

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

CRA-D-No.48-DB OF 2011
DATE OF DECISION : 09th JANUARY, 2019

Bijjan

.... Appellant

Versus

State of Haryana

.... Respondent

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

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Present : Mr. Deepinder Brar, Advocate for the appellant.

Mr. Vivek Saini, Deputy Advocate General, Haryana.

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A. B. CHAUDHARI, J.

1. Being aggrieved by judgment and order dated 26/27.11.2010 passed by the Additional Sessions Judge, Palwal in Sessions Case No.48 of 2010 by which the appellant was convicted for offence of murder punishable under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and fine of ₹10,000/-, the present appeal was filed by appellant-Bijjan.

FACTS:

2. Briefly stated, the case of the prosecution is that on 25.10.1995 having received a ruqa Ex.PB/2 SI Bhagat Singh PW-5 went to the hospital where Bir Pal PW-3 met him who made a statement Ex.PF at about 11/11.30p.m. that at about 8.45 p.m. on that day accused-Bijjan was firing crackers in front of the gate of Ranjit and Cheti PW-4, who opposed, which led to altercation between Bijjan and Cheti on one hand

and Ranjit on the other hand. Hearing the noise of altercation, Rang Lal, Joginder, Billu and Mahesh-co-accused came there. Bir Pal PW-3 also came out from his house after hearing the alarm so also his brother Mohan Lal and nephew Harkesh came out from the house of Har Saroop Jogi. Mohan Lal advised Bijjan and Cheti not to fight. On this Rang Lal stated that Mohan Lal was unnecessarily intervening and had also intervened earlier day. In the meanwhile, Joginder, Billu and Mahesh came forward and exhorted to teach a lesson. Rang Lal inflicted lathi blow on the back of Mohan Lal and Joginder gave a lathi blow to Cheti. Accused-Bijjan fired a pistol shot which hit on left side of the chest of Mohan Lal and he fell down. Accused-Bijjan and others ran away with their weapons. Thereafter, Bir Pal PW-3 brought Mohan Lal to General Hospital, Palwal where Mohan Lal was declared dead. The FIR was registered and thereafter the investigation was undertaken. After completing all the necessary formalities and recording of statements etc. the challan was filed before the trial Court. The trial Court thereafter heard the evidence as well as the arguments and convicted the appellant-Bijjan for the offence of murder.

3. Insofar as the other accused- Rang Lal, Billu and Mahesh were concerned they were acquitted by the trial Court. While accused-Joginder was held guilty under Section 325 IPC and was released on probation in the earlier separated trial in Sessions Case No.1 of 1996 decided on 19.07.1999 by Additional Sessions Judge (I), Faridabad because appellant Bijjan was declared proclaimed offender at that time. After the arrest of Bijjan he was convicted in Sessions Case No.48 of

2010 decided on 26.11.2010 against which the present appeal was filed by him.

ARGUMENTS:

4. Learned counsel for the appellant-Bijjan submitted that the prosecution failed to prove its case and at any rate, as stated earlier, all other accused were acquitted except Joginder for want of satisfactory evidence. According to him the reasons given by the trial Court for recording the acquittal of co-accused, would equally be applicable to the present case and therefore, appellant-Bijjan is also required to be acquitted. He submitted that the prosecution case was not proved beyond reasonable doubt and at any rate benefit of doubt was required to be given to the appellant-Bijjan. There was delay in lodging the FIR which was unexplained. He then submitted that there is no allegation against the appellant that he had fired as a part of unlawful assembly and on the contrary the prosecution case is that he had suddenly appeared on the spot and fired a shot. The learned trial Court made a mistake in relying on the evidence of Bir Pal PW-3 and his evidence should be discarded. The bullet shot was not proved as a link evidence connecting the weapon allegedly used by the present appellant. He, therefore, prayed for acquittal of the appellant. In the alternative the learned counsel for the appellant submitted that the case at hand is one of firing a single shot and therefore according to him the offence of murder cannot be said to have been proved. He relied on the decision of the Apex Court in the case of ***Jhaptu Ram versus State of Himachal Pradesh, 2014(12) SCC, 410.***

5. *Per contra*, learned counsel for the State vehemently opposed the appeal and supported the impugned judgment and the

reasons recorded therein by the trial Court. He submitted that the trial Court has discussed the entire evidence in details and thereafter it came to the conclusion that the appellant had committed a serious offence of murder for which he was convicted. The firing of the gun shot is clear intention of the appellant to commit murder as such. He, therefore, prayed for dismissal of the appeal.

CONSIDERATION:

6. With the assistance of learned counsel for the rival parties we have perused the judgment and reasons recorded by the trial Court. We have also perused the evidence of Bir Pal PW-3 the eye witness and the medical evidence as well.

7. Instead of quoting the entire evidence of Bir Pal PW-3 it would be appropriate for us to quote the extract from the judgment. In paras 28 and 29 of the judgment the trial Court discussed the evidence of Bir Pal PW-3. We quote paras 28 and 29 which read thus:

“28. xxx.... xxx.... If the testimony of PW3 Bir Pal is considered, it is quite clear and convincing that at the time and place of occurrence PW3 Bir Pal was present and he had seen the occurrence as claimed by him when he filed complaint before the police and when he had appeared in the witness box as PW3. I am of the considered opinion that in case the statement of one witness is found to be trustworthy, clinching and unblemished, conviction can be based upon that. In this case PW3 Bir Pal was examined on 9.12.1996. The testimony of PW3

Bir Pal is consistent, unblemished and clearly depict that on 25.10.1995 at about 8.45 p.m. Bijjan present accused fired a shot upon Mohan Lal and Mohan Lal expired due to aforesaid injury and he was declared dead by the doctor when he reached with Mohan Lal to General Hospital, Palwal. His statement given to the police which is Ex.PF is clearly supported by his testimony when he had appeared as a witness in this case. Therefore, even if PW4 Cheti had stated that he had not noticed that he was present at the place of occurrence or not is not sufficient to disbelieve the testimony of PW3 Bir Pal. Therefore, also I find no force in argument of learned counsel for defence.

29. It was further more argued by learned defence counsel that case property was not produced before the Hon'ble Court at any point of time and report of Forensic Science Laboratory is not helpful to the case of the prosecution. On this point it was elaborately argued by learned defence counsel that one bullet was fired from a country made pistol .12 bore which could have caused single hole, but in this case pallets were found to be embedded in the body of deceased Mohan Lal, therefore, recovery of weapon is not connected with the injuries on the person of Mohan Lal.”

8. Apart from that the trial Court negated the affidavit Exhibit-D2 produced by the defence that Bir Pal did not want to support the prosecution. The trial Court has given reasons in paras 34 and 35 of its judgment for not accepting the theory of affidavit Exhibit-D2. Paras 34 and 35 of the judgment read thus:

“34. I also do not find favour with the argument of learned defence counsel because Ex.D2 affidavit purported to be that of Bir Pal serves no purpose because affidavit could not be considered to be evidence in the eyes of law. There is no provision that such type of affidavit could be considered in evidence. The defence has not produced Bir Pal in witness box. Therefore, the affidavit Ex.D2 purported to be of Bir Pal does not help the accused.

35. In view of my aforesaid reasoning the testimony of DW1 Ram Avtar, Stamp-ventor: DW2 Sh. Nand Kishore, Advocate, DW3 Sh. Rohtash Sharma, Notary/Advocate which is related to affidavit Ex.D2 are not helpful to the case of defence. The defence has also examined DW4 Sumer Singh but the testimony of Sumer Singh appears to be only after-thought because initially he was not shown to be present at the place of occurrence. Such type of evidence could not be believed. Therefore, no benefit can be given to the accused.”

9. The recovery of the weapon by the appellant-Bijjan has also been discussed in para 37 of the judgment which reproduced thus:

“As far as recovery of weapon is concerned, accused Bijjan has suffered disclosure statement Ex.PP stating therein that he had kept concealed a country made pistol .12 bore alongwith empty cartridges. In pursuance of his disclosure statement pistol was recovered, rough sketch of the pistol Ex. PP/2 was prepared. The said pistol (sic) alongwith cartridge was taken into police possession vide memo Ex.PP/1. The said country made pistol was sent to Forensic Science Laboratory and as per report of Forensic Science Laboratory Ex. PT its mechanism was found to be in working order. As per report of Forensic Science Laboratory Ex.PT pellets which were recovered from the body of deceased were opined to be forming part of .12 bore cartridge. Therefore, this fact is also established by the prosecution that pellets which were recovered from the body of the deceased could be fired from pistol .12 bore which was got recovered by the accused.”

10. In the light of the above discussion and having checked up the findings recorded by the trial Court after considering the evidence of the witnesses, we are convinced that it was the appellant-Bijjan who had fired a shot at the deceased due to which Mohan Lal died and therefore, his conviction for firing a shot at him will have to be maintained.

11. The next question is that what offence was committed by the appellant-Bijjan. It is not in dispute that during the course of the quarrel between other persons appellant-Bijjan was not at all concerned, particularly when others started assaulting the deceased. But then the appellant suddenly appeared on the scene and fired a shot towards Mohan Lal-deceased, who suffered injury and died. In other words, appellant-Bijjan has no intention to commit murder as such but like others, though he was not concerned or participated in the quarrel, he had appeared on the scene and suddenly fired on Mohan Lal. He had no enmity with the deceased-Mohan Lal as such and therefore, we think that there was no prior intention on the part of the appellant-Bijjan to kill the deceased for any particular motive. In the above background we quote paras 5 and 6 of the judgment in the case of *Jhaptu Ram (supra)* and the said decision, on facts, is aptly applicable in the present case. Paras 5 and 6 of the said judgment are as under:

“5. We have considered the matter, undoubtedly, it was a case wherein the deceased and his mother Bhagti Devi (PW.1 had been called to intervene and pacify the matter. It is also clear from the evidence on record that an altercation took place between the appellant and the deceased. There is no iota of evidence to show that there was any prior intention of the appellant to kill the deceased. As per the medical and ocular evidence, there was only gun shot fired by the appellant which proved to be fatal for deceased. More so, the prosecution failed to

marshal any evidence to show that the gun was in his hand when the deceased enter his house. In such peculiar facts and circumstances of the case, we agree with the submissions advanced by Shri Sreyas, learned counsel for the appellant.

6. In these facts and circumstances of the case, we are of the considered view that the appeal deserves to be allowed partly. Hence, the conviction of the appellant is set aside under Section 302 Indian Penal Code and it convicted under Section 304 Part-I Indian Penal Code and award sentence of ten years.

xxx...xxx..."

12. To sum up, we are convinced that offence under Section 302 IPC for murder has not been proved by the prosecution, since only one gun shot was fired by the appellant which proved fatal for the deceased. In the absence of any evidence to show any prior intention, we would follow the judgment of the Apex Court in the case of ***Jhaptu Ram (supra)***. In the result we make the following order:

ORDER

- (i) Criminal Appeal CRA-D-No.48-DB OF 2011, is partly allowed.
- (ii) The impugned judgment and order dated 26/27.11.2010 passed by the Additional Sessions Judge, Palwal in Sessions Case No.48 of 2010 convicting the appellant for offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for life, is set aside and modified.

- (iii) Instead the appellant is held guilty of offence under Section 304 Part-I IPC and sentenced to undergo the sentence which he has already undergone. Sentence of fine, however, is maintained.
- (iv) The appellant be released forthwith from jail, if not required in any other case.

(A. B. CHAUDHARI)
JUDGE

09th JANUARY, 2019
‘raj’

(HARNARESH SINGH GILL)
JUDGE

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