

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

**CRA-D-971-DB-2011
Date of decision:27.04.2017**

Raj Kumar @ Raju and Others

.....Appellants

Versus

State of Haryana

.....Respondent

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep Singh Sandhu, Advocate
for appellant-Devi Singh.

Mr. Ashit Malik, Advocate
for the remaining appellants.

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

H.S. MADAAN, J.

This appeal is directed against judgment dated 22.09.2011
passed by the Court of Additional Sessions Judge, Sonapat vide which she
had convicted accused Raj Kumar @ Raju, Devi Singh, Ashok, Harsh

Kumar, Sehdev and Kulmeet for offences under Sections 148, 302 read with Section 149 of the Indian Penal Code, in addition to that accused Kulmeet was convicted for offence under Section 25 of the Arms Act and they were sentenced vide order dated 23.09.2011 as follows:-

Name of Convict	Offence	Sentence Awarded
Raj Kumar @ Raju	Under Section 148 IPC	Rigorous imprisonment for two years.
	Under Section 302 read with Section 149 IPC	Rigorous imprisonment for life and to pay a fine of ₹2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months.
Devi Singh	Under Section 148 IPC	Rigorous imprisonment for two years.
	Under Section 302 read with Section 149 IPC	Rigorous imprisonment for life and to pay a fine of ₹2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months.
Ashok	Under Section 148 IPC	Rigorous imprisonment for two years.
	Under Section 302 read with Section 149 IPC	Rigorous imprisonment for life and to pay a fine of ₹2,000/- and in default of payment of fine, to undergo further rigorous

		imprisonment for a period of two months.
Harsh Kumar	Under Section 148 IPC	Rigorous imprisonment for two years.
	Under Section 302 read with Section 149 IPC	Rigorous imprisonment for life and to pay a fine of ₹2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months.
Sehdev	Under Section 148 IPC	Rigorous imprisonment for two years.
	Under Section 302 read with Section 149 IPC	Rigorous imprisonment for life and to pay a fine of ₹2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months.
Kulmeet	Under Section 148 IPC	Rigorous imprisonment for two years.
	Under Section 302 read with Section 149 IPC	Rigorous imprisonment for life and to pay a fine of ₹2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months.
	Under Section 25 Arms Act	Rigorous imprisonment for a period of one year and to pay a fine of ₹500/- and in default of payment

		of fine, to undergo simple imprisonment for a period of one month.
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The substantive sentences were ordered to run concurrently.

The accused-convicts, who are appellants before this Court by way of filing the present appeal submit that their appeal be accepted, the impugned judgment of their conviction and order of their sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated the prosecution story is that on 23.03.2008 Jai Bhagwan, husband of lady-Sarpanch of village Ahmedpur Majra telephonically informed Police Station, Sadar, Gohana that Ram Niwas son of Partap Singh had been murdered. On receipt of that information, SI/SHO-Dhoop Singh (hereinafter referred to as Investigating Officer/I.O.) of Police Station, Sadar, Gohana alongwith other police officials who was proceeding towards Ahmedpur Majra, and on the way near Gangesar turning point Bichpari, came across complainant-Shish Pal, who got his statement Ex.PA recorded with SI/SHO-Dhoop Singh, wherein he stated that he is resident of the abovesaid address and a labourer by avocation. About a year earlier, a scuffle had taken place between them and the family of Amar Singh, regarding putting earth in front of the house, in which, both parties got injuries and cases were pending against both the parties in the Court. As such family of Amar Singh started nursing a grudge against them. On that day in the morning, he and his elder brother Ram Niwas were coming towards the

village from fields after answering call of the nature. At about 8:30 a.m. when they reached near Johar (pond), then from the side of pond came Kulmeet having a sword, Harsh, Raj Kumar @ Raju and Sehdev armed with *BALLAMS*, Devi Singh with *JAILI*, Prithi and Ashok armed with *GANDASAS* came there. Devi Singh gave *LALKARA* (exhortation) that a lesson be taught to them for quarrel. On saying this, Kulmeet gave a sword blow on the head, right hand and right knee of Ram Niwas. Harsh hit with *BALLAM* in centre of chest and Raj Kumar on the right side of chest with *BALLAM* to Ram Niwas. Sehdev gave two blows of *BALLAM* on backside of Ram Niwas and Prithi gave a *GANDASA* blow hitting Ram Niwas on the right eyebrow, Ashok gave a *GANDASA* blow on both arms and Devi Singh gave a *JAILI* blow directly on the left side of stomach of Ram Niwas. When Ram Niwas and complainant raised alarm, then Sukhbir son of Ramphal and Ramphal son of Galdu of their family and many people of village came there. On seeing them accused fled away with their respective weapons from the spot. After accused left the complainant managed his brother-Ram Niwas but Ram Niwas succumbed to the injuries. When the complainant was going to police station for lodging FIR after leaving Sukhbir and Ramphal near the dead body, he met with SI/SHO-Dhoop Singh near Gangesar turn village Bichpari.

The Investigating Officer put his endorsement Ex.PS below such statement and sent ruqa to police station through C. Rakesh, on the

basis of which formal FIR Ex.PR was recorded at Police Station, Sadar Gohana. Thereafter, the police party accompanied by the complainant went to the spot. The Investigating Officer got the spot photographed through C. Ajit Singh. On minute inspection of the spot he lifted the blood stained earth and put the same in a plastic container which was converted into a parcel and sealed with the seal having inscription DS and taken into police possession vide memo Ex.PB. The Investigating Officer also prepared the rough site plan of the place of occurrence as Ex.PS/1. The Investigating Officer conducted the proceedings under Section 174 Cr.P.C., regarding the dead body of Ram Niwas preparing report Ex.PS/2. Thereafter EHC Devender Singh was sent to CHC, Gohana alongwith application Ex.PS/3 for getting the post-mortem conducted on the dead body of deceased-Ram Niwas. On the same day HC. Devender handed over copy of post-mortem report along with parcel containing the clothes of the deceased which was taken into police possession vide memo Ex.PQ. The case property was handed over to the MHC on the same day.

On 25.03.2008 the Investigating Officer arrested accused Ashok and Harsh in this case. On 28.03.2008 the accused Ashok and Harsh suffered disclosure statements, which were reduced into writing vide memo Ex.PC and Ex.PD, respectively. On the same day in pursuance of his disclosure statement accused Ashok got recovered a *GANDASA* fitted with a *LATHI* of 6 *PORIS*. The sketch of the same

was duly prepared in the presence of the witnesses being Ex.PE/1 and the same was taken into possession vide memo Ex.PE. The rough site plan of the place of recovery Ex.PS/4 was prepared.

On the same day accused Harsh also got recovered a *BALLAM* fitted with a *LATHI*. The sketch of the same Ex.PF was prepared. The recovered Ballam was taken into police possession vide memo Ex.PF/1 and the rough site plan of the place of recovery Ex.PS/5 was prepared.

On 30.03.2008, Mahabir, Sarpanch produced accused Sehdev and Kulmeet. They were formally arrested in this case and interrogated. The accused suffered disclosure statements, which were reduced into writing vide memo Ex.PM and Ex.PL, respectively. In pursuance of his disclosure statement accused Sehdev got recovered one *BALLAM*. Its sketch Ex.PM/1 was duly prepared and the recovered *BALLAM* was taken into police possession vide Ex.PM/2. The rough site plan of the place of recovery being Ex.PS/6 was prepared.

In pursuance of his disclosure statement accused Kulmeet got recovered a sword. The sketch of the recovered sword Ex.PL/1 was prepared and that sword was taken into police possession vide memo Ex.PL/2. The rough site plan of the place of recovery was prepared being Ex.PS/7. The case property was handed over to the MHC on the same day. On 13.04.2008 the investigation of this case was transferred to Inspector Ami Lal.

On 16.04.2008 Inspector Ami Lal arrested accused Raj Kumar. He was interrogated and he suffered a disclosure statement Ex.PN in which he disclosed that he had kept concealed a *BALLAM* in village Khandrai on Bichpari road in the ditches by the side of the road. In pursuance of his disclosure statement he led the police party to the disclosed place and got recovered a *BALLAM* from underneath the earth after removing the same. The Investigating Officer prepared the sketch of the ballam being Ex.PN/1 and took the same into police possession vide memo Ex.PN/2. He also prepared the rough site plan of the place of recovery being Ex.PR.

On 21.04.2008 accused-Prithi Singh and Devi Singh were arrested in this case. Firstly, accused Pirthi was interrogated and he suffered a disclosure statement Ex.PJ and in pursuance of his disclosure statement he got recovered a *GANDASA*, the sketch of which Ex.PJ/2 was prepared. The same was taken into police possession after converting it into sealed parcel vide memo Ex.PJ/3. The Investigating Officer also prepared the rough site plan on the place of recovery as Ex.PR/1.

On the same day accused Devi Singh after his arrested also suffered a disclosure statement which was reduced into writing vide memo Ex.PJ/1, in which he disclosed that he has kept concealed a *JAILI*. In pursuance of his disclosure statement Devi Singh led the police party to village Gangaser near a primary school and got

recovered a *JAILI* from nearby place. The sketch of the recovered *JAILI* same was prepared which being Ex.PJ/4 and the same was converted into a sealed parcel and taken into police possession vide memo Ex.PJ/5. The Investigating Officer also prepared the rough site plan of the place of recovery being Ex.PR/6.

On 12.05.2008 the Investigating Officer sought the opinion of the doctor moving an application Ex.PR/3 and obtained opinion of the doctor as Ex.PR/4. After completion of investigation and other formalities challan against the accused was prepared and filed in the Court of learned Sub-Divisional Judicial Magistrate, Gohana

On presentation of *challan* in the Court of learned Sub-Divisional Judicial Magistrate, Gohana, copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C.. Thereafter finding that offence under Sections 302 IPC is exclusively triable by the Court of Sessions, the learned Sub-Divisional Judicial Magistrate, Gohana vide his order dated 13.06.2008 committed the case to the Court of Sessions Judge, Sonapat, which was further entrusted to the Court of learned Additional District and Sessions Judge, Sonapat.

When the case was received in the Court of learned Addl. Sessions Judge, Sonapat finding a prima facie case, charge for offence under Sections 148, 302 read with Section 149 IPC and under Section 25 Arms Act against the accused, to which they pleaded not guilty and

claimed trial. The case was fixed for evidence of prosecution.

During the course of evidence of prosecution it examined as many as seventeen witnesses as detailed below:-

PW-1, Shish Pal son Partap Singh, resident of Ahmadpur Majra, Tehsil Gohnana, Sonapat provided the eye-witness account.

PW-2, Sukhbir Singh son of Ramphal, resident of Ahmadpur Majra, Tehsil Gohnana, Sonapat provided the ocular account of the incident.

PW-3, Virender @ Ajmer son Balwan Singh, resident of Ahmadpur Majra, Tehsil Gohana, District Sonapat had identified dead body of deceased during inquest proceedings.

PW-4, C. Ajit Singh, photographer had clicked photographs Ex.P1 to Ex.P4 on 23.03.2008 of dead body from different angles and happened to be witness of disclosure statements of Ashok and Harsh before SI Dhoop Singh on 25.03.2008.

PW-5, Nafe Singh son of Partap Singh, resident of Ahmadpur Majra, District Sonapat had identified dead body of his brother Ram Niwas on 23.03.2008 before the police and had received the dead body after post-mortem against receipt Ex.PG.

PW-6, Rajesh Kumar, EHC, Draughtsman had visited the spot on 25.04.2008 and prepared site plan Ex.PH at the instance of Shish Pal-complainant.

PW-7, C. Sudhir Kumar, happened to be a witness of

disclosure statements made by accused Prithi and Devi Singh before SI Dhoop Singh on 21.04.2008, besides, being a witness of recovery got effected by such accused.

PW-8, Dr. Parmender Kumar, Medical Officer, CHC, Gohana who on 23.03.2008 while posted as such, had conducted post-mortem examination of Ram Niwas son of Partap Singh r/o Ahmadpur Majra, aged 27/28 years, male and stated that he had found the following injuries on his dead body:-

- 1. An incised wound of size 5 x 2 cm on posterior aspect of skull, underlying bone was fractured.*
- 2. An incised wound of size 4 x 2 cm over the sternum on lower aspect.*
- 3. An incised wound of size 6 x 3 cm over left side of upper abdomen, with abdominal fat coming through the wound.*
- 4. An incised wound of size 5 x 2 cm over the left buttock.*
- 5. An incised wound of size 4 x 1.5 cm over the left buttock, medial to injury No.4.*
- 6. A penetrating wound over right forearm with underlying bone (ulna) was fractured.*
- 7. An incised wound on left side of upper back of size 4 x 1 cm.*

Internal injuries:

Left side of pleural cavity was full of blood. Through and through perforation in the spleen corresponding to injury No.3.

In his opinion the cause of death in this case was due to head injury and hypovolemic shock which were ante mortem in nature and sufficient to cause death in ordinary course of nature.

He proved copy of post-mortem report as Ex.PK.

PW-9, ASI Ramesh, Summons Staff, S.P. Office, Sonapat who was associated with the investigation of this case conducted by SI Dhoop Singh deposed regarding what had transpired in his presence.

PW-10 EHC Ranbir Singh a witness of disclosure statement made by Raj Kumar before Inspector Ami Lal on 16.04.2008 and his subsequently getting a *BALLAM* recovered from his possession testified in that respect.

PW-11 ASI Surender Singh had tendered into evidence his affidavit Ex.PP.

PW-12 HC Devender, who was deputed by SI Dhoop Singh on 23.03.2008 to get the post-mortem examination conducted on dead body of Ram Niwas testified in that regard.

PW-13 C. Ajit Singh deposed that on 15.05.2008, while he was posted at Police Station, Sadar, Gohana on that day the MHC handed over to him five sealed parcels for depositing the same in FSL, Madhuban and he accordingly did so on the same day and handed over

the receipt to MHC. According to him the parcels remained intact till they remained in his possession.

PW-14 ASI Ram Kumar (retired) had scribed formal FIR Ex.PR on 23.03.2008 on receipt of ruqa through C. Rakesh Kumar and had made endorsement Ex.PR/1 on the ruqa. Thereafter he had sent special report through C. Amit Kumar.

PW-15, Ami Lal Inspector, who had carried out investigation in this case from 16.04.2008 onwards testified in that regard.

PW-16 SI Dhoop Singh (retired) who had conducted investigation in this case initially deposed about the same.

PW-17 MHC Harender Singh, Police Station, Gohana had brought the summoned record relating to FIR No.87 dated 03.05.2007 under Section 148, 149, 323, 324 IPC Police Station Sadar, Gohana registered against Kulmeet son of Raju and four other accused detailed in the FIR Ex.PT.

The Public Prosecutor had tendered in evidence report of FSL Ex.PH.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them, but they denied all the allegations submitting that they are innocent and have been falsely involved in this

case. That it was a blind murder and the witnesses were deposing falsely against them being the interested witnesses. Nothing was recovered at their instance and alleged recovery of weapons were planted upon them by the police at the instance of the complainant.

During their defence evidence accused examined three witnesses.

DW-1 Randeep Kumar, Addl. Criminal Ahlmad in the Court of JMIC, Gohana had brought the summoned record of FIR No.60 dated 24.03.2008 pertaining to Police Station, Sadar, Gohana under Sections 148/149/452/506 IPC.

DW-2 ASI Wazir Singh, Police Station, Gohana deposed that on 24.03.2008 he was posted at Police Station, Sadar, Gohana as Investigating Officer. He had seen the original ruqa in the case file titled as *State vs. Dharampal etc.* As per record on that day he recorded the statement of Ram Phal son of Gehlu Ram r/o Ahmadpur Majra. After recording statement of complainant he sent the ruqa through C.Subhash for registration of the case and on the basis of same Ramesh Chander ASI registered the case. He prepared carbon copy of FIR No.60 dated 24.03.2008 pertaining to Police Station, Gohana as Ex.D2. He had also proved statement of Sukhbir Singh in the case file produced by the Ahlmad of the Court and police file as Ex.D3. The witness stated that he had recorded the statements of Ram Phal and Sukhbir verbatim without any addition or omission on his part.

DW-3 Jai Bhagwan son of Ram Phal, agriculturist, resident of Ahmadpur Majra District Sonapat stated that Nirmala Devi is his wife. In the year 2008 she was Sarpanch of village. He came to know about the murder of Ram Niwas at about 6.15 or 6.30 am. He reached at the spot where the dead body was lying. Then he gave information to the police at 7 or 7.15 am. The police reached at the spot at 8.15 or 8.30 am. One or two persons were present with the police. When he reached at the spot, nobody was present at the spot. After inspecting the dead body the police enquired from the persons who were present there. The witness stated that he remained at the spot till the removal of the dead body from the spot. Shish Pal and Sukhbir and their other family members reached at the spot after 9.00 am.

After hearing arguments, learned trial Court convicted and sentenced accused as mentioned above.

We have heard learned counsel for the appellants-convicts and learned Assistant Advocate General for the State besides going through the record.

As far as accused-appellant Raj Kumar @ Raju, Harsh Kumar, Sehdev and Kulmeet are concerned their involvement in the incident stands duly proved from the ocular evidence adduced by the prosecution in the form of examining PW-1 Shish Pal and PW-2 Sukhbir Singh. Their depositions are trustworthy and inspiring confidence as far as such accused-convicts are concerned, but it is not

so as regards accused-convict Devi Singh and Ashok. Accused Devi Singh is not related to other accused who are related inter se. He has been attributed a *LALKARA* and alleging that he was armed with a *JAILI*, he had inflicted injury to the deceased on the left side of abdomen by hitting the *JAILI* thrust-wise whereas according to PW-2 Sukhbir Singh, Devi Singh had given *JAILI* blow to deceased hitting him on the right side. As a matter of fact of the seven injuries found on person of the deceased during post-mortem examination, injury No.1 to 5 and 7 were in the form of incised wounds which could be caused with a sharp edged weapon and not with a pointed weapon. Therefore, injury No.3 attributed to Devi Singh could not have been possibly caused with *JAILI*. Though there was injury No.6 i.e. a penetrating wound over right forearm with underlying bone (ulna) was fractured neither it is case of prosecution nor either of the eye-witnesses stated that such injury had been inflicted by Devi Singh by using *Jaili* thrust-wise. Similarly, accused-Ashok, as per prosecution version, while armed with *GANDASA* had caused blow therewith hitting the deceased on both arms. According to PW-1 Shish Pal such blow given by Ashok had hit deceased on right and left hand whereas according to PW-2 Sukhbir, Ashok-accused had given two blows on both arms. As a matter of fact injury attributed to him i.e. injury No.6 is a stab wound which is not possible with *GANDASA*. As regards accused Devi Singh, he had no motive to participate in the incident being not related to the

remaining accused who are related inter se and as regards to *LALKARA* being raised by him there does exist tendency amongst the people to rope in as many persons as possible as assailants in such type of criminal cases attributing *LALKARA* usually to old infirm or to women folk.

Therefore, ocular evidence is not in consonance with the medical evidence as far as accused Devi Singh and Ashok are concerned. In addition to that Devi Singh had no reason to participate in the incident, therefore, their involvement in the incident comes to be doubtful, whereas regarding the remaining accused-appellants, the prosecution has successfully proved its charge beyond the shadow of reasonable doubt. The impugned judgment of conviction and order of sentence does not suffer from any infirmity or illegality, as regards conviction and sentence of accused Raj Kumar @ Raju, Harsh Kumar, Sehdev and Kulmeet. Therefore the same is upheld, whereas it is otherwise as regards conviction and sentence of accused Devi Singh and Ashok. Therefore, the impugned judgment of conviction and impugned order of sentence are hereby set aside and both the accused-convicts, namely, Devi Singh and Ashok are ordered to be acquitted of the charge framed against him.

Appellants/accused-convicts Raj Kumar @ Raju and Sehdev are stated to be on bail granted to them by this Court vide order dated 31.10.2012 and 21.05.2013 respectively. Their bails are

cancelled. Chief Judicial Magistrate, Sonapat is directed to issue arrest warrant to get them arrested so as to make them undergo the remaining sentence. Ashok-appellant is on bail, Devi Singh-appellant who is being the bars be released forthwith, unless wanted in some other case.

Necessary direction in that regard be issued to the quarter concerned.

27.04.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

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| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |