

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA No.D-265-DB of 2015
Date of decision: 21.04.2015

Monu

.....Appellant

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Ram Niwas Kush, Advocate for the appellant.

S.S. SARON, J.

This appeal has been filed by Monu complainant son of Balwan Singh against the judgment and order dated 03.12.2014 passed by the learned Additional Sessions Judge, Hisar whereby Harpal alias Hokkad (respondent No.2) has been held guilty and convicted for the offence under Section 302 Indian Penal Code (IPC- for short) and sentenced to undergo imprisonment for life; besides, pay a fine of Rs.5000/- and in default thereof to undergo further rigorous imprisonment for a period of three years.

In the appeal it is prayed that respondent No.2 be summoned and punished by enhancing the fine that has been imposed; besides, compensation be granted to the legal heirs of the deceased Sajjan Kumar.

On the last date of hearing none had appeared for the appellant and the following order was passed:-

"The appeal has been filed by Monu, complainant for grant of compensation to the widow and minor children of deceased Sajjan Kumar. Sajjan Kumar, deceased is the father's elder brother (Tau) of complainant Monu. Respondent No.2 Harpal @ Hokkad has been convicted by learned Additional Sessions Judge, Hisar on 03.12.2014 for the offence punishable under Section 302 Indian Penal Code and vide separate order dated 05.12.2014, he has been sentenced to undergo imprisonment for life, besides, pay a fine of Rs.5000/- and in default thereof to undergo rigorous imprisonment for a period of three years.

Criminal appeal No.D-111-DB of 2015 filed by respondent No.2 Harpal Singh @ Hokkad is pending in this Court.

The appellant is not a victim in terms of Section 2 (wa) Code of Criminal Procedure (for short- Cr.P.C.) Besides, no compensation was awarded by learned trial Court for the murder of Sajjan Kumar. Therefore, it is to be considered as to how the appeal by a person who is not a victim would be maintainable. Moreover, how an appeal would be maintainable in terms of proviso to Section 372 Cr.P.C. against a convict in which no compensation has been ordered.

List for hearing on 21.04.2015."

According to learned counsel for the appellant, the

complainant also falls within the category of 'victim' in terms of Section 2 (wa) of the Code of Criminal Procedure (Cr.P.C- for short).

We have given our thoughtful consideration to the matter. In fact the matter is not res integra and a Full Bench of this Court in **M/s Tata Steel Ltd. v. M/s Atma Tube Products Ltd. & others**, 2013 (2) RCR (Criminal) 1005 has considered the definition of 'victim' as defined in Section 2 (wa) Cr.P.C. It was held that Section 2 (wa) defines 'victim' to mean a person who has suffered any loss or injury caused by the reason of the act or the omission for which the accused person has been charged and the expression 'victim' includes his or her 'guardian' or 'legal heir'. Broadly three categories of persons have been defined in the term 'victim' in Section 2 (wa) Cr.P.C. namely (i) who has suffered loss or injury; (ii) guardian of the above category, if sufferer is a minor or of unsound mind; and (iii) legal heirs of the first category if the sufferer dies. It was further held that every heir who in law is entitled to succeed to the estate of a deceased 'victim' in one or the other eventuality, shall fall within the ambit of Section 2 (wa) Cr.P.C., even if the estate of such deceased 'victim' is to devolve upon the legal heirs as per the order of preference prescribed under the personal law of such 'victim'. The appellant apparently being the complainant does not fall in any of the categories of 'victim' so as to be entitled to file the appeal.

The other contention of the appellant for grant of compensation to the legal heirs of the deceased is not sustainable as the learned trial Court has not granted any compensation. In

terms of proviso to Section 372 Cr.P.C, it has been held in case of **N.P.Ahammed v. Abdul Latheef and another**, 2011 (104) AIC 500; Law Finder Doc ID # 425493 (Kerala) that only quantum of compensation can be challenged and not omission to pay compensation. Therefore, no compensation having been awarded, it cannot be said that the appellant can claim compensation on behalf of the 'victim'. Even otherwise it is not shown that the 'victim' of the deceased are under any kind of disability to claim compensation.

In the circumstances, in fact it is only the 'victim' who has a right to file an appeal in terms of the proviso to Section 372 Cr.P.C. and not a third person.

For the foregoing reasons, the appeal filed by the complainant is not maintainable and the same is accordingly dismissed.

(S.S. SARON)
JUDGE

(RAMENDRA JAIN)
JUDGE

21.04.2015
A.Kaundal

Note: To be referred to reporter: Yes