

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-349-DB of 2003

Reserved on : 22.02.2019

Date of decision : 26.02.2019

Sube Singh and others

.... APPELLANTS

Versus

State of Haryana

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Rishab Lohan, Advocate,
for appellants No.1 and 2.

Mr. K.C. Bhatia, Advocate,
for appellant No.3.

Mrs. Shubhra Singh, Addl. A.G., Haryana.

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RAJIV SHARMA, J.

1. This appeal is instituted against the judgment dated 29.03.2003 and order dated 31.03.2003, rendered by learned Additional Sessions Judge, Jind, in Sessions Case No. 30 dated 06.09.2000, whereby appellants Sube Singh, Ramphal and Rajpal, who along with one Smt. Rajpati were charged with and tried for the offences punishable under Sections 452/304/34 of the Indian Penal Code, were convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 2,000/- each under Section

302 read with Section 34 of the Indian Penal Code. They were further sentenced to undergo rigorous imprisonment for a period of one year and also to pay a fine of Rs. 500/- each under Section 452 of the Indian Penal Code. In default of payment of fine, the appellants were ordered to further undergo rigorous imprisonment for a period of three months each. Both the sentences were ordered to run concurrently. Smt. Rajpati was, however, acquitted.

2. The case of the prosecution, in a nutshell, is that Ram Mehar (PW.5) lodged the complaint on 20.06.2000 to the effect that he was an agriculturist by profession. At about 8.00/9.00 AM, his mother Smt. Parwari and Rajpati wife of Sube Singh exchanged hot words. Rajpati climbed up the stairs. She started throwing brick-bats on the complainant party. His father Zile Singh tried to pacify the matter. His father sat on a cot. Meanwhile, Sube Singh came there armed with an axe. Ramphal came armed with a *Ballam* and Rajpal came armed with a *Lathi*. They were his uncles in relations. They entered the courtyard. Sube Singh inflicted axe blow on the head of Zile Singh. Ramphal and Rajpal were saying that they will teach a lesson to the complainant party. The complainant party raised alarm. Many people came on the spot. The accused ran away from the spot. Zile Singh was shifted to hospital in a Matador. He was declared 'brought dead'. The post-mortem examination was got conducted. The clothes were taken into possession. FIR was registered. The investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses in support of its case. Statements of the accused were also recorded under Section 313

Cr.P.C. They denied the case of the prosecution. According to them, they were falsely implicated.

4. The appellants were convicted and sentenced, as noticed above. Hence, this appeal.

5. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case against the appellants. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case against the appellants beyond reasonable doubt and supported the judgment and order of the learned Court below.

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

7. PW.1 Dr. Dhan Kumar deposed that he conducted the post-mortem examination on the dead body of Zile Singh on 20.06.2000. He noticed the following injuries on the dead body :-

“An incised wound 8 cm x 1.5 cm elliptical, tapering at the both ends was present on the left parietal bone, 2 cm away from midline and 3 cm above the left side of frontal hair margin. The wound cut through full thickness of scalp and underlying bone. The brain matter and the meninges were protruded through the wound. Bleeding was present. On dissection fracture of left parietal bone, clotted blood was present in the cranial cavity, laceration of brain matter and meninges were present. Cranial vessels were served.”

The cause of death was due to shock and haemorrhage as a result of injuries

to vital organs of body. These injuries were ante-mortem in nature which were sufficient to cause death in normal course of events. Death of Zile Singh was instantaneous on receipt of injuries. The probable time between death and post-mortem was within 6 to 36 hours. He proved the post-mortem report Ex.PA.

8. PW.5 Ram Mehar complainant testified that on 20.06.2000 at about 8.00/9.00 AM, he was present in his house at village Pegan. Smt.Rajpati wife of Sube Singh came to their house. She entered into an argument with his mother Smt. Parwari. His mother was claiming that she was helpful in getting two/three engagements matured. However, Smt.Rajpati refuted her claim. There was exchange of hot words. His father intervened. Smt. Rajpati went away. Thereafter, his father sat on a *Charpai* (cot). The complainant was taking his breakfast. After some time, Smt.Rajpati climbed up her roof. She started pelting brick-bats. In the meantime, appellants Sube Singh, Ramphal and Rajpal came to the house of the complainant. Sube Singh was armed with a *Kulhara* (axe), whereas Ramphal was armed with a *Bhala* and Rajpal was armed with a *lathi*. Smt.Rajpati exhorted that Zile Singh be killed. Sube Singh gave a *kulhara* (axe) blow on the head of Zile Singh. The complainant party raised alarm. Many persons assembled on the spot. The accused ran away from the spot. Zile Singh became unconscious. He was shifted to hospital. The occurrence was witnessed by the complainant and his mother Smt. Parwari. The doctor declared his father Zile Singh 'brought dead'. His statement, Ex.PG, was recorded by the police. Blood stained earth was lifted. On interrogation, Sube Singh accused disclosed having concealed a *Kulhara* (axe) in the

fodder. Ramphal accused was also interrogated. He disclosed that he had kept *Bhala* under the *Charpai* (cot). Sube Singh got recovered *Kulhara* (axe) and Ramphal got recovered *Bhala*. In his cross-examination, he deposed that street was 30 feet wide in front of their house. The weapons of offence were recovered on 21.06.2000. The occurrence lasted for about half an hour, including the altercation preceding the attack.

9. PW.7 Smt. Parwari is another eye witness. She testified that two years back, she was present in her house at about 8.00/9.00 AM. Smt. Rajpati came to their house. There was an altercation between her and Smt. Rajpati. Her husband Zile Singh separated them. Thereafter, Smt. Rajpati went up stairs and started throwing brick-bats. Her husband Zile Singh was sitting on a *Charpai* (cot). In the meantime, Sube Singh accused armed with *Kulhara* (axe), Ramphal accused armed with a *Bhala* and Rajpal accused armed with a *lathi* came there. Sube Singh gave a *Kulhara* (axe) blow on the head of her husband. Ramphal and Rajpal accused declared that he be taught a lesson for abusing Smt. Rajpati. They raised alarm. The accused ran away from the spot. In his cross-examination, he deposed that though all the three accused entered the house together, yet Ramphal and Rajpal did not inflict injuries to Zile Singh. The accused had not forced their entry after breaking open the doors.

10. PW.8 Rajmal deposed that about two years back, he was coming from his fields at about 8.00/9.00 AM. When he reached near the house of Zile Singh deceased, he heard the noise of “Maar Diya Maar Diya”. Sube Singh accused was armed with an axe. Ramphal accused was armed with a *Ballam* and Rajpal accused was armed with a *lathi*. They were

seen coming out of the house of Zile Singh. He went inside the house of Zile Singh. Smt. Rajpati was throwing brick-bats. They arranged for a Matador. Zile Singh was taken to hospital. In cross-examination, he stated that his house was situated at a distance of 15 paces from the house of Zile Singh and in between, there is a *pucca* metaled road. He admitted that Zile Singh was his uncle in relation. When he reached the house of Zile Singh, doors were open. These were not broken.

11. PW.9 Nar Singh recorded statement of complainant Ram Mehar vide Ex.P-1. FIR Ex.P-15 was registered. He inspected the place of occurrence. He recorded statements of the witnesses under Section 161 Cr.P.C. Sube Singh and Ramphal were arrested on 20.06.2000. On 21.06.2000, Sube Singh was interrogated. He made disclosure statement Ex.P-7 that he had kept concealed a *Kulhari* (axe) in the stack of fodder in his house. Ramphal made disclosure statement Ex.P-8 that he had kept concealed a *Bhala* underneath a cot in his house. In pursuance of the disclosure statements, *Kulhari* (axe) and *Bhala* were got recovered by Sube Singh and Ramphal, respectively. The *Kulhari* (axe) is Ex.P-12 (M.O.).

12. It would be apt at this stage to mention that the prosecution had moved an application under Section 319 Cr.P.C. for summoning Smt.Rajpati wife of Sube Singh accused to face trial under Sections 302, 452 read with Section 34 of the Indian Penal Code. This application was allowed by the learned trial court on 22.05.2001 and the prosecution witnesses were re-called.

13. The FSL report is Ex.P-21. According to the FSL report, blood could not be detected on exhibit-3 (*Kulhari*). The cause of death was shock

and haemorrhage. The injuries were ante-mortem in nature. The motive attributed to the appellants was that PW.7 Smt. Parwari had entered into an altercation with Smt. Rajpati. Zile Singh intervened and told the parties to maintain peace. Thereafter, in order to teach a lesson to Zile Singh, he was attacked.

14. PW.5 Ram Mehar categorically testified that his mother Smt.Parwari entered into an altercation with Smt. Rajpati. His father tried to pacify them. In the meantime, Sube Singh came to his house. He was armed with a *Kulhara* (axe). Ramphal was armed with a *Ballam* and Rajpal was armed with a *lathi*. Sube Singh gave *Kulhara* (axe) blow on the head of Zile Singh. Zile Singh became unconscious. He was taken to hospital. He was declared 'brought dead'. Statement of PW.5 Ram Mehar has been duly corroborated by PW.7 Smt. Parwari. She had also seen Sube Singh inflicting *Kulhara* (axe) blow on the head of her husband Zile Singh, who was sitting on a cot. The *Kulhara* (axe) blow was given on the head of the deceased. PW.8 Rajmal had also seen appellants Sube Singh, Ramphal and Rajpal coming out of the house of Zile Singh.

15. The *Kulhara* (axe) was got recovered by appellant Sube Singh on the basis of his disclosure statement Ex.P-7. No recovery was made from appellant Rajpal, though *Bhala* was got recovered by appellant Ramphal. Neither Ramphal nor Rajpal had given any blow on the body of Zile Singh. They were only present on the spot. It was Sube Singh appellant alone who had inflicted *Kulhara* (axe) blow on the head of Zile Singh, which proved fatal.

16. The Rajasthan High Court in *Dal Chand v. The State*, 1966

Criminal Law Journal 236, has held that there must be clear evidence of preparation for causing hurt to sustain a conviction under Section 452 of the Indian Penal Code. The fact that a person enters another man's house and commits an assault does not necessarily presuppose with preparation, for it may be a case of post hoc ergo propter hoc. It was held as under :-

“5. Taking up the first branch of the argument, I must observe that there is a considerable force in it and it must be accepted. It is well settled that there must be clear evidence of preparation for causing hurt to sustain a conviction under S. 452, Indian Penal Code. The fact that a person entered another man's house and committed an assault does not necessarily presuppose such preparation, for it may be a case of post hoc ergo propter hoc. The materials on the record of this case show that the fight between the parties developed on account of the complainant having protested against the collection of stones by the accused. The fight was sudden and during the course of the fight the accused took a `salia' of the cart and inflicted blow upon the complainant. In the circumstances of the case, it is difficult to infer that the accused had made preparation for causing hurt to the complainant. Mr. Singhi appearing for the State made no attempt to counter argument on this aspect of the case.”

17. In the instant case, the prosecution has failed to prove the charge against the appellants under Section 452 of the Indian Penal Code. There is no evidence to the effect that they had trespassed into the house of the deceased after preparation for hurt or assault. Hence, conviction of the

appellants under Section 452 of the Indian Penal Code is set aside.

18. The prosecution has failed to prove charges against appellants Ramphal and Rajpal. However, case against appellant Sube Singh has been proved beyond reasonable doubt for the offence punishable under Section 302 of the Indian Penal Code.

19. Accordingly, the appeal is partly allowed. The judgment dated 29.03.2003 and the order dated 31.03.2003 qua appellant Sube Singh are modified to the extent that his conviction and sentence under Section 452 of the Indian Penal Code is set aside. However, his conviction and sentence under Section 302 of the Indian Penal Code is upheld. He is on bail. His bail bond and surety bond are cancelled. He is ordered to surrender before the concerned Chief Judicial Magistrate forthwith to undergo remaining part of his sentence. The impugned judgment and order qua appellants Ramphal and Rajpal are set aside. They are acquitted of the charges framed against them. They are on bail. Their bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

February 26, 2019
ndj

(KULDIP SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes