

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

336

**CRA-S-132-SB-2004
Decided on : 23.11.2022**

Suresh @ Lilu

. . . Appellant(s)

Versus

State of Haryana

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Argued by: Mr. Amandeep Singh, *Amicus Curiae*.

None for the appellant(s).

Mr. Vikas Bhardwaj, AAG, Haryana.

SANJAY VASHISTH, J.

For the offence under Section 302 of Indian Penal Code (in short 'IPC') for causing murder of Mahender s/o Sant Lal, appellant Suresh @ Lilu s/o Krishan, was tried by the Court of Sessions through Sessions Case No. 48 of 06.08.2001, emerging from FIR No. 150, dated 03.05.2001, registered at Police Station City Bhiwani, District Bhiwani.

2. By giving reasons, trial Court found the appellant guilty vide judgment dated 11.09.2003 for committing of offence under Section 304 Part-I of IPC instead of Section 302 of IPC, and accordingly, vide order dated 13.09.2003, was sentenced for a period of 10 years rigorous imprisonment along with fine of Rs.2000/- and in default of payment of fine to further undergo rigorous imprisonment of three months.

3. Complainant Ramesh s/o Bala s/o Krishan Kumar, R/o Mastan Wali Gali, City Bhiwani, being complainant and eye-witness got lodged his statement at 1:30 AM on 03.05.2001 at Govt. Hospital, Bhiwani. Stating therein that "*he is employed in BTM and yesterday he did not go to attend*

the duty and remained present at his house. There is a house of Mahender s/o Sant Lal situated in our mohalla, who used to do service in the cloth shop belonging to Virbhan in Lohad Bazar Chopta. He is having two houses. He has given one house on rent to Suresh @ Lilu s/o Krishan, caste Chippi, r/o Dhanan, who does the work of stitching at Vishal Tailor, Mini Market, and he has been residing along with his family, and he does the work of stitching at home also. Mahender has settled his resident in another house along with his children and mother Ram Piari. Children of Mahender are not present at home, as they have gone to parental house of their mother, and Ram Piari, mother of Mahender was present at home. Yesterday in the evening at about 7:00 – 7:30 PM, Suresh and Mahender both were drinking liquor at the house of Mahender. After drinking liquor about 11:00 PM, both of them came into the chowk in front of house of Suresh. Suresh and Mahender exchanged abuses between each other and they were making noise. On hearing their noise, I and Naresh s/o Chander Dutt, caste Brahman, r/o Mastan Wali Gali, City Bhiwani, who were already sitting in the Shiv Temple at Kharkui, went towards them. Both of us reached near chowk. Mahender was saying to Suresh that you have not paid the rent of the house, give the same in morning. At that time light of the house of Suresh was on and there was light in the chowk also. Within our site Suresh got hold a scissor (kenchi) from his house and gave its blow to Mahender, which hit directly on the left side of his neck, which started bleeding profusely and Mahender fell down on the ground. On his serious condition, Suresh fled away from the spot along with scissor. At the same time several persons of the mohalla reached there. After managing a car of Pankaj, I Naresh and several other residents of the Mohalla carried Mahender to Civil Hospital for treatment. After few minutes Mahender lost his breathe in result of those injuries

inflicted on him and Doctor declared him dead. Thereafter, we sent Pankaj in his car to Dadri in order to call family members of Mahender because they had gone to Dadri in a marriage. Sham Lal s/o Ram Bhagat, Brahman, r/o Mastan Wali Gali, who is son of real aunt (massi) of Mahender, was called from Dadri and entire occurrence was disclosed to him (Sham Lal).” This statement was converted into FIR (Ex.PA).

Said statement was given at 1:00 – 1:30 AM, and special report was received at 6:30 on 03.05.2001 by the concerned Magistrate.

4. From the details of FIR, it is clear that complainant Ramesh and one Naresh s/o Chander Dutt, caste Brahman, were projected as named eye-witnesses in the FIR. Thereafter, postmortem examination was conducted at Govt. Hospital, Bhiwani on 03.05.2001, and to prove the proceedings of postmortem examination and cause of death, Dr. (Mrs.) Amrita Bhardwaj, appeared as PW-4 and deposed the injuries as under:-

“1. A stabbed wound present in left of supraclavicular region going downward medially towards right side, triangular in shape, length 2.2. cms breadth 1.2 cms and 8.2 inches in depth on probing. On dissection, injury to muscle and caroted artery and lung present. First rib of left side was injured. Blood was oozing out of wound. Skull and scalp were healthy. Brain was congested. Spinal cord not opened up. Chest wall was healthy, left first rib was injured and fracture present. Both ploural cavities filled with blood. Larynx and trachea were healthy. Right lung was healthy. Left lung upper part injured and upto the middle lobe. Heart, pericardium were healthy. Both chambers of heart were empty. Abdominal wall was healthy. Peritoneum was healthy. Mouth as described stomach

was healthy and contained undigested food material. Intestine was healthy and contained chymes. Large intestine was healthy and contained faecal matter. Liver was healthy and pale. Spleen was healthy and pale. Kidneys were healthy and pale. Bladder was healthy and empty. Organs of generation were healthy.

The cause of death in this case, in our opinion, was due to haemorrhage and shock as a result of injury no.1 on vital organ i.e. lung which was sufficient to cause death in ordinary course of life. Injuries were ante-mortem in nature. Probable time elapsed between injuries and death was within one hour and between death and post-mortem was within 24 hours.”

Said Doctor has deposed that injury No.1 was caused by the scissor (kenchi), and it was produced before him in a sealed parcel. After seeing the scissor opinion Ex.PF/1 was given.

5. Complainant Ramesh @ Bala, appeared as PW-6 and reiterated his version mentioned in the FIR. He refused to suggest that he is an introduced witness in order to convert the blind murder case into an eye-witness account case.

Similarly another eye-witness i.e. Naresh s/o Chander Dutt appeared as PW-7 and corroborated the statement made by the complainant.

6. In total, prosecution examined as many as 12 witnesses i.e. PW-1 Constable Satpal, PW-2 Devender (Photographer), PW-3 Constable Ram Dhari, PW-4 Dr. Amrita Bhardwaj, PW-5 Pankaj Sharma (car owner), PW-6 Ramesh (complainant), PW-7 Naresh (eye-witness), PW-8 Kanwar Pal (Draftsman), PW-9 Sub-Inspector Om Parkash, PW-10 HC Kartar Singh,

PW-11 Dr. RS Sangwan & PW-12 Inspector Ram Mehar, and placed on record the documents, which were exhibited.

7. Mr. Amandeep Singh, learned *Amicus Curiae*, made his first attempt to seek clean acquittal by making submissions that there are material discrepancies in the case of prosecution, such as injury suffered by the patient is shown as 8.2 inches in depth, whereas, recovered weapon of offence is the scissor (kenchi), whose blade's length is 4.5 inches and Pital (Brass) handle's length is 5.5 inches as per Khaka plan. Ld. *Amicus Curiae* further submits that recovery witnesses i.e. Satya Narayan and Parmanand have been given up by the prosecution, being unnecessary.

8. The arguments of non-production of the recovery witnesses (Satya Narayan and Parmanand) would not be material because deposition of PW-12, Inspector Ram Mehar would be sufficient in that regard. Appellant was arrested by him on 04.05.2001, and on his disclosure statement (Ex.PQ), a scissor was got recovered (Ex.P23). Thus, there is nothing available on record from the cross-examination done by the defence that in any manner recovery of the weapon of offence at the instance of the disclosure statement of the appellant, can be said to be doubtful.

9. As far as argument of 8 inches' depth of the injury is concerned, there is nothing asked from the Doctor during cross-examination by defence counsel, as to whether the said depth could be possible or not, if the injury is inflicted with the weapon seen and opined by him. Had there been any question in specific, there was a possibility of giving of an explanation on record by the concerned Doctor i.e. Dr. Amrita Bhardwaj (PW-4). This omission on the part of the defense in asking a pertinent question cannot extend any kind of benefit to his credit. Thus, this argument of the appellant fails.

10. It is further argued by Ld. *Amicus Curiae* that in the absence of any strong motive, it is unlikely that appellant would cause murder of anyone. Moreover, alleged motive of having tiff on account of non-payment of rent does not appear to be a sufficient reason of causing murder. So, it is unlikely that appellant would have caused murder of Mahender with the alleged fatal blow.

This argument also is not sufficient for convincing the conscious of this Court, because as per case of the prosecution both i.e. appellant and Mahender (deceased/victim) were sitting together since 7:00 PM, and were drinking liquor. The tiff/arguments in loud voice started around 11:00 – 11:30 PM. In all possibility by that time enough alcohol had been consumed. Thus, in the rush of blood, exchange of hot words started, resulting into suffering of injuries by victim at the hands of appellants. Thus, this argument is not appreciable.

11. Learned *Amicus Curiae* also pointed out some contradictions in the statements of both the eyewitnesses. Undoubtedly, there are some contradictions, but these cannot be stated to be major.

This Court, on examining the exhibited documents finds that alleged incident took place around 11:00 – 11:30 PM at 02.05.2001. Statement is recorded by SI/SHO Om Parkash on 03.05.2001 at Govt. Hospital, Bhiwani, at 1:30 AM i.e. within two hours of the incident. Thereafter, ruqa is sent to the police station and same is received at police station at 2:00 AM, and thereafter, special report is received by the concerned Magistrate at 6:10 AM on 03.05.2001. It shows that FIR is registered without any concoction and manipulation or padding. It is not possible for the prosecution agency to register the first version from the mouth of the eye-witness of the incident mentioning therein the names of both the eye-

witnesses. The receiving of special report has been proved by sole witness Satpal (PW-1), who delivered FIR (Ex.PA) to the Illaqa Magistrate and proves the receiving by the Magistrate. From the cross-examination nothing material has been taken out for the benefit of the appellant. Thus registration of prompt FIR is another factor reflecting the truthfulness of the case of the prosecution.

12. Considering all the aspects and incident arising out of a tiff over a petty issue without there being any prior motive, already Ld. Trial Court has converted the offence to that of Section 304 Part-I of IPC from Section 302 of IPC.

13. At last, Ld. *Amicus Curiae* points out that offence can be converted to Section 304 Part-II of IPC from Section 304 Part-I, therefore, to that extent, judgment of conviction requires some modification.

14. For strengthening the said argument, Ld. *Amicus Curiae* has cited some judgments of the Hon'ble Supreme Court such as **Partap Singh @ Pikki vs. State of Uttarakhand**, 2019(3) RCR(Cr.) 716. From the said judgment Ld. *Amicus Curiae* submits that deceased victim had suffered total 11 injuries and the appellant therein was convicted for Section 304 Part-II/34 IPC apart the other offences. By considering the aspect that on making of some comments, some altercation took place and the groups entered into scuffle without any pre-meditation, for the offences under Section 304 Part-II/34 IPC, accused was sentenced for the period already undergone after his total custody about 3 years & 5 months.

“27. We do find substance in what being submitted by the learned counsel for the appellant and in the first place, it is to be noted that the trial Court, while awarding sentence to the appellant has not made any analysis of the relevant facts as can

be discerned from the judgment (page 9697 of the paper book) dated 12th January, 1998. Even the High Court has not considered the issue of quantum of sentence. From the factual position which emerge from the record, it is to be noticed that they were young boys having no previous enmity and were collectively sitting and watching Jagjit Singh night. On some comments made to the girls sitting in front of the deceased, some altercation took place and they entered into a scuffle and without any premeditation, the alleged unfortunate incident took place between two group of young boys and it is informed to this Court that appellant has served the sentence of more than three years and five months. Taking into consideration in totality that the incident is of June 1995 and no other criminal antecedents has been brought to our notice, and taking overall view of the matter, we find force in the submission of the appellant that the quantum of sentence is excessive and deserves to be interfered by this Court.

28. Considering the overall facts of the case in totality with the nature of crime, the tender age of the appellant at the time of offence, subsequent conduct and other ancillary circumstances, including that no untoward incident has been reported against him and the mitigating circumstances, it is appropriate that in the obtaining factual score, the sentence of rigorous imprisonment be altered to the period already undergone for offence under Section 304 Part II/34 IPC, to meet the ends of justice.”

In Laxhmi Chand and another vs. State of Uttar Pradesh, 2018(5) RCR (CrI.) 523. In the said appeal, one of the appellant was convicted for offence under Section 304 Part-II read with Section 34 of IPC, and sentenced for a period of eight years, and fine with a default stipulation. For the injury attributed to the said appellant, conviction was maintained under Section 304 Part-II IPC, and by considering the happening of occurrence at the spur of moment and injury not being on vital part, sentence of appellant No.2 was reduced to the period of two years.

“9. The deceased is stated to have succumbed to the injury on the thigh leading to the cut of the femoral artery. The injury is attributable to appellant no. 2. The absence of any common intention makes him individually answerable. His conviction under Section 304 Part II IPC therefore calls for no interference. But considering that the occurrence took place at the spur of the moment, the assault was not made on a vital part of the body, that the assailant ran away upon being challenged, the genesis of the assault lay in a dispute between neighbours with regard to strayed cattle, and that the occurrence had taken place long ago in 1980, we are satisfied to reduce the sentence of appellant no. 2 to a period of two years relying on Maqsood (supra).”

Further in Deepak vs. State of Uttar Pradesh (Now Uttarakhand), 2018(3) RCR(CrI.) 953, wherein, for causing of single sword blow in the rib cage, Ld. Trial Court had convicted the assailants under Section 302 IPC, which was maintained by the Hon’ble High Court of Uttar Pradesh also. However, considering the fact that occurrence took place in the

heat of moment, and assault being without pre-meditation at the spur of moment, the Court considered that said act is not sufficient to infer an intention to kill. Because genesis of occurrence and the single assault by the appellant and duration of entire episode were the factors to adjust the intention and thereafter, the offence was converted from Section 302 IPC to 304 Part II IPC, and the appellant in said appeal was ordered to be released for the sentence period already undergone, and was ordered for immediate release, if not required in any other case.

“7. On consideration of the entirety of the evidence, it can safely be concluded that the occurrence took place in the heat of the moment and the assault was made without pre-meditation at the spur of time. The fact that the Appellant may have rushed to his house across the road and returned with a sword, is not sufficient to infer an intention to kill, both because of the genesis of the occurrence and the single assault by the Appellant, coupled with the duration of the entire episode for 1½ to 2 minutes. Had there been any intention to do away with the life of the deceased, nothing prevented the Appellant from making a second assault to ensure his death, rather than to have run away. The intention appears more to have been to teach a lesson by the venting of ire by an irked neighbour, due to loud playing of the tape recorder. But in the nature of weapon used, the assault made in the rib cage area, knowledge that death was likely to ensue will have to be attributed to the Appellant.

8. In the entirety of the evidence, the facts and circumstances of the case, we are unable to sustain the conviction of the Appellant under Section 302 I.P.C. and are satisfied that it

deserves to be altered to Section 304 Part-II I.P.C. It is ordered accordingly. Considering the period of custody undergone after his conviction, we alter the sentence to the period of custody already undergone. The Appellant may be released forthwith if not required in any other case.

9. The appeal is therefore allowed in part with the aforesaid modification of the conviction and sentence.”

15. Learned State counsel has produced a custody certificate dated 14.11.2022, showing that appellant has actually undergone a total period of sentence of 03 years, 02 months and 21 days, and including of remission 03 years, 07 months and 27 days. It is also mentioned there that after releasing on bail, appellant is not involved in any other criminal case. Said custody certificate is taken on record, subject to all just exceptions. Office to tag the same at appropriate place in case file.

16. Now, this Court is left only with an argument that can the offence under Section 304 Part-I be converted into offence under Section 304 Part-II ?

After going through the judgments cited by Ld. *Amicus Curiae*, this Court finds that the occurrence had taken place on the spur of moment, in the rush of blood, after starting of arguments on small tiff, and appellant was not already armed with any weapon, and the scissor is a professional instrument for a tailor, it can be safely concluded that there was no intention in the mind of appellant to cause murder till both of them started arguing on the issue at about 11:00 – 11:30 PM.

17. It is also not a matter of dispute that appellant has not repeated the blow and after giving first blow and on seeing the oozing of blood, he left

the place along with weapon and ran away. Had there been any deep rooted intention, even to cause a dangerous injury, with per-meditated mind, he would have been armed in advance and repeated the blow of injuries with scissor itself.

18. In view of the judgments cited by Ld. *Amicus Curiae*, and deeply noticed by this Court, and also the factors observed by this Court, the appeal is partially allowed by converting the offence from Section 304 Part-I of IPC to Section 304 Part-II of IPC. As already noticed from the custody certificate that appellant has undergone total actual period of 03 years, 02 months and 21 days, and including remission 03 years, 07 months and 27 days. This Court considers that appellant must realize his illegal act once again, which resulted in taking away of a human life, and thus, it would be appropriate to change the sentence from 10 years to 05 years.

Thus, appellant is ordered to undergo the total sentence period of 05 years as rigorous imprisonment. Appellant is directed to surrender before the concerned Jail Authorities forthwith, for undergoing his remaining part of sentence, or else prosecution agency would be free to take the appellant in custody.

Remaining part of sentence i.e. payment of fine etc. shall remain as such, as passed by the trial Court.

Appeal stands disposed of with partial modification.

(SANJAY VASHISTH)
JUDGE

November 23, 2022

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No