

CRM-15708 of 2016 &
CRA-AD-108 of 2015

RAJ KUMAR ...APPLICANT-APPELLANT
VERSUS
STATE OF HARYANA AND OTHER ...RESPONDENTS

1. Whether the judgement should be reported in the digest? Yes/No

M. JEYAPPAUL, J.

2. It is the case of the prosecution that PW3 Raj Kumar alongwith his son Arun (since deceased) was standing near the Disc Jockey (for short 'DJ') in a marriage function. Accused Raghubir, Amarjit (later declared as juvenile) and Monu who had come to attend the marriage were dancing to the tunes of DJ. Arun asked the DJ to change the song, but accused Raghubir, Amarjit and Monu asked him to continue the song. There was an altercation between them. All the three accused started beating Arun. PW3 Raj Kumar, who was the complainant, with the intervention of the relatives rescued his son Arun. After some time, all the three accused, namely Raghubir, Amarjit and Monu again came to the marriage function. When Arun was standing near complainant Raj Kumar, accused Raghubir tried to

inflict injury with a knife on Arun who jumped to his side and escaped. Thereafter, accused Amarjit and Monu caught hold of Arun by the arms and accused Raghubir inflicted knife blow on the left side of his stomach. When the complainant tried to rescue his son, the assailants slapped and gave fist blows to him. All the three assailants taking benefit of the crowd collected over there, fled away from the scene of crime with the weapon. Arun was brought to the General Hospital at Ambala Cantt., where he was declared “brought dead”.

3. Heard the submissions made by learned counsel appearing for the applicant-appellant.

4. The trial Court has in fact convicted accused Rajhubir under Section 302 read with Section 34 IPC and Section 25(1-A) of the Arms Act and accused Monu under Section 302 read with Section 34 IPC. Both of them were sentenced to life imprisonment. But the trial Court acquitted accused Ashwani Kumar and Aman Kumar.

5. PW3 Raj Kumar has categorically admitted during the course of cross-examination that accused Ashwani Kumar and Aman Kumar were related to him. In the first information report lodged by him, there was no whisper about the presence of the above two accused. PW2 Mandeep Kumar also knew both accused Ashwani Kumar and Aman Kumar prior to the occurrence. He had also not referred to the presence of those two accused at the scene of crime in his statement under Section 161 Cr.P.C. PW2 Mandeep Kumar was none other than the brother of the deceased whose statement also was recorded during inquest proceedings. In the

inquest report Ex.P25, there was no reference to the presence of those accused at the scene of crime. In other words, PW2 and PW3 who were acquainted with accused Ashwani Kumar and Aman Kumar had not assigned any role to the above accused in the murder of Arun. There was no reason for them not to specify the presence and the role of those accused in case they also participated in the occurrence. The occurrence had not taken place in a spur of moment. There had been a sequence of two sets of events. There was no reference to their role either in the first occurrence or in the next occurrence which culminated in the murder. Failure to refer to the presence of the accused-respondents by PW2 and PW3 in the first information report and in the statement under Section 161 Cr.P.C. deals a death blow to the case of the prosecution that these two accused also participated in the occurrence.

6. Of course, the prosecution has come out with recovery of motorcycle at the instance of accused Ashwani Kumar, but it is to be noted that there was no proof that the motorcycle recovered was the same which was used by the co-accused in the crime.

7. For all these reasons, in our view, the trial Court has rightly acquitted accused Ashwani Kumar @ Poli and Aman Kumar. Therefore, leave sought for is declined. As a consequence, the above Criminal Miscellaneous Application and the Main Appeal stand dismissed.

(M. JEYAPPAUL)
JUDGE

July 12, 2016
Gulati

(SNEH PRASHAR)
JUDGE