

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

1. CRA-D-317-DB-2003

Kuldeep and others

... Appellants

Versus

State of Haryana

... Respondent

2. CRA-D-815-DBA-2003

State of Haryana

... Appellant

Versus

Pali @ Ramesh and others

... Respondents

Reserved on : 02.05.2019  
Date of decision : 07.05.2019

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA  
HON'BLE MR.JUSTICE LALIT BATRA**

Present: Mr.R.K.Agnihotri, Advocate  
for the appellants in CRA-D-317-DB-2003  
and for the respondents in CRA-D-815-DBA-2003.

Mr.Vishal Garg, Addl.A.G. Haryana.

**RAJIV SHARMA, J.**

Since common questions of law and facts are involved in the  
aforesaid appeals, therefore, these are taken up together and disposed of by  
a common judgment.

2. These appeals are instituted against judgment and order dated  
05.03.2003 rendered by the Additional Sessions Judge, Jagadhri, in Sessions

Case No.70 of 2000 whereby the appellants in CRA-D-317-DB-2003 along with four co-accused (respondents in CRA-D-815-DB A-2003) were charged with and tried for offences punishable under Sections 148, 323, 324, 302 read with Section 149 of the Indian Penal Code (in short 'IPC').

3. The appellants Kuldeep, Kapoor @ Radhey Sham, Ashwani @ Soni and Sandeep @ Sanjeev Kumar have been convicted and sentenced to undergo rigorous imprisonment for life for offence under Section 302 read with Section 34 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of one year for offence under Section 324 read with Section 34 IPC and to undergo rigorous imprisonment for a period of six months for offence under Section 323 read with Section 34 IPC. All the sentences were ordered to run concurrently. Co-accused Mukesh, Pali, Rakhi and Neetu were acquitted.

4. The case of the prosecution, in a nutshell, is that on 09.07.2000 at about 03.30 P.M. complainant Harish Pal accompanied by his brothers Satbir (since deceased) and Dilbagh Singh was going to his fields. When they reached near the house of one Ashok Kumar, all the eight accused threatened them to teach a lesson for not allowing to pass through their fields. Ashwani @ Soni gave two knife blows in the chest of Satbir. Mukesh gave a knife blow on the left side of neck of Satbir. Pali gave two blows in the left side of the waist of Satbir. Kuldeep gave a *lathi* blow on the neck of Satbir. Rakhi gave a *takua* blow on the neck of Satbir. Sandeep gave an axe blow on the head of Satbir. Sandeep gave an axe blow on the head of Satbir. When Dilbagh Singh and Harish intervened to save Satbir, Ashwani @ Soni gave a knife blow in the left side of waist of Dilbagh Singh. Kuldeep gave a

*lathi* blow on his left arm. Kapoor gave a *lathi* blow on his right arm and Sandeep gave an axe blow on his head. Harish Pal raised alarm. He rushed to the house. He called his father. Satbir and Dilbagh Singh were taken to the Civil Hospital, Jagadhri. Satbir was declared dead. FIR was registered. Post-mortem examination was conducted by Dr.Sumesh Garg. Investigation was completed. Challan was put up after completing all the codal formalities.

5. The prosecution examined a number of witnesses in support of its case. Statements of accused were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The accused also examined two witnesses in their defence. The appellants Kuldeep, Kapoor @ Radhey Sham, Ashwani @ Soni and Sandeep @ Sanjeev Kumar were convicted and sentenced, as noticed hereinabove. Hence the appeal CRA-D-317-DB-2003. The appeal CRA-D-815-DBA-2003 has been filed by the State of Haryana against acquittal of respondents (co-accused of the appellants).

6. Learned counsel appearing on behalf of the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

7. Learned counsel appearing on behalf of the State has supported the conviction of the appellants and has also argued that the respondents in CRA-D-815-DBA-2003 have been wrongly acquitted.

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

9. PW-5 Dr.Ramesh Kumar had medico legally examined Dilbagh Singh. He noticed the following injuries on his person:-

*“1. 3 cm x 1 cm x muscle deep sharp edged wound*

*present on 3 cm above right iliac crest on mid axillary.*

2. *Deformity and swelling of left middle forearm.*

*Advised X-ray left forearm. AP lateral view.*

3. *8 cm x 2 cm reddish abrasion on interior lateral aspect of right upper arm.*

4. *5 cm x 2 cm reddish discolouration of skin on interior lateral aspect of right upper arm. Advised X-ray right arm AP lateral.*

5. *4 cm x .5 cm x bone deep lacerated wound on left parietal region of scalp.”*

He proved the MLR of Dilbagh Singh Ex.PF. Dilbagh Singh was conscious at the time of arrival in the hospital and was examined by him.

He also medically examined accused Sandeep. He noticed the following injuries on his person:-

*“1. 2.5 cm x .5 cm x bone deep lacerated wound on left parietal region of scalp.*

*2. 4 cm x .5 cm x bone deep lacerated wound on left occipital protudens of scalp. Advised X-ray scalp AP lateral.”*

The kind of weapon used was blunt and duration was within six hours. The injuries on the person were on the vital part of his body.

He also examined accused Ashwani @ Soni. He noticed the following injuries on his person:-

*“1. 6 cm x 1 cm x bone deep lacerated wound of left parieto temporal region of scalp and was advised X-ray skull. AP lateral view.*

*2. .5 cm x .5 cm abrasion on interior aspect of left upper leg. It was simple in nature and caused with a blunt weapon.”*

The probable duration was within six hours. Injury No.1 on the person of

Ashwani @ Soni, was on the vital part of his body. He was semi conscious.

10. The post-mortem was conducted by PW-11 Dr.Sumesh Garg. He proved the post-mortem report. He had noticed the following injuries on the dead body of Satbir:-

- “1. There was incised wound over the chin size 5 cm x 2 cm that was bone deep.*
- 2. Incised wound over the forehead frontal region in the middle and vertically placed size 3.5 cm x 1 cm bone deep.*
- 3. Incised wound in the neck 3 cm lateral to the manubrium sterni in the supra clavicle region of size 2 cm x 1.5 cm that was 1.5 cm deep.*
- 4. Incised wound over the right side of the chest, middle to the shoulder 2.5 cm x 1.5 cm and was muscle deep.*
- 5. Incised wound over the lower side right side of the chest just over the xiphisternum. On dissection underlying rib cut/ pleural was cut, pericardium was cut. Pericardium was full of blood. Right atrium was ruptured.*
- 6. Incised wound on the left side of the chest 4 cm away from the xiphisternum was 3 cm x 1 cm. On dissection underlying rib cut. Pleural was ruptured. Left lung was ruptured. Left ventricle was ruptured.*
- 7. Two incised wound left side of the chest just lateral to the mid axillary line of size 3 cm x 1.5 cm and other wounds 4 cm above the injury No.7 of size 2 cm x 1 cm. On dissection underlying rib cut pleura ruptured. Left lung ruptured. Pleural cavity was full of blood. Stomach found to be ruptured. On further dissection, left lobe was ruptured.”*

In the opinion of Board, the cause of death was hemorrhage and shock due to the injuries to the vital organs. Injuries were ante mortem in nature and sufficient to cause death in normal events. The probable duration between

injuries and death was instantaneous and between death and post-mortem was within 24 hours. In his cross-examination, he admitted that few of weapons shown to them were blood stained and few were not. He also admitted that if kulhari (Ex.P5) was used that would cause a wedge shape injury. Incised wound could not be caused with the knives Ex.P6 and Ex.P7. Injury No.3 on the person of Satbir could not be caused with such knives. Similarly injury No.4 could not be caused with such knives. He also admitted that injuries No.4 and 7 could not be caused with the weapon Ex.P8, i.e. ballam. Injuries No.5, 6 and 7 were on vital parts of the body. Injuries No.5, 6 and 7 could be caused by kulhari and takuas.

11. PW-7 Harish Pal testified that on 09.07.2000 at about 03.30 P.M. he along with his brother Satbir and Dilbagh Singh were going to their fields. When they reached near the house of Ashok Kumar, accused came from the front side. The accused threatened them to teach a lesson for not allowing them to pass through the fields. Ashwani @ Soni accused was having a knife in his hand, Mukesh accused was carrying a knife, Pali accused was carrying ballam, Kuldeep accused was carrying a lathi, Kapoor accused was carrying a lathi, accused Rakhi and Neetu were armed with takua, and Sandeep accused was carrying axe in his hand. Ashwani @ Soni accused inflicted two knife blows in the chest of Satbir. Mukesh accused gave knife blow on the neck of Satbir. Pali accused gave two ballam blows in the waist of Satbir, one towards left side and one towards right side. Rakhi accused gave takua blow on the neck of Satbir. Sandeep accused gave axe blow on the head of Satbir. His brother Dilbagh Singh tried to save Satbir. Kuldeep accused gave him lathi blow on his arm. Kapoor accused also gave lathi blow on the right arm of Dilbagh Singh. Ashwani @ Soni

accused gave knife blow on the waist of his brother Dilbagh Singh. Neetu accused gave takua blow on the shoulder of Dilbagh Singh. Satbir collapsed on the ground. They raised noise. He rushed to his house and called his father. His father came on the spot. Satbir and Dilbagh Singh were taken to the Civil Hospital, Jagadhri. Satbir was declared brought dead in the hospital. In his cross-examination, he admitted that he could not differentiate between kulhari and takua. He also admitted that he was standing at a distance of 10/12 feet away from the place of occurrence. He had not intervened to save his brother. However, he orally shouted to leave them. The accused persons kept on inflicting injuries for about 20/25 minutes. Ashok Pandit had not come to the spot at that time. He also admitted that while coming to CH, Jagadhri, on the way there was police station and hospital of Bilaspur. Police came to the spot on the next day of incident.

12. PW-8 Dilbagh Singh has also corroborated the statement of his brother Harish Pal PW-7 in the manner incident had happened. In his cross-examination, he deposed that accused attacked him after giving blows to Satbir. They kept on inflicting blows to Satbir for 15 to 20 minutes. He made efforts to save his brother during that period. He told this fact to the police. They had not inflicted any blow upon Ashwani @ Soni and Sandeep. He did not know whether Ashwani @ Soni and Sandeep were also admitted in the hospital at the time when they were admitted.

13. PW-13 Phool Singh deposed that on 10.07.2000 a parcel containing the clothes of Satbir deceased was produced before the police by the doctor and the same was taken into possession. The clothes were smeared with blood. Recoveries of takua and kulhari were made from Rakhi

and Neetu. Recovery memos were prepared. Police interrogated accused Pali, Kapoor and Kuldeep in the police station. They made the disclosure statements. Kapoor disclosed qua the lathi that he could get recovered the same. The disclosure statement of Kapoor is Ex.PX. Accused Pali made disclosure statement Ex.PY that he had kept concealed ballam. Accused Kuldeep made also disclosure statement Ex.PZ that he had kept concealed lathi in the house of Mam Chand. On 14.07.2000 accused Ashwani @ Soni and Sandeep were also interrogated. The disclosure statement of Ashwani @ Soni is Ex.PAA. Sandeep made a disclosure statement that he kept concealed kulhari in school. His statement is Ex.PBB. Knife and axe were got recovered by them.

14. PW-14 SI Rajpal testified that he arrested Ashwani @ Soni and Sandeep on 14.07.2000. They made disclosure statements qua knife and kulhari.

15. PW-15 Vijay Kumar recorded the statement of Harish Pal Ex.PD on the basis of which FIR was registered. He got the post-mortem conducted. He prepared the rough site plan. Accused Neetu and Rakhi produced Takua each. These were taken into possession. Accused Pali had also made disclosure statement qua ballam. Accused Kapoor also made disclosure statement Ex.PX qua lathi. Accused Kuldeep made disclosure statement that he had kept concealed lathi in the village. All the three accused on the basis of disclosure statements got the weapons recovered. He also prepared inquest report.

16. DW-1 Dr.D.P.Singh had medico legally examined Sandeep on 09.07.2000 vide MLR Ex.DA. Keeping in view the seriousness of injury, he had referred him to PGI, Chandigarh for further treatment. He had also

examined Ashwani @ Soni vide MLR Ex.PB. He was also referred to the PGI, Chandigarh for further treatment keeping in view the seriousness of injury.

17. DW-2 Joginder has deposed that two years back, Ashwani @ Soni and Sandeep were going to their fields. At about 03.30 P.M. when they were going on a path, complainant, Dilbagh Singh injured and Satbir (deceased) came there. They started beating up Ashwani @ Soni. Ashwani @ Soni fell down from the cart. Ashwani @ Soni and Sandeep started running towards the village. Complainant, Dilbagh Singh and Satbir followed them. Then fight took place between both the parties. Satbir fell down on the ground. He was present at the time of occurrence.

18. The incident had taken place on 09.07.2000 at about 03.30 P.M. According to the prosecution case, PW-7 Harish Pal, PW-8 Dilbagh Singh and Satbir (deceased) were going to the fields. They were attacked by the accused. According to PW-7 Harish Pal, accused were on the spot for 20/25 minutes. According to PW-8 Dilbagh Singh, accused were on the spot for 15 to 20 minutes. PW-7 Harish Pal had not tried to save his brother. According to him, he was standing at a distance of 10/12 feet. His conduct is unusual. He should have tried to save his brother. At least he could raise alarm. PW-8 Dilbagh Singh was also on the spot. He should also have tried to save his brother. It has come in the statement that his brother Satbir was beaten up and thereafter injuries were inflicted upon him. Weapons of offence were recovered on the basis of disclosure statements made by the accused.

19. The post-mortem was conducted by PW-11 Dr.Sumesh Garg. The cause of death was hemorrhage and shock due to the injuries to the vital

organs. Injuries were ante mortem in nature and sufficient to cause death in normal events. The probable duration between injuries and death was instantaneous and between death and post-mortem was within 24 hours. The deceased had received, as per post-mortem report, seven injuries.

20. PW-5 Dr.Ramesh Kumar had medico legally examined Dilbagh Singh. He had noticed five injuries on his person. He had also medico legally examined Sandeep and Ashwani @ Soni. Both of them received injuries on their vital parts of the body. According to him, Ashwani @ Soni was semi conscious when brought before him. Sandeep and Ashwani @ Soni were also medico legally examined by DW-1 Dr.D.P. Singh. He had referred both of them to the PGI, Chandigarh, taking into consideration the injuries received by them. The prosecution has not explained the injuries received by Sandeep and Ashwani @ Soni. It is apparent that free fight had taken place between both the parties. The injuries caused to Satbir proved fatal. Dilbagh Singh had also received injuries. PW-7 Harish Pal present on the spot did not receive any injury. The motive attributed to the accused persons is that they were not being permitted to use the passage by the complainant party.

21. However, what emerges from the ocular and medical evidence is that the appellants had intention to cause death of Satbir. Two of the appellants, Sandeep and Ashwani @ Soni had also received grievous injuries. They were referred to the PGI, Chandigarh. Dilbagh Singh had also received injuries as per statement of PW-5 Dr.Ramesh Kumar.

22. Accordingly the appeal (CRA-D-317-DB-2003) filed by the appellants Kuldeep and others is partly allowed and conviction of the appellants from Section 302 IPC is converted to Section 304 Part I IPC.

Their conviction and sentence under Section 324 read with 34 IPC and Section 323 read with 34 IPC is however upheld.

23. The learned trial Court has correctly appreciated oral and documentary evidence while acquitting the respondents. The prosecution has not proved the case against them beyond reasonable doubt. The presence of Rakhi and Neetu on the spot was doubtful. Similarly the presence of Pali and Mukesh was also doubtful. The prosecution has not proved that Neetu had caused injuries to Dilbagh Singh. Accordingly the appeal (CRA-D-815-DBA-2003) filed by the State against acquittal of respondents is dismissed.

Appellants are on bail. They are directed to appear in Court on 13.05.2019 to hear them on quantum of sentence under Section 304 Part I IPC.

**(RAJIV SHARMA)**  
**JUDGE**

**(LALIT BATRA)**  
**JUDGE**

**May 07, 2019.**

*Davinder Kumar*

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No