

Criminal Appeal D-322-DB of 2013

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IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Appeal D-322-DB of 2013

Date of decision : February 6, 2017

Vijender

..... Appellant

Versus

State of Haryana

..... Respondent

Criminal Appeal D-1054-DB of 2013

Ramphal

..... Appellant

Versus

State of Haryana and others

..... Respondents

CORAM:

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

HON'BLE MR. JUSTICE H.S.MADAAN

Present:-

Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep Singh Sandhu, Advocate
for the appellant in CRA-D-322-DB of 2013.

Mr. P. S. Jakhar, Advocate
for the appellant in CRA-D-1054-DB of 2013.

Mr. Praveen Bhadu, Assistant Advocate
General, Haryana.

Mr. R. S. Chauhan, Advocate
for respondent Nos. 2 to 5 in CRA-D-1054-DB of 2013

H.S.MADAAN J.

Vide this judgment we intend to dispose of Criminal Appeal D-322-DB of 2013 filed by the accused-convict Vijender and Criminal Appeal D-1054-DB of 2013 filed by Ramphal complainant against the judgment dated 7.3.2013 and sentence order dated 8.3.2013 passed by the Additional Sessions Judge, (Special Court for Henious Crime against Women), Hisar vide which accused-Vijender had been convicted and sentenced as follows:-

<i>Name of convict</i>	<i>Offence</i>	<i>Sentence</i>
Vijender	Under Section 302 IPC	Rigorous Imprisonment for life which shall continue for the remainder of the natural life of convict

Whereas accused Rajender, Roshani, Joginder and Sikander were acquitted of the charges framed against them.

The accused/convict who is appellant before this Court pray that the appeal be accepted, impugned judgment of his conviction and order of sentence be set aside and he be acquitted of the charges framed against him. Whereas complainant Ramphal submits that accused Rajender, Roshani, Joginder and Sikander be also convicted and sentenced by setting aside the order of their acquittal.

Briefly stated, facts of the case as per the prosecution story as borne out from the report under Section 173 Cr.P.C and documents attached therewith and as un-folded during the trial are that Anita, daughter of complainant Ramphal son of Prabhu Dayal, aged about 48 years, resident of Vakil Colony, Hansi was married with accused Vijender on

27.11.2006; that after sometime of the marriage Vijender, his brothers Joginder, Sikander and Rajender as well as their mother Roshani started harrasing Anita stating that they did not like her, for that very reason Anita was beaten up a number of times. Complainant along with his wife Shakuntla went to matrimonial house of the accused so as to make them see reason not to harrass their daughter and behave in a proper manner but to no effect. As per prosectuion version Vijender accused had been employed in Haryana Police at Bhiwani and living with his brothers. Vijender and Anita were blessed with a son.

On 17.6.2008 at about 8.00 A.M. complainant Ramphal received a telephonic call from his daughter Anita that her husband Vijender along with his brothers Joginder, Rajinder, Sikander and mother Roshani was planning to kill her and he should reach there immediately. Since at that time, complainant was on duty at Patel Nagar, Hansi he made a telephonic call to his son Rahul asking him to go to matrimonial home of Anita immidiately and complainant himself left for Hansi from Hisar and when he reached Bus Stand, Hansi then his son Rahul met him and told him that as directed by the complainant he had gone to Hansi and found that Joginder, Rajinder, Sikander and Roshani had laid Anita on a bed inside the room whereas Vijender gave a blow with a broken glass bottle, on thigh of Anita and when Anita cried, he came out of her house due to fear. In between one person belonging to the Village had met the complainant who disclosed to him that Anita had been taken to Malik Hospital by her in-laws. Complainant went to the said hospital and found her daughter Anita to be dead.

From Malik Hospital an intimation was sent to Police

Station, Sadar Hansi regarding Anita having been brought to hospital in a dead condition. On receipt of such an intimation the police party led by ASI Suresh Kumar observed dead body of Anita to be there and Ramphal complainant to be present nearby. Ramphal got his statement Ex.P-9 recorded with ASI Suresh Kumar. ASI Suresh Kumar appended his endorsement Ex.P-9/A below such statement and sent ruqa to the police station through HC Ram Kumar, on the basis of which a formal FIR Ex. P-9/B was recorded at Police Station, Hansi. ASI Suresh Kumar had conducted inquest proceedings on dead body of Anita and prepared a report in that regard. Thereafter he moved an application Ex. PE at the hospital and got the postmortem examination conducted on dead body of Anita. Then the police party accompanied by complainant and witness Rahul went to the spot. Inspector Arjun Dev SHO., P.S.Sadar, Hansi had already arrived there. ASI Suresh Kumar handed over the relevant papers to Inspector Arjun Dev (hereinafter called as 'the Investigating Officer'). Inspector Arjun Dev carried out inspection of place of occurrence and lifted various clothes of deceased, one piece of bed sheet, one piece of mattress and broken pieces of glass and blood from the floor of room with the help of cotton, blood stained underwear, which was lying outside the house was also taken into possession, vide recovery Memo Ex. P-10 which was attested by ASI Suresh Kumar and EHC Ramesh Kumar as well as Rahul. All the articles mentioned above were converted into sealed parcels separately and sealed with his seal having inscription 'AD' and were taken into possession vide recovery memo Ex. PH. The Investigating Officer had summoned a photographer to the spot who clicked photographs of the place of incident. He recorded statements of the witnesses. Thereafter the police party went to

Hansi and HC Ram Kumar met him near Court Complex, who handed over two sealed parcels to Inspector Arjun Dev, one of the parcel contained ornaments and other of wearing clothes of the deceased. These parcels were taken into possession vide recovery Memo Ex. P-I, which was attested by HC Ram Kumar. Inspector Arjun Dev prepared rough site plan Ex. PJ of the place of occurrence. Thereafter, on reaching the police station he deposited the case property with MHC.

On 19.6.2008, accused Vijender was produced by Anil Kumar Sarpanch and Surender Kumar PWs before the Inspector Arjun Dev. Vijender was interrogated by the Investigating Officer during course of which he suffered a disclosure statement to the effect that he can produce his clothes, which were stained with blood at the time of changing clothes of Anita. The disclosure statement Ex. PK was signed by accused Vijender and attested by HC Rajesh Kumar. Thereafter in pursuance of the said disclosure statement Vijender, while in police custody led the police party to the specified place and got recovered his pant and shirt, which were stained with blood. The Investigating Officer converted those two clothes into a parcel, which was sealed with his seal having inscription 'SK'. The said parcel was taken into possession vide recovery Memo Ex. PL. The Investigating Officer recorded statements of the witnesses and on return to the Police station deposited the parcel in question with MHC.

On 19.6.2008 the Investigating Officer got prepared scaled site plan from Constable Subhash Chander and his statement was recorded and made part of the investigation file.

On 21.6.2008 the Investigating Officer recorded statements of PWs Jai Singh, Vijay Kumar Panch and supplementary

statements of Anil Sarpanch and Surender Kumar PWs.

After completion of investigation, and other formalities, challan against Vijender, Rajender and Roshni accused was prepared and filed in the Court of Illaqa Magistrate. The copies of the documents as envisaged under Section 207 Cr.P.C were furnished to the accused free of cost.

Then observing that the challan had been filed for offences including one under Section 302 IPC which is exclusively triable by the Court of Sessions, the Illaqa Magistrate committed the case.

The case was received by the learned Sessions Judge, Therefrom, it was marked to Court of Additional Sessions Judge.

During the course of trial, an application under Section 319 Cr.P.C was filed by the prosecution to summon Joginder and Sikander as additional accused, which was allowed and they were summoned as additional accused to face trial along with Rajender, Vijender and Roshani.

Thereafter formal charges for offence under Section 302 IPC read with Section 149 IPC and 304-B IPC was framed against all the five accused, to which they pleaded not guilty and the case was fixed for evidence of prosecution.

During the course of trial, the prosecution examined as many as seventeen witnesses as follows:-

PW-1 HC Ranbir Singh, a formal witness who was posted as MHC at Police Station Sadar Hansi on 17.6.2008 tendered in evidence his affidavit Ex. PA.

PW-2 Kulbeer Singh, photographer stated that on

Arjun Dev and took 14 photographs of scene of crime with the help of digital camera. He proved photographs Ex.P-1 to Ex. P-14 stating that photographs were also taken of the dead body in the hospital.

PW-3 Subhash Chander, Draughtsman stated that on 20.6.2008 he had gone to the spot and prepared a site plan Ex. PB using scale 1"=8'.

PW-4 ASI Tara Chand deposed that on 17.6.2008 he was posted at Police Station, Hansi and that day on receipt of ruqa Ex. P-C he had recorded formal FIR Ex. P-C/1 and he made endorsement Ex. PC/2 and sent the ruqa back to ASI Suresh Kumar and also sent the FIR through special messenger to the superior officers.

PW-5 Dr. J. P. Malik, Malik Hospital, Hansi deposed that on 17.6.2008 at 9.35 A.M., Anita wife of Vijender was brought to him; he accordingly examined her and found her brought dead. Thereafter he sent ruqa Ex. PD addressed to SHO, Police Station, Sadar, Hansi.

PW-6 Dr. Kuldeep, Medical Officer, G.H. Hansi stated that on 17.6.2008 on police request Ex. PE accompanied by inquest report Ex. PF he along with Dr. Ramesh Kamra conducted the postmortem examination on dead body of Anita wife of Vijender, 22 years, Harijan at about 5.40 P.M. He prepared copy of the postmortem report Ex. PG. He further proved shirt as Ex.P-15, Salwar as Ex. P-16, dupatta as Ex. P-17 and bra as Ex.P-18, stating that those were same clothes which had been removed by them from dead body and handed over to the police in a sealed parcel.

PW-7 Krishan Lal, SI/SHO Police Station, Sadar Hansi stated that on 9.7.2008 he had recorded supplementary statement of

Ramphal and statement of Shakuntla, wife of Ramphal and he had arrested accused Rajinder Singh from his house on 17.7.2008 and thereafter on completion of investigation had prepared report under Section 173 Cr.P.C.

PW-8 Inspector Arjun Dev, who had taken over the investigation of the case from ASI Suresh Kumar on 17.6.2008 itself and thereafter carried out necessary investigation testified in that respect and proved various documents.

PW-9 Ramphal complainant deposed as per the prosecution story. So did his son Rahul PW-10 and wife Shakuntla PW-11.

PW-12 Partap Singh EHC stated that on 17.6.2008 while posted at Police Station, Sadar Hansi on that day ASI Tara Chand handed over to him the special report for delivering the same to the Illaqa/Duty Magistrate and other higher police officers and accordingly he delivered the report at the residence of JMIC., Hansi and thereafter DSP, Hansi and S.P. Hisar.

PW-13 ASI Suresh Kumar who had carried out the investigation initially in this case deposed in that regard.

PW-14 HC Ranbir Singh, a formal witness who was posted at Police Station, Sadar, Hansi tendered in evidence his affidavit Ex. P-11.

PW-15 Richhpal Singh, ASI, Police Station, City, Hansi, another formal witness tendered in evidence his affidavit Ex. P-12.

PW-16 Constable Kamal Singh, stated that on 19.6.2008 he was posted at Police Station, Civil Lines, Hisar. On that day, one Vijender had made disclosure statement to the effect that he had kept concealed the clothes which he was wearing behind the wheat tank in his

house and he could get those recovered, as such statement Ex. P-13 was recorded. Thereafter, SHO Arjun Dev on the basis of disclosure statement took Vijender to his house and Vijender took out the clothes i.e. one pant and one shirt which were having blood stains. Both the clothes were put in a parcel and were taken into possession vide recovery Memo Ex. P-14 attested by him and Constable Rajesh Kumar. He proved such clothes as Ex. P-15 and P-16.

PW-17 Dr. Joginder Singh, Incharge, Scene of Crime, District Police Office, Jind stated that on 17.6.2008 he received a telephonic message from SHO of Police Station, Sadar Hansi that some occurrence had taken place. At about 2.00 P.M. he reached Village Hazampur, where the police staff met him on the main road and took him upto the place of occurrence. He was told that Anita had died. The dead body was not found at the spot; that he inspected the spot and mentioned the details of articles found. He advised the Investigating Officer to get the photographs of the place of occurrence as well as that of the dead body. He also advised him to send the articles to be taken into possession to FSL for further examination. He proved his report Ex. P-35.

With that evidence of the prosecution got concluded.

Statements of accused under Section 313 Cr.P.C were recorded, in which they were put all incriminating circumstances, appearing against them but they denied the allegations and stated that they are innocent and have been falsely implicated in this case.

During the course of their defence evidence, accused examined the following witnesses:-

DW-1 Surender Kumar, owner of H. No. 182, Sector 6-P,

Hansi deposed that Joginder son of Jhandu Ram is known to him; that Joginder accused had resided in his house from July, 2007 upto August, 2011; that Joginder purchased H.No.183 which is next to him and he is residing there with his family. He further stated that Joginder has been employed as Lecturer in Govt. College, Hansi, The witness proved water bill Ex. DX.

DW-2 Anil Kumar, Ex Sarpanch of Gram Panchayat Hajampur, resident of Adampur stated that the accused are known to him. Vijender is employed in Haryana Police, Jogender is employed as Lecturer in Govt. College, Hansi and Sikander is employed as teacher at Hansi. They are residing at Hansi for the last many years. Rajender is a student. Vijender is separate in mess and residence from his other brothers and mother and he is residing in a separate house. Rajender and Roshani are residing at Hansi, whereas house of Vijender is on the outskirts of village. Vijender was married in village Durjanpur, but his wife was residing at Hansi. This witness stated that during investigation he had appeared as a witness before the police and he being Sarpanch of village along with many respectables of village met Sube Singh Lohan DSP, Satish Balan, the then Superintendent of Police, Hisar regarding this case and had stated before the police that brothers namely Jogender, Sikander, Rajender and their mother Roshani are residing separately from Vijender and Vijender was not present in the house during the night of 16/17.6.2008. The witness stated that his statement was recorded during investigation of the case, and that accused are innocent.

DW-3 Jogender Singh, Assistant Distant Education Branch, MDU, Rohtak had brought the original summoned record i.e. attendance register of Sikander Kumar son of Jhandu Ram and proved

attested photocopy of cut list as Ex. DY/1 and photocopy of attendance chart as Ex. DY/2 stating that Sikander was present in C.R. College of Education Rohtak from 1st June to 25th June and he was present from 8.30 A.M. to 3.00 P.M. on 17.6.2008. He proved photocopy of program chart as Ex. DY/3.

DW-4 Ram Dhari who had brought photocopy of ration card, Ex. DY/4 stated that he had constructed house No. 328 Sector 6, HUDA, Hansi in the year 2000 where he is residing along with his family. He stated that accused Sikander is known to him as he remained as a tenant in his house from January, 2006 to March, 2010; that at that time he was a bachelor but after marriage he remained in his house with his family.

DW-5 Phool Singh, Superintendent, Kurukshetra University, Kurukshetra had brought original record of examination duty for the year 2008 for the period from 16.5.2008 to 26.6.2008 and stated that Jogender was appointed as Deputy Superintendent of Examination Centre No. A-198 in Government College, Hisar-3 whereas Karamvir Singh was working as Superintendent, Examination. He proved chart of examination duty Ex. DZ/1, adding that the timings of the papers were from 9.00 A.M. to 12.00 noon on 17.6.2008. The attendance was marked at point A in Ex. DZ/1.

DW-6 EASI Dalbir Singh who had brought summoned record stated that Ex. DZ/1 is the correct photocopy of the carbon copy which is in the office file. Ex. DZ/2 is report of the officials appointed in the police Post PLA, Hisar.

DW-7 Karambir Singh, Assistant Professor, Govt. College, Bhattu Kalan, District Fatehabad supported the defence case as

regards Joginder performing duty of Deputy Superintendent with him at Government College, Hisar from 16.5.2008 to 26.6.2008.

DW-8 Rajbir Malik, Clerk in Conduct Branch, Kurukshetra University, Kurukshetra had brought the summoned original record for conduct of examination. He proved attested photocopy of date sheet for UG/PG of May-June, 2008 as Ex. DZ/2 and otherwise supported the defence version.

With that the defence evidence of the accused stood closed.

After hearing arguments, learned Additional Session Judge convicted and sentenced accused-Vijender as mentioned above, whereas accused namely Rajender, Roshani, Joginder and Sikander were acquitted. Feeling aggrieved, accused Vijender has filed the present appeal praying that the same be accepted, the impugned judgment of the trial court be set aside and he be acquitted of the charge. Whereas complainant-Ramphal was also dis-satisfied with the judgment and he has filed a separate appeal praying that the accused Rajender, Roshani, Joginder and Sikander, who have been let off by the trial court be convicted and sentenced.

We have heard learned counsel for the appellants and the Assistant Advocate General, Haryana besides going through the record and we find that as far as appeal preferred by complainant Ramphal is concerned that is devoid of merit, since the presence at the spot of Rajender, Roshani, Joginder and Sikander at relevant time and their participation in the incident is not established on file.

The prosecution is relying heavily upon testimony of PW-10 Rahul to show that he had seen the incident when he had observed

that Anita was lying on the bed whereas Rajender, Roshani, Joginder and Sikander had caught hold of her and Vijender had given a blow on her thigh with a broken glass bottle and when Anita screamed Rahul got scared and ran away. The trial court has found the presence at the spot of Rahul, at relevant time, to be doubtful for the reason that Rahul neither raised any alarm nor informed the neighbours about the incident. The police station of the area was seen by him but despite that police station and being a family member of the deceased he did not make any attempt to report the incident to the police. As a matter of fact, he did not take any further step to prevent further injury to his sister and, such conduct of brother of the victim is unnatural, therefore presence at the spot of Rahul, brother of the deceased, at the relevant time, appears to be doubtful. We fully agree with the trial court on this point and find that the trial court by giving sound and valid reasoning has found presence at the spot of Rahul at relevant time to be suspicious and there is no ground to disagree with such an inference drawn by the trial Court.

If testimony of Rahul is dis-believed then there is no other evidence available on file to connect accused Rajender, Roshani, Joginder and Sikander with the incident. Even otherwise, the accused have led evidence in defence in support of their version. From testimony of DW-1 it comes out that accused Joginder along with his family has been residing separately from Vijender for the last one year. DW-2 Ex-Sarpanch of village also vouchsafed for the innocence of Rajender, Roshani, Joginder and Sikander stating that they are residing separately from Vijender. From testimony of DW-3 Jogender Singh, Assistant Distant Education Branch, Rohtak it comes out that Sikander was attending classes in C.R. College of

Education, Rohtak on the fateful day from 8.30 A.M. to 3.00 P.M. From deposition of DW-4 Ramdhari it comes out that Sikander was residing in his house as a tenant from January, 2006 to March, 2010. From the statement of DW-5 Phool Singh, Superintendent, it comes out that Jogender was functioning as Deputy Superintendent, of Examination Centre No. A-198 in Government College, Hisar-3 from 16.5.2008 to 26.6.2008 and on 17.6.2008 he was present at the Centre from 9.00 A.M. to 12. 00 Noon. Testimony of DW-7 Karambir Singh, Assistant Professor, Govt. College, Bhattu Kalan, also corroborates this fact, So does the statement of DW-8 Rajbir Malik, Clerk in Conduct Branch, Kurukshetra.

Replies given by Inspector Arjun Dev in his cross-examination also go to support the defence plea, inasmuch as he stated that during his investigation as per statement of Jai Singh son of Hari Singh and Vijay Panch it came to his notice that Jhandu Ram has four sons, namely Vijender, Jogender, Sikander and Rajender and they are residing separately from each other; that Jogender is a lecturer and is residing in Hansi with his family whereas Sikander is a JBT teacher and is residing at Hansi with his family members, Rajender is unmarried and is residing separately from Vijender. This witness stated that Vijender and Anita were residing in a separate house from other family members. The witness further stated that the house where the occurrence took place is a residential house of Vijender and Anita and that during investigation he had found Jogender and Sikander to be innocent.

Therefore, the judgment passed by the trial Court acquitting Rajender, Roshani, Joginder and Sikander is well reasoned one based upon proper appreciation of evidence and correct interpretation of law

and no ground is there to interfere with the said judgment by way of acceptance of appeal filed by complainant-Ramphal and to convict the said accused for any offence emanating from un-natural death of Anita.

Next coming to appeal filed by accused Vijender, in view of the detailed discussion above, it has come out that the incident had taken place in the matrimonial home of Vijender and Anita. It is a case of homicidal death of Anita, since it is nobody's case that she has committed suicide. The presence, at the spot of Rahul, a brother of the deceased, at the relevant time, has been found to be doubtful. Thus, it means that the case is based upon circumstantial evidence.

As per medical evidence cause of death of Anita was due to haemorrhage and shock as a result of injury No.1, which was ante mortem in nature and was sufficient to cause death in ordinary course of nature. Thus, the major injury on person of the deceased was on upper part of thigh which is a non-vital part. Injury No.2 was in the form of abrasion, injury No.3 was reddish contusion, injury No.4 was redness on left index middle finger nail bed, injury No.5 was an abrasion on dorsal of right hand, that means injuries No. 2 to 5 were minor in nature and on non-vital parts.

As per prosecution case, injury No.1 was inflicted by Vijender with a broken glass bottle. The Investigating Officer, during course of investigation had visited the place of incident and taken into possession broken pieces of glass from there, which lend credence to the prosecution story. Though, during trial, the defence tried to put up a version that Anita had suffered injuries in a scuffle which took place on the intervening night of 16/17.6.2008 when some intruders had come to the house for committing robbery. The trial court has dealt with that aspect in a

very convincing manner discarding the version for the reason that no other family member came to help Anita and the accused had not received any injury, Vijender accused had not informed the police that any articles had been taken away by the robbers during alleged robbery. He has been unable to come up with the explanation as to why he did not make any effort to save life of his wife Anita and to take her to the hospital at the earliest. It is also established on record that clothes of injured-deceased had been changed before taking her to the hospital. If Anita had died as a result of suffering injuries in a scuffle with robbers then where was the necessity of changing her clothes before taking her to the hospital. It has also come on record that clothes of accused Vijender had blood stains but he had concealed the same, though, later on after being arrested, while in police custody he has suffered a disclosure statement and got those clothes recovered, which were taken into police possession. The conduct of accused has been quite suspicious and un-natural. Though in his statement got recorded by the complainant with the police, he has mentioned that his daughter Anita was not being liked by Vijender and his family members and subsequently a plea was developed that demand of dowry was raised by husband and in-laws of Anita and she was harassed for that very reason but then such allegations are not established on record.

PW-10 Rahul, brother of deceased Anita in his cross-examination admitted it as correct that Vijender and Anita were living a happy married life, they were loving each other very much.

Ramphal, father of the deceased, in his cross-examination admitted it as correct that there was no demand of dowry at the time of marriage and he had given customary dowry articles as per his

wish. He further stated that Vijender used to come to his house and would take the girl (deceased) with him and that except some family altercation, there was no dispute between Anita and accused Vijender and they were living happily.

PW-8 the Investigating Officer admitted in his cross-examination that during investigation he found that there was no demand of dowry.

The trial court by taking correct view has come to the conclusion that no offence under Section 304-B IPC was made out and unnatural death of Anita was not in any manner connected with any demand of dowry made by her husband or his relatives and she was not subjected to cruelty or harassment by them in any manner in connection with that demand and inasmuch as allegations in that regard are not established on the file. The trial court by referring to testimony of EASI Dalbir Singh, DW-6 and documents Ex. DZ/2 has found that complainant was on leave from 16.6.2008 to 19.6.2008 and his version that since he could not get leave on 17.6.2008, he had sent his son Rahul to the house of Anita is not believable. Therefore, the version of complainant that Anita had given a telephonic call to him apprehending danger at hands of accused is also not established. The Investigating Officer did not collect the call details to prove those assertions.

However, it comes out that the un-natural death of Anita had taken place in the matrimonial home where she along with her husband Vijender and minor child used to reside. The version put up by the defence that some miscreants entered the house for the purpose of robbery and in the process during scuffle with the robbers Anita had suffered injuries has been

considered and rejected being not plausible. It is for Vijender to explain as to how the incident had taken place. He is obliged to do so under Section 106 of the Indian Evidence Act, 1872. The accused Vijender has failed to prove that he was not present at the spot at the relevant time. Vijender changed clothes of Anita having cut marks corresponding to the injury before taking her to hospital on 17.6.2008, which is a strong incriminating circumstance against him. There was delay on his part in taking his wife Anita to the hospital and an attempt on his part to destroy material evidence also comes out to be there. From the fact that broken bangles were recovered from the scene of crime, it comes out that Anita deceased had resisted attempt of assailant which in this case is established to be her husband Vijender. Thus, so far as it is proved that Anita died a homicidal death and assailant in this case, was none else but her own husband who had caused the vital injury with a broken glass bottle. As it comes out from the record that there was no motive for the accused to cause injury, it seems that the couple had a quarrel and in the heat of moment Vijender attacked his wife with a broken glass bottle causing her injury on the thigh.

However, we find that keeping in view facts and circumstances, the offence of murder against accused Vijender is not made out and fatal injury No.1 on person of Anita deceased was not caused by Vijender with intention of causing her death or with intention to cause such a bodily injury as he knew to be likely to cause death of Anita or cause such injury which was sufficient in the ordinary course of nature to cause death. The present case does not come within the four corners of Section 302 IPC which deals with offence of murder. Rather in our view, it falls within the four corners of Section 304 Part-I IPC, that is, culpable homicide not

amounting to murder. The reasons for arriving at such inference are that injury was not caused with any weapon which is commonly used to cause hurt, much less a fire arm; the injury is not on a vital part, only one major blow was given and it is not a case of repeated blows, then it was accused who had taken injured to the hospital; the accused had not absconded after the incident; it was he who had informed parents and relatives of deceased about the incident as stated by PW-8 Inspector Arjun Dev in his cross-examination. In our considered view, the trial court fell in error in convicting the accused Vijender for offence under Section 302 IPC, therefore conviction of such accused under Section 302 IPC is set aside and he is rather convicted for offence under Section 304 Part-I IPC and is ordered to undergo the rigorous imprisonment for 12 years and to pay a fine of Rs. 10,000/- and in default of payment of fine to further undergo simple imprisonment for two years.

With such modification, the appeal filed by accused-convict-Vijender is accepted partly whereas the appeal filed by Ramphal-complainant stands dismissed.

(T.P.S.MANN)
JUDGE

(H.S.MADAAN)
JUDGE

February 6, 2017
archana

Whether speaking/reasoned
Whether Reportable

Yes
No