

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

CRA-D-358-DB-2003(O&M)
Date of decision :- 14.11.2019

Ramesh and others

....Appellants

Versus

State of Haryana

....Respondent

**CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr.R.S. Mamli, Advocate
for the appellants.

Mr.Vikrant Pamboo, Deputy Advocate General,
Haryana.

H.S. MADAAN, J.

Briefly stated, facts of the case, as per prosecution version, are that on 2.7.2000 at about 8/8:15 p.m., complainant Ishar Singh along with his nephew Ramphal son of Chhota Singh were sitting in their plot situated at village Sidhani, Tehsil Tohana, District Fatehabad, talking with each other; in the meanwhile Hansa son of complainant came from the side of their house having a steel container containing milk; he was going to irrigate the fields; when he reached in front of house of Sube Singh in the street, then accused Singha Ram armed with a *BARCHHA* (spear), his wife Sonan armed with a *GHOP*, son Ramesh armed with a *gandasa*, another son Neka empty handed came from their house from the opposite side; Sonan stated that he was the man, who had tethered

the cattle in their plot and he should be finished off on that day; hearing that Singha Ram gave a *BARCHHA* blow in the abdomen of Hansa; he again gave a *BARCHHA* blow to Hansa hitting him on the neck; when Hansa tried to run away, Neka took him on his grip, then Ramesh gave a *gandasa* blow on head of Hansa hitting him on right temporal region, left wrist and right hip; Hansa fell down, thereafter accused Sonan and Singha Ram caused injuries to him with their weapons in the abdomen, neck and shoulders; Sonan gave a *GHOP* blow on the right leg of the deceased and stated that he had died and they should go; complainant Ishar Singh and Ramphal tried to intervene and to save Hansa but all the four accused/assailants threatened to kill them also. The incident was witnessed by Sube Singh (PW8) also.

The motive for the incident was a dispute between the parties with regard to ownership and possession of a plot measuring 21 marlas situated in their village regarding which the litigation had taken place between the parties and the matter had gone to the Panchayat also. The Panchayat had decided the matter in favour of the complainant party. However, accused Singha Ram was aggrieved by that.

The eye-witnesses had seen the occurrence in the electric light of the bulb affixed on the house of Sube Singh. After causing injuries to Hansa, all the four accused went towards their house. Complainant Ishar Singh proceeded towards Police Station

Jakhal to report the matter there. He had left Sube Singh and Ramphal at the spot, to guard the dead body of Hansa. On the way at Talwara turning, the complainant came across the police party and he got his statement Ex.PJ recorded with SI Jagdish Kumar, SHO of Police Station Jakhal (hereinafter referred to as the Investigating Officer/I.O.). The Investigating Officer appended his endorsement Ex.PJ/3 below such statement and sent ruqa to the police station on the basis of which formal FIR Ex.PJ/1 was recorded. Then the police party accompanied the complainant to the spot. The Investigating Officer carried out spot inspection, preparing rough site plan of the place of incident as Ex.PR. He summoned a photographer and got the place of occurrence where the dead body was lying, photographed. The I.O. carried out inquest proceedings with regard to unnatural death of Hansa, preparing a report Ex.PB in that regard. He lifted bloodstained earth from that place. He also took into possession a shoe (*JUTI*) Ex.P21 belonging to the deceased, one Chadar Ex.P20 and a steel container Ex.P22 from the place of occurrence and all those articles were converted into sealed parcels and taken into possession vide a recovery memo Ex.PL attested by PWs Sube Singh and Ramphal. The Investigating Officer handed over the dead body of Hansa to UGC Kanha Ram and Constable Dayal Kishan for the purpose of getting the postmortem examination conducted thereon handing over application Ex.PA to them. After postmortem examination on

3.7.2000, UGC Kanha Ram handed over copy of the postmortem report and a sealed parcel containing clothes of the deceased to the Investigating Officer. The said parcel was taken into possession vide recovery memo Ex.PH.

Further, investigation of this case was carried out by Inspector Dilbag Singh (PW10). On 13.7.2000, on receiving information, the police party led by Inspector Dilbag Singh apprehended accused Singha Ram, Ramesh, Sonan and Neka from a place near bridge of Sadhanwas. The accused were interrogated. Accused Singha Ram during the course of interrogation, suffered a disclosure statement Ex.PM that he had kept concealed a *BARCHHA* in a box in a room of his residential house, about which only he knew and he could get the same recovered. Accused Sonan also made a statement Ex.PN under Section 27 of the Evidence Act that she had kept concealed a *GHOP* under the heap of manure, over which dung cakes had been placed and she could get the same recovered. Then accused Ramesh suffered a disclosure statement Ex.PO that he had kept concealed a *gandasa* under the heap of fodder stored in the *kotha* of his house and he could get the same recovered. Thereafter, in pursuance of the disclosure statements so made, all the three accused got recovered the respective weapons stated by them in their statements, which were taken into possession after converting those into sealed parcels. The site plans of the places of recoveries were prepared. On return to the police

station, the case property was deposited with the MHC and accused were put in the lock-up. During the course of investigation, the parcels containing belongings of the deceased and weapons of offence were sent to FSL, Madhuban and report therefrom was received.

After completion of investigation and other formalities, challan against the accused Ramesh, Sonan and Singha Ram was prepared and filed in the Court of Judicial Magistrate First Class, Tohana.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Tohana, 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 Session, learned Judicial Magistrate Ist Class, Tohana vide his order dated 6.11.2000 committed the case to the Court of learned Additional Sessions Judge-I, Fatehabad.

It may be mentioned here that fourth accused Neka was found to be a juvenile and proceedings against him were initiated in Juvenile Justice Board.

When the case was received in the Court of learned Additional Sessions Judge, Fatehabad, he finding that prima-facie charge for the offences under Sections 302 read with Section 34 IPC and 506 IPC was disclosed against the three 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 twelve witnesses i.e. PW1 Dr.Satish Kumar, PW2 Dr.H.L. Gupta, PW3 Constable Subhash Chander, PW4 Kanha Ram, PW5 HC Santosh Kumar, PW6 Constable Baljit Singh, PW7 Ishar Singh, PW8 Sube Singh, PW9 Sukhdev Singh, PW10 Inspector Dilbag Singh, PW11 Girish Kumar and PW12 SI Jagdish Kumar.

With that the prosecution evidence stood closed.

Statements of the 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 had been falsely involved in this case by the complainant as they had strained relations with him.

However, the accused did not lead any evidence in defence.

After hearing arguments, learned trial Court vide judgment dated 4.4.2003 convicted accused Ramesh, Singha Ram and Sonan for the offences under Sections 302 read with Section 34 and 506 Part II of IPC and sentenced them vide order dated 5.4.2003 as under:

Sr.No.	Under Section	Sentence Awarded
1.	302 read with Section 34 IPC	Rigorous imprisonment for life and to pay a fine of Rs.2,500/-each and in default of payment of fine to further undergo rigorous imprisonment for a period of six months each.
2.	506 IPC	Rigorous imprisonment for two years each.

The substantive sentences were ordered to run concurrently.

The said judgment and order left the accused/convicts aggrieved and they have filed the present appeal, notice of which was given to the State.

We have heard learned counsel for the appellants-accused- convicts and learned Deputy Advocate General for the State of Haryana besides going through the record.

At the very outset, it may be stated that appellant/accused Ramesh has since expired and his death has been got verified by the State counsel, who has informed the Court in that regard. Therefore, the appeal qua Ramesh Kumar has become infructuous and only two appellants are left before this Court.

As far as appellant/accused Singha Ram is concerned, there is enough cogent, convincing and reliable evidence available on the record to show his participation in the incident. The ocular evidence adduced by the prosecution is quite cogent and convincing

qua him and medical evidence also corroborates the ocular evidence. Furthermore Singha Ram had got the weapon used by him in the incident recovered from his possession by making a disclosure statement before the police and the recovery had been got effected by him in pursuance of the said disclosure statement. He had strong motive to commit the crime.

Whereas with regard to the co-accused Sonan, we find that her participation in the crime is not fully established. It has to be kept in mind that there is a tendency amongst people of this region to throw a net wide so as to rope in as many persons as possible, of the opposite party in an incident of this nature. Furthermore, with her husband having a *BARCHHA*, young son Ramesh with *gandasa* and another son Neka being there, it is highly unlikely that appellant/accused Sonan, aged about 50 years at that time, would have joined her co-accused in the assault. Normally in such type of fights, womenfolk are not asked to join in the assault. Furthermore, the injuries caused with a *BARCHHA* and *GHOP* are somewhat identical and it is quite possible that injury attributed to Sonan had in fact been caused by accused Singha Ram. As per the prosecution case Singha Ram and Sonan had caused injuries with their respective weapons on abdomen, neck and shoulders of Hansa while he was lying down and Sonan had given a *GHOP* blow on the right leg of the deceased. No corresponding injury on the right leg of the deceased was observed

by the doctor, who had conducted his postmortem examination. No other specific injury has been attributed to Sonan. Therefore, a doubt arises in the mind as to whether she was actually present at the spot and had joined her husband and two sons in attacking Hansa. As per law benefit of doubt is to be given to accused Sonan. She deserves to be given such benefit, which was wrongly denied to her by the trial Court.

Accordingly, the appeal with regard to appellant/accused Ramesh stands abated. Whereas it is allowed with regard to appellant/accused Sonan. The judgment of her conviction and order of sentence passed by the trial Court are set aside and she is acquitted of the charge framed against her. However, appeal filed by appellant/accused Singha Ram is dismissed.

Singha Ram appellant – accused is stated to be on bail granted to him by this Court vide order dated 9.5.2006 while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Fatehabad is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

14.11.2019
Brij
(JITENDRA CHAUHAN)
JUDGE

(H.S.MADAAN)
JUDGE

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