

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

Crl. Appeal D-37-DB of 2004
Date of Decision : July 28, 2017

Surender @ Lambu

.....Appellant

VERSUS

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present : Mr. Deepender Singh, Advocate
for the appellant.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

T.P.S. MANN, J.

Convict-Surender @ Lambu has filed the present appeal for challenging the judgment and order dated 10.12.2003 passed by learned Additional Sessions Judge, Rohtak whereby he was convicted under Sections 302/34 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for three years.

According to the prosecution, on 3.9.2002 at 8.30 p.m., ASI Maha Singh recorded the statement Ex.PE of complainant-Rajnish, brother of deceased Rakesh at Medical College and Hospital, Rohtak on the basis of which FIR Ex. PE/1

was registered at Police Station City, Rohtak on 3.9.2002 at 8.50 p.m. by SI Kamlesh Kumar which was concluded at 9.45 p.m. The appellant alongwith three others, namely, Pankaj, Raju and Anil were arraigned as accused therein. The complainant stated therein that he was resident of Silara Mohalla, Rohtak, aged 22 years and a student of 10+2. His brother Rakesh was also a student of 10+2. 3/4 days earlier, there was an altercation between the deceased on one side and Raju and Lambu-accused, on the other, near chowk of Ram Kishan temple and he had also reached the spot and separated them. Raju and Lambu went away saying that on that day he had been saved but his writ would not be allowed to run and he would be seen at an appropriate time. On 3.9.2002 at about 6.30 p.m., the complainant and his brother Rakesh were going to the market for purchasing household articles. When they had reached near the shop of Darshan, a tea vendor near Ram Kishan temple, Lambu, Raju, Pankaj and Anil were found standing on the road. Lambu proclaimed that Rakesh was within their reach and he should not be allowed to go and be done to death. On this, Raju caught hold of his brother whereas Lambu, Pankaj and Anil dragged him into a nearby street. The complainant raised an alarm that his brother be saved. His maternal uncle Surat Singh was attracted to the place. The complainant and his maternal uncle reached the street to save his brother. Within their sight, Pankaj gave a chhura blow

on the left side of the chest of Rakesh. Lambu gave a knife blow under the chin of his brother. Anil gave slap and fists blows and was proclaiming that Rakesh be not allowed to escape. While the complainant's brother was lying on the ground, the complainant and his maternal uncle raised an alarm to save his brother. All the four accused alongwith their respective weapons took to their heels. The occurrence was witnessed by the complainant and his maternal uncle. They shifted Rakesh to PGIMS, Rohtak for treatment in a three wheeler but on examining him, the doctor declared him dead. The assailants had killed his brother by giving knife and chhura blows with their common intention.

During the investigation of the case, ASI Maha Singh prepared inquest report Ex. PB on the dead body and sent it for post-mortem. Inspector Jai Singh, Station House Officer, Police Station City, Rohtak reached PGIMS Rohtak and verified the investigation conducted by ASI Maha Singh till that time and then took further investigation in his own hands. From PGIMS, Rohtak he alongwith ASI Maha Singh reached the place of occurrence and got the scene of crime as well as the dead body photographed by Constable Vijay Pal. The police also picked up blood stained earth and a pair of chappals of the deceased from the spot. Rough site-plan was prepared. The accused were tried to be arrested but they were absconding. On the next day, the complainant made supplementary statement that the name of

accused Lambu was Surender whereas name of his father was Rohtash and not Bhim Singh as earlier stated by him.

On 5.9.2002, on the basis of secret information, all the four accused were duly arrested. Pursuant to the disclosure statement, Pankaj-accused got recovered dagger (chhura) which was duly seized by the police.

After completion of investigation followed by presentation of the challan, the case was committed to the Court of Sessions. An application was, thereafter, filed by Pankaj, Raju and Anil for determining their age as they claimed themselves to be juveniles. After receipt of report from learned Additional Chief Judicial Magistrate, Rohtak, learned Additional Sessions Judge, Rohtak vide order dated 28.3.2003 declared the aforementioned three accused as juveniles and directed the prosecution/police to submit separate challan against them in the Juvenile Justice Board, Rohtak. After perusing the record, learned Additional Sessions Judge, Rohtak found a prima facie case under Section 302/34 IPC and, accordingly, charged Surender-accused, as mentioned above, to which he pleaded not guilty and claimed trial.

At the trial, the prosecution examined fourteen witnesses.

PW1 Dr. Giri Raj, Medical Officer, Civil Hospital, Rohtak deposed that on 4.9.2002, he conducted post-mortem on

the dead body of Surender at 12.10 p.m. and found the following injuries:-

- “1. Reddish abrasion 1.5 cms x 1.5 cms on posterior part of left elbow olecranon, ecchymosis was present.
2. Abrasion 2 cms x1 cm reddish on mid of chin. On dissection, ecchymosis were present.
3. Stab wound on left chest, 4 cms x 2.5 cms just left to left nipple slightly oblique and upper and being just medial to lower end. It is present 9 cm left to midline and upper end is 11 cms below the left mid clavicular joint, wound was elliptical shaped, wound margins were sharp cut. On further dissection, it was directed posterior medially and slight upward, passing through 4th and 5th intercostal space and fracturing 4th rib. Intervening left lung was pierced and right verticle of heart was pierced anteriorally. Whole track was ecchymosed and contused. Whole of thoracic cavity was full of blood.”

He also stated that post-mortem was conducted by a panel of doctors consisting of him and Dr. Mahesh Parkash. In their opinion, the cause of death was due to haemorrhage and shock caused by injuries i.e. injury to vital organs, heart and lung which were ante mortem in nature and sufficient to cause death in ordinary course of nature. He also opined that probable time that elapsed between injury and death was within few minutes and

between death and post-mortem it was six to twenty four hours. He also deposed that injury No.3 was possible by chhura Ex.P5 and the said injury was sufficient to cause death in the ordinary course of nature.

PW2 Constable Sumit Kumar proved the scaled site plan Ex.PD prepared by him after visiting the place of occurrence.

PW3 SI Kamlesh Kumar testified that on receipt of statement Ex. PE of the complainant, FIR Ex. PE/2 was recorded by him. Special report of the case was handed over to Constable Rajesh which was delivered at the residence of the Ilqa Magistrate on the same day at 10.30 p.m.

PW4 HC Ram Kumar tendered in evidence his affidavit Ex. PF regarding deposit of case property in the malkhana and its handing over to EHC Jagbir Singh on 13.9.2002 for its transmission to the Forensic Science Laboratory, Madhuban.

PW5 ESI Jagbir Singh tendered in evidence his affidavit Ex. PG regarding transmission of the case property to the Forensic Science Laboratory.

PW6 Constable Baljit Singh tendered in evidence his affidavit Ex. PH regarding handing over post-mortem report and sealed parcels containing clothes of the deceased to the

Investigating Officer on 4.9.2002.

PW7 Constable Rajesh tendered in evidence his affidavit Ex. PJ regarding delivery of special report to the Ilqa Magistrate.

PW8 Constable Dharam Singh deposed that on 3.9.2002 a ruqa regarding death of Rakesh was received at Police Post PGIMS Rohtak at 7.30 p.m.

PW9 Rajnish deposed about the motive and the details of the occurrence in which his brother Rakesh was done to death by the accused. He also deposed about lifting of blood stained earth and a pair of chappals belonging to his brother by the police.

PW10 Surat Singh, maternal uncle of complainant- Rajnish and deceased Rakesh corroborated the testimony of PW9 Rajnish and stated that he had witnessed the occurrence in which his nephew Rakesh was killed by the assailants.

PW11 Inspector Jai Singh and PW12 ASI Maha Singh deposed about the various steps taken by them during the investigation of the case.

PW13 Constable Vijay Pal proved the photographs Exs.P12 to P15 which he had prepared from the negatives Exs.P8 to P11 clicked by him on 3.9.2002 after visiting the place of

occurrence.

PW14 Dr. Amarjit Singh Rathi proved the ruqa Ex. PL which he had sent to Police Post PGIMS, Rohtak regarding arrival of patient, who had since died in PGIMS, Rohtak.

When the statement of the accused was recorded under Section 313 Cr.P.C., he claimed to be innocent and falsely implicated. According to him, the deceased was a vagabond and a quarrelsome person. He was not a student of any school. He had a number of enemies and someone had killed him. The police had reached the spot on the information of some boy. The police called the family of the deceased at the spot and in order to gain time, sent the dead body to PGIMS, Rohtak and prepared a false statement of Rajnish in collusion with the complainant party by showing Rajnish and Surat Singh as eye witnesses of the occurrence whereas Surat Singh was not even present in Rohtak on that day. He also stated that he was never known by the name of Lambu nor he was known to Rajnish and Surat Singh. He was involved in this case at the instance of his opponents. No altercation between him and Rakesh had ever taken place.

In his defence, the accused examined DW1 Jai Bhagwan, who deposed that about fourteen months back, he had gone to Jhule Wala chowk to purchase some household articles at about 5.30 p.m. Rakesh was standing there and two boys

came there. There was altercation between those two boys and Rakesh. Rakesh went into a street and the two boys followed him and gave knife blows on his chest. As a result, Rakesh fell down in the street and died there. The police and family members of Rakesh reached there. Family members of Rakesh were his mother and brother Rajnish. The dead body of Rakesh was sent to Medical College for post-mortem. Rakesh was a vagabond and used to remain in the company of persons of bad habits. He knew the accused, who was neither the assailant nor present at the spot.

After hearing learned counsel for the parties and on going through the record of the case, learned trial Court accepted the prosecution case and convicted and sentenced the appellant, as mentioned above.

This Court has heard Mr. Deepender Singh, Advocate for the appellant and Mr. Praveen Bhadu, Asstt. A.G., Haryana and with their able assistance, scanned the evidence minutely.

Learned counsel for the appellant has submitted that while making statement Ex. PE on the basis of which FIR Ex.PE/2 was registered, complainant-Rajnish had described the appellant as Lambu son of Bhim Singh. However, at the trial, PW9 Rajnish deposed that Lambu was also known as Surender whose father was Rohtash. He was duly confronted with his statement Ex. PE

wherein he had not mentioned the name of the appellant as Lambu @ Surrender and his father's name as Rohtash but so mentioned in his supplementary statement Ex.DA made to the police. However, he also stated that the appellant was Lambu @ Surrender whose father was Rohtash and this fact he came to know when he returned from the hospital to his house where so many persons were present. He denied that Surrender was not known as Lambu. However, the appellant, who was present in the Court was of normal height, may be about 5' 7". When there is explanation of PW9 Rajnish about the name of the appellant and also his father's name, it cannot be said to be a case of any substitution. The appellant was Surrender, who appeared to be known by his nick name Lambu. When the appellant was heard on the question of charge by the learned trial Court, he was described as Lambu @ Surrender son of Rohtash. He signed the charge-sheet as Surrender. He did not raise any objection that he was neither known as Surrender nor his father's name was Rohtash. As such, there is no ambiguity regarding the identity of the appellant.

The defence tried to make capital from the fact that no test identification parade was held by the prosecution to connect the appellant with the commission of the crime. It is true that no such parade was held. Reasons for the same are obvious i.e. he was described in the FIR as Lambu and in the supplementary

statement made by the complainant he was also referred to as Surender and his father's name also mentioned therein.

PW10 Surat Singh, maternal uncle of the deceased, deposed in his examination-in-chief that he did not see any of the assailants in the Court. However, he corrected himself that Lambu-appellant whom he knew was present in the Court. PW9 Rajnish also identified the appellant in the Court during the trial of the case. Thus, the identity of the appellant stands reaffirmed and no benefit of some minor contradiction can be extended to the appellant.

According to the prosecution, the occurrence had taken place in two parts. First part of the occurrence was the incident which had taken place 3/4 days prior to the main occurrence. In that occurrence, the appellant and Raju-accused were present. There was some altercation between them on the one side and deceased, on the other. However, complainant-Rajnish had intervened and separated them. The appellant as well as Raju left the spot after throwing a challenge that they would see the deceased at some appropriate time. Second part of the occurrence was on 3.9.2002 at around 6.30 p.m. when complainant-Rajnish and deceased Rakesh were proceeding towards the market for purchasing household articles. In this occurrence, the appellant as well as three others, who were later

on declared to be juveniles, had participated. It was the appellant, who had raised *lalkara* that the deceased would not be allowed to go and will be done to death. While Raju took Rakesh in his grip, the appellant as well as Pankaj and Anil dragged him into a street. The complainant kept on raising an alarm that his brother be saved. This attracted his maternal uncle Surat Singh to the spot. Within their sight, Pankaj gave a chhura blow on the left side of the chest of Rakesh. The appellant did not lag behind and gave a knife blow under the chin of Rakesh. Anil gave slap and fists blows to the deceased. As Rakesh had suffered serious injuries, he was taken to Medical College and Hospital, Rohtak where the doctor declared him as dead. While conducting post-mortem, PW1 Dr. Giri Raj and Dr. Mahesh Parkash had noticed three injuries on the dead body. Injury No.3 was a stab wound on the chest of the deceased which injury was attributed to Pankaj-accused. Injury No.2 was a reddish abrasion on the middle of chin and on dissection ecchymosis was found present. This injury was attributed to the present appellant, having been caused with a knife. Merely because, it was injury No.3, which was fatal is no ground to absolve the appellant, who had shared common intention with Pankaj and had actively participated in the occurrence by causing an injury with a knife on the middle portion of the chin of the deceased. Even otherwise PW1 Dr. Giri Raj had opined that cause of death was haemorrhage and shock caused

by injuries which were ante mortem in nature and sufficient to cause death in ordinary course of nature. As such, the part and participation of the appellant in the commission of crime stands duly established.

As regards the nature of offence, it may be noticed that injury No.3 was the fatal injury. The said injury was on the left side of the chest of the deceased and possible to have been caused with chhura Ex. P5 which was recovered pursuant to the disclosure statement made by Pankaj-accused. The injury attributed to the appellant had not resulted in the death of Rakesh. In his cross-examination, PW1 Dr. Giri Raj testified that injuries No.1 and 2 on the person of deceased were simple in nature. Neither Pankaj-accused nor the appellant had repeated causing of injuries to the deceased. Only solitary blow was attributed to each of them. There was no serious enmity between the parties. The appellant was a young boy of the age of 19 years as is indicated in the charge-sheet.

Taking into consideration the totality of the circumstance, this Court is of the view that the appellant never intended to commit the murder of Rakesh. He had no intention or knowledge nor he had the common intention with Pankaj to commit the murder of Rakesh. Facts and circumstances brought on the record, at the same time, make out commission of the

offence of culpable homicide not amounting to murder making the appellant liable under Section 304 Part I IPC.

Resultantly, the conviction of the appellant under Section 302/34 IPC is set-aside. Instead, he is convicted under Section 304 Part I/34 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three years.

The appeal is, accordingly, disposed of.

**(T.P.S. MANN)
JUDGE**

July 28, 2017
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**(MAHABIR SINGH SINDHU)
JUDGE**

Whether reasoned/ speaking : YES / NO

Whether reportable : YES / NO