

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

Crl. Appeal No.D-984-DB of 2002 (O&M)

Date of Decision: February 16, 2018

Rakesh

...Appellant

VERSUS

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.B.S.Tewatia, Advocate
for the appellant.

Mr.Kuldeep Tiwari, Addl. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction dated 16.09.2002 and order of sentence dated 18.09.2002, passed by the learned Sessions Judge, Faridabad, whereby he was convicted and sentenced to undergo life imprisonment and to pay a fine of ₹500/- and in default of payment of fine, to undergo rigorous imprisonment for a period of two months under Section 302 IPC.

The brief facts of the case are that a V.T. message was received from Police Station Kotwali that Udai Parkash, who was admitted to EMC Faridabad in an injured condition, had expired. On this, ASI Jagat Singh along with other police officials, after taking MLC of Udai Parkash, went to EMC Faridabad, where Ramesh Chand met him and got his statement

recorded on 18.07.2001. Complainant Ramesh Chand stated that he does the work of helper on tractor No.UP-81H-6294 for the last about one month and the driver is Uday Parkash. On 17.07.2001 at about 8.00 p.m., they started from village Atroli District Aligarh, after loading wheat bags in trolley attached with tractor for selling the same in Delhi. On the way, another tractor bearing No.UP-81G-2719 along with trolley, in which also the wheat bags were loaded, met them. The driver of the said tractor was Udaibir and helper was Rakesh. On 18.07.2011, at about 9.00 a.m., both the tractors stopped at a hotel near Kithwari. Complainant further stated that he and driver Uday Parkash after taking meals laid on the cot at Hotel. Rakesh helper threw water on Uday Parkash and he got up from the cot and gave blow with wooden plank in the waist of Rakesh. Then Rakesh Kumar said that he would teach him a lesson for giving blow to him. Rakesh Kumar and Udaibir then went towards Delhi along with tractor trolley. He (complainant) and Uday Parkash started from there after about two hours. At about 1.30 p.m., when they reached at Gulshan Dabha on G.T. road, the tractor of Udaibir was lying parked. They stopped their tractor to have some rest. In the meantime, it started raining. The complainant and Uday Parkash went inside Gulshan Dabha. Rakesh Kumar helper was sitting on a cot inside the dabha. Uday Parkash was drinking water and Gulshan Kumar, owner of the hotel, was also present there. In the meantime, Rakesh Kumar picked up wooden arm of the broken cot and gave blow on the head of Uday Parkash from backside. He said to Uday Parkash, in the presence of complainant and Gulshan Kumar that he taught lesson to him for giving *phatta* blow to him. Blood started oozing out from the head of Uday Parkash and he fell down on the ground. He (complainant) picked Uday

Parkash and took him in three-wheeler to Palwal, from where doctor told to take him to Faridabad. Then he took Udai Parkash for treatment to EMC Faridabad in a vehicle, where doctor declared him dead. Then he (complainant) informed the tractor owner Dharmi by calling him on telephone. When he returned back to EMC Faridabad, ASI Jagat Singh met him, to whom he got recorded above statement. On the basis of this statement, ruqa was sent to the police station, upon which, FIR was registered. Special report was sent to the officers. Inquest proceedings were conducted. Thereafter, ASI Jagat Singh went to the spot and prepared rough site plan and lifted blood stained earth and sealed parcel was prepared. The statements of the witnesses were recorded. Accused was arrested. After necessary investigation, challan was presented against the accused-appellant.

On presentation of challan, copies of challan and other documents were supplied to the accused-appellant under Section 207 Cr.P.C. Finding prima facie case, the appellant was charge-sheeted under Section 302 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Ramesh Chand, complainant, who did not support the prosecution version and turned hostile. In his statement, he deposed that Udai Parkash deceased was driver on tractor bearing registration No.UP-81H-6294 and he was helper on the said tractor. About four months ago, wheat was loaded in the said tractor from village Atroli for Delhi. On the way, another tractor bearing registration No.UP-81G-2719 also loaded with wheat came from behind. Udaibir was driver on that tractor, whereas accused Rakesh was the helper.

That tractor met them at village Gadpuri near a hotel situated near the petrol

pump. Both the tractors were parked by the drivers and then he went to answer the call of nature. When he returned, he saw that Udai Parkash was lying in an injured condition. Accused Rakesh did not cause any injury in his presence on the person of Udai Parkash. This witness was cross-examined by learned Public Prosecutor but nothing specific came out from his statement. PW-2 Manoj Kumar, Draftsman, proved the scaled site plan Ex.PC. PW-3 ASI Jagmender Singh, deposed regarding receiving ruqa Ex.PA along with endorsement Ex.PA/1 and also regarding recording of formal FIR Ex.PA/2. PW-4 Gulshan Kumar, owner of Gulshan Dabha, deposed as per prosecution version. He deposed that he is running a hotel in the name of Gulshan Hotel at Gadpuri. On 18.07.2001 at about 10.30/11.00 a.m., Udai Parkash came driving a tractor. Rakesh was helper on the said tractor. After half an hour, another tractor driven by a person, whose name, he does not know, came there. Ramesh was the helper on that tractor. He further deposed that when Udai Parkash was taking ice for drinking water, then Rakesh accused gave a blow from behind on the head of Udai Parkash with wooden arm of the cot (bahi). Rakesh and Udai Parkash had some earlier dispute and on that account, Rakesh caused injury to Udai Parkash. After receiving injury, Udai Prkash fell down. Injured was removed in an Auto-Rickshaw by the workers of the hotel to Diamond Hospital, Palwal, from where he was referred to Escorts Hospital. However, the injured succumbed to his injury on the way to Escorts Hospital. He further deposed that the police came to the spot and took into possession blood-stained earth in a parcel vide recovery memo Ex.PG. PW-5 ASI Jagat Singh, Investigating Officer, deposed regarding investigation conducted by him in the present case. He further deposed that after receiving V.T. message

regarding death of Udai Parkash, he reached Escorts Hospital after obtaining ruqa, where Ramesh Chand met him in the hospital and made his statement Ex.PA, which was endorsed by him vide endorsement Ex.PA/1. He correctly recorded the statement of Ramesh Kumar Ex.PA with marked portions without any addition or alteration and after admitting the same, Ramesh Chand signed it. He further deposed that he prepared inquest report Ex.PH. Thereafter, he went to the spot and prepared rough site plan Ex.PJ and also lifted blood-stained earth in a sealed parcel. PW-6 Dr.Ajay Bhargav, Medical Officer, deposed that he conducted post-mortem examination on the dead body of Udai Parkash on 19.07.2011 and found following injury:-:-

A large wound of size 12 x 2 cm x 2 cm on right parieto occipital region, clotted blood was present, over the wound and near nostril. On dissection, blood was present on all part of cerebral hemisphere. Fracture of right parietal & occipital.

In the opinion of the doctor, the cause of death was due to massive head injury. All other organs were healthy. The injuries were ante mortem in nature and sufficient to cause death in ordinary course of nature. The time that elapsed between injuries and death was within few minutes to few hours and between death and post-mortem was within 6-36 hours.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent. He further pleaded that he has been falsely implicated due to business rivalry and he did not cause any injury to Udai Parkash

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellant mainly argued that complainant Ramesh Chand has not supported the prosecution version and turned hostile. Therefore, he argued that whole of the prosecution case becomes doubtful and accused is entitled to acquittal. Learned counsel for the appellant, in the alternative, argued that there was no previous enmity between the parties. The weapon of offence, as per prosecution version, was stated to be blunt and only one blow was given by the accused-appellant. Therefore, learned counsel for the appellant contended that at the most, the case falls under Section 304 Part-II IPC.

On the other hand, learned State counsel argued that prosecution has duly proved its case beyond reasonable doubt. Eye witness PW-4 Gulshan Kumar, who is owner of the hotel/dabha, has duly proved the prosecution version. He further argued that though Ramesh Chand complainant has not supported the prosecution version, but he has deposed regarding some facts which also support and corroborate the prosecution version. The presence of the accused and deceased on the spot is also proved by PW-1 Ramesh Chand in his statement. Learned State counsel further contended that oral statement of the witness has been duly supported by medical evidence. The presence of PW-4 Ramesh Chand on the spot is natural. He has no motive or enmity to depose against the accused. He next contended that appellant has been rightly convicted under Section 302 IPC

Parkash. Learned State counsel, therefore, argued that accused-appellant has been rightly convicted and there being no merit in the present appeal, the same should be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record, we find that prosecution has duly proved the guilt of the accused-appellant beyond reasonable doubt. It is a case of eye witness account. PW-4 Gulshan Kumar has duly supported the prosecution version. There are no material contradictions or improvements in his statement. Even, PW-1 Ramesh Chand has supported the prosecution version to some extent, which can be relied upon. He admitted that on the tractor of the deceased, he was the helper and other tractor was driven by Udaivir, on which accused Rakesh was the helper and on that day, both the tractor trolleys were going towards Delhi after loading wheat. The mere fact that complainant Ramesh Chand has stated that he has gone to answer the call of nature and injury has not been caused in his presence by the appellant to the deceased, in no way, can be held as fatal to the prosecution case. As already discussed, PW-4 Gulshan Kumar, who is the eye witness and owner of the hotel/dabha, has deposed consistently regarding the prosecution version and has deposed that accused-appellant has given fatal blow on the head of the deceased with wooden arm of the cot (bahi). There is nothing in his cross-examination, which may make his statement unreliable. Nothing has been alleged in the cross-examination showing any enmity or motive of PW-4 to falsely implicate the present accused-appellant or to depose against him.

From the evidence on record, we find that the prosecution has

duly proved the guilt of the accused-appellant and the fact that he caused

fatal injury on the head of the deceased. However, we find that only one blow has been given by the accused to the deceased i.e. also with blunt weapon. No repeated blows have been given by the accused. There was no earlier enmity between the accused and deceased and only some altercation took place between them on that very day. The accused has given injury on the vital part of the body i.e. head with bahi (wooden arm of the cot) with an intention to cause death or it can be held that he has caused the injury which is likely to cause death. Therefore, the case of the appellant falls under Section 304 Part (I) IPC and not under Section 302 IPC.

In view of the above discussion, the conviction of the appellant is modified. He is convicted under Section 304 Part-I IPC instead of Section 302 IPC and he is directed to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹500/- and in default of payment of fine, to undergo rigorous imprisonment for a period of two months.

Therefore, present appeal stands partly allowed with the modification in the conviction and sentence of the accused-appellant, as stated above.

As appellant Rakesh is on bail, his bail bonds stand cancelled and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

(A.B.CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

February 16, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
No