

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRA-D-1148-DB-2010

Satish alias Kala alias Jagmal

... Appellant

Versus

State of Haryana

... Respondent

2. CRA-D-1150-DB-2010

Surender alias Silender and another

... Appellants

Versus

State of Haryana

... Respondent

Reserved on : 03.04.2019
Date of decision : 05.04.2019

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

Present: Mr.J.S.Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate for the appellant
in CRA-D-1148-DB-2010.

Mr.Sajjan Singh, Advocate
for appellant No.1-Surender @ Silender
in CRA-D-1150-DB-2010.

Mr. Sunil Panwar, Advocate
for appellant No.2-Kuldeep
in CRA-D-1150-DB-2010.

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

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the

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

2. These appeals have been instituted against the judgment and order dated 30.09.2010 and 01.10.2010 rendered by the Additional Sessions Judge (I), Bhiwani, in Sessions Trial No.232 of 2007/2008. The appellants along with five co-accused were charged with and tried for offences punishable under Sections 120-B, 302 Indian Penal Code (in short 'IPC') and Section 25 of the Arms Act. Appellants Surender and Kuldeep along with co-accused Sushil were convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.3000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months for offence punishable under Section 302/34 IPC. Appellants Surender and Kuldeep along with co-accused Sushil were also convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.3000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months for offence punishable under Sections 120-B IPC. Appellant Satish @ Kala was convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.3000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months for offence punishable under Sections 302/120-B IPC. Appellants Surender and Kuldeep were also convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month for offence punishable under Section 25 of the Arms Act. All the sentences were ordered to run concurrently.

3. The case of the prosecution in a nutshell is that on 04.09.2007 Dinesh Kumar, Sub Inspector / Station House Officer along with EHC Ram Dulara was present at Pilani Road railway crossing for patrolling. In the meantime, Constable Jagbir met them and presented a medical ruqa regarding death of Prem Nath son of Ram Kishan resident of Loharu due to receiving of gun shot injury. SI Dinesh Kumar along with other police officials reached the C.H.C. Loharu. Complainant Raj Kumar (PW-2) son of Prem Nath resident of Ward No.11, Loharu met him. The complainant got recorded his statement to the effect that he was running a grocery shop in Main Bazar, Loharu. They were three brothers. Out of them, Vipin Kumar used to help him in his shop. Suresh alias Shashi was running another grocery shop at Railway Station Road, Loharu. His father Prem Nath had retired from Haryana Roadways department about three years ago from the post of Sub Inspector. He used to sit in the shop of his brother Suresh alias Shashi. His father after finishing his work at the shop used to go to temple. On that day, his father was going to temple after finishing the work at the shop. He and his brother Suresh alias Shashi were following their father. At about 08.30 P.M. when they reached near Shastri Park, Loharu, a vehicle came from bus stand side on wrong side. Some persons were sitting on the vehicle. Out of them, one person fired on his father and the bullet hit the chest of his father. The assailants ran away from the spot along with the vehicle. Several persons came on the spot. His father was shifted to the hospital. His father died. FIR was registered. The matter was investigated. Challan was put in the Court after completing all the codal formalities.

4. Prosecution examined a number of witnesses. The statements of

appellants along with co-accused were recorded under Section 313 Cr.P.C. They denied the case of the prosecution. The appellants along with co-accused Sushil were convicted and sentenced, as noticed hereinabove. Co-accused Sushil died during the pendency of appeal (CRA-D-1175-DB-2010) filed by him separately and the proceedings qua him stand abated vide separate order dated 03.04.2019 passed in the said appeal. Co-accused Rajesh Kumar, Raj Kumar, Shamsheer and Jagdish were, however, acquitted of the charges framed against them.

5. Learned counsel appearing for the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

6. Learned counsel appearing on behalf of the State has supported the prosecution case.

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

8. PW-2 Raj Kumar testified that he was running a shop in the main market of Mandi in Loharu. His brother Vipin Kumar used to assist him. Suresh Kumar another brother was running a shop of Kiryana on Railway Station Road, Loharu. His father Prem Nath was working as Sub Inspector in Haryana Roadways. After retirement, his father used to sit in the shop of Suresh with him. On 04.09.2007 at about 08.30 P.M., he along with his brother and father after closing the shop were going to their house after performing *puja* in a temple. His father was going ahead of them. They were following their father. When they reached near Shashtri Park, one motor cycle came to the spot. Three persons were sitting on the motor cycle.

Two persons got down from the motor cycle. One person fired a shot which

hit on the chest of his father. Accused persons ran away from the spot. He pointed towards accused Surrender who was present in the Court. He said that he was the person who had fired at his father. He again pointed towards accused Sushil and said that he was driving the motor cycle. He then pointed towards accused Kuldeep and said that he was accompanying the other accused. His father was taken to the Civil Hospital, Loharu. The motive of killing his father was that his brother Suresh was in judicial custody in a Mosque (*Masjid*) case. Accused Satish was also in judicial custody in some murder case. Accused Satish tortured his brother. When his brother was released from the jail, accused Satish threatened his brother and demanded money from him. Due to this reason, his father was killed at the instance of Satish by the accused persons in connivance with the other accused. In his cross-examination, he has categorically admitted that he did not state in his statement Ex.PC to the police about the involvement of Satish. He further stated that it was disclosed by his brother on the next day. He also admitted that the place of occurrence is a busy place. No independent witness was joined by the police. The distance between his father and them was about 10-12 paces.

9. PW-3 Suresh Kumar alias Shashi also deposed that on 04.09.2007 he along with his brother was following their father. In the meantime, one motor cycle came. Accused Surrender fired at his father. Accused Sushil was driving the motor cycle. Accused Kuldeep was also accompanying them. The motive for killing his father was that he was in judicial custody in a Mosque (*Masjid*) case. Accused Sushil was also in judicial custody in some murder case. Accused Sushil tortured him. Dispute arose between them. When he released from the custody, accused Sushil

demanded money. At the instance of accused Sushil, his father was killed. Accused Surender was interrogated in his presence. He disclosed that he along with Sushil, Kuldeep and Sukhchain had gone to meet Satish in the Court at Loharu. When the police van reached near gate of Court at Loharu, Satish handed over a empty packet of cigarette cover. The site plan of his shop was shown on it. Sukhchain was asked to arrange two pistols, four cartridges and one motor cycle which were to be handed over to the accused persons. After meeting Satish, the accused persons went away. On 04.09.2007, Surender along with Kuldeep and Sushil came to Loharu on a motor cycle with their pistols and committed the murder of Prem Nath. Surender fired shot on the chest of Prem Nath. Sushil was driving the motor cycle. Kuldeep was with them. Accused Surender further disclosed that he had kept concealed the pistol in brief case in his house. His disclosure statement is Ex.PE. In his cross-examination, he admitted that threat was given to him through Rajesh. However, he had not disclosed this fact to the police because it was not asked. He also admitted that he had not lodged any complaint against any of the accused including Satish that accused Satish threatened him.

10. PW-5 Dharam Pal testified that he was posted as Inspector in CIA Staff, Bhiwani. He arrested accused Surender and Sushil @ Tinku on 09.09.2007. He interrogated them. Accused Surender made disclosure statement Ex.PE. Accused Sushil @ Tinku got recovered one motor cycle. Accused Surender got recovered one pistol .315 bore along with one live cartridge from his house at village Samargopalpur. It was taken into possession. The pistol is Ex.P1. He prepared the sketch of pistol. It is Ex.PE/2. He had also prepared rough site plan of the place of recovery of

motor cycle. He neither joined any independent witness nor he tried to join the independent witness. In his cross-examination, he deposed that at the time of recovery of pistol, the house of accused was open and no family member was present at that time.

11. PW-6 Girish Kumar had prepared the scaled site plan Ex.PG.

12. PW-14 Ram Kishore deposed that he was posted as Deputy Superintendent of Police, Loharu. He had verified the investigation of the case. From reliable sources, he came to know that Suresh alias Shashi son of Prem Nath was confined in District Jail, Bhiwani in some other case. There was some dispute between Suresh and Satish accused in the jail premises. When Satish accused came on parole, he contacted Rajesh Master resident of *Toda Ki Dhani*. He directed the SHO, Loharu to look into the matter. In his cross-examination, he admitted that he had not recorded any statement of any witness regarding the source.

13. PW-16 Dinesh Kumar deposed that he moved an application Ex.PQ/1 for conducting the post-mortem examination. Dr.Yudhvir Singh conducted the post-mortem examination.

14. PW-20 Hazari Lal testified that on 21.12.2007 he was posted as ASI at Police Station Loharu. He arrested accused Kuldeep. Kuldeep made disclosure statements Ex.PX and Ex.PX/1. Kuldeep got recovered one pistol along with one live cartridge from Pilani road near water tank, Loharu. The same was taken into possession vide Ex.PX/2. Sketch of pistol is Ex.PX/3.

15. PW-15 Dr.Yudhvir Singh had conducted the post-mortem examination. He testified that the dead body was brought by Constable Jagbir. It was identified by Darshan Lal and Kuldeep. In his opinion, the cause of death was fire arm injury and its consequences. The injury was ante

mortem in nature and was sufficient to cause death in normal course of life. On deeper dissection including muscle pleura and lung shows laceration circular to oval of diameter .5 to 1 cm. with a bullet found lodged in posterior intercostal muscles horizontally in 6th and 7th intercostal space posteriorly with clotted and unclotted blood in pluera and lungs.

16. The FSL report is Ex.PC. The gun recovered from accused Surender was sent for FSL examination. According to FSL report, the country made pistol marked W/1 (chambered for .315” cartridges) was a firearm as defined in Arms Act No. 54 of 1959. Its firing mechanism was found in working order. .315” fired bullet marked BC/1 had been fired from country made pistol W/1 and not from any other firearm even of the same make and bore/calibre. The human blood was also found on shirt, pant and earth as per FSL report Ex.PC/1.

17. PW-2 Raj Kumar and PW-3 Suresh Kumar have deposed that the motive to kill their father was tiff which took place between Suresh and appellant Satish. Appellant Satish was also lodged with Suresh in the jail. Appellant Satish was demanding money. Satish was lodged in the jail in the year 2002 and the present incident had taken place on 04.09.2007. The incident dated March, 2002 was very remote. In the report Ex.PC, there is no mention about the motive attributed to Satish. PW-3 Suresh Kumar has admitted in his cross-examination that threat was given to him by accused Satish through Rajesh. He did not lodge any complaint against any of the accused including Satish that Satish threatened him. The prosecution has relied upon statement of PW-14 DSP Ram Kishore. In his cross-examination, he admitted that he had not joined jail official / employee in his investigation. He only received information. He had not recorded any

statement of any witness regarding the source. In his examination-in-chief, he deposed that he directed the SHO, Loharu to look into the matter. It is not in the record whether the matter was looked up by the SHO, Loharu or not.

18. According to the prosecution case, Surrender, Kuldeep and Sushil came on a motor cycle. The motor cycle was driven by Sushil. Surrender fired at Prem Nath. It proved fatal. The pistol .315” was recovered on the basis of disclosure statement made by Surrender. The mutilated bullet was recovered from the body of Prem Nath during the post-mortem examination. According to FSL report, weapon recovered from Surrender was used in the crime. .315 fired bullet marked BC/1 was fired from the country made pistol W/1 recovered from Surrender. The human blood was also found on pant, shirt and blood stained earth. PW-2 Raj Kumar and PW-3 Suresh Kumar have seen Surrender firing on their father. Prem Nath was shifted to the hospital where he died. The cause of death was fire arm injury. The injury was ante mortem in nature which was sufficient to cause death. The probable time that elapsed between injury and death was instantaneous and between death and post-mortem examination was 12-24 hours, as per statement of PW-15 Dr.Yudhvir Singh. The prosecution has proved its case against appellant Surrender beyond reasonable doubt.

19. The prosecution has not attributed any role to Kuldeep except that he was with appellants Surrender and Satish. According to the statement of PW-20 Hazari Lal, disclosure statement was made by Kuldeep on the basis of which one pistol along with one live cartridge from Pilani road near water tank was recovered vide recovery memo Ex.PX/2. This weapon was not sent for FSL examination. Neither PW-2 Raj Kumar nor PW-3 Suresh

Kumar has stated that they had seen Kuldeep carrying any weapon. They have only stated that Kuldeep was with other accused. PW-2 Raj Kumar and PW-3 Suresh Kumar were together. In case there was any motive, the same should have been mentioned in the report Ex.PC. The prosecution has failed to prove the case against Kuldeep and Satish.

18. Accordingly, the appeal (CRA-D-1148-DB-2010) filed by Satish alias Kala alias Jagmal is allowed. The appeal (CRA-D-1150-DB-2010) is partly allowed. Appellant Kuldeep is acquitted of the charges framed against him and the appeal qua appellant Surender alias Silender is dismissed. Appellants Satish alias Kala alias Jagmal and Kuldeep are in custody. They be released forthwith.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

April 05, 2019.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No