

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-1060-DB of 2012

Date of Decision : December 06, 2016

Rahul and another

.....Appellants

Versus

State of Haryana

....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM

Present : Mr. Akshay Bhan, Senior Advocate with
Mr. Gurinder Singh, Advocate
for the appellants.

Mr. Praveen Bhadu, Assistant Advocate General, Haryana.

T.P.S. MANN, J.

The appellants, namely, Rahul son of Mahak Singh and Ramesh son of Sada Ram were tried for committing the murder by intentionally causing death of Jitender @ Jeetu and thereby committing the offences punishable under Section 302 read with Section 34 IPC. Rahul appellant was also tried for keeping in his possession a country made pistol of .315 bore alongwith two live cartridges without any permit or license and thereby committed the offence punishable under Section 25(1)(B)(a) of the Arms Act, 1959. Vide judgment and order dated 17/20.10.2012, learned Sessions Judge, Bhiwani convicted both the appellants under Section 302 read with Section 34 IPC and sentenced them to undergo life imprisonment and to pay a fine of Rs.20,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year. Rahul appellant was also convicted under Section 25 of the Arms Act and sentenced to

undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months. Both the sentences of appellant Rahul were ordered to run concurrently.

Aggrieved of their conviction and sentence, the appellants filed the present appeal which stands admitted and notice issued to the State. Trial Court record stands requisitioned.

According to the prosecution, on 7.8.2010 at 7.30 p.m., one Jaswant Singh, resident of village Kaliyana made statement Ex.PQ before Inspector Sharif Singh, Station House Officer, Police Station Sadar, Dadri to the effect that he was resident of village Kaliyana. His father was the Sarpanch of the village whereas he himself was working as Lecturer in Senior Secondary School, Jhojhu Kalan. On that day, i.e. 7.8.2010 at about 4.30 p.m., he was present at his house where he received an information that a young boy was lying dead with face downwards in a pit in the vacant Panchayat land situated towards the hills in front of a road leading from Kaliyana to Jhojhu Kalan. On receiving the information, he, alongwith Ajit Singh, Rajbir Singh and many other residents of the village reached the spot and saw that a young boy of about 25/26 years of age was lying with face downwards. He was wearing white colour jeans and check shirt. His shirt was stained with blood on its backside. Large quantity of blood was spread over the ground. A pillow of about one foot length of blue and white colour was lying nearby. Two empty cartridges of brass and a pair of hawai chappal of white colour were lying near the spot. Marks on ankles caused by dragging were noticed. There were also marks of coming and going of tyres

of vehicles on a kacha road leading towards hills were slightly visible. The occurrence seemed to have taken place at about 5.00 p.m. on 6.8.2010 and some time before that, there was drizzling. The complaint also stated that he alongwith others had tried to identify the deceased who did not belong to his village nor he seemed to be of a neighbouring village. Two fire shots were found on both sides of waist and there was deep mark behind the ear whereas there was a cut on the left jaw. Black jockey underwear and white Sando Baniyan were on the dead body which were stained with blood. Some unknown persons had committed the murder by firing shots through a vehicle. 8 MM KF was written on both the cartridges recovered from the spot. Blood stained earth, one pair of hawai chappal of cream colour size 9 of Relaxo Company were found at the spot. Accordingly, the complainant sought taking legal action in the matter.

As the statement of complainant Jaswant Singh revealed commission of cognizable offence, Inspector Sharif Singh prepared ruqa and sent the same through HC Balbir Singh to the Police Station for registration of the case. Accordingly, FIR No.297 dated 7.8.2010 (Ex.PU) was registered at Police Station Sadar, Dadri by ASI Chhailu Ram at 8.15 p.m. Special report was, thereafter, entrusted to Constable Ravinder Kumar, who delivered the same to the Ilaqa Magistrate at Charkhi Dadri on 7.8.2010 at 10.05 p.m.

During the investigation of the case, Inspector Sharif Singh inspected the spot and got the same photographed from Inderjit, Photographer. Ravinder Pal, Senior Scientific Officer, Scene of Crime, Bhiwani was called at the spot, who after inspecting the spot and on the

basis of his observations, gave report Ex.PE alongwith rough sketch Ex.PH. Inspector Sharif Singh recorded the statements of the witnesses and lifted two empties Ex.P7 and Ex.P8 from the spot, which were taken into possession after converting into sealed parcel Ex.PL. He also lifted blood stained earth from the spot and after converting in a sealed parcel, took the same into possession vide memo Ex. PK. He also took into possession one bill Ex.P9 and one pair of slippers Ex.P10 from the spot vide recovery memos Ex.PM and Ex.PN, respectively. He also prepared inquest report Ex.P5 and sent the dead body for post-mortem to General Hospital, Charkhi Dadri, from where it was referred to PGI, Rohtak. The post-mortem was conducted on 9.8.2010 by Dr. Hitesh Chawla, Dr. Jitender Jakhar on 9.8.2010 at 10.45 a.m., who found the following injuries on the dead body :-

- "1. A firearm entry wound of size 2.5 cms. x 2.0 cms. over right anterior chest wall, 3 cms. medial to right nipple, 5 cms. away from midline and 140 cms. above right heel. The margins of wound were irregular, inverted and abrasion collar for 3-5 mm was present all around the entry wound. The wound was directed laterally downwards, backwards from left to right, piercing the 3rd and 4th ribs anteriorly, plcura and underneath lungs to emerge out as wound No.2.
2. A firearm exit wound of size 1 cm. x 0.5 cm. over upper right side. 10 cms. away from midline and 15 cms. below shoulder blade. The margins of wound were everted and irregular.
3. A firearm entry wound of size 2 cms. x 2 cms. over left anterior chest wall, 4 cms. medial to left nipple

and 5 cms. away from midline and 139 cms. above left heel. The margins of wound were irregular, inverted and abrasion collar for 3-5 mm was present all around the entry wound. The wound was directed backwards, downwards, from left to right, piercing the 3rd inter-costal space, underneath pleura, lung, the pericardium, base of heart and trachea. The bullet was found embedded just beneath the skin in muscular space over right upper back alongwith the inferior border of scapula, 12 cms. away from midline and 18 cms. below shoulder blade. The length of bullet was 3.0 cms. The whole of track was ecchymosed in its entire length.

4. A firearm entry wound size 3.0 cms. x 2.0 cms over left side of face, lateral to left angle of mouth and 155 cms. above left heel. The margins of wound were irregular, inverted. The medial end of wound was reaching upto lateral angle of mouth. The wound was directed medially backwards and upwards from left to right, the left ramus of mandible, left maxilla and right maxilla was fractured into multiple pieces with the fractured ends showing infiltration of blood, to emerge out as wound No.5.
5. A firearm exit wound of size 2.5 cms. x 2.0 cms. situated 5 cms. behind right ear. The margins of wound were everted and irregular."

After conducting the post-mortem, the Board of Doctors gave the opinion that the cause of death was fire arm injuries which were ante-mortem in nature and sufficient to cause death in ordinary course of nature.

The probable time that elapsed between injuries and death was minimum and

that between death and post-mortem was 1-3 days.

It is also the prosecution case that on 14.8.2010 one Anil came to the Police Station with some newspaper cutting Ex.PC/1 which was taken into possession vide memo Ex.PC attested by PW Anil. On the same day PW14 Constable Manoj Kumar of Cyber Cell in the office of Superintendent of Police, Bhiwani provided call details of mobile No.9813410721 of Ramesh son of Ramphal Ex.PCC, of mobile No.9991286912 of Ashok son of Ramesh Kumar Ex.PDD, of mobile No.7417724185 of Sombir son of Rajender Ex.PEE, of mobile No.9812296993 of Jitender son of Chanderpal Ex.PFF and of mobile No.9991714093 of Jitender son of Chanderpal Ex.PGG and same were taken into possession by PW16 Inspector Sharif Singh vide memo Ex.PHH attested by PW14 Constable Manoj Kumar. He also handed over IDs of the aforesaid mobile numbers Ex.PHH/1.

It is also the case of the prosecution that on 21.8.2010, ASI Surat Singh arrested appellant Rahul at Loharu Chowk, Charkhi Dadri on the basis of secret information and Maruti Car No.DL-09-CJ-5165 and one mobile were recovered from him and the same were taken into possession vide memo Ex.PZ. He also made disclosure statement Ex.PV, pursuant to which he pointed out the place of occurrence vide memo Ex.PR. On 23.8.2010, he was taken out of the lock-up and made another disclosure statement Ex.PX regarding concealment of pistol and cartridges in House No.160, Housing Board Colony of his paternal aunt, pursuant to which he got recovered the pistol and two live cartridges on 24.8.2010. On 25.8.2010, he was interrogated by SI Chhailu Ram and made disclosure statement Ex.PLL. On 31.8.2010 appellant Ramesh was arrested by Inspector Vijender

Singh, who on 1.9.2010 was taken out from the lock- up and interrogated by Inspector Vijender Singh. During such interrogation appellant Ramesh suffered disclosure statement Ex.PM regarding place of occurrence and recovery of mobile phones. Pursuant to the disclosure statement, appellant Ramesh pointed out the place of occurrence and memo Ex.PS in that regard was prepared. On 29.10.2010, appellant Ramesh suffered another disclosure statement Ex.PNN and in pursuance thereof he got recovered one mobile phone Ex.P11, one purse Ex.P12, one Haryana Residential Certificate Ex.P12/A and copy of Ration Card Ex.PW12/B. Those were taken into possession vide memo Ex.PQQ. Statement of the concerned witnesses were recorded. The site plan Ex.P5 of the place of occurrence was prepared by Dharminder Singh, Draftsman on the demarcation of complainant Jaswant Singh. Krishan Singh, Reader of the District Magistrate, Bhiwani proved the sanction order Ex.PJJ for the prosecution of appellant Rahul for keeping in his possession one pistol .315 bore with two live cartridges without a valid licence or permit. After completion of investigation report under Section 173 Cr.P.C. was prepared by Inspector Vijender Singh and the same was sent to the Court for trial.

At the trial of the case, the prosecution examined PW1 Krishan Lal, Mechanic at Chander Motor Garage, Auto Market, Bhiwani, who deposed that he did not know Rahul appellant nor he had seen him before. He was declared hostile at the request of learned Public Prosecutor but during his cross-examination by the learned Public Prosecutor he did not support the prosecution. He also disowned his statement Ex.PA by stating that he never made any such statement.

PW2 Manjeet stated that he did not know Rahul appellant. He also stated that he had a hotel at Badhra in the name of 'Umang' but did not know any Jitender @ Jeetu. This witness was also declared hostile at the request of learned Public Prosecutor.

PW3 Anil, brother of deceased Jitender @ Jeetu deposed that on 6.8.2010 appellant Ramesh of village Chandwas had come to his house, who told to Jeetu in his presence at about 2.00 or 2.30 p.m. that Rahul appellant was coming in the evening as he had a programme of going to Haridwar in order to bring Kawar. At about 5.00 p.m., he (PW3 Anil), his mother and brother Jeetu went to Badhra in a bus. After reaching Badhra, they purchased some articles and after that Jeetu had got separated from them. He again stated that when they were purchasing articles, Jeetu was not with them. After about two hours, Rahul, Jeetu and Ashok came in a Maruti Car 800 CC No.DL-09-CJ-5165 to them. Jeetu told them that he was going to Haridwar and would come back in 3-4 days. Rahul and Ashok also said that they would come back in 3-4 days. Thereafter, Jeetu had gone with Rahul and Ashok. His mother had returned home earlier to him. After 3-4 days, he tried to contact his brother on his mobile No.9812296993 and his another mobile No.9991714093 but both the mobile numbers were switched off. In that process, 4-5 days lapsed. He further deposed that on 14.8.2010, his sister had read the newspaper and told him that descriptions of clothes and slippers etc. were mentioned in the newspaper. He had also read the newspaper. Thereafter, he alongwith his mother went to Police Station Sadar, Dadri. There they saw the clothes of Jeetu and photographs of dead body of Jeetu. The photographs were having two gun shot holes on the chest

of Jeetu and one gun shot on the side of his chin. They identified the clothes and photographs as that of Jeetu. At that time, he had no suspicion on anyone. Later on, he came to know from call details that Rahul, Ashok and Ramesh had murdered his brother near Kaliyana hills. He further stated that there was no enmity or grudge of accused persons with them. He did not give any article to the police including newspaper. He did not make any statement before the police. He had made the statement before the police as told in the Court. At this stage, this witness was also declared hostile at the request of learned Public Prosecutor. In cross-examination by the learned Public Prosecutor he admitted that he stated to the police that his brother Jeetu had made a telephonic call to Priyanka, sister of Ashok Kumar and on that Ashok and Ramesh came to their house and protested. Thereafter, he and his mother felt sorry and made his brother Jeetu understand. Perhaps, this might be a reason for murdering his brother Jeetu.

PW4 Ravinder Pal Singh, Senior Scientific Officer proved the report Ex.PE and rough sketch Ex.PF, which he had prepared during investigation of the spot.

PW5 Dr. Hitesh Chawla tendered in evidence his affidavit Ex.PW5/A deposing therein that on 9.8.2010 at 10.45 a.m., he alongwith Dr. Jitender Jakhar conducted post-mortem on the dead-body of an unknown male individual aged 25/26 years. The various injuries noticed by them were incorporated in the affidavit.

PW6 Jaswant Singh stated that on 7.8.2010 at about 4.30 p.m., he received information about dead body of a person lying in a pit on the

Panchayat land. He also deposed about making statement Ex.PQ before the police.

PW7 Dharmender Singh, Draftsman prepared the scaled site plan Ex.PT on the demarcation of PW Jaswant on 10.11.2010.

PW7 Inderjit proved the photographs Ex.PW8/1 to Ex.PW8/2 which he had clicked on being summoned to the spot.

PW9 HC Ravinder Kumar deposed about delivering the special report to the Ilaqa Magistrate.

PW10 HC Arvind Kumar deposed about the arrest of Rahul appellant and his interrogation, besides making disclosure statement.

PW11 ASI Surat Singh deposed about accompanying Inspector Sharif Singh to the spot on 7.8.2010 and taking of various steps by the Investigating Officer during the investigation of the case.

PW12 Kasturi, mother of the deceased Jitender supported the prosecution case.

PW13 Constable Jasvir Singh deposed about handing over a sealed parcel to him by the Moharrir Malkhana on 14.10.2010 and thereafter depositing the same with the Forensic Science Laboratory, Madhuban.

PW14 Constable Manoj Kumar stated that on 14.8.2010 he was posted in Cyber Cell in the office of Superintendent of Police, Bhiwani. On that day, on the application given by the Investigating Officer, he provided call details of mobile No.9813410721 of Ramesh son of Ramphal, resident of Village Surali, District Mahendergarh Ex.PCC, mobile No.9991286912 of

Ashok Kumar Ex.PDD, mobile No.7417724185 of Sombir Ex.PEE, mobile No.9812296993 of Jitender Ex.PF and mobile No.9991714093 of Jitender and same were taken into possession vide recovery memo. Ex.PHH. Alongwith call details, he also handed over the IDs of the aforesaid mobile numbers Ex.PHH/1.

PW15 Krishan Singh proved the sanction order Ex.PJJ for prosecution of Rahul appellant.

PW16 Inspector Sharif Singh, PW17 ASI Amir Singh, PW19 Constable Radhey Shyam and PW20 Inspector Vijender Singh, who by that time stood posted as Deputy Superintendent of Police also deposed about the various steps taken by them during the investigation of the case.

When examined under Section 313 Cr.P.C., both the appellants claimed that they were innocent and falsely implicated in the case.

In their defence, the appellants examined DW1 Rani, paternal aunt of Rahul appellant, who deposed that the police had come to her house for verification of Rahul appellant residing at her house. At that time Rahul was not with her. The police had not recovered any pistol from him. She had not refused to sign any document.

After hearing learned counsel for the parties and on going through the evidence available on the record, the trial Court convicted and sentenced the appellants, as mentioned above.

This Court had heard learned counsel for the appellants and learned State counsel, besides scanning the evidence with their able assistance.

Learned counsel for the appellants has submitted that the prosecution has miserably failed to bring on record sufficient evidence so as to complete the chain of evidence which could lead to the conclusion that the appellants were the only persons who had committed the crime. It is also submitted that Ramesh appellant has been arrested on the basis of disclosure statement made by Rahul appellant, which is a very weak type of evidence. The recovery of mobile phone and the purse of the deceased has been planted upon Ramesh appellant. It is further stated that the prosecution has not been able to establish the motive for the appellant to commit the crime. The statement made by the prosecution witnesses on the issue of motive that deceased was having relations with the wife of the Rahul appellant, who was daughter of Ramesh appellant is only an afterthought. It is also submitted that the evidence of last seen by way of the testimonies of PW3 Anil and PW12 Kasturi, mother of Jitender deceased while in the company of Rahul appellant and Ashok (since a proclaimed offender) is unnatural conduct of the said two witnesses as they made contradictory statements. Thus, their testimonies cannot be relied upon. Accordingly, the appeal be accepted and the appellants be acquitted of the charges against them.

On the other hand, learned State counsel has vehemently opposed the prayer by submitting that the prosecution has led cogent and convincing evidence to establish the guilty of the appellants.

PW3 Anil, brother of deceased Jitender @ Jeetu has deposed that on 6.8.2010 Ramesh appellant had come to his house who told Jitender in his presence at about 2.00/2.30 p.m. that Rahul appellant would come in the evening as he had a programme of going to Haridwar in order to bring

Kawar. In the evening at about 5.00 p.m. PW3 Anil, alongwith his mother and brother Jitender, went to Badhra and after making necessary purchases, Rahul appellant, Jitender @ Jeetu and Ashok (proclaimed offender) came in a Maruti car. At that time Jitender @ Jeetu stated that he was going to Haridwar and would come back in 3-4 days. Rahul appellant and Ashok also stated similarly. Thereafter, Jitender @ Jeetu went alongwith Rahul and Ashok. To the same extent was the statement of PW12 Kasturi, mother of the deceased. From this evidence, which is available on the record, it stands established that deceased Jitender @ Jeetu was last seen in the company of Rahul appellant and Ashok. There was no mention that Ramesh appellant had also accompanied Jitender @ Jeetu, Rahul and Ashok for going to Haridwar.

During the investigation of the case, Rahul appellant was arrested and on 21.8.2010 he suffered disclosure statement Ex.PV regarding committing the crime and concealing of weapon of offence used in the occurrence. Later on, he retracted from his disclosure statement and suffered another disclosure statement Ex.PX on 23.8.2010, pursuant to which he got demarcated the place of occurrence. He also got recovered pistol .315 bore and cartridges from the house of his bua Rani at Bhiwani vide recovery memo. Ex.PY. Rahul also got recovered Maruti car and a mobile phone without SIM which were taken into possession vide recovery memo. Ex.PZ.

As regards Ramesh appellant, he was arrested on 1.9.2010 and, that too, on the basis of disclosure statement Ex.PV suffered by Rahul appellant. Pursuant to his arrest, Ramesh appellant was said to have suffered disclosure statement Ex.PMM pursuant to which he only demarcated the

place of occurrence. However, nothing was recovered as a result thereof. The place of occurrence had already come in the notice of the investigating agency. As regards the second disclosure statement Ex.PNN made by Ramesh appellant before PW20 Inspector Vijender Singh and PW17 ASI Amir Singh, the mobile phone of the deceased, Haryana Resident Certificate and photocopy of the Ration Card were recovered vide memo Ex.PQQ. However, on close scrutiny of the disclosure statement Ex.PNN and recovery memo. Ex.PQQ it is made out that the mobile phone of the deceased was not recovered as it was with his son Ashok. On the other hand Ramesh appellant had suffered disclosure statement about his own mobile which he had used in talking to Rahul appellant. As such there is no recovery of the mobile phone of the deceased at the instance of Ramesh appellant. The Haryana Residence Certificate and copy of Ration Card of the deceased was of no use to Ramesh appellant. Possibility cannot be ruled out of the investigating agency trying to rope in Ramesh appellant in the commission of the crime.

From the various reports of the Forensic Science Laboratory, it stands established that shirt, baniyan, Pant, underwear and Tabiz of the deceased were found to be having blood stains on them. Blood was also detected on the soil which was lifted from the spot as well as on the pillow. The blood stains was found to be of human origin. Even the country made pistol of .315 bore got recovered by Rahul appellant was used in committing murder of the deceased. The pistol was found to be in working order. The two fired cartridges recovered from the spot and fired bullet taken out from the dead body of Jitender @ Jeetu were found have been fired from the said country made pistol. PW5 Dr. Hitesh Chawla has deposed about conducting

postmortem on the dead body of Jitender @ Jeetu. The various injuries noticed on the dead body were firearm injuries.

Merely because PW1 Krishan Lal and PW2 Manjeet did not support the prosecution case does not mean that the prosecution has failed to establish its case against Rahul appellant.

In view of the above, this Court is of the view that the prosecution has failed to prove its case against Ramesh appellant beyond reasonable doubt, whereas the prosecution has led cogent and convincing evidence to connect Rahul appellant with the commission of the crime.

Resultantly, the conviction of sentence of Rahul appellant, as recorded by the learned trial Court is upheld whereas that of Ramesh appellant is set aside and he is acquitted of the charged against him.

The appeal is, accordingly, disposed of.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

December 06, 2016
satish

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO