

Crl. Appeal-D-No.283-DB of 2003

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Crl. Appeal-D-No.283-DB of 2003
Date of Decision: 19.2.2015

Ajay Kumar Appellant

Versus

State of Haryana Respondent

Crl. Misc. A. No.253-MA of 2003
Date of Decision:

State of Haryana Appellant

Versus

Azad Singh Respondent

Crl. Rev. No. 1317 of 2003
Date of Decision:

Ram Kumar Appellant

Versus

Ajay Kumar and others Respondents

Coram: Hon'ble Mr. Justice Ashutosh Mohunta
Hon'ble Mrs. Justice Raj Rahul Garg

1.To be referred to the Reporters or not?

2. Whether the judgment should be reported in the Digest?

Present: Mr. Vinod Ghai, Sr. Advocate with
Mr. Simrandeep S. Sandhu, Advocate
for the Appellant in Crl. Appeal D.No.283-DB of
2003.

Mr. Anmol P.S.Mann, Advocate
for the petitioner in Crl. Rev. No.1317 of 2003.

Ms. Kirti Singh, DAG, Haryana.

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ASHUTOSH MOHUNTA, J.

1. By this judgement we will dispose of Criminal Appeal No.283- DB of 2003 filed by accused Ajay Kumar against the judgement of his conviction and sentence, Criminal Misc. A-No.253-MA-2003 filed by State of Haryana against acquittal of Azad Singh and Criminal Revision No.1317 of 2003 filed by the complainant Ram Kumar for enhancement of the sentence imposed upon accused Ajay Kumar and against acquittal of Azad Singh in the present case arising out of common judgement dated 04/03/2003 passed by the Additional District and Sessions Judge (Adhoc), Jhajjar.

2. The present appeal arises out of the impugned judgement of conviction and order of sentence dated 04/03/2003 passed by Ld. Additional District and Sessions Judge (Adhoc), Jhajjar vide which accused-appellant Ajay Kumar has been convicted and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.5000/- and in default of payment of fine, to further undergo rigorous imprisonment for 6 months for the offence punishable under Section 302 IPC. Vide the same judgment,

Azad Singh has been acquitted of the charges levelled against him.

3. It is apposite to mention here that during the course of trial, co-accused Ashok died on 23/06/2002 due to hypertension and thus the present case stood abated against him.

4. Brief facts of the case as stated by Ram Kumar, complainant is that he is working with Indian Oil Corporation at Delhi and they are four brothers of which he is the eldest while the youngest was Sandeep @ Kala aged about 20 years. He alongwith Sandeep used to do the job of cultivation in the village and resided together while his other 2 brothers namely Ishwar and Wazir resided separately from him. Accused Ashok son of Azad Singh was running a shop of Tailor Master in the name and style of Ashok Tailors in their village (Lowa Khurd) and Sandeep (deceased) was learning the job of tailoring at his shop. One day, on account of some payment dispute between Ashok and Sandeep, some altercation took place between them and Sandeep stopped visiting the shop of Ashok thereafter. On 18/12/2001 at about 10:30 PM when complainant returned home after his duty, he did not find Sandeep at his house. Upon search for his brother Sandeep, his cousin brother Charan Singh son of Inder Singh told him that Sandeep had

gone to the shop of Attar Singh for purchasing Bidi and Matchbox at about 10 PM. He also told him that Ashok, Ajay and Azad Singh were all quarrelling with Sandeep at the shop of Ashok Tailor and were abusing each other. On hearing so, the complainant alongwith his uncle Puran Singh and brother Ishwar went to the shop of Ashok Tailor and found the same locked. Thereafter, on having suspicion, they went to the house of Azad and brought him to the shop of Ashok Tailor and got the same opened by breaking open the lock with a sabal and in the torchlight found dead body of Sandeep lying on the floor inside in a pool of blood. They also noticed some injuries on his neck and head caused with some sharp edged weapon. After leaving his uncle Puran Singh and brother Ishwar at the shop, he (complainant) went to report the matter to the police and accordingly got his statement recorded (Ex.PA) before Bijender Singh-ASI, on the basis of which formal FIR (Ex.PD) was recorded by Kartar Singh, S.I.

4. Thereafter, Bijender Singh, ASI visited the spot with a photographer whereupon photographs of the dead body were taken. Samples of blood lying on the floor were collected in a bottle and taken to possession vide recovery memo. Rough site plan with marginal notes was prepared. Inquest report was also prepared and the dead body was

sent to the hospital for post-mortem examination through Vijay pal Constable. All the accused were arrested by Bijender Singh, ASI from Dulina Bus Stand. The case property was deposited with MHC. On 20/12/2001, accused Ashok was interrogated, whereupon he disclosed that he had kept concealed a hammer and a pair of scissors and his shirt having blood stains inside the room of his house under some empty gunny bags and could get the same recovered. The said disclosure statement of accused Ashok is Ex.PB on record. In pursuance of the said disclosure statement, accused Ashoka got recovered a hammer, a pair of scissors and a bloodstained shirt from the place indicated by him. Rough sketch of the articles was prepared and all the articles were taken into possession vide separate recovery memos. On 26/12/2001, Bijender Singh, ASI moved application Ex.PF to the doctor for ascertaining the cause of death of the deceased. On the said application, the doctor opined that the injuries on the person of the deceased could be possible with the hammer and the scissors recovered by accused Ashok. The said opinion of the doctor is Ex.PF/1 on record. After completing all the formalities with regard to the investigation in the present case, reported under Section 173 Cr.P.C. was submitted before Ilaqa magistrate on 11/01/2002.

5. Finding a prima facie case punishable under Section 302 read with Section 34 IPC made out against all the accused, the case was committed to the Court of Sessions vide commitment order dated 28/01/2002. Thereafter all the accused were charge sheeted for the offence punishable under Section 302 read with Section 34 IPC vide order dated 03/04/2002 to which all the accused pleaded not guilty and claimed trial.

6. In order to prove its case, prosecution examined PW1 Constable Vijay pal, PW2 Ram Kumar (complainant), PW3 Charan Singh, PW4 Head Constable Satish Kumar No.60, PW5 Constable Jai Chand, PW6 Kartar Singh S.I., PW7 Constable Azad Singh, PW8 Dr.Kashmir Singh, M.O., Civil Hospital, Bhadurgarh, PW9 Ashok Kumar, photographer, PW10 Head Constable Karan Singh, PW11 Constable Daya Chand and PW12 Bijender Singh ASI (Investigating Officer).

7. In defence, statement of the accused Ajay and Azad Singh were recorded under Section 313 Cr.P.C. wherein they pleaded false implication in the present case, however they chose not to lead any evidence in defence and resultantly closed their defence evidence. It is worthwhile to mention here that accused Askok died during the pendency of the trial on 23/06/2002 due to hypertension and thus the present case stood abated against him.

8. After appraisal of the documentary as well as oral evidence on record, the Ld. trial Court acquitted Azad Singh from the charges levelled against him in the present case and on finding cogent and reliable evidence against accused Ajay, convicted and sentenced him to undergo rigorous imprisonment for life for the offence punishable under Section 302 IPC vide judgement and order dated 04/03/2003.

9. It has been argued by the Ld. Counsel for the appellant-Ajay that the present case is a case of blind murder based on circumstantial evidence resting solely on the testimony of an interested witness namely Charan Singh, cousin brother of the complainant which is without any corroboration and cannot be relied upon to convict the appellant in the present case. He further argued that no recovery has been affected from the appellant nor the shop in question where the deceased working was owned and rented by him. It has also been argued, that the prosecution has miserably failed to link the chain as unfolded in the present case with the appellant so as to connect him with the murder of the deceased especially when it has come on record that the shop in which the dead body of the deceased was found lying in a pool of blood was rented out by his brother Ashok under the ownership of

Rambir and thus the appellant deserves to be acquitted in the present case. Ld. counsel for the appellant has further argued that no role has been attributed to the appellant in the present case except that he alongwith his father and brother were quarrelling and abusing the deceased which in the absence of any corroboration or evidence cannot be taken as a ground to convict him in the present case. It has further been argued that on the basis of the same allegations and evidence, co-accused Azad Singh (father of the appellant) has been acquitted in the present case and therefore the appellant too deserves to be acquitted. It has also been argued by the Ld. counsel for the appellant that it was only Ashok who could have thrown light upon the murder of the deceased as recovery was effected from him pursuant to his disclosure statement but unfortunately during the course of trial, he died and so therefore the present case being a case of no evidence as far as the appellant is concerned, he deserves to be acquitted herein.

10. Per contra, it has been argued by the Ld. State Counsel assisted by the Counsel for the complainant that the prosecution has fully proved its case beyond a shadow of reasonable doubt against the appellant in as much as he alongwith his brother Ashok and father Azad Singh quarrelled and abused deceased Sandeep which was

witnessed by Charan Singh and thereafter the dead body of the deceased having been found in the shop of Ashok, completes the chain of events leading to conviction of the appellant in the present case. It has further been argued that recovery of weapon of offence pursuant to disclosure statement of Ashok coupled with the opinion of the doctor that injuries on the person of the deceased could be possible with the hammer and the scissors so recovered leaves no manner of doubt that Ashok alongwith his brother and father had murdered the deceased. It was also argued that accused Ashok and Ajay were not found available at their house which thus fully establishes and proves their guilt in commission of murder of the deceased.

11. We have heard Ld. Counsel for the parties and have gone through the record of the case.

12. The facts of the case as culled out herein above which does not need repetition for the sake of brevity at this stage are as under:-

13. Admittedly, the present case is a case of blind murder based on circumstantial evidence. The only witness in the present case is Charan Singh son of Inder Singh (cousin brother of the complainant) who has been examined as PW3. In his testimony, he has stated that on 18/12/2001 at about 10.00/10:15 PM while he was at the shop of Attar

Singh, he saw Ajay, Ashok and Azad quarrelling with the deceased. He further stated that 10 minutes before, he saw the deceased present at the shop of Ashok. He further stated that he told his brother (Ram Kumar-complainant) that Azad, Ajay and Ashok were abusing Sandeep. In his cross examination he has stated that he did not intervene in the quarrel and that he was the only person seeing and hearing the episode. He further stated that he did not stop in front of the shop of Ashok Kumar after purchasing Bidi etc. and straight went to his house. However, this witness did not see the murder of the deceased at the hands of the appellant and his co-accused. Even Attar Singh at whose shop the said witness was present and witnessing the alleged quarrel and abuses being hurled at by the appellant and his co-accused on Sandeep, has neither been cited as a witness nor examined in the present case. Thus, the statement of PW3 is without any corroboration. Further, he being cousin brother of the complainant, also appears to be an interested witness in the present case. His sole testimony cannot be relied upon in the absence of any independent corroboration so as to convict the appellant in the present case especially when the entire case is based on circumstantial evidence, being a case of blind murder.

14. Further, the dead body of the deceased (Sandeep) was found from inside the shop of Ashok. Pursuant to the disclosure statement made by Ashok, hammer, a pair of scissors and a bloodstained shirt was recovered from the place where he had kept them concealed. As per FSL (Ex.PQ), blood was detected on the said articles so recovered at his instance. As per the post mortem report having conducted by Dr. Kashmir Singh-PW8, following injuries were found on the person of the deceased:-

1. Incised wound over forehead of size 7x1 cmxbone deep on the right side of the forehead.
2. Another wound of 2.5 cmx1cm.xbone deep over the right side of right eye.
3. A wound of size 4x1cmxbone deep over right side of the mid line.
4. Two incised wounds of 1x1cm.xbone deep over left eyebrow and other wound of 4x1cm.over the scalp of left side.
5. Incised wound over the right side of midline and at the level of thyroid cartilage of size 5x2cm.xbone deep surrounded by three lacerated wounds of size 1.5x.5cm. and 2x.5cm. and 1.5x.5cm. respectively.

15. As per opinion of the doctor (Ex.PF/1), injuries on the person of the deceased could be possible with the hammer

and the scissors got recovered by Ashok. However, unfortunately Ashok died during the pendency of the trial on 23/06/2002 due to hypertension i.e. before getting his statement recorded under Section 313 Cr.P.C. It was only he who could have thrown light on the death of the deceased in as much as, the dead body was found from inside his shop. In the absence of his testimony on record, the chain of events having unfolded in the present case, is incomplete. Admittedly, there is no recovery from the appellant in the present case nor any role has been attributed to him in murder of the deceased. In view of the same, we are of the considered opinion that the prosecution has not been able to link the chain of events leading to murder of the deceased with that of the appellant except the sole weak testimony of Charan Singh- interested witness to the effect that he saw the appellant alongwith his brother and father quarrelling and abusing the deceased. Except the said uncorroborative evidence, there is no other evidence on record to support the story of the prosecution and in the absence of the same, we cannot sustain the conviction of the appellant in the present case.

16. That apart, Ram Kumar (complainant) brother of the deceased has been examined as PW2 in the present case.

He is a hearsay witness. He has learnt about the quarrel and

abuses hurled at by the appellant and his co-accused upon his brother (Sandeep-deceased) by Charan Singh. His testimony is of no help to the prosecution in the present case. Merely because the dead body of the deceased has been recovered from the shop of Ashok cannot be a ground to convict the appellant especially when no recovery has been effected from his person, the said shop is neither owned nor rented out by/to him, he had no relation or connection with the deceased nor the deceased was his employee. In this backdrop, we are afraid that the conviction of the appellant in the present case cannot be sustained.

17. Further, a perusal of the prosecution story would reveal that the allegations levelled against Azad Singh and the appellant, are identical. No recovery has been effected from the person of the appellant by the investigating officer. No role has been attributed to him in commission of murder of the deceased. His presence at the scene of crime is doubtful as the shop in question where the dead body was recovered was under the tenancy of Ashok (brother), who died during the pendency of the trial i.e. before his testimony could be recorded in the present case. Merely because it has come in the un-corroborative testimony of PW3, that the appellant alongwith Azad Singh and Ashok were quarrelling and abusing the deceased does not in any manner prove that

the appellant had any role to play in the crime especially when Attar Singh from whose shop PW3 was witnessing the said episode has not been examined by the prosecution in the present case. As far as non-availability of the appellant at his house after the occurrence is concerned, the prosecution has not been able to bring any evidence worth the name on record so as to even remotely suggest participation of the appellant in the crime and that his non-availability at the house was on account of murder of the deceased. On re-appraisal of the entire oral as well as documentary evidence on record, we are of the firm opinion that the judgment of conviction and sentence recorded by the Ld. Trial Court in convicting the appellant in the present case cannot be sustained and thus accordingly is hereby set-aside.

18. Now dealing with the case of Azad Singh who has been acquitted in the present case by the Ld. Trial Court, it has also come on record that Azad Singh, father of the appellant on being visited by the complainant and his aides, accompanied them to the shop of Ashok and got the same opened by breaking open the lock thus leading to discovery of the dead body inside the same. The participation of Azad Singh in the crime is doubtful. He was an elderly man aged about 55 years at the time of the occurrence. No recovery

has been effected from his person by the investigating officer. No role has been attributed to him in commission of murder of the deceased. The Ld. Trial Court after appraisal of the entire conspectus of oral as well as documentary evidence available on record has rightly acquitted Azad Singh in the present case. Though there is an appeal against his acquittal filed by the State of Haryana as well as Criminal Revision Petition against the same filed by the complainant but on perusal of the same we find no ground having been canvassed or made out so as to warrant interference in the order of acquittal passed by the Ld. Trial Court in favour of Azad Singh and thus accordingly we dismiss the appeal against acquittal as well as criminal revision filed against acquittal of Azad Singh.

19. In view of the above, the present appeal filed by appellant-Ajay is allowed and accordingly the judgment of conviction and sentence dated 04/03/2003 passed by Additional District and Sessions Judge (Adhoc), Jhajjar is hereby set aside and the appellant is acquitted of the charges. The appellant is on bail and accordingly his bail bonds stands discharged.

20. However, for the reason stated hereinabove, we find no merit in Criminal Misc.A-253-MA-2003 filed by State of Haryana against acquittal of Azad Singh and Criminal

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Revision No.1317 of 2003 filed by the complainant Ram Kumar for enhancement of the sentence imposed upon accused Ajay Kumar and against acquittal of Azad Singh and thus accordingly dismiss the same.

(ASHUTOSH MOHUNTA)
JUDGE

19th Feb. 2015
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(RAJ RAHUL GARG)
JUDGE