

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

(1) CRA-D-98-DB of 2004

Dharamvir and another

.... Appellants

Versus

State of Haryana

..... Respondent

(2) CRA-D-119-DB of 2004

Banarsi Dass

.... Appellant

Versus

State of Haryana

..... Respondent

Reserved on : 02.07.2019

Date of decision : 05.07.2019

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

**Present: Mr. K.D.S. Hooda, Advocate,
for the appellants in CRA-D-98-DB of 2004.**

**Mr. Narinder Singh, Advocate,
for the appellant in CRA-D-119-DB of 2004.**

Mr. Gagandeep Singh Wasu, Addl. A.G., Haryana.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in CRA-

D-98-DB of 2004 and CRA-D-119-DB of 2004, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against judgment dated 27.11.2003 and order dated 29.11.2003, rendered by learned Sessions Judge, Hisar, in Sessions Case/Trial No. 29 dated 25.07.2002, whereby appellants Dharamvir, Om Parkash and Banarsi Dass, who were charged with and tried for the offence punishable under Section 302 read with Section 34 IPC, were convicted thereunder and sentenced to undergo imprisonment for life and to pay a fine of ₹ 2,000/- each, and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months.

3. The case of the prosecution, in a nutshell, is that on 19.04.2002 at 11.25 PM, Subhash was brought to Civil Hospital, Hisar, in a serious condition, by Rama Nand and Dilbag Singh. PW.2 Dr. Daya Nand attended Subhash. He died at 0.15 AM on 20.04.2002. Dr. Daya Nand sent information Ex.PE to the Incharge, Police Post, General Hospital, Hisar at 0.20 AM. SI Ranbir Singh went to the hospital. He collected ruqa. He recorded statement, Ex.PF, of Dilbag Singh. According to the averments contained in the statement, after getting a Tata vehicle of his relative repaired from Hira Mistri in Auto Market, Hisar, and sending the same, he along with his uncle Subhash went to the shop, where Rama Nand alias Ramu was getting his Tata-407 vehicle repaired. He along with Subhash and Ramu took the Tata vehicle and parked the same in Tata Union. He went to answer the call of nature. In the meantime, Subhash proceeded towards City Chicken Corner. Ramu kept on sitting in the Tata vehicle. It was about 10.15 PM. Subhash was about to reach near the hotel, when three persons,

who were already sitting at the City Chicken Corner, on seeing Subhash, caught hold of him. He proceeded towards the spot. Ramu also came after getting down from the Tata vehicle. One of three persons, who was of short stature and was fat, picked a big size stone and hurled the same against the head of Subhash. Subhash fell down on the spot. He and Ramu tried to save him. The person, who was of short stature, came running towards him along with the stone. In order to save himself, he took shelter behind the Tata-407. Ramu also remained at a distance out of fear. Out of three persons, one tall person picked up stone and hit on the head of Subhash. They raised alarm. Three persons escaped on a motor cycle. The person, who was of short stature, disclosed his name as Dharma Salemgaria. He and Ramu took Subhash to Civil Hospital, Hisar. The doctor gave him first aid. Subhash succumbed to his injuries. The accused were bearing a grudge against him and on that account, they had killed Subhash with stones. SI Ranbir Singh prepared the inquest report. He recorded the statements of witnesses. The body was sent for post mortem examination. Clothes of the deceased were taken into possession. The accused were arrested. The investigation was completed and challan was put up after completing all the codal formalities.

4. The prosecution examined a number of witnesses. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely implicated.

5. The appellants were convicted and sentenced, as noticed herein-above. Hence, this appeal.

6. Learned counsel appearing on behalf of the appellants have

vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State has supported the judgment and order of the learned Court below.

7. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

8. PW.1 Dr. Joginder Kapoor conducted the post-mortem examination on the dead body of Subhash. He noticed following injuries on the person of the deceased :-

- (1) Lacerated wound 3 cm x 2 cm x 2 cm on the left side of skull. Bleeding was present from the wound. Dark red clots were present. Brain matter was coming outside.
- (2) Wound of the size 4 cm x 3 cm x 1.5 cm was present on the fronto parietal region in middle of the scalp. Brain matter was coming outside.
- (3) Bruise of the size 4 cm x 2 cm was present on the forehead. Blood was seen through nose and mouth.
- (4) Lacerated wound 5 cm x 2 cm x 3 cm present on the left temporo parietal region. Bone pieces were coming out. Brain matter was also coming out.

In his opinion, the cause of death was due to head injury with excessive haemorrhage and shock. All the injuries were ante mortem in nature and sufficient to cause death in ordinary course of nature.

9. PW.7 Dilbag Singh testified that he along with his uncle Subhash had gone to Auto Market, Hisar, on 19.04.2002. They visited the shop of Hira Mistri. One Ramu was also getting his vehicle repaired. The vehicle, after repair, was taken away by one of his relatives. Then he along with Subhash and Ramu alias Rama Nand visited four wheeler Union, Hisar, in the vehicle of Ramu. They stopped at a hotel for taking meals. He

along with Subhash got down from the vehicle. Rama Nand was sitting in the vehicle. It was about 10.00 PM. He proceeded to answer the call of nature. Subhash proceeded towards City Chicken Corner. Three persons were taking meals outside the City Chicken Corner. They were Dharma, Banarsi and Om Parkash. On hearing the noise of quarrel between them, he proceeded towards City Chicken Corner. Rama Nand also got down from the vehicle. Scuffle took place between them. Om Parkash had taken Subhash in his grip. Dharamvir accused gave a blow with a stone on the head of Subhash after picking it from the road. They further proceeded towards the accused. In the meantime, Banarsi accused also picked up a stone and hit on the head of Subhash. He along with Rama Nand removed Subhash to Civil Hospital, Hisar. His statement was recorded vide Ex.PF. On 20.04.2002, the police inspected the spot. The police lifted the blood stained stones. The blood stained earth was also lifted. In the cross-examination by learned counsel appearing on behalf of accused Dharma, he was confronted with his statement Ex.PF, where names of the accused were not mentioned. It was only mentioned that three persons were taking meals. He told the police that Om Parkash had taken Subhash in his grip. He was confronted with his statement Ex.PF, where it was not so recorded. He told the police that Dharma had given a stone blow on the head of Subhash. He was confronted with statement Ex.PF, where name of Dharma was not mentioned. He also stated to the police that Banarsi had given stone blow on the head of Subhash. He was confronted with statement Ex.PF, where name of Banarsi was not mentioned. They were free by 9.30 PM from Auto Market, Hisar. There were number of shops around the City Chicken

Corner. The fight had taken place near the chairs, which had been put in front of City Chicken Corner. He could not narrate the reason of the quarrel. Volunteered, so far as he remembered, there was some money dispute between them. He had not physically intervened to save Subhash. No one came from the hotel and adjoining shops on hearing the noise. They did not try to apprehend the accused. In his further cross-examination by learned counsel appearing on behalf of Banarsi accused, he deposed that names of Om Parkash and Banarsi were not known to him. When Ramu disclosed the names of Om Parkash and Banarsi, the police was in the hospital. It was about 4.00 AM. The police had also recorded the statement of Ramu at that time.

10. The statement of PW.7 Dilbag Singh is corroborated by PW.8 Rama Nand alias Ramu, with regard to the manner in which the incident had taken place and Subhash was hit on head with stones by Dharamvir and Banarsi. In his cross-examination by learned counsel appearing on behalf of accused Dharma, he deposed that except the accused, no other person was present outside the City Chicken Corner. No one came from the City Chicken Corner. They raised the alarm. In his further cross-examination by learned counsel appearing on behalf of Banarsi accused, he deposed that Banarsi had given second blow to Subhash. Banarsi gave stone blow by taking the stone in his hand and not by throwing.

11. PW.10 SI Ranbir Singh deposed that he collected ruqa Ex.PE. He recorded statement of Dilbag vide Ex.PF. He prepared the inquest report. He sent the dead body of Subhash for post mortem examination. He lifted blood stained slabs Ex.P4 and Ex.P5 from the spot and made them into

separate parcels after preparing their sketches Ex.PJ/1 and Ex.PJ/2. Accused Dharamvir and Om Parkash were produced before him by Partap Singh on 22.04.2002. Accused Banarsi was arrested on 29.04.2002. In his cross-examination, he deposed that he recorded the statement of Dilbag Singh vide Ex.PF, without any addition or omission. He had not recorded the statements of owner and employees of City Chicken Corner, since it was closed. He admitted that names of the accused were not mentioned in the rough site plan Ex.PK. The names of the accused were also not mentioned in the application Ex.PA for conducting the post mortem examination. It was only mentioned that three accused were involved. In the FIR, the parentage and caste of Dharma was not described. The names of Om Parkash and Banarsi were revealed by Rama Nand.

12. The motive attributed by the prosecution in the instant case is that there was some money dispute between the parties. PW.7 Dilbag Singh in his cross-examination has merely stated that he could not state the reason of the quarrel. However, he voluntarily stated that there was some money dispute. No evidence has been led about the dispute. Subhash, according to the prosecution case, had gone towards City Chicken Corner. PW.7 Dilbag Singh had gone to answer the call of nature. Rama Nand alias Ramu was sitting in the Tata vehicle. PW.7 Dilbag Singh, on hearing the noise, went to the spot. He had seen appellant Dharamvir hurling stone on the head of Subhash. According to him, appellant Banarsi Dass also gave a stone blow on the head of Subhash. Rama Nand alias Ramu also came on the spot. They had not physically tried to intervene. Appellant Banarsi Dass, according to PW.8 Rama Nand alias Ramu, had not hurled the stone at the deceased, but

he had given the blow by holding stone in his hand. The prosecution has not examined owner or any employee of City Chicken Corner or the adjoining liquor vend. It has come in the statement of PW.8 Rama Nand alias Ramu that 6-7 persons were working in City Chicken Corner, but they did not come out. In the FIR, names of the accused were not mentioned specifically, except that one of the persons had disclosed his name as Dharma Salemgaria. The motive mentioned in the FIR was that the appellants were having previous enmity with Subhash. However, nature of enmity has not been spelt out in the FIR.

13. The fact of the matter is that Subhash has died due to stones hurled upon him by Dharamvir and Banarsi Dass. It is apparent from the record that it was a case of sudden fight in the heat of passion upon a sudden quarrel. The appellants had neither taken undue advantage nor acted in a cruel or unusual manner. It is a case which falls within exception four of Section 300 IPC. Learned counsel appearing on behalf of the appellants have vehemently argued that the case would fall under Section 304 Part II IPC. We do not agree to this submission. The case of the prosecution falls under Section 304 Part I IPC, since Subhash had died due to the injuries inflicted on his head by Dharamvir and Banarsi Dass with stones, which were recovered from the spot. The deceased had received four injuries, as mentioned in the post mortem report.

14. Accordingly, both the appeals are partly allowed. Conviction of appellants Dharamvir, Om Parkash and Banarsi Dass recorded by the trial court under Section 302 read with Section 34 IPC is converted to Section 304 Part-I read with Section 34 IPC. All the appellants are on bail. The State

is directed to produce them before this Court on July 12, 2019, to be heard on quantum of sentence under Section 304 Part-I read with Section 34 IPC.

(**RAJIV SHARMA**)
JUDGE

July 05, 2019
ndj

(**HARINDER SINGH SIDHU**)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No