



**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRA-D-54-DB-2005 (O&M)

Date of Decision:- 28.01.2025

Mehru Ram and others

... Appellants

Versus

State of Haryana

... Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Kanisth Ganeriwala, Advocate as Amicus Curiae
for the appellants.

Mr. Pawan Girdhar, Additional Advocate General, Haryana.

GURVINDER SINGH GILL, J.

1. Appellants Mehru Ram, Pyare Lal alias Dhola, Siri Chand and Rajinder Singh alias Raja assail judgment dated 09.11.2004 passed by Additional Sessions Judge, Sirsa and vide order dated 11.11.2004 they have been held guilty and sentenced as under:-



| Accused name | Section | Sentence |
|--|------------------------------|---|
| Pyare Lal alias Dhola | 302 IPC | To undergo life imprisonment and to pay a fine of Rs.5000/-. In default of payment of fine he will further undergo rigorous imprisonment for two years |
| <ul style="list-style-type: none"> • Mehru Ram • Siri Chand • Rajinder alias Raja | 302 read with Section 34 IPC | To undergo life imprisonment and to pay a fine of Rs.5000/- each. In default of payment of fine they will further undergo rigorous imprisonment for two years |

2. The matter arises out of FIR No. 144 dated 27.7.2002, Police Station Sadar, Dabwali, under Section 302 read with Section 34 of Indian Penal Code (Ex.PJ/2) lodged at the instance of Kalu Ram's statement (Ex.PJ) wherein it is alleged that he is a labourer by profession and that on 26.7.2002, at about 9.30 pm, when he along with his son Bansi Lal was returning home from the house of Rajinder son of Hari Ram, then they were waylaid in front of Siri Chand's house by Mehru Ram, Siri Chand, Pyare Lal alias Dhola and Rajinder Singh @ Raja, who all came out from the house of Siri Chand. Complainant alleged that Mehru Ram raised a *lalkara* exhorting his companions to kill the enemy pursuant to which Pyare Lal alias Dhola who was carrying a 'lathi' (stick), Siri Chand and Rajinder Singh alias Raja caught hold of Bansi Lal. Pyare Lal alias Dhola gave a blow with 'lathi' on head of Bansi Lal and resultantly blood started oozing out and he fell down. The complainant being scared ran from the spot and when he returned back with his wife and daughter Santosh, Bansi Lal was seen lying in a pool of blood. They lifted him and took him to their house



where they kept him for the night and on the next day at about 10:00 am he was taken to Civil Hospital, Chautala from where he was referred to Civil Hospital, Dabwali where he succumbed to his injury. The complainant alleged that there was some previous enmity between him and his brothers Mehru Ram and Siri Chand since long and on account of which Bansi Lal had been killed.

3. Pursuant to lodging of FIR (Ex.PJ/2) the police got the post mortem examination conducted on the dead body and also visited the place of occurrence where rough site plan of the place of occurrence was prepared. A blood stained '*parna*' (piece of cloth) was recovered from the place of occurrence which was taken into possession vide recovery memo Ex.PL. Statement of witnesses were recorded in terms of Section 161 Cr.P.C. Accused Mehru Ram was arrested on 28.7.2002, accused Pyare Lal alias Dhola was arrested on 01.8.2002 and accused Siri Chand and Rajinder Singh alias Raja were arrested on 05.08.2002. Upon completion of investigation a challan was presented against the accused in the Court of learned Sub Divisional Judicial Magistrate, Dabwali on 18.09.2002, who committed the case to the Court of Sessions vide order dated 10.10.2002. Charges were framed against the accused for offence punishable under Sections 302 read with Section 34 of IPC by learned Additional Sessions Judge, Sirsa on 13.11.2002 to which accused pleaded not guilty and claimed trial.



4. The prosecution in order to substantiate its case examined as many as 11 PWs, the gist of whose testimonies is being briefly referred to herein under:-

PW-1-HC Jaibir Singh stated that on 27.7.2002 while he was posted at Police Station Sadar, Dabwali, he received a *ruqa* Ex.PA (intimation) from Medical Officer, General Hospital, Chautala regarding admission of Mehru Ram. He went to the hospital and he came to know that Mehru Ram already left to hospital against medical advice and his statement could not be recorded.

PW-2-Constable Raghubir Singh who is a formal witness tendered his affidavit Ex.PC in evidence wherein he deposed that on 12.08.2002 MHC Rameshwar Dass handed over three parcels i.e. a parcel containing blood stained cloth, parcel containing clothes of deceased Bansi Lal and a parcel containing stick and directed him to deposit the same in the office of FSL, Madhuban, Karnal, which he accordingly deposited on the next day and that as long as the said parcels remained in his custody the same were not tampered with.

PW-3-Dr. Gopal Kishore stated that on 26.7.2002 he had conducted medico legal examination of injured Bansi Lal and had found a lacerated wound muscle deep on the right parietal area of scalp and that the patient was referred to General Hospital, Dabwali. During the course of cross-examination he admitted to be correct that Mehru Ram (accused) had also been brought to the hospital on 26.7.2002 at



about 10:45 pm and that he had examined him and had found two injuries on his person i.e. a lacerated wound muscle deep over the scalp in parietal region and an abraded bruise reddish in colour on the dorsal lateral aspect of left fore-arm.

PW-4-Dr. T.R. Mittal stated that on 27.7.2002 he had conducted autopsy on the dead body of Bansilal. He has given the description of the injuries found on the dead body and deposed that cause of death of Bansilal was the injury sustained by him on his head. During the course of cross-examination he stated that in case timely medical aid had been provided to the deceased, he could have been saved.

PW-5-ASI Rajinder Singh stated that on 27.7.2002 he was working at Police Station Sadar, Dabwali and upon receipt of statement Ex.PJ of complainant, he recorded formal FIR Ex.PJ/2.

PW-6-Head Constable Rameshwar is a formal witness who tendered his affidavit Ex.PK in his evidence wherein he deposed that on 27.7.2002 he was posted as MHC at Police Station Dabwali and that on the said day SI/SHO Rajbir Singh deposited a parcel containing blood stained '*parna*' (piece of cloth), a parcel containing clothes of deceased Bansilal and that on 01.08.2002 one parcel containing a '*lathi*' was deposited with him in the *malkhana* and that he had handed over the said parcels to Constable Raghubir Singh on 12.8.2002 for depositing the same in FSL, Madhuban. He further



stated that as long as the said parcels remained in his custody the same were not tampered with.

PW-7-Kalu Ram at whose instance the FIR was lodged stated in detail in tune with his earlier statement Ex.PJ, on the basis of which FIR came to be lodged.

PW-8-Santosh daughter of Kalu Ram stated that on 26.7.2002 his father Kalu Ram had come home at about 10:00 PM and told them that the accused had caught hold of her brother Bansi Lal and that Pyare Lal alias Dhola had give a blow with '*lathi*' on the head of Bansi Lal and as a result of which Bansi Lal had fallen on the street and that he (Kalu Ram) had come home being scared. She further deposed that she along with her mother and father went to the place of occurrence where Bansi Lal was lying in a pool of blood and that they picked him and brought him home where he was kept during the night and that on the next day he was taken to Civil Hospital, Chautala from where he was referred to General Hospital, Dabwali where he succumbed to his injury.

PW-9- Radhey Sham, Draftsman stated that on 24.8.2002 he had visited the place of occurrence and had prepared the scaled site plan Ex.PK.

PW-10-SI/SHO Rajbir Singh who is the Investigating Officer, stated that on 27.7.2002 upon receipt of medical *ruqa* from E.H.C. Dabwali regarding death of deceased, he along with other police officials went



to the hospital where Kalu Ram father of deceased-Bansi Lal got his his statement (Ex.PJ) recorded, on the basis of which FIR (Ex.PJ/2) was lodged. He stated that inquest report was prepared in respect of the dead body which was got subjected to post mortem examination. He further deposed with regard to the investigation conducted by him in the matter including visiting the place of occurrence from where blood stained '*parna*' was recovered. He further stated that when accused Pyare Lal alias Dhola was arrested he produced a '*lathi*' which was taken into possession and that upon conclusion of investigation challan was presented in the Court.

PW-11- Constable Sumer Singh tendered his affidavit Ex.PR in evidence wherein he deposed that on 27.7.2002 he was posted at Police Station Dabwali and was associated with the investigation of the case which was conducted by SI/SHO and that he had taken the *ruqa* to the police station for registration of the FIR. He further deposed that after autopsy was conducted, the doctor had handed over a parcel containing blood stained clothes of the deceased which was taken into possession by the SHO vide a recovery memo.

5. Upon conclusion of prosecution evidence, the entire incriminating evidence was put to the accused in terms of Section 313 Cr.P.C. to enable them to explain the same, but the accused denied the entire prosecution case in toto and pleaded false implication. Accused Mehru Ram took an additional plea that as a matter of fact Bansi Lal had come to his house armed with a '*lathi*' and a quarrel had taken



place between him and Bansilal and that Bansilal had inflicted injuries to him (Mehru Ram) and in self-defence he (Mehru Ram) also inflicted injury to deceased Bansilal. The accused however, did not lead any evidence in their defence.

6. The trial Court upon marshaling the evidence on record held that accused Mehru Ram had committed offence under Section 302 IPC whereas the other three accused had committed offence punishable under Section 302 read with Section 34 IPC vide judgment dated 9.11.2004 which is challenged in this appeal.
7. Learned counsel for the appellant while assailing the impugned judgment broadly made the following submissions:
 - i. that the accused had been implicated falsely in the present case and that as a matter of fact it is Mehru Ram who had been inflicted injuries by the deceased Bansilal after entering into Mehru Ram's house and that the solitary injury found on the person of the deceased was apparently a result of self-defence on the part of accused Mehru Ram;
 - ii. that in any case, even if all the allegations as levelled in the FIR are taken to be correct, no overt act is attributed to the accused other than Mehru Ram and who in fact was not even carrying any weapon;



- iii. that there is gross delay in lodging of the FIR inasmuch as while the occurrence is stated to have taken place on 26.7.2002 at about 9:30 PM, the FIR came to be lodged on the next day at about 4.15 pm;
- iv. that the prosecution story sounds improbable inasmuch as the complainant is stated to have run away from the place of occurrence being scared when the accused out of which only one was armed with a stick had inflicted an injury to the son of the complainant whereas it is highly unlikely that a father would run away from the spot leaving his son at the mercy of the assailants, three out of whom were in fact unarmed and were not carrying any weapon or stick;
- v. that even if it is taken to be correct that Mehru Ram had inflicted a blow with stick to deceased Banshi Lal, the death cannot be said to be a result or outcome of the said blow, as the complainant instead of taking any step for providing medical aid to Banshi Lal took him to his house where he was kept during the night and it is only at 10 am on the next day that he was taken to the hospital and that PW-4 Dr. T.R.Mittal who had conducted post mortem examination on the dead body of Banshi Lal, during the course of cross-examination has categorically stated that



if timely medical aid had been provided to the deceased, he could have been saved.

8. Learned counsel for the appellants thus submitted that in view of the aforesaid infirmities, the impugned judgment could not sustain and is liable to be set aside and that all the accused were entitled to be acquitted.
9. Opposing the appeal, learned State counsel submitted that it is a case where the occurrence was witnessed by PW-7 Kalu Ram, at whose instance the FIR had been lodged who while in the witness box stated in tune with the FIR categorically to the effect that on the day of occurrence he and his son Bansi Lal were waylaid by 4 persons namely Mehru Ram, Pyare Lal alias Dhola, Siri Chand and Rajinder Singh alias Raja out of which Pyare Lal alias Dhola was carrying a '*lathi*' and who inflicted a blow on the head of Bansi Lal on account of which blood started oozing and he fell on the ground. Learned State counsel further submitted that the deceased died the very next day and since PW-4 Dr. T.R.Mittal categorically stated that the death was on account of the injury on the head of the deceased, the complicity of the accused is clearly evident and that the impugned judgment wherein the accused have been held guilty for offence under Section 302/34 IPC does not suffer from any infirmity.
10. This Court has considered rival submissions and have also perused the record of the case.



11. Before proceeding further, it is apposite to refer to the medical record in the shape of testimony of PW-3 Dr. Gopal Kishore and PW-4 Dr. T.R.Mittal. PW-3 Dr. Gopal Kishore who had initially medically examined Bansi Lal on 26.7.2002 had found the following injury on his person:

“1. A lacerated wound of size 6 cm x 1 cm into muscle deep on the right parietal area of scalp just to right of mid line. Clotted blood was present. I advised for surgeon’s opinion.”

12. PW-3 Dr. Gopal Kishore further stated that the injury had been caused with a blunt weapon and that the patient was subsequently referred to General Hospital, Dabwali for the opinion of the Surgeon and for further management of the patient. PW-4 Dr. T.R.Mittal who had conducted the post mortem examination on the dead body of Bansi Lal had described the injury found on the dead body as under:

“A stitched wound 6 cms long present on right parietal area of scalp obliquely placed to right to the mid line and it was 10 cms from eye brow. On removal of sutures, marges were irregular. On dissection there was infiltration of blood in the surrounding tissues. There was extensive haematoma present under scalp on both the sides of mid lines in parietal region. On opening of scalp, there was a big sub dural haematoma on right parietal region which was dark in colour.”

13. PW-4 Dr. T.R. Mittal stated that the cause of death in his opinion was head injury which was sufficient to cause death in ordinary course of nature. However, during the course of cross-examination he also



stated that in case timely medical aid had been provided to the deceased, he could have been saved.

14. Both the aforesaid PWs were cross-examined at length, but nothing substantial could be elicited so as to doubt their credibility or their opinion. While, it is correct that PW-3 Dr. Gopal Kishore did state that in case timely medical aid had been provided to the deceased, he could have been saved, but even if the said opinion is taken to be correct, the very fact that the death otherwise had occurred pursuant to inflicting of injury would not take out the offence from the ambit of culpable homicide. The 2nd explanation of Section 299 of IPC reads as under:

“299. **Culpable homicide**

XXX XXX XXX

Explanation 2. – Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.”

15. In view of the discussion made above particularly in light of Explanation 2 to Section 299 Cr.P.C. there is no room to hold that the instant case is not a case of culpable homicide. As regards the ocular evidence, the prosecution banks upon the testimony of PW-7 Kalu Ram, who while in the witness box, deposed consistent with the version recorded in FIR and while specifically naming all the accused, stated that the accused had waylaid them on 26.7.2002 when



he (Kalu Ram) along with his son Bansi Lal were returning home and that Pyare Lal alias Dhola who was carrying a stick and had inflicted a blow on the head of deceased Bansi Lal. As already discussed above, the medical evidence is consistent with the ocular version inasmuch as the deceased was found to be having one injury on his head. Although, learned counsel for the appellants vehemently argued that the conduct of the complainant in running away from the place of occurrence, leaving his son to fend for himself, when he was being attacked by four persons, is unnatural, but it goes without saying that different persons would react differently and some may be scared easily, some may not be and some would even be willing to take risk of getting themselves injured and come forward for rescue but some may not chose to do so even if someone close is the victim. As such, the mere fact that the complainant is stated to have run away from the spot cannot be taken to be a circumstance so as to absolutely demolish the case of the prosecution.

16. However, this Court finds that the presence of the other three accused is rather suspect and it appears that they have been named by the complainant simply to spread the net wider. The other three accused namely Mehru Ram, Siri Chand and Rajinder Singh alias Raja are stated to be unarmed. The role attributed to Mehru Ram is that he had raised a *lalkara* exhorting his companions that the enemy be killed. Siri Chand and Rajinder Singh alias Raja are stated to have held the deceased while Pyare Lal alias Dhola gave a blow on the head. In



case all the persons had joined hands and had formed some kind of common intention to kill the deceased, then they would not have settled for a single blow particularly when the deceased would have been easily overpowered by four persons and more injuries could have been inflicted.

17. Mehru Ram in his statement recorded under the provisions of Section 313 Cr.P.C. raised a plea that as a matter of fact Bansilal armed with 'lathi' had come to his house and had inflicted injuries to him and that in his self-defence he had also caused an injury, but apart from the said plea he has not examined any witness to substantiate his said stand. PW-3 Dr. Gopal Kishore during the course of his cross-examination did state that on 26.7.2002 he had medico legally examined Mehru Ram and found the following two injuries:

- “1. A lacerated wound of size 7 cm x 1 cm muscle deep over the scalp parietal region just to the left of mid line and was advised for Surgeon's opinion.
2. An abraded burise reddish in colour of size 8 cm x 2 cms on the dorsal lateral aspect of left fore-arm. Movement of forearm painful and restricted and was advised for orthopaedician opinion.”

18. While, the existence of the injuries on the person of Mehru Ram does stand substantiated from the aforesaid statement of PW-3 Dr. Gopal Kishore who has proved the MLR (Ex.DA) in this regard, but the accused have not led any evidence to show as to how the said injuries



came to be inflicted to Mehru Ram. Nor the complainant has explained these injuries.

19. These unanswered questions need to be examined in light of all attending facts and circumstances. The instant case is a case where there is some delay in lodging the FIR inasmuch as the occurrence had taken place at about 9.30 pm on 26.7.2002, the FIR came to be lodged the next day at about 4.30 pm. Whenever there is some delay the Court is put at caution to examine the matter all the more minutely so as to rule out any false implication. At the same time, it is also well settled that mere factum of delay in lodging the FIR is *ipso facto* not a ground for discarding the entire case of prosecution. A Three Judges' Bench of Hon'ble the Apex Court in State of Himachal Pradesh Vs. Gian Chand (2001) 6 SCC 71 held as under:

“Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.”

20. In case, any doubt arises in the mind of the Court on account of any circumstance including delay in lodging of FIR, it is for a Court to



scrutinize as to whether the case of the prosecution is to be disbelieved in toto or as to whether there is some element of truth in the same. In case some part of the prosecution version is found to be believable, convincing and is substantiated by evidence, then such part of the case of prosecution can well be accepted while the remaining part can be discarded. In the present case the occurrence had taken place during night at about 9.30 pm. The complainant appears to be a chicken-hearted person inasmuch as upon watching the accused inflicting injury to Banshi Lal he ran away from the spot being scared and went home where two other lady members were there in the family i.e. wife and daughter and then in their company he went to the spot and brought Banshi Lal in an injured condition to his home where he was kept for the night and taken to hospital the next day. The family members of the injured i.e. the father who is scared and two females may refrain from moving out of home during night out of fear. Under these circumstances the case of the prosecution cannot be dumped solely on account of lodging of the FIR which came to be lodged in the evening after Banshi Lal had breathed his last. However, having regard to the fact that the other three persons were not armed and it is a case of single injury only, the other three accused namely Mehru Ram, Siri Chand and Rajinder can safely be extended the benefit of doubt and consequently would be entitled to be acquitted.



21. As far as accused Pyare Lal alias Dhola is concerned, he is the person who is attributed a blow with 'lathi' on the head of the deceased. Admittedly it is a case of inflicting a single blow only and despite the fact that the deceased was virtually immobilized upon receipt of the first blow and had fallen down, no effort was made to inflict any other injury to Bansi Lal. From the aforesaid sequence of facts particularly bearing in mind the nature of weapon used for inflicting injury and the fact that no repetitive injury was inflicted or any effort was made to cause any more injury shows that it is not a case where the accused can be said to have inflicted the injury with an intention of causing his death. His case would rather fall within the ambit of Section 304-II IPC as he can safely be attributed with the knowledge that the injury which had been inflicted was likely to cause death.
22. Hon'ble the Apex Court in Gurmukh Singh Vs. State of Haryana, 2009 (15) SCC 635 in a case of a single 'lathi' blow resulting in death, held the accused guilty of having committed offence under Section 304-II IPC, while observing as under:
21. In the instant case, the occurrence had taken place at the spur of the moment. Only the appellant Gurmukh Singh inflicted a single lathi blow. The other accused have not indulged in any overt act. There was no intention or pre-meditation in the mind of the appellant to inflict such injuries to the deceased as were likely to cause death in the ordinary course of nature.
 22. On consideration of the entire evidence including the medical evidence, we are clearly of the view that the conviction of the appellant cannot be sustained under section 302 Indian Penal



code, but the appropriate section under which the appellant ought to be convicted is Section 304 Part II Indian Penal Code.

23. Before we part with the case, we would like to clearly observe that we are not laying down that in no case of single blow or injury, the accused cannot be convicted under Section 302 Indian Penal Code. In cases of single injury, the facts and circumstances of each case has to be taken into consideration before arriving at the conclusion whether the accused should be appropriately convicted under Section 302 Indian Penal Code or under Section 304 Part II Indian Penal Code.
23. Examining the facts of the instant case in light of the principles enumerated above, we find that it is a case where apparently there was no premeditation to cause death and it is a case of single assault by the accused during the entire occurrence and no effort whatsoever was made to inflict any other injury and the weapon too was a blunt edged weapon in the nature of wooden stick which is commonly carried by the village folk, it would at best would attract an offence under Section 304-II of IPC and not Section 302 IPC. Consequently, the appeal qua accused/appellant Pyare Lal alias Dhola is partly accepted to the extent that his conviction is converted from offence under Section 302 IPC to offence under Section 304-II IPC and he is ordered to undergo rigorous imprisonment for seven years instead of life imprisonment as had been ordered. The fine imposed shall however, remain the same. As far as the other three accused namely Mehru Ram, Siri Chand and Rajinder Singh alias Raja are concerned



their appeal is accepted while giving them benefit of doubt and they are acquitted of all the charges framed against them.

**(GURVINDER SINGH GILL)
JUDGE**

**(JASJIT SINGH BEDI)
JUDGE**

28.01.2025

Mohan

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No