

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

CRA D-340-DB of 2003

Date of Decision: July 13, 2017

Iqbal and others	Versus	Appellants
State of Haryana		Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present: Mr. Sudhir Sharma, Advocate with
Mr. Ram Krishan Rana, Advocate
for the appellants.

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

T.P.S.MANN, J.

The appellants, namely, Iqbal, Yasin, Jagmal and Jamshed alongwith Mariyam wife of Ishak were tried for committing offences punishable under Sections 148, 302 read with 149, 323 read with 149 and 452 read with 149 IPC. Vide judgment and order dated 29/31.3.2003, learned Additional Sessions Judge, Fast Track Court, Gurgaon acquitted Mariyam accused of the charges against her. The appellant, namely, Iqbal was convicted under Section 302 IPC and sentenced to undergo

rigorous imprisonment for life and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for one year. He was also convicted under Section 323 IPC and sentenced to undergo rigorous imprisonment for six months. Yasin, Jagmal and Jamshed appellants were also convicted under Section 323 IPC but were ordered to be released on probation on their entering into bonds in the sum of Rs.10,000/- each with one surety in the like amount for a period of one year to keep peace and be of good behaviour in the meantime and to appear and receive the sentence as and when called upon to do so by the Court. Both the sentences of imprisonment imposed upon Iqbal appellant were ordered to run concurrently.

Aggrieved of their conviction and sentences, the convicts filed the present appeal, which stands admitted and the trial Court record requisitioned.

According to the prosecution, Majid son of Kapura, resident of village Nai, Police Station Punhana got recorded his statement before HC Rajpal at Government Hospital, Gurgaon on 20.7.2000 at 9.30 p.m. He stated therein that he worked as a labourer and his house and that of Jagmal accused, resident of village were located nearby. On 20.7.2000 at about 7.00 a.m., the

complainant was standing in front of his own house whereas his nephew Sahid son of Abdul Rehman was returning to his house after attending the call of nature. When Sahid reached near his house, the daughter of Jamshed accused alongwith her grandmother Mariyam were going to Gait (cattle shed) in order to tether the buffalo. Amnisha aged 4 years, daughter of Jamshed accused panicked on seeing Sahid and started crying. At this Mariyam abused Sahid. On hearing the noise raised by Mariyam, Iqbal having iron rod in his hand while Yasin, Jagmal and Jamshed accused armed with lathis reached there and while uttering abuses, gave beatings to Sahid. Jagmal gave a lathi blow on the feet of Sahid, who fell down. While he was lying fallen, Iqbal gave rod blow on his head whereas Jamshed and Yasin gave invisible injuries on the back and private parts of Sahid. When the complainant rushed to rescue Sahid, Jagmal gave lathi blow on his head, which he warded off by raising his left hand, Yasin gave lathi blow near the right elbow of the complainant. Bhonda son of Abdul Rehman and Kala son of Jagmal also reached the spot, who rescued the complainant and Sahid from the assailants. Out of the assailants, it was Iqbal, who had given a lathi blow on the head of the complainant, as a result of which, he had fallen down. While he was lying fallen, Jamshed had given a lathi blow

on his back. On receipt of injuries, Sahid, nephew of the complainant had become unconscious. In case Bhonda and Kala had not made an attempt to rescue the complainant and his nephew, the assailants would have given more injuries to them. The complainant also gave injuries to the culprits in his self-defence. The complainant and Bhonda took Sahid from the spot to Punhana Hospital where the doctor referred him to Government Hospital, Gurgaon. As Sahid had serious injuries on his person, the doctor referred him to Safdarjang Hospital, Delhi. According to the complainant, the assailants had caused serious injuries on account of the altercation with them on the issue of a quarrel between the children.

It is also the case of the prosecution that after recording the statement made by the complainant, Head Constable Rajpal made an endorsement on the same and sent it to Police Station Punhana for making entry in the roznamcha (Daily Diary). On 21.7.2000, Mohammad Hussain came present at Police Post Bichhore and informed that on account of receipt of injuries, Sahid had died in Safdarjang Hospital during the last night. Accordingly, Sub-Inspector Satbir Singh, Station House Officer, Police Station Punhana reached the Government Hospital Gurgaon and directed the registration of FIR under Sections

302/323/34 IPC against the accused. Consequently, FIR No. 187 (Ex.PJ) was registered at Police Station Punhana by MHC Desh Raj on 21.7.2000 at 12.50 p.m. Special report was handed over to Constable Chander Pal, who delivered the same to the Ilqa Magistrate on 21.7.2000.

During the investigation of the case, SI Satbir Singh alongwith Mohammad Hussain and police officials reached the spot and after making inspection, recorded the statements of the witnesses. He collected blood stained earth from the spot. Rough site plan of place of occurrence was prepared. On 21.7.2000, ASI Ramesh Chander, who was posted at Police Station Sarojani Nagar, Delhi, Police Post Safdarjang Hospital conducted inquest proceedings on the dead body of Sahid and got the postmortem conducted. On 29.7.2000, ASI Harender Singh arrested Jagmal, Iqbal and Yasin accused and interrogated them. Separate disclosure statements were made by Iqbal, Yasin and Jagmal accused. Pursuant to the same, Jagmal and Yasin accused got recovered a lathi each from the places of their concealment. Iqbal accused also got recovered iron rod. On 8.8.2000 offence under Section 452 IPC was added. On 3.11.2000 Jamshed and Mariyam were arrested. Jamshed accused produced a lathi, which was taken into possession. Report of the Forensic Science

Laboratory was obtained. After completion of investigation and presentation of the challan followed by commitment of the case, learned Additional Sessions Judge Gurgaon charged the accused for the various offences as mentioned above, to which, they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined 16 witnesses.

PW1 Majid and PW9 Bhonda deposed that they were the eye-witnesses of the case, in which, Majid himself and his nephew Sahid had received injuries and later on, Sahid had succumbed to the injuries received by him.

PW2 Dr. P.C.Arya deposed that he had medico-legally examined Sahid on 20.7.2000 and noticed the following injuries on his person:-

- “1. There was a lacerated wound 1cm x ½ cm skin deep located on a contusion of 3 x 2 cms size on the frontal area of skull in the midline. This injury was advised X-ray and kept under observation.
2. There was swelling on the scrotum and the injury was kept under observation.
3. A contusion on the back 3 x 2 cms”.

According to him, all the injuries were caused by blunt weapons.

PW3 Dr. Lal Singh deposed that he had medico-legally examined PW1 Majid on 20.7.2000 and found following injuries on his person:-

- “1. There was a lacerated wound over the left side of parietal region of skull. It was 0.5 cm x 3.5 cms bone deep size. X-ray skull AP and lateral view was advised.
2. There was swelling over the right forearm middle part on posterior aspect 3 cms x 4 cms in size. X-ray right forearm AP and lateral view advised.
3. Lacerated wound on the left hand's groove between index and middle finger. Its size was 0.5 cm x 1.5 cms. Movements of the fingers were normal. Advised X-ray of left hand. AP and lateral view.
4. The patient complained of body ache”.

On the same day, he also medico-legally examined Iqbal accused and noticed the following injuries on his person:-

- “1. There was a lacerated wound over the middle of the parietal region of skull. It was 0.5 x 1.5 cms into bone deep size. Advised X-ray skull in AP and lateral view.

2. Lacerated wound on the occipital region of skull. Its size was 0.5 cm x 1.5 cms into superficial to skin”.

He further testified that he also medico-legally examined Jagmal accused on the same day and found the following injuries on his person:-

- “1. There was a lacerated wound on the right side of parietal region of skull. Its size was 0.75 x 3.5 cms into bone deep. Advised X-ray skull in AP and lateral view.
2. There was a lacerated wound over the occipital region of skull 0.5 x 2.5 cms into bone deep in size. Advised X-ray of skull in AP and lateral view”.

PW10 Dr. Chander Kant testified that he conducted postmortem on the dead body of Sahid on 23.7.2000 and noticed the following injuries :-

- “1. One contused lacerated wound in the middle of fronto-parietal region, 11 cms above from bridge of nose, size 3 cms x 2.1 cms x bone deep.
2. Contusion on the outer aspect of right elbow, size 3.1 cms x 2.1 cms reddish-bluish in colour”.

He also testified that there was extravasation of blood under scalp in the left and middle of frontal region extending upto

anterior aspect of parietal region size 15 cms x 10.3 cms. There was transverse fracture of left frontal bone extended upto middle of right frontal bone. Sub-dural hemorrhage on superior surface of right fronto-parietal lobe, size 5.8 cms x 4.5 cms. generalized subarachnoid hemorrhage on superior surface of both fronto-parietal lobe multiple contusion under surface on right occipital lobe under surface of right frontal lobe. He further stated that proximate time till death was about 54 hours. In his opinion, the cause of death was due to shock and head injury, injuries were antemortem in nature, caused by application of blunt force and collectively sufficient to cause death in the ordinary course of nature.

PW6 Sarwan Kumar, Draftsman-cum-Constable proved the scaled site plan Ex.PG, which he had prepared on the pointing of the place by PW1 Majid.

The investigation part of the case was brought on record by the prosecution by examining PW4 Constable Om Parkash, PW5 Constable Chanderpal, PW7 Head Constable Desh Raj, PW8 Head Constable Rajpal, PW11 SI Ramesh Chander, PW12 SI Satbir Singh, PW13 Constable Sukh Ram, PW14 ASI Harender Kumar, PW15 ASI Sarup Singh and PW16 Inspector Thawar Singh.

The prosecution also tendered in evidence report of Forensic Science Laboratory, Madhuban as Ex.PB.

When examined under Section 313 Cr.P.C., all the accused stated that the case was false and the witnesses were interested and, therefore, deposing falsely. According to them, it was complainant Majid and deceased Sahid, who had opened attack upon Iqbal and Jagmal with lathis and caused injuries on their head. In their self-defence, Iqbal and Jagmal caused injuries to Majid and Sahid. Ali Mohammad had also witnessed the occurrence. The occurrence had taken place near the house of the accused. Police had also recorded the statement of Iqbal, which is Ex.DC.

In their defence, the accused examined B.R. Batra, Medical Record Technician, Safdarjang Hospital, New Delhi as DW1, who deposed from the summoned record that Jagmal accused was admitted in Safdarjang Hospital on 20.7.2000 and discharged on 24.7.2000. He also proved discharge summary Ex.DD, which bore the signatures of Dr. Rishabha.

After hearing learned counsel for the parties and on going through the record, learned trial Court held that Mariyam accused did not cause injury to anyone. She had just abused Sahid. She did not give any lalkara for inflicting injuries or killing

anyone. On hearing her noise, Jagmal, Iqbal, Yasin and Jamshed had reached the spot but no role was attributed to Mariyam and, therefore, she could not be convicted for any offence in this case. It was also held that though the appellants after hearing noise had come to the spot but they had not made any pre-arranged plan. Infact, there was no prior meeting of minds. Since there was no pre-meditation and the occurrence was a sudden affair, each of the appellants was to be held liable for his individual act and not vicariously liable for the acts of others. Accordingly, Iqbal appellant was held guilty under Sections 302 and 323 IPC whereas the other three appellants, namely, Yasin, Jagmal and Jamshed were held guilty under Section 323 IPC and sentenced, as mentioned above.

This Court has heard learned counsel for the appellants and learned State counsel besides going through the evidence available on the record with their able assistance.

Learned counsel for the appellants has submitted that it was complainant Majid and deceased Sahid, who had opened the attack and caused injuries to Iqbal and Jagmal and caused injuries to them. The factum of their injuries has been brought on record by the defence while cross-examining PW3 Dr. Lal Singh. Two injuries were noticed on the person of Iqbal appellant. Injury

No. 1 was a lacerated wound over the middle of the parietal region of skull whereas injury No.2 was a lacerated wound on the occipital region of the scalp. Similarly, Jagmal appellant had received two injuries, both on his skull. As such, the appellants cannot be said to be aggressors and the injuries, if any, were received by complainant Majid and deceased Sahid at the hands of Iqbal and Jagmal appellants in the exercise of right of their private defence of person. However, it may be noticed that while making statement Ex.PA, on the basis of which, FIR Ex.PJ was recorded, complainant Majid had stated that he had given injuries to the assailants in his self-defence. Even at the trial, PW1 Majid deposed that in exercise of his right of defence, he had given a blow to Jagmal on his head and also a blow with the lathi to Iqbal appellant on his head. Merely because, he had not mentioned while making statement Ex.PA that injuries were caused to Jagmal and Iqbal or that a lathi was wielded by him in giving injuries to Jagmal and Iqbal is no ground to hold that the prosecution has not led sufficient evidence to explain the injuries on the accused. PW9 Bhonda had also testified that Majid had got up and snatched the lathi from Jagmal, with which, he gave one blow each to Jagmal and Iqbal. Though he had not mentioned in his statement before the police during the

investigation about Majid snatching the lathi from Jagmal and giving a blow each to Jagmal and Iqbal yet that will again not be sufficient to hold that the prosecution did not explain the injuries on the assailants.

From the prosecution evidence, it stands established that at the time of the occurrence, complainant Majid was standing near his house when he noticed his nephew Sahid returning after attending call of nature. At that very moment of time, Mariyam was going from her house to her Gait to tether the buffalo. She was accompanied by Amnisha, daughter of Jamshed appellant and grand-daughter of Mariyam. On seeing Sahid, said Amnisha got scared and started crying. This resulted in Mariyam abusing Sahid. The noise created by Mariyam attracted the appellants. Three of them were armed with lathis while the fourth, namely, Iqbal was carrying an iron rod. Injuries were caused thereafter by the appellants to Sahid. When the complainant Majid went ahead to rescue his nephew. He was also not spared and caused injuries. PW1 Majid was, thereafter, medico-legally examined by PW3 Dr. Lal Singh, who found four injuries on his person. Injury No. 1 was lacerated wound on the left side of parietal region of his skull, injury No. 2 was swelling over right fore-arm, injury No. 3 was lacerated wound on the left hand's

groove between index and middle finger whereas injury No. 4 was complaint of body ache. Merely because PW3 Dr. Lal Singh testifying that possibility of injuries No. 2 and 3 having been caused with a fall on a hard surface could not be ruled out whereas injury No. 1 could be caused by a stone blow does not mean that complainant Majid had not received the injuries in the occurrence. The occurrence had taken place on 20.7.2000 at 7.00 a.m. Immediately after the occurrence, Majid was taken to CHC Punhana where was medico-legally examined on the same day at about 10.00 a.m. According to PW3 Dr. Lal Singh, injuries on the person of Majid were caused within six hours. The said doctor did not rule out about causing of injuries in the manner as projected by the prosecution. PW1 Majid was cross-examined at length but no material contradiction could be pointed out by the defence in his testimony. From the medical evidence, it stands established that PW1 Majid had received the injuries at the hands of the appellants. Even in their examination under Section 313 Cr.P.C., the defence admitted the presence of Majid at the time of the occurrence. As such, the statement of PW1 Majid is sufficient to hold that the occurrence had taken place in the manner as projected by the prosecution.

The testimony of PW1 Majid is corroborated by PW9

Bhonda, who was attracted to the place of occurrence. At that time, he was working in his fields and on hearing the noise, he reached the place of occurrence. Merely because he happened to be the brother of deceased is no ground to reject his testimony, especially, when the defence has not been able to point out any material discrepancy or contradiction in his testimony.

Learned trial Court while ruling out the applicability of the provisions of Section 149 IPC has observed that there was no prior meeting of minds and since there was no premeditation, the occurrence was a sudden affair. The occurrence had ensued when Amnisha, a young girl of the age of four years became scared on seeing deceased Sahid and it was this act of Sahid, which led to the occurrence. None of the accused was armed with any conventional weapon. While Iqbal was armed with an iron rod, the other three, namely, Yasin, Jagmal and Jamshed were carrying a lathi each. Under these circumstances, it cannot be said with certainty that Iqbal appellant while causing injury with an iron rod on the head of Sahid ever intended to commit his murder. At the most, he could be guilty of committing offence of culpable homicide not amounting to murder as he knew that the injury caused by him to Sahid was likely to cause his death. As such, the conviction of Iqbal under Section 302 IPC cannot be

sustained. Instead, he is liable for committing offence punishable under Section 304 Part II IPC. At the same time, no case is made out for any interference in the conviction of the remaining appellants under Section 323 IPC.

Resultantly, the conviction of Iqbal appellant under Section 302 IPC is set-aside. Instead, he is convicted under Section 304 Part II IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for one year. His conviction and sentence of imprisonment and fine under Section 323 IPC is upheld. Both the substantive sentences shall run concurrently. The conviction and sentence of Yasin, Jagmal and Jamshed appellants under Sections 323 IPC is also upheld.

The appeal is disposed of accordingly.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

July 13, 2017
amit rana

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No