

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

Crl. Appeal No.D- 92-DB of 2003

Date of Decision : 04.02.2015

Uttam Lal

..... Appellant

Versus

State of Punjab

..... Respondent

**CORAM: HON'BLE MR. JUSTICE M.JEYAPPAUL
HON'BLE MR. JUSTICE DARSHAN SINGH**

Present : Mr. S.S. Siao, Advocate
learned Counsel for the appellant.

Mr. P.P.S.Thethi, Advocate
learned Addl. AG, Punjab.

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

DARSHAN SINGH, J.

1. The present appeal has been preferred against the judgment of conviction dated 05.12.2002, vide which accused-appellant Uttam Lal has been held guilty and convicted for the offence punishable under Section 302 Indian Penal Code (for short 'IPC') and the order of sentence

of the even dated vide which he has been sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/-, in default of payment of fine he was further ordered to undergo rigorous imprisonment for a period of one year.

2. The brief facts giving rise to this prosecution are that PW-6 Joga Singh-complainant, the brother of deceased Dargah Singh made the statement Ex.PG dated 27.02.2001 to the police alleging therein that he along with his elder brother Dargah Singh had gone to attend the marriage of the son of Waryam Singh on 27.02.2001 alongwith accused-appellant Uttam Lal, who was working with them as an agricultural servant and was residing in Kotha built in their fields. When they returned to their fields at about 1-2 P.M after attending the marriage, accused-appellant Uttam Lal demanded a sum of Rs. 3000/- as he wanted to go to his village situated in Bihar. Deceased Dargah Singh told the appellant that he would arrange the money in 2-3 days, but Uttam Lal insisted that money be paid to him then and there. The complainant also assured Uttam Lal that he would arrange for the money. The complainant had gone hardly 50 feet ahead to look after the fields when he heard the noise '*Mar Ta, Mar Ta*'. The accused was inflicting injuries on the face of Dargah Singh with the help of a brick

while he was lying on the cot. Uttam Lal was saying "*Saley Kam Kara Letey Hai Paisey Dete Rotey Hai*". The complainant went to rescue his brother. Uttam Lal moved towards the complainant with the handle of the spade. The complainant retreated and raised alarm. PW-7 Amrik Singh and Balbir Singh were attracted to the spot. Uttam Lal gave 2-3 blows with the handle of the spade (Danda) to Dargah Singh. Dargah Singh fell down from the cot. On their arrival accused fled away from the spot along with the Danda. On the basis of the statement of complainant Joga Singh Ex.PG FIR Ex.PG/2 was registered and investigation was started.

3. PW-9 Inspector Sewa Singh prepared the inquest report Ex.PE. He handed over the papers to HC Gurnam Singh with the request Ex.PD/1 for conducting the postmortem examination on the dead body of Dargah Singh. After the postmortem examination, HC Gurnam Singh handed over the postmortem report, inquest report, documents attached with the inquest report alongwith belongings of the deceased to the Investigating Officer, which were taken into possession vide memo Ex.PQ. The Investigating Officer along with the police officials went to the place of occurrence and inspected the scene of crime. He lifted from the spot the blood stained earth, the blood stained jute rope of the cot, one pair of the shoes of the

deceased and half brick stained with blood from the spot vide separate memos in separate sealed parcels. The Investigating Officer prepared the rough site plan of the place of occurrence Ex.PR. He also got the spot photographed.

4. Accused-appellant was arrested in this case on 01.03.2001. During interrogation he suffered the disclosure statement Ex.PL and in pursuance thereof he got recovered his blood stained shirt, which was taken into possession vide memo Ex.PM. Thereafter, the investigation was conducted by PW-8 ASI Maghar Singh. He further interrogated the accused and he suffered the disclosure statement Ex.PN. In pursuance thereof he got recovered the handle of the spade (Danda) which was kept into sealed parcel after preparing the sketch and was taken into possession vide memo Ex.PO. The articles of the case property were deposited with the MHC and thereafter were sent to Forensic Science Laboratory for examination. On completion of the investigation, the report under Section 173 Code of Criminal Procedure (for short 'Cr.P.C') was presented in the Court.

5. The case was committed to the Court of Sessions for trial by the learned Judicial Magistrate Ist Class, Patiala, vide order dated 29.05.2001.

6. The accused-appellant was charge sheeted for the offence punishable under Section 302 IPC vide order dated 24.07.2001 to which accused-appellant pleaded not guilty and claimed trial.

7. In order to substantiate its case, the prosecution examined as many as ten witnesses.

8. When accused-appellant examined under Section 313 Cr.P.C, accused-appellant pleaded that the witnesses are interested witnesses and have deposed for the success of their case. He is innocent and has been falsely implicated. However, no evidence in defence was adduced by the appellant.

9. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, learned trial Court held guilty and convicted the appellant for offence punishable under Section 302 IPC and was awarded the sentence as mentioned in the upper part of the judgment.

10. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

11. We have heard Mr.S.S.Siao, Advocate, learned counsel for the appellant and Mr. P.P.S. Thethi, learned Addl. Advocate General, Punjab and have carefully gone

through the record of the case.

12. Initiating the arguments, learned counsel for the appellant contended that PW-6 Joga Singh-complainant has stated that body of the deceased was identified by Harbhajan Singh and his statement was also recorded. But, in the inquest report the name of Harbhajan Singh does not figure.

13. He further contended that as per the FIR, the deceased alongwith complainant and the accused had gone to attend the marriage of the son of Waryam Singh and they had a lunch there. But, in the postmortem report the stomach of the deceased was found empty, which renders the prosecution case doubtful.

14. He further contended that Waryam Singh or any member of his family has not been examined to prove that deceased, accused and complainant had attended their marriage.

15. He further contended that Balbir Singh, the witness of the occurrence has not been examined. The withholding of that material witness raises an adverse inference against the prosecution.

16. He further contended that PW-6 Joga Singh-complainant, PW-7 Amrik Singh and Balbir Singh, the witnesses of occurrence have not made any effort to save the

deceased. So, their presence at the place of occurrence becomes doubtful. They were three persons. If they would have been present at the spot, they must have made efforts to catch hold the accused and to save the deceased. It shows that none of them was present at the spot. He further contended that infact it was a blind murder and appellant has been falsely implicated.

17. On the other hand learned State counsel contended that the case of the prosecution is based on the direct evidence. PW-6 Joga Singh-complainant had deposed in detail about the manner of the occurrence. His version has also been corroborated by PW-7 Amrik Singh. They have been cross-examined at length, but their testimonies could not be shattered in the cross-examination. This ocular evidence is fully corroborated from the medical evidence. Accused also had motive for the commission of the crime as he was insisting for making the payment of the money. The weapon of offence has also been recovered from his possession. The blood was found on his clothes and the weapon of offence. Thus, he contended that there is no infirmity in the conviction of the appellant recorded by the learned trial Court.

18. We have duly considered the aforesaid contentions.

19. The case of the prosecution is based on cogent, consistent and reliable direct evidence. PW-6 Joga Singh-complainant, the brother of the deceased, has deposed in detail about the manner of the occurrence. In nutshell, he deposed that he is agriculturist by profession. They were two brothers. The name of his elder brother was Dargah Singh. Their land was acquired by D.C.W, Patiala and in the year 1983-84 they were allotted 25 Killas of land in lieu of the acquired land. He had constructed house in the fields. Uttam Lal their servant along with his family was residing in the house situated in the fields and he used to do the agricultural work in their fields. On 27.02.2001, he along with his elder brother Dargah Singh went to attend the marriage of son of Waryam Singh. First, they went to their field and took Uttam Lal accused and then went to attend the marriage. After attending the marriage they returned to the fields at about 1/2 P.M. Uttam Lal accused demanded Rs.3000/- as he wanted to go to his native village Malria in Bihar. His brother Dargah Singh told him to wait for 2-3 days and he would arrange the money. But, accused insisted that his brother should pay the amount then and there. He also told the accused that he will arrange for the money and he left for the fields to look after the crops. He had just gone 50 feet ahead and heard the noise 'Mar Ta

Mar Ta' and accused was inflicting injuries on his face with brick when he was lying on the cot. Accused was saying 'Sale Kam Kara Letey Hai Paisay Deta Rotey Hai'. He came to rescue his brother. Accused came towards him with the Dasta of spade (Danda). He retreated. He raised alarm. On hearing his alarm Amrik Singh and Balbir Singh came on the spot. Accused gave 2-3 injuries with Danda to Dargah Singh while he was lying on the cot and after receiving the injuries at the hands of accused, Dargah Singh fell down from the cot. The blood was coming from his head and face. Accused ran away with the Danda from the place of occurrence. He asked Amrik Singh to bring the jeep and he brought the jeep and they took Dargah Singh to Rajindera Hospital, Patiala. On reaching Rajindera Hospital, Patiala, doctor declared Dargah Singh brought dead. This version of PW-6 Joga Singh on the point of occurrence has been fully corroborated by PW-7 Amrik Singh, the eye witness of the occurrence.

20. The aforesaid ocular evidence is fully corroborated from the medical evidence. PW-4 Dr. Harish Tuli alongwith Dr. Harjinder Singh has conducted the postmortem examination on the dead body of deceased Dargah Singh and found the following injuries on his person:-

1. 4 cm x 4 cm lacerated wound on right

temporal region with underneath bone fracture. 50 cc. of intracranial haemorrhage was present.

2. 3 cm x 3 cm lacerated wound on upper lip in its middle extending towards right nostril with underneath bone fractured.

3. 4 cm x 3 cm contusion on right angle of the mouth with underneath mandible fractured.

4. 1 cm x 1 cm lacerated wound on right cheek in its middle with fracture of the underneath bone.

21. The cause of death was declared as shock and haemorrhage due to the injuries which were ante-mortem and sufficient to cause death in the ordinary course of nature. As per the medical evidence, the deceased has suffered injuries on the face and head. The witnesses of occurrence have also deposed that the accused had caused injuries to the deceased Dargah Singh with brick and Danda on his face and head. So, their testimonies stand fully corroborated from the medical evidence.

22. From the statements of PW-8 ASI Maghar Singh and PW-9 Inspector Sewa Singh, the Investigating Officer of the case, it comes out that the accused was arrested on 01.03.2001. On interrogation he suffered the disclosure statement Ex.PL and in pursuance thereof he got recovered his blood stained check shirt, which was kept in a sealed parcel and was taken into possession vide memo Ex.PM. PW-8 ASI Maghar Singh has deposed that on 04.03.2001

the accused has suffered the disclosure statement Ex.PN and in pursuance thereof he got recovered the Danda, which was also kept in the sealed parcel after preparing its sketch Ex.PP and was taken into possession vide memo Ex.PO. So, from the aforesaid evidence, it comes out that in pursuance of his disclosure statement accused has got recovered the weapon of offence and his shirt.

23. The report of Forensic Science Laboratory, Punjab, Chandigarh, Ex.PO shows that the half brick lifted from the spot, the shirt of the accused and the handle of the spade recovered in pursuance of the disclosure statement were sent to the Forensic Science Laboratory for examination. The blood was found on the half brick, the shirt of the accused and the handle of the spade. The blood was also found on the jute rope of the cot. The clothes of the deceased and the soil were lifted from the spot. Thus, the presence of the human blood on the shirt of the accused recovered in pursuance of his disclosure statement and the weapons of the offence i.e. half brick lifted from the spot and the handle of the spade recovered in pursuance of the statement of the appellant further corroborates the prosecution version. The accused-appellant has not come-forward with any explanation as to how the human blood was found on his shirt and the handle of the spade

recovered from his possession. Thus, the scientific evidence further corroborates the prosecution evidence.

24. The presence of the prosecution witnesses at the place of occurrence is natural. PW-6 Joga Singh-complainant is the brother of deceased. They were having the joint land and on the date of occurrence, they had gone together to the fields and to attend the marriage of the son of Waryam Singh being solemnized in the village. PW-7 Amrik Singh is the neighboring land owner. They have given the consistent version of the occurrence. They have been cross-examined at length, but learned counsel for the appellant has not been able to point out any material contradiction in their statements.

25. The plea raised by learned counsel for the appellant that as prosecution witnesses had not intervened so their presence at the spot is doubtful, carries no substance. As per the statement of PW-6 Joga Singh, he had just gone 50 feet ahead when he heard the noise 'Mar Ta Mar Ta' and saw that accused was inflicting the injuries on the face of the deceased when he was lying on the cot. PW-6 has further categorically deposed that he came to rescue his brother, but accused came towards him with the handle of the spade, so he retreated and raised alarm. On hearing his alarm, PW-7 Amrik Singh and Balbir

Singh came on the spot. Thereafter, accused caused 2-3 injuries with the Danda to the deceased and ran away from the spot along with Danda. So, it is not the case where PW-6 Joga Singh-complainant had made no effort to intervene rather he had come-forward to rescue his brother. But, the accused came towards him armed with a handle of the spade due to which complainant Joga Singh retreated and raised the alarm. Different people behave in different ways and react differently in different circumstances. There is no set rule of natural reaction. Mere this fact that PW-6 Joga Singh did not intervene to save his brother is itself no ground to discard his testimony and make his presence doubtful. The Hon'ble Supreme Court in case **State of U.P Vs. Devendra Singh (2004) 10 Supreme Court Cases 616** has laid down as under:-

“To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way. There is no set rule of natural reaction. Human behaviour varies from person to person. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. Every person

who witnesses a serious crime reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counterattacking the antecedents of the assailant or threats given by him. Each one reacts in his special way even in similar circumstances, leave alone, the varying nature depending upon a variety of circumstances.”

26. The same principle of law has been reiterated in cases **Main Pal and another Vs. State of Haryana and others (2004) 10 Supreme Court Cases 692, Harisingh M. Vasava Vs. State of Gujarat 2002(2) R.C.R (Criminal) 36 (S.C), Mahmood & Anr. Vs. State of U.P 2008(1) R.C.R (Criminal) 130(S.C) and Ramesh Kumar and another Vs. State of Haryana 2007(2) PLR 607 (DB).** In view of the consistent rule of law laid down in the cases referred above, mere this fact that PW-6 Joga Singh had not intervened is no ground to render his presence at the spot doubtful and to render his testimony unworthy of credence. Moreover, when the assault was started by the appellant PW-6 Joga Singh had already proceeded towards the crops and had gone at a distance of 50 feet. He was attracted on hearing

the alarm raised by the deceased and he had come-forward to rescue his brother, but the accused came towards him with the handle of the spade. So, he retreated, which is a reasonable explanation. PW-7 Amrik Singh and Balbir Singh had come at the spot when the accused was causing injuries to the deceased with the handle of spade and on their arrival he fled away from the spot. So, there is nothing un-natural in the conduct of the eye-witnesses to render their presence doubtful.

27. The perusal of inquest report Ex.PE depicts that Harbhajan Singh was very much present at the time of inquest proceedings and had even signed the inquest proceedings. Mere, this fact that in column no. 4, relating to the persons who had identified the dead body, the name of other persons figures is no ground to create any dent in the prosecution case. Moreover, Harbhajan Singh was never claimed to be the witness of occurrence by the prosecution.

28. PW-6 Joga Singh has simply stated in his examination that they went to attend the marriage alongwith accused. He has nowhere categorically deposed in his testimony that the deceased had also taken the lunch in the marriage. In his statement Ex.PG on the basis of which the FIR has been registered mere this fact has been mentioned that after taking the lunch alongwith their

servant Uttam Lal, they came to their fields at about 1/ 2 P.M. So, even in this statement it has not been categorically mentioned that deceased had also taken the lunch in the marriage. So, there is no definite evidence on record to establish that deceased had taken lunch in the marriage. Thus, the findings in the postmortem report with respect to the empty stomach of the deceased is also no ground to create any dent in the cogent, consistent and reliable testimonies of the eye witnesses.

29. Waryam Singh and his family members were not the witnesses of the occurrence. The name of Waryam Singh only figured as the deceased alongwith the appellant and complainant Joga Singh his brother had visited the marriage function of the son of Waryam Singh. The occurrence has taken place when the deceased, complainant and appellant had returned back after attending that marriage. Waryam Singh and his family members were not to unfold nothing about the occurrence. So, their non examination is of no consequences.

30. It is not necessary that each and every witness who has been examined in the charge sheet must be examined. To support this view reference can be made to case **Zahira Habibulla H. Sheikh and Anr. vs. State of Gujarat and Ors. 2004(2) R.C.R (Criminal) 836.** The Court

has to base its findings on the quality of the evidence and not the quantity of the evidence. The prosecution has already examined PW-6 Joga Singh-complainant and PW-7 Amrik Singh on the point of occurrence, who have given the cogent, consistent and reliable testimonies. The examination of PW Balbir Singh was not necessary to prove the charges as his testimony would have simply resulted in the duplicacy of the evidence and wasted the time of the Court.

31. Thus, keeping in view of our aforesaid discussion, the case of the prosecution is based on cogent, consistent and reliable ocular evidence which stands fully corroborated from the medical as well as the scientific evidence. So, we do not find any legal infirmity or impropriety in the conviction of the appellant recorded by the learned trial Court. Thus, the conviction and sentence of the appellant as recorded by the learned trial Court are hereby maintained and affirmed.

32. Resultantly, the present appeal has no merits and the same is hereby dismissed.

(M. JEYAPPAUL)
JUDGE

(DARSHAN SINGH)
JUDGE

February 04, 2015
s.khan