

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

CRA-D No. 506-DB of 2010 (O&M)

Reserved on : 16.1.2019

Date of decision : 22.1.2019

Sachin and another

.... Appellants

versus

State of Haryana

... Respondent

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

Present Mr. Sushil Gautam, Advocate, for the appellants.
Ms. Shubhra Singh, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. This appeal is instituted against the judgment dated 20.3.2010 and order dated 22.3.2010, rendered by learned Additional Sessions Judge, Sonipat, in Sessions Case No. 57 of 23.8.2006, vide which accused Sachin and Pappu alias Kaira were charged with and tried for the offence punishable under Section 302 read with Section 34 IPC. They were convicted and sentenced under Section 302 read with Section 34 IPC to undergo life imprisonment and to pay fine of ₹ 5,000/- each 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 during the course of patrolling on 29.5.2006, a telephonic information was received by Assistant Sub-Inspector Ram Kumar to the effect that Mishru Parjapat was murdered across river Yamuna, near Tikola Ghat. Assistant Sub-Inspector Ram Kumar arrived at Tikola Ghat. He recorded the statement, Ex.PB, of PW3 Azad Singh. According to the contents of the statement, Ex.PB, Azad

Singh were three brothers. They owned 13 acres of land, out of which 8 acres of land was situated across river Yamuna. They have installed a tubewell and constructed a *kotha* (room). He along with his brother Ramesh was plucking the lady fingers in their fields. In the meantime at about 2.30 P.M., two youngsters namely Sachin and Pappu @ Kaira came to the tubewell of the complainant. Sachin was armed with *lathi* and *gandasi*. Pappu @ Kaira was carrying *kassi* (spade) in his hand. Father of the complainant, Mishru, was inside the *kotha*. After sometime, the complainant and his brother heard the screams of their father. They witnessed that Sachin armed with *lathi* and *gandasi*, whereas Pappu @ Kaira was empty handed were running towards village Luhari. They tried to chase them, however, the accused concealed themselves in a distant fields. They came to the *kotha* and saw that their father was lying in a pool of blood. He was dead. The police was informed. Inquest proceedings were carried out. Vide application, Ex.PE/1, dead body was dispatched to Civil Hospital, Sonipat, for post-mortem examination. On 30.5.2006, a team of Forensic Science Laboratory also visited the spot. Blood stained earth was also lifted from the spot. Recoveries were made on the basis of disclosure statements made by the accused. The matter was investigated and the 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 also 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.

4. Learned counsel appearing on behalf of the appellants 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. PW3 Azad Singh is the material witness. He deposed that on 29.5.2006 at about 2.30 P.M., he along with his brother was plucking the lady fingers in their fields. Accused Sachin and Pappu @ Kaira came to the spot. He identified them in the Court. Accused Sachin was armed with *lathi* and *gandasi*, whereas accused Pappu @ Kaira was carrying *kassi* (spade). His father was inside the *kotha* of the tubewell. After some time, they heard cries of their father. They looked towards *kotha*. They saw accused Sachin armed with *lathi* and *gandasi*, whereas Pappu @ Kaira empty handed. They ran towards the side of U.P. They tried to chase them. They could not nab them. They came back. They saw that their father was lying on the ground. Lot of blood was spilled on the ground. His father was dead. They went to the police. His statement, Ex.PB, was recorded. In his cross-examination, he admitted that distance between lady fingers field and *kotha* in question was about 50-60 feet. He also admitted categorically that he had not asked any question from the accused why they were coming towards their tubewell. Within 5-7 minutes of their arrival, they heard cries of their father. In his examination-in-chief, he deposed that the accused were annoyed since his family had lodged complaint against them for stealing fans, etc. However, in his cross-examination, he admitted that no criminal case was registered on the basis of application submitted by them.

7. PW9 Ramesh is also brother of PW3 Azad Singh. He deposed that the accused came to their fields on 29.5.2006 at about 2.30 P.M. Sachin was armed with *lathi* and *gandasi*, whereas Pappu @ Kaira was carrying *kassi* (spade) in his hand. His father was present inside the *kotha*. After sometime, they heard the shrieks of their father. They rushed towards the *kotha* and saw that accused coming out of the *kotha*. At that time, accused Sachin was armed with *lathi* and *gandasi*, and accused Pappu @ Kaira was empty handed. Both of them ran towards U.P. They tried to chase them. According to him also, the accused had murdered his father after the report was lodged against them for stealing their engine and fans. In his cross-examination, he has admitted that they did not challenge the accused when they went inside the *kotha*. They made no enquiry as to why they were carrying weapons in their hands. They did not go inside the *kotha* when the accused entered inside the *kotha*. He also admitted that the jawar crop was of small size at that time. He also admitted that the accused were not arrested in any theft case. The accused were not summoned by the police.

8. PW7 Dr. J. K. Tyagi has conducted the post-mortem examination of the body of deceased Mishru. He noticed the following injuries on the body:

1. A bow shaped incised wound with convexity upwards was present on the upper part of face centro wound was at the bridge of nose. Size of the wound was 11 cms x 0.5 cm. Clotted blood was present. The wound was going dipper posteriorily and slightly downwards fracturing the nasal bone and maxillary bones of both sides in the line of wound going upto the hard palate exposing both the maxillary sinuses.

2. Incised wound transversely placed 1 cm x 0.2 cm on the lateral surface of middle part of pinna of right ear clotted blood was present.
 3. A transversely placed incised wound 5 cms x 1 cm in size bone deep present in the right half of occipital area of scalp just below the occipital protuberance. Clotted blood was present.
 4. Incised wound transversely placed 7 cms x 1 cm in size one cm above and lateral to injury No.3. Bone deep. Clotted blood was present.
 5. A lacerated wound present in upper part of occipital region of scalp 9 cms above the occipital protuberance 8 cms x 1 cm in size bone deep clotted blood was present. On exploration underlying bone fractured underlying intra cranial collection of blood present in the occipital region. Whole of the brain was congested and oedemetous.
 6. A reddish abrasion irregular in shape 4 cms x 3 cms in size present on the superio posterior surface of right shoulder.
 7. A reddish abrasion 2.5 x 2 cms present on upper part of right scapular area of chest.
9. The cause of death was due to shock as a result of injuries to vital organ i.e. brain and its complications. The injuries were ante mortem in nature and were sufficient to cause death in normal course of life. The post-mortem examination was conducted on 30.5.2006. On 8.6.2006, the police had moved an application, Ex.PE/3. He gave his opinion, Ex.PE/4, to the effect that possibility of injuries no. 1 to 7 in the PMR, Ex.PE, being inflicted with the weapon shown to him i.e. *kassi* and *gandasi* could not be ruled out. On 17.6.2006, on another application, Ex.PE/5, moved by the

police, he opined that possibility of injuries no. 5 to 7 being inflicted with the *lathi* shown to him could not be ruled out.

10. PW11 ASI Ram Kumar deposed that he was on patrol duty. He received information that Mishru Parjapat was murdered. PW3 Azad Singh met him at Tikola Ghat and made statement, Ex.PB. He accompanied PW3 Azad Singh to the place of occurrence. He dispatched dead-body for post-mortem examination. Accused Sachin was arrested on 31.5.2016. He made disclosure statement, Ex.PH, to the effect that he had kept concealed the *gandasi* in the tubewell *kotha* of Pappu alias Kaira in village Luhari. On 13.6.2006, accused Pappu @ Kaira was formally arrested. He made disclosure statement, Ex.PJ, and told that he had kept concealed *lathi* in the *kotha* of his tubewell. It was got recovered. He further deposed that 5-6 persons were present when accused Sachin was interrogated. They did not join the investigation. The FSL report is Ex.PC.

11. What emerges from the evidence discussed hereinabove is that PW3 Azad Singh had lodged the report, Ex.PB, on the basis of which FIR was registered. According to him, accused Sachin and Pappu @ Kaira came on the spot on 29.5.2006 at about 2.30 P.M. Father of PW3 Azad Singh and PW9 Ramesh was inside the *kotha*. Sachin was armed with *lathi* and *gandasi*, whereas accused Pappu @ Kaira was carrying *kassi* (spade). They entered inside the *kotha*. PW3 Azad Singh and his brother PW9 Ramesh were plucking the lady fingers in their fields. After some time, they heard cries of their father. They saw accused running towards U.P. side. They tried to chase them but could not nab them. Thereafter, they went to the room of the tubewell and saw that their father was lying dead in the pool of blood.

12. According to PW3 Azad Singh and PW9 Ramesh, the accused were armed with *gandasi*, *lathi* and spade (*kassi*). The case of the prosecution is that the accused were bearing grudge against the family of PW3 Azad Singh for lodging complaint against them. Thus, the relations were not cordial between the family of PW3 and the accused. They did not challenge the accused when they entered their *kotha*. PW3 Azad Singh admitted in cross-examination that he had not asked any questions from the accused why they were coming towards his tubewell and why they were carrying weapons. Similarly, PW9 Ramesh had also not challenged the accused when they entered the room. As per the prosecution version, the distance between lady finger field and *kotha* in question was about 50-60 feet. On hearing the cries of their father, they did not go to the *kotha*, which was about 50-60 feet, but they ran towards the accused.

13. The conduct of PW3 Azad Singh and PW9 Ramesh was unusual and unnatural. When the relations were not cordial between the parties and the accused entered in the fields of PW3 Azad Singh and PW9 Ramesh with deadly weapons, they should have challenged the accused, why they were going towards their tubewell. It casts doubt on the prosecution story. Therefore, conviction on the basis of their evidence cannot be sustained.

14. Their Lordships of Hon'ble the Supreme Court in Anil Phukan vs State of Assam 1993 (30) ACC 316 (SC), have held as under: -

"The unnatural conduct of Ajoy P.W. 3 which has come to our notice from the record is that though he was present alongwith the deceased at the time of occurrence, on March 21, 1976, at about 8.00 p.m., he made no attempt to save his uncle from the assault. He did not

even continue 'to stay there, though of course according to him, he ran for his life on being advised so by his uncle. He was not assaulted though both he and his uncle were unarmed. Even if Mahendra was engaged in assaulting the deceased, Anil, who was also allegedly armed neither made an attempt to assault Ajoy P.W. 3 nor even chased him. P.W. 3 Ajoy did not himself lodge the F.I.R.”

15. Their Lordships of Hon'ble the Supreme Court in Bhimappa Jinappa Naganur vs State of Karnataka 1993 (30) ACC 265 (SC), have held as under: -

“It also appears to us that the behaviour of P.W. 1, wife of the deceased, was not natural in the sense that she merely rests by offering water to her deceased husband who was breathing his last. She did not try to nurse him or offer him any other help which would have shown her presence at the time of the death of the deceased at the site of the incident.”

16. In the present case, according to PW3 Azad Singh and PW9 Ramesh, the accused ran away towards U.P. side, but it is not stated so in Ex.PB. The motive attributed to the accused is that there was enmity between the family of PW3 Azad Singh and accused party on account of lodging complaint against them for theft. However, no FIR/ complaint was ever lodged against the appellants by the complainant with the police.

17. The prosecution has failed to prove the case against the appellants beyond reasonable doubt. Accordingly, the appeal is allowed and the judgment dated 20.3.2010 and order dated 22.3.2010, are set aside. The appellants are acquitted of the charges framed against them.

18. Appellant Sachin is on bail. His bail bonds are discharged.
19. Appellant Pappu @ Kaira is in custody. He be released forthwith. Registry is directed to prepare his release warrant.

(Rajiv Sharma)
Judge

22.1.2019
vs

(Harinder Singh Sidhu)
Judge

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