

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-719-DB-2003
Reserved on : 26.11.2018
Date of decision : 17.12.2018

Apninder Singh and another

... Appellants

Versus

State of Punjab

... Respondent

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

Present: Mr.S.S.Swaich, Advocate
for appellant no.1.

Mr.Vishal Sharma, Advocate
for appellant no.2.

Mr.Rajesh Bhardwaj, Sr.DAG, Punjab.

RAJIV SHARMA, J.

This appeal is instituted against the judgment and order dated 28.07.2003 rendered by learned Additional Sessions Judge, Fast Track Court, Ludhiana, in Sessions Case No.140 of 11.10.1999, whereby the appellants were charged with and tried for offence punishable under Sections 302/34 of the Indian Penal Code (in short "IPC"). The appellants were convicted and sentenced to under rigorous imprisonment for life and to pay a fine of Rs.5000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years.

2. The case of the prosecution in a nutshell is that on 17.04.1999 at about 09.30/10.00 P.M. within the area of Thakardwara Nohrian, Pankaj

Kumar and Vishal Sharma @ Shelly were taking liquor in the house of

Bhura Pandit. Complainant Mohan Lal (PW-2) and his brother Ashok Kumar joined them. Ashok Kumar also started taking liquor. In the meantime, appellant no.1 Apninder Singh @ Raju Sopera and appellant no.2 Rajesh Kumar @ Bobby came on the spot. They also started consuming liquor. A quarrel took place between Apninder Singh and Ashok Kumar. Apninder Singh taunted Ashok Kumar why he had not taken revenge of murder of their common friend Babla. Appellant Apninder Singh chided him by saying that he was jackal. Ashok Kumar replied back that Apninder Singh is jackal and he is a lion. Thereafter Apninder Singh got up and proclaimed that he would tell who is jackal and who is a lion. Appellant Apninder Singh came out of the room of Bhura Pandit. Mohan Lal and Ashok Kumar followed them. Apninder Singh took out his sword (*kirpan*) from the scooter parked outside the Thakardwara and Rajesh Kumar @ Bobby took out a *kirch*. They started inflicting injuries on Ashok Kumar. According to the complainant, Apninder Singh gave a sword (*kirpan*) blow on right hand of Ashok Kumar. Rajesh Kumar @ Bobby also gave *kirch* blow on left arm of Ashok Kumar. Several blows were given by the appellants on the body of Ashok Kumar. Ashok Kumar collapsed. Thereafter Rajesh Kumar gave *kirch* blow on the chest of Ashok Kumar. Thereafter they inflicted 2/3 more injuries to Ashok Kumar. They ran away from the spot. FIR was registered on 18.04.1999 at 06.10 A.M. The body was sent for post-mortem examination. Site plan was prepared. The matter was investigated and challan was put up after completing all the codal formalities.

3. The prosecution had examined a number of witnesses.

Statements of accused were also recorded under Section 313 Cr.P.C. They

had denied the case of the prosecution. They also cited six witnesses and relied upon documents Ex.DA, Ex. DB, Ex.DX and Ex.DY. They were convicted and sentence as hereinabove. Hence this appeal.

4. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove the case against the appellants.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

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

7. PW-1 Dr.Jasbir Singh conducted post-mortem examination on the body of Ashok Kumar. He noticed the following injuries on the body of the deceased:-

“1. An incised wound 3” x 1” was through and through on the dorsum of face of left thumb. The thumb was amputated and was only attached with a tag of skin.

2. An incised wound 2” x ¾” x bone deep on the middle and medial border of left hand. Underneath bone was cut.

3. An incised wound measuring 2” x ½” x bone deep on the front and base of left index middle finger. Underneath bone was cut.

4. An incised wound 3” x 1” x bone deep placed horizontally on the back of left elbow. The underneath bone was cut.

5. Incised wound measuring 7” x 3” bone deep on the mid and medial side of left forearm. The skin and muscles flapped was present and underneath bones was cut.

6. Incised wound 2 ½” x 1” x muscle deep placed obliquely on the front of left hand.

7. *An incised wound 2½ x 1" on the front of chest on the external placed vertically.*
8. *Incised wound 4" x 2 ½" bone deep obliquely based on the back and upper part of right forearm.*
9. *Incised wound measuring 3" x 2" muscle deep obliquely placed 2" below injury No.8.*
10. *Incised wound measuring 2" x ¾" x bone deep placed horizontally on the lower and middle side of right forearm. Underneath bone was cut.*
11. *Incised wound measuring 3½" x 1" horizontally placed on the front and middle of right palm. The underneath bone and tendance were cut.*
12. *An incised wound 2" x 1/2" obliquely placed on the dorsum based of right index finger.*
13. *An incised wound 2½" x ½" x skin deep on the medial and back of right hand.*
14. *An incised wound measuring 1" x ¾" x muscle deep placed horizontally on front and upper part of right thigh.*
15. *Incised wound measuring 2" x ½" x muscle deep obliquely placed on front and upper 1/3rd of left thigh.*
16. *Incised wound 1" x ½" x muscle deep on the left obliquely area underneath popliteal fossa was cut.*
17. *2" incised wound, measuring ¾" x ¼" x sub continuously on the middle and front of right lower leg.*
18. *An incised wound measuring 2" x ½" x bone deep and horizontal just above and lateral to left eye brow.*
19. *An incised wound measuring 2½" x 1" x muscle deep on the lateral side of left upper arm.*
20. *Four incised wound placed vertically on the left parieto occipital region 2½" above the left ear pinna parallel to each other and half inch apart. The underneath bones were cut.*
21. *Two incised wounds 3" x ½" x bone deep just in front and right to the injury No.20.*

22. *Four superficial incised wounds 8" x ¼" in different directions on the back of both sides of chest.*

23. *Two superficial incised wound 5" x ¼" horizontal on the lateral side of right deltoid region.*

24. *An incised wound 2" x ½" subcutaneously horizontal on the mid and lateral side of right upper arm.*

25. *An incised wound measuring 4" x ½" x muscle deep placed obliquely just above the lateral side of right elbow."*

The cause of death was shock and haemorrhage as a result of extensive multiple injuries which were sufficient to cause death in the ordinary course of nature. No alcoholic contents were found in the viscera vide Ex.DA. There were 25 injuries on the dead body of Ashok Kumar. Injuries no.1 to 5, 8, 10, 12, 13 and 21 were penetrating in nature. He also identified sword Ex.P3 and *kirch* Ex.P4.

8. PW-2 Mohan Lal is an eye witness. He testified that on 17.04.1999 at about 08.30/9.00 P.M. he along with his brother went to Thakardwara Nohrian in the room of Bhura Pandit. Pankaj Kumar and Vishal Sharma were consuming liquor. His brother Ashok Kumar also started consuming liquor with them. At about 09.30 P.M. Raju Sapera along with his companion called as Bobby came on the spot. They also started taking liquor. Raju Sprea reminded his brother that they were together when their common friend Babla was murdered. Ashok Kumar had promised him to take revenge of murder of Babla. However, Ashok Kumar did not take any revenge. Raju Sapera taunted Ashok Kumar by calling him jackal (*Giddar*). Ashok Kumar replied that Raju Sapera was *Giddar* and he was a lion. They started fighting with each other. Pankaj Kumar and others tried to patch up the matter. Raju Sapera proclaimed that he would teach a lesson to

Ashok Kumar in order to prove who was lion or jackal. The appellants went outside. He followed them. Raju Sapera took out sword (*kirpan*) from the scooter. Bobby took out a *kirch*. Ashok Kumar also came out. Raju Sapera gave *kirpan* blows on Ashok Kumar's body. Bobby inflicted various injuries on Ashok Kumar. Ashok Kumar collapsed. Then Bobby gave another *kirch* blow on the chest of Ashok Kumar. He raised alarm. Thereafter accused fled away with their weapons on the scooter. He and Raj Kumar took Ashok Kumar to the Civil Hospital, Ludhiana. Ashok Kumar died due to injuries suffered by him. In his cross-examination, he deposed that he did not know how much liquor was consumed by Ashok Kumar between 08.30 P.M. to 10.30 P.M. Ashok Kumar was running a stall on festivals and fairs. He was at a distance of 10/15 yards from the room. Ashok Kumar was treated in the hospital. He came to know about the death of Ashok Kumar in the early hours of next morning. He met the police at about 4.00/5.00 A.M. He and Raj Kumar took Ashok Kumar to the hospital. Police party visited the spot. He had not received any injuries in the incident. He had raised alarm to save his brother. He also admitted that Thakardwara was a thickly populated area. There were shops near the place of occurrence but at that time these were closed. Though there were houses in the vicinity of the spot but nobody came out. He denied the suggestion that he was not present at the spot. He was cousin of Ashok Kumar. He had mentioned before the police about the street light. He was confronted with Ex.PA where it was not so recorded. Ashok Kumar was of aggressive nature. One or two cases were registered against him.

9. PW-3 Vishal Sharma was also present on the spot on 17.04.1999. He was taking liquor in the company of Pankaj Kumar. At that

time, Ashok Kumar and his brother Mohan Lal came there. Ashok Kumar started taking liquor. At about 10.00 P.M. accused Raju Sopera along with his companion called as Bobby reached at the spot. He identified the second accused Bobby present in the trial Court. They started taking liquor. Raju Sopera reminded Ashok Kumar that he had to take revenge of murder of their common friend Babla. Raju Sopera taunted Ashok Kumar by saying that he was jackal. Ashok Kumar replied that he was a lion and not jackal. They picked up quarrel. Raju Sopera threatened him to face dire consequences. Accused Raju Sopera and Bobby went outside. They came back armed with sword and *kirch*. He had seen the appellants giving injuries to Ashok Kumar. Mohan Lal and Raj Kumar took Ashok Kumar to hospital in a rickshaw. In his cross-examination he identified his signatures on the affidavit. He had not sworn this affidavit. His signatures were obtained fraudulently on blank papers. He further deposed that Ashok Kumar and Mohan Lal had come there of their own. Bhura Pandit was not present at that time. He did not remember the number of the scooter. They did not inform the police that the brother of deceased was present on the spot. He signed the recovery memo Ex.PW3/A.

10. PW-5 ASI Gurmeet Singh deposed that Rajesh Kumar made disclosure statement vide Ex.PW5/A, on the basis of which *kirch* was recovered. Accused Apninder Singh @ Raju Sopera also made disclosure statement Ex.PW5/B on the basis of which sword (*kirpan*) was recovered. The recovery of sword was made from Iqbal Ganj Chowk. No independent witness was joined from the place where the weapons were recovered. He also obtained the opinion of the doctor.

11. PW-9 Ram Krishan deposed that inquest report was prepared

by Rajinder Singh. He reached the spot along with SHO Rajinder Singh. The blood stained clothes of Ashok Kumar were taken into possession.

12. PW-10 HC Karnail Singh has also deposed about the disclosure statement made by the appellants on the basis of which sword and *kirch* were recovered. He had also admitted that no person from near locality was joined in the investigation.

13. PW-12 SI Rajinder Kumar deposed that statement Ex.PA was sent to the police station on the basis of which FIR Ex.PW12/A was recorded. The dead body of Ashok Kumar was lying in mortuary. He prepared the inquest report Ex.PB. He arrested the accused. The disclosure statements were made by the appellants on the basis of which *kirpan* and *kirch* were recovered. These were sealed. He admitted that Ashok Kumar was taken to hospital by Raj Kumar as per record of the hospital. He also admitted that there were many shops and transport establishment near the place of recovery of incriminating articles.

14. What emerges from the discussion of the statements discussed hereinabove is that Pankaj Kumar and Vishal Sharma were taking liquor in the house of Bhura Pandit. Mohan Lal and Ashok Kumar also joined them. In the meantime, appellants reached at the spot. Appellant Apninder Singh taunted Ashok Kumar that why he had not taken revenge of murder of their common friend Babla. They picked up a fight. Apninder Singh and Raju Sopera went outside the room and came back with sword and *kirch*. They inflicted various injuries on the body of Ashok Kumar. He collapsed. The appellants ran away from the spot. Ashok Kumar was taken to the hospital. He died. The post-mortem examination was conducted. The cause of death was shock and haemorrhage as a result of extensive multiple injuries which

were sufficient to cause death. As per the statement of PW-1 Dr.Jasbir Singh, there were as many as 25 injuries on the body of Ashok Kumar. This incident has been witnessed by PW-2 Mohan Lal and PW-3 Vishal Sharma. They have seen the appellants inflicting injuries on Ashok Kumar by sword and *kirch*. Statements of PW-2 Mohan Lal and PW-3 Vishal Sharma is duly corroborated by the medical evidence. The appellants had made disclosure statements vide Ex.PW5/A and Ex.PW5/B on the basis of which recovery of sword and *kirch* was made. Learned counsel for the appellants have placed reliance upon the affidavit sworn by PW-3 Vishal Sharma. However he has denied the same. The place from where sword and *kirch* were recovered was not visible to the general public. The statements of the official witnesses can be relied upon if these inspire confidence and corroborated by other evidence.

15. There was no inordinate delay in the registration of the FIR. The focus of Mohan Lal was to get his brother treated.

16. However the fact of the matter is that the act of the appellants was not premeditated. They came on the spot. Pankaj Kumar, Vishal Sharma and Ashok Kumar were already taking liquor. Apninder Singh taunted Ashok Kumar. He called him jackal. Ashok Kumar told Apninder Singh that he was a lion. Thereafter the fight ensued. Thus this case will not fall within the ambit of Section 302 IPC. However, the appellants definitely had the intention to cause death of Ashok Kumar by using deadly weapons, i.e. sword and *kirch*. They had inflicted as many as 25 injuries to Ashok Kumar. He died due to these injuries.

17. Accordingly the appeal is partly allowed and the conviction and sentence of both the appellants is converted from Section 302 IPC to

Section 304 Part I IPC. This Court had suspended the sentence of Apninder Singh vide order dated February 10, 2006 and of appellant no.2 Rajesh Kumar @ Bobby vide order dated 29.05.2006. Their bail bonds are cancelled. They are ordered to be taken into custody.

Appellants/convicts be produced in Court on 21.12.2018 to hear them on quantum of sentence under Section 304 Part I IPC.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

December 17, 2018.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No