

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

Criminal Appeal S-122-SB of 2005

Date of Decision: July 14, 2017

Vinod		Appellant
	Versus	
State of Haryana		 Respondent

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

Present : Mr. Shiv Kumar, Advocate and
Mr. Ivan Singh Khosa, Advocate
for the appellant.

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

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

The appellant, namely, Vinod, and his wife Smt. Neetu, were tried for committing offences punishable under Sections 323 and 304 read with Section 34 IPC. Vide judgment and order dated 30.9.2004/5.10.2004, learned Additional Sessions Judge (Adhoc) Fast Track Court-III, Faridabad acquitted Neetu of all the charges against her. The appellant was also acquitted under Section 323 IPC. However, he was convicted under Section 304 Part II IPC and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of

Rs.1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a term of three months. The period of imprisonment already undergone by him during trial was ordered to be set off against the substantive sentence of imprisonment imposed upon him.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted on 20.1.2005. Subsequently, vide order dated 1.9.2005, this Court suspended his sentence of imprisonment and released him on bail during the pendency of the appeal.

According to the prosecution, the occurrence in question had taken place on 29.3.2002 at about 1.00 p.m. in Krishna Colony, Faridabad. It was 'Fag day' (holi) and Smt. Bimlesh wife of complainant Devi Charan was dancing in front of the house. Other family members of her family were also dancing. The appellant alongwith his wife Neetu came there. The appellant stated that he would dance with Bimlesh, which was objected to by the complainant. On this, Vinod and Neetu started hurling brickbats. One brickbat hurled by the appellant struck on the head of Phoolwati who fell on the ground. When the complainant started looking after his Bua Phoolwati, Neetu threw a brick, which landed on his right ear. The complainant then arranged a three wheeler and shifted Phoolwati to B. K. Hospital where she

was admitted. After some time, Phoolwati succumbed to her injuries. The complainant while making statement before SI Narayan Singh, Incharge Police Post Sector 11, Faridabad further stated that he had no enmity with the appellant. However, the appellant and his wife Neetu had thrown brickbats since his wife Bimlesh had not danced with Vinod.

At the trial of the case, the prosecution examined complainant Devi Charan as PW1, Bharat Singh as PW2, Constable Kuldip Singh as PW3, Dr. S.K. Mittal as PW4, Dr. A.K. Gupta as PW5, Head Constable Rameshwar Dayal as PW6, SI Narayan Singh as PW7 and Sub-Inspector Om Parkash as PW8. Besides, the Public Prosecutor tendered in evidence report Ex.PL of the Forensic Science Laboratory.

When examined under Section 313 Cr.P.C., the appellant and his co-accused denied the incriminating facts and circumstances put to them and pleaded that they had been falsely implicated.

In their defence, the accused examined DW1 Dr. S.K. Mittal, who had medico-legally examined the appellant.

The trial Court acquitted Smt. Neetu accused of the charges against her. However, Vinod appellant was held guilty under Section 304-II IPC and, accordingly, convicted and sentenced, as mentioned above.

From the testimony of DW1 Dr. S. K. Mittal, it is made out that while he was posted as Medical Officer, Government Hospital, Ballabgarh, he had medico-legally examined the appellant on 29.3.2002 and found the following injuries on his person:-

- “1. Lacerated wound 2 cms x 0.1 cm muscle deep, fresh bleeding present left parietal region.
2. Red abrasion 1 cm x 0.1 cm posterior surface right forearm alongwith red contusion 5 cms x 2 cms alongwith swelling. Advised X-ray right forearm.
3. Red abrasion 6 cms x 2 cms right upper arm. Injuries were kept under observation subject to X-ray report. Weapons used blunt duration within 24 hours”.

Bharat Singh, who had also witnessed the occurrence in question was examined as PW2. In his cross-examination, he stated that the appellant had come in a drunkard condition and asked Smt. Bimlesh to dance with him, which was objected to by his mother Phoolwati, who was present there. This was followed by the appellant giving a blow with a brickbat to his mother Phoolwati and when he and others tried to save him, the appellant's wife Neetu had given a brickbat blow to Devi Charan on his right ear. He also stated that first of all slaps were given by

Phoolwati to the appellant and as a result, the appellant fell down on the ground. He also gave a slap to the appellant. He went on to state that there were bricks on the floor in the street and brickbats were thrown for 4/5 minutes.

From the testimony of PW2 Bharat Singh, it is clearly established that injuries were also caused to the appellant. Merely because, PW2 Bharat Singh did not state so in his statement under Section 161 Cr.P.C. and also before the learned trial Court about causing injuries to appellant is no ground to reject the prosecution case as it was the defence itself which brought material on record to show that the appellant had also received injuries.

It is true that the trial Court acquitted Neetu accused of the charges against her. That fact by itself is not sufficient to reject the prosecution case qua the involvement of the appellant in the commission of the crime. The principle *falsus in uno, falsus in omnibus* is not applicable, especially, when the prosecution has been able to satisfactorily prove the involvement of the appellant in the commission of the crime.

There being no enmity between the parties and in the entire occurrence brickbats were hurled and one of the brickbats hurled by the appellant landed on the left occipital region of Phoolwati, which injury was sufficient to cause death in normal

course of events, no fault can be found with the conclusion arrived at by the learned trial Court while convicting the appellant under Section 304 Part II IPC.

As regards the question of sentence, it may be noticed that the appellant is facing the agony of criminal prosecution for the last more than fifteen years. The occurrence in question had taken place when the appellant expressed an intention to dance with Bimlesh, wife of complainant Devi Charan when celebrations on holi festival were going on. The appellant was not shown to be armed with any weapon and picked up the brick lying at the spot and, thereafter, hurled the same at the deceased.

From the custody certificate produced by the learned State counsel, it is made out that the appellant is not involved or convicted in any other case. He has also undergone total sentence of one year, two months and twenty three days.

Taking into consideration the totality of the circumstances and keeping in view the fact that the appellant is on bail for the last about twelve years and he has not misused the concession, no useful purpose will be served by sending the appellant behind the bars, once again, for undergoing the remaining sentence of imprisonment imposed upon him. Ends of justice shall be suitably met, if the substantive sentence of

imprisonment is reduced to the one already undergone by him. However, the fine of Rs.1,000/-, which is on the lower side can be suitably enhanced.

Resultantly, the conviction of the appellant under Section 304 Part II IPC is upheld and his substantive sentence of imprisonment is reduced to the one already undergone by him. The fine of Rs.1,000/- imposed upon him by the trial Court is hereby is enhanced to Rs.25,000/-. The fine amount be deposited by him in the Court of learned Chief Judicial Magistrate, Faridabad, within three months from today, failing which, he shall undergo rigorous imprisonment for six months. The entire amount of fine, when deposited by the appellant be disbursed in favour of legal heirs of deceased-Phoolwati as compensation.

The appeal is, accordingly, disposed of.

July 14, 2017
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No