

(1995) 03 P&H CK 0118

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Application No. 49-DB of 1993

Vedpal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: March 28, 1995**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 304, 304(1)

Citation: (1995) CriLJ 3556**Hon'ble Judges:** S.C. Malte, J; A.S. Nehra, J**Bench:** Division Bench**Advocate:** P.S. Mann and T.P.S. Mann, for the Appellant; P.S. Sullar, AAG, for the Respondent

Judgement

S.C. Malte, J.

This appeal is against the conviction and sentence of accused Vedpal, passed by the Sessions Judge. Faridabad on the charge u/s 302, Indian Penal Code. The appellant-accused was sentenced to suffer imprisonment for life and fined Rs. 10,000/- in default to undergo further rigorous imprisonment for two years. The fine, if recovered, was directed to be paid to the heirs of the deceased Prem Raj. The accused and deceased Prem Raj and others were members of the marriage party, which had come to attend marriage of their relative at village Mindkola within the area of Hathin Police Station, District Faridabad. The marriage party had arrived at that village at about 5 p.m. on 9-5-1990. Shortly thereafter the marriage party had proceeded towards the house of the bride. While proceeding in the procession, as usual, some of the members of the marriage party were dancing in jubilation. In the course of that, an altercation between one Mange Ram and accused Vedpal took place and they grappled with each other. Deceased Prem Raj intervened and separated both of them. At that time, accused Vedpal thought that deceased Prem Raj had unjustifiably taken the side of Mange Ram the uncle of the deceased. Vedpal

therefore threatened Prem Raj that he would face dire consequence later. This incident took place at about 7 p.m. on 9-5-1990. Thereafter, the marriage party including the accused and the deceased were sitting in the baithak. The others including the bridegroom had already left to perform certain rites at the house of the bride. At about 9 p.m. on that day, the dinner was ready and persons started proceeding towards the dining place. At that time, while deceased Prem Raj had about to leave for the dinner, the accused suddenly attacked him and gave a blow on his head with a spade (kassi) and fled away. The witnesses Shri Pal and Sarda Ram tried to catch hold of the accused, but were not successful. Thereupon, the injured Prem Raj was taken to the Government Hospital at Mindkola. The doctor examined Prem Raj and found a lacerated wound measuring 6 cm x 0.4 cm x 0.4 cm transverse in direction on the middle of scalp. Fresh blood was oozing from the injury. Injured Prem Raj was unconscious. His pulse and blood pressure were unrecordable. His pupils were highly dilated and did not react to light, He was gasping and there was secretion in the throat. In view of the serious condition of Prem Raj, he was immediately shifted to General Hospital, Palwal for treatment. He, however, breathed his last at about 2.39 a.m. on 10-5-1990 while he was in the hospital at Delhi. Autopsy examination of the deadbody revealed that the deceased had sustained a lacerated injury on the middle of the scalp measuring 7.20 cm. x 0.8 c.m. coupled with abraded contusion 2 cm x 1.5 cm. On internal examination, blood was noticed under the scalp in the middle region. A fresh fracture to the left temporal bone with separation of frontal sagittal secretion was found. Besides that, there was fracture to the base of right and left temporal bone. The brain was congested and oedematose with petechial haemorrhage. There was contusion and laceration to the under surface of the left temporal lobe and both frontal lobes. All these injuries were ante-mortem. In the opinion of the doctor, these injuries were sufficient to cause death in the ordinary course of nature and the death was caused due to shock resulting from head injury. These injuries were caused by blunt and heavy cutting weapon.

2. The first information report in this case was lodged by Sarda Ram, who was cousin of the deceased and was the eye-witness to the incident. The first information report was recorded at about 10.15 a.m. on 10-5-1990 and was registered at the Police Station Hathin. At the same time, on the following day, at about 7 a.m, a special report regarding the commission of the offence had been received by the Judicial Magistrate 1st Class, Palwal. Meanwhile, the investigation had already commenced.

3. In the course of investigation, the statements of the witnesses were recorded. The accused came to be apprehended by the police on 14-5-1990. He was interrogated by the Police. In the course of interrogation, the accused volunteered to produce the spade (Kassi), which he had concealed. As a consequence of that statement, spade came to be recovered at the instance of the accused. The papers, however, do not clarify as to whether that Kassi was subjected to the examination by the Chemical

Analysed in order to ascertain the existence of the blood stains or other evidence to connect it as the weapon of the offence.

4. The deceased was unconscious till he breathed last. Consequently, his statement could not be recorded. On the completion of the investigation, the accused was charged u/s 302, Indian Penal Code. The accused pleaded not guilty to the charge. On completion of the evidence, he was questioned u/s 313, Code of Criminal Procedure. The accused denied the prosecution case in toto. He further contended that he was implicated on account of party faction and enmity. No defence evidence was led. On considering the material on record, the Sessions Judge, Faridabad held the accused guilty of the charge u/s 302, Indian Penal Code and sentenced him as above, vide judgment dated 20-1-1993. Against that conviction and sentence, this appeal is preferred.

5. In this Court, it was argued that the eyewitnesses PW5 Sarda Ram and PW6 Shri Pal cannot be said to be reliable in view of the discrepant deposition of another eye-witness PW7 Mange Ram. It was contended that Mange Ram was telling the correct natural position by stating that somebody had assaulted Prem Raj. It was also contended that there was inordinate delay in lodging the first information report and that provided enough room for concoction.

6. In so far as it pertains to the time factor in lodging the FIR, the sequence of events should be taken into consideration. The unshaken testimony of PW 1 Dr. A. Ahmed clearly shows that the injured Prem Raj was brought at the hospital at 9.50 p.m. On 9-5-1990. The said hospital is situated in the same village Mindkola where incident took place. The account given by the eye-witnesses in this case clearly established that soon after the assault, the injured was taken in the car and rushed to the hospital at Mindkola. It is, therefore, clear that the incident in this case must have taken place just few minutes prior to the time of examination by the doctor. The approximate time of the incident thus would be at 9.30 p.m. On 9-5-1990. The evidence further shows that soon after the examination of the injured, he was rushed to the hospital at Palwal. It, however, appears that thereafter the injured was taken to Safdarjang Hospital, Delhi. The complainant Sarda Ram, the cousin of the deceased, was accompanying the injured. The injured breathed his last at about 2.30 a.m. during the night between 9th and 10th May 1990 at Safdarjang Hospital, Delhi. Thereafter, the complainant Sarda Ram came to the Police Station, Hathin, where first information report was recorded and registered. That is how, the first information report was registered at 9.15 a.m. on 10-5-1990. The sequence of events narrated above, already indicate that all along, the complainant was occupied with the job of attending the injured while shifting him from one hospital to other in efforts to give the injured the best possible medical help. Under these circumstances, it cannot be said that there was deliberate delay in lodging the first information report. It also cannot be said that the first information report was delayed because the time was spent in deliberation for concoction of the case. In the

context of this, it may be recalled that the incident took place when the accused as well as the deceased were members of the marriage party which had come to village Mindkola for attending a marriage of their relative and there is nothing to indicate previous enmity between the parties.

7. PW5 Sarda Ram is the complainant and eyewitness to the incident. In examination-in-chief, he had fully supported the prosecution case and his testimony is further corroborated by the first information report referred to above. Nothing is brought from his cross-examination to indicate doubt regarding his testimony. Same can be stated in respect of PW6 Shri Pal who was also an eye-witness to the, incident. Both these persons were members of the aforesaid marriage party.

8. PW7 Mange Ram, however, did not whole heartedly support the prosecution case. It may be recalled that the incident that ultimately provoked the assault in this case pertained to the grappling between this witness Mange Ram and accused Ved Pal. In his deposition, Mange Ram Admits that about 7 p.m. on the day of the incident, he had altercation with the accused and they were separated on the intervention by these persons. He further stated that the incident of the assault took place thereafter at about 9 p.m. when the members of the marriage party were leaving for dinner. He also admits the place of the incident as near the chabutra (platform), where the marriage party had halted. He, however, claimed that at that time somebody assaulted Prem Raj and later he came to know the name of the assailant. The public prosecutor was allowed to cross examine this witness and in the course of that, he was confronted with contradictory statement before the police, wherein he had named accused Ved Pal as an assailant. It is obvious that this witness is not willing to state the whole truth. It clearly appears that he is capable of giving discrepant statements one before the police and the other before the Court. In our opinion, therefore, he cannot be said to be a reliable witness.

9. Thus on scrutiny of the testimony of eyewitnesses in this case we find no difficulty in accepting the testimony of PW5 Sarda Ram and PW6 Shri Pal. They were the persons in the marriage party of which the accused as well as the deceased were also the members. There is nothing to show that these witnesses were inimically disposed towards the accused. On the contrary, all these persons had gone there to celebrate a wedding ceremony and nobody might have expected that such a serious incident would take place.

10. It was further submitted that if the prosecution evidence is accepted in respect of the responsibility of the assault by the accused, the offence at the best would be one falling u/s 304 Part I, IPC. In that respect, our attention was invited to the fact that the accused is said to have given only one blow with the spade. It was claimed that the spade is not a weapon which is used for commission of murder. On this premise, it was contended that the accused had no intention to cause the death of Prem Raj, our attention was also invited to a case reported in [Randhir Singh alias Dhire Vs. State of Punjab](#), . In that case, similar circumstances, the Supreme Court

converted the offence u/s 304 Part II, IPC. In this case, there was only one blow with the spade (Kassi). The prosecution evidence clearly shows that about two hours prior to the incident, there was an altercation between the accused and witness Mange Ram and during that deceased had intervened. The accused then felt that the deceased had unjustifiably taken the side of Mange Ram. That rancour of the accused ultimately seems to have resulted into a single blow with the Kassi. The medical evidence referred above indicate that size of the injury on the skull was 6 cm x 0.4 cm x 0.4 cm. The said blow appears to have caused fracture to the skull and internal damage as referred above. It can, therefore, be said that the accused caused the death by doing an act with the knowledge that he was thereby likely to cause the death. His act, therefore, would amount to culpable homicide not amounting to murder and would fall u/s 304 Part 1, IPC. We, therefore, pass the following order.

11. The appeal is thus partly allowed. The conviction and sentence of the appellant is altered from Section 302, IPC to Section 304(1) IPC and he is sentenced to undergo rigorous imprisonment for a terms of five years and sentence of fine of Rs. 10,000/- maintained, and in default of payment of fine, he is to undergo further rigorous imprisonment for two years. The fine, if recovered, shall be paid to the heirs of the deceased Prem Raj.