

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-387-DB-2010 (O&M)

Date of decision: 09.10.2015.

Vijay Homrum

..... Appellant

Vs.

State of Haryana

..... Respondent

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

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

Argued by: None for the appellant.

Mr. Vivek Saini, Assistant Advocate Genera, Haryana.

RAJ RAHUL GARG.J.

This appeal is directed against the judgment of conviction dated 02.08.2008 rendered by the Additional Sessions Judge, Rewari, whereby appellant-accused Vijay Homrum was convicted for committing offence punishable under Section 302 of Indian Penal Code (for short 'IPC'). Vide order of sentence of even date, he was sentenced to undergo RI for life and to pay a fine of ₹5,000/- for committing offence under Section 302 IPC. In case of default of payment of fine, he was further ordered to undergo simple imprisonment for a period of four months.

Briefly prosecution case is like this; that on 20.04.2007, Ramphal Sarpanch of village Mumtajpur lodged a complaint Ex.PA with the police to the effect that one Jitender son of Partap Singh, resident of village Jholri had been working with him as labourer for the last 5 months. Vijay

Homrum (accused) had been coming to him for harvesting the crop for the last two years. For the last one month he was with him. On 19.04.2007, at about 11:00 P.M. Jitender and Vijay Homrum, after taking meals as usual had gone away for sleep. At about 1:00 A.M. in the night, Raju son of Partap Singh, resident of village Jholri, who was working with Ramphool Ex.Sarpanch, was passing through the well of village Mumtajpur as he was bringing straw by a tractor. He told the complainant that Vijay Homrum had inflicted injuries on the head of Jitender, his brother, with pipe. On seeing him Vijay Homrum along with pipe had run away towards the fields. Raju further told the complainant that he had seen his brother, he found him dead on account of injuries suffered by him. Complainant, Ramphool Ex.Sarpanch and Raju had gone to the well and saw Jitender lying dead on account of injuries suffered by him. After leaving Raju near the dead body of Jitender, complainant Ramphal and Ramphool Ex-Sarpanch sent information at the house of Jitender and lodged the report with the police. On this complaint, ASI Sube Singh made endorsement Ex.PA/1 whereupon formal FIR was registered. On going to the place of occurrence, ASI Sube Singh, prepared the rough site plan of the spot as Ex.PB. Photographs of the dead body Exs. P4 to P8 were obtained. He took the shirt and towel belonging to the deceased from the site vide memo Ex.PC. Blood stained earth from the spot was lifted by Inspector Ami Lal and the same was taken into possession vide memo Ex.PD. Accused was arrested from near the canal bridge and the pipe was recovered. Rough sketch plan of the pipe was prepared as Ex.PD/1 and the same was taken into possession vide memo Ex.PE. Blood stained pant worn by the accused was also taken into possession vide memo Ex.PF. Post-mortem on the dead body of deceased

Jitender was got conducted. Inquest report Ex.PH was prepared. Post-mortem report is Ex.PK. Scaled site plan of the spot Ex.PJ was also got prepared. After completion of necessary investigations, the challan was put in the Court.

Finding a *prima-facie* case against the accused under Section 302 IPC, the accused was charge-sheeted, to which he did not plead guilty but claimed trial.

After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein accused denied each prosecution allegation appearing against him and pleaded his innocence. He took the defence that he has been falsely implicated in this case. After hearing both the sides and appraising the entire material and evidence coming on record, the learned trial Court recorded the judgment of conviction and order on sentence as discussed in the earlier part of this judgment.

We have heard learned Shri Vivek Saini, Assistant Advocate General, Haryana for the State and with his assistance appraised the entire evidence available on record.

As per Ex.PA, Raju alone is the eye witness of this case. As per prosecution case on 19.04.2007, he was working with Ramphool Ex.Sarpanch. He was bringing straw (*tuda*) by a tractor for Ramphool Ex.Sarpanch . When he reached near well, situated in village Mumtajpur, he saw accused inflicting injuries with pipe on the head of Jitender, his brother. As per complainant, Raju told him that on seeing him on that place Vijay Homrum accused along with pipe had run away towards his fields.

When he had seen his brother by going near him, he found him dead, on

account of the injuries suffered by him. Of course, Ramphool Ex.Sarpanch as PW2 corroborated the prosecution story on the point that Raju was working with him on the relevant day and further Raju told him that Vijay Homrum had killed his brother Jitender with a fountain pipe. Raju as PW9 in his examination-in-chief though stated that he saw Vijay Homrum beating his brother Jitender with an iron pipe yet in the subsequent part of his statement in his cross-examination, he indicted Ramphal Sarpanch (complainant of this case), which makes the entire prosecution case doubtful regarding guilt of accused Vijay Homrum. Raju (PW9) deposed that when he reached near tube-well of Ramphal Sarpanch, he heard some noise. He saw Vijay Homrum beating his brother Jitender with an iron pipe and Ramphal Sarpanch was also standing there in a baffled condition and his *kurta* was in torn condition and he was seating there. Due to injuries, his brother died on the spot. Blood was oozing from his nose and head. He alighted from his tractor. Vijay Homrum run away from the spot. He asked Ramphal Sarpanch “ what you have done with my brother”. He told him that Vijay Homrum had committed murder of his brother. He told him that he need not do anything. He will pursue his case before the police himself. He further deposed that Ramphal Sarpanch threatened him and told that he has approach in the administration. During the course of his cross-examination he deposed that it is correct that when he reached the spot, his brother was lying dead. With this statement of Raju, it is evident that he had not seen Vijay Homrum inflicting injuries on the person of Jitender. At the most, he reached the spot after the occurrence. He further deposed in his cross-examination that Sarpanch had dropped the iron pipe after seeing him. This statement further indicates that weapon of offence i.e. iron pipe was in the

hand of Sarpanch. As such, this evidence points towards involvement of Sarpanch in this crime. He further deposed that Ramphal Sarpanch had threatened him and had also been threatening him by saying that in case he deposes in the Court against him, he will kill him. He further deposed that it is correct that Vijay Homrum was also present there but he did not give beatings to Jitender in his presence. He further stated that it may be possible that his brother was killed by Sarpanch not by Vijay. This statement of Raju (PW9) further creates doubt regarding genuineness of the prosecution story as it is quite probable under the given circumstance for Ramphal Sarpanch to give threat to Raju for not making statement against him. Even otherwise, as per Inspector/SHO Ami Lal (PW14) and Sube Singh (PW3) accused was arrested with pipe in his hands near Nahar Beer (Nahar Bani) near canal bridge at about 10:30 A.M. It is highly improbable that after committing murder of Jitender with pipe, he would keep on holding that pipe in his hands uptill 10:30 A.M., waiting for the police to arrest him with pipe. There is nothing on record to show as to how and under what circumstances the police reached upto the accused. It is again highly improbable that accused would not change his pant which was blood stained and keep on wearing the same uptill his arrest. As such, even regarding arrest and recovery of blood stained pipe from the possession of accused on 20.04.2007; is also not free from doubt. At the time of alleged recovery of pipe only Ramphal Sarpanch (complainant of this case) and who was indicted as culprit of this case had been kept as witness. Besides him, no independent witness was joined by the prosecution so as to prove the factum of arrest and that of recovery of blood stained iron pipe from the possession of accused. It is of course true that on account of absence of independent

corroboration, otherwise fully proved prosecution case, cannot be brushed aside but the present case is the one in which the statement of prosecution witnesses are not consistent nor inspiring confidence in the mind of the Court regarding guilt of the accused.

Statement of Raju (PW9) points towards involvement of Ramphal Sarpanch as accused in this case and further his statement does not establish the guilt against the accused beyond reasonable doubt, therefore, we are of the view that in this case, appellant-accused is entitled to benefit of doubt.

For the reasons recorded above, finding merit in this appeal as the prosecution has failed to prove its case against the appellant-accused beyond reasonable doubt, therefore, by giving benefit of doubt the appellant-accused is acquitted of the charge for which he was facing trial and the impugned judgment of conviction dated 02.08.2008 and order of sentence of the even date are set aside.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

09.10.2015
smriti