

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

Reserved on 20.11.2018

Date of decision : 01.12.2018

1. CRA No. 914-DB of 2003 (O&M)

Rajesh		 Appellant
	versus	
State of Haryana		... Respondent

2. CRA No. 65-DB of 2004 (O&M)

Shiv Kumar @ Bindu		 Appellant
	versus	
State of Haryana		... Respondent

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

Present Mr. Vinod Ghai, Senior Advocate with
Mr. Harmandeep Brar, Advocate, for the appellants.

Mr. Vishal Garg, Additional Advocate General, Haryana.

Rajiv Sharma, J.

This judgment will dispose of two appeals bearing CRA No. 914-DB of 2003 and CRA No. 65-DB of 2004, as common questions of law and facts are involved therein.

These appeals are instituted against the judgment and order rendered by Additional Sessions Judge (Adhoc), Fast Track Court, Sonapat, in Session case No. 37 of 2001, dated 14.8.2003, whereby appellants Rajesh and Shiv Kumar @ Bindu, along with Bablu @ Bobi, Ram Kumar, Ramvir, Hariya @ Karan Singh and Dalbir were charged and tried for the offence under Sections 302, 343, 364-A, 368, 388, 404, 120-B, 216 read with Section 34 IPC and Section 25 of the Arms Act, 1959.

Appellant Shiv Kumar @ Bindu and Rajesh along with Bablu

@ Bobby were convicted and sentenced under Section 364-A IPC to undergo imprisonment for life and to pay fine of ₹ 2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for two months. They were also convicted and sentenced under Section 368 IPC for life imprisonment and to pay fine of ₹ 2,000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of two months. They were also convicted and sentenced under Section 302 for life imprisonment and to pay fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months. All the sentences were ordered to run concurrently. Bablu @ Bobby was also convicted and sentenced under Section 25 of the Arms Act.

Appellant Bablu @ Bobby died during the pendency of the appeal. His appeal bearing CRA No. 774-DB of 2003 Bablu @ Bobi vs State of Haryana, has abated.

Accused Ram Kumar, Ramvir, Hariya @ Karan Singh and Dalbir were acquitted.

The case of the prosecution in nutshell is that Jagdev son of Hari Singh, watchman, resident of village Bhanwar, District Sonapat, met SI Amar Dass, SHO Police Station, Ganaur at Khubru Bus Stand on 5.2.2001. Jagdev informed SI Amar Dass that he is resident of village Bhanwar and working as a Watchman of that village. He was present at his house at 9.00 am, when Devi Singh son of Mam Chand, Jat, resident of village Bhanwar, who was Sarpanch of the village, came to him. He told that dead-body of a young man was lying in the land owned by panchayat. He went to the spot near the fields owned by Rattan Singh son of Mam Chand, resident of

village Bhanwar along Kailana Road accompanied by Devi Singh Sarpanch.

Dead body of a young man was found lying in the agricultural land owned by Gram Panchayat, adjacent to the fields of Rattan Singh. He left Devi Singh near the dead-body. He told him that he was going to the Police Station. Under these circumstances, the FIR was registered. Dead-body was sent for post-mortem examination. The post-mortem examination was conducted by Dr. Rajiv Sethi. The cause of death was shock and haemorrhage due to head injuries. The recoveries were effected on the basis of disclosure statements made by the accused. The investigation was completed and the challan was put up after completion of all the codal formalities.

The prosecution examined a number of witnesses in support of its case. The statements of the appellants were also recorded under Section 313 Cr.P.C. They have denied the case of the prosecution. The appellants were convicted and sentenced, as noticed above. Hence, the present appeals against the judgment and order dated 14.8.2003.

Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove its case against his clients. Learned counsel appearing for the State has supported the judgment and order dated 14.8.2003 of the learned trial Court.

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

PW1 Jagdev testified that about one year ago he was present in his house. He was called by the Sarpanch of the village. He told that dead-body of an unknown person was lying in the land owned by Gram Panchayat nearby the road. He rushed to the spot and saw a dead-body lying

there. He informed the police. In his cross-examination, he deposed that deceased was about 45-50 years of age. He reached the police station at about 11.00 a.m. He took about one hour on foot to reach the police station.

PW3 ASI Dhanpat Rai deposed that on 17.2.2001 he was posted at Police Station Ganaur, District Sonapat. Accused persons, namely, Bablu and Dalbir were taken into custody by Inspector Jagdish Chander from CIA Staff. On 18.2.2001, Inspector recorded disclosure statement of accused Bablu, vide Mark-A. In pursuance of his disclosure statement, Bablu got recovered ₹ 20,000/- from his house vide recovery memo. Ex. PD, besides one mobile phone mark CMN and one country made pistol. On the same day i.e. 18.2.2001 both the accused persons identified a room where they had kept Lalinder Singh (deceased) confined for about three days. On the basis of report of SI Ram Avtar, case No. 59 dated 13.3.2001 was registered and accused Shiv Kumar and Rajesh were arrested. They also made disclosure statements, Ex. PG and Ex.PH, respectively. Thereafter, two country made pistols were recovered from the custody of both the accused persons vide Mark-B and Mark-C. The pistol which was recovered from the custody of Shiv Kumar contained one empty cartridge and one live cartridge was recovered from the pistol, which was in the custody of Rajesh. They also identified the places where they set the car on fire. On 5.4.2001, accused Ram Kumar was arrested.

PW5 HC Balwan Singh testified that he was posted as Armour, Police Lines, Sonapat. On the request of SI Amar Dass, Police Station, Ganaur, he mechanically tested the country made pistol .315 bore vide report, Ex. PK. Thereafter, the weapon was duly sealed with monogram DR. He tested the same after breaking the seal. He made identifying mark i.e. 'X'.

and sealed the same with monogram 'BS'.

PW12 Dr. Rajiv Sethi, Medical Officer, CHC, Gohana, was one of the members of the Board, which conducted the post mortem examination of an unknown dead-body. The body was brought by HC Ram Kishore. The Board had noticed the following injuries:-

- “1. There was a big wound present in the upper part of left side of face also involving the left temporal frontal, parietal and occipital area of scalp extending to the right midline also margins were clean cut. Clotted blood was present. Whole of the underlying skull and facial bones were fractured. Some pieces of fracture bones were missing. Mouth of the brain tissue was missing. Left eye ball was missing. Right eye ball was hanging out of the fractured orbit.
2. There was an abraded contusion irregular in shape 6 x 2.5 cm present in the outer side of upper part of left upper arm.
3. There was multiple contusion of different sizes and shapes present on the back of lower part and left lower arm.
4. Lower Jaw fractured on left side.”

The cause of death according to the opinion of the Board was injury to vital organs i.e. Brain leading to shock and all the injuries were ante-mortem in nature and sufficient to cause death in ordinary course of life. He proved post-mortem report as Ex.PQ/1. He also admitted that the police moved application, Ex. PQ/4 regarding the possibility of fire arm injury. According to their opinion, Ex. PQ/5, the injury did not seem to be

caused by fire arm but the possibility could not be ruled out. In his cross-examination, he admitted that possibility of the fire arm injury on the body of the deceased could not be ruled out due to the reason that injury was present i.e. big wound. However, that wound was clean cut.

PW13 SI Amar Dass is a material witness. He testified that on 7.2.2001, he was posted as SHO Police Station at Ganaur. He along with SI Dhanpat Singh and other police officials was on patrol duty. In the meantime, one person Jagdev approached them. He told that dead-body was lying within the revenue estate of village Bhanwar. He recorded his statement. FIR was registered vide Ex. PR. Thereafter, he reached the spot. 15/20 persons were present there. Photographs of the dead-body were taken. He removed the dead-body and sent for post-mortem examination.

PW15 Balwinder Singh is the brother of deceased Lalinder Singh. He deposed that on 5.2.2001, he was posted at Patiala (Bank). He received a telephonic call at his residence to the effect that his brother was kidnapped/ abducted for ransom. He collected ₹ 5,000/-. Thereafter, he contacted his maternal uncle. He came to Delhi along with him. On 6.2.2001, he along with some officials visited Police Station, Delhi and lodged FIR. He was told by one Navneet Singla that ransom of ₹ 1.50 lacs was demanded by one Shiv Kumar. The amount was transacted by one Mukesh Kumar Daggar. He was told by the police that his brother Lalinder Singh was kidnapped from Hotel at Karnal. They rushed to Karnal. They also visited Police Station, Ganaur.

PW16 Sardar Amarinderpal Singh deposed that deceased was his sister's son. Information was received by him that Lalinder Singh was kidnapped. He along with Balinder Singh left for Delhi on 6.2.2001 and

reached Mukherji Nagar, residence of Lalinder Singh. Thereafter, FIR was lodged with the police of Police Station, Mukherji Nagar. He was re-called for further examination.

PW19 Jagdish Parkash deposed that he was posted as SHO Police Station, Ganaur. The dead-body was recognized by the deceased's relations.

PW20 Inspector Randhir Singh deposed that he has recorded the statements of the witnesses under Section 161 Cr.P.C.

PW21 Inspector Ram Kala deposed that accused Dalbir made a disclosure statement, Ex. PAA. Accused Bablu was also interrogated. He made disclosure statement, Ex. PBB. The investigation was entrusted to him on 13.2.2001.

PW22 Inspector Jagdish Parshad deposed that on 9.2.2001, he was posted as SHO Police Station Ganaur. He produced the clothes of the deceased before Balinder Singh and Amrinder Singh, who identified the same. On 17.2.2001, Bablu accused took him to the place of occurrence. On 18.2.2001 Bablu accused took him to his *chaubara* situated at village Sanoli, District Panipat. He got recovered one mobile phone, a sum of ₹ 20,000/-, one country made pistol of .315 bore lying in a box. The sketch was prepared. The recovery memos qua these items were prepared. Accused Dalbir was arrested on 17.2.2001. He prepared demarcation memo, Ex. PE.

What emerges from the material statements mentioned above is that according to the case of the prosecution, Lalinder Singh was kidnapped for ransom. His brother was also informed. He also lodged the report. A sum of ₹ 1.5 lacs was paid through one Mukesh Kumar Daggar. The case of the prosecution is that Shiv Kumar shot Lalinder Singh. Thereafter, his car

was also burnt. The ransom money was distributed amongst the accused. On the basis of disclosure statements made by the accused, pistols/ currency notes were recovered. The clothes worn by the deceased were identified by his brother Balinder Singh and Amrinder Singh.

According to PW1 Jagdev, the dead-body was found in the fields. Police was informed. Police lodged the FIR. The dead-body was sent for post-mortem examination. Post-mortem was conducted by PW12 Dr. Rajiv Sethi. He noticed as many as four injuries on the body of the deceased. The cause of death was injury to vital organs i.e. brain leading to shock and all the injuries were ante-mortem in nature and sufficient to cause death in ordinary course of life. According to application filed by the police, vide Ex.PQ/1, the death of unknown person was committed with the help of sharp edged weapon. In the post-mortem report, it has also come that the police had told the doctors that the death was caused due to sharp edged weapon. Thereafter, the police moved an application, vide Ex.PQ/4, seeking opinion of the doctor, who conducted the post-mortem examination whether the injuries could be caused with the fire arms. The opinion given by the doctor, who conducted the post-mortem examination, vide Ex. PQ/5, was that it appears that the injury was not caused by fire arm but the possibility could not be ruled out. The post mortem report was not produced before the doctor, when his opinion was sought vide Ex. PQ/5.

The weapon was got recovered from Shiv Kumar on the basis of disclosure statement made by him, vide Ex. PG. The same was mechanically tested by PW5 Balwan Singh by breaking the seal. It was not permissible under the law. When a weapon used in the crime is taken into possession and sealed, the same can only be opened before the Court or

before the FSL. The FSL report is also placed on record. According to FSL report, Ex.PX, *“Products of combustion of smokeless powder were detected from the barrel of countrymade pistol marked W/1 (chambered for 12 bore cartridges). Test firing from weapon W/1 was done in the laboratory. Its firing mechanism was found in working order. The class as well as individual characteristic marks present on cartridge cases C/1, C/2 and those on test cartridges cases fired from weapon W/1 were examined and compared under stereo and comparison microscope.”*

PW5 Balwan Singh has deposed that he has also tested the weapon by firing with dummy cartridge to ascertain whether the weapon was in working order or not. In case dummy cartridge was used, the carbon/smokeless powder could not be detected by FSL. It casts doubt on the theory of the prosecution that it was the same weapon of offence, which was recovered from Shiv Kumar and used in the commission of crime.

According to the prosecution, Shiv Kumar had shot Lalinder Singh from very close range. In this eventuality, there should have been entry and exit points. No blackening or tattooing was found on the body.

It is also the case of the prosecution that one of the accused, namely, Rajesh was working under the deceased. He wanted to be reinstated. According to the prosecution, when they were traveling in car one of the accused, namely, Bablu @ Bobby asked the deceased to get him employment. Lalinder Singh told him that whether he has any other hobby other than getting employment. The prosecution has also tried to project the theory that it was a case of sodomy but PW12 Dr. Rajiv Sethi opined that it was not a case of sodomy.

It has also come in evidence that the accused took Lalinder

Singh to various places and also kept him in custody in a house. According to the prosecution, he met the accused at Ganaur. Thereafter, he was taken to Bahadurgarh, Gohana and Village Bhanwar. He was young man. It is not believable that he would not have tried to escape from the clutches of the accused. He could also raise alarm when he was shifted from one place to another.

Though the gun was recovered from the custody of Shiv Kumar but he was not charged under the Arms Act, 1959. Disclosure statements made by the accused have been recorded while they were in the police custody.

The present case is based on circumstantial evidence. There is no eye witness. In order to prove the case based on circumstantial evidence, the chain must be complete. All the circumstances conclusively should point towards the guilt of the accused. In the instant case, the chain was snapped.

The prosecution has failed to prove its case beyond reasonable doubt. The appellants are given benefit of doubt. The appeals are allowed. The judgment and order dated 14.8.2003 are set aside. The appellants are on bail. Their bail bonds are discharged.

(Rajiv Sharma)
Judge

01.12.2018
vs

(Harinder Singh Sidhu)
Judge

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