

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRA-D-1117-DB-2009

Giani Ram and others

... Appellants

Versus

State of Haryana

... Respondent

2. CRM-A-530-MA-2011

Bhajan Lal

... Applicant

Versus

State of Haryana & others

... Respondents

Reserved on : 06.03.2020
Date of decision : 17.03.2020

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Arn timer Sood, Legal Aid Counsel
for the appellants in CRA-D-1117-DB-2009 &
for respondents no.2 to 4 in CRM-A-530-MA-2011.

Mr.Pawandeep Singh, Advocate for
Mr.Amrik Singh Kalra, Advocate
for the applicant in CRM-A-530-MA-2011.

Mr.Vivek Saini, DAG, Haryana.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the
aforesaid appeals, therefore, these are taken up together and being disposed
of by a common judgment.

2. These appeals have been instituted against the judgment dated 30.10.2009 and order dated 04.11.2009 rendered by the learned Sessions Judge, Sirsa, in Sessions case no.27 of 2007/2009 whereby the appellants along with co-accused Jagan Lal, Patram @ Patta and Vijay Kumar were charged with and tried for offences punishable under Section 148 IPC and Sections 302, 307, 323, 324, 325, 326, 506 read with Section 149 IPC. The appellants were convicted and sentenced as under:-

For the offence u/s 148 IPC	To undergo rigorous imprisonment for one year each.
For the offence u/s 302 read with Section 149 IPC	To undergo imprisonment for life and to pay a fine of Rs.5000/- each and in default of payment of fine to undergo further simple imprisonment for two months each.
For the offence u/s 323 read with Section 149 IPC	To undergo rigorous imprisonment for 3 months each.
For the offence u/s 324 read with Section 149 IPC	To undergo rigorous imprisonment for 6 months each.
For the offence u/S 325 read with Section 149 IPC	To undergo rigorous imprisonment for two years each and to pay a fine of Rs.2,000/- each and in default of payment of fine to undergo further simple imprisonment for one month each.
For the offence u/s 326 read with Section 149 IPC	To undergo rigorous imprisonment for three years each and to pay a fine of Rs.2,000/- each and in default of payment of fine to undergo further simple imprisonment for one month each.
For the offence u/s 307 read with Section 149 IPC	To undergo rigorous imprisonment for five years each and to pay a fine of Rs.2,000/- each and in default of payment of fine to undergo further simple imprisonment for one month each.
For the offence u/s 506 read with Section 149 IPC	To undergo rigorous imprisonment for six months each.

All the substantive sentences were ordered to run concurrently. However, co-accused Jagan Lal, Patram @ Patta and Vijay were acquitted of the charges framed against them by giving them benefit of doubt.

3. The case of the prosecution in a nutshell is that Bhajan Lal son

of Thakar Ram made a statement Ex.PP on 20.08.2007 to the effect that he was a tubewell mechanic. About 10/15 days back, Dharmainder @ Billu son of Patram and Hawa Singh son of Harji Ram had taken a lady of loose character for sexual intercourse near petrol pump in the Narma field. They were noticed by the complainant's brother Subhash. His brother Subhash told Patram, father of Dharmainder @ Billu upon which Dharmainder and Hawa Singh etc. gave beatings to Subhash. The matter was compromised. On 19.08.2007 at about 9.00 PM, Dharmainder @ Billu, Mangat son of Harji and Vijay son of Harji abused while crossing the street. They were under the influence of liquor. It was objected to by the complainant and his brothers and father. Dharmainder and Hawa Singh threatened to teach them a lesson. Dharmainder and Jagna sons of Patta armed with gandasi, Mangat son of Harji armed with gandasi, Hawa Singh son of Harji armed with jelly and Rajinder son of Giani armed with kassi, Fatta and Harji armed with lathis, Giani son of Madan armed with lathi, and Vijay son of Giani armed with barchha came to the spot after 10/15 minutes. Dharmainder raised lalkara. The complainant's father tried to pacify them. However, they opened attack. Dharmainder gave a gandasi blow to Subhash on his head as a result of which he fell down. Mangat Ram also gave a gandasi blow on his right leg. Dharmainder also gave another blow on the right leg of Subhash. All the accused raised lalkara and also attacked Bansi, Thakar Ram and Subhash. The complainant due to fear went on the roof. The neighbours reached at the spot. Accused ran away from the spot. Complainant, Subhash and Prem sons of Net Ram arranged a vehicle. Subhash died in the Civil Hospital, Sirsa. Bansi Lal and Thakar Ram were medico legally examined. Inquest proceedings were completed. The dead body was sent for post-

mortem examination. Investigation was completed. Challan was put up after completing all the codal formalities.

4. Prosecution examined a number of witnesses. The statement of appellants and co-accused were also recorded under Section 313 Cr.P.C. They had denied the case of the prosecution. The appellants were convicted and sentenced as noticed hereinabove. Hence, the appeal CRA-D-1117-DB-2009.

5. The complainant has also filed an application for leave to appeal, i.e. CRM-A-530-MA-2011 for conviction and sentence of respondents no.2 to 4 after setting aside their acquittal.

4. Learned counsel appearing for the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

7. Learned counsel appearing on behalf of the State has supported the prosecution case.

8. Learned counsel for the appellant in CRM-A-530-MA-2011 prayed for conviction and sentence of respondents no.2 to 4.

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

10. PW-4 Dr.N.K. Mittal had medico legally examined Bansi Lal. He noticed following injuries on his person:-

“1. There was a lacerated wound of size 6 cm x 2 cm bone deep on the posterio lateral aspect of middle one third of left forearm. All the structures were exposed. There was bleeding and deformity and tenderness was present.

2. There was an incised wound of size 6 cm x 1 cm x

bone deep on the left side of the face below the left eye. It was transversely placed. There was bleeding from the mouth.

3. *There was abraded contusion of size 3 cm x 2 cm on the bridge of nose. There was oozing of blood. There was tenderness and there was bleeding from the nose.*

4. *There was a lacerated wound of size 4 cm x 1 cm x bone deep on the left parietal region, 4 cms lateral to the mid line and antero posterior in direction. There was bleeding and haematoma.*

5. *There was a lacerated wound of size 2 cm x ½ cm x bone deep on the right parietal region. 2 cms lateral to the mid line, oblique in direction and there was bleeding and haematoma.*

6. *An incised wound of size 2 cm x ½ cm muscle deep on the antero lateral aspect of upper one third of left arm, oblique in direction and there was bleeding and tenderness.”*

He proved MLR report. He also examined Thakar Ram on 19.08.2007. He noticed following injuries on his person:-

“1. There was an incised wound of size 8 cm x 1.5 cm bone deep on left side of the parietal region just lateral to the mid line. It was vertical in direction. There was bleeding, haematoma and tenderness.

2. An incised wound of 7 cms x 1 cm x bone deep on the mid of the parietal region antero posterior in direction and it was parallel to injury no.1. Margins of the wound were clean and there was bleeding, haematoma and tenderness.

3. There was an incised wound of size 15 cm x 2 cm bone deep on the right parietal region extending upto occipital region antero posterior in direction, 2 cm

lateral to the mid line and there was bleeding, haematoma present and margins of wound were clean.

4. *There was a lacerated wound of size 3 cm x 1 cm bone deep on the posterior aspect of middle one third of right forearm. There was bleeding, haematoma and tenderness.*

5. *There was an incised wound of size 2 x ½ cm muscle deep on anterior lateral aspect of upper one third of right arm and that was oblique in direction and there was bleeding and tenderness.*

6. *There was a lacerated wound of size 2 cm x 1 cm on the mid of right index finger with deformity. There was bleeding and tenderness.*

7. *There was a contusion of size 10 cm x 8 cm including the finger of left hand on the dorsal of left hand. It was red in colour. Tenderness was present. Movements were painful and restricted.”*

He sent ruqa Ex.PE to Police Station City Sirsa. The injuries were caused probably within two hours. Injuries no.2 and 6 were caused to Bansilal by sharp weapon and rest by blunt weapon. Injuries no.1, 2, 3 & 5 were inflicted on Thakur Ram with sharp edged weapon and rest were by blunt weapon. On 05.11.2007 on the police request Ex.PH, injuries no.1, 4, 6 & 7 of injured Thakur Ram were declared grievous in nature vide Ex.PH/1 after going through the X-ray report. He also declared injuries no.1 & 3 of injured Bansilal as grievous and rest were declared simple vide his opinion Ex.PJ/1 after going through the X-ray report. His opinion was again sought by the police vide Ex.PK in respect of injuries no.2, 3 & 6 on the person of Thakur Ram and qua injuries no.2, 3, 4, 5 & 6 of injured Bansilal. He gave his opinion Ex.PK/1 to the effect that injuries no.3 & 6 were grievous and injuries no.2, 4 & 5 were simple in nature. He also gave opinion Ex.PK/2 to

the effect that injuries no.3 and 6 were grievous and injuries no.2, 4 & 5 were simple in nature. On 15.11.2007, on further request of police vide application Ex.PK, he declared injury no.2 on the person of Thakar Ram as dangerous to life vide his opinion Ex.PK/3. In his cross-examination, he deposed that the patients were conscious and drowsy when they were brought to the hospital. They had not told the names of the assailants, thus, he did not mention their names in the MLRs. He had declared the injuries on the person of Thakar Ram as dangerous to life only on the basis of compound fracture of the skull and his this opinion was based on the X-ray report only.

11. PW-5 Dr.Hans Raj Vasir had conducted the post-mortem examination on 20.08.2007. He noticed the following injuries on his person:-

“1. Sharp incised wound 8 cm x 3 cm on right parieto occipital region of skull, bone deep obliquely placed. Clotted blood was present. On dissection, underlying bones were cut massive bleed and a few clots were present in the cranial cavity. Brain matter was lacerated under the fractured sites.

2. Incised wound 11 cm x 4 cm on front of right leg at the level of tibial tuberosity at the anterio lateral aspect, horizontally placed. Clotted blood was present. On dissection, underlying muscles were cut with localised haematoma. Underlying bone (tibia) was cut and exposed.

3. Swelling deformity was present at the lower one third of left forearm. On dissection, clots were present in lacerated muscles and tendon. Underlying both bones (radius and ulna) were fractured with localised haematoma.

4. Incised wound 15 cm x 3 cm on the posterio

lateral aspect of right gluteal region. Clotted blood was present. Wound was obliquely placed. Underlying muscles were cut with localised haematoma under the muscles.

5. Diffuse swelling reddish in colour on back right side scapular region. On dissection, underlying bones fractured with localised haematoma under the fractured bones.

6. Diffuse reddish swelling with abraded contusions overlying at the right shoulder region. 14 cms x 15 cms antero laterally. On dissection, subcutaneous infiltration of blood was present. Underlying bones fractured with localised haematoma.

7. Abraded contusion 6 cm x 3 cm on back of right forearm posterior laterally upper one third. On dissection, subcutaneous infiltration of blood was present.

8. Abraded contusion 7 cm x 2 cm on back of left hand. On dissection, subcutaneous infiltration blood was present. On further dissection, underlying bones were fractured with localised haematoma underlying the fractured bones.

9. Abraded contusion 5 cm x 3 cm on back of right forearm lower one third. On dissection, subcutaneous infiltration of blood was present.

10. Abraded contusion 4 cm x 2 cm on the antero lateral aspect of left forearm lower one third. On dissection, subcutaneous infiltration of blood was present.

11. Reddish contusion 8 cm x 4 cm on back of right elbow joint extending to lower one third of right arm. On dissection, subcutaneous infiltration of blood was present. On further dissection, underlying bones were fractured with localized haematoma under the fractured bones.”

The cause of death, in his opinion, was due to haemorrhage and shock as a result of multiple injuries including injury to vital organ, i.e. Brain, which were ante mortem in nature and sufficient to cause death in ordinary course of nature. The time between injuries and death was variable and between death and post-mortem was within 24 hours. Injuries with lathis, kassis and axe (kulhara) could be possible on the dead body. In his cross-examination, he admitted that police had not sought opinion regarding nature of injuries by showing the weapons to them. He was re-examined on the request of learned Public Prosecutor. He deposed that though the Medical Board had not given the opinion that possibility of death on account of injury no.1 could not be ruled out, yet he stated the possibility in his cross-examination because that injury was inflicted on vital part of the body.

12. PW-6 Dr. S.L. Aggarwal had radiologically examined Bansilal and Thakar Ram. He tendered in evidence his affidavit Ex. PO. He proved X-ray films and reports. According to his affidavit Ex. PO, he found fractures of nasal bones, both bones of left forearm and no fracture was seen in the other parts X-rayed. He conducted X-ray examination of right knee of Bansilal. He found fracture of right tibia bone in its upper half part. He also conducted X-ray examination of Thakar Ram. He found fractures of left parietal bone of skull, comminuted fracture of right ulna bone, proximal phalanges of index and little fingers of right hand and head of fifth metacarpal and proximal phalanges of index, middle and ring fingers of left hand were seen and no fracture was seen in the part X-rayed.

13. PW-10 Bhajan Lal deposed that about 10/15 days prior to the incident, Dharminder @ Billu and Hawa Singh had brought a lady of loose virtue and taken her in the Narma field situated near the petrol pump. His

brother Subhash had seen them while going there. Subhash told this fact to the father of Dharmainder namely Patram. Dharmainder and Hawa Singh gave beatings to his brother Subhash. However, the matter was patched up. On 19.08.2007 at about 9.00 Pm, Dharmainder, Mangat and Vijay were in drunken condition. They started abusing them. He, his brothers and father protested. After 10/15 minutes Patram armed with lathi and his two sons Dharmainder and Jagna both armed with gandasi each, Harji Ram armed with lathi and his two sons Mangat armed with gandasi and Hawa Singh armed with jelly, Giani armed with lathi and his two sons Rajinder armed with kassia and Vijay armed with Barchha, came on the spot. He identified all the accused. Dharmainder raised lalkara. They tried to pacify them. Dharmainder accused gave a gandasi blow which hit on the head of his brother Subhash. He collapsed. Mangat gave a gandasi blow on the right leg of Subhash while he was lying on the ground. Dharmainder gave another blow of gandasi on the left leg of Subhash. Thereafter, all the accused started inflicting injuries to his brother Subhash with their respective weapons. They also inflicted injuries to his brother Bansi and his father Thakar Ram. He went on the roof. People gathered on the spot. Accused ran away from the spot. He along with his cousin arranged vehicle and shifted Subhash, Thakar and Bansi injured to General Hospital, Sirsa. Subhash died on the way. His statement Ex.PP was recorded. Police came to the spot. Dharmainder made a disclosure statement Ex.PR. Accused Jagan was interrogated. He made disclosure statement Ex.PS. Accused Mangat made disclosure statement Ex.PT. Accused Hawa Singh made disclosure statement Ex.PU. Accused Rajinder made disclosure statement Ex.PV. Accused got the weapons of offence recovered on the basis of their

disclosure statements. In his cross-examination, he deposed that he did not receive any injury in the incident. All of them were empty handed. He was summoned by the police twice and in his presence accused made disclosure statements.

14. PW-12 Ajmer Singh deposed that he was posted as SI/SHO at Police Station Baragudha on 19.08.2007. He was informed that quarrel had taken place in Dhani behind Panjuana Petrol Pump. He reached there. Then he reached General Hospital, Sirsa. He collected ruqa regarding death of Subhash. He also collected MLRs of the injured and moved application Ex.PF seeking opinion of doctor regarding condition of the injured. All the injured were declared unfit to make statement. FIR Ex.PP/2 was registered. He prepared rough site plan on the spot. He lifted blood stained earth from three places and two pairs of chappal. He searched for the accused persons. Accused were arrested. Accused Harji made disclosure statement Ex.PAA on the basis of which one lathi was got recovered. The other accused also made disclosure statements on the basis of which recoveries were got effected.

15. The FSL report is Ex.PEE/1. As per report, blood was detected on exhibit-1 (blood stained earth), exhibit-2 (blood stained earth), exhibit-3 (blood stained earth), exhibit-7 (gandasi) and exhibit-8 (wooden danda). Exhibit-4 (rubber chappal), exhibit-14a (kurta), exhibit-14b(pyjama), exhibit-14c(banian) and exhibit 14d(underwear) were stained with blood stains. Blood could not be detected on exhibit-5(lathi), exhibit-6(lathi), exhibit-9(gandasi), exhibit-10(lathi), exhibit-11 (kasola), exhibit-12 (kasiya) and exhibit-13 (wooden lathi).

16. PW-10 Bhajan Lal is the complainant. He had seen the accused

inflicting injuries on Subhash, Bansi and Thakar Ram. The disclosure statements were made by the accused in his presence which led to the recovery of weapons of offence. His testimony was not shattered in the lengthy cross-examination. PW-11 Thakar Ram is an injured witness. He has fully corroborated the statement of PW-10 Bhajan Lal. PW-5 Dr.Hans Raj Vasir had conducted the post-mortem examination. He had noticed as many as 11 injuries on the body of deceased. The cause of death was due to haemorrhage and shock as a result of multiple injuries including injury to vital organ, i.e. Brain. The time between injuries and death was variable and between death and post-mortem was within 24 hours. PW-4 Dr.N.K. Mittal had medico legally examined Bansi Lal and Thakar. He had noticed six injuries on the person of Bansi Lal and seven injuries on the person of Thakar Ram. He had opined few injuries to be grievous in nature and injury no.2 on the person of Thakar Ram was dangerous to life vide his opinion Ex.PK/3. PW-6 Dr.S.L.Aggarwal had noticed fractures as per affidavit Ex.PO noticed hereinabove. Accused on the basis of disclosure statements had got the weapons of offence recovered. Blood was found on the exhibits as per FSL report, as discussed hereinabove. The site plan Ex.PB also depicts the spot where the accused had inflicted the injuries to Subhash, Bansi Lal and Thakar Ram. Thus, there was no occasion to falsely implicate the accused by the complainant party.

17. There is no merit in the contention of learned counsel appearing on behalf of the appellants that Bhajan Lal, Bansi Lal and Thakar Ram had a land dispute with the accused and they used to quarrel and all of them quarreled with each other and inflicted injury to Subhash. There is no evidence on record that there was any dispute with regard to land with

Bhajan Lal, Bansi Lal and Thakar Ram. This was also their stand taken in the statements recorded under Section 313 Cr.P.C. The prosecution has proved its case beyond reasonable doubt that the appellants had inflicted injuries to Subhash which led to his death. They had also inflicted grievous injuries to Bansi Lal and Thakar Ram. One of the injury was life threatening to Thakar Ram. Thus, the prosecution has proved the case against the appellants beyond reasonable doubt.

18. Accordingly, there is no merit in CRA-D-1117-DB-2009 and the same is dismissed. Appellant Harji Ram is on bail. His bail bond and surety bond are cancelled. The police is directed to take him into custody to undergo remaining sentence imposed by the learned trial Court.

CRM-A-530-MA-2011

19. The learned trial Court has rightly come to the conclusion that the presence of respondents no.2 to 4 on the spot is doubtful after correct appraisal of the evidence. Thus, there is no merit in CRM-A-530-MA-2011 and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

March 17, 2020.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No