

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-854-DB of 2002

Date of decision:- 06.01.2015.

Gharsi Ram and another

.....Appellants

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN**

Present: Mr. H.S. Randhawa, Advocate as amicus curiae and
Mr. Vivek Lamba, Advocate for the appellants.

Mr. Randhir Singh, Additional A.G. Haryana.

SHEKHER DHAWAN, J.

Appellants Gharsi Ram and Madan Lal have challenged the judgment of conviction dated 01.08.2002 and order of sentence dated 05.08.2002, whereby, both the appellants were convicted for the offences under Section 302 IPC read with Section 34 IPC and sentenced to undergo imprisonment for life and also to make payment of fine of ₹ 500/- each and in case of default in payment of fine, to further undergo rigorous imprisonment for six months.

Briefly, prosecution case is that on 08.04.2001, medical ruqa was received in General Hospital Adampur. ASI Siri Bhagwan recorded statement of Angoori Devi wife of Satbir. As per Smt.

Angoori Devi, she was married to Satbir (since deceased) about one year back. On that night at about 8 or 8.30 p.m., she was preparing food. Her niece Smt. Saroj was also present along with her. Meanwhile Satbir (since deceased) came running to the house and picked up *lathi* and was making an attempt to go out of the house. Smt. Angoori Devi interrupted him and asked him not to take *lathi* along with him. Satbir told Smt. Angoori that Madan Lal and Gharsi Ram were after him. Smt. Angoori Devi and Saroj told him not to quarrel with them and snatched the *lathi*. However, Satbir went to the street and both of them followed him. As per complainant, at that time Satbir was caused injuries with *lathis* by both the appellants and the injuries were caused on the head of Satbir Singh. Smt. Angoori Devi and Smt. Saroj tried to snatch the *lathis* from them and in the process, Gharsi Ram gave a lathi *blow* to Saroj. They cried for help '*MAAR DIYA MAAR DIYA*' which attracted Chattar Singh, brother of the deceased. Satbir fell down with injuries as Smt. Angoori Devi and Smt. Saroj cried for help '*BACHAO BACHAO*' which attracted persons from the neighborhood and Madan Lal and Gharsi Ram fled away along with their respective *lathis*. Satbir was shifted to General Hospital for treatment and the doctor declared him dead. Saroj and Chattar Singh were admitted in the hospital and they were medically examined. Post-mortem examination of dead body of Satbir was got done. As per complainant, motive for causing injuries to Satbir was that both the appellants were interested that

Satbir should perform marriage with cousin of Smt. Angoori but Satbir performed marriage with Smt. Angoori Devi and on that account both of them were having ill-will.

As the statement made by Angoori Devi revealed commission of an offence under Sections 302/34 IPC, ASI Siri Bhagwan sent the same to Police Station, Adampur, where FIR No. 67 dated 9.4.2001 was registered at 12.15 a.m. The special report, which was handed over to C. Dhup Singh, was received by the Magistrate on 9.4.2001 at 7.15 a.m.

During the investigation of the case, ASI Siri Bhagwan conducted inquest proceedings in respect of dead body of Satbir Singh. The dead body was, thereafter, handed over to C. Karan Singh and C. Randhir Singh for post-mortem. The statements of the witnesses were recorded. ASI Siri Bhagwan then went to the spot, lifted the blood stained earth and prepared the rough site plan of the place of occurrence. Subsequently, an application was given by SI Kapoor Singh and the medico-legal examination of the deceased was done by Dr. Saroj Bhukal. Injured Saroj and Chattar Singh were also medico-legally examined. Both the accused were, thereafter, arrested on 12.4.2001. Pursuant to their respective disclosure statements, they got recovered a *lathi* each from the designated place. After completion of the investigation, both the accused were challaned. The case was, thereafter committed to the Court of Sessions. Charges under Section 302 IPC read with Section 34 IPC

were framed against them, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined ten witnesses. PW1 Subhash Chand, Draftsman proved the scale site plan, which he had prepared of the place of occurrence. PW2 C. Randhir Singh testified about taking the dead body for post-mortem. PW3 ASI Raj Singh stated that he recorded formal FIR on receipt of the statement of Smt. Angoori Devi. PW4 HC Sunder Lal tendered his affidavit. PW5 Dr. Saroj Bhukal deposed that she medico-legally examined Satbir, since deceased, Saroj and Chattar Singh. She also stated about the medico-legal examination of Ram Kumar from the accused side. PW6 Smt. Angoori Devi and PW7 Saroj deposed about the ocular account of the occurrence. PW8 ASI Siri Bhagwan testified about the recording of the statement of Angoori Devi on the basis of which the FIR was subsequently registered. He also narrated the various steps taken by him during the investigation of the case. PW9 Dr. Joginder Kapoor deposed about the post-mortem conducted by him on the dead body of Satbir. PW10 SI Kapoor Singh stated about the steps taken by him during the investigation of the case, including the arrest of the accused and the recovery of the *lathies* from them.

When examined under Section 313 Cr.P.C. both the accused denied the allegations of the prosecution. They stated that on 8.4.2001 at about 7.30 p.m., Satbir was under the influence of

liquor and creating ruckus in the street. This was objected to by Ram Kumar, their brother by telling him that there were girls and ladies living around the street. At this, Satbir picked up brick bats and hurled the same at Ram Kumar, which hit him. In the meantime, accused Madan Lal came there and threw a brick-bat which fell on the head of Satbir. They also stated that Smt. Angoori was not there and so also accused Gharsi Ram. As regards the injuries found on the person of Saroj and Chatter Singh, it was stated that they were result of fall.

After hearing learned Public Prosecutor for the State, counsel for the complainant and the counsel for the accused, the trial Court came to the conclusion that the prosecution had fully established its case against both the accused beyond reasonable doubt of having caused the death of Satbir in furtherance of their common intention. Accordingly, they were convicted under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.500/- each and in default of payment of fine, to suffer further rigorous imprisonment for six months.

Having heard learned counsel for both the parties, this Court is of the view that the alleged occurrence had taken place on 08.04.2001 at about 8.00 p.m. in the village and precisely in front of the house of Satbir. The injuries were caused to Satbir with *lathis* by Madan Lal and Gharsi Ram. Smt. Angoori Devi and Smt. Saroj as

well as Chattar Singh made an attempt to intervene and save Satbir from the clutches of appellants but they were also caused injuries. Saroj and Chattar Singh were medico-legally examined at General Hospital, Adampur on the same night. Chattar Singh had sustained five injuries and Saroj had sustained three injuries. However, Chattar Singh was not examined during trial of the case, rather, he was given up by the prosecution. Smt. Angoori Devi had sustained injuries but her medico-legal examination was not done. That way prosecution case is based on eye-witnesses account i.e. statement of Smt. Angoori Devi (PW-6) and Smt. Saroj (PW-7). Both these eye-witnesses have stated that injuries were caused to Satbir by Gharsi Ram and Madan Lal who were armed with *lathis* and the occurrence had taken place in front of house of Satbir. Both these eye-witnesses, namely, Smt. Angoori Devi (PW-6) and Smt. Saroj (PW-7) as well as Chattar Singh had also sustained injuries.

The ocular testimony finds support and corroboration from medical evidence by way of statement of PW-5 Dr. Saroj Bhukal who had attended Satbir at General Hospital, Adampur. PW-5 Dr. Saroj Bhukal had also conducted the medico-legal examination of Smt. Saroj (PW-7) and Chattar Singh. PW-9 Dr. Joginder Kapoor had conducted the post-mortem examination and in his cross-examination, he has admitted that there was only one head injury. He has gone a step further by admitting that the same injury could be possible because of brick.

Sh. H.S. Randhawa, Advocate, learned counsel for the appellant, urged that prosecution case has not been proved and the trial Judge fell in error while holding the appellants as guilty and convicted and sentenced them. First of all motive for causing the offence has not been proved at all. Initially complainant had come with the version that appellants were interested in marriage of Satbir with cousin of PW-6 Angoori Devi. At the time of trial, PW-6 Smt. Angoori Devi came with a different version. While arguing further, learned counsel for the appellant took the plea that in a criminal case, motive is an important aspect of the trial because malice makes a man to move. There are contradictory versions as regard to motive for committing the offence that certainly makes the prosecution case highly doubtful. As per learned counsel for the appellant, learned trial Judge has also rightly observed that motive part has not been proved in this case but at the same time, held the appellants guilty and convicted and sentenced them.

This plea of learned counsel for the appellant does not help the appellants because even otherwise, learned Trial Judge has come to the conclusion that it is a case of eye-witnesses account and not a case based on circumstantial evidence. In a case based on eye-witnesses account, proof of motive is relatively of less significance. Moreso, in the case in hand, there is no variation in the motive if the statement made by PW-6 Smt. Angoori Devi at the time of First Information Report before the police and her subsequent

statement during the trial of the case are taken into account. The reference to motive part by PW-6 Smt. Angoori is to the extent that both the appellants were interested that Satbir should get married with cousin of PW-6 Smt. Angoori Devi but Satbir decided to perform marriage with PW-6 Angoori Devi and both of them were having ill will on that account. There is no variation in the motive explained by PW-6 Smt. Angoori Devi at the time of first version before the police and her statement at the trial stage.

Learned counsel for the appellant also took the plea that place of occurrence has been differently explained by different witnesses. As per testimony of PW-6 Smt. Angoori Devi as well as PW-7 Smt. Saroj, the occurrence had taken place in the street and in front of house of Satbir. There is no contradiction in that regard. Same position has been shown in the site plan (Exhibit P-1) prepared by the Investigating Officer. Blood stained earth was lifted from the spot during investigation.

The ocular testimony of PW-6 Smt. Angoori Devi and PW-7 Smt. Saroj is in complete agreement with medical evidence available on file by way of statement of PW-5 Dr. Saroj Bhukkal and post-mortem report (Exhibit P-26). As per opinion of the doctor in the post mortem report, cause of death of Satbir in this case was head injury. Copies of MLRs are on the file (Exhibits P-8 to P-12) and MLRs of Smt. Saroj and Chattar Singh are Exhibit P-9 and P-11 on the file.

Learned counsel for the appellant also took the plea that investigation in this case was tainted one as statement of Ram Kumar, injured was not recorded by the Investigating Officer and there is no explanation from the prosecution side regarding injuries caused to Ram Kumar, although he was medico-legally examined at Civil Hospital, Adampur on the same night at about 8.35 p.m. He had sustained two lacerated wounds. Prosecution was duty bound to explain the injuries caused to Ram Kumar but that has not been done and that makes the prosecution case doubtful. However, this argument of learned counsel for the applicant is not of much help for the appellant because Ram Kumar had allegedly sustained simple injuries only. Prosecution is certainly duty bound to explain the grievous injuries caused to accused party as well. But prosecution is certainly not required to explain each and every injury and such like simple injuries. That does not make the prosecution case doubtful in any way.

In view of the above, learned trial Judge has rightly held the appellant accused guilty for causing death of Satbir with *lathi*. However, it is to be seen whether the offence committed by the appellant-accused is covered under Section 302 IPC or it is a case for causing the offence under Section 300 Part-I. Facts are not disputed in any way that both the appellants had no inimical relation with Satbir, rather, they were well-wishers of Satbir, at the initial stage as they wanted to get him married with cousin of PW-6 Smt. Angoori

Devi. The reason for differences between the appellant and deceased were that Satbir had not performed marriage with the girl of their liking rather he had performed marriage with PW-6 Smt. Angoori Devi. Furthermore, from the evidence and material available on the record, the incident appeared to have taken place all of a sudden when Satbir, on the one hand, and Ram Kumar, brother of the appellants on the other seem to have met in the street. At that point of time, Ram Kumar had received injuries, palpably at the hands of Satbir. The various injuries received by said Ram Kumar were noticed by PW5 Dr. Saroj Bhukal in the medico-legal report Ex.D-2. This would have infuriated the appellants who started running after Satbir, who in order to escape from their wrath, came running to his house and after taking up a *lathi*, wanted to go back. However, his wife Angoori Devi started pleading with him not to take the *lathi* with him. At this Satbir told Angoori Devi that the appellants were after him. Despite the same, Angoori Devi and Saroj told him not to quarrel with them and were successful in snatching the *lathi* from him. This, however, did not prevent Satbir in going back into the street. He was followed by Angoori Devi and Saroj and within their view he suffered injuries with *lathies* at the hands of the appellants. The nature of weapons used for commission of the offence i.e. *lathies* also indicated that none of the appellants initiated to commit the murder of Satbir. On the other hand, they intended to cause injuries which were likely to cause the death of Satbir. Under these

circumstances, the offence committed by the appellants is not covered under Section 302 IPC. Rather, the offence committed by the appellants fell within the ambit of Section 304 Part I IPC.

Accordingly, both the appellants are acquitted of offences under Section 302 read with Section 34 IPC, rather they are convicted for the offence under Section 304 Part-I read with Section 34 IPC and both of them are ordered to undergo rigorous imprisonment for 8 years and to make payment of fine of ₹ 5,000/- each and in case of default in payment of fine, they are to further undergo rigorous imprisonment for one year.

January 06, 2015.

sandeep sethi

**(T.P.S. MANN)
JUDGE**

**(SHEKHER DHAWAN)
JUDGE**