

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

456

CRA-D-635-DB-2002
Date of Decision : 25.7.2019

Mukesh and others

..... Appellants

Versus

State of Haryana.

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present : Mr. Vinod Ghai, Senior Advocate with
Ms. Kanika Ahuja, Advocate
for the appellants.

Ms. Tanisha Peshawaria, DAG, Haryana.

AJAY TEWARI, J. (Oral)

1.) This appeal has been filed against the judgment and order dated 27.8.2002 and 29.8.2002 passed by the Additional Sessions Judge, Hisar whereby belowmentioned conviction and sentence was awarded to all 24 appellants :-

a) Appellant No. 1-Mukesh, appellant No.-2 Balwant @ Banta and appellant No.9-Shishpal, appellant No.22-Sajna, appellant No.23-Miya Singh and appellant No.-24-Dhisa @ Jagdish, were convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 1000/- each for offence under Section 302 read with 149 IPC and in default of payment of fine, each of them was ordered to further undergo RI for 6 months.

b) Remaining 18 appellants namely Reshma, Rampal, Kishan Chand, Mange Ram, Rajesh, Melu Ram, Tek Ram, Lalu, Desraj, Bhola Ram, Satbir, Ramesh, Sadhu Ram, Sudhan Ram, Chameli, Bhartho, Ram Piari and Dhira were convicted and sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs. 1000/- each for offence under Section 325/149 IPC and in default of payment of fine, each of them was ordered to further undergo RI for 6 months and to further undergo RI for 1 year under Section 324/149 IPC and also sentenced for 6 months under Section 323/149 IPC. All the accused/appellants were further convicted and sentenced to undergo RI for one year for the offence under Section 148 IPC.

2.) Brief facts of the prosecution case were that on 12.7.1998 members of the complainant party had gone to weed out the crop of Bajra from 2 ½ Kanals of piece of land which was under their possession. The prosecution alleged that a litigation was pending between the complainant party and the appellant party with respect to that land. On the day in question one order had been passed in favour of the complainant party holding that they were in possession of land. After weeding out the grass from the Bajra crop, the complainant party was coming back and when they reached the bridge of canal near the village they were accosted by the appellant party comprising Mange Ram s/o Munshi Ram, Kishan Lal and Bhola Ram sons of Mange Ram, Miyan and Sadhu Ram sons of Tindu Ram, Papu and Ghisa (Dhisa) sons of Miyan Singh, Sajna, Lalu, Melu sons of Sadhu Ram, Ram Pal, Mukesh, Midha, Banta Ram and Dhira sons of Sudhan, Teka son of Phula Ram and Raja, Tampa sons of Tika, Shishpal son of Munshi Ram, Bhartho wife of Miyan Singh, Chamli

wife of Shishpal, Reshma wife of Mange Ram, Mewa Devi wife of Sadhu, all residents of village Bithmara armed with 'gandasi', 'jaili', 'kasola' and 'lathis' and raised a 'lalkara' that they would teach the complainant party a lesson for weeding out the grass from Bajra crop and opened attacked with their weapons. Appellant No.1-Mukesh inflicted two 'gandasa' blows on the head of Chandi Ram, Sajna inflicted jaili blow on the chest, Miya Singh inflicted 'kasola' blow on the head, Dhisa @ Jagdish inflicted 'lathi' blow on the forehead, Banta inflicted jaili blow on the chest, Shishpal inflicted 'lathi' blow on the right hand of the Chandi Ram. Papu @ Satbir caused 'gandasi' blow on the head of Bhira, Lalu, Melu, Raja and Dhisa inflicted one 'lathi' blow each on his head. In the meantime, when other persons of the complainant party came there to save them, all the remaining accused persons caused injuries to them also. After causing the injuries to the complainant party all of the appellants escaped towards the fields and thereafter, the complainant party was taken to the hospital where Chandi Ram s/o Birkha was declared brought dead. All accused-appellants were sent up for trial. The prosecution examined as many as 19 witnesses to prove its case. The appellants closed their evidence after leading documentary evidence.

3.) It may be mentioned here that 10 persons received injuries from the complainant side, the details of which are as follows :-

Bhira (6 injuries), Bhan(2 injuries, one of them was grievous), Mewa Singh (7 injuries, one of them was grievous and one was dangerous to life), Abhey Ram (2 injuries), Sheena s/o Mewa Singh (3 injuries), Bohti (2 injuries), Hawa Singh (6 injuries, one of them was grievous), Bhartho (6 injuries, one of them was grievous), Birmati (5

injuries) and Chandro Devi (1 swelling)

4.) From the appellant's side, 8 persons received following injuries :-

Kishan Chand (4 injuries including fracture of terminal phalanx of right ring finger), Raja Ram (4 injuries including fracture of parieto-temporal bone of right of skull), Satvir (3 injuries including dislocation of right shoulder with fracture of body of scapula of right side), Ramesh Chand (3 injuries), Sadhu Ram (7 injuries including fracture of first metacarpal of right hand and fracture of both bones of left forearm), Sudhan Ram (3 injuries), Sajna (6 injuries) and Miya Singh (2 injuries).

5.) While recording their statement under Section 313 Cr.P.C. the case of these 8 persons from the appellant's side was that it was the complainant side which had accosted and attacked them and they had given injuries in self-defence.

6.) At this stage, it would also be apposite to give details of the injuries suffered by the deceased Chandi Ram (from complainant side) and the attribution also. As per postmortem report, the following injuries were found on the body of the deceased :-

“1. A lacerated wound 2 cm x 1.5 cm on left forehead underlying wound and frontal lobe were healthy and pale with clotted blood in subcutaneous tissues.

2. An incised wound 4 cm x 1 cm on mid parietal region with clotted blood subcutaneous tissues effusion was present.

3. An incised wound left parietal region 6 cm x 1 cm with clotted blood underlying bone and brain matter was healthy and pale on dissection.

4. A wound with sharp margins appears to be punctured and was located 20 cm below right shoulder acromiam 10

cm below mid sternal point on left side of sternum. On dissection underlying sternum was fractured. Right and left ventricles were found punctured through the septum. Large amount of blood was seen in pericardial space. Left lung was also punctured at lower lobe with blood in left thoracic cavity.

5. Two superficial contusions on dorsum of right hand reddish in coloured were seen.

6. A contusion on left lower chest reddish in colour was seen.”

The attribution of these injuries is as follows:-

- i.) Injury No.1 was attributed to appellant No.24-Dhisa @ Jagdish by 'lathi'.
- ii.) Injuries No.2 and 3 were attributed to appellant No.1-Mukesh with 'gandasi' and appellant No. 23-Miya Singh with 'kasola'.
- iii.) Injuries No. 4 and 6 were attributed to two appellants i.e. appellant No.2-Balwant @ Banta with 'jaili and appellant No.-22-Sajna with 'jaili.
- iv.) Injury No.5 was attributed to appellant No.9-Shishpal with 'lathi'.
- 7.) Ultimately, the Trial Court held that appellants No. 1, 2, 9, 24, 22 and 23 were guilty of the offence under Section 302 read with Section 149 IPC. It was further held that 18 out of 24 accused persons did not share common object and, the Trial Court accordingly acquitted them under Section 302 IPC, but held them individually liable for the injuries which they had caused to the complainant side and convicted them under Sections 325, 324, 323 read with Section 149 IPC. As regards appellants No. 1, 2, 9, 24, 22 and 23 who were convicted under Section 302 IPC, the Trial Court held that they had the knowledge that the injuries they were causing could cause death of the deceased and,

thus, as per the Trial Court, they were liable for conviction under Section

302 read with 149 IPC.

8.) The precise argument raised by the learned Senior counsel appearing on behalf of the appellants is that the complainant party as well as the State have accepted the finding that the accused party initially did not have common object to kill anybody and thus the tentative conclusion arrived at by the Trial Court in this behalf is required to be confirmed by this Court. Developing this argument further, he has asserted that once there was no common object in the beginning, it would be hazardous and illegal to invoke Section 149 IPC. He has argued that the Trial Court wrongly recorded the injuries caused to the accused party as simple in nature and has referred to the statement of Dr. Arun Kumar i.e. Ex.PW-13 and has stated that there were 4 fractures on the various persons from amongst the accused party (at this stage, learned DAG interjected to state that two of the fractures were on the fingers, one was on the shoulder and one was on the head). As per the learned Senior Counsel for the appellants, keeping in view the entire sequence of facts, it seems that present is a case of free fight and attribution of common object in these circumstances was wrong. He has pointed out that appellant No.9-Shishpal was attributed blow on the right hand of the deceased. As per the prosecution, appellant No.2-Balwant @Banta and appellant No.22-Sajna were alleged to have caused sharp edged injury on the chest of the deceased. As per the postmortem report Ex.P-32, there was only one sharp edged weapon injury on the chest. As far as appellant No.1 Mukesh is concerned, counsel has pointed out that he was alleged to have given 2 blows on the head of the deceased from the reverse side of 'gandasi'. His argument is that if appellant No.1 had intention to kill Chandi Ram he

would have used sharp edge of the "gandasi". He has further argued that on the head of the deceased, there were simple injuries. As per the allegations, Mukesh had caused one injury on the head of the deceased with gandasi and appellant No.-23 Miya had given one blow on the head of the deceased.

9.) Learned Senior counsel for the appellants has further argued that as regards appellant No.24-Dhisa @ Jagdish, he was attributed blow on the forehead of the deceased with 'lathi' and in the post mortem report, it was shown as a lacerated wound.

10.) The further argument of the learned Senior counsel for the appellants is that in a free fight where blows are being rained by both sides, the perpetrators may not even know where they are landing, because the parties are not trained fighters. In these circumstances, the maximum which could be attributed (and that to only to appellant No.22-Sajna) would be an act which would be covered under Section 304 part II IPC.

11.) As per him, appellant No.2-Balwant has been falsely implicated even though he was not present at the site. He has further argued that even the presence of appellant No.1 Mukesh is not established and consequently, prays that they be acquitted. As regards appellant No.9-Shishpal, he was attributed simple injury on the right hand of the deceased (which as per the Doctor could have been by a fall) and even Shishpal-appellant No.9 was falsely implicated. As regards appellant No.23-Miya Singh, the argument of the learned Senior counsel for the appellants is that the injury caused by him was simple as caused by the appellant No.24-Dhisa @ Jagdish. As regards the other appellants, his

argument is that no specific injuries were attributed to them initially and the specific injuries attributed to them subsequently are only improvement.

12.) Learned DAG has argued that the Trial Court had only recorded tentative conclusion that the appellants did not have any object at the beginning, but if that is so there was no reason for the State or the complainant to have challenged that finding. From the perusal of the evidence and unfolding of the facts, we are also independently of the opinion that there was no common object at the beginning. Once that is behind us, the only conclusion which remains is that it was a free fight.

13.) Learned DAG has further argued that the argument that appellant No.1-Mukesh was falsely implicated cannot be accepted since there were two injuries on the head of the deceased and at the most it can be said that out of them Mukesh had inflicted one because appellant No.23 Miya Singh was himself injured, and therefore, his presence is established. In respect of these two appellants, she has argued that they had given blows with sharp edged weapon on the head of the deceased and therefore, it cannot be claimed that the injuries were simple in nature and, thus, the conviction could be under Section 323 IPC. As regards appellant No.24-Dhisa @ Jagdish, her argument is on the same lines, viz. that a person who gave blow with 'lathi' on the head cannot turn around and claim that the injury was simple. As regards appellant No.22-Sajna, she has argued that pre-mediation and intention are two different things; whereas pre-mediation means advance planning, intention can develop in a second and consequently, the conviction of appellant No.22-Sajna, who inflicted the puncture wound on the chest of the deceased with a 'jaili

cannot come within the ambit of Section 324 IPC and would have to be covered under Section 302 IPC.

14.) On the basis of the evidence coupled with the facts and circumstances on record, the instant one is not a case where the accused-appellants had acted as a result of premeditation of minds, resulting into attribution of common object on their part. Rather, it is a case where two rivaling parties, had fought regarding their alleged possession over the land, outweighing each other. Thus, in our opinion, the occurrence is the result of a free fight. Once, such is the position, the role of the accused-appellants for their individual culpability is needed to be examined and adjudicated upon. Also it stands proved on record and as noticed by the learned trial Court in para 88 of its judgment that both the parties stood challaned in the proceedings under Section 107/151 Cr.P.C. Besides, civil litigation was also pending between them. This clearly shows that there was previous enmity between the parties.

15. While examining the scope and applicability of Section 149 IPC, the Hon'ble Supreme Court in *State of Punjab Vs. Sanjiv Kumar @ Sanju and others*, reported as 2007 AIR SC 2430 has while affirming the judgment of acquittal passed by the High Court, held that the difference between common object and common intention, is clearly to be deciphered before recording conviction of the accused. Yet further, it has been held that where the applicability of Section 149 IPC becomes doubtful, the factum of common object being missing there, the individual role of the accused is required to be examined and ascertained.

16.) Having heard the arguments of both, the learned Senior counsel appearing for the appellants and learned State Counsel, we have

found ourselves in partial agreement with both and hold as under :-

- i. As regards appellant No.2-Balwant, we find that his presence at the place of occurrence is doubtful, therefore, the possibility that he was falsely implicated cannot be ruled out in view of the admitted enmity between the groups and consequently, acquit him and set aside the conviction order qua him. The appeal stands allowed qua appellant No.-2 Balwant.
- ii. As regards appellant No.9-Shishpal, we find that he was attributed simple injury on the right hand of the deceased and accordingly, we set aside his conviction under Section 302 IPC and award conviction under Section 323 IPC. His punishment is reduced to that he has already undergone. He is directed to be set free. The appeal stands disposed of qua appellant No.-9-Shishpal.
- iii. As regards appellant No.24- Dhisa @ Jagdish, we find that simple injury caused by him on the head of the deceased would not amount to a serious injury, therefore, acquit him under Section 302 IPC and award conviction under Section 323 IPC. His punishment is reduced to that which he has already undergone. He is directed to be set free. The appeal stands disposed of qua appellant No. 24- Dhisa @ Jagdish.
- iv. As regards appellant No.1-Mukesh and appellant No. 23-Miya Singh, we agree with both, the learned Senior counsel for the appellant and learned State Counsel. We hold that their act of inflicting sharp edged weapon injury on the head of the deceased would constitute offence under Section 307 IPC. Consequently their conviction under Section 302 IPC is set aside and they are convicted under Section 307 IPC and awarded 7 years imprisonment. The appeal stands disposed of

qua these two appellants.

v. As regards appellant No.22-Sajna, he had caused a punctured wound in the chest of the deceased, which was sufficient to cause death of the deceased in the ordinary course, therefore, we reject the argument of the learned Senior counsel for the appellants and accept the argument of learned Deputy Advocate General and maintain his conviction under Section 302 IPC as well as his sentence of life imprisonment. The appeal is dismissed qua him.

vi. As regards remaining 18 accused, the mere fact that no specific injury was attributed to them in the FIR would pale into significance considering the number of persons involved and the number of injuries caused. The appeal is also dismissed qua these 18 appellants-accused. However keeping in view their role, we reduce their sentence to 9 months of rigorous imprisonment each.

17. The bail bonds produced by the appellants, who are acquitted of their charges or whole punishment/s are reduced to what they have undergone, shall stand cancelled. The appellants whose conviction and sentenced are maintained or modified shall be taken into custody forthwith to undergo remainder of their sentence.

18. Since the main case has been decided, the C.M., if any also stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

25.7.2019
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Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No