

CASE NO.:
Appeal (crl.) 1026 of 2002

PETITIONER:
Smt.Bimla Devi

RESPONDENT:
State of Haryana

DATE OF JUDGMENT: 10/04/2003

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:

J U D G M E N T

SANTOSH HEGDE, J.

The appellant herein, alongwith five others, was charged for offences punishable under Sections 302, 325 and 323 read with Section 34 IPC before the Additional Sessions Judge, Rewari for having committed the murder of one Jaipal Singh on 10th of August, 1992. The learned Sessions Judge after the trial came to the conclusion held that one of the accused by named Ashok was not guilty of the offence charged against him and acquitted him while he convicted the other accused including the appellant herein for offences punishable under Section 302 read with Section 34 IPC and directed them to undergo imprisonment for life and to pay a find of Rs.2000/- each. He further convicted the said accused under Section 325 read with Section 34 IPC and sentenced them to undergo RI for a period of one year and to pay a fine of Rs.500/- each. He also convicted the said accused for an offence punishable under Section 323 read with Section 34 IPC and sentenced them to undergo RI for a period of three months each. He directed all the substantive sentences to run concurrently. The convicted accused preferred an appeal before the High Court of Punjab and Haryana at Chandigarh which appeal came to be dismissed consequent to which this appeal was preferred. This Court while entertaining the appeal granted leave to appeal to this appellant only while dismissing the SLP of other accused. Therefore, the present appeal before us is confined to the case of appellant Bimla Devi only. The case of the prosecution in brief is that in an incident which took place on 10th August, 992 at about 7 p.m. this appellant along with other named accused assaulted the deceased in which this appellant alleged to have assaulted the deceased with a Bankri causing an injury on the left ear portion of Jaipal. The other accused persons assaulted the deceased with various weapons on other parts of the body, consequent to which the said Jaipal died. According to the prosecution, the incident in question was witnessed by Abhey Singh (PW-1) who is the brother of the deceased, Shish Pal (PW-2) the uncle of the deceased and one Ramji Lal who is not examined. The FIR in this case was lodged by PW-1 Abhey Singh at about 5 a.m. on 11th August, 1992. It is based on this complaint of PW-1 after investigation charge-sheeted the accused persons including the appellant. As stated above, the trial court while acquitting the accused Ashok, convicted all others including the appellant which conviction and sentence has been upheld by the High Court.

Shri P.N.Lekhi, learned senior counsel appearing for the appellant contended that so far as this appellant is concerned the

prosecution has miserably failed to prove its charge and the courts below have seriously erred in accepting the unsubstantial evidence of PWs.1 and 2 to convict the appellant. He pointed out that in the FIR that is lodged by PW-1 the eye-witness there is no overt act attributed to this appellant at all except saying all the accused persons have killed Jaipal, while the said FIR mentioned clearly about the other accused's overt act. He also contended in the report of the inquest proceedings which was held at the earliest point of time at Col.12 which describes the weapons used in the assault no injury attributable to Bankri was noticed and though the Bankri was recovered on 13.8.1992 and sent to the chemical examiner no stains of blood were found on such Bankri. He also pointed out that the medical evidence if read as a whole it is seen that no injury that could be caused by the use of Bankri with its blunt side could be noticed on the body of the deceased. In such circumstances, the prosecution has failed to establish its case against the appellant and the courts below have mechanically proceeded to record conviction of the appellant.

Shri V.K.Garg, learned counsel appearing for the respondent contended that even though in the FIR no specific overt act has been attributed to the appellant, her presence is clearly noted with the Bankri in her hand. He submitted that the evidence of PWs.1 and 2 clearly establishes that this appellant did assault the deceased with the blunt side of the Bankri on the left ear. It is his contention that merely because the inquest report does not mention the injury that could be caused by Bankri and that the Bankri recovered did not contain any blood stains that does not ipso facto negative the prosecution case against the appellant. He also submitted that the doctor who had seen the Bankri had opined that one of the injuries caused to the appellant could have been caused by the use of Bankri.

We notice that the incident in question has taken place on 10.8.1992 at 7 p.m. a complaint in regard to which was filed in the early morning of 11.8.1992 by an injured eye-witness who in the said complaint while attributing specific overt act to the various accused stated "in the meantime Manti, wife of Har Chand armed with Kulhari and Bimla Devi wife of Kalu Ram, armed with Bankri also came there". In the later part of the complaint, it is mentioned that "Ashok, Rajinder, Hoshiar, Ram Kumar Singh, Manti Devi and Bimla Devi have killed my brother Jaipal." There is no other statement of fact in the said complaint to the effect that the appellant Bimla Devi though carried a Bankri at the time when she came to the place of incident she did use that Bankri or cause any overt act which would involve her in the crime. In this background, we should notice that the complaint in regard to the attack on Jaipal involves six members of one family giving rise to an argument by the appellant that the complainant has tried to rope in all the grown up members of one family because of a rivalry arising out of caste faction. In the evidence of PW-1, it is stated while describing the attack by other accused persons Bimla Devi gave a Bankri blow on the left ear portion of Jaipal. But in the cross-examination it is brought out that no such statement has been made to the police when his statement was recorded which omission was marked as Ex.PA. While PW-2 in his examination-in-chief stated that Bimla Devi gave a Bankri blow on left ear of Jaipal, in the cross-examination, it is brought out on record that what is stated in the police statement as per Ext.PA is that Bimla Devi had hit Jaipal from the wrong side of Bankri meaning thereby that the appellant did not use the sharp side of the weapon but used the blunt side of the weapon when she assaulted. If we believe the oral evidence, then it shows according to the two eye-witnesses the appellant assaulted the deceased on the left ear lobe with the blunt side of the Bankri. If we compare this oral evidence with medical evidence, we find there is no injury on the left ear which could be attributed to a blunt weapon. On the contrary, there is an incised

wound on the left ear lobe. Therefore, the medical evidence and the oral evidence do not tally. Even in regard to the doctors opinion as to the weapons that could have caused the injuries on the deceased, there are considerable contradictions. In the first instance, when the weapons were sent for seeking medical opinion, the doctor opined that all the injuries on the deceased could be caused by weapons like Jaily, Lathi and Kulhari and he even identified the injury on the ear as an injury that could be attributed to a Kulhari. But when the Bankri was sent to him for his opinion, he opined that a lacerated injury found on the head of the deceased could be caused by the said Bankri. But according to the eye-witnesses, the injury caused on the deceased by the appellant was not on the head but on the left ear. Therefore, this part of the prosecution evidence cannot be accepted.

Apart from the above discrepancy in the oral and medical evidence, we also notice from the inquest proceedings the use of a Bankri has not been mentioned while other weapons like Lathi, Jaily and Kulhari have been mentioned. Then it is to be noticed that even though the Bankri was recovered within four days after the incident and sent for chemical examination the report of the Chemical Examiner shows the absence of any blood stain. This coupled with the fact that even in the FIR PW-1 the eye-witness has not attributed any overt act to the appellant further creates very serious doubt in the case of the prosecution as to the involvement of the appellant. Having considered the entire material that is produced by the prosecution against the appellant, we are of the view that the prosecution has failed to prove its case against the appellant Bimla Devi. Therefore, the courts below, in our opinion, have erred in convicting the appellant. For the reasons stated above, this appeal succeeds and the same is allowed.

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JUDIS