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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
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CRA-D-539-DB-2004 (O/M)
Date of decision : 24.8.2018

Delhi Special Police Establishment, Central Bureau of Investigation, SCB,
Chandigarh Appellant

Versus

Puran Chand and another Respondents

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

Present:- Mr. Sukhdeep Singh Sandhu, Advocate,
for appellant.

Mr. A.P.S. Deol, Senior Advocate, with,
Mr. Rajesh Lamba, Advocate,
for respondent No. 2.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

This is an appeal against judgment dated 29.9.2003, passed by learned Additional Sessions Judge, Ambala, vide which respondents Puran Chand and Nakal Singh, were acquitted of charges framed against them under Section 302 IPC read with Section 34 IPC. It comes out that during the pendency of appeal, Puran Chand (respondent No. 1) died. Therefore, appeal qua him stands abated.

The prosecution story in brief is that Pawan Kumar (deceased), who was working as a Peon in Naraingarh Primary Agricultural Land Development Bank Limited, since 1994. Megh Raj Singh, uncle of deceased, was active in the local politics. He was a member of village

panchayat since 1974. He was Chairman of the Block Samiti and was also the Director of the Naraingarh Primary Agricultural Land Development Bank. He had also won the panchayat elections in December, 1994. The village panchayat had passed a Resolution to get the panchayat land vacated, which was illegally occupied by accused and others. On the basis of said Resolution, the SDM, Naraingarh, had passed the order for vacation of the said panchayat land. Accused persons had not vacated said land, despite orders of SDM, Naraingarh. Further, it was found that family of Megh Raj was having election rivalry with Narata Ram of same village. Accused-respondents being supporters of Narata Ram, feared that if Megh Raj won the elections of Chairman of Block Samiti, which was due on 9.2.1995, may get the panchayat land vacated from them. Therefore, Pawan Kumar, who was working as a Peon in said Bank, was murdered on account of ill will with Megh Raj, uncle of deceased. It further comes out that FIR No. 11, dated 9.2.1995, was registered at Police Station Naraingarh, District Ambala, regarding the murder of Pawan Kumar (deceased) as his dead body was found on 4.2.1995. However, since the police was allegedly not properly investigating the case, one Karan Pal Singh, approached this Court by way of filing CRM-7117-M-1995 and this Court, vide order dated 23.5.1997, transferred the investigation to CBI.

During the investigation, the CBI found that on the day of crime i.e. 4.2.1995 at 9 PM, three witnesses Mahipal Singh, Tejpal Singh and Joginder Singh had seen accused grappling with deceased Pawan Kumar near Old Bus Stand, Shahzadpur. The dead body of Pawan Kumar (deceased) was found at 10:30 PM by Gaurav Kumar and Hemant Kumar, both residents of Shahzadpur, on the heap of Bajri (Gravel) with its face

downwards. During the investigation, Nakal Singh was arrested and he suffered a disclosure statement in the presence of independent witnesses Ramesh Lahoo and R.D. Chaudhary and admitted that he alongwith Puran Chand had committed the murder of Pawan Kumar with the help of an iron rod (takla) of a pinning wheel and had thrown the same in village pond. In pursuance of disclosure statement of accused Nakal Singh, iron rod (takla) of a pinning wheel was recovered. The videography of place of recovery was done. Accused Puran Chand was also arrested. During investigation, he admitted that he alongwith his co-accused Nakal Singh had committed the murder of Pawan Kumar with the help of an iron rod (takla) of a spinning wheel and had thrown the same in village pond.

Both the accused were chargesheeted under Section 302 IPC read with Section 34 IPC, to which they pleaded not guilty.

In support of its case, prosecution examined as many as 27 witnesses, whereas PWs Joginder Singh, K.D. Choudhary, Mohinder Singh Baniwal, Anil Kumar Sharma, Bhim Singh and Rakeh Kumar were given up as unnecessary.

During their statement recorded under Section 313 Cr.P.C., accused pleaded false implication. They stated that they had no enmity with deceased. The complainant party was Rajputs, whereas accused belongs to Balmiki community. Megh Raj and his relatives wanted to forcibly occupy their house. Pawan Kumar had died as a result of consumption of excessive liquor and by falling on Bajri (Gravel). It is a case of accidental death, which has been converted into a homicidal death.

After hearing the accused party, prosecution and going through the evidence, the learned Additional Sessions Judge, Ambala, found the

accused not guilty and accordingly acquitted both accused from the charges framed against them.

We have heard the learned counsel for parties and thoroughly examined the file.

The prosecution case is based on circumstantial evidence i.e. last seen evidence of PW1 Tejpal Singh, PW11 Mahipal Singh and recovery of weapon of offence.

The perusal of statements of witnesses show that according to them, on the day of crime, when they reached the Dhaba of Joginder Singh, they saw that accused Puran Chand and Nakal Singh were fighting with Pawan Kumar, residents of Shahzadpur. They intervened. A Maruti van was parked near that place and accused put deceased forcibly in Maruti van. According to witnesses, they had informed Megh Raj, uncle of deceased, after about 2-3 days about the occurrence. PW1 Tejpal Singh stated that about 3-4 days after the occurrence, he had told Megh Raj that the accused were seen by him while taking Pawan Kumar in a van. The said statements have been disbelieved by the learned Additional Sessions Judge, Ambala. It has come during investigation that Pawan Kumar was habitual consumer of liquor and he used to visit the Hotel of Joginder Singh almost daily for this purpose. On 4.2.1995, around 6 PM, Pawan Kumar came to Hotel of Joginder Singh where he met Roop Chand, Madan and Mukesh, all residents of Shahzadpur and he was offered tea, but instead of this, Pawan Kumar gave Rs. 45/- to Joginder Singh for bringing liquor. The liquor was accordingly brought. Radhey Shyam, Isham Singh (brother of Pawan Kumar) and Pawan Kumar started consuming liquor till 8:30 PM and then Isham Singh left the place. At that time, one Surinder Singh, relative of

Joginder Singh had also joined Radhey Shyam and Pawan Kumar. After consuming liquor, all of them had dinner and Radhey Shyam left the place around at 9:15 PM. Thereafter, Surinder Singh also left for his house and Pawan Kumar also left the place at around 9:30 PM.

The medical evidence in the form of statement of PW8 Dr. Mohinder Singh shows following 7 injuries on the person of deceased :-

- '1. Penetrating wound of the size of 1"x1/4" on the anterior aspect of right shoulder. The wound extended downwards inside the body piercing through right lung, right ventricle of heart and then to liver.
2. Lacerated wound of the size of 2"x1/2" into skin deep on the right cheek.
3. Lacerated wound of the size of 1"x1/4" on the right eye brow horizontally placed.
4. Multiple contusions of varying sizes on the anterior medial aspect of left knee and left thigh medial aspect.
5. Multiple superficial abrasions of varying sizes on the left malleolus and left foot.
6. Superficial abrasion of the size of 3"x1" on the posterior aspect of right elbow and upper arm.
7. Multiple superficial abrasions of varying sizes on the right elbow joint. Haemothorax was present.'

The nature of injuries shows that injury No. 1 was sufficient to cause death in the ordinary course of nature. The wound extended downwards inside the body piercing through right lung, right ventricle of heart and then to liver. It means that it was given with great force from the upper side of body towards down side. The body was found on the heap of Bajri (gravel).

Now, according to prosecution, four years later, when the case was entrusted to CBI, accused Nakal Singh disclosed that he had thrown the said iron rod (takla) in village pond and said iron rod (takla) was recovered.

We are of the view that said weapon of offence is not connected with crime. The mere statement of accused Nakal Singh does not mean that it is same weapon, which was used in the crime. Present case is sought to be proved on the basis of circumstantial evidence. In such cases, there should be a complete chain to connect the accused with crime. The learned Additional Sessions Judge, Ambala, discussed the evidence of both witnesses and found the same to be not dependable to record the conviction. The trial Court also observed that a Resolution to dispossess Phool Singh, father of accused Puran Chand was passed by gram panchayat of its own. There were 15-20 panchayat members of village Shahzadpur. Therefore, the motive was disbelieved. The statements of PW1 Tejpal Singh and PW11 Mahipal Singh were found to be untrustworthy.

We are of the considered view that on the basis of evidence and after hearing both parties, the learned Additional Sessions Judge, Ambala, has taken one of the possible views. Therefore, while applying the parameters regarding interference by this Court in the judgment of acquittal, we do not find that judgment passed by the learned Additional Sessions Judge, Ambala, is perverse and illegal, nor it is found that any material evidence is unappreciated. Therefore, there is no illegality or perversity in the judgment of acquittal, passed by the learned Additional Sessions Judge, Ambala. Consequently, appeal is dismissed.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

24.8.2018
sjks

Whether speaking / reasoned	:	Yes / No
Whether Reportable	:	Yes / No