

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1068-DB of 2012

Date of Decision : September 29, 2016

Randhir Singh

.....Appellant

Versus

State of Haryana

.....Respondent

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

Present : Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep Singh Sandhu, Advocate
for the appellant.

Mr. M.S. Sidhu, Additional A.G., Haryana.

Mr. A.P.S. Deol, Senior Advocate with
Mr. Vishal Rattan Lamba, Advocate
for the complainant.

T.P.S. MANN, J.

The appellant, namely, Randhir Singh, Constable was tried for commission of offence punishable under Section 304-A IPC pursuant to order dated 27.9.2001 passed by learned Judicial Magistrate 1st Class, Faridabad. When the case was fixed for prosecution evidence, an application was moved by the complainant for committing the case to the Court of Sessions, as the cross case arising out of the same incident stood committed to the Court of Sessions against complainant Ramzan and others, being exclusively triable by the Court of Sessions. Statements of

PW1 complainant Ramzan and PW2 Kallu were recorded and, thereafter, an application moved by the prosecution under Section 319 Cr.P.C. for summoning SI/SHO Sat Narain and ASI Randhir Singh, was allowed on 7.8.2006 and the aforesaid accused were summoned to face trial under Section 304-A IPC. Finding no case for framing charge for any offence against ASI Randhir Singh, he was discharged, whereas SI Sat Narain and Constable Randhir Singh were charged for offences under Section 302 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

During trial, SI/SHO Sat Narain died and the trial proceeded against appellant Randhir Singh, Constable. Vide judgment and order dated 18/30.10.2012, learned Additional Sessions Judge, Faridabad convicted him under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-.

Aggrieved of his conviction and sentence, the appellant filed the present appeal which stands admitted and notice issued to the State. The trial Court record stands requisitioned.

According to the prosecution, on 16.5.1998 at about 3.00 a.m., the complainant Ramzan alongwith Yusaf and Kallu was coming from village Uttawar in a Maruti car bearing registration No.HR-51-B-6838. The complainant was driving the car whereas Yusaf was sitting on the front seat and Kallu on the back seat. When they reached near Sikrona turn, they saw police jeep parked there

and some stones put on road in order to block it. The complainant stopped the car. The police party headed by SHO Sat Narain, ASI Randhir Singh, one driver, one Head Constable and two Constables was present there. The police asked them about their names. All of them correctly disclosed their names and addresses. The police party asked for Rs.5,000/- or to leave Yusaf and the car with them as during the whole night they could not get any prey. ASI Randhir Singh told them to please the SHO, failing which they will be in trouble. All the police officials asked the complainant party to pay money failing which they would not be spared and would be shot dead by showing false encounter. The complainant party offered Rs.400/500 only. Negotiations continued for about 10 minutes. Finding an opportunity and sensing trouble at the hands of police party, the complainant started the car and tried to move it ahead. Immediately, SHO Sat Narain exhorted the police party to fire and kill the complainant party. The two Constables in police party were having rifles. One of them, i.e. accused Constable Randhir Singh fired at the complainant party and the bullet pierced through the car and hit Yusaf in his back. Some pieces of bullet hit the complainant also. Both of them started bleeding. However, the complainant somehow sped away in the car to his village and informed the neighbours. Kallu was left there. The complainant alongwith Aziz, maternal uncle of Yusaf, got Yusaf admitted in Escort Medical Centre. At about 6.00 a.m., he came to know from the doctor that Yusaf had expired. Kallu, Kasam and Hanif reached the hospital and stated that the SHO, ASI, Driver, Head Constable

and two Constables had fired in the air in the village to create terror. However, FIR No.233 dated 16.5.1998 was registered against complainant-Ramzan and others in Police Station Sadar, Ballabgarh at the instance of SI Sat Narain, who was SHO at that time. The complainant, accordingly, moved an application to the Superintendent of Police, Faridabad on 16.5.1998, which was marked to the DSP, Headquarters for enquiry and report. Accordingly, the present case was also investigated in the same FIR as a cross-case, as it arose out of the same occurrence.

In support of its case, the prosecution examined seven witnesses.

PW1 Inspector Krishan Kumar deposed that on 21.1.2000 he stood posted as SHO, Police Station Sadar, Ballabgarh and on completion of investigation of this case, he prepared the challan against the accused.

PW2 Balbir Singh Beniwal deposed that on 16.5.1998, he was posted as DSP, Headquarters, Faridabad. On that day, an application moved by complainant Ramzan was marked to him by the Superintendent of Police, Faridabad. The application was in respect of the murder of Yusaf. The application was pertaining to FIR No.233/98. He conducted investigation regarding allegations mentioned in the application. He contacted the SDM, Faridabad. After that he reached Escort Hospital, Faridabad where the dead body of Yusaf was lying. He moved an application Ex.PA to the

SDM for conducting proceedings under Section 176 Cr.P.C. and marked the application to the DDPO, Faridbad, who conducted inquest on the dead body of Yusaf and, thereafter, handed over the papers of proceedings to him. He deputed Constable Karan Singh and Constable Hukam Singh for getting postmortem conducted. On the same day, one Maruti car bearing No.HR-51-B-6838 was taken into possession from the premises of Escort Hospital, Faridabad vide recovery memo. Ex.PC. He recorded the statements of Ramzan, Hazi Abdul, Rehman, Kallu and others. He arrested the accused, namely, Constable Randhir Singh on 4.5.1999. He also arrested SI Sat Narain on 11.8.1999.

PW3 Ramzan deposed that on 16.5.1998 at about 3.00 a.m., he alongwith Yusaf and Kallu was coming from Utawar village in a Maruti car bearing No.HR-51-B-6838. He was driving the said car. When they reached near Sikrona turn, SHO Sat Narain was seen sitting in government vehicle alongwith other police officials. SHO Sat Narain asked their names and checked the car and asked to give him Rs.5,000/6,000. He told them either to give money or leave Yusaf with him. Thereafter, on the asking of Yusaf, he started the car and then SHO said to fire shot on them. They were running away from there and Sat Narain fired a shot upon them. The fire shot hit Yusaf on his shoulder. He deposed that he could not tell who fired upon them because it was dark at that time. He further stated that he could not tell number and names of police officials who were with SHO Sat Narain. Yusaf was taken to village

Dhauj in an injured condition from where he and Aziz, father-in-law of Yusaf took him to Escorts Medical Centre, Faridabad where he expired at about 7.00/8.00 a.m. On this, on the request of learned Public Prosecutor, he was declared hostile and in the cross-examination he admitted his signature on application Ex.PD but stated that it was on dictation of Sh. H.C. Chetal, Advocate and was written by a relative of Yusaf. He also admitted that earlier he had given statement Ex.PE on 25.2.2004, Ex.PE/1 on 27.5.2004 and Ex.PE/2 on 28.4.2004 but stated that said statements were on asking of relatives of Yusaf. In the cross-examination conducted by the learned defence counsel it was stated that aforesaid statements were given under pressure and threats of relatives of Yusaf who had come to Court.

PW4 Kallu deposed that on 16.5.1998 he alongwith Ramzan and Yusaf had gone to Utawar village in car No.HR-51-B-6838 to meet their relative. The vehicle was driven by Ramzan. Yusaf was sitting besides Ramzan whereas he was sitting on the seat behind Ramzan. They started from Utawar at about 2.00 a.m. and reached Sikrona turn at about 3.00 a.m. A police vehicle was parked at Sikrona turn. Police officials, Sat Narain and Randhir, alongwith 6-7 police officials were present there. The car was made to halt by the police officials. SI Randhir Singh inquired from them as to from where they were coming. He asked about their names and addresses. He told them either to give Rs.5,000/- to him or to leave Yusaf there with them. On this,

they stated that they have only Rs.500/- and they can take this amount. While saying so, they left the spot. When they started the car, then they heard SHO Sat Narain saying to shoot them and, thereafter, Constable Randhir Singh fired at them from back side. The bullet pierced through the petrol tank and hit the back of Yusaf. Some pellets also hit Ramzan on his pinna. Then they came back to their house in village Dhauj. Ramzan contacted maternal uncle of Yusaf, namely, Aziz and took Yusaf to Escorts Medical Hospital, Faridabad where after about one and half hour, Yusaf expired. Then they went to Sh. Chetal, Advocate, who prepared an application and took them to S.P. Faridabad who in turn sent it to Deputy Commissioner, Faridabad. The Deputy Commissioner entrusted the enquiry to DDPO, Faridabad who after one or one and half year gave report against the police officers under Section 304-A IPC. However, the Court framed charge under Section 302 IPC.

PW5 Dr. Beena Sharma testified that on 16.5.2008 a Board of Doctors headed by her conducted postmortem on the dead body of Yusaf and observed as under :-

- "1. There was stitched wound present 2" long in right scapular region 2" away from mid line and 3" away from inferior angle of his scapula. Margins were black with inverted margins. Blood oozing out from margins in the surrounding area. Multiple parchment like wound with tattooing skin deep varying size from .5 cm to 1 cm on probing probe to

anteriorly upward in direction. Lung deep. On exploration metallic piece was found on posterior aspect which was taken in sealed, on opening the chest huge amount of blood present in right pleural cavity. Wound piercing lung parenchyma. There was through and through track in upper lower right lung. 2" in length. Damaging whole lung parenchyma. At this time, embedded metallic piece found which was taken out and sealed.

2. Incised wound 1.5 cm in size present in 7th ICS right side. Cavity deep in anterior axillary line.
3. Badly fracture of 2nd, 3rd and 4th ribs present from posterior and pieces of wound embedded in right lung. Larynx tracheae contains blood.

She further deposed that in the opinion of the Board, cause of death was shock and haemorrhage as a result of bullet injury to right lung which was ante-mortem in nature and sufficient to cause death in ordinary course of nature. She handed over the dead body to police after postmortem, copy of PMR, police papers signed 1 to 20 in number, X-ray of deceased three in number, sealed bottle containing metallic piece detected from body and one sample seal. She proved copy of postmortem report Ex.PF, police request Ex.PB and inquest paper Ex.PG."

PW6 Abdul Rehman deposed that in the year 1998 he

was going after paying the Namaz, then Kallu told him that police had fired a shot on Yusaf and they were going to hospital. After sometime they received information that Yusaf had died. Postmortem was conducted on the dead body of Yusaf and after postmortem examination, he identified dead body and the same was taken by them vide memo Ex.PH. He further deposed that he could not tell number of the car but the same was taken into possession. He attested the memo Ex.PC. Many people gathered there including Kallu, Sehdu, Mahtab, etc. After sometime, police came there and fired in the air and ,thereafter, police ran away from the spot.

PW7 Manjoor deposed that on 15.5.1998 he was present in his house where at about 9.30/10.00 p.m. Yusaf, Kallu and Ramzan came there in a vehicle. After taking meals, they sat together and had a talk with each other and made arrangement for sleeping. All the three refused to stay at his residence in night as there was a case fixed at Faridabad for next day. They left his house at about 2.00 a.m. On next day at about 9.00 a.m., persons from village Dhauj came in a vehicle and told him that Yusaf was murdered by the police on the way and Yusaf had died and was cremated at about 10.00/11.00 p.m.

After giving up PW Aziz as unnecessary, learned Public Prosecutor for the State closed the evidence on behalf of the prosecution.

When examined under Section 313 Cr.P.C., the appellant denied the allegations of the prosecution and pleaded his false implication. He further stated that in the month of May, 1998 he was working under the control of SHO Sat Narain. On the intervening night of 15/16.5.1998, he was on duty at PCR No.7 at Sikrona Chowk. Police party headed by SHO Sat Narain was also present there and they had set up a naka there in connection with investigation of case FIR No.232 under Section 395 IPC, Police Station Sadar, Ballabgarh where they received a VT message from PCR No.4 that a truck followed by a car was coming after breaking naka and same be intercepted. From Ballabgarh side, a truck came at high speed which was signalled to stop by police party but the truck did not stop and turned towards Fatehpur Tagga. Maruti car No.HR-51-B-6838 which was following the truck also did not stop and both vehicles turned towards village Dhauj. Occupants of car fired two shots which hit the radiator and the bumper of the jeep and one pellet also hit Constable Sohan Lal below his eye. Then on direction of SHO Sat Narain, ASI Randhir Singh and police party fired shots in the air in order to stop the vehicles, but the vehicles sped away towards village Kabulpur and Dhauj. Police party started chasing the vehicles and reached village Dhauj where truck was nabbed by police party. In the meantime, people of village Dhauj came there and a four wheeler was parked ahead of the jeep of SHO which facilitated the truck driver to run away and villagers also pelted stones at police party, as a result of which Constable Dev Kumar, ASI Randhir Singh and HC Rajinder Kumar suffered

injuries.

In defence, the appellant examined DW1 ASI Vijay Raj, DW2 ASI Rana Singh and DW3 HC Sunil Kumar, who in their respective testimonies proved the various FIRs registered against the complainant party.

After hearing learned counsel for the parties and on going through the record, learned trial Court held the appellant guilty of the charge under Section 302 IPC and, accordingly, convicted and sentenced him, as mentioned above.

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

According to the prosecution, SI Sat Narain, who was the Station House Officer of Police Station Sadar, Ballabgarh, ASI Randhir Singh, one Driver, one Head Constable and two Constables were present at the naka at the relevant time. However, neither the name of the appellant was mentioned in the application moved by complainant Ramzan, on the basis of which the proceedings were initiated against the appellant and others nor any attempt was made for conducting identification parade in order to fix the identity of the appellant, being one of the two Constables who were present at the spot at the time of occurrence. PW3 Ramzan did not support the prosecution version qua the appellant. Rather, he stated that it was SHO Sat Narain, who fired, as a result of

which Yusaf had died. PW4 Kallu also failed to identify the appellant.

The appellant being a Constable was working under the control of SHO Sat Narain. On the intervening night of 15/16.5.1998, the SHO alongwith his police party was on duty for conducting investigation in case FIR No.232 under Section 395 IPC, Police Station Sadar, Ballabgarh where he received a VT message from PCR NO.4 that a truck followed by a car was coming after breaking the naka and it be intercepted. From Ballabgarh side a truck came at a high speed which was signalled to stop by the police party. The truck did not stop and turned towards village Fatehpur Tagga. Maruti car bearing No.HR-51-B-6838 which was following the truck also did not stop and both vehicles turned towards village Dhauj. Occupants of the car fired two shots hitting the radiator and bumper of the jeep. One pellet also hit Constable Sohan Lal. On the direction of SHO Sat Narain, ASI Randhir Singh and the police party fired shots in the air in order to stop the vehicles but the vehicles sped away towards villages Kabulpur and Dhauj. The police party started chasing the vehicles and reached village Dhauj where the truck was nabbed. In the meantime, people of village Dhauj came there and a four wheeler was parked in front of the jeep of SHO which facilitated the truck driver to escape. The villagers also pelted stones at the police party. As a result, Constable Dev Kumar, ASI Randhir Singh and HC Rajinder Kumar suffered injuries. Since the occupants of the Maruti car had fired at

the police party and injured them, the firing resorted to by the police was in the exercise of right of self-defence. The appellant was acting in discharge of his official duties while firing as per the orders given by the superior officer. Therefore, he could not have been prosecuted without obtaining sanction.

In view of the above, this Court finds that the prosecution has miserably failed to prove its case against the appellant beyond reasonable doubt. Even if it was the appellant, who had fired at Yusaf and killed him, he could not have been tried without obtaining sanction for his prosecution.

Resultantly, the appeal is accepted, impugned judgment of conviction and sentence is set aside and the appellant is acquitted of the charge against him.

September 29, 2016
satish

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

Whether reasoned/speaking : YES / NO

Whether reportable : YES / NO