

(2007) 04 P&H CK 0131

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 492-SB of 1994

Ujagar Mal alias Jaggar Mal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: April 17, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 148, 149, 302, 304, 309

Hon'ble Judges: Tej Pratap Singh Mann, J

Bench: Single Bench

Advocate: B.S. Sodhi, for the Appellant; Ravinder Kaur Nihalsinghwala, D.A.G. Punjab, for the Respondent

Final Decision: Dismissed

Judgement

T.P.S. Mann, J.

The Appellant along with five others was tried by Additional Sessions Judge, Jalandhar for offences under Sections 309/149/148 IPC. Vide judgment and order dated 27.8.1994, learned trial Court acquitted the five co-accused of the Appellant of all the charges against them. Even the Appellant was acquitted u/s 302 IPC and after holding him guilty u/s 304 Part-II IPC, the said Court sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 2000/-. In default of payment of fine, he was directed to undergo further rigorous imprisonment for six months.

2. The occurrence had taken place on 10.9.1992 at 8.30 PM, wherein Smt. Swami received injuries. FIR was lodged on the basis of statement made by complainant Ram. He alleged that he had five brothers and one sister. He was working as a Watchman in Nawanshahar Sugar Mill earlier, but for the last six months he was out of service. His parents Sardara Ram and Swami shifted to Nawanshahar about sixteen years earlier. Family of Kartar Ram Bazigar was also residing at

Nawanshahar. About thirteen years ago, the complainant and the accused partitioned their areas of business. In spite of the same, Kartar Singh used to perform gymnastic tricks in the area of the complainant, as a result thereof, there used to remain dispute between them.

3. On the date of the occurrence, Balbir Singh son of Hari Ram, Bazigar, brought another Balbir Singh of Village Salarpur and both of them took liquor. The cot of said Balbir Singh was spread in the street. This was objected to by Ujaggar Mal-accused. A dispute arose, in which Balbir Singh Bazigar abused Ujaggar Mal. This brought Joga Singh-complainant, his brother Joginder Ram and their mother Swami to the said place. Ujaggar Mal was saying that in case Balbir Singh had given a cot to a stranger, he should also allow his cot to remain there. On this Darshan Ram caught hold of Swami from her long hairs. Ujaggar Mal-accused was armed with a kassi, while Babbi (alias Gurjit Lal) accused was carrying a dang. Both of them caused injuries with their respective weapons on the head of Swami. The kassi was used by Ujaggar Mal from its reverse side in inflicting the injuries. The other accused hurled brick bats on the complainant party.

4. After the occurrence, all the accused ran away from the spot. Swami was removed in an injured condition to Civil Hospital, Nawanshahar, where she died. During the investigation of the case, ASI Swami Singh arrested all the accused on 23.9.1992. Dang and kassi were got recovered by Babbi alias Gurjit Lal-accused and Ujaggar Mal-accused respectively in pursuance of their disclosure statements.

5. After completion of the investigation, challan was presented in the Court. All the accused were charged for the offences, as mentioned above, to which they pleaded not guilty and claimed trial.

6. In support of its case, the prosecution examined Joginder Singh PW-1 and Gian Singh PW-2. Both of them deposed about the ocular account. Joga Ram, who had lodged the FIR was given up as unnecessary, being of unsound mind. The medical evidence was brought on record through the testimony of Dr. Baldev Singh Dehal PW-3, who deposed about the post mortem examination conducted on the dead body of Swami on 11.9.1992 at 2.30 PM. He found the following injuries on her person:

After skull hairs were clean shaven, there was one depressed bruise over right frontal parietal region, red in colour and was 5.5 cms x 3 cms, surrounding the depressed bruise was swelling all over the left and right frontal region, and over both the temporal regions, anteriorly 1 cm above the supra orbital margin, posteriorly up to the level of anterior and superior part of both ears. Deeper dissection revealed the extravasation of blood in the inner surface of scalp layers. There was fracture of right parietal and frontal bones into pieces. Underlying brain matter was damaged and large haematoma was present over the right frontal and parietal lobes of brain. Meninges of the brain were also ruptured.

7. The death was declared to be on account of the head injury, which was ante-mortem in nature and caused by blunt weapon. The same was sufficient to cause death in the ordinary course of nature. Dr. J.S. Gujral PW-4 deposed about the x-ray examination of the Appellant, but he found no bony injury, as per his report Ex. PW-4/1. The investigation of the case was testified to by ASI Jiwan Kumar PW-5 and ASI Swam Singh PW-6. Scaled site plan Ex. PW-7/1 was prepared by Madan Lal PW-7.

8. When examined u/s 313 Cr.P.C, all the accused denied the prosecution allegations and pleaded false implication. Ujagar Mal-Appellant stated that on 10.9.1992 at about 9.00 PM, Balbir Singh of his locality and his friend, whose name he did not remember were raising cat calls in front of his house. On his objection, they started throwing brick bats on him and entered his house. Smt. Swami, who is related to Balbir Singh intervened and she received brick bat injuries in this incident at the hands of Balbir Singh. He also received injuries and got himself admitted Civil Hospital, Nawanshahar. He also made statement before the police, but the police did not take any action in the matter.

9. The trial Court believed the prosecution case, regarding infliction or kassi blow from its reverse side by the Appellant on the head of Swami, which resulted in her death. However, the participation of Babbi alias Gurjit Lal- accused was not believed, as there was no other injury on the person of Swami, which could be attributed to him. Finding that there was no brick bat injury on the complainant party, the trial Court also doubted the involvement of Darshan Ram, Kala son of Darshan Ram, Kala son of Amar Chand and Narinder- accused in the occurrence. Resultantly, the five co-accused of the Appellant were acquitted of the charges against them. The Appellant was held guilty only u/s 304 Part-11 IPC, as the occurrence was found to be at the spur of the moment, where altercation was. going on and the Appellant gave an injury with the knowledge that it was likely to cause the death Swami in ordinary course of nature, but he had no intention that the injury, which he actually inflicted would prove fatal. Hence, the present appeal.

10. I have heard the learned Counsel for the parties and gone through the evidence brought on record.

11. Joginder Singh P.W.4 and Gian Singh P.W.2 stated in their respective testimonies before the trial Court that it was the Appellant, who had used the kassi from its reverse side in inflicting an injury on the head of Swami. This injury was found on the dead body of Swami, when it was subjected to autopsy by Dr Baldev Singh Dehal P.W.3. The injury was declared sufficient to cause death in the ordinary course of nature. Probable time that elapsed between the injury and death was 3 to 5 hours. There was no previous enmity between the parties, from which it could be inferred that the Appellant intentionally caused an injury on the head of Swami. The occurrence started when one Balbir Singh Bazigar brought another Balbir Singh of Village Salarpur and both of them took liquor. Thereafter, the cot of said Balbir

Singh was spread in the street, which was objected to by the Appellant. The commotion which resulted there from brought Joga Ram-complainant, his brother Joginder Ram and his mother Swami to the spot. Smt. Swami had not provided any cause to the accused for being attacked at. There was some altercation going on at the spot. During the melee, Swami received an injury from the reverse side of kassi, which was wielded by the Appellant. Qua the infliction of injury on Swami, it was clearly a case of sudden occurrence. The Appellant had not repeated the blow. Under these circumstances, the trial Court was justified in acquitting the other accused of the charges against them and even acquitting the Appellant u/s 302 IPC and instead, convicting him u/s 304 Part-II IPC.

12. Coming to the question of sentence, it is pertinent to observe that the occurrence had taken place on 10.9.1992. The occurrence had taken place all of sudden. Only one blow was found to have been given by the Appellant. The Appellant had been facing the agony of criminal prosecution for the last about 15 years. He was arrested on 23.9.1992. He remained in custody throughout the trial of the case. He was granted the concession of bail by this Court on 1.11.1994. It is, thus, apparent that the Appellant served a period of more than two years and one month before he was released on bail. After passage of such a long time, it would be a futile exercise to send the Appellant once again behind the bars to serve the unexpired portion of his sentence. Ends of justice would be amply met by reducing the sentence to that already undergone by him. Resultantly, the conviction of the Appellant u/s 304 Part-II IPC is maintained. The sentence of imprisonment imposed upon him by the trial Court is reduced to that already undergone by him. The fine along with its default clause, as ordered by the trial Court, is maintained.

Except for modification in the sentence, as indicated above, the present appeal fails and is, accordingly, dismissed.