

Punjab-Haryana High Court

Dharambir And Others vs State Of Haryana on 13 July, 2012

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.-D-931-DB of 2006

.....

Date of decision:13.7.2012

Dharambir and others

...Appellants

v.

State of Haryana

...Respondent

....

Coram: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Rajeshwar Singh, Advocate for the appellants.

Mr. Sukhwinder Singh Nara, Senior Deputy Advocate General,
Haryana for the respondent-State.

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Inderjit Singh, J.

Appellants-Dharambir son of Suraj Bhan, Mange Ram son of Lehri and Krishan Kumar son of Mange Ram have filed this appeal against the judgment dated 21.11.2006 passed by the learned Additional Sessions Judge, Rewari whereby appellant-Dharambir has been held guilty for the commission of offence punishable under Section 325 of the Indian Penal Code ('IPC' - for short), appellant-Mange Ram for the offence under Section 323 IPC and appellant-Krishan Kumar for the offence under Section 302 IPC. By a subsequent order dated 23.11.2006, appellant Dharambir has been sentenced to undergo rigorous imprisonment for two years and to pay a Cr. Appeal No.D-931-DB of 2006 [2] fine of `2,000/- for the offence under Section 325 IPC and in default of payment of fine, he was ordered to further undergo rigorous imprisonment for two months. Appellant-Mange Ram has been sentenced to undergo rigorous imprisonment for one year for the offence under Section 323 IPC. Appellant-Krishan Kumar has been sentenced to undergo rigorous imprisonment for life and to pay a fine of `5,000/- for the commission of offence punishable under Section 302 IPC and in default of payment of fine, he was ordered to further undergo rigorous imprisonment for six months.

The brief facts of the prosecution case are that FIR was registered on the basis of application (Ex.PA) given by Puran Singh- complainant to HC Bijender Singh (PW-15) at 2.15 a.m. on 11.5.2005 in which he stated that on previous night Banwara ceremonies regarding the marriage of Sandeep and Amardeep sons of Tek Chand were being solemnized. At about 11.30 p.m., when Banwara ceremonies were reached near the house of Rajbir, then in that Banwara ceremony, the complainant, his son Dharmender and his wife Shanti and other persons of village were present. Accused Dharambir abused his son Dharmender, upon which Dharmender asked Dharambir as to why he was abusing him. On this Dharambir became furious. Krishan son of Mange Ram having a 'Lathi', Mange Ram son of Lehri having a rod, Devender son of Mange Ram having a rod and Dharambir son of Suraj Bhan having a rod came at the spot. Devender inflicted a rod blow on the head of Dharmender, Krishan inflicted a 'Lathi' blow on the head of Dharmender. Dharmender fell down there. His wife Shanti fell on him in order to save him. Thereafter, Mange Ram inflicted a 'Lathi' blow on the head of Shanti and Dharambir inflicted a Cr. Appeal No.D-931-DB of 2006 [3] rod blow on the finger of the right hand of Shanti. Mange Ram and Dharambir also inflicted 'Lathi' and rod blows on the body of Dharmender and also inflicted injuries with fist and kick blows. On hearing noise of quarrel, Rajbir son of Suraj Bhan and Phool Singh son of Ram Sarup and the complainant rescued them otherwise they might have inflicted some more injuries. The accused attempted to murder his son Dharmender and his wife Shanti and the assailants had threatened them with dire consequences. Thereafter, they brought the injured to CHC, Bawal.

HC Bijender Singh (PW-15) on receiving MLR No.72 of injured Dharmender and Shanti from CHC, Bawal accompanied by Police staff reached at CHC, Bawal where Puran Singh met him and handed over him application. The writing was sent to the Police Station, on the basis of which the FIR was registered. In the hospital, Dr. J.S. Mehra, Medical Officer, CHC, Bawal, medico-legally examined Dharmender on 11.5.2005 and found that one lacerated wound was present on the left lateral aspect of temporal parietal skull bone. It was skin deep and clotted blood was present over the wound as well as clothes. He had advised X-ray of the above said injury. The injury was caused by blunt weapon and duration was within two to four hours. Ex.PR was the original MLR which bears his signatures.

On the same day, Dr. J.S. Mehra medico-legally examined Shanti Devi wife of Puran Singh at about 12.40 a.m. and found following injuries on her person:-

"1. One lacerated wound was present over the tip of right middle finger. The size was 2.5/1.5 cm. I had advised X-ray on the above said injury. Injury was caused by blunt weapon and Cr. Appeal No.D-931-DB of 2006 [4] duration was within 2 to 4 hours.

2. She was having complaint of pain over frontal aspect of skull area. I had advised X-ray. Injury was caused by blunt, duration was within 2 to 4 hours. Ex.PS is the original MLR which bears my signature. I had also sent ruqa Ex.PT and request of Police is Ex.PT/1 regarding fitness of the injured to make statement."

Dharmender was referred from CHC, Bawal to Safdarjang Hospital, Delhi for further treatment. However, on the way near Gurgaon, he succumbed to injuries. Thereafter, Puran Singh-complainant

again returned to Civil Hospital, Bawal along with the dead body of his son, where post- mortem on the dead body was conducted and dead body was handed over to him on the same day i.e. 11.5.2005. Post-mortem was conducted by Dr. Kamal Mehra along with Dr. J.S. Mehra. In the opinion of the doctors, the cause of death in this case was injuries as described above which are ante- mortem in nature and sufficient to cause death in ordinary course of nature. Duration elapsed between injury and death was approximately 12 to 14 hours and between death and post-mortem examination was 6 to 24 hours approximately.

On receiving information regarding death of Dharmender, SI Mohammad Jamal, CIA, Dharuhera reached CHC, Bawal and proceedings under Section 174 Cr.P.C. were prepared which are Ex.PQ. He recorded the statements of the witnesses. Clothes of the deceased and blood stains were produced by Sumer Singh, which were taken into possession vide memo Ex.PO. Photographs of the dead body were taken. On 12.5.2005, accused Cr. Appeal No.D-931-DB of 2006 [5] Dharambir was arrested and he suffered disclosure statement Ex.PC and pursuant to that disclosure statement, he got recovered an iron rod Ex.P1 from his residential house and the same was taken in possession vide Memo Ex.PD. Site plan Ex.P.18/A in respect of the place of recovery was prepared. On 14.5.2005, accused Mange Ram was arrested and he suffered disclosure statement Ex.PK and pursuant to that statement, he got recovered a 'Lathi' Ex.P3 from his residential house and the same was taken in possession vide memo Ex.PL. Site plan Ex.P.18/B qua the place of recovery was prepared. On 16.5.2005, accused Krishan was arrested and he suffered disclosure statement Ex.PW.17/A and pursuant to that disclosure statement, he got recovered a 'Lathi' Ex.P.4 from his residential house and the same was taken in possession vide memo Ex.PW.17/B. Site plan Ex.PW.18/C qua the place of recovery was prepared. On 24.5.2005, accused Devender was arrested and he suffered disclosure statement Ex.PE and pursuant to that disclosure statement, he got recovered an iron rod Ex.P.2 from his residential house and the same was taken in possession vide memo Ex.PF. Site plan Ex.PW.18/D qua the place of recovery was prepared. Statements of witnesses were recorded on 2.6.2005. He moved an application to Medical Officer, CHC, Bawal for obtaining opinion regarding injury on the person of Shanti and the doctor concerned given his opinion which is Ex.PV.I.

After necessary investigation, challan was presented. After presentation of challan, the trial Court finding prima facie charges against the accused under Sections 302, 323, 325, 506 and 34 IPC framed charges to which the accused pleaded not guilty and claimed trial.

Cr. Appeal No.D-931-DB of 2006 [6] In support of its case, the prosecution examined PW-1 Puran Singh, who is complainant and father of the deceased and is eye witness to the occurrence. He deposed as per the prosecution version. In the chief- examination, he stated that accused Dharambir abused his son Dharmender and he was asked to mend his way. Thereafter, all the accused present in the Court returned to their houses and after about five minutes they returned to the same place. PW-2 Shanti Devi is the mother of the deceased and also injured witness and eye witness to the occurrence. She also deposed as per prosecution version. PW-3 Phool Singh is an eye witness to the occurrence and deposed regarding the occurrence. PW-4 SI Om Parkash is a formal witness who mainly prepared the report under Section 173 Cr.P.C. PW-5 HC Rajpal and PW-6 ASI Om Parkash tendered into evidence their affidavits Ex.PG and Ex.PH. PW-7 ASI Parkash Chand mainly deposed regarding partial investigation. PW-8 ASI Hawa Singh deposed regarding partial investigation.

PW-9 HC Vijender Kumar mainly deposed regarding the disclosure statement of accused Mange Ram and recovery of 'Lathi'. PW-10 ASI Sumer Singh deposed regarding recording of FIR. He also deposed regarding lifting of blood stained earth from the spot and taking photographs etc. and recording the statements of witnesses. PW-11 Dr. Kamal Mehra deposed regarding the post-mortem conducted on the dead body of Dharmender. PW-12 Dr. J.S. Mehra deposed regarding medico- legal examination of Dharmender and Shanti Devi. PW-13 Puran Chand is the photographer, who had taken the photographs Exs.P. 7 to P.10 and whose negatives are Exs.P.11 to P.14. PW-14 Constable Dalip Singh has mainly deposed regarding delivery of special report to Illaqa Magistrate at Cr. Appeal No.D-931-DB of 2006 [7] his residence which was delivered. PW-15 HC Bijender Singh deposed regarding his initial visit to CHC, Bawal on 11.5.2005. PW-16 Constable Dharampal, draftsman mainly deposed regarding preparing of scaled site plan. PW-17 HC Brij Parkash deposed regarding the disclosure statement and recovery pursuant to that disclosure statement of accused Krishan. PW- 18 SI Mohammad Jamal is the Investigating Officer.

At the close of the prosecution evidence accused were examined under Section 313 Cr.P.C. and were confronted with the evidence of the prosecution. Accused denied the correctness of the evidence and pleaded themselves as innocent and had stated that they have been falsely implicated in this case. In defence accused examined DW-1 Rajbir, who was prosecution witness but was not examined by the prosecution. He was examined by the accused. He mainly deposed that on 10.5.2005 at about 11.30 p.m. he was participating in the ceremonies known as Banjara ceremony of the sons of Tek Chand. At that time, some guests of Tek Chand were taking liquor on the door-step of the house of Dharambir accused. Dharambir asked them to go to some other place as female folks are coming out of his house. Rajbir also went there, so an altercation took place between him and Dharambir and in between Dharmender son of Puran Singh (since deceased) also came there and in the meanwhile one among the persons, who were taking liquor, also got furious and wanted to hit Dharambir on the head but Dharmender above mentioned came in between and that 'Lathi' blow landed on his head. On getting information about this incident, Smt. Shanti also arrived there and in the stampede she fell down. Phool Singh son of Ram Sarup, Puran son of Ram Sarup and Shanti wife of Cr. Appeal No.D-931-DB of 2006 [8] Puran were not present at the time of occurrence. He took Dharmender to hospital where Dharmender narrated above incident to the doctor and the Police officials at CHC, Bawal in his presence.

From the evidence on record, the learned trial Court convicted the three accused i.e. Dharambir, Mange Ram and Krishan for the offences as mentioned above and acquitted accused Devender.

We have heard learned counsel for the parties and with their assistance have gone through the record.

The learned counsel for the appellants contended that the version of the prosecution cannot be believed as eye witnesses are deposing regarding two injuries whereas as per doctor there is only one injury on the head of deceased Dharmender. Secondly, he argued that the witnesses were not present on the spot and were deposing falsely and the accused have been falsely implicated in the present case. The true version is given by DW-1 Rajbir, who has seen the occurrence and whose presence is admitted by all the eye witnesses. Therefore, he argued that some unknown person gave

the injury with `Lathi' on the head of Dharmender and the accused should be acquitted accordingly. The learned counsel for the appellants in the alternative further contended that the present case does not fall under Section 302 IPC as there was a sudden fight. There was no motive of the accused to cause any injury and only `Lathi' was used which is not a deadly weapon and there was only one injury on the head of the deceased. Therefore, he argued that the case falls under Section 304, Part-II, IPC. He also argued that the witnesses are not trust worthy and are unreliable, therefore, the accused should be acquitted accordingly.

Cr. Appeal No.D-931-DB of 2006 [9] On the other hand, learned Senior Deputy Advocate General, Haryana, appearing for the State argued that case of the prosecution has been duly proved by the PWs. There is eye witness in the present case who has deposed consistently regarding the occurrence. Shanti Devi eye witness has also received injuries including grievous injury. Therefore, her presence on the spot cannot be doubted. Similarly, the other witnesses were also present on the spot and were attending Banwara ceremony. He argued that accused has been rightly convicted and the appeal should be dismissed.

As regarding the first contention, we find that though the eye witnesses have deposed that accused Devender present in the Court inflicted an iron rod on the head of Dharmender and accused Krishan inflicted a `Lathi' blow on the head of Dharmender but as per medical evidence there is only one injury on the head of the deceased. PW-11 Dr. Kamal Mehra, who was a member of the team, who conducted the post-mortem, in his cross- examination has stated that it was a case of single injury. PW-12 Dr. J.S. Mehra also found only one injury on the person of Dharmender, which was caused by blunt weapon. Even if it is taken that the PWs have deposed regarding two injuries given on the head of deceased by the accused but even one injury has been admitted by DW-1 which the injured has received on the head by way of `Lathi'. It is the duty of the Court to separate the grain from the chaff. The Court is to reach the truth by scrutinizing the evidence cautiously and carefully. On the basis of this discrepancy, the accused cannot be acquitted. The place of occurrence, the time, date and presence of accused Dharambir at least is even admitted by DW-1 which has been examined by the accused which means that on 10th May 2005 at about Cr. Appeal No.D-931-DB of 2006 [10] 11.30 p.m. Banwara ceremony regarding the marriage of sons of Tek Chand was taking place. Deceased Dharmender was present. Accused Dharambir was present there and an altercation took place and Dharmender (deceased) received injury on his head by way of `Lathi' which fact is also supported and corroborated by PW-1 to PW-3. The trial Court has already given the benefit regarding the second injury as deposed by PW-1 to PW-3 to Devender accused and he has already been acquitted. Therefore, on the ground that the PWs deposed regarding two injuries and in the medical report there is only one injury, the case of the prosecution cannot be thrown away.

As regarding second contention, a perusal of the evidence on record no where shows that the eye witnesses PW-1 to PW-3 were not present on the spot. All the three PWs have consistently deposed regarding the occurrence. There are no material contradictions nor material improvements in their version which may go to the root of the case. The occurrence is of 11.30 p.m. and the injured Dharmender and his mother Shanti Devi were immediately shifted to hospital and as per Dr. J.S. Mehra PW-12, Shanti Devi was medico-legally examined at 12.40 a.m. and injured was examined prior to that which means that there was no delay in reaching the hospital and in their medico-legal

examination. The application Ex.PA was given at 2.15 a.m. at the earliest and the FIR was registered immediately which means that the FIR is prompt one and there is no unnecessary delay and it cannot be held that a false story has been concocted. Otherwise also, the defence version that the accused have been falsely implicated in the present case cannot be believed. There were so Cr. Appeal No.D-931-DB of 2006 [11] many persons present on the spot participating in the Banwara ceremony. Further we find that there is no reason or ground why the actual culprits will be left and these accused persons are falsely implicated in this case. As already discussed, as there is no motive to falsely implicate the accused, therefore, defence version that some unknown persons caused injury on the head of the deceased, cannot be believed. Again Shanti Devi also received two injuries on her person out of which one is grievous caused by Dharambir and the other was simple injury caused by Mange Ram. She was also medico-legally examined at the earliest at night time and her presence in no way can be doubted on the spot. As all the PWs have deposed regarding the 'Lathi' blow on the head of Dharmender (deceased) and DW-1 also deposed regarding receiving of 'Lathi' blow by Dharmender on head, therefore, the learned trial Court has correctly reached at a conclusion that Krishan Kumar, who was armed with a 'Lathi' has given the 'Lathi' blow on the head of the deceased. As per Investigating Officer, Krishan Kumar has also got recovered 'Lathi' as per his disclosure statement which also supports and corroborates the prosecution version.

As regarding the next argument of the learned counsel for the appellants that the witnesses are not trust-worthy and are unreliable, we find that there is nothing on the record to show that the witnesses are not trust-worthy or are unreliable. As already discussed, the PWs have deposed consistently regarding the prosecution version and as they were attending the marriage ceremony along with so many other persons, therefore, in no way their presence on the spot can be doubted. The fact that they are relatives of the deceased is no ground to discard their testimony.

Cr. Appeal No.D-931-DB of 2006 [12] As regarding the next contention that the case does not fall under Section 302 IPC, rather, it falls under Section 304, Part II, IPC, we find merit in the argument of the learned counsel for the appellants. As per evidence it was a sudden fight. There was no earlier meeting of mind of the accused to cause the injuries. There was also no motive to cause the injuries. There is only one blow given by the accused. Blows are not repeated. The blow was given by 'Lathi' which is a blunt weapon. Even PW-3 Phool Singh in his cross-examination stated that there was no grudge between the complainant and the accused party. This fact also shows that there was no earlier motive of any type to cause injuries and in a sudden fight a 'Lathi' blow was given to the deceased which means that there was no intention to cause the death of Dharmender by accused Krishan Kumar. Therefore, this case falls under Section 304, Part II, IPC and not under Section 302 IPC.

From the evidence of eye witnesses PW-1 to PW-3 and the medical evidence and from the statement of Investigating Officer it is duly proved that Dharambir accused gave grievous injury with blunt weapon to Shanti Devi and Mange Ram also gave simple injury to Shanti Devi and Krishan Kumar gave a 'Lathi' blow on the head of Dharmender (deceased). The witnesses are trust worthy and reliable witnesses. There is no motive to falsely implicate the accused. The defence version that unknown persons gave the 'Lathi' blow cannot be believed. Presence of witnesses specially of Shanti Devi, who also received injuries, cannot be doubted. The time and place of occurrence is even

admitted by DW-1. The version of DW-1 that some unknown persons gave the `Lathi' blow cannot be believed.

Cr. Appeal No.D-931-DB of 2006 [13] Therefore, from the above discussion, we uphold the conviction of Dharambir under Section 325 IPC, Mange Ram under Section 323 IPC. As regarding accused Krishan Kumar, he has been found guilty under Section 304, Part-II, IPC and his conviction is held under Section 304, Part- II, IPC instead of under Section 302 IPC.

With the above modification in conviction of accused Krishan Kumar from under Section 302 IPC to Section 304, Part-II, IPC, the judgment of conviction of the learned trial Court is upheld. As regarding the sentences, Dharambir accused has been sentenced to under rigorous imprisonment for two years. It has been argued that he has already undergone about one year and seven months of sentence. His sentence is modified to already undergone. The accused Mange Ram was sentenced by the learned trial Court to undergo rigorous imprisonment for one year and it has been argued by the counsel for the appellants that he has already undergone this sentence. As regarding accused Krishan Kumar, keeping in view the facts and circumstances of the present case, he is sentenced to undergo rigorous imprisonment for eight years and the sentence regarding the fine is upheld.

The sentence of imprisonment of appellant No.3-Krishan Kumar was suspended vide order dated 12.1.2011 passed by this Court and he was released on bail during the pendency of the appeal. As he is on bail, his bail/surety bonds stand cancelled. Appellant No.3-Krishan Kumar is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

Cr. Appeal No.D-931-DB of 2006 [14] With the above modification, the appeal is disposed of.

(Satish Kumar Mittal)
Judge

(Inderjit Singh)
Judge

July 13, 2012.

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