

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRA-D No.792-DB of 2010

Date of Decision: 28.01.2016.

Pardeep Kumar

....Appellant.

VERSUS

State of Haryana

....Respondent.

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE SNEH PRASHAR**

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?*

Present: Mr. J.S. Lalli, Advocate for the appellant.

Mrs. Shubhra Singh, Additional Advocate General, Haryana.

SNEH PRASHAR, J.

Appellant-accused Pardeep Kumar was held guilty and was convicted for the commission of offence under Section 302 of the Indian Penal Code (for short, "I.P.C.") and was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of six months vide judgment of conviction and order on quantum of sentence dated 21.04.2010. It was ordered that the period of imprisonment already undergone by the convict during investigation and trial shall be set off from the substantive sentence.

The complaint which led to initiation of criminal proceedings

against the appellant-accused was lodged, unfortunate for him, by his own father Rameshwar resident of village Siwah, District Panipat. In his statement which formed the basis of First Information Report, complainant Rameshwar stated that on 22.08.2008 his younger son Pardeep had gone to the house of his (complainant's) niece Babli, who was married in village Patwarpur, District Rohtak. He borrowed an amount of Rs.20,000/- from her. Out of the said amount, he gave Rs.13,000/- to Vijay Financier whose office was situated at Sanoli Road. An amount of Rs.5000/- was given by Pardeep to his mother Angrejo and in that manner he was left with an amount of Rs.2000/-. He spent Rs.500/- on some household articles and the remaining amount of Rs.1500/- was forcibly snatched from him by Parveen, his elder brother which led to an exchange of hot words between the two. Parveen was addicted to liquor and other bad vices. After quarreling with his brother, Parveen went away from the house. He returned home after some time and being under the influence of liquor went to sleep in his room.

It was further stated by complainant Rameshwar that since due to ill health he was feeling suffocation, he put his cot in the courtyard for sleeping. At about 12'O clock in the midnight Pardeep came from outside and went to the room of Parveen. An axe was lying in that room. Pardeep picked up the axe and gave a blow with the same on the head of Parveen who cried out. Parveen sustained injury on his head which started bleeding profusely. Hearing the commotion, Angejo, his wife, also woke up and saw Pardeep running away with an axe in his hand. In the end, the complainant added that since Pardeep nourished a grievance against his

brother Parveen for snatching money from him, he inflicted injury on Parveen with the axe which led to death of Parveen at the spot.

The appellant-accused was arrested and during interrogation he made a disclosure statement in pursuance of which he got recovered the axe used by him in commission of crime which was bloodstained and was taken in possession by preparing a memo. On completion of investigation and other formalities the appellant was challaned and sent to the Court for trial. He was charge-sheeted for the commission of offence under Section 302 I.P.C., to which he pleaded not guilty and claimed trial.

As many as ten witnesses were examined by the prosecution to substantiate the charges, namely PW1 Rameshwar, PW2 Sub Inspector Mahabir Singh, PW3 EHC Jagbir Singh, PW4 Assistant Sub Inspector Dharampal, PW5 Constable Mahender Singh, PW6 Dr. Arvind Kumar, PW7 ASI Shri Krishan, PW8 ASI Shri Niwas, PW9 Ram Niwas, Retd. D.S.P. and PW10 Angrejo.

After closure of prosecution evidence, in his statement recorded under Section 313 of the Code of Criminal Procedure (for short, "Cr.P.C."), the appellant-accused denied the incriminating evidence of the prosecution put to him and pleaded false implication.

In his defence, the appellant examined five witnesses, namely DW1 Sat Narain Namberdar, DW2 Nanda, DW3 Dr. Pratap Malik, DW4 Dr. Satish Gupta and DW5 Dr. Jai Parkash.

Considering the arguments advanced by learned Public Prosecutor for the State, by learned counsel representing the appellant-

accused and analyzing the evidence available on record, learned trial Court held the appellant guilty and convicted and sentenced him as indicated above.

Feeling aggrieved, the convict (appellant) preferred the instant appeal.

Heard the submissions made by Mr. J.S. Lalli, learned counsel representing the appellant and Mrs. Shubhra Singh, learned Additional Advocate General, Haryana.

The star witness of the prosecution was PW1 Rameshwar (complainant), father of deceased Parveen and of appellant Pardeep, who eyewitnessed the occurrence. Reiterating on oath, the first information report lodged by him with the police, he gave a detailed and crystal clear account of the incident during which his sons Parveen (deceased) and Pardeep (appellant) had an altercation over a meager amount of Rs.1500/- as well as the occurrence during which Pardeep in the night intervening 22/23.08.2008 went to the room in which Parveen was sleeping and picking up an axe lying in the room gave a forceful blow with the same on the head of Parveen. He caused such grave injury that Parveen bled profusely and died at the spot. In his statement Ex.PA which formed the basis of First Information Report Ex.PB, PW1 Rameshwar stated that hearing commotion his wife Angrejo had also woken up and witnessed Pardeep running away from the spot with the axe. He reiterated the said fact in his deposition when he appeared as PW1. However, Angrejo, mother of the deceased and of the appellant, failed to corroborate the statement of her husband PW1

Rameshwar.

Learned counsel for the appellant argued with vehemence that according to the prosecution story there were only two eyewitnesses of the occurrence PW1 Rameshwar and PW10 Angrejo who are none other but parents of the deceased and the appellant. It is a hard fact that for a mother all her children are equal. Had appellant Pardeep committed murder of his brother Parveen, Angrejo would not have spared him and would have deposed against him. However, PW10 Angrejo, when examined by the prosecution, altogether denied the story presented by her husband PW1 Rameshwar. On request of Public Prosecutor that she was suppressing the truth, he was allowed to cross examine her but to no better result. Nothing incriminating against the appellant or favourable to the prosecution could be extracted in her cross-examination. She firmly stated that on the fateful day when she woke up in the morning, she found her son Parveen lying dead on the cot. She expressed complete ignorance as to how and under what circumstances Parveen died. According to her, Rameshwar (PW1) was sleeping in another room and was not sleeping in the verandah.

Learned counsel asserted that dispensed with the statement of PW10 Angrejo, the prosecution was left to rely on the solitary statement of PW1 Rameshwar. He though is father of the parties but is not a reliable witness. He was an old man having cataract in his right eye as was proved by DW4 Dr. Satish Gupta. He was also suffering from Chronic Obstructive Airway Disease with hypertension and anxiety neurosis and was under treatment of DW3 Dr. Pratap Malik of Malik Hospital, Panipat. DW3

proved the prescription slips Ex.D1 to Ex.D53 issued in this regard. DW5 Dr. Jai Parkash, S.M.O., B.S.S. General Hospital, Panipat testified that he had prescribed treatment to Rameshwar who was suffering from C.O.P.D. (Chronic Obstructive Pulmonary Disease) i.e. respiratory disease. From the testimony of the doctors, it was apparent that PW1 Rameshwar was suffering from multiple ailments and because of cataract in his right eye, his eyesight was not proper and was facing visual difficulty. The deposition of such a person, whose mental and physical condition was so frail, that he had witnessed the occurrence inside the room during midnight when as per his statement he was sleeping in the courtyard, cannot be relied upon and made basis for conviction.

Learned counsel further contended that from the statement of PW1 Rameshwar it is quite evident that he had not seen the appellant inflicting the fatal injury on the deceased. PW1 deposed that hearing the noise he went to the room in which Parveen was sleeping and saw that there was injury on the head of Parveen. His wife also woke up hearing the commotion and they both saw appellant Pardeep fleeing away from the spot alongwith an axe. Meaning thereby that he did not see the appellant inflicting injury on the deceased with the axe.

Last but not the least, learned counsel for the appellant argued that there was a long delay in lodging of the First Information Report with the police. The murder admittedly had taken place at around 12'O clock in the midnight of 22/23.08.2008. Father and mother of the deceased were eyewitnesses to the occurrence, yet till morning no information about the

murder was sent to the police by either of them. PW9 Retd. D.S.P. Ram Niwas, the Investigation Officer, testified that he received information regarding the occurrence from the Control Room at 8:30 a.m. on 23.08.2008. He reached the spot at around 9:00 a.m. but as per his own version recorded the statement of Rameshwar after about 3-1/2 hours of his reaching the spot. The dead body was sent for autopsy at 2:00 p.m. Because of the delay in lodging of the First Information Report by the complainant and the delay in conducting proceedings by the police, it is so apparent that a false and coloured version was presented in the First Information Report to implicate the appellant who as stated by DW2 Nanda, during the intervening night of 22/23.08.2008 was with him in his house from 9:00 p.m. on 22.08.2008 upto 4:00 a.m. of the following day.

Indeed, PW1 Rameshwar, father of the deceased, is the only eyewitness on whom the prosecution relies upon to derive direct evidence for proving the allegation that appellant Pardeep Kumar had given the fatal blow with an axe on the head of Parveen which caused his death at the spot. PW1 Rameshwar testified in the First Information Report lodged by him as well as in his deposition made in the Court that his wife Angrejo (PW10) had also woken up hearing commotion and alongwith him had seen the appellant fleeing from the spot with an axe in his hand. It was also deposed by him that on 22.08.2008 his son Pardeep had brought Rs.20,000/- from his niece Babli, resident of village Patwarpur, District Rohtak. Out of the said amount, Rs.13,000/- were given to one financier and Rs.5000/- were handed over to his wife Angrejo while Rs.2000/- were kept by Pardeep

(appellant) with him. Rs.5000/- were spent on bringing household articles and another Rs.5000/- were snatched by Parveen from Pardeep. (There appears to be either a clerical mistake in deposition of the witness or a typographical mistake while recording the statement as the amount spent on household articles was Rs.500/- and the amount snatched by the deceased from the appellant was stated as Rs.1500/- in the First Information Report Ex.PB). PW1 Rameshwar further stated that when Parveen snatched money from Pardeep, a minor altercation took place between them. Parveen went out of the house and after sometime he returned home drunk and went to sleep in his room. Since he usually remains ill, he slept in the courtyard of the house. At about 12'O clock in the night, Pardeep (appellant) came from outside and went into the room of Parveen and picking up an axe he gave a blow with the same on the head of Parveen. On shouts raised by Parveen, he woke up and went to the room and saw an injury on his head which was bleeding. His wife also woke up and they both saw Pardeep (appellant) fleeing from the spot with the axe.

PW10 Angrejo may not have corroborated the statement of PW1 Rameshwar with regard to the occurrence that took place in the midnight but it is important to note that she admitted the occurrence during which appellant Pardeep had an altercation with his brother Parveen (deceased) on 22.08.2008. She admitted that an altercation had ensued between Parveen and Pardeep and that Parveen was drunk when he went to sleep in his room. In that manner, the occurrence which PW1 Rameshwar said to be the motive for appellant Pardeep committing murder of his

brother Parveen, was not denied by PW10 Angrejo.

In addition to the above, PW10 Angrejo without any reference volunteered to state her husband Rameshwar was sleeping in another room and not in the verandah. It shows that the occurrence that took place in the night was in her knowledge but she was only trying to intentionally conceal the same. In said state of facts there appears no reason to disbelieve the consistent and categorical version of PW1 Rameshwar who was father of not only the deceased but also of the appellant. He had lodged report with the police and as noticed above he consistently reiterated the entire occurrence during his deposition in the Court.

Neither DW3 Dr. Pardeep Malik, who stated that Rameshwar was suffering from Chronic Obstructive Airway Disease with hypertension and anxiety neurosis nor DW5 Dr. Jai Parkash, who deposed that he had prescribed treatment to Rameshwar for his asthmatic ailment, deposed that PW1 Rameshwar was suffering from any mental or physical disorder or any major ailment. DW3 Dr. Pratap Malik stated that Rameshwar was fully oriented to time and place etc. and he was not suffering from any major problem. It is also in his statement that in the month of August, 2008 Rameshwar did not visit him. Likewise, the statement of DW5 Dr. Jai Parkash was that he had prescribed treatment to Rameshwar on 23.04.2009 whereas the occurrence in the instant case had taken place much earlier i.e. during the night intervening 22/23.08.2008.

As regards, eyesight of PW1 Rameshwar, DW4 Dr. Satish Gupta stated that vide OPD slip No.24632 dated 22.04.2009 Mark-DA he

had diagnosed Rameshwar as having Mature Senile Cataract in right eye and 'pseudophakia' in left eye. Firstly, DW4 had examined Rameshwar almost after eight months of the occurrence. Secondly, he did not state that PW1 Rameshwar had any visual problem in the left eye. In his cross-examination, he explained that in 'pseudophakia' the natural lence is replaced by artificial lence and vision can change from nil to normal. It means that PW1 Rameshwar had normal vision in his left eye. During his deposition also, PW1 Rameshwar when questioned about his eyesight, admitted that he was having cataract in his right eye because of which he was having visual difficulty in the said eye but he firmly volunteered to state that vision in his left eye is proper.

It had also come in the statement of PW1 Rameshwar that there is electricity in his house and during the night the lights inside and outside the house remain on. He was not asked whether the electric bulb of the room in which deceased Parveen was sleeping was on or not, but from his statement, it is proved that there was sufficient light inside and outside the house in which as claimed by him he was able to witness the occurrence. In his first breath, PW1 Rameshwar stated that he had seen Pardeep (appellant) inflicting axe blow on Parveen (deceased). Even though he stated in his next breath that he reached the spot hearing the noise, yet the fact remains that he had seen appellant Pardeep coming from outside and going to the room where his son Parveen was sleeping and as he heard the noise he went and saw that Pardeep had given an axe blow on the head of Parveen who had a grave injury on his head which was badly bleeding and in his

presence appellant Pardeep went out of the room with the axe and fled away. Seen from every angle, the deposition of PW1 Rameshwar conveys direct, consistent and cogent evidence which is sufficient to prove that appellant Pardeep killed his brother Parveen with an axe.

So far as the argument raised by learned counsel for the appellant that there was a delay in lodging of the First Information Report is concerned, that too is completely devoid of merit. It is a settled proposition of law that delay in lodging of the First Information Report is not always fatal to the prosecution case. The case in hand has strange and peculiar facts. An altercation over meager amount of Rs.1500/- took place between the two brothers (appellant and the deceased) and during the night one brother (appellant Pardeep) murdered the other brother (deceased Parveen) and the occurrence was witnessed by their father Rameshwar. Neither during cross-examination of PW1 Rameshwar it was suggested nor any evidence was produced by the appellant to prove that his father PW1 Rameshwar or his deceased brother Parveen had any other major dispute because of which they were inimical to each other. PW1 Rameshwar could not have concocted a story regarding murder of his son implicating falsely his own other son. He would be the last person to implicate his son for commission of murder of his other son and let the real culprit go scotfree. Such being the circumstances, delay, if any, had no adverse bearing on the merits of the case.

In addition to the eyewitness account of the occurrence of murder given by PW1 Rameshwar PW9 Retd. D.S.P. Ram Niwas, who

conducted investigation, testified that he arrested the accused-appellant on the same day i.e. 23.08.2008 and during interrogation the appellant made disclosure statement Ex.PH and in pursuance of the said statement the appellant led the police party to the roof of his house and got recovered the axe used by him in commission of crime. The disclosure statement made by the appellant to the extent of recovery of axe is admissible in evidence under Section 27 of the Evidence Act. The axe was sent to Forensic Science Laboratory for examination and according to its report Ex.PX the axe (Kulhari) was stained with human blood.

The appellant tried to take defence of self elibi by examining DW2 Nanda but the testimony of the said witness is of no help to him. He did not state the date on which the appellant was with him from 9:00 p.m. to 4:00 a.m. of the following day. He could also not state any substantive and believable reason for which the appellant had remained with him at his house.

Consequent to the above discussion, the conclusion irresistible is that the prosecution had succeeded in proving guilt of the accused-appellant and there is no ground for intervention in the judgment recorded by learned trial Court convicting the appellant under Section 302 I.P.C. The order on sentence also calls for no intervention. Accordingly, the appeal filed by the appellant is dismissed.

(HEMANT GUPTA)
JUDGE

(SNEH PRASHAR)
JUDGE

28.01.2016
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