
(1997) 01 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 306-DB of 1994

Vinod Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 21-01-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 303, 304

Citation : (1997) CriLJ 2893 : (1997) 1 RCR(Criminal) 617

Hon'ble Judges : M.L. Koul, J; Amarjeet Chaudhary, J

Bench : Division Bench

Advocate : R.S. Cheema and Pankaj Bhardwaj, for the Appellant; N.K. Sanghi, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

M.L. Koul, J.—The appellant Vinod Kumar (hereinafter the accused) held guilty of an offence u/s 302, of Indian Penal Code and sentenced to imprisonment for life has preferred this appeal for setting aside the judgment and order of conviction and sentence recorded against him by the learned Additional Sessions Judge, Kaithal dated 4-5-1994.

2. The brief facts of the case giving rise to this appeal are that one Ramarand Sarswati, Pujari of Hanuman temple in village Tcontha was done away by the accused on 22-5-1992 at 5.15 a.m. in presence of the complainant Ram Sarup PW 1 and another prosecution witness-Sunil Kumar who afterwards was given up by the prosecution. According to the complainant the accused inflicted knife blow on the left side of the abdomen of the deceased (hereinafter called the Baba) saying that he would teach him a lesson for having levelled the allegations of theft against him earlier and the said Baba fell down and part of his intestines came out. The accused ran away from the spot with the weapon of offence by jumping over a wall of the temple. The said Baba was made to lie by the complainant at a place in front of his room in the temple and the succumbed to the injuries.

3. The motive behind the murder was that the accused had taken away the cash of the temple from the said Baba and he was chased by Kam Singh and others. The cash was recovered from the accused and returned to Baba.

4. After the occurrence the complainant went to the Police Station and kept the dead body in the charge of Sunil Kumar and lodged the report with the police at 7.15 a.m. Thereupon the police swung into action and on completion of the investigation the accused was challenged and charge sheeted.

5. The learned trial Court on the eye-witness account of the complainant PW 1 corroborated from the medical evidence of PW 6 Dr. A. K. Leel was satisfied that the injury sustained by the Baba caused by the accused with knife Hx.P.7 (the weapon of offence recovered on his disclosure statement) was sufficient to cause death of Baba in the ordinary course of nature so much so that some part of his intestines were protruding out. Thus he concluded that the accused committed the murder of the Baba and on conviction, sentenced him to imprisonment for life.

6. The judgment of the trial Court was firstly assailed by Mr. Cheema learned counsel for the accused on the ground that the prosecution failed to establish the motive against the accused for the commission of the crime. According to him, a vague allegation was made against the accused that a few months before the commission of the crime he had stolen some cash in the amount of Rs. 7807- belonging to the temple which was recovered from him and returned to Baba. According to him, such a fact was not established for the matter was not reported to the police. Also PW 4 examined in this regard stated that a Panchayat on that day was held in the Haveli of Sarpanch Bhulla Ram and the father of the accused had undertaken to pay the amount.

7. In any manner the mode of return of money to the Baba is not relevant but the fact remains that a theft, had taken place and the accused on his heels was over-powered by PW 4 and one Sadhu Ram and the money was recovered from him by these two people and others who had collected there. The witness nowhere stated that the cash was returned there and then. May be, money had been returned after a meeting of the headmen in the village was convened who persuaded the father of the accused to return the money. There is sufficient proof available on the file that such an incident took place and there is no reason to disbelieve the independent witness PW 4 to say that a theft had taken place on the temple premises and an amount of about Rs. 800/- stolen by the accused was returned to the Baba. In this way the motive is established.

8. However, it is a beaten point of law that where there is sufficient evidence convincingly led by the prosecution which is not open to any reasonable doubt the conviction held on that evidence is well based even if the motive is loosely pleaded. In any case it is not a sine-qua-non for the success of the prosecution that the motive must be proved. The same view has been taken by the Apex Court in *Kediya Vanaspati Pvt. Ltd. and Others Vs. The State of Andhra Pradesh*, . That being so it can easily be said that the accused was bitter against

the Baba for having levelled allegation of theft against him and the same possibly became the basis for commission of his murder by the accused. The view taken by the trial Court on the cogent evidence is held to be correct that the accused had the motive to commit the crime.

9. The second argument raised by the defence counsel is that it was a blind murder having taken place in the early hours of the night on the intervening night of 21st and 22nd of May, 1992. The prosecution in order to overcome the delay in lodging the report with the police introduced a case against the accused that he committed the murder of the Baba in presence of the complainant PW 1 at 5.15 a.m. on 22-5-1992 when the other witness Sunil Kumar had witnessed it. The said witness Sunil Kumar was given up because he did not support the prosecution story. If examined he would have spoken against the prosecution. He elucidated his argument to say that the place of occurrence is not mentioned in the site plan and neither any blood has been recovered from the spot. According to him if the accused struck the Baba with a knife and injury caused was so deep that even the intestines came out but no blood spotted clay or the clothes have been seized on the spot.

10. Firstly the said argument advanced on behalf of the accused that he was implicated in the crime does not appeal the judicial conscience of the Court on the ground that the complainant who was present on the spot witnessed the occurrence in the broad day light. He is a village Post-master and thoroughly withstood the cross-examination conducted on him by the defence. He proved to be a man of impeccable character to narrate the incident correctly. He deposed that the accused hit the Baba from the front side holding the knife horizontally. According to the witness only one blow was given and little blood came out and the intestines also protruded out. He did not see if any blood fell down on the ground. They lifted the Baba and put him on the Dari in front of his room and the blood was not allowed to fall on the ground. The witness does not bear any animosity or ill-will towards the accused. He in no way was interested in the affairs of the temple management. Neither the Baba who was the priest of the temple was in any manner related to him. He (the witness) was a usual visitor to the temple to pay his obeisance to the Hanumanji. He never interfered in the affairs of the Baba. He never enquired from the Baba whether he was preparing the meals himself or not. His statement does not suffer from any serious contradiction where from in any manner it can be held that he was a chance witness either.

11. The second argument that the spot where the victim was attacked is not shown in the map is also baseless. On the perusal of the map Ex.PD it is vividly found that mark "D" is the place near the boundary wall where the Baba was attacked by the accused with a knife and an injury was caused on his abdomen which resulted into his death. Soon after he ran away after crossing over the wall. Accordingly in Ex.PK Mark "D" is the place where the accused after inflicting the injury upon the deceased ran away from the spot by jumping over the wall.

There is no ambiguity about the commission of the crime by the accused especially when at a very short distance PW 1 found him inflicting knife injury on the abdomen of the Baba who was facing towards the accused. The accused was holding the knife horizontally in his hand as a result of which serious injury of the dimension of 7 cm x .5cm to 3.5 cm was sustained by the deceased which resulted into his instantaneous death. The argument that no blood sprinkled clay has been seized is of no avail for the fact that the complainant has vividly described that the Baba fell down on the earth and his stomach was facing the sky. He immediately with the help of won over witness Sunil Kumar made him to lie over a Dari but he soon died. The complainant did not waste any time in making the report with the police and the copy of the same as a special report was sent to the Magistrate who received it at 10.55 a.m. In no manner there was delay in lodging the report with the police. The police after the arrest of the accused seized the weapon of offence Ex.P.7 which was recovered in presence of the complainant.

12. There is direct corroboration to the evidence of the complainant from the medical evidence as well. Dr. A. K. Leel PW 6 has categorically stated that the deceased had sustained a spindle shape wound size 7 cm x .5cm to 3.5 cm out of which part of small intestine was protruding out. The stomach was containing digested mixed matter of food and it was healthy. The doctor was of the opinion that the time between the injury and death was few hours and between death and post-mortem was 12 hours.

13. Although an effort was made by the learned counsel for the accused to show that the rigor mortis had vanished from the body of the deceased when post-mortem was conducted by the doctor but on the careful perusal of post-mortem report Ex.PL and the statement of the doctor it is found that the rigor mortis were there but no opinion had been expressed by the doctor as to whether the gases had developed in the body of the Baba or not. It is well said and medical evidence has confirmed it that rigor mortis start developing from 3 to 6 hours after the death and become complete in 12 hours. As the rigor mortis had not receded from the body of the deceased at the time the post mortem was conducted the argument of the learned counselor the accused that the death had not taken place at 5.15 a.m. rather in the early hours of the night is baseless and not established by any evidence on the record. This argument also gets assailed from the medical evidence itself when the doctor says that the stomach was containing digested mixed matter of food and the food was not undigested. This also led credence to the. prosecution story that the death had taken place in the early hours of the morning i .e. at 5.15 a.m. when it was vividly seen by the complainant that the deceased was attacked with a knife by the accused and he gave him a serious blow on his abdomen which caused an injury of the dimension of 7 cm x .5cm to 3.5 cm on his body. This injury in the ordinary course as per the opinion of the doctor was sufficient to cause death of the deceased. The death was due to shock and haemorrhage as a result of abdominal injury which was anti-mortem in nature and caused by pointed sharp

edged weapon. In the present case the weapon used which is knife Ex.P. 7 is a pointed sharp weapon although as per the doctor it was blunt from one side. Such a weapon of offence had caused the injury on the body of the deceased which resulted into his death.

14. An argument was advanced by the teamed counsel for the caused that infliction of single injury resulting into death of deceased shall necessarily reduce the offence of culpable homicide and he can be convicted for an offence u/s 304, I.P.C. To overawe this argument I feel motivated to refer to 1995 Supreme Court Cases (Cri.) 231, in which their lordships of the Apex Court have clearly held that where the accused intended to cause the particular injury on the chest of the deceased which necessarily proved fatal, the clause 3rdly of Section 300 I.P.C. is clearly attracted and the accused is liable in such a case to be sentenced for an offence u/s 303, I.P.C. In the present case the accused has caused a grievous injury with a knife of the abdomen of the deceased as a result of which 7 cm x .5 cm to 3.5 wound was sustained by the deceased on his body so much so his intestines came out which resulted in to his death. Therefore by no stretch of imagination it can be held that the accused has committed an offence within the a single knife blow on the abdomen of the deceased resulting into his instantaneous death can be declared to be an offence described under clause 3rdly of Section 300 of the I.P.C by the trial Court u/s 302, I.P.C.

15. Hence the appeal fails and is dismissed.