

2024:PHHC:120448-DB



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRA-S-724-SB-2010(O&M)

Date of Decision:-11.09.2024

Jagdish & Ors.

.....Appellants.

Vs.

State of Haryana.

.....Respondent.

2

CRA-S-806-SB-2010(O&M)

Gugan Ram & Anr.

.....Appellants.

Vs.

State of Haryana.

.....Respondent.

3

CRA-D-1002-DB-2010(O&M)

Ishwar Singh.

.....Appellant.

Vs.

Gugan Ram & Ors.

.....Respondent.

**CORAM:- HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

**Present:- Mr. Kapil Aggarwal, Advocate
for the Appellants (in CRA-S-724-SB-2010) &
for the respondent nos.4 to 6 (in CRA-D-1002-DB-2010).**

**Mr. Vishal R. Lamba, Advocate for
Mr. Daldeep Singh, Advocate for the Appellants
(in CRA-S-806-SB-2010).**

Mr. Gopal Sharma, Advocate with
Ms. Palak Jain, Advocate for the appellant
(in CRA-D-1002-DB-2010).

Mr. Ashok S. Chaudhary, Addl. AG Haryana.

JASJIT SINGH BEDI, J.

By this common order, we shall dispose of the above noted three appeals i.e. CRA-S-724-SB-2010(O&M) filed by accused/appellants- Jagdish, Madan Lal, Omi @ Om Parkash and Bhondia & CRA-806-SB-2010(O&M) filed by the accused/appellants-Gugan Ram & Parkash against their conviction and CRA-D-1002-DB-2010(O&M) filed by the complainant/appellant Ishwar Singh against the acquittal of the accused of the charge under Section 302 IPC.

2. Vide the judgment and order dated 27.02.2010/03.03.2010, passed by the learned Sessions Judge, Rewari, accused-appellants, were convicted and sentenced as under:-

Sr. No.	Offence	Imprisonment	Fine	In Default
1.	148 IPC	RI for 02 Years each	-	-
2.	325 IPC	RI for 04 Years each	Rs.2,000/- each	RI for 03 months each

3. Briefly stated the prosecution case is that on 24-3-2009 at about 7.30 a.m., Pradeep Kumar (deceased) alongwith his father Ishwar Singh came to Police Station Bawal and made his statement alleging therein that on 23-3-2009 at about 8.00 or 8.15 p.m. he had gone outside to answer the call of nature in his fields and near the fields there was a house of Gugan son of Prakash. He stated that on the roof top of the said house, Gugan son of Prakash, Madan son of Manohar Lal, Omi son of Manohar Lal, Jagdish son of Pat Ram, Bhondia son of Jagdish and Prakash son of Bihari were present.

He further stated that when he was easing himself, then Gudan asked as to who was there in the fields, upon which he (Pradeep) disclosed his identity to them. Then, all the persons sitting on the rooftop of the house of Gudan started throwing brick bats upon him as a result of which he fell in the field of the wheat crop and on account of pelting of brick bats, he sustained several injuries on his ribs, waist, abdomen and on the private part. He (Pradeep) raised a hue and cry of 'Bachao Bachao' which attracted Mahavir alias Tillu son of Chander Singh and Sanjay son of Lal Chand and on seeing them, all the persons, sitting on the rooftop, stopped throwing brick bats and thereafter Mahavir and Sanjay took him (Pradeep) to his house. Due to non-availability of conveyance during night, he (Pradeep) could not come to lodge the report. The occurrence had taken place due to the old enmity being neighbours and the accused had caused him injuries.

4. On the aforesaid statement of Pradeep Kumar, Madan Lal ASI made his endorsement Exhibit P 18 and thereafter on the basis of the said daily diary entry, the present case vide FIR Ex.P16 was registered against the accused initially for the commission of the offence punishable under Sections 148/149/323/506 IPC. Thereafter Madan Lal ASI visited the spot and prepared a rough site plan Ex.P19 and he also got the spot photographed. Pieces of brick bats were also taken into possession from the spot vide recovery memo ex. P16. Pradeep was also got medico legally examined at CHC Bawal. Thereafter Pradeep was taken to Birendra Hospital, Rewari where he was operated for exploratory laparotomy on 24-3-2009 and he was shifted to Arvind Yadav Hospital, Rewari on 25-3-2009 for the management of respiratory distress. In the Arvind Yadav Hospital and Research Centre, Rewari, Pradeep Kumar was put to ventilator and other life supporting drugs, but he died on 25-3-2009 at 4.30 p.m.

5. On receipt of information regarding death of Pradeep at Arvind Yadav Hospital and Research Centre, Rewari, the present case was converted into one under section 302 IPC and consequently, special reports of the case were sent to the Ilaqa Magistrate and other senior police officers. Balwant Singh Inspector/SHO also reached he Arvind Yadav Hospital and Research Centre, Rewari and conducted the inquest proceedings on the dead body of Pradeep and sent the dead body of Pradeep to the General Hospital, Rewari for post mortem examination where Dr. Rajesh Kumar conducted the autopsy on the dead body of Pradeep. He also recorded the statements of the witnesses. On 29-3-2009 Balwant Singh Inspector arrested accused Gugan from the bus stand of village Badhrana whereas accused Prakash was arrested on 31-3-2009. A rough site plan of the place of occurrence was also got prepared from Dharam Pal EHC-draftsman.

6. On completion of investigation, accused Gugan and Prakash were arraigned for trial whereas the other four accused were found to be innocent.

7. On 1-6-2009 accused Gugan Ram and Prakash were charged for the commission of the offence punishable under section 302 read with section 34 of the Indian Penal Code.

8. The prosecution in order to substantiate its case against the accused, examined one witness namely Mahavir, the eye witnesses of the occurrence as PW 1 and on the basis of his statement the prosecution moved an application under section 319 Cr.P.C. for summoning of Madan son of Manohar, Omi alias Om Parkash son of Manohar, Jagdish son of Pat Ram and Bhondia son of Jagdish as additional accused. Accordingly, all the said accused came to be summoned to stand trial for the commission of the offence punishable under section 302 read with section 34 IPC and

thereafter, on their appearance, they all were charged for the commission of the offence punishable under Sections 148 and 302 read with section 149 of the Indian Penal Code. The accused pleaded not guilty and claimed trial.

9. The prosecution examined as many as 16 witnesses. Statements of the accused under Section 313 Cr.P.C., were recorded, wherein they stated that they had been falsely implicated and that the deceased under intoxication jumped from the rooftop of the house of Prakash and had sustained injuries.

10. Based on the evidence led, the accused/appellants came to be convicted and sentenced by the learned trial Court, as noticed above.

11. The Counsel for the appellants in CRA-S-724-SB-2010(O&M) contends that during the pendency of the appeal, appellant No.1-Jagdish has passed. Further, a compromise has been arrived at between Ishwar Singh, father of the deceased and the appellants. As the occurrence took place way back on 24.03.2009 and the appellants have been facing the protracted trial for all these years, they may be granted the benefit of probation.

12. The Counsel for the appellants in CRA-806-SB-2010(O&M) contends that the appellant no.1-Gugan Ram has undergone 08 months of custody, whereas appellant no.2-Parkash has undergone 10 months of custody. Though no compromise had been arrived at between said appellants and Ishwar Singh, as the occurrence had taken place more than 15 years ago, no useful purpose would be served by sending the appellants back into custody and, therefore, they are also entitled to the benefit of probation.

13. The Counsel for the appellant-Ishwar Singh, father of the deceased has admitted the factum of compromise having been arrived at with the accused in CRA-S-724-SB-2010(O&M) and states that he has no objection if the appellants therein are granted the benefit of probation. As

regards the appellants in CRA-806-SB-2010(O&M), he contends that there was no such settlement with the said appellants and, therefore, they ought to undergo the entire sentence imposed upon them.

14. We have heard counsel for the parties and perused the record.
15. Admittedly, the occurrence pertains to the year 2009. As many as 15 years have elapsed ever since then. A compromise has been arrived at between some of the appellants and the complainant party. In this view of the matter, no useful purpose would be served by sending the appellants back into custody particularly in a situation wherein no subsequent occurrences have taken place between the parties, since the year 2009.
16. In view of the above, while upholding the conviction of the appellants, we deem it appropriate to grant the appellants the benefit of probation as the ultimate goal of punishment in a modern civilized society is to attempt reformation of the offenders. Accordingly, the appellants in CRA-S-724-SB-2010(O&M) and CRA-806-SB-2010(O&M) are directed to be released on probation on their furnishing probation bonds to the satisfaction of the CJM/Duty Magistrate concerned.
17. Resultantly, the appeals preferred by the accused/appellants bearing CRA-S-724-SB-2010(O&M) and CRA-806-SB-2010(O&M) stands disposed of in the above terms, whereas the appeal bearing CRA-D-1002-DB-2010 preferred by the complainant seeking enhancement of sentence stands dismissed.

(JASJIT SINGH BEDI)

JUDGE

(SUDHIR SINGH)

JUDGE

September 11, 2024
Vinay

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