

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

Crl. Appeal No. 877-SB of 2004

Date of Decision : 15.10.2015

Balbir Singh and others

..... Appellants

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr.Harcharan Singh Bajwa, Advocate
for the appellants.

Mr. Manjit Singh Naryal, Addl.AG, Punjab.

1. **Whether Reporters of Local papers 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**

DARSHAN SINGH, J.

1. The present appeal has been preferred against the judgment dated 04.03.2004, vide which all the five appellants have been held guilty and convicted for the offence punishable under Section 304 Part II of Indian Penal Code, 1860 (for short I.P.C) and the order on the quantum of sentence of the even dated, vide which the appellants have been sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs. 3000/- each in

default thereof to further undergo imprisonment for a period of six months.

2. The brief facts giving rise to this prosecution are that appellant Balbir Singh had demolished the canal watercourse leading to the field of deceased Jangir Singh and was not allowing him to reconstruct the same. On 14.06.2001, a dispute had taken place about that watercourse. Appellants Mukhtiar Singh and Piara Singh had caused injuries to Mangal Singh, the son of deceased Jangir Singh and he was lying admitted in Civil Hospital, Guru Har Sahai. On 15.06.2001, at about 6.00.p.m, PW-7 Fauja Singh along with his brother PW-8 Panja Singh had gone to the hospital carrying the meals for said Mangal Singh. Jangir Singh deceased and his wife Ditto Bai were also present in the hospital. After Mangal Singh took his meals, complainant Fauja Singh along with PW-8 Panja Singh and deceased Jangir Singh started on foot for their village leaving Ditto Bai with Mangal Singh. They came to bus stand Guru Har Sahai, but no vehicle was available for their village. Thereafter, they started for their village on foot on pacca road. At about 9.30 p.m, when they reached near the grain market, all the appellants met them and told that they would get construct the watercourse for them at that very time. Appellant Joginder Singh raised 'lalkara' extorting

his co-accused to caught hold them and not allowing them to leave that place. After that all the accused assaulted them. The complainant and Panja Singh moved towards the adjoining shops, whereas all the appellants took the deceased Jangir Singh in their grip. They pressed him and threw him on the ground. Thereafter, all the accused left the spot and went towards grain market. When complainant Fauja Singh and Panja Singh came to the spot, they found that Jangir Singh has already died. Complainant Fauja Singh, after leaving Panja Singh at the spot, was proceeding to Police Station when PW-10 ASI Balkar Singh met him and recorded his statement Ex.P-9. On the basis of which, the formal FIR EX.P9/B was recorded and the investigation was started.

3. ASI Balkar Singh accompanied by the complainant and other police officials came to the spot and prepared inquest report Ex.P-10. The dead body was sent for postmortem examination to Civil Hospital, Ferozepur through PW-6 Constable Thana Singh and PHG Kartar Singh. The Investigating Officer inspected the spot and prepared the rough site plan of the place of occurrence Ex.P-11. After the postmortem examination, HC Thana Singh produced the parcels containing the belongings of the deceased before the Investigating Officer, which were taken

into possession vide memo Ex.PB. After conducting the postmortem examination, the opinion regarding the cause of death was deferred till the receipt of the report of the Chemical Examiner and Pathologist. One parcel of the viscera was sent to the Chemical Examiner and other sealed parcel containing viscera was sent to the Department of Pathology, G.G.S Medical College, Faridkot. After receipt of the report of Chemical Examiner and the Pathologist, the Board of Doctors gave their report EX.P-5 that the cause of death was due to cardiac arrest as a result of Ischemic Heart Disease (for short I.H.D), which was sufficient to cause death in the normal course of nature. The accused-appellants were arrested in this case and on completion of the formalities of investigation, the report under Section 173 of Code of Criminal Procedure (for short Cr.P.C) was presented in the Court of learned Ilaqa Magistrate, who committed the case to the Court of Sessions for trial.

4. All the appellants were charge sheeted for the offence punishable under Section 302 read with Section 149 IPC, to which they pleaded not guilty and claimed trial.

5. In order to substantiate its case, prosecution examined as many as eleven witnesses.

6. When examined under Section 313 Cr.PC, all the accused-appellants pleaded false implication. They stated

that Panja Singh and his sons were interested to take forcible and illegal possession of their land and they were obstructed from doing so. Due to that reason they involved them in this case. Though, Jangir Singh has died the natural death.

7. In the defence evidence, they examined Des Raj, Revenue Patwari as DW-1, Joginder Singh, M.H.C as DW-2 and Sham Sunder, Patwari Canal Halqa Bettu Qadim as DW-3. Thereafter, the defence evidence was closed.

8. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the learned trial Court held guilty and convicted all the five appellants for the offence punishable under Section 304 Part-II IPC and were awarded the sentence as mentioned in the upper part of the judgment.

9. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

10. I have heard Mr. Harsaran Singh Bajwa, Advocate, learned Counsel for the appellants, Mr. Manjit Singh Naryal, learned Additional Advocate General, for the State of Punjab and has meticulously examined the record of the case.

11. Initiating the arguments, learned counsel for the

appellants contended that the story put forwarded by the prosecution is highly improbable. It is not possible that five accused persons could have taken the deceased in their grip. It is alleged that the deceased was pressed by them, but he did not suffer any internal injury. It is alleged that he was thrown on the ground, but there was no external injury on the body of the deceased. The cause of death is the cardiac arrest as he was having enlarged heart and some blockade in the artery. Thus, he contended that Jangir Singh has died the natural death and appellants have been falsely implicated only due to enmity.

12. He further contended that only interested witnesses have been examined by the prosecution. Though, the occurrence is alleged to have taken place near the grain market. The witnesses examined by the prosecution had the property dispute with the accused-appellants. No independent witness from the grain market has been examined to prove any such occurrence.

13. He further contended that it is alleged that on the previous date, Mangal Singh, the son of deceased Jangir Singh had suffered the injuries at the hands of the appellants Mukhtiar Singh and Piara Singh. But, there is absolutely no evidence to establish any such injury suffered by Mangal Singh. No medico legal report of Mangal Singh

has been produced on record. Even, there is no evidence to show that he was lying admitted in the hospital on the date of occurrence. In the absence of this evidence, whole foundation of the prosecution case stands washed out. He further contended that infact as per the D.D.R produced by DW-2 MHC Joginder Singh, the injuries were caused to Balbir Singh and his wife and there was no D.D.R with respect to any incident of causing injury to Mangal Singh. Thus, he contended that story of the prosecution stands falsified.

14. He further contended that no offence punishable under Section 304 Part-II IPC is made out. As per the medical evidence, the deceased was not having any external or internal injury. The cause of death in this case was cardiac arrest due to I.H.D. As per the prosecution allegations, the deceased was taken into grip by the accused. He was pressed and thrown on the ground. It shows that there was no intention to kill deceased Jangir Singh on the part of the appellants. They also had no knowledge that by just caught holding the accused, he will suffer the cardiac arrest and will die. As per the medical evidence, there was no signs of compression. In fact, the heart of the deceased was enlarged and he was also having some blockade. So, he has suffered the natural death as a

result of cardiac arrest which will not attract Section 304 Part-II IPC. To support his contentions he relied upon cases **M.Babu Vs. State, rep. by Inspector of Police, K.V. Kuppam Police Station, Vellore District 2011(8) R.C.R (Criminal) 910, Mahender and ors. Vs. State (N.C.T of Delhi) 2014(7) R.C.R (Criminal) 1781 and State of Karnataka Vs. Shivlingaiah 1988 AIR (SC) 115.**

15. On the other hand, learned State counsel contended that there are consistent statements of PW-7 complainant Fauja Singh and PW-8 Panja Singh, the witnesses of the occurrence. They have consistently deposed that the appellants took the deceased in grip. They pressed him and threw him on the ground. As a result of which he died. He contended that the report of the Pathologist shows that the deceased was suffering from heart ailment. The manner in which the deceased was manhandled by the appellants can certainly accelerate the cardiac arrest as a result of the criminal force used by them and even due to the shock which the deceased had suffered due to the sudden attack upon him by the appellants. The accused-appellants had knowledge that this action can cause cardiac arrest to the deceased, who was having enlarged heart. So, the act committed by the appellants will clearly attract Section 304 Part-II IPC.

16. He further contended that the case of the prosecution is based on the direct evidence. So, the motive of the occurrence is of no importance. Moreover, there was dispute of the watercourse between the parties. Mangal Singh, son of the deceased was assaulted on the previous date due to the dispute of the watercourse and he was lying admitted in the hospital. Thus, it can not be stated that the present occurrence had no motive.

17. He further contended that there is no reason to disbelieve the statements of PW-7 complainant Fauja Singh and PW-8 Panja Singh, which are natural, cogent and consistent. Thus, he contended that there is no infirmity in the conviction of the appellants recorded by the learned trial Court.

18. I have duly considered the aforesaid contentions.

19. To establish the occurrence in the manner alleged by the prosecution, the prosecution has examined PW-7 complainant Fauja Singh and PW-8 Panja Singh, the witness of occurrence. Both these witnesses have consistently deposed that on 15.06.2001, the date of occurrence, they had gone to the hospital with meal for Mangal Singh, son of the deceased. They stayed in the hospital upto about 9.00 p.m and thereafter, they along with deceased Jangir Singh started for their houses. No mean of

transport was available. As such they started on foot for their village. When, they reached in front of gran market Guru Har Sahai at about 9.30 p.m, all the five accused-appellants namely Joginder Singh, Bablir Singh, Mukhtiar Singh, Hoshiar Singh and Piara Singh came from the opposite side. Accused Joginder Singh raised 'lalkara' that they be caught hold and not allowed to go. The witnesses ran towards the shops. But, accused caught hold deceased Jangir Singh. They took Jangir Singh in their grip pressed him and threw him on the ground. Thereafter, both the witnesses came to Jangir Singh and saw that he had already died. No doubt, both PW-7 complainant Fauja Singh and PW-8 Panja Singh were the real brothers of deceased Jangir Singh. But, at the same time, they are also the real brother of accused Balbir Singh. Thus, they are related to deceased and accused Balbir Singh in the same degree. Other accused are their nephews. In the cross-examination PW-8 Panja Singh has admitted some dispute with Balbir Singh with respect to some power of attorney pertaining to the land. The accused-appellants have not brought on record any material in their defence evidence, to show precisely as to what was the land dispute in between PW-8 Panja Singh and accused Balbir Singh. There is also no material on record to show as to whether any litigation between them

was pending on the date of occurrence with respect to the land dispute. So, it can not be stated that PW-8 Panja Singh was inimical to the accused. They were the real brothers and some property dispute between the brothers is always common. In their statements recorded under Section 313 Cr.P.C, the accused had not alleged any ill-will against PW-7 complainant Fauja Singh. So, there was no reason that PW-7 complainant Fauja Singh will come forward to falsely implicate his real brother and nephews.

20. As already mentioned Pw-7 complainant Fauja Singh and PW-8 Panja Singh are the real brothers of deceased Jangir Singh. They are also the real brother of accused Balbir Singh and real uncles of the other accused. It is also the fact that the prosecution has not examined any independent witness from the locality to corroborate their testimonies. But, mere this fact that the prosecution witnesses happened to be the close relatives of the deceased is no ground to disbelieve their testimonies. It cannot be stated that they were interested or partisan witnesses. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means, unless the victim has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last person

to screen the real culprit and falsely implicate an innocent person. To support this view reference can be made to cases **Dalip Singh and others Vs. State of Punjab AIR 1953 S.C 364** and **D. Sailu Vs. State of Andhra Pradesh AIR 2008 S.C. 505**. In the aforesaid cases, it was further laid down by the Hon'ble Apex Court that the fact that prosecution witnesses are related to the deceased would not adversely affect their credibility. Similar ratio of law has been laid down by the Hon'ble Apex Court in cases **Shyam Babu Vs. State of U.P 2012(4) R.C.R (Criminal) 963** and **Sahbuddin Vs. State of Assam 2013(10) R.C.R (Criminal) 867**. So, there is no reason to disbelieve or ignore the consistent testimonies of PW-7 complainant Fauja Singh and PW-8 Panja Singh, the witness of the occurrence.

21. The plea raised by learned counsel for the appellants that the prosecution story is highly improbable also carries no substance. PW-7 complainant Fauja Singh and PW-8 Panja Singh have categorically stated that accused took the deceased Jangir Singh in grip. He was pressed and thrown on the ground. It does not mean that deceased Jangir Singh was practically taken into grip by all the accused at one and the same time. All the five accused-appellants had come to the spot together having the common object. Accused Joginder Singh has raised 'Lalkara'

that they should not be allowed to go and thereafter, deceased Jangir Singh was caught hold by accused and taken into grip. In such circumstances, it is difficult to narrate the photographic version of the occurrence. But, from the consistent testimonies of both the witnesses of occurrence, there is no escape from the conclusion that all the five accused in order to achieve their common object have participated in the occurrence, which led to the death of Jangir Singh.

22. The plea raised by learned counsel for the appellants that infact Jangir Singh has died the natural death and appellants have been falsely implicated has no legs to stand. This fact is not disputed that dead body of Jangir Singh was lying near grain market Guru Har Sahai i.e. a public place. Even the inquest proceedings were conducted at that very place. The presence of the prosecution witnesses is established from the fact that the matter was promptly reported to the police. The occurrence has taken place at about 09.30 p.m. Ex.P-9 statement of PW-7 complainant Fauja Singh was recorded by the police at 11.00 p.m in the area of taxi stand Guru Har Sahai and even the FIR Ex.P9/B was registered at 11.10 p.m. So, the matter was reported to the police within one and half our of the occurrence. It is not possible that within such a short

span of time, a false and concocted version can be coined. The prompt reporting of the matter to the police indicates the natural and spontaneous version of the occurrence to Police. If Jangir Singh would have died the natural death and the occurrence would not have taken place in the manner alleged by the prosecution. There was no possibility of the dead body lying in open near the grain market at that late hours of the night. In that eventuality some efforts might have been made to rush the deceased for some medical aid. The presence of dead body in this manner shows that the deceased has suffered the death actually at the place where his dead body was lying and in the manner alleged by the prosecution. Thus, there is nothing improbable in the prosecution story.

23. Certainly, the Investigating Officer has committed certain lapses in proper investigation of the case. He has not collected the hospital record to show that Mangal Singh, the son of deceased Jangir Singh was lying admitted in the hospital on the date of occurrence and said Mangal Singh has suffered the injuries in the quarrel alleged to have taken place on 14.06.2001. But, that lapses on the part of the Investigating Officer is no ground to grant any concession to the appellants in view of the other evidence available on record. PW-7 complainant Fauja Singh and PW-8 Panja

Singh have categorically deposed that on 14.06.2001, the quarrel has taken place regarding the watercourse in which Mukhtiar Singh and Piara Singh had caused injuries to Mangal Singh for which he was admitted in Civil Hospital Guru Har Sahai. The existence of the dispute about watercourse is even borne out from the defence evidence adduced by the accused. They have tried to show that there was no watercourse in existence in their land. For that purpose, they had examined DW-1 Des Raj, Revenue Patwari has stated that there does not exist any pacca watercourse in the land which stands in the name of Jang Singh son of Gulab Singh son of Fatta Singh. As per the Shajra Aks, no land in village Chak Pipli is recorded in the name of deceased. But, in the cross-examination he admitted that the record pertaining to the watercourse is not maintained by the Revenue Patwari. Therefore, on the basis of statement of DW-1 Des Raj, Revenue Patwari and the record produced by him, it can not be concluded that there was no such watercourse in existence. The accused have summoned DW-3 Sham Sunder, Patwari Canal Halqa Bettu Qadim. But, no record of this village was available with the Canal Department. The accused have also examined Joginder Singh M.H.C as DW-2, who has produced the copy of the Daily Diary Report dated 14.06.2001 of Police Station

Guru Har Sahai. As per the statement of this witness only the copy of the Medico Legal Report of accused Balbir Singh and his wife Prito were received in the Police Station vide Daily Diary Report No.21 Ex.D-1. Even, this evidence shows that there was some dispute between the parties on 14.06.2001. Otherwise, there was no reason for the injuries having been suffered by Balbir Singh and his wife Prito. No doubt, DW-2 M.H.C Joginder Singh has stated that no Medico Legal Report or Medical Ruqa regarding Mangal Singh was received in the Police Station. It may be due to the fact that Mangal Singh and his family members might not have wanted to initiate any legal action. The non-reporting of the matter to the police is no ground to discard the testimonies of PW-7 complainant Fauja Singh and PW-8 Panja Singh, who have categorically and consistently deposed about the dispute which took place on 14.06.2001, in which Mangal Singh had suffered the injuries and as a result thereof he was lying admitted in Civil Hospital, Guru Har Sahai. Their statements to this effect have not been specifically challenged in the cross-examination. Thus, there is nothing to disbelieve the unassailed testimonies of these witnesses to that effect.

24. The motive for the occurrence is also evident from the aforesaid evidence, which shows that the parties were

having dispute with respect to the watercourse. In case **State of Rajasthan Vs. Arjun Singh and others 2011(4) R.C.R (Criminal) 270**, the Hon'ble Supreme Court has laid down that motive for doing a criminal act is generally a defect area for the prosecution to prove since one cannot normally see into the mind of the another. It is also the settled principle of law that where the prosecution adduces direct, cogent and unimpeachable evidence to establish the commission of the offence, the motive for the offence or the absence thereof or its insignificance is recedes into the background. In the instant case also the prosecution case is based on the cogent, consistent and reliable testimonies of two witnesses of the occurrence. So, the proof of the motive was only academic.

25. Now, the question arises as to whether the conviction of appellants recorded by the learned trial Court for the offence punishable under Section 304 Part-II IPC is legally sustainable or not. PW-3 Dr. B.R.Arora, Medical Officer, Civil Hospital, Ferozepur along with Dr. M.S. Tina has conducted the postmortem examination on the dead body of Jangir Singh. He has deposed that there was no ligature mark. There was also no external injury or bleeding from nose, ear or mouth. However, he stated that the heart was enlarged. The main coronary vessels were

atherosclerosis and narrowed markedly. Aortic valve were calcified. Both chambers contained blood. The Medical Board had reserved the cause of death to be declared after receiving the report of the Chemical Examiner and Pathology Department, Government College, Faridkot respectively. Pw-3 Dr. B.R.Arora has proved the copy of the postmortem report Ex.P-3. On receipt of reports of the Chemical Examiner and Pathologist, the Medical Board declared the cause of death due to cardiac arrest as a result of I.H.D. In the cross-examination, PW-3 Dr.B.R.Arora stated that I.H.D is a sort of heart ailment in which blood supply to the heart is gradually decreased due to blockade of arteries which results into sudden death of a person. He further deposed that in case of heart enlargement and I.H.D, the chances of cardiac arrest of a person and as such his sudden death are much more than in case of a normal person.

26. Statement of PW-5 Dr. R.N.Maharashi, Lecturar, Department of Pathology, Guru Gobind Singh Medical College, Faridkot is very important as he has examined the heart of the deceased and proved his report Ex.P-7 and gave the following findings:-

Grossly: The specimen weight 460 gms and showed normal distributed epicordial fat.

On cutting: Left ventricular wall was 1.7 to 2 cm

thick, papillary muscles are prominent and thickened (Hypertrophied).

Aortic Valve leaflets were thickened, hardened and showed focal calcification. Left atrium showed no pathology. However, mitral valve margins were thickened. Both coronaries showed thickened wall but lumen was patent.

Roof of Aorta was normal looking with patent coronary ostia. Right ventricular wall was 0.6 x 0.8 cm thick.

Microscopically:

Myocardium: Showed small focus healed fibrous scars of ischaemia.

Aortic Valve: showed fibrosis, thickening and marked calcification.

Root of Aorta: showed no pathology.

Coronary Artery: Right coronary showed thick wall, lumen was narrowed but patent. Left coronary artery showed thickened wall, an atheromatous lesion and narrowed but patent lumen.

Mitral Valve: showed fibrosis and thickening.

The aforesaid report shows that deceased Jangir Singh was suffering from heart ailment. PW-5 Dr. R.N. Maharashi has also stated in the cross-examination that possibility of cardiac arrest being on account of I.H.D cannot be ruled out. He further deposed that percentage of blockade in the arteries and valve was not mentioned in the report. However, such blockade was there.

27. From the testimonies of PW-7 Fauja Singh and PW-8 Panja Singh, the witnesses of the occurrence, it is established that accused had taken the deceased in their grip and pressed him and threw him on the ground. They have not stated that the deceased was pressed forcefully, which could result into any external or internal injury. The evidence led by the prosecution shows that accused had taken the deceased in their grip and pressed him and threw him on the ground. The deceased was having enlarged heart and suffering from I.H.D. Due to the criminal force used by the accused to assault the deceased, the heart ailment of the deceased was aggravated, which led to the stoppage of blood supply to the heart and he died due to cardiac arrest, which was the direct cause of his death. Thus, it was not a case of natural death of deceased Jangir Singh.

28. The medical evidence brought on record shows that deceased was having the ailing heart. His heart was enlarged and there was also blockade in the coronary arteries. Aortic valve was also calcified. In such condition any kind of psychological and physical stress can lead to exacerbation or acceleration of the cardiac arrest.

29. Relevant portion of Section 299 Indian Penal Code reads as under:-

“299. Culpable homicide.-Whoever causes death

by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

- (a)
- (b)
- (c)

Explanation 1.-A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation.2-

Explanation.3- “

As per Explanation 1 of Section 299 Indian Penal Code, if a person causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

30. In the instant case, the accused-appellants have applied the criminal force to the victim and assaulted him which could certainly accelerate the cardiac arrest as he was suffering from the heart ailment. Deceased Jangir Singh met with immediate death at the spot, which shows that the act committed by the appellants was the direct cause of

death of Jangir Singh. Appellant Balbir Singh is the real brother of Jangir Singh and the other accused are his nephews. So, they might be knowing about the physical condition of the deceased Jangir Singh. Though, from the evidence available on record, it is not established that appellants were having any intention to commit the murder of Jangir Singh as they were empty handed and have also not caused any serious injury whether external or internal on the person of deceased Jangir Singh. But, they certainly had the knowledge that use of criminal force against the deceased in this manner i.e. taking the victim in grip by accused-appellants and then to throw him on the ground is likely to cause his death as he was suffering from the heart ailment, but without any intention to commit his murder and due to the aforesaid act of the appellants, the deceased suffered cardiac arrest as he was suffering from heart disease and suffered the spontaneous death without any gap of time. Thus, the act committed by the appellants will fall in Explanation-1 to Section 299 Indian Penal Code and will attract Section 304 Part II IPC.

31. In case **Munni Lal Vs. Emperor A.I.R (30) 1943 Allahabad 344**, the Hon'ble Allahabad High Court has laid down as under:-

“Section 304, second part must be read with the

last few words of S.299. It has no reference to S.300 or to the exceptions mentioned therein and must not be confused with culpable homicide not amounting to murder. When a man kneels on the body of another and presses his throat with great violence he knows he is likely to cause death and if death results of strangulation, the knowledge merges into intention and he is guilty of murder under S.300 firstly, unless he can obtain the benefit of any of the exceptions to S.300. But when during the act of strangulation the victim dies suddenly due to rupture of the enlarged spleen and the enlargement of the spleen was not known to the accused and the other injuries would not have been sufficient to cause death if spleen had not been ruptured the accused's knowledge stops short of intention and the case comes under S.304 part 2”.

32. In case State of **Himachal Pradesh Vs. Tejinder Singh 2015(1) SimLC 104, Law Finder Doc Id # 652769**, the deceased was given fist and leg blows by the accused-respondent. As per the medical evidence, he died due to cardiac arrest spontaneously. The Division Bench of Hon'ble Himachal Pradesh High Court held that the accused had knowledge that injuries caused to deceased by way of fist and leg blows would cause his death by way of cardiac arrest and his acquittal by the trial Court was set aside and he was convicted under Section 304 Part II IPC. In case

Sundaram Versus State of Andhra Pradesh, 2000(1) JT 443, as per the medical evidence the death was not certainly attributable to the injury in question. The doctor had stated that the cause of death was due to shock from the injuries leading to cardio-respiratory failure. The Hon'ble Supreme Court held that the offence will be 304 Part II Indian Penal Code. In case **Augustin alias Babu V. State of Kerela, 1994 Supreme Court Cases (Crl.) 1152** the deceased had died as a result of cardiac arrest but there was no evidence to definitely prove that the death was due to injury caused by the appellant. The cardiac arrest may have occurred due to subsequent supervening event. In these circumstances, the Hon'ble Apex Court set aside the conviction under Section 302 Indian Penal Code and convicted the appellant for the offence punishable under Section 304 Part II Indian Penal Code. Thus, in view of aforesaid legal and factual position the conviction of the appellants under Section 304 Part II Indian Penal Code is perfectly legal.

33. Cases relied upon by learned counsel for the appellants are quite distinguishable on facts as in none of the case the victim was suffering from the heart ailment to attract Explanation.1 to Section 299 Indian Penal Code.

34. Learned counsel for the appellants faced with this

situation has contended that appellant Balbir Singh is more than 70 years of age. Appellants Mukhtiar Singh, Hoshiar Singh and Piara Singh are his sons and appellant Joginder Singh is his nephew. All of them was below 21 years of age at the time of occurrence. They had faced the agony of the litigation since long. The victim and appellants belongs to the same family. So, he has pleaded for the lenient view in the matter of sentence.

35. I found substance in these contentions raised by learned counsel for the appellants. This fact is not disputed that deceased Jangir Singh and accused-appellant Balbir Singh were the real brothers. Appellant Mukhtiar Singh, Hoshiar Singh and Piara Singh are the sons and appellant Joginder Singh is the nephew of appellant Balbir Singh. In the impugned judgment, the age of appellant Balbir Singh is mentioned as 60 years. Eleven and half years have passed since that judgment. In this way, the age of appellant Balbir Singh comes to more than 71 years. The remaining appellants were below 21 years of age on the date of occurrence. Admittedly, they had not used any weapon in order to inflict any serious injury on the person of the deceased. Appellant Balbir Singh and his three sons are involved in this case. They have also faced the agony of these proceedings for about more than 15 years. As per the

custody certificates, they are not involved in any other criminal case. So, even the lenient view in the matter of sentence will suffice the ends of the justice and at the same time the amount of fine can be enhanced in order to pay compensation to the legal heirs of deceased Jangir Singh as per provisions under Section 357 (1) Cr.P.C as fine is the part of the sentence.

36. Thus, keeping in view my aforesaid discussion, there is no legal infirmity or impropriety in the conviction of the appellants recorded by the learned trial Court for the offence punishable under Section 304 Part II IPC and the same is hereby confirmed. However, the sentence awarded to the appellants is hereby modified. Now, the appellants ordered to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 20,000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of six months each. Out of the fine so realized Rs.17,000/- from each accused i.e. total Rs.85,000/- shall be paid to legal heirs of deceased Jangir Singh as compensation under Section 357(1) Cr.P.C. The enhanced amount of fine be deposited with the learned trial Court. With the aforesaid modification in the order of sentence, the present appeal has no merits and the same is hereby dismissed.

37. Accused-appellants are on bail. Their bail stand cancelled. They shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Ferozepur, who shall send them to jail to undergo the remaining part of their sentences. If, they fail to surrender, the learned Chief Judicial Magistrate, Ferozepur, shall take coercive steps to secure their presence and send them to jail to undergo the remaining part of the sentence.

October 15, 2015**s.khan****(DARSHAN SINGH)
JUDGE**