

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

312

CRA-D-182-DB-2003

DATE OF DECISION: 23.01.2024

RAM NIWAS AND ANR.

... Appellant (s)

Versus

STATE OF HARYANA

... Respondent(s)

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

Present: Mr. Deepender Singh, Advocate for the appellants.

Mr. Anant Kataria, DAG, Haryana.

ANUPINDER SINGH GREWAL, J. (ORAL)

This appeal is directed against the judgment and order of sentence dated 14/15.01.2003 passed by the Sessions Judge, Hisar, whereby the appellants have been convicted under Section 302/34 IPC and sentenced to undergo life imprisonment, besides to pay fine of Rs.2000/- each. In default of payment of fine, to further undergo rigorous imprisonment for a period of three months.

2. Learned counsel for the appellants submits that he is not challenging the conviction *per se* but confining the prayer in the appeal to reduce the conviction under Section 302/34 IPC to 304/34 Part-I or Part-II IPC. The appellants are attributed a single blow each on the person of the

deceased. The appellant No.1 was armed with a pipe while appellant No.2 was unarmed. The appellants have already undergone an actual sentence of over 5 years and they are not involved in any other criminal case. The sentence of the appellants had been suspended in the year 2006 and there is nothing adverse against their conduct thereafter. The incident had taken place in the year 2001 and the appellants have been facing trial and proceedings ever since then. In support of this submissions, he has relied upon the judgments of the Supreme Court in the cases of **Camilo Vaz Vs. State of Goa, 2000 (2) RCR (Criminal) 607** and **Afrahim Sheikh and others Vs. State of W.B., 1964 AIR (Supreme Court) 1263** and **Sarathi Banichor Vs. State of Orissa, SLP (CRL.) No.3961 of 2023, decided on 30.10.2023.**

3. Learned State counsel, however, submits that in view of the serious allegations against the appellants of causing injuries on the head of the deceased, they are not entitled to any concession including conversion from Section 302/34 IPC to 304/34 Part-I IPC and the judgment/order of sentence passed by the trial Court would not call for any interference.

4. Heard.

5. The case of the prosecution is that on 02.01.2001, the complainant-Ram Kishan had made a statement to the police officials, who were present at Mirjapur Chowk, Hisar that he has three sons who are labourers and on that day at about 04:00 p.m., after they had taken tea, his son Udey Bhan had gone to Bani (area outside the village) to ease himself and after some time, when he and his son- Bhana Ram were going towards the brick kiln, they saw Udey Bhan on the culvert near the road. They had also seen Ram Niwas (Appellant No.1) and Phul Kumar (Appellant No.2) coming

from the side of the fields. Ram Niwas inflicted a pipe blow on the back side of the head of Udey Bhan and he fell down. Thereafter, Phul Kumar lifted a Jhama (cluster of bricks) and threw it on his head. The complainant along with his son -Bhana Ram ran towards the place of occurrence but both the accused managed to escape from the spot. He and his son-Bhana Ram had tried to help Udey Bhan but he succumbed to the injuries. There was deep wound on his head with lots of bleeding. After the occurrence, the other villagers including Dharamvir and Chhabila had arrived at the spot and they proceeded to the police station and met the police officials at the Mirjapur Chowk.

6. The prosecution examined 13 prosecution witnesses including the complainant (Ram Niwas) and other eye-witnesses. PW-9, the doctor, who had conducted the post-mortem report found following injuries on the body of the deceased:

1. Lacerated wound 15 cm. x 5 cm. x brain deep over the left parieto occipital area. Brain matter was coming out of the wound and was badly lacerated. On further dissection, blood clot approximately 100 ml. was present in the sub dural and extra dural space. Brain matter was badly mutilated. There was a compound fracture of left parieto occipital bones.
2. Lacerated wound approximately 2 cm. x 2 cm. x bone deep over the left frontal area, just above the left eye brow. Blood and blood clot were present in the wound.

7. The cause of death, in the opinion of the doctor, was due to concussion as a result of head injuries as described above which were ante-mortem in nature and were sufficient to cause death in the ordinary course of nature.

8. It is evident that the both the appellants had given a solitary injury on the person of the deceased. Ram Niwas (A-1) is stated to have given

a blow on the backside of the head of the deceased with an iron pipe. The pipe is stated to be 2' in length and 1" in diameter. The motive is attributed to Ram Niwas as 2½ years prior to the occurrence, they had some dispute over the 'chaupal' and Ram Niwas was nursing a grudge on that account. However, there has been no material which had been produced on record by the prosecution to indicate that there indeed was a dispute or previous enmity between the two sides. It appears to be a sudden fight without any premeditation especially when the appellant No.2 was unarmed. The appellant No.2 is stated to have come to the spot empty handed but he had picked up the 'jhama' from the spot and hurled it on the deceased. The eyewitnesses are stated to be at the distance of 1 acre from the place of the occurrence which took place at 04:00 p.m. on 02.01.2001. The visibility in the month of January is often quite low due to foggy conditions in the region. The appellant No.1 had given a solitary blow with an iron pipe while appellant No.2 who was unarmed had hurled 'jhama' on the deceased. There is no other injury on the person of the deceased. We, therefore, find merit in the contention of the learned counsel for the appellants that the case would not fall under Section 302 IPC but would fall under Section 304 Part-I IPC. It would, in the facts and circumstances, fall under exception 4 of 300 IPC and would be culpable homicide not amounting to murder i.e. 304 IPC. Reference can be made to the judgment of the Supreme Court in the case of **Camilo Vaz Vs. State of Goa** (supra) wherein the deceased was beaten up with a stick which was of 2" in thickness and 4' in length. There were 11 injuries on the person of the deceased which included a fracture of skull bone and nasal bone. The Supreme Court had converted the sentence from Section 302 IPC to 304

Part-II IPC keeping in view the nature of the weapon which was used. We may also refer to the judgment of the Supreme Court in the case of **Sarathi Banichor Vs. State of Orissa** (supra) wherein a single blow had been given by the appellant who had already undergone an actual sentence of over 6 years and the sentence was converted from 302 IPC to 304 Part-I IPC besides payment of fine of Rs.5,000/-, in default of payment of fine, to further undergo simple imprisonment for one month.

9. In view of the above, we have no hesitation that conviction of the appellants would not fall under Section 302 IPC but would fall under Section 304 Part-I IPC.

10. We would now consider as to what would be the appropriate sentence for the appellants. It is important to note that incident had taken place more than 2 decades ago in the year 2001. The appellants had been facing protracted criminal proceedings for about 22 years. They had been granted the benefit of suspension of their sentence in the year 2006 when they had undergone a sentence of over 05 years. There is nothing to indicate that they are involved in any other criminal case and after the incident, there is nothing adverse against their conduct. The ends of justice would meet, if the sentence of the appellants would be reduced to the period already undergone by them.

11. Consequently, the appeal is partly allowed. We direct that the sentence of 05 years undergone by the appellants would be adequate for the offence under Part-I of Section 304 IPC. The impugned judgment/order of sentence dated 14/15.01.2003 is modified and the sentence already undergone by them is reduced to the period already undergone by them.

12. Pending application(s), if any, also stands disposed of.

(ANUPINDER SINGH GREWAL)
JUDGE

(KIRTI SINGH)
JUDGE

23.01.2024
SwarnjitS

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