

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. D- 403-DB of 1999 (O&M)

Date of decision : 09.03.2015

State of HaryanaAppellant

Versus

Bansi and anotherRespondents

Criminal Revision No. 805 of 1999 (O&M)

SubhashAppellant

Versus

Bansi and anotherRespondents

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Vivek Saini, AAG, Haryana.

Mr. Gautam Kaile, Advocate for
Mr. Ashwani Kumar Antil, Advocate
for the respondents.

LISA GILL, J.

State of Punjab has preferred CRA No. D-403-DB of 1999 impugning judgment dated 19.03.1999 whereby respondents – Bansi and Dharambir have been acquitted of the charges under Sections 302/34 IPC.

Criminal Revision No. 805 of 1999 has been filed by the complainant - Subhash impugning the above mentioned judgment.

Both the cases are taken up together for hearing.

FIR No. 92 dated 29.05.1998 was registered under Sections 302/34 IPC against respondents Bansi and Dharambir as well as Dalbir. As per the FIR registered on the basis of statement of Subhash son of Jai Bhagwan it was informed that complainant's Aunt (Tai) namely Bhateri wife of Shishan (mother of accused Dharambir and Dalbir) had been murdered on an earlier occasion by the complainant Subhash, his brother Suresh and their father Jai Bhagwan. All three of them were arrested by the police and prosecuted for her murder. On a settlement arrived at on the intervention of respectables, all three of them were acquitted of the charges against them. However, Shishan's family could not forgive them for the murder of Bhateri.

On the fateful day i.e. 29.05.1998, Jai Bhagwan (deceased) father of complainant Subhash, had gone to the village pond with buffaloes. Subhash - complainant was already there in the fields to answer the call of nature. He was heading towards the village pond after easing himself that he spotted Dharambir armed with *Kulhari* and Bansi as well as Dalbir hurling filthy abuses at his father. Dalbir exhorted the present respondents to teach Jai Bhagwan a lesson for killing their mother. Jai Bhagwan made an attempt to flee and asked his son to do the same but he was intercepted by the accused. Bansi caught him by his arms. Dalbir snatched Jai Bhagwan's *lathi* and Dharambir inflicted *kulhari* blow on the left ear of Jai Bhagwan. Jai Bhagwan fell down and Dharambir thereafter attacked him with his *kulhari* whereas Dalbir inflicted *lathi*

blows as he laid on the ground. Accused fled from the scene with their respective weapons. Watchman/Chowkidar of the village namely Hariya and complainant's brother Suresh arrived at the spot and saw his father breathing his last. They were left with dead body and complainant left for the town to Panipat to inform his maternal uncle, who was not found present. He returned to lodge the report with police.

Present FIR No. 92 (Ex. PE) was thereafter registered. SI Lal Singh proceeded with the investigation. As per the Post Mortem Report (Ex. PF) cause of death was recorded as hemorrhage and hypovolaemic shock caused by injuries which were ante mortem in nature and were sufficient to cause death in normal course. Co-accused Dalbir was declared to be a proclaimed offender. Present appellants were proceeded against. Charges were framed on 27.08.1998 to which they pleaded innocence and claimed trial.

As many as 9 witnesses were examined by the prosecution. Statements of the accused were recorded under Section 313 Cr.P.C. wherein they pleaded false implication. They examined Mahinder Singh (DW1) and closed their evidence.

Learned trial Court on appreciation of evidence acquitted the respondents—accused of the charges against them vide impugned judgment.

Learned counsel for the State as well as complainant vehemently argued that the prosecution has proved its case beyond reasonable doubt and the trial Court has grossly erred in acquitting

the said respondents. Complainant–Subhash has given an eyewitness graphic account of the incident unfolding the events which led to the death of his father Jai Bhagwan. Non-examination of independent witness/witnesses cannot be fatal to the prosecution case. Subhash (PW6) and Suresh (PW7) though sons of the deceased are the most natural and probable witnesses. Medical evidence on record corroborates their version. Therefore, the respondents should be convicted and sentenced for the offences punishable under Section 302 read with Section 34 IPC.

It is further submitted that the co-accused Dalbir who was tried later has been convicted by the trial Court vide judgment dated 08.07.2002 and sentenced to undergo life imprisonment vide order dated 11.07.2002. Therefore, the present respondents should also be convicted.

Learned counsel for the respondents on the other hand urges that the trial Court has rightly acquitted them giving benefit of doubt. Prosecution has miserably failed to prove its case beyond reasonable doubt. There is an unexplained delay in the lodging of FIR. No independent witness has been examined to prove the prosecution case. There are material discrepancies in the statements of the witnesses. Thus, he prays for upholding the impugned judgment.

We have heard learned counsel for the parties and gone through the record. Alleged incident is stated to have occurred at about 7 a.m. on 29.05.1998. FIR , in this case, was registered at 3.15

p.m. on 29.05.1998 Special report was received at 6.15 p.m. on the same day. Statement of complainant Subhash was recorded at 2.00 p.m. by SI/SHO Lal Singh. Explanation for the delay given by the complainant is that he had immediately left for Panipat to inform his maternal uncle. When he did not find his uncle at Panipat, he returned and thereafter reported the matter. It is highly improbable that the complainant, who is a tailor and his brother Suresh, who is running general merchandise business would not have made immediate arrangements to seek medical aid for their father or report the matter to the police. Normal and probable human instinct would be to rush for obtaining medical assistance for their father.

Furthermore, there is no explanation for the special report being received at 6.15 p.m. i.e. three hours after lodging of the FIR. Distance between Police Station Baroda – and the residence of Judicial Magistrate, Gohana is proved to be few kilometers which cannot take three hours to cover by any stretch of imagination. The place of occurrence is also close to the police station, therefore, delay in lodging of FIR in the present case does cast a doubt on the veracity of the prosecution version.

Long standing acrimony between the parties is admitted and proved on record. Therefore, FIR being a result of deliberation and consultation instead of being a natural and instant version cannot be ruled out.

Another suspicious circumstance is the non-intervention by the complainant when the deceased was being attacked. It is

unbelievable that a young boy would not intervene on seeing his father being assaulted, being done to death and prefer to be a mute spectator. Conduct of the complainant/witness is highly improbable and unnatural. His presence at the spot is rendered doubtful.

It is relevant to note that material independent witnesses namely Watchman Hariya, Jai Ram Sarpanch and Roshan Vice Sarpanch have not been examined by the prosecution. Alleged incident is stated to have taken place in broad day light at a spot surrounded by residential houses, village, school and a temple, still no independent witness has been examined to corroborate the prosecution version.

Medical evidence on record also does not corroborate the prosecution version. Two injuries were detected on the deceased as per the post mortem report. Incised wound measuring 12 cm x 8 cm was detected over the left side of the neck of the deceased just behind the ear and below the hair line posteriorly going deep upto the vertebral column. Second injury in the form of contusion was found at a left side of temporo mandibular region 6 cm x 2 cm. There was dislocation of the mandible and the lower jaw. Therefore, the medical evidence does not corroborate the ocular version that the accused persons had given axe and lathi blows with their respective weapons after Jai Bhagwan had fallen.

Argument of learned counsel for the State and the complainant that conviction of the accused reasons is possible on the evidence available on record, is untenable. It is settled position of

law that until and unless there are very strong, substantial and compelling reasons the appellate Court would not disturb the findings of acquittal recorded by the trial Court merely on the ground that another reasonable conclusion may be possible on the basis of the evidence on record.

We find no perversity or illegality in the impugned judgment. There is no ground to set aside the acquittal of the respondents.

Consequently, CRA No. D-403-DB of 1999 as well as Criminal Revision No. 805 of 1999 are dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

March 09, 2015
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