

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-676-DB-2005
Reserved on : 18.02.2020
Date of decision : 02.03.2020

Sheo Narain and others

... Appellants

Versus

State of Haryana

... Respondent

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

Present: Mr.S.K.Garg Narwana, Senior Advocate with
Mr.Nitin Sachdeva, Advocate &
Mr.Vishal Garg, Advocate
for appellant no.2.

Mr.J.S.Bedi, Senior Advocate with
Mr.Sunil Sihag, Advocate
for appellants no.3 to 7.

Appeal against appellant no.1 abated.

Mrs.Shubhra Singh, Addl.A.G. Haryana.

RAJIV SHARMA, J.

This appeal has been instituted against the judgment dated 03.09.2005 and order dated 05.09.2005 rendered by the Additional Sessions Judge, Bhiwani, in Sessions Trial no.97 dated 27.07.2001 whereby, the appellants were charged with and tried for the offences punishable under Section 148, 302, 325, 323 read with Section 149 of the Indian Penal Code (in short 'IPC') and Section 201 IPC. The appellants were convicted and sentenced to undergo rigorous imprisonment for one year for offence under Section 148 IPC; rigorous imprisonment for life and to pay a fine of Rs.2,000/- for offence under Section 302 IPC read with Section 149 IPC; rigorous imprisonment for one year and to pay a fine of Rs.500/- for offence

under Section 201 IPC read with Section 149 IPC; and rigorous imprisonment for three months for offence under Section 323 IPC read with Section 149 IPC. In default of payment of fine, to further undergo rigorous imprisonment for two months. All the sentences were ordered to run concurrently. Appellant Sheo Narain died during the pendency of the appeal. His appeal stands abated as per order dated 18.02.2020.

2. The case of the prosecution in a nutshell is that on 09.03.2001 the complainant Virender Singh along with his brothers Ravinder Singh and Joginder Singh, a mason Pardeep and a labourer Rajender Singh was coming back to his village. At about 10.30 P.M., accused Satpal and Dalbir along with three other persons had caused blockade by putting the stones. When the complainant party tried to remove the stones, accused resisted. However, the complainant party came to their house. Accused Satpal accompanied by four persons and one of them was Chhotania armed with brick, lathis and dandas came to the house of Ravinder Singh and caused injuries to him and the complainant's wife Kamla. Thereafter, they came to Dadri hospital on a motor cycle for treatment. On their way back, they were accosted by accused Kartar, Dalbir, Satpal, Sheo Narain, Ram Chander, Sunil, Dharambir, Chhotania and three other persons on two tractors. The complainant sped away leaving the motor cycle on the spot. Accused chased the complainant's brother Joginder Singh. The complainant reached village Adampur Dadhi at about 11.45 P.M. He met Jai Singh. He came to know that accused persons had killed his brother Joginder Singh. The dead body was lying in the house of Rattan Singh. The matter was reported to the police. FIR was registered. Ravinder Singh, Kamla and Virender Singh were

medically examined. Their statements were recorded. The dead body was sent for post-mortem examination. Investigation was completed. The challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statements of the appellants were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The appellants were convicted and sentenced, as noticed hereinabove. Hence, this appeal.

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

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

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

7. PW-5 Dr.H.L.Beniwal medico legally examined Ravinder Singh on 10.03.2001. He noticed the following injuries on his person:-

“1. Lacerated wound of 3 x 1 x 1 cm on top of head clotted blood was present.

2. Lacerated wound of 4 x 1 cm into bone deep over the left eye brow. Clotted blood was present. Advised X-ray skull.

3. Lacerated wound of 4 x 1 x 1 cm on left side of face bleeding was present.

4. Red bruise of 4 x 2 cm on left side of face.

5. Lacerated wound of 2 x 1 x 1 cm on left side of upper lip.

6. Complain of pain over right shoulder.”

He also medico legally examined Kamla wife of Virender Singh. He noticed following injuries on the person:-

- “1. Lacerated wound of 4 x 2 into through into on left side of upper lip. Upper left second tooth was mobile attached only by a tag of muscle corresponding gum bruised. Advised Dental Surgeon opinion.*
- 2. Complain of pain on whole of left shoulder and left scapular region. Advised X-ray left shoulder and left scapular region.*
- 3. Complain of pain on whole of back.”*

He also medico legally examined Virender Singh. He noticed following injuries on the person:-

- “1. Red abrated bruise of 6 x 4 cm on right shoulder. Advised X-ray of right shoulder.*
- 2. Complain of pain on left shoulder.*
- 3. Abrated red bruise of 7 x 4 cm on left side of back. Advised x-ray of chest.*
- 4. Red bruise of 6 x 2 cm over left buttock.*
- 5. Red abrated bruise of 3 x 3 cm on anterior aspect of right leg.*
- 6. Lacerated wound of 2 x 1 cm into muscle deep of palmer aspect of right thumb.*
- 7. Red bruise on tip of both fourth and fifth finger of left hand.”*

He also sent ruqa Ex.PG/1 to the Police Station Sadar Dadri regarding the admission of Kamla, Virender and Ravinder. He radiologically examined Kamla wife of Virender. There was fracture of left scapula and fracture of 3rd, 4th, 5th and 6th ribs of left side was present. He proved radiological report Ex.PH. In his cross-examination, he deposed that all the three patients came to him on their own. He admitted that on the same day at 3.30 A.M. he also medico legally examined Sheo Narain son of Parbhu Ram. There were as many as nine injuries on his person caused by blunt weapon within the duration of 24 hours. He proved MLR Ex.DA. He also medico legally

examined Dalbir son of Sohna Ram. He proved MLR Ex.DB.

8. PW-6 Dr. U.S. Dasodia along with Dr.Giri Raj and Dr.Ishwar Singh conducted the post-mortem examination on the dead body of Joginder. He noticed the following injuries on the person:-

“1. Lacerated wound on left Pinna at the middle going cartilage deep echymosis present.

2. Lacerated wound on the posterior aspect of left Pinna just above the mastoid process size 2 x 1 cm x bone deep echymosis was present.

3. Incised wound on the left side of scalp 3 cm posterior to left pinna size 6 cm x 2.5 cm x bone deep. Echymosis was present.

4. Incised wound on left side of scalp just above and posterior to the left parietal eminence size 5 cm x 2 cm x bone deep. Echymosis was present.

5. Incised wound on the left side of scalp size 4 cm x 2 cm x bone deep. The wound is 1 cm above injury no.3. Echymosis was present.

6. Incised wound on left side of scalp just posterior injury no.5. Size of wound is 3 x 2 cm x bone deep. Echymosis was present.

7. Incised wound on left side of scalp on occipital area size 3 cm x 2 cm x bone deep. Echymosis was present.

8. Incised wound on the right side of scalp on occipital just lateral to mid line. Obliquely placed size 5 x 2 cm x bone deep. Fracture of bone underline present. Echymosis was present.

9. Two punctured lacerated wound on right leg. Dorso medial aspect 2 inch apart from one another. One below 2.5 inch medial to the right tibial tuberosity on further dissection wound is going deep upto the bone. Echymosis was present in various tissue planes. Fracture of both bone i.e. Tibia and fibula present just

below tibial tuberosity.

10. One punctured wound on left leg just below the tibial tuberosity on medial side size 1 cm x muscle deep on further dissection. Echymosis was present.

11. Lacerated wound on left leg on dorsal aspect at the middle size 2.5 x 1 cm into muscle deep. Echymosis was present.”

The cause of death, in their opinion, was due to shock caused by multiple injuries and injuries on vital organ, i.e. brain and sufficient to cause death in ordinary course of nature. All the injuries were ante mortem in nature. The probable time that elapsed between injury and death was within few hours and between death and post-mortem examination was within 24 hours. In his cross-examination, he deposed that deceased might have received injuries during the day time of previous day.

9. PW-13 Dr.Mrs.Vandana Beniwal also examined Kamla. She made following observations:-

“1. Number of teeth missing upper lateral incisor.

2. A lateral cut of approximate half inch was present and was presently stitched. Total four number of stitches were there on upper left side about near the base of nostril left side.

3. Inner side of lip was also injured. Swelling was present on upper lip.

4. Gingive related to upper lateral incisor of left side is also damaged and tooth is broken completely out of the socket.

5. Adjacent tooth, i.e. upper central incisor of left side and canine of same side show tenderness and slight mobility.

6. Average oral hygiene.”

In her opinion, the nature of injuries was of grievous type. She proved

report Ex.PCC.

10. PW-7 ASI Hari Singh deposed that accused Kartar Singh made disclosure statement Ex.PM before SI Ajaib Singh. Accused Lila Ram produced one lathi Ex.P6. It was taken into possession vide recovery memo Ex.PN. Accused Chhotania also produced one lathi Ex.P7. It was taken into possession vide recovery memo Ex.PO.

11. PW-8 Virender Singh is the material witness. According to him, on 09.03.2001 at about 10.30 P.M. he along with his brother Ravinder, Joginder and Mistri Pardeep and Labourer Rajender were coming back. On the way, stones were laid by Sattu, Dalbir and three persons of village Mehran. They were obstructing their passage. However, they came back to their house. In the meantime, Satpal, Chhotania and three persons of village Mehrana came there and stood in front of the house of his brother Ravinder. He tried to persuade. They started beating. Satpal inflicted brick blow on the person of his brother Ravinder. He, his wife and his brother Joginder were also administered beatings. They were carrying *fawaras*, spade. He took injured Joginder on his motor cycle to Dadri. When they were coming back near village Mori, one tractor being driven by Kartar Singh, with occupants Sheo Narain, Dalbir and Satpal met them. One another tractor driven by Ram Chander also came there. Chhotania son of Bhag Mal, Dharambir son of Balbir and three residents of village Mehranwala village and Sunil son of Ram Chander were sitting in that tractor. He turned back his motor cycle. The tractors followed him. His brother Joginder Singh jumped from motor cycle. Motor cycle fell down. He took shelter in a house. His brother Joginder was surrounded by accused in a barra. He came out from the house and started his motor cycle. He went to village Adampur Dadhi. Thereafter,

he came to the hospital in truck of his relative. He came to know that his brother was murdered with lathis. He was admitted in the hospital. His statement was recorded by the police vide Ex.PP. In his cross-examination, he deposed that he took shelter in the house. He had not seen the occurrence. However, his brother was killed. There were tyre marks on the body of his brother. Police has told him about the murder of his brother in the hospital. At 2.30 AM and 4 A.M. when police met him in the hospital, then police enquired from him about the occurrence. He had earlier seen his brother Ravinder and his wife Kamla on a scooter near Mori. Scooter was being driven by Mir Singh. When he tried to have talk with them, tractor chased him. Ravinder, Kamla and Mir Singh had seen the tractor chasing him. His wife Kamla, Ravinder and Mir Singh did not follow him. He took shelter in the house for about five minutes. Thereafter, he came out. He went to Adampur Dadhi and then he along with Jai Singh went to the Civil Hospital, Dadri in a truck.

12. PW-9 SI Sheotaj Singh deposed that Virender Singh made statement Ex.PP on the basis of which FIR Ex.PA was registered. Accused Satpal, Sheo Narain and Dalbir were arrested by SI Ajaib Singh. Accused Satpal made disclosure statement Ex.PT. Accused Sheonarain made disclosure statement Ex.PU and Dalbir made disclosure statement Ex.PV. Pieces of lathi were recovered from accused Satpal. One lathi was recovered from accused Dalbir.

13. PW-10 Ravinder Singh is also material witness. According to him, on 09.03.2001, they were irrigating their field. His brother Virender, Pardeep, Mechanic of the Boring Machine and labourer Rajender Singh were with him. They finished their work. They were coming back. Their

passage was obstructed by Satpal, Dalbir, Pappu, Raj Kumar and one more person of village Mehrana. They managed to reach their home. In the meantime, Sattu, Bhagmal, Chhotania, Raj Kumar, Pappu and one more person of Mehrana village came there. They were armed with *fawaras* and lathis. Sattu alias Satpal was carrying a brick in his hand. Sattu caused injuries to him on his face. Chhotania inflicted *fawara* blow on his head. The remaining persons caused injuries with their lathis. His brother Joginder tried to rescue him. He was also given injury by Sattu. His sister-in-law (Bhabhi) Kamlesh and his brother Virender also came to rescue them. Injuries were also inflicted to his sister-in-law Kamlesh and brother Virender. Dalbir caused injuries to his sister-in-law Kamlesh. Pappu also caused injuries to his sister-in-law. Dharambir caused injuries to his brother Virender. His brother Joginder received serious injuries. Thereafter, the accused fled away from the place of occurrence. Thereafter, his brother Virender took Joginder to Civil Hospital, Charkhi Dadri. Thereafter, his brother-in-law Mir Singh took him and his sister-in-law (bhabhi) Kamla. Kamlesh was also called by Kamla towards Dadri. When they reached near village Mori, they noticed their brothers Virender and Joginder coming from the side of Dadri. They stopped facing each other. A tractor was being driven by Kartar son of Bihari. Along with him, Sheo Narain, Dalbir, Dharambir and Satpal etc. were also in the tractor. Another tractor was being driven by Ram Chander. Chhotania son of Bhagmal, Ram Chander, Raj Kumar, Leelu, Sunil etc. were also in the tractor. All the persons got down from the tractor and started running to kill them. Thereafter, his brothers Joginder and Virender sped away on the motor cycle. The motor cycle slipped. Joginder and Virender fell down from the motor cycle. They

ran away in different directions. All the accused ran after Joginder. Joginder entered in the enclave (barra). His brother Joginder was given lathi blows. His brother raised alarm. He did not dare to go near the spot. He asked his brother-in-law Mir Singh to save Joginder. Mir Singh went to the place of occurrence. Thereafter, they went to Civil Hospital, Charkhi Dadri. In his cross-examination, he deposed that he did not accompany Joginder to Dadri for medical aid. He had not seen his brother closely whether he was alive or dead. His brother Joginder was having a bandage over his head when he was coming from Dadri. Both his brothers fell down from the motor cycle. Virender entered in a house. Accused chased his brothers. He was at a distance of 100 feet from the accused and from the place where motor cycle was lying.

14. PW-11 Mir Singh deposed that on 09.03.2001 it was Holi festival. He reached village Gothra to meet his brother-in-law Ravinder. His sister told him that Ravinder, Joginder and Virender had gone to the fields for installing a tubewell. They came back at about 10.00/10.30 P.M. Thereafter, Satpal came in front of the house of Ravinder. Ravinder came out and tried to persuade him not to raise voice. Satpal was carrying a brick bat. In the meantime, Raj Kumar, Lillu, Ram Chander and Chhotania came there. Satpal gave two brick bat blows to Ravinder on his head and face. The others were having spade and lathis. They also caused injuries. Kamla was also administered injuries. Joginder and Virender also came there. They were also caused injuries. Joginder and Virender received serious injuries. They went to Dadri on a motor cycle. After some time, he took Kamla and Ravinder for treatment to Dadri. On the way, in village Mori, Joginder and Virender were seen coming from Dadri. They stopped for a couple of

seconds. In the meantime, Kartar Singh came on the tractor. The other occupants of the trolley were Dalbir, Satpal and Sheo Narain. They got down from the tractor. In the meantime, another tractor being driven by Ram Chander came on the spot. The other occupants of tractor were Sunil, Dharambir, Chhotania, Ram Chander, Raj Kumar and Lila Ram. They were armed with fawaras and lathis. They chased Joginder and Virender. Virender entered in a house. Joginder entered in a barra (enclosed enclave). Accused caused injuries to Joginder with lathis and fawaras. He reached near Joginder. Joginder succumbed to the injuries. Accused left the spot. In his cross-examination, he deposed that he was at a distance of 50 yards when Joginder and Virender started running. The motor cycle was lying there. He was at a distance of 20 yards when Joginder was assaulted. Ravinder remained sitting on the scooter. Scooter was parked at a distance of 20 yards from the place of occurrence. None of the accused tried to inflict injury to him. He did not know who lifted the dead body of Joginder from the place of occurrence. Police met him on 12.03.2001 at 2.00 P.M. in village Gothra. In the morning, he again visited Government Hospital, Dadri at 6.00 A.M. Virender, Kamla and Ravinder were there. The dead body of Joginder was lying at the place of occurrence. He did not go to the police station to report the matter.

15. PW-12 Ajaib Singh deposed that he arrested the accused. He recorded the disclosure statements of accused Satpal vide Ex.PT, accused Dalbir vide Ex.PY and accused Sheo Narain vide Ex.PV. Accused Sunil made disclosure statement Ex.PX. Accused Ram Chander made disclosure statement Ex.PX/1. Accused Ram Chander got recovered a tractor. It was taken into possession. A lathi was recovered from Sunil.

16. The FSL report is Ex.PDD. The blood was detected in exhibits- 1 (blood stained earth), 2a(t-shirt), 2b(banian), 2c(Pants), 2d (parna) 2e (parna) and 2f(khes). The blood was detected on exhibits 3 to 8 (lathis).

17. PW-5 Dr.H.L.Beniwal noticed five injuries on the person of Ravinder Singh, one injury on the person of Kamla and six injuries on the person of Virender Singh. He also medico legally examined Sheo Narain and Dalbir. He proved their MLRs Exs.DA and DB.

18. PW-6 Dr.U.S.Dasodia noticed as many as 11 injuries on the person of Joginder Singh. The cause of death was due to shock caused by multiple injuries and injuries on vital organ, i.e. brain. The probable time that elapsed between injury and death was within few hours and between death and post-mortem was within 24 hours.

19. PW-13 Dr.Mrs. Vandana Beniwal opined that the injuries caused to Kamla were of grievous nature.

20. The prosecution has not examined Kamla though she was injured.

21. The case of the prosecution is that PW-8 Virender Singh along with Ravinder Singh, Joginder Singh and Mason Pardeep and Labourer Rajinder were coming back on 09.03.2001 at about 10.30 P.M. and going towards their house. Their path was obstructed. However, they reached the house. Virender Singh, his wife Kamla and brother Joginder were administered beatings by Satpal, Chhotania and three other persons of village Mehrana. His brother Ravinder was also administered beating. Thereafter, PW-8 Virender Singh took his brother Joginder Singh on motor cycle to Dadri. When they were coming back, they were chased by the tractors. Joginder Singh entered the barra. He was chased. PW-8 Virender

Singh entered the house, thereafter, he came out and went to village Adampur Dadhi. Thereafter, from there he went to the Civil Hospital, Dadri. According to him, he met PW-10 Ravinder Singh, PW-11 Mir Singh and Kamla near village Mori.

22. The statement of PW-8 Virender Singh was recorded vide Ex.PP. It was recorded at 10.30 in the morning on 10.03.2001. He did not mention in the statement Ex.PP that he met his brother PW-10 Ravinder Singh, Kamla and PW-11 Mir Singh. It is not believable that PW-8 Virender Singh knew that his brother was being surrounded by the accused and thereafter without taking care of his brother, he went to village Adampur Dadhi and thereafter he went to Civil Hospital, Dadri. It was unusual conduct of the brother. Similarly, PW-10 Ravinder Singh who was sitting on scooter did not try to save his brother though he was with PW-11 Mir Singh. The statement of PW-10 Ravinder Singh that he was scared and thus he asked PW-11 Mir Singh to save his brother is not believable. Neither PW-10 Ravinder Singh nor PW-11 Mir Singh even tried to remove the dead body from the barra of Rattan Singh. Rattan Singh was never examined. It was unusual conduct on behalf of Ravinder Singh and PW-11 Mir Singh. Virender Singh instead of looking after his brother, went to the Civil Hospital, Dadri. PW-10 Ravinder Singh, Kamla and PW-11 Mir Singh along with Virender Singh were on the spot. At a short distance motor cycle was lying but they did not try to save Joginder Singh. It is also not believable that PW-10 Ravinder Singh remained sitting on scooter. They had not even raised alarm. According to PW-8 Virender Singh, Joginder Singh was caused serious injuries. PW-10 Ravinder Singh also stated that his brother Joginder Singh received serious injuries. PW-10 Ravinder Singh

deposed that he had seen his brother Joginder Singh only with one bandage on the head. PW-8 Virender Singh had not seen the occurrence. However, his brother was killed. Police met him in the Civil Hospital, Dadri. PW-8 Virender Singh had not stated before the police that his brother was injured near village Mori. PW-10 Ravinder Singh and PW-11 Mir Singh also informed the police. Their conduct of leaving behind the dead body of Joginder Singh in the barra of Rattan Singh was strange and unusual. Accused Sheo Narain and Dalbir were medically examined by PW-5 Dr.H.L. Beniwal. Their MLRs are Ex.DA and Ex.DB. The prosecution has not explained the injuries received by Sheo Narain and Dalbir. The prosecution has thus failed to prove the case against the appellants under Section 302 IPC read with Section 149 IPC.

23. Accordingly, the appeal is partly allowed. The conviction of the appellants under Section 302 IPC read with Section 149 IPC is set aside. The appellants are acquitted of the charges framed under Section 302 IPC read with Section 149 IPC. However, the conviction and sentence of appellants Kartar, Jagbir, Dharambir, Ram Chander, Sunil, Satpal and Dalbir under other Sections is upheld. Appellant Kartar Singh had undergone more than 2 years of actual sentence, appellant Dharambir had undergone more than 3 years and 6 months of actual sentence, appellant Sunil had undergone 4 years 1 month and 4 days of actual sentence, appellant Ram Chander had undergone 3 years 8 months and 12 days of actual sentence, appellant Jagbir alias Chhotania had undergone more than 4 years of actual sentence, accused Satpal and Dalbir had undergone more than 5 years and 1 month of actual sentence, at the time they were enlarged on bail. Accordingly, the appellants have already undergone more than the

period of imprisonment for the offences in which they were convicted and sentenced. The appellants are already on bail. Their bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

March 02, 2020.
Davinder Kumar

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