

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-168-DB of 2003

Date of Decision : August 31, 2016

Rajbir

....Appellant

VERSUS

State of Haryana

....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM

Present : Mr. Vikram Punia, Advocate
for the appellant.

Mr. Praveen Bhadu, Assistant Advocate General, Haryana.

T.P.S. MANN, J.

Rajbir son of Mam Chand, resident of village Khewra, District Sonapat has filed the present appeal for challenging the judgment and order dated 10/13.1.2003 passed by learned Additional Sessions Judge, Sonapat vide which he was convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.25,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.

According to the prosecution, Hari Parkash son of Hukam Chand made statement Ex.PF before ASI Pirthi Singh on 2.3.1999 at 2.30 p.m. at General Hospital, Sonapat stating therein that he was resident of village Khewra and an agriculturist by profession. He had two brothers. He himself was the eldest, whereas Ved Parkash and Satbir were younger to him. Ved Parkash was married and living with him,

whereas Satbir was living separately from them. On that day at about 11.00 a.m., he, alongwith his brother Ved Parkash and their mother Sarbati was standing in front of their house and witnessing Holi festival celebrations. The appellant was sitting on their roof top and also witnessing the celebrations. Ved Parkash asked the appellant as to why he was sitting on their roof top. On this, the appellant came down and exchanged hot words with Ved Parkash, besides hurling abuses at him. The appellant then went to his house and returned with an iron pipe. He told Ved Parkash that he would teach him a lesson for abusing. Saying so, he gave a blow with the iron pipe on the head of Ved Parkash, who fell down on the ground and became unconscious. Hari Parkash and his mother Sarbati took Ved Parkash in a car of one Krishan to Civil Hospital, Sonapat where the doctor, after medico-legally examining him and administering first aid advised that he be taken to Medical College and Hospital, Rohtak, it being a serious case. Accordingly, Sarbati and Krishan took Ved Parkash to Medical College and Hospital, Rohtak for treatment. While Hari Parkash himself was standing in front of the hospital and awaiting conveyance for going to his village in order to collect money, he met ASI Pirthi Singh to whom he made statement on the aforementioned lines. He also stated that the appellant had given blow with a pipe on the head of his brother with the intention to kill him.

Further case of the prosecution is that the statement made by Hari Parkash disclosed commission of offence under Section 308 IPC. Accordingly, after making necessary endorsement, ASI Pirthi Singh forwarded the statement to the Police Station for registration of the case. On its basis, FIR Ex.PF/1 under Section 308 IPC came to be registered by ASI Mool Chand at Police Station Rai on 2.3.1999 at 3.05 p.m.

It is also the case of the prosecution that injured Ved Parkash was medico legally examined by Dr. C.P. Arora, Medical Officer, General Hospital, Sonapat on 2.3.1999 at 12.05 p.m. and following injuries were noticed on his person :-

- "1. 2 cm. x 3 cm. swelling on the left side of the scalp in the parietal region. On the anterior part of the swelling there was a lacerated wound of the size 1 cm. x 1 cm. skin deep. It was bleeding actively. X-ray of skull was advised.
2. 2 cm. x 0.5 cm. lacerated wound on the left side of the scalp in the parietal region 3 cm. on the mid-line and skin deep. Fresh bleeding was present. X-ray of the skull was advised."

The weapon used for both the injuries was blunt and duration was within six hours.

It is further the case of the prosecution that on 2.3.1999 at 3.20 p.m. Ved Parkash was brought dead in casualty, PGIMS, Rohtak by Krishan. Accordingly, on receipt of ruqa Ex.PD from Dr. V.K. Nagpal, offence was changed to Section 304 IPC. The dead body was subjected to post mortem by Dr. Raman Shukla, Medical Officer, Civil Hospital, Rohtak on 3.3.1999 at 1.30 p.m. and following injuries were noticed :-

- "1. There was stitched wound of size 1 cm x 1 cm with one stitch over left parietal region 8 cms. above left ear and 9 cms. anterior and left to occipital protuberance alongwith swelling of surrounding skin.
2. Stitched wound with one stitch of size 2 cms.

in length about 5 cms. anterior and above to first wound, 15 cms. from left eye-brow and 15 cms. above left ear."

On dissection of scalp, there was extensive ecchymosis of scalp layers on right half of skull and on posterior part. There was fracture of left frontal bone, multiple fractures fragment of right parietal and occipital bone and fracture extended upto right mid-line. On removing the skull, there was extensive extra-dural, sub-dural haematoma almost in whole of left half of head with deep intracerebral haemorrhage. There was fracture of mid of base of skull on left side alongwith haematoma. Both lungs were congested and left ventricle of heart was empty and right was full. Liver, spleen and kidneys were congested. Stomach was containing light pinkish thick fluid. Small intestine was containing chyme and juices. Large intestine was containing faeces and gases.

The cause of death in the opinion of the doctor was as a result of head injury, which was ante mortem in nature and sufficient to cause death in natural course of life. The probable time that elapsed between injury and death was immediate to within few hours and between death and post mortem between 6 to 36 hours. Further, the injuries could be caused by iron pipe Ex.P6.

During the investigation of the case, ASI Pirthi Singh conducted inquest proceedings Ex.PH/2. He went to the spot and collected blood stained earth therefrom. He prepared rough site plan Ex.PO of the place of occurrence, besides, recording the statements of the witnesses. He arrested the appellant on 8.3.1999. On 9.3.1999, the

appellant made disclosure statement Ex.PL, pursuant to which he got recovered iron pipe Ex.P6 from the designated place vide recovery memo Ex.PL/1. After completion of the investigation, the challan was prepared by SI Mahavir Singh. Upon commitment of the case, the appellant was charged for committing an offence punishable under Section 302 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined 11 witnesses. The eye-witness account of the occurrence has been brought on record by examining PW9 Hari Parkash, brother of the deceased and PW10 Sarbati, mother of the deceased. The medical evidence consists of the testimony of PW2 Dr. V.K. Nagpal, who had sent ruqa Ex.PD regarding Ved Parkash being brought dead in casualty, PGIMS, Rohtak; PW6 Dr. Raman Shukla, who had conducted post mortem on the dead body of Ved Parkash and PW7 Dr. C.P. Arora, who had medico-legally examined Ved Parkash. The investigation part of the occurrence is sought to be brought on record by examining PW1 Constable Inderpal, who had prepared scale site Ex.PA; PW3 ASI Mool Chand, who had converted the offence to Section 304 IPC; PW4 SI Mahabir Singh, who had prepared report under Section 173 Cr.P.C.; PW5 UGC Ram Singh, who had taken statement Ex.PF of Hari Parkash and delivered it at Police Station Rai and PW11 ASI Pirthi Singh, who had recorded statement Ex.PH of Hari Parkash; conducted inquest proceedings Ex.PH/2; prepared rough site plan Ex.PO of the place of occurrence; collected blood stained earth and taking the same into possession vide memo Ex.PM; arrested the appellant on 8.3.1999; recording the disclosure statement Ex.PL of the appellant on 9.3.1999 and recovering

iron pipe Ex.P6 vide memo Ex.PL/1.

When examined under Section 313 Cr.P.C., the appellant pleaded that he was innocent. According to him the house of deceased Ved Parkash adjoined his house. Neither the house of Ved Parkash nor his house has any staircase. In order to go to the roof-tops of their houses, one had to use wooden stairs. On the day of occurrence and early in the morning, the deceased in the process on getting down from the roof of his house fell down in the Gher of Rajinder, where some bricks were lying and pegs were fixed and suffered injuries on his head by fall. Raj Singh came there, who took the deceased in the car of one Krishan to Civil Hospital, Sonapat and from there to Government Medical College and Hospital, Rohtak. He also stated that nobody was present at the house of the deceased at the relevant time. Hari Parkash had named him in the case as he suspected that he had an eye on his wife. According to him, he had no concern with the death of Ved Parkash, and nothing was recovered at his instance.

In defence, the appellant examined two witnesses. DW1 Dr. Subodh Sehrawat testified that his Sehrawat Hospital was situated near ITI, Sonapat, from where he was practising for the last six years. According to him, injuries No.1 and 2 on the person of Ved Parkash as mentioned in the medico-legal report could be caused by fall and he based his opinion on Modi's Medical Jurisprudence and Toxicology. DW2 Raj Singh son of Hari Singh testified that 2½ years back it was festival of Holi and at about 7/7.30 a.m. he was going towards his fields. The house of Ved Parkash fell on the way and he saw Ved Parkash trying to come down from his roof by holding the bricks as there was no

staircase, either wooden or pucca. He slipped and fell down in the Gher of Rajinder, which adjoined his house. Bricks were also lying there and Ved Parkash received multiple injuries. At that time nobody was present at his house. Accordingly, he went to the house of Krishan and asked him to bring his car for taking Ved Parkash to the hospital. The injured was taken to Civil Hospital, Sonapat from where he was referred to PGIMS, Rohtak. On the way Ved Parkash succumbed to his injuries. In the evening at about 4.00 or 5.00 p.m., ASI Pirthi Singh met him at PGIMS, Rohtak and recorded his statement. The postmortem was conducted on the dead body of Ved Parkash on the next day. After that Krishan, alongwith Hari Parkash, elder brother of Ved Parkash, deceased reached PGIMS, Rohtak.

After hearing learned counsel for the parties and on going through the evidence brought on the record, the trial Court accepted the prosecution case and convicted and sentenced the appellant, as mentioned above.

This Court has heard Mr. Vikram Punia, learned counsel for the appellant and Mr. Praveen Bhadu, learned State counsel and scanned the evidence with their able assistance.

The occurrence in question had taken place on 2.3.1999 at 11.00 a.m. at village Khewra. At that time PW9 Hari Parkash, his brother Ved Parkash, since deceased and their mother Sarbati were standing in front of their house and witnessing the Holi celebrations whereas the appellant was sitting on the roof of their house and also witnessing the celebrations. The deceased asked the appellant as to why he was

sitting on their roof. On this, the appellant came down and there was exchange of hot words and hurling of abuses between them. The appellant then went to his house and came back with an iron pipe. He proclaimed that he would teach a lesson to the deceased for abusing. He then gave a blow with the iron pipe on the head of Ved Parkash, who fell down on the ground and became unconscious. Soon after the occurrence, Ved Parkash was removed in the car belonging to one Krishan to Civil Hospital, Sonapat where he was medico-legally examined by Dr. C.P. Arora, who on seeing the condition of Ved Parkash to be precarious referred him to PGIMS, Rohtak. Before Ved Parkash could reach PGIMS, Rohtak, he died on the way, and, accordingly, ruqa Ex.PD was sent by Dr. V.K. Nagpal to the Incharge, Police Post, Medical College and Hospital, Rohtak. Complainant Hari Parkash had not accompanied his brother Ved Parkash to PGIMS, Rohtak as he was required to go to his village for collecting money. Instead, he sent his brother Ved Parkash to PGIMS, Rohtak with his mother Sarbati and Krishan. While the complainant was waiting for some conveyance in front of Civil Hospital, Sonapat, there came ASI Pirthi Singh with whom he got recorded his statement Ex.PF which was recorded on 2.3.1999 at 2.30 p.m. On its basis, FIR Ex.PF/1 came to be registered at Police Station Rai, District Sonapat on 2.3.1999 at 3.05 p.m. At the time of registration of FIR, the offence disclosed was under Section 308 IPC and, therefore, there was no necessity of sending the special report immediately after registration of the FIR. The special report was sent in routine, i.e. through Dak and for that reason it came to be received by the Ilaqa Magistrate on 3.3.1999 at 10.00 a.m. From the above facts, it is clearly discernible that there was no delay in lodging of the FIR. Rather

the same had been registered with due promptitude. The objection of the defence that the special report has been received on 3.3.1999 at 10.00 a.m. is indicative of the fact that the FIR was not registered on 2.3.1999 at 3.05 p.m. as claimed by the prosecution, whereas it had been registered some time before 10.00 a.m. on 3.3.1999 is without any merit. As the FIR stood registered initially under Section 308 IPC, the police rules did not require sending a special report immediately after registration of the FIR. In such like circumstances, the copy of the FIR by way of special report is required to be sent to the Ilaqa Magistrate on the following day at 8.00 a.m. and that too, in Dak. That explains as to why the special report was received by the Ilaqa Magistrate on 3.3.1999 at 10.00 a.m.

According to the prosecution, PW9 Hari Parkash and PW10 Sarbati had witnessed the occurrence. Both of them testified before the trial Court about the manner in which the occurrence had taken place. Merely because they happened to be close relatives of the deceased is no ground to reject their testimonies. Their presence at the time of the occurrence was natural and probable. They alongwith Ved Parkash, since deceased, were witnessing the festivities, which were taking place, it being a day of Holi. Rough site plan Ex.PO and scaled site plan Ex.PA show that the place of the occurrence was an open place (Gher) of Rajinder Singh, which adjoined the residential house of deceased Ved Parkash. The house of deceased Ved Parkash opened on the street which was a thoroughfare and both Hari Parkash and Sarbati were standing close to the place where the deceased was assaulted by the appellant. It has appeared in the testimony of PW11 ASI Pirthi Singh that

he had lifted blood stained earth from the vacant plot of Rajinder, which plot adjoined the residential house of deceased Ved Parkash. The blood stained earth was subsequently sent to the Forensic Science Laboratory and on analysis, it was revealed that the origin of blood on the blood stained earth was human. The said result further fixes the place of occurrence to be in the open area adjoining the residential house of deceased Ved Parkash. The place of occurrence being close to the house of deceased Ved Parkash, it cannot be said that PW9 Hari Parkash and PW10 Sarbati were neither present at the place of occurrence nor witnessed the occurrence in which Ved Parkash had received injuries.

It is true that neither PW9 Hari Parkash nor PW10 Sarbati had intervened when their close relative Ved Parkash was under assault at the hands of the appellant but that is no ground to disbelieve their testimonies as the occurrence had taken place in no time in which only one injury was caused by the appellant to the deceased. In such a short span of time, neither of them could have even reacted to rescue their close relative. By the time they would have realised as to what was happening that the appellant had run away from the spot. Further, the target of the appellant was Ved Parkash, who had initially asked him to come down from the house of their roof top and after the appellant had come down there was exchange of hot words between them and also hurling of abuses. In such a situation, only Ved Parkash could have been the target and not his close relatives PW9 Hari Parkash and PW10 Sarbati.

In view of the above, it stands established that the

occurrence in question had taken place on 2.3.1999 at 11.00 a.m. when Ved Parkash since deceased was assaulted by the appellant and at that time, PW9 Hari Parkash and PW10 Sharbati were present and had witnessed the occurrence.

As regards the nature of offence, it may be noticed that the occurrence in question had taken place on the day of Holi when there are lot of festivities in this part of the country, especially the rural areas where people come out in numbers to witness the festivities, besides participating in the same. There was no ill-will between the appellant and the deceased prior to that day. Even at that time of the occurrence the appellant was simply witnessing the Holi festivities by sitting on the roof top of the house of deceased Ved Parkash. When complainant Ved Parkash objected to his sitting on the roof top on their house, the appellant came down and exchanged hot words with the deceased. He also hurled abuses. The appellant then went to his house and came back to the place of occurrence, while carrying an iron pipe/rod. He then proclaimed that he would teach a lesson to the deceased for hurling abuses. Saying so, he gave a solitary blow on the head of Ved Parkash. As is clear from the scaled site plan as well as the rough site plan, the residential house of the appellant was not far away, rather it adjoined the house of deceased Ved Parkash. In the background which had developed on account of the deceased asking the appellant to get down from the roof top of his house which led to exchange of hot words and hurling of abuses, the appellant caused only one blow. After the arrest of the appellant on 8.3.1999, the police had interrogated him who suffered disclosure statement Ex.PL that he had kept concealed the iron

pipe in his residential house and subsequently the iron pipe was recovered vide memo Ex.PL/1. The iron pipe was found to be of the length of 5'-6½ " whereas its width was 1". Main thing is that it was only a pipe and not a rod. It is the consistent case of PW9 Ved Parkash and PW10 Sarbati that the appellant had given only one blow to the deceased. It is true that when Ved Parkash was medico-legally examined and after his death when post mortem was conducted, two injuries were noticed. Both the injuries were found on the left side of the scalp. Possibility of the deceased receiving a solitary blow on the left side of his head from the iron pipe wielded by the appellant and on account of falling down after being caused the said injury, his receiving another injury on the same side on account of fall cannot be ruled out as it is the case of both the eye-witnesses that after receiving the one of the solitary blow on his head, Ved Parkash had fallen down. In all probability, it would have resulted in Ved Parkash receiving the second injury and it could not be, in any way, the result of causing of another blow by the appellant. There being only one blow caused by the appellant and, that too, with an iron pipe it cannot be said that the appellant had taken any undue advantage. Fact remains that there was an exchange of hot words, besides hurling of abuses which preceded the occurrence, and both the eye witnesses not testifying that the appellant had caused two blows, rather according to them only one blow was caused by the appellant with an iron pipe this Court has no other option but to hold that the appellant never intended to commit the murder of Ved Parkash. Rather, he intended to cause an injury which was likely to cause death. Consequently, the appellant deserves to be acquitted for the offence under Section 302 IPC. On the other hand, he is liable to be convicted

for the offence under Section 304 Part I IPC.

Resultantly, the appellant is acquitted of the charge under Section 302 IPC and his sentence of life imprisonment and fine of Rs.25,000/- is 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.25,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.

The appeal is partly allowed to the extent indicated above.

(T.P.S. MANN)
JUDGE

August 31, 2016
satish

(GURMIT RAM)
JUDGE

Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO