

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

**CRA-D-357-DB of 2003 (O&M)
Date of Decision: 13.11.2019**

Pawan Kumar and another

.....Appellants

VS.

State of Haryana

.....Respondent

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mr. Justice H.S. Madaan.**

Present : Mr. Y.S. Rathore, Advocate and
Ms. Sudha Singh, Advocate,

Mr. Vikrant Pamboo, DAG Haryana.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment dated 15.03.2003 and order dated 18.03.2003 passed by Additional Sessions Judge, (Ad-hoc), Karnal, vide which the accused/appellants were convicted under Section 302 read with Section 34 IPC and sentenced to undergo RI for life and pay fine of Rs.1000/- each with default stipulation.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph Nos. 2 to 4 are reproduced as under:-

“2. The allegations of the prosecution as made-out from the F.I.R. recorded on the statement of complainant Mukesh Kumar resident of Karnal dated 27.10.2001 are as follows: On 26.10.01 complainant and his brother Tirath Kumar at 9.00 p.m. were present in their house. At that time accused Pawan

Kumar came there and demanded a liquor pouch and when his brother refused to do so the accused went-away by giving threat to him i.e. Tirath Kumar. After some time accused Pawan Kumar, his brother Kewal accused armed with 'LATHI' and 'DANDA' came to the complainant's house alongwith accused Lal Bahadur armed with iron bar ('SARIA') and immediately accused Pawan Kumar gave a 'LATHI' blow which hit Tirath Kumar on the back-side of his head, accused Lal Bahadur gave blow with his iron bar which also hit Tirath Kumar on his nose. Besides, accused Kewal Kumar gave a 'LATHI' blow which hit on the right fingers of Tirath Kumar. So complainant's said brother fell-down. Then complainant after coming-out in the street made noise which attracted accused Vijay brother of accused Pawan Kumar who too gave fist blows and kick blows to complainant's brother. On hearing complainant's noise his other brother Tara Chand reached the spot and then both the brothers rescued their brother Tirath Kumar from the clutches of the accused with great difficulty. Then the accused also gave injuries to said Tara Chand. While leaving the accused uttered that on that day the complainant party escaped and in future whenever they get a chance Tirath Kumar will be killed. Thereafter complainant and his brother Tara Chand took Tirath Kumar to General Hospital Karnal for treatment. The said accused persons have illegally caused injuries to his brother Tirath Kumar and on account of those injuries he (Tirath Kumar) on 27.10.01 breathed his last in G.H. Karnal.

3. The said statement of the complainant was recorded by Vijay Kumar Sub-Inspector and he sent the same to the Police Station where formal F.I.R. on that basis was recorded. Thereafter he prepared inquest report regarding the dead-body of Tirath Kumar deceased. He then got post-mortem on the dead-body conducted from the Medical Officer of that hospital.

4. The investigation was then handed over to Mohar Singh Inspector of Police Station City Karnal. Both the Inspector and the S.I. reached the spot where the former prepared the rough

site-plan of the occurrence and recorded the statements of witnesses. All the accused were arrested who were produced before him i.e. Inspector by one Joginder Singh alongwith their respective weapons of offence. The Inspector took into possession the 'LATHI', 'DANDA' and iron rod from accused Pawan, Kewal and Lal Bahadur respectively after preparing their sketches vide recovery memo. On completion of investigation police challan against all the accused was prepared and put-up in Court for their trial.”

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court. As the offence under Section 302 IPC is triable by Court of Session, the case was committed to the said Court.

Charge under Section 302 read with Section 34 IPC was framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1, Dr. Deepender Singh Josan, PW-2 Dr. Amar Bajaj, PW-3 Lakhwant Singh Constable, PW-4 Randhir Singh MMHC, PW-5 Azad Singh Sub-Inspector, PW-6 Mukesh Kumar, PW-7 Dr. Archana Soni, PW-8 Tara Chand, PW-9 Ashok Kumar Constable, PW-10 Vijay Kumar Sub Inspector, PW-11 Mohar Singh Inspector and PW-12 Prem Kumar Draughtsman and closed the evidence.

The statements of the accused under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication. It was further stated by

the accused that no such incident had taken place. The complainant, his brother Tara Chand and deceased Tirath Kumar were living in the same house and they were in the habit of selling illicit liquor in that area. Tirath Kumar was an alcoholic. He had turned very weak and his brothers were fed up with him. On 26.10.2001 at about 8.00 pm when accused, Pawan Kumar had gone to the house of the complainant to take a pouch of liquor, the deceased demanded liquor from his brothers but they hit the deceased against the wall resulting into injuries and ultimate death of Tirath Kumar. The accused never caused any injury to the deceased. It has been further stated that due to refusal to give him (Pawan Kumar) a pouch of liquor despite his offering Rs.15/-, a exchange of hot words took place among him, Mukesh Kumar and Tara Chand. The latter chased him and at that time Tara Chand was having a knife in his hand and on the way Mukesh Kumar caught hold of him and Tara Chand gave him knife blow on his face on the left side and Mukesh Kumar inflicted fist blows on his left eye. Mukesh Kumar also inflicted fist blows on his neck and his noise attracted his brother Kewal Kumar and when he intervened Tara Chand inflicted one knife blow on the fore-arm of Kewal Kumar and this incident was witnessed by their mother Kanta Devi wife of Babu Ram who also reached at the spot and the accused snatched the knife from Tara Chand and went to inform the Police but the Police being under the influence of complainant falsely implicated them.

In defence the accused examined DW-1 Dr. Amar Bajaj,

Medical Officer of General Hospital, Karnal.

After appraisal of evidence, the learned trial court vide impugned judgment and order, convicted the accused/appellants under Section 302 read with Section 34 IPC and sentenced them to undergo RI for life and to pay fine of Rs.1000/- each with default stipulation.

Thus, the present appeal has been filed by accused/appellant Pawan Kumar and Kewal Kumar.

It is contended by the learned counsel for the accused/appellants that the occurrence took place on 26.10.2001 at about 9.00 p.m., whereas the FIR was recorded after a gap of 17 hours on 27.10.2001 at 2.15 p.m. There is no reasonable explanation for delay in lodging the FIR. It is further contended that as per the testimony of DW-1 Dr. Amar Bajaj, Medical Officer, both the accused/appellants had suffered injuries on their person but there is no explanation of the injuries in the prosecution evidence, therefore, it casts a serious doubt about the genesis of the prosecution case.

It is further contended by the learned counsel for the accused/appellants that there are material contradictions in the statements of the witnesses. He refers to the testimony of PW-8 Tara Chand wherein it is stated that the occurrence took place inside the house of the deceased. To the same effect is the ruqa Ex.PE whereas Mukesh PW-6 has stated in the Court that Tirath Kumar (deceased) was outside the house and he was calling him which suggests that the occurrence took place outside the house. It is further contended that

neither the owner of the house nor any independent witness has been examined by the prosecution.

It is further contended that the recovery of weapons has not been made on the basis of disclosure statements. The recovery was made from the possession of the accused, who were allegedly produced by one Joginder Singh before the I.O., but for the reasons best known to the prosecution, said Joginder Singh has not been examined as prosecution witness.

It is further contended that accused/appellant Kewal Kumar is liable to be acquitted as there was no common intention to cause death of Tirath Kumar.

On the other hand, on behalf of the State, it is contended that there is a direct eye witness account coming from the mouth of Mukesh Kumar complainant, who appeared as PW-6 and duly supported the case of prosecution, which further stands strengthened and corroborated by the sworn testimony of PW-8 Tara Chand. The medical evidence is in sync with the oral testimony. It is further contended that there is no fallacy in the impugned judgment and order and accused have been rightly convicted and sentenced by the trial Court.

We have heard the learned counsel for the parties and have gone through the case file.

As regards the first contention raised by the learned counsel for the appellants, the learned trial Court in paragraph No.20

of the judgment has very extensively dealt with the point of delay which is reproduced as under:-

“A perusal of MLR of Tirath Kumar (since deceased) copy Ex.PB reveals that said Tirath Kumar in injured condition was taken to Civil Hospital Karnal at 10.00 p.m, on the same day i.e. 26.10.2001 and 'Rapat Roznamcha' and copy of Daily Diary Report of the police Station City Karnal Ex.D-1 proved by PW-10 Vjay Kumar S.I shows that this entry was made on receipt of telephone from Police Post G.H. Karnal regarding admission of injured Tirath Kumar. This means that ruka regarding admission of the said injured stood already received in the police post of the said hospital in the matter. As per the further testimony of this S.I on 27.10.2001 he received a ruka from G.H. Karnal in the matter and so Kanwar Singh H.C of Police Post Sadar Bazar Karnal went to the said hospital and on return he told that Tirath Kumar was declared unfit by the Medical Officer at 10.40 a.m., on that day and after some time a telephonic message was received at Police Post to the effect that Tirath Kumar has died in the hospital and on receipt of that information he (Vijay Kumar S.I.) along with other police officials went to Mortuary of G.H. Karnal where the dead body of Tirath Kumar was lying and he then recorded the statement Ex.PE of Mukesh Kumar who

was present there. As per the further deposition of this witness he sent Ex.PE with his endorsement Ex.PE-3 which bears the time 1.50 p.m. to the police Station where formal FIR was registered there by SI Azad Singh. The FIR bears the time 2.15 p.m. The said statement of complainant Mukesh was thus recorded at 1:50 pm., which contains the version that the occurrence took place at about 9.00 pm. PW-8 Tara Chand has deposed that the matter was not reported at the Police Post Sadar Bazar Karnal immediately after the occurrence because condition of the deceased was very serious and therefore they had taken him to G.H. Karnal although Police falls in the way to G.H. Karnal. In the aforementioned circumstances undoubtedly there is delay in lodging the FIR of about 17 hours, but it has been held by the Apex Court in their authority Raghbir Singh Vs. State of Haryana 2000 CrI.L.R 2463 that rushing of the victim to the hospital to save his life instead of first going to the Police Station is a satisfactory explanation for the delay in making the complaint i.e. filing the FIR as has been done in this case in view of the above testimony of PW-8 Tara Chand.”

The learned counsel has failed to refer to any contradiction or defects in the facts, thus, this Court finds no reason to differ with the findings given by the trial Court and, therefore, the argument of

learned counsel for the appellants is hereby repelled.

So far as the contention raised by the learned counsel for the appellants regarding suffering of injuries by the accused are concerned, the testimony of DW-1 Dr. Amar Bajaj shows that the injuries suffered by the accused were simple and superficial in nature and that too on the non-vital parts of the body. The doctor has further testified that the injuries could be self suffered and self inflicted. Thus, the arguments of the learned counsel for the appellants pails into insignificance in view of the medical evidence.

With regard to the contradictions in the statements of PW-6 Mukesh Kumar, this Court has scanned the file and finds that if the statement of the witness is read as a whole, it suggests that the occurrence had taken place inside the house and what the witness had meant by saying “go inside” is that he wanted to send the deceased inside the bedroom as at that time he might be standing in verandah or Gallery. As regards the recovery of weapon, PW-11 Mohar Singh Inspector has stated that on 27.10.2001 while he along with police officials was searching for the accused and were near 'Nungir Mandir', one Joginder produced accused Pawan Kumar, Kewal Krishan, Lal Bahadur and Vijay before him armed with lathi Ex.P-2, Danda Ex.P-3, and iron rod Ex.P-1. He prepared the sketches of the said arms Ex.PJ, PK and PH and they were taken into possession vide recovery memo Ex.PJ/1, PK/1 and PH/1 respectively. The same were attested by PWs Suresh Kumar and Surjit. There is no mandate of law that recovery

should always be effected in pursuance to disclosure statement. The provisions of Section 27 of the Evidence Act, are in the nature of exception to Sections 24 to 26 of the Act. Sections 24-26 of the Act make confessional statements before Police Officer inadmissible in evidence whereas, Section 27 of the Act opens the door partly and mandates that if any recovery is effected in pursuance to confessional statement of the accused, the fact to that extent is relevant.

Now adverting to the last submission raised by the learned counsel for the accused-appellants that accused/appellant, Kewal Kumar is alleged to have inflicted a lathi blow on the right finger of Tirath Kumar which is suggestive of the fact that neither he had intention nor knowledge to cause death of Tirath Kumar. A perusal of the case file shows that it is not the case of the prosecution that accused/appellants had ever shared common intention to cause death of Tirath Kumar. Even there is no evidence on record suggesting sharing of common intention by the accused. In the absence of the common intention, the Court is left with the Hobson's choice of determining the individual role played by both the accused. Accused/appellant Pawan Kumar is shown to have caused lathi blow on the back side of head of Tirath Kumar which as per Dr. Archana Soni, PW-7, is the cause of death. As regards accused Kewal Kumar, he is shown to have inflicted a lathi blow on the right finger of Tirath Kumar which cannot be said to be the cause of death and there is no other material against him.

Therefore, accused/appellant Kewal Kumar deserves to be acquitted of

the charges framed against him.

In view of the above, appeal filed by accused/appellant Pawan Kumar is dismissed and his conviction and sentence are upheld. He is stated to be on bail. His bail and bail bonds stand cancelled. He be got arrested through concerned CJM to serve the remaining part of the sentence.

The appeal filed by accused/appellant Kewal Kumar is accepted and the impugned judgment and order are set aside to that extent. He is acquitted of the charges framed against him.

(JITENDRA CHAUHAN)
JUDGE

(H.S.MADAAN)
JUDGE

13.11.2019
SN

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