

(2014) 07 P&H CK 0842

High Court Of Punjab And Haryana At Chandigarh

Case No: CRA No. D-715-DB of 2002

Ramesh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: July 24, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 323, 34

Hon'ble Judges: Kuldeep Singh, J; Ashutosh Mohanta, J

Bench: Division Bench

Advocate: Aditi Girdhar, Advocate for the Appellant; Shalini Attri, Deputy Advocate General, Advocate for the Respondent

Judgement

Kuldeep Singh, J.

This judgment shall dispose of CRA No. D-715-DB of 2002, filed by accused/appellants Ramesh, Bijender, Mahender sons of Ram Kishan and Smt. Dayawanti wife of Ram Kishan, against judgment and order dated 29.8.2002, passed by learned Additional Sessions Judge, Rohtak, vide which accused/appellants were convicted u/s 302 IPC read with Section 34 IPC and sentenced to undergo imprisonment for life each and fine of Rs. 5,000/-each, in default of payment of fine, to undergo further rigorous imprisonment for a period of one year each. The accused/appellants were further convicted u/s 323 IPC read with Section 34 IPC and sentenced to undergo rigorous imprisonment for two months each and fine of Rs. 500/- each, in default of payment of fine, to undergo further rigorous imprisonment for 15 days each. Both the sentences were directed to run concurrently.

2. The case was registered on the basis of statement of Wazir Singh (Ex. PP) son of Gagan Ram, (deceased) aged about 60 years, resident of Village Karor, District Rohtak, made on 17.10.1999, sometime before 5:00 PM to ASI Ajmer Singh, in which Wazir stated that for the last about one year, there was a dispute between him and

his uncle Mahle Ram regarding the partition of the land. Last evening, i.e. on 16.10.1999, there was exchange of abuses between the complainant and sons of Mahle Ram. Today i.e. 17.10.1999 at about 8:30 AM, Wazir and his son Ram Dhan went to the fields called "Khuwan Wala Khet" alongwith oxen. When they reached the fields, Mahender son of Ram Kishan came there and started abusing him. When the complainant restrained him from doing so, he went to his fields and brought a lathi. Bijender son of Ram Kishan also came with him armed with axe. On reaching there, Mahender gave a lathi blow on the feet of Wazir. Ramesh son of Ram Kishan armed with pharsa and Ram Kishan armed with lathi also came there. Bijender gave axe blow on the head of Wazir. Wazir fell down. Ram Kishan gave lathi blow on his back. Daya wife of Ram Kishan came there armed with gandasi and started giving gandasi blows using it like danda on his back and feet. He raised hue and cry "Mar Dia, Mar Dia". His son Ram Dhan tried to rescue him. Accused Ramesh son of Ram Kishan gave a pharsa blow using it as lathi to his (Wazir's) son Ram Dhan. Then, both of them raised alarm "Mar Dia, Mar Dia", which attracted Ram Kishan son of Maha Singh and they rescued them from the clutches of the assailants. Assailants fled away from the spot alongwith their respective weapons. Later on, real brother of the complainant Ram Pal removed them to Medical College, Rohtak in an auto rickshaw and got them admitted there.

3. ASI Ajmer Singh recorded the police proceedings to the effect that on receiving V.T. message from Police Post PGIMS Rohtak, about admission of Wazir in PGIMS Rohtak, he visited the hospital. Injured was found in the emergency ward. After getting the opinion of the doctor, he recorded the statement of Wazir. It was further recorded that as per the MLR, six injuries were found and all of them were with blunt weapon. Injuries No. 1 to 4 have been kept for surgeon's opinion. On perusal of statement and MLR, no offence was made out for the time being. Action will be taken after the receipt of X-ray report and opinion of the surgeon. A report in the daily diary register will be made. Accordingly, DDR No. 32 dated 17.10.1999 was recorded in Police Station Sampla.

4. On 21.10.1999, a V.T. message was received about the death of Wazir. Inspector Satyavir Singh, who was then posted as Sub Inspector/SHO, PS Sampla, then visited PGIMS, Rohtak and obtained the medical ruqa (Ex. PQ). There, he recorded the statement of Ram Dhan. Inquest report (Ex. PE) was prepared. The post mortem of the dead body was got conducted. Inspector Satyavir Singh then visited the spot and prepared the rough site plan (Ex. PR). On the basis of the said DDR, formal FIR No. 286 dated 21.10.1999 (Ex. PB) u/s 302 read with Section 34 was registered against the present appellants and one Ram Kishan, who died during the pendency of the trial.

5. On 22.10.1999, Ram Dhan (PW11) was also medico legally examined. Accused Mahender surrendered in Rohtak Court. He was arrested on 26.10.1999 with the permission of the Court and was remanded to the police custody upto 30.10.1999.

6. On 28.10.1999, accused Ramesh, Bijender and Ram Kishan were also arrested. At the time of their arrest, pharsa was recovered from accused Ramesh, axe (kulhari) from accused Bijender and lathi from accused Ram Kishan. Rough sketches of the said weapons were prepared.
7. On 29.10.1999, accused Mahender was interrogated. He suffered a disclosure statement (Ex. PL) and got recovered the lathi used in the crime, which was taken into possession through recovery memo Ex. PAB. The site plan of place of recovery was prepared.
8. On 29.10.1999, accused Dayawanti was arrested and a gandasi was recovered from her at the time of her arrest and same was taken into possession through recovery memo Ex. PAE.
9. After the completion of the investigation, challan was presented in the Court against the present appellants as well as accused Ram Kishan (since dead).
10. The trial Court chargesheeted all the accused u/s 302 IPC read with Section 34 and u/s 323 IPC read with Section 34 IPC. On recording plea, accused did not plead guilty and claimed trial.
11. In support of its case, prosecution examined ASI Satpal (PW1), HC Dilbagh Singh (PW2), Dr. Raman Shukla, Medical Officer, CHC Rohtak (PW3), Dr. Raman Gupta, CMO, PGIMS Rohtak (PW4), Dr. Suresh Chander, Medical Officer, CHC Sampla (PW5), Constable Mahabir Singh (PW6), HC Rajbir Singh (PW7), Dr. S.P. Chugh, CMO, Medical College, Rohtak (PW8), Raghbir Singh (PW9), HC Ram Bhagat (PW10), Ram Dhan (PW11), Inder Singh, Patwari (PW12), SI/SHO Ajmer Singh (PW13), Inspector/SHO Satyavir Singh (PW14) and closed the evidence.
12. PWs Ram Kishan, Sube Singh and Jasbir Singh were given up as unnecessary.
13. When examined u/s 313 Cr.P.C., accused Mahender and Bijender claimed that they were not present at the spot at the time of occurrence. They have been falsely implicated in this case.
14. Accused Ramesh claimed that he alongwith his mother Dayawanti was present in the fields. Wazir came there and attacked them with lathi and caused injuries to him and his mother. Ram Dhan also came there armed with spade (kassi) and abused them. He also caused injuries to him and his mother Dayawanti. They threw brick bats to save themselves. The neighbours separated them. The matter was reported to police by his mother on the same day. They were also got medico legally examined by the police on the same day. The other co-accused were not present at the spot and have been falsely implicated. Dayawanti also raised the similar plea.
15. In defence, accused examined Dr. Puran Singh (DW1) and closed the defence evidence.

16. After hearing the learned Public Prosecutor for the State, learned counsel for the accused/appellants and going through the evidence, the learned Additional Sessions Judge, Rohtak, convicted and sentenced the accused/appellants, as aforesaid.

17. We have heard learned counsel for the accused/appellants, learned Deputy Advocate General for the State and have also carefully gone through the file.

18. Dr. Raman Gupta (PW4) had initially examined Wazir Singh on 17.10.1999. He found following injuries on the person of Wazir Singh:-

1. Lacerated wound 3x3 cm on scalp central region was present alongwith clotted blood.
2. Lacerated wound 1x1 cm present on frontal region. Clotted blood was present.
3. Swelling 5x2 cm over left side of forehead was present.
4. Patient complained of pain over left side of lower chest. There was no mark of external injuries.
5. Patient complained of pain left side of upper leg.
6. Patient complained of pain left arm.

19. The duration of injuries was within 12 hours. The kind of weapon used was blunt. Surgeon's opinion was sought for injuries No. 1 to 4 and Ortho's opinion was sought for injuries No. 5 and 6. All the injuries were kept under observation. The doctor opined on the police application dated 26.11.1999 (Ex. PH) that injury No. 1 on the person of the deceased could be caused with kulhari (axe). He further stated that patient was brought to PGIMS, Rohtak, by Raghbir Singh.

20. Dr. Raman Shukla (PW3), who had conducted the post mortem on the dead body of deceased Wazir Singh, found the following injuries on his person:-

1. Stitched wound with three stitches about 3 cm long, partially healed present over scalp in the counterpart about 8 cm anterior to occipital protuberance.
2. Partially healed wound 1 cm long over centre of frontal region. On opening the scalp, there was a ecchymosis of scalp layers over frontal and occipital part. There was intracranial haemorrhage in brain tissues near third ventricle and haematoma over left side of base of skull.
3. There was fracture of upper part of left tibia alongwith fracture of patella. On opening thoracic cavity, lungs were congested. No fracture rib seen. Right chamber of heart was full while left was empty. Livers, spleen and kidneys were congested. Stomach small intestine and large intestine were normal.

21. In the opinion of the doctor, the cause of death was as a result of head injuries, which were sufficient to cause death in the ordinary course of nature. The time elapsed between injury and death is as per record.

22. It is to be noted that injuries No. 5 and 6, recorded by Dr. Raman Gupta in MLR, were complaint of pain on the left upper leg and left arm. These injuries are not reflected in the post mortem for the obvious reasons.

23. Dr. Suresh Chander (PW5), who had medico legally examined Ram Dhan on 22.10.1999, found the following injuries on his person:-

1. There was an abrasion 8 cm x 1/2 on the anterio lateral side of left leg upper half. There was brownished scab over the abrasions.

2. There was an abrasion 3 cm x 1 cm covered with the brownish scab on the anterio medical side of upper half of right leg.

3. There was an abrasion 3 cm x 1/2 cm covered with brownish scalp on the extensor aspect of left forearm in the middle.

4. There was abrasion 8 cm x 1/2 cm covered with brownish scab on the left cubital fossa.

5. There was an abrasion 3 cm x 1 cm on the thoratic spine covered with brownish scap.

6. There was a contusion 8 cm x 11/2 cm on the left of injury No. 5 brownish in colour. X-ray throaco lumber spine AP and lateral view was advised for injury No. 5 and 6.

24. As per the statement of Dr. Puran Singh (DW1), when Ramesh (accused) was examined on 17.10.1999 at 10:00 AM, following two injures were found on his person:-

1. Lacerated wound on left side fact maxillary bone region, 2 cm x 0.25 cm bone deep margins defined in Adv. X-ray.

2. Swelling on left shoulder including upper part of left humerus bone, 11 cm x 8 cm reddish warm tender. Adv. X-ray.

25. The duration of injuries was within four hours and were caused with blunt weapon.

26. On the same day, when Dr. Puran Singh (DW1) examined Dayawanti (accused), following three injuries were found on her person:-

1. Lacerated wound on left little finger, 1 cm x 1/2 cm muscle deep, margins defined ill.

2. Complaint of pain on right groin due to hit by fist.

3. Complaint of pain back due to hit by kick.

27. The injuries were found simple in nature and duration of injuries was within four hours.

28. In the light of the medical evidence, discussed above, now when the ocular testimony examined, the statement of Wazir Singh (Ex. PP) made to the police before his death has now become dying declaration. This version was given by Wazir Singh to the police at the earliest possible time i.e. 17.10.1999, sometime before 5:00 PM. The occurrence had taken place on 17.10.1999 at about 8:30 AM. According to Wazir Singh, he was attacked by all the five accused. Mahender had given lathi blow on his feet. This injury is not reflected in the MLR or in the PMR. Bijender had given axe blow on his head, which correspond to injury No. 1. Then, according to him, Ram Kishan gave a lathi blow on his back, which is also not reflected in the PMR. Dayawanti is stated to have given a gandasi blow using like danda on his back and feet, which is also not reflected in PMR. Ramesh is stated to have given pharsa blow using it as lathi to Ram Dhan, whereas as many as six injuries were found on the person of Ram Dhan, which relate to the time of occurrence. It would show that only injury No. 1 is specifically attributed to Mahender, whereas the other injuries on the person of Wazir Singh are not corroborated by medical evidence. Accused Dayawanti and Ramesh admitted their presence at the spot. They have given a cross version of being given injury by the deceased and his son.

29. Now, taking up the version put up by Ram Dhan in the Court, it comes out that when Ram Dhan was examined as PW11, he stated that on 17.10.1999, at about 7:45 AM, when he went to fields with his father Wazir Singh, accused Mahender abused his father and when his (Ram Dhan's) father asked the accused to refrain himself from abusing him, he (Mahender) brought a lathi. He was accompanied by Bijender, Ramesh, Ram Kishan and Dayawanti. Bijender was carrying axe (kulhari), Ramesh was carrying a pharsa, Ram Kishan was carrying a lathi and Dayawanti was carrying gandasi. Mahender gave a lathi blow on the legs of his father, whereas Bijender gave kulhari on the head of his father. His father fell down and then, he (Wazir Singh) was given blows by the accused. Ramesh also gave a pharsa blow on his (Ram Dhan's) back using it as lathi. Ram Pal son of Gugan and Ram Kishan son of Maha Singh came there and rescued them from the accused. Ram Pal took his father in auto rickshaw in Medical College, Rohtak, and got him admitted there. The occurrence had taken place at about 8:30 AM.

30. Ram Dhan is the only eye witness examined by the prosecution. In cross examination, he admitted that one hand of Bijender is amputated at palm level. Defence version was put to him that Ramesh and Dayawanti had gone to the fields and that they were assaulted there with lathi by his father Wazir Singh and thereafter, Ramesh and Dayawanti had thrown bricks on his father in self defence after picking up the same from the spot.

31. The defence is not probable, as the injuries found on the person of Wazir Singh, cannot be the result of brick bat blows.

32. Raghbir Singh (PW9), who had got admitted Wazir Singh in the hospital, stated that on 17.10.1999, he was present at the medical turning on Delhi-Rohtak Road at

about 10:30 AM when his elder brother Ram Pal brought Wazir Singh in an auto rickshaw and then, he put him (Wazir Singh) in the auto rickshaw and took him to the hospital. He further stated that Wazir Singh told him about the occurrence, as detailed above.

33. Dr. S.P. Chugh (PW8) had declared that patient Wazir Singh was in the fit state of mind to make statement. Dr. S.P. Chugh stated that when police sought his opinion, the patient was fit to make statement. It was not suggested to him that Wazir Singh was not fit to make statement and no cross examination of the witness was done.

34. The learned counsel for the appellants/accused has vehemently argued that in this case, dying declaration of Wazir Singh was not recorded by the Magistrate. It is also not in evidence that doctor remained present when the statement of Wazir Singh was being recorded and that he was fit to make the statement till the same was completed.

35. We are of the view that initially, the injuries on the person of Wazir Singh were not thought to be dangerous to life. The police in routine obtained the opinion of the doctor and recorded the statement (Ex. PP) of Wazir Singh. At that time, his life was not in danger. Nor the doctor opined so. The statement of Dr. S.P. Chugh when read with the statement of S.I. Ajmir Singh goes to show that Wazir Singh remained fit during the time the statement of Wazir Singh was recorded.

36. As the statement (Ex. PP) was not made by Wazir Singh, when his life was in danger or he was contemplating death, therefore, some corroboration to the same is required from the statement of eye witness Ram Dhan, medical evidence and other facts and circumstances. Ram Dhan has reiterated the prosecution story as put forward by his father Wazir Singh. The statement of Ram Dhan was recorded on 22.10.1999, after the death of his father on 21.10.1999. Ram Dhan has put forward the same version as disclosed by his father Wazir Singh and he did not make any improvement even after the death of his father. Therefore, the statement of Wazir Singh made to the police, which has now become dying declaration, is corroborated by the statement of Ram Dhan. Ram Dhan had also received injuries in the same transaction, though he was medico legally examined late.

37. The learned counsel for the appellants/accused has further argued that the weapons of offence were not sent to the Forensic Science Laboratory (FSL). We are of the view that no blood is stated to have oozed out of the injuries. The weapons of offence are not stated to be stained with blood. Therefore, there was no need to send the weapons to the FSL.

38. The learned counsel for the appellants/accused has further argued that in this case, independent witnesses were not examined. Ram Pal son of Gudan and Ram Kishan son of Maha Singh had come to the spot, but they were not examined by the prosecution.

39. We are of the view that they had come to the spot after the injured raised hue and cry after receiving injuries. Therefore, they did not see the entire occurrence and witnessed only the concluding part of the occurrence. Therefore, if they have been given up, it hardly affects the merit of the prosecution case.

40. The learned counsel for the appellants/accused has further argued that accused have been falsely implicated in this case. The statement of DW1 Dr. Puran Singh shows that Dayawanti and Ramesh also received injuries in the same occurrence. The place of occurrence is determined in the fields of Wazir Singh (deceased). Therefore, though specific injuries, as per MLR, were not attributed to Dayawanti and Ramesh (accused), but their involvement in the crime with their weapons and receipt of injuries in the same occurrence is proved. Injury No. 1, which proved fatal, is attributed to accused Bijender. The injury attributed to Mahender on the feet of complainant is not supported by medical evidence. Therefore, Mahender is to be given benefit of doubt and acquitted of the charges framed against him. The guilt of the remaining accused is proved beyond all reasonable doubts.

41. As a result of the foregoing discussion, the appeal qua Mahender son of Ram Kishan is allowed and he stands acquitted of the charges framed against him. His bail bonds and surety bonds are discharged. However, appeal filed by accused/appellants Ramesh, Bijender and Dayawanti, who are on bail, stands dismissed. They are ordered to be arrested and committed to jail to undergo the remaining part of the sentence.