

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

**Criminal Appeal S-1487-SB of 2005
Date of Decision: September 8, 2017**

Roshan Lal and another	Versus	Appellants
State of Haryana		 Respondent

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

Present : Mr. Tapan Yadav, Advocate
for the appellants.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

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

The appellants, namely, Roshan Lal and Som Nath, sons of Ram Chander, alongwith their two other brothers Rajbir @ Rajinder Kumar and Mehar Singh, were tried for committing offences punishable under Sections 304, 323, 506 IPC read with Section 34 IPC. Vide judgment and order dated 8/10.8.2005, learned Sessions Judge, Kurukshetra, acquitted Rajbir @ Rajinder Kumar and Mehar Singh accused of the charges against them. The appellants were, however, convicted under Section 304 Part 1 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of ten years and to

pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two months each.

Aggrieved of their conviction and sentence, the appellants filed the present appeal, which was admitted on 1.9.2005. Subsequently, this Court suspended the sentence of imprisonment of Roshan Lal appellant on 3.10.2005 and of Som Nath appellant on 10.7.2007.

The case of the prosecution, in nutshell, is that complainant Som Nath was resident of village Bohli. The street leading to his house was narrow. Roshan Lal appellant used to knowingly park his tanker in the said street. On 4.6.2004 at about 6.00 p.m., Roshan Lal came driving his tanker in the street and parked the same there. Som Nath told him not to park the tanker there. This resulted in Roshan Lal and Som Nath appellants using abusive language against the complainant and while extending threats, they declared that they would kill whosoever raised any objection to the parking of their vehicle there. Both of them brought out iron rods from the tanker and started grappling with the complainant. In the meantime, Mam Chand, father of the complainant tried to intervene with a view to rescuing the complainant. Som Nath appellant gave kick blows on his private parts. Shimla wife of Jag Ram, Bhabi of the complainant came there. She was also given slaps and fist blows. Jag Ram was also

attacked with rod. In the meanwhile, Mehar Singh and Rajbir @ Rajinder Kumar accused came there and exhorted the appellants to crush the complainant and others under the tanker. On seeing the neighbours collecting there, the accused ran away. The complainant brought his father Mam Chand to Singla Hospital, Pipli from where he was taken to P.H.C. Pipli, where he was medico-legally examined. He was further referred to L.N.J.P. Hospital, Kurukshetra, where he was kept for two days and then referred to P.G.I. Chandigarh. He was then admitted in Government Medical College and Hospital, Sector 32 Chandigarh and operated upon. On 7.6.2004, the complainant submitted application before ASI Dharam Pal at Pipli Chowk and on its basis FIR No. 117 dated 8.6.2004 under Sections 323, 506 read with Section 34 IPC was registered.

It is also the case of the prosecution that ASI Dharam Pal went to the place of occurrence and after inspecting the same, prepared rough site plan thereof. He recorded statements of the witnesses besides arresting the appellants. On 8.6.2004, he reached the hospital and sought opinion of the doctor regarding fitness of Mam Chand to make a statement. On 9.6.2004, a V.T. Message was received about the death of Mam Chand. ASI Dharam Pal, after conducting inquest proceedings on the dead body, sent the dead body for postmortem. The offence

under Section 304 IPC was added to the case. Mehar Singh and Rajbir @ Rajinder Kumar were then arrested.

The trial of the case culminated in the acquittal of Rajbir @ Rajinder Kumar and Mehar Singh accused of all the charges against them. However, the appellants were held guilty under Section 304 Part 1 read with Section 34 IPC and sentenced, as mentioned above.

Learned counsel for the appellants has not challenged the impugned judgment of conviction passed by the learned trial Court. However, he has submitted that there was no previous enmity between the parties and the occurrence had erupted on account of parking of the tanker by Roshan Lal appellant. This led to exchange of abuses followed by both the appellants bringing out iron rods from the tanker and started grappling with the complainant. In order to rescue complainant Som Nath, his father Mam Chand had come forward. According to the prosecution, it was Som Nath, who had given kick blows on his private parts. No injury, whatsoever, with iron rod was said to have been caused by the appellants to Mam Chand deceased, rather, injuries with rods were said to have been caused on the injured witnesses. It is also submitted that while deposing before the learned trial court as PW6, the complainant had testified that Roshan Lal appellant had caught hold of Mam Chand deceased but no such averment was

made by the complainant while lodging the FIR. It is further submitted that both the appellants are facing the agony of criminal prosecution for the last more than thirteen years. Apart from the present case, they are neither involved nor convicted in any other case. Out of the sentence of ten years imposed upon them, Som Nath appellant, who was the one to cause injuries to Mam Chand deceased has already undergone a period of about three years whereas Roshan Lal appellant has undergone period of about one year. It is also submitted that both the appellants are presently in the age group of 40 to 45 years and sole bread winners of their respective families. Therefore, a lenient view be taken in the matter of their sentences of imprisonment.

Learned State counsel has vehemently opposed the prayer by submitting that the appellants were responsible for causing the death of Mam Chand besides causing injuries to others. He has, however, produced the custody certificates, as per which, Som Nath appellant has undergone an actual period of two years, eleven months and eight days whereas Roshan Lal appellant has undergone eleven months and twenty days.

Having heard learned counsel for the parties, this Court finds that the appellants, who are on bail for the last more than a decade, need not be sent behind bars, once again, for undergoing their remaining sentences of imprisonment. Ends of

justice shall be suitably met, if their substantive sentences of imprisonment are reduced to the one already undergone by them. The sentence of fine can, however, be enhanced so as to disburse the same by way of compensation to the legal heirs of the deceased.

Resultantly, the conviction of the appellants under Section 304 Part 1 read with Section 34 IPC is maintained. Their substantive sentence of imprisonment is reduced to the one already undergone by them. The fine of Rs.1,000/- imposed upon each of the appellants is, however, enhanced to Rs.25,000/- each. The fine amount be deposited by them in the Court of learned Chief Judicial Magistrate, Kurukshetra, within a period of three months from today, failing which, they shall be required to undergo rigorous imprisonment for six months each. The entire amount of fine, if recovered/deposited, be disbursed in favour of the legal heirs of the deceased as compensation.

The appeal is, accordingly, disposed of.

September 8, 2017

amit rana

(T.P.S. MANN)

JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No