



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 29.04.2024
Pronounced on: 27.05.2024

1. CRA-D-883-DB-2017 (O & M)

ABID AND OTHERSAppellants

Versus

STATE OF HARYANARespondent

2. CRR-86-2018

FAKRUDDINAppellants

Versus

STATE OF HARYANA AND OTHERSRespondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Argued by: Mr. Vipul Aggarwal, Advocate
for the appellants (in CRA-D-883-DB-2017).

Mr. K.B.Raheja, Advocate
for the petitioner (in CRR-86-2018).

Mr. Pradeep Prakash Chahar, Sr. DAG, Haryana.

Mr. Rahul Vohra, Advocate and
Mr. Aditya Jain, Advocate
for the applicant-complainant
(in CRM-794-2023 in CRA-D-883-DB-2017).

SURESHWAR THAKUR, J.



1. Since the criminal appeal as well as the revision petition, both involve common questions of facts and law. Therefore, they are amenable to be decided through a common order.
2. The learned Additional Sessions Judge (1), Palwal, through a verdict drawn on 03.08.2017, upon Sessions Case No. 20 of 2013 proceeded to, in respect of charges drawn against the accused, for offences punishable under Sections 323/325 and 302 read with Section 34 IPC, hence made a verdict of conviction, upon, the convicts. Moreover, through a separate sentencing order drawn on 04.08.2017, the learned trial Judge concerned, proceeded to make the hereinafter extracted sentence(s) upon the convicts.

Under Sections	To undergo	Fine	In default
323 IPC	Rigorous imprisonment for one year each.	Rs. 1,000/- each.	Rigorous imprisonment for a period of ten days.
325 IPC	Rigorous imprisonment for two years each.	Rs. 2,000/- each.	Rigorous imprisonment for a period of twenty days.
302 IPC	Rigorous imprisonment for life each.	Rs. 10,000/- each	Rigorous imprisonment for a period of three months.

3. The convicts become aggrieved from the verdict of conviction (supra), and, also become aggrieved from the consequential thereto sentence(s) (supra), as became imposed upon them by the learned Convicting Court, and, have chosen to assail them, through theirs' constituting the instant appeal before this Court.



FACTUAL BACKGROUND

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex.PA/2 is assigned. The narrations carried in Ex. PA/2 are that on 17.11.2012, on receiving a telephonic message, ASI Prithiv Raj alongwith other police officials reached at the site and got recovered the dead body of one Makhmool from the canal and got recorded the statement of Fakruddin son of Deen Mohammad r/o Meerpur, to the effect that he is running a shop in the name and style of 'Khan Tractor Parts' and also got an engine installed after purchasing one marla land near the bank of Bighawali canal to irrigate their fields. Similarly, Amir and Sorab sons of Lahar Khan have also installed their engines there to irrigate their fields. The engine of Amir was installed inside a 'kothra', which was lying locked from outside. On the intervening night of 16/17.11.2012, their engine suddenly went out of order. His younger brother Makhmool (since deceased), who used to sleep in the kothra, situated near the engine, was present there. On suspicion, Amir and others picked up an oral duel with him. Today i.e. 17.11.2012 at around 7.00 AM, he along with his younger brother Shakir, nephew Hasan son of Sapiya, his cousin Asluddin son of Fajru, and, Hamid son of Jumme Khan reached there fields after taking diesel for the engine, where a canter was already parked. Amir, Sorab, Habib sons of Lahar Khan, Akbar and Akhtar sons of Himmat, Abbas and Abid sons of Habib, Harun son of Nasru, Kalu son of Saddiq, Azad and Tahir sons of Amir, Irshad son of Sohrab, Juber son of Himmat and Tayub son of Dalel, while nursing a grudge over the oral duel took



with common object while armed with *lathies*, *dandas*, axes and *farsas* were hiding themselves behind their *kothra*. The complainant had lit fire on the bank of the canal. Suddenly, Amir raised a lalkara to round them up and not to spare anyone. Accordingly, they rounded them up. Makhmool (since deceased) was caught hold by Tahir and Irshad. Tayub and Juber gave fist blows on his mouth whereas, Amir and Sorab gave kicks blows on the testicles of the deceased. Abid gave an engine-handle blow on the left side of the temple of the deceased. Tahir and Irshad drowned the deceased in 15' feet deep water-flowing in Gurgaon canal. When the deceased was getting drowned, Sorab and Amir gave lathi blows to him. Then Jakir gave a *lathi* blow at the head of Hamid. Abbas gave reverse kulhari blows below the right knee and at the left knee of Harun. Abid gave *lathi* blows at his left hand and at the head of Hasan. Kalu gave a lathi blow on his left hand. Azad gave two *farsa* blows on the right thigh, Amir gave a *lathi* blow at the head of Asluddin and Sorab gave two *lathi* blows on the left foot and right paw whereas, Jakir gave a *lathi* blow on the right hand of Sakir. Abbas gave a axe blow on the right hand whereas, Harun gave a *lathi* blow below his right knee. Abid gave *lathi* blows on his legs below the knees. Kalu gave a *lathi* blow on the right shoulder. They raised rescue alarm, hearing which, many people from the neighbour hood followed by Deen Mohammad, Sarpanch reached there. On seeing them, the assailants fled away towards the village while riding a canter. The sarpanch had informed the police. Police reached there and with the help of co-villagers, the deceased was extricated from the canal. On the



INVESTIGATION PROCEEDINGS

5. The investigation was set into motion. The sketch of the site was prepared. Statement of witnesses under Section 161 of Cr.P.C. was recorded. The injured were medico-legally examined and post mortem of the deceased was got conducted. Accused Amir, Abid, Abbas and Jakir were arrested. Accused Sorab, Habib, Akhtar, Akbar, Juber, Harun, Kalu, Azad, Tahir, Irshad and Tayub were found innocent.

6. After completion of investigations by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C., before the learned Committal Judge concerned, against accused Amir, Aabid, Abbas and Jakir.

COMMITTAL PROCEEDINGS

7. Finding the offence under Section 302 IPC to be exclusively triable by the Court of Sessions, the learned Committing Court vide order dated 30.01.2013, committed the case to the Court of the learned Additional Sessions Judge (1), Palwal.

TRIAL COURT PROCEEDINGS

8. On finding a prima facie case, charges under Sections 323, 325 and 302 read with Section 34 of IPC became framed, against all the accused, to which they pleaded not guilty, and, claimed trial.

9. In support of the prosecution case, the prosecution examined twenty two witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and,



10. The accused opted to lead evidence in their defence, however, no defence evidence was led.

11. After conclusion of the trial, as, entered upon the FIR (supra), by the learned Additional Sessions Judge (1), Palwal, the latter proceeded to make the afore verdict of conviction, and, also made the consequent thereto sentences (supra), upon, the present appellants.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANTS.

12. The learned counsel for the aggrieved convict-appellants herein, has vigorously argued before this Court, that the impugned verdict of conviction, and consequent thereto sentence(s) (supra), as imposed, upon the convicts-appellants, thus are ridden with a gross infirmity of gross misappreciation, and non-appreciation of the evidence, existing on record. Therefore, he has argued that the appeal be accepted, and, the verdict, as challenged before this Court, be quashed, and set aside.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

13. On the other hand, the learned State counsel has argued before this Court, that the judgment, as challenged before this Court, is well merited, and does not warrant any interference.

CASE DEPENDENT UPON THE TESTIMONY OF EYE WITNESSES.

14. Complainant- Fakruddin, stepped into the witness box as PW-3, and, in his examination-in-chief, he thus made an articulation, that he alongwith his family members had purchased one marla land near the canal of village Bighawali. He also made a testification that

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similarly, accused Amir and Sourab had also installed a tubewell on their land, as they had also purchased one marla land, near their land. The engine of Amir was lying in the kothra of his tubewell which was locked from outside. PW-3-Fakruddin further echoed in his examination-in-chief that on the intervening night of 16/17.11.2012, the engine of tubewell of Amir and Sourab suddenly went out of order. Since his younger brother Makhmool, was sleeping during the relevant night in his hut near the engine, therefore, the accused persons doubted that his younger brother Makhmool @ Hundle, had caused the disruption of the engine and therebys they proceeded to hurl abuses upon him.

15. On 17.11.2012, at about 7.00 A.M., he alongwith Sakir, Hassan, Asruddin, and Hamid went to the fields for irrigating them and were carrying diesel with them. A canter was already parked near the canal. Accused Amir, Sourab, Habid, Tahir, Irshad, Juber, Akhtar, Akbar, Kalu, Jakir, Tayyub, Haroon, Abbas, Abid, Azad total fifteen persons armed with lathi, ballan, axe etc. were hiding themselves behind the kothra. However, he testifies that they lit the fire near the bank of canal as it was cold. PW-3-Fakruddin further echoed that Amir made a lalkara to round them up and kill them. Tahair and Irshad caught hold of his brother Makhmool. Tayyub and Juber gave fist blows on the face of Makhmool. Amir and Sourab gave a kick on the testicles of Makhmool. Habid delivered a handle blow of engine on the left temporal region of Makhmool. Tahir and Irshad threw Makhmool in the Gurgaon canal, whereins the water was flowing speedily, besides the



accused Amir and Sourab delivered lathi blows on Makhmool, so that therebys he suffers his demise, by sinking and floating in the canal. Jakir is deposed to deliver a lathi blow on the head of Hamid. Abbas caused an axe blow from the reverse side near the knee of the right leg of Hamid. Abid cause a lathi blow on his right foot. Kalu gave a lathi blow on his right shoulder. Therefore, he testifies that all the accused (supra) delivered injuries on the person of the deceased, thus with weapons (supra) and also caused injuries to Hassan, Asluddin, Hamid, Sakir and upon him.

16. PW-3-Fakruddin further echoed in his examination-in-chief that he has mentioned all the details of injuries received at the hands of accused, thus in his statement (Exhibit PA), which he testifies to bear his signatures. Thereafter, he raised a hue and cry, thus for eliciting help, whereupons, many persons of the village including Deen Mohd., Sarpanch of the village rather visited the crime site. He informed the police and the police came on the spot and recorded his statement Ex. PA. The police with the help of other persons also evacuated the dead body of his brother Makhmool from the canal.

17. In his examination-in-chief, the said witness has thus voiced a narrative, qua the genesis of the prosecution case, which is in complete tandem with his previously made statement, in writing, and, to which Ex.PA becomes assigned. Though, he was subjected to the ordeal of a grilling cross-examination by the learned counsel for the accused, but he remained unscathed in the said ordeal.

18. Since a wholesome reading of his testification, as carried in



unfold, qua therein rather becoming carried any rife improvements or embellishments viz-a-viz his previously recorded statement, in writing, nor when his testification suffers from any further taint of its being ridden with any *intra se* contradiction, thus *intra se* his examination-in-chief, and, his cross-examination, therefore, utmost sanctity is to be assigned to his testification.

19. The deposition of complainant-PW-1 becomes supported by the deposition of the other eye witnesses to the occurrence, namely Sakir, Asluddin, Hasan and Hamid, who respectively stepped into the witness box as PW-1, PW-2, PW-5 and PW-11. The echoings occurring in the examination(s)-in-chief of PW-1, PW-2, PW-5 and PW-11 are also in complete harmony with the echoings, as became rendered in respect of the crime event by the complaint-PW-3. Therefore, when there is complete inter se harmony inter se the testification(s) rendered by PW-3, PW-1, PW-2, PW-5 and PW-11. In addition, when despite the learned defence counsel subjecting the said witnesses to the ordeal of a rigorous cross-examination(s), yet the said PWs (*supra*) remaining unscathed.

20. In sequel, the testification(s) rendered by PW-1, PW-2, PW-3, PW-5 and PW-11 vis-a-vis the crime event, when rather are in complete inter se alignment, as such, their respectively made testification(s) were amenable to become relied upon, as aptly done by the learned trial Court concerned.

MEDICAL EVIDENCE.

21. Though primacy is to be assigned to credible ocular account rendered by the credible eye witnesses (*supra*) vis-a-vis



medical evidence, but yet as an abundant safeguard, corroboration thereto is also required to be meted by medical evidence.

22. The doctor who conducted autopsy on the body of the deceased Makhmool stepped into the witness box as PW-18. During the course of his examination-in-chief, he proved the post mortem report, as became authored by him and by the co-authors Dr. Sudeep Saini and Dr.Arvind Gosh. He also proved the existence thereons of his valid signatures. The post mortem report is assigned Exhibit PW18/E.

23. Moreover, he has proven that the cause of death of deceased was owing to drowning. Further, he opined that possibilities of injuries mentioned in the MLR become entailed by fall on hard and uneven surface and by brick bat thus cannot be ruled out. The relevant injuries as noticed by PW-18, on the dead body of deceased are extracted hereinafter.

1. An abrasion of 5 cm x 2 cm over right fore-arm about 2 inches from the elbow.

2. A laceration of 4 cm x 1 cm x 1 cm, 3" about 3 inches from left elbow.

24. Further, corroboration to the above is meted by injuries becoming suffered in the occurrence also by the eye witnesses concerned, namely PWs-Fakruddin , Hasan, Sakir, Hamid and Asluddin, thus through their respectively proven MLRs, to which respectively Ex.PW19/A, Ex.PW18/D, Ex.PW16/B, Ex.PW13/B and Ex.PW18/C, become assigned.

25. Moreover, PW-20 Dr. B.B.Aggarwal, in his examination-



Government Hospital, Gurgaon, he had received a request for an opinion, with regard to fracture being sustained by an eye witness namely PW-2-Asluddin, and which led him to recorded his opinion borne in Ex. PW20/A, to the effect, that there was no need of any opinion from the radiologist, as a fracture was clearly visible in the left forearm and had advised them to describe the said injury as fracture.

26. Thus, the statements of the eye witnesses, do also thereby become fully supported by the above credible medical account(s).

DISCLOSURE STATEMENT(S) OF ACCUSED AND CONSEQUENT THERETO RECOVERIES

Signed disclosure statement of accused Jakir

27. During the course of investigations, being made into the appeal FIR, convict Jakir made a signed disclosure statement, to which Ex. PW9/A is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“xxx

It is declared that jail accused without any pressure on dated 17.11.2012 at 7.00 AM at Vidyawati canal reaching with my family member used lathi to attack over Sakir and Hamid has put my lathi in my residential house hiding. Except me nobody knows about the lathi. I can recover that lathi from my house hiding in the jhunds near canal...”

Sd/-

Jakir

Prithvi Singh ASI

P.S.Hathin. 22/11/12



28. Pursuant to the above signed disclosure statement, convict Jakir, ensured the effectuation of recovery of the weapon of offence i.e. lathi size 7 foot, which was taken into police possession, through recovery memo Ex. PC.

Signed disclosure statement of accused Abbas.

29. During the course of investigations, being made into the appeal FIR, convict Abbas made a signed disclosure statement, to which Ex. PW9/B is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“xxx

It is declared that witness jail accused Abbas above mentioned case enquiries and arrest has given statements without any police pressure. On dated 17.11.2012 at 7.00 a.m. at vidyawati canal reaching with my family member used axe to attack over Sakir and Hamid, has put my axe in my residential have hiding. Except me nobody knows about this axe. I can give that axe from the hidden place. Yesterday I told lie about the axe about hiding in the jhunds near canal because of fear..”

Sd/-

Abbas

Prithvi Singh ASI

P.S.Hathin. 22/11/12

30. Pursuant to the above signed disclosure statement, convict Abbas, ensured the effectuation of recovery of the weapon of offence i.e. axe, which was taken into police possession, through recovery memo Ex. PD.

**Signed disclosure statement of accused Aabid.**

31. During the course of investigations, being made into the appeal FIR, convict Aabid made a signed disclosure statement, to which Ex. PW9/C is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“xxx

It is declared that witnesses jail accused Aabid above mentioned case enquiry and arresting has given statements without any police pressure. On dated 17.11.2012 at 7.00 a.m. at Vidyawati canal reaching with my family member used lathi to attack over Sakir and Hamid, have put my lathies in my residential house. Except me nobody knows about the lathi. I can give that lathi from my house. Yesterday I told lie about my lathi hiding in the jhunds near canal because of fear...”

Sd/-

Aabid

Prithvi Singh ASI

P.S.Hathin. 22/11/12

32. Pursuant to the above signed disclosure statement, convict Aabid, ensured the effectuation of recovery of the weapon of offence i.e. lathi size 6/1, which was taken into police possession, through recovery memo Ex. PB.

INFERENCES DRAWN FROM THE DISCLOSURE STATEMENT(S) AND RECOVERY MEMO(S).

33. Readings of the respectively made signed disclosure statements, do reveal, that not only the accused confessed their participation, in the crime event, but also reveal qua theirs' evincing

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their readiness to cause recoveries of the relevant incriminatory items, to the investigating officer concerned, thus from their respective place(s) of their hiding and keeping by them, and which place(s) were but known exclusively to them, and whereafter, also they through recovery memo(s) respectively comprised in Exhibits PB, PC, and, in Exhibit PD/-3, also respectively did cause the relevant recoveries, to the investigating officer concerned. The above drawn disclosure statements when become signatred by each of the co-convicts, and, also when they led to the makings of the apposite recoveries at their respective instances, to the investigating officer concerned. In consequence, sanctity is to be meted to the above drawn memo(s). Though the assigning of sanctity thereto would become waned only, when they had ably denied, the existence of their respective signatures thereons, and or, had efficaciously proven that the relevant recoveries, were engineered, or, contrived, thus through a clever strategem being deployed by the investigating officer concerned. However, yet a reading of the deposition of PWs concerned, does not reveal, that the above possible exculpatory pleas, hence for negating the evidentiary worth of the above drawn memo(s), rather becoming either raised or becoming efficaciously proven.

34. In sequel, both the above drawn memo(s) acquire tenacious evidentiary worth. Resultantly they also corroborate the above credible ocular account, as, rendered qua the prosecution case, and, also corroborate the medical account rendered in respect thereof.

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35. Conspicuously, the opinion rendered by PW-18 qua the cause of demise of the deceased, speaks that the demise of the deceased occurred on account of his drowning into the canal.

36. The effect of the above opinion relating to the cause of demise of the deceased, is that, *prima facie* none of the ante mortem injuries rather resulting in the deceased succumbing to them. Moreover, though the prosecution witnesses do testify with inter-se corroboration, that co-convict Habid, delivered a handle blow of engine on the left temporal region of the deceased. However, no corresponding thereto injury has been echoed in the post mortem report. Nonetheless, the omission of reflection of the said injury, thus in post mortem report Exhibit PW18/E, rather on the left temporal region of the deceased Makhmool, yet does not completely denude the evidentiary worth of the testification(s) rendered with inter-se corroboration rather by the ocular witnesses to the occurrence. Significantly, when primacy is to be assigned to the ocular evidence than to medical evidence.

37. For the reasons to be assigned hereinafter irrespective of the above omissions, the prosecution has been able to unflinchingly prove charge drawn against the accused, initially for the reason that there is unrebutted evidence existing on record, but with candid speakings therein, that the deceased was pushed into the canal waters by the accused. The said pushings of the deceased by the accused into the deep waters of the canal, is thus construable to be with an inculpable *mens rea* becoming etched in the minds of the accused, especially when no evidence surges forth qua the deceased being an

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able swimmer and as such he could save himself from drowning in the deep waters of the canal.

38. The effect of the lack of the above evidence, is but that, apparently the accused knew that the deceased was not an able swimmer, thereupons, they with a penally inculpable *mens rea*, thus pushed the deceased into the deep canal waters, so that therebys he suffers his demise through drowning into the deep canal waters.

39. Moreover, even if the ante mortem injuries, as became entailed on the person of the deceased were simple injuries, but the minimality of the ante mortem injuries, when yet generated a penally inculpable *mens rea* etched in the minds of the accused, through pushing the deceased into the deep waters of the canal, to therebys ensure the deceased suffering his demise, especially when for reason (supra) given his evident inability to save himself from drowning, reiteratedly qua therebys his becoming pushed into the deep canal waters, thus would beget his demise.

40. In consequence, irrespective of the omissions (supra), and irrespective of entailment of simple ante mortem injuries on the body of the deceased, yet, with emergence of unflinchingly evidence (supra), thus underscoring the factum of the accused with a penally inculpable *mens rea* pushing the deceased, into the deep canal waters, wherebys, given his not being an able swimmer, so as to save himself from drowning, thereby reiteratedly the accused ultimately did carry in their respective minds the etched *mens rea*, to cause the murder of the deceased, through his being ensured to drown into the deep canal



did as proven by the opinion rendered by the doctor, who conducted an autopsy on the dead body of the deceased.

41. Moreover, when there is also further cogent evidence on record suggestive, that each of the accused (four in number), did commit overt acts, thus with each carrying a common intention. Resultantly, thereby each of the accused become vicariously liable for the commission of the charged offences. In sequel reiteratedly, it has to be concluded that each of the accused evidently carried a common intention, but irrespective of an overt incriminatory participation being made in the relevant crime event, by only some of them.

FINAL ORDER

42. In consequence, there is no merit in the appeal, and, the same is dismissed. The impugned verdict(s), and, consequent therewith sentence(s) (supra), as imposed upon the convicts, are affirmed and maintained.

43. If the convicts (supra) are on bail, thereupon, the sentences(s) as imposed upon the convicts-appellants, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants.

44. The case property, if any, be dealt with in accordance with law after the expiry of period of limitation for the filing of an appeal. The records be sent down forthwith.

45. Furthermore, the connected petition bearing number **CRR-86-2018** deserves rejection on the ground that the dis-affirmative order passed on an application under Section 319 Cr.P.C., has merged into the

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verdict of conviction, as made by the learned trial Judge concerned.
Resultantly, the **CRR-86-2018** becomes rendered infructuous and is disposed of as such.

46. Since the main cases itself have been decided, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

27.05.2024
kavneet singh

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