

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

CRA-D No. 44-DB of 2017 (O&M)

Reserved on : 21.5.2019

Date of decision : 24.5.2019

Ramesh

.... Appellant

versus

State of Haryana

... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. Vinod Ghai, Senior Advocate with
Ms. Kanika Ahuja, Advocate, for the appellant.

Ms. Shubhra Singh, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. The present appeal has been instituted against judgment dated 22.12.2016 and order dated 3.1.2017, rendered by learned Additional Sessions Judge, Jhajjar, in Sessions Case No. 249 of 2013. Appellant Ramesh was charged with and tried for the offence under Section 302 IPC. He was convicted and sentenced thereunder to undergo life imprisonment and to pay fine of ₹ 1,00,000/-, to be paid to the legal heirs of deceased Dharampal in equal shares.

2. The case of the prosecution in a nutshell is that on 23.9.2012, a quarrel took place between Dharampal (brother of the complainant) and Ramesh. Ramesh allegedly gave fist and kick blows on the chest and stomach of Dharampal (deceased). Complainant Nafe Singh got him treated

from a private hospital at Kosli. He was brought back to the house. He felt severe pain in the intervening night of 27/28.9.2012 at about 12.00 midnight. He was taken to H-Way Hospital, Rewari. He succumbed to the injuries at 2.00 P.M. on 28.9.2012. FIR was registered. The dead-body was sent for post-mortem examination. Investigation was completed and challan was put up after completion of all the codal formalities.

3. The prosecution examined as many as 14 witnesses in support of the case. The statement of the accused was also recorded under Section 313 Cr.P.C. He denied the case of the prosecution. He has cited two witnesses in his defence. He was convicted and sentenced, as noticed above. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellant vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

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

6. PW1 Nafe Singh testified that on 23.9.2012 an altercation took place between his brother Dharampal and accused Ramesh. Accused Ramesh had inflicted fist and kick blows on the chest and stomach region of Dharampal at that time. He got his brother Dharampal treated from a private hospital at Kosli (Rewari). On the intervening night of 27/28.9.2012, condition of Dharampal deteriorated. He was taken to H-way Hospital, Rewari. He succumbed to the injuries on 28.9.2012 at about 2.00 P.M. He

lodged the complaint vide Ex.PA. In his cross-examination, he admitted that no altercation between his deceased brother Dharampal and accused Ramesh had taken place in his presence. He had not informed the police in his complaint, Ex.PA, the source from which he got the information of said altercation. He had also not mentioned in his complaint, Ex.PA, that from which private hospital at Kosli, he got his brother treated on 23.9.2012. He also admitted that Ex.PA was also silent about the time and place of the occurrence dated 23.9.2012. He further deposed that Dharampal was taken to hospital in the intervening night of 27/28 in a private marshal jeep of one Jasbir. He also deposed that his brother Dharampal remained in village Dhania from 23.9.2012 to 27.9.2012. He was not got medico-legally examined. He moved the complaint, Ex.PA, before the police on 28.9.2012 at about 12.00 O'clock. He admitted in his cross-examination that when he was defeated for the second time, the winning candidate was the wife of one Dharambir uncle of accused Ramesh.

7. PW4 Umed Singh deposed that on 23.9.2012 he was going to get fuel for his tractor. When he reached near the Hanuman Dharam Kanta, he saw that accused Ramesh was quarreling with his uncle Dharampal @ Ompal. His uncle Dharampal was thrown on the ground by accused Ramesh and he was giving kicks and fist blows to him. He raised hue and cry. His maternal uncle Ram Niwas, who was working in his fields, also reached at the spot. They tried to intervene to rescue his uncle Dharampal. Accused Ramesh fled away from the spot. They shifted Dharampal @ Ompal to a private hospital at Kosli, namely, Sidharath Hospital. When his condition started getting deteriorating, he was shifted to H-way Hospital, Rewari. His

uncle Dharampal died on 28.9.2012. In his cross-examination, he stated that in his statement to the police he stated that accused Ramesh was giving kicks and fist blows to his uncle Dharampal @ Ompal (confronted with Ex.D1 where kicks and fist blows were not mentioned). He had stated before the police that he was going to take fuel in his tractor (confronted with Ex.D2, where the fact of plying the tractor was not mentioned). No report or FIR was got registered by him with the police on 23.9.2012 regarding the occurrence seen by him. He also admitted that nearest Government Hospital was at village Jamalpur, which was at a distance of 5 kilometers. He also admitted that accused Ramesh was serving in Electricity Department.

8. PW7 Ram Niwas deposed that he was agriculturist. His sister Chandermukhi was married with Nafe Singh resident of village Dhanian. On 23.9.2012, Dharampal @ Om Pal (since deceased) had gone for doing labour work at about 8.00 A.M. He had gone to his fields. On 23.9.2012 at about 8.00 A.M., he heard a noise of quarrel. He along with Umed Singh reached at Saw Machine of Sudhir. They saw that accused Ramesh was giving beatings to Dharampal @ Ompal. They separated both accused Ramesh and Dharampal (deceased). At that time, accused Ramesh had consumed liquor. In his cross-examination, he admitted that 2-3 criminal cases have been registered against him regarding the land dispute at Dadri.

9. PW8 Virender Singh had prepared the site plan, Ex.PW8/A.

10. PW11 HC Sandeep Kumar deposed that he was posted as Constable at Police Station, Salhawas on 19.11.2012. MHC Sukhpal handed over to him one sealed jar along with sample seal and one envelope vide RC

No. 448 with the direction to deposit in Pathology Department, PGIMS, Rohtak. He deposited the same. He handed over the receipt in this regard to MHC Sukhpal.

11. PW13 Inspector Sombir Singh deposed that he received a telephonic message from control room, Jhajjar that Dharampal son of Chiman Lal was admitted in Highway Hospital. He prepared the inquest report, PW13/B. The post-mortem was got conducted. Accused Ramesh made disclosure statement, Ex.PW6/A, on the basis of which he got demarcated the place of occurrence. In his cross-examination, he admitted that statement, Ex.D1, under Section 161 Cr.P.C. of Umed Singh did not bear date of recording the statement and signature of any investigating officer. He also admitted that Ex.PA is silent about the time and place of alleged occurrence. It has come in his investigation that deceased Dharampal remained at his residential house at village Dhaniya from 23.9.2012 to 28.9.2012.

12. PW10 Dr. Joginder Singh had conducted the post-mortem examination along with Dr. Minakshi Tyagi, Dr. Sandeep Yadav and Dr. Joginder Tanwar. He after going through the Chemical Examiner's report, Ex.PW9/A, opined that no unnatural cause of death was detected. According to PW10 the exact duration between death and injuries could not be ascertained.

13. PW13 Dr. Moksh Arora had prepared Ultra Sound report, Ex.PW13/A. In his cross-examination, he admitted that as per report of the Ultra-Sound, there was no sign of injury.

14. PW14 Dr. Minakshi deposed that she had noticed the following injuries on the dead-body of Dharampal @ Ompal:-

- “(1) Multiple small bruise 2 x 1 cm brown in colour present over lower 1/3rd of sternum.
- (2) One sutured present over right 6th ICS suggestive ICTD opening.
- (3) Two sutured present over right neck suggestive CVP opening.”

15. As per FSL Report, PW9/A, no poison or alcohol was found in the samples sent for examination.

16. DW1 JE Rajbir Singh deposed that as per office record, Ramesh Kumar was posted as Shift Attendant. He was on duty on 23.9.2012 at 66 KV Sub-Station, HVPN, Borakalan, District Gurgaon, from 16.00 to 24.00 hours.

17. DW2 Sudhir is the owner of Saw Mill at Village Dhaniya. He knew Dharampal (deceased). He deposed that no quarrel had ever taken place either on 23.9.2012 or any other date between Dharampal and accused Ramesh near Saw Mill.

18. According to the prosecution, accused Ramesh has administered beatings to Dharampal @ Ompal on 23.9.2012. Dharampal @ Ompal died on 28.9.2012. FIR was registered after five days as per the statement of PW1 Nafe Singh. In the statement of PW1 Nafe Singh, Ex.PA, the time and place of the occurrence was not mentioned. As per the statement of PW1 Nafe Singh, the deceased was first admitted in a private hospital at Kosli. He was later on discharged. However, no admission or discharge slip was produced. He has also not disclosed the source from

which he got the information of altercation between deceased Dharampal @ Ompal and accused Ramesh. The complainant has not filed any complaint before any authority regarding the said incident. PW1 in his cross-examination has admitted that when he was defeated for the second time, the winning candidate was the wife of one Dharambir uncle of accused Ramesh.

19. PW4 Umed Singh and PW7 Ram Niwas are the eye-witnesses. PW4 Umed Singh in his statement deposed that he had seen accused Ramesh administering beatings to Dharampal @ Ompal. His statement was recorded vide Ex.D1. However, the fact of the matter is that in Ex.D1, he had not mentioned the name of PW7 Ram Niwas. PW4 Umed Singh in his statement before the Court deposed that on 23.9.2012 he had gone to get the fuel filled in his tractor. But no such fact has been mentioned in his statement made before the police.

20. According to PW7 Ram Niwas, he had seen accused Ramesh administering beatings to Dharampal @ Ompal. PW7 Ram Niwas is closely related to the complainant. His sister Chandermukhi is married to PW1 complainant Nafe Singh. He is not resident of the village of the complainant. According to PW7 Ram Niwas, the scuffle between accused Ramesh and deceased Dharampal @ Ompal continued upto 15-20 minutes. It is surprised that he had not tried to save the deceased from the accused. Two criminal cases were pending against him regarding the land dispute at Dadri.

21. According to DW1 JE Rajbir Singh, accused Ramesh Kumar Shift Attendant was on duty on 23.9.2012 at 66 KV Sub-Station, HVPN,

Bhorakalan, District Gurgaon, from 16.00 to 24.00 hours. DW2 Sudhir, who is the owner of Saw Mill at Village Dhaniya, has specifically stated that no quarrel had taken place on 23.9.2012 between Dharampal and accused Ramesh in the Saw Mill.

22. PW14 Dr. Minakshi has opined vide Ex.PW14/A that the injuries mentioned in PMR (bilateral 2, 3 and 4 Ribs fracture with lower 1/3rd sternum) did not correlate with X-ray of same patient done in H-way Hospital on 28.9.2012. She further opined that most probably the injuries were laterogenic in nature (no cause of injury) caused during CPR (Cardio Pulmonary Resuscitation) when patient was going into cardio arrest or during transportation. During post-mortem the underlined tissues were intact. PW14 Dr. Minakshi was put a specific question by the Court that what was the cause of death. She replied that no definite cause of death was found. It has come in the testimony of PW10 Dr. Joginder Singh that it was not a case of unnatural death. This opinion has been given after going through the post-mortem report and Histopathology report, PW10/C as well as Chemical Examiner Report, Ex.PW9/A.

23. The prosecution has not explained the delay in lodging the FIR. In case deceased Dharampal @ Ompal had received the injuries on 23.9.2012, PW1 Nafe Singh (complainant) should have get medico-legally examined the injured. PW1 Nafe Singh in his cross-examination has admitted that no altercation between his deceased brother Dharampal and accused Ramesh had taken place in his presence. In his complaint, Ex.PA, he has not mentioned about the time and place of the occurrence dated 23.9.2012. He has not mentioned in the complaint, Ex.PA, that the incident was seen by PW4 Umed Singh and PW7 Ram Niwas. PW7 Ram Niwas is

closely related to the complainant and is a resident of the other village. It has also come in the evidence of PW13 Inspector Sombir Singh that deceased Dharampal remained at his residential house at village Dhaniya from 23.9.2012 to 28.9.2012. The statements of witnesses PW4 Umed Singh and PW7 Ram Niwas do not inspire confidence. It was not a case of unnatural death.

24. The prosecution has failed to prove the case against the appellant beyond reasonable doubt. Accordingly, the appeal is allowed. The appellant is acquitted of the charges framed against him. He be released forthwith.

(Rajiv Sharma)
Judge

24.5.2019
vs

(Harinder Singh Sidhu)
Judge

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