

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I. **CRA-S-1866-SB of 2003**
Date of Decision : July 21, 2017

Shish Pal and another	Versus	Appellants
State of Haryana		Respondent

II. **CRR 217 of 2004**

Rajbir	Versus	Petitioner
Shish Pal and others		Respondents

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

Present : Mr. Sudhir Sharma, Advocate
for the convicts.

Mr. Praveen Bhadu, Assistant A.G., Punjab.

Mr. Ashwani Bhardwaj, Advocate
for the complainant.

T.P.S. MANN, J.

Shish Pal and Rishi Pal, alongwith their father Lakhmi Chand and cousin Bijender were tried for committing offences punishable under Sections 323, 325 and 302 read with Section 34 IPC of the Indian Penal Code for causing simple and grievous injuries on the person of Rajbir and the death of Rattan Lal on account of dispute over the watering of the fields by the complaint on 6.3.2001 from the tube-well owned by the complainant

and the accused who are related *inter se*. Vide judgment and order dated 5/8.9.2002, learned Additional Sessions Judge, Faridabad acquitted Lakhmi Chand and Bijender of the charges against them. Shish Pal and Rishi Pal were also acquitted under Section 302 IPC. However, Shish Pal was convicted under Section 304 Part I IPC, whereas Rishi Pal under Section 304 Part I read with Section 34 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.25,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for one years and two months. Shish Pal was also convicted under Section 325 IPC, while Rishi Pal under Section 325 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.3,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for nine months. Rishi Pal was further convicted under Section 323 IPC while Shish Pal under Section 323 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for 1½ months. All the substantive sentences were ordered to run concurrently. 75% of the total fine amount was ordered to be paid to the wife of the deceased under Section 357 (1) Cr.P.C.

Aggrieved of their conviction and sentence, Shish Pal and Rishi Pal convicts filed CRA-S-1866-SB of 2003 which stands admitted and both the convicts granted the concession of suspension of sentence. At the same time, complainant Rajbir filed CRR 217 of 2004 for challenging

the acquittal of the accused under Section 302 read with Section 34 IPC and for awarding adequate sentence to Shish Pal and Rishi Pal convicts under Section 304 Part I IPC and awarding compensation to the aggrieved party. The revision was ordered to be heard with the appeal filed by the two convicts.

According to the prosecution, SI Ram Avtar had recorded the statement Ex.PE of complainant Rajbir on 6.3.2001 at 10.15 p.m. In the said statement Rajbir had stated that it was the turn of the complainant party to irrigate their fields from the tube-well jointly owned by them with the accused party and for that purpose Deepak was present at the tube-well waiting for restoration of electricity supply. However, Lakami Chand came there and removed the cutout fuse of the tube-well which act was objected to by Deepak. Verbal dual ensued between Deepak and Lakhmi Chand whereafter both of them went back to their respective houses. When the complainant visited the house of accused Lakhmi Chand to lodge a report, Lakhmi Chand's wife Smt. Barfi handed over the cutout fuse to Deepak who then left for starting the tube-well. In the meanwhile, complainant's brother Rattan Lal returned from retail shop and called the complainant from the street to find out as to when they would be leaving for giving the Maanda. Upon hearing the same, the complainant came out from the house of Lakhmi Chand and told Rattan Lal that they would leave immediately after having a bath. In the meanwhile, Lakhmi Chand, Shish Pal, Rishi Pal and Bijender, while armed with lathies came to the place where the complainant was standing. Shish Pal inflicted the lathi blow on the head of

Rattan Lal without their being any provocation, whereas Rishi Pal gave a lathi blow thrust-wise on the right side of chest of Rattan Lal. Lakhmi Chand and Bijender inflicted lathi blows on the left leg of Rattan Lal. When the complainant raised an alarm, Shish Pal inflicted a lathi blow on his right foot whereas Rishi Pal inflicted a lathi blow on his left shoulder. Bijender and Lakhmi Chand also inflicted lathi blows on his back after he had fallen down on account of receiving injuries. Later on, they removed Rattan Lal to Deep Nursing Home, Faridabad for treatment but the doctor declared him dead.

It is further the case of the prosecution that on the basis of statement made by complainant Rajbir, FIR No.70 dated 6.3.2001 under Sections 323 and 302/34 IPC was registered at Police Station Chhainsa. Subsequently, Head Constable Hukam Chand recorded the statement of Rishi Pal accused who visited Police Station Tigaon in the company of his brother Shish Pal. In his statement the accused stated that on that day, i.e. 6.3.2001 at around 8.00 a.m. his father Lakhmi Chand visited the joint tube-well for operating the same where Deepak was already present who prevented Lakhmi Chand from operating the same as it was his own turn of water. Lakhmi Chand yielded to the resistance offered by Deepak but Rattan Lal fell offended. When Rishi Pal was returning home on his scooter from his duty in a factory, he was attacked and assaulted by Rattan Lal with slaps and fistcuffs, who also gave a lathi blow on the little finger of his left hand. Deepak also gave a lathi blow on his right hand, whereas Rajbir and Praveen sons of Rattan Lal reached the spot and assaulted Rishi

Pal with slaps and fistcuffs. Upon raising of alarm by Rishi Pal, Lekh Raj and Jarsan reached the spot and rescued Rishi Pal from the assailants.

On the basis of aforementioned statement made by Rishi Pal, DDR Ex.PQ was recorded. However, no further action was taken by the police on its basis.

During the investigation of the FIR registered on the basis of statement made by Rajbir complainant, Dr. S.S. Yadav, medico-legally examined Rajbir complainant on 6.3.2001 at 6.00 p.m. and found the following injuries on his person :-

- “1. A reddish abrasion 1.5 cms. x 4 cms. on the posterior aspect of lower 1/3rd of left leg with a diffused swelling around it. Tenderness was present. Crepitus was present. Movements were restricted. Advised X-ray left leg AP and lateral view.
2. A reddish contusion 2 cms. x 4 cms. on the left supra-scapular region. Tenderness was present. Advised X-ray, left scapular region and left shoulder.
3. A reddish contusion 2 cms. x 10 cms. on the back of right chest 2-1/2 cms. lateral to mid line.
4. A reddish contusion 2 cms. x 8 cms. on the back of lower chest extending bilateral to mid line.
5. A reddish contusion 2 cms. x 3.5 cms. on the right lumber region.
6. Complaint of pain right iliac crest region. Tenderness was present, Advised X-ray, right iliac crest region.

7. Complaint of pain right thumb. Tenderness was present. Advised X-ray, right thumb.”

Out of the above injuries, injuries No.3, 4 and 5 were declared simple, whereas remaining were advised X-ray examination, which was conducted by Dr. Sunita Kathri 8.3.2001 and it revealed fracture on lower 1/3rd of the left fibula.

Dr. S.S. Yadav also medico-legally examined Rishi Pal accused on 6.3.2001 at 12.10 p.m. and found the following injuries on his person :-

- “1. A reddish abrasion 1.5 cms. x 2 cms. on the posterior aspect of middle 1/3rd of right forearm.
2. A diffused swelling 3 cms. x 4 cms. on the dorsal aspect of left hand with a reddish contusion 0.5 cm. x 1 cm. on it. Tenderness was present. Movements were restricted. Advised X-rays left hand AP and lateral view.
3. Complaint of pain all over the body.”

According to the doctor, injuries No.1 and 3 were simple in nature whereas X-ray was advised qua injury No.2 which revealed fracture of 5th metacarpal bone and, thus, grievous in nature.

Dr. Dara Singh Rathi had conducted post-mortem on the dead body of Rattan Lal on 6.3.2001, who found the following injury :-

“There was lacerated wound 7 cms. x 1 cm. over the mid-parietal region. Rigor mortis was present in the proximal part of the body. Post-mortem staining was present.”

He deposed that left parietal bone was fractured and there was a subdural haematoma of size 10 cms. X 8 cms. present over the left parietal lobe of the brain. The cause of death was head injury leading to coma and death. All the injuries were ante-mortem in nature and sufficient to cause death in ordinary course of nature.

Upon completion of investigation and presentation of challan, the appellants and their co-accused Lakhmi Chand and Bijender were tried for aforementioned offences, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution has examined as many as fifteen PWs, namely, PW1 Dr. Sunita Khatri; PW2 Dr. Dara Singh Rathi; PW3 Dr. S.S. Yadav, PW4 Bishan Singh; PW5 Constable Lalit Kumar; PW6 Constable Bijender Singh; PW7 Rajbir; PW8 Deepak; PW9 Dalip Singh; PW10 SI Ramphal; PW11 Karan Singh; PW12 SI Ram Avtar; PW13 HC Hukam Chand; PW14 Head Constable Sher Singh; and PW15 Ashok Kumar, Draftsman.

When examined under Section 313 Cr.P.C., all the four accused contended the prosecution evidence as adduced against them to be false. Out of them, the accused Rish Pal has claimed that if it was the turn of the accused party to irrigate their fields from the joint tube-well on 6.3.2001, but PW8 Deepak of the opposite section wanted to forcibly irrigate his own fields which attempt was resisted by his co-accused father Lakhmi Chand but Deepak misbehaved with him whereupon Lakhmi Chand slapped Deepak and removed the cutout fuse from the said tube-well

which act annoyed Rattan Lal (since deceased), Rajbir PW7 and Deepak PW8 who all way laid him in front of his 'Nohra' while he was passing in front of the same on his scooter on his way back home from work and at which time Rajbir showered slaps and fist blows upon him whereupon he himself had snatched the lathi from his above named assailant Deepak and had used the same in self defence whereas ladies from his household had thrown brick bats on the complainant party in self defence. He asserted that his co-accused brother Shish Pal was not present at the time of occurrence in question during the course of which he himself had sustained simple and grievous injuries at the hands of the complainant party and added that in the company of his co-accused brother Shish Pal he had visited Police Post Tigaon where his statement was recorded and where from he was taken for his medico-legal examination. It is alleged by him that upon the complainant party coming to know that he has lodged a report of the occurrence in question with the police, the complainant had in collusion with the police, given a distorted version so as to implicate his whole family and in which version the place of occurrence has also been misreported

The accused Lakhmi Chand has put forth the same version as his co-accused son Shish Pal and reproduced above and added that he himself was not present at the time of occurrence in question. The accused Shish Pal claimed that he did not participate in the occurrence but has been falsely implicated only to mar his career in the army where he is employed. The accused Bijender similarly claimed that he has been falsely implicated

in the case in hand although he has no concern therewith.

The accused party also examined two witnesses, namely, Dr. Ramesh Chand and one Khacheru as DW1 and DW2, respectively in their defence.

After hearing learned counsel for the parties and on going through the evidence, learned trial Court convicted and sentenced Shish Pal and Rishi Pal, as mentioned above, whereas Lakhmi Chand and Bijender were acquitted of the charges against them. Hence, the present appeal.

When the appeal was taken up for final hearing on 24.4.2006, learned counsel for the appellants apprised the Court that Shish Pal appellant had since died. However, his appeal be heard and disposed of on merits, more so, when Rishi Pal appellant is also one of the appellants in the appeal and that appeal is to be decided on merits. On 26.11.2014, learned counsel for the appellants also brought to the notice of the Court that report regarding death of Shish Pal appellant had not been received. Accordingly, learned State counsel was directed to produce the verification report. Pursuant to the same, on 10.12.2014, learned State counsel filed the death certificate of Shish Pal appellant alongwith the affidavit of Shri Ravinder Singh, Assistant Commissioner of Police, Tigaon, Ballabhgarh, District Faridabad. A perusal of the said affidavit showed that the factum regarding death of Shish Pal appellant having taken place on 9.2.2006 stood duly verified.

Having heard learned counsel for the parties and on going through the impugned judgment as well as the evidence brought on record

by the parties, this Court finds that PW7 Rajbir and PW8 Deepak who were projected as eye-witnesses of the occurrence have duly supported the prosecution case in its entirety. Despite having cross-examined at length, both Rajbir and Deepak stood to their ground and deposed that the appellants had actively participated in the occurrence and caused injuries. The ocular account is further corroborated by medical evidence. It may also be noticed that the occurrence in question had taken place on 6.3.2001 at 8.00 a.m. Subsequent thereto, Rattan Lal was rushed to the hospital but he was declared dead on arrival. This was followed Rajpal complainant making statement before SI Ram Avtar on the same day which was completed at 1.15 p.m. On its basis, FIR Ex.PD/1 came to be registered on 6.3.2001 at 2.15 p.m. at Police Station Chhainsa. The FIR, having been registered PD/1 under Section 302 IPC, special report was handed over to PW5 Constable Lalik Kumar who delivered to it to the Ilaqa Magistrate on the same day at 6.30 p.m. There is, thus, no delay in the lodging of the FIR or receipt of the special report by the Ilaqa Magistrate. Whatever delay occurred has been satisfactorily explained.

In view of the above, no case is made out for any interference in the conviction of Shish Pal and Rishi Pal appellants.

Coming to the question of sentence it may be noticed that though Rishi Pal appellant had given lathi blow thrust-wise on the right side of the chest of Rattan Lal, deceased yet PW2 Dr. Dara Singh Rathi who had conducted post-mortem on the dead body of Rattan Lal had noticed only a solitary blow and, that too, on the mid parietal region. No

such injuries as attributed to Rishi Pal on the deceased was noticed. Of course, he was attributed causing of an injury on the person of Rajbir for which he stands convicted under Section 323 IPC. He is facing the agony of criminal prosecution for the last more than 16 years. As per custody certificate already brought on record by the learned State counsel, out of the sentence of five years imposed upon him he has already undergone a total sentence of one year two months and one day. Apart from the present case, he is not shown to be either involved or convicted in any other case. He is on bail , pursuant to the order passed by this Court on 21.8.2004. There is no allegation that after being released on bail, he has misused the concession of bail in any manner.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending Rishi Pal appellant behind the bars, once again, for undergoing the sentence of imprisonment imposed upon him. Ends of justice would be suitably met if his substantive sentence of imprisonment is reduced to the one already undergone by him. At the same time, fine imposed upon him can be suitably enhanced so as to compensate the wife of the deceased.

Resultantly, the conviction of the appellants, as recorded by the learned trial is upheld. No further orders are required to be passed qua the sentence of the Shish Pal appellant as he has already died and for all intents and purposes his appeal abates and disposed of accordingly.

As regards Rishi Pal appellant his substantive sentences of imprisonment on all the counts is reduced to one already under by him. The

fine of Rs.25,000/- imposed upon him under Section 304 Part I read with Section 34 IPC is enhanced to Rs.50,000/- and in default thereof, he shall undergo rigorous imprisonment for two years. Fine of Rs.3,000/- imposed upon him for the offence under Section 325 read with Section 34 IPC is also enhanced to Rs.10,000/- and in default thereof, he shall further undergo rigorous imprisonment for nine months. The fine of Rs.500/- imposed upon him under Section 323 IPC is also enhanced to Rs.1,000/- and in default thereof, he shall further undergo rigorous imprisonment for 1½ months. The entire amount of fine, if recovered or deposited by Rishi Pal appellant shall be paid to the wife of the deceased as compensation under Section 357 (1) Cr.P.C.

The appeal filed by Rishi Pal and so also revision filed by Rajbir complainant are accordingly, disposed of.

July 21, 2017
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**(T.P.S. MANN)
JUDGE**

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO