



**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRA-D-214-DB-2003 (O&M)
Date of Decision:- 24.05.2024

Ramesh and others Appellants

Versus

State of Haryana Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present:- Mr. Jasdev Singh Mehndiratta, Advocate
legal aid counsel with
Ms. Navreet Kaur Dhaliwal, Mr. Rahul Dhanda and
Mr. Divyanshu Kaushik, Advocates, for the appellants.

Mr. Munish Sharma, DAG, Haryana.

FIR NO.	DATE	POLICE STATION	OFFENCES
89	29.06.2001	Alewa, District Jind	302, 34 IPC

GURVINDER SINGH GILL, J.

1. Appellants namely Ramesh alias Kana, Kanshi Ram, Shamsheer alias
Lalu and Krishan assail judgment of conviction dated 12.02.2003 and
order of sentence dated 13.02.2003 passed by the learned Sessions



Judge, Jind, whereby they have been convicted and sentenced to undergo rigorous imprisonment as under:

Section	Sentence
302 r.w. 34 IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo R.I for two years

2. The FIR (Ex.PM) was lodged at the instance of Dharam Pal alias Pala wherein he stated that he is a labourer and is a resident of Village Thua. On 28.6.2001, at about 7.30 am, he and his son Ramesh had gone to Sajanwala Johar (pond) for taking bath. His other son namely Krishan had also come to the pond so as to provide water to buffaloes. As soon as complainant’s son Krishan entered the pond and started bathing buffaloes, Krishan son of Gurdial, Ramesh alias Kana, Shamsher alias Lalu and Kanshi Ram son of Mange Ram, all residents of Village Thua came there from behind the wall constructed by the side of pond. Krishan son of Gurdial was armed with a ‘drant’ (iron sickle) while others were carrying sticks. Kanshi Ram caught hold of complainant’s son Krishan and thereafter Krishan son of Gurdial inflicted 3/4 ‘drant’ blows on the neck and head of complainant’s son Krishan. Upon receipt of said blows, Krishan fell down. Krishan son of Gurdial, Ramesh, Shamsher and Kanshi started giving blows with ‘drant’ and lathi. Though the complainant and his son Ramesh raised alarm “bachao-bachao/mardia-mardia”, but none was attracted to the spot. The accused however, ran away along with their respective weapons. The complainant and his son Ramesh went



near the spot and saw that Krishan had already died. The complainant alleged that about 2 years ago, the complainant party had quarrelled with Krishan and his father Gurdial etc. in which Gurdial had sustained injuries and on account of which they nursed a grudge against the complainant party and due to which Krishan son of the complainant had been murdered.

3. Upon registration of FIR, the police conducted requisite investigation. Inquest proceedings were conducted. The place of occurrence was got photographed. Blood-stained soil was lifted from the spot. The dead body was got subjected to post mortem examination. Accused Krishan and Ramesh were arrested on 30.6.2001. Pursuant to disclosure statement made by Krishan, he got '*drant*' recovered. Similarly, Ramesh also got a *lathi* recovered. Accused Kanshi Ram was arrested on 3.07.2001 and Shamsher was arrested on 8.7.2001. Kanshi Ram upon interrogation suffered a disclosure statement and got a *lathi* recovered. Upon completion of investigation, challan was presented in the Court of area Magistrate, who upon finding that the facts *prima facie* disclosed commission of offences punishable under Sections 302 read with Section 34 IPC, committed the case to the Court of Sessions. Charges were framed against the accused for offences punishable under Sections 302 r.w. 34 IPC by learned Sessions Judge, Jind on 10.12.2001 to which accused did not pleaded guilty and claimed trial.



4. The prosecution in order to establish its case examined as many as 14 PWs, the gist of whose testimonies is being briefly referred to herein under:-

PW-1-Dr. Ashwani Kumar, Medical Officer, Government Hospital, Jind, who had conducted the post mortem examination on the dead body of Krishan proved his report as Ex.PA. He opined that the cause of death was due to shock and haemorrhage as a result of extensive injuries to vital organs including brain, lung, kidney etc. which were sufficient to cause death in ordinary course of circumstances.

PW-2-Ram Phal, Patwari, Halqa Thua who had prepared scaled site plan and proved the same as Ex.PB.

PW-3-Kaptan, Photographer who had clicked the photographs of the dead body proved negatives Ex.P-4 to P-6 and photographs as Ex.P-7 to P-9.

PW-4-HC Jagdish Rai; **PW-5**-MHC Kartar Singh, **PW-6**-Constable Bassu Ram and **PW-7**-Constable Azad Singh, are all formal official witnesses who deposed briefly with regard to the role played by them during the course of investigation. Though, opportunity was afforded to the accused to cross-examine the said PWs, but no question was put to PW-4-HC Jagdish Rai; PW-5-MHC Kartar Singh, PW-6-Constable Bassu Ram whereas PW-7 Constable Azad Singh was very briefly cross-examined regarding the time when the dead body was handed over to the relatives of the deceased.



PW-8-C. Krishan Kumar, who is the attesting witness to the disclosure statement (Ex.PF) made by Kanshi Ram, stated in respect of the same and further stated that pursuant to the said disclosure statement the accused led to the disclosed place and got the *lathi* recovered.

PW-9-HC Dilbag Singh stated that on 30.06.2001 when he was present near Village Thua along with Inspector Yaad Ram who was talking to one Ram Rattan, then a person who disclosed his name as Ramesh made a disclosure statement which was reduced into writing (Ex.PJ) and that pursuant to the said disclosure statement he got a *lathi* recovered. He further deposed that Krishan also suffered a disclosure statement regarding having concealed '*drant*' which was taken down in writing as Ex.PK and pursuant to same got the '*drant*' recovered.

PW-10-Ramesh stated that on the day of occurrence, at about 7 pm, he and his father had gone to take a bath in the pond where they saw that the accused were inflicting injuries to his brother Krishan and that while Kanshi Ram had caught hold of his brother Krishan, he was inflicted injuries by Krishan son of Gurdial Singh 3/4 times as a result of which his brother Krishan fell down and then the other accused also inflicted injuries to his brother. He stated that Krishan (accused) was having '*drant*' made of iron while the remaining were carrying sticks and that while he went to call his father, the accused ran away



after inflicting injuries. He further stated that there was an enmity between them as a fight had taken place about 2 years back and on account of which his brother had been murdered brutally.

PW-11-Dharam Pal, complainant has stated in tune with the version recorded in the FIR to the effect that the accused had inflicted injuries to his son Krishan. He stated that while Kanshi Ram caught hold of his son Krishan, accused Krishan son of Gurdial caused 3/4 injuries with his '*drant*' on the head of Krishan and thereafter other accused also caused injuries with their respective weapons.

PW-12-Ram Kumar stated that on the night of 28.6.2001 the police took into possession blood-stained soil from the place of occurrence and that the same was prepared into a parcel and was duly sealed.

PW-13-SI Mahender Kumar stated that on 29.06.2001 he was posted as Additional SHO Police Station Alewa and had recorded the statement of the complainant on the basis of which FIR was lodged. He further stated that he had conducted inquest proceedings and had prepared his report Ex.PO and had also recorded statements of witnesses and prepared other documents and upon completion of proceedings at the spot, the dead body had been sent to the hospital for post mortem examination.

PW-14-Inspector Yad Ram, who is Investigating Officer in the present case stated in detail in respect of the same and proved various documents prepared by him during the course of investigation.



5. Upon conclusion of prosecution evidence, statements of accused were recorded in terms of Section 313 Cr.P.C. wherein they denied the case of prosecution in toto and pleaded false implication. The accused did not lead any evidence in their defence.
6. Learned trial Court upon examining the evidence led by the prosecution and upon considering the plea of the accused held that the prosecution had successfully established the charges framed against the accused and accordingly held the accused guilty for having committed offence punishable under Sections 302 read with 34 IPC vide impugned judgment of conviction dated 12.02.2003 and order of sentence dated 13.02.2003, which has been assailed before this Court.
7. Learned counsel for the appellants while assailing the impugned judgment submitted that the prosecution case suffers from various infirmities, both in ocular as well as in medical evidence and under these circumstances the conviction of the appellants could not sustain. Learned counsel submitted that PW-1 Dr. Ashwani Kumar, Medical Officer, who had conducted post mortem examination on the dead body of Krishan, stated during the course of cross-examination that the injuries found on the person of the deceased were not possible with the front portion of the '*drant*'. It has been submitted that since only one sharp edged weapon was allegedly used by the accused i.e. the '*drant*' allegedly got recovered from accused Krishan, therefore, it



is evident that somebody else had inflicted the injuries with some other weapon.

8. Learned counsel submitted that there is unexplained delay in lodging the FIR and that while the occurrence had taken place at about 7 pm on 28.6.2001, the FIR came to be lodged on the next day though, in the month of June, there is sufficient day-light even at 7.00 pm and even the police station was about 15 Kms away from the spot.
9. Learned counsel further submitted that as per the site plan the pond where the occurrence had taken place has a wall around it and the said wall is 5 feet high and under these circumstances it remains unexplained as to how the complainant and his son were able to witness the occurrence from a distance particularly when PW-11-Dharam Pal has admitted that if one stands on the *kutcha* path, he cannot see anything in the pond and also admitted that he was at a distance of about 2 *killas* from the place of occurrence.
10. Learned counsel has further pointed out that there are discrepancies with the manner in which the police was informed and that while PW-10 stated that police was informed telephonically, PW-11 stated that he went to the police station to inform about the incident. It has further been pointed out that while PW-7 Constable Azad Singh stated that the body was taken away from the place of occurrence at 9 am, PW-14 Inspector Yad Ram stated that he had reached at the spot at about 6/6.30 am and that the dead body had already been dispatched



for the post mortem at that point of time. It has further been submitted that no reliance can be placed upon the factum of recoveries of *lathis* and '*drant*' at the instance of the accused, as the same are implements of common use which are available in abundance in household and in market and have been falsely foisted upon the accused. Learned counsel thus submitted that collective effect of the infirmities would entitle the accused to benefit of doubt and consequently setting aside of the impugned judgment.

11. Opposing the appeal, learned State counsel submits that the testimony of the complainant finds ample corroboration from the testimony of the eye-witness PW-10-Ramesh and that the trial Court has returned the findings after duly appreciating the evidence on record and do not suffer from any infirmity. Learned State counsel, thus, prayed for dismissal of the appeal.
12. We have considered rival submissions addressed before this Court.
13. Since, the allegations, in nutshell are that the accused had inflicted injuries to the deceased with the help of a '*drant*' and with sticks leading to his death, it is apposite to first of all referred to the injuries found on the dead body. PW-1 Dr. Ashwani Kumar who had conducted the post mortem examination on the dead body stated that he found the following injuries on the dead body:

- “1. Multiple contusion on right side of the frontal region. On dissection, the right side of the frontal bone showed multiple pieces of fronto temporal bone and there was supraciliary



arechnoid haemotoma corresponding the brain was lacerated due to the invasion of bone pieces.

2. There was a obliquely placed incised wound 12 x 3 cm which was brain deep alongwith another 3x2x1 cm in the middle of the vertex of the brain. The wound was placed with tampering towards right parietal region. There was fracture of corresponding vault bone also.
3. Another incised wound 10x2.5x brain deep present obliquely on the vertex of the head present parallel and posterior to injury No. 2 about 5 cm posterior, tapering towards parietal region. Fracture of the corresponding skull was present and brain matter was coming out of it.
4. Incised wound lying vertically from left temporal region going back to parieto occipital region measuring 10x2.5x bone deep.
5. Another incised wound 'V' shaped with tampering towards occipital region Right side of the 'V' measured 7.5 x 2 x brain deep and brain matter was coming out on right parieto occipital region. The left arm of the V was measured and it showed 5 x 2 x bone deep with multiple fractures underneath piercing the brain matter.
6. Incised wound about 14 x 3.5 bone deep with fracture occipital bone over-riding with each other with haemotoma. The injury was present horizontally at occipital region going through occipital protuberance region.
7. Incised wound about 6 x .5 muscle deep in the upper part of neck more so on right side going towards right ear cutting the lobule and middle of the antigragus zone.
8. Incised wound 2 cm below and right to injury No. 7 measuring 4.5 x 2 x muscle deep.
9. Incised wound about 1.5 cm below injury no. 8, measuring 5 x 3 cm which was bone deep.



10. Incised wound 2 x 1 cm which was muscle deep on the right side of the neck below right ear cutting the muscle underneath.
11. The face was badly disfigured. It was split from (a) lateral side of eye upto left ear tragus exposing fascia and bone, (b) another cut splitting upper lip in the middle exposing maxilla on left side alongwith vessels and another of the tongue, mandible left side of ramus fractured at several places.
12. Incised wound vertically placed 2 x 1 cm with bone deep on left frontal region.
13. There were three obliquely placed incised wounds present on the right cheek, right mandible region measuring 1.5 x 1 with muscle deep, 1 x 1.5 cm x muscle deep and 1.2 x 0.5 x 0.5 cm respectively.
14. 4.5 x 4 x tracheal (exposed) wound anterior side of neck.
15. 1.5 cm below injury No. 14, elliptical incised wound going towards right lateral side 9 x 3.5 x trachea in which trachea was split and exposed alongwith oesophageal tear.
16. Incised wound 3 x 1 cm x 1 cm on the left shoulder anteriorly.
17. Incised wound lying vertically involving umbilicus measuring 8 x 3.5 x small intestinal loop was coming out.
18. Another incised wound lateral and left side of abdomen 5 x 3 x gut coming out.
19. Incised wound on right shoulder 2 x 1 cm present on the posterior region.
20. Incised wound present on the right scapular region lying obliquely, elliptical 4 x 2 x piercing upto the middle lobe of the lung.
21. Right lower back of the chest was contused diffusely involving infrascapular region with multiple fractures of the posterior ribs, piercing the lung right at several places causing haemothorax.



22. There were two wounds on the right index finger on the plexer aspect 3 x 2 x .05 cm and another on the web of the thumb lacerated wound 2 x 1 x 0.75 cm.”
14. Thus, as per PW-1, as many as 22 injuries, most of them incised wounds were found on various parts of the body of deceased including head, neck, face, abdomen and chest. Some of the organs were also found to have been punctured. PW-1 Dr. Ashwani Kumar stated that the cause of death was due to shock and haemorrhage as a result of extensive injuries to the vital parts of the body including brain, lung, kidney etc. Although, learned counsel for the appellants tried to assail the aforesaid evidence while submitting that the injuries in question could not have been caused with ‘*drant*’ as the aforesaid witness during cross-examination had expressed some opinion that the front portion of the ‘*drant*’ is serrated and indented and injury could not have been caused with the said portion. However, cross-examination cannot be read in isolation and has to be read into in conjunction with examination-in-chief, the relevant extract of which is reproduced herein under:-

“..... I have seen
“Darat” Ex.P.1. It is correct that some portion of
the drat Ex.P.1 is sharp and that can cause incised
wounds. Lacerated wounds and contusions can be
caused with lathies Exs. P.2 and P.3.”

15. Even if it is accepted that an injury can not be caused by front portion of ‘*darat*’ (Ex.P-1), but PW-1 has clearly stated that some portion of



‘*darat*’ Ex.P-1 is sharp and that can cause incised wounds. Lacerated wounds and contusions as found on dead body could be caused with *lathis* (Ex.P-2 and P-3). The aforesaid portion of the statement does show that inflicting of injuries with the ‘*darat*’ has not been absolutely ruled out and rather it stands clarified that some portion of the ‘*darat*’ was sharp edged and can cause incised wounds. The dead body was found to be having a large number of incised wounds which is in tune with the prosecution version. As such, this Court does not find any reason either to doubt the credibility or the opinion of witness PW-1 whose statement lends corroboration to the case of prosecution.

16. The contention of the appellants counsel to the effect that the presence of complainant at the spot is doubtful is surely required to be examined minutely. A perusal of the testimony of complainant’s son i.e. PW-10 does show that apart from stating that he and his father had gone to take a bath in the pond, he also stated in his examination-in-chief itself that he had gone home to call his father and that in the meantime the accused had run away after inflicting injuries. His Cross-examination also creates a serious doubt regarding the presence of his father at the spot. The relevant extract from his cross-examination is reproduced herein under:

“Our house is situated about fifteen killas away from the pond. On the way, nobody met me. However, at the house, my father met me. It took me about ten minutes to reach my



house from the village pond. I stayed at my house only for one minute and immediately thereafter I and my father came to the place of occurrence. It took us about ten minutes in reaching the spot from our house.....”

17. The aforesaid admission on part of PW-10 Ramesh surely suggests that PW-11 Dharam Pal had in fact not witnessed the incident and had come later at the spot though it is he who lodged the FIR. However, at the same time, this Court cannot lose sight of the fact that PW-10 Ramesh was barely 16 years of age at the time of occurrence and being of rather tender age and being alone at that point of time and immature, he immediately ran to call his father to the spot. The father being matured apparently thought it best to disclose the version to the police himself as if he had witnessed the occurrence along with his son. Under these circumstances, such like zeal on the part of victim's family can be understood and would certainly put the Court at caution. It is the duty of the Court to be at caution and be more careful in scrutinizing the evidence so as to sift grain from chaff.
18. Under these circumstances, in case the testimony of PW-11 is excluded, the Court is left with the testimony of PW-10 Ramesh. The conduct of the said witness i.e. PW-10 Ramesh is quite natural given the fact that he was aged barely 16 years at the time of occurrence and would have rather have been scared and terrorised seeing four persons inflicting injuries ruthlessly to his brother and because of which he ran away after seeing the said occurrence to seek help. However,



there is nothing on record to doubt his presence at the spot. It cannot be presumed that he had been introduced as a false witness by the complainant as in case the complainant was to introduce any false witness he would have preferred to introduce some more matured witness rather than a boy aged 16 years. The version unfolded by PW-10 Ramesh is fully in tune with the medical evidence and there being no evidence to discredit him, his testimony can safely be accepted.

19. As far as the contention of the appellants regarding the impossibility of the complainant or PW-10 to have witnessed the occurrence from outside the pond as it is stated that there is a wall around the pond, this Court finds that though some kind of wall had been constructed near the pond, but it cannot be said that the same was constructed all around the pond as in case the said position was correct, buffaloes would not have been able to enter the pond whereas the present case is that the victim had gone to the pond along with buffaloes to provide water and to bathe them. Similarly, cross-examination of PW-11 to the effect that in case one stands on '*kutcha*' path, the pond is not visible would not discredit the testimony of PW-10 Ramesh inasmuch as there is nothing on record to show that PW-10 was standing on the '*kutcha*' path. As such, the said contention regarding visibility raised on behalf of the appellants does not merit acceptance.



20. As far as the contention regarding delay in lodging the FIR is concerned, it is no doubt correct that the FIR seems to be formally lodged after about 12 hours of the occurrence, but it is a case where the occurrence had taken place late in the evening on 28.6.2001 i.e. at about 7 pm. It would certainly take some time for members of the family to recover from the shock of a brutal murder of a family member and as such the delay of 12 hours in lodging the FIR cannot be said to be fatal enough to be *ipso facto* sufficient to throw out the case of the prosecution.
21. Though, the learned counsel has pointed out some minor contradictions in the testimony of the witnesses, but the said contradictions do not pertain to any material aspect of the case. Such like minor inconsistencies are bound to occur even in the most truthful witnesses. It is well settled that a case of the prosecution cannot be doubted solely on account of discrepancies which do not pertain to a material aspect of the case. The witnesses are consistent on all the material aspects of the case. The testimony of PW-10-Ramesh could not be shattered despite a lengthy cross-examination and his testimony also finds ample corroboration from the medical evidence.
22. Though, it is correct that only one of the four accused was armed with a sharp edged weapon whereas the other were carrying sticks and the majority of the injuries found on the person of the deceased are



incised wounds, but once over-powered by four persons, then the one carrying lethal weapon could have easily inflicted large number of injuries. It is the specific case that accused Kanshi Ram had caught hold of the deceased while Krishan inflicted blows repeatedly with his '*darat*' and thereafter all the accused inflicted injuries with their sticks. All the accused had inflicted the injuries with a common intention to kill him.

23. Under these circumstances each of the accused would be vicariously liable in respect of the acts of the others, the collective effect of which is murder of the deceased. The case of the prosecution would also finds strength from the factum of recovery of the '*darat*' and the sticks at the instance of the accused. Upon chemical examination the '*darat*' was found to be blood stained. Though the grouping could not be ascertained as the material had been found to be dis-integrated, but in any case, the mere fact that blood grouping was not ascertained would not mean that the factum of recovery of blood stained '*darat*' has to be discarded.

24. No other submission or argument has been raised by learned counsel for the appellants. Having gone through the entire evidence particularly the testimony of complainant PW-11 Dharam Pal, PW-10 Ramesh and also the medical evidence, this Court does not find any infirmity in the findings, as recorded by the trial Court as regards the guilt of the accused and the same are hereby upheld.



- 25. Finding no merit in the instant appeal and the same is hereby dismissed.
- 26. Appellants be arrested immediately to undergo remaining part of their sentence. Intimation be sent to quarters concerned.

(GURVINDER SINGH GILL)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

24.05.2024
mohan

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No