

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1581 OF 2013

State of Haryana vs | Appellant

Versus

Bira @ Bhira vs | Respondent

WITH

SPECIAL LEAVE PETITION (CRL.) NO. 3779 OF 2014

Fatta Ram vs | Petitioner

Versus

State of Haryana vs | Respondent

J U D G M E N T

Prafulla C. Pant, J.

Both Criminal Appeal filed by the State of Haryana and Special Leave Petition filed by accused Fatta Ram, are directed against the judgment and order dated 03.05.2012 passed by High Court of Punjab and Haryana in Criminal Appeal No. 662-DB of 2007, whereby said Court has allowed the appeal of

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Bira @ Bhira, and acquitted him of all charges in respect of offences punishable under Sections 302, 323 read with Section 34 of Indian Penal Code (for brevity vs SIPC vs \235), but maintained the conviction and sentence recorded against remaining two accused, namely, Sant Lal and Fatta Ram.

2. We have heard learned counsel for the parties and perused the record.

3. Prosecution story, in brief, is that Vakil Singh (deceased in the present case) was an accused in the case of murder of one Atma Ram of Village Nagal. He (Vakil Singh) was acquitted by the Apex Court about a month before the incident of the present case. On 08.05.2005 at about 11.00 a.m., he was coming along with his wife (PW-8 Balbiro) to his village from Bicchian where the two had gone in connection with condolence of one of their relatives. PW-7 Tehla Ram along with his uncle Mohan Singh had also gone there and was ahead of them. At that point of time, the three accused namely, Sant Lal, Fatta Ram and Bira @ Bhira who were armed with deadly weapons came on motorcycles and intercepted Vakil Singh. All the three accused persons assaulted Vakil Singh. Accused Sant Lal gave a blow with a vs "Gandasi" vs (heavy sharp edged weapon), accused Fatta Ram gave a blow

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with a vs "Lathi" vs and Bira @ Bhira allegedly gave a blow with iron rod (handle of water pump). PW-8 Balbiro resisted but she was also assaulted by the accused persons. When Mohan Singh and PW-7 Tehla Ram, who were ahead, turned back, the three accused attempted to flee but Fatta Ram fell down from his motorcycle as the same got skid and he was caught by villagers. The other two managed to escape. PW-7 Tehla Ram took both the injured Vakil Singh and Balbiro to Mahavir Dal Hospital, Cheeka. Vakil Singh succumbed to the injuries and died in the hospital. The First Information Report (Ex. PH-1) of the incident was lodged by PW-7 Tehla Ram on the very day. PW-13 Sub-Inspector Brij Mohan of Police Station, Cheeka started the investigation. PW-2 Dr. Aman Sood along with team of doctors conducted the post mortem examination and prepared autopsy report. The investigation was completed by PW-3 Sub-Inspector Surta Ram who submitted the charge sheet against all the three accused for their trial in respect of offence punishable under Section 302 IPC.

4. After committal of the case, Sessions Judge, Kaithal, framed charge against all the three accused in respect of offences under Section 302, 323 read with Section 34 IPC to which all the three accused pleaded not guilty and claimed to be tried. On this, prosecution got examined PW-1 Dr. Ajit Pal Singh, PW-2 Dr.

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Aman Sood, PW-3 Sub-Inspector Surta Ram, PW-4 Constable Gurvinder Singh, PW-5 Head Constable Balwinder Singh, PW-6 Dr. Romila Jhanji, Medical Officer, PW-7 Tehla Ram (informant eye witness), PW-8 Balbiro (injured eye witness), PW-9 Draftsman Lachman Singh, PW-10 Ram Mehar Singh, PW-11 Head Constable Bir Bhan, PW-12 Assistant Sub-Inspector Dharam Pal and PW-13 Sub-Inspector Brij Mohan (Investigating Officer). The prosecution evidence was put to the accused under Section 313 of the Cr.P.C. in reply to which they pleaded that the evidence adduced against them is false. In defence, on behalf of the accused DW-1 Ajmer Singh, DW-2 Garibu Ram and DW-3 Puran Singh were got examined. The trial court after hearing the parties found that charge of offences punishable under Sections 302, 323 read with Section 34 IPC is proved against all the three accused. Accordingly, all the three were convicted and each one of them was sentenced to undergo imprisonment for life and to pay fine of Rs. 5,000/- (under Section 302 IPC), in default to undergo further six months rigorous imprisonment. Further, the trial court sentenced the convicts to undergo rigorous imprisonment for a period of six months under Section 323/34 IPC.

5. Aggrieved by order dated 16.05.2007/18.05.2007 passed by

5 Sessions Judge, Kaithal, in Sessions Trial No. 23 of 2006, the three convicts filed Criminal Appeal no. 662-DB-2007 which is partly allowed by High Court. Conviction and sentence recorded against Sant Lal and Fatta Ram is maintained, but that of Bira @ Bhira was set aside, holding that charge as against him is not proved beyond reasonable doubt. Consequently, Criminal Appeal No. 1581 of 2013 is filed by the State of Haryana challenging acquittal of Bira @ Bhira by the High Court, and Special Leave Petition (Crl.) No. 3779 of 2014 is filed by convict Fatta Ram which is clubbed by the Criminal Appeal filed by the State.

6. Before further discussion, we think it just and proper to mention the ante mortem injuries found on the dead body of Vakil Singh by PW-2 Dr. Aman Sood. The same are being reproduced below:-

1. Lacerated wound 8 x 2 cm with fracture of bone in left temporal parietal region. Brain matter was coming out of it.

2. Incised wound over left temporal region 3 x 1 cm. On deep dissection, there is extra dural haematoma of the size of 5 x 3 cm.

3. Lacerated wound over the left maxillary region blood clotted around the wound.

4. There was lacerated wound over the right ring finger with fracture of proximal phalanx.

6 According to PW-2 Dr. Aman Sood, the deceased had died due to shock and hemorrhage on account of injuries suffered by him on the vital parts.

7. It is also relevant to mention here the injuries found on the person of Balbiro by PW-6 Dr. Romila Jhanji on 08.05.2005 at about 4.00 p.m. The same are being reproduced below from MLR (Ex. P.G.):-

1. A lacerated wound of 1 cm. x $\frac{1}{2}$ cm. on the left cheek. Wound was bleeding. She was referred to C.H. Kaithal for X-ray of left cheek and expert opinion.

2. There was an abrasion of the size of 1 cm. x 1 cm. on left knee.

8. PW-8 Balbiro has narrated the prosecution story stating that her husband was accused in connection with murder of Atma Ram, and he was acquitted by the Court. After release of her husband (Vakil Singh) from the jail they had shifted to village Darauli, and on the day of incident they had gone to village Bicchian. She further told that on their way back on the day of

incident at about 11.00 a.m. the accused surrounded them and assaulted. She has stated that accused Sant Lal gave blow with Gandasi and accused Fatta assaulted with lathi. She further told after the incident she and her husband were taken to hospital by Tehla Ram. Statement of PW-2 is corroborated not only from the medical evidence on record discussed above but also from the

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statement of PW-7 Tehla Ram. Both these witnesses have stated that Fatta Ram while fleeing fell down and was caught by the villagers.

9. PW-1 Ajit Pal Singh has proved the injuries found on the person of accused Fatta Ram. The same are being reproduced below:-

1. A lacerated wound 1.3 cm. x 2.5 cm x bone deep on left parietal region 4 cm from mid line of skull and 18 cm. from frontal hair line. Advised X-ray.

2. Lacerated wound 1 cm. x 1 cm. x bone deep on mid line of skull and 19 cm from frontal hair line. Advised X-ray.

3. Lacerated wound 3cm. x 1.5cm x bone deep on right parietal region 2cm from mid line of skull and 19 cm. from frontal hair line. Advised X-ray.

4. Lacerated wound on right temporal region 6 cm. from mid line of skull, 5 cm. from right ear pinna and 9 cm. from frontal hair line, measuring 4.5 x 1.6 cm. x bone deep. Advised X-ray

5. Contused swelling on right fore-arm 3 cm. below right elbow joint measuring 3 cm. x 4 cm. Advised X-ray.

6. Swelling 3 cm. x 2 cm. on right side of back, 6 cm. from vertebral colon, corresponding to L.4. X-ray was advised.

In view of the above evidence, the prosecution story further gets corroborated that after the incident Fatta Ram was apprehended and beaten by villagers. As such, we find no error

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in the conviction recorded against him and the Special Leave Petition filed by him is liable to be dismissed.

10. Learned counsel for the special leave petitioner submitted that DW-1 Ajmer Singh (Sarpanch of the village) has not corroborated the fact that the villagers caught Fatta Ram after the incident. We have carefully gone through the statement of DW-1 Ajmer Singh. What he has stated is that when he saw many persons gathered at the place of incident where the dead body was lying, telephone call was given to the police. Since this witness has reached after the incident, as such, his statement does not throw light as to the fact that whether Fatta Ram was caught or not by the villagers.

11. Our attention is also drawn on behalf of the Special Leave Petitioner to the cross-examination of PW-1 Dr. Ajit Pal Singh who has stated that injuries No. 1 to 3 could not have been suffered due to fall from a motorcycle. On scrutinizing the statement of PW-1 Dr. Ajit Pal Singh, we find that he has clarified that injuries no. 4 to 6 could have been suffered by the accused (Fatta Ram) by falling down. Since villagers apprehended the said accused, other injuries could have been caused while he was caught by the villagers.

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12. On behalf of the State of Haryana (appellant), it is argued that the High Court has erred in law in disbelieving the testimony of injured eye witness (PW-8) and that of Tehla Ram (PW-7) as against Bira @ Bhira. It is contended that the evidence of the prosecution witnesses is equally reliable as against Bira & Bhira, as it was reliable against the two other accused.

13. We have carefully gone through the impugned order passed by the High Court. The High Court has taken note of the fact that

