

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I. Criminal Appeal No.D-426-DB of 2003
Date of Decision : February 10, 2016

Sher Singh
....Appellant

VERSUS

State of Haryana
...Respondent

II. Criminal Appeal No.D-463-DB of 2003

Nanda
.....Appellant

VERSUS

State of Haryana
....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present : Mr. Deepender Singh, Advocate with
Mr. Sudhir Sharma, Advocate
for the appellant (in Criminal Appeal No.D-426-DB of 2003)

Mr. B.S. Saroha, Advocate
for the appellant (in Criminal Appeal No.D-463-DB of 2003)

Mr. Dhruv Dayal, Deputy Advocate General, Haryana.

T.P.S. MANN, J.

Convicts Sher Singh and Nanda were tried for committing offences punishable under Section 148 and Section 302 read with Section 149 IPC. Vide judgment and order dated 17/22.4.2003, learned Additional Sessions Judge, Hisar convicted them under Section 302 read with Section 34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.500/- each and in default of payment of fine, to undergo further

rigorous imprisonment for a period of six months each. Aggrieved of their conviction and sentences, convict Sher Singh has filed Criminal Appeal No.D-426-DB of 2003 whereas convict Nanda has filed Criminal Appeal No.D-463-DB of 2003 wherein they have prayed for setting aside the impugned judgment of conviction and sentence, passed by the trial Court. As both the appeals arise out of the same judgment of conviction and sentence, they are being disposed of by a common judgment.

According to the prosecution, complainant Surrender, (son of deceased Chattar Singh), resident of village Kharia had made statement Ex.P11 before ASI Pat Ram on 7.10.2000 at 11.50 p.m., at General Hospital, Hisar wherein he stated that on that day at about 5.30 p.m., he was present at his residential Dhani constructed in his fields. His family had a mare and his father used to ride the same for coming and going. At about 4.00 p.m., his father had gone to the fields while riding the mare. At about 5.30 p.m., only the mare returned to the Dhani. The complainant became worried about his father. He then left for the fields by riding the mare so as to look for his father. When he had covered a distance of about 10/12 killas, he found his father lying on the kacha passage leading towards the fields and struggling for life on account of injuries on his person. Manoj, son of his uncle Jug Lal and Nihal Singh, his uncle were present at the spot. The complainant enquired about the injuries from his father, who disclosed that Mahender s/o Daulat Ram, Nanda s/o Malla and Satbir, Sher Singh and Vijender @ Pala Ram, the three brothers whose father's name was not known to him, in conspiracy with each other, had injured him with lathi and kulhari. In case, Manoj s/o Jug Lal and his brother Nihal Singh had not reached at the spot, the five assailants would

have killed him there and then. The motive, according to the complainant, was that his family had taken the land of Jai Ram on lease and had given half of it for cultivation to Satbir, Sher Singh and Vijender @ Pala Ram. These three brothers and aforesaid Mahender Singh and Nanda used to take liquor and eat meat on the land taken by the family of the complainant on lease and his father used to restrain them from doing this. On that day, his father was returning to the Dhani from the field while riding the mare whereas these five accused were coming in a bullock cart and after coming in his way, injured him by inflicting injuries. The complainant and Manoj brought his father to the Dhani in a tractor from where he, alongwith one Mahender, whom his father treated as his brother, brought Chattar Singh to General Hospital, Hisar but after some time, he succumbed to the injuries. Thereafter, complainant Surender and Mahender went to Police Post Balsmand for lodging a report. The Munshi there told them that police had already gone to General Hospital, Hisar for conducting proceedings. The complainant and Mahender then came back to Generral Hospital, Hisar where he met ASI Pat Ram before whom he got recorded his statement.

As the statement Ex.P11 of complainant Surender disclosed commission of offences under Sections 302/34 IPC, ASI Pat Ram sent it through Constable Om Parkash to the Police Station for registration of the case. Accordingly, FIR No.728 dated 8.3.2000 (Ex.P.27) under Sections 302/34 IPC came to be registered at Police Station Sadar, Hisar on 8.10.2000 at 12.15 a.m. by ASI Jai Singh.

During the investigation of the case ASI Pat Ram prepared inquest report Ex.P20 and also application Ex.P15 addressed to the doctor

Incharge, Civil Hospital, Hisar for conducting postmortem. The dead body was entrusted to Constable Om Parkash for the aforementioned purpose. ASI Pat Ram then went to the spot, prepared rough site plan of the place of occurrence, lifted blood stained earth from the spot and made it into a parcel, raided the Dhani of Mahender accused who could not be apprehended as he managed to run away, recovered blood stained kurta and pyjama of Mahender accused from his Dhani, prepared site plan of the place of recovery of kurta and pyjama, search of the accused was made and on return to the Police Station ASI Pat Ram deposited the case property with the MHC. Scaled site plan was got prepared through the Patwari.

It may also be mentioned here that initially Dr. D.N. Bagri, Medical Officer, General Hospital, Hisar had medico-legally examined Chattar Singh on 7.10.2000 at 7.45 p.m. He was, at that time semi-conscious and gasping. His pulse was 110/minute and BP was 90/70 mm of Hg. His pupils were dilated and non reacting to light. He had three attacks of vomiting since 5.00 p.m. Following injuries were noticed on his person :-

- "1. There was an incised wound of size 4 c.m. x 1/2 cm. into skin deep on the left side of forehead starting from 2 cm. above the left eye-brow.
2. There was a contused wound of size 5 cm. x 1 cm. into skin deep over the occipital region of scalp.
3. He was complaining of pain abdomen at that time.
4. There were multiple contusions on left shoulder

joint."

All these injuries were kept under observation and the injury No.1 was caused by sharp weapon and rest of the injuries were caused by blunt weapon. The duration of all these injuries was within six hours from the time of examination.

The postmortem on the dead body of Chattar Singh was conducted by a Board headed by Doctor Gopal Bhardwaj with Dr. Ramesh Arora as its member on 8.10.2000 at 11.30 a.m. The Board found the following injuries :-

- "1. Incised wound 2.5" x ½" on left frontal region with reddish clotted blood obliquely placed.
2. Lacerated wound 3" x 1" on left side of occipital region. Reddish clotted blood.
3. Multiple contusions on left shoulder with reddish clotted blood.
4. A contused abrasion on left chest with reddish clotted blood below left nipple."

On dissection left chest showed underlying sub cutaneous tissues with the effusion of blood with fracture left 4th to 7th ribs. Blood was seen in abdominal cavity with tear of spleen. Blood was also seen in peritoneal cavity. Left pleura was ruptured with laceration of lung with blood was present in the left chest. On dissection of injuries one and two underlying sub cutaneous tissue showed effusion of blood with underlying bones and brain matter were healthy. Right larynx, right pleura were healthy and pale. Left chamber of heart was empty. Right was partly full. All other organs except described were healthy and pale and viscera

organs sent for chemical analysis. After seeing the FSL report, the Board of Doctors opined that cause of death was haemorrhage and shock, especially injury No.4 which was sufficient to cause death in ordinary course of nature.

On 16.10.2000 the two convicts, namely, Sher Singh and Nanda were arrested. Mahender Singh could not be arrested as he was stated to be absconding. Satbir and Vijender @ Pala Ram were not challaned by the police. The case was, thereafter, committed to the Court of Sessions where Nanda and Sher Singh were charged for committing the aforementioned offences, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Manoj. The prosecution then moved an application under Section 319 Cr.P.C. for summoning Satbir and Vijender @ Pala Ram as additional accused. Vide order dated 11.10.2001, learned Additional Sessions Judge, Hisar allowed the said application and summoned Satbir and Vijender @ Pala Ram, besides Mahinder Singh accused for facing the trial alongwith the two convicts. As summons of the aforementioned three accused were received back unserved, non-bailable warrants were issued against them. Despite the same, none of the three co-accused could be arrested and vide order dated 29.4.2002, the trial Court declared them as proclaimed offenders and proceeded with the trial of the case against the present two convicts. They were, once again, charged for the aforementioned offences, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Ashok, Photographer, who proved negatives Ex.P1 to Ex.P4 as snaps taken by

him of the dead body with its positives as Ex.P5 to Ex.P8, PW2 Constable Om Parkash, who tendered in evidence his affidavit Ex.P9, PW3 Ram Kishan, Patwari who proved the scaled site plan Ex.P10, PW4 complainant Surrender, who deposed about the motive as well as of the oral dying declaration made by his father before him, PW5 Dr. D.N. Bagri, who had medico-legally examined Chattar Singh, PW6 Dr. Gopal Bhardwaj, who, alongwith Dr. Ramesh Arora, had conducted postmortem on the dead body of Chattar Singh, PW7 HC Hans Raj, who tendered in evidence his affidavit Ex.P24, PW8 Constable Kulbir Singh, who tendered in evidence his affidavit Ex.P25, PW9 Constable Bholu Ram, who tendered in evidence his affidavit Ex.P26, PW10 Shri Maan Singh, DSP, HQ, Hisar who deposed that on 16.6.2000, while he was posted as Inspector, Police Station Sadar, Hisar he had arrested accused Nanda and Sher Singh, PW11 Inspector Sube Singh, who on 22.12.2000 stood posted as SHO, Police Station Sadar, Hisar and deposed about preparing the final report under Section 173 Cr.P.C., PW12 SI Jai Singh, who had recorded formal FIR Ex.P27 on the basis of statement/ruqa Ex.P11, PW13 Nihal Singh, who deposed about the ocular account of the occurrence, PW14 Dr. J.R. Verma, who proved ruqa Ex.P28 sent by him on 17.10.2000 to the police on the death of Chattar Singh and also conducted medico-legal examination of accused Nanda and Sher Singh on 17.10.2000 and found no injuries on their person, PW15 Manoj, another eye-witness of the occurrence and PW16 ASI Pat Ram, the Investigating Officer of the case. The prosecution also tendered in evidence report Ex.P37 of the Forensic Science Laboratory before closing its evidence.

When examined under Section 313 Cr.P.C., both the convicts

claimed to be innocent and falsely implicated. According to them, it was a blind murder. Accused Sher Singh also stated that his name had been mentioned by the PWs to get his land and the standing crop.

In their defence, the convicts examined DW1 Constable Ravinder Singh and DW2 Bhago.

After hearing learned counsel for the parties and on going through the record, the trial Court believed the prosecution case and convicted and sentenced the two convicts, as mentioned above. Hence, the aforementioned two separate appeals filed by them.

Learned counsel for the parties have been heard and the evidence minutely scanned with their able assistance.

It is the case of the prosecution that Chhatar Singh, since deceased was returning to his residential dera set up in the fields while riding a mare and the five accused, including two convicts after stopping their bullock cart, opened an assault and caused injuries to him. The occurrence was witnessed by his brother PW13 Nihal Singh and nephew PW15 Manoj as at the relevant time they were going to have a round of their fields and were present close to the place of occurrence. PW13 Nihal Singh testified that the accused stopped their bullock cart and opened an attack on the deceased. Sher Singh gave a Kulhari blow on the head of Chhattar Singh, who fell down from the mare and the mare ran towards his Dhani. The four other accused, namely, Nanda, Mahinder, Satbir and Vijender @ Pala Ram gave lathi blows to Chhattar Singh. The accused, thereafter, left the place of occurrence. In the meantime, Surrender, son of the deceased, also reached there on the mare and asked his father Chhattar Singh that who had given him the injuries. Upon this, Chhattar

Singh told him about having been injured at the hands of the accused. Chattar Singh was then removed in a tractor-trolley to his Dhani and, thereafter, to Civil Hospital, Hisar in a jeep. After reaching the hospital, the doctor declared him dead. He also deposed that the accused was inimical towards the deceased because they were in the habit of preparing meat and consuming liquor in the fields, which fields had been taken on lease by Chattar Singh and Sher Singh jointly but Chattar Singh had been objecting to the acts of the accused as he did not like his land to be used for illegal activities. PW15 Manoj testified that when he, alongwith his uncle Nihal Singh, was going to their fields by a kacha path from their house, they noticed the accused coming on a bullock cart and Chattar Singh was following them on a mare. He also deposed that Sher Singh gave a Kulhari blow on Chattar Singh who fell down and, thereafter, the other four accused caused injuries to him with lathies. They had tried to rescue Chattar Singh but the accused fled away. The mare of Chattar Singh also ran towards his Dhani. In the meanwhile, Surender, son of the deceased, came at the spot on the same mare and was told by his father Chattar Singh about the occurrence. Chattar Singh was then taken to his house and subsequently to Civil Hospital, Hisar where he expired after 10/15 minutes. He also deposed that the cotton crop loaded on the bullock cart was jointly owned by Sher Singh and Chattar Singh and it was to be unloaded at the house of Chattar Singh to be thereafter divided between them. According to him, the motive for the occurrence was about five accused drinking liquor and cooking meat in the land jointly taken on lease by Sher Singh and Chattar Singh, which was not liked by Chattar Singh who used to stopped them from consuming liquor and cooking meat.

Apart from deposing about the ocular account, both PW13 Nihal Singh and PW15 Manoj also deposed about the arrival of PW4 Surender, son of the deceased at the spot while riding the mare which mare had earlier run away to the residential dera of Chattar Singh after he was attacked by the accused. Chattar Singh, when asked by his son Surender as to what had happened, had apprised him of having been attacked and caused injuries by the accused. While deposing before the trial Court as PW4, Surender stated that at about 5/5.15 p.m. on 7.10.2000, the mare used by his father Chattar Singh for the purpose of riding returned to the dera without his father and he suspected that the mare might have fallen her father and he, accordingly, rode the mare and went to the fields. He had covered a distance of 10/12 killas when he noticed his father lying in an injured condition. He noticed that Manoj and Nihal Singh were present there. When he asked his father as to what had happened, he told him that the accused had caused injuries to him and in case Manoj and Nihal Singh had not reached the spot, the accused would have killed him. He also stated that he removed his injured father on a tractor-trolley to the Dhani and, thereafter, to General Hospital, Hisar in a jeep where his father died about 30/45 minutes after reaching there. As the oral statement made by Chattar Singh before his death related to the circumstances leading to his death, it can safely be termed as a dying declaration. The said dying declaration has been referred to by PW4 Surender, which stands duly corroborated by PW13 Nihal Singh and PW15 Manoj. The medical evidence by way of the testimonies of PW5 Dr. D.N. Bagri who had conducted medico-legal examination of Chattar Singh on 7.10.2000 at 7.45 p.m. and by PW6 Dr. Gopal Bhardwaj, who had

conducted post-mortem on the dead body on 8.10.2000 at 11.30 a.m. One of the injuries was found to be incised wound while the other were blunt weapon injuries in the form of lacerated wounds, contusions etc. Merely because PW13 Nihal Singh had testified that when he and others had brought Chattar Singh to Civil Hospital, Hisar, the doctor declared him dead is not sufficient to hold that Chattar Singh had died immediately after receiving the injuries and there was no occasion for him to make oral dying declaration before his son PW4 Surender, his brother PW13 Nihal Singh and nephew PW15 Manoj, especially when PW5 Dr. D.N. Bagri had testified that the duration of all the injuries was within six hours from the time of their examination. Meaning thereby, that after receiving the injuries at the hands of the accused, Chattar Singh did not succumb to those injuries at the spot itself. Rather, he was fit enough to make oral dying declaration before his close relatives. The defence did not suggest to PW5 Dr. D.N. Bagri that with the injuries received by him, Chattar Singh would not have remained conscious so as to make statement before his relatives about the manner and the details of the occurrence in which he had received injuries at the hands of the accused. Fact remains that even after reaching General Hospital, Hisar, Chattar Singh was alive and for that reason he was subjected to medico-legal examination. The doctor had noticed that at that time, he was semi-conscious and gasping.

The occurrence in question had taken place on 7.10.2000 at 5/5.15 p.m. Immediately after the occurrence, Chattar Singh was shifted to his Dhani and, thereafter, removed to Civil Hospital, Hisar where he was medico-legally examined on the same day at 7.45 p.m. After his medico-legal examination, he succumbed to his injuries at 11.50 p.m.

Immediately, thereafter, i.e. on 7.10.2000 at 11.50 p.m., Surender had made statement Ex.P11 before PW16 ASI Pat Ram and on its basis FIR Ex.P27 came to be registered at Police Station Sadar, Hisar soon thereafter, i.e. on 8.10.2000 at 12.15 a.m. In his statement Ex.P11, the complainant mentioned about Manoj and Nihal Singh present by the side of his injured father. He also mentioned about his father making oral dying declaration to him. It cannot be said that the prosecution had any time to cook up a false version so as to falsely implicate the two convicts. Merely because the special report was received by the Ilaqa Magistrate on 9.10.2000 at 3.15 a.m., is not sufficient to hold that the FIR Ex.P27 had not been registered on 8.10.2000 at 12.15 a.m., as in the meantime, inquest report Ex.P20 had already been prepared and sent alongwith the dead body for the purposes of postmortem, which postmortem was conducted on 8.10.2000 at 11.30 a.m. The inquest report Ex.P20 contained the statement Ex.P11 of PW4 Surender. As the postmortem was conducted on 8.10.2000 at 11.30 a.m., no cognizance of delayed receipt of the special report by the Ilaqa Magistrate beyond the time when the postmortem was conducted, needs to be taken. All the necessary papers containing the version of the prosecution regarding the manner in which the occurrence had taken place and the deceased making oral dying declaration had already been completed by the Investigating Officer. As the postmortem had been conducted on 8.10.2000 at 11.30 a.m., it cannot be said that the statement Ex.P11 and FIR Ex.P27 were fabricated long after the occurrence or such a delay having been used by the prosecution to falsely name the two convicts as accused.

Despite subjecting PW4 Surender, PW13 Nihal Singh and

PW15 Manoj to lengthy cross-examination, the defence could not shatter their testimonies or bring on record any material which could indicate that the two convicts, had been falsely implicated in the case for committing the murder of Chattar Singh. Even otherwise, the testimonies of the aforementioned three witnesses are found to be cogent and convincing and no benefit, whatsoever, can be extended to the two convicts.

It is true that the motive for the occurrence was the deceased objecting to the accused taking liquor and cooking meat in the fields is trivial but the manner in which the occurrence had taken place and the injuries received by Chattar Singh, it stands established that the two convicts alongwith their co-accused in furtherance of common intention had caused the murder of Chattar Singh, making them liable for committing the offence under Section 302 read with Section 34 IPC.

In view of the above, this Court is of the view that no fault can be found with the judgment of conviction and order of sentence passed by the trial Court. Both the appeals, i.e. Criminal Appeal No.D-426-DB of 2003 filed by Sher Singh and Criminal Appeal No.D-463-DB of 2003 filed by Nanda are devoid of any merit and, accordingly, dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

February 10, 2016
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