

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

**CRA-D-762-DB of 2014
Date of decision : 5.5.2016**

Ajay Kumar

.....Appellant

v.

The State of Haryana and others

.....Respondents

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

Present : Dr. Praveen Hans, Advocate
for the appellant

Mr. Hemant Bassi, Advocate
for respondents No.2 to 4

RAMENDRA JAIN, J.

The instant appeal has been filed by complainant Ajay Kumar against acquittal of respondents No.2 to 4 (the private respondents) vide judgment dated 5.3.2014 passed by Additional Sessions Judge, Hisar.

The private respondents along with convicts Shammi and Subhash Kalra were booked and tried under Section 302 read with Section 120B and 452 read with Section 34 IPC.

Put pithily, the prosecution case is that there was a dispute regarding partition of land in between the complainant party and his uncle respondent No.3-Virender, regarding which a panchayat was convened, but no settlement could take place. Having grudge on this account, in the evening of 24.10.2010 convicts Shammi and his father Subhash having conspired with the

private respondents came to the house of the complainant. Convict Subhash raised a lalkara to teach a lesson to Vijay Kumar since deceased (real brother of the complainant) for not giving the land and convict Shammi after breaking a glass bottle hit the same on the left side of the chest and on the right arm of Vijay Kumar. Consequently, Vijay Kumar fell down and one Chander Kant saved him. Hue and cry of the complainant party attracted Arjan Singh and Anil Kumar, who rescued the complainant party from the clutches of Shammi and Subhash.

On appraisal of the prosecution evidence and hearing learned counsel for both the sides, the trial Court did not find itself in favour of the prosecution story and resultantly acquitted the private respondents, while convicting Shammi and Subhash under Sections 452, 302 read with Section 34 IPC.

Learned counsel for the applicant/complainant contended that the impugned judgment is based on surmises and conjectures. The trial Court has failed to appreciate that respondent No.4-Virender was having joint land with the father of the complainant for which there was a dispute regarding partition amongst them. In the panchayat held on 24.10.2010 no settlement could take place, therefore, respondent No.4-Virender along with his sons namely, Rajiv and Sanjeev-respondents No.2 and 3 respectively had hatched a conspiracy with Subhash and Shammi to commit the murder of Vijay Kumar. Convict Subhash was none else, but brother-in-law of respondent No.4 (maternal uncle of respondents No.2 and 3) whereas convict Shammi was son of Subhash. The convicts being closely related to the private respondents had committed the murder of Vijay Kumar by hatching a conspiracy. The factum of conspiracy in

between the private respondents with convicts Subhash and Shammi was well proved on record and, therefore, they have rightly been convicted by the Court below while wrongly acquitted the private respondents

We have given our thoughtful consideration to the above submissions and find the present appeal completely meritless for the reasons to follow.

(i) The name of the private respondents came into existence for the first time after 15 days of the occurrence in the statement of PW14- Sanjay Kumar, after registration of the case as the occurrence took place on 24.10.2010, whereas statement of Sanjay Kumar was recorded on 10.11.2011. Thus, it can safely be stated that the names of the private respondents as accused were introduced after due deliberations and consultations. Their names were not disclosed as conspirators while naming convicts Shammi and Subhash as accused.

(ii) Complainant Ajay Kumar-PW1 and Anil Kumar PW3 though testified that the private respondents were the conspirators in the murder of Vijay Kumar, but they could not explain as to how and in what manner the private respondents had conspired with convicts Shammi and Subhash. PW2 Chander Kant, who as per the prosecution story had reached the spot on raising hue and cry by the complainant party and allegedly rescued them and on seeing him convicts Shammi and Subhash ran away from the spot has not uttered a single word against the private respondents about their alleged conspiracy with Shammi and Subhash.

(iii) PW13 Investigating officer Inspector Vijay Pal Singh admitted in his cross examination that during investigation respondents No.3 and 4 were found innocent and thus, they were not challaned.

(iv) PW14 Sanjay Kumar testified that on 24.10.2010 at around 5.30 p.m., while he was going to Hansi with one Inderjit his co-villager on his motor cycle, they stopped one kilometer ahead of their village to take water from hand pump and found the private respondents along with convicts Shammi and Subhash standing along with two cars and were talking that so long Vijay Kumar was alive, the dispute regarding the land and the plot at Delhi cannot be settled. They were discussing that respondent No.4 would go back to Delhi with his two sons and thereafter, Vijay Kumar could be murdered by Subhash and Shammi. Thereafter, the private respondents along with Shammi and Subhash left the place. However, it is unexplained on the record that why this witness kept mum for about 15 days in disclosing the fact to the Investigating Officer. This fact has rendered the prosecution story doubtful. More so, it is pertinent to mention here that the testimony of this witness has remained uncorroborated, because of non examination of his co-traveller Inderjit Singh.

Taking into account the above factors, the trial Court has rightly acquitted the private respondents.

Learned counsel for the appellant has miserably failed to put any dent in any of the findings of the Court below. We have also gone through the

impugned judgment and found no illegality or perversity in the same.

Accordingly, the appeal being completely devoid of any merit, is dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

5.5.2016
Ashwani