

2023:PHHC:126920-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1558-DB-2014 (O&M)

Date of Decision: September 19, 2023

Karambir and another

..... Appellants

VERSUS

State of Haryana

..... Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Charanjit Sharma, Advocate for the appellants.

Mr. Sukhdeep Parmar, Sr.DAG, Haryana.

LISA GILL, J.

1. Appellants have filed this appeal challenging judgment dated 11.09.2014 passed by learned Additional Sessions Judge, Rohtak wherein they have been convicted for the offence punishable under Section 302 IPC read with Section 34 IPC as well as order of sentence of even date whereby they have been sentenced to undergo imprisonment for life besides pay a fine of ₹10,000/- each for the offence punishable under Section 302 IPC read with Section 34 IPC and in default thereof undergo simple imprisonment for six months. Both appellants have been convicted and sentenced for the murder of Baljeet and Rajbir.

2. Brief facts as per prosecution case are that FIR No. 9 dated 27.01.2011 was registered on the basis of statement of complainant - Satbir

(PW3). As per version in the FIR, information about murder of Baljeet son of Sultan in the field at village Girawar was received by SI/SHO Surat Singh on 27.02.2011 when he alongwith other police officials were present at Lakhan Majra chowk on patrol duty. Complainant - Satbir met SI/SHO Surat Singh at the said fields and stated that they are five brothers, eldest being Karambir (appellant No. 1), then Rajbir (deceased) alongwith Baljeet Singh (deceased) with the youngest being Ramesh. Karambir is their step brother being a son from another lady namely Bedo married to their father. Apart from Karambir, all four brothers including the complainant are sons from the other mother and are residing together with all brothers being married. Karambir Singh was residing separately since 25 years. Karambir is stated to have become a Baba (spiritual guide) since a number of years and had started wearing saffron clothes. Complainant stated that on 27.01.2011 when he was working in the fields, Karambir and Rajbir came present. Rajbir and Baljeet asked Karambir to give up the saffron dress and start doing agricultural work, upon which, Karambir started abusing them. Karambir and Rajbir then left for the village. At about 1.00 p.m., Karambir alongwith his son Sunil (appellant No. 2) returned to the fields with Karambir armed with stick (danda) and Sunil with an axe. Karambir gave stick blow on Baljeet while Sunil gave axe blows on the head and neck of Baljeet. When Satbir tried to save Baljeet, both Karambir and Sunil ran towards him while proclaiming that they had killed Baljeet and Rajbir and now it is his turn. Complainant – Satbir called out to Ajit son of Ram Kumar and Shamsheer son of Dayanand, who were working in nearby fields, upon which both these persons ran towards him. Sunil and Karambir on seeing Ram Kumar and Shamsheer fled from the spot alongwith their respective

weapons. Baljeet, it is stated, succumbed to his injuries at the spot. Complainant stated that he came to know that accused had also inflicted injuries upon his brother Rajbir with danda and axe. Rajbir was taken to hospital by his younger brother Ramesh. Appellants are stated to have assaulted Rajbir with intention to kill him and have killed Baljeet due to tussle of land and having a grudge about being asked to give up saffron clothes.

3. FIR No. 9 dated 27.01.2011 under Sections 302, 307, 34 IPC was, accordingly, registered at Police Station Lakhan Majra, Rohtak. In the meantime, Rajbir also died. Proceedings under Section 174 Cr.P.C. were initiated. Inquest reports were prepared. Post mortem of both the deceased was carried out. Post Mortem Report of Baljeet and Post Mortem Report of Rajbir are on record as Ex.P8 and Ex.P19. Rough site plan/s of the spot/s of occurrence was prepared and photographs taken. Blood stained earth and a broken piece of stick was lifted from the spot of occurrence of murder of Baljeet and taken in police possession vide recovery memo (Ex.P2). Blood stained earth from place of occurrence where fatal injuries were inflicted on Rajbir was also lifted. Statements of the witnesses were recorded. Accused were arrested on 28.01.2011. On the basis of disclosure statement (Ex.P37) by Karambir Singh one broken stick (danda) and clothes were recovered from his residential house. One axe and clothes were recovered at the instance of disclosure statement (Ex.P38) by appellant – Sunil from his residential house. PW18, ASI Jaideep Singh deposed in detail in regard to the investigation carried out in the matter. SI, Surat Singh had unfortunately passed away before being able to depose in the matter. Challan under Sections 302, 307, 34 IPC was presented on completion of investigation.

Case was committed to the Court of Sessions on 19.05.2011. Appellants were charge sheeted for the offence punishable under Sections 302, 34 IPC on 07.09.2011, to which they pleaded not guilty and claimed trial.

4. Prosecution examined as many as twenty (20) witnesses to substantiate its case. Learned trial Court on considering the evidence on record, facts and circumstances concluded that prosecution had succeeded in proving its case beyond reasonable doubt against both the appellants. It negated the defence raised by appellants that present is a case of blind murder and that there was no evidence on record to prove that appellants have murdered both the brothers. Both the appellants were, accordingly, convicted for the offences punishable under Section 302 IPC read with Section 34 IPC and sentenced as detailed in the foregoing paras. Aggrieved therefrom, present appeal has been filed.

5. Learned counsel for the appellants vehemently argued that evidence on record does not conclusively prove commission of the crime beyond reasonable doubt by the present appellants. There was no motive whatsoever for the appellants to have murdered the deceased persons. Appellant No. 1 as well as his son were admittedly living separately since the past twenty five years. Thus, occasion did not arise for having any grudge against the deceased. Furthermore, recovery of the weapons of offence and blood stained clothes is doubtful and it has not been proved from the evidence on record that blood on the weapon and clothes was of the deceased persons. Learned counsel for the appellants has vehemently argued that learned trial Court has incorrectly considered the statement of PW9 Ramesh to the extent that deceased Rajbir had narrated the sequence of events and has wrongly treated the same to be a dying declaration.

6. In the alternate, it was argued that in the given factual matrix, offence punishable under Section 302 IPC read with Section 34 IPC is not made out and at best present may be a case of grave and sudden provocation, thus, inviting lesser penal consequences. It is, thus, prayed that this appeal be allowed. Judgment and order dated 11.09.2014 be set aside, consequently, acquitting appellants of the charges against them or in the alternate reducing the sentence imposed upon them.

7. Learned counsel for the State while refuting the arguments raised on behalf of the appellants submitted that prosecution evidence positively and clearly proves commission of offence by both the appellants, as alleged. It was, thus, prayed that this appeal being devoid of any merit, be dismissed.

8. We heard learned counsel for the parties and have carefully gone through the file as well as record with their able assistance.

9. Appellants have been held guilty for committing murder of Baljeet and Rajbir, both of whom are real brothers. Appellant No. 1 – Karambir is their step brother having been born from a different mother. Appellant No. 2 is the son of Karamabir. Complainant – Satbir is real brother of deceased as is PW9 Ramesh. Complainant – Satbir PW3 clearly deposed that he alongwith his brother was working in the fields on 27.02.2011 when appellant No. 1 – Karambir and Rajbir (deceased) also came present. Rajbir and Baljeet asked Karambir to give up the saffron dress and start doing agricultural work. It is on this advice that Karambir got enraged and started abusing. Thereafter, appellant No. 1 – Karambir alongwith Rajbir had gone towards the village from fields. Karambir alongwith his son Sunil returned at about 1.00 p.m., duly armed

with stick and axe. They immediately attacked Baljeet, with stick blows given by Karambir and Sunil inflicting axe blows on the head and neck of Baljeet. Karambir, it is stated, proclaimed that Baljeet would be taught a lesson for advising him to lay down his Saffron clothes. Injuries found on the person of deceased Baljeet as described in the Post Mortem Report (Ex.P8) and affidavit (Ex.PW5/A) of Dr. Renu Berry (PW5), Medical Officer, General Hospital, Rohtak read as under:-

“1. An incised wound 1cm x 5cm on Rt. parietal region of scalp 15cm from rt. pinna & 1.5cm from midline scalp deep. Margins show infiltration.

2. 2cm x 6cm incised wound on Lt. occipital region Lt side linear in shape oblique in direction 1.5cm from midline & 10cm from Lt. pinna. There is linear fracture of the underlying bone with gaping under lying brain matter visible margins are regular & show infiltration of blood & ecchymosis. On deep dissection the skull shows EDH & SDH.

3. 9cm x 2cm incised wound on Lt. side of neck 8cm from the Lt pinna & 8cm from the chin in the midline. The underlying trachea is cut larynx & trachea are diffusely contused show ecchymosis & infiltration. The underlying 2nd & 3rd thoracic vertebra are cut with the margins showing infiltration. Large neck vessels are cut with infiltration of blood in the wall.

4. 10cm x 0.5cm incised wound skin deep in front of neck 5 cm to the Rt. from the midline & to the Lt. 5cm from midline. The margins are ecchymosed & showing infiltration.”

10. Cause of death is stated to be injuries as described which are sufficient to cause death in ordinary course of nature. PW5 Dr. Renu Bery has categorically stated that possibility of injuries being caused by the weapons shown to her i.e. axe and danda, as produced before her, could not be ruled out.

11. It is stated by complainant - Satbir that appellants clearly proclaimed that they had killed Baljeet and Rajbir and later he came to know that his brother Rajbir had also been killed with danda and axe. Injuries found on the person of Rajbir as described in PMR, (Ex.P19) and affidavit (Ex.P20) of Dr. Dimple (PW7), Medical Officer, Pt. B.D.Sharma PGIMS, Rohtak read as under:-

- “1. A stitched wound of size 10 cm long was present over scalp having eight stitches extending from frontal region on rt. side upto midline.
2. A stitched wound having four stitches was present over left frontal region of scalp 2 cm away from midline.
3. 4 cm long stitched wound was present over scalp having 4 stitches present over left side (frontal) 2 cm away from midline.
4. 3 cm long stitched wound having 3 stitches was present over scalp in It. Parietal region 5 cm away from midline. On further dissection a linear # was present over frontal bone 1 cm size and rest of the parietal bone. Size of# was 3.5 cm long.
5. 6 cm long stitched wound was present having 6 stitches wound was present in the midline of scalp 2 cm towards rt. and 4 cm towards left side. On dissection of scalp a sharp cut(#) of size 4cm x 0.2cm was present over the vertex on both sides of the midline more so on the left side A chip of rt. parietal bone elevated and separated from #ed part of the bone. This bony injury was present in midline.
6. 4 cm long stitched wound having 4 stitches present in rt. parietal region present 2cm away from midline.
7. 9 cm long stitched wound having 8 stitches was present on rt. side in occipital area 3cm from midline.
8. 4 cm long stitched wound having 4 stitches was present in occipital region on left side. On further dissection a linear # was present and the size of linear # was 10 cm. Cranial cavity was full of blood underlined tissue of the above mentioned injuries

found ecchymosed. Skull bone shows pericranial infiltration of blood.

9. Stitched wound of size 4 cm having 5 stitches was present over nape of neck which was present 9 cm away from occipital protuberance. Underlined tissues were ecchymosed.

10. Contused abrasion of size 5x3 cm was present over rt. iliac crest of hip bone.

11. Abrasion of size 3.5x1 cm was present over rt. forearm.

12. 9x9 cm bruise was present over left upper arm anteriorly.

13. Contusion was present behind the rt. ear.”

12. Cause of death is opined to be multiple injuries as above and its complications which were ante mortem in nature and sufficient to cause death in due course of nature. Time between the injuries and death was stated to be variable and between autopsy and death within 24 hours.

13. It is to be noted that PW4 Shamsheer duly deposed that he was present at about 1/1.30 p.m. in his fields on 27.01.2011. He heard hue and cry raised by Satbir and saw that Karambir and Sunil were after him. Appellants were proclaiming that they had already killed Baljeet and Rajbir and now it was Satbir's turn. PW4 stated that Sunil was having a Kulhari (axe) in his hands and Karambir a danda (stick). When he (PW4) alongwith Ajit ran towards the accused, appellants fled towards the village alongwith their respective weapons. Cross examination of said witness Shamsheer (PW4) could not elicit anything in favour of the appellants and the witness deposed steadfastly while supporting the prosecution version.

14. PW9 Ramesh son of Sultan deposed that appellant No. 1 Karambir is their step brother and used to reside separately since last 20/25 years. Their father owned 20 acres of agricultural land, which was divided in six equal shares, out of which, one share had been kept by their father.

Karambir had wanted to sell land of his share due to which all family members were unhappy. PW9 Ramesh, categorically stated that he was present in his village on 27.01.2011 when he received a telephonic call from his brother Satbir (PW3), who informed him about the murder of Baljeet by Karambir and Sunil with danda and axe as well as their proclamation that they had also given injuries to Rajbir and killed him. Satbir asked PW9 to go to the other field to look for Rajbir. It is on this information that PW9 went to the field and found Rajbir in an injured condition in the fields. Rajbir revealed to PW9 that Karambir armed with danda and Sunil with the axe caused injuries to him. PW9 alongwith Ram Kumar son of Tek Ram took Rajbir to PGIMS, Rohtak. It is stated that on the way to hospital, Rajbir became unconscious and ultimately died at PGIMS on the same day at about 7.00 p.m. Blood stained earth was lifted from the place of occurrence in his presence on the next day i.e. 28.01.2011.

15. PW9 Ramesh has also steadfastly stuck to the version given by him and has denied the suggestion that share of land of Karambir was being used by them and it was only in order to grab this land that Karambir and his son were falsely implicated. On the basis of disclosure statement of appellant No. 1, stick and axe used in the commission of offence alongwith blood stained clothes were recovered from his residence and taken in possession as testified by PW10 HC Rohtash. PW12 Constable Pradeep has testified regarding disclosure statement of appellant No. 1 (Ex. P37) and that of appellant No. 2 (Ex.P38). ASI Samundar Singh (PW11) has proved recovery memo Ex.36 in respect of the recoveries effected pursuant to the disclosure statements. PW18 ASI Jaideep Singh has disclosed in detail about the investigation in the matter and the documents on record. He has also

verified the investigation as carried out by and under supervision of SI Surat Singh who had unfortunately passed away.

16. PW20 Dr. Ashok Kumar, who examined Rajbir on 27.01.2011 testified that Rajbir was brought to the Accident and Emergency department, PGIMS Rohtak on 27.01.2011 at about 2.35 p.m. He was admitted with alleged history of assault with sharp weapon. He was having multiple incised wounds over the scalp, about ten in number and with one wound present on the back of the neck as well as one over the right gluteal region. Laceration over the right ear was also mentioned. It is further stated that patient's condition deteriorated at about 3.30 p.m. He was intubated but he ultimately passed away at about 6.55 p.m. despite best medical treatment and efforts.

17. In our considered opinion, prosecution in this case, has led clear and cogent evidence on record to prove the commission of offence by the appellants. All the ends are clearly and neatly tied on the basis of evidence. Argument that it is interested witnesses, who have deposed as per their convenience and wishes is an argument devoid of any merit, hence rejected. Merely because complainant and PW9 are real brothers of the deceased and step brothers of appellant No. 1 does not impinge upon their credibility in the given facts and circumstances. Both the witnesses have succinctly deposed about the sequence of events as they took place. They are the most natural, normal and probable witnesses in the given circumstances. Moreover, Shamsher son of Dayanand, who is an independent witness, has duly deposed as PW4, narrating the turn of events. He has given the eye witness account regarding the murder of Baljeet as well as proclamation by the said appellants about having killed Rajbir. Intimation about injuries to

Rajbir was given by Satbir to his brother Ramesh, who immediately went looking for Rajbir and found him in an injured condition in the fields. Argument that non examination of other witness namely Ajit, who was allegedly present alongwith Shamsheer is fatal to the prosecution case, is devoid of any merit in view of the cogent evidence on record. Shamsheer is not related to the complainant and neither is there any evidence on record to discredit his testimony. Shamsheer alongwith Ajit were working in the adjoining fields. There is again no evidence to the contrary. Thus, non examination of Ajit does not dent the prosecution case. Said argument is hence rejected.

18. As is evident from the evidence on record, Rajbir was admitted at PGIMS, Rohtak at 2.35 p.m. on 27.01.2011 with history of assault with sharp weapon. Sequential narration of the events as they unfolded, duly corroborated by evidence on record proves the commission of crime in the manner as alleged.

19. Apart from clear and cogent eye witness on account by Satbir PW3, oral dying declaration of Rajbir as revealed by PW9 Ramesh is available. PW9 Ramesh has clearly deposed that deceased Rajbir, who was found by him in an injured condition revealed that appellant No. 1 armed with stick and appellant No.2 with an axe caused injuries to him. There is no merit in the argument raised by learned counsel for the appellants that no reliance can be placed on the statement of PW9 in respect to the so called oral dying declaration of Rajbir. It is pertinent to refer to Section 32 of Indian Evidence Act, 1873 at this stage, relevant portion of which reads as under:-

“Section 32:- Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. —

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

(1) **When it relates to cause of death.** —When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.”

20. In respect to the evidentiary value of dying declaration Hon’ble the Supreme Court in **State of Madhya Pradesh versus Dal Singh and others (Criminal Appeal No. 2303 of 2009 decided on 21.05.2013)** while referring to its earlier judgments on the subject held as under:-

“9. In Laxman v. State of Maharashtra, AIR 2002 SC 2973, this Court held, that a dying declaration can either be oral or in writing, and that any adequate method of communication, whether the use of words, signs or otherwise will suffice, provided that the indication is positive and definite. There is no requirement of law stating that a dying declaration must necessarily be made before a Magistrate, and when such statement is recorded by a Magistrate, there is no specified statutory form for such recording. Consequently, the evidentiary value or weight that has to be attached to such a statement, necessarily depends on the facts and circumstances

of each individual case. What is essentially required, is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind, and where the same is proved by the testimony of the Magistrate, to the extent that the declarant was in fact fit to make the statements, then even without examination by the doctor, the said declaration can be relied and acted upon, provided that the court ultimately holds the same to be voluntary and definite. Certification by a doctor is essentially a rule of caution, and therefore, the voluntary and truthful nature of the declaration can also be established otherwise.

10. In **Koli Chunilal Savji v. State of Gujarat, AIR 1999 SC 3695**, this Court held, that the ultimate test is whether a dying declaration can be held to be truthfully and voluntarily given, and if before recording such dying declaration, the officer concerned has ensured that the declarant was in fact, in a fit condition to make the statement in question, then if both these aforementioned conditions are satisfactorily met, the declaration should be relied upon.

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14. The law on the issue can be summarised to the effect that law does not provide who can record a dying declaration, nor is there any prescribed form, format, or procedure for the same. The person who records a dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. Moreover, the requirement of a certificate provided by a Doctor in respect of such state of the deceased, is not essential in every case.

Undoubtedly, the subject of the evidentiary value and acceptability of a dying declaration, must be approached with caution for the reason that the maker of such a statement cannot be subjected to cross-examination. However, the court may not

look for corroboration of a dying declaration, unless the declaration suffers from any infirmity.

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xxx”

21. It is to be noted at this stage that in the present case conviction of appellants is not based solely on the said oral dying declaration. Same is infact duly corroborated by the evidence on record. Satbir, PW3, revealed that Baljeet was murdered by appellants when they came to the fields at about 1.00 p.m. Satbir alerted Ramesh about their attack on Rajbir, upon which Rajbir was found in an injured condition in the fields by Ramesh who took him to the hospital by 2.35 p.m. The chronological narrative of the events is duly corroborated by the evidence on record. Admittedly, it was Ramesh who had got Rajbir admitted to PGIMS, Rohtak at about 2.35 p.m. on 27.01.2011.

22. Due corroboration of the prosecution version is also available from recovery of weapons of offence and blood stained clothes pursuant to disclosure statements of both the appellants. It is extremely relevant to note that a broken stick was recovered from the place of murder of Baljeet. Upon disclosure by appellant No. 1, it was a broken stick, which was recovered from his residence. This fact goes a long way to corroborate the prosecution version. There is no merit in the plea raised by learned counsel for the appellants that recovery of weapons of offence and blood stained clothes are suspect on account of no independent witness being associated at the relevant time.

23. It was argued that there is no evidence on record to substantiate the statement of PW9 Ramesh that their father who owned 20 acres of land had divided the same in six shares and had kept one of the six shares with

him and that Karambir wanted to sell the land of his share, which was the cause of unhappiness among the family members. Thus, motive to kill Baljeet and Rajbir, it was urged has not been proved on record. Apart from the fact that firstly there is no denial of appellant No. 1 projecting himself as a Baba, there is clear cut testimony of the witness to the effect that he was told by Baljeet and Rajbir to give up such pursuits and earn his living by taking up agriculture. There is sufficient evidence on record in the shape of evidence of Satbir PW3, succinct testimony of PW9 Ramesh, Shamsheer PW4, other witnesses alongwith medical evidence coupled with recoveries of the weapons of offence etc. which proves the commission of offence by the appellants. The timeline of the sequence of events, as has been narrated above leaves a stamp of truthfulness upon the prosecution version. In view of said evidence on record, question of motive in any case pales into insignificance.

24. At this stage, it had been urged by learned counsel for the appellants that in the alternate, in case complicity of appellants is found to be proved, present is a case, where the appellants cannot be convicted for the offence punishable under Section 302 IPC. At best, it may be a case of grave and sudden provocation where on the comments of the brothers about appellant No. 1 giving up his saffron clothes, the offence was committed. It was, thus, urged that present be treated to be a case of culpable homicide not amounting to murder and appellant be sentenced accordingly.

25. Upon careful consideration of the evidence on record, we do not find any merit in this argument, which is accordingly, rejected. This is so for the reason that there is clear and cogent evidence on record to prove that appellant No. 1 after hearing alleged comments about him giving up saffron

clothes i.e. giving up the lifestyle of a Godman/spiritual guide had got angry and thereafter left the spot alongwith Rajbir (deceased). It is subsequently that appellant No. 1 alongwith his son appellant No. 2 arrived at the spot again, caused injuries upon Baljeet and also proclaimed that they had murdered Rajbir. Turn of events clearly indicates due deliberation about commission of offence in question, meeting of minds of both the appellants, resultant to which offence in question was carried out with due deliberation and premeditation. Offence in question is of no other but of premeditated calculated murder of both the brothers.

26. Prosecution has duly proved the commission of offences by the appellants as charged, beyond reasonable doubt on the basis of clear, cogent and reliable evidence on record.

27. Learned counsel for the appellants is unable to point out any illegality, perversity or infirmity in judgment and order dated 11.09.2014 passed by learned Additional Sessions Judge, Rohtak, which calls for interference by this Court.

28. No other argument was addressed.

29. Present appeal being devoid of any merit is, accordingly, dismissed.

30. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

September 19, 2023
Rts

(RITU TAGORE)
JUDGE

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