

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-450-DB-2004 (O&M)

Date of decision: 30.07.2018

Randhir Singh and others

.....Appellants

versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr.Justice A.B.Chaudhari
Hon'ble Mr.Justice Kuldip Singh

Present: Ms.Rivayat Hayer, Advocate for the appellant no.2
Ms.Tanisha Peshawaria, DAG Haryana

1. *Whether Reporters of Local newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

Originally, this appeal was filed by four appellants, namely, Randhir Singh, Partap Singh, Naresh and Phoolpati against judgment of conviction dated 20.4.2004 and order of sentence dated 27.4.2004, passed by learned Additional Sessions Judge, Jind, vide which, appellants were convicted and sentenced as under:-

“to undergo rigorous imprisonment for five years and to pay a fine of Rs.1000/- each under Section 120-B Indian Penal Code. Convicts Randhir Singh, Partap Singh and Naresh are also sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- each under Section 302 read with Section 34 Indian Penal Code. They are further sentenced to undergo rigorous imprisonment for seven years and to pay a fine of

Rs.2000/- each under Section 307 read with Section 34 Indian Penal Code and further sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- each under Section 325 read with Section 34 Indian Penal Code. In default of payment of fine, accused-convict Phulpati shall further undergo rigorous imprisonment for one year while the remaining three convicts shall further undergo rigorous imprisonment for two years each in default of payment of fine. However, all the aforesaid substantive sentence shall run concurrently. Benefit of Section 428 Cr.P.C. Be also given to all the convicts.

However, during the pendency of the appeal, three appellants, namely, Randhir Singh, Naresh and Phoolpati died. Vide order dated 17.7.2018, appeal qua them was disposed of having been abated.

Now, the appeal survives only qua Partap Singh-appellant no.2.

The case was registered on the statement of Rupa alias Rup Chand son of Rati Ram (Ex.PA), wherein, he stated that his father namely, Rati Ram were two brothers. Younger brother was Krishan Lal. Rati Ram had three sons, namely, Duli Chand, Zile Singh and complainant Rupa alias Rup Chand. Krishan Lal, uncle of the complainant had four sons, namely, Surta, Sobha, Maha Singh and Lal Chand. Sobha was married but due to death of his younger brother Maha Singh, his wife Phool Pati contracted Kareva marriage with Sobha. Both wives of Sobha, namely, Khazani and Phool Pati were not cooperating with Sobha, therefore, he performed third

marriage with Nirmala. From the wedlock of Sobha, Khazani gave birth to a son, Nirmala gave birth to a son and Phool Pati gave birth to three sons, namely, Partap, Randhir and Naresh. Randhir is residing in the village and the other two sons are residing in Hisar and Panipat. Phool Pati has filed a Civil Suit in Civil Court Safidon to dispossess Nirmla, in which, Roopa and his brother Duli Chand and Zile deposed in the Court in favour of Nirmla. On 24.8.2000, after taking meals as usual, he was sleeping on *Chabutra* in front of his house, Ishwar son of Duli Chand and Virender son of Ishwar were sleeping on their *Chabutra* near the complainant. While Duli Chand was sleeping in his room (Baithak). Zile Singh was sleeping in the street and Balbir son of Roopa was sleeping in front of Nohra. At about 11.30 PM he heard a noise. He woke up and saw Randhir son of Sobha standing near to him armed with Axe. On his asking, Randhir told that he will teach a lesson to the complainant party for giving evidence in the Court. On saying that he gave Axe blow on the left side of his chest. The complainant raised alarm. Virender son of Ishwar also woke up. Randhir then gave Axe blow on the front side of neck of Ishwar. They raised alarm and tried to overpower him but in the mean time Randhir gave Axe blow on the chest of Duli Chand and then gave Axe blows on the back of Zile Singh and gave two Axe blows on son of the complainant Balbir Singh, one on his chin and the other on his left arm. Randhir succeeded in running away with his Axe. Duli Chand succumbed to the injuries at the spot, whereas, the complainant, Balbir, Zile Singh and Ishwar were being taken by son of the complainant Suresh in a four wheeler to Civil Hospital, Safidon for treatment. Ishwar Singh succumbed to the injuries on the way and was declared brought dead by the doctor. Balbir Singh and Zile Singh were referred to PGIMS, Rohtak by the

doctor.

During the course of investigation, Ramesh Kumar made a supplementary statement, in which, he stated that when he heard the noise of 'Bachao Bachao'. He went in the street, he saw that Partap, Randhir and Naresh sons of Sobha Ram armed with Axes in their hands and they were inflicting injuries on the persons who were sleeping there. He identified all the three persons, who ran away.

All the accused were arrested and put to trial. All the accused were charge sheeted under Sections 302, 307, 325 read with Section 34 and 120-B IPC, to which, they pleaded not guilty.

To support its case, the prosecution, examined as many as 24 witnesses. When examined under Section 313 Cr.P.C., accused pleaded false implication. They examined Dr.S.C.Bhargava (DW1), Dr.Prem Kumar Gupta (DW2), Ram Kumar, LDC (DW3) and Inder Singh (DW4).

After hearing the prosecution, the accused and going through the evidence, all the appellants were convicted and sentenced as aforesaid.

We have heard learned counsel for both the parties and have also carefully gone through the file.

Since, in this case three appellants are dead and only appellant no.2, namely, Partap Singh son of Sobha is surviving, therefore, we will confine our discussion only to the role attributed to Partap Singh-appellant no.2.

It is to be noted that in the first version of Rupa alias Rup Chand, who is eye witness to the occurrence, only one person was involved in the crime i.e. Randhir Singh son of Sobha. According to Rupa alias Rup Chand, it was Randhir Singh, who caused injuries to Rupa alias Rup Chand,

Ishwar Singh, Duli Chand, Zile Singh and Balbir Singh. Two persons, Duli Chand and Ishwar Singh died, whereas other were injured. It was on the supplementary statement of Ramesh Kumar that the remaining accused were named.

Now, the first question arising for consideration is as to whether the first version of injured eye witness, who is stamped witness, is to be believed or the supplementary statement recorded later on is to be believed.

We are of the view that Rupa alias Rup Chand is a stamped witness as he had also received injuries in the occurrence. He has specifically given the time when he saw Randhir Singh and in his presence, Randhir Singh son of Sobha had caused injuries. The injuries were given in the *Chabutra* in front of the house of the complainant. All of them were sleeping. Injuries were given when Rupa alias Rup Chand complainant woke up and asked Randhir Singh as to why he has come there with Axe. Ramesh Kumar, who made a supplementary statement later on, during investigation, was not recorded to be present when the injuries were caused. All the injuries were attributed to Randhir Singh, who is now dead and proceedings against him have abated. In his supplementary statement, Ramesh Kumar has tried to implicate two brothers of Sobha, namely, Partap Singh and Naresh and Phoolpati wife of Sobha, by stating that he had also seen said Partap Singh, Naresh and Phoolpati with Randhir Singh carrying Axe and saw them causing injuries to the persons.

We are of the view that the improved version of Ramesh Kumar cannot be believed and the first version given by Rupa alias Rup Chand is more dependable.

In his statement in the Court, Zile Singh injured PW2 toed the line of Rupa alias Rup Chand, stating that it was Randhir Singh, who caused injuries. However, he has stated that four five days prior to the occurrence, when he was going through a street to engage labourers and when reached near the house of the Phoolpati, he heard Partap saying that Randhir will commit the murder of the family and then they will support for his escape. In this way, conspiracy is sought to be attributed to Partap Singh and Phoolpati. The statement of Zile Singh is a weak evidence. He only heard the voice. However, later on he tried to improve his version saying that he also saw them. If it was so, then Zile Singh would have been alarmed about the conspiracy but there is nothing to show that he was ever alarmed and tried to take preventive measures. Balbir Singh, while appearing as PW3 stated that on 24.8.2000 at about 11.30 pm, when he was sleeping in front of his house, after taking dinner, he heard a noise, he woke up and saw that Naresh and Partap were standing by the side of his cot. Partap inflicted Axe blow on his chin. Naresh inflicted Axe blow on his left shoulder. After receiving injuries, he became unconscious. His statement is in complete contradiction with the statement made by Rupa alias Rup Chand and Zile Singh.

In the circumstances and considering that we are deciding the appeal only qua Partap Singh-appellant no.2, we are of the view that the version tried to be put forth by Zile Singh regarding conspiracy, 4-5 days prior to the occurrence and that by Balbir Singh regarding other accused being involved in the crime, has to be ruled out. Consequently, it has to be held that only Randhir Singh was involved in the crime.

As a result of the foregoing discussion, present appeal is

allowed qua Partap Singh-appellant no.2 Judgment of conviction dated 20.4.2004 and order of sentence dated 27.4.2004 passed by learned Additional Sessions Judge, Jind, convicting and sentencing him under Sections 120-B, 302 read with Section 34, 307 read with Section 34, 325 read with Section 34 Indian Penal Code are set aside and he is acquitted of the charges framed against him. Since, Partap Singh-appellant no.2 is on bail, his bail bonds and surety bonds are discharged.

(A.B.Chaudhari)
Judge

(Kuldip Singh)
Judge

30.07.2018
gk

Whether speaking/ reasoned:	Yes
Whether Reportable:	No