

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

CRA-D-747-DB-2003(O&M)
Date of decision :- 27.11.2019

Madan Pal and another

....Appellants

Versus

The State of Haryana

....Respondent

**CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr.Deepinder Singh, Advocate
for the appellants.

Mr.Vikrant Pamboo, Deputy Advocate General,
Haryana.

H.S. MADAAN, J.

Briefly stated, facts of the case as per prosecution story are that on 2.8.2001 deceased Parmod along with Kailash was proceeding to Dayalpur on motorcycle bearing registration No.HR-29-C-4070; the complainant Kesh Raj, a brother of deceased Parmod and Ajay Pal were also going in the same direction on a separate motorcycle; they were going to village Kurali; there was

some distance between the two motorcycles; while being in the area near bus stand of village Kurali, accused Madan Pal and Harish Kumar having pistols appeared there; Madan Pal fired a shot at Parmod hitting him on the chest, whereas Harish Kumar fired a shot hitting Parmod on the back, in total five shots were fired, two of them by Harish Kumar; after being hit Parmod ran for his life towards the fields of Chhaju situated behind the bus stand and then fell down; the complainant Kesh Raj rushed to his rescue and challenged the assailants, then both the accused/assailants ran away from the spot along with their respective weapons; several other persons gathered at the spot, however Parmod succumbed to the injuries on the place of incident itself. Earlier in the year 1999, accused had caused injuries to Parmod, in respect of which a criminal case had been registered and both the accused were facing trial. The accused were inimical towards Parmod and for that reason, they had committed his murder.

After the incident a police party, which was passing nearby on getting to know about the occurrence reached the spot. The complainant Kesh Raj got his statement recorded with the police officer, who after making endorsement on the statement send ruqa to the police station and formal FIR No.204 dated 2.8.2001 for the offences under Sections 302/34 IPC and 25 of the Arms Act was registered at Police Station Chhainsa. The Investigating Officer took into possession shoes of Parmod deceased, blood stained earth,

empty cartridge shells and live cartridges after preparing sealed parcels thereof vide different memos. The Investigating Officer prepared inquest report with regard to unnatural death of Parmod. He got the postmortem examination conducted on the dead body on 2.8.2001. Two bullets were recovered from the dead body, as a result of postmortem examination. Such bullets along with sample of blood of deceased and other articles were handed over to the police. There were holes in the shirt of deceased corresponding to the injuries. The scene of occurrence was got photographed. A scaled site plan of the incident was got prepared.

Both the accused were arrested and interrogated on 7.8.2001 in presence of Kesh Raj – complainant. Both of them made separate statements under Section 27 of the Evidence Act and in pursuance thereof, accused Madan Lal got recovered a pistol of .315 bore from the *Kotha* of tubewell, which had been taken into possession vide a seizure memo. Accused Harish Kumar had got recovered a country-made pistol from a hut near the field of co-accused. The site plans of the places of recovery were prepared. During the course of investigation, the firearms recovered from the accused, the empty shells and live cartridges were sent to FSL. Both the pistols were found to be in working condition and empty shell was found to have been fired from the pistol recovered from Madan Pal.

After completion of investigation and other formalities,

challan against the accused was prepared and filed in the Court of Judicial Magistrate First Class, Faridabad.

On presentation of challan in the Court of Judicial Magistrate First Class, Faridabad, he supplied copies of documents relied upon in the challan to both the accused free of cost as provided under Section 207 Cr.P.C. Then finding that offence under Section 302 IPC is exclusively triable by the Court of Session, learned Judicial Magistrate Ist Class, Faridabad vide his order dated 29.10.2001 committed the case to the Court of learned Sessions Judge, Faridabad, from where it was entrusted to the Court of learned Additional Sessions Judge, Faridabad.

When the case was received in the Court of learned Additional Sessions Judge, Faridabad, he finding that prima-facie charge for the offences under Sections 302 read with Section 34 IPC and 25 of the Arms Act was disclosed, charge-sheeted both the accused accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution examined as many as thirteen witnesses i.e. PW1 Keshraj, PW2 Ajay Pal, PW3 Dr.Sudhir Khurana, PW4 Bhudev Singh, Patwari, PW5 Constable Amar Singh, PW6 Shiv Kumar, Ahlmad, PW7 ASI Ram Pat, PW8 HC Sher Singh, PW9 Constable Sukhbir Singh, PW10 Constable Sukender Singh, PW11 Inspector Banshi Lal, PW12 Gulab Sharma and PW13 Sanjay.

With that the prosecution evidence stood closed.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them, but they denied the allegations contending that they were innocent; Parmod was a notorious criminal of the area and he was facing trial in serious criminal cases in various Courts and had many enemies; that they had been falsely implicated in this case.

In defence evidence, the accused had examined DW1 HC Vijay Singh, DW2 HC Anand Kumar, DW3 Constable Rajender Kumar, DW4 Vipin, DW5 Constable Sarwan Kuamr and DW6 Constable Mahesh.

After hearing arguments, learned trial Court vide judgment dated 28.8.2003 convicted both the accused for the offences under Sections 302 read with Section 34 IPC and 25 of the Arms Act and vide order dated 1.9.2003, they were sentenced as under:

Under Section	Sentence Awarded
302 read with Section 34 IPC	Imprisonment for life and to pay a fine of Rs.10,000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of one year.
25 of Arms Act	Imprisonment for three years and to pay a fine of Rs.500/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of three months.

Both the sentences were ordered to run concurrently.

The said judgment and order left the accused/convicts aggrieved and they have filed the present appeal, notice of which was given to the State.

We have heard learned counsel for the appellants-accused- convicts and learned State counsel besides going through the record.

Here both the the eye-witness of the incident i.e. PW1 Kesh Raj and PW2 Ajay Pal have supported the prosecution story on material aspects. Although both these PWs were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on any material point. A few minor variations in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. The fact cannot be lost sight of that different persons have got variable memorization of the events. Merely for the reason that a witness slipped at a few places regarding the minute details does not go to put a question mark over his credibility and truthfulness. These minor variations and contradictions rather go to show that the witnesses have deposed in a natural and truthful manner unlike tutored witnesses who testify in a parrot like manner. We find presence at the spot of both the witnesses to be natural and probable

and account given by both of them to be worthy of reliance. If the witnesses had not been present at the spot, they could not have possibly been imported to the place of incident and their statements recorded within such a short time. The incident in this case as per the prosecution story had taken place on 2.8.2001 at about 9:00 a.m., whereas the police had arrived at the spot, recorded statement of Kesh Pal in which he had given detailed version of the incident naming Ajay Pal to be the second eye-witness, the statement was completed. The endorsement of Investigating Officer was appended and ruqa was sent to the police station at 10:30 a.m. i.e. within 1 ½ hours of the incident. The complainant having seen the sudden gruesome murder of his brother would have been under a tremendous shock and his staying near the body for some time instead of leaving the body there and himself rushing to the police station to lodge report regarding the incident cannot be termed to be an unnatural conduct. Furthermore, various people react to various situations in a different manner. Though Kesh Raj is stated to be a literate person and in a Government service, but that by itself does not mean that he was expected to rush to the police station soon after the incident while being in state of shock having seen sudden murder of his brother undergoing a traumatic experience. Therefore, the complainant and the other witnesses remaining at the spot after the incident and not going to the police station immediately does not make their presence at the spot doubtful.

Furthermore, if we imagine a situation when a person has not seen an incident but is wrongly cited as an eye witness, it is difficult for such witness, who had just lost his real brother to concoct a story giving fine details and then present those before the police within 1 ½ hours of the incident.

Learned counsel for the appellants has argued that there is contradictions between the oral ocular and medical evidence inasmuch as according to the prosecution version, the incident had taken place at 2.8.2001 at 9:00 a.m.; however, when postmortem examination was conducted on the dead body of Parmod on that very day at 2:30 a.m., the dead body was found to have developed rigor mortis all over the body. The doctor had opined that the period that elapsed between death and postmortem was within 24 hours, whereas between injury and death was within a few minutes.

Learned counsel for the appellants has argued that in treatise Modi's Medical Jurisprudence and Toxicology, in temperate regions rigor mortis usually lasts for two to three days and in northern India, the usual duration of rigor mortis is 24 to 48 hours in winter and 18 to 36 hours in summer. He had contended that as observed in the said authority in general, rigor mortis sets in one to two hours after death, is well developed from head to foot in about twelve hours. According to him, it was a blind murder. Kesh Pal and Ajay Pal had not seen the same and they had involved the accused on the basis of suspicion only. The rigor mortis observed in

the dead body shows that the murder had been committed much earlier may be on the previous night, therefore, the presence at the spot of eye-witnesses becomes doubtful, which leads to the inference that the incident had not taken place at the time as suggested by the prosecution.

On the other hand, learned State counsel has countered the arguments contending that the eye-witnesses have faced the test of cross-examination quite well and there was no reason for them to involve the accused in this case falsely. Furthermore, setting in of rigor mortis depends upon various factors including weather conditions and the cause of death etc. Therefore, the presence of rigor mortis in the dead body does not render the prosecution story untrustworthy.

After hearing the rival contentions, we find that since the eye witness account of the incident given by witnesses has been found to be truthful and worthy of reliance and appearance and disappearance of rigor mortis depending upon various factors, it cannot be presumed that the death had taken place 24 hours prior to the examination of the dead body in the hospital by the doctor performing postmortem examination.

It may be mentioned here that complainant Kesh Raj having lost his real brother would have been the last person to try to screen the actual culprit and involve the accused in this case falsely since it is always the earnest endeavour of such a close relative to

ensure that the person responsible for gruesome end of his near and dear is brought to book and is punished suitably rather than attempting to shield the actual culprit and involve some innocent person in his place without any rhyme or reason.

We find that the cogent and convincing ocular evidence available on the file is duly corroborated by medical evidence. The accused are clearly connected with the crime. Point Nos.2 to 5 of FSL report for ready reference are reproduced as under:

2. *.315” fired cartridge case marked C/1 & .315” fired bullet marked BC/2 have been fired from Countrymade pistol W/2 and not from any other firearm even of the same make and bore/calibre, because every firearm has got its own individual characteristic marks.*
3. *.315” fired bullet marked BC/3 has been fired from Countrymade pistol W/1 and not from any other firearm even of the same make and bore/calibre, because every firearm has got its own individual characteristic marks.*
4. *.315” bullet marked BC/1 is an unfired bullet.*
5. *Holes in the shirt contained in parcel No.IV have been caused by bullet projectiles.*

Thus, participation of the accused in the incident stands

established. The Investigating Officer had no reason to involve the accused in this case wrongly, challan them falsely or to depose against them to secure their conviction. The motive for the incident was clearly there on account of previous enmity between the parties.

The judgment of conviction and order of sentence passed by the trial Court are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

It may be mentioned here that appellant/accused/convict Madan Pal has expired during the pendency of the appeal. Therefore, appeal filed by him stands abated, whereas the appeal filed by appellant/accused/convict Harish Kumar stands dismissed.

Appellant/accused/convict Harish Kumar is stated to be on bail granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Faridabad is directed to issue arrest warrant to get him arrested immediately so as to make him undergo the remaining sentence.

27.11.2019
Brij
(JITENDRA CHAUHAN)
JUDGE

(H.S.MADAAN)
JUDGE

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