

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

**CRM-A No. 1811-MA of 2016 (O&M)
Date of Decision: 29.01.2019**

Sukhpal Kaur

..... Appellant

Versus

Subhash @ Basha and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present: Mr. Naresh Jain, Advocate
for the applicant-appellant.

JASWANT SINGH, J.

CRM No. 31398 of 2016

Present application has been filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of **30 days** in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay of **30 days** in filing the application for grant of leave to appeal is condoned.

Application stands disposed of accordingly.

CRM-A No. 1811-MA of 2016

1. Present application has been filed under section 378 (4) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Leave to Appeal against the judgment dated 23.05.2016 passed by learned Additional Sessions Judge, Sri Muktsar Sahib, vide which all the present respondents/accused persons have been acquitted of the charge for commission of offence under Section 304, Indian Penal Code (IPC) for

allegedly causing death of Angrej Singh and have been convicted for

commission of offences under Sections 452, 325, 323, 148 & 149 of IPC.

However, one of the co-accused, namely, Dilbagh Singh S/o Ram Avtar has been convicted by the trial Court for commission of offence under section 304 IPC besides for commission of offences under Sections 452, 325, 323, 148 read with 149 of IPC on account of attribution of fatal injuries on the person of deceased-Angrej Singh.

2. In nutshell, the facts of the prosecution case are that the **PW-2 - Sukhpal Kaur (applicant-appellant)** on 29.05.2014 at around 9.30 a.m. was standing in the door of her house and in the meantime, respondents/accused, namely, Ram Avtar S/o Gopi Ram, who was carrying with him a **Gandasa**, Dilbagh Singh S/o Ram Avtar armed with **iron rod**, Subhash S/o Ram Avtar armed with **sword**, Shana Singh S/o Gurdeep Singh armed with **Gandasa**, Harpreet Singh S/o Makhan Singh armed with **Gandasi**, Cheena Singh S/o Natha Singh armed with **sword**, Davinder Singh S/o Jaswinder Singh armed with **sword**, Krishna Kumari wife of Ram Avtar and other unknown assailants started hurling abuses to Sukhpal Kaur (PW-2). When she protested for hurling the abuses by the above referred persons, they opened an attack on her. On hearing the hues and cries Angrej Singh, Jasveer Kaur and Chhinder Singh got attracted to the spot. These assailants also started giving beatings to these persons and accused-Dilbagh Singh gave **rod** blow on the person of complainant and Angrej Singh (now deceased) tried to stop the attack, which landed on his head. As a result of receiving the **iron rod** blow, Angrej Singh fell down on the ground, and then accused-Ram Avtar started giving push blows with the help of **Gandasi** on the chest of Angrej Singh. Accused-Subhash @ Basha inflicted

a **sword** blow on Chhinder Singh. Accused-Cheena caused a **sword** blow on the person of Chhinder Singh from its reverse side, which landed on his hand. Accused-Shana gave **Gandasa** blow on Chhinder Singh, which landed on his shoulder. Accused-Krishna Kumari wife of Ram Avtar inflicted the brick-bat blows, which were sustained at Chhinder Singh and Jasvir Kaur in their abdomen and they also raised hue and cries. On hearing their hue and cries, the people assembled on the spot and on seeing them, all the assailants fled away from the spot alongwith their respective weapons. On account of receiving of the injury at the hands of accused-Dilbagh Singh, Angrej Singh succumbed to the injury and died on 01.02.2015.

3. On appearance before the trial Court, the respondents-accused were supplied the copies of challan and they were also charge-sheeted for the commission of offences under Sections 452, 325, 323, 148 and 149 of IPC, including under Section 304 IPC. To strengthen its case against the respondents, the prosecution has examined as many as eleven (11) witnesses, which are as under:-

Chhinder Singh injured as PW-1, *Sukhpal Kaur*, the complainant in this case as PW-2, *Dr. Ramesh Kumari* as PW-3, *C. Amrik Singh* as PW-4, *Dr. Dinesh Gupta* as PW-4/A, *ASI Jaswinder Singh* Investigating Officer of this case as PW-6, *Dr. Parshant* as PW-7, *Dr. G.S. Shekhawat* as PW-8, *Rajinder Kumar* as PW-9, *Dr. Vireshwar Chawla* as PW-10, *Dr. Amrit Pal* Medical Officer, CHC, Morinda as PW-11, *C. Manjit Kumar* as PW-12.

On completion of prosecution evidence, the statement under Section 313 Cr.P.C. was recorded by the trial Court in which all the incriminating circumstances appearing by way of evidence of prosecution

against the respondents/accused were put to them and they pleaded their innocence and false implication.

On the basis of weak evidence produced by the prosecution against the present respondents, they have been acquitted of the charge for the commission of offence under Section 304 IPC.

4. Learned counsel for the applicant-appellant/complainant has vehemently contended that observation of the trial Court vide which it has acquitted the respondents/accused for the commission of offence under Section 304 IPC is patently wrong. The trial Court has disbelieved the cogent and convincing evidence produced by the prosecution to prove that deceased-Angrej Singh died on account of injuries received by him at the hands of these respondents, which proved to be fatal. In this manner, the findings of the trial Court *qua* offence under Section 304 IPC against these accused/respondents be reversed and they be also convicted for commission of offence under Section 304 IPC.

5. The moot question before us is whether the trial Court is justified in acquitting all the respondents for commission of offence under Section 304 IPC. In order to answer this question, we have gone through the paper book and on perusal of the same, there leaves no manner of doubt that the trial Court is right in acquitting of these respondents for commission of offence under Section 304 IPC. The statement of PW-2/Sukhpal Kaur (complainant) is significant to highlight the fact that Dilbagh Singh inflicted a **rod** blow on the head of Angrej Singh. PW-3/Dr. Ramesh Kumari (Medical Expert), on 29.05.2014, while examining the injured-Angrej Singh (now deceased), also opined that the injury on his head was dangerous to

life. None of the injury attributed to these respondents/accused is opined by the medical expert to be of such a nature which could be termed as likely to cause death of deceased-Angrej Singh. To constitute the offence under Section 304 IPC, it is necessary on the part of the prosecution to prove the following ingredients:-

1. Causing of death of a human being.

2. Such death must have been caused by doing an act:-

(i) with the intention of causing death; or

(ii) with the intention of causing such bodily injury as is likely to cause death; or

(iii) with the knowledge that the doer is likely by such act to cause death.

As such, on the basis of oral evidence coupled with the medical evidence on record, it is proved that these respondents/accused did not inflict any injury with the intention of causing death or with the intention of causing such bodily injury as likely to cause death of deceased-Angrej Singh. The prosecution has also not proved that the injuries were caused by the respondents/accused with the knowledge that they would cause death of the deceased-Angrej Singh. In this manner, it is clear-cut case of the prosecution that head injury was received by the deceased-Angrej Singh from the hands of Dilbagh Singh. Dr. Ramesh Kumari, Medical Expert, who appeared as PW-3, has testified that on 29.05.2014, injured Angrej Singh was examined by her and injury on his head was declared as dangerous to life. This witness has also stated that the injuries on the person of remaining injured was declared simple in nature. As such, we are of the view that no injury caused by these respondents was serious allegedly to be

opined by the Medical Expert as dangerous to life which was received by the deceased-Angrej Singh on his head from the hands of accused-Dilbagh Singh. It is also proved on the record that these respondents did not inflict any injury on the vital part of the deceased. It is also duly proved on the record that none of these respondents were equipped with any deadly weapon, by virtue of which, it can be said that these respondents played an active role in infliction of an injury, which have direct result into death of the deceased-Angrej Singh. As such, in the absence of using any deadly weapon and in the absence of infliction of injury with intention or knowledge on vital part of the deceased by these respondents, the trial Court is justified in acquitting all these respondents for commission of offence under Section 304 IPC.

Furthermore, PW2/appellant (Sukhpal Kaur) also stated that a rod blow was given on the head of Angrej Singh. Apparently, it is undisputed case of the prosecution that this rod blow was not given by these respondents and the medical experts have opined that the other injuries on the person of deceased were not of such a nature, which could be considered that the injuries were inflicted with such intention or knowledge to cause death of the deceased. As such, the blows given by these respondents are not co-related to the injury received by the deceased, which caused death of Angrej Singh.

6. Before leaving this judgment, we are also of the view that a very limited question was set up before us with regard to acquittal of these respondents/ accused for commission of offence under Section 304 IPC. It is made clear that this judgment will not be taken as an expression of our

opinion *qua* other offences for which the respondents/accused have been convicted.

7. As in the instant matter, there was a very limited question before us with regard to acquittal of present respondents by the trial Court for commission of offence under Section 304 IPC, and in case, these respondents/accused or any of the party challenged the impugned judgment except offence under Section 304 IPC, then anything said or observed herein may not be taken as expression with regard to merits of the case *qua* other offences. That Court will remain free to examine the facts of the case *qua* other offences, for which, these respondents have been convicted and one of the accused-Krishna Kumari wife of Ram Avtar has been acquitted.

8. As a cumulative effect of our discussion, the instant **application** is without any merit and, therefore, **dismissed**. Leave to appeal is declined.

(JASWANT SINGH)
JUDGE

January 29, 2019
'dk kamra'

(ARUN KUMAR TYAGI)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No