

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

CRA-D No. 540-DB of 2012 (O&M)

Date of decision : August 31, 2016

Ramesh Kumar

.....Appellant

Versus

State of Haryana

....Respondent

CRA-D No. 668-DB of 2012 (O&M)

Ram Niwas & others

.....Appellants

Versus

State of Haryana

....Respondent

**CORAM:- HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Atul Lakhanpal, Senior Advocate with
Mr. R.S. Chahal, Advocate for the appellants.

Mr. Surinder Singh Pannu, DAG, Haryana
for the respondent-State.

LISA GILL, J.

Both Criminal appeals i.e. CRA-D-540-DB of 2012 (Ramesh Kumar Versus State of Haryana) and CRA-D-668-DB of 2012 (Ram Niwas and others versus State of Haryana) arise out of the judgment and order dated 12.04.2012/17.04.2012 passed by the learned Additional Sessions Judge, Hisar. Appellants – Ram Niwas, Dushyant and Vinod in CRA-D-668-DB of 2012 and the appellant - Ramesh Kumar in CRA-D-540-DB of 2012 have been convicted for the offences punishable under Sections 148, 302/149 and 452/149 of

the Indian Penal Code ('IPC' - for short). They have been sentenced to undergo imprisonment for life, besides, pay a fine of Rs.10,000/- each and in default thereof undergo rigorous imprisonment for a period of two years for the offence punishable under Sections 302/149 IPC; to undergo rigorous imprisonment for three years, besides, pay a fine of Rs.1,000/- each and in default thereof undergo rigorous imprisonment for a period of six months for the offence punishable under Sections 452/149 IPC and to undergo rigorous imprisonment for one year for the offence punishable under Section 148 IPC.

Aggrieved from their conviction and sentence, the appellants have filed these appeals. Both the appeals are taken up together for hearing and are being decided by a common judgment.

FIR No. 499 dated 21.11.2006 under Sections 148, 302, 323, 452/149 and 120-B IPC was registered at Police Station Barwala on the statement (Ex.P1) of Prem Singh. There are six accused in this case namely Ram Niwas, Dushyant, Vinod, Ramesh Kumar, Chandgi Ram and Dharambir. Chandgi Ram (accused No. 5) passed away during trial and Dharambir (accused No. 6) has been acquitted by the learned trial Court.

The statement (Ex. P1) of the complainant – Prem Singh was recorded on 21.11.2006 at 9.30 a.m. by SI/SHO Kartar Singh (PW8). Prem Singh stated that he had one son namely Rohtash (deceased) and four daughters, who were all married. The complainant was living with his family members in his house in the village. The grandsons of the complainant's paternal aunt (*Bhua*)

were residing in the same village along with their family members since a number of years. They had constructed their houses in the village. The complainant had given one plot of land to Chandgi Ram son of Khubi Ram (accused No. 5). Chandgi Ram was the grandson of the complainant's paternal aunt. This plot situated on the eastern side of the village had been given by the complainant to Chandgi Ram for the purpose of preparing and keeping cow dung cakes. About two months prior to the incident in question which took place on the intervening night of 20/21.11.2006, the complainant and his son Rohtash had asked Chandgi Ram to clear the plot of cow dung cakes and hand over its vacant possession as they had to construct a house on the said plot after raising a boundary wall. Chandgi Ram cleared the plot of cow dung cakes and the complainant constructed the boundary wall thereon. Twenty days prior to the incident, Ramesh son of Khubi Ram (appellant in CRA-D-540-DB of 2012) demolished the said boundary wall. Ramesh on inquiry said that as yet only boundary wall had been demolished and something more would also take place. The complainant, however, started construction of the house on the plot. Masonry work of the house was being done by his son-in-law also named Rohtash (son of Jai Narain). The complainant alongwith his family members were sleeping in their house on 20.11.2006. However, the complainant's son and son-in-law both named Rohtash went to sleep in the house still under construction after taking their meals. At about 1.00 a.m. during the intervening night of 20/21.11.2006, the complainant's son-in-law Rohtash came to his house and informed that Chandgi Ram armed with an iron

'dadar', Dharambir son of Khubi Ram armed with a 'gandasi', Ramesh son of Khubi Ram armed with a 'gandasi' and Ram Niwas son of Jai Singh armed with a 'gandasa' came to the house which was under construction at about 12.30 a.m. They caught hold of Rohtash (son of the complainant) from his hair and threw him on the ground from the cot on which he was sleeping. All of them caused injuries on the head, neck, back and feet of Rohtash son of the complainant with their respective weapons. The complainant's son-in-law being fearful ran away and came to inform the complainant. Thereafter, the complainant alongwith his son-in-law Rohtash (PW2) arrived at the spot and found the complainant's son Rohtash with injuries on his head, neck and feet caused with sharp edged weapons. A lot of blood had flown. The complainant's son had succumbed to his injuries. It was stated that Rohtash had been murdered by Chandgi Ram, Dharambir, Ramesh sons of Khubi Ram and Ram Niwas son of Jai Singh. The complainant prayed for legal action against them. This statement was recorded at Hansi chowk, Barnala.

FIR No. 499 dated 21.11.2006 (Ex.P22) was registered under Sections 148, 302, 323, 452/149 and 120-B IPC at Police Station Barwala. SI Kartar Singh (PW8) proceeded to the spot alongwith the police party. Photographs of the place of occurrence were taken by Raju @ Raj Kumar (PW9). A plastic slipper and blood stained earth was recovered from the place of occurrence. The same were taken in possession vide recovery memo (Ex.P9), which was attested by Partap Singh and Vijay Singh. Inquest report (Ex.P15) was prepared. The dead body of Rohtash son of Prem Singh was

sent for post mortem examination. The post mortem examination was conducted by Dr. Sunil Kumar Jalodia (PW6), Medical Officer, General Hospital, Hisar. As per the Post Mortem Report (Ex.P16), thirteen (13) injuries were found on the dead body. The cause of death was opined to be the result of injuries described. The injuries were ante mortem in nature and sufficient to cause death in the normal course of time. The clothes of the deceased alongwith sample seals were handed over to SI Kartar Singh. These were taken in possession vide recovery memo (Ex.P25). The statement (Ex.DB) of Om Parkash (PW3) was also recorded.

The appellant – Dushyant was arrested on 24.11.2006. He allegedly suffered a disclosure statement (Ex.P10). As per the said disclosure statement, the appellant - Dushyant alongwith his brother Ram Niwas, Chandgi Ram, Dharambir, Ramesh, Raju (juvenile), Vinod murdered Rohtash son of Prem Singh. He stated that the ‘gandasi’ used by him could be got recovered by him from the plot of his father's elder brother (*Tau*) Hawa Singh. A ‘gandasi’ was recovered pursuant to the said disclosure statement vide Ex.P11. It is relevant to note that the appellants – Dushyant, Vinod and juvenile Raju were not named by the complainant – Prem Singh in his statement Ex. P1.

The appellants - Vinod and Ram Niwas surrendered on 24.11.2006. During the course of interrogation, they suffered separate disclosure statements Ex.P28 and Ex.29. They allegedly confessed to having murdered Rohtash in concert with the other accused. A ‘gandasa’ was recovered from Ram Niwas pursuant to his

disclosure statement (Ex. P20). Pursuant to disclosure statement (Ex.P28) of Vinod, a 'gandsa' was recovered, which was taken in custody vide memo Ex. P30. A rough site plan of the place of recovery was prepared. The appellant – Ramesh was arrested on 09.12.2006. Accused - Chandgi Ram (since deceased) was arrested on 13.12.2006. After investigation, the appellant – Dharambir was found innocent and report under Section 173 Cr.P.C. was presented against Ram Niwas, Dushyant, Chandgi Ram, Vinod and Ramesh. The charges against the above said persons were framed on 20.04.2007. The appellant - Dharambir was summoned vide order dated 20.09.2008 on an application under Section 319 Cr.P.C. moved by the prosecution. The charge against all the accused was then framed on 10.11.2008.

The prosecution examined as many as thirteen (13) witnesses to prove its case against the accused persons. All the accused in their statements under Section 313 Cr.P.C. denied the incriminating evidence and material put to them. They pleaded innocence and false implication.

Dharambir (since acquitted) took the plea that at the time of occurrence i.e. the intervening night of 20/21.11.2006, he was not present in Dhani Khan Bahadur. He remained on duty as a peon in the office of Tehsil Welfare Office, Assandh on the said date and the day prior thereto. He was present in the retiring room of Chairman Block Samiti, Assandh alongwith one Ram Kumar, Chowkidar of the office of Child Development Project Office, Assandh besides Kuralia Ram Chowkidar, BDPO office. Dharambir was ultimately acquitted by

the learned trial Court.

The appellant – Ramesh Kumar took a defence that on the day of occurrence, he remained present in the office of Military Engineer Services, Cantonment, Hisar from 9.00 am to 5.00 p.m. on 20.11.2006 and during night of 20/21.11.2006 he remained present in his residential house provided in the complex situated in the Cantonment area, Hisar. His neighbours Amar Singh and Shiv Narayan were present with him and the police duly verified his presence from the authorities of Military services cantt. Seven witnesses were examined in defence.

DW1 Sohan Lal, Assistant General BDPO, Assandh, District Karnal and DW2 Kurlia Ram, Chowkidar-cum-Mali in the office of BDPO, DW3 Ram Kumar, Chowkidar in the office of CDPO, DW4 Sanjay Deshwal, Tehsil Welfare Officer, Asandh and DW5 Ramesh Chand, Assistant CDPO, Assandh, were examined to prove the presence of Dharambir at the place of his posting as alleged by him. DW6 Mahabir Singh stated that the accused Vinod was working with him at his shop as a helper and learning the electric work. Vinod had come to his house on the intervening night of 20/21.11.2006 and had stayed with him from 8.00 p.m. to 8.00 a.m. DW7 Lt. Col. Vinod Bhat proved the letter dated 02.12.2006 addressed by him to Senior Superintendent of Police, Hisar. He stated that the appellant – Ramesh Kumar was one of his employees in the mess and he had submitted his report (Ex. DW6/A) to Senior Superintendent of Police, Hisar regarding his presence on the intervening night of 20/21.11.2006.

The learned trial Court on considering the facts and circumstances of the case and the evidence on record concluded that the prosecution had succeeded in proving its case beyond reasonable doubt qua the appellants – Ramesh Kumar, Ram Niwas, Vinod and Dushyant. However, the prosecution could not bring home its case against the accused Dharambir, who was accordingly acquitted of the charges against him.

The appellants were, accordingly, convicted of the offences punishable under Sections 148, 302 and 452 read with Section 149 IPC and sentenced to undergo imprisonment as detailed in the foregoing paragraphs.

The learned counsel appearing for the appellants have vehemently argued that the conviction of the appellants is not justified in the wake of deficient and insufficient evidence on record to record a finding of guilt. It is submitted that the present is in fact a case of a blind murder. The presence of the so-called eyewitness Rohtash (PW2) is highly doubtful. The complainant's version of the incident in any case is hearsay and, therefore, inadmissible in evidence. The complainant was not present at the spot, therefore, his narration of the incident as unfolded is not liable to be relied upon to convict the accused. Furthermore, PW3 Om Parkash has also been introduced at a later stage. Om Parkash is a nephew of Prem Singh, being the son of Puran Singh. Puran Singh is the real brother of the complainant – Prem Singh. There is no mention of Om Parkash in the FIR. Therefore, it is apparent that he has been introduced at a later stage in an attempt to build the prosecution case. It is further

submitted that there is an unexplained delay in lodging of the FIR. The incident took place at 12.30 a.m. on the intervening night of 20/21.11.2006 as per the version of the complainant. Rohtash (PW2) informed the complainant at 1.00 o'clock at night. However, information is given by the complainant at 9.30 a.m. on 21.11.2006. This delay in itself shows that it was the result of an afterthought and complete concoction. It is urged that the recoveries that are shown to be effected from the appellants are doubtful. The weapons recovered were new with stickers intact and they were not blood stained. The FSL report (Ex.P2), it is submitted also, does not support the prosecution version.

Learned counsel appearing for the appellants further vehemently contend that the medical evidence on record does not corroborate the ocular version. Reference is made to the statement of Dr. Sunil Kumar Jalodia (PW6) wherein he stated that all the injuries on the person of the deceased are possible to be caused by one weapon itself. It is submitted that as far as the appellants – Dushyant and Vinod are concerned they were not named in the FIR. They have clearly been implicated falsely at a later stage due to their close relations with the other accused. In the FIR, no specific injury has been attributed to any of the accused persons named therein. It is at a subsequent stage that PW2 Rohtash stated that Ram Niwas inflicted 'gandasa' blows on the head of the deceased, Vinod inflicted two or three 'gandasa' blows on the neck of the deceased, Dushyant inflicted a 'gandasa' blow on the left forearm of the deceased, Raju (juvenile) gave an iron rod blow on left ankle and buttocks of

Rohtash, Ramesh inflicted a 'gandasi' blow on the chest of Rohtash, Dharambir inflicted a 'gandasi' on the left forearm of Rohtash and Chandgi Ram gave a 'dadar' blow on the right shoulder of Rohtash. It is submitted that the presence of Rohtash PW2 at the place of occurrence is not proved. He is not even shown to be present at the time of preparation of the inquest report. The site plan does not indicate his presence either. The electricity bulb is also not shown in the site plan. In view of the admitted position that there was no electricity connection at the premises, it is not possible that the accused were even identified at the spot. Thus, the entire prosecution case is submitted to be highly doubtful.

No motive is alleged to have been proved qua all the appellants. It is submitted that once the plot had been vacated by Chandgi Ram, there was no occasion for all the appellants to have murdered Rohtash son of Prem Singh at a later stage. Furthermore, motive, if any, would survive only qua Chandgi Ram alone.

Learned counsel for the appellant - Ramesh has vehemently argued that there is specific evidence in the shape of report (Ex. DW6/A) given by Lt. Col. Vinod Bhat (DW7) to prove the innocence of Ramesh. It is specifically stated in the report that the appellant - Ramesh Kumar was on duty on 20.11.2006 from 9 hours to 17 hours. His colleagues Amar Singh and Shiv Narain living in the same complex confirmed that Ramesh Kumar was in the residential complex throughout the night. This was verified by the Junior Engineer In-charge after checking the records. It is, thus, prayed that these appeals be allowed and all the appellants be acquitted of the

charges against them.

Learned counsel for the State while refuting the above said arguments submits that the appellants have been rightly convicted of the offences for which they were charged. The impugned judgment and order are well reasoned and logical, based on a careful and proper consideration of the evidence on record. It is submitted that there is sufficient evidence on record to prove the culpability of the appellants. There is an eye witness account in the shape of the testimony of PW2 Rohtash. The complainant – Prem Singh got his statement recorded at 9.30 a.m. on 21.11.2006. There is no delay in the lodging of the FIR, keeping in view the facts of the case. The motive for the murder of Rohtash is evident on the face of it. Recoveries of the weapons used in the crime have been effected from the appellants which leaves no doubt about their culpability. Therefore, it is prayed that both the appeals be dismissed and the impugned judgment and order dated 12.04.2012/17.04.2012 be upheld.

We have given our thoughtful consideration to the contentions as have been raised by the learned counsel appearing for the parties and with their assistance have gone through the records of the case.

It is to be noted that the prosecution has relied upon the testimonies of the complainant Prem Singh (PW1), Rohtash (PW2) and Om Parkash (PW3) for the ocular version of the incident as it took place. PW2 Rohtash and PW3 Om Parkash are stated to be the eyewitnesses to the incident in question wherein the son of the

complainant was murdered by all the accused persons.

There is no dispute that all the accused persons including the appellants are closely related. The accused Chandgi Ram (since deceased), Dharambir (acquitted), Ramesh (appellant) and Hawa Singh alongwith one Jai Singh are real brothers being sons of Khubi Ram. Appellants – Ram Niwas and Dushyant are sons of Jai Singh. Appellant – Vinod is a son of Hawa Singh. The accused Raju @ Suraj is a son of Ramesh Kumar son of Khubi Ram.

The complainant – Prem Singh (PW1) deposed that his cousins i.e. grandsons of his paternal aunt (Bhua) reside in his village i.e. Dhani Khan Bahadur. The complainant had given a plot of land outside the village 'abadi' to his cousin Chandgi Ram for making and storing cow dung cakes. About two months prior to the occurrence which took place on the intervening night of 20/21.11.2006, the complainant alongwith his son Rohtash (deceased) had asked Chandgi Ram to vacate this plot and lift the cow dung cakes therefrom because the complainant wanted to construct a house on the said plot. The plot was vacated by Chandgi Ram. A boundary wall was constructed on the plot by the complainant. PW1 further deposed that about 20 days prior to the occurrence the appellant – Ramesh demolished the boundary wall of this plot. When questioned, Ramesh retorted that as yet only the boundary wall had been demolished whereas something more may also happen. Construction of a house was, however, started on the plot by the complainant. The masonry work was being done by the complainant's son-in-law Rohtash (PW2).

The complainant alongwith his other family members were sleeping in their already existing residential house on 20.11.2006. The complainant's son as well as son-in-law both named Rohtash were sleeping on the premises of the house under construction after having their food. PW2 Rohtash came to the complainant's house at about 1.00 a.m. during the intervening night of 20/21.11.2006. He informed the complainant that the accused Chandgi Ram armed with an iron 'dadar', Dharambir armed with a 'gandasi', Ramesh armed with a 'gandasi', Ram Niwas armed with a 'gandasa', Vinod armed with a 'gandasa', Dushyant armed with a 'gandasi' and Raju armed with an iron rod inflicted injuries on his son at 12.30 a.m. after midnight. PW2 Rohtash woke up on hearing the noise and he witnessed the said persons causing injuries to Rohtash after throwing him of the cot. PW2 Rohtash further informed that the complainant's son had succumbed to his injuries. PW2 had come to inform the complainant after leaving Om Parkash with the dead body. The complainant accompanied his son-in-law to the site of the house under construction. He saw that his son had died and blood was oozing out from his body. After leaving his son-in-law and Om Parkash near the dead body, the complainant proceeded to inform the police. He met the police at Hansi 'chowk', Barnala and his statement (Ex.P1) was recorded.

It is pertinent to note that the complainant in his statement (Ex.P1) has not attributed any specific role to any of the accused. Moreover, the appellants – Dushyant, Vinod and Raju do not find mention in Ex. P1. There is no reference to the presence of Om

Parkash (PW3) either at the place of occurrence.

The contention of learned counsel for the appellant that the testimony of the complainant – Prem Singh (PW1) is to be discarded being hearsay would not be tenable. Section 6 of the Evidence Act is relevant in the facts and circumstances of this case.

Section 6 of the Evidence Act reads as under:-

“6. Relevancy of facts forming part of same transaction.—Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) to (d) xxxx

Thus, for a statement to be admissible in terms of Section 6 above, it must be almost contemporaneous with the act in question or immediately thereafter. The spontaneity and promptness of the statement would bring it within the ambit of Section 6 of the Evidence Act. In the present case, the occurrence is stated to have taken place at about 12.30 a.m. after midnight during the intervening night of 20/21.11.2006. Rohtash PW2 who witnessed the occurrence rushed

to inform the complainant. Rohtash (PW2) informed the complainant at about 1.00 a.m. itself on reaching the complainant's existing residential home. Thus, the statement of the complainant is admissible in evidence as it comes within the ambit of Section 6 of the Evidence Act inasmuch as it was given without much interval from which it could be said would allow fabrication. The statement would be admissible as it is within the principle of 'res gestae' and is applicable in this case. It was made contemporaneously with the act and in any case immediately thereafter.

PW2 Rohtash deposed that the complainant (father-in-law of PW2) and his son Rohtash (deceased, brother-in-law of PW2) were getting a house constructed in their plot. PW2 was doing the masonry work of the house. Rohtash (PW2) and his brother-in-law Rohtash (deceased) used to sleep on the premises of the house under construction every night after taking their meals. PW2 stated that he used to sleep on a cot inside the room whereas Rohtash (deceased) used to sleep on a cot in the '*veranda*'. The deceased and PW2 Rohtash were sleeping during the intervening night of 20/21.11.2006, when PW2 woke up at about 12.30 a.m. on hearing some noise. In the light of an electric bulb, PW2 Rohtash saw that all the accused persons armed with their respective weapons, as noted in the foregoing paragraphs, were causing injuries to Rohtash after throwing him on the ground from his cot. PW2 Rohtash stated that the appellant - Ram Niwas inflicted 'gandasa' blows on the head of the deceased Rohtash; appellant - Vinod inflicted two/three 'gandasa' blows on the neck of the deceased; appellant - Dushyant inflicted

injuries with a 'gandasi' on the left forearm of the deceased; Raju (juvenile, tried separately) hit the deceased on his left ankle and buttocks with an iron rod; appellant - Ramesh inflicted a 'gandasi' blow on the chest of the deceased; Dharambir inflicted a 'gandasi' blow on the left forearm of Rohtash and Chandgi Ram accused (since deceased) inflicted an iron 'datar' blow on the right shoulder of Rohtash. Om Parkash (PW3) was attracted to the spot by the noise. Om Parkash came to the spot and raised an alarm on which all the accused fled from the spot alongwith their respective weapons. Rohtash (PW2) and Om Parkash (PW3) found that the complainant's son had died. While leaving Om Parkash near the dead body, PW2 Rohtash went to inform his father-in-law about the occurrence.

Om Parkash (PW3) has deposed that during the intervening night of 20/21.11.2006, he was proceeding to his house from his fields at about 12/12.30 midnight. When he reached near the complainant's house, which was under construction he heard noise emanating from a quarrel. He hid himself near the main gate of the house under construction and saw all the accused armed with their respective weapons (as noted above) in the light of an electric bulb. They were causing injuries with their respective weapons to the deceased Rohtash after throwing him off the cot. When Om Parkash raised a hue and cry then all the accused fled from the spot alongwith their respective weapons. It is stated that Om Parkash (PW3) and Rohtash (PW2) discovered that the complainant's son had succumbed to his injuries. Thereafter, Rohtash (PW2) went to inform the complainant about the incident. After sometime, Rohtash and the

complainant came back to the spot where he narrated the entire occurrence to the complainant.

It is pertinent to note that Om Parkash (PW3) is a nephew of the complainant Prem Kumar (son of the complainant's real brother). The evidence of PW2 Rohtash who is an eye witness of the occurrence, cannot be negated in respect of Ram Niwas. PW2 Rohtash was a mason. The argument that Rohtash (PW2) did not have a license, therefore, he is not proved to be a mason is untenable. It is noticed only to be rejected. The village of PW2 Rohtash was about 35 km away from the complainant's village. Therefore, it is natural and probable that he was asked by the complainant to execute the masonry work for his residential house. It is also not opposed to logic that PW2 Rohtash alongwith his brother-in-law (deceased) used to sleep on the premises of the house under construction. It is common knowledge that construction material is ordinarily lying at the premises and there would be somebody to stand guard at night. Therefore, the presence of Rohtash (PW2) on the spot cannot be doubted on that account. Similarly, the contention that no evidence has been led to prove that the incident was seen in the light of an electric bulb by Rohtash (PW2) is of no avail. PW2 has specifically deposed that an electric bulb was lit at the spot. It has been clarified that the electric wire was taken from the neighbour Lilu Ram.

It is strenuously urged that the attempt to rope in the maximum number of male members of the accused family is apparent on the face of it. Though this possibility cannot be ruled out

as is elaborated hereinafter in the given circumstances, it is open to the Court to rely upon the part of the statement/evidence of a witness which is reliable. The maxim *falsus in uno falsus in omnibus* is not applicable. The entire testimony of a witness is not to be discarded if a part of it can be segregated as credible and trustworthy. The said circumstance, thus, does not detract from the evidence qua the appellant - Ram Niwas.

The appellant - Ram Niwas is attributed with the injuries on the head of the deceased. As per the testimony of PW6 Dr. Sunil Kumar Jalodia, Medical officer, General Hospital, Hisar, who conducted the post mortem examination on the dead body, the following injuries were found on the body of the deceased :-

- (1) Incised wound 12.5 x 2.0 cm on left temporo-parietal area of Head, fresh blood clot was present in subjacent tissue. Underlying bone was fractured and corresponding area of cerebral hemisphere was cut. Intracranial hematoma was also present.
- (2) An incised wound, 7.5 x 1.0 cm on right frontal area of head. Fresh blood clot was seen in underlying tissue and the underlying bone were fractured.
- (3) An incised wound, 17.5 x 4.0 cm was present on right upper neck. Fresh blood clots seen in subjacent tissue. The platysma, Larynx, External jugular vein were cut.
- (4) An incised wound of size 4.5 x 1.5 cm was horizontally present in middle 1/3 part of the neck

interiorly. Fresh blood collection seen in the subjacent tissue.

- (5) An incised wound 3.5 x 0.8 cm, horizontally placed on lower 1/3 part of neck on the right side. Fresh subcutaneous hematoma was present.
- (6) An incised wound 2.5 x 0.6 cm, was seen on the base of left thumb (Palmar aspect). Fresh blood clot was seen in subjacent tissue.
- (7) A fresh abrasion, 4 x 3 cm was present on right shoulder.
- (8) Fresh abrasion 6x4 cm was present on lateral aspect of left arm in its lower 1/3 part.
- (9) A fresh abrasion, 7x1 cm was present on right upper chest.
- (10) A fresh abrasion, 6x2 cm was present on left upper chest.
- (11) A fresh abrasion, 2x1.5 cm was present on right iliac crest.
- (12) A fresh abrasion was seen on the right thigh and right tibia.
- (13) Lacerated wound, 3x1 cm was present on the left heel. Fresh blood clots was also present.

It is stated by PW6 that injuries No. 1 to 6 are possible by a sharp edged weapon. In his cross examination, PW6 Dr. Sunil Kumar Jalodia has stated that injuries No. 1 to 6 would be possible with one single sharp edged weapon. The appellant – Ram Niwas

surrendered before Area Magistrate, Hisar on 24.11.2006 alongwith the appellant - Vinod. Ram Niwas suffered a disclosure statement (Ex. P29). In pursuance of the said disclosure statement, a 'gandasa' was recovered from the place pointed out by him. The ocular version pointing out the role of the appellant Ram Niwas is duly corroborated by the medical evidence on record.

Therefore, it is held that the prosecution has proved its case beyond reasonable doubt against the appellant – Ram Niwas.

It is relevant to note that the complainant – Prem Singh (PW1) has not named the appellants – Dushyant, Vinod and the juvenile Raju at the very outset when his statement (Ex.P1) was recorded on 21.11.2016 at 9.30 a.m. The complainant has also not attributed any specific injuries to the appellants Vinod and Dushyant. In his statement before the Court, he has, however, named the appellants - Dushyant, Vinod and the juvenile Raju as well. He has tried to explain the omission by saying that he was under shock at the time of recording of Ex. P1. Being puzzled he did not give the names of the said appellants. It is, however, admitted that the entire occurrence was narrated to him by PW2 Rohtash as well as PW3 Om Parkash before his statement Ex.P1 was recorded. PW2 Rohtash and PW3 Om Parkash have affirmed that they narrated the incident to the complainant. PW2 Rohtash has stated that he named all the accused with their parentage to the complainant - Prem Singh. He informed about the injuries inflicted by them on the deceased. Therefore, non-mentioning of the names of the appellants - Dushyant and Vinod in the statement (Ex.P1) of the complainant assumes

significance for the reason that this statement was recorded at 9.30 a.m. on 21.11.2006 while the incident in question took place at 12/12.30 midnight i.e. intervening night of 20/21.11.2006. The complainant admittedly got information about the incident at 1.00 a.m. on 21.11.2006 itself. It is stated by PW1 Prem Singh that they did not inform the police at night because they wanted to wait for other relatives to reach the spot. Prem Singh (PW1) has stated that his wife Champa (Champa has not been examined as a witness by the prosecution) accompanied them to the place of occurrence. They kept weeping on the way to the place of occurrence but none from the village joined them. Nobody came to the spot till the time he went to inform the police in the morning. Thus, it is highly doubtful and improbable that the complainant would have left out the names of three of the accused. All three of the said accused were well known to the complainant as they are close relatives. The names of these three accused as per the prosecution version figure in the statement (Ex.DA) of PW2 Rohtash. Ex. DA was recorded at about 1.30/2 p.m. on 21.11.2006 as per SI Kartar Singh (PW8).

PW2 Rohtash has stated that no villager came to the spot till 7.00 a.m. The villagers started gathering at 7.00 a.m. PW2 Rohtash has further stated that there are 10 to 12 houses in between the place of occurrence and the house of the complainant but he did not raise any alarm and neither did he wake up any person on the way. PW2 Rohtash has specifically stated in his cross examination that he had advised his father-in-law to report the matter at 1.30 a.m. at night but his father-in-law said that they should wait till all the

relatives came to the spot. PW2 Rohtash stated that he had informed their relatives about the incident at about 7.00 a.m.

It is pertinent to notice at this stage that PW3 Om Parkash in his cross examination has specifically stated that before proceeding to lodge the report of the incident, the complainant consulted his relatives for about 15 minutes about the registration of the case and the persons to be named therein. The relatives of the complainant reached the spot at about 8.00 a.m. The statement (Ex.P1) of the complainant was recorded at 9.30 a.m.

Thus, the possibility of persons other than the ones who were actually involved in the incident being roped in cannot be ruled out in this situation. Dushyant and Vinod are the sons of real brothers of the accused Chandgi Ram. The appellant - Dushyant is the son of Jai Singh. Vinod is the son of Hawa Singh. Hawa Singh and Jai Singh are real brothers of the accused Chandgi Ram. In these circumstances, the delay of about eight (8) hours in lodging of the FIR assumes importance and the possibility of these two appellants being roped in at a later stage after due deliberations, therefore, cannot be ruled out.

The prosecution also seeks to rely on the recoveries of the alleged weapons of offence from the appellants - Dushyant and Vinod. PW4 Bhag Singh is a witness to the recovery of a 'gandasi' from the appellant - Vinod. Bhag Singh (PW4) was also a witness to the recovery of a 'gandasi' by Ram Niwas. PW4 stated that the appellant - Ram Niwas led them to a pond and got recovered one 'gandasi' from the pond in front of the house of the appellant -

Ramesh. A sketch of the same was prepared. Subsequently the appellant - Vinod led them to the pond and got recovered another 'gandasa' from the pond, which was handed over to the police vide recovery memo Ex. P6. In his cross examination, Bhag Singh (PW4) has stated that he alongwith the police party and Sita Ram (another witness to the recoveries effected above) proceeded to the pond pointed out by Ram Niwas. At that time, the appellant - Vinod was not accompanying them. He further stated that the place from where the 'gandasa' used by Vinod was recovered was at a distance of 2½ feet from the place where Ram Niwas got effected the recovery of his 'gandasi'. Bhag Singh could not tell whether Vinod had got effected the recovery from the mud. The place of recovery was open and accessible to the public. The 'gandasa' (Ex. P8) allegedly recovered from the appellant - Vinod was a new one with three or four stickers on it. PW4 Bhag Singh has admitted that he is related to the complainant in the brotherhood. No blood stains were found on the 'gandasa'. Therefore, the recovery of a 'gandasa' from Vinod, which may have been used for causing injuries, is doubtful.

A 'gandasi' was allegedly recovered from the appellant - Dushyant vide recovery memo (Ex. P11). Partap Singh (PW5) is one of the witnesses of the said recovery. PW5 Partap Singh is admittedly a nephew of the complainant. He is the son of the real brother of the complainant – Prem Singh. The recovery of a 'gandasi' was effected from a vacant plot of the appellant – Vinod's uncle Hawa Singh. This place was also open and accessible to the public. Admittedly, no independent witness was associated at the time of the alleged

recoveries. The recoveries got effected from these two appellants are indeed doubtful. Thus, reliance cannot be placed on these disclosure statements to convict the said appellants. Therefore, the presence of the appellants - Dushyant and Vinod at the time of occurrence during the intervening night of 20/21.11.2006 is indeed suspect and doubtful. The possibility of them being named at a later stage as a result of concoctions and deliberations by the complainant and his relatives cannot be ruled out. The list of the accused persons cannot rule out the tendency and zest to implicate the maximum number of male members of a family.

The learned trial Court has clearly erred in holding that as the appellant - Vinod surrendered in Court alongwith Ram Niwas on 24.11.2006, therefore, this in itself is a compelling circumstance to show that he was involved in the murder of deceased Rohtash. The factum of having surrendered before the Court by itself cannot lead to an irresistible conclusion of guilt of an accused. Coupled with aforementioned circumstances there is the evidence of DW6 Mahabir Singh son of Bhim Singh. He has specifically deposed that Vinod was working as a helper in his shop since April 2004. DW6 has deposed that Vinod stayed with him for the night intervening 20/21.11.2006. DW6 has also stated that Vinod did not leave village Lowan, District Jind from 8.00 p.m. to 8.00 a.m. on 20.11.2006 to 08.00 a.m. on 21.11.2006. The fact that Mahabir Singh is a cousin brother of the appellant Vinod's wife lends credence to the defence rather than detract therefrom. Thus, a serious doubt is cast on the prosecution case against Vinod and Dushyant in the factual matrix of the case.

The appellant - Ramesh Kumar has taken a specific defence that at the time of the alleged occurrence, he was present in the area of cantonment at Hisar. Ramesh Kumar in his statement under Section 313 Cr.P.C. stated that on the day of alleged occurrence i.e. 20.11.2006, he remained present in the office of the Military Engineer Services at Hisar Cantonment from 9.00 am to 5.00 p.m. on 20.11.2006. During the intervening night of 20/21.11.2006, he remained present in his residential house provided in the complex of the Cantonment at Hisar. His neighbours Amar Singh and Shiv Narayan were present with him. Due verification was carried out by the authorities of the Military services at the Cantonment at Hisar.

Reliance was placed by the appellant - Ramesh Kumar on a letter/report dated 02.12.2006 (Ex. DW6/A) written by DW7 Lt. Col. Vinod Bhat at that time Garrison Engineer. This letter was addressed to the Senior Superintendent of Police, Hisar. The relevant contents of this letter read as under:-

“1. It has come to our notice that a FIR has been lodged against Sh. Ramesh Kumar s/o Sh. Khubi Ram resident of Dhani Khan Bahadur at Police Station Barwala under IPC 302. The individual is an employee in MES (Military Engineer Services) organization under Ministry of Defence and posted to E/M Subdivision of this office. Concerned investigation officer has already investigated the matter on 01.12.2006 in the office of GE

Hisar by interacting with the subordinate staff and colleagues of Sh. Ramesh Kumar.

2. It is also brought to your kind notice that the individual Sh. Ramesh Kumar was on duty on 20.11.2006 from 0900 hrs to 1700 hrs which has been confirmed by the Junior Engineer in charge after checking the records. Moreover, two of his colleagues Sh. Amar Singh and Sh. Shiv Narain who are living in the same complex where the individual Sh. Ramesh Kumar is putting up have also confirmed that he was in residential complex only throughout the night.”

DW7 Lt. Col. Vinod Bhat, Officer Commanding 202 Bomb disposal unit has proved the letter dated 02.12.2006. It is affirmed that Ex. DW6/A was written by him. Appellant - Ramesh Kumar was admittedly an employee with the military authorities at Hisar. There is no reason to disbelieve or discredit the testimony of DW7 Lt. Col. Vinod Bhat. There is no reason evident on record, which would lead us to doubt the testimony of an officer of the rank of a Lieutenant Colonel. The prosecution has not been able to prove any circumstance as to why an officer of this rank would make a false averment to favour the appellant. Similarly, the contention of learned counsel for the State that non examination of Amar Singh and Shiv Narain is fatal to the defence of this appellant is not tenable. DW7 Lt. Col. Vinod Bhat has specifically deposed that he keeps a track of all

the persons working under him. He submitted a report Ex.DW6/A to the Senior Superintendent of Police, Hisar after making due inquiries from his Sub division. It is specifically mentioned in Ex.DW6/A that the matter was duly investigated by the concerned investigating officer on 01.12.2006 by duly interacting with the subordinate staff and colleagues of Ramesh Kumar. There is no reason to doubt the verification which was carried out by the military authorities. In this situation, non examination of Amar Singh and Shiv Narain is not relevant. Due credence is to be given to the verification and certification provided by the military authorities especially in the absence of any evidence to the contrary. Therefore, though the appellant - Ramesh Kumar has been named by the complainant in his statement (Ex.P1), his presence at the spot at the time of alleged occurrence is indeed doubtful. A perusal of the record reveals that no weapon has been recovered from the appellant - Ramesh Kumar. The complainant did not inform the police nor called any Panchayat when Ramesh Kumar allegedly razed the boundary of this plot. The prosecution version qua Ramesh Kumar is sketchy and doubtful. The learned trial Court has clearly erred in not placing reliance on the testimony of DW7 Lt. Col. Vinod Bhat. It has wrongly discarded the testimony of DW7 by observing that neither Amar Singh nor Shiv Narain had been examined to substantiate the plea of alibi raised by Ramesh Kumar.

In view of the discussion above, appellant No. 2 - Dushyant and appellant No. 3 – Vinod in CRA-D No. 668-DB of 2012 and the appellant – Ramesh Kumar in CRA-D No. 540-DB of 2012

are entitled to the benefit of doubt. The prosecution has, however, successfully proved its case against appellant No. 1 – Ram Niwas in CRA-D No. 668-DB of 2012.

The judgment of conviction dated 12.04.2012 and order of sentence dated 17.04.2002 passed by the learned Additional Sessions Judge, Hisar is set aside to the extent that appellants No. 2 and 3 in CRA-D No. 668-DB of 2012 and the appellant – Ramesh Kumar in CRA-D No. 540-DB of 2012 have been convicted and sentenced. They are acquitted of the offences attributed to them by affording them the benefit of doubt. However, the appeal against Ram Niwas (appellant No. 1 in CRA-D-668-DB of 2012) is dismissed and the sentence of imprisonment imposed upon him is maintained and upheld. The appellant No. 1 (Ram Niwas) shall pay compensation of Rs. 2 lacs to the legal heirs of the deceased Rohtash son of Prem Singh. Dushyant and Vinod (appellants No. 2 and 3 in CRA-D-668-DB of 2012) and Ramesh Kumar (appellant in CRA-D-540-DB of 2012) be set at liberty forthwith, if not wanted in any case.

Accordingly, CRA-D-540-DB of 2012 is allowed and CRA-D-668-DB of 2012 is partly allowed.

(Lisa Gill)
Judge

(S.S. Saron)
Judge

August 31, 2016
Rts/A.Kaundal

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No