

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

CRA D-553-DB of 2009

Date of Decision : November 29, 2016

Jagan and another

....Appellants

Versus

State of Haryana

....Respondent

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

Present : Mr. Sarabjeet Singh Khaira, Advocate
for the appellants.

Mr. Praveen Bhadu, Assistant A.G., Hayana.

T.P.S. MANN, J.

The appellants, namely, Jagan and Udey Bhan, have filed the instant appeal against the judgment and order dated 30.3.2009/1.4.2009 passed by learned Additional Sessions Judge, Hisar.

Vide impugned judgment and order, learned trial Court convicted Jagan-appellant under Section 302 IPC and Udey Bhan-appellant under Sections 302/34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months.

According to the prosecution, on 31.10.2005 at 7.15 p.m., DSP Deepak Saharan, alongwith his fellow officials was present at Bus Stand of village Rakhi Shahpur where Amarjit son of Satbir met

him and made statement Ex.P1. The said statement is reproduced here-in-below :-

“Statement of Amarjit son of Satbir, resident of village Rakhi Shahpur, aged 22 years

Stated that I am resident of above address and do labour work. We are three brothers. I am the eldest. My father Satbir also used to do labour with us. The houses of Udey Bhan and Jagan sons of Tulsi and that of Rajesh son of Udey Bhan are situated near our house with whom there used to be exchange of hot words over water in the street and scattering of rubbish there. Yesterday evening, the aforementioned three persons quarreled with my father when the latter rebuked them and made them to go away from there. Today I, my mother Tara Devi, my uncle Raja and my father Satbir, while standing in front of our house were talking with each other. At about 4.00 p.m., Rajesh, Udey Bhan and Jagan came there. Udey Bhan stated that Satbir be taught a lesson for the quarrel made during previous night. Rajesh caught hold of my father from behind whereas Jagan gave blow with Bhala, held by him in his hand which hit my father on his left arm. He gave another blow thrust twice in his left armpit/flank. My father started staggering and fell down at the end of the street. We raised an alarm that we have been attacked and all the three accused fled away from the spot alongwith their weapons. When we tried to handle my father, he could not bear the onslaught and breathed his last. Leaving my mother and uncle near the dead body of my father, I was going to the Police Station to lodge the report when you met me at Bus Stand of Rakhi Shahpur. I have got recorded my

statement which I have heard and is correct. The accused have murdered my father on account of exchange of hot words on the issue of street. Legal action be taken against them.”

Attested
Deepak Saharan
DSP, Hisar

Sd/-
(Amarjit Singh)”

It is further the case of the prosecution that as the statement of Amarjit disclosed commission of offence under Sections 302/34 IPC, DSP Deepak Saharan made an endorsement on the statement and forwarded the same to Police Station, Hisar where on its basis, FIR Ex.P3 was registered by ASI Bhim Singh on 31.10.2005 at 8.00 p.m. Special report sent through Constable Avtar Singh was delivered to Sub Divisional Judicial Magistrate, Hansi on 31.10.2005 at 10.30 p.m.

It is also the case of the prosecution that DSP Deepak Saharan reached the place of occurrence and inspected the spot. A photographer was joined in the police party. Blood stained earth was lifted from the spot. Inquest proceedings on the dead body of Satbir were conducted and dead body, thereafter, sent through Constable Rohtas and Constable Neterpal to General Hospital, Hansi for post-mortem. Statements of witnesses were recorded under Section 161 Cr.P.C. The accused were arrested on 16.11.2005. Jagan accused suffered disclosure statement pursuant to which he got recovered Bhala and his blood stained clothes from underneath and iron box. Udey Bhan accused made disclosure statement and got recovered his blood stained clothes. Rajesh accused also suffered disclosure statement and got recovered his kurta and

pyjama. After completion of investigation, challan was presented against Jagan and Udey Bhan accused, whereas proceedings against Rajesh were segregated as he was found to be a juvenile. The case was, thereafter, committed to the Court of Sessions where Jagan was charged under Section 302 IPC, while Udey Bhan under Sections 302 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined fourteen witnesses.

PW1 ASI Bhim Singh deposed that he had recorded formal FIR Ex.P3 on receipt of statement Ex.P1 of Amarjit complainant from DSP Deepak Saharan.

PW2 Constable Inderpal tendered his sworn affidavit regarding the safe deposit of case property with FSL.

PW3 Dr. Ramesh Kumar, Medical Officer, Government Hospital, Hansi deposed that on 1.11.2005 he conducted the post-mortem on the dead body of Satbir and found the following injuries :-

- “1. There was a reddish incised wound over left lateral side of chest wall 12 cm. below axilla and 6.5 cm. below nipple. Clotted blood was present. Size of the wound 5.5 cm. x 2.5 cm. wound was of perforating type going slight obliquely and about in a parallel way.
2. There was incised wound over left forearm below elbow. Clotted blood was present. Size 8 cm. x 2.5 cm. On dissection, there was fracture

of the fifth and sixth rib. Right pleurae was ruptured and also the left pleurae. Right lung was health. Left lung was perforated 5 cm. x 2.5 cm. Pericardial sac was perforated size 6.0 cm. x 3.5 cm. and was having clotted blood. Left ventricle of heart was also perforated, size 6.0 cm. x 4.0 cm.

All the organs were healthy and pale, stomach contained food material. Small intestine was having semi digested food. Large intestine was having faecal matter and gases.

The probable time between death and post-mortem examination was within 4 to 24 hours.

The cause of death in the opinion of the doctor was due to shock and haemorrhage due to chest injury and the time between injury and death was opined to be within a few minutes and the weapon was sharp perforating.”

PW4 Constable Rambir Singh, PW6 ASI Ram Niwas and PW8 HC Naresh Kumar tendered their sworn affidavits in evidence.

PW5 Subhash Chander, draftsman proved the scaled site plan Ex.P15 made by him on pointing out of Amarjit.

PW7 Constable Avtar Singh testified that he delivered special report to the Ilaqa Magistrate without any delay.

PW9 SI Sadhu Ram testified that on completion of investigation, he prepared report under Section 173 Cr.P.C.

PW10 Raja, brother of deceased Satbir deposed that on 31.10.2005 at about 4.00 p.m., he, alongwith his brother Satbir, sister-in-law Tara Devi and nephew Amarjit was talking with each

other in front of their house. In the meantime, Rajesh, Udey Bhan and Jagan came there. Udey Bhan declared that Satbir be taught a lesson for the quarrel of previous night. On this, Rajesh caught hold of his brother Satbir. Jagan, who was armed with a spear inflicted two blows with the same on the left arm and lower portion of the chest of Satbir, who fell down on one side of the street. They raised an alarm, on which all the three accused ran away from the spot while carrying their respective weapons. He also deposed that Amarjit went to Police Station to lodge the report, whereas he alongwith his sister-in-law Tara Devi remained at the spot to guard the dead body. Police reached the spot and lifted blood stained earth.

PW11 Amarjit, the complainant in the case supported the the prosecution on all material aspects as per his initial version Ex.P1 made to DSP Deepak Saharan.

PW12, DSP Deepak Saharan deposed about the various steps taken by him during investigation of the case.

PW13 Dinesh Kumar, photographer proved four photographs Ex.P35 to Ex.P38 of the dead body of Satbir and their negatives Ex.P39 to Ex.P42.

PW14 ASI Mahinder Singh, deposed that on 31.10.2005, he was with DSP Deepak Saharan for investigation of some other case and were present at Budana road near village Rakhi Sahpur, where Amarjeet, complainant met the DSP with whom he got recorded his statement Ex.P1. Ruqa was sent to Police Station through Constable Neterpal for registration of case. He also

deposed that on 16.11.2005, he joined the investigation of this case, and accused Jagan, Udey Bhan and Rajesh were arrested by the DSP. On 17.11.2005, accused Jagan, on interrogation in his presence as well as in presence of HC Suresh, suffered disclosure statement Ex.P19 that he had concealed Bhala and blood stained clothes in the house of his brother and he could get them recovered. Accused Udey Bhan also made disclosure statement Ex.P20 that he could get his clothes which he was wearing on the day of occurrence recovered from the house of his daughter Darshna in village Pidhdan, where he kept concealed the same. Accused Rajesh then during interrogation disclosed vide his disclosure statement Ex.P21 that he could get his blood stained clothes recovered which he was wearing at the time of occurrence and kept concealed in village Niana in the house of Nihal Singh his Phupha.

This witness further testified that thereafter on 18.11.2005, accused Jagan led the police party and got recovered Bhala and clothes, sketch Ex.P23 of Bhala was prepared. Bhala and clothes were converted into sealed parcel with seal of 'DS' and taken into possession vide memo Ex.P22. Likewise accused Udey Bhan got recovered his clothes from the disclosed place and the same were sealed in a parcel with seal 'DS' and were taken into possession vide memo. Ex.P27. Accused Rajesh also got recovered his blood stained clothes, i.e. Kurta and Pyjama from the disclosed place, which were taken into possession vide recovery memo. Ex.P31 after converting the same into a sealed parcel."

When examined under Section 313 Cr.P.C., the accused

denied the entire prosecution allegations and pleaded that they were innocent. They did not cause any injury to Satbir. On the other hand, they were falsely involved in the case due to dispute of land in the street. However, in their defence, they did not examine any evidence.

After hearing learned counsel for the parties and on going through the record, learned trial Court convicted and sentenced the appellants, as mentioned above.

This Court has heard learned counsel for the appellants, learned State counsel and with their able assistance gone through the evidence brought on the record.

Learned counsel for the appellants has submitted that the prosecution miserably failed to prove its case. A false version was set up. There was an inordinate delay in the lodging of the FIR. The prosecution did not seek any independent corroboration. On the other hand, only brother and son of the deceased were examined. The blood group on the clothes of the accused was not got compared with blood group of the deceased. Therefore, recovery of blood stained clothes cannot be used as a circumstance against accused. The depositions of PW10 Raja and PW11 Amarjit are full of discrepancies which go the root of the case. As such the appellants be acquitted of the charge against them.

Learned State counsel has opposed the prayer by submitting that the prosecution has proved its case against both the appellants beyond reasonable doubt. The FIR was lodged without any loss of time. Merely because PW10 Raja and PW11 Amarjit are

closely related to the deceased is no ground to reject their testimonies, especially when their depositions are cogent, convincing and trustworthy. The medical evidence corroborated the ocular account. The blood stains on the clothes of the accused were found to be of human origin for which the appellants could not furnish any explanation.

The place of occurrence in village Rakhi Shahpur was in front of houses of the parties. At a distance of 8/9 killas from there, the Bus Stand of village was situated. Police Station Narnaud is at a distance of eight kilometers from the village. Distance between Police Station Narnaud and the residence of the Sub Divisional Judicial Magistrate, Hansi is 25/30 kms. The occurrence having taken place on 31.10.2005 at about 4.00 p.m. in front of the house of the parties in village Rakhi Shapur, Amarjit complainant who had witnessed the occurrence proceeded for the Police Station and came across DSP Deepak Saharan at village Bus Stand where his statement was recorded and concluded at 7.15 p.m. DSP Deepak Saharan made an endorsement on statement Ex.P1 and forwarded the same to Police Station Narnaud where on its basis, FIR Ex.P3 came to be registered on 31.10.2005 at 8.00 p.m. Special report was sent through Constable Avtar Singh to Sub Divisional Judicial Magistrate, Hansi, who received the same on 31.10.2005 at 10.30 p.m. That being the situation, it cannot be said that there was any delay in the lodging of the FIR. Whatever little delay was there had been satisfactorily explained by the prosecution.

The ocular account of the occurrence was brought on

record by the prosecution by examining PW10 Raja and PW11 Amarjit, who are brother and son, respectively, of deceased Satbir. The occurrence having taken place in front of houses of the parties, the presence of PW10 Raja and PW11 Amarjit cannot be said to be unnatural or improbable. Rather, their presence stands duly established as they have deposed in detail about the manner in which the occurrence had taken place. Both of them categorically deposed that Jagan was armed with a spear at the time of the occurrence which he had used in causing two injuries to the deceased, one on left forearm of the deceased, while the second in the left armpit/flank. PW3 Dr. Ramesh Kumar, who had conducted post-mortem had opined that the weapon used for causing injuries to the deceased was sharp perforating. Spear being a sharp and perforating type of weapon, it cannot be said that the two injuries found on the dead body could not be caused with the same. Rather, it lends independent corroboration to the prosecution case that Jagan accused had wielded spear in causing injuries to the deceased.

The presence of PW10 Raja and PW11 Amarjit at the time of the incident has been challenged by the defence on the ground that in the inquest report, the weapon of assault was mentioned as sharp pointed weapon and there was no mention made that it could be a spear. Spear being a sharp pointed weapon, it cannot be said that the injuries were not caused with the same. Merely because it was not mentioned in the inquest that the weapon used was a spear is no ground to reject the prosecution case.

There have been some dispute between the parties over the throwing of rubbish in the street which had led to an altercation between the deceased and the accused. The motive seems to be trivial in nature but that is no ground to reject the prosecution case. The defence could not bring any material on the record to establish that the prosecution witnesses had any reason to falsely implicate the accused. When examined under Section 313 Cr.P.C., both the appellants simply pleaded that they were innocent. They went on to add that there was some dispute between the parties on account of land/street. In a way, the defence admitted about the bickering which were going on between the parties.

As regards the blood stains found on the clothes of the accused, suffice it to state that when examined in FSL, those clothes were found to be having blood stains which were of human origin. The stand of the defence that blood group of the deceased was not matched with the blood found on the clothes of the accused is not such which could go to the root of the case.

In view of the above, this Court finds that the prosecution has been successful in proving the charge of murder against Jagan-appellant. At the same time, this Court is of the view that the involvement of Udey Bhan-appellant in the crime is somewhat doubtful. Udey Bhan-appellant is none-else but brother of Jagan-appellant. He was not armed with any weapon at the time of the occurrence. The only role attributed to him was of exhorting his companion to teach a lesson to the deceased on account of the dispute which had taken place between the parties on the previous

night. If he had to be privy to the crime at the relevant time, he ought to have carried some weapon with him. That gives further indication to the fact that he might not be present at the time of the occurrence.

Resultantly, Udey Bhan-appellant is acquitted of the charges under Section 302 read with Section 34 IPC and his sentence of imprisonment and fine are set aside. However, the conviction of Jagan-appellant under Section 302 IPC and his sentence of life imprisonment and fine of Rs.10,000/-, alongwith its default clause is maintained.

The appeal is, accordingly, disposed of.

November 29, 2016	(T.P.S. MANN) JUDGE	(GURMIT RAM) JUDGE
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satish

Whether reasoned/speaking	:	YES / NO
Whether reportable	:	YES / NO