

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

209

CRA-D-1141-DB-2018
Date of Decision : 6.11.2019

Vikas and others

..... Appellants

Versus

State of Haryana

..... Respondent

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

Present: Mr.Pardeep Kumar Raparia, Advocate
for the appellants.

Ms. Neha Rana, Advocate and
Mr. R.N. Lohan, Advocate
for the complainant.

Ms. Palika Monga, DAG, Punjab.

AJAY TEWARI, J. (Oral)

1. This appeal has been filed against the judgment of conviction and order of sentence dated 25.10.2018 passed by the Additional Sessions Judge, Jind, whereby the appellants were convicted under Sections 302 read with Section 34 IPC and sentenced to undergo life imprisonment alongwith fine of Rs. 10,000/- each and, in default thereof to further undergo RI for one year in case FIR No. 76 dated 24.3.2017, under Sections 302, 324, 120-B, 34 IPC registered at P.S. Julana.

2. As per the FIR which was got recorded by the complainant, on 23.3.2017, he had received information from Sonu (PW-1) (who is the

co-employee of his son-Abhimanyu at Jai Sons Filling Station) that the appellants had come and killed his son. The Police went into action and after four days on 27.3.2017 produced PW-1 before the Magistrate where statement under Section 164 Cr.P.C was got recorded wherein he stated that on the fateful day, Abhimanyu and he were lying inside the petrol pump when three unidentified boys came and caused injuries to Abhimanyu. Importantly, he did not name the appellants. The appellants were arrested and on their disclosure two 'gandasas' were recovered which were sent to the FSL. The appellants were sent up for trial. During the evidence the FSL proved that:-

- i. that the deceased had Blood Group 'O'
- ii. the clothes which the deceased was wearing at the time of his death was stained with Blood Group 'O'.
- iii. the wooden handle of the gandasas which were recovered as a result of the disclosure of the appellants have stains of Blood Group 'O'.

3. In his testimony, PW-1 Sonu again repeated what he had stated in his statement under Section 164 Cr.P.C viz. three unidentified persons had come and caused the death of Abhimanyu. He further clarified that three appellants present in Court were not those who caused the death of Abhimanyu. The Trial Court, however, having convicted them, they are in appeal before this Court.

4. In the course of the trial, as many as 17 prosecution witnesses were examined. 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, Punjab. The important witnesses being PW1, PW2 and PW4, their testimony would require a close scrutiny.

6. PW-1 Sonu @ Devender (eye witness) deposed in his statement that he was serving as Salesman with the deceased on Jai Sons Filling Station. On the fateful day, he and deceased were sleeping in a room of Jai Sons Filling Station. Then three young boys came in the room with gandasa and pistol and started giving beatings to Abhimanyu. Due to injuries, Abhimanyu died on the spot. He stated that he could not tell the name of the assailants. However, regarding identification of the appellants he deposed that the accused persons/appellants present in the Court were not the same who murdered Abhimanyu.

7. PW-2 Satyawar (complainant) (father of the deceased) in his statement Ex.P5 deposed that on 23.3.2017 at about 9:15 pm, after receiving the information on telephone that the appellants had murdered his son-Abhimanyu, he reached at the spot and saw the blood stained body of Abhimanyu and there were many injuries on the head, mouth and hands of the deceased. He further deposed that Sonu, Wazir and many other villagers were present at the spot. Thereafter, police reached at the spot. He disclosed the motive of murder by stating that appellants gave abuses to wife and mother of the deceased.

8. PW-4 Usha Devi (mother of the deceased) in her statement

deposed that one day before the fateful date she alongwith her daughter-in-law (wife of deceased) were coming from the field, on the way appellants met them and used indecent language towards them. PW-4 disclosed about this incident to her husband and her daughter-in-law disclosed to her husband (Abhimanyu). On the next day, when the appellants met with Abhimanyu he protested this fact to them. Thereafter, she came to know that the appellants had murdered Abhimanyu.

9. Learned counsel for the appellants has argued that the judgment of the Trial Court is completely vitiated because underlying thread of the judgment was the presumption that PW-1 had exculpated the appellants due to fear and actually there was no basis for this presumption.

10. Learned Deputy Advocate General has countered this argument by arguing that immediately when the occurrence took place i.e. at 9:15 the complainant had received specific information from the eye witness that the appellants had killed his son and he had promptly reported it to the police and thus indicates that the statement was correct.

11. Learned Deputy Advocate General has further pointed out to the circumstance of the Blood Group on the cloth of the deceased, and the wooden handles of the 'gandasas' which pointed out to the guilt of the accused/appellants. Learned counsel for the appellants has countered by asserting that no matching was done of the Blood Group of the deceased, and therefore, even the argument that the blood found on the clothes of the deceased was of the deceased is not proved beyond reasonable doubt.

12. In our considered opinion, the appeal must succeed. The eye

witness of the incident is PW-1 and he had unequivocally stated that the appellants were not the three persons who attacked the deceased and him and he had stood with his theory during the cross-examination. Once the eye witness had so clearly declared that the appellants were not the assailants and there was no evidence led that he was either threatened or bribed, it would be very hard to hold that that part of testimony that three persons had come to attack should be believed but the second part where he refused to identify the appellants should be disregarded and rather it should be held that in fact the appellants were the assailants.

13. The scientific evidence was also absolutely vague. In the first place, the Blood Group 'O' by its very definition is the most prevalent Blood Group in human beings and the identification of the stains on the clothes and the 'gandasas' cannot pin the murder on the appellants.

14. Learned Deputy Advocate General has further pointed out that motive of the murder was also present. As per the statement of PW-4, in the morning of the previous date of the fateful day, the deceased had heated arguments with the appellants regarding indecent remarks made by them about the wife and mother of the deceased in a drunken condition.

15. In our opinion, the statement of PW-4 may be relevant for introducing a motive but in our considered opinion, it is too trivial to motivate the appellants to commit murder of the deceased.

16. In the facts of the present case and the circumstances of the case coupled with the infirmities pointed out above can not lead to the conviction of the appellants. We are, therefore, of the view that the conviction of the accused-appellants as recorded by the learned trial Court and the sentence imposed is not legally tenable. We, therefore, set

aside the same, acquit the accused-appellants and allow the appeal.

17. The appellants are in custody. They be released forthwith, if not required in any other case.

18. Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(ALKA SARIN)
JUDGE

6.11.2019
anuradha

Whether speaking/reasoned : Yes/no
Whether reportable : Yes/no