

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRA-D-754-2022(O&M)  
Date of Decision: 21.10.2024

Rajender

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM: HON’BLE MR. JUSTICE SANJEEV PRAKASH SHARMA  
HON’BLE MR. JUSTICE SANJAY VASHISTH

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Present: Mr. Randeep Singh Dhull, Advocate for the appellant.

Mr. Apoorv Garg, Sr. DAG-cum-Public Prosecutor, Haryana.

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**SANJAY VASHISTH, J.**

1. Instant appeal has been filed by appellant-Rajender s/o Sher Singh, aged 24 years, r/o Village Tehnauli, P.S. Kishangarh Bass, District Alwar, Rajasthan, whereby judgment and conviction dated 04.08.2022 and order of sentence dated 05.08.2022 passed by learned Sessions Judge, Rewari (for short, ‘trial Court’) has been assailed.
2. Offences under which appellant has been convicted and the period of sentence awarded thereon, is as under:

| Offence under which convicted | Sentence/ imprisonment awarded | Fine imposed | Sentence/ imprisonment in default of payment of fine |
|-------------------------------|--------------------------------|--------------|------------------------------------------------------|
| 302 IPC                       | Rigorous imprisonment for life | Rs. 5000/-.  | Imprisonment for a period of one year.               |



The period already undergone by the convict during trial, is also to be set off towards the sentence of imprisonment.

3. Proceedings of the trial enumerated from FIR No. 216 dated 10.06.2020, under Section 302 IPC, registered at Police Station Bawal, District Rewari.

As per the factual narration, homicidal death of one Sonu s/o Deep Chand, r/o Village Nangal Ugra, P.S. Bawal, Rewari, occurred on 09.06.2020 at about 10:30 p.m. On receiving the information at Police Station, GD Entry No.30 was recorded on 10.06.2020 and special report was received by the Sub Divisional Judicial Magistrate, Bawal at about 6:00 p.m. on 10.06.2020. Version of complainant-Laxman Singh recorded in the FIR is as under:

*“ To the SHO, PS- Bawal, I Laxman Singh S/ Gulab, R/o Village Baruva, PS Kalizar, District Banda, UP and am living in Jhugis (cottage) built at Dharam Bhatta Company, Rasiawas and Sonu S/o Deep Chand R/o Village Nangal Ugra, PS Bawal, District Rewari was also residing in jhugi adjacent to my jhugi. Last night, myself and Rajender S/o Sher Singh R/o Tanauli, PS Kishangarh Bass, District Alwar were sleeping in separate cot in open area. At about 10:30 PM, Sonu S/o Deep Chand R/o Village Nangal Ugra came there and sat on Rajender's cot. Some altercation took place between them and suddenly Rajender angrily took the drawal of tractor and gave blow to*



*Sonu on his stomach as well as thigh. Sonu agonized whole night. I tried to convince Rajender, then Rajender called his brother Sonu, they both took Sonu to the government hospital, Bawal for treatment. On receiving information, I reached Government Hospital Bawal and came to know that he has died due to the injuries sustained in quarrel. Therefore, legal action be taken against Rajender. Information was given to the family members of Sonu. They also came to hospital. I presented application to you. SD/-LTI Applicant Laxman Singh s/o Gulab, R/o Village Baruva, Mob No.8930127571.”*

4. After registration of the FIR, inquest proceedings were conducted and dead body of Sonu was sent for post-mortem examination, which was conducted on 10.06.2020 at 3:55 p.m. As per *prima facie* opinion mentioned by the Doctor in the post-mortem report, the cause of death is hemorrhage and shock due to the injuries suffered on a vital part of the body i.e. liver, which is antemortem in nature. However, to give a final opinion, the Doctor said to await the viscera report from the Laboratory.

5. After recording statements of the other witnesses, appellant mentioned in the FIR was arrested and the final police report/challan under Section 173 Cr.P.C was filed. Thereafter, appellant was charge-sheeted under Section 302 IPC for committing intentional murder of Sonu by giving him beatings on 10.06.2020.

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In support of the charges, the prosecution examined total 13 witnesses.

**i) ASI Bir Singh** appeared as PW1 and deposed that on 10.06.2020 when he was posted at Polic Station Bawal, a tehrir with the endorsement of SI Bhagirath was received through Constable Anil and on receipt of the same a formal FIR (Ex. PW1/A) was registered. The special report was sent to the learned Illaqa Magistrate and other superior police officers through Constable Krishan Kumar.

**ii) Constable Anil Kumar** appeared as PW2 and proved that the application of complainant Laxman (Ex. PW2/A) moved to SI Bhagirath was handed over to him for getting the case registered at the Police Station, upon which ASI Bir Singh had registered a formal FIR (Ex. PW1/A).

**iii) Jigar Jangra, Halqa Patwari Rasiawas, Bawal** appeared as PW3, who deposed that on 22.06.2020, on asking of SI/SHO Madan Lal, he went to revenue estate of Village Rasia and on demarcation of SI Madan Lal he prepared a scaled site plan (Ex. PW3/A), bearing his signature.

In cross-examination, he explained that Brick kiln is situated on the main road. Two-three office type building are situated there.

**iv) MHC Narpal** appeared as PW4 and tendered his affidavit (Ex. PW4/A) for proving that on 14.06.2020, he was posted as MHC at Police Station Bawal and on that day ASI Bhagirath had deposited the sealed case property with him. Further deposed that on 22.07.2020, sealed samples were handed over to lady Constable Asha for depositing the same in RFSL, Bhondsi.



v) **Constable Krishan Kumar** appeared as PW5 and proved the delivery of Special report to the Illaqa Magistrate and thereafter to other senior police officers without any delay.

vi) **Lady Constable Asha** appeared as PW6 and tendered her affidavit (Ex. PW6/A) dated 12.07.2021 and ensured that the sealed samples were taken by her from Malkhana for depositing the same in RFSL, Bhondsi for its chemical examination vide RC No. 306 dated 22.07.2020 and also assured that the samples were safe in her custody.

vii) **Krishan s/o Deep Chand** appeared as PW7 and deposed that Sonu-deceased was his brother and he had received information that Sonu has died in an occurrence. Thereafter, he reached to Government Hospital, Bawal and identified the dead body of his brother-Sonu vide memo Ex. PW7/A. However, he denied having any personal knowledge of the case.

viii) **Deep- Father of the deceased** appeared as PW8 and deposed that his son Sonu was married and had a minor son. He also denied having any personal knowledge regarding the case.

ix) **Dr. Mohit, MO, CHC, Bawal** appeared as PW9 and proved post-mortem examination conducted by him on the dead body of Sonu. He tendered his affidavit Ex. PW9/A and post-mortem report was proved as Ex. PW9/B.

Noticing the injuries in the post-mortem report, opinion regarding provisional cause of death mentioned in Post Mortem Report is reproduced herebelow:



**“Cranium And Brain:** *Intact*

**Thorax:-***B/L lung and pleura- Intact and healthy and Heart- Blood present in right chamber of heart.*

**Abdomen:-***Mouth: Frothing and regurgitate of food particle from right angle of mouth, Wall- intact and distended, Peritoneum- intact and filled with blood 2.6L blood present in peritoneal cavity, Stomach- intact and semi digested food present, Small intestine- intact and semi digested food present, Large intestine- Semi digested food and fecal matter present, Liver- Ruptured, Spleen- intact, pale & healthy, B/L Kidney- Pale & healthy, Bladder - Empty and intact and healthy*

**Opinion:-***The provisional cause of death in this case in our opinion is hemorrhage and shock due to injuries described above (vital part of body i.e. Liver) which was antemortem in nature and sufficient to cause death in ordinary course of nature.”*

After seeing the FSL report Ex. PX, Doctor gave his opinion that the cause of death is hemorrhage and shock due to the injuries described by him in the post-mortem report. Doctor also proved his opinion (Ex. PW9/D) on the application presented by the police to him on 08.07.2020 that possibility of suffering of injuries on the person of the deceased cannot be ruled out by the ***Iron Drawal.***

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x) **ASI Bhagirath** appeared as PW10, who proved the investigation part conducted by him uptill same was taken over by SHO Madan Lal. Said witness also proved that he had joined investigation with SI Madan Lal on 12.06.2020, who had arrested appellant-Rajender. appellant-Rajender suffered the disclosure statement (Ex. PW10/B) and thereupon one **drawal** from his jhuggi situated at Dharam Brick Kiln, was recovered.

xi) **SI Madan Lal** appeared as PW11 and proved the arrest of the appellant and preparation of the rough site plan Ex. PW11/A. Said witness also proved the recording of the disclosure statement of the appellant and the recovery of the weapon.

xii) **Laxman s/o Gulab Singh** appeared as PW12 and deposed the incident which he witnessed being an eye witness. As per his deposition appellant-Rajender inflicted a blow to Sonu on his stomach and another blow on his thigh. In the morning, appellant-Rajender himself took Sonu to Government Hospital Bawal for his treatment. Said witness had also joined Sonu at the hospital, where later Sonu expired during treatment.

The version given in examination in chief by witness-Laxman is reproduced hereunder:

*“Laxman son of Gulab Singh, aged 26 years,  
Labourer, illiterate, resident of Village Baruva,  
District Banda (UP).*

*.....On SA*



*I along with appellant Rajender, Sonu and one Heera was working at brick-kiln namely Dharam Bhatta Company at village Rasiawas. We were living in Jhugis built in the above said Bhatta. On 9.6.2020 at about 10-30 p.m. we were sleeping in our Jhugi. Other labour workers were also sleeping. I, appellant Rajender and Sonu were sleeping in our separate cots. Sonu came on the cot of appellant Rajender and sat there. Some altercation took place between Rajender and Sonu. They were abusing with each other. Rajender got angry and he took drawal of the tractor and he gave a blow to Sonu at his stomach and another blow on his thigh. Thereafter, Sonu remained present at the brick-kiln till morning. In the morning, appellant Rajender took Sonu to government hospital, Bawal for his treatment. I had not gone to the hospital with Sonu. Sonu expired during his treatment. I moved application Ex. PW2/A to the police which put my thumb impression at point-A. appellant Rajender is present today in the court.”*

**xiii) Heera s/o Shyam Lal** appeared as PW13 and deposed that he was working as Driver of Dharam Bhatta Company at Village Rasiawas. On 09.06.2020 at about 10:30 p.m., when he was sleeping in his jhuggi, Sonu, Laxman and Rajender were sleeping outside the Jhugi. Some altercation took place between Rajender and Sonu, thereupon Rajender took out a tractor rod and gave a blow on the stomach of Sonu and another blow of rod



was given on the thigh and his back. In the morning, appellant-Rajender took Sonu to Government Hospital, Bawal for his treatment. His (PW13) examination-in-chief appears to be an independent version, same is also reproduced herebelow:

*“ Heera son of Shyam Lal, aged 24 years*

*Driver, illiterate, resident of village Rattanpur,*

*District Buland Shahar, UP*

*..... On SA*

*I am working as tractor driver of Dharam Bhatta Company at village Rasiawas. I was living in Jhugis built in the above said Bhatta. On 9.6.2020 at about 10-30 p.m. I was sleeping in my Jhugi whereas Sonu, Laxman, Rajender were sleeping outside the Jhugi. Some altercation took place between Rajender and Sonu. Rajender told Sonu that he would go and sleep upon which Sonu said that he is going to sleep. In the meantime, appellant Rajender present in the cot took out a tractor rod and gave a blow to the stomach of Sonu and another blow of rod on his thigh and another on his back. Thereafter, Sonu remained present at the brick-kiln till morning. Sonu was having pain in his stomach. In the morning, appellant Rajender took Sonu (injured) to government hospital, Bawal for his treatment. I had not gone to the hospital with Sonu. Sonu expired during his treatment at about 11-00/12-00*



*noon. (At this stage, case property is shown to the witness). I have seen case property Ex.MO1 which is the same by which appellant Rajender had given blows to the deceased. IO had recorded my statement to this effect. appellant Rajender is present today in the court.”*

After recording of the statement of PW13, on the statement of Public Prosecutor given on 02.06.2022, evidence of the prosecution was closed. By giving a separate statement dated 23.03.2022, Public prosecutor gave up witness Karambir being unnecessary. FSL report (Ex. PX) was tendered on record, by giving up the Director, RFSL Bhondsi because no common poison could be detected in the exhibits.

6. After closing of the evidence of the prosecution, statement of appellant under Section 313 Cr.P.C. was recorded, wherein, without taking any specific defence appellant stated that “***I am innocent. I have been falsely implicated in the present case with ulterior motive.***”

No defence evidence was led and thereupon by considering the complete evidence of the prosecution appellant was convicted for the offence under Section 302 IPC.

7. Mr. Randeep S. Dhull, Advocate, appearing on behalf of the appellant argued that there was delay of 16 hours in lodging the FIR as occurrence took place on 09.06.2020 at 10:30 p.m., whereas the FIR was registered on the next day i.e. 10.06.2020 at 5:20 p.m. and the special report was also delivered at 6:00 p.m.



8. Another argument raised by the appellant is that the statement of the prosecution witness suffered from several contradictions and discrepancies as there is no conformity with the ocular version of the witnesses and therefore, sole ocular testimony cannot be made basis for holding the appellant guilty.

9. Learned counsel for the appellant also submits that the witness PW12-Laxman and Heera-PW13 cannot be said to be independent witnesses and have rather been procured by concocting the story which resulted in causing of huge delay in registration of the FIR.

Infact, the case has been planted against the appellant, who has been made a scapegoat for the untraced appellant.

10. Learned counsel also argued that in the Ruqa (Ex. PW9/C) there is nothing mentioned about the history of the case, even, name of the person who brought the deceased to the hospital is not mentioned. Once no external injury mark was noticed by the doctor, the injury suffered by the deceased on his stomach might be on account of falling on some hard object, which resulted in his death.

Therefore, learned counsel for the appellant argued that there being no definite evidence against the appellant, he cannot be convicted for such a serious offence.

11. At last, in alternative, learned counsel for the appellant argued that even if the appellant is held guilty of causing death of the deceased-Sonu, it is not the case worth for conviction under Section 302 IPC for causing



intentional murder and then sentencing him for undergoing rigorous imprisonment for life.

Looking at the conduct of the appellant and non-repeated blows on the vital part, covers his action for convicting him under Section 302 Part-II of IPC instead of 302 IPC.

12. On the other hand, learned State counsel submits that unshaken evidence has been led by the prosecution to prove its charges, and nothing material could be borne out by the appellant from cross-examination of the independent witnesses i.e. PW12 and PW13. He also argued that appellant failed to establish the reason as to what would be gained by PW12 and PW13 by deposing against the appellant in the Court. Infact, based on their testimony both the witnesses appear to be truthful, and their presence also cannot be doubted from any angle. However, regarding the contradictions in the ocular version, he submits that same would not be that material, because, firstly there are no material contradictions in the statements and minor contradictions in the ocular version are of no consequence.

13. Learned State counsel also submits that the weapon i.e. iron drawal had been recovered on the basis of the disclosure statement made by the appellant from his jhuggi, and once the recovery has been effected in pursuance to the disclosure statement, the factum of recovery of weapon is well established.



Not only this, said weapon was shown to the Doctor by the police, and by moving an application an opinion was sought, which also proved the case of the prosecution.

14. We have heard learned counsel for the parties and gone through the entire record prepared and forwarded by the Court below to this Court.

15. It is admitted case of the prosecution that incident of fight and causing of injury to deceased-Sonu happened on 09.06.2020 at about 10:30 pm. Deceased Sonu was under severe stomach pain, but no action was taken throughout the night. It is thereafter that he was taken to the hospital by none else than the appellant. Death of Sonu took place at about 11:20 a.m on 10.06.2020. Resultantly, FIR was registered by ASI Bhagirath (PW-10) at about 4:00 p.m. on 10.06.2020 on the version of complaint Laxman. Thereafter, formal FIR was registered without any delay, therefore it cannot be said that there is any delay in registration of the FIR.

16. The statements of witnesses, complainant-Laxman (PW12) and Heera (PW13) are required to be read in conjunction with the Medical evidence stated by Doctor-Mohit (PW9) and the post-mortem report prepared by him. Witness-Laxman has completely supported his earlier version given in the FIR and same has been supported by Heera-PW13, thus, even by deeply examining both the statements, it is found that on material aspects there is no contradictory statement of witnesses' vis a vis the presence of the appellant, deceased and witnesses, at the time of incident. Even, from the statements of



the said witnesses no material contradictions have been pointed out by the appellant.

17. Medical evidence of the Doctor also completely supports the version of the complainant. From the statement and opinion of Doctor-Mohit (PW9), it is proved that because of the infliction of a blow on stomach, serious liver injury was suffered, which ultimately resulted into the death of Sonu on the next day. Thus, even for minor and non-material contradictions in the statements, appellant cannot be extended any benefit of doubt.

Non-mentioning of the history of the case or non-mentioning of the person who brought the deceased to the Hospital would not mean that the deceased has not suffered any injury. Since no external injury was noticed by the Doctor, there was no purpose of raising a question about the color of weapon or taking of the blood sample from the weapon.

Dr. Mohit has clearly given his unshaken opinion “***that cause of death in this case is hemorrhage and shock due to injuries described by me in the post-mortem report***”

Apart the aforementioned opinion about cause of death, after seeing the weapon he supplemented his opinion that “***possibility of injuries on the person of the deceased cannot be ruled out by the above said weapon***”. In cross-examination, doctor accepted that no external injury was found on the person of deceased and same seems to be natural also, because the alleged blow of iron drawal, which undisputedly is, a heavy instrument and inflicting of any injury with it on the soft and fleshy body



part, may not look as an apparent injury from outside. However, it may cause injury to the internal organs. For the reasons best known to the appellant, no such clarification is sought by him from the doctor during cross-examination. Therefore, expert opinion in regard to the cause of death and suffering of injuries with the instrument produced before doctor during evidence remains unshaken.

18. In the present case, the prime evidence is of two eyewitnesses i.e. PW12-Laxman and PW13-Heera, who had no interest in any manner to depose against the appellant for implicating him in such a crime. In the foregoing paragraphs of the judgment, the deposition made in the examination-in-chief has been reproduced and by reading the same believability of happening of incident cannot be doubted.

Therefore, in view of the statements of the witnesses coupled with the medical evidence proved by Dr. Mohit-PW9, this Court finds that due to the injury inflicted by the appellant on the stomach of the deceased-Sonu, liver was damaged which ultimately resulted in his death.

19. Now, while proceedings further, this court has to take notice of the submissions addressed by the appellant that whether the appellant is entitled to be held guilty for committing the offence of culpable homicide not amounting to murder or his act be confirmed in accordance with the decision given by the trial Court, whereby he has already been convicted for committing the offence of intentional murder. For the said purpose, this Court draws support from the Judgment passed by the Hon'ble Supreme



Court, titled as, 'Lavghanbhai Devjibhai Vasava Vs. The State of Gujarat', 2018(4) SCC 329, wherein, case of 'Dhirendra Kumar VS. State of Uttarakhand' 2015(3) SCALE 30, was followed, whereby Hon'ble Apex Court had laid down the parameters which must be taken into consideration, while deciding the question as to whether a case falls under Section 302 IPC or Section 304 IPC. As per the version of the prosecution in Devjibhai's case (supra) deceased Shakuben had a tiff with her husband (appellant therein) on account of preparation of the food. appellant got instigated and hit leg of the cot on the head of the deceased. Due to the inflicting of said injury, deceased started bleeding from her head and ultimately succumbed to her injuries. On lodging of complaint by mother of the deceased, appellant was charge-sheeted and then convicted by trial Court under Section 302 IPC. On appeal, High Court also upheld the conviction and sentence order awarded by the trial Court. However, in the light of the guidelines laid down by Hon'ble Apex Court in 'Dhirendra Kumar V. State of Uttarakhand' (2015) 3 SCALE 30, Hon'ble Apex Court while maintaining the culpability of the appellant altered the conviction to Section 304, Part-II IPC instead of Section 302 IPC. The Paragraph No.8 and 9 of Devjibhai's case (Supra) are reproduced herebelow:

*“8. This Court in the case of **Dhirendra Kumar Vs. State of Uttarakhand 2015(3) SCALE 30** has laid down the parameters which are to be taken into consideration while deciding the*



*question as to whether a case falls under Section 302 IPC or 304 IPC, which are the following:*

- (a) The circumstances in which the incident took place;*
- (b) The nature of weapon used;*
- (c) Whether the weapon was carried or was taken from the spot;*
- (d) Whether the assault was aimed on vital part of body;*
- (e) The amount of the force used;*
- (f) Whether the deceased participated in the sudden fight;*
- (g) Whether there was any previous enmity;*
- (h) Whether there was any sudden provocation;*
- (i) Whether the attack was in the heat of passion; and*
- (j) Whether the person inflicting the injury took any undue advantage or acted in the cruel or unusual manner.*

*9. Keeping in view the aforesaid factors it becomes evident that the case of the appellant would fall under Section 304 IPC as the incident took place due to a sudden altercation which was a result of delay in preparing lunch by the deceased. The appellant picked up a wooden object and hit the deceased. The medical evidence shows that not much force was used in inflicting blow to the deceased. The prosecution has not set up*



*any case suggesting that relationship between the husband and wife was not cordial, otherwise. Manifestly, the incident took place due to sudden provocation and in a heat of passion the appellant had struck a blow on his wife, without taking any undue advantage. We are therefore, of the opinion that it was an offence which would be covered by Section 304 Part-II IPC and not 302 IPC.”*

20. If the parameters laid down by the Hon’ble Apex Court are applied to the facts and evidence available in the present case, this Court finds, that as per the deposition of the eye witnesses i.e. PW12 and PW13, appellant-Rajender was sleeping when Sonu came and sat on the cot of the appellant. Thereupon, some altercation ensued between the two and they started abusing each other. In a fit of rage, appellant-Rajender took drawal of the Tractor and gave a blow to Sonu on his stomach. Although it is mentioned that another blow was given on thigh but same cannot be termed as a vital part. PW13-Heera has additionally attributed that a third blow was inflicted on the back of the deceased, which also cannot be termed as a vital part without specifying the exact portion. This Court, however, is unable to find any additional injury on the thigh and the back side of the deceased; nor same could be pointed out by the learned public prosecutor while arguing the appeal before this Court. Therefore, to the viewpoint of this Court only one injury is found on the person of the deceased which even was not visible, however, the attributed injury damaged the internal organ of the stomach i.e. liver of the deceased,



which is so mentioned in the post-mortem report, which has also been proved by the Doctor.

Therefore, taking into consideration the facts and circumstances of the case, it is more probable that appellant inflicted a single blow with iron drawal of the tractor which was already lying at the site, on the stomach of the deceased. The blow was delivered in a moment of anger after the appellant was disturbed when he was sleeping in his bed during dark night. This sole blow resulted into the rupturing of the liver. It goes without saying that there is no evidence in regard to the pre-mediation or any intention or motive to cause murder. The instrument i.e. iron dawal of the tractor cannot even be termed as weapon of any kind by its nature. Rather, same was picked up impulsively from the spot which was already available there on the site.

Not only this, as per the guidelines of Hon'ble Apex Court in ***Dhirender Kumar's case (supra)*** appellant did not take any undue benefit or acted in the cruel and unusual manner after the incident. Rather as per the statement of the witnesses, he himself had taken the deceased to the Government hospital next day. Thus, it can be concluded that there was no intention to cause death or may be to inflict a serious injury upon the deceased. However, due to the action of the appellant/appellant, a person has lost his life, therefore, considering the facts and circumstances of the case and the evidence available therein, coupled with the parameters laid down by the Hon'ble Apex Court in ***Dhirender Kumar's case (supra)***, conviction

of appellant-Rajender is altered from Section 302 IPC to Section 304 Part II IPC.

21. State has produced the custody certificate dated 19.10.2024, according to which appellant has undergone total sentence of four years, four months and ten days and including remission same is five years and four months. Moreover, no other offence is shown to have ever been committed by the appellant. Therefore, sentence is also reduced to the period already undergone, however, the imposition of fine as imposed by the trial Court and other terms recorded in the order of sentence would remain the same.

22. Accordingly, with the aforementioned modification impugned judgment of conviction dated 04.08.2022 and order of sentence dated 05.08.2022 passed by the Learned Session Judge, Rewari are hereby modified and the sentence of the appellant be reduced to the period already undergone. The present appeal is **partly allowed**.

23. Since the main appeal has been decided all other pending criminal miscellaneous application(s), if any, shall stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)  
JUDGE

(SANJAY VASHISTH)  
JUDGE

October 21, 2024  
Rashmi

Whether speaking/reasoned?  
Whether reportable?

✓Yes/No  
✓Yes/No