

JARNAIL SINGH
v.
STATE OF PUNJAB
(Criminal Appeal No.62 of 2009)

JANUARY 15, 2009

**[ALTAMAS KABIR AND DR. MUKUNDKAM
SHARMA JJ.]**

Penal Code, 1860 – s. 304 (Part II) – Death Caused – Three eye-witnesses – One turned hostile and the other declared won-over – Evidence of sole eye-witness not in conformity with his police statement and FIR version given by him – Conviction u/s.304 (Part II) by trial court – In appeal by accused High Court convicting the accused u/s. 304 (Part I) – On appeal, held: Conviction liable to be set aside – Prosecution version is doubtful and full of contradictions – Testimony of sole eye-witness cannot be relied on if it is full of embellishment and contradictions without corroboration in material particulars by reliable testimony direct or circumstantial – High Court was also not justified in convicting the accused of a higher degree of offence by altering the conviction to s.304 (Part I) from 304 (Part II) in absence of any State appeal – Administration of Criminal Justice.

Appellant-accused was prosecuted for having caused death of one person. There were three eye-witnesses to the incident. Accused was charged u/s. 302 IPC. During trial PW-6 (eye-witness) turned hostile, while the other eye-witness was not examined as having been won over by the accused. PW-7 gave different version of the incident than those given before police and in FIR. Trial court convicted the accused u/s.304 (Part II) IPC. In the appeal of the accused, High Court altered the conviction to one u/s.304 (Part I). Hence the present appeal.

A Allowing the appeal, the Court

B HELD: 1. High Court was not justified in converting the order of conviction and altering the same from Section 304 (Part II) IPC to Section 304 (Part I) IPC, particularly when the prosecution did not file any appeal. By virtue of the order passed by the High Court, the appellant stood convicted of a higher degree of offence than that of Section 304 (Part II) IPC. If a person is charged under a grave Section, but however, it acquitted under the said grave Section by the Trial Court, then it would amount to travesty of Justice if in his own appeal he is convicted under that grave Section, without there being any appeal from the State and without there being prior notice of enhancement issued by the appellate court. [Para 14] [319-D-G]

D *Ruli Ram v. State of Haryana* (2002) 7 SCC 691 and *Abdul Aziz v. State of Rajasthan* (2007) 10 SCC 283, relied on

E 2.1. The entire story sought to be put forth by the prosecution and by PW-7 particularly appears to be doubtful and full of contradictions. It will be unsafe to convict a person on the basis of such unreliable and untrustworthy evidence particularly when such statements are full of embellishment and contradictions, without corroboration in material particulars by reliable testimony, direct or circumstantial. [Para 20] [323-B-C]

G 2.2. It is no doubt true that conviction could be based on the sole testimony of a solitary eye-witness but in order to be the basis of conviction his presence at the place of occurrence has to be natural and his testimony should be strong and reliable and free from any blemish. Since the case must stand or fall by the evidence of single witness, it is necessary to examine that evidence critically. In the present case, PW-7 is not trustworthy and

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reliable witness, for he is changing his version frequently. He had given one version in the F.I.R. which is reiterated during the course of investigation before the police whereas he had given a totally different version at the time of his statement before the court. [Paras 17 and 18] [321-F-H; 322-A-B]

Chuhar Singh v. State of Haryana (1976) 1 SCC 879 relied on

2.3. Evidence of PW-8, who stated that he was the owner and driver of a taxi and on the relevant date, the accused hired the taxi of the deceased in his presence and after that the deceased never returned, is also found to be not worthy of reliance, for he did not produce any registration certificate. On his statement that he was owning a taxi, he later said that he had sold the taxi. He also stated in his evidence that he is unable to recollect as to where from he had purchased the taxi or to whom he had sold his taxi. He also stated in his deposition that he was holding a forged driving license. These circumstances make him totally unreliable. [Para 19] [322-G-H; 323-A]

Case Law Reference:

(2002) 7 SCC 691	Relied on	Para 14
(2007) 10 SCC 283	Relied on	Para 14
(1976) 1 SCC 879	Relied on	Para 17

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 62 of 2009.

From the final Judgment and Order dated 18.12.2007 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal SB No.532 of 1996.

R.K. Talwar and Yash Pal Dhingra, for the Appellant.

A Anil Grover, Manish Kumar and Kuldip Singh, for the Respondent.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave Granted.

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2. The present appeal is filed by the appellant being aggrieved by the judgment and order of the learned Single Judge of the Punjab & Haryana High Court affirming the judgment and order of the learned Additional Sessions Judge, Patiala finding the appellant- accused guilty of the offence alleged against him. The learned Additional Sessions Judge, C found the appellant-accused guilty and convicted him under Section 304 Part II of the Indian Penal Code, 1860 (for short 'IPC') and sentenced him to undergo rigorous imprisonment for eight years. However, in the appeal filed by the appellant as D against the order of conviction and sentence the learned Single Judge while maintaining the finding of guilt of the appellant converted the conviction of the appellant from Section 304 Part II IPC to offence under Section 304 Part I IPC and sentenced E him to undergo rigorous imprisonment for five years.

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3. In order to appreciate the contention raised by the appellant-accused that the courts below have failed to properly analyse and scrutinise the evidence of the solitary witness and that the presence of the said solitary witness at the place of F occurrence was not natural and also that his testimony was not free from embellishment, we are required to mention brief facts as alleged by the prosecution.

4. Ramtar (hereinafter referred to as 'deceased') was the G younger brother of the Harjinder Kumar, the complainant, both sons of Jiwa Nath. The deceased was employed as a driver of a Maruti Van bearing Registration No. PB-01-0353 belonging to Gurdev Singh, resident of village Sular.

H On 15.11.1993, Harjinder Kumar was proceeding from village Phagan Majra to meet Mohinder Singh son of Kartar

Singh and at about 6.30 p.m., he reached the bus stop of village Phagan Majra, where he met Manjit Singh, Sarpanch and Chanan Singh, Member Panchayat of village Kasiana. They all then started to village Phagan Majra. When they reached the point from where a kacha path takes off to village Kasiana, they found the abovementioned Maruti Van with its headlight on, lying parked with its windows open at a distance of about 1 1/2 Killa from the metalled road. On suspicion, they went towards the van and on reaching there, they found deceased seated on the right rear seat and accused Jarnail Singh seated on the left rear seat of the van.

Accused was putting pressure on deceased to take the van by kacha path way to village Kasiana but the decease was disinclined. An exchange of hot words ensued. Accused dealt two stab blows with knife, one on the chest and other on right flank of deceased. The deceased became unconscious and rolled down on the ground through the right window of the van. On sensing that deceased has succumbed to the injuries, accused plunged the knife into his chest, in order to commit suicide. The knife fell down from his grip in the van.

After having arranged a tractor the deceased and accused were brought to Rajindra Hospital, Patiala. On reaching the hospital, Harjinder Kumar and others were told by doctor that deceased had already expired. Harjinder Kumar and Manjit Singh left for the Police Station, Sadar Patiala. When they reached near the general bus stand, Patiala they came across ASI Karnail Singh alongwith other police officials at about 10.30 p.m. Harjinder Kumar made statement Ex. PD before the ASI who made his endorsement Ex.PD/1 and sent the same to the Police Station where on its basis formal FIR Ex. PD/2 was recorded. ASI Karnail Singh alongwith Harjinder Kumar, Manjit Singh and other police officials went to Rajindra Hospital, Patiala. At that time the dead house was lying locked. Early in the morning at about 6.30 a.m. Raj Kumar the attendant came to the dead house and opened the same. The dead body of

A deceased was identified by Harjinder Kumar and Manjit Singh. The ASI prepared the Inquest Report Ex. PA/1 and handed over the dead body alongwith request Ex. PA/2 to Constable Gurdeep Singh for postmortem examination.

B ASI in the company of Harjinder Singh, Manjit Singh and other police officials went to the scene of crime, and prepared site plan Ex. PW 11/A showing the place of occurrence. He seized the knife Ex. P1, which was allegedly stained with blood. The same was converted into a parcel after preparing its rough sketch Ex. PW 11/B. The knife was taken into possession vide memo Ex. PW 10/A. Some portion of the rear seat of the van which was blood stained alongwith its foam was also removed and turned into a parcel with seal 'GS' and taken into possession vide memo Ex PW.10/E. The van alongwith its Registration Certificate Ex. PW 10/D was also seized vide memo Ex. PW 10/C. Thereafter ASI came to Rajindra Hospital, Patiala and took into possession the parcel containing clothes of the deceased. He deputed some constables including Amar Singh to guard the accused in the hospital. He went back to the police station on 16.11.1993 and deposited the case property with seals intact with MHC Bhupinder Singh. He arrested the accused on 9.12.1993. After completion of investigation, the charge-sheet was filed in the court of learned Chief Judicial Magistrate, Patiala, who vide his order dated 15.03.1994 committed the case to the court of learned Sessions Judge, Patiala for trial.

5. The accused was charged u/s 302 IPC as well as u/s 309 IPC. However, the charge u/s 309 IPC was deleted subsequently. In order to substantiate its case, the prosecution examined 12 witnesses in all. Harjinder Singh who was the eye witness and complainant was examined as PW7. Manjit Singh, Sarpanch, the alleged eye witness was also examined as PW6 but he did not support the prosecution version, not even the presence of PW7 at the time of occurrence. Consequently he was declared hostile. Chanan Singh another alleged eye

witness was given up on the ground that he has been won over by the accused. A

6. In the FIR it was stated by PW-7, the alleged eye witness, that the deceased brother first gave a knife blow in the chest of the accused and thereafter the accused gave two stab blows with his knife on the person of deceased. The same set of allegation was made by said PW-7 even before the police during the course of investigation. However, during the trial he stated that there was an exchange of hot words between the accused and the deceased consequent to which the accused gave two stab blows with the knife to the deceased, one of which fell on the chest whereas the other on the right flank of the deceased. It was also stated in the evidence by the said PW-7 that on seeing that the deceased had died the accused attempted to commit suicide by plunging the knife on the left side of his chest. B
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7. On the other hand, the accused put forth that he was learning driving from the deceased, who was his friend. He stated that on the day of the occurrence three unidentified person hired the van of the deceased and on reaching the spot, deceased refused to take his van on kacha path and those person picked up a row with him and they assaulted both the deceased and the accused with the Gatra Kirpan due to which both of them suffered injuries. He further stated that he became unconscious on receipt of injury in his stomach and subsequently he was involved in this case. E
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8. The learned Additional Sessions Judge, on appreciation of the evidence on record held that though the injury on the accused could have been self inflicted as stated by the doctor, but even considering that the same was inflicted in self-defence, the right of self-defence to the extent of causing the death of the deceased was not available to the accused. On noticing and appreciating the fact that there was allegation of an exchange of hot words and that the incident occurred at the spur of the moment without any premeditation, the learned Additional G
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A Sessions Judge found the accused guilty and convicted him under Section 304 Part II IPC and sentenced him to undergo rigorous imprisonment for eight years.

B 9. On an appeal being filed by the appellant as against the aforesaid order of conviction and sentence the learned Single Judge heard the parties on merits. While maintaining the finding of guilt against the appellant the learned Single Judge, however, convicted the appellant under Section 304 Part I IPC by altering the same from one under Section 304 Part II IPC. However, taking into consideration the fact that the accused has become permanently physically handicapped and his disability is 80% the learned Single Judge reduced the sentence to five years instead of eight years.

D 10. The accused filed the present appeal as against the aforesaid orders. We have heard the learned counsel appearing for the appellant-accused as also learned counsel appearing for the State and also scrutinised the evidence on record.

E 11. The learned counsel appearing for the appellant submitted before us that the presence of PW-7, the only eye witness supporting the alleged story of the prosecution, at the spot is too providential to be true. It was also submitted that although it is alleged that the First Information Report was recorded at 10.30 or 11.00 p.m., but in the inquest report which was drawn at 7.00 a.m. on the next day, in the place of the F.I.R number no particulars were given and only a dash was shown and the F.I.R number was inserted at the later point of time. Relying on the said fact it was submitted that the first information report was submitted late and belatedly on the next date i.e. on 16.11.1993 at about 9.00 a.m. He further submitted that the statement of PW-7 is full of embellishment and contradictions from his previous statement. He drew our attention to the allegation made in the first information report and to the statement of said PW-7. He submitted that said PW-7 is neither trustworthy nor reliable, and therefore, the appellant should have been acquitted instead of being convicted in the aforesaid

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manner.

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12. The learned counsel appearing for the respondent, on the other hand, submitted that both the courts below namely the High Court and the learned Additional Sessions Judge found the appellant guilty of the offence and the said findings and conclusion reached should not be interfered with.

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13. The learned Additional Sessions Judge found the appellant guilty of the offence and convicted the appellant-accused under Section 304 Part II IPC. The prosecution did not file any appeal as against the aforesaid order of conviction and sentence whereas the appellant-accused filed an appeal against his order of conviction.

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14. It is established fact that the offence of Section 304 Part I IPC is of a higher degree than that of the offence under Section 304 Part II IPC, as also held in *Ruli Ram v. State of Haryana* [(2002) 7 SCC 691, Para 8]. The learned Single Judge, therefore, was not justified in converting the order of conviction and altering the same from Section 304 Part II IPC to Section 304 Part I IPC, particularly when the prosecution did not file any appeal. By virtue of the order passed by the learned Single Judge the appellant stood convicted of a higher degree of offence than that of Section 304 Part II IPC, although the learned Single Judge altered the sentence from eight years to five years. In the case of *Abdul Aziz v. State of Rajasthan* [(2007) 10 SCC 283] it was held by this Court that if a person is charged under a grave Section, but however, if acquitted under the said grave section by the Trial Court, then it would amount to travesty of Justice if in his own appeal he is convicted under that grave section, without there being any appeal from the State and without there being prior notice of enhancement issued by the appellate Court.

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15. Be that as it may, it is necessary now to consider whether the prosecution case as alleged could be said to be trustworthy and reliable, for which we are required to refer and

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A analyse the evidence as adduced by the parties.

16. According to the prosecution the incident took place on 15.11.1993 at about 6.30 p.m. which was an incident happening on an evening of the winter season. The deceased who was the brother of PW-7 was allegedly driving the van which was parked at the place of incident with windows open and headlights on, which meant that it was dark at that point of time. Although it was a winter night still the windows of the car were kept open, for which according to the prosecution, PW-7 could see the entire incident. In the first information report PW-7 stated that initially a knife blow was given by the deceased to the accused and thereafter the accused gave two knife blows to the deceased, which resulted in his death and consequently his body came out of the window. The aforesaid version as stated in the first information report, was however, later on changed and altered when PW-7 deposed in the court that the accused after giving two knife blows to the deceased attempted to commit suicide by plunging the knife in his chest. In support of the said contention reliance was placed on the evidence of the doctor who has stated during his examination that the aforesaid injury on the accused could have been self inflicted also. PW-7 is said to be the eye witness who has allegedly seen the entire occurrence including the exchange of hot words between the appellant and the deceased in a winter night and that also when it was totally dark. According to him, he could see the entire incident in the light of the headlight of the car.

17. The aforesaid statement of PW-7 does not appear to be trustworthy and reliable for the simple reason that even though the headlight of the car was on, it would be lighting only the front portion and not the side of the car and may not even have lighted sufficiently to enable PW 7 to see as to what had happened inside the car. Although it was a winter night it is not stated nor understood as to why the windows of the car were kept open. It is also not stated by PW-7 that he had made any

effort to help or render assistance to stop the verbal dual between the accused and the deceased or took any effective steps to stop the stabbing on both the persons. PW-7 had further stated that his brother was a driver of the van and that the incident had happened because he was unwilling to take the vehicle by the village path. However, in his deposition he has stated that his brother was seated at the back seat alongwith the deceased. It is not understood as to why the driver of the vehicle driving the car would seat in the back seat of the car instead of driving the car from the front seat. Presence of PW-7 at the spot at that point of time was also providential and he has been examined only as a chance witness. The other alleged eye witness namely Chanan Singh, Member Panchayat of village Kasiana was not examined at all on the ground that he was won over by the accused. Marjit Singh, Sarpanch who is stated to be the last and third eye witness turned hostile. Therefore, out of the three eye witnesses' one has become hostile whereas the other was not examined at all by the prosecution and we have only one eye witness PW-7, who happens to be the brother of the deceased. If his evidence is discarded there is no other evidence on the basis of which the accused could be convicted.

It is no doubt true that conviction could be based on the sole testimony of a solitary eye witness but in order to be the basis of conviction his presence at the place of occurrence has to be natural and his testimony should be strong and reliable and free from any blemish. In *Chuhar Singh v. State of Haryana*, [(1976) 1 SCC 879] this Court held that what is important is not how many witnesses have been examined by the prosecution but what is the nature and quality of evidence on which it relies. The evidence of a single witness may sustain a sentence of death whereas a host of vulnerable witnesses may fail to support a simple charge of hurt. Since the case must stand or fall by the evidence of single witness, it is necessary to examine that evidence critically.

A 18. However, when we scrutinize the evidence of PW-7,
in the present case, we do not find him to be trustworthy and
reliable witness for he is changing his version frequently. He had
given one version in the F.I.R which is reiterated during the
course of investigation before the police whereas he had given
B a totally different version at the time of his statement before the
court. He had stated in the F.I.R that following the altercation
between the deceased and the accused the deceased first
gave a knife blow. When inquest proceedings took place on
the next day at 7.00 a.m. he stuck to the same version and
C during investigation also he confirmed the aforesaid allegation
made by him whereas in the trial he stated that the accused
first gave two knife blows to the deceased and then he tried to
commit suicide by giving a knife blow to himself. He had also
stated that on receiving those two blows the deceased came
D through the window and fell down on the ground. The said
version also cannot be believed for the deceased after
receiving the injuries could not have gone out of the window
unless the door was open. The car was allegedly parked with
the headlights on and if that was so, the key of the car was
available in the starting/ignition switch and, therefore, there was
E no reason why the said car could not have been driven with the
dead body of the deceased and the injured to the hospital as
also to the police station by the said PW-7 and the other
witnesses allegedly with him at that point of time for it has come
in evidence that the other witness knew driving as he was
F driving the tractor.

19. The prosecution also examined Balbir Singh, PW-8,
who stated that he is the owner and driver of a taxi and on
15.11.1993 Jarnail Singh hired the taxi of Ramtar in his
presence and after that Ramtar never returned. The deposition
G of the said witness is also found to be not worthy of reliance
for he did not produce any registration certificate. On his
statement that he was owning a taxi, he later said that he had
sold the taxi. He also stated in his evidence that he is unable
H to recollect as to where from he had purchased the taxi or to

whom he had sold his taxi. He also stated in his deposition that he was holding a forged driving license. These circumstances make him totally unreliable. A

20. The entire story sought to be put forth by the prosecution and by PW-7 particularly appears to be doubtful and full of contradictions. It will be unsafe to convict a person on the basis of such unreliable and untrustworthy evidence particularly when such statements are full of embellishment and contradictions, without corroboration in material particulars by reliable testimony, direct or circumstantial. Consequently, we set aside the order of conviction and sentence passed against the appellant and give him benefit of doubt. He stands acquitted of the charges. He shall be set free immediately, unless required in any other matter. B C

21. The appeal is accordingly allowed. D

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Appeal allowed.