

In the High Court of Punjab & Haryana at Chandigarh.

Date of decision: 23.08.2017
CRA-D-339-DB-2008

Sohan Pal @ Sonu

..... Appellant.

VS

State of Haryana

..... Respondent.

(2)

CRA-D-352-DB-2008

SAMARVEER @ MONU AND ORS.

..... Appellants.

VS.

STATE OF HARYANA

..... Respondent.

(3)

CRA-D-382-DB-2008

BITTU

..... Appellant.

VS.

STATE OF HARYANA

..... Respondent.

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Sanjay Vashisht, Advocate
for the appellant in CRA-D-339-DB-2008.

Mr. Ram Avtar Sheoran, Advocate
for the appellants in CRA-D-352-DB-2008.

Mr. Sunil Sihag, Advocate
for the appellant in CRA-D-382-DB-2008.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

MAHABIR SINGH SINDHU, J.

This judgment shall dispose of aforesaid three appeals which

are arising out of the common impugned judgment of conviction dated 17.04.2008 and order of sentence dated 22.04.2008, vide which the appellants were convicted under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life and to pay a fine of ₹20,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two years. Sohan Pal @ Sonu appellant was also convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months. The substantive sentences awarded to Sohan Pal @ Sonu appellant were ordered to run concurrently.

2. Brief facts of the case are that on the statement (Ex. PA) of Deepak @ Rinku, S/o Suresh, Caste Mahajan, r/o Patram Gate, Bhiwani, an FIR No. 478 dated 25.10.2006 under Sections 302/34 IPC and 25/54/59 of the Arms Act, was registered at Police Station Sadar, Bhiwani. Statement reads as under:-

“Stated that I am resident of above address. We have a mill in the name of Bhiwani Oil Mill at Loharu Road near Devsar. We are two brothers. I am the elder and younger is Shiv Nandan. My brother Shiv Nandan and father, as a daily routine use to go to look after the mill in the night. During the night, as our chowkidar Raju was on leave, therefore I also went to look after the mill in the night.

Due to the absence of chowkidar, my brother Shiv Nandan slept in the room near the gate. I alongwith my father was looking after the goods in the mill. Tonight at about 12:00(mid night) our driver Kuldeep s/o Chander Bhan, caste Dhanak, village Davsar and Conductor

Sudhan Rajput r/o Devsar came from Ambala in TATA 407 after taking oil and sounded horn to open the main gate, then I and my father came near the gate and my brother Shiv Nandan opened the gate. We saw Raj Kumar @ Dhillu s/o Rampal and Dinesh s/o Satpal caste Brahmins r/o Devsar were beating the driver. And on our seeing, Dhillu fired a shot upon my brother Shiv Nandan by the pistol which he was having in his hand and he fell down after receiving the shot. Raj Kumar @ Dhillu and Dinesh were seen, in the light of electricity, going toward Bhiwani side upto distance. It is possible that some more boys were also with them and they might have hidden themselves outside in dark. Thereafter, we took our brother from the gate to inside the factory. Then my brother told that Dhillu fired a shot at him. The reason for enmity is that few days back both these boys had taken flour from our mill and they quarreled with my brother Shiv Nandan on payment of money. They threatened my brother while going that they will see him whenever they get a chance. We made a phone call to our home. Upon this, my uncle Vinod and the other family members reached there. After arranging the vehicle we brought my brother Shiv Nandan at GH Bhiwani for treatment. After giving first aid treatment, doctor referred him to PGIMS Rohtak being a serious case and we brought my brother to PGIMS Rohtak. The doctor declared my brother as dead. Dhillu and Dinesh with common intention had killed my brother after firing a shot. It is possible that today they might have come with an intention to snatch money. I have got recorded my statement, heard and the same is correct. Legal action be taken.”

3. It is necessary to mention here that initially the FIR was registered against Raj Kumar @ Dhillu son of Rampal and Dinesh son of Satpal and others.

4. Police prepared the inquest report (Ex. PQ/2) and the dead body was sent for post-mortem examination.

5. SI/SHO Wazir Singh (PW16) recorded the statement of Suresh (PW2) under Section 161 Cr.P.C. and, thereafter, supplementary statement was recorded on 27.10.2006 and he told that he has inquired about the death of his son Shiv Nandan at his own level and found that Raj Kumar @ Dhillu and Dinesh alongwith accused Samarveer, Koki, Bittu and Sohanpal @ Sonu were also present in the occurrence and all these accused went on the motorcycle of Koki and Bittu from the spot after the incident. The only purpose behind this incident was to loot the money from the vehicle. The vehicle of their mill used to bring oil and supply the same to outside and brought sufficient money and in this occurrence the informer may be the employee of their mill.

6. On 28.10.2006, investigation was handed over to CIA Satff, Bhiwani. Inspector Ram Avtar (PW18) investigated the matter and arrested accused Sohan Pal @ Sonu, Bittu, Dinesh, Samarveer @ Monu and Vijay @ Koki and also took into possession Motorcycle bearing No. HR-16B/4225 which was parked there.

7. On 29.10.2016, Inspector Ram Avtar (PW18) interrogated the aforesaid accused. Accused Samarveer @ Monu suffered a disclosure statement Ex.PG, accused Bittu suffered a disclosure statement Ex. PH, accused Dinesh suffered a disclosure statement Ex. PJ, accused Sohanpal @ Sonu suffered a disclosure statement Ex.PK in the presence of ASI Partap Singh and ASI Krishan Chand and they also disclosed regarding aforesaid incident.

8. S.I. Hawa Singh (PW15), arrested accused Raj Kumar from

Devsar Dham at about 7:00 p.m., on 25.10.2006. On 30.10.2006 during interrogation, Raj Kumar suffered disclosure statement Ex. PKK in the presence of SI Ramphal. On 01.11.2006, he also suffered a disclosure statement Ex. PLL in the presence of SI Ramphal and HC Virender Kumar.

9. On the same day, accused Sohanpal @ Sonu made a disclosure statement Ex. PMM and in pursuance thereof, he got recovered a pistol .12 bore (Ex. P29), accused Bittu made a disclosure statement Ex. PNN and got recovered a *danda* from his Gym, accused Dinesh made a disclosure statement Ex. POO and got recovered an iron rod Ex. P30 and accused Samarveer @ Monu made a disclosure statement Ex. PP in the presence of SI Ramphal and HC Virender and got recovered a bat Ex. P31.

10. On 02.11.2006, accused Sohanpal @ Sonu made disclosure statement Ex. PVV before Inspector Ram Avtar to the effect that he was having a country made Sixer; accused Samarveer made disclosure statement Ex. PWW regarding having a pistol .315 bore and one live cartridge; accused Bittu made disclosure statement Ex. PXX to the effect that he was having a pistol of .315 bore with one live cartridge, in the presence of EHC Partap Singh and EHC Dilbagh Singh.

11. On 03.11.2006, accused Vijay @ Koki made disclosure statement Ex. PL, regarding concealment of axe and motorcycle used in the crime, before Inspector Ram Avtar and in the presence of ASI Partap Singh and H.C. Virender. Thereafter, he got recovered the axe which was taken into possession vide recovery memo. Ex. P34 and also got recovered motorcycle bearing HR-16C-1087.

12. After completion of investigation police submitted the report under Section 173 Cr.P.C. against seven accused, namely, Sohan Pal @

Sonu, Bittu, Samarveer @ Monu, Dinesh, Vijay @ Koki, Vijender and Raj Kumar @ Dhillu.

13. Dr. Ved Pal (PW8) had conducted the post-mortem examination of the dead body of Shiv Nandan and the cause of death was reported to be hemorrhage and shock due to firearm injury to the vital organ which is ante mortem in nature and sufficient to cause death in normal course of life.

14. Dr. Naresh Kumar Garg (PW9), who initially medico legally examined Shiv Nandan on 25.10.2006 had found the following injury on his person:-

“Multiple small size holes with lacerated wounds of size 04X03 cms on abdomen and chest with omentum coming out on left side. Patient was advised x-ray. Injury was kept under observation. Probable duration of injury was within six hours and weapon used was blunt”

15. Ex. PR is the copy of MLR. Ex. PR/01 is the diagram showing the seat of injury. This witness has also medico-legally examined Kuldeep son of Chander Bhan and found following injury on his person:-

“Lacerated wound of size 04X01X01 cm on skull on frontal hair line. Patient was advised x-ray. Probable duration of injury was within 06 hours and weapon used was blunt”

16. Carbon copy of MLR is Ex. PS and Ex. PS/01 is the diagram showing the seat of injury. Ruqa Ex. PT with regard to arrival of injured Shiv Nandan and Ruqa Ex. PU regarding arrival of the Kuldeep were also sent to the police by the doctor. Injured Kuldeep was declared unfit for making statement at 1:32 am on 25.10.2006. Ex. PX/01 was endorsement made by doctor and declared injured Shiv Nandan also unfit to make

statement.

17. After taking into consideration the material available on record, learned trial Court convicted and sentenced the appellants while passing the impugned judgment.

18. It is argued by learned counsel for the appellants that there is no material available on record to connect the appellants with the commission of alleged offence charged against them; and all the material witnesses i.e Deepak @ Rinku (PW1), Suresh (PW2), Kuldeep (PW3) and Sudhan (PW4) have not supported the prosecution case and they have even specifically stated during their cross-examination that the appellants were not the assailants in this case. It is also argued that main accused Raj Kumar @ Dhillu as well as his co-accused Vijender stand acquitted by learned trial Court and no appeal has been filed against their acquittal either by the State or by the complainant. Consequently, on the same set of evidence, the present appellants also deserve the acquittal.

19. Learned trial Court has convicted the appellants only on the basis of their confessional statements and even the recoveries were not proved in view of the absence of any independent witness to the disclosure statements.

20. It is further argued that neither any motive nor allegation of loot of money is proved and lastly, it is argued that this was a blind murder and the appellants have been falsely implicated.

21. On the other hand, learned State counsel has argued that the case of the prosecution is duly proved and does not require any interference by this Court and all the three appeals deserve to be dismissed.

22. Heard learned counsel for the parties and perused the record.

23. Deepak @ Rinku (PW1), who is the eye witness and complainant has not supported the prosecution case; rather he deposed in his examination-in-chief that the persons present in the Court are not known to him and they had not fired any shot at his brother. He has specifically admitted during cross-examination that accused Raj Kumar and Dinesh were not known to him earlier.

24. Similarly, Suresh (PW2), father of the deceased, Kuldeep (PW3), who was the driver of the canter and Sudhan (PW4), who was the conductor also did not support the prosecution case.

25. ASI Partap Singh (PW5), CIA-II, Bhiwani, is the witness to the recovery memo as well as disclosure statements. This witness has specifically stated that no public witness was joined in the investigation.

26. Head Constable Dalip Singh (PW13), deposed regarding disclosure statement Ex. PBB made by Raj Kumar on 26.10.2006.

27. SI Hawa Singh (PW15), deposed about recording of the statement (Ex. PA) of Deepak @ Rinku, on the basis of which FIR (Ex.PA/1) was registered. Thereafter, he prepared the inquest report (Ex. PQ/02). He arrested Raj Kumar @ Dhillu on 25.10.2006.

28. Wazir Singh (PW16), who was posted as Inspector/SHO, Police Station Sadar, Bhiwani, stated that on receiving information regarding this incident, he alongwith other police officials reached General Hospital, Bhiwani and then the place of occurrence. Rough site plan of the place of occurrence Ex. PDD was prepared and statements of witnesses were recorded under Section 161 Cr. P.C.. On 28.10.2006, investigation was handed over to CIA Staff.

29. Inspector Ramphal (PW17), deposed regarding arrest and

recoveries which were effected from four accused, namely, Bittu, Dinesh, Samarveer and Sohanpal. All the accused also pointed out the place of occurrence.

30. Inspector Ram Avtar (PW18), deposed that on 28.10.2006, investigation of the case was entrusted to him. He arrested the five accused and they suffered disclosure statements as discussed above and got recovered vehicle and arms used in the crime.

31. Statements of accused under Section 313 Cr. P.C. were recorded in which accused Sohanpal @ Sonu, Dinesh and Vijay @ Koki taken the plea that they are innocent and stated that Inspector, Rajender Singh (Retd.), hails from their village and at his instance Inspector Ram Avtar brought them and other co-accused from village and implicated them falsely in this case. Nothing was recovered from them. They did not make any disclosure statement; accused Bittu, Samarveer @ Monu and Vijender have taken the plea that they were innocent and were falsely implicated in this case. Further stated that they had not suffered any disclosure statement and nothing was recovered from them and they did not point out the place of occurrence. The disclosure statements and recoveries were fabricated by the police. Accused Raj Kumar has also taken the plea that he is innocent. He has not committed any offence. He was falsely implicated in this case. He had not suffered any disclosure statement. The disclosure statement in question was fabricated by the police with a view to create false evidence against him. He had not threatened the deceased and had not raised any demand of money, mobile phone, flour, etc. from him.

32. There is no dispute that all the material witnesses including eye witnesses i.e. Deepak @ Rinku (PW1), Suresh (PW2), Kuldeep (PW3) and

Sudhan (PW4) have not supported the prosecution case and even the FSL report (Ex.PN) also does not prove that the firearm injury to the deceased was caused by the country made pistol recovered from Sohanpal by the police in this case. Even the prosecution has not proved that any money was looted from the driver or Shiv Nandan (since deceased) or any other family member.

33. In view of the above, supplementary statement made by Suresh, loses its significance. If we go by the initial version of the prosecution then it was Raj Kumar and Dinesh, who were the assailants; but Raj Kumar has been acquitted and no appeal has been filed by the State against him for the reasons best known to it. Although, that cannot be the sole ground for acquittal of the present appellants; but the fact remains that their presence have not been proved at the time of occurrence which resulted into the death of Shiv Nandan in the intervening night of 24/25-10-2006. Even motive is not proved in this case. Consequently, this Court is not in agreement with the conclusion arrived at by the learned trial Court and thus the impugned judgment of conviction and order of sentence are set aside being unsustainable. All the three appeals are allowed. Appellants are acquitted of the charges levelled against them. The appellants are on bail, their bail and surety bonds stand discharged.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

23.08.2017

smriti

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No