

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

CRA-D No. 638-DB of 2003 (O&M)

Reserved on : 20.12.2018

Date of decision : 8.1.2019

Pawan alias Ponny

.... Appellant

versus

State of Haryana

... Respondent

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

Present Mr. Atul Lakhanpal, Senior Advocate with
Mr. Sahil Gupta, Advocate, for the appellant.

Mr. Vishal Garg, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. The present appeal is instituted against judgment dated 17.5.2003 and order dated 21.5.2003, rendered by Sessions Judge, Hisar, in Sessions Case/ Trial No. 65 of 2001, vide which appellant Pawan alias Ponny along with his co-accused Ashok Kumar alias Ashoki was charged with and tried for the offence punishable under Sections 302/34 IPC. Appellant Pawan alias Ponny was convicted and sentenced under Section 302 IPC to undergo imprisonment for life and to pay fine of ₹ 2,000/-, and in default of payment of fine, to further undergo rigorous imprisonment for three months. Co-accused Ashok Kumar @ Ashoki was convicted and sentenced under Section 323 IPC to undergo rigorous imprisonment for one year and to pay fine of ₹ 1,000/-, and in default of payment of fine to further undergo rigorous imprisonment for one month.

2. The case of the prosecution in a nutshell is that on 5.9.2001 at 3.10 P.M., Prem injured was brought to General Hospital, Hisar, by his father Nathu Ram, cousin brother Ramesh Kumar and maternal uncle Ram Lal. Dr. Sanjay Sheoran treated him and then referred the patient to higher medical centre for further management vide reference slip, Ex.P10. He was removed to CMC at 5.00 P.M. He was declared dead at 5.30 P.M. FIR, Ex.P5, was registered. Dead-body was sent for post-mortem examination. The cause of death was due to shock and haemorrhage as a result of injuries. The injuries were ante-mortem in nature and were sufficient to cause death in ordinary course of nature. Investigation was completed and challan was put up after completion of all the codal formalities.

3. The prosecution examined a number of witnesses in support of the case. The statements of the accused were recorded under Section 313 Cr.P.C. They denied the case of the prosecution. They were convicted and sentenced, as noticed above. Hence, the present appeal. Accused Ashok Kumar @ Ashoki appears to have not filed any appeal.

4. Learned counsel appearing on behalf of the appellant 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.

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

6. PW1 HC Om Parkash tendered his evidence by filing affidavit, Ex.P1.

7. PW4 Subhash Chander has prepared the site plan vide Ex.P3.

8. PW5 Dr. Daya Nand deposed that he medico-legally examined Prem Kumar. The patient was brought by Ram Lal, real maternal uncle of the injured, Ramesh Kumar cousin brother and Nathu Ram, father. He found him unconscious. He was not responding to painful stimuli. He noticed the following injuries on the body of deceased Prem Kumar:-

1. There was sharp edged wound over left side of chest, almost vertically placed of size 3 c.m. x 1.2 c.ms. and the depth of the wound was not probed. The wound was lying 4 c.m. medial to left nipple and 2 c.m. below the level of nipple.

The injury was declared dangerous to life and was caused by sharp edged weapon and the probable duration was within six hours. He advised x-ray chest and general surgeons opinion.

Duration of injury was within six hours. According to him, the possibility of the injury being caused at about 2.00 P.M. on 5.9.2001, could not be ruled out.

9. The post-mortem examination was conducted by PW6 Dr. Sanjay Sheoran. He proved the post-mortem report as Ex.12/A. According to him, the injury was possible on 5.9.2001 at 2.00 P.M. The cause of death in his opinion was due to shock and haemorrhage as a result of injuries, which were ante-mortem. The probable time elapsed between injury and death was variable and between death and post-mortem was within 24 hours.

10. PW8 Nathu Ram is the father of the deceased. He testified that his son was unemployed on the date of occurrence. On 4.9.2001 at about 8.00 P.M. he along with his son Prem Kumar was present in his house. Pawan Kumar and Ashok came there. They requested him and his son Prem

Kumar to arrange finance from the Financier, who was their tenant on the ground floor. They refused. On 5.9.2001 at about 8.00 A.M., Pawan Kumar and Ashok again came to their house. They took his son Prem Kumar along with them. He waited for his son upto 1.00 P.M. but he did not come to the house. They went in search of Prem Kumar. When they reached near Lamba Hospital, Hisar, PW Rajinder was present at his tea shop. He made inquiries from Rajinder, if he had seen Prem Kumar. He told him that Prem Kumar was present in the godown of Shakti Furniture along with Pawan and Ashok. He along with Ramesh went there. He had seen Pawan and Ashok giving fists and slaps to Prem Kumar. Prem Kumar collapsed. Pawan @ Ponny took out a knife and gave its blow to Prem Kumar. He raised alarm and the accused ran away from the spot. He along with his nephew removed Prem Kumar in Civil Hospital, Hisar. First aid was given and Prem Kumar was referred to PGIMS, Rohtak. In his cross-examination, he deposed that when the accused came to them, the Financiers were present in their house. The other family members and his other sons were present at the house. The accused were known to them. The accused were friendly with Prem Kumar. His clothes were also stained with blood when he lifted Prem Kumar. His statement was recorded at 7.30 P.M.

11. Statement of PW8 Nathu Ram is duly supported by PW9 Ramesh Kumar. He has narrated the manner in which the appellant had inflicted knife blows on Prem Kumar. In his cross-examination, he deposed that Rajinder was known to him. Prem Kumar was wearing pant and shirt. They reached Civil Hospital at about 2.30 P.M. His clothes were also stained with blood. They removed Prem Kumar to CMC Hospital in Ambassador car. The place of occurrence was at a distance of half a *kill*

from the shop of Rajinder.

12. PW11 SI Balwan Singh testified that he received *ruqa* Ex.P7. He recorded the statement, Ex.P4, of PW8 Nathu Ram. He also made application, Ex.P11, for conducting post-mortem examination. He arrested accused Pawan Kumar on 6.9.2001. He also took into possession blood stained shirt and made it into a sealed parcel. He interrogated Pawan Kumar, who made disclosure statement, Ex.P20, regarding the knife. He again interrogated Pawan Kumar in the presence of Constable Murari Lal and ASI Ram Singh, who made disclosure statement, Ex.P21, to the effect that he had kept concealed a knife used in the crime under the bricks lying in his house. He also arrested accused Ashok Kumar. He also got recovered one knife, on the basis of disclosure statement, Ex.P22. The knife was also produced before Dr. Sanjay Sheoran.

13. The incident was witnessed by PW8 Nathu Ram and PW9 Ramesh Kumar. They have seen accused Pawan Kumar inflicting knife blows to Prem Kumar. Prem Kumar collapsed. He was taken to hospital. The knife was recovered at the instance of Pawan Kumar on the basis of disclosure statement, Ex.P21. The cause of death as per the opinion of the doctor was due to shock and haemorrhage as a result of injuries. The injuries were ante-mortem in nature and were sufficient to cause death in ordinary course of nature.

14. The motive attributed to the appellant was that he had requested PW8 Nathu Ram and his son Prem Kumar (deceased) to arrange finance from the Financier, who was their tenant on the ground floor. They refused. The accused were known to PW8 Nathu Ram and his son Prem Kumar (deceased). The statements made by father and cousin of the deceased

inspire confidence. The statements of interested witnesses can also be relied upon, if these are duly corroborated by other evidence. In the instant case, two eye-witnesses PW8 Nathu Ram and PW9 Ramesh Kumar have been duly supported by other ocular and documentary evidence produced by the prosecution, including medical evidence.

15. The trial court has correctly appreciated the evidence brought on record by the prosecution and found the accused guilty. No interference is called for in the well reasoned judgment and order recorded by the learned Court below. Accordingly, the appeal is dismissed.

(Rajiv Sharma)
Judge

8.1.2019
vs

(Harinder Singh Sidhu)
Judge

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