

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

Cr. Appeal No. 10/1993
c/w
Confirm No. 17/1993

Date of decision: 29.08.2014

Charanjit Singh & ors.	Vs.	State of J&K.
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Coram:

Hon'ble Mr. Justice Virender Singh - Judge
Hon'ble Mr. Justice Bansi Lal Bhat - Judge

Appearing counsel:

For appellant (s) :	Mr. Anil Khajuria, Amicus curiae.
For respondent(s) :	Mr. D. S. Jamwal, Advocate.

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| 1. | Whether to be reported in Press/Journal/Media | : | Yes/No |
| 2. | Whether to be reported in Digest/Journal | : | Yes/No |
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Per Bansi Lal Bhat J.

1. This appeal by appellants-convicts (hereinafter referred to as 'accused') is directed against judgment of conviction and order of sentence respectively dated 26.04.1993 and 29.04.1993 formulated by learned Sessions Judge Jammu in File No. 91/Sessions titled *State vs. Charanjit Singh & ors.* by virtue whereof accused-Charanjit Singh has been convicted of offence under Sections 302 of RPC and 4/27 of Arms Act and sentenced to imprisonment for life and fine of Rs.1000/-(Rupees One Thousand) for offence under Section 302 of RPC, in default of payment of fine to further suffer six months simple imprisonment; also sentenced to one year's rigorous imprisonment and a fine of Rs.500/-(Rupees Five Hundred) for offence under Section 4/27 Arms Act, in default of payment of fine to further undergo three months simple imprisonment. Accused Inder Singh and Rattan Lal have been

convicted for offence under Section 302/34 of RPC and sentenced to imprisonment for life and a fine of Rs.1000/- (Rupees One Thousand) each, in default of payment of fine to further suffer six month's simple imprisonment. Learned Sessions Judge has made Reference in terms of Section 374 of Cr.P.C. for confirmation of sentence of life imprisonment slapped on the accused. Confirmation Reference No. 17/1993 has been clubbed with the instant appeal for disposal.

2. Prosecution version, as emanating from report submitted by the Investigating Agency under Section 173 of Cr.P.C., is that on 07.11.1986 at about 1.30 am one Waryam Singh lodged a written report at Police Station Bishnah alleging therein that his relative Gian Chand (hereinafter referred to as '**deceased**'), who was a hot-headed man disliked by the villagers and had previously been subjected to a murderous assault resulting in serious injuries, was chased by the accused after the deceased had an altercation with some villagers who raised a *lalkara* that Gian Chand should not be permitted to escape but the deceased managed to save his life. However, at 7/8 pm the accused armed with *lathies* and swords, with common intention, assaulted the deceased on a thoroughfare near a well. When the deceased ran for safety, the accused gave him a chase, waylaid him in the compound of Mst. Shani and struck him repeatedly with the intention of eliminating him. It was alleged that accused Charanjit Singh inflicted injuries on the person of deceased by giving repeated strikes with a sword while accused Rattan Lal and Inder Singh hurled *lathi* blows on him. He further alleged that the deceased succumbed to injuries on spot and his dead body was lying in a pool of blood. The informant Waryam Singh claimed to have watched the occurrence alongwith Janak Raj as the duo had visited the residence of deceased on that day.

Based on this report, case under FIR No. 162/86 for offence under Sections 302/34 of RPC came to be registered at Police Station Bishnah. Police embarked upon an investigation, during the course of which dead body of deceased found lying in the compound of Mst. Shani in a pool of blood besides three broken teeth of deceased, a dismembered figure with nail smeared in blood and clay were seized. The seized articles were sealed on spot. Site plan and Fard-e-Surat-e-hal were prepared on spot. Photographs of dead body were taken and the dead body was sent for post mortem examination to Bishnah Hospital. Clothes and shoes of deceased were also seized. Body of deceased was subsequently delivered to the next of kin of deceased for last rites. Statements of witnesses were recorded. Accused Charanjit Singh was arrested and a blood-stained sword was recovered in pursuance of a disclosure statement made by him. Same was seized along with blood-stained articles and sent to FSL for chemical examination. *Lathies* used as weapons of offence were recovered from accused Rattan Lal and Inder Singh. The investigation culminated in filing of Charge-Sheet against the accused for offences under Sections 302/34 of RPC and 4/27 of Arms Act which, after going through the ritual of committal proceedings, landed in the Court of learned Sessions Judge Jammu for judicial determination.

3. Charges came to be framed against accused Charanjit Singh for offences under Sections 302 of RPC and 4/25 and 4/27 of Arms Act whereas charges against accused Rattan Lal and Inder Singh came to be framed under Sections 302/34 of RPC. The accused pleaded *not guilty* and claimed trial. Prosecution adduced evidence at the trial and upon its conclusion the incriminating circumstances appearing in prosecution evidence were put to accused for their explanation in terms of provisions of Section 342 of Cr.P.C. The

accused denied the prosecution allegations and pleaded that they had been falsely implicated in the case. No evidence was adduced in defense. On consideration of the evidence brought on record during trial learned Sessions Judge recorded the conviction of accused and passed sentence upon them as afore-said which have been assailed through the medium of the instant appeal.

4. Before noticing the rival contentions and proceeding to re-appreciate the evidence adduced at the trial it would be appropriate to give a brief resume of the evidence recorded at the trial.

Prosecution evidence

Pw-Waryam Singh- brother-in-law of deceased deposed that on a day in the month preceding *Maghar*, Krishan Lal of Chak Majara informed his family in his absence that his uncle Gian Chand had died. Later his daughter broke the news to him when he was working in the fields. He went to his home where he found Krishan Lal waiting for him. Krishan Lal told him that the villagers had beaten up the deceased with *Lathies*, chased away the mother of deceased who reached there to intervene and thereafter assaulted the deceased with swords resulting in his death. The witness further deposed that Krishan Lal had not nominated the assailants. The witness deposed that he had rushed to the place of occurrence where he found the Police on spot. Body of deceased was lying there and it bore marks of injuries. The witness denied that he had lodged any report with the Police. Confronted with the report attributed to him, the witness admitted that he had lodged the report at the Police Station on the day following the date of occurrence. However, he did not support the assertion in the report to the extent that he had personally witnessed the occurrence. The report was

marked ExPw-WS. Witness also did not support such assertion incorporated in FIR marked ExPw- WS/1 bearing his thumb impression. The witness testified to the contents of Seizure Memo of body of deceased marked ExPw-WS/2, Seizure Memo of a pair of shoes of deceased marked ExPw-RD/2, Seizure Memo of wearing apparel of deceased marked ExPw-RD/3, Seizure Memo of a dismembered finger with blood-stained nail marked ExPw-WS/3, Seizure Memo in respect of three teeth marked ExPw-WS/4 and Seizure Memo(s) of plain and blood-stained clay respectively marked as ExPw-WS/5 and ExPw-WS/6. However, the witness did not support the seizure of a sword at the instance of accused Charanjit Singh and *Lathies* produced by accused Inder Singh and Rattan Lal maintaining that the accused Charanjit Singh had not made any disclosure statement in his presence.

In his cross-examination the witness stated that he is an illiterate and the report ExPw-WS was written by a Police Personnel at the Police Station next day after occurrence. He maintained that he was not an eye-witness to the murder of deceased and he had visited the site of occurrence on the next day. Police had read over the report attributed to him but he did not pay much attention to the same.

Pw-Janak Singh-brother-in-law of deceased deposed that on 11.06.1986 he alongwith Waryam Singh and his wife Parkasho Devi visited his mother-in-law Sadro Devi who was ailing. It was 4 pm. Deceased had gone towards the canal where the accused had raised a *lalkara* forcing him to return to his home. However, at 7/8 pm he again went towards the canal to answer the call of nature. After sometime the witness heard a noise

emanating from the direction of a well located near the Bord tree. The witness further deposed that he alongwith Waryam Singh, Parkasho Devi and Kripalo Devi rushed towards the place while Sadro Devi followed them. Upon reaching there he found the accused Charanjit Singh giving strikes to deceased with a sword while other accused were causing *Lathi* blows to him. When he tried to prevent the accused, the accused threatened to eliminate him. Accused Charanjit Singh caused a strike of sword on the arm of deceased while other accused landed *Lathi* blows upon him. The deceased ran for safety and entered the compound of Shani Devi but the accused chased him and repeatedly assaulted him with the sword and *Lathies*, accused Charanjit Singh causing three strikes on his body with one landing on his face resulting in breaking of his teeth. Charanjit Singh also struck blows with the sword upon the neck and arm of deceased while other accused continued to hurl *Lathi* blows upon him. The deceased had a blood bath. Accused told him and other witnesses to mourn the death of the deceased and then escaped from the spot. Waryam Singh went to Police Station Bishnah to lodge report while the witness himself and his companions stayed on spot. Police arrived there in the night. The witness testified to contents of Fard-e-Surat-e-hal and receipt of body of deceased marked as ExPw-WS/5.

In cross-examination the witness stated that he resided at Gondla which lies at a distance of 5 Kms from the place of occurrence. His co-brother Waryam Singh resident of Plaser was a respectable person. The witness denied the suggestion that Waryam Singh had sent him a message to the effect that the deceased had been murdered. The deceased had suffered fourteen years imprisonment for committing murder of one Ram

Singh Saini and after his release from jail he had a fight with the Sainis but no Saini was injured. Inder Singh and Rattan Lal had brutally struck *Lathi* blows on the deceased. The deceased suffered injuries all over the body but collapsed after receiving head injury. Mst. Shani was not present in her house at that time. Lal Chand and a Saini reside in the vicinity of place of occurrence. Kartar Singh, Parkash, Bheru-Lambardar and Sant Ram-Master besides accused Charanjit Singh live near the well. People were watching the occurrence from a distance of about 30 feet. Accused were threatening to eliminate anybody who tried to intervene. However, the witnesses did not make any statement before Police on account of fear of accused. Police had arrested the accused in the night and whisked them away. His statement was recorded at the Police Station though he was questioned the same night. Body of deceased was cremated on 08.11.1986 and his statement was recorded thereafter. However, it was found that his statement had been recorded on 07.11.1986.

Pw-Mst. Kirpalo Devi- is the widow of deceased. She deposed that she was in her house when she heard the cries “*mar diya mar diya*”. She rushed to the spot and found the deceased lying in injured condition. He was dead. She did not know who the assailant was. She had not seen the accused causing strikes to the deceased. The witness was declared hostile to prosecution and on cross-examination by learned Public Prosecutor she disowned the statement attributed to her under Section 161 of Cr.P.C with regard to her being an eye-witness to the alleged occurrence. She claimed that she had reached the compound of Shani Devi after the death of her husband. Chowkidar had lodged report with the Police. She had put her signatures on

certain documents prepared by Police but she was not aware of contents thereof. Police had seized the dismembered finger and three broken teeth of her husband besides plain and blood-stained clay. In her cross-examination by learned defense counsel she stated that Janak Singh and Waryam Singh reached there the following day at 4 pm. They had been called through a messenger. The deceased had suffered sentence of twelve years in a case relating to murder of one Ram Singh Saini belonging to the same village. Relatives of Ram Singh Saini had previously assaulted the deceased after he was let off from the jail. However, the case relating to the incident of assault had been dismissed by Court.

Pw Sadro Devi has been given up by prosecution.

Pw-Parkasho Devi , wife of Waryam Singh, deposed that the deceased was her real brother. Her brother-in-law Janak Singh landed in her home and advised her and her husband to accompany him to the house of her mother Sadro Devi to enquire about her health. All the three went to Chak Kima and while they were getting ready to return to their abode, they heard a noise emanating from a place near the well. At about 7/8 pm her brother Gian Chand had gone out to call the answer of Nature. She alongwith her husband Waryam Singh, Janak Singh and Sadro Devi rushed towards the well where they found accused Inder Singh and Rattan Lal armed with *Lathies* and accused Charanjit holding a sword in his hand who were running after the deceased. She further deposed that the deceased escaped from the spot to save his life and entered the compound of house of Mst. Shani. The room of Mst. Shani was locked. Accused followed him and entered the compound of house. Accused Charanjit struck the deceased with the sword

while other accused hurled *Lathi* blows on him. The deceased fell down but accused continued with their assault. The deceased received a strike of sword in his face resulting in breaking of teeth which fell down. He sustained cut injuries on his head and arm. His finger was also cut. The deceased was drenched in blood. The witness claimed that she and other witnesses raised an alarm and the people were attracted to the place. The accused threatened them and left the place. The deceased succumbed on spot. Her husband went to Police Station to lodge report. She and other witnesses stayed with the dead body on spot. Police arrived there during the night and removed the body from there after daybreak.

On cross-examination the witness stated that slight darkness had descended upon the place at the time of occurrence. The place of occurrence was at a distance of about 500 yards from the house of Sadro Devi. Amar, Mohan, Dheru-Lambardar, Sant Ram-Master and accused Charanjit lived in the vicinity of the place where the deceased was initially assaulted. People had assembled on spot. Deceased was beaten mercilessly. Some people tried to intervene but the accused threatened to eliminate them. Police did not record her statement at night as she was mourning the death of her brother. Deceased was cremated on the following day after post mortem. Her husband Waryam Singh too figures as a witness in this case. He is a truthful witness. She did not remember whether Waryam Singh had told her about the contents of his deposition in Court. After cremation of deceased she went to her village and visited her parental home on the tenth day of deceased. She got blood-stains on her hands but not on her clothes. She claimed that she had told the Police that the deceased was murdered in her

presence. She did not deny the factum of deceased having served sentence of fourteen years imprisonment in a murder case. Her statement was recorded in Police Station.

Pw-Ramdhan was the Chowkidar of Village Chak Kima. He deposed that he had not witnessed the alleged occurrence. The witness was declared hostile to prosecution and on cross examination by learned Public Prosecutor he deposed that he had made statement before Police only in regard to the seizure of weapons of offence. On being confronted with his statement recorded under Section 161 of Cr.P.C., which depicted him as an eye-witness, he denied having made such statement before the Police. He claimed that he had lodged report at the Police Station on the basis of information provided to him by one Ashok that a murder had been committed in the village. Nothing was seized in his presence. The witness identified his signatures on Seizure Memo(s) which have been marked ExPw-RD and ExPw-RD/1. However, he supported Seizure Memo in regard to seizure of a pair of shoes of deceased, his signatures being marked ExPw-RD/2. He also supported the Memo in regard to seizure of garments of deceased; his signatures marked ExPw-RD/3.

In cross –examination by learned defense counsel deposed that Chak Majra lies at a distance of half a mile from Chak Kima where he resides. He was not conversant with Urdu and did not know what was written in various Memo(s) he had signed. Deceased had served jail term of fourteen years for committing murder of Ram Singh.

Pw-Ashwani Kumar-Photographer has not been examined.

Pw-Behari Lal, then posted as Head Constable at Police Station Bishnah deposed that on 07.11.1986 he had

accompanied the then SHO when the investigation in case registered under FIR No. 162/1986 was taken up. During course of investigation the accused were arrested. Accused Charanjit Singh made a Disclosure Statement which led to recovery of a sword from his store room. The witness testified to contents of Disclosure Statement marked ExPw-BL bearing his signatures. He further deposed that the above-named accused led the Police Party to his store-room from where the blood-stained sword was recovered by him and produced before the Police. Same was seized and sealed. He proved the Seizure Memo marked ExPw-BL/1 in this regard. He identified the sword marked ExP-1.

On cross-examination by learned defense counsel he deposed that accused Charanjit Singh was arrested at around 10.30 pm and he made the Disclosure Statement within 5/7 minutes. Accused spoke in Urdu language. Waryam Singh was accompanying the Police Party. Two ladies and two gents were found in the house of accused when recovery was affected. They were relatives of accused. He took part in investigation for 2/3 days. SHO had visited the spot at 2.15 am. He had examined the informant and mother and widow of deceased besides recording statement of Chowkidar.

Pw-Puran Chand – then posted as Patwari Halqa Chak Majra deposed that he had drawn up the site plan marked ExPw-PC. The site plan was drawn at the site of crime identified by Police.

In cross-examination the witness stated that besides the local residents Chowkidar Ramdhan was also present on spot. Shani Devi was not on spot. Houses of Shani Devi, Mani Devi and Lal Chand are located near the site of crime. The place of occurrence lies between a well and a lane.

Pw-Dr. Amar Kotwal the then BMO Bishnah deposed that on

07.11.1986 at 4.30 pm he conducted post-mortem examination on the dead body of Gian Chand which was identified by Sudhiro Devi and Janak Singh. He proved the post-mortem report marked ExPw-AK. In his opinion the deceased had died because of injuries sustained by him on 07.11.1986 and the time of post- mortem examination was within twenty-four hours of death.

On cross examination the witness stated that no vital part of the deceased was involved in the injuries. Individually none of the injuries was grievous.

Pw-Bodh Raj Malagar the then Naib Tehsildar Executive Magistrate, Bishnah deposed that on 12.11.1986 Police produced six sealed packets before him for resealing. He resealed the packets and issued certificate marked ExPw- BR.

In cross-examination stated that he had not opened the sealed packets. He had not seen the seals used by Police in sealing the packets.

5. That concludes the resume of prosecution evidence recorded at the trial. Examined under Section 342 of Cr.P.C. to explain the incriminating circumstances emerging against them from prosecution evidence, the accused denied the allegations leveled by prosecution witnesses in *toto* and pleaded false implication. No specific plea mitigating the alleged offence has been taken by the accused and no evidence adduced in defense.

6. Heard learned counsel for the rival sides and scanned through the record to reappraise the evidence adduced by prosecution at the trial in the light of submissions made at the bar. It is argued on behalf of appellant-accused that prosecution has failed to discharge burden of proof resting upon it to establish complicity of accused

in the alleged occurrence in which injuries sustained by deceased proved fatal. It is submitted that prosecution had resorted to two modes of proof to bring home guilt against the accused. The first mode comprised of direct evidence of Pw(s)-Waryam Singh, Janak Singh, Kripalo Devi and Parkasho Devi. These witnesses, it is submitted, claim to have witnessed the occurrence but their testimonies failed to inspire confidence. It is submitted that these witnesses are not the natural witnesses and claim to have been attracted to the scene of crime on hearing hue and cry raised on spot. It is further pointed out that their testimonies are inconsistent on material particulars of alleged occurrence. Moreover, the witnesses living in the vicinity including Shani Devi in whose compound the final assault is alleged to have been made leading to on spot death of deceased, have not been cited and examined by prosecution to render its version of the occurrence credit-worthy. It is further contended on behalf of appellants-accused that the second mode of proof relied upon by prosecution in the nature of recovery of weapon of offence *viz* sword at the instance of accused –Charanjit Singh in pursuance of Disclosure Statement attributed to him does not furnish substantive evidence of complicity of accused as the same cannot be taken as a legal proof in accordance with law apart from the fact that the evidence in regard to such Disclosure Statement and recovery stated to have been effected in pursuance thereof is neither admissible nor convincing. It is submitted that the evidence brought on record by prosecution is not of such quality which could be made the basis for recording conviction of accused. Learned counsel for appellants-accused has vehemently assailed the impugned judgment and submits that same cannot be supported.

7. Per contra, learned AAG submits that equipped with the two modes of proof including the substantive evidence of eye-witnesses who were the close relatives of deceased and had no reason to spare the real culprit and implicate the accused, prosecution has brought on record cogent and convincing evidence to link the accused with the murder of deceased. It is further submitted that the accused had a motive for eliminating the deceased who had committed murder of their relative Ram Singh and suffered jail term of twelve years for the same. It is pointed out that the deceased, after being released from jail, had been subjected to assault by accused in which the deceased had suffered injuries and the case relating to the same had been judicially tried. It is submitted that the direct evidence brought on record by prosecution is credible and convincing and the same stands duly corroborated. In regard to recovery of weapon of offence it is submitted that the same is linked with the Disclosure Statement of accused Charanjit Singh made immediately after his arrest and the same has been proved satisfactorily. Thus, it is submitted, that the evidence adduced at the trial perfectly justifies conviction of accused in respect of the charges framed against them.

8. On reappraisal of evidence we find that prosecution relies upon two modes of proof to establish complicity of accused in the alleged occurrence. The first mode of proof is the direct evidence of eye-witnesses and the second mode of proof is the circumstantial evidence. Before dwelling upon these modes of proof be it noticed that according to Dr. Amar Kotwal, who conducted Post Mortem examination on the dead body of deceased, following injuries were found on the body of deceased:

1. Muscle deep incised wound extending from the anterior of the left ear upto upper lip 1 ½”.

2. 2" x 1" muscle deep incised wound from the left angle of the mouth parallel to the injury No. one above.
3. 4 incised wounds on the left forearm varying from 4" x 1 ½" muscle deep to 3" x 1" m. deep.
4. 2" x 1" bone deep incised wound on the dorsal surface of the left hand.
5. 3" x 1 ½" bone cut on the left elbow joint.
6. 4 incised wounds on the right forearm varying from 3" x 1 ½" muscle deep to 2 ½" m. deep.
7. Incised wound 1" wide bone deep extending from the base of the little finger upto the wrist of the right hand.
8. 3" x 1" bruise on the dorsal surface of the rt. Hand
9. 4" x 1" m. deep incised wound on the rt. Arm.
10. 6" x 2" bone deep incised wound on the left side of the neck.
11. 3" x 1" incised wound on the pos-surface of the rt. Lower leg.
12. 5" x 2" muscle deep incised wound on the left scapular region.

According to the witness all injuries found on the dead body of deceased were ante-mortem and were mostly caused with sharp-edged weapons. Three teeth were dislocated and a finger was dismembered. Deceased had died due to injuries sustained on his body surface. Witness has proved Post Mortem Examination Report marked ExPw-AK. In view of the testimony of Medical Expert it is established that the deceased died an unnatural death and it was an act of homicide. ExPw-WS/2 is the Seizure Memo relating to seizure of body of deceased. The document has been proved at the trial by Pw-Waryam Singh. According to this Memo the body of deceased was found lying in a pool of blood in the

compound of Shani Devi and it was seized by Police from there on 07.11.1986. Thus, prosecution has established the basic facts in regard to alleged murder of deceased by proof of corpus delicti and opinion of Medical Expert attributing cause of death to injuries found on the body surface of the deceased mostly caused by sharp-edged weapons.

9. Now coming to authorship of crime be it seen that prosecution has relied upon direct evidence and proof of circumstances to establish nexus of accused with murder of deceased. It appears that out of six eye-witnesses projected in the final report only Janak Singh and Parkasho Devi have supported the prosecution version. Pw(s)-Kripalo Devi and Ramdhan have turned hostile to prosecution whereas Pw-Sudhiro Devi has been given up. Pw- Waryam Singh has been examined at the trial. He has resiled from his version stated before Police during the investigation of case and denied having personally witnessed the incident. Consequently, we have only the eye-witness account of Pw(s)-Janak Singh and Parkasho Devi who, if found truthful and reliable, can become the basis for recording conviction of accused.

10. Pw-Janak Singh is the brother-in-law of deceased. According to his version his mother-in-law Sudhiro Devi was ailing and he went to the house of Sudhiro Devi in the company of his sister-in-law Parkasho Devi and her husband Waryam Singh. As per his account on 11.06.1986 at around 4 pm the deceased who had gone to the Canal Bank, came back apprehending danger to his life from accused who had threatened him. Later, the deceased again went toward the canal bank for easing himself. It was about 7/8 pm. The witness claims to have heard cries emanating from a place near the well. He alongwith Waryam Singh, Parkasho Devi and Kripalo Devi rushed to the spot. The witness has stated in unambiguous

terms that he saw accused Charanjit Singh inflicting blows on the body of deceased with a sword whereas accused Rattan Lal and Inder Singh were hurling *Lathi* blows on him. The witness claims to have challenged the accused who retaliated by threatening the witnesses with elimination. According to this witness, the accused Charanjit Singh inflicted an injury with sword upon the arm of deceased while other accused were beating him with *Lathies*. The deceased *ran* for safety and entered the compound of Shani Devi. He was chased by the accused who too gained entry to the compound of Shani Devi and continued to assault the deceased with the weapons they were armed with. The witness has vividly described the roles attributed to accused in the whole episode. He maintained that despite the deceased collapsing on the ground accused Charanjit Singh inflicted three blows with the sword on his body, one landing on his mouth resulting in breakage of teeth which fell on the ground, second blow landing on his neck and the third blow landing on his arm resulting in cutting of fingers. He has further deposed that other accused continued to hurl *Lathi* blows upon the deceased who was lying in a pool of blood. According to witness the accused thereafter made good their escape. **Pw-Waryam Singh left for Bishnah to inform the Police while other witnesses stayed back near the body of deceased.** Police reached there at night and prepared the Fard-e-Surat-e-hal marked ExPw- JS. Body of deceased was removed in the morning and delivered to the next of kin vide ExPw-JS/1. It is in his testimony that before leaving the compound of Shani Devi the accused asked the witnesses to come close to the body of the deceased and mourn his death. Pw- Parkasho Devi is the sister-in-law of Pw-Janak Singh. She, while corroborating the version of Pw-Janak Singh, affirmed that she alongwith her husband Waryam

Singh accompanied Pw- Janak Singh to Chak Kima to enquire about the health of her mother Sudhiro Devi. It is in her testimony that the deceased had gone to the canal side in the evening but returned home immediately as the accused had raised a *lalkara* on noticing his presence there. She further deposed that again at 7/8 pm the deceased had gone to the canal side to ease himself but shortly thereafter they heard his cries which emanated from a place near a Bordh tree adjoining a well. It is in her testimony that she along with Waryam Singh, Janak Singh, Kripalo Devi and Sudhiro Devi rushed to the spot and upon reaching there saw the deceased being chased by accused Charanjit Singh who was armed with a sword and accused Inder Singh and Rattan Lal who were armed with *Lathies*. As per her deposition the deceased ran for safety and entered the compound of Shani Devi but the accused followed him and managed to enter the compound of Shani Devi, overpowered the deceased and inflicted injuries upon his body by giving repeated blows with the arms respectively carried by them which resulted in dislocation of three teeth and dismemberment of a finger of his hand which fell down on the ground. Her testimony is emphatic on the point that despite the deceased having collapsed and fallen on the ground, the accused continued with their assault with the deadly weapons carried by them while the deceased was bleeding profusely. Her testimony leaves no room for doubt that the deceased was subjected to murderous assault in the most brutal and dastardly manner while the deceased, being unarmed, was helpless and unable to put up resistance. She has corroborated testimony of Pw-Janak Singh in all material particulars of the alleged occurrence maintaining that the accused threatened to liquidate the witnesses if they dared to intervene and rescue the deceased. On close scrutiny of the account rendered by these two

witnesses it emerges that their versions are consistent and there is no contradiction in regard to the material aspects of the incident. Both witnesses have deposed in a forthright manner. No dent has been created in their cross-examination. It is not suggested that they had a motive for false implication of the accused. It is also not shown that they have made any attempt to gloss over the truth. Their rendering of the occurrence sounds credible and free from exaggeration and embellishments. Being the close relatives of deceased and their presence on spot being natural, these witnesses cannot be expected to spare the real culprits and rope in innocent people. Pw- Parkasho Devi is the real sister of deceased while Pw- Janak Singh is the brother-in-law of deceased. Given the nature of their relationship with the deceased, their presence in the house of deceased at the relevant time is rendered probable on account of the explanation given by both witnesses who stated that Pw- Janak Singh had visited the house of Pw- Parkasho Devi to take them along to Chak Kima to enquire about the health of Sudhiro Devi who was ailing. That explains the situation. The occasion for visit of these witnesses to the house of deceased arose on account of ailment of Sudhiro Devi and there is nothing unnatural on the part of these witnesses to have visited the house of deceased on that day. No parallel version of the alleged occurrence is forthcoming from the accused in their cross-examination of these prosecution witnesses. No attempt, not even a feeble one, has been made on the part of accused to demonstrate that these witnesses have been planted. We are satisfied that these witnesses are truthful and they have neither tried to suppress the truth nor made any attempt to exaggerate the things. Their testimonies, not shown to be tainted with interest, are found reliable and worthy of credit. The argument of learned counsel for accused that the testimonies of these

witnesses are liable to be rejected on the score of their being related and interested witnesses is accordingly repelled.

11. Pw(s)-Ramdhan and Kripalo Devi figure among the eye-witnesses cited in the calendar but they have not supported the prosecution version at the trial. Pw- Kripalo Devi is the widow of deceased whereas Pw-Ramdhan is the Chowkidar of village Chak Kima. Pw-Ramdhan staged a volte-face by flatly denying that the accused committed murder of deceased in his presence. Pw-Kripalo Devi stated at the trial that on hearing cries she rushed to the spot where she found the deceased lying dead with injuries inflicted on his body. However, she denied that she had seen the accused inflicting fatal injuries upon the deceased. Pw-Waryam Singh is the husband of Pw- Parkasho Devi. He has totally resiled from his version before Police and deposed that one Krishan Lal of Chak Majra had dropped a message at his residence in his absence that the deceased had died and his daughter had informed him while he was working in his fields. **The reasons for betrayal on the part of these witnesses is not far to seek. Criminal justice system is facing serious challenges, one being failure on the part of State to provide adequate and meaningful protection to witnesses. It is well known that many influences are at work at the trial of a criminal case and the witnesses are susceptible to such influences. Some succumb to intimidatory tactics adopted by the sympathizers of criminals facing trial while some others give in to temptation and allurements. This accounts for resiling of many of the witnesses from the version disclosed before Police during investigation.** In the instant case, be it seen that Pw-Waryam Singh is proved to have visited the house of deceased while accompanying Pw(s)- Janak Singh and Parkasho Devi, the latter being his wife. He admits being the author of FIR

which recites that he watched the occurrence and is an eye witness to the murder. **In view of the finding recorded that the testimonies of Janak Singh and Parkasho Devi are truthful accounts of the ghastly murder of deceased, testimony of Pw-Waryam Singh making a marked departure from the established facts can be termed as a concoction. Once the eye witness account of Pw(s) Janak Singh and Parkasho Devi is found completely truthful and totally reliable, there is no hesitation in branding Waryam Singh as a liar.** Insofar as Sudhiro Devi is concerned, she admittedly was in advanced age and not keeping good health. In these circumstances, no adverse inference could be drawn against prosecution for giving her up at the trial. After all the proof of criminal charges rests upon quality and not the quantity of evidence. If in the opinion of prosecution the evidence adduced was sufficient to establish the charge against the accused, it could not be compelled to produce each and every witness cited in the Charge Sheet.

12. The testimonies of eye-witnesses Janak Singh and Parkasho Devi having been found credible and worthy of reliance, be it seen that the Medical Expert who conducted Post Mortem examination on the body of deceased found as many as twelve injuries on the body of deceased which, barring one bruise, were incised wounds which could be caused by the sword wielded by accused Charanjit Singh. The solitary bruise found on the body of deceased is attributable to a *lathi* blow. The contention raised by learned counsel for accused that the participation of accused other than Charanjit Singh has to be dismissed as a concoction on account of only one bruise attributable to *lathi* blow being found on the body of deceased though there were two accused allegedly hurling *lathi* blows on deceased repeatedly as if thrashing wheat, is devoid of

merit. Since it is a case of multiple incised wounds being found on the body of deceased, most of the bruises and blow marks of *lathies* must have got obliterated. That accounts for not finding of more than one bruise on the body of deceased by the Medical Expert. The description of injuries found on the body of deceased as noticed in the Post Mortem Report fits in with the version of the two eye-witnesses who claimed that the accused-Charanjit Singh armed with sword and accused Inder Singh and Rattan Lal armed with *lathies* not only persisted in repeatedly causing strikes on the body of deceased but also threatened these witnesses of being subjected to physical harm. The Post Mortem Report proved by the Medical Expert corroborates the ocular version of Pw(s) Janak Singh and Parkasho Devi. Prosecution is accordingly held to have successfully discharged this mode of proof.

13. Now coming to other mode of proof be it seen that the prosecution relied upon Disclosure Statement emanating from accused Charanjit Singh leading to recovery of a sword at his instance which was seized. Pw- Behari Lal-Head Constable who was associated with investigation proved the Memo of Disclosure Statement marked ExPw-BL and the Seizure Memo marked ExPw-BL/1. According to this witness accused Charanjit Singh, while in custody, disclosed before IO that he had concealed the sword behind the earthenware used for storage of wheat and placed in the storeroom of his house and the sword with inscription ***“presented by 31 MAD REGT. Made in India”*** was recovered at his instance from the place indicated by him. This witness was accompanying SHO during investigation of case and he remained associated with SHO throughout. The seized sword, according to the witness, was blood-stained. The witness is a signatory to the Disclosure Memo as also the Seizure Memo. He has supported the contents of these

Memo(s). The recovery of sword at the instance of accused Charanjit Singh pursuant to his disclosure from a place inside the storeroom of his house, which was exclusively within his knowledge, confirms the substance of information given by accused Charanjit Singh, such information distinctly leading to the discovery of a fact viz. concealment of the sword used by the said accused as weapon of offence in causing fatal injuries on the body of deceased. The Disclosure Statement attributed to accused Charanjit Singh, irrespective of its being confessional or non-confessional in nature, having been confirmed by recovery of the blood-stained sword at his instance, is admissible in evidence and acceptable as a relevant mode of proof, given the fact that eleven incised wounds out of twelve wounds found on the body of deceased could have been caused by the seized sword. This mode of proof, too, links the accused with the commission of crime.

14. Some shortcomings in proof of material facts have been pointed out by learned counsel for appellants but the same are not of a magnitude which would justify throwing away of the prosecution case. Seizure of *lathies* from Rattan Lal and Inder Singh has not been proved as Pw(s) Ramdhan and Waryam Singh have not supported the prosecution case. Same is true about seizure of a pair of shoes of deceased vide ExPw-RD/2 and blood stained clothes of deceased vide ExPw-RD/3. This also holds good about seizure of dismembered finger of deceased vide ExPw-S/3. Three dislocated teeth of deceased were recovered from place of occurrence vide ExPw-S/4. Other Seizure Memo(s) relate to seizure of blood-stained and plain clay, seizure of body of deceased and its delivery to NOK for cremation. Pw-Waryam Singh is the marginal witness to most of these Memo(s). Since

some witnesses are proved to have succumbed to influences and their version in Court has not been believed, no aspersion is caused on the prosecution case. Non proof of some of these documents does not create any dent in the prosecution case which is established to the hilt by direct and circumstantial evidence. Objection raised on this score is accordingly overruled.

15. Lastly it was argued that non-examination of Investigating Officer is fatal for the prosecution case. This argument overlooks the fact that Pw- Behari Lal Head Constable who was associated with SHO right from registration of FIR till conclusion of investigation has been examined at the trial and he has deposed about the relevant facts. His deposition also establishes the factum of recovery of blood-stained sword at the instance of accused Charanjit Singh pursuant to the Disclosure Statement made by the said accused. The witness has been cross-examined but his credit has not been shaken in the least. In view of the same non-examination of Investigating Officer does not materially affect the prosecution case. No prejudice has either been claimed by the accused during trial on this score. It is not shown that the testimony of Investigating Officer was essential for explaining any contradiction found in the prosecution evidence or that an illegality had been committed during the course of investigation which was required to be explained by Investigating Officer. The argument is accordingly repelled and it is held that non-examination of Investigating Officer has not affected the basic substratum of the prosecution case.

16. On careful consideration and reappraisal of evidence adduced by prosecution at the trial we are of the considered opinion that the prosecution has discharged burden of proof resting upon it, to the hilt, by direct evidence and proof of circumstances. The authorship

of crime is clearly proved against the accused who all along collaborated with each other in continuing with the assault on the person of deceased with their respective weapons till he laid the ghost. Evidence brought on record by prosecution admits of no ambiguity on the aspect of motive for the crime of murder, it being established that the deceased had served sentence for having committed murder of one Ram Singh Saini- a relative of the accused and the accused were after his throat. The conviction of accused, who are proved to have acted in tandem sharing common intention for causing brutal murder of deceased, is well founded. We find no infirmity in the impugned judgment of conviction and order of sentence formulated by the learned Trial Court. The conviction and sentence are, accordingly, upheld and the sentence of life imprisonment slapped upon accused is confirmed. The appeal is dismissed and the reference upheld. Result of the appeal and confirmation reference be certified to the Trial Court as mandated by Section 425 of CrPC.

17. Record of the Trial Court be remitted back. Appeal file and the confirmation reference file be consigned to records.

(Bansi Lal Bhat)
Judge

(Virender Singh)
Judge

Jammu

Sunita.

29.08.2014