
(1998) 11 P&H CK 0092
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 385-SB of 1987

Nathu

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 20-11-1998

Acts Referred:

Citation : (1999) 1 RCR(Criminal) 501

Hon'ble Judges : R.L.Anand, J

Advocate : Sanjiv Sheoran, Ashok Singh Chaudhary, Advocates for appearing Parties

Judgement

R.L. Anand, J. (Oral)

1. This is a criminal appeal filed by Nathu and his son Dharam Pal and it has been directed against the judgment dated 26.5.1987 and order dated 27.5.1987 vide which the appellants were convicted under Section 304 Part 1. I.P.C. They were sentenced to undergo rigorous imprisonment for a period of six years each and to pay a fine of Rs. 200/ each. In default of payment of fine, each one of them was directed to undergo rigorous imprisonment for a period of three months. It may be mentioned here that alongwith Nathu and Dharam Pal, Sukhbir son of Nathu was tried for the offence but he has been given benefit of doubt.

2. In brief, the case of the prosecution is that Fateh Singh deceased was real brother of Nathu appellant. Both Fateh and Nathu owned about 2 bighas of land adjacent to JatheriSonepat road. Their lands are adjacent to each other. Fateh Singh deceased had installed a tubewell on a well situated in his land. He had declined to give water to the fields of Nathu appellant. Fateh Singh deceased did not allow the water to pass to the field of Nathu accused. A panchayat for that purpose was held in the village which was attended by Dhan Singh and certain others. There also Fateh Singh deceased was adamant and this was the cause of bad blood between the deceased on one side and the accused persons on the other side.

3. The story of the prosecution proceeds that on the day of the occurrence i.e. 15.9.1986 at about 6.30 A.M. the deceased Fateh Singh left his home in order to make a round of his field in the presence of his wife Vidya Wati (PW.4) and she was her husband leaving for the field. Fateh Singh found that the appellants alongwith Sukhbir were mending a water channel which had been demolished earlier. He objected to the same. This resulted in an exchange of hot words. They were quarrelling with each other when Chandro (PW.6) sister of Fateh Singh and Nathu alongwith Sukhbir Singh (PW.5) the wife's brother of Fateh Singh came there. They were on bicycle and were going to Sonapat. On hearing noise they came to fields where accused persons and the deceased were exchanging hot words. It was near the fields of Bhagwana. Sukhbir Singh (PW.5) and Chandro (PW.6) reminded them of the compromise brought about by the Gram Panchayat 15/16 days earlier. Thereupon, Nathu appellant assured the PWs that they would not quarrel and they should go. Chandro and Sukhbir Singh then left for Sonapat. It is also the prosecution story that after Chandro and Sukhbir Singh PWs had left the spot, quarrel between the parties started afresh. Dharam Pal accused threw dust into the eyes of Fateh Singh who started rubbing his eyes. The accused persons assaulted him with fist and slaps and they felled him on the ground. In that condition, Nathu appellant caught hold of the feet while Sukhbir Singh secured the arms of the deceased. Dharam Pal stepped on the chest of the deceased and trampled him by jumping on his chest and he also gave him kicks. Thereupon the deceased became unconscious. The accused left him in the field of Bhagwana and ran away. Subsequently they came to know about the death of the deceased and made them scare.

4. It is further the case of the prosecution that Fateh Singh used to return by 7.30 a.m. and leave his home on a hooter given by the factory. When Fateh Singh deceased failed to return home at 7.30 A.M. his wife, Vidya Wati (PW.4) went to the field and found the dead body of her husband lying in the field of Bhagwana. She returned to the village and brought Dewan Chand Ex. Sarpanch and Ude Singh Chowkidar. Leaving behind the chowkidar to guard the dead body, she started for the Police Station. However, at the local bus stand she happened to meet ASI Sube Singh. It was 10.30 A.M. The A.S.I. recorded her statement Ex. PG. The same was sent to the Police Station with an endorsement that it should be recorded in the Daily dairy as the police did not know the cause of death by that time. He also prepared inquest report Ex.PB in the presence of Dewan Singh Ex.Sarpanch and Ude Singh chowkidar. The dead body was sent to Civil Hospital Sonapat where postmortem examination was conducted on the dead body by Dr. Pawan Kumar Chaudhary at 5.30 P.M. The doctor found a small abrasion on the left upper aspect. He also found fracture of the ribs of the deceased. On receipt of the postmortem report formal F.I.R. Ex.PG/3 was recorded at 7.00 P.M. on the same very day and thereafter investigation was taken up by ASI Sube Singh. A sealed parcel of clothes of the deceased removed by the Doctor Chaudhary at the time of postmortem examination were taken into possession. Investigating Officer also visited the spot and recorded the

statements of the witnesses. He also prepared rough site plan Ex.PL.

5. It is also in the story of the prosecution that from 15.9.1986 to 19.9.1986, the accused persons evaded their arrest. On 19.9.1986, the appellants and Sukhbir came to baithak of Dewan Singh Ex.Sarpanch. Ajit Singh (PW.10) brother of Nathu was present. All the three made extra judicial confession before Dewan Singh ExSarpanch and Ajit Singh PW narrating the occurrence as to how they had a quarrel with Fateh Singh deceased and how Chandro and Sukhbir had come there and the way they felled the deceased on the ground and caused injuries to him and how they ran away from there. Dewan Singh and Ajit Singh produced the accused before the Investigating Officer S.I. Ram Singh who arrested them.

6. On completion of the investigation of the case, challan was submitted in the court of Ilqa Magistrate who supplied copies of the documents to the appellants and vide commitment order dated 26.11.1986 committed the accused to the court of Sessions. Vide orders dated 10.12.1986, the accused were chargesheeted under Section 304 of the Indian Penal Code read with Section 34 of the Indian Penal Code. The charge was read over and explained to them to which they pleaded not guilty and claimed trial.

7. In order to prove the charge the prosecution examined Dr. Pawan Kumar Chaudhary (PW.1) who conducted post mortem examination on the dead body of Fateh Singh. The following injuries were found on his person :

1. An abrasion 1.5 cm x .5 cm. was present on the interior medial aspect of left upper arm. Red in colour.

2. On opening the chest wall, both sides ribs 4th, 5th, 6th, 7th, 8th and 9th were found multipally fractured. Pleurae ruptured. Throacic cavity was full of blood. Both lungs were ruptured on its anterior surface as well as middle portion between anterior and posterior surface. Clotted blood present. Underlying blood vessels of both lungs on its anterior lateral surface reuptured."

In the opinion of the Doctor the cause of death was massive shock and internal haemorrhage as a result of injuries to the vital organs like both lungs. Injuries were antimortem in nature and sufficient to cause death in the ordinary course of nature. Probable time that elapsed between injuries and death was within a few minutes while between death and postmortem was 24 hours. It has also been certified by the Doctor that fracture of ribs could be caused by violent blows either by kicks and fists. Ex.PB is correct carbon copy of the post mortem report which has been proved by this witness. Prosecution examined Shri Deep Chand (PW.2), Shri Kishan Lal (PW.3), Vidya Wati (PW.4) widow of the deceased, Sukhbir Singh (PW.5), Smt. Chandro (PW.6), Constable Medi Singh (PW.7), Constable Rup Chand (PW.8), Constable Dhan Singh (PW.9), Ajit Singh (PW.10), Udey Pal (PW.11), Head Constable Sajjan Pal (PW.12), Ashok Kumar (PW.13) and ASI Sube Singh (PW.14).

8. On closure of prosecution evidence, statement of the accused was recorded under Section 313 of the Code of Criminal Procedure and all the incriminating circumstances were put to them. Accused denied those circumstances and plea of Nathu was as follows :

"I have no dispute with Fateh Singh deceased regarding the flow of water from the tubewell of Dhan Singh to my field. We had no dispute with Fateh Singh deceased on 15.9.1986. Sh. Sukhbir Singh and Chandro have deposed falsely and they never came at the time of the alleged dispute. My two sons and myself had been arrested by the police by 8.30/9 A.M. on 15.9.1986 on the basis of suspicion only and taken to the Police Station. We were detained illegally in the Police Station until 19.9.1986 and then our arrest was shown fictitiously. No dispute between the deceased and ourselves took place. We made no extra judicial confession before anyone and the whole of the prosecution evidence is forged and manufactured.

Plea of Dharam Pal was that of innocence.

9. I need not incorporate the plea of Sukhbir Singh as he has already been acquitted by the trial Court.

10. In defence the accused examined Balbir Singh, School Teacher as DW.1. Learned Sessions Judge Sonapat relied the story of the prosecution and convicted and sentenced Nathu and Dharam Pal under section 304 Part I of the Indian Penal Code and sentenced them in the manner as stated above. Aggrieved by their conviction and sentence, the present appeal filed by Nathu and Dharam Pal.

11. I have heard Shri Ashok Singh Chaudhary Advocate on behalf of the appellants and Shri Sanjiv Sheoran on behalf of the respondents and with their assistance have gone through the record of this case.

12. The story of the prosecution rests upon motive, last seen, extra judicial confession and medical evidence. One more aspect which would be important in this case would be if the story of the prosecution is believed in entirety what offence is ultimately made out against Nathu and his son Dharam Pal.

13. As per prosecution, on the day of the occurrence Shri Fateh Singh left for his fields in the view of his wife Smt. Vidya Wati in order to have a round. Smt. Vidya Wati appeared as PW.4 and stated that her husband owned 2 bigha of land and it was situated towards west of the village Jatheri and it was being irrigated by tubewell which was got installed by her husband. She further stated that on the day of the occurrence at 6.30 A.M. her husband went to the fields and when he did not return at about 7.30 A.M. which was usual time of return, she waited for her husband and then went to the fields and saw the dead body of her husband lying in the fields of Bhagwana. The field of Bhagwana adjoins to their field and then she went to Dewan Singh village sarpanch and informed him about the presence of dead body of her husband in the field of Bhagwana. The other

aspect of the prosecution case is that Fateh Singh had installed a tubewell in his land and he was not interested to give water to his brother Nathu. In these circumstances Nath and his family members had strong motive for the commission of the offence against Fateh Singh. A farmer cannot allow his land to die without water because it is backbone of the crops. It has also come in evidence that land of Nathu and Fateh Singh adjoins with each other. Also it has come in evidence that tubewell was installed in the land of Fateh Singh and in these circumstances the possibility of being objected to on the part of Fateh Singh not to give water to his brother Nathu cannot be ruled out. This aspect of the case has been proved by the statement of Kishan Lal (PW.3) who is sarpanch of village Jatheri. According to this witness Nathu accused used to get his water from the tubewell of Dhan Singh. Prior to death of Fateh Singh there was dispute between Nathu and deceased. Deceased did not allow water from his field. The site was inspected and it was advised to Shri Fateh Singh that water to 1/2 kila of Nathu's land may be passed through his field. However, Fateh Singh rejected that suggestion. It was also suggested to Fateh Singh that Nathu would lay down pipes underground. This suggestion was also declined by Fateh Singh. In these circumstances, it stands proved that Fateh Singh was an eye sore qua land of Nathu. It is true that there is no eye witness of this occurrence but there are two important witnesses on the record which would show that just before the occurrence there was a dispute between Nathu and Fateh Singh and in this regard I will like to refer to the statements of Sukhbir Singh (PW.5) and Smt. Chandro (PW.6). Sukhbir Singh belongs to village Bakhtawarpur. He stated that his sisters Smt. Vidya and Smt. Durga were married to Fateh Singh and Jit Singh respectively of village Jatheri. Fateh Singh and Jit Singh were real brothers. He further deposed that he had come to village Jatheri on 14.9.1996 to see his sisters. There Smt. Chandro sister of Fateh Singh was present and she was unwell. Condition of Chandro deteriorated during night and on the request of his sister Smt. Vidya he accompanied Smt. Chandro and proceeded for Sonapat on bicycle. At about 7 A.M. on 15.9.1986 when he and Chandro reached near the field of Bhagwana they saw Fateh Singh exchanging abuses with Nathu and his sons Dharam Pal and Sukhbir Singh. It has been further stated by this witness that on seeing Nathu and Fateh quarrelling with each other they went near to them and it was noticed by them that they were quarrelling over the dispute with regard to small water course. They tried to pacify the matter by stating that it was a small matter and why the two brothers should fight with each other. It was assured by appellant Nathu that they would not further quarrel with the deceased. Also it has been stated by Shri Sukhbir Singh that Fateh Singh was objecting that he would not allow the water to pass to the field of Nathu. So much so this witness stated that Nathu and Fateh were reminded of the decision of the panchayat which took place 15 days back. On the assurance given by Nathu that he would not further pick up the quarrel with Fateh Singh, Sukhbir Singh and Chandro proceeded for their destination i.e. Sonapat and that they returned at about 2.30/3.00 P.M. It was talk of the town that Fateh Singh has been murdered and that his dead body had been found in the field of Bhagwana.

The testimony of Sukhbir Singh is also corroborated by Chandro who appeared as PW.6. There is no worthy reasons to discard the testimony of Sukhbir Singh and Chandro. They are natural witnesses and the presence of Sukhbir Singh is very natural. His two sisters Smt. Durga and Vidya were married to Jit Singh and Fateh Singh respectively. Jit Singh is real brother of Fateh Singh and Nathu. In this manner Sukhbir Singh has a great affinity in the family of Fateh Singh and Nathu. Smt. Chandro is sister of Fateh Singh and Nathu and she would be the last persons to save the real offender. Consistent statements of Sukhbir Singh (PW.5) and Chandro (PW.6) give irresistible conclusion that the deceased was last seen with Nathu and Dharam Pal and they were quarrelling with each other over the question of passing of the water. Though Sukhbir Singh implicates Sukhbir but Smt. Chandro exonerates him. In the circumstances as stated above, it cannot be ruled out that injuries which have been suffered by Fateh Singh must have been caused by Nathu and Dharam Pal.

14. The third aspect that is being relied upon by the prosecution is extra judicial evidence. No doubt an extrajudicial evidence is a weak type of evidence but it is admissible piece of evidence. This court cannot lose sight of the fact that extrajudicial confession has to be accepted as the same is coming from the mouth of the author of the crime. The counsel for the appellant had the objection to the extra judicial confession by stating that it was a joint one. The argument is not reasonable in the peculiar facts and circumstances of the case. It is allegedly made by Nathu and Dharam Pal. They are closely related with each (other) being father and son. However, either of them can make confession in the presence of each other. There is not an iota of evidence suggesting to the witness that when Nathu was allegedly suffering the extra judicial confession, Dharam Pal was objecting to it or viceversa. In this view of the matter I am not accepting the contention of the learned Counsel for the appellant when he submitted that extra judicial confession is not reliable. The point to be seen is that whether the person before whom extra judicial confession has been made is a person upon whom reliance may be placed or not ? Ajit Singh (PW.10) deposed that on 19.9.1996 he was present at the Pauli of Dewan Singh at about 7/730 P.M. On that day Nathu, Dharam Pal and Sukhbir came there. Ajit Singh is none else but the real brother of Nathu and uncle of Dharam Pal and Sukhbir. Further this witness deposed that the accused stated that they had caused death of Fateh Singh over trifling matter of water course. It has been further confessed by them that they had gone to the fields at about 6 A.M. on 15.9.1986 and had started preparing the water course, that after 30/40 minutes Fateh Singh deceased came and told them not to mend the khal as he had objected to the doing of the same earlier also. It has been further deposed by Ajit Singh that an exchange of hot words took place. Further Chandro and Sukhbir Singh came there and they also advised Fateh Singh and Nathu not to quarrel with each other and after giving the advice they left for their destination. As per the statement of Shri Ajit Singh it has also been confessed by the appellants that they gave injuries with fists and slaps to Fateh Singh and made him to fall. As per confession suffered by the appellants they

were the persons who gave injuries with legs on the chest of the deceased. He was trampled by jumping over his chest. Full marks has to be given to the testimony of Ajit Singh because he is the real brother of Nathu. His relation with Fateh Singh is of the same degree. Further that real sister of the wife of Fateh Singh is also married with Ajit Singh. Learned Counsel for the appellant made an effort to say that implicit reliance should not have been placed upon the testimony of Ajit Singh who has close proximity with the family of Fateh Singh but I am not inclined to accept this contention because Ajit Singh is equally connected with blood with the family of Shri Nathu. Thus it stands proved that Nathu and Dharam Pal suffered extra judicial confession before Ajit Singh. Therefore going of the accused to Ajit Singh is very natural being relation in the family of Fateh Singh also.

15. The next aspect in this case is medical evidence. As per story of the prosecution, Fateh Singh was made to fall and thereafter Dharam Pal sat over the chest of Shri Fateh Singh and he jumped over the chest as a result of which bones of Fateh Singh broke down and he further gave many blows with legs and kicks. This aspect of the case has also been proved by PW.1. Thus the four circumstances on which prosecution relies upon conclusively establish that Nathu and Dharam Pal participated in this occurrence and they are the persons responsible for the unfortunate death of Fateh Singh. At the cost of repetition I may say that the circumstances in this case are strong motive, i.e. the deceased and the accused were last seen quarrelling with each other, and evidence of extra judicial confession and the medical evidence.

16. Last aspect of this case is to be examined by this court whether the trial Court was justified in recording conviction of the appellant under Section 304 Part I of the Indian Penal Code or not ? According to Part I of Section 304 of the Indian Penal Code, whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years and shall also be liable to fine, if the act by which the death is caused with the intention of causing death, or of causing such bodily injury as is likely to cause death. It is the admitted case of the prosecution that neither Nathu nor Dharam Pal was carrying any weapon. Further it is the case of the prosecution that there was exchange of hot words and Nathu and Fateh Singh quarrelled with each other. As per evidence of Sukhbir Singh, Chandro and Ajit Singh also there is no indication that Nathu and his family members wanted to commit murder of Fateh Singh by intentionally causing his death. Even at the spot there is no indication that Nathu and Dharam Pal committed any act with the intention of causing death or that with the intention of causing such bodily injuries as is likely to cause death. In this view of the matter, I am of the opinion that the trial Court was not justified in recording conviction of the appellants under Section 304 Part I of the Indian Penal Code. However act of Nathu and Dharam Pal clearly falls under Section 304 Part II. They had sufficient knowledge that by their act, they were likely to cause death of Fateh Singh. Resultantly I modify the conviction of the appellants from Section

304 Part I to Section 304 Part II of the Indian Penal Code and sentence each one of them to undergo rigorous imprisonment for a period of four years. With the above modification in the matter of sentence, the appeal of Nathu and Dharam Pal fails which is hereby dismissed.