

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

CRM A-815-MA of 2017

Date of Decision: July 17, 2017

Subhash and others	Versus	Applicants
State of Haryana and others		 Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present : Mr. Randeep S. Dhull, Advocate
for the applicants.

T.P.S.MANN, J.

Subhash and others have filed the present application under Section 378(3) Cr.P.C., seeking leave to appeal against the judgment dated 24/30.1.2017 passed by Additional Sessions Judge, Hisar.

Vide impugned judgment and order, learned trial Court acquitted all the accused, who are respondents No. 2 to 5 herein, of the charge under Section 302 IPC but convicted them for the lesser offence under Section

304 Part II IPC.

As per the prosecution, complainant Subhash son of Piare Lal made a statement before ASI Mahabir on 19.8.2014 at Sapra Hospital, Hisar to the effect that he was resident of Shiv Colony, Shergarh Road, Kaithal and had come to Hansi to ascertain the condition of his nephew Sonu, who was admitted in the hospital. On 18.8.2014 at about 8.00 p.m., he alongwith his sister Sunita, brother-in-law Subhash and nephew Golu and Rajesh was returning to Nand Nagar from Garg Hospital, Hansi and when they reached Malia Mandi, Hansi, Rahul having a gandasi, Rahul's brother Sahil having an axe and Dara Singh alongwith four others came there and raised a lalkara that the complainant and others be caught hold of as they were their enemies. Rahul gave a gandasi blow from its reverse side upon Rajesh hitting him on the right side of his head. When the complainant tried to rescue Rajesh, Sahil gave an axe blow on the backside of his head. Thereafter, all the accused started causing injuries with kicks and punches and after causing injuries with danda, fled away from the spot. The complainant and Rajesh were brought to General Hospital, Hansi where the doctor discharged the complainant after giving treatment whereas

Rajesh was referred to General Hospital, Hisar. However, instead of taking him to General Hospital, Hisar, he was brought to Sapra Hospital, Hisar. According to the complainant, injuries were caused by Rahul accused and others in order to kill them. The motive behind the occurrence was that Rajesh and Rahul had previously quarrelled due to which the accused were nursing a grudge.

This Court has heard learned counsel for the applicants and also perused the impugned judgment.

PW1 Subhash and PW2 Golu, who were the two eye-witnesses of the occurrence testified that Rahul accused had given gandasi blow from its reverse side on the head of Rajesh. PW13 Dr. Ashish Jain, testified that the injury on the head of Rajesh was by blunt weapon. PW5 Dr. Ashish Rana, who had conducted post-mortem on the dead body of Rajesh deposed that underneath the injury on the right side of skull, there was no fracture. It is not the prosecution case that the accused had caused repeated blows or intended to commit the murder of Rajesh. Had the accused possessed any intention of committing the murder of Rajesh, they would not have stopped after giving only a single injury, and that, too from the reverse side of the gandasi. Under these

circumstances, it cannot be said that the learned trial Court was erred in acquitting the accused/respondents of the charge under Section 302 IPC but convicted them for the lesser offence under Section 304 II IPC.

Resultantly, the application is bereft of any merit and, therefore, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

July 17, 2017
amit rana

(MAHABIR SINGH SINDHU)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No