

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

CRA-S-334-SB-2004

Date of decision:-28.11.2017

Tarsem Singh @ Sema and another

...Appellants

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vipul Jindal, Advocate
for the appellants.

Ms.Samina Dhir, DAG, Punjab.

Mr.Parminder Singh-I, Advocate
for the complainant.

H.S. MADAAN, J.

This appeal is directed against judgment and order dated 22.1.2004 passed by the Court of learned Additional Sessions Judge (Ad hoc), Amritsar vide which he had convicted accused Tarsem Singh @ Sema and Waryam Singh @ Giani for an offence under Section 304(2)/34 IPC and sentenced them to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- each and in default thereof, to further undergo rigorous imprisonment for one month each.

Feeling aggrieved by that, the accused – convicts have filed the appeal in this court, which came up for hearing on 26.2.2004, when it was admitted.

Briefly stated, the facts of the case as per prosecution version are that criminal machinery in this case was set into motion by complainant Kulwant Singh son of Nana Singh, resident of village Havelian, Police Station Sarai Amanat Khan, who in his statement got recorded with SI Manjit Singh (hereinafter referred to as the Investigating Officer/I.O.) from said police station on 28.12.2002 had stated that since he was not having good relations with his wife, she had been residing with her sister at village Chawinda for the last 3-4 months; that he had transferred his 2 ½ killa of land in her name; that on 27.12.2002 Rajbir Singh son of the complainant had gone to spray insecticides in the wheat fields of Balkar Singh son of Gian Singh, where he came to know that his mother had sold the land to Waryam Singh, who was to harvest wheat crop standing therein; that Behak of Waryam Singh was near the Behak of Kulwant Singh - complainant; that while returning home Rajbir Singh at about 9:00 p.m. enquired from Waryam Singh, accused as to why he had got transferred land of his mother by playing deception upon her, which led to a verbal dispute between Rajbir Singh on one side and both the accused on the other side; that thereafter Rajbir Singh went home; that Nachattar Singh, another son of Kulwant Singh, his daughter Baljit Kaur and his son-in-law Sukhdev Singh were present in the house at that time and they tried to make Rajbir Singh understand that he should calm down since the land of his mother had not been transferred to anybody; that in the meanwhile, accused Waryam Singh armed with a gandasi (axe) and his son Tarsem Singh armed with daang (club) while raising exhortations came there; that Tarsem Singh challenged Rajbir Singh to come out of his

house since he had made false allegations against them and he was to be taught a lesson for that; that Rajbir Singh went out of his house; that he was followed by Kulwant Singh and other family members, who tried to explain the factual position to the accused, however, Waryam Singh gave a gandasi blow from reverse side hitting Rajbir Singh near his left ear; that thereafter Rajbir Singh fell on the ground; that then Tarsem Singh gave daang blow on right flank, right foot of Rajbir Singh; that the accused showered several blows upon Rajbir Singh; that the incident was witnessed by Kulwant Singh and others; that then the accused left the spot along with their respective weapons; that after some time Rajbir Singh succumbed to the injuries suffered by him in the incident; that on the next day Kulwant Singh and Sukhdev Singh were going to police station to report the matter to the police while on the way near bus stop of Rajatal, they came across a police party led by SI Manjit Singh. SI Manjit Singh put his endorsement below that statement and sent ruqa to police station, on the basis of which formal FIR was recorded there by MHC Mantej Singh. Thereafter, the police party accompanied by Kulwant Singh and Sukhdev Singh went to the spot, where dead body of Rajbir Singh was found lying. The Investigating Officer carried out inquest proceedings with regard to unnatural death of Rajbir Singh, preparing report Ex.PB. He also prepared rough site plan of the place of incident. The dead body was sent to Civil Hospital for post-mortem examination. Statements of witnesses were recorded. After post-mortem examination clothes of the deceased produced by HC Tarsem Singh were converted into a sealed parcel and taken in police possession vide memo Ex.PL.

Both the accused were arrested in this case on 1.1.2003. Accused Waryam Singh during the course of interrogation by the Investigating Officer in presence of HC Jaspal Singh and Constable Harjinder Singh suffered a disclosure statement that he had kept concealed gandasi on the backside of his house in the reeds, which he could get recovered. Such statement was thumb marked by Waryam Singh and thereafter he while in police custody got the gandasi recovered from the place disclosed by him, which was taken into possession vide memo Ex.PN. Rough site plan of the place of recovery was prepared.

Accused Tarsem Singh, when interrogated stated that he had kept concealed a daang in bushes near canal bridge of his village, which he could get recovered. His statement Ex.PQ was recorded. Thereafter, such accused while in police custody got the daang recovered from the place so stated by him in his disclosure statement. It was taken into police possession and rough site plan of the place of recovery was prepared.

After completion of investigation and other formalities, challan against accused was prepared and filed in the Court of Illaqa Magistrate.

On presentation of challan in the Court of Illaqa Magistrate, copies of documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that offence under Section 304 IPC is exclusively triable by the Court of Sessions, learned Illaqa Magistrate committed the case to the Court of learned Sessions Judge, Amritsar from where it was entrusted to the Court of learned Additional Sessions Judge, Amritsar.

On receipt of case in the Court of learned Additional Sessions Judge, Amritsar, observing that charge for offences under Section 304/34 IPC was disclosed against both accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as eight witnesses, namely, Dr.R.K. Nanda as PW1, HC Tarsem Singh as PW2, MHC Mantej Singh as PW3, Kulwant Singh as PW4, Sukhdev Singh as PW5, SI Manjit Singh as PW6, Constable Balwinder Singh as PW7 and Constable Balwant Singh as PW8.

With that the prosecution evidence stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocents and had been falsely involved in this case.

Accused did not lead any evidence in their defence.

After hearing arguments, learned Additional Sessions Judge (Ad hoc), Amritsar convicted and sentenced the accused as mentioned supra, which left them aggrieved and they have filed the present appeal.

I have heard learned counsel for the appellants-accused-convicts and learned Deputy Advocate General for the State of Punjab besides going through the record.

Learned counsel for the appellants has submitted that the matter has since been compromised between the parties and as complainant Kulwant Singh has died, the compromise has been effected

by his son-in-law Sukhdev Singh. Learned counsel has further submitted that he does not challenge the judgment passed by the Court below as regards conviction part and confines his prayer only qua sentence.

Learned counsel representing the complainant concedes this fact of compromise. An affidavit of Sukhdev Singh has been placed on file. Learned counsel for the appellants conceding that offence under Section 304 Part II IPC is non-compoundable has submitted that keeping in view the compromise between the parties, relief be granted to the appellants on the point of sentence. In support of his contentions, he has referred to authority **Mohinder Pal Jolly Versus State of Punjab, 1979 AIR(SC) 577** by the Apex Court where in a case under Section 304 Part II i.e. of culpable homicide, the accused had been convicted and sentenced for the said offence. The sentence was reduced to a period already undergone, apart from sentence of fine observing that the occurrence had taken place a decade ago and accused faced the ordeal all these years. He has further cited **Baldev Singh and another Versus State of Punjab, 1995(3) R.C.R.(Criminal) 750** in that regard. He also pressed into service authority **State of Karnatka Versus Muddappa, 1999 AIR(SCW) 4814** by Hon'ble Supreme Court where in a case under Section 304 Part II, the accused was ordered to be released on probation by applying the provisions of Section 4 of the Probation of Offenders Act by the High Court, which order was upheld observing that no infirmity was found therein.

As per the custody certificate filed by the State counsel, Waryam Singh has undergone total sentence of 1 year, 2 months and 9

days, whereas Tarsem Singh has undergone 3 years, 3 months and 13 days of total sentence. Waryam Singh is stated to be 90 years of age, whereas Tarsem Singh is said to be aged more than 50 years. The incident had taken place more than 15 years back. The matter has been settled between the parties, who belong to the same village. Since the offence under Section 304 Part 2 is non-compoundable, its compounding cannot be allowed. However, in view of the ratio of authorities, concession in sentence can definitely be given keeping in view the ages and previous antecedents of the accused-convicts as it is neither alleged nor proved that the accused appellants - accused – convicts are habitual criminals and they are not shown to be involved in any other criminal case. It is not a case of prosecution that they have taken the path of crime after the conclusion of trial and when they were released on bail in terms of the order passed by this Court.

The judgment of conviction passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. As such the judgment is upheld as regards the conviction part.

However, with respect to the sentence part, I find that ends of justice would be squarely met if the appellants are sentenced to imprisonment already undergone by them, while in custody in the present case, whereas the part of conviction relating to payment of fine is kept as intact.

Therefore, the impugned judgment is upheld as regards conviction part qua the appellants whereas the sentence part is modified

and the appellants are sentenced to imprisonment already undergone by them as mentioned supra. Whereas the sentence regarding payment of fine and in default of making payment of fine remains intact.

As such the appeal challenging the impugned judgment stand disposed of with above modification in sentence.

Necessary intimation be sent to the quarter concerned.

28.11.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**