

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-490-MA-2016
Decided on : - 20.12.2017

Suraj Bhan

... Applicant

Versus

Surinder Kumar @ Chhota and others

... Respondents

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

Present:- Mr. Malkeet Singh, Advocate,
for the applicant.

MAHABIR SINGH SINDHU, J.

Present application under Section 378(4) of the Code of Criminal Procedure (for short 'Cr.P.C') has been filed for seeking leave to appeal against the impugned judgment dated 27.08.2015, passed by the learned Additional Sessions Judge, Fatehabad, vide which respondents No.1 and 2 have been acquitted of the charges under Sections 148 and 302 read with Section 149 IPC.

2. Brief facts of the case are that FIR No.278 dated 31.05.2013, under Sections 148 and 302 read with Section 149 IPC was registered at Police Station City Fatehabad on the statement of applicant-Suraj Bhan for committing the murder of his brother, namely, Satpal. It is alleged that he is

resident of Dhani Issar and they are two brothers and three sisters. Younger to him is Satpal (since deceased). It is further alleged that his marriage was fixed for 02.06.2013 and on 31.05.2013 at about 9.00 PM he, his brother Satpal and their brother-in-law Bhup Singh after shopping in the city of Fatehabad parked their car bearing registration No.HR-22F/8330 at Arorwansh Dharamshala road. He and his brother-in-law Bhup Singh remained in the car while Satpal was going to the shop of Sita Ram jeweller to collect jewellery, but on the turn of the street, Mukesh, Sanjay, Sagar @ Bhalu, Shubham and Ravi, residents of Balmiki Mohalla, Fatehabad and Isharpal, resident of Shakti Nagar, Fatehabad with 5-6 other persons armed with swords and kappas, suddenly arrived and opened attack from the backside of Satpal. Thereafter, he fell down and bleeding profusely from the head and his internal organs were thrown out. It is further alleged that the applicant and Bhup Singh rushed to save Satpal, but they were pushed and thrown on the ground. Mukesh proclaimed that he had taught Satpal a lesson for falling in love with his daughter Shabnam. The motive for the occurrence was that Satpal was in love with Shabnam for the last one year and had married her without the consent of the family members. On 31.05.2013, at about 7.00 PM, when Satpal had gone to Balmiki Mohalla to distribute marriage cards among his friends, then above persons tried to attack him, but Satpal fled in his car and at that time the said persons also threw brickbats at him due to which the rear mirror of the vehicle cracked. The matter was not reported to the police due to impending marriage as they did not want to enter into quarrel. The accused persons with common object had attacked Satpal with sharp edged weapons, cut him into pieces and killed him. They left the spot with their weapons and an ambulance was

called by them and they removed the dead body of Satpal to General Hospital, Fatehabad.

3. Thereafter, the investigation was conducted by the police and the post-mortem was conducted in the General Hospital, Fatehabad. As per post-mortem report, the cause of death was haemorrhage and shock due to injuries to the vital organs i.e. brain. During investigation, accused Sanjay @ Bhartu Ram was arrested on 02.06.2013. Thereafter, supplementary statement of complainant Suraj Bhan was also recorded who mentioned the involvement of Surender Singh @ Chhota Singh (respondent No.1), Sagar @ Khapat and Sunny (respondent No.2), caste Balmiki, residents of Balmiki Chowk, Fatehabad and they were stated to be armed with *binda*, *kassi* and *gandasi* and caused injuries to his brother on back and head. Accused Sagar @ Bhalu, Sunny (respondent No.2), Ravi Kumar and Sagar @ Khapat were arrested on 05.06.2013. Accused Isharpal was arrested on 06.06.2013 and a *gandasa* was recovered from him on 09.06.2013. Accused Mukesh was arrested on 10.07.2013.

4. After investigation, the report under Section 173 Cr.P.C. was submitted. Thereafter, the case was committed to the Court of Sessions by the learned Illaqa Magistrate, as offence under Section 302 IPC is exclusively triable by the Court of Session.

5. Learned trial Court, prima facie, found that the accused have committed the offences under Sections 148, 302 read with Section 149 IPC and thus framed the charges, to which, they pleaded not guilty and claimed trial. Accused-Sagar @ Khapat was declared juvenile.

6. Prosecution in order to prove its case, examined sixteen witnesses and brought on record documentary evidence and thereafter the

entire incriminating material was put to the accused under Section 313 Cr.P.C., but they denied the same and claimed innocence. In their defence, the accused examined ten witnesses.

7. Learned trial Court after taking into consideration the material available on record and after hearing both the sides, convicted accused Sagar @ Bhalu, Isharpal, Mukesh, Ravi and Sanjay under Sections 148, 302 read with Section 149 IPC, but acquitted present respondents No.1 and 2, namely, Surender Kumar @ Chhota and Sunny, vide impugned judgment dated 27.08.2015. Hence, the present application for seeking leave to appeal.

8. It is argued by learned counsel for the applicant-complainant that learned trial Court has acquitted respondents No.1 and 2 only on surmises and conjectures and did not take into consideration the entire material available on record and that resulted into miscarriage of justice as offence under Section 302 IPC is a very serious offence.

9. Heard learned counsel for the applicant and perused the paper-book.

10. In this case, the incident had occurred on 31.05.2013 at about 9.00 PM at Arorwansh Dharamshala road and FIR was registered on the statement of applicant-complainant at about 11.30 PM in General Hospital, Fatehabad. The special report was received by the Magistrate at 1.20 PM on 01.06.2013. Accused Sagar @ Bhalu, Mukesh, Sanjay, Isharpal, Ravi and Shubham were named in the FIR, but present respondents No.1 and 2 as well as Sagar @ Khapat (later on declared juvenile) were not named in the initial version. The motive is ultimately attracted on account of the fact that Satpal has married Shabnam daughter of accused Mukesh against his wishes

on 06.09.2012. PW11 Suraj Bhan, brother of the deceased and PW12 Bhup Singh, his brother-in-law, were claimed to be the eye-witnesses. On the basis of supplementary statement made by applicant Suraj Bhan, which was recorded on 04.06.2013, the names of present respondents No.1 and 2 were added and they were alleged to have carried *gandasi*, *binda* and *kassi*, which was not mentioned in the FIR. It has come on record that the occurrence has taken place near jewellery shop where CCTV cameras were installed but the footage of the same has been withheld by the prosecution for the reasons best known to it. There is no evidence as to how their names came in the statement of PW11 Suraj Bhan. Moreover, the alleged recovered weapons were never sent to Forensic Science Laboratory. In the supplementary statement dated 04.06.2013, PW11 has stated that he learnt about the names of accused Surender, Sunny and Sagar @ Khapat, but there is no explanation who told him about their involvement. There was no test identification parade conducted during investigation to establish identity of the present respondents accused. As per post-mortem report (Ex.P8), the deceased suffered seven injuries and six of them were incised wounds. Even the *kassi* and *binda* alleged to have been recovered from Surender Kumar @ Chhota (respondent No.1) was never produced before the doctor for his opinion.

11. PW12 Bhup Singh also stated that on 31.05.2013, Satpal was intercepted by Mukesh, Sanjay, Sagar, Shubham, Isharpal, Surender, Ravi, Sunny and Sagar, who were armed with sword, *danda*, *kappa*, *gandasi* and started giving injuries on the person of Satpal, due to which, he started bleeding from his head and inner part of his skull came out. They came out of the car and tried to rescue Satpal, but accused pushed them aside. At that

time, Mukesh was exhorting that they had taught Satpal a lesson for falling in love with his daughter Shabnam. Satpal succumbed to the injuries at the spot and the accused fled away from the spot with their weapons. They brought Satpal in an ambulance to General Hospital, Fatehabad where he was declared dead. The same motive is attributed by PW12 also, but the fact remains that the present respondents No.1 and 2 were not named in the FIR, which was recorded on the basis of statement of Suraj Bhan PW11. It was only on 04.06.2013 that the police recorded supplementary statement of Suraj Bhan PW11 and the names of present respondents No.1 and 2 along with Sagar @ Khapat (declared juvenile and acquitted) were disclosed first time.

12. There is no doubt that FIR is not an encyclopedia, but the mentioning of name(s) of the accused is a very important aspect. During cross-examination PW11 Suraj Bhan stated that he came to know about the names of present respondents No.1 and 2 before 04.06.2013 and the same were disclosed to the police. Again he stated that he came to know about the names of present respondents on 01.06.2013, but the same were not disclosed to the police.

13. As per testimony of Investigating Officer Inspector Gaurav Sharma, a handle of spade (*Kassi- Binda*) was recovered by the police from the house of Surinder Kumar @ Chhota (respondent No.1) in pursuance of his disclosure statement Ex.P52 on 04.06.2013 and was taken into possession, vide memo Ex.P54. Thereafter, on 07.06.2013, *kassi-binda* was recovered from house of Sunny (respondent No.2) and the same was taken into possession, vide memo Ex.P38. There is no injury alleged to have been caused to deceased Satpal with the weapons allegedly recovered from

respondents No.1 and 2. Therefore, the learned trial Court has rightly come to the conclusion that it is not safe to convict present respondents No.1 and 2 as their presence was not mentioned at the stage of FIR and the learned trial Court rightly disbelieved the testimony of PW11 and PW12 qua present respondents No.1 and 2 as members of the unlawful assembly as observed in paragraph 64 of the impugned judgment.

14. PW7 Dr. Dolly Gambhir, Medical Officer, General Hospital, Fatehabad, proved the post mortem report (Ex.P8) wherein it is mentioned that deceased Satpal was having the seven injuries on his body, but none is proved to have been caused by respondents No.1 and 2.

15. In view of above, this Court does not find any merit in the present application as learned trial Court has adopted the right approach while scrutinizing the material available on record. The view taken by the learned trial Court is the possible view and there is no material available to differ with the view taken by the learned trial Court. The present application is, accordingly, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

December 20, 2017

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Whether speaking/reasoned	:	Yes
Whether Reportable	:	No