

A

SANJEEV

v.

STATE OF HARYANA

(Criminal Appeal No. 1149 of 2013)

FEBRUARY 19, 2015

B

**[T.S. THAKUR, ROHINTON FALI NARIMAN  
AND PRAFULLA C. PANT, JJ.]**

C

D

E

*Penal Code, 1860 – s. 304 Part I – Culpable homicide not amounting to murder – Prosecution case that the accused had altercation with the victim after consuming liquor whereafter he assaulted the victim, resulting in death of victim – Conviction and sentence u/s. 302 by courts below – On appeal held: In view of the evidence relating to the chain of circumstances, extra judicial confession made by the accused to the prosecution witness which fact got corroborated from the statement of the doctor, act committed by the accused is covered by exception 4 to s.300 and is punishable u/s. 304 Part I – Thus, conviction and sentence u/s. 302 modified to one u/s. 304 Part I and sentenced to ten years imprisonment with fine of Rs.5000/-.*

**Disposing of the appeal, the Court**

F

G

**HELD: 1.1 The circumstances established by the prosecution against the appellant read together, makes it clear that it is only the appellant who could have caused death of 'RP' in the intervening night. When the prosecution successfully proved that accused suffered the injury almost at the same time when the deceased had suffered the injuries, there should have been some explanation on the record from the side of the defence as to how he (accused) received the injury and went to Government Hospital where his injury was recorded by PW-13-doctor before giving him medical treatment. In**

H

absence thereof, the courts below had no reason to A  
disbelieve the evidence relating to chain of  
circumstances and they rightly recorded the finding that  
it was accused only who could have caused death with  
the knowledge that act committed by him is likely to  
result in death of the person assaulted. In order to read B  
either intention or knowledge to commit the crime, the  
courts have to examine the circumstances, as there  
cannot be any direct evidence as to the state of mind of  
the accused. From the evidence of PW-12, it reflects that  
while making extra judicial confession, the appellant C  
narrated that after both he and the deceased got drunk,  
they engaged into an altercation whereafter scuffle took  
place, and the appellant caused injuries on the forehead  
and chest of the deceased which fact got corroborated  
from the statement of PW-13. [Para 13, 15, 16] [217-G-H; D  
218-A-B, D-E]

1.2 When the prosecution evidence relating to extra  
judicial confession made before PW-12 is believed by  
the courts below to examine as to whether act committed  
by the accused constitutes culpable homicide E  
amounting to murder or not, they should have read the  
statement as a whole, and the circumstances, in which  
the injuries were caused by the appellant to the  
deceased, should not have been ignored. Having gone  
through the evidence on record and the submissions, F  
the act committed by the appellant is covered by  
Exception 4 to s. 300 IPC, i.e., culpable homicide not  
amounting to murder, as such the same is, punishable  
u/s. 304 Part I. The conviction and sentence recorded  
by the courts below under Section 302 IPC against the G  
appellant, is set aside. [Para 18, 19] [219-B-F]

CRIMINAL APPELLATE JURISDICTION : Criminal  
Appeal No. 1149 of 2013

From the Judgment and Order dated 24.05.2011 of the H

A High Court of Punjab & Haryana at Chandigarh in Crl. Appeal No. 827-DB of 2002

J. P. Tiwari, Sanjeev Bansal, Praksh Kumar Singh for the Appellant.

B Nupur Choudhary (for Kamal Mohan Gupta) for the Respondent.

The Judgment of the Court was delivered by

C **PRAFULLA C. PANT, J.** 1. This appeal is directed against judgment and order dated 24.5.2011 passed by the High Court of Punjab and Haryana in Criminal Appeal No. 827-DB of 2002 whereby conviction and sentence recorded by the Additional Sessions Judge (FTC), Sonapat against the appellant under Section 302 of Indian Penal Code (IPC) has been affirmed.

D 2. We have heard learned counsel for the parties and perused the record.

E 3. Prosecution story, in brief, is that PW-9 Raj Singh, resident of Village Hassanpur, had three brothers. Raj Pal @ Pale (deceased) was younger to him. All the four brothers used to live separately. On 11.1.2000, Raj Singh had gone to Sonapat with his brother Raj Pal for some personal work. Raj Singh got held up in Sonapat, and Raj Pal left for the Village. F Later, he (Raj Singh) also proceeded from Sonapat. At about 10.00 p.m., when Raj Singh on his way to Village Hassanpur, G alighted from three-wheeler, at G.T. Road crossing, he noticed Sanjeev @ Gaja (appellant) with blood stained clothes fleeing from the side of Government tubewell towards Murthal bus stand. He (Raj Singh) could identify Sanjeev in the headlights of the vehicles, but did not have an idea that his brother (Raj Pal) had been murdered. After meals he went to bed. In the next morning, Shakuntala (wife of Raj Pal) came to him and H told that Raj Pal had not reached home. On this, a search was

made by Raj Singh and his another brother Ram Kumar A  
regarding their missing brother. At about 9.00 a.m., they  
reached near water supply tubewell and noticed a man lying  
only with trousers. They went near to see the person and  
realized that their brother Raj Pal has been killed who was  
lying in the pool of blood. There were wounds on the forehead, B  
nose and eye brows of the body. Shirt, sweater, slippers, etc.  
were lying at some distance. Suspecting that Sanjeev @ Gaja  
might have killed or helped someone killing Raj Pal, he went  
to the police post and gave First Information Report (Ex. PG/  
1) on 12.1.2000 at 10.40 a.m. C

4. PW-6 A.S.I. Jagat Singh recorded the above First  
Information Report relating to offence punishable under Section  
302 IPC at Police Post, Sadar, Sonapat. Police team headed  
by PW-14 S.I. Yashpal Singh with PW-8 H.C. Mahinder Singh  
and Constable Rajeev Singh, along with informant, proceeded D  
towards the place where the dead body was lying. The body  
of the deceased was taken into possession and sealed. The  
inquest report (Ex. PE/2) was prepared. Shirt, sweater,  
slippers, etc. and a blood stained brick were also taken into  
possession by the police and a memorandum was prepared. E  
Sealed dead body of Raj Pal was handed over to PW 8 H.C.  
Mahinder Singh, and sent for post mortem examination through  
Constable Ramesh Kumar and Rajbir. PW-11 S.I. Ram  
Chander took up investigation. F

5. PW-3, Dr. Purnima Ahuja of Government Hospital,  
conducted post mortem examination on the very day, i.e.,  
12.1.2000, on the dead body of Raj Pal, with her colleague  
Dr. R.N. Tehlan. Following ante-mortem injuries were  
recorded by the team of medical officers who prepared G  
autopsy report (Ex PA/1/2000): -

“1. Multiple contusion of varying sizes 5 x 1 cm, 4x3,  
2x1, 3x1, 3x1 and 1x1 cms, present on whole of back  
about 10 to 12 in number. On cut sections blood was  
found on the sub coetaneous tissue. H

- A 2. Defused swelling was present on the front and left side of chest of size 20x10 cms. On examination crepitus was found. On exploration, there was massive presence of blood in the sub coetaneous tissue deep to the chest wall and pericardium and
- B pleura. No. 3<sup>rd</sup> to 9<sup>th</sup> ribs were found fractured at multiple paces. Left thoracic cavity was full of blood (about 2 liters) left lung was badly lacerated on right side. The 3<sup>rd</sup> and 6<sup>th</sup> ribs were fractured medially and
- C thoracic cavity was full of blood. The lung was lacerated.
3. Lacerated wounds 5x2 cms present on the middle of the forehead vertically placed. Underlines bone was fractured. C.V. was present.
- D 4. Lacerated wound 3x2 cms. present on the right side just above the right eye. C.V. was present.
5. Defused swelling were present on the left cheek 6x5 cms.
- E 6. Defused swelling on the left eye.
7. Contusion 6x5 cms present on the back of the left shoulder.”
- F It was opined by the two doctors, who conducted post mortem examination, that the above mentioned ante mortem injuries were sufficient to cause death.
- G 6. Mean while, accused Sanjeev who had gone to Government Hospital in the intervening night of 11.1.2000 and 12.1.2000, was also medically examined by PW-13, Dr. C.P. Arora of General Hospital, Sonapat, at about 1.30 a.m. (12.1.2000), and following injury was found on his person: -
- H “22 x 0.2 x 2 to 0.5 cm incised wound on the posterior surface of the left fore-arm. It was superficial in depth

and skin deep only. There was a corresponding cut  
on the shirt.” A

7. After examination of the witnesses and on completion of the investigation, the Investigating Officer submitted charge sheet against accused Sanjeev (appellant) for his trial in respect of offence punishable under Section 302 IPC. The forensic report regarding blood group of the blood stains found on the clothes of accused and that of deceased was also obtained. The case was committed by the Magistrate to the Court of Sessions and necessary copies were provided to the accused as required under Section 207 of the Criminal Procedure Code. After hearing on charge, Sessions Judge framed charge of offence punishable under Section 302 IPC against accused Sanjeev on 23.5.2000 to which he pleaded not guilty and claimed to be tried. B  
C  
D

8. Thereafter, prosecution got examined fifteen witnesses, namely, PW-1, A.S.I. Rajiv Kumar (witness of disclosure as to the recovery of blood stained clothes of accused), PW-2, Constable Mahesh Chander (in whose presence blood stained clothes of the deceased were taken into possession and recovery memo Ex. PB prepared), PW-3, Dr. Purnima Ahuja (who conducted post mortem examination), PW-4, Jaipal (who took photographs of dead body of Raj Pal before the body was sealed), PW-5, Rampal Patwari (who prepared site plan Ex.-PF), PW-6, A.S.I. Jagat Singh (who recorded the First Information Report Ex.-PG/1), PW-7, Inspector Ram Kala (who arrested the accused), PW-8, H.C. Mahinder Singh (to whom the dead body was handed over after the same was sealed), PW-9, Raj Singh (informant and brother of the deceased), PW-10, Balwan Singh (another brother of the deceased), PW-11, S.I. Ram Chander (who sent a letter Ex.-PO/1 requesting the Government Hospital for post mortem examination), PW-12, Om Prakash (witness of extra judicial confession), PW-13, Dr. C.P. Arora (who examined the injury on person of the accused), PW-14, S.I. Yashpal Singh H

A (who went to the place of incident along with other police officials and informant, after First Information Report was registered, and prepared the inquest report), and PW-15, Azad Singh (another witness of extra judicial confession).

B 9. The oral and documentary evidence was put to the accused under Section 313 of the Criminal Procedure Code on 16.1.2000 by the learned Sessions Judge, in response to which the accused pleaded that the same was incorrect, and stated that he was falsely implicated.

C 10. The Additional Sessions Judge, Fast Track Court, Sonepat, after hearing the parties, found accused Sanjeev guilty of charge of offence punishable under Section 302 IPC and convicted him accordingly on 3.10.2002. The parties were heard on sentence on 5.10.2002 and the convict (Sanjeev)  
D was sentenced to imprisonment for life and directed to pay fine of Rs.5000/-, in default of payment of fine he was directed to undergo further imprisonment for a period of two months.

E 11. Aggrieved by the judgment and order dated 3.10.2002/ 5.10.2002, the convict preferred appeal before the High Court of Punjab and Haryana, which was registered as Criminal Appeal No. 827-DB of 2002. The High Court, after hearing the parties, concurred with the view taken by the trial court and dismissed the appeal. Hence, this appeal by way of  
F special leave.

G 12. Learned counsel for the appellant argued before us that it is a case of circumstantial evidence and no one has seen the appellant committing the crime. It is further argued that the circumstances shown by the prosecution in the present  
H case do not complete the chain, and the courts below have erred in law in holding the appellant guilty of the charge of murder. To appreciate above argument, we have to see the circumstances which are brought on record against the appellant. The prosecution has established following facts in this case against the accused: -

- i) PW-9, Raj Singh, informant, saw the accused running away on 11.1.2000 at about 10.00 p.m. and his clothes were stained with blood. A
- ii) On 12.1.2000, when PW-13, Dr. C.P. Chopra medically examined the accused Sanjeev in the wee hours, it was found that the accused had suffered incised wound measuring 22 x 0.2 x 2 to 0.5 cm. on the posterior surface of left fore-arm, and there was cut in the shirt. This witness (PW-13) sent Ruka (memorandum) Ex. PP/1 to the in-charge, Police Post, General Hospital (even before F.I.R. was lodged). B C
- iii) PW-12, Om Prakash, has stated that accused Sanjeev disclosed him on 14.1.2000, that on 11.1.2000, he (accused) had altercation with Raj Pal after consuming liquor whereafter he assaulted the deceased with the brick. D
- iv) PW-1, A.S.I. Rajiv Kumar, and PW-7, Inspector Ram Kala, have adduced the evidence that on 15.1.2000 on disclosure (Ex. -PA) from the accused Sanjeev, his blood stained clothes which were concealed by him in a wooden box in his house, were recovered. E
- v) From the forensic laboratory report, it is established that same blood group was found in the blood stained clothes recovered i.e. blood group 'O'. F

13. The above circumstances, read together, make us belief that it is only the appellant who could have caused death of Raj Pal in the intervening night of 11.1.2000 and 12.1.2000. When the prosecution has successfully proved that accused Sanjeev suffered the injury, as mentioned above, almost at the same time when the deceased had suffered the injuries, there should have been some explanation on the record from the side of the defence as to how he (accused) received the injury H

A and went to Government Hospital where his injury was recorded by PW-13, Dr. C.P. Arora, before giving him medical treatment. In absence thereof, the courts below had no reason to disbelieve the evidence relating to above chain of circumstances and they rightly recorded the finding that it was B accused Sanjeev only who could have caused death with the knowledge that act committed by him is likely to result in death of the person assaulted.

14. On behalf of the appellant it is submitted that there was no motive on the part of the appellant to commit murder of C Raj Pal, as such, in absence of motive, it cannot be said that it was only the appellant who could have committed the crime.

15. It is settled principle of law that, to establish D commission of murder by an accused, motive is not required to be proved. Motive is something which prompts a man to form an intention. The intention can be formed even at the place of incident at the time of commission of crime. It is only either E intention or knowledge on the part of the accused which is required to be seen in respect of the offence of culpable homicide. In order to read either intention or knowledge, the courts have to examine the circumstances, as there cannot be any direct evidence as to the state of mind of the accused.

16. In the present case, from the evidence of PW-12 Om F Prakash, it reflects that while making extra judicial confession, the appellant narrated that after both he and Raj Pal got drunk, they engaged into an altercation whereafter scuffle took place, and the appellant caused injuries on the forehead and chest of the deceased. This fact gets corroborated from the G statement of PW-13, Dr. C.P. Arora, who recorded wound measuring 22 x 02 x 2 to .5 cm in the medical report soon after the time of the incident, on the person of the appellant.

17. Exception 4 to Section 300 IPC provides that culpable H homicide is not murder if it is committed without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel

and without the offender having taken undue advantage or acted in a cruel or unusual manner. Explanation to Exception 4 to the Section further provides that it is immaterial in such cases which party offers provocation or commits the first assault.

18. In our opinion, when the prosecution evidence relating to extra judicial confession made before PW-12, Om Prakash, is believed by the courts below to examine as to whether act committed by the accused constitutes culpable homicide amounting to murder or not, they should have read the statement as a whole, and the circumstances, in which the injuries were caused by the appellant to the deceased, should not have been ignored. Having gone through the evidence on record and considering the submissions of the learned counsel for the parties, we are of the view that the act committed by the appellant in the present case is covered by Exception 4 to Section 300 IPC, i.e., culpable homicide not amounting to murder, as such the same is, punishable under Section 304 Part I, IPC.

19. For the reasons, as discussed above, we are inclined to partly interfere with the impugned orders. The conviction and sentence recorded by the trial court and affirmed by the High Court in respect of offence punishable under Section 302 IPC against the appellant, is set aside. Instead, the appellant is convicted under Section 304 Part I, IPC and sentenced to undergo imprisonment for a period of ten years and to pay fine of Rs.5000/-, in default of which the appellant shall undergo imprisonment for a further period of two months. Amount of fine if deposited in compliance of orders of courts below shall be treated to have been deposited in compliance of direction of this Court as above. The appellant is said to be in jail and he shall complete the sentence, as awarded by this Court.

20. The appeal, accordingly, stands disposed of.