

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1926-SB-2004
Decided on : 04.10.2019

Paramjit Singh and another
... Appellant(s)
Versus
State of Punjab
... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Himanshu Arora, Advocate as *Amicus Curiae*
for the appellant(s).

Ms. Jaspreet Kaur, AAG, Punjab.

MANJARI NEHRU KAUL, J.

1. The instant appeal has been preferred by Paramjit Singh and Harmesh Lal @ Meshi, against the impugned judgment and order of conviction dated 11th August, 2004, passed by Addl. Sessions Judge, Hoshiarpur, whereby, the accused-appellant(s) were convicted and sentenced as under : -

<i>Name of Convict(s)</i>	<i>Offence(s)</i>	<i>Period of sentence(s)</i>	<i>Fine(s) imposed</i>	<i>Period of sentence(s) of default payment of fine(s)</i>
<i>Paramjit Singh</i>	<i>304 Part-I IPC</i>	<i>Rigorous imprisonment (RI) for 10 years</i>	<i>₹ 5000/-</i>	<i>RI for six months</i>
<i>Harmesh Lal @ Meshi</i>	<i>304 Part-I/ 34 IPC</i>	<i>Rigorous imprisonment (RI) for 10 years</i>	<i>₹ 5000/-</i>	<i>RI for six months</i>
<i>Kamlesh</i>	<i>323 IPC</i>	<i>Rigorous imprisonment (RI) for 01 year</i>	<i>--</i>	<i>--</i>

All the sentences were ordered to run concurrently. Accused-

Kamlesh has not come in appeal.

2. Prosecution case in brief is that both the deceased Mohan Lal and accused-appellant No.1 – Paramjit Singh were real brothers and were residing in adjoining houses in Village Dadial. Their mother Pritam Kaur was residing in the house of Mohan Lal. There was a dispute between the two brothers pertaining to their shares in the ancestral property. On 01st October, 2002 at about 09:30 P.M., the accused-appellant No.1/Paramjit Singh called out to his brother Mohan Lal to open the gate of the house. When Mohan Lal and his wife Kailash came out on the street, the accused-appellant No.1/Paramjit Singh was seen standing with a brick-bat. His wife Kamlesh (accused) was armed with a wooden rod, whereas, Harmesh Lal @ Meshi (accused/appellant No.2) was armed with a stick (danda). Soon thereafter, appellant No.1-Paramjit Singh attacked Mohan Lal with a brick-bat which hit him on his head, while Harmesh Lal @ Meshi inflicted a stick blow on the head of Mohan Lal, as a result of which, he fell down on the ground. His wife Kailash (PW-2) rushed to the rescue of her husband-Mohan Lal, but she was held back by Paramjit Singh by her hair. Accused-Kamlesh and Harmesh Lal @ Meshi (accused/appellant No.2), then inflicted an injury each on her head with their respective weapons. On an alarm raised, Nirmla (PW-3) i.e. sister of Mohan Lal rushed to the spot and saved them from the clutches of the accused-appellants. The accused-appellants, thereafter, fled away along with their respective weapons. The injured were taken to the Civil Hospital, Garshankar, where, Mohan Lal succumbed to his injuries. On receipt of information from the Hospital, Inspector Maninder Bedi (PW-7) reached there and recorded the statement of complainant – Kailash (PW-2) as Ex.PB, leading to the registration of FIR Ex.PM. Some

injuries were also caused on the person of the accused by the complainant party in the exercise of their right of private defence.

3. On completion of investigation, challan was presented. The accused-appellant No.1/Paramjit Singh was charge-sheeted for the offence under Sections 304 Part-I. Co-accused Kamlesh and Harmesh Lal @ Meshi were charged-sheeted for the offence punishable under Section 304 Part-1 read with Section 34 IPC. Accordingly, the accused-appellants were put to trial.

4. In support of its case, the prosecution examined as many as 07 witnesses, besides, tendering into evidence all other relevant documents.

5. The accused-appellants when examined under Section 313 Cr.P.C. denied all the incriminating circumstances appearing in evidence against them. The accused-appellants claimed false implication.

6. On the basis of evidence adduced, the accused-appellants were convicted by the Ld. Trial Court and sentenced as already detailed hereinabove.

7. Learned counsel for the appellants has vehemently contended that the evidence led by the prosecution unerringly establishes that it was a case of sudden quarrel between the brothers. It has been urged that the essential ingredients of Section 304 Part-I IPC were clearly amiss in the instant case, as there was neither any intention nor any knowledge on the part of the appellants to cause the death of Mohan Lal. However, even assuming the prosecution version as correct, though disputed, it was at best a case falling under Section 304, Part-II IPC. It was further argued that the Ld. Trial Court failed to appreciate that as many as 12 injuries were found on the person of appellant No.1 – Paramjit Singh, including two lacerated

injuries on the scalp on both left and right side as well as one grievous injury on the outer aspect of the chest i.e. injury No.6, as against only one lacerated wound on Mohan Lal (deceased) and a crush injury on the left foot of the deceased. Learned counsel argued that had it been a case of pre-mediated attack, the appellant would have been armed with lethal weapons and not carried out the attack on the deceased only with brick-bats and a stick. *Qua* the alleged role of Harmesh Lal @ Meshi – appellant No.2, learned counsel for the appellants contended that no doubt he was a friend of appellant No.1 – Paramjit Singh, but he happened to be at the spot by chance. No motive thus could be attributed to him as he had no interest in the ancestral property, which allegedly was the bone of contention between appellant No.1 – Paramjit Singh and his deceased brother Mohan Lal. Hence, in the circumstances, his conviction under Section 304 Part-1 read with Section 34 IPC was un-sustainable. Learned counsel pointed out to certain discrepancies in the deposition of the eye-witnesses and argued that the same cast a serious doubt about the truthfulness of the prosecution version which raised a big question mark as to the circumstances which triggered the occurrence.

8. Learned State counsel on the other hand prayed for dismissal of the instant appeal by urging that the eye-witnesses fully supported the case of the prosecution and the same stood corroborated from the medical evidence as well.

9. I have heard learned counsel for the parties and gone through the evidence as well as other material available on record.

10. The crucial question, which requires determination is whether the occurrence has taken place as per the version put up by the prosecution

during trial or is it a case of sudden and free fight between the parties, as urged by the learned counsel for the appellants. Before proceeding further, it would be relevant to notice the injuries sustained by both the parties in the alleged occurrence, which are as follows:-

1. *Mohan Lal (deceased):*

- i. *Lacerated wound 6 cm x 1 cm present over the left side of the head in the left parietal bone, scalp deep and present 6 cm above the pinna of left ear. Wound is obliquely placed. On dissection underlying parietal bone is fractured, underlying meningeal membrane of the brain are teared and underlying brain tissue is lacerated. On further dissection, base of the brain contains huge amount of clotted blood.*
- ii. *Crush injury 2.5 cm x 2.5 cm present over the nail bed of thumb of left foot, nail is partially damaged.*

The cause of death, in my opinion, in this case was due to asphyxia, associated with head injury no.1 which is sufficient to cause death in the ordinary course of nature. All these injuries were antemortem in nature.

2. *Complainant (PW-2) – Kailash w/o Mohan Lal (deceased):*

- i. *Lacerated wound 4.5 cm x 0.5 cm x 0.5 cm deep over the left half of scalp. 13.5 cm above the left eyebrow and 4 cm from midline. It runs backward and inwards, covered with clotted blood. X-ray was advised and kept under observation.*
- ii. *The patient complains of pain over the left side of upper chest and left shoulder. X-ray was advised.*
- iii. *Red abrasion 2 cm x 1.5 cm over the back of right forearm, 9 cm below the elbow joint X-ray was advised.*
- iv. *Red abrasion 1 cm x 1 cm over the front of right knee.*

Injury no. 4 was declared simple in nature and remaining injuries were kept under observation. The weapon used for all

the injuries was blunt. The patient did not get the x-ray done, so nature of injuries No.1 to 3 could not be declared.

3. Accused-Appellant No. 1 – Paramjit Singh:

- i. Lacerated wound 1.6 cm x .5 cm x .5 cm deep over the left side of scalp. 5 cm from midline, and 9 cm above the occipital protuberance covered with clotted blood. Kept under observation. X-ray was advised.*
- ii. Lacerated wound 1 cm x .3 cm x .3 cm over the right half of scalp 4 cm from midline and 8 cm above the occipital protuberance covered with clotted blood. Kept under observation and x-ray was advised.*
- iii. Red contusion 7 cm x 1.5 cm over the top of left shoulder. X-ray was advised.*
- iv. Red contusion 12.5 cm x 2 cm over the back of left side of chest. 7 cm below the top of chest and 7.5 cm from midline. X-ray was advised.*
- v. Red contusion 11 x 2 cm over the back of left side of chest, horizontal, 24 cm below the base of neck, inner end was over the midline of chest. X-ray was advised.*
- vi. Red contusion 12 cm x 2 cm over the outer aspect of left chest. 24 cm below the top of chest Horizontal. X-ray was advised.*
- vii. Red contusion, 6 cm x 1.8 cm over the back of left side of trunk, 30 cm below the top of chest and 4 cm from midline. X-ray was advised.*
- viii. Red contusion, 11 cm x 2 cm over the back of left side of abdomen, 2.5 cm above the iliac crest and 5 cm from midline. Kept under observation.*
- ix. Red contusion, 5 cm x 2 cm over the top of right shoulder. X-ray was advised.*
- x. Red abrasion, .5 cm x .5 cm over the back of left forearm, 5 cm below the elbow joint. X-ray was advised.*
- xi. Red abrasion, .5 cm x .5 cm over the back of left hand. 2cm below the wrist.*
- xii. Multiple red abrasion over the front of the right knee.*

Injury no.2, 11 and 12 were declared simple in nature and remaining were kept under observation. Probable duration of injuries was within 24 hours and kind of weapon used for all injuries was blunt. After x-ray examination and observation, the injury No. 6 was declared grievous in nature and remaining injuries were declared simple in nature.

4. *Accused-Appellant No. 2 – Harmesh Lal @ Meshi:*

- i. Lacerated wound 1.8 x .5 cm x .5 cm deep over the right side of scalp. 6 cm from the midline and 13 cm from right eye brow covered with clotted blood. X-ray was advised and was kept under observation.*

The patient was conscious, breath of patient smelt of alcohol, pulse 78 per minute, BP 128/90 MMhg, pupils equal on both sides. The probable duration of injuries was within 24 hours, weapons used blunt.

It is apparent from the nature of injuries sustained that brick-bats and sticks were exchanged freely and equally between the parties. The admitted case on record is that the complainant party too caused injuries on the person of the accused-appellants. As per evidence on record, the accused party received more injuries as compared to the complainant party. However, more injuries on the person of the accused party would not tilt the scales in their favour primarily for the reason that the occurrence took place in front of the house of the complainant, who was beckoned by none other than the accused-appellant/Paramjit Singh to come out of the house. The accused party were three in number when they came to the house of the complainant armed with a stick, wooden rod and a brick-bat. Hence, in this background, it would have been unreasonable to expect the complainant party to balance their retaliatory attack to thwart the imminent danger with numerical precision. From the evidence on record, it is the offensive acts

and conduct of the accused party, which triggered the occurrence and in the face of the imminent danger staring in their face, the complainant party was left with no other option but to hurl brick-bats at the aggressors.

11. The next contention of the learned counsel for the appellants that the ingredients of Section 304 Part-I were amiss in the instant case is not without merit. Section 304 Part-I provides for punishment for culpable homicide not amounting to murder and one of the essential ingredients to attract the provisions of this Section are that the death of a person has been caused with the intention of causing death or causing such bodily injury which is likely to cause death. The act of the accused must fall within one of the first three clauses of Section 300 IPC and further must be covered by any of the five exceptions to Section 300 IPC. Therefore, in the facts and circumstances of the case, the acts of the accused party would fall under Section 304, Part-II. There apparently was no pre-mediation on the part of the accused party to cause death of the deceased Mohan Lal. Had the intention of the accused party been to cause death of Mohan Lal deceased, they would not have been armed with only sticks and wooden rod, rather, they would have come equipped with some lethal weapon. Only two injuries were sustained by the deceased out of which injury No. 1 was caused with a blunt weapon, which unfortunately proved fatal for him. Hence, considering the facts of this case, I set-aside the conviction and sentence of accused-appellant No.1 – Paramjit Singh for the offence under Section 304, Part-I IPC and substitute the same for one under Section 304, Part-II IPC.

The occurrence in the instant case pertains to the year 2002. Accused-appellant No.1 – Paramjit Singh has thus suffered the agony of protracted trial for almost 17 years. His custody certificate, which has been

filed by the learned State counsel does not reflect his involvement in any other criminal case. As per the custody certificate, he has undergone a total sentence of 03 years, 04 months and 24 days (including remissions), out of the total sentence of 10 years awarded to him. Keeping in view the facts and circumstances and as prayed for by the learned counsel for the appellants, ends of justice would be met if the sentence is reduced to rigorous imprisonment of 05 years from rigorous imprisonment of 10 years. However, he is ordered to pay a compensation of ₹ 25,000/- to the complainant – Kailash (PW-2) i.e. wife of the deceased Mohan Lal within two months from the date of this order, failing, which the benefit of reduction of sentence shall not accrue to him.

12. *Qua* accused-appellant No.2 – Harmesh Lal @ Meshi, who was attributed a stick blow on the complainant – Kailash and another blow on the deceased Mohan Lal, which admittedly was not the cause of his death, can not be vicariously liable for the act of co-accused Paramjit Singh. He is, thus, acquitted for the offence charged with i.e. under Section 304, Part-I read with Section 34 IPC.

13. As a sequel to the above discussion, the instant appeal stands disposed of, with the modifications as indicated above. Accused-appellant No.1 – Paramjit Singh is on bail. His bail bonds/surety bonds stand cancelled. Necessary steps be taken to secure his custody.

(MANJARI NEHRU KAUL)
JUDGE

October 04, 2019

J.Ram

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