

(2010) 04 P&H CK 0108

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Babba Masih and Others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: April 28, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 300, 302, 304, 323, 324

Hon'ble Judges: Jaswant Singh, J; Hemant Gupta, J

Bench: Division Bench

Judgement

Hemant Gupta, J.

Sarvshri Bau Masih, aged about 84 years and his two sons namely Jagga Masih, aged about 40 years and Babba Masih, aged about 28 years, are in appeal against the judgment dated 17.4.2007 passed by the learned Sessions Judge, Gurdaspur vide which the appellants were convicted for the offences punishable under Sections 302/323/324/34 IPC and sentenced to undergo for varying terms as mentioned in the order of sentence.

2. Sardar Masih a neighbourer of the appellants is the deceased. The prosecution case was set in motion on the statement of Reeta wife of Rakesh and daughter-in-law of Sardar Masih, Ex.PE made to the Inspector Baldev Singh, SHO, P.S. Dorangla on 18.12.2005 at about 9.30 PM. As per her statement, Sajan son of her Jeth namely Bhilli i.e. elder brother of Rakesh, aged about 12/13 years was playing cricket outside with the son of Jagga Masih son of Bau Masih. Sajan came home weeping on account of beating by grand-son of Bau Masih. At that time, her father-in-law Sardar Masih and mother-in-law Mukhtiaran were present in the house. Sardar Masih complained to Bau Masih about the beatings to his grand son and came back. At about 7.30 PM, when electric bulbs outside two rooms of their house were on, Bau Masih armed with Dang, Jagga Masih armed with datar and Babba Masih armed with Chhavi (a sharp edged weapon measuring 3 1/4 having a blade of 7 8 cm) came to the courtyard of their house raising lalkara and

started abusing. Sardar Maish, her father-in-law went ahead to stop them. But Bau Masih gave dang blow on his head. Jagga Masih gave datar blow to her father-in-law, who raised his right hand to ward off the blow and the same hit in between the first finger and thumb. Sardar Masih, her father-in-law fell down on the ground. She went ahead to save her father-in-law, but Babba Masih gave Chhavi blow to her, hitting on the inner side of wrist of her right hand. Thereafter, she and her mother-in-law Mukhtiaran raised alarm. The accused ran away from the spot along with their respective weapons. After some time, her father-in-law Sardar Masih succumbed to the injuries. Information about the incident was given to Shri Ajaib Singh, Sarpanch of the village, who informed the Police. The police came at the spot and recorded her statement. On the basis of ruqa sent by Inspector Baldev Singh, FIR Ex.PE/1 was registered at 10.00 PM. The special report was received by the learned Magistrate at 3.15 AM on 19.12.2005.

3. The post-mortem examination on the dead body of the deceased was conducted by Dr. Manwinder Singh Walia (PW-8) on 19.12.2005 at 12.50 PM. He has found 8 cm x 6 cm dark brown bruise on the right parietal region of the scalp and also an incised wound 7 cm x 1.5 cm in the webbing between index finger and thumb of the right hand. The cause of death was injury on the vital organ i.e. brain. The probable duration of injuries and death was immediate and between death and postmortem was within 24 hours. On the same day i.e. 19.12.2005, Dr. Manoj Gupta (PW-1) medico-legally examined Reeta at about 1.50 PM. He has noticed complaints of pain in the left lower leg and in right shoulder joint. He also noticed reddish wound 1 cm x 1.5 cm with irregular skin margins with loss of skin in this area. Clotted blood was also present. The wound was on right forearm lower part on plexor surface. Injuries No. 1 and 2 were kept under observation, whereas injury No. 3 was declared simple in nature. The duration of the injuries was within 12 to 24 hours.

4. Apart from the aforesaid medical evidence, the prosecution has also examined PW-4 Reeta-complainant, PW-5 Mukhtiaran and PW-9 Inspector Baldev Singh, the Investigating Officer. The prosecution also examined other witness to complete the chain of events. The learned trial Court after considering the evidence on record, found the appellants guilty for the offences punishable under Sections 302/323/324/34 IPC as detailed in the order and sentenced them for varying terms.

5. Before this Court, learned Counsel for the appellants has vehemently argued that PW-4 Reeta in her cross-examination has not supported the prosecution case. She was medico-legally examined after 18 hours of the alleged occurrence and as per the testimony of PW-1 Dr. Manoj Gupta, the injuries suffered by PW-4 Reeta can be self-inflicted. It is, thus, argued that the prosecution case is based upon unreliable and untrustworthy evidence and, therefore, the conviction of the appellants is not justified. It is also argued that PW-8 Dr. Manwinder Singh Walia has deposed in his cross-examination that the injury on the head of the deceased could be caused by fall and, therefore, the prosecution has failed to prove the charges against the

appellants beyond a reasonable doubt. Lastly, in the alternative, it is argued that it is a case of sudden fight on a trivial dispute between the children while playing cricket. There is no history of previous enmity. The appellants are neighbour of the deceased. There was no premeditated mind to cause injuries of a nature to cause death of Sardar Masih. Thus, it is a case where the conviction for an offence punishable u/s 302 IPC is not sustainable, but it can be said to be at best a case of conviction for an offence punishable under Second part of Section 304 IPC.

6. PW-4 Reeta in her examination-in-chief has whole-heartedly supported the prosecution story as given by her in her statement Ex.PE recorded soon after the incident. However, when she was recalled for cross-examination on a deferred date, she did not support the prosecution case. It appears that she has been won over by the accused. However, PW-5 Mukhtiaran, wife of Sardar Masih in her evidence has supported the prosecution case in its entirety. She was one of the eye-witness stated to be present at the spot in the statement Ex.PE. She has also deposed that she was present at the spot, when Bau Masih armed with Dang, Jagga Masih armed with datar and Babba Masih armed with Chhavi came to their house and raised lalkaras that Sardar Masih is to be eliminated. She has deposed in respect of inflicting of dang blow by Bau Masih on the head of Sardar Masih, datar blow by Jagga Masih on the right hand of the deceased and also the Chhavi blow by Babba Masih on the right hand of her daughter-in-law Reeta (PW-4). Her testimony has not been shattered in the cross-examination in any manner. The testimony of PW-5 Mukhtiaran in respect of injuries suffered by the deceased and Reeta is corroborated by the medical evidence i.e. evidence of PW-8 Dr. Manwinder Singh Walia and PW-1 Dr. Manoj Gupta.

7. In view of the above, we found that the prosecution has been able to prove inflicting of injuries by the appellants on the person of Sardar Masih, deceased and that of Reeta on 18.12.2005 at about 7.30 PM beyond any shadow of doubt.

8. However, the question required to be examined is whether the causing of such injuries on the person of the deceased and that of PW-4 Reeta, was on account of any pre-meditated mind or are result of anger and provocation on account of fight between the children while playing cricket in the street. No doubt, the appellants Jagga Masih and Babba Masih came to the house of the deceased armed with sharp edged weapons, but Bau Masih was armed with Dang. Such visit seems to be actuated by anger on account of earlier visit of Sardar Masih to their house to lodge a protest in respect of fight of children. Though the appellants were armed, but each of the accused is attributed only one single blow. Though, Jagga Masih and Babba Masih, appellants are armed with sharp edged weapons, but such weapons have caused simple injuries and that too on the non-vital parts. It explains the intention of the appellants was not to cause death. Appellant Bau Masih has given dang blow on the head of the deceased. Dang is not such a weapon which is not available easily. It is commonly found in rural areas. Therefore, dang blow on the head of the

deceased can be said to be with the knowledge of causing death, but was not intended to cause death.

9. We find that there was no pre-meditated mind to cause death of Sardar Masih. The conviction of all the appellants u/s 34 is, thus, set aside. Therefore, the role of each of the appellants is to be examined in causing injuries on the person of the deceased and to that of PW-4 Reeta.

10. Bau Masih has caused single dang blow on the head of the deceased. It is a case of sudden provocation without any pre-meditated mind and, thus, falls within Exception 4 of Section 300 of the Indian Penal Code, punishable u/s 304 Part-II of the Code. We modify his conviction to that u/s 304 Part-II by setting aside the conviction u/s 302 IPC. As per the learned Counsel for the appellants, Bau Masih is in custody since 20.12.2005 i.e. for more than 4 years and 4 months. In view of the said fact, Bau Masih is sentenced to undergo to that already undergone by him. However, he is liable to pay a fine of Rs. 25,000/-, which shall be payable as compensation to the wife of the deceased.

11. Appellants Jagga Masih and Babba Masih have caused simple injuries on the non-vital parts of the deceased and to witness PW-4 Reeta, but with a sharp edged weapon. Since the offence u/s 34 IPC is not made out, therefore, keeping in view the injuries attributed to them, their conviction for an offence u/s 302 IPC is not sustainable. Consequently, the same is set aside. However, they are convicted for an offence u/s 324 IPC for causing injuries with sharp edged weapon to the deceased and to the injured respectively.

12. Appellant Jagga Masih is in custody since 20.12.2005, whereas Babba Masih was admitted to bail on 6.11.2008. He was on bail during trial as well. He has undergone about 2 years and 2 months of imprisonment. In view of the said fact, Jagga Masih is sentenced to that already undergone with a fine of Rs. 25,000/- which shall be payable as compensation to the wife of the deceased, whereas Babba Masih is sentenced to that already undergone by him with a fine of Rs. 50,000/-, which shall be payable as compensation to the wife of the deceased. Babba Masih is being directed to pay more fine in view of the fact that his period of imprisonment is less than the other two accused. In default of payment of fine by Babba Masih within a period of three months, he shall undergo further rigorous imprisonment for a period of two years. Appellants Bau Masih and Jagga Masih shall be set at liberty on deposit of fine. In case, appellants Bau Masih and Jagga Masih failed to deposit the fine of Rs. 25000/- each, they shall undergo further rigorous imprisonment for a period of 6 months.

13. The appeal stands disposed of accordingly.