

(2007) 08 P&H CK 0169

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 165-DB of 1998

Sannu alias Raju

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision: Aug. 2, 2007

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 304, 307, 34

Citation: (2007) 4 RCR(Criminal) 152

Hon'ble Judges: Mehtab S. Gill, J; A.N. Jindal, J

Bench: Division Bench

Advocate: Sanjeev Gupta in Criminal Appeal No. 165-DB-1998 and Mr. S.S. Bahl in Criminal Appeal No. 336-DB-1998, for the Appellant; Kulvir Narwal, A.A.G. Haryana, for the Respondent

Final Decision: Dismissed

Judgement

Mehtab S. Gill, J.

This is an appeal against the judgment/order dated 17.2.1998/19.2.1998 of the Additional Sessions Judge, Ambala, whereby he convicted Sannu alias Raju son of Hans Raj and Chhotu alias Pardeep son of Kali Dass under Sections 302/34 IPC and sentenced them to undergo life imprisonment. They were directed to pay a fine of Rs. 1,000/-, in default of payment of fine to further undergo one year R.I. Both were also convicted under Sections 307/34 IPC and sentenced to undergo seven years R.I. and to pay a fine of Rs. 500/-. In default of payment of fine to further undergo R.I. for six months. Sentences were ordered to run concurrently.

2. We will be deciding Criminal Appeal No. 165-DB of 1998 and Criminal Appeal No. 336-DB of 1998 by a common judgment, as they arise out of the same judgment/order of the learned Additional Sessions Judge, Ambala.

3. The case of the prosecution is unfolded by the statement Ex.PN of Manish given to Darshan Pal Singh S.I. at P.G.I., Chandigarh on 11.3.1997 at 4.20 p.m.

4. Manish stated, that he worked as a tailor with his father Ramesh Kumar. On 10.3.1997 at 10.00 p.m., his father Ramesh Kumar, Sannu son of Hans Raj, Chhotu son of Kali Dass and Ravinder were playing cards in a room in front of J.K. Automobiles. Hari Kishan son of Sham Lal Sharma came to the house of Manish and told him, that his father had won in gambling from Sannu, Chhotu and Ravinder. Sannu and others were quarreling with him. Manish along with Hari Kishan went to the room. They saw a Sabbal (Iron rod) in the hand of Sannu, while Chhotu and Ravinder had bricks in their hands. Sannu gave a blow with the Sabbal on the head of his father and stated, that he had taught him a lesson for winning in gambling. Ravinder and Chhotu started throwing bricks, which hit on the face of his father Ramesh Kumar. Hari Kishan stepped forward to rescue Ramesh Kumar. All three of them, then started giving blows to Manish with bricks and Sabbal. Hari Kishan separated them. Hari Kishan and some other persons from the locality got Ramesh Kumar admitted in Civil Hospital, Ambala Cantt. He was referred to P.G.I., Chandigarh, but he expired on the way.

5. On the basis of this statement, FIR Ex.PN/1 was recorded on 11.3.1997 at 6.20 p.m. and the special report reached the J.M.I.C., Ambala at 10.00 p.m. on the same day.

6. The prosecution to prove its case brought into the witness box Dr. Deepak Tyagi PW1, Dr. S.K. Gupta PW2, Dr. P.K. Nigam PW3, Constable Surjit Singh PW4, Constable Ram Saran PW5, HC Suresh Pal PW6, Constable Om Parkash PW7, Amarjit Singh PW8, ASI Dharam Pal PW9, Manish Kumar PW10, HC Malkiat Singh PW11 and Darshan Pal Singh SI PW12.

7. Learned Counsel for the Appellants has argued, that the place of occurrence was in the area where residential houses and shops were situated. No independent witness from the locality was produced. The only witness Manish Kumar PW10 was produced and the other eye witnesses were given up, not for the reasons that they were not ready to depose and had been won over by the accused, but they would have given the truthful version that Appellants were not the ones who committed the murder of Ramesh Kumar. It cannot be overlooked, that Appellant Sannu alias Raju also received injuries, which have not been explained by the prosecution. The genesis of the occurrence has been suppressed.

8. Learned Counsel has further argued, that even if we take the prosecution case as it is, it is still a case of sudden quarrel and fight. There was no intention or motive on the part of the Appellants to commit the murder of Ramesh Kumar. At the most, the Appellants can be found guilty for culpable homicide not amounting to murder.

9. Learned Counsel for the State has argued, that the promptness with which the FIR was recorded, itself is going a long way in proving the case of the prosecution. Manish Kumar PW10 is an injured eye witness, who was present at the time of occurrence and has fully supported the case of the prosecution. He (PW10) was

examined by Dr. P.K. Nigam PW3, who found several injuries on his person. Amarjit Singh PW8, an independent witness, is a witness to the recovery of Sabbal Ex.P1 and brick Ex.P2.

10. We have heard the learned Counsel for the parties and perused the record with their assistance.

11. Occurrence in this case had taken place on 10.3.1997 at 10.00 p.m. near Cecil Hotel Ambala Cantt. Statement Ex.PN of Manish Kumar PW10 was recorded by SI Darshan Pal Singh PW12 at P.G.I., Chandigarh; on the basis of which FIR Ex.PN/1 was recorded on 11.3.1997 at 6.20 p.m. at Police Station Ambala Cantt. and the special report reached the J.M.I.C., Ambala on the same day at 10.00 p.m.

12. Manish Kumar PW10 is an eye witness to the occurrence, who received a number of injuries. He has stated in his testimony before the Court, that on 10.3.1997 he was present in the premises of Cecil Hotel Ambala Cantt. Hari Kishan came to him at about 9.30/9.45 p.m. and told him, that there was a quarrel of his father with some persons. Manish Kumar PW10 came out of his house and opposite J.K. Automobile, he saw Appellant Sannu alias Raju armed with a Sabbal and Appellant Chhotu alias Pardeep with a brick in his hand. Sannu gave a Sabbal blow to his father, on the left side of his face. Appellant Chhotu gave 4/5 brick blows to his father. Both the Appellants stated, that he (Ramesh Kumar deceased) would be taught a lesson for winning in gambling. When Manish Kumar PW10 tried to intervene, Appellant Sannu gave a Sabbal blow on the right side of his face. Appellant Chhotu gave brick blows on the head of Manish Kumar PW10.

13. Occurrence had taken place at about 200 yards from the house of Manish Kumar PW10. Dr. P.K. Nigam PW3 examined Manish Kumar PW10 on 10.3.1997 at 11.35 p.m. and found the following injuries on his person:

1. A lacerated wound 2 cm x 1 cm x bone deep was present on right parietal region of scalp. There was diffuse swelling around and fresh bleeding was present. Surgeon opinion and x-ray was advised.

2. A lacerated wound 1.5 cm x 0.5 cm x bone deep was present on prominence of right cheek. There was diffuse swelling and fresh bleeding was present. X-ray and surgeon opinion was advised.

3. A lacerated wound 1.3 cm x 0.5 x bone deep was present on right cheek situated 1.2 cm above injury No. 2. Diffuse swelling was present and fresh bleeding was present. X-ray and surgeon opinion was advised.

4. There was diffused swelling both eye lids and there was profused bleeding from both nostrils and mouth. Patient was referred to PGI Chandigarh for management.

He (PW3) opined, that probable duration of the injuries was within 6 hours. Further he has stated, that possibility of Manish Kumar PW10 suffering from the injuries

with Sabbal Ex.P1 and brick Ex.P2 cannot be ruled out.

14. Dr. P.K. Nigam PW3 also stated, that on 12.3.1997 at 4.10 p.m., he examined Appellant Sannu alias Raju and found the following injuries on his person:

1. A lacerated wound 2 cm x 0.5 cm x 0.5 cm present on right parietal region of scalp touching the midline. It was covered with dark colour hard blood clot which on removal there was slight oozing of blood tinged fluid. There was no swelling around. X-ray was advised.

2. A lacerated wound 1.2 x 0.2 x 0.5 cm present on right parietal region of scalp situated 1.5 cm posterolateral to injury No. 1. It was covered with dark colour hard clot which on removal there was slight oozing of blood tinged fluid. There was no swelling around. X-ray was advised.

3. An abrasion 1.5 cm x 0.5 cm present on left parietal region of scalp situated 6.5 cm from mid line. It was covered with dark red hard clot which on removal there was oozing of blood tinged fluid. There was no swelling around. X-ray was advised.

15. Dr. S.K. Gupta PW2, who prepared the postmortem report of the dead body of Ramesh Kumar, has stated that the possibility of the injury being suffered by the deceased by Sabbal Ex.P1 and brick Ex.P2, cannot be ruled out.

16. Taking into consideration the totality of the circumstances and the statements of the prosecution witnesses coupled with the injuries on the person of Appellant Sannu alias Raju, it is clear that a quarrel erupted between the Appellants and deceased Ramesh Kumar, when they were playing cards and gambling. In the heat of the moment, Appellants Sannu alias Raju and Chhotu alias Pardeep inflicted injuries on the person of Ramesh Kumar, which led to his death. There was no intention on the part of the Appellants, nor was there any motive on the part of the Appellants to take the life of Ramesh Kumar. The quarrel erupted at the spur of the moment.

17. As per the discussions and observations made above, conviction of Appellants Sannu alias Raju and Chhotu alias Pardeep is modified to that u/s 304 Part II and both are sentenced to undergo six years R.I. Fine shall remain intact.

18. With the above modification in conviction and sentence, CrI. Appeal No. 165-DB of 1998 filed by Appellant Sannu alias Raju and CrI. Appeal No. 336-DB of 1998 filed by Appellant Chhotu alias Pardeep are dismissed.