

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

CRA-D-645-DB of 2003
Date of decision:-9.12.2016

Shashi Kumar 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.Sudhir Sharma, Advocate with
Mr.Ram Kishan Rana, Advocate
for the appellants.

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

GURMIT RAM, J.

The above noted criminal appeal at the instance of
aforementioned appellants Shashi Kumar and Bhagwat Dayal has been
preferred against the judgment of conviction dated 4.8.2003 and order of
sentence dated 6.8.2003 passed by the Court of learned Additional
Sessions Judge, Narnaul in criminal case bearing FIR No.38 dated
12.2.2001 under Sections 323 and 302 read with Section 34 of the Indian
Penal Code (for short – 'IPC'), Police Station Ateli, vide which all the
three accused i.e. appellants herein and their co-accused Savitri Devi were
held guilty for the offence punishable under Section 323 read with Section

34 of the IPC and were awarded the sentence of rigorous imprisonment for one month each whereas appellants-herein (accused) were further held guilty for the offence punishable under Section 302 read with Section 34 of the IPC and were awarded the sentence of rigorous imprisonment for life along with fine of Rs.500/- each and in default of payment of fine, to suffer further rigorous imprisonment for a period of two months each. Both the substantive sentences of the appellants were ordered to run concurrently.

Concisely stated, the prosecution version as put forth before the learned trial Court was that on 12.02.2001, Om Parkash, Inspector of CIA Staff, Narnaul along with some other police officials was present in the premises of Police Station, Ateli in connection with investigation of case FIR No.33 of 2001, under Sections 498-A and 304-B of the IPC. At that time, a ruqa was received from Community Health Centre (CHC), Ateli regarding injured Tara Chand, who was brought dead to this hospital. Since no NGO was present in the police station, so Om Parkash, Inspector along with other police officials reached at CHC Ateli where he came across complainant Rajesh Kumar son of Tara Chand, resident of village Tobra, Police Station, Ateli who made his statement Ex.PA before him which was as under:

“He is the only son of his parents and doing welding work at his house. A litigation is pending in the Civil Court, Narnaul between him and his uncle Duli Chand about some plot. Shashi Kumar, who is his cousin, helps his uncle Duli Chand and has asked him (complainant) several times that either he should effect compromise in the said case, otherwise he would not leave him and his

father alive. Today i.e. 12.2.2001 at about three O' clock during day time, he was present at his house and his father was bringing the buffalo inside the house by catching hold the iron chain. In the meantime, Shashi Kumar caused an obstruction with his cycle and directed his father to ask his son Rajesh (complainant) either to make the compromise with Duli Chand, otherwise he would not leave (him) his father alive. On this, his father told him that he should talk to Rajesh himself in this regard. In the meanwhile, one Bhagwat Dayal armed with an iron rod (*SABBAL*) came there and while handing over this *SABBAL* to Shashi Kumar asked him "*MAAR SALE KO*". Thereupon, accused Shashi Kumar gave an iron rod blow towards the left side of the head of his father. His mother Gayatri Devi also came out of the house. At that time, accused Savitri Devi, mother of accused Shashi Kumar, also came there while holding a small stick in her hand, who gave a stick blow on the head of her mother. Resultantly, her mother fell down on the earth. While she was lying down, accused Shashi Kumar and Savitri Devi gave her fist and slap blows. On raising his noise *BACHAO – BACHAO*, his wife Kamlesh and one Balwant of his village reached at the spot, who rescued his parents from the clutches of the accused. In the meantime, Darshan Singh resident of his village also reached at the spot who took his father on his scooter to Government Hospital, Ateli for the treatment, where he was declared dead already. He took

his mother to the said hospital where she was got admitted for treatment. His father had died due to inflicting of injuries by iron rod by accused Shashi Kumar on his head. Request was made to take legal action against the assailants.”

The complainant signed his abovesaid statement after admitting it to be correct. Om Parkash, Inspector made his endorsement on the above statement of the complainant and sent ruqa to the police station through Constable Ram Bhagat, on the basis of which FIR Ex.PM with regard to the present occurrence was registered.

Thereafter, Om Parkash, Inspector prepared the inquest proceedings in respect of the dead body of the deceased. He also visited the spot of occurrence and prepared rough site-plan. Post-mortem on the dead body of deceased was also got conducted. Accused Shashi Kumar was apprehended in this case on 13.2.2001 whereas accused Savitri Devi was arrested in this case on 14.2.2001. Weapon of offence was got recovered. Statements of the witnesses were recorded. Parcel containing *SABBAL* and parcel containing clothes of the deceased were sent to the office of Forensic Science Laboratory, Madhuban for chemical analysis. During investigation of this case, accused Bhagwat Dayal was found innocent. On the completion of investigation, challan was initially presented against accused Shashi Kumar and Savitri Devi before the Court of learned Illaqa Magistrate, who further committed this case to the Court of learned Sessions Judge, Narnaul for trial, after making compliance of the provisions of Section 207 of Code of Criminal Procedure (for short – Cr.P.C.) vide order dated 26.4.2001.

On finding a prima-facie case punishable under Sections 323 and

302 read with Section 34 of the IPC against both the accused namely Shashi Kumar and Savitri Devi, they were charge-sheeted accordingly vide order dated 31.5.2001 to which they pleaded not guilty. After examining one PW, the prosecution filed an application under Section 319, Cr.P.C., for summoning of Bhagwat Dayal as an additional accused to face trial in this case along with the abovesaid accused, which was accepted vide order dated 5.9.2001.

On procuring the presence of accused Bhagwat Dayal, he was also chargesheeted for the offences punishable under Sections 323 and 302 read with Section 34 of the IPC vide order dated 18.10.2001, to which, he pleaded not guilty and claimed the trial.

The prosecution during the trial of the case, in order to discharge its obligation to prove the guilt of the accused, examined as many as 12 witnesses in total.

Then the accused were duly examined as required under Section 313 of Cr.P.C. Entire incriminating evidence and other culpable circumstances as brought and appearing on the file against them were put to them, which they denied entirely. Further, accused Shashi Kumar took the plea that in fact on 12.2.2001 at about 3:30 p.m., Tara Chand was bringing buffalo from his plot while holding chain of buffalo in his hand. At that time, a vehicle TATA – 407 came from backside and the buffalo went stray due to sound of the horn. Tara Chand could not maintain his balance and fell on the ground and sustained injuries on his head. This entire incident was seen by Lal Chand and Smt. Durga, residents of his village. Gayatri, mother of the complainant obtained a false MLR in order to introduce herself as a witness. PW Rajesh Kumar was not present in village at the time of alleged occurrence. Gayatri Devi and Kamlesh had not seen this occurrence. Accused Savitri Devi also took the same very

plea in her statement. Then accused Bhagwat Dayal took the plea that neither he was present in the village on 12.2.2001 nor he had any concern with this case. Then all the accused took the plea of their innocence and false implication in this case.

In defence, the accused also examined Durga Devi as DW1.

The learned trial Court after hearing the learned counsel for both the parties and perusing the record as well held all the accused guilty for the offence punishable under Section 323 read with Section 34, IPC and also further held accused Shashi Kumar and Bhagwat Dayal guilty for the offence punishable under Section 302 read with Section 34 of the IPC and awarded them sentences as mentioned above in the opening para of this judgment.

The appellants - herein (accused) Shashi Kumar and Bhagwat Dayal being not satisfied with the impugned judgment of conviction and order of sentence have approached this Court by way of instant appeal, notice of which was given to the respondent – State. Record of the learned trial Court was also requisitioned.

We have heard the learned counsel for both the parties at length and made appraisal of the evidence as available on the record with their able assistance.

The learned counsel for the appellants-herein (accused) has firstly argued that as per prosecution version, appellant-herein (accused) Bhagwat Dayal did not cause any injury to deceased and the only role attributed to him was that he gave his iron rod (*Sabhal*) to his co-appellant (co-accused) Shashi Kumar and further exhorted him to cause injury to the deceased. In this connection, he further submitted that in fact this appellant was not present at the spot at the time of alleged occurrence.

Even during investigation of the case, he was found innocent by the police. Further, no motive had been attributed to him for committing the murder of deceased nor he had any nexus with the alleged occurrence. Herein he has contended that this appellant has been fitted in this case by complainant-party due to some previous animosity and party faction in the village.

But on the other hand, the learned State counsel has refuted the above contention of learned counsel for the appellants and has contended that presence of this appellant at the spot at the time of alleged occurrence is fully established. Besides, he handed over his iron rod (*Sabhal*) to his co-accused (Shashi Kumar) and instigated him to inflict injury to deceased. His conviction as well as order of sentence as held and granted by the learned trial Court is justified in the light of evidence on the record.

Now let us appreciate the testimonies of material witnesses of prosecution in order to gauge the above rival contentions of both the parties and to find out which one is correct.

PW-8 Rajesh Kumar-complainant in his cross-examination has stated that he is *Khati* by caste, whereas accused Bhagwat Dayal is *Brahmin* by caste. Then he admitted that about 10/12 years ago, there was a dispute over a passage between him and Bhagwat Dayal and even a civil suit in this regard had been instituted by his father against Bhagwat Dayal. It was further in his cross-examination that his mother is the member of the Panchayat and accused Bhagwat Dayal had also contested the election to become the member of the Panchayat. Umed Singh was the *Sarpanch* of the village and he helped Umed Singh in the election.

One Naresh who was *Brahmin* by caste and related to accused Bhagwat Dayal had contested election against Umed Singh. Then this witness had shown his ignorance as to whether appellant-herein (accused) Bhagwat Dayal had supported said Naresh or not. Then PW-9 Gayatri who was one of the injured as well as eye-witness to the alleged occurrence admitted in her cross-examination that Bhagwat Dayal is the resident of her ward. Then she also admitted that Bhagwat Dayal had helped said Naresh in the election for the office of *Sarpanch* of the village. Said Naresh contested election against Umed Singh. In this election, they supported Umed Singh, who was elected.

Then PW-11 Om Prakash, Inspector, Investigating Officer, in his cross-examination had admitted categorically that as per his investigation accused Bhagwat Dayal was found innocent and his investigation was also verified by Deputy Superintendent of Police. Then it is also found mentioned in his statement that he arrested accused Shashi Kumar from his house who at that time produced iron rod (*Sabhal*) Ex.P1, which was taken into police possession.

From the above discussed evidence of prosecution, it is very well established on record that some sort of enmity was there between both the parties due to Gram Panchayat election in the village. Even about 10/12 years back father of PW-8 had instituted a suit against Bhagwat Dayal with regard to some dispute over a passage. Then as per the above discussed statement of PW-11, the weapon of offence i.e. iron rod (*Sabhal*) Ex.P1 was got recovered by accused Shashi Kumar from his house when he was apprehended by the police. Meaning thereby, that this iron rod (*Sabhal*) had no concern at all with accused Bhagwat Dayal.

Then as per statement of PW-8 (Rajesh Kumar), the civil suit was pending

between him and his uncle Duli Chand with regard to dispute over a plot in which accused Shashi Kumar was aiding Duli Chand. He did not utter even a single word as to how appellant-herein (accused) Bhagwat Dayal was interested in the said civil litigation.

So in the light of above circumstances and evidence of prosecution, the net conclusion is that the possibility of false implication of accused Bhagwat Dayal in this case due to previous litigation, enmity on account of Panchayat election and party faction in village cannot be ruled out.

Then the learned counsel for the appellants has also urged that as per prosecution story, at the time of alleged occurrence, appellant-herein (accused-Shashi Kumar) who was coming on bicycle met Tara Chand (since deceased) per chance in the street while deceased was carrying a buffalo to his house. Then this appellant (accused) created a bottle-neck in the way of deceased by putting his bicycle before him and directed him (deceased) to ask his son Rajesh to effect compromise in the civil suit aforementioned with regard to the dispute of plot or to face its dire consequences. In response thereto, deceased advised him to talk himself directly with his son Rajesh Kumar to do the needful. At that very moment, appellant-herein (accused) Shashi Kumar was not armed with any weapon. Then as alleged by prosecution, appellant-herein (accused) Bhagwat Dayal came there all of a sudden who was holding an iron rod (*Sabhal*) and handed over the same to appellant-accused/Shashi Kumar, who further caused a *Sabhal* blow on the left side of head of the deceased in pursuance to the exhortation caused by appellant-herein (accused) Bhagwat Dayal.

In nut shell, the contention of learned counsel for the appellants- herein (accused) is that the alleged occurrence, if any, took place all of a sudden in a heat of passion without any pre-meditation. Then accused- Shashi Kumar caused only a single blow with the *Sabbal* to deceased and did not repeat it as per the own version of prosecution. Hence this case does not fall within the definition of murder as described in Sections 299/300 of the IPC and rather it is covered within exception No.4 annexed to Section 300 of the IPC.

In the case in hand as stated by both PW-8 and PW-9, appellant- herein (accused) Shashi Kumar caused only a single blow on the head of deceased with the alleged *Sabbal*. Their oral testimonies also find corroboration from medical evidence since as per the post-mortem report Ex.PC of the deceased only one injury was found on the person of deceased at the time of post-mortem, that too on his head. Certainly, it was a case of sudden brawl without any pre-plan in a heat of passion. Hence the instant case, looking from all the angles, is squarely covered within the purview of the provisions of exception No.4 annexed to Section 300 of the IPC.

Now the description of weapon of offence i.e. *Sabbal* Ex.P1 is to be seen. As per its rough sketch Ex.PB/1, it was 1 ½ inches in width (thickness) and 31 ½ inches in length. So this *Sabbal* Ex.P1 was quite a thick and heavy substance made of iron. If a person assaults any person with such like a weapon on head, then his intention in causing this assault cannot be said none-else, but to cause demise of the victim. Hence this case falls within the purview of the provisions of Section 304 part-I of the IPC.

Then the learned counsel for the appellants-herein (accused) has also pointed out that both PW-8 and PW-9 were interested witnesses in this case for the reason that PW-8 was the son, whereas PW-9 was the wife of the deceased and as such, it is not safe to rely upon their statements. In the case in hand PW-9 Gayatri was the injured as well as eye-witness to the alleged occurrence. So her deposition cannot be discounted on her alleged interestedness or on any other ground. PW-8 Rajesh Kumar was the complainant as well as eye-witness to the alleged occurrence, so his testimony also cannot be dis-credited on any score including his alleged interestedness when there is no trustworthy material on record to support the above contention of learned counsel for the appellants. Then it is a fact that in our society in the modern time, nobody comes forward to depose against the accused for one reason or the other. Only the victim of the crime / aggrieved party usually comes forward to say something adverse to the interest of the accused.

Then the learned counsel for the appellants-herein (accused) has further contended that there is another serious lacuna in the case of prosecution since the ocular version of prosecution with regard to the injury allegedly caused to deceased is not in consonance with the medical version. Herein he has contended that as per statement Ex.PA made by complainant-Rajesh before the police on 12.02.2001 and FIR Ex.PM, appellant-herein (accused) Shashi Kumar caused a *Sabbal* blow on the right side of the head of deceased, whereas in the PMR Ex.PC, the said injury is shown to be on the left side of head of deceased. But as per original record, complainant-Rajesh Kumar in his statement Ex.PA got recorded that *Sabbal* blow given by accused-Shashi Kumar hit on the left side of head of his father Tara Chand (since deceased). He

while appearing in Court as PW-8 and his mother Gayatri Devi as PW-9 have so stated very clearly and this fact is very much in consonance with the contents of the PMR Ex.PC. The only confusion is that in the copy of English translation of said statement Ex.PA and FIR Ex.PM, the official who had made this translation, had recorded wrongly that the *Sabbal* blow given by accused Shashi Kumar hit on the right side of head of deceased which has created the entire delusion. As per the original record, there is no inconsistency between said ocular version and medical version. Hence the above contention of learned counsel for the appellants is found to be not sustainable.

Regarding prosecution version, PW-8 Rajesh Kumar-complainant deposed before the Court as per his statement Ex.PA made by him before the police on 12.02.2001 with regard to the alleged occurrence. Then he also proved the memo Ex.PB vide which iron rod (*Sabbal*) Ex.P1 produced by accused Shashi Kumar was taken into police possession after preparing its sketch Ex. PB/1. In answer to a question put to PW-8 Rajesh Kumar in his cross-examination he answered that his father remained in standing posture after receiving the injury. He also talked to his father before he was taken to hospital. On his asking as to how he had received injury, his father told him that he had received injury at the hands of Shashi Kumar accused. So this part of statement of PW-8 which came in his cross-examination can also be treated as an oral dying declaration made before him by Tara Chand (since deceased).

PW-9 Gayatri, the injured as well as eye-witness to the alleged occurrence also corroborated the prosecution version. She specifically stated that accused Savitri, the mother of accused Shashi Kumar, caused a blow on her head with stick.

PW-2, Dr. Anil Kumar Mathur conducted post-mortem on dead body of deceased-Tara Chand on 13.02.2001 and found following injuries on his person:-

“There was a wound on left parietal region of scalp of size 3.5 cm x 0.5 cm. Blood was present between scalp and skull. On further examination, fracture of left parietal bone with meninges of brain lacerated at the site of fracture with blood and clot around.”

Further, he proved post-mortem report Ex.PC of deceased and gave his opinion, that cause of death in this case was due to shock, haemorrhage and injury to vital organ i.e. brain.

PW-3, Dr. B.S. Sharma, medico legally examined Smt. Gayatri wife of Tara Chand on 12.02.2001 and found following injuries on her person:-

“There was a reddish defused swelling of the size 2”x 1” over the right parietal region of skull.”

Further he proved carbon copy of her MLR Ex.PD. As per his opinion, the injury was caused by a blunt weapon and on receipt of X-ray report, he declared the injury on her person as simple in nature vide his opinion Ex.PG.

PW-11, Inspector Om Parkash of CIA Staff, Narnaul recorded statement Ex.PA of Rajesh Kumar-complainant on 12.02.2001 and sent ruqa to police station for registration of the case on the basis of which FIR Ex.PM was recorded by PW-6 HC Jagdish Parshad. Further this witness prepared inquest report Ex.PO in respect of dead body of the deceased. Further he got conducted post-mortem on the dead body of the deceased.

He also recorded statement of injured-Gayatri Devi after getting report Ex.PQ/1 of the Doctor by moving application Ex.PQ. Then he inspected the spot of occurrence on 13.02.2001 and prepared its rough site plan Ex.PR. He also took into possession the clothes of deceased vide memo Ex.PS after preparing parcel thereof. Then he arrested accused Shashi Kumar on 13.02.2001 from his house. Accused produced before him an iron rod (*Sabbal*) Ex.P1 of which he prepared rough sketch Ex.PB/1 and took the same into his possession vide memo Ex.PB.

PW-5 C. Mahesh Kumar, Draftsman prepared the scaled site plan Ex.PL of the spot of occurrence.

PW-7, C. Dinesh Kumar, tendered in his statement his duly sworn affidavit Ex.PN as a part of his statement.

In the light of above discussion, this appeal qua appellant-herein (accused) Bhagwat Dayal is accepted. He is acquitted of all the charges and impugned judgment and order of sentence qua him is set aside. He and his surety are also discharged from their liability of bail bond and surety bond respectively.

So far as appellant-herein (accused) Shashi Kumar is concerned, his conviction and order of sentence under Section 302, IPC, is also set aside. Rather he is convicted for the offence punishable under Section 304 Part-I of the IPC, and awarded the sentence of rigorous imprisonment for ten years along with fine of Rs.25,000/- and in default thereof, to undergo rigorous imprisonment for further period of one year. His conviction and sentence under Section 323 read with Section 34 of the IPC is anyhow maintained. His both the sentences of imprisonment are ordered to run concurrently.

In the light of above observations, this appeal so far as it relates to appellant-herein (accused) Bhagwat Dayal, the same is accepted, whereas it is partly accepted qua appellant-herein (accused) Shashi Kumar with the above modification of his conviction and sentence and this appeal stands disposed of accordingly.

Intimation in this regard be sent to the quarter concerned for its strict compliance.

9.12.2016
Brij/Gaurav Sorot

(T.P.S.MANN)
JUDGE

(GURMIT RAM)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No