

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 16.09.2015

CRA No.1065-DB of 2011

Mohinder Masih @ Billu & another

...Appellants

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vipin Mahajan, Advocate, for the appellants.

Mrs. Manjari Nehru Kaul, Addl. AG, Punjab.

HEMANT GUPTA, J.

The present appeal is preferred by Mohinder Masih @ Billu and Bagga Masih @ Kodu, both sons of Bashir Masih against the judgment of conviction and order of sentence dated 25.10.2011 passed by the Additional Sessions Judge, Gurdaspur, whereby both the appellants were convicted for the offences punishable under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.5000/- each. In default of fine, the defaulter shall further undergo rigorous imprisonment for six months.

On 29.06.2006, pursuant to information to the effect that Janak Singh son of Diwan Singh resident of Kalichpur has died due to injuries received in a fight, SI Swinder Singh, P.S.Dinanagar alongwith other police

officials reached Civil Hospital, Gurdaspur and got recorded the statement of Balbir Singh son of Diwan Singh. In his statement (Ex.PA), Balbir Singh stated that he has two brothers out of which his elder brother Janak Singh had been living at Jammu for a long time and come to meet them in the village for the last about 20/25 days. Bashir Masih son of Rakha Masih has constructed his house after purchasing the land about 15 years ago near their house. About 20/21 days ago, Bashir Masih in order to grab the vacant land of their *haveli* installed a Fodder cutting machine. They objected such action of Bashir Masih and had also informed Panchayat and respectables, but Bashir Masih had not removed the machine. Due to this, an altercation also took place between them and Bashir Masih. He further stated that yesterday i.e. 28.06.2006 at about 8.00/8.15 PM, he alongwith his brother Janak Singh and Devinder Singh son of Chanan Singh, who is their relative, was sitting in the *haveli*, when he came to find out about the health of his father. Janak Singh showed intention to answer the call of nature. He followed him. When Janak Singh was near the house of Bashir Masih, near Peepal tree, Bashir Masih armed with dang, his son Billu Masih armed with wooden sota and Kodu Masih armed with iron rod were standing in front of their house. In the meantime, Bashir Masih raised lalkara that Janak Singh has been coming, caught hold him and not to let him go alive. On this, he also raised raula as a result of which his relative Devinder Singh also came running. In the meanwhile, Kodu Masih gave iron rod blow to his brother Janak Singh, which hit on the head of his brother; Bashir Masih gave dang blow, which hit on the right side of head of his brother, whereas Billu Masih gave a sota blow on the mouth, which hit on left eye of his brother. As a result of such blows, his brother fell down. On raising hue and cry, all the accused ran way alongwith their respective weapons. He stated that since blood was oozing from

his head, they took him to their house. After arranging a vehicle, they removed him to Government Hospital, Dinanagar, where after examining his brother, the Doctor told them to take him to Civil Hospital, Gurdaspur. Thereafter, he and his relative Devinder Singh shifted his brother Janak Singh to Civil Hospital, Gurdaspur, where the Doctor declared him dead. He stated that Bashir Masih and his sons Kodu Masih and Billu Masih in connivance with each other and on the instigation of Raghbir Singh and his brother Daljit Singh of their village, committed murder of his brother Janak Singh. On the basis of such statement, ruqa (Ex.PA/1) was sent to the Police Station for registration of an FIR around 2.00 AM. On receipt of ruqa, FIR (Ex.PA/2) was recorded under Sections 302, 34, 120-B IPC.

After preparing the inquest report Ex.PW-8/A, SI Sawinder Singh sent the dead body of Janak Singh for post mortem examination. Thereafter, he reached at the spot and prepared the site plan Ex.PW-8/C. On the same day, accused Bagga Masih @ Kodu Masih was arrested vide memo Ex.PW-8/E. During interrogation, he suffered a disclosure statement (Ex.PW-8/F) in respect of concealment of iron rod. Pursuant to such statement, he got recovered the iron rod from the roof of the kitchen of his house. Thereafter, the investigation was handed over to Inspector Tilak Raj.

It was on 23.07.2006, accused Bashir Masih and Mohinder Masih were arrested. During interrogation, Bashir Masih and Mohinder Masih suffered disclosure statements Exs.PE and PF in respect of concealment of their respective weapons i.e. Dang and Sota respectively. Pursuant to such statements, Bashir Masih and Mohinder Masih got recovered Dang and Sota respectively from the disclosed place by pointing out the same. The site plan of the place of recovery Exs.PG/1 and PH/1 have been prepared. Thereafter, on

completion of necessary formalities, report under Section 173 Cr.P.C. was filed against Bashir Masih, Mohinder Masih and Bagga Masih. It may be noticed that accused Bashir Masih died during the pendency of trial.

To prove its case, the prosecution has examined as many as ten witnesses which include PW-1 Balbir Singh – complainant; who reiterated his earlier version Ex.PA i.e. the basis of FIR; PW-2 Devinder Singh, an eye witness, who supported the prosecution case in its entirety; PW-3 Dr. H.S.Dhillon, who conducted the post-mortem examination on the dead body of Janak Singh as well as PW-8 Inspector Sawinder Singh and PW-9 Tilak Raj, who deposed with regard to the investigations carried out by them.

All the incriminating circumstances appearing in the prosecution evidence were put to the accused Mohinder Masih and Bagga Masih in their statements recorded under Section 313 Cr.P.C. However, both the accused pleaded false implication. After considering the entire evidence on record, the learned trial Court convicted and sentenced the present appellants, as mentioned above.

Before this Court, learned counsel for the appellants has vehemently argued that the prosecution has miserably failed to complete the chain of circumstances to return a finding that it is the appellants alone, who are responsible for causing death of the deceased Janak Singh. It is argued that there is unexplained delay of 13 hours in lodging of FIR on 29.06.2006 though the occurrence is said to have taken place on 28.06.2006 at about 8.00/8.15 PM. It is also argued that the place of occurrence is in front of the house of the appellants and the weapons of offence are dang, wooden sota & iron rod, which are generally available. Therefore, the injuries with such weapons are without any premeditated mind and without any intention to cause death. It appears to

be a case of sudden fight. Thus, it is a case where the conviction for an offence punishable under Section 302 IPC is not sustainable, but it can be said to be at best a case of conviction for an offence punishable under Section 304 IPC.

We have heard the learned counsel for the parties at some length, but do not find any merit in the present appeal. The entire prosecution case is based upon the testimony of PW-1 Balbir Singh, author of FIR and brother of the deceased, corroborated by PW-2 Devinder Singh, who has deposed in the similar manner. Their testimonies could not be shattered by the accused in the cross-examination. PW-1 Balbir Singh has given the vivid description of the manner of occurrence, as he was following his brother Janak Singh (deceased). Similar is the statement of PW-2 Devinder Singh. In his earlier statement (Ex.PA), Balbir Singh has categorically stated that about 20/21 days ago, there was an altercation between him and Bashir Masih, as Bashir Masih installed a Fodder cutting machine in the vacant land of their *haveli* in order to grab the same. About this, they had objected to the act of Bashir Masih and had also informed Panchayat and other respectables, but Bashir Masih had not removed the machine. There is nothing on record, which could create doubt about the veracity of the aforesaid witness and why they should depose falsely against the appellants.

The mere fact that there is delay in lodging of FIR is of no help to the appellants and to discard the prosecution case as untruthful. As per initial version (Ex.PA) given by Balbir Singh, the occurrence had taken place at about 8.00/8.15 PM on 28.06.2006. After receiving injuries from the accused-appellants, Janak Singh – deceased fell down. Since blood was oozing from the head of Janak Singh, PW-1 Balbir Singh and PW-2 Devinder Singh lifted him and took to their house. Thereafter, after arranging vehicle, both of them

removed Janak Singh firstly to Government Hospital, Dinanagar, where doctor after examining him orally told them to take him to Civil Hospital, Gurdaspur. Thereafter, both of them shifted Janak Singh – deceased to Civil Hospital, Gurdaspur, where the Doctors declared Janak Singh dead. It is, thereafter, Balbir Singh informed the police telephonically. As per PW-8 SI Swinder Singh – the Investigating Officer, he received telephonically information regarding arrival of Janak Singh at about 12.30 AM (in the night). Pursuant to such information, he reached Civil Hospital, Gurdaspur at about 1.00 AM. Thereafter, he recorded the statement (Ex.PA) of Balbir Singh. After putting his endorsement Ex.PA/1 on the said statement, he sent the same through HC Balbir Singh to the Police Station for registration of FIR at about 2.00 AM. On receipt of such information, FIR Ex.PA/2 was registered at about 10.15 AM. In these circumstances, it cannot be said that there is delay in lodging of FIR. Such delay is not on the part of the complainant i.e. brother of the deceased as the primary concern of the family of the victim is to provide medical assistance. Though in their cross-examination, PW-1 Balbir Singh and PW-2 Devinder Singh have admitted that they had to pass Police Station, Dinanagar twice at the time of going to the hospital and that they did not inform the police, but since Janak Singh, brother of the complainant, has received serious injuries, some time is bound to have taken place for providing immediate medical attention, which is the normal human conduct. The primary nature of a person is to save the life of the injured instead of going to the police station. Therefore, we do not find that there is any fatal delay in lodging of FIR. We find that the testimonies of PW-1 Balbir Singh, brother of the deceased and PW-2 Devinder Singh are that of a reliable and trustworthy witness, which inspires the confidence and have been rightly taken into consideration by the learned trial Court.

We also do not find any merit in the argument that it is a sudden provocation without any pre-mediated mind and, therefore, the conviction of the appellants under Section 302 IPC is not sustainable. The appellants were possessed with dang, wooden sota and iron rod. They have given multiple blows on the head as well as other body parts of Janak Singh – deceased. It was nothing, but a cruel act of causing death intentionally. The stand of the appellants is not of a sudden fight, but a case of denial in their statements recorded under Section 313 Cr.P.C. None of the prosecution witnesses has been suggested that the death was un-intended and in the fit of anger. Therefore, the conduct of the appellants does not warrant any modification for an offence punishable under Section 304 IPC.

In view of the above, we do not find that the findings recorded by the learned trial Court suffer from any illegality or irregularity. The entire evidence has been taken into consideration to return a finding that the prosecution has been successful in proving its case against the accused beyond any reasonable doubt.

Consequently, the present appeal is dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

16.09.2015
Vimal