

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-1868-DB-2014

DATE OF DECISION: February 18, 2016

Braham Parkash

...Appellant

versus

Ajay and others

...Respondents

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

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sandeep Kotla, Advocate for the appellant

RAMENDRA JAIN, J.

By way of the present appeal, the appellant has assailed the judgment of acquittal dated 29.10.2014 passed by the Sessions Judge, Gurgaon.

Briefly stated, around 6.00 P.M. on 3.3.2013, son of the appellant, namely, Amit (since deceased) had left home on scooty. After some time, his daughter namely Seema had made call to the deceased to bring some household articles. However, the deceased did not return home. Upon contact, his mobile was found switched off. They made search for him at their own level, but did not succeed. On 4.3.2013, the appellant had approached the police of Police Station Rajindra Park, Gurgaon by moving an application regarding missing of his son, whereupon, DDR No.24 dated 4.3.2013 was recorded. On 5.3.2013, when the appellant along with his family members while searching for his deceased son reached ahead of sewage

drain near Baba Parkashpuri Mandir, he noticed a Kothra slightly open in a plot having boundary wall. On opening the same, the dead body of his deceased son was found lying there. Blood was oozing out of his nostrils. He informed the police. On the basis of statement of appellant-complainant Ex.PJ, raising suspicion upon Rajiv Fauji and his brothers, as one and a half years ago, the deceased was beaten by Rajiv Fauji and the matter was compromised later on, the present case was registered.

The respondents No.1 and 2 were arrested on 08.07.2013. They made disclosure statements admitting their involvement in the commission of crime. Pursuant thereto, they identified the place, where they along with co-accused Imtiyaj Ali had committed murder of Amit and had thrown his dead body. Accused Ajay-respondent No.1 got recovered key of the scooty, learner's driving licence and mobile phone of the deceased and also a car (Accord) used in carrying the dead body. Accused Sanjeev-respondent No.2 got recovered Central Government Health Scheme Card of deceased from his house. Both the accused i.e. respondents No.1 and 2 also disclosed that they had committed murder of co-accused Masu @ Imtiyaj Ali on 24/25.3.2013. Respondent No.1 also made disclosure that they had got the colour of the Accord car changed from silver to black through co-accused Masu @ Imtiyaj Ali. Upon completion of investigation, challan was presented against the respondents No.1 and 2 for trial.

The offences alleged being punishable under Section 302 IPC, the case was committed to the Court of Sessions by the court of JMIC, Gurgaon vide order dated 01.10.2013. Charge was framed against the respondents No.1 and 2 under Sections 302 and 201 IPC read with Section 34 IPC to which they pleaded not guilty and claimed trial.

The prosecution examined as many as 19 witnesses. Statements of respondents No.1 and 2 were recorded under Section 313 Cr.P.C. They denied the allegations and pleaded false implication. However, they did not lead any evidence in their defence.

The trial Court after analysing the evidence in great detail found that the statement of prosecution witnesses lacks credence and unreliable. Accordingly, it directed the acquittal of accused/respondent Nos.1 and 2.

Learned counsel for the appellant submits that the trial Court has wrongly acquitted respondents No.1 and 2, without appreciating the fully corroborated statements of complainant and other witnesses. It is further argued that the learned trial Court erred in not considering that recoveries of personal belongings of the deceased were effected at the instance of the respondents No.1 and 2 in pursuance of their disclosure statements. The learned trial Court wrongly came to the conclusion of acquittal of the accused respondents.

We have thoughtfully considered the arguments advanced by learned counsel for the appellant and after going through the record, are of the view that the appeal deserves to be dismissed for the reasons to follow.

The appellant-complainant initially suspected Rajiv Fauji and his brothers for the killing of his son Amit, who was allegedly having illicit relations with wife of Rajiv Fauji. However, when the police failed to collect incriminating evidence against Rajiv Fauji, the needle of suspicion turned towards the story propounded by brother of the deceased PW9-Rajesh, who vide his statement (Ex.DA, dated 15.6.2013), recorded after more than three months of the occurrence, stated that deceased Amit and co-accused Masu alias Imtiyaz were close friends and respondent Nos.1 and 2 with the help of said Masu called deceased Amit at the office of Sanjiv Associates with intention to kidnap him, but later on he was murdered as they got enraged due to the conduct of the deceased. However, the above story narrated by PW9 Rajesh does not inspire confidence for the reason that prosecution could not produce any call details of the mobile used by the deceased to prove beyond any shadow of doubt, the complicity of accused respondents and co-accused Masu (since deceased). It has also come on record that parents of the deceased were not so rich as to seek ransom by kidnapping of the deceased. Thus, the statement of PW9 Rajesh cannot be taken as cogent and convincing evidence.

As regards the alleged recoveries got effected at the instance of respondents No.1 and 2 of key of scooty, learner's driving licence, broken mobile phone and Central Government Health Scheme Card of the deceased, no independent witness was either joined at the time of alleged disclosure statements by respondents No.1 and 2 or at the time of effecting recovery of said articles. This lapse on the part of Investigating Officer makes the recovery doubtful especially when the recoveries were effected after more than three months of the occurrence. In such a situation of late recoveries, it was incumbent upon the Investigating Officer to join disinterested independent witness(es). It also does not inspire confidence that respondents No.1 and 2, who allegedly committed offence, would retain the articles of deceased for such a long time knowing well that the same could be a piece of material evidence against them. There is also no connecting evidence that the body of the deceased was carried in the Accord car recovered from respondent No.1 except his own disclosure statement, which is otherwise not admissible in evidence.

In view of the aforesaid discussion, we find no merit in the appeal and the same is hereby dismissed.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

February 18, 2016
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