

In the High Court of Punjab and Haryana at Chandigarh

CRM-A-266-MA-2015 (O&M)

Date of decision: 08.09.2015

State of Haryana

..... Appellant

Vs.

Arjun Singh

..... Respondent

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

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?

Argued by: Mr. Vivek Saini, Assistant Advocate General, Haryana.

Mr. Keshav Partap Singh, Advocate and
Mr. Hitesh Chauhan, Advocate
for the respondent.

RAJ RAHUL GARG.J.

This is an appeal against acquittal, whereby, State of Haryana, assailed the impugned judgment dated 13.08.2013, rendered by the then learned Additional Sessions Judge, Gurgaon, whereby accused Arjun Singh was acquitted of the charges under Sections 302/34 of Indian Penal Code (for short 'IPC') and under Section 25 of the Arms Act, whereas regarding accused Shakti, it was ordered that as accused Shakti has not been arrested in this case, therefore, the case be put up again as and when accused Shakti is arrested or produced before the Court.

Briefly prosecution case is like this; that on receipt of Ruqa, received from Orbit Hospital, Gurgaon regarding admission of Gian Singh

in the hospital, the police machinery was set in motion. Inspector Pardeep Singh (PW15), alongwith police officials reached the hospital. An application was moved seeking the opinion of the doctor with regard to the fitness of patient Gian Singh, whereupon, it was reported that he has expired. Mahender Singh, uncle of the deceased, who was present in the hospital, gave statement Ex.PA to the police to the effect that for the last two years he was plying a handcart (rehri) at steel factory Narsinghpur Chowk. He used to prepare food. His nephew Gian Singh and maternal uncle Rajesh also used to work at the handcart.

On 02.01.2012 at about 6:30 P.M. accused Arjun Singh came to the rehri and asked Gian Singh to serve *pranthas* to him on the other side of the road where he went and had sat. Gian Singh, refused to do so. Arjun Singh had an altercation with Gian Singh and left the spot.

On 03.01.2012 at about 7:30 P.M., accused Arjun Singh came to the rehri with some other person. He called Gian Singh on the pretext to have a talk with him and called him towards Maruti Krishna Company. Complainant Mahender Singh got suspicious on account of the fact that on the previous day Arjun Singh had an altercation with Gian Singh, so he may not pick up a quarrel with him. As such Mahender Singh along with Rajesh started following the trio. After covering a short distance, they saw that the person who was accompanying Arjun Singh, had caught hold of Gian Singh. Arjun Singh took out a pistol from his trousers and shot on the head of Gian Singh from the back. Resultantly, Gian Singh collapsed. On seeing Mahender Singh and Rajesh, accused Arjun Singh along with his accomplice had fled away from the spot. Mahender Singh and Rajesh raised

alarm to apprehend them but they could not do so. Mahender Singh with the help of Rajesh brought Gian Singh to Orbit Hospital, Gurgaon, by arranging a private vehicle. Gian Singh, had expired there during treatment. Complainant also stated that he could recognize the accomplice of Arjun Singh, if shown to him. On this statement, FIR was registered. Investigations were conducted. Inquest report was prepared. Post-mortem of the dead body was got conducted. Spot was inspected. Blood-stained earth etc. along with other articles were lifted and taken into possession. Rough site plan of the place of occurrence was prepared.

On receipt of secret information regarding accused Arjun Singh on 05.01.2012, to Inspector Pardeep Singh, naka was laid at Rajiv Chowk, Gurgaon. Arjun Singh was spotted coming by an auto. On seeing the police party, he tried to flee away towards Delhi side, but was arrested. On 06.01.2012, during interrogation, he gave disclosure statement Ex.PG. On 08.01.2012, he again suffered a disclosure statement Ex.PH, in pursuance with which, he got recovered one country made pistol along with one live cartridge. The same were taken into police possession vide memo. Ex.PK. Statement of witnesses were recorded. Spot was got photographed. Photographs are Ex.P17 to Ex.P29. After completion of necessary investigations, challan was put in the Court against the accused.

Finding a *prima-facie* case against the accused, he was charge-sheeted for committing offence punishable under Sections 302/34 IPC and 25 of the Arms Act, to which he did not plead guilty but claimed trial.

After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein accused denied each

allegation of the prosecution and pleaded his false implication.

We have heard both the counsel for the parties besides appraising the entire material coming on record.

Mr. Vivek Saini, counsel for the State, argued that learned trial Court has over-looked the most clinching evidence available against the accused. It is proved on the file that accused got recovered a country made pistol in pursuance with his disclosure statement Ex.PH. The same was sent to FSL for examination. Bullet, which was recovered from the body of deceased, was also sent to FSL for examination. It was reported by FSL that bullet, which was recovered from the body of deceased, was fired from the pistol, sent for examination to FSL. As such, in view of this evidence, it is proved on the file that since the bullet recovered from the body of deceased, was fired from the pistol recovered from the possession of accused, therefore, it is the accused alone who has caused death of Gian Singh (deceased)

From the above discussed evidence on the file, the prosecution case cannot be said to be established beyond reasonable doubt. Complainant Mahender Singh (PW1) and his uncle Rajesh (PW2) are eye witnesses of this case. Of course, they did not support the prosecution case, at the same time nothing material could be extracted from them when they were cross-examined. They deposed that Gian Singh used to remain in depression and he committed suicide. Mahender Singh (PW1)-complainant also deposed that nothing had happened in his presence and accused Arjun Singh had never fired at his nephew nor had committed his murder. The pistol, which the police said, was recovered from accused Arjun Singh, actually the same

was recovered by the police from the spot and further that the same was lying near the dead body and the same was taken into possession by the police in his presence. This creates doubt with regard to the recovery of weapon. A country made pistol which was allegedly recovered in this case, is not a licensed weapon of the accused so as to connect him with this crime.

As a result, since both the eye witnesses did not support the prosecution case and further as the recovery of weapon is not proved beyond reasonable doubt, therefore, we do not find any reason to interfere in the impugned judgment of acquittal as the findings recorded by the learned trial Court are neither perverse nor misreading of evidence.

In the matters of appeal against acquittal, it is observed by Hon'ble Apex Court in *Ashok Kumar Vs. State of Rajasthan, 1991 (1) SCC, 166*, that interference in an appeal against acquittal would be called for only if the judgment under appeal was perverse or based on misreading of the evidence and merely because the Appellate Court was inclined to take a different view, could not be a reason calling for interference.

For the reasons recorded above, finding no merit in this appeal, it is ordered to be dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

08.09.2015
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