

(2009) 12 P&H CK 0154

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 6-DB of 2008 and Criminal Appeal No. 209-DB of 2008

Satish Kumar

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Dec. 9, 2009

Acts Referred:

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

Citation: (2009) 32 CriminalCC 429

Hon'ble Judges: Ram Chand Gupta, J; Mehtab S. Gill, J

Bench: Division Bench

Advocate: Vikrant Rakra, in Criminal Appeal No. 6-DB of 2008 and Mr. Kuldeep S. Sandhu, in Criminal Appeal No. 209-DB of 2008, for the Appellant; S.S. Gill, AAG, Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Ram Chand Gupta, J.

Both the above-mentioned appeals, i.e., Criminal Appeal Nos.6-DB and 209-DB of 2008 are being disposed of by this common judgment as they have arisen out of one judgment of conviction and order of sentence dated 29.11.2007 passed by the Court of Additional Sessions Judge, Ludhiana, vide which appellant-accused Billu was convicted for offence u/s 302 of the Indian Penal Code (for short "IPC") and appellants-accused Chalitar Sada and Satish Kumar were convicted for offence u/s 302 read with Section 34 IPC and all the three appellants-accused sentenced to undergo imprisonment for life and to pay fine of Rs.2000/- each, and in default of payment of fine to further undergo rigorous imprisonment for six months.

2. Briefly stated, the case of the prosecution, as unfolded by complainant Chand Kishore in his statement Ex.PG, got recorded with Balwinder Singh, SI/SHO of Police Station Sarabha Nagar, Ludhiana, on 26.01.2003, when he was present at bridge canal of Village Sunet, Ferozepur road in connection with special nakabandi, runs as

under:

3. Chand Kishore, complainant, used to reside near Gurudwara Sahib Haibowal Khurd, Ludhiana alongwith his cousin Sanjay. Billu son of Vasudev accused is a building contractor. Complainant alongwith his cousin Sanjay used to work under Billu Contractor. On 25.01.2003 at about 8.30 P.M., Chand Kishore alongwith Sanjay and Dalip had gone to Billu for taking remuneration of the work done by them, however, Billu refused to pay the amount. Billu used to reside in a hut situated near Mazar of Baba Sunet Ali, near Punjab Agricultural University. Billu instead of making payment took out a burning wooden log and gave blow on the head of Sanjay. Satish Kumar and Chalitar Sada were also present in the hut, at that time. Satish Kumar caught the complainant from the neck and Chalitar Sada abused him and raised lalkara that Sanjay be killed and he should be taught a lesson for demanding money. Sanjay fell on the ground after being hit on the head. Complainant and his companions raised alarm and thereafter all the accused ran away from the spot. Sanjay was taken to their house. He was taken to 2-3 hospitals, however, he was not admitted. Thereafter, he was taken to Civil Hospital, Ludhiana. However, on 26.01.2003 he succumbed to injuries.

4. Balwinder Singh, SI made his endorsement Ex.PG1 on statement Ex.PG, and sent the same to the police station for registration of the case, on the basis of which formal FIR Ex.PG2 was recorded for offence u/s 302 read with Section 34 IPC. He prepared inquest report on the dead body of Sanjay and got conducted the post mortem examination on the same. He also visited the place of occurrence and prepared the rough site plan Ex.PW7B at the instance of Chand Kishore, complainant. He had also taken into possession the clothes being worn by the deceased after post mortem examination.

5. The accused were arrested by the Investigating Officer on 28.01.2003 on the identification of Chand Kishore. He recovered one half burnt wooden log as per disclosure statement of accused-Billu and the same was taken into possession.

6. Statements of witnesses were recorded and after completion of the investigation, report u/s 173 of the Code of Criminal Procedure (for short "Cr.P.C.") was filed against all the three accused in the Court of Illaqa Magistrate, who committed the case for trial to the Court of Sessions.

7. Learned trial Court charged all the three accused for offence punishable u/s 302 read with Section 34 IPC, to which they did not plead guilty and claimed trial.

8. In order to prove the allegation against the accused, the prosecution has examined as many as 8 witnesses.

9. PW1 is Dr.Sanjeev Hans, who conducted the post mortem examination on the dead body of Sanjay on 27.01.2003 at 2.00 P.M. and found the following injuries on his person:

1. A black left eye with sub conjunctival haemorrhage.

2. A defuse swelling 3" x 3" present in left temporal area, (seen on shaving of hair).

10. He further deposed that on exploration of skull he found clotted blood in the left temporal parietal area and on removal of clot he found fracture of temporal bone extending upto parietal area obliquely, linear about 3-3/4" in length and there was a big haematoma on the left side of cranial cavity and also found laceration and congestion of membranes and brain matter. He opined that cause of death in this case was shock and haemorrhage and injury to vital organ, i.e., brain due to head injury, which was sufficient to cause death in he ordinary course of nature. He has proved carbon copy of post mortem report as Ex.PA and pictorial diagram as Ex.PA1.

11. PW2 is Dr.U.S.Sooch, the then Medical Officer, Civil Hospital, Ludhiana, who medico legally examined Sanjay on 26.01.2003 at 10.00 P.M. and found the following injury on his person:-

Alleged history of blow on the head yesterday evening the left eye was blackened and pupil was dilated. The injury was referred to surgical specialist for expert opinion. X-ray and C.T. Scan of the head was also advised.

12. Dr.U.S.Sooch kept the injury under observation and opined that duration of injury was 12 hours and was caused with blunt weapon. He has proved copy of medico legal report as Ex.PC and pictorial diagram as Ex.PC1.

13. PW3 is Mohinder Singh, ASI, who was deputed by Balwinder Singh, SI, for getting the postmortem examination done on the dead body of Sanjay.

14. PW4 is Harsukhdevpal, Constable, in whose presence half burnt piece of wooden log Ex.P4 was got recovered by accused Billu, which was taken into possession vide recovery memo Ex.PE1.

15. PW5 is Ram Saran, Constable, who prepared scaled site plan Ex.PF of the place of occurrence at the instance of Chand Kishore.

16. PW6 is Chand Kishore, complainant, who proved his statement Ex.PG, on the basis of which the present case was registered.

17. PW7 is Balwinder Singh, SI, who investigated this case after recording statement of the complainant.

18. PW8 is Dalip Kumar, another eye-witness of the occurrence, who corroborated the version of complainant Chand Kishore.

19. Statements of accused u/s 313 Cr.P.C. were recorded in which they denied all the incriminating evidence coming against them and claimed to be innocent.

20. Accused Billu contended that deceased never worked under him as Mason and that he never caused injury to him. Accused Chalitar Sada has also taken the similar

plea. Accused Satish Kumar took the plea that he has been falsely implicated in this case due to suspicion and that he never worked with accused Billu contractor and that he was not present at the time of alleged occurrence as he was working with one Brajesh Kumar Mason alongwith his brother Vinod. He has further taken the plea that on 25.01.2003 at about 8.30 P.M., he alongwith Brajesh Kumar, Sunil Kumar, Vinod Kumar and Kishan Sagar was performing kirtan at his residence and that he alongwith Brajesh and Vinod used to work with Askylne Construction Building Company at the time of alleged occurrence.

21. Accused examined witness Brajesh Kumar as DW1 in their defence.

22. After hearing learned counsel for the appellants-accused and learned Public Prosecutor for the State, learned trial Court came to the conclusion that prosecution has been able to prove its case against all the three accused beyond any shadow of reasonable doubt and hence the accused were convicted and sentenced, as aforementioned, vide impugned judgment against which the present appeals have been filed.

23. We have heard learned counsel for the appellants-accused, learned State counsel and have gone through the whole record carefully.

24. It has been argued by learned counsel for the accused that there was no prior information with accused Billu regarding arrival of deceased Sanjay and the witnesses, as admitted by the witnesses and hence it cannot be said that accused had prior meeting of minds to commit murder of Sanjay. It is further contended that even if the prosecution version is believed, the occurrence took place at the spur of moment in a fit of anger and injury was caused by Billu accused only when Sanjay allegedly insisted for payment and had an altercation with Billu and that Billu had suddenly took a half burnt wooden log from the hearth situated nearby and gave its blow on the head of Sanjay. It is further contended that Chalitar Sada and Satish Kumar were not residing with Billu accused and that they were simply present in the hut of Billu as they used to reside in the adjoining huts and that dispute was also between Billu and deceased and that altercation had taken place between Billu and Sanjay deceased. Hence, it is contended that accused Chalitar Sada and Satish Kumar cannot be held liable for the act of Billu. It is further contended that even Billu accused cannot be held liable for offence u/s 302 IPC because his intention was not to cause death of Sanjay as he simply gave a blow with the wooden log suddenly picked up from the hearth lying nearby and that the blow was not repeated by him and that no blow was also given by the other accused. It is further contended that if accused Billu had the intention of causing the death of Sanjay, then he would have used some other weapon like knife or spade present in his hut, as PW6 admitted in the cross-examination that Billu used to keep Tasla, an iron pot for taking earth, sand etc. and spade in his hut and usually knife is also found in the house and that however, accused allegedly picked only half burnt wooden log and hence he had no intention of causing death of Sanjay. Hence, it is argued that at the most case for

offence u/s 304 Part II IPC is made out.

25. It is correct that only one blow was given by accused Billu on the head of Sanjay and that too with a wooden log, which proved fatal and that the blow was also not repeated. It is also correct that no injury was caused to deceased by co-accused Satish Kumar and Chalitar Sada, however, it has been proved from deposition of Chand Kishore, PW6 that accused Satish Kumar and Chalitar Sada also took part in the occurrence. Accused Chalitar Sada is brother of accused Billu. Accused Chalitar Sada and Satish Kumar grappled with the complainant as Satish Kumar caught complainant from the neck and accused Chalitar Sada abused him and also raised lalkara that Sanjay be killed and he should be taught a lesson for demanding money. Moreover previous meeting of minds is not always necessary to impute common intention to the accused as common intention can be developed even at the spot during the occurrence.

26. Hence taken into consideration the sequence of occurrence, as deposed by the complainant and the eye-witness, common intention to cause injury to Sanjay on the part of all the three accused can be easily inferred and accused Satish Kumar and Chalitar Sada rightly held responsible for the act of Billu accused by the learned trial Court.

27. However, there is force in the argument of learned counsel for the accused that taking into consideration the fact that there was no prior information with accused Billu regarding arrival of deceased Sanjay and witnesses to his hut and further taking into consideration the fact that an altercation took place between Billu and Sanjay deceased, as he demanded money from Billu accused and further taking into consideration the fact that Billu picked up a log of wood from nearby hearth and gave only one blow on the head of Sanjay deceased and did not repeat the blow and that he did not use any other sharp edged weapon like spade, though available in the hut, the only inference which can be drawn is that none of the accused intended to commit murder of Sanjay nor did they intend to inflict such an injury which in the ordinary course of nature was sufficient to cause death.

28. There are three types of culpable homicide under Indian Penal Code. The first is defined in Section 300 IPC as murder and the second may be termed as culpable homicide of 2nd degree which is punishable under 1st part of Section 304 IPC and there is culpable homicide of 3rd degree, i.e., culpable homicide punishable under IIInd part of Section 304 IPC.

29. However taking into consideration the peculiar facts and circumstances of the case, as detailed above, we are of the view that die offence committed by appellant-accused Billu would come u/s 304 Part II IPC, whereas offence committed by accused Satish Kumar and Chalitar Sada would come u/s 304 Part II read with Section 34 IPC.

30. Hence conviction of appellant-accused Billu for offence u/s 302 IPC is converted to offence u/s 304 Part II IPC whereas conviction of appellants-accused Satish Kumar and Chalitar Sada for offence u/s 302 read with Section 34 IPC is converted to offence u/s 304 Part II read with Section 34 IPC and while setting aside their sentence to undergo life imprisonment for offence u/s 302 and Section 302 read with Section 34 IPC, they are sentenced to undergo rigorous imprisonment for six years each, for offence u/s 304 Part II and for offence u/s 304 Part II read with Section 34 IPC. However, the imprisonment already undergone by the accused during investigation, trial and during pendency of this appeal after conviction shall be set off as provided u/s 428 Cr.P.C. With this modification in the quantum of sentence, the appeals filed by appellants-accused, namely, Satish Kumar, Billu and Chalitar Sada are dismissed.