

(2013) 08 P&H CK 0627

High Court Of Punjab And Haryana At Chandigarh

Case No: CRA No. 711-DB of 2009

Braham Singh @ Neetu

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Aug. 1, 2013

Acts Referred:

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313
- Penal Code, 1860 (IPC) - Section 302, 34

Hon'ble Judges: Inderjit Singh, J; Hemant Gupta, J

Bench: Division Bench

Advocate: G.S. Kaura, Rajbir Singh, in CRA No. 711-DB of 2009 and Mr. Tarundeep Kumar, as Amicus Curiae in CRA No. 756-DB of 2009, for the Appellant; Sandeep Vermani, A.A.G., Haryana, for the Respondent

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

This order shall dispose of aforesaid two appeals i.e. CRA No. 711-DB of 2009 and CRA No. 756-DB of 2009 preferred by Braham Singh @ Neetu and Ravinder respectively against the judgment of conviction dated 08.06.2009 and order of sentence dated 10.06.2009 passed by the learned Additional Sessions Judge, Sonapat, whereby the appellants were convicted for an offence punishable u/s 302 read with 34 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs. 2000/- each. The appellants were also convicted for the offence punishable u/s 25 of the Arms Act, 1959 and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 1000/- each. The prosecution case was set in motion on the basis of statement of Inder Singh, father of the deceased-Dharmender made to SI Ranjit Singh at about 1.00 AM on 02.11.2007. In his statement (Ex. PK), Inder Singh stated that he has two sons and daughter. His elder son Dharmender, aged about 26 years, was plying jeep on hire and yesterday

i.e. 01.11.2007 after taking meals, he went to sleep on the upper floor of the house, whereas he, his wife Indrawati and his younger son Anil were sleeping in the ground floor. At about 11.00 PM, one boy called his son Dharmender from the street that Ravinder is calling you. On hearing this, his son Dharmender came down. He also woke up. As soon as Dharmender opened the main gate, two boys standing in the street started firing from their pistols. Many bullets hit the head and ear pit of Dharmender as a result of which he fell down on the spot. Both the assailants ran towards Shahid Wali Gali. He further stated that he had seen them while running and out of them one was wearing black coloured pant, however, he could not identify them due to darkness. His son Dharmender died on the spot on account of gun shot injuries. He further stated that about one year ago his son Dharmender had a quarrel with Jony son of Hawa Singh, Jat, resident of Murthal. In that quarrel, Dharmender had sustained injuries. Later on, Dharmender caused fracture on the foot of said Jony, but Jony did not report the matter to the police and asserted to his son that he will take revenge for the same. About one week ago, his son Dharmender had a dispute with one Bobby son of Baljit, Jat, resident of Murthal. He expressed suspicion that his son Dharmender has been murdered by said Bobby and Jony by gun shots. He further stated that at about 8.00/8.30 PM, Bobby and one Devi son of Sultan while roaming in front of his house on a motor-cycle and were seen by one Krishan son of Chet Ram, Jat, resident of Murthal.

2. On the basis of such statement, a ruqa was sent to Police Station for registration of a case. On receipt of ruqa, FIR Ex. PN/1 was lodged at about 1.10 AM. The special report was received by the Magistrate at 9.35 AM on the same day.

3. Thereafter, SI Ranjit Singh visited the place of occurrence and prepared rough site plan Ex. PQ. He also lifted blood stained soil, empty cartridges and bullets from the spot and taken into possession vide recovery memo Ex. PC. After completing the inquest proceedings, he sent the dead body for post-mortem examination to Civil Hospital, Sonapat. He also recorded the statement of Anju wife of the deceased Dharmender u/s 161 Cr.P.C. In her such statement (Ex. PH) recorded. She stated that her husband Dharmender, Ravinder son of Ram Chander, Bobby son of Baljit and Neetu son of Dharambir were partners in liquor vends at Murthal and Tajpur. On 01.11.2007 at about 11.00 PM, Ravinder made a call to her husband from the street near the house and asked him to come down. She and her husband Dharmender woke up after hearing the call. She put on the lights of the room. She and her husband saw in the street, where they found Ravinder and Neetu standing in the street and Bobby was standing besides the motor-cycle. Ravinder said that Dharmender come down as they said that they have to go to somewhere. Her husband Dharmender after wearing his pant and shirt, instructed her to sleep after closing the door from inside and he shall come back after some time. Thereafter, she put off the lights and closed the door from inside. As soon as her husband went downstairs, she heard gun shots. Her father-in-law shouted at once and she came down on the ground floor. She saw Ravinder and Neetu riding on the motor-cycle of

Bobby and ran away towards Shahid Wali Gali and her husband had fallen on the main gate.

4. It was on 09.11.2007, accused-Ravinder and Neetu @ Braham Singh were arrested. During interrogation on 10.11.2007, accused Braham Singh disclosed that the pistol from which he shoot Dharmender has been kept concealed in the fields of village Garh Mirakpur and he can get recovered the same. In pursuance of such disclosure statement (Ex. PL), accused Braham Singh got recovered the pistol from the disclosed place, which was taken into possession vide recovery memo Ex. PL/1. Similarly, during interrogation on 12.11.2007, accused Ravinder suffered a disclosure statement that the pistol from which he shoot Dharmender has been kept concealed in Murthal in the fields at his farm. In pursuance of such disclosure statement (Ex. PM), accused Ravinder got recovered the pistol from the disclosed place, which was taken into possession vide recovery memo Ex. PM/1.

5. On 15.11.2007, accused Joginder @ Bobby was also arrested. On interrogation, he suffered a disclosure statement that the Pulsar Motor-cycle, which was used by them in the commission of crime, was parked in his house at Murthal. In pursuance of such statement (Ex. PT), he got recovered the Pulsar Motor-cycle bearing Registration No. HR10-H-5270. After completing the other necessary formalities, the accused were made to stand trial.

6. To prove the guilt of the accused, apart from examining the witnesses of formal nature, the prosecution examined PW-11 Inder Singh, father of the deceased and author of FIR and PW-8 Anju, wife of the deceased-Dharmender. Both of the said witnesses have turned hostile. The prosecution examined PW-10 Dr. S.P. Sharma, who along with Dr. J.S. Punia and Dr. Versha conducted the post-mortem on the dead body of Dharmender on 02.11.2007. He proved the post-mortem report as Ex. PJ. In his opinion, the cause of death was hemorrhage and shock as a result of fire arm injuries. He deposed that he handed over a sealed glass bottle containing four bullets recovered from the body, which are Ex. P17 to Ex. P20. The prosecution also examined PW-18 SI Ranjit Singh, the Investigating Officer, who deposed with regard to the investigations carried out by him.

7. After conclusion of prosecution evidence, the statements of the accused were recorded u/s 313 Cr.P.C. They were put all the incriminating circumstances appearing against them in the prosecution evidence. They denied the prosecution case in its entirety and pleaded false implication. In their defence, the accused did not adduce any evidence.

8. After going through the evidence on record, learned trial Court convicted and sentenced the accused-appellants, as mentioned above, whereas acquitted Joginder @ Bobby of the charges levelled against him.

9. Before this Court, learned counsel for the appellants has vehemently argued that PW-11 Inder Singh, father of the deceased and author of FIR and PW-8 Anju, wife of

the deceased-Dharmender, the alleged eye witnesses, have not supported the prosecution story. They have not supported prosecution even relating to the recoveries of pistols & bullets. Therefore, only on the basis of recovery of pistols in pursuance of the disclosure statements, the appellants cannot be convicted. It is further contended that there is no corroboration of the evidence of recovery of pistols attributed to the appellants.

10. Though PW-11 Inder Singh, father of the deceased and author of FIR and PW-8 Anju, wife of the deceased-Dharmender have turned hostile and not supported the prosecution case, but the fact remains that the pistols used in the commission of crime in the present case are recovered in pursuance of the disclosure statements suffered by the accused-appellants. The two pistols recovered in pursuance of the disclosure statements of Braham Singh and Ravinder are taken into possession vide recovery memos Ex. PL/1 and Ex. PM/1 respectively. As per the testimony of PW-6 HC Dilawar Singh, who tendered into evidence his affidavit Ex. PF, SI Ranjit Singh deposited the case property i.e. one parcel of blood stained soil, one parcel of 8 empty cartridges, 4 lead bullets, one parcel of clothes and one parcel of bullets on 01.11.2007; one parcel of pistol 32 bore on 11.11.2007 and one parcel of pistol 32 bore on 12.11.2007, with him for depositing the same in Malkhana of the Police Station and that he delivered these parcels along with sample seal to Constable Bijender Singh for depositing the same to the Forensic Science Laboratory, Madhuban. PW-19 Constable Bijender also tendered into evidence his affidavit Ex. PU. As per his affidavit (Ex. PU), on 22.11.2007 MHC Dilawar Singh handed over the case property consisting of six sealed parcels along with sample seal to him for depositing the same to the Forensic Science Laboratory, Madhuban and after depositing the same, he handed over the receipt to HC Dilawar Singh on the same day. The report of the Forensic Science Laboratory, Madhuban, Karnal is Ex. PE. As per the said report, the seals on the parcels were found intact and tallied with the specimen seals as per forwarding authority. As per the report Ex. PE, parcel-I contained blood stained soil lifted from the place of occurrence; parcel-II contained eight 7.65 mm fired cartridges cases (marked as C/1 to C/8); two 7.65 mm fired bullets (marked as BC/1 & BC/2) and two deformed jackets of 7.65 mm fired bullets (marked as BC/3 & BC/4) collected from the place of occurrence; parcel-III contained clothes of the deceased; parcel-IV contained four 7.65 mm fired bullets (marked as BC/5 to BC/8) recovered from the body of the deceased; parcel-V contained one pistol along with magazine recovered from accused Braham Singh @ Neetu (marked as W/1) and parcel-VI contained one pistol along with magazine recovered from accused Ravinder (marked as W/2). After examination, it was concluded that the firing mechanism of pistols marked W/1 & W/2 were in working order and that 7.65 mm fired cartridges cases marked C/1, C/4, C/6 & C/7; jacket of 7.65 mm fired bullet marked BC/3 and 7.65 mm fired bullets marked BC/6 to BC/8 have been fired from pistol marked W/1, whereas 7.65 mm fired cartridge cases marked C/2, C/3, C/5, C/8 and 7.65 fired bullets marked BC/1, BC/2 & BC/5 have been fired from pistol marked

W/2. It was also reported that definite opinion cannot be formed regarding the linkage of jacket of 7.65 mm fired bullet marked BC/4 in respect of pistols marked W/1 & W/2 due to lack of sufficient individual characteristics marks. As per report of the Forensic Science Laboratory, Madhuban (Ex. PE), the bullets recovered from the dead body and from the spot have been proved to be fired from the pistols recovered at the instance of the accused/appellants. The recovery of bullets from the place of occurrence corroborated by the recovery of pistols at the instance of the appellants and subsequent report of the Forensic Science Laboratory that the bullets were fired from the pistols so recovered, sufficiently prove the commission of crime by the appellants completing the chain of circumstances. There is no suggestion that any of the police officials have any enmity to falsely implicate the appellants.

11. Joginder Singh has been acquitted of the charges by granting benefit of doubt on account of recovery of motor-cycle, which might or might not have been used in the commission of crime, but use of pistols recovered in pursuance of the disclosure statements suffered by the appellants coupled with the fact that the bullets recovered from the dead body and place of occurrence are proved to have been fired from the same pistols completes the chain of circumstances, so as to hold the appellants guilty of commission of offence. We find that the report of the Forensic Science Laboratory Ex. PE sufficiently corroborates the other evidence led by the prosecution to form basis of conviction of the appellants for the offence of causing death of Dharmender.

12. We may notice that there is nothing unusual for the witnesses these days to turn hostile. It is said that the witnesses may lie, but the circumstances don't. Therefore, on the basis of the circumstances brought on record, we do not find that the judgment recorded by the learned trial court warrants any interference in appeal. We find that the findings recorded by the learned trial Court are based upon correct appreciation of evidence. Consequently, we do not find any merit in both the appeals. The same are dismissed.