

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

CRA-D No. 201-DB of 2003 (O&M)

Reserved on : 28.5.2019

Date of decision : 29.5.2019

Naresh and another

.... Appellants

versus

State of Haryana

... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. Deepender Singh and Mr. Ram Krishan Rana, Advocates,
for the appellants.

Mr. Vishal Garg, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. The present appeal is instituted against judgment dated 13.2.2003 and order dated 14.2.2003, rendered by Sessions Judge, Faridabad, in Sessions Trial No. 7 of 13.3.2002. Appellants Naresh and Surender were charged with and tried for the offence punishable under Sections 148, 302 read with Section 149 IPC. They were convicted and sentenced under Section 148 IPC to undergo one year rigorous imprisonment and to pay fine of ₹ 250/- each and in default of payment of fine, to further undergo one month rigorous imprisonment. They were also convicted and sentenced under Section 302 read with Section 149 IPC to undergo life imprisonment and to pay fine of ₹ 500/- each and in default of payment of fine, to further undergo rigorous imprisonment for two months. Both the sentences were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that on 21.10.2001 , on receipt of V. T. message from Police Station, Kotwali that Ajay Sharma had received injuries in accident and was admitted in Escorts Medical Centre, Faridabad, ASI Jagat Singh reached there. He recorded the statement, Ex.PC/1 of Mukesh Kumar. According to him, he was a student of 10+2 standard in Modern Vidya Mandir, Baghola. Ajay Sharma was his class fellow. He and Ajay Sharma had gone from village Devli to attend Dasothan ceremony at the house of their friend Jitender alias Jeetan at village Chhaprola on scooter. After staying there for about 45 minutes, they were coming back to village Devli. Ajay Sharma was driving the scooter while he was pillion rider. When they reached the out-skirt of village Prithla, at about 1.00 O' Clock, they saw a motor-cycle standing by the side of the road with two boys on its side. One of them was Kuldeep resident of Prithla, who was a student of 10th standard in their school, whereas he did not know the name of other person. Kuldeep was having a danda. Kuldeep signaled towards the side of road. Accordingly, three more boys armed with danda in their hands also came and started beating Ajay Sharma with dandas. Due to the injuries, scooter got out of control. They fell down on the road. Immediately complainant got up and saw that Ajay Sharma was bleeding from his head and mouth. He became unconscious. The accused ran away from the spot. Ajay Sharma was taken to Diamond Hospital, Palwal, from where he was referred to Escorts Medical Centre, Faridabad. The injuries were caused to Ajay Sharma due to an altercation took place between Ajay Sharma and Kuldeep Singh about two months prior to the occurrence. Investigation was completed and challan was put up after completion of all the codal formalities.

3. The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. The accused were convicted and sentenced, as noticed above. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

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

6. PW1 Dr. P. S. Parihar conducted the post-mortem examination. He had noticed the following injuries on the body of deceased Ajay Sharma:

1. Red bruise 12 cm x 3 cm in size over left side of forehead, extended to left frontal region of head.
2. Red bruise 10 cm x 3 cm over right frontal region of head.
3. Lacerated wound 7 cm x 2 cm over right fronto-parietal region of head.
4. Depressed wound 8 cm x 5 cm over left parietal region of head.
(On dissection of scalp haematoma involving whole of scalp was present. On further dissection of head fractures of left frontal, left parietal, right frontal and right parietal bone were present. Brain matter seen outside the skull through fracture site. Frontal and parietal lobes of brain were lacerated. Liquid and clotted blood was present in the bone).
5. Red bruise 5 cm x 1 cm over left chest-wall in 5th inter-costal space.

6. Red bruise 2 x 1 cm over left chest wall in 8th inter-costal space.
7. Abrasion 3 cm x 2 cm on anterior surface of left knee.
8. Abrasion 10 cm x 1 cm over medial aspect and upper 1/3rd part of right leg.”

According to the opinion of the doctor, the cause of death was head injury, which was ante-mortem in nature and sufficient to cause death in ordinary course of nature. He proved post-mortem report, Ex.PA. Injuries to the deceased could be caused by danda blows.

7. PW2 ASI Jai Singh had recorded the FIR.
8. PW7 Mukesh Kumar is the material witness. He testified that on 21.10.2001, he along with Ajay Sharma had gone to village Chhaprola on a scooter to attend the Dashothan ceremony of son of Jitender's brother. They reached there at 11.45 A.M. They stayed there for about 45 minutes. They started coming back to their village. Scooter was being driven by Ajay Sharma. He was pillion rider. At about 1.00 P.M., when they reached near Banni of Prithla, they saw accused Kuldeep and another boy standing near the motorcycle on the road side. On seeing them, accused Kuldeep signaled to some one and thereafter three boys came out from the roadside. Kuldeep was armed with a danda. The other three boys were also having dandas. The accused present in the Court were two out of the three boys who had come from the roadside on the signal made by Kuldeep. He did not recollect the names of the boys, who were present in Court but he could recognise them by face. The boys started giving repeated danda blows on him and Ajay Sharma. On account of danda blows, the scooter went out of control. He noticed that Ajay Sharma was bleeding from his head and nose. Thereafter,

he requested one pedestrian to help him. Ajay Sharma was removed to Diamond Hospital, Palwal, from where he was referred to Escorts Medical Centre, Faridabad. His statement, Ex.PC/1, was recorded by the police. They all were students of Modern Vidya Mandir, Bhagola. About two months prior to the occurrence, a quarrel had taken place between Ajay Sharma and Kuldeep Singh. He had come to know the names of accused persons later on which he had disclosed to the police. In his cross-examination, he deposed that after the incident, he had seen the accused in Police Station, Palwal. Police had called him to identify the accused after they were arrested. He had come to know about the names of the accused from the school. He did not remember as to who had disclosed the names of accused to him. They had seen Kuldeep and another boy with the motorcycle from a distance of ten feet. The speed of the scooter was 30 kilometers per hour. He did not receive any injury. All the boys had caused injuries to Ajay Sharma. He could not narrate which of the accused had given injury on what part of Ajay Sharma. The road on which the occurrence took place was a busy road and some persons were also working in the fields nearby. Nobody came from the fields or the passers by. The injuries were caused by the accused while the scooter was in motion. After causing injuries, the accused ran away.

9. PW9 Suresh Chand testified that a person from village Prithla had informed that Ajay Sharma had received injuries in an accident. Thereafter, he left for Diamond Hospital. The doctor of Diamond Hospital told that condition of Ajay was serious. Thereafter, they reached Escorts Hospital, where the doctor told that Ajay had already expired. While they were removing Ajay to the hospital, on the way Mukesh told him that Ajay

had not received injuries in an accident. He further disclosed that while he and Ajay were going to Chhaprola, they were followed by Kuldeep and another boy on a motorcycle. They were also present in the party but they left earlier. He further told that while they were returning, Kuldeep and other boy stopped the motorcycle and asked Ajay to stop the scooter. Thereafter, three boys were signaled to come on the spot. All the boys caused injuries to Ajay Sharma. Thereafter, the accused ran away from the spot.

10. PW10 ASI Jagat Singh deposed that he received V. T. message on 21.10.2001 from Police Station Kotwali that Ajay Sharma had received injuries in accident. He went to Escorts Medical Centre and recorded the statement, Ex.PC/1, of Mukesh Kumar. FIR was registered. He took his clothes. He recorded the statements of Mukesh, Suresh Chand and Dal Chand. He prepared rough site plan, Ex.PH. In his cross-examination, he deposed that name of accused Pawan Kumar had come to the knowledge of ASI Raghbir Singh on the second day of occurrence. The V.T. message was received at 4.00 P.M. He prepared the inquest report.

11. PW11 Raghbir Singh deposed that investigation was entrusted to him. The names of five accused Kuldeep, Surender, Naresh, Sunil and Pawan were confirmed, who had caused injuries to deceased Ajay Sharma. He received the information that accused Kuldeep surrendered in the Court of Shri P.R. Sharma, JMIC, Palwal. Accused Kuldeep was produced in the Court of CJM, Faridabad. He was then sent to judicial custody by CJM. When they reached Agra Chowk, Palwal, Jagbir and Dharambir residents of Prithla produced accused Naresh and Surender, in the Court. They were joined in the investigation and arrested. Dharamvir had also produced

motorcycle. It was taken into possession. In his cross-examination, he deposed that he had not moved any application for conducting the identification parade of the accused.

12. The prosecution case precisely is that PW7 Mukesh Kumar and Ajay Sharma were coming back on scooter to their village after attending the Dashothan ceremony of son of Jitender's brother. At about 1.00 P.M., when they reached near Banni of Prithla, they were attacked by accused Kuldeep and his companions. Ajay Sharma received injuries on his head. He was taken to Diamond Hospital, Palwal, from where he was referred to Escorts Medical Centre, Faridabad. He was declared dead. The cause of death as per PW1 Dr. P. S. Parihar was head injury, which was ante-mortem in nature and sufficient to cause death in ordinary course of nature. He proved post-mortem report, Ex.PA. According to him, injuries to the deceased could be caused by danda blows.

13. PW7 Mukesh Kumar has narrated the manner in which the injuries were given by the accused to Ajay Sharma. In his cross-examination, he deposed that after the incident, he had seen the accused in Police Station, Palwal. Police had called him to identify the accused after they were arrested. He had come to know about the names of the accused from the school. He did not remember as to who had disclosed the names of accused to him. The road on which the occurrence took place was a busy road. People were working in the fields nearby. Nobody came from the fields. The injuries were caused by the accused while the scooter was in motion. He admitted that lot of blood had oozed from the injuries of Ajay. His clothes were also stained with blood but he did not give his clothes to the police. The deceased was administered beatings by the boys. He was

also one of the person who had accompanied deceased Ajay Sharma to the hospital.

14. The matter was investigated by PW10 ASI Jagat Singh and PW11 Raghbir Singh. Arrests were made.

15. Learned counsel for the appellants argued that it was a case of accident but no such suggestion was put to PW1 Dr. P. S. Parihar. He had noticed as many as eight injuries on the person of deceased.

16. The motive attributed to the accused was that an altercation took place between accused Kuldeep and Ajay Sharma about two months back of the occurrence. Thereafter, the accused were looking for an opportunity to settle the score with Ajay Sharma. One of the accused Kuldeep was standing on the road. He signaled the other boys towards the side of road. Accordingly, three boys armed with danda came and started beating Ajay Sharma. The injuries caused to Ajay Sharma were proved fatal. The accused and the deceased were students of the same school. In the PMR, it was reported that it was a case of personal vendetta. The motive attributed in the inquest report is also personal dispute.

17. Though the motive attributed to the accused is that there was an altercation between accused Kuldeep and deceased Ajay Sharma, however, it has not come on record as to what was the nature of dispute. If it was a quarrel or fight whether any FIR or complaint was lodged against any of the party.

18. Learned counsel for the appellants has argued that this case is not covered under Section 302 IPC and it would be covered under Section 304 Part-II IPC. However, we are of the considered view that this case would fall within the ambit of Section 304 Part-I, considering the fact that

the appellants had the intention to cause death by hitting dandas repeatedly on the head of Ajay Sharma.

19. Accordingly, the appeal is partly allowed. The conviction of both the appellants is converted from Section 302 IPC to Section 304, Part-I IPC.

20. The sentence of appellants was suspended on 23.9.2008. The said order has been revoked vide order dated 14.05.2019 as nobody was present to represent the appellants on that date. Their bail bonds and surety bonds already stand cancelled.

21. In view of our aforesaid discussion, the appellants are directed to be present in Court on 31.5.2019 to be heard on the quantum of sentence.

(Rajiv Sharma)
Judge

29.5.2019
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No