

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

CRA-D No. 534-DB of 2012(O&M)

Date of Decision: May 11 , 2015.

Hemant @ Bunty @ Raj @ Rajesh and another

..... APPELLANT (s)

Versus

State of Haryana

..... RESPONDENT (s)

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

Present: Mr. Karanbir Singh Mann, Advocate
for appellant No.1.
Mr. Jitender Dhanda, Advocate
for appellant No.2.

Mr. Vivek Saini, AAG, 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.

Appellants – Hemant @ Bunty @ Raj @ Rajesh and Satyabhan have preferred the instant appeal challenging the judgment and order dated 10.02.2012 passed by learned Additional Sessions Judge, Bhiwani whereby they have been convicted and sentenced for the offences punishable under Sections 302/120B IPC and appellant No.1 – Hemant @ Bunty @ Raj @ Rajesh additionally for offence punishable under Section 25(1)(1B)(a) of the Arms Act,

1959. Both the appellants have been sentenced to undergo rigorous imprisonment for life for offences under Sections 302/120B IPC, besides, pay a fine of ₹1,00,000/- each and in default thereof, to further undergo simple imprisonment for one year. Appellant No.1 – Hemant @ Bunty @ Raj @ Rajesh additionally sentenced to undergo rigorous imprisonment for three years, besides, pay a fine of ₹10,000/- and in default thereof, to further undergo simple imprisonment for one month for offence punishable under Section 25(1)(1B)(a) of the Arms Act, 1959.

As per prosecution version, FIR No.33 dated 16.04.2009 (Ex.PA/1) was registered on the statement (Ex.PA) of complainant Krishan Kumar (PW1). Complainant Krishan Kumar stated that they are three brothers, his elder brother being Radhey Sham (deceased) and younger brother, namely, Bajrang Lal. He and his brother Radhey Sham were Commission Agents in the grain market. They had two trucks. Satbir and Ramesh were employed as drivers for the abovesaid trucks. Satbir alongwith Surender i.e., the conductor/ cleaner started their journey from Maur Mandi in Punjab on 15.04.2009 at about 1.00 p.m. after taking ₹4,26,170/- as price of the mustard. This amount was paid to Radhey Sham at 4.40 p.m. on the same day in the complainant's presence. When complainant and his cousin Rajesh came to the shop at about 8.00 p.m. on 15.04.2009, they saw two young boys, one of them carrying a pistol in his hand and another holding a bag. Another boy was also standing near a vehicle make TATA 407 alongwith a motorcycle which was running. Both the boys fled towards the Cooperative Bank on the abovesaid motorcycle. Complainant Krishan Kumar thereafter saw his brother Radhey Sham with blood oozing out

from his body. Radhey Sham revealed that one person inflicted a blow with stick/Danda and another fired at him. They forcibly snatched the bag having currency notes. Injured was taken to Birendra Hospital, Behal where he was referred to Hisar. However, he succumbed to his injuries on reaching Hisar. During investigation, appellants Hemant @ Bunty @ Raj @ Rajesh and Satyabhan as well as accused Pawan (tried separately by the Juvenile Justice Board) were arrested on 25.04.2009. Disclosure statements (Ex.PK) of appellant Hemant @ Bunty, accused Pawan (Ex.PL) and appellant Satyabhan (Ex.PM) were recorded. Pursuant to disclosure by Hemant @ Bunty, a countrymade pistol .315 bore used in the commission of offence was recovered alongwith three live cartridges and one empty. Accused Satish Kumar and Tasvir were arrested on 28.04.2009 for the commission of offence punishable under Section 216 IPC.

On completion of investigation, challan/report under Section 173 Cr.P.C. was presented against seven accused. All the accused except Pawan (who was tried separately by the Juvenile Justice Board) were proceeded against for commission of the offences punishable under Sections 460/302/120B/216 IPC. Accused Ragbir Singh was declared to be a proclaimed offender. Appellant-accused Hemant @ Bunty was additionally proceeded against for the offence punishable under Section 25 of the Arms Act, 1959. While pleading innocence all the accused claimed trial.

Prosecution examined as many as 17 witnesses to prove its case.

Accused while denying the incriminating material which has come against them, pleaded false implication in their statements recorded under

Section 313 Cr.P.C. Appellant – Hemant @ Bunty has stated that he was running a Dhaba at Rewari. When he disembarked at Bhiwani railway station while coming to Bhattu from Rewari, he was questioned by some policemen and taken away in a Gypsy. He was asked to put his signatures on a paper. His mobile phone as well as ₹3,000/- were taken, he was beaten but he could not say why this treatment was meted out to him by the police.

Appellant – Satyabhan has stated that two days after the deceased died, SHO Nehra of police station Siwani met him. He was called in the police station in the evening but he did not go. On the next day, SHO came to his house but he was not present. He was taken to the police station by the said SHO at about 5.00 p.m. and made to sit there. His brother was told that he had teased some girl therefore, he was detained in the police station. After two or three days, he was taken to Siwani and then to Behal. He also did not explain why he was proceeded against.

The learned trial court on appreciation of the evidence on record, facts and circumstances of the case concluded the prosecution to have proved its case beyond reasonable doubt qua the present appellants. They were thus convicted and sentenced as mentioned above. The other accused, namely, Devi Lal Singh, Satish Kumar and Tasvir Singh were acquitted of the charges against them.

Learned counsel for the appellants while impugning the abovesaid judgment and order passed by the learned trial court vehemently contend that the prosecution has miserably failed to prove its case beyond reasonable doubt qua the present appellants. It is submitted that there is an unexplained delay in the

lodging of the FIR which has led to embellishment and concoction. Incident is alleged to have taken place at about 8.00 p.m. on 15.04.2009 whereas, the FIR is recorded on 16.04.2009. No reason is forthcoming as to why prompt action was not taken. It is further contended that the identity of appellants has not been established. There is nothing on record which proves that it was the present appellants who were involved in the commission of crime as alleged. Identification by the witnesses in Court would be of no avail to the prosecution as per the learned counsel for the appellants.

It is urged on behalf of the appellants that no independent witness has been associated at the time of alleged recoveries from them. Thus, recovery of pistol from appellant Hemant @ Bunty and motorcycle from appellant Satyabhan are clearly suspect. The same cannot be used for connecting the accused to the offence as alleged. Much stress has been laid on the fact that it was not the amount of ₹4,26,170/- which had been snatched on 15.04.2009 from the deceased but only a sum of ₹10,000/-. Reference is made to Ex.DA i.e., an application dated 20.04.2009 made by the complainant as well as the memo Ex.PZ of this application to the effect that the sum of ₹4,26,170/- has been mistakenly mentioned as the said amount was subsequently found at their house. It is only ₹10,000/- which was snatched by the accused. This application was submitted by the complainant on 24.04.2009. It is relevant to note at this stage that the accused were arrested on 25.04.2009.

Per contra, learned counsel for the State submits that the prosecution has brought on record sufficient evidence to prove its case beyond reasonable doubt. It is submitted that appellant – Hemant @ Bunty stands convicted in eight other cases including those under Sections 379/392/402 IPC

as well as under the Arms Act. He has been acquitted in two matters. It is submitted that the said appellant is a habitual offender and at present he is facing proceedings in another case for offence punishable under Section 395 IPC. It is prayed that the impugned judgment of conviction and order of sentence dated 10.02.2012 passed by the Additional Sessions Judge, Bhiwani be upheld.

We have heard learned counsel for the parties and gone through the record minutely.

PW1 Krishan Kumar complainant has fully supported his initial version. He has specifically identified accused Hemant @ Bunty to be the person carrying the pistol, Raghbir (proclaimed offender) having a bag in his hand and appellant Satyabhan as the person beside the motorcycle in a running condition.

PW2 Bajrang Lal has specifically stated that appellant Satyabhan was earlier known to him. Satyabhan was seen standing beside a motorcycle alongwith two other boys on 15.04.2009 at about 7.45 p.m. It has further come in evidence that .315 bore pistol as well as .315 fired cartridges case were recovered pursuant to disclosure statement of appellant Hemant @ Bunty. Motorcycle was recovered pursuant to the disclosure statement made by appellant Satyabhan. Cash amount of ₹1,000/- each was also recovered from both the appellants.

SI Shri Bhagwan (PW13) has stated that appellant-accused Hemant @ Bunty suffered a disclosure statement (Ex.PK) to the effect that he had kept concealed a country made pistol alongwith live cartridges and ₹1,000/- on Siwani-Hisar and he could get the same recovered. Appellant – Satyabhan suffered a disclosure statement (Ex.PM) to the effect that he had kept concealed

motorcycle bearing registration No.HR-16F-4376 used in the commission of crime in a Jhuggi of the brick-kiln on Gurera turn near village Kikral. He also stated that he had kept concealed ₹1,000/- which was part of the money snatched from the spot in a Almirah in his rented house. Accused Pawan suffered a disclosure statement (Ex.PL) that he had kept concealed ₹1,000/-, a part of the money snatched from the deceased, in a bag which was lying in Satyabhan's room and he had kept concealed one stick/Danda which could be got recovered. Recoveries were thereafter effected from the abovementioned accused on their pointing out. SI Jai Pal (PW15) has clearly stated that the present appellants alongwith others had identified the place where conspiracy was hatched. Similarly, Inspector Pradeep Kumar (PW16) has proved the disclosure statements (Ex.PU and Ex.PV) by the present appellants regarding their involvement in the commission of offence on 25.04.2009. SI Sandeep Kumar (PW17) who conducted the investigation on receipt of information of the crime on 15.04.2009 has supported the prosecution version on all counts.

Post-mortem examination of the deceased Radhey Sham was conducted by PW7 Dr. Tej Pal Sharma, Medical Officer, Govt. Hospital Hisar alongwith Dr. M.K.Garg on 16.04.2009, who found the following injuries on the body of deceased:-

- “1. A lacerated wound of 4 cm x 1 cm present over left parietal region and clotted blood was present in the underlying subcutaneous tissue.
2. An oval shaped lacerated wound of 3 cm x 1.5 cm was present with margins inverted with collar of abrasion present over left lower chest and upper abdominal wall 5 inches below left nipple and 3 inches lateral to mid line. The burnt and unburnt gun

powered was embedded surrounding the wound in a radius of 6 inches. On further dissection, the direction of wound was traced posteriorly and laterally with slight inferior tilt up to subcutaneous tissue behind 12 ribs on the right side of back where the bullet was found embedded. The peritoneal cavity was full of blood and intervening organs ruptured were transverse colon, stomach, mesentery, right kidney and liver. The bullet was recovered and sealed in a card board box.”

Cause of death in this case was hemorrhage and shock as a result of fire arm injuries which were ante mortem in nature and sufficient to cause death in ordinary course of nature. Probable time which elapsed between injuries and death was variable and time between death and post-mortem examination was said to be between 6 to 36 hours. Injury No.2 was opined to be caused from a close range. Post-mortem report (Ex.PH/1) was proved by PW7 Dr. Tej Pal Sharma.

As per FSL report (Ex.PAA/1), .315 fired bullets marked BC/1 recovered from the body of deceased-Radhey Sham is proved to have been fired from the country made pistol recovered from appellant-accused Hemant @ Bunty. Similarly, the motorcycle make CD Deluxe of black colour with which Satyabhan was seen on the fateful day has been recovered from Satyabhan. Complicity of the appellants-accused is duly proved on record. Evidence as discussed above points to no other conclusion except the guilt of the accused.

Learned counsel for the appellants argued that the amount of ₹4,26,170/- was in fact never snatched by the accused as is admitted by the complainant. This fact itself shows that the appellants have been falsely

implicated as there is no reason why they would have killed anyone for this meagre amount. This contention of the learned counsel for the appellants is rejected being absolutely untenable. Admission of the complainant that it is only ₹10,000/- which were snatched does not detract the veracity of the prosecution version in any manner. Offence qua the accused is independent of the quantum of money snatched. Quantum of money actually snatched is not a relevant or crucial factor to prove the complicity of the accused in the commission of the offence in this case.

Plea of delay in lodging of FIR raised on behalf of the appellants is not borne out. A perusal of the record shows that there is no delay in recording of statement of complainant Krishan Kumar. It is proved that the statement (Ex.PA) of Krishan Kumar was recorded at about 12.15 a.m. i.e., on the intervening night/midnight of 15/16-4-2009. Incident had taken place at about 8.00 p.m. on 15.04.2009. In such a situation the foremost anxiety would obviously be to secure medical aid for the injured. Circumstances do not reveal any delay in this case. Prompt lodging of the FIR rules out any embellishment or concoction as alleged on behalf of the appellants.

Similarly, argument that no independent witness was associated at the time when alleged recoveries were effected, is equally untenable. There is no evidence on record to impinge on the credibility of the official witnesses. There is no reason forthcoming as to why and for what reason the present appellants were singled out for being proceeded against. It is not borne out from the record that any of the officials or witnesses were holding a grudge against the accused or that they had an axe to grind against them. Discrepancies sought to

be pointed out in the statements of prosecution witnesses are indeed trivial and do not create a doubt upon the credibility of these witnesses.

In the facts and circumstances, learned trial court has rightly convicted the appellants-accused for the offences punishable under Sections 302/120B IPC. Appellant-accused Hemant @ Bunty has rightly been convicted in addition for the offence punishable under Section 25 of the Arms Act.

No other argument is urged.

In the facts and circumstances of the case, the prosecution has proved its case beyond reasonable doubt against the appellants. Their conviction vide the impugned judgment and order dated 10.02.2012 by the learned Additional Sessions Judge, Bhiwani is upheld.

Consequently, this appeal is dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

May 11 , 2015.
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