

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

CRA S-1270-SB of 2004

Date of Decision : October 3, 2016

Rajinder Kumar	Versus	Appellant
State of Haryana		 Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Ashwani Bhardwaj, Advocate
for the appellant.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

T.P.S.MANN, J. (Oral)

Rajinder Kumar and Shiv Kumar @ Shibu were tried for committing offences under Section 302 read with Section 34 IPC. Vide judgment and order dated 21/27.4.2004, learned Additional Sessions Judge, Kurukshetra, acquitted them of the charge under Section 302 read with Section 34 IPC. Instead, they were convicted under Section 304 Part II read with Section 34 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.7,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for six months. The period which they had already undergone during the trial was ordered to be set off against the period of sentence imposed upon them.

Aggrieved of their conviction and sentences, Rajinder

Kumar appellant filed the present appeal whereas his co-convict Shiv Kumar @ Shibu appellant filed Criminal Appeal S-1503-SB of 2004. Both the appeals stand admitted and the appellants also extended the benefit of suspension of their sentences of imprisonment.

As both the appeals arise out of one and the same judgment of conviction and sentence passed by the trial Court, they are being disposed of by a common judgment.

The case of the prosecution is that complainant Smt. Maya Devi, a widow, had five sons and four daughters. Eldest of them was Jai Bhagwan. Next to him was Shiv Kumar @ Shiba @ Chiba, who used to be engaged for preparing potato tikkis, chat etc., in social functions. On 22.12.2001 at about 2.00 p.m., he did not return during the night. Even on the next day, he did not come home. At about 8.00 p.m., on 23.12.2001, he was seen at the shop of one Bheera, a tea vendor in Gandhi Nagar by Jaspal, son-in-law of the complainant and at that time, he was in the company of Tittu, Pinny, Rajinder and Shiv Kumar @ Shibu. Jaspal Singh had asked Shiv Kumar @ Shiba @ Chiba to come home but Shiv Kumar @ Shiba @ Chiba told Jaspal Singh to go to the house by assuring him that he would follow him soon. However, Shiv Kumar @ Shiba @ Chiba did not come home during the entire night. On 24.12.2001 at about 1.00 p.m., the complainant learnt that a dead body had been found in a sugarcane field near the edge of the road leading to village Bishangarh. The complainant, accompanied by her sons Jai Bhagwan @ Pali and Lakhmi Chand,

went to the spot and recognized the dead body to be that of her missing son Shiv Kumar @ Shiba @ Chiba.

The trial Court accepted the prosecution evidence to the extent of involvement of the two appellants in the commission of the crime. However, it was held that the appellants did not intend to cause death nor had any intention to cause such bodily injury, which was likely to cause death but their act of giving a push was sufficient to hold that they had knowledge while causing injury that it was likely to cause death. Accordingly, they were convicted under Section 304 Part II read with Section 34 IPC.

Having heard learned counsel for the parties and on going through the evidence, this Court finds that the prosecution has led sufficient, cogent and convincing evidence so as to fix the liability of the appellants in the commission of the crime. Despite cross-examining various witnesses to a great extent, the defence could not bring on record any material, from which, it could be concluded that the appellants had no role to play in the commission of the crime. As such, no case is made out for any interference in the conviction of the appellants for the offence under Section 304 Part II read with Section 34 IPC.

Next comes the question of sentence to be imposed upon the appellants for the offence committed by them. The appellants are facing the agony of criminal prosecution for the last about fifteen years. None of them is shown to be armed with any weapon. The only

role attributed to Rajinder Kumar appellant was of giving a push to deceased Shiv Kumar @ Shiba @ Chiba. As per the custody certificates already brought on record by the learned State counsel, Rajinder Kumar appellant has undergone total period of four years, four months and two days including remission of seven months and seven days whereas Shiv Kumar @ Shibu appellant has undergone total sentence of four years, two months and fifteen days. None of them is involved or convicted in any other case. When the appellants were heard by the trial Court on the quantum of sentence, they had pleaded that they were poor labourers and required to look-after their families. Appellant Shiv Kumar @ Shibu had stated that he had two small children besides his wife and widowed mother to support whereas Rajinder Kumar appellant had pleaded that he had an old and ailing father to support.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the appellants behind the bars, once again, for undergoing their remaining sentences of imprisonment. Ends of justice shall be suitably met, if their substantive sentences of imprisonment are reduced to the one already undergone by them. At the same time, the fine of Rs.7,000/- imposed upon each of them can be suitably enhanced.

Resultantly, the conviction of the appellants under Section

304 Part II read with Section 34 IPC is upheld. Their substantive sentences of imprisonment are reduced to the one already undergone by them. The fine of Rs.7,000/- imposed upon each of them is, however, enhanced to Rs.20,000/-. The entire amount of fine be deposited by the appellants with the trial Court within three months from today, failing which, they shall be required to undergo rigorous imprisonment for two years. The entire amount of fine, when deposited by them, be disbursed to the legal heirs of deceased Shiv Kumar @ Shiba @ Chiba, as compensation.

But for the modification in the quantum of sentence of imprisonment and fine, as indicated above CRA S-1270-SB of 2004 filed by Rajinder Kumar and CRA S-1503-SB of 2004 filed by Shiv Kumar @ Shibu, fail and are, therefore, dismissed.

October 3, 2016
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No