
(2015) 01 P&H CK 0097

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. S-68-SB of 2004

Anoop Singh and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 428
Penal Code, 1860 (IPC) — Section 307, 308, 323, 34, 506

Citation : (2015) 01 P&H CK 0097

Hon'ble Judges : Raj Rahul Garg, J

Bench : Single Bench

**Advocate : H.S. Gill, Senior Advocate and R.K. Dhiman, for the Appellant;
Mahima, AAG, Advocates for the Respondent**

Final Decision : Dismissed

Judgement

Raj Rahul Garg, J.—This appeal is directed against the judgment dated 19.11.2003 and order of sentence dated 21.11.2003 rendered by Sh. L.N. Mittal, the then Sessions Judge, Kurukshetra, whereby all the four appellants were held guilty for committing offences punishable under Sections 307/34, 323/34 and 506 IPC. Appellant Anoop Singh was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year for offence punishable under Section 307 IPC, whereas, all the remaining three appellants were sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 2,000/- each and in default of payment of fine to further undergo rigorous imprisonment for six months for offence punishable under Section 307/34 IPC. All the four appellants were also sentenced to undergo rigorous imprisonment for six months for offence punishable under Section 323/34 IPC and to undergo rigorous imprisonment for one year for offence punishable under Section 506 IPC. All the substantive sentences of each convict were ordered to run concurrently.

2. At the very outset, I would like to make a mention that during the course of hearing of arguments it was brought to the notice of this Court that Multan Singh, appellant had died. A photocopy of the death certificate was already on the file. Even learned Assistant Advocate General, Haryana also did not dispute the factum of death of appellant Multan Singh. Proceedings against him are ordered to be dropped.

3. Brief facts of the case are like this: Buta Singh (injured) are six brothers i.e. Jagjit Singh and the four accused. Their father Lachhman Singh had 4-1/4 acres of land. He had also constructed houses of Buta Singh and four accused in the fields, where they reside, whereas, Jagjit Singh resides in the house in village abadi. There was litigation between the parties regarding the land of their father. On 21.11.2002, Multan Singh threw away goods of complainant party from a room and kept his own goods there. The same night Buta Singh, his wife Balwinder Kaur complainant and brother Jagjit Singh were talking at the house of Buta Singh in the matter. At about 8.00/9.00 p.m. all the four accused came there with common intention abusing the complainant party. They came in front of the house of the complainant and proclaimed that they would teach lesson for taking forcible possession of the house. Buta Singh came out and asked the accused why were they abusing. Thereupon accused Multan Singh, Sukhwant Singh and Balwant Singh caught hold of Buta Singh, whereas, Anoop Singh inflicted gandas blow with reverse side, on the head of Buta Singh. He fell down and became unconscious. He started bleeding from the head. His wife Balwinder Kaur and brother Jagjit Singh tried to rescue Buta Singh. Thereupon all the four accused gave slaps and fists blows to Balwinder Kaur. Jagjit Singh intervened and rescued both of them. While going away accused threatened that they would kill Buta Singh later on. Buta Singh was removed to Government Hospital, Shahabad and was admitted there. Next day, he was referred and sent to Government Hospital Kurukshetra. On 24.11.2002 Buta Singh was referred to P.G.I., Chandigarh and was taken and admitted there. Dr. Rajesh Gorla medico legally examined Buta Singh vide MLR Ex. PL and found a lacerated wound 5 cms. x 0.5 cm. over scalp 9 cms. above right ear. Fresh bleeding was present. X-ray skull was advised. Besides it there was complaint of pain over chest. No external injury mark was present but slight tenderness was present. Both the injuries were caused by blunt weapon within probable duration of twelve hours. Dr. Gorla sent rukka Exhibit PH to the police. Thereupon Head Constable Prem Singh came to the hospital at Shahabad and moved application Ex. PJ on which Dr. Gorla gave opinion Exhibit PJ/1 that Buta Singh was unfit for statement. Again at 11.00 a.m. on 22.11.2002, Dr. Ravinder Nath gave opinion Exhibit PJ/2 on the same application that Buta Singh was unfit to make statement. Head constable Prem Singh again went to Government Hospital, Shahabad on 23.11.2002 when Dr. (Ms) Sunita Kumari made report Exhibit PJ/3 that patient Buta Singh had been referred to Lok Nayak Jai Parkash Hospital, Kurukshetra, on 22.11.2002. Thereupon Prem Singh went to L.N.J.P., Hospital, Kurukshetra, on 24.11.2002 and moved application Exhibit PK, on which Dr. (Ms.) Madhu Sharma gave

opinion Exhibit PK/1 that Buta Singh was unfit to make statement. Head-constable Prem Singh again visited the said hospital on 25.11.2002 when Dr. N.P. Singh gave report Exhibit PK/2 that as per record Buta Singh had already been referred to P.G.I., Chandigarh on 24.11.2002. Thereafter head Constable Prem Singh went to P.G.I., Chandigarh on 26.11.2002 and moved application Exhibit PB on which Dr. Sarbjit Singh gave opinion Exhibit PB/1 that head injury of Buta Singh was dangerous to life. On another application Exhibit PC moved by Head constable Prem Singh, Dr. Shihbu gave opinion Exhibit PC/1 that Buta Singh was unfit for statement. Balwinder Kaur and Jagjit Singh were found present with injured Buta Singh. Balwinder Kaur made statement Exhibit PE regarding the occurrence to Head constable Prem Singh. She also mentioned in it that she had suffered invisible injuries and she did not get herself medico legally examined. Head constable Prem Singh made his endorsement Exhibit PE/1 on the statement and sent it to police station Shahabad, where on its basis FIR Exhibit PE/2 was recorded by Roshan Lal, Assistant Sub Inspector. Rough site plan of spot Ex. PF was prepared. Statement of Jagjit Singh, PW, was recorded. On 10.1.2003, Roshan Lal recorded statement of Buta Singh (injured) and added offence under Section 307 IPC in place of section 308 IPC. On 29.1.2003, appellant Anoop Singh was arrested who produced a gandasi. A rough sketch Ex. PG of the gandasi was prepared and then gandasi was sealed into parcel and seized vide memo Ex. PG/1. Scaled site plan Ex. PA of the place of occurrence was got prepared by Rishi Pal, Constable, Draftsman. Case summary Ex. PD of Buta Singh was obtained from PGI, Chandigarh. On completion of investigation, challan was presented against all the four appellants.

4. Finding a prima facie case against the accused for committing offences punishable under Sections 307/34, 323/34 and 506 IPC, the appellants were charge sheeted accordingly.

5. After taking prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded wherein the accused denied each allegation of the prosecution and pleaded their innocence. They stated that they have been falsely implicated in this case due to dispute over land and they had not caused injuries to Buta Singh and had no quarrel with him. In their defence, they placed on file copy of the plaint Ex. DB i.e. a civil suit filed by Buta Singh and Jagjit Singh against all the four appellants.

6. I have heard Sh. H.S. Gill, Senior Advocate with Sh. R.K. Dhiman, Advocate for the appellants and Ms. Mahima, AAG, Haryana for the State, besides appraising the entire material coming on record.

7. It was contended by learned senior counsel for the appellants that there has been a delay of five days in lodging the FIR and even the statement of Buta Singh (injured) was recorded after much delay i.e. on 10.1.2003, whereas, he was discharged from the hospital on 29.11.2002. His statement was recorded after about two months from the date of his discharge from the hospital. The delay in recording of FIR casts a serious cloud on the prosecution case. There

was enough time for the complainant party to concoct the story and to implicate the appellants falsely in this case. Not only this, even the complainant party has roped in all the four brothers in this case. Balwinder Kaur (PW3) did not state in her statement Ex. PE that accused Multan Singh, Sukhwant Singh and Balwant Singh were having iron rods or dandas in their hands or that they had given blows with their respective arms. Had the accused been given danda blows and blows with iron rods, there would have been more injuries on the person of Buta Singh and injuries on the person of Balwinder Kaur. Admittedly, Balwinder Kaur did not get herself medico legally examined which shows that she did not suffer any injury in this alleged incident. With single injury on the person of Buta Singh, the implication of appellants, who did not give gandasi blow, is apparently a false implication.

8. It was further contended by learned senior counsel for the appellants that the alleged occurrence had taken place on 21.11.2002, whereas, the FIR was lodged on 26.11.2002. The FIR was lodged on the statement of Balwinder Kaur (PW3). Balwinder Kaur categorically stated that she along with Jagjit Singh remained by the bed-side of Buta Singh throughout, meaning thereby she was with Buta Singh when he was taken to CHC, Shahabad, L.N.J.P. Hospital, Kurukshetra and then PGI, Chandigarh. No reason is coming forward as to why the statement of Buta Singh was not recorded in the first instance i.e. when Buta Singh was lying admitted in CHC, Shahabad or at L.N.J.P. Hospital, Kurukshetra. The time gained by the complainant party in lodging the FIR has given room for roping in all the four brothers. In support of his contention, learned senior counsel for the appellants has cited judgments rendered in Achhar Singh v. State of Punjab 1984(2) Crimes, page 843 and Khiali Ram and others v. The State of Haryana 1999(2) AICLR 607. The facts and circumstances of the judgments relied upon by learned senior counsel for the appellants are different, as such, not applicable to the present case in view of reasons recorded hereinafter.

9. The above contention of learned senior counsel for the appellants is not sustainable as the present case is based on eye witness account and in the MLR itself it finds mention that there was alleged history of assault which shows that Buta Singh suffered injuries in assault and not otherwise. Buta Singh remained unfit to make statement throughout when he was lying admitted in CHC, Shahabad as is evident from Ex. PJ/1 dated 22.11.2002 and Ex. PJ/2 of the even date and then from report Ex. PK/1 dated 23.11.2002 given by doctor of L.N.J.P., Hospital, Kurukshetra and then by the doctor of PGI vide report Ex. PC/1 which is dated 26.11.2002 and at that juncture, the statement of Balwinder Kaur wife of Buta Singh was recorded which is Ex. PE. Under these circumstances, the recording of the statement of Balwinder Kaur cannot be said to be unnatural. The condition of Buta Singh was serious. Under the prevailing circumstances, there was no occasion for a female to concoct the entire version. There was no occasion for her to make consultations before lodging FIR. She could well make consultations with her husband but he was unfit to make the statement. Even otherwise, three days time was not required for concocting the story. The dispute

is a family dispute. There was motive behind this crime as after the death of Lachhman Singh, father of the parties, room under his occupation, was occupied by Buta Singh. The accused party had thrown away the articles of Buta Singh, in his and his wife Balwinder Kaur's absence. They had kept their own articles in that room. When during night Buta Singh and his wife Balwinder Kaur came back and were talking to Jagjit Singh, another brother, the present occurrence had taken place. Jagjit Singh is the real brother of accused. Buta Singh and Jagjit Singh had filed a civil suit. A copy of the plaint is placed on the file as Ex. DB. Jagjit Singh had been won over by the accused, as such, he even did not stand in support of Buta Singh. Under these circumstances, particularly, when Balwinder Kaur is female rustic villager and was in great distress at the relevant time, the police always wait for the main witness so as to record the FIR. As such, under the above discussed circumstances, in fact, there was no occasion for Balwinder Kaur to concoct the entire story.

10. Of course, Balwinder Kaur deposed that she remained by the bed-side of Buta Singh while he was in CHC, Shahabad, L.N.J.P., Hospital, Kurukshetra and at PGI, Chandigarh. Prem Singh, Head Constable (PW6) who after obtaining doctor's ruqa Ex. PH along with MLR of Buta Singh had gone to CHC, Shahabad and L.N.J.P., Hospital, Kurukshetra and obtained the opinion of the doctors regarding state of mind of Buta Singh as to if he was fit to make the statement or not, categorically stated that he did not find any eye witness of the incident either in CHC, Shahabad or L.N.J.P., Hospital, Kurukshetra. Under these circumstances, the fact that immediate concern of relations was to save the life of the injured, rather than reporting the matter to the police, is worth considerable.

11. Learned Assistant Advocate General, Haryana cited the judgment rendered in *Boota Singh v. State of Punjab* 1998(1) RCR (Criminal) 292 (Punjab and Haryana). In the aforesaid judgment, the FIR was lodged after 44 hours. That case was also a case of under Section 307 IPC. It was observed that in face of direct evidence, delay in lodging the FIR pales into insignificance. The case in hand is also a case based on direct evidence. Buta Singh was in a serious condition. He was referred from CHC, Shahabad to L.N.J.P., Hospital, Kurukshetra on 22.11.2002 and from there to PGI, Chandigarh on 24.11.2002. He was operated upon in PGI, Chandigarh on 26.11.2002. So the immediate concern of relations was to save his life instead of going to the police to report the matter. Above all, Head Constable Prem Singh (PW6) had been going to the hospital and obtaining opinions of the doctors who had been reporting Buta Singh as unfit to give the statement. The opinion of the doctors regarding unfitness of Buta Singh cannot be said to be procured because at every level doctors of different hospitals, have reported that Buta Singh was unfit to give the statement. Under these circumstances, it cannot be said that it is a case of unexplained delay in lodging the FIR. Buta Singh remained unfit to make the statement for a longer period. Emergency operation had to be performed on him on 26.11.2002 i.e. after five days of the occurrence. Even after his discharge from the hospital, he

was not able to speak. PW4 Buta Singh deposed that he started speaking after 2-1/2 months of the occurrence. He further deposed that he was still under the treatment of PGI. Even otherwise, the FIR had already been registered by the police on the statement of Balwinder Kaur (PW3). It is also the settled proposition of law that the defective investigation by itself cannot be made a ground for acquitting the accused. Under these circumstances, there is no material on the file to show that after his discharge, till the time his statement was recorded by the police, he was in a fit state of mind to make the statement to the police. In cases of head injury, it is seen that patients remain in unconscious state of mind for months" together. Under these circumstances, it cannot be said that the present case is a case of unexplained delay in lodging the FIR.

12. It was next contended by learned counsel for the appellants that it is a case in which ocular testimony is not consistent with the medical evidence. Dr. Rajesh Gorla, Medical Officer, CHC, Shahabad (PW7) deposed about the injuries on the person of Buta Singh as reported in his MLR, Ex. PL that both the injuries were caused by blunt weapon. PW3-Balwinder Kaur and PW4 Buta Singh deposed that Anoop Singh, appellant gave gandasi blow by its sharp side, as such, a serious doubt arises regarding the present occurrence, benefit of which is to be given to the accused.

13. The above contention of learned senior counsel for the appellants is not sustainable as in the FIR, Ex. PE, which was recorded on the statement of Balwinder Kaur, it clearly finds mention that Anoop Singh gave gandasi blow on the head of Buta Singh by its reverse side. PW2-Dr. Sarabjit Singh, Senior Resident, Department of Neurosurgery, PGI, Chandigarh gave an opinion about the nature of this injury as dangerous to life vide Ex. PB/1. Buta Singh suffered fracture of temporal parietal bone which could well be caused by giving a gandasi blow with force, maybe by using its reverse side. Blood oozed out of this head injury and Buta Singh had fallen down and became unconscious. Anoop Singh had caused head injury to Buta Singh. Under these circumstances, if there is an improvement in the version of Buta Singh on the point of infliction of blows and even on the point as to which side of gandasi was used, it is not very material. Moreover, Buta Singh might not have exactly noticed if the blow given to him was from sharp side or blunt side but in the anxiety to do better he might have deposed that gandasi blow was inflicted from the sharp side. Learned Assistant Advocate General, Haryana has cited judgment rendered in Sukhdev Yadav and Others Vs. State of Bihar, (2001) 7 AD 593 : AIR 2001 SC 3678 : (2002) CriLJ 80 : (2001) 7 JT 597 : (2001) 6 SCALE 292 : (2001) 8 SCC 86 : (2001) AIRSCW 3649 : (2001) 7 Supreme 125 wherein it was observed that there would be hardly a witness whose evidence does not contain some amount of exaggeration or embellishment. Sometimes there would be a deliberate attempt to offer the same and sometimes the witness in their over anxiety to do better in the witness box detail out an exaggerated account. On perusal of evidence in its entirety, it appears to be otherwise trustworthy, question of the evidence being non-

trustworthy would not arise. Even for that reason, the discrepancies in the statements of PW3 and PW4 regarding infliction of blows with iron rods and dandas cannot be said to be fatal to the prosecution case. The fact remains that since Balwinder Kaur and Harpeet Kaur did not suffer any external injuries, therefore, they did not get themselves medico legally examined.

14. The fact remains is this that gandasi was the weapon of offence and by using it, Anoop Singh, appellant had caused head injury to Buta Singh which was dangerous to life as per PW2 and for this injury, Buta Singh had to be operated upon and even PW2 Dr. Sarabjit Singh deposed that without operation the patient would have died.

15. In view of the above discussion, the contention of learned senior counsel that in fact the appellants had no intention to kill Buta Singh or that no offence under Section 307 IPC is said to be made out, is not sustainable. Maybe, single blow of gandasi was given on the head of Buta Singh but the same was given with so much force that it caused fracture of temporal parietal bone of Buta Singh. Anoop Singh had chosen the vital part of the body of Buta Singh which itself goes to show that he had an intention to kill him, otherwise, he would not have struck the head of Buta Singh. The reliance placed by learned counsel for the appellants on the judgments rendered in *State of Punjab v. Gurmail Singh* 2002(2) RCR (Criminal) 600 and *Bawa Singh and Others Vs. State of Punjab*, (2013) 3 RCR(Criminal) 1027 are not applicable to the facts and circumstances of present case. In *Gurmail Singh's* case (supra) all the injuries were caused by blunt weapon, whereas, in the case in hand, the weapon used is gandasi and the place of injury is head which is a vital part of the human body and further that the blow was given with such force that it caused fracture of temporal parietal bone.

16. The contention of learned senior counsel for the appellants that in summary Ex. PD, the nature of injury reported by the doctor as grievous, is again not sustainable. Maybe, the nature of injury has been reported as grievous but the opinion of the doctor Ex. PB/1 regarding nature of injury as dangerous to life, is there. He has also unequivocally deposed that without operation, the patient would have died. Thus, with the statement of PW2-Dr. Sarabjit Singh itself it stands proved on the file that the injury suffered by Buta Singh at the hands of Anoop Singh, appellant was dangerous to life.

17. It was next contended by learned counsel for the appellants that Balwinder Kaur (PW3) and Buta Singh (PW4) have made improvements in their statements when appeared in the Court. They were duly confronted with their statements made to the police. Balwinder Kaur (PW3) did not state in her statement Ex. PE that her daughter Harpreet Kaur was present at the time of occurrence and further that all the other three accused were having iron rods and dandas in their hands and further that the goods from the room had been removed in their absence during the day.

18. The presence of Harpreet Kaur in the house is quite natural. She was of the age of 15 years at that time. She did not suffer any injury for which he was medico legally examined, as such, if the mention regarding Harpreet Kaur was not made in the FIR, Ex. P3, it is immaterial. Learned Assistant Advocate General, Haryana has cited the judgment rendered in Allarakha K. Mansuri Vs. State of Gujarat, AIR 2002 SC 1051 : (2002) CriLJ 1489 : (2002) 1 Crimes 322 : (2002) 2 JT 63 : (2002) 2 SCALE 131 : (2002) 3 SCC 57 : (2002) 1 SCR 1011 : (2002) 1 UJ 419 : (2002) AIRSCW 781 : (2002) 1 Supreme 622 , wherein, it was held that contradictions of minor nature in statements of witnesses instead of discarding their statements, strengthen the case of the prosecution showing the witnesses being truthful as they had not made parrot like statements. Some minor contradictions and discrepancies are very natural. If the statements are made without any such contradictions or discrepancies, the same may be liable to be doubted being tutored or unnatural. Likewise, the contention of learned senior counsel for the appellants regarding improvements made by Buta Singh (PW4) is not sustainable as he did not make any material improvement in the statement in the Court. Even otherwise, some variations or exaggerations are bound to be there in such like cases.

19. Thus, with the statements of PW3 Balwinder Kaur and PW4 Buta Singh, it stands established on the file beyond reasonable doubt that Anoop Singh had accompanied with co-accused gave a gandasi blow on the head of Buta Singh which had caused fracture of temporal perital region of skull for which he had to be operated upon, failing which he would have died. With the statement of PW2- Dr. Sarabjit Singh it further stands established on the file that the injuries suffered by Buta Singh at the hands of appellants were dangerous to life. PW3 and PW4 also deposed that co-accused had caught hold of Buta Singh when accused Anoop Singh gave gandasi blow on his head. Balwinder Kaur-PW3 also deposed that the appellants had also given her beatings and blows. As a result of injury inflicted on the person of Buta Singh, he fell down and blood oozed out from this injury, resulting which he became unconscious. Thus with the statements of these witnesses, coupled with the statements of other prosecution witnesses examined in this case, whose evidence has been discussed in detail by learned trial Court, prosecution has succeeded in bringing home guilt against the appellants.

20. Learned senior counsel for the appellants has also contended for reduction of sentence of the accused. In that connection, he cited judgments rendered in Sheru and another v. State of Haryana 2003(3) RCR (Criminal) 506 and Raj Kapur v. State of Punjab 2000(2) RCR (Criminal) 386. Of course, in the aforesaid cited judgments, the sentences were reduced but the present case is not the one in which reduction of sentence is in any way warranted. The disputing parties are close relations. They are the real brothers. The dispute was on possession of one room which was occupied by their father Lacchman Singh before his death. The accused party had forcibly taken out the household articles of Buta Singh from that room and put their own articles by occupying the same. Civil litigation is

also pending between the parties. Their father Lacchman Singh had left a Will in favour of Buta Singh, Jagjit Singh and Anoop Singh. The nature of injury which is dangerous to life further goes to show the intention of the appellants to do away with the life of Buta Singh. The appellants had taken the law in their own hands. Their act of forcible dispossession of Buta Singh from the room earlier occupied by their father is a pre-mediated act of the accused party. It cannot be said that in a heat of moment or suddenly the quarrel had taken an ugly turn or that the accused never intended to kill Buta Singh. As such, this Court does not find any reason for reduction of sentence.

21. For the aforesaid reasons, finding no merit in this appeal, it is ordered to be dismissed maintaining the judgment of conviction and order of sentence passed by the trial Court. However, since Multan Singh had died, therefore, the proceedings against him are ordered to be dropped.

22. If the appellants are on bail, their bail bonds, shall stand cancelled and they be taken in custody for serving the remaining period of sentence. The concerned Chief Judicial Magistrate shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Criminal Procedure Code, and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

23. The District and Sessions Judge, Kurukshetra shall ensure that the directions are complied with, within the time frame, and the compliance report is submitted immediately thereafter.

24. The Registry shall keep track of the submission of compliance report, and put up the papers whether the reports are received or not, within the time frame, immediately after the expiry thereof.