



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-111-SB-2003 (O&M)
Date of Decision:11.07.2024

Bhupender Singh @ Bhupa and Anr. ...Appellants

Vs.

State of Haryana ...Respondent

(ii) CRA-D-420-DBA-2003 (O&M)

State of Haryana ...Appellant

Vs.

Ranbir Singh and Ors. ...Respondents

Coram : Hon’ble Mr. Justice Gurvinder Singh Gill
Hon’ble Mr. Justice N.S.Shekhawat

Present: Ms. Sheenu Sura, Deputy Advocate General, Haryana.

Mr. Pardeep Singh Poonia, Advocate and
Mr. Pulkit Dhanda, Advocate
for respondents No.1 to 3 and for
the appellants in CRA-S-111-SB-2003.

N.S.Shekhawat J.

CRM-27286-2024

1. Today, at the very outset, learned counsel for the appellant submits that he may be permitted to withdraw the instant application.
2. In view of the aforesaid request, the present application is dismissed as withdrawn.

Main case

1. This judgment shall dispose off two criminal appeals i.e CRA-S-111-SB-2003 (O&M) titled as “Bhupender Singh @ Bhupa and Anr.



Vs. State of Haryana and CRA-D-420-DBA-2003 (O&M) titled as “State of Haryana Vs. Ranbir Singh and Ors.

2. Bhupender Singh @ Bhupa and Balak Ram @ Kalu, both appellants have preferred the criminal appeal No. CRA-S-111-SB-2003 (O&M) to challenge their conviction under Sections 304 Part II of IPC read with Section 34 of IPC and award of sentence for a period of 07 years and a fine of Rs.2000/- each, passed by the Court of Additional District and Sessions Judge (Adhoc), Rohtak. Whereas, on the other hand, State of Haryana has filed criminal appeal No. CRA-D-420-DBA-2003 with a prayer to convict all the respondents under Sections 302/34 of IPC and to sentence them accordingly.

3. The FIR in the present case was registered on the basis of the statement Ex.PQ, made by Anil son of Mahinder Singh, aged about 18 years, resident of Sampla, District Rohtak. The FIR along with police proceedings have been reproduced below:-

“Stated that I am resident of above mentioned address and read in Senior Secondary School, Sampla in 12th class. An altercation had taken place between me and Surinder s/o Chhotu R/o Sampla about one month ago. He warned me that he would see me, and will teach me a lesson. Today, dated 04.07.2001 at about 8:15 AM, I went to wash my clothes at Sarsali wala Pond. I was washing the clothes. In the meantime, Surinder S/o Bore, Balak Ram @ Kalu S/o Rame, Bhupender @ Bhupa S/o Rame all R/o Sampla came there armed with lathies. They were also accompanied with 2 or 3 boys. The accompanied boys were empty handed. On their arrival Surender told me that they would teach me a lesson and they started abusing me. I told them that why they



were abusing me. On this Surrender gave a lathi blow on the right side of my head. Then Balak Ram @ Kalu gave lathi blow which struck above on my right eye. Bhupender gave a lathi blow below the elbow of my left hand. Thereafter Surrender, also gave a lathi blow on my head. The accompanying two or three boys also gave the blows of their fists and legs. I could identify the accompanying boys as and when they come in front of me. I raised alarm “Mar Diya Mar Diya” and continued running here and there for safety. At that time the son of my uncle Monu s/o Suraj Bhan and Manjit s/o Mohinder, my elder brother came there for watering the buffaloes. On seeing them, the assailants fled away. Thereafter, I became unconscious on account of the injuries. Monu and Manjit admitted me here. Now I am in sense. Legal action be taken against Bhupender @ Bhupa S/o Rame, Balak Ram @ kalu S/o Rame, Surinder S/o Bore all R/o Sampla and the remaining two or three boys, whom I know by face and they belong to Village Sampla. I have got recorded by statement, heard it, which is correct.

Police Proceedings:- Today I alongwith C.Rohtas Singh No.1044 was present at Ashoka Turn, Rohtak for maintaining the law and order duty as directed by the officers. In the meantime, C.Suresh Kumar: No.978 appeared and handedover the ruqa of doctor alongwith MLR No. 21/15/1 regarding Anil Kumar s/o Mohinder Singh r/o Sampla to me. Anil Kumar had been referred to G.H.Rohtak as per ruqa. Hence I proceed to G.H.Rohtak alongwith C.Rohtas No.1044. The doctor made me aware that Anil Kumar had been referred to PGIMS Rohtak. On this I alongwith accompanying Constable reached at casualty of PGIMS Rohtak. Having obtained the opinion of the doctor I recorded the above statement of Anil Kumar. He thumb marked of his left hand under his statement after admitting it to be correct which I testified. The



doctor has described 7 injuries in the MLR No.21/5/01 of Anil Kumar. The injuries no.1,2,3,5,6 and 7 have been kept under observation as blunt. The injury no.4 has been caused by sharp weapon as described by the doctor. On the persual of the MLR of Anil and the statement, the commission of offence punishable u/s 148,149,323 and 324 IPC is made out. Hence the writings are being sent to Police Station for registration of the case through C. Rohtas No.1044. After registration its number be intimated. I (HC) alongwith Mohinder Singh, the father of complainant, proceed to the spot. At PGIMS Rohtak. S/d Ajit Singh, Head Constable, Police Station Sampla, dated 04.07.2001 at 02:30 P.M.

4. The case was initially registered under Sections 148,149,323,324 of IPC. However, on 05.07.2001, Anil injured had expired and the offence under Section 302 of IPC was added. Initially, Surender, Balak Ram @ Kalu and Bhupender @ Bhupa were named. However, during the course of investigation, the supplementary statement of Monu was recorded and Ranbir was also arrayed as an accused in the instant case. After completion of the necessary investigation, the final report under Section 173 Cr. P.C was presented before the competent Court.

5. After committal, the Trial Court found a prima facie case, under Section 302/34 of IPC against Ranbir, Balak Ram @ Kalu and Bhupender @ Bhupa and they were ordered to be charge-sheeted accordingly. Surender, co-accused was held to be a juvenile and was tried separately. All the accused pleaded that they were innocent and claimed trial.



6. To support the case of the prosecution, the prosecution relied upon 17 witnesses. The prosecution examined Dr. Asha Goel, Medical Officer as PW-1, who had referred Anil, injured to PGIMS, Rohtak. PW-2, Dr. S.P Chugh stated that he had declared Anil, injured fit for making the statement on 04.07.2001. The prosecution produced PW-3, Sumeer Kumar, Record Keeper, who had brought the bed head tickets and the treatment record of Anil, injured in the Court. PW-4, Ajit Singh, Head Constable had recorded the FIR, Ex.PC on receipt of ruqa in the case. PW-5, Mahender Singh went to the hospital on 04.07.2001 and had identified the dead body of his son Anil Kumar. PW-6, Monu son of Suraj Bhan, an eye witness of the case, had supported the case of the prosecution. As per him, on 04.07.2001, he and his brother Manjit were taking their buffalo towards village pond. At about 08:00 AM, they left the house with buffalo and when they reached near the pond, they heard the alarm of “*Mar Diya Mar Diya*”. They ran towards the temple situated near the pond and saw that four persons namely Surender, Balak Ram @ Kalu, Bhupender @ Bhupa and Ranbir accused were beating Anil with lathis in their presence. Balak Ram @ Kalu gave a blow with lathi on the right eye-brow, whereas, Surender gave a blow with lathi on the head of Anil Kumar. Surender Kumar gave another blow with lathi on the head of Anil and Bhupender @ Bhupa gave a lathi blow above his left eye. Ranbir also gave a lathi blow on his head. On seeing them, the accused ran away from the spot and they shifted Anil to Civil Hospital, Sampla for treatment and got admitted there. The doctors at Civil Hospital, Sampla had referred the injured to Civil Hospital, Rohtak from



where he was further referred to PGIMS, Rohtak. PW-7, Manjit another eye-witness, who supported the case of the prosecution and deposed on almost similar lines.

7. The prosecution further examined PW-8 Dr. Jai Mala, who had medico-legally examined Anil, injured on 04.07.2001 at about 09:45 AM and deposed as under:-

The patient was conscious and cooperative and his blood pressure was 150/84 pulse. The pupils were reacting to light and well oriented with time place and persons.

- 1. There was lacerated wound 5 cm x 5cm. in size present above right eye brow on lateral end. Fresh bleeding was present. Advised X-ray skull.*
- 2. An lacerated wound 1 cm. x .5cm. into bone depth was present on right parital region above 7 cm to right ear. With fresh bleeding. X-ray was advised.*
- 3. An lacerated wound 2.5cm x 3 mm. in size was present below to injury no.2 on right side.*
- 4. An incised wound .5cm. in size was present on right pinna upper part with fresh bleeding. Surgeon's opinion was advised.*
- 5. A diffused swelling was present on left forearm below left elbow joint. Patient was not able to lift the hand. X-ray was advised.*
- 6. A diffused swelling was present on right forearm. Advised X-ray right forearm.*
- 7. A swelling was present lower half of the right leg with right ankle joint. Advised X-ray right leg with right angle. APA lateral view.*

All injuries were caused with blunt weapon except injury no.4 which could be with sharp edged weapon. The duration of injuries was within 24 hours. My medico legal report is Ex. PD



which is in my hand. I sent ruqa Ex.PE to the Police station Sampla regarding the arrival of the injured in the hospital. The patient was referred to Civil Hospital, Rohtak as his condition was serious for immediate treatment and preventing the delay in management.

On 17.7.2001 the police moved an application Ex. PF for obtaining my opinion regarding the nature of weapon used for causing the aforesaid injury vide my report Ex.PF/1. I opined that injury no.1,2,3,5,6,7 could be caused with the weapons shown to me by Rajender SHO. These were the lathies. As regard the injury no.4 that injury could be caused by the iron patti fixed at the end of lathi. The weapons i.e lathies, I have seen today in the court.

In her cross-examination, she stated that all the injuries on the person of Anil, injured except injury No.5 would be possible with a fall on stony surface. The injured was brought in the hospital by Joginder and Monu. The prosecution further examined Ishwar Singh son of Bhim Singh as PW-9, who had arrested all the four accused and brought them to the police station. In pursuance of disclosure statement Ex. PG, Ranbir got recovered a lathi. PW-10, Ramkishan Patwari had prepared a scaled site plan Ex.PJ. PW-11, Rohtas Singh, Constable was part of the investigation team. He stated that Ajit Singh, Head Constable had recorded the statement of Anil Kumar, injured. He further stated that Surender, Balak Ram @ Kalu and Bhupender @ Bhupa were produced by a person in the police station with their respective weapons i.e. lathies and the I.O had arrested them. Bhoolan Singh, Inspector was examined as PW-12, who remained the Investigating Officer in the present case. He recovered a lathi from Ranbir, co-accused in pursuance of his disclosure



statement. Ajit Singh, Constable was examined as PW-13, who had initially conducted the investigation. He had recorded the statement Ex.PO of Anil, injured and also prepared the rough site plan Ex.PR. PW-14, Devraj, Head Constable was part of the police team, which had arrested Surrender, Balak Ram @ Kalu, Bhupender @ Bhupa and Ranbir. PW-15, Ram Parkash Head Constable had recorded the DDR No.18 dated 05.07.2001 Ex.PS on receipt of VT message. The prosecution further examined Dr. Narender Singh as PW-16, who had proved on record the post mortem report Ex. PT. He stated that initially, Dr. A.K. Goel had conducted the post mortem examination, who had expired. So he had brought the record pertaining to post mortem and proved the signature of Dr. A.K Goel on the said report. The prosecution further examined PW-17, Rajender Singh, S.I, who took over the investigation on 05.07.2001, after the death of Anil. He went to the hospital after adding 302 IPC in the present case. He prepared the inquest report Ex. PV and also sent special reports to the higher police officers. He moved an application and got the post mortem conducted from Civil Hospital.

8. After recording of the prosecution evidence, the statement of all the three accused were recorded under Section 313 Cr. P.C. Accused Balak Ram @ Kalu stated that in fact Anil was beaten up and thrown on the hard surface having stones by some unidentified persons of Village Garhi Sampla and they were falsely implicated in the present case by colluding with the police. Sometimes ago, uncle of Anil, deceased remained in jail for abducting a boy and the complainant party was under an impression that his family was



responsible for it. When the real culprits could not be caught in the present case, he along with his brothers were falsely involved. Similarly, the same stand was taken up by all the three accused. In support of the defence, they examined DW-1, Joginder who stated that on 04.07.2001, he had gone to village pond. At that time, Anil was also there and some persons from Village Garhi were also there. Anil and some boys of Village Garhi had climbed up a Jamun tree for plucking Jamun and some boys had a fight with Anil and in that process, Anil fell down from the tree. There were stones near the tree and Anil suffered injuries by fall on that road. Anil was taken to a hospital at Sampla and he was referred to Civil Hospital, Rohtak. He was further referred to PGIMS, Rohtak and while he was being taken to PGIMS, Rohtak, he became unconscious. He further stated that accused were not present at the Sarsali pond nor anyone was seen by him there.

9. Learned State counsel submitted that three accused namely Ranbir, Balak Ram @ Kalu and Bhupender @ Bhupa had come at the spot, duly armed and had the intention to cause the murder of Anil, by causing him injuries. She further contended that the statements of eye-witnesses PW-6 Monu and PW-7 Manjit were duly corroborated by medical evidence. In fact, from the statements of PW-6 Monu and PW-7 Manjit, it is established that all the accused had come at the place of occurrence with pre-meditation and had the intention to commit the murder of Anil. Still further, even in pursuance of their respective disclosure statements, all the accused had got recovered lathis i.e. the weapon of the offence and it has been wrongly stated that they had no intention



to cause death of Anil. Thus, the accused have been wrongly convicted under Section 304 Part II of IPC and Ranbir has been wrongly acquitted.

10. On the other hand, learned counsel for the appellants vehemently argued that there was an unexplained delay of more than six hours in lodging the FIR. The alleged occurrence took place at 08:15 AM on 04.07.2001 and the injured was medico-legally examined at about 09:45 AM on 04.07.2001. However, the FIR had been registered at 02:30 P.M on the same day. He further contends that the presence of PW-6 Monu and PW-7 Manjit at the place of occurrence was highly doubtful. In fact, due to the enmity, they had falsely involved all the three brothers namely Ranbir, Balak Ram @ Kalu and Bhupender @ Bhupa in the present case. Still further, the version of the defence was more probable and natural in the given facts and circumstances of the present case. Even the evidence of DW-1, Joginder was clearly overlooked by the Trial Court.

11. We have heard the rival contentions made by learned counsel for the parties and carefully perused the record in the present case.

12. In the present case, as per the case set up by the prosecution, at about 08:15 AM on 04.07.2001, the complainant/injured namely Anil had gone to the village pond for washing some clothes. When he was washing clothes, Surender, Balak Ram @ Kalu and Bhupender @ Bhupa all armed with lathis along with 2/3 more persons had arrived there. In fact, the injured as well as the accused were well known to each other and all were young boys. The MLR was prepared at 09:45 AM and after noticing the serious injuries, the injured was



referred to Civil Hospital, Rohtak. After getting the medical opinion, the statement of the injured was recorded at about 02:00 PM and he specifically named Surender, Balak Ram @ Kalu and Bhupender @ Bhupa and two unknown persons as the assailants in the present case. Thus, it is apparent that the police had recorded the statement of Anil, injured at the earliest available opportunity. By any stretch of imagination, it can never be stated that there was delay in registration of the FIR in the present case. In fact, Anil injured had suffered serious injuries on his person. Consequently, the first priority of the witnesses as well as the police was to provide the best possible treatment to him, which is reflected in the fact that initially, he was taken to the hospital at Sampla and was referred to Civil Hospital, Rohtak, from where he was further referred to PGIMS, Rohtak. Thus, we uphold the findings recorded by the Trial Court that the FIR was registered without any delay.

13. So far as the presence of PW-6 Monu and PW-7 Manjit is concerned, both of them are rustic villagers and their presence near the place of occurrence was natural and probable. Both of them had heard the cry of Anil for help and on hearing his noise, they both rushed to the spot, where injuries were being caused to him by Surender, Balak Ram @ Kalu and Bhupender @ Bhupa and two unknown persons with lathis. No doubt, in their depositions, they had also mentioned Ranbir as one of the accused, but it appears that he was named as one of the accused because he happens to be real brother of Balak Ram @ Kalu and Bhupender @ Bhupa. Even otherwise,



Ranbir, accused and PW-6 Monu and PW-7 Manjit, all belonged to Village Sampla. Had Ranbir being present at the place of occurrence, both PW-6 Monu and PW-7 Manjit would have named him as one of the assailants in the present case. The Trial Court had discussed the evidence of the prosecution in detail in this regard and we find no grounds to interfere with the same. The Trial Court had rightly acquitted Ranbir after due appreciation of evidence.

14. The main contention raised by learned State counsel is that the offence fell within the ambit of definition of "Murder" as all the accused had caused injuries to Anil and had reached the place of occurrence, duly armed with lathis. On the other hand, the Trial Court has held that from the evidence it could not be inferred that the assailants had gone to village pond for committing the murder of Anil, deceased.

15. In the matter of **Sukhbir Singh Vs. State of Haryana, 2002(2) RCR (Criminal) 57: 2002 (3) SCC 327**, as per the case set up by the prosecution the appellant had caused two *bhala* blows on the person of the deceased, which were sufficient in the ordinary course of nature to cause death. In such a case also, the Hon'ble Supreme Court held that all the fatal injuries resulting in death could not be termed as cruel or unusual for the purposes of Exception No.4 of Section 300 IPC. In cases, where after the injured had fallen down, the appellant did not inflict any further injury when he was in a helpless position, it may indicate that he had not acted in a cruel or unusual manner. While discussing the same, the Hon'ble Supreme Court observed as under:-



"...All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with Bhala caused injuries at random and thus did not act in a cruel or unusual manner."

16. The Hon'ble Supreme Court also held in the matter of "**Mahesh Vs. State of M.P., (1996) 10 SCC 668**" as follows:-

... Thus, placed as the appellant and the deceased were at the time of the occurrence, it appears to us that the appellant assaulted the deceased in that sudden fight and after giving him one blow took to his heels. He did not cause any other injury to the deceased and therefore it cannot be said that he acted in any cruel or unusual manner. Admittedly, he did not assault PW-2 or PW-6 who were also present also with the deceased and who had also requested the appellant not to allow his cattle to graze in the field of PW-1. This fortifies our belief that the assault on the deceased was made during a sudden quarrel without any premeditation. In this fact situation, we are of the opinion that Exception-4 to Section 300 IPC is clearly attracted to the case of the appellant and the offence of which the appellant can be said to be guilty would squarely fall under Section 304 (Part- I) IPC..."

17. In the present case, the next question which would arise for the consideration of this Court is whether the case would fall under Part-I or Part II of Section 304 IPC. The Hon'ble Supreme Court has laid down the distinction



between the said provisions in the matter of “***Alister Anthony Pareira Vs. State of Maharashtra, 2012(1) RCR (Criminal) 524:2012(1) Recent Apex Judgments 43:2012(2) SCC 648*** in the following words:-

“...For punishment under Section 304 Part I, the prosecution must prove: the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death....”

18. The Hon’ble Supreme Court, while drawing a distinction between motive, intention and knowledge, held in the matter of “***Basdev Vs. The State of Pepsu , AIR 1956 SC 488*** by observing as under:-

“...Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things.

19. Now, advertent to the facts of the present case, admittedly, the occurrence had taken place near the village pond at about 08:30AM, when normally villagers move in the village. An Akhara was also nearby and a temple was also there. Thus, it can be very well inferred that all the accused had



not gone at the place of occurrence with an intention to commit the murder of Anil, injured. Apart from that, we find that the findings recorded by the Trial Court are also quite reasonable and based on correct appreciation of evidence. Anil, injured was shifted in three hospitals, without providing him any first aid treatment. Consequently, the Trial Court has correctly held that the delay in treatment had also resulted into the death of Anil within a period of about 28 hours. Apart from that, it is also evident from the conduct of the accused that at the time of commission of crime, they had not acted in a cruel and unusual manner. Thus, the Trial Court has rightly convicted Balak Ram @ Kalu and Bhupender @ Bhupa under Section 304 Part II read with Section 34 of IPC and their conviction is ordered to be upheld. On the other hand, the Trial Court had rightly held that involvement of Ranbir was doubtful in the present case and he was ordered to be acquitted. As a consequence, criminal appeal No. CRA-D-420-DBA-2003 titled as “State of Haryana Vs. Ranbir Singh and Ors.” preferred by State of Haryana is accordingly ordered to be dismissed.

20. In the present case, as per the impugned judgment, Bhupender Singh @ Bhupa was aged about 22 years, whereas Balak Ram @ Kalu was aged about 20 years. Both the appellants have faced the agony of trial/appeal for the last about 23 years. Moreover, all the accused had used “*lathi*” as a weapon of offence, which is easily available in every house in a village in the State of Haryana and no other weapon of offence was used by the accused. Moreover, as it has been observed that all the appellants had not acted in a cruel and unusual manner and had no intention to kill Anil. Consequently, keeping in

view the facts and circumstances of the present case, the sentence imposed on the appellants Bhupender Singh @ Bhupa and Balak Ram @ Kalu in criminal appeal No. **CRA-S-111-SB-2003 (O&M)** is reduced to four years. The amount of fine shall remain the same.

21. In view of the above, the criminal appeal No. **CRA-S-111-SB-2003 (O&M)** is hereby partly allowed and the impugned judgment of conviction dated 25.11.2002 is ordered to be upheld, whereas, the sentence imposed on both the appellants is reduced to the period of four years, as mentioned above and the amount of fine shall remain unaltered.

22. With these directions, the appeal stands disposed off.

23. All pending application(s), if any, are also disposed off, accordingly.

24. Trial Court record be sent back to the Trial Court.

(GURVINDER SINGH GILL)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

11.07.2024
hitesh

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