



CRA-D-952-2019 (O&M)

-1-

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

CRA-D-952-2019 (O&M)

Date of decision on:27.09.2024

Jai Bhagwan & others

... Appellants

Vs.

State of Haryana

... Respondent

**CORAM: HON'BLE MRS. JUSTICE LISA GILL.
HON'BLE MRS. JUSTICE SUKHVINDER KAUR.**

Present: Mr. Sukhwinder Singh Kamboj, Advocate, for the appellants.

Mr. Sukhdeep Parmar, Sr. DAG, Haryana.

...

SUKHVINDER KAUR, J.

1. Present appeal has been filed by the accused/appellants, namely, Jai Bhagwan, Jaswant @ Jasse, Chaman @ Banti, Deepak and Jai Parkash against verdict of their conviction dated 17.09.2019 and order of sentence dated 18.09.2019 passed by learned Additional Sessions Judge, Faridabad, whereby appellants have been convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.20,000/- each for committing the offence punishable under Section 302 IPC read with Section 34 IPC and in default of payment of fine, to further undergo RI for a period of six months.

2. The factual scenario as unfolded by prosecution is that on 05.09.2017, complainant- Rajdev S/o Jawahar Singh filed a written complaint before the police alleging that they are four brothers and one



CRA-D-952-2019 (O&M)

-2-

sister. His brother Partap Singh had expired about 2 years back and his father had also expired about 2½ years ago. About 3 years ago, his sister – Rinki was married to appellant No.1 - Jai Bhagwan. Since about 2 years, she was residing with the family of complainant and sometimes her husband also used to stay there for about 1-2 months. This was objected to by his brother- Sunder and he asked Rinki to go back to her matrimonial house, due to which his sister Rinki and her husband Jai Bhagwan were annoyed with him. Due to this reason, about 15 days prior to the incident, quarrel had taken place between Sunder, Rinki and their mother, in which his mother and sister Rinki had received injuries and police case was also registered. Since then, Sunder was staying away from his house. On 04.09.2017 at about 8:00 P.M., when Sunder came to their house Rinki called her husband and her brother-in-law by making a phone call. At about 10:00 P.M., her husband Jai Bhagwan, brother-in-law Jai Parkash and Jasse along with their two other companions came to their house and started giving *danda* and *lathi* blows to Sunder. Jai Bhagwan gave *lathi* blows on the head and back of Sunder, whereas Jai Parkash gave *danda* blows on the chest and feet of Sunder. Jasse and his other two companions gave *lathi* blows on the head, chest, feet and back of Sunder and thereafter, they fled from the spot. Complainant took his injured brother Sunder to hospital where he succumbed to these injuries on 05.09.2017. It was prayed that legal action be taken against the accused persons. On the basis of aforesaid complaint, present FIR was registered.

During investigation, accused persons were arrested. Statements of



witnesses were recorded. After completion of all formalities of investigation, challan under Section 173 Cr.P.C. against the accused was presented in the Court of Illaqa Magistrate. Thereafter, the case was committed to the Court of Sessions for trial.

3. After finding a prima facie case against the accused, all the accused were charge sheeted for offence punishable under Section 120-B IPC and accused Jai Parkash, Deepak, Jai Bhagwan, Jaswant @ Jasse and Chaman @ Banti were charge sheeted under Sections 302/34 IPC, to which they did not plead guilty and claimed trial.

4. As many as 20 witnesses were examined by the prosecution to prove its case. Statements of accused under Section 313 Cr.P.C. were recorded while putting all incriminating evidence to them. They claimed innocence and false implication. However, no evidence in defence was led by the accused.

5. After considering the evidence on record, learned trial Court acquitted accused Rinki under Section 120-B IPC by holding that the prosecution failed to prove guilt of accused Rinki beyond the shadow of reasonable doubt. The remaining accused, namely Jai Bhagwan, Jai Parkash, Jaswant @ Jasse, Deepak and Chaman @ Banti were held guilty and convicted for committing offence punishable under Section 302 IPC read with Section 34 IPC whereas they were acquitted of the charge framed under Section 120-B IPC vide the impugned judgment dated 17.09.2019. Aggrieved by the said decision, the present appeal has been filed by the appellants challenging the aforesaid judgment.



6. Learned counsel for the appellants vehemently contended that as per prosecution case, alleged occurrence had taken place on 04.09.2017 at 10:00 P.M., but complainant's family did not get the deceased admitted in hospital. Deceased was real brother of complainant, but instead of hospitalizing him, they kept the deceased at home till his death, without even informing the police regarding the occurrence. He further contended that non-admission of deceased in the hospital by complainant party rather proves that they concocted the prosecution story to falsely implicate the appellants. He argued that prosecution has failed to prove *mens rea* behind the alleged murder. The alleged story projected by the prosecution that living of Rinki and her husband at paternal home was being objected by the deceased, cannot be considered as motive to kill deceased Sunder, as Rinki being daughter had a right to stay in her paternal house. Moreover, Rinki has been acquitted by the trial Court. Learned trial Court has also failed to appreciate that deceased was having a criminal background and was facing several criminal cases. He used to consume liquor and then quarrel with people and had enmity with number of persons. On the date of alleged occurrence, he consumed liquor and met with an accident and because of this reason, he was not taken to hospital by the complainant party. He has urged that PW2, complainant Rajdev and PW13 Kartar have not fully supported the case of the prosecution and there are number of discrepancies in the statements of all the witnesses and as such, their depositions cannot be relied upon. PW2 and PW13 had stated that deceased had not consumed liquor but the post



mortem report is otherwise. Learned counsel submitted that there is delay of about two days in lodging the FIR which has not been satisfactorily explained by the prosecution. He thus prayed that this appeal be accepted, judgment and order dated 17.09.2019 and 18.09.2019 respectively be set aside and accused be acquitted of the offences, they have been charged with.

7. On the other hand, learned counsel for the State contended that all the accused with common intention caused injuries to Sunder with the intention to kill him, which stands duly proved from statements of PW2/complainant Rajdev and PW3 Kartar, who are eye witnesses to the occurrence. He further contended that ocular version of the aforesaid prosecution witnesses stands duly corroborated from the medical evidence. It was submitted that accused/appellants have been rightly convicted by learned trial Court and impugned judgment and order do not call for any interference.

8. We have heard learned counsel for the appellants and have perused the judgment as well as other relevant record.

9. It is appropriate at this stage to refer to evidence produced by the prosecution.

10. In order to prove its case, prosecution has examined PW1 Dr. Sunny Dahanwal, who tendered in evidence his affidavit Ex.PW1/A and deposed that on 06.09.2017 along with Dr. Rohit Gaur, he conducted the post mortem on dead body of Sunder and proved on record his post



mortem report as Ex.P1. He also testified about the histopathology report as Ex.P37 and their opinion as Ex.P36.

PW2 Rajdev is a material witness of the prosecution, who is complainant in the present case and is an eye witness to the alleged occurrence. He proved his complaint/application Ex.P3 submitted before the police. He reiterated the facts as alleged in the complaint/application Ex.P3.

PW3 Sarwan Kumar, Draftsman testified that on 10.09.2017, after visiting the place of occurrence, he prepared the scaled site plan Ex.P10 on the demarcation carried out by SI Anil Kumar.

PW4 Wasim Mohd., Nodal Officer, Bhartiya Airtel produced summoned record pertaining to mobile No.97179-30488 in the name of Jai Parkash son of Phool Singh. He also produced call detail records from 03.09.2017 to 05.09.2017 as Ex.P12 and certificate under Section 65-B of the Indian Evidence Act as Ex.P13 and location of tower as Ex.P14.

PW5 ASI Sunil Kumar deposed regarding registration of FIR Ex.P15 on 06.09.2017 and sending report through Ct. Ram Avtar to the higher officers.

PW6 Ct. Joginder Singh tendered in evidence his affidavit Ex.PW6/A and deposed that on 06.10.2017, case property was handed over to him by MHC for depositing the same with FSL Bhondasi and after depositing the same, he handed over the receipt to the MHC on the same day.



PW7 ASI Rakesh Kumar remained associated with investigation of this case on 24.10.2017 with SI Anil Kumar. He deposed that on the same day, in his presence, accused Chaman @ Banti was arrested from village Badrola, who suffered disclosure statement Ex.P17 and got recovered one bamboo stick which was taken in possession vide memo Ex.P18. Accused also got demarcated the place of occurrence vide memo Ex.P19.

PW8 ASI Pardeep also accompanied SI Anil Kumar on 05.09.2017 to village Pyala, where complainant – Rajdev presented a written complaint before SI Anil Kumar. He testified about various investigation proceedings conducted by SI Anil Kumar. He also deposed that on 06.09.2017, SI Anil Kumar arrested accused Jai Bhagwan and Jaswant @ Jasse, who suffered their disclosure statements Ex.P24 and Ex.P25 respectively.

PW9 EHC Vikram Singh tendered in evidence his affidavit Ex.PW9/1 deposing therein that on 06.10.2017, MHC Sadar Ballabgarh handed over the case property to him for depositing the same with FSL Bhondasi and after depositing the same, he handed over the receipt to MHC on the same day.

PW10 Sheela is paternal aunt (bhua) of complainant – Rajdev and deceased Sunder. She deposed that on 06.09.2017, after receiving information regarding death of her nephew Sunder due to beatings given by his brother-in-law Jai Bhagwan and other co-accused, she reached at village Pyala and came to know that on 04.09.2017, Sunder came to Pyala



during the night. Rinki made a phone call to Jai Bhagwan to take her to village Badrola. After some time Jai Bhagwan, his brother Jai Parkash and his friends came to their house and gave beatings to Sunder with *dandas* and *lathis* and fled from the spot. Sunder succumbed to these injuries on 05.09.2017.

PW11 ASI Bhajan Lal also remained associated with SI Anil Kumar during investigation of the present case and has deposed about various investigation proceedings conducted by SI Anil Kumar.

PW12 ASI Ratan Singh is a formal witness, who tendered in evidence his affidavit Ex.PW12/A and deposed about depositing of case property with him in the Malkhana .

PW13 Kartar is also a material witness of the prosecution, who is brother of deceased Sunder and allegedly witnessed the occurrence. He has deposed on the lines of the prosecution case and has fully corroborated the statements of PW2/complainant Rajdev and PW 10 Sheela while deposing that when on 04.09.2017, Sunder came to their house at 8:00 P.M., Rinki telephonically called Jai Bhagwan to take her to village Badrola and thereafter Jai Bhagwan, Jai Parkash, Jaswant @ Jasse, Deepak and Chaman @ Banti came to their house at 10:00 P.M. and gave fist blows and beatings with *dandas* and *lathis* to Sunder. On 05.09.2017, Sunder expired due to the injuries inflicted by the accused.

PW14 Inspector Hans Raj partially investigated the present case and has deposed about various proceedings conducted by him during the course of the investigation. He also proved the recovery memo of call



details of mobile No.9953691454 of Vodafone Company Ex.P28 and call details of mobile No.9717930488 of Airtel Company as Ex.P29.

PW15 Ct. Monika also remained associated with SI Anil Kumar with the investigation of the case and has deposed about the various proceedings conducted by SI Anil Kumar during the investigation.

PW16 HC Sanjeev Kumar stated that on 10.01.2017 he collected the call details record from Vodafone office and handed over the same to Investigating Officer which was taken into possession vide memo Ex.P28.

PW17 SI Raj Kumar was also accompanying SI Anil Kumar on 05.09.2017 when on receipt of information regarding murder of one person at village Pyala, they went to village Pyala, where Rajdev presented a written complaint before SI Anil Kumar. He has deposed on similar lines as PW8 ASI Pardeep Kumar.

PW18 Dr. Rohit Gaur deposed that on 06.09.2017 he along with Dr. Sunny Dahanwal conducted postmortem examination on the dead body of deceased Sunder. He has proved on record post mortem report of deceased Sunder as Ex.P1 and also proved and testified their opinion as Ex.P36.

PW19 SI Anil Kumar, Incharge Crime Branch, Faridabad also partially investigated this case and has deposed about the various proceedings of investigation conducted by him. He has proved the disclosure statement of accused Jai Bhagwan and Jaswant @ Jasse as Ex.P24 and P25. He also proved the disclosure statements suffered by Jai



Bhagwan and Jaswant @ Jasse on 08.09.2017 as Ex.P30 and Ex.P33 respectively in pursuance to which Jai Bhagwan got recovered one *danda* and accused Jaswant @ Jasse also got recovered one *danda* from the disclosed place. He stated that on 24.10.2017, he arrested accused Chaman @ Banti, who suffered disclosure statement Ex.P17 and in pursuance to the same, got recovered one bamboo stick. He further deposed that on 14.02.2018, Deepak and Jai Parkash surrendered in Court and joined the investigation. During interrogation, accused Jai Parkash suffered disclosure statement Ex.P43 and Deepak suffered disclosure statement Ex.P44. In pursuance thereof, accused Deepak got recovered a *danda* from his house and Jai Parkash also got recovered *danda* from his house which were taken into police possession.

PW20 Ct. Joginder Singh is a former witness, who deposed that on 16.01.2017, MHC handed him over the case property for depositing the same with PGIMS, Rohtak, which was deposited by him.

11. It is an admitted fact that accused Jai Bhagwan is real brother-in-law (husband of sister Rinki) of deceased Sunder. It is again admitted that Rinki used to stay in her parental house and Jai Bhagwan also used to visit their house and used to stay there for long periods of time, which was objected to by deceased Sunder. Relations between accused Jai Bhagwan and deceased Sunder were clearly not cordial.

12. There is concededly no dispute regarding identity of the accused persons. Accused Jai Parkash is real brother of accused Jai

Bhagwan and the remaining accused Jaswant @ Jasse, Chaman @ Banti



and Deepak were friends of accused Jai Bhagwan and Jai Parkash. PW2 complainant Rajdev and PW13 Kartar, are brothers of deceased Sunder and are eye witnesses to the occurrence. Both these witnesses have deposed in detail regarding inflicting of injuries by the accused persons on the person of Sunder in their presence, which ultimately led to his death.

13. The ocular version of PW2/complainant Rajdev and PW13 Kartar is also duly corroborated by the medical evidence. PW1 Dr. Sunny Dahanwal and PW18 Dr. Rohit Gaur conducted the post mortem examination on the dead body of deceased Sunder and have deposed that cause of death in this case was shock and hemorrhage due to head injuries and other injuries as mentioned in the post mortem and these were antemortem in nature. Thus from testimony of aforesaid witnesses and the post mortem report Ex.P1, it is duly proved that death of deceased Sunder was caused due to injuries sustained by him at the hands of the accused persons. There is no material on record which impinges the credibility of these witnesses.

14. The so called contradiction in the statement of PW10 Sheela from statement of PW2 Rajdev and PW13 Kartar regarding her deposition that on 06.09.2017 when she reached at village Pyala at that time dead body of Sunder was lying in the house at Pyala, is immaterial in the given circumstances. It is abundantly clear from the evidence on record that dead body of deceased was taken by the police in the evening of 05.09.2017 and post mortem was conducted on 06.09.2017. Moreover,



PW10 Sheela is not an eye witness to the occurrence and her statement is hearsay in nature regarding the occurrence, so the aforesaid contradiction has no adverse effect on the case of the prosecution.

15. It has also been pointed out by learned counsel for the appellants/accused that PW2 Rajdev and PW13 Kartar have deposed that before alleged occurrence, deceased Sunder did not consume liquor, but as per the post mortem report Ex.P1, liquor was found in the dead body of the deceased. This aspect is immaterial in wake of specific opinion of PW1 Dr. Sunny Dahanwal and PW18 Dr. Rohit Gaur that cause of death was shock, hemorrhage and head injuries coupled with the ocular version.

16. It has also been argued by learned counsel for the appellants that deceased Sunder was not taken to hospital by the complainant and other family members which led to his death but again this contention raised by learned counsel for the appellants is without any substance. Even if the deceased Sunder was not taken to hospital, it does not mean that accused have been exonerated from their offence and no such occurrence had taken place. As already observed, specific medical evidence is available on record to prove that death of deceased Sunder took place due to the injuries sustained by him, obviously for which the accused/appellants are responsible.

17. Contention of learned counsel for the appellants that deceased was having a criminal background, habitual to consumption of liquor, quarrelling with inhabitants of the village and had sustained injuries at the hands of some other persons and that accused have been falsely



implicated in this case, is devoid of any merit. There is in fact no such evidence on record to substantiate such allegations. At this stage, it is relevant to refer to some of the suggestions given to PW13 and PW2. Suggestion was given to PW13 Kartar that after consuming liquor, deceased Sunder quarrelled with the villagers with whom he had enmity and those persons had caused injuries to him. On the other hand suggestion has been given to PW2 Rajdev by counsel for defence that deceased had consumed liquor and met with an accident and died in the said accident. Yet another suggestion was given to this witness that deceased Sunder had died due to consumption of excess liquor and had not taken meals. Thus, all the aforesaid three suggestions are contradictory to each other and it appears that accused have tried to raise false pleas to avoid criminal liability.

18. It has also been emphasized by learned counsel for the appellants that there was inexplicable delay in lodging of the FIR and reporting the matter to the police. In the given factual matrix, delay in lodging of the FIR is not fatal in case of the prosecution. It is to be noted that accused Jai Bhagwan is the real brother-in-law of the complainant. In such a situation, hesitation of the family to initiate criminal proceeding is quite understandable. It was only the deceased Sunder who had been objecting to the stay of the brother in law in their home. The FIR it is apparent was lodged, after the aunt PW10 i.e. bhua had come to their house. Therefore in our considered opinion delay in lodging of the FIR is succinctly explained. There is also no merit in the argument raised by learned counsel



CRA-D-952-2019 (O&M) -14-

for the appellants, Jaswant @ Jasse, Chaman @ Banti, Deepak and Jai Parkash that they should be acquitted as there is no evidence against them. The ocular version is absolutely clear wherein specific role has been attributed to them with injuries being caused by them to the deceased in tandem with Jai Bhagwan. They are duly identified to be present at the spot. Learned counsel for the appellant was unable to point out anything on record which impinges upon the credibility of this ocular version coupled with medical evidence on record.

- 19. No other argument was raised.
- 20. For the reasons recorded above, we find no merit in this appeal which is accordingly dismissed while affirming the judgment and order dated 17/18.09.2019 passed by learned Additional Sessions Judge, Faridabad.
- 21. A copy of this order be sent to the Chief Judicial Magistrate concerned, who shall issue warrants of arrest against the accused/appellants for undergoing remaining part of their sentence.
- 22. Pending application(s), if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

(LISA GILL)
JUDGE

27.09.2024
harjeet

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|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |