
(1978) 08 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 1144 of 1975

Balwant Rai and Others

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 17-08-1978

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (1978) 08 P&H CK 0022

Hon'ble Judges : S.S. Dewan, J; Bhupinder Singh Dhillon, J

Bench : Division Bench

Advocate : H.L. Sibal with Mr. S.C. Sibal and Mr. S.S. Rathour, for the Appellant;
Chandra Singh, for the Respondent

Final Decision : Allowed

Judgement

S.S. Dewan, J.—Balwant Rai, Kishan Lal and Mahla Ram were brought to trial for committing the murder of Bhola Nath of Karnal. The trial Court convicted Balwant Rai u/s 302, Indian Penal Code and the co-accused u/s 302 read with section 34, Indian Penal Code and sentenced each one of them to imprisonment for life.

2. The prosecution case, in brief, it that Bhola Nath, who was a retired Revenue Officer used to reside at Karnal. He owned some land in the area of village Azizulla Pur, which is at a distance of about three miles from Panipat. That land was being cultivated by his tenant Lakhmi (P.W. 4), His (Lakhmi's) wife's brother Balbir Singh (P.W. 3) used to work with him as an agricultural labourer. Balwant Rai accused used to place his kurri (dhanias Plants) in the Ahata chah jointly owned by him Bhola Nath, the deceased and one Dhan Singh. About 8 or 9 days prior to the present occurrence, which took place on 1st June 1974, Bhola Nath asked Balwant Rai as to why the latter was not removing the kurri despite his repeated requests. A couple of days before the said occurrence, Bhola Nath set fire to that heap of dhanias plants. On the same day, at about 4 P.M. all the three accused went to the house of Lakhmi in an agitated mood and abused him. Thereafter, the accused went to the house of Bharat Bhushan Sarpanch (P.W. 10)

and asked him to inspect the spot. Bharat Bhushan visited the place where the heap of stalks of dhanias plants had been burnt down by Bhola Nath. Balwant Rai said that he would take revenge for the burning down of his stalks of dhanias plants. Bharat Bhushan told him that it was a petty matter and he would decide it himself. On the fateful day, i.e. on 1st June 1974 at about 10 A.M. Bhola Nath went to his land where Balbir Singh (P.W. 3), Lakhmi and the latter's wife Smt. Sunehri (P.W. 5) were working. From there Bhola Nath went to the tubewell of Hukam Chand P.W. and narrated to him the previous incidents. Some time in the afternoon when Bhola Nath was coming towards his land and had covered about 30 or 40 paces from the tubewell of Balwant Rai accused, the latter armed with a stick of guava tree; while Kishan Lal accused armed with a gandasi and his father Mehla Ram with a lathi, came from the side of that tubewell. They surrounded Bhola Nath. Mehla Ram uttered abuses towards Bhola Nath which attracted Balbir Singh, Lakhmi and Smt. Sunehri to the spot. Balwant Rai caught hold of Bhola Nath by his neck. When Bhola Nath was trying to free himself, his cap, spectacles and cycle fell down. Balwant Rai then gave a blow with his stick on the head of Bhola Nath, on receipt, of which the latter slumped on the ground and became unconscious. The accused then made good their escape. Balbir Singh and Lakhmi removed Bhola Nath to Civil Hospital, Panipat and got him admitted there at about 2.45 P.M. Balbir Singh remained with Bhola Nath, while Lakhmi went to Karnal to inform Pishori Lal who is the Brother of Bhola Nath.

3. Dr. V. Keshterpal (P.W. 2) sent ruqa, Exhibit PE, to the Station House Officer, Sadar Panipat regarding the admission of Bhola Nath in the Hospital with multiple head injuries. On receipt of ruqa, Head Constable Hari Kishan (P.W. 12) made entry in the dally diary register, copy of which is Exhibit P.R. Assistant Sub Inspector Mohan Singh (P.W. 11) went to Civil Hospital, Panipat and recorded the statement (Exhibit PG) of Balbir Singh (PW 3). On the basis of that statement, formal First Information Report (Exhibit PG/2) was drawn by Head Constable Hari Kishan. Bhola Nath expired in the Hospital at 3.55 P.M. Assistant Sub Inspector Mohan Singh held inquest (Ex. PB) and sent the dead body for autopsy. Dr Prem Kumar (P.W. 1) Senior Medical Officer, Civil Hospital, Panipat who performed the post mortem examination on the dead body of Bhola Nath on 2nd, June 1974 at 8.45 AM found the following injuries:--

1 A lacerated wound 2 x 1/4 x 1/4" on the left front parietal region of scalp running longitudinally 3/4" above the left eye brow and 1/2" to the left of the mid line.

2. A lacerated wound 1/2" X 1/4" x 1/8" x 1/4" behind injury No. 1.

According to the doctor, there was ecchymosis of blood in the subcutaneous tissues all over the scalp with a haematoma in the right and left temporo parietal region. There was fissured "fracture of both the parietal bones running transversely 5" above the root of the nose and going to the base of the skull in the anterior cranial fossa on the left side and radiating on the right side to the base of the skull in the middle cranial fossa. There was ecchymosis of blood over

the meninges and in the substance of the whole of the brain. In the opinion of the doctor, death was the result of shock and haemorrhage due to injuries to the brain. The injuries were described to be ante mortem in nature and were sufficient to cause death in the ordinary course of nature. The probable time that elapsed between injuries and death was six hours and between death and post mortem examination about 18 hours. The case was earlier registered u/s 308/34, Indian Penal Code. On the death of Bhola Nath, the offence was changed to section 304, Indian Penal Code. Sub Inspector Mulkh Raj (P.W 13) took over the investigation of the case from Assistant Sub Inspector Mohan Singh. He prepared the visual plan (Exhibit PS) of the place of occurrence and also lifted blood-stained earth. Cycle, Ex. P.5, cap. Ex. P.2 and spectacles, Ex. P.3 were recovered from the spot. Balwant Rai and Mahla Ram accused were arrested by Assistant Sub Inspector Mohan Singh on 2nd, June, 1974. On interrogation by the said Investigating Officer, Balwant Rai made a disclosure statement leading to the recovery of click of guaya tree, Exhibit P.1 from the specified place of concealment. Mahla Ram got recovered lathi; Exhibit P.6, Kishan Lal accused was at rested on; 10th June, 1974. On interrogation by Assistant Sub Inspector, Kishan Lal made a disclosure statement leading to the recovery of gandast, Exhibit P. 4. After necessary investigation, the accused were challaned and committed to the Court of Session.

4. Balbir Singh (P.W, 3) and Lakhmi (PW.4) furnished the ocular version of the occurrence, while Lahmi (P.W. 4) deposed regarding the recoveries of weapons of offence in the course of investigation. Sent Sunheri (P W. 5) was tendered for cross-examination Ram Sarup Patwari (P.W. 8) prepared the sate plan. Ex. PQ. Assitant Sub Inspector Mohan Singh and Sub Inspector Mulkh Raj deposed to the investigation part of the prosecution.

5. The plea of the accused in their statements u/s 313 of the Code of Criminal Procedure was of denial simpliciter. They, however, led no evidence in their defence.

6. The trial Court on the basis of the material so pieced before it, convicted and sentenced the accused as noticed above and hence this appeal.

7. The main plank of the argument on behalf of the appellants is that the crime was committed unseen and in any case Balbir Singh (P.W. 3) and Lakhmi (P.W. 4) had not witnessed the same Lacking any factual basis for this suggestion, th.3 usual argument was sought to be raised that the First Information Report, Exhibit PG/2, was inordinately delayed and it was not recorded at 3.55 P.M. on 1st, June, 1974 as alleged by the prosecution.

8. After hearing the learned counsel for both the sides and perusing the recory with their help, we are of the opinion that there is no merit in his anguemnts.

9. As is inevitable in a case of the present kind, the ocular account is the core of the prosecution case. Balbir Singh (P.W 3) and Lakmi (P.W. 4) have given an account thereof which is remarkable in its consistency. A gruelling cross

examination was levelled against both these witnesses. This, however, appears to us to be lacking both in thrust and direction. Nothing significant emerged therefrom which may possibly cloud forthright testimony of these witnesses. Indeed, the transcending feature of the case is that apart from the disinterestedness of these two witnesses qua the appellants, no animus or hostility even worth the name has been proved on the record. For lack of anything better it was sought to be suggested on behalf of the defence that since Lakhmi was the tenant of Bhola Nath deceased, and Balbir Singh was the wife's brother of Lakhmi, no implicit reliance could be placed on their testimony. May be that the aforesaid witnesses were the employees of the deceased, but that by itself is not sufficient to reject their cogent and convincing testimony. It is not disputed that Lakhmi, his wife Smt. Sunehri and Balbir Singh were cultivating the land of Bhola Nath. At the alleged time of occurrence, they were doing *nalai* in his sugar cane field. On hearing the abusive language of Mania Ram they were attracted to the spot and witnessed Bhola Nath being assaulted by Balwant Rai, with the stick, immediately after the occurrence Balbir Singh and Lakhmi removed Bhola Nath to Civil Hospital at Panipat, and got him admitted there. The presence of these witnesses at the alleged time and place of occurrence cannot consequently be doubted. On an overall appraisal of the testimony of these witnesses, we are inclined to place implicit reliance on their word. Their testimony receives further corroboration from the medical evidence and the recovery of blood stained earth from the place of occurrence.

10. The learned counsel for the appellants criticised the prosecution case with the contention that the first information report was not recorded promptly. Delay in reporting the incident to the police is all by itself never fatal to the prosecution case. It is at the most a circumstance which puts the Court on guard to scrutinise the prosecution evidence before acting upon it. Once the chances of fabricating a false story and introduction of false eye witnesses are eliminated, the mere delay in reporting the incident cannot be a ground much less just or sufficient to throw away the prosecution case. The incident had taken place at about noon time on 1st June 1974. Bhola Nath had been rendered unconscious. Therefore, the first anxiety with Balbir Singh and Lakhmi was to secure medical aid to him at the earliest. They, therefore, carried Bhola Nath in a tonga to Civil Hospital, Panipat, reaching there at about 2 or 2.30 P.M. The distance between village Azizullapur and Panipat is about 3 miles. On receipt of intimation, Exhibit PE from Dr. V. Keshterpal in the Police Station Sadar Panipat, the Assistant Sub-Inspector Mohan Singh went to the said hospital and recorded the statement of Balbir Singh at about 3.00 P.M., which formed the basis of the First Information Report, Exhibit PG/2. In these circumstances, it cannot be said that there had been any delay much less culpable in reporting the incident to the police.

11. We agree with the trial Court that the evidence on record proves beyond all reasonable doubt that it was Balwant Rai who inflicted injuries with his stick to Bhola Nath and the same proved fatal.

12. However, a general tendency on the part of the complainant party to throw the net wider and rope in as many close associates of the actual culprit is possible and as such the Court has to guard against the fall implication of such persons. Kishan Lal is the tenant of Balwant Rai and Mehla Ram is the father of Kishan Lal. Their case is distinguishable from that of Balwant Rai. It is clear from the prosecution evidence that Kishan Lal was armed with a gandasi, while Mahla Ram was armed with a bamboo stick. The part attributed to Mahla Ram was that he had abused Bhola Nath but no avert act was attributed to Kishan Lal In view of this, the complicity of the said two accused in the alleged crime become doubtful. Without doubting the testimony of the eye-witnesses, out of abundant caution we award benefit of doubt to Kishan Lal and Mahla Ram and acquit them.

13. Shri Hira Lal Sibal, the learned counsel for the appellants, has contended that in the facts and circumstances of this case, Balwant Rai can at best be said to have committed an offence u/s 304 Part II, Indian Penal Code. The fourth exception to section 300, Indian Penal Code, runs thus:

Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

14. It emerges from the prosecution evidence that there was exchange of abuses between Balwant Rai and Bhola Nath and in that process they started grappling with each other Balwant Rai caught hold of Bhola Nath from from his neck. When Bhola Nath freed himself from the clutches of Balwant Rai, then the latter gave a stick blow on the head of the former, which proved fatal. Balwant Rai gave, the fatal blow without premeditation in a sudden fight in the heat of passion upon a sudden quarrel. There is no evidence that the accused took any undue advantage or acted in a cruel or unusual manner He merely gave a single stroke on the head of the deceased with ultimately proved fatal. He did not go on assaulting the deceased even though he fell down unconscious. All the elements of Exception 4 are, therefore, fulfilled in this case. We are clearly of opinion that the offence committed by the accused will be culpable homicide not amounting to murder and he is punishable u/s 304, Indian Penal Code.

15. The further question is whether first part or second part of section 304. Indian Penal Code, would apply First part deals with the first two clauses of section 299 while second part deals with the third clause. In this case, the accused caused the bodily injury on the head of the deceased which resulted in his death. The weapon used was a stick. Head is a vital part of the body. In the circumstances we are of opinion that Balwant Rai caused the death of the deceased with the intention of causing such bodily injury as was likely to cause death. The offence would accordingly come under the first part of section 304, Indian Penal Code.

16. In the result, the conviction of Balwant Rai u/s 302, Indian Penal Code, is set aside and he is convicted u/s 304, Part I, Indian Penal Code and sentenced to 6

years rigorous imprisonment and a fine of Rs. 3000/-. In case of default he shall suffer three years" rigorous imprisonment. Fine, if realised, the whole of it shall be paid to the heirs of the deceased.

17. The appeal is allowed to the extent detailed above.

Bhapinder Singh Dhillon, J.

18. I agree.