



101/3

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1465-SB-2002 (O&M)
Date of Reserve: 08.07.2024
Date of Decision: 11.07.2024

Mahabir and Anr. ...Appellants

Vs.

State of Haryana ...Respondent
(ii) CRR-2165-2002 (O&M)
Dhan Kaur ...Petitioner

Vs.

Mahabir and Others ...Respondents
(iii) CRA-D-371-DBA-2003
State of Haryana ...Appellant

Vs.

Mahabir and Others ...Respondents

Coram : Hon'ble Mr. Justice Gurvinder Singh Gill
Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Munish Sharma, DAG, Haryana.

Mr. Sant Lal Barwala, Advocate
for respondents in CRA-D-371-DBA-2003
for respondents n CRR-2165-2002 and
for appellant-Ajmer in CRA-S-1465-SB-2002.

Appellant/respondent-Mahabir is stated to be died.

Mr. Deep Inder Singh Walia, Advocate and
Ms. Gursimran Walia, Advocate
for the petitioner in CRR-2165-2002.

N.S.Shekhawat J.

1. By way of the present appeal, we shall dispose off three cases i.e.



CRA-S-1465-SB-2002 (O&M) titled as “*Mahabir and Anr. Vs. State of Haryana*”, CRR-2165-2002 (O&M) titled as “*Dhankaur Vs. Mahabir and others*” and CRA-D-371-DBA-2003 titled as “*State of Haryana Vs. Mahabir and others*”.

2. Vide the impugned judgment of conviction dated 17.08.2002 and order of sentence dated 19.08.2002, passed by the Court of Additional Sessions Judge, (Adhoc), Hisar, Mahabir and Ajmer, appellants in criminal No. CRA-S-1465-SB-2002 (O&M) were convicted for the offences punishable under Sections 304, Part-II IPC read with Section 34 IPC and were sentenced to undergo rigorous imprisonment for seven years each and to pay a fine of Rs. 500/- each, alongwith default stipulation. Both the appellants had prayed for their acquittal. On the other hand, State of Haryana had filed a criminal appeal No. CRA-D-371-DBA-2003 titled as “*State of Haryana Vs. Mahabir and others*” with a prayer that Mahabir, Ajmer, Saroj and Ram Rati, respondents may be convicted and sentenced under Section 302 IPC. Similarly, Dhankaur, a witness/victim in criminal trial had also filed a Criminal Revision No. CRR-2165-2002 (O&M) titled as “*Dhankaur Vs. Mahabir and others*” making the same prayer as that of State of Haryana.

3. As per the brief facts of the case of the prosecution, Ram Mehar son of Chander was brought by her mother to the General Hospital, Hansi, after he had suffered injuries in a fight and was medico-legally examined. On receipt of ruqa, Hari Chand, ASI went to the hospital and made an application for knowing the fitness of injured. The doctors initially, declared Ram Mehar to be unfit to make statement. However, at about 06:35 PM on 10.05.2000 itself,



Ram Mehar, injured was declared fit to make statement. The statement of Ram Mehar was recorded, which finally led to the registration of the FIR Ex.PJ/2 in the present case. The statement of Ram Mehar son of Chander has been reproduced below:-

“Stated that I am the resident of aforesaid address. I do agricultural pursuits. I was going from my house to my fields to harvest wheat crop. When I reached at about 10.00 in the morning near the house of Madan Lal S/o Sariya Sunar, where the house of Mahabir S/o Polu Ram, jat was also situated. Mahabir armed with Gandasi, Ajmer S/o Ram Ratti who was nephew of Mahabir having a jelly, Ramratti D/o Polu having Danda and Saroj D/o Ram Ratti having Danda, all the residents of Budana, were hiding themselves. Suddenly they stopped me in the way and Mahabir gave a gandasi blow to me. Ajmer gave the jelly blow on the elbow of my left arm and Mahabir gave two blows of Gandasi to me, which hit me on my head. I fell down on the ground. Mahabir, Ajmer, Ramratti and Saroj gave blows on my knees, ankles and legs on the right side elbow, chest and waist, with their respective weapons and many blows on my other parts of the body. My mother Dhankaur and Rajesh S/o Balwant Singh Jat, R/o Budana, who were coming behind me. tried very much to separate but these persons left me when they thought that I had died. Leaving me there, the assailants went to their house with their respective weapons. My mother brought me in a jeep and got me admitted in the hospital, where I have been medico-legally examined and given treatment. The reason for the enmity is that six months ago, Mahabir had alleged that I had mis-behaved with his daughter. He kept this enmity in his mind and at the time of giving me blows. Mahabir was saying that my knees, ankles and elbow should be broken. I got recorded the statement to you which I have heard and the same is correct.



4. After the registration of the FIR, the necessary investigation was conducted in the present case. At about 02:00 AM on 11.05.2000, Ram Mehar succumbed to the injuries suffered by him in a fight and the post mortem examination on the dead body was got conducted by the police. Ram Rati and Saroj, accused were arrested and both of them produced one danda each, which were allegedly used in the commission of crime. Thereafter, Mahabir was arrested and he got recovered a *Gandasi*, which was taken into possession by the police. Ajmer produced one jelly and vide a separate memo, the same was taken into possession by the police. Ultimately, the final report of investigation under Section 302/34 of IPC read with Section 34 of IPC was filed against the accused.

5. After committal, the challan and other incriminating material was taken into consideration by the Trial Court and Trial Court was of the prima facie view that the offence under Section 341,302/34 of IPC was made out against the accused and a formal charge-sheet was framed against them. The charge was explained to the accused, to which they pleaded not guilty and claimed trial.

6. During the course of trial, the prosecution examined Dr. Kuldeep Singh, Medical Officer, Government Hospital, Hansi, who had medico-legally examined Ram Mehar on 10.05.2000. In his deposition, he stated that the patient was drowsy. His pulse rate was 120 P.M. and B.P. was 60/30 MM GH and he found the following injuries on his person:-

1. 4 cm x 1 cm muscle deep incised wound on left patella. Fresh bleeding wes present.



2. *Multiple lacerated wound on left leg of sizes 3 x 1 cm, x muscle deep, 2 x 1 cm x bone deep, 1.5 cm x 1 cm x muscle deep, 2 x 1 cm x bone deep, 3 x 1 cm into muscle deep, 1.8 cm x 1 cm into muscle deep, 4.5 x 1 cm into bone deep. Fresh bleeding was present, and advised X-ray left leg.*
3. *An incised wound of size 5 x 1 cm into bone deep on right petala Fresh bleeding was present.*
4. *A reddish contusion with swelling on right ankle joint.*
5. *Multiple lacerated wound on right leg, 5 in number of sizes 3.5 cm x 1 muscle deep, 2.5 x 1 cm muscle deep, 2 x 1 cm muscle deep, 2.5 x 1 cm muscle deep, 1.5 x 1 cm muscle deep. Fresh bleeding was present.*
6. *An incised wound on posterior aspect of left elbow joint size 6 x 1 cm into muscle deep and fresh bleeding was present.*
7. *The reddish contusions on right side front of chest sizes 10 x 6 cm. 8.5 cm x 6 cm.*
8. *Multiple reddish contusions on anteree lateral aspect of right forearm of sizes 8 x 4 cm, 5x 3 cm, 6 x 4 cm.*
9. *Bleeding was present per both nostrils.*
10. *An incised wound of size 4x 1 cm into muscle deep on right partial region of scalp. Fresh bleeding was present.*
11. *An incised wound of size 5x1 cm into muscle deep on front partial region of scalp. Fresh bleeding was present.*
12. *Incised wound of size 3 x 1 muscle deep on pariety occipital region of scalp.*
13. *A reddish contusion on left arm 6 x 4 cm.*
14. *A reddish contusion on tip of left shoulder size 6 x 4 cm.*

As per PW-1, injuries No. 1,3,6,10,11 and 12 were by sharp weapon and all remaining injuries were with blunt weapon. Vide the opinion, Ex. PC/1, on police request Ex. PC, he had opined that the patient was unfit to



make statement. He also conducted post mortem examination on the dead body of Ram Mehar on 11.05.2000. As per him, the cause of death was hemorrhage and shock due to the above mentioned injuries which were ante-mortem in nature and sufficient to cause death in the ordinary course of nature. In his cross-examination, he stated that injuries No. 1 to 5 on the person of Ram Mehar were on his both legs and from patella to ankle, which are non-vital parts of the body. He admitted that except fracture of right fibula under injury No.4, no fracture was found on the person of Ram Mehar. He further admitted that injuries No. 6,8,13 and 14 were existing on both the arms of the injured, which are non-vital parts of the body. There was no external or internal injury on the nose in respect of injury No.9 on the person of Ram Mehar. He further admitted that out of the injuries mentioned above except the fracture of right fabula, all the injuries were simple in nature. In case of injuries No.10,11 and 12, he did not find any underlying damage to skull or brain and these injuries would also be simple in nature. He further admitted that injuries No. 1 to 3, 5,6 and 10 to 12 were the bleeding injuries on the person of Ram Mehar and none of the injuries involved any major blood vessel. He further admitted that in case, if there is excessive bleeding and those injuries are left unattended for a long time, then B.P. may come down to 60/30 as it was when the patient was brought to the hospital. He further admitted that if the patient had been transfused blood timely, the patient might have survived. The prosecution further examined Dr. K.S Rathor, SMO, CHC, Narnaund as PW-2, who had opined vide the Ex. PC/2 that Ram Mehar was fit to make a statement at 06:35 P.M on 10.05.2000. The prosecution further examined PW-3, Constable Raju, who had prepared a scaled



site plan Ex.PG. The statements of PW-4, H.C Ram Kumar and PW-5, Constable Madan Lal were formal in nature. PW-6, Constable, Jagbir Singh had delivered the special report in the instant case, whereas, PW-7, Jagbir Singh SI/SHO had prepared the report under Section 173 Cr. P.C. The prosecution further examined Smt. Dhan Kaur, mother of Ram Mehar (since deceased), as PW-8. She had witnessed the entire occurrence and supported the case of the prosecution, as mentioned in the FIR. She further stated that she arranged conveyance and brought Ram Mehar to Hansi, hospital. The doctor told that the blood was required for transfusion to Ram Mehar and Ram Mehar was died on the same very night at midnight. Somebody had uttered remarks in respect of the daughter of Mahabir and Mahabir had a suspicion that Ram Mehar had uttered those remarks against his daughter. Her son Ram Mehar was given injuries on that account by the accused. In her cross-examination, she admitted that her son Ram Mehar (since deceased) was in jail at Hisar for a period of 03 months. She denied the suggestion that her son was a known criminal in the area and the people were scared from him and many persons were inimical towards him. She further admitted that Mahabir was the only son of his parents. He had two sons and four daughters. The daughter of Mahabir were unmarried. His sons are minors and unmarried. All the four daughters of Mahabir were studying in the school of village. Mahabir had two sisters namely Ram Ratti and Murti. Ram Rati was married in a village namely Sisar Karbala, which is at a distance of 20 Kilometers from their village. Ram Chander is the husband of Ram Ratti. Ram Ratti has got only one daughter namely Saroj, accused. Saroj is married to an army man in Village Data and his name is Ram Phal. She further



admitted that Ram Phal was serving in Navy and resides outside with his children. He had got one son and one daughter, who were studying in school. The prosecution further examined PW-9, Constable Krishan Kumar, who had filed his affidavit Ex. PN. The prosecution further examined Dr. D.N Bagri as PW-10, who had sent a ruqa Ex. PO to SHO Police Station, City, Hansi. The prosecution further examined PW-11, Devender Kumar, S.I.CIA, Jind, who had conducted the investigation in the present case. In his cross-examination, he admitted that the S.P. had issued directions for keeping supervision on the persons involved in the cases of dacoity and Ram Mehar (since deceased) was one of those persons, who was in that list. The prosecution further examined PW-12, ASI Hari Chand, who remained associated with the police during the course of investigation.

7. After the evidence of the prosecution witnesses, prosecution evidence was closed, the entire incriminating evidence was put to the accused and their statements under Section 313 Cr. P.C were recorded by the Trial Court. All the accused had pleaded false implication in the present case. In their defence, the accused examined Jaibir Singh, Naib Mohrar, Police Station Narnaund as DW-1, who had brought the record pertaining to FIR No. 270 of 1994, FIR No. 181 of 1998, FIR No. 244 of 1998 and FIR No. 176 of 1999 and exhibited the said FIRs as Ex.DC, Ex. DD, Ex.DE and Ex.DF. The said FIRs were registered against Ram Mehar, since deceased.

8. Learned State counsel submitted that in the present case, the case was based on the statement of Ram Mehar (since deceased) and his statement was recorded as dying declaration by the Trial Court. Still further, Trial Court



found no fault with dying declaration and Ram Mehar had stated the facts voluntarily in the said statement. Still further, there was sufficient evidence to show that all the four accused attacked Ram Mehar with pre-meditation and the weapons of offence were recovered from all the four accused. Even the ocular version was duly corroborated by the medical evidence as Ram Mehar had died due to the cumulative effect of numerous injuries caused by all the four accused. She further contends that in fact, Ram Mehar (since deceased) had died due to the injuries suffered by him in the incident and the respondents in criminal appeal No. CRA-D-371-DBA-2003 were liable to be convicted by this Court. Learned counsel appearing on behalf of petitioner in criminal revision No. CRR-2165-2002, also prayed that the respondents No.1 to 4 may be convicted and sentenced under Section 302 IPC, instead of under Section 304 Part-II IPC read with Section 34 IPC.

09. On the other hand, it requires mention here that criminal appeal No.CRA-S-1465-SB-2002 (O&M) was initially filed by two accused/appellants namely Mahabir and Ajmer. During the pendency of the appeal before this Court, Mahabir, appellant No.1 has expired and appeal qua him already stands abated. Consequently, learned counsel appearing on behalf of sole appellant namely Ajmer in criminal appeal No.CRA-S-1465-SB-2002 submitted that the appellant had been falsely involved in the present case. He further contends that the appellant was not connected with the commission of crime in any manner. As per learned counsel, the occurrence had taken place at 10:00 AM on 10.05.2000 and ruqa was sent at around 11:20 AM itself. The police reached the hospital at 01:25 P.M and when other persons were present and the statement of



no other person from the side of the complainant, was recorded by the police. Later on, the fitness certificate was managed at about 06:35 P.M and thereafter, the statement of Ram Mehar, complainant was recorded. He further contends that in the present case, the Trial Court had correctly disbelieved the statement of Ram Mehar, injured and rightly held that Saroj and Ram Rati were falsely involved in the present case. Learned counsel further contends that in the present case, the accused have been convicted only on the basis of dying declaration, which was allegedly made by Ram Mehar, since deceased. He further contends that in fact, the medical condition of Ram Mehar was such that he could not have even made a statement to the police and alleged dying declaration was concocted by the police, in collusion with the complainant side. Learned counsel further contends that the appellant had been falsely involved in the present case and he may be acquitted.

10. We have considered the rival submissions made by learned counsel for the parties and perused the record carefully in the settled principles of law.

11. In the present case, the entire case hinges on the statement, which was made by Ram Mehar on 10.05.2000 and on the strength of the said statement, the FIR in the present case was registered by the police. The main contention made by learned counsel for the accused was that a person, who was having in such a critical condition, could not have made a statement and there is a possibility that the statement was made by Dhan Kaur and the thumb impressions of Ram Mehar were procured on the said statement. However, we find no reasons to dis-agree with the findings recorded by the Trial Court in this regard. In fact, before recording the statement of Ex. PJ of Ram Mehar, the



medical opinion Ex. PC/3 was obtained from PW-2, Dr. K.S Rathor. Even Dr. K.S Rathor had clearly stated that at about 06: 35 PM on 10.05.2000, he had declared Ram Mehar was fit to make statement. Thus, it is apparent that the statement was made by Ram Mehar, while his condition had slightly improved during the course of treatment by the doctors in hospital at Hansi.

12. Still further, in the present case, the Trial Court has correctly held that Ram Mehar was having a criminal background and was under constant surveillance by the police. Even PW-11, Devender Kumar, S.I.CIA, Jind, had clearly stated that the S.P. had issued directions for keeping supervision on the persons involved in the cases of dacoity and Ram Mehar (since deceased) was one of those persons, who were in that list. It is apparent that Ram Mehar had teased the unmarried daughter of Mahabir, accused. It is also apparent that Mahabir was having unmarried daughters and out of anger, Mahabir and Ajmer had attacked Ram Mehar, since deceased. Still further, in the present case, after getting the medical opinion Ex. PC/3, statement of Ram Mehar was recorded, when his condition during treatment improved considerably. In the present case, even PW-8, Smt. Dhan Kaur mother of Ram Mehar also admitted that somebody had uttered remarks in respect of the daughter of Mahabir and Mahabir had a suspicion that Ram Mehar had uttered those remarks against his daughter. Her son Ram Mehar was given injuries on that account by the accused. Thus, there was a motive also on the part of Mahabir and Ajmer to cause injuries to Ram Mehar. Even learned counsel for the appellant tried to assail the genuineness of statement of Ram Mehar on the ground that the thumb impression of Ram Mehar was morphed and the statement of Ram Mehar was



inadmissible. In fact, there is no doubt that at the time of making of the statement, Ram Mehar was critical and he might have narrated the occurrence to ASI Hari Chand. It is also apparent that the thumb impression on Ex. PJ was either super imposed and the impressions of thumb/finger were taken on the same. However, during the course of trial, Finger Print Expert was examined from the office of IG, Hisar and as per his opinion, the thumb impression had two separate impressions i.e. one is “Part A” and the other is “Part B”. As per the opinion of the Finger Print Expert impression “B” was overlapping over “Mark A” to the extent of 2/3 ridgers. However, the remaining part of the impression was clear. Still further, ASI Hari Chand had no reason to falsely involved the accused in the present case. Thus, there was no reasons to discard the testimony of Ram Mehar on this count as well. Further, even in his dying declaration, Ram Mehar had stated that he had teased the daughter of Mahabir about 06 months ago. However, from the testimony of PW-8, Dhan Kaur, it is apparent that the incident of teasing the daughter of Mahabir had taken place immediately prior to the occurrence. Thus, when Ram Mehar, who was facing criminal charges in several cases, teased unmarried daughter of Mahabir; he got annoyed and caused injuries to Ram Mehar, since deceased. Consequently, we uphold the findings recorded by the Trial Court regarding the involvement of Mahabir and Ajmer in the present case.

13. In the present case, the State of Haryana as well as learned counsel for the petitioner have vehemently argued that even Saroj and Ram Rati were also involved in the present case and had been assigned specific roles. Thus, they had been wrongly acquitted of the charge. However, we find no substance



in the said arguments. In the present case, even though Ram Mehar had mentioned names of Saroj and Ram Rati in his statement made before the police, but, still, it can be safely concluded that due to enmity, Ram Mehar had falsely named Ram Rati and Saroj in the present case, being close relatives of Mahabir. Otherwise, Ram Rati and Saroj had no reason to involve in the fight in the present case. Apart from that, both Saroj and Ram Rati were married and settled in their respective matrimonial houses, far away from the place of occurrence. We may also refer to the statement of Smt. Dhan Kaur, who is mother of Ram Mehar (since deceased). She also admitted in her cross-examination that Ram Rati was the sister of Mahabir, accused. She was married about 40/45 years ago in Village Sisar Karbala. Village Sisar Karbala is at a distance of about 20 kilometers from their village. Ram Rati had only one daughter namely Saroj, accused. Saroj was married to an army man in Village Data and his name is Ram Phal. She further admitted that Ram Phal was serving in Navy and he is used to reside outside with his children. His son and daughter were studying in school. Thus, it is apparent that Saroj was also living with her husband Ram Phal, who was serving in a Navy at a far off place. We agree with the findings recorded by the Trial Court to the effect that there was anxiety on the part of the Ram Mehar to falsely involve these two ladies namely Ram Rati and Saroj, who were closely related to Mahabir, main accused. Even otherwise, there is general tendency in this part of the country to involve other family members also, who had not actually participated in the crime. Thus, the acquittal of Ram Rati and Saroj by the Trial Court is upheld.



14. Further, learned State counsel as well as learned counsel for the complainant vehemently argued that the accused were liable to be convicted under Section 302 IPC, instead of under Section 304 (Part-II) IPC read with Section 34 IPC. The Trial Court has correctly referred to the statement Ex. PJ made by Ram Mehar in this regard. Ram Mehar, injured/deceased stated that Mahabir was saying that knees, ankles and elbow of Ram Mehar be broken. Had there been any intention on the part of Mahabir to kill Ram Mehar, Mahabir would have certainly exhorted other accused to kill him. However, while causing injuries to Ram Mehar, Mahabir only intended to cause injuries on knees, ankles and elbow of Ram Mehar and even told his accomplices to do so. We may also referred to the statement of PW-1, Dr. Kuldeep Singh in this regard. He clearly stated that injuries No.1 to 5 on the person of Ram Mehar were on his both legs and from patella to ankle, which are non-vital parts of the body. He further admitted that except fracture of right fibula under injury No.4, no fracture was found on the person of Ram Mehar. He further admitted that injuries No. 6,8,13 and 14 were existing on both the arms of the injured, which are non-vital parts of the body. He further admitted that injuries No.10,11 and 12, which were on head, he did not find any underline damage to skull or brain. He further admitted that the injuries on the head were also simple in nature. He further admitted that in case, the patient had been transfused blood timely, the patient might have survived. Thus, the facts of the case clearly establish that there was no intention on the part of Mahabir and Ajmer to commit the murder of Ram Mehar and the Trial Court had correctly convicted Mahabir and Ajmer under Section 304 (Part II) IPC.



15. While elucidating the difference between Section 302 and 304 Part (II) IPC, the Hon'ble Supreme Court has held in the matter of **N. Ramkumar Vs.State, 2023 AIR (Supreme Court) 4246** held as follows:-

*14.The cause of death assigned in the post-mortem report as already noticed is "died of head injury". It is a trite law that "culpable homicide" is a genus and "murder" is its species and all "murders" are "culpable homicides, but all "culpable homicides" are not "murders" as held by this court in **Rampal Singh v. State of Uttar Pradesh (2012) 8 SCC 289**. The intention of the accused must be judged not in the light of actual circumstances, but in the light of what is supposed to be the circumstances.*

*15. In the case of **Basdev v. State of Pepsu AIR 1956 SC 488** at page 490 the following observations have been made:*

"Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this has led to a certain amount of confusion."

16. It requires to be borne in mind that the test suggested in the aforesaid decision and the fact that the legislature has used two different terminologies, 'intent' and 'knowledge' and separate punishments are provided for an act committed with an intent to cause bodily injury which is likely to cause death and for an act



*committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death, it would be unsafe to treat 'intent' and 'knowledge' in equal terms. They are not different things. Knowledge would be one of the circumstances to be taken into consideration while determining or inferring the requisite intent. Where the evidence would not disclose that there was any intention to cause death of the deceased but it was clear that the accused had knowledge that his acts were likely to cause death, the accused can be held guilty under second part of Section 304 IPC. It is in this background that the expression used in Indian Penal Code namely "intention" and "knowledge" has to be seen as there being a thin line of distinction between these two expressions. The act to constitute murder, if in given facts and circumstances, would disclose that the ingredients of Section 300 are not satisfied and such act is one of extreme recklessness, it would not attract the said Section. In order to bring a case within Part 3 of Section 300 IPC, it must be proved that there was an intention to inflict that particular bodily injury which in the ordinary course of nature was sufficient to cause death. In other words, that the injury found to be present was the injury that was intended to be inflicted. This Court in the case of **Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh, AIR 2006 SC 3010** has observed:*

"Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters- plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not



even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.

*17.This Court in the case of **Pratap Singh @ Pikki v. State of Uttarakhand (2019) 7 SCC 424** had noticed that the deceased-victim had suffered total 11 injuries and had been convicted for offences under Section 304 Part-II/Section 34 IPC apart from other offences. It was noticed that some altercation took place and*



the groups entered into scuffle without any premeditation and convicted accused for the offence punishable under Section 304 Part-II/Section 34 IPC. Taking into consideration that the appellants therein were young boys and had served sentence of more than three years and five months and there was no previous enmity, persuaded this Court that the quantum of sentence is excessive and accordingly sentenced them to the period already undergone for the offence under Section 304 Part-II/ Section 34 IPC by observing thus:

"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 96?97 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 pre-meditation, the alleged unfortunate incident took place between two group of young boys and it is informed to this Court that the 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."

18. In the case of *Deepak v. State of Uttar Pradesh* reported in (2018) 8 SCC 228 it came to be noticed by this Court that incident



had taken place in the heat of the moment and the assault was by a single sword blow in the rib cage was without any premeditation and incident had occurred at the spur of the moment, and thus inferred there was no intention to kill and as such the offence was converted from Section 302 IPC to Section 304 Part II IPC and the appellant was ordered to be released forthwith by sentencing them to the period of conviction already undergone. It was held:

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 premeditation on 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 IPC and are satisfied that it deserves to be altered to Section 304 Part II IPC. 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.

16. In the present case also, it is discernible that there was no premeditation to cause death and the accused had no intention to cause the murder of Ram Mehar. Thus, the offence was clearly brought within the ambit of Section 304 (Part II) of IPC. The Trial Court has correctly held that it is the misbehaviour by Ram Mehar, a criminal, with one of the unmarried daughters of Mahabir, which might have enraged a self-respecting person and he was unable to tolerate the misbehaviour with Ram Mehar and gave him beatings in the village. Even, Ajmer had joined hands with Mahabir in causing injuries to Ram Mehar. Thus, we uphold the conviction of Ajmer, appellant No.2 under Section 304 (ii) IPC and the findings recorded by the Trial Court in the judgment of conviction is ordered to be upheld.

17. Now, adverting to the order of sentence, this Court is conscious of the fact that we have to take into consideration the aggravating as well as mitigating circumstances of the present case. In the present case, no doubt the crime committed by Ajmer, appellant No.2 is unquestionably grave and unvoluntarily, but at the same time this Court cannot be oblivious of the fact that he had been facing the agony of the trial/appeal since last more than 24 years. Even Mahabir, co-accused has already expired. Even at the time of framing of charges on 24.08.2000 his age was about 26 years and at present he is aged about 50 years. He is rustic villager and was never involved in any other crime.



18. Consequently, keeping in view the facts and circumstances of the present case, the sentence imposed on the appellant is reduced to three years. The amount of fine shall remain the same.

19. In view of the above, the criminal appeal No. CRA-S-1465-SB-2002 is hereby partly allowed and the impugned judgment of conviction dated 17.08.2002 is ordered to be upheld, whereas, the sentence imposed on the appellant is reduced to the period of three years, as mentioned above and the amount of fine shall remain unaltered.

20. In view of the abovesaid findings recorded in CRA-S-1465-SB-2002, CRA-D-371-DBA-2003, filed by the State of Haryana *as well as* CRR-2165-2002 filed by the complainant, are ordered to be dismissed.

21. Pending application(s), if any, are also disposed off.

(GURVINDER SINGH GILL)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

11.07.2024
hitesh

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