

In the High Court of Punjab and Haryana at Chandigarh

Date of decision: 14.10.2015

CRA-D-1078-DB-2009 (O&M)

Krishan and others

..... Appellants

Vs.

State of Haryana

..... Respondent

CRR-1368-2010 (O&M)

Shakuntala and others

..... Petitioners

Vs.

Krishan and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Argued by: Mr. Ashwani Bhardwaj, Advocate
for the appellants (in **CRA-D-1078-DB-2009**)

Mr. Vivek Saini, AAG, Haryana.

Mr. Mani Ram Verma, Advocate
for the petitioners/revisionists (in **CRR-1368-2010**)

Mr. Ashwani Bhardwaj, Advocate
for respondents No.1 to 4 (in **CRR-1368-2010**)

RAJ RAHUL GARG.J.

Criminal appeal **CRA-D-1078-DB-2009** is directed against the
judgment dated 04.12.2009 rendered by learned Additional Sessions Judge-

III, Bhiwani whereby the appellants were convicted for committing offence punishable under Sections 302/34 of Indian Penal Code (for short 'IPC') whereas appellant Krishan was also held guilty under Section 25 of the Arms Act. Thereafter, vide order of sentence dated 07.12.2009, each one of accused was sentenced to undergo rigorous imprisonment for life and also fined Rs.2,000/- each with default clause for committing offence punishable under Section 302/34 IPC. For committing offence punishable under Section 25 of the Arms Act, appellant Krishan was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 1,000/-. In default of payment of fine, he was ordered to undergo simple imprisonment for a period of 15 days.

Shakuntala, wife of Bhoop Singh (deceased), filed aforementioned **CRR-1368-2010** with a prayer for enhancement of sentence of the appellants and allowing the compensation to the petitioners.

Brief facts of the case are like this; that on the statement of Balwan, son of Baljeet Singh, which is Ex. PA, this case registered. As per Balwan, Bhoop Singh (deceased) was his uncle (younger brother of his father). On 22.03.2008, at about 10:00 A.M. his aunt Shakuntala was going towards plot from her residence. Vikas aged about 6/7 years, son of Krishan, started throwing mud on Shakuntala. His aunt stopped him and told that she is his Tai and he has no right. At that time, Krishan reached there. He was under the influence of liquor. He abused his aunt. Krishan's mother and wife took him from there.

At about 4:30/5:00 P.M., his uncle Bhoop Singh was talking on mobile phone bearing No. 9416765233 while standing in the Chowk near the house of Kurara Ram Ahir. At that time, his aunt Shakuntala and son

Rahul were coming from the side of their house. Complainant was also going towards them. In their presence, Ratti Ram, Krishan, Krishna and Anita (accused) came there in furtherance of their common intention to kill his uncle Bhoop Singh and caught hold of him. They made his uncle fall on the ground and then pressed him. Krishan gave several blows with knife to his uncle on the right side of his chest, right side of his abdomen, at the back, right side at the back of neck and on the left hand thumb. On this complaint, his aunt Shakuntala and Rahul raised alarm by shouting '*bachao bachao*' whereupon all the accused had run away from the spot. Bhoop Singh was brought to General Hospital, Bhiwani by Maruti van belonging to Raj Kumar. Bhoop Singh was declared dead by the doctor. As per complainant, since accused party was nursing a grudge on account of aforesaid morning incident, therefore, they had killed Bhoop Singh by giving him knife blows.

Investigations were conducted. During the course of investigations, statement of witnesses were recorded. Inquest proceedings were completed. Post-mortem on the dead body of Bhoop singh was got conducted. On 23.03.2008, ASI Ram Singh produced before Investigating Officer parcel containing the clothes of the deceased and the same were taken into possession vide memo Ex. PE. On the same day, rough site plan of the spot Ex.PK was prepared. Blood stained brick bats lying at the spot, after duly sealing the same with the seal of 'DR' were also taken into police possession vide memo Ex. PB. Case property was deposited with the MHC of the police station, thereafter, further investigations of the case were handed over to Inspector/SHO Vijay Pal. Vijay Pal, Inspector arrested the accused. Clothes of accused Ratti Ram and Krishan, which they were

wearing at the time of incident, were taken into possession vide memo Ex. PC and Ex. PD. The same were duly sealed with the seal of 'RS'. Sealed parcel was deposited with the MHC of the police station. On 24.08.2008, on interrogation, accused Krishan made disclosure statement Ex. PL to the effect that he had kept concealed knife in the *tin shed (chapper)* in village Dinod and he alone knows about it and can get the same recovered. In pursuance with his disclosure statement Ex. PL, accused Krishan got recovered blood stained knife Ex.P7 from the aforesaid place. After preparing its sketch plan and sealing it with the seal of 'VP', it was taken into police possession vide memo Ex. PL/1. Site plan of the place of recovery of knife Ex.PM was also prepared. Case property was handed over to MHC of the police station on the same day. During the course of investigations, accused Sunil was found innocent. As such, challan was presented against the accused for offence under Sections 302/34 IPC and under Section 25 (54) 59 of Arms Act.

Shakuntala, wife of Bhoop Singh (deceased) also filed aforementioned revision petition and pleading that they have incurred great expenditure in prosecuting the case against the appellants. They incurred expenditure in engaging an Advocate and also paying other expenses. They spent Rs. 1,50,000/- for that purpose. Revisionists Shakuntala as well as her minor sons suffered a lot on account of death of her husband/father, who was the only bread earner of the family. They have become helpless. In view of Section 357 (4) Cr.P.C. they are also entitled to compensation as laid down in **Sarvinder Singh and another Vs. The State, 1976 PLR 867.** The learned trial Court did not pass any order for payment of compensation.

As such, by filing the present revision petition, it was prayed that the

sentence of the appellants be enhanced and they may be directed to pay compensation to the revisionists.

Finding a *prima-facie* case against the accused, they were charge sheeted for committing offence punishable under Section 302/34 IPC whereas appellant Krishan was also charge sheeted for the offence under Section 25 (54) 59 of the Arms Act, to which, accused did not plead guilty but claimed trial.

After taking entire prosecuting evidence, statement of accused under Section 313 Cr.P.C. were recorded wherein they denied each prosecution allegations and pleaded their innocence as well false implication. As per accused, no recovery was effected from them. They have been falsely involved in this case. They have not committed any such offence as alleged by PW1 and PW2. It is a blind murder. PW1 and PW2 have been falsely introduced as eye witnesses being close relation of the deceased. It was a 'FAAG' day (festival of colours) and the deceased was enjoying this festival under the influence of liquor and was playing 'FAAG'. He fell down in a drain (*Nali*) and sustained injuries. They did not cause any injury to the deceased.

After hearing both the sides and appraising the entire material and evidence coming on record, the learned trial Court recorded the judgment of conviction and order of sentence as mentioned in the earlier part of this judgment.

We have heard learned counsel for the parties, besides appraising the entire material and evidence coming on record.

First of all, it was argued by learned counsel for the appellants-accused that statement of Balwan (PW1) and that of Shakuntala (PW2) are

not reliable. They have given the improved versions, when they appeared in the Court. In the FIR, there is no mention as to which of the accused caught hold of which part of the deceased when accused Krishan gave knife blows to the deceased. During the course of their cross-examination, they have been specifically put questions in that regard and, thereafter, they were confronted with their statements Ex.PA and Ex.DA. The aforesaid two eye witnesses deposed that after making Bhoop Singh lay on the ground, Ratti Ram caught hold Bhoop Singh from upper portion of the body whereas Krishan caught hold from the lower portion of the body. Sunil caught from private organ (nalle). Anita and Krishna have also caught him from legs and then Krishan gave knife blows on the chest, abdomen, back, back side of the neck and thumb. Of course, the aforesaid two PWs have been confronted on this point from their earlier statements yet participation of accused Ratti Ram and that of accused Krishan stand established on record beyond reasonable doubt. SI Ram Singh (PW4), who was also joined in the investigations on this case, categorically stated that on 23.03.2008, Inspector/SHO Vijay Pal arrested the accused. At the time of arrest, he produced his blood stained clothes i.e. *Pajama and* one shirt white colour. Same were converted into a sealed parcel sealed with the seal of 'RS' and then taken into police possession vide recovery memo Ex. PC. Vijay Pal (PW14) also corroborated this fact. SI Ram Singh (PW4) further deposed that on the same day, accused Krishan was also arrested. He also produced his blood stained clothes i.e. one pant and one shirt. The same were sealed into a parcel, sealed with the seal of 'RS', and taken into police possession vide memo Ex. PD. The aforesaid clothes have also been sent to FSL for chemical examination. Pajama and shirt of Ratti Ram are Ex P3 and Ex.P4

respectively whereas one pant and shirt of accused Krishan are Ex. P5 and Ex.P6. As per report FSL, blood was found on the aforesaid clothes of the accused Ratti Ram and Krishan. Involvement of Ratti Ram and Krishan is established, besides oral testimonies of Balwan (PW1) and Shakuntala (PW2). Had Ratti Ram not present at the spot and not participated in the crime, the blood of the deceased would not have fallen on his clothes. Presence of blood on the clothes of Ratti Ram pin points his involvement in this crime. As such, the contention of learned counsel for the appellants-accused that Ratti Ram is an old man of the age of 60 years and thus would not participate in such like crimes, is not sustainable.

However, from perusal of the statements of Balwan (PW1), Shakuntala (PW2) and FIR Ex.PA, the involvement of appellants-accused Krishna wife of Ratti and Anita wife of Krishan, cannot be said to be proved beyond reasonable doubt. As per FIR, accused Krishan, Ratti Ram along with Krishna, Anita and Sunil, came to the spot with an intention to kill Bhoop Singh and with that intention, they all caught hold of the deceased, made him fall on the ground forcibly and, thereafter, accused Krishan gave knife blows to deceased Bhoop Singh. In the FIR, there is no mention that while accused Krishan gave knife blows to Bhoop Singh, Krishna Devi and Anita Devi caught hold of deceased from the legs. In the FIR, the complainant party also involved. Sunil, wife of Parkash, as accomplice to the appellants-accused. After investigations, she was found innocent and thus not challaned in this case. Not only this, an application under Section 319 Cr.P.C. was also given in the Court for summoning aforementioned Sunil as additional accused but her summoning was not allowed by the Court and the application was dismissed. As per FIR

Ex.PA, it is evident that when in the morning at 10:00 A.M. Vikas son of Krishan threw mud on Shakuntala on account of 'Holi' festival and when Krishan, under the influence of liquor started calling bad names to Shakuntala, then Krishan's wife and mother had taken him away. This very fact shows that Krishan's mother and wife Anita wanted to avoid any untoward incident and that is why they have taken Krishan away so as to avoid the dispute. As such, they were in avoidance of dispute and not in precipitating or causing it. Now-a-days, it is quite common that when a crime is committed, the complainant party tries to rope in as many members of the family of accused as they can. In the case in hand, firstly they named Krishna and Anita along with Sunil as accused and later on when appeared in the Court, they also attributed specific part to them so as to show their involvement in the crime and get them convicted. Sunil had already been found innocent during investigations. Had Krishna and Anita caught hold of Bhoop Singh at the relevant time i.e. when Krishan gave knife blows to deceased, their clothes would have also sustained blood stains which is not in the case in hand. As such, their involvement in this crime is not free from doubt. Thus, we are of the considered view that accused Krishna and Anita are entitled to the benefit of doubt.

It was next argued by learned counsel for the appellants-accused that oral evidence and medical evidence are not consistent. As such, benefit of doubt has to go to the accused.

On the other hand, it was contended by learned State counsel that ocular evidence, if otherwise is acceptable, has to be given importance over medical opinion. Medical evidence is only an evidence of opinion and it is not conclusive and when oral evidence is found to be inconsistent with

the medical opinion, the question of relying upon one or other would dependent upon facts and circumstances of each case. No hard and fast rule can be laid down thereof.

In the case in hand, PW1 and PW2 witnessed the occurrence from some distance i.e. 8/10 paces which comes to approximately 100'. Even the cause of death was given by Dr. Amrita Bhardwaj (PW8), as a result of injury to great vessel and vital organs lungs which was anti-mortem in nature and sufficient to cause death in ordinary course of nature. Under these circumstances, with the aforesaid injuries on the person of deceased, it stands proved that appellant-accused Krishan has given knife blows to deceased Bhoop Singh with an intention to kill him. It is not always expected from the eye witnesses to describe each and every injury on the person of deceased mathematically. Thus, the above contention of learned counsel for the appellants-accused is devoid of any force.

It was next argued by learned counsel for the appellants-accused that Vijay Pal (PW14) deposed that he took into possession the clothes of Ratti Ram and Krishan which they were wearing whereas Ram Singh (PW4) stated that accused Ratti Ram and Krishan themselves produced their clothes at the time of their arrest. This contradiction appearing in the statements of PW4 and PW14 makes the prosecution case doubtful, so far as, the recovery of blood-stained clothes from the possession of accused in concerned. In fact, if we read the statement of Vijay Pal (PW14), it would become clear that he never intended to state that he took into possession the clothes of accused Ratti Ram and Krishan which they were wearing at the time of arrest rather he intended to state that he took into possession their clothes which they were wearing at the time of

occurrence. Ram Singh (PW4), clearly stated that when they were arrested, they produced their blood stained clothes before Inspector Vijay Pal, who partly investigated this case. It is also understandable that firstly the accused would not be expected to keep on wearing blood stained clothes uptill next day and further there is no material on the file to show that the accused were stripped off their clothes and then the same were taken into police possession. Thus, the aforesaid argument of learned defence counsel is nothing but imaginary and absurd.

The next argument raised by learned counsel for the appellants-accused is this; that in fact accused did not cause any injury to the deceased on account of 'FAAG' day, he was under the influence of liquor and as such he had fallen down in a drain (*Nali*) and since the complainant party was having a grudge against accused on account of morning incident of the same day, therefore, they have implicated accused falsely in this case.

Again, the contention of learned counsel for the appellants-accused is devoid of any force for the reasons that there is no evidence on the file to show that the clothes of the deceased were smeared with mud or dirt of *nali*. Had he in fact fallen in the drain, his clothes must have also been spoiled. In the absence of the same, this argument of counsel for the appellants-accused is not sustainable.

The next contention of learned counsel for the appellants-accused that the witnesses are relation witnesses and as such interested in the success of the case and, therefore, in the absence of any independent corroboration, their testimonies are not worthy of placing any credence and atleast it would not be safe to record the judgment of conviction.

The above argument of learned counsel for the appellants-

accused is devoid of any force in view of the settled proposition of law that merely because the eye witnesses are family members their evidence cannot *per se* be discarded. It is also the settled proposition of law that when there is an allegation of interestedness, the same has to be established. Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against innocent person. In the case in hand, the statements of PW-1 and PW2 coupled with the medical evidence as well the fact that the weapon of offence i.e. blood stained knife was recovered from the possession of accused Krishan, the involvement of accused Ratti Ram and that of Krishan appellants-accused stands established on record beyond any shadow of doubt.

Accepting the contention of learned counsel for the revisionists that they being legal heirs of deceased Bhoop Singh are entitled to compensation as they have lost their earning member and have also incurred expenditure in pursuing this case, we are of the view that the ends of justice would be met if a sum of Rs. 1 lac is given as compensation to the revisionists which shall be apportioned in their favour in equal shares. So is ordered accordingly. Regarding enhancement of sentence, the learned counsel for the revisionists have failed to show any ground in support of his case. We have also considered this revision petition from the point as to if this case falls in the categorically of rarest of rare case but in our considered view, the present case is not one which falls in the aforesaid categorically. As such, this argument of counsel for the revisionists is rejected.

For the reasons recorded above, this revision petition is allowed to the extent of awarding compensation of Rs. 1 lac to the

revisionists in equal shares only by the appellants Ratti Ram and Krishan in equal shares.

For the reasons recorded above, the appeal qua appellants-accused Krishna and Anita, is allowed by giving benefit of doubt to them. Thus they are acquitted and the impugned judgment of conviction dated 04.12.2009 and order of sentence dated 07.12.2009 are set aside to that extent. However, we find no merit in the appeal qua appellants-accused Ratti Ram and Krishan. Thus, the judgment of conviction dated 04.12.2009 and order on sentence dated 07.12.2009 qua them is maintained. The appeal by Ratti Ram and Krishan is ordered to be dismissed. In case, the amount of fine of Rs.1,00,000/- as compensation is not paid to the revision petitioner, they shall undergo further imprisonment for a period of six months.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

14.10.2015
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