

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-810-DB-2018 (O&M)

Date of Decision:19.12.2019

Pawan @ Pona and others

... Appellants

vs.

State of Haryana

.. Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Sanjeev Kadian, Advocate
for the appellant no.1.

Mr. S.S.Mor, Advocate
for appellant No.2.

Mr. Randeep Singh Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate and
Mr. Deepinder Brar, Advocate
for appellant No.3.

Ms. Palika Monga, Deputy Advocate General, Haryana.

VIVEK PURI, J.

1. The present appeal has been preferred against the judgment of conviction dated 10.08.2018 and order of sentence dated 16.08.2018 passed by learned Additional Sessions Judge, Sonipat thereby, convicting the appellants-accused under Section 302 of the Indian Penal Code (for brevity, 'IPC') read with Section 34 and Section 25 of the Arms Act. The appellants were sentenced to undergo life imprisonment and to pay a fine of Rs. 10,000/- each for committing offence under Section 302 IPC read with Section 34 IPC with default stipulation. They were also sentenced to undergo rigorous imprisonment for one year for committing offence under Section 25 of the Arms Act with default stipulation. All the

sentences were ordered to be run concurrently.

2. Precisely, the prosecution has put forth a case to the effect that on 02.06.2014, complainant-Suraj Bhan alongwith Rajbir, father-in-law of his son Rahul, Mahabir and Rajiv @ Raju had come to District Jail, Sonipat to meet his son Rahul, who was confined therein. At about 10:30/11:00 A.M., they were present outside the gate of the jail. Rajiv @ Raju was about 15-20 steps ahead of the other persons. When Rajiv @ Raju reached at the outer gate of District jail, Sonipat, three young persons arrived at the spot on a motorcycle from Gohana side and started firing upon Rajiv @ Raju, who fell on the ground near the gate of jail. An *alarm* was raised and efforts were made to catch the assailants but they managed to slip away on the motorcycle towards Gohana road. The complainant had identified the assailants as Naveen @ Badka, who was driving the motorcycle, Pawan @ Pona and Sumit. Rajiv @ Raju succumbed at the spot due to bullet injuries. On the basis of statement of the complainant, the case was registered.

3. On completion of investigation, report under Section 173 Cr.P.C. was presented. The appellants alongwith their co-accused have faced the trial.

4. In support of its allegations, the prosecution had examined 22 witnesses besides producing documentary evidence. Statements of accused under Section 313 Cr.P.C. were also recorded but no defence evidence has been led by them.

5. Vide judgment of conviction dated 10.08.2018 and order of sentence dated 16.08.2018, the appellants-accused were convicted and sentenced, as mentioned in the first paragraph of this judgment.

6. Aggrieved by the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred by the appellants-accused.

7. We have heard the learned counsels for the appellants as well as learned State counsel and have perused the record.

8. At the very outset, it may be mentioned here that no appeal has been preferred by other two accused, namely, Pankaj @ Pinku and Parveen @ Kachi, who have been convicted and sentenced with regard to commission of offence punishable under Section 25 of the Arms Act. Accused-Vikas @ Pilla and Ishro have been acquitted. As such, the observations are being circumscribed only with regard to criminal liability of the present appellants.

9. Assailing the judgment of the learned trial Court, it has been mainly contended by the learned counsels for the appellants that the material witnesses including eye witnesses have not supported the prosecution version. There is no direct evidence with regard to commission of crime by the appellants-accused. The learned trial Court has based the conviction of the appellants-accused on the basis of report of Forensic Science Laboratory (FSL) as the bullets/cartridges recovered from the place of occurrence and body of the deceased had matched with the firearms alleged to have been recovered from the appellants-accused.

10. It has been further argued that the recovery of firearms from the appellants-accused is not free from doubt as no independent witness has been associated at the time of recovery.

11. There is significant discrepancy with regard to the manner of recovery of firearms effected from appellants No. 1 and 3. Moreover,

there is a significant time gap between the date of occurrence and alleged recovery effected from appellant No.2. All these factors raise a serious element of doubt with regard to the genuineness of the prosecution version.

12. On the contrary, it has been argued by learned Deputy Advocate General, Haryana that there cannot be any bar to base the conviction of the appellants-accused even if the material witnesses are hostile, as there is sufficient circumstantial evidence to connect the appellants with the commission of crime.

13. The conviction can be based if the scientific evidence is reliable. The bullets/cartridges recovered from the spot/body of the deceased had matched with the firearms recovered from the appellants-accused. There is no need to join independent witness at the time of recovery and names of the appellants-accused have also been mentioned by the complainant in his statement (Ex. PA) on the basis whereof, the FIR has been registered. Appellants No. 1 and 3 were apprehended on the day of occurrence and the evidence with regard to recovery of firearms from the appellant(s) inspires confidence.

14. In our opinion, there is sufficient merit in the appeal and the appellants are entitled to acquittal for the reasons given hereafter.

15. In the instant case, the eye witness count hinges upon deposition of Suraj Bhan (PW-2), Mahabir (PW-3), Rajbir (PW-4). Rohit (PW-5) and Rajesh (PW-22) have been examined to further fix the identity of the appellants and criminal conspiracy. Significantly, none of these witnesses have supported the version of prosecution and they have not uttered even a single word incriminating any of the appellants with

the commission of crime.

16. The learned trial Court has primarily based the conviction of the appellants-accused on the score that the result of examination of the recovered weapon of offence and other articles at FSL, Madhuban, vide reports dated 08.09.2014 (Ex.PX) and 02.12.2014 (Ex.PX/1), show that the pistols recovered from the appellants have been used in commission of offence. It has been observed by the learned trial Court that the aforesaid reports of FSL scientifically connect the appellants with the murder of Rajiv @ Raju as bullets/cartridges recovered from the place of occurrence and from the body of the deceased have been fired from the pistol recovered from them.

17. The opinion of FSL can be of much significance in the event there is satisfactory/reliable and clinching evidence to indicate that the firearms were actually recovered from the appellants-accused. In the case in hand, no independent witness has been joined at the time of recovery of firearms from the appellants. It is no doubt true that there is no requirement of law to join independent witness during the course of investigation and the deposition of the police officials is not to be viewed with distrust or suspicion merely because of their official status. However, in such like circumstances, a stringent duty is cast upon the Court to scrutinize the evidence of the police officials with more care and caution. On this yardstick, the evidence with regard to recovery of firearms from the appellants has to be evaluated and appreciated.

18. It may be mentioned here that the recovered firearms are not licensed weapons which could have fixed the identity of the licensee and user of the weapons. The weapons recovered in the instant case are

country made.

19. With regard to recoveries from appellants No. 1 and 3, the version of the prosecution is to the effect that a country made pistol .315 bore each has been recovered them which were taken into possession vide recovery memos Ex.PW8/B and PW8/D. Two witnesses have been examined with regard to the recovery effected from appellants No. 1 and 2. Both the appellants were apprehended on the day of occurrence and the recoveries were made on that day also. The two witnesses examined in this aspect are EASI Satyapal (PW-8) and SI Naresh Kumar (PW-17). From perusal of deposition of said two witnesses and recovery memos, it indicates that a discrepant version has been sought to be put forth during the course of trial. EASI Satyapal (PW-8) had produced appellants No. 1 and 3 alongwith two country made pistols and two live cartridges which were alleged to be recovered from the possession of both the appellants-accused before SI Naresh Kumar (PW-17).

20. In such circumstances, the version of prosecution is to the effect that the recovery of firearms from appellants No. 1 and 3 was effected by EASI Satyapal (PW-8) and subsequently the same were produced before SI Naresh Kumar (PW-17). However, a discrepant version has been sought to be put forth by EASI Satyapal (PW-8) and as per the version put forth by him, he had joined the investigation with SI Naresh Kumar (PW-17) on 02.06.2014 and appellants No. 1 and 3 had produced the firearms alongwith cartridges to SI Naresh Kumar (PW-17). As such, a discrepant version is emerging with regard to the mode and manner in which the recovery of firearms has been effected from appellants No. 1 and 3. Such a discrepancy cannot be, in any manner, said

to be a minor one, as it goes to the root of the case and renders the version of the prosecution with respect to recovery of firearms from appellants No. 1 and 3 to be highly doubtful.

21. With regard to appellant No.2, the material witnesses in respect of recovery effected from him are ASI Hari Om (PW-20) and ASI Dharambir (PW-21). A 32 bore country made pistol has been recovered from him. The recovery has been effected from him on 23.09.2014 i.e. after a period of more than 3½ months from the date of occurrence. The possibility cannot be ruled out that he inadvertently laid hands or came in possession of the weapon ignorant of the fact that the same has been used in commission of crime more than 3½ months ago. The time gap in the occurrence and recovery, raises an element of doubt in the absence of any other incriminating circumstance to establish the guilt of the appellants-accused.

22. In these set of circumstances, the evidence with regard to recovery of firearms from the appellants does not appear to be reliable and acceptable. The sole circumstance with regard to recovery of firearms alleged to have been used in the commission of murder, does not appear to be trustworthy and does not find support from any other incriminating circumstance to establish the guilt of the appellants.

23. Lastly, it may be mentioned here that the learned trial Court has also observed that the presence of the appellants at the place of occurrence and their involvement in the crime was disclosed by complainant-Suraj Bhan to the police soon after the occurrence, in the statement Ex.PA, on which he admits his signatures. In this regard, suffice is to say that during the course of his deposition in the Court,

Suraj Bhan (PW-2) has not supported the prosecution version. He has not uttered any word incriminating the appellants with the commission of crime and nothing material could be elicited despite cross-examination by the learned Public Prosecutor. In such circumstances, the names of the appellants, as depicted in the statement Ex.PA, become inconsequential and pales into insignificance.

24. For the aforesaid reasons, the case of the prosecution against the appellants cannot be termed to be free from reasonable doubt and they are held entitled to the benefit of doubt.

25. In view of aforesaid discussion and the reasoning contained therein, the appeal is accepted. The judgment of conviction dated 10.08.2018 and order of sentence dated 16.08.2018 passed by learned Additional Sessions Judge, Sonipat is set aside. The appellants are acquitted of the charges levelled against them and they be set at liberty forthwith, if not required in any other case.

(AJAY TEWARI)
JUDGE

(VIVEK PURI)
JUDGE

19.12.2019
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Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No