

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA D-No. 1022-DB of 2009 (O&M)

Date of decision : July 09, 2015

Tehal Singh

.....Appellant

Versus

State of Haryana

....Respondent

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

Present: Mr. Ashit Malik, Advocate
for the appellant.

M. Vishal Garg, Addl. AG. Haryana

LISA GILL, J.

Present appeal has been preferred by the appellant –
Tehal Singh impugning the judgment and order dated 03.11.2009 and
05.11.2009 respectively passed by learned Additional Sessions
Judge, Ambala whereby appellant has been convicted and sentenced
to undergo rigorous imprisonment for life for the offence punishable
under Sections 302 IPC and rigorous imprisonment for a period of
four years for the offence punishable under Section 392 IPC.

FIR No. 72 dated 14.09.2004 was registered under
Sections 302, 201, 392, 34 IPC and 25 of Arms Act at Police Station
Naggal on the statement of PW4 Karam Singh who informed the
police authorities about an unidentified body of a young male lying

near his agricultural fields. He revealed that he was going from his residence to his fields as usual. He met his cousin brother Jarnail Singh on the way and they both proceeded on the road leading towards Sonta. When they reached near double pole of electricity on the road at about 9.00 a.m. adjacent to their paddy fields, they saw dead body of a young boy approximately 24/25 years, 5'7" in height having wheatish complexion. They were not aware of his name or address. He was wearing a red shirt, yellow and white lines, a red vest and a black trouser. There was a shoe on his right foot with socks. Left shoe was lying near the dead body. Wrist watch golden in colour was also lying there.

On the statement, Ex. PB, by Karam Singh, abovesaid FIR was registered under Sections 302, 201 IPC. Telephonic message was given to Police Station Naggal and senior police officials informed. Forensic team was summoned at the site. Photographs of the deceased were also taken. Deputy Superintendent of Police, Anil Kumar reached the spot and verified the facts. Rough site plan Ex. PRR was prepared. Wrist watch maxima golden, one challan chit on which the address of the deceased was written, a purse containing two currency notes of ₹20 each and one of ₹10/- and a shoe Lee Parke were taken in possession vide memo Ex. PL after converting in parcels and were sealed with seal SS.

On that very day, i.e. 14.09.2004, Sher Singh son of Sharvan Singh (father of the deceased) and other family members reached the site and identified the dead body as that of Sher Singh's

son Sukhdeep Singh. It was revealed that Sukhdeep Singh – deceased was employed as a driver of a Quallis bearing registration No. HR-38-FT/8778 owned by Tirlochan Singh son of Jagir Singh PW21. Thereafter, application Ex. PE was submitted for conducting post mortem of the deceased. Post mortem was conducted by PW24 Dr. Sunanda Jindal and Dr. Kailash Chaudhary. Following injuries were found present on the deceased:-

“ 1.5 c.m. x 1.5 c.m. wound present over the sternum at the level of and in between the nipples, 9 c.m. from right and 11 c.m. from left nipple. Margins ragged and inverted, dark black in colour, blackning of adjacent skin for 0.25 c.m. on all sides. Tract of the wound was dissected which was directed through the sternum towards the right side of lung perforating the anteromedial aspect of the middle lobe passing through and through leaving a hole. Embedded in the posterior thoracic wall was the bullet which was taken out and sealed in a dry vial bearing one seal and handed over to the police. Shirt and banyan show corresponding tear marks and were blood stained.”

Cause of death was hemorrhage and shock due to injuries described caused by fire arm. All injuries were ante mortem and sufficient to cause death in the normal course of nature. Post Mortem Report is Ex. PHH.

It was revealed by Kamaljit Singh PW13 in his statement

Ex. PD dated 14.09.2004 that he used to drive a Tata sumo at Lalru.

His vehicle used to be parked at Lalru taxi stand. He was present at his house on 13.09.2004 due to unavailability of any passenger. His uncle Sher Singh came to his house at about 9.30 p.m. and asked about whereabouts of Sukhdeep Singh. Kamaljit Singh PW13 informed that he had seen Sukhdeep Singh being approached by two young Sikh boys at about 6.30 p.m., wearing white shirt and lower and white *Patka* on their head, for hiring his vehicle for ₹ 750/- for a to and fro journey to Pehowa. His uncle Sher Singh again came to his house in the morning on 14.09.2004 and said that Sukhdeep Singh had not returned. Kamaljit Singh called on Sukhdeep's mobile, which was found to be switched off. Kamaljit Singh alongwith his uncle and one Bahadur Singh reached the taxi stand Lalru in search of Sukhdeep Singh. While they were inquiring, two police officials inquired about Sukhdeep Singh. When they said that he had not returned back since evening of 13.09.2004 after two young sikh boys had taken his vehicle on hire, they were informed by the police officials that dead body of a young boy was found. A slip on which his name and number of the vehicle is written had been recovered from his pocket. On this, Kamaljit Singh and others proceeded to the spot and identified the dead body to be that of Sukhdeep Singh. Accused in this case could not be traced and a report to this effect was presented before the Court.

It was on 14.01.2007 that a message was received from CIA staff, Kurukshetra by Sub Inspector Dharamvir Singh, PW33 informing about the arrest of the appellant Tehal Singh in FIR No. 13 dated 12.01.2007 registered under Sections 379, 411, 420, 467, 468,

471 IPC. It was informed that Tehal Singh apprehended in the said FIR had confessed to the commission of the offence in the present case. On receipt of this information, PW33 Dharamvir alongwith other police officials collected disclosure statement of appellant Tehal Singh (Ex. PEE) in the above noted FIR No. 13 alongwith recovery memo of Qualis Ex. PCC and site plan Ex. PDD from SI Des Raj. Consequent to moving an application before the Court of Illaqa Magistrate, Kurukshetra obtaining permission to join accused Tehal Singh in investigation, PW33 arrested Tehal Singh in the present case. After getting transit remand, he was produced before the Illaqa Magistrate, Ambala. He was medically examined.

On interrogation appellant suffered a disclosure statement Ex. PJ to the effect that Qualis No. HR38-FT-8778 was hired by him alongwith co-accused Nirmal Singh on 13.09.2004 for a sum of ₹750/- for going to Ismailabad-Pehowa side. When they reached near Jansui Head, driver Sukhdeep Singh was taken out from the Qualis and he was shot by the appellant with a country made pistol .315 bore. Dead body was thrown in the ditches near the road. They left the spot alongwith vehicle and mobile phone Nokia 2100.

Tahal Singh further revealed that fake Registration No. HR D 3747 was prepared by him in name of Ram Dass. Original Registration Certificate and number plates were destroyed by him. Appellant had also obtained insurance policy in his name of the said vehicle. He had thrown away the SIM of the deceased's mobile and inserted in his own SIM No. 9416252268 which was subsequently

sold by him for ₹1,000/-. Qualis in question was sold by the appellant to Kirpal Singh @ Pali for ₹1,00,000/-. Kirpal Singh had also been arrested by CIA Staff, Kurukshetra and the vehicle in question had been taken in possession. He had prepared forged RC stamp of RTO, Hisar, forged signatures and had given photostat copy thereof to Kirpal @ Pali. Both the forged registered certificates, insurance, pins of words, forged number plates, country made katta .315 and cartridge and Qualis alongwith the forged number plate had already been recovered by the Kurukshetra police. He could also demarcate the spot where he alongwith co-accused Nirmal Singh had murdered Sukhdeep Singh. He also disclosed that a sum of ₹30,000/- was given to Nirmal Singh to facilitate the commission of crime.

In pursuance to the disclosure statement, place of occurrence was demarcated. Demarcation memo Ex.PK was duly attested by Jarnail Singh and Jagtar Singh.

Accused Nirmal Singh was also arrested. He suffered a disclosure statement Ex.PR about the commission of the said offence and demarcated the spot vide Ex. PS. Qualis was taken on superdari by the actual owner Tirlochan Singh.

Country made pistol, bullet and missed cartridge recovered at the instance of Tehal Singh were sent to the Forensic Science Laboratory, Madhuban for examination.

On completion of investigation, report under Section 173 Cr.P.C. was prepared. Accused claimed trial. Charge was framed under Sections 302, 392 read with Section 34 IPC as well as under

Sections 25/54/59 Arms Act on 30.03.2007.

Prosecution examined as many as thirty five witnesses to prove its case against the accused. While denying incriminating material put to the accused, they pleaded false implication and innocence in their statements under Section 313 Cr.P.C.

Appellant Tehal Singh took a specific stand that daughter of Kirpal Singh was married with son of Balkar Singh, his cousin brother. There is a matrimonial dispute between them and due to this enmity between the families he has been falsely involved in this case. Two witnesses were examined in defence namely Raghbir Singh and Gurmit Singh.

Learned trial Court on appreciation of the evidence on record concluded that prosecution was unable to prove its case against accused Nirmal Singh beyond reasonable doubt. Therefore, extending the benefit of doubt, Nirmal Singh was acquitted of the charges against him. In respect to appellant - Tehal Singh it was held that prosecution has proved its case beyond reasonable doubt, therefore, convicting and sentencing him as detailed above. Hence, the present appeal by Tehal Singh.

Learned counsel for the appellant has vehemently argued that this case rests purely on circumstantial evidence. Prosecution has miserably failed to prove its case beyond reasonable doubt against the appellant. Learned trial Court while disbelieving the evidence of last seen has grossly erred in proceeding to convict the appellant. This is so especially keeping in view the acquittal of the co-accused Nirmal Singh against whom the evidence is common. It

is further argued that the recovery of mobile phone from Gurmukh Singh or the Qualis from Kirpal Singh cannot in any manner connect the appellant with commission of the offence in question. He further submits that Kirpal Singh as well as Tehal Singh have both been acquitted in FIR No. 13.

It is vehemently argued that false implication of the appellant is apparent from the fact that no action was taken by the police for nearly two years since the occurrence. Therefore, there is no question of sustaining the conviction of the appellant. Chain of circumstances, it is urged is not complete which would point to the guilt of the appellant. In these circumstances, it is prayed that conviction and the sentence imposed upon the appellant be set aside and he be acquitted of the charges against him.

Learned counsel for the State while negating the above said arguments submits that the prosecution has led overwhelming evidence to prove the culpability of the appellant. There is sufficient evidence on record to show the guilt of the accused. There is no reason for setting aside the conviction of the appellant. He, thus, prays for dismissal of the appeal.

We have heard learned counsel for the parties and gone through the record with their assistance.

It clearly emerges from the record that the prosecution has succinctly proved its case beyond reasonable doubt against the appellant. Evidence on record unerringly points to no other hypothesis but the guilt of the appellant. No doubt, evidence of last seen has been disbelieved by the trial Court but the fact remains that

at the very outset PW13 Kamaljit Singh in his statement on 14.09.2004 had revealed that two young Sikh boys had taken the vehicle driven by the deceased Sukhdeep Singh on hire for a sum of ₹750/- The police in this case could not make any headway till intimation was received by PW33 Dharamvir regarding registration of FIR No.13 dated 12.01.2007 registered at Police Station, Kurukshetra in which the appellant Tehal Singh was apprehended. It is in this case that a disclosure statement was made by Tehal Singh regarding the commission of offence in the present case.

Undoubtedly Qualis driven by the deceased was recovered from Kirpal Singh in FIR No. 13. A perusal of Ex. DX i.e the judgment rendered in connection with FIR No. 13 dated 12.01.2007, reveals that secret information was received regarding running of Qualis on rent as taxi in a fraudulent manner. Kirpal Singh was apprehended alongwith the said vehicle on the basis of secret information. It thereafter emerged that the said vehicle had been sold by appellant Tehal Singh to Kirpal Singh. It is on the disclosure statement of Tehal Singh it emerged that this Qualis was the same vehicle which had been hired by him from the deceased from the taxi stand, Lalru for going to Peohwa. Fake number plates were found to be used on this vehicle. Engine and chassis numbers were also changed. Records of both the fake number plates recovered were summoned and the vehicles in respect to the fake number plates were found to be registered in the name of other persons.

Testimony of Sohan Lal Goel PW34, who is an Agent with the Oriental Insurance Company further nails the issue qua

Tehal Singh. He has categorically deposed that Tehal Singh had got the said vehicle insured from him on 25.09.2006 in his own name. He has stated that he knew Tehal Singh as he belonged to his native village. In this view of the matter, acquittal of the appellant in FIR No. 13 dated 12.01.2007 is absolutely irrelevant.

Contention of learned counsel for the appellant that recovery of mobile phone cannot link the appellant to the crime is untenable. Doubtlessly factum of the deceased carrying Noika mobile phone was disclosed later during investigation by his real brother Jagtar Singh on 25.11.2006 but the revelation is admittedly prior to the arrest of the appellant on 12.01.2007 in F.I.R. No.13. It has been proved on record that the deceased was indeed using the said mobile phone at the time of his death. Receipt Ex. PG has been proved to show that the light blue nokia mobile phone in question with a rose flower print on its back was purchased by the deceased from Bhagat Sales and Service, Lalru on 28.04.2004 for a sum of ₹4600/-.

PW9 Satish son of Vadhwa Ram, owner of Bhagat Sales and Service, Lalru has testified that the mobile in question was sold by him to the deceased Sukhdeep Singh. On the factum of the deceased carrying mobile phone being brought to the notice of the investigating officer, the same was put on surveillance and one Gurmukh Singh PW11 son of Malookh Singh was discovered to be using mobile phone. Gurmukh Singh PW11 categorically testified that he had purchased the said Nokia mobile phone 2100 bearing IMEI No. 352537001700199 from the appellant Tehal Singh for a sum of

₹1,000/-. There is nothing on record which would point out to any enmity or grudge which PW11 Gurmukh Singh may have against the appellant. Non issuance of a receipt in the present case is not relevant or material. There is no reason whatsoever to disbelieve the testimony of this witness.

These circumstances positively link the appellant to the commission of offence in question. Appellant has been unable to show how he had come into possession of the vehicle in question or the mobile phone. It is for the prosecution to prove its case beyond reasonable doubt but at the same time Section 106 of Indian Evidence Act categorically provides that when any fact is specially within the knowledge of any person, burden to prove that fact is upon him. Appellant has failed on this count.

Similarly acquittal of the co-accused Nirmal Singh can be of no avail to the appellant. It is a settled position of law as held by the Hon'ble Supreme Court in **Israr v. State of U.P., 2005(2) RCR (Criminal) 40** that acquittal of one of the co-accused would not lead to rejection of the entire evidence qua the other accused as well. Other accused can be convicted on the basis of the same evidence if found credible qua them.

In the present case, evidence on record is sufficient to prove the culpability of the appellant. Chain of circumstances in this case is complete in all respects and the evidence on record unequivocally points to no other conclusion or hypothesis except the guilt of the appellant. Appellant has been rightly convicted and sentenced by the trial. No other argument has been raised.

In the facts and circumstances as above we find no merit
in the present appeal.

Consequently, appeal is dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

July 09, 2015
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