

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA-D-625-DB of 2003**

DATE OF DECISION: OCTOBER 11, 2017

DALBIR SINGH ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

2. **CRA-S-1451-SB of 2003**

MAHAVIR SINGH & 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. R.N. KUSH, ADVOCATE
FOR THE APPELLANT IN CRA-D-625-DB OF 2003
AND FOR APPELLANTS NO.1, 3 AND 4
IN CRA-S-1451-SB OF 2003.

MR. T.C. DHANWAL, ADVOCATE
FOR APPELLANT NO.2 IN CRA-S-1451-SB OF 2003.

MR. PRAVEEN BHADU, ASST.A.G., HARYANA.

MAHABIR SINGH SINDHU, J.

1. By a common judgment, two connected cases i.e. CRA-D-625-DB-2003 and CRA-S-1451-SB-2003 filed by the convicts-appellants are being disposed of being arising out of the same impugned judgment of conviction dated 11.6.2003 and order of sentence dated 13.6.2003, passed by the learned Additional Sessions Judge (Ad hoc), Hisar for committing the murder of Dhira @ Randhir and causing injuries to Om Parkash.

2. The appellants were prosecuted on the basis of the statement (Ex.PF/2) made by Parkash @ Om Parkash on 11.8.2001 which reads as under:-

“Stated that I am the resident of above noted address and carry on agricultural pursuits; About one and half months ago, I had purchased a house for a sum of Rs.28,000/- from the brother of Paras Ram Behrupia, which is situated in Ward No.8 of Barwala; In front of that house, Dalbir Singh Fauji was residing with Smt. Chander Naik as her husband. He also wanted to purchase this very house; On this count, he used to nurse grudge against me. I live all alone in this purchased house.

Yesterday, on 10.8.2001, at about 8.00 p.m., in this house Dhira @ Randhir Sikngh s/o Nainu Ram and Ram Kumar son of Jai Lal caste Balmiki, were sitting in the courtyard and were chatting with each other; That at this very juncture, Dalbir Singh Fauji resident of Singwal, District Jind, now resident of Ward No.8, Barwala, Raj Kumar s/o Hari Kesh, caste Balmiki, resident of Ward No.8, Suresh S/o Kamra, Behrupia, resident of Ward No.5, Mahavir son of Bhuria, caste Naik, resident of Ward No.7, one son of Randhir Singh Behrupia, and one boy whose name I do not know, but can identify him on production before me, while holding lathies in their hands came to us, in

the house; Dalbir Singh raised a lalkara “Dushman Kaabu Aa Gaye Hain Bach Kar Nahin Janey Payen”. While uttering these words, Dalbir Singh Fauji, who was holding lathi in his hand gave two lathi blows on the head of Dhira @ Randhir Singh; As a consequence, Dhira @ Randhir fell down on the ground. In the meanwhile we raised an alarn of “Maar Diya Maar Diya”, upon this Jai Singh son of Sh. Sujaan Singh, Caste Jat, resident of Uchana-Khurd, now resident of Barwala also reached our house in order to save us; Then Raj Kumar gave a lathi blow on my head on the front side; Suresh dealt a lathi blow more on the back side of my head; Jeet Singh death a lathi blow on my right thigh, Mahabir dealt a lathi blow on Dhira @ Randhir Singh on his abdomen and son of Randhir Singh Behrupia also gave kick blows to me and Dhira @ Randhir and when I and Randhir Singh were being caused injuries by the abovesaid persons, then Ram Kumar and Raja finding an opportunity slipped away and thereafter Jai Singh after arranging for conveyance got us admitted in Janta Hospital at Barwala; On the spot, Bharat Singh son of Shri Mai Lal, caste Jat, resident of Badhwar, now resident of Barwala also reached, who took Dhira @ Randhir Singh to his house from where Kailo wife of Dhira @ Randhir Singh had taken him along for medical treatment. He was shifted to Janta Hospital at

Barwala where the Doctor also admitted him as well. After giving us injuries, all the assailants alongwith respective weapons had fled away from the spot; I and Dhira @ Randhir Singh have been caused injuries without any rhyme and reason; Action may be taken against them according to law. Now I have got my statement recorded with you, which I have heard and the same is correct.”

3. On the basis of above statement of Om Parkash, initially FIR No.204 dated 11.8.2001 under Section 308/454/323/148/149 IPC was registered at Police Station Barwala and accused were arrested. On interrogation, accused Mahabir made a disclosure statement that he had kept concealed a lathi in his house behind the Iron box and after digging underneath he got recovered the same which was taken into possession vide Ex.PW/1. Accused Ajit Singh @ Jit Singh also made a disclosure statement that a lathi had been kept concealed by him in his residential house where cotton sticks were lying the heap of fuel and got recovered the same which was taken into possession vide Ex.PY. Accused Dalbir Singh made a disclosure statement that a lathi had been kept concealed by him in his residential house in backside of iron box and got recovered the same which was taken into possession vide Ex.PX/2.

4. During investigation, Dhira @ Randhir Singh succumbed to his injuries and charge under Section Section 302 IPC was added.

5. Thereafter, the police investigated the matter and submitted a report under Section 173 Cr.P.C. against the convict-appellants under

Sections 302/452/148/323/450 read with Section 149 IPC.

6. The prosecution examined 12 witnesses and provided documentary evidence to support its case.

7. All the incriminating evidence was placed before the accused-appellant to which they pleaded innocence in their statement under Section 313 Cr.P.C. The accused-appellants lead evidence of DW1 Kamla in their defence.

8. DW1 Kamla deposed that it was the complainant party who under the influence of liquor tried to outrage her modesty. She deposed that it was the complainant party who had to be grilled, but the police arrested the appellants wrongly.

9. The trial Court after taking into consideration all the materials on record convicted and sentenced the accused-appellants.

10. Hence the present appeal.

11. Learned counsel for the appellants contended that there was no motive for the appellants to attack deceased Dhira @ Randhir Singh. Rather, the deceased intervened and it was at spur of the moment and therefore, no offence under Section 302 IPC is made out against the appellants. Learned counsel further contended that the occurrence took place on 10.8.2001, whereas the deceased was taken to hospital on 11.8.2001 at 5.50 p.m. who died on 15.8.2001 at 9.45 p.m. Had timely medical assistance been provided to the deceased, he could have been saved. Therefore, for no fault of them in not delivering medical assistance to the deceased, they can be held guilty for the offence under Section 302 IPC. It

was lastly contended that the prosecution has failed to prove the charges against them.

12 Heard learned counsel for the appellants as well as the counsel for the State and perused the record carefully.

13. PW4 Om Parkash is the star witness in this case. He being the injured eye witness set the prosecution case in motion and categorically deposed that about 1½ months prior to the date of occurrence, i.e. 10.8.2001, he purchased a house in Ward No.8, Barwala from the brother of one Paras Ram and accused Dalbir Singh who was also interested to purchase the same was nursing a grudge against him. On 10.8.2001 at about 8.00 p.m. when he alongwith deceased Dhira @ Randhir Singh, Ram Kumar and Raja was sitting in the courtyard of his house, accused Dalbir alongwith five other persons, namely, Ajit Singh, Raj Kumar, Satpal, Suresh and Mahabir armed with lathies came there. Accused Dalbir raised a lalkara that enemies are present, they be dealt accordingly and accused Dalbir gave two lathi blows on the head of Dhira @ Randhir Singh and on account of which Dhira @ Randhir Singh fell down on the ground. Accused Raj Kumar gave lathi blow on the head of Parkash @ Om Parkash from front side. Accused Suresh inflicted a lathi blow from the backside on the head of Parkash @ Om Parkash. Accused Ajit inflicted lathi blow on the thigh of right leg. Accused Mahabir gave lathi blow on the stomach of Dhira @ Randhir Singh. Accused Satpal inflicted a kick blow on the head of Dhira @ Randhir Singh while he was lying on the ground and a kick in the back of Om Parkash(complainant). On his raising alarm, PW5 Jai Singh and one

Bharat Singh came to their rescue whereas, Ram Kumar and Raj slipped away.

14. PW5 Jai Singh corroborating the version deposed by PW4 deposed that on 10.8.2001, when he was proceeding to the house of Om Parkash, he heard noise of Dalbir Fauji raising lalkara and attacked Om Parkash and Randhir Singh. PW5 has given a graphic account of the whole occurrence as deposed by the PW4 Om Parkash.

15. PW2 Dr. Subhash Sharma, General Surgeon, Janta Hospital, Barwala medico-legally examined Parkash @ Om Parkash on 10.8.2001 at about 10.30 p.m. and found the following injuries on his person:-

“1. A lacerated wound measuring about 5 cm x 1 cm wide x 1 cm deep situated over parietal region just parallel to the anterior median plane (in longitudinal direction) in the middle part of the scalp, slightly towards the left side anterior to the sagittal plane. The wound is muscle deep, underlying bone feels normal. On palpation moderately bleeding.

2. An oblique long bruise with two parallel lines over right thigh region above right knee.

3. An ill defined swelling over occipital region scalp.

The Doctor opined that the injuries were caused within a duration of 6 hours with blunt weapons.

16. PW2 Dr. Subhash Sharma, General Surgeon, Janta Hospital, Barwala also medico-legally examined Dhira @ Randhir Singh on 11.8.2001 at about 5.50 p.m. and found the following injuries on his

person:-

“1. Patient was unconscious not responding to vocal command. Patient was having high grade fever. Involuntary movements of both the upper limbs were there. Bleeding from nose was present. Suddenly, the patient was passed in respiratory failure. Endo tracheal intubation was done and patient was kept on artificial respiration.

2. An ill defined swelling was seen over occipital region of the scalp 4 cm x 3 cm.

3. There were bruise over lower part of the right side of chest longitudinal/obliquely placed with two parallel lines about 4 cm long x 3 cm wide (approximately).”

The Doctor opined injuries No.1 and 2 to be dangerous in nature. On being shown the weapon of offence, this Doctor opined that injuries could be inflicted by such type of lathies.

17. PW6 Dr. Suman Menon, Medical Officer, General Hospital, Hisar, conducted post mortem examination on the dead body of Dhira @ Randhir Singh on 15.8.2001 at 4.00 p.m. and found the following injuries:-

“1. There was swelling in the occipital region.

2. There were stitched wound of 5.5 cm on right parietal bone above the right ear, which was longitudinal.

3. There was an abrasion on the chest.

On dissection on the injury No.1, there was fracture of right parietal. Blood was coming out of the brain tissue.

There was haemorrhage in the brain tissue. Blood was also present at the base of skull. There was fracture of skull bone in the occipital region. All the internal organs of abdomen and chest were congested.

The Doctor opined that the cause of death in this case was shock due to head injury which was ante mortem in nature and sufficient to cause death in ordinary course of life.

18. It has come on record through the deposition of PW12 ASI Raj Kumar that on receiving ruqa Ex.PF regarding admission of Om Parkash on 10.8.2001, he rushed to Janta Hospital to record the statement of Om Parkash, vide application Ex.P1, but the Doctor declared Om Parkash unfit to make a statement vide his endorsement Ex.P1/A. On 11.8.2001, PW12 again received a ruqa Ex.PH regarding admission of injured Dhira @ Randhir Singh. PW12 again forwarded an application Ex.PJ before the Doctor, but the Doctor declared Dhira @ Randhir Singh unfit to make a statement vide Ex.PJ/1, whereas vide endorsement Ex.P1/B, the Doctor declared Om Parkash fit to make statement on 11.8.2001 and he recorded his statement whereas, injured Dhira @ Randhir Singh was declared unfit from 11.8.2001 to 13.8.2001 by the Doctor vide Ex.PJ/1 to PJ/3. Ultimately, Dhira @ Randhir Singh succumbed to his injuries on 15.8.2001 at 9.45 a.m. PW12 arrested all the accused.

19. The evidence of PW4 and PW5 and the medical evidence establish that the accused in furtherance of their common intention, who otherwise nursed grudge against PW2 Parkash @ Om Parkash attacked them

and in that process caused the death of Dhira @ Randhir Singh and caused injuries to PW2.

20. As far as motive part is concerned, it has come in evidence that the accused-appellant Dalbir nursed a grudge against Om Parkash and he alongwith other accused-appellants had every reason to attack him. But the prosecution has failed to establish that there was any previous enmity or malice or any premeditation to give injuries to Dhira @ Randhir Singh and cause his death. Neither, it was the case of the prosecution, nor any of the witnesses has deposed that the accused-appellants had nursed against Dhira @ Randhir Singh. True it is that accused Dalbir premeditated the attack on Om Parkash and had gone well prepared and attacked the complainant party with lathi alongwith other accused. But on the other hand, it has also to be taken into consideration that appellant Dalbir nursed the grudge against Om Parkash only. It was in a fit of rage that accused Dalbir in order to attack Om Parkash, came down heavily crashing and crushing everything that came in his way just to take revenge from Om Parkash and unfortunately, Dhira @ Randhir Singh faced the brunt and became his victim.

21. Therefore, in our opinion accused Dalbir had committed the offence under Section 304 Part I IPC and not under Section 302 IPC. Since as per the evidence of PW4 and PW5, accused Dalbir caused lathi blows on the head of Dhira @ Randhir Singh and as per medical evidence the death occurred due to the head injury, therefore, it can be safely held that other accused, namely, Mahavir Singh, Jeet Singh @ Ajit Singh, Raj Kumar and Suresh had no role to play in the murder of Dhira @ Randhir Singh and can

only be charged with the offence under Section 452/148/323 read with Section 149 IPC.

22. Therefore, the appeal in CRA-D-625-DB of 2003 stands disposed off with modification that appellant Dalbir is convicted for the offence under Section 304 Part I IPC instead of Section 302 IPC and is sentenced to undergo RI for 10 years and to pay a fine of ₹5000/- and in default of payment of fine, to undergo further rigorous imprisonment for 1 year. The conviction and sentence imposed for the other offences is maintained. The conviction of appellants in CRA-S-1451-SB of 2003 stands maintained whereas, they are sentenced to the period already undergone by them. The sentence of fine alongwith the default clause is maintained.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

October 11, 2017
Gulati

Whether Reportable : Yes

Whether Speaking/Reasoned : Yes