

**CRA-D-10-DB-2018 (O&M) and
CRR-2296-2018 (O&M)**

2025:PHHC:029084-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. **CRA-D-10-DB-2018 (O&M)**
Date of Decision: February 28, 2025

Kamal Dev @ AjayAppellant

Versus

State of Punjab Respondent

2. **CRR-2296-2018**

Shivani Sharma Petitioner

Versus

State of Punjab and another Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. R.S. Mamli, Advocate
for the appellant in CRA-D-10-DB-2018.

Mr. Fateh Sahota, Advocate for petitioner in CRR-2296-2018.

Mr. Dhruv Dayal, Addl. AG, Punjab.

LISA GILL, J.

1. This order shall dispose of CRA-D-10-DB-2018 and CRR-2296-2018 which were taken up together for hearing and decision, at request and with consent of learned counsel for parties as both of them arise out of

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judgment and conviction dated 11.12.2017 and order of sentence dated 15.12.2017.

2. CRA-D-10-DB-2018 has been filed by appellant for setting aside judgment dated 11.12.2017 passed by learned Sessions Judge, Rupnagar whereby he has been convicted for the offences punishable under Sections 302 and 307 of Indian Penal Code (for short – ‘IPC’) and order dated 15.12.2017, whereby he has been sentenced as under:-

Offence (U/S)	Sentence
302	Imprisonment for life, besides, pay a fine of Rs.50,000/-. In default thereof, undergo further rigorous imprisonment for two years.
307 IPC	Rigorous imprisonment for ten years, besides, pay a fine of Rs.70,000/-. In default thereof, undergo further rigorous imprisonment for two years.

3. CRR-2296-2018, has been filed by complainant, seeking modification of order of sentence dated 15.12.2017, to the extent that imprisonment for life under Section 302 IPC should mean that convict shall remain imprisoned till his natural death.

4. Brief facts as per prosecution version are that FIR No. 23 (Ex.PW10/B) was registered at the instance of complainant – Shivani Sharma in respect to occurrence which took place on 20.02.2017 at 7.00 a.m. As per statement (Ex.PW1/A), complainant stated that she was in a love affair with appellant sometime prior to the incident, however, appellant’s parents were opposed to their marriage, thus, matter came to an end. Complainant was engaged with one Neeraj Sharma (deceased) and her marriage with Neeraj Sharma was fixed for 28.03.2017. Appellant started harassing her. She stated

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that on 20.02.2017 she boarded the bus from Una to go to her place of work. Neeraj Sharma was travelling in the same bus. Appellant also boarded the same bus from Mehatpur. Complainant and Neeraj Sharma alighted from the bus at Kiratpur Sahib at the old bus stand. Neeraj Sharma sought to accompany the complainant right up to her house to ensure that appellant did not harass her on the way. Appellant too got off the bus from Kiratpur Sahib and followed complainant and Neeraj Sharma. As both of them were waiting for the bus while standing towards Nangal side, appellant took out a Khukhri from his *dub* (waist/side) and attacked Neeraj Sharma at about 7.00 a.m. Complainant came forward and tried to ward off the attack with her right arm, upon which she received grievous injury on her right hand. Appellant statedly gave another blow which hit left side of complainant's neck. Thereafter, he gave Khukhri blows to Neeraj Sharma on the left side of his neck, abdomen and in the pelvic area. Appellant hit the complainant with his fist on the right side of her neck and threw her down. It is stated that appellant attacked them with intention to kill. In the meantime, number of people gathered at the spot. Complainant and Neeraj Sharma were put in ambulance which was coming from Ropar side. They were removed to Civil Hospital, Anandpur Sahib where Neeraj Sharma was declared 'brought dead'. Complainant was referred to PGI, Chandigarh.

5. As per Investigating Officer Kulbhushan Sharma (PW10), he alongwith ASI Chiranji Lal (PW9) and other police officials went to Civil Hospital, Anandpur Sahib on receipt of medical ruqa alongwith MLR of complainant and medical ruqa qua Neeraj Sharma. Application (Ex.PW8/H)

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seeking fitness of injured was filed, upon which Neeraj Sharma was reported dead and complainant was declared fit to record her statement vide report Ex.PW8/I. Statement (Ex.PW1/A) of complainant, as narrated above, was recorded by him. She appended her left thumb impression thereon. Police proceedings (Ex.PW10/A) were recorded and ruqa sent to Police Station Kiratpur Sahib through PHG Harbhajan Singh for registration of case against appellant. On the basis thereof, FIR (Ex.PW10/B) was registered. Inquest report (Ex.PW10/C) and Ex.PW3/A was prepared. Dead body was identified by Telu Ram and Rajnish Sharma with their statements, Ex.PW3/B and Ex.PW3/C under Section 175 Cr.P.C. being recorded. Rough site plan (Ex.PX) of the place of occurrence was prepared. Post Mortem was conducted. Post Mortem Report (Ex.PW7/C) is on record. Blood stained clothes of deceased received from Dr. Swaranjit Singh, PW7, were taken in possession vide memo (Ex.PW9/D). Appellant was arrested on 20.02.2017 vide arrest memo (Ex.PW9/B) on receipt of information regarding his presence at railway crossing Kiratpur Sahib. As per disclosure statement (Ex.PW9/E) dated 21.02.2017, appellant disclosed that he had kept weapon of offence (Khukhri) concealed in the bushes near bank of Bhakra canal. Said Khukhri stained with blood was thereafter recovered and taken in possession vide memo (Ex.PW9/G). Medical record regarding examination and treatment of complainant was also taken in possession.

6. After completion of investigation, final report/challan was presented under Sections 323, 324, 307, 302 IPC. After commitment of case, charge under Sections 323, 324, 307, 302 was framed on 01.06.2017.

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Appellant pleaded not guilty and claimed trial. As many as ten witnesses were examined by prosecution to prove its case besides tendering in evidence, the documents as are detailed in para 14 of impugned judgment.

7. Statement of accused/appellant under Section 313 Cr.P.C. was recorded with entire incriminating evidence being put to him which he denied, claimed innocence and false implication. Plea put forth by appellant is that he was contacted telephonically by complainant herself on 20.02.2017, asking him to settle the dispute of their affair/relationship in the presence of Neeraj Sharma, upon which he boarded the bus in question on 20.02.2017 alongwith complainant. Before boarding the bus, he had conversed with her telephonically through cell phone number 7018186192 which is a cell phone of one of his relatives, namely Sunil Kumar as he had left his own cell phone at home. He also brought along all photographs, letters and gifts given to him by complainant, in order to return them to her. Venue of return of these articles was affixed at bus stand Kiratpur Sahib. When he and complainant were conversing with each other at the bus stand Kiratpur Sahib, Neeraj Sharma emerged at the spot armed with Khukhri and attacked him. Souvenirs fell from his hand and were scattered on the ground. Complainant raised her right hand to stop Neeraj Sharma from attacking the appellant, due to which she received injuries at the hands of deceased. It is stated that appellant tried to snatch the weapon from the hands of Neeraj Sharma to protect and defend himself and during the scuffle he also received injuries. Neeraj Sharma also received injuries with weapon which was brought by none other but the deceased himself. Appellant on being attacked on his head by the deceased

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became unconscious and fell on the road. On regaining consciousness he found himself admitted in Civil Hospital, Anandpur Sahib. No police official approached him to record his statement about the occurrence during his stay in the hospital. He himself went to the police after discharge from the hospital and disclosed the entire occurrence but the police did not register any case on the basis of his statement and proceeded to falsely implicate him. He denied recovery of any weapon being effected from him. In defence, five witnesses were examined by the appellant. Details of prosecution witnesses are mentioned in para 3 to 13 of impugned judgement and those of the defence witnesses in para 16 to 20 thereof. Same are not being reproduced for the sake of brevity.

8. Learned trial Court on considering the evidence on record, facts and circumstances concluded that prosecution had successfully proved the commission of offence by the appellant beyond reasonable doubt. He was, thus, convicted for the offences punishable under Sections 302 and 307 IPC and sentenced as has been detailed in the foregoing paras. Aggrieved therefrom, above said appeal and Criminal Revision by the complainant have been filed.

9. Learned counsel for appellant vehemently argued that learned trial Court has grossly erred on fact and in law in convicting the appellant for the offences as above. Evidence on record does not in any manner prove appellant to be the aggressor. It was in fact deceased, who attacked the appellant and it was in his self defence that appellant retaliated. Injuries were caused in the scuffle which ensued. Deceased had come armed with Khukhri

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and was inflicting injuries upon appellant and complainant. Learned counsel for appellant further submitted that discovery of Khukhri on the basis of disclosure statement is not proved as per evidence on record. Appellant, it was submitted, was in fact immediately removed to the hospital from the place of occurrence, in the same ambulance in which injured and deceased were taken. He remained admitted in the hospital till 3.00 p.m. There was, thus, no occasion for him to conceal the weapon of offence at the alleged place of discovery. Reference was also made to photograph, Ex.DW3/C, wherein Khukhri is stated to be left at the spot and Photographer, Ex.DW3/A reflecting the accused being guarded by policemen while admitted at the hospital. It is submitted that learned trial Court has wrongly discarded the said evidence on record. Learned counsel argued that from no angle whatsoever offence punishable under Section 302 IPC was made out. At best, appellant can be held guilty for the offence punishable under Section 304 Part 1 IPC. It is, thus, prayed that this appeal be allowed and impugned judgment and order dated 11.12.2017 and 15.12.2017 be set aside.

10. Learned counsel for State refuted the arguments as raised on behalf of appellant and submitted that there is clear cut evidence on record including the evidence of injured eyewitness which cogently proves the commission of offences by the appellant. Learned counsel for complainant also argued on the same lines. Dismissal of appeal was prayed for.

11. Heard learned counsel for parties at length and have carefully perused the record.

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12. Narration in the FIR by complainant as detailed in foregoing paras is a matter of record and is not being reproduced again for the sake of brevity. Important fact to be noted in this case is that occurrence in question on 20.02.2017 at 7.00 a.m. at the bus stand, Kiratpur Sahib is duly admitted by the appellant who, however, seeks to give a different complexion to the sequence of events as they unfolded. It is a case of appellant that it is the deceased who had come present at the spot, armed with a Khukhri and attempted to cause injuries to both appellant and complainant. Appellant, it is stated, acted in self defence and Neeraj Sharma unfortunately passed away on account of injuries received by him in a scuffle which ensued. Complainant also received injuries as she tried to intervene. It is further the case of appellant that he had been called to the spot by the complainant.

13. At this stage, it is germane to refer to medical evidence on record. PW7, Dr. Swaranjit Singh, Medical Officer, BBMB Rupnagar Nangal, District Rupnagar stated that vide his order (Ex.PW7/B), medical Board consisting of him and Dr. Harsh Kumar, Surgeon, was constituted for carrying out the post mortem of deceased Neeraj Sharma. Following injuries were observed on the dead body:-

- “1. Stab wound 1.5 inch long x 1 inch broad x 2 inches deep on the neck on left side. Left carotid artery punctured, trachea punctured, oesophagus punctured.
2. Stab wound 2 inch long x 0.5 inch broad x 1 inch deep in the epigastric region on left side . Peritoneal cavity full of blood.
3. Abrasion injury red in colour 0.5 inch long x 0.5 inch broad below left knee joint.

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4. Stab wound 2 inches long x 1 inch broad x 1 inch deep in the pubic region. Large intestine punctured at four places.
5. Incised wound 0.5 inch long x 0.25 inch broad x 0.5 inch deep on the palmer surface of left hand at the base of little finger.
6. Incised wound 0.75 inches long x 0.5 inches broad x 0.25 inches deep on the palmer aspect of left hand on the terminal phalynx of left thumb.

Lungs were congested. Peritoneum, punctured in the epigastric region. Peritoneal cavity full of blood. Stomach was normal containing semi-digested food particles and gases. Small intestine was punctured at two places and containing semi digested food particles and gases. Large intestine was punctured at four places and containing digested food particles, gases and fecal matter.”

14. PW7, further stated that probable time between injury and death was immediate and between death and post mortem was within 12 hours. Cause of death was due to combined effect of injuries 1 to 6, which were ante mortem in nature and sufficient to cause death in the ordinary course of nature. He further deposed that corresponding injuries of Khukhri mark was present on the shirt, vest, sweater, under wear and pant of the deceased and that injuries were very much possible with Khukhri Ex.MO/1 which was shown to him in Court.

15. PW8, Dr. Satinderjit Singh, Civil Hospital Anandpur Sahib, District Rupnagar testified that he was posted as Medical Officer on 20.02.2017 at Civil Hospital, Anandpur Sahib. On the said day, Neeraj Sharma and complainant were brought to the hospital with history of assault.

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Intimation was sent to the police (Ex.PW/8A). Medico legal examination of complainant was carried out and following injuries were found:-

- “1. An incised wound on the right wrist joint mostly separating the forearm hand with active bleeding. Advised surgeon and ortho opinion.
2. An incised wound of size 4x1x1 cm on the left sided neck extending to occipital region, advised NCCT head and surgeon opinion.
3. An incised wound of size 3 x 1 x 1 cm is seen on the left shoulder region. Advised ortho opinion.
4. A swelling was seen on the right sided neck with bluish colour. Advised surgeon opinion and ENT opinion.”

16. PW8 further testified that nature of injuries were kept under observation till receipt of opinion of Orthopedist, surgeon and receipt of NCCT Head. Kind of weapon used for injuries No. 1 to 2 and 4 was sharp and blunt for injury No. 3, with probable duration of injuries within 30 minutes. Complainant, it is further submitted, was referred to PGI after preparation of MLR she was declared fit to record her statement vide his report Ex.PW8/I. As per MLR, it is recorded to be a case of history of assault by a known stalker while appellant was walking towards the bus at about 7.30 a.m. on 20.02.2017 at Kiratpur Sahib.

17. PW11 – Dr. Saurav Aggarwal, Senior Resident, Department of Orthopedics, PGI, Chandigarh deposed that complainant – Shivani Sharma was admitted to PGI on 20.02.2017 by one Parmod Kumar (father of complainant). He further deposed that:-

“ The pre operative diagnosis was fracture of right scaphoid lunate of open IIIb-c, DRUJ, ulnar not palpable and extensor

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tendon injury. We performed operation/surgery on her person.

The operational notes are as under:-

Debridement K wire fixation of DRUJ right scaphoid and wrist spanning fixator plus plastic surgery. I have seen such operational notes and pre operative diagnosis from the copy with me and original from the bed head ticket Ex.PW-IV/A total pages 1 to 37 which bears my signatures as well as signatures of Dr. Sanjog Gupta, which I identify from the original shown to me through Video Camera.

Description of operation:-

Patient laid in supine position. Skin painted and draped. Thorough debridement of necrosed, muscles debrided, Wound washed with ten liters of saline. K wire fixation of right scaphoid and DRUJ done. Wrist spanning fixator was applied. Case was handed over to plastic surgery and further management.”

18. He further deposed that injuries in question are not possible in a scuffle.

19. It is apparent that injuries, as described above, are in complete sync with ocular version as given by injured eyewitness/complainant PW1. Nature and receipt of injuries does not leave an iota of doubt that it was the appellant who was the aggressor. It is to be noted at this stage that appellant was admittedly serving Indian Army and was trained in combat. It is not possible that he would not have been able to ward off the attack by Neeraj Sharma, who was stated to be working for a private Company at Nalagarh.

20. Much stress had been laid by learned counsel for appellant on injuries suffered by appellant and his admission at the hospital, to submit that prosecution case is doubtful and lacks credibility. DW4 Dr. Satinderjit Singh,

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Medical Officer, Civil Hospital, Anandpur Sahib was examined by appellant in defence. DW4, brought the emergency register before learned trial Court to indicate that appellant had been admitted in hospital on 20.02.2017 with swelling on right side of his forehead. DW4 further stated that appellant was discharged on the same day. In cross examination, DW4, stated that all medical tests conducted on the person of appellant were normal and no external injury on his body was found except swelling as above and as per record he was mentally and physically normal. It has also come on record that appellant was discharged at about 3.00 p.m. and thereafter arrested at about 7.45 p.m. at Kiratpur Sahib. In this factual matrix, even the argument raised on behalf of appellant that discovery of weapon of offence i.e. Khukhri pursuant to his disclosure statement is suspect, is completely negated. It is correctly held by learned trial Court that appellant had sufficient time to place the Khukhri at the location from where it was recovered.

21. Similarly, argument raised on behalf of appellant that he had come at the beckoning of the complainant is not proved on record. Testimony of DW2, Mandip Singh, Nodal Officer, who deposed that cell phone No. 7018186911 was issued in the name of Shivani Sharma is of no avail to the appellant because it is a matter of record that there is no evidence to show that any of the connected calls were from the cell phone of appellant. It is correctly held by learned trial Court that appellant failed to prove any call with Shivani Sharma and that his plea of talking to her from one cell phone No. 9646882510 of his relative Sunil Kumar is not proved because there is no

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evidence on record to indicate that Sunil Kumar is the subscriber of such cell phone number, neither has Sunil Kumar been examined in defence.

22. Learned counsel for appellant had also vehemently argued that photographs Ex.DW3/A and Ex.DW3/B give much credence to the defence and deal a fatal blow to prosecution version. Reliance has been placed by defence on statements of DW3, Reena Kumari, who is the real sister of appellant, for proving photographs Ex.DW3/A to Ex.DW3/D. She stated that these images were received by her cousin Poonam from Whatsapp sent to her by another one of her friends who was present at the place of occurrence for boarding the bus for Chandigarh. Reference was also made to testimony of DW5, Babli Rani, who stated that as she was waiting to board the bus at the old bus stand Kiratpur Sahib, she witnessed a quarrel taking place across the road and when she crossed the road, quarrel was over, one man was lying unconscious and the other one seriously injured was also lying on the ground with knife in his hand. She clicked some photographs of the scene alongwith her cell phone and sent them to her friend Poonam. Ex.DW3/C is stated to have been clicked by her. It is correctly held by learned trial Court that said photographs/images are not proved in accordance with law. DW5, Babli Rani, has not authenticated the photographs Ex.DW3/A, Ex.DW3/B to be the print out of images which were clicked by her through his cell phone. She was confronted only with photograph Ex.DW3/C. There is no evidence as to who took out these prints. Link evidence is clearly absent and fabrication of such images and forwarding of the same on the cell phones in question, cannot be ruled out. It is further pertinent to note that PW10, in his testimony clearly

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stated that no photographs were found at the spot. Moreover, even if it be accepted to be correct, these photographs do not probablise the case of defence. It is correctly held that mere presence of photographs and letters etc. at the spot by itself, even if accepted, does not prove that appellant had been called to the spot by the complainant and that it was deceased who was the aggressor. If that had been the case it is highly improbable that appellant would have got away with just a swelling on the forehead.

23. Learned counsel for appellant has also referred to cross examination of PW10, Kulbhushan Sharma, to the extent that appellant was indeed found in a semi conscious condition at the hospital and that subsequently when he was to be arrested later in the evening, he did not try to escape on seeing the police party. Reference was also made to testimony of PW9, wherein it is affirmed that appellant had also been admitted at Civil Hospital on the day of admission of injured. It was submitted that testimonies of PW9 and PW10 by themselves indicate that appellant had been apprehended in the morning itself. However, this is belied by the evidence on record. PW9, while accepting admission of appellant in the morning has explained that no effort was made to arrest the accused/appellant there and then. He was lastly seen at the hospital at 9.15 a.m. In the evening, SHO had sent a request to the doctor to inquire about fitness of appellant upon which the doctor informed that appellant already stood discharged. Thus, admission of appellant at Civil Hospital in the morning alongwith deceased and appellant does not for a moment affect the veracity and credibility of prosecution version.

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24. We also do not find any merit in the argument raised on behalf of appellant that offence at best would fall under the rigours of Section 304 Part I IPC. Section 304 Part I IPC reads as under:-

“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.”

25. The number and nature of injuries on person of deceased as detailed in foregoing paras clearly negate abovesaid argument of learned counsel for appellant, which is, hence, rejected.

26. Factual matrix, as has been described in the foregoing paras, clearly reflects that appellant has been correctly convicted for the offence punishable under Sections 302 and 307 IPC.

27. At this stage, it is relevant to note that learned counsel for complainant argued that sentence imposed upon appellant under Section 302 IPC should be modified to that of ‘imprisonment for life till his natural death’, keeping in view the gravity of offence. We have carefully gone through judgments of Hon’ble the Supreme Court in **Union of India versus V.**

Sriharan @ Murugan and others 2016 (2) SCC (Cri.) 695, Ravinder

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Singh Vs. The State of N.C.T., of Delhi, 2024 (2) SCC 323 and other judgments referred therein. In our considered opinion, no ground is made out to add the words “till his natural death” in the sentence of imprisonment for life. Further, keeping in view the nature and manner of offence, we do not find it just and expedient to take recourse to special category sentencing as discussed in the judgments as above and in the case of **Swamy Shraddananda @ Murali Manohar Mishra Vs. State of Karnataka (2008) 13 SCC 767**, in exercise of revisional jurisdiction, as urged by learned counsel for complainant/revisionist.

28. No other argument was addressed on behalf of any of the parties.

29. Keeping in view the facts and circumstances as above, we do not find any ground whatsoever to interfere in impugned judgment of conviction dated 11.12.2017 and order of sentence dated 15.12.2017 passed by learned Sessions Judge, Rupnagar, which are accordingly upheld.

30. CRA-D-10-DB-2018 as well as CRR-2296-2018 are, accordingly, dismissed.

**(LISA GILL)
JUDGE**

**(ALOK JAIN)
JUDGE**

February 28, 2025
Rts

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