

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-D-1304-DB-2014 (O&M)
Date of decision : January 08, 2016

Smt. Vinod Devi

.....Appellant

Versus

State of Haryana and Others

.....Respondents

CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MR.JUSTICE GURMIT RAM

Present : Mr. R.A. Sheoran, Advocate for the appellant.
Ms. Tanisha Peshawaria, Deputy A.G., Haryana.
Mr. Zorawar Singh, Advocate for respondents No.2, 4 and 6.
Mr. Ramender Chauhan, Advocate for respondent No.3.

S.S. SARON, J.

Learned counsel for the applicant submits that he does not press his appeal for inadequate compensation, however, he be given liberty to make a prayer for compensation in the pending appeals filed by the convicts Ram Niwas, Gopi and Budh Ram (respondents No.2 to 4) respectively. He further submits that acquittal of Rajesh and Raj Bala (respondents No.5 and 6) is improper as it is contrary to evidence and material on record. Therefore, the appeal against their acquittal be admitted and they be convicted and sentenced for the offences for which they were charged.

We have heard learned counsel for the applicant/appellant.

The learned Additional Sessions Judge has held Ram Niwas, Gopi and Budh Ram (respondents No.2 to 4 respectively) guilty for committing the offence punishable under Section 302 read with Section 34 of the Indian Penal Code ("IPC"- for short) for causing the death of Ajeet @ Gajanand in furtherance of their common intention by inflicting multiple bodily injuries to him with their '*dandas*'. They have been convicted and sentenced to undergo life imprisonment each, besides, pay a fine of Rs.3,000/- each and in default thereof undergo further imprisonment for 6 months each. Rajesh and Raj Bala (respondents No.5 and 6) have, however been acquitted and against their acquittal, the present appeal is being pressed.

First information report ("FIR"- for short) in the case has been recorded on the statement of complainant-Sanjay Kumar (PW-2) son of Ramjas (PW-3). The complainant made his statement before the police that he was an agriculturist by profession. He received information late in the night at about 3/3:15 a.m. that his nephew Ajeet @ Gajanand (deceased) had been injured in village Kikral. The complainant then along with his father namely Ramjas (PW-3) reached village Kikral. There he came to know that his nephew Ajeet @ Gajanand (deceased) was present in the house of one Ram Niwas (respondent No.2). The complainant and his father then went to the house of said Ram Niwas (respondent No.2) and found his nephew Ajeet @ Gajanand was badly injured. The complainant alleged that Gopi (respondent No.3) and Budh Ram (respondent No.4) brought out Ajeet @ Gajanand from their house and Ram Niwas (respondent No.2) started beating him (Ajeet @ Gajanand) with '*dandas*'.

When they objected then aforesaid Ram Niwas (respondent No.2) informed

him that Ajeet @ Gajanand had trespassed into their house. Thereafter, they took Ajeet @ Gajanand to General Hospital, Siwani, but he succumbed to his injuries there. The complainant alleged that Ajeet @ Gajanand was killed by Ram Niwas, Gopi and Budh Ram (respondents No.2, 3 and 4 respectively) because his nephew had helped the daughter of Budh Ram (respondent No.4) in copying during examinations. In other words they suspected that Ajeet @ Gajanand had an eye on the daughter of Budh Ram (respondent No.4).

On the statement Ex.P5 of complainant, FIR Ex.P25 was registered at Police Station Siwani for the offences punishable under Section 302/34 IPC. Investigation was conducted in the case and after completion of investigation, police report was filed in the Court of the learned Sub-Divisional Judicial Magistrate, Siwani. The case was then committed to the Court of learned Sessions Judge, Bhiwani.

The learned Additional Sessions Judge to whom the case was assigned charge-sheeted respondents No.2 to 4 for the offences punishable under Section 302 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

The prosecution in order to establish its case examined as many as fifteen witnesses, besides, tendered in evidence the FSL report Ex.P24, pathology report Ex.P26 from PGIMS Rohtak as also the crime scene report Ex.P19.

The statements of the accused in terms of Section 313 Cr.P.C. were recorded and the incriminating evidence appearing against them on record was put to them. They denied the correctness of the evidence produced against them.

As already noticed respondents No.2 to 4, Ram Niwas, Gopi and Budh Ram respectively have been convicted while respondents No.5 and 6, Rajesh and Raj Bala have been acquitted.

Mr. R.A. Sheoran, Advocate appearing for the applicant/appellant-Vinod Devi submits that respondents No.5 and 6 were also liable to be convicted and sentenced. Therefore, appeal against their acquittal be admitted and they be also convicted and sentenced.

We have given our thoughtful consideration to the matter and with the assistance of learned counsel for the parties gone through the records of the case that has been requisitioned.

The learned trial Court acquitted Rajesh and Raj Bala (respondents No.5 and 6). It was observed that improvements had been made in the statements of Sanjay-PW-2 (complainant) and his father Ramjas (PW-3). The disclosure statements Ex.P40 of Rajesh (respondent No.5) and Ex.P42 of Raj Bala (respondent No.6) were noticed. Their disclosure statements in fact had been recorded by the Investigating Officer while they were in police custody; besides, in furtherance of the said disclosure statements no new fact was discovered and neither was anything recovered in pursuance thereof. Therefore, their statements showing their involvement in the crime cannot be read in evidence being barred by Section 25 of Indian Evidence Act. The statements of complainant-Sanjay (PW-2) and his father Ramjas (PW-3) being shaken were held to be not reliable in respect of Rajesh and Raj Bala (respondents No.5 and 6). No other person was examined in the case who had seen the roles attributed to Rajesh and Raj Bala (respondents No.5 and 6). They did not cause any injury on the person of the deceased namely Ajit @ Gajanand even in the presence of Sanjay

Kumar (PW-2) and Ramjas (PW-3) who alleged against them that they had facilitated the accused Ram Niwas, Budh Ram and Gopi (respondents No.2, 3 and 4 respectively) by catching hold of the legs and hands of the deceased but these witnesses were held to be discrepant to each other on this point despite being an improved version. It was noticed that Sanjay (PW-2) deposed before the Court that he stated before the Police when they reached in the house of accused, they met Ram Niwas (respondent No.2), Gopi (respondent No.3), Budh Ram (respondent No.), Rajesh (respondent No.5) and Raj Bala (respondent No.6), but when he was confronted with his earlier statement Ex.P5, this fact was not found to be recorded therein. Then it was further deposed that he i.e. complainant Sanjay (PW-2) stated to the Police that all the four accused brought the deceased by dragging him but this fact was also not found mentioned in his statement Ex.P5. He further deposed that he had stated to the police that all the four accused had caught hold of the deceased. But this fact was also not recorded in his statement Ex.P5. In cross-examination it was stated by the complainant Sanjay (PW-2) that he did not name accused Rajesh (respondent No.5) and Raj Bala (respondent No.6) in the statement Ex.P5 made before the police but police had arrested them on the basis of its own investigation.

Ramjas (PW-3) in his examination-in-chief stated that four accused namely Gopi Ram, Budh Ram, Rajesh and Raj Bala (respondents No.3 to 6) were catching hold of Ajeet @ Gajanand (deceased) while Ram Niwas (respondent No.2) was beating him with a '*danda*'. However, in cross-examination, he stated to the Police that Ajeet @ Gajanand was caught hold by three brothers and Raj Bala (respondent No.6) while Ram Niwas (respondent No.2) was beating him with a '*danda*', but when he was

confronted with his statement Ex.D1, this fact was not so recorded.

In view of the improved version, the learned trial Court disbelieved the testimony qua the involvement of Rajesh and Raj Bala (respondents No.5 and 6 respectively) in the occurrence. The police had involved them i.e. Rajesh and Raj Bala (respondents No.5 and 6) on the basis of their disclosure statements which are not admissible in evidence being barred by Section 25 of Indian Evidence Act, moreover no circumstantial evidence was available against them.

Learned counsel for the applicant/appellant has not been able to make out any case so as to dislodge the findings and conclusions reached at by the learned trial Court in respect of the acquittal of Rajesh and Raj Bala (respondents No.5 and 6). Indeed, there has been improvements in the statements of the complainant Sanjay (PW-2) and his father Ram Jas (PW-3); besides, there being discrepancies in their depositions in respect of Rajesh and Raj Bala (respondents No.5 and 6). There is no evidence on record against Rajesh and Raj Bala (respondents No.5 and 6 respectively) showing their involvement in the incident that had occurred which led to the death of Ajeet @ Gajanand. The learned trial Court has taken a reasonable and possible view on appreciation of the evidence insofar as the acquittal of Rajesh and Raj Bala (respondents No.5 and 6) is concerned. Merely because another view may be possible would not be a ground to set aside their acquittal. In the aforesaid facts and circumstances they have rightly been acquitted by learned trial Court and no ground is made out to admit the appeal against their acquittal and the same is liable to be dismissed summarily in terms of Section 384 CrPC.

Consequently, there is no merit in the appeal against the acquittal of Rajesh and Raj Bala (respondents No.5 and 6) and the same is dismissed. However, the appellant, if so advised may file necessary application in the pending appeals of the convicts/respondents No.2 to 4 for grant of compensation. It is also made clear that nothing stated or observed herein shall be construed as an expression of opinion on merits of the case in the pending appeal of the convicts/respondents No.2 to 4 and their appeal shall be heard on the basis of evidence and material on record without being influenced by observations made herein.

(S.S. SARON)
JUDGE

January 08, 2016
Gaurav Sorot

(GURMIT RAM)
JUDGE

Note: Whether to be referred to the Reporter : Yes/No.