

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

CRA-D-No.236-DB OF 2003 (O&M)
DATE OF DECISION : 4TH APRIL, 2018

Rajesh Kumar

.... Appellant

Versus

State of Haryana

.... Respondent

CRA-D-No.694-DBA OF 2003 (O&M)

State of Haryana

.... Appellant

Versus

Sanjay Kumar

.... Respondent

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

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Present : Mr. Aditya Sanghi, Advocate
for the appellant in CRA-D-236-DB-2003.

Mr. Sidharth Sanwaria, Deputy Advocate General, Haryana
for respondent in CRA-D-236-DB-2003 &
for the appellant in CRA-D-694-DBA-2003.

None for the respondent in CRA-D-694-DBA-2003.

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A. B. CHAUDHARI, J. (ORAL)

1. The appellant- Rajesh Kumar has filed appeal bearing CRA-D-No.236-DB-2003, being aggrieved by judgment and order dated 23.01.2003 passed by learned Sessions Judge, Sirsa in Sessions Trial No.30 of 2001, in case FIR No.24 dated 27.01.2001 registered under Sections 302 read with 34 Indian Penal Code (IPC) and Section 25 of the Arms Act, at Police Station Sadar Sirsa, by which the appellant Rajesh

Kumar was held guilty of offence of murder and was sentenced to undergo imprisonment for life.

2. The State of Haryana has filed criminal appeal bearing number CRA-D-No.694-DBA-2003 against Sanjay Kumar the co-accused who was acquitted by the trial Court in the aforesaid sessions case.

Facts:

3. In brief the prosecution case is that on 27.01.2001 the deceased Jai Singh had come to village at about 3.00 pm. At about 5.30 pm Satbir along with others were watching the cricket match being played at a distance of one acre from their house. Sanjay Kumar accused, PW-9 Dharambir and Rajbir were playing cricket match. There was some altercation between accused-Sanjay Kumar and PW-9 Dharambir. Sanjay Kumar caught hold of the neck portion of the shirt of Dharambir and threw him on the ground, who started abusing him. Sanjay Kumar gave two/three slaps to Dharambir who started going towards the house while weeping. On the way Jai Singh deceased met him and asked the reason for his weeping. Dharambir narrated the entire episode to him. Thereafter, Jai Singh asked Sanjay Kumar as to why he had beaten PW-9 Dharambir. But Sanjay Kumar started abusing Jai Singh also, who slapped him. Sanjay Kumar went towards his house by saying that he will teach lesson to Jai Singh for slapping him. Then accused Sanjay Kumar brought a double barrel .12 bore gun from his house. In the meanwhile, another accused Rajesh Kumar also reached the spot. He also proclaimed that they will teach Jai Singh a lesson for slapping

Sanjay Kumar. Suddenly accused Rajesh snatched the gun from the co-accused Sanjay Kumar and fired a shot which hit the chest of Jai Singh, who fell down on the ground. Thereafter, both the accused ran away from the spot. Jai Singh was declared dead by the Doctors when he was brought to the hospital. The FIR was registered and post-mortem examination of the dead body was conducted. The police made investigation and thereafter filed chargesheet. The trial Court recorded evidence of witnesses, including the eye witnesses and finally convicted the appellant Rajesh Kumar but acquitted Sanjay Kumar.

Arguments:

4. Learned counsel for the appellant-Rajesh Kumar submitted that the trial Court committed an error in convicting appellant Rajesh Kumar, though the evidence of the eye witnesses was unbelievable and there were material inconsistencies therein. He further submitted that the witnesses, who have been believed by the trial Court, are close relatives of the deceased and their evidence could not have been accepted in the manner that has been done by the trial Court. The counsel for the appellant then contended that there was delay in lodging the FIR which resulted into concoction of the case against the appellant. The police did not recover any empties from the spot and therefore the prosecution case was unbelievable and the benefit of doubt should have been extended to the appellant. The eye-witness account show that only one shot was fired and the post-mortem report shows that there were two injuries. Thus the entire prosecution case was wholly doubtful and conviction of the appellant could not have been recorded. In the alternative learned

counsel for the appellant contended that the prosecution itself says that there was quarrel between children and that was the cause of dispute. It is the case of the prosecution that Rajesh was not involved in the cricket match but Sanjay Kumar was playing cricket match. Therefore, there was no motive for Rajesh Kumar to commit any crime as alleged. On the contrary, the prosecution case is that Rajesh later on came to the spot and snatched the .12 bore gun from Sanjay Kumar. In that case no offence of murder could at all be made out or proved and therefore, the appellant is liable to be acquitted for the said offence.

5. *Per contra*, learned counsel for the State opposed the appeal and supported the impugned judgment and order of conviction of Rajesh Kumar. He submitted that there is eye witness account of the witnesses who were natural witnesses on the spot while cricket match was going on and therefore though the appellant Rajesh Kumar had not been the part of the cricket match, he had no reason to get angry and snatch the gun from Sanjay Kumar and fire a gun shot on the chest on the deceased. Though the witnesses are close relatives of the deceased but their evidence had not been shaken in the cross-examination and therefore the trial Court has rightly believed the said evidence. The conviction of Rajesh Kumar is therefore liable to be maintained.

6. In support of the appeal filed by the State of Haryana learned counsel for the appellant-State of Haryana vehemently argued that Sanjay Kumar has been wrongly acquitted by the trial Court and there is perversity in the judgment of the trial Court in acquitting him, when as a matter of fact it was Sanjay Kumar, who initiated the quarrel

and thereafter brought gun from his house which was eventually snatched by appellant Rajesh Kumar. He, therefore, prayed for reversal of acquittal of Sanjay Kumar.

Consideration:

7. We have heard learned counsel for the rival parties. We have perused the entire record, including the evidence of the witnesses. We have also seen the reasons recorded by the trial Court for recording the order of conviction of appellant Rajesh Kumar and acquittal of appellant Sanjay Kumar.

8. The prosecution has heavily relied on the eye witness account in order to prove its case besides the medical evidence as well as scientific evidence. With the assistance of learned counsel for the rival parties we have carefully gone through the evidence of two eye witnesses i.e. PW-8 Satbir and PW-9 Dharamvir. We have also gone through their cross-examination. Both the witnesses have consistently deposed corroborating each others evidence to the fullest extent. The cross-examination nowhere shows any dent to their sworn testimony before the Court though lengthy and searching cross-examination was made. The trial Court has discussed their evidence in good details and therefore instead of repeating what they have deposed before the Court we would quote relevant paragraph from the judgment of the trial Court which we find to be consistent with the deposition recorded before the Court. We quote extracted portion from para 24 which reads thus.

24. xxx.... xxx.... xxx.... At the outset, it may be added here that PW8-Satbir Singh, who has swung

into action the police machinery has, interalia, maintained on oath that on 27th January, 2001 around 5.30 p.m. he alongwith others was watching the cricket match, which was being played at a distance of about one acre from their house. Accused Sanjay, PWs Dharambir, Rajbir and other boys were playing the cricket match. During the match, some altercation took place between Sanjay accused and PW Dharambir. The former caught hold the neck portion of the shirt and threw the latter on the ground. At this, PW Dharambir started abusing Sanjay accused, who gave two/three slaps to him. Dharambir started going towards the house while weeping. On the way, his (PW9's) uncle Jai Singh met him and asked the reason for his weeping. PW Dharambir narrated the entire episode to him. Then Jai Singh asked Sanjay accused as to why he had beaten Dharambir PW. Upon this, Sanjay accused started abusing Jai Singh, who slapped him. PW9 further stated that thereafter Sanjay accused went towards his house challenging Jai Singh that he would be taught a lesson for slapping him. Sanjay accused brought a double barrel 12 bore gun from his house. In the meantime, Rajesh Kumar accused also reached at the spot and asked that he would teach Jai

Singh a lesson for slapping Sanjay. Thereafter, Rajesh Kumar accused snatched the gun from Sanjay accused and fired a shot, which hit in the chest of Jai Singh, who felled on the ground after the receipt of the gun shot. PW9 maintained that then both the accused fled away from the spot with the gun.”

9. We also find that the trial Court has scrutinized their evidence with care and caution because both of them are related to the deceased. We have also carefully scrutinized their evidence to find out whether there was any lacuna, they being related witnesses, but we do not find any. We, therefore, agree with the trial Court in placing full reliance on the testimony of aforesaid two eye witnesses.

10. We then find that the prosecution examined PW-1 Dr. Joginder Singh, who had conducted the post-mortem examination and given details about the two injuries. It is on the basis of this opinion, the appellant contended that the prosecution case is that only one shot was fired and then how there are two injuries. In this connection the learned trial Court has recorded sound reasons to repel the said submission. We have carefully examined the reasons given by the trial Court for doing so vide para 36 of the impugned judgment. We quote the relevant portion of para 36 of the impugned judgment, which reads thus:

“36. The next contention of learned defence counsel that as per cross-examination of PW1 Dr. Joginder Singh injuries No.1 and 2 on the dead body were independent injuries and possibility of these injuries

having been caused by two shots cannot be ruled out (but it will depend upon the position of the arm, i.e. the seat of injuries), therefore, the prosecution version that accused Rajesh fired the single shot, become doubtful, has no force. As per medical evidence, injuries No.1 and 2 are multiple lacerated wounds on right side of chest and upper part of abdomen, extending from neck upto upper abdomen and on right upper limb over shoulder, arm, elbow and fore-arm in lateral aspect. Accused Rajesh used his double barrel gun from some distance and such injuries are possible by one shot. It cannot possible be denied that at the first instance, PW1 tried to help the accused, but he immediately volunteered that all the injuries could be the result of one fire-arm (single shot) xxx.... xxx.... xxx....

11. We are fully inclined to agree with the reasons given by the trial Court for the aforesaid alleged discrepancy. That apart in the wake of the eye witness account no much importance can be given to the said submission all the more so that it is not the case of either of the parties that anybody else had fired any shot at the deceased Jai Singh. The submission, therefore, according to us, is based merely on the confusion sought to be introduced. We therefore reject the said submission.

12. Upon perusal of the scientific evidence, namely the FSL report we find that it provides for incriminating evidence against

appellant-Rajesh Kumar. The trial Court has discussed the same in the extracted portion from para 37 of the impugned judgment which we quote hereunder:

“37. xxx.... xxx.... xxx.... The FSL reports further substantiate the charges against the accused to the hilt. The report Ex.PR would go to show that products of combustion of smokeless powder were detected from the barrels of 12 bore DBBL gun Ex.P5 and on test firing in the laboratory, its firing mechanism was found in working order. The class as well as individual characteristic marks present on 12 bore misfired fired cartridge Ex.P1 and those on test cartridges Ex.P2 and Ex.P3 fired from 12 bore DBBL gun were examined and compared under various stereo and comparison microscopes. The clothes contained in a parcel (No.II) were examined for the presence of firearm discharge residues. Lead was detected from the margins of the hole in the shirt Ex.P9, Jersey Ex.P11, sweater Ex.P10 and banian Ex.P7. The clothes were also examined under stereo microscope. The pellets contained in parcel no.III (in respect of dead-body of Jai Singh) were washed, dried, weighed and examined under stereo microscope. In the opinion of the Senior Scientific Officer (Ballistics), the 12 bore DBBL gun Ex.P5

was a firearm as defined in Arms Act and its firing mechanism was found in working order. It had been fired through. However, scientifically the time of its last firing could not be given. The 12 bore mis fired cartridge Ex.P1 has missed fire from right barrel of gun Ex.P5. Holes in the shirt, jersey, sweater and banian had been caused by pellet projectiles. The pellets were found to be fired lead pellets of size (1). Such pellets are usually loaded in shotgun cartridges including 12 bore. Sequelly, as per report Ex.PR/1 of Senior Scientific Officer (Serelogy), on laboratory examination blood was detected on blood stained earth lifted from the spot, while the shirt Ex.P9 pants Ex.P8, banian Ex.P7, sweater Ex.P10 and Jersey Ex.P11 were stained with blood stains. Traces of blood too small for serological tests were detected on muffler Ex.P12. On serological analysis of blood its origin was found to be human on various articles. In this manner, the FSL reports are conclusive and further strengthens the prosecution version.”

13. The above discussion made by the trial Court is apt and is consistent with the record which we have examined. We agree with the aforesaid factual reasons in that behalf and therefore we hold that the aforesaid scientific evidence has fully corroborated the prosecution case.

We, therefore, hold that it was appellant Rajesh who had fired a gun shot at Jai Singh who died as a result thereof.

14. The next question is that what is the offence that has been proved by the prosecution and whether it could be said to be murder ?

15. As stated earlier, in the factual matrix, there was a cricket match amongst the children and the co-accused Sanjay caught hold of the collar of PW-9 Dharambir and slapped him and fell him on the ground. PW-9 started weeping going towards his house when his uncle Jai Singh, the deceased met him and then Jai Singh asked the co-accused Sanjay as to why he assaulted him. Upon which Sanjay started abusing him. Thereafter Jai Singh slapped Sanjay. Sanjay challenged him saying that he would be taught lesson and went home and came out with the gun in question. Except coming out with the gun in question, he neither raised any *lalkara* nor held the gun towards Jai Singh or anybody. In other words, he just wanted to show the gun and nothing more. But then Rajesh came on the spot and in anger snatched the gun and suddenly fired at the deceased Jai Singh. In our opinion, these facts do not make out the case for offence of murder for absence of any requisite intention, pre-planning or conspiracy but a sudden jerk and therefore according to us the offence of culpable homicide not amounting to murder under Section 304 part 1 IPC is proved against Rajesh rather than offence under Section 302 IPC. We hold accordingly and sentence him to undergo rigorous imprisonment for eight years.

16. Now coming to the appeal filed by the State of Haryana against acquittal of Sanjay Kumar, we have already stated the factual

matrix leading to the incident in question in the earlier paragraph. The trial Court has also recorded similar reasons for recording the order of acquittal of Sanjay Kumar. We agree with those reasons. The view taken by the trial Court is probable and correct and we find no perversity therein for acquitting Sanjay Kumar. Instead of putting the narration in our words we quote following portion from para 31 of the judgment of the trial Court:

“39. xxx.... xxx.... xxx.... Thereafter Sanjay accused went to his house and brought 12 bore DBBL gun of his brother Rajesh. Having reached the spot, he (Sanjay) did not fire towards the deceased. It means, he had no intention at all to murder Jai Singh. Perhaps he wanted to show his armed strength. Otherwise, he would have immediately fired the shot towards Jai Singh, who had slapped him. The prosecution itself claimed that in the meantime, main accused Rajesh Kumar reached the spot and declared that he would teach Jai Singh a lesson for slapping Sanjay. Thereafter, Rajesh accused forcibly snatched the gun from Sanjay accused and fired the fatal shot at Jai Singh. Hence, in my view Sanjay accused neither had the requisite intention nor at any stage shared the common intention with the main accused to commit the murder. Moreso, neither this accused exhorted

the main accused nor raised Lalkara nor himself offered the gun to the main accused. In fact, no overt act is attributed to accused Sanjay.xxx.... xxx.... xxx....”

17. We, therefore find that the order of acquittal of Sanjay is legal, correct and proper and needs no interference.

18. In the result, we make the following order:

ORDER

- (i) CRA-D-No.236-DB OF 2003 filed by Rajesh Kumar is partly allowed.
- (ii) Impugned judgment and order of conviction of the appellant Rajesh Kumar for offence under Section 302 IPC recorded by the learned Sessions Judge, Sirsa vide order dated 23.01.2003/27.01.2003 passed in sessions trial No.30 of 2001, is set aside.
- (iii) It is held that the appellant Rajesh Kumar is guilty of offence under Section 304 Part-1 IPC and is sentenced to undergo rigorous imprisonment for 8 years along with fine in the sum of ₹10,000/- and in default of payment of fine he has to undergo further rigorous imprisonment for a period of 03 months.
- (iv) The judgment and order of conviction of the appellant-Rajesh Kumar under Section 27 of the Arms Act made by Sessions Judge, Sirsa vide order dated 23.01.2003/27.01.2003 passed in sessions trial No.30 of 2001, is confirmed.

- (v) The sentences for offences under Section 304 Part-1 IPC and Section 27 of the Arms Act shall run concurrently.
- (vi) The impugned judgment and order dated 23.01.2003/ 27.01.2003 passed in sessions trial No.30 of 2001 acquitting Sanjay Kumar, is upheld.
- (vii) CRA-D-No.694-DBA-2003 filed by the State of Haryana against the acquittal of respondent-Sanjay Kumar, is dismissed.

4TH APRIL, 2018
‘raj’

(A. B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>