

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

CRA-D-356-DB of 2003
Date of decision :- 18.10.2019

Vinod Kumar and others

....Appellants

Versus

State of Haryana

....Respondent

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

Present : Mr.Prateek Rathee, Amicus Curiae
for the appellants.

Mr.Vikrant Pamboo, DAG, Haryana.

Mr.Kulvir Narwal, Advocate and
Ms.Simranjeet Kaur, Advocate
for the complainant.

H.S. MADAAN, J.

Briefly stated, facts of the case as per prosecution version are that on 5.5.1999 injured Dinesh, who was admitted in General Hospital, Jind got his statement recorded with SI/SHO Jagat Singh of Police Station City, Jind (hereinafter referred to as the Investigating Officer), wherein he stated that they are five siblings, Pardeep is his elder brother, whereas the three others are sisters, namely, Kanta, Saroj and Suman; his parents are alive; on 4.5.1999, one Sukhbir had parked his bullock-cart in his field known as 'Tobawala'; father and brother of the complainant had

objected to the same, which resulted in exchange of hot words between them; on 5.5.1999 while he (complainant Dinesh) along with his brother Pardeep and father Asha Ram was returning from their fields and when he and his brother Pardeep had reached near house of Sukhbir, whereas their father Asha Ram was following them, then accused Satish armed with a Jelwa, accused Vinod armed with a *gandasi* attached to a lathi, accused Naresh armed with a Jelwa, accused Sukbir armed with a lathi and accused Satpal armed with a gandasas came out of house of Om Parkash son of Jug Lal; they raised a *lalkara* (exhortation) that they would teach a lesson to Pardeep etc. for not allowing them to park the bullock-cart in the fields, at which complainant Dinesh and Pardeep turned and tried to go away to save their lives; when they had reached in front of their *ghair*, then all the accused surrounded them and caused injuries to them with their respective weapons; Vinod gave a gandasas blow to Pardeep hitting him on back of the head; Pardeep fell down, then accused Satpal gave a jelwa blow, which hit on right thigh of Pardeep, accused Sukhbir inflicted a lathi blow hitting Pardeep on his left hand; both the injured raised alarm, then Siria came and rescued them from the clutches of accused; they had also thrown brickbats in their self-defence; accused managed to run away along with their respective weapons; both the injured were shifted to hospital but Pardeep succumbed to the injuries suffered in the incident on reaching the hospital. On information being sent

from General Hospital, Jind, a police party headed by SI/SHO went there and recorded statement of injured Dinesh.

The Investigating Officer appended his endorsement below such statement and sent ruqa to the police station, on the basis of which formal FIR No.118 dated 6.5.1999 for the offences under Sections 148, 302, 326, 324, 149 IPC was registered with Police Station Uchana.

After registration of the FIR, the matter was investigated. Accused were arrested in this case. Recoveries were effected from them. Statements of witnesses were recorded and several articles were taken into police possession. After completion of investigation and other formalities, challan against all the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Narwana.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Narwana, she supplied copies of documents relied upon in the challan to all the accused free of costs as provided under Section 207 Cr.P.C. Then finding that offence under Section 302/149 IPC is exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Narwana vide her order dated 16.8.1999 committed the case to the Court of learned Sessions Judge, Jind from where it was entrusted to the Court of learned Additional Sessions Judge, Jind.

When the case was received in the Court of learned

Additional Sessions Judge, Jind, he finding that prima-facie charge for the offences under Sections 148 IPC, 302, 326, 324 read with Section 149 IPC was disclosed against the accused, charge-sheeted them accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution examined as many as seventeen witnesses as per details below:

PW1 Dinesh – injured/complainant provided eye-witness account of the incident deposing in consonance with the prosecution story.

PW2 Asha Ram, father of the deceased also provided ocular version of the incident supporting the prosecution story on material aspects.

PW3 Dr.M.L.Kochar, who on 6.5.1999 and 7.5.1999 had radiologically examined Dinesh finding fracture of left parietal bone on the x-ray examination of scalp submitting his reports Ex.P2 and Ex.P3 on the basis of x-ray films Ex.P4 to Ex.P8 deposed in that regard.

PW4 Dr.B.P. Gupta, who had conducted postmortem examination on the dead body of deceased Pardeep Kumar finding multiple abrasions of varying size six in number on right upper limb lateral aspect, front of left shoulder and right side of front of lower chest deposed in that regard proving copy of postmortem report as Ex.P9. He proved various other documents.

PW5 Constable Rajinder Singh testified regarding his having taken the special reports to Illaqa Magistrate so given to him by MHC of police station on 6.5.1999.

PW6 Constable Dhup Singh stated that on 18.6.1999 when he was posted at Police Station Uchana, seven sealed parcels were handed over to him by the MHC of the police station for onward transmission to FSL, Madhuban and he accordingly deposited the sealed parcels there with seals intact. He proved his affidavit in that regard as Ex.P17.

PW7 Dr.Ranbir Singh, who had medico legally examined Dinesh finding two injuries on his person proved his MLR Ex.P21. He proved various other documents.

PW8 Dr.B.R. Kayat had stated that he had medico legally examined Satpal, Sukhbir, Vinod, Satish and Naresh (accused) on 9.5.1999 i.e. after four days of the occurrence giving his reports Ex.P25 to Ex.P26 stating that he had not found any injury on the person of Naresh and Satpal. He further deposed that the injuries were possible by blunt weapon with duration between 3 to 7 days.

PW9 Raj Kumar, UGC, CIA Staff, Jind a formal witness, who had taken the dead body of Pardeep to hospital and got conducted postmortem examination thereon and had handed over sealed parcels to the Investigating Officer, deposed in that regard.

PW10 Ramphal, who had joined the investigation had proved recovery of gandasi Ex.P13 from accused Vinod, which had been seized vide recovery memo Ex.P29 after preparing its sketch Ex.P28. He deposed regarding recovery of lathi from the possession of accused Sukhbir, which was seized vide memo Ex.P31 after preparing its sketch Ex.P30. This witness further proved recovery of jelwa Ex.P18 from accused Satish, which had been seized vide seizure memo Ex.P33 after preparing its sketch Ex.P32. He further deposed regarding recovery of gandas Ex.P19 from the possession of accused Satpal, which was seized vide memo Ex.P35 after preparing its sketch Ex.P34. This witness also deposed regarding recovery of jelwa Ex.P14 with single prong from the possession of accused Naresh, which was seized vide memo Ex.P37 after preparing its sketch Ex.P36.

PW11 ASI Raj Kumar, who was member of the police party on 5.5.1999 deposed regarding what had transpired in his presence.

PW12 Inspector Jagat Singh, the Investigating Officer of this case deposed with regard to the investigation conducted by him.

PW13 HC Mahavir Singh deposed with regard to deposit of the sealed parcels by the Investigating Officer with him, stating that two parcels were handed over to the Investigating Officer for seeking opinion of doctor and on 18.6.1999 he had sent

all the parcels to FSL, Madhuban. He tendered his affidavit Ex.P49 in that regard.

PW14 Kuldeep Singh, Draughtsman proved the scaled site plan of the place of incident prepared by him.

PW15 SI Ganga Ram, who had prepared final report under Section 173 Cr.P.C. on 17.7.1999 deposed in that regard.

PW16 ASI Mohinder Singh happened to be a formal witness, who had recorded the formal FIR.

PW17 Inspector Badri Parshad, who had investigated the case partly deposed regarding suffering disclosure statement by accused in his presence as well as in presence of PW12 Inspector Jagat Singh. He also testified with regard to recovery of weapons from the accused, which were seized.

With that the prosecution evidence stood closed.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case.

No evidence in defence was led by the accused. However, accused Vinod tendered in evidence the school certificates Ex.DA and Ex.DB.

After hearing arguments, learned trial Court convicted all the accused for the offences under Sections 302, 326 and 324

read with Section 34 IPC and sentenced them as under:

Sr.No	Under Section	Sentence Awarded
1.	302 read with Section 34 IPC	Life imprisonment and to pay a fine of Rs.5,000/- each.
2.	326 read with Section 34 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.2,000/- each.
3.	324 read with Section 34 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.1,000/- each.

All the substantive sentences were ordered to run concurrently.

The said judgment and order left the accused/convicts aggrieved and they have filed the present appeal.

We have heard learned counsel for the appellants-accused- convicts, learned Deputy Advocate General for the State of Haryana and learned counsel for the complainant besides going through the record.

At the very outset, it may be mentioned here that the injuries to deceased Pardeep are attributed to accused Vinod with a gandas and Naresh with Jelwa. Naresh has since expired, whereas accused Vinod Kumar has been held to be a juvenile.

Keeping in view the facts and circumstances of the case, it comes out to be a sudden fight and not a planned and premeditated quarrel. The accused had also suffered injuries in the

incident. The prosecution itself had examined PW8 Dr.B.R. Kayat, who stated that he had medico legally examined Satpal, Sukhbir, Vinod, Satish and Naresh, though he had not found any injuries on the person of Naresh and Satpal, that means that three accused namely Sukhbir, Vinod and Satish had suffered injuries. The explanation rendered by the prosecution that the accused had caused injuries to him in self-defence by using brickbats appears to be somewhat doubtful for the reason that no brickbats are shown to have been spotted or recovered by the Investigating Officer from the spot. Furthermore, PW8 Dr.B.R. Kayat had stated in his cross-examination that injuries are possible by lathi blow if the assailants and injured are facing each other. The Investigating Officer is not shown to have made any serious attempt to find out as to how and in what manner accused party had suffered injuries. Thus, it is quite possible that the incident had not taken place exactly in the manner as suggested by the prosecution. Some efforts to conceal the genesis of the incident seem to be there. It appears to be a free fight between the two factions, in which both sides suffered injuries, injuries on complainant side being much more serious then those suffered by the accused party. The vital part of the body on which the injuries had been inflicted upon the deceased as well as the type of weapon used by assailants goes to show that they had an intention to commit murder of deceased. Their acts clearly come within the mischief of Section 302 IPC.

Whereas regarding the remaining accused as it transpires they did not share a common intention to commit murder of Pardeep. As already observed it seems to be a free fight, which broke out all of a sudden.

Accused Vinod, who is said to have given fatal blow has been found to be a juvenile as per the enquiry report received from Principal Magistrate, Juvenile Justice Board, Jind. Learned counsel for the appellants has referred to judgment **Ram Narain Versus State of U.P., 2015(4) Crimes 113** wherein the Apex Court while dealing with an eventuality when the accused had been convicted under Section 302 IPC and sentenced to life imprisonment, he had raised plea of juvenility, which could not be proved for want of relevant certificate and after conviction the accused had submitted an application before the Juvenile Board, which had declared him to be a juvenile when he committed the offence; the accused was in jail for 10 years and he was directed to be released forthwith.

As per the custody certificates placed on record by the State counsel, accused Sukhbir has undergone one year, two months and one day of the total sentence, accused Satpal has undergone five years, two months and twenty four days of total sentence, accused Satish has undergone one year and 17 days.

Therefore, the appeal is accepted partly. The conviction of Naresh and Vinod is maintained. Since Naresh has expired,

proceedings against him stand abated. Whereas accused Vinod has been held to be a juvenile and as per custody certificate he has undergone total sentence of eight years, five months and fifteen days of total sentence, which is more than three years for which he can be kept in a juvenile home. His conviction under Section 302 read with Section 34 IPC is maintained but he is sentenced to imprisonment already undergone by him.

Whereas conviction and sentence of accused Satpal, Sukhbir, Satish under Section 302 read with Section 34 IPC is set aside and they are acquitted of the offence under Section 302 read with Section 34 IPC. However, their conviction and sentence for remaining offences is maintained.

Necessary information be sent to the quarter concerned.

18.10.2019
Brij
(JITENDRA CHAUHAN)
JUDGE

(H.S.MADAAN)
JUDGE

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