

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

(1)

Crl. A. No. S-2352-SB of 2015

Lucky Kumar

.... APPELLANT

Versus

State of Punjab

.... RESPONDENT

(2)

Crl. A. No. S-3346-SB of 2015

Manpreet Singh Johal

.... APPELLANT

Versus

State of Punjab

.... RESPONDENT

DATE OF DECISION : 10.02.2018

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Aman Dhir, Legal Aid Counsel,
for the appellant (in Crl. A. No. S-2352-SB of 2015)

Mr. Abhimanyu Kalsy, Legal Aid Counsel,
for the appellant (in Crl. A. No. S-3346-SB of 2015)

Ms. Bhavna Gupta, DAG, Punjab, and
Ms. Jaspreet Kaur, AAG, Punjab.

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AVNEESH JHINGAN, J. (Oral)

This judgment shall dispose of two appeals, bearing Criminal

Appeals No. S-2352-SB and S-3346-SB of 2015, filed by Lucky Kumar and Manpreet Singh Johal, respectively.

2. The appellants have faced trial in case FIR No. 153 dated 27.12.2013 registered at Police Station Goraya, Jalandhar, under Sections 302/307/34 of the Indian Penal Code (for short 'IPC').

3. Vide judgment dated 27.02.2015 learned Sessions Judge, Jalandhar, convicted the appellants for offence punishable under Section 304 Part II IPC. Vide order of the same date, they were sentenced to undergo rigorous imprisonment for six years and to pay fine of ₹ 10,000/- each. In default of payment of fine, the defaulting appellant was to undergo rigorous imprisonment for three months.

4. The brief facts of the case are that deceased Raj Kumar was working in a liquor vend. Appellant Lucky Kumar was working in a tavern. On 26.12.2013 at about 10.30 PM, appellant Lucky Kumar demanded one quarter of liquor from Raj Kumar, but did not make payment. On persistence of Raj Kumar for money, Lucky Kumar gave a *danda* blow on the head of Raj Kumar. Manpreet Singh also joined and started giving beatings to Raj Kumar. A *danda* blow and knife blow were attributed to Lucky Kumar. Manpreet Singh gave glass bottle blows on the head, mouth, forehead, neck and other parts of the body of Raj Kumar. Sanjay Kumar son of Krishan Lal came at the place of occurrence. On seeing him, both the appellants fled away. The injured was taken to hospital, where he was medically examined.

5. On receiving information regarding admission of Raj Kumar in the hospital, SI Jagdish Kumar reached there. On an application Ex.PW4/B

moved by the police, Dr. Gurpreet Mahal gave certificate Ex.PW4/C declaring injured Raj Kumar fit to make statement. The Investigating Officer recorded statement Ex.PW7/A of injured Raj Kumar. On the said statement, FIR Ex.PW7/B was recorded between 4.15 PM to 5.05 PM. The condition of Raj Kumar deteriorated during the intervening night of 27.12.2013. Against the medical advise, he was taken to Dayanand Medical College and Hospital, Ludhiana (for short, 'DMC Hospital, Ludhiana') at 9.45 PM. There he succumbed to his injuries on 29.12.2013 at about 12.47 PM. Inquest memo Ex.PW7/L was prepared. Post mortem was conducted on 30.12.2013. The offence under Section 302 IPC was added. Statements of the witnesses were recorded.

6. On completion of investigation, the challan was submitted. The provision of Section 207 of Cr.P.C. was complied with and the case was committed to the court of Sessions.

7. The accused were charge-sheeted under Section 302/34 IPC. They pleaded not guilty and claimed trial.

8. The prosecution in order to prove its case examined 13 witnesses.

9. PW.1 HC Jaswant Singh deposed regarding receiving of the dead body through transit pass from DMC Hospital, Ludhiana.

PW.2 Avtar Singh turned hostile.

PW.3 Dr. Hardeep Bains of DMC Hospital, Ludhiana, had conducted surgical operation of Raj Kumar and gave the following details of injuries found on his body :-

- 1) 6 cm sutured wound in parieto occipital region.
- 2) 3 cm sutured wound in parieto occipital region about 2 cm to right of injury no.1.
- 3) 2 cm x 1 cm x 0.5 cm lacerated wound in parietal region midline.
- 4) 3 cm sutured wound over the nasal bridge.
- 5) 1.5 cm sutured wound in right flank about 4 cm above interior superior iliac spine.
- 6) 2 cm sutured wound, 4 cm above the lateral to wound No.5.
- 7) 2 cm sutured wound over left eye brow.
- 8) 1 cm x .5 cm lacerated wound over left middle finger, ring finger and little finger at the level of distal phalanx on palmar aspect.

PW.4 Dr. Gurpreet Mahal of Mahal Hospital, Goraya, had given preliminary medical treatment to the injured. He also deposed that he had declared the injured fit to make statement vide Ex.PW4/C. He also described the injuries.

PW.5 Smt. Meenakshi had prepared the site plan Ex.PW5/A.

PW.6 HC Daljit Kumar was a formal witness.

PW.7 SI Jagdish Kumar had partly investigated the case. He went to Mahal Hospital, got opinion of the doctor regarding fitness of injured to make statement and recorded statement Ex.PW7/A of injured Raj Kumar.

PW.8 Constable Amarjit Singh stated that appellant Lucky Kumar was interrogated and he suffered disclosure statement, whereby a blood stained *danda* was recovered, which was sent to Forensic Science Laboratory.

PW.9 Sanjay Kumar projected as an eye witness turned hostile. He was cross-examined at length by the Public Prosecutor but nothing could be established.

PW.10 Dr. Ashwani Kumar, Medical Officer, Civil Hospital, Phillaur, had conducted the post mortem. He gave details of the injuries found on the dead body of Raj Kumar. He further opined that the cause of death was due to cranio-cerebral injury, shock haemorrhage and septicemia due to the injuries collectively, which were sufficient to cause death in an ordinary course of nature and all the injuries were ante mortem in nature.

PW.11 Nirotam had identified the dead body.

PW.12 Sandeep Singh had not seen the occurrence and stated that he had come to know from some persons that Raj Kumar died due to injuries caused to him by some unidentified persons.

10. After the closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C. They denied all the allegations and pleaded false implication but did not lead any evidence in their defence.

11. Learned Sessions Judge, after hearing arguments and taking into consideration the evidence produced, held that the offence committed by the accused fell short of offence under Section 302 IPC, as there was no prior enmity. The appellants and the deceased were working at the same place. It appeared that non-payment of liquor purchased resulted into sudden fight, in which *danda* blow was given. There was no premeditation. The demand of money for liquor purchase resulted into provocation, on which Lucky Kumar picked up a *danda* and gave a blow on the head of Raj

Kumar. In all this, co-accused Manpreet Singh Johal also came at the spot and inflicted injuries with glass bottle. It was held that offence under Section 304 Part II IPC is well established. In spite of there being no separate or alternative charge, the accused were made liable for the offence under Section 304 Part II IPC.

12. Learned counsel for the appellants submit that the prosecution failed to prove its case against the appellants, as the alleged eye witness PW.9 Sanjay Kumar turned hostile. Argued that the Investigating Officer made statement that there were two witnesses at the time of recording of the statement of Raj Kumar. In cross-examination of PW.4 Dr. Gurpreet Mahal and PW.12 Sandeep Singh, they stated that the statement of Raj Kumar was not recorded in their presence. It was further argued that between recording of statement and death of Raj Kumar, there was sufficient time with the police to call a Gazetted Officer for recording the dying declaration. They further argued that the recovery of *danda* never established case of the prosecution, because in the report of the Forensic Science Laboratory, it was only stated that the *danda* had human blood stains. There was no further report to match blood group of the deceased with the stains found on the *danda*.

13. Learned State counsel argued that the statement of the deceased attributed specific injuries to both the appellants. The said statement is corroborated by the statements of PW.3 Hardeep Bains and PW.10 Dr. Ashwani Kumar. Both doctors gave details of the injuries suffered by the deceased. Dr. Ashwani Kumar further opined that the cause of death was the

collective effect of the injuries suffered. She argued that the statement of Raj Kumar could be treated as dying declaration. The contention raised is that the police during the course of treatment of Raj Kumar could not have apprehended that injuries would prove to be fatal. Even otherwise, the statement of Raj Kumar was recorded only after having a certificate from the Doctor that he was fit to make statement. She further argued that there was no occasion for Raj Kumar to falsely implicate the appellants.

14. The statement of Raj Kumar attributing specific injuries to the appellants cannot be doubted for the reasons that (i) the statement was recorded after the Doctor certified him to be fit to make statement; (ii) there is no allegation of animosity of the officer recording the statement who was discharging his official duty in due course. Not even a vague allegation has come stating that there was some reason with Raj Kumar to falsely implicate the appellants; and (iii) the *danda* and knife blows attributed to Lucky Kumar are fortified by the detail of injuries given by the doctors. Similarly, glass bottle blows attributed to Manpreet Singh Johal are also evident from the details of injuries given by the doctors.

15. The argument that Sanjay Kumar, the alleged eye witness, turned hostile, would not prove fatal to the case of the prosecution. Even as per the statement of Raj Kumar, when Sanjay Kumar arrived at the place of occurrence, the appellants fled away. Sanjay Kumar had no detailed version regarding the injuries inflicted by each of the appellant.

16. The contention that the blood stains found on the *danda* and the blood group of the deceased were not matched, does not enhance the case of

the appellants. The witnesses and other evidence available on record prove the fact that injuries were inflicted by the appellants. The knife was recovered from the place of occurrence. It was on the disclosure statement of appellant Lucky Kumar that *danda* was recovered and it was having blood stains on it.

17. The contention that the prosecution has failed to prove its case cannot be upheld. The statements of the prosecution witnesses and the evidence on record establish the offence committed under Section 304 Part II IPC. Hence, conviction of the appellants is upheld.

18. In the present case, learned Sessions Judge has observed that it was not a case covered under Section 302 IPC, keeping in view the fact that payment of liquor purchased from a liquor vend was a triggering point. Appellants Lucky Kumar and Manpreet Singh Johal were aged 22 years and 26 years, respectively, at the time of the occurrence. They were the only bread winners of their families. There was no previous involvement of the appellants in any criminal activity. Learned State Counsel has filed custody certificates of both the appellants, issued by Shri Lalit Kumar Kohli, PPS, Deputy Superintendent, Central Jail, Jalandhar at Kapurthala.

19. As per these certificates, appellant Lucky Kumar has undergone 3 years 8 months and 29 days of actual sentence. With remission, sentence undergone by him comes to 5 years 8 months and 15 days. Appellant Manpreet Singh Johal has undergone 3 years 11 months and 3 days of actual sentence. With remission, sentence undergone by him comes to 4 years 10 months and 23 days.

20. Keeping in view the aforesaid facts and age of the appellants, a chance should be given to them to reform and rehabilitate themselves.
21. Consequently, the judgment of conviction of appellants Lucky Kumar and Manpreet Singh Johal under Section 304 Part II of the IPC is upheld. The order of sentence is modified to the extent that the sentence of imprisonment awarded to appellants Lucky Kumar and Manpreet Singh Johal is reduced to the period already undergone, i.e. 5 years 8 months and 15 days (inclusive of remission) and 4 years 10 months and 23 days (inclusive of remission), respectively. However, the sentence of fine is upheld.
22. Both the appeals are, accordingly, dismissed with the aforesaid modification in the order of sentence.
23. The appellants be set at liberty, if not required in any other case, subject to their depositing the amount of fine. If fine is not paid, the defaulting appellant shall undergo the default sentence.

February 10, 2018
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes