

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Appeal No.S-1431-SB of 2008 (O & M)

Date of Decision: September 02, 2015

Raj Kumar

..... APPELLANT

VERSUS

State of Haryana

..... RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

. . .

PRESENT: - Mr. Ashwani Gaur, Advocate, for the appellant.

Mr. Anil Mehta, Deputy Advocate General, Haryana.

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Jaspal Singh, J

Crl. Misc. No.34246 of 2014

Present application shall be dealt with and disposed of at the time of disposal of Crl. Appeal No.S-1402-SB of 2008 filed by the accused – appellant, which is pending disposal.

Copy of the instant application be also tagged with the aforesaid appeal, alongwith copy of the order.

Crl. Appeal No.S-1431-SB of 2008

Appellant – Raj Kumar has preferred the instant appeal against judgment of conviction dated April 28, 2007 and order of sentence dated April 30, 2007 passed by the Additional Sessions Judge, Bhiwani in case FIR No.96 dated June 1, 2001, under Sections 436, 307, 429, 427, 34 IPC and Section 3 of Explosive Substances Act, 1908 (for short, 'Act'), Police Station, Tosham, whereby he has been convicted and sentenced as under:-

“....rigorous imprisonment for seven years and impose a fine of Rs.2000/- (Rs.two thousand only) under Section 307 read with Section 34 Indian Penal Code, rigorous imprisonment for five years and slap a fine of Rs.1000/- (Rs. one thousand only) under Section 436 read with Section 34 Indian Penal Code, rigorous imprisonment for two years under Section 429 read with Section 34 Indian Penal Code and rigorous imprisonment for seven years and impose a fine of Rs.two thousand only under Section 3 Explosive Substances Act, 1908 upon convict. In default of payment of fine, the convict would have to undergo additional rigorous imprisonment for two years. However, all the sentences shall run concurrently.”

As per the prosecution story, on June 1, 2006, complainant Mai Ram alongwith his family members was asleep in his house. He woke up after hearing the noise of falling of some stones due to explosions in the house. He and his son spotted accused – appellant Raj Kumar and his father Mahabir on the back of their house, who having noticing them, fled away. Cracks had appeared in the walls of his house due to explosions. Pellet injuries were caused to the buffalo of one Sajjan Singh. The matter was lodged with the police. During the course of investigation, site plan was sketched.

Accused Raj Kumar was hauled up, whereas his father Mahabir was declared a proclaimed offender. After completion of investigation, accused Raj Kumar was brought to trial.

Having heard learned Public Prosecutor; learned defence counsel; and after going through the material available on file, prima facie offence under Sections 307, 436, 429, 427 read with Section 34 IPC and Section 3 of the Act was made out against accused Raj Kumar and he was charge-sheeted accordingly, to which he pleaded not guilty and claimed trial.

In order to prove the charge, prosecution examined as many as 13 witnesses and tendered certain documents. When incriminating circumstances appearing in prosecution evidence were put to accused for eliciting his explanation as required under Section 313 Cr.P.C., he denied all the allegations and pleaded false implication in the instant case due to family feud as complainant is the real brother of his father. Accused did not opt to lead evidence in defence.

After hearing leaned counsel for the parties and having gone through the material available on file, the accused was convicted and sentenced as detailed above, vide the impugned judgment/order.

Feeling dis-heartened, the accused has approached this Court by way of instant appeal challenging his conviction and sentence.

While assailing the impugned judgment of conviction and order of sentence, it has been ebulliently argued by learned counsel for the appellant that entire case of the prosecution is based upon the circumstantial evidence and prosecution has failed to complete the chain of circumstances to establish the guilt of accused. It is well established that if two conclusions are possible on the evidence adduced in a case of circumstantial evidence, one pointing to the guilt of the accused and the other to his innocence, the court should adopt the latter view favourable to the accused, as was reiterated by their Lordships in Anna Nageswara Rao vs. The Public Prosecutor, *AIR 1975 SC 1387* and Rajendra Rai & others vs. State of Bihar, *AIR 1974 SC 2145*.

Moreover, in the instant case, the accused has been falsely implicated due to old enmity existing in between the parties. Mai Ram, complainant –cum- author of the FIR, who appeared in the witness box as PW-3 and Ombir (PW-4) are father and son, respectively and they have deposed against the accused on account of previous enmity existing between the parties and infact, no occurrence as unfolded by them has seen the light of the day. Infact, neither the prosecution could prove the identity of the accused at the spot nor that the accused is responsible for any explosion. Though, during the course of arguments, accused is alleged to have suffered a disclosure statement but to the utter surprise, nothing in pursuance thereof could be recovered from him which could connect him with the alleged crime. PW-4 Ombir has simply stated that he identified the accused in

torch light. Neither the accused has been apprehended at the spot nor was he positively identified by any of the alleged eye witnesses at the place of occurrence. Thus, in such circumstances, the factum of identity usually could not be established satisfactorily in the court. No test identification was also got conducted by the Investigating Agency, hence, the omission to hold test identification parade becomes fatal for the prosecution, particularly in such an alleged heinous crime. There is also nothing on the record to suggest that the accused at any point of time refused to participate in the identification parade. The conduct of identification parade belongs to the realm and is part of investigation but the absence of holding any test identification parade to get the accused identified from the eye witnesses goes to the root of the case and make the case of prosecution highly doubtful and suspicious. Moreover, PW-5 Sajjan Singh also did not witness any person at the place where the alleged explosive material burst or the occurrence took place. He has simply stated that due to busting of some explosive material, his buffalo sustained injuries which proved fatal. Even there is nothing on the record to suggest that any of the injuries sustained by the buffalo were due to an explosion. PW-8 Dr. Umed Singh, Veterinary Surgeon, who conducted the autopsy on the dead body of buffalo belonging to Sajjan Singh, did not specify or fortify that injuries were result of some explosion. Similarly, there is no evidence i.e. photographs etc. to show that walls of the house of complainant Mai Ram developed some cracks. Thus, in the absence of any such material which could

have easily connected by the Investigating Agency, accused cannot be fastened any liability or charge against him cannot be said to have proved beyond doubt.

On the other hand, there is cogent and convincing evidence available on the file that there existed animosity in between the accused and complainant Mai Ram in respect of some civil dispute, otherwise, they are closely related to each other. The accused is none-else but nephew of complainant Mai Ram and it was only due to the animosity and ill will, the accused has been named as a culprit and the complainant as well as his son Ombir joined hands to get the accused punished.

The next argument addressed by learned counsel for the appellant is that there is an inordinate delay in lodging the FIR with the police. The occurrence is alleged to have been taken place during mid night at 03.00 AM on June 01, 2006 whereas FIR was put into black & white at 03.40 PM on June 01,2006 which reached in the hands of learned Magistrate at 08.00 PM on June 01, 2006. The delay in lodging the FIR has been utilized by the complainant just to falsely rope in the accused and to give coloured version to the occurrence as well as to collect the evidence. Delay in lodging the FIR quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in the introduction of coloured version or concocted story as a result of deliberation and consultation which has taken place in the instant case. In case Thulia Kali vs. The State of

Tamil Nadu, *AIR 1973 SC 501*, it has been held by Hon'ble Apex Court that when an occurrence is not reported for more than 20 hours after the occurrence even though the police station is only two miles from the place of occurrence, it is unsafe to base conviction upon such an evidence.

While summoning up his arguments, learned counsel for the appellant has pointed out that since prosecution has miserably failed to establish the identity of accused; that there is delay of more than 15 hours in reporting the matter to the police; and further that there is also a motive for false implication of the accused, the case of the prosecution cannot be said to have been proved beyond shadows of doubt. The impugned judgment of conviction and order of sentence which are purely based upon conjectures and surmises are not sustainable in the eyes of law and as such, the same are liable to be set aside by way of acceptance of instant appeal. Consequently, the accused deserves acquittal.

On the other hand, learned State counsel has supported the impugned judgment of conviction and order of sentence submitting that case of the prosecution is not based upon circumstantial evidence, rather, there is a direct evidence of eye witnesses in the shape of testimonies of PW-3 Mai Ram and PW-4 Ombir, whose presence at the spot cannot be doubted. They are the victims of the explosion for which the accused is responsible. PW-5 Sajjan Singh is none else but owner of the buffalo who died due to sustaining of injuries to busting of the explosive material.

As far as identification of the accused at the spot is concerned, that stands established from the testimony of PW-3 Mai Ram and PW-4 Ombir. It is not the case of prosecution that the accused was not known to the witnesses earlier. Rather, they being closely related to each other were fully known to each other. Accused is none else but nephew of complainant Mai Ram and even in the state of darkness, a close related person can be identified by a witness.

There is no delay in reporting the matter to the police and if there is some delay that has been fully explained by the prosecution witnesses. Moreover, the motive is also fully established for causing harm to the complainant and his family due to their inimical relations. Thus, the prosecution case is fully proved and the impugned judgment of conviction and order of sentence are absolutely in consonance with the evidence available on file. The instant appeal being devoid of merits is liable to be dismissed.

After bestowing due consideration to the rival submissions made by learned counsel for the appellant, appraisal of evidence and scrutinizing the impugned judgment/order, this Court is of the considered view that the submissions made by learned counsel for the appellant are absolutely meritless in view of cogent and convincing evidence adduced by the prosecution during trial.

No doubt, in criminal cases, the identity of the culprit is invariably the most vital factor for the success of the prosecution case. Unless he has been apprehended at the spot or was previously known to or positively identified by the eye witnesses at the place of

occurrence. The factum of identity usually could not be established satisfactorily in the court. But, in the case in hand, the accused was previously known to complainant Mai Ram (PW-3) as well as his son Ombir (PW-4) and he was positively identified by them at the time of occurrence. So, in the case in hand, it cannot be said that prosecution has failed to identify the culprit at the spot. In such circumstances, the omission to hold the test identification is not fatal to the case of prosecution, rather, identification parade in such circumstances would have been absolutely valueless. The prosecution has examined complainant Mai Ram (PW-3) who has categorically unfolded the entire occurrence and has specifically attributed the role to the accused. His statement finds full corroboration from the testimony of Ombir (PW-4). He has also categorically stated that he identified the accused at the spot of occurrence in a torch light. Further, the testimonies of Mai Ram and Ombir further find corroboration from the statement of Sajjan Singh (PW-5) whose buffalo died due to sustaining of injuries due to explosion. So, this Court is of the considered view that the contention of learned counsel for the appellant is without any substance.

Now coming to another ground of attack raised by learned counsel for the appellant during the course of arguments i.e. delay in registration of FIR. Occurrence is alleged to have taken place at 03.00 AM on June 01, 2006. The law pertaining to FIRs is based upon the maxim: *Accusator post rationabile tempus non est audiendus*

sis se bene de omission excusaverit. An accuser is not to be heard after a reasonable time unless he can satisfactorily account for the delay.

Adverting to the facts and evidence available on file, it has been clearly unfolded by the author of FIR – Mai Ram that before reporting the matter to the police, he discussed and took up the matter with the villagers and it was only thereafter he went to the police station to report the occurrence, and the discussion with the villagers is also probable in view of the fact that litigation regarding the linden property has been going in between the complainant and accused who are real uncle and nephew. Rather, it can be said that there was a motive with the accused to teach a lesson and cause harm to the complainant, especially in the circumstances that there is nothing on record to suggest false implication of the accused in the instant case. The mere fact that there is some delay in reporting the matter to the police, it is *ipso facto* mean that there are confabulations or that delay has been utilized to collect the evidence. PW-8 Dr. Umed Singh, who conducted the autopsy on the dead body of buffalo belonging to Sajjan Singh, has also categorically opined that injuries sustained by the buffalo were ante mortem in nature. The report of Forensic Science Laboratory further fortifies the case of prosecution which speaks in volumes. FSL report clearly specifies that chemical test and techniques were employed to detect commonly used explosive mixtures and their decomposition, and the material so collected at the spot was found to be consisting of Charcoal, Sulphur and radicals of potassium & nitrate. From the FSL, it can be safely

concluded that it was an explosive material. In view of the material brought on record by the prosecution which has been detailed and discussed above, this Court is of the considered view that prosecution has been successful to establish the charge framed against the accused. The judgment of conviction and order of sentence are absolutely in consonance with the evidence available on file. No material infirmity or illegality could be pointed out by learned counsel for the appellant during the course of arguments.

In the light of what has been discussed above, this Court does not find any merit in the instant appeal, as such, the same is dismissed.

September 02, 2015
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(Jaspal Singh)
Judge