

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. D-255-DB of 2010 (O&M)

Date of decision : 31.07.2015

Bintu alias Bhindu

.....Appellant

Versus

State of Haryana

....Respondent

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Ravinder Malik, Advocate
for the appellant.

Mr. Vishal Garg, Additional AG. Haryana.

Criminal Appeal No. D-229-DB of 2010 (O&M)

Krishan

.....Appellant

Versus

State of Haryana

....Respondent

Present: Ms. Monika Jalota, Advocate
for the appellant.

Mr. Vishal Garg, Additional AG. Haryana.

LISA GILL, J.

This judgment shall dispose of two appeals, CRA No. D-255-DB of 2010 (Bintu alias Bhindu Versus State of Haryana) and CRA No. D-229-DB of 2010 (Krishan Versus State of Haryana) as they arise out of the same impugned judgment and order.

Instant appeals have been preferred by Bintu alias Bhindu

and Krishan son of Satbir impugning judgment and order dated 18.12.2009 and 21.12.2009 respectively passed by the learned Additional Sessions Judge-II, Bhiwani whereby they have been convicted and sentenced to undergo rigorous imprisonment for life besides to pay a fine of ₹2000/- each and in default thereof to undergo rigorous imprisonment for one month for the offence punishable under Sections 302 read with Section 34 IPC and also sentenced to undergo rigorous imprisonment for one year besides to pay a fine of ₹500/- each and in default thereof to undergo rigorous imprisonment for seven days for the offences punishable under Sections 323, 452 read with Section 34 IPC.

Prosecution was set in motion on the statement Ex. PF, suffered by Raj Kumar, PW3. He disclosed that he is a labourer. He had gone to Bhagat Singh Chowk on 21.12.2007 at about 8.30 p.m. where his maternal uncle Subhash son of Shree Chand DW 1 used to station his handcart (Rehri) for selling eggs. Appellants - Bintu alias Bhindu, Krishan alias Sonu alongwith Bholi and two other boys came on a motorcycle and a scooter and started beating him. When his maternal uncle tried to stop them he was pushed back and accused took him on a motorcycle to a vacant land near the brick kiln. They caused injuries to him and thereafter brought him back to his house where his wife and father Suraj Bhan were present. His wife and father tried to rescue him. Bintu hit his father Suraj Bhan on the head with a brick when Suraj Bhan intervened to have the complainant. Krishan alias Sonu also inflicted a blow with a brick on his father's head. Then Bholi and the other two boys also attacked

his father on his head and chest. He alongwith his wife ran out of the house. Accused fled from the spot. His father died due to multiple injuries and complainant himself was seriously injured. He remained with his father while his wife went to call his mother and brothers Vijay and Pardeep from Hanuman gate, Bhiwani. They all reached his house and were apprised of the facts. Thereafter he came to report the matter to the police. Reason for the incident was that about three months prior thereto accused had caused him injuries and threatened to kill him. Legal action was prayed for. Formal FIR Ex. PF/1 was registered under Section 302 read with Section 34 IPC.

Thereafter Dinesh Kumar PW 15 Sub Inspector Incharge Police Post Sector 13 HUDA, Bhiwani proceeded to the spot alongwith the complainant and took in possession the blood stained earth, two bricks stained with blood, a stick (Danda) of Kikar wood which was also stained with blood and the tape of the cot stained with blood. All of them were converted into separate parcels. Inquest report Ex. PB/2 was prepared. Post Mortem of Suraj Bhan deceased was conducted by Medical Board consisting PW11 Dr. S.S. Dhankhar, Dr. R.S. Punia and Dr. N.K. Garg. Post Mortem Report Ex. PB/1 was received. Following injuries were found present on the body of the deceased :-

1. Lacerated wound of size 4 x 2 cm present on the left side of the forehead. On dissection extra-vasation of blood was present. On further dissection, there was fracture of multiple bones of the skull. On further dissection laceration of the brain was present.

2. Lacerated wound of size 3 cm x 1 cm was present. On dissection, there was fracture of underline skull alongwith laceration of brain.
3. Lacerated wound of size 3 cm x 1 cm was present on the middle of the forehead with underline bone fracture and laceration of brain.
4. Lacerated wound of size again 3 cm x 1 cm on anterior aspect of left ear on the cheek. On dissection extra vacation blood was present. All the organs were healthy and pale.

Cause of death was due to shock and hemorrhage as a result of injuries to vital organs. All injuries were ante mortem in nature and sufficient to cause death in the ordinary course of nature.

Complainant - Raj Kumar was examined by PW 10 Dr. Mahender Kumar, Medical Officer, CHC Gopi Tehsil Charkhi Dadri on 22.12.2007, following injuries were found on his person :-

1. A contusion was present on the right parietal area, with right forehead area of size 2 cm with pain and tenderness on lateral side.
2. A contusion was present in the left parietal area and left forehead junction on lateral side with pain, swelling and tenderness with an abrasion of size 2 cm x 1 cm, which was superficial. Injuries no. 1 and 2 were advised for x-ray skull.
3. A swelling was present all over left eye, above and below with an abrasion on the lateral canthus of eye and below lower lid on lateral side of size 1 cm x 1 cm. Three abrasions each having the size of 1 cm x 1 cm and there was congestion in the left eye. X-ray was advised and was kept for Surgeon's opinion.
4. Complaint of pain in the right elbow but no physical

injury was visible.

5. An abrasion of size $\frac{1}{2}$ cm x $\frac{1}{2}$ cm in the left hand.

Advised for ortho-Surgeon's opinion.

6. A swelling was present on the upper part of nose with mild abrasion and the injury was subjected to x-ray and E.N.T. Surgeon's opinion.

7. Complaint of pain, tenderness and swelling was present. Injury was advised for x-ray and ortho-Surgeon's opinion.

8. Complained of pain, tenderness, swelling in the left foot with multiple small abrasions and injury was advised for x-ray left foot with left lower leg. Opinion of ortho-surgeon was also sought.

Copy of the MLR Ex. PK/1 was received. All injuries were found to be caused by blunt weapons and were kept under observation. Probable duration of injuries was 24 hours.

Appellant - Bintu alias Bhindu was arrested on 23.12.2007 alongwith accused Neeraj @ Bholi and Robin son of Rajeev Shah. Appellant Krishan alias Sonu was arrested on 30.12.2007.

On completion of investigation, report under Section 173 Cr.P.C. was presented in Court. Co-accused Robin and Neeraj being below the age of 18 years, report was presented against them before the Juvenile Justice Board. Charge was framed against the appellants for the offences punishable under Sections 302, 323, 452 read with Section 34 IPC on 17.03.2008. Prosecution examined as many as 15 witnesses to prove its case against the accused persons.

Accused while denying incriminating evidence put to them pleaded innocence and false implication in their statements under

Section 313 Cr.P.C. Appellant Bintu alias Bhindu took a stand that he was residing in his house which is situated besides the house of deceased Suraj Bhan. Prior to the occurrence, Suraj Bhan called a person from Nehru Colony, Bhiwani in which he and his family members were mediators. Since then attitude of the deceased and his family members towards him was not good or cordial. Present case has been foisted upon him. Appellant - Krishan has pleaded innocence and stated that he is not known as Sonu. However, no evidence was led in defence.

Learned trial Court on appreciation of the evidence on record concluded that the prosecution had proved its case beyond reasonable doubt against the accused thereby convicted and sentencing them as detailed above.

Learned counsel for the appellants vehemently argue that false implication of the appellants is apparent from the record. There is a colossal delay in lodging of the FIR which is fatal to the prosecution case. Furthermore, site of the occurrence has not been identified. Prosecution version appears to be highly improbable and unnatural qua the place/places of occurrence. Furthermore, there is no independent witness to corroborate the prosecution version. Subhash, maternal uncle of the complainant Raj Kumar, who is an alleged eye witness of the occurrence at the first instance has not been examined by the prosecution. He has appeared as a defence witness. Prosecution story is, thus, riddled with falsehood. As per statement Ex.PF made by Raj Kumar, accused were five in number whereas only four persons have been proceeded against. In these

circumstances learned counsel for the appellants submit that conviction of the accused is not justified and is liable to be set aside.

Learned counsel for the State on the other hand while refuting the above said arguments prays for upholding the impugned judgment and order. He submits that there is no ground whatsoever for setting aside the impugned judgment and order, conviction of the appellants is justified in view of the clear, cogent and overwhelming evidence on record.

We have heard learned counsel for the parties and gone through the record.

Present is a case where the eye witness account by an injured witness is available on record. PW3 Raj Kumar has categorically deposed that he had gone to Bhagat Singh Chowk to meet his maternal uncle on 21.12.2007. Present appellants alongwith other boys had arrived at the place where his uncle operated his handcart/Rehri. He was inflicted injuries by the accused. Complainant was taken to brick kiln near New Housing Board Colony, Bhiwani where again he was inflicted injuries. Raj Kumar was then taken to his house where his father and wife Suman PW4 tried to intervene to save him. Both the present appellants inflicted blows on his father's head with bricks. His father Suraj Bhan succumbed to the injuries caused by the appellants. An effort has been made to suggest that PW3 Raj Kumar has given a version which is not probable and believable inasmuch as there is no reason for the accused to have first taken him to a brick kiln and then drag him back to his house. It is further urged that his statement is discrepant, self-

contradictory and untrustworthy. While referring to Raj Kumar's statement that the accused and others brought him to the street of his house and caused injuries it is submitted that it is not proved that the accused had entered his house and then inflicted injuries on him and his father. Incident took place on the street and not in the street as per complainant's version, therefore, charge under Section 452 IPC is not proved. Such contention is clearly not acceptable in the wake of the evidence on record. Discrepancy sought to be highlighted in the statement of PW3 and his initial statement do not retract from the truthfulness of the version put forth.

Blood stained bricks, blood stained earth and the blood stained stick were duly recovered from the spot vide recovery memo Ex. PM. Furthermore PW4 Suman who also witnessed the occurrence which took place in the house of the complainant whereby Suraj Bhan lost his life has fully supported the prosecution version. It is a futile attempt on the part of the appellants to contend that presence of PW4 Suman is not proved on record.

Medical evidence on record corroborates the ocular version. Four injuries were found on the body of Suraj Bhan, three of them being on the head. His skull was fractured. Photographs Ex. P2 to P6 also corroborate the ocular version. No benefit can be had by the appellants from the observation by PW11 Dr. S.S. Dhankhar in his cross examination that possibility of the injuries by falling from a roof on a hard surface cannot be ruled out. Similarly, PW10 Mohender Kumar has proved that there were as many as eight injuries on the person of the complainant Raj Kumar.

It has also been argued that there is considerable delay in lodging of the FIR. It is to be noted that incident is stated to have taken place on 21.12.2007 from about 8.30 p.m. onwards starting at Bhagat Singh Chowk proceeding to the brick kiln and ultimately the house of the complainant. FIR Ex. PF/1 was registered on the statement Ex. PF at about 4.20 a.m. on 22.12.2007. FIR was registered at 6.05 a.m. Special report was received by the Judicial Magistrate at 6.45 a.m.

Keeping in view the facts and circumstances of the present case, it cannot be said that there is any unexplained delay in the lodging of the FIR which is fatal to the prosecution case. It is a matter of record that PW4 had rushed to call her mother-in-law who was present in the house on of her brother-in-law at Hanuman gate, Bhiwani. She called other relatives as well while her husband PW3 remained with the dead body. It is specifically stated by PW3 and PW4 that Suraj Bhan had died at the spot on account of injuries. Complainant is a poor labourer. Thus, it is normal, natural and probable that on having discovered that his father had died they would immediately call for other relatives who would be available at hand. Immediately thereafter the complainant has approached the police and his statement was recorded at about 4.20 a.m. Thus, it cannot be said that there is a delay in lodging of the FIR which may permit or provide a scope of any embellishment or concoction by the complainant.

Similarly, argument that the conduct of the complainant is unnatural inasmuch as the deceased was not rushed to the hospital

but an attempt was made to gather the relatives is not tenable in the peculiar facts of this case. As discussed above, in the given factual matrix there is nothing abnormal or unnatural in trying to gather his relatives on having discovered that his father had indeed passed away on account of the injuries.

Learned counsel for the appellants have also contended that there is no evidence on record to show that there was any enmity between the accused and the complainant. Therefore, the bald statement made by PW3 should be ignored being not worthy of any credence. Said argument is noticed only to be rejected for the reason that enmity being a double edged sword there was no reason for the complainant to falsely implicate the present accused either. Similarly, non examination of any independent witness in the factual matrix of the case is not fatal to the prosecution. Evidence of PW3 and PW4 cannot be discarded on the ground that they are interested witnesses being related to the deceased. Their presence is natural and normal in the given circumstances. Their testimonies inspire confidence and there is nothing on record to cast a shadow of doubt on their credibility. In this situation, non-examination of an independent witness in the area is not fatal.

It is further argued that PW4 has stated that her husband had been forced to imbibe liquor by the accused. However, there is no evidence on record to corroborate the same. This fact in any case is not material or relevant for the controversy in hand. It has no bearing as far as proving the guilt of the accused is concerned.

No other argument has been raised. Keeping in view the

facts and circumstances as discussed above, we find no ground whatsoever for setting aside the conviction and sentence imposed upon the appellants.

At this stage, learned counsel for the appellants pray that there is no evidence on record to show pre-meditation on the part of the appellants. There was no intention on their part to cause the death of Suraj Bhan, therefore, they are liable to be convicted for the offence punishable under Section 304 IPC.

We do not find any merit in this contention as Suraj Bhan has been inflicted injuries with bricks with such great force on his head, which leaves no doubt about their intention. It cannot be said that this act on their part does not amount to murder. Learned counsel is made to point out any circumstance which would justify conviction of the appellant for a lesser offence.

Consequently finding no merit, present appeals are dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

July 31, 2015
rts