

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr.No.526

CRA-D-127-DB-2004 (O&M)
Date of Decision : 07.11.2019

Bir Singh and others

..... Appellants

Versus

The State of Haryana

..... Respondent

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Gautam Dutt, Advocate &
Mr. Deepinder Brar, Advocate
for the appellants.

Ms. Tanisha Peshawaria, DAG, Haryana.

AJAY TEWARI, J. (ORAL)

1. This appeal has been filed against the conviction of the appellants in case FIR No.544 dated 28.12.1999, registered under Sections 302, 307, 325, 323, 34 IPC at Police Station Sector 7, Faridabad, vide judgment dated 11.12.2003, passed by the Ld. Additional Sessions Judge (Adhoc), Faridabad and against the sentence awarded by the Ld. Additional Sessions Judge (Adhoc) vide order dated 12.12.2003 whereby the appellants have been awarded the sentence of rigorous imprisonment for life and to pay a fine of Rs.5000/- each for offence under Section 302 IPC read with Section 34 IPC and in default of payment of fine, shall undergo further rigorous imprisonment for one year. The appellants have further been awarded the sentence of rigorous imprisonment for three years and to pay a fine of Rs.1000/- each for offence under Section 325

IPC read with Section 34 IPC and in default of payment of fine, shall undergo further rigorous imprisonment for six months. The appellants have further been awarded the sentence of rigorous imprisonment for one year for offence under Section 323 IPC read with Section 34 IPC. All the sentences have been ordered to run concurrently.

2. On 28.11.1999 at about 7:00 PM, the complainant Budho informed the Police that her husband had been murdered. As per the complainant, appellant No.3's husband-Amar Singh was her brother-in-law. Amar Singh and her husband owned adjoining shops and they had a dispute regarding the discharge of waste water. On the fateful date, at about 5:30 PM, the three appellants i.e. the wife of Amar Singh and her two sons tried to forcefully install the pipes by breaking shutter of the shop of complainant's husband. On hearing the noise, the complainant alongwith her husband and son reached the spot, and tried to stop the appellants from damaging their premises but the appellants turned upon them and gave injuries. The appellant No.2-Kamal Singh hit with Gedala on the head of the deceased and the appellant No.3-Bega gave blows with iron rod on the head of the deceased. The appellant No.1 - Bir Singh had given two-three blows with Dao on the head and other parts of the body of the deceased and repeatedly hit him with the sharp edge of the Dao. As regards the son of the complainant, it was alleged that he also received injuries but no doctor had come to prove the same.

3. In the course of the trial, as many as 13 prosecution witnesses were examined. The accused-appellants were examined under Section 313 Cr.P.C. in the course of which they took the plea of being falsely implicated in the offence alleged and made a statement that they

were innocent. Two defence witnesses were produced. Thereafter, at the conclusion of the trial the learned trial Court, on consideration of the evidence and material on record, passed the impugned judgment and order convicting and sentencing the appellants as mentioned above.

4. We have gone through and considered the judgment and order under challenge and the evidence of the prosecution witnesses apart from hearing the learned counsel for the appellants and learned Deputy Advocate General, Haryana. The important witnesses being PW3, PW4 and PW7, their testimony would require a close scrutiny.

5. PW3 Smt. Budho Devi is the wife and PW4 Pawan is the son of deceased Ranjan Singh. They deposed about the manner in which occurrence took place and in which injuries were caused by the appellants with Dao, Gedala and iron rod. As per them, they also received injuries at the hands of the appellants.

6. PW7 Dr. Dara Singh, Medical Officer, B.K. Hospital Faridabad conducted postmortem examination on the dead body of Ranjan Singh and found the following injuries:-

- i) An incised wound 6 cm in size over the front of neck 3 cm above the adam's apple. Underlying muscles and trachea were cut.*
- ii) An incised wound 10 cm in size over the front parietal region, underlying right parietal bone was fractured and brain matter was coming out.*
- iii) An incised wound 10 cm posterior of the fronto parietal region left parietal bone was fractured.*
- iv) An incised wound 2 cm present on the root of nose.*
- v) An incised wound 1.5 cm over the left eye brow.*
- vi) An incised wound 2.5 cm over the left eye brow.*
- vii) An incised wound 1.5 cm in size over the mis forehead.*

Rigor mortis and postmortem staining were present. The brain was pale and brain matter was coming out. Larynx and trachea were cut and he found that the injuries were ante-mortem and sufficient to cause death in the ordinary course of nature and the death had resulted within few minutes of the injuries.

7. Learned Deputy Advocate General has pointed out to the Exhibit P-C which is the MLR of the son. The son of the complainant was brought to the hospital but in the absence of the Doctor it cannot be taken as gospel truth, though it can be relied upon to infer that the son was also present and was injured though not seriously.

8. As regards the wife of the deceased PW3, she was reported to have the following injuries :-

“1.Reddish abrasion 2cmx1 cm posterior surface left wrist joint. Movement was normal.

2. Multiples small reddish abrasion and contusion posterior surface below left elbow Movement normal.

3. Reddish abrasion 1cm x1 cm posterior surface left ring finger distal phalanx. No tenderness was present.

4. Reddish contusion 4cmx2 cm posterior surface left upper arm.

5 Two parallel contusion reddish in colour 14cmx2cm each posterior surface chest and abdomen.

6 Abraded reddish contusion 10cmx2cm posterior surface chest and abdomen obliquely placed.

7 Reddish linear abrasion 3cm lower part chest. Xray chest advised for injury nos. 5to7.

8 Reddish abrasion 3cmx1cm, dorsomedial surface left foot. Tenderness was present.

9 Reddish contusion 5cmx3cm anterior surface above right knee.

10 Reddish abrasion 3cmx1/2 cm medial surface left knee.”

9. Learned Deputy Advocate General has further pointed out that there is another eye witness Arjun Singh (PW5) who has also given an ocular account of the incident.

10. The witnesses testified as to the involvement of the three appellants and on the basis of their testimony, the Court convicted them and now they are in appeal before this Court.

11. The case of the learned counsel for the appellants is that actually the appellants Kamal Singh and Bega have been falsely roped in this case. As per him, it is at the most a case where a sudden fight took place between the appellant No.1-Bir Singh and the deceased, and in a fit of anger Bir Singh picked up something lying on the side and caused fatal injuries to the deceased.

12. Developing his argument further, the learned counsel for the appellants has drawn the attention of this Court to the injuries which were seen on the deceased. He has stated that all the injuries on the deceased were incised and thus it is clear that the allegation that co-appellant Kamal Singh hit the deceased with Gedala and the co-appellant Bega hit the deceased with an iron rod are not established. He has further argued that once it is shown that these two appellants did not give any blows to the deceased and the further circumstances of the case where close family members had an argument which developed into a fight corroborates his assertion that the appellants Kamal Singh and Bega have been falsely implicated. He has further pointed out that the injuries suffered by the complainant are too trifling to be of consequence and likewise no substantial injuries had been suffered by the son of the deceased because

no evidence was led about his injuries.

13. As regards PW5 Arjun Singh, learned counsel for the appellants has pointed out to the testimony of the complainant wherein she had accepted that he had come within 10 minutes of the incident.

14. We have gone through the entire evidence with the aid of the learned counsel and we are of the considered opinion that the appeal qua the appellant No.1-Bir Singh is liable to be dismissed while the appeal qua appellant No.2-Kamal Singh and appellant No.3-Smt. Bega is liable to succeed. The absence of any lacerated wound or bruises on the body of the deceased makes it clear that no injury was caused either by the iron rod or by the Gedala. It can not also be lost sight of the fact that this was a dispute between close relatives and even as per the complainant it happened suddenly. Further no substantial injury was suffered by the complainant or her son which reveals that apart from one person with a sharp edged weapon and the deceased, the other four persons were not active participants.

15. Resultantly, we are constrained to give the benefit of doubt to the appellants No.2 and 3 and consequently allow the appeal qua them.

16. Qua Bir Singh, the evidence on the record leaves no manner of doubt that the death of deceased Ranjan Singh was caused by fatal injuries inflicted by the appellant No.1 Bir Singh and intentionally causing the death of Ranjan Singh. Hence, we uphold the conviction of the appellant No.1 and dismiss the appeal qua him.

17. The bail bonds/surety bonds shall stand discharged qua appellants No.2 and 3. However, the appellant No.1-Bir Singh is on bail, he be arrested forthwith to serve out the remaining period of sentence.

18. Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

November 07, 2019
anuradha/ashish

(ALKA SARIN)
JUDGE

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