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IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-D-172-DB-2004 (O&M)

Date of Decision: 03.04.2025

Mukesh & another

... Appellants

Versus

State of Haryana

... Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. P.K.S.Phoolka, Advocate as Amicus Curiae,
for appellant No.1.

Mr. Vivek K. Thakur, Mr. Mohit Thakur & Mr. R.K.Rana,
Advocates, for appellant No.2.

Mr. Ranvir Singh Arya, Addl. AG, Haryana.

GURVINDER SINGH GILL, J.

- The appellants namely Mukesh and Sanjeev assail judgment dated 14.01.2004 passed by the Additional Sessions Judge, Faridabad, vide which while accused/appellant No.1 Mukesh has been held guilty of having committed offence under Sections 302 and 323 read with Section 34 IPC, accused/appellant No.2 Sanjeev has been held guilty of having committed offence under Sections 302 & 323 IPC. The appellants have been sentenced as under:

Name of convict	Offence	Imprisonment	Fine
Mukesh	302 read with Section 34 IPC 323 read with Section 34 IPC	Life imprisonment 6 months	Rs.2000/- Rs.500/-
Sanjeev	302 IPC 323 IPC	Life imprisonment 6 months	Rs.2000/- Rs.500/-



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2. The matter arises out of FIR No.75 dated 21.03.2000 registered at Police Station Kotwali Faridabad, Faridabad under Sections 302, 323, 506, 34 IPC at the instance of Anju. The translated gist of Anju's statement (Ex.PA) on the basis of which FIR (Ex.PA/1) was lodged reads as under:

“I am resident of New Press Colony, Faridabad and am doing private service. Yesterday i.e. on 20.03.2000 at about 11.00 AM, Mukesh and Sanjeev, who are residents of A-Block, New Press Colony, Faridabad came to our house and asked my brother Sunil to come out and play Holi, but my brother refused to play Holi. In the meantime, my other brother Pradeep came out and Mukesh and Sanjeev tried to forcibly make him play Holi. My father also came out and tried to reason out with Mukesh and Sanjeev not to force them into playing Holi and told them to go home. However, Sanjeev gave a blow with *Bahi* (wooden leg of cot) on the head of my father Ram Vrikh, whereas co-accused Mukesh gave a blow with stick on the waist of my father, as a result of which my father fell down and became unconscious. Mukesh and Sanjeev also slapped and punched me. Upon hearing noise commotion, my *fuffad* (uncle) came out and so did out neighbourer Kamla. My uncle Rama Nand and Kamla saved us from Mukesh and Sanjeev otherwise they would have given more beatings to us. My brother Soni took my father to B.K.Hospital and got him admitted.”

3. As per prosecution, pursuant to a telephonic message having been received in the Police Post No.2 Kotwali from B.K. Hospital, Faridabad regarding admission of Ram Vrikh, PW-10 HC Rambir alongwith Constable Om Parkash went to the hospital and sought permission (Ex.PK) of the Doctor concerned as regards fitness of Ram Vrikh to make a statement, but the Doctor declared him unfit to make statement and referred him to Safdarjang Hospital, Delhi. Thereafter, on 21.03.2000, PW-10 HC Rambir went to Safdarjang Hospital, Delhi and sought opinion of the Doctor regarding fitness



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of Ram Vrikh, but the Doctor opined that he was unfit to make any statement. Since Anju, daughter of Ram Vrikh met HC Rambir, her statement (Ex.PA) was recorded and sent to police station for lodging FIR. Thereafter, HC Rambir Singh went to the spot and prepared a rough site plan. Statements of witnesses were recorded in terms of Section 161 Cr.P.C. However, Ram Vrikh could not survive and succumbed to his injuries on 22.03.2000. Inquest report was prepared. Post-mortem examination was got conducted on the dead body of Ram Vrikh on 23.03.2000.

4. Both the accused were arrested on 23.03.2000. During the course of interrogation, accused Mukesh suffered a disclosure statement (Ex.PF) as regards concealment of a stick and got the same recovered, which was taken into possession vide recovery memo Ex.PG. During the course of interrogation, accused Sanjeev also suffered a disclosure statement (Ex.PH) as regards concealment of a *Bahi* (wooden leg of cot) and got the same recovered, which was taken into possession vide recovery memo Ex.PI.
5. Upon conclusion of investigation, challan was presented against both the accused on 10.05.2000 in the Court of Chief Judicial Magistrate, Faridabad, who committed the case to the Court of Sessions vide order dated 01.06.2000. Learned Additional Sessions Judge, Faridabad, framed charges against both the accused for offences punishable under Sections 302, 323, 506 and 34 IPC on 07.09.2000.
6. The prosecution in order to establish its case examined as many as 11 PWs. The gist of their testimonies is being briefly referred to herein under:-

PW-1 Inspector Kehar Singh stated that on 21.03.2000 while he was posted as SI at Police Station Kotwali Faridabad, a ruqa Ex.PA was received



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on the basis of which he recorded formal FIR (Ex.PA/1) under his signatures.

- PW-2** Dr. D.S.Rathi, Medical Officer, B.K.Hospital, Faridabad, who at the first instance medically examined Ram Vrikh, proved his MLR as Ex.PB, wherein he described the injuries found on his person. He stated that after seeing the CT scan report, he referred the patient to Safdarjang Hospital, New Delhi.
- PW-3** Ashok Kumar, Draftsman, stated that on 20.04.2000, he had prepared a scaled site plan of the place of occurrence and proved the same as Ex.PC.
- PW-4** Anju, who is the complainant, stated with regard to the occurrence in the same manner, as got recorded by her in the FIR. She categorically stated that on the day of occurrence, both the accused who were in inebriated state came to her house and asked her brother to play Holi with them, but her brother refused for the same. She further stated that when her father Ram Vrikh told the accused to go away, they gave a blow with *Bahi* (wooden leg of cot) to her father. She further stated that they had also inflicted some injuries in their self-defence. She further stated that Sanjeev had also inflicted a blow to her with stick hitting her foot.
- PW-5** Pardeep, brother of the complainant and son of Ram Vrikh (deceased), stated that on 20.03.2000 on the eve of Holi, Mukesh and Sanjeev came to their house and called for Sunil asking him to play Holi with them, but his brother refused upon which they started quarrelling with his brother and started abusing him being in inebriated state. Upon commotion having been raised, he as well as his father also came out and his father told the accused to go back to their houses and that they do not want to play Holi with them which led to exchange of hot words and hereafter Sanjeev gave a blow with stick on the head of his father. He clarified the stick to be *Bahi* (wooden leg of cot). He stated that Mukesh thereafter gave a blow with stick hitting his arm pit. He stated that they also inflicted injuries to the



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accused in their self defence and that thereafter, the accused ran away from the spot.

PW-6 Dr. Alexendar, Specialist and Head of Department, Forensic Medicines Safdarjang Hospital, Delhi, who had conducted post-mortem examination on the dead body of Ram Vrikh on 23.03.2000, proved the post-mortem report as Ex.PD, wherein he described the injuries found on the dead body and opined that the cause of death was due to carnio-cerebral injuries caused by blunt force impact.

PW-7 ASI Krishan Kumar stated that on 22.03.2000 while he was posted as Incharge at Police Post No.2, NIT, Faridabad, Rama Nand son of Durga informed him that Ram Vrikh, who had been admitted in Safdarjang Hospital, Delhi had expired. He further stated that he had got medical examination of Anju conducted. He further stated that pursuant to Mukesh having surrendered before the Area Magistrate on 23.03.2000, he was arrested. He stated that Mukesh suffered a disclosure statement (Ex.PF) with respect to concealment of a stick, which he got recovered and was taken into possession vide recovery memo Ex.PG. He further stated that on the same day even accused Sanjeev was arrested, who also made a disclosure statement (Ex.PH) and got recovered a *Bahi* (wooden leg of cot), which was taken into possession vide recovery memo Ex.PI. He further stated with respect to investigation conducted by him and the documents prepared during the course of the same and that upon conclusion of investigation, challan was presented against the accused.

PW-8 Rama Nand stated that he knew Ram Vrikh (deceased) who was related to him being his wife's brother. He stated that on 20.03.2000 it was Holi and he was present in the house of his *Sala* (brother-in-law) situated in Press Colony, Faridabad. He stated that at about 11.00 AM, Sanjeev and one more person whose name he does not recollect came there, while they were under the influence of liquor. Ram Vrikh told them that they will not play Holi upon which the said two persons started quarreling with Ram Vrikh and thereafter Sanjeev



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gave a blow with *Paya* (wooden leg of cot) on the head of Ram Vrikh and Mukesh also gave a blow with stick to Ram Vrikh. He further stated that Sunil and Pardeep also caused injuries to the accused in their self-defence in his presence and in the presence of Kamla. He stated that Ram Vrikh was taken to B.K.Hospital from where he was further taken to Safdarjang Hospital, Delhi.

PW-9 SI Ramesh Chander stated that on 22.03.2000, when he was posted in Police Post Safdarjang Hospital, Delhi, a patient namely Ram Vrikh expired and that he had prepared inquest report in respect of the same and had also got post-mortem examination conducted.

PW-10 HC Rambir Singh stated that on 21.03.2000, he was posted as Head Constable at Police Post No.2 Kotwali and that upon receipt of telephonic message from B.K.Hospital as regards admission of Ram Vrikh in an injured condition, he alongwith Constable Om Parkash went there, but since Ram Vrikh was declared unfit for making any statement, he recorded the statement of his daughter Anju (Ex.PA), who had met him and the said statement was sent to the Police Station for registration of FIR. He further stated that during the course of investigation, he had also recorded the statements of Kamla, Rama Nand, Sunil and Pardeep in terms of Section 161 Cr.P.C. and had prepared a rough site plan Ex.PL.

PW-11 Dr. S.K.Mittal, B.K.Hospital, Faridabad, who had medically examined Anju on 22.03.2000, proved her MLR as Ex.PM, wherein he described the injuries found on her person.

7. Upon closure of the prosecution evidence, statements of both the accused were recorded in terms of Section 313 Cr.P.C., wherein they denied the entire case of prosecution and pleaded false implication. However, the accused in their defence examined 3 DWs. **DW-1** Pawan Kumar stated that on 20.03.2000, there was a festival of Holi and about 50-60 persons including himself were playing Holi. Ram Vrikh (deceased) came there carrying a stick



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and was drunk. He asked Mukesh and Sanjeev to play Holi with him, but the said persons were not willing for the same upon which Ram Vrikh gave a blow with stick to both Mukesh and Sanjeev and the said two persons in their self-defence snatched the stick from Ram Vrikh and waived the same hitting Ram Vrikh on his head and that neither the complainant nor any of the son of Ram Vrikh was present at the spot. **DW-2** Ashok Kumar stated that on the day of Holi on 20.03.2000 at about 10.00/11.00 AM, 60/70 persons including DW-1 Pawan Kumar were playing Holi. Ram Vrikh (deceased), who was carrying a *lathi* (stick) insisted that Mukesh and Sanjeev should also play Holi, but Sanjeev and Mukesh refused for the same upon which Ram Vrikh inflicted blows with *lathi* (stick) to them and that Sanjeev and Mukesh, in their self-defence, snatched the *lathi* (stick) and gave a blow on the head of the deceased and that neither Anju nor any of her brother was present at the spot. **DW-3** Surendar Kumar, Senior Store Keeper (Record), B.K.Hospital, Faridabad, who had brought the summoned record pertaining to MLR No.92/AS/BKH/2000 and MLR No.86/AS/BKH/2000, stated that he identified the hand-writing and signatures of Dr. Anupama Seth on the aforesaid MLRs and proved the same as Ex.DA and Ex.DB respectively.

8. The learned trial Court, upon considering the evidence brought on record by the prosecution and also by the accused, held that the charges framed against the accused for offences punishable under Sections 302, 323 & 34 IPC stood duly proved and accordingly sentenced them as mentioned above.
9. Learned counsel for the appellants, while assailing the impugned judgment, submitted that it is a case where Ram Vrikh (deceased) himself was the aggressor, who while in inebriated state, inflicted injuries to both the



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accused/appellants in order to force them to play Holi with him and that the accused being attacked by the deceased acted in self-defence and snatched the *lathi* (stick) and had inflicted a single blow to him which unfortunately led to his death. Learned counsel in this regard have drawn the attention of this Court to the MLRs (Ex.DA and Ex.DB) to hammer forth their contention that in fact it is Ram Vrikh (deceased), who had attacked the accused/appellants. Learned counsel further submitted that under these circumstances, it is apparent that the accused/appellants had acted in their self-defence and as such, cannot be held guilt of having murdered the deceased.

10. Opposing the appeal, learned State counsel submitted that it is a case where the case of prosecution stands duly established from the testimony of PW-4 Anju (complainant), wherein she categorically stated that both the accused had come to their house and were insisting that the brother of the complainant should also play Holi with them and when other brother of the complainant as well as her father objected to the same, both the accused gave beatings to her father leading to his death. It has been submitted that the aforesaid testimony of Anju stands corroborated from the testimony of PW-5 Pardeep Kumar and that the medical evidence is also in tune with the ocular version and that the plea of self-defence set up by the accused does not inspire confidence. Learned State counsel, thus, prayed for dismissal of the instant appeal.
11. We have considered rival submissions addressed before this Court and with the assistance of learned counsel have also perused the record of the case.
12. Since it is a case where the prosecution alleges that the accused had inflicted injuries with the help of *Bahi* (wooden leg of cot) and a stick on his head



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leading to his death, it is apposite to first of all refer to the medical evidence in this regard. The occurrence had taken place on 20.03.2000. As per the case of prosecution immediately after the occurrence, the deceased was initially taken to B.K.Hospital, Faridabad. The prosecution has examined PW-2 Dr. D.S.Rathi, Medical Officer, B.K.Hospital, Faridabad, who at the first instance medically examined Ram Vrikh on 20.03.2000 and described the following injuries found on his person:

- “1. There was a left black eye was present. Advised X-ray skull lateral and A.P. view.
2. There was an abrasion 25x.5 cm size was present over the left side of forehead. 1 cm above the left eyebrow.”

13. However, Ram Vrikh was referred to the Safdarjang Hospital, New Delhi, where he breathed his last on 22.03.2000. The prosecution has also examined PW-6 Dr. Alexendar, who had conducted the post mortem examination on the dead body of Ram Vrikh on 23.03.2000. He proved the post-mortem report as Ex.PD and described the injuries found on the dead body as under:

- “1. Black eye on the left side.
2. Abrassion on the left side of forehead and lateral aspect of left eye. Size was 5cm x 3cm.”

14. PW-6 Dr. Alexendar opined that cause of death in this case was due to carnio cerebral injuries caused by blunt force impact. PW-6 Dr. Alexendar was briefly cross-examined on behalf of the accused, but nothing substantial could be elicited during the course of his cross-examination so as to either doubt his veracity or his opinion.



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15. Coming to the statement of PW-4 Anju (complainant), she has categorically stated that on the day of occurrence i.e. 20.03.2000 at about 11.00 AM, both the accused Mukesh and Sanjeev had come to their house and started forcing her brother Sunil to play Holi, but her brother refused to play Holi and that in the meantime, her other brother as well as her father also came there and when her father tried to reason out and told Mukesh and Sanjeev to go to their houses, Sanjeev took a *Bahi* (wooden leg of cot) and gave a blow with the same to her father. PW-4 further stated that Sanjeev thereafter gave another blow which hit on his (Ram Vrikh) arm pit.

16. To a similar effect is the statement of her brother PW-5 Pardeep Kumar, who categorically stated that both the accused while being drunk had come to their house and were forcing his brother to play Holi and when his brother refused for the same, they started quarrelling with his brother. PW-5 stated that in the meantime he and his father came out and objected for the same and when his father told the accused to go back to their houses, there was exchange of hot words upon which Sanjeev gave a blow with stick on the head of his father. He also clarified that the said stick was in the nature of a *Bahi* (wooden leg of cot). He further stated that another blow was given with a stick on the arm pit of his father. The existence of injuries on the person of Ram Vrikh (deceased) stands fully established from the medical evidence. Apart therefrom, the complainant (PW-4 Anju) herself was injured in the occurrence as is also borne out from the medical evidence, as she was found to have sustained one abrasion on her ankle joint as specifically stated by PW-11 Dr. S.K.Mittal.



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17. Although the accused have tried to paint a different picture about the incident by stating that it was the deceased, who in an inebriated state, insisted upon to play Holi with the accused, but the said defence neither appeals to reason nor is borne out from the medical evidence inasmuch as the post-mortem report does not show that the deceased had consumed liquor. Neither PW-2 Dr. D.S.Rathi has recorded any such observation regarding the deceased having consumed liquor and nor PW-6 Dr. Alexendar, who had conducted post-mortem examination on the dead body of Ram Vrikh, found anything in this regard. As such, the defence plea taken by the accused/appellants cannot be accepted. The accused/appellants cannot even derive any benefit from the factum of existence of some minor injuries on their person inasmuch as their medical was got conducted on 23.03.2000, whereas the occurrence had taken place on 20.03.2000. As such, the findings of the trial Court to the effect that Ram Vrikh (deceased) lost his life on account of injuries inflicted by the accused does not suffer from any infirmity and the same are hereby affirmed.
18. The material question that would still survives is as to whether in the present case where the accused are alleged to have inflicted two injuries with blunt edged weapon would constitute an offence punishable under Section 302 IPC or as to whether it is the provisions of Section 304 IPC, which would be attracted.
19. Admittedly, it is not a case where there was any prior enmity of the accused with the deceased. It cannot even be said that they had gone with any pre-meditation or with an intention of killing anybody. Though it goes without saying that the accused/appellants themselves are responsible for having



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created the circumstances leading to death of Ram Vrikh (deceased), but having regard to the fact that the weapons used are in the nature of *Bahi* (wooden leg of cot) which one of the accused had picked up from the spot and the other co-accused was carrying a stick and the entire development was instantaneous inasmuch as a quarrel apparently ensued when the deceased tried to reason out with the accused and told them not to force them to play Holi and to go away, which apparently did not go well with the accused and they attacked the father of the complainant i.e. Ram Vrikh (deceased), it cannot be said that the accused intended to murder the deceased. At this stage, it is apposite to refer to definition of Section 300 IPC, which reads as under:

300. Murder. - Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or –

Secondly. - It is done with intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or –

Thirdly. - If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or –

Fourthly. - If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1. - When culpable homicide is not murder. - Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:-

First. - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly. - That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly. - That the provocation is not given by anything done in the lawful exercise of the right of private defence.



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Explanation. - Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2. - Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3. - Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Explanation. - It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5. - Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

20. The facts of the present case, as enumerated above, would fall within the ambit of Exception 4 inasmuch as there was no premeditation on the part of the accused and it was a sudden development leading to a fight wherein both the accused inflicted one injury each to the deceased with blunt edged weapon in the nature of *Bahi* (wooden leg of cot) and stick. As such, the accused/appellants are guilty of having committed offence punishable under Section 304 Part II IPC. Consequently, the conviction of the appellants is altered from Section 302 IPC to Section 304 Part II IPC.
21. Further having regard to the facts under which the occurrence took place and keeping in view the fact that both the accused/appellants have already undergone substantial period of imprisonment inasmuch as accused/appellant No.1 – Mukesh had undergone more than 06 years & 08 months and



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accused/appellant No.2 – Sanjeev had undergone more than 05 years & 02 months, the sentence as imposed by the trial Court is reduced to the one already undergone. However, the fine shall remain unaltered.

22. Accordingly, the appeal stands partly accepted to the extent indicated above.

(GURVINDER SINGH GILL)
JUDGE

03.04.2025
Vimal

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No