
(2010) 07 P&H CK 0180
In the Punjab And Haryana At Chandigarh

State of Haryana

APPELLANT

Vs

Bijender Singh alias Lamba
 Basant Singh Vs State of
Haryana and Others

RESPONDENT

Date of Decision : 14-07-2010

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120B, 148, 149, 201, 302

Citation : (2010) 07 P&H CK 0180

Hon'ble Judges : Nawab Singh, J; Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Nawab Singh, J.—This judgment would dispose of Criminal Appeal No. 653-DBA of 2002 filed by the State of Haryana and Criminal Revision No. 1991 of 2002 filed by Basant Singh-complainant as they have arisen out of a common judgment dated January 11th, 2002 passed by Additional Sessions Judge, Jhajjar, whereby accused-respondents were acquitted in cases bearing First Information Report No. 193 dated June 23rd, 1998 under Sections 148, 201, 302/120B read with Section 149 of Indian Penal Code and Section 25 of Arms Act and FIRs No. 210, 211 and 212 dated, July 8th, 1998 u/s 25 of the Arms Act Police Station Sadar Bahadurgarh.

2. In brief, prosecution story is that on June 22nd, 1998 at about 8 PM Jaibir and Ashok (both brothers-deceased) and Bijender, Ashok Kumar, Satish, Joginder Pal all residents of village Isapur, Ram Avtar and Krishan Kumar accused-respondents were present on the turning of village Isapur. Vijay Singh brother of the deceased was on his way back from Delhi to his village Isapur in a bus. On noticing his brothers and the accused-respondents, he alighted from the bus and asked his brothers as to why they were standing there. The deceased told him that Ram Avtar and Krishan accused-respondents were to pay their money which was paid to them through Bijender. Thereafter, they never returned to their

house.

3. On June 23th, 1998 a few women of village Lohat had gone to the fields to cut the grass and noticed a dead body of a young boy having injuries lying in a drain near the field of Umed Singh. They informed Lakhmi Chand Sarpanch of Gram Panchayat Lohat. Lakhmi Chand, Jagmal and Banwari reached the spot. From the spot, Lakhmi Chand reached Police Post Badli, Police Station Bahadurgarh and informed the Police. A wireless message was sent to Mohar Singh, Station House Officer, Police Station Bahadurgarh (PW-19) by Police official of Police Post Badli. Mohar Singh, Sub Inspector reached the spot. He recorded the statement of Lakhmi Chand (Exhibit PJ) and appended his endorsement (Exhibit PJ/2). First Information Report (Exhibit PJ/1) was recorded in Police Station Badli. Inquest proceedings (Exhibit PAB) were conducted. Fired cartridges, live cartridges, 4 buttons, bullets, sleepers and blood stained earth were taken into possession vide recovery memorandum (Exhibits PK). The dead body was also photographed. Rough site plan (Exhibit PAA) was prepared. The dead body was sent for post-mortem examination.

4. On June 24th, 1998 Vijay Singh and Basant Singh identified the dead body to be of their brother-Jaibir.

5. On June 29th, 1998 Hoshiar Singh (PW-17), In-charge Police Post Badli along with other Police officials was on patrol duty near Dhansa border. Partap Singh resident of village Badli informed him that he noticed a dead body of a young person lying in the water-course near the bridge and field of Jai Bhagwan. Statement of Partap Singh (Exhibit PP) was recorded. He appended his endorsement (Exhibit PP/1). Daily Diary Report (Exhibit PP/2) was recorded in Police Station Bahadurgarh. He reached the spot. Inquest proceedings (Exhibit PS) were conducted. The dead body was photographed. The dead body was of Ashok which was identified by his brothers Vijay Singh and Basant. The dead body was sent for post-mortem examination. Post mortem examination was conducted by Dr. S.K. Dhatarwal (PW-16).

6. On July 4th, 1998 Bijender, Ashok, Satish, Krishan and Ram Avtar were arrested on the canal bridge in village Shidipur by Pyara Ram (PW-25) District Inspector. Joginder Pal and Chandurp accused-respondents were arrested on July 5th, 1998 and October 27th, 1998 respectively.

7. On July 8th, 1998 Birender, Satish, Ashok and Naresh Kumar accused-respondents were interrogated by Mohar Singh (PW-19), Pyara Ram (PW-25), Hoshiar Singh (PW-17) and Ram Avtar (PW-24) respectively.

8. In pursuance to the disclosure statement of Bijender Singh (Exhibit PM), a country-made pistol (Exhibit P-21) and a live cartridge were recovered from the bushes near Gurukul and the same were taken into possession vide recovery memorandum (Exhibit PM/1).

9. Pursuant to the disclosure statement made by Satish accused-respondent,

motor-cycle No. DL-4SP-1636 of Jaibir (deceased) was recovered from an abandoned brick-kiln in the area of village Dhansa under the bushes and the same was taken into possession vide seizure memorandum (Exhibit PF/1).

10. A country-made pistol (Exhibit P-22) was recovered from the bushes in the kacha path near Shakti Batha in pursuance to the statement of Ashok. The same was taken into possession vide recovery memorandum (Exhibit PH/1).

11. Per disclosure statement of Ram Avtar, knife (Exhibit P-33) was recovered from the bush near a field in the area of village Badli and the same was taken into possession vide seizure memorandum (Exhibit PAP).

12. Country-made pistols (chambered for .315" cartridges) and knife were sent to Forensic Science Laboratory, Haryana, Madhuban Karnal (for short "the FSL").

13. Two live cartridges and seven fired cartridges and seven fired bullets of .315" country-made pistol recovered from the place of occurrence were also sent to the FSL.

14. Three .315" fired bullets recovered from the body of Jaibir (deceased) and one .315" fired bullet recovered from the body of Ashok (deceased) were also sent to the FSL.

15. On completion of investigation and other formalities, the accused-respondents were arraigned for trial.

16. The accused-respondents were charged under Sections 148, 201 and 302 read with Section 149 of Indian Penal Code and Bijender alias Lamba, Ram Avtar and Ashok alias Bhalle accused-respondents were also charged u/s 25 of Arms Act.

17. In support of its case, prosecution examined Kanwaljit Singh, Patwari (PW-1), Krishan Chander Dalal (PW-2), Man Singh, Constable (PW-3), Rajender Singh (PW-4), Rajbir (PW-5), Ajit Singh, Head Constable (PW-6), Rajbir Singh (PW-7), Dalip Singh (PW-8), Hans Raj, Constable (PW-9), Ashok Kumar, Constable (PW-10), Lakhmi Chand (PW-11), Vijay Singh (PW-12), Basant Singh (PW-13), Jai Bhagwan (PW-14), Siri Chand, Inspector (PW-15), Dr. S.K. Dattarwal (PW-16), Hoshiar Singh, Sub-Inspector (PW-17), Satya Parkash (PW-18), Mohar Singh, Inspector (PW-19), Raj Kumar, Head Constable (PW-20), Balkar (PW-21), Dr. Vijay Pal Khangawal (PW-22), Roop Singh (PW-23), Naresh Kumar, Assistant Sub-Inspector (PW-24) and Pyara Ram (PW-25).

18. In their examination recorded u/s 313 of the Code of Criminal Procedure, accused-respondents denied the allegations and pleaded innocence.

19. No eye witness account of the murders is available in this case. The prosecution case hinges on three piece of evidence vis (i) Evidence of last seen; (ii) Recovery of country-made pistols (Exhibit P-21 and P-22) at the instance of Bijender and Ashok Kumar accused-respondents and; (iii) Recovery of motor cycle No. DL-4SP1636 of Jaibir (deceased) by Satish accused-respondent.

20. It is to be seen whether prosecution was able to prove its case beyond any shadow of doubt against the accused on the basis of aforesaid evidence or not. In a case of circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. It is not to be expected that in every case depending on circumstantial evidence, the whole of the law governing cases of circumstantial evidence should be set-out in the judgment. Legal principles are not magic incantations and their importance lies more in their application to a given set of facts than in their recital in the judgment. The simple expectation is that the judgment must show that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis as has been held lucidly and in an enlightening manner by Hon'ble Apex Court in *Shankarlal Gyarasilal Dixit Vs. State of Maharashtra*, .

21. Dr. Vijay Pal Khangawal (PW-22) conducted the post-mortem examination on the dead body of Jaibir and found the following injuries:

1. A rifled fire arm ammunition-bullet entry wound of size 2 m 1 cm over lateral margin of right eyebrows situated 169 cms above right heel. On dissection, the wound was directed downwards and obliquely and outwards to penetrate the anterior most part of temporal bone and the overlying soft tissues. The margins of the wound were reddish and inverted with tattooing effect. A corresponding hole of size 2 1 cm present over temporal bone with effusion of blood in trabecular of bone. A brownish deformed metallic bullet was recovered from inside of the cranial from right side of middle cranial fossa. The brain was liquified and consisted of bloody pasty material more so on the right side.
2. A rifled fire arm ammunition-bullet entry wound of size 3.5 x 2 cms over upper part of chest on the left side, 3 cms below clavicle, 14 cms from midline and 139 cms from left heel. The margins were reddish and inverted with tattooing effect. On dissection, the wound was found to be directed in slightly oblique and upward direction upto back after piercing the upper lobe of left lung.
3. An exit wound of size 4x2 cms present over the back in inter scapular region, 2 cms away from midline on left side and 140 cms above left heel. The margins were reddish and everted with ecchymoses of subcutaneous tissue.
4. A rifled fire arm ammunition bullet entry wound of size 1 cm in diameter over front of chest on the left side 2 cm away from midline, 3 cms inferomedial in injury No. 2 and 136 cms above right heel. The margins were reddish, inverted and showing tattooing effect. On dissection, the wound was directed obliquely down wards through subcutaneous tissues outwards (laterally). The intervening subcutaneous tissues were ecchymoses.
5. An exit wound of size 3.5 x 2 cms over front of chest on the left situated 5 cms away from midline at the level of 4th rib & 133 cms above left heel. The margins being reddish and everted with ecchymoses of the tissues.

6. A rifled fire arm ammunition-bullet entrance wound of size 2x1 cm over front of chest on left side, in midclavicular line, 6 cms away from midline, 3 cms below injury No. 5 and 130 cms above left heel in slightly oblique direction. The margins were inverted and reddish with tattooing effect. On dissection, the wound was directed obliquely and downwards with penetration of the lower part of upper lobe of left lung from where a brown metallic deformed bullet was recovered.

7. A rifled fire arm ammunition-bullet entry wound of size 2.5 x 1.5 cms over front of chest on left side, 3 cms below injury No. 6, 5 cm away from midline and 127 cms above left heel. The margins were reddish and inverted with tattooing effect. On dissection, the wound was directed slightly downwards and obliquely with penetration of the lower lobe of left lung and lower half of the heart through with ecchymosis of intervening structures. A deformed brown metallic bullet was recovered from the paravertebral tissues near posterior articulating ends of 10th and 11th ribs, adjacent to (left to) 10th thoracic vertebra.

8. A rifled fire arm ammunition-bullet entry wound of size 1.5 x 1 cms present over the front of chest in midline, situated 26 cms below centre of chin and 134 cms above right heel. The margins of the wound were reddish and inverted with tattooing effect. On dissection, the wound was found to be directed obliquely downwards and outwards (laterally) through the subcutaneous tissues which were ecchymosed.

9. An exit wound of size 2.5 cms in diameter present over front of chest on the right side, 14.5 cms away from midline, 9 cms below right nipple and 131 cms above right heel. The margins were reddish and everted with ecchymosis of the underlying tissues.

The Medical Officer apart from other observations, found that maggots of size varying from 0.5-1.0 cm were crawling all over the body. The body was emitting foul smell. Both the ears were deformed. The eye balls were protruding. Nose was deformed. Face and lips were distended. The tongue was distended and protruded. The brain was liquified and consisted of bloody, pasty material, pleurae, peritoneum were putrefied. Three bullets were also recovered from the body. All the injuries were anti mortem and were caused by fire arm.

22. Dr. S.K. Datterwal conducted the post-mortem examination on the dead body of Ashok. He found the following injuries on his person:

(1) There was an entry wound with abrasion collar over left eye ball, 2 cm size round and bullet recovered from brain which was deformed and marked as one. There was evidence of ecchymosis in the depth of wound and bullet recovered from posterior parietal region of skull and there was involvement of skull frontal temporal and parietal regions with infiltration of blood.

(2) There was an entry wound with abrasion collar, 2 cm wide round in shape over left side of neck, 26 cm from vertex and there was evidence of ecchymosis

in the track and bullet marked as number 2.

(3) There was an similar entry fire-arm wound situated 11 cm, below injury No. 2 over chest and bullet recovered marked as No. 3.

(4) There was a similar entry-arm wound situated 9 cm right from injury No. 3 over left side of chest and bullet recovered mark as No. 4. Injuries No. 2, 3, 4 bullets recovered together and track was going from front to back.

(5) There was a similar wound over right side of trunk but bullet not recovered.

Bullets were recovered from the dead body. The Medical Officer found that liquified brain runs out. He opined that cause of death was to be due to fire arm injuries. However, stab wounds and strangulation were post-mortem in nature.

23. From the medical evidence, it is proved that both the deceased died on account of fire arm injuries. It is the case of the prosecution that on June 22nd, 1998, Vijay Singh (PW-12) brother of both the deceased was on his way back from Delhi to his village in a bus, at about 8/8.30 PM, he noticed all the accused except Chandrup and the deceased standing on the turning of village Isapur. He alighted from the bus to inquire from his brothers as to why they were standing on the turn and after inquiring, he left for his village. The deceased did not return. Next day, that is, June 23rd, 1998 at 9 AM the dead body of Jaibir was recovered from the drain near the field of Umed Singh in village Lohat meaning thereby the deceased were murdered during the intervening night of June 22/23th, 1998. Dr. Vijay Pal Khangwal recorded in his observations that the brain of Jaibir was liquified and liquification of brain takes place in 3 to 5 days. The post-mortem examination was conducted on June 25th, 1998 at 9 AM, that is, within a period of less than 3 days of witnessing the accused and the deceased together by Vijay Singh which shows that deceased was not murdered on the intervening night of June 22/23th, 1998 rather, prior thereto. In view of this, evidence of last seen fails to inspire confidence.

24. There is another clinching circumstance in this case, that is, the recovery of the fired bullets from the body of two deceased and the country-made pistols got recovered by Bijender and Ashok accused-respondents. The FSL vide its report (Exhibit PAI), opined that .315" fired cartridges and .315" bullets recovered from the dead bodies of the deceased were not fired from the country-made pistols (Exhibit P-21 and P-22) allegedly got recovered by Bijender and Ashok accused-respondents. So, the recovery of pistols by the accused also does not connect them with the commission of the crime.

25. The recovery of motor cycle of Jaibir (deceased) at the instance of Satish accused-respondent is also not reliable. The alleged occurrence took place on June 22nd, 1998. There was no whisper till July 8th, 1998 that the motor-cycle of deceased was not traceable. The accused got the motor-cycle recovered from an abandoned brick-kiln and that too, in village Badli. The motor-cycle could easily be taken somewhere else and could be destroyed completely than to park

it at an abandoned place. Thus, recovery of motor cycle by the Satish accused-respondent is not substantiated and is therefore, repelled.

26. It would thus, be seen that a complete chain of circumstances inevitably leading to the inference of guilt on the part of the accused has not been established. Learned trial Judge rightly acquitted the accused-respondents.

27. For the reasons recorded supra, this Court does not find any infirmity in the impugned judgment and the same is, therefore, upheld. Thus, the appeal and the revision being devoid of merit are dismissed.