

PETITIONER:
PREM

Vs.

RESPONDENT:
DAULA & ORS.

DATE OF JUDGMENT: 16/01/1997

BENCH:
M.K. MUKHERJEE, S.P. KURDKAR

ACT:

HEADNOTE:

JUDGMENT:

THE 16TH DAY OF JANUARY, 1996

Present:

Hon'ble Mr. Justice M. K. Mukherjee

Hon'ble Mr. Justice S.P. Kurdukar

R.C. Kohli, Adv. for the appellant

R.S. Bhatia, B.S. Gupta (Ajay, Siwach) Adv. for Prem
Malhotra, Advs. for the Respondents.

J U D G M E N T

The following Judgments of the Court was delivered:

S.P. KURDUKAR, J.

This criminal appeal is at the behest of the complainant-appellant challenging the legality and correctness of the judgment and order dated October 29, 1986, passed by the Punjab & Haryana High Court, Chandigarh, acquitting the respondents Nos. 1 to 4 (accused) of all the charges. The Addl. Sessions Judge II, Rohtak, by his judgment and order dated October 24/26, 1985, convicted the first respondent (A-1) under Section 302 IPC and respondents Nos. 2 to 4 (A-2 to A-4) under Section 302/34 of the Indian Penal Code for committing the murder of Ishwar son of Budh Ram and each one of them was sentenced to suffer imprisonment for life and to pay a fine of Rs. 5,000/- or in default to undergo further RI for six months.

2. Briefly stated the prosecution case as unfolded at the trial is as under:-

The marriage of the daughter of Malha, pot maker, was to be celebrated on December 9, 1984, and in that connection, Halwais from Rohtak were engaged for preparing the sweets on December 8, 1984. The sweets were being prepared in the house of Giani which is situated in Silara Mohalla, Rohtak. Ishwar (since deceased) and Rajinder (PW 14) were present at the place of Giani. At about 6.00 p.m., Daula (A-1) and Jai Singh (A-2) came there and picked up a quarrel with Rajinder over money. A-2 gave a lathi blow on Rajinder (PW 14) and Prem (PW 9). Ishwar intervened and saved his colleagues from further assault. Ishwar then pushed out A-1 and A-2 from the house of Giani. The quarrel then ended and they left to their respective houses. Prem and Ishwar thereafter came to the house of the latter. Krishan and Ude were sitting on the cot outside the house.

When all of them are talking, Daula (A-1), Jai Singh (A-2), Balraj (A-3) and Baljit (A-4) came there at about 6.30 p.m. A-1 was carrying Ranpi (sharp edged cutting weapon used by cobblers) whereas A-2 and A-4 were armed with lathis. A-3 was however not having any weapon. All the four accused forcibly entered into the house of Ishwar whereupon A-1 shouted at Ishwar and challenged as to why he had pushed him out of the house of Giani. It was alleged by the prosecution that Baljit (A-4) and Balraj (A-3) caught hold of Ishwar whereupon Daula (A-1) assaulted him with Ranpi on his back. Jai Singh (A-2) gave a lathi blow on the left hand of Ishwar. Daula again struck a Ranpi blow on the right hand of Ishwar. Dhan Kaur (PW 11) mother of Ishwar tried to intervene during the assault but she was also given a lathi blow by Jai Singh (A-2). Krishan, Ude and Prem (PW 9) intervened in the quarrel and saved Ishwar from the assault. In the meantime, all the accused fled away. Since Ishwar had sustained bleeding injuries, he was taken to the Medical College, Rohtak, in a rickshaw but before any medical help could be given to him, he succumbed to his injuries.

3. The doctor on duty sent a riqqa to the Incharge, police post attached to the Medical College at about 8.20 p.m. and also informed police station, City Rohtak on telephone regarding the arrival of the dead body. S.I. Ram Chander (PW 17) after making an entry in the daily diary proceeded to the Medical College where he recorded the statement (Ex. PJ/1) of Prem Singh (PW 9) which was treated as the FIR. SI Ram Chander held the inquest on the dead body of Ishwar (Ex.PF). The dead body was then sent for post mortem examination. Dr. Rohtas Yadav (PW 3) carried out the post mortem examination and his report is at Ex.PD. SI Ram Chander then recorded the statements of various witnesses including that of Rajinder Singh (PW 14) and Dhan Kaur (PW 11) who were injured during the assault and were sent to the Medical College for necessary treatment. All the four accused were arrested during the investigation. After completing the necessary investigation, a charge sheet came to be submitted against all the four accused for offences punishable under Sections 302, 302/34 and 449 of the Indian Penal Code.

4. The accused denied the allegations levelled against them and pleaded that they are innocent and they have committed no offence. They have been falsely implicated in the present crime. They prayed that they be acquitted.

5. The prosecution in order to bring home the guilt against the accused examined Prem Singh (PW 9), Krishan (PW 10), Dhan Kaur (PW 11) and Rajinder (PW 14) as the witnesses of fact and also to prove motive. The prosecution also examined formal witnesses including three doctors, panch witnesses and the investigating officer. The accused did not lead any evidence.

6. The learned trial judge after careful scrutiny of the oral and documentary evidence on record by his detailed and well reasoned judgment found A-1 guilty of committing murder of Ishwar whereas A-2 to A-4 were held guilty with the aid of Section 34 PIC for the substantive offence of murder. A-1 was accordingly convicted under Section 302 IPC and was sentenced to undergo life imprisonment and to pay a fine of Rs. 5,000/- in default to undergo further RI for six months. A-2 to A-4 were convicted under Section 302/34 IPC and were sentenced to suffer imprisonment for life and to pay a fine of Rs.500/- each or in default to undergo further RI for six months.

7. The respondents Nos. 1 to 4 accused aggrieved by the order of conviction and sentence preferred a criminal appeal

to the High Court and the High Court reversed the well reasoned judgment of the trial court and acquitted all the accused. It is against this order of acquittal, the complainant has filed the present Criminal Appeal to this Court.

8. Mr. R.C.Kohli, learned Advocate appearing for the appellants assailed the impugned judgment firstly on the ground that the High Court had committed a grave error while rejecting the evidence of eye witnesses on the premise that the medical evidence did not support their evidence. He then urged that the High Court had also committed a grave error while doubting the credibility of the eye witnesses solely on the ground that they are close relatives of the deceased. He then urged that the High Court erroneously assumed that the injuries to Ishwar (since deceased) could not have been caused by Ranpi having regard to its measurement and size. He, therefore, urged that each reason given by the High Court in support of its order of acquittal is unsustainable and prayed that the impugned order be set aside and the order passed by the trial court be restored.

9. Mr. R.S.Bhatia, learned Advocate appearing for the accused supported the impugned order and tried to demonstrate how the order of acquittal is sustainable. He urged that no case for interference is made out by the appellant and, therefore, the appeal being devoid of merits, be dismissed.

10. We have gone through the judgments of the courts below as well as the relevant materials on record. Before we deal with the rival contentions raised before us, we deem it proper to first find out as to whether impugned order is based on cogent and satisfactory objective assessment of the evidence on record. In our considered view, the High court has dealt with the criminal appeal in a very causal manner and the reasons recorded for acquittal are contrary to the evidence on record. We may hasten to reproduce some of the reasons in the impugned order which read as under:-

"It was conceded by PW 3 Dr. Yadav, during the course of his cross-examination that the blade of Ranpi Ex.P6, is 4 c.m. wide and 11.5 c.m. in length. We have checked up these measurements in court and find them to be correct. In the light of this what is not explained by the prosecution is as to how this Ranpi could cause the fatal injury (no.1), which is 14 c.m. deep. Similarly what is further unexplainable is that the maximum width of the blade of this Ranpi is 4 c.m. but against this, the width of the above noted injury is only 3.5 c.m. It is thus patent that the depth and width of this fatal injury (No.1) found on the body of the deceased Ishwar could not possibly be caused by Ranpi Ex.P6."

While entertaining the doubt as mentioned above, the High Court went on to observe:-

"This, to our mind, completely knocks out the bottom of the prosecution case."

11. The High Court then observed that having come to the conclusion that Ranpi Ex.P6 could not have caused the injury No.1 to Ishwar, its recovery is meaningless. The High Court

then observed:-

"It has repeatedly been held that if the version of the prosecution is inherently improbable and intrinsically incredible in material and intrinsically incredible in material particulars then it has essentially to be discredited as a whole."

12. The High court then set out the pedigree to show how the prosecution witnesses are closely related to Ishwar and held that since the prosecution has not examined by independent witness, it was not possible to sustain the conviction on the basis of such evidence of interested witnesses. As regards the injury sustained by Dhan Kaur (PW 11), the mother of Ishwar, the High Court observed:-

"She appears to have been brought in later as an eye witness. Even the two simple injuries found on her person do not authenticate her presence at the time of occurrence. This is again by itself, to our mind, good enough to discredit the prosecution version."

13. As against this, we find that the judgment of the learned Addl. Sessions Judge (II), Rohtak, was based on a very correct objective assessment of the evidence on record and had rightly held that the accused persons were guilty of murder of Ishwar.

14. As far as the first incident at the place of Giani was concerned, the evidence of Rajinder (PW 14) is quite clear that A-1 and A-2 had come to that place where there was some quarrel when Ishwar pushed out both these accused. It was this incident which motivated the accused persons to assault Ishwar in the same evening at about 8.30 p.m. Rajinder (PW 14) had himself sustained a lathi blow given by Jai Singh (A-2) and the injury certificate (Ex.PA) issued by Dr. Ravinder Kumar (PW 2) clearly borne out the said fact. Coming to the actual assault on Ishwar, the evidence of Prem Singh (PW 9), Krishan (PW 10) and Dhan Kaur (PW 11) is absolutely unimpeachable and each one of them had testified how all the four accused came to the house of Ishwar and assaulted him with weapons in their hands. All these three witnesses were searchingly cross-examined on behalf of the defence but hardly any material could be brought out during their cross-examination to discredit their evidence. It is true that Dr. Rohtas Yadav (PW 3) who conducted the post mortem examination on the dead body of Ishwar while referring to injury No.1 during the cross-examination admitted that such an injury may not be possible by Ranpi (Ex.6). The measurements of the said Ranpi (Ex.6) which were referred to by the High Court in its impugned judgment could not persuade us to disbelieve the evidence of three witnesses as regards the assault on Ishwar by A-1 with Ranpi (Ex.6). We have no hesitation in saying that Dr. Rohtas Yadav (PW 3) has given the evidence in a very causal manner. His evidence being the opinion evidence in the facts and circumstances of this case cannot nullify the evidence of Prem Singh (PW 9), Krishan (PW 10) and Dhan Kaur (PW 11) who have testified that A-2 and A-3 were holding Ishwar and when he bent a little, A-1 gave Ranpi blow on his back. One has to only visualise the assault and if one does so, it is quite apparent that Ishwar was made to bend a little as his hands were caught by A-2 and A-3 whereupon A-1 gave a powerful blow with that Ranpi on his back. The depth of the

injury was 14 cms which was no doubt more than the length of the blade of the weapon but since it was a forceful blow, we see no improbability of such a deep injury having been caused by the said weapon. It is also relevant to note that the incident in question had taken place at the house of Ishwar where the presence of these three eye witnesses was proved. Apart from this, Dhan Kuar (PW 11) had also sustained an injury which was proved by Dr. Mohar Singh (PW 4) who issued the injury certificate (Ex.PG). We prefer to believe the evidence of these eye witnesses notwithstanding the fact that Dr. Rohtas Yadav (PW 3) had expressed some doubt as regards the injury No.1 having been caused by Ranpi (Ex.6). We accept the evidence of these three eye witnesses and hold that the Ranpi (Ex.P6) was the weapon of assault used by A-1 and had caused the injuries on the person of Ishwar which were proved to be fatal. The trial court was also right in convicting accused Nos. 2 to 4 with the aid of Section 34 PIC as it is quite clear from the evidence on record that all the four accused came together and were armed with weapons except A-4; trespassed into the house of Ishwar and thereafter assaulted him. This evidence, in our opinion, is quite sufficient to prove the complicity of accused Nos. 2 to 4 with the aid of Section 34 IPC for the substantive offence of committing murder of Ishwar.

15. In the result, criminal appeal is allowed. The impugned judgment and order dated October 29, 1986, passed by the High Court acquitting respondents Nos. 1 to 4 (A-1 to A-4) is quashed and set aside and the judgment and order of conviction dated October 24/26, 1985, passed by the learned Addl. Sessions Judge (II), Rohtak, is restored, If A-1 to A-4 are on bail, they shall surrender to their bailbonds forthwith to serve out the remaining part of their respective sentences.