

RANDHIR @ RANDHIR PAL & ORS.

v.

STATE OF HARYANA

(Criminal Appeal No. 1580 of 2010)

OCTOBER 06, 2016

**[JAGDISH SINGH KHEHAR AND ARUN MISHRA, JJ.]**

*Penal Code, 1860: ss.148, 302, 342, 452 r/w s.149 – Victim-deceased attacked and shot dead in a shop – Allegations against appellants that they were standing in the street and preventing people from entering the shop and from moving on the street in front of the shop at the time when other accused persons were assaulting the victim – Conviction of appellants under ss.148, 302, 342, 452 r/w s.149 by courts below – Challenge against – Held: Statement of eye-witnesses was to the effect that the appellants were not involved in the assault which took place inside the shop – Neither of these appellants were stated to have caused injuries to the deceased – Naming the persons who were purportedly prevented from entering the shop premises was an afterthought, as these persons were not named when PW7 registered his complaint, on the date of the occurrence itself – Evidence showed that there was previous enmity between complainant party and the appellants – Therefore, it is difficult to conclude that the appellants were involved in the occurrence – Appellants entitled to benefit of doubt and hence acquitted.*

**Allowing the appeal, the Court**

**HELD: 1.** The statement of PW-7 was to the effect that besides stopping people from moving on the street, some named persons, were also prevented from entering into the shop. It is not a matter of dispute, that the instant version was an addition to the original version depicted by PW7, at the time of registering the complaint. Inasmuch as, in the First Information Report, it was neither stated that any of these appellants, namely – A2, A4, A7, A8 and A11, were armed. And furthermore, none of the persons who have now been named (as having been prevented from entering the shop), were mentioned earlier. The version

A depicted by PW8, when he deposed before the trial court, was on  
similar lines as PW7. Based primarily on the evidence of the  
above two eye-witnesses (PW7 and PW8), the trial court found  
the appellants guilty of the charges levelled against them, under  
sections 148, 302, 342, 452 read with section 149 of the Penal  
Code, as also, as against A1 under the Arms Act. [Paras 5 and 6]  
B [830-G-H; 831-A-B]

2. Even as per the statements of two eye-witnesses, namely,  
the brothers of the deceased (PW7 and PW8), the present five  
appellants were not involved in the assault which had taken place  
within the shop premises, on 26.11.2002. Neither of these five  
C appellants can, therefore, be stated to have caused any injuries  
to the deceased, on the fateful day. The persons named by PW7,  
as being prevented from entering the shop premises, was an  
afterthought, as these persons were not named when PW7  
registered his complaint, on the date of the occurrence itself.  
D Not only that, the statement of PW8 clearly demolishes the version,  
with reference to those persons since in the statement of PW7,  
for the reason, that PW8 took the position, that after the  
occurrence, he had gone to his field, to call for help. Even though  
there is no material on the record of the case, to identify whether  
the persons named in the statements of PW7 and PW8, were the  
E same persons, it is quite apparent, that they indeed seem to be  
the same persons, on account of the names being the same. The  
testimony of PW7, with reference to stopping persons from  
coming into the shop, by the five named appellants before this  
Court, appears to be false. In any case, this factual position cannot  
F be stated to be fully established. Appellants namely A2, A-7 and  
A-11 are relatives of a person whose murder was committed  
around year prior to the fateful incident. It is apparent, therefore,  
that on account of enmity, innocent family members of the accused  
persons, were also roped in. [Paras 13, 14, 15] [833-D-H; 834-A-  
C]

G 3. It is difficult to conclude with certainty, that the present  
five appellants, were truly and factually involved in the occurrence.  
In the above view of the matter, the appellants are entitled to the  
benefit of doubt. Accordingly, while giving the benefit of doubt to  
the appellants, the appellants (A2, A4, A7, and A11) are acquitted  
H of the charges levelled against them. [Para 16] [834-D-E]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1580 of 2010. A

From the Order dated 18.09.2009 by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 715-DB of 2004.

V. Giri, Sr. Adv., Mrs. Kawaljit Kochar, Ms. Krishna Parkhari, Ms. Kusum Chaudhary, Advs. for the Appellants. B

Anish Kumar Gupta, AAG, Chandra Shekhar Suman, R. K. Rajwanshi, Ms. Deepshikha Bharati, Dr. Monika Gusain, Advs. for the Respondent.

The Judgment of the Court was delivered by C

**J. S. KHEHAR, J. 1.** The instant criminal appeal by special leave, was originally filed by eight of the accused namely Randhir A2, Amrit - A3, Vijay Kumar - A4, Satyawar - A5, Rajesh - A6, Lakhmi Ram - A7, Shiv Narain - A8 and Manoj - A11.

2. By this Court's order dated 22.2.2010, notice was issued only with reference to the appeal preferred by A2, A4, A7, A8 and A11. The special leave petition preferred by the remaining accused was dismissed. D

3. The details of the occurrence under reference, emerges from the statement of Raj Mal - PW7, who had made a complaint on the date of occurrence itself - 26.11.2002. In the complaint, he had asserted, that he himself and his two brothers, namely, Randhir - PW8 and Laxman (the deceased), were present at their shop at 8.30 a.m. At 8.40 a.m., six of the accused namely Satpal - A1, Amrit - A3, Satyawar s/o Baru Ram - A5, Rajesh - A6, Rajinder s/o Jita - A9, and Rajinder s/o Baru - A10, entered their shop. They were carrying a country made pistol, knives and "gandasas" (axes). In the complaint it was also asserted, that Satpal - A1 fired a shot with the pistol in his possession, which hit the chest of the complainant's brother - Laxman. He further claimed, that Rajinder s/o Jita - A9 gave a "gandasa" blow on the left cheek of the deceased Laxman. And that, Satyawar - A5 gave a "gandasa" blow on the left shoulder of Laxman. He also asserted, that Amrit - A3 inflicted a knife blow on the forehead of Laxman, and further that, Rajinder s/o Baru - A10 inflicted a "gandasa" blow on the left ear of Laxman. Having committed the aforesaid assault, it was maintained by the complainant, that the aforesaid six accused came out of the shop. It was also pointed out, that at that juncture, Randhir - A2, Vijay Kumar - A4, Lakhmi Ram E F G

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A - A7, Shiv Narain - A8, and Manoj - A11, were standing guard outside the premises of the shop. They were preventing persons from entering the shop, as also, passersby from moving on the street in front of the shop.

B 4. The aforestated details depicted in the complaint, which came to be converted into the First Information Report, were affirmed by two prosecution witnesses, who claimed to be eye-witnesses to the occurrence, namely Raj Mal – PW7, and Randhir - PW8. Needless to mention, that both Raj Mal - PW7 and Randhir - PW8 were brothers of Laxman (on whom the aforestated injuries were inflicted) and who subsequently succumbed to the injuries inflicted on him.

C 5. Insofar as the deposition of Raj Mal – PW7 is concerned, in his examination-in-chief he asserted, that he had seen Shiv Narain - A8, and Randhir - A2 on the northern side of the shop. And that, they were armed with “lathis” (fighting sticks) and “jellies” (pitchforks). He also asserted, that he had seen Manoj - A11, Lakhmi Ram - A7 and Vijay Kumar - A4 standing on the southern side of the street, in front of the house of Shiv Lal, and that, they were also similarly armed. It was pointed out by him, that they were trying to stop persons coming towards the shop. During his cross-examination, he deposed as under :

E “The accused who were standing outside the shop have stopped Bir Bhan, Vinod and one Harijan to come towards the shop, where the occurrence has taken place. I have not told the names of those person to the police nor the police enquired about it. Bir Bhan and Vinod came one after the other from one side, while Laxman Harijan came from the other side of the street. They were stopped at a distance of about 30 feet from our shop. I did not disclose about the places to the Draftsman or to the police where the above named three persons were stopped by the accused from the proceeding towards our shop.”

F From his aforestated statement it emerges, that besides stopping people from moving on the street, some named persons, were also prevented from entering into the shop. It is not a matter of dispute, that the instant version was an addition to the original version depicted by Raj Mal – PW7, at the time of registering the complaint. Inasmuch as, in the First Information Report, it was neither stated that any of these appellants, namely - Randhir - A2, Vijay Kumar - A4, Lakhmi Ram -

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A7, Shiv Narain - A8 and Manoj - A11, were armed. And furthermore, none of the persons who have now been named (as having been prevented from entering the shop), were mentioned earlier. A

6. The version depicted by Randhir – PW8, when he deposed before the trial court, was on similar lines as Raj Mal - PW7. Based primarily on the evidence of the above two eye-witnesses (Raj Mal – PW7, and Randhir – PW8), the trial court found the appellants guilty of the charges levelled against them, under sections 148, 302, 342, 452 read with section 149 of the Indian Penal Code, as also, as against Satpal - A1 under the Arms Act. B

7. All the appellants preferred an appeal, against the judgment dated 23.7.2004, rendered by Additional Sessions Judge, Jind, to the High Court of Punjab and Haryana at Chandigarh (hereinafter referred to as the High Court) which was registered as Criminal Appeal No.715 DB/2004. The above appeal was dismissed by the High Court on 18.9.2009. C

8. This Court by its order dated 22.2.2010, dismissed the appeal preferred by Satpal - A1, Amrit - A3, Satyawar - A5, Rajesh - A6 and Rajinder s/o Baru – A10. The only remaining appellants before this Court, in the present appeal are, those who were allegedly standing in the street. These appellants were accused of preventing people from entering the shop at the time of occurrence, and from moving on the street in front of the shop. D E

9. It is pertinent to mention, that the High Court acquitted the accused Rajinder s/o Jita – A9, on the ground that the prosecution had not been able to prove its case against him beyond all reasonable doubt. The allegations levelled against the remaining appellants namely Randhir - A2, Vijay Kumar - A4, Lakhmi Ram - A7, Shiv Narain - A8 and Manoj – A11 as noticed above, were limited to the assertion, that they were preventing persons from entering into the shop premises, and also, preventing passersby from moving on the street in front of the shop. F

It was the vehement contention of the learned Senior Counsel for the appellants, that it is not even the case of the prosecution witnesses, and not even the assertion of two of the brothers of the deceased – Laxman, who had appeared as prosecution witnesses (Raj Mal - PW7 and Randhir - PW8), that the present five appellants, were in any way involved in the injuries, which were inflicted on the deceased Laxman. It was not even their assertion, that the present five appellants had entered H

A the shop premises at the time of the occurrence, or had participated in the occurrence in any manner whatsoever, except that, they were allegedly preventing passersby from moving on the street, and from entering the shop, wherein the occurrence had taken place.

B 10. It was also the submission of the learned Senior Counsel for the appellants, that according to the prosecution story, the motive for committing the crime was the murder of Prem s/o Baru on 30.8.2001 i.e., about one and quarter years prior to the present occurrence, wherein, the deceased herein – Laxman, was allegedly involved. It was submitted, that the effort now was to involve as many members of the family as possible, of the deceased - Prem S/o Baru. It was also the contention of C the learned Senior Counsel for the appellants, that the exact position where the five appellants were positioned, when the occurrence took place, has also not been disclosed. It was also his contention, that the persons who were stopped from moving on the street, or coming into the shop by the present appellants, were not originally named. Insofar as D Bir Bhan, and Laxman Harijan are concerned, it was submitted, that the contention of Raj Mal - PW7 was, that they were prevented from coming into the shop premises, whereas, they were not named in the First Information Report. It was also pointed out, that neither the concerned passersby, nor the persons named (who had been prevented, from E entering into the shop premises), were recorded during the course of the investigation, or thereafter, during the course of the trial.

F 11. During the course of hearing, when the factual position, indicated at the behest of the learned Senior Counsel for the appellants, was brought to the notice of the learned counsel representing the State of Haryana, he acknowledged, that none of the present five appellants participated in the occurrence, within the premises of the shop. It was also not disputed, that with reference to A2, A4, A7, A8, and A11, the factual assertion contained in the First Information Report dated 26.11.2002 was limited to the fact, that “..... Vijay - A4 S/o Ram Kumar, Manoj - A11 S/o Rajender and Lakhmi - A7 S/o Baru, Brahaman by G caste, were standing in front of the house of Rama Kala S/o Shiv Lal, Brahaman, in the street, and Shiv Narain – A8 S/o Sunder and Randhir – A2 S/o Jai Narayan, Brahaman, residents of the same village, were standing in front of the house of Pura S/o Kanbiya, Brahaman, in the street and were stopping the passersby.....” None of these accused, according to learned counsel, were stated to be standing outside the H

shop in question, or were preventing persons from entering the shop. It was also acknowledged, that none of these five appellants were alleged to have been possessed of any weapons, or that, they had caused any injuries on the deceased - Laxman. A

12. It was disputed, by the learned State counsel, that their (A2, A4, A7, A8, and A11) position, was not depicted in the rough sketch map. Insofar as the instant assertion is concerned, referring to the site plan Ex.PC, it was pointed out, that their exact location was marked at points 'J' and 'K', on the street in question. It was however not disputed by the learned State counsel, that the persons who were allegedly stopped from moving on the street, and others who were allegedly prevented from entering into the shop premises (as per the statements of the prosecution witnesses, recorded by the trial court), were neither examined at the investigation stage, nor any evidence was produced in that behalf, by the prosecution, during the course of the trial. B C

13. Based on the rival submissions advanced at the hands of the learned counsel for the parties, we are of the view, that even as per the statements of two eye-witnesses, namely, the brothers of the deceased (Raj Mal – PW7, and Randhir - PW8), the present five appellants were not involved in the assault which had taken place within the shop premises, on 26.11.2002. Neither of these five appellants can, therefore, be stated to have caused any injuries to the deceased Laxman, on the fateful day. D E

14. We are of the view, that the persons named by Raj Mal - PW7, as being prevented from entering the shop premises, namely Bir Bhan, Vinod, and Laxman Harijan, was an afterthought, as these persons were not named when Raj Mal - PW7 registered his complaint, on the date of the occurrence itself. Not only that, the statement of Randhir - PW8 clearly demolishes the version, with reference to Bir Bhan, Vinod, and Laxman Harijan, since in the statement of Raj Mal - PW7, for the reason, that Randhir - PW8 took the position, that after the occurrence, he had gone to his field, to call for help. And from his field, he had brought with him Vinod, Laxman Harijan, Tek Chand and Bir Bhan. Even though there is no material on the record of the case, to identify whether the persons named in the statements of Raj Mal - PW7 and Randhir - PW8, were the same persons, it is quite apparent, that they indeed seem to be the same persons, on account of the names being the same, especially Laxman Harijan. The testimony of Raj Mal – PW7, with reference to stopping persons from coming into the shop, by the F G H

A five named appellants before this Court, appears to be false. In any case, this factual position cannot be stated to be fully established.

15. When examined closely, we are of the view, that one of the present appellants namely Randhir - A2, is the nephew of Prem s/o Baru, whose murder had been committed on 30.8.2001. Lakhmi Ram - A7, is the son of Baru, and therefore, the brother of the deceased Prem (in the earlier occurrence). Manoj - A11, is the son of Rajinder s/o Baru - A10 and in that sense, the nephew of the deceased Prem (in the previous incident). It is apparent, that on account of enmity, innocent family members of the accused persons, were also roped in. The assertions made by learned Senior Counsel, on behalf of the accused, and the response thereto by the learned State counsel, noticed in paragraphs 10 to 12 hereinabove, are also very meaningful, specially because the same confirm the position recorded by us in the course of our consideration, hereinabove.

16. We are, therefore, of the view that it is difficult to conclude with certainty, that the present five appellants, were truly and factually involved in the occurrence. In the above view of the matter, we are satisfied, that the appellants are entitled to the benefit of doubt. Accordingly, while giving the benefit of doubt to the appellants, we acquit the appellants (Randhir - A2, Vijay Kumar - A4, Lakhmi Ram - A7, Shiv Narain - A8 and Manoj - A11) of the charges levelled against them. Since the present appellants are on bail, their bail bonds shall stand discharged.

Devika Gujral

Appeal allowed.