



NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. _____ OF 2024
[Arising out of Special Leave Petition (Criminal) No.5460 of
2024 @ D.No.36602 of 2022]

MOHD. AHSAN **...APPELLANT (S)**

VERSUS

STATE OF HARYANA **...RESPONDENT (S)**

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.
2. This appeal challenges the judgment and order dated 09th October, 2013 passed by the Division Bench of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 233-DB of 2007 wherein the Division Bench dismissed the Criminal Appeal preferred by the Appellant Mohd. Ahsan and upheld the order of conviction and sentence dated 25th January, 2007 as recorded by the learned Sessions Judge, Yamuna Nagar

(hereinafter referred to as the 'trial Court') in Sessions Case No. 09 of 2005.

3. Shorn of details, the facts leading to the present appeal are as under:-

3.1 On 18th August, 2005, at about 01:00 a.m., the SHO of Police Station City Jagadhri, namely, Jai Singh (PW-13), received telephonic information from P.P. Rakshak Vihar about the death of one Vikrant @ Chintu (hereinafter referred to as 'the deceased') who had been admitted in Civil Hospital, Jagadhri in an injured state. On the receipt of the information, PW-13 along with several other police personnel rushed to the said hospital wherefrom PW-13 obtained the medico-legal report (Ex.PC) of the deceased and recorded the statement of Sh. Devi Dayal Sharma (PW-10), the de-facto complainant. On the basis of the said complaint, the First Information Report ("FIR" for short) being FIR No. 373 of 2005 was registered at Police Station, City Jagadhri for the offence punishable under section 302 of the Indian Penal Code, 1860 ("IPC" for short), against the present Appellant. Subsequently, the post mortem of the deceased was conducted

on 18th August, 2005 wherein it was concluded that the cause of death was shock due to massive haemorrhage in the left plural cavity which was sufficient to cause death under normal circumstances.

3.2 The prosecution case is that on 17th August, 2005 at about 11-11:30 p.m., the de-facto complainant (PW-10) had been taking food at Shiv Dhaba which was situated opposite Bus Stop, Jagadhri, in the company of Charan Singh and Rajiv Kumar (PW-12), when another group of four men, namely, Neeraj Gulati (PW-11), Kamal Kumar, Naresh Kumar and the deceased arrived at the Dhaba to partake their meals. To attract the attention of the waiter, the deceased called the waiter by use of the word “hello”. This gesture irked another customer i.e. the present Appellant who was seated in a corner of the Dhaba, smoking a cigarette. The Appellant initially abused the deceased in the name of his sister and thereafter rose from his seat, walked up to the deceased and grappled with him. During the said quarrel, the Appellant and the deceased went out of the Dhaba where they were separated by the complainant (PW-10) and his companions.

However, refusing to relent, the Appellant rushed to his car and pulled out a glass bottle which he broke on the bonnet of his car and thereafter proceeded to inflict five injuries on the body of the deceased, due to which the deceased fell to the ground bleeding, after which the Appellant fled from the scene. Subsequently, Neeraj Gulati (PW-11) and the others present at the Dhaba placed the deceased on the motorbike of PW-11 and rushed him to Aggarwal Hospital, but owing to the unavailability of a doctor, the deceased was subsequently taken to the Civil Hospital, Jagadhri, where he eventually succumbed to his injuries.

3.3 Upon the conclusion of investigation, a chargesheet came to be filed before the Court of the Additional Chief Judicial Magistrate, Yamuna Nagar. Since the case was exclusively triable by the Sessions Court, the same came to be committed to the Sessions Judge.

3.4 Charges came to be framed by the trial Court for the offence punishable under Section 302 of the IPC. The Appellant pleaded not guilty and claimed to be tried.

3.5 The prosecution examined 13 witnesses to bring home the guilt of the accused. In his defence, the Appellant stated that it was a case of false implication since he had not used the glass bottle to cause any injury to the deceased; whereas, it was the deceased who had rushed towards the Appellant with a broken glass bottle in order to physically assault him, during which exercise, he had fallen down and had injured his own body with the said glass bottle.

3.6 At the conclusion of the trial, the trial Court found that the prosecution had proved the case against the Appellant beyond reasonable doubt and accordingly convicted him for the offence punishable under Section 302 of the IPC and sentenced him to undergo imprisonment for life along with a fine of Rs. 10,000/-.

3.7 Being aggrieved thereby, the Appellant preferred a Criminal Appeal before the High Court. The High Court by the impugned judgment dismissed the Criminal Appeal and affirmed the order of conviction and sentence awarded by the trial Court.

3.8 Being aggrieved thereby, the present appeal.

4. This Court vide order dated 14th December 2022 had issued notice, limited to the question as to whether conviction under Section 302 of the IPC could be converted to Part I or Part II of Section 304 of the IPC.

5. We have heard Mr. Jay Kishor Singh, learned Advocate-on-Record appearing for the Appellant and Mr. Shekhar Raj Sharma, learned Deputy Advocate General (“D.A.G.” for short), appearing for the respondent-State.

6. Mr. Jay Kishor Singh submits that even if the prosecution case is taken at its face value, it would reveal that the incident occurred out of a sudden fight. It is submitted that there was no intention of the appellant to cause death of the deceased. It is submitted that the incident had occurred in a sudden fight without premeditation, in the heat of passion upon a sudden quarrel. It is submitted that from the nature of injuries, it would reveal that the appellant had not taken undue advantage or acted in a cruel or unusual manner. He therefore submits that the conviction under Section 302 of the IPC would not be tenable and

the offence would be required to be brought under Part I or Part II of Section 304 of the IPC.

7. Mr. Shekhar Raj Sharma, learned D.A.G., on the contrary, submits that both the courts, upon correct appreciation of evidence, have concurrently found the Appellant guilty for the commission of the offence punishable under Section 302 of the IPC and the said findings warrant no interference.

8. The prosecution case basically rests on the ocular testimony of PW10-Devi Dayal son of Sadhu Ram; PW11-Neeraj Gulati son of Vinod Kumar; and PW12-Rajiv Kumar son of Sham Lal.

9. PW10-Devi Dayal in his evidence stated that he along with Charan Singh and Rajiv Kumar (PW-12) were sitting at Shiv Dhaba for taking dinner. In the meantime, Kuldip and Vikrant @ Chintu (the deceased) and two other boys reached there. Kuldip then placed orders for the meal. It is stated that, in the meantime, a car bearing registration No.DL-7729 arrived there and its driver alighted from his seat. He then objected to the use of the words made by the deceased Vikrant @ Chintu by abusing him in the name of his sister. However, PW10 and his associates

intervened and separated them. They returned inside the building of the restaurant but the accused-Appellant and the deceased were again heard quarreling. When they rushed out to intervene, the accused-Appellant pulled out a glass bottle from his car, broke it on the bonnet of his car and caused at least five injuries on the person of the deceased with that broken glass bottle. Thereafter, the deceased was taken to the Civil Hospital, Jagadhri.

10. Similar is the evidence of PW11-Neeraj Gulati. It will be relevant to refer to the following part of his testimony in the examination-in-chief.

“I placed the orders for the meals whereafter deceased Vikrant called the waiter by the sound of Hello. It seems that the accused thought that sound was aimed at him and he retaliated by abusing Vikrant in the name of his sister. This was followed by a heated exchange. They then grappled out of the building of the Dhaba. We intervened to separate them and succeeded. The accused rushed to his car, pulled out a bottle from the driver’s seat side, broke it on the bumper of the car and violently attacked repeatedly victim Vikrant.”

11. Similar is the evidence of PW12-Rajiv Kumar.

12. PW1-Dr. Vikash Kaushik had examined the deceased Vikrant, who was brought in an unconscious condition. He found the following injuries on the injured Vikrant:-

- “1. Lacerated wound 5cm x 4 cm x bone deep on left side of chest 7 cm from mid-line.
2. Lacerated wound 5cm x 3 cm bone deep on dorsomedial aspect of left arm and elbow joint.
3. Lacerated wound 4cm x 2cm x bone deep on anterior aspect of right shoulder joint and adjoining area of chest.
4. Lacerated wound 2 cm x 1 cm x bone deep on the medial wall of right axilla.
5. Punctured wound 1cm x .5cm x bone deep on left side of chest.”

13. From the testimonies of the prosecution witnesses themselves, it would reveal that there is no premeditation. The incident occurred since the appellant believed that the utterances by deceased Vikrant @ Chintu were aimed at him and, therefore,

he retaliated by abusing the deceased. This was followed by a heated exchange between them. They grappled out of the building of the Dhaba. Though the witnesses were successful in separating them, the accused-Appellant rushed to his car, pulled out a bottle from the driver's seat side, broke it on the bumper of the car and attacked the deceased.

14. It is thus clear that the incident occurred without premeditation, in a sudden fight, in the heat of passion and upon a sudden quarrel. The evidence would also not show that the accused-Appellant had either taken undue advantage or acted in a cruel or unusual manner. We therefore find that the present case would fall under Exception 4 to Section 300 of the IPC.

15. We therefore find that the present appeal deserves to be partly allowed. The conviction of the accused-Appellant under Section 302 of the IPC is altered to one under Part I of Section 304 of the IPC and he is sentenced to rigorous imprisonment for a period of eight (08) years and a fine of Rs.5,000/- (Rupees Five thousand) and in default of payment of fine, a further imprisonment for a period of three (03) months.

16. Needless to state that the period already spent by the accused-Appellant in custody shall be set-off against the aforesaid sentence.

17. The appeal is partly allowed in the above terms.

.....**J.**
[B.R. GAVAI]

.....**J.**
[ARAVIND KUMAR]

.....**J.**
[SANDEEP MEHTA]

NEW DELHI;
APRIL 25, 2024