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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-696-DB-2011 (O/M)

Date of decision : 9.10.2018

Ravinder Dahiya

..... Appellant (s)

Versus

State of Haryana

..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vinod Ghai, Senior Advocate, with,
Mr. S.S. Sandhu, Advocate,
for appellant.
Mr. Vivek Saini, DAG Haryana.
Mr. Anil Ghanghas, Advocate,
for complainant.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

Impugned in present appeal is the judgment of conviction dated 25.5.2011 and order of sentence of same date, passed by learned Sessions Judge, Gurgaon, vide which appellant was convicted under Section 302 IPC and was sentenced to undergo imprisonment for life and to pay fine of Rs. 10,000/-, in default thereof, to undergo further rigorous imprisonment for three and half years.

On 30.7.2009, at about 9:15 PM, deceased Rakesh Yadav, was sitting in his restaurant 'Rao Bhojnalya', Dundahera, Kharkhuda, District Sonapat. At about 9:00/9:15 PM, 2/3 persons came on their motorcycles at the said restaurant Rao Bhojnalya on the pretext of taking meals. Rakesh Yadav was sitting on the counter of said restaurant. Said persons fired 5-6 bullets and thereafter, fled away on their motorcycles towards Delhi side. Sandeep alias Banti (complainant) on receiving telephonic information from

Sonu alias Parveen son of Ram Kishore about incident rushed to the spot.

Finding Rakesh Yadav injured, he alongwith Rajesh Yadav, brother of Rakesh Yadav, removed the injured to Columbia Asia Hospital, Palam Bihar, Gurgaon, where after examining him, the doctor declared injured Rakesh Yadav brought dead. The police, on receiving information, rushed to said restaurant, from where they came to know that injured has been shifted to Columbia Asia Hospital, Gurgaon. After reaching hospital, police got MLR of injured wherein the injured was declared dead by doctor. In the hospital, statement (Ex.PB) of Sandeep alias Banti was recorded. After making endorsement, same was sent to police station on 31.7.2009, at about 1:00 AM, on which FIR No. 101 of 2009 under Section 302 read with Section 34 IPC and 25/54/59 of Arms Act was registered at police station at Udyog Vihar, District Gurgaon. The inquest report was prepared (Ex.PP/4). The post mortem (Ex.PP/1) of the dead body was got conducted on 31.7.2009. The doctor extracted three bullets from the dead body, which were sealed and handed over to the police alongwith clothes of deceased. The site plan (Ex.PF) of place of occurrence was prepared. From the spot inspection, 3 empties of 9mm were recovered. The blood was also lifted from the spot and same was taken into possession through memo (Ex.PA). The police recorded the statements of various persons. On 20.10.2009, police recorded the statement of Sunita (PW3) wife of deceased, who informed the police that a few days earlier, deceased had a quarrel with accused Ravinder Dahiya and Vikas, in which deceased had also suffered foot injury.

In the meanwhile, on 22.10.2009, Ravinder Dahiya was arrested at Delhi by police of Police Station Vijay Vihar alongwith a pistol and two live cartridges, two mobile phones, one Nokia make 1203-3, black/white

colour, bearing IMEI No. 353218037680957, having No. 9654516526 and another mobile Vodafone No. 227, brown colour, bearing IMEI No. 355689020622362 and Rs. 450/- in cash. The police got call details of mobile No. 9654516526 from the computer section of SP Office. The police on coming to know about the arrest of accused at Delhi obtained his production warrants on 9.11.2009 and took him into custody. His police remand was obtained. On 11.12.2009, accused was interrogated, in which he disclosed about commission of crime. He informed the police that on 18.6.2009, he alongwith Vikas had gone to Rao Bhojnalya, situated at Delhi road at Dundahera for taking meals. There, he had an altercation with the servants, who were serving the meals and they were beaten up by owner of Rao Bhojnalya, namely, Rakesh Yadav. They felt insulted. On 30.7.2009, he alongwith Vikas went to said restaurant on black colour Pulsor motorcycle, bearing Registration No. DL-9SP-5090 and fired three shots from his pistol and thereafter, they fled away to Delhi. He parked his motorcycle in the house of Vikas and covered it with a sheet of cloth. On 16.9.2009, Vikas was found murdered. He further stated that his mobile No. 9654516526 is in the custody of Delhi police.

In pursuance to disclosure statement Ex.PO, accused got recovered said motorcycle, which was taken into possession through recovery memo (Ex.PO/1). He also led the police party to Rao Bhojnalya and demarcated the place of occurrence, regarding which memo Ex.PO/2 was prepared.

The other co accused Vikas had died.

The police after completion of investigation presented challan against the appellant in the Court.

Accused was chargesheeted under Section 302 IPC, to which he

pleaded not guilty.

In support of its case, prosecution examined as many as 25 prosecution witnesses, namely, Ramchand Dhiman (PW1), Rajesh Yadav (PW2), Smt. Sunita (PW3), Vijay (PW4), Sandeep alias Bunt (PW5), Bhupender Verma (PW6), Rafter Khan (PW7), Ram Avtar (PW8), HC Virender Singh (PW9), C. Rakesh Kumar (PW10), Girish Kumar (PW11), Prem Singh (PW12), C. Devinder Singh (PW13), HC Jitender Singh (PW14), C. Braham Pal Singh (PW15), HC Sukhbir Singh (PW16), Dr. B.B. Aggarwal (PW17), Dr. Brij Pal Singh Deo (PW18), SI Mahipal (PW19), Dr. Pawan Kumar (PW20), Babu Lal (PW21), LDC, Transport Authority, New Delhi, Anuj Bhatia (PW22), Nodal Officer, Vodafone Mobile Services Limited, Okhla Phase-II Delhi, HC Rohtash (PW23), SI Daya Ram (PW24), SI Surender Singh (PW25) and closed its evidence.

When examined under Section 313 Cr.P.C., accused stated that he was picked up by Special Staff of Police, Delhi, from Gurgaon on 20.10.2009 at around 5:20 PM and later on, a false case under Arms Act was foisted on him. The mobile phones do not belong to him. He has nothing to do with the mobile phones. He has been falsely implicated in this case.

In defence, accused examined ASI Satyawar, Incharge, Police Control Room, Gurgaon (DW1) and Babita Dahiya wife of Ravinder Dahiya accused (DW2) and closed defence evidence.

After hearing the prosecution and defence and going through the evidence, the learned Sessions Judge, Gurgaon, convicted and sentenced the accused, as aforesaid.

We have heard the learned senior counsel for accused, learned State counsel, learned counsel for complainant and have also carefully gone

through the file.

The statement of Dr. B.B. Aggarwal (PW17), Senior Medical Officer, General Hospital, Gurgaon, shows that he had conducted X-ray examination, on which three bullets were found in the dead body of Rakesh Yadav.

PW18 Dr. Brij Pal Singh Deo, Medical Officer, Damien Foundation India Trust, T.B. Hospital, Goyela Dairy, New Delhi, proved that when deceased was brought with gunshot injuries, after examination, he was declared dead. He also described injuries on the dead body.

PW20 Dr. Pawan Kumar Chuadhary, Medical Officer, General Hospital, Gurgaon, stated that he conducted post mortem on dead body on 31.7.2009. He found following injuries :-

- a) Wound over left limb just below elbow laterally 1 cm x 1 cm edge of wound inverted blackening around wound 9 cm depth medially. Another wound below 1.5 cm x cm edge of wound everted.
- b) Another wound above left elbow in left arm 1cm x 1cm laterally blackening around the wound 4cm depth edge of wound inverted leading to another wound 1.5cm x 1 cm flexor aspect of left arm medially.
- c) One wound over left side of chest over left nipple 1cm x 1cm edge of wound inverted blackening around wound. Further dissection of wound underlying ruptured left lung and pleura and heart ruptured full of blood leading to ruptured left diaphragm and rupture of liver.
- d) Wound over right side of upper chest 6cm lateral to midsternum and medial side of clavicle 1cm x 1cm edge of wound inverted blackening of around the wound. On further dissection of wound underlying structure rupture and right lungs and pleura ruptured and full of blood. Right side diaphragm and liver ruptured contusion on adjacent portion of intestine to liver.
- e) One wound over left shoulder laterally 1cm x 1cm blackening around the wound edge of wound inverted. On further dissection underlying structure ruptured leading to rupture of left lung and heart and diaphragm and liver.

On dissection of above wound three bullets found which is sealed and handed over to police.

In our opinion cause of death in this case is due to injury

to vital organ i.e. heart, lungs and liver due to gun shot injury. All injury were ante mortem in nature and sufficient to cause death normal course of nature.'

In the Court, he identified the bullets (Ex.26 to Ex.28), which were handed over to police.

PW1 Ramchand Dhiman has stated that in the year 2006, he was studying in Delhi Institute of Fire Engineering alongwith his friend Rishi Dev. In July, 2009, accused asked him for about ID proof and two photographs, which he delivered. After 2-3 days, he was informed by accused that he has got mobile No. 9654516526 in his name. Accused had come in contact with him when he was a student of Delhi Institute of Fire Engineering. He had not signed any document. In this way, Ramchand Dhiman (PW1) proved that due to old friendship, he lend his ID proof and two photographs to accused to enable him to obtain mobile number in his name in July, 2009.

Now, coming to the witnesses of crime, Rajesh Yadav (PW2) stated that on hearing the noise from the nearby hotel, he went to the spot where he found that his brother Rakesh Yadav was being shot and was lying near the counter. Bunti alias Sandeep alongwith other workers was also present there. He stated that his brother used to sit in hotel. On the intervening night of 18/19.6.2009, two boys had come to the hotel and had quarreled with him due to non payment of bill and his brother had beaten up those persons and he had also sustained injury. When his brother came to house, he told his wife that a quarrel had taken place with accused Ravinder Dahiya and Vikas and that he had beaten those two persons, who had threatened him with dire consequences.

Rajesh Yadav was not present at the spot. He merely proved the earlier fight between accused and deceased. In cross examination, he

admitted that his statement was recorded three times.

Sunita wife of Rakesh Yadav (PW3) stated about incident on 18/19.6.2009 regarding quarrel between her husband and two customers. She stated that in said incident, her husband had also received injuries on his foot. She stated that her husband told that those customers were Ravinder Dahiya and Vikas. Her husband told her that both of them threatened him with dire consequences. She further stated that one day, she received a call from unknown person, who told that her husband had been murdered by Ravinder Dahiya and Vikas.

Sandeep alias Bunti (PW5) testified that on receiving telephonic message from Sonu alias Parveen, he rushed to the spot and found that Rakesh Yadav had been murdered. He removed the injured to Columbia Asia Hospital, Palam Vihar, Gurgaon, where he was declared dead.

The crucial witness in this case is the cook of the hotel, namely, Bhupender Verma (PW6). PW6 stated that he is working as a cook in said hotel for last ten years. On 18.6.2009, in the night, two persons were having meals and one person was sitting in the car. Those two persons, who had taken the meal, had quarreled with Rakesh Yadav, regarding payment of bill. In the said quarrel, Rakesh Yadav sustained fracture in his left foot due to slip and those two boys also sustained injuries. Thereafter, two two boys threatened to kill Rakesh Yadav. Accused present in the Court is the person, who quarreled with Rakesh Yadav on 18.6.2009. He further testified that on 30.7.2009, at around 9:00/9:15 PM, he was in kitchen and Rakesh Yadav was sitting on the counter. In the meanwhile, two persons came on a motorcycle, came near the counter and fired three shots on Raksh Yadav and thereafter, fled away on the motorcycle to Delhi side. He identified the

accused present in Court as one of those two persons, who had fired upon Rakesh Yadav. The witness was subjected to lengthy cross examination. In the cross examination, the witness disclosed that Rakesh Yadav was having three licenced revolvers and he used to keep same with him. There was a business rivalry between Sher-e-Punjab Hotel and Rao Bhojnalya, which are adjacent to each other. He stated that after the incident, police arrived at the spot within 15 minutes and made inquiries. He was confronted with statement recorded under Section 161 Cr.P.C. where he had not told the police that he can identify the accused. He stated that he had not seen the accused coming to hotel, but seen while running away. During further cross examination, he clearly asserted that he had seen accused firing at Rakesh Yadav. Regarding the location of kitchen, he stated that kitchen is in the open area, outside the hotel. The counter is in the building of hotel. Accused fired from open area of hotel. He further stated that CCTV cameras are installed in the hotel prior to incident. The said CCTV cameras do not have any memory facility as only running incidents are recorded therein.

Further crucial witness is Raftar Khan (PW7), who claimed that on 13.9.2009, he loaded his vehicle TATA-407, bearing registration No. HR-47-A-1843 from Bhiwari and was to go to Delhi. On the way, one Hari Singh met him and boarded his vehicle for going to Delhi for some work. Around 8:30 PM, they stopped at Ravi Hotel, Nakhrola, for taking meal. On the adjoining table, two boys were also sitting and were talking to each other. One of the boy, who was well built, was called by the name of Ravinder Dahiya and other was being called by name of Vikas. They were saying that they had quarreled with Rakesh Yadav, owner of Rao Bhojnalya, Dundahera. They will go on a motorcycle and kill him. He was

further saying that on 16.9.2009, his friend Vikas was killed and he apprehends his murder also. Thereafter, Ravinder Dahiya started weeping and went outside.

Constable Devinder Singh (PW 13), proved that he had obtained the call details of mobile No. 9654516526 for period from 10.6.2009 to 23.10.2009 and same were taken into possession by investigating officer through memo Ex.PH.

Anuj Bhatia, Nodal Officer, Vodafone Mobile Service Ltd., 345 Okhla Phase-II, New Delhi-20, while appearing as PW22, proved the call locations of said mobile number, which was near the Pooja Ten House, Dundhera village, Gurgaon.

SI Daya Ram, Police Station Traffic, Manesar, (PW24), who had conducted initial investigation proved that he has recorded the statement of complainant, inspected the spot and prepared the site plan. He also lifted three empty cartridge cases of 9mm pistol and blood on a cotton. He also proved the record of statement of witnesses.

In cross examination, he denied the suggestion of defence counsel stated that door of room open towards counter. He claimed that the vegetables are cut in open space.

PW25 SI Surender Singh, SHO Police Station Udhyog Vihar, Gurgaon, proved further investigation by him on 20.10.2009 and collecting of call details on 23.10.2009. He also proved production warrants against accused Ravinder Dahiya and his interrogation on 8.12.2009 and 11.12.2009.

The FSL report (Ex.PC/1) shows that three fired cartridges of 9mm pistol were recovered from spot.

The learned senior counsel for appellant has vehemently argued

that in this case, complainant had not witnessed the occurrence, nor brother of deceased Rajesh Yadav had witnessed the occurrence. They came to the spot after occurrence. There were CCTV cameras, footage of which was not produced.

We are of the view that witnesses had clearly stated that CCTV cameras were not having memory. Therefore, the footage could not be obtained. However, it is to be noted that background of incident has been proved by Rajesh Yadav. Infact, on 18.6.2009, accused alongwith another person had visited hotel for meal and there, an altercation had taken place, as a result of which Rakesh Yadav had beaten up present appellant and he also suffered a fracture on his foot. Normally, when a person suffers injury, he is questioned at his home as to how he suffered injury and it was natural on the part of deceased to disclose the entire incident to his wife and brother. Therefore, we agree with learned State counsel that deceased must have disclosed the incident to his wife and brother. The mere fact that statement of wife was recorded later on 20.10.2009 is no ground to disbelieve her version. Normally, when a occurrence takes place and is a blind murder, everybody is in dark and after some time, they start recollecting the past incidents to find out as to who could be involved in the crime. Therefore, the statement of Sunita wife of Rakseh Yadav is to be believed that deceased had told them about incident of 18.6.2009, in which he had beaten up present appellant Ravinder Dahiya and his friend.

Now, regarding the incident, there is statement of Bhupender Verma (PW6), who is working as a cook in the kitchen of hotel for last 10 years, he clearly testified that he was working in kitchen when the firing took place. Three shots were fired in quick. He rushed to the spot and saw accused lying near the counter. Though in cross examination, he stated that

he had seen accused running away, but at the same time, he stated that he had seen the accused firing shots. He also identified the accused present in Court. He also narrated about incident of 18.6.2009 and stated that accused present in Court was involved in the said incident and was beaten up by Rakesh Yadv. So far as location of kitchen is concerned, it is in open area and there was a door. The deceased was sitting on counter and firing took place from open space. Therefore, cook could easily see the assailants. In this case, three shots were fired, giving enough time to cook to throw his attention towards shots being fired and see the assailants. Therefore, the statement of Bhupender Verma (PW6) inspires confidence and is to be believed.

So far as statement of Raftar Khan (PW7) is concerned, it is a week evidence regarding overhearing the conversation with accused that he had committed the crime. However, the statement of Bhupender Verma (PW6) is found to be trustworthy and same was rightly relied upon by trial Court.

So far as mobile No. 9654516526 is concerned, Ramchand Dhiman (PW1) has proved that accused had used his identity proof and two photographs. He had given accused two photographs and driving licence. The mobile phone having mobile No. 9654516526 was recovered by Delhi police from accused when he was arrested on 22.10.2009. A pistol alongwith two live cartridges was also recovered from accused. The fact that accused obtained mobile No. 9654516526 in the name of his old acquaintance goes to show that he was making preparation to commit the crime and was using the mobile number of someone else. Even though the call details have not been certified in accordance with law and cannot be believed, but eye witness account of Bhupender Verma (PW6) is trustworthy

and is to be believed.

The learned senior counsel for accused has further argued that in this case, when accused was picked up on 22.10.2009 by Delhi police, then his wife had approached this Court by way of filing a criminal writ petition.

We are of the view that said allegations are of no help to the accused in this case. Present case was registered at Gurgaon near Delhi and accused was arrested by Delhi police in some other case and he was taken into custody in this case much later. It was only thereafter that he was interrogated and he disclosed about crime.

The learned senior counsel for appellant has further argued that call details were taken from SP Office and are not certified in accordance with law.

We are of the view that same is also of no consequence as the call details are not being relied upon by this Court. The mere fact that fingerprints lifted from spot did not tally with accused does not mean that he is not involved in the crime. So many persons come to the restaurant/hotel and the finger print lifted from the spot may be of some other customer.

From the foregoing discussion, it comes out that there is no illegality or perversity in the findings recorded by the Court below. We find no merit in present appeal and same is accordingly dismissed.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

9.10.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No