



102 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1969-SB-2003(O&M)
Reserved On: 20.05.2024
Pronounced On: 29.05.2024

Raju GurangAppellant

Versus

State (U.T. Chandigarh) ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Tanu Bedi, Advocate and
Ms. Divya Sood, Advocate
for the appellant

Mr. P.S. Paul, Addl. Public Prosecutor, U.T. Chandigarh.

HARPREET SINGH BRAR, J.

1. This instant appeal has been preferred by the appellant-accused against the judgment of conviction dated 05.08.2003 and order of sentence dated 07.08.2003 passed by learned Additional Sessions Judge, Chandigarh in Sessions Case No.11 of 29.08.2001 arising out of FIR No.73 dated 13.04.2001 registered under Section 304 of IPC at Police Station- Sector-19, Chandigarh, whereby, the appellant was sentenced as under: -

Under Section	Sentence
304 Part II of IPC	<i>R.I for 5 years along with a fine of Rs.1,000/- and in case of default on fine, R.I for 6 months.</i>

FACTUAL MATRIX

2. Succinctly, the facts are that on 13.04.2001, the appellant and the complainant- Sitla Parshad went to the stall (*phari*) of deceased Vijay Kumar to purchase cigarettes (*beedi*) and a pouch of tobacco. The appellant bought a pouch of tobacco for which the deceased demanded Rs.1 as sale price but the



appellant told him that he did not have any loose currency, upon which, the deceased became angry and demanded his tobacco pouch back. This angered the appellant and he caught hold of the deceased by his collar and started giving fist blows on his mouth, head and abdomen and also kicked the deceased in his abdomen. Due to the said beatings, the deceased fell down on the ground and blood started oozing out of his mouth and nose and he became unconscious. Thereafter, Vijay Kumar was taken to Sector-16, General Hospital, Chandigarh, where he was medico-legally examined and referred to PGI, Chandigarh given his serious condition. Before Vijay Kumar could be declared fit by the concerned Medical Officer, he passed away on 15.04.2001 and his post mortem was conducted on 16.04.2001. The Medical Officer who conducted his post mortem examination opined that the cause of death was mainly head injury and that the injuries were ante-mortem and were sufficient to cause death in ordinary course of nature. Thereupon, after following due procedure, the concerned police filed the final report under Section 173 Cr.P.C. against the appellant for commission of offence punishable under 304 IPC.

3. The learned trial Court upon finding a prima-facie case, framed charges against the appellant for commission of offence punishable under Section 304 of IPC, to which he pleaded not guilty and claimed trial. On assessing the evidence available on record, the learned trial Court vide the impugned judgment dated 05.08.2003 and order of sentence dated 07.08.2003 convicted and sentenced the appellant-accused under Sections 304 as mentioned above.

4. However, the remaining portion of the sentence awarded to the appellant in the present case, after he had already undergone a custody of 2



years and 10 months out of the maximum sentence of 5 years, was suspended by this Court vide order dated 26.02.2004.

CONTENTIONS

5. Learned counsel for the appellant-accused has vociferously contended that upon a careful perusal of the facts of the case and the evidence of the prosecution witnesses, it becomes absolutely clear that the appellant was wrongly charged and convicted for offence under Section 304, whereas, the facts attracted a charge under Section 323 of IPC at most, since the alleged act was not done with knowledge that it would likely cause death. She further contended that the entire case of the prosecution was based on the testimonies of PW4 and PW10 but the evidence of PW4 cannot be relied upon as he was a chance witness and a relative of the deceased whose presence has been denied by PW10 Sitla Parshad at the spot of occurrence. It is further contended that even evidence of PW10, statement made by the appellant under Section 313 Cr.P.C. and the evidence of DW1 are all in unison that there was a heated exchange of words between the appellant and the deceased followed by grappling which shows that there was no pre-planned motive or intention to cause death. Also, it is an admitted case of the prosecution that no weapon was used in the alleged occurrence. She also submitted that PW9 being the doctor who conducted the post mortem examination of the deceased, categorically stated in his cross-examination that all four injuries received by the deceased were possible from falling on a hard surface faceward. Even PW10, who is the complainant, also deposed that both deceased as well as the appellant fell down and head of the deceased hit a stone lying on the ground and thus it cannot be implied that the appellant had the knowledge that mere fist blows would cause injuries leading to his death.



6. Learned counsel for the appellant further prays for a lenient view of this Court since the appellant has already undergone about 2 years and 10 months out of the total sentence of 5 years awarded to him in the present case and given the fact that he was poor domestic servant and only 18 years old at the time of the alleged occurrence.

7. Learned State contends that there is ample evidence on record to prove that the appellant had given fist blows to the mouth, head and abdomen of the deceased and also kicked him in his abdomen due to which he suffered fatal injuries and therefore, no interference is warranted by this Court.

OBSERVATIONS AND ANALYSIS

8. I have heard learned counsel for the parties and perused the paper-book with their able assistance. The learned trial Court has recorded in its finding that there was no motive or intention on the part of the appellant to cause death but had the knowledge that such bodily injuries would likely cause death. Hence, before proceeding further, it is pertinent to reproduce the bare provisions, which are as follows: -

Section 304 IPC: Punishment for culpable homicide not amounting to murder.

Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but



without any intention to cause death, or to cause such bodily injury as is likely to cause death.

9. Even if the prosecution version that the appellant gave fist blows to the deceased and even kicked him in his abdomen, is taken at its face value, still it cannot be held that the appellant had the knowledge that merely giving fist blows would lead to the death of Vijay Kumar. It transpires that the doctor who conducted post-mortem examination of the deceased was examined as PW9 and in his cross-examination, he stated that all four injuries sustained by the deceased were possible due to a fall on a hard surface faceward. Further, the Investigating Officer examined as PW11 has stated in his cross-examination that it was quite possible that the spot of occurrence had pieces of concrete slabs, bricks and stones. Even the complainant examined as PW10 by the prosecution, who was present at the place of occurrence, also deposed on the same lines that both the appellant as well as the deceased fell and the head of the deceased hit a stone that was lying on the ground. It has also come to the fore that prosecution examined four doctors but none of them were asked to explain whether the injuries on the deceased were possible by fist and kick blows. Furthermore, the medical evidence on record shows that there was no fracture on any part of the body of the deceased. It is also an admitted case of the prosecution that no weapon was used by the appellant during the incident. In the case of **Marcelino Fernandes and others vs. State, 1971 Cri LJ 598**, where similar facts and circumstances were involved, the conviction under Section 304 part II of IPC was set aside and the accused were convicted under Section 323 of IPC and the following observations were made:

“13. Merely because it is established that the appellants injured the deceased and due to the injuries received by the



deceased at the scene of the offence the deceased died within three hours of his receiving the injuries, it cannot be said that the appellants committed the offence punishable under Section 304, Part II read with Section 34, I.P.C. The Medical Officer, P.W. 10, who conducted the autopsy on the corpse of Venkatesh Shet Raikar found the following injuries on that cropse:— (1) Edema of upper lip and haematoma on the left zygomatic region (2) Haematoma under the scalp of left side of frontal region; (3) Fractures on the base of the skull and of the left side of the ethemoide bone; and (4) Congestion of the brain and its meninges. P.W. 10 opined that the deceased had died due to traumatic shock due to head injuries. The head injuries found by P.W. 10 in post-mortem examination according to him, could be caused due to fall or due to beating. No witness stated that the deceased was beaten on head by any of the appellants. P.W. 2 said that the deceased had fallen first on his face and then on his back. P.W. 5 stated that due to slaps given by appellant No. 5, the deceased dashed with his head against wall. It is found in the evidence of P.Ws. 2 and 5 that the fourth appellant caught the head of the deceased and knocked the deceased to a wall. When there is no evidence to show that any of the appellants injured on the head of the deceased and when head injuries found on the corpse of the deceased could be caused even by fall on the ground it cannot be said that the injuries due to which the deceased died were caused by the appellants. It is quite possible that the head injuries were received by the deceased due top fall on the ground. For this reason it cannot be said that the appellants caused the fatal injuries to the deceased. There was no previous enmity between the deceased and the appellants. Simply because the deceased had sold fake ring to P.W. 9 the appellants thought of punishing the deceased and they gave him slaps and kicked him. They had neither intention to kill nor cause such bodily injuries to him which were sufficient to cause death. It cannot be said that the



appellants knew that the injuries which they were causing were sufficient or likely to cause the death of the deceased. The intention of the appellants was only to beat the deceased with their hands and legs. In view of the facts of this case, the appellants could be convicted only for the offence under Section 323, I.P.C.”

10. Similarly, in the case of **Thomas vs. State of Kerala, 1992 Cri LJ 581**, following observations were made by a Division Bench of Kerala High Court: -

“10. Section 304 Indian Penal Code will apply to the following classes of cases : (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression "sufficient in the ordinary course of nature to cause death" but is of a lower degree of likelihood which is generally spoken of as an injury "likely to cause death" and the case does not fall under Clause (2) of Section 300 Indian Penal Code, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

11. The word 'likely' means probably and it is distinguished from more "possibly". When chances of happening are even or greater than its not happening, we may say that the thing will "probably happen". In reaching the conclusion, the Court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

12. The act committed by the appellant in the instant case is that he fisted Rappai (now deceased) with hand which led to the death of Rappai due to subdural haematoma. Can we say that the appellant had necessary knowledge that his act was



likely to cause death of Rappai? If such knowledge can be attributed to the appellant, the act committed by the appellant would certainly fall within the third limb of Section 299 Indian Penal Code and will constitute an offence of culpable homicide not amounting to murder punishable under Part II of Section 304 Indian Penal Code.

*13. In **Urmese v. State of Kerala, 1959 Ker LT 1351 : (1960 Cri LJ 827)** the deceased abused the accused's wife and on her reporting the matter to the accused, he dealt one blow with his hand to the deceased. It was held by this Court that the offence would fall only under Section 323 of the Indian Penal Code, even though death ensued. In **Ramakrishna Panicker v. State of Kerala, AIR 1959 Kerala 372 : (1959 Cri LJ 1331)** it was held by a Division Bench of this Court that where from the circumstances of the case, it is impossible to draw an inference that the accused, would have intended to give the deceased anything more than a beating or thrashing to teach him a lesson for using foul language to him. Because of the deceased's condition, the spleen of the deceased got ruptured in that case. This Court held that in the circumstances, the conviction of the accused under Section 304 Indian Penal Code cannot stand.*

*14. A similar situation as in this case, arose before a learned Single Judge of the Bombay High Court in **Dnyaneshwar Dagdoba Hivrekar v. State of Maharashtra, 1982 Cri LJ 1870**. The accused and the deceased were neighbours and friends and after some quarrel, accused gave a blow on the head of the deceased with a stick, which resulted in the death of the deceased. It was argued that the accused had neither intention nor knowledge that his act would cause the death of the deceased. From the evidence, it was seen that the weapon used was a stick and the accused had neither intention nor knowledge that his act would result in the death of the deceased. The Court held that offence would fall only under Section 323 Indian Penal Code.*



15. No doubt, in the instant case, the fisting resulted in subdural haematoma which led to the death of Rappai, but we are unable to say that the appellant can be attributed with the knowledge that by such act he was likely to cause death of Rappai. Nor are we in a position in the circumstances of this case, to hold that the accused intended to cause that particular injury which he caused. It is true that the appellant and the deceased were inimical. However, the evidence shows that the accused was unarmed, and he happened to see the deceased in a casual way and then some altercation ensued which led to the fisting by the appellant with hand. In the circumstances, his intention could only have been to give some thrashes to the deceased. It follows that the offence committed by him will fall only under Section 323 Indian Penal Code.”

11. In the case at hand, the ocular evidence of PW10 being the eye-witness and the medical evidence of PW9 being the doctor who performed the post-mortem examination of the deceased lead this Court to opine that the appellant neither had intention nor knowledge that his act would result in the death of the deceased. Further, given the fact that the appellant was only 18 years old at the time of the alleged occurrence and has faced a protracted trial for the last 23 years, a lenient view is to be deservedly taken.

12. In **Deo Narain Mandal v. State of UP (2004) 7 SCC 257**, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while



determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench of the Hon'ble Supreme Court in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused. In order to determine the quantum of sentence, Courts should bear in mind the principle of proportionality as awarding punishment is not merely retributive but also reformative.

13. In view of the above discussion, the present appeal is disposed of in the following terms: -

(i) The conviction of the appellant under Section 304 Part II is set aside but he is held guilty for commission of offence punishable under Section 323 of IPC. Accordingly, the appellant is sentenced to rigorous imprisonment for 1 year.

(ii) Given the fact that the appellant has already undergone a custody period of 2 years and 10 months, which is more than the maximum sentence of 1 year awarded to him under Section 323



of IPC, the quantum of sentence awarded to him is modified to the period already undergone by him.

14. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

29.05.2024
Neha

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