

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-698-DB-2003

Date of Decision:-02.12.2019

Surjit Ram @ Sita and others

... Appellants

vs.

State of Punjab

....Respondent

Coram: **Hon'ble Mr. Justice Jitendra Chauhan**
 Hon'ble Mrs. Justice Archana Puri

Present:- Mr. Pradeep Virk, Advocate (Amicus Curiae) and
 Mr. S.S. Rana, Advocate
 for the appellants.

Mr. Bhupinder Beniwal, Assistant Advocate General, Punjab

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Archana Puri,J.

Challenge in the present appeal is to the judgment dated 09.08.2003 passed by learned Additional Sessions Judge (Adhoc), Jalandhar.

The background facts in nutshell are, as follows:

That, complainant Mohan Lal, son of Bikkar Ram, resident of village Pasla, was doing the labour work. He had two sons and a daughter. His eldest son Rakesh Kumar was serving at Goraya with Gobind Light Sound Service. On 31.08.2000, at about 7.30 PM, his eldest son Rakesh Kumar was standing at the bus stop of Daduwal Pasla for going to Goraya. The complainant was also there, as he had to go to a passage leading to village Daduwal for some domestic work. When the complainant reached at bus stop Pasla Daduwal, his son Rakesh Kumar was found standing there, then, in the meanwhile, Prem Pal @ Gung son of Lahori Ram, Addharmi

residents of Pasla, Surjit Ram @ Sita Ram, armed with kirch, while Nama son of Resham was standing empty handed. Nama, son of Resham raised a lalkara and proclaimed to Rakesh Kumar that he may run away, but they would not allow him to go away and they shall kill him. In the meanwhile, Surjit @ Sita gave a kirch blow on his son, which hit below his neck on the chest and second blow was given by him, with his kirch, which hit on the right side of his abdomen. Rakesh Kumar tried to run away but Nama having moved ahead, pushed his son Rakesh Kumar and made him fall on the ground, asked him as to where he was going. Thereafter, his son raised a lalkara as to what Prem Pal was doing and he should be killed. Upon this, Prem Pal @ Gung gave 3rd blow with his kirch to Rakesh Kumar, which hit on his back. The complainant raised lalkara, which attracted Jagdish Kumar resident of village Pasla to the spot and he also witnessed the occurrence. Having inflicted injuries to Rakesh Kumar, all assailants ran away from the spot alongwith their respective weapons of offence. The scooter was driven by accused Surjit Kumar @ Sita having light creme colour and its number plate was smeared with mud so the same was not legible. The motive for causing the injuries was that 3/4 months, prior to the occurrence in question, a fight had taken place between Rakesh Kumar and the accused. Thereafter, compromise was arrived at between the parties with the intervention of a panchayat and on account of the same, all the aforesaid accused inflicted injuries on the person of Rakesh Kumar.

The complainant alongwith Jagdish Kumar took the injured- Rakesh Kumar to Civil Hospital, Bandala where doctor treated him and on considering his serious condition, they referred him to Civil Hospital,

Jalandhar. On reaching Civil Hospital, Jalandhar, the concerned doctor had declared Rakesh Kumar dead.

Proceedings in the present case were initiated, on the basis of the statement got recorded by complainant Mohan Lal, to Sub Inspector Manjit Singh.

According to Manjit Singh, Sub Inspector, on 31.08.2000 he alongwith ASI Jagan Nath was present near the bus stand of Bundala where PW Girdhari Lal met them and apprised him about injuries suffered by Rakesh Kumar, who was lying in the Civil Hospital, Bundala. On reaching Civil Hospital, Bundala they came to know that the injured was referred to Civil Hospital, Jalandhar. Thereupon, SI Manjit Singh alongwith police party reached Civil Hospital, Jalandhar and at the gate of the hospital, Mohan Lal, complainant and Jagdish Ram, eye witness met them. Statement of Mohan Lal was recorded, which is Ex.PA. Endorsement Ex.PA/1 was made and formal FIR Ex.PA/2 was recorded.

During the course of investigation, inquest proceedings were conducted. Postmortem on the dead body of Rakesh Kumar was also got conducted. The Investigating Officer also lifted the blood stained earth from the spot, which were converted into parcel and taken into possession vide memo Ex.PD. Rough site plan of the place of occurrence was prepared. Statements of the witnesses were recorded. Even belongings of the deceased were taken into possession, vide memo Ex.PX.

On completion of investigation, challan was presented u/s 302 read with Section 34 of the Indian Penal Code, against accused Surjit Ram, Prem Pal @ Gung and Nama.

On presentation of the challan, compliance of Section 207 Cr.P.C. was made and thereupon, the case was committed to the Court of Sessions. On the basis of the report under section 173 Cr.P.C. and the material coming forth, charge was framed against the accused under Section 302 read with Section 34 of the Indian Penal Code, to which they pleaded not guilty and claimed trial.

In endeavour to establish its claim, the prosecution has examined as many as 13 witnesses, besides adducing documentary evidence.

PW-1 Mohan Lal is the complainant, at whose instance, the prosecution proceedings were initiated. He has categorically deposed about the manner of occurrence as well as injuries caused by the accused-persons on the person of Rakesh Kumar, which led to his death. He proved his statement Ex.PA made before the police.

PW-2 Jagdish is an eye witness to the occurrence. He has also narrated about the manner of causing of injuries by the accused on the person of Rakesh Kumar. He also deposed regarding preparation of the inquest report Ex.PB by the police, which was attested by him.

PW-3 C.II Nachhatar Singh, has tendered into evidence his affidavit Ex.PC, which is formal evidence.

PW-4 Dr. Ashok Kumar, Medical Officer, Mini PHC Rurka Kalan, Jalandhar, has deposed that on 31.08.2000 he medico-legally examined Rakesh Kumar, son of Mohan Lal, who was in shock, B.P. and pulse un-recordable sweating on the face. He also observed the following injuries on the person of Rakesh Kumar:-

“1- Incised wound 2.75 cm into 0.75 cm blow the right sterno calvicular joint marginal sharp edge and inverted, fresh bleeding present, advised surgeon opinion and x-ray opinion.

2- Incised wound 2 cm into 0.5 cm on right iliac fossa, 3 cm medial to the right Enterioriliac spine advised surgeon opinion, fresh bleeding present marginal clean and inverted.

3- Incised wound 2.25 cm into 0.5 cm on interscapular region, marginal clean cut and inverted, advised x-ray opinion.”

He also deposed that the injuries no.1,2 and 3 were kept under observation and probable duration of the injuries was within six hours. Injuries No.1 to 3 were caused by sharp edged weapon. He further proved carbon copy of original MIR Ex.PD/1, police request Ex.PE, and Ex. PE/2, referral card.

PW-5 Harjinder Pal, has tendered into evidence his affidavit Ex.PF, which is formal evidence.

PW-6 Dalip Singh, has deposed about the preparation of map Ex.PG, with correct marginal notes, which bears his signature.

PW-7 C. Hans Raj, has tendered into evidence his affidavit Ex.PH, which is formal evidence.

PW-8 Dr. Jasbir Singh, Medical Officer, Civil Hospital, Jalandhar, has deposed that on 01.09.2000 he conducted the postmortem on the dead body of Rakesh Kumar son of Mohan Lal and found the following injuries:-

“1- Incised punctured wound below the medial end of right clevical obliquely placed from above downwards and medially 3 cm x 2 cm on dissection the chest wall, the right plural cavity and the right lung were cut. The wound extended backward and downward. Plural cavity was full of blood.

2- Incised punctured wound 2.5 x 1.5 cm at the right iliac region of abdomen transversally placed on dissection. Peritoneum was cut and small intestine was also cut. The peritoneal cavity was full of blood.

3- Incised punctured wound 2.5 x 1 cm vertically placed at the left supra scapular region. On dissection the chest wall pleural cavity and left lung were cut. The wound extended anteriorly and downwards. The left pleural cavity was full of blood. Clotted blood was present at the wound.

4- Already stitched wound length 3.5 cm transversely placed on the lateral aspect of upper 1/3th of left forearm.”

He also deposed about the cause of death in this case which in his opinion was due to shock and haemorrhage resulting from injuries, which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. The probable time elapsed between injury and death was within few hours and that between death and postmortem was within 24 hours. He proved copy of postmortem report Ex.PJ, inquest report Ex.PK. He also proved various police paper initialled by him and made his endorsement Ex.PL/1 on the application Ex.PL for conducting the postmortem on the dead body of Rakesh Kumar.

PW-9 Girdhari Lal, ex-sarpanch of village Pasla, has deposed about the compromise effected between Rakesh Kumar and others on one side and Surinder Pal and others on other side. He also deposed about the injuries caused to Kishori Lal and Surinder Pal as well as payment of Rs.23,000/- to the injured. He verified his signature on the compromise which is Ex.PM.

PW-10 Surjan Dass, Clerk, DTO Office, Chandigarh, who had brought the summoned record of Scooter No. PB-08 N-5310, which stands in the name of M/s Passla and Pal Travels (Regd.) 12 Sutlej Market,

Jalandhar, and proved attested copy of registration certificate Ex.PN.

PW-11 Inspector Swaran Singh, who conducted partial investigation of the present case and deposed that on 3.9.2000 Ex-sarpanch Girdhari Ram had produced before him Surjit and Santokh, who were formally arrested by him and were produced before the Illaqa Magistrate on 4.9.2000. While in police custody on 5.9.2000 he interrogated the accused in the presence of ASI Jagan Nath and others, and during interrogation accused made a disclosure statement about having kept concealed kirch beneath the bed in his house and only he knew about the same and he could get the same recovered. He also proved disclosure statement of accused Ex.PO, which bears his signature and attested by ASI Jagan Nath and C. Jagir Singh. He further proved kirch Ex.PQ, which was taken into possession vide memo Ex.PR, and rough site plan of the place of recovery Ex.PS.

PW-12 ASI Jagan Nath, who has conducted the initial investigation in the present case, has deposed about the manner, in which, he alongwith police party had gone to Civil Hospital, Bundala, where he moved application Ex.PE before the doctor whether Rakesh Kumar was fit to make statement. He further deposed that he came to know that Rakesh Kumar had succumbed to injuries. Thereafter, he recorded the statement of Mohan Lal, complainant. Thereupon having conducted inquest proceedings on the dead body of Rakesh Kumar, he had gone to the spot and taken into possession vide memo Ex.PT, which were converted into parcel.

He further deposed about the associated Sub Inspector Swaran Singh on 3.9.2000 in the present case and deposed about the manner of Ex-Sarpanch Girdhari Lal, who had produced the accused Surjit Ram and

Santokh Lal. He also deposed about the recovery of kirch, on the basis of disclosure statement made by accused Surjit Ram, which was taken into possession, vide memo Ex.PR.

He further deposed that on 7.9.2000 the case of the investigation was entrusted to him. He also deposed that on the same day, he alongwith other police officials was present in village Pasla. PW Surinder Pal was also with him. Budh Ram and Prem Pal were seen coming from the side of village Rurka on a scooter and they were identified by Surinder Pal, PW. Both the accused were arrested at the spot. He also deposed about the disclosure statement made by Prem Pal regarding concealment of kirch near the pond of Baba Billa Shah in the area of Pasla. He recorded his statement Ex.PU. He further deposed that the scooter bearing registration No. PB-08 N-5310 was taken into possession vide memo Ex.PV. He also deposed about the preparation of the site plan of the place of recovery of scooter Ex.PV/1, and rough sketch of recovery of kirch Ex.PU/1, which was taken into possession vide memo Ex.PU/2 as well as sketch of place of recovery Ex.PU/3.

PW-13 Manjit Singh, Sub Inspector, who conducted the initial investigation of this case, has deposed about the manner of having come to know about the occurrence on 31.08.2000 and thereafter having gone to Civil Hospital Bundala and then to Civil Hospital, Jalandhar where he met Mohan Lal and got recorded his statement, which is Ex.PA and endorsement Ex.PA/1 was made on the basis of which, formal FIR Ex.PA/2 was recorded. He also deposed about the inquest proceedings, conducted on the dead body of the deceased and also having recorded the statement of Jagdish Kumar. He also deposed that on 01.09.2000 C.

Nachhater Singh produced the belongings of the deceased Rakesh Kumar, which were taken into possession vide memo Ex.PX. He had also recorded the statements of various witnesses.

Thereafter, the Additional Public Prosecutor, closed the prosecution evidence.

On closure of the prosecution evidence, all the incriminating circumstances appearing in the prosecution evidence, were put to the accused, in their respective statements under Section 313 Cr.P.C. However, the accused denied those allegations and pleaded innocence. The accused Surjit Ram had taken the plea that he had been taken by the police from his house and was falsely involved in this case at the instance of Gurmail, who was inimical towards him. He also pleaded that on the alleged date of occurrence, he was not present in the village.

Accused Prem Pal, Budh Ram and Santokh Ram had also pleaded innocence and taken the plea that they were taken by the police from their houses and were falsely involved in the case.

However, the accused did not lead any evidence in defence.

After hearing learned Additional Public Prosecutor for the State and learned defence counsel and on appraisal of the evidence brought on record, vide judgment dated 09.08.2003, accused Budh Ram was acquitted, whereas, accused Surjit Ram, Prem Pal held guilty for committing the murder of Rakesh Kumar and convicted under Section 302 of the Indian Penal Code and accused Santokh Ram @ Nama was held guilty for committing the murder of Rakesh Kumar under Section 302 read with Section 34 IPC.

Feeling aggrieved by the aforesaid judgment of conviction and quantum of sentence so imposed, the appellants Surjit Ram @ Sita, Santokh Ram @ Nama and Prem Pal filed the present appeal.

It is pertinent to mention here that during pendency of the appeal, Santokh Ram, appellant had died.

I have heard learned counsel for the appellants as well as learned Assistant Advocate General, Punjab and perused the lower court record.

At the very outset, it has been submitted by learned counsel for the appellants that the impugned judgment dated 09.08.2003 has been passed by learned Additional Sessions Judge (Adhoc), Jalandhar without appreciation of fact that the accused Surjit Ram @ Sita has been falsely implicated at the instance of Gurmail, who was inimical towards him. Even that he was not present in the village at the time of occurrence. Furthermore, Prem Pal and Budh Ram @ Budhu were also falsely implicated by the police.

It is also submitted by learned counsel for the appellants that the alleged occurrence had taken place at about 7.30 a.m. and the FIR was recorded on 31.08.2000 at about 1.30 p.m. Hence, there is delay in initiation of action, which in itself proves that it is the case of deliberations and consultations and creates a doubt about the truthfulness of the prosecution version. It is submitted that the prosecution has miserably failed to establish its case, beyond shadow of reasonable doubt. Further more, it is submitted that the prosecution case hinges upon the testimonies of the interested witnesses, which in itself, throws doubt about the truthfulness of the prosecution version. It is submitted that the prosecution has miserably

failed to establish its case, beyond shadow of reasonable doubt. Furthermore, it is also submitted that there are discrepancies in the testimonies regarding number of injuries sustained by the deceased Rakesh Kumar, which is highly improbable, which in itself, throws doubt about the truthfulness of the prosecution version. As such, a prayer has been made for acceptance of the appeal while extending benefit of doubt to the appellants.

On the contrary, learned Assistant Advocate General, Punjab has refuted the claim of the appellants, tooth and nail. He submitted that the prosecution has successfully established its case against the appellants beyond shadow of reasonable doubt. The learned lower Court has rightly appraised the evidence and held the appellants guilty and convicted for the charges levelled against them. Thus, a prayer has been made for dismissal of the appeal.

At the very outset, it is pertinent to mention that the prosecution is duty bound to establish sufficient connectivity of the direct evidence and the circumstances deduced with cumulative effect to rule out of any other hypothesis and unequivocally pointing towards the guilt of the accused.

So far as the fact of death of Rakesh Kumar is concerned, the same stands amply established from the medical evidence brought on record. PW-8 Jasbir Singh, Medical Officer, Civil Hospital, Jalandhar, had conducted the postmortem on the dead body of Rakesh Kumar on 01.09.2000. He has given the detail of the injuries found on the dead body which is re-produced in the earlier portion of the judgment and has also deposed about the cause of death and duration of injuries and the same being ante mortem in nature. He also produced copy of postmortem report Ex.PJ, and inquest report Ex.PK during the course of evidence. PW-8 also

produced various police papers initialled by him and made his endorsement Ex.PL/1 on the application Ex.PL for conducting the postmortem on the dead body of Rakesh Kumar.

Thus, in the light of the testimony of the aforesaid witness, coupled with the testimony of the complainant Mohan Lal as well as PW-2 Jagdish, who had witnessed the occurrence, the fact of death of Rakesh Kumar, on account of the injuries sustained by him, stands amply established.

Now, it has to be ascertained, as to whether death was due to homicidal violence or not. To so establish, the prosecution banks upon the testimonies of two eye witnesses, who are complainant Mohan Lal PW-1 and eye witness PW-2 Jagdish. Throughout the arguments, much emphasis has been laid upon Mohan Lal, to be interested witness, as he is close relative of deceased Rakesh Kumar.

Relationship is not a factor to effect credibility of a witness. It is more often than not that relation would conceal actual culprit and make allegations against an innocent person. Ordinarily, a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, then there is a tendency to drag in an innocent person against whom, a witness has a grudge, along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. Every case has to be adjudicated in the backdrop of its own factual position and the Courts have to adopt a careful approach and analyze the evidence to find out, whether it is cogent and reliable.

The credibility of a witness cannot be judged merely on the basis of his close relation with the deceased, and as such, cannot be a ground, to discard his testimony, if it otherwise inspires confidence.

In “**State of Himachal Pradesh Vs. Mast Ram, 2004(4)**

RCR (Criminal) 401”, it was observed by Hon'ble Supreme Court, as herein given:-

“The law on the point is well settled that the testimony of the relative witnesses cannot be disbelieved on the ground of relationship. The only main requirement is to examine their testimony with caution. Their testimony was thrown out at the threshold on the ground of animosity and relationship. This is not the requirement of law”.

In the backdrop of the aforesaid dictum, it is required to be kept in mind that each case has to be adjudicated, in the backdrop of its own factual position and the Courts have to adopt a careful approach and analyze the evidence, whether it is cogent and reliable. If the witnesses stepping into the witness box are related to the deceased, it only cautions the Court, to scrutinize their statements, more carefully.

Even though in the present case, no witness from the vicinity of the occurrence in question has been examined but however, it is pertinent to mention here that it is the categorical claim of the prosecution that no sooner the accused attacked Rakesh Kumar, then he raised alarm, which attracted Jagdish to the spot and he also witnessed the occurrence. It is so stated by Mohan Lal while appearing in the witness box as PW-1 and even by PW-2 Jagdish, who was attracted to the spot of occurrence. Both the witnesses have stated about the manner in which accused Surjit Ram and Prem Pal, while armed with kirch, had inflicted injuries on the person of Rakesh Kumar, deceased. Both the said witnesses were cross-examined at length, by the defence counsel, but nothing material elicited out to dislodge

their version. Rather, it is also coming forth that the accused were nursing grudge against Rakesh Kumar as earlier a fight had taken place, to which the matter was patched up with the intervention of the Panchayat. PW-9 Girdhari Lal, ex-sarpanch, proved compromise Ex.PM, effected between the parties on 25.05.2000. Further, no cross-examination of the said witness was conducted, though opportunity was given.

Even the version so given by PW-1 Mohan Lal, complainant and PW-2 Jagdish, eye witness, find credence from the recovery of weapons of offence i.e. two kirchs having been effected in pursuance of the disclosure statements made by both the appellants Surjit Ram and Prem Pal. Relating to the same, suffice to make mention to the testimonies of Inspector Swaran Singh, PW-11 as well as PW-12 ASI Jagan Nath, and Manjit Singh, Sub Inspector, PW-13 , who have proved various documents vis-a-vis recording disclosure statements as well as recovery of weapon of offence, on the basis thereof at the instance of both the appellants, Surjit Ram and Prem Pal.

During the course of arguments, learned counsel for the appellants has laid much emphasis upon there being delay in initiation of action. It is submitted that the occurrence in question had taken place on 31.08.2000 at 7.30 a.m. and the report has been lodged by the complainant Mohan Lal at 1.30 p.m. In view of the same, it is submitted that action was initiated, only after deliberations and consultations. However, the aforesaid submission is not tenable. So far as time of occurrence is concerned, it is claimed to be 7.30 a.m. Even the statement of the complainant Mohan Lal, which is Ex.PA revealed that the same to have recorded at about 1.30 p.m.

However, it is pertinent to mention that the statement of the complainant,

who is father of the deceased was recorded at Civil Hospital, Jalandhar. **PW-8 Jasbir Singh, Medical Officer, Civil Hospital, Jalandhar**, had conducted the postmortem on the dead body of Rakesh Kumar on 01.09.2000 and proved report Ex.PJ. Perusal of the same, reveals that Rakesh Kumar had died at 11.45 a.m. It appears to be a typographical mistake in the postmortem report Ex.PJ. The time of death of Rakesh Kumar has been mentioned by the doctor concerned in his hand as 11.45 a.m. and this fact stands corroborated from the other evidence brought on record. It is pertinent to mention that it was only after the death of Rakesh Kumar, statement of the complainant was got recorded and the FIR was sent to the Illaqa Magistrate on the same day i.e. 31.08.2000 at 9.15 p.m. Looking to the aforesaid seriatim of facts, it cannot be said that there was inordinate delay, which remained unexplained. In the light of the same, the submission so made by learned counsel for the appellants on this count is hereby rejected.

There is stated to be discrepancy in the testimonies of material witnesses regarding the number of injuries sustained by the deceased Rakesh Kumar. Much emphasis has been laid upon the statement of complainant, who appeared in the witness box as PW-1, wherein he has stated that three injuries were caused by the appellants, whereas Dr. Jasbir Singh, PW-8, who conducted the postmortem examination on the dead body of Rakesh Kumar, had found four injuries. However, it is to be seen that Dr. Ashok Kumar, Medical Officer, PW-4 had found three injuries on the person of Rakesh Kumar. In the backdrop of the other evidence so coming on record more particularly of PW-8 Dr. Jasbir Singh, M.O., thereby giving the detail of injuries on the person of Rakesh Kumar,

deceased and in view of the contents of the postmortem report Ex.PJ, the discrepancy so pointed out, as such does not carry much weight.

In the light of the aforesaid discussion, the prosecution has established the guilt of the accused beyond shadow of reasonable doubt and thus, the learned lower Court has appraised the evidence coming on record in the right perspective. As such, the impugned judgment merits no interference. Resultantly, the appeals sans merit and the same is hereby dismissed.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

02.12.2019
dinesh

Whether speaking/reasoned
Whether Reportable:

Yes
Yes