

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

1. CRA-D-1630-DB-2013
Pronounced on: 10th April, 2015

Rajesh Appellant

VERSUS

State of Haryana Respondent

2. Murder Reference No.6 of 2013

State of Haryana Appellant

VERSUS

Rajesh Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Ms.Puneeta Sethi, Advocate, for the appellant-Rajesh.
Mr.Sandeep Vermani, Addl.A.G., Haryana.

AMOL RATTAN SINGH, J.

Murder reference No.6 of 2013, titled as State of Haryana Vs. Rajesh, has been placed before us for confirmation of the death sentence imposed upon the respondent by the trial Court, vide its judgment dated 27.09.2013/28.09.2013.

Rajesh, the convict, on the other hand, challenges the same order/judgment passed by the Additional Sessions Judge, Sonapat, convicting and sentencing him in the following terms: -

Offence(s)	Sentence(s)
Under Section 302 of the IPC	Sentenced to death.
Under Section 324 of the IPC	Sentenced to undergo rigorous imprisonment for a period of one year.
Under Section 326 of the IPC	Sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/-. In default of payment of fine, further rigorous imprisonment for three months.
Under Section 449 of the IPC	Sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/-. In default of payment of fine, further rigorous imprisonment for three months
	The sentences shall run concurrently.

2. The facts of the case are that Police Station City, Gohana, received information at 01:45 AM from a ward servant of CHC Gohana (Ex.PQ), containing intimation by a doctor that Sonu @ Kala and Ramesh have been referred to PGIMS, Rohtak, whereas Sonia, daughter of Ramesh, has been brought dead to the hospital.

PW-22, SI Megh Raj, who was posted at PS City Gohana, Sonapat, alongwith ASI Balwan, ASI Samunder Singh, HC Ram Niwas, HC Sukhbir and Constable Sanjay proceeded to the Police Post, PGIMS, Rohtak and upon reaching there, took into possession intimation Ex.PU, about the death of Ramesh and also took into possession intimation Ex.PN/1, pertaining to injuries suffered by Sonu, alongwith a copy of the MLR, Ex.PN.

3. SI Megh Raj recorded the statement Ex.PK, made by PW-20 Pawan, son of Ramesh, the first informant. Pawan stated that they reside with Om Parkash, elder brother of his father-Ramesh, in Devi Pura, Gohana

and are two brothers and two sisters. His elder sister, Sunita, is married at Beri. Pawan is younger to Sunita, another sister, Sonia, is 11/12 years old and his brother Sonu is aged 9 years. Rajesh, son of Dei Ram, resides opposite their house. His father used to hurl abuses, while under the influence of liquor. Rajesh (appellant) had stated that as “you hurl abuses”, he would kill their family one day. Pawan further stated that his father had not abused Rajesh and his family. On the previous day, a quarrel took place between Rajesh and Ramesh (Pawan's father), which was resolved by neighbours. At about 09:40 PM, his sister, Sonia, was sleeping in the inner room, his father and younger brother Sonu were sleeping in the outer room and he was sleeping in the house of his grandmother, which is adjacent to their house. He came out in the street to pass urine but as he heard a noise coming from his house, he entered his house and saw Rajesh (appellant) holding a 'Dau' and causing injuries with the 'Dau' to his father Ramesh. Sonu, his younger brother, on seeing injuries being caused to their father, ran outside, crying. Rajesh chased Sonu with the 'Dau' in his hand. Sonu went to his grandmother's room. Rajesh followed and caused injuries to Sonu. Om Parkash, his uncle, also came to the spot and witnessed the occurrence. On an alarm being raised, Rajesh ran out of the house. Pawan and his uncle went into the house and found that Sonia (his sister) had been injured. Pawan, Om Parkash and other people of the locality arranged a vehicle and transported his father-Ramesh, Sonu and Sonia to CHC Gohana, where doctors declared Sonia dead. Ramesh and Sonu were taken to PGIMS Rohtak, without preparing any MLR. On reaching PGIMS, Rohtak, his father-Ramesh was declared dead but Sonu was admitted for treatment. Pawan further stated that Rajesh harboured a grudge against his father for

abusing him (Rajesh) while under the influence of liquor and had, therefore, caused the death of Ramesh and Sonia and injuries to Sonu, with a 'Dau'.

The statement led to registration of an FIR, Ex.PK/1, under Section 449/302/324 of the IPC, dated 06.09.2010, by PW-13 ASI Subash Chander. A special report was forwarded to the Illaqa Magistrate and police officers through PW-1 Balvinder Singh.

4. SI Megh Raj filed an application to the Medical Officer, PGIMS, Rohtak to opine whether Sonu was fit to make a statement but as he was informed that Sonu was unfit to make a statement, he took the dead body of Ramesh into possession, prepared an “inquest” report, Ex.PV and forwarded the dead body for postmortem examination through ASI Sunder Singh. “Inquest” proceedings pertaining to Sonia are Ex.PV/1. During inquest proceedings, statements of witnesses were recorded. The dead body of Sonia was forwarded for postmortem examination.

SI Megh Raj then proceeded to the place of occurrence, inspected the spot, got the place photographed, lifted blood stained earth, vide memo Ex.P1, prepared a rough site plan of the place of occurrence Ex.PV/3 and after ASI Balwan Singh handed over a sealed parcel containing papers and clothes (Ex.PE) of deceased-Sonia and papers and clothes (Ex.PH) pertaining to deceased-Ramesh, they were taken into possession. The case property was deposited with the Moharrar HC on 07.09.2010. Rajesh was arrested, in the meanwhile, on 06.09.2010.

5. Upon interrogation, Rajesh suffered a disclosure statement Ex.PJ, admitting his guilt and stating that he could get the weapon of offence, i.e. an iron 'Dau' (Ex.P1), recovered. Rajesh thereafter led the police party to the place where he had concealed the iron 'Dau' and got it

recovered. A rough sketch plan of the weapon is Ex.PF. The blood stained clothes of Rajesh (Ex.P2 and Ex.P3) were taken into possession, vide memo Ex.PG. The rough sketch of the place of occurrence is Ex.PV/3. The appellant was produced before the Illaqa Magistrate on 13.09.2010. SI Megh Raj filed an application, Ex.PW15/B, to Dr. Sanjiv, Medical Officer, CHC, Gohana, for obtaining his opinion whether injuries on the person of deceased-Sonia could have been caused by the iron 'Dau', which was produced before the doctor. The doctor opined, vide Ex.PW15/C, in the affirmative. On 16.09.2010, the investigating officer took into possession clothes of Sonu vide memo, Ex.PM and thereafter obtained the opinion of Dr. Dimple, Ex.PN/3, whether the weapon recovered, could have been used to cause injuries to Sonu. On 18.09.2010, an application Ex.PN/2 was moved before the Medical Officer, PGIMS, Rohtak, about the nature of injuries suffered by Sonu. The opinion of the doctor is Ex.PN/3, which was recorded after seeing the weapon.

The photographs of the dead body and the place of occurrence, were taken into possession. A scaled site plan of the place of occurrence was prepared. The opinion of the doctor, pertaining to injuries to Sonu, is Ex.PN/5 given on an application Ex.PN/4. Ex.PY is the opinion of the treating doctor, given on an application, Ex.PY/1. Thereafter, the statements of the witnesses were also recorded.

6. Upon completion of prosecution evidence, a final report was filed before the Judicial Magistrate Ist Class, who vide order dated 13.11.2010, committed the matter to the Court of Sessions. The matter was eventually placed before the Additional Sessions Judge, Sonapat, who vide order dated 27.01.2011, framed the following Charges: -

“Firstly: That on 5.9.2010 in the area of Devi Pura, Gohana, P.S.City, Gohana, you committed murder intentionally causing the death of Ramesh and Sonia and thereby you committed an offence punishable under Section 302 IPC and within the cognizance of this court.

Secondly: That on the same date and place, you voluntarily caused simple injuries to Sonu with the help of sharp edged weapon and thereby you committed an offence punishable under Section 324 IPC and within the cognizance of this court.

Thirdly: That on the same date and place, you voluntarily caused grievous injuries to Sonu with the help of sharp edged weapon and thereby you committed an offence punishable under Section 326 IPC and within the cognizance of this court.

Fourthly: That on the same date and place, you committed house trespass by entering into the house of the complainant and used as a human dwelling in order to commit the offence punishable with death and thereby you committed an offence punishable under Section 449 IPC and within the cognizance of this court.

And I hereby direct that you be tried by this Court for the above said charges.”

The appellant pleaded not guilty and claimed trial. The Additional Sessions Judge, therefore, called upon the prosecution to lead its evidence.

7. The following documents were exhibited by the prosecution before the trial Court: -

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| 1. Ex.PM | Postmortem report of Ramesh; |
| 2. Ex.PL | Postmortem report of Sonia; |
| 3. Ex.PN | MLR of Sonu; |
| 4. Ex.PX | FSL Report; |
| 5. Ex.PN/1 | Ruka to the Incharge, PP, PGIMS, Rohtak; |
| 6. Ex.PK, Ex.PK/2., Ex.PK/3 and Ex.PK/1 and FIR; | |
| 7. Ex.PV | Ruka to MO; |
| 8. Ex.PM/1, Ex.PO, Ex.PP | Inquest report of Ramesh; |
| 9. Ex.PU | Ruka to Incharge, PP, PGIMS, Rohtak; |
| 10.Ex.PL/1 | Application to MO for conducting postmortem examination of deceased Sonia; |

11.Ex.PV/1	Inquest report of deceased Sonia;
12. Ex.PQ	Ruqa to SHO
13.Ex.PA	Recovery memo of sealed parcel containing clothes
14.Ex.PB	Affidavit of EASI Jagbir Singh.
15.Ex.PC	Affidavit of EHC Ajmer Singh
16. Ex.PD	Sealed Site Plan
17. Ex.PE	Recovery memo of sealed parcel of clothes of deceased Sonia.
18. Ex.PF	Sketch of Iron Dah
19. Ex.PG	Recovery memo of Dah and blood Stained Clothes.
20. Ex.PH	Recovery memo of sealed parcel containing clothes of deceased Ramesh.
21. Ex.P1	Recovery memo of blood stained Earth.
22. Ex.PJ	Recovery memo of blood stained earth.
23. Ex.PM/2 & Ex.PM/3	Application to M.O. For giving opinion with endorsement.
24. Ex.PN/2, Ex.PN/3	Application to MO with endorsement.
25.Ex.PN/4 & Ex.PN/5	Ruqa to MO with endorsement
26.Ex.PU/1	Ruqa to MO with endorsement
27.Ex.PV/3	Site plan of place of occurrence
28.Ex.PW15/B & Ex.PW15/C	Application to MO for obtaining opinion with endorsement.
29. Ex.PX/1	Summons alongwith report.
30.Ex.PX/2	Summons alongwith report.
31.Ex.PX/3	Summons alongwith report.
32.Ex.PY & Ex.PY/1	Application to Dr. Navneet along with opinion.
33.Ex.P1 to Ex.P7	Photographs.
22 witnesses appeared for the prosecution	

PW-1 was Constable Balvinder Singh, PS City Gohana, who

deposed that on 06.09.2010, ASI Subhash Chander handed over the special

report which he delivered to the Illaqa Magistrate and police officers at

06:45 AM.

PW-2 was Constable Sukhpal, PS City Gohana, who took photographs Ex.P1 to Ex.P7 of the place of occurrence and the dead body, with a digital camera, at CHC Gohana. The witness also deposed that on 16.09.2010, the doctor at PGIMS, Rohtak, handed over a parcel sealed with the seal of the doctor which was taken into possession vide memo Ex.PA. PW-2 identified his signatures on memo Ex.PA. In his cross-examination, PW-2 deposed that he took the photographs at about 9 AM in the mortuary and at 12:00 noon the place of occurrence. He also deposed that the door of the house was towards the western side. The house consists of two rooms, the floor of one room was “katcha” and the other was “pucca”.

PW-3 was ASI Jagbir Singh, PS City Gohana, who tendered his affidavit, Ex.PB, wherein he deposed that he was posted as MHC, PS City Gohana, on 06.09.2010. SI Megh Raj deposited sealed parcels in the malkhana, of which three were containing blood stained earth sealed with the seal “MR”, alongwith the sample seal. A parcel containing clothes of deceased-Sonia, sealed with a seal of the doctor, alongwith a sample seal, a parcel containing clothes of deceased-Ramesh sealed with the seal of the doctor alongwith a sample seal, were also deposited. PW-3 also deposed that on 07.09.2010, SI Megh Raj deposited a parcel containing a dagger, allegedly recovered from Rajesh (appellant) and a sealed parcel containing the clothes of the appellant, which was sealed with the seal “MS”. Seven sealed parcels were handed over to EHC Ajmer Singh, 874, PS City Gohana, vide RC No.760, dated 21.09.2010, after taking them out from the malkhana. EHC Ajmer Singh handed over a receipt on 21.09.2010 after depositing the case property in FSL, Madhuban.

PW-4 was EHC Ajmer Singh, PS City Gohana, who tendered his affidavit, Ex.PC, to corroborate the statement made by PW-3 that the case property was handed over to him and he deposited the same with the FSL, Madhuban, against receipt.

PW-5 was EHC Rajesh Kumar, Draftsman, S.P. Office, Sonapat, who deposed that on 30.09.2010 he prepared the scaled site plan, Ex.PD, after visiting the spot.

PW-6 was Constable Sanjay Kumar, PTC Madhuban, who deposed that on 06.09.2010 ASI Balwan Singh handed over a parcel sealed with the seal of the doctor, containing the clothes of deceased-Sonia, to SI Megh Raj, in his presence and acknowledged his signatures on possession memo Ex.PE.

On 05.05.2011, the Public Prosecutor tendered into evidence the FSL report, Ex.PX.

9. **PW-7** was Sonu @ Kala son of deceased-Ramesh, aged 10 years, a child witness. Before his statement was recorded, the Additional Sessions Judge, Sonapat, satisfied himself by asking a few questions that Sonu was capable of understanding questions and giving rational answers. Sonu deposed that his father used to abuse them, but Rajesh thought that his father was abusing him. Rajesh threatened that he would kill the entire family. The exact words used by Rajesh were: “Tumhari Kunba Ghani Kar Dunga”. Sonu further deposed that they were sleeping in their house. A light was on. Rajesh entered the house and started inflicting injuries on his sister Sonia with a 'Dau'. They heard the cries of Sonia, got up and saw that Rajesh was inflicting injuries upon Sonia. Rajesh thereafter moved towards his father Ramesh and started inflicting injuries upon him with the 'Dau'.

Sonu further deposed that as he was afraid, he ran into his grandmother's house and hid himself beneath the staircase and then after entering the room bolted the room from inside. Rajesh came down from the roof through the staircase and started inflicting injuries on him (Sonu) with a 'Dau'. His 'Tau' (uncle), Om Parkash and brother Pawan rescued him but Rajesh ran away. He identified Rajesh in Court and also deposed that his father Ramesh and sister Sonia succumbed to the injuries. Sonu also deposed that the appellant inflicted injuries on his (Sonu's) elbows, foot, back of the neck, right cheek and forehead etc. The trial Court has recorded that, at this stage, the witness showed injury marks which were clearly visible on his body. The witness was cross examined and in essence he stood by his deposition in the affirmative, while deposing as to the attack by Rajesh.

10. **PW-8** was Om Parkash son of Dharam Singh, brother of the deceased-Ramesh, who deposed that on 05.09.2010 there was an altercation between Ramesh and Rajesh (appellant). Rajesh had issued a threat that one day he will kill Ramesh. The witness deposed that at about 09:45 PM Rajesh entered the house of Ramesh and started inflicting injuries upon Sonia and Ramesh and thereafter also upon Sonu with a 'Dau'. On hearing their cries, he came out into the street and saw Pawan passing urine in the street. He and Pawan entered Ramesh's house and saw the occurrence, i.e. Rajesh was inflicting injuries on Ramesh and they tried to apprehend him but as he tried to inflict injuries upon them also, they saved themselves. Rajesh then went to the place where Sonu was hiding and on hearing the cries of Sonu he and Pawan ran to save Sonu, who had in the meanwhile been seriously injured. They shifted Sonu, Ramesh and Sonia to Civil Hospital, Gohana, where the doctor declared Sonia dead but referred

Ramesh and Sonu to PGIMS, Rohtak where Ramesh was declared dead but Sonu was admitted for treatment. The witness was subjected to a detailed cross examination and denied that his brother-Ramesh was habituated to drinking liquor and denied that he had not seen the appellant inflicting injuries.

11. **PW-9** was Sandeep son of Jagdish, who, though not an eye witness, was a witness to the recovery of the blood stained 'Dau' pursuant to the disclosure statement and proved his signatures on the sketch of the 'Dau', Ex.PF and on a sealed parcel regarding clothes, Ex.PG etc.

PW-10 was HC Ram Niwas, PS City Gohana, who deposed that on 06.09.2010, ASI Surinder Singh handed over a parcel alongwith sample seal and postmortem report to SI Megh Raj in his presence. The witness acknowledged his signatures on recovery memo Ex.PH and also deposed that on 07.09.2010 he recorded the statement of child witness Sonu under Section 161 of the Cr. P.C., after ascertaining whether the witness was able to understand the questions and give rational replies.

PW-11 was ASI Sukhbir Singh, Police Lines, Sonapat, who accompanied SI Megh Raj to the house of Ramesh (deceased), during investigation of the case and deposed that the investigating officer collected blood stained earth from three places and placed them into three separate plastic containers which were converted into three parcels and sealed with the seal of "MR" and taken into possession vide memo Ex.P1. He acknowledged his signatures on the memo and deposed that PW Sandeep, son of Jagdish also affixed his signatures as an attesting witness. PW-11 also deposed that SI Megh Raj interrogated Rajesh on 07.09.2010 in the police station. ASI Balwan Singh was also present. Rajesh suffered a

disclosure statement, Ex.PJ, which was reduced into writing. He acknowledged his signatures on the disclosure statement Ex.PJ. In cross-examination, he stated that they reached the spot at 11:00 AM on 06.09.2010 and gave details of the place from where blood stained earth was lifted and described the rooms and deposed that blood stained earth was lifted from three different places, i.e. two places in one house and one place in the other house. He also stated that the floor was made of bricks. The investigating officer did not join Sandeep son of Jagdish as a witness but made inquiries from him. Rajesh was arrested at 8:00 PM on the same day from Fowara Chowk, Gohana and that the disclosure statement made by Rajesh was recorded at 7:00 AM on 07.09.2010.

PW-12 was Hawa Singh son of Ram Nath, who is a cousin of deceased-Ramesh and identified the dead body of Sonia.

PW-13 was ASI Subhash Chander, PS Sadar, Gohana, who deposed that he received ruqa Ex.PK, registered formal FIR Ex.PK/1, made endorsement Ex.PK/2 and forwarded the special report through Constable Balvinder Singh to the Illaqa Magistrate and police officers.

PW-14 was Pankaj son of Om Parkash, who identified the dead body of Ramesh.

11. **PW-15** was Dr. Sanjiv Kumar, PHC Lath, District Sonapat, who tendered his affidavit Ex.PW15/A, corroborating the postmortem report of Sonia, Ex.PL. PW-15 identified the salwar Ex.P8 and “kamij” Ex.P9, which were worn by Sonia, after they were taken out from a sealed parcel. The witness deposed, by way of his affidavit Ex.PW15/A, that on 06.09.2010 he, alongwith Dr. Adarsh Sharma, conducted postmortem examination of Sonia, aged 12 years and found the following injuries: -

“i) On external examination the length of body was 4'-7". The dead body of young female child bearing sky blue salwar kamij silver coloured metallic ear rings on both sides. One red colour holy thread with plastic beads and one silver colour thread on the right wrist. Eyes closed mouth semi opened. P.M. Staining present on back. Rigor mortis present all over the body.

INJURIES

- i) An incised wound of size 9.5 x 2.5 cm on left side of face extending from left corner of mouth upto lower part of left ear, bone deep. Underlying muscles incised alongwith blood vessels left mandible lying exposed. Clotted blood present.
- ii) An incised wound of size 11.0 x 3.0 cm on left sub mandibular area upto left mastoid area bone deep. Underlying muscles and blood vessels incised clotted blood present.
- iii) An incised wound of size 7.0 x 2.0 cm on the left mastoid area of skull, bone deep. Clotted blood present underlying muscles and blood vessels incised.
- iv) An incised wound of size 8.0 x 4.0 cm on back of skull in occipital area bone deep. Clotted blood present. Underlying muscles and blood vessels incised.
- v) An incised wound of size 4.5 x 2.0 cm on the right parietal area of skull, bone deep, clotted blood present. Underlying tissues and blood vessels incised.

Both sides of heart chambers were empty. Stomach and its contents contains semidigested food material. Small intestines chyme present. Large intestines Faecal matter and foul smelling gases present. Uterus was empty.

OPINION

In our opinion, the cause of death of deceased was shock and haemorrhage as a result of injuries described in P.M.R. which were ante mortem in nature and sufficient to cause death in normal course of nature. Time between injury and death was within few minutes and between death and P.M. was within 24 hours. Handed over to police. i) A well stitched dead body after PME alongwith its belonging. ii) A sealed parcel bearing 8 seals containing clothes of deceased. iii) Police papers No.1 to 28 duly initialed by me. iv) A sample of seal used. v) Copy of P.M.R.”

Dr. Sanjiv Kumar, also opined that the time between injury and death was within a few minutes and between death and postmortem was within 24 hours. He was recalled for further examination and proved Ex.PW15/B and Ex.PW15/C, i.e. the letter written by the police seeking his opinion after seeing the weapon. He opined that it could have been used to

inflict injuries upon deceased-Sonia.

12. **PW-16** was Dr. Dimple, Medical Officer PGIMS, Rohtak, who tendered her affidavit Ex.PW16/A and proved the postmortem examination report pertaining to Ramesh, a copy of which is Ex.PM and report Ex.PM/1. She also proved application Ex.PM/2 made by the investigating officer, seeking her opinion whether the 'Dau' could have been used to inflict injuries on Ramesh and proved her opinion Ex.PM/3. She also identified a T-shirt, a pant, an underwear and a parna (Ex.P8 to Ex.P11) which were worn by deceased-Ramesh, after they were taken out from a sealed parcel.

Dr. Dimple found the following injuries on the body of Ramesh:--

- “On the right side of the scalp a deep wound was present with clear margin. Deep wound was 21 cm long and 4 cm wide, which was present 6 cm away from midline and 3 cm away from right eyebrow and 8 cm away from base of occiput, underneath fracture skull was present. Dura matter was torned and brain matter was coming out. Multiple bone pieces were present in brain matter. A lacerated wound of size 10x5 cm was present 6 cm away from midline. Head injury.
- Clear an deep wound was present over right pinna, size of wound was 12x3 cm and was situated 6 cm away from right eye, 8 cm away from right mandible and 6 cm away from occipital bone.
- Vertebrae and spinal cord were not opened.
Thorax wall, ribs and cartilages, pleurae, larynx and trachea, hyoid were healthy. Lungs were healthy and pale. Heart was healthy and pale, large vessels contained blood. Abdominal wall and peritonum was healthy. Stomach contained gastric contents and juices, small intestine contained juices and chyme and large intestine contained flatus and gases. Liver, spleen, kidneys were healthy and pale. Bladder was empty. Organs of generations were healthy.
- In my opinion the cause of death of the deceased was due to injures described and its complications which were sufficient to cause death in normal course of life. Probable time that elapsed between injures and death as per hospital record. The time between death and post-mortem examination was within 24 hours. Articles handed over to the police after P.M. examination were well stitched dead body of deceased, copy of P.M.R. no.1211/10 dated 6.9.10, police papers ten in no.

duly countersigned by me, a sealed parcel bearing five seals containing clothing & belongings of deceased and sample of the seal used (Fm).”

13. **PW-17** was Inspector Raj Pal, the then SHO, PS City, Gohana, who prepared the final report under Section 173 of the Cr. P.C..

14. **PW-18** was Dr. Gaurav Dhuper, who tendered his affidavit Ex.PW18/A, proved copy of MLR Ex.PM pertaining to Sonu, endorsement sent to the police Ex.PN/1. He testified to an application, Ex.PN/2, having been moved by the police, seeking his opinion whether injuries on the person of Sonu could be caused by the weapon shown to him. His opinion Ex.PN/3, was that injuries on the person of Sonu could have been caused by the weapon shown to him. Ex.PN/4 was the police request and Ex.PN/5 was his opinion regarding nature of injuries.

The doctor found the following injuries: -

- “1. 4 x 2 cm depth not probed wound with even margins (R) side forehead.
2. 4 x 2 cm depth not probed wound with even margin at angle of mandible (R) side.
3. 15 x 3 cm bone deep wound on junction of head and neck in back side.
4. 4 x 2 cm bone deep wound with even margins ® side occipital region.
5. 4 x 2 cm bone deep wound with even margins between (3) & (4) wound.
6. 4 x 2 cm bone deep wound with even margins on left elbow.
7. 4 x 2 cm bone deep wound (R) foot at ball of great toe planter surface.

All the injuries were caused by a sharp weapon. On 18.09.2010 at 07:07 A.M. sealed parcel bearing three seals of F.M. brought by S.I. Megh Raj P.S. City Gohana parcel opened and a metallic long knife with wooden handle seen. Possibilities of injuries 1,2,3,4,5,6,7 of MLR GD/25/2010 with this weapon can not be ruled out. Weapon resealed in a parcel with three seals of M.C.H.R. and handed over to police (S.I.) Megh Raj and a sample seal given.

On 20.10.2010 at 12:30 P.M. the opinion regarding the injuries was given after going through the treatment file having C.R.No.882442 having C.T.Scan report on Pg 19 and X-ray report on Pg 46 fracture of frontal bone and olecronon bone and fracture of proximal phalanx great toe (R) side present.

The GCS was 15/15 through out the course of treatment in hospital according to surgeon opinion.

Hence the injuries 1,6,7 was grievous in nature & injuries 2,3,4,5 were simple in nature.”

The doctor opined that injuries No.1, 6 and 7 were grievous whereas injuries No. 2, 3, 4 and 5 were simple in nature.

15. **PW-19** was ASI Samunder Singh, who was present during the investigation and was deputed to get the postmortem examination of Ramesh conducted and deposed with respect to handing over the sealed parcel etc. to SI Megh Raj, which were taken into possession vide memo Ex.PH.

16. **PW-20** Pawan, son of Ramesh (deceased), was the first informant, who after narrating particulars with respect to the family of his father, his brothers and sisters, stated that on 05.09.2010 at about 10:30 PM, his father was beating his brother. The appellant, armed with a 'Dau', entered the house and inflicted injuries upon his father and thereafter upon Sonia and then upon Sonu. Rajesh was under the influence of liquor and said that he would kill the entire family. He further deposed that he shifted his father, sister and brother to the hospital at Gohana. During cross examination, he denied a suggestion that his father had caused injuries to Sonia and Sonu and stated that his uncle, Om Parkash, had come home at about 10:30 PM after the occurrence and remained outside the house the whole night. He also stated that he himself was 'mentally weak'.

There are obvious contradictions between his statement and

that of PW8, Om Parkash, inasmuch as PW8 stated that he and the complainant both entered the house and saw the appellant attacking Ramesh and thereafter following Sonu to his (Sonu's) grandmothers' house, where they saw the appellant attacking Sonu PW20, on the other hand, stated that Om Parkash reached home after the occurrence.

Another contradiction in the deposition of this witness was that he stated that injuries were caused first to his father and then to his sister, by the appellant, whereas both PW7 and PW8 had stated that injuries were first inflicted upon deceased Sonia and then upon her father Ramesh.

There are also contradictions in the timings given by this witness during the cross-examination, but the possibility of confusion on account of his not being fully alert ("mentally weak" as he put it) cannot be ruled out. We will deal with the contradictions while considering the entire evidence, later.

17. **PW-21** was Jagdish son of Dharam Singh, brother of deceased-Ramesh, who identified the dead bodies of Ramesh and Sonia and proved his statement Ex.PP recorded by the police.

PW-22 was SI Megh Raj (Retd.), the investigating officer, who detailed the investigation, though we need not recount his deposition in detail, as we have almost narrated the entire process of investigation while narrating the facts and the depositions of other witnesses.

18. Upon conclusion of prosecution evidence, the incriminating circumstances were put to the appellant under Section 313 of the Cr.P.C., which the appellant denied and said that no recovery was effected from him. Though he stated that he would, he however did not, lead any evidence in defence.

19. The trial Court, after considering the evidence on record, convicted and sentenced the appellant to various terms of imprisonment, as recorded in the opening part of the judgment, but also sentenced him to death under Section 302 of the IPC, subject to its confirmation by this Court.

20. Counsel for the appellant submitted that findings recorded by the trial Court are based upon conjectures and surmises and, therefore, cannot be sustained. The prosecution failed to prove any motive. PW-20, Pawan, the complainant, deviated from the statement made before the police and, as is apparent from his deposition, could not have witnessed the attack upon Ramesh and Sonia, as he was outside the house, having gone out to pass urine. Another eye witness, PW-8 Om Parkash, even as per PW-20 Pawan, arrived after some time. She submitted that the deposition by Om Parkash that he witnessed the entire occurrence, is therefore, false. Ms. Puneeta Sethi further submitted that PW-20 is the son of deceased Ramesh, whereas PW-8 Om Parkash is brother of the deceased and, therefore, should not be believed as they have a vested interest in ensuring the conviction of the appellant. The evidence regarding recovery of the blood stained earth from the spot does not match the deposition by eye witnesses, as per Ms. Sethi. This apart, counsel submitted that Pawan stated that it was only later that Sonia was injured, whereas Sonu deposed to the contrary. It was further submitted that if such an attack had taken place, at least some neighbours would have intervened but the prosecution has not associated any neighbour even to prove that there was an altercation in evening before, or to prove facts relating to the incident. The prosecution failed to examine any independent witness, whether of the occurrence or of

the alleged recovery. The investigation of the case is, thus, seriously flawed, according to her. She further submitted that the disclosure statement recorded without associating an independent witness has to be ruled out of consideration and the mere fact that the FSL report detected blood on the 'Dau' is not sufficient to link the 'Dau' to the injuries inflicted on the deceased and the injured eye witness.

As regards the quantum of sentence, learned counsel for the appellant vehemently asserted that even if the conviction of the appellant is upheld, it is not such a case where the death sentence should be confirmed. A death sentence may only be inflicted in the rarest of rare case and as witnesses have already admitted that deceased-Ramesh had been hurling abuses at the appellant and that there was a prior altercation in the evening, it cannot be said that the offence is so brutal and so reprehensible so as to invite a death sentence. The appellant is a 'poor' rustic villager who has no criminal record. He has a family and minor children to look after, and therefore, the order imposing death sentence may be set aside.

20. Mr. Sandeep Vermani, Additional Advocate General, Haryana, on the other hand, submitted that the entire occurrence was witnessed by three eye witnesses, one of whom was injured. The injured eye witness, Sonu, though ten years old, deposed with a great degree of certainty about the manner in which the appellant inflicted fatal injuries to his father and sister and serious injuries upon him. The police having identified the appellant, lifted blood stained earth, proved the disclosure statement which led to the recovery of the weapon, sought opinion of the doctors that the weapon could have been used to inflict the injuries on the persons of the deceased and the injured. He then relied upon the FSL report to fortify the

case against the appellant. Learned counsel for the State, therefore, submitted that the prosecution has proved its case in its entirety and that the evidence adduced by the prosecution is clear, cogent and clearly proves that the appellant is guilty of the crime. The trial Court has, therefore, rightly convicted the appellant. The appellant having committed the murder of two persons one of whom was a minor girl and having also inflicted grievous injuries on a minor, the trial Court has rightly, after considering the entire gamut of the evidence, held that the offence committed by the appellant falls within the rarest of rare cases and would, therefore, warrant the extreme penalty of death.

21. We have heard counsel for the parties, perused the evidence in detail and considered the arguments advanced but find no reason to grant relief to the appellant as regards his conviction.

The case in hand, as detailed earlier while narrating the evidence, commences with the police receiving information from the hospital at Gohana, regarding the death of Sonia, injuries to Ramesh and Sonu and that Ramesh and Sonu had been referred to PGIMS, Rohtak. The police party headed by PW-22, SI Megh Raj, proceeded to PGIMS, Rohtak, where they had collected the intimation of the death of Ramesh and the MLR pertaining to Sonu but as Sonu was not in a position to make a statement, SI Megh Raj sent Rameshs' body for post-mortem examination, recorded statements of witnesses and then left for the hospital at Gohana, where the police party took into possession the dead body of Sonia and got her postmortem examination conducted.

The police carried out "inquest" proceedings relating to both the deceased and thereafter inspected the spot, lifted blood stained earth

from three separate places in two houses, one house belonging to deceased-Ramesh and the other to his mother. The police arrested the appellant who suffered a disclosure statement that led to recovery of a 'Dau'. The 'Dau' was shown to all the doctors who conducted the postmortem examinations of Ramesh and Sonia and who attended to Sonu. The doctors all opined that this weapon could have been used to inflict injuries upon the deceased and the injured. The weapon was also forwarded for forensic examination. The FSL report Ex.PX, proved that the 'Dau' was stained with human blood but the blood group could not be detected.

The prosecution case, however, primarily rests on the depositions by PW-7 Sonu and PW-20 Pawan sons of the deceased and PW-8 Om Parkash, brother of deceased.

22. The first submission by counsel for the appellant is that the prosecution has failed to prove any motive for the alleged attack, thereby rendering the prosecution case incomplete. A criminal offence undoubtedly consists of motive, the plan and the execution. Therefore, to bring home the guilt of an accused all three ingredients should generally be satisfied but the proof of motive is subject to certain exceptions as more often than not direct evidence of motive is difficult to prove. Also, motive lies in the mind of the accused and is to be inferred from attending circumstances, the deposition of witnesses and any other relevant evidence that may be adduced on record; but where the offence is sought to be proved by deposition of an eye witness, the proof of motive is not essential. A careful perusal of the depositions by PWs 7, 8 and 20 as well as statement Ex.PK, made by PW-20, the first informant, proves that deceased-Ramesh was habituated in drinking liquor and after taking liquor may have abused the appellant,

though as per these witnesses the appellant wrongly assumed that Ramesh was abusing him. The aforesaid evidence also depicts that on the morning prior to the occurrence, there was some altercation between the appellant and deceased-Ramesh which was resolved but it appears that simmering discontent lurked in the mind of the appellant which goaded him to commit the ghastly crime. The fact that the prosecution has not examined any neighbour to prove this altercation, does not detract from the deposition by PW-7 Sonu and PW-20 Pawan (both sons of the deceased) and PW-8 Om Parkash, brother of the deceased. Even if we were to take into consideration certain discrepancies in the statement of the eye-witnesses, we do not find it possible to disbelieve the gist of their statements, especially that of the severely injured child witness, to the effect that the appellant was the one who inflicted the injuries on both the deceased, as also to PW-7 himself. These testimonies do not enable us to hold that the prosecution was required to add further to this evidence, to prove motive. This apart, even if there had been no evidence of motive, the presence of eye witnesses renders the proof of motive unnecessary, as once its is proved that deposition by eye witnesses is clear, cogent and acceptable, the question of proving motive pales into insignificance. Further, as already observed, motive with the appellant was his pent up anger on account of the abuses hurled, or perceived to be hurled, at him.

However, the argument advanced by counsel for the appellant about discrepancies in the depositions needs to be considered. It would, therefore, be necessary to examine the statements with a degree of detail, but before doing so, it would be necessary to point out that PW-7 Sonu was a 10 year old child on the date of his examination by the trial Court, and is

an injured eye witness. Before he was allowed to enter the witness box, the trial Court, conscious of its obligation to ensure that a child witness understands the questions and is capable of responding in a rational manner, asked the following questions: -

“Q. Do you go to school?

Ans. Yes.

Q. In which class do you read?

Ans. I read in 3rd standard.

Q. What is the name of your school?

Ans. I do not know.

Q. Where is your school?

Ans. Near Mandi.

Q. Do you watch TV?

Ans. Yes. I have seen Dabang Movie starred by Salman Khan.

Q. With whom do you reside?

Ans. I reside with my aunt (Bua) Ram Kali at Rohtak.”

After considering the answers by Sonu, the trial Court recorded its satisfaction in the following terms: -

“After hearing the answer of the child witness of the questions put by the court, it is found that the child has understood the questions and has given rational answer to these questions. Therefore, the child is declared as competent witness and he be examined accordingly.”

A perusal of the deposition by PW-7 reveals that he clearly stated that the appellant threatened to kill his entire family as Rajesh thought that his father (Sonu's father) was abusing him. Sonu thereafter went on to narrate that they heard the cries of Sonia, woke up and saw the appellant was inflicting injuries on her with a 'Dau', after which the appellant moved towards his father (deceased) and started inflicting injuries.

Sonu further deposed that he ran towards his grandmothers' house, hid beneath the staircase and then hid in a room but the appellant came down by

way of the staircase that leads to the roof and inflicted injuries upon him. He was rescued by PW-8 Om Parkash and PW-20 Pawan. The witness was cross-examined but a perusal of the cross-examination reveals that the defence could not elicit anything as would cast a doubt upon the deposition by this child witness who has himself been injured and, in our considered opinion, has rightly deposed that he witnessed the attack on his sister Sonia, his father Ramesh (both deceased) and upon him. The deposition by a child witness has to be appraised carefully but we find nothing in his statement as would enable us to hold that this injured child witness has not spoken the truth or was tutored or has exaggerated the occurrence or has falsely implicated the appellant. The injuries upon PW-7 Sonu are duly corroborated by the depositions by PW-18 Dr. Gaurav Dhuper, MO, PGIMS, Rohtak, who medico-legally examined Sonu and found seven injuries on his person, caused by a sharp edged weapon and after examining the weapon produced before him by the police, opined that the weapon could have been used to inflict injuries on Sonu. Thus, the deposition by PW-7 Sonu finds corroboration from the medical evidence (which we have already reproduced in an earlier part of the judgment and, therefore, does not require repetition). Only because he could not give the name of his school does not detract from the truth of his testimony, in our opinion.

The other eye witness, PW-20 Pawan, was the first informant. While making his statement, Ex.PK, before the police, Pawan clearly stated that after drinking, his father used to start abusing and therefore, the appellant threatened that he would eliminate his (Ramesh's) family. He also deposed that at about 10:30 PM his father was beating his brother and thereafter the appellant attacked his father and sister, then his brother.

Immediately before the occurrence he himself (PW20) was sleeping in the house of his grandmother. When he entered his fathers' house, he saw Rajesh holding a 'Dau' in his hand and causing injuries to his father and thereafter to Sonia and then to Sonu, in his grandmothers' house, with a 'Dau'. He acknowledged the correctness of his statement, Ex.PK. While deposing as PW-20 he did not refer to the earlier altercation but narrated the particulars of the incident. His statement may not be as detailed as the statement of PW-7 Sonu, the injured child witness, but as he acknowledged his statement, Ex.PK, which forms the basis of the FIR, it can be read with his deposition and in our considered opinion, despite some contradictions between this witnesses' testimony and his statement, Ex.PK, and the contradictions between his testimony and that of PWs7 and 8 to some extent, the essence of the testimony corroborates that of the injured child witness and thus proves the culpability of the appellant in all material particulars, if at all any further corroboration is needed.

The deposition by PW-8, Om Parkash, is on similar lines, though there are contradictions in his testimony and those of PWs 7 and 22. PW7 did not state that PWs 22 and 8 came in when his father and sister were attacked. However, he did state that they came to rescue him when the appellant attacked him in his grandmothers' house. PW22 stated that his uncle, Om Parkash (PW8), came after the occurrence, though in his complaint, Ex.PK, he had stated that PW8 also came there and saw the occurrence.

Thus a doubt does arise as to whether PW8 saw the appellant actually inflicting injuries on his father and sister, also seeing that he stated that first his father was attacked and thereafter his sister, whereas his

statement 'Ex.PK', which is the basis of the FIR, essentially corroborates what was testified to by Om Parkash (PW-8), to the effect that he (complainant PW20) had gone out of the house to urinate when he heard a hue and cry from his house and upon entering it saw Rajesh causing injuries with a "Dah" to his father and thereafter, upon his younger brother, Sonu, running out, Rajesh chased him and caused injuries to him in the room of his grand-mother, from where the complainant (Pawan) and Om Praksh rescued Sonu, after which they went back to Rameshs' house and discovered that Sonia was lying in a pool of blood in the inner room.

Thus, it is seen that the sequence of events of occurrence, firstly as to whether it was Sonia or Ramesh who was first^t attacked; and secondly with regard to whether the appellant chased Sonu through the street or went to the other house over the roof, has been narrated differently in Ex.PK and the testimonies of the three eye witnesses, to a certain extent. Yet, Ex.PK essentially gives the same sequence of events as given in the testimony of PWs 7 and 8, inasmuch as, the appellant is shown to have attacked Rajesh and Sonu after having attacked Sonia. Though the attack on Sonia being the first one is not specifically stated in Ex.PK, however, the fact that the complainant, Pawan (later PW 20) heard a cry from inside his house and went inside and saw Rajesh causing injuries to his father and then ran after his younger brother shows that his sister had already been attacked, which is also evident from the fact that the complaint states that when the complainant and his uncle (Om Parkash) went back inside his house to the inner room, they saw Sonia soaked in blood.

Therefore, even if there is some improvement in the statements of PW8 and PW20 in their testimonies, to the effect that they actually saw

Sonia being attacked and that Om Parkash saw Ramesh being attacked, such improvement does not detract from the essence of the testimonies, that it was actually the appellant who committed the crime. To repeat, the narration of the sequence of events by the injured child witness, does not raise any doubt in our mind with regard to the case of the prosecution, the essence of it being corroborated by PWs 8 and 20. Thus, even if it is presumed, in view of the inconsistencies, that PWs 8 and 20 did not actually witness Sonia and Ramesh being attacked but only rescued Sonu from the appellant, that does not demolish the testimony of the injured child witness, who also stated that he was attacked by the appellant, after he attacked his sister and father. Therefore, even if Pws8 and 22 have exaggerated that they personally saw the appellant attacking both the deceased, it does not detract from their testimonies, corroborated by PW7, Sonu, that they rescued him from the appellant. Hence, once it is firmly established that the appellant was causing injuries with a 'Dau' to PW7, there is no reason to disbelieve this child witness, that just prior to the attack on himself, the appellant attacked his sister and father.

Next, the deposition by three eye witnesses is corroborated by medical evidence, namely postmortem reports relating to the two deceased, which detail the injuries on the person of the deceased, and the deposition by the doctors who, after examining the weapon recovered from the appellant pursuant to his disclosure statement, opined that the weapon could have been used for inflicting the fatal injuries detected on the person of the deceased. The site of the fateful attack and injuries is proved by recovering of blood stained earth from the three spots stated to be the spot where the appellant attacked the deceased and the injured. The use of the weapon has

been corroborated by the report received from the FSL. The evidence, when read in its entirety, leaves no manner of doubt as to the culpability of the appellant and, in our considered opinion, does not enable us to interfere with the opinion recorded by the trial Court insofar as it relates to the conviction of the appellant for the offences for which he was charged.

The question that survives and which must be examined, is whether the trial Court is justified in awarding the penalty of death to the appellant. The appellant is guilty of the murder of an adult and a minor girl and of inflicting serious injuries on a minor child. The offence is undoubtedly heinous, as a murder cannot be anything other than heinous. But the question before us is whether the appellants' act falls within the parameters of a "rarest of rare case", i.e. an act actuated by such a degree of depravity as to foreclose all other options except to award the penalty of death.

The penalty of death has been subject matter of a long debate with arguments for and against being so far irreconcilable; however, the right to take the life of an individual by sanction of law is provided in the Indian Penal Code. The constitutional validity of the death penalty came up for consideration before a Constitution Bench of the Supreme Court in "Bachan Singh Vs. State of Punjab", 1980(2) SCC 684. The hon'ble Supreme Court, after upholding the constitutionality of a death sentence, held that a question whether a case falls within the "rarest of rare cases" is best left to the discretion of Courts, as laying down a rigid list of aggravating or mitigating circumstance or standard or parameters is abhorrent to criminal law, which confers a very wide discretion in matters of awarding punishment. The Apex Court thereafter went on to hold that the

discretion is to be exercised judicially after balancing aggravating and mitigating circumstances which may always be corrected by superior Courts. Thus, the normal rule is to award imprisonment for life, with the punishment of death being an exception. The question whether a case falls within the “rarest of rare” category has to be examined and assessed by reference to the facts and circumstances of a particular case, i.e. the aggravating and mitigating circumstance.

In the present case, which is a double murder, including that of a minor girl child, undoubtedly the offence of killing an innocent child is an extremely heinous one. Yet, even considering that it is a case of the murder of an adult, and a child and of virtually of an attempt to murder another child (even though the appellant was charged and convicted only under Section 326 and not Section 307 of the IPC on that count, as no injury on Sonu was declared as being dangerous to life), yet we still cannot bring ourselves to agree with the trial Court to the effect that the case falls within the category of “rarest of rare cases”, in view of the fact that there was simmering anger in the mind of the appellant on account of consistent abuses hurled upon him by deceased Ramesh, who is admitted to have been a drunkard (though denied to be so by his brother, PW-8). That unfortunately, led him to eventually commit the dastardly crimes. Obviously, no degree of discontent or provocation can justify the murder of a young child and an attempt to murder or grievously injure another. Yet, the acts, in our considered opinion, are not those of a wholly depraved mind, with no mitigating circumstances.

Hence, while upholding the conviction of the appellant for the offence punishable under Section 302 of the IPC on two counts and the

offences punishable under Sections 324 and 326 for causing grievous injuries to PW7, we turn down the reference for confirmation of the death sentence and instead impose the punishment of rigorous imprisonment for life upon appellant Rajesh, for committing the offence of murder of deceased Ramesh, punishable under Section 302 of the IPC.

He is also sentenced to life imprisonment for having committed the murder of deceased Sonia, punishable under Section 302 of the IPC. The sentences imposed upon him by the trial Court to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 324 of the IPC and to undergo rigorous imprisonment for three years and to pay a fine of Rs. 5,000/- (Rs. Five thousand only) for having committing an offence punishable under Section 326 of the Indian Penal Code, are upheld. The sentence to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/- for the offence punishable under Section 449 of the IPC, is also upheld, as are all the sentences imposed for all the aforesaid offences, which are to be undergone by the appellant, in default of payment of the fines imposed.

Though a sentence of life imprisonment is a sentence for imprisonment of a person till the last breath of his natural life and as such imposition of two life sentences is otherwise superfluous, however, since by executive action, in the form of remissions and pardons, such life imprisonment is often reduced to imprisonment for a lessor period, therefore, in such a situation, sentence of a second life imprisonment can be directed to run from the date when a person completes one sentence of such imprisonment, if remissions are granted to him. So in the present case, we direct that if any remission is granted to the appellant, Rajesh, in any one of

his sentences of imprisonment for life, the sentence of life imprisonment imposed upon him for the other offence of murder, would start running from the date that the first period of such imprisonment is completed with no gap period in between. The sentences imposed upon him of rigorous imprisonment for the commission of offences punishable under Sections 324, 326 and 449 IPC, however, will run concurrently with the life imprisonment imposed by the first sentence.

Criminal Appeal No.D-1630-DB of 2013 is consequently dismissed qua the conviction of appellant Rajesh, but is partly allowed qua the sentence imposed upon him. Murder Reference No.6 of 2013 is answered as per the judgment rendered hereinabove.

(AMOL RATTAN SINGH)
JUDGE

April 10, 2015
dinesh/amit rana

(RAJIVE BHALLA)
JUDGE