

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-1012-DB-2016
Reserved on : 07.12.2018
Date of decision : 29.01.2019

Sandeep and others

... Appellants

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.S.S. Duhan, Advocate for appellant No.1.

Mr.Munish Behl, Advocate for appellant No.2.

Mr.Amit Goyal, Advocate for appellant No.3.

Mr.Apoorv Garg, DAG, Haryana.

RAJIV SHARMA, J.

This appeal is instituted against the judgment and order dated 31.08.2016 and 01.09.2016 rendered by the learned Additional Sessions Judge, Sonapat, in Sessions Case No.26 of 2013 whereby the appellants Sandeep, Nanha alias Jitender and Nikka alias Parvesh, who along with co-accused Manish and Deepak alias Taffi were charged with and tried for offences punishable under Sections 302/34, 120-B of the Indian Penal Code (in short 'IPC') besides appellant Nikka alias Parvesh, who was also charged with and tried for offence under Section 25/27 of the Arms Act, 1959, were convicted and sentenced to undergo rigorous imprisonment for life for offence punishable under Section 302 IPC and to pay a fine of Rs.10,000/- each. Appellant Nikka alias Parvesh was further convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5000/- and in default of payment of fine, to further undergo rigorous

imprisonment for a period of five months for offence punishable under Section 25 of the Arms Act, 1959. Both the sentences of appellant Nikka alias Parvesh were ordered to run concurrently. However, co-accused Manish and Deepak alias Taffi were acquitted.

2. The case of the prosecution in a nutshell is that the complainant Jaipal made a statement Ex.PA to the effect that he was an agriculturist by profession. He along with his younger brother Sandeep was going towards market on 09.08.2013. The assailants namely Nikka alias Parvesh son of Rattan Singh, Sandeep son of Rajan and Nanha son of Mahender intercepted them near Balmiki temple. Nikka alias Parvesh was armed with .315 bore pistol. Sandeep persuaded Nikka alias Parvesh to teach them a lesson for the dispute that had taken place between the parties about two years back. Nanha caught hold of his brother Sandeep. Nikka alias Parvesh fired a shot at Sandeep. The complainant raised alarm. It attracted Jasbir son of Balwan and Ram Niwas son of Rajender on the spot. The assailants fled away from the spot. His brother Sandeep was shifted to the Government Hospital, Sonapat. Thereafter he was referred to PGIMS Rohtak, but was taken to Max Hospital, Delhi. Sandeep died on 15.08.2013. The post-mortem was conducted. The matter was investigated and challan was put up after completing all the codal formalities.

3. Prosecution examined 23 witnesses in support of its case. The statements of the appellants and their co-accused Manish and Deepak alias Taffi were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. The appellants were convicted and sentenced and co-accused Deepak alias Taffi and Manish were acquitted, as noticed hereinabove. Hence the appeal.

4. Learned counsel appearing for the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

5. Learned counsel appearing on behalf of the State has supported the judgment and order dated 31.08.2016 and 01.09.2016.

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

7. PW-1 Jai Pal is an eye witness. He testified that he along with his brother Sandeep was going to the market. When they reached near Balmiki temple, Nikka alias Parvesh son of Rattan Singh, Sandeep son of Rajan Kumar, Nanha son of Mahender, Manish and Taffi sons of Rattan Singh came there. Accused Sandeep gave a *lalkara* to teach a lesson to Sandeep for the scuffle which took place earlier. Sandeep, Nanha, Manish and Taffi grappled his brother. Accused Nikka alias Parvesh shot his brother Sandeep with a .315 country made pistol. His brother collapsed. Manish gave two kick blows on his chest. They raised alarm. His two nephews namely Jasbir and Ram Niwas reached on the spot. Accused ran away from the spot. The injured was taken to Max Hospital, Delhi. On 10.08.2013 police met him. He got recorded his statement Ex.PA. In his cross-examination, he admitted that he, Jasbir and Ram Niwas were from one family. Heated exchange of words had taken place between Nikka alias Parvesh and deceased Sandeep in the year 2010. No case was registered regarding this incident. The place of occurrence was surrounded by residential houses. They started from their house at about 10.30 P.M. on 09.08.2013. The distance between their house and place of occurrence was

about half kilometer. There was electricity light at that time near Balmiki temple. Nikka alias Parvesh had fired the shot from country made pistol on the chest of his brother. He had not caught hold accused Nikka alias Parvesh prior to the firing of gun shot suddenly.

8. PW-2 Jasbir Singh testified that when he and his brother Om Parkash were coming back from the market, they saw that his uncle Sandeep was lying there. Jai Pal his uncle and all the five accused present in Court were present there. He came to know that accused Nikka alias Parvesh present in Court had murdered Sandeep. He did not know the reason of murder. He did not know any other thing about this case. Police had inquired about the occurrence from him at about 1.30 A.M. He identified all the accused present in Court. He deposed in cross-examination that all the accused were standing near the body of Sandeep when he reached on the spot. He had seen the accused on the place of occurrence from a distance of about 15 feet.

9. PW-3 Dr.K.K. Trehan deposed that patient died on 15.08.2013.

10. PW-4 Ram Niwas has also corroborated the statement of PW-1 Jai Pal and PW-2 Jasbir Singh. He also deposed that Nikka alias Parvesh was armed with country made pistol .315 bore. Sandeep asked Nikka alias Parvesh to teach a lesson to his uncle. Nanha caught hold of his uncle Sandeep. Nikka alias Parvesh gave a gun shot injury on the chest of his uncle. Injured was moved to the hospital.

11. PW-5 Dr.V.K. Jha conducted the post-mortem examination. He proved the post-mortem report Ex.PW5/A. In his opinion, the cause of death was shock as a result of haemorrhage and septicemia as a result of

laceration of vital organs consequent to gun shot injuries. All injuries were ante mortem in nature. He admitted in his cross-examination that at the time of conducting post-mortem, he did not find any blackening, tattooing and gun powder around both the injuries.

12. Sh.Pushpender Bhardwaj, Public Prosecutor had tendered FSL report Ex.PX.

13. PW-9 HC Sushil Kumar deposed that accused Sandeep was interrogated by the I.O. in his presence. He made a disclosure statement Ex.PW9/A admitting his guilt. He disclosed about the hatching of conspiracy. Thereafter accused Deepak alias Taffi was interrogated. He made a disclosure statement Ex.PW9/B. Accused Manish also made a disclosure statement Ex.PW9/C.

14. PW-11 Dr.Deepak Arora had proved the MLR of Sandeep Ex.PW11/B.

15. PW-13 Constable Rajesh Kumar deposed that on 17.09.2013 accused Parvesh got recovered one country made pistol .315 bore from the house of Ram Kishan situated at Shimla Fagu. It was taken in possession vide recovery memo Ex.PW13/D.

16. PW-21 ASI Devender deposed that he received information to the effect that one Sandeep had sustained gun shot injuries. He reached the spot. Injured was declared unfit for making statement. Statement of his brother Jai Pal was recorded vide Ex.PA.

17. PW-22 SI Rakesh Kumar deposed that he had recorded supplementary complaint Ex.PW21/E of PW-1 Jai Pal on 15.08.2013. One of accused Jitender made disclosure statement Ex.PW22/E.

18. According to the statement Ex.PA made by PW-1 Jai Pal, only three appellants Nikka alias Parvesh, Sandeep and Nanha were present on the spot. Sandeep gave a *lalkara*. Nikka alias Parvesh was armed with country made pistol. Nanha caught hold of his brother. Nikka alias Parvesh shot at his brother. Thereafter he was moved to hospital. However when he appeared as PW-1 he deposed that there were five persons on the spot. The persons mentioned later on namely Manish and Deepak alias Taffi were acquitted by the trial Court since they were not found connected with the crime. PW-1 Jai Pal in his cross-examination admitted that a scuffle had taken place between all the accused and the deceased. All accused except Nikka alias Parvesh caught hold of deceased Sandeep and the accused Nikka alias Parvesh immediately fired at deceased Sandeep. He also deposed that all the four accused except accused Nikka alias Parvesh had embraced / grappled deceased Sandeep. Accused Sandeep embraced deceased Sandeep from the front side. Accused Manish, Jitender and Deepak had embraced deceased Sandeep from behind. All the four accused had embraced deceased Sandeep from all sides. Accused Nikka alias Parvesh had fired gun shot from the country made pistol on the chest of the deceased. In case deceased Sandeep was embraced by all the accused except Nikka alias Parvesh, in that case he could not be shot at the chest. Though PW-6 Rajpal has deposed in his examination-in-chief that the accused had hatched conspiracy but in his cross-examination he admitted that he had not told the police about hatching of conspiracy and neither he had seen the accused at the time of hatching conspiracy nor he was present at the time of occurrence.

19. The post-mortem was conducted by PW-5 V.K. Jha. According

to him, the deceased died due to haemorrhage and septicemia as a result of laceration of vital organs consequent to gun shot injuries. All the injuries were ante mortem in nature. He proved post mortem report Ex.PW5/A. Deceased Sandeep was also examined by PW-11 Dr.Deepak Arora. He proved the MLR report Ex.PW11/B. Accused Nikka alias Parvesh made disclosure statement Ex.PW13/A. He got the pistol recovered. The pistol was sent for ballistic examination. The report is Ex.PX. According to FSL report, .315 fired cartridge case marked C/1 and .315” fired bullet marked BC/1 had been fired from country made pistol marked W/1 recovered from accused person and not from any other fire arm even of the same make. The doctor had not seen any tattooing or blackening around the injuries where the bullet entered the body. There is no other evidence except that appellant Nanha had caught hold of deceased Sandeep at the instance of appellant Sandeep. The role attributed to appellant Sandeep is that he had raised *lalkara*.

20. Accordingly the appeal is partly allowed. Appellants Sandeep and Nanha alias Jitender are acquitted. Appellant Sandeep is on bail. His bail bonds and surety bonds are discharged. Appellant Nanha alias Jitender is in custody. He be released forthwith in this case. The conviction and sentence qua appellant Nikka alias Parvesh is upheld.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 29, 2019.
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No