

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I. Criminal Appeal D-264-DB of 2002
Date of Decision : February 02, 2015

Virender SinghAppellant

VERSUS

State of HaryanaRespondent

II. Criminal Appeal D-509-DB of 2002

BablooAppellant

VERSUS

State of HaryanaRespondent

III. Criminal Revision 1424 of 2002

Shiv SinghPetitioner

VERSUS

Babloo and others ...Respondents

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

Present : Mr. K.B.S. Mann, Advocate as amicus curiae
for the convicts/appellants.

Mr. Randhir Singh, Additional Advocate General, Haryana.

Mr. S.D. Bansal, Advocate
for the complainant/petitioner.

T.P.S. MANN, J.

The appellants, namely, Virender Singh and Babloo, were tried for committing the offences punishable under Section 302 read with Section 34 IPC for committing murder by intentionally causing the death of Virender Kumar. Babloo was also charged for committing the offence punishable under Section 25 of the Arms Act for being found in conscious possession of one spring actuated knife without any licence or permit.

Vide judgment and order dated 30.3.2002/1.4.2002, learned Additional

Sessions Judge, Fast Track Court No.1, Faridabad convicted them for the charge under Section 302 read with Section 34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.10,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for two years. Babloo was also convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for six months. The sentences imposed upon him on both the counts were ordered to run concurrently.

Aggrieved of the impugned judgment of conviction and sentence, Virender Singh filed Criminal Appeal D-264-DB of 2002 whereas Babloo filed Criminal Appeal D-509-DB of 2002. Shiv Singh complainant/petitioner also filed Criminal Revision 1424 of 2002 seeking enhancement of the sentence of imprisonment and fine of both the convicts. Both the appeals and the revision stood admitted.

As both the appeals and the revision arise out of one and the same judgment of conviction and sentence passed by the trial Court, they are being disposed of by a common judgment.

According to the prosecution, on 22.8.2000 SI Prem Singh, Station House Officer, Police Station Saran, alongwith his fellow officials was present at Saran Chowk for checking the traffic when he received VT message that dead body of an unknown young man had been received at B.K. Hospital from Nangla Enclave. Accordingly, he alongwith his staff reached B.K. Hospital, where he collected the ruqa from the Medical Officer but no eye-witness was found there. However, after some time, Shiv Singh son of Mangal Singh, r/o House No.864/14, 30 Feet Road,

Parvatia Colony, NIF, Faridabad came present in B.K. Hospital and got recorded his statement Ex.PB before him (SI Prem Singh), which reads as under :-

"Stated that I am residing at above noted address and live with my family. I am serving in a company in Sector 6, Faridabad. My elder son Virender Kumar was studying in 10th class in Aggarwal Modern Public School at Parvatia Colony. Today on 22.8.2000 at about 5.00 p.m., my son Virender Kumar told me at home that today a quarrel had taken place with younger brother of Babloo s/o Mohd. Ali, r/o Parvatia Colony, outside the school after its closure at 4.00 p.m. when he came outside the school where Babloo and Virender Singh, rs/o Parvatia Colony were standing. Both of them slapped and gave him fist blows for quarrelling with Babloo's brother and went away with the threat to see him again. Then, I after leaving him at house went to Sabzi Mandi where Kishan s/o Shri Sohan Lal r/o Parvatia Colony met me. After purchasing vegetables from Durga Divya temple street, when it was 7.00 p.m. we reached near Air Force Gande Nala at 22 feet Road towards electric transformer we saw my son Virender Kumar was being beaten by Babloo s/o Mohd. Ali, Virender s/o Hawa Singh in open street. We saw Virender s/o Hawa Singh catching hold of my son Virender Kumar from back side and Babloo after putting out a knife from his pocket gave straight blow in my son Virender's chest. Due to injuries my son fell down. On seeing us coming towards the spot, both boys ran away inside the colony towards their houses. In the meanwhile Satish s/o Pati Ram r/o Kapra Colony came at the spot. We after arranging the three wheeler took Virender Kumar to the B.K. Hospital for

treatment. After check up, the doctor declared my son to be dead. Thus, aforesaid Virender and Babloo have killed my son. Strict legal action be taken against them. Statement has been got recorded with you which I have heard and is correct.

Attested
Prem Singh, SI/SHO
22.8.2000

Sd/-
Shiv Singh"

From the above statement, case under Sections 302/34 IPC was found to have been made out. Accordingly, SI Prem Singh, after making endorsement Ex.PB/1, forwarded the statement through Constable Bhup Singh to Police Station Saran at 10.00 p.m. for registration of a criminal case. Accordingly, FIR No.289 dated 22.8.2000 (Ex.PB/2) under Sections 302/34 IPC was registered at Police Station Saran at 10.30 p.m.

Post-mortem on the dead body of Virender Kumar son of Shiv Singh was conducted by Dr. Meenu Kapoor, Medical Officer, BSI Hospital, Faridabad on 23.8.2000 at 11.55 a.m., who noticed the following injuries on the dead body :-

- "1. There was an incised wound with clean out margins spindle shape obliquely placed between the 5th and 6th rib on the left side, just lateral to the sternum. The wound was 2 cms. X 1.5 cms. at the broadest central part. On probing this, wound was going obliquely inwards to the left side. The depth of the wound was 12 cms. On dissection, the underlying tissues were found full of clotted blood. There was a similar corresponding cut in the 5th inter-costal space underlying pericardium was found full of blood and there was a corresponding incised wound on the right ventricle of the heart. Chambers of the

heart were empty.

2. Small abrasion 1 cm. x 1 cm. was present on the lateral side of neck on right side just below ear lobule."

In the opinion of the doctor, the cause of death was haemorrhage, shock and injury to vital organ. All the injuries were ante-mortem and sufficient to cause death in the ordinary course of nature. The probable time between death and post-mortem was within twenty four hours.

It is also the case of the prosecution that before sending the dead body for post-mortem SI Prem Singh had prepared inquest report Ex.PG/1. He also inspected the spot and prepared rough site plan. He lifted blood stained earth. Scaled site plan of the place of occurrence was prepared by Constable Manoj Kumar, Draftsman. Both the accused were arrested on 27.8.2000 by SI Sat Narain after they were produced by one Sabbu Singh of Ajji Colony, Balabharh. On the same day, both the accused were interrogated in the presence of Attar Singh and ASI Ranbir Singh. The accused were, thereafter, produced before the Court and police remand was obtained. On 29.8.2000, while in police custody, Babloo accused suffered disclosure statement that he had kept concealed blood stained shirt and knife behind an iron drum in a room of his residential house in Parvatia Colony. Virender Singh accused disclosed that he had kept concealed his blood stained shirt in an iron box in his house. The disclosure statements made by the accused were attested by Rattan Singh and Om Chand. Both the accused then led the police party to Parvatia Colony where Babloo accused got recovered his shirt and knife from the

place specified by him while Virender Singh accused got recovered blood stained shirt. Ruqa was sent to the Police Station for registration of a separate case under Section 25 of the Arms Act against Babloo accused. The statements of witnesses were recorded and the case property deposited with the MHC. After completion of all the formalities, report under Section 173 Cr.P.C. was prepared by SI Sat Narain and both the accused were sent up for trial. The accused were charged under Section 302 read with Section 34 IPC. Babloo accused was also charged for the offence punishable under Section 25 of the Arms Act. Both of them, however, pleaded not guilty and claimed trial.

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

PW1 Dr. Sangeeta Khurana stated that on 22.8.2000 at 7.55 p.m. one unknown young male was brought dead at B.K. Hospital by Satish Gupta. Accordingly, she sent ruqa Ex.PA to the Incharge Police Post , B.K. Hospital.

PW2 ASI Ranbir Singh deposed that on receipt of statement Ex.PB of Shiv Singh alongwith endorsement Ex.PB/1 of SI Prem Singh, he recorded formal FIR Ex.PB/2.

PW3 Constable Manoj Kumar, Draftsman proved the scaled site plan Ex.PD, which he had prepared on the pointing out of PW Shiv Singh.

PW4 Dr. Meenu Kapoor deposed about the post-mortem on the dead body of Virender Kumar, which she had conducted on 23.8.2000 and proved copy of the post-mortem report Ex.PG.

PW5 Shiv Singh, father of deceased Virender Kumar and PW6 Kishori Lal deposed about the ocular account of the occurrence.

PW7 SI Prem Singh and PW9 Inspector Sat Narain deposed about the various steps taken by them while conducting the investigation in the case.

PW8 Rattan Singh testified about the interrogation of the accused and effecting of recoveries at their instance.

At the time of final arguments, it came to the notice of the trial Court that one Satish Gupta had taken the deceased to the hospital whereas occurrence was witnessed by Shiv Singh and Kishori Lal but the doctor had mentioned that it was an unknown person who was brought dead by Satish Gupta. Said Satish Gupta was neither cited nor examined by the prosecution nor even produced in defence. Accordingly, the Court found it imperative to examine said Satish Gupta as a Court witness as his testimony in the circumstances was to be quite relevant. Consequently, Satish Gupta was summoned and examined as a Court witness CW1. He deposed that on 22.8.2000 he had taken one person from Parvatia Colony to B.K. Hospital, Faridabad. He also stated that at that time, he was sitting with his brother who was residing in the area. Some persons told them that an occurrence had taken place and when he went there he found one person lying injured. He was not asked by anyone to take the injured to the hospital. However, as a responsible citizen he took the injured to B.K. Hospital on his own. He did not try to find out the identity of that person. Leaving him in the hospital, he went away.

When examined under Section 313 Cr.P.C., the accused

denied the allegations levelled by the prosecution and pleaded that they have nothing to do with the occurrence and were picked up from their house and falsely implicated.

In their defence, the accused did not examine any witness.

According to the prosecution, the occurrence had taken place while in the presence of PW5 Shiv Singh and PW6 Kishori Lal and they had witnessed the same. Both of them have categorically deposed that on 22.8.2000 at about 7.00 p.m., they after purchasing vegetables, left together for their house in Parvatia Colony and when they reached the drain, they saw the two appellants, namely, Babloo and Virender Singh giving beatings to Virender Kumar. When both the witnesses moved closer, they saw that Virender Singh had caught hold of Virender Kumar deceased from behind whereas Babloo had caused a knife blow in the chest of Virender Kumar deceased. As a result of the injury, Virender Kumar had fallen down. Seeing PW5 Shiv Singh and PW6 Kishori Lal, both the appellants fled away towards their colony. PW5 Shiv Singh further stated that after some time of the occurrence, Satish Gupta son of Pati Ram also reached the spot and as he himself had become perplexed, it was Satish Gupta, who removed the injured to B.K. Hospital on three wheeler. Later on, PW6 Kishori Lal consoled him and then they went to their house and from there after arranging money, went to the hospital. They were informed by the doctor that Virender Kumar had already expired. In the ruqa Ex.PA, which was prepared by PW1 Dr. Sangeeta Khurana it was stated that the dead body was of an unknown person who was brought dead by Satish Gupta son of Pati Ram resident of A-63, Kapra Colony, Air

Force Raod, Faridabad. According to the defence, if PW5 Shiv Kumar and PW6 Kishori Lal had witnessed the occurrence, then they were required to remove the victim to the hospital. However, neither Shiv Singh nor Kishori Lal had taken Virender Kumar to the hospital but it was CW1 Satish Gupta, who had taken the injured to the hospital. However, he could not state anything about the identity of the deceased whom he had taken to the hospital. PW5 Shiv Singh, who is father of the deceased testified that on witnessing the occurrence wherein his son was attacked, he had become perplexed and stunned. Accordingly, he could not take steps for removing the injured to the hospital. Instead, Satish Gupta, who had come present at the scene of occurrence arranged an auto-rickshaw and removed the injured to the hospital. Thus, he did so on account of being a responsible citizen so as to make an attempt for saving the victim. After some time it was PW6 Kishori Lal, who consoled PW5 Shiv Kumar and realising that his son had been shifted to the hospital, first went to his house to arrange money and, thereafter, reached the hospital where he found his son already dead. In the meantime, on receipt of ruqa Ex.PA, VT message was received by SI Prem Kumar, who went to B.K. Hospital but by that time, PW5 Shiv Kumar and PW6 Kishori Lal had not reached hospital. It was only after some time that PW Shiv Kumar reached hospital and he met SI Prem Kumar before whom he got recorded his statement, on the basis of which FIR was registered. Therefore, no benefit of any sort can be extended to the defence that PW5 Shiv Singh and PW6 Kishori Lal were not the eye-witnesses of the occurrence or that PW5 Shiv Singh is none-else than the father of the deceased whereas PW6 Kishori Lal was residing in the same colony where the deceased resided and he was also

acquainted PW5 Shiv Singh. Both PW5 Shiv Singh and PW6 Kishori Lal have come out with a consistent, truthful and convincing account of the manner in which the occurrence had taken place.

According to the prosecution, knife was used by Babloo appellant in inflicting an injury in the chest of Virender Kumar. PW4 Dr. Meenu Kapoor, while conducting post-mortem on the dead body of Virender Kumar noticed two injuries, one was an incised wound with clean cut margins spindle shape obliquely placed in between the 5th and 6th rib on the left side. The wound was 2 cms. X 1.5 cms. at the broadest central part. The depth was 12 cms. On dissection, the underlying tissues were found full of clotted blood. There was a similar corresponding cut in the 5th inter-costal space, underlying paricardium was also full of blood and there was a corresponding incised wound on the right ventricle of the heart. Injury No.2 was a small abrasion 1 cm. x 1 cm. present on the lateral side on neck on right side just below ear lobule. She further deposed that injury No.1 could be caused by a knife. Thus, the prosecution case to the extent of causing of the fatal blow by Babloo appellant to Virender Kumar deceased stands duly corroborated. At the same time, this Court finds that the involvement of Virender Singh appellant in the commission of the crime is doubtful. He was not armed with any weapon at the time of the occurrence. The role attributed to him was of catching hold of the victim from behind. The initial quarrel had taken place between Virender Kumar deceased and younger brother of Babloo appellant on 22.8.2000 at 4.00 p.m. when the appellants were standing outside the school in which Virender Kumar deceased studied and both the appellants slapped and gave fist blows for the quarrel which he had with the younger

brother of Babloo. Both the appellants had threatened to see Virender Kumar deceased again. If that had been the case, Virender Singh appellant would have armed himself while participating in the occurrence in which it was Babloo appellant who was armed with a knife and had given blow with the same in the chest of Virender Kumar deceased. As mentioned above, Virender Singh appellant was not armed with any weapon and was attributed raising of lalkara only. Under these circumstances, it would be just and proper to extend the benefit of doubt to Virender Singh appellant.

Though complainant Shiv Singh has filed the revision for enhancement of sentence and fine yet keeping in view the facts and circumstances, no case is made out for any such enhancement.

Resultantly, the conviction and sentence of Virender Singh appellant is set aside and he is acquitted of the charge against him. The conviction and sentence of Babloo appellant, as recorded by the trial Court is upheld. The plea of complainant Shiv Singh for enhancement of sentence of imprisonment and fine is declined.

Criminal Appeal D-264-DB of 2002 filed by Virender Singh is allowed, whereas Criminal Appeal D-509-DB of 2002 filed by Babloo appellant is dismissed. Criminal Revision 1424 of 2002 filed by complainant Shiv Singh is also dismissed.

(T.P.S. MANN)
JUDGE

February 02, 2015
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(SHEKHER DHAWAN)
JUDGE