
(2004) 10 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 195-DB of 2003 And Criminal Appeal No. 122-DB of 2003

Roshan Lal and others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 12-10-2004

Acts Referred:

Citation : (2005) 1 RCR(Criminal) 66

Hon'ble Judges : Nirmal Singh, J and H.S.Bedi, J

Advocate : For the Appellants in Cr. A. No. 122-DB of 2003, Mr. R.S. Cheema, Sr. Advocate with Mr. M.J.S. Waraich, Advocate. For the Appellants in Crl A. No. 195-DB of 2003, Mr. V.S. Rathore, Advocate. Mr. Sanjeev Sheokand, A.A.G., Haryana., Advocates for appearing Parties

Judgement

Harjit Singh Bedi, J.

1. 33 accused were sent up for trial in this case of whom 24 were acquitted by the learned trial Court vide its judgment dated 4.1.2003. These two appeals have been filed by the nine accused, who have been convicted under Sections 148, 302/325 read with Section 149 of the Indian Penal Code. The facts insofar as they are relevant to the disposal of these appeals are as under :

2. At about noon time on 28.2.1998 Singh Ram (PW15), his brother Mohinder Singh (PW17) and Amar Singh (since deceased), Singh Ram's brotherinlaw, were working in their fields in village Rampur, when they were attacked by Roshan Singh, Amar Singh son of Data Ram, Ram Singh, Raj Kumar, Suresh Pal, Karnail Singh, appellants, who were armed with gandasis and Barkha Ram and Sawan Ram armed with Lathis as also by the other acquitted accused, also variously armed. Roshan Lal gave a Lalkara that Singh Ram etc. should be taught a lesson for taking possession of Shamlat Deh land and on this Roshan Lal and his sons Karnail Singh, Raj Kumar and Suresh Pal gave gandasi blows on the head of Amar Singh (deceased). Accused Amar Singh son of Data Ram, Mohinder Singh and Ram Singh gave gandasi blows on Singh Ram's head and arm. Barkha

Ram and Sawan Ram also gave gandasi blows to Mohinder Singh whereas the other accused also caused injuries to them with their respective weapons. The occurrence was also witnessed by Balbir Singh (PW10) and several other persons, who arrived at the spot. The injured were thereafter first taken to the hospital at Raipur Rani and then referred to the PGI, Chandigarh wherein Amar Singh succumbed to his injuries on 4.3.1998. In the meanwhile, the statement of Balbir Singh (PW10) had been recorded at 11.30 P.M. on 28.2.1998 in the PGI, Chandigarh by ASI Jagir Singh (PW13) and on its basis the formal FIR registered at Police Station, Raipur Rani at 2.00 A.M. on 1.3.1998 for offences punishable under Sections 323, 324, 148, 149, 506 of the Indian Penal Code. However, on the death of Amar Singh, the main offence was changed to one under Section 302 of the Code. On the completion of the investigation, the case was committed to the Court of Sessions and the charge was ultimately framed by the learned Additional Sessions Judge, Ambala on 16.12.1998. The accused pleaded not guilty and were brought to trial.

3. In support of its case, the prosecution relied inter alia on the evidence of PW1 Dr. Deepali Aggarwal, who had medicolegally examined Mohinder Singh (PW) at 1.45 P.M. on 28.2.1998 and had found six injuries on his person and had also sent Ruqa, Exh. PD, to the police station with respect to the arrival of the injured in the hospital; PW4 Dr. A. Pathak, Additional Professor, Department of Neuro Surgery, PGI, Chandigarh, who deposed that Amar Singh had been admitted to the Emergency, OPD on 28.2.1998 at 10.00 A.M. and his CT scan revealed a large temporo-parietal extradural haematoma, for which he had undergone an operation but he had nevertheless expired on 4.3.1998; PW5 Dr. M.K. Tiwari, Associate Professor, Department of Neurosurgery, PGI, Chandigarh, who had admitted Singh Ram (PW) to the PGI on 28.2.1998 at 2.5 P.M.; PW18 Dr. Shivani Gupta, who had conducted the postmortem examination on the dead body; PW3 ASI Jagir Singh, who had investigated the case upto 4.3.1998 whereafter he had been divested of the charge; PW6 Dr. B.M. Sharma, who had produced the medical records of PWs; PW15 Singh Ram and PW17 Mohinder Singh, both injured witnesses; and PW19 Inspector Ram Kala, who had taken over the investigation from ASI Jagir Singh on 4.3.1998.

4. The prosecution case was then put to the accused and their statements recorded under Sections 313 of the Code of Criminal Procedure. They denied the allegations and pleaded false implication on account of enmity. They also produced several documents in support of their plea.

5. The trial Court held that from the evidence of Singh Ram and Mohinder Singh, it was clear that the injuries had been suffered by Amar Singh (since deceased) and the two witnesses in the manner suggested by the prosecution and that the ocular testimony was fully supported by the medical evidence. The Court further held that as many as 33 persons had been accused of the crime but from the evidence on record, the case against 24 of the accused was doubtful but that against 9 of the accused had been established beyond all reasonable doubt. The

Court also observed that the fact that there was enmity between the parties was clear from the documents, Exh. DX, Ex. DY, Ex. DX and Ex. DAA, which pertained to a dispute pending between them qua some agricultural land, which had resulted in extensive civil and criminal litigations. The Court also observed that though there appeared to be some delay in the lodging of the FIR that would not be fatal to the prosecution story but would put the Court on guard to ensure that the evidence was scrutinised with more than under usual care. The Court accordingly (as mentioned above) held nine of the accused guilty of the offence punishable under Sections 148, 302/325 read with Section 149 of the Indian Penal Code and acquitted the accused for an offence under Sections 447 IPC and 506 IPC but convicted and sentenced them as under :

Under Section Sentence In default of payment of fine

302 read with Section 149 IPC Life imprisonment and a fine of Rs. 10,000/ each
Rigorous imprisonment for one year

325 read with Section 149 IPC Three years rigorous imprisonment and a fine of Rs. 5,000/ each
Rigorous imprisonment for six months

148 IPC One year rigorous imprisonment

6. Two sets of appeals have been filed; Crl. Appeal No. 122DB of 2003 by Amar Singh, Barkha Ram, Ram Singh, Sawan Ram and Mohinder Singh whereas Crl. Appeal No. 195DB of 2003 by Roshan Lal, Raj Kumar, Suresh Pal and Karnail Singh. Both these appeals are being disposed of by this judgment.

7. We have heard Mr. R.S. Cheema, the learned Senior Advocate (with Mr. M.J.S. Waraich, Advocate) appearing for the appellants in appeal No. 122DB of 2003 and Mr. V.S. Rathore, the learned Counsel appearing for the appellants in appeal No. 195DB of 2003.

8. It has been urged by Mr. Cheema that Balbir Singh (PW10) the first informant though clearly related to the complainant party had remained unscathed in the incident and as he was a Government employee and a resident of Village Rampur, his presence at the place of incident during office hours had to be ruled out. He has urged that the trial Court itself had given a positive finding that 24 of 33 accused had been falsely roped in and that this finding had been accepted by the respondent State and as such a clear doubt had been cast on the veracity of the prosecution witnesses. He has further pleaded that as most of the accused appellant had been armed with gandas and no incised injury had been found either on the deceased or the injured witnesses, the prosecution story was clearly falsified and as specific roles had been attributed to each of the appellants, it was clear that atleast some of the appellants had not caused any injury to the deceased or to the witnesses. He has finally submitted that in any case even on the admitted facts, no case of murder was spelt out.

9. Mr. Sanjeev Sheokand, the learned State counsel has, however, urged that the trial Court itself had gone through the exercise of the sifting of the evidence and

as the benefit of doubt had already been given to 24 of the 33 accused and as the prosecution story rested on the evidence of not only Balbir Singh (PW10) but also for two seriously injured witnesses Singh Ram (PW15) and Mohinder Singh (PW17), whose presence at the spot could not be doubted, there was no reason to give any further relief to the appellants.

10. We have considered the arguments advanced by the learned counsel for the parties and have gone through the file carefully.

11. As already mentioned above, the first challenge is to the presence of PW Balbir Singh, the first informant. Balbir Singh stated that he was a resident of village Rampur but employed as a Salesman in the Cooperative Society of Village Badaul and that he had gone to Raipur Rani and while on his way home, had seen the incident. He further gave the motive for the offence, which was that he along with his brothers had purchased some land for which a case was pending in the Court of Naib Tehsildar and that the Naib Tehsildar had also come to the village on 28.2.1998 in that connection. He further stated that as he was a salesman, he kept irregular working hours and he was often on tour in the area of the Society and in that view of the matter, he was not called upon to sign any attendance register in the office and as his work entailed the taking of debtors to the Bank at Raipur Rani, thus, often enabled him to return home for lunch. To our mind, it is, thus, clear that Balbir Singh (PW) has given good reasons for being present at the spot at the relevant time.

14. In any case, Balbir Singh's statement is corroborated by the evidence of the two injured witnesses, Singh Ram and Mohinder Singh. Mr. Cheema has, in this connection, urged that though Singh Ram and Mohinder Singh had been discharged from the PGI a few days after the incident, their statements under Section 161 Cr.P.C. had been recorded on 21.3.1998 and as such no credence could be attached to their testimony. We, however, find absolutely no merit in this plea. The fact that these two witnesses had suffered injuries and that they had been referred by the doctors at the Raipur Rani Hospital to the PGI, Chandigarh has not been disputed. It is also significant that ASI Jagir Singh, who had been incharge of the investigation at the initial stage had been divested of the investigation, which had then been handed over to Inspector Ram Kala (PW19) on 4.3.1998 on which date he had made an attempt to record the statements of the injured witnesses in the PGI but could not do so as they had not been present. To our mind, a reasonable inference can be drawn that ASI Jagir Singh had deliberately tried to sidetrack the investigation with an ulterior motive with the result that the investigation had to be taken away from him.

13. We have also considered Mr. Cheema's argument with regard to the nature of injuries found on the persons of the deceased and the injured witnesses. It is true that as per the evidence, there does not appear to be any incised injury on their persons. Mr. Sheokand has, however, pointed out that it was clear from the evidence of Dr. Shivani Gupta (PW18), who had been a member of the Board, which had conducted the postmortem examination on the dead body, that

several stitched injuries had been noticed on it. To our mind, the presence of stitched wounds would clearly pertain to incised and cutting wounds. Even assuming, however, that there was no incised injury present on the dead body or the injured witnesses, no benefit can be drawn by the defence on that account, as a large number of accused had been involved in the incident and it would have been well nigh impossible for Balbir Singh and for that matter for the two injured witnesses Singh Ram and Mohinder Singh to have noticed with even reasonable precision as to whether the injuries had been caused from the blunt or the sharp side of the gandasi. To our mind, trying to identify each injury given by large number of accused so as to make a castiron case in the FIR is a near impossibility and witnesses, who make such an attempt often falter. Mr. Cheema's reliance on *Dharam Singh and others v. State of Punjab*, 1993 SCC(Crl.) 1059 is, therefore, misplaced as this judgment had been rendered on an over all view of the evidence and not only on the ground that the nature of the injuries found on the deceased or the injured witnesses did not correspond to the weapons of offence that had been used by them.

14. Mr. Cheema has also raised an argument with respect to the role of each of the 9 accused, who are the appellants before us. He has pointed out that there was only one injury on the dead body, four on the person of Singh Ram and 6 on the person of Mohinder Singh. We, however, find from the evidence of Dr. Shivani Gupta that 45 injuries were found on the dead body and not one as contended by Mr. Cheema. It is true that an attempt has been made by the prosecution to attribute specific injuries to the appellants but as already noticed above, to give an exact resume of the injuries and the manner in which they had been caused (where a large number of accused are involved) is clearly impossible and the fate of an appeal in a murder case cannot be left exclusively to the wisdom of the officer, who records the FIR. We are, therefore, of the opinion that in the light of the positive evidence of Balbir Singh and the two injured witnesses, Singh Ram and Mohinder Singh, the involvement of each of the accusedappellants must be held to have been clearly proved.

15. We now deal with Mr. Cheema's argument with regard to the nature of offence. It has been pointed out that there was only one fatal injury found on the dead body which had resulted in a temporoparietal extra dural haemotoma. It has been emphasised that this injury did not involve a fracture and had not been repeated by any of the accused. He has also pleaded that though the injury had been suffered by Amar Singh on 28.2.1998, he had died four days later. He as contended that in this situation, a case under Section 304 Part I IPC was made out and not one under Section 302 IPC as held by the learned trial Court.

16. We find merit in this plea. A bare look at the evidence of Dr. Pathak (PW4), who had treated Amar Singh for his injuries in the PGI, when read with that of Dr. Shivani Gupta, who had conducted the postmortem examination, would reveal that Amar Singh had suffered one fatal injury, which had been caused by the blunt side of the gandasi by Roshan Lal accused and that Amar Singh had

died as a result of the ensuing haemotoma and that there was no fracture of the skull. We also find that the main part in the incident pertaining to the injuries on Amar Singh has been attributed to the four accused Roshan Lal and his sons, namely, Raj Kumar, Suresh Pal and Karnail Singh, who have filed Cr. Appeal No. 195DB of 2003 and only a secondary role with regard to the injuries on the witnesses has been attributed to the other five accused, namely, Amar Singh, Barkha Ram, Ram Singh, Sawan Ram and Mohinder Singh, who have filed CrI. Appeal No. 122DB of 2003.

We, accordingly partly allow the appeals, convert the main offence from 302 IPC to 304 Part I and award a sentence of five years rigorous imprisonment to the appellants in CrI. Appeal No. 122DB of 2003 and seven years rigorous imprisonment to the appellants in CrI. Appeal No. 195DB of 2003. The other part of the sentence shall remain as it is.

Appeals partly allowed.