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**(2011) 07 P&H CK 0195**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Criminal A. No. 298 DB of 2007**

Dariya Singh and Others

APPELLANT

Vs

The State of Haryana

RESPONDENT

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**Date of Decision :** 12-07-2011

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 149, 302, 304, 34

**Citation :** (2011) 07 P&H CK 0195

**Hon'ble Judges :** Vijender Singh Malik, J; Hemant Gupta, J

**Bench :** Division Bench

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## Judgement

Hemant Gupta, J.—The present appeal is directed against the judgment of conviction dated 6.3.2007 passed by learned Additional Sessions Judge, Jind, whereby it convicted the Appellants namely Dariya Singh son of Ram Chander; Ram Phal, Rohtash and Shamsher Singh sons of Dharma and Dalbir son of Ajmer for the offence u/s 302 read with Section 149 of the Indian Penal Code (IPC) and order of sentence dated 8.3.2007 sentencing them to undergo life imprisonment and to pay a fine of Rs. 2,000/- each. In default of payment of fine, the Appellants were directed to further undergo rigorous imprisonment for a period of six months.

2. Prosecution case was set in motion on the basis of statement (Ex. PA) of Pawan Kumar (PW-1) son of deceased Pirthi Singh made to ASI, Rajinder Singh, P.S. Sadar, Narwana on 10.4.2005. On the basis of such statement, ruqa was sent to the police station for registration of the FIR at 9.00 am and the FIR (Ex. PG) was registered at 1.10 p.m. Pawan Kumar in his statement (Ex. PA) stated that yesterday on 9.4.2005 at about 10.15 p.m., he and his father Prithi Singh were sitting at their house. Gurchadi on account of marriage of Krishan son of Dharma was being carried. Shamsher Singh, Ramphal and Rohtash sons of Dharma, Ajmera and Dalipa sons of Ram Chander, Dalbir son of Ajmera were part of marriage party. They had consumed liquor. When Gurchadi was in front of their house, some children committed mischief in Gurchadi. They started raising

dispute and started abusing. He told them not to abuse. On this Shamsher Singh, Rohtash, Ramphal Ajmera, Dariya, Dalbir brought lathies and Krishan was armed with a saria. Ajmera, Dariya and Dalbir gave a lalkara that these persons should be taught a lesson. Thereafter, Shamsher Singh gave a lathi blow on the head of his father Prithi Singh and Rohtash gave a lathi blow on the left knee of his father and his father fell down. Thereafter, Ramphal gave a thrust wise lathi blow on the left eye of his father whereas Krishan gave a blow with saria on the left ankle of his father. On raising alarm, Vinod Kumar son of Ram Kumar, Om Parkash son of Harsarup and many other villagers came to the spot. Thereafter all the assailants ran away from the spot along with their respective weapons. He and Vinod Kumar arranged a vehicle and shifted his father to Civil Hospital, Narwana. He was medico legally examined by the doctor but due to the serious injuries, he was referred to PGIMS, Rohtak for further treatment. His father-Prithi Singh succumbed to the injuries on reaching PGIMS, Rohtak. The cause of grudge is the dispute raised by the children in the marriage.

3. The injured Prithi Singh was taken to Civil Hospital, Narwana at 10.15 p.m. on 9.4.005. He was medico legally examined by Dr. Rajesh Gupta (PW-3). As per the medico legal report (Ex. PC), Prithi Singh is stated to have received the following injuries:

1. A lacerated wound of size 6cm x 1 cm on left parietal area of skull bone deep.
2. A lacerated wound of size 4cm x 1 cm on left post auricular area of skull bone deep.
3. Black eye left side was present.
4. A lacerated wound of size 2 cm x 1 cm on left knee on anterior side.

4. During the intervening night of 9/10.4.2005, PW 3 Dr Rajesh Gupta has also examined Rohtash; Dharma and Phool Chand. In the medico legal report of Rohtash, an incise wound on the anterior medial side of right wrist and a lacerated wound on the right parietal area of skull was found. Abrasions on left wrist were found on the person of Dharma son of Indraaj whereas, lacerated wound of size of 8 cm x 2 cm in the right side of skull was found on the person of Phool Chand son of Sheo Chand.

5. PW-4 Dr. Rajesh Jale, Medical Officer conducted post mortem examination on the dead body of Prithi Singh son of Neki Ram on 10.4.2005 and found the following injuries:

- 1 A stitched wound of size 6cm x 1cm present over left parietal region.
- 2 A stitched wound of size 4 cm x 1 cm present over left post auricular area of skull 6 cm away from left tragus.
- 3 Black eye left was present.
- 4 A stitched wound of size 2cm x 1 cm was present over left knee joint.

5 Abrasion of size 1cm x 1 cm was present over right knee joint.

6 A linear fracture of skull bone was present of size 12 cm over left temporal parietal bone.

6. In his opinion, the cause of death was head injury and its complications, which were sufficient to cause death in normal course of nature. The clothes of the injured-Prithi Singh was sent for forensic science examination. Vide the report (Ex. PJ), the Forensic Science Laboratory, Haryana, Madhuban, Karnal found the human blood on the kurta, inner jacket and on dhoti.

7. On completion of investigations and other chain of circumstances, the accused, Dariya, Ramphal, Dalbir and Rohtash were made to stand trial. However, after the recording of the statement of Pawan Kumar, on an application filed by prosecution, Shamsheer Singh was also summoned to stand trial. On the basis of the prosecution evidence, such as that of PW-1 Pawan Kumar and PW-2 Om Parkash and other formal and informal witnesses, learned trial Court convicted the present Appellants as mentioned above.

8. Learned Counsel for the Appellants has vehemently argued that the witnesses examined by the prosecution are the interested witnesses and their testimonies are not that of reliable witness which can be relied upon to convict the Appellants. It is argued that the manner of occurrence as deposed by PW-1 Pawan Kumar and PW-2 Om Parkash discloses sudden fight without any pre-mediated mind at the spur of the moment. There was no common object in taking the life of Prithi Singh at the stated time and place nor there was any common intention of causing the death of Prithi Singh by any of the accused. Therefore, the finding recorded by learned trial Court convicting the present Appellants u/s 149 of IPC is not sustainable. It is also argued that the allegation against Dariya and Dalbir is that of lalkara and that such allegation can be leveled against any person. It is also argued that no injury is attributed to be caused by Dariya and Dalbir to the deceased-Prithi Singh. Therefore, the conviction of the Appellants, Dariya and Dalbir is based upon the surmises and conjectures and thus not sustainable. It is also argued that Ramphal, Rohtash and Shamsheer Singh are attributed one or the other injury on the person of the deceased but the fact remains that there was no pre-mediated mind or any common object or intention in taking the life of Prithi Singh. The prosecution has tried to involve all the members of the family including the bridegroom Krishan. He has been attributed saria blow on the ankle of the deceased. It is contended that Krishan was not even made to stand trial as it is impossible to comprehend that a bridegroom shall be an active participant of an assault on a person whose house is on the way. Shamsheer Singh is attributed lathi blow on the head whereas Rohtash is attributed the lathi blow on the knee of his father. Ramphal is said to have given thrust wise lathi blow on the left eye. It is contended that the blackening of eye as deposed by witnesses is not on account of thrust injury by lathi but on account of lacerated wound on the left parietal area of the skull. It is thus contended that the occurrence has taken place all of a sudden when the

accused, the members of the marriage party got engaged in scuffle. None of the accused had any intention to cause the death of Prithi Singh. There is neither previous enmity nor any other motive. Therefore, the conviction of the Appellants with the aid of Section 149 of the IPC for an offence u/s 302 of the IPC is not sustainable.

9. PW-1 Pawan Kumar has alleged that after the dispute arose, the accused came back to the spot after bringing lathies from their house. The house of the accused is said at a distance which is less than one acre. The witnesses are not specific as to which of the accused went home and came back armed. The allegations are vague and without corroboration, cannot be relied upon to convict all the accused. Dariya and Dalbir are not the members of the same family as that of other accused. There is no evidence as to whether, they went to their home or to the house of the other accused. It makes the prosecution story doubtful against them. Krishan, the bridegroom is the son of Dharma and the brother of Ramphal, Shamsheer Singh and Rohtash. Therefore, any dispute which has arisen during the marriage ceremony of Krishan could be with the family members of Krishan and not with the strangers Dariya and Dalbir. Only Lalkara is said to have been given by Dariya and Dalbir but no injury is attributed to them.

10. We also find that, it is a case of sudden fight during the Gurchadi ceremony. It was an occasion of festivities for the family of Krishan. They cannot be said to be prepared for any controversy. There was hardly any occasion for the accused to plan and execute any common objective or the common intention to take life of Prithi. Dalbir and Dariya are not attributed any specific role. In the absence of any individual act attributed to them in respect of causing of the injury, Dalbir and Dariya cannot be convicted for the offence u/s 302 read with Section 149 of the IPC. Dariya and Dalbir are thus entitled to benefit of doubt.

11. Shamsheer Singh, Ramphal and Rohtash are the sons of Dharma. The day of the occurrence is day of marriage of Krishan son of Dharma. Any sudden dispute at the time of marriage of their brother-Krishan could not be intended with the intention to take the life of the deceased-Prithi Singh. The genesis of the occurrence is sudden provocation without any pre-mediated mind and thus it cannot be said that there was any meeting of mind between the accused prior to the occurrence and thus their conviction for the offence u/s 149 or Section 34 of the IPC is not sustainable. Since, there was no intention to cause the death of Prithi Singh, the conviction of the Appellants for the offence u/s 302 of the IPC is not sustainable. The occurrence has taken place all of a sudden without any pre-mediated mind and on account of dispute in front of the house of the deceased by some children. Therefore, it is a case where Shamsheer Singh, Ramphal and Rohtash are liable to be convicted u/s 304 Part II of the IPC and not for an offence u/s 302 of the IPC.

12. Therefore, we set aside the conviction of Shamsheer Singh, Ramphal and Rohtash for the offence u/s 302 of the IPC but convict them of committing an offence punishable u/s 304 Part II. The injuries have been caused with the

knowledge that it may cause the death but without any intention of causing the death.

13. Consequently, we partly accept the present appeal and grant benefit of doubt to accused Dariya and Dalbir whereas the accused Shamsheer Singh, Ramphal and Rohtash are convicted for the offence u/s 304 Part II of the IPC. They are sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 2,000/-each. In default of payment of fine, Appellant Ramphal, Shamsheer Singh and Rohtash shall undergo further imprisonment for a period of three months.

14. With the said modifications, appeal stands disposed of.