

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

CRA-D-467-DB of 2004 (O&M)
Date of decision: December 10, 2018

Amar Singh and others

.....Appellants

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. J.S. Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate for appellants No.2 and 3.

Mr. Vivek Saini, DAG Haryana.

Mr. K.D.S. Hooda, Advocate for appellant No.4.

A.B. CHAUDHARI, J

Being aggrieved by impugned judgment/order dated 26.02.2004/27.02.2004 passed by the learned Additional Sessions Judge (Adhoc), Faridabad in Sessions Case No.26 of 1999, by which the learned trial Court convicted and sentenced the appellants, namely Amar Singh, Sube Singh, Sunil and Anil @ Vasuali, for commission of offences as mentioned in the impugned judgment/order, the present appeal was filed by the appellants.

FACTS

2. Briefly stated, the prosecution case was that on 07.05.1999, appellants/accused persons armed with bricks, *lathis* and iron rod attacked the complainant-Parkash Chand and his brother Partap Singh in their house at village Tigron and inflicted injuries on their person. The occurrence was

witnessed by Mawasi, Dharambir and Shyam Lal who were also attacked by the accused persons and ran away from the spot. Complainant-Parkash Chand and his brother Partap Singh were taken to PHC Kaurali. They were referred to Civil Hospital, Ballabgarh and then to Batra Hospital, New Delhi. They were further taken to Holy Family Hospital, Delhi, where their medical examination was conducted on 08.05.1999. Ultimately, they were shifted to Safdarjung Hospital, New Delhi. Partap Singh, brother of the complainant was declared dead on 08.05.1999 at 3:10 P.M.

3. On completion of necessary formalities, FIR was registered. Accused were arrested. Weapons of offence were recovered, statements of witnesses were recorded and accused persons were charged for commission of offence punishable under Sections 452, 302, 325 and 323 read with Section 34 of Indian Penal Code, 1860 (for short 'IPC'). Finally, after hearing the evidence, the learned trial Judge convicted the appellants as stated above. Hence, this appeal.

ARGUMENTS

4. Mr. J.S. Bedi, learned Senior counsel for appellants No.2 and 3 and Mr. K.D.S. Hooda, learned counsel for appellant No.4 contended that the impugned judgment/order of conviction/sentence is totally against the facts and settled canons of law and misreading and mis-appreciation of evidence has resulted into miscarriage of justice. There is an unexplained delay of 19 hours in lodging the FIR in question. The occurrence took place at about 8:00 P.M. on 07.05.1999 whereas FIR was got registered at about 5:40 P.M. on 08.05.1999. Thus, there was a delay in lodging the FIR only with a view to involve accused persons. Taking advantage of one injury on

the head of Partap Singh (since deceased), all the family members have been roped in. They also contended that it was a case of free fight. Injuries on the person of appellants No.1 and 3 have not been explained by the prosecution. Amar Singh filed a complaint (Exhibit PD4/A), i.e. DDR No.21 dated 07.05.1999 against Parkash Chand and Partap Singh. There were two injuries inflicted to Amar Singh and two injuries upon Sunil. Finally, learned counsel submitted that the appellants could not have been held guilty for commission of offence as above and prayed for allowing of appeal and acquittal of the appellants.

5. *Per contra*, learned State counsel supported the case of the prosecution and contended that the impugned judgment/order of conviction/sentence is absolutely inconsonance with the legal preposition of law. There is no lacuna in the case of the prosecution and thus, the learned trial Court rightly dealt with all the aspects of the case. He, therefore, prayed for dismissal of the appeal.

CONSIDERATION

6. We have heard learned counsel for the rival parties at length. We have also perused the entire evidence adduced by the prosecution. As per death certificate dated 22.12.2016 (Annexure R-1), appellant No.1-Amar Singh expired during the pendency of the present appeal and as such, appeal qua him stands dismissed as abated.

7. The prosecution case in brief is that the deceased Partap was taking electricity supply from the house of his neighbour Badley by using a wire. From a joint cable, the electricity supply was given to both the appellants and Parkash Chand, which got burnt on 05.05.1999 due to

overload because a marriage was being celebrated. Due to the burning of the electricity cable, a fight had taken place between the family members of the deceased and Parkash Chand. The submission made by the learned counsel for the appellants that there was delay in lodging the FIR on 08.05.1999 at 5:40 P.M. does not impress us and therefore, we reject the same. The trial Court also found disagreement with the said submission. We quote the following reasons from the impugned judgment of the trial Court dealing with the said aspect of the matter from Para-28, which reads thus:-

“28.But delay in lodging of the FIR would not prove fatal by itself and in face of delay the court would be required to scrutinize the evidence with great care and caution. Furthermore, the explanation for the delay in the present case is not far to seek. Parkash Chand himself had received injuries and his brother Partap had received grievous injuries which ultimately proved fatal. His condition was serious and he was in a coma and the injured were being taken from one hospital to the other. They had to knock the doors of the Primary Health Centre, Kurali. Escorts Hospital Faridabad from where Partap was referred to Batra Hospital Delhi. No bed was available in Batra Hospital and they had to go to Holy Family Hospital, New Delhi and then Partap was referred and shifted to Safdarjung Hospital, New Delhi where he died on 08.05.1999. The scenario was such that the first concerned of Parkash Chand and others was to get proper medical aid to Partap who was vacillating between life and death. Partap himself was in Coma and his brother Parkash Chand was also in injured condition. Reporting of the matter to the police in those critical hours would be the second priority. As soon as the police received information, statement of Parkash Chand PW-4 was recorded. There was nothing remiss on part of the Investigating Officer.

PW-6 Satbir Singh, Head Constable went to PHC Kurali but Partap and Parkash Chand were not found there. PW-4 Parkash Chand stated that he did not go to the police Post Tigaon and asked Net Ram to inform the police and when police came to Holy Family Hospital he made the statement Ex.PD. Said Parkash Chand was discharged on 09.05.1999. The inquest proceedings were conducted in Safdarjung Hospital by Delhi police.”

8. PW4-Parkash Chand is the injured eye witness along with PW5-Mawasi and had given a detailed narration about the manner in which the incident occurred. In this case, most important piece of evidence is eye witness account by PW4-Parkash Chand and PW5-Mawasi. They stated that the occurrence took place on 07.05.1999 at 08:00 P.M. when the deceased-Partap and eye witness Parkash Chand were in the house, when all the four accused persons Amar Singh (dead), Sube Singh, Sunil and Anil @ Vasuli entered their house. Amar Singh and Sube Singh gave a *lathi* blow on the head of Partap when PW4-Parkash Chand tried to rescue him, he was also attacked by them. Partap fell down on receiving head injury and Sunil gave a blow with iron rod on his forehead. PW4 also fell down.

9. Perusal of the evidence of these two witnesses shows that it was Amar Singh who had given a *lathi* blow on the head of the deceased Partap. Amar Singh has expired. In so far as other accused persons are concerned, it is stated that Sube Singh gave a *lathi* blow and Sunil gave a blow on the forehead of Partap with iron rod while Anil gave a brick blow to him. It is significant to note the injuries on the person of the deceased in order to find out the number of injuries in the light of the claim by the eye witness about number of blows given by iron rod, *lathi* and so on and so forth. We quote

injuries received by the deceased and the evidence thereto from the impugned judgment/order, which reads thus:-

“18.

1. *Abrasion on the back of right shoulder of size 2 x 1 cm;*
2. *Abrasion on the back of right elbow of the size 5 x 5 cms;*
3. *Abrasion in the back of left elbow of the size 8cm x 4cm;*
4. *Abrasion on the lower third of the left forearm;*
5. *Black eye left side with swelling;*
6. *Lacerated wound on the left parietal region of the size 3cm x 0.5 cm x. 0.5cm.*

19. Internal examination revealed that there was extravasation of blood under the scalp corresponding to injury No.6. The skull vault showed depressed fracture on the left parietal bone extending to right parieto frontal bone. Base of skull showed fracture of the middle cranial fossa bilaterally. Subdural and subarachnoid haemorrhage was present on left temporal parietal lobes. Intra haematoma was present in left parietal lobes. Brain was grossly oedematous and intra ventricular bleeding was present. He opined that the death was due to cranio cerebral injuries caused by blunt and hard weapons. Injury No.6 and corresponding internal injuries were sufficient to cause death in the course of nature individually as well as collectively.....”

10. Perusal of the above injuries numbering 6 shows that four injuries are abrasions, 5th injury is merely swelling and the 6th injury which is fatal is lacerated wound on the left parietal region of the deceased-Partap.

Thus, ocular evidence of the witnesses about all the accused showering blows on the head of the deceased will have to be circumspected. At any

rate, it can well be said that there was only one fatal injury that was caused. It is true that other accused persons had also entered the house together along with Amar Singh and had a quarrel. The deceased Partap died on 08.05.1999 at 3:10 P.M.

11. It is significant to note that the prosecution has not unfolded the genesis of the case inasmuch as Exhibit DW4/A is DDR No.21 dated 07.05.1999 lodged by accused Amar Singh against the deceased and the eye witness PW4-Parkash Chand. It is also an admitted fact that Amar Singh and Sunil had received two injuries each. There is, therefore, reason to believe in the absence of any prosecution witnesses about they assaulting accused persons that there must have been some fight. But then it is difficult to infer the intention on the part of the accused persons to commit murder of Partap as such. The appellants' party wanted to teach lesson to the deceased and his family members, but then it cannot be said that the prosecution proved any intention on the part of the appellants to commit murder of any particular person. We, are therefore, convinced that the conviction of the appellants for commission of offence of murder under Section 302 IPC will have to be set aside. We are of the opinion that the appellants except Amar Singh could be convicted in the light of the injury report of the deceased as aforesaid for the offence under Section 325 IPC read with Section 34 IPC in the absence of any intention to commission of murder. We, therefore, make the following order:-

ORDER

- (i) **CRA-D-467-DB of 2004** qua appellant No.1-Amar Singh is dismissed as abated;

- (ii) **CRA-D-467-DB of 2004** qua appellants No.2 to 4, namely Sube Singh, Sunil and Anil @ Vasuali, respectively, is partly allowed;
- (iii) The impugned judgment/order dated 26.02.2004/27.02.2004 passed by the learned Additional Sessions Judge (Adhoc), Faridabad in Sessions Case No.26 of 1999, by which the learned trial Court convicted and sentenced appellants No.2 to 4, namely Sube Singh, Sunil and Anil @ Vasuali, respectively, for commission of offences as mentioned in the impugned judgment/order, is set aside; and modified and they are convicted for the offence punishable under Sections 325/34 IPC and sentenced to undergo rigorous imprisonment which they have already undergone;
- (iv) Bail bonds of appellants No.2 to 4, namely Sube Singh, Sunil and Anil @ Vasuali, respectively, stand discharged.

(A.B. CHAUDHARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

December 10, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No