

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

(1) CRA-D-804-DBA of 2002 (O&M)
Date of Decision: 18.11.2019

State of Haryana

.....Appellant

VS.

Narain Dutt and others

.....Respondents

(2) CRA-D-235-DB of 2002 (O&M)

Tara Chand and others

.....Appellants

VS.

State of Haryana

.....Respondent

(3) CRR No. 1990 of 2002 (O&M)

Biro Devi

.....Petitioner

VS.

State of Haryana and others

.....Respondents

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mr. Justice H.S. Madaan.**

Present : Mr. Vikrant Pamboo, DAG Haryana,
for the appellant in CRA-D-804-DBA-2002 and
for the respondent in CRA-D-235-DB-2002 and
for respondent No.1 in CRR-1990-2002.

Mr. Vinod Ghai, Sr. Advocate with
Ms. Kanica Ahuja, Advocate,
for the appellant(s) in CRA-D-235-DB-2002 and
for respondent Nos. 2 to 4 in CRR-1990-2002.

None for the petitioner in CRR-1990-2002.

JITENDRA CHAUHAN.J.

The captioned three appeals have been preferred against
the common judgment dated 13.03.2002 and order dated 14.03.2002
passed by Additional Sessions Judge, Jind, vide which the

accused/appellants Bhira, Pappal, Ramesh and Tara Chand were convicted and sentenced as under:-

Pappal & Bhira

Offence	Sentence	Fine	In default
302 IPC	Life imprisonment	Rs.10,000/-	RI for one year
148 IPC	RI for 6 months	Rs.1000/-	RI for one month
323/149 IPC	RI for six months	Rs.1000/-	RI for one month

Tara Chand and Ramesh

Offence	Sentence	Fine	In default
302/149 IPC	Life imprisonment	Rs.5,000/-	RI for one year
148 IPC	RI for 6 months	Rs.1000/-	RI for one month
323/149 IPC	RI for six months	Rs.1000/-	RI for one month

All the substantive sentences were ordered to run concurrently.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 3 are reproduced as under:-

“3. The facts of the case, if put into a narrow compass, may be gathered from the statements of Smt. Biro Devi the widow of Manphool Singh deceased, who has examined herself as PW-8 when she reasserted such facts as incorporated in the FIR Ex.P-35 recorded on the basis of her statement Ex.P-17 and Med Singh, the investigating officer who has stepped into the witness box as PW-15. According to Smt. Biro Devi, she was the Sarpanch of her village Shamdo in the year 1998 and she had two sons and three daughters from the lions of her husband, namely, Manphool Singh. It was on 14.01.1998 that she was accompanying her husband on their return journey from their native village Shamdo to come to Jind after they set

out their journey from village Shamdo to reach Jind at 5.15 PM on their Rajdoot motor cycle but when they were present at a place situated at a distance of about 4 or 5 acres from a brick-kiln located in the area of village Nagura towards village Chuaharpur at about 5.30 PM, Ramesh accused emerged from behind the bushes to block their way while putting a branch of a tree in front of their motor cycle. She further alleged that on account of the presence of the branch of the tree (described as 'chharra') in the local parlance), Manphool Singh deceased had to slow down his motor cycle and no sooner that motor cycle was stopped, all the accused, namely, Tara, Pappal, Bhira, Narain Dutt, Ram Kumar and Darsh surrounded them. According to the prosecution, Tara accused was empty handed whereas Pappal and Bhira accused were armed with swords and the remaining three accused, namely, Darshan, Ram Kumar and Narain Dutt were armed with knives. Even Ramesh accused, who had put the 'Chharra' on the road, was armed with a gandasa. It is further the case of the prosecution as put up by Smt. Biro Devi that the accused were raising 'lalkara' and Tara accused declared "sale ko pakar lo; Jinda Mat Chhoro". Apprehending danger, Manphool Singh leaving his motor cycle behind, started running but he was chased by Tara, Pappal, Bhira, Ram Kumar and Darshan accused and attacked. Giving the details, Smt. Biro Devi has further alleged that Papal and Bira accused gave sword blows to her husband whereas Ram Kumar and Darshan inflicted knife injuries to him. When Tara accused caught hold of the deceased, Papal, Bhira, Darshan and Ram Kumar accused inflicted injuries to him and Narain Dutt accused caught hold of Smt. Biro Devi and when she raised alarm, Ramesh accused then gave 4 or 5 gandasa blows to her; one such gandasa blow hit on her head and the other on her left hand finger. The other blows received by her, hit her on her back and thigh. It has been further alleged that Manphool Singh fell injured on the ground and the accused taking him to be dead, went away with their respective weapons towards village Chuaharpur. After the occurrence,

Smt. Biro Devi signalled to stop a jeep coming from the side of Kaithal and when she was on her way to the hospital, her husband succumbed to his injuries beyond Nagura.”

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court of Area Magistrate. As the offence punishable under Section 302 IPC is triable by the Court of Session so, the case was committed to that Court.

Charges under Sections 148, 302 and 323 read with Section 149 IPC were framed against the accused to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1, Dr. Satyawan Sharma, PW-2 HC Jai Bhagwan, PW-3 Constable Rajinder Singh, PW-4 HC Krishan Kumar, PW-5 Ramphal Patwari, PW-6 Constable Sunil Dutt, PW-7 HC Balwan Singh, PW-8 Smt. Biro Devi, PW-9 Dharam Chand, PW-10 Balwan Singh, PW-11 Kuldip Singh, PW-12 Dharampal, PW-13 Dr. Mrs. Sheela Kharab, PW-14 SI Ishwar Singh, PW-15 Inspector Med Singh and PW-16 Daya Nand and closed the evidence.

The statements of the accused under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication. It was further stated by them that the present case was fastened against them due to long standing enmity with the complainant party and the prosecution has put up a concocted version against them while examining the near

relatives of the deceased.

In the defence evidence, the accused examined DW-1 Ganga Ram, DSP, DW-2 Ram Mehar, DW-3 Ramesh Kumar, DW-4 Shiv Narain and DW-5 Ramphal, Assistant, C.I.D. Office.

After appraisal of evidence, the learned trial court vide impugned judgment and order, convicted and sentenced the accused/appellants Pappal, Bhira, Tara Chand and Ramesh as narrated in the first paragraph of the judgment whereas, accused Narain Dutt, Ram Kumar and Ram Darshan were acquitted of the charges.

Thus, CRA-D-804-DBA-2002 has been filed by the State of Haryana whereas, CRR-1990-2002 has been filed by complainant Biro Devi challenging the acquittal of accused/respondents Narain Dutt, Ram Kumar and Ram Darshan.

CRA-D-235-DB-2002 has been filed by accused/appellants Tara Chand, Bhira, Pappal and Ramesh Chander against the judgment of conviction and order of sentence.

During the pendency of present appeals, accused/appellants Ramesh Chander and Tara Chand have expired. So, appeal qua them stands abated.

On behalf of the State of Haryana, it is contended that the learned trial Court has erred in acquitting accused Narain Dutt, Ram Kumar and Ram Darshan when their case is on the same footing as that of accused Tara Chand, Bhira, Pappal and Ramesh who have been convicted and sentenced. Complainant Smt. Biro Devi, PW-8 has

specifically named these accused in the FIR. Specific role has been attributed to them in the deposition made by Biro Devi in the Court.

On the other hand, on behalf of the accused/appellants, it is contended that deceased Manphool Singh was an accused in FIR No.138 dated 18.07.1983 in which the present accused, Tara Chand, Narain Dutt and Ramesh Chand were prosecution witnesses. In the said case, Manphool Singh was convicted and sentenced to undergo life imprisonment, therefore, Biro Devi wife of Manphool Singh had every reason to falsely implicate them in the present case. Learned trial Court has given the benefit of the motive to three co-accused but has erred in not giving the same benefit to accused/appellants, Tara Chand, Bhira, Pappal and Ramesh.

We have heard the learned counsel for the parties and have gone through the case file.

Smt. Biro Devi, PW-8, wife of deceased Manphool Singh is the star witness in the present case. The occurrence has been witnessed by her alone. She is wife of the deceased so, a natural question arises as to whether her testimony should be believed in toto to convict the accused. The occurrence took place on 14.01.1998 at about 5.15 p.m, and the statement of the complainant was recorded at 8.40 p.m. It has been stated by PW-8 Biro Devi that Ram Darshan and Ram Kumar accused also inflicted knife injuries to her husband but she could not tell the seat of injuries particularly when she has given a categorical statement that Bhira and Pappal accused have inflicted

sword blows on the head of her husband Manphool Singh. In the medical evidence given by PW-1 Dr. Satyawan Sharma, injury Nos. 1, 2 and 3 were found to have been caused on the head. They are reproduced as under:-

“1. 9 cm x 3 cm sharp cut wound bone deep on left side of the parieto-occipital region of the scalp. 15 cm above the left mastoid process longitudinally placed with multiple fracture of the underlying bone. Oozed clotted blood was present in and around the wound. Maximum depth of the wound was 2.5 cm. On dissection, the membrane were lacerated, brain matter was lacerated, mild haematoma was present.

2. 8 cm x ¼ cm wound 1 cm above and posterior to number one of the same characteristic as of the number one was present.

3. 'Y' shaped sharp cut wound 2.5 to 3 cm size of each limb bone deep on right Pareto occipital region of the scalp 4 cm right to the midline of the same characteristic as of No.1 was present.”

The post mortem examination report was proved as Ex.P-1.

The injury Nos.1, 2 and 3 could be the result of sword blows. As per complainant Biro Devi, PW-8, the injuries on the head of the deceased were caused by Pappal and Bhira with swords. Injury No.1 was opined to be massive injury and could be singularly responsible for causing death of Manphool Singh instantaneously. There was no stab wound or corresponding cut on the garments of the deceased. The injuries on the person of Manphol Singh and Smt. Biro Devi cannot be said to have been caused with knives. There is no recovery of knives. As per PW-1

Dr. Satyawan, injuries Nos. 4 to 14 were superficial in nature. It has further come on the record that accused Narain Dutt, Ram Kumar and Ram Darshan were alleged to be armed with knives and they must have inflicted injuries from a very close quarter but their wearing apparels are not found to be stained with blood.

Learned trial Court while acquitting accused Narain Dutt, Ram Kumar and Ram Darshan has observed that DW-2 Ram Mehar, a chance witness, has stated that when he approached Smt. Biro Devi, she did not disclose the names of the assailants and the number of assailants was only three. Similar is the statement of DW-3, Ramesh Kumar, another chance witness, when he stated that Smt. Biro Devi has told them that the names of the assailants were Satish, Pappal and Dinesh who fled away on their scooter. The statements of Pala Ex.DW-4/D, Manga Ex.DW-4/E, Rajesh Gupta Ex.DW-4/F, Krishan Lal Ex.DW-4/G, Balwinder Kumar Yadav Ex.DW-4/H, Ram Bilas Mittal Ex.DW-4/I, Inder Singh Ex.DW-4/J, Dharma Ex.DW-4/K, Thandi Ram Ex.DW-4/L, Satya Kumar Ex.DW-4/M and Dharam Pal Ex.DW-4/N recorded during the investigation conducted by Shiv Narain, Inspector, CID Crime show that an attempt has been made to implicate Narain Dutt, Ram Kumar and Darshan in the present case because they were the prosecution witnesses in the case in which deceased Manphool Singh was an accused. Shiv Narain, Inspector had further recommended that Ram Kumar, Narain Dutt and Ram Darshan be got discharged. The defence witnesses could not be disbelieved that there

were 3-4 persons who committed the murder of Manphool Singh. The named of accused Pappal had figured in the initial version given by the complainant, in the report made by the Inspector and also in the Court. The name of accused Bhira also finds mention in the statement of Smt. Biro Devi PW-8. Thus, the prosecution has been able to bring the guilt of accused Pappal and Bira to home. So far as accused Narain Dutt, Ram Kumar and Ram Darshan are concerned, there is no evidence against them. They have been rightly acquitted by the learned trial Court.

In view of the above, the appeals filed by the accused and State and the revision petition filed by the complainant are hereby dismissed. Accused/appellants Pappal and Bhira are stated to be on bail. They be taken into custody to serve the remaining part of the sentence.

Learned State counsel has placed reliance on the death report dated 09.10.2018 of appellant Tara Chand. Same is taken on record as Mark 'A'. Learned State counsel further submits that accused Ramesh has expired. So, appeal qua Ramesh and Tara Chand stands abated.

Photocopy of this order be placed on the file(s) of other connected case(s).

(JITENDRA CHAUHAN)
JUDGE

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

18.11.2019

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