

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision : 15.11.2019

201 CRA-D-700-DB-2017 (O&M)

Vijay alias Kala Appellant

Versus

State of Haryana Respondent

CRA-D-539-DB-2017 (O&M)

Sandeep @ SonuAppellant

Versus

State of HaryanaRespondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Bijender Dhankhar, Advocate and
Mr. Yash Pal Malik, Advocate
for the appellant.

Mr. Randhir Singh, Addl. A.G., Haryana.

AJAY TEWARI, J. (Oral)

1. This common order shall dispose of abovesaid two appeals as
they arise from the same FIR.

2. These two appeals have been filed against the judgment of
conviction and order of sentence dated 28.4.2017 and 1.5.2017 passed by
the Additional Sessions Judge, Sonapat, whereby the appellants were
convicted under Sections 302 read with Section 120B IPC and sentenced

to undergo life imprisonment alongwith fine of Rs. 10,000/- each and, in default thereof to further undergo RI for a period of three months each in case FIR No. 280 dated 20.6.2013, under Sections 302, 450/34 IPC and Section 25/54/59 of the Arms Act registered at P.S. Civil Line, Sonapat.

3. Brief facts are that on 20.6.2013, one Jeweller Rajender Pal (deceased) opened his showroom viz. Laxmi Gold Palace at about 10:00 am. Apart from the owner, there were three people in the showroom who were working there, namely Mannu Kumar, Lalita and Ritu. It had been stated that Lalita and Ritu apart from being employees were also relatives of said Rajender Pal. Just at that time i.e. 11:00 am, two young boys (one short statured and the other tall) came; the taller man stood at the gate of the showroom while the shorter one came inside; sat on sofa and asked about the rate of rings. He also asked for a glass of water which was being brought to him, when he suddenly stood up, took out his pistol, and fired a shot at Rajender Pal which hit him on the right side of the chest. Both the assailants escaped and fled away on a red coloured motor cycle. On being arrested, they were sent up for trial. In the course of the trial, as many as 21 prosecution witnesses were examined.

4. The accused-appellants were examined under Section 313 Cr.P.C. in the course of which they took the plea of being falsely implicated in the offence alleged and made a statement that they were innocent. No defence evidence was led. Thereafter, at the conclusion of the trial the learned trial Court, on consideration of the evidence and material on record, passed the impugned judgment and order convicting and sentencing the appellants as mentioned above.

5. We have gone through and considered the judgment and order under challenge and the evidence of the prosecution witnesses apart from hearing the learned counsel for the appellants and learned Deputy Advocate General, Haryana. The important witness being PW8-Lalita, her testimony would require a close scrutiny. The entire case rests on the testimony of Lalita since the other two eye witnesses turned hostile and therefore, it would be apposite to consider her testimony in detail. She has given a chronological, coherent and consistent account of what happened and it was her testimony which led the Trial Court to convict the appellants.

6. PW-8 Lalita deposed that in the month of June, 2013 she was employee at Laxmi Gold Palace at Subhash Chowk, Sonipat whose owner was Rajender Pal (deceased). On 20.6.2013 at about 10:00 a.m, she alongwith Ritu, Mannu, Gunman and Rajender Pal reached at the said showroom. Mannu was cleaning the showroom. They had just settled the gold articles. At about 11:00 am two young boys entered in the showroom, one of them was a short statured and other one was tall. She further deposed that short statured boy sat on the sofa in front of Rajender Pal and enquired about rate of a gold ring. Rajender Pal was telling him about the rates, in the meanwhile, he asked for a glass of water. Mannu gave him a glass of water. The accused drank the water and put the glass on the counter. Thereafter, that short statured boy stood up and took out a pistol and fired a shot upon Rajender Pal which hit him on the right side of his chest. The blood started oozing out and he fell down on the chair on the back side. She ran and chased the accused persons but both of them fled away on a red coloured motor cycle which was standing outside

with another boy. That boy drove the motor cycle towards Atlas factory with both the appellants. She raised alarm which attracted some persons to the spot and took Rajender Pal to the hospital. The Gunman had already left the showroom for some personal work when the accused came there. The police had recorded her statement. She further deposed that on 24.6.2013 the police had shown the photographs and also the CCTV Footage. She had seen the photographs Ex.P7 and Ex.P8. These were the same photographs which were shown to them alongwith CCTV Footage. The police took the same into police possession vide memo Ex.PA. The same was signed by her and Mannu.

7. PW-8 Lalita further deposed that on 6.7.2013 she alongwith Mannu was going near the ITI Chowk and while they were standing there a police vehicle was found standing near the railway over bridge. There was a traffic jam at that time. She went near the vehicle and saw the short statured accused present in the Court, who had fired the shots upon Rajender Pal on 20.6.2013. Her statement was recorded by the police on that day.

8. Learned counsel for the appellants have argued that the identification by Lalita is suspect. As per them, appellant-Vijay was arrested in an another case and was arraigned in this case because of disclosure statement. The story which was put forth by Lalita that on 6.7.2013 that she was going somewhere and was stuck in a traffic jam and then she noticed a police jeep in which appellant-Vijay (who was apprehended by Police in some other case) was sitting and she recognized him, is a highly unbelievable sequence of events. Counsel for the appellants have further argued that Lalita stated that she had been shown

the picture of the CCTV Footage by the Police (much prior to the arrest of the appellants) but the Trial Court held that the CCTV Footage was not proved. They have argued that Lalita was shown the pictures from this unbelievable evidence and that was the basis of her identification and thus, the identification is impermissible. They have further asserted that nothing was robbed and there was no motive for the appellants to have committed this crime. Moreover, no recovery of any weapon was made from either of the appellants. They have also stated that the other two eye witnesses have refused to recognize the appellants. The conviction based on the identification by Lalita is a fraught with danger.

9. Per contra, learned Additional Advocate General has argued that considering the cold blooded murder, it is hardly surprising that two employees i.e. young Ritu and Mannu Kumar turned hostile but even if they did not identify the appellants at least they corroborated the sequence of events. He has asserted that the testimony of Lalita rings true. Moreover, the defence was not able to elicit anything meaningful from her in the cross-examination which may go in their favour. Her identification of the two appellants was unequivocal and credible. Moreover, as per him the motive card can be played by both sides and Lalita had no motive to falsely implicate the appellants. The argument that she had identified the appellants after two years, as per him, is not of much consequence because sometimes when a horrific scene played out before a person the details can be printed on their memory (even though the obverse may also be true) and what the Court has to determine is whether the testimony of the witness is based on what she saw and remembered or whether it seems to be tutored. He has taken us to

through the testimony of Lalita and we find that her deposition is eminently believable.

10. It is trite to say that one truthful witness can swing the case either way. It is strange that PW-8 Lalita happened to identify appellant-Vijay fortunately when she was on a busy road but it is not as if this cannot happen. As we said earlier, the essential factor is whether the evidence of the witness inspires confidence, which in the present case it positively does.

11. Learned counsel for the appellant-Sandeep has further argued that as far as Sandeep is concerned he did not do any overt act and no evidence was led against him. In our opinion, this argument has to be rejected. The chronology of events and the professional manner in which the offence was committed leaves no doubt that the appellant Sandeep was also fully cognizant of what had to transpire. Resultantly, he cannot wash away his liability under Section 34, in any case.

12. Consequently, the appeals stand dismissed.

13. Since the main appeals have been dismissed, pending application, if any also stands dismissed.

(AJAY TEWARI)
JUDGE

(ALKA SARIN)
JUDGE

15.11.2019
anuradha

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