IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No.207 of 2009

Date of Decision: 18.08.2022

Harvinder Singh .....Petitioner

Versus

State of Haryana and another .....Respondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Pankaj Kaushik, Advocate, for the petitioner.
Mr. Chetan Sharma, Asstt. AG, Haryana.
Mr.Abhishek Singh, Advocate, for respondent no.2.
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SANDEEP MOUDGIL, J.

This revision petition is directed against the judgment dated 30.10.2008 passed by the learned Sessions Judge, Karnal, whereby he acquitted accused Julfan son of Sh.Basant Ali under Section 302 IPC in case FIR No.291 dated 22.07.2007, registered at Police Station Sadar Karnal. No appeal was preferred by State against the order of acquittal of accused and hence, the present revision petition is filed by the complainant.

The case set up by the prosecution is that on 22.07.2007 at about 11:20 a.m, complainant - Harvinder Singh (PW3) met SI Azad Singh (PW14) and some police officials at Churni turn on Indri road and got recorded his statement Ex.PB to the effect that he has three brothers. For the last 6/7 months, his eldest brother Manvinder Singh, aged about 40 years (since deceased) was employed as driver of Sham Sunder (DW1) on his truck No. HR-58-A-5257. On 20.07.2007 Manvinder Singh alongwith accused Julfan, who was working with him as Cleaner, had come to the

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village Matlaudha with that truck loaded with Bajri from crusher Zone Chichhroli. On the next day i.e on 21.07.2007, after unloading the truck, they had come to Balbir (PW5) in village Gagsina, for collecting some previous balance amount from him. But on not getting money from him, they had returned at about 10:30 p.m but on the said next day i.e on 22.07.2007, at about 07:00 a.m, he (Harvinder Singh) received a telephonic message from someone that Manvinder Singh was lying dead in the truck standing on the road, at a distance of about one km from Police Post Ramba, towards Indri. On this, he alongwith some villagers reached there and found his brother Manvinder Singh lying dead on the back seat of the cabin of the truck, having sharp injury on the left side of his chest and lot of blood was there in the cabin. Harvinder Singh (PW3) in his statement Ex.PB expressed his suspicion that his brother Manvinder Singh was either killed by Julfan himself or he got him killed in conspiracy with some other person.

After completion of investigation, accused was arrested, upon finding a prima facie case against the accused, challan was submitted by the police under Section 302 IPC and charge under Section 302 IPC was framed.

Prosecution to prove its case has examined as many as 15 witnesses including C Veer Shakti Singh as PW1, EHC Jasbir Singh as PW2, Harvinder Singh as PW3, Rajesh Kumar as PW4, Balbir Singh as PW5, Dr.Lalit Kumar as PW6, ASI Ram Bhajan as PW7, Ujjal Singh as PW8, Mohinder Singh as PW9, ASI Ram Chander as PW10, EHC Ranbir Singh as PW11, HC Surat Singh as PW12, HC Bir Singh as PW13, SI Azad Singh as PW14 and Ved Parkash as PW15.

After completion of prosecution evidence, statement of accused under Section 313 Cr.P.C was recorded in which a categoric stand was taken

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by defence that the accused was working as Cleaner on truck no. HR-58-A-5257 on which Manvinder Singh (since deceased) was working as a driver. He admitted that on 20.07.2007, they had come from Chichhroli, village Matlauda, with Bajri loaded in the truck. The accused further stated that he himself had unloaded the Bajri from the truck at Matlaudha so he was tired; he went to sleep in the truck and does not know as to when Manvinder Singh or anybody else, started and drove the truck, but at about 04:45 a.m, when he woke up, he saw the dead body of Manvinder Singh on the back seat in the cabin of the truck; that he also found his own pockets, as well as, the pockets of Manvinder Singh, already searched and emptied by some unknown person; that the dash board of the truck was also found opened and searched; that he immediately went to nearby village Samora and made telephonic call to Sham Sunder (DW1), owner of the truck, informing him about the incident. He has denied all other incriminating circumstances and pleaded innocence.

In defence, accused has examined Sham Sunder (owner of the truck in question) as DW1,who has supported the accused that in the early morning of 22.07.2007, he had received a telephonic call from the occurrence that Manvinder Sinngh had been murdered; whereupon he had instructed Julfan, to stay near the truck or to go to nearby Police Station; that at about 11:00/12:00 noon, he (Sham Sunder) then reached the hospital at the time of postmortem examination of the deceased. DW2 Ram Dhan stated that the accused is a man of good character and that there has never been any criminal case pending against him except in hand.

Learned counsel for the petitioner has argued that there is no eye witness to the occurrence as the complainant on whose statement the

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case was registered, had received a telephonic call about dead body of his brother lying inside the truck. The case is based on circumstantial evidence.

Learned counsel for the State has admitted the fact that no appeal was preferred against the judgment dated 30.10.2008, passed by the learned Sessions Judge, Karnal, acquitting the accused of commission of offence punishable under Section 302 IPC. Hence, the complainant has come up with this revision petition before this Court.

I have heard learned counsel for the parties and perused the impugned judgment and record with their assistance.

The learned trial Court has rightly held that the prosecution has been able to prove three sets of circumstances against the accused. Firstly, the prosecution has been able to prove the recovery of weapon i.e knife as well as blood stained T-shirt of the accused which was used in the commission of the offence and recovered at his instance. Secondly, the evidence of last seen together of the deceased and the accused, has also been admitted and is duly proved. Thirdly it is the admitted case of the accused in his statement under Section 313 Cr.P.C that he was sleeping in the cabin of the truck when some unknown person/persons entered the truck and killed deceased Manvinder Singh and also searched his pockets but despite all this happening in the cabin of the truck, the accused take the stand that he was asleep in the cabin of truck and therefore, he could not notice anything. He has no reasonable explanation to give as to who has caused this offence. The recovery of knife wrapped in the T shirt was made, both of which could be recovered at the same time but as per the disclosure statement of the accused knife and T-shirt were recovered at different places. In this situation,

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the trial Court has disbelieved the disclosure statement of the accused that knife was recovered wrapped in the T-shirt at the same place.

Furthermore, the State has not come up in appeal against the order of acquittal of accused, which shows that the first cause of action was lying with State if it was aggrieved against the order, which it has not chosen to do so.

Keeping in view the totality of circumstances and also the discussion made hereinabove, I do not find any infirmity or illegality in the judgment of the learned Sessions Judge, Karnal. Order of acquittal of the accused is maintained.

In view of the above, revision petition is dismissed.

(SANDEEP MOUDGIL)
JUDGE

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

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