

In the High Court of Punjab and Haryana at Chandigarh.

Criminal Appeal-D No.938-DB of 2011

Date of Decision:- October 6, 2017

**Rocky and another**

**.....Appellants**

Versus

**State of Haryana**

**.....Respondent**

CORAM: Hon'ble Mr. Justice Rajesh Bindal  
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Arun Kumar Bakshi, Advocate, Amicus Curiae,  
for the appellants.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

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Gurvinder Singh Gill, J.

1. Rocky and Lakhan Singh have filed the present appeal challenging judgment dated 15.07.2011 passed by the Court of learned Additional Sessions Judge, Karnal whereby both the accused have been held guilty for having committed offence punishable under Section 302 read with Section 34 of Indian Penal Code, 1860 (for short 'IPC') and have been sentenced to undergo imprisonment for life and to pay a fine of ₹5,000/- each. In default of payment of fine, they have to undergo further rigorous imprisonment for 3 years.
2. The case of prosecution is that on 24.8.2010, upon receipt of a telephonic message from Government Hospital, Karnal, regarding admission of Garib

Dass in an injured condition, ASI Ishwar Singh reached the hospital, where he came to know that Garib Dass had been referred to PGI, Chandigarh for further treatment. The daughter-in-law of Garib Dass namely Mukesh Rani was, however, present there whose statement was recorded by ASI Ishwar Singh wherein she stated that on the night intervening 23–24.8.2010, at about 1 A.M., there was no electricity supply in their house. Her father-in-law Garib Dass and her mother-in-law Som Pati got up for the purpose of urination but accused Lakhan and Rocky who were standing on the way, started beating her mother-in-law all of a sudden. When Garib Dass raised alarm, Kurshaid husband of the complainant also woke up and reached there. Rocky gave a blow with '*lathi*' on head of Garib Dass. Lakhan Singh caught hold of Kurshaid who was trying to rescue his parents. Rocky, thereafter pushed Garib Dass towards wall and the head of Garib Dass struck against the wall and he sustained injuries on the right side of his head. Lakhan Singh, who had caught hold of complainant's husband exhorted Rocky to give more beatings. It is further alleged that Rocky also hurled abuses to the complainant.

3. ASI Ishwar Singh, after recording statement of complainant, collected MLR of Garib Dass from the hospital and thereafter sent a '*ruqa*' to Police Station, Karnal for registration of FIR and in pursuance thereof FIR No.778 dated 24.08.2010 u/s 323 & 506 IPC was registered at Police Station, City Karnal
4. Garib Dass however succumbed to his injuries on 25.8.2010 and consequently offence under Section 302 was added in the FIR. Inquest proceedings were conducted. During the course of investigation, site plan of the place of

occurrence was prepared and statement of witnesses were recorded in terms of Section 161 Cr.P.C. After conclusion of investigation, challan was presented in the Court of learned Chief Judicial Magistrate, Karnal on 13.09.2010 who committed the case to the Court of Sessions vide order dated 4.10.2010. The case was assigned to the learned Additional Sessions Judge who upon finding sufficient grounds to presume that the accused had committed offence punishable under Section 302 and 506 read with Section 34 IPC framed charges against the accused on 18.10.2010, to which the accused pleaded not guilty and claimed trial.

5. The prosecution in order to establish its case examined as many as 9 witnesses. PW-1 EHC Veer Shakti Singh, who had prepared a scaled site plan of place of occurrence proved the same as Ex.PA. PW-2 Mukesh Rani, complainant stated in tune with her statement (Ex.PB) made to the police on 24.08.2010. PW-3 Kurshaid husband of complainant stated in corroboration to the testimony of the complainant Mukesh Rani. PW-4 ASI Sukhbir Singh is a formal witness who tendered his affidavit Ex.PC in evidence wherein he deposed that while he was posted as MHC in Police Station City, Karnal, the case property was deposited with him and that the same was not tampered with as long as the same remained in his possession. PW-5 Dr. S.P.Mandal who had conducted post mortem examination on the dead body of Garib Dass proved the post mortem report as Ex.PD. PW-6 SI Surat Singh is a formal official witness who stated about registration of FIR upon receipt of ruqa (Ex.PB) through C. Balbir Singh. PW-7 Dr. Sameer Manocha, Medical

Officer, Government Hospital, Karnal, who had medically examined Garib Dass in the first instance proved his MLR as Ex.PM. PW-8 Inspector Subhash Chand, SHO Police Station City, Karnal who had partly investigated the case after the same was handed over to him on 26.08.2010 stated in detail in respect of the entire investigation conducted by him. PW-9 ASI Ishwar Singh who had recorded statement of complainant Mukesh Rani (Ex.PB) and had conducted the initial investigation stated in respect of the same.

6. Upon conclusion of the prosecution evidence, statements of accused were recorded in terms of Section 313 Cr.P.C. wherein entire incriminating evidence appearing against them was put to them to enable them to explain the same but the accused denied the prosecution allegations in toto and pleaded false implication. They further took a stand that Garib Dass and his sons were in fact not happy with Rocky on account of his marriage with Kajal granddaughter of Garib Dass and that on the day of occurrence when both the accused had gone to the house of sister of Rocky namely Jamuna, they were attacked with '*lathis*' by Garib Dass, his sons alongwith Sajan and Dinga who were under influence of liquor and that one '*lathi*' might have hit Garib Dass. They further stated therein that while fleeing away Garib Dass fell down on bricks and sustained injuries and might have died due to said injuries.
7. The accused in their defence, examined DW-1 Harminder Singh, Draftsman who proved site plan Ex.D-2 prepared by him. The accused also examined DW-2 Dr. Sucha Singh, Medical Officer, CHC Nissing who proved MLR in respect of injuries on the person of Lakhan Singh as Ex.D-3. DW-3 Dr.

Archna Soni, Medical Officer, Government Hospital, Karnal, stated that on 24.8.2010 Lakhan Singh was admitted in hospital and was attended by Orthopedic Surgeon and he remained under his treatment till 26.8.2010 and was thereafter shifted to Surgery Ward and discharged on 28.8.2010. He proved bed head ticket as Ex.D-4.

8. Learned trial Court upon appraisal on the evidence on record, while acquitting the accused for offence under Section 506 of IPC, held them guilty of having committed offence under Section 302 read with Section 34 IPC vide impugned judgment dated 15.7.2011. Feeling aggrieved with the same, the accused have filed the present appeal.
9. The learned counsel for the appellants, while assailing the impugned judgment, has submitted that the genesis of occurrence has been suppressed by the prosecution inasmuch as the prosecution has not explained the injuries found on the person of accused Lakhan Singh including an injury on his forehead. The learned counsel has further submitted that in fact it is a case where the deceased along with his sons and others had attacked the accused while they had gone to the house of sister of Rocky and the deceased had infact sustained injuries when he fell down on bricks while fleeing from the place of occurrence. The learned counsel for the appellants has further submitted that there is no independent eye witness to the occurrence and that the said fact coupled with the suppression of material facts by the prosecution renders the case of the prosecution highly doubtful and the accused are entitled to be acquitted.

10. On the other hand, the learned counsel representing the State has submitted that the trial Court has meticulously examined the evidence and there is no misreading of the same. It has been submitted that the medical evidence led by the prosecution is fully in tune with the ocular version and there is no room to doubt the same. The learned counsel has further submitted that the story of the complainant party being aggressor and the accused having sustained injuries in the said process cannot be accepted as the alleged injuries cannot be said to have been sustained by the accused at the same time when Garib Dass sustained the injuries. The learned counsel for the State has thus submitted that there is no infirmity in the impugned judgment and has prayed for dismissal of the appeal.
11. We have considered rival submissions addressed before this Court and with the assistance of learned counsel, have also perused the record of the case.
12. As far as the ocular version is concerned, the prosecution relies upon the testimonies of PW2 Mukesh Rani and PW-3 Kurshaid. PW-2 Mukesh Rani while in the witness box has categorically stated that on the night intervening 23/24.8.2010 at about 1 A.M. when her parents-in-law got up and went to the street for urinating, then the accused Rocky and Lakhan Singh who were standing in the street started beating his mother-in-law. She deposed that when her father-in-law raised alarm, then her husband Kurshaid also woke up and reached at the spot and at that time Rocky gave a blow with '*lathi*' on the head of his father-in-law. She stated that when her husband tried to rescue his parents, then Lakhan Singh caught hold of him. She stated that Rocky pushed

his father-in-law towards the wall and the head of his father-in-law struck against the wall and he sustained injuries on his head and fell on the ground. She further stated that Lakhan Singh exhorted Rocky to cause more injuries to his father-in-law as he had not died. She stated that after the occurrence they took her father-in-law Garib Dass to General Hospital, Karnal where the police recorded her statement Ex.PB. She further stated that her father-in-law was referred to PGI, Chandigarh where he died on the next day i.e. 25.08.2010 at 2.30 AM due to the injuries sustained by him.

13. PW-3 Kurshaid, husband of the complainant has also deposed identically as stated by PW-2 complainant. Both the said witnesses were cross-examined at length on behalf of the accused but nothing substantial could be elicited during their cross-examination. Both the witnesses remained firm and consistent on all the material aspects of the case and there is nothing to doubt the veracity of their testimonies.
14. The prosecution in order to further strengthen its case also relied upon medical evidence in the shape of the statement of PW-7 Dr. Sameer Manocha, Medical Officer, General Hospital, Karnal who had medically examined Garib Dass in the first instance on 24.08.2010 when he was taken to the hospital by the complainant. He proved the MLR as Ex.PN and has described the injuries found on the person of Garib Dass as follows:

“1. Laceration 1 x .2 cm muscle deep on the back of right ear. Advised x-ray of skull and surgeon’s opinion.

2. Abrasion .2 x .2 cm on the right side of forehead temple region 4 cm in front of the ear.”

15. The prosecution also relies upon the testimony of PW-5 Dr. S.P.Mandal who had conducted post mortem examination on the dead body of Garib Dass. PW-5 while proving the post mortem report as Ex.PD has described the injuries found on the dead body as follows:

- “1. Vertical blue contusion 10 x 4 cm was present on left temporal parietal region of the scalp started back of the left ear pinna goes upward.
2. Superficial laceration 3 x 1.5 cm was present on the back of right ear pinna in lower portion.
3. Brown escaped abrasion 2.5 x 1.5 cm was present on the right side of face 2 cm lateral to maxillary process.

On internal examination I found as under:-

Subaponeurotic haematoma was present on left frontal parietal and temporal region of the scalp. Fissured fracture (semi circular 48 cm present on left frontal, left temporal, left occipital, right occipital and right temporal region of the scalp. Subdural thin layer haematoma present on left cerebral hemisphere. Contusion 4.5 cm x 3 cm was present on outer surface of left temporal lobe of brain. Brain stem haemorrhage was present. Brain congested and oedematous. Other internal organs were congested except mouth pharynx and oesophagus, pancreas,

suprarenal.

In my opinion the cause of death was oedema of brain due to head injuries as described. Injuries were antemortem and were caused by blunt weapon. The probable time that lapsed between the injury and death is about one day and between and post mortem examination is 13 hours as calculated.”

16. Both the aforesaid witnesses were cross-examined on behalf of the accused. The learned counsel for the accused has drawn the attention of this Court to the cross-examination of PW-5 wherein the Doctor has stated as follows:

“The possibility of the head injury to be caused by falling on hard surface and pointed/raised surface can not be ruled out with force. It is incorrect to suggest that the alleged head injury was not cause of death. It is incorrect to suggest that the deceased can die by falling a heap of bricks by fleeing away. It is correct that the PMR was not conducted by the board.”

17. The learned counsel while referring to the aforesaid cross-examination of PW-5, has submitted that the plea raised by the accused in their statements recorded under Section 313 Cr.P.C. stands duly substantiated inasmuch as the doctor has stated that possibility of the head injury on the deceased as a result of fall on a hard surface cannot be ruled out. However, a perusal of the complete cross-examination of PW-5 shows that he has qualified the said opinion by stating that the possibility of such injury having been caused due to fall on hard surface cannot be ruled out in case such fall is with great force.

He has categorically denied to be incorrect the suggestion given to him that the deceased can die by falling on a heap of bricks while fleeing away. As such we do not find any reason to doubt the opinion of the doctor as regard the cause of death due to the head injury sustained by Garib Dass. Further PW-5 Dr. S.P.Mandal, during cross-examination, having categorically denied the suggestion that the deceased could have died on account of fall on a heap of bricks while fleeing away virtually demolishes the stand taken by the accused in their statement under Section 313 Cr.P.C.

18. The learned counsel for the accused, however, vehemently argued that the non-explanation of the injuries found on the person of Lakhan Singh renders the prosecution case highly doubtful and that in the absence of any plausible explanation for the same, the testimonies of PW-2 and PW-3 cannot be said to be trustworthy. The learned counsel in order to hammer-forth his aforesaid submission had referred to the testimony of DW-2 who proved MLR of Lakhan Singh. DW-2 Dr. Sucha Singh while proving the MLR in respect of Lakhan Singh as Ex.D-3 described the injuries found on the person of Lakhan Singh as follows:

- “1. Laceration over right forehead measuring 6 cm x 1.5 cm x bone deep.
2. Tenderness/swelling over the left thigh.
3. Tenderness/swelling over the left elbow with abrasion.
4. Complaining of pain over back however no mark of

injury was seen.”

19. DW-3 Dr. Archana Soni, Medical Officer, General Hospital, Karnal has also stated that Lakhan Singh remained admitted in the hospital from 24.8.2010 to 26.8.2010 and was attended by Orthopedic Surgeon and was subsequently discharged on 28.8.2010. She proved the bed head ticket in respect of Lakhan Singh as Ex.D-4.
20. It is certainly for the prosecution to come out with complete details of occurrence and in case any injury is sustained by the accused, the prosecution is expected to explain the same as to under what circumstances the same was sustained by the accused. The explanation in respect of the injuries assumes importance because an injury caused in self-defence may not invite any criminal liability. In such circumstances it is for the Court to ascertain as to who the aggressor was. However, before entering into this controversy it needs to be ascertained as to whether the injuries as depicted in MLR Ex.D-3 were indeed sustained by Lakhan Singh in the same very occurrence or not. A perusal of the MLR Ex.D-3 reveals that the time of arrival of Lakhan Singh in the hospital is recorded at 1 PM on 24.08.2010. DW-2 Dr. Sucha Singh, while in the witness box has categorically stated that duration of injuries is one hour as is recorded in the MLR. In view of the said position it transpires that the injuries had been sustained by Lakhan Singh at about 12 noon on 24.08.2010. On the other hand Garib Dass, as per MLR Ex.PM had been brought to hospital at 6.30 A.M. on 24.08.2010 and it is recorded therein that the probable duration of the injuries was within six hours which is in tune with the

prosecution version that the occurrence had taken place at 1 A.M. on 24.08.2010.

21. As such, it cannot be said that Lakhan Singh had sustained injuries in the occurrence in which Garib Dass sustained injuries. Further in case Garib Dass and his sons had actually attacked the accused and had caused injuries to Lakhan Singh then there would have been on a cross-version. Assuming that the police did not record cross-version, the accused could have filed a private complaint against the complainant and his sons in respect of the injuries allegedly sustained by Lakhan Singh at the hands of the complainant and his two sons. In the absence of any such cross-version or complaint, the plea of the accused in this regard is rendered hollow, apart from the fact that even the medical evidence, as discussed above, does not support the said plea. The contention raised on behalf of the accused in this regard is without any substance and is repelled.
22. During the course of arguments, learned counsel for the appellants while referring to the site plan Ex.D-2 proved by DW-1 Harminder Singh, Draftsman has submitted that since the said site plan reflects the existence of a bathroom and a toilet in the courtyard, therefore, the prosecution story that Garib Dass was going out of the house for urinating is falsified. We have considered the aforesaid submission. A perusal of the site plan Ex.D-2 does show that in the courtyard a bathroom and toilet is shown but the said courtyard is surrounded by houses of Dharamvir, Kharku and Kurshaid, all sons of Garib Dass and there is no evidence to show as to whether the said toilet was a common toilet

or was in exclusive possession of any of the said brothers. In any case, the site plan Ex.DA proved by PW-1 EHC Veer Shakti Singh does not show the existence of any such toilet. A perusal of cross-examination of DW-1 who prepared the site plan Ex.D-2 shows that the said site plan was prepared in a clandestine manner without associating any of the neighbours. During cross-examination he had admitted that he had not given any notice to Kurshaid and Kharku before visiting the spot and had neither given any notice to the police/Investigating Officer nor had even informed the complainant before preparing the site plan. During cross-examination he further stated that he cannot say as to how old the bathroom and toilet were, which was found at the spot and that the same may be one or two years old. The aforesaid cross-examination shows that the site plan prepared by DW-1 cannot be relied upon and it remains unexplained as to how he managed to enter the courtyard of the complainant party without any of the members of the complainant party noticing him. Further, since DW-1 has also virtually admitted that the said toilet may be a recent construction being one or two years old, therefore, the existence of the said toilet when the said occurrence took place cannot be accepted as a fact with certainty so as to disbelieve the entire prosecution case.

23. The consistent statement of PW-2 Mukesh Rani, complainant and PW-3 Kurshaid coupled with the medical evidence which is absolutely in tune with the prosecution case leaves no room to doubt the case of prosecution. The plea of the accused that it is the complainant party which had attacked them and caused injuries to Lakhan Singh has been found to be absolutely hollow.

Nothing else has been shown to this Court so as to doubt the case of the prosecution on any count. A perusal of the judgment shows that the learned trial Court has duly appreciated all the factual matrix and there is no misreading of evidence. As such, the findings of the learned trial Court to the effect that it is accused who had caused injuries to deceased Garib Dass resulting in his death are affirmed.

24. However, we find that it is a case where none of the injuries was caused with any sharp edged weapon. In fact none of the accused was carrying any dangerous weapon. It is only Rocky who was carrying '*lathi*'. A perusal of the MLR and the post mortem report in respect of the Garib Dass does not indicate that he has been inflicted a large number of injuries on vital parts with help of a '*lathi*'. Apart from injury No.1 on the head, the other injuries are in the nature of laceration and abrasion.
25. In this backdrop and keeping in view the fact that the weapon of offence is a blunt edged weapon i.e. a '*lathi*', commonly found in rural household and the fact that a single blow had been caused by accused with '*lathi*' and thereafter no other blow with the '*lathi*' was inflicted, and even the medical evidence also does not suggest so, it cannot be said that the accused had an intention to cause death or to inflict such bodily injury to deceased likely to cause death.
26. In this context, a reference may be made to a judgement reported as 2009(14) SCC 532, *Indrasan v. State of U.P.* wherein in a case of single blow by accused on head of deceased with stick, which proved fatal, conviction under

section 302 IPC was altered to 304 Part I IPC and sentence was reduced to R.I for ten years. The relevant extract reads as follows:

“11. .... When on the very next day morning i.e. 14.10.1979, the accused-appellant saw the face of the deceased he simply picked up his lathi and with that gave one blow on the head of the deceased. The said blow was so forceful that as a consequence of which the deceased died within an hour and before he could be taken to the hospital. There is a direct nexus between the blow of lathi and death of the deceased which is immediately caused after giving the blow.

12. We, therefore, are of the considered opinion that although it is a case of culpable homicide not amounting to murder, but considering the nature of the injuries which was caused on a vital part of the body, we are of the considered view that there was intention on the part of the accused-appellant to cause death of the deceased.

13. We, therefore, alter the conviction of the appellant from Section 302 Indian Penal Code to Section 304 Part I Indian Penal Code.”

27. In view of our aforesaid discussions and in the light of the judgment referred to above, we are of the opinion that the facts established on record do not make out a case under section 302 IPC, but certainly make out a case under section 304 Part-I IPC. Consequently, the conviction of the appellant Rocky is altered from Section 302 IPC to Section 304 Part-1 of IPC.

28. Though Lakhan Singh was unarmed but he facilitated the commission of crime by holding Kurshaid when he was trying to rescue his father Garib Dass when Rocky was causing injuries to him. As such even if the fatal injuries is not attributed to Lakhan Singh still he would be vicariously liable for any injury caused by co-accused Rocky. As such the conviction of Lakhan Singh is altered from 302 read with Section 34 IPC to 304 Part-I read with Section 34 IPC. The imprisonment as imposed by the trial Court on both the appellants is reduced from life imprisonment to RI for 10 years. The fine shall however remain unaltered.
29. The appeal stands disposed of accordingly.

**( Rajesh Bindal )**  
**Judge**

**( Gurvinder Singh Gill )**  
**Judge**

**October 6, 2017**  
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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No