

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

**Cr.Acq.Appeal No.21/98
Cr.Appeal No.10/98, Confir.9/98**

Dated:1.06.06

State v. **Jeevan Lal and ors**
Jeevan Lal and anr **State**

Coram:-

Hon'ble Mr Justice Nirmal Singh, Judge

Hon'ble Mr Justice H.Imtiyaz Hussain,Judge

Appearing counsel:

For petitioner : Mr B.S. Manhas
For respondent: Mr SC Gupta, AAG

JUDGEMENT

This judgment shall govern the disposal of both these appeals which arise out of the same order dated 20/21st Feb'98 passed by the learned Sessions Judge, Udhampur.

Appellant Jeevan Lal in Criminal Appeal No10/98 along with his father Shankar Dass, since deceased, and his mother Geeta Devi, since acquitted, were prosecuted under Section 302, 307, 448 read with Section 34 RPC, for having committed murder of deceased Vijay Kumar and injuring PW Romesh Chander on 30th April'91 at village Malhar tehsil and district Udhampur.

The prosecution case is that on 30th April'91 at about 7.30 pm, Romesh Chander was returning to his house from a Gharat (water flour

mill). When he reached near his house, he met his paternal uncle Shanker Dass, who started abusing him. There was an altercation between Shanker Dass and Romesh Chander PW. Shanker Dass had a sickle in his hand. He gave a blow hitting on the left eye of Romesh Chander. Shanker Dass left the scene whereas injured Romesh Chander went to his house. PW Sheela Devi along with her daughter Sanjokta and three daughter-in-laws namely Babli, Rani and Guddi were also present in the house. In the meanwhile, Vijay Kumar, deceased, brother of Romesh Chander also returned to his house and enquired about the incident from his brother. In the meanwhile, at about 8 p.m. Shanker Dass accompanied by his son Jeevan Lal and his wife Geeta Devi came to the house of injured Romesh Chander and started abusing him. Shanker Dass and Jeevan Lal were armed with daggers. When Romesh Chander came out of the compound, Geeta Devi caught hold of Romesh Chander and Jeevan Lal gave a dagger blow on the back of Romesh Chander due to which he fell down. Vijay Kumar, brother of Romesh Chander came to rescue his brother. Geeta Devi also caught hold of Vijay Kumar and Shanker Dass and Jeevan Lal inflicted blows in his abdomen. Vijay Kumar became unconscious and the ladies present in the house raised alarm. On this, the accused ran away from the spot along with the weapons. The injured were taken to hospital where Vijay Kumar was declared dead. Injured Romesh Chander was admitted in the hospital and was given treatment.

Sheela Devi went to the police station and made a statement on the basis of which FIR under Sections 302, 307, 448 read with Section 34 RPC was registered against the appellants-accused.

P.W. Ganesh Raj, SI, went to the spot, took the dead body into custody and sent it for autopsy which was conducted by Dr TR Gupta vide his report ExPW M/1. During investigation Geeta Devi and Shankar Dass were arrested by SI Ganesh Raj and the appellant Jeevan Lal was found absconding. Shankar Dass was interrogated. On interrogation, he made a disclosure statement on 8.5.91 and got recovered the weapon of offence. Jeevan Lal was also arrested on 16.4.93. After his arrest, he was interrogated and made a disclosure statement. The weapons of offence were recovered and seized vide seizure memo EXPW JK/1 and EXPW JK/2.

After completion of the investigation, challan was presented and the accused were charge-sheeted under the aforementioned Sections to which they pleaded not guilty.

To prove the case, the prosecution has examined PWs namely Mst Sheela Devi, Krishan Dass, Romesh Chander, Sanjokta Devi, Mst Babli, Mst Rani Devi, Mule Raj, Mango, Joginder Kumar, Shiv Lal, Jai Lal, Kamlesh Kumar, Photographer, Durga Dass, Dr Anju Balla,

Dr TRGupta, Nazir Ahmed, Constable, Ganesh Raj Sharma, SI, Isher Dass, and Sham lal, ASI.

When the appellant-accused were examined under Section 342 Cr.P.C, to explain the incriminating evidence appearing in the prosecution evidence, they have not denied the occurrence. Accused Shankar Dass took the plea that after closing of his office when he was returning home and was passing through the passage which passed from outside the house of complainant, PW Romesh Chander caught him and started beating him with a stick and also called his brother Vijay Kumar and exhorted him to reach there with a drat for killing him. Vijay Kumar came with a drat. Thereafter he raised alarm and his wife Geeta Devi also reached on spot. According to Shankar Dass, both Romesh Chander and Vijay Kumar gave him beating. Vijay Kumar deceased then handed over the drat to Romesh Chander who tried to gave a blow to him but instead of hitting him, it hit the deceased Vijay Kumar.

The accused were called to lead defence. In defence, they examined Badri Nath and Mohan Lal.

The learned Sessions Judge after appreciating the evidence of the prosecution and the defence, acquitted Geeta Devi. However, Shanker Dass and Jeevan Lal were convicted and sentenced to undergo rigorous

imprisonment for life and to pay a fine of Rs. One lac u/s 302 RPC. For commission of offence under Section 307 RPC, accused Jeevan Lal was further sentenced to undergo rigorous imprisonment for a period of ten years and was also liable to pay fine of Rs. 10,000. For commission of offence under Section 448 RPC, both the accused were sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs. 500/- All the sentences were ordered to run concurrently.

It is against this conviction and sentence, the appellants Shanker Dass and Jeevan lal have filed Criminal Appeal No.10/98 and the State has preferred acquittal appeal No.21/98, whereas the learned Sessions Judge, Udhampur, has made a reference under Section 374 Cr.P.C. for confirmation of sentence imposed upon Shankar Dass and Jeevan Lal.

During the pendency of appeals, appellant Shanker Dass has died. Proceedings against him, therefore, shall stand abated.

First of all, we take the appeal filed by the State against the acquittal of Geeta Devi.

When a matter pertains to acquittal, the appellate or revisional court has to be slow to interfere in the order passed of acquittal. The order of acquittal can be interfered with only if the judgment passed by the court

below is palpably perverse or based on mis-reading of evidence and where two views are possible, the one taken by the trial court in making a judgment of acquittal should not be disturbed.

Mr SC Gupta, learned AAG, appearing for the State virtually failed to assail the finding of the learned Sessions Judge with regard to the acquittal of Geeta Devi by pointing out that order of acquittal is perverse or based on mis-reading of the evidence.

We have perused the evidence on record. After appreciating the same, we are of the view that the learned Sessions Judge has not committed any legal error in acquitting Geeta Devi, rather, the finding recorded by the court below is in consonance with the evidence on record. The prosecution had examined Smt Sheela Devi, mother of the deceased Vijay Kumar. She had deposed in her statement that on the day of occurrence, her son Romesh Chander had gone to a flour mill (Gharat). At about 7.30 pm she along with her daughter Sanjokta and three daughter-in-laws, Mst Babli, Mst Rani and Guddi, were present in the house. Her son Romesh Chander had gone to a Gharat to fetch flour and her other son was sowing the wheat crop in the land. When Romesh Chander returned to the house, he was having an injury which was given by Shanker Dass . She further deposed that after about half an hour, all the three accused came to their house and attacked Romesh Chander.

Accused Jeevan Lal stabbed him at his back with a dagger. Romesh chander fell down. Geeta Devi caught hold of Vijay Kumar from his arm and Shanker Dass and Jeevan Lal stabbed him with the daggers at his abdomen. To the same effect is the statement of Sanjokta, Babli, Rani and Romesh Chander.

Deceased Vijay Kumar and PW Romesh Chander were quite young. It is not believable that Geeta Devi would have caught hold of young men to facilitate stabbing by the other co-accused. The learned Sessions Judge has rightly observed in this regard as under:-

“According to the case of the prosecution while the accused Jeewan Lal firstly, stabbed PW Romesh Chander accused Mst Geeta had kept him held up and likewise the accused Shanker Dass and Jeewan Lal had stabbed the deceased Vijay Kumar, she had again held up the deceased Vijay Kumar The eye witnesses PW Romesh Chander and others have stated so in their evidence but on the fact of it, it appears highly improbable and it will be doubtful. There would not have been the necessity of holding PW Romesh Chander by accused Mst Geeta as PW Romesh Chander had come in the compound alone at that time.....”

.....Similarly when the deceased Vijay Kumar was assaulted and stabbed by accused Shanker Dass and Jeewan Lal at that time PW Romesh Chander had already fallen on the ground so again there would not have

been any necessity of holding deceased Vijay Kumar by accused Geeta Devi for facilitating the stabbing on him. In this view of the matter the participation of the accused Geeta Devi in the occurrence seems to be doubtful.....”

Thus, the observations made by the learned Sessions Judge are not perverse or mis-reading of the evidence. Rather, these are correct as it is the tendency in this part of the country that when a party is involved in a hurt case, the complainant party tries to involve as many as persons possible of the accused side as it has been done in this case. Therefore, no ground is made out for disturbing the finding recorded by the learned Sessions Judge in acquitting Geeta Devi.

Now, we take the appeal filed by Jeevan Lal.

Mr BS Manhas, learned counsel appearing for the appellant submitted that the learned Sessions Judge has not appreciated the evidence on record in right perspective and has based his finding on surmises and conjectures. He submitted that there is delay in lodging the FIR. The occurrence in this case has taken place at about 8 p.m. but the FIR has been got registered after due deliberations and consultation on the day of occurrence at 11pm. He pointed out that from the place of occurrence, when a person goes to the hospital, he has to pass by the side

of the police station of the area concerned. He further submitted that the injured Romesh Chander was the best witness to lodge the complaint but instead of that the complaint has been lodged by Sheela Devi. He further pointed out that when Romesh Chander was medically examined, he was accompanied by policemen. This shows that the complainant party firstly went to the police station and then went to the hospital but had not lodged the report, and therefore, this delay in lodging the FIR is fatal to the case of prosecution.

We have given our thoughtful consideration to the submissions made by the learned counsel for the appellant and find the same without any substance. The delay ifso-facto is not fatal to the case of the prosecution. The delay is fatal when the prosecution concocts a false story, introduces the false witnesses who have not witnessed the occurrence and implicate the innocent persons as accused. In the instant case, the occurrence has not been denied by the appellants.

Appellant Shankar Dass, since deceased, when was examined under Section 342, as indicated above, did not deny the occurrence. Rather, he admitted the presence of injured Romesh Chander as well as that of Vijay Kumar but he tried to put counter version by explaining that when he was returning home after closing his office and was passing through the passage which was just outside the house of the complainant, PW Romesh

Chander started beating him with a sickle and also called his brother Vijay Kumar and exhorted him to reach there with a Darat for killing Shankar Dass. He had further deposed that Vijay Kumar came there with a Darat and his wife Geeta Devi also reached there. He further deposed that Vijay Kumar handed over the sickle to Romesh Chander and he tried to give a blow with it to him but instead of hitting him, it hit the deceased Vijay Kumar. When the occurrence is admitted, then, if there is any delay in lodging the FIR, it loses its importance. In that eventuality, it is for the court to see whether the version given by the prosecution is correct or that of the accused.

As per the prosecution version, there were two occurrences. The first occurrence had taken place at about 7.30 p.m and the second had taken place at about 8 p.m. PW Romesh Chander had deposed that when he was returning home and carrying about 20/25 kgs wheat flour on his head along with 4 kgs of sugar, Shankar Dass accused started abusing him. Shankar Dass was having a sickle in his hand, he gave a sickle blow which struck on his face under the left eye. He further deposed that he snatched the sickle from Shanker Dass at which Shanker Dass ran away. Romesh Chander PW also sustained injuries which have been proved by

Dr Anju Bala, who medically examined him. These injuries are as under:-

- "1. An incised wound on left cheek below left eye 2 cms x 5 cms which was bleeding.*
- 2. Stab wound on the left side of back of chest below left scapula 2 cms x 0.5 cms x 1 ½" deep obliquely placed."*

Shanker Dass has given no explanation how Romesh Chander received above injuries on his person. Taking into consideration the seat of injury and its nature, it cannot be said that these are the result of friendly hand. The defence taken by Shanker Dass is, thus, not believable.

Dr TR Gupta, conducted the post mortem examination of deceased Vijay Kumar along with the Board of doctors and following injuries were found on his person:-

- "1. An incised wound on the left side the mid axillary line on the 9th rib 1 ½" x ½" cutting the muscle rib and puncturing the spleen, omentum coming out of the wound. The wound was iliac crest.*
- 2. An incised wound on the left side the chest 4" below the left nipple muscle deep 1 ½" x 1 ½".*
- 3. Two bruises over the right shoulder."*

In the opinion of doctor the cause of death was haemorrhage and shock due to spleenic rupture and duration of death was within 24 hours. Injuries No. 1 and 2 were the fatal injuries.

The case of Shanker Dass accused was that Vijay Kumar came with a Darat. He handed over the same to Romesh Chander who tried to gave a blow to him but instead of hitting him, it landed on the person of Vijay Kumar. This defence taken by Shanker Dass can not be believed because as noticed above, Vijay Kumar was having three injuries on his person as per the post mortem examination. If the version given by Shanker Dass would have been true, then there would have been only one injury on the person of deceased Vijay Kumar because Ramesh Chander would not have given repeated blow to his brother Vijay Kumar. Ramesh Chander,PW , has also sustained injuries on his person but no explanation has been given by Shanker Dass or Jeevan Lal whereas the appellants/accused have admitted presence of Ramesh Chander and Vijay Kumar at the place of occurrence.

Learned counsel for the appellant also tried to make the case of prosecution doubtful by making a submission that the occurrence has taken place in the locality but no independent witness has been examined and only related witnesses have been examined. This submission raised by the learned counsel for appellant is also without any force. There is no

law that evidence of a related and interested witness cannot be relied upon. When the case is based on testimony of related and interested witnesses it puts the court on its own guard to scrutinize their evidence with great care and caution. The case of prosecution hinges on the statement of Ramesh Chander, Sanjokta, Babli and Rani and Sheela Devi. PW Romesh Chander is the stamped witness . He has received injuries in the occurrence and has given minute detail of the occurrences with regard to time, place and the manner in which these have taken place and the weapon used by the accused appellants. His version has been fully corroborated by PW Sheela Devi, Babli, Sanjokta and Rani who are the eye witnesses. Presence of these related eye witnesses is the most natural as the time of occurrence is 8 pm and it has taken place in the compound of the house of the complainant. So their presence at the place of occurrence cannot be doubted. These eye witnesses-Romesh Chander, Sheela Devi, Sanjokta, Babli and Rani have been cross-examined at length but nothing favourable came to the defence. The evidence of related and interested witnesses can be discarded only where the evidence given by these witnesses smack of partisanship and is tainted but when the evidence is convincing, reliable and trustworthy, then such an evidence is not to be discarded simply on the ground that they are related to the deceased or injured. The evidence of Romesh Chander, Babli, Sanjokta and Rani has been further corroborated by medical evidence given by Dr TR Gupta who has conducted the post mortem examination

on the dead body of deceased Vijay Kumar and Dr Anju Bala who has conducted medical examination on the person of Romesh Chander.

The learned counsel for the appellant further tried to make out the case of the prosecution doubtful by pointing out that the prosecution has suppressed the genesis of the occurrence. He pointed out that Shankar Dass accused now deceased, had also sustained injuries but these injuries have not been explained by the prosecution.

We have considered this aspect of the case also. The prosecution is not supposed to explain each and every injury on the person of accused and is to explain only those injuries which the accused has sustained in the occurrence and are fatal in nature, as has been laid down in the case of **Baba Nanda v. State of Assam, AIR 1977 SC 2252**. The injuries on the person of Shanker Dass were not only simple in nature but they were also on non vital parts. Such like injuries can be self suffered to make out a counter case which seems to have been done in this case. Therefore, the submission made in this regard by the learned counsel for the appellants is without any force.

Mr BS Manhas, learned counsel for the appellants submitted that as per the version given by Romesh Chander, Babli, Rani and Sanjokta, accused Shankar Dass and Jeewan Lal stabbed Vijay Kumar with a

dagger in his abdomen due to which his intestines came out and he died at spot. He submitted that the prosecution has failed to ascertain who was the author of fatal injury, therefore, appellants could not be convicted under Section 302. He placed reliance on a judgment of the Supreme Court reported in **1973 (Vol.1) C.L.R. 14, Ram Lal v. Delhi Administration and 1976(Vol.IV) C.L.R. 204,Tarsem Lal v. The State of Punjab.**

We have given our thoughtful consideration to the submission made by the learned counsel for the appellants and find force in the same. Dr TR Gupta, who had conducted post mortem examination had deposed that injury No.1 noted in the post mortem examination, was in his opinion, the cause for the death but the learned Sessions Judge has erroneously recorded that Dr TR Gupta has pointed out that injuries No.1 and 2 are the fatal injuries. The prosecution has not proved who is the author of injury No.1. When it is not proved who is the author of fatal injury which has resulted into death of deceased Vijay Kumar, then the accused cannot be convicted for the offence under Section 302 RPC. In Ram Lal's case (*supra*), the Apex Court has held as under:-

“No attempt was made to identify the internal injury with either or both the external injuries found on the head. It is quite possible on that evidence to infer that only one of these two injuries may have been responsible for death or both. The difficulty then arises which was the

injury caused by the appellant. The finding of the High Court was that the appellant Ram Lal had given only one blow with the stick on the head and not more than one. In that case it will be very difficult to say whether the blow given by him was the one which ultimately proved to be fatal. Mr Khanna, appearing on behalf of the Delhi Administration, contended that since the High Court came to the definite conclusion that the other assailants had not given any blow on the head of the deceased it must be assumed that both these blow had been given by Ram Lal, appellant. But that would be contrary to the finding of the High Court which has specifically come to the conclusion that only one blow with the stick had been given by the appellant on the head of the deceased. It was essential in this case, in order to bring home the offence of murder to the appellant, that the lathi blow given by him on the head had proved fatal. Since the evidence clearly disclosed that two lathi blows had been given on the head and there is no evidence which of these two was given by the appellant, the benefit of doubt must go to him. He may have given the fatal blow or he may have given the blow which did not prove fatal. In these circumstances, the appellant's conviction under Section 302 Indian Penal Code was plainly incorrect. He and his companions had the common intention to cause grievous hurt and hence he can be convicted only under Section 325 r/w Section 34. Since in pursuance of the common intention he had given a blow with a lathi on the head which is a vital part of the body he is not entitled to the same consideration as the others in the matter of sentence because the other had given blows on non vital

parts. Therefore, we set aside the conviction under Section 302 Indian Penal Code and convict the appellant under Section 325 r/w 34 and sentence him to 5 years rigorous imprisonment in respect of the offence committed with regard to deceased Har Lal....”

A Division Bench of Punjab and Haryana High Court in Tarsem Lal's case (supra) held that when three persons alleged to have assaulted the deceased, the author of fatal injury not ascertained, then anyone of the assailant could not be convicted under Section 302. Similar view was taken by a Division Bench of Punjab & Haryana High Court in the case of **1977 (Vol.V) C.L.R. 95, Ajit Singh & Ors v. The State of Punjab.**

In the case in hand, injury No.1 resulting in the death of deceased Vijay Kumar has not been attributed to either of the accused i.e. Jeewan Lal or Shanker Dass since deceased. Therefore, both of them can claim benefit to the extent that they have caused individually the non fatal injury. Hence both the accused cannot be convicted under Section 302 RPC. However, both the accused have participated in the attack on the deceased Vijay Kumar, therefore, they had the knowledge that the injury given in the abdomen would likely cause death, therefore, the act of both the accused will fall under Section 304 Part-I-culpable homicide not amounting to murder. Therefore, Jeewan Lal is convicted under Section 304 Part -1 RPC and taking into consideration the facts and circumstances

of the case, appellant Jeewan Lal is sentenced to undergo ten years rigorous imprisonment with a fine of Rs.10,000/- . In default of payment of fine, the appellant/accused shall further undergo rigorous imprisonment for a period of six months. For offence under Sec. 307, appellant Jeewan lal is further sentenced to undergo rigorous imprisonment for a period of five years and shall also be liable to pay a fine of Rs. 5000/- . In default of payment of fine, the appellant shall undergo rigorous imprisonment for a period of three months. In case, fine is paid, the same would be payable to the wife of deceased Vijay Kumar. The conviction and sentence recorded under Section 448 is maintained. All the sentences shall run concurrently.

In view of the above, both the appeals are dismissed with the above modification. Reference sent by the Sessions Judge is also rejected.