

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

1. CRA-350-DB-2003
Reserved on: 20.11.2018
Date of decision : 29.11.2018

Hoshiar Singh and others

... Appellants

Versus

State of Haryana

... Respondent

2. CRR-979-2003

Vijay Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

3. CRR-1567-2003

Vijay Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: *HON'BLE MR. JUSTICE RAJIV SHARMA*
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Vinod Ghai, Senior Advocate with
Mr. Simardeep S. Sandhu, Advocate
for the appellants in CRA-350-DB-2003 &
for respondents no.2 to 8 in CRR-979-2003 &
for respondents no.2 to 12 in CRR-1567-2003.

Mr.S.S.Narula, Advocate
for the petitioner in CRR-979-2003 & CRR-1567-2003.

Mr.Vishal Garg, Addl.A.G. Haryana.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the aforesaid appeal and revision petitions, therefore, these are taken up together and disposed of by a common judgment.

2. The appeal (CRA-350-DB-2003) was instituted against the judgment and order dated 07.03.2003 rendered by the Sessions Judge, Narnaul, in Sessions case no.8 of 2000 whereby the appellants were charged with and tried for offences under sections 147, 148, 323, 302 read with Section 149 IPC.

3. Appellants Hoshiar Singh, Data Ram, Jagmal, Parkash Chand, Hira Lal, Satpal and Smt.Santosh were convicted and sentenced for offences under Sections 148, 302, 323 read with Section 149 IPC. They were sentenced to undergo rigorous imprisonment for life for offence punishable under Section 302 IPC. They were also sentenced thereunder to pay fine of Rs.500/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of one month each. They were also sentenced to undergo rigorous imprisonment for a period of one year for offence punishable under Section 148 IPC and sentenced to undergo rigorous imprisonment for a period of six months for the offence punishable under Section 323 IPC. The sentences awarded to them for offences under Sections 148 and 323 IPC were ordered to run concurrently with life imprisonment.

4. The case of the prosecution in a nutshell is that Satpal son of Jagmal resident of village Nangal Katha entered the house of the complainant under the influence of liquor. On 13.01.2000 at about 8.30 p.m.

Satpal came to their grocery shop. He hurled abuses. On 14.01.2000 at about 7.00 a.m. Siri Ram was present in his shop. Hoshiar Singh came to the shop. He gave *danda* blow on the head of Siri Ram. Siri Ram went to his house. He informed his family members. Thereafter Rajesh, his mother Santra, Vijay along with Siri Ram came to the shop. The complainant opened the cash box. A sum of Rs.5000/- was missing. The complainant asked the appellants why they had assaulted his father. Thereafter the fight ensued. The family of the complainant including Rajesh, Vijay, Siri Ram, Santra received various injuries. They were taken to hospital. They were examined by Dr.A.K.Mathur (PW-6). He prepared the MLR. Siri Ram died in Pushpanjali Hospital. Hoshiar Singh had already lodged the FIR against the family members of Rajesh and others. The investigation was completed and challan was put up after completing all the codal formalities.

5. Prosecution examined a number of witnesses in support of its case. The statement of appellants were also recorded under Section 313 Cr.P.C. They have denied the case of the prosecution. The appellants were convicted and sentenced as noticed hereinabove. Hence this appeal. Hence this appeal.

6. CRR-1567-2003 has been filed by Vijay Singh against the judgment dated 07.03.2003 whereby Ami Lal, Smt.Santosh wife of Om Parkash, Smt.Santosh wife of Hira Lal and Smt.Maya Devi were acquitted.

7. CRR-979-2003 has also been filed by Vijay Singh for enhancement of sentences in respect of the appellants and suitable compensation.

8. Learned counsel appearing for the appellants have vehemently

argued that the prosecution has failed to prove the case against the appellants. He has vehemently argued that this case is not covered under Section 302 IPC. He also argued that the appellants had a right of private defence since they were attacked by the complainant's family.

9. Learned counsel appearing on behalf of the complainant has argued that the appellants were rightly convicted for offence under Section 302 IPC.

10. Learned counsel appearing on behalf of the State has supported the judgment and order dated 07.03.2003.

11. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

12. PW-1 Rajesh testified that he belong to village Nangal Katha. The accused also belong to his village. Satpal had barged to their house under the influence of liquor. The matter was patched up with the assistance of respectable members of the village community. In the evening of 13.01.2000 at about 8.00/8.30 P.M. Siri Ram and his brother Vijay Singh were present in the shop. Satpal again hurled abuses on his father. Thereafter in the morning, Hoshiar Singh came to the shop of his father. He gave *danda* blow on his father's head. His father Siri Ram went to his house and informed the other members of family. Then the family members, i.e. Rajesh, Vijay, Santra Devi along with Siri Ram came to the shop. They enquired from the appellants why Hoshiar Singh had beaten up his father. Thereafter they were attacked with *kulharis* and *jellis*. They were taken to hospital. He has categorically deposed that he and his family members were given blows from the blunt side of *kulhari*.

13. PW-2 Vijay Singh has corroborated the statement of his brother Rajesh. He also deposed the manner in which he and his family members were attacked. He also narrated the manner in which the accused had given different blows on the body of his family members. He has also stated that the blows were given from the blunt side of axe.

14. PW-3 Santra is the mother of PW-1 Rajesh and PW-2 Vijay Singh. She also deposed the manner in which Hoshiar Singh had earlier given *danda* blow on the head of her husband. All the appellants had given beatings to her, her sons and her husband. According to her, the incident lasted for about 1 ½ hours. She also became unconscious. She has denied the suggestion that her family members had given beating to Hoshiar Singh and his family members.

15. PW-4 Prabhu Dayal has given slightly different version. According to him, Hoshiar Singh had given *danda* blow on the head of Siri Ram. Siri Ram went to his house to inform his family members. On way back he came to his shop. He also accompanied Siri Ram to the shop. Thereafter PW-1, PW-2, PW-3 and Siri Ram were inflicted beatings by the appellants.

16. PW-6 Dr.A.K. Mathur had medically examined PW-1, PW-2, PW-3 and Siri Ram. He had examined them at 9.00 AM on 14.01.2000. He had noticed the following injuries on the dead body of Siri Ram:-

“1. Lacerated wound on right parietal region of size 3.5 cm x 0.5 cm scalp deep. Bleeding was present and x-ray was advised.

2. Tenderness was present on left shoulder region. Movements were restricted and x-ray was advised.

3. Black eye on right side upper eyelid. The injury

was kept under observation and also sought eye surgeon opinion.”

On the same day, he also examined Santra. He noticed the following injuries on the body of Santra:-

- “1. Lacerated wound on right forehead near hair line of size 2 cm x 0.5 cm skin deep. Bleeding was present and x-ray was advised.*
- 2. Lacerated wound on right parietal region of size 4.5 cm x 0.5 cm scalp deep. Bleeding was present and x-ray was advised.*
- 3. Lacerated wound on left parietal region of size 3.5 cm x 0.5 cm scalp deep. Bleeding was present. X-ray was advised.”*

He also medically examined Rajesh. He noticed the following injuries on his body:-

- “1. Lacerated wound on left parietal region of size 2.5 cm x 0.5 cm scalp deep. Bleeding was present.*
- 2. Abrasion on left forearm, upper 1/3rd of size 1 cm x 0.5 cm. X-ray was advised.*
- 3. Complaint of pain on right and left shoulder region. X-ray was advised.*
- 4. Abrasion on back of left hand posteriorly metacarpal region. X-ray was advised.”*

He also medically examined Vijay and noticed the following injuries on his body:-

- “1. Lacerated wound on left parietal occipital region of size 5 cm x 0.5 cm scalp deep. Bleeding was present and x-ray was advised.*
- 2. Lacerated wound on right forearm, posteriorly, upper half of size 4.5 cm x 0.5 cm muscle deep. Bleeding was present and x-ray was advised.*

3. *Complaint of pain of left leg.*
4. *Lacerated wound on left parietal region of size 2.5 cm x 0.5 cm scalp deep. Bleeding was present and x-ray was advised.”*

He has categorically stated that all the injuries were caused by blunt weapon within probable duration of 6 hours. He has proved the medico legal reports. He had also examined x-ray report of Smt.Santra. He has given his report Ex.PE/4. X-ray report of Santra showed suspected fracture. He also medically examined Hoshier Singh on 14.01.2000. He noticed the following injuries on his body:-

- “1. Abrasion 1 cm x 0.3 cm associated with swelling and tenderness on left metacarpal region, below index finger.*
- 2. Swelling on left frontal region.”*

He also medically examined Smt.Santosh and noticed the following injuries:-

- “1. Superficial lacerated wound on left side of the cheek of size 1 cm. x 0.3 cm. Bleeding was present.*
- 2. Abrasion on right forearm, laterally lower 1/3rd of size 2 cm x 1 cm near elbow.”*

He also medically examined Parkash son of Data Ram and noticed the following injuries on his body:-

- “1. Lacerated wound on post occipital parietal region of size 4 cm x 0.5 cm. Bleeding was present.*
- 2. Abrasion on left forearm posteriorly, middle 1/3rd of size 3 cm x 0.5 cm.*
- 3. Complaint of pain on post Gluteal region with no mark of external injury.”*

He also medically examined Data Ram son of Sheo Ram. He noticed the following injuries on his body:-

“1. Lacerated wound on left parietal region of size 4 cm x 0.5 cm scalp deep. Bleeding, again said, wet clotted blood was present.

2. Superficial wound of size 0.5 cm on right arm laterally lower 1/2.”

The injuries were simple. These were caused by blunt weapon within the probable duration of 12 hours.

He also examined Hira Lal. He noticed the following injuries on his body:-

“1. Abrasion of size 1 cm x 0.5 cm on left metacarpal region posteriorly associated with swelling and tenderness.

2. Abrasion on right forearm posteriorly, lower 1/3rd near wrist of size 2.5 cm x 1 cm.”

17. PW-7 Subrat Saxena deposed that Siri Ram and Santra Devi were admitted in Pushpanjli Hospital on 14.01.2000. Siri Ram was unconscious. He also noticed injuries on the body of Siri Ram and Santra Devi. He had informed the police about admission of Siri Ram and Santra Devi.

18. PW-10 HC Partap Singh has prepared the site plan.

19. PW-11 Bhim Singh has recorded the disclosure statement of Satpal.

20. The case of the prosecution is that Satpal had trespassed into house of Rajesh. He also used filthy language against his father on 13.01.2000. Hoshier Singh gave *danda* blow on the head of Siri Ram. Thereafter Siri Ram went to his house and apprised them of incident. All of them came to the shop and fight ensued. There is no merit in the contention of learned counsel for the appellants that it is a case of private defence.

They have exceeded their right by inflicting serious injuries on the witnesses as proved by PW-6 Dr. A.K.Mathur. It is also true that Hoshiar Singh and others have also received injuries. The injured were also medically examined by PW-6 Dr.A.K. Mathur. The injuries were simple in nature. Siri Ram died in Pushpanjli Hospital.

21. However the fact of the matter is that according to PW-1 Rajesh, PW-2 Vijay, the appellants have used blunt side of axe to inflict injuries upon them including their mother and father. PW-6 Dr.A.K.Mathur has also proved that injuries received by all of them were by blunt side of weapon. In case the appellants wanted to kill PW-1 Rajesh, PW-2 Vijay, PW-3 Santra and Siri Ram, they could have hit them from sharp edge of axes. The injuries caused to Siri Ram proved fatal. He died as noticed hereinabove in Pushpanjli Hospital. It is also not the premeditated act. In fact the family of Rajesh PW-1 and Vijay PW-2 came to the shop of their father on 14.01.2000 and challenged the appellants why they had given beatings to their father. Thereafter the fight ensued. Though the appellants had no intention to cause murder of Siri Ram but definitely they had knowledge that the injuries inflicted by blunt side of axes and *jellis* could cause the death of Siri Ram. The x-ray report of Santra as per PW-6 shows suspected fracture.

22. Accordingly the appeal is partly allowed. The conviction of the appellants is altered from 302 IPC to 304 Part II IPC. Their conviction under Sections 148/323 IPC is upheld. Accordingly the appellants are ordered to be present in Court on 13.12.2018 to be heard on the quantum of sentence under Section 304 Part II IPC.

The State is directed to ensure the presence of appellants on the

next date of hearing.

23. In view of the findings recorded by us, the CRR-979-2003 and CRR-1567-2003 are dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

November 29, 2018.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No