

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

Crl. A. No. 616-SB of 2005

DATE OF DECISION : 23.09.2017

Ram Bilas and another

.... APPELLANTS

Versus

State of Haryana

.... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : None for the appellants.

Mr. Siddharth Sanwaria, DAG, Haryana.

* * *

AVNEESH JHINGAN, J. (Oral)

Appellants had faced trial in FIR No. 105 dated 24.02.2004 registered at Police Station City Yamunanagar, under Section 304 read with Section 34 IPC.

Learned Additional Sessions Judge, Jagadhri, vide judgment and order dated 14.03.2005 convicted the appellants for commission of an offence punishable under Section 304 Part II IPC, and sentenced them to undergo rigorous imprisonment for a period of five years.

The facts of the prosecution case, as noted by learned trial court in the impugned judgment, are as under :-

“The deceased Ramji Lal was running a tea stall near the bridge of Western Yamuna canal at

Saharanpur road, Yamuna Nagar. Both the accused were his customer. They owed some money to him. On 24.2.2004 at about 10.30 A.M. they came to his tea stall. When he demanded the money due from them, some altercation took place between them. They caught him and gave severe beatings. They gave him kicks and fist blows repeatedly on different parts of the body including abdomen, chest and head. He fell down. While lying down also, they gave him kicks and fist blows. His brother Ishak Lal and son Arun Kumar were present there. They and his neighbour Sewa Ram intervened to save him from the clutches of the accused. After inflicting injuries, the accused fled away. The deceased was taken to Civil Hospital, Yamuna Nagar, where he was declared dead.

Autopsy on the body was conducted by Dr. Sunil Kumar with the help of Dr. Sushma Ojha. On examination no external mark of injury except contusions on chest and abdominal wall which were brownish in colour was found. The scalp and vertebra were intact. On opening the scalp, a large subdural haematoma was found present on left frontal lobe. All other organs were healthy. In the opinion of the doctors, the cause of death was injury to vital organ i.e. brain. The injury was sufficient to cause death in ordinary course of nature.

On receiving information about the occurrence, A.S.I. Barkha Ram, incharge Police Post Hamida reached the hospital. On reaching there he recorded the statement of Arun Kumar Ex.PA and sent that statement to Police Station City Yamuna Nagar for registration of a cas with his endorsement Ex.PA/1. He then held the inquest Ex.PE and proceeded to the place of occurrence. On reaching there he carried out spot inspection and prepared rough site plan Ex.PH of the place of occurrence. Next day both the accused were arrested. On 15.3.2004 an application Ex.PG was presented by A.S.I Barkha Ram before the doctor to seek his opinion whether the injuries found on the person of the deceased could be caused by kicks and fist blows. The doctor gave his opinion in affirmative.”

On appearance of the accused-appellants, provisions of Section 207 Cr.P.C were complied with. They were charged with the offence under Section 304 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined Arun Kumar as PW.4. His statement is on the lines of the case of the prosecution. He has stated that on the day of occurrence he and his uncle Ishak Lal were present at the tea stall of his father, when both the accused came there. They use to take tea at their tea stall and thus owed some money to his father. When his father demanded the amount due from them, they started quarreling with his

father and gave kicks and fist blows on his abdomen, chest and head. There was another *khokha* of Sewa Ram by the side of their tea stall. On seeing the occurrence he arrived at the spot and rescued his father. He has further stated that he and his uncle Ishak Lal too intervened to save his father. On receiving injuries his father became unconscious. He was taken to Civil Hospital, Yamuna Nagar, where he was declared dead. Police arrived in the hospital and recorded his statement Ex.PA.

Sewa Ram is examined as PW.2. He too has stated the same facts. He has corroborated the statement of the complainant on all material particulars.⁴

Dr. Sunil Kumar who had conducted post mortem examination on the dead body with the help of Dr. Sushma Ojha is examined as PW.3. He proved the post mortem report Ex.PD and his opinion Ex. PG/1 is to the effect that the injuries found on the dead body could be caused by kicks and fist blows.

A.S.I. Barkha Ram Investigating Officer of the case is examined as PW.8. He has stated about the mode of investigation.

On close of the prosecution evidence, accused-appellants were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution. While denying correctness of the evidence, they pleaded themselves to be innocent and their false implication in the case.

No witness was examined in defence.

After going through the evidence on record, learned trial court vide impugned judgment and order convicted and sentenced the accused-appellants for an offence punishable under Section 304 Part II IPC.

Aggrieved against the said judgment and order, the present appeal has been filed.

No one appeared on behalf of the appellants on 26.4.2017. The High Court Legal Services Committee was requested to nominate a panel counsel for representing the appellants. Even today, no body has put in appearance on behalf of the appellants.

Mr. Siddharth Sanwaria, DAG, Haryana, has appeared and produced custody certificates of both the appellants, duly verified by Shri Vishal Chhibber, Deputy Superintendent, Central Jail, Ambala. The custody certificates are dated 26.04.2017. As per these certificates, the accused-appellants were released on bail on 03.11.2005 and have undergone actual sentence of 1 year 8 months and 7 days. There is no other conviction or FIR pending against them. The custody certificates are taken on record.

No one has appeared on behalf of the appellants. The grounds of appeal have been perused. No evidence was produced by the appellants during trial. Even in the grounds of appeal, no substantial material has been relied upon basing on which the conviction could be challenged. Grounds of appeal are basically pointing towards contradiction in statements of the prosecution witnesses as to the mode by which deceased was taken to hospital. Ground has been raised that medical evidence has not been

appreciated. The challenge is that statement of Ashok Kumar, who produced the accused before the Investigating Officer, has not been recorded.

On the other hand, learned Deputy Advocate General, appearing on behalf of the State of Haryana, argued that case of the prosecution has been duly proved by PWs. Even PW.3 Dr. Sunil Kumar, who had conducted post mortem examination on the dead body of the deceased with the help of another doctor, deposed that the cause of death could be the injuries caused by kicks and fist blows. He argued that the accused-appellants have been rightly convicted and sentenced by the trial court, and there is no merit in this appeal.

After hearing learned State counsel and going through the record, I find that grounds raised by the appellants cannot be accepted. The contradiction pointed out by the appellants in grounds of appeal does not enhance their case. The mode of transporting the deceased to hospital will not make a difference to case of the prosecution. Further, the statement of Dr. Sunil Kumar 'PW3' has to be read as a whole. It has been specifically stated by the Doctor as under :-

“The cause of death in this case in our opinion was due to injury and haemorrhage to vital organ such as brain. The injury was sufficient to cause death in ordinary course of events.

x x x

I have my opinion Ex.PG/1 to the effect that above mentioned injuries could be caused by

hitting knees and fists on head which could lead to death.”

A technical plea has also been raised that statement of Ashok Kumar, who produced the accused before the Investigating Officer, has not been recorded. The case has been established by two statements of eye witnesses and medical record. Nothing has been pointed against these statements. In such circumstances, the case of prosecution cannot be doubted. More over, no ill will has been alleged against anybody that the accused were being falsely implicated. In the absence of any evidence produced by the accused-appellants, there is no reason or ground to set aside the judgment of their conviction passed by the trial court.

In view of the above discussion, I find that both the appellants have been rightly convicted by the trial court for an offence punishable under Section 304 Part II IPC, especially when they themselves admit that the injuries were caused by them. Therefore, the judgment of conviction dated 14.03.2005 passed by the trial court does not require any interference from this court.

With regard to sentence, this court in *Mahabir Vs. State of Haryana*, 1997 (3) RCC 469, keeping in view the delay in trial, reduced the sentence to the period already undergone.

Even, the Hon'ble Apex Court in *Mukesh Vs. State of M.P.*, 2015 (1) RCR (Criminal) 251 had reduced the sentence to already undergone.

The appellants-accused are stated to have small children to support and there is no one else, except them to maintain the family. It was their first offence. The injuries were inflicted due to some altercation which took place suddenly. There was no planning for the same. The appellants-accused are on bail since 03.11.2005. They are not stated to be involved in any offence after registration of the FIR in this case in the year 2004. They have already suffered the agony of protracted trial, spanning over a period of 13 years.

At the most, it can be said to be case of sudden quarrel in which injuries have been caused without any intention to cause death.

Keeping in view the aforesaid decisions and the facts as stated above, coupled with the fact that the appellants-accused have already undergone 1 year 8 months and 7 days of actual sentence, out of 5 years of sentence, the sentence imposed upon them is reduced to the period already undergone by them. Their bail bonds be released.

Accordingly, the present appeal stands partly allowed.

September 23 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes