

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

CRA-D No. 66-DB of 2004 (O&M)

Reserved on : 7.5.2019

Date of decision : 10.5.2019

Vishnu and another
The State of Haryana

versus

.... Appellants
... Respondent

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

Present Mr. Deepinder Singh, Advocate, for appellant no.1.
Mrs. Shubhra Singh, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. The present appeal is instituted against the judgment dated 23.12.2003 and order dated 24.12.2003, rendered by learned Additional Sessions Judge, Sonapat, in Sessions Case No. 149 of 7.11.2003, by appellants Vishnu and Mehar Singh. The appellants were charged with and tried for the offence punishable under Section 302 read with Section 34 IPC. Appellant Vishnu was convicted and sentenced under Section 302 IPC to undergo life imprisonment and to pay fine of ₹ 10,000/-, and in default of payment of fine, to undergo further rigorous imprisonment for a period of one year. Appellant Mehar Singh was convicted and sentenced under Section 304-II IPC to undergo rigorous imprisonment for a period of seven years and to pay fine of ₹ 5,000/-, and in default of payment of fine, to undergo further rigorous imprisonment for a period of six months.
2. Appellant Mehar Singh died during the pendency of the appeal. Death certificate was made available on record on 7.5.2019. Appeal qua appellant Mehar Singh stood dismissed as abated.

3. The case of the prosecution in a nutshell is that complainant Kanwar Singh vide his statement, Ex.PA, deposed that he was resident of village Panchi Jatan. He was agriculturist by profession. The shop of Ashok Kumar of the same village was situated near to his house. Ashok Kumar was doing the business of Kiryana. On 2.7.2000 at about 11.00 P.M., his son Devender was present in the shop of Ashok Kumar. Satish son of Tara Chand was also present with them. On that night Devender did not return to his house and he thought that his son Devender might have gone to sleep with Ashok Kumar. On 3.7.2000, in the morning, he went to Ashok Kumar and enquired about his son Devender. He told him that in the night at about 11.15 P.M., Vishnu son of Mehar Singh, resident of the same village, came to his shop and took Devender with him on the pretext that he was having some work with him. Devender left the shop and accompanied Vishnu. On the same day at about 7.00 A.M., he came to know about dead-body of his son Devender lying in the room of residential house of Ram Karan. Then he along with some inhabitants of the village went to the house of Ram Karan, where he saw that dead-body of his son Devender was lying on the floor of the room. There were injury marks on the dead-body. Vishnu son of Mehar Singh resident of the same village was having suspicion upon his son Devender that he was having illicit relations with the daughter of his uncle Ram Karan. He with the help of his father Mehar Singh had committed the murder of his son Devender by calling him in the house of his uncle Ram Karan. The case was registered. The dead-body was sent for post-mortem examination. The investigation was carried out. Challan was put up after completion of all the codal formalities.

4. The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. They produced DW1 Kitab Singh in defence. They were convicted and sentenced, as noticed hereinabove. Hence, the present appeal.

5. Learned counsel appearing on behalf of appellant no.1- Vishnu vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

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

7. PW5 Inderjit deposed that on 8.7.2000, he was posted as Head Constable at Police Station, Gannaur. On that day, accused Vishnu made disclosure statement that he had concealed *Khunta* near the parapit of the *chaubara* in his *gher*. His statement is Ex.PE.

8. PW6 Jai Kanwar deposed that on 8.7.2000, the police party brought accused Vishnu to his village. He led the police to his house. He got a *khunta* recovered from his house. It was taken in possession.

9. PW7 Dr. Varsha had conducted the post-mortem examination and noticed the following injuries on the body of the deceased:-

1. A lacerated wound of size 6 cm x 1 cm was present on the right parietal region of the skull. It was longitudinally placed. On exploration, the underlying bone was found fractured. On opening the skull the meningitis and brain was found lacerated.

2. There were multiple contusions over the anterior side of chest and abdominal wall and the upper part of the right side of hip. The contusion marks were about 6 to 8 cm x 2.5 cm bluish brown in colour. On opening the chest wall, there were multiple lacerations present in both the lungs. There were three laceration marks over the right lobe of liver about 4 to 6 cm in length. The peritoneal cavity was full of blood.
3. There were two penetrating wound present over the right leg of size 1 x 1.5 cm.
4. There was a penetrating wound of size 1 cm in diameter present over the middle of leg left.

The cause of death was due to extensive haemorrhage and shock due to injuries to vital organs i.e. brain, lungs and liver. The injuries were ante-mortem in nature and were sufficient to cause death in normal course of life.

10. PW8 Kanwar Singh is the father of deceased Devender. He testified that on 2.7.2000, his son Devender was sitting in the shop. He did not return to the house in the evening. He thought that Devinder might have gone to bed in the shop. He enquired about his son from Ashok Kumar in the morning. Ashok Kumar told him that Devinder had gone with Vishnu as he had some work with him. The villagers told him that dead-body of his son was lying in the room of Ram Karan. Thereafter, he along with his family members reached at the house of Ram Karan and found the dead-body of Devinder lying in his house. He also noticed injuries on the left hand and back on the dead-body of his son. In his cross-examination, he has admitted that the house of Balwan was situated in the eastern part of the village. The house of Ram Karan was situated in the southern part of the

village and not in the western part. He has also admitted that house of Ram Karan had been constructed in the plot allotted to him for residential purpose during consolidation of holdings. He also admitted that the house of Ram Karan was adjacent to the village pond. He had no knowledge that his son Devinder had illicit relations with the daughter of Ram Karan. Nobody told him that his son had illicit relations with the daughter of Ram Karan. Vishnu never told him that his son had illicit relations with the daughter of Ram Karan. He also admitted in his cross-examination that relations between Ram Karan and Mehar Singh were strained for the last seven years because of ill-will. He also admitted that dead-body of his son Devinder was lying in the house of Ram Karan. He also admitted that Vishnu and Mehar Singh were named on the basis of suspicion.

11. PW10 Ashok Kumar deposed that on 2.7.2000 at about 11.00 P.M., he was present at his shop with Devinder and Satish. At about 11.05 P.M., Vishnu came and took Devinder with him by saying that he had some work with him. In the morning, he talked to Kanwar Singh and told him that Devinder had gone from his shop with Vishnu. In his cross-examination, he admitted that he used to close his shop at 9.00 P.M. in the winter season and between 11.00 to 11.00 P.M. in summer season. His house was situated at a distance of 1000 yards from his shop. They waited for Devinder about 1½ hours and thereafter, they went to their houses. He did not give information to the family members of Devinder that he had gone with Vishnu at 11.15 P.M.

12. PW11 Satish deposed that on 2.7.2000 he was present at the shop of Ashok Kumar with Ashok and Devinder. At 11.00 P.M., Vishnu reached there and he accosted Devinder that he had some business with him

and then Devinder went away with him. In his cross-examination, he admitted that his father's sister Angrejo was married to Balwan resident of village Jauli, District Sonapat.

13. PW12 Balwan Singh is cited as 'eye witness'. He deposed that on 2.7.2000 at about 11.00/11.30 P.M., he had loose motion and had gone to the fields situated in village Panchi Jattan to ease himself. When he reached near the house of Ram Karan, he heard the noise of '*Mar Diya, Mar Diya*'. He saw Mehar Singh holding Devinder by his hands and Vishnu was giving blows to him with *Khunta*. After that he went to the fields. In his cross-examination, he admitted that distance between his house and Ram Karan's house was about 1 kilometer. There was no pond near their house. He did not tell any villager that he had seen Mehar Singh and Vishnu giving blows to Devinder in the house of Ram Karan. He did not raise alarm when he saw Vishnu giving *khunta* blows. He did not tell the police officer who recorded his statement that he peeped in the room of Ram Karan through the fitting gap of the door. He did not make any attempt to rescue Devinder out of fear. He did not disclose this fact to anyone. His house was situated in the north direction in village Panchi Jatan. The house of Ram Karan was situated on the eastern side of the village Panchi Jatan.

14. PW13 Siri Pal deposed that on 8.7.2000, he along with Jai Kanwar went to village Panchi Jatan with police. Vishnu led them and police party to his house and got recovered a *khunta* lying on the roof.

15. PW14 Jagdish Prashad was the Investigating officer. He received the information. He made endorsement, Ex. PN. He lifted blood-stained earth and packed it in a sealed parcel. He took into possession a *Khes* and a pillow and shirt of the deceased lying at the place of crime. He

prepared seizure memo, Ex.PH. He examined the dead-body of Devinder lying at the place of crime and prepared the inquest report, Ex.PQ. He moved an application, Ex.PQ/1 for post-mortem examination. He arrested accused Vishnu on 7.7.2000. Accused Vishnu made disclosure statement and got recovered a *Khunta* lying on the roof of his *Chaubara*. In his cross-examination, he admitted that he found a blind woman, a girl of about 15 years old, and another girl of 10 years of age in the house of Ram Karan. He did not make enquiries from the woman and the girls found in the house of Ram Karan. He did not record their statements.

16. The motive attributed to the appellant is that deceased Devinder had illicit relations with the daughter of Ram Karan. However, PW8 Kanwar Singh, father of deceased Devender, in his cross-examination admitted that he had no knowledge that his son Devinder had illicit relations with the daughter of Ram Karan. Nobody had told him that his son had illicit relations with the daughter of Ram Karan. He also admitted that he had drawn only presumption.

17. The case of the prosecution is also that since deceased Devinder had illicit relations with the daughter of Ram Karan, it was objected to by the appellant Vishnu and his father. PW8 Kanwar Singh has categorically stated in his cross-examination that relations between Ram Karan and Mehar Singh were strained for the last seven years because of ill-will. Since the relations were strained between Mehar Singh and Ram Karan, there was no occasion for Vishnu and Mehar Singh to kill Devinder.

18. The prosecution has also relied upon the testimony of PW10 Ashok Kumar and PW11 Satish to substantiate the plea of 'last seen together'. PW10 Ashok Kumar is the shop keeper. According to him, on

2.7.2000 at about 11.00 P.M., he was present at his shop with Devinder and Satish. At about 11.05 P.M., Vishnu came and took Devender with him on the pretext that he had some work with him. The Court can take judicial notice of the fact that in villages, shops are closed ordinarily at 8.00 /9.00 P.M. PW10 has also deposed that he waited for Devinder about 1½ hours and thereafter, he and Satish went to their houses. If that was so, he should have informed the family members of the deceased.

19. PW11 Satish deposed that on 2.7.2000 he was present at the shop of Ashok Kumar with Ashok and Devinder. At 11.00 P.M., Vishnu reached there and he took away Devinder with him by saying that he had some business with him. In his cross-examination, he admitted that his father's sister Angrejo was married to Balwan resident of village Jauli, District Sonapat.

20. The prosecution has also relied upon the testimony of 'eye-witness' PW12 Balwan Singh. He deposed that on 2.7.2000 at about 11.00/11.30 P.M., he had loose motion and he had gone to the fields situated in village Panchi Jattan to ease himself. When he reached near the house of Ram Karan, he heard the cries of '*Mar Diya, Mar Diya*'. He looked into the house and saw that Mehar Singh was holding Devinder by his hands and Vishnu was giving blows to him with *Khunta*. The house of PW12 Balwan Singh is situated in the north direction in village Panchi Jatan. He had no occasion to go towards the house of Ram Karan to ease himself. The distance between the house of Ram Karan and the house of PW12 Balwan Singh was more than 1 kilometer. PW12 Balwan Singh himself admitted in his cross-examination that his house was situated in the north direction and the house of Ram Karan was situated on the eastern side of the village

Panchi Jatan. His statement does not inspire confidence. If he had seen the appellant and Mehar Singh giving beatings to deceased Devinder, he would have informed the villagers.

21. The FSL report is Ex.PS. No blood was detected on exhibit-1 (*khunta*), though blood was found on exhibits (*khes*, shirt and pillow).

22. The prosecution has not proved the motive attributed to appellant Vishnu to kill Devinder. We have already taken note of the fact that the relations between Ram Karan and Mehar Singh were strained. Thus, there was no occasion for the appellant to kill Devinder to save the prestige of Ram Karan and his family. The prosecution has neither examined Ram Karan nor any member of his family. The Investigating Officer Jagdish Parshad has admitted while appearing as PW14 that he had not recorded statement of any of the woman and the girls found in the house of Ram Karan.

23. The prosecution has failed to prove the case against the appellant beyond reasonable doubt. Accordingly, the appeal is allowed. The appellant is acquitted of all the charges framed against him.

(Rajiv Sharma)
Judge

10.5.2019
vs

(Harinder Singh Sidhu)
Judge

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