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

1) CRA-D-843-DB-2003
Date of decision: 29.11.2019

Nachhatar Singh ...Appellant

Versus

State of Haryana ...Respondents

2) CRA-D-844-DB-2003

Pappi ...Appellant

Versus

State of Haryana ...Respondents

3) CRA-D-845-DB-2003

Gurjant Singh ...Appellant

Versus

State of Haryana ...Respondents

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Ashwani Bhardwaj, Advocate for
Mr.Aditya Sanghi, Advocate for the appellants
in all the three appeals

Mr.Vivek Saini, DAG, Haryana

JITENDRA CHAUHAN, J.

This judgment shall dispose of all the aforementioned three appeals filed by appellants against the judgment of conviction and order of sentence dated 7.10.2003, vide which they have been sentenced to undergo imprisonment for life and to pay a fine of Rs.50,000/- each for the offence

punishable under Section 302 read with Section 34 of the Indian Penal Code (for short 'IPC') with default stipulations.

The facts necessary for adjudication of the matter as narrated in para 2 of the impugned judgment are as under:-

“About three years back (intervening night of 8/9.8.2000) PW Jagsir Singh, his brother Jagpal Singh, his father Chhota Singh and his father-in-law Mahinder Singh had gone to their fields situated within the revenue limits of village Kurangawali, District Sirsa on a tractor for irrigating the fields as their turn of water was to start at 2.07 a.m. and they had to take water from accused Gurjant Singh. PW Jagsir Singh and his father-in-law Mahinder Singh remained at the tubewell, whereas S/Shri Chhota Singh and Jagpal Singh went to the Nakka in order to take the turn of their water. When Chhota Singh and Jagpal Singh reached the Nakka, the accused Nachhatar Singh armed with a gandasa, accused Gurjant Singh armed with a kasauli and accused Pappi armed with a kassi reached there and declared that they would not allow them to cut the water from the Nakka. On hearing this, PW Jagsir Singh and his father-in-law Mahinder Singh also reached the Nakka from the tubewell. PW Jagsir Singh was having a torch with him. Accused Nachhatar Singh inflicted a gandasa blow on the head of deceased Chhota Singh and a result thereof he fell in the water-course. Accused Gurjant Singh inflicted a kasauli blow on the left ear of Jagpal Singh and a result thereof Jagpal Singh also fell in the water-course. All the three accused thereafter inflicted several blows with their respective weapons to deceased Chhota

Singh and deceased Jagpal Singh, when they had fallen in the water-course. PWs Jagsir Singh and his father-in-law Mahinder Singh raised alarm while standing at a distance of 4/5 karams and all the three accused then ran away from the spot alongwith their respective weapons. PW Jagsir Singh then left his father-in-law Mahinder Singh on the spot with the dead bodies and he himself went to their house and narrated the occurrence before S/Shri Shivraj Singh, Babu Singh and Chowkidar Karnail Singh. Thereafter, PW Jagsir Singh accompanied by S/Shri Shivraj Singh, Babu Singh and Karnail Singh Chowkidar went to the spot and then accompanied by Shivraj Singh he left for the Police Station, but the police met them at bus stand, Rori and PW Jagsir Singh made his statement Ex.PH before the police, which led to the registration of the present case.”

During investigation, accused Pappi was found innocent and by putting him in column No.2, report under Section 173 Cr.P.C. was submitted in the Court against accused Nachhatar Singh and Gurjant Singh @ Janta Singh. Both the accused were charged under Section 302 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

During the course of trial, on examination of PW Jagsir Singh, the prosecution moved an application under Section 319 Cr.P.C. to summon Pappi as an additional accused, which was allowed by learned trial Court and fresh charge under Section 302 read with Section 34 IPC against all the three accused was framed vide order dated 27.9.2001, to which they pleaded not guilty and claimed trial.

In order to substantiate its case, the prosecution examined as many as thirteen witnesses, namely, Dr. CP Dhadich as PW1, Kuldeep Singh, Clerk, as PW2, HC Raj Kumar as PW3, HC Krishan Lal as PW4, ASI Anil Kumar as PW5, Pawan Kumar Patwari as PW6, Bhushan, Photographer as PW7, Dr.SL Aggarwal as PW8, Jagsir Singh as PW9, Mahinder Singh as PW10, Constable Mani Ram as PW11, SI Chand Singh as PW12 and SI Ravi Dutt as PW13.

Thereafter, all the three accused were examined under Section 313 Cr.P.C., all the incriminating circumstances appearing in the prosecution evidence were put to them, to which they denied and claimed innocence.

After hearing learned counsel for both the parties and perusal of evidence, learned trial Court convicted and sentenced the accused-appellants for the offences and term as indicated at the outset in para 1 hereinabove.

Learned counsel for the appellants contends that the occurrence took place at 2.07 am on 9.8.2000 whereas, the matter was reported to the police at 7.35 am and the copy of the FIR reached to the Magistrate at 1.30 p.m. after a delay of 11 hours of the occurrence, which is sufficient to introduce coloured and fabricated version on the occurrence. The parties being members of the extended family, there was no motive for the appellants to commit such a heinous crime. The place of occurrence is also not established. As per the scaled site plan (Ex.PJ) prepared by PW6

Pawan Kumar, Halqa Patwari, the place of occurrence is at a distance of about 1.5 acre from the tubewell, whereas, as per the statement of PW10 Mohinder Singh, an eyewitness, it is at distance of 20 karams towards the eastern side of tubewell. Further, it is submitted that the conduct of the both the eyewitnesses i.e. PW9 Jagsir Singh and PW10 Mohinder Singh are abnormal because they being in the close relation of the deceased, kept standing as a mute spectators during the occurrence.

It is further argued that the prosecution had examined only the interested witnesses, who were closely related to the deceased and in the absence of any independent corroboration, therefore, their presence on the spot at the time of occurrence is highly doubtful.

Lastly, learned counsel submits that appellant Pappi was found innocent during investigation and was kept in the column No.2, only being the son of Nachhatar Singh, he has been falsely implicated in the present case. Neither any recovery was effected from the appellant nor any incriminating evidence could be collected against him and during investigation. He was subsequently summoned on the application moved under Section 319 Cr.P.C. by the prosecution after the statement of PW Jagsir Singh. As per the version of the PWs and the medical evidence, no injury on the person of the deceased caused by *Kassi* was found.

On the other hand, learned State counsel submits that appellant Pappi is named in the FIR and he was carrying 'Hoe' (*Kassi*) and he gave a number of injuries on the person of the deceased, which proves his

participation in the crime.

Heard.

PW1 Dr. CP Dadhich, Medical Officer, General Hospital Sirsa conducted the postmortem examination on the dead body of Chhota Singh and found seven injuries, out of which three injuries were on the vital part of the deceased, which are as under:-

1. Incised wound of 10x 2 cm on lower part of occipital area of scalp, horizontally. On dissection effusion of blood was present in subcutaneous tissue and underline cervical vertebra one and were fractured and spinal cord was lacerated.
2. Incised wound of 7x 2.5 cm on right mastoid region below and behind right ear. Effusion of blood was present in subcutaneous tissue, with fracture of underline bone.
3. Incised wound of 8x 2.5 cm on left side of face extending from 2 cm below and lateral to left side of nose to left mandibular area. On dissection effusion of blood was present in subcutaneous tissue with fracture of left mandible bone and maxillary bone.
4. Incised wound of 4 x 1.5 cm on middle of medial aspect of left upper arm. On dissection, effusion of blood was present in subcutaneous tissues.
5. Abraded contusion of 11 x 6 cm on posterior aspect of lower part of right side of chest. On dissection, effusion of blood was present in subcutaneous tissue with fracture of right 10th and 11th ribs.
6. Abraded contusion of 11 x 1.5 cm, horizontally on middle of posterior aspect of back. On dissection,

effusion of blood was present in subcutaneous tissue.

7. Abraded contusion of 5 x 2 cm on posterior aspect of left phalank of abdomen. On dissection effusion of blood was present in subcutaneous tissue.

PW1 Dr. CP Dhadich further opined that the cause of death in this case was hemorrhage and shock as a result of the injuries to vital organs and those injuries were ante-mortem in nature and sufficient to cause death in ordinary course of nature. He further opined that injuries found on the dead body are possible by 'gandasa' and 'kasauli'.

PW8 Dr.SL Aggarwal, District Malariya Officer, Sirsa, had conducted the postmortem on the dead body of Jagpal Singh and found 14 injuries, out of which, following injuries were on the vital parts of the body:-

1. An incised wound of size 4 cms x 2 cms x bone deep on the left frontol parietal region, 8 cms above and lateral to lateral lateral aspect of left eye brow. It was obliquely placed. On further dissection, sub -cutaneous infiltration of blood was present and underlying bones were cut. Blood clot was present over the underlying brain matter.

2. An incised wound of size 14 cms x 11 cms x bone cut over left side of face, extending upto left side of neck in its upper part. Left ear was cut through and through with cutting of mastoid bone. On further exploration, there was sub -cutaneous infiltration of blood present

and on further dissection, skin, facial, muscles and vessels of the upper part of the neck, maxillary bone, left side, left temporal bone were cut. The wound was obliquely placed.

The said doctor further opined that the cause of death was hemorrhage and shock as a result of injuries as described, which were ante-mortem in nature and sufficient to cause death in the ordinary course of nature.

It is to be noticed that the parties are related to each other. The accused appellants Nachhatar Singh and Gurjant Singh are uncle and cousin of the complainant, respectively. They have been specifically named in the FIR. Therefore, their identity is well established. No doubt PW 9 Jagsir Singh, complainant, being son of deceased Chhota Singh and brother of deceased Jagpal Singh as well as PW10 Mahinder Singh, being father-in-law of the complainant, are related to the victim, however, this fact alone is not sufficient to discard their evidence in entirety. They were the only eye witnesses to the occurrence and were subjected to lengthy cross examination by the defence, which they successfully withstood. They have given a vivid account of the incident and the manner in which the incident had occurred. PW9 Jagsir Singh has specifically stated that accused Nachhatar Singh inflicted 'gandasa' blow on the head of his father Chhota Singh and as a result thereof, he fell down in the watercourse. Accused Gurjant Singh inflicted a 'kasauli' blow on the left ear of his brother Jagpal

Singh and on receipt thereof he also fell in the watercourse. Thereafter also, they inflicted several blows to both the deceased with their respective weapons.

After giving our anxious consideration to the facts and circumstances of the case it emerges that the fatal injuries had been inflicted by Nachhatar Singh and Gurjant Singh. On the basis of the disclosure statement of Nachhatar Singh Ex.PR, recovery of the bloodstained 'gandasa' was effected from the 'kotha Turiwala' from the house of Nachhatar Singh, whereas on the basis of the disclosure statement of Gurjant Singh Ex.PS, recovery of bloodstained 'kasuali' was effected from the 'Turi'. The said weapons were recovered at the instance of the accused and they had special knowledge about the same. Such recovery is permissible under Section 27 of the Indian Evidence Act. The said weapons were stained with human blood and no reasonable explanation has been given by accused for such bloodstains. Appellants Nachhatar Singh and Gurjant Singh inflicted as many as seven injuries on the person of deceased Chhota Singh and fourteen injuries to deceased Jagpal Singh. PW1 Dr.CP Dhadich and PW8 Dr.SL Aggarwal, have admitted that the injuries found on the person of the deceased could be inflicted by a gandasa and kasauli and complicity of the appellants Nachhatar Singh and Gurjant Singh in inflicting the fatal injuries by 'gandasa' and 'kasauli' has been corroborated by the eyewitnesses i.e. PW10 Jagsir Singh and PW10 Mahinder Singh. Appellants Nachhatar Singh and Gurjant Singh had not received any injury which indicates the brutality

of the act and that the victims were done to death in a merciless manner.

There is no substance in the argument of learned counsel appearing on behalf of the appellants that the eyewitnesses were the interested witness and there is inconsistency in their statements. In fact they are the natural witnesses and we do not find any inconsistency in their statements. Hon'ble the Supreme Court in **Jayabalan vs. UT of Pondicherry (2010) 1 SCC 199** has held as under:-

“23. ... We are of the considered view that in cases where the Court is called upon to deal with the evidence of interested witnesses, the approach of the Court, while appreciating the evidence of such witnesses must not be pedantic. The Court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the Court must not be suspicious of such evidence. The primary endeavour of the Court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.”

In the instant case, the conduct of the complainant was natural. He might have got scared after seeing the gory incident. Hon'ble the Supreme Court in **Rammi @ Rameshwar v. State of M.P., 1999 AIR SCW 3546** held as under:-.

The post-event conduct of a witness varies from person to person. It cannot be a cast iron reaction to be followed as a model by every one witnessing such event. Different persons would react differently on seeing any serious

crime and their behaviour and conduct would, therefore, be different.

Further more, there is no delay in lodging the FIR. The occurrence took place at 2.07 am and the matter was reported to the police at 7.15 am.

In *Silak Ram vs. State of Haryana* (2007) 10 SCC 464,

Hon'ble the Supreme Court has held as under:-

“12... Delay in lodging the FIR by itself would not be sufficient to discard the prosecution version unless it is unexplained and such delay coupled with the likelihood of concoction of evidence. There is no hard-and -fast rule that delay in filing FIR in each and every case is fatal and on account of such delay the prosecution version should be discarded. The factum of delay requires the Court to scrutinise the evidence adduced with greater degree of care and caution. In this case the eyewitnesses have given a vivid description of the events. The evidence of PW11 as noted above, is cogent and consistent and the version given by this witness fits with medical evidence.”

In the present case, motive is not very material because it is a case of direct eyewitness account and the evidence on record clearly points out to the guilt of accused Nachhatar Singh and Gurjant Singh. Accordingly, the guilt of accused Nachhatar Singh and Gurjant Singh is fully established by the prosecution.

So far as accused Pappi is concerned, though he is named in the

FIR, however, no specific role has been attributed to him, whereas the

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version qua the other co-accused is very specific. Neither any recovery was effected from appellant Pappi nor any incriminating evidence could be collected against him and during investigation, he was kept in column No.2 of the Challan. He was subsequently summoned on the application moved under Section 319 Cr.P.C. by the prosecution after the statement of PW Jagsir Singh. The FIR gives detailed version of the incident alongwith the specific injuries attributed to the other accused. Whereas, the FIR does not contain the number of injuries allegedly given by appellant Pappi. Accordingly, the prosecution has failed to prove its case against accused Pappi beyond reasonable doubt and therefore, he is acquitted of the charge framed against him by giving him the benefit of doubt.

In view of the above, CRA-D-843-DB-2003 and CRA-D-845-DB-2003 filed by Nachhatar Singh and Gurjant Singh respectively are dismissed, whereas CRA-D-844-DB-2003 filed by Pappi is allowed.

[JITENDRA CHAUHAN]
JUDGE

[ARCHANA PURI]
JUDGE

29.11.2019
gsv

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No