

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1835 OF 2010

SATISH KUMAR APPELLANT(S)

VERSUS

THE STATE OF HARYANA RESPONDENT(S)

J U D G M E N T

SANJIV KHANNA, J.

The impugned judgment dated September 19, 2008 passed by the Punjab & Haryana High Court affirms conviction of the present appellant Satish Kumar and one Dhajja Ram for murder of Shamsheer under Section 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as the “Code”), for which the appellant has been sentenced to imprisonment for life and fine of Rs. 10,000/- with default stipulation to undergo further rigorous imprisonment for two years. The impugned judgment also affirms conviction of Satish Kumar and Dhajja Ram under Section 506 read with Section 34 of the Code for which they have been sentenced to rigorous imprisonment for one year and fine of Rs.

1,000/- each with default stipulation to undergo rigorous
Criminal Appeal No. 1835 of 2010 *Page 1 of 7*

imprisonment for 3 months and under Section 323 read with Section 34 of the Code for which they have been sentenced to undergo rigorous imprisonment for six months and fine of Rs. 500/- each, and in default to undergo further rigorous imprisonment for one month.

2. It appears that Dhajja Ram has not assailed the impugned judgment passed by the Punjab & Haryana High Court. In fact, it was stated before us that perhaps he has been released on grant of remission.
3. As far as involvement of the present appellant in the offences under Sections 302, 506 and 323 read with Section 34 of the Code is concerned, we find no ground and reason to interfere with the findings recorded by the High Court affirming the findings of the trial Court that Dhajja Ram and Satish Kumar had given 'Lathi' blows to deceased Shamsheer as was stated by the deceased to Surender (PW-2) on his way to the hospital and to ASI Sri Kishan (PW-9), which statements have been relied upon as dying declaration. Bharpoor (PW-7) and Sadhu Ram (PW-8), who had gone to ease themselves, on hearing alarm raised by the deceased Shamsheer had returned and witnessed the incident. They have also deposed on the involvement of the appellant.

reason and motive for the violence, as the appellant and Dhajja Ram had threatened deceased Shamsheer on account of their objections to the relations of a woman belonging to 'Dahiya Gotra' with a man of 'Ohlan Gotra'.

4. The primary question which arises for consideration is whether the conviction of the appellant for murder under Section 302 of the Code is justified and correct, or it should be converted to Section 304 Part I of the Code.
5. As per the dying declaration of the deceased, the appellant Satish Kumar had given 'Lathi' blows on his waist and below the right knee whereas Dhajja Ram had given 'Lathi' blows on his thigh/knee of left leg and left hand. The medico-legal report Ex-PC prepared by Dr. Jai Mala (PW-3) on 20th March, 2002 at about 9:15 a.m., had observed the following injuries on Shamsheer, when he was alive:

- “1. A bruise reddish bluish in colour, 3 cm x 1cm in size was present on posterior aspect of left forearm in middle part along with swelling. No bleeding was present. Tenderness was present. Advised for X-ray left forearm, A.P. lateral view.
2. A bruise reddish in colour, 10 cm x 1 cm in size was present on upper border of the right buttock region.
3. A bruise 4 cm x 1 cm in size, reddish in colour was present below right knee along with diffused swelling involving right knee. No bleeding was present. Tenderness was present. Advised X-ray right knee, A.P and later view.

4. A bruise reddish in colour 4 cm x ½ cm in size was present on right upper back region. Advised X-ray chest right side.”
6. Subsequently, condition of Shamsheer had deteriorated and he was referred to Post Graduate Institute of Medical Sciences, Rohtak where he died on 21st March, 2002. Dr. R.K. Nandal (PW-4) had conducted autopsy of Shamsheer on March 22, 2002 at about 12:05 p.m. and his post-mortem report Ex-PG, records:
- “1. A contusion on left forearm, mid part posterior side, on dissection, infiltration of blood in surrounding tissues was present.
 2. There was contusion of posterior side of left elbow joint, 3x2 cm. On dissection fracture of humerus was seen.
 3. The contusion on right buttock, 10x1.2 cm, on dissection, infiltration of blood was present.
 4. A contusion on right knee joint front 4.5 x 2 cm on dissection, infiltration of blood was present.
 5. A contusion on right upper back region, 4x1 cm in size.
 6. On dissection of head, there was infiltration of blood in whole the brain with clotted blood present at the base of skull, 80-100 cc.
 7. There was dislocation of first cervical vertebral joint present.”

As per the post mortem, the head injury was sufficient cause of death in ordinary course of nature.

7. As noticed above, the dying declaration of the deceased had referred to ‘Lathi’ blows which were given on his legs, left hand and waist and did not refer to any ‘Lathi’ blow on his head. The

medico-legal report Ex-PC prepared by Dr. Jai Mala (PW-3) also does not refer to any head injury. Dr. R.K. Nandal (PW-4) who had conducted the post mortem had testified that there was infiltration of blood in the whole brain with clotted blood 80-100 cc present at the base of skull. There was dislocation of first cervical vertebral joint. All other organs were found healthy and pale. The cause of death was the head injury. Importantly, Dr. R. K. Nandal (PW-4) during the course of cross-examination had stated as under:

“Before post mortem, only police papers of inquest proceedings before me with initial summary. Bed Head ticked was not produced before me. It is not necessary that just after dislocation of first cervical patient would die within very short period. Death is also not certain in case of dislocation of first cervical. I am MBBS and M.D (Gynaecologist). It is incorrect that detection of dislocation of first cervical is not possible without X-ray. Volunteered it is possible in post mortem examination. It is incorrect to say that only Neurologist expert can find out its dislocation of cervical and not any other medical officer. It is correct that first cervical is surrounded by a ring of fibrous tissues. Dislocation can also be due to sudden severe jerk. It is incorrect that my opinion regarding cause of death may not be correct.”

8. Clearly, therefore, there is inconsistency between the dying declaration, medico-legal report Ex-PC and the post mortem report Ex-PG. Further, cross-examination of Dr. R.K. Nandal (PW-4) exposit contradiction as to whether the injury in question was sufficient to cause death in normal course of nature. Benefit of

doubt in view of the ambiguity and contradictions must go the appellant.

9. In view of the aforesaid, we do not think that the condition and mandate of third clause of Section 300 of the Code that the bodily injury intended to be inflicted was sufficient in ordinary cause of nature to cause death has been proved and established beyond doubt. Pertinently, it is under this clause alone that the present appellant has been convicted for murder under Section 302 read with Section 300 of the Code and sentenced to life imprisonment. Accordingly, the conviction of the appellant Satish Kumar is converted from Section 302 to Part I of Section 304 of the Code. Other convictions are maintained and not interfered.
10. Turning to the question of sentence for the offence under Section 304 Part I, we find that the appellant was released on bail vide order dated July 22, 2011, which refers to Jail Custody Certificate dated September 16, 2010 that the appellant had undergone sentence of seven years on the date of issue. The appellant has been on bail since then. We do not think that the appellant should be again incarcerated and sent to jail.
11. We would, therefore, partly allow the present appeal by converting the conviction of the appellant from Section 302 to Section 304

Part I of the Code for imprisonment to the period already undergone. The appellant would, however, be liable to pay a fine of Rs. 1,000/- in default of which he would undergo simple imprisonment for one month. As stated above, the conviction and sentence of the appellant for other offences is maintained.

.....J.
(INDU MALHOTRA)

.....J.
(SANJIV KHANNA)

**NEW DELHI;
OCTOBER 3, 2019.**