IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA- D No. 915 DB of 2005
Reserved on 15.11.2018
Date of decision: 29.11.2018

Sultan Singh and others

..... Appellants

VERSUS

State of Haryana .....Respondent

CORAM Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu

PRESENT: Mr. Jitender Dhanda, Advocate for the appellants.
Mr. Vishal Garg, Additional A.G. Haryana

RAJIV SHARMA,J.

This appeal is instituted against judgment dated 10.8.2005 rendered by the learned Additional Sessions Judge, Kaithal in Sessions case No. 6 of 2003, whereby the appellants were charged and tried for offence under Sections 148/149/302/506 IPC and 25 of the Arms Act 1959. They were convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for a period of two years under Section 302 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of three years under Section 148 IPC and two years of rigorous imprisonment under Section 506 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of three years under Section 25 of the Arms Act 1959.

2. The case of the prosecution in a nut shell is that on 11.10.2002 at about 3.30 PM in the area of Village Serdha, the appellants had murdered Ram Mehar. They used kulharas (axe), swords etc. as the

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weapons of offence. The FIR was registered . The dead body was sent for post-mortem examination. The investigation was carried out and challan was put up after completing all the codal formalities.

3. The prosecution has produced a number of witnesses.

4. The statements of the appellants were recorded u/s 313 Cr.P.C. They had denied the case of the prosecution. They were convicted and sentenced in this case, as noticed above. Hence this appeal.

5. Counsel for the appellants has vehemently argued that the prosecution has failed to prove the case against the appellants. Learned State counsel has supported the case of the prosecution.

6. We have heard counsel for the appellants and the learned State counsel and gone through the judgment and record very carefully.

7. PW 1 Head Constable Baljit Singh has proved affidavit Ex. PA.

8. PW- 2 Constable Ram Niwas has testified that on 28.11.2002, on the directions of S.H.O. Rajound, he visited the spot at Village Serdha and prepared site plan EX. PB.

9. PW-3 Constable Brahm Singh has proved affidavit Ex. PC.

10. PW- 4 Head Constable Shiv Charan, Police Station Rajound has stated that he along with S.I. Vijay Pal went to the Police Station, City Kaithal, where from S.I. Vijay Singh collected medical rukka. They went to the General Hospital, Kaithal, where Investigating Officer S.I. Vijay Pal recorded the statement of Sewa Singh.

10. PW- 6 Dr. Lajja Ram has conducted the post- mortem examination. He proved the post-mortem report. According to him the cause of death in this case was shock and haemorrhage, which was caused due to multiple injuries. The injuries were ante-mortem in nature and sufficient to cause death in the normal course of life.

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11. PW- 9 Sewa Singh is a material witness. He testified that on 11.10.2002 at about 2.30 PM, he, Ramphal, Satpal and Kuldeep were present in a public street. They were playing cards. His brother Ram Mehar, deceased, was also present. Initially Dalsher came on the spot. He was followed by Rajesh, Jagdish, Rohtas, Satish and Sultan. They were armed with Kulharas (axe) and swords. Accused Dalsher gave a lalkara. Thereafter, Dalsher gave a sword blow on the head of Ram Mehar. Rajesh gave a sword blow on the head of Ram Mehar. Jagdish also gave a sword blow on the head of Ram Mehar. Rohtas also gave a sword blow on the head of Ram Mehar. Satish gave a sword blow on the right ear of Ram Mehar. Sultan gave a sword blow on the back of Ram Mehar. Rohtas gave a sword blow on the right ear of Ram Mehar. Satish gave a sword blow on the left hand of the deceased. Jagdish gave a sword blow on the cheek of Ram Mehar. Ram Mehar collapsed on the spot. They remained standing on the one side due to fear. The accused escaped from the spot along with their weapons. They threatened the witnesses. The dead body was sent to the General Hospital, Kaithal. The recoveries of weapons were made on the basis of the disclosure statements made by the accused.

12. PW-10 Rampal was another material witness. He testified that on 11.2.2002 he along with Sewa Singh, Kuldeep and Satpal were playing cards in a public street. Ram Mehar son of Ajmer was also present there. The accused came on the spot. They inflicted various injuries on Ram Mehar. PW-10 Ramphal also deposed the manner, in which the appellants gave injuries to Ram Mehar. Ram Mehar was taken to the hospital.

13. PW-11 S.I. Vijay Pal was the investigating officer. According to him the recoveries were made from accused.

14. PW-12 S.I. Sultan Singh deposed that the statements of the

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witnesses were recorded under Section 161 Cr.P.C.

15. The appellants have also examined DW-1 Head Constable Ram Kumar. He produced the record of complaint No. 894 dated 25.10.2002. DW -2 Sohal Lal produced record of complaint filed title **Bimla Devi vs. Sewa Singh**.

16. DW- 3 Bhagwan Dass produced brief of **Bala Devi vs. Sewa Singh,** pending in the Court of Ms. Gurvinder Kaur, Judicial Magistrate, Kaithal.

17. DW- 4 Ramesh deposed that Dalsher is brother-in-law. He was present with him in his village on 11.10.2002.

18. DW- 5 Raj Kumar deposed that Rajesh and Satish are sons of his sister. They were present with him in his village.

19. DW- 6 Ram Diya deposed that his daughter is married to Sher Singh. Sher Singh was murdered by Ram Mehar and others of village Serdha.

20. The motive attributed to the appellants was that they there was some financial dispute of Sher Singh with Ram Mehar. However, no evidence was led to prove the same. In case there was some financial dispute, it was with Sher Singh and not with the appellants.

21. The conduct of PW- 9 and PW-10 is unusual and unnatural. The case of the prosecution is that the appellants had come, armed with swords and kulharas (axe) and attacked Ram Mehar. According to PW- 9 Sewa Singh, he along with Ramphal, Satpal and Kuldeep was present on the spot when the assailants attacked his brother Ram Mehar. Similarly, PW- 10 Ramphal has deposed that he along with Sewa Singh, Kuldeep and Satpal was playing cards in the public street. PW-9 Sewa Singh and PW-10 Ramphal could not remain mute spectators when Ram Mehar was

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attacked. They could at least raise an alarm even if they were frightened.

22. In this case since the motive has been attributed to the appellants, the same was required to be proved by the prosecution. The presence of PW-9 Sewa Singh and PW-10 Ramphal is doubtful due to their unnatural and unusual conduct.

23. Their Lordships of the Hon'ble Supreme Court in ***Shivasharanappa and others vs State of Karnataka, (2013) 5 SCC 705*** have held that the court cannot be oblivious to conduct that is too unnatural even taking into account unpredictability of human conduct and lack of uniformity in human reaction. Court must determine whether in circumstances of case, behaviour of witnesses concerned is acceptably natural allowing for variations and if behaviour is absolutely unnatural, testimony of witness may not deserve credence and acceptance. Their Lordships have held as under:

> *"19. In Gopal Singh and others v. State of Madya Pradesh, this Court did not agree with the High Court which had accepted the statement of an alleged eye witness as his conduct was unnatural and while so holding, it observed as follows: -*
>
> *We also find that the High Court has accepted the statement of Feran Singh, PW 5 as the eye witness of the incident ignoring the fact that his behaviour was unnatural as he claimed to have rushed to the village but had still not conveyed the information about the incident to his parents and others present there and had chosen to disappear for a couple of hours on the suspicious and unacceptable plea that he feared for his own safety.*
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> *Xxx xxx xxx*
>
> *22. Thus, the behaviour of witnesses or their reactions would differ from situation to situation and individual to*

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> *individual. Expectation of uniformity in the reaction of witnesses would be unrealistic but the court cannot be oblivious of the fact that even taking into account the unpredictability of human conduct and lack of uniformity in human reaction, whether in the circumstances of the case, the behaviour is acceptably natural allowing the variations. If the behaviour is absolutely unnatural, the testimony of the witness may not deserve credence and acceptance."*

24. Their Lordships of the Hon'ble Supreme Court in **Lahu Kamlakar Patil and another vs. State of Maharashtra,** (2013) 6 SCC 417 have held that though there cannot be uniformity in human reaction, it is also to be borne in mind that if conduct of witness is so unnatural and is not in accordance with acceptable human behaviour even allowing for variations, then his testimony becomes questionable and is likely to be discarded. Their Lordships have held as under:

> *"22. The attack is based on the grounds, namely, that the said witness ran away from the spot; that he did not intimate the police about the incident but, on the contrary, hid himself behind the pipes near a canal till early morning of the next day; that though he claimed to be eye witness, yet he did not come to the spot when the police arrived and was there for more than three hours; that contrary to normal human behaviour he went to Pune without informing about the incident to his wife and stayed for one day; that though the police station was hardly one furlong away yet he did not approach the police; that he chose not even to inform the police on the telephone though he arrived at home; that after he came from Pune and learnt from his wife that the police had come on 21.2.1988, he went to the police station; and that in the backdrop of such conduct, his version does not inspire confidence and deserves to be ignored in toto.*
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> *xxx xxx xxx*

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26. From the aforesaid pronouncements, it is vivid that witnesses to certain crimes may run away from the scene and may also leave the place due to fear and if there is any delay in their examination, the testimony should not be discarded. That apart, a court has to keep in mind that different witnesses react differently under different situations. Some witnesses get a shock, some become perplexed, some start wailing and some run away from the scene and yet some who have the courage and conviction come forward either to lodge an FIR or get themselves examined immediately. Thus, it differs from individuals to individuals. There cannot be uniformity in human reaction. While the said principle has to be kept in mind, it is also to be borne in mind that if the conduct of the witness is so unnatural and is not in accord with acceptable human behaviour allowing of variations, then his testimony becomes questionable and is likely to be discarded.

27. Keeping in mind the aforesaid, we shall proceed to scrutinize the evidence of PW-2. As is evincible from his deposition, on seeing the assault he got scared, ran away from the hotel and hid himself behind the pipes till early morning. He went home, changed his clothes and rushed to Pune. He did not mention about the incident to his family members. He left for Pune and the reason for the same was also not stated to his family members. He did not try to contact the police from his residence which he could have. After his arrival at Pune, he did not mention about the incident in his sister-in-law's house. After coming back from Pune, on the third day of the occurrence, his wife informed that the police had come and that Bhau, who had accompanied him, was dead. It is interesting to note that in the statement under Section 161 of the Code, he had not stated that he was hiding himself out of

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fear or he was scared of the police. In the said statement, the fact that he was informed by his wife that Bhau was dead was also not mentioned. One thing is clear from his testimony that seeing the incident, he was scared and frightened and ran away from the hotel. He was frightened and hid himself behind the pipes throughout the night and left for home the next morning. But his conduct not to inform his wife or any family member and leaving for Pune and not telling anyone there defies normal human behaviour. He has also not stated anywhere that he was so scared that even after he reached home, he did not go to the police station which was hardly at any distance from his house. There is nothing in his testimony that he was under any kind of fear or shock when he arrived at his house. It is also surprising that he had not told his family members and he went to Pune without disclosing the reason and after he arrived from Pune and on being informed by his wife that his companion Bhau had died, he went to the police station. We are not oblivious of the fact that certain witnesses in certain circumstances may be frightened and behave in a different manner and due to that, they may make themselves available to the police belatedly and their examination gets delayed. But in the case at hand, regard being had to the evidence brought on record and, especially, non-mentioning of any kind of explanation for rushing away to Pune, the said factors make the veracity of his version doubtful. His evidence cannot be treated as so trustworthy and unimpeachable to record a conviction against the appellants. The learned trial

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court as well as the High Court has made an endeavour to connect the links and inject theories like fear, behavioural pattern, tallying of injuries inflicted on the deceased with the Post Mortem report and convicted the appellants. In the absence of any kind of clinching evidence to connect the appellants with the crime, we are disposed to think that it would not be appropriate to sustain the conviction."

25. The prosecution has failed to prove the case against the appellants beyond reasonable doubt.

26. Accordingly, the appeal is allowed. The judgment of conviction and order of sentence dated 10.8.2005, rendered in Sessions case No. 6 of 2003 by the Additional Sessions Judge, Kaithal are hereby set aside. The appellants are on bail. Their bail bonds are discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

November 29 ,2018
TSM

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

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