

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.S-2362-SB of 2003

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Date of decision:2.9.2015

Rasal Singh and another

...Appellants

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Sartaj Singh, Advocate for the appellants.

Ms. Simsi Dhir Malhotra, Deputy Advocate General and Mr.
B.S. Bhullar, Assistant Advocate General, Punjab
for the respondent-State.

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Inderjit Singh, J.

This criminal appeal has been filed by appellants-Rasal Singh and Dilbagh Singh alias Bagha challenging the impugned judgment of conviction and order of sentence dated 18.11.2003 passed by learned Sessions Judge, Amritsar, whereby accused/appellant No.1-Rasal Singh has been held guilty and convicted for the offence under Section 304 Part II of the Indian Penal Code and accused/appellant No.2 Dilbagh Singh has been held guilty for the offence under Section 304 Part II read with Section 34 IPC. Accused-Rasal Singh has been sentenced to undergo rigorous imprisonment for eight years for the offence under Section 304 Part II IPC.

Accused Dilbagh Singh has been sentenced to undergo rigorous imprisonment for six years for the offence under Section 304 Part II read with Section 34 IPC.

The brief facts of the prosecution case are that on 20.7.2000, a medical chit was received regarding the dead body of Lakha Singh lying in Civil Hospital, Ajnala. Then Inspector Salinder Singh along with other Police officials reached there. Basant Singh son of Lakha Singh was found present near the dead body of Lakha Singh and he had made statement before Salinder Singh, Inspector, who mainly stated that he had two brothers, namely, Roop Singh and Bhagwant Singh, who along with him were the agriculturists. Land of Rasal Singh adjoined their land and there was common 'Watt' between their land and 'Nehri Khaal' was also there. Four-five days earlier, Rasal Singh had demolished that 'Khaal' and had amalgamated the site of that 'Khaal' in his land and had sown paddy crop therein. When that fact came to their knowledge, he (Basant Singh) along with his brother Bhagwant Singh, mother Kans Kaur and father Lakha Singh had visited their fields to see that demolished 'Khaal'. On seeing them there, Rasal Singh armed with 'Barchhi' along with his son Dilbagh Singh, who was empty handed, had come from their tube-well, which was near to that place. It was 6.30 p.m. at that time; that his father Lakha Singh had reprimanded Rasal Singh for having demolished the 'Khaal'. Lalkara was raised by Dilbagh Singh asking his father Rasal Singh to catch hold of them and to teach them a lesson for reprimanding them. Simultaneously, with the 'Lalkara', Rasal Singh had given the blow with a 'Barchhi' on the

person of Lakha Singh, which landed on his chest on the left side. Lakha Singh had fallen down. Hue and cry was raised by Basant Singh, his brother Bhagwant Singh, mother Khans Kaur and the assailants had fled away along with the weapon from the spot. Lakha Singh was admitted in Civil Hospital, Ajnala, where, he was declared having been brought dead. On the basis of 'Ruqa' sent to the Police Station, Ajnala, formal FIR was registered. Inquest report Ex.PC regarding the dead body of Lakha Singh was prepared by Inspector Salinder Singh. Post-mortem examination was got conducted. Site plan was prepared. Statements of the witnesses were recorded. After necessary investigation, the challan was presented in the Court.

On presentation of challan, the trial Court finding *prima facie* case against the accused, framed charge for the offence under Section 302 read with Section 34 IPC, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Dr. Gurmanjit Rai, who conducted the post-mortem examination on the dead body of Lakha Singh on 20.7.2000 and found the following injury:-

“Incised stab wound 4 x 1 cm. was present on front of left shoulder, 5 cms. below tip of shoulder, clotted blood was present.”

Injury No.1 was ante-mortem in nature. Cause of death, in this case, in the opinion of the doctor was haemorrhage and shock as a result of injury No.1 to left lung (vital organ), which was sufficient to cause death in the

ordinary course of nature.

PW-2 HC Mukhtar Singh, PW-3 Constable Sawinder Pal, PW-4 Constable Gurmit Singh and PW-5 Constable Sukhdev Singh are formal witnesses, who tendered into evidence their respective affidavits Exs.PG, PH, PJ and PK respectively. PW-6 Basant Singh deposed as per the prosecution version. PW-7 Bhagwant Singh, who is brother of the complainant and son of the deceased also deposed as per prosecution version. He is the eye witness of the occurrence. PW-8 Draftsman Rishi Ram mainly deposed regarding preparing scaled site plan Ex.PM. PW-9 Inspector Salinder Singh is the Investigating Officer, who mainly deposed regarding the investigation of the case. The learned Public Prosecutor tendered in evidence the report Ex.PU of the Chemical Examiner and closed the prosecution evidence.

At the close of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and were confronted with the evidence of the prosecution, but they denied the correctness of the evidence and pleaded themselves as innocent. The accused also stated that they have been falsely implicated on suspicion.

After going through the evidence on record, the learned Additional Sessions Judge, Amritsar, vide impugned judgment and order, convicted and sentenced the accused-appellants for the offences as mentioned above. Aggrieved against this judgment and order, the present appeal has been filed.

The appeal was admitted. Notice was given in this case.

Ms. Simsi Dhir Malhotra, learned Deputy Advocate General and Mr. B.S. Bhullar, Assistant Advocate General, Punjab have put in appearance on behalf of the respondent-State and contested this appeal. Lower Court record has also been summoned.

At the time of arguments, learned counsel for the appellant argued that the appellants have been falsely implicated in the present case. Lakha Singh (since deceased) was having enmity with Jagir Singh. He argued that the version of the prosecution that they did not come to know regarding the demolition of 'Khaal' for five-six days is improbable. He further argued that Dilbagh Singh-appellant No.2 was stated to be empty handed and only 'Lalkara' has been attributed to him. He argued that no participation is alleged to Dilbagh Singh and he has also been falsely implicated in this case.

On the other hand, learned Deputy Advocate General, Punjab, appearing for the respondent-State argued that the case of the prosecution has been duly proved by the PWs. The complainant and Bhagwant Singh PW-7, who are eye witnesses also of the occurrence have consistently deposed as per prosecution version and there are no material discrepancies or improvements in their statements. She argued that the oral statements are duly supported by medical evidence as well as investigation of the case. Therefore, the appellants have been rightly convicted and sentenced by the trial Court and there being no merit in this appeal, the same should be dismissed.

After going through the evidence on record and after hearing

learned counsel for the parties, I find that as regards the arguments of the learned counsel for the appellants that Lakha Singh (deceased) was having enmity with Jagir Singh and Rasal Singh is attorney of Jagir Singh is no ground to falsely implicate Rasal Singh. If the deceased had enmity with Jagir Singh, then there is no reason or ground as to why Jagir Singh was not implicated in the present case. Why his attorney was implicated in a false case leaving Jagir Singh? The argument of the learned counsel for the appellant is, therefore, having no merit.

I have gone through the evidence on record minutely and carefully. There is nothing on the record to show that appellant No.1-Rasal Singh has been falsely implicated in the present case. There is only one injury on the person of deceased Lakha Singh and that injury has been attributed to Rasal Singh. A perusal of the cross-examination of the PWs shows that there are no material contradictions or material improvements in their statements. There is nothing on the record to disbelieve the statements of the PWs qua Rasal Singh, who has been attributed injury. Both the PWs Basant Singh and Bhagwant Singh, who are eye witnesses of the occurrence, have consistently deposed regarding causing of injury by Rasal Singh to Lakha Singh. These oral statements of PWs have been duly supported and corroborated by medical evidence as well as investigation of the case.

Therefore, from the above, I find that Rasal Singh has been rightly convicted by the learned trial Court for the offence under Section 304 Part-II IPC.

As regards appellant No.2-Dilbagh Singh alias Bagha, he is son of Rasal Singh. He was stated to be empty handed at the time of occurrence. He had not caused any injury to the deceased nor to any other person. Only 'Lalkara' had been attributed to Dilbagh Singh.

Keeping in view the facts and circumstances of the present case, I find that as appellant No.2-Dilbagh Singh was not armed with any weapon nor any active participation is there on his part, no injury had been caused by him, only 'Lalkara' is attributed to him and there is also only one injury given by co-accused and further PW-7 Bhagwant Singh in cross-examination stated that he did not state in his statement before the Police that Dilbagh Singh had raised the 'Lalkara', saying "Isno ros da Ilahama den di maja das dayia", shows that a reasonable doubt exists regarding the involvement of appellant No.2-Dilbagh Singh.

Keeping in view the fact that a reasonable doubt exists in the prosecution version qua appellant No.2, hence benefit of doubt is to be given to appellant No.2-Dilbagh Singh. Therefore, by giving benefit of doubt to appellant-Dilbagh Singh, he is acquitted of the charges as framed against him. Since, appellant-Dilbagh Singh is on bail, his bail and surety bonds stand discharged.

At the time of arguments, learned counsel for the appellant No.1-Rasal Singh prayed for reduction in the sentence.

Keeping in view the facts and circumstances of the present case and the fact that there is only one injury by Rasal Singh, the occurrence took place on the spur of moment, there was no earlier planning etc. and Rasal

Singh is facing the criminal trial since the year 2000 i.e. for the last 15 years, his sentence of imprisonment is reduced to rigorous imprisonment for seven years instead of RI for eight years.

The sentence of appellant No.1 Rasal Singh was suspended by this Court vide order dated 27.9.2004 and he was released on bail during the pendency of the appeal. As he is on bail, his bail/surety bonds stand cancelled. He is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

With this modification in sentence of appellant No.1-Rasal Singh and acquittal of appellant No.2-Dilbagh Singh, this appeal is partly allowed.

September 2, 2015.

(Inderjit Singh)
Judge

hsp