

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-1684-DB-2015(O&M)

Reserved on : 08.03.2019

Date of decision : 14.03.2019

Amit

... Appellant

Versus

State of Haryana

... Respondent

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

Present: Mr. Vinod Ghai, Senior Advocate
with Mr. Simrandeep S. Sandhu, Advocate
for the appellant.

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

RAJIV SHARMA, J.

This appeal is directed against the judgment and order dated 02.11.2015 rendered by the learned Sessions Judge, Kaithal, in Sessions Case No.24 of 2014 whereby the appellant, who was charged with and tried for offences punishable under Sections 323, 302, 506 read with Section 34 of the Indian Penal Code (in short 'IPC'), was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months for offence under Section 302 read with Section 34 IPC. He was also convicted and sentenced to undergo rigorous imprisonment for a period of six months for offence under Section 323 read with Section 34 IPC. Both the sentences were ordered to run concurrently.

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The case of the prosecution in a nutshell is that on 15.08.2014

on receipt of a telephonic message from Police Post General Hospital Kaithal regarding admission of Jagpal son of Sadhu and Sushil son of Mahabir, residents of village Keorak in General Hospital, Kaithal due to injuries sustained in a scuffle, ASI Shiv Kumar (PW9) along with Constable Surender reached the General Hospital, Kaithal. He moved an application Ex.PJ upon which the concerned Medical Officer opined that injured Sushil was fit to make statement whereas Jagpal had been referred to PGI Chandigarh. He recorded statement of the complainant Sushil Kumar Ex.PA. The complainant narrated that he was student of B.A. Part II. On 15.08.2014, he along with his brother Karamjit (PW-12) and uncle Jagpal were returning to their house from the fields. They were on motor cycle. It was driven by him. His brother Karamjit and uncle Jagpal were pillion riders. At about 11.00 A.M. when they reached on the road and were crossing the car already parked there, in the meanwhile, Amit, Lehna, Balbir and Telu sons of Harbans, Ajay son of Telu and Hansa son of Kabaj residents of Joshi Patti, Keorak, came out of the fields of sugarcane. They raised *lalkara* that the complainant party should not be left alive and lesson must be taught to them for abducting their girl forcibly. All the assailants were armed with *gandasis* and *lathis*. They started beating the complainant and his uncle Jagpal. His brother Karamjit fled away from the spot. On hearing the noise, his father Mahabir and owner of the land Krishan came on the spot. The assailants ran away from the spot. His uncle Jagpal had succumbed to the injuries at PGI Chandigarh. Post-mortem was conducted. Accused Amit was arrested. He made a disclosure statement Ex.PN. He got recovered one wooden stick. It was taken into possession vide memo Ex.PP. Accused also got recovered motor cycle bearing No.HR-8Q-9612. It was

taken into possession vide Ex.PR. On the disclosure statement of Amit, co-accused Ajay son of Telu Ram (juvenile) was also arrested on 20.08.2014. During the course of investigation, Telu Ram, Lehna Singh, Balbir Singh sons of Harbans and Hans Raj alias Hansa son of Kabaj were found innocent. As such offence under Section 149 IPC was deleted and Section 34 IPC was inserted. The challan was put up after completing all the codal formalities.

3. The prosecution has examined a number of witnesses. Statement of accused was also recorded under Section 313 Cr.P.C. He denied the case of the prosecution. The appellant examined one witness in his defence. The appellant was convicted and sentenced, as stated hereinabove. Hence this appeal.

4. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

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

7. PW-17 Dr.Mandeep Singh conducted the post-mortem examination of Jagpal. He proved the post-mortem report Ex.PDD. He noticed ten injuries on the body. As per Ex.PDD, the cause of death was shock and hemorrhage due to head injury which was sufficient to cause death in ordinary course of nature. Jagpal was also medically examined by PW-13 Dr. Sachin Mandlay. He had noticed injuries on his body.

8. PW-1 Sushil deposed that he was student of B.A. Part II. On

15.08.2014 he along with his brother Karamjit and uncle Jagpal was coming to their home. They were coming on motor cycle at about 11.00 A.M. It was driven by him. His uncle Jagpal and his brother Karamjit were pillion riders on motor cycle. When they reached on the road, one car was already parked there. When they were passing by the car, then Amit, Lehna, Balbir, Telu, Ajay and Hansa came out from the fields of sugarcane. They raised *lalkara* that they (complainant party) should not be left alive and lesson must be taught to them for taking away the girl forcibly. They were carrying *gandasis* and *lathis* in their hands. They inflicted injuries to him and his uncle Jagpal fiercely. His brother Karamjit ran away from the spot. On hearing noise, his father reached the spot. The assailants ran away from the spot. His uncle became unconscious as he received serious injuries on his head. His uncle was admitted in the Government Hospital, Kaithal. Later on his uncle was referred to PGI Chandigarh. His uncle succumbed to the injuries at PGI Chandigarh on 17.08.2014. In his cross-examination, he deposed that the distance between their house and field was three kilometers on Balwanti-Jaswanti Road. They owned five acres of land. On 15.08.2014 he along with his brother Karamjit and uncle Jagpal left their house at about 08.00 A.M. on their motor cycle and reached their leased land at about 08.30 A.M. Amit and Hansa gave him one each *lathi* blow. He fell down on the ground. Ajay gave a *gandasi* blow to his uncle Jagpal from reverse side. Except Ajay, all accused were having *lathis* in their hands. Telu, Hansa and Amit gave *lathi* blows in the head of his uncle Jagpal on right side. Lehna gave *lathi* blow on the head of his uncle Jagpal on the left side. Balbir gave *lathi* blow and Ajay gave *gandasi* blow on both arms, chest and knee of his uncle Jagpal. In his further cross-examination he deposed that the assailants

had enmity with him due to which injuries were caused to the deceased.

9. PW-3 Labh Singh and PW-4 Raj Kumar had identified the dead body of their brother Jagpal on 17.08.2014.

10. PW-5 Mahabir Singh deposed that he along with his son Sushil, his brother Jagpal and his younger son Karamjit were going to fields on Kathwar Road, on 15.08.2014. At about 11.00 A.M. they had accomplished their works at fields. His son Sushil was driving the motor cycle. Jagpal and Karamjit were pillion riders. When they were turning towards Keorak from Kathwar Road, they saw motor cycle and car parked near the sugarcane fields. When Sushil, Jagpal and Karamjit were passing nearby the fields of sugarcane, Hansa, Balbir, Lehna, Telu, Amit and Ajay gave *lalkara* by saying that they would teach a lesson to them for taking away Sonia forcibly and they should not be left alive. They all were armed with *lathis* and *gandasis*. On hearing noise, he reached there. He saw that all these persons were causing injuries to Sushil and Jagpal with *lathis* and *gandasis*. Karamjit fled away from the spot. His brother Jagpal had lost his consciousness. Thereafter they had taken him to hospital. His brother died on 17.08.2014. In his cross-examination he deposed that the sugarcane field where the car and motor cycle were parked belonged to Mahipal. There was no previous dispute between them and accused party. However accused persons had suspicion that his son had enticed the daughter of Lehna.

11. PW-6 Pappu, PW-7 Suresh and PW-8 Ram Kumar @ Raj Kumar did not support the case of prosecution. They were declared hostile and were cross-examined by the learned Public Prosecutor.

12. PW-9 ASI Shiv Kumar had recorded the statement of PW-1 Sushil. Statement of Mahabir was recorded under Section 161 Cr.P.C. He

visited the PGI, Chandigarh on 16.08.2014 and moved application Ex.PM regarding fitness of injured Jagpal. Jagpal was declared unfit to make statement. On 17.08.2014 Jagpal had died. Accused Amit @ Joginder son of Lehna, present in Court, was interrogated on 19.08.2014. He made disclosure statement Ex.PN. On the same day, accused Amit got recovered one *danda*. It was taken into possession vide memo Ex.PP. Motor cycle was also got recovered. In his cross-examination, he deposed that no independent witness was joined at the time of recovery of *danda*.

13. PW-12 Karamjit deposed that he along with his brother Sushil and his uncle Jagpal was present at the fields situated at Kathwar Road on 15.08.2014. They were coming back from the fields on motor cycle. When they reached near on the road and were passing through a car which was parked on the road, then Amit, Lehna, Telu, Balbir, Ajay and Hansa came out from the sugarcane fields. They surrounded them. They started causing injuries to his brother Sushil and his uncle Jagpal. They were exhorting that they would teach a lesson for taking away the daughter of Lehna. While Amit, Lehna, Telu, Balbir, Ajay and Hansa were causing injuries to his brother Sushil and uncle Jagpal with *lathis* and *gandasis*, he ran away from the spot.

14. PW-15 Raj Singh Inspector deposed that accused Amit @ Joginder was arrested on 19.08.2014. Disclosure statement Ex.PN of accused Amit was recorded. Accused Amit got recovered *danda* Ex.PN and motor cycle bearing No.HR-8Q-9612.

15. PW-20 Dr.Ankur deposed that he was posted at Senior Resident Trauma Centre, PGI, Chandigarh on 17.08.2014. He had prepared death summery of Jagpal. He informed the police about his death. In his

cross-examination he deposed that CT scan of the patient was conducted in the PGI as well as outside. According to him, all six vital organs including liver, lung, spleen etc. were found congested in his post-mortem report.

16. The FSL report is Ex.PGG. No common poison/drug was detected in exhibits-1a, 1b, 1c, 1d and 1e. Jagpal was administered with *lathi* by Amit. *Lathi* was recovered on the basis of disclosure statement Ex.PN of Amit. According to the post-mortem report, Jagpal had died due to shock and hemorrhage on account of head injury. Though there is variance in the PMR and MLR but we have given precedence to the PMR. The injuries were present on both sides of body of the deceased. He died in PGI, Chandigarh, on 17.08.2014 after two days of incident. PW-1 Sushil is the eye witness. He had seen the appellant administering *lathi* blow to his uncle. He was also injured. His father PW-5 Mahabir Singh had also reached the spot along with his brother PW-12 Karamjit. They had also seen administering beatings to PW-1 Sushil and deceased Jagpal. The ocular statements of PW-1 Sushil, PW-5 Mahabir Singh and PW-12 Karamjit are duly supported by medical evidence. There is no merit in the contention of the appellant that the deceased died due to some disease. No medical evidence to this effect was produced. Though there is exaggeration qua the number of accused but it has in no manner effected the case of the prosecution. DW-1 Krishan Kumar was initially cited as prosecution witness but later on his name was given up. He along with Mahabir reached at Kathwar Keorak Road and travelled a distance of about 10/12 acres, then they saw Jagpal lying on the ground and his son was standing beside him. Statement of DW-1 Krishan Kumar does not inspire confidence. Mahabir has denied in his examination that he had received telephonic call from his

son. The theory of accident is not acceptable in view of the injuries received by the deceased. Even in the MLR, the history of assault was stated and not history of accident. The doctor has also given opinion vide Ex.PZ that the injuries received were possible with the weapon recovered from the appellant. The deceased died due to head injury.

17. Their Lordships of the Hon'ble Supreme Court in ***Balwan and others vs. State of Haryana, (2014)13 Supreme Court Cases, 560*** have held that evidence of injured witness, being a stamped witness, is accorded a special status in law. Their Lordships of the Hon'ble Supreme Court have held as under:-

“16. It is trite law that the evidence of injured witness, being a stamped witness, is accorded a special status in law. This is as a consequence of the fact that injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness would not want to let actual assailant go unpunished.”

18. The statement of relative witness can be considered if it inspires confidence. According to FSL report, blood was detected on exhibit-1 (blood stained earth) and exhibit-2 (*danda/binda*). Blood was not detected on exhibit-3 (*danda/binda*). Exhibit-4 (*kurta*) was stained with blood stains. Merely that blood was not found on exhibit-3(*danda/binda*), it will not make any dent in the prosecution case. The eye-witnesses had seen the assailants administering *danda* blow on Jagpal. The *danda* was got recovered at the instance of Amit on the basis of his disclosure statement Ex.PN. Even in the MLR, it is mentioned that injuries were caused by blunt weapon. Even doctor had opined vide Ex.PZ that these injuries were

possible from the weapon recovered from the accused.

19. There is no merit in the appeal and accordingly the appeal is dismissed.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

March 14, 2019.
Davinder Kumar

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