

In the High Court of Punjab and Haryana at Chandigarh.

Criminal Appeal No.D-678-DB of 2010
Date of Decision:- October 13, 2017

Anil and another

.....Appellants

Versus

State of Haryana

....Respondent

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Bijender Dhankhar, Advocate.
Counsel for the appellants.

Mr.Ankur Mittal, Additional Advocate General, Haryana with
Mr. Manoj Dhankhar, Assistant Advocate, General, Haryana.

Gurvinder Singh Gill, J.

1. Anil and Bhim Singh have filed the present appeal challenging judgment dated 14.6.2010 and order dated 15.6.2010 passed by learned Sessions Judge, Narnaul vide which they have been convicted for committing offence punishable under Section 302 read with Section 34 of Indian Penal Code, 1860 (for short, 'IPC') and have been sentenced to undergo imprisonment for life and to pay fine of ₹30,000/- each.
2. The matter arises out of FIR No.155 dated 25.8.2008 under Section 302 read with Section 34 IPC Police Station Ateli, lodged on the basis of application (Ex.PA) submitted by Ram Niwas. The translated gist of the application reads as follows:

“I am resident of Village Nangal. On the occasion of Janamashtami I along with my brother Ishwar Singh were going to village temple at about 10.30/11.00 PM. When we were at some distance from the said temple near a turning point, we heard cries of my uncle Satyabir and upon hearing the same I along with Ishwar Singh rushed near Satyabir and saw that Anil son of Raghubir, carrying an iron rod, and Bhim son of Raghubir Singh, carrying a ‘*lathi*’, were present there along with Raghubir and Laxmi Narain sons of Sarjeet. We saw that Anil gave blows with iron rod on the legs of Satyabir as a result of which he fell down on the ground and while he was falling Bhim gave several blows with his ‘*lathi*’ on his chest, legs and hands. When I and my brother objected then Raghubir and Laxmi Narain said that we should be taught a lesson too and we being scared kept away. All those four persons then left the place with their respective weapons. Satyabir was lying unconscious and while I remained with him and Ishwar Singh brought his motorcycle from home and they made Satyabir sit in the middle on the motorcycle and brought him to Government Hospital where he was declared dead. The cause of quarrel is that about 1¾ years back my brother Ishwar had quarreled with Laxmi Narain and my brother had been challaned by the police but later the matter was compromised. Action be taken against the aforesaid persons.”

3. Upon registration of FIR, the police conducted investigation in the matter.

Inquest proceedings were conducted. The dead body was sent for post-mortem examination. Rough site plan of the place of occurrence was prepared. Statements of witnesses were recorded under Section 161 Cr.P.C. After conclusion of investigation, report under Section 173 Cr.P.C. was filed in the Court of learned Judicial Magistrate 1st Class, Narnaul, against accused Anil and Bhim Singh while the remaining two accused namely-Raghubir and Laxmi Narain were found innocent. It may here be added that subsequently during the course of trial the prosecution moved application under Section 319 Cr.P.C. for summoning of Raghubir and Laxmi Narain but the same was dismissed.

4. The prosecution in order to establish its case examined as many as 12 witnesses. PW-1 Ram Niwas, complainant stated in tune with his application Ex.PA on the basis of which FIR was lodged. PW-2 Ishwar who was accompanying the complainant Ram Niwas at the time of occurrence also stated identically in corroboration to the statement of complainant. PW-3 Rameshwar stated that he was associated with the inquest proceedings and had identified the dead body of Satyabir. PW-4 HC Mahesh Kumar stated that he had prepared the scaled site plan Ex.PB of the place of occurrence. PW-5 ASI Naresh Kumar stated that on 25.8.2008 upon receipt of application Ex.PA of complainant Ram Niwas along with endorsement Ex.PA/1 of SI Dharampal he registered the FIR Ex.PA/2. PW-6 Dr.Arun Kalra, Medical Officer, CHC, Ateli, stated that upon receipt of a dead body in the hospital on 24.8.2008 at about 11.40 PM he had sent ruqa Ex.PD to the police.
5. PW-7 C. Risal Singh stated that on 25.8.2008 he had delivered the special

reports to the Ilaqa Magistrate and to senior police officers without delay. PW-8 HC Satyabir Singh is formal witness who tendered his affidavit Ex.PE in evidence wherein he deposed that on 3.10.2008 MHC Naresh Kumar had handed over the case property to him directing him to deposit the same in FSL Madhuban which he accordingly deposited the same day. He further stated that as long as the case property remained in his possession the same was not tampered with. PW-9 HC Rakesh Kumar stated that on 25.8.2008 after the post-mortem examination was conducted on the dead body of Satyabir, the Doctor handed over a sealed parcel to him which he delivered to SHO. PW-10 Ashok Kumar stated that on 27.8.2008 he along with Kalu Ram had gone to Police Station Ateli in connection with the case and that in his presence both the accused made disclosure statements Ex.PG and Ex.PH and in pursuance of the same got an iron rod and a wooden stick recovered which were taken into possession vide recovery memo Ex.PK and Ex.PL.

6. PW-11 Inspector Dharampal stated that on 25.8.2008 he had received a ruqa from CHC, Ateli, regarding receipt of dead body of Satyabir and thereupon he went to the hospital. He further stated that at about 4.30 AM complainant Ram Niwas presented an application Ex.PA and he made his endorsement Ex.PA/1 for registration of FIR. He has further stated regarding the inquest proceedings and other proceedings conducted during investigation of the case. PW-12 Rajender Singh deposed that he was entrusted with investigation of the case on 26.8.2008 and he arrested both the accused on the said day and interrogated them on 27.8.2008 and that during interrogation they made disclosure statements Ex.PG and Ex.PH and in pursuance thereof got iron rod

and wooden stick recovered, which were taken into possession vide recovery memo Ex.PK and Ex.PL. He has further stated in respect of the investigation conducted in the matter and regarding filing of challan upon completion of investigation. PW-13 Dr. Ashok Kumar, Medical Superintendent, Government Hospital Narnaul who had conducted post mortem examination on the dead body of Satyabir and proved the post mortem report as Ex.PP.

7. Upon conclusion of the prosecution evidence, entire incriminating evidence was put to the accused to enable them to explain the same but the accused denied the prosecution case in toto and pleaded false implication. The accused in their defence examined DW-1 Babu Lal who deposed that on 24.8.2008 he along with Ranbir had gone to a brick kiln situated in village Fatni and when they reached in front of a temple in village Nangal they saw a boy lying on the road and 4-5 children were standing around him. Upon inquiry, they disclosed that a TATA 407 had struck against the boy and that in the meanwhile some persons came out of the temple and recognized the boy to be Satyabir who was lying in injured condition and was bleeding.
8. The learned trial Court, upon appreciation of the evidence on record held the accused guilty for committing offence punishable under Section 302 read with Section 34 of IPC vide impugned judgment dated 14.6.2010. Vide order dated 15.6.2010 both the accused were sentenced to undergo imprisonment for life and to pay fine of ₹30,000/- each. Aggrieved with their conviction and sentence the accused have filed the present appeal.
9. The learned counsel for the appellants, while assailing the impugned judgment, submitted that there is no independent witness to the occurrence and

that both the eye witnesses are brothers and closely related to the deceased. The learned counsel has submitted that since the occurrence is stated to have taken place on the occasion of Janamashtami, it remains unexplained as to why the occurrence was not witnessed by anybody else. Learned counsel has further submitted that the prosecution has not been able to establish any motive for the crime and that the assertion of complainant that there was some dispute between the brother of complainant and Laxmi Narain which too had been compromised would hardly furnish any reason for murdering Satyabir. The learned counsel has further submitted that in fact it is a case where the accused had sustained injuries when one TATA 407 truck struck against him and the police had falsely implicated the accused at the behest of the complainant party. The learned counsel has further submitted that even otherwise the conduct of the complainant and his brother Ishwar, in not informing any member of the family when Ishwar had gone to fetch motorcycle is highly unnatural and clearly shows that a story was cooked up much after the incident to implicate the accused falsely.

10. On the other hand, the learned counsel representing the State submitted that the case of prosecution is established from the consistent statements of the two eye witnesses i.e. Ram Niwas and Ishwar and that the medical evidence is also in tune with the case of prosecution. The learned counsel has submitted that the impugned judgment has been rendered after duly appreciating the evidence on record and there is no infirmity in the same and that the appeal deserves to be dismissed.
11. We have considered the rival submissions addressed before this Court and

with able assistance of learned counsel have also perused relevant referred record of the case.

12. Before proceeding to discuss the ocular evidence led by the prosecution, it is apposite to refer to the medical evidence in the shape of post mortem report (Ex.PP). The prosecution examined PW-13 Dr. Ashok Kumar who had conducted the post mortem examination on the dead body of Satyabir. PW-13 proved the post mortem report as (Ex.PP) and described the injuries found on the dead body as follows:

- “(i) Bruise of size 14 x 2.5 cm Reddish colored horizontally present on anterior aspect of chest at level of nipple.
- (ii) Bruise of size 15.3 x 2.5 cm. Reddish colored present just below Injury No.i.
- (iii) Fracture both bones of left forearm, about 10 cm. Distal to elbow.
- (iv) Incised wound of size 2 x 1 cm on palmer aspect of left thumb.
- (v) Bruise of size 6 x 2.5 cm. Reddish colored present on right side of abdomen in the middle.
- (vi) Bruise of size 8 x 1.5 cm. On left thigh.
- (vii) Bruise of size 7 x 2 cm. On left thigh.
- (viii) Bruise of size 10 x 2 cm on lateral aspect of left thigh.
- (ix) Bruise of size 8 x 1 cm on lateral aspect of left thigh.
- (x) Bruise of size 7 x 1.5 cm on right thigh middle
- (xi) Bruise of size 7 x 2 cm on right thigh middle.
- (xii) Bruise of size 7 x 2 cm on just below right knee
- (xiii) Lacerated wound of size 3 x 2 cm, irregular margins, boney deep on Rt. Great toe on dorsum.
- (xiv) Lacerated wound of size 2.5 x 2 cm. irregular margins,

boney deep on Lt. Great toe on dorsum.

(xv) Lacerated wound of size 1 x 1.5 cm. on Rt. 2nd toe on medial aspect.”

13. PW-13 Dr. Ashok Kumar opined that the cause of death was shock due to hemorrhage and that all injuries were antemortem in nature and sufficient to cause death in ordinary course of nature. The aforesaid witness was briefly cross-examined on behalf of the accused. During cross-examination he stated that possibility of suffering injury if a person has a fall on the ground taking support of the hand which strikes against a sharp edged object cannot be ruled out. However, in examination-in-chief, he has specifically stated that the police had produced the weapons i.e. the pipe and the ‘*lathi*’ (wooden stick) and had sought his opinion and he had opined that all the injuries except injury No.4 could be possible with those weapons. In any case, in light of the fact that as many as 15 injuries were found on the person of deceased, it cannot be accepted that the same had been caused due to fall. As such, there is no room to doubt that it is a case of homicidal death of Satyabir. The findings of the trial Court to this effect are affirmed.
14. The prosecution relies on the testimonies of two star witnesses i.e. PW-1 Ram Niwas and PW-2 Ishwar both sons of Ram Chander. PW-1 Ram Niwas while in the witness box has stated that on 24.8.2008 when he along with his brother was on his way to temple on the occasion of Janamashtami, then they heard cries of Satyabir and they immediately rushed and saw Anil carrying an iron rod and Bhim Singh carrying a ‘*lathi*’ present there. He further stated that Laxmi Narain carrying a ‘*Kulhari*’ and Raghubir carrying a ‘*lathi*’ were also present there. He stated that Anil gave a blow with rod to Satyabir on his feet

and he fell down. He further stated that Laxmi Narain gave a '*Kulhari*' blow on left hand of Satyabir and Bhim Singh gave a blow on the chest and all four gave several blows to Satyabir with their respective weapons. He further stated that when they tried to intervene, Laxmi Narain and Raghubir threatened them also and they withdrew due to fear and thereafter all four of them left from the spot along with their weapons. To a similar effect is the statement of PW-2 Ishwar.

15. Learned counsel for the accused has however assailed the aforesaid statements on the ground that both the said witnesses are brothers of the deceased and being interested witnesses they had come forward to depose in the case though, it is a case of blind murder. Learned counsel has further submitted that no other witness had been examined by the prosecution though, this is case of the prosecution itself that it was Janamashtami festival and on which day a lot of persons visit temple. The learned counsel has submitted that since the occurrence had taken place near temple, therefore, it remains unexplained as to why there was no other witness at the spot.
16. We have considered the aforesaid submissions. It is no doubt correct that occurrence took place on the occasion of Janamashtami. However, it is also to be borne in mind that it was late in the day when the occurrence had taken place. A perusal of the site plan (Ex.PN) shows that the place of occurrence is depicted to be away from '*abadi*'. PW-11 Inspector Dharampal SI/SHO who had conducted initial proceedings in the case, specifically stated that the place of occurrence is close to the road which is away from the '*abadi*' area. Complainant Ram Niwas (PW-1) during his cross-examination stated that

houses of Vijaypal and Ved Parkash are close to the incident but none had come at the spot from the neighbourhood. PW-2 Ishwar during his cross-examination stated that though they had raised alarm but none came there at the spot. The fact that the occurrence had not taken place near the '*abadi*' and none had come to the spot despite the alarm raised, sufficiently explains the absence of any other person in the late hours of the day when the occurrence took place. As such, the case of prosecution cannot be doubted on this score itself.

17. The learned counsel for the accused has next assailed the testimonies of PW-1 and PW-2 on the ground that though the witnesses state that after Satyabir had been caused injuries and the accused had left, Ishwar went to get his motorcycle and thereafter Ishwar and Ram Niwas took Satyabir to hospital on a motorcycle but it remained un-explained as to why Ishwar did not inform anybody when he went to get his motorcycle.
18. We have considered the aforesaid submission. In the circumstances when brother of Ishwar had been caused large number of injuries, the prime concern of Ishwar, at that stage, would be to provide medical aid without wasting any time. In these circumstances the fact that he did not inform anybody else cannot be said to be abnormal conduct on part of Ishwar. Different persons act differently in different situations. A person whose brother had been caused serious injuries would be in a state of shock and may not be able to think rationally and his immediate concern would be to provide help to his brother rather than anything else. As such, the aforesaid contention does not carry much weight and is rejected.

19. Apart from the above stated consistent testimonies of PW-1 Ram Niwas and PW-2 Ishwar, the prosecution also relies upon the disclosure statement Ex.PG made by accused Anil Kumar wherein he stated that Satyabir had given a slap to him and also abused him and then he brought an iron pipe and he along with his brother Bhim Singh went to Shiv temple and gave beatings to Satyabir. He further stated that he had concealed the iron pipe at '*tin wala kotha*' (room with a *tin* roof) and could get the same recovered. Pursuant to the aforesaid disclosure statement Ex.PG, accused Anil Kumar led the police party to the disclosed place and got the iron rod recovered. Accused Bhim Singh also made an identical statement Ex.PH regarding having caused injuries to deceased with the help of a '*lathi*' and having concealed the '*lathi*' in a tin shed. Pursuant to the aforesaid disclosure statement Ex.PH, accused Bhim Singh led the police party to the disclosed place and got the '*lathi*' recovered which was taken into possession vide recovery memo Ex.PL.
20. The prosecution in order to prove the aforesaid disclosure statements and recoveries have examined PW-10 Ashok Kumar as well as PW-12 Rajender Singh who have both stated consistently that upon interrogation both the accused had made disclosure statements Ex.PG and Ex.PH on 27.8.2008 and in pursuance of the same had got an iron rod and a wooden stick recovered which were taken into possession vide recovery memos Ex.PK and Ex.PL.
21. Though, the learned counsel for the accused has attempted to assail the aforesaid disclosure statements and the recovery memos on the ground that the independent witness Kalu Ram who had attested the disclosure statements and the recovery memos has not been examined by the prosecution, but there is no

mandate of law that an independent witness must be associated and examined to prove the factum of disclosure statements or recovery memos. Both PW-10 and PW-12 had conducted the proceedings in discharge of their official duties and had no enmity with the accused so as to depose falsely. In these circumstance, we do not find any reason to disbelieve their testimonies or to discard the disclosure statements and the recoveries made in pursuance thereof.

22. Dead body of Satyabir was found to have as many as 15 injuries and barring one injury, the remaining 14 injuries were in the nature of bruises and lacerations on various parts of the body. PW-13 Dr. Ashok Kumar upon being shown the iron pipe and the wooden stick opined that the said injuries could be possible with the said weapons. As such, the recovery of the said iron pipe and '*lathi*' at the instance of the accused is an important piece of evidence which lends corroboration to the testimonies of PW-1 and PW-2.
23. The accused have examined DW-1 Babu Lal who stated that on 24.8.2008 he along with Ranbir had gone to a brick kiln situated in village Fatni and since they did not like the quality of bricks, they were going back to their village via village Nangal and when they reached their village Nangal at about 10-11 PM and were near the village Mandir, they saw a boy lying on the road having injuries who was bleeding and upon inquiry from the other boys standing nearby they were informed that a TATA 407 had struck against the boy. During cross-examination, the said witness stated that upon reading in the newspaper Dainik Bhaskar on 25th or 26th August he came to know that two persons had been arrested regarding injuries to Satyabir and then he went to

the DSP and disclosed the aforesaid facts to him.

24. Learned counsel for the accused while referring to the aforesaid statement has submitted that in fact it is a case of accidental death and that the accused had been falsely implicated due to previous enmity with the complainant party.
25. We have considered the aforesaid submission. A perusal of the statement of DW-1 does not inspire confidence at all. During cross-examination the said witness stated that upon reading in the newspaper Dainik Bhaskar on 25th or 26th August they came to know that two persons had been arrested regarding injuries to Satyabir and then they went to the DSP after 10-15 days and disclosed the aforesaid facts to him. During cross-examination, he further stated that they had never appeared in Police Station, Ateli in this connection.
26. Further the manner and number of injuries found on the dead body do not suggest that the same had been caused in some vehicular accident. In case the deceased had been struck by a truck, then in every likelihood he would be having lessor injuries but injuries would be of greater impact. Still further, no suggestion whatsoever was given to the Doctor during cross-examination that the injuries in question could have been possible by striking with a vehicle. As such, the witness examined by the accused does not appear to be trustworthy at all and no reliance can be placed upon his statement. In any case the version putforth by him is rather inconsistent with the medical evidence.
27. As a sequel to the discussion made above, we find that the accused has not been able to make any effective dent in the case of the prosecution. Both the

witnesses i.e. PW-1 Ram Niwas and PW-2 Ishwar are consistent regarding the manner of occurrence. The medical evidence is in tune with the ocular version. The disclosure statements leading to recovery of the weapons in the shape of an iron rod and 'lathi' also lend corroboration to the case of prosecution regarding causing of injuries by such weapons. There is no delay in lodging the FIR or in sending special reports so as to suggest that FIR had been lodged after consultations. The testimony of the witness examined by the accused does not inspire confidence and by no stretch of imagination it can be said to be a case of accidental death. Consequently, we have no hesitation in affirming the findings of the trial Court to the effect that the accused had caused injuries to the deceased with the help of iron rod and 'lathi' resulting in his death.

28. The learned counsel for the accused also made an alternate submission to the effect that even if the case of prosecution is taken to be correct, still at best it would be a case falling within the ambit of Section 304-I of IPC and not under Section 302 of IPC. The learned counsel cites 2005(2) RCR (Criminal) 64 Adu Ram Vs. Mukna in support of his aforesaid contention.
29. We have considered the aforesaid submission and have also perused the judgment cited by the learned counsel. In the cited case, the occurrence had taken place all of a sudden when the parties exchanged hot words over a trifle dispute and none of the injury was noticed on any vital part. However, the present case is not a case of quarrel at the spur of the moment. Further large number of injuries caused to the deceased including injuries on his chest would show that the injuries had been caused with a definite intention of

killing Satyabir. As such, we do not find any ground to alter the conviction from Section 302 of IPC to Section 304-I of IPC.

30. As a sequel to the discussions made above, we do not find any infirmity in the impugned judgment and the same is upheld. The conviction of both the accused under Section 302 read with Section 34 of IPC is maintained. There is no scope even for alteration of the sentence.
31. There is no merit in this appeal and the same is hereby dismissed.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

October 13, 2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No