

STATE OF HARYANA

v.

JAGAT PAUL & ORS.

JUNE 20, 2007

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

*Penal Code, 1860; Ss.34, 302 & 323:*

*Murder—Accused persons attacked deceased and his brother with lathis and gandasis and injuring them—Deceased succumbed to injuries—F.I.R.—Charge Sheet—Trial Court convicted and sentenced all the accused persons for offences punishable under section 302 r/w s.34 IPC—Acquitting one of the accused persons High Court altered conviction of three other accused persons to s.325 r/w s.34 IPC—On appeal, held, High Court altering conviction on the basis of report of medical officer whereby he opined the cause of death to be cardiac arrest and statement of PW.9, the only eyewitness that accused persons gave blows with lathis and gandasis on the persons of the deceased—However, these cannot be a ground for altering the conviction under s.302 r/w s.34 IPC to s.325—In the facts and circumstances of the case, Trial Court rightly convicted the accused persons except respondent no.1 under s.302 r/w s.34 IPC since he had no role to play in the occurrence and High Court rightly acquitted him—Hence, conviction and sentence of accused persons except respondent no.1 as ordered by Trial Court restored.*

On the fateful day, there was a quarrel between the son of the deceased and one of the accused persons near a culvert on the road. When the deceased came to know about the incident he alongwith his brother, PW.9 went towards that side. On seeing them accused fled away. Later, accused persons armed with lathis and gandasis came and gave blows with their respective weapons on the head, face and chest of deceased. The deceased fell down on the ground. When PW.9 tried to save him, one of the accused gave a Gandasi blow from its reverse side on his head. PW.9 raised an alarm. After committing the crime all the four accused persons ran away from the spot. Both the injured were taken to general hospital where the deceased succumbed to injuries. First Information Report was lodged and investigation was undertaken and

A charge sheet was filed by the police. The trial court found all the four accused persons guilty and convicted and sentenced them for offences punishable under Section 302 read with Section 34 IPC and Section 323 read with Section 34 IPC. Appeals were preferred by the accused persons before the High Court. The High Court directed acquittal of one of the accused persons and altered conviction of other three accused persons to Section 325 read with Section 34 IPC and the sentence was reduced to the period already undergone but maintaining conviction for the offence punishable under Section 323 read with Section 34 IPC. Hence, the present appeals.

The Appellant-State contended that the High Court has indicated no reason for altering the conviction, even though it found the evidence of PW.9 to be clear and cogent; and that on an erroneous reading of the doctor's evidence, the High Court has come to the conclusion that the cause of death was "Cardiac Arrest". In fact what was specifically stated by the doctor was that the head injury with its complications alongwith other injuries was the cause of death.

Disposing of the appeal, the Court

HELD: 1.1. Only reason which appears to have weighed with the High Court for altering the conviction was that the doctor has stated the cause of death to be Cardiac Arrest and PW.9 - the only eye witness had stated that all the accused persons gave blows with lathis and gandasis on the person of the deceased. These cannot be a ground for altering the conviction to Section 325 read with Section 34 IPC. [Para 5] [1078-F, G]

1.2. The conclusions of the High Court that the conviction would be under Section 325 read with Section 34 IPC is clearly unsustainable. The trial court had rightly convicted the accused persons for offence punishable under Section 302 read with Section 34 IPC. The conviction and the sentence shall stand restored. So far as the respondent is concerned the High Court has indicated the reasons for directing his acquittal. It has noted that respondent no.1 had no role to play in the occurrence; and that the earlier quarrel took place between son of the complainant and the real brother of the accused had reasons to attack deceased and his brother respondent no.1 is not related to the co-accused persons. The High Court found that he had no animosity so far as the complainant party is concerned. Hence, no reason is found to take a different view and therefore the acquittal of accused-respondent no.1 cannot be faulted. [Para 8] [1079-G; 1080-A, B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 981-982 of 2000. A

From the Judgment and Order dated 11.01.2000 of the High Court of Punjab and Haryana at Chandigarh in Crl. Appeal No. 193-DB and 330-DB of 1995.

Roopansh Purohit, T.V. George and Rajeev Gaur for the Appellant. B

Shalu Sharma, Rajesh Sharma and Good-will Indeevar for the Respondent.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Challenge in these appeals is to the order passed by a Division Bench of the Punjab and Haryana High Court directing acquittal of respondent No.1-Jagat Paul and converting conviction of rest of three respondents. By the common judgment relating to two appeals i.e. Criminal Appeal No. 193-DB of 1995 and Criminal Appeal No. 330-DB of 1995, Respondent-Jagar Paul -appellant in Criminal Appeal No. 193- DB of 1995 was acquitted while in the other appeal the three appellants were held guilty of offence punishable under Section 325 of the Indian Penal Code, 1860 (in short the 'IPC') read with Section 34 IPC by the High Court. Accordingly their conviction for offence punishable under Section 302 read with Section 34 IPC was altered. C

2. The background facts in a nutshell are as follows: D

Krishan, son of Deceased (hereinafter referred to as 'deceased') had gone to the village for fetching desi ghee. Prabhu (PW-9) the complainant was sitting in the house of deceased and were discussing about the matrimonial alliance. Saraswati wife of Prabhu came there and told that Krishan and accused Dalip accused were exchanging hot words near a culvert on the road near the house of Chando and she expressed her apprehension that they might have a quarrel. Deceased and Prabhu (PW-9) went towards that side. On seeing them coming, accused Dalip fled away towards his house. When deceased and Prabhu were standing near the house of Jagdish Chowkidar, all the four accused armed with lathis and gandasis came there raising lalkaras to the effect that they would teach them (complainant party) a lesson. Saying so, all the four accused gave blows with their respective weapons on the head, face and chest of deceased. On receipt of the injuries, Deceased fell down on the ground. When Prabhu went near his brother to save him, Dalip E

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A gave a Gandasi blow from its reverse side on his head. Prabhu raised an alarm of crying for help. On hearing his alarm, Jagmal (member of panchayat) and Mahabi rushed to the spot to rescue them from the onslaught of the accused. All the four accused persons ran away from the spot. Prabhu and deceased were removed to general hospital. Sirsa by Om Prakash.

B On the basis of the FIR investigation was undertaken and charge sheet was filed.

C The trial court placing reliance on the evidence of PW-9, the injured witness Prabhu, found all the four accused persons guilty and convicted and sentenced them for offences punishable under Section 302 read with Section 34 IPC and Section 323 read with Section 34 IPC. Appeals were preferred by the accused persons before the Punjab and Haryana High Court which, as noted above, directed acquittal of accused Jagat Paul. In respect of other three accused persons the conviction was altered to Section 325 read with Section 34 IPC and the sentence was reduced to the period undergone. The conviction for the offence punishable under Section 323 read with Section 34 IPC was maintained.

E 3. In support of the appeals, learned counsel for the appellant-State submitted that the High Court has indicated no reason for altering the conviction. In fact it found the evidence of Prabhu, PW 9 to be clear and cogent. On an erroneous reading of the doctor's evidence, the High Court has come to the conclusion that the cause of death was "Cardiac Arrest". In fact what was specifically stated by the doctor was that the head injury with its complications alongwith other injuries was the cause of death.

F 4. Learned counsel for the respondent supported the judgment of the High Court.

G 5. It is to be noted that the only reason which appears to have weighed with the High Court for altering the conviction was that the doctor has stated the cause of death to be Cardiac Arrest and Prabhu - the only eye witness had stated that all the accused persons gave blows with lathis and gandas on the person of the deceased. These according to us cannot be a ground for altering the conviction to Section 325 read with Section 34 IPC.

H 6. At this juncture it is to be noted that the case of the accused persons before the trial court was that the offence at the most is one relating to Section 304 Part-I IPC. So far as the question of "Cardiac Arrest" is concerned

it is only sign or symptom of death. The trial court had elaborately dealt with these aspects. A

7. It was recorded as follows:

“Defence counsel next submitted that if at all the offence made out is under Section 304-Part I I.P.C and not under Section 302 IPC. In this behalf, much reliance was placed on certificate dated 2.5.1994 lying in the treatment record showing the cause of death as cardiac arrest. On its basis, it was urged that the death was not result of injuries. The argument has no force because cardiac arrest is only sign or symptom of death. It symbolises the end of life but cardiac arrest may be due to injuries or due to some other reasons also. In our case post mortem report clearly establishes that ShishPaul succumbed to his injuries and the cause of death was injuries suffered by him in the occurrence. In the context it is significant to mention that there was fracture of left fronto-parietal-temporal region. The fracture was ‘Y’ shaped. Separate three pieces were present. The fracture extended upto occipital suture in the posterior and upto orbit in the anterior. Thus it was a big multiple fracture. Even brain matter was injured there was also marginal extradural haematoma in the left parietal region. Such serious injuries on vital organ clearly show that the death resulted from the injuries as also categorically opined by Dr. Subhash Juneja PW13 who conducted postmortem examination. It is true that there was no sharp weapon injury, but the force with which the aforesaid head injury was caused clearly shows the intention and knowledge of the accused persons. The other injuries were also on vital organs being on head, face and chest. So there cannot be any doubt about the cause of death being the injuries caused by the accused. In this context, it is also significant to mention that Shish Paul remained unconscious throughout and did not regain consciousness till his death. So it is more than crystal clear that the death was direct result of the injuries and there was no other cause of death. It may be added that heart was found to be healthy and of normal size on X-ray examination and also in autopsy, and so it was not case of sudden heart failure and rather the alleged cardiac arrest was due to death resulting from injuries.” B C D E F G

8. Therefore, the conclusions of the High Court that the conviction would be under Section 325 read with Section 34 IPC is clearly unsustainable. The trial court had rightly convicted the accused persons for offence H

A punishable under Section 302 read with Section 34 IPC. The conviction and the sentence shall stand restored. So far as the respondent -Jagat Paul is concerned the High Court has indicated the reasons for directing his acquittal. It has noted that Jagat Paul had no role to play in the occurrence. It was noted that the earlier quarrel took place between Om Prakash, son of the complainant and Ran alias Ran Singh the real brother of the accused had reasons to attack deceased and Prabhu. Jagat Paul is not related to the co-accused persons. The High Court found that he had no animosity so far as the complainant party is concerned. We find no reason to take a different view and therefore the acquittal of accused Jagat Paul cannot be faulted. The appeal stands dismissed so far as he is concerned.

C 9. The appeals are accordingly disposed of.

S.K.S.

Appeals disposed of.