

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

CRA-D-267-DB of 2003

Date of decision :- 19.4.2017

Dharambir 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.R.S.Cheema, Senior Advocate with
Mr.Arshdeep S. Cheema, Advocate
for the appellants.

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

Mr.Manoj Tanwar, Advocate
for the complainant.

H.S. MADAAN, J.

This appeal has been preferred against the judgment dated 3.3.2003 passed by the Court of learned Additional Sessions Judge, Narnaul vide which accused Dharambir, Naresh Kumar and Abhey Singh were convicted for offence under Section 302 IPC read with Section 34 IPC and order dated 4.3.2003 vide which they were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.500/- each and in default thereof, to undergo further rigorous imprisonment for a period of two months.

The accused-convicts, who are appellants before this Court pray that the appeal be accepted, the impugned judgment of their conviction and order of sentence be set aside and they be acquitted of

the charge framed against them.

Shortly put, the prosecution story as it came out during the trial is that on 10.7.2000, complainant – Satpal son of Nihal Singh, resident of village Kanina, aged 45 years got his statement Ex.PC recorded with ASI Juthar Singh from Police Station Kanina, wherein he stated that his agricultural land measuring two killas and one marla known as *luhach* is located on the outskirts of village Ghara and Kanina where a well, cattle shed and residential house have been constructed; that they are four brothers, eldest being Ram Singh followed by Hari Singh, then complainant Satpal and thereafter Dharambir; that all the four brothers had been separate in residence for the last 18-20 years prior to the incident; that they had partitioned their land by way of family settlement though in the revenue record their *khata* is still joint; that the land in which the well is situated had fallen to his share and as such his other brothers nursing a grudge against him had been creating troubles for him; that all the four brothers had been irrigating the land in their respective possession from that very well; that 3/4 days prior to the incident, an altercation had taken place between them on account of irrigation of fields from the well and the complainant had moved an application in that regard at Police Post Kanina, however, the dispute was amicably settled; that as agreed upon between the brothers, the well was given to Ram Singh and Dharambir with a condition that complainant could draw water from it to irrigate his *bajra* crop. According to the complainant on 9.7.2002, he had gone to Ram Singh informing that he was to irrigate his chari crop in terms of compromise. One Krishan son of Laxmi Narain, resident of that very area was sitting

along with Ram Singh. Krishan stated that there was no guarantee given to the complainant that they would allow him to draw water to irrigate his chari crop from the well since the well had gone to share of other brothers Ram Singh and Dharambir and he was to pay Rs.37,500/- in lieu of share of well. Krishan and Ram Singh stated that “*AGAR JAYADA HEEL HUZAT KEE TO HAMAARE SE ACCHA NAHI HOGA*”, roughly translated it means that if he tried to lodge any protest and to raise hue and cry that would not be proper for him.

Inter alia, in the statement the complainant had stated that as usual he along with his sons Rajesh and Karan Singh was sleeping near the chari crop sown in the field where house is constructed; that he had sown chari crop in the field which he had taken on *MAAL* from Ram Singh son of Jokhi Ram of Ahir community, resident of village Ghara; that electric light was on; that he and his younger son Rajesh were sleeping on one cot, he by placing his head towards the *pangat* (feet side) of the cot whereas his son Rajesh had placed his legs towards *pangat* side; that at about 3:00/3:30 A.M., on hearing noise of barking of dogs, he and his son Karan Singh, who had slept on the other cot woke up and found that Abhey Singh son of Ram Singh, Dharambir son of Nihal Singh and Naresh Kumar son of Hari Singh had arrived there stating that they would give water to him as well as his sons on that day; when Rajesh woke up from the cot, Abhey Singh gave a blow of knife type sharp pointed weapon in his abdomen, resultantly his intestines came out; that thereupon complainant and his son Karan Singh inquired from the accused as to why they were committing such a gruesome crime, then Abhey Singh gave a push to complainant whereas

Dharambir gave a blow of knife type sharp edged weapon to Rajesh hitting him on the right side of the neck; that Naresh Kumar inflicted a blow with sharp pointed weapon on the left side of abdomen of Rajesh, then Dharambir gave another blow of the similar weapon on the left shoulder of Rajesh; that the cot had become blood stained; that being terrified complainant and Karan Singh ran away towards the well of Siri Chand resident of village Ghara; that Rajesh had also been coming towards that side, however, he fell at the well of Siri Chand due to injuries received by him, rather he had succumbed to those injuries. The complainant and his other son Karan Singh kept hiding in the chari fields due to fear and in the morning on arranging vehicle for going to the village, complainant was going to police station for lodging the report. In the meanwhile at bus-stand, Kanina, complainant came across the police party headed by SI Juthar Singh, SHO of Police Station Kanina and he got his statement recorded with said police officer, in which he had further stated that he had left his son Karan Singh near the dead body and the motive for the incident was that several years ago, a well dug up in the land which had fallen to his share given to him in the family settlement and his three brothers wanted to get the well forcibly and for that reason in furtherance of their common intention in collusion with each other, they had murdered his son Rajesh by giving him injuries and a suit for partition of the well was pending in the Civil Court at Mahendergarh.

The statement was signed by complainant Satpal in Hindi and his signatures were attested by SI Juthar Singh, who appended his endorsement Ex.PC/1 below such statement and finding that offence

under Section 302 read with Section 34 IPC appeared to have been committed, sent ruqa Ex.PC to Police Station Kanina through Constable Devender Singh on the basis of which formal FIR Ex.PC/2 was recorded at Police Station by MHC Ajesh Kumar.

Thereafter, the police party accompanied by the complainant went to the spot. There the investigation of the case was handed over to Inspector Inder Singh (hereinafter referred to as the Investigating Officer/IO), CIA Staff, Narnaul as per the direction of Superintendent of Police, Narnaul. Inspector Inder Singh along with his staff had arrived at the place of occurrence. He examined dead body of Rajesh lying at the spot. He carried out inquest proceedings Ex.PL/4 and in that regard preparing rough site-plan of the place where the dead body was lying as Ex.PLL. He deputed Constables Devender and Har Dayal for the purpose of getting post-mortem examination conducted on the dead body of Rajesh from Civil Hospital, Mahendergarh, who accordingly took the dead body there. The Investigating Officer recorded supplementary statement of complainant Satpal besides statement of Karan Singh under Section 161 Cr.P.C. After getting the post-mortem examination conducted on the dead body of Rajesh, Constable Devender produced before him (IO) a parcel containing clothes of deceased which was taken into possession vide memo Ex.PMM. The Investigating Officer recorded statements of witnesses. He picked up blood stained earth from the place where dead body was lying and the same was taken into possession vide memo Ex.PJJ after converting it into a sealed parcel. The blood stained portion of *Takhtposh* (wooden bed) and blood stained portion of the cot were also

taken into possession vide that very recovery memo i.e. Ex.PJJ. Before doing that, those portions had been converted into sealed parcels i.e. parcel of piece of *Takhtposh* as Ex.P12 and that of strings of cot as Ex.P13. The Investigating Officer took into possession blood stained earth, a pair of *Hawai Chappal*, one pant, one shirt, a *lathi* and a match-box vide recovery memo Ex.PKK and before doing that such articles had been converted into separate sealed parcels i.e. *lathi* and blood stained earth were sealed separately whereas rest of articles were converted into single parcel i.e. *lathi* Ex.P6, pair of *Hawai Chappal* Ex.P7 and Ex.P8, match-box Ex.P9, pant Ex.P10 and shirt Ex.P11. The Investigating Officer prepared rough site-plan of the place of occurrence and the place where deceased was sleeping as Ex.PNN. On return to the police station, the Investigating Officer deposited the case property with MHC. During the course of investigation, on 15.7.2000, the Investigating Officer took into possession affidavit Ex.PH of Ram Singh, affidavit Ex.PJ of Satpal and affidavit Ex.PK of Dharambir, vide memo Ex.POO, whereas copies of daily diary register Ex.PT, Ex.PU and Ex.PV, respectively were seized vide recovery memo Ex.PX.

On 20.7.2000, all the three accused were brought before the Investigating Officer by Ram Singh son of Nihal Singh. Such accused were formally arrested in this case and they were put in lock-up of the police station.

On 21.7.2000, all the three accused were interrogated one by one in presence of Pat Ram and Mahabir PWs. During the course of such interrogation, accused Dharambir suffered a disclosure statement Ex.PY regarding having specific knowledge with respect to concealment

of knife used in the incident in the heap of garbage in a room near his tubewell and that he could get the same recovered. Similarly, Abhey Singh accused had made a statement Ex.PZ under Section 27 of the Indian Evidence Act to the effect that he had kept concealed a knife in a heap of fodder in the room of tubewell of Ram Singh about which only he had specific knowledge and he could get that knife recovered. A similar disclosure statement Ex.PAA was made by accused Naresh offering to get recovered a knife lying concealed in the field of Ram Singh. All the three accused in police custody were taken to the places specified by them in their respective disclosure statements for the purpose of recovery. Accused Dharambir got recovered knife Ex.P4 from the disclosed place. The Investigating Officer prepared its rough sketch Ex.PBB. The knife was converted into a sealed parcel and was taken into possession vide recovery memo Ex.PCC. The Investigating Officer prepared rough site-plan of the place of recovery as Ex.PBB/1. Thereafter, accused Naresh Kumar got recovered knife Ex.P3 from the disclosed place. The Investigating Officer prepared its rough sketch Ex.PDD. The knife was converted into a sealed parcel and was taken into possession vide recovery memo Ex.PEE. The Investigating Officer prepared rough site-plan of the place of recovery as Ex.PDD/1. Then accused Abhey Singh got recovered knife Ex.P5 from the disclosed place. The Investigating Officer prepared its rough sketch Ex.PFF. The knife was converted into a sealed parcel and was taken into possession vide recovery memo Ex.PGG. The Investigating Officer prepared rough site-plan of the place of recovery as Ex.PFF/1. All the disclosure statements and recovery memos were attested by Pat Ram and Mahabir

Singh PWs. The Investigating Officer recorded statements of witnesses and on return to the police station deposited the parcels with MHC.

On 27.7.2000, an application Ex.PM was moved by the Investigating Officer before the doctor to seek his opinion whether the injuries found on the person of deceased could be caused by knives Ex.P3 to Ex.P5, however, on that day, the doctor was not available. On 28.7.2000 doctor gave opinion Ex.PM/1. The knives after examination were again sealed by the doctor with his own seal. Thereafter, the file was sent by the Investigating Officer to the concerned police station. After completion of investigation and other formalities, challan against all the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Mahendergarh.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Mahendergarh, he supplied copies of documents relied upon in the challan to all the accused free of cost as provided under Section 207 Cr.P.C. Then finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Mahendergarh vide his order dated 12.10.2000 committed the case to the Court of learned Sessions Judge, Narnaul from where it was entrusted to the Court of learned Additional Sessions Judge, Narnaul.

When the case was received in the Court of learned Additional Sessions Judge, Narnaul, he finding that prima-facie charge for the offence under Section 302 read with Section 34 IPC was disclosed against the accused, charge-sheeted them accordingly, to which, they pleaded not guilty and claimed trial. The case was then

fixed for evidence of the prosecution.

During the course of its evidence, the prosecution examined as many as fifteen witnesses as per details below:

PW1 Mahesh Kumar, Draughtsman, SP Office, Narnaul stated that on 28.7.2000, he had gone to the spot and prepared two site-plans on pointing out of Satpal i.e. site-plan of place of occurrence Ex.PA, using the scale of 1 inch equal to 30 feet, and another scaled site-plan Ex.PB of the place from where the dead body was recovered, using the scale 1" = 20'.

PW2 Constable Ranbir Singh deposed that on 10.7.2000, he was posted at Police Station Kanina; that on that day, MHC Ajesh Kumar of Police Station Kanina had handed over to him four envelopes containing FIR of this case at 11:30 A.M. for delivering the same to Illaqa Magistrate, DSP Mahendergarh, S.P. Narnaul and I.G. Gurgaon; that he had delivered the special report to the Illaqa Magistrate at 3:00 p.m. at Rest House. He stated that it took time for him to reach Illaqa Magistrate as level crossing was closed and road was jammed.

PW3 Head Constable Ajesh Kumar testified that on 10.7.2000, he was posted at Police Station Kanina as MHC; that on that day SI/SHO Juthar Singh had forwarded the statement of Satpal Ex.PC with his endorsement Ex.PC/1 through him on the basis of which formal FIR Ex.PC/2 was recorded. He proved his endorsement about recording of the FIR in this case as Ex.PC/3. He further tendered in evidence his affidavit Ex.PD submitting that the same be read as a part of his statement.

PW4 Constable Prem Singh submitted his affidavit Ex.PE

praying that the same be read as a part of his statement.

PW5 Krishan Kumar, Photographer doing the business under the name and style of Vinay Photo Studio at village Kanina stated that in this case at the asking of police, he took photographs of place of occurrence and place from where the dead body was recovered proving the photographs as Ex.PF/1 to Ex.PF/8 and negatives as Ex.PG/1 to Ex.PG/8.

PW6 Satya Rup, Naib Tehsildar, Bawal deposed that on 7.7.2000, he was posted as Naib Tehsildar – cum – Executive Magistrate, Kanina. On that day, he attested affidavit of Ram Singh adopted son of Ram Lal, resident of Kanina on identification of Sat Narain, Retired Principal. He proved the affidavit as Ex.PH. He further added that affidavit of Satpal son of Nihal Singh Ex.PJ was also attested by him. The witness added that he had attested affidavit Ex.PK of Dharambir as identified by Sat Narain, Retired Principal.

PW7 Dr.Gaj Raj Singh deposed that on 10.7.2000 while he was posted as Medical Officer at CHC Mahendergarh, at about 5:20 p.m. on police request, he conducted post-mortem examination on the dead body of Rajesh son of Satpal, aged 17 years male, resident of Kanina. The dead body was brought by Constable Devender Singh and was identified by Satpal and Karan Singh. On examination, he found as under:

The length of the body was 5'2". On external examination it was an averagely built dead body of a male wearing white baniyan (vest) and blue shorts which were stained with blood. There were two holes present on baniyan measuring 2.5 cm long each, one on right side in front and one on left

side behind. Both were corresponding to the injuries on the abdomen and the chest. Right eye was semi open, left was closed, mouth was closed. Rigor mortis was present. Post mortem staining was present on the body. Blood stains were present all over the body.

List of injuries which were found on the dead body:

- 1. A stab wound with clean cut margins was present on right side of neck. The measurement of the wound was 2.5 cm x 1 cm x 4.5 cm deep. On dissection of the neck the depth was traced. The wound was injuring all the subcutaneous soft tissues, muscles and cutting the common carotid artery. The wound was situated 5 cm below the ear.*
- 2. A stab wound was present on right side of epigastric region just below the costal cartilage. Part of the omentum was lying out. The wound was of size 2.5 cm x 1 cm and 5 cm deep up to the abdominal cavity. On opening the abdomen mesentric vessels were injured of large intestine making a small haematoma. No haemoparitonium was present. Corresponding hole/cut was present on the baniyan.*
- 3. A stab wound with clean cut margins was present on the superior aspect of left shoulder up to the bone deep. The size of the wound was 2.5 x 1 cm.*
- 4. A stab wound with clean cut margins was present on the chest left side posteriorly. The size was 2.5 x 1 cm and 4 cm deep which was oblique in depth. On opening the chest no haemothorax was present. A corresponding cut was present on the baniyan.*

Scalp and skull and organs of generation external and internal were healthy. Membranes of brain pleurae larynx and trachea both the lungs pericardium mouth pharynx and oesophagus liver spleen and kidney and bladder were pale. Right chamber of the heart contained minimal blood.

Stomach contained semi digested food particles and fluid around 500 ML. Small intestines contained chyme and gasses and was pale. Large intestine contained faecal matter and gasses and was pale, valves, ribs and cartilages were also healthy.

In his opinion, the cause of death in this case was shock and haemorrhage due to excessive loss of blood from injury No.1, which was sufficient to cause death in ordinary course of nature. All the injuries were ante-mortem in nature. The probable duration between injury and death was within few minutes to an hour and the duration between death and post-mortem examination was within 24 hours.

He proved the carbon copy of PMR as Ex.PL, diagrams showing the location of the injuries on the dead body as Ex.PL/1 and Ex.PL/2, police request as Ex.PL/3 and inquest papers as Ex.PL/4. He further proved *baniyan* Ex.P1 and *kacchha* (shorts) Ex.P2. This witness further deposed that on 28.7.2000, the police produced before him application Ex.PM along with three sealed parcels with seal used 'IS' for obtaining his opinion, which were found containing knives. He marked them as A1, A2 and A3 with his initials thereon which was done for the purpose of identification of these articles. He gave his opinion Ex.PM/1 after examining all the three knives which were exhibited as Ex.P3, Ex.P4 and Ex.P5, respectively. After his opinion, he re-sealed all the three knives separately with his seal 'GRS' and handed over the same to the police. As per his report all the four injuries mentioned in PMR were possible by knives Ex.P3, Ex.P4 and Ex.P5 though it was not possible to say that as to which injury caused by which of these knives.

PW8 Dr.Suresh Kumar, Medical Officer, CHC Kanina

stated that on 6.7.2000, he medico legally examined Vivek Kumar son of Kirori, resident of Buroli, District Rewari and found five injuries on his person which were described in detail in MLR, the carbon copy of which being Ex.PN. He proved police request Ex.PN/1 for conducting the medico-legal examination which was signed by him. On the same day, he medico-legally examined Pawan Kumar son of Raghbir, aged 19 years, resident of Sunaria and found six injuries on his person which were described in detail in the MLR, the carbon copy of which being Ex.PQ. He proved police request Ex.PQ/1 for conducting the medico-legal examination, which was signed by him. On the same day, he had also medico-legally examined Ajit Kumar son of Vijay Singh, aged 19 years, resident of Gokal Garh, District Rewari and found six injuries on his person which were described in detail in the MLR, the carbon copy of which being Ex.PR. He proved police request Ex.PR/1 for conducting the medico-legal examination, which was signed by him. On that very day, he had also medico-legally examined Karan Singh son of Satpal, aged 20 years, resident of Kanina and found three injuries on his person which were described in detail in the MLR, the carbon copy of which being Ex.PS. He proved police request Ex.PS/1 for conducting the medico-legal examination, which was signed by him.

PW9 ASI Ajit Singh deposed that on 6.7.2000, he was posted as Incharge at Police Post, Kanina; that on that day Dharambir son of Nihal Singh got recorded DDR No.17, copy of which being Ex.PT. He further stated that on the same day, he had recorded DDR No.18 on the statement of Karan Singh, copy of which being Ex.PU. He added that he had got injured Vivek Kumar, Pawan Kumar, Ajit Singh

and Karan Singh medico-legally examined from CHC Kanina by submitting written requests Ex.PN/1, Ex.PQ/1, Ex.PR/1 and Ex.PS/1, respectively. Going further, the witness deposed that on 7.7.2000, Ram Singh son of Ram Lal, Dharambir son of Nihal, Satpal son of Nihal Singh along with 6-7 more persons including Karan Singh came to police post after compromising the matter and submitted photocopies of affidavits of Ram Singh, Dharambir and Satpal in that regard and he had accordingly recorded report No.9 dated 7.7.2000 relating to compromise, copy of which being Ex.PV. He stated that he handed over all those documents to Inspector Inder Singh on 15.7.2000 which had been seized by him vide recovery memo Ex.PX attested by him (this witness).

PW10 Juthar Singh, Retired Sub-Inspector, who on 10.7.2000 while posted as SHO P.S. Kanina was heading a police party which had recorded statement of complainant Satpal at bus-stand Kanina deposed in that regard stating that after recording police proceedings, he had sent ruqa to police station for recording of FIR and then he along with other police officials had accompanied the complainant to the spot where he had handed over investigation to Inspector Inder Singh. This witness stated that he had prepared challan under Section 173 Cr.P.C. on 23.8.2000.

PW11 Pat Ram a witness of the disclosure statements made by accused Dharambir, Abhey Singh and Naresh and subsequent recoveries of knives got effected by them in pursuance of such disclosure statements deposed in that regard.

PW12 Head Constable Devender, who on 10.7.2000 was

member of the police party, headed by SI Juthar Singh before whom complainant made statement, deposed regarding taking that statement to the police station for the purpose of registration of FIR and after registration of the FIR, handing over the same to the Investigating Officer. In addition to that he tendered in evidence his affidavit Ex.PHH submitting that the same be read as a part of his statement.

PW13 Satpal (complainant) and PW14 Karan Singh provided the eye-witness account of the incident deposing as per prosecution version.

PW15 Inspector Inder Singh, since promoted as DSP and retired from service, who had carried out investigation in this case deposed in that regard proving various documents.

Learned Public Prosecutor tendered in evidence FSL reports Ex.PPP and Ex.PQQ and closed the evidence of prosecution.

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 the allegations contending that they were innocent and had been falsely involved in this case.

Further, accused Dharambir took up a plea that on 9.7.2000, he was not present in the village as he had gone to village Ratta Kalan to purchase a buffalo from Paras Ram son of Bihari Lal, Harijan and had returned to village next morning at 10:00 A.M.

Accused Naresh Kumar took up a plea that it was a blind murder and he had been falsely implicated due to enmity.

Similar plea as taken by accused Naresh Kumar has been

adopted by accused Abhey Singh.

During their defence, accused examined Paras Ram son of Bihari Lal, aged 45 years, Mason by avocation, resident of village Rata Kalan, Tehsil Narnaul as DW1, Kanwar Singh UDC, DHVPN, Kanina as DW2 and Pt.Shri Ram Sharma as DW3.

DW1 Paras Ram stated that accused Dharambir is known to him, who came to him on 9.7.2000 at about 6:30/7:00 p.m. to take his money as he had purchased a buffalo from him. The witness stated that Dharambir stayed with him during the night intervening 9/10.7.2000 inasmuch as he and accused Dharambir had slept outside his house; that he (Dharambir) remained with him throughout that night; that he got up at 2:00/2:30 A.M. on that night and found Dharambir sleeping besides him; that on the next morning, he had dropped him at bus-stand and thereafter made him to board the bus; that after 2-3 days, he read a news in the newspaper that a person has been murdered in the area of Kanina at a tubewell in which the involvement of Dharambir along with others was mentioned and that after reading the news, he went to Police Station Kanina and informed the police that on the fateful night, Dharambir was with him at his residence, however, the police officer asked him to depose in that regard in Court.

DW2 Kanwar Singh, UDC had brought the service register from 3.1.1976 to 28.2.1979, ledger book w.e.f. May 1979 to April 1980 and ledger book w.e.f. 1.2.2000 to 2.9.2002 and stated that Ram Singh son of Nihal Singh had applied for the tubewell connection in their office on 20.7.1978 vide application No.2689; that their office released the connection to him on 24.4.1979 having account No.K-443 AP,

adding that thereafter the account number of this connection was changed to K/4-141. Going further, the witness stated that for the first time, the consumer deposited the amount of bill on 26.3.1980 for a period of five months and an entry in that regard is there at serial No.443 whereas the entry in the current register is at serial No.141 at Page – 4. He proved the true attested copies of the relevant extracts of service register and ledger register as Ex.DE, Ex.DF and Ex.DG. After seeing Ex.DH, Ex.DJ and Ex.DK, the witness stated that those had been issued by Krishan Kumar, LDC of their department whereas receipt Ex.DH had been issued by Krishan Kumar, Cashier.

DW3 Pt.Shri Ram Sharma stated that he has been working as Jyotishi (Astrologer) for the last 35 years and that he had brought Shree Aryabhata Panchang with him issued from Delhi and is applicable in Delhi area and southern Haryana, which includes District Mahendergarh. He stated that on 9.7.2000 the moon rose at 11:54 A.M.(day time) and set at 1:10 A.M. (on night) on 10.7.2000. He further stated that on 10.7.2000, the sun rose at 5:36 A.M. and set at 7:10 p.m. on that date.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned supra, which left them aggrieved and they have filed the present appeal.

We have heard learned counsel for the appellants-accused-convicts, learned Assistant Advocate General for the State of Haryana and learned counsel for the complainant besides going through the record and we find that there is no merit in the appeal.

In this case the most important witnesses for the prosecution happened to be PW13 Satpal (complainant) - father and PW14 – Karan Singh - brother of Rajesh deceased, who provided the eye-witness account of the incident. A perusal of their depositions goes to show that they testified in a natural and convincing manner and account of the incident given by them inspires confidence. We find presence at the spot of both the witnesses to be natural and probable and the ocular version of the incident narrated by them to be creditworthy. The incident as per prosecution story had taken place at 3:30 A.M. on 10.7.2000. The report regarding incident was lodged by complainant Satpal with SI/SHO Juthar Singh by making statement Ex.PC which was completed at 10:00 A.M. at bus-stand Kanina and then ruqa was sent to the police station at that very time where the FIR was registered. As per entry in the FIR, the place of occurrence and its distance from police station is 3 kms. towards east. In that way, there is delay of about 6 ½ hours in reporting the matter to the police.

Learned counsel for the appellants – accused – convicts has tried to make much of this aspect submitting that as a matter of fact neither complainant nor his other son Karan Singh were present at the spot at the relevant time. It was a case of blind murder and when in the morning Satpal and Karan Singh came to know about murder of Rajesh, they implicated the accused in this case due to earlier strained relations on account of dispute with regard to drawing water from the well. The defence counsel has tried to shake credibility of these witnesses stating that they had not tried to intervene so as to save Rajesh, their close relative from the assailants which is highly unnatural conduct on their

part. Furthermore, their hiding in the chari fields from the time of incident till 5:00/5:30 A.M. does not appeal to reason. Learned counsel has further contended that presence at the spot of both these witnesses at the relevant time comes out to be highly doubtful since they did not make any effort to remove the injured to the hospital so as to make an attempt to save his life.

On the other hand, learned Assistant Advocate General assisted by learned counsel for the complainant countered the arguments stating that the delay in lodging the report with the police is well explained inasmuch as the incident as per prosecution story had taken place in the early morning hours; the three assailants armed with dangerous weapons like knives had attacked Rajesh causing him serious injuries; the complainant party did not have any weapon with them to save themselves. As such the only option available with them was to run away from the spot so as to escape from the hands of assailants which they did. Unfortunately, Rajesh had suffered multiple injuries several of them on vital parts to which he succumbed; the complainant and Karan Singh out of fear had hid themselves in the chari fields nearby and it was only when the sun rose and the day time had arrived, they could summon courage to come out of the chari fields and observed that Rajesh had succumbed to the injuries; that was a traumatic experience for them. Thereafter, complainant had left Karan Singh at the spot near the dead body and himself proceeded towards police station to lodge report regarding the incident. He had to cover a distance of 4 kms. before coming across the police party and lodged the report. The report lodged is detailed one which would have taken considerable time in

being recorded. Keeping in view such position, in light of the fact that complainant is an illiterate rustic villager, too much cannot be looked into to say that there was deliberate delay on the part of complainant to report the matter to the police.

After hearing the rival contentions, we find that delay in lodging the FIR in the instant case is not something unnatural and unexplained and it does not affect the credibility of the prosecution story. The fact that has to be kept in mind that the incident as per prosecution version had taken place in the early morning hours at 3:00/3:30 A.M. on 10.7.2000 when the accused assailants armed with deadly weapons like knives had trespassed in property of the complainant party and attacked Rajesh causing him multiple injuries including those on vital parts. The complainant party not having any weapon to defend themselves except a solitary lathi was not left with any alternative but to make an attempt to escape and in the process complainant Satpal and his other son Karan Singh hid themselves in the chari field nearby and when the day broke, they came out of the chari field, went to the spot found that Rajesh had succumbed to the injuries suffered by him and his dead body was there on the *Takhtposh*. Then complainant had left Karan Singh near the dead body and himself proceeded towards police station to lodge information and after meeting police party at a distance of 4 kms. from the spot getting his statement recorded which in all likelihood would have consumed considerable time and then ruqa was sent at 10:00 A.M. from bus-stand, Kanina. Therefore, keeping in view all the facts and circumstances, no unexplained delay on the part of complainant to report the matter to the police comes out to be there.

Furthermore, delay alone is not sufficient to reject the prosecution story unless it is accompanied by a strong motive for false implication. No such motive on the part of complainant party comes out to be there. As a matter of fact, accused are none else but close relatives of the complainant party. Complainant Satpal having lost his young son and Karan Singh his real brother would have been the last persons to try to screen the actual culprits and involve the accused in this case falsely since it is always the earnest endeavour of close relatives to ensure that the persons responsible for death of their near and dear is brought to book and is punished suitably rather than attempting to shield the actual culprit and involve some innocent persons in their place without any rhyme or reason. As regards the conduct of the eye-witnesses, they having seen Rajesh being inflicted several injuries on his person with knives and themselves being unarmed except having a *lathi*, it is too much to expect them to intervene so as to make an attempt to save Rajesh from the assailants running risk of themselves getting injured or even killed in the process, as self-preservation is a natural instinct of every human being. Protection of near relatives and loved ones comes later on. Confronting the three assailants having knives with a lathi would have put the complainant and his sons in a hopeless position. Therefore, non-intervention of the eye-witnesses in the incident does not travel against the prosecution story and does not make their conduct unnatural.

Another argument advanced by learned counsel for the appellants – accused – convicts was that there is no independent corroboration to the prosecution story and the prosecution case rests

upon depositions of the relation witnesses, who had a reason to involve the accused in this case wrongly. However, we do not find any merit in this contention. The incident had taken place in early morning hours when most of the people are asleep. The place of incident is agricultural land. So it cannot be expected that attention of persons from nearby areas would have been attracted to the spot due to incident taking place there. There is nothing on record to show that any person from nearby area had seen the incident who could be cited as an eye-witness. Both the eye-witnesses PW13 Satpal (complainant) and PW14 Karan Singh had deposed in natural and convincing manner. Their presence at the spot come out to be natural and probable. They had no reason to substitute the accused as murderers of their close relative Rajesh. We do not find any reason to discard the depositions of PW13 Satpal and PW14 Karan Singh. For the reasons mentioned supra, absence of independent corroboration in the instant case is immaterial, even otherwise independent corroboration is rule of prudence and not requirement of law.

As regards another argument advanced by learned counsel for the appellants – accused – convicts that no trail of blood was found from the place where Rajesh was attacked causing him injuries upto the place where his dead body was lying, which was a crucial piece of evidence; no blood stains having been shown in the site-plan prepared by the Investigating Officer and the scaled site-plan got prepared during investigation of the case; therefore, the prosecution story becomes doubtful, we are not agreeable with this contention. If we peruse the cross-examination of the police officers, who had carried out

investigation in this case and were associated therewith, then we find that PW15 Inder Singh, Retd. DSP, who at the relevant time was posted as Inspector, CIA Narnaul and to whom the investigation of this case had been handed over as per orders of Superintendent of Police, Narnaul, this police officer along with other police officer having visited the spot admitted in his cross-examination that he had seen the blood spots on the path used by the deceased in running from the place where the occurrence took place to the place where his dead body was lying and that these blood spots have not been shown by him in the incident. PW10 Juthar Singh, Sub-Inspector (Retd.), who on 10.7.2000 was posted as SHO Police Station Kanina and who had recorded statement of complainant regarding the incident, sending ruqa to police station on the basis of which FIR was registered and who along with complainant had gone to the spot in his cross-examination deposed that he had seen the blood spots at one or two places in between the place of occurrence and the place where the dead body was lying; that those spots were in the middle; that there was some blood at a distance of one killa from the spot and blood spot further at a distance of one killa. Though he stated that there was no trail of blood but what he actually meant to say was that there was no continuous trail of blood. Blood stains being present from the spot where Rajesh was attacked and inflicted injuries up to the place where dead body was lying on the *Takhtposh* do constitute a trail of blood though not continuous. Admittedly, those blood stains were not shown by the Investigating Officer in the site-plan. In addition to that as deposed by PW15 Inder Singh, Retired DSP, the footprints at the place of occurrence were not fit for lifting. He had added that otherwise also

there was no necessity to lift the footprints since the accused were named in the FIR. Whereas PW10 Retired Sub-Inspector Juthar Singh had stated that he had seen footprints at the spot and Inspector Inder Singh had not lifted the same because it was stormy weather. Thus non-depiction of the places where blood spots and footprints were there and non-lifting of footprints definitely constitutes a lapse in the investigation by the Investigating Officer but then the prosecution cannot be made to suffer on that score. The blood spots and the footprints being shown in the site-plan and footprints having been lifted therefrom and then compared with those of the accused would have constituted effective investigation but the Investigating Officer not doing so may be due to lack of experience, inadvertence or lack of knowledge and insufficiency does not create an adverse impact on the prosecution story, when otherwise there is overwhelming evidence on the file led by the prosecution to prove its charge against the accused. Again non-depiction of cots in the site-plans got prepared during the investigation of the case points towards deficiency in the investigation, however prosecution cannot be made to suffer on that count.

One more argument advanced by learned counsel for the appellants – accused – convicts was that keeping in view the dimensions of the injuries on the person of Rajesh and the weapon used for inflicting the same at the most it could be handiwork of one person. In all probability some known assailant had inflicted those injuries upon Rajesh at night time and it was a blind murder. Accused had been wrongly dragged in this case.

However, we find this argument to be unacceptable as it has

come in the testimony of PW11 Pat Ram, aged 62 years, resident of village Gahra, District Mahendergarh and PW15 Inder Singh, Retired DSP that all the three accused in police custody on 21.7.2000 while being interrogated had suffered disclosure statements and got recovered a knife each from their possession. The Investigating Officer had prepared sealed parcels thereof and taken those into possession. Those knives Ex.P3 to Ex.P5 had been sent to Forensic Science Laboratory, Madhuban and as per report received from there Ex.PPP, they were found to be stained with blood, which clearly pointed towards their use in the incident by the accused. During the course of investigation, the Investigating Officer had moved an application Ex.PM seeking opinion from the doctor as to whether the injuries found on the person of deceased could be caused with the knives recovered from the possession of accused and the doctor vide his opinion Ex.PM/1 opined that all the four injuries mentioned in post-mortem report are possible by those weapons. Thus, the possibility of only one assailant having caused the injuries stands ruled out and from the evidence adduced by the prosecution, it comes out that it were the accused who had inflicted such injuries upon Rajesh.

Learned counsel had raised one more contention that it has not been clarified by the prosecution as to why the assailants had selected Rajesh for attack out of the three i.e. complainant Satpal, his son Karan Singh and other son Rajesh as per prosecution story. Whereas answer to this question can easily be found out if we see deposition of PW14 Karan Singh, who in his cross-examination stated that he and his brother used to reside in the fields where they had constructed a house

and his father used to bring food for them from the house located in the *abadi* of the village. He further stated that members of the family used to reside in the fields for 24 hours and sometimes they both the brothers used to stay in the field and his father used to take food for them and sometimes his father and brother used to stay in the field and he used to take their food. He stated that two members of the family used to stay in the field 24 hours to take care of cattle heads and crop. PW13 Satpal in his examination-in-chief stated that on 6.7.2000, a quarrel over the well had taken place; that on that day he was beaten up by his brothers; that he had reported the matter to the police and that the matter was compromised. It being so it comes out that the accused were nursing a grudge against Satpal and his sons and when they came to land in possession of complainant party, they caught hold of Rajesh and attacked him whereas complainant Satpal and his other son Karan Singh had managed to escape. Therefore, there is nothing surprising as regards accused selecting Rajesh for attack and causing injuries to him.

Learned counsel for the appellants – accused – convicts has referred to various authorities in support of his contentions:

1. Tori Singh and another Versus State of Uttar Pradesh, AIR 1962 Supreme Court 399.

2. State of Punjab Versus Ajaib Singh and others, (2005) 9 Supreme Court Cases 94

3. Padam Singh Versus State of U.P., (2000) 1 Supreme Court Cases 621

With regard to omissions in the site-plan; and

1. *Rampukar Rai and others Versus State of Bihar, (1993) Suppl.2 Supreme Court Cases 362.*

2. *Mohinder Singh Versus State of Punjab, AIR 1955 SC 762.*

With respect to submission with regard to late night murder, claimed by the witnesses – awakened by noise/alarm, submitting that prosecution case is bound to fail under the circumstances.

However, we find that these authorities are not applicable due to different facts and circumstances.

Coming to the argument by learned counsel for the appellants – accused – convicts that time of death of Rajesh is not corroborated by medical evidence in light of state of digestion of food and presence of rigor mortis to show that the prosecution story is doubtful. In support of that contention, learned counsel referred to authorities as under:

1. *Virendra alias Buddhu and another Versus State of Uttar Pradesh, (2008) 16 Supreme Court Cases 582.*

2. *Shivaji Sahebrao Bobade and another Versus State of Maharashtra, AIR 1973 SC 2622.*

3. *Bhimappa Jinnappa Naganur Versus State of Karnataka, 1993 Supp.(3) Supreme Court Cases 449.*

However, we find that medical evidence is only the opinion evidence and furthermore the state of digestion of food is to be seen in

light of the fact that witnesses are illiterate rustic persons who are not expected to know the strict and exact timings of consumption of food. Therefore, such opinion evidence cannot overshadow the direct ocular evidence regarding the incident which is found to be creditworthy. The authorities do not help the appellants – accused – convicts in any manner.

The prosecution has successfully proved its charge against all the three accused that on 10.7.2000 in the area of village Ghara all the three accused in furtherance of their common intention had committed murder of Rajesh by intentionally causing him injuries with dangerous weapons like knives, the instruments used for cutting and stabbing. The very fact that all three of them had come together armed with knives and had attacked Rajesh causing him injuries including injury No.1, sufficient to cause death in ordinary course of nature i.e. on right side of neck; injury No.2 stab wound on right side of epigastric region just below the costal cartilage; and injury No.4 stab wound on the chest left side posteriorly. The injuries being on the vital parts of the body keeping in view their size and dimensions clearly show the intention of the accused to cause death of Rajesh. The medical evidence corroborates the prosecution story on material aspects. The investigation has been conducted in a fair and impartial manner though not in a very scientific and professional manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan them falsely or to depose against them to secure their conviction. A strong motive for the incident was there i.e. dispute regarding drawing water from the well regarding which a quarrel had earlier taken place between the parties on

6.7.2000 also. The pleas taken by the accused in defence do not come out to be satisfactory and are not proved on record. The defence evidence does not help the accused in causing a dent in the prosecution case.

The judgment of conviction and sentence passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and sentence is upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

Appellants – accused – convicts Dharambir and Naresh Kumar are stated to be on bail granted to them by this Court vide order dated 5.4.2006 and appellant – accused – convict Abhey Singh is stated to be on bail granted to him by this Court vide order dated 31.5.2006 while suspending their sentence. Their bails are cancelled. Chief Judicial Magistrate, Narnaul is directed to issue arrest warrant to get them arrested so as to make them undergo the remaining sentence.

19.4.2017 Brij	(T.P.S. MANN) JUDGE	(H.S.MADAAN) JUDGE
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No