

**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

D.B. Criminal Appeal No. 1145/2016

1. Bherulal, S/o Bhanwarlal, R/o Mali Mohalla, Ramganj Mandi, District Kota.
2. Pooran @ Rajesh, S/o Bherulal, R/o Mali Mohalla, Ramganj Mandi, District Kota. (Both at present in Central Jail, Kota)

----Accused Appellants

Versus

State Of Rajasthan through PP

----Respondent

Connected With

D.B. Criminal Appeal No. 1086/2016

Jaheer Mohammad, S/o Subhan Khan, R/o Miyana Police Station Kotwali, Baran, AT present Aapa ka Makaan, Cement Road, Near Pani Ke Tanki, Ramganjmandi District Kota. (At present in Judicial custody at Distt Jail, Kota)

----Accused-Appellant

Versus

State Of Rajasthan through PP

----Respondent

D.B. Criminal Appeal No. 1525/2016

1. Tarun @ Tejmal S/o Ram Lal, R/o Kundaliya, Police Station Jirapur, Madhya Pradesh, At Present Bazar No.3, Near Sharab Theka, Ramganjmandi, District Kota. At Present Accused Appellant Is Confined In Central Jail, Kota.
2. Ram Lal, S/o Bhanwar Lal, R/o Kundaliya, Police Station Jirapur, Madhya Pradesh, At present Bazar No.3, Near Sharab Theka, Ramganjmandi, District Kota.  
(At present accused appellants are confined in Central Jail, Kota)

----Accused-Appellants

Versus

State Of Rajasthan through PP.

----Respondent



---

For Appellant(s) : Mr. Govind Prasad Rawat  
Mr. Dhananjay Sharma for Sudarshan  
Laddha  
Mr. Manish Sharma  
For Complainant(s) : Mr. Sajid Ali  
For State : Mr. Javed Choudhary, Addl. GA

---

**HON'BLE MR. JUSTICE PANKAJ BHANDARI**

**HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

**Judgment**

**Judgment reserved on** :: **18/01/2023**

**Judgment pronounced on** :: **31/01/2023**

**By the Court:::(Per Hon'ble Pankaj Bhandari, J)**

1. Appellants have preferred these appeals aggrieved by judgment of conviction and sentence dated 11.08.2016 passed by Addl. Sessions Judge, Ramganj Mandi, District Kota whereby appellants have been convicted for offence under Sections 302/149, 147, 148, 341 IPC. For under Section 302 IPC to suffer life imprisonment and to pay fine of Rs.5,000/-. In default of payment of fine, to further suffer rigorous imprisonment for two months. Under Section 147 IPC, to suffer simple imprisonment for two years. Under Section 148 IPC, to suffer simple imprisonment for three years. Under Section 341 IPC, to suffer simple imprisonment for one month. All the substantive sentences have been ordered to run concurrently.

2. Briefly stated the facts of the case are that the incident took place on 30.09.2012 at 9:45 -10:00 pm. On 01.10.2012 at 07.30 am, PW-11 (Ashok Kumar) submitted a written report at Government Hospital, Jhalawar. Police on the basis of this information registered the case under Sections 147, 341, 302/149 IPC against the appellants and other co-accused and arrested the accused appellants. Police after due investigation, submitted



challan against the accused appellants and other co-accused under Sections 147, 148, 341, 302/149 IPC. Learned trial Court framed charges against the accused appellants and other co-accused under Sections 147/148, 341 and 302 or 302/149 IPC. Appellants denied the charges, on which prosecution examined as many as 23 witnesses and 51 documents were exhibited. Accused-appellants were examined under section 313 Crpc wherein they denied the prosecution case. On behalf of defence, one witness – DW-1 Gaurav Rai was examined and 3 documents were exhibited. Trial Court after hearing both the parties, convicted the accused appellants and other co-accused under Sections 147, 148, 341, 302/149 of IPC. Aggrieved by which, present appeals have been filed.

3. It is contended by counsel for the appellants that there is delay of about ten hours in lodging of FIR which has not been explained by the prosecution, even though police station was at a distance of mere 150 meters from the place of occurrence. It is also contended that there is delay of more than one day in the receipt of FIR by the Magistrate, which further creates a doubt on the authenticity of FIR. It is further contended that the written report (EX.P-16) has been received at 07:30 am on 01.10.2012. The FIR was registered at 01.30 pm on the same day but, the copy of FIR was received by the Magistrate at 03.00 pm on 02.10.2012 which creates a doubt on the authenticity of the FIR. It is also contended that even though on the date of occurrence, there was a *Kavi Sammellan* in the market place near the alleged place of occurrence wherein many people were present yet none of them were produced as independent witnesses.



4. It is contended by counsel for the appellant-Jaheer that PW-7 (Parwez Alam) has specifically stated in his examination-in-chief that Jaheer was not involved in the incident and he was not a member of the unlawful assembly. He was only an employee in the shop of Bherulal Tailor. It is also contended that it is not established that the shirt which was recovered at the instance of Jaheer belonged to Jaheer as he was not asked to wear the same. It is also contended that the scissor is said to have been recovered from Jaheer having human blood but the blood group was inconclusive.

5. It is contended by counsel for the appellant-Tarun that no recovery has been effected from Tarun. There is no overt act assigned to him. It is also contended that in the FIR, name of four persons-Bherulal, Ramlal, Pooran and Jaheer is mentioned. Name of Tarun is not mentioned in the FIR. Hence, he has been falsely implicated in this case.

6. It is contended by counsel for the appellant-Ram Lal that there is no allegation against Ram Lal of causing injury with a hockey stick, whereas a hockey stick is said to have been recovered at his instance. At the time of recovery of the hockey stick, it was mentioned by the investigating officer that there was no blood stains on the hockey stick. However, in Ex.P-20, human blood is said to be found on the hockey stick of group-AB. It is also contended that no overt act is assigned to Ram Lal.

7. It is contended by counsel for the appellant-Bherulal that there is no recovery from Bherulal. It is contended that there is allegation against Bherulal of causing injury with a scissor. However, no scissor has been recovered at his instance.



8. It is contended by counsel for the appellant-Pooran that a scissor has been recovered at his instance but no blood was detected from scissor as per FSL report (Ex.P-21).

9. It is also contended by counsel for the appellants that eye witness-Parwez Alam (PW-7) has turned hostile. Similarly, Rambabu Gupta (PW-9) who is said to have been the first person to reach the place has also turned hostile. It is further contended that PW-10 (Abhay Jain) is also not a reliable witness as he has not mentioned of having witnessed the incident. With regard to complainant-Ashok Kumar (PW-11), it is contended that he has reached the place of occurrence after the incident had taken place and thus, he can also not be considered as an eye witness. It is further contended that in the FIR, there is mention of two unknown persons. In that case, it was the duty of prosecution to conduct test identification parade. Not holding a test identification parade is a serious lapse on the part of the prosecution. Reliance in this regard placed on **Lakhwinder Singh vs. State of Punjab AIR 2003 SC 2577.**

10. It is also contended by counsel for the appellant that one of the scissors was recovered from an open place and such recovery cannot implicate the accused. Reliance in this regard placed on **Salim Akhtar @ Mota vs. State of U.P. (2003) 5 SCC 499.**

11. Learned counsel for the complainant has opposed these appeals. It is contended that PW-7 (Parwez Alam) has not completely turned hostile. He has simply stated that Jaheer was not involved in the beating. As far as other accused are concerned, he has specifically stated that Pooran was having a scissor and Bherulal was armed with a hockey stick. Thus, the



presence of Pooran and Bherulal as assailant is made out by the statement of this witness. It is also contended that PW-10 (Abhay Jain) is an independent witness who resided near the place of occurrence and as per his statement, all the accused-Bherulal, Pooran, Jaheer, Tarun and Ram Lal were involved in beating the deceased. The car which was parked near the place of incident of occurrence also belonged to this witness. It is argued that he is an independent and natural witness who immediately came out of his house and saw the incident. It is also contended that the deceased has sustained as many as 12 sharp injuries and 18 abrasions. It is argued that out of these injuries, internal injuries A,B,C which were under injury No.1, 2 & 3 were of the depth of 8.8 cm, 10 cm & 8 cm and as per the evidence of PW-21 (Dr. Anil Goyal), these three injuries alongwith internal injuries were sufficient in the ordinary course of nature to cause death.

12. We have considered the contentions and have carefully perused the record as well as judgment passed by the Trial Court.

13. The FIR in this case was lodged at 7:30 am on 01.10.2012. The incident took place around 9:45 -10:00 pm on the preceding night i.e. 30.09.2012. It is evident that a written report of this incident was given by PW-11 (Ashok Kumar) at Jhalawar Government Hospital. From the evidence, it is revealed that the injured was taken to Ramganj Mandi hospital and from there, he was referred to Jhalawar Hospital and when he reached there, he was declared dead. The delay in lodging of FIR is thus properly explained. It is also evident from the record that information about the incident was given to the police immediately after the incident and police also reached the spot. Investigating Officer-Ghanshyam (PW-22) when he reached the spot, was



informed that the injured has been taken to the hospital. The contention of counsel for the appellants that there is delay in the FIR cannot thus be sustained.

14. As far as evidence is concerned, the incident took place between at around 10:00 pm and PW-10 (Abhay Jain) whose house overlooks the place where the occurrence took place, has said in the evidence that around 10:00 pm, he was watching TV when he heard a hue and cry. He came out from his house and he saw the assailants hitting the deceased with hockey stick and scissor type object. He has specifically stated that the persons who were hitting the deceased were Bherulal, Pooran, Jaheer, Tarun and Ram Lal. As far as veracity of this witness is concerned, this witness is a very natural witness who is not related to either side and he is the one who came out after hearing a hue and cry. The incident took place near his own car just adjacent to his house and there is no cross-examination to the effect that the incident could not be seen by him.

15. Yet another witness PW-7(Parwez Alam) who was declared hostile by the prosecution clearly states that Pooran, Bherulal were having scissors with which they were beating the deceased. He has stated that Bherulal was having a hockey stick and he was hitting with that. He has also stated that Ram Lal and his son were also there. However, he deposed that Jaheer was not involved in the beating and for that reason, he was declared hostile. As far as presence of Pooran, Bherulal, Ram Lal and his son-Tarun is concerned, witness (PW-7) has deposed before the court with regard to their presence. He has also said that Jaheer was also present. So the presence of all five accused in this case is also made out from evidence of Parwez Alam (PW-7). PW-16



(Shubham Porwal) is another witness who has witnessed the incident. He has stated that he was going to see the *Kavi Sammelan* and was sitting at a general store when five persons gave beating to Dilip Porwal and the incident took place in front of Prince Ladies Tailor and that he also recognised Bherulal, Pooran and Tarun. He has also stated that he recognised the others by face but did not know their names.

16. PW-11 (Ashok Kumar) is yet another witness, who is the complainant of this case and who is the elder brother of the deceased. He has also stated that Bherulal, Pooran, Ram Lal, Jaheer and Tarun were involved in beating the deceased. As per the cross-examination of this witness, he has admitted that when he reached the place of occurrence, the incident had taken place and he has only seen the accused running from the place of occurrence. PW-11 cannot be thus considered as an eye witness to the incident. The fact that Ashok Kumar (PW-11) reached the place of occurrence, appears to be correct as he is the person who alongwith Ankit Shah took the injured to Ramganj Mandi Hospital and from there, took him to Jhalawar Hospital and he is the one who gave the written report at Jhalawar Hospital to the police. In his examination-in-chief, he has named all the persons as assailants. It is true that in the FIR, he has mentioned name of Bherulal, Pooran, Ram Lal and Jaheer and two to three unknown persons. However, in his examination-in-chief before the Court, he has mentioned the name of all five persons.

17. We are of the considered view that PW-10 (Abhay Jain) is an independent and a natural witness and nothing has been put to him to doubt his veracity. He has specifically named all the five appellants as persons who were involved in beating the deceased.



As far as recovery is concerned, the shirt recovered at the instance of Jaheer was found stained with human blood of group-AB. Blood group-AB was also found in the clothes belonging to the deceased. Thus, the involvement of Jaheer in the incident is made out. The contention of counsel for the appellant-Jaheer that it is not established that the shirt belonged to him as he was not asked to wear the shirt, has no significance as there is no requirement under the Law to ask the accused to wear the clothes in order to come to the conclusion that the clothes belong to him.

18. It is also evident that a scissor was also recovered at the instance of Jaheer which was having human blood on it. The shirt was recovered vide Ex.P-21 on the basis of information given under Section 27 of Indian Evidence Act and the shirt was recovered from a room that was in possession of Jaheer. Thus, the recovery of shirt and scissor from Jaheer and the fact that they were stained with human blood, as also the fact that shirt was stained with human blood of group-AB which is the same as blood group of the deceased, clearly connects him with the alleged incident. The other recovery in this case is a hockey stick which was recovered at the instance of Ram Lal. Ex.P-20 (hockey stick) was recovered from the house of Bherulal, brother of accused-Ram Lal. As per the FSL report, this hockey stick is also found to be having human blood as was detected vide FSL report P-40. Though PW-7 (Parwez Alam) has tried to save Jaheer by stating that he was not involved in the incident but he has given evidence to the fact that Jaheer was also present. The presence of Jaheer at the place of incident is thus not denied by this eye witness. A cumulative reading of statement of eye witnesses reveal that all five persons were assailants in this case and with an object to get

rid of the deceased, they caused as many as 12 sharp injuries to the deceased with scissors.

19. With regard to the motive for commission of the said offence, PW-22 (Ghanshyam-I.O.) has exhibited Ex.P-42 to Ex.P-58 regarding the monetary transactions between the deceased and accused-Bherulal. It is also the case of PW-11 (Ashok Kumar) that accused-Bherual was owing some money to the deceased and he had promised to pay the money on the first of October but a day prior to first of October, appellants eliminated the deceased. From the photographs Ex.P-3 to P-6, it is evident that the incident took place on the road, near a parked car and blood stains can be seen on the car also. From the crime details form (Ex.P-11), it is evident that incident took place at point-X and in the shop belonging to appellant-Bherulal, there were blood stains found on the floor. From the photographs of the shop also Ex.P-7 and P-8, blood stains can be seen in the shop of the accused appellant-Bherulal. From the site plan, it is also evident that house of Prakash Jain is just adjacent to the place of occurrence. Abhay Jain (PW-10) is the son of Prakash Jain. Thus, from the entire evidence which is before the Court, it is evident that all the accused-appellants were involved in the commission of offence and have rightly been convicted for offence under Section 302 IPC with aid of Section 149 of IPC.

20. Learned Trial Court has considered the entire evidence and has not committed any illegality in convicting the accused-appellants for the aforesaid offence. We are thus, not inclined to entertain the present appeals and the same are accordingly dismissed.



21. Judgment of conviction and sentence dated 11.08.2016 passed by Addl. Sessions Judge, Ramganj Mandi, District Kota is affirmed.

22. Accused-appellant-Tarun @ Tejmal S/o Ram Lal is on bail. The bail bonds earlier furnished by the appellant-Tarun @ Tejmal S/o Ram Lal stands cancelled and the learned trial Court is directed to take necessary steps for taking the accused appellant-Tarun @ Tejmal S/o Ram Lal in custody for serving the remaining sentence.

(ASHUTOSH KUMAR),J

(PANKAJ BHANDARI),J

CHANDAN /