
(2015) 06 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 246 of 2013

Amar Bahadur

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 29-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2015) 06 SHI CK 0006

Hon'ble Judges : Rajiv Sharma, J; Sureshwar Thakur, J

Bench : Division Bench

Advocate : K.B. Khajuria, for the Appellant; Shrawan Dogra, Advocate General and P.M. Negi, Deputy Advocate General, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Rajiv Sharma, J.

1. This appeal is instituted against judgment dated 10.7.2007, rendered by learned Additional Sessions Judge, Fast Track Court, Shimla, Himachal Pradesh in S. Trial No. 1-S/7 of 2007, whereby appellant-accused (hereinafter referred to as "accused" for convenience sake), who was charged with and tried for offence under Section 302 of the Indian Penal Code, has been convicted and sentenced to undergo imprisonment for life and to pay fine of Rs. 10,000/- under Section 302 of the Indian Penal Code and in case of default of payment of fine, to further undergo rigorous imprisonment for a period of two years.

2. Prosecution case, in a nutshell, is that on 29.5.2006, at 9.30 am, one Sh. Jog Bahadur lodged daily diary report vide Ext PW-8/A stating therein that he was a permanent resident of Nepal. He was working as a Munshi with Ramesh Kumar Thaneja of Solan. He was awarded contract of laying pipeline of Dewla drinking water scheme. He was putting up in the house of Bhimi Ram at village Agla Bag. Shri Surinder Bahadur, Shri Kumar Bahadur, Sh. Amar Bahadur (accused) and Shri Nanu alias Daulat (deceased) were also putting up with him as tenants in

the house of Bhimi Ram. On 28.5.2006 at 8.30 pm, he and his family members went to sleep in a room on the ground floor of the house. All the four labourers who were away to Khatnol, returned home at about 9 pm and retired to bed in the verandah of upper storey of the house. He heard noise of fighting. He came out of the room and found that accused was beating Nanu with Khilna. Shri Surinder Bahadur and Shri Kumar Bahadur saved Nanu from the clutches of the accused. Accused ran away. Nanu suffered injuries over left ear and face. They brought Nanu to a room in ground floor and made him to sleep in the room. Nanu succumbed to injuries after 1 1/2 hours of brawl. Entire incident was brought to the knowledge of landlord Bhimi Ram. Bhimi Ram informed Shri Narayan Dutt, Up Pradhan, about the incident. FIR No. 116/06 was registered. Khilna was taken into possession. Post-mortem of dead body of Nanu was got conducted. Accused was also got medically examined. It transpired during the course of investigation that on 28.5.2006, in the evening, Shri Amar Bahadur (accused), Sh. Nanu (deceased) and Sh. Surinder Bahadur had gone to village Khatnol. They consumed liquor and returned to their dwelling house at Agla Bag. Sh. Kumar Bahadur and Shri Surinder Bahadur went to sleep in the verandah on the first floor after the dinner. Accused and deceased, who were in the ground floor of the house, started exchanging hot words while taking meals. Thereafter, both of them came to verandah of first floor and started fighting. Accused picked up a Khilna and gave a blow with the Khilna on temporal region of Shri Nanu. Investigation was completed and challan was put up after completing all the codal formalities.

3. Prosecution has examined as many as thirteen witnesses to prove its case against the accused. Statement of accused was recorded under Section 313 of the Criminal Procedure Code. He pleaded innocence. Accused was convicted and sentenced as noticed above. Hence, this appeal.

4. Mr. K.B. Khajuria, Advocate, has vehemently argued that the prosecution has failed to prove its case against the accused.

5. Mr. P.M. Negi, Deputy Advocate General has supported the judgment passed by the learned trial Court.

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

7. PW-1 Surinder Bahadur testified that they used to live in the house of Shri Bhimi Ram. They were present in the room about 1 year ago. At 9-10 pm, he was taking his meals. Accused and deceased started quarrelling with each other while taking dinner. After taking dinner, he went to sleep. Nanu and accused kept on fighting with each other. Accused Amar Bahadur took out a Khilna (an agriculture equipment) and gave a blow on the head/temporal region on left side of deceased. Accused fled away. Blood oozed out from the injury. He called Munshi Jog Bahadur. They applied bandage to Nanu and made him sleep. Nanu died. Bhimi Ram was called on the spot. He informed Narayan Dutt. In his cross-

examination, he has admitted that deceased and accused had purchased liquor bottles from Khatnol. He, accused and deceased took liquor at Khatnol and then returned to their home. Accused and deceased quarreled with each other on the point of Thali (eating plate).

8. PW-2 Jog Bahadur deposed that on 28.5.2006, he was present in the room in the evening. Accused and Nanu also reached their room around 9 pm. He heard noise at 9 pm. He went there. Accused and Nanu were quarreling with each other. Accused gave Khilna blow on left temporal region side of Nanu. Blood started oozing out. They tried to stop the blood.

9. PW-3 Bhimi Ram deposed that on 28.5.2006 at about 9 pm, Jog Bahadur came and told that Nanu had been killed. Narayan Dutt Pradhan also came there. They went to the spot. Nanu was lying dead. He noticed injury on the temporal region of the deceased. Accused ran away. Accused was brought to Mashobra and handed over to police.

10. PW-4 Kumar Bahadur deposed that at 8/9 pm, accused gave Khilna blow to Nanu on the head. Blood oozed out. In his cross-examination, he has admitted that he and Surinder Bahadur went to sleep after dinner. Accused had also sustained injuries in the fight.

11. PW-5 Dr. (Mrs.) Payal Gupta has medically examined the accused. She has issued MLC Ext. PW-5/B. Following injuries were noticed on the person of the accused:

"1. Reddish brown abrasion 1.5x1.5 cm triangular in shape present on posterior aspect of right elbow. Margins clear. No active bleeding present.

2. Multiple abrasions present over posterior aspect of right elbow near injury No. 1. No active bleeding present. Abrasions are reddish brown in colour.

3. Small reddish brown linear abrasion on left side of face 0.1x0.1 cm, 1.5 cm below lower margin of left eye lid. No active bleeding present.

4. Mild tenderness over right parietal region of head. No external injury present."

12. PW-6 Dr. Uvi Tayagi Barwal has conducted post-mortem examination. She issued post-mortem report Ext. PW-6/A. According to her opinion, Nanu died as a result of ante mortem head injury while under the effect of alcohol. In her cross-examination, she has admitted that the concentration of Ethyl Alcohol in the blood of deceased was 204.6 mg.

13. PW-7 Kewal Ram, PW-8 Ranjeet Singh, PW-9 Naresh Kumar, PW-10 Ramesh Chand, PW-11 Sato Kumar and PW-12 Raj Kumar, are all formal witnesses.

14. PW-13 Vijay Kumar has investigated the matter. He went to the spot. Accused was handed over to him at the police post. He prepared spot map. Shirt of the deceased was taken into possession alongwith Khilna. Dead body was sent for post-mortem. Statements of the witnesses were also recorded. This is the

entire evidence led by the Prosecution.

15. It has come on record that deceased had consumed alcohol. Concentration of Ethyl Alcohol in his blood was 204.6 mg. Accused and deceased has consumed alcohol. They fought while taking meals over Thali (eating plate).

16 Accused in his statement recorded under Section 313 CrPC admitted the incident but, according to him, liquor bottle was brought by Jog Bahadur. He was called to the room of Jog Bahadur to take liquor. Jog Bahadur, Surinder, Bhimi Ram and accused consumed liquor in the room of Jog Bahadur. During night, deceased and accused consumed liquor. Surinder Bahadur also went there. Nanu and Surinder Bahadur started quarreling. Jog Bahadur tried to intervene. Nanu gave him beatings. He went upstairs. Nanu came up to the upper storey. Accused jumped from the verandah from first floor and went inside the room. Nanu was coming to the room of Jog Bahadur. Jog Bahadur asked accused to go to sleep. Nanu was carrying a stone in one of his hands. Surinder Bahadur handed over a Khilna to him. When he started brandishing Khilna, which was in his hands, to save himself, suddenly, the Khilna hit Nanu and he died.

17. What emerges from the evidence is that it was a case of sudden fight which was not premeditated act but has taken place due to heat of the passion. Accused also received injuries as noticed herein above. Accused, deceased and other occupants of the room were also drunk. Defence of the accused is probablized that the deceased was trying to hit him with stone. He, in order to save his life, has also jumped from the verandah and tried to enter the room of Jog Bahadur. It is in these circumstances that he started brandishing Khilna to save himself and in the process Khilna hit deceased. Even according to Ext. PW-6/B, deceased died as a result of ante mortem head injury while under the influence of alcohol. Thus, accused had no intention to kill the deceased but he had the knowledge that if Khilna struck the temporal region, it could kill the deceased. Thus, in this case Section 304 part II and not 302 IPC would be attracted.

18. Accordingly, the appeal is allowed partly. Accused is convicted under Section 304 part II instead of Section 302 IPC. Respondent-State is directed to produce the accused for hearing on the question of quantum of sentence on 3.7.2015.

Judgment for consideration please.

Sureshwar Thakur, J.

I agree/I do not agree.

Rajiv Sharma, J.

List for pronouncement of judgment on 29.6.2015.