

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

1. CRA-D-1579-DB-2015

Deepak

... Appellant

Versus

State of Haryana

... Respondent

2. CRA-D-214-DB-2016

Paramjeet @ Kala

... Appellant

Versus

State of Haryana

... Respondent

Reserved on: 16.11.2018

Date of decision : 03.12.2018

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU***

Present: Mr.Rajiv Vij, Advocate
for the appellant in CRA-D-1579-DB-2015.

Mr. Atul Lakhanpal, Senior Advocate
with Mr. Rajwant Singh Chahal, Advocate
for the appellant in CRA-D-214-DB-2016.

Mr. Vishal Garg, Addl.A.G. Haryana.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the

aforesaid appeals, therefore these are taken up together and disposed off by a common judgment.

2. These two appeals are directed against the judgment and order dated 18.09.2015 rendered by the Additional Sessions Judge, Rohtak in Sessions case no.50 of 2012 whereby the appellants along with Ravinder, Ranjit and Ranbir were charged with and tried for offences under Section 302, 120-B, 387, 506 read with Section 34 of the Indian Penal Code (in short 'IPC') and 25 of the Arms Act, 1959.

3. Appellants Paramjeet @ Kala and Deepak son of Jagdish were convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each and in default payment of fine, to further undergo simple imprisonment for a period of nine months for offence under Section 302 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- each and in default payment of fine, to further undergo simple imprisonment for a period of six months for offence under Section 120-B IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.5000/- each and in default payment of fine, to further undergo simple imprisonment for a period of six months for offence under Section 387 read with Section 34 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1000/- each and in default payment of fine, to further undergo simple imprisonment for a period of three months for offence under Section 506 IPC. They along with Ravinder accused were also convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5000/- each and in default payment of

fine, to further undergo simple imprisonment for a period of six months for offence under Section 25 of the Arms Act, 1959. The appellants were also directed to pay Rs.50,000/- each as compensation to the LRs of deceased Shri Krishan. All the sentences were ordered to run concurrently. Remaining accused were acquitted.

4. The case of the prosecution in a nutshell is that on 07.11.2011 a telephonic message was received in the Police Station Sampla from Police Post PGIMS Rohtak about admission of Shri Krishan. ASI Om Parkash along with HC Sandesh and HC Sanjeet reached the Police Post PGIMS Rohtak. Jai Kanwar got recorded his statement to the effect that he is resident of village Karor. His father was running a Fauji Dhaba at Rohtak Delhi Road. On 07.11.2011 at about 5.00 P.M. he along with his father and maternal uncle Rattan Singh was present in the Dhaba. In the meanwhile, three youths came on a motor cycle to their Dhaba. They ordered certain eatables. His father Shri Krishan was walking in the parking of the Dhaba. In the meanwhile he went to the roof of Dhaba. The youths started talking with his father. Thereafter one youth went towards motor cycle. Remaining two youths took out their pistols and they fired shots on his father. He raised alarm. Youths ran away from the spot. He also came down from the roof of the Dhaba. He along with his maternal uncle Rattan Singh shifted his father to PGIMS Rohtak in a vehicle. His father was declared dead. The FIR was registered. The dead body was sent for post-mortem examination. The matter was investigated and challan was presented after completing all the codal formalities.

5. The prosecution examined a number of witnesses in its support. The statement of accused under Section 313 Cr.P.C. recorded. He has

denied the case of prosecution. The appellant was acquitted. Hence this appeal.

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

7. PW-1 Parmod testified that on 08.11.2011 at the request of Jai Kanwar he reached at Fauji Hotel. He opened the lock of CCTV camera. Thereafter he prepared two CDs and one pen drive. He took four photographs with the digital camera from the footage of CCTV camera. Thereafter he handed over the same to Jai Kanwar. In cross-examination, he has deposed that he had received a telephonic call at 11.00 AM on 08.11.2011. The CDs were prepared by him at the Fauji Hotel. It took about one hour.

10. PW-2 Jai Kanwar is the eye witness. He is son of the deceased. He deposed that Shri Krishan was running a Fauji Hotel on National Highway. On 07.11.2011 at about 4.45 P.M. he along with his maternal uncle and Shri Krishan was present in the hotel. In the meanwhile, three youths came on motor cycle. They sat on the chairs and ordered for eatables. His father went towards parking of the hotel and he went to the roof of hotel. His father was walking in the parking lot. Three youths went to the parking of the hotel. They started talking to his father. He saw them from the roof of the hotel. Thereafter all the accused took out their pistols and fired shots on his father. He raised alarm. He came down from the roof of the hotel. His maternal uncle Rattan Singh also raised alarm. He rushed to the parking of the hotel. The assailants went away from the spot. He took his father to the PGIMS Rohtak where his father was declared dead. The police recorded his statement Ex.P8 at PGIMS Rohtak. On 08.11.2011 he

called Parmod who was an expert of CCTV Cameras. He prepared four photographs. He also opened the lock of CCTV camera. He prepared one pen drive and two CDs also. In cross-examination he has admitted that he has not told the police about the installation of CCTV camera in his hotel. He has admitted that the distance between the Police Station Sampla was six kilometers from the hotel. They had reached the PGIMS Rohtak within 20 minutes. His uncle was present in the hotel and was sitting on the counter of the hotel.

11. PW-3 Rattan Singh is another eye witness. He has corroborated the statement of PW-2 Jai Kanwar. He also deposed that three youths came to hotel on motor cycle. One youth out of three youth went towards the motor cycle. He came out from the cash counter of the hotel. He saw youths talking with his brother-in-law. They took out their pistols and fired 4-5 shots on his brother-in-law. He raised alarm. His brother-in-law was injured. He was lying in pool of blood. He was taken to the hospital. He joined the inquest proceedings on 08.11.2011. In his cross-examination he deposed that he reached the hotel at about 7.00 A.M. The hotel remained open for 24 hours. His brother-in-law Shri Krishan used to come in the hotel at about 7.30 A.M. The distance between parking and counter was 30 feet. He was present on the counter.

12. PW-4 Rai Singh deposed that his brother-in-law was running a hotel in the name and style of 'Fauji Hotel'. He was working as cashier during night time. His brother Rattan Singh also used to work as cashier during day time. Dilbag and Bhagwan son of Chhaju Ram used to come to the hotel and used to take protection money of Rs.25,000/- from his brother-in-law. Two youths had come to their hotel and they told his brother-in-law

that Dilbag and Bhagwan Sawroop had demanded Rs.50,000/- as monthly protection money.

13. PW-6 Doctor Saroj Dahiya had reached at the spot being Incharge of FSL Unit.

14. PW-7 Dr.Tirth Singh Bagri had conducted post-mortem examination. He proved post-mortem report Ex.P23. According to his opinion, Shri Krishan died as a result of haemorrhage and shock due to fire arm injuries which were ante mortem in nature and sufficient to cause death in ordinary course of nature.

15. PW-10 Murti is widow of deceased Shri Krishan. She also deposed that Dilbag and Jai Bhagwan used to demand money as protection money.

16. PW-11 HC Sharda Nand deposed that on 29.11.2011 he was posted as Constable at Police Station Sampla. The disclosure statement Ex.P37 was made by Ravinder on that day. He had kept concealed one pistol and one cartridge under the soil near the wall of IMT at Kheri Sadh. Accused Ranjit had also made disclosure statement Ex.P41. The motor cycle was also recovered on the basis of statement. The accused Deepak was interrogated on 01.12.2011 and 02.12.2011. He made disclosure statement about concealment of one pistol of 9 mm. Accused Paramjeet also made disclosure statement on 12.12.2011 vide Ex.P50 that he had concealed one country made pistol and two cartridges. These recoveries were effected from the accused.

17. PW-13 EASI Sham Lal has proved his affidavit Ex.P63.

18. PW-19 ASI Om Parkash has deposed that he was posted at Police Station Sampla. He received a telephonic message about the death of

Shri Krishan from the Police Post PGIMS Rohtak. The statement of the complainant was recorded. He reached at the spot at Fauji Dhaba. He got the post-mortem examination conducted. The CDs and photographs were taken into possession after 08.11.2011.

19. PW-22 Inspector Narender Pal had arrested accused Paramjeet and on the basis of his disclosure statement recoveries were effected.

20. Learned counsel appearing on behalf of the appellants have vehemently argued that no motive was attributed to the appellants. It has come in the statement of PW-4 and PW-10 that one Dilbagh and Bhagwan used to take protection money from them. They had sent the appellants to collect the money on their behalf.

21. In the instant case two witnesses have seen the incident namely PW-2 Jai Kanwar and PW-3 Rattan Singh. They have deposed that the appellants had come to their Dhaba. They ordered eatables. PW-2 Jai Kanwar went to the roof of the hotel. His father was walking in the parking lot. The appellants were talking with him. Thereafter they fired 5 shots at his father. His father collapsed. He raised alarm. PW-3 Rattan Singh also came at the spot. They took Shri Krishan to hospital. He was declared dead. The recoveries were effected from the appellants on the basis of disclosure statement made by them. The FSL team had also reached at the spot. The motor cycle was also taken into possession. The pistol was sent for FSL examination. The bullets were lodged in the body of the deceased as per x-ray report. The cause of death was as a result of shock and haemorrhage due to fire arm injuries. The injuries were ante mortem in nature. The relevant extract of FSL report Ex.P15 is reproduced as under:-

Parcel No.	No.& seal impression	Description of parcel(s)
II.	2 of doctor	Contained one .315” fired bullet (badly deformed & mutilated), one 9 mm fired bullet and one jacket stated to have been taken out from the body of deceased Krishan in reference PMR No.604/GH/11 Dated 08/11/11. (Bullets marked as BC/1 and BC/2 and jacket marked as BC/3 by me).
III	3 of O.P.S.	Contained one .315” fired cartridge case and two 9 mm fired cartridge cases stated to have been recovered from the place of occurrence. (Cartridge cases marked as C/1 to C/3 by me).
VI	7 of R.S.	Contained one Countrymade pistol (Chambered for 9 mm cartridges) without magazine and alongwith one 9 mm fired cartridge case stated to have been recovered from accused Deepak. (Pistol marked as W/2 and cartridge case marked as C/4 by me).
VII	12 of R.S.	Contained one country made pistol (Chambered for .315” cartridges) alongwith two .315” live cartridges stated to have been recovered from accused Paramjeet (Pistol marked as W/3 by me).

Results

- “3. The .315” fired cartridge case marked as C/1 has been fired from countrymade pistol marked as W/3 (recovered from accused Paramjeet) and not from any other firearm even of the same make and bore/calibre because every firearm has got its own individual characteristic marks.
5. The 9 mm fired cartridge case marked as C/4 has been fired from Countrymade pistol marked as W/2 (recovered from accused Deepak) and not from any other firearm even of the same make and bore/calibre because every firearm has got its own individual characteristic marks.
6. The 9 mm fired bullet marked as BC/2 and jacket of 9mm fired bullet marked as BC/3 have been fired from countrymade pistol marked as W/2 (recovered from accused Deepak) and not from any other firearm even of the same make and bore/calibre because every firearm has got its own individual characteristic marks.

7. The .315” fired bullet marked as BC/1 has been fired from countrymade pistol marked as W/3 (recovered from accused Paramjeet) and not from any other firearm even of the same make and bore/calibre because every firearm has got its own individual characteristic marks.”

22. The prosecution has proved that the bullets which were taken out from the body of deceased Shri Krishan were fired by the pistols used by the appellants Paramjeet and Deepak. PW-4 Rai Singh and PW-10 Murti have deposed about the motive attributed to the appellants. Moreover it is settled law in criminal jurisprudence that if the case is proved by the prosecution on the basis of convincing evidence, the motive will not be material. Now as far as the timing given in ruqa at 3.30 P.M. is concerned, the same is a minor omission which will not dent the case of prosecution. The prosecution has proved the case against the appellants beyond reasonable doubt. Accordingly there is no occasion to interfere with the well reasoned judgment and order of the trial Court.

23. Accordingly both the appeals are dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

December 03, 2018.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No