

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

**Criminal Appeal S-549-SB of 2005
Date of Decision: August 10, 2018**

Rakesh Kumar and othersAppellants

Versus

State of Punjab Respondent

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

Present : Mr. Narinder Singh, Advocate
for the appellants.

Mr. Sarabjit Singh Cheema, Asstt. A.G., Punjab.

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

The appellants, namely, Rakesh Kumar, Ajay Kumar and Vicky alongwith Rani were charged for committing offences punishable under Sections 304 and 120-B IPC. Vide judgment and order dated 10.3.2005, learned Additional Sessions Judge, Muktsar, acquitted Rani accused of the charges against her. The appellants were acquitted under Section 120-B IPC. However, Rakesh Kumar appellant was convicted under Section 304 Part II IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for six months.

Ajay Kumar and Vicky appellants were also convicted under Section 304 Part II read with Section 34 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months.

Aggrieved of their conviction and sentence, the appellants filed the present appeal, which stands admitted and notice issued to the State. All the three appellants are presently on bail.

According to the prosecution, on 30.9.2002, ASI Darshan Singh alongwith other police officials was present in Husner Chowk, Gidderbaha where he received a ruqa bearing No.PI-65 dated 30.9.2002 regarding death of Hardam Singh son of Harnek Singh resident of Daula, upon which he alongwith his co-officials reached Civil Hospital, Gidderbaha, where the dead body of Hardam Singh @ Kala Singh deceased was lying in the dead house and his son Gurwinder Singh alongwith his uncle Labh Singh and other persons were sitting near the dead body. Statement of Gurwinder Singh was recorded, in which, he stated that he is studying in B.A. 2nd in D.A.V. College, Gidderbaha and the only son of his father. Elder to him is his sister Virpal Kaur. He further stated that they both brother and sister are bachelor. They are having three trucks and 21/22 killas of land. They have

employed drivers on two trucks and one truck was being plied by his father Hardam Singh @ Kala Singh. He further stated that on 29.9.2002 at about 1.30 p.m. his father Hardam Singh @ Kala Singh went to the Truck Union from the house but did not return in the evening nor they received any telephonic message or message for not-coming to the house. At about 9.00 p.m., he came on scooter to Gidderbaha city to enquire about his father and while searching at about 10.00 p.m., reached near Malwa Dharam Kanda, G.T. Road, Gidderbaha, where three persons whom he knew previously viz. Rakesh Kumar son of Dev Raj Jindal, Ajay Kumar son of Madan Lal Arora and Vicky son of Sukhdev Raj Bansal, residents of Baintabad Mohalla, Gidderbaha, were quarreling with his father Hardam Singh @ Kala Singh on the back side of room of Dharam Kanda in loud voice and were saying that he (deceased) was stopping his girl friend Rani from accompanying them, but he himself was roaming with her at odd hours and they will teach him a lesson for the same. The complainant further stated that he humbly stated that he had done nothing bad, then they became angry and Ajay Kumar caught hold of his father from arms and Vicky caught hold from his waist from behind and Rakesh Kumar picked up a brick lying nearby and gave a blow with the same on the head of his father. He raised alarm saying "Na Maro Na Maro". Then, Bikkar

Singh son of Jagroop Singh, resident of Gidderbaha, who is also having a truck came at the spot. At that time, the electric light was on and on seeing him, all the three appellants ran away from the spot after throwing the brick. Due to injury with brick on the head of his father, he fell down at the spot and became unconscious. The complainant and Bikkar Singh took him to a private hospital of Dr. Ravi Kamboj, Gidderbaha, who after giving first aid referred him to Civil Hospital, Gidderbaha, but on reaching Civil Hospital, Gidderbaha, the doctor declared his father to be dead. The complainant further stated that his father Hardam Singh @ Kala Singh, Rakesh Kumar, etc. were having illicit relations with Rani wife of Malkiat Singh resident of Gidderbaha and were having grudge with each other. Due to this grudge Rakesh Kumar, Ajay Kumar and Vicky with their common intention caused the death of his father by giving injury on his head. On the basis of the said statement of the complainant, the case was registered against the accused.

During the investigation of the case, Dr. Hari Narain Singh, Medical Officer, Civil Hospital, Gidderbaha conducted postmortem on the dead body of deceased Hardam Singh @ Kala Singh and found the following injuries:-

- “1. A reddish contusion 2 cms x 1 cm on the right side of the head, medial end of the contusion was 4 cms

from midline and 6 cms from the right eyebrow. It was horizontally placed.

2. A reddish contusion 3.5 cms x 1 cm on the left side of the head antero medial end of the contusion was 2 cms from the midline and 10 cms from the root of nose and it was obliquely placed. On dissection regarding injury No.1 underlying bone was not fractured, meninges and brain matter were normal. On dissection regarding injury No.2 reddish blood clot were seen in the underlying subcutaneous tissue, underlying bone was fractured and there was huge extra dural hematoma measuring 11 cms x 6 cms in the region of parietal and temporal bones. Brain matter and meninges were normal”.

Injuries Nos. 1 and 2 were antemortem in nature and were sufficient to cause death in ordinary course of life. Weapon used was blunt for the injuries and the probable time that elapsed between injuries and death was few minutes to few hours and between death and postmortem was within 24 hours.

Learned counsel for the appellants has not challenged the impugned judgment to the extent of convicting Rakesh Kumar appellant under Section 304 Part II IPC and Ajay Kumar

and Vicky appellants under Section 304 Part II read with Section 34 IPC. However, he has submitted that the appellants are facing the criminal prosecution for the last about sixteen years. There was no serious enmity between the appellants and deceased Hardam Singh @ Kala Singh. According to the prosecution, the appellants and the deceased were having illicit relations with accused Rani. However, the deceased used to stop Rani for accompanying the accused. It is also submitted that none of the appellants was armed with any conventional weapon. Rakesh Kumar accused had picked up a brick lying nearby, with which, he had given a blow on the head of the deceased. Before that, Ajay Kumar accused had caught the deceased from his arms while Vicky from his waist. None of the appellants is previous convict. All of them were in their earlier twenties at the time of the occurrence. Out of the sentence of five years imposed upon him, Rakesh Kumar appellant has undergone about two and half year whereas out of the sentence of three years imposed upon Ajay Kumar and Vicky, they have undergone a period of about 10/11 months. It is also submitted that the appellants are on bail for the last more than thirteen days. There is no allegation that in the *interregnum* they have misused the concession in any manner. Prayer has, accordingly, been made for taking a lenient view in the matter of their sentence of imprisonment.

Learned State counsel has vehemently opposed the prayer by submitting that after Ajay Kumar and Vicky appellants had caught hold of the deceased, Rakesh Kumar appellant had picked up a brick, which he used in inflicting injury on the head of the deceased. Further, while conducting postmortem on the dead body of Hardam Singh @ Kala Singh, Dr. Hari Narain Singh noticed not one but two injuries and both these injuries were on the head. Learned State counsel has also produced the custody certificates, as per which, Rakesh Kumar appellant has undergone an period of two years, five months and three days, Ajay Kumar appellant has undergone nine months and nine days whereas Vicky appellant has undergone eleven months and ten days.

After hearing learned counsel for the parties and on going through the impugned judgment of conviction and sentence, this Court finds that no useful purpose will be served by sending the appellants behind the bars after a period of about thirteen years so as to put them behind the bars for undergoing their remaining sentence of imprisonment. Ends of justice shall be suitably met, if their sentences of imprisonment are reduced to the one already undergone by them. At the same time, the fine of Rs.2,000/- imposed upon each of them can be suitably enhanced so as to compensate the family of the deceased.

Resultantly, the conviction of Rakesh Kumar appellant under Section 304 Part II IPC and of Ajay Kumar and Vicky appellants under Section 304 Part II read with Section 34 IPC is upheld. Their substantive sentences of imprisonment are reduced to the one already undergone by them. However, the fine of Rs.2,000/- imposed upon Rakesh Kumar appellant is enhanced to Rs.40,000/- and in default of the same, he shall undergo rigorous imprisonment for one year. The fine of Rs.2,000/- each imposed upon Ajay Kumar and Vicky appellants is also enhanced to Rs.20,000/- each and in default of payment of fine, to undergo rigorous imprisonment for six months. The fine amount be deposited by the appellants in the Court of Chief Judicial Magistrate Sri Muktsar Sahib within a period of three months from today. The entire fine amount, if deposited by/or recovered from them be released in favour of complainant Gurwinder Singh, son of deceased Hardam Singh @ Kala Singh as compensation.

The appeal is, accordingly, disposed of.

August 10, 2018
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No