

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

CRA-D-809-DB of 2005
Reserved on : 26.02.2020
Date of decision : 04.03.2020

Satpal Appellant

Versus

State of Haryana Respondent

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

Present: Mr. Vinod Ghai, Senior Advocate, with
Ms. Kanika Ahuja, Advocate, for the appellant.

Mr. Vivek Saini, Deputy Advocate General, Haryana.

* * *

RAJIV SHARMA, J.

1. This appeal is instituted against the judgment dated 06.10.2005 and order dated 13.10.2005, rendered by learned Additional Sessions Judge, Rohtak, in Sessions Case No. 3 of 2005, dated 31.01.2005, whereby appellant Satpal, who was charged with and tried for the offences punishable under Sections 302 and 452 of the Indian Penal Code (for short 'IPC'), was convicted and sentenced as under :-

- | | |
|--------------------------|---|
| 1) Under Section 302 IPC | To undergo life imprisonment and to pay a fine of ₹ 5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of three months. |
| 2) Under Section 452 IPC | To undergo rigorous imprisonment for a period of one year and to pay a fine of ₹ 1,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of |

one month.

2. The case of the prosecution, in a nutshell, is that the dead body of Anil was brought to PGIMS, Rohtak, on 10.07.2004. Police Post, PGIMS, Rohtak, was informed. Baljit Singh ASI (PW.19) along with other police officials reached the hospital. Statement of Ashok Kumar (PW.12) was recorded vide Ex.P9. He was maternal uncle of deceased Anil. According to Ashok Kumar, he was owner of three trucks. One of the trucks was bearing registration No. HR-46B-8540. It was jointly owned by him and his sister's son Anil Kumar. Sonu was working as conductor in the said truck. Anil had come to village Shimli on 09.07.2004 at about 3.00 PM. He was driving the said truck loaded with rice from Pipli. The complainant slept in his house. Anil slept on a cot in a *gher*. Sonu slept in the truck parked in the street. Sonu conductor and Navneet came to the complainant at about 1.45 AM and told that somebody had caused injuries with sharp edged weapon to Anil. He found Anil lying on the cot. Blood was oozing out. Anil was rushed to PGIMS, Rohtak. He was declared 'brought dead'. Anil could not tell anything about the incident. The body was sent for post-mortem examination. The investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined as many as 22 witnesses in support of its case. The accused was also examined under Section 313 Cr.P.C. He denied the case of the prosecution. According to him, he was falsely implicated. The accused was convicted and sentenced, as noticed here-in-above. Hence, this appeal.

4. Learned counsel appearing on behalf of the appellant has

vehemently argued that the prosecution has failed to prove its case against the appellant. Learned counsel appearing for the State has 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. PW.5 Dr. Asha Goel conducted the post-mortem examination on 10.07.2004. She noticed incised wound 2 cms wide x 6 cms long transversed cut on the neck just below the larynx. The cause of death in her opinion was respiratory arrest as a result of injury to trachea, and was sufficient to cause death in ordinary course of nature.

7. PW.12 Ashok is the material witness. According to him, he owned three trucks. Anil deceased was partner of truck No. HR-46B-8540. Sonu was conductor. Anil was his nephew. Anil came to his village on 09.07.2004 in the truck loaded with rice. He came at about 3.00 PM. He parked the truck in front of his *gher*. Anil slept in the *gher* on a cot. Sonu slept in the truck. At about 1.30/2.00 AM, Navneet came to him and told that somebody had caused injuries to Anil with a sharp edged weapon. He went there. Anil was bleeding. He was lying on a cot of Hari Kishan. He was removed to PGIMS, Rohtak. Anil was declared 'brought dead'. His statement was recorded by the police vide Ex.P9. Police visited the spot. Blood stained mattress was taken into possession. In his cross-examination, he deposed that Kundan PW was his real uncle. Ram Narain PW was his real brother. Sheela PW was wife of Hari Kishan. He came to know on 13.07.2004 that Satpal accused had committed this murder. This information was given to him through Sheela. His statement was also

recorded by the police on 13.07.2004.

8. PW.13 Lata deposed that Anil was son of her husband's sister. He was truck driver. He used to come to their village Shimli. He used to crack jokes with her whenever he used to come to their house. Satpal objected to it. Satpal accused also tried to have illicit relations with her. She told about the same to the family members, but they kept mum on account of family honour. About 2 - 2 ½ months prior to the occurrence, Satpal tried to kill her with *gandasa*, if she did not permit him to have illicit relations with her. He had also clicked some photos of her when she was taking bath in her house. The photos were taken from the roof. He wanted to black-mail her. On 09.07.2004, Anil deceased had come to their village Shimli. Satpal accused met her on that day. He uttered that he would not spare Anil that day. Satpal accused then committed the murder of Anil. Her statement was recorded by the police. In her cross-examination, she deposed that Anil deceased had no further relation with her except cracking jokes with her. She had not seen her naked photographs allegedly snapped by Satpal accused nor she had noticed him taking photographs. She did not develop illicit relations with accused Satpal.

9. PW.14 Sheela deposed that her house was situated in front of the *gher* of Ram Narain. On 09.07.2004, Anil deceased had come in the village Shimli. He was sleeping in her court-yard. At about 1.00 AM, she heard the noise of barking of dogs. Some persons were coming. She also followed. Satpal accused was being followed by Anil deceased. Anil was bleeding and he pointed towards his injury to her uttering the name of Satpal accused. She asked Satpal what he had done. Satpal brandished the

weapon and asked her to keep quiet. Her statement was recorded vide Ex.P24. In her cross-examination, she admitted that the police had approached her after three days of the occurrence. Satpal accused was at a distance of 20 paces from the cot of Anil Kumar when she first saw him. She did not notice any other person at the spot. She became unconscious near the cot, where Anil collapsed. She regained consciousness on third day of the occurrence. In between, she used to get fits. She appeared before the Magistrate after three months of the occurrence.

10. PW.15 Ram Kishan alias Jokar testified that on the intervening night of 9/10.07.2004 at about 1.30 AM, he was sleeping in his house. He got up to urinate. He came near the *gher* where Anil was sleeping. He saw accused Satpal bending over him. Satpal gave a blow by some sharp edged weapon on the neck of Anil and ran away from the spot. Anil followed him. He asked Satpal what he had done. He was asked to keep quiet by Satpal. Meanwhile, Sheela also came there. His statement was recorded under Section 164 Cr.P.C. vide Ex.P25. In his cross-examination, he deposed that he told about the murder of Anil to Ranbir and Ram Narain after 2-3 days of the incident. He admitted that his family members, Lambardar and Sarpanch of the village had assembled at the time when the police came to the village on 10th July. The police had enquired about the facts from all the persons assembled on the spot on 10.07.2004.

11. PW.16 Kundan Lal deposed that about one year back, he was sitting in the house of Master Chhotu Ram along with Naurang. Rambhaji and Dilbagh and younger brother of accused Satpal came there. Rambhaji and Dilbagh told him that Satpal had committed the murder. They came to

him after 7-8 days of the occurrence.

12. PW.17 Ram Narain testified that he heard some noise in the street on the intervening night of 9/10.06.2004. He noticed Satpal accused smeared with blood and carrying a sharp edged weapon in his hand. Except Anil, he did not notice anyone. On 29.10.2004, he along with Ranbir went to Police Station and found Satpal accused in the custody of the police. Satpal made disclosure statement Ex.P27. He led the police party to the disclosed place and got recovered a camera. His statement was recorded under Section 164 Cr.P.C. by the Magistrate vide Ex.P30. In his cross-examination, he deposed that after noticing accused Satpal, he went to sleep. On the next morning, the police came and enquired from him about this incident. He narrated all the facts.

13. PW.18 Ranbir testified that about eleven months back, accused Satpal had borrowed a camera from him. He did not return it. He had seen the accused taking photographs of Lata. He was at a distance of 100 yards. On 29.10.2004, he had gone to the Police Station. Statement of accused Satpal was recorded vide Ex.P27. Accused got recovered camera from the disclosed place. In his cross-examination, he categorically admitted that he did not possess any receipt regarding purchasing of camera.

14. PW.19 ASI Baljit Singh received information from PGIMS, Rohtak, on 10.07.2004. He went to the hospital. He recorded statement of Ashok Kumar vide Ex.P9. FIR Ex.P10 was recorded. He recorded the statements of Bani Singh and Samunder Singh. The body was sent for post-mortem examination. He took into possession blood stained earth from the spot. In his cross-examination, he deposed that investigation of the case

remained with him till 16.07.2004. He made enquiries from seventeen persons at the time of inquest. He could not ascertain about the actual culprit.

15. PW.21 ASI Jai Singh deposed that on 16.10.2004, he was posted in Police Station Sadar, Rohtak. Investigation of this case was conducted by him. On 18.10.2004, he moved an application Ex.P34 to the Duty Magistrate for recording the statements of Sheela Devi, Ram Narain, Ram Kishan and Kundan Lal under Section 164 Cr.P.C. He arrested the accused on 29.10.2004. He interrogated him. The accused made disclosure statement Ex.P27. He got recovered a camera make Yashika. It was identified by PW Ranbir Singh.

16. The FSL report is Ex.P4. According to it, blood was detected in exhibit-1 (blood stained earth), exhibit-3b (underwear), exhibit-2 (piece of quilt) and exhibit-3a (piece of cloth/Safa).

17. The incident happened on the intervening night of 09/10.07.2004. PW.12 Ashok deposed that Anil came to his village Shimli on 09.07.2004. He slept in his *gher* on a cot. Sonu slept in the truck. He was informed by Navneet at about 1.30/2.00 AM that somebody had caused injuries to Anil with a sharp edged weapon. He went there. Anil was bleeding. He was taken to PGIMS, Rohtak. Anil was declared 'brought dead'. His statement Ex.P9 was recorded by the police. In his cross-examination, he deposed that on 13.07.2004, he came to know that appellant Satpal had committed this murder. This information was given to him through Sheela. The prosecution has neither examined Sonu nor Navneet, though they were material witnesses.

18. PW.13 Lata deposed that Anil used to come to their village Shimli. He used to crack jokes with her. Appellant Satpal tried to have illicit relations with her. She narrated this to her family members, but no action was taken. About 2 - 2 ½ months prior to the occurrence, Satpal tried to kill her with *gandasa*, if she did not permit him to have illicit relations with her. On 09.07.2004, Anil deceased had come to their village Shimli. The appellant told her that he would not spare Anil that day. He then committed the murder of Anil. According to her, the appellant had taken her photographs when she was taking bath. In case, the appellant had uttered her that he would kill Anil, she would have definitely told this to her husband on 09.07.2004 itself. Her statement was recorded by the police under Section 161 Cr.P.C. on 25.10.2004. There is no explanation for recording her statement belatedly.

19. PW.14 Sheela deposed that she heard the noise of barking of dogs at about 1.00 AM. She followed some persons. Appellant Satpal was being followed by Anil. Anil was bleeding. He pointed towards his injury to her uttering the name of appellant Satpal. In her cross-examination, she deposed that the police had come to her after three days of the occurrence. Her statement was recorded on 17.07.2004 vide Ex.DB. In case, she had been told by deceased Anil about the injury inflicted by the appellant, she would have definitely told the police or her family members immediately, instead of waiting till 17.07.2004. Her statement under Section 164 Cr.P.C. was recorded, that too on 18.10.2004, vide Ex.P24. In her cross-examination, she deposed that when she reached near the cot of Anil, she became unconscious. She regained consciousness on third day of the

occurrence. This is not believable. It is just to cover up the delay in recording her statement belatedly.

20. PW.15 Ram Kishan alias Jokar has been introduced as an eye witness. According to him, he had seen the appellant giving a blow with some sharp edged weapon on the neck of Anil. He asked the appellant what he had done. The appellant asked him to keep quiet. In his cross-examination, he admitted that his family members, Lambardar and Sarpanch of the village had assembled at the time when the police came to the village on 10th July. The police had enquired about the facts from all the persons assembled on the spot on 10.07.2004. In case, he had seen the appellant inflicting injury on the neck of Anil, he would have definitely told this fact to the police, Lambardar or Sarpanch of the village on 10.07.2004 itself. His statement under Section 164 Cr.P.C. was also recorded on 18.10.2004.

21. PW.16 Kundan Lal deposed that he was sitting in the house of Master Chhotu Ram along with Naurang. Rambhaj and Dilbagh and younger brother of the appellant came there. Rambhaj and Dilbagh told him that appellant Satpal had committed the murder. His statement under Section 164 Cr.P.C. was recorded vide Ex.P26 on 18.10.2004. It is hear-say evidence. Moreover, in case, Rambhaj and Dilbagh had told him that the appellant had committed the murder, he should have informed the police immediately.

22. PW.17 Ram Narain had seen the appellant smeared with blood and carrying a sharp edged weapon in his hand on the intervening night of 09/10.07.2004 His statement Ex.P30 was also recorded under Section 164 Cr.P.C. on 18.10.2004. He is also witness of recovery of camera on the basis

of disclosure statement made by the appellant vide Ex.P27. In his cross-examination, he deposed that after noticing appellant Satpal, he went to sleep. On the next morning, he narrated all the facts to the police. It is unusual conduct. In case, he had noticed the appellant smeared with blood and carrying a sharp edged weapon in his hand during the night, he would have immediately informed the police or relatives of deceased Anil.

23. PW.18 Ranbir deposed that the appellant had borrowed a camera from him. In his cross-examination, he admitted that he did not possess any receipt regarding purchase of camera.

24. PW.19 ASI Baljit Singh, in his cross-examination, deposed that till 16.07.2004, he could not ascertain the actual culprit.

25. PW.21 ASI Jai Singh had arrested the appellant on 29.10.2004.

26. Statements of PW.13 Lata, PW.14 Sheela, PW.15 Ram Kishan, PW.17 Ram Narain and PW.18 Ranbir do not inspire confidence. Sonu and Navneet, the material witnesses, have not been examined. Statement of PW.13 Lata was recorded by the police on 25.10.2004 vide Ex.DA. Statement of PW.14 Sheela was recorded by the police on 17.07.2004 vide Ex.DB. Her statement under Section 164 Cr.P.C. was recorded along with statements of PW.15 Ram Kishan, PW.16 Kundan Lal and PW.17 Ram Narain on 18.10.2004. PW.14 Sheela was supposed to tell her husband immediately that she had seen the appellant being followed by Anil and Anil pointing towards his injury uttering the name of the appellant. We have already noticed that PW.14 Sheela deposed that she saw the appellant on the spot, but she became unconscious and regained consciousness after three days. PW.15 Ram Kishan though had seen the appellant inflicting blow on

the neck of Anil, but remained quiet till his statement was recorded under Section 164 Cr.P.C. on 18.10.2004. He had the occasion to tell the details of the occurrence, when the police recorded his statement on 10.07.2004. PW.17 Ram Narain though had noticed the appellant smeared with blood, but did not disclose this fact to any body and his statement under Section 164 Cr.P.C. was recorded on 18.10.2004. He had noticed the appellant in the night but thereafter, he had gone to sleep. It is un-usual conduct. Though the prosecution case is that the appellant had tried to black-mail PW.13 Lata, but she had not seen the photographs. PW.18 Ranbir could not produce the receipt of the camera.

27. The prosecution has failed to prove its case against the appellant beyond reasonable doubt.

28. Accordingly, the appeal is allowed. The impugned judgment dated 06.10.2005 and order dated 13.10.2005 rendered by the learned trial court are set aside. Appellant Satpal is acquitted of the charges framed against him. He is in custody. He be released forthwith, if not required in any other case. His release warrant be prepared.

(RAJIV SHARMA)
JUDGE

March 04, 2020
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes