

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.D-162-DB of 2013

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Date of decision:25.4.2018

Jagmender alias Kala and another

...Appellants

v.

State of Haryana

...Respondent

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**Coram: Hon'ble Mr. Justice A.B. Chaudhari
Hon'ble Mr. Justice Inderjit Singh**

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Present: Mr. A.P.S. Deol, Senior Advocate with Mr. Vishal R. Lamba
and Himmat Singh Deol, Advocates for the appellants.

Mr. Siddharth Sanwaria, Deputy Advocate General, Haryana
for the respondent-State.

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Inderjit Singh, J.

This criminal appeal has been filed by appellants-Jagmender alias Kala and Ram Niwas alias Niwasa challenging the impugned judgment of conviction and order of sentence dated 20/21.12.2012 passed by learned Additional Sessions Judge, Sonapat, vide which the accused-appellants have been convicted for the offences under Sections 450, 302, 467 and 471 read with Section 34 IPC. Accused-appellants have been sentenced to undergo rigorous imprisonment for life and to pay fine of ₹5,000/- each and in default thereof to further undergo rigorous imprisonment for three months each for the offence under Section 302 read with Section 34 IPC. They have further been sentenced to undergo rigorous imprisonment for seven years and to pay fine of ₹5,000/- each and in default thereof to further undergo rigorous imprisonment for three months each for the offence under Section

450 read with Section 34 IPC. They have further been sentenced to undergo rigorous imprisonment for five years and to pay fine of ₹2,000/- each and in default thereof to further undergo rigorous imprisonment for one month each for the offence under Section 467 read with Section 34 IPC. They have further been sentenced to undergo rigorous imprisonment for five years and to pay fine of ₹2,000/- each and in default thereof to further undergo rigorous imprisonment for one month each for the offence under Section 471 read with Section 34 IPC. All the substantive sentences of imprisonment have been ordered to run concurrently.

In the present case, FIR has been registered on the statement of Surender Kumar-complainant, who in his statement dated 1.2.2011 had stated that he is an employee in Kohinoor Rice Mill Murthal. They are three brothers. He is eldest, younger to him is Sanjay who is an agriculturist and the youngest is Sandeep. Sandeep being an agriculturist also used to work as a property dealer. He used to sit in the office of his friend, namely, Sonu Tyagi alias Rohit son of Shri Om Parkash Tyagi resident of Ganaur situated at Railway road near Manjit Colony, Ganaur. On that day, at about 4.00 p.m., Sonu Tyagi informed him on his mobile No.9896016421 that Sandeep while sitting in his office has been shot by three unknown young boys. On information, he immediately reached at the office of Sonu Tyagi. When he reached there, his brother Sandeep was shifted to the hospital by his friends in injured condition for treatment. Sonu Tyagi alias Rohit being an eye-witness at the spot met him and told him that at about 3.40 p.m., he along with Sandeep and Ashok son of Inder Singh, Caste-Brahman, R/o Garhi

Kesari was sitting in the office, meanwhile at the edge of road, three unknown young boys stopped a white coloured car and alighted from that car and entered in the office. Out of them, one boy sat in front of Sandeep on chair whereas other two were standing as guards on the gate of the office. The person sitting on chair abused in the name of sister to Sandeep and took out a pistol from his dub and fired a shot in the abdomen and another on chest of Sandeep and thereafter he stood up and fired two-three more shots on his head and out of the boys who were standing as guards, one fired a shot on the head of Sandeep and he also tried to fire a shot on them. However, the pistol went out of order and thereafter all the three unknown young boys fled away in the car in which they had come. After having disclosed these facts, Sonu alias Rohit Tyagi also left by saying that he is going to the hospital. However, later on, he received a message from the hospital that his brother Sandeep had succumbed to bullet injuries on the way to the hospital. The above three unknown young boys had committed the murder of his brother Sandeep due to having some grudge. On the basis of above statement of complainant-Surender Kumar, formal FIR was registered and during the course of investigation the accused were arrested. On completion of necessary investigation, challan under Section 173 Cr.P.C. was presented in the Court.

On presentation of challan, the trial Court finding prima facie case against the accused-appellants framed charges for the offences punishable under Sections 450, 302 read with Section 34, 467 and 471 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Rohit, who did not support the prosecution version and specifically stated that accused present in the Court were not those persons who alighted from that car and entered into his office. The witness got declared hostile but nothing substantial came out from the cross-examination. PW-2 Ashok also did not support the prosecution version and stated that the accused present in the Court were not those persons who alighted from that car. He was also got declared as hostile. PW-3 Rajbir is a formal witness who simply identified the dead body of Sandeep during the inquest proceedings. PW-4 Surender Kumar-complainant though deposed regarding the occurrence but has also not supported the prosecution version. He mainly deposed that Sandeep (since deceased) was his younger brother. On 1.2.2011, at about 4.00 p.m., he had received a telephonic message on his mobile from Sonu Tyagi who told him that three unknown persons had committed murder of his brother Sandeep by firing shots at him in the office. On that information, he reached the office of Sonu Tyagi and came to know that his brother Sandeep had been shifted to the hospital in injured condition. However, Sonu alias Rohit Tyagi had met him at the spot. On enquiry, Sonu alias Rohit Tyagi told him regarding the occurrence that three unknown persons came in a white coloured car and entered inside the office and fired shots resulting injuries to Sandeep. PW-5 Rajesh mainly deposed that on 16.2.2011, he had joined the investigation in this case. Investigating Officer had interrogated accused Parvender alias Chhalura and he suffered disclosure statement, vide which he confessed to commit murder of Sandeep along with his co-accused

Jagmender and Ram Niwas on 1.2.2011 at Ganaur. He also stated regarding concealing the car (Santro) in the factory area. He also deposed that his pants and shirt were stained with blood at the time of murder and he washed the clothes and kept the same in the diggy (trunk) of the car and offered to get the car and clothes recovered. He also disclosed regarding the disclosure made by accused Jagmender. He also told that he got recovered a shirt having some blood stains which was sealed in a parcel with the seal of 'YP'. The forged RC was also taken into possession. He also got recovered pistol. PW-6 Sushil Kumar, Registration Clerk mainly brought the summoned record of vehicle bearing registration No.HR-42A-8178. As per record, this registration number was allotted to Minakshi daughter of Dalbir on her motorcycle Hero Honda Splendor Plus. PW-7 Ram Parkash, Reader to District Magistrate, Sonapat mainly deposed regarding the sanction order given by District Magistrate, Sonapat. PW-8 EHC Rajesh Kumar deposed regarding preparing scaled site plan Ex.PH. PW-9 ASI Naresh Kumar mainly deposed that he had mechanically examined Santro car bearing registration No.HR-42A-8178 lying in the premises of P.S. Ganaur. PW-10 Constable Satpal is a formal witness, who deposited the sealed parcel with Director FSL, Madhuban regarding two pistols and blood stained clothes. PW-11 Constable Bijender Singh is also a formal witness, who also deposited the sealed parcel containing blood stained earth etc. with the Director, FSL. PW-12 ASI Ram Mehar Kaushik deposed regarding the theft of car of Rohit Singh bearing registration No.DL-4CND-3622. However, he did not submit any written complaint and asked him that he would search

his car at his own level. On 26.3.2011, Rohit made the statement about theft of the car and FIR Ex.PK was registered. PW-13 Dr. Anuradha Jain, Medical Officer, General Hospital, Sonapat, deposed that on 2.2.2011 at 10.30 a.m., she along with Dr. Deepak conducted post-mortem examination on the dead body of Sandeep. The following injuries were found:-

“a A punctured L/w of size 1 x 1cm on R. Temporal area 2 cm above R. Pinna. Margins are inverted contusion collar present. On exploration track is going medially towards left side by injuring right temporal bone, brain and its meninges. Exit wound present.

b. Exit wound size 1 x 1 cm on zygoma on left side on face 3 cm behind left eye margins everted cranial cavity full of blood brain lacerated.

c. On chest punctured L/w of size 1 x 1 cm present on the back on right side of chest in the posterior 8th 1/C space .7 cm away from midline. Margins inverted contusion collar present.

d. P/L/W of 2 x 2 cm with everted margins on front of right side of chest in 2nd 1/C 2 cm inside the mid clavicular line (exit wound).

e. P/L/W of 1.5 x 1.5 cm on front of abdomen in right lumbar area margins everted on exploration of track of injury 'd' is going backward and laterally through the muscles of abdomen up to injury 'e'.

f. On opening chest right hemothorax present with laceration of lung and pleura and fracture of 8th rib. A metallic bullet was

lying in the thoracic cavity bullet removed and sealed.

In their opinion the cause of death of the deceased in this case was shock and haemorrhage as a result of bullet injuries ante-mortem in nature. The duration between injury and death was within a few minutes and between death and PME within 24 hours.”

PW-14 EHC Kuldeep Singh is a formal witness, who tendered in evidence his affidavit Ex.PW.14/A. PW-15 Constable Bhupender Singh deposed regarding delivering the special report to Illaqa Magistrate, DSP and SP. PW-16 Sunil Kumar deposed regarding photographs Ex.P.18 to Ex.P.40. PW-17 Subhash deposed regarding disclosure statement made by the accused, who got demarcated the place of occurrence on 25.4.2011. PW-18 ASI Surender, who had joined the investigation deposed regarding the investigation. PW-19 SI Inder Singh mainly deposed about recording of formal FIR Ex.PM. PW-20 DSP Yashpal is the Investigating Officer, who conducted investigation in this case.

At the close of prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C. and confronted with the evidence of the prosecution. They denied the correctness of the evidence and pleaded themselves as innocent. In defence the accused did not produce any evidence.

The learned trial Court vide the impugned judgment convicted and sentenced the accused-appellants as stated above.

At the time of arguments, learned senior counsel for the

appellants argued that there is no cogent evidence on record produced by the prosecution to connect the accused with the crime. It is a case of eye witness account but both eye witnesses i.e. PW-1 and PW-2 did not support the prosecution version and turned hostile. He further argued that the pistols recovered from the accused, as per FSL report, were not connected with the crime as the empties recovered from the spot were not found fired from the pistols. The learned senior counsel for the appellants further argued that there is no cogent evidence on record that they had forged the car number. He further argued that false recoveries had been planted upon the appellants to strengthened the case.

On the other hand, learned Deputy Advocate General, Haryana, appearing for the respondent-State argued that the case of the prosecution has been duly proved. The PWs have consistently deposed regarding the prosecution version and there is nothing to disbelieve the statements of these PWs.

We have heard learned senior counsel for the appellants and learned State counsel for the respondent-State and have gone through the record minutely and carefully.

From the record, we find that first of all it is a case of eye witness account and both the PWs i.e. PW-1 Rohit and PW-2 Ashok, who were eye witnesses of the occurrence, had not supported the prosecution version and have turned hostile. Nothing substantial had come out from their statements. Therefore, as the eye witnesses had specifically stated that they were not the persons who alighted from the white coloured car and

fired upon Sandeep creates a reasonable doubt in the prosecution version. The report of FSL, which is on the record, also specifically states that the empties were not fired from the pistols recovered from the accused-appellants which further shows that the pistols which were shown recovered as per disclosure statements of the accused are not connected with the crime. Further we find that the disclosure statements regarding demarcation of the place of occurrence etc. in the month of April after a long period cannot be relied upon. At that time, everybody was knowing the place of occurrence. No new fact was discovered in the disclosure statements under Section 27 of the Evidence Act. Similarly, the disclosure statements made by the accused regarding narrating the occurrence are also hit by Section 25 of the Evidence Act as these are the statements made by the accused while in custody of the Police regarding confessing their guilt. These disclosure statements are also inadmissible in evidence. The learned trial Court has relied upon the evidence of site plan etc. but site plan is not substantial piece of evidence to connect the accused-appellants with the crime which was prepared by the Investigating Officer.

From the evidence on record, we find that the prosecution has failed to prove the guilt of the accused beyond a reasonable doubt and a reasonable doubt exists in prosecution case. It is settled law that benefit of doubt is to be given to the accused. Therefore, by giving the benefit of doubt to the appellants, they are liable to be acquitted of the charges framed against them. We have gone through the findings given by the learned trial Court. These are not as per the evidence and law and the same are liable to

be set aside. Therefore, this appeal is allowed and the impugned judgment of conviction and order of sentence passed by the learned trial Court are set aside and the appellants are acquitted of the charges as framed against them.

Appellant No.1-Jagmender alias Kala be released forthwith from the jail, if not required in any other case. The sentence of imprisonment of the appellant No.2-Ram Niwas alias Niwasa was suspended by this Court and he was released on bail. As he is on bail, therefore, his bail bonds and surety bonds stand discharged.

(A.B. Chaudhari)
Judge

(Inderjit Singh)
Judge

April 25, 2018.

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No