

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA S. No.226 SB of 2004
Date of decision : 29.01.2015.

Lal Singh

..... Appellant.

versus

State of Haryana

..... Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to
see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

Present : Mr. Rajinder Pal, Advocate for
Mr. B.S. Rana, Advocate for the appellant.
Mr. P.P.Chahar, DAG, Haryana.

K.C.PURI, J.

Challenge in this appeal is the judgment dated 28.11.2003 and order dated 29.11.2003 passed by Shri K.C.Sharma, learned Additional Sessions Judge, Gurgaon vide which the accused-appellant was convicted under Section 304 Part I of the Indian Penal Code (in short – the IPC) and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.2000/- and in default thereof to further undergo rigorous imprisonment for a period of four months.

2. The case of the prosecution, in brief, is that on 27.8.2002, a VT message received in the Police Station, City Gurgaon, alongwith medico legal report of Kishan Lal son of Sohan. Therefore, SI Ishwar Singh alongwith other police officials reached General Hospital, Gurgaon and there he was informed that Kishan Lal was referred to Safdarjang Hospital, New Delhi. Then SI Ishwar Singh reached Safdarjang Hospital, Delhi and came to know that Kishan Lal had died in the night. No eye-witness was found present in the Hospital. Inquest proceedings were carried out by the Delhi Police. Thereafter, SI Ishwar Singh alongwith other police officials reached the place of occurrence at village Harsaru, where eye-witness Karambir met and got recorded his statement to the effect that his grandfather Kishan Lal aged about 102 years used to reside in Dharamshala constructed in village Harsaru. He also used to sleep with his grandfather in the Dharamshala. On 26.8.2002 at about 9.00pm, he was playing with a Deck in the Dharamshala whereas his grand father was sitting on a cot near the gate of Dharamshala. In the meanwhile, his uncle Lal Singh accused wearing underwear and vest reached there and asked Kishan Lal as to why he had transferred the entire land in the name of his brothers. On that, Kishan Lal hurled abuses upon the accused and asked him to go away from there. Then the accused who was having danda which was used by him for the purpose of walking due to fracture of leg, gave a danda blow on left side of head of Kishan Lal, due to which Kishan Lal fell down from the cot by the side of head on pucca floor. The accused after causing injury escaped

from there. It was further submitted by the complainant that due to fear, he remained inside the room near the window and witnessed the entire occurrence. When the accused had left the place of occurrence, he gave information of the occurrence to his uncle Banni alias Het Ram and then he went to the house of his Bua (father's sister) Sutto for giving information to her. Thereafter, his father Bishamber Dayal, uncle Het Ram alias Banni, Bua Sutto and other family members reached the spot. Then his grand father was taken to General Hospital, Gurgaon by his father, Jai Bhagwan and Jai Singh. He later on came to know that his grand father succumbed to the injuries in Safdarjang Hospital, Delhi. SI Ishwar Singh made his endorsement on the aforesaid statement of complainant and sent the same to Police Station and on the basis of which First Information Report was recorded by Suraj Parkash, Assistant Sub Inspector. SI Ishwar Singh carried out the investigation. He took into possession blood stained Pagri from the spot and recorded the statements of the witnesses and prepared rough site plan regarding the place of occurrence. The accused was arrested from a Hotel near Hayyatpur turning. After completion of formal investigation, challan against the accused was presented in court.

3. On presentation of challan, copies of documents were supplied to accused free of costs as required under section 207 Cr.P.C. The Illaqua Magistrate committed the case to the Court of Session as the offence alleged against the accused was exclusively triable by the said Court. Charge under Sections 304 of the IPC was framed against the accused. Accused pleaded not guilty and claimed trial.

4. In support of the case prosecution examined Dr. B.Swain PW1, Swaran Kumar Draftsman as PW2, HC Mohammad Usman PW-3, Constable Jasbir Singh as PW-4, SI Rajpal as PW-5, Constable Attar Singh as PW-6, complainant Karambir as PW-7, ASI Suraj Parkash as PW-8, HC Suresh Kumar as PW-9, SI Ishwar Singh as PW-10, ASI Krishan Kumar as PW-11, Dr. Renu Sharma as PW-12 and thereafter learned Additional Public Prosecutor for the State closed the prosecution evidence.

5. After the closure of prosecution evidence, all the incriminating circumstances appearing against the accused were put to accused in his statement recorded under section 313 Cr.P.C., he denied the prosecution allegations and pleaded his innocence. He further stated that on the fateful day at about 8.00p.m., he was present in Dharamshala with Kishan Lal, who was sitting on Delhla (big cot), having height about four feet. He was talking to Kishan Lal as to why he had transferred the entire agricultural land in the names of his other brothers and on that Kishan Lal became furious and called him with bad names. When Kishan Lal was in the process of standing from Dehla, having danda in his hand, fell down on the pucca floor and received injuries. Complainant Karambir was not present at the place of occurrence. Later on his other brother having strained relations with him, after due deliberation and consultation lodged false report against him on the next day. However, accused did not lead any evidence in defence.

6. The trial Court, after hearing the learned counsel for the parties convicted and sentenced the accused vide judgment dated 28.11.2003 and

order dated 29.11.2003, as aforesaid.

7. Feeling dissatisfied with the aforesaid judgment dated 28.11.2003 and order dated 29.11.2003, accused has directed the present appeal.

8. I have heard learned counsel for the parties and have gone through the records of the case with their able assistance.

9. Learned counsel for the appellant has submitted that prosecution has failed to prove any guilt. In fact, on the fateful day, the appellant asked his grandfather that as to why he has transferred all his agricultural land in the name of all his brothers and not to him. Kishan Lal his grandfather became furious and he fell down on the pukka floor and received injuries. Appellant has not caused any injury to him. Dr. Renu Sharma (PW-12) in her cross-examination has stated that possibility of injury No.1 by fall on pukka surface cannot be ruled out. It is submitted that other two injuries had not been attributed to the appellant and those injuries have not been explained. In fact, the complainant and his family members wanted to deprive the appellant of his rights in the property and on that account false case has been registered. It is further submitted that even according to the eye-witnesses, appellant was suffering from fracture of leg and he could not cause injury in the manner narrated by the complainant. Otherwise also, there are discrepancies in the statement of eye-witnesses and investigating officer and as such the prosecution story is doubtful.

10. I have carefully considered the said submission but do not find

any force in that submission.

11. The presence at the spot of the appellant has not been disputed by him as is clear from his statement recorded under Section 313 of the Cr.P.C. The only point which requires consideration is whether deceased Krishan Lal received injuries by a fall as alleged by the appellant or by injuries caused by the appellant? The complete answer to that question has been given by PW-1 Dr. B.Swain, who had conducted the postmortem examination of the deceased. He has categorically stated that injury No.1 is fatal in the present case, which was a depressed fracture, could not be the result of a fall from back. So, the learned trial Court has rightly accepted the statement of eye-witnesses, who was fourteen years of age at the time of occurrence. So far as the remaining two injuries are concerned that could be the result of fall as stated by PW-1 Dr. B.Swain. However, the facts remain that appellant had given injuries on the head of Kishan Lal. Minor discrepancies are bound to occurrence in the statements of the prosecution witnesses.

12. Learned counsel for the appellant has further attacked the prosecution story on the ground of delay in lodging the FIR. He has submitted that occurrence took place at 9.00p.m. on 26.08.2002 and FIR had been registered on 27.08.2002 at 2.30p.m.. The said delay has not been explained.

13. I have carefully considered the said submission but do not find any force in that submission.

14. The deceased was taken to various hospitals and as such the

delay in lodging the FIR stands fully explained. It cannot be said that false case had been registered on account of property dispute.

15. Lastly, counsel for the appellant has submitted that offence under Section 304 Part I of the IPC is not made out in case the allegations are taken as it is. Even then the offence under Section 325 of the IPC is made out. It is submitted that the appellant was suffering from fracture and as such he was required to get some support for walking. Even according to the prosecution, the appellant had given only one blow on the head of the deceased and there was no intention on the part of the appellant to cause death. The deceased was aged about 102 years. The appellant has not repeated the blow. The learned counsel for the appellant has submitted that Hon'ble Apex Court in authority **Sardul Singh vs. State of Haryana reported in 2002 (4) RCR (Criminal) page 560** has held that at the most offence under Section 325 of the IPC shall be made out in case the injury given on the head with danda. So, prayer has been made for acquittal under Section 304 Part I of the IPC and for convicting the appellant for offence under Section 325 of the IPC. He has further contended that as per order dated 29.10.2004, the appellant has already undergone incarceration for a period of two years and two months. So, the sentence be reduced by converting the offence into under Section 325 of the IPC instead of under Section 304 Part I of the IPC, as imposed by the trial Court.

16. I have carefully considered the said submission.

17. The argument advanced by the counsel for the appellant carries weight and has to be accepted. The facts of authority **Sardul Singh's case**

(supra) are that head injury with soft wood was given to the deceased and Hon'ble Apex court reached to the conclusion that offence under Section 302 of the IPC is not made out and the sentence was reduced to offence under Section 325 of the IPC. In the present case also, the accused has not previous intention as he did not carry any weapon except danda which was required by him to support himself as he was suffering from fracture. He has not repeated the blow and only singal injury is attributed to him. So, the intention of the appellant cannot be said to be to cause the death of deceased.

18. So, in view of the above discussion, the appeal is partly accepted. The conviction recorded by the trial Court under Section 304 Part- I of the IPC stands set aside. However, accused/appellant stands convicted under Section 325 of the IPC. As per order dated 29.10.2004, appellant has already undergone incarceration for a period of two years and two months. So, the ends of justice would be made in case his sentence under Section 325 of the IPC would be to the period already undergone by him. And I order accordingly.

19. The appeal stands disposed of accordingly.

20. A copy of this judgment be sent to the trial Court for strict compliance.

January 29, 2015
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(K. C. PURI)
JUDGE