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

**Date of decision: September 10, 2018
CRA-D-607-DB of 2015 (O&M)**

Krishan

.....Appellant

Versus

State of Haryana

....Respondent

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE B.S. WALIA**

Present: None for the appellant.

Mr. Vivek Saini, DAG Haryana.

A.B. CHAUDHARI, J

Being aggrieved by judgment and order dated 13.03.2015 passed by the learned Sessions Judge, Jind, in Sessions Case No.33 of 07.04.2014, by which the present appellant-Krishan was convicted for offence punishable under Section 302 of Indian Penal Code, 1860 (for short 'IPC') and sentenced him to undergo Rigorous Imprisonment for Life, with fine in the sum of ₹20,000/-; in default of payment of fine, to further undergo Rigorous Imprisonment for one year, the present appeal has been preferred by him.

2. None appeared on behalf of the appellant. Heard learned State counsel.

3. We have gone through the entire record and proceedings of the learned trial Court. We have seen the entire evidence with the assistance of the learned State counsel. We have also seen the reasons given by the

learned trial Court for convicting the appellant for commission of offence of murder.

4. The prosecution examined star witness, who is the eye-witness, namely, PW13-Priya wife of the deceased, who was actually present at the spot when her husband was killed by the accused persons. Instead of quoting the relevant para of her evidence, which has gone practically unchallenged and is believable, we quote the such evidence from Para-9 of the impugned judgment, which reads thus:-

“PW-13 complainant Priya happens to be wife of deceased Suresh. Reiterating the version of her statement Ex.PB made before the police, she deposed that she was married with deceased Suresh since 07.01.2010. She had two sons namely Vinay Kumar aged about three years and Saurya aged about one year. Her husband was a truck driver. He had come to home 4-6 days prior to the present occurrence. About one month prior to the present occurrence, her Dever Krishan present in the court had started residing separately in one room in the same house. On 02.08.2013 at about 1.30 P.M., accused Krishan came to home under the influence of liquor and raised quarrel with her husband and she and her mother-in-law intervened and sent the accused out of house. Thereafter, at about 3.15 P.M., accused again came and picked up a Binda alongwith Kassi. She and her mother-in-law tried to stop him, but he pushed them aside and proclaimed that he would teach a lesson to Suresh on account of raising quarrel with him and inflicted Kassi blow on the backside of his head. She and her mother-in-law tried to save the life of her husband and then the accused fled away from the spot alongwith Kassi. Her husband died on account of the injuries inflicted by the accused present in the Court. Leaving her mother-in-law with the dead body of

her husband, she went to the Police Station and on the way, the police party met her near Chhota Bus Adda and she got recorded her statement Ex.PB under her signatures. She nextly deposed that on the same day, the police had lifted one bed sheet, blood stained earth, pieces of cotton Niwar from the spot and took the same into possession vide recovery memo Ex.PE which was attested by her, after converting the same into separate sealed parcels. After seeing, Bed sheet Ex.P1, blood stained earth Ex.P2 and two pieces of cotton Niwar Exs.P3 and P4 collectively, she testified that those were the same which were taken into possession by the police in her presence.”

5. The aforesaid evidence has been discussed by the trial Court and the evidence shows that the appellant at the first blush, at 1:30 P.M. raised quarrel with the husband of the deceased. Thereafter, he went away and came back at 3:15 P.M. The husband of the deceased and the appellant were the real brothers. Accused/appellant was under the influence of liquor. Having quarrel with his brother, in the first instance, he again came back to the deceased and gave a *kassi* blow on the backside of his head by reverse side of the *kassi* and went away.

6. We have perused the medical evidence and the nature of injury, which read thus:-

“10. PW-11 Dr. Arvind Kumar, Medical Officer, General Hospital, Jind had conducted postmortem examination on the dead body of deceased Suresh on police request Ex.PC. He tendered his affidavit Ex.PR and proved carbon copy of postmortem report Ex.PS on the strength of original postmortem report brought by him. He further deposed that he initialed the inquest proceedings Ex.P1. After seeing Shirt Ex.P6, pant Ex.P7 and underwear (Kachha) Ex.P8, he testified that those were the

same which were removed from the dead body and handed over by him to the Police after postmortem examination.

He nextly vouched that on 05.08.2013, on Police application Ex.PO, whereupon he gave his opinion Ex.PO/1 that the injuries on the person of deceased could be caused with spade Ex.P5.”

7. Perusal of the above stated postmortem report and the injury clearly show that the same was caused at the backside of the head, as a result of which, the husband of the complainant, died. The learned trial Court had rejected the argument made by the defence that the appellant could be held guilty for commission of offence punishable under Section 304 Part-I IPC and not Section 302 IPC. The learned trial Court rejected the said argument on the ground that the offence under Section 302 IPC was proved. Upon careful consideration to the entire matter what we find is that the appellant under the influence of alcohol, at 1:30 P.M. quarrelled with his real brother. Thereafter, he went away and came back with weapon, namely *kassi* and gave a blow of *kassi* from the reverse side thereof on the backside of the head of the husband of the complainant and immediately went away. Had there was intention on his part to commit his murder, he would not have given a single blow that too from the rear side of the *kassi* and gone away. He would have given further blows to fulfill his desire of murder. But that is not so. He simply given a blow of reverse side of the *kassi* and not from the sharp side thereof. Not only that, he had murmured that his brother had quarreled with him, therefore, he wanted to teach him a lesson. This itself shows that the offence under Section 304 Part-I IPC is made out rather than the offence under Section 302 IPC. In that view of the matter, we are

satisfied that the appellant could be held guilty for commission of offence punishable under Section 304 Part-I IPC rather than Section 302 IPC. We are, therefore, inclined to set aside the judgment of the trial Court by modification. Accordingly, we make the following order:-

ORDER

- (i) **CRA-D-607-DB of 2015** is partly allowed;
- (ii) The impugned judgment and order dated 13.03.2015 passed by the learned Sessions Judge, Jind, in Sessions Case No.33 of 07.04.2014, is set aside and modified and the appellant-Krishan is convicted for offence punishable under Section 304 Part-I IPC and sentence him to undergo Rigorous Imprisonment for 8 years, with fine in the sum of ₹2,00,000/- payable to the wife of the deceased; and in default of payment of fine, to further undergo Rigorous Imprisonment for one year.

(A.B. CHAUDHARI)
JUDGE

(B.S. WALIA)
JUDGE

September 10, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No