

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

1. CRA-S-1312-SB-2004 (O&M)
Date of decision : 21.05.2019

Mehtab Singh Appellant

VERSUS

State of Haryana Respondent

2. CRA-S-1422-SB-2004 (O&M)

Balwan Appellant

VERSUS

State of Haryana Respondent

3. CRA-S-1593-SB-2004 (O&M)

Bijender Singh Appellant

VERSUS

State of Haryana Respondent

4. CRR-67-2005 (O&M)

Bimla Petitioner

VERSUS

Bijender Respondent

5. CRR-68-2005 (O&M)

Bimla Petitioner

VERSUS

Mehtab Singh Respondent

6. CRR-69-2005 (O&M)

Bimla Petitioner

VERSUS

Balwan Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Hemant Bassi, Advocate with
Mr. Harmanjeet Singh, Advocate and
Mr. Avi Dhankar, Advocate, for the appellant
in CRA-S-1312-SB-2004.

Mr. R.A Sheoran, Advocate, for the appellants
in CRA-S-Nos.1422 and 1593-SB-2004.

Mr. R.S. Chahar, Advocate with
Mr. Babbar Bhan, Advocate, for the petitioner(s).
in CRR Nos.67, 68 and 69 of 2005.

Mr. Arun Beniwal, DAG, Haryana

SUDHIR MITTAL, J.

This judgment shall dispose of aforementioned appeals and revision petitions as common questions of facts and law are involved therein. The convicted persons are Mehtab Singh, Balwan and Bijender @ Bijju, who have filed the appeals. The revision petitions have been filed by the complainant seeking conviction under section 302 Indian Penal Code (45 of 1860) (for short “IPC”).

2. The deceased is Chhattar Singh son of Chandgi Ram. According to the case of the prosecution at about 9.00 p.m. on 24.5.2001, he was lying on a cot outside his house when the convicted persons came in a drunken condition and attacked him. The reason for the attack was the fact that on the same day at about 4.00 p.m. the deceased had taunted Mehtab Singh for not being available to help him in his time of need whereas, he was always available when he himself needed some help from the deceased. All the convicted persons attacked Chhattar Singh with their fists and inflicted injuries on the face and left eye. Chhattar Singh raised a hue and cry. His wife and daughter who were resting

inside the house came out. Meanwhile, on account of fist blow given on the left eye, Chhattar Singh became unconscious.

3. Chhattar Singh was taken to Community Health Centre, Loharu at about 2.10 a.m. on 25.5.2001 as is evident from the statement of PW-3 Dr. Jitender Kumar. He sent a ruqa Ex. PD at about 3.00 a.m. on the same day which was received by the police at 3.35 a.m. as is evident from the endorsement on Ex.PD. The patient was referred to General Hospital, Bhiwani on the same day where his statement Ex. PY was recorded. In this statement, he has named the convicted persons and has given the details of the incident as per the case of the prosecution. At this stage, it may be noted that according to the statement of PW-3 Dr. Jitender Kumar, who examined the deceased at the first instance when he was brought to Community Health Centre, Loharu, the deceased had suffered 11 injuries out of which injury No.5 was a bruise mark of size 4 x 5 cms. present over the abdomen just below the umbilicus. USG abdomen was advised and surgical opinion was sought. The patient remained in General Hospital, Bhiwani till 3.6.2001 when he was referred to Medical College and Hospital, Rohtak, but instead of getting admitted at Rohtak, the patient went to Base Hospital, New Delhi as he was an Ex-serviceman. He died on 9.7.2001 on account of septicemia following blunt trauma to abdomen.

4. Initially, no FIR was registered. Only DDR No.25 dated 25.5.2001 Ex. PV was recorded as injury Nos.1 to 3, 4, 7 and 10 were simple in nature and expert opinion was sought in respect of the other injuries. Thereafter, opinion of Dental Surgeon, Dr. Ram Chander of

General Hospital, Bhiwani (who deposed as PW-2) was obtained and vide his opinion Ex. PB, he opined that injury No.11 was grievous in nature as periodontal fibers were broken and bleeding was present around them. Consequently, FIR No.62 dated 8.6.2001 was registered under Sections 323, 325 and 34 IPC. After the death of Chhattar Singh on 9.7.2001, Section 302 IPC was added.

5. The convicted persons were charged under Section 302 IPC, but convicted under Section 304 Part-II read with Section 34 IPC and sentenced to undergo RI for a period of 05 years and to pay fine of Rs.3,000/- each, in default of payment of which to further undergo RI for a period of 06 months each. During pendency of their respective appeals, remaining sentence of the convicted persons has been suspended. Mehtab Singh has undergone actual custody of 02 years, 11 months and 28 days, Bijender @ Biju has undergone actual custody of 03 years, 03 months and 10 days, whereas Balwan has undergone actual custody of 03 years, 01 month and 03 days.

6. Learned counsel for the appellants have argued that the cause of death evidently is septicemia following blunt trauma on the abdomen. Neither the deceased in his statement Ex.PY nor his wife and daughter who are alleged eye-witnesses in their statements under section 161 Cr.P.C. mentioned any injury on the abdomen. Thus, the cause of death is not relatable to the incident and therefore, the case is not of culpable homicide. From the evidence of the prosecution witnesses, it is clear that injuries were inflicted on the face only on account of some petty quarrel and thus, neither intention nor knowledge can be attributed to the

convicted persons. At the most, it is a case of having caused a grievous injury and thus, conviction can only be under Section 325 IPC. The appellants have already undergone custody in excess of two and a half years and thus, they be sentenced to the period already undergone.

7. Learned counsel for the complainant submits that a death has been caused on account of act of the convicted persons. They had come in an inebriated condition with a pre-determined mind to cause injuries which ultimately resulted in the death of Chhattar Singh. Thus, having intentionally caused injuries which were sufficient in the normal course of nature to cause death, the convicted persons should have been convicted under Section 302 IPC and sentenced accordingly. The aforementioned revisions petitions thus, deserve to be allowed.

8. From the evidence on record, it is proved that the appellants had come together with the common intention of causing injuries to deceased Chhattar Singh. The evidence of PW-3 Dr. Jitender Kumar, makes it clear that Chhattar Singh had suffered an injury on the abdomen because of which, he was advised to undergo an ultrasound scan. It also stands fully proved that after the incident Chhattar Singh was first admitted to Community Health Centre, Loharu, from where he was referred to General Hospital, Bhiwani. He remained admitted in General Hospital, Bhiwani from 25.5.2001 till 3.6.2001, whereafter he got himself admitted to Base Hospital, New Delhi. Although, learned counsel for the appellants on the basis of statement of Investigating Officer PW-6 ASI Manjit Singh, have argued that Chhattar Singh remained at home and got himself treated by private doctor between 25.5.2001 till

3.6.2001. The said evidence can only be taken with a pinch of salt in view of the statements of PW-1 Dr. K.D. Sharma, PW-2 Dr. Ram Chander, PW-19 Dr. Rajender Gera and PW-20 Dr. R.P. Sharma, who are all doctors of General Hospital, Bhiwani and who have treated Chhattar Singh in the said hospital. PW-2 Dr. R.P. Sharma has specifically averred that he had referred the patient to PGIMS Rohtak on 3.6.2001 and thus, it stands proved that Chhattar Singh remained admitted in the General Hospital, Bhiwani till 3.6.2001. Thereafter, although he was referred to PGIMS Rohtak, he preferred to get him admitted in Base Hospital, New Delhi being an Ex-serviceman, where he ultimately passed away on 9.7.2001.

9. Learned counsel for the appellants would have me believe, on the basis of statement of DW-1 Dr. K.L. Bawa, Sr. Medical Officer, Community Health Centre, Kairu that the abdominal injury was not of such nature which would have caused death. The said doctor had conducted the ultrasound and had deposed that liver, gall-bladder (GB), common bile duct (CBD), pancreas, spleen and both kidneys were in normal condition and no free fluid was seen in peritoneum cavity. This ultrasound was conducted on 28.5.2001. Thus, it is evident that the doctors of Base Hospital, New Delhi were negligent in treating Chhattar Singh resulting in septicemia and the same has been wrongly blamed on blunt trauma to abdomen to save their own skin.

10. This argument is however, not worthy of acceptance. Chhattar Singh had complained of abdominal pain in the first instance on account of which PW-3 Dr. Jitender Kumar had advised an ultrasound

scan. He was being treated for abdominal pain as is evident from the statement of PW-20 Dr. R.P. Sharma. It may be that the ultrasound scan carried out on 28.5.2001 did not reveal free fluid in peritoneum cavity, however, an ultrasound was also conducted in Base Hospital, New Delhi on 4.6.2001 as is evident from the statement of PW-4 Sqn. Ldr. Dr. R.D. Bavdekar. His abdominal cavity was opened on the same day and a complete tear in the small intestine was detected and three litres of peritoneal fluid collection was made. However, no attempt to stitch the tear was made as the tissue was not in a condition to take stitches. Both ends of the intestines were brought out of the abdominal wall and collestomy bag was applied. Thus, it is established beyond doubt that an abdominal injury was suffered during the incident of 24.5.2001, which led to rupture of the small intestine. The patient was treated conservatively in General Hospital, Bhiwani and since the ultrasound scan did not reveal any fluid in peritoneum cavity, the tear in the small intestine could be detected. However, the condition of the patient deteriorated because of which he was referred to PGIMS Rohtak but being an Ex-serviceman, he got himself admitted in Base Hospital, New Delhi, where an ultrasound scan was done immediately. The same revealed collection of fluid in peritoneum cavity and immediate action was taken to treat the same. Under the circumstances, negligence cannot be imputed to the doctors of Base Hospital, New Delhi. The patient however, developed septicemia which resulted in his death. Thus, it stands proved that an injury caused in the incident of 24.5.2001, ultimately led to the death of Chhattar Singh.

11. The question therefore, is whether the death of Chhattar Singh is murder, culpable homicide not amounting to murder or something else ?

12. Undoubtedly, a death has been caused by the convicted persons. For the same to come within the definition of murder as given in section 300 IPC, death should have been caused with the intention to cause death or with the intention to inflict such bodily injury as is either likely to cause death or is sufficient in the ordinary course of nature to cause death. It is culpable homicide not amounting to murder if the action is covered under the exceptions mentioned therein, for which the punishment is prescribed by Section 304 IPC. Here too, the act should have been done with the intention of causing death or the intention of causing such bodily injury as is likely to cause death or with the knowledge that the injury is likely to cause death. Thus, culpable homicide may amount to murder or not depending upon the facts of a particular case. However, in either case, there must be intention to cause death or the knowledge that death may be caused. If neither intention nor knowledge is present, it amounts to 'not culpable homicide.'

13. In the instant case, neither the complainant nor the eye witnesses i.e. wife and daughter of the deceased stated in the first instance that any injury had been inflicted on the abdomen. However, the patient complained of abdominal pain, the moment he was admitted to hospital and thus, it is evident that the abdominal injury was also caused by the appellants. The evidence of the deceased person as well as the statements of the eye witnesses, establish that the appellants inflicted injuries on his

face, but none of them was very serious in nature. A few broken teeth resulted but most of the 11 injuries suffered by Chhattar Singh were simple in nature. The appellants were also not armed with any weapon. Thus, the only conclusion possible from this state of evidence, is that the appellants came with the intention of causing some injuries to Chhattar Singh but there was no intention of causing death. The injury caused in the abdomen was incidental and in the heat of the moment. However, the same was not inflicted time and again as none of the prosecution witnesses thought it fit to mention the same at the first instance. An internal injury did result which ultimately caused the death of Chhattar Singh but the said injury cannot be said to have been caused with the intention or with the knowledge that such injury was likely to cause death. It is thus, a case of 'not culpable homicide.' Such a death would be covered by Section 304-A IPC which is reproduced below:-

“304 A. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

14. In **'Richhpal Singh Meena Vs. Ghasi @ Ghisa and others 2014(4) RCR (CrI.) 61'**, the Hon'ble Supreme Court examined the question whether a conviction under Sections 300/302 IPC, could be altered to one under Section 322, 325 or Section 326 IPC, while ignoring the possibility of conviction under Section 304 IPC. Deceased Sunderlal Meena had been given a shovel blow and a lathi blow by the accused

therein resulting in fracture of the fourth and fifth ribs on the right side of the chest and seventh and eighth ribs on the left side. It is resulted in tear of lung causing death. After examining Sections 299, 304 and 304-A IPC it was held that once a death has been caused, the accused have to be convicted either for 'culpable homicide or not culpable homicide' and five step enquiry needs to be conducted as mentioned in para 46 of the aforementioned judgment which is reproduced below:-

“46. Having considered all the decisions cited before us (and perhaps there are many more on the subject but not cited), in our opinion a five step inquiry is necessary: (i) Is there a homicide ? (ii) If yes, is it a culpable homicide or a 'not culpable homicide' ? (iii) If it is a culpable homicide, is the offence one of culpable homicide amounting to murder (Section 300 of the IPC) or is it a culpable homicide not amounting to murder (Section 304 of the IPC) ? (iv) If it is a 'not culpable homicide' then a case under Section 304-A of the IPC is made out. (v) If it is not possible to identify the person who has committed the homicide, the provisions of the Section 72 of the IPC may be invoked. Since this five-pronged exercise has apparently been missed out in the first category of decisions, learned amicus was of the opinion that those decisions require reconsideration.”

15. The present case is one of 'not culpable homicide' and therefore, I hold that the death was caused due to rash and negligent act. The conviction of the appellants is converted to one under Section 304-A IPC. The maximum sentence under the said provision is RI for a period of 02 years. The appellants are sentenced, accordingly. Since fine has

not been paid, the period in excess of RI for a period of 02 years, shall be counted towards the sentence in default of payment of fine.

16. The appeals are accordingly, partly allowed and the revision petitions stand dismissed.

17. Copy of this judgment be sent to the trial Court concerned for compliance.

18. A photocopy of this judgment be placed in the file(s) of the other connected case(s).

(SUDHIR MITTAL)
JUDGE

21.05.2019
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No