

(2006) 04 P&H CK 0130

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal 156-DB of 2001

Hatti Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: April 4, 2006**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 364

Hon'ble Judges: Mehtab S. Gill, J; Ajai Lamba, J**Bench:** Division Bench**Advocate:** Mansur Ali with Mr. H.S. Deol and Sh. G.S. Hooda, for the Appellant; Ravi Dutt Sharma, D.A.G., for the Respondent**Final Decision:** Dismissed

Judgement

Mehtab S. Gill, J.

We will be deciding both Criminal Appeal Nos. 156-DB of 2001 and 156-DB of 2001 (Arms Act) as they arise out of a common judgment/order.

2. This is an appeal against the judgment of the Additional Sessions Judge, Hissar dated 5.02.2001/7.02.2001, whereby he convicted the appellant Hatti Singh under Sections 302, 364 and 201 IPC and u/s 25 of the Arms Act and sentenced him to undergo various terms of sentences.

3. The case of the prosecution is unfolded by the statement Ex.PH of Rajbir Singh given to Nihal Singh SI/SHO, Police Station Narnaund on 23.07.1995 at 3.30 P.M. in Police Station Narnaund. Rajbir Singh has stated, that he is an agriculturist by profession. He has three brothers. Umed is the eldest and rest are younger to him. All the brothers live separately.

4. Umed had two Maruti vans. He used to park them at Taxi Stand, Hansi, so that he could let them out on hire basis. On 11.07.1995 Umed came to the Taxi Stand at Hansi on a Maruti Van, bearing registration No. DDA/3665. Till 23.07.1995, Umed

had not come back with the van. On 22.07.1995 Rajbir Singh came to know that a Maruti van was found abandoned on the road leading from village Bass to Puthi. The engine of the van was lying on the ground, which had been taken into possession by the police of Police Station Narnaund. Rajbir Singh went to the police station and found that the van was that of his brother Umed. There was blood inside the van. The blood was covered with soil. No proof regarding his brother could be found. Rajbir Singh suspected that some unknown persons had taken away his brother Umed Singh, with the intention to kill him. The appearance of his brother Umed was as follows :-

Wheatish colour, stout body, height approximately 5 "6", aged 35 years, wearing pants and shirt of blue colour with white strips and he is putting a small beard.

On the basis of this statement, FIR Ex.PH/1 was recorded on 23.07.1995 at 3.30 P.M. and the special report reached the J.M.I.C. Hansi on 23.07.1995 at 5.30 P.M.

5. Prosecution to prove its case brought into the witness box HC Puran Singh as PW1, C. Satyawan as PW2, C. Jagbir Singh as PW3, C. Naresh Kumar as PW4, Photographer Raj Kumar as PW5, Patwari Suraj Mal as PW6, Asstt. Constable Sham Sunder as PW7, C. Dalbir Singh as PW8, complainant Rajbir as PW9, Ram Kishan as PW10, Balwan Singh as PW11, Dr. Basant Lal Sirohiwal as PW12, Jai Singh as PW13, SI Madan Lal as PW14, Davinder Singh as PW15, ASI Ishwar Singh as PW16, ASI Prem Chand as PW17, ASI Santa Singh as PW18, HC Ved Singh as PW19 and SI Nihal Singh as PW20.

6. Learned counsel for the appellant has argued that two last seen witnesses i.e. Ram Kishan PW10 and Balwan Singh PW11 are not truthful witnesses and cannot be relied upon. Ram Kishan PW10 could not give the taxi number and as to the reason why he went to Haridwar and came back after two weeks. Ram Kishan PW10 kept quiet for two weeks without reporting the matter to any relative. No test identification parade was held. Appellant has been identified in Court only. Balwan Singh PW11 is a relative of the deceased. He has stated that he had taken a lift in the taxi. He gave his statement u/s 161 Cr.PC on 26.07.1995. No explanation has been given by this witness as to why he also kept quiet for a number of days. In the inquest report, the colour of the shirt has been given as green colour having red and blue strips, while in FIR Ex.PH/1, the colour of the shirt has been given as blue with white strips. Both these witnesses kept quiet for a number of days, though there must have been a hue and cry of the disappearance of Umed Singh. Jai Singh PW13 has not identified the body of the deceased properly.

7. In Judgment Ex. DX appellant Hatti Singh was also an accused. Commission of the crime is the same. Judgment Ex.DX is of FIR No. 191 dated 17.07.1995. It concerns the robbery of a Maruti Van and the driver being murdered. The modus operandi in both FIR No. 191 (Ex.DX) and the present FIR Ex.PH/I dated 23.07.1995 is the same. It is not believable that appellant Hatti Singh would commit the offence of stealing a

Maruti Van on 11.07.1995 and then after six days stealing another Maruti Van on 17.07.1995.

8. There is no motive for the commission of the offence. It has not been shown whether any cash was looted. Appellant Hatti Singh could have sold the alleged stolen Maruti Van. There was no need for him to take the engine out. Evidence against both Naresh alias Chhotu and appellant Hatti Singh is of the same nature. Naresh has been acquitted by the trial Court, but Hatti Singh has been convicted. Pistol Ex. P1 was recovered from the appellant. Dr. Basant Singh Sirohiwal PW12, who performed the post mortem examination, has stated that no fire arm injury was inflicted on the deceased.

9. Learned counsel for the State has argued that Ram Kishan PW10 and Balwan Singh PW11 are truthful witnesses, who saw the deceased last in the company of appellant Hatti Singh. The discrepancies in the date of arrest of the appellant are of minor nature. Ram Kishan PW10 has stated in his testimony that appellant was arrested on 24.07.1995, while the Investigating Officer has stated, that arrest was made on 29.07.1995. This is for the reason that statement of Ram Kishan PW10 was recorded after a gap of four years i.e. on 8.04.1999. This is only due to the slip of the tongue. It has no material bearing on the case. Intention of the appellant was to sell the car and its engine. Engine was taken out of the car and put by the road side, so that the engine be sold separately.

10. We have heard learned counsel for the parties and perused the record and the impugned judgment with their assistance.

11. The case of the prosecution revolves around Ram Kishan PW10 and Balwan Singh PW11. Ram Kishan PW10 has stated in his testimony before the Court that in July 1995 he and Umed Singh were running a taxi at Taxi Stand, Hansi. Ram Kishan PW10 was the driver of Maruti van of Umed Singh. On 11.07.1995 at about 5.30 P.M. appellant Hatti came to the stand and asked for a taxi. Ram Kishan PW10 knew appellant Hatti. Three other persons were accompanied the appellant. Appellant along with his companions took the taxi of Umed Singh on hire at the rate of Rs. 230/-. On 12.07.1995 Ram Kishan PW10 went to Haridwar in his own taxi, which was driven by him and was hired by one Ram Chand. He returned back on 24.07.1995. Ram Kishan PW10 thereafter came to know that Umed Singh could not be traced out. He then gave this information to Rajbir Singh PW9 that Umed Singh had gone with appellant Hatti Singh, who had hired the taxi. Rajbir Singh PW9 then went to the police station and informed the police. He has further stated that apart from being the driver of deceased Umed Singh he did not have any relation with him. He has categorically stated that till 24.07.1995 he did not know that Umed Singh was missing. This witness has stood the test of cross-examination. Similarly, Balwan Singh PW11 has stated that on 11.07.1995 he was standing at the Bus Stand, Hansi. Deceased Umed Singh came in a car and asked him as to why he was standing there. Balwan Singh PW11 has stated that he had to go to Mundhal. Umed Singh

offered him a lift and thereafter dropped him at Mundhal. Balwan Singh PW11 noticed four persons sitting in the taxi. They were addressing each other by name. One of them was appellant Hatti Singh. Appellant Hatti Singh was identified by this witness when asked to do so in Court. He has stated that he came to know about the death of Umed Singh on 25.07.1995 and it is thereafter he informed Rajbir Singh PW9 as to what was transpired in front of him. This witness also has stood the test of cross-examination. Learned counsel for the appellant has laid a lot of stress and vehemently argued that Ram Kishan PW10 could not give the number of the taxi and it is after two weeks that he informed Rajbir Singh PW9, also in his statement, he has stated that appellant was arrested on 24.07.1995, while as per the Investigating Officer Nihal Singh SI PW20, appellant was arrested on 29.07.1995. This argument of learned counsel for the appellant does not cut much ice. Ram Kishan PW10 was working with Umed Singh deceased for the last four months only. He is an illiterate man and thus could not give the number of the taxi, in which he had last seen the deceased in the company of the appellant. Ram Kishan PW10 has categorically stated that he went to Haridwar with one Ram Chand, who had hired his taxi, and he came back after two weeks and it is thereafter that he came to know that Umed Singh was missing. Discrepancy regarding arrest of the appellant is only a slip of tongue. Ram Kishan PW10 would not have known when appellant was arrested, as it is on 24.07.1995 that Ram Kishan PW10 came back and told Rajbir Singh PW9 of what he had seen.

12. Jai Singh PW13 has stated in his testimony, that on 23.07.1995 he along with Satbir Singh had gone to Talu minor, where they found the dead body of Umed Singh. Umed Singh was wearing a pant, shirt and white baniyan. Satbir Singh was working as a tailor and the pant worn by Umed Singh had been stitched by him. He could identify the body, it being of Umed Singh. In the inquest report Ex.PT/1, the colour of the shirt and the pant has been given which corroborates the statement of Jai Singh PW13.

13. Country made pistol Ex.P1 and cartridges were recovered from appellant Hatti Singh. It is not the case of the prosecution that Umed Singh was murdered by fire arm injuries. Country made pistol Ex.P1 was kept by the appellant to defend himself and to scare Umed Singh into submission. Dr. Basant Singh Sirohiwal PW12 in his testimony before the Court has stated that the cause of death in this case was injuries inflicted on the body of the deceased. Motive for the commission of the offence was to sell the engine and van. The engine of the van was lying on the road. It seems that appellant wanted to take the engine away and sell it to make some money, but before he could sell it he was arrested.

14. The set of evidence is the same qua the charge u/s 25 of the Arms Act which we have already discussed. We do not differ with the order of the Additional Sessions Judge, Hissar qua conviction and sentence of appellant Hatti Singh u/s 25 of the Arms Act. Both appeals are dismissed.