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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 5th April, 2019

+ CRL.A. 416/2002

SUBHEG SINGH & ANR.

..... Appellants

Through: Mr. Anil Hooda & Mr. Ajay
Sharma, Advocates along with
appellants in person.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Raghuvinder Verma, APP
with SI Manish, PS Mangol
Puri.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellants were sent for trial on the basis of report (charge sheet) dated 11.02.1996 under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted by Station House Officer (SHO) of Police Station, Mongol Puri upon conclusion of investigation into first information report (FIR) No.1085/1995 of the said police station. The case was committed to the Court of Sessions where they were put on trial on the charge for offence punishable under sections 308 read with Section 34 of Indian Penal Code, 1860 (IPC), wherein Kartar Singh (PW2), Sukhchain Singh (PW8) and Balbir Singh (since deceased) are the persons described as victims, the incident having

occurred at about 9:20 p.m. on 15.10.1995 in front of House No.I-430, Mongol Puri, Delhi.

2. Upon conclusion of the trial, the appellants were held guilty, as charged, by judgment dated 27.04.2002 (in Sessions Case No.56/1997) and sentenced to rigorous imprisonment for three years each by order dated 29.04.2002, the benefit of set off under Section 428 Cr.P.C. having been accorded.

3. The appellants challenged the above-mentioned judgment and order on sentence by the present appeal in 2002. The appeal was admitted and put in the list of '*Regulars*'. Its turn for adjudication has come up after seventeen years.

4. The FIRs had been registered on the basis of statement (Ex.PW2/A) made by Kartar Singh (PW2), the other victims of the offence *viz.* Sukhchain Singh (PW8) and Balbir Singh (since deceased) being his sons. It was alleged in the FIR that when PW2 was standing outside the house, appellant Subheg Singh (A1) and his cousin, appellant Baldev Singh (A2), had come out, the former wielding a *gandasi* (chopper), the latter (A2) holding a wooden stick. Both the appellants allegedly started beating up the complainant. Upon hearing his cries for help, his sons came out and tried to intervene. It is alleged that A1 caused injuries with *gandasi* on the person of PW8 and Balbir Singh (deceased) while A2 used wooden stick to hit at PW2, all of them having suffered injuries in the process.

5. The charge sheet which was submitted and the evidence that was adduced show that PW2 was shifted immediately to Deen Dayal

Upadhyay Hospital (DDU Hospital) where he was medically examined, the medico-legal certificate (MLC) in this respect having been proved on record (as Ex.PW10/A). The MLC of PW2 shows that he had suffered a superficial contused lacerated wound (CLW) on the forehead besides suffering bruises and abrasion on the back. The other victims, PW8 and Balbir Singh, were instead taken to the police station from where they were referred to the same hospital and examined separately, the injuries suffered by PW8 being two CLWs on the scalp and forehead, they found to be “*simple caused by blunt weapon*”, the injuries of Balbir Singh including “*a bruise over the neck and a vertical incised wound on the forehead*”, the nature, however, being simple caused by sharp weapon. All the three victims were discharged from the hospital on the same day.

6. Balbir Singh suffered certain complications seven days later on 22.10.1995. He was taken to Jaipur Golden Hospital at about 9:35 p.m. with history of bleeding and vomiting, and declared dead at 9:40 p.m. in the said hospital, the death at the time suspected to be on account of “*cardio respiratory collapse*”, the MLC in this respect being Ex.PW7/A.

7. Since the death of Balbir Singh had occurred within a week of the above-mentioned assault, upon information being received, the police took note and conducted inquiry into the death, also taking the dead body for post-mortem examination. The autopsy on the dead body of Balbir Singh was conducted on 23.10.1995 by Dr. L.K. Baruah (PW1) in the Civil Hospital, Delhi. PW1, by his autopsy

report Ex.(PW1/A), which he affirmed at the trial, concluded that the death had occurred due to *pulmonary tuberculosis disease* suffered by Balbir Singh, it having led to respiratory arrest. There is no evidence on the record to assume cause of death to be anything other than what was opined by the autopsy doctor

8. Against the above backdrop, the case came to trial, the prosecution alleging the offence of attempt to commit culpable homicide not amounting to murder *qua* Kartar Singh, Sukhchain Singh and Balbir Singh. In support of this charge, it relied primarily on the evidence of Kartar Singh (PW2) and Sukhchain Singh (PW8), also placing reliance on the testimony of Raj Pal (PW3), Sadhu Singh (PW6) and Gurdeep Singh (PW9). PW6 and PW9 did not support the prosecution case, their respective testimonies indicating that they had not been present when the incident took place. PW3, nephew of PW2, however, did confirm his word which also finds corroboration from testimony of PW8, one of the witnesses.

9. The learned trial judge accepted the evidence of PW2, PW3 and PW8 and concluded that the appellants herein had joined together, out of their common intention, and assaulted initially on the person of PW2 and when PW8 and his brother Balbir Singh had come to the scene, also assaulted each of them causing injuries. In the opinion of the trial judge, the attempt was to cause such injuries as, to the knowledge of the assailants, were like to cause death and consequently the charge under Section 308 read with Section 34 IPC was held to be proved.

10. The learned counsel for the appellants has submitted that though the consistent testimonies of PW2 and PW8 as corroborated by PW3, do prove the assault by the appellants on the person of the said three individuals, there is nothing on record from which any intention to cause such injuries as were likely to result in death could be deduced. It is his argument that none of the three witnesses speak specifically about a vital part of the body of any of the three victims being targeted. It is his argument that in an incident of this nature where two persons on one side and three on the other were fighting with each other, passions running high, injuries had been inflicted unintentionally on the head. It is argued that in absence of any medical opinion to such effect there being no indication in any material to show any excessive force having been used or it being the intention to use sharp edge of the weapon in the nature of *gandasi*, the charge under Section 308 read with Section 34 IPC ought not be upheld.

11. The learned Additional Public Prosecutor on being asked fairly conceded that given the testimony of PW1 (the autopsy doctor), there is no nexus proved between the injuries suffered by Balbir Singh in the incident of 15.10.1995 and his death on 22.10.1995, the substantive material on the contrary showing that the said person was suffering from tuberculosis which had led to respiratory arrest. He further conceded that the evidence lacks in material particulars with regard to the intended situs of the injuries which were inflicted or the amount of force used in the assault. He, however, submitted that the fact that the injuries suffered by Balbir Singh included one noticeably

with the sharp edge of the weapon, it cannot be argued that it is a case only of simple injuries punishable under Section 323 IPC.

12. This court on the aforesaid nature of evidence accepts the submission of the appellants that insofar as the assault on the person of PW2 and PW8 is concerned, the guilt of the appellants for the offence punishable under Section 323 read with section 34 IPC only has been proved. Further, the court concludes that as regards Balbir Singh, the offence proved is under section 324 read with section 34 IPC, the injuries found by the medical opinion to be simple caused by sharp edged weapon.

13. Thus, the conclusions reached by the impugned judgment need to be modified. The conviction of the appellants for offence under section 308 read with section 34 IPC is set aside. Instead, they are held guilty for offence under section 324 read with section 34 IPC committed against Balbir Singh (since deceased) and for offences under section 323 read with section 34 IPC committed against Kartar Singh (PW2) and Sukhchain Singh (PW8).

14. There is a resultant need for modification of the order on sentence. Indeed, a long time has lapsed. The incident had occurred on 15.10.1995. More than twenty three years have gone by, the appellants have in the meanwhile grown to middle age. They are engaged in their respective jobs earning their livelihood to support their respective families. There is no report of any criminal antecedents nor of involvement in any other crime of such nature after the incident which was subject matter of this case. In these

circumstances, it would be harsh to send them back to jail at this distant point of time. At the same time, the victims cannot be forgotten.

15. In the considered opinion of this court, instead of being made to suffer jail terms, it will be appropriate that the appellants be enlarged on probation of good conduct, subject to appropriate conditions that must include directions for the victims to be compensated. Since one of the victims, namely, Balbir Singh had died within a week, the compensation payable in his name will have to go to his father Kartar Singh (PW2).

16. For the foregoing reasons, the impugned order on sentence is also modified. It is directed that instead of being sentenced at once to any imprisonment, the appellants shall stand released on probation of good conduct for a period of two years, subject to each of them depositing Rs.75,000/- (Rs. Seventy Five Thousand Only) with the trial court, the amount to be availed for compensating the victims, along with personal bonds in the sum of Rs.10,000/- with one surety in like amount each, and if so ordered, to appear and receive sentence when called upon to do so during the said period of probation and, in the meantime, to keep the peace and be of good behaviour.

17. The appellants are granted time to make the deposit of the amounts payable as compensation and furnish bail bonds as above with the trial court on or before 29th April, 2019. The default in making of the deposit, or furnishing of the bail bond, or breach of conditions of release on probation, will entail consequences envisaged

in law including the liability to be called before the court and to be sentenced to substantive punishment.

18. Upon deposit of the amount as above being made by the appellants, the same shall be equally apportioned and paid as compensation for the injuries suffered by Kartar Singh (PW2), Sukhchain Singh (PW8) and Balbir Singh (since deceased). As observed earlier the compensation payable on account of injuries suffered by Balbir Singh (since deceased) will be paid to his father Kartar Singh (PW2).

19. The Trial Court will take necessary steps for disbursal of the compensation as hereby directed.

20. At this stage, the counsel for the appellants submitted that the first appellant has now informed him that Kartar Singh (PW2) may have died. The trial court will make inquiry in this regard and if the information is correct, the compensation awarded as above in his favour will be disbursed to his legal heirs.

21. The appeal is disposed of with these directions.

22. Trial court record be sent back forthwith with copy of this judgment.

R.K.GAUBA, J.

APRIL 05, 2019

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