

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Date of Decision: *December 06, 2018*

1. Criminal Appeal No.D-484-DB of 2003 (O & M)

Rajwinder Singh

..... APPELLANT

VERSUS

State of Punjab

..... RESPONDENT

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2. **Criminal Appeal No.S-594-SB of 2000 (O & M)**

Raj Pal Singh

..... APPELLANT

VERSUS

State of Punjab

..... RESPONDENT

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CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL

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PRESENT: - Mr. Varinder Singh Rana, Legal Aid Counsel for the appellant(s).

Mr. H.S. Grewal, Additional Advocate General, Punjab.

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Harnaresh Singh Gill, J

By this common judgment, two criminal appeals viz.

Criminal Appeal No.D-484-DB of 2003 and Criminal Appeal No.S-594-SB

of 2000 are being disposed of as they involve similar questions of facts and law.

Both the appeals have been preferred by the appellants – accused against judgment of conviction and order of sentence dated May 11, 2000, passed in case FIR No.33 dated 23.03.1997 registered at Police Station, Baghapurana, District Moga, whereby they alongwith other co-accused have been convicted and sentenced under Sections 302, 323, 148, 149 IPC.

Vide impugned order of sentence, accused - appellant Rajwinder Singh has been sentenced under Section 302 IPC to undergo RI for life alongwith fine of ₹ 500/- and in default to undergo RI for one year; under Section 323 IPC read with Section 149 IPC to undergo RI for one year alongwith fine of ₹ 100/- and in default of payment of fine to further undergo RI for three months. Accused – appellant Rajpal Singh has been sentenced under Section 323 and 149 IPC to undergo RI for one year alongwith fine of ₹ 100/- and in default of payment of fine to further undergo RI for three months.

FACTS

As per the prosecution version, eight accused persons including the appellants were put to face trial for having constituted an unlawful assembly armed with deadly weapons and having caused death of Krishan Chand and injured PWs Satya Devi (complainant), her daughters Lakhbir Kaur & Inderjit Kaur, her sons Avtar Singh and Jagsir Singh on 23.03.1997 at 9.00 AM in the area of Baghapurana.

Statement of complainant Satya Devi formed the basis of FIR in present case. As per her version recorded by PW-6, ASI Amarjit

Singh, there was a vacant plot of Kapur Singh in front of her house which was used by the residents of houses of Mohalla including accused Pal Singh. On the day of occurrence, she alongwith her husband Krishan Chand and four children (Jagsir Singh, Avtar Singh, Lakhbir Kaur and Inderjit Kaur) was placing sticks in the plot. Accused Rajwinder Singh son of Pal Singh armed with iron rod and accused Rajpal Singh son of Balbir Singh armed with rod alongwith other co-accused armed with dangs and iron rods attacked the complainant party for placing sticks in front of their house. Rajwinder Singh gave iron rod blow on the head of Krishan Chand. Rajpal Singh gave two rod blows on left shoulder of Jagsir Singh. Other accused also inflicted multiple injuries to the complainant party. On raising of alarm by the complainant party, accused ran away with their respective weapons. Injured were admitted in Civil Hospital, Baghapurana with the help of 1/2 other villagers. On the basis of his statement, FIR No.33 dated 23.03.1997 under Sections 323, 148, 149 IPC was registered at Police Station, Baghapurana. Injured Krishan Chand died on 24.03.1997 whereupon offence under Sections 450, 302 IPC were added.

On 05.04.1997, Gian Singh Brar, resident of Baghapurana produced all the accused alongwith their weapons before PW-6 ASI Amarjit Singh in the Police Station. Accused were arrested and weapons were taken into possession.

After completion of necessary formalities, challan against the accused was presented in the court of Illaqa Magistrate. Copies of documents as required under Section 207 Cr.P.C. were supplied to accused. The case being exclusively triable by the Court of Sessions, it was

committed vide order dated 22.07.1997 passed by the Sub Divisional Judicial Magistrate, Moga.

Finding a prima facie case against the accused, they were chargesheeted on 18.01.1999, to which they pleaded not guilty and claimed trial.

The prosecution, in order to substantiate its case examined as many as six witnesses. PW-1 Dr. Moinder Pal, Medical Officer, proved post mortem examination of Krishan Chand. PW-2 Dr. Arbinder Singh Gill provided MLRs of Krishan Chand, Satya Devi, Lakhbir Kaur, Inderjit Kaur, Jagsir Singh and Avtar Singh including the fact that Krishan Chand and Lakhbir Kaur were referred to Civil Hospital, Moga for further treatment. PW-3 Satya Devi narrated the occurrence. PW-4 Inderjit Kaur, eye witness, reiterated the version of her mother Satya Devi. PW-5 Avtar Singh, being son of deceased and complainant, corroborated the testimony of PW-3 and PW-4. PW-6 ASI Amarjit Singh is the investigating officer of the case.

Statements of accused under Section 313 Cr.P.C. were recorded and incriminating circumstances appearing in the prosecution evidence were put to them, whereupon, they pleaded innocence and false implication. They stated, rather Krishan Chand and Avtar Singh attacked them with wooden Bala (lathi) and sharp blade. Even, wife of accused Pal Singh was given injuries by Krishan Chand and Avtar Singh.

ARGUMENTS

Learned counsel for the appellants has argued that FIR is hit by Section 164 Cr.P.C. as Avtar Singh (PW-5) has stated that he narrated in his statement to the doctor who has recorded his statement. The appellants have been falsely involved in the case as inaction on the part of Police.

Reliance has also been made on statement of Pal Singh (Ex.DC). It is further argued that appellants resided at distant place and story of prosecution is improbable. No identification parade of the appellants was done and the MLRs of the accused were earlier in time than of Satya Devi (PW-3). Shamsher Singh has not been produced as witness, thus, adverse inference should be drawn. All the private witnesses were interested in success of the case. It has been prayed that appellants be acquitted as no case is made out against them. In the alternative, it is contended that offence under Section 304 Par – II IPC and not under Section 302 IPC is made out.

As per learned counsel for the respondent – State, Mr. H.S. Grewal, Additional Advocate General, Punjab, prosecution has proved the charges levelled against the appellants. PW-3 Satya Devi, PW-4 Inderjit Kaur and PW-5 Avtar Singh have corroborated in their evidence. It has been further argued that even if it is presumed that prosecution has not proved the injuries on the person of the accused, it would not make any difference.

CONSIDERATION

It is clear from the evidence in the present case that occurrence took place in the open plot of Kapur Singh. Both the appellants Rajwinder Singh and Rajpal Singh received injuries but they have not been explained by the prosecution. Moreover, MLRs of appellants and other injured on their side are earlier in time whereas injuries on the person of deceased Krishan Chand and Satya Devi PW-3 are shown to be recorded at later stage. Accused Pal Singh made his statement (Ex.DC) to the police but no action was taken on it. Thus, it is a case of free fight over a vacant plot of Kapur Singh in the village.

Before adjudicating the matter, it is required to be examined as to what relevant factors should be kept in consideration while deciding the question as to whether case in hand falls under Section 302 or Section 304 Part – II IPC. Thus, before we examine the factual matrix of the case in hand, it is apposite to take note of the settled law laid down on the question as to when culpable homicide is not a murder under Section 300 IPC and what are the elements which the prosecution should establish. As per Section 300, Exception IV, four requirements must be satisfied:-

- i) It was sudden fight;
- ii) There was no premeditation;
- iii) The act was done in the heat of passion;
- iv) The assailant had not taken any undue advantage or acted in a cruel or unusual manner.

This question came up before Delhi High Court in **Bhagwan Sahai vs. State, 2015 (6) AD (Delhi) 243** (Criminal Appeal No.132 of 2011, decided on 08.01.2015), wherein while following the various principles laid down by the Hon’ble Supreme Court, it was held as under:-

“20. At this stage, a short question which has arisen before the court as to whether the case of the appellant falls under Section 302 or Section 304 of Indian Penal Code. Section 304, read as under:

“304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder shall be punished with 1[imprisonment for life], or imprisonment of either description for a term which may extend to ten

years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

21. It would be useful to refer to the case of ***Augustine Saldanha Vs. State of Karnataka (2003) 10 Supreme Court Cases 472***, wherein it has been held:

“In the scheme of the IPC culpable homicide is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the greatest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is

'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is, also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.”

22. In ***Basdev Vs. State of PEPSU, AIR 1956 SC 488***, it has been held that:

“Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act.”

23. In ***Surinder Kumar Vs. Union Territory, AIR 1989 SC 1094***, it has been held that:

“To invoke Exception 4 to Section 300 I.P.C. four requirements must be satisfied, namely (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion, and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Where, on a sudden

quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this Exception provided he has not acted cruelly.”

24. We are unable to reach to the conclusion that the intention of the appellant was to cause death of Raju. We have also considered the fact that the appellant had used a 3 ft. long danda, as the weapon of offence. The evidence on record shows that deceased was residing with the family of the appellant and had developed illicit relation with the wife of the appellant and we are inclined to accept the submission of the learned counsel for the appellant that the act was committed on account of sudden provocation and in the heat of the moment having seen his wife in a compromising position and the appellant had no intention to cause death.

25. We are, therefore, of the view to alter the conviction of the appellant from Section 302 IPC to Section 304 Part-II of the Indian Penal Code.”

Similar view has been adopted by the Delhi High Court in **Mohd. Sadiq vs. State of Delhi, 2015 (5) AD (Delhi) 521** (Crl. A. 315 of 1999, decided on 09.01.2015).

In this view of the matter, from the occurrence, it is clear that intention of appellants was not to cause death of any person. Though, appellants were armed with iron rod but the act was committed on account of sudden provocation and in the heat of moment. The appellants had no intention to cause the death of Krishan Chand.

ORDER

i) The appeals viz. Criminal Appeal No.D-484-DB of 2003 filed by Rajwinder Singh and Criminal Appeal No.S-594-SB of 2000 filed by Raj Pal Singh are partly allowed.

ii) The impugned judgment and order dated 11.05.2000 passed by learned Trial Judge, Moga in case number SC. RT 102 of 7/98/05.08.1997 convicting appellant Rajwinder Singh in Criminal Appeal No.D-484-DB of 2003 for offence under Section 302 IPC is set aside and modified and he is convicted for the offence under Section 304 Part – II IPC. He is sentenced to undergo rigorous imprisonment which he has already undergone.

iii) The impugned judgment and order of conviction of Rajwinder Singh and Raj Pal Singh for offence under Section 323 IPC on all counts, under Section 323/149 IPC on all counts under Section 148 IPC and sentence awarded thereunder is set aside and modified and the sentence is reduced to the one already undergone by them. Sentence of fine, however, is maintained.

(A.B. Chaudhari)
Judge

(Harnaresh Singh Gill)
Judge

December 06, 2018
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No