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

CRA-S-950-SB of 2003 (O&M)
Date of decision: May 20, 2016

Gopal Krishan

.....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. A.P.S. Deol, Senior Advocate with
Mr. M.P.S. Mann, Advocate
for the appellant.

Mr. Vijesh Sharma, DAG Haryana.

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

A.B. CHAUDHARI, J

Being aggrieved by the judgment and order dated 01.05.2003/03.05.2003 passed in Sessions Case No.41 of 2002, by which the Additional Sessions Judge, Ambala convicted the appellant-Gopal Krishan for commission of offence punishable under Section 304-Part II of Indian Penal Code, 1860 ('IPC' for short) and for commission of offence punishable under Section 323 IPC and sentenced him to undergo rigorous imprisonment for a period of seven years with fine of ₹1,000/-, in default of payment of fine, simple imprisonment for one month, and also rigorous imprisonment for a period of six months for commission of offence punishable under

Section 323 IPC, the present appeal was filed by the appellant-Gopal Krishan.

This Court had earlier decided the present CRA-S-950-SB of 2003 vide judgment and order dated 10.09.2012 and had held that the appellant was guilty of causing simple hurt to Baldev Singh and also for giving push to Richpal Kaur-complainant. But then, the Supreme Court, in Criminal Appeal No.46 of 2014 filed by the appellant found that reversal of conviction under Section 304-Part II IPC was wrong and illegal. This Court having found the appellant guilty of offence under Section 323 IPC had also extended the benefit of Section 4(1) of the Probation of Offenders Act, 1958 and thus freed him.

Appellant had appeared in person before the Apex Court. Apex Court while disposing of the said criminal appeal, noticed that the conviction under Section 304-Part II IPC could not be altered to Section 323 IPC because the medical evidence which was not shattered, clearly indicated fracture of thyroid cartilage which was an ante-mortem injury to the neck due to mugging which means the air passage to the trachea leading to the lungs was blocked and as a result of which the death of Baldev Singh occurred. It is in this background the Apex Court therefore, found that the judgment and order of the High Court was faulty and therefore, remanded the matter to this Court for reconsideration.

That is how this appeal has come up before me now for

fresh hearing and disposal.

Heard learned counsel for the rival parties.

Keeping in mind the findings given by the Apex Court so also the evidence and particularly the medical evidence, at the outset, it is not possible for me to agree that the appellant could be convicted for offence under section 323 IPC. Section 304-Part II IPC for which offence the appellant was convicted by the Sessions Judge, was the correct provision under which he could be convicted. I concur. The sentence that was ordered by the Sessions Judge was, however, of 7 years plus fine. It is in the background of the medical evidence, it would be appropriate to have a re-look at the award of sentence. The medical evidence shows fracture of thyroid cartilage in midline in vertical direction resulting into asphyxia as a result of mugging. The background facts are that the deceased-Baldev Singh and Richpal Kaur, husband and wife had gone to the shop of Ramu and asked accused as to why he was misbehaving with their daughter, on which some altercation took place. The appellant suddenly caught hold of Richpal Kaur and pushed her back. Subsequently, he caught hold of her husband Baldev Singh and also pushed him back and Baldev Singh fell on the ground and became unconscious. In the hospital, he was declared brought dead. The ante-mortem injury in the postmortem report have not been seriously challenged by the defence. The ante-mortem injury to the trachea cartilage must have been caused due to mugging by the appellant so much so that the air passage was blocked.

That is why Baldev Singh fell down and died. It is thus, clear that the appellant appears to have caught hold of his neck with unreasonable force resulting into the mugging and as a result of which, unfortunately, the wind pipe was pressed to such an extent that there was a respiratory failure, as a result of which Baldev Singh fell on the ground and died. But then, it cannot be forgotten that there was no damage to the Thyroid as such. What was damaged was cartilage of Thyroid. Therefore, there is no reason to hold that Thyroid was as such anyway damaged. But then it is not a case of such an attack that the appellant should be sentenced for rigorous imprisonment for 7 years plus fine. It is well settled legal position that while awarding the sentence, the background facts, the manner in which incident took place, the motive and surrounding circumstances are required to be kept in mind. In the instant case, in the light of the above background facts, it is clear that there was a sudden fight, in the sense that the appellant was being asked as to why he was misbehaving with the daughter of Baldev Singh and Richpal Kaur, he without any weapon in hand, merely by hands, pushed Richpal Kaur and thereafter, caught hold of the neck of Baldev Singh and also pushed him back. It is in this background, I think the sentence which accused-appellant has actually undergone namely one year, 5 months and 25 days should be sufficient rather than pushing him in Jail now at such a late stage. That apart, there is a mitigating factor namely that the appellant got punishment, due to this case, namely that he was dismissed from

service from the Air Force Organisation where he was working as a Corporal.

In view of the above, I make the following order:

ORDER

- (i) CRA-S-950-SB of 2003 is partly allowed.
- (ii) The judgment and order of conviction of the appellant for commission of offence punishable under Section 304-Part II IPC, is confirmed.
- (iii) However, the judgment and order awarding sentence of 7 years plus fine to the appellant, is modified. The appellant shall undergo sentence which he has already undergone, i.e. one year, 5 months and 25 days. The appellant shall pay fine of ₹1,000/-, if not paid already. Bail bonds stand cancelled.

(A.B. CHAUDHARI)
JUDGE

May 20, 2016
mahavir