

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. D-941-DB of 2010
Date of Decision: 21.10.2015

Ravinder Kumar @ Bittu @ Bhima

...Appellant

Versus

State of Punjab

...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? Yes
3. Whether the judgment should be reported in the Digest?

Argued By: Mr. H. S. Thiara, Advocate for the appellant.

**Ms. Manjari Nehru Kaul, Additional Advocate General,
Punjab for respondent-State.**

Raj Rahul Garg, J.

1. This appeal is directed against the judgment dated 02.08.2010 rendered by learned Sessions Judge, Kapurthala whereby appellant-accused Ravinder was held guilty for committing offence punishable under Section 302 IPC for causing death of Ram Kumar. Vide order on sentence of the even date, he was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 20,000/-; in default of payment of fine, to further undergo rigorous imprisonment for 3 months for the offence punishable under Section 302 IPC.

2. Brief facts of the case are like this; that on 25.10.2009 at about 7.00 PM, Ashwani Bedi (complainant) along with his brothers Ashok Kumar and Ram Kumar were present in Mohalla Nigahan, Mehli Gate, Phagwara, in connection with some domestic talk. His cousin Sanjiv Kumar also came there. Ram Kumar was having some money dealings with Ravinder-accused. Ravinder also came there armed with scissors. He raised lalkara that Ram Kumar should not be spared as he demanded back money from him. He attacked on Ram Kumar with scissors. He gave a blow to Ram Kumar which hit him on his left elbow. He gave another blow to Ram Kumar which hit him on the left side of his chest. They all raised hue and cry. They took Ram Kumar to hospital, where he was declared dead. Ashwani Bedi got his statement, Ex. PC, recorded to the police whereupon formal FIR, Ex. PC/2, was recorded. Inquest report, Ex. PH, was completed. Post-mortem on the dead of Ram Kumar was got conducted. Site plan of the spot, Ex. PL, was prepared. Sealed parcel, containing cloth of the deceased which was produced before Investigating Officer after the post-mortem of Ram Kumar, was taken into police possession, vide memo Ex. PM. Accused was arrested. On 28.10.2009, on interrogation, accused gave disclosure statement, Ex. PE, to the effect that he had kept concealed one blood stained scissors after wrapping it in a polythene bag at Chachokee Pulli underneath pavement of the canal falling between Onkar Nagar and Urban Estate, Phagwara and further that he can get the same recovered by giving demarcation. In pursuance with the aforesaid disclosure statement, accused led the police party to the disclosed place and after removing earth from the pavement of the canal, he got recovered scissors

and the same was converted into a sealed parcel and was taken into police possession, vide memo Ex. PG. Before that, rough sketch of scissors was also prepared as Ex. PF. Site plan of the place of recovery of scissors was also prepared as Ex. PQ. Sealed parcel of the clothes of the deceased was sent to FSL for chemical examination whereupon report, Ex. PR, was obtained. As per the report of Chemical Examiner, human blood was found on the cloth of the deceased as well on the scissors.

3. After completion of necessary investigations, the accused was challaned in this case. Appellant-accused was charge-sheeted under Section 302 IPC. After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein accused denied each prosecution allegation and pleaded his innocence and false implication.

4. After hearing both the counsel for the parties and appraising the entire evidence and material on record, the learned trial Court recorded the impugned judgment of conviction and order on sentence as mentioned in the earlier part of this judgment.

5. We have heard Mr. H. S. Thiara, Advocate for the appellant and Mrs. Manjari Nehru Kaul, Additional Advocate General, Punjab for the state of Punjab besides appraising the entire evidence and material on record.

6. The first and foremost argument raised by learned counsel for the appellant-accused is this; that no independent witness is joined in the investigations of this case. Ashwani-complainant, PW-4, and Ashok, PW-5, alleged eye-witnesses of this case, are none but the real brothers of deceased. PW-4 Ashwani stated during the course of his cross-examination that many

people had collected at the time of occurrence. As such, when other persons were also present, some independent witness should have been joined in the investigations. Though, PW-4 deposed during his cross-examination that many people had collected at the time of occurrence, yet, he did not state that in their presence accused-Ravinder inflicted injuries on the person of Ram Kumar. Unless the people had themselves seen the occurrence, there was no need for the Investigating Officer to keep them as eye-witnesses. PW-4 and PW-5 have been closely related to the deceased and are the interested witnesses. Had some independent witnesses been joined in the investigations of this case, the genuineness of the prosecution case would have been disclosed.

7. The above argument of learned counsel for the appellant-accused is devoid of any force. Of course, in this case, PW-4 and PW-5 are the brothers of the deceased, yet, in **Guli Chand & Ors. Vs. State of Rajasthan, AIR 1974 SC 276**, it is settled proposition of law that ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person. In the case in hand, there is absolutely no material on the file to show that there was a case for the complainant to implicate accused falsely in this case. PW-4 Ashwani and PW-5 Ashok categorically stated that Ram Kumar-deceased was having a money dealing with Ravinder. Ravinder-accused caused the death of Ram Kumar as he was having a grudge against him as to how he dared to demand back his money. Thus, since Ram Kumar demanded back his money from Ravinder, therefore, he felt bad and committed this crime.

8. Apart from above, it is also the settled proposition of law as contained in **Bur Singh & another vs. State of Punjab, 2008 4 RCR**

(Criminal) 834 that when there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased, they are to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. In the case in hand, the oral testimonies of PW-4 and PW-5 are in consonance with the medical evidence. Scissors is the weapon of offence. PW-1 Dr. Rajinder Margo, Medical Officer, Civil Hospital, Phagwara gave the cause of death in his opinion as due to shock and hemorrhage due to injury to vital organ i.e. heart which was sufficient to cause death in an ordinary course of nature.

9. As per complaint, Ex. PC, and statements of PW-4 Ashwani and PW-5 Ashok, Ravinder-accused was armed with scissors and on seeing Ram Kumar present at the spot, raised *lalkara* that he will not spare him as he had demanded back his money from him. Both the witnesses categorically deposed that within their sight accused-Ravinder attacked with scissors on Ram Kumar which hit on his left elbow and another blow given by him with scissors hit Ram Kumar's left side of chest. This injury has been mentioned as injury No. 6 in the post-mortem report of the deceased. Carbon copy of which is Ex. PA. Doctor also reported that the aforesaid injury was on the vital organ of the deceased i.e. heart and it was sufficient to cause death in an ordinary course of nature. As such, medical evidence is consistent with afore-discussed oral evidence on record. Here we would like to make a mention that learned counsel for the appellant-accused has tried to create doubt in the prosecution case by arguing about the number of injuries on the person of deceased reported in the post-mortem report Ex. PA. He contended that as per Ex. PA, there was 7

injuries found on the person of deceased whereas per eye-witnesses Ravinder gave only two injuries. As such medical evidence is not in consonance with the oral evidence. This argument of learned counsel for the appellant-accused is not sustainable as both the injuries, as stated by PW-4 and PW-5 having been caused on the person of Ram Kumar by the accused, find mention as injury No. 6 and injury No. 7. Injury No. 6 has been reported as sufficient to cause death in the ordinary course of nature. All other injuries mentioned in the MLR are simply bruises and abrasions type. These type of injuries can always be there on the person of deceased as a result of fall on the ground on account of sufferance of the major injuries by the deceased. As such, no undue importance can be attached to these type of injuries. Even otherwise, no eye-witness would be able to tell about bruise and abrasion type injuries. An eye-witness would always see as to with what weapon, the accused inflicted injury on which part of the body of the deceased. About that there is no inconsistency. As such, we conclude that the medical evidence available on the file fully supports the prosecution case.

10. In this case, accused got recovered scissors in pursuance with disclosure statement, Ex. PE, after removing earth at the pavement of canal. That scissors was blood stained and it was taken into possession, vide memo Ex. PG. ASI Harmail Singh, PW-8, HC Harjit Singh are the witnesses of disclosure statement as well of recovery. Learned counsel for the appellant-accused contended that the recovery was got effected in pursuance with disclosure statement of appellant-accused as per the prosecution case. Prosecution could well join independent witnesses at the time of recovery and

even at the time of disclosure statement, Ex. PE. Only police officials are the witnesses to the disclosure statement as well of recovery. There is no reasonable explanation coming-forth as to why the police did not join independent witnesses at the time of disclosure statement and recovery. Thus, non-joining of independent witness cause doubt regarding recovery of scissors from the possession of accused. Even Amrik Singh, Investigating Officer of this case, as PW-9, deposed during the course of his cross-examination that the place of recovery of scissors is an open place and accessible to all. As such, exclusive possession of accused cannot be said to be proved. The possibility that accused might have acquired knowledge about it cannot be ruled out.

11. Though, it is imperative on the part of the Investigating Officer to join the independent witnesses at the time of alleged search of scissors or at least to make a genuine, sincere and real effort to join such witness, yet, only on that count, otherwise fully proved case of the prosecution, cannot be thrown out. It is the settled proposition of law that the statements of police officials are at par with the statements of non-official witnesses. In that eventuality, a heavy duty is cast on the court to scrutinize the statements of official witnesses with great care and caution. If the statements of police officials inspire confidence in the mind of the Court regarding guilt of the accused, the conviction can well be based on the testimonies of the official witnesses. It is also well known that in villages where murders are committed, independent villagers are generally reluctant to give evidence because they are afraid that giving evidence might invite the wrath of the assailants and might expose them to serious risks. It would be very unrealistic to suggest that if the prosecution is not able to bring

independent witness to the Court, it should be treated as an infirmity in the prosecution case so as to justify the defence contention that the evidence actually adduced should be disbelieved on that ground alone without examining its merit.

12. It was next argued by the learned counsel for the appellant-accused that PW-4 Ashwani deposed that at the time of the incident they were standing at Chowk. As per this witness, the occurrence had taken place at the Chowk. Even PW-9 Amrik Singh, Investigating Officer, also deposed that the murder was committed at the Chowk. Whereas per site plan, Ex. PE, the place of occurrence has been shown as street. This also goes to show that occurrence did not take place in the manner stated by the prosecution. This argument of learned counsel for the appellant-accused is again not sustainable. If we peruse the site plan, Ex. PE, it would become clear that the place of occurrence, as shown in this site plan, is very close by the Chowk. As such, it cannot be said that the place of occurrence has been differently shown in Ex. PE. The entire place has been shown as Chowk *Gali Jai Hind*. As such, we cannot confuse the word '*Gali*' (street) with Chowk. These are not two different things as far as this case is concerned.

13. There is nothing on record to show that police officials or the witnesses were, in any way, inimical towards the accused so as to implicate him falsely and to leave the real culprits. Complainant has given the cause to the accused to commit the crime like; this that Ram Kumar-deceased had demanded back his money from the accused. As a result of which, accused was having a grudge against him and thus out of revenge and anger he committed

this crime. It is the settled proposition of law that where the ocular evidence is proved to be trustworthy and reliable and finds corroboration from the medical evidence, a finding of guilt can be well recorded even if the motive for the commission of crime has not been proved. In the case in hand, since the oral evidence corroborated by the medical evidence is trustworthy, therefore, we are not to look towards proof of motive. The mind of accused can never be predicted or known. As such, it is also the settled law that it cannot be said that without a motive, no crime can be committed. Motive, though, plays an important role, yet, if proved, it only lends additional support to strengthen the probability of commission of the offence by the accused but the absence of proof does not *ipso facto* warrant acquittal.

14. For the reasons recorded above, finding no merit in this appeal, maintaining the impugned judgment of conviction dated 02.08.2010 and order on sentence of the even date, this appeal is dismissed.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

21.10.2015
Waseem Ansari