

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

**CRM A-1396-MA of 2017 and
CRM 29600 of 2017**

Date of Decision : February 2, 2018

Sawai HussainApplicant

Versus

State of Haryana and others Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present : Mr. Pankaj Kundra, Advocate
for the applicant.

T.P.S.MANN, J.

Respondent No.2-Sajid was tried for committing offences punishable under Section 302 IPC and Section 25 of the Arms Act whereas respondent No.3-Tarif and Mohammad Zarin (since dead) were tried for committing the offence punishable under Section 212 IPC.

Vide judgment dated 15.3.2017, learned Additional Sessions Judge, Mewat after holding that there were doubts galore in the prosecution version and the story set up by the

prosecution did not inspire confidence and, therefore, it would not be safe to hold respondents No. 2 and 3 guilty of the offences, acquitted them of the charges against them. Aggrieved of the same, the applicant, who is a victim, being son of Fajruddin (deceased) has filed the application under Section 378(4) read with Section 482 Cr.P.C. (CRM A-1396-MA of 2017) seeking leave to appeal. He has also filed application under Section 391 Cr.P.C. (CRM 29600 of 2017). for permission to produce certified copy of the complaint dated 5.7.2013 by way of additional evidence.

According to the prosecution, on 11.8.2013, the applicant, hereinafter referred to as "the complaint", made statement before the police alleging therein that 35/37 days back, his cousin Sahabu was looted of cash and dumper bearing registration No. HR-74A-0362 by Mubarik, Sajid, Khalli and Ballu sons of Asraf and Jakkar and Ansar sons of Samma, residents of village Chuaharpur, Rajasthan. On 5.7.2013, the matter was reported to the police. In order to settle the dispute, panchayat was convened 3/4 times. In the siting of the panchayat held on 7.8.2013, it was decided to convene next meeting on 10.8.2013 at the house of Tayyab. On the date fixed, the complainant alongwith his father Fajruddin, Sahabu, Nayab son of Nasru, Alijan son of Roshan and other respectables reached the venue of the

meeting. Sajid, Khalli, Rashid @ Ballu sons of Asraf, Asraf himself, Nasira son of Ramjan, Salim son of Subhan Khan, Unnus son of Jabbar Khan, Asgar and Iqbal sons of Deenu, Samma son of Sukha, Saman son of Sulli, Fajru son of Nayab, all residents of Chuharpur, Haroon son of Samsu, resident of Noshera, Deenu resident of Saraikalan as well as the people from the neighbouring village were present there. When the panchayat began, members of opposite party became adamant on quarrelling. At about 2.30/3.00 p.m., the panchayat dispersed. Soon thereafter, members of the opposite party started a quarrel and manhandled the complainant party. The complainant as well as his companions ran away to save themselves. However, Fajru, father of the complainant was surrounded by the members of the opposite party. After reaching the main road, the complainant waited for his father but he did not reach there for a long time. The complainant alongwith his companions searched for Fajru but all in vain. When they reached the hilly area in search of Fajru, his dead body was found lying there.

Further case of the prosecution is that on the statement made by the complainant, FIR No.306 dated 11.8.2013 under Sections 148, 149, 395, 397, 384, 302 and 120-B IPC was registered at Police Station Tauru.

During investigation, Mohammad Zarin and Tarif were arrested under Section 212 IPC and Section 25 of the Arms Act. After obtaining medical opinion, Section 302 IPC was deleted whereas Section 306 IPC was added. Accused Sajid was arrested on 12.5.2014. Tayyab son of Mohammad Khan, Deenu, Unnus, Faku, Nasira, Khalli, Mubarik, Asraf, Ansar and Iqbal were found innocent by the police. Subsequently, report under Section 173 Cr.P.C. was presented against Sajid, Tarif and Mohammad Zarin whereas Rashid, Jakkar, Samman, Salim and Haroon were kept in column No. 2. The case was, thereafter, committed to the Court of Sessions where Sajid, Tarif and Mohd. Zarin were charged on 18.9.2014 qua commission of offences punishable under Sections 148, 395, 397, 212, 324, 384, 306 read with Section 149 IPC and Section 25 of the Arms Act. During the pendency of the trial, supplementary challan was filed against accused Sajid under Section 302 IPC. On 24.10.2016, fresh charge-sheet was served upon Sajid accused under Section 302 IPC and Section 25 of the Arms Act whereas Tarif and Mohd. Zarin accused were charge-sheeted under Section 212 IPC. During the trial, Mohd. Zarin, accused died.

After hearing learned counsel for the parties, the trial Court acquitted the accused/respondents of the charges against

them.

The case of the prosecution is based upon circumstantial evidence. The two circumstances upon which the prosecution has tried to build its case are motive and last seen.

According to the prosecution, panchayat was convened for 10.8.2013 for settling the dispute regarding looting of Sahabuddin of his dumper by various accused including Sajid, report regarding which was made to the police on 5.7.2013. However, the prosecution did not lead any evidence to establish that such a report was made to the police on 5.7.2013. PW6 Najakat, who claimed himself to be one of the victims of the incident of looting did testify about the said occurrence. However, the prosecution did not claim at any stage that Sahabuddin was accompanied by anyone. Further, PW6 Najakat also stated that offenders had inflicted injury on his head, for which, he was treated in Government Hospital, Nuh, but no efforts were made to produce the medical report so prepared by the doctor. Sahabuddin, who was victim as well as complainant of the incident of looting dated 4.7.2013 has also not been examined by the prosecution to prove genesis of the occurrence.

The applicant has filed CRM 29600 of 2017 under Section 391 Cr.P.C. for permission to bring on record certified

copy of the complaint dated 5.7.2013 by way of additional evidence. However, at the trial of the case, no attempt was made by the prosecution to prove the complaint dated 5.7.2013 especially when the complainant party was duly represented by its counsel. Only when the learned trial Court, while acquitting the accused/respondents of the charges against them has observed that the said complaint had not been proved on record that the applicant has now made an attempt to fill up the lacuna, which was left at the trial of the case. Under these circumstances, this Court is of the view that no case is made out for permitting the applicant to place on record certified copy of the complaint dated 5.7.2013 by way of additional evidence.

As regards the evidence of last seen, the prosecution has examined the applicant as PW7 and Ali Jan as PW8. PW7 Sawai Hussain did not state a single word about the accused manhandling/inflicting injury on the person of his father Fajruddin. He only disclosed that his father was held up by the members of opposite party. During his cross-examination, he stated that his father was manhandled but he did not sustain any injury. PW8 Ali Jan deposed that on account of beatings given by members of the opposite party, Fajruddin had sustained injuries on various parts of his body. If there was any such manhandling/giving of

beatings, PW8 Ali Jan and PW7 Sawai Hussain ought to have rescued Fajruddin but they did not do so. The occurrence in question had taken place on 10.8.2013 at 3.30 p.m. The dead body of Fajruddin was found in the hills at about 8/9.00 p.m. The time gap between the last seeing of the deceased with the accused and finding his dead body has to be very small so as to rule out the possibility of anyone other than the accused, being responsible for causing the murder of the deceased. Even otherwise, the prosecution has failed to establish that the death of Fajruddin was unnatural. After going through the FSL and Histo-pathological reports, PW18 Dr. Sanjay Phogat opined that the cause of death was due to complicated atherosclerosis of both the coronary arteries. He also admitted the suggestion that the disease which the deceased was suffering from was not the result of injuries on his body. PW15 Dr. Mahavir, who headed the Special Medical Board, which was constituted to obtain fresh opinion about the cause of death of Fajruddin opined that in the present case, the cause of death could be coronary artery insufficiency.

The prosecution has alleged that countrymade pistol was recovered at the instance of Sajid accused. However, it is not the case of the prosecution that any firearm injury was received

by deceased Fajruddin. Therefore,recovery of countrymade pistol was of no consequence.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal passed by the learned trial Court. The applications, CRM A-1396-MA of 2017 and CRM 29600 of 2017, are without any merit and, therefore, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

February 2, 2018
amit rana

(ANUPINDER SINGH GREWAL)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No