
(2014) 02 P&H CK 0084

In the Punjab And Haryana At Chandigarh

Case No : Criminal A. No's. 350-DB of 2011 and 1029-DB of 2010

Devender Gupta

APPELLANT

Vs

State of Haryana and Others
 Vijay Sharma and
Another Vs State of Haryana

RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 319
Evidence Act, 1872 — Section 103 25
Penal Code, 1860 (IPC) — Section 120B 201 302 364

Citation : (2014) 02 P&H CK 0084

Hon'ble Judges : Hemant Gupta, J;Fateh Deep Singh, J

Bench : Division Bench

Advocate : P.S. Hundal, Mr. B. S. Jattana, Mr. V.C. Gautam for Mr. Dinesh Jain and Ms. Monika Jalota, in Criminal A. No. 350-DB of 2011, for the Appellant; P.S. Poonia, Additional Advocate General, for the Respondent

Judgement

Fateh Deep Singh, J.—What stands reflected from the record as well as the arguments of the counsel for the contesting parties are to the effect:-

That a case registered by way of FIR No. 39 dated 13.03.2004 under Sections 302/120B/364/201 IPC read with Section 25 of the Arms Act pertaining to Police Station City Bahadurgarh on the statement of complainant Devender Gupta against nine accused namely, Dharmender @ Dhauna, Rajesh @ Raju, Swaran Singh @ Tony Sardar, Kuldeep @ Monu, Rajesh @ Mogli, Dinesh @ Datua, Vijay @ Koki, Neetu Nihal and Kamal Mehta out of whom Rajesh @ Raju, Dinesh @ Datua and Vijay Sharma @ Koki were held guilty for commission of offences under Sections 302/364/120B IPC by the Court of learned Additional Sessions Judge, Jhajjar and were sentenced to rigorous imprisonment for life and fine of Rs. 20,000/- each. In default of fine, the convicts to undergo further imprisonment for two years each u/s 302/120B of IPC and further were sentenced to rigorous imprisonment for ten years and fine of Rs. 10,000/- each,

in default of fine, the convicts to undergo further imprisonment for one year each u/s 364 of IPC whereas remaining accused stood acquitted. Thus that is how these appeals have arisen against the acquittal as well as conviction passed against various accused. Thus being inter-connected matters arising out of the same case, therefore, needs to be disposed off by this common judgment.

For the sake of brevity, three different challans against all these accused were submitted and committed at various stages which were consolidated by orders dated 06.02.2006 of the learned trial Court and so of appellant-convict Vijay @ Koki, who was earlier found innocent during investigation and was subsequently summoned u/s 319 Cr.P.C. vide orders dated 15.09.2006. That is how the trial against all these accused commenced inspite of initial hiccups and there had been repeated misc. applications having been preferred by the accused under different provisions of law as well as amendment/alteration of the charges and as well as recalling of certain prosecution witnesses on the basis of the directions of the Hon'ble High Court and, therefore, sufficiently explains how the trial had proceeded at snail's pace.

2. The precise allegations levelled by Devender Gupta PW-1 son of deceased Rakesh Kumar Gupta contained in his statement Exhibit PA/1 recorded by PW-7 ASI Chander Gupta on 13.04.2004 around 5.00 P.M. at Patel Nagar, Bahadurgarh. In a statement, the complainant had stated that his deceased father was running a tent house under the name and style of M/s. Ganpati Tent House at Shastri Nagar, Delhi where the complainant also helps him. It has been stated that about 20 years ago Subhash elder uncle (Tau) of the complainant was murdered by elder brother of accused Koki regarding which a case was got registered and on account of nurturing of a grudge, Dinesh @ Datua, Koki, Chikna @ Raju @ Rajesh all accused convicts had murdered his father by a fire arm after calling him from his tent house and, thereafter have thrown his dead body in Patel Nagar. Upon this statement, after endorsement Exhibit PA/1 has led to the registration of the present FIR by PW-6. It is during the investigations by PW-13/PW-7 ASI Chander Gupta photographs with negatives of the dead body were clicked by PW-10 vide Exhibits P-6 to P-13. Inquest report was prepared and statement of the witnesses were recorded. The dead body was handed over to PW-5, who got conducted the post-mortem examination on police request through PW-1 Dr. K.K. Jakhar, who initially also conducted the MLR of this injured. The articles i.e. the vehicle recovered from near the dead body and the remnants of the bullet recovered from the dead body were sent to the Forensic Science Laboratory and during the course of investigations by the various officials including PW-24 DSP Samunder Singh and PW-25 DSP Devender Yadav, the accused were arrested and on the basis of their disclosure statements articles were got recovered. Consequent upon investigations, the accused detailed above were put to trial after they denied the charges so framed against them.

3. Learned counsel for the parties have in their submissions not questioned the

death as well as cause of this death of the deceased. It is well elaborated in the testimony of PW-1 Dr. K.K. Jakhar, who was examined on 12.04.2006, 02.04.2007 on the basis of the post-mortem examination given by way of report Exhibit P-2 whereby five lacerated wounds have been discovered on the dead body on the areas of face, anterior chest wall and left upper back medial aspect. The doctor has opined all these injuries to be ante mortem in nature sufficient to cause death in normal course of life and has proved the belongings of the dead body shirt Exhibit P-3, Pant Exhibit P-4, Banyan Exhibit P-5 and underwear Exhibit P-6. The doctor had also recovered a metallic portion of the bullet from the dead body which was sealed and handed over to the police though the doctor has failed to give the precise nature of this metallic article whether it is a pallet or a bullet certainly had to be certified by the Forensic Expert and not by the doctor, who had conducted the postmortem examination.

4. The FSL report Exhibits PZ and PZ/1 clearly establishes beyond any doubt in the light of the contentions of the State counsel that these articles as to the belongings of the dead body were stained with human blood and the blood collected from the spot by the Investigating Officer at the time of initial examination of the spot was also blood stained earth and the metallic portion remnant of the bullet was of 38 caliber and also stained with human blood. Thus from this all leads to the inference that the deceased had died on account of fire arm injury thus a homicidal death by all means.

5. No doubt as is spelled out in the first version contained in the statement of the complainant Exhibit P-A there is no clear cut version that as to manner in which these three accused had called the deceased. However, in his testimony as PW-1, the complainant had detailed in his testimonies on 09.08.2006, 13.01.2007, 20.08.2010 that on the day of the occurrence around 11/11.30 A.M. Vijay @ Koki, Dinesh @ Datua and Raju @ Chikna had came to their shop and after having conversation with his father took him away and that his father had taken the keys of the car from him telling he would be coming back after two hours. It was thereafter stated by this witness that PW-3 brother of the deceased came and told him that the deceased had been shot dead and his body was lying near his car registration No. DL-8CF-1351. Though the counsel for the accused have tried to dampen the effects of the testimony of PW-1 terming him to be a close relative of the deceased. However, it is the stand of the complainant that he was working in the tent house helping his father and it was in his presence these three accused have taken away his father. The taint that is sought to be assigned to PW-1 that there was history of previous enmity between families is certainly an admitted fact from the prosecution as well as the defence side. Rather a suggestion has been put to this witness regarding plea of alibi qua accused Vijay @ Koki that he was not present at the time of the occurrence as he happened to be present at Budh Vihar, Delhi accused Chikna @ Raju was present at Rohini, Delhi. There is a positive averment in the cross-examination of this witness that he tried to contact about 15 times between 11.30 to 4.30 P.M. on the cell phone of the deceased but there was no response. Learned counsel for the accused

could not pin point anything adverse that has come to put to doubt the veracity of this witness.

6. Though it has been rightly contended that testimony of PW-3 Ombir Gupta regarding taking away of the deceased by three accused is based on hearsay. However, he has only been one of the first persons to arrive after receiving information as to the murder of the deceased and this witness has not much to state against the accused. Similarly PW-9 Hari Kishan another brother of the deceased has simply identified the dead body and the recovery of golden ring, wrist watch, driving license, mobile phone and sum of Rs. 797/- through memo Exhibit PB from the dead body. Consequent upon arrest of the accused, the most crucial evidence that has been collected by the Investigating Agency is through PW-23 ASI Sultan Singh, who is a witness to the interrogation of accused Swaran Singh @ Tony, who while in police custody on the basis of his disclosure statement Exhibit P-4 had demarcated the place and execution of this murder situated in Sector 6, House No. 1697, Bahadurgarh regarding which memo of demarcation Exhibit PY/1 was prepared. However to the query of the Court nothing concrete has come out from the interrogation of this accused. Similar is the fate as to the testimony of PW-19 lady constable Smt. Urmila through whom the prosecution has sought to bring about that accused Neetu Nihal was having affair with accused Kuldeep @ Monu and on her asking accused Neetu Nihal had tried to befriend the deceased and had called the deceased on her mobile phone to the place situated in Sector 6, House No. 1697, Bahadurgarh where the deceased was shot dead and, thereafter, his body was thrown away.

7. PW-24 DSP Samunder Singh is a very crucial witness and his cross-examination reflects how there has been sabotage of the investigations to protect certain aspects of the case including the role of one Krishan Pehalwan, who while lodged in Rohtak Jail had been instrumental in helping the principal accused in arranging and laying the trap for the deceased and in his cross-examination this witness accepts that he had not recorded statement of any official of the Rohtak jail nor interrogated Krishan Pahlwan. Neither he had interrogated nor recorded statement of one Bharat Singh and has not collected the mobile call details of deceased during investigations and though accepts that it has come in the investigations that the deceased was called at Bahadurgarh from Shastri Nagar, Delhi and during this journey between two places the deceased was constantly in touch with the accused persons through mobile and had not obtained any location chart and call details of any person from either of the sides. Thus reflects the total insensitivity of the Investigating Officer towards such an important matter rather leaves no scope to doubt how crucial evidence has been allowed to be kept away from the scrutiny of the Court and rather in his cross-examination has refused to refresh his memory from the case file. The other Investigating Officer is PW-25 DSP Devender Yadav and accepts in his cross-examination that his report dated 19.01.2005 against accused Rajesh @ Mogli is detailed and exhausted where it has come that in the first confession by accused Rajesh @ Mogli, it was disclosed that Krishan Pehalwan while in Rohtak

jail had met accused Raju, Dinesh and Vijay and, therefore, suddenly puts an end to this crucial phase of the investigations.

8. No doubt under the provisions of Section 25 of the Evidence Act statement made before a police official is inadmissible in evidence qua the accused and PW-2 ASI Sri Niwas is no exception before whom as claimed by this witness accused Rajesh @ Raju @ Chikna had sought to confess the manner in which the deceased was murdered and nothing worthwhile has come out of testimony of PW-21 Inspector retired Hukam Chand as well as PW-20 Inspector Satyavir Singh, PW-18 ASI Randhir Singh, PW-17 Inspector Amar Dass, PW-16 SI Jagat Singh as well as PW-15 SI Shyam Narain, who though has sought to bring about the disclosure statement of Dharmender regarding recovery of the pistol but had not reached the legitimate conclusion regarding this recovery. Deposition of PW-14 Inspector Sube Singh, PW-12 HC Ram Bhagat by way of affidavit Exhibit PL is mere formal in nature thus leaves the deposition of PW-12 Mohan Lal as the most important witness, who claims to have heard the three accused, namely, Dinesh, Raju and Koki having liquor at Gulab Bagh, Rangoli restaurant, Delhi and were talking with each other that they have handed over the deceased to accused Nitu Ninal, Kuldip, Dharmender and Mogli for murdering him and the counsel for the accused could not pin point anything adverse that has come in the cross-examination of this witness which could put to doubt his veracity and credentials. Thus from this evidence, it clearly stands established beyond any doubt that there was a strong motive and which is otherwise not denied regarding history of previous enmity between the family of the principal accused and that of the deceased and though it could not be established by the prosecution through any concert and cogent evidence as to the role of Nitu Nihal, Rajesh @ Mogli, Kuldeep, Swaran Singh @ Tony, and Dinesh @ Datua as to the manner in which they have participated in the commission of this crime. However, the eye witness account given by complainant that it was these three accused Dinesh, Vijay and Rajesh, who had taken away the deceased from his shop and immediately the dead body of the deceased was found riddled with bullets. There is studied silence on behalf of the accused to explain for these circumstances which is well within their knowledge and who have failed to explain for this certainly impels the Court to draw an adverse presumption against them. Though these accused had sought to set up plea of alibi through DW-1 Mahesh Kumar regarding sale of Santro vehicle through documents Exhibits D1 and D2 or that of DW-2 ASI Biphi Ram, who has lodged FIR Exhibit D-3 of the registration of the vehicle proved by DW-3 Padam Singh, Record-keeper by way of Exhibit D4 and the testimony of DW-4 Puran Kumar, SP, Narnaul regarding innocence of the three accused Vijay, Dinesh and Rajesh does not suffice the purpose of the defence and the plea of alibi that has been raised by the accused has not been proved by any manner whatsoever is certainly a distressing feature for the defence and, therefore, goes against the accused in view of the law laid down wherein while interpreting the provision of Section 103 of the Evidence Act, it has been held that where the accused fails to prove the

plea of alibi leaves to the irresistible conclusion that they were guilty. Thus from all this evidence that the complainant had named only three persons Rajesh @ Raju, Dinesh @ Datua and Vijay @ Koki and has not detailed anything against the other accused and it has been rightly argued on behalf of the accused respondents in the appeal of the complainant that nothing is suggestive qua their role in the commission of the crime. We have gone through the judgment of conviction along with the evidence and do not find any infirmity and illegality in the same and the judicious appreciation. Thus we are not inclined to show any indulgence whereby the appeal of the convict appellants Vijay @ Koki, Rajesh @ Raju, Dinesh @ Datua as to their conviction stands dismissed and so the appeal by the complainant against the accused, who have been acquitted also stands dismissed.