

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

CRA-D-60-DB of 2018

Reserved on : 30.08.2019

Date of decision : 03.09.2019

Vijay Kumar alias Sethi

.... Appellant

Versus

State of Haryana

..... Respondent

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Bijender Dhankhar, Advocate,
for the appellant.

Mr. Vivek Saini, DAG, Haryana.

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RAJIV SHARMA, J.

1. This appeal is instituted against judgment dated 14.11.2017 and order dated 18.11.2017, rendered by learned Sessions Judge, Ambala, in Sessions Case (IPC) No. 17 of 2016, whereby appellant Vijay Kumar alias Sethi, who was charged with and tried for offence punishable under Section 302 IPC, was convicted thereunder and sentenced to undergo imprisonment for life and to pay a fine of ₹ 1,00,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year.

2. The case of the prosecution, in a nutshell, is that on 15.11.2015, PW.17 ASI Roshan Lal was present at Kalpi crossing along with other

police officials. He was informed by the MHC of Police Station, Mullana that one Rajesh Kumar was injured and was admitted in PGI, Chandigarh. PW.17 ASI Roshan Lal reached Police Post, PGI, Chandigarh. He collected police information Ex.P1. He sought opinion of Medical Officer, PGI, Chandigarh, with regard to fitness of the patient for making a statement, vide application Ex.P34. The doctor opined that the patient was unfit to make statement. An endorsement Ex.P35 was made in this regard on application Ex.P34. PW.17 ASI Roshan Lal met the father of injured Rajesh, namely Raj Pal, in PGI, Chandigarh. Raj Pal gave statement vide Ex.P10 that he was resident of village Dhanora, Police Station Mullana, District Ambala. On 14.11.2015 at about 11.00 AM, his son Rajesh was coming back home from the fields on his motor cycle. Accused Vijay Kumar alias Sethi son of Satish Kumar was coming out of his house on his motor cycle. There was a curve near the house, as a result of which, their motor cycles collided. An altercation took place. The residents of village gathered at the spot. The matter was settled. However, accused Vijay and his father Satish stated that they would kill Rajesh. On the same day at about 3.00 PM, Rajesh was going to the fields on his bullock-cart. When he reached near their fields, PW.7 Raj Pal was already present there along with their neighbour Sarwan Kumar son of Shish Pal and Manoj Kumar son of Balbir Singh. Accused Vijay Kumar alias Sethi came there on a motor cycle with an axe in his hand. He gave repeated blows from the back on the head of Rajesh with intention to kill him. Raj Pal raised alarm. Sarwan and Manoj came on the spot. Accused Vijay Kumar ran away from the spot on his motor cycle along with his axe. Raj Pal picked up his son and took him to

MM Hospital, Mullana. His son was given first aid. Thereafter, he was referred to PGI, Chandigarh. The complaint was sent to Police Station, Mullana. FIR was registered. The site plan was prepared. Accused was interrogated. Motor cycle and axe were got recovered by him. Investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined as many as 18 witnesses in support of its case. The appellant was also examined under Section 313 Cr.P.C. He denied the case of the prosecution.

4. The appellant was convicted and sentenced, as noticed here-in-above. Hence, this appeal.

5. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove its case against his client. Learned counsel appearing on behalf of the State has 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. PW.1 Dharamvir Singh deposed that he was posted as ASI at Police Station Mullana on 15.11.2015. He registered FIR Ex.P2.

8. PW.3 Pardeep Kumar deposed that on 18.11.2015, he was posted as EHC at Police Station Mullana. He joined the investigation. Doctor handed over one sealed parcel containing clothes of the deceased, after post-mortem examination of deceased Rajesh Kumar, to the Investigating Officer. The Investigating Officer took the same into possession vide recovery memo Ex.P5.

9. PW.4 ASI Subhash Chander mechanically examined motor cycle (without number) make Hero Honda Splendor Plus bearing engine No.62093.

10. PW.7 Raj Pal is the material witness. According to him, on 14.11.2015 at about 11.00 AM, his son Rajesh Kumar was coming from the side of their fields to their house on motor cycle. At that time, Vijay Kumar alias Sethi son of Satish Kumar was going outside from his house on motor cycle. On turn, situated near their house, motor cycles collided with each other. Minor altercation took place between them. Some villagers gathered and pacified the matter. However, Vijay Kumar and his father Satish Kumar threatened his son Rajesh Kumar that they would kill him. On the same day at about 3.00 PM, his son Rajesh Kumar was going to their fields on buffalo-cart for taking fodder. When his son Rajesh Kumar reached their fields, Vijay Kumar was roaming there along with an axe on his motor cycle. As soon as Rajesh Kumar reached fields, Vijay Kumar gave a number of axe blows to Rajesh Kumar on his head from back side, when he was on buffalo-cart. At that time, he was coming from the fields. Vijay Kumar saw him and fled away on his motor cycle with his axe, as he raised alarm. Sarwan Kumar and Manoj Kumar came on the spot. They brought his son Rajesh Kumar to MM Hospital, Mullana, where he was given first-aid. Thereafter, he was referred to PGI, Chandigarh. In his cross-examination, he deposed that Sarwan and Mahinder were his nephews in village relation. He was in possession of 14 acres of land. He had not reported the incident which had taken place on 14.11.2015 at 11.00 AM. He had noticed Vijay Kumar with axe in his hand on his motor cycle at about 2.45/3.00 PM. He

was confronted with his statement Ex.P10, wherein this fact is not recorded. No blood was found on the buffalo-cart.

11. PW.10 HC Taljinder Singh testified that Vijay Kumar was interrogated. He made disclosure statement Ex.P20.

12. PW.11 Inspector Kulwant Singh interrogated accused Vijay Kumar on 18.11.2015. He deposed that accused made disclosure statement Ex.P20. He made another disclosure statement vide Ex.P22 on 20.11.2015. Accused resiled from his earlier disclosure statement qua recovery of axe as well as motor cycle. He further disclosed that after cleaning the axe, he put the same underneath bed in his own house and that he could get recover the same. He further disclosed that he had parked the motor cycle at Do-Sarka Chowk, Sirasgarh at a closed petrol-pump and that he could get recover the same. Accused led the police party on 20.11.2015 to his residence and got recovered the axe. He also got recovered motor cycle. It was taken into possession vide recovery memo Ex.P27.

13. PW.12 Sarwan Kumar is another eye witness. According to him, on 14.11.2015 at about 11.00 AM, Rajesh Kumar was coming to his house from fields on his motor cycle. Vijay Kumar alias Sethi was coming out of his house on his motor cycle. There was curve outside his house. At the curve, both the motor cycles collided. There was exchange of hot words. Many villagers gathered there. They patched up the matter. On the same day at about 3.00 PM, Rajesh Kumar was going to take fodder on his buffalo-cart. Rajesh Kumar reached near his field. At that time, he, Manoj Kumar and his neighbour Raj Pal were working in their respective fields. In the meantime, Vijay Kumar alias Sethi came on his motor cycle carrying axe in

his hand. He gave axe blows on the head of Rajesh Kumar from his back side with intention to kill him. Raj Pal raised alarm. They reached the spot. Vijay Kumar after giving axe blows escaped from the spot on his motor cycle along with axe. They removed Rajesh Kumar to MM Medical College, Mullana. Thereafter, he was referred to PGI, Chandigarh. Vijay Kumar got recovered axe from his house as well as motor cycle from a petrol pump. In cross-examination, he admitted his relation with Raj Pal.

14. PW.15 Sukhbir Singh identified the dead body of Rajesh Kumar at PGI, Chandigarh, on 17.11.2015.

15. PW.17 ASI Roshan Lal testified that he reached Police Post, PGI on 15.11.2015. He moved application Ex.P34 before the Medical Officer, PGI, Chandigarh, for obtaining opinion of the concerned doctor about the fitness of Rajesh Kumar. The concerned doctor made endorsement Ex.P35 on the said application that the patient was unfit to make statement. Raj Pal, father of Rajesh Kumar, got recorded his statement vide Ex.P10. He also collected blood stained earth from the spot. He visited PGI, Chandigarh on 18.11.2015. He moved application Ex.P12 to the HOD, Forensic Department, PGI, Chandigarh, regarding post mortem of deceased Rajesh Kumar. After post mortem, he handed over the dead body to the relatives of the deceased. He admitted in his cross-examination that as per post mortem report Ex.P32, injuries were defined in pages No.2 and 3 as lacerated wounds and abrasions and no incised wound was observed or found.

16. PW.6 Dr. Ravi Tej Pal deposed that on 17.11.2015, the police moved an application Ex.P8 before him and asked him to supply copy of MLC of Rajesh. He reported that no MLR was prepared. He proved report

Ex.P9.

17. PW.9 Dr. S.P. Mandal conducted post mortem examination on the body of Rajesh Kumar. He noticed following injuries on the person of the deceased :-

1. Oblique lacerated wound of size 2.5 cm x 0.9 cm x bone deep present over right occipito parietal region of the scalp, the anterior is 4.5 cm above the right ear and 13 cm from the right eyebrow. The posterior end is medial and backward. The margins are irregular and contused.
2. Oblique lacerated wound of size 3 cm x 1.5 cm x bone deep present over the right occipito parietal region of the scalp, anterior end 1.5 cm medial from end of injury No.1. The posterior end is medial and above. The margins are irregular and contused.
3. Vertically placed lacerated wound of size 5.1 cm x 0.6 cm x bone deep present over left side of occipito parietal region of the scalp, 1.6 cm from injury No.2. The margins are irregular and contused.
4. Oblique lacerated wound of size 5.1 cm x 1 cm x bone deep present over occipital region of the scalp, anterior end is 7 cm above the injury No.3 and 2.5 cm lateral to occiput and posterior end is above and right.
5. Reddish brown scabbed abrasion of size 1.6 cm x 0.8 cm present over middle of nose.
6. Reddish brown scabbed abrasion of size 1 cm x 1 cm present over right side of upper lip at its middle.
7. Reddish brown scabbed abrasion of size 1.5 cm x 1 cm present over right side of lower lip at its middle.

According to his opinion, the cause of death was due to craniocerebral trauma consequent to injuries described on head. The injuries were ante mortem in nature. The nature of weapon used was blunt. The probable time

that elapsed between injuries and death was about two to three days and between death and post-mortem examination was 25 hours as calculated. He proved post mortem report Ex.P13. In his cross-examination, he deposed that he was not shown any weapon by police in order to elicit his opinion regarding injuries vis-a-vis the weapon. He reiterated in his cross-examination that the nature of weapon was blunt for all the seven injuries. Injuries No.1 to 4 were not possible by accident.

18. PW.13 Dr. Chander Shekhar deposed that injured Rajesh was admitted in their hospital i.e. PGI, Chandigarh, on 14.11.2015 with alleged history of assault. He had given treatment to the patient and prepared MLC vide Ex.P28. The injured was referred from MMU Ambala. He had sustained severe head injury. The nature of injuries was dangerous to life and type of weapon used was sharp. Rajesh died on 17.11.2015.

19. PW.16 Dr. Manish K. Chhabra deposed that on 15.01.2016, he was posted as SMO in PGIMER Advance Trauma Center, Chandigarh. ASI Roshan Lal moved an application Ex.P40 along with sealed parcel containing weapon of crime i.e. axe before him seeking his opinion regarding the weapon i.e. axe used in the crime. He took out the axe and after inspecting it, he gave opinion Ex.P41 that the injuries as given in the case summary were caused by sharp weapon and possibility of injuries with the said weapon could not be ruled out. In his cross-examination, he admitted that before giving opinion Ex.P41, he had not gone through the post mortem report. He could not say as to how it was mentioned in the post mortem report that the wounds were lacerated. Volunteered, he had given the opinion after the axe was shown to him along with the case, which

mentioned it as a sharp weapon. The following injuries were found on the person of injured Rajesh Kumar :-

1. Laceration 10 x 2 cm on left scalp margin bleeding.
2. Laceration mid scalp 5 x 1 cm margin bleeding.
3. Laceration right scalp 7 x 1 cm bleeding.
4. Abrasion on dorsum of left hand.
5. Abrasion on dorsum of right hand.

The probable duration of injuries was within six hours. Opinion regarding nature of injuries was kept pending for want of report of Neuro Surgeon. He proved MLR Ex.P32.

20. The Forensic Science Laboratory report is Ex.P21. According to it, blood was detected on exhibit-1 (blood stained earth), exhibit-2b (underwear) and exhibit-3 (axe). Exhibit-2a (shirt) was stained with few blood stains.

21. On 14.11.2015 at about 11.00 AM, an altercation had taken place between deceased Rajesh Kumar and appellant Vijay Kumar, when their motor cycles collided. The matter was patched up. Thereafter, on the same day, in the evening at about 3.00 PM, PW.7 Raj Pal and PW.12 Sarwan Kumar had seen appellant Vijay Kumar inflicting axe blows from the back side on the head of Rajesh Kumar. Rajesh Kumar collapsed. He was taken initially to MM Hospital, Mullana. Thereafter, he was referred to PGI, Chandigarh. PW.13 Dr. Chander Shekhar had medico legally examined Rajesh Kumar. According to him, the injuries were dangerous to life. Injured Rajesh Kumar was found lying in the fields, as per history reported by his father. ASI Roshan Lal had moved application Ex.P40 on 15.01.2016 before PW.16 Dr. Manish K. Chhabra seeking his opinion

whether the injuries could be caused by the axe produced before him. He gave his opinion Ex.P41. According to him, the injuries were caused by sharp weapon. He had noticed as many as five injuries on the person of Rajesh Kumar. The probable duration of injuries was within six hours. PW.9 Dr. S.P. Mandal had conducted post mortem examination. According to him, the cause of death was due to craniocerebral trauma consequent to injuries described on head. The injuries were ante mortem in nature. The nature of weapon used was blunt. The probable time that elapsed between injuries and death was about two to three days and between death and post-mortem examination was 25 hours as calculated. In his cross-examination, he deposed that injuries No.1 to 4 were lacerated wounds. Injuries No.1 to 4 were caused probably within two and three days prior to conducting post-mortem examination. The probable time of injuries No.5 to 7 was the same as that of injuries No.1 to 4. PW.9 Dr. S.P. Mandal further deposed in his cross-examination that the nature of weapon was blunt for all the seven injuries. However, as per the opinion given by PW.16 Dr. Manish K. Chhabra vide Ex.41, sharp weapon was used for causing injuries. According to the FSL report Ex.P21, blood was found on axe (exhibit-3) as well as on blood stained earth (exhibit-1) and shirt (exhibit-2a).

22. The prosecution has proved that the appellant caused injuries on the head of Rajesh Kumar with axe. This act of the appellant was witnessed by PW.7 Raj Pal and PW.12 Sarwan Kumar. The axe and the motor cycle were got recovered on the basis of disclosure statement made by the appellant. It is settled law that statements of related witnesses can be taken into consideration but with caution. The prosecution has proved its

case against the appellant beyond reasonable doubt.

23. Accordingly, there is no merit in this appeal and same is dismissed. The impugned judgment and order are upheld.

(**RAJIV SHARMA**)
JUDGE

September 03, 2019
ndj

(**HARINDER SINGH SIDHU**)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No