

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

(1) **CRA-D-685-DB-2013(O&M)**

Ravinder

...Appellant

Versus

State of Haryana

...Respondent

(2) **CRA-D-790-DB-2013(O&M)**

Devinder Singh

...Appellant

Versus

State of Haryana

...Respondent

(3) **CRA-D-868-DB of 2013(O&M)**

Manoj

...Appellant

Versus

State of Haryana

...Respondent

(4) **CRA-D-988-DB of 2013(O&M)**

Dinesh

...Appellant

Versus

State of Haryana

...Respondent

Date of decision:-7th Dec.2018

**CORAM : HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr.Anmol Rattan Sidhu, Senior Advocate with
Mr.Pratham Sethi, Advocate
for the appellant in CRA-D-988-DB-2013.

Mr.Vinod Ghai, Senior Advocate with
Mr.A.S. Kang, Advocate
for the appellant in CRA-D-790-DB-2013.

Mrs.Baljit Mann, Advocate
for the appellant in CRA-D-868-DB-2013.

Mr.N.S. Shekhawat, Advocate
for the appellant in CRA-D-685-DB-2013.

Mr.Vivek Saini, Deputy Advocate General, Haryana.

Mr.S.K. Hooda, Advocate
for the complainant.

H.S. MADAAN, J.

Vide this judgment, we propose to dispose of four appeals i.e. CRA-D-685-DB-2013 filed by appellant Ravinder, - CRA-D-790-DB-2013 filed by appellant Devinder Singh, CRA-D-868-DB-2013 filed by appellant Manoj and CRA-D-988-DB-2013 filed by appellant Dinesh, all accused, who were tried and convicted by the Court of learned Additional Sessions Judge, Rohtak for the offences under Sections 323/302 read with Section 34 IPC vide impugned judgment dated 24.5.2013 and vide order of that very date, they were sentenced as follows:

Offence under Section	Sentence Awarded
Section 302 read with Section 34 IPC	Rigorous imprisonment for life and to pay a fine of Rs.10,000/- each and in default thereof, to further undergo simple imprisonment for a period of six months.
Section 323 read with Section 34 IPC	Rigorous imprisonment for a period of three months and to pay a fine of Rs.1,000/- each and in default thereof, to further undergo simple imprisonment for a period of one month.

The accused-convicts, who are appellants before this Court, pray that their appeals 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.

In nutshell, the facts of the case as per the prosecution story are that on 4.8.2005, an intimation was received at Police Station City, Rohtak sent by MHC, Police Post, PGIMS, Rohtak to the effect that Sajjan son of Sukhbir, Shakti son of Rishi Pal and Satish son of Ram Chander were admitted in PGIMS, Rohtak in injured condition. Accordingly, a police party from the said police station headed by SI Samunder Singh (hereinafter referred to as the Investigating Officer/I.O.) went to the said medical institute and after collecting MLRs of the injured and medical ruqa from the police post located in premises of that medical institute, went to the casualty ward and sought opinion of the attending doctor regarding

fitness of the injured to make statement. The doctor concerned declared injured Sajjan unfit to make statement, whereas opining that other two injured Satish and Shakti were fit to make statement. Thereafter, the Investigating Officer recorded statement of injured Satish wherein he stated that on the said day, his niece Pooja was to appear in 10+2 class examination at Vaish Higher Secondary School, Rohtak, as such, his nephew Amarjeet had accompanied Pooja for going to that examination centre. According to the complainant Satish, he along with Shakti and Sajjan had also come to Rohtak for some personal work; that at about 2:15 p.m., they went to Vaish Higher Secondary School, Rohtak to take Pooja with them where they observed that four boys were quarrelling with his nephew Amarjeet in the college ground near the school; that out of those boys, one was in police uniform.

Inter alia complainant Satish stated that he and persons accompanying him got the quarrelling boys separated and while they were about to leave the spot, those boys asked them to stop in a loud voice and held out threats to kill them. Subsequently, they came to know names of two boys as Devender and Dinesh besides their residential addresses. Regarding the third, who was in police uniform and the fourth boy, they could recognize them whenever produced before them. At about 2:30 p.m. when they reached near Aggarsain Chowk, Rohtak, those boys were came armed with

lathies. Devender raised a lalkara (exhortation) that no one should escape and all be killed, hearing that all the accused started giving lathi blows to them inasmuch as Devender gave a lathi blow on right temple of Sajjan while Dinesh gave a lathi blow to Satish hitting him on right side of forehead. The other two boys gave lathi blows to Sajjan and after receiving those blows Sajjan fell down and became unconscious. While Satish and others accompanying him tried to save Sajjan, Dinesh gave a lathi blow to Satish hitting him on his left leg, whereas the boy in police uniform gave lathi blow hitting Satish on right knee, whereas other unknown boy gave a lathi blow to Satish hitting left side of his head and he fell down. Accused gave lathi blows on Amarjeet and Shakti Singh also. Amarjeet ran away from the spot out of fear. Accused assuming Sajjan to be dead also fled from the spot along with their respective weapons. Later on complainant and Shakti Singh took Sajjan Singh to PGIMS, Rohtak in an auto rickshaw and injured were admitted there. The complainant stated that the cause of dispute was snatching of books from Amarjeet and necessary action in the matter be taken.

The Investigating Officer appended his endorsement below such statement of complainant Satish and sent ruqa to police station, on the basis of which formal FIR was registered for the offences under Sections 323, 307 read with Section 34 IPC. The

investigation in the case started. Sajjan Singh succumbed to the injuries suffered by him in the incident on 6.8.2005, as such, offence under Section 302 IPC was added. Accused Ravinder, Manoj and Devender were arrested in this case, whereas involvement of accused Dinesh was not found to be there.

After completion of investigation and other formalities, challan against accused Ravinder, Manoj and Devinder Singh was prepared and filed in the Court. After commitment proceedings, the case was assigned to Additional Sessions Judge, Rohtak, who framed formal charge for offences under Sections 302 and 323 read with Section 34 IPC against the accused, to which, they pleaded not guilty and claimed trial. The case was then adjourned for prosecution evidence.

During prosecution evidence PW Satish - complainant was examined as PW1. Thereafter, on an application under Section 319 Cr.P.C. having been moved by the prosecution, accused Dinesh was summoned as an additional accused to face trial. After procuring his presence, amended charge for the offences under Sections 302 and 323 read with Section 34 IPC was framed against all the accused, to which, they pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution examined as many as twenty three witnesses i.e. Satish Kumar – complainant as PW1, Shakti Singh injured as PW2, Amarjeet as

PW3, Dilawar Singh as PW4, Rakesh alias Ram Mehar as PW5, Jagbir Singh as PW6, Dr.SPS Bhatia as PW7, Vijay Malik, Sub Inspector as PW8, Dr.R. Sahu as PW9, Raja Ram as PW10, Constable Devender Singh as PW11, Constable Sumit Kumar as PW12, Head Constable Som Nath as PW13, MHC Ram Kumar as PW14, EHC Sukhdarshan as PW15, Dr.Nitu as PW16, ASI Rohtas Singh as PW17, Yudhvir Singh as PW18, Dr.Rohit Kapoor as PW19, ASI Ranphal as PW20, DSP Chander Bhan as PW21, Sub Inspector Samunder Singh as PW22 and Inspector Dalel Singh as PW23.

With that the prosecution evidence stood closed.

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.

In defence evidence, the accused examined Anil Kumar, Commando, CRPF, Headquarter as DW1, Baljeet Singh as DW2, Surjeet Singh as DW3, Devender son of Sajjan Singh as DW4, Vidhya Devi as DW5 and Sh.Arun Singh Nehra, SP, Sonapat as DW6.

With that the defence evidence got closed.

After hearing arguments, learned trial Court convicted

and sentenced the accused as mentioned supra, which left them aggrieved and they have filed the present appeals praying that the same 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.

We have heard learned counsel for the appellants-accused, learned State counsel besides going through the record and we are of the considered view that conviction and sentence of accused/appellants for offence under Section 302 IPC is not sustainable and rather the case comes within the purview of Section 304 Part II IPC.

While saying so, we have taken into consideration various factors. Firstly, there is no strong motive for the incident inasmuch as the genesis of the incident is stated to be snatching of book from Amarjeet by the accused. Secondly, the incident comes out to have taken place in a heat of moment without any pre-planning or pre meditation on the part of the accused. Thirdly, all the accused assailants are stated to be armed with lathies and there are no allegations of their carrying any sharp edged weapon or firearm.

The next factor, which we have taken into consideration, is that number of the blows on the person of the deceased and their location. Out of the total eight injuries observed

on the dead body of Sajjan, one injury was on right side of forehead over the right superior orbital margin i.e. injury No.1, besides a swelling 5 cm round on right parietal region i.e. injury No.3. Injuries No.4, 6, 7 and 8 were in the form of abrasions. There were four assailants as per the prosecution story. In view of the eye-witness account and the medical evidence, it comes out that there were not repeated blows especially on the vital parts, which make us to draw an inference that though the accused assailants did have the knowledge that they by the assault on Sajjan were likely to cause death but their intention to cause death or cause such bodily injury as were likely to cause death does not come out to be there. The case of the accused appellants, in our considered view falls within Part II of Section 304 IPC. The trial Court seems to have not taken into consideration that death of the deceased was caused by the accused with an intention of causing death or such bodily injury as they knew to be likely to cause death. The essential ingredients of offence of murder as provided under Section 300 IPC are not found to be there in the instant case.

Learned counsel for the appellants have raised various contentions, first being that there is delay in reporting the matter to the police, which has not been explained, therefore, a doubt is cast in the mind about truthfulness of the prosecution story. However, we are not inclined to accept this argument. Though in a criminal

case prompt reporting of matter to the police is desirable but delay by itself does not adversely affect the merits of the prosecution case unless a strong motive for false implication is there. In this case no such motive is found to be present. As per the prosecution story, the incident in this case had taken place in two parts. First part of the incident had taken place at about 2:15 p.m. on 4.8.2005, whereas the second part in which Sajjan had received injuries had taken place at about 2:30 p.m. on the said date. Injured Sajjan had been removed to hospital and was examined at 2:55 p.m. Similarly, another injured Satish was examined at that very time as deposed by PW9 Dr.R. Sahu, CMO, PGIMS, Rohtak, who had attended to both the injured while posted at PGIMS, Rohtak. He stated that patient Sajjan had come with alleged history of assault on 4.8.2005 at 2:30 p.m. near Vaish College and patient Satish had also given that very history. From the hospital, information had been sent to the police. The police had come to the hospital. The Police Officer had collected MLRs and medical ruqas from Police Post, PGIMS, Rohtak and then went to casualty Ward, after obtaining medical opinion had recorded statement of Satish injured, thereafter sending ruqa to police station at 16:40 i.e. 4:40 p.m., after two hours of the incident. No story could possibly have been fabricated within such a short time. Injured Satish, Shakti and Amarjeet having suffered injuries in the incident are stamped witnesses and their presence at

the spot cannot be doubted. Therefore, there is no unexplained delay in reporting the matter to the police.

Learned counsel for the appellants had raised the plea of alibi on the part of the appellants. However, keeping in view the facts and circumstances of the case, such plea is found to be without merit. In the FIR, which was got recorded on the basis of statement of PW1 Satish Kumar injured, the names of Devinder Singh and Dinesh are specifically mentioned, whereas regarding Ravinder, he is referred to as a police official. Ravinder does not deny his serving in the police at the relevant time, though the fourth accused Manoj is not named and has been referred to as an unidentified person whom the eye-witnesses could identify, if brought before them. He was named in the supplementary statement got recorded by the complainant. There could not be any reason for the complainant and other witnesses to falsely involve the accused in this case since it is always the earnest endeavour of a close relative to ensure that the person responsible for death of his near and dear is brought to book and is punished suitably rather than attempting to shield the actual culprit and involve some innocent person in his place without any rhyme or reason.

Learned counsel for the complainant could not convince us with regard to strong motive for the alleged false implication of accused in this case.

With regard to the defence evidence produced, DW1 is Anil Kumar, Commando, CPF, Headquarter, Karnal, who had stated that accused Ravinder was his co-commando and he was with them on duty on 4.8.2005 and whenever one of them had to leave the police station, he would have to bring it to the knowledge of other Sub Inspector or the MHC and they used to made entry in that behalf in the DDR. He further stated that they wear black dress as a Commando and even in the police station, they remain in the same dress during day time. However, during his cross-examination, he stated that MHC used to mark their presence at 8:00 or 9:00 a.m. and in the evening he used to count and then made entry at 7:00 p.m. The incident in this case had taken place after 2:00 p.m. Accused Ravinder could very easily come out of the police station during the intervening period of 8:00 or 9:00 a.m. to 7:00 p.m. and then go back to the police station within time so as to get his presence marked. Furthermore, the counsel for such appellant has raised a point that Ravinder being a Commando used to wear black uniform and could not be in *KHAKHI* uniform at the relevant time. We do not find any force in this argument. If Ravinder could come to premises of Vaish College, Rohtak during his duty hours and enter into a scuffle with Amarjeet in the college premises there, thereafter participating in the incident at Aggarsain Chowk, Rohtak, he could very well have changed to any type of

clothes and this contention does not make the prosecution story doubtful. One more thing to be taken note is that DW1 Anil Kumar in his cross-examination stated that accused Ravinder has since been dismissed from the job and that his statement was recorded during departmental inquiry. It being so, that rather goes to falsify the defence version that Ravinder was on duty on the fateful day and as such could not have participated in the incident. If Ravinder had faced departmental inquiry on account of the incident in question and was given extreme penalty of dismissal from service that goes to show that the plea so taken by him now was not accepted. The department would have been in the best position to peruse the relevant record and to find out as to whether Ravinder accused was on duty on the fateful day and had not ventured out of the police station concerned and if that was so then he would have been given a clean chit and not shown the door after holding the departmental inquiry against him. Therefore, the plea of alibi of Ravinder is without any merit.

As regards the plea of alibi raised by accused Dinesh, DW2 Baljeet Singh, Clerk, Jat Senior Secondary School, Rohtak had brought the record and stated that accused Dinesh is working as English teacher in their school since the year 2000 and on 4.8.2005, he had marked his presence firstly in the morning at 8:20 a.m. and then at 1:30 p.m. Even if the deposition of this witness is accepted,

that does not help the accused Dinesh because the incident had taken place at 2:15 p.m.(first part) and 2:30 p.m.(second part) after 1:30 p.m. He could very well participate in the occurrence after performing his official duty. It has to be taken in view that he is specifically named in the FIR. As regards, the testimony of DW3 Surjeet Singh, Wrestling Coach, CRPF Centre, Jharoda Kalan, who stated that Dinesh accused had working as Wrestler since 2000 at the rank of Head Constable in their unit and he was present at CRPF Centre on the relevant date. He does not come out to be a convincing witness. In the cross-examination, he stated that presence is marked a 4:00 p.m. when the practice again starts that means that one could go out before that time. Even otherwise, Dinesh is specifically named in the FIR. The testimony of this witness is not worthy of reliance.

Coming to the testimony of DW5 Arun Singh Nehra, S.P. Sonapat, who claimed to have conducted an inquiry with regard to Dinesh coming to the conclusion that he was not present at the spot at the relevant time, hollowness of his conclusion comes out to be there when in his cross-examination, he stated that he had not recorded statement of any of the witness as discussed in his investigation and had not obtained any affidavit from any such person. He stated that he had examined the complainant and eye-witnesses and they had told him that Dinesh accused was present at

the spot and was involved in the incident causing injuries to the deceased. His testimony and report do not inspire any confidence.

The prosecution had successfully proved on record that on 4.8.2005 in the area of Aggarsain Chowk, accused Ravinder, Manoj, Devender Singh and Dinesh in furtherance of their common intention had assaulted Sajjan causing injuries to him having knowledge that such injuries were likely to cause death, to which he succumbed later on, thereby committing offence of culpable homicide not amounting to murder coming within the purview of Section 304 Part II IPC and on the same date, time and place they had voluntarily caused simple hurt to PWs Satish, Shakti and Amarjeet committing an offence under Section 323 read with Section 34 IPC.

Therefore, appeals filed by all the accused/appellants are allowed partly inasmuch as their conviction and sentence for the offence under Section 302 read with Section 34 IPC is set aside and they are convicted for the offence under Section 304 Part II IPC and sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.50,000/- each and in default of payment of fine, they shall further undergo simple imprisonment for a period of four months each.

Whereas their conviction and sentence for the offence under Section 323 read with Section 34 IPC is kept intact.

Both the sentences shall run concurrently.

It is directed that out of the fine imposed, on recovery 95% be paid as compensation to the family of deceased Sajjan. The amount be recovered from the person and property of the convicts and if that amount is not deposited in the trial Court within one month from today, then necessary recovery warrants be sent through Collector concerned.

As per the custody certificate, accused/appellant Ravinder has undergone the total sentence of 10 years, 9 months and 28 days including remission. It also shows that he has undergone the actual sentence of 7 years, 3 months and 24 days out of which 4 years, 10 months and 19 days is after conviction.

As per the custody certificate, accused/appellant Devender Singh has undergone the total sentence of 8 years, 7 months and 12 days including remission. It also shows that he has undergone the actual sentence of 5 years, 10 months and 15 days out of which 3 years, 4 months and 26 days is after conviction.

As per the custody certificate, accused/appellant Manoj has undergone the total sentence of 10 years and 25 days including remission. It also shows that he has undergone the actual sentence of 6 years, 10 months and 11 days out of which 4 years, 7 months and 20 days is after conviction.

Appellants/accused Ravinder, Devender Singh and Manoj are shown to have already undergone imprisonment of more than four years. They be released forthwith from custody, if not required in any other case.

Whereas as per the custody certificate, appellant/accused Dinesh is shown to have undergone total sentence of two years and presently on bail. Re-arrest warrant be issued against him by Chief Judicial Magistrate, Rohtak so as to get him arrested and send him to jail to undergo the remaining sentence.

With such modification, the appeals are allowed partly.

Necessary information be sent to the quarter concerned.

(A.B.CHAUDHARI)
JUDGE

(H.S.MADAAN)
JUDGE

Dated:- 7th Dec.2018
Brij

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No