



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

D.B. Criminal Appeal No. 304/2019

Fula @ Fulchand S/o Shri Nanji Gameti, Aged About 42 Years, By  
Caste Gameti, R/o Mundavali, P.s. Jhadole, District Udaipur  
(Raj.) (At Present Lodged In Central Jail, Udaipur)

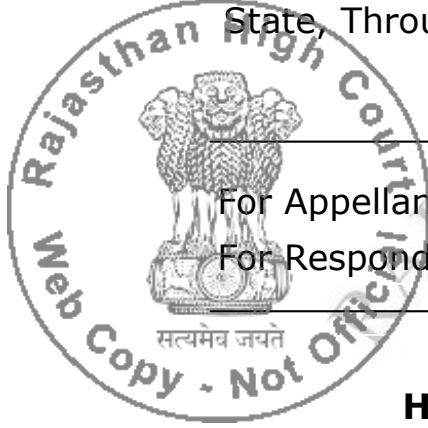
----Appellant

Versus

State, Through PP

----Respondent

For Appellant(s) : Mr. Vivek Mathur  
For Respondent(s) : Mr. B.R. Bishnoi, AGC



**HON'BLE MR. JUSTICE SANDEEP MEHTA  
HON'BLE MR. JUSTICE VINOD KUMAR BHARWANI**

**Judgment**

**17/05/2022**

The appellant Fula @ Fulchand has preferred the instant appeal under Section 374(2) of the CrPC to assail the judgment dated 14.08.2019 passed by the learned Additional Sessions Judge No.5, Udaipur in Sessions Case No.148/2016, whereby he has been convicted for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment alongwith a fine of Rs.10,000/- and in default of payment of fine, further to undergo additional simple imprisonment of three months'.

Brief facts relevant and essential for disposal of the appeal are noted hereinbelow:-

Mr. Thawara (P.W.1) submitted a written report (Ex.P/1) to the SHO, Police Station Jhadol, District Udaipur on 15.05.2016 alleging inter alia that on the previous day, i.e. 14.05.2016, he



had engaged the tractor of Pratap S/o Shankar Ji for transporting stones. The tractor reached his home at about 02.00 p.m. The informant's son Ambalal, aged 19 years, was sent to the quarry alongwith the labourers Chatarlal S/o Pratap, Kishan S/o Pratap, Gopilal S/o Chhaganlal and tractor driver Kailash S/o Pratap to Mahuda Khadara for loading the stones and transporting them to the field of the complainant, where a boundary was being constructed. Three trips of the stone trolleys had already been unloaded at the field. Thereafter, the tractor had gone back to the quarry for the fourth trip and was in process of being loaded. Chatarlal came to the informant and told him that they were loading stones in the tractor. Ambalal was sitting on the front tyre. The time was about 06.30 in the evening. Fula S/o Nanji (the appellant herein) came there and called Ambalal towards him. He was armed with a lathi of which, he gave a blow on the temporal region of Ambalal with an intention of killing him. Ambalal fell down on receiving the lathi blow. Fula then went away from the spot. Ambalal succumbed to the injuries. On receiving this information, the informant proceeded to the field of Fula and saw Ambalal's lifeless body lying on the ground. The informant got annoyed and questioned the tractor driver and the labourers as to why they did not try to save the boy on which, they stated that despite all their efforts, Fula assaulted Ambalal and ran away. Fula was objecting to the tractor going through the water channel and because of this motive, he had launched the assault. On the basis of this report, FIR No.73/2016 (Ex.P/19) came to be registered at the Police Station Jhadol and investigation was commenced. The dead body of Ambalal was subjected to postmortem at the hands of Dr. Vardichand (P.W.15),



the Medical Officer at CHC, Jhadol, who carried out the autopsy and issued the postmortem report (Ex.P/13) taking note of numerous abrasions and marks of swelling on the neck, shoulder, back and arm of the deceased. The Medical Officer noticed blood oozing out from the nose and mouth of the victim. The area underneath the left ear was swollen. All internal organs except the head were unaffected. When the skull was opened, extravasation of blood was noticed. The Medical Officer opined that the cause of death of Ambalal was subdural haematoma as a result of the head injury. Upon conclusion of the investigation, charge sheet came to be filed against the appellant herein for the offence punishable under Section 302 IPC. The case was committed to the Court of Sessions Judge, Udaipur from where, it was transferred to the Court of Additional Sessions Judge, Women Atrocities Cases, Udaipur for trial. Charge was framed against the appellant, who pleaded not guilty and claimed trial. The prosecution examined 16 witnesses and exhibited 22 documents to prove its case. The accused denied the prosecution allegations in his statement under Section 313 CrPC and claimed that the victim fell down and received the injuries leading to his death. One witness was examined in defence. Upon conclusion of the trial and after hearing arguments advanced by the appellant's counsel and the learned Public Prosecutor, the learned trial court proceeded to convict and sentence the appellant as mentioned above. Hence this appeal.

Shri Vivek Mathur, learned Amicus Curiae representing the appellant urged that the testimony of the eye-witnesses is unbelievable and is contradicted by the medical evidence. He referred to the statements of the witnesses Kailash (P.W.3),



Chatarlal (P.W.4), Kishanlal (P.W.5), Gopilal (P.W.7), the so-called eye-witnesses, and the Medical Jurist Dr. Vardichand (P.W.15), and urged that the witnesses have alleged that the accused inflicted lathi blow on the neck of the victim, whereas no corresponding injury was found on the body of the deceased. He urged that the defence has come out with a clear case that Ambalal fell down from the tractor and received the injuries and expired as a result thereof. The Medical Jurist Dr. Vardichand (P.W.15) categorically stated that the injuries noticed on the dead body of the victim could have been caused by falling down from a tractor. The Medical Jurist did not state that there was any fracture at the location of the head injury. Thus, Mr. Mathur urged that even if the testimony of the eye-witnesses is to be believed, conviction of the appellant cannot be sustained for the offence punishable under Section 302 IPC and he can be convicted only for the offence punishable under Section 323 IPC or at best for the offence punishable under Section 304 Part II IPC. In support of this contention, Mr. Mathur placed reliance on the Supreme Court judgments in the cases of **Jugut Ram Vs. The State of Chhattisgarh [(2020) 9 SCC 520]**, **Jagat Singh Vs. State of Himachal Pradesh [(2011) 2 SCC 234]** and the Division Bench judgment of this court in **Dunga Ram Vs. State of Rajasthan [1996 Cri LJ 3672]** and implored the court to accept the appeal, set aside the appellant's conviction and acquit him. His alternative submission was to tone down the offence with corresponding reduction in the sentence awarded to the appellant.

Learned Public Prosecutor, on the other hand, vehemently and fervently opposed the submissions advanced by the appellant's counsel. He urged that the victim was peacefully





occupied in loading stones in the tractor trolley when the appellant herein launched an unprovoked attack at him. He referred to the statements of the eye-witnesses Kailash (P.W.3), Chatarlal (P.W.4), Kishanlal (P.W.5) and Gopilal (P.W.7) and urged that all the 4 witnesses have given unimpeachable evidence stating that the appellant called Ambalal towards him and inflicted blows of lathi on his person. Learned Public Prosecutor also submitted that the Medical Jurist took note of multiple injuries on the head and other body parts of the deceased and opined that the head injury resulted into subdural haematoma causing death of Ambalal, who was a young boy aged 19 years. Thus, as per the learned Public Prosecutor, the conviction of the appellant as recorded by the trial court for the offence punishable under Section 302 IPC does not warrant any interference. On these arguments, learned Public Prosecutor implored the court to dismiss the appeal.

We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgment and the original record.

At the outset, we would like to take note of the injuries noticed by the Medical Jurist Dr. Vardichand (P.W.15) in the postmortem report (Ex.P/13). He took note of the following injuries on the body of Ambalal :

- ◆ Swelling below left ear with abrasion from mid throat to mid back occipital region.
- ◆ Abrasion on left shoulder
- ◆ Abrasion on left back.
- ◆ Abrasion on left arm.
- ◆ Blood coming out from nose and mouth.



Subdural haematoma was noticed in the cranium, however, exact location thereof was not mentioned in the postmortem report. The doctor gave a conclusion that the subject died due to subdural haematoma, which in turn was a result of the head injury. He did not, however, state that the injuries were sufficient to cause death in the ordinary course of nature.

Now we proceed to discuss the evidence of the eye-witnesses.

Kailash (P.W.3) stated that Ambalal was sitting on the tractor. Fula came there and called Ambalal and then gave him two lathi blows, which landed above his ear. He denied the defence suggestion that Ambalal fell down from the tractor and expired as a result thereof.

Chatarlal (P.W.4) stated that he, Ambalal and other witnesses had gone to Mahuda Khadra in the tractor trolley for loading stones. Ambalal was sitting on the tyre when Fula called him towards himself and inflicted a lathi blow above his ear. Ambalal expired because of the injury. In cross-examination, a suggestion was given to the witness that Ambalal fell down from the running tractor and received the injuries, which he denied.

Similar statement was given by Kishanlal (P.W.5) and Gopilal (P.W.7).

Manifestly, these witnesses had no animosity whatsoever with the appellant, which could instigate them to falsely implicate him in the incident.

As per the allegations set out in the FIR, the appellant was objecting to the transit of the tractor from a water channel, whereafter the incident took place. This seems to be the immediate cause of the incident. The appellant admittedly had no



animosity whatsoever with the deceased. The incident seems to have taken place at the spur of the moment without any pre-meditation. The eye-witnesses alleged that the accused inflicted a lathi blow on the ear of the victim. However, as per the evidence of Dr. Vardichand (P.W.15), he did not notice lacerated wounds anywhere on the body of the deceased. Swelling was noticed below the left ear and subdural haematoma was noticed underneath the cranium. The doctor did not state that any fracture or other grievous injury was noticed anywhere on the body of the deceased.

In view of the above facts, it is apparent that the accused appellant might have inflicted a lathi blow to Ambalal while he was sitting on the tractor and in all probability, the victim fell down from the tractor and received the injuries, which resulted into his death. We may note that the dimensions of the injury noticed on the ear of the deceased do not convince us that the same could have been the result of a lathi blow. More likely, the said injury seems to be result of falling from tractor. In any event, the lathi blows attributed to the appellant did not result into any grievous injury being caused to the victim and hence, we are of the firm opinion that the appellant could not have been convicted for the offence punishable under Section 302 IPC.

Our view is fortified by the judgment in the case of **Jagat Singh** (*supra*), wherein the Hon'ble Supreme Court discussed the medical evidence and held as below :-

"16. *The post-mortem examination of the dead body of the deceased was performed by Dr. R.S. Dadhwal (PW-15) and he opined that the deceased died due to shock resulting from massive hemorrhage and injuries*



on the vital organs. The doctor noticed six wounds on the person of the deceased, on the nose, below the tip of left shoulder, posterior, on the right of the midline of the chest, on the left side of the chest and on the interior to the left axilla on the mid axillary line. Apart from the above injuries of the deceased as well as PW1, it is also relevant to note that the Appellant Jagat Singh (A-1) and his brother Rattan Singh (A-2) also sustained injuries in the same commotion.



17. Dr. Mrs. S. Sharma (DW-1), medically examined all the four accused and copies of which are marked as Exs. DA to DD respectively. Here again, we are concerned with the injuries on the person of Jagat Singh-Appellant alone.

1. There was a reddish brown small bruise of the size of 2 cms x 1 cm on the chest on the left side of the lower one third of sternum.

2. There was bluish bruise on the left hip of the size of 8 cm x 7 cm.

3. There was bluish bruise 10 cm x 1/3cms with intervening healthy area on the left side of the abdomen 5 cms above the left iliac crest.

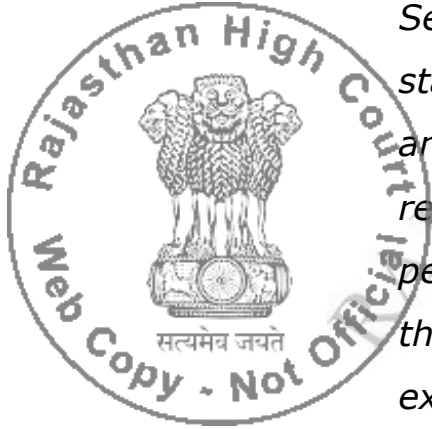
4 . He had complained of pain on the right forearm. The injured was referred for treatment of bronchial asthma.

18. As rightly observed by the trial Judge, the perusal of the statement of PWs 1 and 3 and the doctors leave no scope for doubt that a free fight had taken place in which members of both sides got injured and one person succumbed to the injuries. We have already adverted to the statement recorded under Section 313





of the Code, more particularly, the statement of the Appellant-Jagat Singh which have thrown light that in what manner the fight ensued and ended. We have already mentioned that from the evidence of prosecution side as well as the statement by the accused recorded under Section 313 of the Code, it is very much clear that a free fight had taken place. It is also clear and as narrated by the accused under Section 313 of the Code that to save themselves, they stabbed the deceased and the complainant. Both A1 and A2 happened to be baptized Sikhs and as per religious necessity they have to carry Gatra on their persons and in order to save them from the clutches of the deceased and the complainant, free blows were exchanged through Gattras. It is also seen from the evidence that the main blow on the chest of the deceased was caused by Rattan Singh who died pending appeal before the High Court. (A-3) and (A-4) were acquitted by the trial Court and the High Court dismissed the appeal against them.



19. Considering the evidence of the doctor with regard to the injuries sustained by the deceased, the complainant (PW-1) as well as the Appellant/accused and the evidence of (DW-1) who examined the accused, the trial Court has rightly observed that they had no requisite intention to kill the deceased as envisaged under Section 300. As discussed earlier, on account of meddling with the enquiry conducted by the ASO, both the parties sustained injuries out of which the deceased succumbed to the injuries.

20. From the materials placed by the prosecution as well as the defence, taking note of the fact that the trial Court has acquitted (A-3) and (A-4) and (A-2) died during the pendency of the appeal before the High Court, considering the nature of the injuries sustained



by the deceased as opined by Dr. R.S. Dadhwal, (PW-15), and the injuries sustained by the Appellant (A-1) as explained by Dr. Mrs. S. Sharma (DW-1), we hold that at the most, the Appellant could be held under Section 323 IPC for causing hurt on the body of the deceased. We are also of the view that there is no acceptable evidence to the fact that the Appellant had voluntarily caused hurt on the person of the deceased.



21. Considering all these events and taking note of the fact that the persons in both the groups, namely, complainant and the accused sustained injuries in a free fight and also of the fact that the Appellant A1 alone is before us, we feel that the ends of justice would be met by altering the conviction from Section 302 to Section 323. It is brought to our notice that he had served about a year in prison (pending trial) and is in prison for approximately seven months after conviction by the High Court, aged about 82 years and also suffering from asthma and other old age ailments. Considering all these aspects, we feel that the period undergone is sufficient and he be released forthwith if he is not required in any other offence. The appeal is allowed to this extent."

In the case of **Dunga Ram** (supra), Division Bench of this court discussed a similar set of facts and altered the conviction of the accused therein from the offence punishable under Section 302 IPC to 323 IPC. The factual scenario of the present case is squarely covered by the ratio of the above referred judgment.

In wake of the discussion made hereinabove, the accused can at best be held guilty for causing simple hurt to the victim Ambalal.



Accordingly, the instant appeal deserves to be and is hereby allowed in part. The conviction of the appellant cannot be sustained for the offence punishable under Section 302 IPC and hence, the impugned judgment dated 14.08.2019 passed by the learned Additional Sessions Judge No.5, Udaipur in Sessions Case No.148/2016 is modified in the terms that the appellant is acquitted of the charge for the offence punishable under Section 302 IPC and instead he is convicted for the offence punishable under Section 323 IPC and is sentenced to undergo one year's rigorous imprisonment. The appellant was arrested on 16.05.2016 and thus, he has remained in custody for more than six years. Since he has already served out the maximum sentence awarded to him by this court, he shall be released from prison forthwith, if not wanted in any other case.

However, keeping in view the provisions of Section 437-A CrPC, the appellant is directed to furnish a personal bond in the sum of Rs.40,000/- and a surety bond in the like amount before the learned trial court, which shall be effective for a period of six months to the effect that in the event of filing of a Special Leave Petition against the present judgment, on receipt of notice thereof, the appellant shall appear before the Supreme Court.

**(VINOD KUMAR BHARWANI),J**

**(SANDEEP MEHTA),J**

40-Pramod/-