

NON REPORTABLE

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

CRIMINAL APPEAL Nos. 1478-1479 OF 2011

RAMJI ... Appellant(s)

VERSUS

STATE OF PUNJAB ... Respondent(s)

JUDGMENT

N. V. RAMANA, J.

These appeals arise out of common judgment and order dated 21st January, 2011 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal Nos. 775-SB of 1997 and 101-SB of 1998, whereby the High Court set aside the judgment passed by the trial Court and altered the conviction and sentence against the appellant—accused from an offence under Section 304 Part II, IPC to that of under Section 302, IPC.

2. The prosecution case, in brief, is that on 21st July, 1995 at about 9 p.m. when the complainant Darshan Lal (PW 5)

and his mother were sitting in the compound of their house, his brother Som Raj (deceased) went upstairs. Soon thereafter, their neighboring residents Sukhdev Singh (A1), Sandeep Singh (A2), Ramesh Singh (A3) and Lali @ Tarlok Singh (A4) armed with deadly weapons came from the upstairs dragging Som Raj and beating him with the weapons alleging that he had thrown stones into their house. The complainant and his mother though requested the accused not to beat the deceased, the accused did not pay any heed to their request and took away Som Raj to the flour mill of one Tara Singh and tore off his clothes. In the commotion, Som Raj managed to escape from their clutches and ran into the house of Bansi Lal in nude form itself and bolted from inside. The accused again caught hold of Som Raj and given severe beatings to him and brought him near the bus stop of the village. At that point of time, the appellant herein Ramji (A5), who appeared there in his SPO uniform repeatedly gave kick blows to Som Raj on his head, chest and neck. By applying full force, Ramji (A5) pressed the neck of Som Raj till he became unconscious. Thereafter, all the accused lifted Som Raj and thrown him in front of his house and fled away. The complainant took him to Civil Hospital, Mukerian where he succumbed to the

injuries at about 12.30 a.m. on 22.7.1995.

3. Upon informing by the hospital authorities, Inspector Ram Prakash (PW 9) went to the hospital and recorded the statement of complainant and registered FIR against the accused. After preparing inquest report and recording statements of witnesses, the I.O. visited the spot, prepared site plan. It was followed by the arrest of the accused and recovery of weapons used in the offence. All the accused were challanned for the offence under Section 302/34, IPC. The case was then committed to the Court of learned Sessions Judge for trial.

4. The learned trial Judge, at the end of trial, formed the opinion that all the accused were guilty of offence under Section 304 read with Section 149, IPC and accordingly convicted them and sentenced to suffer seven years rigorous imprisonment and to pay a fine of Rs.2,000/- each, in default, to further suffer rigorous imprisonment for a period of six months.

5. All the accused persons aggrieved by the judgment of the trial Court approached the High Court in appeal while the complainant preferred Criminal Revision Petition and the State has filed separate appeal before the High Court. By the judgment impugned herein, the High Court while dismissing the appeals of

the accused, allowed the State appeal and disposed of the Criminal Revision filed by the complainant by setting aside the judgment of the trial Court and altered the conviction of accused from the offence under Section 304, Part II to the offence under Section 302, IPC and sentenced to suffer imprisonment for life and to pay a fine of Rs.20,000/- each, in default to suffer rigorous imprisonment for one year. Assailing his conviction and sentence, the appellant (A5) is in appeal before us.

6. We have heard learned counsel for the appellant as also learned senior counsel appearing for the State.

7. Learned counsel appearing for the appellant contended that at the time of offence, the appellant was not armed with any deadly weapon and his presence was only at the bus stand and well before that circumstance, the deceased had already received severe injuries including one on forehead at the hands of other accused Nos. 1 to 4. There was no intention of the appellant to kill the deceased but he acted only with a view to teach a lesson to the deceased to prevent him from creating nuisance by throwing stones into others houses. The injuries attributed to the appellant do not find corroboration from the post mortem report or medical legal report as there was no injury on the neck or

chest of the deceased. There were contradictions in the statements of prosecution witnesses and the High Court without proper application of mind ignored the factum of role played by the appellant and wrongly convicted him along with other accused which approach of the High Court is highly perverse. Learned counsel finally submitted that particularly when the trial Court has convicted the appellant under Section 304, Part II only on a plausible finding, the High Court ought not have altered the conviction to Section 302, IPC and pleaded for intervention of this Court.

8. The case put forth by learned senior counsel appearing for the State is to the effect that the role played by the appellant—accused in the offence cannot be taken simply as has been done in a sudden provocation. It is not a case of inflicting normal injuries or teaching a lesson to the victim so as not to throw stones into other's house. The accused chased the victim and repeatedly assaulted mercilessly which exhibits his intention to cause death of Som Raj. The entire crime executed by the accused was witnessed by bystanders and their statements were duly corroborated with the medical evidence. The accused, in spite of knowing fully that the deceased was not mentally stable,

beaten him cruelly. The extent of bodily injuries suffered by the deceased and the way in which the accused gave beatings to the deceased at the bus stop leads to the definite inference without any iota of doubt that the accused acted clearly knowing the fact that such bodily injuries shall cause death of the deceased.

9. Having heard learned counsel on either side, we have carefully gone through the material on record.

10. It is abundantly clear from the record and there is also no denial to the factum that the crime leading to the death of a helpless young man of 22 years age, namely, Som Raj had taken place in four stages first at the hands of accused Nos. 1 to 4 at the house of the deceased, secondly at the floor mill of one Tara Singh, thirdly in the house of Bimla Devi (PW6) where the deceased hid for a while and finally at the bus stand where the appellant herein joined the other accused and actively participated in the commission of crime.

11. To analyze the guilt of the appellant in the offence, it is unfortunate and degrading of honor that the appellant—accused No. 5, despite being in the uniform of SPO and expected to protect the law and order, took the law into his own hands and exhibited unruly behavior in a public place (bus stop) and gave kick blows

with his shoes on the head, chest and neck of a desperate man, who was by then already beaten black and blue by the other accused. Apart from this, the accused—appellant had also put his weight over Som Raj (deceased) and compressed his neck with full force leading to unconscious stage of Som Raj.

12. Darshan Lal—PW5, the complainant and author of FIR in clear terms deposed that the appellant—accused appeared at the bus stop in uniform and gave kick blows to the deceased with his shoes when the deceased was lying on the ground. The blows given by the accused—appellant hit the head of the deceased, arms and other parts of the body. Later, the accused had put his weight on the chest and neck of Som Raj (deceased), as a result of which Som Raj became unconscious. Then all the accused lifted the body of Som Raj and threw it in front of the house of his brother and ran away from there.

13. Besides the testimony of the complainant (PW5), the evidence led by Asha Devi (PW7) who was another eyewitness to the incident, clearly demonstrates and proves the guilt of the appellant. Further, the evidence of Bimla Devi (PW6) makes it clear that the deceased entered into her house in injured and naked condition and bolted the room from inside and only when

PW4—Panchayat Member, reached there and persuaded the victim, he opened the door. We find from the record that the evidences of prosecution witnesses particularly eyewitnesses corroborate with each other to establish the chain of events and the guilt of the accused. There is also nothing to perceive any ill-motive on the part of complainant to falsely implicate the accused.

14. The medical evidence of Dr. V.P. Singh (PW2) who examined the deceased in the Civil Hospital at 11.15 pm on the date of incident and the evidence of Dr. Jagdish Singh (PW3) who conducted postmortem on the body of Som Raj, also supports the prosecution case. The medical evidence reveals that the deceased had suffered as many as 15 injuries on his person which were caused by blunt objects. The Doctor's opinion clearly indicates that the deceased was unconscious when brought to the hospital and the injuries sustained on his person could be possible by dragging him on hard surface. The recoveries of towel, pant and torn shirt near the bus stand prove the incriminating circumstance against the appellant.

15. Looking at the material on record, it can safely be said without any doubt that the entire occurrence had taken place not

at the spur of the moment. It can also be said that the appellant, stated to be holding the post of SPO, was not ignorant but well aware of the fact that the death of Som Raj was likely to ensue, for the beatings he received. After careful consideration of the facts of the case, we are of the considered opinion that the circumstances concluding the guilt of the appellant are clearly established. In other words, from the established facts and circumstances, the only inference that could be drawn is that the High Court has not committed any error of law in convicting and sentencing the accused for an offence under Section 302, IPC. Therefore, we are in agreement with the judgment of the High Court and do not find any merit in these appeals.

16. The appeals are accordingly dismissed.

.....J.
(N. V. Ramana)

.....J.
(Mohan M. Shantanagoudar)

.....J.
(M.R. Shah)

**NEW DELHI,
NOVEMBER 27, 2018**

