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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on : 13.2.2019
Date of decision : 15.2.2019

CRA-D-40-DB-2004 (O/M)

Babu Lal Appellant

Versus

State of Haryana Respondent

CRA-D-63-DB-2004 (O/M)

Dinesh Kumar Appellant

Versus

State of Haryana Respondent

CRA-D-120-DB-2004 (O/M)

Devender Appellant

Versus

State of Haryana Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Arshdeep Singh Cheema, Advocate,
for appellant in CRA-D-40-DB-2004.

Mr. Deepinder Brar, Advocate,
for appellants in CRA-D-63-DB-2004, CRA-D-120-DB-2004.

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

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KULDIP SINGH, J.

This judgment shall dispose of three connected criminal appeals i.e. CRA-D-40-DB-2004, CRA-D-63-DB-2004 and CRA-D-120-DB-2004, filed by Babu Lal, Dinesh Kumar and Devender (appellants) against judgment of conviction dated 6.12.2003, passed by learned Additional Sessions Judge-I, Faridabad, whereby they were

convicted under Section 302 IPC read with Section 34 IPC and order of sentence dated 8.12.2003, vide which they were sentenced to undergo imprisonment for life each and fine of Rs. 10,000/- each, in default of payment of fine, to undergo further rigorous imprisonment for 3 years. Out of total amount of fine recovered, 75% thereof shall be paid as compensation to Smt. Mathuri Devi, mother of deceased Vishnu.

Facts of case are that on 29.12.1999, around 12.00/1.00 Noon, Mathuri widow of Hari Chand (complainant), aged about 60 years, resident of village Faridpur, accompanied by her son Vishnu were going from their house to fields. They were having litigation with one Mani Ram and on this account, they had developed some ill will. Tej Pal, son of complainant and Om Wati, her daughter-in-law were also going behind them. When all of them reached outside village, accused Dinesh, Naresh, sons of Mani Ram, Dharam and Devender, sons of Sukhi Ram, Babu Lal, son of Aji Ram, Sat Parkash, son of Tulsi Ram, Khillu, son of Bhulle Ram, Mani Ram, son of Duli Ram and elder handicapped son of Khillu, carrying swords, knives, country made pistol, hockey and rope etc. came there. Mani Ram exhorted to caught hold of Vishnu to settle old score with him. On this, all accused caught hold of Vishnu and tied him with rope and while beating him, took Vishnu towards their house. Mathuri (complainant), her son Tej Pal and daughter-in-law Om Wati raised alarm, but nobody came forward to rescue Vishnu. All accused took Vishnu to street and started inflicting injuries with their weapons. Dinesh gave sword blow, Naresh and Dharam gave knife blows, Mani Ram, Khillu and Khillu's son gave lathi blows and Sat Parkash gave hockey blows. Babu Lal was carrying a country made pistol. On account of injuries received by Vishnu, he died at spot.

Ram Dutt, SI/SHO, Police Station Old Faridabad, alongwith

police officials was present in connection with patrol duty on Kheri Bridge where Mathuri (complainant) met him and made statement (Ex.PD). SI/SHO Ram Dutt then made endorsement (Ex.PD/1) and sent same to police station for registration of case, upon which formal FIR (Ex.PD/2) was registered at Police Station Old Faridabad. Police Party then visited the spot and prepared rough site plan (Ex.PN.) Blood stained earth was lifted from the spot, vide memo Ex.PG. Inquest report (Ex.PC) was prepared. On 30.12.1999, post mortem (Ex.PB) of dead body was got conducted. Accused Dinesh Kumar, Devender and Sumit were arrested on 5.1.2000, accused Dharam Chand was arrested on 10.1.2000 and accused Babu Lal was arrested on 28.1.2000.

On 6.1.2000, during interrogation, accused Dinesh Kumar suffered a disclosure statement (Ex.PM) wherein he disclosed that sword used in crime has been concealed by him beneath iron box in his house. In pursuance to his statement, accused Dinesh led the police party to his house and got recovered sword which was found to be blood stained. Rough sketch of sword (Ex.PM/2) was prepared. Site plan (Ex.PM/1) of place of recovery was also prepared.

Similarly, accused Devender also suffered a disclosure statement (Ex.PO) on same day and got recovered danda used in crime which was taken into possession through recovery memo Ex.PO/1.

On 30.1.2000, accused Babu Lal also suffered a disclosure statement (Ex.PG) that he has kept concealed danda used in crime in his cottage and can get the same recovered. Accordingly, he also got recovered danda used in crime. Rough sketch of danda and site plan of place of recovery were prepared.

On 6.1.2000, accused Sumit also suffered disclosure statement

(Ex.PP) that he has kept concealed rope used in crime beneath iron box in his house and can get same recovered. Accordingly, he led the police party to said place and got recovered said rope which was stained with blood. Same was taken into possession through recovery memo Ex.PP/1. Site plan of place of recovery (Ex.PP/3) was prepared.

During the course of investigation, articles recovered in this case were sent to Forensic Science Laboratory, Madhuban, for analysis and report Ex.PQ of same was received. During investigation, accused Mani Ram, Khillu, Naresh and Satya Parkash were found to be innocent by police. Only accused Dinesh Kumar, Devender, Sumit, Dharam Chand and Babu Lal were challaned for offences under Sections 148, 149, 302 IPC and under Section 25 of Arms Act.

After commitment of case, all said five accused were chargesheeted under Sections 148, 302 IPC. Accused pleaded not guilty to charge. After examination of eight witnesses, an application under Section 319 Cr.P.C. was filed, on which remaining four accused, who were found innocent by police during investigation, were also summoned.

All accused were chargesheeted under Section 302 IPC read with Section 149 IPC and under Section 148 IPC, to which they pleaded not guilty. The witnesses already examined were then recalled.

In support of its case, prosecution examined as many as 12 witnesses. When examined under Section 313 Cr.P.C., accused Babu Lal, Dinesh Kumar and Devender denied as incorrect evidence led against them and pleaded that they have been falsely implicated due to party faction in village. Other accused also raised same plea.

In defence, accused examined, S.N. Singh (DW1) UDC, Ministry of Environment and Forest, New Delhi, to prove the alibi of Sat

Parkash (accused), Ved Parkash (DW2) to prove the alibi of accused Naresh, Kanni Ram (DW3) to prove the alibi of accused Mani Ram and Khillu, Devi Charan Sharma (DW4) to prove the alibi of accused Mani Ram and Khillu and R. Sunder Lal (DW5) to prove the alibi of accused Satya Parkash. They also produced copies of jamabandis (Ex.D1 to Ex.D3), copy of akshshijra (Ex.D4) and copy of khasra girdawari (Ex.D5) and closed defence evidence.

After hearing prosecution, accused and going through evidence, learned Additional Sessions Judge-I, Faridabad, convicted and sentenced accused Dinesh Kumar, Babu Lal and Devender, as aforesaid. Remaining accused were acquitted of charges framed against them. Against said judgment of conviction and order of sentence, accused Dinesh Kumar, Babu Lal and Devender have filed separate appeals.

We have heard learned counsel for appellants, learned State counsel and have also carefully gone through file.

The site plan shows that occurrence took place in a broad day light, around 12.00/1.00 Noon. Dead body was found lying in street, opposite house of Mani Ram. There are houses adjoining the street. In order to properly appreciate the prosecution case, it is necessary to examine medical evidence which will show nature of injuries and weapons used in crime.

Dr. S.P. Jayant (PW1) stated that he conducted post mortem on the dead body of Vishnu on 30.12.1999 and found following 11 injuries :-

- i) There were two lacerated wound over right wrist of size 3 x 3 cm and 2 x 2 cm on the outside with fracture of both bones of fore-arm.
- ii) Lacerated wound was present over right fore-arm. 2 cm size on the outer side and in the middle.
- iii) A lacerated wound was present over right leg in the

middle of 2 x 2 cm size.

- iv) An incised wound was present in front of right leg in the upper part of 3 x 3 x 1 size.
- v) There were 3 incised wound over left leg of each of size 3 x 2 x 1 cm with corresponding cut marks over the pant.
- vi) There were 3 incised wound in the growing region. 2 cm long each and 4 cm deep with the cut marks over the clothes.
- vii) Incised wound was present over right hip on its outer side with size 3 cm wide and 4 cm deep with cut over clothes.
- viii) Two incised wounds were present over left side of flank (abdomen). Size 3x1x5 cm each with cut marks over clothes.
- ix) Incised wound was present over left side of chest below nipple of size 2x1x4 cm.
- x) A multiple abrasion present over left arm and fore-arm in the outerside, total 7 in numbers, from 5 cm long each of the various directions.
- xi) Lacerated wound was present over scalp in the midline of size 2x1x1 cm.'

He further observed as under :-

'Skull meninge, ribs and cartilage were normal. Left pleura was incised and also the left lung. Heart and pericardite were healthy; Abdominal was incised over left side; peritoneum was also incised. Mouth, pharynx, oesophagus and stomach were healthy; Small and large intestine shows incised wounds; Liver and spleen were pale and health; Left kidney was also incised; There are three incised wounds below testis of size 3x2x5, 3x2x4 and 3x2x4 of size.'

According to doctor, death was instantaneous and duration between death and post mortem was 12 to 36 hours. However, he stated that none of injuries described above is individually sufficient to case death.

The medical evidence shows that incised wounds on vital parts i.e. lung, small and large intestines, left kidney, testis and abdomen. As a result of 11 injuries, some of which were caused injuries on vital parts, Vishnu died instantaneously.

Most crucial is statement of Mathuri (complainant). She

appeared as PW9. She supported prosecution case. She stated that on the day of occurrence at around 12.00/1.00 Noon, she was going to fields with her son Vishnu. Her son Tej Pal and his wife Om Wati were also following them at some distance. When they came out of village, Vishnu was 20 paces ahead of her. Then accused Mani Ram, Khillu, Sumit, Dinesh Kumar, Naresh, Sat Parkash, Babu Lal, Devender and Dharam Chand, present in Court, came there. Mani Ram raised exhortation that Vishnu be caught and beaten to settle old score. Accused were armed with lathis, knife, sword, hockey and iron rods. All of them starting giving injuries to Vishnu. Then Vishnu was tied with rope and was taken towards house of Mani Ram and was thrown outside house of Mani Ram. She cried but none of villagers came to her help. All accused fled away from spot. Thereafter, she alongwith her son Tej Pal and his wife Om Wati went to place where Vishnu was lying. They found that Vishnu had died.

In cross examination she stated that she was watching the injuries being given to her son from a distance of about 20 paces. Tej Pal and his wife Om Wati had also arrived near her. Accused gave beatings for about 5 minutes and then took Vishnu towards the house. Her son was dragged while his feet were touching the ground. About criminal cases against deceased Vishnu, she admitted that Vishnu was convicted under Section 394 IPC and was sentenced for 7 years imprisonment. Vishnu was on bail in the said case. His appeal was pending in High Court. She further admitted that she alongwith her son Tej Pal and Vishnu were accused in a case under Section 325 IPC, which pertained to 6-7 years prior to this occurrence. She further admitted that Vishnu alongwith remaining five accused was arrested in a case under Sections 399, 402 IPC in case FIR

No. 86, dated 11.3.1999, Police Station Sadar, Ballangan, and he was bailed out.

Tej Pal son of complainant, while appearing as PW10, fully supported statement of her mother Mathuri. He stated that on the day of occurrence at about 12.00/1.00 Noon, he alongwith his wife was following his mother, who was going with Vishnu to fields. Then all 9 accused, namely, Mani Ram, Khillu, Dinesh Kumar, Naresh, Dharam Chand, Devender, Sat Parkash, Babu Lal and elder handicapped son of Khillu, were found standing there. They were armed with ballams, lathi, iron rod, knife and a country made pistol by Babu Lal. On the exhortation raised by Mani Ram, accused tied his brother with rope and took him towards their house. He was taken in front of house of Mani Ram. He raised alarm. They noticed that all accused were inflicting injuries to Vishnu with their respective weapons. He also proved lifting of blood stained earth from spot.

In this case other crucial witness is SI/SHO Ram Dutt, Incharge, Police Post Rajinder Park, Gurgaon. While appearing as PW11, he proved the formalities of investigation i.e. recording of FIR, preparing of site plan and lifting of blood stained earth. He also proved that accused Dinesh Kumar, Devender and Babu Lal made disclosure statements, as narrated above, and got recovered sword, danda and lathi. Sword was found stained with blood. In cross examination, he admitted that accused Mani Ram, Khillu, Sat Parkash and Naresh were found to be innocent.

Perusal of report of FSL (Ex.PQ) shows that sword was found to be stained with blood. Blood could not be detected on rope and lathi. Clothes of Vishnu were found stained with blood.

The learned counsel for appellants have vehemently argued that

in this case, out of 9 accused, prosecution case regarding five accused was disbelieved by trial Court. Four of accused were found to be not present at the time of occurrence and they were not even challaned. The learned counsel have also referred to defence evidence by which the alibi of said four accused was proved. Therefore, it is contended that false implication of Dinesh Kumar, Devender and Babu Lal cannot be ruled out.

We will confine our discussion only to roles of accused Dinesh Kumar, Devender and Babu Lal.

It appears that Mathuri made some exaggerated claims and named some other persons also who were found to be not present at spot. However, this Court is to separate the chaff from grain to find out as to whether these three accused/appellants were involved in crime or not ? It is to be seen that it is tendency of complainant that he/she may rope in innocent persons, but will not spare the real culprits. The injuries described above clearly show that danda, lathi and sword were used in crime. Blood stained sword was recovered at the instance of Dinesh Kumar from his house. Dinesh has not explained as to how blood stained sword came in his possession. Similarly, danda and lathi were recovered from Babu Lal and Devender. Danda and lathi were used in crime. Crime took place in a broad day light in a street of a village. Vishnu was firstly beaten up in the presence of his mother Mathuri, brother Tej Pal and Tej Pal's wife Om Wati and was taken in front of house of Mani Ram where he was again brutally assaulted and killed.

The learned counsel for appellants have argued that witnesses were not present at the spot. They have not given details as to which accused gave which injury. They did not intervene. Therefore, their presence at spot is not proved.

We are of the view that occurrence took place around 12.00/1.00 Noon. Thereafter, Mathuri, after leaving his son and daughter in law at spot, proceeded to approach police. Complaint (Ex.PD) shows that work of recording complaint and making endorsement thereof was completed on 29.12.1999 at 3.30 PM. It might have taken around one hour to complete said complaint and endorsement thereof as every word has to be written very carefully, it being a murder case, which means that after walking 6-7 kilometers, Mathuri Devi had met police party around 2.30 PM. In this way, there is no inordinate delay in recording FIR.

It hardly matters that if witnesses have not attributed specific injuries to a particular accused. It is sufficient if it is stated that all accused with their respective weapons caused injuries. Weapons carried by accused were mentioned by complainant in her complaint and also in statement made before Court.

The learned counsel for appellants have further argued that trial Court has not discussed as to how Section 34 IPC is applicable to the facts of present case. Therefore, accused cannot be held liable to offence under Section 302 IPC with the aid of Section 34 IPC.

We are of the view that common intention is to be gathered from circumstances. The fact that accused firstly assaulted Vishnu and after tying him with a rope, took him in a street opposite house of Mani ram and thereafter started giving injuries with their respective weapons goes to show that they had formed common intention to kill Vishnu. 11 injuries were given with different weapons, resulting in instantaneously death of Vishnu. It is thereafter that accused fled away from spot. Unluckily, when this occurrence took place in a broad day light, nobody from village intervened, probably out of fear of accused. Therefore, in this case, act of

accused shows that they had formed common intention to kill Vishnu. Therefore, aid of Section 34 IPC was rightly taken by trial Court to convict accused for offence under Section 302 IPC.

The learned counsel for appellants have further argued that Vishnu had criminal background. Reference has been made to cross examination of Mathuri which has been reproduced above.

We are of the view that if Vishnu was involved in some crime and was convicted, same is no ground to brutally murder him. It should have been left to Court to decide his fate. The manner of commission of crime shows that accused were having ill will towards deceased. They firstly assaulted him and thereafter tied him with a rope and took him in front of house of Mani Ram and then gave him brutal injuries with their weapons, resulting in his death. There is nothing to disbelieve the statements of Mathuri and Tej Pal regarding roles attributed to accused Dinesh Kumar, Devender and Babu Lal. Mere fact that Om Wati was given up on account of duplicacy of evidence is no ground to hold that statement of complainant is also not to be believed.

The learned counsel for appellants have further argued that no witness from locality has come forward to support prosecution case.

We are of the view that the manner of commission of crime shows that terror was created at spot. In such circumstances, nobody from village will dare to come forward either to rescue the deceased or witness the occurrence. Even if somebody had witnessed the occurrence, he will not take risk of incurring the wrath of accused by becoming an eye witness. Therefore, absence of any independent witness is also immaterial.

From the foregoing discussion, we come to conclusion that the statement of complainant and Tej Pal, eye witness, inspires confidence

regarding the role of accused/appellant. Therefore, they were rightly convicted and sentenced under Section 302 IPC read with Section 34 IPC. There is no ground to interfere in the well reasoned judgment, passed by learned Additional Sessions Judge-I, Faridabad. Accordingly, we find no merit in all the appeals and same are accordingly dismissed. Accused are on bail. Their bail bonds and surety bonds are cancelled. They are ordered to be rearrested to undergo remaining part of sentence.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

15.2.2019
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No