

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

CRA-D-252-DB-2003 (O&M)

Date of decision: 04.10.2019

Phool Singh @ Phool Mohd. and Others

...Appellants

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. B.S. Saroha, Advocate for the appellants.

Mr. Vikrant Pamboo, AAG, Haryana.

H.S. MADAAN, J.

Briefly stated facts of the case, as per prosecution story, are that on 23.12.1997, at about 6.00 pm, complainant Nanhi along with her husband Yasin Khan were removing weeds from their fields situated at Village Jandwala Bagar, District Fatehabad. Then accused Chandu son of Khairdin of their village, a brother of father-in-law of complainant, along with his sons Phool Singh @ Phool Mohd, Gafoordin, Mahabir, wife-Reshma, daughter Sumitra, daughters in-law i.e. Bala wife of Phool Mohd and Madina wife of Gafoordin, having lathies arrived there in a fitter-cart which was being driven by Mahabir. All the accused/assailants on arrival at the spot started calling bad names to the complainant and her husband Yasin, stating that they would teach them a lesson for making water course and they assaulted complainant Nanhi and her husband Yasin. Both the victims raised alarm, which attracted Khatun wife of

Ghulam Ali, Kela wife of Mushtak and Ismile a brother in-law of complainant to the spot. They tried to intervene to save the victims and in the meantime, assailants caused injuries to Kela and Khatun with lathies. Thereafter the accused/assailants took away Yasin to some place in their fitter-cart. Complainant/injured Nanhi was taken to CHC Bhattu Kalan by her brother in-law Ismile, where she was medico-legally examined and given medical treatment. Smt. Khatun wife of Gulam Ali informed brothers of Yasin, namely Mushtak and Gulam Ali regarding abduction of Yasin by the accused in a fitter-cart after causing injuries to him, stating that accused had taken Yasin towards house of Chandu with an intention to kill him. On getting that information, Mushtak and his brother Gulam Ali went to the house of Chandu and found that all the eight accused were causing injuries to Yasin with lathi blows and on observing Mushtak and Gulam Ali there, all of the accused went away therefrom along with their lathies. Yasin was having injuries all over his body except head. He was bleeding from his mouth and was lying unconscious. Mushtak and Gulam Ali took Yasin to General Hospital Bhattu Kalan in a jeep, from where, he was referred to General Hospital, Fatehabad, keeping in view his serious condition. While being taken to General Hospital, Fatehabad, Yasin succumbed to the injuries suffered by him and he was declared brought dead by the doctor of General Hospital, Fatehabad. Formal FIR No.447 dated 23.12.1997 for offences under Sections 147, 148, 302, 364 IPC was registered at Police Station Bhattu Kalan, on the basis of statement made by Smt. Nanhi Ex.PJ. The motive

for the incident was that the dispute with regard to water course and the passage pending before Executive Engineer, Sirsa. After registration of formal FIR, the matter was investigated by ASI Gulshan Kumar (for short 'the IO') who along with other members of the police party went to CHC Bhattu Kalan and from there to General Hospital, Fatehabad, where dead body of Yasin was lying in mortuary of the said hospital. The IO carried out inquest proceedings with regard to unnatural death of Yasin, preparing report Ex.PN in that regard. He deputed Constable Krishan Kumar and Constable Dharambir for the purpose of getting post mortem examination conducted on the dead body of Yasin, handing over formal application Ex.PL in that regard. After post mortem examination, dead body of Yasin was handed over to his relatives. The belongings of deceased produced before the IO by the police officials, who had got the post mortem examination conducted on the dead body, were converted into a sealed parcel, which was taken into police possession, vide recovery memo Ex.PS. The said parcel was deposited with MHC of the police station. Further, investigation of the case was carried out by Inspector Karan Singh, the then SHO PS Bhattu Kalan. Inspector Karan Singh along with other police officials went to the spot on 24.12.1997 and prepared rough site plan of the place of incident as Ex.PT. He took into possession a pair of chappal from the spot, vide recovery memo Ex.PU after converting that into a sealed parcel. He further prepared rough site plan of house of accused where Yasin was given beatings as Ex.PV.

On 25.12.1997, accused Reshma appeared before the IO and produced the lathi. The IO converted that into a sealed parcel and took it into possession, vide recovery memo Ex.PW attested by the witnesses. Accused Reshma was arrested in this case, on 27.12.1997. The IO went to the house of accused Chandu and others and the fitter-cart which was used to carry the deceased was found standing in the street adjoining house of the accused. On one plank of the fitter cart, blood stains were present. That piece of the plank containing blood stains was taken into possession after converting into a sealed parcel, vide seizure memo Ex.PX.

On 28.12.1997, while the IO was present in the area of Jandwala, accused Mahabir, Phool Mohd. and Gafoor appeared before him. First two accused, produced lathi each before the IO, which were converted into sealed parcels and taken into police possession, vide recovery memos Ex.PY and Ex.PZ respectively. All the three accused were arrested in this case. During the course of interrogation, accused Gafoor suffered a disclosure statement Ex.PAA and in pursuance of the said statement, he got recovered lathi from fodder room of his house, which was converted into a sealed parcel and taken into police possession, vide recovery memo Ex.PBB. The IO prepared rough site plan of recovery site Ex.PCC. He recorded statement of witnesses and on return to the police station, deposited the case property with MHC of the police station.

On the completion of investigation and other formalities, the

challan against accused Phool Mohd, Mahabir, Gafoordin and Smt. Reshma only was filed, since the remaining accused namely Chandu, Sumitra, Madina and Bala had been found innocent during the investigation.

On filing of challan in the Court of Judicial Magistrate Ist Class (JMIC), Fatehabad, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C and then finding that some of the offences for which the accused had been booked were exclusively triable by the Court of Sessions, committed the case to the Court of Sessions Judge, Fatehabad, from where, it was assigned to Addl. Sessions Judge, Fatehabad.

Finding a prima facie case, charge for offences under Sections 323 read with Section 34, 364 and 302 read with Section 34 IPC was framed against the accused, to which, they pleaded not guilty and claimed trial.

During the course of trial, statement of complainant Nanhi was recorded. Thereafter, the prosecution moved an application under Section 319 Cr.P.C to summon Chandu, Sumitra, Madina and Bala as additional accused. That application was accepted by learned Sessions Judge, Fatehabad, vide order dated 15.03.1999. Presence of such additional accused was procured. Necessary compliance of Section 307 Cr.P.C., was made. Then all the eight accused were charge-sheeted for offences punishable under Sections 148, 302 read with Section 149, 323 read with Section 149 and 364 IPC, vide order dated 29.04.1999. All the

accused pleaded not guilty to the charge and claimed trial.

During the course of prosecution evidence, prosecution examined inasmuch as 13 witnesses as detailed below:-

PW-1 Dr. Dale Singh Medical Officer, Kalanwali who had medico-legally examined complainant Nanhi and injured Kela and Ismile proved copies of their MLRs as Ex.PA, Ex.PB and Ex.PC respectively.

PW-2 Dalip Singh, Patwari Halqa Jandwala Bagar proved site plan Ex.PG.

PW-3 HC Manphool Singh, a formal witness submitted his affidavit Ex.PH.

PW-4 Constable Ram Dhari, another formal witness submitted his affidavit Ex.PI.

PW-5 ASI Ajaib Singh who had recorded the formal FIR Ex.PJ/1 on receipt of statement of Nanhi Ex.PJ deposed in that regard.

PW-6 Constable Krishan Kumar, a formal witness submitted his affidavit Ex.PK.

PW-7 Nanhi injured/complainant.

PW-8 Smt. Kela injured provided the eye witness account of the incident, deposing inconsonance with the prosecution story.

PW-9 Mushtak an eye witness of second part of incident at house of accused Chandu also toed the lines of the prosecution.

PW-10 Dr. Rajender Singh, Medical Officer, General Hospital, Fatehabad who had conducted the post mortem examination on dead body of deceased Yasin stated that he had found the following

injuries on his person:-

1. *A lacerated wound on upper lip on left side 2 cm x 0.5 cm with blood clots. On dissection infiltration of blood was present in underlying tissues.*
2. *Reddish contusion 9 inches x 1 inch on the lower 1/3rd of the back of chest. Obliquely placed on both sides. On dissection infiltration of blood was present in underlying tissues.*
3. *Reddish contusion in an area of 10 inches x 6 inches on the middle and upper third of the back on both sides. On dissection infiltration of blood was present in underlying tissues.*
4. *Reddish contusion 9 inches x 1 inch on the left scapular region and below it lower end towards mid line. On dissection infiltration of blood was present in subcutaneous tissues.*
5. *Reddish contusion 6 inches x 2 inches just above left iliac crest obliquely placed towards mid line of the back. On dissection infiltration of blood was present in underlying tissues.*
6. *An abrasion 5 cms x 1.5 cm x 3 inches lateral to mid line on back on right side just below right costal margin. On dissection infiltration of blood was present in underlying tissues.*
7. *An abrasion 2 cm x 1.5 cm on upper third of left scapular region on lateral aspect. On dissection infiltration of blood was present in underlying tissues.*
8. *Reddish contusion 6 inches x 1 inch on middle third of left buttock obliquely placed. On dissection infiltration of blood was present in underlying tissues.*
9. *Reddish contusion 7 inches x 1 inch, 2 inches below the injury No.8 obliquely placed. On dissection infiltration of blood was present in underlying tissues.*
10. *Reddish contusion 4 inches x 1.5 inches on upper third of the left leg on posterio lateral aspect. On dissection infiltration of blood was present in underlying tissues.*
11. *Reddish contusion 6 inches x 1.5 inches on the lower third of the left leg on posterio lateral aspect. On dissection infiltration of blood was present in underlying tissues.*
12. *Reddish contusion 7 inches x 1 inch on lower third of right side of chest and abdomen obliquely placed 3 inches lateral to mid line of the body extending downwards and laterally. Lower end of the contusion ending at a distance of 6 inches from mid line of the abdomen. On dissection infiltration of blood was present in underlying tissues. Abdominal cavity was full of blood and liver was lacerated.*
13. *Reddish contusion in an area of 3 inches x 2 inches on the posterior aspect of lower third of right fore-arm on dissection infiltration of blood was present in underlying tissues and ulna was found to be fractured.*
14. *Reddish contusion 5 inches x 1 ½ inches on lower end and*

middle third of left upper arm obliquely placed entero lateral aspect. On dissection infiltration of blood was present in underlying tissues.

15. A lacerated wound on the posterior side of left elbow joint 2 cm x 0.5 cm with blood cots. On dissection infiltration of blood was present in underlying tissues.

16. Reddish contusion 6 inches x 1 ½ inches on the middle third of right buttock obliquely placed. On dissection infiltration of blood was present in underlying tissues.

The witness proved copy of post mortem report of the deceased Ex.PM, stating that cause of death in his opinion was due to hemorrhage and shock due to multiple injuries and all the injuries were ante-mortem in nature which were sufficient to cause death in ordinary course of nature.

PW-11 Dr. D.L. Bansal, SMO, General Hospital, Fatehabad proved X-ray report Ex.PQ relating to complainant Nanhi. In terms of that report, no bony injury was found on her person.

PW-12 ASI Gulshan Kumar had carried out the investigation initially, testified about that.

PW-13 Inspector Karan Singh who had investigated the case subsequently deposed in that regard.

After tendering report of FSL as Ex.PDD, the Public Prosecutor had closed the evidence of the prosecution.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to them but they denied the same, contending that they are innocent and have been falsely involved in this case. That as a matter of fact, 23.12.1997, accused Reshma and Mahabir were working in

their fields. Nanhi and Yasin were also working in their own fields. Reshma and Mahabir came on the dol of the field and told Nanhi and Yasin that they had wrongly constructed the kotha in the khal about three years ago and the canal authorities had ordered for restoration of the said water course, therefore, they should be allowed to dig the water course. Hearing that Yasin became angry and gave 5/6 blows to Reshma. Mahabir could not tolerate beatings of his mother and he threw brick bats towards Yasin. PWs Khatun, Kela and Ismile were not present at the spot. Similarly, accused Phool Mohd., Gafoor, Sumitra, Chandu, Madina and Bala were also not present and they had been falsely involved in this case.

During their defence evidence, the accused examined DW-1 Amar Singh Ahlmad to the Court of Addl. Sessions Judge, Fatehabad to prove copy of complaint filed by Reshma against Ismile, Mushtak, Gulam Nabi Khatun and Hanif under Sections, 307, 452, 148 and 149 IPC as Ex.DD.

DW-2 Raj Kumar, Criminal Ahlmad in the Court of Judicial Magistrate 1st Class (JMJC), Fatehabad proved copy of statement of Reshma as Ex.DE; copy of FIR No.20 dated 04.02.1996, under Sections 279, 337 and 109 IPC registered on the basis of statement of Reshma against Ismile, Mushtak and Yasin sons of Sadiq as Ex.DF.

DW-3 Sh. Gulshan Kumar, Criminal Ahlmad in the Court of SDJM, Fatehabad had brought the summoned file of case bearing FIR No.230 dated 27.09.1996 under Sections 323, 325 and 34 IPC registered

on the basis of statement of Neki Ram son of Mehar Din, brother of accused Reshma, stating that Reshma has been cited as a witness in that case and her statement recorded as PW-2. Deceased Yasin, his brothers Ismile, Gulam Nabi and Mushtak were accused in that case. He had proved copy of DDR Ex.DG.

DW-4 Dr. Mohinder Kumar Gupta, Medical Officer, Chuli Bagrian stated that he had medico-legally examined Reshma on 25.12.1997 and found three simple injuries with blunt weapon on her person, vide MLR Ex.DH.

With that the defence evidence of accused was concluded.

After hearing arguments, learned Addl. Sessions Judge (ASJ), Fatehabad vide judgment dated 23.01.2003, convicted the accused Phool Mohd., Mahabir, Gafoordin and Smt. Reshma and sentenced them to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 323 read with Section 34 IPC, RI for life and directed to pay a fine of Rs.4000/- each for the offence punishable under Section 302 read with Section 34 IPC, in default of payment of fine, they will further undergo RI for a period of six months each. They were further sentenced to undergo RI for a period of 07 years and directed to pay fine of Rs.2000/- each for the offence punishable under Section 364 IPC, in default of payment of fine, to further undergo RI for a period of four months each. Whereas, accused Chandu, Sumitra, Bala and Madina were acquitted by giving them benefit of doubt.

Feeling aggrieved by judgment of their conviction and

sentence, the accused/convicted have filed the instant appeal before this Court, notice of which was issued to the State, who has put in appearance through counsel.

We have heard learned counsel for the parties besides going through the record and we are of the view that considering the facts and circumstances of the case, conviction of the accused under Section 302 IPC is not sustainable. The accused/appellants are stated to be armed with lathies at the time of incident. As per prosecution story, none of the accused was having any fire arm or a sharp edged weapon. Furthermore, though inasmuch as 16 injuries were observed on the dead body of Yasin but except injury No.1, which is a lacerated wound on upper lip of left side of dead body and injury No.15, which is lacerated wound of posterior side of left elbow joint, injury Nos.6 & 7 which are abrasions, the remaining injuries are in the form of contusion. None of the injuries was there on the head. Most of the injuries are on the non-vital part, therefore, intention to cause death by causing such bodily injury as the assailants knew to be likely to cause death is not established. The offence which in our opinion is disclosed from the circumstances is one under Section 304 (II) IPC, since it transpires that the injuries were caused to the deceased having knowledge that the same were likely to cause his death but without any actual intention to do so. The learned Addl. Sessions Judge on conclusion of trial has acquitted four of the accused, since, the charge against them was not proved conclusively and affirmatively. Therefore, the prosecution story has been disbelieved to

that extent. Furthermore, one of the accused, namely, Reshma had also suffered three injuries as deposed by DW-4 Dr. Mohinder Kumar Gupta. Those injuries have not been explained by the prosecution, though, learned Addl. Sessions Judge, has not given much weightage to that factor but the same does result in doubting the veracity of prosecution case to some extent but it becomes doubtful as to whether the fight had in fact originated in the manner as suggested by the prosecution or had taken place in that way or in some other manner.

As it is born out from the record that a dispute regarding the water course was pending between the parties, the parties are related to each other, having adjoining fields. The complainant had tried to throw the net wide and rope in several other persons whose involvement was not found as a result of investigation. Though, they were summoned as additional accused by the trial Court but ultimately, earned acquittal. Therefore, the prosecution story cannot be accepted as it is, rather, the Court is to find element of truth from the version of the incident set up by the prosecution. Under the circumstances, we find that though the conviction of accused/convicts under other offences does not call for any interference but with regard to offence under Section 302 IPC, the same cannot be upheld, rather, it is set aside and the accused/convicts are convicted for offence under Section 304 (II) IPC. The said offence carries imprisonment upto 10 years or with fine or with both. As per custody certificates produced by the State counsel, accused/convict Mahabir has undergone total sentence including remissions of 09 years, 05 months and

25 days, accused/convict Phool Singh @ Phool Mohd has undergone total sentence including remissions of 09 years, 04 months and 01 day, accused/convict Gafoordin is shown to have undergone total sentence including remissions of 09 years, 05 months and 08 days and accused/convict Reshma who was aged about 69 years at time of conviction, is presently aged about more than 85 years. She is stated to have undergone total sentence including remissions of 04 years, 11 months and 28 days. None of the accused/convicts can be termed to be habitual criminal, therefore, the appeals are allowed partly in terms of the discussion above, they are sentenced to the imprisonment already undergone by them in this case. They may be set at liberty, if they are not required in any other case.

(JITENDRA CHAUHAN)
JUDGE

04.10.2019

sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No