

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

CRA-D-32-DB-2004 (O&M)

Date of Decision: 27.02.2020.

Rajesh and others

.....Appellants

VS.

State of Haryana

.....Respondent

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mrs. Justice Archana Puri.**

Present : Mr. Vinod Ghai, Sr.Advocate with
Ms. Kanika Ahuja, Advocate,
for the appellants.

Mr. Vikrant Pamboo, DAG Haryana.

JITENDRA CHAUHAN.J.

The appeal is directed against the judgment dated 16.12.2003 and order dated 18.12.2003 passed by Additional Sessions Judge, Sonipat, vide which the accused/appellants were convicted under Sections 148 and 302 read with Section 149 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.2000/- each under Section 302 IPC and in default of payment of fine to undergo RI for six months and to undergo RI for a period of one year under Section 148 IPC.

Both the substantive sentences were ordered to run concurrently.

The brief facts of the case as noticed in the judgment

passed by the trial Court in paragraph No. 2 are reproduced as under:-

“2. The facts, in brief of the prosecution case are that on 29.11.2001 a police party headed by ASI Ram Kumar was on patrolling duty near Delhi Chowk, Kharkhoda, when complainant Rajbir met them and made statement Ex.PD wherein he alleged that he was resident of village Thana Kalan and was serving in M/s Dev Motors Co. Noida (U.P.) but due to strike of the workers, he had come to his house. They were three brothers. The eldest was Dharampal (since deceased) who was serving in DDA Delhi at the post of Gardner. Next to him is the complainant while Dharambir is the youngest. His brother Dharampal used to come daily to his house in the village from Delhi. On that day, as usual, he was coming on his cycle. While he (complainant) and his brother Dharambir were bringing oil for their tractor. On the same day at about 6.00 PM, when they reached near Pipli water course, they heard voice of fire shot. Then after coming on the bridge of the water course in the light of tractor they saw accused Raj Kumar s/o Mange Ram, Rajesh and Rakesh ss/o Sahab Singh, Sandeep s/o Raj Kumar, Lokesh s/o Rajender and one Jagmender @ Leela s/o Narain Singh, Jat, r/o Sant Nagar, Kharkhoda in prosecution of their common object were causing hurt to their brother Dharampal while he was on the road side, with the help of Gandasis and Kulharis etc. Thereafter, they stopped their tractor and alarmed that they should not give beatings to their brother. Thus after seeing them, the accused along with their respective weapons fled away from the spot towards the side of fields. Then they reached the spot and found their brother Dharampal lying dead smeared with blood and having a number of injuries on his person.

Thereafter he sent his brother Dharambir to inform about the occurrence in their village. After that Devender, Member Panchayat and other dignitaries of the village came along with his brother at the spot. The police on the statement Ex.PD registered the case and investigated the same. During investigation the I.O prepared the rough site plan and took the blood stained earth from the spot. Thereafter the dead body of Dharampal was shifted to the Hospital where post-mortem examination on the dead body was got conducted. Further, during the course of investigation, the accused were arrested. Some of them made disclosure statements on the basis of which the weapons so used in the crime were got recovered. Thus on completion of usual formalities of investigation and receipt of post-mortem report, the accused have been challaned in this case. According to the complainant, the motive behind the occurrence was that there was a dispute regarding payment of rent by the complainant party for cultivation of the land of Raj Kumar. Thus they were also involved in civil and criminal litigations where some compromise was stated to be effected but the accused were having grouse of the same.”

On completion of the investigation, challan/report under Section 173 Cr.P.C was presented in the Court. The case was committed to the Court of Session.

The accused were charge-sheeted under Sections 148 and 302 read with Section 149 IPC. They pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined

PW-1 Constable Vijay Kumar, PW-2 Consable Naresh Kumar, PW-3

Shiv Kumar Photographer, PW-4 HC Khilla Ram, PW-5 complainant Rajbir, PW-6 Dharamvir, PW-7 HC Hari Parkash, PW-8 Consable Anil Kumar, PW-9 SI Satbir Singh, PW-10 ASI Ram Kumar, PW-11 HC Jagdish Rai, PW-12 Satish Kumar Patwari, PW-13 Inspector Sat Narain, PW-14 Dr. J.S. Punia and closed the evidence.

The statements of the accused under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication.

No witness in defence evidence was examined by the accused.

After appraisal of evidence, the learned trial court vide impugned judgment dated 16.12.2003 and order dated 18.12.2003 convicted and sentenced the appellants as narrated in the first paragraph of the judgment and acquitted co-accused Jitender of the charge framed against him.

Thus, present appeal has been filed by accused/appellants.

It is contended by the learned senior counsel that there was no motive with the accused/appellants to commit the murder of Dharampal. As per the case of the prosecution, the complainant had a dispute with the accused regarding lease of land. The said matter later had been compromised but when the complainant, Rajbir appeared as PW-5 he made a statement that it was Dharamvir PW-6 who had dispute with the appellants. Thus, the complainant tried to change the

motive qua Dharmvir. There is nothing on record to corroborate the same. Even otherwise, if Dharamvir had dispute with the appellants then Dharamvir would have been the target and would not have been allowed to go unhurt.

It is further contended that PW-5 Rajbir and PW-6 Dharamvir are related and interested witnesses who reached on the spot exactly at the time when the assailants started giving injuries. Their conduct at the time of occurrence and thereafter makes their presence doubtful. Instead of trying to save their brother or inform the Police, PW-6 Dharamvir is alleged to have gone to the village and then came back with some other persons who have not been examined.

It is further contended that in the inquest proceedings, in column No.10, the investigating officer did not mention about the fire arm injury. The murder is reported to have been committed with a sharp edged weapon. It was admitted by PW-5 Rajbir that Police officer told him that the injury was caused not with fire arm but with a knife and that was the reason he did not mention about the fire shot having been inflicted but when the post-mortem was conducted, the deceased was found to be having fire arm injuries and it is thereafter that the supplementary statement of PW-5, Rajbir was recorded specifying the weapons to each assailants and also attributing fire arm injuries to Rajesh, appellant. Thus, the present case is an inquest-oriented FIR which is fallout of afterthought version.

It is further contended that the inquest report which was

prepared within 3-4 hours of the occurrence records presence of Rigor Mortis which normally sets in later than that time. Hence, the occurrence also does not seem to have taken place at the time as alleged by the prosecution.

On the other hand, it is contended by the learned State counsel that the accused/appellants have been rightly convicted and sentenced by the learned trial Court. PW-5 Rajbir and PW-6 Dharmvir have fully proved the case of the prosecution. They have withstood the test of cross-examination. There is nothing on record to discard their testimonies. Thus, the judgment of conviction and order of sentence have been rightly recorded by the learned trial Court.

We have heard the learned counsel for the parties and have gone through the case file very carefully.

The law was set into motion on the statement of PW-5 Rajbir, brother of deceased Dharampal. The occurrence is stated to have taken place on 29.11.2001 at 6.00 p.m., at culvert of Pipli Outlet, Thana Kalan Road, Sonipat. The statement of Rajbir was recorded on the same day at 8.36 p.m by ASI Ram Kumar at Delhi Chowk Kharkhoda, District Sonipat. It was stated by PW-5 Rajbir that he along with his brother Dharamvir was going from Ochandi Border and when they reached near Pipli outlet they heard firing of shots. On reaching the culvert, they saw in the light of tractor that Raj Kumar son of Abhay Kumar, Rajesh and Rakesh sons of Sahab Singh, Sandeep son of Raj Kumar, Lokesh son of Rajinder and Jasminder @ Leela

were inflicting injuries with kulharies and gandasi to their brother Dharampal. They raised noise and the assailants fled away with their respective weapons. It cannot be lost sight of the fact that both the witnesses in the present case are related and chance witnesses. Though, the testimonies of related witnesses cannot be discarded only on the ground that they are related witnesses but at the same time, the Court has to reach at a satisfaction that their evidence is reliable, probable, cogent and consistent. Both PW-5 Rajbir and PW-6 Dharamvir reached on the spot exactly at the time when the assailants started giving injuries. They had no occasion to be present there. Their conduct at the time of the occurrence and thereafter makes their presence doubtful. Instead of saving their brother or informing the Police, PW-6, Dharambir went to the village and then came back with some other persons who have not been examined by the prosecution. Further, in the inquest report in column No.10, the I.O did not mention about the fire arm injury. PW-5, Rajbir had admitted that the Police Officer told him that the injury was not with fire arm but with the knife. That explains the reason he did not mention about the fire shot having been inflicted. When the post-mortem was conducted, the deceased was found to be having fire arm injuries and it is thereafter that the supplementary statement of PW-5, Rajbir was recorded specifying the weapons to each of the assailants and also attributing fire arm injuries to Rajesh appellant. During investigation, no fire arm was recovered from Rajesh.

The entire gamut of circumstances go to show that it was an inquest oriented FIR which was later on changed after receipt of post-mortem report. The related witnesses were then introduced as eye witnesses. The Court feels that it was a blind murder and on account of previous enmity, the appellants were falsely implicated; appellant Rajesh was attributed two firearm injuries and the other appellants were attributed one injury each to show their complicity in the crime. Moreover, the conduct of PW-6, Dharambir is most unnatural. As per prosecution version, PW-6 Dharambir had dispute with the appellants and though he was allegedly present on the spot but he had not suffered any injury in the occurrence. Had this been true, the assailants would not have spared PW-6, Dharambir unhurt. This makes the presence of PW-6 Dharambir on the spot doubtful. In the considered opinion of this Court, story of the prosecution as projected is a tainted one. The genesis of the occurrence has been withheld from the Court.

As regards the motive part, the allegations of the complainant were that criminal cases were pending between both the parties with regard to a dispute regarding lease of land. The said dispute was compromised but when the complainant appeared in the Court, he deposed that it was PW-6, Dharmvir who had dispute with the appellants. Thus, the witness tried to change the motive qua PW-6 Dharamvir. There is nothing on record to corroborate the stand taken by the complainant with regard to motive part. The prosecution has failed to prove the motive for the appellants to commit the murder of

Dharampal.

In view of the above inherent discrepancies in the case of the prosecution, the presence of both the eye witnesses on the spot becomes doubtful. There is no direct evidence to connect the accused/appellants with the alleged commission of crime by them. In the absence of direct evidence, if the evidence is examined on the touchstone of the principles in relation to circumstantial evidence, the case of the prosecution falls to the ground inasmuch as there is no link at all what to talk of a chain. Thus, the present appeal is accepted. The judgment of conviction dated 16.12.2003 and order of sentence dated 18.12.2003 are hereby set aside. The accused/appellants are acquitted of the charges framed against them. They are stated to be on bail. Their bail-bonds and surety bonds stand discharged.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

27.02.2020.

SN

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No