

(2007) 09 P&H CK 0165

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal. No. 665-DB of 2001

Ashok Kumar Chawla

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Sept. 18, 2007**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302

Hon'ble Judges: Mehtab S. Gill, J; A.N. Jindal, J**Bench:** Division Bench**Advocate:** K.L. Choudhary, for the Appellant; S.S. Bhinder, Addl. A.G. Punjab, for the Respondent**Final Decision:** Dismissed

Judgement

A.N. Jindal, J.

The accused-Appellant Ashok Kumar has faced trial u/s 302 IPC for committing a murder of Ram Saran Arora on 8.8.1999 on account of some dispute over the money matter. Consequently, he was convicted u/s 302 IPC and sentenced to undergo RI for life imprisonment and to pay a fine of Rs. 10,000/- and in default of payment of fine to further undergo imprisonment for one year.

2. The complainant Gourav Arora and his father Ram Saran (since deceased) had been residing at Street No. 1, Shastri Nagar, Amritsar. Rama Sharma PW9 widow of Pawan Kumar was running a Public Call office, inside the main gate of Shri Guru Teg Bahadur Hospital, Amritsar, Gourav Arora and his father were closely associated with Rama Sharma. After school hours, Gourav Arora used to work at the Public Call office of aforesaid Rama Sharma. On 8.8.1999, after returning from the school at 4:00 p.m. he went to Public Call Office, where his father Ram Saran Arora was already present. At about 6:00 p.m. Joginder Singh Chawla along with Jagdish Singh, who had property dealings with his father, came to make call at the public call office.

When Joginder Singh was busy in making telephone call, Jagdish Singh went out. In the meantime, the accused Ashok Kumar Chawala came on his scooter and while parking the scooter on the right side of the Public Call Office near Tempo called the deceased. Thereafter, when Ashok Kumar Chawala and Ram Saran were busy in the conversations, Rama Sharma and Gourav Arora also came out. The accused told Ram Saran Arora that he should settle the account, upon which, Ram Saran had shown his inability to do so due to ill wealth. At this the accused picked up a SBBL. 12 bore gun from his scooter and hit Ram Saran on the left side of his chest as a result of which Ram Saran collapsed. Consequently, the complainant Gourav Arora and Rama Sharma raised hue and cry, upon which, the accused fled away with his scooter bearing registration No. PB-02-E-6026. Ram Saran was shifted to Guru Nanak Dev Hospital, Amritsar, where, he expired. After leaving Rama Sharma and Joginder Singh near the dead body, Gourav Arora went to the police station but Inspector Rajinder Pal met him on the gate of the Guru Nanak Dev Hospital, Amritsar, where the statement of Gourav Arora Ex. PB was recorded and on the basis of which formal FIR Ex. PB/2 was registered at police station. Then Inspector Rajinder Pal accompanied by Gourav Arora reached at the place where the dead body of Ram Saran was lying. Thereafter, he got conducted the autopsy of his dead body. He lifted simple earth and blood stained earth as well as a blood stained piece of brick. He took into possession a hearing aid machine from the spot and an empty .12 bore. He took into possession the cloths removed from the dead body. Accused was arrested on 9.8.1999. Thereafter, .12 bore gun and a bandolier with 12 live cartridges were recovered from him. The scooter of the accused was also taken into possession. The accused was interrogated on 11.8.1999 and the registration certificate of the scooter and fire-arm licence was got recovered. On completion of the investigation challan against him was presented in the Court. He was charged u/s 302 IPC to which he pleaded not guilty and claimed trial.

3. In order to prove its case against the accused, the prosecution examined P.W.1 Dr. Ashok Chanana, who stated that on police application, Ex. PA, dated 8.8.1999, he had conducted post-mortem examination on the dead-body of Ram Saran Arora on 9.8.1999 at 12:10 p.m. The doctor further stated that dead-body along with police papers including statement of Gaurav Arora, Ex. PB, Copy of First Information Report, Ex. PB/2, and copy of inquest report, Ex. PD, were brought to Mortuary. On examination of the dead-body, the doctor had observed as under:

The length of the body was 5-7-1/2". It was dead-body of a male, moderately built and moderately nourished, wearing a shirt, a pajama, a banyan and an underwear. Except underwear, rest were blood-stained. Shirt was torn on the front and left side with blackening around the tear. Rigor mortis was present in the whole body. Post-mortem staining was present on the back, except in areas of contact flattening. Tracheostomy hole was present over the front of the neck Injuries:

(i) A lacerated wound 3x24 cms with clotted blood, with inverted margins was present on front and left side of the chest .5 cm above and lateral to nipple at 2"0 clock position.

(ii) A lacerated wound 4x4 cms muscle deep with clotted blood was present over the left eye-brow. On dissection of injury No. 1, it communicated with the peritoneal cavity after injuring the intervening structure i.e. chest wall, ribs, left pleura, left lungs, pericardium, heart, diaphragm, peritonium and liver. The track was of divergent type and clotted blood was present in the track. The left pleural cavity and peritonium cavity contained 250 C.C. and one liter of fluid and clotted blood.

Three wads and 21 pellets were recovered from the track. The stomach, small intestine and bladder were empty. Large intestine contained faeces. Liver, spleen, kidneys were pale. Injuries were ante-mortem in nature.

4. Dr. Ashok Chanana, P.W.1 further opined that the injury No. 1 was sufficient to cause death in the ordinary course of nature. He proved the carbon copy of the post mortem report Ex. PE. P.W.2, Surinder Kaur, clerk of the office of District Transport Officer, Amritsar, proved the registration of the scooter No. PB-02-E-6026 in the name of Surinder Pal son of Om Parkash. PW3 constable Partap Singh, P.W.4 constable Kanwaljit Singh, PW6 constable Jagir Singh and P.W.7 constable Jagtar Singh proved their affidavits, Ex.PF, PG, PH & PJ respectively. P.W.5 Ashneel Kumar, Arms Clerk, deposed that Ashok Kumar Chawla was issued a Arm Licence vide entry dated 11.11.1998, P.W.10 Constable Major Singh and P.W.11 HC Mukhtiar Singh proved their affidavits, Ex.PK & PL respectively. Rajinder Pal DSP while appearing as PW12 proved the investigation conducted by him from time to time. After tendering the report of Forensic Science Laboratory, Ex. PU and report of the chemical examiner Ex. PV, prosecution closed its evidence.

5. When examined u/s 313 Code of Criminal Procedure the accused denied all the incriminating circumstances appearing against him and pleaded his false implication in the case. In his defence, he examined constable Sukhwant Singh DW1., and Ravi Shanna DW2, a representative of UNI, Amritsar.

6. The trial ended in conviction. Hence, this appeal.

7. We have heard Mr. K.L. Choudhary, Advocate, counsel for the Appellant; Mr. S.S. Bhinder Additional Advocate General, Punjab and perused the record of the case with their able assistance.

8. As regards delay in FIR, it does not find any merit as occurrence had taken place at 6:00 p.m. and the matter was reported by Gourav Arora to SI Rajinder Pal, who met him on the gate of the hospital and he completed his statement at 8:00 p.m. on the basis of which FIR was registered at 8:30 p.m. in police station Civil Lines, Amritsar. The special report reached the Illaqa magistrate at 11:30 p.m. on the same day. Therefore the question of FIR being infested with coloured or twisted version

and suffering from embellishment and exaggerations, does not arise. Gourav Arora P.W.8 and Rama Sharma P.W.9, who were present at the PCO in the natural course of events, consistently testified about the time, place and the manner in which the occurrence took place. No reason to discard their testimonies has been brought forward. The presence of Rama Sharma PW9 at the place of occurrence cannot be doubted for the reasons that she being the owner of the PCO works there, as such, she could in all probabilities, be also present at the time of occurrence. Gourav Arora in the FIR as well in his testimony in the Court had also reiterated that after school hours he used to work at the PCO. Even though he has little bit improved his statement in the Court by saying that he was receiving a salary, does not affect the sub-stratum of the case and is also not sufficient to discard his testimony because though he used to work on account of his affiliation with Rama Sharma P.W.9, still the fact remains that he used to come on the PCO after school hours. Some discrepancy with regard to recording of the statement of Gourav Arora has been addressed before us while contending that Rama Sharma states that the statement of Gourav Arora was recorded by the Rajinder Pal in her presence in the hospital whereas Gourav Arora does not so state. While scanning the records it has come out that Gourav Arora had categorically stated when he was on way to the police station, SI Rajinder Pal met him on the gate of the hospital where he recorded his statement. Thereafter he came in the hospital where the dead body of Ram Saran was lying and at that time Rama Sharma was also present. The records further reveal that supplementary statement of Gourav Arora was also recorded at the place where the dead body was lying. Therefore, this ambiguity in the mind of the learned Counsel stands removed and the presence of Gourav Arora and Rama Sharma at the time of occurrence near the dead body and the dead body was taken to the hospital immediately stands established. In view of the consistent statements of both the witnesses on all material particulars of the case, the delay if any in lodging the FIR loses significance.

9. As regards the argument of doubtful identity of the accused, it may be observed that the accused and deceased had property dealings since earlier. Gourav Arora has stated that he knew the accused since earlier. Nevertheless, it was not night time when the witnesses saw the accused while coming out from the PCO and saw them also discussing about the, property dealings and when Ram Saran had shown inability to settle the accounts. They also saw the accused firing shots at Ram Saran, therefore, this case cannot be said to be of doubtful identity. As regards the contention with regard to non examination of Joginder Singh and Jagdish Singh it would be suffice to say that the prosecution is the dominus litis of the case and it has discretion to examine the witness of their own choice keeping in view as to which of the witnesses is helpful for unfolding the truth and who could withstand the test of cross examination. It is well settled law that it is the quality of evidence which matters and not the quantity of witnesses, therefore, the public prosecutor made statement dated 6.8.2001 vide which he had given them up as having been

won over. So far as the other contention that the witnesses did not try to apprehend the accused when he was causing the injuries, is, concerned, it appears that the incident occurred within a minutes. The initial stage when conversations were going on. Gourav Arora did not take the matter seriously on account of their earlier alliances. Since the accused after firing a shot, left the place and the occurrence took place within a minute, it could not be expected, from the witnesses to catch hold of him particularly when they were un- armed and accused was armed with a gun. Since, the accused had dispute with the deceased and he was the only target, therefore, question of causing injuries to accused also becomes immaterial. That apart, the testimony of Gourav Arora P.W.8 and Rama Sharma PW9 stand supported by the recovery of the SBBL gun P4 along with 13 live cartridges Ex. P6 to Ex. P18 as well as bandolier Ex. P5 from the accused on 9.8.1989. After his arrest, the Forensic Science Laboratory also opined vide report Ex. PU that the empty 12 bore recovered from the spot, was fired from the gun Ex. P4. Nothing has been argued to rebut these pieces of evidence. Again it has been urged by the counsel for the Appellant that in the wireless log book Ex. DB, name of the accused is not mentioned, therefore, there are all chances of his name being inserted later on. Having delineated the factual scenario of the case, we do not find any force in the aforesaid contention. No doubt in the wireless log book, the name of the accused is not mentioned but it is a matter of common experience as also clarified by constable Sukhwant Singh DW1 that the messages in the wireless log book are recorded on the basis of any information given by any person or even message received on phone. There is no evidence on the record that the information was given by the witnesses present at the spot. Thus, to our mind neither the wireless message received by the wireless staff, can be treated as a statement made by a witness nor the names were required to be mentioned in the said book. As such this argument is of no consequence and no benefit could be derived from the testimony of witnesses DW1 and DW2.

No other argument has been raised or no other law has been cited by either of the parties.

As in up shot of the above discussion, we find no merit in the appeal and the same is hereby dismissed.