A

RAJ PAL

v.

STATE OF HARYANA

(Criminal Appeal No. 517 of 2008)

JANUARY 7, 2013

B

[DR. B. S. CHAUHAN AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Penal Code, 1860:

C

s.302/34 – Murder – Conviction and sentence of life imprisonment awarded by trial court – Affirmed by High Court – Held: The fatal injuries sustained by deceased could not have been self-inflicted – Once the death was found to be homicidal, the evidence of eye-witnesses becomes relevant and the same being consistent in narrating the manner in which the deceased was attacked by accused and co-accused, with specific reference made to weapons used and further supported by the medical evidence, there is no infirmity in the verdict of courts below – Evidence – FIR.

D

E

Evidence:

Testimony of related witnesses – Murder committed in a farm house – Brother and sister of deceased witnessed the incident – Held: When the deceased was in one part of the house, while the witnesses and other blood relatives were in some other portion, there would not have been any difficulty for them in rushing to the deceased, who was making a frantic call for help on being attacked by accused with dangerous weapons – Their version was cogent, natural and convincing and there was no good ground to reject their version on the sole ground that they were interested witnesses.

F

G

H

FIR:

Delay in registration of FIR – Murder committed late in the night – Victim brought to hospital injured and unconscious – Held: Trial court has held that there was in fact, no delay in carrying out various formalities with regard to the receipt of 'ruka', holding of inquest, recording the statement of the witnesses, registration of FIR and forwarding special report to the magistrate and concluded that the same was carried out within a reasonable time – Further, keeping in view the distance of hospital and Police Station from the place of occurrence, no exception can be taken with regard to the alleged delay in registration of complaint, in order to hold any infirmity in the case of the prosecution – Delay/Laches.

The appellant and the co-accused were prosecuted for murder of the brother of the complainant (PW6). The prosecution case was that there was a dispute between the appellant and the deceased over a ridge. On the date of occurrence there was an exchange of hot words between the two in this regard. In the late night, PW 6, his sisters and mother heard cries of the deceased from the adjoining "Kotha". When they rushed there, they saw that the appellant and the co-accused were pouncing upon the deceased with a "Pharsa" and a "Kulhari". Soon thereafter, the assailants ran away. The injured was taken to the hospital, where he succumbed to his injuries. The trial court convicted the appellant and the co-accused and sentenced them to imprisonment for life and the same was affirmed by the High Court. The appeal of the co-accused had been dismissed.

Dismissing the appeal, the Court

HELD: 1.1. At the very outset it may be noted that the deceased was attended on by the doctor (P.W.4), when he was admitted in the hospital. P.W.4 has stated that the patient was unconscious and collapsed within about half an hour. In the injury report, he mentioned the incision

A in the trachea, which was exposed and transparent. Post mortem was conducted by P.W.5. A combined reading of the evidence of P.Ws. 4 and 5 discloses that there was nothing to suspect either of the versions, having regard to the specific role played by P.W.4 whose main concern B was to take every effort to save the life of the person rather than noting down the injuries in detail, as compared to the role played by the post mortem doctor (P.W.5), whose prime duty was to record the details of all the injuries found on the body along with determining the C cause of death. According to P.W.5, injury Nos. 1 and 2 were fatal and could not have been self-inflicted. Once the death of the deceased was found to be homicidal, then the other evidence became relevant to find out as to who was responsible for the death. In that respect there is the D evidence of P.Ws. 6 and 7, the brother and sister of the deceased, who were the eye witnesses. [para 12-13] [177-A-B-C-H]

1.2. As far as the plea that P.Ws. 6 and 7 could not have witnessed the incident as narrated, it is evident that E the occurrence took place in the farm house where the deceased, his mother, brother and sisters were living together. Therefore, when the deceased was in one part of the house, while the witnesses and other blood relatives were in some other portion, there would not F have been any difficulty for them in rushing to the deceased, who, on being attacked by the accused with "Pharsa" and a "Kulhari", was making a frantic call for help. In view of the versions of P.Ws.6 and 7 being consistent in narrating the manner in which the deceased G was attacked at the behest of the accused and the co-accused, with specific reference made to the weapons used, adding to which the medical report also confirmed the use of such weapons, there is no infirmity in the case of the prosecution as narrated and the consequent verdict of the courts below. [para 14-16] [178-A-D-F-H;173-H A-B]

1.3. Though P.Ws.6 and 7 are the brother and sister of the deceased, inasmuch as their version was cogent, natural and convincing, there was no reason to reject their version on the sole ground that they were interested witnesses. Once the said conclusions reached by the court below are unassailable, the other discrepancies attempted to be pointed out by the appellant were all trivial in nature. [para 17] [179-C]

1.4. As regards the plea that immediate steps were not taken to report the matter at the Police Station the trial court has held that there was in fact, no delay in carrying out various formalities with regard to the receipt of 'ruka', holding of inquest, recording the statement of the witnesses, the registration of FIR and forwarding the same to the magistrate, and concluded that the same was carried out within a reasonable time. The witnesses and other relatives were aware that a responsible police officer had taken cognizance of the crime and the initiative to hold the inquest. There was, thus, no necessity for them to rush to the police station or the outpost to register the complaint. If P.W. 12 took some time to record the statements of the witnesses, no blame can be attributed to the complainant for any alleged delay in getting the same registered. Further, keeping in view the distance of the hospital and the Police Station from the place of occurrence, this Court is also of the considered opinion that no exception can be taken with regard to the alleged delay in recording of the statements and registration of the complaint, in order to hold any infirmity in the case of the prosecution. [para 19] [179-E-G; 180-B-E]

1.6. With regard to the semi-digested food found in the stomach of the deceased, in view of the decision of this Court in *Jitender Kumar,* no exception can be taken to the conviction on this ground. [para 20] [180-F]

A *Jitender Kumar vs. State of Haryana* **2012 (6) SCC 204 – relied on**

Maharaj Singh vs. State of U.P. **1994 (5) SCC 188 – cited.**

B **Case Law Reference:**

1994 (5) SCC 188	**cited**	**para 10**
2012 (6) SCC 204	**relied on**	**para 11**

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 517 of 2008.

From the Judgment & Order dated 23.11.2007 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal
D No. 198-DB of 1998.

R.K. Das, Suchit Mohanty, G. Biswal, Anupam Lal Das for the Appellant.

Kamal Mohan Gupta, Tarjit Singh, Sanjeev Kumar for the
E Respondent.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. This appeal is directed against the judgment of the Division Bench
F of the High Court of Punjab and Haryana dated 23.11.2007, in Crl.A.Nos.198-DB of 1998. The High Court by order dated 23.11.2007, dismissed Crl.A.No.198-DB of 1998 and Crl.A.No.426-DB of 1998. The present appellant was the appellant in the Crl.A.No.198-DB of 1998. As far as the
G appellant in Crl.A.No.426-DB of 1998 is concerned, it is stated that by an order dated 14.07.2009 his S.L.P. (Crl.) 5039 of 2009 was dismissed.

2. The case of the prosecution as narrated in the impugned
H judgment was that two to three months prior to the date of

occurrence an altercation took place between the appellant and the complainant party, over the "Mial" (Ridge), which was however subsequently compromised at the intervention of the relatives.

3. On 29.12.1995, in the evening it is stated that there was an exchange of hot words between the appellant Raj Pal and the deceased over the aforesaid Ridge. The appellant stated to have nurtured a grievance over the same. Late in the night, on that date after dinner, when the complainant P.W.6 along with his mother and sisters was taking rest in their house, the deceased who was lying in the "kotha" adjoining their house cried for help, to which the complainant, his sister and mother rushed to the "kotha" where they found the appellant and the co-accused pouncing upon the deceased with a "Pharsa" and "Kulhari" (axe). According to P.W.6, the appellant gave a "Pharsa" blow on the frontal portion of the neck of the deceased, while the co-accused inflicted an axe blow on the deceased, which hit him on the left hand below the elbow. It was also stated that when P.W.6 and others tried to apprehend the assailants, they fled away from the scene of occurrence along with their weapons.

4. P.W.6 is stated to have left his mother and sisters to take care of the deceased and went out to fetch his elder brother Sita Ram and cousin Sube who also reached the spot. Thereafter, the deceased was stated to have been taken to the village and from there to the General Hospital in a four-wheeler, where he succumbed to the injuries.

5. The case was investigated by P.W.12 Ran Singh, Sub-Inspector of Police, Badhra Police Station, who was then working as Asst. Sub-Inspector in the said station. After completion of the investigation, the appellant and the co-accused were charged for offences under section 302 read with section 34 of the Indian Penal Code, 1860. Before the Trial Court, the prosecution examined 13 witnesses. When the incriminating circumstances were put to the appellant in the

A questioning under Section 313 Cr.P.C, the appellant denied the same and stated that he was a +2 student studying in a different village, that the co-accused was not related to him in any manner, that he was not their share cropper at any point of time and also that there was no enmity between him and the B complainant party over the ridge as alleged. He also stated to have denied the recovery of weapons and according to him it was a blind murder with no witnesses. It was also stated by him that the so-called eyewitnesses were introduced later and that some of them were inimical towards him.

C 6. On the defense side, D.Ws.1 to 3 were examined. The Trial Court having convicted the appellant and the co-accused, imposed the punishment of life sentence and the same having been confirmed by the High Court, the appellant is now before us.

D 7. We heard Mr. R.K. Das, learned senior counsel for the appellant. The learned senior counsel after referring to the sketch marked before the Trial Court, contended that the so called eyewitnesses, P.Ws-6 and 7, who are the brother and E sister of the deceased could not have witnessed the occurrence as stated by them. According to the learned senior counsel, on a perusal of the sketch marked before the Trial Court, where the abode of the eye-witnesses and the place where the deceased was lying at the time of occurrence, it is F hard to believe their version that they were able to witness the occurrence as deposed by them. By referring to page 331 of the record placed before the Court, learned senior counsel contended that the deceased was lying in a different room away from the place where P.Ws. 6 and 7 were staying and, G therefore, the claim that they saw the assailants assaulting the deceased, cannot be a true statement. The learned senior counsel then contended that going by the statement of P.W.6 by around 4 to 4.40 a.m., when the complainant party reached the hospital, the deceased was very much alive but yet, no dying declaration was recorded. He then contended that though the H

deceased survived for about 35 minutes, no dying declaration was recorded i.e. till 5.15 a.m., when he was reported to have died according to P.W.4. He also submitted that when P.W.12 the investigating officer, on being informed, held the inquest at 6.05 a.m. when P.W.6, his older brother, cousin and other relatives were in the hospital and that their statements came to be recorded only by 11.30 a.m., which was subsequently forwarded to the police station for registration of F.I.R. According to the learned senior counsel such a time delay in recording of statements and registration of F.I.R. disclosed that the whole case was cooked up against the appellant out of personal vendetta by the members of the deceased party. The learned senior counsel further contended that even according to the prosecution, after the incident when the mother of the deceased entered the room, the deceased asked for a paper to write something, which was exhibited as P.21.

8. The learned senior counsel referred to the report of the P.W.4 doctor, as well as Exhibit P.21 and submitted that there was no reference to any particular individual's name in the report though it was mentioned therein that he was informed by persons accompanying the deceased that the assault was made by some persons. He also pointed out that though P.W.6 was present at the outpost police station, which was located in the hospital, nobody reported the matter to the police. It was then contended that according to the Doctor, P.W.5, who conducted the Post Mortem found semi-digested food in the stomach of the deceased, in which event the time of occurrence as stated to have occurred on 29.12.1995 would not have been a true statement. The learned senior counsel submitted that undigested food would not have remained for nearly eight hours, inasmuch as according to P.W.6, they had their dinner 1 ½ hours before the occurrence i.e. around 9.00 p.m.

9. The learned senior counsel pointed out that the mother of the deceased was not examined, who would have been a relevant witness to corroborate the writing of the deceased as

A claimed in Ex.P-21. It was then contended that investigation was made on 04.01.1996 and the "Pharsa" was recovered under Ex. PJ/2, which however did not disclose any blood stain in the chemical examination, in as much in the report it was stated that it was disintegrated.

B

10. As far as P.W.8 was concerned, it was contented that though he was claimed to be an independent witness, as he belonged to a place other than where the weapons were recovered, his version could not be relied upon. The learned senior counsel while referring to the delay involved in recording C the statement of the witnesses, stated that it was sufficient to demonstrate that the case was a cooked up one. In support of his contention, he relied upon a judgment of this Court in *Meharaj Singh Vs. State of U.P.* reported in (1994) 5 SCC 188.

D

11. As against the above submissions, Mr. Gupta learned counsel appearing for the State submitted that the case is covered by the principles laid down by this Court in *Jitender Kumar Vs. State of Haryana* reported in (2012) 6 SCC 204 E and further submitted that the case depended upon various factors and that the case of the prosecution cannot be faulted. With regard to the semi-digested food in the post mortem report, the learned counsel for the State stated that nothing was put to the doctor relating to that aspect and, therefore, based F on the said factor, the offence found proved against the appellant cannot be doubted. The learned counsel for the State also submitted that the submissions based on the alleged delay in filing of the F.I.R. was satisfactorily explained by the Trial Court in *para* 15 of the judgment and, therefore, on that ground also, no interference can be made. As far as the evidence of G P.W.6 was concerned, the learned counsel submitted that he was a young boy of 17 to 18 years who was present on the date and time of occurrence along with his mother and sisters. Therefore, the version spoken to by him having been accepted by the Trial Court, being a cogent one, the same does not call H for interference.

12. Having heard the learned counsel for the parties and having perused the judgments of the Courts below and the material papers, at the very outset we find that the deceased was attended by P.W.4 Dr. A.S. Gupta when he was in an injured condition. P.W.4 has stated in his report that at the time when the deceased was admitted in the hospital, he was able to notice his physical condition and also stated that the patient was unconscious. It was also stated that all his endeavour at that point of time was to save the life of the deceased and was not to keep notes as to the nature of injuries, though in his injury report he mentioned the incision in the trachea, which was exposed and transparent. It was also noted that there was a clot over the wound. There was also a contusion below the elbow and for both the injuries the advice given was to get the opinion of a surgeon. As the patient collapsed within about half an hour, after the time of admission, Post Mortem was conducted and the Post Mortem report authored by P.W.5, Dr.PK Charaiya, revealed as many as four injuries.

13. The combined reading of the evidence of P.Ws. 4 and 5 disclose that there was nothing to suspect either of the versions, having regard to the specific role played by P.W.4 who attended on the deceased at that time when he was brought to the hospital in an injured condition and was unconscious, at which point of time his main concern was to take every effort to save the life of the person rather than noting down the injuries in detail, as compared to the role played by the Post Mortem Doctor P.W.5, whose prime duty was to record the details of all the injuries found on the body along with determining the cause of death. According to P.W.5, injury Nos. 1 and 2 were fatal and could not have been self-inflicted. Once the death of the deceased was found to be homicidal, then the other evidence became relevant to find out as to who was responsible for the death. In that respect the courts below were concerned with the evidence of P.Ws. 6 and 7, the brother and sister of the deceased, who were the eye witnesses.

A 14. As far as the versions of P.Ws. 6 and 7 are concerned, it was the contention of the appellant to suggest that in the first place they could not have witnessed the event. It was argued that having regard to the location as described in the sketch relating to the place where the deceased was taking rest and B considering that P.W. 6, his mother and other sisters were staying in a different place at the relevant point of time, it was impossible for them to have witnessed the incident as narrated.

15. Having noted the submissions of the learned counsel for the parties and having bestowed our serious consideration, C after going through the record and other material papers, we find that the said submission does not merit any consideration, as in our opinion the same was highly technical in nature. The occurrence took place in the farmhouse where the deceased, his mother, brother and sisters were living together. We can D easily discern that in such a farmhouse every member of the family would have access to every other place at times of calling and it cannot be said that it would be strenuous for anyone living in one portion of the farmhouse to reach the other part of the house at times of emergency. To put it differently, E being a member of the family of a farmhouse, it is needless to state that every one of them can have easy access to any other part of the farmhouse without any hurdle, especially when any one of the member of the family makes a distress call seeking for help. We fail to understand as to what would have been the F difficulty for the other members of the family to reach the concerned person at a time of distress, to extend a helping hand. Therefore, when the deceased was lying in one part of the house, while the witnesses and other blood relatives were living in some other portion, there would not have been any G difficulty for them in rushing to the place where the deceased was lying, who was making a frantic call for help and that too when he was being attacked by the accused with the such dangerous weapons, namely, a "Pharsa" and a "Kulhari".

16. When the versions of P.Ws.6 and 7 was consistent in H

narrating the manner in which the deceased was attacked at the behest of the accused and the co-accused, with specific reference made to the weapons used, adding to which the Medical report also confirmed the use of such weapons, we do not find any infirmity in the case of the prosecution as narrated and the consequent verdict of the courts below.

17. Though P.Ws.6 and 7 are the brother and sister of the deceased, inasmuch as, their version was cogent, natural and convincing, there was no good ground to reject their version on the sole ground that they were interested witnesses. Once the said conclusions reached by the court below are unassailable, the other discrepancies attempted to be pointed out by the appellant in our considered opinion were all trivial in nature.

18. It was contended by the appellant that though there was a police outpost present at the hospital and though relatives were present right from the time the deceased was admitted, immediate steps were not taken to report the matter to the personnel in the Police Station. On that ground we do not find any infirmity in the case of the prosecution because, even admittedly the issue was brought to the notice of P.W. 12, by the hospital authorities who conducted the inquest by 6.05 a.m. Only the witnesses and other relatives were aware that a responsible police officer had taken cognizance of the crime and the initiative to hold the inquest. Hence, there was no necessity for them to rush to the police station or the outpost to register the complaint. If P.W. 12 took some time to record the statement of the witnesses, no blame can be attributed to the complainant for any alleged delay in registering the same. In this respect, it was rightly pointed by the learned counsel for the State that the Trial Court has noted in Para 15 that P.W. 4 who attended on the deceased at a time when he was in an injured condition, sent the "Ruka" Exhibit PD at 4.40 a.m. on 30.12.1995 and subsequently, after his death, sent Ex. PD 11 at 5.15 am to the police post. The Police Incharge of the post in the hospital, sent Ex. PT, to the Vadhra Police station which was recorded on 30.12.1995 in the Police Station. It was only

A thereafter, P.W. 12 arrived at 6.05 a.m. and after conducting inquest and the other formalities, recorded the statement of the witnesses at 11.30 a.m. and forwarded the same as PH 1 to the police station. Thereafter, PH2 FIR was recorded at 1.30 p.m. and the special report was sent to the Magistrate at his B residence at 4.30 p.m. The distance between the place of occurrence and Bhiwani was stated to be 40 kms and between Badhwar Police station and Chakui Dadhi was 35 kms, while the distance between the place of occurrence and the police station was 12 kms.

C 19. The trial court having noted the above factors has held that there was in fact, no delay in carrying out various formalities with regard to the receipt of 'ruka', holding of inquest, recording the statement of the witnesses, the registration of FIR and forwarding the same to the magistrate and concluded that the D same was carried out within a reasonable time. Having perused the reasoning of the Trial Court in dealing with the above, we are also of the considered opinion that no exception can be taken with regard to the alleged delay in the recording of the statements and the registration of the complaint, in order to hold E any infirmity in the case of the prosecution.

20. With this when we come to the other submission with regard to the semi-digested food found at the time of occurrence, we wish to rely on the decision of this court in F *Jitender Kumar (supra). Para* 50 of the said decision reads as under:

> "the entire basis for this submission is the statement of PW 3, Dr. L.L. Bundela, who stated that the stomach of the deceased contained some semi-digested food. It is G worthwhile to note that the statement of this very witness that the death of Indra could have taken place between 1.00 to 1.30 a.m. remained unchallenged. Furthermore, it cannot be stated as a rule of universal application that after a lapse of two to three hours stomach of every individual, H without exception, would become empty. It would depend

upon a number of other factors like the caloric content and character of the solid food. Further, addition of fats, triglycerides and carbohydrates such as glucose, fructose and xylose to a solid meal can delay its emptying from the stomach, presumably because of their effect on the initial lag phase of digestion of solid foods. Furthermore, the presence of liquids in the stomach prolongs this initial lag phase of solid emptying. In fact, ingestion of a liquid bolus 90 minutes after a solid meal can induce a second lag phase of solid emptying from the stomach."

21. In the light of the said principles stated, which we find applies on all fours, to the case on hand, no exception can be taken to the conviction on this ground. Having regard to our above conclusion, we do not find any merit in this appeal. Appeal fails and the same is dismissed.

R.P. Appeal dismissed.