

CRA-D-1051-DB-2015 (O&M)
CRA-D-1062-DB-2015 (O&M)
CRA-D-1159-DB-2015 (O&M) and
CRA-D-1398-DB-2015 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision :17.12.2019

CRA-D-1051-DB-2015 (O&M)

Jitender and others

.....Appellants

Versus

State of Haryana

..... Respondent

CRA-D-1062-DB-2015 (O&M)

Satish and another

.....Appellants

Versus

State of Haryana

..... Respondent

CRA-D-1159-DB-2015 (O&M)

Surender @ Lal Singh

.....Appellant

Versus

State of Haryana

..... Respondent

CRA-D-1398-DB-2015 (O&M)

Satbir

.....Appellant

Versus

State of Haryana

..... Respondent

CRA-D-1051-DB-2015 (O&M)
CRA-D-1062-DB-2015 (O&M)
CRA-D-1159-DB-2015 (O&M) and
CRA-D-1398-DB-2015 (O&M)

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CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. T.S.Sanga, Sr. Advocate with
Mr. Narender Singh, Advocate
for the appellants in CRA-1062-DB-2015.

Mr. R.A.Yadav, Advocate
for the appellants No. 2 to 4
in CRA-D-1051-DB-2015.

Mr. Ram Darshan Yadav, Advocate
for appellant No.1 in CRA-D-1051-DB-2015.

Mr. Bhupinder Singh Bairagi, Advocate
for the appellant in CR-D-1159-DB-2015.

Mr. G.S.Goraya, Advocate
for the appellant in CRA-D-1398-DB-2015.

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

Ms. Tanisha Peshawaria, DAG, Haryana

AJAY TEWARI, J. (Oral)

1. This common order shall dispose of abovesaid appeals as they arise from the same FIR.

2. These appeals have been filed against the judgment of conviction dated 2.7.2015 and order of sentence dated 3.7.2015 passed by the Additional Sessions Judge, Narnaul whereby the appellants had been convicted under Sections 148 and 302/149 IPC in FIR No.199 dated 26.5.2013 registered at Police Station Mohindergarh. The sentence awarded to the appellants is as under:-

Under Section	Sentence awarded
148 IPC	To undergo rigorous imprisonment for two years. each
302/149 IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each and in default of payment of fine, they shall further undergo Rigorous Imprisonment for a period of two years.

3. Brief facts brought out in the FIR are that on 25.5.2013 the complainant and his brother namely Suresh (deceased) were present at the bus stand of Village Akoda. They decided to leave for home. The deceased proceeded on motorcycle while the complainant and one Tej Pal s/o Sadhu Ram of the same village followed the deceased in a jeep belonging to the complainant. As they reached on the road which leads to Kharkhara (Akoda) they saw that Satish s/o Sampat, Jatinder s/o Attar Singh, Surender s/o Raghbir, Shish Ram s/o Mahabir were inflicting injuries with iron rods and iron pipes on the head, hands and feet of the deceased at about 50-60 yards ahead from Kharkhara on the side of Mohindergarh-Dadri road and Raju s/o Jagdish, Surender s/o Jagat Ram, Satbir s/o Bhagmal r/o Akoda had caught hold of hands and feet of the deceased and dragged him down in the prone position. Ved Pal s/o Salla Ram and one another person were sitting in Bolero vehicle and Ved Pal gave a 'lalkara' that Suresh would be killed today because he had dare to obtain information of his and present Sarpanch under RTI Act and made a complaint to ADC. When the complainant and his companion disembarked from their jeep to rescue the deceased, the assailants fled away towards Kharkhara in Bolero vehicle owned by Raju s/o Jagdish. They put the deceased in the vehicle and took him to the Doctor at

Government Hospital Mohindergarh along with Balwan s/o Murli and others. After giving some first aid to the injured/deceased, he was referred to the higher centre at Rewari but on the way near village Dahina, District Rewari he succumbed to his injuries, whereupon he was brought back to the Government Hospital at Mohindergarh where Doctor after checking declared him dead and his body was put in a mortuary.

4. The appellants were arraigned and sent up for trial and in the course of the trial, as many as 10 prosecution witnesses were examined but the second eye witness Tej Pal was given up. The accused-appellants were examined under Section 313 Cr.P.C. in the course of which they took the plea of being falsely implicated in the offence alleged and made statements that they are innocent. Six defence witnesses were examined. Thereafter at the conclusion of the trial the learned trial Court on consideration of the evidence and material on record, passed the impugned judgment and order convicting and sentencing the appellants as mentioned above. Having been convicted, they have filed present appeals.

5. We have gone through the record and considered the judgment and order under challenge and the evidence of the record apart from hearing the learned counsel for the appellants and learned Deputy Advocate General, Haryana and learned counsel for the complainant.

6. The case of the prosecution rests on the eye witness testimony of the complainant (PW-7 Birender) and the medical evidence of PW-1 Dr. Vikas Tekwani and PW-4 Kanwar Singh and therefore, it would be necessary to examine the same in more detail. The complainant

and his testimony by and large deposed on the same lines as the FIR with one or two small departures which cannot be taken to be consequential. The deceased suffered following injuries as per Post Mortem Report (PMR) :-

- i. *Lacerated wound size 3cm x 5cm x .5cm in the middle of the forehead, on dissection fracture of the frontal bone seen.*
- ii. *Lacerated wound size 5cm x 3 cm x .5 cm in the occipital region on dissection fracture of the occipital bone was seen and rupture of vital organs, blood vessels was seen and accompanied by extravasation of blood into the affected tissues and they were multiple and variable sizes fracture of the anterior cranial tissue seen subarachnoid hemorrhage was seen.*
- iii. *fracture of left upper 1/3rd of the tibia and fibula seen*
- iv. *fracture of t right leg both bones was seen in the middle 1/3rd.*
- v. *fracture of the left ankle joint seen.*
- vi. *contused wound of variable sizes underneath both the nipple were seen.*
- vii. *Multiple contused wound of variable sizes on both forearms was seen.”*

7. The Doctor who conducted the postmortem categorically deposed that the injuries could not be caused in a single road accident and we have no reason to doubt this expert testimony. Per contra, learned counsel for the appellants has relied upon the statement of PW-1 Dr. Vikash Tekwani who had deposed that all the injuries on the person of the deceased can be a result of motor vehicular accident.

sum and substance is that deposition of the solitary eye witness is not of such a sterling character that conviction can be based solely on it. He has argued that had the eye witness been present and was amongst the persons who removed the deceased to the hospital his name would have been mentioned in the MLR but MLR shows that the deceased was brought by Balwan s/o Murli (who is the real uncle of the complainant and the deceased). Developing this argument further, learned counsel for the appellants have argued that in normal course of conduct, it would have been the brother whose name would be recorded as having brought the injured/deceased but even if for some reasons Balwan's name was recorded then Balwan should step into the witness box. Moreso, since the history of the incident given in the MLR by Balwan was of assault and vehicle entrapment which as per the learned counsel means that first the deceased was assaulted with hand held weapons and then banged with the vehicle. He has further argued that as per the testimony of Birender (complainant) the injuries were as a result only of beatings and he did not mention the use of vehicle in causing those injuries. He has argued that the Doctor PW-1 who has first examined the injured/deceased had unequivocally stated that all the injuries could be a result of motor vehicular accident. Learned counsel for the appellants have pointed out to the non-examination of Tej Pal has another doubt of attack on the judgment. He has further argued that in cross-examination the complainant was confronted with the criminal past of the deceased which the complainant could not deny and he has argued that a man who had so many enemies could be killed by anyone of them. He has also pointed

out that as brought out in the cross-examination of the complainant, the deceased had very serious enmities with many people compared to which the motive which has been attributed in the present case is very trivial. He has relied upon the testimony of DW-1 Ramesh Kumar who had deposed that on the date in question even employee of the tile factory (opposite to which the incident had taken place) had witnessed the motorcycle being hit by a jeep which was trying to overtake a truck. Learned counsel for the appellants have stressed on the fact that no suggestion was given to this witness in the cross-examination that he was in any way connected or friendly with the appellants.

9. Learned counsel for the complainant and learned Deputy Advocate General have defended the judgment. They have argued that lack of enmity between the appellants and deceased (as urged by the counsel of the defence) is a double edged weapon and if there was no enmity between them there was no reason for the complainant to have falsely framed them. They have further argued that the bare statement of PW-1 Dr. Vikash Tekwani that all the injuries can be caused by vehicular accident cannot stand in the face of the testimony of PW-4 the Doctor who conducted postmortem because he had explained in great detail why the injuries on the body of the deceased could not be caused in a single vehicular accident. As per them, this clearly corroborates the case of the assault. They have argued that the testimony of DW-1 Ramesh Kumar cannot be relied upon because as per him, it was a single motor vehicular accident which had caused these injuries and this has been completely discounted by the expert medical evidence.

10. In our opinion, the appeal must succeed. True, the testimony of the complainant has not been shaken in cross-examination and he has stood fast, but it is trite to say that though it is not illegal to base a conviction on the solitary testimony of an eye witness yet it is not to be resorted to easily and the testimony of the solitary eye witness has to be viewed with much circumspection, moreso, when he is closely related to the deceased, because in such cases what may have started as a suspicion grows into conviction that the suspects had actually killed the deceased and then once the conviction is there in the mind, the testimony automatically blends with that. The contemporaneous account of the incident given by none other than the real uncle is at odds with the deposition of the complainant. Moreover, as per learned counsel for the appellants the medical evidence does not correspond with the story of the prosecution because if the injuries had been caused by blows of iron rods and iron pipes there would have to be some contusion over fractures also and there is not even one contusion reported in the list of injuries. The absence of Balwan from the list of witnesses also goes against the prosecution because then the defence could have asked him on what basis he had given the history of the incident in the manner it had happened. In the instant case, although PW-7 Birender (the brother of the deceased) has testified with regard to the eye witness account but his presence at the spot at the time of occurrence becomes doubtful as his name does not find mention in the hospital record to be the person who had shifted the victim to the hospital. This aspect clubbed with other circumstances appearing on record does not permit our judicial conscience to come to the

conclusion that there is no reasonable doubt in the case of the accused, once that is so, they have to be given the benefit for the same.

11. Consequently, the appeals are allowed and judgment of conviction dated 2.7.2015 and order of sentence dated 3.7.2015 are set aside. Any one of the appellants who are in jail, is ordered to be released forthwith, if not required in any other case and if anyone of the appellants is on bail, their bail bonds/surety bonds, if any, stand discharged.

12. Since the main cases have been decided, the pending CRM, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(VIVEK PURI)
JUDGE

17.12.2019
anuradha

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