
(2011) 05 P&H CK 0229

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 695-DB of 2006

Satish @ Jaspal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: May 31, 2011

Acts Referred:

Arms Act, 1959 & Section 25#Penal Code, 1860 (IPC) & Section 109, 120B, 302, 34

Citation: (2011) 05 P&H CK 0229

Hon'ble Judges: Hemant Gupta, J; A.N.Jindal, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

This order shall dispose of Criminal Appeal No. 695-DB of 2006 filed by Satish @ Jaspal son of Kamal @ Kawal

Singh and Criminal Appeal No. 720-DB of 2006 filed by Sombir son of Dharampal against the judgment of conviction and order of sentence

dated 10.07.2006 passed by the learned Additional Sessions Judge, Bhiwani, convicting and sentencing the Appellants for life imprisonment and to

pay a fine of Rs. 10,000/-each for the offence punishable under Sections 302 read with 34 IPC. The Appellants were also convicted and

sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 1000/-each for the offence punishable u/s 25 of the

Arms Act, 1959.

2. Initially Ramji Lal and Sanjay were also made to stand trial for the offences punishable under Sections 302/120-B/109 read with Section 34

IPC and Section 25 of the Arms Act, 1959. However, the learned trial Court extended benefit of doubt to the aforesaid persons and acquitted

them of the charges levelled against them. The acquittal of Ramji Lal and Sanjay is not subject matter of challenge in the present appeals before us.

3. The prosecution case was set in motion on the statement of Lalit Kumar, brother of Ashwani Kumar (deceased) made to SI/SHO Om Parkash,

P.S. Loharu on 16.05.2002 at about 5.00 pm in respect of an incident, which has taken place at about 3.00 pm. In his statement (Ex.PF), Lalit

Kumar stated that he along with his brother Ashwani Kumar is running a petrol pump near Bus-stand, Loharu. He stated that today i.e.

16.05.2002 at about 3.00 pm, when he, his brother Ashwani Kumar and one Kanshi Ram son of Mansukh Rai were present at petrol pump, then

Sombir @ Solu son of Dharampal resident of Dhani Toda came to the petrol pump from the side of Pilani in a Jeep bearing No. DL-2-CF-0650.

One boy was accompanying him. After stopping the jeep at petrol pump, Sombir called his brother Ashwani Kumar. Both of them stood outside

the cabin of petrol pump. Sombir stated that as he (Ashwani Kumar) has grabbed his plot, so he will teach him a lesson. While saying so, Sombir

took out a country-made pistol from his pocket and fired a shot with an intention to kill his brother Ashwani Kumar. The shot hit Ashwani Kumar

on his chest as a result of which he fell down. Thereafter, Sombir called Satish, the person sitting in the to fire a shot on Ashwani Kumar, so that he

does not survive. Within their sight, Satish fired a shot in the head of his brother. On raising alarm, Sombir and Satish ran away from the spot along

with their respective weapons. They removed their brother smeared with blood to Civil Hospital, Loharu, where the Doctor declared his brother

dead. After deputing Sanjay to guard the dead body, when he was going to Police Station for lodging report, SI/SHO Om Parkash met him on the

way near Punjab National Bank and recorded his statement. On the basis of such statement, ruqa Ex.PF/1 was sent to the Police Station for

registration of a case. On receipt of such ruqa, the recoding of FIR Ex.PL was completed at 5.40 pm. The special report was delivered to the

learned to the learned Magistrate at about 8.10 pm.

4. Thereafter, SI Om Parkash went to the Civil Hospital, prepared inquest report and sent the dead body of Ashwani Kumar for post-mortem

examination. He also visited the place of occurrence and prepared a rough site plan Ex.PY with correct marginal notes. He also got the scene

photographed. He lifted blood stained earth, pair of chappal and bullet from the place of occurrence and taken into possession after converting into

separate sealed parcels. Later on, both the accused namely Sombir and Satish were arrested on the same day from Village Dhani Toda. One

country-made pistol and one live cartridge each were recovered from both the accused. The pistols and the live cartridges were taken into

possession after converting into separate sealed parcels. The jeep, which was parked near the canal was also taken into possession vide recovery

memo Ex.PU.

5. The post-mortem on the dead body of Ashwani Kumar was conducted by PW-9 Dr. Jitender Kumar Jakhar on 16.05.2002 at about 6.00 pm.

In the opinion of the doctor, the cause of death was hemorrhage and shock resulting from injuries to the vital organs. He found three injuries on the

person of the deceased. Injury Nos. 1 & 2 were the entry and exit wound on the head of the deceased, whereas injury No. 3 is on chest. He also

took out a bullet from the chest. The bullet taken out from the dead body and the clothes of the deceased were handed over to the police in

separate sealed parcels.

6. On 17.05.2002 during interrogation, Sombir and Satish suffered disclosure statements Exs.PJ and PK respectively in respect of empty

cartridges thrown by them in the field, however, no recovery was effected in pursuance of such disclosure statements. It was on 23.05.2002,

accused Satish and Sombir suffered another disclosure statements Exs.PC and PD respectively. It was in pursuance of such disclosure statements,

accused Sombir got recovered an empty cartridge from the fields near Village Ladunda (Rajasthan), which was taken into possession vide

recovery memo Ex.PE.

7. After completion of investigation including obtaining the reports of the Forensic Science Laboratory (Exs.PB, PB/1 & PB/2), accused Sombir,

Satish, Ramji Lal and Sanjay were made to stand trial.

8. During trial, the prosecution has examined as many as 17 witnesses to prove the guilt against the accused. On the other hand, the accused

denied all the incriminating circumstances and pleaded that they are innocent. In their defence, the accused also examined DW-1 Chameli Devi,

DW-2 Manohar Lal and DW-3 Satbir Ranga.

9. On the basis of evidence produced before it, the learned trial Court convicted and sentenced the Appellants Sombir and Satish, whereas Ramji

Lal and Sanjay were acquitted of the charges framed against them by granting benefit of doubt, as mentioned above.

10. Before this Court, learned Counsel for the Appellants has vehemently argued that no independent witness has been associated by the

investigating agency. Since the place of occurrence is a petrol pump i.e. a place frequented by general public and also by numerous employees, the

investigating agency should have joined an independent person. It is contended that PW-3 Lalit Kumar, author of FIR and PW-4 Kanshi Ram

have claimed that they have removed the deceased to the Civil Hospital, Loharu, but the clothes of neither of them is proved to be stained with

blood. Such facts create doubt on the presence of both PW-3 Lalit Kumar and PW-4 Kanshi Ram at the time of occurrence. It is also contended

that the disclosure statements Exs.PC and PD suffered by Satish and Sombir, the basis of recovery of empty cartridge on 23.05.2002 does not

inspire confidence, as the same has been recovered from the open fields and after 7 days from the date of occurrence. It is also argued that there is

gross delay in lodging of FIR. Though the incident is said to have taken place at 3.00 pm, but the statement of PW-4 Lalit Kumar was recorded by

SI Om Parkash, the Investigating Officer, at about 5.00 pm when the bus-stand is near the petrol pump and the petrol pump has a telephone as

well. Therefore, the police could be called immediately after the occurrence. Such delay of 2 hours in lodging of FIR is fatal in the facts of the

presence case. It is also argued that Sombir in his disclosure statement has not attributed any role to Satish, thus, the conviction of Satish is not

sustainable.

11. We have heard learned Counsel for the parties and with their assistance gone through the record of the case carefully and find no merit in the arguments raised.

12. The argument that FIR is delayed is not tenable. The time of occurrence is 3.00 pm and the recording of statement of Lalit Kumar along with

ruqa is completed at about 5.00 pm i.e. within 2 hours. The immediate reaction of the family members or the persons, who are near to the victim is

to provide medical assistance to the victim, so as to make an attempt to save life.

Therefore, soon after the occurrence the reaction of Lalit Kumar,

brother of the deceased and that of Kanshi Ram is natural human conduct. They removed the victim immediately after the occurrence to the Civil

Hospital, Loharu. Since he was found dead, thereafter Lalit Kumar decided to go to the Police Station to lodge the report and met the police

officials on the way. Therefore, time of two hours between the time of occurrence and recording of statement of Lalit Kumar and in sending ruqa

for registration of FIR is not such a delay, which throws doubt on the prosecution story in any manner. Therefore, the FIR cannot be said to be

delayed in any matter, but as a matter of fact it is a case of due diligence.

13. The argument that independent witnesses have not been joined and that the clothes of Lalit Kumar and Kanshi Ram were not blood stained is

again not tenable. Apart from proving his statement Ex.PF, the basis of FIR, while appearing in the witness-box as PW-3, Lalit Kumar has also

deposed that the motive of the crime was grievance in respect of compensation in the shape of shops for facilitating the possession of land

measuring 24 Kanals 17 Marlas purchased from Sant Lal vide sale deed dated 05.03.2002. In his cross-examination, PW-3 Lalit Kumar has

stated that they used to return home together around 3.00/4.00 pm for lunch and that the collections from the petrol pump used to be deposited in

installments on the same day. He stated that they had employed four-five persons out of which three are sales man and two are meant to supervise

the functioning of petrol pump from outside. He stated that when Sombir visited petrol pump, he was sitting on the chair in the office room towards

Pilani road, whereas deceased Ashwani Kumar was sitting on a chair in the office room on the Railway Station side and at that time three

employees were on duty. He stated that Sombir called Ashwani Kumar from the place near the opening of sales office and Ashwani Kumar

immediately came outside the office room and at that time, he was sitting in his office room. Sombir and Ashwani Kumar talked to each other for

one or two seconds. He stated that he came outside the office room after first shot was fired and thereafter immediately second shot was fired at

Ashwani Kumar. After firing shots, Sombir ran towards Pilani road side. He stated that seven-eight persons in total including two employees of the

petrol pump were at the spot. He along with Kanshi Ram took Ashwani Kumar to Hospital instead of informing the police at that time. They

remained in the hospital for about 5-10 minutes and at that time Doctors declared Ashwani Kumar dead. From the hospital, Kanshi Ram went to

his house, whereas he went to Police Station for making complaint. He admitted that Sombir helped them in dispossessing a black-smith and taking

possession of the land. There is no question asked either by the prosecution or on behalf of the accused in respect of blood stains on the clothes of

the witness.

14. PW-4 Kanshi Ram has also supported the prosecution case in its entirety and deposed in respect of manner of occurrence as deposed by

PW-3 Lalit Kumar. He deposed that after the Doctor declared Ashwani Kumar death at General Hospital, Loharu, he went to the spot and police

taken into possession one pair of chappal, blood stained earth and bullet and taken into possession via recovery memo Ex.PG, which bears his

signatures. In his cross-examination, he stated that the distance between his shop and the petrol pump is about 1 km and that he visited petrol

pump to meet Lalit Kumar in connection with purchase of wheat, as Lalit was authorized Government dealer of wheat. He stated that he stayed at

petrol pump for about 45 minutes. He stated that Ashwani Kumar was removed to Hospital in a maruti car driven by Lalit Kumar and that he

remained in hospital for five minutes. From the hospital, he went to his house and after visiting his house, he went to the house of Lalit in order to

inform his father about the occurrence. He stated that blood from the injuries of Ashwani Kumar had fallen in the car, but this fact was not told by

him to the Police. Similarly, there is no question was asked either by the prosecution or on behalf of the accused in respect of blood stains on the

clothes of the witness.

15. From the cross-examination of PW-3 Lalit Kumar and PW-4 Kanshi Ram, it is apparent that no question has been asked in respect of

presence or absence of blood stains on their clothes during the course of removal of Ashwani Kumar (deceased) to the Civil Hospital, Loharu.

Therefore, the argument raised is without any factual or legal basis.

16. PW-3 Lalit Kumar is brother of the deceased and was running petrol pump along with his brother. PW-4 Kanshi Ram may have shop at

another place, but the fact he was at the place of occurrence again cannot be doubted, as nothing incriminating could be extracted from his cross-

examination. There is no iota to doubt his presence at the place of occurrence i.e. petrol pump, so categorically stated in respect of visit to the

petrol pump.

17. The argument that the employees or the independent witnesses have not been associated is again not tenable. PW-4 Kanshi Ram is not related

to the deceased in any manner. He is visiting Lalit Kumar for an independent transaction i.e. purchase of wheat. Therefore, PW-4 Kanshi Ram is

an independent witness. It is well-settled that it is quality of evidence, which is important and relevant to determine the commission of crime and not

quantity thereof. The joining of employees in the investigation is only quantification of the evidence, which may not be necessary in the facts of this

case, when the presence of PW-3 Lalit Kumar, brother of the deceased and author of FIR as well as pw-4 Kanshi Ram is natural, reliable and

trustworthy.

18. Ex.PX/7 .315 pistol has been recovered from Sombir at the time of his arrest on the date of occurrence itself. Bullet recovered during post-

mortem examination from the dead body of Ashwani Kumar, is proved to have been fired from pistol Ex.PX/7 as per the pistol recovered from

Satish at the time of his arrest. The lead of the bullet recovered from the place of occurrence Ex.PC/1 and the empty cartridge recovered on

23.05.2002 is proved to be fired from pistol Ex.PX/2, recovered from Satish. The recovery of .315 country-made pistols from the Appellants and

the matching of fired bullets from such country-made pistols, corroborates the eye-witness account deposed by PW-3 Lalit Kumar, brother of the

deceased and PW-4 Kanshi Ram. The empty cartridge recovered in pursuance of the disclosure statements Exs.PC and PD of Satish and Sombir

is though after 7 days, but the same was recovered from a place i.e. from the fields near Village Ladunda (Rajasthan), which is in the exclusive

knowledge of the accused only. Once the recovery of empty cartridge was proved, then it was for the accused, to rebut the same by leading

cogent and convincing evidence. However, the Appellants failed to rebut that presumption, either during the course of cross-examination of the

prosecution witnesses or by leading defence evidence. Even if, the recovery of empty cartridge is not deemed to be trustworthy, but still the other

circumstances conclusively proves the commission of crime by Satish. Satish has fired shot in the presence of PW-3 Lalit Kumar and PW-4

Kanshi Ram and firing of such shot is corroborated by medical evidence and partly by the report of the Forensic Science Laboratory.

19. In view of the above, we do not find any illegality or irregularity in the findings recorded by the learned trial Court holding the Appellants guilty

for the offences punishable under Sections 302/34 IPC and 25 of the Arms Act.

Consequently, the present appeals are dismissed.