

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

(1) CRA-D-766-DB-2003 (O&M)

Mohinder and another

...Appellant(s)

Versus

State of Haryana

...Respondent(s)

(2) CRA-D-698-DBA-2004 (O&M)

State of Haryana

...Appellant(s)

Versus

Ram Kishan and others

...Respondent(s)

Date of decision: 25.11.2019

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. Nand Lal Sammi, Advocate for the appellant(s)
in CRA-D-766-DB-2003 and
for respondents in CRA-D-698-DBA-2004.

Mr. Vikrant Pamboo, DAG, Haryana for the appellant(s)
in CRA-D-698-DBA-2004 and for the respondent in
CRA-D-766-DB-2003.

H.S. MADAAN, J.

Briefly stated facts of the case as per prosecution version are
that a theft had taken place in house of deceased Sheo Ram at Village
Bilaspur. Accused Mohinder had named Sanjeev Kumar, son in-law of
deceased as a thief, while, the deceased himself suspected that the theft
had been committed by Mohinder. A Panchayat was convened, wherein, it
was found that Sanjeev Kumar was innocent. A fine of Rs.4000/- was

imposed by the panchayat upon Mohinder and he was asked to apologize to Sanjeev Kumar. Mohinder accordingly though apologized before Sanjeev Kumar but did not pay the amount of fine, rather, it was waived. For that reason, Mohinder started nurturing a grudge against deceased Sheo Ram and his family members for the humiliation meted out to him. Mohinder and Raj Kumar started extending threats to the deceased. It may be mentioned here that the deceased and accused are related *inter se* inasmuch as Sheo Ram deceased and Ram Kishan accused were brothers, Mohinder, Raj Kumar and Ram Dhan accused are sons of Ram Kishan, Sanjeev Kumar accused is son of Mohinder, Usha Rani accused is wife of Raj Kumar and Smt. Bachni Devi accused is wife of Mohinder; complainant Nirmal Kumar is son of Sheo Ram; Lal Chand PW10 is the son of Sumer Chand, another brother of Sheo Ram and Ram Kishan.

On 11.06.2000 at about 9.00 pm, while Nirmal Kumar was just closing his shop when Raj Kumar and Ram Dhan accused came there on a motorcycle. Raj Kumar was holding a gandasi. They threatened to kill Nirmal Kumar on that very day and then sped away. It so happened in the presence of Nawab Singh PW5 and Nayab Singh PW. Those two persons did not allow Nirmal Kumar to go home. After about 7-8 minutes, Nirmal Kumar heard noises coming from side of his house, which was located nearby. Nirmal Kumar accompanied by Nawab Singh and Nayab Singh rushed to his house and found that Raj Kumar, Mohinder, Ram Dhan having gandasi's, Ram Kishan having a lathi, Sanjeev Kumar armed with a ballam, Usha Rani having an axe and

Bachni Devi holding a gandasi, to be there. Raj Kumar gave a gandasi blow on head of Sheo Ram, Mohinder Kumar also gave a gandasi blow on his head, whereas, Ram Dhan gave a gandasi blow on chest of Sheo Ram. After receiving these injuries, Sheo Ram fell down on the ground. The remaining accused dragged him and caused injuries to him with their respective weapons. Lal Chand and his wife Taro Devi intervened, then, Ram Kishan gave four lathi blows on left shoulder and left leg of Lal Chand. Usha Rani gave an axe blow on the upper arm of Taro Devi. Bachni Devi gave gandasi blow on her head, whereas, Usha Rani gave another axe blow on her other arm. When the injured raised alarm, many villagers rushed to the spot and rescued them from the clutches of the accused. Then, all the accused left the spot with their respective weapons. All the three injured were taken to Civil Hospital, Bilaspur in a car, however, no doctor was available there. The nurses at the hospital declared Sheo Ram to be brought dead. Lal Chand and Taro Devi were taken to Civil Hospital, Jagadhri. Nirmal Kumar went to police station Bilaspur to report regarding the incident. He got his statement Ex.PQ recorded with Karan Singh, SHO (for short 'the IO'). Then, Karan Singh went to Civil Hospital, Bilaspur, where dead body of Sheo Ram was lying in a car. He got the dead body photographed by summoning a photographer to that place. He carried out inquest proceedings with regard to unnatural death of Sheo Ram, preparing report Ex.PD in that regard. He deputed HC Dal Singh and Constable Gurcharan Singh to get the post mortem examination conducted on the dead body of Sheo Ram

from Civil Hospital, Jagadhri, handing over written request Ex.PE to them. Then, the police party went to the spot. The IO carried out spot inspection. He prepared rough site plan of the place of occurrence. He lifted blood stained earth from the place of incident and took the same into possession, preparing a sealed parcel thereof. Then, the police party left for Civil Hospital, Jagadhri, where the IO moved an application Ex.PL seeking opinion of attending doctor regarding the fitness of Taro Devi to make statement. The doctor gave his opinion in affirmative. Thereafter, the IO recorded her statement. During the course of investigation, Mohinder and Usha Rani were arrested on 12.06.2000. Usha Rani had produced an axe before the IO, which was taken into possession, vide a recovery memo after preparing its sketch. On 14.06.2000, accused Mohinder was interrogated, during the course of which, he suffered a disclosure statement that he had kept concealed a gandasi under heap of residue of sugarcane near the crusher of Amarjit Singh and he could get the same recovered. Thereafter, in pursuance of his disclosure statement, he led the police party to the disclosed place and got a gandasi recovered, which was taken into possession after preparing its sketch and then convert into a sealed parcel.

On 15.06.2000, accused Ram Kishan, Ram Dhan, Raj Kumar and Sanjeev were arrested and interrogated. On 17.06.2000, during the course of his interrogation, accused Ram Dhan made a disclosure statement under Section 27 of the Indian Evidence Act that he had kept concealed a gandasi under heap of residue of sugarcane at the crusher of

one Tanvir Singh, resident of Kapuri Kalan and then in pursuance of that statement, got the gandasi recovered, whereas, Sanjeev Kumar had made a disclosure statement and got a ballam recovered from his possession. Raj Kumar making a similar statement had got a gandasi recovered from his possession. Ram Kishan making a statement under Section 27 of the Evidence Act had got recovered a lathi from his possession. All those weapons were seized by the police. Bachni Devi accused was arrested in this case on 21.06.2000. On 22.06.2000, Taro Devi produced her blood stained shirt which she was wearing at the time of occurrence, which was taken into possession.

On completion of investigation and other formalities, the challan against accused Ram Kishan, Mohinder, Raj Kumar, Ram Dhan, Sanjeev Kumar, Usha Rani and Bachni Devi was prepared and filed in the Court of Illaqa Magistrate at Jagadhri, who supplied copies of documents relied upon in the challan to the accused free of cost as provided under Section 207 Cr.P.C and then finding that the offence under Section 302 IPC was exclusively triable by the Court of Session, vide detailed commitment order, committed the case to the Court of Sessions Judge, Jagadhri, from where, it was assigned to learned Addl. Sessions Judge, Jagadhri, who finding a prima facie case, charge-sheeted the accused for the offences under Sections 302, 323, 324, 506, 148 read with Section 149 IPC, to which, they pleaded not guilty and claimed trial.

During the course of prosecution evidence, it examined inasmuch as 12 witnesses i.e. PW1 HC Yameen, PW2 HC Jai Singh, PW3

Dr. Sandeep Gupta, PW4 Subhash Gupta-Photographer, PW5 Nawab Singh, PW6 Dr. Ramesh Kumar, PW7 Mulakh Raj, Draughtsman, SP Office, Yamuna Nagar, PW8 HC Dal Singh, PW9 Nirmal Kumar, PW10 Lal Chand, PW11 SI Raj Pal and PW12 Karan Singh.

With that the evidence of the prosecution got concluded.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the same, contending that they are innocent and have been falsely involved in this case.

In defence, accused placed on file copy of jamabandi Ex.DD to show that Ram Kishan and his brothers jointly owned some land within the revenue estate of village Ajijpur.

After hearing arguments, learned Addl. Sessions Judge, Jagadhri, vide his judgment dated 03.09.2003, concluded that charge against accused Mohinder and Raj Kumar was proved beyond shadow of reasonable doubt and they were convicted under Section 302 read with Section 34 IPC, whereas, the remaining accused were acquitted holding that charge against them was not proved and benefit of doubt was granted to them. Mohinder and Raj Kumar were sentenced to undergo rigorous imprisonment for life.

Both the accused/convicts felt aggrieved by the judgment of their conviction and sentence and had filed an appeal i.e CRA-D-766-DB-2003 before this Court, notice of which was given to the State, which has put in appearance through counsel. The State was also aggrieved by

judgment of acquittal granted to remaining accused and had filed an application under Section 378(3) Cr.P.C., for grant of leave to appeal. Leave was accordingly granted; appeal was admitted; bailable warrants of arrest were ordered to be issued against such accused, who had been acquitted and they have put in appearance through counsel.

We have heard learned counsel for the parties besides going through the record.

As far as conviction of accused Mohinder and Raj Kumar is concerned, we do not find anything wrong with the same. The injuries attributed to both of them are on the vital part of the body i.e. on head, caused with gandasis. The medical evidence on the record corroborates the ocular evidence. Raj Kumar had suffered injuries in the incident but all of those were simple in nature, however, that established his participation in the incident. On 14.06.2000, when Mohinder was arrested in this case, during the course of his interrogation, he had disclosed that he had concealed a gandasi under heap of residue of sugarcane (khoi) near the crusher of Amarjit Singh, which he could get recovered. Thereafter, in pursuance of his disclosure statement, he had led the police party to the disclosed place and got recovered a gandasi Ex.P2, rough sketch thereof was prepared and it was converted into a sealed parcel and taken into police possession.

On 15.06.2000, accused Ram Kishan, Ram Dhan, Raj Kumar and Sanjeev Kumar were arrested and they were interrogated separately. They had suffered disclosure statements and got weapons recovered from

their possession. Raj Kumar had made a statement Ex.PX that he had kept concealed a gandasi in the field, which he could get recovered and then in pursuance of his disclosure statement, gandasi Ex.P1 was recovered. A rough sketch thereof was prepared, which was converted into a sealed parcel and taken into police possession. During the course of investigation, weapons have been sent to FSL, which also corroborates the prosecution version. The type of weapons used in the incident and the targeted place being head of the victim, clearly shows the intention of the accused to cause his death. Therefore, the trial Court was justified in convicting and sentencing accused Mohinder and Raj Kumar for murder of deceased Sheo Ram. However, the remaining accused were rightly acquitted by the trial Court, since, the prosecution had been unsuccessful in proving its charge against the remaining accused beyond a shadow of reasonable doubt. The trial Court has specifically noted that though the prosecution witnesses stated that the deceased was dragged by the remaining four accused and caused injuries with their respective weapons but then, no other injury on the body of deceased except the injuries attributed to Mohinder, Ram Kishan and Ram Dhan were found, which makes participation of remaining accused doubtful. One more reason for which participation of remaining accused was suspected was that the injuries on the person of Lal Chand were attributed to Ram Kishan accused but Ram Kishan happened to be aged about 85 years, too feeble and weak and it was difficult to believe that he could give lathi blow with such force, which would have left injury mark, more particularly, when he

could not even stand properly.

Similarly injuries on the person of Taro Devi are attributed to Usha Rani and Bachni Devi with sharp edged weapons, however, out of three injuries observed on the person of Taro Devi, only one was with sharp edged weapon and other two were with blunt weapons. None of the PWs had stated that such accused had used blunt side of the weapon while inflicting injuries on the person of Taro Devi and in the FIR, injuries on the person of Taro Devi are not attributed to any accused specifically and there is simple mention that accused had also caused injuries to Taro Devi. In that way, medical evidence and ocular version are at variance. The trial Court has rightly noticed that the practice amongst our people is there to rope in innocent persons along with guilty persons in such like matters and the Court is required to separate truth from falsehood. The trial Court has further observed that the injuries found on the person of Ram Kishan and Raj Kumar were superficial in nature. There was only one visible injury on the person of Ram Kishan, which was in the shape of reddish dis-colouration of skin on left calf region, which could possibly be received on account of scuffle in the occurrence. Similarly, there were only two injuries on the person of Raj Kumar accused on forehead. Both the injuries were simple in nature which were also possible in scuffle. Similarly Lal Chand and his wife Taro Devi seems to have received injuries in the scuffle as nature of injuries on their person were found to be simple.

Thus, the judgment passed by the trial Court is quite detailed,

well reasoned, based upon proper appraisal of evidence and correct interpretation of law. We do not see any reason to interfere with the same. As far as, the appeal filed by Mohinder and Raj Kumar accused/convicts is concerned, Mohinder is reported to have expired, as stated at bar by learned counsel representing him. His death has been verified by State counsel through police authorities and copy of his death certificate has been placed on record as Mark 'A'. As such, appeal qua Mohinder abates, whereas, appeal with regard to Raj Kumar is found to be without any merit and is dismissed accordingly. Similarly Ram Kishan and Usha Rani are also stated to have died. Copies of their death certificates Mark 'B' and Mark 'C' have been placed on record. Accordingly, proceedings against them stand abated. The appeal filed by the State i.e. CRA-D-698-DBA-2004 against accused Ram Kishan, Ram Dhan, Sanjeev Kumar, Usha Rani and Bachni Devi who had been granted acquittal by the trial Court is also dismissed.

(JITENDRA CHAUHAN)
JUDGE

(H.S. MADAN)
JUDGE

25.11.2019

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No