
(2019) 01 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 817, 828, 898-DB Of 2012

Dimpi Alias Rimpi Alias Gurpreet And Others

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 14-01-2019

Acts Referred:

Indian Penal Code, 1860 — Section 148, 149, 302, 307, 325, 365, 395, 506

Arms Act, 1959 — Section 25, 27

Code of Criminal Procedure, 1973 — Section 313

Citation : (2019) 1 RCR(Cri) 809 : (2019) 2 CriCC 13

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

Bench : Division Bench

Advocate : Anmol Rattan Singh Sidhu, Sanish Girdhar, Tushar Gera

Final Decision : Partly Allowed

Judgement

1. Since common questions of law and facts are involved in the aforesaid appeals, therefore these are taken up together and disposed of by a common judgment.

2. These appeals have been instituted against the judgment and order dated 31.08.2012 rendered by the learned Sessions Judge, Fatehabad (Haryana), in Sessions Case No.RBT 2 of 2008/2010 whereby the appellants were charged with and tried for offences punishable under Sections 302, 148, 149 of the Indian Penal Code (in short 'IPC') and 25/27 of the Arms Act, 1959. They were convicted and sentenced as per the operative portion of the judgment and order dated 31.08.2012.

3. The case of the prosecution in a nutshell is that Malti Devi PW-1 had two sons. Raj Kumar was the eldest. The name of younger son is Gajraj. She along with PW-2 Anita and Raj Kumar on 01.12.2007 had boarded the vehicle Bolero bearing No.HR-24J-8611. They were going to their fields at about 11.30 A.M. When they reached opposite Punia Tent House Ding Mandi, her son Raj Kumar stopped the vehicle by the side of road. He went to that place for some work. In

the meantime two vehicles reached on the spot. One of them was white in colour. It stopped opposite the Punia Tent House. Ram Kumar son of Nathu Ram, Sunil Kumar son of Ram Kumar, Bhanwar Lal son of Om Parkash, Sandeep Kumar son of Ram Kumar, Om Paraksh son of Nathu Ram and Dimpi son of Harbhajan Singh got down from the vehicles. Om Parkash was carrying a double barrel gun.

Others were armed with pistols. Ram Kumar gave a lalkara that the enemy has come and he should not be spared. All the persons started firing indiscriminately at Raj Kumar. Raj Kumar collapsed at the spot. The assailants along with their weapons ran away from the spot. The injured was taken to the hospital. He was declared brought dead. The motive of the crime was that in the month of March, 2004 Kuldeep son of Om Parkash, a nephew of Ram Kumar was murdered. Raj Kumar and Gajraj were the accused. They were facing trial and were enlarged on bail. Thus in order to take revenge, the appellants had murdered Raj Kumar. The statement is Ex.P1. Thereafter formal FIR Ex.P29 was registered. The dead body was sent for post-mortem examination. The post-mortem was conducted by Dr.Pawan Kumar PW-12 on the basis of application Ex.P74 moved by the police. Photographs of the spot were also taken. The appellants were arrested. Recoveries were effected. The investigation was completed and the challan was put up after completing all the codal formalities.

4. Prosecution examined a number of witnesses. The statements of appellants were also recorded under Section 313 Cr.P.C. They have denied the case of the prosecution. The appellants were convicted and sentenced as noticed hereinabove. Hence, CRA-D-817-DB-2012 has been preferred by Dimpi @ Rimpi @ Gurpreet, CRA-D-828-DB-2012 preferred by Ram Kumar and others and CRA-D-898-DB-2012 preferred by Bhanwar Lal and another.

5. Learned counsel appearing for the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

6. Learned counsel appearing on behalf of the State has supported the judgment and order dated 31.08.2012.

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

8. PW-1 Malti Devi testified that she had two sons namely Raj Kumar and Gajraj. She along with her son Raj Kumar and his wife Anita were going to fields in Bolero on 01.12.2007. When they reached in front of Punia Tent House, Raj Kumar stopped the vehicle. He went towards Punia Tent House. Two white cars came at the spot. Ram Kumar son of Nathu Ram, Bhanwar Lal son of Om Parkash and Dimpi son of Bhajan Lal alighted from first car. Om Parkash son of Nathu Ram, Sandeep Kumar son of Ram Kumar and name of sixth accused she did not remember, also got down from the second car. However later on she deposed that the name of sixth accused was Sunil Kumar son of Ram Kumar. Ram Kumar exhorted the appellants that enemy should not be spared. Om Parkash was armed with double barrel gun. Remaining all accused were armed

with pistols. They started firing towards Raj Kumar. Raj Kumar fell down on the spot. Accused ran away from the spot along with their weapons. After that Vinod Kumar and Rajinder came to the spot. Raj Kumar was moved to Bhargav Hospital, Ding Mandi. He was declared dead. In year 2004 the nephew of Ram Kumar namely Kuldeep was murdered. In that murder, Raj Kumar and Gajraj were named as accused. They were on bail in that case. For this reason, the accused had murdered her son. Police came to Bhargav Hospital at about 1.00 P.M. Police recorded her statement. Thereafter she along with police came on the spot. One mobile along with one battery, one pair of footwear of Raj Kumar, one live cartridge of .315 bore, one empty cartridge of .315 bore, two empty cartridges of .12 bore, two pallets one small and one big were taken in possession. She admitted in cross-examination that Gurpreet alias Dimpi was posted as a Teacher in Narel Khera. The distance between Narel Khera and Ding Mandi was about 8/9 kilometers. She denied the suggestion that Dimpi was on duty in the school in village Narel Khera on 01.12.2007. She also denied the suggestion that he had attended a meeting on 01.12.2007 from 11.00 A.M. to 01.30 P.M. She also denied the suggestion that Headmaster of Govt. School of Narel Khera had deputed Dimpi on 30.11.2007 itself for attending a meeting of VEC on his behalf. She admitted that a case under Section 302 IPC for the murder of her husband Poonam Chand was registered against Indraj, Prithvi sons of Hardeva, Tirlok son of Banwari, Devi Lal son of Sanwat Ram and Devi Lal son of Norang Ram, residents of Ding in the year 1995. She also admitted that a case under Section 302 IPC was registered for murder of Richhpal against her, her son Gajraj and Rajpal, her husband Poonam Chand and Anita wife of Raj Kumar in the year 1994. The case was compromised between the parties. They were acquitted. In the murder case of Kuldeep, her sons Raj Kumar and Gajraj were named. Gajraj was facing trial in the Court. Subhash and Rajpal were also co-accused. They had no litigation against accused Ram Kumar, Sandeep Kumar and Sunil Kumar except the murder case of Kuldeep of the year 2004. On 01.12.2007 they had left their house for going to fields at about 11.00/11.15 AM. The distance between her house and agricultural fields was about one kilometer. Their agricultural field was situated towards Ding Mor. None was present in their agricultural fields on that day. The distance between Punia Tent House, Ding and their house is about ½ kilometer. In between, residential houses were situated. Punia Tent House was not busy place but was near a road and surrounded by shops. One Punia Bishnoi was the owner of that Tent House. The vehicle was driven by Raj Kumar. Her son had not disclosed that he had some work at Punia Tent House. One school was situated in front of Punia Tent House. Bolero was parked near that school. Her younger son Gajraj was at house at the time of occurrence. At the time of occurrence, few shops were opened. Few shops were closed. There was no hawker or rehri etc. in front of that school or near that school. She had seen these vehicles coming towards the place of occurrence from the distance of 17/18 paces. These vehicles had stopped at the distance of 10/12 paces from Punia Tent House and 17/18 paces from their vehicle. All accused had alighted from the vehicles simultaneously and immediately. All of

them started firing simultaneously. Her son had not entered Tent House. He was shot by the six accused from a distance of 6/7 paces. The entire incident lasted for two minutes. Accused left the spot in their vehicles towards the village. Her son had not raised any alarm. However her daughter-in-law raised alarm. Nobody came on the spot. No one had fired at her and Anita. The owner of Punia Tent House did not come even after the accused had left the scene of occurrence. The police station Ding was situated at a distance of 7/8 kilometers from the spot. Bhargav Hospital was just across the road from the place of occurrence. Her clothes and clothes of her daughter-in-law were stained with blood. Neither she nor Anita had disclosed to any person who had gathered on the spot that who had murdered her son. She did not know the bore of weapons. She had never seen a 12 bore gun. She had not seen fire arm prior thereto. Ram Kumar was an employee in the co-operative bank. She and her daughter-in-law remained in jail for one day in the matter relating to murder case of Richhpal. She also admitted that for the murder of Kuldeep, a case was registered against her sons Gajraj and Raj Kumar, Subhash and Rajpal sons of Chander Gupt.

9. PW-2 Anita is wife of the deceased. According to her also, she along with her husband Raj Kumar and her mother-in-law were going to their fields in Bolero on 01.12.2007. They started from their house at 11.15 A.M. They reached near Punia Tent House at about 11.30 A.M. Raj Kumar stopped the vehicle. He had gone towards the Punia Tent House for some personal work. In the meantime two white vehicles came there. The appellants alighted from the vehicles. She recognized all of them in the Court. Om Parkash was armed with double barrel gun whereas remaining accused were armed with pistols. Ram Kumar raised lalkara that the enemy has been found and he be eliminated. Thereafter all the accused fired indiscriminately towards her husband Raj Kumar. He collapsed. He was taken to Bhargav Hospital. In the month of March 2004, murder of Kuldeep son of Om Parkash had taken place. In that case, her husband and her brother-in-law Gajraj were facing trial. They were enlarged on bail. The police recorded the statement of her mother-in-law Ex.P1. Recoveries were made from the spot. In her cross-examination she deposed that her marriage was solemnized with Raj Kumar in the year 1991. She had five children. They had 23 acres of land. She was also accused in a murder case. She had appeared as a witness in murder case of his father-in-law Poonam. Her husband was on bail for about 1½ years. Nobody had harmed him during the period of 1½ year, although he had been going to his fields on this route on daily basis. They were going towards fields only to look after the crops but no work was to be done by them in the fields. They had covered a distance of half kilometer when her husband stopped the Bolero. She admitted that their house is situated in the southern side of the place of occurrence while Ding road is situated on the northern side. They were sitting on rear seats of the Bolero vehicle. Accused had fired from the corner of the boundary wall of the government school and not from the street in between the school and Tent House. Raj Kumar was standing at the counter of Punia Tent House when the firing started. Raj Kumar did not turn when Ram Kumar gave

the lalkara. He also did not run inside the Tent House. Volunteered said no opportunity was given to him. The shots had hit the tin shed. Surjit and Vinod had shifted Raj Kumar in their vehicle to Bhargav hospital. Dr.Bhargav checked him and he declared him dead. They started crying. She knew the difference between 12 bore and .315 bore. The empty cartridges of 12 bore were lying outside the tent house at a distance of 5/6 paces towards street.

10. PW-3 Bhup Singh deposed that he along with Vinay joined investigation in this case on 06.12.2007. At that time, Ram Kumar accused came along with a double barrel gun and his two arm licences. Sunil Kumar accused came in the police station along with a revolver, his Zen car and RC of the car. Ram Kumar handed over his double barrel gun whereas accused Sunil Kumar handed over Zen car, revolver and RC of the car to the police. Sketch Ex.P15 of gun was prepared. These were seized. Sandeep Kumar was taken out from the police lock up. He made disclosure statement Ex.P19. Sandeep Kumar led the police party to his house and got recovered one single barrel gun from his kotha underneath the quilt of his cot. Sketch of gun Ex.P20 was prepared. In his cross-examination he has admitted that FIR no.127 dated 31.08.2002 under Sections 148, 365, 395, 307, 506, 325, 149 IPC was registered against him and 18 other persons. They were found guilty by the trial Court and convicted on 24.09.2008 by the Fast Track Court, Sirsa. His cousin Subhash Chander was also involved in that case. He had visiting terms with Malti Devi complainant. All the police officials of police station, Ding were known to him at that time but he could not tell their names. Accused Ram Kumar and Sunil Kumar had came at their own. They had come separately. Sunil Kumar had come to the police station carrying revolver in his hand. He had handed over the same to the investigating officer. The police had also obtained signatures of Ram Kumar and Sunil Kumar in his presence on more than 10 papers. He did not know what was written on those papers since he was illiterate. The police obtained his signatures on 5/6 papers.

11. PW-4 Radhey Sham had prepared the scaled site plan.

12. PW-6 Ram Niwas had taken photographs of the dead body.

13. PW-8 ASI Satbir Singh deposed that he was posted in Police Station Ding, District Sirsa on 01.12.2007. He got the post-mortem conducted from the General Hospital, Sirsa. The dead body was thereafter handed over to the family members of the deceased.

14. PW-9 Sahab Singh was formal witness.

15. PW-10 ASI Balbir Singh testified that on 10.12.2017 he was posted in Police Station Ding. On that day, accused Ram Kumar made disclosure statement Ex.P60 to the effect that the pistol .315 bore used in the commission of offence was kept concealed by him in the cover of quilt in the Chobara of his house in village Ding. Accused Ram Kumar led the police party to the disclosed place and got recovered the pistol from the cover of quilt. The pistol was taken into possession. In his cross-examination, he deposed that accused Ram Kumar was

interrogated by Inspector Dharamvir on 09.12.2007 and 10.12.2007.

16. PW-12 Dr.Pawan Kumar conducted the post-mortem examination. The post-mortem was conducted on 02.12.2007 at 10.15 A.M. The injuries on the body of Raj Kumar could be caused at 11.30 A.M. on 01.12.2007 by fire arm weapons. In his cross-examination he admitted that injuries No.1, 2 and 3 were on the front side of the dead body. Similarly injuries No.6 and 7 were also on the front side of the dead body. There was no exit wound of these injuries. Injuries No.8 and 9 were situated on the back side of the body. There was no exit wound of these injuries. The cause of death as per Ex.P75 was due to massive injuries to vital organs, i.e. Heart bilateral lung, liver spleen collectively leading to hemorrhagic shock which was sufficient to cause death in ordinary course of nature and ante mortem in nature. The probable duration between injury and death was instantaneous whereas between death and post-mortem was twenty four hours.

17. PW-13 Inspector Dharamvir had investigated the matter. He reached the spot. He recorded the statement Ex.P1 of Malti Devi. He got photographs of the dead body clicked through Ram Niwas. He prepared the inquest report. He called the team of scene of crime at the spot. They inspected the spot. On 06.12.2007 during the search of accused when he reached at Ding Chowk, Bhup Singh and Vinay met him. One Ranbir produced accused Ram Kumar, Sandeep Kumar and Sunil Kumar. Accused Ram Kumar produced one DBBL gun 12 bore with licence. Accused Sunil Kumar produced one licenced revolver of 32 bore and a maruti car (Zen). He prepared sketches of DBBL gun and .32 revolver. Accused Ram Kumar made a disclosure statement on the basis of which .315 bore pistol was recovered. The statement Ex.P60 was recorded. He had not noticed any blood stains on the clothes of Malti Devi and Anita. He had prepared only one memo for recovery of both these weapons. He had also interrogated Sandeep Kumar. No independent witness was joined from the chowk at the time of interrogation. They had gone to the house of Sandeep Kumar for recovery of weapon.

18. The motive attributed to the appellants is enmity between two families. According to the prosecution case, Kuldeep son of Om Parkash was murdered by the deceased Raj Kumar and Gajraj. Raj Kumar and Gajraj were on bail. Raj Kumar with his wife and mother were going to the fields in Bolero jeep. They left at 11.30 A.M. Raj Kumar got down from the vehicle near Punia Tent House. In the meantime, two vehicles came. The assailants were armed with weapons. They started indiscriminate firing at Raj Kumar. Raj Kumar collapsed. He was taken to Bhargav Hospital. He was declared dead. Thereafter PW-1 Malti Devi got recorded her statement Ex.P1. Recoveries were effected. The weapons of offence were sent for FSL examination. The FSL report is Ex.PA. According to the doctor's opinion, Raj Kumar died due to the injuries on vital organs. Kuldeep Singh was son of one of the appellants namely Om Parkash. Kuldeep Singh was murdered in 2004.

19. The case of the prosecution is that Ram Kumar raised lalkara and thereafter the deceased was fired at. The weapons have been recovered from Ram Kumar,

Sandeep Kumar and Sunil Kumar. Sandeep Kumar was 30 years of age at the time of occurrence. Sunil Kumar was 22 years of age at the time of occurrence. Bhanwar Lal was 25 years of age at the time of occurrence and Dimpi was 33 years of age at the time of occurrence. Ram Kumar and Om Parkash are brothers. PW-1 Malti Devi and PW-2 Anita were involved in criminal cases earlier. Appellant Dimpi @ Rimpi @ Gurpreet is not related to the rest of the appellants. He was working as teacher at the time of incident. He has taken the plea of alibi. No recovery was effected from him. No motive has been attributed to him. It is the case where the entire families of Ram Kumar and Om Parkash have been implicated by the police. According to the FSL report, 12-bore fired cartridge cases marked C/1 & C/2 were fired from right & left barrels respectively of 12-bore DBBL gun W/1 and not from any other firearm even of same make and bore. The .315" fired cartridge case marked C/3 had been fired from country made pistol marked W/4 and not from any other firearm. According to FSL report, only 12 bore DBBL gun marked W/1 and .315" country made pistol marked W/4 were used in the crime. W/1 and W/4 were recovered from Ram Kumar. Thus the weapons recovered from Sunil Kumar and Sandeep Kumar were not used in the commission of offence as per the FSL report. The case of the prosecution is that Ram Kumar had handed over one of the weapon of offence to Om Parkash. No recovery has been made from Bhanwar Lal. Recoveries effected from Sandeep Kumar and Sunil Kumar do not link them with the incident. No recovery has been made from Dimpi. Though no recovery has been made from Om Parkash but Ram Kumar had handed over the weapon to Om Parkash. Recoveries were effected on the basis of statement made by Ram Kumar vide Ex.P60 dated 10.12.2007. He had produced one weapon of his own and another was recovered at his instance from the quilt from the second floor of the house. Thus the prosecution has only proved the case against the appellant Ram Kumar as well as Om Parkash. Om Parkash and Ram Kumar were bearing grudge against Raj Kumar. Raj Kumar was facing trial along with brother for committing murder of son of Om Parkash. Om Parkash and Ram Kumar are real brothers.

20. Their Lordships of Supreme Court in Jalpat Rai and others vs. State of Haryana, 2011(7) RCR (Criminal) 2228 have held that due to previous enmity and simmering feelings, complainant may falsely implicate the entire family although one or only few members of that family involved in crime. Their Lordships have held as under:-

"39. PW-1, PW-4 and PW-8 are not only much interested in the prosecution case but they are inimically disposed towards the accused party as well. The deep rooted enmity and serious disputes between PW-1 on the one hand and A-1 and his sons on the other and their unflinching interest in the prosecution case necessitate that the evidence of PW-1, PW-4 and PW-8 is considered with care and caution. To find out intrinsic worth of these witnesses, it is appropriate to test their trustworthiness and credibility in light of the collateral and surrounding circumstances as well as the probabilities and in conjunction with all other facts brought out on record. There cannot be a rule of universal application that if the

eyewitnesses to the incident are interested in prosecution case and/or are disposed inimically towards the accused persons, there should be corroboration to their evidence. The evidence of eye-witnesses, irrespective of their interestedness, kinship, standing or enmity with the accused, if found credible and of such a caliber as to be regarded as wholly reliable could be sufficient and enough to bring home the guilt of the accused. But it is reality in life, albeit unfortunate and sad, that human failing tends to exaggerate, over-implicate and distort the true version against the person/s with whom there is rivalry, hostility and enmity. Cases are not unknown where entire family is roped in due to enmity and simmering feelings although one or only few members of that family may be involved in the crime. In the circumstances of the present case, to obviate any chance of false implication due to enmity of the complainant party with the accused party and the interestedness of PW-1, PW-4 and PW-8 in the prosecution case, it is prudent to look for corroboration of their evidence by medical/ballistic evidence and seek adequate assurance from the collateral and surrounding circumstances before acting on their testimony. The lack of corroboration from medical and ballistic evidence and the circumstances brought out on record may ultimately persuade that in fact their evidence cannot be safely acted upon."

21. The incident was witnessed by PW-1 Malti Devi and PW-2 Anita. They were travelling in the same jeep driven by Raj Kumar. They had not intervened due to fear. Thus no adverse inference is to be drawn against them. The prosecution has proved the case against Om Parkash and Ram Kumar on the basis of eye witness account of PW-1 Malti Devi and PW-2 Anita and duly corroborated by medical evidence.

22. Accordingly, Criminal Appeal no.CRA-D-828-DB-2018 is partly allowed. Sandeep Kumar and Sunil Kumar sons of Ram Kumar are acquitted. Appellant Sandeep Kumar and Ram Kumar on bail. Bail bonds and surety bonds of appellant Sandeep Kumar are discharged. Appellant Sunil Kumar in custody. Appellant Sunil Kumar be released. Registry is directed to prepare release warrant of appellant Sunil Kumar. The conviction and sentence of Ram Kumar is upheld. Appellant Ram Kumar is ordered to be taken in custody to suffer the remaining imprisonment.

23. Criminal Appeal No.CRA-D-817-DB-2012 is allowed. Appellant Dimpi @ Rimpi @ Gurpreet is acquitted. He is on bail. The bail bonds and surety bonds of appellant Dimpi @ Rimpi @ Gurpreet are discharged.

24. Criminal Appeal No.CRA-D-898-DB-2012 is partly allowed. Bhanwar Lal is acquitted. He is on bail. The bail bonds and surety bonds of appellant Bhanwar Lal are discharged. The conviction and sentence of appellant Om Parkash is upheld. He is already in custody.