

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on : 16.11.2018
Date of Decision: 29.11.2018

1. CRA No. 204-DB of 2003 (O&M)

Mohan and another Appellants

versus

State of Haryana ... Respondent

2. CRA No. 77-DBA of 2004 (O&M)

State of Haryana ... Appellant

versus

Somvir ... Respondent

and

3. CRR No. 642 of 2004 (O&M)

Om Parkash ... Petitioner

versus

State of Haryana and others ... Respondents

Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu

Present Mr. Vinod Ghai, Senior Advocate with
Mr. Madhur Singh, Advocate, for the appellants
in CRA No. 204-DB of 2003.

Mr. Jitender Nara, Advocate, for the petitioner
in CRR No. 642 of 2004.

Mr. Vishal Garg, Additional Advocate General, Haryana.

Rajiv Sharma, J.

This judgment will dispose of three cases bearing CRA No. 204-DB of 2003, CRA No. 77-DBA of 2004 and CRR No. 642 of 2004, as common questions of law and facts are involved therein.

CRA No. 204-DB of 2003 has been filed by appellants -Mohan and Sukhbir against their conviction.

The State has come in appeal bearing CRA No. 77-DBA of 2004 against the acquittal of Somvir @ Som.

Criminal Revision No. 642 of 2004 has also been filed by Om Parkash, father of deceased Sandeep against the acquittal of Somvir @ Som.

The aforesaid appeals and revision are instituted against the judgment dated 17.2.2003 rendered by Additional Sessions Judge (Adhoc), Jhajjar in Session case No. 86/ 19.5.1999/12.12.2002, whereby appellants Mohan and Sukhbir @ Babbal along with Somvir @ Som were charged and tried for the offence punishable under Section 302/34 IPC. The appellants were convicted and sentenced to undergo rigorous imprisonment for life and to pay fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment of 6 months. Somvir @ Som was acquitted.

The case of the prosecution in a nutshell is that on 25.1.1999, Gomi Ram complainant was going to his fields known as Dabrawala at about 10.00 a.m. At that time, he met Rajender his neighbour. He was also having fields near the fields of complainant Gomi Ram. They proceeded towards their fields. After about 15 minutes, when they crossed the *kacha path* leading towards Badli, they heard the noise '*bachao bachao*'. They reached the spot. They saw Somvir and Sukhbir sons of Jage Ram and Mohan son of Kalmat armed with knives giving knife blows to Sandeep @ Tilu. The complainant and Rajender raised alarm. The assailants escaped from the spot on the scooter. FIR was registered. The post mortem was conducted. The challan was put up after completion of all the codal formalities.

The prosecution examined a number of witnesses. The statements of the accused were also recorded under Section 313 Cr.P.C. According to them, they were falsely implicated. Somvir @ Som was acquitted, while the appellants were convicted and sentenced, as has been referred hereinabove.

Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove its case. Learned counsel for the State supported the judgment of the learned Additional Sessions Judge dated 17.2.2003 as far as the conviction of appellants Mohan and Sukhbir, is concerned. However, learned counsel appearing on behalf of the State has vehemently argued that accused Somvir @ Som has wrongly been acquitted.

We have heard learned counsel for the parties and gone through the judgment carefully.

PW1 Gomi Ram complainant testified that he and PW4 Rajender were going to their fields. It was on 25.1.1999 at about 10.00 a.m. When they reached near the temple after crossing the road, they heard the noise of '*bachao bachao*'. They reached the spot. They saw Somvir, Sukbir and Mohan giving knife blows to Sandeep. They escaped towards Badli road on a scooter. The complainant and Rajender tried to revive Sandeep, however, he did not give any response. Rajender remained on the spot. PW1 Gomi Ram went to village to inform the parents of Sandeep. The vehicle was arranged and Sandeep was taken to hospital. The doctor declared him dead. FIR, Ex.PC, was recorded by Baljeet Singh MHC.

PW2 Constable Jagbir Singh and PW3 Hari Singh are the formal witnesses. PW4 Rajender Singh has also corroborated the statement of PW1 Gomi Ram. PW5 Constable Hemant Kumar and PW7 Baljeet Singh have proved the affidavits to the effect that during the period the case property remained with them, the seals remained intact.

PW8 Dr. Bharat Singh has conducted the post mortem examination at 3.45 PM on 25.1.1999. According to him, the death was caused due to bleeding and shock resulting from injuries on the chest and abdomen. The injuries were ante mortem in nature and sufficient to cause death. He proved post mortem report, Ex.PK. The recoveries were effected including the knives, Ex.P9, Ex.P10 and Ex. P11. Scooter was also recovered.

Learned counsel appearing for the appellants has vehemently argued that no motive has been attributed to the appellants. It is settled law that motive is immaterial, if there is clinching evidence against the accused. PW1 Gomi Ram and PW4 Rajender have seen the appellants inflicting knife injuries to Sandeep. They cannot be treated as chance witnesses. The Court can also take judicial notice of the fact that the farmers go to their fields in the morning time. As per post-mortem report, ante-mortem injuries were sufficient to cause death. Recoveries of weapon of offence were made on the basis of disclosure statements made by the appellants. Statements of PW1 Gomi Ram and PW4 Rajender Singh are duly corroborated by the medical evidence.

The motive attributed by the prosecution to the appellants is that 2-3 days prior to the incident, Sukhbir and Mohan had quarreled with Sandeep in the marriage party at Bahadurgarh.

As far as Somvir @ Som is concerned, the blood on his clothes was found disintegrated. The knife, got recovered by Somvir @ Som, was not bearing any human blood. The knife recovered from Somvir @ Som was a rusted piece of iron. The same could not be used for stabbing. The prosecution has failed to prove the case against Somvir @ Som.

The prosecution has proved the case against the appellants beyond reasonable doubt. Accordingly, there is no merit in the appeal filed by the appellants. The same is hereby dismissed.

In view of the above, the appeal filed by the State and the revision filed by Om Parkash against the acquittal of accused Somvir @ Som are also dismissed.

(Rajiv Sharma)
Judge

29.11.2018
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No