

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

Criminal Appeal D-191-DB of 2003

Date of Decision : July 17, 2015

Mithu Ram and others

....Appellants

Versus

State of Haryana

.....Respondent

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

Present: Mr. K.D.S.Hooda, Advocate
for the appellants.

Mr. Dhruv Dayal, Deputy Advocate General, Haryana.

T.P.S. MANN, J.

The appellants have filed the present appeal for challenging the judgment and order dated 4/6.2.2003 passed by learned Additional Sessions Judge, Fatehabad whereby they were convicted and sentenced as follows :-

- i) Appellant-Mithu Ram was convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months whereas appellants Tara Chand @ Gholu Ram and Guddi Bai were convicted under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.4,000/- each and in default

of payment of fine, to further undergo rigorous imprisonment for six months;

- ii) All the appellants were convicted under Section 325 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months; and
- iii) All the appellants were convicted under Section 323 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for six months.

All the sentences were ordered to run concurrently.

The period already spent by them behind the bars during trial of the case was ordered to be set off against the sentences of imprisonment imposed upon them.

The case of the prosecution, in nutshell, is that on 20.2.1999 at 10.05 a.m., complainant-Mani Ram went to Police Station Sadar, Fatehabad and got recorded his statement before Inspector Balbir Singh, Station House Officer that he was resident of village Hijrawan Kalan and working as a labourer. He was also member of the Block Samiti. About nine months ago, Guddi Bai wife of Mithu Ram got registered a criminal case against him and Saman Ram besides others regarding a quarrel which took place on account of Tara Chand @ Gholu Ram uttering filthy abuses to the daughter of his maternal uncle Joginder Singh. In the said

criminal case, challans were presented against the complainant party as well as against Mithu Ram and others and the case was to be heard on 22.2.1999 in the Fatehabad Courts. Even on the preceding night, Mithu Ram abused Pappu Ram son of Fatta Ram and told him that he would not allow him to attend the hearing of the case. Further, on 20.2.1999 at about 8.30 a.m., when complainant-Mani Ram alongwith, Saman Ram, Pappu Ram, Mohinder Ram and Sammi Bai wife of Fatta Ram, was sitting in front of the house of Mohinder Ram and talking about the hearing of the case, Mithu Ram armed with his licenced gun, Tara Chand @ Gholu Ram carrying an iron rod and Guddi Bai holding a danda reached there from the side of the chowk. They were raising *lalkaras* that they would teach a lesson for falsely implicating them in the case. Saman Ram started running towards the house of Mohinder Ram, Mithu Ram fired from his licenced gun, which hit Saman Ram below his left shoulder and, as a result, Saman Ram fell down. Gholu Ram gave iron rod blow on the left ankle of Pappu Ram, while Guddi Bai gave a danda blow on the right arm of Sammi Bai. When the complainant party raised an alarm, the assailants decamped from the spot while carrying their respective weapons. Saman Ram breathed his last at the spot due to receipt of fire arm injury. After leaving Dhuli Ram and Battu Ram at the spot, the complainant left for reporting the matter to the police.

Consequently, FIR No. 46 dated 20.2.1999 (Ex. PD) was registered at Police Station Sadar, Fatehabad.

During the investigation of the case, Inspector Balbir Singh after reaching the spot got it photographed. He conducted inquest proceedings and sent the dead body of Saman Ram to General Hospital, Fatehabad for post-mortem. Rough site-plan Ex.PT of the place of occurrence was prepared. Blood stained earth was also lifted from the spot. One empty cartridge and one wad were recovered from the spot. After receipt of medico-legal reports of the three accused, who were admitted in General Hospital, Fatehabad, the Investigating Officer reached the said hospital where Pappu Ram and Sammi Bai were also admitted. He recorded the statements of both Pappu Ram and Sammi Bai. Similarly, the Investigating Officer recorded the statements of Guddi Bai and Gholu Ram and registered a cross case against Pritam Singh @ Preeta. On 23.2.1999, SI Sheo Taj Singh went to village Hijrawan Kalan where Mehla Singh, Sarpanch of the village produced Guddi Bai and Gholu Ram before him, who were formally arrested. Guddi Bai got recovered danda while Gholu Ram got recovered iron rod pursuant to their disclosure statements made by them. On 4.5.1999, accused-Mithu Ram surrendered in the Court at Fatehabad. After getting necessary permission from the Court, Inspector Balbir Singh arrested him in the case. Mithu Ram asked

Mala Ram to bring his licenced gun and, accordingly, the said gun alongwith the arms licence and two cartridges were produced before the Investigating Officer.

Upon completion of the investigation and presentation of the challan followed by commitment of the case, accused-Mithu Ram was charged for the offence punishable under Section 302 IPC, while Gholu Ram and Guddi Bai were charged for the offence punishable under Section 302 read with Section 34 IPC. All three of them were also charged for the offences punishable under Section 325 read with Section 34 IPC and Section 323 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined fifteen witnesses.

PW1 Constable Ajay Pal testified that he delivered the Special Report to the Ilaqa Magistrate.

PW2 Sohan Lal, Photographer proved photographs Exs. P1 to P5 alongwith their negatives Exs. P6 to P10, which he had taken after going to the scene of crime.

PW3 Nar Singh, Clerk, D.C., Office, Hisar proved the arms licence of Mithu Ram.

PW4 Dr. Dharamvir Singh, who had conducted post-mortem on the dead body of Saman Ram found the following injuries:-

“1 There was a lacerated wound 2 cm x 1 cm on the right side of chest, 2” below mid clavicular point. Margins were irregular and were inverted. On probing the wound was going obliquely towards left side and downwards and posteriorly with another lacerated wound of the size 2.5 cm x 2.00 cm on back, 2” left side of spine on scapular region. Margins of wound was everted and irregular and wound was oval shaped. On dissection infiltration of blood was present in subcutaneous tissue. Fracture of 1st and 2nd ribs and clavicle of right side was present, right lung was lacerated at upper part and right thoracic cavity was full of blood. 2nd and 3rd thoracic vertebrae was fractured, spinal cord was lacerated and transacted.”

According to Dr. Dharamvir Singh, the cause of death was haemorrhage and shock and injuries to the vital organs due to firing. The injuries were ante-mortem in nature and were sufficient to cause death in the ordinary course of nature.

Complainant-Mani Ram appeared as PW5 and injured Pappu Ram as PW6 and both of them described the manner in which the occurrence had taken place.

PW7 Balwant Singh, Draftsman proved the scaled site-plan Ex. PK of the place of occurrence.

PW8 Dr. Rajinder Singh, Medical Officer, General

Hospital, Fatehabad deposed that he had medico-legally examined Pappu Ram on 20.2.1999 and noticed the following injuries on his person:-

- “1. A lacerated wound with red scab 3 cm x 1 cm on left lateral malleolus with tenderness. X-ray was advised and orthopaedic opinion was sought.
2. Patient complaint of pain right thigh lateral aspect upper part. No external injury was seen.”

The doctor declared injury No.2 to be simple, while injury No.1 was kept under observation. The duration of injuries was within 24 hours and caused by blunt weapon. The said doctor further deposed that he medico-legally examined Sammi Bai on the same day and found the following injuries on her person:-

- “1. A lacerated wound 3 cm X 0.5 cm with red scab on right index finger. Distal part on dorsum on lateral aspect.
2. Red diffuse swelling 7.5 cm X 4 cm with tenderness right palm proximal aspect at right thenar eminense.
3. Red contusion 7.5 cm X 2.5 cm on right arm lower 3rd on anterior aspect. X-ray was advised.
4. Red diffuse swelling 7.5 cm x 4.5 cm on dorsum of left hand close to proximal end of

left thumb X-ray was advised.”

Injury No.1 was declared simple, while injuries No. 2, 3 and 4 were kept under observation for X-ray and Orthopaedic opinion. The duration of all the injuries was within 24 hours and caused by blunt weapon.

PW9 ASI Ishwar Singh testified that in his presence the gun and the cartridges were produced by accused-Mithu Ram before the Investigating Officer.

PW10 SI Sheo Taj Singh deposed that he partly investigated the case. He arrested Guddi Bai and Gholu Ram and recovered danda and rod at their instance.

PW11 Constable Dharambir stated that he had taken the dead body of Saman Ram to the hospital for post-mortem.

PW12 Raj Kumar, Criminal Ahlmad in the Court of Sh.Mewa Singh, Sub Divisional Judicial Magistrate, Fatehabad brought on record case FIR No. 254 dated 6.5.1998 under Sections 285/323/324 read with Section 34 IPC titled as “State Vs. Mithu Ram etc.” and cross case registered on the statement of Smt. Guddi Bai against Kashmir Singh, Saman Ram, Mani Ram and Makhan Ram.

PW13 Inspector Balbir Singh, PW14 HC Rajbir Singh and PW15 Constable Rajinder Singh deposed about the various

steps taken by them during the investigation of the case.

Before closing the prosecution evidence, learned Public Prosecutor tendered in evidence reports Exs. PU and PV of FSL.

When examined under Section 313 Cr.P.C., all the appellants pleaded innocence. They pleaded that on 20.2.1999, Pappu Ram alongwith Mani Ram, Sammi Bai and Saman Ram came to their house while armed with gandasa and lathis. They declared that they would kill them and take the revenge. They caught hold of Gholu Ram and Guddi Bai and dragged them from their house to the open space in the street. While Pappu Ram caught hold of Mithu Ram, Saman Ram gave a gandasa blow with an intention to kill Mithu Ram. Mithu Ram was able to ward off the attack by raising the left hand and in the process received grievous injury on his left hand. Sammi Bai gave a gandasa blow to Guddi Bai, which also resulted in grievous injury. Pappu Ram gave a lathi blow, which hit on the head of accused-Gholu Ram. Both Gholu Ram and Guddi Bai hurled brick bats upon the complainant party in their self defence, which hit Sammi Bai and Pappu Ram. In the meanwhile, accused-Mithu Ram went to his house and brought his licenced gun. He fired a shot in private defence of his son and wife and when Saman Ram was in the process of causing gandasa blow to Gholu Ram, the shot fired by Mithu Ram hit him.

In their defence, the accused examined DW1

Dr.A.L.Bajaj, Orthopaedic Surgeon, General Hospital, Fatehabad who proved the X-ray reports Ex. DB of Gholu Ram, Ex. DC of Guddi Bai and Ex. DD of Mithu Ram.

DW2 Dr. N.Chakrawarti, Medical Officer, General Hospital, Fatehabad deposed that he medico-legally examined accused-Mithu Ram on 20.2.1999 and found the following injuries on his person:-

- “1. There was an incised wound measuring 9 cm X 3 cm left wrist joint anteriorly going laterally and posteriorly above the thenar eminence. Wound was with regular and clean cut margins underlying soft tissues, muscles, vessels and bone was cut. Clotted blood was present and fresh bleeding was present. X-ray was advised.

This injury was declared grievous in nature and was kept under observation and opinion of Orthopaedic Surgeon. The duration of the injury was fresh and was caused with sharp weapon. The injury could be possible by a sharp weapon like gandasas etc.”

Dr. N.Chakrawarti also deposed that on the same day, he medico-legally examined Gholu Ram and found the following injuries on his person.

- “1. Lacerated wound 8 cm X 1 cm left parietal region of the scalp with irregular margins. Wound was scalp deep with fresh bleeding and

clotted blood was present. X-ray was advised.

This injury was kept for X-ray and the duration of the injury was fresh and injury was caused by a blunt weapon.”

He further deposed that on the same day, he also medico-legally examined Guddi Bai and found the following injuries on her person:-

- “1. An incised wound 3 ½ X 1 ½ cm left forearm lower half posterio medially with regular and clean cut margins. The wound was muscle deep with clotted blood present and there was fresh bleeding from the wound. There was swelling around the injury. X-ray was advised.

This injury was kept under observation. The duration of the injury was fresh and was caused by sharp edged weapon. The possibilities of all the injuries by a sharp edged weapon like gandasa etc. could be possible.”

After hearing learned counsel for the parties and going through the evidence, the trial Court accepted the prosecution case and, accordingly, convicted and sentenced the appellants, as mentioned above. Hence, the present appeal.

Learned counsel for the appellants has submitted that there was delay in lodging of the FIR, which remains unexplained. The evidence led by the prosecution was contradictory with regard to the occurrence and reporting of the matter. It is also submitted

that it was the complainant party, which had opened the aggression and only in exercise of right of self defence that the accused had caused injuries to the complainant party. Still further, it has been established on record that all the three accused had received injuries in the occurrence. The injuries which were found on the persons of Mithu Ram and Guddi Bai were found to be grievous in nature. All the injuries on the three accused could not be termed as superficial in nature. Despite the same, neither PW5 Mani Ram nor PW6 Pappu Ram, the two eye witnesses of the occurrence have offered any explanation regarding the injuries on the accused. On the other hand, PW5 Mani Ram specifically testified that all the members of the complainant party were empty handed and talking with each other in the courtyard of the house of Mohinder Ram and none of them caused any injury to any of the accused.

Learned State counsel has submitted that the prosecution has led cogent and convincing evidence to connect the appellants with the commission of the crime.

Having heard learned counsel for the parties and after going through the evidence with their able assistance, this Court finds that the occurrence had taken place on 20.2.1999 at about 8.30 a.m., when complainant-Mani Ram, alongwith Saman Ram, Pappu Ram, Mohinder Ram and Sammi Bai, was present in front

of the house of Mohinder Ram and talking about the hearing of the case. At that time, all the three accused came from the side of chowk and raised a *lalkara* to teach a lesson to the complainant party for falsely implicating them in the challan. The firing resorted to by Mithu Ram resulted in hitting Saman Ram below his left shoulder whereas Gholu Ram and Guddi Bai gave rod and dang blows respectively to Pappu Ram and Sammi Bai. As a result of fire arm injury received by Saman Ram, he breathed his last at the spot. Soon thereafter, complainant-Mani Ram left for Police Station Sadar, Fatehabad, which was situated at a distance of about 10 kilometers and got recorded his statement before Inspector Balbir Singh on the same day at 10.05 a.m. Special Report sent through PW1 Constable Ajay Pal was received by the Ilaqa Magistrate at 11.05 a.m. as brought on record by the defence while cross-examining Constable Ajay Pal. There was, thus, no delay whatsoever in informing the police and getting criminal case registered.

As regards the contradictions in the prosecution case qua the timing and place of occurrence, suffice it to say that both PW5 Mani Ram and PW6 Pappu Ram have stated unequivocally that the occurrence had taken place when they were present in the house of Mohinder Ram. Both of them also deposed that the occurrence had taken place in the morning of 20.2.1999. In cross-

examination, they deposed about the actual occurrence having taken place between 8.30 a.m. and 9.00 a.m. on 20.2.1999. Therefore, no benefit on this count deserves to be extended to the appellants.

At the same time, this Court finds that all the three accused were found to have received injuries on their persons during the course of occurrence. From the testimony of DW2 Dr.N.Chakrawarti, Medical Officer, General Hospital, Fatehabad, it is clear that he had medico-legally examined Mithu Ram, Gholu Ram and Guddi Bai on 20.2.1999 and found an incised injury on the left wrist joint of Mithu Ram, lacerated wound on the left parietal region of accused-Gholu Ram and incised wound on left forearm of Guddi Bai. As the injury on the person of Mithu Ram was having clean cut margins and underlying soft tissues, muscles, vessels and bone were cut, the said injury was declared grievous. The duration of all the injuries was found to be fresh. The injuries were otherwise kept under observation and for X-ray. DW1 Dr. A.L.Bajaj, Orthopaedic Surgeon, General Hospital, Fatehabad deposed that he radio-logically examined Gholu Ram but did not find any bony injury. He also radio-logically examined Guddi Bai and found fracture of left ulna with no callous formation. He also radio-logically examined Mithu Ram and found fracture of second metacarpal (left) with no callous formation. Going by the

nature of the injuries, DW2 Dr.N.Chakrawarti had testified that the injuries on all the three accused might have been possibly caused at about 8.00 a.m. on 20.2.1999. In cross-examination, he deposed that though the hand of Mithu Ram was not in hanging position, yet there was cutting of muscle, vessel and bone underneath the injury. He also stated that on account of the said injury, the grip of the left hand was not possible and so also the functioning. However, he went on to state that the injured could fire a gun shot with his right hand after placing the gun on the left fore arm with elbow joint.

From the above, it is clear that all the three accused had received injuries in the occurrence and these injuries were neither superficial nor it could be said that they were caused by friendly hand. In such a situation, the prosecution was under a duty to offer an explanation about the manner in which the three accused had received injuries. PW5 Mani Ram and PW6 Pappu Ram during their respective examination-in-chief remained silent about the injuries noticed on the three accused. During his cross-examination, PW5 Mani Ram testified that all of them were empty handed when they were talking with each other in the courtyard of the house of Mohinder Ram. He further stated that none of them caused any injury to any of the accused person. He further stated that he did not cause any injury. He also did not notice any injury

on the person of the three accused at the spot.

As regards the injuries noticed on the three accused, PW13 Inspector Balbir Singh has testified that Constable Ram Kumar had produced before him the medico-legal reports of the three accused who stood admitted in General Hospital, Fatehabad. Accordingly, he reached General Hospital, Fatehabad and learnt that Mithu Ram had already been referred to PGI, Rohtak. The other two accused, namely, Guddi Bai and Gholu Ram were declared unfit to make statement. However, on the following day i.e. 21.2.1999, he recorded the statements of Gholu Ram and Guddi Bai and on the basis of those statements initiated a cross case against the brother of PW6 Pappu Ram.

Once it is held that the prosecution has offered no explanation about the injuries noticed on the three accused, it cannot be said with certainty as to what was the genesis of the occurrence. According to the prosecution, about nine months before the incident, a case was got registered by accused-Guddi Bai against complainant-Mani Ram, Saman Ram and others as there was quarrel between the parties on account of Gholu Ram uttering filthy abuses to the daughter of the maternal uncle of complainant-Mani Ram. Regarding the said incident, both the parties were challaned and the case was fixed for 22.2.1999 for hearing in the Court. If that be the background, possibility cannot

be ruled out that the complainant party had taken initiative in attacking the accused and causing injuries to them and only, thereafter, that accused Mithu Ram used his licenced gun to fire at the complainant party in order to defend his wife Guddi Bai and son Gholu Ram. In any case, it cannot be said that the accused were aggressors and as they had taken the plea of self defence, the said plea cannot be said to be without any basis. Reliance in this regard can be placed upon the judgment of the Hon'ble Supreme Court in Lakshmi Singh Vs. State of Bihar, AIR 1976 SC 2263, wherein it was held as under :-

"It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:-

- (1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
- (2) That the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
- (3) That in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to

explain the injuries on the person of the accused assumes must greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the Court to rely on the evidence of P.Ws 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus, neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in State of Gujarat Vs. Bai Fatima, Criminal Appeal No.67 of 1971 decided on March 19, 1975 (Reported in AIR 1975 SC 1478) there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the

prosecution case on unconvincing premises."

In view of the above, it cannot be said that the prosecution has been able to prove its case beyond reasonable doubt.

Resultantly, the appeal is accepted, impugned judgment of conviction and sentence is set-aside and the appellants are acquitted of the charges against them.

The appellants are on bail. Bail bonds furnished by them and the sureties shall stand discharged. The amount of fine, if already deposited by the appellants, be refunded to them.

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

**(MAHAVIR S. CHAUHAN)
JUDGE**

July 17, 2015
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