PW3 Daljit Singh, Patwari, has prepared the scaled site plan (Ex. PE) of the place of occurrence with its correct marginal notes on 28.11.2001 on the asking of SHO of Police Station Shahkot.

9. The last to note is the testimony of PW-9 SI Surinder Singh and PW-10 Inspector Sikatter Singh Investigating Officers. They have maintained that on 31.10.2001, having received an information of the incident, they went to village Talwandi Madho,

where complainant Manohar Lal met them and made his statement (Ex. PG). It was read over and explained to him. He signed the same in token of its correctness. PW-10 made his endorsement (Ex. PG/1) and sent it to the police Station for registration of the case, on the basis of which, formal FIR (Ex. PG/2) was recorded by ASI Amrik Singh. He identified his signatures. Thereafter, PW10 in the presence of PW9 inspected the place of occurrence. PW10 lifted Danda (Ex. P1) from the spot. It was sealed into parcel and was taken into possession, by way of recovery memo (Ex. PK). He has also taken into possession the piece of cloth (Parna) (Ex. P2) and brick-bat (Ex. P3) from the place of occurrence, by means of recovery memos (Ex. PL & Ex. PM). He prepared the visual site plan (Ex. PO) of the spot. PW10 prepared the inquest report (Ex. PC) and sent the dead-body for post-mortem examination along with the police request (Ex. PB). He has also prepared the site plan of place, where the dead-body was lying and recorded the statements of the witnesses. On reaching police station, he deposited the recovered articles with the MHC. On 01.11.2001. He (PW-10) took into possession the clothes of the deceased, vide recovery memo (Ex. PQ) attested by PWs Gurdev Lal and Balbir Chand. PW9 SI Surinder Singh arrested the appellant on 3.11.2001, by virtue of arrest and information memo (Ex. PN). PW9 and PW10 have also testified their entire investigations.

10. After close of the prosecution evidence, the statement of the appellant was recorded. The entire incriminating material/evidence was put to enable him to explain any circumstance appearing against him therein, as contemplated u/s 313 Cr. P.C. However, he has denied the prosecution evidence in its entirety and pleaded false implication in the following manner:-

My parents, who were old and sick, at about 7.30 PM, I had gone to the place of occurrence for bringing medicine and Muraba. At the shop, old man Hari Chand, his son Manohar Lal and grandson Rahul were present. After deducting Rs. 25/- as price for 1/2 kg. of Muraba, when Hari Ram tried to return me Rs. 75/-, I objected the price to be on higher side and demanded my money back. At this, Hari Ram started abusing me and said that the articles once sold would not be taken back and remarked that I may throw the same in drain of dirty water. I also spoke in angry mood. All the three pushed me from the platform which was about four feet in height in the road and I fell down with back downward on the road. Simultaneously, Hari Chand picked up a rough stick of eucalyptus from heap of straw wood lying near the shops installed for fair and hit me with the same. When he tried to give second blow with that stick, I, while lying back wise catch hold that stick, which Hari Chand and his grand son Rahul tried to get the same free and pulled the same. That stick slipped from my hand, with the result Hari Chand who was standing in the stairs of the platform, fell down and struck his head with the bricks of the ramp. I had not caused any injury to him. I am innocent. I have no enmity with them nor I had taken any article on credit. I have all respect for them.

11. In the same sequence, he (appellant) in order to prove his line of defence, examined DW1 Sukhwinder Singh son of Pritam Singh, who has, inter alia, stated that on 31.10.2001 at about 7.15 P.M. Hari Chand, his son and grandson were, pushing the appellant outside the shop and abusing him. The appellant felled from platform due to push given by them. Hari Chand pushed and appellant felled on the ground. He (Hari Chand) was possessing a stick. He gave two stick blows when the appellant was lying on the ground. When Hari Chand tried to strike with his stick, then appellant caught hold it and there was struggle between them. In that process, when appellant left the stick, Hari Chand felled on the platform of the shop and he received injuries on the right side of his head. They took him to his house on foot at a distance of 35-45 yards. He was 65/70 years of age and was possessing a sound body. He was patient of diabetes and heart. The appellant was not at fault. This is the total oral as well as documentary evidence brought on record by the parties.

12. Taking into consideration the entire evidence brought on record by the prosecution, the appellant was acquitted on accusation of having committed the murder of Hari Chand, punishable u/s. 302 IPC. At the same time, he was convicted and sentenced to undergo rigorous imprisonment (in short "RI") for a period of ten years, to pay a fine of Rs. 5,000/- and in default thereof, to further undergo RI for a period of six months, for the commission of an offence punishable u/s 304 Part-II IPC, by means of impugned judgment of conviction and order of sentence dated 06.05.2003, by the trial Judge.

13. Aggrieved thereby, the appellant has preferred the instant appeal. That is how, I am seized of the matter.

14. Assailing the impugned judgment of conviction, the learned counsel for appellant has contended with some amount of vehemence that the story of prosecution is highly improbable and the statements of complainant (PW5) and his son Rahul Arora (PW6) were not corroborated by any independent evidence. The argument is that Hari Chand (since deceased) had himself picked up a stick (danda) from the heap of straw wood lying near the shops and hit him (appellant). When he tried to inflict 2nd blow, in that process, the stick slipped, Hari Chand felled on the platform of the shop and sustained injuries. The argument further proceeds that the evidence brought on record by the prosecution falls short as is required to prove a criminal charge. Thus, she prayed for acquittal of the appellant.

15. Hailing the impugned judgment of conviction, on the contrary, the learned State counsel has vehemently urged that the case of prosecution is duly proved. The ocular version finds corroboration from the medical evidence and no interference is warranted in this regard.

16. After hearing the learned counsel for the parties at quite some length, going through the evidence on record with their valuable assistance and after considering the entire matter deeply, to my mind, there is no merit in the present appeal as

regards the conviction of the appellant is concerned.

17. Ex facie, the celebrated submission of learned counsel for appellant that the story of the prosecution is highly improbable, is not only devoid of merit but misplaced as well.

18. As is evident from the record that the prosecution, inter-alia, claimed that on 31.10.2001 at about 7.30 P.M., as soon as the complainant, his son Rahul Arora and father Hari Chand were present in the shop, in the meantime, the appellant came there and asked them to provide him household articles. His father asked him to pay the previous balance amount, only then, he would give the articles to him. In this manner, the dispute has suddenly originated between them. Meanwhile, the appellant gave a stick (danda) blow, which landed on the head of Hari Chand (deceased). They raised noise and tried to catch, but the appellant threatened to kill and decamped from the place of occurrence. Therefore, the story of prosecution is very probable and natural, particularly when even he has admitted his presence as well as presence of PW5, PW6 and the deceased at the spot at the relevant time of commission of offence.

19. Not only that, the complainant (PW5) and his son (PW6) have duly corroborated the prosecution case on all vital aspects of actual crime. They gave the vivid and natural version of the incident. They unequivocally have deposed that the appellant gave the stick (danda) blow, which landed on the head of Hari Chand (deceased), in the same manner as projected by the prosecution. The next contentions of learned counsel for the appellant that the prosecution has not examined Ravinder Kumar (PW) and there is no independent corroboration to the statements of PW5 & PW6, lack merit as well. According to the complainant, Ravinder Kumar (PW) subsequently came to the spot after hearing their noise. Moreover, the prosecution is not legally required to produce each and every witness of the occurrence in the Court, in view of Section 134 of the Indian Evidence Act, which postulates that no particular number of witnesses shall in any case be required for the proof of any fact in issue, specially when the prosecution has examined sufficient evidence on record to prove the guilt of the appellant. It is well known principle of law that reliance can be placed on the solitary statement of a witness if the court comes to the conclusion that the said statement is true and the version of the prosecution is correct. The Courts are required to consider the merit of the statement of a particular witness. They are not concerned with the number of witnesses examined by the prosecution. At the same time, it is the quality and not the quantity of the evidence, which is to be judged by the Court to place credence on the statement. Thus, the non-examination of Ravinder Kumar (PW) would not adversely affect the case of prosecution in any manner, which is otherwise proved on the record by the indicated acceptable evidence.

20. This is not the end of the matter. The ocular version of the prosecution finds further corroboration from the medical evidence of Dr. Dharambir (PW1), who found

a lacerated wound on the right parietal region of the deceased. The defence version that when Hari Chand tried to strike, then the appellant caught hold of the stick (danda) and during the course of struggle, the stick slipped from his hands, Hari Chand felled and his head struck with the bricks of the ramp, is ridiculous and the statement of Sukhwinder Singh (DW1) outrightly deserves to be rejected. The perusal of the MLR and statement of PW1 would reveal that there was a lacerated wound measuring 9 cm x 0.75 cm. on the right parietal region, horizontally placed 11 cm above the pinna of right ear. The parietal bone showed a crack. On dissection and opening the skull, there was a big haematoma on the parietal surface of the brain. The brain showed laceration, meninges showed laceration. CSF was blood stained. That means, the nature, length and seat of the injury, would naturally suggest that the stick blow was so forceful that it culminated into the fracture of parietal bone and the occurrence had taken place in the same manner as projected by the prosecution and not in terms of defence taken by the appellant.

21. Thus, it would be seen that the story of prosecution is probable and very natural. The ocular version is fully supported by the medical evidence. The matter was promptly reported to the police. The chain of link evidence is complete. The investigating officers have duly testified their investigations. The narration given by PW5 and PW6 is cogent, convincing and natural. They were cross-examined at length, but no substantial material could be elicited in their searching cross examination to dislodge their testimony and impeach their credibility. No motive could possibly be attributed to them as to why they would falsely implicate the appellant in this case. The learned counsel for the appellant did not point out any legal infirmities to doubt the prosecution story. Therefore, the trial Court has rightly convicted him and the impugned judgment of conviction and order of sentence of fine deserve to be maintained in the obtaining circumstances of the case.

22. Be that as it may, the last arguments of learned counsel that the occurrence suddenly originated on a trivial matter and the offence u/s. 304 Part-II, IPC is punishable with imprisonment of either description for a term which may extend to ten years, or with fine, or with both and since the appellant is a first offender, so, there are sufficient grounds and large scope of reduction in the matter of his sentence of imprisonment, have considerable force. It is not a matter of dispute that as per custody certificate, he (appellant) has already undergone the period of his substantive sentence of imprisonment of 3 years, 3 months and 22 days u/s. 304 Part-II, IPC. This factual position is acknowledged by the learned State counsel.

23. Having regard to the rival contentions of learned counsel for parties, to me, it would be in the interest and justice would be sub-served if the sentence of imprisonment imposed on the appellant by the trial Court is reduced to the period already undergone by him, inter-alia, on the following grounds:-

i) The occurrence in this case is of 31.10.2001 and the appellant has already faced the pangs and suffered the agony of protracted trial & appeal for the last about 12

years.

ii) He was a young person of 31 years of age at the time of incident.

iii) His father has already died, mother used to remain ill and there is no other person to look after her.

iv) As per custody certificate, the appellant has already undergone the period of his substantive sentence of 3 years, 3 months and 22 days.

v) He is a first offender and is not a previous convict.

In the light of aforesaid reasons, as there is no merit, therefore, the appeal filed by the appellant is hereby dismissed. The impugned judgment of conviction and order of sentence of fine imposed on him by the trial court are maintained. However, taking into consideration the totality of the facts & circumstances, emanating from the record, as discussed here-in-above, the sentence of imprisonment is reduced to (3 years, 3 months and 22 days) already undergone by him. Accordingly, the impugned order of sentence is modified to the extent and in the manner depicted here-in-before.

Needless to mention that necessary consequences & compliance will naturally follow accordingly.