

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Cr1.A. NO.87-DB OF 1999

Date of Decision: 5-4-2006

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Vijay Shankar

.....Appellant

Versus

The State of Haryana

.....Respondent

**Coram: Hon'ble Mr.Justice HS Bedi
Hon'ble Mr.Justice RS Madan**

PRESENT:- Mrs.Satinderpal Kaur, Advocate for the appellant.

Mr.AR Sidhu,Addl.Advocate General,Haryana with
Mr.Rajiv Kwatra,Senior Deputy Advocate General,
Haryana.

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JUDGMENT

The facts relating to this appeal are as under:

Sukhbir Singh-PW10 was working as a teacher whereas his elder brother Satish Kumar (deceased) was a Sub Inspector, with the Delhi Police. The two brothers owned a poultry farm in the area of Village Dujana in which they were also residing. On 16-3-1995, Satish Kumar along with his family members reached the poultry farm at about 8.00 P.M. to celebrate the Holi festival. After the two brothers had discussed some family affairs for some time, Sukhbir Singh returned to the Village at about 2.00 A.M. on the night intervening of 16/17-3-1995 to be with his family, leaving Satish Kumar at the Farm. On the early morning of 17-3-1995,

Sukhbir Singh received a telephone call from his servants, namely, Kishore, that Satish Kumar was lying in an unconscious condition outside the room in a pool of blood. Sukhbir Singh thereupon reached to the farm and carried his injured brother to the Medical College and Hospital, Rohtak and got him admitted there. The information was also sent to the police. On getting information, a police party from police station Jhajjar reached the hospital where they found the injured unfit to make statement. However, the statement Ex.PR of Sukhbir Singh was recorded by the police, on the basis of which the First Information Report Ex.PJ was registered at Police Station, Jhajjar at 3.30 P.M. On 17-3-1995 and the special report had been delivered to the Illaqa Magistrate, Rohtak at 10.00 A.M. on 20-3-1995. In the FIR, Sukhbir Singh revealed that at about 10-11 P.M. on 16-3-1995, the accused Vijay Shanker had arrived at the farm completely drunk and had mis-behaved with him and his brother Satish Kumar and also threatened that he would teach them a lesson. On the registration of the First Information Report, the help of dog squad was also taken. The sniffer dog followed the trail to the Baithak of the accused Vijay Kumar. On the completion of the investigation, the accused was charged for the offence punishable under Sections 302/449 of the Indian Penal Code, to which he pleaded not guilty and claimed trial.

The prosecution in support of its case, examined PW4-Mir Singh, Patwari, Halqa Dujana, who brought the relevant record to prove the existence of the Farm and land of Smt. Vidya and her children including Satish Kumar and Sukhbir Singh (deceased); PW6-Dr. KS Bhatia, who on 17-3-1995 had opined on the application Exhibit PE that Satish Kumar was unfit to make a statement; PW-7-Dr. Ashwani Kumar of the Department of

Pathology, MCH,Rohtak, who deposed that he had examined Satish Kumar on 17-3-1995 and found five injuries on his person, including incised wounds and a diffused swelling on the left side of the neck and hand and had opined after seeing the knife that injuries Nos.1 to 4 could have been caused by the said weapon; PW-9-Dyali Ram,Chowkidar of village Dujana, who stated about the sniffer dog having followed the trail to the Baithak of the accused; PW-10-Sukhbir Singh, the complainant; PW11-Vidhya Rattan, who had on the night intervening 16-3-1995 and 17-3-1995, had gone towards village Budha in search of a lost buffalo and had seen the accused coming out of the room of Satish Kumar at about 2.30 A.M; PW12-Budh Ram, who also deposed to the motive and pointed out that he had went to meet Satish Kumar on the Farm on 16-3-1995 and was a witness to the mis-behaviour of the accused at that time; PW13-Dr.Subhash Juneja who had conducted the post-mortem of the body of Satish Kumar; PW15-Kashmir Singh the recovery witness of the knife, the alleged murder weapon(Exhibit P16) and the blood stained clothes belonging to the accused (Exhibits P17 and P18); PW19-Kishore, the farm servant who deposed that he had seen Satish Kumar lying injured and had conveyed the information in the village; PW20-ASI Dalip Singh is the Investigating Officer of the case. The prosecution case was then put to the accused under Section 313 of the Code of Criminal Procedure and he denied the allegations leveled him and stated that infact the murder could have been caused by Sukhbir Singh-the complainant himself, as relations between the two brothers were strained. He also examined one witness DW1-Sat Bhagwan in his defence.

The learned trial Court examined the matter under four heads; 1.Motive, 2.Last seen 3. Extra judicial Confession and 4.Recovery of

the incriminating articles. The Court observed that though the absence of a motive would not by itself determine the fate of the matter but the motive had infact been proved by the statement of Sukhbir Singh-PW-10. The Court also observed that last seen evidence was also to be believed, as PW11-Vidhya Rattan, who lived 15-16 killas away from the farm of the complainant had gone out in search of his buffalo and while doing so, had come across the accused, who was running away from the place of incident. The Court also observed that the extra judicial confession had been proved by the evidence of PW12-Budh Ram, who had been accompanied by the Numberdar at the time when the confession had been made. The learned Trial Court had also accepted the recoveries made at the instance of the accused in the presence of PW20-Dalip Singh, ASI and PW15-Kashmir Singh. The Court accordingly convicted and the sentence the accused to undergo rigorous imprisonment for life and a fine of Rs.2,000/- and in default of payment of fine to undergo rigorous imprisonment for six months under Section 302 of the Indian Penal Code and to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1000/- for the offence under Section 449 of the Indian Penal Code and in default of payment of fine, to undergo rigorous imprisonment for three months. Both the sentences were, however, ordered to run concurrently. Hence this appeal.

We have heard the learned counsel for the accused-appellant and Mr. Rajiv Kwatra, Sr. Deuty Advocate General, Haryana.

It has been argued by Mrs. Satinderpal Kaur that the FIR had not been recorded at the time shown thereon as the special report had been delivered to the Illaqa Magistrate at Rohtak after a delay of 67 hours.

It has also been pointed out that there is clear suspicion that the murder could have been committed by Sukhbir Singh-complainant on account of the strained relation between the two brothers. She has also pointed out that the last seen evidence could not be believed as there was no reason as to why Vidhya Rattan-PW11, a rich man and the owner of 60 acres of land would go out in search of a buffalo and that in any case, it would not have been possible to identify the appellant from a long distance as was the case of the prosecution. She also pointed out that the extra judicial confession was weak type of evidence and could not be relied upon.

The learned State counsel however argued that the chain of the circumstances against the accused-appellant were clearly spelt out, and no reason for false implication of the accused could be discerned and the fact the dog had followed the track to the Baithak of the accused-appellant proved the case of the prosecution beyond doubt.

We have considered the arguments advanced by the counsel for the parties very minutely.

Concededly, the special report was delivered to the Illaqa Magistrate on 20-3-1995 at 10.00 A.M. although the First Information Report had been registered at 3.30 P.M. on 17-3-1995. We, however, observe that the FIR had been registered under Section 307 of the Code of Criminal Procedure and, it is, therefore, understandable that the Investigating Officer was a little careless in sending the report to the Illaqa Magistrate immediately. We also observe that Satish Kumar deceased had been admitted in the hospital early morning of 17-3-1995 and had expired on 20-3-1995 and it only after becoming alive to the situation that the special report had been despatched to the Illaqa Magistrate. We are,

therefore, of the opinion that merely because the special report had reached the Illaqa Magistrate on 20-3-1995 would not in any manner show that the FIR had not been lodged at the time shown therein.

We have also considered the arguments in respect of the involvement of Sukhbir Singh-complainant as the murderer. It is true that in his statement under Section 313 of the Code of Criminal Procedure, the accused has stated that the possibility of the murder being committed by Sukhbir Singh could not be ruled out, but except for his bald statement, there is no evidence whatsoever on this score. We also observe that no suggestion had been put to any of the prosecution witnesses including PW Kishore that the relationship between the two brothers were strained so as to impel one of them to murder the other. We have also carefully considered the arguments with respect to the last seen evidence. It is true that Vidhya Rattan,PW-11 lived at a distance of 15-16 killas away from the farm owned by the two brothers and that he was the owner of 60 acres of land and a petrol pump. We, however find nothing surprising in his going out in search of his buffalo as that would be the normal behavior of a farmer in the State of Haryana. Moreover as per the statement of Vidhya Rattan, he had identified the accused-appellant from a distance of 25 feet in the moon light and also in the light of an electric bulb, which had been affixed in the courtyard as is clearly evident from the evidence of PW19-Kishore. It has to be borne in mind that there is no suggestion whatsoever that Vidhya Rattan had any enmity or bias against the appellant.

Mr.Kwatra has, however, argued that in addition to this evidence, there are several other circumstances against the appellant i.e. the extra judicial confession and the motive. The trial Court has observed that

the motive for the murder stood proved by the positive evidence of Sukhbir Singh-PW10. It is also clear from the record that Sukhbir Singh and Satish Kumar were financially secure and in addition to being employed (Sukhbir Singh being a teacher and Satish Kumar a Sub Inspector in Delhi Police) whereas the accused-appellant was a mere peon working in the Vaish College,Rohtak. There would thus not be any interaction between the two but at the same time there would be an element of envy or jealousy and in this situation the words uttered by the accused-appellant in the late evening of 16-3-1995 become relevant as he had threatened that as he felt slighted as he had not been allowed to park his bycycle at the farm or to take liquor therein, he would avenge the insult. We are of the opinion that in these circumstances, the motive also stands proved. We also find that the recoveries made from the accused have been proved by the evidence of Dalip Singh and Kashmir Singh.

There is thus no merit in the appeal.

Dismissed.

(H S BEDI)
JUDGE

(R S MADAN)
JUDGE

April 05, 2006

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