

(1996) 02 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 129 of 1995

Balbir Singh alias Bhira and Another

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 02-02-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 300, 302, 304, 307, 325

Citation : (1996) CriLJ 2663 : (1996) 2 RCR(Criminal) 95

Hon'ble Judges : V.K. Bali, J;K.S. Kumaran, J

Bench : Division Bench

Advocate : R.S. Cheema and M.J.S. Waraich, for the Appellant; Varinder Singh, DAG, for the Respondent

Judgement

V.K. Bali, J.—Balbir Singh alias Bhura son of Balkar Singh and Lakhvinder Singh alias Lakhu son of Ajit Singh, who were tried along with their co-accused Gurbachan Singh son of Mohan Singh and Pritam Kaur, mother of Lakhvinder Singh have filed the present appeal against the order of conviction and sentence recorded against them by Shri B.P. Jindal, Addl. Sessions Judge, Kurukshetra, who vide his judgment dated January 12-13, 1995, found both the appellants guilty of an offence punishable u/s 302 read with Section 34 of the Indian Penal Code and sentenced them to undergo imprisonment for life and to pay a fine of Rs. 1000/- and in default thereof to further undergo RI for six months. Co-accused of the appellants, Gurbachan Singh and Pritam Kaur were, however, acquitted giving them benefit of doubt. Information with regard to death of Mela Ram was reported by PW 4 Ghansham Dass on Feb. 14, 1992 at 3.45 p.m. to ASI Rajesh Kumar, PW 14, of Police Station Shahabad. He stated that he was resident of Satya Nagar, Shahabad Markanda and they were four brothers. Their land was situated near Markanda Bandh. On 14-2-1992 at about 1 p.m. he was grazing the cattle at the Bandh. His brother Mela Ram, Pritam Singh son of Mula Ram, caste Saini and Joginder Singh Patwari had gone to the fields of Lakhvinder Singh for delivery of possession of the land to Pritam Singh. On their way to the

fields, they had to pass from near him. His elder brother Mela Ram had effected an agreement to sell the land between Lakhvinder Singh and Pritam Singh Saini. The deed was scribed by Dalip Chand, petition writer. Later on, Lakhvinder Singh backed out of the promise to sell the land and wanted to swallow the earnest money. His brother Mela Ram and he pressurised Lakhvinder Singh to execute the sale deed and as such he executed the sale deed in respect of five acres of land instead of 9 1/2 acres mentioned in the agreement. On the eventful day, Joginder Singh Halqa Patwari, Pritam Singh and Mela Ram had gone to the spot for demarcation of the land measuring five acres and delivery of possession. Joginder Singh Patwari had gone away after demarcation and delivery of possession. At that time, Lakhvinder Singh, Balbir Singh alias Bheera, who is brother-in-law (sister's husband) of Lakhvinder Singh, Gurbachan Singh son of Mohan Singh and Pritam Kaur widow of Ajit Singh, all residents of Sahabad, were also present at the spot. Pritam Kaur raised a lalkara that Mela Ram should be put to death as he had got the possession of their land delivered. At that, Lakhvinder Singh and Balbir Singh, armed with gandasis and Gurbachan Singh, armed with lathi, stepped ahead. Within his sight, Lakhvinder Singh and Balbir Singh started causing blows with their respective gandasis on the head and face of his brother Mela Ram and Gurbachan Singh dealt a lathi blow to him. On this, Pritam Singh and he raised an alarm of MAR DIA -MAR DIA" and rushed to the spot. Lakhvinder Singh, Balbir Singh, Gurbachan Singh with their respective weapons and Pritam Kaur fled away from the spot with their respective weapons. Pritam Singh and he had seen this occurrence. Gandasi blows had been given to his brother Mela Ram on his face and head. Had they not raised an alarm, the assailants would have caused more injuries to Mela Ram. He had Pritam Singh then removed Mela Ram to Civil Hospital, Shahabad in an unconscious condition.

2. From the facts, as have been noted above, it appears that the occurrence leading to death of Mela Ram, took place on Feb. 14, 1992 in the fields at Shahabad which is at a distance of 2 kms. from the Police Station at 1 p.m. and the FIR came to be recorded at 3.45 p.m. u/s 307 read with Section 34 of the Indian Penal Code. The special report reached the Magistrate concerned at Kurukshetra at 9.45 p.m. on Feb. 14, 1992, which is stated to be 27 kms. from Police Station Shahabad. Mela Ram succumbed to his injuries on March 3, 1992 at 4 a.m. in P.G.I., Chandigarh whereafter FIR was converted to one u/s 302, I.P.C.

3. The prosecution, with a view to bring home the offence against the appellants and their co-accused, examined PW 4 Ghansham Dass, who is real brother of deceased and PW 8 Pritam Singh, who is not related to the deceased in any manner. These two persons are stated to be eye witnesses of the occurrence and they have fully supported the prosecution version.

4. Dr. G. Dewan, Medical Officer of Health, U.T. Chandigarh, was examined as PW 2, who stated that on March 3, 1992 he had conducted post mortem on the dead body of Mela Ram and had found following injuries:-

1. Stitched wound (healed and stitches removed only scar on the left pareto frontal) 4" x 2".

2. Stitched healed wound scar measuring 6" x 4" on the medial aspect of right eye.

5. On opening of skull, 8 burr holes done by Bilateral were present. Odema of the brain matter was present. Meningitis and brain spinal code were congested and exudate material was present. Lungs, right and left, were congested on cut section, blood mixed with pus present. Liver on cut-section pus mixed with blood, spleen. Pus mixed with blood. Kidneys blood mixed with pus. He also found fracture of mandible and zygoma. There was bilateral fracture of maxila. In the opinion of the doctor, the cause of death was due to septicaemia which was sufficient to cause death in ordinary course of nature. The doctor further stated that septicaemia was the result of infection which resulted due to the injuries received by the deceased. The witness further stated that he did not know whether the injuries on the dead body of Mela Ram were operational or caused by violence to his body. In cross-examination, he stated that septicaemia is the result of invasion of blood stream by various types of bacteria wherein they multiply themselves and septicaemia can be caused due to bad source. Dr. M. Ram Mohan, Junior Resident, Department of General Surgery, PGI, Chandigarh, was examined as PW 3. He stated that on March 3, 1992 at 3.45 p.m. he had sent ruqa, Ex. PC, to the Officer Incharge, Police Post, PGI Chandigarh regarding the death of Mela Ram. In cross-examination, the witness aforesaid stated that he had examined Mela Ram on Feb. 22, 1992 when he had already been operated upon. He could not say whether infection had developed by that date or not. Dr. Sushil Budhiraja was examined as PW 17. He stated that on Feb. 24, 1992 he had attended the patient Mela Ram and on examination, he found that patient was conscious but was not able to speak properly. His blood pressure was 170/90 mm and his pulse rate was 68 per minute. Cardio vascular system, chest, abdomen and skeletal system did not reveal any significant injury. On examination of central nervous system, both pupils were dilated and were not reacting to light. Light perception was present on left side and the patient was not able to open the eyes due to local injury. Speach of the patient was not comprehensive. The patient was moving all four limbs spontaneously and on command. The other injuries noted were (i) lacerated wound on the forehead about 8 cm long with fracture underlying skull. Brain matter was visible: (ii) There was another 15 cm long wound on right half of the face with fracture underlying facial sketon; (iii) 4 cm wound was present on left side of the face with fracture of left maxilla. Amputation of terminal phalanx of left little finger; (iv) lacerated wound over right little finger with fracture underlying bone. He ordered for X-ray of skull, chest and cervical spine. He declared that the patient was unfit to make statement on Feb. 14, 1992. In cross-examination he stated that he did not examine the patient after Feb-14, 1992 and he did not receive the result recommended by him as they were meant for the Specialists. Dr. M.K. Tiwari, Government Lecturer, Department of Surgery, Chandigarh was examined

as PW 18. He stated that on Feb. 17, 1992 he had operated upon Mela Ram, who had post traumatic C.S.F. (Cerebro spinal-fluid) Rinnorrhea, which was the result of fracture ethmoid, tear in basal line in anterior cranial fossa (A.C.F.) leading to C.S.F. (Cerebro-spinalfluid). In cross-examination, he stated that when he had operated upon Mela Ram, he once had already been operated. The doctor denied the suggestion that septicaemia of the patient Mela Ram was not due to the injuries.

6. From the facts mentioned above, it is, thus made out that on 14th of Feb. 1992, Mela Ram was brought in an injured condition at Civil Hospital Shahabad at 3.35 p.m. PW 1 Dr. S.C. Sikkar had referred the patient to P.G.I. Chandigarh where he was examined by Dr. Sushil Budhiraja PW 17. He was operated upon on 17th of Feb. 1992 by Dr. M.K. Tewari PW 18 and he was last examined by Dr. M. Ram Mohan PW 3. He died on 3rd of March, 1992 at 4.45 p.m. in P.G.I. Chandigarh and Dr. G. Dewan PW 2 conducted post mortem on the deadbody of Mela Ram at General Hospital, Chandigarh. He, thus, died after 17 days from the date of occurrence.

7. The other relevant evidence on which the prosecution has relied upon and which requires mention is the statements of PW 11 and PW 12, namely, Sushil Chand and Mushi Ram as also PW 15 Muni Lal Patwari and ASI Rajesh Kumar who was examined as PW 14. Sushil Chand PW 11 stated that ASI Rajesh Kumar had taken into possession bloodstained earth from the spot which was sealed into a small box and the seal after use was handed over to him. In cross-examination he stated that his field was situated adjacent to the spot of occurrence and he had come to the spot seeing the police present there. He, however, stated that he had returned to his house at about 1.30 p.m. and had gone to the fields again at 3.00 p.m. He also stated that demarcation of the land started at 11.00 a.m. and was completed at 1.30 p.m. PW 12 Munshi Ram stated that on 9th April, 1992 police had come and had met him at the barrier of Barara Road. Lakhvinder Singh was also brought by the police and the police interrogated him in his presence about the whereabouts of the gundasi, whereupon he stated that he had kept concealed the gundasi in the bushes located nearby and he could get the same recovered. Accused led the police party to the forest up to Bandh where Kikkar three bearing No. 3 was standing and produced the gundasi from there and the same was taken into possession by the police. PW 14 Rajesh Kumar ASI of Police Line, Kurushetra gave the details of the investigation conducted by him. The accused when examined u/s 313 of the Code of Criminal Procedure stated that they were innocent and had been falsely implicated in the case. After resultant trial, as mentioned above, appellants were convicted u/s 302 read with Section 34 of the Indian Penal Code and sentenced to rigorous imprisonment for life. Their co-accused Gurbachan Singh and Pritam Kaur were acquitted by giving them the benefit of doubt.

8. We have heard Mr. R.S. Cheema, learned Senior Counsel appearing on behalf of the appellants as also Mr. Varinder Singh learned Deputy Advocate General,

Haryana and with their assistance have gone through the records of the case. Mr. Cheema on the basis of some evidence and documents reference whereof shall be made later contends that Ghanshyam PW 4 was not present at thi time of occurence and has simply deposed on account of his close relationship with the deceased Mela Ram as also that the other eye-witness, namely, Pritam Singh PW 8 even though not related has been proved to be telling lies on material issues and has falsely implicated acquitted accused Gurbachan Singh and Pritam Kaur. This witness is, thus, not wholly reliable and therefore, some corroboration of his testimony is required before a finding of conviction can be recorded against the appellants and since there is no corroboration coming forth from any other evidence, the appellants deserve to be acquitted. Second contention of the learned Counsel is that the ocular evidence provided by Ghanshayam PW 4 and Pritam Singh PW 8 is in sharp contrast to the medical evidence and, in any case, the offence even if proved against the appellants would fall within the mischief of Section 325 or at the most u/s 304, Part II of the Indian Penal Code and these appellants deserve acquittal for an offence u/s 302 read with Section 34 of the Indian Penal Code. Mr. Varinder Singh has joined issues with the learned Counsel appearing for the Defence on all the points that have been canvassed by the learned counsel for the defence.

9. After giving our thoughtful consideration to the various contentions noted above, whereas we find no substance in the two contention raised by the learned Counsel, we find considerable force in the third contention pressed into service.

10. While dealing with the first point with regard to presence of Ghanshayam, the brother of the deceased at the place of occurrence and the reliability of Pritam Singh PW 8, the learned counsel has brought to our notice that whereas Ghanshayam stated that the occurrence took place at 1.00 or 1.15 p.m. on 14th of February, 1992, PW 8 Pritam Singh fixes the time of occurrence at 3.00 p.m. as also that in Ruqa Ex. PA it is mentioned by the concerned doctor that Mela Ram injured was brought by some persons. Had he been brought in an injured condition by Ghanshayam as is claimed by the prosecution, there was no question that his name would have been omitted in Ex. PA. In support of his contention noted above, the learned Counsel has also relied upon the judgment of the Supreme Court in Sukhwant Singh Vs. State of Punjab, . It is true that Ghanshayam has stated in examination-in-Chief that at 12 noon he was grazing his cattle at the Band of Markanda river at Shahabad and he had seen Joginder Singh Patwari, Pritam Singh and Mela Ram proceeding towards the field of Lakhvinder Singh and that after about 1 hour and 15 mintues, he saw Joginder Singh Patwari and Muni Lal Patwari, Pritam Singh's two sons going towards Shahabad City. It is thereafter that Leku and Pritam Kaur came to the field and told Mela Ram and Pritam Singh to go away from there otherwise bargain would be very costly and then Pritam Kaur gave a Lalkara that they should be killed as Mela Ram was getting the possession of the land delivered. It is on this exhortation that the appellants with their co-accused, as per the version of this witness, had started giving injuries to Mela Ram deceased. From the aforesaid

statement it appears that according to this witness, the occurrence had taken place some time between 1.30 p.m. to 2.00 p.m. All that this witness has stated is that when he was grazing his cattle at about 1200 noon, an hour and 15 minutes thereafter he saw Joginder Singh Patwari and Muni Lal Patwari going towards Shahabad. He has thereafter not given the time as to when Lekhu and Pritam Kaur to go away from there. It is possible that from the time when he had seen Joginder Singh Patwari and Muni Lal Patwari going towards Shahabad City and when Pritam Kaur gave a Lalkara, there may be a time lag of 15 to 30 minutes. In so far as the statement of PW 8 Pritam Singh with regard to time of occurrence is concerned, he has stated that the occurrence had taken place after Muni Lai Patwari had left the place and that the occurrence took place at about 2.30 p.m. There is hardly any material difference in the statements of these two eye-witnesses about the time of occurrence. Whereas one witness stated that the occurrence took place between 1.30 to 2.00 p.m. the other states that the same had taken place at about 1.30 p.m. On this small discrepancy in time which in our view, is not material and it is possible that timings differed in the absence of the witnesses keeping a watch as also making deposition in the Court after considerable time, the prosecution version cannot be thrown out. In so far as Ruka Ex.PA and non-mentioning of the name of Ghanshayam therein is concerned, suffice it to say that it has come in the evidence that when Mela Ram was taken to hospital 20-30 persons were with him. So far as Ghanshayam is concerned, immediately after taking Mela Ram to hospital, he had gone to lodge the report with the police. Reliance of the Counsel on Sukhwant Singh's case AIR 1995 2521 (supra) in our view is of no assistance to the appellants as there were number of things taken together to give the benefit of doubt in the said case. The case of the prosecution was based on the sole testimony of brother of the deceased. His name was not mentioned in the ruka sent by the doctor to the police station immediately after arrival of dead body in the hospital and the identification of the deceased was made by him on the next day. There was delay in sending the Special Report to the Magistrate. There was some contradiction in the ocular account with the medical evidence as well and the other witnesses who had removed the deceased to the hospital were not examined. There were other defects pointed out by the Apex Court in rejecting the prosecution case.

11. Coming now to the second contention of the learned Counsel with regard to conflict in ocular version provided by Ghanshaym PW4 and Pritam Singh PW 8 and the medical evidence, it is argued by the learned Counsel that whereas the said witnesses have stated that the appellants had caused gandas blows to Mela Ram on his head and face, no incised wound was found by any of the doctors examining him and, in fact, only lacerated wounds were found on the head and face of Mela Ram. Lacerated wounds, it is being argued could not be caused by a gandas and therefore also the version of PW 4 Ghanshayam and PW 8 Pritam Singh should be rejected. This argument would have been of considerable importance, if the defence could really convince the Court that the eyewitnesses of the occurrence were actually not present at the scene of crime. We have

already rejected the contention of the learned Counsel with regard to absence of Ghanshayam. Assuming that there is some substance in the said contention of the learned Counsel, the presence of Pritam Singh PW 8 cannot possibly be doubted. The learned Counsel appearing for the defence with regard to the said witness could not urge anything except to state that the witness being not wholly reliable should not be believed at all. No effort at all made from the available record to show to the court that Pritam Singh was not present at the time when Mela Ram was attacked by the appellants and others. In fact, under the weight of evidence that is available, the learned Counsel had to concede, even though half-heartedly, that presence of Pritam Singh is quite probable as he was the person who was to take possession and in all relevant records produced by the prosecution which came into being and had to come into being at the time of demarcation of land, presence of Pritam Singh stands recorded therein. He was a most natural witness, as mentioned above, being a party who had to take possession and for which purpose revenue officials had come there. Arrival of revenue officials has been proved by documentary evidence and as mentioned above, in these documents presence of Pritam Singh is recorded and his signatures are also available. This witness, as mentioned above, is not at all related to deceased Mela Ram. That being so, even if for the sake of argument, the presence of Ghanshayam is ruled out, Pritam Singh was certainly present there and had seen the occurrence. His statement is consistent, and inspires confidence. Nothing at all has been pointed out from the lengthly cross-examination to which the witness was subjected from where it could be made out that he had not seen the occurrence or that he is, in any way, inimical to the appellants or interested in success of the prosecution version. If statements of eye-witnesses is trustworthy and seemingly there is some contradiction in the statements of the said witnesses and the medical evidence and if such a contradiction can be explained, in our view, it is the testimony of the eye-witnesses which would prevail. If we consider the matter in view of what has been stated above, then it appears plausible to us that the gandasis were used by the appellants from its wrong ends. It would be appropriate at this stage to mention that neither Ghanshayam nor PW 8 have stated that the gandasis were used from the side of the blade nor the defence had ventured to clarify from the said witnesses in cross-examination. The learned Sessions Judge in our view in these circumstances rightly held that the gandasis were used from the reverse side.

12. Once it is proved that Pritam Singh was present at the time of occurrence as also that his statement had stood close judicial scrutiny, and inspired confidence, his testimony cannot be discarded on the ground that he has named some other persons also as co-accused who were acquitted by giving them the benefit of doubt. Reliance for this can well be placed on the judgment of the Apex Court in *Sheikh Ishaque and Others Vs. State of Bihar*, .

13. Third and the last argument of the learned Counsel as mentioned has considerable force. None of doctors out of so many examined by the prosecution

has anywhere stated that the injuries found on the person of Mela Ram were sufficient to cause death in the ordinary course of nature. We have already given the gist of medical evidence. It may be recalled that PW 1 Dr S.C. Sikka had only given first aid to Mela Ram injured and referred him to P.G.I. Chandigarh. Dr. G. Dewati PW 2 had conducted post mortem on the dead body of Mela Ram. In his opinion, cause of death was due to septicaemia which was sufficient to cause death in the ordinary course of nature. He further stated that septicaemia is the result of infection. No doubt this witness has further stated that in this case the infection resulted due to the injuries received by the deceased but, however, he further stated that he did not know whether injuries on the dead body of Mela Ram were operational injuries or caused by violence to his body. Dr. M. Ram Mohan PW 3 stated in his cross-examination that he did not know whether infection had developed by the date he had examine Mela Ram or not and that the causes of death of Mela Ram were (i) cardiac arrest, (ii) septicaemia and (iii) renal failure. Dr. Sushil Budhiraja PW 17, of course, stated that he had found lacerated wound on the forehead, about 8 cm long with fracture underlying skull, of Mela Ram. Brain matter was visible. He had also seen another 15 cm long wound on right half of the face with fracture underlying facial skellton and 4 cm wound was present on left side of the face with fracture of left maxilla and amputation of terminal phalanx of left little finger. From the medical evidence, mentioned above, it, thus, cannot be said that as to what was the actual cause of death of Mela Ram, even though injuries noticed by Dr. Sashil Bhudhiraja PW 17 who examined Mela Ram on 14th Feb. 1992, itself when he was taken to P.G.I, Chandigarh from Shahabad are quite serious. Seen in the light of medical evidence as also the sudden fight resulting into inflicting of injuries to Mela Ram, as it is on the spur of moment that altercation took place between the appellants and their co-accused and the others, we are of the considered view that the case against the appellants would not go beyond Section 304, Part II of the Indian Penal Code. The prosecution version which may be recalled, was that on the date of occurrence Joginder Singh Patwari, Pritam Singh and Mela Ram had come to the spot for demarcation of the land measuring five acres and for delivering the possession. Joginder Singh Patwari had gone away after the demarcation and delivery of possession and at that time Lakhivinder Singh and Balbir Singh appellants along with their co-accused who were present at the spot first gave a Lalkara that Mela Ram should be put to death and then the appellants and others started beating him with their respective weapons. Prior in point of time as is the version of Ghanshyam, Lakhu and Pritam Kaur came to the fields and had told Mela Ram and Pritam Singh to go away from there otherwise bargain would be very costly and it is then that Pritam Singh gave a Lalkara that he should be killed. It was thus, asudden quarrel and the appellants had not planned earlier to kill Mela Ram. The Apex Court in Kishore Singh and Another Vs. The State of Madhya Pradesh, where the medical opinion with regard to death was not definite and death had occurred after a month, held. "In view of somewhat hesitant medical opinion with regard to the cause of death given by the three doctors and the further fact that the deceased died a month after the occurrence Clause

"3rdly" of Section 300 had not been established beyond reasonable doubt in this case. The conviction u/s 302/34 was, therefore, altered to one u/s 304 (Part-I)/34. In the present case not only that there is no definite medical opinion with regard to cause of a septicaemia of Mela Ram and that he died after 17 days of the date of occurrence, there is an additional fact that it was a sudden quarrel and the attack on Mela Ram was not pre-planned as also that the appellants had used gandasis from their reverse sides. All these facts in our considered view would bring the offence committed by the appellants u/s 304, Part II of the Indian Penal Code and in the facts and circumstances of this case, we are of the opinion that sentence of six years would meet the ends of justice.

14. In view of the discussion made above, the Appeal is partly allowed. The conviction and sentence recorded against the appellants u/s 302, read with Section 34 of the Indian Penal Code is altered to one u/s 304, Part II read with Section 34 of the Indian Penal Code and they are accordingly sentenced to undergo R.I. for a period of six years and to pay a fine of Rs. 10,000/- which shall be paid as compensation to the heirs of the deceased Mela Ram, failing which they would undergo R.I. for further one year.