

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

CRM-A-1909-MA-2017
Date of Decision: 5.2.2019

State of Haryana

.....Applicant

Versus

Kartar & others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
 HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Surender Singh Pannu, DAG, Haryana,
 for the applicant.

Harnaresh Singh Gill, J.

The State has preferred the present application under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment dated 30.01.2017 passed by the learned Additional Sessions Judge, Jhajjar, whereby the respondents stood acquitted of the charges framed against them under Section 302 read with Section 120-B IPC as also under Section 25 of the Arms Act, 1950.

In brief, the prosecution case is that on 21.12.2012, SI-Randhir Singh received a telephonic message to the effect that some unknown persons had fired shots upon Himmat @ Sonu, resident of Mandothi, near village Sankhol in front of the Hero Honda Motorcycle Agency, Bahadurgarh. On receiving said information, he along with his fellow policemen reached the spot where the complainant PW1-Deepak @ Tachwa son of Ramesh resident of Mandothi met him. His statement (EXPW1/A) was recorded wherein SI Randhir Singh, made his endorsement (Ex.PW13/A) and sent the same to the Police Station. On the basis thereof, FIR No. 634 dated 21.12.2012 under Sections 148, 149, 302, 120-B IPC and Section 25 of the Arms Act (Ex. PW8/A), was registered. As per the version of the complainant, as

contained in the aforesaid FIR, he was given beatings by Kartar and Ram Chander sons of Ramphal, residents of village Mandothi and Jai Bhagwan @ Bacchu son of Daryiav Singh, residents of the same village had also helped them in giving such beatings. After about six months of the said incident, Jai Bhagwan @ Bacchu was got murdered, in which his brother Sonu @ Himmat was indicted and arrested. In the year 2008, both the parties had compromised the matter as a result whereof his brother Sonu was acquitted. However, the family of accused Kartar Singh was nursing a grudge against his brother Himmat @ Sonu. On 21.12.2012, the complainant and his elder brother Sonu @ Himmat had, in their Ford Figo Car bearing registration No. HR-99-LV-Temp-2991, gone to the Courts at Bahadurgarh for appearance in the Court case. At about 12 noon, when in their aforesaid car, they were coming back to their village then at about 12.15 p.m, and when they had reached near village Sankhol, nearby Hero Honda Motorcycle Agency, there came, from the front, a Hero Honda City Car bearing Registration No. DL-3CV-9886 driven by Gianender @ Gadgu son of Mahender. He hit their car with the side of his car due to which the complainant stopped his car on the left side of the road, but the abovesaid Honda City car fell down on the road. Accused Kartar and Ram Chander sons of Ramphal, Rishi Raj @ Ballu son Sardara, Balwan son of Chaub Singh and Gianender @ Gadgu son of Mahender, all residents of village Mandothi, armed with pistols, came out of the car and accused Kartar had raised a laklkara that Sonu @ Himmat should not escape on that day. On hearing that his brother Sonu, after alighting from the car, started running on the left side towards nursery and the abovesiad all the five accused chased his brother and fired shots from their respective pistols indiscriminately upon him due to which his brother fell down in the nursery. All the five accused persons had left their car

on the spot and fled away along with their weapons. As a result of the injuries received by complainant's brother on the left side of his head, left hand and back side of the shoulder and back, his brother had died. His brother was murdered by all the abovesaid accused in conspiracy with Balraj @ Ghasi, Leela @ Preet, Ishwar @ Kala sons of Chaub Singh, Priyanka, Seema daughters of Balwan, Suresh son of Karan Singh, Ravinder @ Shushu son of Hawa Singh, Gunga son of Deba, Mukesh son of Umed, Bhagat son of Mahender, Hari Om son of Rishi Raj, all residents of village Mandothi and Karambir son of Jai Narayan resident of village Soldha.

During the investigation, Investigating Officer, SI-Randhir Singh (PW-13) SI-Randhir Singh, inspected the spot and prepared the site plan (Ex. PW13/B). Blood stained earth was collected and put into sealed parcel. Sealed parcels in respect of three empty cartridges and two empty cartridges of .455 bore pistol and one live cartridge of .32 bore and one bullet lead, were prepared. Search in respect of Ford Figo car was also conducted. .315 bore pistol with one live cartridge from the seat adjoining the driver seat of the car and one .32 bore pistol containing six live cartridges lying near the car in a load condition, were taken into possession. The same were put into a sealed parcel and taken into possession vide recovery memo Ex. PW3/B. Besides, Ford Figo car bearing Registration No. HR-99-LVT-2991 and Hero Honda car bearing Registration No. DL-3CV-9886, were also taken into possession. Vide recovery memo Ex. PW3/C, one Samsung mobile phone containing a SIM bearing No. 9540480742 lying near the dead body of deceased Himmat @ Sonu, was taken into possession. Inquest proceedings Ex. PW13/C were prepared. Post mortem on the dead body of the deceased was conducted. Parcels of the clothes, sample seal and sealed box of leads two cartridges into possession vide recovery memo Ex. PW3/E.

Accused Sanjeev @ Kala and accused Kartar Singh were produced before the Court. They suffered their disclosure statements in respect of the recovery of the pistol, used in the commission of murder of Himmat @ Sonu.

Accused were arrested during the investigation. Statements of the witnesses under Section 161 Cr.P.C. were recorded. Upon completion of investigation, report under Section 173 Cr.P.C. was presented in the Court and followed by commitment of the case, charges under Section 302 read with Section 120-B IPC as well as Section 25 of the Arms Act read with Section 120-B IPC were framed.

In support of its case, the prosecution examined 22 witnesses besides tendering reports Ex.PX and Ex.PY of the Forensic Science Laboratory.

When examined under Section 313 Cr.P.C., the accused denied the allegations levelled against them and claimed that they had been falsely implicated. In defence, three witnesses had been examined.

As mentioned above, the trial Court did not feel itself convinced about the truthfulness of the prosecution version and, accordingly, acquitted the accused of the charges against them holding that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt.

After hearing the learned counsel for the applicant, we do not find any ground to interfere in the present application seeking leave to appeal.

The learned trial Court, has found that undoubtedly complainant PW1-Deepak had in his statement on the basis of which FIR was registered, named the respondents Kartar, Ram Chander, Balwan and Rishiraj as assailants, but he did not name Sanjiv @ Kala to be an assailant. While examining the testimony of PW1-Deepak

(complainant), it was found that respondent-Ram Chander, Rishiraj @ Ballu and Balwan were not arrested by the police as also no weapons of offence were recovered from them. Respondent-Rishiraj @ Ballu was present in the Court at Dwarka (Delhi) on the date of occurrence, as proved by DW2-Harish Kumar, Ahlmad. Respondent-Sanjeev @ Kala had been in police custody in another case on the date of occurrence as proved by DW1-Subhash Chand, Jail Warden. Even no recovery of any weapon of offence was effected from him. Respondent-Kartar Singh, who was in custody in FIR No. 326 of 2011 on the date of occurrence was joined in investigation by PW18-Inspector Jasbir Singh. Said Kartar Singh suffered a disclosure statement regarding using 9 mm pistol being used in the occurrence. Said pistol of 9 mm along with cartridges and another pistol of .315 bore and cartridges were sent to the FSL through PW19-SI Jagmal, but neither the weapons of offence recovered in that case have been sent to the FSL in the present case nor any report regarding those weapons of offence had been produced on record.

The learned trial Court has further found that the .315 bore pistol recovered from the spot (which was lying on the driver seat of Ford Figo Car of deceased Himmat) and .32 bore pistol near said Ford Figo Car, were sent to the FSL for examination and report. Similar was the case with empty cartridges of 9 mm and one live cartridge of .32 bore. Still further, lead of the cartridges recovered by the Doctor from the dead body of deceased Himmat during the course of post mortem was also taken into possession and sent to the FSL for examination and report. However, neither the pistol of 9 mm bore recovered from accused Kartar in case FIR No. 326 of 2011 was got transferred as case property in this case by the Investigating Officer nor sent to the FSL for matching with the recovered lead of cartridge

from the dead body of deceased Himmat. From the FSL report (Ex.PX), it was found that the cartridges from the place of occurrence were not found to have been fired from the weapons tested by the FSL. Thus, it was found that there was no incriminating evidence against any of the accused person.

As regards the recoveries effected from the accused persons, the learned trial Court found that recovery of pistol in another FIR, could not be held to be proved merely by examination of the Investigating Officer of the said case, without connecting the same with the occurrence in question. Still further, disclosure statement Ex.PW12/A recorded by PW13-SI Randhir Singh, did not lead to any discovery of new fact or article, which may make the same admissible under Section 27 of the Evidence Act.

The learned trial Court has further noticed various contradictions in the statement of PW1-Deepak (complainant) and PW13-SI Randhir Singh, Investigating Officer. From the testimony of PW1-Deepak complainant, not only is it clear that he had made huge contradictions not only regarding the enmity with respondent-Kartar regarding land dispute, but also the criminal cases pending against him and his deceased brother Himmat @ Sonu. From the history sheets Ex. DW3/A and DW3/B, it was found that the complainant and his deceased brother were facing large number of criminal cases. Even PW1-Deepak and Investigating Officer PW13-SI Randhir Singh, had contradicted each other when the complainant stated that he had gone on a motorcycle to the police station and informed the police, whereas the Investigating Officer stated that he had received the information regarding the occurrence on telephone. Thus, there were contradictions regarding the timing of the incident and the conduct of the witnesses was found to be highly doubtful.

Complainant Deepak stated that he was inside his car when the accused persons fired shots upon his brother and they ran away with their respective weapons, but said witness in his cross-examination stated that one pistol of .315 bore and one pistol of 9 mm belonging to the accused persons were thrown by them in the vehicle of the deceased Himmat @ Sonu on the spot after the incident. Yet further, it was found that the complainant testified that he did have enmity with the accused persons, but it could not be explained by him as to why he was not harmed by the accused persons, especially when he was driving the car, in which his deceased brother was sitting, when shots were allegedly fired upon him (deceased). Thus, the complainant's version had been found to be improbable by the learned trial Court.

In view of the above, we find that the learned trial Court has rightly found that the complainant PW1-Deepak and the Investigating Officer PW13-SI Randhir Singh, being the most relevant witnesses, had contradicted not only each other, but also their own statements. Besides, the prosecution has failed to corroborate the occurrence through any incriminating forensic evidence. Thus, the case set up by the prosecution was found to be improbable.

In view of the above, the application filed by the applicant is devoid of any merit and, therefore, dismissed. Leave to appeal is declined.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

05.02.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No