
(2016) 03 SHI CK 0073
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 238 of 2012

State of Himachal Pradesh

APPELLANT

Vs

Manjeet Singh and Others

RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, Section 313
Penal Code, 1860 (IPC) — Section 300, Section 302, Section 304 (II), Section 304(II),
Section 307, Section 323, Section 34

Citation : (2016) 03 SHI CK 0073

Hon'ble Judges : Rajiv Sharma and Sureshwar Thakur, JJ.

Bench : Division Bench

Advocate : M.A. Khan, Addl. AG, for the Appellant;

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—1. This appeal is instituted at the instance of the State against the judgment and order dated 30.11.2011 and 5.12.2011, respectively, rendered by the learned Sessions Judge, Kullu, H.P. in Sessions Trial No. 13/2010, whereby the respondents-accused (hereinafter referred to as accused), who were charged with and tried for offence punishable under Sections 302, 307, 323 read with Section 34 IPC, have been convicted and sentenced to undergo imprisonment for three years with fine of Rs. 10,000/- each for the offence punishable under Section 304 (II) IPC and in default of payment of fine, they were further ordered to undergo imprisonment for six months. The accused were also sentenced to undergo imprisonment for three years and to pay fine of Rs. 10,000/- each under Section 307 IPC and in default of payment of fine to further undergo simple imprisonment for six months. For the commission of offence under Section 323 IPC, the accused were sentenced to undergo imprisonment for one year and to pay fine of Rs. 1,000/- each and in default of payment of fine, they were further ordered to undergo simple imprisonment for one month. All the sentences were ordered to run concurrently.

2. The case of the prosecution, in a nut shell, is that on 23.11.2009 at 1:30 AM (mid night), an information was received in the Police Station from Medical Officer, Kullu to the effect that a person in injured condition was brought to the hospital. The rapat Ext. PW-4/A was recorded in writing and ASI Rattan Chand alongwith HC Bir Singh reached RH Kullu. The statement of PW-6 Yuv Raj Ext. PW-6/A was recorded under Section 154 Cr.P.C. and sent to Police Station, on the basis of which FIR was registered vide Ext. PW-10/A. According to the averments made in the statement, on 22.11.2009 Lotam Chand, Poshu Ram and Dabe Ram had gone in mundan ceremony of grandson of Bir Singh at Kashladi. After taking meals at 7:30 PM, Lotam Ram and Poshu Ram were having conversation in the courtyard of Mata Chamunda temple situated near house of Bir Singh, who was also present at some distance. In the meantime, accused Manjeet Singh and Garib Chand reached there and started quarrelling with Lotam Chand and Poshu Ram. Accused Manjeet Singh was holding a glass and bottle in his hands and he struck bottle on the head of Lotam Chand. Accused Garib Chand also gave beatings to Poshu Ram and Lotam Chand with danda of "kail". They fell unconscious. When they alongwith Kishan, Nomi Ram and Ganga Ram were shifting injured Lotam Chand and Poshu Ram to the hospital, Lotam Chand died. The dead body of Lotam Chand was left there and Poshu Ram was shifted to hospital. The dead body of deceased was taken into possession and inquest reports Ext. PW-17/C and PW-17/D were prepared and dead body was sent for post mortem examination. PW-16 Sanjeev Chouhan after receipt of the information visited the spot. The accused persons were arrested. Disclosure statements were recorded. Dandas were recovered. Spot map was also prepared. Post mortem report qua Lotam Ram deceased Ext. PW-8/B was obtained. The case property was deposited with MHC. FSL reports Ext. PW-8/C, PW-15/B were obtained and thereafter final opinion Ext. PW-7/A was obtained from the doctor. On completion of the investigation, challan was put up after completing all the codal formalities.

3. The prosecution, in order to prove its case, has examined as many as 18 witnesses. The accused were also examined under Section 313 Cr.P.C. They denied the incriminating circumstances put to them. The learned trial Court convicted the accused, as noticed hereinabove. Hence, this appeal.

4. Mr. M.A. Khan, Addl. Advocate General, appearing on behalf of the State, has vehemently argued that the prosecution has proved the case against the accused under Section 302 IPC. He also contended that the sentences imposed under Section 307, 304 (II) and 323 IPC are also inadequate.

5. We have heard learned counsel appearing for the State and gone through the judgment and records of the case carefully.

6. PW-1 Nomi Ram testified that the accused who was in custody disclosed during investigation to the police that he has kept concealed the bottle by which he inflicted injuries to deceased Lotam Chand in the bushes in village Kashladi near Mata Chamunda temple. He also disclosed that the fact is only in his

knowledge and he could get the same recovered. Chaman Lal son of Bhagat Ram was also with him. The statement was recorded vide Ext. PW-1/A. He signed the same. Manjeet Singh also signed the memo. In pursuance to the disclosure statement PW-1/A accused Manjeet Singh took the police party and got recovered the bottle which was concealed in the bushes behind Mata Chamunda temple. The same was taken into possession vide memo Ext. PW-1/B. In his cross-examination he deposed that he came to the Police Station alongwith complainant Yuv Raj. He also admitted that accused Manjeet got recovered broken pieces of bottle and not unbroken bottle. The accused got recovered 10-12 broken pieces of bottle in pursuance to the disclosure statement.

7. PW-2 Tara Chand deposed that the accused Garib Chand made a disclosure statement that he has concealed a small piece of wooden danda at Kashladi near water tank in the bushes and this fact was in his knowledge only. He could get recover the same. His statement was recorded vide memo Ext. PW-2/A. Similarly, accused Dharam Chand made disclosure statement to the police disclosing therein that he has concealed piece of wooden danda (Fari Lakri danda) at a place known as Kashladi near the temple in the bushes which fact was known to him only and could get the same recovered. The statement was recorded vide Ext. PW-2/B. In pursuance to the disclosure statements, the recoveries were made. The recovered wooden dandas were taken into possession vide memos Ext. PW-2/C and PW-2/D. In his cross-examination, he admitted that the temple in village Kashladi there is foot path. Adjoining to foot path, there are agricultural fields. He was not aware of the owners of those fields.

8. PW-4 HC Ram Krishan deposed that the case property was deposited with him. The case property which was deposited with him was sent to RH Kullu as well as FSL, Junga.

9. PW-6 Yuv Raj is the material witness. He testified that deceased Lotam Chand was his real brother. On 22.11.2009, he alongwith deceased Lotam Chand, Poshu Ram and Dhabe Ram had gone in mundan sanskar ceremony of grandson of Bir Singh at village Kashladi. At 7:30 PM, they took meals. At that time, his brother deceased Lotam Chand and Poshu Ram were talking with each other in the courtyard of Mata Chamunda temple. He was present at some distance from them. In the meantime, accused Manjeet Singh, Garib Chand who are residents of village Shahita came. He had seen both these persons quarrelling with his brother deceased Lotam Chand and Poshu Ram injured. Manjeet was holding a bottle in his hand with which he hit on the head of his younger brother Lotam Ram. Garib Dass gave beatings to both Lotam Chand and Poshu Ram with danda of Kail and they became unconscious. At that time, Krishan Chand, Ganga Ram and Nomi Ram were with him. When they were lifting Lotam Chand and Poshu Ram in injured condition to hospital at Kullu, at some distance Lotam Chand died. He was left there on the way and Poshu Ram was hospitalized. His statement was recorded under Section 154 Cr.P.C. vide Ext. PW-6/A. He identified dandas Ext. P-4, P-6 and pieces of bottle Ext. P-2. In his cross-

examination he deposed that he had seen deceased Lotam Chand and Poshu Ram from a distance of 12-15 feet. Dhabe Ram was also sitting with him. Besides 30-35 other persons were also in the temple yard. Four persons had come to attack his brother and Poshu Ram and the moment they came they pounced upon his brother and Poshu Ram. Accused Manjeet Singh gave bottle blow on the head of his brother Lotam Ram. His brother had sustained injuries on ear but could not tell it was right or left ear. He admitted about the old enmity with accused Manjeet Singh. In his cross-examination by the Advocate appearing on behalf of accused Garib Chand, he deposed that when Garib Chand gave danda blow to his brother, he ran towards him to rescue him but he ran away. In his cross-examination by the Advocate appearing on behalf of accused Dharam Chand, he deposed that Poshu Ram regained consciousness after 15 days, again deposed that after 15-20 days. Poshu Ram was first taken to PGI and thereafter he was sent back to Kullu hospital. In his cross-examination by the Advocate appearing on behalf of accused Heera Lal PW-6 Yuv Raj deposed that deceased Lotam Chand was sitting on western side. When the police came to the spot on 23.11.2009, people from village had gathered there. The police did not inquire from them. He could not tell the size of the stone with which Heera Lal hit his brother. He denied the suggestion that Heera Lal was not present on the spot.

10. PW-7 Dr. Akshat Chandel has examined Poshu Ram and proved MLC Ext. PW-7/A. he noticed following 7 injuries on his person:

"1. Bruise was present over base of neck right side 2 x 2 cm in size and was reddish in colour.

2. Bruise was present over left side of chest below axilla 3 x 3 cm in size reddish brown with underlying swelling present;

3. Bruise was present over left side of back 10 cms above anterior superior iliac spine reddish in colour 2 x 1 cm in size.

4. Bruise over right side of back just above anterior superior iliac spine reddish in colour 2 x 2 cm in size.

5. Bruise was present over left arm above the elbow 2 x 1 cm reddish brown in colour.

6. Bruise was present over left forearm 10 cms above wrist volar aspect reddish in colour 2 x 1 cm in size.

7. Swelling was present on left side of skull above parietal region 3 x 3 cm. No discoloration of over lying skin. Fluctuation was present. No bleeding from the site was present. There was no active bleeding from any side."

He advised X-ray chest, posterior anterior view and x-ray skull anterior posterior lateral view. On receipt of chest x-ray report, x-ray was within normal limits whereas x-ray skull showed fracture parietal region right side. On the basis of these reports, he opined that the injury No. 7 was grievous and dangerous to

life. Kind of weapon used was blunt. Duration of injuries was 6 to 12 hours. He also referred the patient to IGMCM Shimla for further management. In his final opinion, injuries No. 1 to 7 could have been caused by weapon in parcel 8 & 9.

11. PW-8 Dr. Palzore has conducted the post mortem examination on the dead body. He noticed following injuries on the dead body:

"Injuries:

(i) During the post mortem examination, we noticed multiple abrasions on right zygomatic area and right forehead, which were ante mortem in nature;

(ii) A lacerated wound of about 3 cm in size was over right upper eye-lid, which was also ante mortem in nature.

(iii) There was dark brown red blood oozing out of both nostrils, no mark and ligature dissection on or around the neck was seen."

After opening the skull, we noticed a large haematoma present on the parietal occipital region. No fracture of skull or vertebra was seen. There was dark brown blood and haematoma below the right parietal occipital region."

In his opinion, the person died due to head injury leading to brain hemorrhage and shock. The probable time that elapsed between injuries and death was within 1 to 2 hours and between death and post mortem was within 34 hours. The post mortem report is Ext. PW-8/B.

13. PW-11 Poshu Ram is the injured witness. He deposed that he alongwith Yuv Raj, Dhabe Ram and deceased Lotam Chand had gone to attend the mundane ceremony of grandson of Bir Singh. At about 7:30 PM, he alongwith deceased Lotam Chand after having dinner were sitting in the courtyard. The meal was served in the courtyard of Mata Chamunda temple. The people left the spot after taking meals. Some of them were present on the spot. The accused Manjeet Singh alias Manu, Garib Chand, Dharam Chand and Heera Lal were also present on the spot. He had gone to purchase biscuit from a shop at a distance of about 60-70 meters. When he came back, he noticed that deceased Lotam Chand was being mercilessly beaten by the accused. Accused Manjeet Singh was carrying bottle, Dharam Chand and Garib Chand were carrying fuel wood sticks of Kail wood and Heera Lal was having a stone. When he tried to rescue Lotam Chand, the accused persons also attacked him. The deceased was lying unconscious after the beatings given by the accused persons with the bottle, fuel wood sticks and stone. He also fell unconscious after the attack by the accused persons. After hearing noise, the villages came on the spot and he was shifted to the hospital. He regained consciousness after about one month. Deceased died on the spot due to beatings given by the accused persons. He remained admitted in Kullu Valley Hospital, PGI Chandigarh and thereafter in District Hospital Kullu for treatment. He identified broken pieces of bottle taken out from parcel Ext. P-1, fuel wood sticks Ext. P-4 and P-6. In his cross-examination by the Advocate appearing on behalf of accused Manjeet, he admitted that he could not tell about

the cause of dispute since he had gone to buy biscuits. In his cross-examination by the Advocate appearing on behalf of accused Garib Chand he could not tell the exact date when he regained consciousness, however, he remained unconscious for one month. Perhaps, he regained consciousness in the month of December. In his cross-examination by the Advocate appearing on behalf of accused Heera Lal he deposed that accused Heera Lal gave beatings to the deceased with the help of stone weighing approximately 5 to 7 kgs. He and deceased Lotam Chand had sustained injuries with stone.

14. PW-12 Dhabe Ram testified that he had gone to attend mundan ceremony of grandson of Bir Singh. Accused persons had also come to attend the function. He and Yuv Raj were sitting in the courtyard of Mata Chamunda temple. After taking meals, people had gone to their houses. At about 7:30 PM, deceased Lotam Chand and Poshu Ram had some arguments over a point with accused persons. Accused Dharam Chand was having fuel wood stick, accused Heera Lal was having stone and accused Manjeet was having glass bottle. There was commotion on the spot. Deceased Lotam Chand and Poshu fell unconscious. They were shifted to the hospital. In his cross-examination by the Advocate appearing on behalf of accused Manjeet, he admitted that Manjeet was carrying empty bottle in his hand which was not broken at the relevant time. He admitted that pieces like Ext. P-2 are easily available everywhere. In his cross-examination by the Advocate appearing on behalf of accused Garib Chand he deposed that distance between Kashladi and Talpini is about 1 1/2 to 2 kms. He reached the house of Bir Singh at about 8 or 9:00 AM. He did not know the mode as to how Lotam Chand was shifted to hospital since he had left for his house. In his cross-examination by the Advocate appearing on behalf of accused Dharam Chand he could not tell the exact date when his statement was recorded by the police. In his cross-examination by the Advocate appearing on behalf of accused Heera Lal, he could not tell the injuries sustained by deceased Lotam Chand because he had not seen these injuries. However, blood was oozing out from the nose of deceased Lotam Chand. He could not tell the injuries sustained by Poshu Ram injured.

15. PW-13 Dr. M.K. Kapoor examined x-ray films Ext. PW-13/A-1 to PW-13/A-3. He noticed fracture of skull in the left parietal region as per report Ext. PW-13/B.

16. PW-16 Dr. Lalit Bhardwaj deposed that the patient Poshu Ram was admitted on 24.11.2009 at about 8:45 AM in emergency Neuro Surgery of PGI, Chandigarh. The patient was referred from IGMC with alleged history of assault on 21.11.2009 near Kullu H.P. The patient had history of loss of consciousness. As per the clinical report and CT findings, injuries were grievous in nature. He issued MLC Ext. PW-16/A. The injuries sustained by him were possible with Ext. P-4 and P-6.

17. PW 17 Prem Dass deposed that on 23.11.2009 the case file was handed over to him by ASI Rattan Chand for investigation. He visited the spot and prepared the spot map Ext. PW-17/A. Photographs were also taken. Inquest reports were

prepared. The dead body was taken to RH Kullu for post mortem. Thereafter, the statements of the witnesses were recorded as per their versions. Accused made disclosure statements, on the basis of which recoveries were effected. In his cross-examination by the learned Advocate appearing on behalf of accused Manjeet, he admitted that the bottle was broken in Malkhana and during transportation. The statements of other villagers present on the spot was not recorded. Neither Pradhan nor Panch or Lambardar were called to the spot as witnesses of recoveries. In his cross-examination by the learned Advocate appearing on behalf of accused Heera Lal, he admitted that he did not remember as to how many injuries were sustained by the deceased and injured. He has not obtained opinion qua injuries from the doctor.

18. PW-18 Dr. P.L. Thakur deposed that Poshu Ram was admitted in the hospital on 23.11.2009 and referred to PGI Chandigarh and he was again re-admitted on 26.11.2009. The patient was under treatment in PGI Chandigarh and discharged on 5.12.2009.

19. What emerges from the evidence discussed hereinabove is that Lotam Chand deceased and injured Poshu Ram were sitting in the courtyard. The accused Manjeet Singh was carrying the bottle and glass in his hands. He hit Lotam Chand deceased with the bottle. Other accused gave beatings to Lotam Chand deceased and injured Poshu Ram with dandas and stone. The pieces of broken glasses Ext. P-2 and dandas Ext. P-4 and P-6 were recovered. Lotam Chand deceased died while being carried to the hospital. Injured Poshu Ram was taken to hospital. Inquest papers were prepared by PW-17 SHO Prem Dass. The post mortem of the dead body was also got conducted from the Medical Officer.

20. According to PW-8 Dr. Paljore, the probable time that elapsed between injuries and death was within 1 to 2 hours and between death and post mortem was within 34 hours. The person died due to head injury leading to brain hemorrhage and shock. The post mortem report issued is Ext. PW-8/B. Injured Poshu Ram has received seven injuries as per the statement of PW-7 Dr. Akshit Chandel. PW-11 injured Poshu Ram was also admitted in PGI Chandigarh. PW-16 Dr. Lalit Bhardwaj has examined him. He has issued MLC summary vide Ext. PW-16/A. There was fracture of skull in the left parietal region and injury No. 7 was found to be grievous in nature and dangerous to life.

21. The accused along with victims i.e. deceased Lotam Chand and injured Poshu Ram were present in the courtyard. There was neither pre-meditation nor common intention to kill deceased Lotam Chand. Lotam Chand deceased and Poshu Ram injured were sitting in the courtyard when according to the prosecution accused Manjeet hit the deceased with bottle and other accused gave beatings to the deceased and injured with sticks and stone. It is not the case of the prosecution that accused were seen carrying any sticks in their hands when they were coming to courtyard. Sticks were of fuel wood. According to PW-11 injured Poshu Ram, he and Lotam Chand deceased received injuries with stone. He did not remember the exact part of the body where injuries were

sustained by him and Lotam Chand deceased with stone. PW-11 Poshu Ram is the injured witness. In his cross-examination, he admitted that he could not tell the cause of dispute since he had gone to buy biscuits. The police has neither associated Pradhan nor Up-Pradhan or Lambardar as independent witnesses at the time of recoveries made at the instance of the accused.

22. Their lordships of the Hon^{ble} Supreme Court in the case of Nankaunoo v. State of Uttar Pradesh, reported in , (2016) 3 SCC 317, have explained the difference between "intention" and "knowledge" and have held that knowledge is bare awareness and not the same thing as intention and such consequences shall ensue. As compared to "knowledge", "intention" requires something more than the mere foresight of the consequences, namely, the purposeful doing a thing to achieve a particular end. Their lordships have held as follows:

"11. Intention is different from motive. It is the intention with which the act is done that makes a difference in arriving at a conclusion whether the offence is culpable homicide or murder. The third clause of Section 300 IPC consists of two parts. Under the first part it must be proved that there was an intention to inflict the injury that is present and under the second part it must be proved that the injury was sufficient in the ordinary course of nature to cause death. Considering the clause thirdly of Section 300 IPC and reiterating the principles in Virsa Singh's case, in Jai Prakash v. State (Delhi Administration) , (1991) 2 SCC 32, para (12), this Court held as under:--

"Referring to these observations, Division Bench of this Court in Jagrup Singh case, , (1981) 3 SCC 616 observed thus: (SCC p. 620, para 7) "These observations of Vivian Bose, J. have become locus classicus. The test laid down in Virsa Singh case, , AIR 1958 SC 465 for the applicability of Clause Thirdly is now ingrained in our legal system and has become part of the rule of law. The Division Bench also further held that the decision in Virsa Singh case , AIR 1958 SC 465 has throughout been followed as laying down the guiding principles. In both these cases it is clearly laid down that the prosecution must prove

- (1) that the body injury is present,
- (2) that the injury is sufficient in the ordinary course of nature to cause death,
- (3) that the accused intended to inflict that particular injury that is to say it was not accidental or unintentional or that some other kind of injury was intended. In other words Clause

Thirdly consists of two parts. The first part is that there was an intention to inflict the injury that is found to be present and the second part that the said injury is sufficient to cause death in the ordinary course of nature. Under the first part the prosecution has to prove from the given facts and circumstances that the intention of the accused was to cause that particular injury. Whereas the second part whether it was sufficient to cause death is an objective enquiry and it is a matter of inference or deduction from the particulars of the injury.

The language of Clause Thirdly of Section 300 speaks of intention at two places and in each the sequence is to be established by the prosecution before the case can fall in that clause. The "intention" and "knowledge" of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances.

The framers of the Code designedly used the words "intention" and "knowledge" and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue.

Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to "knowledge", "intention" requires something more than the mere foresight of the consequences, namely the purposeful doing of a thing to achieve a particular end."

23. In the instant case, Ext. P-2 is the broken pieces of bottle. PW-17 SHO Prem Dass, in his cross-examination, has categorically admitted that the bottle got broken in malkhana and during transportation. However, surprisingly, no DDR to this effect was lodged. The incident has taken place due to spur of moment in the compound of Chamunda Devi temple. Thus, it cannot be said that the accused persons had committed offence under Section 302 IPC read with Section 34 IPC. They had no intention to cause the death of Lotam Chand deceased. However, they had the knowledge that the injuries were likely to cause his death. It is, in these circumstances, the accused were convicted under Section 304(II) of the IPC instead of Sections 302 IPC.

24. The learned trial Court, taking into consideration the age of the accused has rightly sentenced the accused, as noticed hereinabove, for committing offence under Section 304 (II) IPC and Sections 307 and 323 IPC read with Section 34 IPC. Thus, there is no occasion for us to interfere with the well reasoned judgment and order of the learned trial Court dated 30.11.2011 and 5.12.2011, respectively.

25. Accordingly, there is no merit in this appeal and the same is dismissed.