

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

Reserved on : 6.12.2018

Date of decision : 20.12.2018

1. CRA-D No. 341-DB of 2003 (O&M)

Kuldeep Appellant
versus
The State of Haryana ... Respondent

2. CRA-D No. 348-DB of 2003 (O&M)

Gulab Singh and others Appellants
versus
State of Haryana ... Respondent

3. CRR No. 1271 of 2003 (O&M)

Krishan Lal Petitioner
versus
State of Haryana and others ... Respondents

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. Vinod Ghai, Senior Advocate with
Mr. Simarndeeep S. Sandhu, Advocate, for the appellant
in CRA-D No. 341-DB of 2003,
Mr. R. S. Cheema, Senior Advocate with
Ms. Sumanjit Kaur and Mr. Satish Sharma, Advocates,
for appellant no.1 in CRA-D No. 348-DB of 2003 and
Mr. A. P. S. Deol, Senior Advocate with
Mr. Vishal Rattan Lamba, Advocate, for the appellant
nos. 2 to 7 in CRA-D No.348-DB of 2003.

Mr. B. S. Sodhi, Advocate, for the petitioner
in CRR No. 1271 of 2007.

Mr. Vishal Garg, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. This judgment will dispose of three cases bearing CRA-D No. 341-DB of 2003, CRA-D No. 348-DB of 2003 and CRR No. 1271 of 2003.

2. The present appeals and criminal revision are instituted against judgment dated 18.3.2003 and order dated 20.3.2003, rendered by Additional Sessions Judge, Kaithal, in Sessions Case No. 83 of 2001, vide

which accused Gulab Singh, Jai Parkash, Kuldeep, Rajesh Kumar, Bhoop Singh, Amarjeet Singh, Naresh Kumar and Randhir Singh were charged with and tried for the offence punishable under Sections 302, 323, 324, 506, 148, 149 IPC. All the accused were convicted and sentenced under Section 302 IPC to undergo life imprisonment and to pay fine of ₹ 10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months. They were also convicted and sentenced under Section 324 IPC to undergo rigorous imprisonment for a period of six months. They were also convicted and sentenced under Section 323 IPC to undergo rigorous imprisonment for a period of six months. They were also convicted and sentenced under Section 148 IPC to undergo rigorous imprisonment for a period of six months. They were also convicted and sentenced under Section 506 IPC to undergo rigorous imprisonment for a period of one year. All the sentences were ordered to run concurrently.

3. The case of the prosecution in a nutshell is that PW4 Krishan Lal made a statement, Ex.PK, on 30.7.2001 at about 1.00 P.M. in the Civil Hospital, Kaithal, to PW11 Assistant Sub-Inspector Mohinder Singh. According to the complaint, Krishan Lal was student of B.A.III of R.K.S.D. College, Kaithal. On 30.7.2001 at about 11.00 A.M., he along with Dayanand (deceased), Ved Pal, Surinder, Naresh, who were also students of R. K. S. D. College, Kaithal, came out of tea shop. It was in front of college. In the meantime, one Sumo vehicle stopped in a street. Kuldeep was carrying sword like weapon, Naresh carrying *gupti*, Dheera carrying *lathi*, J.P. carrying *gupti*, Bhoop Singh carrying iron rod, Rajesh carrying sword, Amarjit Singh carrying weapon like *katta* (country made pistol) and Gulab alighted from Tata Sumo and came towards them. They gave a *lalkara* that

two years prior, they (complainant party) had caused injuries to their man (accused man) and on 28.7.2001 Dayanand gave a shoulder push to their man and now they had come to take the revenge. Kuldeep gave a sword like weapon blow to the waist of Dayanad towards the left side of his waist. Jai Parkash gave a *gupti* blow on the left side of his stomach. Accused Dheera gave a *lathi* blow to him. It hit his right hand fingers. He became unconscious. Thereafter, all the accused caused injuries to others. Alarm was raised. Many people gathered at the spot. Accused ran away from the spot with their respective weapons, however, while leaving they again gave a *lalkara* that today (on that day), the complainant party was saved and in future they would kill them. Injured were brought to the hospital. Dayanand succumbed to the injuries. The injured were medically examined. On the basis of Ex.PK, FIR Ex.PK/1 was recorded. The dead-body was sent for post-mortem examination. The disclosure statements were made by the accused on the basis of which weapons of offence were recovered. Investigation was completed and challan was put up after completion of all the codal formalities.

4. The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. Accused Kuldeep has taken the plea of alibi. The accused were convicted and sentenced, as noticed above. The appeals have been filed by the appellants against the judgment and order of the learned trial Court. Petitioner Krishan Lal (complainant) filed the aforesaid criminal revision for enhancement of sentence and conviction.

5. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below, whereas learned counsel for the petitioner submitted that sentence awarded to the appellants be enhanced and the petitioner be granted suitable compensation.

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

7. PW1 Dr. R. D. Chawla has medically examined Dayanand (deceased). He noticed the following injuries on his body:-

- “1. Incised penetrating wound on the lateral aspect of the left side of the chest. 7.5 cm from the nipple. Blood oozing out of it. Margins were sharp. Wound was 1 cm x ½ cm, for which x-ray was advised.
2. Incised penetrating wound 10 cm from the midline (spinal cord), 7 cm from the scapula, 2 cm long and ½ cm wide, blood oozing out of it. Margins were sharp. X-ray chest was advised.
3. Incised penetrating wound on the left side of the chest. 4 cm from the spinal cord, just before injury no.2. Margins were sharp. Blood oozing out of it, for which x-ray chest was advised.”

Duration of injuries was within 1 to 2 hours. Weapon used was sharp edged. To know about nature of injury, x-ray was advised.

8. PW1 Dr. R. D. Chawla also examined Ved Pal son of Pritam Singh. He noticed the following injuries on his body:-

- “1. Incised wound 1.2 cm x ½ cm on the sternum, 3

cm from the Xiphoid process, margins were sharp, blood oozing out of it. Subcutaneous tissue was seen. X-ray chest was advised.

2. Incised wound 1 cm x $\frac{1}{4}$ cm on the anterior aspect of the left side of the chest at the level of 9 rib, 9.5 cm from the midline. Subcutaneous tissue was seen for which x-ray chest and x-ray abdomen was advised.
3. Incised wound on the medial anterior medial aspect of the left arm in the middle of it, muscle deep, blood oozing out of it, margins were sharp, 2 cm x $\frac{1}{2}$ cm for which x-ray both bones advised.
4. Incised wound on the postero-medial aspect of the left arm in the middle of it, 12 cm from the elbow joint, muscle deep, margins were sharp. Blood oozing out of it. X-ray both bones advised.

Probable duration of injuries was within 1-2 hours. Weapon used was sharp edged. X-ray was advised.

9. PW1 Dr. R. D. Chawla also examined Surinder son of Dharam Pal. He noticed the following injuries on his person:-

- “1. Lacerated wound in the middle of the scalp, 4 cm long scalp deep, blood oozing out of it, for which x-ray was advised.
2. Bruise 8 x 2 cm on the right elbow joint with swelling 8 x 4 cm on the right elbow joint, for which x-ray and elbow both bone right forearm advised.
3. Bruise 8 x 2 cm on the left postero-aspect of the chest, in the region of 6, 7, 8 rib. No crepaitus was felt, for which x-ray chest was advised.
4. Swelling of the left leg, just below the knee joint and bruise of 6 x 4 cm reddish in colour, for which x-ray of the knee joint including both bones was

advised.”

The probable duration of injuries was 1 to 2 hours. Weapon used was blunt in nature. The injured was kept under observation. He also proved medical ruqa, Ex.PD. He deposed that SMO Dr. S. K. Jain had sent the application, Ex.PH, to him for conducting post-mortem examination. He identified the signatures of Dr. Jain on the endorsement, Ex.PH/1. He conducted the post-mortem examination of Dayanand on 30.7.2001 at 2.15 P.M. The dead-body was identified by Chhajju Ram son of Shodi Ram and Ram Chander. He noticed the following injuries on the dead-body of Dayanand:-

- “1. Incised penetrating wound on the lateral aspect of left side of the chest over the anterior axillary line, about 7.5 cm from the nipple, on dissection, the direction of the wound was medially puncturing the corresponding parts of the lungs through and through entering the left ventricle of the heart, haemothorax and hemopericardium was present.
2. Incised penetrating wound 10 cm from the mid-line, 7 cm from the inferior angle of the scapula, 2 cm x ½ cm blood oozing out of it, on dissection, direction of the wound was on the left side of the chest and going anteriorly and slightly medially, injuring the corresponding parts of the lung.
3. Incised penetrating wound on the left side of the chest, 4 cm from the midline posteriorly just below 1 cm below the injury no.2. Blood trickling out of it injuring the underlying parts of the lung.”

10. All the injuries were ante-mortem. In his opinion the cause of death was shock and haemorrhage due to injury to heart and lung (vital organs) which was sufficient to cause death in normal course of life. In his cross-examination, he deposed that the injuries on the person of Dayanand

and Ved Pal could have been caused by sharp edged weapons. He also admitted that injury no.1 in the MLR of Dayanand was not on the back and was on the lateral side of chest. Injury nos.2 and 3 in the MLR of Dayanand were on the back of Dayanand. Injury no.1 on the dead-body of Dayanand as described in post-mortem, Ex.PJ, was deep uptill heart. However, he has not mentioned the depth in measurement like millimeters or centimeters. He has also not mentioned length and breadth of injury no.1 on the dead-body of Dayanand in the post-mortem examination report. He has also not mentioned the depth of injury no.2 in millimeter or centimeter. He also mentioned that in case injury no.1 on the person of Dayanand was caused by Sword, Ex.P5, then the Sword could enter to the extent of 15 to 20 cm inside the body of the deceased. He identified Sword, Ex.P5, in Court. He admitted that in case injury caused on the person of Surinder Singh was by rod, Ex.P11, then the raised edges would appear on the body at the place of injury. He did not find any such mark on the person of Surinder Singh. He also deposed that there was no appreciable depth in injuries on the person of Ved Pal. Injuries no.1 and 2 were subcutaneous and injuries no.3 and 4 were muscle deep. He was called for further cross-examination. He has admitted that one edge of the sword was blunt and another edge was sharp. He also admitted that if injuries were caused by sword then the possibility of ragged margins could not be ruled out.

11. PW3 SI Sadhu Ram has recorded the formal FIR, Ex.PK/1.
12. PW4 Krishan Lal is the material witness. He has lodged complaint, Ex.PK. According to him, he was student in R. K. S. D. College, Kaithal. On 30.7.2001 at about 11.00 A.M., he, Surinder, Dayanand, Ved Pal, Naresh were taking tea in the canteen of the college. They came out of

the canteen and proceeded towards Kaithal City. A student Gurnam came from the college and started talking with Dayanand. In the meantime, a white Tata-sumo came there. Accused Jai Parkash, Kuldeep, Rajesh, Naresh, Amar, Gulab, Bhoop, Dheera came out of the Sumo. They were carrying weapons like *gupti*, hockey, iron rod and *lathi*. Amar was having a country made pistol (*katta*). They gave a *lalkara* that about two years back, their man (complainant party's man) caused injuries to them (accused party) and on 28.7.2001 Dayanand gave a shoulder push to their man (accused party man) at bus stand and they had come to take revenge of that. Kuldeep and Jai Parkash attacked Dayanand with their swords. Dheera gave *lathi* blow which hit his hand. He fell down and thereafter became unconscious. He did not know who attacked whom. Accused escaped. He regained consciousness after some time. While leaving the place, assailants gave *lalkara* that they had taught a lesson of the previous incidents and next time, they would kill them. The injured were removed to hospital. In his cross-examination, he deposed that incident lasted only for 5 or 10 minutes. After gaining the senses, he enquired from Ved Pal, Surinder, Naresh and Gurnam, how they were caused injuries. He also admitted that no quarrel had taken place two years back from the date of incident in question in his presence. The incident about giving the shoulder push had not taken place in his presence.

13. PW5 Surinder corroborated the statement of PW4 Krishan Lal. He narrated the manner in which Dayanand was attacked by Kuldeep and Jai Parkash. He also gave description of the respective weapons carried by the accused. The incident to which the reference has been made by the accused two years prior to the present incident had not taken place in his

presence. He also did not enquire from anyone about the incident.

14. PW6 Ved Pal was another injured witness. He deposed that all the accused were carrying arms and inflicted injuries to Dayanand and other persons including him. He also reiterated that while fleeing, the accused had given a *lalkara* that they had taught a lesson for jostling and in future if they get an opportunity, they would kill them. He also deposed that he did not know the incident which had taken place two years back. He had also no knowledge about the alleged incident dated 28.7.2001.

15. PW7 Gurnam Singh has also deposed that he was going to take tea in the shop. A Tata-sumo came on the spot and the accused came out of it. They were carrying arms. They attacked Dayanand and the injured witnesses. He also admitted that about 15-20 students were present when the incident had taken place. He also did not have any personal knowledge of the incident, which was mentioned by the accused during the *lalkara*.

16. PW9 Inspector Puran Chand deposed that on receiving the information he reached the spot. He lifted blood stained earth from the spot and made parcel. The same was put in seal. The case property was deposited by him with the MHC. He prepared the docket and MHC was directed to send the case property to FSL, Madhuban. He added offence under Section 307 IPC on the basis of the statements of the injured witnesses.

17. PW10 SI Hem Chander has conducted the investigation along with Raj Singh, Inspector, CIA, Kaithal. Accused Kuldeep made the disclosure statement, Ex.PR. Accused Jai Parkash made the disclosure statement, Ex.PS. Accused Randhir made disclosure statement, Ex.PT. Accused Rajesh Kumar made disclosure statement, Ex.PU. Accused Amarjit made disclosure statement, Ex.PV. The weapons of offence were recovered

on the basis of disclosure statements. He also arrested accused Gulab Singh on 6.8.2001. His disclosure statement is Ex.PX. Hockey was got recovered by him from his house kept in a *deewan*.

18. PW11 SI Mohinder Singh recorded the statement of complainant Krishan Kumar, Ex.PK. He completed the inquest proceedings vide Ex.PJ/1. He had not got Krishan Kumar medically examined.

19. PW12 ASI Om Parkash deposed that on the basis of disclosure statements made by the accused, recoveries were made.

20. PW15 Raj Singh has also made statement qua disclosure statements made by the accused and recovery of Tata-sumo- HR05-B-7557.

21. The prosecution version is that the appellants armed with *gupti*, iron rod, sword like weapon, *lathi*, country made pistol (*katta*) came out from the Tata-sumo. Kuldeep and Jai Parkash gave sword and *gupti* blow to Dayanand. PW4 Krishan Lal became unconscious after receiving *lathi* blow given by accused Dheera. Surinder, Naresh, Ved Pal and other injured were the witnesses. Dayanand succumbed to his injuries. Post-mortem of the dead body of Dayanand was conducted by Dr. R. D. Chawla. The cause of death was shock and haemorrhage due to injury to heart and lung (vital organs), which was sufficient to cause death in ordinary course of nature. The motive attributed to the appellants is that one of the person of the complainant party i.e. Dayanand had given push to a friend of assailants and two years back friend of the appellants was beaten. Appellants wanted to teach a lesson and had given a *lalkara* while fleeing from the spot that if they get an opportunity, they would kill them. PW4 Krishan Lal, PW5 Surinder, PW6 Ved Pal and PW7 Gurnam had no knowledge about the incident, which had taken place two years prior to the incident in question. The motive

attributed to the appellants is very weak and trivial.

22. The case of the prosecution is that while fleeing from the spot, the appellants had exhorted that they had taught a lesson and if they get an opportunity they would kill all of them.

23. PW1 Dr. R. D. Chawla has not given the depth of the injuries in measurement like millimeter or centimeter. He has also not mentioned length and breadth of injury no.1 on the body of Dayanand in the post-mortem examination report and the depth of injury no.2 in millimeters or centimeters. The fact of the matter is that the appellants had constituted an unlawful assembly and had caused injuries to the complainant and his companions. One companion Dayanand lost his life. The case of the prosecution is that one Amarjit Singh was carrying country made pistol (*katta*). Accused Amarjit had given butt of the country made pistol. He has not opened any fire. In case the intention of the assailant party was to kill the complainant or his companion, accused Amarjit could have opened the fire. The appellants have used *gupti*, sword like weapon, *lathi* while attacking the complainant party. The injuries inflicted upon Dayanand were serious, which caused his death. PW4 Krishan Lal has not received any injury. PW5 Surinder and PW6 Ved Pal have received injuries.

24. Considering the aforesaid fact, this case would not fall under Section 302 IPC.

25. Learned counsels appearing on behalf of the appellants have vehemently argued that this case is not covered under Section 302 IPC and it would be covered under Section 304 Part-II IPC.

26. We are of the considered view that this case would fall within the ambit of Section 304 Part-I, considering the weapons of offence used by

the appellants resulting in death of victim. The appellants were armed with weapons and had constituted unlawful assembly with a common object.

27. Accordingly, the appeals are partly allowed. The conviction is converted from Section 302 IPC to Section 304, Part-I IPC. The conviction and sentence under other sections imposed by the trial Court are upheld. No case for enhancement of sentence is made out. Accordingly, the revision petition of complainant Krishan Lal is dismissed.

28. The sentence of appellant Kuldeep was suspended on 11.5.2007.

29. The sentence of appellants Gulab Singh, Rajesh Kumar, Naresh Kumar and Randhir Singh @ Dheera was suspended on 7.10.2003.

30. The sentence imposed upon Bhoop Singh and Amarjit Singh was suspended vide order dated 18.8.2003.

31. The sentence of appellant no. 2 Jai Parkash was suspended on 31.5.2007.

32. In view of our aforesaid discussion, the appellants are directed to be present in Court on 14.1.2019 to be heard on the quantum of sentence. Their bail bonds are cancelled.

(Rajiv Sharma)
Judge

20.12.2018
vs

(Harinder Singh Sidhu)
Judge

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