

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-757-DB-2016 (O&M)

Date of decision: 21.02.2019

Magha Ram and another

.....Appellants

versus

State of Haryana

.....Respondent

**CORAM: Hon'ble Mr.Justice Rajiv Sharma
Hon'ble Mr.Justice Kuldip Singh**

Present: Mr.Parminster Singh, Advocate for the appellants
Mr.Vishal Garg, Addl.A.G. Haryana

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

Magha Ram and Jai Parkash have filed this appeal against the judgment of conviction dated 19.7.2016 and order of sentence dated 20.7.2016 passed by learned Additional Sessions Judge, Sonapat, vide which, both the appellants were convicted under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life and pay a fine of Rs.one lakh each, in default of payment of fine, to further undergo Simple Imprisonment for one year.

Facts of the case are that in the year 2000, Vinod and Krishan, both now deceased, along with their uncles Ram Niwas, Ganga Sarup and Satish were booked in a case of murder of Dilbagh son of Ram Phal, brother of the present appellants/ accused, under Section 302 IPC. All of them were convicted and sentenced to imprisonment for life. Out of them, Ram Niwas and Satish were released on bail by Hon'ble High Court. About 20 days

back, Vinod and his brother Krishan were released on parole. On 9.7.2004, a telephonic information was received by the police from village Mahra that Vinod and Krishan have been injured by accused Magha Ram and his brother and are lying in their fields. On receiving information, SI Rajinder Singh accompanied by fellow police officials visited the spot, where statement of injured Vinod Kumar son of Mahavir (PW10/A) was recorded. Vinod Kumar in his statement stated that on 9.7.2004 at 5.00 p.m. he along with his brother Krishan and Sonu were present in the tubewell of his uncle Ram Niwas. His uncle Ram Niwas and his father Mahavir were sitting near the tubewell. After drinking water from the tubewell, he along with his brothers Krishan and Sonu proceeded towards fields to answer the call of nature. In the meantime, Magha Ram, Anand Sarup, Jagdish and Jai Parkash armed with deadly weapons reached there on the tractor and started chasing them. It was around 6.30 p.m. Magha Ram and Anand Sarup were armed with *Gandasis* and accused Jagdish and Jai Parkash were armed with Axes. The accused shouted that they would take revenge of murder of their brother Dilbagh. Vinod and his brother Krishan started running. All the accused intercepted them near the vacant fields and started beating them. Accused Magha Ram gave a blow on the hand of Vinod. Accused Anand Sarup gave a blow of Gandasi on the stomach of Vinod. Accused Jagdish and Jai Parkash gave Axe blows on the foot of Vinod. Magha Ram gave Gandasi blow on left hand of Krishan. Anand Sarup gave Gandasi blow on his left knee. Jai Parkash gave Axe blow on his right foot. On hearing the commotions, Ram Niwas uncle and Mahavir father of the complainant Vinod reached the spot. Sonu brother of the complainant managed to escape from the spot. Krishan succumbed to the injuries at the spot. Later on

Vinod also expired in General Hospital, Sonapat. The police prepared the inquest report of both the deceased, lifted blood stained earth from the place of occurrence and also prepared rough site plan. Photographs of the place of occurrence were also clicked.

On 11.7.2004, accused Anand Sarup and Jagdish were arrested. Accused Magha Ram and Jai Parkash present appellants became proclaimed offenders and could not be arrested. Accused Anand Sarup and Jagdish were separately tried, convicted and sentenced under Section 302 read with Section 34 IPC vide judgment of conviction dated 13.5.2006 and order of sentence dated 15.5.2006. Criminal Appeal No.D-383-DB-2006 against the said judgment has already been dismissed by this Court on 24.01.2018.

On 30.4.2013 i.e. little less than 9 years after the crime, accused Magha Ram and Jai Parkash were also arrested. They were interrogated and both of them have disclosed that they have thrown Gandasi and Axe used in the crime in the fields.

Accused were charge sheeted under Section 302 IPC, to which, they pleaded not guilty. In support of its case, the prosecution examined as many as 15 witnesses. When examined under Section 313 Cr.P.C., accused pleaded false implication. They stated that some unknown persons have committed the murder of Vinod and Krishan. They also stated that their brother was murdered by both Krishan and Ram Niwas etc. who were convicted in that case and due to old enmity they are deposing against them. Accused did not lead any evidence in defence.

After hearing the prosecution, learned defence counsel and going through the evidence, learned Additional Sessions Judge, Sonapat convicted and sentenced the accused as aforesaid.

We have heard learned counsel for the appellant, learned State counsel and have also carefully gone through the file.

First of all, it is necessary to reproduce the injuries suffered by the deceased Vinod and Krishan to see the extent of injuries. As per statement of Dr.Rajiv Sethi (PW7), when he conducted postmortem on the dead body of Vinod on 10.7.2004, he found the following 18 injuries:-

- 1. An incised wound in front of chest, lower part on both side of midline, obliquely placed, 20 cm x 5.5 cm x muscle deep. Clotted blood present.*
- 2. An incised wound, 8 cm x 1 cm x muscle deep, present in front of chest, 6 cm below injury no.1. Clotted blood present.*
- 3. An incised wound, 6 cm x 1 cm in size, on left side of lower part of chest in anterior axillary line.*
- 4. An incised wound in front of right upper arm, 15 cm x 10 cm in size. Only tag of skin intact on back side. Underlying bones, muscles, tendons and vessels cut. Clotted blood present.*
- 5. An incised wound 3 cm x 2 cm present in front of right upper arm in middle, just above injury no.4.*
- 6. An incised wound 2.5 cm x 2cm x muscle deep present on lateral side of upper 1/3rd of right upper arm.*
- 7. An incised wound, on lateral side of right upper arm, in middle 1/3rd, size 5 cmx2cm, muscle deep. Clotted blood present.*
- 8. An incised wound, on lower 1/3rd of right upper arm, lateral side, 3 cm x 2 cm x muscle deep. Clotted blood present.*

9. *An incised wound 4 cm x 1.5 cm, on antero lateral side of left upper arm in upper 1/3rd. Clotted blood present.*
10. *An incised wound, 4 cm x 2cm x muscle deep, present in middle 1/3rd of left upper arm antero lateral side. Diffuse swelling present.*
11. *An incised wound 2.5 cm x 1 cm x muscle deep, just below injury no.10.*
12. *Diffuse swelling underneath above three injuries with fracture of underlying bones.*
13. *An incised wound 1 cm x 0.5 cm in front of left elbow. Clotted blood present.*
14. *An incised wound on the back of left lower arm, 10 cm x 3.5 cm x bone deep. Clotted blood present. Underlying bones fractured.*
15. *Multiple incised wounds of different sizes and shapes present in front of middle and lower 1/3rd of right leg. Sizes varying from 7 cm x 2 cm to 3.5 cm x 1cm. Clotted blood present. Underlying bones fractured.*
16. *An incised wound present in front of left foot 6 cm x 4 cm bone deep. Underlying bones fractured. Clotted blood present.*
17. *An incised wound 4 cm x 1 cm present in front of left ankle joint.*
18. *Multiple incised wounds, 5 in no, present in front of middle and lower 1/3rd of left leg, with diffuse swelling and underlying fractures of bones. Size 4 cm x 2cm to 3cm x 1cm.*

Clotted blood present.

The cause of death was hammeroage and shock as a result cumulative effect of all the injuries which were ante mortem in nature and sufficient to cause death in ordinary course of nature. Dr.Rajiv Sethi further stated that on 10.7.2004, when he conducted postmortem on the dead body of Krishan, he found the following 12 injuries:-

- 1. One incised wound of size 8 cm x 3cm, transversly placed, present on the ant aspect of lower left thigh, bone deep. Underlying muscles & ligaments ruptured, bone (femur) fractured. Clotted blood present.*
- 2. One incised wound of size 2 cm x 1cm, present on ant. Aspect of left leg, muscle deep.*
- 3. One incised wound of size 2 cm present on left foot on the ant. Aspect, skin deep.*
- 4. One incised wound of size 11 cm x 3 cm present on the ant. aspect of right thigh in lower thigh, muscles and lig. Injured. Bone fractured.*
- 5. One incised wound of size 8 cm x 2cm present just below injury no.4, transversly placed, muscle deep. Clotted blood present.*
- 6. One incised wound of size 13 cm x 5 cm present in the poplikal part of right lower leg. Underlying bones fractured, underlying muscle ruptured.*
- 7. One incised wound of size 18 cm x 5cm present on the posterior region of the right lower thigh, bone fractured and exposed. Clotted blood present, vessels ruptured.*

8. *One incised wound of size 8 cm x 3 cm present on the posterior region of the right thigh in the middle of right thigh, muscle deep, transversely placed.*
9. *One incised wound of size 2 cm x 1cm present on the right thigh in the upper posterior thigh.*
10. *One incised wound of size 10 cm x 5cm, present on the left forearm, transversely placed, bone of left forearm fractured. Clotted blood present. Underlying vessels and muscles ruptured.*
11. *Diffuse swelling present with multiple abrasions present on the left upper arm anterolateral aspect. On exploration fracture in left humerus found.*
12. *One incised wound of size 3 cm x 1 cm present on the right palm, obliquely placed, muscle deep. Clotted blood present.*

The nature of injuries shows that these are brutal in nature. The assailants ensured that the victims do not survive. Krishan succumbed to the injuries at the spot, whereas Vinod succumbed to the injuries in the hospital on the next day. Luckily, before Vinod could die, his statement was recorded by the police, in which, he gave the details of the injuries. The said statement of Vinod is admissible in evidence under Section 32 of the Indian Evidence Act, 1872 as it relates to the cause of his death. He has specifically attributed the role to the present appellants in addition to the two other accused, who have already been convicted and sentenced. In addition to this, there is a statement of eye witness Sonu. Sonu appeared as PW5 and supported the prosecution case. He stated that Magha Ram, Jai Parkash, Anand Sarup and Jagdish reached in their tractor from their fields. They

were armed with weapons. Magha Ram and Anand Sarup were having Gandasi and Jagdish and Jai Parkash were having Axes. At that time, he was accompanied by his deceased brothers Krishan and Vinod. Accused shouted to take revenge of murder of their brother Dilbagh and thereafter started running after them. Ultimately, accused encircled them and forced them to move towards their fields. According to Sonu, he managed to escape and hid himself in the fields of Ram Kumar in which crop of Jawar had been sown. From there he saw accused Magha Ram and Anand Sarup inflicted injuries with their Gandasis on the person of his brother Vinod. Accused Jagdish and Jai Parkash inflicted injuries with their Axe on the legs of his brothers. Anand Sarup gave blows of Gandis on the knees of his brother Krishan. All the four accused gave repeated blows with their weapons on the hands and legs of Krishan and Vinod. Thereafter, he along with his father and uncle Ram Niwas went to village and informed the police. After arrival of the police, they again went to the fields and found that his brother Krishan had succumbed to the injuries, whereas Vinod was crying of the injuries.

Mahavir father of the deceased appeared as PW6 and stated that when Vinod, Krishan and Sonu went towards the tubewell, they were surrounded by the accused Magha Ram, Anand Sarup and Jai Parkash and their fourth brother. He also supported statement of Sonu regarding inflicting of injuries by the accused. He stated that he witnessed the occurrence. He also identified the accused present in Court.

Rajinder Singh then SHO appeared as PW10 stated that on receiving the information regarding the occurrence, he visited the spot, where Vinod Kumar injured was lying. He recorded the statement of Vinod

Kumar (Ex.PW10/A). He called photographer and got the photographs of the place of occurrence clicked. He proved the statement of Vinod Kumar deceased.

Plea of the accused is that they were not involved in the occurrence and that deceased have murdered their brother along with his father and uncle and that they have been falsely involved.

We are of the view that both the deceased were released on parole few days back. Dilbagh, brother of the present appellants and their co-accused was murdered by the deceased and others, for which they were convicted under Section 302 IPC. Therefore, the accused had the motive to commit crime. Further, in addition to the dying declaration of Vinod made to the police about the crime, there is eye witness account by Sonu and his father Mahavir. There is no major discrepancy in the statements of the witnesses. The manner of commission of crime and arrival of the police goes to show that the report was promptly made. There is no delay in recording the FIR. The version of the prosecution has been proved beyond all reasonable doubts. There is no illegality or infirmity in the judgment of conviction and order of sentence passed by learned Additional Sessions Judge, Sonapat.

Consequently, we do not find any merit in the present appeal. Same is accordingly dismissed.

(Rajiv Sharma)
Judge

(Kuldip Singh)
Judge

21.02.2019

gk

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes