

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

Reserved on : 4.2.2020

Date of decision : 12.2.2020

1. CRA-D No. 878-DB of 2004 (O&M)

Mool Chand alias Moola	 Appellant
versus	
State of Haryana	... Respondent

2. CRA-D No. 170-DBA of 2005 (O&M)

State of Haryana	 Appellant
versus	
Hem Raj alias Hema and others	... Respondents

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

Present Mr. Nand Lal Sammi, Advocate, for the appellant
in CRA-D No. 878-DB of 2004.

Mrs. Shubhra Singh, Additional Advocate General, Haryana
for the respondent-State in CRA-D no. 878-DB of 2004 and
for the appellant in CRA-D No. 170-DBA of 2005.

Rajiv Sharma, J.

1. Since common questions of law and facts are involved in these appeals i.e. CRA-D No. 878-DB of 2004 and CRA-D No. 170-DBA of 2005, therefore, these are taken up together and being disposed of by a common judgment.

2. The present appeals are instituted against the judgment and order dated 2.9.2004, rendered by Additional Sessions Judge, Jind, in Sessions Case No. 55 of 26.7.2003/18.2.2002. Appellant Mool Chand alias Moola was charged with and tried for the offence punishable under Sections 148/302/149/323/149 IPC along with co-accused Hem Raj alias Hema,

Ramesh and Bhagwan Dass. Appellant Mool Chand @ Moola was convicted and sentenced under Section 302 IPC to undergo imprisonment for life and to pay fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a term of six months. Co-accused Hem Raj alias Hema, Ramesh and Bhagwan Dass were acquitted of the charges framed against them.

3. The case of the prosecution in a nutshell is that Smt. Indro lodged report with ASI Virender Singh at noon time on 15.11.2001 in respect of the circumstances under which her son Sandeep, aged about 21/22 years, had been done to death by accused Mool Chand alias Moola and his four accomplices during the previous night. The deceased was a *Halwai* by profession. He had gone to the market on the evening of 14.11.2001 for purchasing goods for celebrating the festival of Diwali. Since Sandeep did not come back home till late in the evening, his mother Indro became anxious. They found Sandeep at Chaklawala Mohalla where he was being rounded up and abused by accused Mool Chand alias Moola and accused Hem Raj alias Hema. The complainant and her two companions intervened to rescue Sandeep from the accused. They were intercepted by accused Bhagwan Dass, Mool Chand alias Moola, Kalu, Hema and Ramesh Kumar sons of Bhagwan Dass at about 11.30 P.M. at a place called Channi Chowk, Safidon. On the exhortation of accused Bhagwan Dass alias Bhagwana, accused Mool Chand alias Moola gave a blow with a rod on the head of Sandeep. Thereafter, accused Hema gave a reverse side *gandasi* blow on the head of Sandeep. Accused Ramesh gave a *lathi* blow on his left knee. Accused Kalu gave a *lathi* blow on the head of Nirmal Singh, whereas Ramesh gave a *lathi* blow on the wrist of his left hand. Alarm was raised.

Accused ran away from the spot. Sandeep was shifted to the hospital at Safidon. He succumbed to the injuries at the hospital. Post-mortem examination was conducted. Investigation was completed and challan was put up after completion of all the codal formalities.

4. The prosecution examined a number of witnesses in support of its case. The statements of the accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. They examined three witnesses in defence. Appellant Mool Chand alias Moola was convicted and sentenced, as noticed above. Co-accused Hem Raj alias Hema, Ramesh and Bhagwan Dass were acquitted. Hence, the appeal i.e. CRA-D No. 878-DB of 2004 has been filed by appellant Mool Chand @ Moola against his conviction and sentence, whereas appeal i.e. CRA-D No. 170-DBA of 2005 has been filed by the State against the acquittal of accused Hem Raj alias Hema, Ramesh and Bhagwan Dass. Bhagwan Dass died during the pendency of the appeal on 5.9.2012. Appeal qua respondent-Bhagwan Dass was ordered to be abated on 4.2.2020.

5. Learned counsel appearing on behalf of appellant Mool Chand @ Moola 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 against all the accused, however, the learned trial court has wrongly acquitted accused Hem Raj alias Hema, Ramesh and Bhagwan Dass and supported the judgment and order of the learned Court below qua accused Mool Chand @ Moola.

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

7. PW1 Smt. Indro testified that on 14.11.2001, her son Sandeep had gone to Market of Safidon to purchase some items for Dewali festival. He did not come back. She went in search of her son with her other son Sultan. They went to the house of Anil Kumar where also her son Sandeep was not available. On return, they reached in the Mohalla Chakla. Anil was also with them. They found accused Hema and Mool Chand alias Moola were quarreling with her son Sandeep. They were grappling with Sandeep. They intervened and saved Sandeep from the clutches of the accused. Accused Mool Chand threatened that he would take revenge of throwing crackers on him. When they were coming back and reached Channi Chowk, Safidon in front of the shop of Chetan in the main bazar at that time it was 11.00/ 11.30 P.M. In Channi Chowk, Bhagwana, Hem Raj, Ramesh, Kalu and Moola were present. Moola was armed with an iron rod, Hemraj was armed with a *gandasi*, Ramesh was having a *lathi* and Kalu was also carrying a *lathi*. Bhagwana gave a *lalkara* that they would teach him a lesson for throwing the crackers and causing injuries to Moola. Mool Chand gave blow with an iron rod on the back side of head of her son Sandeep. Hem Raj gave a *gandasa* blow from the reverse side on the head of her son Sandeep. Sandeep collapsed on the ground. She raised alarm. Nirmal came there on hearing the alarm. Ramesh gave a *lathi* blow on the left knee joint of Sandeep. Accused Kalu gave two *lathi* blows on the head of Nirmal and two *lathi* blows, one on the left wrist joint and another on left ear of Nirmal. They raised alarm. Accused ran away from the spot. They shifted Sandeep to CH Safidon. He was medico-legally examined. He died due to the injuries suffered by him in the occurrence. In her cross-examination, she deposed that distance between her house and Chakla Mohalla was about 300/ 400

yards. She denied the suggestion that her son was residing in Gurgaon.

8. PW2 Sultan Singh deposed that his brother Sandeep was working as a *halwai*. On 14.11.2001 at about 9.30 P.M. his brother had gone to the market to purchase material for Diwali. He did not come back. He along with his mother Indro Devi went to the house of Anil Kumar. Sandeep was not present there. Anil also joined them. They went towards the Chakla Mohalla. When they reached in Chakla Mohalla, they saw that Mool Chand and Hema were grappling with his brother. They intervened. Mool Chand threatened them that they would take the revenge for throwing crackers and quarreling with him. Then they proceeded towards their house. When they reached near Channi Chowk, Safidon, accused Bhagwan Dass, Hem Raj, Mool Chand, Ramesh and Kalu met them. They were armed with weapons. Moola was having an iron rod. Hem Raj was having a *gandasa*. Ramesh and Kalu were having *lathis*. Bhagwana gave a *lalkara*. Accused Mool Chand gave an iron rod blow on the back side of Sandeep. Hem Raj gave a *gandasa* blow from its reverse side on the head of Sandeep. Sandeep collapsed. Ramesh gave a *lathi* blow on the left knee of Sandeep. Nirmal Singh tried to intervene and save Sandeep. Accused Kalu gave 2/3 *lathi* blows on the head of Nirmal and then on the wrist and ear of Nirmal. Sandeep died in the hospital at Safidon. Police reached the spot and lifted the blood stained earth.

9. PW3 Dr. Dhan Kumar had conducted the post-mortem examination. He noticed the following injuries on the person of deceased Sandeep:-

“1. A lacerated wound size 7.5 x 2.5 cm present on the left side of the scalp. 5 cm above and left side of the

vertex. Bleeding was present. On exploration all layers of scalp were cut thoroughly. There was a fracture of scalp bone present. Cranial cavity was full of dark red colour haematoma.

2. A lacerated wound size 7.5 x 1.5 cm present on the vertex. Bleeding was present. Fracture scalp bone was present. Cranial cavity was full of dark red colour haematoma.

3. A lacerated wound size 7.5 x 1.5 cm present on the right side of the scalp, 5 cm away to injury No. 2. Bleeding was present. On exploration fracture scalp bone was present. Cranial cavity was full of dark red coloured haematoma.”

The cause of death was due to haemorrhage and shock as a result of the injuries to the vital organs. The injuries were ante mortem in nature and sufficient to cause death in the normal course of nature.

10. PW7 Dr. A. K. Suri had medico-legally examined Sandeep (deceased). He noticed the following injuries on the person of deceased Sandeep:-

“1. One lacerated wound 6 cm x 2 cm x bone fractured and protruding out on left parieto occipital region of skull. It was obliquely placed. Margins were irregular. There was profused bleeding. Injury was kept under observation and x-ray was advised. It was caused by a blunt object and was within 6 hours duration.

2. One lacerated wound 5 x 1.5 cm placed on left parieto occipital region of skull. Margins were irregular. There was profused bleeding. X-ray was advised and the injury was kept under observation. Injury was caused by a blunt weapon and was caused within 6 hours duration.

3. One lacerated wound 4.5 x 1 cm placed on left side of parieto occipital region of skull. The margins were

irregular. There was profused bleeding. X-ray was advised. Injury was kept under observation and it was caused by a blunt object, was within 6 hours.

4. The abrasion 1 cm x 0.5 cm on placed on left knee joint. The injury was simple in nature caused by a blunt object and was within six hours.”

He also medico-legally examined Nirmal Singh. He noticed seven injuries on the person of Nirmal Singh, which are given as under:-

“1. One lacerated wound 7 cm x 1 cm upto bone deep placed on right parietal region of the skull. Margins were irregular. Tenderness was present. X-ray was advised. Injury was kept under observation and it was caused by blunt object within duration of six hours.

2. Lacerated wound 5.5 cm x 0.7 cm x bone deep placed on right occipital region of skull. Margins were irregular. Tenderness was present.

3. One lacerated wound 7 cm x 1.5 cm x bone deep placed on left temporal region of skull. Margins were irregular. Tenderness was present.

4. One lacerated wound 6 cm x 1 cm x bone deep placed on left temporal region of skull below injury no.3. Margins were irregular. Tenderness was present.

5. One lacerated wound 3 cm x 0.7 cm placed on left ear pinna. Margins were irregular.

6. One contusion 6 cm x 1 cm placed on left forearm in its lower 1/3rd. It was reddish in colour. Tenderness was present.

7. One contusion 5.5 cm x 1 cm placed on left arm in its lower half. It was reddish in colour. Tenderness was present.”

All the injuries were caused by blunt weapon and duration was within six hours. He proved MLR, Ex.PK, of deceased Sandeep and MLR, Ex.PL, of injured Nirmal Singh.

11. PW12 SI Chhotu Ram had interrogated accused Mool Chand @ Moola. According to him, Parveen @ Pinna had arranged the weapon. He had caused injuries to Sandeep with iron rod as well as to Nirmal Singh. His disclosure statement is Ex.PR. On the basis of disclosure statement, he got recovered iron rod, Ex.P-10. He prepared rough site plan, Ex.PU, of the place of recovery.

12. PW13 SI Virender Singh deposed that he moved application, Ex.PM, before the Medical Officer to seek his opinion whether Nirmal Singh was fit to make statement. Vide opinion, Ex.PM/1, the doctor had opined that Nirmal Singh was unfit to make statement. Then he recorded the statement, Ex.PA, of Smt. Indro, on the basis of which the FIR was registered. Post-mortem was conducted. He prepared rough site plan of the place of occurrence. He arrested accused Parveen and Mool Chand. Mool Chand made disclosure statement, Ex.PR. He got the place of occurrence demarcated.

13. DW1 Nirmal Singh deposed that on the eve of Diwali he received injuries at Channi Chowk, Safidon. There was no light when he was given beatings. When the light came, he saw Sandeep lying injured.

14. DW2 Kamal Arora testified that on 15.11.2001 at about 6.35 A.M. one Vikram asked him to give telephone call at Gurgaon. When he first contacted the number, then Vikram told Surinder that Gopi who was his neighbour be called with Sultan. Then he again telephoned at 6.39 A.M. and he had a talk with Sultan. Vikram told Sultan that his brother Soni was

murdered and he should come immediately. In his cross-examination, he admitted that it was not possible for him to recollect the identity of the persons who made calls from his booth. The name of Vikram was nowhere recorded on the receipts as the person who had made the calls or that he had talked with Sultan.

15. DW3 Suresh deposed that on the eve of Diwali at about 10.00 p.m., he along with Rajesh was present at Channi Chowk. There was no light. There was a fight. He could not tell how many persons were there. When the light came, he saw Sandeep lying injured. He sent Rajesh to call his mother. Sandeep was shifted to hospital.

16. PW1 Smt. Indro and PW2 Sultan have seen the accused administering beatings to Sandeep with iron rod. There was no occasion for them to falsely implicate the accused. They have specifically given the manner in which the accused administered beatings to deceased Sandeep as well as to Nirmal Singh.

17. PW3 Dr. Dhan Kumar had conducted the post-mortem examination. He had noticed three injuries on the person of deceased Sandeep. According to him, the cause of death was due to haemorrhage and shock as a result of the injuries to the vital organs. The injuries were ante mortem in nature and sufficient to cause death in the normal course of nature.

18. PW7 Dr. A. K. Suri had medico-legally examined Sandeep (deceased) and injured Nirmal Singh on 15.11.2001. He proved MLR of deceased Sandeep as Ex.PK and MLR, Ex.PL, in the case of injured Nirmal Singh.

19. No person from the electricity department was examined to prove that there was no electricity at the time of incident. The statement of DW2 Kamal Arora does not inspire confidence.

20. As far as acquittal of accused Hem Raj alias Hema, Ramesh and Bhagwan Dass is concerned, *gandasi* allegedly used by Hem Raj alias Hema was never recovered; *lathi* allegedly used by Ramesh was also not recovered. Accused Bhagwan Dass was empty handed. The injuries caused by appellant Mool Chand @ Moola were fatal, which were sufficient to cause death of Sandeep. The trial Court has rightly acquitted accused Hem Raj alias Hema, Ramesh and Bhagwan Dass (since deceased). However, the prosecution has rightly proved the case against appellant Mool Chand @ Moola beyond reasonable doubt. The ocular statements are duly corroborated by the medical evidence.

21. There is no merit in the appeals filed by appellant Mool Chand @ Moola and by the State. Both the appeals are dismissed. The sentence of appellant Mool Chand @ Moola was suspended vide order dated 8.10.2007. His bail bonds are cancelled. He is directed to surrender before the concerned court to undergo his remaining sentence.

(Rajiv Sharma)
Judge

12.2.2019
vs

(Harinder Singh Sidhu)
Judge

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