

(2016) 02 P&H CK 0297
In the Punjab And Haryana At Chandigarh
Case No : CRA-D-782-DB of 2015 (O & M).

Jai Narain

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 2 LawHerald 1180

Hon'ble Judges : T.P.S. Mann; Ramendra Jain, JJ.

Bench : Division Bench

Advocate : R.K. Saini, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Ramendra Jain, J. - CRM No. 16627 of 2015:

1. Heard. Sufficient cause has been shown for condonation of delay in filing of the appeal. The application is, therefore, accepted and the delay of 14 days in filing of the appeal is condoned.

CRA-D-782-DB of 2015:

2. Appellant/Complainant has preferred the present appeal against the impugned judgment dated 21.1.2015, acquitting respondents No. 2 and 3 of the charges under Sections 302, 201 and 34 IPC and 27 of the Arms Act, 1959.

3. Briefly stated, on 28.3.2013 on the statement of complainant Jai Narain, a blind FIR was registered against unknown persons for committing murder of his brother Ajit Singh @ Jeeta Pahalwan. During investigation, a revolver, motor cycle and sample of blood lying at the spot near the dead body of Ajit Singh were taken into police possession. Rough site plan of the place of occurrence was prepared. Inquest proceedings were conducted under Section 174 Cr.P.C. Statements of the relevant witnesses were recorded. During investigation, one Baba Puran Nath got recorded his supplementary statement on 10.4.2013. Both

the respondents No. 2 and 3 were arrested and interrogated. Respondent No. 2 made a disclosure statement that on 27.3.2013 he had fired upon the head of Ajit Singh from his licensed revolver and thereafter, he called Ravi Kumar @ Ravi-respondent No. 3 his friend and then they both taking the dead body of Ajit Singh on motor cycle, threw it in a street near the power house at Khurana road.

4. On completion of investigation, the final report under Section 173 Cr.P.C. was presented in the Court against respondents No. 2 and 3 under Sections 302, 201 read with Section 34 IPC and 27 of the Arms Act. Since the aforesaid offences were exclusively triable by the Court of Sessions, so the case was committed there.

5. On finding a prima facie case, the learned trial Court framed charges against both the respondents No. 2 and 3 under the aforesaid sections, to which they pleaded not guilty and claimed trial. The prosecution in support of its case examined as many as following 20 witnesses :-

PW1 Gurnam Singh visited the spot along with accused/respondent No. 2-Rajiv and complainant Jai Narain, on receipt of information of lying of a dead body near the power house. But he did not support the prosecution case and turned hostile. Appellant-complainant was examined as PW2. He in his statement Ex.PE had stated that some unknown person had murdered his brother Ajit Singh, but before the Court he improved his version and deposed that accused Rajiv Kumar @ Raju has committed his murder. PW3 Laxman Singh, Draftsman, PW 5 C. Naresh Kumar and PW 17 Inspector Ashwani Kumar are formal witnesses. PW4 Dr. Vikas Bhatnagar has proved the post mortem report of the deceased Ex.PJ. PW6 ASI Ranbir Singh got conducted the post mortem examination of the deceased. PW7 ASI Shiv Kumar had witnessed the recovery memo Ex.PC and extra judicial confession of the accused. PW8 ASI Dalbir Singh, PW 9 ESI Jai Kishan, PW 10 SI Satbir Singh and PW 11 HC Ram Mehar were the witnesses to the disclosure statements of the accused. PWs 12 to PW 15 had proved the record of mobile phones and call details etc. PW 16 Baba Puran Nath, is the Manager of Akhara (ring) Chand Ram, where the deceased was residing. He had made supplementary statement on 10.4.2013 during the course of investigation. He is the witness before whom accused Rajiv had allegedly made extra judicial confession on 10.4.2013 on the basis of which, the accused were arrested, but he has not supported the case of the prosecution. PW 18 Vinay Kumar has testified that in an insurance policy of deceased Ajit Singh, sister of accused Rajiv Kumar @ Raju, namely Komal was made as nominee by him. PW 19 Inspector Vishnu Parsad is the Investigating Officer of the case, but his statement is not in the line of PW 2 Jai Narain, complainant. PW 20 registration clerk has proved that the motor cycle found near the dead body of Ajit Singh belonged to accused Rajiv Kumar.

6. After closure of prosecution evidence, statements of the respondents No. 2 and 3 under Section 313 Cr.P.C. were recorded putting entire incriminating evidence brought on record by the prosecution against them, to which they

denied and pleaded their false implication. In defence respondent No. 2-Ravi Kumar @ Ravi stated that on 9.4.2013, he was called by Inspector Vishnu Parsad telephonically in the police station and was falsely involved in this case. He never suffered any disclosure statement, rather his signatures were obtained by the police on blank papers. Respondent No. 3 Rajiv Kumar pleaded that he was also called telephonically at police station and was threatened and forced by Inspector Vishnu Parsad to sign confessional statement. He under pressure and threat signed the papers prepared by the police.

7. After hearing learned counsel for both the sides and considering the evidence on record, the learned trial Court acquitted respondents No. 2 and 3 vide impugned judgment dated 21.1.2015.

8. Learned counsel for the appellant contended that the impugned judgment of the learned trial Court is based on surmises and conjectures. The learned trial Court has failed to appreciate the last seen evidence of the complainant that he had left his brother Ajit Singh at the house of accused Rajiv Kumar. Both the respondents have made their disclosure statements and pursuant thereto, recovery was effected from their house. The motive behind the murder of Ajit Singh was illicit relations of deceased with mother and sister of respondent Rajiv Kumar. Komal, sister of accused Rajiv Kumar was named as nominee in the Insurance Policy taken by deceased Ajit Singh. The motor cycle found near the dead body of Ajit Singh was also in the name of respondent Rajiv Kumar. Respondent No. 3 had helped respondent No. 2 in the commission of crime. By ignoring all these glaring facts, the learned trial Court has wrongly and illegally acquitted respondents No. 2 and 3.

9. We have given our thoughtful consideration to the above submissions made by learned counsel for the appellant.

10. The prosecution has failed to prove the motive, on which the entire prosecution story was based. No evidence regarding the illicit relationship of deceased Ajit Singh with the mother of the respondent Rajiv Kumar was produced. Further, no evidence regarding keeping bad eye on the sister of respondent Rajiv Kumar by the deceased Ajit Singh was ever tried to be brought on record. According to the complainant deceased Ajit Singh had purchased some property in the names of accused Rajiv Kumar and his sister Komal, but neither any evidence nor any document was produced in this regard.

11. Link evidence is missing in this case. Finger prints of the respondents were not found on the revolver and motor cycle which were allegedly recovered from near the dead body of Ajit Singh.

12. The story of the prosecution that respondents No. 2 and 3 after murdering Ajit Singh had taken his dead body on the motor cycle and threw it near the power house on Khurana Road is not believable, because in these circumstances, their clothes must have been smeared with blood of the deceased, but no such clothes were found or recovered.

13. The material witnesses PW 1 Gurnam Singh and PW 16 Baba Puran Nath did not support the prosecution case. Both were cross examined at length, but nothing favourable to the prosecution could be elicited from their mouth.

14. Blood stains found on the wiper recovered from the bath room of respondent Rajiv Kumar were not compared with the blood group of the deceased.

15. As per the prosecution story, the murder of Ajit Singh was committed in a small bathroom with a gun shot. However, PW 4 Dr. Vikas Bhatnagar categorically deposed that it was not a short range fire. This contrary version in the statements of witnesses creates doubt in the prosecution story.

16. Undisputedly, the police or the complainant had no clue about the murder of the deceased for about 14 days. For the first time on 10.4.2013 PW 16 Baba Puran Nath in his supplementary statement Ex.PU named both respondents No. 2 and 3 as murderers of deceased Ajit Singh. Baba Puran Nath in his above statement told the police that respondent No. 2 had made an extra judicial confession before him about the murder of Ajit Singh. Pursuant thereto, both respondents No. 2 and 3 were arrested on the same date.

17. In pursuance of his disclosure statement Ex.PY, respondent No. 2 allegedly got recovered mobile phone Ex.P3 of the deceased vide memo Ex.PZ and the clothes worn by him at the time of occurrence. However, the said mobile set was never sent to FSL authorities, for the reasons best known to the prosecution to link respondent No. 2 with the commission of crime. It was simply opened in the Court after its alleged recovery from respondent No. 2. Even the prosecution did not bring on record that whether it contained any sim card or what was its number and to whom it belonged. As such, the alleged recovery of mobile from respondent No. 2 does not connect him with the commission of crime.

18. More so, alleged motive in this case is double edged. As discussed above, respondents No. 2 and 3 have been attributed motive to commit murder of Ajit Singh for two reasons - (i) that deceased had illicit relations with the mother of respondent No. 2 and had an evil eye on his sister; (ii) the deceased had nominated the sister of respondent No. 2 in the insurance policy and also purchased various properties in her name. However, cross examination of the appellant-complainant shows that it is not respondents No. 2 and 3, rather he had a motive to falsely implicate respondent No. 2, with the grouse that his deceased brother had not purchased the alleged properties in his name.

19. Admittedly, the murder of deceased Ajit Singh was committed on the day of Holi festival. However, no colour was found on his clothes Ex.P-1 to P-7. Hence, the learned trial Court has rightly held that it was not possible that on the day of Holi, deceased Ajit Singh did not celebrate the said festival.

20. PW-2 complainant Jai Narain as well as Investigating Officer of the case have categorically admitted that prior to 12.4.2013, when the wiper was taken into possession from the bathroom of respondent No. 2, no gun shot mark was found

in the bathroom measuring 5 x 5? ". Admittedly, complainant Jai Narain had not witnessed the occurrence. Hence, the conviction of respondents No. 2 and 3 could not have been recorded by the learned trial Court on his solitary hearsay statement, more particularly, as discussed above, when PW 1 Gurnam Singh and PW 16 Baba Puran Nath have turned hostile.

21. Complainant Jai Narain as PW 2 testified that he had disclosed his suspicion over respondent No. 2 about the murder of his deceased brother by going to the police station after 3-4 days of the occurrence. Contrary to it, the police found complicity of respondent No. 2 for the first time on 10.4.2013, when he made his alleged extra judicial confession before PW 16 Baba Puran Nath. Till that time, it was a blind murder. It is not understandable that if complainant Jai Narain had disclosed about his suspicion against respondent No. 2 immediately after 3-4 days of the occurrence, then what was the necessity for the police to introduce the story of extra judicial confession of respondent No. 2. More so, why respondent No. 2 was not arrested by the police till 10.4.2013. All these facts and circumstances raise suspicion about the prosecution story and thus, the learned trial Court, taking into account all the above factors has rightly acquitted both the respondents.

22. We have gone through the impugned judgment very carefully and found no irregularity or perversity in the same.

23. In view of the discussion above, the instant appeal is completely devoid of any merit, therefore, dismissed.