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

1. **CRA-S-1880-SB-2004**
Date of Decision : July 31, 2017

Harmesh Lal and another

.... Appellants

Versus

State of Punjab

.... Respondent

2. **CRA-S-1940-SB-2004**

Sucha Ram and others

.... Appellants

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Ms. Kulwant Kaur Kahlon, Advocate,
for the appellants.

Mr. Rahul Rathore, D.A.G., Punjab,
for the respondent-State.

SHEKHER DHAWAN, J.

Present two appeals are directed against the common judgment of
conviction and order of sentence dated 11.09.2004 passed by learned
Additional Sessions Judge, Nawanshahar, whereby the appellants were

convicted and sentenced as under:-

Under Section	Sentence	In default
U/s 304-Part II IPC	to undergo Rigorous Imprisonment for a period of Seven years and to pay a fine of Rs.7,000/- each	to further undergo Rigorous Imprisonment for a period of One year each.

Therefore, both these appeals are being decided by this common judgment.

2. Facts relevant for the purpose of decision of the appeals; that on 25.10.2001, Bhola Nath, Krishan Kumar and Man Singh were present in the temple at about 7.00/8.00 PM. At that time, about 7 – 8 persons had gone towards the temple where Pujari (priest) Lehar Nath (since deceased) was present. They asked Lehar Nath as to why he had abused them in their shop and now he would be taught a proper lesson for abusing them. All the said persons started giving beatings to Lehar Nath. Out of the said persons, five of them were Shingara Ram, Tholu Ram, Nek Ram, Sucha Ram and Teeta son of Munshi Ram. Lehar Nath was rescued by Krishan Kumar, Bhola Nath and Man Singh. Thereafter all the said persons fled away from the spot. Lehar Nath was in critical condition. Bhola Nath and Krishan Kumar arranged for a car and took him to Civil Hospital, Nawanshahar. However, Lehar Nath died on the way to the hospital, near village Begumpur. The dead body of Lehar Nath was brought back to the temple. On the basis of statement of Krishan Kumar, formal FIR (Ex. PB/2) was registered. Postmortem examination on the dead body was conducted.

3. After completion of investigation proceedings, challan was presented in the Court for trial.

4. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused, recording of evidence of the prosecution witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and the defence version on record, learned trial Judge held the appellants guilty and convicted them for commission of offence punishable under Section 304 Part II IPC and sentenced them on 11.9.2004.

5. Aggrieved of passing of judgment of conviction and order of sentence, the appellants are before this Court by way of present appeals.

6. Learned counsel for the appellants contended that as per prosecution case, PW-1 Bhola Nath and PW-2 Krishan Kumar were present in the temple on 25.10.2001 and the alleged occurrence had taken place at 7.00/8.00 PM. As per the site-plan, produced and proved on record as Ex. PH, the temple is at the height of 6 to 8 feet and it had come in the statement of Krishan Kumar that PW-1 Bhola Nath was present at such a height that they could not see the occurrence and on this point, site plan (Ex. PH) and more specific, points marked A, B and C are the most relevant which establish that in fact, these two witnesses were not the eye-witnesses to the occurrence and in fact, the alleged crime, if any, had been committed by complainant, Krishan Kumar and Bhola Nath and the present appellants have been falsely implicated in this case.

7. Learned counsel for the appellants further submitted that it had come in the statement of PW-8, SI Surinder Mohan, Investigating Officer of this case that the dead body of Lehar Nath was lying with the wall in the sitting position. That fact clearly shows the involvement of complainant, Krishan Kumar and Bhola Nath in the commission of crime because if they had taken the dead body of Lehar Nath to the temple, what was the reason for them to keep the dead-body of Lehar Nath in sitting position with the wall.

8. Learned counsel for the petitioners further contended that the prosecution case is falsified from the fact that the matter was reported to the police after an inordinate delay of 8/9 hours, which is fatal to the prosecution. The occurrence had taken place at 7.00/8.00 PM on 25.10.2001 and the same reported to the police at 9.10 AM on 26.10.2001 as is evident from Ex. PB. The defence version is established on the file as per statement of four defence witnesses examined in defence, who have stated before the Court below correct sequence of events, but the trial Judge has completely ignored their testimony without there being any reason. As such, the present appeals be accepted and the appellants be acquitted of the charge.

9. While arguing on these points, learned State counsel contended that the plea taken by learned counsel for the appellants, that Krishan Kumar and Bhola Nath had not seen the occurrence, is not tenable as there was no suggestion put to PW-2, Krishan Kumar, complainant that he had not

seen the occurrence or that temple was not visible from the place where they were standing. Otherwise, both the material eye-witnesses, namely, Krishan Kumar and Bhola Nath, fully supported the prosecution case. The death of Lehar Nath had taken place because of multiple injuries which were result of fist and kick blows and post-mortem report, (Ex. PF) fully established that fact. The delay in this case has been duly explained, that Krishan Kumar and Bhola Nath had taken Lehar Nath to Civil Hospital in injured condition and Lehar Nath died on the way. His dead body was taken back to the temple. Complainant Krishan Kumar and Bhola Nath made efforts to find out the heirs and family members of Lehar Nath and as they could not find any one, then the matter was reported to the police without any further delay. The defence version by way of statement of four witnesses is just an after-thought and concocted one. DW-2, Baldev Singh is related to one of the accused and probably, that was the reason for his stepping into the witness box to save the skin of accused. Otherwise, there is no ground for acceptance of the present appeals and learned trial Judge has already considered all the aspects while record judgment of conviction and order of sentence. The appeals are liable be dismissed.

10. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that learned trial Judge has rightly placed reliance upon the testimony of both the eye-witnesses including the complainant as well as statement of PW-8 Surinder Mohan, Investigating Officer of this case and the Post-mortem

report, (Ex. PF) prepared by PW-7, Dr. Rajesh Bhatia and other prosecution witnesses and had not relied upon the testimony of defence witnesses examined in this case. It has specifically come in the statement of PW-2, Krishan Kumar, complainant, that he had taken 7 Kanals of land belonging to Santokha Nand temple on lease and Lehar Nath was the priest of the temple and was about 40/45 years of age. He was living in the said temple and performing *puja* there. On the fateful day, i.e., on 25.10.2001, at about 7.00/8.00 PM, he was present in the fields alongwith Bhola Nath and Man Singh. At that time, 5/6 persons ran towards the temple the temple where priest Lehar Nath was present. Sucha alias Ladi, Thola Ram, Neka sons of Sohan Lal, and Shingara Ram son of Hans Raj and Teeta son of Munshi Ram were amongst the said persons. The motive for causing death of Lehar Nath as been explained by him was that Lehar Nath had abused them in their shop and they had visited the temple to take revenge for that. In furtherance of their criminal intention, they had given fist and kick blows in the abdomen and genitals of Lehar Nath. At that time, light of the temple was on. The complainant and Bhola Nath raised alarm and rescued Lehar Nath from the clutches of the accused and the accused persons fled away from the spot. As Lehar Nath was in a critical condition and was unable to speak, they made efforts to take him to the Civil Hospital after arranging car. However, Lehar Nath died on the way near village Begumpur and then he was brought back to the temple and kept there. Thereafter, they made efforts to trace out the heirs of Lehar Nath but they could not find any one

and then they reported the matter to the police. On 26.10.2001, statement (Ex. PB) of Krishan Kumar was recorded. Similar is the deposition of PW-1, Bhola Nath.

11. Post mortem examination on the dead body of Lehar Nath was conducted by PW-7, Dr. Rajesh Bhatia, Medical Officer, Civil Hospital, Nawanshahar and following injuries were noticed by him :-

“There were multiple subcutaneous hemorrhages on the anterior abdominal wall and inguinal regions. On dissection of the abdomen, there was large collection of blood into the ratero peritoneal space containing liquified as well as clotted black coloured blood. There was no tear in the peritoneum. All the other organs of the abdominal cavity were normal. Other organs were also normal and healthy.”

12. As per this witness, the cause of death in this case was due to hemorrhage and shock because of excessive loss of blood which could occur due to blunt trauma to the abdomen. Surinder Mohan, Sub Inspector, Investigating Officer [PW-8] of the case deposed the Krishan Kumar had reported the matter to him and thereafter the matter was investigated and challan was presented in the Court. Remaining prosecution witnesses have also supported the prosecution case.

13. Accused had denied the prosecution version in their respective statements recorded under Section 313 Cr.P.C. The three witnesses examined in defence were rightly disbelieved by learned trial Judge on the ground that DW-2, Baldev Singh, brother-in-law of accused Teeta and this

fact has been admitted by him in the cross-examination and that was probably the reason for deposing falsely. DW-1, Rakesh Kumar has admitted in his cross-examination that a civil suit had been filed by him against Bhola Nath and the witness is also facing trial under Narcotic Drugs and Psychotropic Substances Act, 1985 and a complaint was also pending against him under Sections 323, 324, 326, 307, 148 read with Section 149 IPC and because of these reasons, his testimony was rightly not believed. DW-3, Lal Chand Bhagra proved the news item and he had not bothered to get the information verified from the police.

14. As regards the plea taken by learned counsel for the appellants that complainant, Krishan Kumar and eye-witness, Bhola Nath were at such a distance from where they were not in a position to see the occurrence, the same is contrary to the facts available on record. PW-1, Bhola Nath as well as PW-2, Krishan Kumar have stated in so many words that they were present in the fields which are adjacent to the temple and they had seen the occurrence and thereafter they had gone to the spot and raised alarm and on seeing them, the accused persons had fled away from the spot. Thereafter, they had taken Lehar Nath in critical injured condition to the hospital, but he died on the way. Both these witnesses were put to lengthy cross-examination by learned defence counsel during trial, but there was nothing to disbelieve their testimony. As such, learned trial Judge rightly believed their testimony.

15. As regards to the plea of learned counsel for the appellants that

there was inordinate delay in reporting the matter to the police, law on the point is settled that delay in itself is not fatal to the prosecution, but the same put the Court to caution to scrutinize the testimony of prosecution witnesses with greater care and caution. More so, if the delay has been validly explained, then the same cannot be a ground for disbelieving the prosecution case.

16. Taking the case from both the angles, the testimony of complainant and the eye-witness has been duly scrutinized and scanned by learned trial Judge. The entire lengthy cross-examination done on these two witnesses does not make out a case that the witnesses are not telling the truth, rather they have supported the prosecution case that accused persons, who are residents of the same area and well known to them, had inflicted fist and kick blows in the abdomen and genitals of Lehar Nath [since deceased]. As per the postmortem report, Ex. PF, the same was the cause of death. The ocular testimony is in complete consonance with the medical evidence. The delay has been validly explained by the prosecution witnesses and as per the prosecution case, Lehar Nath was lying in the temple and the complainant and PW-1, Bhola Nath made efforts to find out the heirs in order to associate them and report the matter but as they could not find anyone, they reported the matter to the Police. Thereafter, they had gone to the Police Station but the police officials were not available there as there was Dussehra day and thereafter, they contacted the police and reported the matter vide Ex. PB.

17. In view of the above, learned trial Judge has rightly held the accused-appellants guilty for commission of offence punishable under Section 304 Part II IPC and present appeals against judgment of conviction is without any merit and stand dismissed.

18. As regards to the order of sentence, learned trial Judge has held the appellants guilty and convicted and sentenced *inter alia* under Section 304 Part II for 7 years. Learned counsel for the appellants contended that the appellants are not habitual offenders and they are also in custody and no other case is pending against them. Hence, a lenient view on the point of sentence be taken.

19. There is substance in the contention of learned counsel for the appellants and this Court is of the considered view that the sentence awarded to the appellants needs to be reduced from 7 years to 5 years under Section 304 Part II IPC. So ordered. Resultantly, the sentence awarded to the appellants is reduced from 7 years to 5 years under Section 304 Part II IPC with no change in default stipulation.

20. The appeals qua order of sentence are partly allowed in the above terms. Learned trial Judge is directed to comply with this order forthwith under intimation to this Court.

(SHEKHER DHAWAN)
JUDGE

July 31, 2017

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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes