

EB

Cr1.A.No. 225 OF 2003

ITEM No.102

Court No.5

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No. 225 of 2003

AVTAR SINGH

Appellant (s)

VERSUS

STATE OF PUNJAB

Respondent (s)

(with office report)

Date : 12/09/2003 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE B.P. SINGH

For Appellant (s) Mr. Tapash Ray, Sr. Adv.
Mr. Satish Vig, Adv.
Mr. Gurvinder Singh Dhillon, Adv.

For Respondent (s) Mr. J.K. Bhatia, Adv.
Mr. Bimal Roy Jad, Adv.

UPON being mentioned the Court made the following
O R D E R

Mr. Tapash Ray, learned senior counsel started his arguments at 12.35 p.m. and concluded at 3.15 p.m. Hearing concluded.
The appeal fails and the same is dismissed in terms of the signed order.

(PAWAN KUMAR) (PREM PRAKASH)
COURT MASTER COURT MASTER

(signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 225 OF 2003

Avtar SinghAppellant

Versus

State of PunjabRespondent

O R D E R

Though the appellant was charged of the offence punishable under Section 302 IPC for having caused the death of Shangara Singh the Sessions Judge, Jalandhar after trial found him guilty only of an offence punishable under Section 304 Part I of Indian Penal Code and sentenced him to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- .

Against the said judgment the appellant preferred an appeal challenging his conviction and sentence. While the State preferred an appeal challenging the acquittal of the appellant under Section 302 IPC. The complainant also preferred a revision petition on the very same ground as was raised by the State in its appeal. The High Court by the impugned judgment has dismissed the appeal of the appellant and allowed the State appeal and converted the conviction to one under Section 302 IPC and sentenced the appellant to undergo imprisonment for life.

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Against the said judgment of the High Court the appellant is in appeal before us.

The brief facts necessary for the disposal of this appeal are that the deceased Shangara Singh had owed some money to the appellant hence the appellant on 17th May, 1989 at about 8-9 p.m. went to the house of the said deceased and demanded the return of the money. This was done in the presence of the father of the deceased, who was not examined by the prosecution, brother of the deceased, PW.7 and wife of the deceased, PW.8. On the deceased's pleading his inability to repay the said sum of money the appellant removed a knife from his dub and stabbed the deceased twice on the left side of his chest and on the right shoulder consequent to which the deceased died instantaneously. PW.7 who noticed the incident went to the Sarpanch of the village who has been examined as a defence witness and at his instance proceeded to the police station to lodge a complaint but he met the Inspector incharge of the Police Station, PW.9 on the way to the Police Station wherein the statement of PW.7 was recorded by PW.9 who after making the required endorsement sent the same to the Police Station to register a crime. It is the prosecution case that the accused was produced by the Sarpanch, DW.1 before the Investigating Officer on 30th May, 1989 and on a statement made by the appellant a knife was recovered from the place where the same was concealed by the appellant. The Investigation Officer after completing the investigation as stated above filed a charge-sheet

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against the appellant for the offence punishable under Section 302 IPC which came to be converted to under Section 304 Part I IPC by the learned Sessions Judge but on appeal the same was converted to under Section 302 IPC by the High Court.

Shri Tapash Ray, learned senior counsel appearing for the appellant contended that the evidence of PWs.7 and 8 cannot be relied upon for basing a conviction against the appellant. His submission was that even according to the prosecution a large number of neighbours had come to the house of the deceased on hearing roulla and none of these independent witnesses has been examined as also the father of the deceased has not been examined, therefore, it is not safe to rely on the evidence of PWs.7 and 8. He also submitted that so far as PW.8 is concerned, there is material on record to show that her relationship with deceased was not cordial. She was having affair with one Sucha Singh. According to DW.1 the said Sucha Singh had married to PW.8, therefore, it is Sucha Singh and PW.8 who connived to kill the deceased, this is, according to the learned counsel, throws considerable doubt on the evidence of PW.8. However, the two

courts below and have based reliance on the evidence of PWs.7 and 8 which is erroneous. The learned counsel contends that in view of the fact that DW.1, Sarpanch of the village who happened to visit the place of incident soon after the murder of the deceased has not supported the case of the prosecution same ought not to have been

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believed. According to the learned counsel DW.1 being a Sarpanch had no reason to depose against the prosecution unless the prosecution case was not true. We find from the discussion in the judgments of the two courts below that they have given sufficient reason to disbelieve the evidence of DW.1 it is seen from the evidence of DW.1 that though he was present when the complaint was given to PW.9 by PW.7 which mentioned the name of the appellant as accused he did not protest against the contents of the complaint. We also notice that according to the inquest report DW.1 was present and signed the report but when confronted with the same, he stated that he had signed the report without knowing the contents of the same which in our opinion is not acceptable. Even the fact that PWs.7 and 8 were not present when he went to the place of incident is only spoken to by DW.1 whose evidence we have already observed is not acceptable to us. There can be no doubt about the presence of PWs.7 and 8 at the place of incident because it is natural that for the brother and wife of the deceased to be present in the house of the deceased. PW.7 has given good reasons to be present in deceased's house and mere suggestion by the defence or statement of a witness like DW.1 that he did not see these two witnesses when he went to the place of the incident cannot be a
...5/-

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ground for rejecting his evidence. The learned counsel for the appellant also pointed out that defence had suggested an alternative motive for the murder of the deceased, that is that Such a Singh and PW.8 had illicit relationship hence they wanted to get rid of the deceased. We think it is only a suggestion without any basis which the two courts below rightly rejected. The learned counsel then contended that the trial court was justified in coming to the conclusion that the act of the appellant in causing the death of the deceased would be one that falls under Exception 4 to Section 300 IPC, therefore, trial court came to the conclusion that the appellant is only guilty of an offence punishable under Section 304 Part I IPC. He submitted that the High Court has erred in converting the said conviction to one under Section 302 IPC. Having noticed the nature of injuries found in the body of the deceased as spoken by the doctor we have no hesitation to hold that the act of the appellant can never be brought under Section 304 Part I IPC. We are in agreement with the finding of the High Court that
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the said act squarely falls under Section 302 IPC, therefore, the said argument of the learned counsel also fails. For the reasons stated above the appeal fails and the same is dismissed.

.....J.
(N. SANTOSH HEGDE)

.....J.
(B.P. SINGH)

NEW DELHI,
SEPTEMBER 10, 2003.