

DAYARAM & ORS.

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v.

STATE OF HARYANA

(Criminal Appeal No.1590 of 2011)

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JULY 02, 2015

[PRAFULLA C. PANT AND AMITAVA ROY, JJ.]

Penal Code, 1860: s.302 r/w s.34 – Double murder – Previous enmity – Threat on previous night – Informant was an eyewitness to the incident of series of assault on victims-deceased – Incident took place at night in the field – Out of fear, informant hid himself in bushes – In the morning found the dead bodies – Reported matter to police thereafter – Trial court convicted the appellants u/s.302 r/w s.34 – Three other accused acquitted on benefit of doubt – High Court upheld conviction of appellants – On appeal, held: The weapons of assault were recovered on the basis of disclosure statements made by appellants – The ocular account of the incident presented by the PW 3 was in graphic details – He did not vacillate in identifying the appellants – He also could relate the weapons of assault used by them – The injuries sustained by deceased in the course of incident and those detected in the post-mortem examination were compatible with each other – The evidence of informant was reliable and consistent – Conviction upheld.

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Dismissing the appeal, the Court

HELD: 1. The case witnesses an incident of double murder of which PW 3 has been cited to be the only eyewitness. The deceased persons were the brothers of informant PW 3. The courts below on a correct assessment of his evidence concluded that he indeed

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A was present at the place of occurrence at the time of the incident. Though the participation of the three of the acquitted accused persons was not accepted due to absence of any blood mark in the lathis said to have been wielded by them, in the face of the overwhelming and impregnable testimony of this witness and the entirety of the events relatable to the incident, it is not possible to extend any benefit of doubt to the appellants on that count. The ocular account of the incident presented by the PW 3 was in graphic details. He did not vacillate in identifying the appellants. He also could relate the weapons of assault used by them. The injuries sustained by the deceased in course of the incident and those detected in the post-mortem examination were compatible with each other. The seizure of the weapons of assault *vis-à-vis* the appellants based on their statements of disclosure and the report of the Forensic Science Laboratory, also established their irrefutable nexus with the crime. The plea of the decomposition of the dead bodies to nihilate the medical opinion also lack persuasion. Noticeably, as per the testimony of the doctor performing the post-mortem examination, the time of death tallied with the one of the incident. [Para 16] [1153-C-H]

F 2. The testimony of PW 3 cannot be rejected on the ground that his conduct was unusual at the place of the occurrence, he having kept himself aloof therefrom instead of attempting to save his brothers who were under murderous attack by a group of assailants. As G rightly observed by the courts below that, on being confronted with such an unforeseen and sudden situation, it is quite likely that individuals would react differently and if the PW 3, being petrified by such H unexpected turn of events, being in the grip of fear and

alarm, as a matter of reflex hid himself from the assailants, his version of the episode, is not liable to be discarded as a whole as the same is otherwise cogent, coherent and compact. The participation in the gory brutal attack of the appellants with the lethal weapons resulting in death of two persons is proved beyond reasonable doubt not only by the testimony of PW 3, the eyewitness, but also by other evidence collected in course of the investigation and adduced at the trial. [Paras 17, 18] [1154-A-C, E-F]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1590 of 2011.

From the Final Judgment and Order dated 28.07.2010 in CrI. Appeal No. 261-DB of 2003 of the Punjab and Haryana High Court at Chandigarh.

P. N. Kush, Rameshwar Prasad Goyal for the Appellant.

Arun Kumar, Rajiv Kr. Singh, Kamal Mohan Gupta for the Respondent.

The Judgment of the Court was delivered by

AMITAVA ROY, J. 1. Having failed to secure redress against their conviction under section 302 of the Indian Penal Code (for short hereinafter referred to as IPC/Code) read with Section 34 of the Code, and the sentence consequential thereto, from the High Court of Punjab and Haryana, at Chandigarh, the appellants seek the remedial intervention of this Court. By the impugned judgment and order dated 28.7.2010 rendered in Criminal Appeal No. 261-DB of 2003 and Criminal Revision Petitioner No. 1560 of 2003, the High Court has sustained the decision of the Additional Sessions Judge (Ad-hoc), Hissar passed in Sessions Case No. 120/SC on 06.02.2003, sentencing the appellants, following their

A conviction as above, to suffer imprisonment for life and to pay a fine of Rs.500/- each, in default, to undergo further rigorous imprisonment for six months. As alongwith the appellants, three others, namely, Devi Lal, Chander Singh and Vidyadhar alias Didaru were also tried but were acquitted, the Complainant / Informant Bajrang Bali being aggrieved had filed Criminal Revision Petition No. 1560 of 2003, which was dismissed. The High Court thus, in *toto* sustained the verdict of the learned trial court on both counts.

C 2. We have heard Mr. P. N. Kush, the learned counsel for the appellants and Mr. Arun Kumar, the learned counsel for the Respondent.

D 3. The prosecution case is traceable to the First Information Report (for short hereinafter referred to as FIR) recorded on 25.8.2001 at 12.15 PM, on the version made by the informant Bajrang Bali to the effect that on 23.8.2001, the aforementioned Devi Lal, Chander Singh, Vidyadhar alias Didaru and Daya Ram, sons of Sahi Ram, residents of the same village had abused his brother Ashok and had threatened to kill him. On being informed about this threat on the next day i.e. 24.8.2001, the informant had accompanied his brothers Rohtash and Ashok to their field at about 8.30/09.00 PM to look after the crops. According to the informant, as soon as they reached the field, Vidyadhar alias Didaru, Chander Singh, Daya Ram, Madan and Devi Lal sons of Sahi Ram and Hans Raj and Rohtash sons of Ami Lal all of the same village came out from behind the standing Bajara crop thereat, being armed with lathi, jaily and gandasa and unleashed a series of assaults on Rohtash and Ashok. The informant alleged that the assailants had hid themselves in the cover of the Bajara Crops and though he had accompanied his brothers, he was behind them by 10/12 paces. He stated that on seeing the attack, he concealed himself in the bushes nearby but in the moonlight he could recognise all the seven assailants. He mentioned that

all the seven persons inflicted injuries on his brothers with their weapons whereupon the injured fell on the ground. According to the informant, Daya Ram thereafter fetched a cart (peter rehra) parked nearby and the assailants removed his brothers from the field. The informant stated that out of fear and alarm he kept himself in the hiding for the rest of the night and only at the break of dawn, he went back to the village and disclosed the above episode to his cousin-brother Sarwan and thereafter embarked on a search for the injured. He stated that after a thorough search, they could detect the dead bodies of Rohtash and Ashok lying in front of the door of the Dhani (small hutment adjacent to the agricultural field to enable the occupant to keep a vigil on the crops) of Sahi Ram, the father of the appellants, Daya Ram and Madan. The informant after waiting there in inconsolable anguish and pain, left the spot to inform the Police, by leaving Sarwan Kumar to be on guard. He met the SHO, PS Adamur at the bus stand at Darauli, and disclosed the whole incident. His statement was recorded by the said officer and after endorsing an observation that offences under Section 148/149/302/201 IPC had been committed, forwarded the report to the police station Adampur whereupon FIR No. 207 dated 20.8.2001 was registered. Investigation followed, in course whereof, the appellants alongwith Devi Lal, Chander Singh, Vidyadhar alias Didaru were arrested and acting on their statements of disclosure, their weapons of the alleged assault i.e. jaily, kulhari/Gandasa and lathis were recovered and seized. The Investigating Officer also visited the site, performed inquest over the dead bodies, prepared a report and despatched the bodies for post-mortem examination. He drew a site-plan, collected samples of blood-stained earth, seized amongst others a bucket, a chappal (Hawai) from near the dead body of the Rohtash and one pair of leather slippers from near the dead body of Ashok. The Investigating Officer prepared recovery memos and sealed the seized items. He also recorded the statement inter-alia of the informant, Bajrang

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- A Bali and others and eventually laid a chargesheet against all the seven persons under the above provisions of the Code. The matter was eventually committed to the Court of the Additional Sessions Judge (Ad-hoc), Hissar and charge under Section 302/201/148/149 IPC was framed against all the
- B seven persons including the appellants, to which they pleaded "not guilty".

4. At the trial, the prosecution examined several witnesses including the informant, Bajrang Bali, PW 3, and
- C the doctors who had conducted the post-mortem examination of the dead bodies and had examined the appellants Madan Lal and Daya Ram. The prosecution also proved the report of the Forensic Science Laboratory, Haryana on the samples of earth as well as the bucket and weapons of assault forwarded
- D to it for serological investigation. It proved as well the post-mortem and medical reports alongwith disclosure statements and got identified through witnesses the seized weapons and other articles. After the closure of the evidence of the prosecution, the accused persons were examined under
- E Section 313 Cr.P.C. in course whereof all of them pleaded to be innocent. One witness, namely, Rati Ram H.C. was examined in defence.

5. The learned trial court on a consideration of the
- F evidence on record and after analyzing the rival contentions, convicted the appellants under Section 302 IPC read with Section 34 of the Code and sentenced them as above. However, being of the view that the complicity of the other three accused persons, namely, Devi Lal, Chander Singh and
- G Vidyadhar alias Didaru was doubtful, as the lathis otherwise identified to have been used by them did not wear blood-stains, it acquitted them on the benefit of doubt. It rejected the defence plea of delay in lodging of the FIR, having regard to the developments prior thereto. It dismissed the challenge to the
- H trustworthiness of the informant, rejecting the defence plea of

his indifferent conduct as a brother when the deceased were being openly assaulted in his presence. According to the learned trial court, it was not unusual for individuals to react differently in such situations and was of the view that there had been no undue delay in filing of the FIR. The learned trial court also discarded the defence plea of inconsistency between the injuries on the dead bodies with the weapons of assault allegedly used by observing that the same could be inflicted by blunt weapons like lathi or jaily/kulhari, if used by the blunt side. The narration of the incident as made by the informant, PW 3 was otherwise accepted to be credible except to the extent of participation of the three accused persons, namely, Devi Lal, Chander Singh and Vidyadhar in the assaults. The learned trial court was of the view that the plea of the defence that the informant as the eye-witness could not specify the individual acts of assault, did not have any fatal bearing on the case of the prosecution and returned a finding of guilt against the appellants on an exhaustive analysis of the evidence on record, by taking note inter-alia of the factum of seizure of their weapons of assault i.e. jaily, gandasa and lathis on their disclosures and also the report of the Forensic Science Laboratory, Haryana detecting human blood thereon. The sentence as above was awarded to the appellants after according to them, hearing in connection therewith. The High Court concurred with the learned trial court on all the above aspects and maintained the conviction and sentence.

6. Before advertng to the competing assertions, it would be appropriate to notice the relevant evidence in brief. The informant Bajrang Bali PW 3, who claimed himself to be the eye-witness of the incident, is the brother of the deceased persons. He stated on oath, that he had accompanied them to the field in the fateful night of 24.8.2001. In his testimony, he mentioned about the incident of threat extended by Devi Lal, Chander Singh, Vidyadhar alias Didaru and Daya Ram to his

A brothers in the previous night of 23.8.2001 and reiterated his version as made in the FIR that on reaching the field at about 8/8.30 pm on 24.8.2001, the appellants and three others (since acquitted) did all together, inflict several assaults on his brothers (deceased), after emerging from behind the Bajara Crop

B standing at the place of occurrence. He mentioned that, the appellant Madan was armed with jaily, while Daya Ram was with a kulhari. He testified, that others were armed with lathis. He said that, he was behind his brothers by 10/15 paces and seeing the sudden attack, he out of panic, hid himself behind

C the nearby bush to save his life. He stated, that it was a moonlit night and therefore, he could identify all the accused persons. According to him, as the injured fell on the ground after being assaulted, Daya Ram brought a 'peter rehra' whereafter, all of

D them lifted his injured brothers thereon and left the field. The witness stated, that out of fear, he did not leave the field and it was only in the next morning that he returned to his village, and informed his cousin-brother Sarwan about the incident and then both set off to search the injured. The witness stated, that

E eventually they could detect the dead bodies of the two brothers near the 'dhani' of Sahi Ram. He thereafter informed the police, who reached the place of occurrence and apart from conducting the inquest on the dead bodies, took other steps including seizure of a bucket, chappal etc. The witness also

F identified the accused persons in court and amongst others the bucket, seized from the place of occurrence.

7. In cross-examination, PW 3 stated, that the dhani of Sahi Ram was about fifteen killas from the place of occurrence.

G To a suggestion put to him by the defence, he stated that it was correct that the incident had taken place 10/12 paces away from him. He however admitted, that it was not possible to give the details of the assaults, by the accused persons on his brothers. He reiterated that he did not come out or intervene

H out of fear.

8. PW 1 Dr. Krishan Kumar stated, to have examined Madan Lal on 25.8.2001 and to have detected a lacerated wound and an abrasion on his body as detailed in his testimony. He stated that the injuries which could be caused by a blunt weapon, were also possible by a fall on the ground. According to him the injuries were six hours old.

9. This witness also stated that on 27.8.2001, he had examined Daya Ram, who complained of pain in his left thumb, index finger and the adjoining part of the hand. The witness stated that x-ray did not reveal any fracture. The corresponding reports were proved by him. In cross-examination, this witness reiterated that the injuries suffered by Madan Lal could be possible by a fall from a height of four to five feet.

10. In his evidence, Dr Arun Gupta who had performed the post-mortem examination on the dead bodies of the Ashok and Rohtash on 26.8.2001 at about 9.50/10.15 AM, stated to have detected the following injuries.

Ashok:

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1. Lacerated wound about 1.5 cm x 5 cm on the anterior surface of right leg in middle. Clotted blood seen.

2. Contusion with deformities was seen on upper part of left hip joint. On dissection injury No. 2 the neck of left femur was fractured and clotted blood seen.

3. Lacerated wound about 4 cm x 5 cm vertical lines on the forehead approximately in middle. On dissection of injury No. 3 the frontal bone on right skull was fractured underlying brain tissues were injured. Clotted blood was present.”

A Rohtash:

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1. Lacerated wound about 3 cm x 1 cm on the left side of the head just above the eye brow.

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2. Lacerated wound about 4 cm x 5 cm obliquely lying on the occipital bone of the skull. On dissection of the injury occipital bone was fractured underlying brain tissues were injured. Clotted blood seen.

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3. On dissection of abdomen abdominal cavity was having blood. The right lobe of liver was injured.”

D 10.1 This witness opined that in case of Ashok, the cause of death was multiple injuries and injury to the vital organ of the body i.e. brain. According to this witness, the cause of death of Rohtash was due to shock and haemorrhage and injuries to vital organs of the body. The doctor stated, in categorical terms, that the injuries were ante-mortem in nature and sufficient to cause death in the normal course. According to **E** him, the time-lag between death and the post-mortem examination was approximately 36/37 hours and death could have occurred on 24.8.2001 between 8.00 to 9.00 pm .

F 11. PW 9 Umed Singh, who was on 25.8.2001 posted as SHO, PS Adampur and to whom the incident was first lodged by Bajrang Bali PW 3, detailed the steps taken by him in course of the investigation. While reiterating that, the information first in time, about the incident, was lodged with **G** him by the informant, while he was stationed at bus stand, Darauli in connection with patrol duty and that after recording the same he had forwarded it to the police station for registration whereafter formal FIR was recorded as Ex. P – 24, he deposed that, he went to the spot and amongst others **H** conducted inquest on the dead bodies and on completion of the formalities despatched the same for post-mortem

examination. He also prepared a site-plan, made seizures of the bloodstained earth, chappal/sleeper lying near the dead bodies, a bucket smeared with blood, and packed and sealed the same and deposited all those with the police station. This witness in categorical terms, referred to the statements of disclosures, made by the appellants Rohtash, Devi Lal and Hans Raj leading to the recovery of their lathis concealed in places mentioned by them and proved the statements and also the recovery memos in connection therewith. The disclosures and recovery were during 28.8.2001 and 29.8.2001. The witness also deposed about the production of accused persons Chander Singh and Vidyadhar alias Didaru in the police station on 23.10.2001 along with their lathis. Similarly on the basis of the disclosure statements Ex. P-42 and Ex. P-43 made by the appellant Madan Lal and Daya Ram, one jaily and one kulhari/gandasa were recovered from the fields near the dhani of Sahi Ram which were accordingly packed and sealed. The witness stated as well, that the seized articles/ weapons of assault were forwarded to the Forensic Science Laboratory, Haryana for serological examination and on the receipt of the report and on a consideration of the materials collected in course of the investigation, he submitted the chargesheet.

12. In cross-examination, the Investigating Officer amongst others reiterated that dhani of Sahi Ram was the place from where the dead bodies were recovered. He deposed further that after the registration of the FIR, he reached the place of occurrence, at about 1.30 PM and after exhausting all steps, forwarded the dead bodies to the hospital at about 4.30 PM.

13. The report of the Forensic Science Laboratory, Haryana referred to in course of the arguments, does indicate that samples of bloodstained earth, one metal bucket, one kulhari, one jaily, one wooden lathi and one bamboo lathi had

A been forwarded for examination. The sample of earth, bucket, jaily and the lathis were subjected to serological analysis which confirmed human blood on jaily. However, vis-à-vis the earth and bucket, the blood spot had disintegrated.

B 14. The learned counsel for the appellants has strenuously argued that the prosecution having miserably failed to adduce any cogent and convincing evidence in support of the charge, they (appellants) ought to have been acquitted. According to the learned counsel, the prosecution case is liable
C to be rejected on the ground of unexplained delay in the lodging of the FIR. Further the version of PW 3 being wholly unreliable, on that count as well, he being the only witness, the courts below ought to have rejected the charge against the appellants, he urged. Mr. P. N. Kush argued as well that PW 3 being the sole
D eye-witness, his testimony ought to have been scrutinized with all rigour and as his version does unmistakably fail such test, conviction of the appellants should not have been based thereon. Without prejudice to these pleas, the learned counsel,
E has insisted that the acquittal of three of the seven accused persons charged with the same offence, did destroy the substratum of the prosecution case and that therefore, the appellants are entitled to be acquitted.

F 15. As against this, the counsel for the Respondent has maintained, that in view of the evidence disclosing the intervening events leading to the filing of the FIR, the demur of delay in connection therewith is wholly misplaced. He dismissed as well the criticism of the evidence of the PW 3 and asserted that this witness was wholly reliable and in view
G of the detailed description of the incident, the conviction of the appellants based thereon is unassailable. While contending that the medical evidence on record and the ocular narration of the incident by PW 3 are clearly consistent with each other, the learned counsel has argued, that the charge against
H appellants is proved beyond reasonable doubt and thus no

interference with their conviction and sentence is warranted. A
According to the learned counsel, the recovery of the weapons
of assault on the disclosures made by the appellants and the
report of the Forensic Science Laboratory, Haryana did
corroborate their complicity and thus they had been rightly
convicted and sentenced by the courts below. B

16. We have duly considered the evidence on record
and also the arguments based thereon. The case witnesses
an incident of double murder of which PW 3 has been cited to
be the only eye-witness. It is a matter of record, that the C
deceased persons were the brothers of this witness PW 3,
who coincidentally is also the informant. The courts below on a
correct assessment of his evidence, had concluded that he
indeed was present at the place of occurrence at the time of D
the incident. Though the participation of the three of the accused
persons, namely, Devi Lal, Chander Singh and Vidyadhar alias
Didaru was not accepted due to absence of any blood mark
in the lathis said to have been wielded by them, in our opinion
in the face of the overwhelming and impregnable testimony of E
this witness on the entirety of the events relatable to the
incident, it is not possible to extend any benefit of doubt to the
appellants on that count. Suffice it to state, that the ocular
account of the incident presented by the PW 3 has been in
graphic details. He did not vacillate in identifying the appellants. F
He also could relate the weapons of assault used by them.
The injuries sustained by the deceased in course of the incident
and those detected in the post-mortem examination are
compatible with each other. The seizure of the weapons of
assault vis-à-vis the appellants based on their statements of G
disclosure and the report of the Forensic Science Laboratory,
also establish their irrefutable nexus with the crime. The plea
of the decomposition of the dead bodies to nihilate the medical
opinion also lacks persuasion. Noticeably, as per the testimony
of the doctor performing the post-mortem examination, the time H
of death does tally with the one of the incident.

A 17. We are not inclined to reject the testimony of PW 3
on the ground that his conduct had been unusual at the place
of the occurrence, he having kept himself aloof therefrom
instead of attempting to save his brothers who were under
murderous attack by a group of assailants. As rightly observed
B by the courts below that, on being confronted with such an
unforeseen and sudden situation, it is quite likely that individuals
would react differently and if the PW 3, being petrified by such
unexpected turn of events, being in the grip of fear and alarm,
C as a matter of reflex hid himself from the assailants, his version
of the episode, in our estimate, is not liable to be discarded
as a whole as the same is otherwise cogent, coherent and
compact.

D 18. As the eventual objective of any judicial scrutiny is to
unravel the truth by separating the grain from the chaff, we are
of the opinion that in the face of clinching evidence on record,
establishing the culpability of the appellants, their conviction
and sentence as recorded by the courts below does not call
for any interference at this end. The participation in the gory
E brutal attack of the appellants with the lethal weapons resulting
in death of two persons Ashok and Rohtash is proved beyond
reasonable doubt not only by the testimony of PW 3, the
eyewitness, but also by other evidence collected in course of
F the investigation and adduced at the trial. On an overall
appreciation of the materials on record, we find ourselves in
complete agreement with the findings recorded by the courts
below.

G 19. In the wake of the above, the impugned judgment and
order of the High Court sustaining the decision of the learned
trial court is affirmed. The appeal lacks in merits and is thus
dismissed.

H Devika Gujral

Appeal dismissed.