

2024:PHHC:123716-DB



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

CRM-A-5-2023 (O&M)
Date of decision: September 18, 2024

State of Haryana
.....Applicant
versus
Harender
.....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Ms. Shubhra Singh, Additional AG Haryana.

SUDHIR SINGH, J.

CRM-14-2023

For the reasons stated in application, the same is allowed and delay of 85 days in filing the application seeking leave to appeal is condoned.

Main case (O&M)

The present application seeking leave to appeal is directed against judgment dated 22.03.2022 passed by learned Additional Sessions Judge, Charkhi Dadri, whereby the respondent has been acquitted of the charges under Sections 323 and 302 IPC and under Section 27 of the Arms Act framed against him, while granting him the benefit of doubt.

2. The case of the prosecution is that on 07.02.2021, an information was received by SI Veer Singh, whereupon he along with

other police officials reached the place of occurrence and found dead body of a young boy lying in a black colour Alto Car bearing registration No.HR12J-5714. Jagbir Singh son of Dariyao Singh, resident of Ward No.10, Gaushala Road, Charkhi Dadri presented a written complaint to SI Veer Singh stating therein that Bijender alias Binder (since deceased) was son of his brother, namely, Krishan and he was a driver. It was further stated that on 07.02.2021 at about 7:30 p.m., he was having tea at the tea stall at *kachcha Kapoori* road, Mahendergarh Chungi, and Dinesh son of Suresh and Dhyan Singh alias Chotan son of Ramesh, residents of Dadri and deceased, were sitting in the Alto Car belonging to Dinesh. It was further stated therein that in the meantime, a red colour Brezza Car came there and two young boys alighted from it, and that one of them had fired upon the Alto Car, whereupon, Dinesh started his car and took the same towards *kachcha* passage. The occupants of said Brezza car had chased the Alto car of Dinesh. However, due to closed street, Dinesh and Dhyan Singh left the said Alto car there and fled from the spot, and the occupants of aforesaid Brezza car had also fled away from the spot in their vehicle. The complainant reached the spot and found his nephew Bijender lying dead on the backseat of Alto car. It was alleged that deceased was murdered by the unknown occupants of aforesaid Brezza car.

3. On the basis of the aforesaid information, FIR under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') and Section 25 of the Arms Act, 1959 was registered. During investigation, place of occurrence was inspected by the team of FSL. The blood stained *chadder* and seat cover of Alto car were taken into

possession by the police along with said Alto car. One empty cartridge was also recovered. The CCTV footage installed in nearby house was also obtained. The postmortem of the dead body of the deceased was conducted. Accused-respondent was arrested. Challan was presented. Charges were framed against the accused under Sections 323 and 302 of IPC as well as Section 27 of the Arms Act, to which he pleaded not guilty and claimed trial.

4. In evidence, the prosecution had examined as many as 44 witnesses besides leading documentary evidence Exhibits P1 to P25, Exhibits P1 to P97, PX, PY, PZ/1 to PZ/3. Thereafter, statement of accused, under Section 313 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.'), was recorded. The entire incriminating material was put to him, which he denied and pleaded innocence. However, no evidence was led by the defence.

5. Learned trial Court, after taking into consideration the rival contentions and evidence on record, has acquitted the accused vide the impugned judgment, *inter alia*, on the following grounds:-

- i) From the evidence on record, it was doubtful that accused had fired upon the deceased while the deceased was sitting in the Alto car;
- ii) Neither any register has been taken into police possession at the time of investigation of the case nor the correctness as well as genuineness of lists Exhibit P41 (Arms lists of STF Unit, Rohtak) could be established;
- iii) Correctness and genuineness of Exhibit P7 (Arms list of STF Unit, Rohtak) was also not established and proved beyond reasonable doubts;

- iv) The testimony of Investigating Officer, namely, Veer Singh (PW23) is doubtful;
- v) As regards electronic records, the mandate of Section 65-B of the Indian Evidence Act, 1872 not complied with;
- vi) Neither PW30 Sandeep Kuamr nor Incharge of weapons Head Constable Yogesh (PW26) has deposed that they had sealed the pistol Exhibit MO1 prior to handing over it to Inspector Hitender Singh (PW25);

6. Learned State counsel argues that it was proved on record by way of cogent and convincing evidence that death of the deceased Bijender alias Binder was caused by fire arm injuries and in this regard, scientific evidence in the form of FSL was also produced and proved on record. It is further submitted that all the witnesses produced by the prosecution had supported the case of the prosecution and it was clearly established that accused had fired upon the deceased, who was sitting in Alto car. While referring to the FSL report (Exhibit P26), it is contended that it was clearly proved that accused had committed murder of Bijender alias Binder. Still further, it is argued that learned trial Court has failed to take into consideration that CCTV footage, which was collected from the nearby house in the locality and the same was produced and proved on record, clearly establishing that it was the accused, who had fired upon the deceased. It is further submitted that learned trial Court has committed grave illegality in ignoring said piece of evidence by holding that it was not proved in terms of Section 65-B of the Indian Evidence Act. Thus, a prayer for grant of leave against the impugned judgment of acquittal has been made.

7. We have heard learned State counsel and have also gone through record of the case.

8. The issue that arises for determination in the present case is whether the finding of acquittal recorded by the learned trial Court, requires any interference by this Court.

9. It may be noticed that the learned trial Court had framed two points for determination. As far as first point i.e., “*Whether the death of person namely Bijender alias Binder was homicidal due to sustaining of bullet/firearm injury?*”, is concerned, it was found that death of deceased was caused due to sustaining fire arms injury and it was homicidal in nature. So far as the second point i.e., “*Whether the accused was actual assailant of the incident dated 07.02.2021, wherein person namely Bijender alias Binder was murdered at the spot, near Kake T.Stall, at Mahendergarh-Chungi, Charkhi Dadri?*”, is concerned, it has been found by the trial Court that prosecution has failed to prove on record by way of cogent and convincing evidence that accused had fired upon the deceased Bijender alias Binder, while he (deceased) was sitting in Alto car. It was further found that the prosecution has failed to prove that 9mm pistol Exhibit MO1 was exclusively allotted to the accused. On the basis of the computer generated list of weapons (Exhibit P7 and Exhibit P41), it was found that similar kind of bore pistols were also available with other members of the raiding party. It was further found that none of the witnesses of the prosecution, including the complainant, had deposed that they had seen the accused firing upon the deceased. Thus, their testimony was doubtful. So far as CCTV footage is concerned, it was found that timing of procuring CCTV footage and hard-disk was doubtful. It was

further found that PW7 Jaipal, in his cross-examination, stated that before removing the hard-disk by the police, some other contents were inserted in that disk by the police. It was further stated by him that maximum capacity of memory of the hard-disk was for 15 days and after expiry of 15 days, earlier recording stood automatically deleted. It was thus, found that even if the hard-disk Exhibit MO7 was taken into possession by the police in April 2021, then also it becomes doubtful that it was containing the recording of length of April, 2021 as according to PW7, the capacity of memory of hard-disk was only 15 days. It was further found that said as regards CCTV footage no certificate under Section 65-B of the Indian Evidence Act was produced or proved on record and the mandate of the Hon'ble Supreme Court in Anvar P.V. Vs. P.K. Basheer and others, (2014) 10 SCC 473, has not been followed. Besides that it was found that PW4 Dinesh had never deposed that the accused had inflicted any injury on his person. MLR Exhibit-P89 and opinion Exhibit- P49 alongwith treatment/ CR file of injured Dinesh proved that injury on his the person was caused with a blunt weapon, but it was not established that accused was having any blunt weapon with which he could have caused injury to injured Dinesh.

10. We find that there are huge contradictions in the testimony of prosecution witnesses. Admittedly, there is no eye witness to the occurrence. The complainant did not identify the accused and the weapon, allegedly recovered, could also not be connected with the accused. Rather, the trial Court found that such kind of weapons were also available with other members of the raiding party.

11. The most vital part of occurrence is CCTV footage allegedly collected by the prosecution from a nearby house in the locality of the place of occurrence. It is settled law that CCTV footage is to be proved by complying with the provisions of Section 65(2) and (4) of the Indian Evidence Act. The Hon'ble Supreme Court in Anvar P.V. (supra) has held that it is only if, the electronic record is duly produced in terms of Section 65-B of the Indian Evidence Act, the question regarding its genuineness would arise for consideration and it is only in this eventuality, that resort can be taken to Section 45-A of the Act. It is further held that the Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence, if requirements under Section 65-B of the Evidence Act, are not complied with. It was held as under:-

“14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over

which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these

safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.”

12. In the instant case, no certificate in terms of aforesaid provisions of the Indian Evidence Act, was produced on record by the prosecution. The same is fatal to case of the prosecution. As noticed above, it is established that the testimony of the prosecution witnesses suffer from material contradictions.

13. In view of the above, we do not find any illegality or perversity in the impugned judgment of acquittal passed by learned trial Court. Consequently, the present application is dismissed and leave to appeal is declined.

14. Pending application(s), if any, shall stand disposed of.

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

September 18, 2024
mahavir

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