

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-487-DB of 2003

Date of Decision : August 23, 2016

Rajesh Kumar

....Appellant

VERSUS

State of Haryana

...Respondent

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

Present : Mr. Naveen Gupta, Advocate as amicus curiae
for the appellant.

Mr. M.S. Sidhu, Additional Advocate General, Haryana.

Mr. R.K. Agnihotri, Advocate
for the complainant.

T.P.S. MANN, J.

The appellant, namely, Rajesh Kumar, alongwith Dharampal and Narinder Kumar was tried for committing offence punishable under Section 302 read with Section 34 IPC on the allegations that on or about 12.11.2001 and in the area of village Salempur Kohi, they in furtherance of their common intention committed the murder of Shiv Kumar by intentionally causing his death. Vide judgment and order dated 9/12.5.2003, learned Sessions Judge, Yamuna Nagar at Jagadhri acquitted Narinder Kumar of the charge against him, whereas Rajesh Kumar and Dharampal were convicted under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life.

Aggrieved of his conviction and sentence, Rajesh Kumar

filed the present appeal, whereas Dharampal filed Criminal Appeal No.D-629-DB of 2003, which stood admitted and notice issued to the State of Haryana. Complainant Tek Chand also filed Criminal Revision No.1496 of 2003 with the prayer that the sentences awarded to Rajesh Kumar and Dharampal be enhanced and they be also directed to pay fine. Vide order dated 6.10.2003, the Court directed the said revision to be posted for final hearing alongwith the appeals filed by the two convicts. As both the appeals as well as the revision arise out of one and the same judgment of conviction and sentence, they are being disposed of by a common judgment.

According to the prosecution, complainant Tek Chand made statement Ex.PG before Sub Inspector Chhatter Pal Singh on 13.11.2001 at 2.30 a.m. at Civil Hospital, Jagadhri to the effect that he was resident of village Salempur Kohi and installed one sugarcane crusher in his land situated outside the boundary of the village. Besides, he was running two shops, one of kiryana (grocery), while the other of cement and fertilizer. He had four sons and one daughter. His son Shiv Kumar was studying in B.A. final in Mukand Lal National College, Yamuna Nagar and coming home village after college hours. On 12.11.2001 at about 8.00 p.m., the complainant after taking meals laid on a cot in the chhappar of crusher, whereas his sons Shiv Kumar and Sushil Kumar laid on separate cots in front of their shops. At about 9.30 p.m., he heard the alarm raised by his son Shiv Kumar that he be saved. The complainant woke up from the cot and saw in the electric light that Rajesh Kumar son of Man Singh, Caste Jat, resident of Rampur Jattan and Dharampal son of Lachhman Dass,

Caste Dhiman, resident of Salempur Kohi were grappling with his son Shiv Kumar and giving fist blows and slaps to him. On hearing the noise his other son Sushil Kumar also woke up. The complainant and his son Sushil Kumar tried to rescue Shiv Kumar but within their view Rajesh Kumar gave a blow with a pointed iron rod on the left side of the chest of his son Shiv Kumar. As a result Shiv Kumar fell down and became unconscious. Both Dharampal and Rajesh Kumar ran away from the spot. The complainant transported his son Shiv Kumar in a tractor trolley to Civil Hospital, Jagadhri for treatment but after checking him, the doctor declared Shiv Kumar to be dead. According to the complainant, some time earlier he and his son Shiv Kumar had a quarrel with Rajesh Kumar pertaining to fertilizer. On account of the same, Rajesh Kumar used to nurse a grudge towards the complainant party. Rajesh Kumar, alongwith Dharampal, after quarrelling with his son Shiv Kumar had caused injury to him. As a result, his son had breathed his last.

Further case of the prosecution is that as the statement of the complainant revealed commission of offence under Sections 302/34 IPC, SI Chhatter Pal Singh made endorsement Ex.PG/1 on the statement Ex.PG and sent it to Police Station Bilaspur, where on its basis, FIR Ex.PG/2 came to be registered on 13.11.2001 at 3.30 a.m. by MHC Randhir Singh. Special Report sent through Constable Balwinder Singh was received by the Ilqa Magistrate on 13.11.2001 at 6.00 a.m.

During the investigation of the case SI Chhatter Pal Singh

prepared inquest report Ex.PC of the dead body of Shiv Kumar and also application Ex.PB for post-mortem. He recorded the statement of the witnesses. Post-mortem on the dead body of Shiv Kumar was performed at Civil Hospital, Jagadhri. Clothes of the deceased were taken into possession vide memo Ex.PK. Thereafter, SI Chhatter Pal Singh went to the place of occurrence and prepared rough site plan Ex.PQ. The case property was deposited with the MHC on the same day. On 14.11.2001 Dharam Pal was arrested whereas Rajesh Kumar was arrested on 19.11.2001. On 21.11.2001, Rajesh Kumar suffered disclosure statement Ex.PL that he had kept concealed an iron sua behind the wall of residential house of Lachhman Dass near the tree and he could get the same recovered. Said Rajesh Kumar then led the police party to the disclosed place and got recovered iron sua Ex.P1. Site plan Ex.PR of the place of recovery was prepared. On 3.12.2001 Bashir and Som Nath produced Narinder Kumar accused before SI Chhatter Pal Singh, who arrested him. On completion of investigation, challan was prepared on 27.12.2001 and presented in the Court of the Ilaqa Magistrate. The case was, thereafter, committed to the Court of Sessions, where both Rajesh Kumar and Dharampal, besides Narinder Kumar were charged for the aforementioned offences, to which they pleaded not guilty and claimed trial.

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

PW1 Dr. Ramesh Kumar testified that on 13.11.2001, he, alongwith Dr. Anuja Goel conducted post-mortem on the dead body of

Shiv Kumar, aged 20 years and found the following injury :-

"A cruciate shaped wound with sharp edges of size 12 mm x 8 mm x cavity deep (pleural) placed vertically in left third intercostal space 2.5 cm from mid sternal line. Clotted blood was present in the wound. 2 mm white brownish discolouration was seen around the margin of the wound (? rust or bruise). On further dissection inter costal muscles were found cut. Pleural cavity was full of blood, a rent 10 mm x 3 mm was present on anterior surface of left lung. On further dissection 10 mm x 3 mm rent was present on left ventricle of heart on its anterior surface. Scalp, skull vertebrae, membranes, brain, spinal cord were normal."

The cause of death was opined to be injury to vital organs, i.e. heart and lung leading to cardiac temponents, which was ante-mortem in nature and sufficient to cause death in normal course of events. The probable time between injury and death was within few seconds and between death and post-mortem within 24 hours.

PW2 Constable Mulakh Raj testified that on 24.12.2001, he went to village Salempur Kohi and prepared scaled site plan Ex.PE at the pointing out of Tek Chand.

PW3 Constable Balwinder Singh testified that on 13.11.2001, he had delivered special report of this case to the Ilaqa Magistrate at 6.00 a.m.

Complainant Tek Chand was examined by the prosecution as PW4. He reiterated his version as was earlier stated by him in his

statement Ex.PG. He also deposed about the motive and the ocular account of the occurrence.

PW5 HC Daryav Singh and PW6 HC Randhir Singh tendered into evidence their respective affidavits Ex.PH and Ex.PJ.

PW7 HC Mohan Singh testified that he was deputed by SI Chhatter Pal Singh to get the post-mortem conducted on the dead body of Shiv Kumar. After post-mortem the doctor handed over to him a sealed parcel containing the clothes of the deceased, which he further produced before SI Chhatter Pal Singh, who took them into possession vide recovery memo. Ex.PK.

PW8 Uggar Sain testified that on 21.11.2001, SI Chhatter Pal Singh interrogated Rajesh Kumar accused in his presence, who disclosed that he had kept concealed a sharp edged pointed iron sua in backside of residential house of Lachhman Dass and he could get the same recovered. Disclosure statement Ex.PL was recorded and on its basis, Rajesh Kumar got recovered the sua Ex.P1 from the disclosed place, which was taken into possession vide recovery memo. Ex.PM.

PW9 Sushil Kumar deposed on the same lines as was done by his father Tek Chand.

PW10 Som Nath deposed that on 3.12.2001, when he had visited the house of Bashir, Narinder Kumar accused reached there and told Bashir that he be produced in the Police Station. Narinder Kumar further told Bashir that he had committed mistake as he alongwith Rajesh Kumar had gone to village Salempur Kohi and both

of them had murdered a boy, namely, Shiv Kumar. He also told Bashir that he had removed quilt from the body of Shiv Kumar while he was sleeping and Rajesh Kumar had caused him injury with a sua. He further deposed that all of them then proceeded for the Police Station but met the police on the way where Narinder Kumar was produced before the police.

PW11 Dr. Rajesh Saini, Medical Officer, General Hospital, Jagadhri testified that on 12.11.2001 at 10.55 p.m., Shiv Kumar was brought to the hospital and on checking his body, he found him dead. He sent ruqa Ex.PO to Police Post Rakshak Vihar, Jagadhri.

PW12, SI Chhatter Pal Singh testified about the various steps taken by him during the investigation of the case.

When examined under Section 313 Cr.P.C., all the three accused claimed themselves to be innocent and falsely implicated in the case. Rajesh Kumar further stated that on 10.11.2001, he was called by Sushil Kumar son of Tek Chand complainant for getting dispute settled between him and Lachhman Dass as Lachhman Dass had lodged DDR against Tek Chand but he refused to go with him as it was their own dispute and he could not interfere in the same. On his refusal, the complainant party became annoyed and threatened to teach him a lesson as and when they would get a chance in future. He further stated that he did not make any disclosure statement nor got recovered sua. The police had obtained his signatures on blank papers under threat.

In their defence, the accused examined DW1 Kishori Lal,

SA, Office of CMO, Yamuna Nagar who brought the register regarding birth entry and other summoned record. He proved certified copies of birth entries of Satya Wati as Ex.D1, Piari as Ex.D2, Jawantri as Ex.D3 and of Savitri as Ex.D4.

DW2 Ajay Kumar, DRK, Judicial Record Room, Jagadhri brought the original file of Criminal Case No.108/1 of 2000 titled as "State Vs. Jasmer Singh etc." decided on 22.9.2001, and proved certified copy of statement of Karta Ram under Section 161 Cr.P.C. as Ex.D6, certified copy of report under Section 173 Cr.P.C. as Ex.D7, certified copy of discharge report as Ex.D8, copy of discharge order dated 22.9.2001 as Ex.D9, certified copy of statement of Kiran Pal dated 22.9.2001 as Ex.D10, certified copy of statement of Kiran Pal dated 20.11.2000 as Ex.D11, certified copy of report No.15 dated 13.10.1999 as Ex.D12 and certified copy of judgment dated 22.9.2001 as Ex.D13.

DW3 Jagmal Singh testified that wife of Tek Chand was daughter of Sunehri Devi.

DW4 Constable Raj Kumar brought *roznamcha* of Police Station Bilaspur and proved copy of DDR entry No.23 dated 10.11.2001 as Ex.D15.

In addition, Narinder Kumar accused tendered in evidence, birth certificate of Shiv Kumar as Ex.D16, birth certificate of Bir Bala as Ex.D17 and birth certificate of Kanta as Ex.D18.

After hearing learned counsel for the parties and on going

through the evidence, the trial Court came to the conclusion that the prosecution had failed to prove its case against Narinder Kumar and, accordingly, acquitted him of the charge against him. At the same time, Rajesh Kumar and Dharampal were convicted and sentenced, as mentioned above.

When the present appeal came up for hearing on 19.8.2016, none appeared for the appellant. Under these circumstances, this Court had no other option but to appoint Mr. Naveen Gupta, Advocate as amicus curiae to represent Rajesh Kumar appellant and to plead his cause.

This Court has heard Mr. S.K. Garg Narwana, Senior Advocate with Mr. Teevar Sharma, Advocate for Dharampal appellant, Mr. Naveen Gupta, Advocate as amicus curiae for Rajesh Kumar appellant, Mr. M.S. Sidhu, Additional Advocate General, Haryana and Mr. R.K. Agnihotri, Advocate for complainant Tek Chand and perused the evidence with their able assistance.

The stand of the defence is that it was a case of blind murder when neither PW4 complainant Tek Chand nor PW9 Sushil Kumar was present. They were, later on, projected as eye-witnesses of the occurrence. Their presence at the spot at the time of the occurrence was unnatural and improbable. Even the version regarding Rajesh Kumar accused owing some amount on account of purchase of fertilizer from the shop of PW4 Tek Chand is cooked up as the alleged transaction had taken place long before the present occurrence. It is also the case of the defence that Dharampal

appellant had no reason to be present at the time of the occurrence. He had been falsely roped in the case on account of the fact that on 9.11.2001, his brother Gopal had gone to the shop of complainant Tek Chand for bringing some household articles and at that time, there was exchange of hot words between Gopal on the one hand and Sushil Kumar and Sat Pal, sons of the complainant on the other over currency note of the denomination of Rs.2/- and later on, in the evening at about 9.30 p.m., complainant Tek Chand and his sons Sushil Kumar, Sat Pal and Shiv Kumar came there and asked about his brother and when his father Lachhman Dass intervened and tried to make them understand they kept on hurling abuses, whereafter complainant Tek Chand and his sons caught hold of his brother and caused him fists and slap blows. His father was also given fists and slap blows. Thereafter, complainant Tek Chand went to his shop and returned with an iron rod, whereas his son Kamal came behind carrying a lathi. Tek Chand gave a blow on his father's foot while Kamal gave two lathi blows on his left leg and left arm. Subsequently, HC Sat Pal Singh had recorded statement of Dharampal's father Lachhman Dass and on its basis DDR No.23 dated 10.11.2001 was recorded at Police Station Bilaspur. It is further the case of the defence that even if the prosecution case is accepted as such, both the convicts cannot be held liable for committing the offence under Section 302 IPC. At the most, it may be a case of falling within the ambit of Section 304 IPC.

On the other hand, learned State counsel as well as learned counsel for the complainant have submitted that the presence

of PW4 Tek Chand and PW9 Sushil Kumar at the time of the occurrence stood well established and, therefore, the appellants have rightly been convicted and sentenced by the trial Court.

It is a case of direct evidence. According to the prosecution PW4 Tek Chand was sleeping in a chhappar by the side of his sugarcane crusher, whereas PW9 Sushil Kumar as well as deceased Shiv Kumar were sleeping in the veranda in front of their shops. The distance between the two places was about 10 paces. At about 9.30 p.m., Tek Chand woke up on hearing the alarm raised by his son Shiv Kumar. He got up and proceeded towards the place where his son Shiv Kumar was being assaulted by Rajesh Kumar and Dharampal. Within his sight, Rajesh Kumar gave a blow with the pointed iron rod, which has also been referred at some places in the record as sua. The said blow landed in the left side of the chest of Shiv Kumar resulting into a cruciate shaped wound with sharp edges measuring 12 mm x 8 mm. It was placed vertically in left third intercostal space, 2.5 cm from mid sternal line. On dissection, intercostal muscles were found cut. The pleural cavity was full of blood. A rent of 10 mm x 3 mm was present on anterior surface of left lung. On further dissection 10 mm X 3 mm wound was present on left ventricle of heart on its anterior surface. The cause of death in the opinion of PW1 Dr. Ramesh Kumar was due to injuries to vital organs, i.e. heart and lung leading to cardiac temponents, which were sufficient to cause death in normal course of events. The medical evidence fully corroborates the testimony of PW4 Tek Chand. His statement is also corroborated by his son Sushil Kumar, who stepped

into the witness box as PW9 and testified that on 12.11.2001 at about 9.30 p.m., he and his brother Shiv Kumar slept on separate cots in the veranda in front of their shops, whereas their father was sleeping in chhappar near the crusher. At that time, he heard cries of his brother Shiv Kumar. He got up and so did his father, who reached there. Both Rajesh Kumar and Dharampal were seen causing slaps and fist blows to Shiv Kumar. Rajesh Kumar was having iron sua in his hand with which he caused injury in the left side of his chest. On account of the injury, received with the sua in his chest, his brother fell down on the ground. Thereafter, Rajesh Kumar and Dharampal ran away. Shiv Kumar was taken to Civil Hospital, Jagadhri in a tractor-trolley where the doctor examined him and declared him to be dead.

Both PW4 Tek Chand and PW9 Sushil Kumar had testified that Rajesh Kumar had purchased two bags of fertilizers from their shop for an amount of Rs.300/- but the price of fertilizer was not paid by him. Tek Chand and Shiv Kumar had demanded the said amount from Rajesh Kumar and hot words were exchanged between them. On that account, Rajesh Kumar used to nurse a grudge against the complainant party. Merely because PW4 Tek Chand did not make any entry in his account books of selling two bags of fertilizers on credit to Rajesh Kumar accused is no ground to hold that the motive for opening the attack was non-existent. It is a case where the parties belong to a village and more often than not the residents of the village purchase articles on credit and the shopkeeper does not make any entry in his records. Most of the time records are also not maintained and the commodities are sold on faith hoping that the buyer would pay

the amount in due course of time. Similarly, the presence of both PW4 Tek Chand and PW9 Sushil Kumar at the place of occurrence cannot be doubted on the ground that the complainant party had engaged Jai Singh of their village and one Furkan, who belonged to UP for crushing the sugarcane and making gur and these two persons ought to be present at the sugarcane crusher and the shops during the night while PW4 Tek Chand and PW9 Sushil Kumar would not be present there and rather, would be present in their house. It has come in the testimony of PW9 Sushil Kumar that both Jai Singh and Furkan had left the crusher on the previous day after finishing the work. Meaning thereby, that at the relevant time, they were not present at the place of occurrence. It may also be noticed that deceased Shiv Kumar was admittedly killed while he was lying on a cot in the veranda in front of his shops and if Shiv Kumar could sleep there, both Tek Chand and his son Sushil Kumar could also stay there for the night in order to keep a watch on their sugarcane crusher as well as the shops.

It has come in the evidence that when PW4 Tek Chand got up on hearing the alarm raised by his son Shiv Kumar, he had recognized Rajesh Kumar and Dharampal accused in the light of electric bulbs. At that time, Rajesh Kumar was having a sharp pointed weapon of iron in his hand. The distance of ten paces between the place where Tek Chand was sleeping and the place where the occurrence had taken place could be covered by Tek Chand in no time. At the same time, PW9 Sushil Kumar was lying asleep on a cot which was close to the cot of Shiv Kumar. On account of the giving of

slaps and fist blows by the aforementioned two accused, Shiv Kumar had raised an alarm which had attracted his father Tek Chand to the spot and also woken up his brother Sushil Kumar who was lying asleep nearby. On seeing that the alarm raised by Shiv Kumar had attracted his father and brother, Rajesh Kumar, who had earlier purchased fertilizer for an amount of Rs.300/- on credit and refusing to pay the said amount, subsequently, went ahead to execute his plan of committing the murder by thrusting the pointed iron rod-cum-sua in the left side of the chest of Shiv Kumar. The amount of Rs.300/- may not be that substantial but it depends as to what is going on in the mind of the accused. For him it may be a huge amount and instead of paying the same, he opted to open the assault and commit the murder of Shiv Kumar.

During the investigation of the case, the police had recorded the disclosure statement Ex.PC of Rajesh Kumar accused in which he hinted that it was he and one Narinder Kumar who were the ones who had assaulted Shiv Kumar. Subsequently, on the basis of the said disclosure statement Narinder Kumar was arrested on 3.12.2001. However, during the trial, neither PW4 Tek Chand nor PW9 Sushil Kumar uttered a single word against Narinder Kumar. Their consistent case was that both Rajesh Kumar and Dharampal had assaulted Shiv Kumar by giving slaps and fist blows and subsequently Rajesh Kumar inflicted injury with the pointed iron rod in the left side of the chest of Shiv Kumar which ultimately proved to be fatal.

It is a case where Rajesh Kumar accused had opened assault after going to the place where deceased Shiv Kumar was sleeping on a wintry night. At that time, he was armed with the pointed iron rod. Such like instrument could not be available at the place of the occurrence, rather it was Rajesh Kumar who had carried the same with him while going to the place of occurrence and finally wielded the same and causing injury in the left side of his chest. The injury resulted into piercing of the left lung and the left ventricle which resulted into Shiv Kumar breathing his last within no time. As such, it was a case of murder having been caused by Rajesh Kumar.

At the same time, the involvement of Dharampal in the occurrence, in question, is not above board. As per the prosecution, he was not armed with any weapon at the time of the occurrence. The motive was also attributed to Rajesh Kumar accused, whereas Dharampal had nothing to do with the same. From the DDR No.23 dated 10.11.2001, which has been brought on record by DW4 Constable Raj Kumar as Ex.D15, it is made out that Dharampal's father Lachhman Dass and his son Dharampal were given slaps by complainant Tek Chand and his sons on 9.11.2001 whereafter he was also caused injuries with iron rod and lathi. The said incident occurred only three days before the present occurrence. Tempers must be running high between the family of Dharampal appellant on the one hand and complainant Tek Chand on the other and possibility cannot be ruled out that because of the said DDR, both PW4 Tek Chand and PW9 Sushil Kumar named him alongwith Rajesh Kumar as the accused. Under these circumstances, extending benefit of doubt to

Dharampal would be in order.

Resultantly, the conviction and sentence of Dharampal appellant is set aside and he is acquitted of the charge against him. The conviction of Rajesh Kumar under Section 302 read with Section 34 IPC is, however, converted to Section 302 IPC for which he shall undergo life imprisonment. At the same time, no case is made out for any enhancement of sentence of imprisonment and fine.

Criminal Appeal No.D-629-DB of 2003 filed by Dharampal appellant is accepted, whereas Criminal Appeal No.D-487-DB of 2003 filed by Rajesh Kumar and Criminal Revision No.1496 of 2003 filed by complainant Tek Chand are, hereby, dismissed.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

August 23, 2016
satish

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No