

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. **Crl. Appeal D-60-DB of 2010**
Date of Decision : March 12, 2015

Dinesh and others	VERSUS	Appellants
State of Haryana		Respondent

2. **Crl. Appeal D-201-DB of 2010**

Birender @ Brahm	VERSUS	Appellant
State of Haryana		Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN**

Present : Mr. Vinod Ghai, Senior Advocate with
Mr. Birinder Singh Khehar, Advocate
for the appellants.

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

T.P.S. MANN, J.

As both the aforementioned appeals are against the judgment and order dated 23.12.2009 passed by the Additional Sessions Judge (Fast Track Court), Faridabad, they are being disposed of by a common judgment.

The appellants, four in all, were tried for committing the offence punishable under Section 323 read with Section 34 IPC for voluntarily causing hurt to PW Manoj in furtherance of their common intention. They were also tried for the offence punishable under Section 302 read with Section 34 IPC for committing the murder of Om Parkash in furtherance of their common intention. Vide impugned judgment and order, the trial Court convicted and sentenced them as follows:-

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| i) under Section 302
read with Section
34 IPC | Rigorous imprisonment for
life and to pay a fine of
Rs.50,000/- each and in
default of payment of fine, to
further undergo simple
imprisonment for six months
and |
| ii) under Section 323
read with Section
34 IPC | Rigorous imprisonment for
one year and to pay a fine of
Rs.1,000/- each and in
default of payment of fine, to
further undergo simple
imprisonment for one month. |

Both the sentences were ordered to run concurrently.

The period already undergone by the appellants in custody during trial was ordered to be adjusted towards period of imprisonment. Out of the amount of fine, if recovered, a sum of Rs.1,00,000/- was ordered to be paid to the legal heirs of deceased-Om Parkash and a sum of Rs.10,000/- to injured Manoj, as compensation.

The case of the prosecution, in nutshell, is that Om Parkash, since deceased, resident of village Nangla Jogiyan was working as a Security Contractor in Paras Motors Company, Shahpur Khurd Road, village Sikri, District Faridabad. On 21.7.2008 at about 5.30 p.m., he got a call on telephone from his Supervisor Adesh Kumar that accused Brahm, son of Ganga

Ram, resident of village Shahpur Khurd had come in the factory and gave a kick at the gate and when he and guard Kot Bahadur asked him as to what was the matter, Brahm, who was drunk, started manhandling him. On receiving the information, Om Parkash alongwith his son Manoj reached the premises of the company and on seeing him, Brahm again kicked the gate. When Om Parkash asked Brahm as to what was the matter, the latter, who was armed with an iron rod, gave a blow with the same on his head. He gave more blows with the iron rod, hitting Om Parkash on his left little finger and on his left leg behind the knee. The companions of Brahm gave beatings to his son Manoj on his left leg below his knees and also on his hand. The commotion created at the spot attracted labourers of the company, who rescued Om Parkash and his son or else the assailants would have caused more injuries to them.

Further case of the prosecution is that Om Parkash alongwith his son Manoj went to Police Station Ballabgarh and reached there at about 6.45 p.m. The statement of Om Parkash was recorded by ASI Sube Singh which was verified by his son Manoj and on its basis DDR No. 35 dated 21.7.2008 was registered. It was followed by ASI Sube Singh sending Om Parkash and Manoj to General Hospital, Ballabgarh for medical examination. Both the injured were referred to B.K.Hospital, Faridabad. On 22.7.2008 at 3.30 a.m. a telephone call was

received in the Police Station from the said hospital that Om Parkash had died at 3.10 a.m. Accordingly, FIR No. 151 dated 22.7.2008 at 3.30 a.m. under Sections 323/302/34 IPC was registered on the basis of initial statements made by Om Parkash and Manoj. During the investigation of the case, accused Brahm @ Birender was arrested by Inspector Prit Pal on 22.7.2008 and pursuant to the disclosure statement, got recovered iron rod Ex.P1. He also disclosed the names of other three accused i.e. Dinesh, Arun and Ishwar Singh, who all were arrested on 23.7.2008. Those three accused also suffered their respective disclosure statements and got recovered an iron rod each pursuant thereto. After completing the formalities, final report under Section 173 Cr.P.C. was submitted against all the four accused. The case was, thereafter, committed to the Court of Sessions where charges for the aforementioned offences were framed against them to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined twelve witnesses. The ocular account of the occurrence was deposed to by PW3 Manoj and PW5 Adesh Kumar. The medico-legal reports prepared in respect of the injuries found on the persons of Manoj and Om Parkash were proved by PW4 Dr. Man Singh of General Hospital, Ballabgarh whereas PW9 Dr. Maha Singh deposed that he conducted post-mortem on the dead body

of Om Parkash on 22.7.2008 and found five injuries on his person. The cause of death was head injury, i.e. injury to brain which was ante-mortem in nature and sufficient to cause death in normal course of nature. PW1 HC Sharwan Kumar proved the scaled site-plan Ex. PA which he had prepared in respect of the place of occurrence. PW8 Roshan Lal deposed that he identified the dead body of Om Parkash at the time of inquest. Satish Kumar Jain was examined by the prosecution as PW12, who stated that he was running a factory, namely, Paras Motors at Shahpur road, Sikri and had entered into a security agreement with Om Parkash on 1.10.2006. He also stated that the agreement was in subsistence on the date of the incident and even upto his examination before the trial Court as a witness of the prosecution. The investigation part of the incident was deposed to by PW2 HC Mukesh Kumar, PW6 EHC Vipin Kumar, PW7 Constable Krishan Kumar, PW10 Inspector Prit Pal and PW11 ASI Sube Singh.

When examined under Section 313 Cr.P.C., all the accused pleaded innocence and stated that they had been implicated falsely. According to them, the PWs were interested and related witnesses and they had deposed falsely. It was further stated by Birender @ Brahm that his name was Virender Singh Solanki and had never been known as Brahm or Viren. Even in his ration card, voter identity card and education record,

his name was recorded as Virender Singh Solanki. He tendered in evidence photocopies of voter identity card Ex. D1, ration card Ex. D2, resident certificate issued by Tehsildar Ballabgarh Ex. D3, Matriculation examination mark sheet Ex. D4, Senior Secondary certificate Ex. D5, statement of marks issued by Amrawati University Ex. D6, degree of B.PEd Ex. D7, mark sheet of M.PEd Ex.D8 and degree of M.PEd Ex. D9. However, no witness was brought before the trial Court in support of the defence plea.

The trial Court, after hearing learned counsel for the parties and going through the evidence on record thoroughly and very carefully, believed the prosecution case and, accordingly, convicted and sentenced the appellants, as mentioned above. Aggrieved of their conviction and sentence, Dinesh, Arun and Ishwar Singh have filed Crl. Appeal D-60-DB of 2010 while Birender @ Brahm has filed Crl. Appeal D-201-DB of 2010.

Learned counsel for the appellants has submitted that the names of Dinesh, Arun and Ishwar Singh-appellants were not mentioned in the statement made by Om Parkash, since deceased, and his son Manoj before ASI Sube Singh in the first instance when DDR No.35 (Ex. PZ) dated 21.7.2008 was registered at Police Station Ballabgarh at 6.45 p.m. No attempt was made even thereafter to get them identified from the witnesses by holding test identification parade. It is also submitted that Birender @ Brahm was referred to as Brahm only

in DDR No. 35 (Ex. PZ) whereas he had never been known by any such name. His name is entered in various records as Virender Singh Solanki. Further, he has been falsely implicated by the witnesses at the instance of management of Paras Motors Company as he alongwith other inhabitants of the village had been protesting against the damage to the road and seeking its repair. It is also submitted that PW3 Manoj and PW5 Adesh Kumar are interested witnesses, being the son and son-in-law, respectively of deceased Om Parkash. On the other hand, Kot Bahadur, who was an independent witness of the occurrence, has not been examined by the prosecution.

Learned defence counsel has also pointed out certain contradictions appearing in the statements of the prosecution witnesses. It is also submitted that no blood stained earth was picked up from the spot. The place of recovery of the iron rods was open and accessible and, therefore, it cannot be said that only the appellants were aware of the weapons used in the commission of the crime. It is further submitted that the agreement Ex. DA proved by PW12 Satish Kumar Jain had already expired on 31.8.2007 and, therefore, it is highly unbelievable that on the date of the occurrence i.e. 21.7.2008, the deceased was working as a contractor in the company. It is also submitted that even if the presence and testimonies of PW3 Manoj and PW5 Adesh Kumar at the time of the occurrence are

accepted and so also the manner in which the occurrence had taken place, none of the appellants can be convicted under Section 302 IPC.

On the other hand, learned State counsel has submitted that the prosecution has been able to establish the identity of Birender @ Brahm-appellant to be the main assailant in the occurrence, who had first given a kick at the gate of the factory and when Om Parkash alongwith his son Manoj reached the spot, he had given blows with an iron rod to Om Parkash and one of the injuries caused by him on the head of Om Parkash was sufficient to cause death in the normal course of nature. It is also submitted that even the identity of Dinesh, Arun and Ishwar Singh-appellants stands proved and so also their participation in the occurrence of giving injuries to PW3 Manoj. It is further submitted that all the appellants had used iron rods in inflicting injuries and the injury on the head of Om Parkash deceased and attributed to Birender @ Brahm-appellant resulted in the death of Om Parkash. Even Dinesh, Arun and Ishwar Singh-appellants did not lag behind and had caused injuries to PW Manoj.

We have heard learned counsel for the parties and perused the evidence with their able assistance.

It is true that in the DDR No. 35 (Ex. PZ) which was recorded on the basis of statement made by Om Parkash, since deceased, and verified by PW3 Manoj, the name of Birender @

Brahm -appellant was not mentioned as such and it was only stated that it was Brahm-accused, who had given a kick blow at the gate in the first instance which was objected to by PW5 Adesh Kumar and subsequently said Brahm using an iron rod in giving injuries to Om Parkash. According to this appellant, he is only known as Virender Singh Solanki and not as Brahm or as Viren with which name he was referred to during the investigation of the case. However, that fact by itself is not sufficient to hold that the prosecution has remained unsuccessful in establishing the identity of Birender @ Brahm as one of the accused. In the DDR Ex. PZ, apart from his short name as Brahm, his father's name as Ganga Ram and his place of residence as Shahpur were also mentioned. It is not the case of this appellant that there is some other person by the name of Brahm, who may be the son of Ganga Ram and residing in village Shahpur Khurd. Moreover, Birender @ Brahm-appellant while making disclosure statement Ex. PR appended his signatures against his name mentioned as Birender @ Brahm. Similar was the position in the memo. Ex. PD pertaining to recovery of iron rod at his instance where also he signed for Birender @ Brahm. At no stage, did this appellant object that he was never known as Birender @ Brahm. Under these circumstances, the identity of Birender @ Brahm as one of the accused stands duly established. It was he, who in the first instance gave a kick at the gate and when Om Parkash and

Manoj were attracted, he gave a number of blows with iron rod to Om Parkash and one of the injuries received by Om Parkash on his head and caused by the appellant proved fatal as it was sufficient to cause death in the ordinary course of nature.

As regards the identity of Dinesh, Arun and Ishwar Singh-appellants, their names as such were not mentioned by Om Parkash, since deceased, while making statement before ASI Sube Singh. The statement of Om Parkash was duly verified by PW3 Manoj, who also did not name any of these three appellants as the companions of Brahm son of Ganga Ram. He further stated that he did not know them but could recognize if produced before him. In his examination-in-chief, PW3 Manoj stated that he was also given beatings by the companions of Birender @ Brahm. He then went on to state that those companions were Dinesh, Ishwar Singh and Arun-appellants and they were present in the Court. In his cross-examination, PW3 Manoj testified that he knew Dinesh and Arun prior to the incident. He then went on to state that he did not know the names of Arun, Dinesh and Ishwar Singh himself. Rather, the names of these three appellants were disclosed to him by his father in the hospital. As is clear from the records, only one statement was made by Om Parkash, since deceased, i.e. one on the basis of which DDR No.35 (Ex.PZ) was recorded on 21.7.2008 at 6.45 p.m. Said Om Parkash died on 22.7.2008 at 3.10 a.m. in B.K.Hospital,

Faridabad. No other statement apart from Ex. PZ had been made by Om Parkash. PW3 Manoj also testified that at the time of the incident, he was a student and studying in Nalanda Senior Secondary School Adarsh Nagar, Ballabgarh in 12th class. He further went on to state that he did not know the accused personally before the incident but could identify them. He further stated that he knew their names as they used to visit a shop near the factory and he had seen them calling each other by their names. He also stated that he knew the fathers' name of the accused persons because some time the accused used to call each other by their fathers' name. However, he stated that he did not remember the name of the owner of tea shop and also the name of any other person, who used to visit the tea shop in his presence. Similarly, PW5 Adesh Kumar testified before the trial Court that when Om Parkash and Manoj came to the spot in response to a call made by him on telephone and was apprising them as to what had happened, Birender @ Brahm returned with his friends and hit the company gate by kicking it. He also went on to state that while Birender @ Brahm had given injuries to Om Parkash, the friends of Birender @ Brahm started beating Manoj, who received various injuries. He further stated that Arun, Dinesh and Ishwar Singh had caused injuries to Manoj and he knew them. In cross-examination, he testified that he had accompanied Om Parkash and Manoj to the Police Station and

names of Arun, Dinesh and Ishwar Singh were mentioned in the statement of Om Parkash on the basis of which DDR was recorded. He then stated that the names of Arun, Dinesh and Ishwar Singh were not given specifically but otherwise it was mentioned that the assailants were Birender @ Brahm and 2/3 others. He further stated that he did not disclose the names of these three accused at that time as the police had not recorded his statement. He also stated that he did not ask Om Parkash to specifically mention the three names in his statement before the police. According to him, Manoj already knew the names of these three accused and, therefore, he did not tell their names to him. He further stated that when Om Parkash was admitted in B.K.Hospital, he and Manoj were present with him. Further, Om Parkash stated about how the injuries were caused but did not state names of those assailants. He further stated that he had told the names of all the accused in his statement before the police as he was aware of their names at the place of the incident. According to him, both Om Parkash and Manoj knew the names of the accused and for that reason he himself did not tell the names of the accused to them. From the above, it is apparent that the names of Dinesh, Arun and Ishwar Singh as accused, though claimed to be in the knowledge of Om Parkash, Manoj and Adesh Kumar, were not mentioned in the DDR Ex. PZ on the basis of which formal FIR Ex. PK was subsequently

recorded by PW10 Inspector Prit Pal on 22.7.2008 at 3.30 a.m. It was only stated that Birender @ Brahm-appellant was accompanied by his companions, 2/3 in number. However, when Birender @ Brahm came to be arrested on 22.7.2008 that he appears to have disclosed their names to the police. The said statement of Birender @ Brahm-appellant, naming his three co-assailants cannot be read in evidence as it was made when said Birender @ Brahm was in police custody. Moreover, neither Om Parkash nor Manoj in the DDR Ex. PZ described the physical appearances of three unnamed assailants, who were companions of Birender @ Brahm-appellant. For that reason, the prosecution was under a duty to get Dinesh, Arun and Ishwar Singh identified by holding test identification parade. It is the admitted case of the prosecution that no such parade has been conducted. Therefore, it will not be safe to sustain the conviction of Dinesh, Arun and Ishwar Singh.

As regards the nature of the crime, it is made out that there was no previous enmity between the parties. Initially, the occurrence started when Birender @ Brahm-appellant came to the factory premises and gave a kick blow in the gate. This was objected to by Adesh Kumar and Kot Bahadur. In response to call received from Adesh Kumar, both Om Parkash and his son Manoj started from their village which was at a distance of about 7 kms from the factory premises. When Om Parkash and Manoj

reached the factory premises, Birender @ Brahm, once again, reached there and again kicked the gate. At that time, he appeared to be drunk. Merely because Om Parkash had been hired as a security contractor and said Om Parkash had assigned the duty of security supervisor to PW5 Adesh Kumar, who was his son-in-law, it cannot be said that Birender @ Brahm had any motive to open an assault upon Om Parkash and his son Manoj. Whatever development had taken place on account of giving of a kick by Birender @ Brahm at the gate followed by Om Parkash objecting to the same led to Birender @ Brahm-appellant causing blows with iron rod to Om Parkash. Whatever injuries were received in the entire occurrence. Om Parkash did not take the matter seriously as instead of rushing to the hospital, he proceeded for lodging a report with the police. When his statement was recorded i.e. after about one and a half hour of the incident, he was conscious. Subsequently, he was sent to General Hospital, Ballabgarh for medical treatment. Later on, his condition started deteriorating and, accordingly, he was referred to B.K.Hospital, Faridabad where he died on 22.7.2008 at 3.10 a.m. Apart from one injury on the head of Om Parkash, other injuries were on the left little finger, left leg and back of knee of Om Parkash. The only fatal blow i.e. injury on the head, caused with a blunt weapon is not sufficient to hold that Birender @ Brahm had caused the said injury with an intention or knowledge

to cause the death of Om Parkash. On the other hand, Birender @ Brahm-appellant can be imputed with intention of having caused an injury which was likely to cause death. Therefore, the conviction of Birender @ Brahm-appellant under Section 302 IPC cannot be sustained. Instead, he can be held liable for committing the offence under Section 304 Part-I IPC.

Resultantly, Crl. Appeal D-60-DB of 2010 filed by Dinesh, Arun and Ishwar Singh-appellants is accepted and they are acquitted of all the charges against them. At the same time, Crl. Appeal D-201-DB of 2010 is partly allowed by setting aside the conviction and sentence of Birender @ Brahm under Section 323/34 IPC. His conviction under Section 302/34 IPC is also set-aside. Instead, he is convicted under Section 304 Part-I IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/-. In default of payment of fine, he shall further undergo simple imprisonment for one year. The entire amount of fine imposed upon the said appellant, shall be paid, on its recovery, to legal heirs of deceased-Om Parkash, as compensation.

(T.P.S. MANN)
JUDGE

March 12, 2015
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(MAHAVIR S. CHAUHAN)
JUDGE