

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

**Crl. Revision No. 613 of 2006**  
**Date of decision : 01.12.2015**

**Kamal Mehta**

**..... Petitioner**

**versus**

**Rakesh Kumar and another**

**... Respondents**

**CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY**

1. Whether Reporters of the local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Jaideep Verma, Advocate  
for the petitioner

Mr. Saraj Malakar, Advocate  
for respondent No. 1

Mr. K.S. Aulakh, AAG Punjab

**ANITA CHAUDHRY, J.**

This revision has been filed by the petitioner who is aggrieved by the judgment passed by the Additional Sessions Judge, Rupnagar who has convicted respondent No. 1 only under Section 323 IPC and ordered his release on probation.

It would be necessary to first refer to the facts.

The unfortunate incident took place on 06.04.2002. A complaint was lodged by his widow Kamal Mehta. Yog Raj had retired in 1997. He and his wife started residing in village Kathera in the house of Bhabishan Dutt. The complainant's son was residing at Jalandhar. Babhishan Dutt, their landlord had died and his son Rakesh Kumar was residing in one portion of the house. The

complainant alongwith her husband were residing in the other portion of the house. A sum of ₹ 2 lacs had been alleged to have been taken by Rakesh. He had promised to return the amount within 6 months but for one reason or the other he was putting it off. Subsequently, he extended threats and started disrupting the electricity supply.

On 05.04.2002, Navin (son of the complainant) had come from Jalandhar to village Kathera and in the presence of the respectable, Rakesh Kumar had undertaken to clear the accounts by 15.04.2002 and thereafter Navin went back. On 06.04.2002 at about 11 a.m. the complainant alongwith his son-in-law and her husband were present at their house when Rakesh Kumar came there and started abusing him. Yog Raj stopped him whereupon Rakesh inflicted fist blows on Yog Raj and dragged him to the gate. The complainant and her son-in-law also came forward but then Rakesh fled from the scene. As a result of the scuffle Yog Raj collapsed and died. The matter was reported to the police and FIR Ex. PW-5/D was registered. The opinion of the doctor was taken. It was reported that it was a case of cardio respiratory arrest following acute myocardial infraction which was sufficient to cause death in the ordinary course of nature.

The police filed the challan under Section 304 IPC.

Charge was framed under Section 304 IPC. The accused pleaded not guilty and claimed trial.

The prosecution examined 10 witnesses. In the statement under Section 313 Cr.P.C. the accused denied the allegations and stated that he did not inflict any injury and had been

falsely implicated. The accused stated that he had asked the complainant to vacate the house.

By way of defence, the accused had examined Leela Devi who lives close by. She was present at her house which is one plot away and had seen Yog Raj standing in front of the house. She had seen him suddenly falling. She said she did not see Rakesh Kumar there. Ravinder Kumar Sethi also made a similar statement.

The trial Court while summing up observed as under:-

*“To sum up, in case we analyse the facts and circumstances of the entire case, it is clear that deceased as well as his family was residing in the house of accused, accused took some money to run his business from the deceased and when the money was demanded back, there was dispute between the deceased and the accused which are referred to police station and on 05.04.2002, it was settled between accused and son of deceased to settle the amount upto 15.04.2002 and on 06.04.2002 there was a dispute between the deceased and the accused and in the scuffle accused gave fist blows to the deceased as a result of which he died. Apparently, there was no external injury, but in a simple injury, external injury may not be possible to have appeared while conducting the post mortem, but the main cause of death as per medical evidence is due to cardio respiratory arrest which shows that accused died not on account of fist blow but due to cardio respiratory arrest. Therefore, accused cannot be held guilty for offence under Section 304 IPC and at the most he can be held guilty u/s 323 IPC. Some other points with regard to discrepancy and delay in the FIR have also been raised by counsel for accused, but those points are not sufficient to totally reject the version of the prosecution. Therefore,*

*this Court is of the opinion that prosecution has not been able to prove that accused committed culpable homicide not amounting to murder. However, on the basis of prosecution evidence, it is held that accused caused simply injury to the deceased and accordingly he is held guilty and convicted under Section 323 IPC.”*

The trial Court imposed a fine of Rs. 1000/-.

Aggrieved by the judgment complainant has filed this revision petition.

Learned counsel for the petitioner had submitted that the complainant side had been living in the premises for almost 4 years and the accused was aware of his health and a complaint had been given to the police on 04.04.2002 that the accused was harassing them and had disconnected the electric connection and that evidence was led by the prosecution and they had examined PW-7 and the parties had been called to the Police Station on 05.04.2002 and a writing was executed and the parties had agreed to settle the matter on 15.04.2002. On the next date the accused entered their room and dragged Yog Raj out and physically assaulted him and Yograj had collapsed.

The submissions was that the accused had dragged Yog Raj out of the house and had given fist blows and the death occurred on account of the trauma, fear and intense provocation and the accused knew that the deceased was suffering from heart problem and the death was immediately thereof as he could not bear the sudden assault which led to his death and the case would clearly fall under Section 304 IPC and the trial Court has let off the accused on

probation with a petty fine of Rs. 1000/-.

The submission on the other hand was that the accused was the landlord and had asked the tenant to vacate the property and there is no evidence that any amount had been taken and there is no external injury on the body of the deceased and it was a cardio respiratory arrest and report of the Medical Officer was considered by the trial Court which had found that the case fell only under Section 323 IPC. It was urged that if the complainant was to be believed that Yog Raj had been dragged to 20 feet then there would have been drag marks on the body. It was urged that there was another male member in the family and he would have intervened and the ocular account does not get support from Medical evidence.

The prosecution had examined Dr. S.P. Kanwar, Medical Officer, BBMB Nangal. He had conducted the post mortem on the body and had observed as under:-

*“There was history of scuffle as per the police information. The body was of an adult male 5'-9” in length, well built and well nourished, wearing green colour shirt, white Banyan and grey coloured pant, eyes closed, body is cooled down to room temperature, rigor mortis present, post mortem skin present. Cyanosis present on face and finger tips. Expertanal mark injury, no ligature mark. On skull, no external injury, on opening the skull brain and membranes within normal limit, ribs, pleurae, larynx and trachea were within normal limits, both the lungs were congested. In heart there was an infracted area measuring 4 cm x 2 cm on postero, inferior wall of left venticle, blood clot was present in the venticle and large vessels show thrombo embolism. In the*

*abdomen the wall peritoneu" "outh pharynx and oesophagus were within normal limits. About 200 cc of partially digested food was found in the stomach. There was no peculiar smell. There was no petechial hamorrhage. Intestines were having gases. Liver spllen and kidneys were congested. Bladder was empty and organs of generation was normal."*

In the opinion of the Medical Officer the cause of death was cardio respiratory arrest following acute myocordial infraction which was sufficient to cause death in the ordinary course of nature.

The police had moved another application to the Medical Officers for their opinion as to whether heart attack was possible due to scuffle. The Medical Officer had given his opinion Ex. P6/1 that the possibility could not be ruled out.

The main witness of the prosecution was Kamal Mehta - the complainant who had made a similar statement in the Court as contained in her complaint Ex. PW5/A. Rajan Kumar PW-6 was present at the time of the incident. He too corroborated the statement made by the complainant. He also stated that a sum of ₹ 2 lacs had been borrowed by Rakesh Kumar and he was postponing the issue and the application was given to the police and the account was to be cleared on 15.04.2002.

Besides this, the prosecution had examined the Investigating Officer SI Des Raj, Navin Kumar PW-8, Inspector Mandip Singh PW-9, SI Manvir Singh PW-10.

Navin Kumar PW-8 had disclosed that in November 2001

the accused had taken ₹ 1 lac from his father for doing business and

after some time the accused had taken another sum of ₹ 1 lac. He (PW-8) had also joined business and found that illegal trade of wood was being undertaken so he distanced himself from the accused and asked him to pay the amount within 6 months. He stated that on 02.01.1999 his father gave another self cheque to the accused Rakesh Kumar but he did not return the amount. He stated that Rakesh Kumar was harassing and torturing his parents and his father had made an application to the SHO and they were called to the police station but his father was not present at that time and therefore, the parties were asked to again appear for payment on 05.04.2002. He stated that as per compromise a sum of ₹ 2 lacs was to be paid by Rakesh Kumar and writing Ex. PW7/D was given. On the next date he got a message that his father had died and the incident was disclosed by his mother.

On examination of the evidence, the facts that emerge are that the complainant and her husband moved into the rented premises some time in 1998. The witnesses have disclosed that sum of ₹ 1 lac was contributed by Yog Raj for starting the business and another self cheque was given in January 1999, though the initial amount had not been returned by him. They kept on asking for their money back but the same was not returned. The complainant had stated that the landlord started harassing them by switching off the electricity and some times closing the wash room and on 05.04.2002 a complaint in writing was given to the police and it was agreed that the amount would be repaid on 15.04.2002. Vide Ex. PW 7/D the accused had undertaken to settle the account upto 15.04.2002. In

the complaint given to the police there is a reference to the payment of the amount to the accused but in the statement given by the accused there is no reference to the return of the amount. It only states that they would appear in the Police Station on 15.04.2002 and settle the dispute. As the facts appear the relations had soured in 1999 and if the statement of the complainant side is believed they had taken the money but the same had not been paid back. The complainant had also stated that the self cheque was given. It is not clear as to whether those cheques were actually used by the accused. No civil litigation was pending between the parties. There is no evidence also on the point that the deceased was a heart patient or had been getting treatment. There were no external marks of injury. There were no drag marks. The police did not collect any material to show that the accused had barged into the portion occupied by Yog Raj or that bolt had broken. Apparently there was some dispute as the matter was reported to the police but the issue for examination is whether the accused was the cause of the sudden death.

The question is whether conviction can be recorded only on the ocular account specially when it gets no support from medical evidence.

The cause of death indicated in the PMR was cardio respiratory arrest. The medical witness who performs the post mortem examination is a witness of fact though he gives an opinion on certain aspects of the case.

When there is glaring inconsistency between direct

evidence and medical evidence in respect of entire prosecution case, then it is manifest that there is manifest defect in the prosecution case.

In ***Purushottam vs. State of Madhya Pradesh, AIR 1980 SC 1873*** the Supreme Court held that as the ocular account of occurrence was falsified by medical evidence the version given by prosecution witness with regard to the vital fact was inherently improbable and intrinsically incredible.

The evidence of the prosecution witness is totally inconsistent with medical evidence and when there is glaring conflict between medical and oral evidence, the prosecution case must fail.

The revision petition is dismissed.

**December 01, 2015**

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**(ANITA CHAUDHRY)  
JUDGE**