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**(1992) 12 P&H CK 0011**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 391-DB of 1992 and Murder Ref. No. 2 of 1992

Ram Lal and Another

APPELLANT

Vs

The State of Haryana

RESPONDENT

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**Date of Decision:** Dec. 17, 1992

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 354(3)

**Citation:** (1993) CriLJ 1564 : (1993) 3 RCR(Criminal) 67

**Hon'ble Judges:** H.S. Brar, J; A.P. Chowdhury, J

**Bench:** Division Bench

**Advocate:** P.N. Makani and R.S. Cheema, for the Appellant; D.S. Pishnoi, Addl. A.G. and Baldev Singh, for the Respondent

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**Judgement**

A.P. Chowdhri, J.

Ram Lal (60) and his son Billu alias Jagga (25) were convicted by the learned Sessions Judge, Sirsa, for triple murder and by order dated September 22, 1992, they were awarded sentence of death. Murder Reference No. 2 of 1992 has been made by the trial Court for confirmation of the above sentence. The accused have filed Cri. Appeal No. 391-DB of 1992. Both these are being disposed of by this order.

2. The first information report in this case was lodged by Bashir Mohammad (P.W. 8). He originally belonged to Malerkotla in the State of Punjab and had been residing with his family in a rented house in ward No. 5 at Mandi Ellenabad, district Sirsa (Haryana). In the same house, in the adjoining room, was another tenant Bachan Singh, living with his family. The family of Bashir Mohammad and that of Bachan Singh had developed good neighbourly relations with each other. About 11/2 years prior to the occurrence Bashir Mohammad's wife named Maida had got the engagement of Parveen, 17/18, daughter of Bachan Singh, settled with one Parkash son of Mohan Lal Mehra of Malerkotla. Bachan Singh and his wife Darshana were quite happy with the said engagement, but the maternal grandfather of Parveen

named Ram Lal and his son Billu alias Jagga, who were also residing at Ellenabad, were not happy with the said engagement. They wanted Parveen to be engaged somewhere else. Three/ four days prior to the occurrence Bashir Mohammad and his wife Maida asked the aforesaid Ram Lal and Darshana, mother of the daughter to be married, for fixing up the marriage early. Ram Lal exchanged hot words with Bashir Mohammad and Maida because the marriage at Malerkotla, as already stated, was not to his liking. On February 7, 1991, at about 11 a.m. Bashir Mohammad was lying in the room on account of fever. His son Bagga Mohammad (PW 11) was looking after him and his wife Maida, aged 38, was cooking meals in the open kitchen outside the room. Ram Lal accused armed with a sword and Billu alias Jagga armed with a Gandasa entered the house and told his wife Maida that they would teach her a lesson for getting the engagement of Parveen done at Malerkotla. Maida got up and started running in the courtyard. The two accused followed her, causing injuries with their respective weapons on her head and neck. She fell down. Darshana, wife of Bachan Singh, and mother of Parveen, as well as her daughter Parveen intervened to rescue Maida. Both the accused caused injuries with their respective weapons to both Darshana as well as Parveen on their head and neck. As a result of the injuries, they also fell down at the spot. Santa Singh Kamboj, resident of Dhani, came there. On seeing him, both the accused persons ran away with their respective weapons. Bashir Mohammad and his son found that Maida and Parveen had already succumbed to their injuries while Darshana was still alive. Darshana was taken to the hospital, where she also died at 12.20 p.m. the same day. Leaving Bishan Dass and Bishamber Dass to guard the place of occurrence. Bashir Mohammad went to Police Station, Ellena-bad, and lodged the first information report at 11.45 a.m. Copy of the special report was received by the Judicial Magistrate, Sirsa, 41 Kms from Ellenabad, at 5 p.m.

3. After registering the case, S.I. Krishan Singh Hooda (PW 16) deputed ASI Surjan Singh for going to the hospital and himself proceeded to the place of occurrence. He had photographs taken and carried out inspection. He learnt about the death of Darshana in the hospital. He recovered blood-stained earth from three different points from the courtyard of the house. He also took into possession a pair of chappals, one woollen blood-stained shawl, one blood-stained bed sheet. The shawl was picked up from near the deadbody of Parveen. The bed sheet was picked up from near the deadbody of Maida and another pair of Chappals from near the place where Darshana had fallen on receipt of the injuries. One sheath of a sword was also recovered from the place of occurrence. These articles were made into sealed parcels. The Sub-Inspector then prepared inquest reports with regard to the deaths of Maida and Parveen and the deadbodies were despatched to Civil Hospital, Sirsa, for post-mortem examination. The inquest report in connection with the death of Darshana was produced before the Investigating Officer by ASI Surjan Singh. Her deadbody was also despatched for post-mortem examination to the Civil Hospital, Sirsa On the following day, the Investigating Officer recorded the statements of

Baga Mohammad, Santa Singh etc. The accused were arrested on February 14, 1991.

4. On February 16, 1991, ASI Satbir Singh (P.W. 12) recovered sword Exhibit P-8, Kurta Exhibit P-23 and Chadhra Exhibit P-24 in pursuance of a disclosure statement made by Ram Lal accused. Billu alias Jagga accused got recovered Gandasa Exhibit P-9, shirt Exhibit P-25 and Pyjama Exhibit P-26 in pursuance of a disclosure statement following interrogation. These articles were duly sealed into separate parcels. The house of the accused from the place of occurrence is about 100 yards.

5. On completion of investigation, the police presented a charge sheet against the accused. ,

6. At the trial, the prosecution examined Bashir Mohammad (PW 8) and Bagga Mo-hammad (PW 11) as eye-witnesses" of the occurrence. They supported the prosecution version set out above. The prosecution also examined Dr. Vasudev Bansal (PW 3) who had carried out medico-legal examination of Darshana on the day of occurrence at 11.50 a.m. He noted that the patient was unconscious, gasping irregularly at the rate of three per minute. The pulse was not palpable and B.P. was not recordable. He noted the following injuries on her person:--

1. Incised wound 14 cms. x 3 cms x brain matter deep on right side of skull, extending from front of right ear upwards and backwards. Fresh bleeding was absent. Brain tissues masserated and expelled out.

2. Incised wound 10 cms x 3 cms x brain matter deep on right parietal area, in front of injury No. 1, directed backwards and upwards, up to upper end of injury No. 1. Fresh bleeding was absent. Brain matter was expelled out.

3. Lacerated wound 6 cms x 2 cms x bone deep in between cleft of right thumb and index finger. Fresh bleeding was absent.

4. Lacerated wound 7 cms x 3 cms x bone deep on back of right ear, directed upwards and backwards. Fresh bleeding was absent.

5. Lacerated wound 1 cm x 0.4 cm x bone deep on left parietal area, 5 cms to left of mid-line. Fresh bleeding was absent.

The duration was within three hours. He sent intimation to the police regarding the arrival of the injured and about her death in the hospital. Dr. Bansal gave the opinion that injuries 1 and 2 could be possible by the sword Exhibit P-8 and injuries 3 to 5 were possible from the reverse side of the Gandasa Exhibit P-9. The injured had been brought by one Baldev Son of Ram Lal, brother of the injured, and one constable.

7. Dr. Narinder Chaudhary (PW 2) carried out post-mortem examination on the deadbody of Darshana on February 8, 1991. The description of injuries noted by Dr. Chaudhary tallied with that given by Dr. Vasudev Bansal (PW 3) in the medico-legal

examination. The cause of death was shock and haemorrhage on account of multiple injuries, which were ante-mortem and sufficient to cause death in the ordinary course of nature. ,

8. Dr. Shakuntala Chaudhary (PW 4) and Dr. Vanita Jhunthra conducted postmortem examination on the deadbody of Parveen (17/18). They found the following injuries on her person:--

1. Spindle shaped clean margin wound measuring 7 x 4 cms lying at the middle of the back of the neck just 5 cms above and medial to the medial angle of right scapula. Wound was bone deep, cutting muscles and other tissues. On dissection, the surrounding tissues of the wound were infiltrated with blood. The 6th and 7th cervical vertebrae were found fractured, with damaging of spinal cord.

2. Spindle shaped horizontal clean cut marginal wound 3 cms above the injury No. 1, it was 5 x 2.5 cms bone deep. On dissection, the muscle and tissues were infiltrated with blood. The 1st and 2nd cervical vertebrae were crushed, damaging spinal cord.

3. Wound clean-cut 8 x 2.5 cms., bone deep, cutting the occipital bone in the middle part at occipit protuberance, 4 cms above the injury No. 2. The brain matter was exposed. On dissection the scalp tissues infiltrated with blood. There were blood clots, present underneath the scalp tissues. The brain, occipital lobe was lacerated up to 5 cms deep. The brain matter was congested.

4. V-shaped wound with clean cut margins, situated 4 cms above injury No. 3, lying on the parietal bone in the centre. The horizontal limb 9 x 2 cms cutting bone reaching to brain matter. The oblique limb starting from the right side of the horizontal limb aparting from, 7 x 2 cms underlying brain matter was exposed. On dissection, the fractured line from injury No. 4 leading to the frontal suture and temporal line. Underlying brain matter was congested and clots of the blood present. The brain matter underlying injury No. 4 was lacerated. Blood clots present in the brain matter. Congestion was present in the whole of the brain.

The cause of death was haemorrhage on account of injuries described above, which were ante-mortem and sufficient to cause death in the ordinary course of nature. Injury No. 4 described as "V" shaped injury could be the result of multiple injuries and it was not necessarily caused by a blunt weapon having a "V" shaped sharp-edge.

9. Dr. Raj Kumar (P.W. 9) conducted post-mortem examination on the deadbody of Maida. He noted the following injuries on her person:--

1. A deformity in left forearm at middle. It was angulated on cut section, eco-mesis was present and both bones of left forearm were broken.

2. An incised wound measuring 10 cms. x 3 cms. x 3 cms. deep at middle of occipital region of skull. Brain matter was lacerated and coming out. Brain membrane were

torn and fracture of the corresponding wound was present.

3. An incised wound measuring 7 cms. x 3 cms. x 3 cms. at the occipital region of skull. It was 4 cms. below injury No. 3 Membrane were torn. Brain matter was coming out from the wound.

4. An incised wound measuring 3 cms. x 2 cms. x 2 cms. at the back of neck, just below the hair crease. 1st and 2nd cervical vertebrae were broken and spinal cord injured.

5. An incised wound measuring 4 cms. x 3 cms. x 2 cms. on lower part of occipital region. It was 4 cms. above injury No. 4 and brain matter was coming out. Membrane was torn and lacerated. The injuries were ante-mortem and sufficient to cause death in the ordinary course of nature. Injury No. 1 on the person of Maida included fracture of both the bones of left forearm. This was possible by a blunt weapon. The cause of death, in his opinion, was due to haemorrhage and brain injuries.

10. The prosecution also examined Smt. Shanti (P.W. 17), wife of Mohan Lal, of Malerkotla, with whose son the engagement of Parveen had been done. She deposed about the said engagement and that the same had been done through the good offices of Bashir Mohammad, who is originally a resident of Malerkotla. Three days before the Lohri festival, both the accused came to her and took a sum of Rs. 5,000/- from her. Maida and her husband had visited her 4/5 days prior to the occurrence when she informed them that Ram Lal and his son had taken Rs. 5,000/- from her. Thereafter she learnt about the occurrence and made her statement before the police. At the time of betrothal ceremony of Parveen, Ram Lal, his wife, Maida and her husband had come to Malerkotla.

11. The Investigating Officer was also produced.

12. The plea of the accused was one of denial and false implication. The accused produced no evidence in defence.

13. On an appreciation of the evidence, the learned Sessions Judge accepted the testimony of the eye-witnesses and accordingly convicted and sentenced the accused. Hence this reference and appeal.

14. The main contention of Mr. R.S. Cheema, Senior Advocate, learned counsel, who argued the appeal on behalf of the accused on our request, is that the eyewitnesses had not seen the occurrence and they had been introduced to support a fabricated story. Mr. Cheema emphasised that the significant fact of Bashir Mohammad being ill was conspicuous by its absence in the first information report and there was no assurance that the so-called supplementary statement of Bashir Mohammad was recorded on the day on which the first information report was entered. Normally, Bashir Mohammad was supposed to be selling cloth as a hawker and his son, who was employed at the shop of Bishan Dass, was supposed to be present at that shop.

There was no compelling reason for them to be present in the house. It was further urged that this submission finds support from the fact that neither of them intervened to save the deceased from the assault and the accused were allowed to badly maul one victim after another without uttering a word. According to Mr. Cheema, this totally belied their presence in the house at the time of occurrence. Learned counsel made a reference to the fact that Darshana had been rushed to the Primary Health Centre, Ellenabad, by one of her brothers Baldev Singh, and significantly one constable. It was pointed out that the prosecution had not explained as to at what stage Baldev Singh and constable came into the picture. In any case, the presence of a police constable accompanying the injured to the hospital, indicated that the police had learnt about the occurrence and they were still making efforts to secure the presence of Bashir Mohammad and his son Jagga Mohammad in order to introduce them as eye-witnesses. It was further submitted that the first information report appears to have been ante-timed, as special report was delivered only at 5 p.m. even though Sirsa was linked with Ellenabad by a pucca metalled road and the distance could be easily covered in less than one hour. According to Mr. Cheema, it was not safe to place reliance on the testimony of the two eye-witnesses as they had tried to modulate their testimony so as to fall in line with the medical evidence in this case.

15. On behalf of the prosecution, the Court was assisted by Mr. Baldev Singh, Advocate. He controverted each one of the contentions of Mr. Cheema. He contended that the first information report was lodged promptly. Necessary details were given by Bashir Mohammad. The medical evidence produced in the case showed that the injuries found on the three deceased could be received by the weapons ascribed to the two accused and it was only a matter of detail as to whether the Gandasa wielded by Billu alias Jagga was used from the sharp side or the blunt side. Mr. Baldev Singh further urged that the explanation that Bashir Mohammad was running temperature and had not, therefore, gone for his work and had kept his son Bagga Mohammad in order to attend on him, had been given by way of supplementary statement on the day of the occurrence itself. It was emphasised that Bashir Mohammad and Bagga Mohammad must have been stunned and shocked to see three gruesome murders being committed before their eyes. Bagga Mohammad, it was pointed out, was taken away by Santa Singh to the Dhani and it was only on the following day that he was brought back after he regained his composure. In the alternative, it was submitted that even if there was one day's delay in recording the statement of Bagga Mohammad, the same could be attributed to lack of care on the part of the Investigating Officer, but no fault could be found with the prosecution. The name of Bagga Mohammad was duly mentioned in the first information report, which, as stated earlier, was lodged quite promptly and the investigation started. Learned counsel also offered an explanation why post-mortem examinations were carried out only on February 8, 1991, and not in the afternoon of February 7, 1991. The three deaths in this case involved

considerable writing work in preparing three inquest reports etc. and arranging to send the dead bodies for post-mortem examination at the District H Qrs Sirsa. According to the instructions, post mortem examinations are not carried out after sunset.

16. We have given our deep and anxious consideration to the respective submissions of the learned counsel on both sides.

17. A salient feature of this case is that the first information report was lodged by Bashir Mohammad within less than an hour of the occurrence. If Bashir Mohammad were not present in the house, it would not be possible for the police to trace him out because it would not be known where at that particular time he was hawking cloth. He had no fixed place of work. The explanation furnished by Bashir Mohammad why he did not go to attend his work that day was mentioned by him in the supplementary statement, which was recorded the same day. The presence of Bagga Mohammad in the house was duly mentioned in the first information report and it is entirely consistent with the probabilities of the case that he had stayed back to look after his father. The eye-witness account furnished by Bashir Mohammad and Bagga Mohammad finds corroboration from the medical evidence. The version was given by Bashir Mohammad quite promptly. There is no background of any enmity between Bashir Mohammad on the one hand and the accused persons on the other. Nor has it been shown that Bashir Mohammad was interested in the family of Bachan Singh, which lost two of its members, namely, Darshana and Parveen. The occurrence took place in broad-day light within the four walls of the house in which admittedly Bashir Mohammad and his son Bagga Mohammad P.Ws. were residing. The very fact that the first information report was lodged within 45 minutes lends great assurance to the fact that the occurrence had been witnessed by Bashir Mohammad and son. This would not have been possible if Bashir Mohammad had gone away for selling cloth by hawking from place to place in the nearby villages. No doubt, Darshana was taken to the hospital in an injured condition by her other brother Baldev Singh and in the ruqa which the doctor sent, there is also mention of a constable, but during the trial no material has been brought on record whether the constable had been sent by the officer concerned of the police station. We, therefore, find force in the submission of Mr. Baldev Singh, learned counsel, who argued for the State, that the constable may have offered to assist Baldev Singh who carried his injured sister to the hospital. He had not been deputed for the purpose at any stage by the police. If it were otherwise, the Investigating Officer would have been suitably cross-examined on those lines. A reading of the testimony of the doctors shows that all the injuries found on the deceased could be received from the weapons carried by the accused. The blunt weapon injuries were naturally possible with the reverse side of the Gandasa with which Billu alias Jagga accused was armed. What the witnesses have done is only to render an explanation in the Court how the weapons were used. This does not amount to an improvement. It is only an explanation. The eye-witness account is not rendered open to doubt

simply on the ground that they came up with the explanation which is in accord with the medical evidence on record. It is only an understandable human anxiety to sound convincing and to be seen to be believed. While evaluating the credit-worthiness of witnesses involved in various criminal cases, we have no reason to expect that only ideal person will come before us. The persons whose testimony is to be evaluated are ordinary persons in the street and the Court by its experience of these matters tries to cull out nuggets of truth. Keeping that approach in mind, have no doubt that Bashir Mohammad and his son witnessed the occurrence and they are witnesses of truth and their testimony has been rightly accepted by the trial Court.

18. No doubt, the P. Ws. Bashir Mohammad and Bagga Mohammad did not physically intervene, in the facts and circumstances of the case, this circumstance is not sufficient to make their testimony doubtful. Bashir Mohammad was ill and was lying on a cot inside the room. The attack on Madia was sudden. Involvement of Darshana and Parveen was a later unanticipated development. Smt. Darshana and Parveen suffered the wrath of the accused because they intervened to save Maida. In the circumstances, it could not be expected that Bashir Mohammad or his son would physically intervene to prevent assault on the victims. This is apart from saying that various individuals react in their own way on the sight of a gruesome murder being committed in their presence. No standard reaction can be expected from the eyewitnesses.

19. Coming to the sentence, Section 354(3) of the Criminal P.C. lays down that when the conviction is for an offence punishable with death or, in the alternative with imprisonment for life or imprisonment for a term of ten years, the judgment shall state the reasons for the sentence awarded, and in case of sentence of death, the special reasons for such sentence. It is because of the above provision that the recent benign direction of the penal law is towards the life sentence as a rule and death as an exception, awarding of which must be accompanied by recorded reasons. The law laid down in the well known decision in [Bachan Singh Vs. State of Punjab](#), which was reiterated in a string of later authorities, death sentence is to be awarded in rarest of rare cases. In [Machhi Singh and Others Vs. State of Punjab](#), four principles were deduced in the matter of award of the extreme penalty. These are:--

- (a) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;
- (b) Before opting for the death penalty the circumstances of the offender also require to be taken into consideration along with the circumstances of the crime;
- (c) life imprisonment is the rule and the death sentence is an exception. In other words, death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of



imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(d) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

In *Allauddin Mian v. The State of Bihar*, it was observed that when the question of choice of sentence is under consideration the Court must not only look to the crime and the victim but also the circumstances of the criminal and the impact of the crime on the community. Unless the nature of the crime and the circumstances of the offender reveal that the criminal is a menace to the society and the sentence of life imprisonment would be altogether inadequate, the Court should ordinarily impose the lesser punishment and not extreme punishment of death which should be reserved for exceptional cases only. Keeping in view the above-noted authoritative pronouncements of the apex Court as also the mandate of law laid down in Section 354(3) of the Criminal P.C., we are of the considered view that on a balancing of the relevant circumstances of the case in hand, the sentence of death is not called for and of imprisonment for life on both the appellants is the appropriate sentence.

20. We, therefore, set aside the order of the trial Court imposing death sentence upon the appellants. While maintaining the conviction, we alter the sentence to one for imprisonment for life. The reference as well as the appeal are disposed of in these terms.