

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-2285-SB of 2016(O&M)
Date of Decision: July 21, 2018

Nand Lal Appellant

Versus

State of Punjab Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Mayuri Lakhanpal Kalia, Advocate
for the appellant.

Ms. Rashmi Attri, AAG , Punjab.

LISA GILL, J (Oral).

Appellant has been convicted for the offences punishable under Sections 304-II of the Indian Penal Code, 1860 (for short-'IPC') by the learned Sessions Judge, Faridkot, vide impugned judgment dated 23.12.2015 and by a separate order dated 23.12.2015, he has been sentenced as under:-

Offence u/s	Sentence
304-II IPC	Rigorous imprisonment for 07 years; besides pay a fine of ₹5,000/- and in default thereof to further undergo RI for two months

Aggrieved therefrom, the present appeal has been filed by the appellant.

At the very outset, learned counsel for the appellant submits that she does not address arguments on the merits of the case, but prays for reduction of sentence imposed upon the appellant to that already undergone by the appellant.

Brief facts necessary for the adjudication of the case are that

FIR No. 16 dated 18.03.2014, was initially registered under Section 308 IPC against the appellant on the statement of Shivan Sahai (PW-12). It was enhanced to Section 302 IPC on the death of Sonu on 19.03.2014. Cause of death of Sonu was a single injury on his head attributed to the appellant. Complainant-Shivan Sahai (PW-12) stated that in the year 2014, he was working at the motor '*kotha*' (room) of Baldev Singh, Member Panchayat resident of village Golewala alongwith Sonu (deceased) son of Teju, Nand Lal (appellant) son of Dev Sahai and one Narinder (PW-13) son of Madhu. The complainant alongwith Nand Lal and Sonu used to reside in the motor '*kotha*' of Baldev Singh, whereas Narinder used to work and reside at the house of Baldev Singh. The complainant alongwith appellant-Nand Lal, Sonu and Narinder celebrated Holi festival on 17.03.2014 at the motor '*kotha*' of Baldev Singh and after the feast, all of them retired to the motor '*kotha*'. A fight had ensued between the appellant and Sonu in the evening. At about 09.30.p.m., the appellant picked up a '*Ghotna*' (thick wooden stick used for grinding chillies) and struck Sonu on the head with it. As a result Sonu became dumb founded. The complainant and other questioned the appellant about it on which the appellant replied that Sonu (deceased) had picked up a fight with him. Narinder (PW-13) called PW-1-Jhujhar Singh son of Baldev Singh. Then, Jujhar Singh alongwith Sandeep Singh came to the spot and took the injured to Guru Gobind Singh Medical College, Faridkot, from where, he was referred to a hospital at Chandigarh. Sonu, however, succumbed to his injuries. Statement of the deceased could not be recorded as he was declared unfit to record a statement. Investigation was carried out by PW-11, ASI Rajbir Singh. Appellant-Nand Lal was arrested on 21.03.2014. Final report under Section 173 of the Code of Criminal Procedure, 1973 (for short '*Cr.P.C.*') was presented after completion of

investigation.

The case was committed to the Court of Sessions, Faridkot, on 05.08.2014. Charge was framed against the appellant, who pleaded not guilty and claimed trial. The prosecution examined as many as thirteen (13) witnesses to prove its case.

The accused in his statement under Section 313 Cr.P.C., denied all the incriminating evidence put to him while claiming innocence and false implication. No evidence was however led in defence.

Learned trial Court on considering the facts and circumstances of the case as well as the evidence on record concluded that the prosecution successfully proved that the appellant had dealt a blow on the head of Sonu which resulted in his death. However, the appellant was found guilty of the offence punishable under Section 304-II IPC and not Section 302 IPC. Consequently, the appellant was convicted for the offence punishable under Sections 304-II IPC and sentenced as detailed above.

Aggrieved therefrom, the present appeal has been filed.

As noted earlier, learned counsel for the appellant has not addressed arguments on the merits of the case and prays for reduction of sentence imposed upon the appellant to that already undergone by the appellant.

The appellant, it is submitted has undergone nearly six (06) years of the sentence imposed upon him. It is further submitted that though sentence imposed upon the appellant was suspended by this Court on 19.09.2016, he is so poverty stricken that he could not even furnish the requisite sureties and is still in custody. He is not involved in any other criminal case. Learned counsel for the appellant submits that PW-12-Shivan Sahai, the complainant and PW-13-Narinder, have reiterated the version as

given in the FIR though PW-1-Jujhar Singh and PW-2-Harbhajan Singh, were declared hostile as they stated that though a phone call was received from Narinder on 17.03.2014 regarding Sonu suffering an injury, name of the person, who inflicted the injury was not disclosed. The present is a case of single injury which led to the death of Sonu. The appellant, it is submitted is an extremely poor person belonging to the downtrodden strata of society who had come from the State of Chhatisgarh to earn a living. It is thus prayed that the sentence imposed upon the appellant be reduced to that already undergone by him.

Learned counsel for the State with reference to custody certificate dated 14.07.2018, does not dispute that the appellant is not involved in any other criminal case. It is further affirmed that the appellant is still in custody.

As per custody certificate dated 14.07.2018, the appellant has undergone actual imprisonment of 04 years, 03 months and 21 days as on 13.07.2018 and in case the period of remission is included the sentence undergone is 05 years, 09 months and 21 days.

The appellant has been convicted for causing the death of Sonu. Dr. Satinderpal Singh-PW-4 while proving the postmortem report Ex.PW4/A testified that the cause of death was craniocerebral trauma, as a result of blunt injury on the head. No other injury was detected on the person of the deceased. The appellant alongwith the deceased, complainant and PW-13 admittedly used to work for Baldev Singh. They had celebrated the festival of Holi on 17.03.2014 and were going to retire when the unfortunate incident occurred. The appellant did not have any previous enmity with the deceased. He had come from Chattisgarh to earn his living. Learned counsel for the State is unable to deny that the appellant is not reported to be

involved in any other criminal case either prior or subsequent to the registration of the present case. The appellant has been facing the proceedings since the year, 2014. Admittedly he is a poor person who did not even have the wherewithal to furnish requisite sureties etc., when the sentence imposed upon him was suspended on 19.09.2016. Learned counsel for the appellant has indeed succeeded in making out a case for reduction of the sentence imposed upon the appellant.

Keeping in view the facts and circumstances of the case, while upholding the conviction of the appellant for the offence punishable under section 304-II IPC, it is considered just and expedient to reduce the sentence imposed upon the appellant to the one already undergone by him. However, fine of ₹5000/- as well as the imprisonment in default thereof is maintained.

Impugned judgment dated 23.12.2015, passed by the learned Sessions Judge, Faridkot, convicting the appellant under Sections 304-II IPC, is accordingly upheld. With the modification in the sentence as above, the present appeal is dismissed.

July 21, 2018
s.khan

[LISA GILL]
Judge

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