

ABC 2016 (I) 344 SC
ACQUITTAL & BAIL CASES
SUPREME COURT OF INDIA

(T.S. Thakur & R. Banumathi, JJ.)

Criminal Appeal No. 11 of 2016 (Arising out of S.L.P. (Crl.) No.3896 of 2013) with Criminal Appeal No 12 of 2016 (Arising out of S.L.P. (Crl.) No.3897 of 2013)

(From Allahabad High Court)

Decided On 6 January, 2016

SANJAY

- Appellant(s).

Versus

STATE OF UTTAR PRADESH

- Respondent(s).

Law Covered:- (A) *Indian Penal Code, 1860 – Sections 302, 304 Part I, 307 r/w 34 & 452 – Conviction under – Gunshot injury in the head – After the attack the deceased survived for sixty two days after his surgery – discharged in stable condition – Cause of death – Septicaemia – Held, was indirectly due to the wounds sustained during assault – the bullet injury was on the head, vital organ – Conviction modified – Sec. 304 Part I & Sec. 304 Part I r/w 34 – Sentence altered. (Para 9 & 15)*

(B) *Criminal Jurisprudence – Indian Penal Code, 1860 – Section 300 clause(3) – Attraction of – Deceased was discharged from the hospital in good condition & survived for sixty two days – Held, in such facts and circumstances prosecution should elicit from the examining doctor – that the injury sustained by the deceased was sufficient in the ordinary course of nature to cause death – in absence of the same – the court cannot draw an inference that the intended injury caused was sufficient in the ordinary course of nature to cause death – so as to attract clause (3) of Section 300. (Para 13)*

(C) *Indian Penal Code, 1860 – Section 34 – Common Intention – Mode of proof – Held, the common intention is to be gathered from the manner in which the crime has been committed. (Para 13)*

(D) *Indian Penal Code, 1860 – Sections 34 – Attraction of – Both the appellants came together armed with firearms in the wee hours – Both indiscriminately fired – Held, conduct & the manner of commission of crime – is sufficient to attract Section 34 IPC – as both the accused acted in furtherance of common intention. (Para 15)*

Facts:- As per the case of the prosecution appellants and one unidentified assailant armed with countrymade pistols entered the house of the deceased and fired at the deceased and his wife. The deceased was operated and after discharge he was taken back to his home. Later on he died of septicaemia. The honourable Supreme Court issued notice limited to the question of nature of the offence committed by the appellants. It was observed that after the attack the deceased survived for sixty two days after his surgery and was discharged in stable condition, later on he died of septicaemia. It was held that the appropriate conviction would be u/s 304 Pt-1 r/w 34, IPC and not u/s 302. Sentence was reduced.

Law of relief:- After the attack the deceased survived for sixty two days discharged in stable condition & died of septicaemia, appropriate conviction would be u/s 304 Pt-1 & not Sec. 302.

Held:- Dr. Laxman Das (PW-9) opined that condition of the deceased at the time of discharge from the hospital on 25.09.1998 was not critical and his condition was stable. In the instant case, admittedly, deceased Roop Singh died after sixty two days of the fateful incident. PW-3-Dr. M.C. Gulecha, who conducted the post-mortem examination on the body of deceased-Roop Singh opined that the cause of death was septicaemia which was due to the wounds sustained by him prior to his death. (Para 9)

However, in the instant case, it is apparent that the death occurred sixty two days after the occurrence due to septicaemia and it was indirectly due to the injuries sustained by the deceased. The proximate cause of death on 13.10.1998 was septicaemia which of course was due to the injuries caused in the incident on 11.08.1998. Having regard to the fact that Roop Singh survived for sixty two days and that his condition was stable when he was discharged from the hospital, the court cannot draw an inference that the intended injury caused was sufficient in the ordinary course of nature to cause death so as to attract clause (3) of Section 300 IPC. (Para 13)

In the instant case, the appellants used firearms countrymade pistol and fired at Roop Singh at his head and the accused had the intention of causing such bodily injury as is likely to cause death. As the bullet injury was on the head, vital organ, second appellant intended of causing such bodily injury and therefore conviction of the appellant is altered from Section 302 IPC to Section 304 Part I IPC. The learned counsel for the appellant-Sanjay submitted that it was only Narendra who fired at Roop Singh at his head, appellant-

Sanjay fired on Sheela (PW-2) on her neck, stomach and leg. Learned counsel for the appellant-Sanjay contended that as Sanjay fired only at Sheela, he could not have been convicted for causing death of Roop Singh under Section 302 IPC read with Section 34 IPC. There is no force in the above contention. The common intention of the appellants is to be gathered from the manner in which the crime has been committed. Both the appellants came together armed with firearms in the wee hours of 11.08.1998. Both the appellants indiscriminately fired from their countrymade pistols at Roop Singh - deceased and Sheela (PW-2) respectively. The conduct of the appellants and the manner in which the crime has been committed is sufficient to attract Section 34 IPC as both the appellants acted in furtherance of common intention. The conviction of the appellant-Sanjay under Section 302 IPC read with Section 34 IPC is modified to conviction under Section 304 Part I IPC. (Para 15)

Cases Referred:-

1. *Jagtar Singh And Anr. vs. State of Punjab*, (1999) 2 SCC 174. (Para 11)
2. *Dhupa Chamar And Ors. vs. State of Bihar*, (2002) 6 SCC 506. (Para 11)
3. *Ganga Dass alias Godha vs. State of Haryana*, 1994 Supp (1) SCC 534. (Para 14)

JUDGMENT

R. BANUMATHI, J.: - Leave granted in both the special leave petitions.

2. These criminal appeals have been filed assailing the impugned judgment dated 30.08.2012 passed by the High Court of Judicature at Allahabad dismissing the criminal appeals No.2188/2007 and 2561/2007 upholding the conviction of the appellant Narendra for offences under Sections 302, 307 read with Section 34 IPC and Section 452 IPC and also the sentence of life imprisonment, ten years imprisonment with fine of Rs.5,000/- and three years imprisonment with fine of Rs.1,000/- respectively. The High Court also confirmed the conviction of the appellant Sanjay under Section 302 read with Section 34 IPC, Section 307 read with Section 34IPC and Section 452 IPC and sentence of life imprisonment, ten years imprisonment with a fine of Rs.5,000/- and three years imprisonment with a fine of Rs.1,000/- respectively.

3. Case of the prosecution is that appellant-Sanjay is the brother of deceased Roop Singh. According to PW-2 Sheela wife of Roop Singh, after selling his land to Narendra, Sanjay was insisting

his brother Roop Singh to sell his land to Narendra for which Roop Singh refused, due to which appellant-Sanjay is said to have developed enmity towards Roop Singh. On the intervening night of 10/11.08.1998 at 3.00 a.m., Roop Singh and his wife Sheela were sleeping in their chowk and a lantern was lit in the house. Appellants -Narendra and Sanjay along with another person armed with tamancha (pistol) came to the house of Roop Singh. Appellant-Narendra fired multiple bullets at Roop Singh and Roop Singh sustained bullet injury in his head. Sanjay fired at PW-2 Sheela and she sustained bullet injuries at neck, abdomen and her right leg. Hearing sounds of bullets, the complainant-Partap Singh and one Ompal and several other persons rushed to the spot and on seeing them, the appellants Narendra, Sanjay and the third assailant fled away from the scene. On the basis of the complaint lodged by Partap Singh at Police Station Sardhana, Meerut, case was registered in Crime No. 387/1998 for offences under Sections 307 and 452 IPC. Injured victims were sent to Primary Health Centre, Sardhana, Meerut for treatment. Roop Singh (deceased) was admitted at Safdarjung Hospital, Delhi and after treatment, Roop Singh was discharged from the hospital on 25.09.1998. Subsequently, Roop Singh developed complications, Roop Singh was taken for check up to Delhi and Roop Singh died on 13.10.1998. Ram Pal gave written information about the death of injured Roop Singh to the police and Section 302 IPC was added to the FIR. After completion of investigation, chargesheet was filed against the appellants for offences under Sections 302, 307 and 452 IPC.

4. To substantiate the charges against the appellants, prosecution examined nine witnesses and exhibited twenty five documents and material objects. Upon appreciation of evidence, the learned Additional Sessions Judge, Meerut vide judgment dated 17.03.2007 found the appellants guilty for offences under Section 302 IPC read with Section 34 IPC and Section 307 IPC read with Section 34 IPC and Section 452 IPC and they were sentenced to suffer life imprisonment, ten years imprisonment with a fine of Rs.5,000/- and three years imprisonment with a fine of Rs.1,000/- respectively. The trial court ordered that half of the fine amount be paid to PW-2 Sheela as compensation. Aggrieved by the verdict of conviction, the appellants filed criminal appeals before the High Court of Judicature at Allahabad which were dismissed vide common impugned judgment dated 30.08.2012 upholding the conviction and sentence

imposed upon the appellants as aforesaid. Aggrieved, the appellants have preferred these appeals assailing the conviction and sentence imposed on them. a

5. Learned counsel for the appellants contended that as the deceased Roop Singh had already transferred his land to Partap Singh (PW-1) about one and a half years prior to the occurrence and therefore it is improbable that Sanjay would have insisted his brother Roop Singh to sell his land also to appellant-Narendra and as such the motive suggested by the prosecution is not a probable one. It was further submitted that death of Roop Singh as seen from the evidence of Dr. Laxman Das (PW-9) when Roop Singh was discharged from the hospital his condition was stable and two months thereafter Roop Singh died due to septicaemia and therefore conviction of the appellants under Section 302 IPC is not sustainable. b c

6. Per contra, Mr. Ratnakar Dash, learned Senior Counsel for the respondent contended that death of Roop Singh was the direct result of the multiple bullet injury inflicted by the appellants and the head injury caused by the appellants was sufficient in the ordinary course of nature to cause death and the courts below rightly convicted the appellants under Section 302 IPC and the same cannot be interfered. Learned Senior Counsel submitted that as the deceased Roop Singh sustained bullet injuries on his head, intention to cause death can be inferred from the situs and nature of the injury and the weapon used. d e

7. Case of the prosecution as seen from the evidence is that appellants-Sanjay and Narendra and one unidentified assailant armed with countrymade pistols entered the house of deceased Roop Singh at the wee hours-3.00 a.m. on 11.08.1998. It is alleged that the appellant-Sanjay fired four times at his sister-in-law-Sheela (PW-2) wife of the deceased and Narendra fired one gun shot on the deceased-Roop Singh. Roop Singh was operated at Safdarjung Hospital, Delhi and was discharged on 25.09.1998 and he was taken back to his home at village Sardhana. When injured Roop Singh was taken to Delhi for check up, he died on the way to hospital on 13.10.1998, PWs 1 and 2 have consistently spoken about the overt act of the appellants. PW-2-Sheela is an injured witness and her version stands on a higher footing. The testimony of the injured witness coupled with the fact that the complaint was promptly lodged by the f g h

a complainant-Partap Singh within one and half hours of the incident lends assurance to the prosecution case. As the prosecution version is unassailable, by order dated 18.04.2013, this Court issued notice limited to the question of nature of the offence committed by the appellants.

b 8. In the light of the specific contention advanced by the appellants that after the attack the deceased survived for sixty two days after his surgery discharged in stable condition, the only issue which needs to be examined is whether conviction of the appellants under Section 302 IPC is sustainable.

c 9. Dr. Laxman Das (PW-9), Neuro Surgeon at Safdarjung Hospital, Delhi who examined injured Roop Singh on 12.08.1998 found one wound of insertion of bullet in the head mid frontal region of Roop Singh which measured 2 cm x 2 cm. PW-9 conducted the operation on 15.09.1998 and bullet was extracted from the supra cellular part of the head of Roop Singh. PW-9 stated at the time of admission d of Roop Singh in the hospital on 12.08.1998, general condition of the patient was serious and that the injuries received in the head was dangerous to his life. Dr. Laxman Das (PW-9) opined that condition of the deceased at the time of discharge from the hospital on 25.09.1998 was not critical and his condition was stable. In the instant case, admittedly, deceased Roop Singh died after sixty two days of the e fateful incident. PW-3-Dr. M.C. Gulecha, who conducted the post-mortem examination on the body of deceased-Roop Singh opined that the cause of death was septicaemia which was due to the wounds sustained by him prior to his death.

f 10. Learned counsel for the appellants submitted that since Roop Singh died more than two months after the date of the occurrence and that he was discharged from the hospital in good condition and septicaemia might have set in due to lack of proper care after he was discharged from the hospital and therefore the appellants cannot be said to have caused the death of deceased and g the conviction under Section 302 IPC is not sustainable.

h 11. Learned Senior Counsel for the respondent contended that second appellant-Narendra inflicted serious injuries on the forehead of the deceased and fire shots with intention to kill the deceased and the intention to cause death can be inferred from the situs of the injury and that the act was sufficient in the ordinary course of nature to cause death. Reliance was placed upon the judgment of this Court

in *Jagtar Singh And Anr. vs. State of Punjab, (1999) 2 SCC 174 and Dhupa Chamar And Ors. vs. State of Bihar, (2002) 6 SCC 506.*

12. In Jagtar Singh's case (supra), Harbans Singh gave gandas a blow on the left side of the head of deceased-Naib Singh, Jagtar Singh inflicted khapra blow to the deceased. The incident happened on 23.09.1991 and the injured succumbed to his injuries even while he was undergoing treatment at PGI Hospital Chandigarh on 09.10.1991. In the said case, it was brought out from evidence that the deceased succumbed to injuries even while he was undergoing treatment and in such facts and circumstances, court drew inference that the injuries were sufficient in the ordinary course of nature to cause the death. In Dhupa Chamar's case (supra), Dhupa Chamar gave a bhala blow on the left side of neck of Ram Patia Devi and she fell down and died instantaneously. Accused No.2-Tokha Ram assaulted Dharam Chamar in the abdomen with bhala and he was rushed to the hospital whereupon he was declared brought dead. On the basis of nature of injuries inflicted which resulted in the instant death of the deceased persons and other circumstances, court held that the intended injury was sufficient in the ordinary course of nature to cause death and convicted the accused for the offences under Section 302 IPC.

13. However, in the instant case, it is apparent that the death occurred sixty two days after the occurrence due to septicaemia and it was indirectly due to the injuries sustained by the deceased. The proximate cause of death on 13.10.1998 was septicaemia which of course was due to the injuries caused in the incident on 11.08.1998. As noted earlier, as per the evidence of Dr. Laxman Das (PW-9), Roop Singh was discharged from the hospital in good condition and he survived for sixty two days. In such facts and circumstances, prosecution should have elicited from Dr. Laxman Das (PW-9) that the head injury sustained by the deceased was sufficient in the ordinary course of nature to cause death. No such opinion was elicited either from Dr. Laxman Das (PW-9) or from Dr. Gulecha (PW-3). Having regard to the fact that Roop Singh survived for sixty two days and that his condition was stable when he was discharged from the hospital, the court cannot draw an inference that the intended injury caused was sufficient in the ordinary course of nature to cause death so as to attract clause (3) of Section 300 IPC.

14. In *Ganga Dass alias Godha vs. State of Haryana, 1994 Supp (1) SCC 534*, the accused gave iron pipe single blow on the head

a of the deceased and the deceased died eighteen days after the occurrence due to septicaemia and other complications, the conviction of the appellant under Section 302 IPC was altered by this Court to Section 304 Part II IPC. This Court observed as under:-

b “6. We find considerable force in this submission. As stated above the occurrence took place on November 18, 1988 and the deceased died 18 days later on December 5, 1988 due to septicaemia and other complications. The Doctor found only one injury on the head and that was due to single blow inflicted with an iron pipe not with any sharp-edged weapon. Having regard to the circumstances of the case, it is difficult to hold that the appellant intended to cause death nor it can be said that he intended to cause that particular injury. In any event the medical evidence shows that the injured deceased was operated but unfortunately some complications set in and ultimately he died because of cardiac failure etc. Under these circumstances, we set aside the conviction of the appellant under Section 302 IPC and the sentence of imprisonment for life awarded thereunder. Instead we convict him under Section 304 Part II IPC and sentence him to undergo six years’ RI. The sentence of fine of Rs.2000 along with default clause is confirmed. Accordingly the appeal is partly allowed.”

e 15. In the instant case, the appellants used firearms countrymade pistol and fired at Roop Singh at his head and the accused had the intention of causing such bodily injury as is likely to cause death. As the bullet injury was on the head, vital organ, second appellant intended of causing such bodily injury and therefore conviction of the appellant is altered from Section 302 IPC to Section 304 Part I IPC. The learned counsel for the appellant-Sanjay submitted that it was only Narendra who fired at Roop Singh at his head, appellant-Sanjay fired on Sheela (PW-2) on her neck, stomach and leg. Learned counsel for the appellant-Sanjay contended that as Sanjay fired only at Sheela, he could not have been convicted for causing death of Roop Singh under Section 302 IPC read with Section 34 IPC. There is no force in the above contention. The common intention of the appellants is to be gathered from the manner in which the crime has been committed. Both the appellants came together armed with firearms in the wee hours of 11.08.1998. Both the appellants indiscriminately fired from their

countrymade pistols at Roop Singh- deceased and Sheela (PW-2) respectively. The conduct of the appellants and the manner in which the crime has been committed is sufficient to attract Section 34 IPC as both the appellants acted in furtherance of common intention. The conviction of the appellant-Sanjay under Section 302 IPC read with Section 34 IPC is modified to conviction under Section 304 Part I IPC.

16. Conviction of the appellants-Narendra and Sanjay under Section 302 IPC and Section 302 IPC read with Section 34 IPC respectively is modified to Section 304 Part I IPC and Section 304 Part I IPC read with Section 34 IPC respectively and each of them are sentenced to undergo rigorous imprisonment for ten years and the same shall run concurrently alongwith sentence of imprisonment imposed on the appellants. Conviction of the appellants for other offences and the respective sentence of imprisonment imposed on the appellants and fine is affirmed. The appeals are partly allowed to the above extent.

Result:- Appeals partly allowed.

**ABC 2016 (I) 352 SC
ACQUITTAL & BAIL CASES
SUPREME COURT OF INDIA**

(Jagdish Singh Khehar & C. Nagappan, JJ.)

Criminal Appeal No. 462 of 2016 (Arising out of SLP(Crl.) No.1962 of 2015)

(From Chhattisgarh High Court)

Decided On 12 May, 2016

RAMBRAKSH @ JALIM

- Appellant(s).

Versus

STATE OF CHHATTISGARH

- Respondent(s).

Law Covered:- (A) Indian Penal Code, 1860 – Sections 302 & 201 – Conviction under – Circumstantial Evidence – Case based on – Delay in FIR – not explained – Independent witnesses – not supporting the case by – Human bones recovered – DNA analysis not conducted – Cause of death could not be ascertained – Held, prosecution has failed to prove that the death of the deceased was either homicidal or otherwise – Last seen theory – not established – Conviction set aside – Acquittal. (Para 8, 9 & 10)