

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-8163 of 2016 and
CRA-D-1064-DB of 2015
DATE OF DECISION: May 13,2016

Raghbir Singh

...Applicant

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.Arshdeep Singh Brar, Advocate for the
applicant.

RAMENDRA JAIN, J.

The instant application under Section 378(4) CrPC has been filed by applicant Raghbir Singh, seeking leave to file the accompanying appeal against acquittal of respondent No.2, vide impugned judgment dated 5.5.2015 passed by the learned Additional Sessions Judge, Bhiwani.

On 30.7.2013, the applicant got recorded his statement Ex.PE to the police that around 9.00 p.m. on the previous day i.e. 29.7.2013, his son Rajender went to guard the fields in the night. In the coming morning, when he along with his grand son Sanjay reached the fields with meal of Rajender, he was found lying dead on a cot in the hut having sharp injury marks on his body. Describing the back history, the applicant narrated that around six months ago,

a brawl had taken place between his grand son Manjeet and Sombir son of Kartar and at that time, Sombir had threatened to cause death either of Manjeet or any other family member. There was also some brawl with Sombir son of Sadhu Ram. Hence, he had suspicion that respondent No.2 Sombir and Sombir son of Sadhu had caused murder of his son Rajender.

Upon receipt of above information, the police swung into action. A formal FIR was registered. Investigation was commenced. Deceased Rajender was taken to the hospital. His post mortem examination was got conducted. Respondent No.2 and his accomplice Sanjay were arrested and their disclosure statements were recorded. On completion of investigation, final report under Section 173 CrPC was presented for prosecuting respondent No.2 and his accomplice Sanjay under Sections 302,120-B,201 IPC before the Area Magistrate.

Accordingly, respondent No.2 and his accomplice Sanjay (died during trial) were charge sheeted under Sections 120-B and 302,201 read with section 120-B IPC.

On appraisal of evidence and hearing both the sides, the trial Court did not find itself convinced with the prosecution case and thus acquitted respondent No.2 vide impugned judgment dated 5.5.2015.

Learned counsel for the applicant has contended that the trial Court has not appreciated the evidence available on record in a prospective manner and has wrongly acquitted respondent No.2. The ocular version in its entirety was consistent with the medical evidence. The motive behind the murder was also duly proved.

After giving our thoughtful consideration to the submissions of learned counsel for the applicant, we find the present application completely meritless for the reasons to follow:

(1) There is no eye-witness account to the occurrence. The entire case rests on circumstantial evidence. The prosecution has made every possible efforts to succeed in its case by examining PW6 Andeep, who deposed that he had seen Sanjay (since deceased) and respondent No.2 Sombir armed with jelly and lathi leading towards the hut of deceased Rajender. As per prosecution case, respondent No.2 Sombir had threatened to cause death either of Manjeet or any of his family member and resultantly, Rajender was found dead. The above evidence lacks credence, inasmuch as, weapons allegedly recovered pursuant to disclosure statements of respondent No.2 and his accomplice Sanjay did not have any blood stains. The medical evidence does not prove that at what time, the

death of Rajender was caused, or whether the weapons allegedly recovered were ever used in the commission of crime. Even no specific evidence was led to show that at any point of time, threat to cause death was given by respondent No.2 Sombir.

(2) The allegation in the FIR that Sombir son of Sadhu Ram was also having grudge against Manjeet was found to be false by the Investigating Agency. Even this allegation was not substantiated by any of the prosecution witnesses.

(3) The dead body of deceased was lastly seen by the applicant (PW5) and Sanjay. However, Sanjay was not examined which casts serious doubt on the prosecution story.

(4) The only witnesses left are PW4 Surender and PW5 Raghbir Singh (applicant). PW4 Surender deposed that about 7 to 8 months ago, respondent No.2 Sombir had threatened to cause death either of Manjeet or any of his family member as and when he would find an opportunity to do so and that being so, Rajender was killed. PW5 Raghbir Singh deposed that the cause of death was previous enmity.

However, the above evidence, if read in its entirety, does not connect respondent No.2 with the crime.

No evidence was led to show the presence of respondent

No.2 at the place of alleged occurrence. Respondent No.2 was allegedly seen by PW6 Andeep in the fields around 9.30 p.m., but that evidence is not corroborated by any other witness. More so, it does not appeal to reason that PW6 Andeep could identify respondent No.2 in the dark night at 9.30 p.m. along with the weapons allegedly carried by him.

(5) Enmity is a double edged weapon. It may be a motive for commission of crime or it may also be a motive for false implication. It is well settled that when prosecution relies upon the evidence of last seen to prove the incident, motive assumes a secondary role. In the present case, the testimony of eye-witness (PW6) is unacceptable, therefore, the motive is not relevant. Enmity in the instant case does not show any ground for the commission of crime.

All the facts and circumstances mentioned above and discrepancies prove that the prosecution case in all probabilities is false.

In view of the aforesaid discussion, we find no merit in the present application and, therefore, the same is hereby dismissed. Leave to appeal is declined and the appeal dismissed.

(T.P.S.MANN)
JUDGE
May 13,2016
KD

(RAMENDRA JAIN)
JUDGE