

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.106 OF 2010**

Bable @ Gurdeep Singh

... Appellant

Versus

State of Chattisgarh Tr.P.S.O.P. Kursipur ... Respondent

J U D G M E N T

Swatanter Kumar, J.

1. The present appeal is directed against the judgment of the High Court of Judicature at Chattisgarh at Bilaspur dated 15th November, 2006 wherein the High Court maintained the judgment of conviction and order of sentence passed by the learned Fourth Additional Sessions Judge, Durg, Chattisgarh, convicting the appellants for an offence under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') and awarding life sentence to them. Though there were three accused before the trial court, the present appeal has been

preferred only by appellant/accused No.1, Bable @ Gurdeep Singh. While impugning the judgment under appeal, the learned counsel appearing for the appellant has, *inter alia*, but primarily raised the following arguments:

1. The injuries found on the person of the accused have not been explained by the prosecution. The deceased having suffered serious injuries that are stated to have been inflicted by the accused, could not have been in a condition to inflict any injuries upon the person of the accused. This leads to the conclusion that the accused had been assaulted by the deceased before the deceased himself suffered the injury. The injuries were admittedly found on the person of the accused. The prosecution has failed to explain such injuries. This failure on the part of the prosecution renders the story of the prosecution not only improbable but unbelievable as well.
2. Assuming, though not admitting, that the incident has been proved, the accused was entitled to the right to private defence as he was attacked and he caused the injuries in the process of protecting himself. Thus, the contention is that the accused/appellant cannot be convicted under Section 302 IPC and his conviction under Section 302/34 IPC cannot stand the scrutiny of law.

3. Further the appellant states that the informant Tariq Shakil, PW1, had turned hostile. The FIR not being a substantive piece of evidence, would discredit the entire case of the prosecution. The Courts, in the judgments under appeal, have failed to appreciate the evidence in its proper perspective and hence the judgments are liable to be set aside.

4. Lastly, the dying declaration is not corroborated by other prosecution witnesses and no details have been furnished therein. As such the Courts could not have relied upon the said dying declaration.

2. Before we proceed to deliberate upon the legal and factual aspects of the case with reference to the arguments advanced, it would be necessary to refer to the case of the prosecution in brief.

3. On 14th May, 1999 at about 10.15 p.m., when Tariq Shakil, PW1, was sitting in his S.T.D.-P.C.O. shop situated at New Kursipur, Gurunanak Chowk, one Guddu @ Jiten Soni, PW12, came there and informed PW1 that the accused Sardar Bable is quarrelling with Ishwari Verma in front of his shop. Upon hearing this, PW1 closed his shop and went along with PW12 to the place of occurrence. The accused Bable was carrying a sword in his hand and was running towards them. Being frightened,

both of them went towards a street. After sometime, there was a noise that the accused Bable had caused injuries to Ishwari Verma and the said victim was lying in injured condition. He was removed to BSP Hospital, Sector 9, by his uncle Balwant Verma, PW14, where he was admitted. Dr. A.D. Banerjee, PW2, had examined him and declared him brought dead. A written report in this regard was prepared being Ex.P5. The matter was reported to Bhilai City Police Station. Even a telephonic message was sent. Sub-Inspector, Suresh Bhagat, PW10, posted at that Police Station registered the case under Section 174 Cr.P.C., Ex.P-22. On the same day at about 12.15 a.m. in the night, PW1 got the First Information Report (FIR), Ext.P-1, of the incident registered at Police Station Kursipur and a case under Section 302 IPC was registered. The Investigating Officer, Sub-Inspector P.N. Singh, PW13 took up the investigation and went to the site. He prepared the site plan, Ex.P14, seized blood-stained earth, plain earth and a piece of chain of the watch and for that he prepared a seizure memo Ex.P-20. He also prepared the inquest report vide Ex.P4, in presence of the *Panchas*. The post mortem examination of the body of the deceased was performed by Dr. S.R. Surendra, PW5 at 11.30 a.m. on 15th May, 1999. The post mortem report was

submitted vide Ext.P-8 which noticed the following injuries on the body of the deceased: -

- “1. Incised wound 5 c.m. x $\frac{1}{2}$ c.m. upto bone deep red colour longitudinal on anterior its and middle of scalp.
2. Incised wound 8 c.m. x 1 c.m. up to bone deep red colour. Margin everted oblique anterior and right side of scalp.
3. Incised wound 3 c.m. x $\frac{1}{4}$ c.m. $\frac{1}{4}$ c.m. above left ear.
4. An abrasion 9 c.m. x $\frac{1}{2}$ c.m. long below left ear.
5. An abrasion 6 c.m. x $\frac{1}{2}$ c.m. neck colored below the first wound.
6. Incised wound 5 c.m. x $\frac{1}{2}$ c.m. x $\frac{1}{2}$ c.m. on left shoulder laterally.
7. Incised wound 1 c.m. x $\frac{1}{2}$ c.m. x $\frac{1}{2}$ c.m. on left shoulder anteriority.
8. Amputation middle finger from terminal phalages.
9. Ring finger also cut from terminal phalages from palmer aspect only.
10. Incised wound 8 c.m. x $\frac{1}{2}$ c.m. x $\frac{1}{2}$ c.m. red coloured on upper part and lateral surface of right arm.
11. Abrasion 2 c.m. x 2 c.m. red coloured on lower part and lateral surface of right upper arm.
12. Incised wound 7 c.m. x $\frac{1}{2}$ c.m. x $\frac{1}{2}$ c.m. lateral surface of elbow.
13. Incised wound 15 c.m. x 4 c.m. x 3 c.m. deed exposed tendon and blood vessel

visible through wound. On lower part and medial surface of right fore arm.

14. Incised wound of 4 c.m. x 4 c.m. between right hand thumb and index finger. Bone of index finger visible through the wounds.

15. Perforated wound directed from behind, anteno laterally, 4 c.m. above the left knee joint. Wound entry cut of post medially size 4 c.m. x 3 c.m. oblique. On dissection popliteal artery is found cut.”

4. The cause of death has been recorded as unconsciousness, which occurred prior to death and had arisen due to the injuries caused by some pointed sharp edged weapon.

5. The accused were arrested on the basis of their disclosure statements Exts.P-15, P-16 and P-26. Weapons used in the crime were seized and seizure memo was prepared vide Exts.P-17, P-18 and P-27. Blood stained clothes were recovered from the accused Bable and seizure memo Ext.P-19 was prepared. Sealed clothes of the deceased received from the Hospital were seized and seizure memo was prepared vide Ext.P.29. The seized articles were sent for chemical examination.

6. It is further the case of the prosecution that the people around the place of the incident had seen the occurrence. Immediately thereafter, sister-in-law of the deceased, Janki, PW11 and uncle Balwant PW14 had reached the place of the

incident. Balwant, PW14, had enquired from the deceased as to who were the assailants. After he gave the names, the accused persons were arrested and they made disclosure statements, as stated above.

7. It is noteworthy that the appellant Bable @ Gurdeep Singh had stated that on the date of incident, he was returning after collecting money for the milk supplied to the Thelawala at about 1-1.30 a.m. in the night. He saw Ishwari, Dalip, Dimple and Bage quarrelling at Gurunanak Chowk. He enquired from Ishwari (the deceased), who was his friend, as to what had happened. Ishwari, without any provocation, abused him and inflicted injury on his head with the sword that he was carrying. Thereupon, the accused ran away. Dalip and Prakash saw him running away. After some time of leaving the place, he lodged a police report of this incident giving details of the injuries that he had suffered and, in fact, he was medically treated and five stitches were put on his head. According to him, he had been falsely implicated in the present case.

8. The accused persons faced the trial and the learned Trial Court, vide its detailed judgment dated 27th February, 2001 held all the accused persons guilty of an offence under Section 302 read with Section 34 IPC for causing death of the deceased in

furtherance of their common intention and sentenced them to undergo life imprisonment. Upon appeal by the accused persons, the High Court came to the conclusion that the oral dying declaration was not corroborated by the FIR as the names of two accused, namely, Pappi alias Arjun Singh and Vikky alias Vikram were not mentioned in the latter and held that there was no legal and clinching evidence to implicate these two accused persons and hence the Court acquitted both of them. In relation to Bable alias Gurdeep Singh, the High Court sustained the findings, judgment of conviction and order of sentence passed by the Trial Court. Legality and correctness of this judgment of the High Court dated 15th November, 2006 has been assailed in the present appeal.

9. Reverting to the submissions made on behalf of the appellant, we may refer to the fact that the FIR had been lodged upon the statement of PW1. PW1 did not completely support the case of the prosecution and with the permission of the Court he was declared hostile. The contention is that the case of the present appellant would also stand equated to the case of the two acquitted accused persons and the High Court has fallen in error of law in not acquitting the accused-appellant as well. It cannot be denied that the FIR Ext.P-1 was registered upon the statement

of PW1 and he himself has not supported the case of the prosecution, which creates a doubt in the case of the prosecution.

10. Once registration of the FIR is proved by the Police and the same is accepted on record by the Court and the prosecution establishes its case beyond reasonable doubt by other admissible, cogent and relevant evidence, it will be impermissible for the Court to ignore the evidentiary value of the FIR. The FIR, Ext. P1, has duly been proved by the statement of PW10, Sub-Inspector Suresh Bhagat. According to him, he had registered the FIR upon the statement of PW1 and it was duly signed by him. The FIR was registered and duly formed part of the records of the police station which were maintained in normal course of its business and investigation. Thus, in any case, it is a settled proposition of law that the FIR by itself is not a substantive piece of evidence but it certainly is a relevant circumstance of the evidence produced by the Investigating Agency. Merely because PW1 had turned hostile, it cannot be said that the FIR would lose all its relevancy and cannot be looked into for any purpose. In the present case, PW11 and PW14 are the two persons who had reached the place of incident immediately after the occurrence. They were instantaneously told by the deceased as to who the assailants were. They have substantially supported what had

been recorded in the FIR which further stands corroborated by the medical evidence and the statements of other witnesses. In these circumstances, we cannot discredit the statements of PW11 and PW14 merely because PW1 has turned hostile. Besides this, in furtherance to the statements of the accused persons, recovery of the weapons used in the crime was effected.

11. The dying declaration made by the deceased to PW14 cannot be lost sight of by the Court. To the rule of inadmissibility of hearsay evidence, oral dying declaration is an exception. The dying declaration in this case is reliable, cogent and explains the events that had happened in their normal course which was not only a mere possibility but leaves no doubt that such events actually happened as established by the prosecution. Once there exists reliable, cogent and credible evidence against one of the accused, the mere acquittal of other accused will not frustrate the case of the prosecution. Where the High Court, exercising its judicial discretion ultra-cautiously, acquitted the unnamed accused in the FIR, there the High Court for valid reasons held the present appellant guilty of the offence. The High Court had recorded reasons in support of both these conclusions. [Ref. *Krishan Lal v. State of Haryana* [(1980) 3 SCC 159].

12. Thus, we find that the present appellant cannot derive any benefit from the acquittal of the two other accused persons, with which this Court is not concerned as the State has not preferred any appeal against the decision of the High Court. Moreover, the case of the prosecution is not merely based on the dying declaration made by the deceased to PW14 but there also exist other circumstances which support the view in favour of guilt of the appellant, i.e., the disclosure made by the appellant and the consequent recovery of the weapons used in the crime, the statement of Investigating Officer, PW13, the statement of the doctor, PW5, and, in fact, the own version of the accused in relation to the incident.

13. In the present case, the accused had led defence before the Trial Court and examined as many as four witnesses in support thereof. DW4, Head Constable Manharan Yadav stated that he was posted as a Constable at PS Kursipur outpost on 14th May, 1999. At about 22:45 hrs., the appellant Bable @ Gurdeep Singh appeared and reported orally that while he was going in a drunkard condition behind the Gurdwara, Ishwari met him on the way who posed to be a *dada*. He along with Manpreet, who was armed with *lathi*, caused injuries to both of his hands, head and then he had come to lodge a report. In furtherance to this

report, the accused was examined by DW1, Dr. Praveen Chandra Agarwal, who noticed six injuries on the person of the accused and found that injury Nos.1 to 3 had been caused by some hard and sharp-edged weapon and injury Nos.4 to 6 were caused by some hard and blunt weapon and all the injuries were caused within 24 hours. The appellant is also stated to have been smelling of liquor at that time but was not intoxicated. Further, injury Nos.2 to 6 were simple in nature and for injury No.1, X-ray of the skull, was advised but that also was not found to be grievous. In view of the nature of injuries suffered, the story advanced by the accused can hardly be believed. Where the deceased suffered fatal injuries, the accused despite having been assaulted by two people with *lathi* and weapon just suffered simple injuries. Thus, the possibility of the injuries being self-inflicted or having been suffered in some other way cannot be ruled out.

14. The legislative scheme contained under the provisions of Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.) is to put to the accused all the incriminating material against him and it is equally important to provide an opportunity to the accused to state his case. It is the option of the accused whether to remain silent or to provide answer to the questions asked by

the Court. Once the accused opts to give answers and, in fact, puts forward his own defence or the events as they occurred, then the accused is bound by such statement and the Court is at liberty to examine it in light of the evidence produced on record.

15. In the present case, the accused had opted to give an explanation, as aforenoticed. It was for the accused to satisfy the Court that his explanation was true and correct. Both the Courts below have concurrently rejected the explanation offered by the accused. On the contrary, they have found the said explanation to be factually incorrect. It was for the prosecution to explain the injuries on the person of the appellant as to when, how and by whom they were inflicted as also the fact whether they were inflicted during the occurrence in question or elsewhere? Of course, the prosecution has not rendered any explanation as to how the appellant had suffered these injuries but that by itself is not sufficient to believe that the appellant is innocent and the explanation rendered by him is established *ipso facto*. The onus is still on the appellant-accused to prove that his explanation is correct and in accordance with law. In the present case, the accused has stated that the deceased was carrying a sword and when he enquired from him as to why the other persons were quarrelling with and beating him, the deceased had assaulted

him with the sword. Firstly, if a person is assaulted with a sword, there is hardly any likelihood of him to suffer injuries of the kind that the appellant had suffered; secondly, in the FIR, Ext.D-2, which he had got registered, it is specifically stated that the injuries were caused by *lathi* by the deceased. Thus, there is apparent contradiction of serious nature (as to the weapon used in committing the said assault against the appellant). Thirdly, the doctor (DW1) who had examined him, in his report had nowhere noticed as to how the accused had suffered those injuries. Even in his explanation under Section 313 Cr.P.C., the appellant has not stated that he had consumed liquor whereas, according to the doctor, the appellant was smelling of liquor though he was not intoxicated. Lastly, the explanation offered by the appellant seems to be very unnatural and opposed to normal behavior of a human being. The appellant claims to be a friend of the deceased and that he had asked the deceased as to why others were quarrelling with him and had intended to help the deceased. If that be so, no person, in his senses, is likely to cause injuries to a well wisher, that too, with a sword. All these circumstances show that the explanation offered by the accused is neither plausible nor true.

16. But, because of lodging of FIR, Ext D2, and his statement under Section 313 of the Cr.P.C., one fact that completely stands established and is undisputable is that the appellant was present at the place of occurrence and also that he had a fight with the deceased. Once these two circumstances are admitted, they fully provide corroboration to the dying declaration, the statements of PW11 and PW14 as also the other material evidence led by the prosecution. If the appellant was carrying a sword and others were carrying *lathis*, it is not understable as to how could the deceased suffer as many as 15 injuries including the incised wound, abrasions, amputation of middle finger from terminal phalages and other serious injuries and the appellant merely suffered six simple injuries. This itself belies the stand taken by the appellant. In any case, the deceased could not have caused injuries to any other person as in consequence of the assault upon himself, he would have had no strength left to cause any injury to others. Strangely, the accused denied all other questions as '*maloom nahin*' (don't know) or 'incorrect' and gave explanation which is not worthy of any credence.

17. For the reasons aforestated, we find no merit in the present appeal and the same is dismissed.

.....J.
[Swatanter Kumar]

.....J.
[Ranjan Gogoi]

New Delhi;
July 10, 2012.