

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

(1)

**CRA-D-387-DB-2003
Date of decision: 01.12.2016**

Mahabir and Others

.....Appellants

Versus

The State of Haryana

.....Respondent

(2)

CRR-1803-2003

Ashok Kumar

.....Petitioner

Versus

Mohan Lal and Others

.....Respondents

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

Present: Mr. Sudhir Sharma, Advocate
for the appellants in **CRA-D-387-DB-2003**
and for respondents in CRR-1803 of 2003

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

Mr. Dilpreet Singh, Advocate
for the petitioner in **CRR-1803-2003**.

GURMIT RAM, J.

The above noted criminal appeal and criminal revision have been taken up together for the purpose of disposal as these are the outcome of one and the same judgment dated 04.04.2003 and order of sentence dated 05.04.2003 and also to avoid repetition.

The appeal is at the instance of appellants-Mahabir and six others against the judgment of conviction dated 04.04.2003 and order of sentence dated 05.04.2003 passed by the Court of learned Additional Sessions Judge (Fast Track Court), Gurgaon in criminal case bearing FIR No.57 dated 18.05.2001 under Sections 302, 323, 325 read with Section 34 of the Indian Penal Code (“IPC” – for short) Police Station Farrukh Nagar vide which appellant-herein (accused) Mahabir was held guilty for the offences punishable under Sections 302 and 323 of the IPC for his individual acts and awarded the sentences as detailed below:-

Mahabir	Under Section 302, IPC.	To undergo rigorous imprisonment for life and to pay a fine of ₹2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year.
	Under Section 323, IPC.	To undergo rigorous imprisonment for six months.

Both these sentences were ordered to run concurrently.

Appellants-herein (accused) Mohan, Rameshwar & Lakhi

were held guilty for the offence punishable under Section 323 of the IPC for their individual acts and appellants-herein (accused) Bishan Devi, Anita and Sarbati were held guilty for the offences punishable under Sections 323 and 325 read with Section 34 of the IPC and all these six appellants (accused) were released on probation under Section 4 of the Probation of Offenders Act read with Section 360 of the Code of Criminal Procedure (Cr.P.C. for short) besides burdening with the costs of proceedings vide the impugned judgment and order of sentence.

All the appellants-herein (accused) were anyhow acquitted of the charge under Section 148 of the IPC.

The revision has been preferred by complainant-Ashok Kumar against respondents-Mohan Lal and others with a prayer to enhance the sentence of the respondents and to convict them along with their co-accused Mahabir and for granting the adequate compensation also.

The prosecution case in brief as presented before the learned trial Court was that on 18.05.2001, a telephonic message was received at the Police Station from village Babra Bakipur to send the police immediately since a quarrel was going on in the village. Upon this Narinder SI/SHO, Police Station, Farrukh Nagar, along with police officials reached in said village where he met complainant-Ashok Kumar s/o Raj Kumar who made his statement Ex.PA before him which was recorded as under:-

“That he is serving in Delhi Home Guard. His

grandfather was having two brothers. All the three had some joint land, which was lying vacant inside the village. Mohan, Mahabir, Rameshwar sons of Lakhi and Lakhi himself wanted to take exclusive possession of this land alone regarding which an altercation took place between them and aforesaid Mohan etc.. His grandfather had told them that they would not give this land to them. For this reason said Mohan etc. were keeping enmity in their minds against them. Today on 17.05.2001 at about 7:30 p.m. on finding his grandfather Har Narain alone on the way, abovesaid Mahabir gave a Lathi blow on his head. In the meanwhile, accused-Mohan also came there and caused a Lathi blow to his grandfather which hit on his back. Upon hearing a noise 'Mardiya-Mardiya' raised by his grandfather, his grandmother Imarti Devi was attracted to the spot to rescue his grandfather. Accused Rameshwar who was already present there caused a Lathi blow on the back of his grandmother. In the meantime, accused Lakhi and Vicky @ Vikas (Juvenile) also came there and they both started giving kick and fist blows to his grandfather. On a call given by accused Mohan, accused Bishan Devi, Anita and Sarbati also reached at the spot and started giving beatings to his grandfather. Then accused Rameshwar caused a Lathi blow which hit on the feet of his grandfather. He was seeing the

entire incident and when he rushed to rescue his grandfather and grandmother, then accused Mahabir gave a Lathi blow which hit on the back side of his left hand. On raising their alarm, all the above-mentioned accused ran away from the spot. His grandfather Har Narain succumbed to injuries at the spot. His grandmother was taken to General Hospital, Gurgaon for her treatment. Request was made to take action against the assailants.”

After recording the above statement of complainant, it was read over to him and he had signed the same after admitting it to be correct. After making endorsement Ex.PA/1 on the above statement of complainant, ruqa was sent to police station on the basis of which instant case was registered against the accused. Inquest proceedings in respect of dead body of the deceased were prepared. Post-mortem on dead body was also got conducted.

Accused were apprehended in this case. Weapons of offence were recovered. Report from the office of Forensic Science Laboratory, Haryana in respect of the parcels containing bloodstained earth and clothes of the deceased was obtained. MLR of injured Imarti was also taken into police possession. Statements of witnesses were recorded. On completion of investigation, challan was presented in the Court.

On finding a prima facie case punishable under Sections 148/323/325 and 302 read with Section 149, IPC against all the accused, they were charge-sheeted accordingly by the learned trial Court vide order

dated 06.09.2001, to which they pleaded not guilty and claimed trial.

The prosecution in order to substantiate its version and also to prove the guilt of the accused examined ten witnesses in all before the trial Court.

Then during examination of the accused under the provisions of Section 313, Cr.P.C., the entire incriminating evidence as came on record during trial of the case against them was put to them, which they denied entirely.

Accused Mahabir, Mohan Lal and Rameshwar took the plea that about 4/5 days prior to this occurrence, Ashok Kumar-complainant had abused their ladies while under the influence of liquor. Two days thereafter accused Rameshwar and Mahabir made a protest to said Ashok Kumar who abused them also. In response thereto, they also gave him 2/3 slap, fist blows, besides, abusing him. In this regard, said Ashok Kumar along with his grandfather and grandmother came to their house to lodge their protest wherein also Ashok Kumar abused accused Rameshwar and Mahabir, besides causing beatings to them and Lakhi Ram and Sharbati. In the self-defence, they gave blows to Ashok Kumar and his grandfather Har Narain (since deceased). The allegation of enmity regarding any plot of land was stated to be concocted one. The alleged occurrence in fact took place in front of their house. Ashok Kumar had lodged the instant FIR after delay of 7 ½ hours by making a false story after due consultation and deliberations. Further they also took the plea of their innocence and false implication in this case. Accused Anita, Bishan Devi, Lakhi Ram

and Sarbati simply took the plea of their innocence and false implication.

In their defence, the accused also examined seven witnesses.

The learned trial Court after hearing learned counsel for both the parties and going through the record as well held the accused guilty for the offences and awarded them sentences as detailed in para No.1 of this judgment.

The appellants-herein (accused) being dissatisfied with the impugned judgment and order of sentence came up before this Court vide the appeal, notice of which was given to the respondent-state.

Record of learned trial Court was requisitioned and perused in detail with the able assistance of learned counsel for both the parties.

Learned counsel for the appellants very firstly has contended that on the date of alleged occurrence, the appellant-herein (accused-Mahabir) was working in Delhi Home Guard and he was discharging his duties, as such at Police Station Dabri, Delhi and his duty hours were from 10:00 a.m. to 5:00 p.m. It is further his contention that there is plenty of evidence on the record to show that this appellant had remained on his duty on the date of alleged occurrence i.e. 17.05.2001 from 11:15 a.m. to 05:40 p.m. at the place of his working aforementioned. He has made his above submission to substantiate the plea of alibi on behalf of this appellant to say that he was not present at the spot at the time of alleged occurrence and that he had been entrapped in this case falsely after preparing a concocted version. In order to fortify his above contention, he has referred to the statements of DW-4, DW-5 & DW-7 and has

contended that learned trial Court had utterly failed to appreciate the testimonies of these witnesses in a judicious manner, which caused a serious prejudice to this appellant.

But on the other hand, learned State counsel has denied the above contention of learned counsel for the appellants and submitted that this appellant did not take any such plea of alibi either during investigation of this case or during the examination of prosecution evidence and hence the plea of alibi on behalf of this appellant at a later stage is nothing but an afterthought story and the evidence produced in support of it is also not trustworthy being fabricated and procured one.

Now let us see the evidence led in defence in support of above contention of learned counsel for this appellant and the plea taken by this appellant during trial of the case. The relevant evidence in this regard was as under:-

DW-4 Shyam Lal, Station Master, Patli proved the original pass Ex.DW4/1 issued in the name of accused Mahabir valid from 07.05.2001 to 06.06.2001. Further, he stated that 7RD train starts from Delhi Junction at 06:25 p.m. and reaches Patli at 07:44 p.m. Anyhow this train reached Patli on 17.05.2001 at 08:12 p.m. Then he also deposed that another train 9RD reached Patli on 17.05.2001 at 9:43 p.m. of which usual arrival time at Patli was 9:19 p.m.. Even if this pass Ex.DW4/1 was issued in the name of accused Mahabir, then that did not mean that he was bound to travel by the trains mentioned in the examination-in-chief of DW-4 or that he was not permitted to use any other mode of transport to

reach at his home after his usual duty hours. Then it was also found mentioned in the cross-examination of this witness that Train No.4719 Haryana Express reached Patli at 06:36 p.m. on 17.05.2001 and hence accused Mahabir might have travelled by this train on that date to reach at his house after performing his duty.

Statement of DW-5 HC Sarla Yadav was to the effect that as per record brought by her, accused Mahabir who had come on duty at 11:15 a.m. on 17.05.2001 was kept for reserve duty. Then it came in her cross-examination that there is no mention in the record regarding presence of this Mahabir earlier to 11:15 a.m. on the said date.

DW-7 Smt. Rajinder Dhawan was posted as Company Commander at Police Station Dabri, Delhi on the relevant date. Her statement was to the effect that Mahabir had joined duty on 17.05.2001 at 11:15 a.m. and remained in the said police station till 05:40 p.m. and also proved the certificate Ex.DW7/1 issued in this regard bearing her signatures. But in her cross-examination she deposed that Mahabir did not give any information either to her or to Police Station Dabri regarding his arrest in a murder case. She also did not bring the record showing that Mahabir remained with them on 17.05.2001 from 11:15 a.m. to 05:40 p.m. So the above discussed depositions of DW-4, DW-5 and DW-7 lack the credibility whereby making it difficult to rely upon the same.

Then during trial of the case, no suggestion was put to the material prosecution witnesses i.e. PW-1 and PW-2 that the appellant-herein (accused-Mahabir) remained present at the place of his posting in

connection with his duty on 17.05.2001 from 11:15 a.m. to 05:40 p.m. and hence not present at the spot at the time of alleged occurrence in order to substantiate his alleged plea of alibi. Then during his examination under Section 313, Cr.P.C., he simply took the plea of his innocence and false implication in this case without making any mention of his alleged plea of alibi. His plea in this regard is already discussed above in para No.5 of this judgment. Then it is also very interesting to note that this appellant in his plea admitted his presence at the spot at the time of alleged occurrence, which shatters his plea of alibi from its very core.

So, the above plea of alibi raised on behalf of appellant-herein (accused-Mahabir) is held to be an afterthought creation. Even the evidence led in this regard as above discussed to substantiate it is also held to be not fully convincing and confidence inspiring to justify the same to make out any ground in favour of this appellant-accused. Hence this contention of learned counsel for the appellants stands declined and disposed of accordingly.

Then the learned counsel for the appellants has further argued that there was a delay of about 7 ½ hours in informing the police with regard to present occurrence of which the prosecution rendered no explanation. It is further his contention that this delay is quite fatal to the prosecution version since it has no explanation to justify the same. This delay was used by the complainant-party to excogitate a false version after due consultation and deliberations and thereafter entrapped the appellants-herein (accused) in this case falsely.

As per ruqa Ex.PA/1 and FIR Ex.PA/2, the alleged occurrence took place on 17.05.2001 at about 7:30 p.m. in village Babri Bakipur. Then as came on the record, on receipt of telephonic message with regard to a quarrel in said village, SI/SHO Police Station, Farukh Nagar, proceeded to that spot from where he sent ruqa Ex.PA/1 to police station at 3:00 a.m. after recording statement Ex.PA of the complainant-Ashok Kumar. Distance between Police Station Farukh Nagar and place of occurrence as recorded in the FIR Ex.PA/2 was 7 ½ KMs. So meaning thereby police might have reached at the place of occurrence by about 2:00 a.m. and recorded the above statement of complainant after examining the facts and other circumstances appearing at the spot and then thereafter sent ruqa Ex.PA/1 to police station qua this occurrence. So it can safely be concluded that the above statement of complainant was recorded by about 2:15 a.m.

Then it is also to note that in the alleged occurrence, Har Narain-grandfather of the complainant succumbed to the injuries received in the alleged occurrence and his grandmother-Imarti Devi had also suffered grievous injuries in this occurrence. PW-9 Dr. Vishwjeet, Medical Officer medico legally examined said injured Imarti Devi aged about 65 years on 18.05.2001 at about 3:15 a.m. and found two injuries on her person as detailed in the copy of her MLR Ex.PG.

PW-7 Dr. Dhiraj Kaul, Radiologist, radiologically examined said injured-Imarti Devi on 18.05.2001. As per his statement, she was having *emphysema of soft tissues from both sides, fractures, 5th, 6th, 7th,*

8th and 9th rib on the left side. A small pneumothorax is seen on the left side. Interstitial emphysema is present. Fracture lateral wall of maxillary antrum left side was detected.

Then he also proved her X-ray report Ex.PF and the skiagrams in this regard Ex.P1 to Ex.P5.

Complainant might have remained occupied in taking care of his grandmother-Imarti Devi (since grievously injured) as her five ribs were found to be fractured during her radiological examination. Further his innermost also might have been jolted seriously due to shock on account of sudden death of his grandfather in this incident. Then another fact which is to be noted is that the alleged occurrence took place during night time and delay of 6/7 hours in informing the police qua this occurrence cannot be construed either as inordinate one or that it was used by the complainant-party for inventing a made up version with the ulterior motive to entrap the appellants-herein (accused) in this case falsely when there is no substance on record to support it. So the above contention of learned counsel for the appellants is also held to be not sustainable and declined accordingly.

Then the learned counsel for the appellants has also contended that it was a case of version and cross-version and since the complainant-party did not narrate about the injuries which the accused party had suffered in this occurrence, so there is a glaring infirmity in the story of prosecution as alleged, the benefit of which is certainly to be given to the appellants-herein (accused).

Admittedly, complainant-Ashok Kumar in his statement Ex.PA is silent about the injuries stated to be caused to the accused party in this occurrence, though while appearing in the Court as PW-1, he stated that he pelted stones in his self-defence.

Then in this case the accused party never approached the police authority concerned either in writing or orally to get their case registered as a cross-version case for the injuries allegedly caused to them in this occurrence by the complainant-party. Even they did not file any complaint before the Court of learned Illaqa Magistrate for the redressal of their grievance. Now the evidence which the accused party had led before the trial Court qua their alleged cross version case is required to be appreciated which was as under:-

DW-1 Dr. Manoj Sharma, medico legally examined injured Sharbati wife of Lakhi Ram and Lakhi Ram s/o Budh Ram in the premises of PHC Gadi Harsaru on 18.05.2001 at 10:50 a.m. and 11:00 a.m. respectively. During their examination, he found four injuries on the person of patient Sharbati and five injuries on the person of Lakhi Ram as depicted in their medico legal reports Ex.DB and Ex.DC respectively.

Then DW-3 Dr. Sudhir Kumar, Dental Surgeon examined said injured Sharbati on 18.05.2001 and his report in this regard was Ex.DE. In his cross-examination he stated that no abnormality was found. Then as abovesaid in the case in hand, the alleged occurrence took place at about 7:30 p.m. on 17.05.2001. So there was delay of about 15 hours in the alleged medico legal examination of said injured Sharbati and Lakhi

Ram of which they did not give any explanation. Then injury No.2 and 5 on the person of Lakhi Ram as mentioned in the cross-examination of DW-1 were superficial in nature. Complaint of pain is no injury in medical terms.

DW-2 Dr. Suman Verma, medico legally examined accused Rameshwar on 22.05.2001 and found two injuries on his person as detailed in his medico legal report Ex.DD. Then in his cross-examination, he stated that possibility of injury No.1 on his person being self-inflicted cannot be ruled out.

Then he was examined after a gap of more than four days from the date of alleged occurrence and his said MLR cannot be used in order to make out a cross version case in this case.

Then DW-6 Karan Singh was examined to the effect that both the parties were present at the spot at the time of alleged occurrence and both of them assaulted each-other and caused injuries to each other. But his oral testimony is also held to be not upto the mark to substantiate the plea of cross-version case since the other evidence led in defence as above discussed is held to be not inspiring any confidence. So the above plea of cross-version is also rejected being found to be not tenable.

Now the other evidence of prosecution is taken in some brief, which was as under:-

Ashok Kumar-complainant appeared in the Court during trial as PW-1 and his testimony is found to be verbatim of his statement Ex.PA which he allegedly made before the police on 17.05.2001 qua this

occurrence. In addition to this, he also stated that he pelted stones in his self-defence. PW-2 Imarti, one of the injured as well as eye-witness to the alleged occurrence also corroborated the prosecution version. Neither she nor anybody else from their side did anything in their self-defence.

PW-3 Dr. Rajesh Kumar Sharma, conducted post-mortem examination on the dead body of Har Narain (since deceased) on 18.05.2001 in the premises of General Hospital, Gurgaon and found following injuries on the dead body:-

- i. A lacerated wound of size 4.3 x .5 cm on the left occipito parietal region oblique in direction near the mid line. On further dissection subcutaneous ecchymosis was found present. Left frontal and parietal bones were found fractured. There was a contusion of size 3x3 cm on the parietal lobe of left hemisphere, about 300 ML fluid and clotted blood was present in the left cranial cavity.*
- ii. There was a contusion of size 4x3 cm on the left occipital region. Subcutaneous ecchy-mosis was present. Trachea contained vomitus and fluid. His lungs were congested. The stomach of deceased contained about 300 ML of semi digested food material. His small intestine contained chyle and gases, while large intestine contained faces matter and gases. Other organs were healthy.*

Further he proved the post-mortem report of the deceased as Ex.PB. Then in his opinion head injury was the cause of death of

deceased and all the injuries were ante-mortem in nature. Injury No.1 was sufficient to cause death.

PW-10, SI Narinder was posted as SHO, Police Station, Farukh Nagar on 18.05.2001. He went to the spot of occurrence on receipt of telephonic message from village Babra Bakipur where complainant-Ashok Kumar made his statement Ex.PA before him upon which he made endorsement Ex.PA/1 and sent ruqa to Police Station on the basis of which FIR Ex.PA/2 was recorded by PW-8 ASI Hemant Kumar. Then he prepared the rough site plan Ex.PA/4 of the place of occurrence after its inspection. Further, he conducted proceedings under Section 174, Cr.P.C., in respect of dead body of deceased and prepared the inquest report Ex.PC. Then he got conducted post-mortem on dead body of the deceased. Further he apprehended accused Mohan Lal, Mahabir, Rameshwar, Vikas @ Vicky and Lakhi. Accused Mohan produced before him, one *Lathi* Ex.P6, rough sketch Ex.PH of which was prepared and the same was taken into police possession vide memo Ex.PH/1 after converting it into a sealed parcel. Then accused Mahabir also produced *Lathi* Ex.P7, rough sketch Ex.PJ of which was also prepared and the same was taken into police possession vide memo Ex.PJ/1 after converting it into a sealed parcel. He recorded the statements of witnesses.

PW-4 SI Rampal was posted as SHO of Police Station, Farukh Nagar on 06.06.2001 and recorded statements of Imarti and Daya Kishan under Section 161, Cr.P.C. After obtaining MLR and X-ray report of Imarti on 11.06.2001, the offences under Sections 323 and 325 of the

IPC were added in this case. Further, he also arrested accused Bishan Devi, Sharbati and Anita on 21.06.2001 in this case and prepared the challan.

PW-5 Constable Sarwan Kumar (draftsman) proved the scaled site plan Ex.PD of the place of occurrence.

PW-6 C. Siri Chand delivered the special report to the Court of Illaqa Magistrate, Gurgaon on 18.05.2001 at about 8:30 a.m. The distance of Police Station , Farrukh Nagar to Gurgaon as mentioned in his cross-examination was 20 kilometres.

Learned counsel for the revisionists has failed to point out any material from the record as to how respondent Nos.1 and 3 to 7-herein (accused) can also be held liable for their conviction for the offence punishable under Section 302, IPC and to award them same sentence as awarded in this case to accused Mahabir (respondent No.2-herein). The learned trial Court has rightly appreciated evidence on record to distinguish the case of the respondent Nos.1 and 3 to 7-herein (accused) from the case of accused-Mahabir (respondent No.2-herein) and has rightly convicted them for the offences punishable under Sections 323 and 325 read with Section 34 of the IPC. The plea of revisionists for the grant of adequate compensation is also not established on the record and same is also turned down.

No other submission was made by either of the parties.

In the light of above discussion, the above-noted criminal appeal as well as revision, both stand dismissed and disposed of

accordingly. Impugned judgment of conviction and order of sentence under challenge in this appeal and revision are upheld.

Intimation to the quarter concerned be sent for its strict compliance.

01.12.2016

Gaurav Sorot

(T.P.S.MANN)

JUDGE

(GURMIT RAM)

JUDGE

1.

Whether reportable?

No / Yes

2.

Whether reasoned / speaking?

No / Yes