

Before Mehtab S. Gill & A. N. Jindal, JJ.

PARKASH,—*Appellant*

Versus

STATE OF HARYANA,—*Respondent*

Criminal Appeal No. 248/DB of 2006

17th September, 2007

Indian, Penal Code, 1860—Ss. 302—Murder—Registration of case against three including appellant—Other 2 accused acquitted—Appellant convicted & sentenced—Contradictions in statements of witnesses—Entries of police register showing appellant in jail on the day of commission of offence—Case of prosecution was that appellant was present at scene of crime—No evidence that appellant could be a part of conspiracy—Prosecution failing to prove charge against appellant—Appeal allowed, appellant acquitted of charge framed against him.

Held, that it is clear from the defence evidence that on the day of the commission of the offence, appellant was lodged in Sub-Jail, Devband, District Saharanpur (U.P.). The prosecution has not made out a case of any conspiracy being hatched on the part of appellant, but made out a case of he being present at the scene of crime and also of having participated in the commission of the offence. The eye witnesses produced by the prosecution have stated that appellant was at the scene of crime on 19th March, 2000. There is no evidence to the effect that appellant could be a part of the conspiracy to eliminate Ajit neither the prosecution pleaded, it, nor they have brought up any evidence before the Court to bring out the conspiracy angle. The prosecution has failed to prove the charge against appellant. Appellant is acquitted of the charge framed against him.

(Para 22 & 24)

R. S. Rai, Senior Advocate with Hemant Bassi, Advocate, *for the appellant.*

Kulvir Narwal, Addl. Advocate General Haryana.

MEHTAB S. GILL, J.

(1) This is an appeal against the judgment dated 20th February, 2006 of the Additional Sessions Judge, Panipat, whereby he convicted Parkash, son of Ujala Singh under Section 302 IPC and sentenced him to undergo life imprisonment. A fine of Rs. 5,000 was also imposed, in default of payment of fine to further undergo R. I. for one year. Parkash was also convicted under Section 25 of the Arms Act and sentenced to undergo R. I. for two years. Both the sentences were ordered to run concurrently.

(2) The learned trial acquitted Ramesh *alias* Durjan, son of Partap and Surinder *alias* Kala son of Sheo Ram, who were arrayed as accused, along with Parkash, son of Ujala Singh.

(3) The case of the prosecution is unfolded by the statement Ex. PN of Karan Singh given to SI Zile Singh at Pul Purani on Jattal Road, Panipat.

(4) Karan Singh stated, that Ajit Singh, son of Dharam Pal was his real uncle's son. Ajit Singh had made a wrestling play ground near the pucca canal on Jattal road. The name of wrestling play ground was Ajit Pahalwan. On 18th March, 2000 in the evening Karan Singh and his real uncle Prem Singh went to the house of Ajit and stayed with him in the night. On 19th March, 2000 in the morning, Ajit took them along to show his wrestling play ground. At about 7.45 a.m., Surender *alias* Kala, Durjan, son of Partap and Parkash, son of Ujala came there on a motorcycle. Surender and Durjan got hold of Ajit and Parkash fired a shot from a pistol, which hit Ajit near the right ear. Thereafter, all of them ran away on the motorcycle. Earlier, a quarrel had taken place between Ajit and Parkash. Cases were registered on both the sides, which were still pending.

(5) On the basis of this statement, FIR Ex. PN/1 was registered on 19th March, 2000 at 12.30 p.m. and the special report reached the Ilaqa Magistrate, Panipat on the same day at 3.30 p.m.

(6) The prosecution to prove its case brought into the witness box Chatar Singh (Retd.) MHC PW1, Rajesh Kumar, PW2, Dr. S. S. Kalra, PW3 Madan Lal Sethi PW4, Satish Kumar PW5, Lal Chand, PW6, Constable Sat Narain, PW7, Prithvi Raj, ASI, PW8, Prem, PW9,

Karan Singh, PW10, HC, Ram Karan, PW11, Constable Dharambir PW12, Inspector Kali Ram Sandhu, PW13, Ram Kumar, PW14, Dalbir Singh, PW15, Zila Singh, PW16, ASI, Ram Phal, PW17, Rajesh Kumar SI. PW18, DSP Vinod Kumar, PW19, HC Ram Kumar, PW20 and Constable Raj Pal Singh, PW21.

(7) The defence to prove the alibi of appellant Parkash also examined Manoj Kumar, Jail Warder DW1, Jaidrath Criminal Ahlmad DW2, Ram Singh, Deputy Jailor DW3, Constable Yangpal DW4 and SI Chattar Singh DW5.

(8) State has not filed any appeal against the acquittal of Ramesh *alias* Durjan and Surinder *alias* Kala. Now we are left with only the appeal of Parkash, son of Ujala Singh.

(9) Learned counsel for the appellant has argued, that going through the statements of Lal Chand, PW6, Prem PW9 and Karan Singh PW10, the eye witnesses to the occurrence, material contradictions and improvements could be found. Lal Chand PW6 did not support the prosecution case and was declared hostile and after being declared hostile, nothing could be extracted from this witness to point to the guilt of appellant Parkash. Prem PW9 has stated in his examination-in-chief, that the number of assailants were 5/6 in number. The one who fired at deceased Ajit were Parkash, Durjan and Surinder *alias* Kala. In his statement on oath, when he (PW9) was recalled for cross-examination, he stated that there were three assailants and the Court in its observations stated, that the witness was not giving a specific answer to the questions inspite of repeated directions by the Court. He at that time stated, that appellant Parkash fired 3/4 shots and later on stated, that appellant Parkash indiscriminately fired upon Ajit and five shots hit him.

(10) Similarly, Karan Singh PW10 has stated, that two more motorcycles had come, which were ridden by six persons. He has stated in his cross-examination, that the other accused i.e. Parkash and Ramesh did not fire any shot. Meaning thereby, that shots were fired by Surinder *alias* Kala, the acquitted accused. He (PW10) has further stated, that he could not tell the type of weapon used by the assailants. He has also stated, that deceased is the son of his real uncle, namely Dharam Pal.

(11) Learned counsel for the appellant has further argued, that the prosecution version, that appellant Parkash was at the scene of crime and was the one who fired at Ajit, falls flat after going through the statements of defence witnesses. Manoj Kumar DW1, Jail Warder, Devband Jail, District Saharanpur (U.P.) has stated, that on 12th March, 2000 Parkash, son of Ujala was lodged in Sub-Jail in pursuance of the order of the S.D.M., Devband. He was booked under Sections 151/107/116 Cr. P.C., Police Station, Rampur. He was produced on 23rd March, 2000 before the S.D.M. and was released on bail as per the order of the S.D.M., Devband. The name of Parkash is mentioned at Sr. No. 323. He (DW1) has categorically stated, that appellant Parkash remained in Sub-Jail, Devband from 12th March, 2000 to 22nd March, 2000. Similarly, Jaidarath, DW2, Criminal Ahlmad of the Court of Sub-Divisional Judicial Magistrate, Devband District Saharanpur has stated, that in the register of the S.D.M. at Serial No. 194, a case under Sections 107/116 Cr. P.C. of P. S. Rampur has been registered against Parkash, son of Ujala Singh. The cases were initiated on 12th March, 2000 and were decided on 29th April, 2000. Ram Singh Sagar DW3, Deputy Jailor has stated, that on 12th March, 2000 he was posted as Deputy Jailor in Sub-Jail, Devband, District Saharanpur (U.P.) and Parkash was in jail at that time.

(12) Learned counsel for the State has argued, that FIR Ex. PN/1, which was registered on 19th March, 2000 at 12.30 p.m., is prompt. Name of appellant Parkash is mentioned, weapon of offence is mentioned and presence of the eye witnesses is also given. The special report reached the Ilaqa Magistrate, Panipat on the same day at 3.30 p.m. Though Lal Chand PW6 has been declared hostile, but the testimony of Prem PW9 and Karan Singh PW10 inspires confidence and their version is truthful. The defence witnesses and as per the register, which they have brought clearly shows that appellant marked himself present in Devband Jail, District Saharanpur (U.P.), but in fact was out on 19th March, 2000 and after committing the murder of Ajit, then when back to the jail.

(13) We have heard the learned counsel for the parties and perused the record with their assistance.

(14) The testimony of Lal Chand, PW6, Prem PW9 and Karan Singh, PW10, the three eye witnesses to the occurrence is inconsistent. There are glaring contradictions, which could not be reconciled by the prosecution. Lal Chand PW6 did not support the case of the prosecution. He was declared hostile, but no worthwhile cross-examination was done to shatter his testimony. Prem PW9 in his statement before the Court in examination-in-chief has stated, that the total number of assailants were 5 or 6 in number. In FIR Ex. PN/1, the names of only three assailants have been given i.e. appellant Parkash and the two acquitted accused Surinder *alias* Kala and Durjan. In the FIR, it is mentioned that the assailants came on a motorcycle, but if they were 5/6 in number, as mentioned in his statement before the Court, they could not have come on one motorcycle. When this witness was recalled for cross-examination on another date, he then stated, that there were assailants. He changed his version again. The learned trial Court was compelled to make the following observations “The witness is not giving specific answers to the questions despite repeated directions being given by the Court”. It is not once the learned trial Court has made these observations, but after when a few more questions were put to him again, the learned trial Court was constrained to note, that the witness is not giving answers to the questions specifically, despite being asked repeatedly. It clearly shows, that this witness was suppressing the truth.

(15) Similarly, Karan Singh PW10, the propounder of the FIR, has stated in his examination-in-chief, that the assailants were six in number and they came on two motorcycles. The statement of this witness in FIR Ex. PN/1 is that the assailants, which were three in number, namely appellant Parkash, Surinder and Durjan came on one motorcycle. This witness has admitted, that deceased Ajit is his real uncle's son. He (PW10) has stated in his cross-examination, that the other accused, i.e. Parkash and Ramesh did not fire any shot. Meaning thereby, that shots were fired by acquitted accused Surinder *alias* Kala. When he was recalled for further examination, he then stated, that appellant Parkash was holding a revolver and he fired 2/3 shots towards Ajit. The contradictions in the statements of these witnesses i.e. Lal Chand PW6 (declared hostile), Prem PW9 and Karan Singh PW10 are difficult to reconcile. They instead of supporting the case of the prosecution, have confused the matter.

(16) Appellant Parkash took a specific plea, that on the date of the occurrence, he was lodged in Devband Jail, District Saharanpur (U.P.). To prove his case, he brought into the witness box Manoj Kumar, Jail Warder DW1, Jaidarath DW2, Criminal Ahlmad of the Court of Sub-Divisional Judicial Magistrate, Devband, Ram Singh Sagar DW4, Deputy Jailor, Yangpal, Constable of Police Station Rampur DW4 and Chattar Singh, Sub-Inspector (retd.) DW5. who at that time was posted as Sub-Inspector in Police Station, Rampur, District Saharanpur (U.P.).

(17) Manoj Kumar DW1 has stated, that on 12th March, 2000 Parkash son of Ujala, resident of Village Bodhwala, Police Station Sadar Jind (Haryana) was lodged in the Sub-Jail in pursuance of the order of S.D.M., Devband. They (appellant Parkash and Ramesh) were produced before the S.D.M. on 23rd March, 2000. The entry relating to appellant being in jail was made in the register at Serial No. 323. The names of their wives and children are also given. Their thumb impressions were obtained at the time of entering the jail and also at the time of their release. Appellant Parkash remained in Sub-Jail, Devband from 12th March, 2000 to 22nd March, 2000.

(18) Similarly, Jaidarath, Criminal Ahlmad of the Court of Sub-Divisional Judicial Magistrate, Devband, District Saharanpur has stated, that a case under Sections 107/116 Cr. P.C. was filed at Police Station Rampur, District Saharanpur. The name of appellant Parkash is mentioned at Sr. No. 194. The case was filed on 12th March, 2000 and decided on 29th April, 2000, as per order Ex. DE.

(19) Similarly, Ram Singh Sagar, Deputy Jailor DW3, now posted at Kishore Sadan, Bareilly has stated that he was posted at Deputy Jailor in Sub-Jail, Devband, District Saharanpur (U.P.). Appellant Parkash son of Ujala Singh, resident of Village Bohatwala, Police Station Sadar Jind was lodged in the Sub-Jail. The entry relating to appellant Parkash was made in register No. 12. Appellant Parkash was released from the jail on 22nd March, 2000. He remained in jail from 12th March, 2000 to 22nd March, 2000.

(20) Yangpal Constable DW4 has stated, that he has brought the Daily Diary register of Police Station, Rampur for the period from 2nd March, 2000 to 12th March, 2000. S.I. Garish Chander Tyagi along with H.C. Vir Singh arrived in the Police Station after arresting appellant Parkash son of Ujala Singh. Copy of entry is Ex. DF.

(21) Chattar Singh, Sub-Inspector (retd.) DW5 has stated, that on 12th March, 2000 appellant Parkash was produced before him and he was taken in custody. Entry was made in Roznamcha, which is Ex. DF.

(22) It is clear from the defence evidence, that on the day of the commission of the offence, appellant Parkash was lodged in Sub-Jail, Devband, District Saharanpur (U.P.). The prosecution has not made out a case of any conspiracy being hatched on the part of appellant Parkash, but made out a case of he being present at the scene of crime and also of having participated in the commission of the offence. The eye witnesses produced by the prosecution have stated, that appellant Parkash was at the scene of crime on 19th March, 2000. There is no evidence to the effect that appellant Parkash could be a part of the conspiracy to eliminate Ajit, neither the prosecution pleaded it, nor they have brought up any evidence before the Court to bring out conspiracy angle.

(23) The learned trial Court in his zimni orders dated 8th August, 2000, 11th August, 2000, 12th August, 2000, 24th August, 2000 and 20th February, 2003 has very meticulously gone through the jail record at the time when bail was to be granted

(24) With the above observations and discussions, we do not have any hesitation in coming to the conclusion that the prosecution has failed to prove charge against appellant. Appellant is acquitted of the charge framed against him.

(25) Appeal is allowed. His conviction and sentence is set aside. If in custody, he be released forthwith if not wanted in any other case.

R.N.R.