

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

1. CRA-D-545-DB-2013

Vikas and others

... Appellants

Versus

State of Haryana

... Respondent

2. CRA-D-658-DB-2013

Anil Kumar

... Appellant

Versus

State of Haryana

... Respondent

3. CRA-D-670-DB-2013

Surinder and others

... Appellants

Versus

State of Haryana

... Respondent

**Reserved on : 28.08.2019
Date of decision : 03.09.2019**

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU***

Present: Mr. Rahul Deswal, Advocate
for the appellants in CRA-D-545-DB-2013.

Mr.Kulvir Narwal, Advocate
for the appellant in CRA-D-658-DB-2013.

Mr. APS Deol, Senior Advocate with
Mr. Vishal R Lamba, Advocate
for appellants no.1 & 3 in CRA-D-670-DB-2013.

Mr.Parveen Kaushik, Advocate
for appellant no.4 in CRA-D-670-DB-2013.

Mrs. Shubhra Singh, Addl.A.G. Haryana.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the aforesaid appeals, therefore, these are taken up together and disposed of by a common judgment.

2. These appeals have been instituted against the judgment and order dated 10.05.2013 and 15.05.2013 rendered by the Additional Sessions Judge, Jhajjar, in Sessions Case no.67 of 2009/2013 (RBT) whereby the appellants, who were charged with and tried for the offence punishable under Sections 148 and 302 read with Section 149 of the Indian Penal Code (in short 'IPC'), have been convicted thereunder. They have been sentenced as under:-

I	To undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each for the commission of offence under Section 302 read with Section 149 IPC and in default of payment of fine to undergo simple imprisonment for one year.
II	To undergo rigorous imprisonment for two years and to pay a fine of Rs.2000/- each for the commission of offence under Section 148 IPC and in default of payment of fine to undergo simple imprisonment for two months.

Both the sentences were ordered to run concurrently.

3. The case of the prosecution in a nutshell is that on 20.05.2009, a medical ruqa Ex.P14 and MLR Ex.P13 regarding hospitalization of Roshan Lal son of Mam Chand resident of Bamdoli, due to injuries suffered in quarrel was received in the police station through Ward Servant of General Hospital, Bahadurgarh. ASI Sant Ram reached General Hospital, Bahadurgarh. The Medical Officer opined that injured was unfit to make statement. Injured thereafter was referred to PGIMS, Rohtak, for medical treatment. The statement of Sumitra wife of Roshan Lal was recorded with

the allegations that she was resident of village Bamdoli. On 20.05.2009 at about 9.00/10.00 P.M., her husband Roshan Lal was going to shop nearby their house to buy biri/cigarette. She herself was standing at the gate of their house. In the meantime, Surender son of Om Parkash came out of shop. He started saying to her husband that they had not given their share in the land, therefore, he would be taught a lesson. Surender, who was concealing an iron rod in his hand, gave a blow with iron rod on the head of her husband Roshan Lal. Surender called upon his family members to come on the spot. Vikas son of Balle Ram armed with *mogri (thapi)*, Sombir (since deceased) armed with *fawda*, Balle Ram son of Mam Chand, Tarawati wife of Balle Ram, Om Parkash son of Mam Chand and Parkashi wife of Om Parkash (all were family members) reached on the spot. Vikas gave a *mogri* blow on the head of her husband Roshan Lal. Sombir gave a *fawda* blow near the left eye of her husband Roshan Lal. She, her sons Naveen and Parveen @ Monu and daughter Monika rushed towards Roshan Lal to save him. Then a car bearing no.HR-13C-9615 came on the spot. Anil grandson of Mange Ram, Ashok Kumar resident of Bahadurgarh and 2/3 boys came down from the car. They gave fist and leg blows as well as *danda* blow. They raised alarm. The assailants ran away from the spot. Her sons Parveen and Naveen took their father Roshan Lal to General Hospital, Bahadurgarh. Doctor referred Roshan Lal to PGIMS, Rohtak. FIR was registered. Cross FIR at the behest of accused party was also registered. Investigation was completed. Challan was put up after completing all the codal formalities.

4. Prosecution examined a number of witnesses. The statements of accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. One DW was examined in their defence. The appellants

were convicted and sentenced as noticed hereinabove. Hence these appeals.

5. One of the appellant Sombir died during the trial. Appellant Om Parkash died during the pendency of these appeals as per statement made by learned Senior Counsel Sh. Deol. He has placed on record death certificate of appellant Om Parkash

6. Learned counsel appearing for the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

7. Learned counsel appearing on behalf of the State has supported judgment and order dated 10.05.2013 and 15.05.2013.

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

9. PW-1 Dr.Hans Raj Ranga deposed that on 30.05.2009 patient Roshan Lal son of Mam Chand resident of Bamroli was brought to PGIMS, Rohtak. He was admitted with the complaint of seizures, headache. Patient had history of assault and was admitted in 6/IV surgery. He examined the patient Roshan Lal, who attended accident emergency with history of road side accident ten days back. He was admitted under 6/IV with diagnosis of head injury and was discharged on 25.05.2009 with well stable condition. In his cross-examination, he admitted that at page 10 of the bed head ticket, there was a note of his senior Dr. Manish Verma, whose signatures and handwriting, he identified. It was Ex.D1. According to him, the patient was admitted with alleged history of road side accident and sustained head injury. As per Neurosurgeon opinion dated 28.05.2009 Ex.D2, on examination of patient Roshan Lal, Glasgow Comma Index was 15/15 which was normal. Patient was advised to review after two weeks. As per

treatment discharge card of Roshan Lal Ex.D3 annexed with the C.R. file, earlier patient Roshan Lal was admitted in 6/IV surgery department on 21.05.2009. He was discharged on 25.05.2009. His condition was normal and stable. The patient was admitted in department with road side accident history.

10. PW-2 Dr.Manju Mehra had conducted the post-mortem examination of Roshan Lal. She had noticed following injuries on the body of deceased:-

- “1. A lacerated wound of size 9 cm deep on parietal region on left side of the skull.*
- 2. A lacerated wound of size 9 cm on parietal and frontal bone of left side, its edged draged.*
- 3. Abrasion of left side of left eye.”*

In her opinion, cause of death was due to injuries on head and its complications which were ante mortem in nature and sufficient to cause death in normal course of nature.

11. PW-11 Dr.Yogender Kumar deposed that on 20.05.2009 he was posted as Medical Officer, General Hospital, Bahadurgarh. He medico legally examined Roshan Lal son of Mam Chand who was brought by his son Monu. The injured was conscious and oriented. He was smelling of alcohol. He noticed the following injuries on the person:-

- “1. A lacerated wound size 4 inches x 2 mm. Skin deep on parietal bone of left side of his skull. Bleeding was present. Complaining of pain. Advised X-ray skull. Weapon used blunt.*
- 2. A lacerated wound size 3 inches x 3 mm on frontal and left parietal bone. Skin deep with edges raged. Bleeding present. Complaining of pain. Advised X-ray skull. Weapon used blunt.*

3. *An abrasion on left side of left eye brow size 1 inches x 2 mm. Bleeding was present. Complaining of pain. Nature of injury simple. Weapon used was blunt.”*

In his opinion, injuries no.1 and 2 were kept under observation and injury no.3 was declared simple in nature. Kind of weapon was blunt for all three injuries. Duration of all the injuries was more than 12 hours. The copy of MLR of injured Roshan was Ex.P13. On 01.09.2009, Investigating Officer had moved an application before him for seeking opinion along with the sealed parcels. The weapons were taken out from the parcels and same were produced before him for seeking opinion. He after going through the MLR opined that injuries no.1 to 3 could be caused by the weapon so recovered. Injuries no.1 and 2 could be fatal. He did not affix his seal on any of the parcels which were handed over to the Investigating Officer after giving his opinion Ex.P15. In his cross-examination, he admitted that Ex.D1, the MLR of Vikas was prepared by him at 11.20 P.M. However, Ex.D2 MLR of injured Balle Ram was prepared by him at 12.40 A.M. on 21.05.2009.

12. PW-4 Constable Labh Singh deposed that on 09.07.2009 he joined the investigation. Police interrogated accused Vikas. He made disclosure statement Ex.P2. He got recovered *mogri (thapi)*.

13. PW-5 HC Jai Chand prepared scaled site plan Ex.P6.

14. PW-6 Sumitra is an eye witness. According to her, on 20.05.2009 at about 9.00/10.00 P.M. when she was standing near the gate of her house, her husband Roshan Lal had gone to a shop for purchasing Biri/Cigarette. Surrender came out from that shop. He asked her husband that he had not given their share. He would teach him a lesson. He had concealed one iron rod in his back side. Surrender gave a blow of iron rod on the head of her husband Roshan Lal. Surrender called other persons at the spot. Balle

Ram, Tarapati, Vikas, Sombir, Om Parkash and Parkasi came at the spot. Vikas inflicted *fawda* blow on the left eye of Roshan Lal. Then she called her family members to save her husband. Naveen, Parveen and Monika came there. In the meantime, a car bearing registration no.HR-13C/9615 came on the spot. Anil, Ashok and some other persons alighted from the car. Anil and Ashok gave them beatings with *dandas*, *lathis*, and fist and kick blows. They raised alarm. Accused ran away from the spot. Her husband and other injured person were taken to Civil Hospital, Bahadurgarh. Doctor stitched the wound of her husband. On 21.05.2009 her husband was referred to PGIMS, Rohtak. In her cross-examination, she admitted that police recorded her statement Ex.P7 at her house on 25.05.2009. No visible injury was received by them from the hands of accused Anil and Ashok. They had shown their injuries to the doctors. Anil was also armed with *danda*. It took 15 minutes to reach the hospital from their village. Her husband was discharged from the hospital on 25.05.2009. He was again admitted in PGIMS, Rohtak, on 30.05.2009. At the time of discharge on 25.05.2009, her husband Roshan Lal was in position to speak. They had not caused any injury to Vikas and Balle Ram. She was not aware whether Vikas and Balle Ram were medico legally examined in the hospital or not on 20.05.2009. She admitted that Vikas got registered a case against them. She remained in the hospital till 5.00 A.M. and came back at her home on 21.05.2009. She denied the suggestion that her husband Roshan Lal received injuries again under the influence of liquor after 25.05.2009.

15. PW-7 SI Karan Singh deposed that accused Surender suffered disclosure statement Ex.P8. Accused Sombir suffered disclosure statement Ex.P9. Accused Surender got recovered iron rod Ex.P10.

16. PW-9 Naveen also deposed regarding the manner in which accused inflicted injuries on his father Roshan Lal with the weapons. His father was shifted to Civil Hospital, Bahadurgarh, in three wheeler. His father was referred to PGIMS, Rohtak on 21.05.2009. Police came to the hospital on 25.05.2009 and recorded the statement of his father. In his cross-examination, he deposed that his father fell down on the spot after receiving injuries. Anil and Ashok gave them beatings. His father was again taken to PGIMS, Rohtak, on 28.05.2009. He had denied the suggestion that his father had consumed the liquor after the incident.

17. PW-14 Ram Kumar had prepared the inquest report Ex.P20. Accused Balle Ram was arrested on 03.06.2009. Ashok, Surender and Sombir were arrested on 17.06.2009. Accused Sombir made disclosure statement Ex.P9. He got recovered the *fawda*. He also interrogated accused Surender. He made disclosure statement Ex.P8. He got recovered iron rod. Accused Vikas was arrested on 09.07.2009. One *mogri (thapi)* was recovered from him. In his cross-examination, he admitted that at the time of interrogation of accused Surender, Sombir and Ashok, no independent witness was joined by him. He also admitted that initially at the statement of Vikas, case vide FIR no.55 was registered against Roshan Lal, Sumitra, Parveen and Naveen. They were bailed out by the Court.

18. One of the accused Vikas had received as many as five injuries. Injury no.1 was received by sharp edged weapon. He was medico legally examined by PW-11 Dr.Yogender Kumar. Accused Balle Ram was also medically examined by PW-11 Dr.Yogender Kumar. Their MLRs are Ex.D1 and Ex.D2 respectively.

19. The motive attributed to the appellants is that the deceased

Roshan Lal had not given their share of land. However, there was no description of land and its measurement. It has also not come on record that oral or registered partition has taken place. According to the statement of PW-6 Sumitra, her husband had gone to shop to buy biri/cigarette. Surrender came out from the shop. He inflicted head injury on Roshan Lal with iron rod. Surrender called other persons. They came on the spot. PW-6 Sumitra called family members. Thereafter a car came. Anil and Ashok along with 2/3 boys alighted from the car. They inflicted injuries with *lathis*, *dandas*, and fist and kick blows. Her husband was admitted in General Hospital, Bahadurgarh. Thereafter, he was referred to PGIMS, Rohtak. Statement of PW-6 Sumitra was recorded on 25.05.2009. Roshan Lal was discharged on 25.05.2009. Thereafter he was again admitted in PGIMS, Rohtak. It has come in Ex.P1/ D1 Short Stay File of Pt.B.D. Sharma, Post Graduate Institute of Medical Sciences, Rohtak, that Roshan Lal was admitted due to road side accident. PW-1 Dr.Hans Raj Ranga has admitted in his cross-examination that at page 10 of the bed head ticket, there was a note of his senior Dr.Manish Verma that patient was admitted with alleged history of road side accident and sustained head injury. History of admission under 6/IV and conservative management was done. Patient was discharged on 25.05.2009. He was in stable condition. Roshan Lal died due to ante mortem injuries.

20. The incident has taken place on 20.05.2009. Accused have registered the FIR against complainant party on 21.05.2009 itself. However, in the present case, statement of PW-6 Sumitra was recorded on 25.05.2009. There was delay of five days in lodging the FIR. Roshan Lal died on 31.05.2009. It is apparent from the evidence placed on record that fight had

taken place between the appellants and complainant party on 20.05.2009 at about 9.00/10.00 P.M. Vikas had received five injuries. One of the injuries was caused by sharp edged weapon. Two injuries on Balle Ram were caused with blunt weapon. Injuries to Roshan Lal (deceased) were caused by blunt weapon. Dr.Yogender Kumar had also medically examined Vikas on 20.05.2009 and injured Balle Ram on 21.05.2009. Cross FIR was also registered on the basis of statement made by Vikas vide Ex.D6. According to contents of Ex.D6, Roshan Lal came out from his house. He stated to Surrender that if they asked for their share, they would be taught a lesson. He also reached the spot after hearing the noise. Naveen and Parveen @ Monu also came on the spot. Roshan Lal also called his wife Sumitra and daughter Monika. Naveen and Parveen were armed with weapons. Parveen handed over *farsa* to Roshan. They were armed with *lathis*. Roshan gave a blow with *farsa* on the back side of his head. Naveen and Parveen gave *lathis* blows on the left hand and shoulder. Sumitra and Monika gave slaps and fist blows to him. He cried. His father Balle Ram came on the spot. Parveen had also given a *lathi* blow to his father Balle Ram. The assailants ran away from the spot.

21. It was not pre-meditated act. The genesis of the quarrel was that Surrender had asked Roshan Lal why his family had not given the share. Thereafter the fight ensued. The complainant party as well as accused have received injuries. Though PW-6 Sumitra and PW-9 Naveen have deposed that they have received injuries, however they were not medically examined. Injuries were received by Roshan Lal by blunt weapon. Injuries were received by Vikas by sharp edged weapon. Vikas received five injuries. Balle Ram received two injuries. It has also come on record that Roshan Lal

was initially admitted in General Hospital, Bahadurgarh, on 20.05.2015. Thereafter he was referred to PGIMS, Rohtak. He was discharged after recovery. He was again admitted in PGIMS, Rohtak, with alleged history of road side accident vide Ex.P1/D1 and as per statement of PW-1 Dr.Hans Raj Ranga. Even the FIR should have been lodged by complainant immediately. More particularly when the medical ruqa was sent, PW-9 Naveen was in the hospital. The statement of PW-6 Sumitra was recorded on 25.05.2009.

22. However, the fact of the matter is that Roshan Lal succumbed to injuries which he had received on 20.05.2009. The doctor should have got the CT Scan conducted on 20/21.05.2009 since he had received injury on his head. CT Scan was conducted later which disclosed the fracture of parietal region of skull. It was a case of sudden fight without pre-meditation in the heat of passion. The injuries on the accused have not been explained by the prosecution.

23. Learned counsel appearing on behalf of the appellants have vehemently argued that the case would fall within the ambit of Section 325 IPC. However, we are of the considered opinion that this case would fall within the ambit of Section 304 Part II IPC. The case is covered under Exception 4 of Section 300 IPC. The appellants had knowledge that injuries caused on the head would result in death.

24. Accordingly, all these three appeals are partly allowed. The conviction and sentence of the appellants under Section 148 IPC is upheld. The conviction of the appellants under Section 302 read with Section 149 IPC is converted to Section 304 Part II read with Section 149 IPC. The appellants are on bail. Their bail bonds and surety bonds are cancelled. The State is directed to produce the appellants/convicts in Court on 10.09.2019

to hear them on quantum of sentence under Section 304 Part II read with
Section 149 IPC.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

September 03, 2019.
Davinder Kumar

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