

A.F.R.

Reserved On:- 05.08.2019

Delivered On:- 30.08.2019

Case :- CRIMINAL APPEAL – 1487 of 1984

Appellant :- Ram Chandra And Other

Respondent :- State

Counsel for Appellant :- A. Hajela, Rahul Misra, Amicus Curiae, V.B.L. Srivastava, V.K. Shukla

Counsel for Respondent :- A.G.A.

Hon'ble Vipin Sinha, J.

Hon'ble Siddharth, J.

(Delivered by Hon'ble Siddharth, J.)

1. Heard Sri Rahul Misra, learned Amicus curiae for the appellants and Sri Rajesh Mishra, learned A.G.A. for the State.
2. This criminal appeal has been preferred against the judgment and order of conviction dated 30.04.1984 passed by VIth Additional District & Sessions Judge, Saharanpur in Sessions Trial No. 584 of 1982 (State vs. Sia Ram and two others) convicting and sentencing the appellants, namely, Ram Chander son of Godhra Kisan and Jaduvir son of Jograj Kisan. Appellant no. 1, Ram Chander, is convicted and sentenced to undergo imprisonment for life under Section 302 IPC. He is also convicted and sentenced to undergo rigorous imprisonment for three years under Section 324 IPC read with Section 34 IPC. Appellant no. 2, Jaduvir, is also convicted and sentenced to undergo life imprisonment under Section 302/34 IPC. He is also sentenced to undergo rigorous imprisonment for

three years under Section 324 IPC. Both the sentences have been directed to run concurrently.

3. The prosecution case is that Ram Kishore, informant, lodged the first information report at Police station- Jaitipur, on 11.03.1982 at 07:15 am stating that his grandfather, Anokhe Lal, had illicit relationship with Smt. Prema, widow of Khushali. Khushali was elder uncle (tau) of co-accused, Sia Ram. After death of Khushali, Smt. Prema had been living in his house and she transferred 20 bighas of land of her share to Anokhe Lal. She died about 7 years back. Ever since her death, co-accused, Sia Ram wanted to get back the aforesaid land back but he could not get possession of the same. Due to the above motive yesterday i.e., 10.03.1982, at about 3:00 pm, when the informant was going along with his uncle, Gendan Lal and Nanku, to village- Kota on the eve of Holi, co-accused, Sia Ram, armed with gun, his brother, Ram Chander, armed with country made pistol and Jaduvir, armed with *kanta*, came out of the house of Sia Ram. When they reached the door of Sia Ram he fired at his uncle, Gendan Lal, with his gun. When his uncle fell down, Jaduvir attacked him on his legs with a *kanta* and Ram Chander fired from his country made pistol on his right ear. Sia Ram hit him with the butt of the gun on his head also and Gendan Lal died.

4. Inquest report and site plan were prepared, blood stained earth was taken from the spot and thereafter post mortem report of the body of

Gendan Lal was conducted by Doctor Aslam Khan. After due investigation charge-sheet was submitted against the appellants and co-accused, Sia Ram, who died during pendency of trial.

5. Accused-appellant no. 1, Ram Chander, was charged under Section 302 IPC and 324 IPC read with Section 34 IPC. Accused-appellant no. 2, Jaduvir, was charged under Section 302/34 IPC and 324 IPC.

6. Prosecution examined, P.W.-1, Ram Kishore, the informant; P.W.-2, Nanku; P.W.3, S.I. Kali Shanker Tiwari, Investigating Officer; P.W.-4, Dr. Mohd. Aslam Kamal Khan, who conducted the post-mortem of deceased Gendan Lal and P.W.-5, Constable, Asif Husain, who brought the sealed dead body of deceased for post-mortem along with the papers.

7. P.W.-1, Ram Kishore, deposed that deceased, Gendan Lal, was his uncle. Name of his father was Kunwar Bahadur. Co-accused, Sia Ram, has died. Ram Chander, is real brother of deceased co-accused, Sia Ram. Accused-appellant no. 2, Jaduvir is real nephew of Ram Chander. Khushali was uncle of Ram Chander and Sia Ram. Smt. Prema was widow of Khusali. His grandfather, Anokhey Lal, has illicit relation with Smt. Prema. After death of her husband, she began to live with Anokhey Lal in his house. Smt. Prema transferred her share of 20 bighas of land in the name of Anokhey Lal. Smt. Prema died about 8 years back. Co-accused, Sia Ram, wanted to get back that land, which was transferred by Smt. Prema. As Sia Ram could not get possession over that land, hence

accuseds had enmity with them. About one year, 10 months back at 3 pm, he alongwith deceased, Gendan Lal and Nanku, were going to village-Kota in connection with *Holi Milan*. When they reached at the door of Sia Ram, deceased co-accused, he was armed with a country-made gun, Jaduvir had a *kanta* and Ram Chander was armed with a pistol. Sia Ram fired with the gun at his uncle, Gendan Lal. Ram Chander fired with the pistol and Jaduvir attacked him with the *kanta*. Sia Ram attacked with the butt of the gun also on the head of the deceased and due to injuries inflicted his uncle died.

8. In his cross-examination P.W.-1 stated that his father were five brothers, namely, Rajaram, Ramnath, Gendan Lal, Ram Sewak and Kunwar Bahadur. His father, Kunwar Bahadur, was murdered in dacoity. Brother of accused, Sia Ram, Hemraj, was murdered prior to the present murder of Gendan Lal. In the murder trial of Hemraj, he and his uncle Ram Sewak are accuseds. The trial is still pending. Wife of Ram Chandra is the witness and mother of Jaduvir is also a witness in the trial. He stated that his uncle, Ram Nath, was murdered in Saraiyaganj. In the aforesaid murder Ram Singh and Chote were tried. In suggestion he denied that the deceased, Gendan Lal, was tried in the murder of Mahesh. He also denied implication of deceased, Gendan Lal, in dacoity in the house of Lallu Singh. He also denied implication of deceased, Gendan Lal, in the theft case at Sraiaganj before trial court. He further stated that he wrote the application for lodging FIR in his house where no one were present. Raja

Ram was near the dead body of Gendan Lal and his uncle, Nanku, was also there. All the other people were near the dead body of the deceased but he was in the house. He did not sleep in the night and started for police station at 4:00 – 4:30 a.m on foot. Police Station is 6 *kos* away. First he went to village Padainiya where his uncle (*fufa*), Pothi Ram resides, and after taking him from his house and he went to the police station. Jaitipur is too *kos* away from Padainiya. He specifically denied that the report was lodged on the next day of the incident.

9. P.W.-2, Nanku, stated in his statement that he is resident of village Gauhaniya and deceased, Gendan Lal, was his cousin (*mausera bhai*). At the time of incident he was residing in village Jhabra along with deceased. His murder took place at 3:00 pm when he was going to village Kota for meeting people on the eve of *holi* from the passage passing through the house of Sia Ram. As soon as they reached the gate of house of Sia Ram the accuseds, Sia Ram, Ramchandra and Jaduvir came out from their house. Sia Ram had gun, Ram Chandra had a country made pistol and Jaduvir was having a *kanta*. Sia Ram stated that he will let them enjoy the taste of cultivating the land of his aunt today and thereafter he threw a challenge. Gendan Lal, turned back after raising his arms and then Sia Ram fired at him which hit him below the arm pit and he fell down. Ram Chandra fired at his right ear and Jaduvir gave blow of *kanta* on his right leg. Sia Ram hit Gendan Lal on his head by the barrel of the gun. He along with Ram Kishore cried for help but no one came. He went and saw

Gendan Lal who had died. On account of fear he and the informant did not went anywhere. His brother, Raja Ram was weak and therefore he was living with him in his village.

10. In his cross-examination, P.W.-2 stated that he does not knows how much land did Raja Ram had. He further stated that Rajaram had about 60, 70 bighas of land which was joint. There were two other persons to work, apart from Raja Ram. He has land of about 40-50 bighas in village Gauhaniya. He admitted in cross-examination that he was not doing the ploughing, planting and harvesting of the land of Raja Ram. He does not knows how much land Raja Ram has in the village. He admitted that his village is 10-11 *kos* away and 1.5 miles are equal to one *kos*. At the time of incident Gendan Lal was 3-4 steps ahead to him. Sia Ram fired at him immediately after coming out of the gate. After firing Sia Ram did not run away nor the informant, Ram Kishore ran. Gendan Lal suffered injuries. Neither the informant nor he suffered any injury. Sia Ram did not attacked them. Deceased fell down infront of the house of Ram Bharose. He did not lifted him. Since he was empty handed he did not made any effort to defend him. He further stated that he informed the investigating officer that injuries of *kanta* was caused on the left leg and right feet of the deceased. Deceased fell in the middle of the passage. After Gendan Lal fell the ladies of his house came. Neither the informant nor he had any talk with the ladies. He and Raja Ram remained with the dead body till it was lying there and it was only after it was sealed and taken away by the police

that they left. He does not know Pothi Ram. He was not the witness of inquest report. At the time of inquest Ram Kishore was there. He does not remember who were signatories of inquest report. He denied that signature of Ram Kishore was taken before him on the inquest report. The dead body was sealed at 12:00- 12:30 pm. After it was taken away in bullock-cart he went alone. He denied that Gendan Lal was involved in any criminal case regarding theft, dacoity, gangster, etc. He also denied any such involvement of Ram Kishore, the informant. He denied that he has not seen the incident and is falsely deposing before the court.

11. P.W.-3, Kali Shanker Tiwari, deposed that on basis of report Ext. Ka-1, head constable Bani Singh executed chik which is Ext. Ka-2, copy of G.D. No. 7, 7:15 am dated 11.03.1982 executed by the said constable is Ext. Ka-3. He took the statements of the witnesses and reached the place of occurrence. He took the dead body of deceased, Gendan Lal, in his possession, executed *panchnama*, Ext. Ka-4, prepared photo of dead body, chalan of dead body and specimen of seal and letters to the C.M.O. and R.I. which are Ext. Ka-5, Ka-6, Ka-7, Ka-8 and Ka-9. He sealed the dead body and handed over sealed dead body and relevant papers for post-mortem to constable, Asif Husain, and village- Chaukidar Rahwari. He prepared site plan, Ext. Ka-10. From the place of occurrence, he took in possession shoes of deceased and plain earth and blood stained earth and prepared the memos which are Ext. Ka-11 and Ka-12. Shoes are Ext. 13. Blood stained earth is Ext. 2 and plain earth is Ext. 3. After investigation,

he filed charge sheet Ext. Ka-14.

12. Dr. Mohd. Aslam Kamal Khan, P.W.-4, deposed that on 12.03.1982 at 4:30 pm he conducted the post-mortem of Gendan Lal who was brought by constable, Asif Husain and Chaukidar Rahwari. Seal was intact. Dead body was identified by the above mentioned constable and Chaukidar. Duration of the death of the deceased was about 2 days. Rigor mortis had passed off from the upper portion and was passing from lower portion.

13. Ante-mortem injuries on the dead body of the deceased were following:-

- (1) Incised wound on the dorsum of right foot 10cm x 1.5 cm x bone deep.
- (2) Incised wound of 3.5cm x 1 cm on left leg in the middle 1/5 of the leg.
- (3) Gunshot wound of entrance 6 cm circular x chest cavity deep, margins lacerated and inverted, on the right side of the chest lower part 12 cm (sic) and lateral to the right nipple at 8 o'clock position. Blackenning and tattooing present around the wound.
- (4) Gunshot wound of entrance 3 cm circular x brain cavity deep on the right side of the skull just behind the right ear. No blackenning and tattooing.
- (5) Incised wound 4 cm x 1 cm x cranial cavity deep 5 cm about right ear.
- (6) Incised wound 10 cm x 0.5 cm x cranial cavity deep on the top of skull in sagittal place 9 cm above the injury nos. 5 and 7.
- (7) Wound 4 cm x 1 cm x cranial cavity deep on the front of the skull 6cm away from the bridge of the nose. Bones fractured under the wounds.

14. On internal examination, he found that stomach contained 100 grams food particles, not recognizable. Gall bladder was empty. In small intestines digested food was found. According to him death was due to

shock and haemorrhage. He deposed that time of death may be at about 3 pm. On 10.03.1982. Dr. also deposed that injury nos. 3 and 4 are possible by gun and pistol and injuries nos. 1, 2, 5, 6 and 7 are possible by *kanta*.

15. Accused, Ram Chander, deposed under Section 313 Cr.P.C. that informant killed his brother. At the time of incident, informant, Ram Kishore and his uncle, Ram Sewak, were accuseds in a case regarding death of his brother, Hemraj, due to which he has been falsely implicated, so that he could not do *pairavi* of that case.

16. Jaduvir, deposed under Section 313 Cr.P.C., that informant, Ram Kishore and his uncle, Ram Sewak, killed his uncle, Hemraj. He and his mother are witnesses in that case. Therefore, he has been falsely implicated in this case.

17. Accuseds did not produced any oral evidence in defence.

18. The accuseds filed copy of the charge sheet in the Case Crime No. 95, under Sections 302, 307/34 IPC, Police Station- Jaitipur (State vs. Raja Ram, Sita Ram and Hemraj) of the court of II- Additional Sessions in Sessions Trial No. 30/1981 (State vs. Raja Ram and others) under Sections 395 IPC, Police Station- Jaitipur and judgment of the IInd Additional Sessions Judge, Sri R.G. Gupta, in Sessions Trial No. 30 of 1981, copy of the charge sheet in Crime No. 101 under Sections- 148, 147, 149, 342, 364, 302, 20 IPC, Police Station- Jaitipur, (State vs. Raja Ram and others).

19. This court vide order dated 13.08.2018 appointed Sri Rahul Mishra,

Advocate as Amicus Curaie to assist the court on behalf of appellants since no one was appearing to argue the appeal on behalf of the appellants.

20. He has firstly submitted that the appellants have been falsely implicated in this case. Their presence on the scene of occurrence is doubtful and not proved from the evidence on record. The testimony of P.W.-1 is not worth credence since he has deposed before the court that deceased, Gendan Lal, was done to death before him and he made no effort to save him. He made no effort of lifting him from the spot with the help of Nanku, P.W.-2. He did not even touched the deceased to ascertain whether he is alive or not. He has only stated that he raised the alarm for help but no one came. It has been stressed that the conduct of the informant is not normal since as soon as Gendan Lal fell he along with P.W.2 presumed that he has died and their conduct shows that neither P.W.-1 nor P.W.-2 were present on the spot. P.W.-2 has also admitted that where the deceased fell he remained there and he did not lifted him or tried to save him by taking him to doctor.

21. In support of his argument, learned Amicus Curaie has further stated that there was prior enmity between the family of the deceased and the accuseds. P.W.-1 has stated in his cross-examination that his father were five brothers, namely, Rajaram, Ramnath, Gendan Lal, Ram Sewak and Kunwar Bahadur. His father Kunwar Bahadur was murdered in dacoity. Brother of co-accused, Sia R

7. am, Hemraj, was murdered prior to the murder of Gendan Lal. In the murder trial of Hemraj he and his uncle Ram Sewak are accuseds. The trial is still pending. Wife of Ram Chander is the witness and mother of Jaduvir is also a witness in the trial. He has further submitted that his uncle, Ram Nath, was murdered in Saraiyaganj. In the aforesaid murder Ram Singh and Chote were tried. In suggestion he denied that the deceased, Gendan Lal, was tried in the murder of Mahesh. He also denied implication of deceased, Gendan Lal, in dacoity in the house of Lallu Singh. He also denied implication of deceased, Gendan Lal, in the theft case at Sraiyaganj before trial court. The accuseds filed the documentary evidence regarding the criminal cases pending against the family members of P.W.-1 but the trial court has not considered the documentary evidences filed by the accuseds.

22. It has been submitted that the deceased was murdered by unknown person/persons in the night of 10.03.1982 and since there was a criminal trial pending regarding the murder of brother of Sia Ram, Hemraj. Wife of Hemraj and mother of appellant, Jaduvir are witnesses in the case and P.W.-1 was in the need of defending himself and his uncle, Ram Sewak, in the aforesaid trial thereafter he falsely implicated the deceased, Sia Ram and appellants, who are the brother and nephew of Sia Ram respectively and by the same relation brother and nephew of deceased, Hemraj.

23. By implicating the appellants and deceased Sia Ram in the murder

of Gendan Lal, the informant succeeded in presurizing the appellants in the trial of murder of Hemraj.

24. The second submissions made by learned Amicus Curaie is that the FIR was lodged showing incorrect time of death of the deceased and therefore the prosecution case has wrongly been believed by the trial court. He has elaborated that P.W.-1 and P.W.-2, both have stated in their statements that the murder of Gendan Lal took place at 3:00 pm on 10.03.1982. Both the witnesses have stated that on account of fear they did not went to the police station on the same day to lodge the FIR. P.W.-1 has stated that in the morning of 11.03.1982 he went to lodge the FIR at 4:00 to 4:30 am in the morning from his village by foot. Police Station is about 6 *kos* from his village. He had written the application in the night. He did not went directly to the police station- Jaitipur. He first went to village Padiniya where his uncle (*fufa*), Pothi Ram, resides and thereafter he went to the police station along with his uncle, Pothi Ram.

25. Learned Amicus Curaie has pointed out to the post mortem report and the statement of P.W.-4, Dr. Mohd, Aslam, wherein it has been stated that at the time of post mortem of the deceased on 12.03.1982 at 4:30 pm. rigor mortis on the upper part of the body of the deceased had passed off, while in the lower part it was passing off. He has submitted that if the murder of the deceased took place at 3:00 pm on 10.03.1982 there was no reason for the rigor mortis not to have passed off completely over the body

of the deceased at the time of post-mortem after more than 48 hours of the murder of the deceased.

26. He has submitted that the trial court has not examined this aspects while dealing with the contentions of the defence. He has further submitted that P.W.-1 and P.W.-2 both have stated that they did not went to lodge FIR on the date of incident because of fear. However, P.W.-1 has not stated how he went alone to lodge the FIR at 4:00 to 4:30 am on foot when the accuseds were absconding. He has submitted that the explanation of delay in lodging of the FIR was not convincing and the court below has wrongly accepted the same. The murder of the deceased took place sometimes in the night of 10.11.1982 and the first information report was lodged next day at 07:15 am before the police station by falsely implicating the appellants and Sia Ram. The medical evidence does not supports the time of death mentioned in the FIR as 3:00 pm on 10.03.1982. He has further pointed out that the FIR was lodged after consultation with Pothi Ram, uncle of P.W.-1. In his statement P.W.-1 has admitted that he first went to Pothi Ram and after taking him along went to lodge the F.I.R. at police station.

27. The third submissions made by the learned Amicus Curaie is that the prosecution case cannot be said to have been proved keeping in view the statement of the doctor, P.W.-4 wherefrom it is clear that there is no explanation of injury nos. 5, 6 and 7 mentioned in the statement of the

doctor.

28. From the statement of P.W.-1 and P.W.-2 it is clear that there was no injury of *kanta* caused on the head, ear and skull of the deceased. Injury nos. 5, 6 and 7 are such injuries which were not alleged by the prosecution either in the FIR or in the statements of the witnesses. He has further pointed out that in the anti-mortem injuries mentioned by the trial court the injury no. 7 has been mixed with injury no. 6 when injury no. 7 is different from injury no. 6. It is incised wound 4 cm x 1 cm cranial cavity deep, 6 cm away from nose bridge. He has pointed out that the prosecution was required to explain the injuries noted above which has not been explained. It casts doubt over the prosecution case.

29. The final submission of the learned Amicus Curaie is that the motive of crime alleged is not convincing. The disputed transfer of 20 bighas of land by Smt. Prema, widow of Khushali, was done by her in favour of Anokhe Lal about 7 years back. Thereafter, no litigation, civil or revenue, or even a petty dispute ever took place between the family of Sia Ram and the appellants. Therefore, the motive of the crime set up by the prosecution is not correct. No evidence was led before the Court that after the transfer of the aforesaid land by Smt. Prema any dispute ever took place between the two families. How all of a sudden Sia Ram and the appellants caused the murder of only Gendan Lal, when the informant, Ram Kishore, who also belonged to the family of Anokhey Lal and was also beneficiary of the

land of Smt. Prema, was not harmed at all by Sia Ram and the appellants. He has submitted that the motive of crime set up by the prosecution was false and had been wrongly believed by the court below.

30. Learned A.G.A. has submitted that the first submission of learned Amicus Curaie is misconceived since P.W.-1 was very much present on the scene of occurrence and he has given exact description of the incident as it occurred. There were only 4 to 5 families left in the village and therefore when he raised the alarm no one came for his help. The village was not well populated and therefore no one could hear his cry for help. He has further submitted that mere non-causing of any injury to P.W.-1 and P.W.-2 does not implies that they were not present on the scene of occurrence. The motive of implication of the appellants only because of the mother of appellant, Jaduvir and wife of Hemraj being witness in the murder case of Hemraj, cannot be said to be correct. The reason for implication of the appellants was the dispute regarding the land which was given to the father of Gendan Lal by elder aunt of Sia Ram and appellants and Sia Ram were trying to get back the possession of the same.

31. Regarding the second submissions made by learned Amicus Curaie, learned A.G.A. has submitted that the time of death of the deceased was not incorrect. The first information report disclosed the correct time of death of the deceased, Gendan Lal, at 3:00 p.m. on 10.03.1982. Both the witnesses have testified the aforesaid time of death of the deceased and it

cannot be disputed in appeal when the trial court has also accepted the same as correct. He has not given any reply to the argument of the learned Amicus Curaie that the rigor mortis was passing on the lower part of the body on 12.03.1982 at 4:30 p.m., when the post-mortem was conducted.

32. Regarding the third submissions of the learned Amicus Curaie that there was no explanation for injury nos. 5, 6 and 7 in the statements of P.W.-1 and P.W.-2, the learned A.G.A. has also not been able to give any cogent reply.

33. Regarding the final submission of the learned Amicus Curaie, that Smt. Prema, transferred 20 bighas of land in favour of Anokhey Lal, father of the deceased and therefore Sia Ram and appellants were aggrieved and they killed Gendan Lal and that the land in dispute was not the motive of crime committed by the appellants, the learned A.G.A. has submitted that there was no other motive of the crime except the land dispute because Sia Ram and the appellants were deprived of their 20 bighas of valuable land on account of the execution of sale deed by Smt. Prema in favour of Anokhey Lal, father of the deceased, Gendan Lal, therefore, they caused the murder of Gendan Lal.

34. After hearing the rival contentions, this court finds that the first submission of the learned Amicus Curaie, that the incident in dispute is doubtful appears convincing from the testimony of P.W.-1. It is clear that when he along with the deceased, who was his real uncle, were passing

from the house of Sia Ram and the appellants, they suddenly came out armed with the alleged weapons and all of them attacked only the deceased, Gendan Lal. Not a scratch was caused to P.W.-1, who was the real nephew of the deceased. After Gendan Lal fell down, P.W.-1 not even touched the deceased to ascertain whether his life can be saved nor he made any effort to lift him with the help of P.W.-2, Nanku, for taking him to any doctor. He simply presumed that Gendan Lal is now dead. P.W.-2 has stated in his statement that he along with P.W.-1 remained with the dead body till it was lifted by the police and taken for post-mortem at about 12-12:30 p.m., but P.W.-1 has deposed that he went to his house soon after the murder of Gendan Lal and remained there. Other members of family were with the dead body. He did not sleep in the night and left for the police station, after writing the application in the night at around 4:00 to 4:30 p.m. on 11.03.1982. The statement of P.W.-1 that he did not go to the police station directly but he went to the house of his uncle, Pothi Ram, and thereafter, he went to lodge the FIR shows that the FIR was lodged by the P.W.-1 after due deliberation with Pothi Ram.

35. From the statement of P.W.-1 it has also come on record that the deceased had criminal history and was involved in number of cases of theft, dacoity, etc. Documentary evidence in this regard was placed before the trial court by the appellants but the trial court has not adverted to the same nor has recorded any finding for not considering the same. The argument advanced that in the murder of the brother of Sia Ram, Hemraj,

Ram Sewak, uncle of P.W.-1 and P.W-1 himself were accuseds therefore the appellants were falsely implicated in order to pressurize the witnesses in the family of the appellants from deposing against Ram Sewak in the trial appears to have force. The FIR has been lodged after more than 12 hours of the incident and there was sufficient time for planning with the P.W.-1 to implicate the appellants and Sia Ram. By implicating the appellants and Sia Ram, P.W.-1 succeeded in pressurizing them to depose favorably in the trial of Hemraj. He got Sia Ram and the appellants falsely implicated thus.

36. The second argument made by learned Amicus Curaie has not been answered by the learned A.G.A., however, a perusal of the statement of P.W.-2 shows that the rigor mortis on the dead body of the deceased had passed from the upper portion of the body and was passing off from the lower part.

37. In view of the controversy at the Bar we have consulted, apart from Modi's Medical Jurisprudence and Toxicology, Taylor's Principles and Practice of Medical Jurisprudence and Jhala & Raju's Medical Jurisprudence (by Dr. R. K. Jhala and V. B. Raju). It would be useful to refer to the opinion of the learned authors as follows. Modi in his Medical Jurisprudence (21 st Edition at page 171) writes, Rigor mortis first appears in the involuntary muscles and then in the voluntary muscles. In the voluntary muscles rigor mortis follows a definite course. It first occurs in

the muscles of the eyelids, next in the muscles of the back of the neck and lower jaw, then in those of the front of the neck, face, chest and upper extremities and lastly extends downwards to the muscles of the abdomen and lower extremities. Last to be affected are the small muscles of the fingers and toes. It passes off in the same sequence.

Taylor in his book (13th Edition at page 143) under the caption 'The order in which rigor appears' states :-

As a rule, cadaveric rigidity first appears in the muscles of the face, neck and trunk; it then takes place in the muscles of the upper extremities and lastly in the legs...In regard to its disappearance the muscles of the lower extremities will often be found rigid, while those of the trunk and upper extremities are again in a state of relaxation. It appears later and lasts longer in the lower extremities than in other parts of the body.

In Jhala and Raju's Medical Jurisprudence (6th Edition at pages 256-257) it has been stated :-

Rigor mortis is due to rigidity of the muscles. It appears both in the voluntary as well as involuntary muscles, its appearance and disappearance in various muscles follows a pattern. It is apparent first in the region of head, face, neck, eyelids and lower jaw. It last shows its appearance in the lower extremities. Hence if rigor mortis is present in lower extremities, it can safely be opined that it is present all over...After the rigor mortis has set in the whole body (as confirmed from its presence

in lower extremities) no specific opinion is possible till the time it starts disappearing i.e. after about 18 hours.

38. It would, thus, appear that all the authorities on the subject are unanimous in their opinion that rigor mortis sets in and reaches the 'extremities' at the end and that it follows the same pattern both in the matter of appearance and disappearance. Presence of rigor mortis by itself cannot be decisive of the time of death. It is true that on the basis of presence of rigor mortis, no opinion can be given with mathematical precision regarding the time of death. At the same time, in view of the undisputed position regarding the 'course' of appearance and disappearance of rigor, its presence only in the lower left of body does provide a sound basis to find out the probability or otherwise of the prosecution case regarding time of death. The process of appearance and disappearance of rigor mortis may take relatively shorter and longer time depending on various factors like temperature, season, etc., of the place of death.

39. In the present case the time of death of the deceased has been disputed on the ground that at the time of post-mortem of the dead body of the deceased which took place on 12.03.1982 at 4:30 p.m., the rigor mortis was passing from lower half of the body and therefore the learned Amicus Curiae for the appellant has submitted that the death of the deceased had not taken place at 3:00 p.m. on 10.03.1982 but sometime in the night of 10/11-03-1982. Jhala & Raju in their medical jurisprudence have held that

rigor mortis usually is absent after about 36 hours but the period may be longer in cold weather and for other reasons. As per **Taylor** the dead body becomes limp after 36 hours of death. As per **Modi** also the rigor mortis passes off from dead body after 36 hours of death. In the case of ***Virendra @ Buddhu and another vs. State of U.P., 2008 (15) SCALE 283***, the Apex Court doubted the prosecution case where the rigor mortis was present in the lower extremities at the time of post mortem conducted after 30 hours when death was alleged to have taken place more than 48 hours of ago. The relevant paragraph is as follows:-

“Moreover, the doctor who conducted autopsy on the dead body on 06.10.1979 at 4.30 p.m., in the report has mentioned that rigor mortis had passed through upper extremities and was present in lower extremities. It is mentioned at page 125 of Modi's Medical Jurisprudence and Toxicology, Edition 1977 that in general rigor mortis sets in 1 to 2 hours after death, is well developed from head to foot in about 12 hours, is maintained for about 12 hours and passes off in about 12 hours. In the instant case rigor mortis was present in lower extremities at the time autopsy was conducted on the dead body after 30 hours. As according to ocular testimony deceased was murdered on 05.10.1979 at about 10.00 a.m. and the doctor conducted autopsy on the dead body on the next day at about 4.30 p.m. after 30 hours of death but rigor mortis was found present in lower extremities. Had he died on 04.10.1979 at about 10.00 p.m. or so rigor mortis would have passed off from the dead body completely at the time of autopsy. Thus the ocular testimony that he was murdered on 05.10.1979 at about 10.00 a.m. stands corroborated from the medical evidence pin-pointing that rigor mortis was present in lower extremities at the time when the autopsy was conducted on the dead body after 30

hours.”

40. From the above consideration, it is clear that the time of death mentioned by the prosecution cannot be accepted as correct. Jhala & Raju have held that as a result of exposure and cold stiffening can appear as rigor mortis. In the present case the incident is of March in District Saharanpur which is in northern India and dead body is stated to be lying in open field from 3 p.m on 10.03.1982 till 12:30 p.m on 11.03.1982. Thereafter, post-mortem was conducted on 12.03.1982 at 4:30 p.m. In the month of March it not so cold which may lead to further stiffening to body beyond period of 36 hours. Therefore, the contention raised on behalf of appellant is not without substance. It appears that the death of Gendan Lal did not took place at 3 p.m on 10.03.1982 but sometimes in the night of 10/11-03-1982 and the prosecution has mentioned incorrect time of death only to implicate the appellants and deceased co-accused, Sia Ram, with whom the informant had prior enmity.

41. On the basis of the other material on record the time of death of the deceased mentioned in the FIR too appears to be doubtful. The explanation on the basis of fear in going to police station soon after the incident and then going alone to lodge the FIR by P.W.-1 at 4:00 – 4:30 a.m the next day is contradictory. The prosecution case does not inspires confidence on this account too.

42. Regarding the third argument of the learned Amicus Curaie that there is no explanation for injury nos. 5, 6 and 7, it is found from the injury

report of the deceased that no evidence was led by the prosecution regarding the aforesaid injuries and P.W.-4, the doctor has stated that such injuries cannot be caused by the barrel of the gun. There is no explanation on record and therefore this court has no option but to accept the contention raised on behalf of the appellants that prosecution has failed to discharge its burden regarding the incident in dispute and it has failed to prove the injury nos. 5, 6 and 7 on the body of the deceased.

43. Regarding the last submission made on behalf of the learned Amicus Curaie it is found that the motive of the crime alleged by the prosecution has not been successfully established. The dispute regarding the transfer of land by Smt. Prema in favour of Anokhey Lal, father of the deceased and grandfather of P.W.-1, was never raised during the period of 7 years prior to the incident in dispute and all of sudden it would result in a selective murder of only one person from the family of Anokhey Lal without causing any harm to the other person, P.W.-1, cannot be accepted as correct foundation of motive set up by the prosecution. There is no evidence on record to prove that any pre-planning was done by the appellants or Sia Ram for causing the murder of Gendan Lal on the eve of Holi and there is also no material on record to show that the motive of crime was evident from any material or any conduct of the appellants whatsoever. Therefore, it can be safely held that the motive of crime set up by the prosecution was not convincing.

44. After consideration of the entire material on record and the judgment of the trial court, we have come to the conclusion that the prosecution has failed to establish the alleged crime against the appellants beyond reasonable doubt. The judgment and order of conviction of the trial court is set aside and the appellants are acquitted of the charges. The bail bonds of the appellants are cancelled and the sureties are discharged.

45. Let the copy of this judgment along with lower court record be sent to court below for compliance.

46. While recording our appreciation for Sri Rahul Misra, Advocate, learned Amicus Curaie for ably assisting us, we direct that he should be paid his professional fee of Rs. 15,000/- in this case.

47. This Criminal Appeal is *allowed*.

Order date: 30.08.2019

Rohit