

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

307

CRA-S-962-SB-1999 (O&M)

Reserved on 10.11.2022

Date of Decision: 22.12.2022

Azad Singh and another

...Appellants

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Gautam Dutt, Advocate and
Mr. Vishal Sharda, Advocate
for the appellants.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction and order of sentence dated 01.06.1999 passed by the Court of learned Sessions Judge, Faridabad, whereby, the appellants had been convicted under Section 304/34 of the IPC and were sentenced to undergo rigorous imprisonment for ten years each and to pay a fine of Rs. 500/- each alongwith default clause.

The FIR in the instant case was got registered by Rajender Singh by stating that he was resident of village Nawada and was residing in Nehru Colony near Dabua Pali Road and even his children were staying with him in his own house. At about 11 O' clock, in the night of 11.09.1998, he was present at his house and was operating the electric motor to fill the water in the tank. In the meantime, he heard noise of "Chor Chor" from the side of Nehru

Colony and on hearing the same, he also went towards that direction. When he reached in the vacant plot adjoining the house of Azad Singh son of Chet Ram, he found that Azad Singh, Radhey Shyam, Farid son of Rashid Ahmed and Mohd. Farooq son of Mohd. Ali residents of Nehru Colony were beating an unknown person with 'danda' and were asking him his name and address and were saying that he wanted to enter into the house of Farid to commit the theft. Due to the beatings by them, the said unknown person became unconscious and fell on the ground. A crowd had gathered there. The complainant and his neighbour Sukh Pal told them to shift him to the hospital. On this, Radhey Shyam, Farid and Farooq had put that person on a rickshaw and went to the doctor and the complainant went to his house. The complainant identified the dead body of the said unknown person and stated that he was beaten up by Azad, Radhey Shyam, Farid and Mohd. Farooq with *dandas* and had taken away for treatment. With these broad averments, the FIR was registered by the police against the named accused.

After the registration of the FIR, the investigation was conducted by the local police and the final report under Section 173 Cr.P.C., was presented against the persons named in the FIR and it was concluded during the investigation that the accused had committed offence under Section 304/34 IPC.

After the presentation of challan, the case was committed to the Court of Sessions as it was triable by the Court of Sessions.

Finding a prima facie case against the accused, they were ordered to be charged under Section 304/34 IPC vide order dated 17.12.1998 and the accused pleaded not guilty and claimed trial.

In support of the prosecution case, the prosecution examined PW1 Dr. S.K. Bhutani, who had conducted the postmortem examination on the dead body, of an unknown person on 12.09.1998. He stated that the rigor mortis was present and contusions were present all over the body bluish in colour. There was bleeding from the penis. On moving the lower limbs, fracture of left side of pelvic bone was felt. On dissection, fracture of pelvic bone on the left side was found and the blood was present in the pelvic cavity. All other organs were normal and healthy. As per his opinion, the cause of death was due to shock and hemorrhage because of fracture of pelvic bone and internal bleeding, which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. He exhibited the postmortem report as Ex.PA. The prosecution further examined PW2 Sukh Pal son of Ram Phal, who had turned hostile and did not support the case of the prosecution. The prosecution further examined PW3 Rajender Singh, who stated that on hearing the noise, he went to the Nehru Colony from where the noise was emanating. He saw near the house of Azad Singh that Farid and Azad Singh, were beating the

thief. Perhaps Azad Singh was armed with a 'danda' while Farid was empty handed. Many people were collected there. Other persons were also beating but he could not tell the number of such persons. When he reached there, Azad Singh and Farid were beating him and while beating they were inquiring the whereabouts of the thief. Radhey Shyam and other persons, to whom, he did not identify had taken the thief in a rickshaw to the hospital. He also identified the photograph Ex.P1 of the boy who was given beating in the night. He was declared hostile by the public prosecutor and his cross-examination was allowed. In his cross-examination, he did not support the case of prosecution partly stated that he had not disclosed to the police that Radhey Shyam and Farooq were also beating the unknown thief alongwith Azad Singh and Farid. In his cross-examination by the learned defence counsel, he stated that he had seen the photograph Ex.P1 for the first time in the Court. He stated that the man, to whom, they were addressing as thief was lying on the ground when the complainant reached there. In his presence, one or two danda blows and one or two slaps were given. He admitted that there was a police post in Dabua colony, which is at a distance of one furlong from his house. He did not give any information to the police post. The name of his friend is Harbir and his relative was admitted in the hospital and the complainant had gone to see, but he could not state his name. He could not say when that person was admitted in the hospital and

for how long he stayed in the hospital. He could not tell his bed number in the ward number. PW4 Harjit Singh, Photographer, exhibited the photographs Ex.P1 to Ex.P4 and the negatives Ex.P5 to Ex.P8. PW5 Balwant Singh informed the police on seeing the dead body of an unidentified person. PW6 Ram Babu was the maternal uncle of the deceased and he identified the dead body of Rajender (since deceased). PW7 Kehar Singh, Sub-Inspector had recorded the formal FIR Ex.PD/2 on getting the written information in this regard. Further, PW8 ASI Dhan Singh was examined to prove the initial investigation. He prepared the inquest report Ex.PB, site plan of the place of the occurrence and also placed on record the steps taken by the Investigating Agency initially. He arrested the accused on 14.09.1998 and recovered *danda* from their possession.

After closing the prosecution evidence, the incriminating evidence was put to the appellants in the shape of statement under Section 313 Cr.P.C. and their co-accused and they pleaded their false implication. It was stated that they had been falsely implicated in this case by Rajender Singh, who was having strain relations with them.

The accused did not lead evidence in defence.

I have heard learned counsel for the parties and perused the trial Court record with their able assistance.

Learned counsel for the appellants vehemently contended that the entire prosecution case was based on the testimonies of two

alleged eye witnesses, i.e. PW2 Sukhpal Singh and PW3 Rajender Singh. PW2 Sukhpal Singh had not supported the case of the prosecution whereas PW3 Rajender Singh had only named both the appellants, i.e. Azad Singh and Farid Ahmed whereas he had exonerated Mohd. Farooq and Radhey Shyam, who were similarly placed and the testimonies of PW3 Rajender Singh is liable to be disbelieved by this Court only on this short ground. Still further, he was merely a chance witness and had no occasion to be present at the place of the occurrence. However, the said submission has been opposed by the learned State counsel by stating that PW3 Rajender Singh was neighbour of Azad Singh and on hearing the noise, he immediately reached at the place of the occurrence and had witnessed the same. Thus, he was not a chance witness and his testimony is liable to be believed.

I have heard the submissions made by the learned counsel for the parties and find no substance in the arguments raised by the learned counsel for the appellants. No doubt, PW2 Sukh Pal had not fully supported the case of the prosecution, however, PW3 Rajender Singh had specifically named and assigned roles to the appellants. The testimony of PW3 Rajender Singh could not be rejected on the ground that he did not name the co-accused Mohd. Farooq and Radhey Shyam. PW3 Rajender Singh had not only named both the appellants but had assigned specific roles to both the

appellants. Still further, PW3 Rajender Singh clearly stated that he was present near the house of Azad Singh and both the appellants were beating the thief. Even both the appellants were known to him earlier and he had full reason to identify both the assailants. He clearly stated that when he reached at the place of occurrence, both the appellants were beating him up. Even PW3 Rajender Singh was cross-examined by the learned defence counsel at length and nothing material could come out of the same. The testimony of PW3 Rajender Singh, eye witness remained unshaken and can be believed by this Court. The learned trial Court had recorded well reasoned judgment and the same is liable to be upheld by this Court. Apart from the submissions of the eye witnesses, the prosecution also examined PW1 Dr. S.K. Bhutani, B.K. Hospital, Faridabad, who had conducted postmortem examination on the dead body of the unknown person on 12.09.1998. He admitted that contusions were present all over the body, bluish in colour and there was bleeding from the penis. Apart from that, the fracture of left side of pelvic bone was also found. Thus, it is apparent that ocular version has been duly corroborated by the medical evidence. Even, the allegations levelled by the complainant were found to be correct during the course of investigation. The prosecution examined PW8 ASI Dhan Singh, who had taken up the investigation at the very initial stage and collected various incriminating evidence against the present appellants. Even

the appellants were not armed with any deadly weapon. Appellant Azad Singh was carrying a 'danda' whereas accused Farid Ahmed was empty handed and the occurrence had taken place at the spur of moment. Thus, the impugned judgment of conviction passed by the learned trial Court is liable to be upheld by this Court.

A perusal of the records show that the occurrence had taken place on 12.09.1998 and the present appellants are facing the agony of trial/appeal for the last more than 24 years. Even, their sentences of imprisonment were ordered to be suspended on 21.11.2000 and they are on bail for the last more than 22 years and had not misused the concession of bail. Even Azad Singh was aged 28 years and Farid Ahmed was aged about 23 years on the date of framing of charge.

Consequently, keeping in view the above said facts, the sentence imposed on the present appellants is reduced from ten years' rigorous imprisonment to four years. However, the amount of fine is enhanced from 500/- to Rs. 20000/- each. In default of payment of fine, the appellants shall undergo a period of six months of imprisonment.

They are directed to surrender before CJM concerned within a period of 15 days from today, failing which, the CJM shall issue warrants against them and commit them to custody to serve the remaining sentence.

With these above modifications, the present appeal stands disposed of in the above terms.

All pending applications, if any, are disposed of, accordingly.

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

Records of the Court below be sent back.

21.12.2022
amit rana

(N.S.SHEKHAWAT)
JUDGE

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