

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-85-SB-2004

Date of decision: 21.11.2017

Doongar Ram

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Saransh Sabharwal, Advocate for
Mr. SPS Sidhu, Advocate for the appellant.

Ms. Deepshikha Chauhan, Advocate
Amicus Curiae, for the appellant.

Ms. Bhavna Gupta, DAG, Punjab.

RAMENDRA JAIN, J.

1. Since, Mr. Saransh Sabharwal, Advocate for Mr. SPS Sidhu, Advocate, has put in appearance on behalf of the appellant, therefore, Ms. Deepshikha Chauhan, Advocate, Amicus Curiae for the appellant is discharged.

2. Appellant-Doongar Ram, has preferred the instant appeal against the judgment of conviction and order of sentence dated 11.11.2003, passed by the learned Sessions Judge, Ferozepur, in case FIR No. 69 dated 21.04.2001, under Section 302 read with Section 34 IPC, Police Station Khuian Sarwar, holding him guilty under Section 304 Part-II IPC and sentencing him to undergo rigorous imprisonment for a period of 7 years and pay a fine of ₹ 5000/-. In default thereof, further undergo rigorous imprisonment for a period of one year. Vide aforesaid judgment of

conviction and order of sentence, co-accused of the appellant, namely; Madan Lal and Kaila Ram, were also convicted under Section 323 IPC and sentenced to undergo rigorous imprisonment for a period of one year and pay a fine of ₹ 1000/- each. In default thereof, further undergo rigorous imprisonment for a period of three months.

3. In the instant case, the story unfolded by the prosecution is that four persons including the appellant, his accomplice Madan Lal and Kaila Ram and deceased-Kahna Ram, being poor persons, came to Punjab from Jodhpur (Rajasthan) for doing labour work. A dispute regarding wages arose in between them and around 5.00 A.M. on 16.04.2001, the appellant threw a stone upon deceased-Kahna Ram, which hit on his ear and his co-labourers, Madan Lal and Kaila Ram gave lathi blows to him. On hearing noise, one Sardar Bharat Singh, came on the spot and took injured-Kahna Ram, to hospital, where he succumbed to his injuries. His dead body was taken to his native village by the appellant. Consequently, upon an application of Harman Ram, FIR was registered at Police Station Bhopalgarh, District Jodhpur to which the deceased belonged. However, since the occurrence had taken place in the State of Punjab, therefore, the case was transferred to the concerned police station i.e. Police Station Khuian Sarwar, District Ferozepur. The appellant along with his accomplice, namely; Madan Lal and Kaila Ram was arrested and joined in the investigation. After completion of investigation, a final report under Section 173 Cr.P.C. was presented before the Illaqa Magistrate.

4. On commitment of the case to the Court of Sessions, the appellant along with his co-accused was charge-sheeted under Section 302 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

5. After completion of trial, the trial Court convicted and sentenced the appellant and his co-accused as referred to above in the opening part of this judgment. The accomplice of the appellant, namely; Madan Lal and Kaila Ram, have not preferred any appeal as they had served their sentence during trial.

6. Learned counsel for the appellant submits that PW-1 Harman and PW-3 Bhoop Ram, in whose field the appellant, his accomplice, namely; Madan Lal and Kaila Ram and deceased-Kahna Ram, were working had not witnessed the occurrence. PW-5 Mandroop, eye-witness to the occurrence turned hostile. The only eye-witness, who supported the prosecution case, PW-2 Smt. Bhanwari, was an interested witness, being wife of the deceased. Even otherwise, her presence at the time of incident is also disputed, because PW-3-Bhoop Ram, in his cross-examination, has categorically testified that she was not present in the village at the time of incident. PW-7 HC Shiv Dutt, in his cross-examination, specifically testified that presence of PW-2 Smt. Bhanwari, is not recorded in any of the documents. Link evidence is also missing in this case, because, Mahi Ram from whom PW-3 Bhoop Ram had got information about the incident was not examined by the prosecution for the reasons best known to it. Appellant-Doongar Ram has falsely been implicated in view of the deposition of PW-2 Smt. Bhanwari, as after the incident, it was only the appellant, who took the deceased to the local hospital and then after his death to his native place at Jodhpur (Rajasthan). Had the appellant committed murder of Kahna Ram, he would not have accompanied the deceased to the hospital and then to his native place, rather would have absconded from the spot, being guilty in his mind for committing crime.

When the appellant took deceased-Kahna Ram to hospital and then to Jodhpur (Rajashtan), PW-2 Smt. Bhanwari, wife of the deceased, was not accompanying him. The medical officer who conducted post-mortem examination of the deceased was not examined rather, post-mortem report of the deceased was simply exhibited without adopting legal recourse to prove a document, which caused prejudice to the appellant. There are material discrepancies in the prosecution case. There is difference in between the ocular version and the medical evidence, because according to the ocular version three persons including the appellant have caused injuries, whereas in the post-mortem report Ex. P-8, only one injury has been shown on the person of the deceased.

7. On the other hand, learned State counsel has pleaded the legality and validity of the impugned judgment of conviction and order of sentence.

8. I have given thoughtful consideration to the submissions made by learned counsel for the appellant as well as the learned State counsel.

9. Undisputedly, the appellant and his accomplice, namely; Madan Lal and Kaila Ram and deceased-Kahna Ram, being poorer persons, had travelled a long way from the State of Rajasthan to Punjab to earn their livelihood. Some dispute with regard to wages arose in between them. The appellant, his accomplice and deceased were harvesting wheat crop in the fields of PW-3 Bhoop Ram, in which the appellant threw a brick towards the deceased and the same hit near his ear. The accomplice of the appellant gave dang blows to the deceased. The above factual aspect of the case shows that the appellant had no *mens rea* to kill the deceased, rather sudden fight took place in between them in which Kahna Ram, died. Considering

this fact, the trial Court has rightly convicted the appellant under Section 304 Part-II IPC, instead of Section 302 IPC for which he was charge-sheeted.

10. As per custody certificate dated 27.07.2016, placed on record by learned State counsel, out of the total sentence of 7 years, the appellant has already undergone actual sentence of 4 years, 2 months and 7 months including remissions, which in the considered opinion of the Court, is sufficient to reprimand him for his un-warrant and un-reasonable behaviour.

11. In view of the discussion made above, the impugned judgment of conviction and order of sentence dated 11.11.2003 holding the appellant guilty under Section 304 Part-II IPC is upheld. Since, the appellant has already suffered major part of his total sentence of 7 years, the same is reduced to the period already undergone by him under Section 304 Part-II IPC.

12. With the above modification in the sentence, the instant appeal stands disposed of, accordingly.

November 21, 2017

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No