


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Appeal No. 134/2018

Hari Singh Son Of Bhondu Jatav, R/o Gujar Bhavli, Police Station
Masalpur, District Karauli Raj.

At present in District Jail Bharatpur

----Accused/Appellant

Versus

The State Of Rajasthan Through P.P.

----Respondent

For Appellant(s) : Mr. Jaswant Singh Rathore
For Respondent(s) : Mr. Naresh Kumar Gupta, PP
Ms. Neha Goyal

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE CHANDRA PRAKASH SHRIMALI
Judgment

15/01/2026

This criminal appeal is directed against the judgment dated 03.02.2018 passed by the learned Additional Sessions Judge, Karauli (for brevity, 'the learned trial Court') in Sessions Case No.56/2015 (92/2015) CIS No. 899/2015 whereby, the accused appellant (for brevity, 'the appellant') has been convicted and sentenced as under:-

- (i)**Under Section 302 IPC:-** Life imprisonment with fine of ₹25,000/-; in default thereof, 6 months' additional simple imprisonment.
- (ii)**Under Sections 323 IPC:-** One year's simple imprisonment.

Both the sentences to run concurrently.

The relevant facts in brief are that Shri Sitaram (PW-3) lodged a written report dated 01.07.2015 (Ex.P3) at the Community Health Centre, Masalpur wherein, it was alleged that his uncle Babu Lal had gone, alongwith his son Rajveer, at about

05.00 P.M. on 30.06.2015 to Gothara to attend a program. At about 08.00 P.M., Rajveer returned in injured condition and informed that the appellant alongwith his colleagues has beaten Babu Lal as also him resulting into death of Babu Lal. It was further stated that Rajveer was taken by his mother and sister for treatment to Karauli Hospital from where he was referred to Jaipur. Based thereupon, an FIR No. 126 dated 01.07.2015 was registered at the Police Station Masalpur, District-Karauli for the offence under Sections 302 and 323 IPC. The appellant was charge-sheeted under Sections 341, 323 and 302 IPC and charges were framed against him under the aforesaid Sections. He pleaded not guilty and demanded trial whereafter, he has been convicted and sentenced in the manner stated hereinabove.

Assailing the impugned judgment, learned counsel for the appellant contended that the learned trial Court has seriously erred in relying upon the testimony of Shri Rajveer (PW-4)-son of deceased and an injured witness inasmuch as it suffered from contradiction and improvement on material aspects of the case. Learned counsel submitted that although, he has deposed that his father was not drunk; but, his cross-examination as also other evidence available on record suggest otherwise. He submitted that the ocular evidence as to nature of beating by the appellant is not medically corroborated. He further contended that since, it was not a case of pre-planned murder, the incident has occurred in night while returning from another village, the weapon of offence is alleged to be a stick, usually carried by the villagers during night, there is no repetition of blow on the head, i.e., the vital part of the body, in any case, the matter would not travel beyond the

scope of Section 304 Part I IPC. He, therefore, prays that the appeal be allowed in terms aforesaid and the substantive sentence may be reduced to the period already undergone.

Per contra learned Public Prosecutor, supporting the findings recorded by the learned trial Court vide impugned judgment dated 03.02.2018, prayed for dismissal of the appeal.

Heard. Considered.

The prosecution case is based primarily on the testimony of injured eye-witness Shri Rajveer (PW-4) who was aged about 12 years on the date of incident. He has stated that while returning from Village Gothara in night with his father, the appellant inflicted a lathi blow on head of his father and also dealt with the blow on his hand and leg. He has further stated that his father died immediately and the appellant also inflicted a lathi blow on his head. In his cross-examination, though, he has claimed that his father was not inebriated; but, it stands falsified from his further cross-examination as also from the statement of other prosecution witnesses. His further cross-examination reflects that he has denied that his father was heavily drunk; but, had admitted that his father was facing difficulty in walking and was doing so with his support. Although, he has denied that his father had fallen at one or two places; but, has admitted that he saw him falling. The other prosecution witnesses namely; S/Shri Patram (PW10), Deshraj (PW11), Girraj (PW13) as also Mukesh Chand (PW20)-the Investigating Officer have admitted that the deceased was drunk at the time of alleged incident. Be as it may, however, we find no reason to disbelieve the testimony of the injured eye-witness (PW4) that his father Babu Lal died on account of blow on his

head with lathi by the appellant. Although, there are some minor contradictions in the testimony of Shri Rajveer (PW4); but, the same do not impeach his credibility to the extent that it can be rejected as a whole. However, from the material on record, the undisputed position that emerges is that there was no previous enmity in between the deceased and the appellant and the assault was not premeditated. As a matter of fact, the prosecution has failed to assign any motive behind the assault. We also find that the incident has occurred during night when the appellant and the deceased were returning to their home from another village and the appellant was carrying a 2 feet long lathi (stick) which is not unusual for the villagers to carry alongwith them during night while traveling from one place to another. It also supports our view that the assault was not pre-planned. It has also come on record that the deceased was inebriated and was not in his senses. The postmortem report (Ex.P7) reflects one lacerated injury on the occipital part of his skull with corresponding fracture of bone. Although, he has suffered fracture in 1/3rd part of left elbow and fracture of the ribs No. 5, 6 and 7; but, the PW4 did not allege infliction of any injury by the appellant on the ribs of the deceased. Therefore, it is apparent that there was no repetition of blow by the appellant on the vital part of the body of the deceased. Further, it is not the prosecution case that the deceased or anybody else prevented the appellant from inflicting further blow. In the conspectus of aforesaid analysis, we find substantial force in the submission of learned counsel for the appellant that the offence would not travel beyond the scope of Section 304 Part-I IPC.

Resultantly, this criminal appeal is disposed of in following

terms:-

1. The conviction of the appellant, recorded by the learned trial Court vide judgment dated 03.02.2018 under Section 302 IPC, is altered to the conviction under Section 304 Part-I of IPC.
2. The conviction of the appellant under Section 323 IPC is maintained. But, he has already served the sentence of one year awarded by the learned trial Court.
3. The appellant has remained in custody, including remission, for a period of about 12 years and 10 months. In view thereof, the substantive sentence awarded to him is reduced to the period already undergone. Since, the appellant is in jail, he shall be set at liberty forthwith if not required to be detained in any other case.
4. The appellant is granted three months' time to deposit the fine, if not already deposited. In case of default, learned trial Court shall ensure that he serves the default sentence imposed vide impugned judgment dated 03.02.2018.

In view of the provisions of Section 437-A CrPC (Section 481 Bharatiya Nagarik Suraksha Sanhita, 2023), the appellant namely **Hari Singh S/o Bhondu Jatav** is directed to furnish personal bond in the sum of Rs. 25,000/- and a surety in the like amount within four weeks before the Registrar (Judl.) of this Court, which shall be effective for a period of six months with the stipulation that in that event Special Leave Petition being filed against the judgment or on grant of leave, the appellant aforesaid, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

(CHANDRA PRAKASH SHRIMALI),J
Tahir/18

(MAHENDAR KUMAR GOYAL),J