

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

Crl. Appeal No.D-872-DB of 2009 (O&M)

Date of Decision: December 14, 2018

Manoj Kumar

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.P.Jangu, Advocate
for the appellant.

Mr.Sukhdeep Parmar, DAG, Haryana
for the respondent-State.

INDERJIT SINGH, J.

This appeal was heard by Hon'ble Division Bench of this Court comprising Justice A.B.Chaudhari and Justice Kuldip Singh. Justice A.B.Chaudhari accepted the appeal and acquitted the accused-appellant, whereas Justice Kuldip Singh dismissed the appeal. Now, the present appeal has been listed before this Bench for third opinion.

The present appeal has been filed by the appellant against State of Haryana, challenging the judgment of conviction dated 12.09.2009 and order of sentence dated 15.09.2009 passed by learned Addl. Sessions Judge, Fast Track Court, Gurgaon, whereby he was held guilty and convicted and sentenced to undergo imprisonment for life and to pay fine of ₹5,000/- and

in default of payment of fine, to undergo rigorous imprisonment for a period

of two years under Section 302 IPC and further, to undergo rigorous imprisonment for a period of two years and to pay fine of ₹2,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of six months under Section 25 of the Arms Act. Both the sentences were ordered to run concurrently.

The brief facts of the prosecution case are that an information was received on telephone that Durga Parshad has been shot dead. On receipt of this information, SI/SHO Babu Lal along with other police officials, reached village Palra and saw the dead body. Photographs were got clicked. He recorded statement of complainant Girish, wherein, he stated that he is employed in International Company Ltd. It was Sunday and there was holiday of the company and he was present at his house. His father Durga Parshad after taking dinner at about 8.00 pm., was going for sleep in the cattle shed (Nohra) for guarding the cattles. After sometime, a loud voice of firing was heard by him from the side of house of Jagpal. The complainant came out of this house and went in the direction from where the noise of fire came. When reached at the back of the house of Jagmal, he found his father lying on the earth and his clothes were stained with blood. He examined his father and found fire arm injury on the left side of chest and bullet had come out from the backside of the waist and he was already dead. His uncle Ram Singh also reached the spot. Several other persons also reached there. The complainant alleged that some unknown person had committed murder of his father. He stated that he does not know for what enmity his father had been shot dead. On this statement, FIR was registered. Inquest proceedings were conducted. Dead body was sent for post-mortem

possession and after converting the same into sealed parcel, it was handed over to the police. The accused was arrested. He made disclosure statement and in pursuance of the same, he got recovered the country made pistol along with live cartridge, which were taken into police possession. Statements of the witnesses were recorded. After completion of necessary investigation, challan was presented against the accused.

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 302 IPC and Section 25 of the Arms Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Manoj Kumar, who mainly proved the scaled site plan Ex.PA. PW-2 ASI Arvind Kumar deposed regarding registration of formal FIR Ex.PG. PW-3 ASI Samsuddin mainly deposed that he was with SI/SHO Babu Lal and deposed regarding taking into possession blood stained earth from the spot. PW-4 Head Constable Ghanshaym mainly deposed regarding handing over the dead body for conducting post-mortem examination. PW-5 Girish, complainant deposed as per the FIR. He also deposed that on 05.02.2008, he went to the police station. Accused Manoj was arrested by the police and he was interrogated by the police in his presence. Accused made disclosure statement Ex.PF that he had murdered complainant's father. He further disclosed that complainant's father was instigating accused's grandfather to the effect that at his instance grandfather of the accused was not giving his property to the accused and his father. Accused also disclosed that earlier

also, there had been a dispute in which complainant's father had helped in

arranging bail of grandfather of the accused and due to this enmity, he murdered Durga Parshad. Complainant further stated that accused also disclosed that he can get recovered the country made pistol from his house with which he had committed murder of complainant's father. Then, in pursuance of the disclosure statement, accused led the police party to his house. A grain container was there above which a carton of television was lying. Accused got recovered a polythene bag in which a country made pistol and a live cartridge was there, which were handed over by the accused to the police. The country made pistol and live cartridge were taken by the police in possession and sealed parcel was prepared. Recovery memo was also prepared, which bears his signatures. Complainant also deposed that accused got the place of occurrence identified and Investigating Officer prepared the site plan and obtained his signatures. Sketch of the pistol was also prepared, which bears his signatures. PW-6 Head Constable Sant Ram, formal witness, who got deposited the sealed parcels with the FSL. PW-7 Constable Sandeep, is also formal witness, who deposited country made pistol and one live cartridge in the FSL. PW-8 Constable Rajender Kumar deposed regarding disclosure statement suffered by the accused and also regarding recovery of country made pistol and one live cartridge. PW-9 Ram Avtar, photographer deposed regarding photographs Ex.P3 to Ex.P9 and proved negatives Ex.P10 to Ex.P16. PW-10 SI Kanwar Singh deposed regarding preparing of final report under Section 173 Cr.P.C. PW-11 Head Constable Hukam Singh, formal witness, tendered into evidence his affidavit Ex.PI. PW-12 Vinod Kumar deposed regarding identifying the dead body of Durga Parshad. PW-13 Nand Kishore, Ahlmad proved the sanction order. PW-14 Dr.B.B.Aggarwal deposed that he conducted x-ray

examination on the dead body and deposed regarding recovery of bullet from the clothes of the deceased. PW-15 Dr.Hazari Lal, deposed regarding conducting post-mortem examination on the dead body of Durga Parshad and found following injuries:-

i) Gun shot injury on the back. Gun shot wound was 2.5 x 1 cm having blackening of circular margins in the region between 9th and 10th left side rib. Both ribs were fractured penetrates left lung, left kidney, spleen and heart parts of intestine having an exit wound on front left side exit wound bit larger and irregular margins with no blackening in the region between 4th and 5th left rib right to it. Nipple. Bullet recovered from clothes on front. 9th and 10th ribs fractured on the back left side and 4th and 5th rib fractured on the front same side. Left lung, left kidney apex of heart spleen and parts of intestine were punctured. Rest of the viscera were healthy.

In the opinion of the doctor, the cause of death in this case was haemorrhage and shock which was caused by described injuries caused by gun shot which were ante-mortem in nature and sufficient to cause death in normal course of life and the time between death and post-mortem was within 24 hours. PW-16 SI Babu Lal, Investigating Officer, deposed regarding investigation conducted by him in the present case.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence. Accused further pleaded that he has been falsely dragged in this case. Nothing was recovered from him and false recovery has been planted upon him. He has no concern with the murder. In defence, accused examined DW-1 Dr.Satpal

through Ballistics Division on 28.02.2008. Ex.1 was bearing five seals of 'SS'. No report was sought from him regarding entry of hole and exit of hole which was found on the cloth. He did not receive the bullet to ascertain the blood on the bullets. He further deposed that the main report has been submitted regarding fire arm and working condition of country made pistol by Dr.R.K.Kaushal and not by him. The detection of the blood on the bullet Ex. No.2 was sent by Ballistic Division on 26.02.2008 and Smt.Kamlesh Rani, SSO, SOC submitted her report on 27.02.2008. No blood group was detected by Dr.Kamlesh. DW-2 Dr.J.S.Mahanwal, Retd. Director, FSL, mainly deposed that he retired as Director, FSL, Haryana. He also deposed that a particular pellet cannot be connected with any fire arm. It is specifically asked to this witness that if an empty cartridge is not available then without tallying from empty cartridge, the opinion cannot be given, is it correct and answer given by DW-2 is 'Yes it is correct'. He further deposed that live cartridges if recovered and if sent to the Director FSL for examination, are sent back to the concerned police officer along with the report and case property. DW-3 R.K.Koshan, Assistant Director, FSL, stated that police had not sent any empty/fired cartridges to him for examination in this case. However, a bullet (fired) which was taken out from the body of the deceased by the doctor, was sent to him for examination. The size of the bullet was .315 inch. He compared the test fired bullet which was fired by him in the lab with the bullet in question recovered by the doctor under stereo and comparison microscope. He further deposed that live cartridge sent to him by the police along with parcel as per parcel No.4 was of .315 inch riffle. He also deposed that he had used .315 inch

same after firing was not sent back to the police. DW-4 Subhash deposed that Sehdev, father of accused is his real brother while Durga Parshad (deceased) is his real uncle. He deposed that it was a blind murder. He had seen the police lifting country made pistol from the spot. There was big crowd at that time. He further deposed that Sehdev and deceased had never any dispute of any kind during the lifetime of deceased. Sehdev got ancestral property house in family partition while deceased had constructed his own new house about 5-6 years ago. This DW also deposed that he, Sehdev and Manoj had attended the funeral ceremony of Durga Parshad. They remained at the house of Durga Parshad upto *Thervai*. At the instance of some villager, Manoj has been falsely challenged in this case. He also deposed that he have good relations with father of the accused and with the deceased.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that it is a case of circumstantial evidence and is a blind murder case. There is no last seen evidence in the present case nor there is any extra judicial confession by the accused. He next argued that there is no motive to commit murder in the present case. Motive has significance in the case of the circumstantial evidence. He further argued that false recovery of country made pistol has been planted upon the accused-appellant on the basis of disclosure statement. No independent witness was joined at the time of recovery of pistol. Learned counsel for the appellant also contended

that DW-4, who is close relative of the deceased also deposed that police has lifted country made pistol from the spot at that time in his presence. He next contended that bullet was found struck in the sweater but as per prosecution version, no empty was recovered. It is also argued by learned counsel for the appellant that bullet cannot be matched with the pistol without empty. It is only empty which can be got examined and can be held that the same was fired from the pistol. He further argued that chain of circumstances is not complete in the present case and reasonable doubt exists in the case of the prosecution. The accused-appellant has been falsely implicated in the present case and has been wrongly convicted and sentenced. Learned counsel for the appellant, therefore, argued that there being merit in the present appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved. PWs have deposed consistently regarding the prosecution version. He further argued that the bullet fired from the pistol and the pistol got recovered by the accused-appellant, have been matched as per FSL report, which connects the accused with the crime. He next argued that none of the close relative of the accused has come to the witness box to depose in support of the accused that no such recovery has been effected from the house. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record minutely and carefully, I find that it is a blind murder case and prosecution case is based on circumstantial evidence. In the case of circumstantial evidence, chain of

circumstances should be complete in such a way that it should point towards the guilt of the accused only and none else. It is also settled law that in the case of circumstantial evidence, motive is of much significance. In the present case, the main private witness is the complainant PW-5 Girish. I have gone through his examination-in-chief. He has nowhere deposed regarding motive to commit murder by the accused. He has simply stated in his chief-examination that accused has disclosed before police that he had murdered Durga Parshad, father of the complainant and he has disclosed in his disclosure statement that complainant's father was instigating his grandfather to the effect that at his instance, grandfather of the accused was not giving his property to the accused. It is settled law that any statement given before the police regarding confession is inadmissible and hit by Section 25 of the Indian Evidence Act. Only that portion of the statement, which relates to some recovery or discovery of fact, is admissible under Section 27 of the Indian Evidence Act. Whatever statement given by the accused regarding motive to the police during his disclosure statement is inadmissible in evidence and only statement given by the accused Manoj Kumar regarding concealing of pistol and then recovery of the pistol in pursuance of the disclosure statement is admissible in evidence. If this portion of the disclosure regarding motive is inadmissible as hit by Section 25 of the Indian Evidence Act, then no motive is proved by the prosecution. PW-5 Garish nowhere independently deposed regarding motive or any previous enmity or any document of any type to show the motive of the accused to commit murder.

From the evidence on record, I find that in the present case,

prosecution by leading cogent evidence. In the presence case, there is also no last seen evidence. There is also no extra judicial confession nor there is any other evidence to connect the accused with the crime except the recovery of country made pistol in pursuance of the disclosure statement. As regarding recovery of country made pistol by the accused, I find that no independent witness has been joined by the police party at the time of recovery of pistol nor there is any independent corroboration by any person. Even, none of the family member has been joined and examined by the prosecution to prove the recovery of pistol by the accused beyond doubt. There is also no explanation as to why no independent person was joined while effecting the recovery, especially, when the prosecution had sufficient opportunity to join independent/respectable person.

The weapon of offence in this case is a country made pistol but not a licenced weapon. To connect the accused with the pistol, there is also no other evidence except the disclosure statement and recovery. The arguments of learned State counsel that none of the family member has come to the witness box to support the defence that no such recovery has been effected, has no merit. It is settled law that in a criminal trial, the prosecution is to prove its case beyond reasonable doubt by leading cogent evidence and the accused has right to keep silent during the trial. The accused is not to prove or disapprove any fact. It is for the prosecution to prove its case beyond reasonable doubt.

Furthermore, in this case, no empty has been lifted from the spot nor it was sent to the FSL for proving the fact that empty was fired from the said pistol. DW-4 Subhash, who is close relative of the deceased

and accused, has deposed that he had seen the police lifting the country

made pistol from the spot. This fact also creates doubt in the prosecution version. The accused has also got examined expert witnesses. DW-2 J.S.Mahanwal, Retd. Director, FSL has deposed that a particular pellet cannot be connected with any fire arm. A specific question was asked to the witness; 'if an empty cartridge is not available then without tallying from empty cartridge, the opinion cannot be given, is it correct; and the answer given is 'Yes it is correct'. This evidence further creates doubt in the prosecution case, whether bullet recovered in the present case can be held as fired from the country made pistol. Further, DW-3 R.K.Koshal, Assistant Director, FSL, has deposed that live cartridge sent to him was test fired in the lab by him for testing with the bullet recovered by the doctor.

From the evidence produced by the prosecution, which is discussed above, in no way, it can be held that chain of circumstances is complete in the present case or it point towards the guilt of the accused only and none else. The prosecution has failed to prove the guilt of the accused by leading cogent evidence and chain of circumstances, in the present case, is not complete. As already discussed, there is no last seen evidence. There is no extra judicial confession in the present case. The motive is also not proved in the present case, which creates doubt. Only evidence regarding recovery of country made pistol, is also doubtful.

In view of the above discussion, I find that a reasonable doubt exists in the prosecution version and benefit of doubt, always go to the accused. Therefore, by giving benefit of doubt to the accused-appellant Manoj Kumar, he is acquitted of the charges framed against him.

Keeping in view the above discussion, I find that the judgment

passed by learned Addl. Sessions Judge, Fast Track Court, Gurgaon, are not as per law and the same are set aside.

Therefore, finding merit in the present appeal, the same is allowed. Appellant Manoj Kumar, who is in custody, be released forthwith, if his custody is not required in connection with any other case.

Resultantly, I agree with the decision given by Justice A.B.Chaudhari.

December 14, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No