

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-299-DB of 2014 (O&M)
Date of decision : 21.11.2018

...

Kapil @ Pardeep and another
.....Appellants

vs.

State of Haryana
.....Respondent

Coram: Hon'ble Mr. Justice A.B. Chaudhari
Hon'ble Mr. Justice H.S. Madaan

Present: Mr. Deepinder Singh Brar, Advocate for the appellants

Mr. Amit Mehta, Deputy Advocate General, Haryana.

...

H.S. Madaan, J.

This appeal is directed against judgment dated 6.12.2013, passed by Additional Sessions Judge, Palwal, vide which he had convicted accused Kapil @ Pardeep and Ashok Rathi, for offences under Sections 302, 201, 34 IPC, as well as under Section 25 of the Arms Act and vide order dated 7.12.2013 sentenced them as follows:-

<i>Name of the convict</i>	<i>Offence</i>	<i>Sentence</i>
Kapil @ Pardeep and Ashok Rathi	U/s 302 IPC	To undergo rigorous imprisonment for life and to pay fine of Rs.10,000/- each and in default of payment of fine, both the convicts to further undergo rigorous imprisonment for three years.
	U/s 201 IPC	To undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.5,000/- each and in default of payment of fine, both the convicts to further undergo rigorous imprisonment for two years.
	U/s 25 of Arms Act	To undergo rigorous imprisonment for a period of one year.

All the sentences were ordered to run concurrently.

Accused-convicts who are appellants before this Court pray that the appeal filed by them be accepted, the impugned judgment of conviction and order of sentence passed against them be set aside and they be acquitted of the charge framed against them.

Briefly stated, the facts of the case, as per the prosecution story are that on 9.8.2011, Prem Singh, Sarpanch of village Kalwaka, informed the police of Police Post Dhatir, that dead body of a young man was lying near the metalled road towards Jaindapur side in his village. As such, the Police Party, headed by SI Mahabir Singh (hereinafter to be referred to as 'the Investigating Officer') went to the spot, where complainant Prem Singh appeared and got his statement recorded to the effect that on the said day, at about 2.30 P.M. while he was coming from Jaindapur side towards his village and was about 2 kms short of his village, then he observed dead body of a young boy, aged about 20-21 years, wearing shirt of blue colour having white lining and a capri of black colour, lying near the road, in the fields of Lekh Ram. The dead body was having a fire arm injury on the left side of the chest and two empty shells were lying nearby; that several people had gathered at the spot, but the dead body could not be identified. Such statement of the complainant Prem Singh was duly signed by him and the Investigating Officer appended his endorsement below that statement and sent *ruqa* to the Police Station on the basis of which formal FIR was registered.

The investigation in the case started. The Investigating Officer summoned a photographer to the scene of crime who took

snaps thereof. The Investigating Officer prepared a site plan of the place of occurrence. The empty shells were taken into police possession. After carrying out inquest proceedings the Investigating Officer got post mortem examination conducted on the dead body. The dead body was later on found to be that of Dharmender. During the course of investigation, it transpired that accused Ashok Rathi had approached PW-3 Manoj Kumar and borrowed his Scorpio vehicle bearing registration No. HR 26BF 8342 and in that vehicle Dharmender, his mother Anguri Devi and one Kapil, who used to work with Ashok Rathi, had gone towards Gurgaon side. The Scorpio vehicle was being driven by Ashok Rathi. Dharmender and Anguri Devi had not returned home ever since.

Accordingly, Ashok Rathi and Kapil were arrested in this case. Ashok Rathi was interrogated on 24.11.2011, during the course of which he suffered a disclosure statement confessing his involvement in the incident and got demarcated the place of occurrence. In pursuance of the disclosure statement suffered by him, such accused had got recovered a pistol having inscription USA and two live cartridges from the almirah kept in his residential house and the recovered pistol and live cartridges were converted into a sealed parcel and taken into possession vide recovery memo. Interrogation of Ashok Rathi revealed that he alongwith Kapil had committed murder of his brother-in-law and mother-in-law Anguri Devi; the dead body of Anguri Devi was thrown in Gaunchi drain. Ashok Rathi had got recovered the Scorpio vehicle bearing registration No. HR 26BF 8342 from Laxmi Dharam Kanta at Raisina Crusher Zone,

Sohna, by making statement under Section 27 of the Evidence Act and that vehicle was taken into police possession. The motive for the incident came out to be that Dharmender, a brother-in-law of Ashok Rathi had solemnized marriage with a girl namely, Sapna, who belong to Yadav community, whereas the deceased belonged to the Jat community. His mother Anguri Devi was agreeable to that matrimonial alliance, as such Ashok Rathi was annoyed with Dharmender and his mother Anguri Devi and he had committed their murder throwing dead body of Dharmender in the fields, whereas that of Anguri Devi in Gaunchi drain.

During the course of investigation, the Investigating Officer took into possession various articles, recorded statements of several witnesses, sent the pistol, two live cartridges recovered from the possession of Ashok Rathi and empty shells, recovered from the spot to the Forensic Science Laboratory, Madhuban.

After completion of investigation and other formalities, the accused were challaned.

On presentation of challan in the Court of Additional Chief Judicial Magistrate, Palwal, copies of documents relied upon therein were supplied to the accused free of cost, as provided under Section 207 Cr.P.C. Then finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, he vide order dated 16.3.2013 committed the case to the Court of Sessions, and from where it was assigned to the Additional Sessions Judge, Palwal.

On receipt of case file in his Court, learned Additional Sessions, Palwal, finding a prima facie case, charge sheeted both the

accused for offences under Sections 302, 201, 34 IPC read with Section 25 of Arms Act, to which they pleaded not guilty and claimed trial.

The case was fixed for evidence of the prosecution, during the course of which, the prosecution examined 19 witnesses, i.e. PW-1 Manbir Singh, Sarpanch, PW-2 Prem Singh, Sarpanch, PW-3 Manoj Kumar, PW-4 Narender Arora, PW-5 Sri Bhagwan, Patwari, PW-6 EASI Raghuvir Singh, PW-7 EHC Iqbal Khan, PW-8 HC Rajesh Kumar, PW-9 EHC Mahender Singh, PW-10 Mahavir Singh, SI, PW-11 Inspector Mohammad Jamal, PW-12 HC Rajesh Kumar, PW-13 ASI Dharam Pal, PW-14 HC Harpal Singh, PW-15 Inspector Surender Singh, PW-16 Ved Ram, Ahlmad, PW-17 ASI Ashok Kumar, PW-18 HC Ravi Dutt and PW-19 Dr. J.P. Parsad.

On closure of prosecution evidence statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against such accused were put to them, but they denied the allegations pleading false implication. The accused did not lead any evidence in defence.

After hearing the arguments, learned trial Court convicted and sentenced accused as mentioned above, which left them aggrieved and they have filed the present appeal.

We have heard learned counsel for the appellants-accused, learned State counsel, besides going through the record and we find that the impugned judgment passed by the trial Court with regard to convicting both the accused for offences under Sections 302, 201 read with Section 34 IPC and accused Kapil for offence

under Section 25 of the Arms Act, is not sustainable, as such the impugned judgment to that extent and sentence order in that regard are bound to be set aside.

The instant case is based upon circumstantial evidence with no eye witness of the incident being there, who might have seen the accused committing murder of Dharmender and Anguri Devi and then disposing of their dead bodies, so as to destroy the evidence of their crime with intention to screen them from legal punishment. The law is well settled that if a case is based upon circumstantial evidence, the chain of events/evidence must be complete and if any vital link in the chain is missing, then conviction of accused cannot be based. Further more, in such an eventuality, a strong motive must be established. In the instant case, it is not so. There are many chinks in the armour of the case of the prosecution and several important and vital links in the chain are missing.

Taking up the witnesses examined by the prosecution one by one and assessing their evidentiary value, PW-1 Manbir Singh, Sarpanch, Village Alipur, stated that on 8.8.2011, deceased Dharmender alongwith his mother Anguri Devi had gone for taking medicines, but did not return and later on he came to know that dead body of Dharmender was found at Palwal. As such he alongwith other members of Panchayat reached General Hospital, Palwal, where he identified the dead body of Dharmender. The witness did not utter even a single word against the accused, holding them responsible for murder of Dharmender and disappearance of Anguri Devi.

Similarly, PW-2 Prem Singh, Sarpanch of village

Kalwaka, stated that on 9.8.2011 while he was coming from village Jaindapur, on the way he had seen dead body of a young boy in the fields of Lekh Ram at a distance of about 2 kms from the village and he had noticed fire arm injury marks on the chest and other side of the deceased. As such he had informed the villagers but he could not identify the deceased. Again this statement is not incriminating against the accused.

Coming to the testimony of PW-3 Manoj Kumar, a very important witness for the prosecution, from whom, as per the prosecution story, Ashok Rathi had borrowed the Scorpio vehicle bearing registration No. HR 26BF 8342 and alongwith his co-accused Kapil had taken away his brother-in-law Dharmender and mother-in-law Anguri Devi, by making them sit in that vehicle, did not support the prosecution story at all. Rather he stated that he did not know anything about the case; that Ashok Rathi never came to him to borrow his Scorpio vehicle bearing registration No. HR 26BF 8342. He was declared a hostile witness at the instance of learned Public Prosecutor and learned Public Prosecutor was allowed to put question to him in the form of cross examination. But lengthy cross examination failed to get any reply favourable to the prosecution. This witness having not supported the prosecution story gives a major jolt to the prosecution case since if he had toed the line of prosecution that would have provided a very vital piece of inculpatory evidence against the accused, showing that the deceased Dharmender and Anguri Devi were last seen in the company of Ashok Rathee and Kapil and then onus would have shifted upon them to explain the

whereabouts of Anguri Devi and as to how Dharmender suffered gun shot injury, resulting in his death and his dead body lying in the fields of Lekh Ram in the area of village Kalwaka.

PW-4 Narender Arora, photographer deposed about going to the spot on 9.8.2011, at the asking of Investigating Officer Mahavir Singh and taking of photographs of the dead body. His statement is at best of corroborative nature and does not connect the accused with the crime. To the similar effect, is testimony of PW-5 Sri Bhagwan Patwari, Halqa Ratipur, who deposed that on 18.1.2012, while posted as Patwari at village Kalwaka, he had prepared the scaled site plan on the asking of the Investigating Officer.

PW-6 EASI Raghuvir Singh, Moharar Mal Khana, Police Station Sadar Palwal, is a formal witness. According to him SI Mahavir Singh had deposited the case property on 9.8.2011, 10.8.2011 and 25.11.2011, which he had sent to Forensic Science Laboratory, Madhuban, through Constable Krishan Kumar.

PW-7 EHC Iqbal Khan, deposed regarding he being member of the Police Party headed by Inspector Jamal Khan on 26.11.2011; that accused Ashok Rathi had got recovered Scorpio bearing registration No. HR 26BF 8342 from crusher zone Raishina, which was taken into police possession. From his testimony, at the best it can be taken that Ashok Rathi had got recovered Scorpio vehicle in question from his possession. But then there is nothing to show that Ashok Rathi and Kapil had used this vehicle for transportation of Dharmender and Anguri Devi and then committing

their murder.

Coming to the testimony of PW-8 HC Rajesh Kumar, who was member of the Police Party on 9.8.2011 and had taken *ruqa* from the spot to the Police station for the purpose of registration of the FIR and in whose presence empty shells had been taken into possession and further who on 10.8.2011 had received parcel containing belongings of the deceased from doctor giving the same to the Investigating Officer. Again his statement is not directly incriminating against the accused and is of supportive type only.

As regards the statement of PW-9 EHC Mahender Singh, who had taken special reports to Area Magistrate and higher police officers, his testimony is of formal nature.

With respect to the testimony of SI Mahavir Singh, Investigating Officer of this case, who had appeared as PW-10, admittedly he is not an eye witness of the incident and had carried out investigation in the case at initial level. Though he stated that on 24.11.2011, accused Ashok Rathi was interrogated by him, who had suffered statement in which he confessed his guilt, but then that statement being statement made by the accused in custody to a police officer, is clearly hit by Section 25 of the Evidence Act and cannot be taken into consideration.

As far as deposition of PW-11 Inspector Mohammad Jamal, SHO, Police Station Sadar, Palwal, who had also reached at the spot, carrying out investigation, arresting the accused in this case and interrogating them. According to this witness Ashok Rathi on being interrogated, had suffered a disclosure statement and in

pursuance thereof, got a pistol with USA inscribed thereon, alongwith two live cartridges, recovered from his almirah in his house, which were taken into police possession. Although this witness stated that accused also disclosed regarding murdering his mother-in-law and throwing the dead body in Gaunchi drain, again this statement is hit by Section 25 of the Evidence Act. Admittedly, dead body of Anguri Devi was not got recovered by Ashok Rathi from the disclosed place in pursuance of such statement allegedly made by him to the police, therefore, the statement cannot be taken into consideration. Similarly, according to this witness Ashok Rathi had got recovered Scorpio vehicle bearing registration No.HR 26BF 8342 , from Laxmi Dharam Kanta at Raisina Cursher Zone Sohna, in pursuance of the disclosure statement suffered by him. As discussed earlier, unless there is connecting evidence to show that vehicle was used in the crime, the recovery of Scorpio vehicle cannot be taken to be a piece of incriminating evidence against the accused. However, from statement of this witness, it comes out that Ashok Rathi had got recovered a pistol and two live cartridges from his possession.

PW-12 HC Rajesh Kumar, is an attesting witness of the disclosure statement made by Ashok Rathi in pursuance of which Scorpio vehicle was recovered. This aspect has already been discussed earlier.

Coming to the statement of ASI Dharam Pal, PW-13, an attesting witness of disclosure statement said to have been made by Ashok Rathi in his presence on 24.11.2011, before SI Mahavir Singh.

As stated by him in his cross examination no recovery was effected in

his presence, therefore, the disclosure statement is not of much value. No recovery was effected in his presence.

PW-14 Harpal Singh a witness of disclosure statement by Ashok Rathi, who then got recovered 32 bore pistol alongwith two live cartridges from his possession, from the disclosed place, but that corroborates the prosecution case as regard recovery of pistol and live cartridges from possession of Ashok Rathi only.

PW-15 Inspector Surender Singh, is a formal witness who had just filed challan against the accused on completion of investigation, deposed regarding that. Whereas PW-16 Ved Ram Ahlmad, DM Office, Palwal, proved the sanction granted by District Magistrate, Palwal, for prosecution of the accused under Section 25 of the Arms Act.

PW-17 ASI Ashok Kumar, stated that on 11.1.2012, he was associated in the investigation of the case by ASI Satbir Singh, who had interrogated the accused Kapil @ Pardeep, who had suffered a disclosure statement admitting his involvement in the crime and in pursuance of said disclosure statement lead the police party and demarcated the place of occurrence where Dharmender was murdered and had demarcated the place where dead body of Anguri Devi had been thrown, besides disclosing name of co-accused as Ashok. But statement of accused in custody before the police officer does not carry much evidentiary value in view of Section 25 of the Evidence Act, as discussed above.

PW-18 HC Ravi Dutt, claimed to be attesting witness of the disclosure statement made by Ashok Rathi while in police

custody on 23.11.2011 and thereafter got recovered 32 bore pistol and two live cartridges which were taken into police possession and demarcating the place where murder of Dharmender had been committed. This aspect has already been dealt with in the earlier part of the judgment.

Now coming to the FSL report, from Forensic Science Laboratory, Madhuban, the pistol was found to be in working order and the cartridges to be live one, the empty shells were found to have been fired from the recovered pistol. As per the other report, human blood was found to be there on the clothes of the deceased.

It may be mentioned here that the clinching evidence that Dharmender had died as a result of the shots fired by the accused, is missing in this case. No bullet is said to have been found from the body of Dharmender during post mortem examination which could be connected with the pistol recovered from accused Ashok Rathi.

PW-19 Dr. J.P. Parsad, Medical Officer, Government Hospital, Palwal, who provided the medical evidence, stated that on 10.8.2011, he was one of the three doctors comprising Board of doctors, which had performed the post mortem examination on the dead body of Dharmender, who was un-identified by that time. Finding that death was due to shock and hemorrhage, as a result of antimortem, penetrating puncturing over the chest (injury to vital parts), which was sufficient to cause death in ordinary course of nature. The medical evidence is of supportive nature only and it cannot by itself slap criminal liability upon the accused.

The judgment passed by the trial Court with regard to

convicting both the accused for offence under Sections 302, 201 read with Section 34 IPC and under Section 25 of the Arms Act, with regard to Kapil, accused, is based on presumptions, conjectures and legally inadmissible evidence and wrong interpretation of law. The same cannot be sustained. The prosecution had failed in its endeavour to prove its charge against both the accused in that respect conclusively and affirmatively. Therefore, the conviction and sentence of both the accused – appellants, to that extent is set aside.

However, the conviction and sentence of Ashok Rathi for offence under Section 25 of the Arms Act, is upheld. Since the prosecution has successfully proved that he had kept in his custody a pistol of 32 bore alongwith two live cartridges, without any licence or permit, committing an offence punishable under Section 25 of the Arms Act. Whereas conviction and sentence of accused Kapil under Section 25 of the Arms Act is not sustainable since no firearm or cartridge was recovered from him. Therefore, he is acquitted of the charge for offence under Section 25 of the Arms Act. A copy of the judgment be sent to Chief Judicial Magistrate, Palwal, for information and further necessary compliance.

With such modification, the appeal is disposed of.

(A.B. CHAUDHARI) (H.S. MADAN)
JUDGE JUDGE

21.11.2018
chugh

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