

In the High Court of Punjab and Haryana at Chandigarh.

(I)

Criminal Appeal-D No.970-DB of 2012  
Date of Decision:- December 21, 2017

Amit Kumar and another

.....Appellants

*Versus*

State of Haryana

....Respondent

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(II)

Criminal Appeal-D No.1172-DB of 2012

Sunny @ Sahil and another

.....Appellants

*Versus*

State of Haryana

....Respondent

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CORAM: Hon'ble Mr. Justice Rajesh Bindal  
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. S.K.Rana, Advocate, for appellant No.1 in  
CRA-D No.970-DB of 2012 and  
Mr. G.S.Sandhu, Advocate as Amicus Curiae  
for the appellants in both the appeals.

Ms. Palika Monga, Deputy Advocate General, Haryana.

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Gurvinder Singh Gill, J.

1. Sunny @ Sahil, Deva Nand, Amit Kumar and Tilak Raj have filed the above mentioned appeals challenging judgement dated 29.9.2012 passed by learned Additional Sessions Judge, Ambala holding them guilty of committing offence

punishable under Section 302 read with Section 149 of Indian Penal Code, 1860 (for short, 'IPC'). Vide order dated 4.10.2012, all the four convicts/appellants have been sentenced to undergo rigorous imprisonment for life and to pay fine of ₹ 5,000/- each.

2. The matter arises out of FIR No.59 dated 20.04.2009 under Sections 120-B, 148, 302/149 of IPC, registered at Police Station Mahesh Nagar, Ambala Cantt. It is case of the prosecution that on 19.4.2009 police received intimation (Ex.P-11) sent by Medical Officer, Government Hospital, Ambala Cantt to the effect that Raju son of Raj Kumar has been hospitalized due to multiple injuries and had been referred to PGI Chandigarh due to his serious condition. However, when the injured reached the hospital in Chandigarh, he was declared dead. The hospital authorities thereafter sent intimation (Ex.P-33) to the police regarding death of Raju. SI Rajbir Singh (PW-12) along with other police officials proceeded to Government Hospital, Sector 32, Chandigarh. The deceased's parents i.e. Raj Kumar (complainant) and his wife Laxmi Devi were present there and the police recorded their statements. It was on the basis of statement of Raj Kumar that the FIR (Ex.P-15) was recorded. The gist of his statement (Ex.P-9), when translated to English reads as follows:

“I am working as a labourer. I have two daughters and a son named Raju aged 22 years. Geeta wife of Chiman Lal resident of Balyal was having illicit relations with my son Raju since the last 5 years and was keeping him with her. Due to the said reason, her sons namely Tilak Raj, Amit and Ashu had a grudge against my son. They all were residing on rent in Foreman Building, Tangri Dam. Along with them, family of Sharda wife of Deva Nand was

also residing in a separate room who was having sons namely Sunny @ Sahil and Ravinder. About one year ago Deva Nand, Sharda, their sons and sons of Geeta caused injuries to my son but the matter was later on compromised. Two days back Sharda and Deva Nand warned me with dire consequences and told me to restrain my son Raju. I reasoned out with my son but he was under her influence. Yesterday i.e. on 19.4.2009 at about 9 P.M. my son was returning back home after doing labour work. Upon hearing cries of “save-save” near our house, I and my wife went to the Tangri Dam where Tilak Raj and Sunny were causing injuries to my son with swords on his head. Ravinder son of Deva Nand, Ashu and Amit sons of Chiman Lal were carrying rods and sticks in their hands and were giving beatings to him. When we tried to stop them, they said that they will teach him a lesson for visiting their mother. Along with them Deva Nand and many other boys were also present. When we raised alarm many *Bihari* boys came there on Tangri Dam and got Raju released from them. My son fell down at the spot and blood was oozing out of his injuries. Several injuries were sustained by him on his head and he fell unconscious. We took him to Government Hospital from where he was referred to Chandigarh but upon reaching Govt. Hospital, Sector 32, Chandigarh he was declared dead. Tilak Raj, Ashu, Amit, Sunny @ Sahil, Ravinder, Deva Nand and many other boys have murdered my son by causing injuries to him with swords, rods and sticks. Sharda and Geeta are also involved in the murder. Action be taken.”

3. Dead body of Raju was subjected to post mortem examination. Inquest proceedings were conducted. Police visited the place of occurrence. Statements of witnesses were recorded. Accused Geeta was arrested on 20.4.2009. Accused Amit Kumar was arrested on 21.4.2009. Accused Tilak Raj, Ravinder, Sharda, Pankaj Kumar, Deva Nand and Sunny @ Sahil were arrested on 24.4.2009.
4. Upon conclusion of investigation, challan was presented against 8 accused namely Geeta, Amit Kumar, Deva Nand, Sunny @ Sahil, Ravinder, Tilak Raj @ Tilka, Pankaj Kumar and Sharda in the Court of learned Judicial Magistrate 1<sup>st</sup> Class, Ambala Cantt on 13.6.2009. Two of the aforesaid accused namely Ravinder and Pankaj Kumar were declared juvenile. Ashu, against whom challan was presented later was tried separately as a juvenile. It may be added here that the said juveniles confessed their guilt before Juvenile Justice Board. Thus, the present trial proceeded against six accused namely Geeta, Amit Kumar, Deva Nand, Sunny, Tilak Raj and Sharda. After commitment, the case was assigned to the Court of Additional Sessions Judge, Ambala who framed charges against the aforesaid four accused on 15.9.2009 for offences punishable under Sections 120-B, 148, and 302 read with Section 149 of IPC.
5. The prosecution in order to establish charges framed against accused examined 14 witnesses. PW-1 C. Nasib Singh stated about delivery of special reports to the Area Magistrate and to the DSP without any delay. PW-2 EASI Raj Singh deposed that on 11.5.2009 MHC Sultan Singh handed over the case property to him directing him to deposit the same in FSL Madhuban which he

deposited on the same day and handed over the receipt to MHC. PW-3 HC Sultan Singh (MHC) deposed about deposit of the case property with him and that the same was not tampered with nor he allowed anyone to tamper with the same. PW-4 HC Waryam Singh deposed that on 20.4.2009 he along with other police officials visited the place of occurrence from where blood stained earth was lifted. PW-5 Devi Dayal Verma, Photographer, proved the photographs of the place of occurrence. PW-6 EHC Ram Saran, Draftsman, proved the scaled site plan (Ex.P-5) of the place of occurrence prepared by him.

6. PW-7 Dr. Suparna Grover, who had conducted post mortem examination on dead body of Raju, proved post-mortem report as Ex.P-7. PW-8 Raj Kumar (complainant) and PW-9 Laxmi Devi wife of Raj Kumar who are the eye witnesses stated in detail in respect of the manner of occurrence. PW-10 ASI Pardeep Kumar stated that on 20.4.2009 upon receipt of ruqa (Ex.P-9) through HC Waryam Singh, he recorded formal FIR (Ex.P-15). PW-11 SI Krishan Lal and PW-12 SI Rajbir Singh who remained Investigating Officers at different points of time stated in detail as regards entire investigation conducted in the case. PW-13 C. Pawan Kumar stated about receipt of ruqa (Ex.P-33) from Government Hospital, Sector 32 Chandigarh regarding death of Raju and regarding conveying the same to SHO Police Station Mahesh Nagar through U.T. Control Room. PW-14 Dr. Manbir Singh stated that on 20.4.2009 when he was posted at Government Hospital, Sector 32, Chandigarh, he sent ruqa (Ex.P-33) to Incharge, Police Post Govt. Medical College and Hospital, Sector 32, Chandigarh.

7. The accused, in their statements under 313 Cr.P.C., pleaded false implication.  
Accused Tilak Raj, Sunny @ Sahil, Deva Nand, Pankaj Kumar and Amit

Kumar further stated therein that they were not present at the spot of occurrence. The accused in their defence evidence examined DW-1 Roshan Lal who stated that he is son-in-law of accused Deva Nand and that he had celebrated his daughter's birthday on 19.4.2009 and that accused Deva Nand, Sharda, Sunny and Ravinder had come over to his house on 16.4.2009 and stayed with him upto 24.4.2009. DW-2 Ravinder Singh stated that he knows Roshan who is sweeper in the village and that he attended the birthday ceremony of Ravinder's daughter on 19.4.2009 and at that time Deva Nand, Sharda, Sunny and Ravinder were also present.

8. The learned trial Court, upon appreciating the evidence, while acquitting Sharda and Geeta, held Tilak Raj, Sunny, Deva Nand and Amit Kumar guilty for committing offence punishable under Section 302 read with Section 149 of IPC vide impugned judgment dated 29.9.2012. Aggrieved against the same, the accused have preferred the present appeals.
9. The learned counsel for the appellants, while assailing the impugned judgment, submitted that there is delay of about 12 hours in lodging the FIR which would show that the FIR has been lodged after consultations so as to falsely implicate large number of accused. The learned counsel submitted that in fact it is a case of blind murder and the complainant, who admittedly had a grudge with Geeta and her family on account of illicit relations with his son with Geeta, had falsely implicated not only entire family of Geeta but even the family of Geeta's neighbour namely Sharda. It has been submitted that the said neighbours, in any case, cannot be said to have any motive for killing Raju. The learned counsel has submitted that the alleged recovery of the sword and handle of hand pump have been planted upon the accused and the same would

be evident from the fact that even as per report of FSL, the same were not found to be blood stained. The learned counsel further submitted that the medical evidence is also not in tune with the case of prosecution inasmuch as apart from 3 incised wounds, no other injury was found on the person of the deceased though it is alleged that he had been caused a large number of injuries with rod and sticks also. The learned counsel thus submitted that the impugned judgment cannot sustain and prayed for acquittal of the appellants.

10. On the other hand, the learned counsel representing the State submitted that the impugned judgment is well reasoned and has been passed after appreciating all the material aspects of the case and that there is no misreading of evidence. It has been submitted that the consistent testimonies of PW-8 Raj Kumar and PW-9 Laxmi Devi fully establish the case of prosecution and that the said oral evidence is also corroborated from the medical evidence. The learned State counsel thus prayed for dismissal of the appeals.
11. We have considered the rival submissions addressed before this Court and with assistance of learned counsel have also perused record of the case.
12. It will be apposite to first of all refer to the evidence led by the prosecution as regards the existence of injuries on the person of the deceased. It is the case of the prosecution that Raju, upon his arrival in Government Hospital, Sector 32, Chandigarh was declared dead. Thereafter, the dead body was subjected to post mortem examination. PW-7 Dr. Suparna Grover who had conducted post mortem examination on dead body of Raju proved the post mortem report as Ex.P-7. She described the injuries found on the dead body as follows:

“.....There were three parallel wounds on right parietal

aspect of head. Anterior most 9x2 cm reaching upto brain matter, middle on 7x2 cm reaching up to brain matters posterior one 4x1 cm reaching up to skull bone.

All the three wounds had sharp edges.....”

13. PW-7 opined that the cause of death was head injuries caused by some hard and heavy weapon leading to shock and hemorrhage which in ordinary course of nature is sufficient to cause death. PW-7 also proved her opinion Ex.P-13 wherein she has opined that the injuries found on the dead body could have been caused with the weapons shown to her i.e. a sword and the handle of tap.
14. The learned counsel for the appellants further attempted to assail the aforesaid medical evidence by submitting that though it is the case of the prosecution that the deceased had been caused injuries with handle of hand-pump but none of the injuries found on the dead body can be said to have been caused with the handle of hand-pump as all the three injuries are in the nature of incised wounds whereas handle of hand-pump would be blunt edged.
15. We have considered the aforesaid submission. Handle of hand-pump is made of a thick iron strip. A perusal of the sketch of the recovered handle of hand-pump would show that same is 2 feet and 9 inches long. The said handle was shown to PW-7 Dr. Suparna Grover who had conducted the post mortem examination, who upon seeing the same specifically opined that the injuries on the person of deceased could be caused with the weapons shown to her i.e. a sword and handle of hand-pump of a tap. PW-7 further opined that the cause of death was head injuries caused by some hard and heavy weapon. In view of the aforesaid specific opinion of the doctor, this Court does not find any reason

to doubt or discard the statement of the doctor especially as regards the existence of the injuries and possibility of the said injuries having been caused with sword and handle of hand-pump.

16. As regards delay in lodging FIR, the occurrence in question had taken place in village Mahesh Nagar, District Ambala on 19.4.2009 at about 9 PM. Immediately after occurrence, the injured was taken to Civil Hospital from where he was referred to PGI Chandigarh. The injured was taken to Government Hospital, Sector 32, Chandigarh where he was declared dead. Initially, the hospital authorities at Government Hospital, Ambala sent information (Ex.P-11) to the police regarding admission of Raju with injuries. Subsequently, the hospital authorities at Chandigarh also sent information (Ex.P-33) to the police regarding death of Raju. The police reached Government Hospital, Sector 32, Chandigarh on 20.4.2009 in the morning and it was at 9.15 AM that the statement(Ex.P-9) of complainant Raj Kumar was recorded leading to registration of FIR.
17. It is well settled that delay *ipso-facto* would not result in discarding the case of prosecution. It is only if there are genuine suspicious circumstances to doubt the veracity of the statement of the complainant and the delay remains absolutely unexplained that delay in lodging the FIR would assume significance. As such, the effect of delay has to be considered in context of all evidence available on record and the delay *ipso facto* cannot be held fatal to the case of the prosecution.
18. The contention of the learned counsel for the appellants that the report of FSL does not support the case of the prosecution inasmuch as no blood stains were

found on the sword or handle of the hand-pump, cannot be said to negative the case of prosecution as the presence of blood stains is only a corroborative piece of evidence. For that matter, even recovery of weapon is also a corroborative piece of evidence only and is not *sine-qua-non* for establishing guilt. In any case, a perusal of the report of FSL (Ex.PX) would reveal that it has been reported that the traces of blood on the handle of hand-pump were too small for serological analysis. The factum of absence of blood stains cannot have the effect of discarding the testimonies of the eye-witnesses, if the same are otherwise found to be reliable.

19. The learned counsel for the appellants further submitted that since the occurrence had taken place at 9 P.M. and the place of occurrence was not even illuminated, therefore, complainant PW-8 Raj Kumar and eye witness PW-9 Laxmi Devi could not have possibly witnessed the occurrence as their house is situated at a distance. The learned counsel for the appellants in this context has referred to the cross-examination of PW-8 Raj Kumar wherein he has stated that the electricity pole is at the distance of about 7-8 feet from his house and that on the Tangri bridge in the adjoining area no electricity pole is installed.
20. We have considered the aforesaid submission. During cross-examination, PW-8 has also clarified that though it is dark at about 9 P.M. but the light of the adjoining houses were switched on at that time and that he and his wife were waiting for milk vendor in front of their house at about 9 P.M. as the milk vendor usually comes at 9 P.M. and that he had seen the accused from the distance of about 20 feet. He has further stated that *Bandh* is visible from the door of his house. PW-9 Laxmi Devi during her cross-examination has also stated identically that Tangri Bridge is about a distance of 15-20 yards. There

is a distance of 15-20 yards between Tangri Bridge and '*abadi*' (residential area) and though there is no lighting system at Tangri Bandh but there are houses near the place of occurrence and light from the said houses reaches the place of occurrence and there is visibility. She has further stated that there is one '*kutcha chobara*' (a room generally constructed with mud) on a house near Tangri Bridge where light always remained switched on which reflects towards the Bandh. She also stated consistently regarding the fact that she and her husband were waiting for the milk vendor at about 9 P.M. outside their house when the occurrence took place.

21. A perusal of the site plan (Ex.P-5) shows that house of one Vijay Kumar and of one Shastriji are less than 30 feet away from the place of occurrence. As such, even if there was no electricity pole at the place of occurrence, still it cannot be said that there was pitch dark at the place of occurrence, as the light from the adjoining houses would to some extent be illuminating the area around the houses. In view of the aforesaid statements, the presence of PW-8 and PW-9 near the spot and the fact that the place of occurrence was visible on account of electricity lights nearby cannot be doubted.
22. The contention of the learned counsel that it is a case of blind murder has to be tested by scrutinizing the testimonies of the complainant i.e. PW-8 Raj Kumar and PW-9 Laxmi Devi. A perusal of their testimonies would reveal that both of them have stated to the effect that while Tilak Raj was carrying a sword, Sunny was having handle of hand-pump and both of them caused injuries to the deceased with their weapons along with other accused who were carrying rods and sticks. Though in the FIR, both Tilak Raj and Sunny are alleged to be carrying swords but it needs to be noticed that the recovered handle of hand-

pump is almost of the same length as the sword and would pass off as a sword if it is being used as a weapon unless somebody gets a chance to observe it specifically. Such like discrepancy in description of weapon of offence, by a witness whose son is being killed would lose significance, more particularly when medical evidence corroborates the use of weapons recovered. Since the medical evidence in the shape of post mortem report clearly shows that three incised wounds were found on the head of the deceased and that the same were caused by some hard and heavy weapon, therefore, use of the swords and handle of hand-pump is duly established. PW-7 Dr. Suparna Grover has specifically opined that the injuries found on the dead body could have been caused with the weapon of offence, shown to her which is sword and handle of hand-pump.

23. In of the consistent testimonies of eye witnesses PW-8 Raj Kumar and PW-9 Laxmi Devi, the complicity of Tilak Raj and of Sunny is evident. The involvement of the aforesaid two appellants (Tilak Raj and Sunny @ Sahil) is also corroborated from the fact that both the aforesaid accused suffered disclosure statements Ex. P-21 and Ex. P-22 leading to recovery of sword and handle of hand-pump at their instance which was taken into possession vide recovery memos Ex.P-26 and Ex. P-28.
24. Though, in the FIR, it is alleged that the remaining accused also caused a large number of injuries with their respective weapons i.e. rods and sticks but apart from the three incised wounds on the head of the deceased, no other injury was found on the dead body. Since, the medical evidence does not establish the said assertion, therefore, the presence of the said remaining accused at the spot is rendered highly doubtful even though, they may be having grudge against the

deceased on account of his illicit relations with mother of appellants Amit Kumar and Tilak Raj. As such, it can not be held that other than accused Tilak Raj and Sunny, the remaining accused had also inflicted injuries to the deceased.

25. Even if the presence of the remaining accused is established at the spot, still in the absence of any evidence to show that there was a common intention of all of them to eliminate the deceased or that they shared any such common object, they cannot even be held vicariously liable. Thus the appellants namely Amit and Deva Nand are entitled to be acquitted.
26. No other argument has been raised before this Court.
27. In view of our discussions made above, the appeals on behalf appellants Deva Nand and Amit Kumar are accepted and their conviction is set aside and they are acquitted of all the charges framed against them whereas the appeals on behalf of appellants Tilak Raj and Sunny @ Sahil, being devoid of merits are dismissed. The conviction and sentence of appellants Tilak Raj and Sunny @ Sahil is upheld.

**(Rajesh Bindal )**  
**Judge**

**(Gurvinder Singh Gill)**  
**Judge**

**December 21, 2017**  
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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No