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ANIL @ BAWA

v.

STATE OF HARYANA

(Criminal Appeal No. 894 of 2011)

B

FEBRUARY 25, 2016

[V. GOPALA GOWDA AND ARUN MISHRA, JJ.]

C

Penal Code, 1860: s.302 r/w s.149 – Prosecution case was that victim-deceased, son of complainant was assaulted by the appellants and other accused with lathis and sword resulting in his death on the spot itself – Incident witnessed by father-complainant – Conviction by courts below – Challenged on the ground of delayed lodging of FIR and plea of false implication – Held: The ocular version that the accused persons had inflicted the injuries with weapons due to which the victim died was corroborated by medical

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evidence – The doctor clearly stated that injury Nos.1 to 10 were caused by sharp-edged weapon and the contusion in the form of a lathi mark on the back, right side and multiple bruises and contusions in the form of lathi marks on the front chest and both arms were caused by blunt object like lathi – Thus, the version of the complainant was quite reliable – He would be the last person to spare the actual assailant and would not implicate the accused falsely – He had no enmity with accused persons – Delay in lodging the FIR was satisfactorily explained, being father of deceased he became unwell for two hours after death of his son – Reading of the entire statement of complainant inspired confidence and both

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the courts below accepted the version after full appreciation of the evidence and there were no inherent improbabilities in the version unfolded by witness – Thus, conviction was rightly recorded by the courts below which called for no interference in the appeals.

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The State of U.P. & Anr. v. Jaggo alias Jagdish & Ors. AIR 1971 SC 1586; Bahal Singh v. State of Haryana AIR 1976 SC 2032 – referred to.

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Case Law Reference

AIR 1971 SC 1586 referred to Para 8

AIR 1976 SC 2032 referred to Para 9

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A
No. 894 of 2011.

From the Judgment and Order dated 06.08.2009 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 279-DB of 2006

WITH B

CrI. A. Nos. 895 and 898 of 2011

Pushpinder Singh, Kumar Kartikay, Aruneshwar Gupta, Amarjit Singh Bedi, Advs. for the Appellant.

S.U.K. Sagar, Vishwa Pal Singh, Ms. Naresh Bakshi, Rao Ranjit, Advs. for the Respondent. C

The following Order of the Court was delivered

ORDER

1. The appeals have been preferred by the accused appellants against the judgment of conviction and order of sentence dated 6.8.2009 passed by the High Court of Punjab & Haryana at Chandigarh thereby affirming the conviction recorded by the trial court as against the appellants under section 302 read with section 149 sentencing them to undergo life imprisonment and to pay fine of Rs.5,000 each; in default to undergo further simple imprisonment for a period of 3 months and under section 148 read with section 302 to undergo RI for one year. D

2. In the incident dated 4.7.2003 Partap son of Anand Singh PW5 died. Anand Singh lodged the First Information Report at 4.30 a.m. on 5.7.2003. The incident took place at about 8.30 p.m. It was mentioned in the FIR that Partap had gone to Akhara of the village. As he did not come back, he along with two others Lakhmi Chand and Ramesh went towards Akhara in search of Partap. When they reached near veterinary hospital, they saw Ran Singh and Pinda were quarrelling with Partap. Ran Singh was armed with a Lathi and Pinda with a sword, Roop Chand with a Lathi, Sushil with sword and Anil alias Bawa also armed with a Lathi joined them. They shouted that Partap be taught a lesson for having an evil eye on the lady members of the family of the accused. Sushil and Pinda inflicted injuries on the hands, stomach, waist and chest of Partap. Sushil gave blows of sword to Partap on the head, right hand and on the left of the face of the deceased. Roop Chand and Anil alias Bawa inflicted Lathi blows on the person of Partap. After beating Partap accused fled away. Partap succumbed to his injuries at the place of incident itself. E
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A 3. The prosecution examined in all 11 witnesses. Anand Singh
PW5 is the complainant. The accused abjured their guilt and contended
that as Partap had tried to outrage the modesty of Monika, villagers
assembled and gave a beating to Partap due to which he died. The
accused were not present at the place of occurrence. They have been
B falsely implicated in the case. Defence also examined 8 witnesses. The
trial court convicted all the 6 accused persons. However, the High Court
has acquitted Sandeep as his name was not mentioned in the FIR. He
has been given the benefit of doubt. Relying upon the ocular evidence
furnished by Anand Singh-PW5, and the medical evidence of Dr. Naresh
Dahiya-PW7, and other witnesses related to the investigation it has
C convicted the remaining 5 accused persons. Three of them are before
us in the appeals.

4. It was submitted on behalf of the appellant that accused-
appellants have been falsely implicated in the case. Deceased Partap
had tried to outrage the modesty of Monika due to which he was beaten
D by the villagers. The FIR is belated. The house of the accused was set
on fire on the same day. Savitri, wife of accused Roop Chand has filed
a complaint under sections 323, 325, 436, 427, 307, 148, 149 and 452 of
IPC against family members of deceased Partap. The witnesses Lakhmi
Chand and Ramesh have not been examined whereas they were named
E in the first information report as such adverse inference deserves to be
drawn against the prosecution. The guilt has not been established beyond
periphery of doubt by the prosecution.

5. It was contended by learned counsel appearing for the State
of Haryana that both the courts have appreciated the evidence and
concur with the finding that the deceased Partap was mercilessly
F beaten and murdered by the accused appellants. Considering the number
of injuries which were sustained by deceased Partap and the ocular
version is supported by the medical evidence. Conviction has been rightly
recorded. Other two witnesses were not examined as they were won
over by the accused. The statement of the complainant Anand Singh
PW5 who was an eye witness to the incident has been found to be
G worthy of reliance. Defence evidence has also been taken into
consideration. The conviction and sentence is absolutely proper and does
not call for interference.

6. We have gone through the judgment as well as the evidence
placed on record. It is apparent from statement of eye-witness Anand
H Singh-PW5, that the deceased Partap was given beating by accused

Sushil, Anil alias Bawa and Roop Chand. Sushil had inflicted injuries with the help of a sword on the person of deceased Partap on various parts of the body. Roop Chand and Bawa inflicted several Lathi blows. The ocular version that the aforesaid persons had inflicted the injuries with weapons in question due to which Partap died has been corroborated medically by Dr. Naresh Dahiya-PW7. He has clearly stated that injury Nos.1 to 10 were caused by sharp-edged weapon and the contusion in the form of a Lathi mark on the back, right side and multiple bruises and contusions in the form of Lathi marks on the front chest and both arms were caused by blunt object like Lathi. Thus the version of Anand Singh-PW5, being father of the deceased is quite reliable. He would be the last person to spare the actual assailant and would not implicate the accused falsely. He had no enmity with accused persons. It has been found that the delay in lodging the FIR has been satisfactorily explained, being father of deceased he became unwell for two hours after death of his son. It also appears that another incident of setting fire to the house of accused had taken place in the same night with respect to which report had been lodged by Savitri wife of accused Roop Chand. The trial court as well as the High Court have found that the outcome of the murder of the deceased Partap at the hands of accused persons was that house of accused was set ablaze for which report had been lodged by Savitri.

7. In the FIR it was mentioned that deceased Partap was given beating on the allegation that he had an evil eye on the women-folk of the family of the accused. In the circumstances, the accused persons came armed with swords and Lathis and had caused large number of injuries on the person of the deceased Partap due to which he succumbed to death on the spot itself. The accused persons had no right to take law into their hands and to beat Partap mercilessly and intentionally to cause his death.

8. The prosecution had not examined the two witnesses namely Ramesh and Lakhmi Chand. However in the instant case the version of Anand Singh PW5 is found to be reliable. Learned counsel for the appellants has relied upon *The State of U.P. & Anr. v. Jaggo alias Jagdish & Ors.* [AIR 1971 SC 1586] to draw an adverse inference against the prosecution for non-examination of the aforesaid witnesses. Drawing of an adverse inference is dependent upon the facts and circumstances of each case. In the instant case the version of the father of the deceased is found to be reliable and he had no motive to implicate the accused falsely and appears to be a truthful witness.

A 9. Learned counsel has also placed reliance on *Bahal Singh v. State of Haryana* [AIR 1976 SC 2032] so as to contend that being related and chance witness, the version of Anand Singh PW5 is not acceptable. In the case of *Bahal Singh* (supra), the best evidence was kept behind and it was held that same had prejudiced a fair trial. Certain

B circumstances were also not put to the accused which was also considered to be a grave irregularity. In our opinion, it would depend upon the facts of each case whether the accused has received a fair trial. As Anand Singh had gone towards Akhara in search of his son along with others could not be said to be unusual as he had to water the fields along with Partap, his son. Reading of the entire statement of Anand Singh-PW5,

C inspires confidence and both the courts below have accepted the version after full appreciation of the evidence and there are no inherent improbabilities in the version unfolded by witness. Thus, in our considered opinion, conviction has rightly been recorded by the courts below which calls for no interference in the appeals. It cannot be said that the accused

D have not received fair trial in the instant case.

10. We find no ground to interfere in the appeals. The appeals being devoid of merit, deserve to be and are hereby dismissed.

Devika Gujral

Appeals dismissed.