

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

Sr. No.533

CRA-D-1057-DB-2010 (O&M)

Reserved on : 29.02.2024

Pronounced on: 22.03.2024

Harey Ram

..... Appellant

VERSUS

State of Punjab

..... Respondent

**CORAM: HON’BLE MR. JUSTICE ANUPINDER SINGH GREWAL  
HON’BLE MS. JUSTICE KIRTI SINGH**

Present: Mr. Suram Singh Rana, Advocate and  
Mr. Arvind Kumar Sharma, Advocate, for the appellant.

Mr. Aftab Singh Khara, Sr. DAG, Punjab.

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**KIRTI SINGH, J.**

The instant appeal is directed against the judgment of conviction dated 29.10.2009 passed by the learned Sessions Judge, Ludhiana whereby the appellant was convicted for commission of offence under Section 302 IPC in FIR No.63 dated 17.04.2006 registered at Police Station Division No.7, Ludhiana and vide order dated 29.10.2009 he was sentenced to undergo imprisonment for life and to pay fine of Rs.2000/-, in default of payment of fine to further undergo RI for six months.

Factual matrix

2. The genesis of the prosecution is embodied in the FIR to which Ex.PD/2 is assigned. It is recorded therein that the present case was registered on the basis of the statement given by the complainant Ramji Rai (brother of deceased) before the police on 17.04.2006 to the

effect that he alongwith his younger brother Vajra Rai were present in the dairy of Kuku No.48, Tajpur Road, Ludhiana and on reaching the dairy No.48-A they saw his brother Vajra Rai having an altercation with the appellant Harey Ram. The complainant Ramji Rai and Raju Kumar tried to pacify the appellant. However, he did not relent and gave a brick blow on the forehead of Vajra Rai and on an alarm being raised by them, the appellant ran away from the spot after throwing the brick. Blood was percolating from the forehead of Vajra Rai, brother of the complainant, who succumbed to the injuries received at the hands of the accused at the spot itself. The motive behind the occurrence was that both the deceased and accused were working in one dairy and they developed some dispute over nature of work to be done by them.

### Investigation

3. The abovementioned statement Ex.PD of Ramji Rai was recorded by Balbir Singh, SHO, Police Station Division No.7, Ludhiana near police post Tajpur Road which was read over and explained to the complainant, who thumb marked the same after admitting the genuineness and correctness thereof and Balbir Singh Sub Inspector put his endorsement Ex.PD/1 thereon and sent the same to police station Division No.7, Ludhiana through Head Constable Devinder Singh where a formal FIR Ex.PD/2 was registered by Balwinder Singh ASI. Thereafter, Balbir Singh SI alongwith the complainant and police party reached the place of occurrence, inspected the spot, prepared inquest report Ex-PC on the corpse of Vajra Rai and also recorded the statement of Raj Kumar and Raju Kumar under Section 175 Cr.P.C.

4. From the place of occurrence Balbir Singh Sub Inspector seized blood stained earth, blood stained plastic bag and one blood stained brick which were converted into separate parcels and these parcels were sealed by Balbir Singh Sub Inspector with his seal bearing impression BS and seized vide memo Ex.PH. He wrote an application Ex.PB and sent the corpse of Vajra Rai for autopsy to the mortuary through Gurnam Singh Head Constable and Bhupinder Singh Constable. He also prepared the site plan of the place of occurrence Ex.PL and arrested the accused vide memo Ex.PM and also prepared personal search memo Ex.PN and intimation of arrest of accused memo Ex.PQ. Accused was wearing blood stained vest, blood stained pair of shoes which were seized vide memo Ex.PG, after converting these into separate parcels, which was sealed by Balbir Singh SI with his seal bearing impression BS. Thereafter, he alongwith accused and case property reached Police Station Division No.7, Ludhiana where Gurnam Singh Head Constable produced before him the clothes of the corpse of Vajra Rai which were converted into a parcel and that parcel was sealed by him with his seal bearing impression BS and seized that parcel vide memo Ex.PR and on return to the police station, he deposited the case property with seals intact with Baldev Singh MHC. He also took photographs of the place of occurrence and those photographs and negatives Ex.P4 to Ex.P11 were seized vide memo Ex.PS.

5. After completion of investigation by the investigating officer and all other formalities, the final report under Section 173 Cr.P.C. was

instituted against the accused for offence punishable under Section 302 IPC.

6. On presentation of police report, copies of documents as required under Section 207 Cr.P.C. were furnished to the accused and the case was committed to the Court of Sessions for trial. On 11.09.2006 the charge under Section 302 of IPC was framed against the accused whereto he pleaded not guilty and claimed trial.

#### Trial Proceedings

7. The prosecution examined as many as 09 witnesses and subsequently, the Public Prosecutor closed the prosecution evidence. After closure of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. and all incriminating evidence was put to him to which he pleaded innocence and claimed false implication. However, he did not lead any evidence in his defence.

8. The learned Sessions Judge after examining the entire evidence led by prosecution held the appellant guilty of an offence punishable under Section 302 IPC.

9. The appellant filed an appeal against the order of conviction under Section 302 IPC which was admitted vide order dated 20.12.2010.

#### Submissions by learned counsel for the parties

10. At the very outset, the learned counsel for the appellant submits that he is not challenging the conviction *per se* but confining the prayer in the appeal to reduce the conviction under Section 302 IPC to 304 Part-I or II IPC. He further submits that the appellant has already undergone an actual sentence of 16 years, 07 months and 25 days and is

not involved in any other criminal case. There is nothing adverse against the conduct of the appellant. The incident took place way-back in the year 2006 and the appellant has been facing the protracted trial ever since then. In support of this submission, he had relied upon the judgments of the Supreme Court in **Gurmukh Singh Vs. State of Haryana 2009 (15) SCC 635** and **Buddu Khan Vs. State of Uttarakhand 2009 SCC Online SC 118**.

11. Learned State counsel however, submits that in view of the serious allegations against the appellant, causing injuries on the head of the deceased, he is not entitled to any concession including any conversion from Section 302 to 304 Part-I IPC and order of sentence passed by the trial Court would not call for any interference.

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

#### Medical evidence

##### Statement of PW1, Dr. G.P. Mangla

13. Dr. G.P. Mangla conducted the postmortem and examination of body of Vajra Rai on 17.04.2006 at 4:00 p.m. He noticed following injuries on the person of the deceased:

(1) Lacerated wound 2.1/2x 1/4" x bone deep on the right eye brow. Underneath bone was fractured.

(2) Lacerated wound 1.1/2x 1/3" bone deep on the right side of forehead, half inch above injury No.1. Underneath bone was fractured.

(3) Lacerated wound 1.1/4x 1/3" x muscle deep in the middle of forehead.

- (4)     Abraded contusion with swelling 3”x2” on left cheek in front of left ear.
- (5)     Abrasion 3/4" x 1/2" on the left side of forehead, just above the left eye brow.
- (6)     Two lacerated wounds 2” x 1/3” x bone deep on the left side of the occipital region half inch apart from each other underneath the injuries, bone was fractured.
- (7)     2 lacerated wounds 2.1 /2” x 1/4” x bone deep on the right side of occipital region half inch apart from each other underneath the injuries bone was fractured.

14.           The cause of death in his opinion was due to haemorrhage and shock as a result of multiple injuries which were sufficient to cause death in the ordinary course. All the injuries were ante-mortem in nature.

15.    FSL Report

|                      |                                                                                                                                         |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| Report No.           | 282/2006/FSL/Pb/Bio./Exam, dt. 16 5 06                                                                                                  |
| Forwarding authority | The Sr. Superintendent of Police, Ludhiana                                                                                              |
| Reference No.        | 30034/AC-3 dated 24.4.2006                                                                                                              |
| Case Reference       | Case FIR No. 63 dated 17.4.2006 U/s 302 IPC, P.S.Div. No. 7, Ludhiana. 25.4.2006                                                        |
| Date of receipt      | 25.04.2006                                                                                                                              |
| Mode of receipt      | Through C.Bhupinder Singh No.1669                                                                                                       |
| Articles received    | Six sealed parcels which were marked A,B,C,D,E and F in the laboratory. The seals were found intact and tallied with the specimen seal. |
| Parcel ‘A’ contained | Soil alleged to be stained with blood.                                                                                                  |
| Parcel ‘B’ contained | Bori Plastic alleged to be stained with blood                                                                                           |
| Parcel ‘C’ contained | Brick alleged to be stained with blood.                                                                                                 |
| Parcel ‘D’ contained | Banian alleged to be stained with blood.                                                                                                |
| Parcel ‘E’ contained | Shoes alleged to be stained with blood.                                                                                                 |
| Parcel ‘F’ contained | The following exhibits alleged to be stained with blood:-<br><br>(i) kameez marked F-1 in the laboratory                                |

|  |                                          |
|--|------------------------------------------|
|  | (ii) nikker marked F-2 in the laboratory |
|--|------------------------------------------|

16. As per the FSL report, the exhibits contained in parcels A, B, C, D, E and F were found to be stained with human blood of group ‘A’.

Statement of relevant witnesses

Statement of PW4, Avtar Singh

17. “PW4 Avtar Singh, HC, testified that on 17.4.2006 at about 12.30 p.m, when he was posted as MHC in Police Post Tajpur, Harey Ram accused now present in the dock came to him, confessed before him about the murder of his companion Vajra Rai by causing injuries to him with brick and at that time, he was wearing a knicker and shirt of turquoise colour; he was also wearing plastic shoes of black colour; there were blood stains on his vest and shoes and he made him to sit by his side, thereafter, he inquired about his name and address and brought these facts to the notice of Balbir Singh SHO, who directed him to keep him (accused) sitting by his side and in his presence, Balbir Singh SHO, on the same day, took shoes and vest of accused into his possession by turning the same into two different parcels, sealed with his own seal bearing impression BS, vide memo Ex.PG attested by him and Rajinder Kumar, HC. He also testified that his statement was recorded by the Investigating Officer.”

Statement of PW-5, Ramji Rai

18. “PW5, Ramji Rai testified that Vajra Rai, his brother was working on the dairy of Kuku. On 17.4.2006, at about 10:00

a.m, he went to meet his brother Vajra Rai, Raju met him on by-pass, who has been working in some other dairy; he along with Raju went to the dairy of Kuku where he saw the accused now present in the dock quarrelling with his brother Vajra Rai. He along with Raju dissuaded the accused, but he did not relent and gave brick blows on the forehead of Vajra Rai and his brother fell down on the ground and accused gave 2-3 more brick blows on his head and when he along with Raju raised alarm, then accused ran away from the spot by leaving the brick at the scene of crime. PW5 also identified the brick Ex.P1. PW5 examined in this case is not alleged to have any animosity or hostility against the accused prior to the occurrence which would impel him to testify falsely against the accused. PW1 Dr. G.P. Mangla categorically testified that the injuries on the corpse of Vajra Rai could be possible with the brick blows. So in this manner, this medical evidence of PW1 to the effect that these injuries were caused with brick stands corroborated with the testimony of PW5 who also in candid words testified that brick blows were given by the accused upon forehead of his brother in his presence.”

19. The Hon’ble Supreme Court in case of **Sudhakar Vs. State of Maharashtra (2012) 9 SCC 725** held that in a spur of moment, quarrel between the father and the son took place and father took out a knife and inflicted stab injury, thus, in such circumstances, the sentence was converted from Section 302 IPC to Section 304 Part I IPC. The relevant extract of the judgment is reproduced as below:-

“Going by the narration of the facts disclosed, there was nothing to suggest that there was any premeditation in the mind of the appellant to cause the death of the deceased. Taking into account the statement of P.W.1 that the deceased was under the influence of liquor and that whenever he was under the influence of liquor he used to throw the household articles and create a ruckus in the house was a factor which created a heat of passion in the appellant who as a father was not in a position to tolerate the behaviour of his son whose misbehaviour under the influence of liquor was the torment. Therefore, unmindful of the consequences, though not in a cruel manner the appellant inflicted a single blow which unfortunately caused severe damage to the vital organs resulting into the death of the deceased. In such circumstances, as rightly contended by learned counsel for the appellant, we are convinced that the offence alleged and as found proved against the appellant can be brought under the First Part of Section [304](#) of Indian Penal Code. Accordingly, while affirming the conviction of the appellant, we are only altering the same as falling under Section [304](#) Part I of Indian Penal Code in place of Section [302](#) of Indian Penal Code. As far as the sentence imposed on the appellant in as much as we reached at the conclusion that the conviction should fall under Section [304](#) Part I of Indian Penal Code, taking note of the sentence already undergone, we find from the Imprisonment Certificate that the appellant is in jail from 12.07.2004 and he is 60 year old, P.W.1, who is the wife of the appellant, is left all alone and the appellant having suffered imprisonment for more than eight years, we hold that the sentence already undergone would be sufficient punishment apart from the fine imposed with the default sentence as per the judgment of the Trial Court and as affirmed by the High Court. The appeal stands partly allowed with the above modifications of the charge and the sentence imposed on the appellant.”

20. The Hon’ble Supreme Court in **Sanjeev Vs. State of Haryana 2015 (4) SCC 387** held that if there was no premeditation and the offence is committed by the accused in the spur of moment, it will be covered by Exception 4 to Section 300 IPC i.e. culpable homicide not amounting to murder, as such the same is punishable under Section 304 Part-I, IPC. The relevant extract of the judgment is reproduced as under:-

“16. In the present case, from the evidence of PW-12 Om Prakash, it reflects that while making extra judicial confession, the appellant narrated that after both he and Raj Pal got drunk, they engaged into an altercation whereafter scuffle took place, and the appellant caused injuries on the forehead and chest of the deceased. This fact gets corroborated from the statement of PW-13, Dr. C.P. Arora, who recorded wound measuring 22 x 02 x 2 to .5 cm in the medical report soon after the time of the incident, on the person of the appellant.

17. Exception 4 to Section [300](#) I.P.C. provides that culpable homicide is not murder if it is committed without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Explanation to Exception 4 to the Section further provides that it is immaterial in such cases which party offers provocation or commits the first assault.

18. In our opinion, when the prosecution evidence relating to extra judicial confession made before PW-12, Om Prakash, is believed by the courts below to examine as to whether act committed by the accused constitutes culpable homicide amounting to murder or not, they should have read the statement as a whole, and the circumstances, in which the injuries were caused by the appellant to the deceased, should not have been ignored. Having gone through the evidence on record and considering the submissions of the learned counsel for the parties, we are of the view that the act committed by the appellant in the present case is covered by Exception 4 to Section [300](#) I.P.C., i.e., culpable homicide not amounting to murder, as such the same is, punishable under Section 304 Part I, IPC.”

#### Analysis and conclusion

21. This Court is conscious of the fact that the incident occurred in the year 2006 when a sudden fight took place between the accused and deceased, there was no premeditation and the offence was committed in the spur of the moment. The appellant was unarmed and the injury was caused by a brick blow. This Court is of the view that conviction of the appellant would not fall under Section 302 IPC but fall under Section 304 Part-I IPC.

We would now consider as to what would be the appropriate sentence for the appellant. The appellant has been facing protracted criminal proceedings for about 14 years, not granted the benefit of suspension of sentence and has undergone an actual sentence of over 16 years. There is nothing to indicate that he is involved in any other criminal case and after the incident, there is nothing adverse against his conduct. The ends of justice would meet, if the sentence of the appellant would be reduced to the period already undergone by him.

22.           Consequently, the appeal is partly allowed. We direct that the sentence of 16 years undergone by the appellant would be adequate for the offence under Part-I of Section 304 IPC. The impugned judgment/order of sentence dated 29.10.2009 is modified and the sentence is reduced to the period already undergone by him subject to payment of fine, if not deposited. Accused be released forthwith, if not required in any other case.
23.           Pending miscellaneous application(s), if any, also stands disposed of.

|                                      |                                                 |
|--------------------------------------|-------------------------------------------------|
| <b>(KIRTI SINGH)</b><br><b>JUDGE</b> | <b>(ANUPINDER SINGH GREWAL)</b><br><b>JUDGE</b> |
| <b>22.03.2024</b>                    |                                                 |
| Ramandeep Singh                      |                                                 |
| Whether speaking / reasoned          | Yes                                             |
| Whether Reportable                   | Yes                                             |