

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Appeal No. S-2608-SB of 2014

Date of decision : 08.12.2015

Sunil Kumar

..... Appellant

versus

State of Haryana

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

Present: Mr. Ashwani Bhardwaj, Advocate
for the appellant

Mr. G.S. Salwara, DAG Haryana

ANITA CHAUDHRY, J.

The appellant had been convicted and sentenced to undergo 5 years rigorous imprisonment under Section 307 IPC and was directed to deposit a fine of Rs. 25,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of four months in FIR No. 312 dated 05.10.2011 registered at Police Station Sadar, Fatehabad.

Elucidating the facts essential for examination of the case as follows:-

The complainant's version as it appears in the complaint which led to the FIR are that on 13.7.2011, Anguri Devi had lent Rs. 23,000/- to Sunder son of Balwant. Her driver Subhash stood surety for payment of the amount. Sharda wife of Subhash was not happy because Subhash had given surety. There used to be constant

quarrels between the couple. Sharda made a call to Anguri Devi and asked her to collect the loan amount and after that they would not be responsible. Anguri Devi went to dhani of Subhash in her Bolero vehicle. She settled the account with Sunder who promised to pay the amount within a fortnight. The allegations further are that Sunil Kumar, Om Parkash and Sushil Kumar arrived in a vehicle. Sunil son of Om Parkash fired a gunshot leading to injuries to Anguri. Sharda and Satpal had also reached the spot and they inflicted injuries upon Anguri and Subhash. They were armed with iron pipes and dandas. Anguri Devi fainted and was admitted at Agroha Medical College, Agroha. She has also stated that Inderjit had pressurized her to reach at a compromise earlier and that statement was made under pressure. On 14.07.2012, the Investigating officer visited the spot and collected whatever evidence he could and after seeking the opinion of the doctor, a report was submitted before the Court. Challan was filed against Om Parkash, his son Sunil Kumar and Sushil Kumar.

The trial Court examined the evidence and noted that there was relationship between Anguri and Subhash and that was the reason why Sharda, her parents and brother were upset and that was the motive to cause injuries to Anguri. It was found that there was no evidence of loan being given. It was also observed that only Sunil was involved and he had inflicted the gun shot injury. Sunil was convicted under Section 307 IPC while the remaining two persons were acquitted.

Dis-satisfied with the judgment the present appeal has

been filed.

The submission made on behalf of the appellant was that Anguri Devi was in a relationship with Subhash who was married to Sharda and an unbelievable story was projected that Anguri would have given a loan on the surety of her driver and Anguri would go to her driver's house. It was urged that there is no evidence that any amount had been lent to Sunder and the prosecution had held back the main witnesses and failed to examine Inderjit. It was urged that first version which was given to the police does not indicate any reason and the FIR has been lodged after three months and delay has not been explained. It was urged that Sharda was objecting to the relationship between the two and Anguri was bold enough to come to her house and it was not liked by the family. It was urged that Anguri had arrived in a Bolero driven by Vijay who was not joined in the investigations and there is no evidence from the independent source and there was no motive against the appellant if the version of the complainant is to be accepted. It was urged that though the Medical Officer had stated that injury No. 1 and 2 were from a firearm but there was no blackening and tattooing though the allegations were that the gun shot had been fired from a short range. It was urged that Medical Officer had also stated that no pellet was removed from the body and all the injuries were simple in nature. It was contended that true account had never come before the Court. It was urged that Ex. D-1 is the first statement made by the complainant and she was confronted with it but she had only explained that she had made that statement on the pressure exerted

by Inderjit.

Learned State counsel supported the judgment and had urged that the trial Court had examined each aspect and there was injury and medical expert had submitted that there were gun shot injuries and there is no infirmity in the judgment.

It is necessary to first refer to the statement made by Anguri on 14.07.2011 i.e. day after the occurrence. She is married and her daughters are also married. She admitted to a close relationship with Sharda and called her, her 'Dharam sister'. She had been visiting her house very often. During this there was some exchange of money and the amount was lent to Sharda. On 13.07.2011 at about 9 p.m., she went in her Bolero car to Sharda's house where Om Parkash, Sushil son of Amar Singh also came. They had dinner and all of them watched T.V. and as the accounts were lengthy it was agreed that they would stand settle it. She stated that Sharda's father Om Parkash was carrying gun and had kept it on the cot. They were discussing the accounts and heated arguments started between Subhash and Sharda and Sharda's father Om Parkash got up from the cot to intervene when the gun fell down and she received a gun shot injury and no body was responsible.

Three month's later Sharda made a statement alleging that she had paid Rs. 23,000/- to Sunder and Subhash had stood surety. She had deposed that Subhash was a driver on her vehicle and stood surety and because of it a dispute arose between Subhash and his wife. The complainant had mentioned that Sharda made a

call on her husband's phone and the call was for her and she was called to settle the account on that day and, therefore, she had gone and they were sitting and settling the accounts and Sunder agreed to settle the account on 27.07.2011 and meanwhile a vehicle came. No one got down. Another jeep came and Om Parkash, Sunil son of Om Parkash and Sushil got down and Sunil son of Om Parkash fired a gun shot which hit her arm and Sharda and Om Parkash and Satpal started inflicted injuries on Subhash and she fell unconscious and was later shifted to Agroha Medical College and the police recorded her statement on 14.07.2011 but she was not fully conscious then she also added that Inderjit had pressurized her to compromise the matter.

The medical of Anguri Devi had been carried out and Dr. Rajeev Chauhan (PW 8) had found the following injuries.:-

- (i) 0.7 x 0.5 cm lacerated wound with 0.5 cm reddish abrasion encircling the wound present on left lat. to neck, 3.5 cm above from upper border of clavicle, margins were inverted with fresh bleeding present.*
- (ii) 0.7 x 0.5 cm lacerated wound with 0.2 cm reddish abrasion encircling the wound present on right lat. to neck, 3.5 cm above from upper border of clavicle, margins were inverted fresh bleeding present.*
- (iii) 8.5 x 3.5 cm lacerated wound on ventral aspect of upper one third of left arm. Muscle and tendon exposed margins are irregular with fresh bleeding present.*
- (iv) 0.5 x 0.25 cm lacerated wound present on dorsal aspect of upper one third of right arm margin inverted with fresh bleeding present.*
- (v) 0.5 x 0.25 cm lacerated wound present on left front of shoulder with fresh bleeding present, margins were*

inverted.

(vi) 1 x 0.5 cm lacerated wound with irregular margins present on right front of shoulder with fresh bleeding present.

The prosecution had examined Anguri Devi she made the same statement as given in the complaint Ex. P-1. Suhhash PW-2 supported the statement made by Anguri and had additionally stated that her wife Sharda had given rod blow to him and he fell unconscious and he did not know who took Anguri Devi and later on he came to know that Anguri had been admitted at Agroha Medical College.

Besides the above, the prosecution had examined the Medical Officer, the Investigating Officers and had tendered the FSL report Ex. P-38.

Perusal of the record shows that a case was registered against Om Parkash under the Arms Act in which he had been acquitted. The case of the prosecution was that the fire arm used was owned by Om Parkash. In the first version given to the police Anguri had given a totally different statement, she had spoken about her cordial relation with Sharda. From the tone and tenor of the complaint Ex. D-1 it appeared that there were family relation and they had been visiting each other and there was financial dealings as well. The name of Sunder does not appear in the first statement given to the police. It only refers to money lent to Sharda. Three months later Anguri completely changed her version and introduced Sunder's name.

The complainant admits her presence in the house of the

Subhash. Strangely in the complaint Ex. P-1 the complainant had said that Subhash was her driver. It is indeed surprising that the employer would go to the house of the employee on a call made by employee's wife. The phone on which the call was made was used by her husband. The complaint Ex. D1 does not refer to any financial dealing between Anguri and Sharda. The story has been completely changed in Ex. P-1. The prosecution failed to examine Sunder. There was one more person namely Vijay who had taken Anguri to that house. He was not joined in the investigation.

The trial Court had also found that there was no evidence of any money transaction between Anguri and Sunder and rightly so. There is thus a delay of three months in lodging the FIR. Though delay is not fatal to the prosecution case but when there is delay the prosecution is expected to give reason for the delay.

In **Kanhaiya Lal and others vsv State of Rajasthan, (2013) 5 SCC 655**, the Hon'ble Apex Court had held that it is settled in law that mere delay in lodging the First Information Report cannot be regarded by itself as fatal to the case of the prosecution. However, it is obligatory on the part of the court to take notice of the delay and examine, in the backdrop of the case, whether any acceptable explanation has been offered, by the prosecution and if such an explanation has been offered whether the same deserves acceptance being found to be satisfactory.

In **State of H.P. v. Gian Chand, (2001) 6 SCC 71**, three-Judge Bench had expressed thus: -

“Delay in lodging the FIR cannot be used as a ritualistic

formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.”

In Kilakkatha Parambath Sasi and others vs. State of Kerala, AIR 2011 SC 1064, it has been observed that when an FIR has been lodged belatedly, an inference can rightly follow that the prosecution story may not be true but equally on the other side, if it is found that there is no delay in the recording of the FIR, it does not mean that the prosecution story stands immeasurably strengthened.

In Zahoor and others vs. State of U.P., 1991(1) RCR (Criminal) 65(SC), it was held that mere delay by itself is not enough to reject the prosecution case unless there are clear indications of fabrication.

The complainant refers to one Inderjit who is said to have pressurized her. He was not present at the time of the incident. He was not there in the hospital on the next day. She names a stranger who has no role to play in the incident. In this scenario the question would arise whether the story put forward by the complainant can be accepted. The very genesis of the incident has not been brought

before the Court. There was something which has been kept away. The defence had suggested to the complainant that she was in relationship with Subhash.

The important witness would have been the statement made by Sunder who was said to be present on that day but he was not joined in the investigation. The first version given by Anguri does not refer to his presence. The Medical Officer does say that injury No. 1 and 2 were fire arm injury. As per the version given by the complainant, the shot was fired by Sunil when he was standing in front of the complainant and it was a close range. Whereas the Medical Officer had stated that there was no blackening and tattooing on the wounds. No pellet was removed from the body. All the injuries were simple in nature. The police did not found any bullet on the spot.

From the above, it can safely be said that the version given by the prosecution is not probable. The appeal is allowed. The appellant is acquitted. The appellant is in custody for the last more than 2 years. He be set free forthwith, if not required in any other case.

December 08, 2015

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**(ANITA CHAUDHRY)
JUDGE**