

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

Crl. Appeal S-1861-SB of 2004

Date of Decision : July 28, 2017

Lakhmi

.....Appellant

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Rakesh Nagpal, Advocate
for the appellant.

Mr. Pramjeet Singh, Asstt. A.G., Haryana.

Mr. Sanjiv Sheoran, Advocate,
for the complainant.

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

The appellant was tried for committing the offence punishable under Section 302 IPC. Vide judgment and order dated 20/23.08.2004, learned Additional Sessions Judge, Jind, after holding that there was no previous enmity between the parties and the incident took place at the spur of the moment and the accused did not take undue advantage of the situation, absolved him of the charge under Section 302 IPC. However, he

was convicted under Section 304 Part-II IPC and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs. 25,000/- and in default of payment of fine, to undergo further imprisonment for a term of one year. The amount of fine, if recovered, was ordered to be paid as compensation to the wife and children of deceased Rambir in equal shares.

Aggrieved of his conviction and sentence, the appellant filed the present appeal which was admitted on 27.09.2004. Subsequently, vide order dated 18.11.2004, this Court suspended his sentence of imprisonment and ordered his release on bail during the pendency of the appeal.

It may be mentioned here that complainant-Dilbag Singh, also filed Criminal Revision 2237 of 2004 praying therein for convicting the appellant under Section 302 IPC and enhancement of compensation to Rs. 5,00,000/-. The said revision was ordered to be listed for hearing alongwith the present appeal.

According to the prosecution, on 20.03.2002 at 11.15 p.m., the turn of the appellant for using canal water for irrigating his fields came to an end. This was followed by turn of Rambir- since deceased for irrigating his fields by using the canal water. When the deceased requested the appellant to stop irrigating his fields so that he himself could avail of his turn the appellant lost his cool and retorted that the turn of the deceased had not

commenced by then. This was followed by exchange of hot words between the parties. When the deceased attempted to divert the flow of canal water into his fields, the appellant flew into a rage and gave a lathi blow on his head, who was standing in the water course itself. The appellant gave another blow on the left side of his head while proclaiming that he would kill Rambir.

After the occurrence, Rambir was rushed to the hospital where he was medico-legally examined by Dr. Manoj Kumar, who found the following injuries on his person:-

1. A lacerated wound 4 cm x 0.5 cm x 0.7 cm on the scalp. Clotted blood was present. Advised X-ray and referred to PGIMS, Rohtak for further management. The wound was situated in the middle of the scalp in fronto-parietal region.
2. Swelling was present on the left side of the face associated with red blue discolouration of skin. Black eye was present. Swelling was present on lateral scalp on left side extending upto the region of ear lobule area. Advised X-ray and C.T. Scan.

Rambir succumbed to his injuries on 28.03.2002 and Dr. Paramjit Singh conducted autopsy on his dead body wherein he found a healed abrasion with clotted blood over the posterior aspect of the left elbow joint. There was bilateral black discolouration around the eyes. There was another 5 cm linear healed lacerated wound present over the scalp which was 1 cm

towards the right of the midline.

During the recording of the prosecution evidence, it was revealed that the swelling was on the left parietal region of the deceased and definitely not on the right side of the head. There was no mark of injury present at the seat of injury No. 2. The doctor specifically opined that injury No. 2 could be due to collection of blood in the independent area caused as a result of injury No. 1.

Learned counsel for the appellant has tried to convince this Court about the merits of the case but on going through the evidence available on the record by way of the statement of complainant-Dilbag, who was examined by the prosecution as PW7, this Court has no other option but to uphold the conviction of the appellant under Section 304 Part-II IPC. No case is made out for interfering in the impugned judgment of conviction so as to hold that the appellant ought to have been convicted under Section 302 IPC.

As regards the question of sentence, it may be noticed that the appellant is facing the agony of criminal prosecution for the last more than fifteen years. He was armed with a *lathi* at the time of the occurrence. Though the prosecution had alleged that he caused two blows to the deceased with the *lathi*, but going by the medical evidence on record, it stands established that only one injury was caused whereas the other injury was result of the

first injury. Moreover, he had not repeated the blow on the person of the victim. The occurrence had flared up after exchange of hot words and it being a sudden attack, there was no question of his intending to commit the murder of the deceased. When he was heard by the learned trial Court on the quantum of sentence, he had pleaded that he was a poor agriculturist and having a large family to support. His memory had also been impaired by the tremendous psychological fact brought on his mind by the incident and for that he had been under treatment at PGIMS, Rohtak.

From the custody certificate produced by the learned State counsel, it is made out that the appellant has already undergone an actual period of two years, seven months and seven days out of the sentence of five years imposed upon him.

Taking into consideration the totality of the circumstances, this Court is of the view that the appellant, who is on bail for the last about thirteen years, need not be sent behind the bars, once again, so as to undergo his remaining sentence of imprisonment. Ends of justice shall be suitably met, if his substantive sentence of imprisonment is reduced to the one already undergone by him. At the same time the amount of fine already imposed upon him by the learned trial Court can be enhanced so as to further compensate the wife and children of the deceased.

Resultantly, the conviction of the appellant under

Section 304 Part-II IPC is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. However, the fine of Rs.25,000/- imposed upon him by the learned trial Court is enhanced to Rs.75,000/-. The fine amount be deposited by him in the Court of learned Chief Judicial Magistrate, Jind within a period of three months from today, failing which he shall be required to undergo simple imprisonment for two years. The entire amount of fine, if deposited by him, be disbursed in favour of the wife and children of deceased-Rambir, as compensation in equal shares.

Criminal Appeal S-1861-SB of 2004 filed by the appellant and Criminal Revision 2237 of 2004 filed by complainant-Dilbag are disposed of accordingly.

July 28, 2017
jyoti iii

(T.P.S. MANN)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No