

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-D-1444-DB of 2014
DATE OF DECISION : January 15, 2015**

Keshav

...Appellant

Versus

State of Haryana and others

...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

Present:- Mr. G.C. Shahpuri, Advocate for the appellant.

M.JEYAPPAUL, J.

1. The present appeal is preferred by complainant Keshav aggrieved by acquittal recorded by the trial Court in a case of murder.

2. It is the case of the prosecution that juvenile accused Anuj along with 2nd respondent accused Rahul kidnapped Bholu son of PW4 Keshav and committed his murder by shooting him to death.

3. PW4 Keshav, the father of the deceased Bholu, deposed before the trial Court that PW2 Jagat Singh informed him that juvenile accused Anuj, 2nd respondent Rahul and juvenile accused

Bhagat took away his son Bholu on their motor cycle towards Hassanpur side. Thereafter, he came to know that his son Bholu was fired upon and murdered.

4. PW2 Jagat Singh deposed before the trial Court that on 4.5.2011 at about 11. A.M. when he was present at the bus stand of Bedha Patti, he noticed juvenile accused Anuj taking the victim Bholu on his motorcycle. A person with muffled face was also found sitting behind Bholu on the motorcycle. He suspected that the person with muffled face was accused Rahul. He further stated that they took Bholu towards Hassanpur side and had duly informed this fact to PW4 Keshav, the father of Bholu.

5. PW3 Sukhdev, the owner of the motorcycle bearing registration No. HR50B5679, deposed that accused Rahul and juvenile accused Anuj came to his house about a year ago at about 7.00 A.M. and borrowed his motorcycle for attending some marriage function. On the same day at about 12.00 noon, one Surfraj resident of village Bedha Patti Hodal came to his office on his motorcycle and entrusted the same to him.

6. PW 14 Dr. Chirag Sethi, Medical Officer, attached to General Hospital, Palwal conducted Post Mortem examination on the dead body of Bholu on 5.5.2011 at about 10.45 A.M. and found the following injuries on his dead body :-

“Round cherry red margin Black Tatoo present over left side just above nipple and left parasteranal size 3 x 4

inches round in shape penetrating inverted lacerated wound directed towards obliquely left to right superiorly involving skin, fossa, muscle, sternum pleura and left lung, major vessels of thorax and right lobe of liver rupturing heart and pericardium. On dissection, metallic foreign body was found in right lobe of liver left sided hemthorax.”

7. In his opinion, Bholu had died due to shock and haemorrhage on account of fire arm injury over his chest. He also stated that the said injury which was ante mortem in nature was sufficient to cause death in the ordinary cause of life.

8. The accused have come out with a total denial in their statements under Section 313 Cr.P.C.

9. The trial Court having adverted to the evidence on record found that the prosecution failed to establish beyond reasonable doubt that the accused herein committed the murder of Bholu.

10. Learned counsel appearing for the complainant, who is the appellant in this case, would vehemently submit, referring to the evidence of PW2 Jagat Singh, PW3 Sukhdev and PW4 Keshav, that accused Rahul was last seen with the deceased on a motorcycle. As no explanation was forthcoming from accused Rahul, it is his submission that the participation of Rahul in the murder of Bholu will have to be presumed. The motorcycle which was used in the crime was recovered from accused Rahul. Therefore, it is his submission

that the said recovery also connects accused Rahul to the crime. The medical evidence also would support the case of the prosecution, it is further submitted.

11. We find that PW4 Keshav laid the complaint only based on the information furnished by PW2 Jagat Singh. It is to be noted that except the name of juvenile accused Anuj no other name of the accused figured in the First Information Report. The muffled face theory projected for the first time during the course of trial by PW2 did not figure in the First Information Report. Had accused Rahul been found with a muffled face, there was no reason for PW2 to burke the fact when he gave details of the kidnapping to PW4 Keshav. Further, on a careful perusal of the evidence of PW2 Jagat Singh, it is found that the other person who was found along with juvenile accused Anuj was also with a muffled face. It was only his suspicion that the person with muffled face could have been Rahul. From such a sketchy evidence, the Court cannot jump to a conclusion that accused Rahul was found lastly in the company of the deceased Bholu.

12. Of course, PW3 Sukhdev, owner of the motorcycle, deposed that Rahul and Anuj came to his house and borrowed his motorcycle for the purpose of attending a marriage function. From his evidence it is found that the vehicle was returned on the very same day at about 12.00 noon itself. But unfortunately, the prosecution has come out with a case only based on the disclosure

statement suffered by Rahul. The motorcycle of PW3 Sukhdev was later on recovered at his instance. Therefore, the recovery theory projected by the prosecution falls flat.

13. Apart from the above evidence adduced by the prosecution, there is no other evidence to implicate accused Rahul.

14. The charge as against accused Satpal who figures as 3rd respondent in this appeal is that he harboured accused Rahul in order to save him from the legal recourse. The trial Court has rightly made an observation, having gone through the entire gamut of evidence, that none of the witnesses examined on the side of the prosecution, whispered anything about the role of accused Satpal, who allegedly harboured Rahul in order to save himself from criminal prosecution.

15. In view of the above, we find that there is no merit in the appeal. In our considered view, the trial Court has rightly evaluated the evidence on record and come to a correct conclusion. Therefore, the appeal fails and it stands dismissed.

**(M. JEYAPPAUL)
JUDGE**

**(DARSHAN SINGH)
JUDGE**

January 15, 2015

p.singh