

Virender Singh and Others Vs. State of Haryana

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Court : Punjab and Haryana

Decided On : May-17-2013

Appellant : Virender Singh and Others

Respondent : State of Haryana

Judgement :

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH Criminal Appeal not D-704-DB of 2008 Date of decision :

17. 05.2013 Virender Singh and others ...Appellants VERSUS State of Haryana ...Respondent CORAM : HON'BLE MR.JUSTICE M.JEYAPPAUL HON'BLE MR.JUSTICE INDERJIT SINGH *** Present : Ms.Baljit Mann, Advocate, for the appellants.

Mr.Kshitij Sharma, Asstt.

Advocate General, Haryana, for the respondent-State.

*** INDERJIT SINGH, J Appellants Virender Singh, Amar Singh and Kamal Singh have preferred the instant appeal against the judgment of conviction dated 19.09.2008 and order of sentence dated 22.09.2008, passed by Addl.

Sessions Judge, Faridabad, vide which they have been held guilty for the commission of offence punishable under Section 302 read with Section 34 IPC and accused Virender Singh has also been held guilty for the commission of

offence punishable under Section 27 of the Arms Act.

Accordingly, appellants have been convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of four months each under Section 302 read with Section 34 IPC.

Appellant Virender Singh has also been convicted and sentenced to undergo rigorous Criminal Appeal not D-704-DB of 2008 [2].imprisonment for a period of three years and to pay a fine of Rs.2,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of four months under Section 27 of the Arms Act.

Both the sentences of appellant Virender Singh were ordered to run concurrently.

However, accused Bhim Singh has been acquitted.

Brief facts of the prosecution case are that on 13.06.2007, a telephonic message was received in Police Station Hodal from Inderjit, who intimated that Amar Singh, Virender and Kamal Singh had murdered his brother Girraj with lathies and gunshot and his dead body was lying in Civil Hospital, Palwal.

On this intimation, Sub Inspector Jai Kishan alongwith other police officials reached Government Hospital, Palwal, where Vir/Bir Singh met them and got recorded his statement in which he stated that on that day i.e.13.06.2007, he, Girraj and Inderjit had gone to attend Panchayat and after conclusion of Panchayat, they were returning back to their house.

On the way, they went to the house of Hukam Singh for smoking 'hukka' where Hukam Singh was already sitting in the 'Baithak' (drawing room).Complainant further stated that Virender accused of their 'Mohalla' is a vagabond (awara).who was made to understand 2-3 days prior by Girraj that it is not good to indulge in these activities (awaragardi) in village and mohalla.

Virender and his brothers got furious on this matter.

On that day, at about 6:15 p.m., Amar Singh and Kamal armed with 'lathis' came in the 'Baithak' of Criminal Appeal no D-704-DB of 2008 [3]. Hukam Singh and told Girraj that they will make him leader.

On seeing so, Amar Singh gave a lathi blow on the right leg and Kamal gave a lathi blow on the back of Girraj.

In the meantime, Virender armed with double barrel gun came there and fired upon Girraj with an intention to kill him.

One bullet hit in the chest towards left side and another bullet hit left armpit of Girraj.

Complainant and Inderjit made noise and tried to catch the accused but they all three alongwith their weapons ran away and while going, they threatened to kill them.

When Girraj was being shifted to hospital for treatment, he succumbed to the injuries on the way.

Dead body of Girraj was lying in the Dead House, Palwal.

It is also stated in the FIR that the accused have a double barrel licenced gun.

Statement of complainant was completed at about 9:05 p.m. Ruqa was sent to the police station on the basis of which FIR was registered.

Then the Inquest proceedings of the dead body were conducted and inquest report Ex.PB was prepared.

Postmortem examination on the dead body of Girraj was got conducted by moving application Ex.PA/1.

Investigating Officer proceeded to the place of occurrence and prepared rough site plan Ex.PF.

Blood stained earth was lifted.

On 15.06.2007, accused Virender Singh was arrested.

On interrogation, he suffered disclosure statement Ex.PH and in pursuance thereof, he got recovered a gun and two empty cartridges and the same, after converting into sealed parcel, were taken into police possession vide recovery memo Ex.PG.

On 25.06.2007, accused Amar Singh and Criminal Appeal not D-704-DB of 2008 [4].Bhim Singh were arrested.

On interrogation, they suffered disclosure statement and in pursuance thereof, Amar Singh got recovered licence of the gun and five cartridges and Bhim Singh got recovered motorcycle make 'Pulsar'.

Accused Kamal was arrested on 09.07.2007.

Statements of witnesses were recorded.

After completion of investigation, challan against the accused was presented before the Court.

The prosecution, in support of its case, examined PW1 Dr.J.P.Parsad, who mainly deposed that on 14.06.2007, he alongwith Dr.S.Dhankar and Dr.D.Jain conducted the postmortem examination on the dead body of Girraj and found the following injuries on his body:- 1.

A hole at mid axillary line left side of chest of size 2 inch x 1 inch surrounding skin was blackened tattooing was present.

The wound penetrating skin, fascia muscles, fracture of multiple ribs, pleura bilateral lungs, great vessels of thorax and heart.

All chambers were torn and there was loss of blood, clots and haemothorax were present.

2. A penetrating wound at anterior axillary line of left size thorax 3.5 inches below nipple, soft tissues were coming out of the wound.

Size 2 inch x 1 inch.

Tattooing around the wound was present.

In the opinion of the doct ORS.the cause of death in this case was shock and haemorrhage due to two penetrating wounds as a result of fire arm injuries which were antemortem in nature and Criminal Appeal not D-704-DB of 2008 [5].sufficient to cause death in ordinary couRs.of nature.

Duration between injuries and death was instantaneous and between death and postmortem examination was within 24 houRs.PW2 Bir Singh, complainant and eye witness to the occurrence, mainly deposed as per prosecution version.

PW3 Inderjit Singh, another eye witness to the occurrence, also deposed as per prosecution version.

PW4 Sub Inspector Ram Rattan mainly deposed that on 14.06.2007, he was associated with Sub Inspector Jai Kishan and on that day, blood stained earth was lifted which was taken into police possession vide recovery memo Ex.PD.

PW5 Anot Kumar, Draftsman, mainly deposed regarding preparing of scaled site plan Ex.PF.

PW6 Ranbir Singh mainly deposed regarding recovery of gun and three cartridges by accused Virender Singh from his house.

This witness also deposed that out of these cartridges, one was live and two were empty.

PW7 Head Constable Rajesh Kumar deposed that he was associated in the investigation of this case.

He also deposed regarding the investigation conducted by Sub Inspector Jai Kishan.

PW8 ASI Liyakat Ali deposed regarding recording of formal FIR Ex.PC/1.

PW9 Head Constable Suresh Kumar is a formal witness who tendered into evidence his affidavit Ex.PM.

PW10 Constable Rattan Singh mainly deposed regarding handing over the parcel to him by the doctor which was taken into police possession vide recovery memo Ex.PN.

PW11 Constable Ashwani Kumar is a formal witness who tendered into evidence his Criminal Appeal not D-704-DB of 2008 [6].affidavit Ex.PP.

PW12 Constable Anand Kumar deposed regarding delivery of special report to Illaqa Magistrate etc.PW13 Sub Inspector Jai Kishan, SHO, Police Station Hodal, Investigating Officer, mainly deposed regarding the investigation conducted by him in this case.

Public Prosecutor tendered into evidence Forensic Science Laboratory report Ex.PE.

At the close of prosecution evidence, the accused were examined under Section 313 Cr.P.C.and confronted with the evidence of prosecution.

The accused denied the correctness of the evidence and pleaded themselves as innocent.

They also pleaded that they have been falsely implicated in the present case because of serious party faction in the village.

No evidence was led in defence.

The trial Court, after appreciation of evidence, convicted and sentenced the appellants-accused and acquitted accused Bhim Singh, as stated above.

At the time of arguments, learned counsel for the appellants contended that appellants-accused have been falsely implicated in the present case.

The eye-witnesses were not present at the spot.

Recoveries have been planted upon the accused.

Learned counsel for the appellants further contended that no lathies were recovered from accused Amar Singh and Kamal Singh.

No injury by lathi was found during the postmortem examination.

Amar Singh and Kamal Singh appellants are real brothers of Virender Criminal Appeal not D-704-DB of 2008 [7]. Singh and no injury was caused by them and a doubt exists regarding their participation in the commission of offence.

She next contended that even PW2 Bir Singh and PW3 Inderjit Singh improved their version regarding lathi blows given by accused Amar Singh and Kamal Singh by stating that these blows did not hit Girraj.

Therefore, learned counsel for the appellants contended that appeal should be allowed and appellants should be acquitted accordingly.

On the other hand, learned Asstt.

Advocate General, Haryana, contended that the case of the prosecution has been duly proved by the statements of eye witnesses which have been supported and corroborated by medical evidence and recovery of gun and empties.

He further contended that Forensic Science Laboratory report further supports and corroborates the prosecution version.

Therefore, learned Asstt.

Advocate General, Haryana, contended that there being no merit in the appeal, it should be dismissed.

We have heard learned counsel for the appellants and learned Asstt.

Advocate General, Haryana and with their assistance we have gone through the evidence on record minutely and carefully.

From the evidence on record, we find that it is a case of direct evidence i.e. eye witnesses account.

PW2 Bir Singh, who is complainant and eye witness to the occurrence, has consistently deposed regarding the prosecution version.

There is no material contradiction or material improvement pointed out at the time of Criminal Appeal not D-704-DB of 2008 [8].arguments.

Statement of PW2 Bir Singh has been further supported and corroborated by PW3 Inderjit Singh, another eye witness to the occurrence.

Both these PWs have consistently deposed regarding the prosecution version.

There is nothing in the cross-examination of these PWs which may make their statements unreliable.

There is no material contradiction or material improvement which may go to the root of the case.

Both these PWs (eye witnesses) have consistently deposed that Virender Singh fired shot from the double barrel gun and Girraj succumbed to the injuries.

As per medical evidence, PW1 Dr.J.P.Parsad has not found any injury with lathi etc.Therefore, the FIR version that appellants Amar Singh and Kamal Singh gave lathi blows to Girraj is not supported and corroborated by medical evidence.

Otherwise also, both the eye witnesses namely PW2 Bir Singh and PW3 Inderjit Singh, while giving statements in the Court, made improvements that Kamal Singh and Amar Singh gave lathi blows but Girraj (deceased) saved himself and lathi hit the floor.

No lathies were recovered from appellants Amar Singh and Kamal Singh.

Both these appellants are the real brother of Virender Singh appellant.

The motive for causing the occurrence was also with Virender Singh to whom Girraj, as per prosecution version, was made to understand not to do 'awaragardi' in the village or in the mohalla.

In view of the evidence on record, especially when no lathies were recovered from appellants Amar Singh and Kamal Singh; the version given in the FIR regarding giving lathi blows to Criminal Appeal not D-704-DB of 2008 [9].Girraj (deceased) by them also not supported by medical evidence and the eye witnesses (PW2 Bir Singh and PW3 Inderjit Singh) when appeared in the Court also improved their version by stating that Girraj (deceased) saved himself from the lathi blows and lathi fell on the ground, we find a reasonable doubt exists in the prosecution version regarding involvement of Amar Singh and Kamal Singh appellants.

No active participation in the commission of offence has been proved against them.

Therefore, giving benefit of doubt to appellants Amar Singh and Kamal Singh, they are acquitted of the charges framed against them.

As regarding accused Virender Singh, from the perusal of the evidence on record, we find that PW2 Bir Singh and PW3 Inderjit Singh consistently deposed against accused Virender Singh that he (Virender Singh) fired shot on Girraj (deceased) from double barrel gun.

Statements of these PWs have been duly supported and corroborated by medical evidence i.e.statement of PW1 Dr.J.P.Parsad.

The gun and the empties were got recovered by appellant Virender Singh, as per his disclosure statement.

The empties, gun and the wad etc.were sent to Forensic Science Laboratory for comparison.

As per Forensic Science Laboratory report Ex.PE, 12 bore double barrel gun marked W/1 was found in working order and the 12 bore fired cartridge cases C/1 and C/2 have been fired from left and right barrels respectively of 12 bore double barrel gun W/1 and not from any other firearm.

The wads contained Criminal Appeal not D-704-DB of 2008 [10].in parcel not II and III were found to be plastic air cushion wads of 12 bore cartridges.

The holes on the kurta contained in parcel not I have been caused by shot gun projectiles.

This Forensic Science Laboratory report further supports and corroborates the prosecution version.

There is nothing on the record that these articles have been falsely planted upon the accused.

The gun is licenced one of Amar Singh, brother of appellant Virender Singh.

There is also nothing in the cross-examination of PW2 Bir Singh and PW3 Inderjit Singh to make their presence doubtful.

Therefore, from the evidence on record, we find that prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt against appellant-accused Virender Singh.

Therefore, from the above discussion, judgment of conviction and order of sentence passed by the trial Court against appellant Virender Singh are upheld and against appellants Kamal Singh and Amar Singh are set aside.

Resultantly, the present appeal is partly allowed qua appellants Amar Singh and Kamal Singh and is dismissed qua appellant Virender Singh.

Amar Singh and Kamal Singh are on bail, therefore, their bail bond/surety bonds stand discharged.

(M.JEYAPPAUL) (INDERJIT SINGH) JUDGE JUDGE 17 05.2013 mamta

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