

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D No. 734-DB of 2009(O&M)

Date of Decision: May 13 , 2015.

Balwant @ Vicky

..... APPELLANT (s)

Versus

State of Haryana

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Ms. Manjari Nehru Kaul, Amicus Curiae
for the appellant.

Mr. Vishal Garg, Addl.AG, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellant Balwant @ Vicky, in the instant appeal, has challenged judgment and order dated 28.07.2009 passed by learned Additional Sessions Judge, Gurgaon whereby he has been convicted under Section 302 read with Section 120B IPC and sentenced to undergo imprisonment for life.

Prosecution in this case was set in motion on the statement, Ex.PE, of complainant Manjeet Singh, PW5, recorded by PW12 Rajesh Kumar SI/SHO on 09.11.2006 at 9.30 a.m. Complainant Manjeet Singh revealed that their

family had enmity with Surjit @ Billu because Manjeet Singh's father was murdered on 07.11.2012 by Surjit @ Billu. In that case, his great uncle Ram Kumar (deceased) son of Hari Singh was a witness. He was standing outside his house in the street on 09.11.2006 at about 8.00 a.m. and Ram Kumar (deceased) was sitting on a chair outside the house in the street. Three persons came on foot from the side of Daya Nand Colony, namely, Randhir son of Ram Phal brother-in-law of Surjit @ Billu, Saleem son of Meenudin and elder brother of Randhir whose name he did not know. When they reached in front of his house, all three of them started firing. Randhir and his elder brother fired directly on Ram Kumar and Saleem fired in the air. On hearing the noise, Pappu @ Ved Parkash son of Ram Kumar and Ramesh Chand son of Hari Singh rushed out of their houses and witnessed the occurrence. Assailants thereafter fled towards Mauji Wala Kuan. Complainant ran towards his uncle Ram Kumar to handle him whereas, Pappu @ Ved Parkash chased the assailants. Ram Kumar died at the spot. It is also stated that Surjit @ Billu was confined in Bhondsi Jail and was planning the murder of Ram Kumar alongwith Jitender Jogi. Narain son of Ram Kumar had been murdered a few days earlier. On this statement, formal FIR No.331 dated 09.11.2006 (Ex.PE/3) was registered at Police Station Rajender Park Sector 5 Gurgaon.

However, complainant Manjeet Singh while recording his supplementary statement (Ex.PH) on 07.12.2006 gave another version. He stated that due to perturbed state of mind and on account of previous ill-will he had wrongly named Randhir and his brother to be the assailants but they were not involved. Saleem son of Meenudin, Vijay @ Yogesh @ Kala, Vicky @

Balwant (present appellant) and Naresh son of Daya Ram were the real culprits. Saleem fired in the air whereas, Vijay @ Yogesh @ Kala and Vicky @ Balwant fired at his uncle Ram Kumar with pistols held in their hands. Naresh son of Daya Ram was standing at some distance with a motorcycle on which all of them fled.

Photographs (Ex.P8 to P14) of the place of occurrence were taken. Spot inspection was carried by SI Rajesh Kumar. Five empty cartridges (Ex.P23 to Ex.P27), three fired bullets (Ex.P28 to Ex.P30) and one live cartridge (Ex.P31) were lifted. Blood stained earth was lifted and converted into a sealed parcel and taken in possession vide memo (Ex.PI). Rough site plan (Ex.PS) of the place of occurrence was prepared. Dead body was sent to Civil Hospital, Gurgaon for post-mortem through ASI Sube Singh. Post-mortem examination was conducted by PW10 Dr. Satpal Bhanot, Medical Officer, Govt. Hospital, Gurgaon on 09.11.2006 and following injuries were found on the body:-

- “1. There was 2cm x 2cm wound with surrounding singeing on the right occiput near right auricle. Track going through the skull base and fracturing the nasal bone. No foreign body was found.
2. There was 1cm x 1cm wound with surrounding singeing on the right occiput 2cm posterior to wound number 1. Track going across the skull with 2cm x 2cm wound with everted margins on the left temporal region. No foreign body was found.
3. There was 1cm x 1cm wound with surrounding singeing 5cm from the right nipple. Track going across the chest piercing right lung, left lung, heart and exiting through left side chest

- 3cm from the left nipple. No foreign body was found
- (i) Left side 4th, 5th, 6th and 8th ribs were fractured.
 - (ii) Pleura- left and right pleura pierced. Bilateral thoracic cavities containing blood.
 - (iii) Larynx and trachea were normal.
 - (iv) Right and left lungs were ruptured.
 - (v) Heart- Right auricle having 2 x 2cm defect with laceration with blood in pericardial cavity.
4. There was 1cm x 1cm wound on the anterior abdominal wall. One cm above the umbilicus making a track in the abdominal wall. and a foreign body palpable on the right side of iliac crest . Bullet was extracted and sealed. Peritoneal cavity ruptured. Mouth pharynx and esophagus containing blood. Stomach containing food particles. Small intestine, large intestine, liver, spleen, kidneys, urinary bladder and organs of external genitalia were normal.
5. Right thigh- There was 1cm x 1cm wound with surrounding swelling on the right thigh medial aspect 70 cm from the foot end. Track going through the thigh muscles to another wound 74 cm from the foot end 2 x 2cm in size. No foreign body was found.
6. Right forearm- There was 1cm x 1cm wound with surrounding swelling on the right antero medial forearm. Track going through the muscles and ending in a foreign body lying 5cm. from the wound on the postero medial aspect 30cm from the tip of the hand. Foreign body was found and extracted.”

Cause of death was injuries No.1, 2 and 3 which caused extensive damage to brain, lungs and heart. All injuries were ante-mortem in nature and sufficient to cause death in ordinary course of nature. Time that elapsed between injuries and death was immediate and that between death and post-

mortem was within 24 hours. Two fired bullets (Ex.P2 and P3) were removed from the body and handed over to ASI Sube Singh. After converting them into a sealed parcel ASI Sube Singh handed over them to Rajesh Kumar SI/SHO who took them into possession vide memo Ex.PO. Investigation was handed over to PW13 SI Ishwar Singh and thereafter to PW15 SI Surender Singh. PW15 SI Surender Singh recorded supplementary statement of complainant Manjeet Singh as well as other two eye-witnesses, namely, Pappu @ Ved Parkash and Ramesh Chand.

Appellant Balwant @ Vicky was arrested on 22.12.2006 by PW14 ASI Rajender Singh in a case arising out FIR No.554 dated 22.12.2006, Police Station Hansi, under Sections 307/120B/34 IPC and Section 25 of the Arms Act. A country made pistol, two live cartridges and one empty cartridge were recovered in the said case (Ex.PT). Disclosure statement, Ex.PU, was suffered by appellant Balwant @ Vicky disclosing his involvement in the present case. He was formally arrested on 14.01.2007 in the present case by SI Surender Singh, PW15. He suffered a disclosure statement, Ex.PF, stating that deceased, Ram Kumar was killed by him alongwith Vijay @ Yogesh @ Kala while Naresh was standing at some distance. He killed the deceased at the instance of Surjeet @ Billu and Jitender @ Jogi. Pistol used by him in the commission of crime was handed over by him to Vijay @ Yogesh @ Kala.

Accused Naresh was arrested on 09.03.2007. He suffered disclosure statement, Ex.PV, on 10.03.2007 giving the details about the incident.

Accused Saleem and Vijay @ Yogesh @ Kala who were in custody

in another case were joined in investigation on 13.05.2007 in this case. Vijay @ Yogesh @ Kala suffered disclosure statement, Ex.PY, on 14.05.2007 revealing that the pistol used by Balwant @ Vicky (appellant) to commit the offence was handed over by Balwant @ Vicky to him and he further handed over the same to one Pawan who has been arrested by the Hansi Police. He further disclosed that this weapon had been handed over by him to Balwant @ Vicky. Place of occurrence was also identified by him.

Prior to the arrest of Vijay @ Yogesh @ Kala, the abovementioned Pawan to whom pistol used in the commission of crime was stated to be handed over, was arrested on 24.04.2007 by Inspector Bhagwan Chand in a case arising out of FIR No.134 of 2007 pertaining to police station City Hansi. A Country made pistol, Ex.P32, and two live cartridges were taken in possession vide memo Ex.PUU. On interrogation Pawan suffered disclosure statement, Ex.PVV, revealing that the pistol, Ex.P32 and cartridges were given to him by Vijay @ Yogesh @ Kala in mid February, 2007 saying that he would take it back after some time. Vijay @ Yogesh @ Kala identified this weapon when shown to him to be the one handed over to him by Balwant @ Vicky after committing the offence. Vijay @ Yogesh @ Kala handed over this pistol to Pawan. Memo Ex.PCC to this effect was prepared.

Both the fired bullets (Ex.P2 and P3) as well as the pistol (Ex.P32) recovered from Pawan were sent to Forensic Science Laboratory, Madhuban for examination. It was found that both the bullets have been fired from one and same firearm most probably from a countrymade/pathani type firearm and the said firearm was Ex.P32.

On completion of investigation, challan/report under Section 173 Cr.P.C. was filed. Charge was framed against six accused on 27.10.2007 to which they pleaded innocence and claimed trial.

Prosecution examined as many as twenty eight (28) witnesses to prove its case. Accused while denying the incriminating material/evidence put to them pleaded innocence and false implication in their statements under Section 313 Cr.P.C.

Learned trial court on appreciation of evidence on record, facts and circumstances acquitted all the accused except Balwant @ Vicky (present appellant) and Saleem of the charges against them. Saleem was held guilty for offence under Section 25 of the Arms Act and appellant Balwant @ Vicky was convicted of the offence punishable under Section 302 read with Section 120B IPC and sentenced as above. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently submits that none of the three alleged eye-witnesses of the occurrence have supported the prosecution version. Complainant Manjeet Singh, PW5, has stated that the accused were not the assailants. He, in fact, states that he was in his house at the time of occurrence and when he came out, assailants had already fled the spot. Alleged eye-witnesses PW8 Pappu @ Ved Parkash and PW1 Ramesh Chand have also not supported the prosecution case. They denied to have ever stated before the police that the present accused are involved in the occurrence. PW5 Manjeet Singh has denied that he ever had made statements Ex.PE or Ex.PH. He has denied that any recovery whatsoever was effected in his

presence. It is submitted that there is no other evidence on record to connect the present appellant to the offence in question as the disclosure statement. There is no other incriminating material on record to connect the appellant to the crime. Furthermore, on the basis of the same evidence other co-accused have been acquitted. Therefore, it is prayed that this appeal be accepted and conviction of the appellant be set aside.

Learned counsel for the State, per contra, submits that there is overwhelming evidence on record to connect the accused with the crime notwithstanding the eye-witnesses having turned hostile in this case. He, therefore, prays for upholding the conviction and sentence imposed upon the appellant.

We have heard learned counsel for the parties and gone through the record with their able assistance.

Doubtlessly, this is a case where the complainant as well as the eye-witnesses have turned hostile. They have not supported the prosecution case in any manner. There is complete denial on their part. However, we are unable to agree with the learned amicus curiae that this by itself would be sufficient to acquit the appellant of the charges against him. Argument on behalf of the appellant that disclosure statement of the accused cannot be used for convicting him, is not tenable in the facts of the instant case. It is a matter of record that as per the appellant's disclosure (Ex.PF) pistol used by him in the commission of offence was handed over by him to Vijay @ Yogesh @ Kala. On interrogation, Vijay @ Yogesh @ Kala further revealed vide Ex.PY that this pistol was handed by him to Pawan which had already been recovered by the police of police station city Hansi in a case arising out of FIR No.134 of 2007.

The said pistol when shown to Vijay @ Yogesh @ Kala was identified to be the one, which was handed over to him by Balwant @ Vicky after committing the offence. Pawan further disclosed that this weapon was handed over to him by Vijay @ Yogesh @ Kala. Taking things further, the said weapon (Ex.P32) and the fired bullets (Ex.P2 and P3) recovered from the dead body of Ram Kumar were sent to Forensic Science Laboratory, Madhuban for examination. It was found on examination that both the abovesaid bullets had been fired from this pistol. Thus, the link in the chain of events is complete and points to no other hypothesis but the guilt of the appellant. There is no possibility of any fabrication or tampering because the bullets recovered from the dead body were sent to Forensic Science Laboratory, Madhuban on 20.11.2006 in a sealed parcel prior to the recovery of the pistol (Ex.P32) from Pawan. Weapon (Ex.P32) was recovered from Pawan on 24.04.2007 and sent to Forensic Science Laboratory, Madhuban on 20.06.2007. Evidence on record as discussed above is sufficient in itself to prove the complicity of appellant-accused in this case. Eye-witnesses having turned hostile does not impinge upon the veracity of the prosecution version, whatsoever, in any manner keeping in view the clear, cogent and overwhelming evidence which proves the culpability of the appellant.

Contention on behalf of the appellant that acquittal of other co-accused on the basis of the same evidence reflects false implication of the present appellant, is unjustified and rejected. There is sufficient evidence on record as discussed above to prove the involvement of the appellant in the commission of the offence. No benefit can be derived by him from the acquittal

of co-accused. Prosecution has succeeded in proving its case beyond reasonable doubt qua the appellant.

Thus, we find that the appellant has been rightly convicted and sentenced by the trial court. We find no ground to interfere in the impugned judgment and order dated 28.07.2009 passed by the learned Additional Sessions Judge, Gurgaon which suffers from no infirmity or illegality.

Consequently, this appeal is dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

May 13 , 2015.
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