

KALA SINGH @ GURNAM SINGH

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v.

STATE OF PUNJAB

(Criminal Appeal Nos. 1040-1041 of 2021)

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SEPTEMBER 21, 2021

**[R. SUBHASH REDDY AND HRISHIKESH ROY, JJ.]**

*Penal Code, 1860 – s.304 Part II r/w s.34 and s.201 – Appellant-accused and deceased had a sudden fight – In the heat of passion, the co-accused, who had rod with him, gave a blow with the rod on the head of deceased resulting in his death – Thereafter appellant and co-accused hurled the dead body of deceased in the canal – Appellant and co-accused were convicted by the Sessions Court u/ss.302/34 and s.201 IPC – High Court modified the conviction u/s.302 IPC to that u/s.304 Part-I IPC – On appeal, held: Sudden fight took place in the heat of passion upon a sudden quarrel – There was no pre-meditation – As there was no intention on the part of the appellant and co-accused either to cause death or cause such bodily injury as is likely to cause death, the High Court ought not to have convicted the appellant u/s.304 Part-I IPC – Conviction of appellant u/s.304 Part-I / s.34 IPC modified to that u/s.304 Part-II/s.34 IPC – His conviction u/s.201 IPC maintained.*

**Partly allowing the appeals, the Court**

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**HELD:1.** On the fateful day, the appellant, co-accused and deceased went to the house of one Hardev Singh Arora and they took one bottle of liquor with them. Thereafter they went to bridge of Doda Minor through Harike passage. There they consumed liquor where there was a quarrel between the appellant and deceased alleging that deceased had stolen the pigeon of appellant. The co-accused who had a rod with him, gave a rod blow on the head of deceased. Immediately thereafter he fell down and as there was no response even after half an hour, they have shifted the body to the minor canal. It is clear from the evidence and other material placed on record that there was

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- A no intention to kill the deceased. It is clear from the evidence on record that the scuffle had taken place on the spur of the moment and a sudden fight had taken place in the heat of passion upon a sudden quarrel. It was not a pre-meditated one and as there was no intention on the part of the appellant and co-accused either to cause death or cause such bodily injury as is likely to cause death, the High Court ought not to have convicted the appellant for the offence under Section 304 Part-I IPC. In absence of any intention on the part of the appellant, it is a clear case where the conviction of the appellant is to be modified to one under Section 304 Part-II IPC by maintaining the conviction for the offence under Section 201 IPC. [Para 9] [229-B-F]
- B 2. The conviction of the appellant is modified from the one under Section 304 Part-I/34 IPC to the one under Section 304 Part-II/34 IPC. The appellant is hereby sentenced to undergo
- C rigorous imprisonment for a period of seven years and the fine of Rs.10,000/- imposed by the High Court is maintained. Further, conviction of the appellant for the offence under Section 201 IPC and sentence of three years' rigorous imprisonment and the fine of Rs.500/- are also maintained. [Para 11][231-E]
- E *Uday Singh v. State of U.P. (2002) 7 SCC 79 ; Shahajan Ali & Ors. etc. v. State of Maharashtra & Ors. etc. (2017) 11 SC 807 – relied on.*

**Case Law Reference**

<b>F</b>	<b>(2002) 7 SCC 79</b>	<b>relied on</b>	<b>Para 7</b>
	<b>(2017) 11 SC 807</b>	<b>relied on</b>	<b>Para 10</b>

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos.1040-1041 of 2021.

- G From the Judgments and Orders dated 08.02.2019 and 01.03.2019 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.713 DB of 2003.

Bharat Sood, P. S. Sudheer, Advs. for the Appellant.

Ms. Jaspreet Gogia, Ms. Mandakini Singh, Karanvir Gogia, Ms. Shivangi Singhal, Ms. Ashima Mandla, Advs. for the Respondent.

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The Judgment of the Court was delivered by

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**R. SUBHASH REDDY, J.**

1. Leave granted.

2. These appeals are filed against the final judgment and orders dated 08.02.2019 and 01.03.2019 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No.713 of 2003. High Court has modified the conviction from Section 302 IPC to Section 304 Part-I r/w Section 34, IPC, and sentenced to 12 years' rigorous imprisonment and a fine of Rs.10,000/- . The conviction under Section 201 IPC was maintained.

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3. It is alleged that, the appellant and the deceased had a sudden fight as the deceased had stolen the pigeon of the appellant and in the heat of passion upon a sudden quarrel, the co-accused (Kehar Singh) who had rod with him, gave a blow with the rod on the right side of the head of the deceased resulting in his death. It is further alleged that, thereafter the appellant and co-accused have thrown the dead body of the deceased in the minor canal.

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4. Before the trial court, the co-accused was charged for offence under Sections 302 and 201 IPC, whereas the appellant was charged for offence under Sections 302/34 and 201 IPC. They were convicted by the Sessions Court for the aforesaid offences and they were sentenced to rigorous imprisonment for life for the offence under Sections 302/34 IPC and three years' rigorous imprisonment for the offence under Section 201 IPC, apart from the fine.

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5. In the appeal filed before the High Court, High Court has found that as the deceased had stolen the pigeon of appellant-accused Kala Singh, scuffle took place between Shamber Singh (deceased) and the appellant Kala Singh. It is further held that the co-accused Kehar Singh gave blow with the rod on the head of the deceased Shamber Singh. As a result of such blow Shamber Singh fell down and died. The High Court has categorically found that scuffle had taken place on the spur of the moment and that sudden fight had taken place in the heat of passion, upon a sudden quarrel and it was not a pre-meditated act. It has also come on record that appellant, the co- accused and the deceased had consumed liquor and even in the chemical examiner report it was found that deceased had also consumed liquor. The High Court has modified the conviction from Section 302 IPC to 304 Part-I IPC and

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- A imposed the sentence, of 12 years' rigorous imprisonment and to pay a fine of Rs.10,000/-, on the appellant herein and co-accused for the offence under Section 304 Part-I with a default clause that in the event of non-payment of fine, they shall undergo rigorous imprisonment for a further period of six months.
- B 6. We have heard Sri Bharat Sood, learned counsel for the appellant and Ms. Jaspreet Gogia, learned counsel for the State of Punjab.
  - 7. The only submission made by learned counsel for the appellant Sri Bharat Sood is that there was no intention at all on the part of the
- C appellant-accused to kill the deceased. It is submitted that the appellant, co-accused and deceased had consumed liquor and on the ground that the deceased had stolen pigeon of appellant Kala Singh, scuffle took place between deceased Shamber Singh and appellant Kala Singh. It is submitted that at that point of time, the co-accused Kehar Singh gave one rod blow on the head of the deceased Shamber Singh which resulted
- D into his death. It is submitted that scuffle had taken place on the spur of the moment and that sudden fight had taken place in the heat of passion upon a sudden quarrel. It was not a pre-meditated act and there was no intention at all to kill the deceased. It is submitted that having regard to the reasoning assigned by the High Court itself High Court
- E ought to have modified the conviction to Section 304 Part-II but not 304 Part-I, as ordered. To buttress his argument, learned counsel has placed reliance on a judgment of this Court in the case of **Uday Singh v. State of U.P.**<sup>1</sup> wherein this Court has modified the conviction to one under Section 304 Part-II IPC. Learned counsel by further submitting that appellant has already served more than three years of sentence,
- F made a request to reduce the sentence by converting the conviction to one under Section 304 Part-II IPC.
- G 8. On the other hand, Ms. Jaspreet Gogia, learned counsel for the State of Punjab has contended that there are absolutely no grounds to interfere with the judgment of conviction and order of sentence passed by the High Court. It is submitted that sufficient leniency is already shown to the appellant-accused and there are no grounds to interfere with the impugned judgment. It is further contended that the case law which is relied on by the appellant is distinguishable on facts and cannot be applied to the facts of the case on hand.

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H <sup>1</sup> (2002) 7 SCC 79

9. Having heard learned counsels on both sides, we have perused the impugned judgment and other material placed on record. It is clear from the impugned judgment and other material placed on record that the incident happened one day prior to the date of *panchayat* elections. On the fateful day, the appellant, co-accused and deceased went to the house of one Hardev Singh Arora and they took one bottle of liquor with them. Thereafter they went to bridge of Doda Minor through Harike passage. There they consumed liquor where there was a quarrel between the appellant and deceased Shamber Singh alleging that deceased Shamber Singh had stolen the pigeon of appellant herein. The co-accused Kehar Singh who had a rod with him, gave a rod blow on the head of Shamber Singh. Immediately thereafter he fell down and as there was no response even after half an hour, they have shifted the body to the minor canal. It is clear from the evidence and other material placed on record that there was no intention to kill the deceased Shamber Singh. It is clear from the evidence on record that the scuffle had taken place on the spur of the moment and a sudden fight had taken place in the heat of passion upon a sudden quarrel. It was not a pre-meditated one and as there was no intention on the part of the appellant and co-accused either to cause death or cause such bodily injury as is likely to cause death, the High Court ought not to have convicted the appellant for the offence under Section 304 Part-I IPC. In absence of any intention on the part of the appellant, we are of the view that it is a clear case where the conviction of the appellant is to be modified to one under Section 304 Part-II IPC by maintaining the conviction for the offence under Section 201 IPC. The case law which is relied on by the learned counsel for the appellant also supports the case of the appellant for converting his conviction from the one under Section 304 Part-I IPC to the one under Section 304 Part-II IPC.

10. The judgment relied on by the counsel for the appellant, in the case of **Uday Singh v. State of U.P.**<sup>1</sup> supports the case of the appellant. The relevant paragraphs 6 and 7 read as under :

“6. From the findings recorded by the trial court as well as the High Court, it is clear that the fight between the two parties started all of a sudden as a result of obstruction caused in digging of the foundation and there is no evidence to show that the accused attacked the deceased with deadly or dangerous arms (or weapons). It was only in a fight, hand to fist, that both Gainda Singh and the appellant had held the neck of the deceased,

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- A Shishupal Singh with such force as to ultimately result in strangulation and his death. It is very difficult to conceive as to how much pressure was applied either by Gainda Singh or the appellant on the deceased's neck so as to cause death. It would be reasonable to hold that the injuries were caused by the appellant on the deceased in a sudden fight where no arms (or weapons) were used and that fight took place in the heat of passion and no common intention to kill the deceased could be inferred. We cannot definitely conclude who actually inflicted the fatal injury as the evidence on record discloses that Gainda Singh and the appellant both strangled the deceased, which action is part of the sudden unarmed fight nor can we conclude that the appellant had an intention to cause death or cause such bodily injury as is likely to cause death, though we attribute to him knowledge that such act is likely to cause death. Thus the appellant and Gainda Singh are guilty of culpable homicide not amounting to murder.
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7. In the circumstances, we set aside the conviction recorded by the trial court as affirmed by the High Court under Section 302 read with Section 34 and instead convict him under Section 304 Part II and reduce the sentence to imprisonment for a period of seven years. The bail granted earlier shall stand cancelled and the appellant shall surrender before the trial court and be committed to prison to serve out the remaining part of the sentence."
- So also, the judgment in the case of **Shahajan Ali & Ors. etc. v. State of Maharashtra & Ors. etc.**<sup>2</sup> supports the case of the appellant. Paragraph 8 of the judgment, which is relevant, reads as under :
- "8. We have no doubt about the complicity of all the accused in the homicide of Sarfraz. A-1 attacked the deceased with the knife and caused injury on his neck which resulted in his death. The other accused assisted him in committing the crime by holding the hands of the deceased. However, the only question that falls for our consideration is whether the accused are liable to be punished for an offence under Section 302 IPC. After considering

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H <sup>2</sup> (2017) 11 SC 807

the submissions made by the counsel for the appellants and scrutinising the material on record, we are of the opinion that the accused are not liable to be convicted under Section 302 IPC. We are convinced that there was neither prior concert nor common intention to commit a murder. During the course of their business activity the accused reached the dhaba where the deceased was present. An altercation took place during the discussion they were having behind the dhaba. That led to a sudden fight during which A-1 attacked the deceased with a knife. Exception 4 to Section 300 IPC is applicable to the facts of this case. As we are convinced that the accused are responsible for the death of Sarfraz, we are of the opinion that they are liable for conviction under Section 304 Part II IPC. We are informed that A-1 has undergone a sentence of seven years and that A-2 to A-4 have undergone four years of imprisonment. We modify the judgment of the High Court converting the conviction of the accused from Section 302 to Section 304 Part II IPC sentencing them to the period already undergone. They shall be released forthwith.”

11. In view of the aforesaid reasons, these appeals are allowed in part and conviction of the appellant is modified from the one under Section 304 Part-I/34 IPC to the one under Section 304 Part-II/34 IPC. The appellant is hereby sentenced to undergo rigorous imprisonment for a period of seven years and the fine of Rs.10,000/- imposed by the High Court is maintained. Further, conviction of the appellant for the offence under Section 201 IPC and sentence of three years' rigorous imprisonment and the fine of Rs.500/- are also maintained.