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

CRA-D-731-DB of 2011

Date of decision: March 14, 2018

Naseem

.....Appellant

Versus

State of Haryana

....Respondent

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Ms. Sarbhjeet Kaur, Advocate for
Mr. Gautam Dutt, Advocate for the appellant.

Mr. Kuldeep Tewari, Addl. AG Punjab.

Mr. Vinod Ghai, Senior Advocate with
Mr. Harmandeep S. Brar, Advocate for the complainant.

A.B. CHAUDHARI, J

Being aggrieved by the judgment/order dated 23.07.2011/27.07.2011 passed by the learned Additional Sessions Judge, Nuh, in Sessions Case No.99 of 2008 by which the learned trial Judge held the appellant-Naseem guilty of commission of offence under Section 302 of Indian Penal Code, 1860 (for short 'IPC') and sentenced him to undergo Imprisonment for life and fine in the sum of ₹5,000/-; in default of payment of fine, to further undergo simple imprisonment for six months, the present appeal was filed by the appellant.

FACTS

The prosecution case, in nutshell, was that Head Constable Ajit Singh received a message, on 15.05.2008 about admission of injured Hakam

son of Idrish and when he reached there, injured was not found present. He, therefore, visited on the next date, i.e. 16.05.2008 in the same Hospital, where he was informed that injured was shifted to Safdarjang Hospital, Delhi. He, further made a search in the village Akera, but injured was not found and therefore, lastly on 19.05.2008, information was received about death of injured-Hakam in Kalyani Hospital, Gurgaon. Statement of Idrish was recorded who stated that he was the resident of village Akera. On 15.05.2008, at about 5:00 PM, he along with his son Hakam aged about 14-15 years were going towards a plot of his nephew Jamil. In the meantime, accused Yakub son of Majid, Smt. Jamila wife of Yakub, Jaina son of Mazid, Naseem son of Yakub, Ali Mohd. Son of Gulab and Nasru son of Abdul Karim met on the way and abruptly, they pounced upon them. It is further the case of the prosecution that accused Yakub and Jaina exhorted a *lalkara* that Hakam should not be spared. In the meanwhile, Yakub and Jamil caught hold of Hakam while accused Naseem inflicted a knife blow on the head of Hakam which hit behind his neck. Hakam fell down and became unconscious. Accused Ali Mohd. And Nasru gave fist and kick blows to Hakam. Quarrel started. The motive for commission of offence stated by the complainant was that about 2-3 days before, an altercation took place between Hakam and Naseem on the issue of cricket game when Hakam was assaulted. The injured Hakam was shifted first to General Hospital, Mandikhera and thereafter, he was referred to Safdarjang Hospital, New Delhi and thereafter, he was removed to Kalyani Hospital, Gurgaon where Hakam died in the night. The police thereafter, registered the FIR and started investigation. The inquest was prepared, statement of witnesses was

recorded and post-mortem report was collected and finally, the accused were charge-sheeted for offence under Sections 148, 302 read with Section 149 IPC. All the accused persons pleaded not guilty. The prosecution examined its witnesses numbering 12 while the defence examined DW1-Devender Yadav, DW2-Jamshed, DW3-Juned and DW4-Abdul Aziz. The trial Court finally acquitted all the other accused persons except the present appellant-Naseem. Hence, this appeal.

ARGUMENTS

In support of the appeal, learned counsel for the appellant submitted that the prosecution has miserably failed to prove its case much less beyond reasonable doubt and therefore, the judgment/order of conviction/sentence of the appellant will have to be set aside. He submitted that the motive itself indicates that there was no question of commission of murder over a petty quarrel over cricket match and that too amongst the children. He submitted that there are major contradictions in the prosecution case itself apart from the fact that there was delay in lodging the FIR on 19.05.2008 as against the incident of 15.05.2008. He, then submitted that the delay of four days in lodging the FIR particularly in the serious offence of murder was fatal but the trial Court ignored the same. The prosecution witnesses had concocted the story of murder and the assault. Learned counsel for the appellant then submitted that the evidence of the witnesses was not trustworthy and was liable to be rejected.

Per contra, learned State counsel supported the impugned judgment and order inviting our attention to the discussion by the trial Court and the reasons recorded therein for basing the conviction of the appellant-

Naseem. He submitted that the appellant-Naseem had given a fatal blow by means of knife or *chhura* whatever it may be. The weapon was a dangerous instrument and the appellant very well knew that it could cause death. Hence, the appellant was rightly convicted for the offence of murder.

CONSIDERATION

We have heard learned counsel for the rival parties at length. We have perused the entire evidence tendered by the prosecution and the reasons recorded by the trial Court. It would be repetitive if we discuss the evidence in our own words. Hence, we propose to quote Para-40 of the impugned judgment, where there is a discussion about the relevant portion about the ocular evidence, which reads thus:-

“40. A perusal of statement of PW4 complainant Idrish would go to show that with regard to participation of five accused Ali Mohd, Nasru, Yakub, Jaina, Jamila his statement is not worthy of credence. Before proceeding further in the matter, it will be worthwhile to refer to his statement Ex.PE made by him for the first time before ASI Balwan Singh PW5, wherein he attributed the overt act against the said accused by stating that all the said accused including accused Nasim suddenly came on the way when he alongwith his deceased son Hakam was walking away to the plot of PW9 and said accused pounced upon them. Accused Yakub and Jaina gave a lalkara not to spare Hakam and accused Ali Mohd. and Nasru were also saying that they be secured with the help of hands and thereafter Yakub and Jamila caught hold his son Hakam from behind and further accused Jamila caught hold both the hands of his son and in the meantime accused Nasim dealt a knife blow on the head of Hakam, which hit him on the back portion of neck, which resulted into the fall of deceased on the grounds, who fell

unconscious and thereafter accused Ali Mohd. and Nasru gave fist and slap blows to deceased, while he was lying on the ground. Now the said version is to be tested as to what he has stated in the court on Oath as PW4. In his examination in chief, he has simply stated that accused Yakub and Jaina gave a lalkara that Hakam should not be allowed to go. However, in his statement Ex.PE, he stated that Hakam should not be spared. From both the assertions, it is clear that there was no exhortation to commit murder of deceased Hakam. Matter goes a step further. He has further stated that accused Ali Mohd. and Nasru raised Lalkara to encircle Hakam and he should not be spared, wherein in his statement Ex.PE before the police, there is no specific reference of encircling Hakam rather it is attributed to both the complainant and Hakam. There is further no use of word that they should not be spared rather it is stated that the victim should not go out of the clutches. In the statement Ex.PE of PW4 before the police as well as statement made in the court, there is no reference as regards the said accused also exhorting a lalkara to commit murder of deceased Hakam. As per his own version, all the said five accused Nasru, Ali Mohd. Yakub, Jamil, and Jaina were unarmed. There is further nothing in his statement that the said accused knew that accused Nasim was having screw driver in his hand. It is further nothing in his statement that accused Nasim was brandishing screw driver openly proclaiming to kill deceased Hakam.”

We have compared the facts stated by the trial Court in Para-40 of the impugned judgment with the evidence that was recorded and we find that there is no discrepancy or inconsistency anywhere and on the contrary, we find that the trial Court has rightly marshalled the evidence in the correct perspective to hold that accused-Naseem had given a blow on the head of the deceased Hakam which landed on the back portion of his neck and he

became unconscious. We agree with the above reasons given by the trial Court for recording the conviction of appellant-Naseem.

Then next question is about what offence has been committed by the appellant looking to the nature of motive that has been propounded by the prosecution, namely petty quarrel amongst the children. We do not think that it can be said that there was any *mens rea* as such about the commission of murder of Hakam. It cannot be said that there was intention to commit the murder of Hakam by Naseem. The medical evidence shows only one injury that too at the back of the head and the description of the injury is as under:-

“10. PW3 Dr. Pardeep Kumar M.O. from G.H. Mandikhera testified that on 15.05.08 he medico legally examined injured (since deceased) Hakam son of Idrish, who was brought with alleged history of assault. He proved the carbon copy of MLR Ex.PD of said Hakam and found only one following injury”

There was a lacerated wound 1.5 x .3 cm over the left occipital region skin deep. Fresh bleeding was present associated with surrounding swelling and tenderness.”

It is clear that there was lacerated wound 1.5x0.3 cm over the left occipital region skin deep. Even the fracture has not been reported, it appears that the appellant caused injury knowing fully that the weapon used by him, namely knife would not cause death, if he struck only one blow as aforesaid. In the light of the injury, we are of the firm opinion that the appellant cannot be held guilty of the offence of murder, but must be held guilty of offence, namely culpable homicide not amounting to murder. We, therefore, hold appellant-Naseem guilty of offence under Section 304 Part-I of IPC. Appellant has undergone sufficient sentence as per the custody certificate. In our opinion, the interest of justice would suffice, if his

sentence is reduced to the one already undergone. In the result, we make the following order:-

ORDER

- (i) CRA-D-731-DB of 2011 is partly allowed;
- (ii) The impugned judgment/order dated 23.07.2011/27.07.2011 passed by the learned Additional Sessions Judge, Nuh, in Sessions Case No.99 of 2008, is set aside and is modified and the appellant is convicted for commission of offence under Section 304 Part-I IPC and sentenced to undergo Rigorous Imprisonment which he has already undergone;
- (iii) Appellant be released forthwith, if not required in any other case.

(A.B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

March 14, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No