

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-768-DB-2017
Reserved on : 01.02.2019
Date of decision : 08.02.2019

Vishal Wadhwa
... Appellant

Versus

State of Punjab
... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE KULDIP SINGH**

Present: Mr.Vinod Ghai, Senior Advocate
with Ms.Kanika Ahuja, Advocate
for the appellant.

Mr.S.P.S. Tinna, Addl.A.G. Punjab.

Mr.S.P.S.Sidhu, Advocate
for the complainant.

RAJIV SHARMA, J.

This appeal is instituted against the judgment and order dated 19.07.2017 rendered by the learned Sessions Judge, SAS Nagar (Mohali), in Sessions Case No.RT-10 dated 16.02.2015 / 26.04.2016 whereby the appellant along with co-accused Ashok Kumar and Ravinder Singh @ Happy were charged with and tried for offences punishable under Sections 302, 324, 341 Indian Penal Code (in short 'IPC'). Co-accused Ashok Kumar and Ravinder Singh @ Happy were acquitted. The appellant Vishal Wadhwa has been convicted and sentenced for offences punishable under Sections 302, 324 IPC, as under:-

Name of convict	Offence	Sentence
Vishal Wadhwa	Under Section 302 IPC	Rigorous imprisonment for life and also to pay a fine of Rs.20,000/-, in default whereof, to further undergo R.I. for a period of four months.

Name of convict	Offence	Sentence
	Under Section 324 IPC	Rigorous imprisonment for one year and also to pay a fine of Rs.10,000/-, in default whereof, to further undergo R.I. for a period of two months.

2. The case of the prosecution in a nutshell is that the complainant Satinder Singh @ Johny was resident of village Rurki, P.S. Lalru. He was student of B-Tech in Universal College, Ballopur. On 31.10.2014 at about 10.30 A.M., the complainant along with his friend Devinder Singh son of Sahib Singh, resident of Dharamgarh Road, near Rathi Public School, Lalru, had gone to attend a *Jagran* in Lalru Mandi. Vishal Wadhwa and his friend Ravinder Singh @ Happy gave them beatings. On 01.11.2014 at about 11.00 A.M., the complainant and his friend Devinder Singh were going on motor cycle. Ravi Kumar and Sandeep Singh were also on motor cycle. They were proceeding towards their shop. Vishal Wadhwa stopped them when they reached near his shop. Vishal Wadhwa gave a knife blow to Devinder Singh which struck him on the left side of his chest. Ashok Kumar father of Vishal Wadhwa had exhorted that he should not be spared. The father of Vishal Wadhwa had caught hold of Devinder Singh. The complainant came forward to save Devinder Singh. Vishal Wadhwa gave blows on the left *kula (pelvis)* and left thigh of the complainant. Ravinder Singh @ Happy caught hold of Devinder Singh from his arms. Vishal Wadhwa gave another blow to Devinder Singh. The uncle (chacha) of Vishal Wadhwa was standing there. He also proclaimed that the complainant should not be spared. In the meantime, Kamaljit Singh, uncle (chacha) of Devinder Singh reached at the spot. The assailants ran away. The complainant along with his friend Ravi Kumar had taken Devinder Singh on motor cycle to Lalru Mandi. The doctor checked him. He was

declared dead. The post-mortem was conducted. The complainant was also examined by the doctor. The challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statements of appellant along with co-accused were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The appellant was convicted and sentenced, as noticed hereinabove. Hence the appeal.

4. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

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

7. PW-1 Satinder Singh @ Johny testified that on 31.10.2014 at about 10.30 P.M., he along with his friend Devinder Singh had gone to attend *Jagran* at Lalru Mandi. Vishal Wadhwa and his friend Ravinder Singh @ Happy were there. They gave them beatings. On 01.11.2014 at about 11.00 A.M., he along with his friend Devinder Singh was going towards his shop on motor cycle. Ravi Kumar and Sandeep Singh were also coming on another motor cycle from the opposite direction. When they reached near the shop of Vishal Wadhwa, he stopped them. Ashok Kumar father of Vishal Wadhwa, Ved Parkash his uncle and his friend Ravinder Singh @ Happy were also standing there. As soon as Devinder Singh stopped his motor cycle and got down from the motor cycle, Vishal Wadhwa came and attacked Devinder Singh with a sharp edged weapon which hit

him on the left side of his chest. Ashok Kumar caught hold of Devinder Singh. When he moved forward to rescue Devinder Singh, Vishal Wadhwa attacked him with weapon like knife. He was given knife blows on his left thigh and left pelvis. In the meantime, while Ravinder Singh @ Happy caught hold Devinder Singh from his arm, Vishal Wadhwa gave another blow of knife to Devinder Singh. Ved Parkash who was standing behind, was also saying that both these persons should not be spared. Devinder Singh's uncle Kamaljit Singh also reached the spot in the meanwhile. On seeing him, Vishal Wadhwa and others fled away from the spot. He with the help of Ravi Kumar took Devinder Singh to Lalru Hospital on motor cycle. He was declared dead. In his cross examination, he admitted that their shop could be easily seen from the shop of Vishal Wadhwa. He was running a cosmetic shop which was in the name of his brother. On the day of occurrence, the shop was open. The said shop usually opens at 9.00 A.M. His brother was sitting in the shop at the time of occurrence. He admitted that his brother Jaswinder Singh was inside the shop. He did not come out. He did not know whether Kamaljit Singh, paternal uncle (*chacha*) of the deceased had also reached hospital or not. He further deposed that Kamaljit Singh, the uncle of the deceased Devinder Singh, was called by the deceased to get the matter compromised with accused Vishal Wadhwa and for this reason he had gone to the shop of accused Vishal Wadhwa. Vishal Wadhwa was all alone. He was not sure if at the time of incident Ashok Kumar and Ravinder Singh @ Happy were present at the shop or not. He had named Ashok Kumar and Ravinder Singh @ Happy for the reason that the shop was in the name of Ashok Kumar.

8. PW-2 Ravi Kumar testified that on 01.11.2014 he was driving the motor cycle. Sandeep Singh was pillion rider. They were going to tailor shop situated at village Lalru. When they reached Lalru Mandi at Dharamgarh Road, they saw Devinder Singh and Satinder Singh @ Johny lying in injured condition. They stopped the motor cycle. Sandeep Singh got down from the motor cycle. In the meantime Vishal Wadhwa accused, who was present in Court, attacked Sandeep Singh. Sandeep Singh fled away from the spot. He was chased by Vishal Wadhwa. In the meantime, he picked up Devinder Singh in an injured condition with the help of Satinder Singh @ Johny. He was declared hostile and was cross-examined by the learned Public Prosecutor. He denied making any statement vide Mark PW2/A. He has denied the contents of the same. He was confronted with the portions B to B1, C to C1, D to D1 and E to E1 of his statement. He deposed that he had not seen the occurrence in question. When he was taking away Devinder Singh, he had disclosed to him about the injuries inflicted to him by Vishal Wadhwa. He also admitted that there was market existing on both sides of the shop of accused Vishal Wadhwa.

9. PW-3 Kamaljit Singh deposed that on 31.10.2014 his nephew Devinder Singh along with his friend Satinder Singh @ Johny had gone to Lalru Mandi to attend *Jagran*. At about 10.00/10.30 P.M. at the place of *Jagran* an altercation took place between his nephew Devinder Singh, Satinder Singh @ Happy and Vishal Wadhwa. He came to know about altercation on the phone call made by his nephew to him. He told his nephew that he would come in the morning and bring it to the notice of father of Vishal Wadhwa. On 01.11.2014 his nephew Devinder Singh along

with his friend Satinder Singh @ Johny were passing through Dharamgarh Road. When they reached near the shop of Vishal Wadhwa at Dharamgarh Road, Vishal Wadhwa had called them and stopped them. Immediately when his nephew stopped, Vishal Wadhwa gave a knife blow on the chest of his left side. When Satinder Singh @ Johny came forward to rescue, the aforesaid assailants with an intention to kill, had given knife blows to Johny on his pelvis and left thigh. Vishal Wadhwa ran away. He had taken Devinder Singh and Satinder Singh @ Johny injured to the Civil Hospital, Lalru. Devinder Singh was declared dead. In his cross-examination, he admitted that his village was at a distance of 10/12 kilometers from the place of occurrence. He received phone call at about 10.30 P.M. He was present in his village. The shop of Satinder Singh @ Johny's brother was opposite the shop of Vishal Wadhwa's father. The shop of Satinder Singh @ Johny's brother was open at the time of occurrence. In his cross-examination by the learned Public Prosecutor, he had denied that Vishal Wadhwa, Ashok Kumar and Ravinder Singh @ Happy were present and they participated in incident in question.

10. PW-4 Dharampal HC deposed that on 02.11.2014 Vishal Wadhwa made statement disclosing that he had kept concealed his clothes smeared with the blood of deceased and iron *barchi* in the thick area of village Kurali. He got the same recovered.

11. PW-9 Atul Soni Inspector testified that he reached the spot. He sought opinion of doctor whether Satinder Singh @ Johny was in a position to make statement. He recorded statement of Satinder Singh @ Johny vide Ex.PA. Statement of Ravi Kumar was recorded at the spot at 2.30/3.00 P.M.

It had come in the investigation made at the spot that about 5/6 boys before the occurrence, had entered into the shop of Vishal Wadhwa and had come out of the shop during the course of scuffle.

12. PW-10 Barma Singh SI deposed that he interrogated the accused. The accused was arrested vide memo Ex.PW10/A. The statement of accused Ex.PW4/A was recorded on the basis of which recoveries were made. The disclosure statement was made at 3.00 P.M.

13. The post-mortem was conducted by PW-5 Dr.Harleen Bahga. She noticed the following injuries on the body:-

- “1. 3 cm x 0.2 cm abrasion left side on forehead.*
- 2. Incised wound 1 cm broad 2 cm long 10 cm deep extending to rib cage and heart.*
- 3. Abrasion on toes great toe, 2nd toe, 3rd toe both sides.”*

The cause of death was due to haemorrhage and shock leading to cardiorespiratory failure which was sufficient in ordinary course of nature to cause death. The probable time elapsed between death and post-mortem examination was about 20 hours and death occurred immediately after the injury.

14. PW-7 Dr.Harpreet Walia had examined the complainant Satwinder Singh @ Johnny. He noticed the following injuries on the person of complainant:-

- “1. Three incised sharp wound were noticed on his left leg all wounds were approximately 1 inch long and 01. inch wide*
- 2. One wound on hip with depth approximately ½ inch two wounds on back of thigh of depth 1 ½ inch and ½ inch respectively.”*

15. The case of the prosecution is that the complainant Satinder Singh @ Johny and deceased Devinder Singh had gone to attend the *Jagran* on 31.10.2014. They were beaten up by Vishal Wadhwa and his friend. They came back to their home. In the morning of 01.11.2014, the complainant and Devinder Singh were going on motor cycle to their shop. Ravi Kumar and Sandeep Singh were on their motor cycle. The appellant stopped them. He gave knife blows on the body of Devinder Singh. He was removed to hospital by the complainant and Ravi Kumar. It has come in the statement of PW-1 Satinder Singh @ Johny that he had tried to falsely implicate the father of the appellant as well as Sh. Ravinder Singh @ Happy. He had named them since the shop belonged to Ashok Kumar. PW-1 Satinder Singh @ Johny has deposed that the uncle of deceased Devinder Singh was called by the deceased to get the compromise effected between him and Vishal Wadhwa. PW-3 Kamaljit Singh also told his nephew that he would come and talk to father of Vishal Wadhwa. The appellant was in his shop.

16. Learned counsel appearing on behalf of the appellant has vehemently argued that the complainant party had dragged the appellant outside the shop. The appellant in order to save himself gave knife blows to the deceased with *barchi*. These injuries proved fatal. Though initially the case of the appellant was that he pushed the deceased and he fell on iron rod. The fact of the matter is that as per the prosecution case, an altercation took place in the morning of 31.10.2014. Thereafter the incident took place at 11.00 A.M. on 01.11.2014. The scuffle had taken place all of a sudden when the complainant party reached near the shop of the appellant. The act was not premeditated. The fight ensued in the heat of passion upon a sudden

quarrel. The offender had not taken undue advantage or acted any cruel or unusual manner. However the fact of the matter is that the appellant was aware that in case blows are given by *barchi* it may cause death. Injury No.2 is deep. It is also apparent that the complainant party had reached to compromise the matter as per the statement of PW-1 Satinder Singh @ Johny and PW-3 Kamaljit Singh but things went out of control.

17. Accordingly the appeal is partly allowed. The conviction of the appellant is altered from Section 302 IPC to Section 304 Part-I IPC. The appellant is in custody. Appellant/convict be produced in Court on 20.02.2019 to hear him on quantum of sentence under Section 304 Part I IPC.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

February 08, 2019.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No