JAGTAR SINGH A

v.

STATE OF HARYANA

(Criminal Appeal No.86 of 2013)

JUNE 19, 2015 B

[R.K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Penal Code, 1860 – s. 304 Part II read with s.34 – Land dispute between parties – On the fateful day, appellant and his brother caught hold of PW3 and when PW 3's uncle tried C *to intervene, appellant inflicted injuries to uncle, who later succumbed to it – Conviction and sentence of both appellant and his brother u/s.304 Part II rw s.34 – However, High Court upheld conviction of the appellant, while acquitted his brother – On appeal, held: Evidence proved the appellant guilty for* D *committing the offence – He was aggressor and had hit the deceased – Both ocular and documentary evidence proved that motive did exist prior to commission of the crime – Material evidence duly proved by the eyewitnesses could* E *not be ignored – However, such was not the case of co-accused and thus, he was given the benefit of doubt – Having regard to the nature of injury caused by the appellant to the deceased and the manner in which it was caused and taking into account the cause of death-shock and hemorrhage, the* F *courts below justified in bringing the case u/s. 304 Part II – Also the punishment of five years appears to be just and proper – Thus, conviction and sentence awarded to the appellant by the courts below upheld.*

Dismissing the appeal, the Court G

HELD: 1.1 The evidence proved that it was the appellant who took the lead, caught hold of deceased

A by his hand, pulled him down to the ground and hit him on his head. Due to the head injury, the deceased first became unconscious and later succumbed to it. The ocular evidence on this issue was properly appreciated by the trial court and the High Court for holding the B appellant guilty for committing the offence. No inconsistency or exaggeration was noticed in the evidence adduced by the prosecution on the said issue so as to disbelieve the evidence of eyewitnesses account and thus, the finding of the High Court is accepted. [Paras C 17, 18] [1020-H; 1021-A-C]

1.2 There was no case to differ with the finding of the two courts below on the issue of motive. There was enough evidence both ocular and documentary to prove D that the motive did exist prior to commission of the crime. Thus, in the light of the facts, duly proved by the prosecution with the aid of their eyewitnesses, there was no good ground to differ with the finding of the High Court. [Paras 20, 21, 22] [1022-C-G] E

1.3 The evidence on record in no uncertain terms proved that it was the appellant who was the aggressor and hit the deceased. This evidence was rightly made basis by the two courts to hold the appellant guilty for F committing the offence. When the evidence directly attributes the appellant for commission of the act, it cannot be appreciated as to how and on what basis the material evidence duly proved by the eyewitnesses could be ignored. Such was not the case so far as co- G accused is concerned. The prosecution witnesses too did not speak against the co-accused and hence, was given the benefit of doubt. Also the State did not file any appeal against his acquittal and hence, that part of the order has attained finality. [Para 24] [1023-B-D] H

1.4 The submission for conversion of the conviction of the appellant to s.323/325 IPC or in the alternative to reduce the quantum of sentence to the extent of appellant already undergone i.e. three years, cannot be accepted. Having regard to the nature of injury caused by the appellant to the deceased and the manner in which it was caused and taking into account the cause of death-shock and hemorrhage, the courts below were justified in bringing the case under Section 304 Part II instead of bringing the same either under Section 302 or/and Section 304 Part I. It is apart from the fact that the State has not filed any appeal against the impugned order seeking conviction of the appellant under Section 302 or under Section 304 Part I or even for enhancement of punishment awarded to the appellant under Section 304 Part II. [Paras 25, 26] [1023-E-H; 1024-A]

1.5 The punishment of five years appears to be just and proper. It could have been even more because eventually the incident resulted in death of a person though the appellant did not intend to cause death of deceased. In the absence of any cross appeal by the State on the issue of quantum of sentence, it is not proper to go into the question of adequacy of sentence. As a result, the conviction and sentence awarded to the appellant by the courts below is upheld. [Paras 27, 28] [1024-B-D]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 86 of 2013.

From the Judgment and Order dated 22.12.2009 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal Nos. 910-SB/1998.

Akshat Goel, Shree Pal Singh for the Appellant.

Devender Kr. Saini, AAG, Dr. Monika Gusain, Vikram Saini

A for the Respondent.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is filed by the accused against the final judgment and order dated B 22.12.2009 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 910-SB of 1998 which arose from the order of conviction and sentence dated 06.10.1998 and 07.10.1998 respectively passed by the C Sessions Judge, Karnal in Sessions Case No. 37 of 1996/ Session Trial No. 9 of 1997 convicting the accused persons under Section 304 Part II read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and sentencing them to undergo imprisonment for five years and D to pay a fine of Rs.1000/- each. By impugned judgment, the High Court dismissed the appeal in respect of the present appellant–accused by upholding his conviction and sentence and allowed the appeal in respect of the co-accused by acquitting him of the charge.

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2. Facts of the case need mention in brief to appreciate the issue involved in this appeal.

3. Harwant Singh/Harbans Singh, (PW-3)-first informant and the accused persons are related to each other. Kapoor F Singh (since deceased), father of PW-3 was having three brothers, namely, Amar Singh, Gurnam Singh and Surinder Singh. The accused persons–Ajaib Singh and Jagtar Singh - the appellant herein are sons of Gurnam Singh. Amar Singh and Gurnam Singh have expired. The family of these persons G owned extensive agricultural land. The forefathers of the parties had, therefore, partitioned the agricultural land verbally amongst the family members and accordingly all sharers were cultivating their respective share.

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4. In the year 1991, the appellant-accused and his brother

raised a grievance to PW-3 that the land which was allotted to them was not of good quality. PW-3, acceded to their request and exchanged his land with the accused persons. The parties accordingly executed the exchange deed on a written document before the Panchayat in relation to exchange of lands. However, the girdawari in respect of the exchanged land remained unaltered and both the parties continued to cultivate their exchanged land. PW-3 then made improvements in the land which was in his possession by investing his money and labour. On finding that the land had been improved by PW-3, the appellant and his brother raised a demand to reverse the exchange. On noticing that this might lead to a dispute, PW-3 applied for correction of the girdawari entries in revenue records. The Tehsildar, Nilokheri on 31.07.1996, visited the spot to enable him to pass appropriate orders on adjudication of the application.

5. On 20.09.1996, when PW-3 went to the Court to attend the proceedings, his uncle Surinder Singh and Gurmeet Singh, son of Amar Singh also accompanied him. The Tehsildar passed the order in favour of PW-3. At about 5.15 p.m., when they were coming out of the office of the Tehsildar, the appellant and his brother came there and caught hold of PW-3 and said that the verdict of the revenue officer is wrong and, therefore, they would not allow him to enter the land in question. When Surinder Singh tried to intervene, Jagtar Singh, the appellant-accused herein caught hold of the beard of Surinder Singh and pulled him down on the ground and hit him on his head 2-3 times by hand. Due to injuries received, Surinder Singh became unconscious. PW-3 and his cousin-Gurmeet Singh then tried to catch hold of the accused persons but they managed to run away from the spot. Both of them then took Surinder Singh to the nearest hospital at Nilokheri but in midway, he died. Thereafter, PW-3 lodged an FIR bearing No.404 dated 20.09.1996 at P.S. Butana Dist. Karnal under

A Section 302/341/34 IPC of the incident.

6. After investigation, on 07.10.1996, charge sheet against the accused persons, namely, Jagtar Singh-appellant (accused) herein and Ajaib Singh, was filed under Section 302/
B 341/34 IPC.

7. By order dated 16.11.1996, the Judicial Magistrate-1st Class, Karnal committed the case for trial to the Sessions Judge, Karnal which was numbered as Session Case No. 37
C of 1996 (Session Trial No.9 of 1997). The prosecution examined six witnesses to prove their case whereas defence examined one witness and filed certain documents.

8. By order dated 06.10.1998 in Sessions Case No. 37
D of 1996 and Sessions Trial No. 9 of 1997 convicted both the accused under Section 304 Part-II read with Section 34 of IPC and vide order dated 07.10.1998 sentenced them to undergo imprisonment for five years and to pay a fine of Rs.1000/- each, in default of payment of fine to further undergo imprisonment
E for six months under Section 304 Part II read with Section 34 of IPC.

9. Aggrieved by the said order, the accused persons filed appeal bearing Appeal No. 910-SB of 1998 before the High
F Court. The High Court, by judgment dated 22.12.2009 dismissed the appeal of Jagtar Singh-the appellant (accused) herein and in consequence upheld his conviction whereas while allowing the appeal filed by Ajaib Singh, co-accused, set side his conviction and acquitted him of the charges.

G 10. Feeling aggrieved, Jagtar Singh (accused) has filed this appeal by way of special leave.

11. Heard Mr. Akshat Goel, learned counsel for the appellant-accused and Dr. Monika Gusain, learned counsel
H for the State.

12. Challenging the conviction and sentence, learned counsel for the appellant-accused has submitted that:

(i) there was neither any motive on the part of accused to commit the offence in question and nor there was any incident of any type in the past during the course of proceedings.

(ii) in any case, since there was only one simple injury found on the body of the deceased and no weapon was used to inflict such injury, the courts below erred in convicting the appellant for an offences punishable under Section 304 Part II of IPC.

(iii) even if the case against the appellant-accused is held proved yet at best it is punishable under Section 323/325 of IPC.

(iv) the statement of the eyewitnesses are not trustworthy and hence the Court below erred in placing reliance on their testimony.

(v) In any event, the High Court having rightly acquitted the co-accused, the same benefit should have been extended to the appellant and he too should have been acquitted on the same reasoning

(vi) and lastly since the appellant has already undergone sentence for a period around 3 years or so out of total sentence awarded to him and hence the appellant be now left with the sentence already undergone by appropriately reducing the quantum of sentence.

13. In contra, learned counsel for the respondent-State contended that no case is made out for any interference in the concurrent conviction recorded by the two Courts below. He urged that none of the submissions of the appellant-accused has any substance.

A 14. Having heard learned counsel for the parties and on perusal of the record of the case, we find no merit in any of the submissions of the appellant-accused.

15. The High Court dealt with the case of appellant herein
B for holding him guilty as under:

> **"The same is, however, not true in case of appellant Jagtar Singh. There is clear, clinching and unambiguous evidence on the record, in the**
C **statements of PW-3-Harbans Singh and PW-4 Gurmeet Singh to the effect that it was he who caught hold of Surinder Singh, deceased by latter's beard and hair, felled him upon ground and hit his head twice or thrice against ground. It was on**
D **account of that hit that Surinder Singh became unconscious on the spot. Though appellant Jagtar Singh did make an attempt, abortive though, to raise above indicated plea (in the statement under Section 313 Cr.P.C.) but that plea does not stand proved on**
E **record. If there was an iota of truth in the above noticed plea of appellant Jagtar Singh (to the effect that matter was under discussion in the presence of certain common relations), there is no reason why he could not have named them or examined at least**
F **one or two out of them at the trial. Their testimony could be supportive of the plea raised by Jagtar Singh appellant at the trial."**

16. We have also on our part perused the ocular evidence
G and having so perused are inclined to concur with the aforementioned view of the High Court calling no interference.

17. The evidence, in our opinion, does prove that it was the appellant who took the lead, caught hold of deceased by
H his hand, pulled him down to the ground and hit him on his

head. The injury in the head resulted the deceased first becoming unconscious and later succumbed to it. The ocular evidence on this issue was properly appreciated by the trial Court and the High Court for holding the appellant guilty for committing the offence in question and hence it deserves to be upheld.

18. We have not been able to notice any kind of inconsistency or exaggeration in the evidence adduced by the prosecution on this material issue so as to disbelieve the evidence of eyewitnesses account and hence we concur with the finding of the High Court quoted above and reject the submission of the learned counsel for the appellant.

19. Now so far as the issue relating to existence of motive is concerned, we consider it apposite to reproduce the finding of the High Court on this issue.

> **"There also, Jagtar Singh appellant is not on firmer footing. There is plethora of evidence available on record to prove that the first informant had filed an application for correction of Girdawari entries and the adjudication announced on the relevant date by the revenue officer was favourable to him. There is also material available on record that first informant had improved the land which he exchanged with the appellant to redress the grievance of the latter that the quality of the land which fell to their share in a partition was inferior. It was after the further exchange, as between the appellants on the one hand and PW-3 Harbans Singh on the other hand, that the latter had improved the quality of that land. It was obvious that the appellants entertained a feeling of envy towards the first informant and they had an eye upon the improved land under the cultivation of first informant. The favourable**

announcement of the Girdwari correction provided the proverbial combustible material to the appellants who have been proved on record to have announced thereafter that announcement of the verdict of the revenue officer notwithstanding, they would not allow the first informant to enter upon the land qua which Khasra girdwaries entries had been ordered to be corrected. It cannot, thus be said with any justification that the appellant had no motive to commit the impugned crime."

20. We have on our part perused the evidence on this issue and find no case to differ with the finding of the two courts below. Learned counsel for the appellant was also not able to show as to why the aforementioned finding of the High Court is rendered bad in law and legally unsustainable.

21. In our considered view, there is enough evidence both ocular and documentary to prove that the motive did exist prior to commission of the crime in question. Firstly, it was not in dispute that the parties were related to each other; secondly, everyone had a share in the lands which belong to their forefathers; thirdly, proceedings for mutation were going in revenue courts in relation to the lands belonging to them; fourthly, an order of mutation was passed by Tehsildar in PW-3's favour which the accused did not like being adverse to them resulting in developing some grudge against PW-3 and his family members.

22. In the light of these facts, which are duly proved by the prosecution with the aid of their eyewitnesses, we find no good ground to differ with the finding of the High Court and accordingly hold that there was a motive to commit the offence. We accordingly hold so.

23. We are not impressed by the submission of the

learned counsel for the appellant when he urged that since the co-accused was acquitted of the charges, hence the benefit of the same be also extended to the appellant.

24. As held above, the evidence on record in no uncertain terms proves that it was the appellant who was the aggressor and hit the deceased. This evidence was rightly made basis by the two courts to hold the appellant guilty for committing the offence in question. When the evidence directly attributes the appellant for commission of the act then we fail to appreciate as to how and on what basis we can ignore this material evidence duly proved by the eyewitnesses. Such was not the case so far as co-accused is concerned. The prosecution witnesses too did not speak against the co-accused and hence he was given the benefit of doubt. It is pertinent to mention that the State did not file any appeal against his acquittal and hence that part of the order has attained finality.

25. Now coming to the issue of conviction and sentence awarded under Section 304 Part II of IPC to the appellant, though arguments were advanced by the learned counsel for the appellant for its conversion under Section 323/325 of IPC or in the alternative to reduce the quantum of sentence to the extent of appellant already undergone i.e. three years, we are not inclined to accept the submission of learned counsel even on this issue.

26. In our considered opinion, having regard to the nature of injury caused by the appellant to the deceased and the manner in which it was caused and taking into account the cause of death - shock and hemorrhage, the Courts below were justified in bringing the case under Section 304 part II instead of bringing the same either under Section 302 or/and Section 304 Part I. It is apart from the fact that the State has not filed any appeal against the impugned order seeking conviction of the appellant under Section 302 or under Section

A 304 Part I or even for enhancement of punishment awarded to the appellant under Section 304 Part II.

27. In any event, we find that punishment of five years appears to be just and proper. It could have been even more
B because eventually the incident resulted in death of a person though the appellant did not intend to cause death of deceased. In the absence of any cross appeal by the State on the issue of quantum of sentence, we do not therefore consider it to be proper to go into the question of adequacy of sentence in this
C appeal filed by the accused.

28. In the light of foregoing discussion, we find no merit in this appeal which thus fails, and is accordingly dismissed. As a result, the conviction and sentence awarded to the appellant
D by the courts below is upheld.

29. The appellant is accordingly directed to undergo remaining period of sentence. If the appellant is on bail, his bail bonds are cancelled to enable him to surrender and
E undergo remaining period of sentence.

30. A copy of the order be sent to concerned court for compliance.

Nidhi Jain Appeal dismissed.