

(2007) 04 P&H CK 0120

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 630-SB of 1995

Jagdish

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: April 30, 2007**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 279, 302, 304A, 34

Citation: (2007) 4 RCR(Criminal) 175**Hon'ble Judges:** Ranjit Singh, J**Bench:** Single Bench**Advocate:** H.S. Gill, with Mr. Vivek Goel, for the Appellant; Yashwinder Singh, AAG, Haryana, for the Respondent

Judgement

Ranjit Singh, J.

The Appellant, who was tried for an offence u/s 302 read with Section 34 IPC on the basis of a complaint filed by one Satyabir Singh, was ultimately convicted for an offence u/s 304A and sentenced to suffer RI for 2 years with further direction to pay a fine of Rs. 2,000/-. He was also to undergo further RI for 3 months in case of default of payment of fine. Aggrieved by the order, the present appeal is filed. No appeal is filed by the State against the order impugned in the present appeal acquitting the Appellant of an offence u/s 302 IPC. As already noticed, on the basis of initial allegations, the Appellant alongwith his co-accused was prosecuted for an offence u/s 302 IPC.

2. The allegations made by the prosecution would reveal that Appellant Jagdish alongwith his co-accused Ramji Lal and Banwari came to the house of one Tota Ram in Village Mayee, Tehsil Narnaul on his tractor. They had taken away Tota Ram, brother of complainant Satyabir Singh. It is further alleged that Tota Ram was having a sum of Rs. 8,200/- with him, which was given to him by his son Rajbir on the same day. Allegation is that in furtherance of their common intention, these

three persons committed murder of Tota Ram near the railway level crossing and threw the dead body in the nearby fields. It is alleged that they had also removed a sum of Rs. 8,200/- from the person of deceased. The police had recovered a sum of Rs. 721/- only from the dead body. A complaint was made alleging that the Appellant and his co-accused did not give any information about Tota Ram to the complainant and that a false case was lodged under Sections 279 and 304A IPC by the police in order to save the Appellant and his co-accused from their prosecution u/s 302 IPC. It is also disclosed that accused Ramji Lal owed a sum of Rs. 40,000/- to Tota Ram about which there was no writing and it was perhaps the motive for the Appellant and the co-accused to commit murder of Tota Ram. On the basis of this complaint filed by complainant Satyabir Singh, the Appellant and his co-accused were summoned for facing trial u/s 302 IPC. A criminal revision was also filed against the order summoning the Appellant and his co-accused before the Additional Sessions Judge, Narnaul, which was dismissed. Consequently, the Appellant and his co-accused faced trial, leading to conviction of the Appellant u/s 304A IPC and award of sentence, as noticed above and acquittal of his co-accused, namely, Ramji Lal and Banwari. Since no appeal has been filed against the order of acquittal of the co-accused of the Appellant or acquittal of the Appellant u/s 302 IPC, the same has acquired finality and need not be gone into further.

3. Mr. H.S. Gill, learned senior counsel appearing for the Appellant, has pointed out that the Appellant was prosecuted for an offence u/s 304A IPC on the basis of FIR No. 225 dated 25.11.1987 registered in this regard. The case was accordingly adjourned to ascertain the outcome of the trial in the said FIR. Mr. Yashwinder Singh, learned Assistant Advocate General, Haryana, has pointed out that the proceedings in the said FIR were dropped vide judgment dated 9.10.1995, when the Appellant was convicted for an offence u/s 304A IPC. on the basis of complaint. Learned State counsel is in possession of certified copy of the judgment dated 9.10.1995 referred to above, which he produces before the Court and the same is taken on record and marked as exhibit 'A'.

4. Mr. H.S. Gill, learned senior counsel, submits that though he would have arguable points to raise in this case but in view of the incident being old, he would only plead for showing leniency to the Appellant and would pray for his release on probation. Counsel says that the Appellant has suffered enough while facing this prolonged prosecution and the sentence staring at him for all these years. As per the counsel, the Appellant, as such, deserves some compassion.

5. I see justification in the submission made by learned senior counsel. The incident in this case took place on 24.11.1987. The Appellant was saddled with the prosecution for an offence u/s 302 IPC. Though he has been acquitted yet his plight can well be imagined while he was made to face prosecution for a serious offence u/s 302 IPC. The complainant as well as the State appear to be satisfied with the order of acquittal of the Appellant for an offence u/s 302 IPC and that is why they

have not preferred any appeal against the said order. Even two of the co-accused of the Appellant, Ramji Lal and Banwari, are acquitted by the trial Court. On the basis of evidence, the Appellant is found responsible for only rash or negligent act, which happened in the year 1987 i.e. almost 20 years ago. The Appellant has faced prosecution in the present FIR for a period of 8 years. His appeal is pending for the last 12 years. It is, thus, seen that he has suffered enough for his rash or negligent conduct, which obviously was not intentional. The prosecution could not establish the serious allegation made against the Appellant. Considering all these facts, I am of the view that it would be a fit case for showing some compassion to the Appellant.

6. The Appellant deserves to be released on probation for a good conduct instead of being sentenced and it is ordered accordingly. The Appellant will appear before the Chief Judicial Magistrate, Narnaul, and enter into a bond with one surety to appear and receive the sentence when called upon during the period of two years for the purpose in question. The bond for this period shall be executed before the Chief Judicial Magistrate, Narnaul, within one month of the receipt of the copy of this order. The appeal is accordingly disposed of.