

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRA-D-519-DB-2018
Reserved on: 22.11.2018
Date of decision : 11.12.2018

Sombir

... Appellant

Versus

State of Haryana

... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Anil Rathee, Advocate
for the appellant.

Ms.Shubhra Singh, Addl.A.G. Haryana.

RAJIV SHARMA, J.

Though CRM no.23810 of 2018 seeking suspension of sentence was listed, but learned counsel for the appellant requests to argue the main appeal.

2. This appeal is instituted against the judgment and order dated 30.04.2018 rendered by the learned Additional Sessions Judge, Jhajjar passed in Sessions case no.24 of 2015/2016 whereby the appellant along with Bijender, Narender, Dharambir and Ajay was charged with and tried for offences punishable under Sections 148, 149, 302, 307, 323 IPC and Section 27 of the Arms Act, 1959.

2. Appellant Sombir was convicted and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year for offence punishable under Section 302 IPC. He was also convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.10,000/- and in default of payment of fine to

further undergo rigorous imprisonment for six months for offence punishable under Section 307 IPC. Both the sentences were ordered to run concurrently. Bijender, Narender, Dharambir and Ajay were acquitted.

3. The case of the prosecution in a nutshell is that PW-2 Rakesh Kumar had lodged the complaint Ex.PW2/A on the basis of which FIR Ex.PW1/A was registered. According to the contents of the FIR, PW-2 Rakesh Kumar were five brothers including Krishan, Ramesh, Suresh and Subhash. Suresh was unmarried. They had constructed a pipeline for bringing water for irrigation from one field to another field. At about 4.00 P.M. family members of Ram Parsad namely Sombir, Bijender, Narender sons of Ram Parsad, Ajay son of Sombir, Dharambir son of Bijender and Anita wife of Sombir armed with *lathis* and *jellis* and Sombir armed with double barrel gun came on the spot and started beating them. Sombir fired a gun shot on the chest of his brother Ramesh. He also fired another shot on Krishan. Ramesh died in the hospital. The post-mortem examination was conducted by PW-13 Dr.Seema Yadav. Krishan was also medically examined by Dr.Amit Gupta. The matter was investigated and challan was put up in the Court after completing all the codal formalities.

4. The prosecution examined a number of witnesses. Statements of accused were also recorded under Section 313 Cr.P.C. They had denied the case of the prosecution.

5. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

6. Learned counsel appearing on behalf of the State has supported the prosecution case.

7. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

8. PW-2 Rakesh Kumar is the complainant. He has supported the case of the prosecution. In examination-in-chief, he deposed that accused Sombir along with co-accused were armed with *jellis* and *lathis*. Accused Sombir was carrying his licensed double barrel gun. Ajay gave a *lathi* blow on right elbow of his nephew Sumit. Sombir fired a gun shot on the chest of his brother Ramesh. He had also fired on the right shoulder of Krishan. They also caused simple injuries to the accused persons in their defence. They raised alarm. The accused fled away from the spot. Injured were shifted to the hospital. Ramesh died in the hospital. He was called for further cross-examination. In his cross-examination, he denied the case of prosecution in entirety. According to him, they heard the noise of quarrel between migrant labourers. They tried to pacify the quarreling parties. Ramesh (deceased) received a gun shot injury and Sombir also received fire arm injuries while separating the migrant labourers. He was under impression that Sombir had fired shot at his brother Ramesh. He was tutored by the police to depose as per his complaint Ex.PW2/A. His statement was not voluntary. He was sitting in front of his *varanda*. Police threatened him to implicate him in a false case. The appellant and other family members were not responsible for causing injuries to Ramesh and others. No injury was caused to him by the accused. The accused did not run away from the spot. They were rather busy in arranging the vehicles, money for the treatment of injured. The contents of PW2/A were read over and explained to him. He has admitted his signatures on Ex.PW2/A. His signatures were obtained on blank papers. He denied that altercation had

taken place between him and family members of Ram Parsad. He also denied that Sombir was carrying his licensed double barrel gun. The accused had not fired on the right shoulder of Krishan.

9. Similarly, PW-3 Sumit Kumar has not supported the case of the prosecution. According to him, the fight took place between the migrant labourers. He along with family members went to the spot. They tried to pacify the quarreling parties of migrant labourers. In the rescuing process, his father Ramesh and uncle Krishan received firearm injuries. He had received injuries from the migrant labourers. He was declared hostile. He denied recording statement Ex.PW3/A. He had also denied that they were attacked by the family members of Sombir. He had not stated to the police that Sombir had fired on the chest of his uncle Krishan. He had also denied that Sombir had fired on his father.

10. PW-4 Krishan Kumar has also deposed that migrant labourers were fighting. They went there to separate them. He was also declared hostile. He denied the contents of statement Ex.PW4/A. He also denied the genesis of quarrel between him and assailants family.

11. PW-5 Subhash also did not support the case of the prosecution. He was also declared hostile. According to him, he had not got the statement Ex.PW5/A recorded.

12. PW-18 Suresh had also resiled from his statement. According to him also, they had hired 20 migrant labourers. The migrant labourers quarreled with each other. He tried to pacify them. He had denied the contents of PW18/A. He had denied the suggestion that they were attacked by Sombir and his family members.

13. The gun was recovered on the basis of disclosure statement

Ex.PW12/A. The eye witnesses have specifically denied that Sombir had fired from his double barrel gun. The other weapons of the offence, i.e. *lathis* and *jellis* were not connected with the other accused. The motive attributed by the prosecution was that there was dispute with regard to water channel. However, PW-2 Rakesh Kumar had even denied lodging of complaint Ex.PW2/A. According to other witnesses, i.e. PW-3 Sumit Kumar, PW-4 Krishan Kumar and PW-18 Suresh, fight took place between the migrant labourers and Sombir and his family members reached there to separate them. Thus the motive as attributed by the prosecution has not been proved.

14. The cause of death as per post-mortem proved by PW-13 Dr.Seema Yadav was fire arm injury which was ante-mortem in nature and sufficient to cause death. She had noticed following injuries on the person of Ramesh:-

- “1. Fire arm entry wound of size 4 x 6 x 3 cm. located 141 cm from heel and 5 cm. below manubrium sternum in center of chest. Edges and margin of wound was congested and cherry red colour and edges are inverted.*
- 2. Approximately 30 to 35 Charra (metallic foreign bodies / shots) recovered from chest visera, lung, pericardium, heart chambers.*
- 3. Viscera are badly mutilated by the injury.*
- 4. X-ray chest shows multiple small rounded opacities scattered in chest.”*

Krishan Kumar was also examined by the doctor. PW-13 Dr.Seema Yadav has proved PMR Ex.PW15/A. The eye witnesses, i.e. PW-2 Rakesh Kumar, PW-3 Sumit Kumar, PW-4 Krishan Kumar and PW-18 Suresh have not supported the case of the prosecution. They were alleged eye witnesses present on the spot. PW-2 Rakesh Kumar is brother of the deceased

Ramesh. PW-3 Sumit Kumar is son of the deceased Ramesh Kumar. Even he has not supported the case of the prosecution. PW-4 Krishan Kumar is brother of the deceased. PW-18 Suresh Kumar is also brother of the deceased. In this case, neither the brothers of the deceased nor the son of the deceased have supported the case of the prosecution. They have denied their statements recorded by the police. According to PW-2 Rakesh Kumar brother of the deceased, he was pressurized to lodge the complaint Ex.PW2/A. It is true that relevant portion supporting the case of the prosecution can be taken into consideration while dealing with statements of hostile witnesses. However, in the instant case, there is wholesale resiling by the witnesses. There is no other evidence to connect the appellant with the commission of offence. Though post-mortem report is supported by PW-13 Dr.Seema Yadav but the eye witnesses have not supported the case of the prosecution. Generally in case there is difference between the statement of expert, i.e. doctor and ocular statement made by witnesses, ocular statement is to be given preference by taking into consideration the entire evidence.

15. Accordingly the appeal is allowed and the judgment and order dated 30.04.2018 are set aside. The appellant Sombir is acquitted of the charges framed against him. He is ordered to be released forthwith from the custody. Registry is directed to prepare the release warrant.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

December 11, 2018.

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No