

Neutral Citation No. - 2025:AHC:90859-DB

Reserved on - 21.04.2025

Delivered on - 28.05.2025

Court No. - 43

Case :- CRIMINAL APPEAL No. - 1790 of 1983

Appellant :- Sukh Ram And Another

Respondent :- State of U.P.

Counsel for Appellant :- S.K.Srivastava,Shamshuddin Khan (S U Khan)

Counsel for Respondent :- Dga

Hon'ble Vivek Kumar Birla,J.

Hon'ble Jitendra Kumar Sinha,J.

(Per:- Hon'ble Jitendra Kumar Sinha,J.)

1. Heard Sri Shamshuddin Khan, learned counsel for the appellants and Sri Rahul Asthana, learned A.G.A. for the State.

2. By means of this criminal appeal the appellants have challenged the judgement and order dated 30.07.1983 passed by Sri O.P. Garg, IIIrd Additional Sessions Judge, Hamirpur in Session Trial No.- 276 of 1980 arising out of Case Crime No.- 37 of 1980 P.S.-Khanna, District-Hamirpur, whereby the appellant no.1-Sukh Ram has been convicted under Section 302 of I.P.C. and has been sentenced to undergo imprisonment for life, whereas the appellant no.2-Hari Lal @ Hariya has been convicted under Section 109 read with Section 302 of Indian Penal Code and has been sentenced to undergo imprisonment of life.

Brief facts

3. A first information report was lodged by one Kallu @ Shiv Narayan on 21.03.1980 stating therein that at 05:30 P.M. on the same day Ram Swaroop came to him and informed him that Kallu s/o Babbu and Munna s/o Beni Lal were trying to remove 'laahi' from his 'khalihan'. On this information the informant Kallu @ Shiv Narayan along with his brother Banke Bihari reached 'khalihan' to see that Kallu and Munna were taking away bundles of 'laahi'. The duo, Kallu @ Shiv Narayan and his brother Banke Bihari caught hold of two boys and proceeded towards the village

where one Ram Kishor met them and advised that the boys be taken to police station. When the informant and his brother along with the two boys were proceeding towards the village, Hari Ram, Bhagvan Deen, Sukh Nandan, Beni Lal, Babbu, Gorava, Mahangu and Ram Prasad Teli met them and they said that the boys had not committed the theft of 'laahi' and they started quarreling. On hearing the uproar of quarrel, Mool Chand, Advocate, brother of complainant who used to practise in Mahoba and had come to village, told them that there was no need to quarrel and legal steps were required. On this, Sukh Ram armed with a gun came there. Hari Ram @ Hariya on seeing Sukh Ram, exhorted him to teach a lesson to Mool Chand, Advocate, and thereafter Sukh Ram opened fire directing his gun towards Mool Chand which hit him on his mouth. As a result of the fire arm assault, Mool Chand fell down and succumbed to his injuries instantly at the spot, thereafter Shukh Ram fled away towards North direction and he was chased by the complainant for some distance but Shukh Ram could not be apprehended. The other accused persons also fled away from the scene of occurrence. The incident took place at 03:00 P.M. On this written report Case Crime No.- 37 of 1980 was registered. Written report was scribed by Banke Bihari PW-2 at the instance of Kallu @ Shiv Narayan PW-1 at 12:30 P.M. on 22.03.1980.

4. The Investigating Officer commenced investigation and inquest of the dead body was carried out and inquest report Exhibit No.- Ka-3 was prepared and post mortem of the dead body was also done in which the following injuries on the dead body of the deceased Mool Chand were found:-

*"(i)- Gun shot wound 13cm * 13cm on the mouth, middle part of mandible, skin, muscle absent, 7cm medial and below from the left ear and 8cm medial and below right ear, margin irregular, blackening and scorching around the wound present, tongue lacerated, dried blood present all around.*

*(ii)- Gun shot wound 1.5 cm * 1cm chest cavity deep on the neck right side 5cm above the medial end of clavicle. Margin blackened, inverted.*

*(iii)- Gun shot wound 1cm * 1.5cm chest cavity deep on the neck left side 4 cm above the sternum. Margin blackened, inverted.*

*(iv)- Dried abrasion 2.5cm * 1cm on front of left shoulder 3cm below the acromion process.*

*(v)- Dried abrasion 1cm * 1cm on the lateral border of sternum right side 9cm below the injury No.2."*

5. After completing the investigation, the Investigating Officer, Sub-Inspector, PW-4 filed charge sheet against accused persons namely Hari Ram @ Hariya, Bhagwan Deen, Beni Lal, Baboo, Gurwa, Mahgoo and Ram Prasad under Sections 147, 302 read with Section 149, 109 read with Section 302 of I.P.C.

6. The learned trial Judge framed charge against accused Sukh Ram under Sections 302 and 148 of the I.P.C. and rest of the accused persons were charged under Section 147, 149, 302 of Indian Penal Code. Accused Hari Ram was further charged for the offence of abatement punishable under Section 109 read with Section 302 I.P.C. All the accused persons denied the charges and claimed to be tried. Thus trial commenced.

7. On conclusion of the trial, learned IIIrd Additional Sessions Judge, Hamirpur vide judgement dated 30.07.1983 convicted Sukh Ram under Section 302 I.P.C. and sentenced him to undergo imprisonment for life, whereas, appellant no.2 Hari Ram @ Hariya under Section 109 read with Section 302 I.P.C. and he was also sentenced to undergo imprisonment for life. Rest of the accused persons namely Bhagwan Deen, Beni Lal, Baboo, Gurwa Mahgoo and Ram Prasad were acquitted of the charges framed against them.

Evidence of Prosecution

8. The prosecution has examined four witnesses in oral evidence namely PW-1 Lallu @ Shiv Narayan, PW-2 Banke Bihari, PW-3 Dr. B.K. Nigam, who conducted postmortem of the dead body of the deceased Mool Chand and PW-4 S.I. Sharman Singh, who is Investigating Officer who also proved the inquest of the dead body of the deceased Mool Chand. The prosecution has proved the following documents in documentary evidence. Written report as Ext. Ka1. Postmortem report as Ext. Ka2. Panchayatnama as Ext. Ka3. Photo lash as Ext. Ka4. Challan lash as Ext. Ka5. Site Plan with Index as Ext. Ka9. Charge-sheet as Ext. Ka10. F.I.R. as Ext. Ka11.

9. On closure of prosecution evidence, the statements of accused persons were recorded under Section 313 Cr.P.C. Accused Sukh Ram in his statement under Section 313 Cr.P.C. has denied his involvement in the case and has stated that he has been implicated in this case due to enmity and the witnesses have testified due to being inimical. Similarly, accused Hari Ram @ Hariya denied his involvement in the case and similar statement has been made by accused Hari Ram @ Hariya under Section 313 Cr.P.C.

10. Learned trial court after hearing the prosecution and the defence passed the judgement of conviction and sentence impugned.

11. Learned counsel for the appellants submits that the appellants/accused persons have been implicated in this case due to enmity and PW-1 and PW-2 are highly interested witnesses and their presence at the place of occurrence is doubtful. The prosecution has failed to prove the manner in which the occurrence has taken place. Learned counsel further submits that only single shot was fired by accused Sukhram and from this it cannot be inferred that the appellant/accused had intention to cause the death of the deceased Mool Chand. Learned counsel further submits that from the evidence available on record, the prosecution has failed to establish its case against appellants beyond the reasonable doubt. Learned counsel further submits that even if it is assumed for the shake of

argument that the offence has been committed by the appellants, the same does not fall under Section 302 of Indian Penal code rather it may fall under Section 304 of the Indian Penal Code as the occurrence took place due to sudden quarrel and there was no premeditation. Learned counsel for the appellants has placed reliance on the judgement of Hon'ble Apex Court in **Jagtar Singh Vs. State of Punjab** reported in **1983 0 SCC(Cri) 459**, **Viram @ Virma Vs. State of Madhya Pradesh** reported in **2022 1 Scc(Cri) 178** and in **Sivamani and another Vs. State represented by Inspector of Police, Vellore Taluk Police Station, Vellore District** reported in **2023 0 Supreme(SC) 1180**.

12. On the other hand, learned A.G.A. has supported the judgment of learned trial court and submits that the learned trial court was right in appreciating the evidence available on record and the finding of conviction and order of sentence as recorded by it, is just and proper. Learned A.G.A. further submitted that the testimony of the PW-1 and PW-2 are worth believable beyond doubt and their evidence has been corroborated by medical evidence of PW-3. Learned A.G.A. submits that the judgement of conviction and order of sentence impugned is not fit to be interfered with by this Court and the appeal lacks merit and deserves to be dismissed.

13. This Court is tasked with the duty to re-appreciate the evidence available on record and come to conclusion whether prosecution has been able to bring home charge against the appellants/accused beyond the shadow of reasonable doubt and also whether the learned trial court has appreciated the evidence in the right perspective?

14. The genesis of the incident relates to theft of laahi by two persons, namely, Kallu and Munna from the field of the informant. PW-1 and PW-2 are categorical in their statement before the learned trial court which supports the prosecution case. In their cross-examination defence has not been able to extract any material contradiction in their statement. PW-1 and PW-2 have categorically stated that when the informant and his

brother Banke Bihari caught hold of Kallu and Munna, who were removing “laahi” from the field of informant and they were taking them to village then, the appellant Sukhram and Hariram @ Hariya along with other accused intercepted them and a quarrel took place and in the heat of quarrel Hariya exhorted appellant Sukhram to teach a lesson to deceased- Mool Chand and on this appellant Sukhram opened fire which hit the deceased on his mouth and the deceased succumbed to his injuries.

15. PW-3 Doctor B.K. Nigam, who has conducted the postmortem of the deceased has found the following injuries:-

*“(i)- Gunshot wound 13cm * 13cm on the mouth. Middle part of mandible, , skin, muscle absent, 7cm medial & below from the left ear and 8cm medial below Rt ear; margin irregular, blackening and scorching around the wound present. Tongue located. Dried blood present all around.*

*(ii)- Gun shot wound 1.5cm * 1cm * chest cavity deep on the neck Rt side 5cm above the medial end of clavicle. Margin blackened, inverted.*

*(iii)- Gun shot wound 1cm * 1.5cm * chest cavity deep on the neck left side 4cm above the sternum. Margin blackened, inverted.*

*(iv)- Dried abrasion 2.5cm * 1cm on front of left shoulder 3cm below the aeromion process.*

*(v)- Dried abrasion 1cm * 1cm on the lateral border of sternum Rt. side 9cm below the inj. No.2.*

16. PW-1 and PW-2 have nowhere stated that the appellant Sukhram repeated the fire arm assault as PW-1 has stated that Sukhram opened fire on Mool Chand which hit him on his mouth and neck and thereafter appellant fled away. Similarly, PW-2 has also stated that accused Sukhram opened fire on Mool Chand and thereafter he fled away.

17. PW-4 is Investigating Officer, who has conducted investigation and is also witness of inquest and has proved various police papers including inquest and the charge sheet. The accused- appellant Sukhram and Hariram @ Hariya have admitted in their statement recorded under

Section 313 Cr.P.C. that 7 to 8 years before the incident a criminal case under Section 107 of Cr.P.C. was instituted between the accused and the deceased.

18. Though there was one criminal case going on between prosecution and appellant side but that enmity was not immediate cause of commission of offence as the immediate cause of commission of the offence was the theft of “laahi” being committed by Kallu and Munna from the field of informant.

19. Admittedly, the occurrence has taken place at spur of the moment and without premeditation and appellant Sukhram on exhortation of appellant Hariram @ Hariya, opened fire, which hit Mool Chand. In our view the case of the appellant does not fall under Section 302 of Indian Penal Code. In this regard Exception 4 to Section 300 needs to be reproduced as hereinbelow:-

“Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

20. Hon’ble Supreme Court in the case of **Jagtar Singh Vs. State of Punjab; 1983 0 SCC(Cri) 459** has held as under:-

“The circumstances in which the incident occurred would clearly negative any suggestion of premeditation. It was in a sudden quarrel to some extent provoked by the deceased, that the appellant gave one blow with a knife. Could it be said that para 3 of Section 300 is attracted. We have considerable doubt about the conclusion reached by the High Court. We cannot confidently say that the appellant intended to cause that particular injury which is shown to have caused death. There was no pre-meditation. There was no malice. The meeting was a chance meeting. The cause of quarrel though trivial was just sudden and in this background the appellant, a very young man gave one blow. He could not be imputed with the intention to cause death or the intention to cause that particular injury which has proved fatal. Neither para 1 nor para 3 of Section 300 would be attracted.

In a trivial quarrel the appellant wielded a weapon like a knife. The incident occurred around 01:45 noon. The quarrel was of a trivial nature and even in such a trivial quarrel the appellant wielded a weapon like a knife and landed a blow in the chest. In these circumstances, it is a

permissible inference that the appellant atleast could be imputed with a knowledge that he was likely to cause an injury which was likely to cause death. Therefore, the appellant is shown to have committed an offence under Section 304 Part II of the I.P.C. and a sentence of imprisonment for 5 years will meet the ends of justice."

21. Similarly, Hon'ble Supreme Court in the case of Stalin Vs. State represented by the Inspector of Police has held as under:-

"7.1.1. In Mahesh Balmiki v. State of M.P. [Mahesh Balmiki v. State of M.P., (2000) 1 SCC 319 : 2000 SCC (Cri) 178] , this Court while deciding the question of whether a single blow with a knife on the chest of the deceased would attract Section 302 IPC, held thus: (SCC pp. 322-23, para 9)

"9. ... there is no principle that in all cases of a single blow Section 302 IPC is not attracted. A single blow may, in some cases, entail conviction under Section 302 IPC, in some cases under Section 304 IPC and in some other cases under Section 326 IPC. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him. In the instant case, the deceased was disabled from saving himself because he was held by the associates of the appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the appellant had the intention to kill the deceased. In any event, he can safely be attributed the knowledge that the knife-blow given by him was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death."

7.1.2. In Dhirajbhai Gorakhbhai Nayak v. State of Gujarat [Dhirajbhai Gorakhbhai Nayak v. State of Gujarat, (2003) 9 SCC 322 : 2003 SCC (Cri) 1809] , this Court while discussing the ingredients of Exception 4 of Section 300 IPC, held thus: (SCC pp. 327-28, para 11)

"11. The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution (sic provocation) not covered by the first exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But,

while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon an equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

7.1.4. *In Singapagu Anjaiah v. State of A.P. [Singapagu Anjaiah v. State of A.P., (2010) 9 SCC 799 : (2010) 3 SCC (Cri) 1498] , this Court while deciding the question whether a blow on the skull of the deceased with a crowbar would attract Section 302 IPC, held thus: (SCC p. 803, para 16)*

"16. In our opinion, as nobody can enter into the mind of the accused, his intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crowbar as the weapon of offence. He has further chosen a vital part of the body i.e. the head for causing the injury which had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors irresistibly leads to one and the only conclusion that the appellant intended to cause death of the deceased."

7.1.5. *In State of Rajasthan v. Kanhaiya Lal [State of Rajasthan v. Kanhaiya Lal, (2019) 5 SCC 639 : (2019) 2 SCC (Cri) 674] this Court in paras 7.3, 7.4 and 7.5 held as follows: (SCC pp. 643-44)*

"7.3. In Arun Raj [Arun Raj v. Union of India, (2010) 6 SCC 457 : (2010) 3 SCC (Cri) 155] this Court observed and held that there is no fixed rule that whenever a single blow is inflicted, Section 302 would not be attracted. It is observed and held by this Court in the aforesaid decision that nature of weapon used and vital part of the body where blow was struck, prove beyond reasonable doubt the intention of the accused to cause death of the deceased. It is further observed and held by this Court that once these ingredients are proved, it is irrelevant whether there was a single blow struck or multiple blows.

7.4. In Ashokkumar Magabhai Vankar [Ashokkumar Magabhai Vankar v. State of Gujarat, (2011) 10 SCC 604 : (2012) 1 SCC (Cri) 397] , the death was caused by single blow on head of the deceased with a wooden pestle. It was found that the accused used pestle with such force that head of the deceased was broken into pieces. This Court considered whether the case would fall under Section 302 or Exception 4 to Section 300 IPC. It is held by this Court that the injury sustained by the deceased, not only exhibits intention of the accused in causing death of victim, but also knowledge of the accused in that regard. It is further observed by this Court that such attack could be none other than for causing death of victim. It is observed that any reasonable person, with any stretch of imagination can come

to conclusion that such injury on such a vital part of the body, with such a weapon, would cause death.

7.5. A similar view is taken by this Court in the recent decision in Leela Ram [State of Rajasthan v. Leela Ram, (2019) 13 SCC 131 : (2019) 4 SCC (Cri) 528] and after considering a catena of decisions of this Court on the issue on hand i.e. in case of a single blow, whether a case falls under Section 302 or Section 304 Part I or Section 304 Part II, this Court reversed the judgment [Leela Ram v. State of Rajasthan, 2008 SCC OnLine Raj 945] and convicted the accused for the offence under Section 302 IPC. In the same decision, this Court also considered Exception 4 of Section 300 IPC and observed in para 19 as under: (Leela Ram case [State of Rajasthan v. Leela Ram, (2019) 13 SCC 131 : (2019) 4 SCC (Cri) 528] , SCC pp. 140-41)

'19. ... Under Exception 4, culpable homicide is not murder if the stipulations contained in that provision are fulfilled. They are: (i) that the act was committed without premeditation; (ii) that there was a sudden fight; (iii) the act must be in the heat of passion upon a sudden quarrel; and (iv) the offender should not have taken undue advantage or acted in a cruel or unusual manner.'

7.1.6. In Bavisetti Kameswara Rao [Bavisetti Kameswara Rao v. State of A.P., (2008) 15 SCC 725 : (2009) 3 SCC (Cri) 175] , this Court has observed in paras 13 and 14 as under: (SCC pp. 729-31)

"13. It is seen that where in the murder case there is only a single injury, there is always a tendency to advance an argument that the offence would invariably be covered under Section 304 Part II IPC. The nature of offence where there is a single injury could not be decided merely on the basis of the single injury and thus in a mechanical fashion. The nature of the offence would certainly depend upon the other attendant circumstances which would help the court to find out definitely about the intention on the part of the accused. Such attendant circumstances could be very many, they being (i) whether the act was premeditated; (ii) the nature of weapon used; (iii) the nature of assault on the accused. This is certainly not an exhaustive list and every case has to necessarily depend upon the evidence available. As regards the user of screwdriver, the learned counsel urged that it was only an accidental use on the spur of the moment and, therefore, there could be no intention to either cause death or cause such bodily injury as would be sufficient to cause death. Merely because the screwdriver was a usual tool used

by the accused in his business, it could not be as if its user would be innocuous.”

22. From the evidence available on record, it is absolutely clear that the appellant Sukhram fired one shot from his gun. From the above it is clear that he had intention and knowledge to cause the death of Mool Chand but in view of principles enunciated above by the Hon’ble Apex Court he did not intend that his act would in all likelihood result in death of the deceased. Therefore, in our view the conviction of Sukhram is fit to be altered from Section 302 to Section 304 Part-I of the Indian Penal Code and similarly the conviction of appellant Hariram @ Hariya is also fit to be altered from Section 109 read with Section 302 I.P.C. to 109 read with Section 304 Part-I I.P.C.

23. In view of the above, the appeal deserves to be partly allowed and judgement of conviction and order of sentence needs to be partly modified.

24. The incident has taken place more than 40 years ago. The appellant-Sukhram has already undergone sentence of 3 years 4 months 24 days whereas, appellant-Hariram @ Hariya has already undergone sentence of 2 months 25 days. At present appellant-Sukhram is now aged about 65 years old whereas, appellant-Hariram @ Hariya is aged about 74 years old. The appellant-Hariya has not been assigned role of assault rather he has been assigned the role of exhortation.

25. Considering the above facts and circumstances of the case and the law laid down by Hon’ble Apex Court in ***State of Madhya Pradesh Vs. Shyamlal and others, Criminal Appeal No.-1254 of 2024***, we are of the view that following sentence would sub-serve the ends of justice:-

26. Appellant-Sukhram is sentenced to period already undergone under Section 304 Part-I read with Section 149 I.P.C. and is also sentenced to pay fine of Rs. 25,000/-. Similarly, appellant-Hariram @ Hariya is sentenced to period already undergone for the offence under Section 109 read with Section 304 Part-I. He is also sentenced to pay fine of Rs.

25,000/-. In default of payment of fine both the appellants will undergo sentence of three months. The fine thus imposed shall be paid to the legal heir/heirs of the deceased-Moolchand. The above named appellants are directed to deposit the fine before the learned trial court within one month. In default of payment of fine each appellant will undergo sentence of three months.

27. Learned Chief Judicial Magistrate, Hamirpur is directed to send compliance report within two months.

28. With the above modification, the appeal stands *partly allowed*.

Order Date :- 28.05.2025

Virendra