

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-387-DB-2016
Reserved on : 29.08.2019
Date of decision : 03.09.2019

Parvesh

... Appellant

Versus

State of Haryana

... Respondent

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

Present: Mr. Amandeep Singh Rai, Advocate
for the appellant.

Mr. Vivek Saini, DAG, Haryana.

RAJIV SHARMA, J.

This appeal has been instituted against the judgment and order dated 01.03.2016 and 03.03.2016 rendered by the Sessions Judge, Faridabad, in Sessions case no.65 of 25.08.2014 whereby the appellant, who was charged with and tried for offence punishable under Section 302 of the Indian Penal Code (in short 'IPC'), has been convicted thereunder and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1,10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year.

2. The case of the prosecution, in a nutshell, is that Smt. Rajni wife of deceased Brijesh had lodged the complaint. Her husband Brijesh had given Rs.50/- to their neighbourer Parvesh for getting recharged his phone on 29.05.2014. However, instead of getting his phone recharged, Parvesh

consumed liquor. On return of Parvesh to his house, when her husband asked Parvesh about amount of Rs.50/- given to him for recharging the phone, Parvesh picked up quarrel with her husband. During altercation, her husband slapped him twice. At that time, Parvesh threatened her husband with dire consequences. The matter was patched up. She further alleged that on 30.05.2014 at about 8.30 P.M. she and her husband were shifting their luggage due to change of house. Her husband was walking ahead of her. When they came in the street, Parvesh armed with a *danda* was already present there. He exhorted that he would teach a lesson. Parvesh inflicted a *danda* blow to her husband. Thereafter, he took out a knife and inflicted the knife blow on the neck of her husband. Second blow was given on the left thigh of her husband. Her husband collapsed on the road. Parvesh threw the *danda* and fled away from the spot along with the knife. Brijesh was shifted to B.K. Hospital, Faridabad. FIR was registered. Challan was put up after completing all the codal formalities.

3. Prosecution examined a number of witnesses. The statement of accused was also recorded under Section 313 Cr.P.C. He had denied the case of the prosecution. The appellant was convicted and sentenced as noticed hereinabove. Hence this appeal.

4. Learned counsel appearing for the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

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

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

7. PW-14 Dr. Rohit Gaur conducted the post-mortem examination along with Board of doctors. He led his evidence by filing affidavit Ex.PT. The cause of death was shock and haemorrhage as a result of injuries to major vessels which were ante mortem in nature and sufficient to cause death in ordinary course of nature.

8. PW-1 Rohtas had taken the photographs Ex.P1 to P7.

9. PW-4 Mahender deposed that his son Lokesh had intimated him on telephone at about 8.30 P.M. that his brother Brijesh was murdered. He reached in B.K. Hospital, Faridabad. The dead body of his brother Brijesh was lying there. He reached in Police Post Nangla Enclave. He identified the dead body of his brother Brijesh in B.K. Hospital.

10. PW-5 Smt. Manisha examined the spot at about 11.00 P.M. on 30.05.2014. She prepared the report Ex.PD. The spot was in the middle of gali. There was blood trail in an area of 18' x 13.5 ' in front of a dealer shop.

11. PW-10 Rajni is an eye witness. According to her, on 29.05.2014 her husband Brijesh had given Rs.50/- to accused Parvesh to get the mobile phone recharged but the accused did not recharge the mobile of her husband. He consumed the liquor of that amount. When her husband enquired about Rs.50/-, he started quarreling with him. Accused threatened her husband with dire consequences. Due to this quarrel, they decided to vacate the rented house. On the next day, they had taken their household to new rented accommodation at about 8.30 P.M. Her husband was walking ahead of her. When they reached near the shop of Rathi Property Dealer in the gali, accused was already standing there. Accused suddenly attacked on her husband. He gave a *danda* blow to her husband. He also gave knife

blow to her husband. Her husband collapsed. She raised alarm. Her parents also came on the spot. Accused fled away. In her cross-examination, she deposed that accused Parvesh was residing in the same rented accommodation. Her parents were also residing with them. She admitted that no complaint was lodged qua fight which took place over Rs.50/-. She deposed that by 5.00/6.00 P.M. on that day they had taken all articles to said house. She further explained that though they had shifted their entire luggage to the new accommodation by 5.00/6.00 P.M. but they had left their old accommodation at about 8.00/8.30 P.M.

12. PW-11 Mahabir is the father-in-law of deceased Brijesh. He deposed that his son-in-law had given Rs.50/- to Parvesh for getting mobile phone recharged. However, accused did not recharge the phone. He consumed the liquor of that amount. When his son-in-law Brijesh enquired about his Rs.50/-, accused started quarreling with him. Accused threatened Brijesh with dire consequences. After quarrel, they had vacated rented accommodation. At about 8.30 P.M. his daughter and son-in-law Brijesh were in process of shifting to new rented accommodation, at that time, he was in vegetable market. After the quarrel, he took his son-in-law to B.K. Hospital. He was not present at the time of quarrel.

13. PW-12 Constable Arvind deposed that accused made two disclosure statements Ex.PJ and Ex.PK. He got recovered a knife and *danda* on the basis of disclosure statement Ex.PK.

14. PW-13 SI Ravinder Kumar deposed that he recorded the statement Ex.PG of Rajni. He prepared rough site plan Ex.PP. He recorded the statements of witnesses under Section 161 Cr.P.C. Police had taken in

possession chappals and jeans. Accused was arrested. He made disclosure statement Ex.PK on the basis of which *danda* and knife got recovered. In his cross-examination, he deposed that accused got recovered the weapon of offence from a vacant plot in front of the house of his brother-in-law Avdhesh at about 5.00 P.M.

15. The FSL report is Ex.PN. According to the report, exhibit-1a (jeans) was stained with a few blood stains. Exhibit-1b (chappal) and exhibit-3 (*danda*) were stained with blood stains. Blood was detected on exhibit-2(knife) and exhibit-4 (blood stained earth).

16. PW-10 Rajni had seen the accused Parvesh inflicting *danda* blow and knife blow to her husband Brijesh. He collapsed. He was taken to the hospital. Knife and *danda* were got recovered on the basis of disclosure statement made by accused vide Ex.PK. Knife and *danda* were stained with blood as well as jeans of the accused.

17. The genesis of the incident is that Brijesh had handed over Rs.50/- to the appellant on 29.05.2014 to get recharge mobile phone. However, he consumed the liquor. Quarrel took place between Brijesh and the appellant on 29.05.2014. Thereafter the family decided to shift due to the quarrel which took place between Brijesh and the appellant. When they were in process of shifting, accused attacked Brijesh resulting in injuries which led to his death. The cause of death was shock and haemorrhage as a result of injuries to major vessels which were ante mortem in nature and sufficient to cause death in ordinary course of nature.

18. Learned counsel appearing on behalf of the appellant has argued that PW-10 Rajni in her cross-examination deposed that incident had

happened at 5.00/6.00 P.M. though in Ex.PG, she had stated the time of incident as 8.30 P.M. In suggestion put to her in cross-examination, she deposed that though they started to shift luggage to new accommodation at 5.00/6.00 P.M. but they left their old accommodation at about 8.00/8.30 P.M. The injury caused to neck has resulted in damage to vessels which led to death of Brijesh. PW-5 Smt. Manisha had noticed trail of blood where the incident had taken place. According to the site plan, incident had taken place at point 'A', which was prepared by PW-2 HC Sharwan Kumar.

19. The prosecution has proved the case against the accused beyond reasonable doubt. Accordingly, the appeal is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

September 03, 2019.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No