

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

Reserved on : 26.11.2018

Date of decision : 14.12.2018

CRA-D No. 466-DB of 2004 (O&M)

Ajit Kumar

.... Appellant

versus

State of Haryana

... Respondent

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

Present Mr. Karan Garg, Advocate for
Mr. Rahul Deswal, Advocate, for the appellant.

Ms. Shubhra Singh, Additional Advocate General, Haryana.

Rajiv Sharma, J.

This appeal is instituted against the judgment dated 13.4.2004 and order dated 15.4.2004 rendered by Additional Sessions Judge (Adhoc), Faridabad, in Sessions Case No. 147 of 2002, whereby appellant Ajit Kumar was convicted and sentenced under Sections 302 and 406 IPC and Section 25 of the Arms Act.

The appellant and accused Babloo were charged with and tried for offence under Sections 302, 460, 120-B IPC and 25 of the Arms Act. Appellant Ajit Kumar was acquitted in respect of charge under Section 120-B IPC. Accused Babloo was acquitted for all the charges.

The appellant was sentenced to undergo rigorous imprisonment for life and to pay fine of ₹ 10,000/- for offence under Section 302 IPC and in default of payment of fine, to further undergo rigorous imprisonment for one year. He was further sentenced to undergo rigorous imprisonment for

seven years and to pay fine of ₹ 5,000/- for offence under Section 460 IPC and in default of payment of fine, to further undergo rigorous imprisonment for six months. He was also convicted and sentenced to undergo rigorous imprisonment for three years and to pay fine of ₹ 1,000/- for offence under Section 25 of the Arms Act and in default of payment of fine, to further undergo rigorous imprisonment for three months. All the sentences were ordered to run concurrently.

The case of the prosecution in a nutshell is that complainant Shiv Kumar had three brothers. Vinod Kumar was his elder brother. On 20.7.2002 at about 8.00 P.M., complainant went to his residence situated at Uggarsain Chowk, Ballabgarh. The complainant and his brother Vinod Kumar used to sit in the shop. At about 9.45 P.M., Rajat Gupta, nephew of the complainant, rang him and told that his father Vinod Kumar was bleeding and he should reach the spot immediately. He rushed to the shop. He saw that Vinod Kumar was lying on the floor in a pool of blood. There were cut marks on his neck and other parts of the body. He with the help of neighbours took him to Escorts Hospital, Faridabad. Many persons had come to the shop. His younger brother Sunil Gupta accompanied Vinod Kumar to the hospital. Vinod Kumar was declared dead. Shiv Kumar complainant received this information on phone. He made the statement with the police on the basis of which FIR was registered. Recoveries were made. Post-mortem examination was conducted by PW1 Dr. S. K. Mittal. The investigation was completed. The challan was put up after completion of all the codal formalities.

The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section

313 Cr.P.C. They have denied the case of the prosecution. Accused Babloo was acquitted. The appellant was convicted and sentenced, as noticed above. Hence, this appeal.

Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case. He supported the judgment and order of the learned Court below.

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

As per *ruqa*, Ex.PC/PK, it is stated by complainant Shiv Kumar that he came back at about 8.00 P.M. to his residence from the shop. His elder brother Vinod Kumar used to look after the accounts. He went to his house on 20.7.2002 after finishing his work. At about 9.40 P.M., he got telephonic message from his nephew Rajat Gupta to the effect that his father was bleeding. He proceeded from the house. Neighbours also reached the spot. He saw his brother was lying on the floor in the pool of blood. He along with Ramesh and Madan Lal lifted him. He raised alarm and asked the neighbours to bring the police. The police reached the spot. He later on came to know about the death of his brother Vinod Kumar. The murder was committed by some unknown person.

PW1- Dr. S. K. Mittal has conducted the post-mortem examination on the dead-body of Vinod Kumar. He noticed the following injuries on the dead-body:-

- “1. Multiple incised wound over left side of face and neck epiglottis cut was present, major blood vessels

of both sides were cut and the muscle of the neck was also cut.

2. Incised wound of the size 3x 1 cm on the upper part of left side of chest. Clotted blood was present. Dissection showed there was blood on both sides of lungs, which were lacerated and there was blood in the plueral cavity.
3. Incised wound 5x 2cm, muscle deep and clotted blood was present on right fore-arm. The muscle had been cut.
4. Multiple Incised wound of simple nature on both hands and upper limbs.”

According to him, the cause of death was shock and haemorrhage as a result of multiple injuries, which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. He proved post-mortem report. The duration between injuries and death could be a few minutes to several minutes and the duration between death and post-mortem was 24 hours.

PW3 Shiv Kumar is the material witness. He testified that on 20.7.2002 at about 8.00 P.M. after completion of his work, he came back to his house from his shop. Shop is situated behind the residence. He and Vinod Kumar used to sit in the shop. Vinod Kumar was sitting in the shop when he left for home. At about 9.45 P.M. in the night, Rajat Gupta, who is nephew of the complainant, rang him up and told that his father was lying on the floor in a pool of blood and he should reach. He reached the shop. He found that his brother was lying on the floor in a pool of blood. Many persons assembled there. Police also reached. Sunil Gupta, his younger brother, accompanied Vinod Kumar to the hospital. He was declared dead.

PW Shiv Kumar received this information later at night. Police recorded his statement, Ex. PC. In his cross-examination, he stated that he reached the shop after 2/3 minutes on receiving the information. He has categorically admitted that he had not accompanied his brother to the hospital.

PW4 Sunil Kumar Gupta is also brother of the deceased. He deposed that on 28.7.2002, he was going to police station to enquire about the progress of the case. He met SI Virender Singh. In the meantime, one person came from his left side. He supplied secret information that Ajit Kumar had gone to his residential quarter and he was about to escape. The police party raided his house. Accused was arrested. He was wearing *Hawai chappals*, which had small stains of blood. Accused was brought to the police station. His *chappals* were compared with the foot prints found on the papers in the shop of Vinod Kumar. The same tallied. He made disclosure statement on the basis of which a sum of ₹ 24,000/- were recovered. The memo of disclosure statement is Ex. PE. He also got recovered knife vide Ex. PF. Sketch map, Ex. PF/1, was prepared. Similarly accused Babloo was arrested. He made disclosure statement, Ex.P1. At his instance, a sum of ₹ 3,150/- were recovered. In his cross-examination he stated that when accused Ajit was taken to the police station, he had pointed out accused Babloo on the way. The appellant did not try to run away. The currency notes were kept in a polly bag.

PW5 Ashok Kumar son of Sat Narain deposed that on 20.7.2002, he and Ashok Kumar resident of Chawla Colony were going towards Mohna Road from Clock Tower in Ballabgarh. He had seen Ajit Kumar accused. He worked for some time in the shop of deceased Vinod Kumar known as Gupta Enterprises and he was plying rickshaw. He was

seen in front of the shop of the deceased at about 9.00 P.M. After about 15-20 minutes, they came back. Accused Ajit Kumar and one other person were coming out of the shop. In his cross-examination, he deposed that he has not heard any noise.

Statement of PW5 Ashok Kumar was corroborated by PW16 Ashok Kumar son of Shri Shyam Sunder. He also deposed that he had seen accused in front of the shop of the deceased while they were strolling from Ghanta Ghar towards Gupta Hotel. When they came back, accused were coming out of the shop.

PW6 Ganpat Rai deposed that he along with Sunil Gupta was going to the police station to enquire about the progress of the case. Secret information was received. They accompanied the police party and went to Milk Plant Road. Ajit Kumar was arrested from his house. Babloo was also arrested. They were interrogated. On the basis of their disclosure statements, knife and currency notes were recovered.

PW7 Anoj Kumar is a formal witness.

PW8 Sushil Mittal deposed that accused Ajit Kumar made disclosure statement while in custody of the police. The currency notes amounting to ₹ 24,000/- were recovered from Bhatia Colony.

PW9 Inspector Naveen Kumar deposed that he had arrested accused Ajit Kumar on 28.7.2002. He was interrogated. He made a disclosure statement on the basis of which, *chappals* were recovered. The knife was also recovered. The same was taken into possession, vide Ex. PF. He also interrogated accused Babloo. A sum or ₹ 3,150/- was also recovered.

PW15 SI Sukhvinder Singh had prepared the inquest report. He had sent the body for post-mortem examination to B. K. Hospital, Faridabad. Sealed parcels of the clothes and other articles were handed over to Constable Narender Kumar and Abdul Ajiz.

What emerges from the statements of the witnesses discussed above is that on 20.7.2002 at about 8.00 P.M. PW3 Shiv Kumar had come back to his house from the shop. His brother Vinod Kumar was still sitting in the shop. At about 9.45 P.M., he received a message from his nephew Rajat Gupta. He reached the shop. The prosecution has not examined Rajat Gupta, who was son of the deceased. He was the material witness. He was the first person to reach the spot. There is no explanation given by the prosecution as to why he was not examined.

As per statement of PW3, he reached the spot within 2-3 minutes on receiving the information. The distance between the residence and the shop is about 150 yards. It is not believable that commotion was not heard by the family members of the deceased and the neighbours. Surprisingly, PW3 Shiv Kumar has not taken his brother to the hospital. According to him, his younger brother Sunil Kumar Gupta had accompanied Vinod Kumar to the hospital. PW4 Sunil Kumar Gupta stated that he had taken his brother to the hospital. PW3 Shiv Kumar came to know about the death of his brother only later in night. It has come in the FIR that Ramesh and Madan Lal had lifted Vinod Kumar.

The case is based on circumstantial evidence. In order to prove the case based on circumstantial evidence, the chain must be complete. In the instant case, it is reiterated that Rajat Gupta was the material witness, but he has not been examined. The conduct of PW3 Shiv Kumar and PW4

Sunil Kumar Gupta is un-natural. It is not believable why PW3 Shiv Kumar had not accompanied his brother Vinod Kumar, who was in a serious condition, to the hospital. No evidence has come that who got Vinod Kumar admitted in the hospital.

PW4 Sunil Kumar Gupta and PW6 Ganpat Rai deposed that they were going to enquire about the progress of the case. Both of them saw police jeep in which SI Virender Singh was sitting. Secret information was received that Ajit was going to his residence and likely to escape. Their statements do not inspire confidence. The disclosure statements of the accused have been recorded while they were in police custody.

The version of the prosecution witnesses PW5 Ashok Kumar son of Shri Sat Narain and PW16 Ashok Kumar son of Shyam Sunder do not inspire confidence. It cannot be a co-incident that when they were strolling from Ghanta Ghar towards Gupta Hotel, they had seen accused Ajit Kumar in front of the shop of the accused and when they were coming back, they saw again accused Ajit Kumar coming out of the shop. PW5 Ashok Kumar has admitted in his cross-examination that he had not heard noise or cries. In the instant case, the chain is not complete. Examination of Rajat Gupta, son of the deceased, who reached first at the spot, was necessary. PW3 Shiv Kumar and PW4 Sunil Kumar Gupta have not accompanied their brother to the hospital, which makes the case of the prosecution doubtful. The distance between the shop and the house is very short. In case the deceased had raised noise, his voice could be heard by his family members or his neighbours. The prosecution has failed to prove the case against the appellant.

Accordingly, the appeal is allowed. The appellant is acquitted from all the charges framed against him. The judgment dated 13.4.2004 and order dated 15.4.2004 are set aside. Since the appellant is already on bail, he need not to surrender. His bail bonds are discharged.

(Rajiv Sharma)
Judge

14.12.2018
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No