

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. D-170-DB of 2003

Date of Decision : November 26, 2015

Babloo Ghosh

.....Appellant

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE GURMIT RAM

Present : Mr. Abhay Pal Singh Gill, Advocate
as Legal Aid Counsel for the appellant.

Mr. Dhruv Dayal, Deputy Advocate General, Haryana.

T.P.S. MANN, J.

The appellant was tried for committing murder by intentionally causing the death of Om Parkash on 3.6.2000 at 5.30 p.m., making him liable for committing the offence punishable under Section 302 IPC. Vide impugned judgment and order dated 19/21.12.2002, learned Additional Sessions Judge, Fast Track Court, Sonapat held the appellant guilty and, accordingly, convicted him under Section 302 IPC and sentenced him to undergo life imprisonment and to pay an amount of Rs.5,000/- as fine. Aggrieved of his conviction and sentence, the appellant filed the present appeal, in which he is on bail.

The case of the prosecution is that on 3.6.2000 at 7.15 p.m., Smt. Durgawati wife of deceased Om Parkash made statement

Ex.PK before ASI Bishambar Lal, Incharge, Police Post, Kundli, who was at that time controlling the traffic of G.T. Road. In the said statement, Smt. Durgawati stated that she, alongwith her husband, had been residing in a rented accommodation at Rajender Colony, Piau Maniari. Her husband was working in Lohia Metal Factory. Appellant Babloo Ghosh, resident of Vijay colony had borrowed Rs.1,500/- from her husband about a month before, which he had promised to return on 3.6.2000. Accordingly, on 3.6.2000 at about 5.30 p.m., she, alongwith her husband, was proceeding towards the house of the appellant for collecting the amount borrowed by him. When they reached in front of Vijay Colony, the appellant came from the direction of his house. The deceased demanded from the appellant to return the borrowed amount. At this, the appellant stated that he would teach him a lesson for demanding the money. The appellant took out a knife used for cutting vegetables from the right pocket of his pant and hit the same on the right side of the neck of the deceased. As a result, the deceased fell down and blood started oozing in large quantity from his neck. She raised an alarm. Ravinder, who was coming behind them, rushed to the spot. On seeing him, the appellant fled towards his house while carrying the knife with him. With the help of Ravinder, Smt. Durgawati lifted her husband and started for the hospital. However, when they had covered some distance, the victim succumbed to his injuries. His dead body was, thereafter, taken to Janta Hospital where the doctor

declared him as having already died. After leaving her brother-in-law Raghurai Parshad with the dead body, the complainant started for Police Post, Kundli and after coming across ASI Bishambar Lal got recorded her statement Ex.PK on the aforementioned lines.

Further case of the prosecution is that on the basis of statement Ex.PK, FIR Ex.PK/2 was registered at Police Station Rai, District Sonapat by ASI Subhash Chand on 3.6.2000 at 8.00 p.m. Special report sent through a constable was received by the Ilqa Magistrate on 3.6.2000 at 11.45 p.m.

During the investigation of the case, ASI Bishambar Lal reached Janta Hospital, Piau Maniari and after preparing inquest report Ex.PA/2, sent the dead body for post-mortem. He then reached the place of occurrence and prepared rough site plan Ex.PN. He also lifted blood stained earth from the spot vide recovery memo. Ex.PB. He recorded the statements of the witnesses. On 15.6.2000, Inspector Ram Dhan arrested the appellant and interrogated him. The appellant disclosed that he had kept concealed a knife in a room of his house. His disclosure statement Ex.PC was recorded. Pursuant to the same, the appellant led the police party and got recovered the knife Ex.P1, which was taken into possession vide recovery memo. Ex.PC/1.

The post-mortem on the dead body of Om Parkash was conducted by PW1 Dr. V.K. Gupta, alongwith Dr. A.K. Sharma, who found the following injuries :-

- "1. 2.5 x .5 cms. stab wound present over the right side of upper neck near the angle of the mandible. The margins of the wound were clean-cut. On further exploration it was going posteriorly downward through the neck into the chest cavity injuring the upper lobe of the lung. The underlying blood vessels and muscles of the neck were clean-cut. Right pleura and right lobe of the lung were clean-cut. The right pleural cavity was full of blood.
2. 1.5 x .5 cms. muscle deep incised wound at the back at T-10 level in the centre. Margins and ends were clean-cut clotted blood was present."

According to the opinion of the doctors, the cause of death was shock and haemorrhage as a result of injuries to the vital organs, which were ante-mortem and sufficient to cause death in ordinary course of nature. It was also opined that injuries on the deceased could be the result of knife Ex.P1. The time that elapsed between injury and death was within few minutes and between death and post-mortem was within thirty six hours.

Upon completion of the investigation, final report under Section 173 Cr.P.C. was prepared by SI Ramphal and presented in the Court. The case was, thereafter, committed to the Court of Sessions where the appellant was charged for the offence under Section 302 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1

Dr.V.K. Gupta, who deposed about conducting the post-mortem on 4.6.2000 at 11.00 a.m.

PW2 HC Suresh Kumar testified that on 3.6.2000, he alongwith ASI Bishambar Lal went to the spot in the area of Vijay Colony on G.T. Road, Piau Maniari and blood stained earth was lifted and taken into possession vide memo. Ex.PB. On 15.6.2000, he was present alongwith ASI Bishambar Lal at Piau Maniari. Inspector Ram Dhan also came there in a jeep. The house of the appellant was searched but he was not found there. On the same day, one Mohinder Singh produced the appellant at Police Post, Kundli who was arrested. The appellant suffered disclosure statement Ex.PC, pursuant to which, he got recovered knife Ex.P1, which was taken into possession vide memo. Ex.PC/1.

PW3 HC Balbir Singh deposed that on 3.6.2000, he had taken the dead body of Om Parkash to Civil Hospital, Sonapat for post-mortem and on the following day, the doctor handed over the clothes of the deceased in a sealed packet, which he further handed over to ASI Bishambar Lal.

PW4 Dr. Pawan Khatri of Janta Hospital, Piau Maniari, testified that on 3.6.2000 at 5.45 p.m. he had examined Om Parkash, who was brought to the Janta Hospital and found to be dead. Accordingly, he sent ruqa Ex.PH to the Police Station for information.

PW5 Constable Inderpal deposed that on the pointing

by Smt.Durgawati, he prepared scaled site plan Ex.PJ after visiting Vijay Colony.

PW6 Smt.Durgawati wife of deceased Om Parkash deposed about the manner in which the occurrence had taken place. In doing so, she reiterated what she had stated while making statement Ex.PK before ASI Bishambar Lal. According to her, the appellant had taken out a knife from his packet and started inflicting injuries on the person of her husband. He gave knife blow on the right side of the neck of her husband. Her husband had fallen down after receiving injuries and while being taken to the hospital, he succumbed to the injuries.

PW7 Ravinder Kumar, who was projected by the prosecution as an eye-witness, however, did not support the case of the prosecution as he stated that he had not seen the occurrence. After getting him declared hostile, learned Public Prosecutor cross-examined him but could not bring on record any incriminating material against the appellant.

PW8 Satinder, brother of deceased Om Parkash testified that when he had returned home at 7.00 p.m. on 3.6.2000, he came to know about the murder of his brother by the appellant. He testified that his brother had not met him in the morning nor he had disclosed about lending Rs.1,500/- to the appellant or the appellant likely to visit his house in the evening so as to repay the amount. As

this witness did not support the prosecution case, he was also got declared hostile at the request of the learned Public Prosecutor, who cross-examined him, thereafter.

PW9 ASI Bishambar Lal testified about recording statement Ex.PK of Smt. Durgawati, preparing inquest report Ex.PA/2, sending the dead body for post-mortem alongwith application Ex.PA/1, reaching the place of occurrence, preparing rough site plan Ex.PN, lifting blood stained earth from the spot and taking the same into possession vide recovery memo. Ex.PB and recording the statements of the prosecution witnesses. He also deposed about the arrest of the appellant on 15.6.2000 by Inspector Ram Dhan and the appellant suffering disclosure statement Ex.PC and subsequent thereto, knife Ex.P1 being recovered vide recovery memo. Ex.PC/1.

PW10 Raghuram Parshad testified that he identified the dead body of Om Parkash in the hospital. He also stated that he had come to know about the deceased lending an amount of Rs.1,500/- to the appellant and the latter promising to repay the amount on 3.6.2000.

PW11 Inspector Ram Dhan testified about the arrest of the appellant on 15.6.2000, making of disclosure statement Ex.PC and recovering knife Ex.P1 vide memo. Ex.PC/1.

When examined under Section 313 Cr.P.C., the appellant claimed that he was innocent and falsely implicated in the case.

However, he did not lead any defence evidence.

After hearing learned counsel for the parties and on going through the record, the trial Court believed the prosecution version and, accordingly, convicted and sentenced the appellant, as mentioned above.

We have heard Mr. Abhay Pal Singh Gill, Advocate appearing as Legal Aid Counsel for the appellant and Mr. Dhruv Dayal, Deputy Advocate General, Haryana and scanned the evidence brought on the record with their able assistance.

Learned counsel for the appellant has submitted that the testimony of PW6 Smt. Durgawati is not consistent qua the number of injuries, which have been inflicted by the appellant upon her husband Om Parkash. Rather the medical evidence contradicts her testimony when she had stated in her statement Ex.PK that only one injury was caused by the appellant but PW1 Dr. V.K. Gupta, who, alongwith Dr.A.K. Sharma had conducted post-mortem testified that there were two injuries on the dead body, one was on the right side of the neck while the other at the back at T-10 level in the centre. In order to bring her testimony in conformity with the medical evidence, she improved her version by testifying that not one but more than one injury was caused by the appellant. It has also been submitted that despite visiting the house of the appellant, the police could not effect his arrest upto 15.6.2000 and the recovery of the knife Ex.P1 at the

instance of the appellant and, that too, from the room of his house is nothing but a crude padding. It is also submitted that after the alleged recovery of the knife, it was shown to have been sent to the Forensic Science Laboratory vide RC No.64M dated 14.7.2000 as reflected in the affidavits Ex.PE of MHC Ramesh Chander and Ex.PF of Constable Baljit Singh whereas in the report Ex.PG of the Forensic Science Laboratory, it has been mentioned that the parcel was dispatched vide RC No.66 on 24.7.2000. It is also submitted that the appellant was not asked during his examination under Section 313 Cr.P.C. to explain about the two injuries noticed on the dead body. Rather, he was asked only about one injury, said to have been caused by him to the deceased. Learned counsel for the appellant has further submitted that from the facts and circumstances of the case, offence under Section 302 IPC is not made out as it was not a case of pre-meditation; the parties had come across each other by chance; there was altercation between the parties and the appellant did not intend to commit the murder of Om Parkash. Rather causing of only solitary blow by the appellant will make him liable for committing the offence punishable under Section 302 IPC.

Learned State counsel has vehemently opposed the appeal by submitting that the testimony of PW6 Smt. Durgawati is convincing and reliable to prove that it was the appellant, who had inflicted injuries upon her husband. Further, the appellant had motive to commit the crime as instead of returning the amount which he had

borrowed from her husband, he proclaimed that he would teach him a lesson for asking return of the borrowed amount. It is further submitted that the facts and circumstances of the case make out commission of offence under Section 302 IPC only.

Having heard learned counsel for the parties, this Court finds that while making statement Ex.PK, Smt. Durgawati had stated that the appellant had taken out knife Ex.P1 from the right side pocket of his pant and used the same in inflicting the injury on the right side of the neck of her husband, who fell down and blood started oozing in large quantity from his neck. During her examination-in-chief, PW6 Smt. Durgawati testified that when her husband asked the appellant to return the amount, he proclaimed that he would teach him a lesson. Simultaneously, the appellant took out a knife from his packet and started inflicting injuries on the person of her husband. She further stated that the appellant had given a knife blow on the right side of the neck of her husband and after receiving the injuries, her husband had fallen down and she started crying. During her cross-examination, the defence did not confront her with her statement Ex.PK wherein she had stated about the appellant causing one injury and, that too, with a knife on the right side of the neck of her husband. Even otherwise, the manner in which the occurrence had taken place in a short duration when Smt. Durgawati, alongwith her husband Om Parkash, was proceeding towards the house of the appellant so as to collect the amount which the appellant had

borrowed, the appellant may have given not only one but two injuries. On noticing her husband being fatally assaulted, Smt. Durgawati might have missed noticing the second blow caused by the appellant to her husband and, that too, on his back. PW1 Dr. V.K. Gupta, who, alongwith Dr. A.K. Sharma had conducted post-mortem on the dead body of Om Parkash had noticed two injuries on the dead body. Both were stab wounds. Margins were clean cut. Dr. V.K. Gupta testified about the injuries on the person of the deceased having been caused with knife Ex.P1 said to have been recovered from the appellant. His testimony qua infliction of both the injuries with knife Ex.P1 was also not challenged by the defence during his cross-examination. The only material brought on record during his cross-examination was about the width of the blade of knife which, according to Dr. V.K Gupta, was 1 inch (2.5 cm.). No question was asked that the injuries could not have been caused with knife Ex.P1. Under these circumstances, no benefit can be extended to the appellant on account of the fact that initially it was a case of inflicting of one injury only but at the trial of the case the prosecution claimed about the appellant causing more than one injury to the deceased.

It is the case of the prosecution that on 15.6.2000 the police had visited the house of the appellant but he was not found available. There is no material on the record that from 3.6.2000 to 15.6.2000, the police had visited the house of the appellant. Further, knife Ex.P1 was got recovered by the appellant on 15.6.2000 from the

room of his house, which had been wrapped in a paper and placed under the clothes in the corner. While making disclosure statement Ex.PC, the appellant had stated that nobody except him knew the place where the knife had been concealed by him. The recovery of knife, at the instance of the appellant further lends corroboration to the prosecution case.

Coming to the discrepancy regarding RC No.64M and its date, suffice it to say that such discrepancy may have crept in account of the typographical error in the affidavits Ex.PE of MHC Ramesh Chander and Ex.PF of Constable Baljit Singh. This fact is established from the details of the FIR as noted in the report Ex.PG of the Forensic Science Laboratory, which particulars are in conformity with the prosecution case.

As regards the examination of the appellant under Section 313 Cr.P.C. regarding number of injuries inflicted by him to Om Parkash, it may be noticed that he was specifically asked that he had given a knife blow on the right side of the neck of Om Parkash and after receiving injuries, Om Parkash had fallen down. Therefore, it cannot be said that the appellant was not asked about the two injuries which had been noticed by PW1 Dr. V.K. Gupta on the dead body at the time of post-mortem.

At the time of the occurrence, the appellant was carrying knife, stated to be used for cutting vegetables, which he had kept in

the right side pocket of his pant. The length of the iron blade was 5.2 inches while the wooden handle was 4.2 inches long. The width of the knife was 1 inch (2.5 cms.). The said knife was used by the appellant in causing two injuries to Om Parkash. On the day of the occurrence deceased Om Parkash was proceeding towards the house of the appellant, which was at a distance of only 100 yards to recover the amount which the appellant had borrowed from him. When the deceased asked him about the return of the borrowed amount, the appellant took out the knife and wielded the same in causing as many as two injuries to the deceased. Both the injuries were declared to be sufficient to cause death in the ordinary course of nature. Under these circumstances, it cannot be said that the appellant did not intend to commit the murder of Om Parkash. Rather, the assault was made by him with the intention to commit the murder of Om Parkash and, thus, no fault can be found with the findings arrived at by the trial Court in convicting and sentencing the appellant under Section 302 IPC.

The appeal is devoid of any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

November 26, 2015
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