

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

Crl. Appeal D-547-DB of 2010
Date of Decision : February 03, 2018

Attar Singh @ Galla and others

.....Appellants

VERSUS

State of Haryana

.....Respondent

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

Present : Ms. Mayuri Lakhanpal Kalia, Advocate
as legal aid counsel
for the appellants.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

T.P.S. MANN, J.

The appellants, namely, Attar Singh @ Galla, Raju @ Chander Bhan and Madan @ Madi, were tried for committing the offence punishable under Section 302 read with Section 34 IPC for committing the murder by intentionally and knowingly causing the death of Prabhu Dayal @ Babu on 30.7.2008 at about 2.00 p.m. in the area of City Bahadurgarh falling within the jurisdiction of Police Station City, Bahadurgarh in furtherance of their common intention. Vide impugned judgment and order dated 5/6.5.2010, learned Additional Sessions Judge, Jhajjar convicted them for the aforementioned offence and sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs.20,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for two years each.

Aggrieved of their conviction and sentence, the appellants filed the present appeal which was admitted on 24.5.2010.

According to the prosecution, Smt. Raj Rani had made a statement Ex.P1 before ASI Jai Singh, Police Station City, Bahadurgarh on 30.7.2008 at 4.50 p.m. near Sabzi Mandi, Bahadurgarh stating therein that on that day it was festival of Shivratri, and her son Deepak had taken kaawad. After performing Ganga Jal ceremony and taking their meals, her son Deepak and devar Prabhu Dayal @ Baboo went to sleep. At about 2.00 p.m., she alongwith her son Deepak, Prabhu Dayal and husband Ram Kumar, who was suffering from paralysis, was present in their house. Attar Singh @ Galla, who was their neighbour alongwith Raju Dhanak and Madi Panjabi, residents of Killa Mohalla, Bahadurgarh came to their house and told them that they were going to Kundan Cinema. While doing so, they carried her devar Prabhu Dayal with them. All of them were addicted to drugs. After some time, her husband Ram Kumar directed her to call Prabhu Dayal back as the accused might commit some foul play. Accordingly, she and her son Deepak reached Kundan Cinema and saw that Raju and Madi had caught hold of her devar from his hands whereas Attar Singh @ Galla was causing injuries with a sharp edged weapon on his neck.

She and her son Deepak raised an alarm. All the three accused left Prabhu Dayal and fled away from the spot. Her devar while in an injured condition tried to chase them in order to apprehend them but on account of oozing out of lot of blood, he fell down on the kacha road. She and her son Deepak reached near Prabhu Dayal but by that time he had breathed his last. In order to attend to her devar, she remained there but sent her son to the Mohalla for informing the neighbours. The residents of the Mohalla reached the spot and told her that Attar Singh @ Galla was barefoot and proclaiming that if the police made enquiry regarding him they should state that he would return to his house after a month. After leaving her neighbours near the dead body of her devar, the complainant left for lodging a report and met ASI Jai Singh near Sabzi Mandi, Bahadurgarh where she got recorded her statement before him. On the basis of statement Ex.P1, FIR Ex.P1/B under Sections 302/34 IPC was registered at Police Station City, Bahadurgarh by SI Rohtash Singh on 30.7.2008 at 2.30 p.m. The Special Report was entrusted to Constable Jatinder, who handed over the same to the Ilaka Magistrate on 30.7.2008 at 6.30 p.m.

During the investigation of the case, ASI Jai Singh arranged a photographer and reached the place of occurrence. The site was got photographed. Inquest proceedings were also conducted. An application for getting the dead body subjected to

post-mortem was scribed and sent through Constable Devinder Kumar. The site was inspected and rough site-plan was prepared on the demarcation of complainant-Raj Rani. Blood stained earth was lifted from the spot. Statements of Ashwani Kumar, Deepak and Ajay Kumar were recorded.

On 31.7.2008, ASI Jai Singh received a secret information about the presence of the accused near Bus Stand Bahadurgarh. A search was made for them but they could not be found. On 2.8.2008, Raju-accused was arrested. He was interrogated and his disclosure statement recorded, pursuant to which he demarcated the place of occurrence. The investigation was, thereafter, transferred to Inspector Sat Narain, who on 4.8.2008 arrested Attar Singh-accused, who during interrogation, suffered disclosure statement that he could get recovered knife which he had kept concealed and also demarcate the place of occurrence. Pursuant to the same, Attar Singh-accused got recovered a knife from under the bricks near Kundan Cinema boundary. On 6.9.2008, Madan-accused was arrested and interrogated. He also suffered disclosure statement that he could demarcate the place of occurrence. Pursuant to the same, he led the police party to the place of occurrence and got it demarcated. On completion of investigation, Inspector Sat Narain prepared challan under Section 173 Cr.P.C. and submitted it in the Court on 18.10.2008.

After commitment of the case, the accused were charged for committing the offence punishable under Section 302 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as fifteen witnesses.

PW1 Raj Rani, who was the complainant and PW14 Deepak, son of the complainant, testified about the manner in which the occurrence had taken place leading to the death of Prabhu Dayal @ Baboo-deceased.

PW2 Ajay identified the dead body of deceased Prabhu Dayal in Civil Hospital, Bahadurgarh and after post-mortem, he received the dead body of his uncle and performed last ceremonies.

PW3 Dr. Urender Singh, Medical Officer, General Hospital, Bahadurgarh testified that on 31.7.2008, he conducted post-mortem on the dead body of Prabhu Dayal @ Baboo at about 11.00 a.m. and found the following injuries:-

- “1. 6x1 cms incised wound on left mid of arm middle aspect muscle deep.
2. 1.5x1.5 cms skin deep on left side lumbar region of abdomen. Corresponding cut present on shirt & Baniyan wound is incised.

3. 1.5x0.5cms incised wound present on 2 cms upper lateral to left nipple wound is muscle deep corresponding cut on shirt & Baniyan present.
4. 1.5x0.5x2.5 cms deep lacerated wound on left side of neck 2 cms below the mandibular bone. After dissection internal jugular vein & artery cut (partially) after dissection of all injuries echymosis present.”

In the opinion of the doctor, the cause of death was direct injury to artery, vein and due to haemorological shock. All the injuries were ante-mortem in nature and sufficient to cause death in ordinary nature of life. Time between death and post-mortem was within 24 hours. He also stated that in his opinion, all the injuries on the dead body could be caused by a knife.

PW13 ASI Jai Singh, who had since retired as Sub Insepctor and PW15 Inspector Sat Narain deposed about the various steps taken by them during the investigation of the case. Their testimonies were corroborated by PW5 HC Satbir Singh, PW6 Constable Ashok Kumar, PW7 SI Kila Singh, PW8 HC Narender Kumar, PW9 Constable Om Parkash, PW10 EHC Ashwani Kumar, PW11 Constable Jitender and PW12 EASI Narender Singh.

PW4 HC Jai Chand, who was posted as Draftsman, proved the scaled site plan prepared by him of the place of

occurrence on the pointing out by Raj Rani-complainant. The prosecution also tendered in evidence the report of Forensic Science Laboratory, Madhuban, Karnal.

When examined under Section 313 Cr.P.C., all the accused denied the prosecution allegations and pleaded their false implication. In their defence, they did not examine any witness.

After hearing learned counsel for the parties and on going through the evidence, the trial Court convicted and sentenced all the three accused, as mentioned above.

Learned legal aid counsel for the appellants has submitted that neither PW1 Raj Rani nor PW14 Deepak were present at the time of the occurrence. They had reached the place of occurrence after the deceased had already received injuries. They were later on set up as eye-witnesses. They were related witnesses being the sister-in-law and nephew of the deceased. It has also been stated that no attempt was made by them to lodge a report with the police at the earliest. The evidence regarding the arrest of Raju-accused is contradictory. According to the prosecution, he was apprehended near Post Office whereas according to the Investigating Officer, he was arrested from near Kundan Cinema. It is also stated that no independent witness was joined while effecting the recovery of

knife at the instance of Attar Singh-accused. Even the blood stains on the knife were found to be disintegrated. Prayer has, accordingly, been made by her for setting aside the impugned judgment of conviction and sentence.

On the other hand, learned State counsel has submitted that both the eye-witnesses i.e. PW1 Raj Rani and PW14 Deepak have mentioned in detail about the occurrence taking place in their presence. None of them had any motive to falsely implicate the accused. It is also submitted that the medical evidence fully corroborates the ocular account of the occurrence. Accordingly, it is submitted that the appeal filed by the appellants be dismissed.

From a conjoint reading of the testimonies of PW1 Raj Rani and PW14 Deepak, who were projected by the prosecution to be the eye-witnesses of the occurrence, it stands established that the accused had taken the deceased from his house on 30.7.2008 to Kundan Cinema. However, as the accused were addicted to drugs, both the eye-witnesses after some time followed them and on reaching Kundan Cinema, they saw the occurrence taking place. The occurrence in question had taken place on 30.7.2008 at 2.00 p.m. Soon thereafter PW14 Deepak was sent home to inform his family members whereas PW1 Raj Rani stayed near the dead body. After the arrival of the

neighbours on being informed by PW14 Deepak, Raj Rani left the site for lodging the report with the police. On reaching near Sabzi Mandi, Bahadurgarh, she came across ASI Jai Singh with whom she got recorded her statement Ex.P1 narrating the manner in which the occurrence had taken place. The said statement came to be recorded and completed by ASI Jai Singh on 30.7.2008 at 4.50 p.m. On its basis, FIR Ex. P1/B was recorded at Police Station City, Bahadurgarh on the same day at 5.05 p.m. The Special Report was, thereafter, handed over to Constable Jitender, who delivered the same to the Ilaka Magistrate on 30.7.2008 at 6.30 p.m. The manner in which the police had been intimated about the occurrence and consequently FIR was lodged with due promptitude, it lends independent corroboration to the prosecution that the occurrence was witnessed by PW1 Raj Rani and PW14 Deepak.

The testimonies of PW1 Raj Rani and PW14 Deepak regarding the infliction of injuries is duly corroborated by PW3 Dr.Urender Singh, who had performed post-mortem on the dead body of Prabhu Dayal @ Baboo. In his opinion, the cause of death was direct injuries to artery, vein and due to haemorrhological shock. He also deposed that in his opinion, all the injuries on the dead body of Prabhu Dayal could be caused by knife which was recovered at the instance of Attar Singh @ Galla-appellant.

Merely because no independent witness had been examined by the prosecution in support of factum of the recovery of knife Ex.P14 at the instance of Attar Singh @ Galla-appellant pursuant to his disclosure statement is not sufficient to set aside the conviction of the appellants. It has come in the testimony of PW15 Inspector Sat Narain that when recovery was effected by the police party, no public person joined the investigation as they expressed their helplessness. Merely because there is slight discrepancy about the place from where the incriminating knife was recovered is no ground to reject the case in its entirety. The incriminating knife after being recovered was sent to Forensic Science Laboratory and during its laboratory examination, blood was detected on the same. The serological analysis of blood on the knife showed that material was disintegrated. The knife in question was recovered after about five days of the occurrence. In such a situation, possibility of the blood stains disintegrating could not be ruled out.

In view of the above, the prosecution has been able to establish that the occurrence in question had taken place in the presence of PW1 Raj Rani and PW14 Deepak. Both of them have duly proved the prosecution case. However, the Court has a lurking doubt as regards the involvement of Raju @ Chander Bhan and Madan @ Madi-appellants is concerned. Both of them

were not armed with any weapon at the time of the occurrence. The only role attributed to them was of catching hold of the deceased from his hands. Though it is a case of prompt lodging of the report yet whatever delay occurred in the registration of the FIR, its benefit can be extended to the said two appellants. Under these circumstances, it would be in the fitness of things to extend the benefit of doubt to the said two appellants.

Resultantly, the conviction and sentence of Attar Singh @ Galla-appellant is upheld. At the same time, the conviction and sentence of Raju @ Chander Bhan and Madan @ Madi-appellants is set aside and they are acquitted of the charges against them.

The appeal is, accordingly, disposed of.

**(T.P.S. MANN)
JUDGE**

February 03, 2018
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**(MAHABIR SINGH SINDHU)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No