

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

CRA-D No. 196-DB of 2008 (O&M)

Reserved on : 18.12.2018

Date of decision : 21.12.2018

Sukhbir Lal alias Tony and another Appellants

versus

State of Punjab ... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice B. S. Walia**

Present Ms. Isha Goyal, Advocate, for the appellants.
Mr. Rajesh Bhardwaj, Sr. Advocate General, Punjab.

Rajiv Sharma, J.

1. The present appeal is instituted against the judgment and order dated 15.2.2008, rendered by Sessions Judge, Amritsar, in Sessions case No. 40 of 2006, vide which appellants Sukhbir Lal alias Tony and Kashmiri Lal sons of Darshan Lal, were charged with and tried for the offence punishable under Sections 302/34 IPC. They were convicted and sentenced under Section 302 IPC read with Section 34 IPC to undergo life imprisonment and to pay fine of ₹ 5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months.

2. The case of the prosecution in a nutshell is that on 1.1.2006, Amrik Singh complainant along with his children was present in his house located in village Kathuanangal. At about 10.00 P.M., Sukhdev Lal alias Kaka, Kashmiri Lal and Sukhbir Lal alias Tony, came in front of the house of Avtar Singh (PW4). They started hurling abuses on Avtar Singh. This attracted the attention of his elder brother Joginder Singh. He went to the

house of Avtar Singh. The complainant also followed his brother to the house of Avtar Singh. Joginder Singh asked the accused as to why they were hurling abuses on Avtar Singh without any reason. Sukhdev Lal alias Kaka, who was armed with bat raised *lalkara* extorting his accomplices to teach lesson to Joginder Singh for preventing them from hurling abuses on Avtar Singh. Thereupon Sukhbir Lal alias Tony gave 2-3 blows of wicket on the head of Joginder Singh. Sukhdev Lal alias Kaka and Kashmiri Lal gave many bat blows on the arms, legs and head of Joginder Singh. They raised alarm. On this, all accused fled away from the spot along with their respective weapons. Injured died while being removed to the hospital. On 2.1.2006, post-mortem was conducted by PW1 Dr. Puneet Khurna. The cause of death was compression of brain as a result of Subdural haematoma due to injury no.1. It was sufficient to cause death in ordinary course of nature. Investigation was completed and challan was put up after completion of all the codal formalities.

3. The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. They were convicted and sentenced, as noticed above. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

5. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

6. PW1 Dr. Puneet Khurna had conducted the post-mortem examination on the dead-body of Joginder Singh (deceased). He noticed the following injuries on his body:-

- “1. A lacerated wound 6.9 x 0.7 cm present on left parietal region of head 11.2 cm from left hair pinna obliquely placed clotted blood present. Margins were inflamed.
2. On dissection: on reflecting scalp subgaleal haematoma was present over right and left parietal regions, right temporal region of head. A linear fracture of left parietal bone extending to the right parietal bone and right temporal bone was present. Infiltration of blood was present. Clotted blood was present. On opening cranial cavity membranes were found tense, subdural haematoma was present over both cerebral hemispheres. About 80 cmm of fluid and clotted blood was present at the base of skull.
3. A reddish brown abrasion 0.6 x 0.4 cm present on the back of left hand 6.2 cm from left wrist joint.
4. A reddish brown abrasion 1.1 x 0.6 cm present on the front of left leg 4.2 cm below left tibial tuberosity.

The cause of death was compression of brain as a result of Subdural haematoma due to injury no.1. It was sufficient to cause death in ordinary course of nature. He opined that probable time that elapsed between injury and death was within 12 hours and between death and post-mortem was less than 12 hours.

7. PW3 Amrik Singh deposed that they were four brothers. He was truck driver. On 1.1.2006, he was present in his house along with his neighbour. Joginder Singh was also present on the spot. At about 10.00

P.M. noise was heard from the house of Avtar Singh. Joginder Singh went to the spot. He followed Joginder Singh. He found accused present on the spot. Light was available on the spot. Joginder Singh asked the accused as to why they were abusing Avtar Singh. On this, accused Sukhdev Lal @ Tony raised *lalkara* exhorting other accused to teach him a lesson. Sukhdev Lal alias Kaka and Kashmiri Lal were armed with bats and Tony was armed with wicket. Tony gave 2-3 wicket blows on the head of Joginder. Accused Sukhdev Lal and Kashmiri Lal gave blows with their respective bats on his arms, head and legs. He and Avtar Singh raised alarm. The accused ran away from the spot along with their respective weapons. Injured could not be removed to the hospital due to poverty during night. He died while being taken to hospital. The police met them on the way. The report was lodged vide statement, Ex.PC. In his cross-examination, he admitted that all the accused were real brothers. Avtar Singh was living in the house along with his wife and children. On that day, his wife was present in the house.

8. PW4 Avtar Singh corroborated the statement of PW3 Amrik Singh. He deposed that on 1.1.2006 at about 10.00 P.M., he was present in his house, when Sukhdev Lal, Kashmiri Lal and Tony came to the spot. They started abusing him. Joginder Singh came to the spot followed by Amrik Singh. Joginder Singh prevented the accused from abusing to him. Accused Sukhdev Lal raised *lalkara*. Tony accused gave three wicket blows on the head of Joginder Singh. Thereafter, Sukhdev Lal and Kashmiri Lal gave bats blows on his arms, head and legs. Joginder Singh received injuries. He could be not removed to the hospital immediately due to poverty. He died on the way to the hospital. He was confronted with the statement, Ex.DB, recorded under Section 161 Cr.P.C.

9. PW6 ASI Lakhbir Singh testified that he visited the spot along with the complainant. Dead-body was sent for post-mortem examination. He went to the house of Avtar Singh from where the SHO collected the blood stained earth. He arrested Kashmiri Lal and Sukhbir Lal. Kashmiri Lal made disclosure statement that he had kept concealed one bat in the *sarkandas* of the eastern side of his house. He got it recovered from that place. The statement is Ex.PJ. Statement of Sukhbir Lal was also recorded by him. He made disclosure statement, Ex.PK, on the basis of which bat was got recovered.

10. PW7 SI Dilbagh Singh deposed that FIR, Ex. PC/2, was recorded. He went to the spot. He prepared inquest report. He conducted the raids of the houses of the accused. The clothes of the deceased were also taken into possession. He recorded statements, Ex.PA and Ex.DB of Avtar Singh.

11. What emerges from the discussion of the evidence hereinabove is that the appellants had gone to the house of Avtar Singh. They were hurling abuses on Avtar Singh. Joginder Singh accompanied by his brother Amrik Singh reached the spot. Joginder Singh asked the accused not to hurl abuses to Avtar Singh. Thereafter, he was administered beatings. The incident had taken place at 10.00 P.M. He could not be removed to the hospital due to poverty. He died on the way to the hospital. Chemical examiner report is Ex.PX. The cause of death was compression of brain as a result of Subdural haematoma due to injury no.1 as per the statement of PW1 Dr. Puneet Khurna. PW3 Amrik Singh and PW4 Avtar Singh have testified that the accused were hurling abuses. Joginder Singh went to the spot with PW3 Amrik Singh. He asked the accused as to why they were

abusing on Avtar Singh. Thereafter accused gave beating to him. He was given blows with bat and wicket, which were got recovered by the accused on the basis of disclosure statements, vide Ex. PJ and PK.

12. It was not premeditated act. Joginder Singh was preventing the accused from hurling abuses on Avtar Singh. The atmosphere was surcharged on the spot. It was an act of a sudden provocation. The deceased was trying to intervene in the matter and there was no intention of the accused to kill him. Thus, this case would not fall within the ambit of Section 302 IPC but would be covered under Section 304, Part-I IPC. The appellants have inflicted injuries to the deceased on his vital organs and one of the injuries i.e. injury no.1, proved fatal.

13. Accordingly, the appeal is partly allowed and the conviction and sentence of the appellants under Section 302 IPC is converted to Section 304 Part-I IPC. The State is directed to produce the accused in Court on 14.1.2019 to be heard on quantum of sentence under Section 304 Part-I IPC.

(Rajiv Sharma)
Judge

21.12.2018
vs

(B. S. Walia)
Judge

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