

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

**Crl. Appeal D-1677-DB of 2014**  
Date of Decision : October 30, 2017

Sakir and others

.....Appellants

**VERSUS**

State of Haryana

.....Respondent

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

Present : Mr. A.P.S.Deol, Senior Advocate with  
Mr. Vishal Rattan Lamba, Advocate  
for the appellants.

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

**T.P.S. MANN, J.**

The appellants, namely, Sakir, Imran, Jumma, Shokeen Dhanni, Ashif and Samir Pehuhu alongwith Mubarik and Saraju were tried for committing the offences punishable under Sections 148 and 302 read with Section 149 IPC. Vide judgment and order dated 9/16.10.2014, learned Additional Sessions Judge, Gurgaon acquitted Mubarik and Saraju of all the charges against them. However, the appellants were convicted under Section 302 read with Section 149 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/- each and in default of payment of fine, to further undergo simple

imprisonment for a period of one year. They were also convicted under Section 147 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000/- each and in default of payment of fine, to undergo simple imprisonment for three months.

Aggrieved of their conviction and sentences, the appellants filed the present appeal which stood admitted and the trial Court record has requisitioned.

The facts of the case are that on 8.2.2012 at 1.15 a.m., Sandeep-complainant got recorded his statement before SI Daya Nand at General Hospital, Sohna wherein he stated that he was son of Het Ram, aged 19 years and resident of Abheypur, Police Station Sohna. After passing 10<sup>th</sup> class, he used to remain at his house. They were five brothers. Eldest was Ravinder, younger to him Bijender, still youngers were Rajesh and Billu whereas the complainant himself was the youngest. His brother Bijender used to work as a driver on a private vehicle in Gurgaon. On 7.2.2012, the complainant and his brother Bijender went to Khera Khalilpur in their relations. They were accompanied by Anil in TATA 407, who was resident of Damdama. They were carrying DJ system with them. Surender of his village was also accompanying them. When they reached near Octroi Post No. 2 in Sohna, opposite chilling plant and time was about 9.30 p.m.,

Bijender got the vehicle stopped and went to the freezer for taking water. 4/5 young boys were already drinking water there from the bottle. Bijender asked for water bottle from them for drinking water. One of the boys hit water bottle on the face of Bijender. All 4/5 boys started giving slaps, fists and leg blows to Bijender and also called 10/15 boys from adjacent Raghav Vatika. The complainant came out from the Tempo and tried to rescue his brother but all the assailants gave him slaps, fists and leg blows on his face and back. After rescuing himself, the complainant ran towards the grain market. The complainant came back but the assailants proclaimed that he be caught hold of. The complainant again ran towards the grain market and after taking a turn, ran towards fountain chowk. He then passed through the house of Sukhbir Singh and came in front of Sohna chilling plant where 15/20 persons had surrounded Bijender and were beating him. The complainant again went to Raj Hall and from there made a call at his residence from his mobile. He received a call from village Khera Khalilpur asking him as to where he was. Bijender was got admitted in Government Hospital, Sohna. The complainant reached there on the motor cycle of his cousin Krishan and found 15/20 boys standing outside the gate of the hospital. The complainant went past them after avoiding being noticed by them. The complainant called his brother Ravinder,

who told him that they were in the hospital and asked him to reach the hospital. Krishan also reached there and the complainant came to know that one Bijender son of Giriraj, who was also resident of his village and had a shop of welding near the chilling plant, had got admitted the complainant's brother Bijender after lifting him from the spot. After some time, the doctor told the complainant that Bijender had died due to the injuries sustained by him. According to the complainant, his brother Bijender died due to the injuries caused by 15/20 boys whose names and addresses were not known to him but he could identify them. Bijender, the owner of welding shop, had told the complainant that Khushi Ram, who works on a saw machine adjacent to his shop, was resident of M.P. and those 15/20 boys were residents of Nat Colony, Sohna, who had given injuries to his brother Bijender.

It is also the case of the prosecution that SI Daya Nand was present at Police Post Sohna when the ruqas were received from Medical Officer, General Hospital, Sohna about a fight and death of Bijender son of Het Ram, resident of Abheypur and got medico-legal report in respect of the deceased and, accordingly, he reached General Hospital, Sohna where Sandeep-complainant got recorded his statement. SI Daya Nand after making necessary endorsement on statement Ex. PB made

by Sandeep-complainant, forwarded it to Police Station Sohna, District Gurgaon where on its basis, FIR Ex. PA dated 8.2.2012 was registered under Sections 148, 149 and 302 IPC at 1.45 a.m. by SI Hawa Singh. Copy of the FIR was handed over to Constable Ajbir Singh, who delivered the same to the Ilqa Magistrate on 8.2.2012 at 10.00 a.m.

It is also the case of the prosecution that SI Daya Nand prepared inquest report Ex. PL; recorded the statements of the witnesses under Section 161 Cr.P.C.; moved application Ex.PK/2 for the purpose of post-mortem on the dead body of Bijender; got the dead body of Bijender photographed; and went to the spot and prepared rough site-plan Ex. PM. He also searched for the accused and arrested Sakir, Imran, Jumma, Mubarik and Saraju on 8.2.2012. On 9.2.2012, Sakir, Imran, Mubarik, Jumma and Saraju suffered disclosure statements and offered to get demarcated the house of 4/5 boys, who were with them. On 10.2.2012, Imran @ Dainy son of Nasrudeen, Ashif, Sakir and Shokeen were arrested, who also got recorded similar disclosure statements.

Upon completion of investigation and presentation of challan, followed by commitment of the case, joint charges were framed against the six appellants, their two co-accused Mubarik and Saraju besides one Imran @ Dainy, who was subsequently

declared juvenile and, accordingly, his case was separated and sent to Principal Magistrate, Juvenile Justice Board, Gurgaon for enquiry.

At the trial of the case, the prosecution examined sixteen witnesses.

PW1 SI Hawa Singh deposed that on 8.2.2012, he received writing Ex. PA/1 through Constable Sandeep Kumar, on the basis of which he recorded FIR Ex. PA. He then sent special report through Constable Ajbir Singh for delivering the same to the Ilaqa Magistrate.

PW2 Sandeep son of Het Ram and PW3 Ravinder Kumar besides PW4 Surender, who were accompanying Bijender-deceased at the time of the occurrence, deposed about the manner in which the occurrence had taken place.

PW5 HC Ombir Singh proved the disclosure statements Exs. PC and PD suffered by Mubarik and Imran while they were being interrogated by SI Daya Nand.

PW6 HC Balbir Singh proved the disclosure statements Exs. PE and PF suffered by Jumma and Samir-accused while they were interrogated by SI Daya Nand.

PW7 HC Krishan Kumar proved the disclosure statement Ex. PG suffered by Saraju-accused.

PW8 Constable Ajbir Singh deposed that on 8.2.2012,

he delivered the special report of the case to the Ilaqa Magistrate and higher officers without any delay and tampering.

PW9 Parveen Kumar deposed that he owned a marriage party lawn under the name and style of Raghav Vatika at Sohna-Gurgaon road and the lawn was booked for 7.2.2012 by one Aman Ahmad for organizing a reception party.

PW10 Girish Kumar, Draftsman proved the scaled site-plan Ex. PH prepared by him on 13.2.2012 after visiting the spot and on the demarcation of the complainant.

PW11 Constable Chap Singh testified that on 8.2.2012, he went to General Hospital, Sohna alongwith Government camera where he met SI Daya Nand and took eleven photographs Exs.P1 to P11 of the dead body of Bijender.

PW12 ASI Deepak proved the disclosure statements Exs.PI and PJ suffered by Imran and Ashif-accused while they were being interrogated by SI Daya Nand.

PW13 Inspector Harinder Kumar, who stood posted as SHO, Police Station Sohna on 9.2.2012, deposed that he had prepared challan under Section 173 Cr.P.C.

PW14 Dr. Harender Kumar, who was posted as Medical Officer, General Hospital, Sohna tendered his affidavit Ex. PK in evidence as per which he had conducted post-mortem on the dead body of Bijender on 8.2.2012 and found the following

injuries:-

- “1. Bruise right side parietal region on scalp. Bruise measuring 5.0 cms x 6.0 cms.
2. Abrasion antero lateral part of left side of chest. Multiple linear abrasions on left lower chest extending towards Umbilicus.
3. Bruise antero lateral part of left side of chest. Contusion measuring 5.0 x 6.0 cms present over upper left lateral part of chest.
4. Abrasion antero lateral aspect of middle 3<sup>rd</sup> of right leg. Abrasion measuring 3.0 x 2.0 cms.
5. Abrasion left shoulder over scapular region.
6. Abrasion right shoulder over scapular region.
7. Bruise posterolateral aspect of left side lower back (left loin). Contusion measuring 10 cms x 10 cms over left renal angle.
8. Bruise posterolateral aspect of upper back on right side. Contusion measuring 7.5 cms x 8.0 cms over right sub-scapular region.

9. Abrasion posterior aspect of right knee.  
Abrasion measuring 3.0 x 2.0 cms.
10. Abrasion posterior aspect of right elbow.  
Deep abrasion measuring 4.0 cms x 5.0  
cms.”

The cause of death in his opinion was due to shock and haemorrhage due to multiple injuries to vital organs, namely, brain, lung, liver and spleen. All the injuries were ante-mortem in nature and sufficient to cause death in ordinary course of life. Probable time between injury and death was 1-2 hours while between death and post-mortem was 6-24 hours. He proved post-mortem report Ex. PK which bore his signatures.

PW15 SI Daya Nand, who was the Investigating Officer in the case, deposed with regard to the various steps taken by him during the course of investigation. He proved the arrest of the accused on various dates and the disclosure statements made by them.

PW16 Dr. Parveen Parkash Yadav, who was posted as Medical Officer, Government Hospital, Sohna on 7.2.2012, deposed that he conducted medico-legal examination upon Bijender, since deceased. According to him, when the deceased was admitted in the hospital, he was semi conscious and non-cooperative. His BP was 90/unrecordable. The pulse was unrecordable and it was a case of alleged history of assault near

Jain Hospital, Sohna. He noticed the following injuries received by him:-

- “a) Abrasion over the lower part of right arm and complain of pain, advised X-ray of arm and ortho opinion, blunt within 24 hours.
- b) Complain of pain over the right elbow joint, advised X-ray of right elbow joint and ortho opinion, blunt within 24 hours.
- c) Complain of pain over the right shoulder joint X-ray of right shoulder joint advised and ortho opinion blunt within 24 hours.
- d) Abrasion over the left shoulder joint and c/o pain advised x-ray for right shoulder joint and ortho opinion, blunt within 24 hours.
- e) Abrasion over the back of chest left side and c/o pain, advised X-ray of chest and ortho opinion blunt within 24 hours.
- f) Abrasion over the left iliac crest region and abrasion over the right iliac crest region and c/o pain blunt within 24 hours.
- g) C/o pain over the abdomen advised W.S.G. of abdomen and surgeon opinion blunt within 24 hours.
- h) C/o pain over the scalp advised CT scan head and surgeon opinion blunt within 24 hours.”

This witness also proved MLR Ex. PW16/C of PW2

Sandeep-complainant and finding the following injuries on his

person:-

- “a) C/o pain over the upper and lower lip simple blunt within 24 hour.
- b) C/o pain over the back abdomen simple blunt within 24 hours
- c) C/o pain over the right hand finger simple blunt within 24 hours.”

This witness proved his opinion Ex.PW16/F which he gave on the police request to the effect that the kind of weapon used was blunt for all the injuries and those injuries could be caused by kicks and blows.

When examined under Section 313 Cr.P.C., all the accused pleaded their innocence and claimed to be falsely implicated because of political rivalry as one Javed, real brother of Ch.Khurshid Ahmad, Ex-Minister in joint Punjab and thereafter in Haryana, contested the election against one Sukhbir Singh Jonpuria, Gujar by caste and said Sukhbir Singh lost election and he was harbouring a myth that he lost the election because of Javed contesting the election. All the accused stated that their families had supported said Javed in the election.

In their defence, the accused examined DW1 Yusuf, who deposed that Ch. Khurshid Ahmad was the Cabinet Minister in Haryana, who is his cousin and in the last assembly election from Sohna assembly constituency, Javed Ahmed, his real uncle,

contested the election and opposed the candidature of sitting MLA Sukhbir Singh Jonpuria but both of them were defeated in the election. Sukhbir Singh held Javed responsible for his defeat.

DW2 Ajay Yadav, Election Kanungo, District Election Officer, Gurgaon produced the compendium of general elections of Vidhan Sabha in Haryana State. He deposed that in the Haryana Vidhan Sabha assembly election held in the year 2009 from Sohna assembly constituency, Sh. Dharambir was elected as MLA whereas Sukhbir Singh and Javed Hussain got less votes.

After hearing learned counsel for the parties and on going through the record, learned trial Court convicted and sentenced the appellants, as mentioned above.

This Court has heard learned counsel for the appellants and learned Assistant Advocate General, Haryana besides scanning the evidence minutely with their able assistance.

From the testimonies of PW2 Sandeep, PW3 Ravinder Kumar and PW4 Surender, it stands established that on 7.2.2012 they alongwith deceased Bijender and Anil had gone in TATA 407 vehicle to Khera Khalilpur while carrying DJ system and after attending the marriage, they were returning and at about 9.30 p.m. when they reached near octroi post on the chilling plant

at Sohna, Bijender alighted from the vehicle for taking water from the freezer. 4/5 persons were already present at the chilling plant. When Bijender asked them for a bottle of water, one of them hit the water bottle at his face and started giving fists and slaps blows to him. PW2 Sandeep and PW4 Surender alighted from the vehicle in order to save Bijender. However, they were also beaten by the assailants, who called 10/15 other boys from Raghav Vatika. Those boys also gave beatings to them. PW2 Sandeep, PW3 Ravinder Kumar and PW4 Surender fled away from the spot apprehending that they would further be assaulted by the accused. It has come in the evidence that one Bijender son of Giriraj, who belonged to the village of the complainant, had a shop of welding near chilling plant and said Bijender admitted Bijender, since deceased in General Hospital, Sohna. Complainant-Sandeep, who had received injuries in the occurrence at the hands of the assailants, also managed to reach the hospital where he and Bijender, since deceased were medico-legally examined. After some time Bijender succumbed to the injuries. Ruqa was, thereafter, sent by the Medical Officer and on receiving the same, SI Daya Nand reached the hospital and recorded statement Ex. PB of PW2 Sandeep, on the basis of which FIR Ex. PA came to be recorded at Police Station Sohna under Sections 148, 149 and 302 IPC. The special report was

handed over to Constable Ajbir Singh, who delivered the same to Ilaqa Magistrate on 8.2.2012 at 10.00 a.m. From the testimony of PW16 Dr. Parveen Parkash Yadav, it is made out that he had found three injuries on the person of Sandeep. All the injuries were result of attack by blunt weapon and duration of the injuries was 24 hours. So much so that even Bijender, since deceased was initially medico-legally examined and found to have received eight injuries. Soon after his medico-legal examination, Bijender had succumbed to his injuries. His dead body was subjected to post-mortem by PW14 Dr. Harender Kumar, who again found eight injuries on the dead body which were abrasions and bruises. PW14 Dr. Harender Kumar had opined that the cause of death was due to shock and haemorrhage on account of multiple injuries to vital organs, namely, brain, lung, liver and spleen. According to the evidence which has come on the record, water bottle was used for inflicting injuries on the face of Bijender. Besides the assailants had given slaps, fists and leg blows to Bijender. The ocular account regarding the occurrence is duly corroborated by the medical evidence consisting of the testimonies of PW14 Dr. Harender Kumar and PW16 Dr. Parveen Parkash Yadav. In this manner, the prosecution has been successful in establishing that the death of Bijender had resulted on account of the assault launched by the present appellants.

The two witnesses examined by the defence i.e. DW1 Yusuf and DW2 Ajay Yadav do not in any manner establish that the appellants had been falsely implicated in the case. If the election dispute had any bearing on the case, then the accused could have been named in the very first instance. Fact remains that the appellants were not named as accused initially.

At the same time, this Court finds that no case is made out for upholding the conviction of the appellants under Section 302 IPC. There was no motive for the appellants to have assaulted the deceased besides causing injuries to PW2 Sandeep. The occurrence developed when Bijender, since deceased got down from the vehicle and went to pick up a water bottle for quenching his thirst. The same was objected to by the accused, who used the bottle in hitting his face. Thereafter, the appellants caused slaps, fists and leg blows to Bijender. Similar attack was also launched upon PW2 Sandeep. None of the appellants was armed with any weapon. As such, it would be doubtful if the appellants had any intention to commit the murder of Bijender-deceased. At the most, they could be said to be having the knowledge that by causing the injuries to Bijender-deceased, they committed the offence of culpable homicide not amounting to murder. As such, the conviction of the appellants under Section 302 IPC is liable to be set-aside. Instead, they are

to be convicted under Section 304 Part II read with Section 149 IPC.

Resultantly, the conviction of the appellants under Section 302 read with Section 149 IPC is set-aside. Instead, they are convicted under Section 304 Part II read with Section 149 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year. Their conviction and sentence of imprisonment and fine under Section 147 IPC alongwith its default clause is maintained. Both the substantive sentences of imprisonment shall run concurrently.

The appeal is partly allowed to the extent indicated above.

**( T.P.S. MANN )  
JUDGE**

**October 30, 2017**  
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**( MAHABIR SINGH SINDHU )  
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No