

(2018) 12 P&H CK 0088

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 1625-DB Of 2014, Criminal Revision No. 4135 Of 2014

Bhagwant Sarup And Others

APPELLANT

Vs

State Of Haryana

RESPONDENT

Date of Decision : 13-12-2018

Acts Referred:

Indian Penal Code, 1860 — Section 148, 149, 302
Arms Act, 1959 — Section 25
Code of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 11

Citation : (2018) 12 P&H CK 0088

Hon'ble Judges : Rajiv Sharma, J; Harinder Singh Sidhu, J

Bench : Division Bench

Advocate : Vinod Ghai, Simarndeeep S. Sandhu, Anurag Jain

Final Decision : Dismissed

Judgement

1. This judgment will dispose of two cases bearing CRA-D No. 1625-DB of 2014 and Criminal Revision No. 4135 of 2014.
2. The appeal has been instituted against the judgment and order dated 17.7.2014 and 19.7.2014, respectively, rendered by Additional Sessions Judge, Hisar, in Session Case No. 82-SC dated 25.7.2011 / 23. 10.2013, whereby the accused Bhagwat Sarup, Chetan, Pawan, Manmohan and Shalender alias Bablu were charged with and tried for the offence under Sections 302, 148, 149 IPC and Section 25 of the Arms Act, 1959.
3. Appellant no.1- Bhagwat Sarup died during the pendency of the present appeal. The appeal qua him has abated.
4. All the appellants were convicted and sentenced to undergo life imprisonment and to pay fine of Rs. 25,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year for the offence punishable under

Section 302 read with Section 149 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for two years for the offence punishable under Section 148 IPC. Appellant Chetan was also convicted and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs. 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months for the offence punishable under Section 25 of the Arms Act. Appellant Pawan was also sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs. 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months for the offence punishable under Section 25 of the Arms Act. All the sentences were ordered to run concurrently.

5. Criminal Revision No. 4135 of 2014 - Sarwati vs State of Haryana and others has been filed by widow of Dharam Pal for enhancement of sentence.

6. PW1 Tek Chand made a statement, Ex.PA, to the effect that on 11. 3.2011 at about 11.00/ 11.30 A.M., he was standing on the roof of his house. He noticed that Pawan, Chetan, Manmohan, Bablu sons of Bhagwat Sunar, Bhagwat himself, his wife, Jagdish Saini and both his sons, namely, Pawan and Sonu and Kuldip Saini alias Mota were giving beating to his nephew Mohan Lal. In the meanwhile Pardeep alias Dhola and Joginder alias Pinga i.e. both brothers of Mohan Lal came to the spot. They tried to rescue Mohan Lal. Pawan, Chetan, Manmohan and Bablu started firing indiscriminately upon his three nephews. The remaining assailants, namely, Bhagwat, his wife, Jagdish Saini, Pawan, Sonu and Kuldip gave knife blows to Mohan Lal alias Monu, Pardeep and Joginder sons of Dharam Pal. All the three collapsed on the ground. Roshan Lal, Sat Pal and Kanta daughter of Dharam Pal reached the spot. The assailants escaped from the spot along with their weapons. The motive attributed to the appellants was a money transaction over the recharge of a mobile phone between Mohan Lal alias Monu and Pawan Sunar. FIR, Ex.PA/2, was registered. Post-mortem examination was conducted on the dead-bodies of Mohan, Pardeep and Joginder. Investigation was carried out and the challan was put up after completion of all the codal formalities.

7. The prosecution examined a number of witnesses in support of its case. The statements of the accused were recorded under Section 313 Cr.P.C. They denied the case of the prosecution. Accused Manmohan has also taken the plea of alibi. The appellants were convicted and sentenced as noticed above. Hence, the present appeal.

8. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove the case against the appellants. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubts. Learned counsel appearing for the petitioner submitted that sentence awarded to the appellants be enhanced.

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

10. PW1 Tek Chand is the eye-witness. He testified that on 11. 3.2011 at about 11.00/ 11.30 A.M., he was standing on the roof of his house. He heard noise. He saw accused Pawan, Chetan, Manmohan, Shalender alias Bablu sons of Bhagwat, Bhagwat himself and his wife Tarawati beating his nephew Mohan Lal. On hearing the noise, his nephews Pardeep and Joginder also came to the spot to rescue Mohan Lal. He came down. Manmohan and Chetan were armed with pistols. They started indiscriminate firing at his nephews Mohan Lal, Joginder and Pardeep. Appellant Pawan gave knife blows on the back of Mohan Lal. Appellant Bablu gave knife blows on the chest of Pardeep. When Joginder fell down, accused Chetan fired two more shots in his chest. Pardeep also collapsed. Accused Chetan also fired one shot on his back and one on his chest. Accused Bhagwat and his wife Tarawanti gave blows to all three with lathies and dandas. His brother Satpal, niece Kanta and Roshan Lal also reached the spot. Kanta requested the assailants not to kill her brothers. Manmohan also fired in the air. The accused ran away from the spot along with their weapons. Injured were taken to CMC Hospital, Hisar. They were declared brought dead. The cause of quarrel with his nephew Mohan Lal was on account of the mobile recharge by him from Pawan. They had an altercation on the payment. In his cross-examination, he deposed that he has not named Jagdish Saini, Pawan son of Jagdish, Sonu son of Jagdish and Kuldeep as accused in FIR. The explanation given by him was that the police had enquired only about the names of the persons whose houses were situated opposite his house. He was confronted with his statement, Ex.PA. He has denied the suggestion that there is no shop of mobile or recharge of mobile in the house of Bhagwat Sarup. He deposed that Pawan was running the mobile recharge shop in the building. He deposed that quarrel over recharge of mobile had not taken in his presence. Mohan Lal had gone to the shop of Pawan for getting mobile recharged on the same day. When he heard the noise, accused were beating his nephew Mohan Lal in front of their shop. He was standing at a distance of about 10 feet away when the accused started firing. He had requested the appellants to spare the lives of his nephews. While going to the hospital, they had not made any phone call to the police as they were perplexed. They had taken the injured in a auto. He was accompanied by Kanta and Mamta. Cremation took place after recording of his statement.

11. Statement of PW1 Tek Chand is duly corroborated by PW10 Kanta Rani. According to her, she was present in the house of her father. Mohan Lal had gone to the shop of accused Pawan for getting the mobile recharged. They had quarreled over an amount of Rs. 30/-. She heard some noise. She came out of her house. She found accused Pawan, Chetan, Manmohan, Bablu @ Shalender sons of Bhagwat Sarup, Tara Devi wife of Bhagwat Sarup and Bhagwat Sarup himself quarreling with his brother and beating him. Her brother Pardeep and Joginder were accompanying her. They tried to rescue her brother Mohan Lal, but in the meantime, accused Chetan and Manmohan took out their pistols. Chetan fired shot at Joginder. Manmohan fired shot at Monu. Thereafter, Chetan fired shot at Pardeep. Accused Bablu and Pawan caused injuries to Monu and Pardeep

with knives. Accused Bhagwat and his wife Tara caused injuries to his three brothers with lathis. Her uncle Tek Chand, Roshan and Satpal also arrived at the spot. Her uncle requested the accused to spare lives of his nephews. Thereafter, accused Chetan fired shots at her brothers Monu and Pardeep.

Accused ran away from the spot along with their weapons. They took the injured to CMC Hospital, Hisar. She was confronted with her statement, Ex.D1. In her cross-examination, she deposed that she was married in the year 2003 with Pawan resident of village Landhari. She reiterated that her brother Joginder and Pardeep had gone to rescue her brother Mohan Lal. The distance between their house and the shop of the accused is about 100 feet. There were only two houses in between. The incident had taken place about 5-7 paces away from the shop of the accused. Firstly, Joginder was shot and thereafter Manmohan fired at Monu. Monu collapsed at the spot. Pardeep was also shot at about 3-4 paces away from the place where Monu collapsed. Her uncle Tek Chand was standing 5-7 paces away from the place where her brothers were lying. They had gone to the hospital on Auto.

12. PW2 SI Mahender Singh has registered FIR, Ex.PA/2.

13. PW3 Constable Devi Lal has taken the pictures of the place of occurrence. He has also taken photographs of the dead-body, vide Ex.P20 to Ex.P24.

14. PW5 Dr. Amit Kumar along with other members of the Board had conducted post-mortem examination on the dead-body of Joginder on the application, Ex.PC. He has proved PMR. He has noticed the following injuries on the dead-body of Joginder:-

"1. Lacerated wound in the middle of chest slightly on left side of size 2 x 2 cm. with inverted margin with tattooing and blackening.

2. Lacerated wound of the middle of chest slightly above the left nipple of size 2 x 2 cm. with inverted margin, tattooing and blackening.

3. One Lacerated wound of the middle of back on left side with inverted margin of size 4 x 3 cm.

4. Lacerated wound on left parital region of skull of size 2 x 2 cm. with inverted margin, blackening and tattooing.

5. Lacerated wound on right temporal region of size 7 x 5 cm with inverted margin."

According to post-mortem examination report, cause of death was injuries to vital organs of body (brain, lung & heart). The injuries were ante-mortem in nature and sufficient to cause death in ordinary nature of life.

15. PW6 Dr. Suresh Kumar along with other members of the Board has conducted post-mortem examination on the dead-body of Pardeep @ Dhola. It was conducted at 5.00 PM. on 11.3.2011. He has noticed the following injuries

on the dead-body of Pardeep:-

- "i. One circular wound in the middle of the chest (2x2 CM in size), inverted margins, tattooing was present, blackening was present, 10 CM medial to the left nipple;
- ii. One incised wound on the left nipple, clear cut well defined margins (spindle shaped) 2 x 2 CM in size;
- iii. One spindle shape wound 2 CM medial to the injury No. 2. (2x1 CM size), clear cut well defined margins.
- iv. One circular wound in the middle of the back on the left side, 2 x 2 CM, inverted margins, blackening and tattooing was present.
- v. One lacerated wound on the scalp on the left side, 10 x 10 CM, temporal bone was fractured."

This witness has also proved inquest proceedings. In his opinion, the cause of death was haemorrhagic shock due to the injuries to the left lung and the heart which were ante-mortem in nature and sufficient to cause death in ordinary course of nature.

16. PW12 Dr. Puneet Loona along with Dr. Suresh Kumar and Dr. Amit Kumar Rohilla had conducted post-mortem examination on the dead-body of Monu alias Mohan Lal. Post-mortem report is exhibited as Ex.P12/D. He noticed the following injuries on the dead-body of Mohan Lal:-

- "1. One lacerated wound was present of size 1 x 1 CM present over left side of forehead, margins were inverted.
- ii. One lacerated wound of size 5 x 4 cm on the occipital region of scalp, margins were inverted.
- iii. One incised wound on back in mid auxiliary line of size 3 x 1 cm spindle shaped with well defined margins.
- iv. One incised wound of size 3 x 1 cm on the right side of back, margins were clear and well defined.
- v. One incised wound of size 3 x 1 cm with well defined margins was present on the left side of back in the scapular region."

According to his opinion, the cause of death was due to injury to vital organs i.e. brain and left lung leading to haemorrhage and shock. All injuries were ante-mortem in nature and sufficient to cause death in the ordinary course of nature.

17. PW11 ASI Rajinder Parshad deposed that a Medical Board of Medical Officers was constituted on the request of SHO for conducting post-mortem examination on the dead-body of Joginder, Monu and Pardeep. After conducting post-mortem examination, Medical Officer handed over three sealed parcels having wearing

clothes of three deceased and two vials containing bullets which were removed from the dead-body by the Medical Officer. These articles were taken into possession vide recovery memo,

Ex.PJ. Thereafter, he visited place of occurrence. Investigating officer lifted five empty cartridges .315 bore, two led of bullets and blood stained earth from three places, one piece of brick stained with blood, three chappals from the street. He also lifted blood from two places from the floor of the courtyard and one blood stained piece of bed-sheet and blood stained piece of khes (blanket). On 15.3.2011, accused Chetan made disclosure statement, Ex.PM. He disclosed that he had kept concealed the blood stained clothes and chappel worn at the time of occurrence. Pistol was got recovered by removing the earth from near the water tank of Siwani bus-stand by Chetan. He identified the recovered pistol i.e. Ex.P33. He denied the suggestion that nothing was recovered at the instance of accused Chetan.

18. PW13 Inspector Rakesh Kumar deposed that he recorded the statement Ex.PA. He conducted inquest proceedings. He moved the application for conducting postmortem examination. He got prepared the site plan Ex.PQ. He lifted five empties of .315 bore from different places. Two fired bullets were also lifted. He lifted blood stained earth including hairs from three different places. He also lifted three sleepers from the spot. He also took into possession one double bed sheet and one khes (blanket) stained with blood. Pawan and Bhagwat Sarup made discloser statements before him vide Ex.PR and Ex.PS respectively. He identified five empties of .315 bore.

19. PW14 SI Om Parkash testified that accused Pawan and Bhagwat Sarup made disclosure statements. At the instance of accused Pawan Kumar, knife was recovered which he had kept concealed near the water tank, Airport Chowk, Hisar.

20. PW16 SI Parkash Chand had arrested accused Manmohan. He made disclosure statement, Ex.PAA, on the basis of which the motorcycle was recovered.

21. PW17 Inspector Sajjan Singh arrested accused Chetan. He made disclosure statement, Ex.PEE. At his instance pistol was got recovered alongwith clothes. Place was also got demarcated.

22. Accused Manmohan produced Dr. Sukhwinder, SDO as DW1, who deposed that he was posted as SDO, Animal Husbandry, Dabwali since

28. 11.2013. He has produced attendance register for the month of March, 2011. He deposed that Dr. Arun Kumar Bansal was posted as Veterinary Surgeon in Government Veterinary Hospital, Dabwali. GVD, Shergarh is under GVH, Dabwali. He also admitted that signatures of Dr. Arun Kumar Bansal were not found on the attendance register from November, 2010 to March, 2011. He also admitted that except at point A there was no signature against any date in OPD register of GVD, Shergarh from 3.11.2010 to 11. 3.2011.

23. The injuries received by the deceased were ante-mortem in nature. These were sufficient to cause death. The post mortem reports have been duly proved. The pistol was got recovered at the instance of accused Chetan. At the instance of accused Pawan, knife was got recovered. The motive attributed to the appellants is that a quarrel took place between Monu and Pawan over an amount of Rs. 30/-. The appellants with common object have used deadly weapons including pistols, knife and lathis to attack three brothers Mohan, Pardeep and Joginder. They were declared brought dead in the hospital. The recoveries were made on the basis of disclosure statements made by the appellants. FSL report, Ex.PJJ, reads as under:-

"Laboratory Examination Products of combustion of smokeless powder were detected from the barrel of Countrymade pistol marked W/1 (Chambered for .315" cartridges). Test firings were done in the laboratory from weapon marked W/1. Its firing mechanism was found in working order.

The class as well as individual characteristic marks present on .315" fired cartridge cases marked C/1 to C/5 & .315" fired bullets marked BC/1 to BC/4 and those on test fired cartridges cases and bullets fired from Countrymade pistol marked W/1 were examined and compared under stereo and comparison microscope.

Based on the examination carried out in the laboratory, the result of analysis is as under:-

1. Countrymade pistol marked W/1 (Chambered for . 315" cartridges) is a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was found in working order.
2. It had been fired through. However, the time of its last firing cannot be given scientifically.
3. .315" fired bullets marked BC/1 to BC/4 have been fired from Countrymade pistol marked W/1 and not from any other firearm even of the same make and bore because every firearm has got its own individual characteristic marks.
4. .315" fired cartridge cases marked C/1, C/2, C/3, C/4 and C/5 have been fired from Countrymade pistol marked W/1 and not from any other firearm even of the same make and bore because every firearm has got its own individual characteristic marks.
5. Report in original from Serology Division is enclosed herewith."

According to FSL report, Ex.PJJ/1, blood could not be detected on Churri.

24. The plea of alibi taken by Manmohan has not been proved. DW1 Dr. Sukhwinder, SDO deposed that he had joined his duties in the month of November, 2013. The attendance register produced was for the month of March, 2011. DW1 also admitted that Dr. Arun Kumar Bansal was not present from the month of November, 2010 to March, 2011 at GVD, Shergarh. The plea of alibi is a

double edged weapon. In case the accused fails to prove the plea of alibi, his presence at the spot cannot be ruled out.

25. In order to prove plea of alibi, their Lordships of Hon'ble the Supreme Court in *Binay Kumar Singh vs State of Bihar* (1997) 1 SCC 283, have held that once the prosecution succeeds in discharging the burden, it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. Their Lordships have held as under :-

"22. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration

(a) given under the provision is worth reproducing in this context:

"The question is whether A committed a crime at Calcutta on a certain date; the fact that on that date, A was at Lahore is relevant."

23. The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions (*vide Dudh Nath Pandey v. State of U.P.* 5; *State of Maharashtra v. Narsingrao Gangaram Pimple*."

26. The statements made by eye-witnesses PW1 Tek Chand and PW10 Kanta Rani are duly corroborated by the medical evidence tendered by PW5 Dr. Amit

Kumar, PW6 Dr. Suresh Kumar and PW12 Dr. Puneet Loona. According to FSL report, Ex.PJJ, the pistol, which has been recovered at the instance of accused Chetan was used as weapon of crime. It was found in the working condition. The knife was also got recovered on the basis of disclosure statement made by Pawan Kumar. The injuries were ante-mortem in nature. The injuries were caused by firearm and knife. The appellants had formed unlawful assembly while holding deadly weapons and in furtherance of common object inflicted injuries on the vital organs of Mohan Lal, Pardeep and Joginder resulting in their death. The prosecution has proved the case against the appellants beyond reasonable doubt. No interference is called for in the well reasoned judgment and order recorded by the learned trial Court. Accordingly, the appeal is dismissed.

27. In view of the evidence discussed hereinabove, the sentence imposed on the appellants is adequate. This case does not fall in the ambit of rarest of rare cases. Accordingly, the revision petition is also dismissed.