

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D-158-DB of 2003
Date of decision: 03.11.2015

Chhinda

...Appellant

Versus

State of Punjab

...Respondent

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE GURMIT RAM**

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Ms. G.K. Mann, Advocate
for the appellant.

Mr. S.S. Dhaliwal, Addl. A.G., Punjab.

GURMIT RAM, J.

1. The abovesaid appellant has preferred this appeal against the judgment and order of sentence dated 13.12.2002 passed by learned Additional Sessions Judge, Ludhiana in criminal case bearing FIR No.28 dated 14.01.1989 under Section 302 read with Section 34, IPC, Police Station, Sadar, Ludhiana vide which he was held guilty for the offence punishable under Section 302 read with Section 34, IPC and awarded sentence thereunder.

2. Precisely the case of prosecution as put forth before the learned trial Court was that on 14.01.1989, Sub-Inspector Sohan Lal, In-

charge Police Post, Jodhewal, was present in the area of Chowk Basti Jodhewal along with some other police officials in connection with patrolling. There came to him complainant Ram Lal s/o Mangal Dass r/o Kalyan Nagar, H. No.B3/1169, Police Station Division No.4, Ludhiana and made his statement before him which was as under:-

“That they are two brothers. Ashok Kumar is his younger brother. Today night at about 9:00 P.M. he alongwith his brother Ashok Kumar and friends Kewal Krishan and Sukhwinder Singh was going to watch Ramayan-serial. There was electric light in front of the dairy. At that time Jatinder Kumar @ Ladi s/o Ram Nath and Chhinda s/o Khazan Chand Mehra, who had wrapped clothes were found in an inebriated condition. Said Jatinder Kumar @ Ladi was armed with a Chhuri (knife) whereas Chhinda was empty handed. Chhinda raised a Lalkara thereby exhorting his co-accused Ladi that today Ashok Kumar be not spared alive. Upon this Ladi accused gave 2/3 Chhuri blows instantaneously to Ashok Kumar which hit on his left flank and left upper arm. On receiving these injuries Ashok Kumar fell down. Complainant along with Sukhwinder Singh and Kewal Krishan raised alarm “Marditta-Marditta”. Then both the accused ran away from the spot after causing injuries to Ashok Kumar. The complainant along with his said colleagues brought injured Ashok Kumar to Civil Hospital, from where the Doctor referred him to C.M.C. Hospital, on finding his condition

serious. Motive behind this occurrence was that on the eve of 'Lohri' both the accused were rasing 'Raula' in their Mohalla under the influence of liquor, who were prevented by him and his brother Ashok Kumar from doing so. After recording this statement of complainant, same was read over to him and that he had signed the same in Hindi after admitting it to be correct."

3. On the abovesaid statement of complainant, Sohan Lal-SI made his endorsement and sent *ruqa* to police station, on the basis of which instant case was initially registered under Section 307 read with Section 34, IPC. Thereafter, the injured expired on the same day and as such, the offence under Section 302, IPC, was added in this case. Inquest report with regard to the dead body of deceased was prepared. Then post-mortem on the dead-body was got conducted. Statements of witnesses were recorded. Site plan of the spot of occurrence after inspecting the spot was prepared. Accused were apprehended on 16.01.1989. On completion of the investigation, challan was presented in the Court of learned Illaqa Magistrate, Ludhiana, who further committed the same to the Court of learned Sessions Judge, Ludhiana for trial after making compliance of the provisions of Section 207, Cr.P.C..

4. On finding a prima facie case punishable under Section 302 read with Section 34, IPC, against the accused, they were charge-sheeted accordingly by the learned trial Court vide order dated 05.07.1989 to which they pleaded not guilty and claimed trial.

During trial of the case, accused Jatinder Kumar @ Ladi was

declared as juvenile by the learned trial Court vide order dated 17.04.2002 and this case qua him was ordered to be tried by Principal Magistrate, Juvenile Court, Ludhiana.

5. The prosecution during trial of the case examined as many as nine witnesses in order to prove its version against the accused. Complainant Ram Lal was not examined since as per the record, he expired during trial of the case.

6. Thereafter, accused Chhinda Singh was duly examined as per provisions of Section 313 Cr.P.C. during which the entire incriminating evidence as brought on the file against him was put to him, which was denied by him entirely. Further, he pleaded his innocence and false implication in this case on wrong suspicion and enmity.

7. The learned trial Court after hearing learned counsel for both the parties held the accused guilty for the offence punishable under Section 302 read with Section 34, IPC and sentenced him thereunder as detailed below: -

Rigorous imprisonment for life and to pay a fine of ₹5,000/- (in default of payment of fine, he shall further undergo rigorous imprisonment for two years).

The appellant (accused) being not satisfied with the impugned judgment of conviction and order of sentence has come up with the instant appeal, notice of which was given to the respondent.

8. We have heard the learned counsel for both the parties and also analysed the record very minutely with their eminent assistance.

9. The learned counsel for the appellant has contended that there is inordinate delay in lodging the FIR, which the prosecution has

failed to explain properly during trial of the case and as such, the possibility of the false implication of the appellant in this case after due deliberation and consultation cannot be ruled out. Then it is further her contention that as per the depositions of PWs Sukhwinder Singh and Kewal Krishan, the alleged eye-witnesses to the occurrence, Ram Lal-complainant, brother of the deceased, did not make any effort to save the deceased from the accused. Herein, she has also submitted that this act on the part of complainant-Ram Lal is quite unnatural and as such, his presence at the spot at the time of alleged occurrence is not free from suspicion. Then further she has contended that as per the case of prosecution only *Lalkara* was attributed to the appellant and that he did not inflict any injury either to the deceased or to anybody else. The evidence on the record is not sufficient to sentence him with life imprisonment. Then it is also her contention that the alleged motive behind the instant occurrence was also not proved on the record, since there is no evidence on the file to show that the present appellant along with his co-accused Jatinder Kumar @ Ladi (Juvenile) had created any nuisance on Lohri day while under the influence of liquor and that they were prevented from doing so by Ashok Kumar (since deceased). Then lastly she has also pointed out some discrepancies in the evidence of prosecution and prayed that this appeal be accepted and to acquit the appellant of the charge framed against him by setting aside the impugned judgment of conviction.

10. But on the other hand, the learned State counsel has denied the above contentions of learned counsel for the appellant and contended that the impugned judgment is quite valid one being recorded on the basis of

evidence, oral as well as documentary available on the record. Nothing worthwhile had come on the record during trial of the case which could warrant any kind of interference in the impugned judgment of conviction. There is no inordinate delay in lodging the FIR which could render the story of prosecution being an afterthought and concocted one. The presence of present appellant along with his co-accused Jatinder Kumar @ Ladi (Juvenile) was very much proved on the record at the time of commission of the offence and as such, he does not deserve for any kind of leniency. Lastly, he has prayed for dismissal of the appeal and to uphold the conviction and sentence of the appellant.

11. The evidence which the prosecution led during the trial of the case, we find it necessary to discuss and the sum and substance of which is as under:-

PW-9 Sohan Lal, retired Inspector, deposed that on 14.01.1989 he was posted as Sub-Inspector, In-charge, Police Post Jodhewal and on that date his police party was present in connection with patrolling at Basti Jodhewal. PW-Ram Lal met him and he recorded his statement Ex.PJ who signed the same after admitting it to be correct. Further, he proved his endorsement Ex.PJ/1 which he made on the said statement of the complainant on the basis of which FIR Ex.PJ/2 was recorded in this case. Then he visited the spot of occurrence and prepared rough site plan Ex.PK on pointing out of complainant-Ram Lal. Then on receipt of QST from Police Station, Division No.3, he reached C.M.C. Hospital where dead body of Ashok Kumar was lying. He collected his dead body on 14.01.1989 in the early morning and prepared the inquest report Ex.PB. Further, he sent the dead body for post-mortem vide his

request Ex.PC. Further, he took the blood-stained clothes of the deceased, i.e. one pant, underwear, shirt and vest into possession vide memo Ex.PL after preparing the parcel thereof duly sealed with his seal of "SL". Further he arrested the accused and on completion of investigation, the accused was challaned by SHO.

PW-1 Dr. S.K. Sharma conducted post-mortem on the dead body of deceased on 14.01.1989 on police request Ex.PC. During post-mortem of the deceased, he found following injuries: -

"1. Stab wound 1/4" x 1/8" muscle deep on left upper part of chest, just below left clavical border.

2. Stab incised wound 1" x 1/2" on lower part of front abdomen just above left illiac region Omentum was protruding out.

3. Abrasion 1" x 1" front of left knee.

4. Abrasion 1" x 1/4" front upper part of right leg.

On exploration of the abdomen the peritoneum was cut below injury No.2. Peritonal cavity was full of blood. Omentum was cut on left side. Aorta was cut at lower part. Rest all the organs were healthy.

The cause of death in this case in his opinion was due to injury to aorta, which was sufficient to cause death in an ordinary course of nature. Injuries were ante-mortem in nature.

Further he proved the carbon copy of post-mortem report

Ex.PA and pictorial diagram showing the seats of injuries Ex.PA/1. Then

he further gave his opinion that injuries on the person of deceased could be caused with a *Chhuri* (Knife).

PW-6, Sukhwinder Singh as per the case of prosecution was one of the eye-witnesses to the alleged occurrence. His statement in nutshell was that on 13.01.1989, he along with Kewal Krishan was standing in front of Gawala Dairy in their Mohalla, where an electric bulb was on. At that time there came Ram Pal and Ashok Kumar from the side of Shivpuri Road, who told them that they were going to their house to view the telecast of Ramayana on television. In the meantime accused Jatinder Kumar @ Ladi armed with *Chhuri* (knife) and Chhinda empty handed present in the Court came there. Chhinda who was under the influence of liquor raised a *Lalkara* thereby exhorting his co-accused Ladi that Ashok Kumar should not be allowed to escape alive. On this, accused Ladi caused a stab blow with *Chhuri* (knife) into front side of Ashok Kumar. He raised an alarm *Bacho-Bacho* and ran away. Accused persons after committing the crime also fled away with the weapon. Then he and Kewal Krishan took Ashok Kumar to Civil Hospital, Ludhiana where they were advised to take him to C.M.C. Hospital, Ludhiana since his condition was serious and accordingly they got him admitted in CMC hospital. Then it was further in his statement that Ashok Kumar had told them that on the previous day they had an altercation with accused since they were creating nuisance in their Mohalla.

Abovesaid Kewal Krishan who was also eye-witness to the alleged occurrence was examined as PW-8 and he also supported the version of prosecution by corroborating the above discussed statement of PW-6 Sukhwinder Singh.

PW-2, HC Ranjit Singh, PW-3 C. Sarwan Kumar, PW-4 C. Ram Parkash and PW-5 C. Malkiat Singh were the formal witnesses in this case. They tendered their duly sworn affidavits Ex.PD, Ex.PE, Ex.PF and Ex.PG, respectively, as a part of their depositions.

PW-7, Nachhattar Singh was the draftsman. He proved the scaled site-plan Ex.PH, which he prepared after visiting the spot.

12. As per the case of prosecution, the alleged occurrence took place on 13.01.1989 at about 9:00 P.M and thereafter the injured was taken to Civil Hospital, Ludhiana. On seeing the serious condition of injured, the Doctor of Civil Hospital referred him to C.M.C. Ludhiana wherein he was got admitted and expired on the same day. Then the matter with regard to the occurrence was reported to police as per *ruqa* Ex.PJ/1 on 14.01.1989 at 12:30 A.M. i.e. within 3 ½ hours of the alleged occurrence. It is a matter of common prudence that whenever a person sustains serious injuries either at the hand of the accused or otherwise, then the natural tendency of his family members, colleagues, etc. is to take him to the nearby hospital in order to save his life by providing him all the possible medical aid. In the case in hand as observed by Dr. S.K. Sharma (PW-1) in the carbon copy of post-mortem Ex.PA of deceased, there were two stab wounds i.e. on the left upper part of the chest and lower part of front abdomen, just above left illiac region, besides, two abrasions on left knee and upper part of right leg. So certainly due to nature of these injuries, the condition of the injured was to be serious and unstable which made his family members firstly to take him to the hospital for his survival without bothering to inform the police qua this occurrence. Then it had also come in the cross-examination of PW-9 that

injured-Ashok Kumar had expired at 11:20 PM on 13.01.1989. The information qua the alleged occurrence in this case was prompt and said delay of about 3 ½ hours in informing the police qua this occurrence cannot be termed as an inordinate delay to brush aside the version of prosecution. Then the FIR Ex.PJ/2 was registered in this case at 1:00 A.M on 14.01.1989. Then it is also mention-worthy herein that the alleged occurrence took place during winter period on 13.01.1989 at about 9:00 P.M. and during this period there generally remains extreme cold coupled with dense fog in Punjab-State as well as in the entire northern part of the country. Moreover complainant-party belongs to a poor family and this point could be gathered from the fact that at the time of alleged occurrence, deceased along with his brother and two others was going to see telecast of Ramayana on television in the house of some neighbour, meaning thereby they were unable to keep any set of television in their house at that time. As abovesaid the FIR in this case was registered at 1:00 A.M. on 14.01.1989 and then the delay, if any, in sending the special report to the Illaqa Magistrate is on the part of the police of concerned police station and the complainant is not to be penalized for that. So the above contention of learned counsel for the appellant regarding delay in reporting the matter to the police is found to be devoid of any substance and as such, the same is rejected.

13. So far as the duration of alleged occurrence in this case is concerned, the same was very short. As per the prosecution version, the present appellant raised a *Lalkara* and immediately thereupon his co-accused Jatinder Kumar @ Ladi inflicted 2/3 knife blows to deceased and fled away from the spot of crime. So there was no time for complainant-

Ram Lal to intervene and to save the deceased from the accused. Then the accused at the time of alleged occurrence had wrapped the clothes around their bodies and this occurrence took place during night time at about 9:00 P.M. in the winter season. So the above contention of learned counsel for the appellant that complainant did not intervene to save the deceased from the accused does not cut much ice to cause any material effect on the case of prosecution.

14. Then as per the record it was proved that complainant Ram Lal of this case had died during trial of the case and hence he could not be examined as a witness by the prosecution.

15. The cause behind this occurrence was that one day prior to this occurrence complainant and his brother Ashok Kumar (since deceased) had forbidden the appellant and his co-accused from causing nuisance in their Mohalla while being under the influence of liquor. Even it is also found mentioned in the statement of PW-6 Sukhwinder Singh that said Ashok Kumar had told them that on the previous day there was a dispute/altercation with Jatinder Kumar @ Ladi and Chhinda since the latter were causing uproar in their *mohalla* Kalyan Nagar. So this part of statement of this witness can also be treated as a sort of oral dying declaration made before him by the deceased immediately prior to his death after the alleged occurrence. Then PW-8 had also categorically stated that motive behind this occurrence was that the accused had a dispute/altercation with Ashok Kumar (since deceased). So in the light of the above circumstances and evidence on the record, the motive as alleged behind this occurrence stands fully established. Consequently, the above contention of learned counsel for the appellant that motive as

alleged is not proved on record is also turned down.

16. Then in the instant case only *Lalkara* is attributed to the appellant. His presence at the spot at the time of alleged occurrence has also been duly proved on the record. It is a settled principle of criminal law that “*they also serve who only stand and wait*”. The mere fact that only *Lalkara* is attributed to this appellant cannot be a ground to allow him to go scot free in this case when the occurrence in question and his presence at the spot has been fully established beyond the doubt.

17. Regarding the inconsistencies as well as improvements in the statements of PW, the learned counsel for the appellant had referred to the cross-examination of PW-6 wherein he had stated that he did not state before the police that he, Ashok Kumar, Ram Lal and Kewal Krishan had come together at 9:00 P.M. to see the telecast of Ramayan in Preet Nagar, but when confronted with part **A to A** of his statement Mark DA wherein it was so stated, then he denied to have made any such statement before the Police. Then the learned counsel for the appellant has further referred to his cross-examination wherein he deposed that he had stated before the Police that he invited Ashok Kumar and Ram Lal to see Ramayan telecast at his house, but when confronted with his statement Mark DA wherein it was found to be not so recorded. Then further she has referred to the cross-examination of this witness, wherein he deposed that he did not state before the police the fathers' name of both the accused, but when confronted with part **B to B** of his statement Mark DA, then fathers' name of both the accused were found recorded in it. But these alleged improvements and inconsistencies in the statement of PW-6 are not found

upto the mark to dislodge the prosecution version.

18. Then the learned counsel for the appellant has pointed out few discrepancies in the statements of material witnesses of prosecution. In this regard she has contended that according to PW-6, they reached in C.M.C. Hospital, Ludhiana along with injured at about 10:20/10:25 P.M., whereas PW-8 on this point stated that they reached in the said hospital at about 10:00 P.M. Then it is further her contention that according to PW-6, injured Ashok Kumar was declared dead by the Doctor in C.M.C. Hospital, at about 11:30/11:45 P.M., whereas PW-8 on this point stated that injured was declared dead at about 1:00 A.M. This time as stated by PW-9 was about 10:20 PM on 13.01.1989. Then it is further her submission that according to PW-6, the distance of Civil Hospital, Ludhiana from the place of occurrence was 3 kilometers, whereas PW-8 on this point deposed that this distance was of about 3/4 kilometers.

The above discrepancies in the statements of abovesaid PWs are also found to be of minor nature and not sufficient to cause any dent in the version of prosecution.

19. Then it is case of the prosecution that after the post-mortem on the dead body of deceased, his clothes i.e. one pant, one underwear, one shirt and one vest were taken into police possession in a sealed parcel vide memo Ex.PL. As mentioned in this memo there was a cut on the left side of the pant as well as on the underwear. Cut on these clothes corresponds with injury No.2 stab wound as mentioned by the Doctor in post-mortem report Ex.PA. Then the cut mentioned on the shirt and vest of the deceased corresponds with injury No.1 stab wound as mentioned in the abovesaid post-mortem report of the deceased. Then these clothes of

the deceased were sent to the Forensic Science Laboratory and as per report Ex.PX as submitted by the laboratory, human blood was found on all these clothes.

20. Then it is also made clear that cross-examination of PW-6 was deferred as per the record qua accused-Jatinder Kumar @ Ladi, which was not completed. This cross-examination of PW-6 could not be completed for the reason that subsequently the said accused Jatinder Kumar @ Ladi was declared as juvenile and this case qua him was ordered to be sent for trial before Juvenile Justice Board concerned. So far as the cross-examination of this witness qua the present appellant is concerned, the same was complete for all intents and purposes. So statement of this witness cannot be ignored on the ground that his statement was not complete one for the reason that he did not appear to face cross-examination at the hands of accused-Jatinder Kumar @ Ladi.

In the light of above discussion, this appeal is found to be meritless. Resultantly, it stands dismissed. The judgment of conviction and order of sentence under appeal stands upheld.

As per the record, the appellant is on bail, so let he be taken into custody after cancelling his bail bonds and surety bonds and be sent to the jail for undergoing the remaining part of his sentence.

A copy of this judgment be sent to the quarter concerned for the strict compliance.

November 03, 2015
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(GURMIT RAM)
JUDGE