

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-952-DB-2011 (O&M)

Date of decision: September 7, 2015

Deepak

..... 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: Mr. Vinod Ghai, Sr. Advocate with
Mr. Simrandeep S. Sandhu, Advocate and
Mr. Vineet Kaushal, Advocate
for the appellant.

Mr. Vivek Saini, Assistant Advocate General Haryana.

RAJ RAHUL GARG.J.

This is an appeal against the judgment of conviction dated 15.09.2011, rendered by learned Additional Sessions Judge, Sonapat, whereby appellant-accused Deepak was convicted for committing offence punishable under Section 302 of Indian Penal Code (for short 'IPC'), whereas the remaining accused namely Dharmender, Sombir, Vijay, Pardeep, Arvind and Hardeep were acquitted of the charges in which they were facing trial. Vide order of sentence dated 15.09.2011, accused Deepak, was sentenced to undergo imprisonment for life, means, imprisonment not less than 20 years and the period spent in custody by convict Deepak w.e.f. 22.03.2004 till date shall be adjusted towards total

sentence and in default of payment of fine of ₹50,000/-, he was further directed to undergo R.I. for a period of one year. The amount of fine was not paid by the appellant-accused Deepak.

The police machinery was set in motion by complainant Jai Parkash son of Risal Singh, who gave statement Ex. PB to the police on 14.02.2004. As per complainant, he was having two brothers, elder one was Raghubir Singh where as Maman was youngest of all. Maman was dealing in the contract-ship of brick-kilns. On 10.02.2004, his brother Maman told him that, that there had been altercation between him (Maman) and Deepak (accused). At this, complainant told his brother Maman that he would pacify Deepak.

On 14.02.2004, at about 7:30 A.M, complainant, Maman (since deceased), Jagdish and Raj Singh were strolling at Rathi brick-kiln. From there, they reached Surajmal brick-kiln. Outside the office of Surajmal brick-kiln, few cots were lying thereat, on which Deepak, along with his three friends were sitting and on seeing them, Deepak exhorted, to teach a lesson to Maman on account of picking up quarrel with him. After saying so, accused Deepak pull out a pistol from the sheet which he was wearing at that time; covering his body; fired a shot in the head of Maman, from back side, from close range. Maman, thus, fell down. Complainant, Raj Singh and Jagdish, made an endeavour to catch hold of Deepak and his companions but they fired shots upon them straight with an intention to kill them. However, the complainant party had a narrow escape. The assailants while firing, boarded a Maruti Car, white colour, already parked, in front of brick-kiln on the road and the driver of the car was already sitting on the driving seat. As per complainant, he could not note down the number of

aforesaid Maruti Car. All the assailants had run away towards village Kidoli. Complainant described that all the assailants were of the age about 22-23 years and were wearing pants and shirts. They had also covered their bodies with cloth sheet. Thereafter, complainant, Jagdish and Raj Singh, brought Maman, for treatment to Sethi Hospital, Kharkhoda, where doctor declared him brought dead. Complainant further stated that Maman was murdered by accused Deepak with the help of his friends, who had fired shots upon them in order to kill them, as a result of enmity.

On the aforementioned statement Ex.PB, formal FIR was registered. Inquest report Ex. PN was prepared. Post-mortem of the dead body of Maman was got conducted. Rough site plan of the spot Ex.PO was prepared. Photographs of the spot were obtained. Two empty cartridges of .9 mm and one pellet .315 bore from the spot, were lifted. The same were converted into a sealed parcel and then taken into police possession vide memo. Ex.PC, after sealing the same with the seal of 'YR'. Statement of accused were recorded.

EHC Basau Ram, who had taken the dead body of Maman for post-mortem examination, handed over the sealed parcel containing the clothes of deceased Maman and bullet which was recovered from the dead body of Maman during post-mortem, to Yad Ram SI/SHO.

Both the aforesaid parcels, duly sealed with the seal of doctor, i.e. of clothes and the other one of bullet were taken into police possession vide recovery memo. Ex.PE/1.

On 22.03.2004, accused Deepak, Dharmender, Sombir, Vijay, Arvind and Pardeep, were produced before the Ilaqa Magistrate by the jail authorities of Delhi, as the accused were apprehended and arrested by the

Delhi Police in different cases of Arms Act. All the aforesaid accused were interrogated, whereupon, accused Dharmender gave his disclosure statement Ex.PP, accused Arvind gave his disclosure statement Ex.PP/1, accused Pardeep gave his disclosure statement Ex.PP/2, accused Sombir gave his disclosure statement Ex.PP/3, accused Vijay gave his disclosure statement Ex. PP/4 and accused Deepak gave his disclosure statement Ex.PP/5. All the accused confessed their guilt and disclosed that they were involved in the murder of Maman.

In pursuance with the disclosure statement Ex.PP/5, accused Deepak led the police party to the place of occurrence i.e. Maman brick-kiln, in village Sohati, where accused Deepak identified the place of occurrence. Demarcation memo Ex.PP/6 was prepared. He also disclosed that the recovery of weapon which was used by him in the murder of Maman, had already been effected by Delhi Police.

All the accused except Deepak were willing to participate in the test identification parade but since the public witnesses showed their inability to join the test identification parade as they were afraid from the accused, as such test identification parade could not be done. Since, accused Deepak was named and the identity of accused Deepak was not in question, therefore, prosecution did not want to get test identification parade conducted respecting appellant-accused Deepak.

All other accused had also given *nishandehi* of the place of occurrence in pursuance with their aforesaid disclosure statements. As was done by appellant-accused Deepak. Scaled site plan of the spot was got prepared. Accused Hardeep was arrested. On interrogation, he also gave disclosure statement Ex. PP/7 and also gave demarcation of the spot

Ex.PP/8 in pursuance with his aforesaid disclosure statement. Record from Delhi police regarding recovery of weapons from the accused by the Delhi police, was collected and placed on record of this case. Malkhana Mohrrer, of the police station, Special Cell, Crime Branch, Delhi, was also cited as a witness in this case.

After completion of necessary investigations, challan was filed against the accused.

Since, we are concerned with the appellant-accused Deepak, therefore, now onwards, the entire discussion would be regarding accused Deepak alone.

Finding a *prima-facie* case against appellant-accused Deepak, he was charge-sheeted for committing offence punishable under Sections 302/307/120-B of IPC, to which appellant-accused 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. It was pleaded by him that he has been falsely implicated in this case.

After hearing both the sides and appraising the entire evidence and material coming on record, the learned trial Court, convicted the appellant-accused Deepak only for offence under Section 302 IPC and sentenced him as mentioned in the earlier part of this judgment. Accused Deepak was not convicted for offence under Section 307 IPC.

We have heard learned counsel for the appellant and learned State counsel besides appraising the entire material and evidence coming on record.

It was contended by learned counsel for the appellant that as per FIR Ex.PB, got recorded by Jai Parkash (PW2), the time of occurrence at Maman brick-kiln, was at about 7:30 A.M and the matter was reported to the police at 10:30 A.M, while the police station is at a distance of 14 k.m. away from the alleged place of occurrence. It has also been admitted by the witness that police station Kharkhoda falls on the way. When the deceased was shifted to Sethi hospital, Kharkhoda, many persons were present and when he was taken to Sethi hospital, the matter could have been reported by someone else to the police. This delay in lodging the FIR is fatal for the prosecution case.

In fact, Maman deceased was a person of criminal tendency. Many cases were registered against him. Some of his enemies shot him dead on the intervening night of 13/14.02.2004 at about 10:00/10:30 P.M. Dr. Jai Kishore (PW6) stated that rigor mortis was present all over the body and the probable time that elapsed between injury and death was few minutes and between death and post-mortem was within 6 to 36 hours.

The above argument of learned counsel for the appellant is not sustainable as this case cannot be termed as a case of delayed FIR. The occurrence has taken place at 7:30 A.M. As per prosecution case, Jai Parkash (PW2), got, FIR of this case, recorded with the police at 10:30 A.M. The complainant party must have taken time in shifting the deceased to the hospital. The FIR Ex.PB was got lodged by an eye witness. Time taken by PW2 in getting the FIR recorded in this case, cannot be said to be unreasonable, even if the police station, Kharkhoda, was on the way to hospital. In that eventuality as well, it is not expected to lodge FIR in the first instance than taking the injured to the hospital for treatment. In such

like cases, the anxiety of relatives and friends would always be to take injured to hospital as quickly as possible. If Dr. Jai Kishore (PW6) had stated about the presence of rigor mortis and about the time elapsed between injury and death as few minutes and between death and post-mortem as within 6 to 36 hours, it would not show that the occurrence did not take place at 7:30 A.M on 14.02.2004. Rigor mortis could be present in the body even after 2 hours of the death of a person. Doctor did not state that since the rigor mortis was present in the dead body, therefore, the occurrence must have taken place during the intervening night of 13/14.02.2004. Not only this, even during the course of his cross-examination, doctor specifically stated that he cannot give the definite opinion regarding duration and time of death. If the doctor states that the duration between death and post-mortem could be from 6 hours to 36 hours, it is well inconsonance with the present occurrence.

In this case, the occurrence had taken place at 7:30 A.M. Post-mortem was conducted at 2:00 P.M. As such, statement of PW6 does not belie the prosecution case so far as appellant-accused is concerned.

There is no evidence to show that Maman deceased was a person of criminal tendency. Even if, that may be the position, only on the basis of conjectures, surmises and presumptions, it cannot be said that some of his enemies has shot him dead. There is, in fact, not even an iota of evidence available on record as to who others are the enemies of Maman, who had shot him dead; rather, the boot is on the other leg. Jai Parkash (PW2) clearly stated in the FIR itself that prior to the present occurrence i.e. on 10.02.2004, Maman had told him that, that day Deepak-accused had picked up a quarrel with him whereupon he told his brother that he will

pacify him.

Of course, in the present case, the investigations are not upto mark. It is the settled proposition of law that for defective investigation, no benefit can be given to the accused, in case, the prosecution evidence inspire confidence in the mind of the Court regarding guilt of the accused.

Statement of Jai Parkash (PW2) fully inspires confidence in the mind of the Court regarding guilt of accused-Deepak. He specifically named Deepak in the FIR which is prompt in time. He deposed that on 14.02.2004 at about 7:30 A.M, he along with Maman, Jagdish and Raj Singh, had reached Surajmal Bhatta, Sohati, where Deepak along with 3 accomplices were sitting on the cots, placed in front of the office. He specifically stated that Deepak explained that they will teach Maman a lesson for quarreling with him. He further deposed that Deepak took out a pistol from his '*CHADDAR*' and then within their view, fired a shot on the head of Maman, from the back-side from a very close range. Receiving bullet injuries, Maman fell down on the earth and when they tried to catch hold of Deepak and his accomplices, they fired shots directly on them with an intention to kill them whereas they had a narrow escape and, thereafter, all the four persons could make good their escape by sitting in the white colour Maruti Car, standing on the road in which driver was already present. That car had gone towards village Kidoli. There is, in fact, nothing on record to show as to why Jai Parkash (PW2) would falsely implicate appellant Deepak. No motive has been attributed to him for the false implication of appellant-accused Deepak, in this case. As such, findings recorded by the learned trial Court that even if we ignore the statement of Raj Singh (PW3), the statement of Jai Parkash (PW2) is sufficient to

convict him, suffers from no infirmity.

Post-mortem report Ex.PF, which is duly proved by Dr. Jai Kishore (PW6), also corroborates the fact that deceased died due to fire arm injury. Doctor gave the cause of death was due to injury to the vital organs i.e. brain, due to fire arm injury. He further reported that all the injuries were ante-mortem in nature and sufficient to cause death in normal course of life. Even report FSL Ex.PA, also speaks about the fact that 9 mm fired bullet marked BC/2 has been fired from a rifled barrel firearm. Thus, with this evidence on the file, prosecution has succeeded in bringing home guilt against the accused Deepak.

In this case, Investigating Officer, did not take into the possession firearm, allegedly recovered from the possession of accused Deepak by Delhi police. Investigating Officer, has also not sent firearm, allegedly recovered from the possession of accused Deepak, for test in the FSL nor sought any report from ballistic expert. Of course, it is a lapse on the part of the Investigating Officer. We have already noticed that the investigation of this case is defective, benefit of which cannot be given to the appellant-accused Deepak as otherwise case against him stands proved from the statement of eye witness, whose testimony, defence could not impeach.

It was next argued by learned counsel for the appellant that in this case, car by which the accused made good their escape, has not been taken into possession by the police nor it was investigated as to who was the owner of the car at the time of alleged occurrence and in whose possession it was. As such, the link evidence is missing, for which benefit is to be given to the accused.

This argument of learned counsel for the appellant is devoid of any force. Running away from the spot by car is a circumstance, subsequent to the causing of present occurrence. If the car was kept ready on the road with a driver on the driver seat and if the accused could make good their escape by that car, it is not expected of the witness to know about the registration number, owner or driver of that car. For this reason alone, it cannot be said that appellant-accused did not cause firearm injury to Maman on account of which he has died.

On the point of sentence, it was argued by learned counsel for the appellant-accused Deepak that the sentence awarded to the appellant does not commensurate with the offence allegedly committed by the appellant-accused. The learned trial Court while awarding the sentence of imprisonment of life along with fine of ₹50,000/- with default clause also put a rider to the effect that imprisonment for life means imprisonment not less than 20 years. As per counsel for the appellant, the appellant was of the age of 26 years at the time of commission of alleged offence. He is the first offender. He is quite repentant on what has happened. He wants to lead a happy life. As such, some leniency be taken in awarding the sentence to the appellant.

Under the above mentioned facts and circumstances, we modify the order of sentence dated 15.09.2011 to the extent that appellant-accused shall undergo imprisonment for life along with payment of fine of ₹50,000/- in default of payment of fine, he shall undergo RI for further period of one year. Benefit of Section 428 Cr.P.C. shall also be given to him.

For the reasons recorded above, finding no merit in this appeal,

maintaining the impugned judgment of conviction dated 15.09.2011, the order of sentence is modified to the extent indicated above and the appeal is ordered to be dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

September 7,2015
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