

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

(i) Crl. Appeal No.D-939-DB of 2003

Anar and another

...Appellants

VERSUS

State of Haryana

...Respondent

(ii) Crl. Appeal No.S-2337-SB of 2003

Smt.Bala and others

...Appellants

VERSUS

State of Haryana

...Respondent

Date of Decision: January 29, 2020

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
 HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.B.S.Saroja, Advocate
 for the appellants.

Mr.Vikrant Pamboo, Deputy Advocate General, Haryana
for the respondent-State.

ARCHANA PURI, J.

Challenge in the twin appeals, is to the judgment of conviction and order of sentence dated 24.11.2003 passed by learned Addl. Sessions Judge, Rohtak, vide which the appellants Anar and Mukesh were held guilty and convicted for the commission of offence under Section 302 read with

Section 34 IPC for killing Prem Singh and they were sentenced to undergo imprisonment for life and to pay fine of ₹5000/- each and in default, to further undergo rigorous imprisonment for a period three years, whereas, remaining accused-appellants namely Bala, Babita, Chand, Tara and Suresh, were held guilty and convicted for the commission of offence under Section 323 read with Section 34 IPC for causing simple injuries to Prem Singh, Rohtash, Vijay and Kamla and they were sentenced to undergo simple imprisonment for a period of three months and to pay fine of ₹200/- each and in default of payment of fine, to further undergo simple imprisonment for a period of 15 days.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, appellants Anar and Mukesh have filed CRA No.D-939-DB of 2003, whereas appellants Bala, Babita, Chand, Tara and Suresh have filed CRA No.S-2337-SB of 2003.

The background facts in nutshell are, as herein given:-

That, on 27.06.2002, a V.T. message was received in the Police Station, Sadar, Rohtak, at about 9.00 p.m., from Police Post, PGIMS, Rohtak, with regard to admission of injured Prem Singh (since deceased). Thereupon, ASI Mahender Singh along with his police companions, had reached Police Post, PGIMS Rohtak, wherefrom, he collected medical ruqa, informing the police for admission of injured Prem Singh at about 7.25 p.m. and also copy of his MLR. Then, ASI Mahender Singh had moved application to the doctor to know about the condition of the injured for recording his statement but however, the attending doctor had orally deposed that since the patient was taken to the operation theatre, so he will

give opinion after some time but later on, he gave opinion at 11.50 p.m.,

that Prem Singh is unfit to give statement and only 15 minutes thereafter, Prem Singh was declared dead.

Thereupon, Rohtash, brother of deceased Prem Singh, who was present in the hospital, had got recorded his statement to ASI Mahender Singh. The substance of the prosecution version, as unfolded in his statement is that complainant Rohtash had three brothers, besides him, namely Prem, Rajkumar and Ranbir. Rajkumar had died about 10-12 years back. All of them lived separately. Ranbir resides in Delhi. His own son Vijay lives separate from the complainant. He does labour work in the village along with Anar son of Chand. A quarrel had taken place about 2-3 days back, between Anar and Vijay, with regard to the payment of wages, on account of which, protest was lodged by him with accused Tara Devi, mother of Mukesh and Zile, father's elder brother of Mukesh. Zile had taken responsibility upon him to make them understand and even complainant made his son Vijay to understand not to quarrel again. On that day i.e. on 27.06.2002, at about 6.30 p.m., complainant along with his brother Prem Singh was sitting in front of house of Prem and enjoying smoking '*hukka*'. Even, Kamla wife of Prem Singh was also present there. Then Vijay came running and told them that accused Mukesh and Anar wanted to cause injuries to him, upon which, Vijay was concealed in their house. During this time, Mukesh armed with *gandasa* and Anar armed with *ballam*, came there. They wanted to enter the *kotha* of Prem to assault Vijay but Prem had refrained them. He also asked them as to what was the matter, whereupon, they asked to bring out their lion. Saying so, Mukesh gave a *gandasa* blow, on the left side of the head of Prem, while accused Anar

pulled him down on the ground. When Prem was attempted to be rescued

by complainant and Kamla, then Chand armed with '*jaili*' and Suresh armed with '*lathi*', came there and they started assaulting them. Meanwhile, Tara armed with '*lathi*', Babita alias Geeta armed with '*lathi*', Bala armed with '*lathi*', and accused Gulaab (since juvenile) also reached and started giving them injuries. Accused Gulaab gave a brick bat blow on the right arm of Kamla. Meanwhile, Vijay and his brother Ajay had also reached there. On hearing their hue and cry, some villagers have gathered there, whereupon, all the assailants had gone away with their respective weapons. Injured Prem was then brought to PGIMS, Rohtak, in a three-wheeler arranged by Vijay.

In pursuance of recording of the statement of Rohtash, the endorsement was made by ASI Mahender Singh, upon the same, on the basis whereof, FIR was got registered.

During the course of investigation, ASI Mahender Singh, prepared the inquest report of the dead body and further facilitated the conducting of the post-mortem examination on the dead body through Constable Dalbir Singh. However, at the time of admission of Prem in the hospital at about 7.25 p.m. on 27.06.2002, he was medico-legally examined by Dr.Subhash Chander. During the course of further investigation, spot of the occurrence was inspected. Blood-stained earth was lifted and converted into parcel and taken into possession vide separate memo. Rough site plan was also prepared. Efforts were made for search of the accused but they were absconding. On the basis of statement of eye witnesses, namely Vijay and Ajay, Section 148 IPC was recommended to be added and for dropping Section 34 IPC.

produced accused Mukesh, Chand, Anar, Gulaab, Tarawati, before ASI Mahender Singh and they were arrested. At that time, accused Chand produced *jaili*, accused Anar produced *ballam*. Rough sketches of the same were prepared and were taken into possession, vide separate memos.

In pursuance of the disclosure statement, made by Mukesh, a *gandasa* was recovered. Sketch of the same was prepared and same was taken into possession vide separate memo. Site plan of the spot of recovery was also prepared. On 10.07.2002, the parcel of *gandasa* was produced before Dr.Subhash Chander, who had opened the parcel and on seeing the weapon, gave his opinion on the police application that possibility of the said head injury on the person of Prem by that weapon, cannot be ruled out. It was, thereafter, again converted into parcel and re-deposited with MHC Ajmer Singh. On 21.07.2000, accused Suresh was arrested, who had produced *lathi*. Sketch of the same was also prepared and taken into possession vide separate memo. On 29.08.2002, accused Bala was produced by Nahar Singh, Panch, before ASI Mahender Singh and she was arrested. Even, *lathi* used by her in the crime was produced, sketch of which was prepared and it was taken into possession vide separate memo. On 19.09.2002, accused Babita was produced by one Mahavir Singh with *lathi* and she was arrested and *lathi* was taken into possession vide separate memo, after its sketch having been prepared. On 17.07.2002, all the parcels, containing blood-stained earth, picked up from the spot, clothes of the deceased and *gandasa* were duly sent to the FSL and in the FSL report, human blood was found on these articles but as per the Serological report, qua finding the origin of blood and blood group, it was found that said material thereon, was disintegrated. Scaled site plan of the spot was also

got prepared.

On completion of investigation, report under Section 173 Cr.P.C. was presented against seven accused. As accused Gulaab was juvenile, he faced trial separately before Juvenile Justice Board.

After compliance of Section 207 Cr.P.C., the case was committed to the Court of Session.

In pursuance of the commitment proceedings, on the basis of material coming forth, charge was framed under Sections 302, 323 read with 149 IPC, to which they pleaded not guilty and claimed trial.

In endeavour to establish its case, the prosecution examined as many as 14 witness, besides adducing documentary evidence.

PW-1 Dr.Kulprathibha, Medical Officer, has deposed about conducting of post-mortem examination on the dead body of Prem Singh on 28.06.2002. The said doctor has deposed about the detail of injuries found on the dead body, which are herein given as under:-

1. *A stitched wound present over the left frontol and left temporal region of scalp starting from just above the middle of left eye brow and extending poster lateral cutting to the left pinna upper 1/3rd and going posteriority also. Total length was 18 cm and 17 stitches were applied. On dissection of the wound, underlying haematoma was present extra cranial region below the injury. There was fracture of left frontal and left temporal just underneath the injury on opening the skull, subdural haematoma was present in left parietal, frontal, and temporal regions. Underlying cerebral tissue was oedematous and congested. Intra-cerebral bleeding was present. Bleeding was present in left intra-ventricular space.*
2. *An abrasion 3 x 1 cm on the posterior aspect of right shoulder.*
3. *An abrasion 2 x 1 cm on the lateral aspect of upper 1/3rd of right thigh.*

Furthermore, the cause of death was opined to be due to head injury and its complications. All the injuries were ante-mortem in nature and sufficient to cause death in ordinary course of nature. The probable time between death and post-mortem was within 26 hours. The said doctor also proved the carbon copy of the post-mortem report, which is Ex.PA, pictorial diagram Ex.PA/1, police request for post-mortem examination Ex.PB and inquest report Ex.PC.

PW-2 Dr.Subhash Chander, has deposed about having medico-legally examined Prem on 27.06.2002 at 7.25 p.m., who was brought by Rohtash, with the alleged history of assault in village around 6.00 p.m. on 27.06.2002. Vitals were unrecordable and patient was unconscious with following injuries:-

1. *Incised wound of size 12 x 3 cm, bone deep present over left temporal region. Wound was fresh and fresh bleeding was present.*
2. *Upper 1/3rd part of left pinna was missing. Margins of rest pinna were sharp. Wound was fresh, with fresh bleeding.*

He also deposed about having dispatched ruqa Ex.PE to Incharge of Police Station Sadar, Rohtak regarding admission of Prem at 7.25 p.m. He also deposed that on 10.07.2002, on the application Ex.PF, he opined Ex.PF/1 about possibility of injuries caused by the weapon (so produced before him) cannot be ruled out.

PW-3 Head Constable Ajmer Singh, tendered into evidence his affidavit Ex.PG, which is formal evidence.

PW-4 ASI Ishwar Singh has deposed about having registered

deposed about dispatch of Special Report to the Illaqa Magistrate

PW-5 Rohtash is the complainant, at whose instance, the prosecution proceedings were initiated. Besides deposing about his relationship with deceased Prem. He further deposed about the manner of causing of occurrence by the accused persons, while he was present along with Prem in front of his house on 27.06.2002. He has deposed in consonance with the prosecution version.

PW-6 SI Vijender Singh, has deposed about preparing of report under Section 173 Cr.P.C., at his instance.

PW-7 Ramdhan, Operation Theatre attendant, PGIMS Rohtak, has proved the record of treatment file of Prem, bearing CR No.269281. He deposed that he was admitted on 27.06.2002 and was declared dead at 12.30 a.m. on 28.06.2002.

PW-8 Constable Sumit Kumar has deposed about having prepared scaled site plan on 10.08.2002 Ex.PJ, at the instance of Rohtash.

PW-9 Constable Dalbir Singh has deposed about having facilitated conducting of the post-mortem examination on the dead body of Prem and the parcel of clothes having handed over to him, which was further handed over to ASI Mahender Singh and the same was taken into possession vide memo Ex.PK.

PW-10 Vijay has deposed about the detail of manner of occurrence caused by the accused on 27.06.2002 at about 6.30 p.m.. He also deposed in consonance with the testimony of complainant Rohtash.

PW-11 Kamla, wife of the deceased, has also given the eye witness account of the occurrence, so caused by the accused and her

statement is also, in consonance with the testimony of the complainant.

PW-12 Ranbir is another brother of the deceased, who has deposed about having come to see his brother at PGIMS, Rohtak, on night of 27/28.06.2002. He further deposed about having met police party outside the police station on 01.07.2002, where, Hari Singh, who claimed himself to be maternal uncle of Chand and Anar, produced them after a short while. He also deposed about Anar having produced *ballam* and Chand having produced *jaili* and the same were taken into possession vide separate memos Ex.PM and Ex.PN. Even, accused Tara, Gulaab and Mukesh were produced by Hari Singh. He also deposed that Mukesh made a statement about having kept concealed *gandasa* after cleaning the same in the bed of his *chaubara* and the said statement is Ex.PO, on the basis whereof, *gandasa*, was got recovered. Sketch Ex.PO/1 was prepared. *Gandasa* is **Ex.P1**. He also deposed about the parcel of the same to have been prepared and the same was taken into possession vide memo Ex.PO/2, which was also attested by him.

PW-13 ASI Mahender Singh, is the Investigating Officer of the present case. He has deposed about the manner of initiation of the proceedings in the present case, the detail, whereof, has already given in the earlier part of the judgment. He further deposed about the manner of recording of the statement of the complainant Rohtash, on the basis whereof, FIR was got registered. He also gave the details of investigation conducted by him. Furthermore, he has also deposed about having met Ranbir son of Bhim Singh, per chance, on 01.07.2002, while he was present at Sukhpura, for going to village Makroli, in connection with the investigation of this case. He also deposed about Hari Singh, maternal

Anar, Gulaab and Tarawati before him. He also deposed about Chand and Anar to have produced *jaili* and *ballam*, which were taken into possession vide separate memo Ex.PM and Ex.PN. Rough sketches of *jaili* and *ballam* were prepared. He further deposed about recovery of *gandasa* in pursuance of disclosure statement made at the instance of Mukesh. Furthermore, he has deposed about the sketch of same having been prepared and having taking the same into possession vide separate memo and site plan of the spot of recovery was also prepared. He also deposed that on 21.07.2002, Suresh was also produced before him by Dilbagh, son of Ramdhari and he had produced *lathi*, which was taken into possession vide separate memo. On 28.07.2002, when he raided the house of brother-in-law of Chand, Bala, his sister was present there. Nahar Singh, Panch, produced Bala along with *lathi* before him. Rough sketch of the *lathi* was prepared and the same was taken into possession vide separate memo. On 19.09.2002, Babita was produced by Mahavir Singh along with *lathi* and rough sketch of the *lathi* was prepared and the same was taken into possession vide separate memo. On 10.07.2002, he had made an application Ex.PF to the doctor, for seeking opinion regarding injuries on the person of deceased and after opening of the parcel, the doctor had given his opinion Ex.PF/1 and again re-sealed the parcel.

PW-14 Dr.Nithsha had stated about admission of patient Prem on 27.06.2002 with diagnosis of multiple injuries. Prior to shifting patient he was in emergency department. His general condition was very poor. She further deposed that at the time of admission of the patient in emergency department, BP was not recordable, pulse was very feeble and he was unconscious. She further deposed about some of the notes in the treatment

record to be in her hand. She further deposed about police having informed regarding the death of Prem.

Thereafter, learned Public Prosecutor tendered into evidence FSL report Ex.PW and closed the evidence.

On closure of the prosecution evidence, all the incriminating circumstances appearing in the prosecution evidence were put to the accused in their statements under Section 313 Cr.P.C. However, the accused denied those allegations.

Accused Mukesh has taken the plea, which for the convenience of discussion, is reproduced as herein given:-

“I am innocent and have been falsely implicated in this case due to enmity. I and Anar used to do labour work in the fields of agriculturists of my village and we returned back to our village at about 7 p.m. Thereafter, we came to know about the causing of injuries by some unknown person near village Pond and Prem Singh was removed to PGI MS Rohtak by the villagers.”

Accused Chand, while asserting innocence and claiming false implication, due to enmity, he took the plea of alibi about himself to be present in ITI Rohtak, on the day of occurrence. Specific plea has been taken by him that Ishwar Singh told him about the causing of injuries to Prem Singh by some unknown persons near the village Pond. Thereafter, he reached in the village and upto that time, Prem had been taken to PGIMS Rohtak by the villagers.

Even, Anar had taken plea about the injuries to have been caused to Prem by some unknown persons, near the village Pond and in

injured condition, he was removed to PGIMS, Rohtak, by the villagers.

Similarly, Suresh had taken the plea of false implication, due to his relationship with Chand and other accused. He took the plea about having visited his in-laws' on 24.06.2002 and returned back to his village with his wife on 25.06.2002. He also deposed that he did not know anything about the facts of this case.

Accused Babita, Bala, Tarawati have also taken the plea of false implication.

In defence, accused examined as many as 8 witness.

DW-1 Dalbir Singh, Assistant, ITI, Rohtak, has deposed about presence of Chand son of Nafe Singh, who has been working as Sweeper in ITI, Rohtak on the day of occurrence. He has deposed that the attendance register of 27.06.2002 for showing his presence or absence from duty, had already been lost and in this regard, DDR dated 02.09.2002 was lodged in police post Arya Nagar, Rohtak. He further deposed that letter dated 03.07.2002 was written by Principal Sh.M.S.Sangwan, to Chand regarding his absence from duty from 28.06.2002 and photocopy thereof is Mark-D1.

DW-2 Chander Singh has deposed about Suresh to be working with him since 2-3 months prior to the occurrence. He was apprehended by the police on 21st day of Asad of last year. On his enquiry, police people, who were four in number, told him that he had murdered a person at his village Makroli and that is why he is being taken by the police. He further deposed that Suresh used to work with him from dawn to dusk. Prior to the date of arrest, he was working with him regularly.

DW-3 Kartar Singh has deposed about knowing Chand,

Mukesh and Rohtash and complainant. He further deposed that on

27.06.2002 at about 5.30-5.45 p.m., he was proceeding to his fields and he reached near the village Pond, he saw two persons scuffling with Prem and one of them, gave *pharsa* blow on his head and after inflicting injury, both of them fled away towards the field. As a result of *pharsa* injury, Prem fell down on the ground. He deposed that he raised hue and cry and some people were attracted to the spot and they brought Prem Singh injured in a room situated on the outer side of village and he was made to lie on bed and his wife was informed. He was taken to the house of Rohtash and thereafter, he was got admitted in PGIMS, Rohtak, by Rohtash.

DW-4 Brij Bhushan has deposed about knowing Chand Ram and deposed that he used to work as Sweeper in ITI Rohtak. He has also deposed about letter dated 28.6.2002, which was written to Chand Ram regarding his absence for the dates; 18.6.2002, 26.6.2002 and 28.6.2002. Copy of the same is Mark D-2.

DW-5 Head Constable Partap Singh has deposed about DDR having got recorded by Brij Bhushan, Group Instructor, attested copy where of Ex.DD.

DW-6 Raj Singh has deposed about himself to be Contractor at Railway Station Makrauli Kalan, Rohtak, for issuance of railway tickets and monthly seasonal tickets. He also deposed that Ex.DE is the monthly seasonal ticket of accused Chand Ram whereas, Ex.DF is his identity card, which were issued by him from 13.6.2002 to 12.7.2002. It was from Makrauli to Rohtak and back.

DW-7 Ishwar has deposed about Chand to be residing with him. After arrival from his duties from Rohtak, he used to come through train and after employment, he used to work for about two hours with him.

On the day of death of Prem, Chand had come to his tubewell after his duty hours. He also deposed that he apprised Chand about the injuries received by Prem. On that day, Chand had left his tubewell after half an hour of his arrival.

DW-8 Sh.M.S.Sangwan, Principal, ITI Kaithal, has brought the letters Mark D1 and D2, which were dated 28.06.2002 and 03.07.2002, which were issued to Chand Ram and which bears his signatures and the same are Ex.DG and Ex.DH.

After hearing learned Public Prosecutor, learned counsel for the accused and on appraisal of the evidence, brought on record, vide judgment of conviction and order of sentence, accused Anar and Mukesh were convicted for the commission of offence punishable under Section 302 read with Section 34 IPC, whereas, accused Bala, Babita, Chand, Tara and Suresh were convicted for the commission of offence punishable under Section 323 read with Section 34 IPC and all of them were sentenced, as detailed in the earlier portion of the judgment.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, appellants have filed the respective appeals.

We have heard learned counsel for the appellants and learned State counsel and have perused the record.

As per version of the prosecution, on 27.06.2002, at about 6.30 p.m., Rohtash and Prem Singh were smoking *hukka* in front of *kotha* of Prem Singh, where Kamla, wife of Prem Singh was also present. At that time, Vijay came running and told them that Mukesh and Anar are chasing him to cause injuries, whereupon Vijay was pushed inside the *kotha*. Just,

thereafter, Anar armed with *ballam* and Mukesh armed with *gandasa*, had

reached there and asked them to bring out Vijay. However, when Prem Singh refrained them, then Mukesh had given *gandasa* blow on left side of his head and Anar pulled him down on the ground. Further, it is the claim of the prosecution that accused Chand, Suresh, Gulaab, Bala, Tara and Babita had also reached there. They had also given assault to Prem Singh, Rohtash and Kamla. So far as, other accused apart from Mukesh and Anar, are concerned, it is the version of the prosecution that they had come after some time and they had caused injuries to Rohtash, Vijay and Kamla. However, it is pertinent to mention that prosecution witnesses while facing cross-examination, have categorically stated that they have not got themselves medically examined. Even though, there are stated to be simple injuries but medical examination was essential to have been got conducted. However, the same has not been so conducted. Even though, it is the claim that Gulaab had thrown brick bat, which hit elbow of right arm of Kamla but however, no medical examination, as such, has been got conducted. It seems that it is an inflated version of the prosecution about role so attributed to those accused, who had subsequently come to the spot. Their role does not inspire confidence vis-a-vis causing of the injuries to Prem Singh and his companions, at the spot. Even though, weapons are stated to have been produced by them but however, such weapons are not of any material avail to the prosecution as none of them were found stained with the human blood. Moreover, they are also easily available in the village. Similarly, even the role of Anar, as put forth by the prosecution, does not appear to be above board. Though, it is claimed that Anar was accompanying Mukesh, at first instance and was armed with *ballam* but however, no injury on the person of deceased, as such, has been attributed to Anar. Only role

attributed to him is about having made Prem Singh fall on the ground. It also appears as an inflated version of the prosecution, more particularly, when Anar is stated to be armed with *ballam*, but no injury was caused by this accused.

In the light of the same, now let us consider the role of Mukesh. So far as, accused Mukesh is concerned, Rohtash, at whose instance, the proceedings were initiated, while in the witness box as PW-5, has categorically stated that on 27.06.2002, at about 6.30 p.m., he was smoking in front of the house of Prem Singh and Prem Singh and his wife were present there. He further categorically stated that Vijay came running and told him about Mukesh and his companions want to cause injury to him. He also deposed that Vijay was concealed in the house and also deposed about the accused Mukesh, to have come there, while armed with the *gandasa*. He further deposed that when Prem Singh stopped him, Mukesh had given *gandasa* blow on the left side of head of Prem Singh. Even, PW-10 Vijay has deposed about this manner of causing of the occurrence by Mukesh. Furthermore, PW-11 Kamla, wife of Prem Singh (since deceased) has also deposed about this manner of causing of the injuries by Mukesh on the head of Prem Singh, while being armed with *gandasa*. The said witnesses have given vivid description of the manner of causing of the injuries by Mukesh with *gandasa* on the head of Prem Singh.

The ocular version, so coming forth, also finds corroboration from the medical evidence, coming on record. Soon after the occurrence, when deceased Prem Singh was taken to the hospital, PW-2 Subhash Chander, had conducted medico-legal examination of the patient. He has

categorically stated that on 27.06.2002, he medico-legally examined Prem

Singh, who was brought by Rohtash with alleged history of assault in village around 6.00 p.m. on 27.06.2002. He deposed that vitals were unrecordable and patient was unconscious. He has given the detail of the injuries, which has already been reproduced in the earlier portion of the judgment. Detail of the injuries reveal about the same to be two in number. However, while facing cross-examination, the said witness has made it amply clear that injuries No.1 and 2, could be caused by single blow. He has stated in the cross-examination that bone was visible. Even, PW-1 Dr.Kulpratibha has deposed about conducting of the post-mortem examination on the dead body of Prem Singh and she has given the detail of the injuries, which has already been reproduced in the earlier portion of the judgment. She also opined that cause of death was due to head injury and its complications. Furthermore, it is pertinent to mention here that though in the post-mortem report, injuries No.2 and 3, which are abrasions, have been mentioned but however, the same went unnoticed when the medico-legal examination was conducted. Even though, it is submitted that same were caused by the remaining accused but however, this doctor, while facing cross-examination, has categorically stated that injuries No.2 and 3, being abrasions, could be caused by fall on a hard surface and therefore, it rules out the role of other accused, of having inflicted injuries, on the person of the deceased.

Further, so far as, role of Mukesh is concerned, the witnesses as detailed aforesaid, have given eye witness account and they have faced lengthy cross-examination but nothing material elicited out, to dislodge the version of the prosecution. Even, their testimonies find credence from the medical evidence, so coming on record.

Now, it is submitted by learned counsel for the appellant that the witnesses, so examined by the prosecution, are interested witnesses being close relatives and therefore, sole reliance cannot be placed upon their testimonies. However, the aforesaid submission is not tenable. So far as, Rohtash is concerned, definitely he is brother of the deceased. Even though, he is living separate in PGI campus but however, as evident from the prosecution witnesses, he had share in the ancestral property in the village and in view of the same, his presence in the house of his brother in the village, is not unnatural. He along with his brother Prem Singh (since deceased) was enjoying smoking *hukka* at the relevant time. Even, Vijay is son of Rohtash. He has categorically deposed about accused to be chasing him. In the light of the same, it was most natural on his part, to have come to the house of Prem Singh to seek assistance to save himself. In the light of the same, presence of the aforesaid witnesses, as such, cannot be doubted. Even, Kamla, another eye witness, is wife of deceased Prem Singh. Considering this relationship, her presence at the spot also, as such, cannot be doubted. Otherwise also, it is pertinent to mention that testimonies of the witnesses, is not to be discarded, solely on account of they being interested witnesses, being close relatives of the deceased. Relationship is not a factor to effect credibility of a witness. Ordinarily, a close relation would be the last to screen the real culprit and falsely implicate an innocent person. Very true, when there is some kind of enmity or bitterness between the parties concerned, then, on account of close relation being witness, may introduce incriminating role of an innocent person but however, such is not the case in the present case. No bitterness or animosity between the parties is evident.

Rather, presence of the aforesaid witnesses, is most natural at the spot.

They have been subjected to lengthy cross-examination. Nothing material elicited out to create doubt about their presence at the spot. In the light of the same, the mere fact of said witnesses being relatives of the deceased, does not matter much.

Now, further learned counsel for the appellant has also submitted that there is delay in initiation of action in the present case, therefore, tutored version, as such, is coming forth but however, the aforesaid submission is not tenable. As per the version of the prosecution, the occurrence had taken place at about 6.30 p.m. Injured Prem Singh had arrived in PGIMS, Rohtak, at 7.25 p.m. Thereafter, V.T. was sent and the same was received in the police station. Thereafter, the police had come to the hospital. The certificate regarding injured to be unfit to make statement, was obtained from the doctor and same was given at 11.50 p.m. Though, it is submitted that no effort was made to record the statement of the eye witness, even though, they were present in the hospital, but however, it is pertinent to mention that it is quite natural for the Investigating Officer, firstly to obtain the opinion of the concerned doctor regarding the injured fit to make the statement and if so, injured is not available, only thereupon, the statement of eye witness is to be recorded. The said certificate of unfitness was obtained at 11.50 p.m. The Special Report had reached Illaqa Magistrate at 6.30 a.m., on the next day i.e. 28.06.2002. However, it is pertinent to mention that in the medical evidence, it is coming forth, that there was cardiac arrest to Prem Singh at about 9.40 p.m. Vijay, son of the complainant Rohtash, after admission of Prem Singh, is stated to have gone away to make arrangement for money for treatment of Prem Singh. Looking

of the near relatives of Prem Singh injured (at that time) to provide medical aid to him. It was only on this account, in the process, there was delay in recording statement of the complainant. In these circumstances, it cannot be said that the delay was used for tutoring of the complainant. In the light of the same, the time consumed during the interregnum period, as such, stands duly explained.

Even, it is further submitted on behalf of the appellant that no strong motive, as such, is established for causing of the occurrence by Mukesh, which fact, as such, raises doubt the truthfulness of the version of the prosecution. However, the aforesaid submission is not tenable. It is pertinent to mention that as per version of the prosecution, motive for causing the occurrence, was relating to the previous quarrel between Vijay one one hand and Anar on the other hand. But, any how, there was no motive for causing the injury to Prem Singh, so far as dispute of payment of wages is concerned. Otherwise also, it is pertinent to mention that the present case is of direct evidence and is not based on circumstantial evidence. In the light of the same, aspect of motive, as such, pales into insignificance.

In view of the aforesaid discussion, we find that the prosecution has failed to establish the guilt, beyond shadow of doubt qua appellants Anar, Bala, Babita, Chand, Tara and Suresh and therefore, they are acquitted of the charges levelled against them. However, the prosecution has duly proved its case, beyond shadow of doubt qua appellant Mukesh and he has been rightly convicted and sentenced.

Resultantly, CRA No.D-939-DB of 2003 stands allowed qua

appellant Anar, whereas, it stands dismissed qua appellant Mukesh and

CRA No.S-2337-SB of 2003 stands allowed.

Accused-appellant namely Mukesh, is stated to be on bail. A copy of the judgment be sent to concerned Chief Judicial Magistrate, to get the accused-appellant arrested, so as to serve the remaining part of the sentence.

As accused-appellants namely Anar, Bala, Babita, Chand, Tara and Suresh, are on bail, their bail bonds, stand discharged.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

January 29, 2020
Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No