

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

Crl. Appeal S-1289-SB 2006

Date of Decision : September 26, 2018

Mohinder Pal

.....Appellant

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Surender Dhull, Advocate
for the appellant.

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

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

The appellant, namely, Mohinder Pal was tried for committing the offence punishable under Section 304 IPC. Vide judgment and order dated 29/30.5.2006, learned Sessions Judge, Kaithal convicted him for the offence under Section 304 Part II IPC and sentenced him to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs. 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months. The period of detention already undergone by him during the investigation and trial of the case was ordered to be set off against the substantive sentence of imprisonment.

Aggrieved of his conviction and sentence, the appellant filed the present appeal which stands admitted.

According to the prosecution, deceased-Ram Kishan had come to Cheeka from his village on 25.6.2005 for some

personal work. In the evening, complainant-Om Parkash, brother of the deceased alongwith Labh Singh also came to Cheeka for some personal work. At about 8.00 p.m., after becoming free from the personal work, they were planning to return to village and were near the *Khokha* market, when they saw one person giving beatings to the deceased. The assailant went inside his *Khokha* and brought a danda and, thereafter, gave blows with the same to the deceased on the back of his neck, on the left temple and other parts of his body. When the complainant and Labh Singh intervened, the assailant fled from the spot while carrying danda with him. The persons, who had collected at the spot, disclosed the name of the assailant as Mohinder Pal son of Ram Chander. The injured was, thereafter, taken to Government Hospital, Kaithal on a three-wheeler where he was declared as having been brought dead. On enquiry, it was noticed that the deceased had purchased some articles from the appellant. He found those articles to be of inferior quality and so had come to return the articles to the appellant and on this a quarrel had ensued wherein the appellant caused injuries to Ram Kishan leading to his death.

At the trial of the case, the prosecution examined ten witnesses i.e. PW1 ASI Ajmer Singh, PW2 Constable Rakesh Kumar, PW3 MHC Bir Bhan, PW4 Lakshman Singh, Draftsman, PW5 HC Om Parkash, PW6 Dr. D.C.Thukral, PW7 Om Parkash,

complainant, PW8 Lajja Ram, PW9 HC Dalbir Singh and PW10 SI Surta Ram.

When examined under Section 313 Cr.P.C., the appellant denied the incriminating evidence put to him and pleaded that he was innocent. On the day of the occurrence, the deceased was under the influence of liquor and was present in front of Police Station Cheeka and on seeing the police, he had started running and fell down resulting into injuries being caused. His head had struck against the pavement resulting in injuries leading to his death. In defence, the appellant did not lead any evidence. However, he tendered in evidence documents Ex. DA, Ex. DB and Ex. DC.

After hearing learned counsel for the parties and on going through the record, learned trial Court believed the prosecution version to be true and, accordingly, convicted and sentenced the appellant, as mentioned above.

Having heard learned counsel for the parties and on going through the evidence on the record, this Court finds that PW7 Om Parkash, brother of the deceased and PW8 Lajja Ram, brother-in-law of the deceased, have deposed about the ocular account of the occurrence. Despite being subjected to lengthy cross-examination, the defence could not bring any material on record from which it could be inferred that the appellant has been falsely implicated. The testimonies of the two eye-witnesses are

duly corroborated by the medical evidence by way of testimony of PW6 Dr. D.C.Thukral, who had found as many as four injuries on the deceased when he conducted post-mortem on 26.6.2005 at 11.30 a.m., which are as under:-

- “1. A contusion of size 14 cm x 2 cm on back of the neck upper part extending towards right side of the neck. On exploration, neck showed fracture and dislocation of 2nd cervical vertebrae with blood clots formation and haematoma around the 2nd and 3rd cervical vertebrae;
2. A contusion on left scapular area 10 cm x 2 cm underlying structure was intact;
3. An abrasion on right anterior of neck and;
4. A swelling on left occipital area behind the left ear in an area of 10 cm x 7 cm. Exploration showed intact skull bones and brain matter.”

In the opinion of the doctor, the cause of death was due to shock and injury to cervical vertebrae which was ante-mortem in nature and sufficient to cause death in the normal course of nature. The probable time that elapsed between injuries and death was a few minutes to hours.

After conducting formal investigation, the police had found the involvement of the appellant in the commission of the crime and, accordingly, presented the final report against him under Section 173 Cr.P.C.

In view of the above, no case is made out for any interference in the conviction of the appellant, as recorded by the learned trial Court.

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 thirteen years. According to the prosecution, there was no serious enmity between the parties. The deceased had purchased certain articles from the appellant. When he found those articles to be of inferior quality, he wanted to return them to the appellant and at that time there ensued a quarrel between them. Further, the appellant was not said to be armed with a lethal weapon. According to the prosecution, he had given danda blows to the deceased. The appellant is not shown to be a previous convict. As per the custody certificate already brought on record by the learned State counsel, he has already undergone an actual period of one year, two months and eleven days inclusive of post-conviction period of three months and twelve days. When he was heard by the learned trial Court on the quantum of sentence, he had pleaded that he had old parents and there was no male member in his family to look after them. He was about 25 years of age at the time of the occurrence.

Taking into consideration the totality of the circumstances, this Court is of the view that the appellant, who is

on bail for the last more than twelve years and has not misused the concession in any manner, need not be sent behind the bars, once again, so as to undergo the remaining sentence of imprisonment imposed upon him. Ends of justice shall be suitably met, if his substantive sentence of imprisonment is reduced to the one already undergone by him. However, at the same time, the fine amount can be enhanced so as to make it payable as compensation to the legal heirs of the deceased.

Resultantly, the conviction of the appellant under Section 304 Part II IPC is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. However, the fine of Rs. 5,000/- imposed upon him by the learned trial Court is enhanced to Rs. 50,000/-. He shall deposit the entire fine amount in the Court of Chief Judicial Magistrate, Kaithal within a period of three months from today, failing which he shall be required to undergo rigorous imprisonment for one year. The fine amount, if deposited by him or recovered from him, shall be paid to the legal heirs of the deceased, as compensation.

The appeal is, accordingly, disposed of.

September 26, 2018
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No