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

CRA-S- 50-SB-2004
Date of Decision : May 23, 2017

Ashok and another Appellants

Versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE [Dr.] SHEKHER DHAWAN

Present Mr. J.S.Bedi, Senior Advocate,
with Mr. Sunil Sihag, Advocate,
for the appellants.

Mr. Vivek Saini, DAG, Haryana,
for the respondent-State.

SHEKHER DHAWAN, J.

Present appeal by accused-appellants, Ashok and Birpal, is directed against the judgment of conviction and order of sentence dated 27.05.2003 passed by learned Additional District & Sessions Judge [Adhoc], Jhajjar whereby the appellants were convicted and sentenced as under:-

Name of the accused-appellant	Under Section	Sentence	In default
Ashok	U/s 304 Part II IPC	to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs. 3,000/-	to further undergo RI for six months.
Birpal	323 IPC	To pay a fine of Rs.3,000/-	To undergo RI for 5 months.

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2. Facts relevant for the purpose of decision of the appeal; that Randhir Singh, complainant reported the matter to the police that his youngest son, Ajit Singh, aged 35 years was residing with him in Village Badsa. On 26.03.2001 he along with his son, Ajit Singh and Sumitra Devi [wife of Ajit Singh] had loaded the mustard crop in their tractor trolley. They were taking the same to their fields known as Khera wala. Ajit Singh was driving the tractor while complainant Randhir Singh and Sumitra Devi were sitting on the tractor. At about 6.00 P.M. when they crossed the Bus Stand of their village, another tractor trolley being driven by appellant Ashok came from the opposite side. Rajbir, brother of Ashok and Birpal, son of Ashok, were also sitting on that tractor. Ajit Singh asked Ashok to take his tractor aside. There was exchange of words for giving passage to tractor trolley. Rajbir and Birpal got down from their tractor and pulled down Ajit Singh from his seat and gave him slaps and fist blows. Accused Ashok hit an iron pipe on the head of Ajit upon which, he fell down on the ground. When complainant Randhir Singh and Sumitra Devi intervened and tried to save Ajit Singh, Randhir Singh was also attacked by Rajbir, who brought one iron pipe from their tractor and aimed a blow at his head. However, the blow fell at the left eye of the complainant. On alarm having been raised, all the accused ran away with their tractor towards the village. Complainant Randhir Singh arranged a car and took injured Ajit Singh to Civil Hospital, Gurgaon, where he was admitted and was medico legally examined, but his condition was serious. As such, he was referred to Safdargang Hospital, Delhi. The condition of Ajit Singh was turning to be

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more serious and the complainant Randhir Singh and his family members decided to shift him to a good local hospital instead of going to Delhi. So, they got him admitted in Kalyani Hospital, Gurgaon where his treatment was started. At at 1.15 A.M. (midnight). Ajit Singh died because of the injuries sustained by him.

3. On information having been sent by the hospital, police started investigation and statement [Ex.PH] of the complainant Randhir Singh was recorded. During investigation accused were arrested and Ashok got recovered iron-pipe from store room of his house which was taken into police custody and the case property was sent to the FSL Madhuban.

4. After completion of investigation proceedings, challan was presented in the Court for trial.

5. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused, recording of statements of the witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and the defence evidence on record, learned trial Judge held the appellants guilty and convicted and sentenced them as detailed in para No.1 above.

6. Aggrieved of passing of judgment of conviction and order of sentence, the appellants are before this Court by way of present appeal.

7. At the time of arguments, learned Senior counsel for the appellants contended that the complainant of this case, Randhir Singh died after registration of the FIR (Ex.PH/1) and as such, he could not be examined during the trial. The prosecution case is mainly based on the

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testimony of Sumitra wife of Ajit Singh and she is just a planted witness. In fact, death of Ajit Singh was a case of blind murder. The relations between the parties were inimical and dispute was regarding boundary of their land. As per prosecution case, Sumitra came to know about the death of her husband in the evening of 27.03.2001. It was not a case of prompt reporting to the police because Ajit Singh was taken to hospital at 8.30 P.M. and his death took place at 1.15 A.M. (midnight). The Investigating Officer reached Kalyani Hospital, Gurgaon at 4.00 AM (midnight). and contacted Randhir Singh at 8.00 A.M. and recorded his statement at 10.30 A.M. The intervening period was mis-used by the complainant party to implicate certain innocent persons because of inimical relations prevailing between the parties and as such, the prosecution version is not believable.

8. Learned senior counsel for the appellants further contended that learned trial Judge has not considered defence version at all. It had come in the statement of appellant, Ashok recorded under Section 313 Cr.P.C. that Ajit was found lying injured and unconscious near Bus Stand by Ranbir, Krishan and some children. Thereafter, Ajit was taken to Gurgaon by Krishan, Hanumant and Ram Kishan. Randhir Singh, father of Ajit was summoned through Ram Kishan. Ajit was probably injured by some persons of village Dewli as Ajit and his brothers were married to three sisters of that village and they were deserted. Later on, Ajit and Krishan were married in village Atil with Sumitra and her sister and the latter deserted her husband. Randhir Singh suspected that appellant Ashok and his family members were helping the people of Dewli and as such, their names

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were mentioned in the complaint and the blind murder case was used as a weapon to take revenge of old inimical relationship. Moreso, accused persons examined three persons in defence including Ranbir Singh [DW-1], Krishan [DW-2] and Sat Narain [DW-3], who had supported the version of appellant-Ashok as set-up in his statement recorded under Section 313 Cr.P.C., but their testimony has been discarded without any reason. So, the present appeal be accepted and appellants be acquitted.

9. Learned State counsel contended that learned trial Judge has already considered all these facts while recording judgment of conviction. The prosecution case is based upon the testimony of eye-witnesses. Unfortunately, the complainant died and another eye-witness was Sumitra, who was examined at the trial stage as PW-1. She has supported the prosecution case in toto and nothing has come out in her cross-examination. The medical evidence is in complete agreement with ocular version. There is no inordinate or unexplained delay in reporting the matter to the police. The defence version was rightly discarded by the trial Judge as that is just an after-thought and as such, the appeal be dismissed.

10. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that originally, the investigation was set into motion as per statement [Ex. PH] of Randhir Singh on the file. Unfortunately, Randhir Singh died before his statement could be recorded at the trial stage. Another eye-witness, Sumitra, was examined as PW-1 and she had stated in so many words that the death of Ajit had taken place because of iron pipe blow having been given on the

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head of Ajit by accused, Ashok. There was exchange of words regarding passage for the tractor trolley on the road. Subsequently, during investigation, weapon used for commission of offence, i.e., iron pipe, was recovered from the possession of appellant, Ashok. The medical evidence is in complete agreement with the ocular testimony. As per statement of PW-9, Dr. Sarayu Sharma, Medical officer, General Hospital, Rohtak, Ajit Singh was brought to the hospital and she medico-legally examined him at 8.35 PM. At that time, she observed the following injuries on his person:-

“Depressed parietal bone right side. No bleeding. Advised X-ray and Surgeon's opinion.

Type of Injury :- subjected to X-ray and surgical opinion.

Duration of injury, within 6 hours.

Type of weapon : blunt.”

11. The Medical Officer also mentioned in her statement that the patient was brought by Randhir Singh and thereafter, he was referred to Safdarjang Hospital, Delhi.

12. As per statement of PW-11, Dr. S.Khanna, Senior Consultant, Kalyani Hospital, Gurgaon, Ajit Singh was admitted to his hospital at 9.15 PM on 26.03.2001. As per statement of PW-4, Dr. R.N.Yadav, SMO, General Hospital, Gurgaon, Post-mortem examination on the dead-body was conducted on 27.3.2001 at 1.15 PM and following injury was observed:-

“Injuries :-

A red contusion 2.1 cm x 6.5 cm on the middle of scalp obliquely

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placed more so on right side of parietal region. There was boggy defused swelling on right temporo-parietal region.”

13. The ocular testimony by way of statement of PW-1, Sumitra is on the same line that accused Rajbir and Birpal caught hold of Ajit in her presence and accused-appellant Ashok, caused injury with iron-pipe blow at the head of her husband upon which Ajit fell down on the ground. Rajbir and Birpal had given kick and fist blows to him. The recovery of iron pipe was effected in the presence of PW-2 Dharambir.

14. As regard to the plea taken by learned senior counsel for the appellants that there is inordinate and unexplained delay in reporting the matter to the police, the same is contrary to the facts available on the file. The alleged occurrence had taken place at 6.00 PM and thereafter, Ajit was taken to hospital at Gurgaon and the time of arrival has been given by PW-9 as 8.35 PM. Then, he was referred for better treatment to Safdarjang Hospital but his condition being critical, the family members decided to take him to a near-by good hospital, i.e., Kalyani Hospital, Gurgaon where Ajit was admitted at 9.15 PM. He was treated there and ultimately, died at 1.15 AM [Midnight]. Medical *ruqa* was sent to the police and the Police reached Kalyani Hospital at 4.00 AM and thereafter, the statement [Ex. PH] of complainant, Randhir Singh was recorded. Such a delay cannot be said to be “inordinate delay” when the case is based upon eye-witness account. Moreso, delay itself is not fatal to the prosecution case. The real test is whether the delay remains explained or unexplained. In this case, the delay has been duly explained by the prosecution that Randhir Singh had

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gone to the village and the Investigating Officer recorded the statement immediately when he contacted him. It is really unfortunate part that Randhir Singh could not be examined at the trial as he was no more, otherwise, he could have explained as to why he had gone to the village leaving his son at the hospital in critical situation. But this fact has been completely denied by PW-8, HC Amar Singh, Investigating Officer of this case. It has come in his statement that Randhir Singh met him at Kalyani Hospital at 8.00 AM and then he recorded his statement. However, he denied the suggestion put to him that Ranbir, Ram Mehar, Mir Singh and Krishan of village Badsa were present in the hospital at that time and they had called Randhir from village Jarodha Kalan.

15. As regard to the plea taken by learned senior counsel for the appellants that they have been falsely implicated in this case because of inimical relations between both the parties, as established on the basis of statements of three witnesses examined in defence and as per the statement of accused recorded under Section 313 Cr.P.C. law on the point is settled that the plea of inimical relations is double-edged weapon so as to give motive for false implication as well as motive for commission of offence. The same thing happened in this case as the inimical relations between both the parties resulted into present incident which ultimately resulted in the death of Ajit Singh. Otherwise, the alleged occurrence has been proved in accordance with statement of Sumitra [PW-1] and duly supported by medical evidence and statement of Investigating officer as well as statement of PW-2, Dharambir before whom recovery of iron pipe was made. This is

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the reason for rightly disbelieving the defence version by the Court below.

16. In view of the above, there is no merit in the submissions made by learned senior counsel for the appellants. Injury causing death of Ajit Singh, by iron-pipe is attributed to Ashok and the same is proved on the file. The offence punishable under Section 323 IPC stands proved against accused-appellant Birpal and he has been awarded sentence of fine of Rs.3,000/- with default stipulation. Learned trial Judge has rightly held the appellants guilty for commission of offence punishable under Sections 304 Part II and 323 IPC respectively.

17. As regards appeal against order of sentence, learned senior counsel contended that accused-appellant, Ashok has already spent 3 years 4 months and 22 days in custody in this case, whereas the alleged occurrence was at spur of moment and it was not a case of pre-meditated murder of Ajit Singh. So, the sentence awarded to appellant, Ashok be reduced to already undergone by him. On this point, reliance was placed on the judgment of Apex Court in **Hansa Singh Vs. State of Punjab, 1974(4) SCC255.**

18. Learned State counsel contended that learned trial Judge has already taken a lenient view in the matter and there is no ground for further reduction of the sentence awarded to the appellants.

19. In **Hansa Singh's case [supra]**, the sentence period already undergone by the appellant was 7 years. Probably, that was the reason before the Apex Court to reduce the sentence to the period already undergone, whereas, in this case, appellant Ashok Kumar has undergone 3

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years 4 months 22 days. Moreso, the facts of the case in hand are entirely different because here, prosecution case is based on eye-witness account and duly supported by medical evidence.

20. Resultantly, the appeal filed by Ashok and Birpal against judgment of conviction and order of sentence fails and is accordingly dismissed. Appellant-Ashok was released on bail by this Court during the pendency of his appeal. His bail/surety bonds are cancelled. He be arrested and sent to jail to undergo the remaining part of sentence. Learned trial Judge is directed to comply with this order forthwith under intimation to this Court.

(SHEKHER DHAWAN)
JUDGE

May 23, 2017
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes