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PAWAN @ RAJINDER SINGH AND ANOTHER

v.

STATE OF HARYANA

(Criminal Appeal No. 2194 of 2014)

MARCH 08, 2017

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[N. V. RAMANA AND PRAFULLA C. PANT, JJ.]

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Penal Code, 1860 – ss.302/34 – Murder – Prosecution case was that on the fateful day, the accused persons demanded return of their money from the neighbour of the victim-deceased – Deceased requested them to waive off the amount and due to that altercation took place between the deceased and the two accused – After half an hour the accused persons came back on scooter and thereafter deceased also left with them but on his separate scooter – Thereafter, deceased did not return and next day his dead body was found in an open ground – Trial court relying upon the testimony of chance witnesses held both the accused guilty u/ss.302/34 – High Court affirmed conviction – On appeal, held: It is not clear from the record as to how these chance witnesses, who stated that they heard altercation between the deceased and the two accused after midnight and thereafter heard sound of fire, were present at the spot – The testimony of these witnesses could not be said to be reliable or trustworthy particularly when their statements were not corroborated from other evidence on record – In view of the conclusion of the Forensic Science Laboratory that the firing mechanism of the country-made pistol was not in working order and no opinion could be formed regarding the linkage of the pistol with the crime in question, the prosecution story, as narrated by chance witnesses was highly doubtful – Apart from this, though the motive of crime is not necessarily required to be proved, but in the case like the present one where the appellants are named on suspicion by informant, the motive appears to be relevant fact – Informant simply mentioned that the deceased had asked the two accused to waive of the remaining amount of ₹ 250/- from the loan of ₹ 10,000/- taken by his neighbour but the same would not appear to be a convincing motive to commit the crime by the accused – The said neighbour was not examined by prosecution – Even otherwise, in the FIR it was nowhere mentioned why actually deceased had gone in his separate scooter with the two accused from his house – Prosecution

failed to prove the charge of offence punishable w/ss.302/34 against the two accused – Both the accused are acquitted of the charges. A

Allowing the appeal, the Court

HELD: 1. It is a case of circumstantial evidence but for the evidence of two chance witnesses, namely PW-4 and PW-5. The incident is said to have occurred near Air Force ground. The complainant (PW-6), his brother (deceased) and the two accused/appellants were residents of N.I.T., Faridabad. It is not clear from the record as to how these chance witnesses (PW-4 and PW-5) who have stated that they heard altercation between the deceased and the two accused after midnight and thereafter heard sound of fire, knew them. The testimony of these witnesses cannot be said to be reliable or trustworthy particularly when their statements are not corroborated from other evidence on record. The conclusions of the examination conducted in the Forensic Science Laboratory was that the firing mechanism of the countrymade pistol was not in working order. Further, it stated that scientifically, the time of its last firing cannot be given and therefore, no opinion could be formed regarding the linkage of the pistol with the crime in question. In view of the conclusions given by Forensic Science Laboratory, the prosecution story, as narrated by PW-4 and PW-5 was highly doubtful. [Paras 8, 9] [886-H; 887-A-B, E] B C D E

2. Apart from this, though the motive of crime is not necessarily required to be proved, but in the case like the present one where the appellants are named on suspicion by informant PW-6 in the First Information Report (which does not contain names of PW-4 and PW-5 as witnesses who had seen the occurrence), the motive appears to be relevant fact. PW-6 has simply mentioned that the deceased had asked the two accused to waive of the remaining amount of ₹ 250/- from the loan of ₹ 10,000/- taken by his neighbour but the same does not appear to be a convincing motive to commit the crime by the appellants. Prosecution did not examine the said neighbour if he had taken loan of ₹ 10,000/- and paid off the same minus the amount ₹ 250/-. Even otherwise, in the First Information Report it was nowhere mentioned why actually (deceased) had gone in his separate scooter with the two appellants from his house. [Paras 10, 11] [887-F-H; 888-A] F G H

A **3. The trial court as well as the High Court had erred in law**
in holding that the charge against the two accused stood proved.
The prosecution has failed to prove the charge of offence
punishable under Section 302/34 IPC against the two accused.
The charge of offence punishable under Section 25 of the Arms
 B **Act, 1959 against accused 'A' was also not proved beyond**
reasonable doubt. [Paras 12, 13] [888-A-C]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.
 2194 of 2014.

C From the Judgment and Order dated 02.04.2014 of the High Court
 of Punjab and Haryana at Chandigarh in Criminal Appeal No. D-391-
 DB of 2002.

Basant R., Sr. Adv., Sunny Choudhary, Arun Boomulli, Advs. for
 the Appellants.

D Anil Grover, AAG., Ms. Noopur Singhal, Sanjay Kr. Visen, Advs.
 for the Respondent.

The Judgment of the Court was delivered by

E **PRAFULLA C. PANT, J.** 1. This appeal is directed against
 judgment and order dated 02.04.2014, passed by the High Court of Punjab
 and Haryana in Criminal Appeal No. D-391-DB of 2002 whereby said
 Court has dismissed the appeal affirming the conviction and sentence
 under Section 302/34 IPC, against accused/appellants Pawan @ Rajinder
 Singh and Ajit @ Dara Singh, recorded by the Additional Sessions Judge,
 Fast Track Court No. 1, Faridabad. The High Court has further affirmed
 the conviction and sentence recorded against accused/appellant Ajit @
 F Dara Singh under Section 25 of the Arms Act, 1959.

2. Heard learned counsel for the parties and perused the record
 of the case.

G 3. Prosecution story, in brief, is that Deepak (deceased) was elder
 brother of PW-6 Amit Kumar (complainant). Amit Kumar had a business
 of selling flowers, and his elder brother used to do the delivery work.
 Their neighbour Gola (not examined) had taken a loan of ₹ 10,000/- on
 interest from accused Pawan, and he (the debtor) had returned the same
 except ₹ 250/-. On 09.11.2000 at about 8.30 p.m. accused Pawan @
 Rajinder Singh and his cousin accused Ajit @ Dara Singh demanded
 H remaining ₹ 250/- from Gola to which the deceased requested them to

waive the said amount due to which some altercation took place between the deceased and the two accused. About half an hour thereafter both the accused came back on a scooter, and Deepak (deceased) also left with them but on his separate scooter bearing registration No. HR 51 E-4749. Deepak did not return till late night. On this, PW-6 Amit Kumar and his father Ram Nath started search for him. In the next morning they came to know that dead body of a person is lying near Air Force ground. Both, father and son went there and saw that it was the dead body of Deepak. Suspecting that appellants Pawan @ Rajinder Singh and Ajit @ Dara Singh had committed the murder, a report (Ex PE-1) was given to the police in the early hours of 10.11.2000 mentioning their names. On the basis of said report, First Information Report No. 803 dated 10.11.2000 (Ex.PK) was registered at Police Station, N.I.T., Faridabad.

4. Investigation was initiated by PW-9 ASI Jai Singh, and later PW-12 Inspector Raj Pal Singh took over the same. PW-9 ASI Jai Singh, after taking the dead body in his possession, got the inquest report (Ex. PL-1) and site plan (Ex.PM) prepared. An empty cartridge was also recovered from the place of incident. PW-12 Inspector Raj Pal Singh, Investigating Officer got sent the empty cartridge to Forensic Science Laboratory for examination. He also took the blood stained earth from the spot. He interrogated the witnesses. Meanwhile, PW-1 Dr. D.S. Rathi, along with Dr. Sunita Gupta and Dr. P.S. Yadav, conducted the post mortem examination on 10.11.2000 at about 5.00 p.m. In the autopsy report (Ex. PL) following ante mortem injury is mentioned: -

“A circular circumscribed wound 2.5 c.m. x 2.5 c.m. in diameter and 2 c.m. from middle of chest on left side at level of 10th rib. On probing going downward posteriorly, blackening and singeing present around the wound, margins inverted. On examination few pellets found embedded, underneath the skin and soft tissues. On dissection the pleural cavity contained blood. A few metallic pellets found inside in left chest and pleural cavity, removed. On further dissection hole in stomach also present. On further examination a foreign body of rounded shape 2 c.m. in size was found and removed. The pellets and the foreign body sealed in a vial.”

5. During investigation, the Investigating Officer arrested both the accused, and on their disclosure scooter bearing registration No. HR

A 51 C 1609 was recovered from their house. The prosecution case is that a country made pistol was also recovered on the disclosure statement (Ex. PK) made by accused Ajit @ Dara Singh. A broken butt of the pistol was said to have been found from the place of incident. After completion of investigation charge sheet was filed by the Investigating Officer against both the accused.

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D 6. On committal, after framing charge, the trial court recorded evidence. Prosecution got examined PW-1 Dr. D.S. Rathi, PW-2 MMHC Hari Chand, PW-3 Constable Manoj Kumar, PW-4 Pappu, PW-5 Surender Singh, PW-6 Amit Kumar, PW-7 Ram Nath, PW-8 Constable Ash Mohd., PW-9 ASI Jai Singh, PW-10 ASI Ami Lal, PW-11 Naimuddin and PW-12 Inspector Raj Pal Singh. After putting the documentary and oral evidence under Section 313 Cr.P.C. to the accused persons, the trial court found both the accused guilty of charge of offence punishable under Section 302/34 IPC. Accused Ajit @ Dara Singh was further found guilty of charge of offence punishable under Section 25 of Arms Act, 1959. They were awarded sentence, as already mentioned above.

7. On appeal by the convicts, High Court agreed with the findings of the trial court and dismissed the appeal. Hence this appeal before us through special leave.

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G 8. At the outset, we would like to mention that in substance it is a case of circumstantial evidence but for the evidence of two chance witnesses, namely PW-4 Pappu and PW-5 Surender Singh. PW-4 Pappu is a rikshaw puller who is resident of Sant Nagar Jhuggi in Faridabad. PW-5 Surender Singh, a three wheeler driver, is resident of Railway Colony, Old Faridabad. It is relevant to mention here that the incident is said to have occurred near Air Force ground. It is further relevant to mention that the complainant Amit Kumar (PW-6), his brother Deepak (deceased) and the two accused/appellants are residents of N.I.T., Faridabad. It is not clear from the record as to how these chance witnesses (PW-4 Pappu and PW-5 Surender Singh) who have stated that they heard altercation between the deceased and the two accused after midnight and thereafter heard sound of fire, knew them. In our opinion, the testimony of these witnesses cannot be said to be reliable or trustworthy particularly when their statements are not corroborated from other evidence on record.

H 9. Now, we come to the report of the Forensic Science Laboratory. The conclusions of the examination conducted in the Forensic Science

Laboratory, Haryana, Madhuban, Karnal, are reproduced below from Ex. PF: - A

“RESULT

- (1) The countrymade pistol marked W/1 (chambered for 12 bore cartridges) is a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was not found in working order. B
- (2) The countrymade pistol marked W/1 had been fired through. However, scientifically, the time of its last firing cannot be given.
- (3) The percussion cap of cartridge case marked C/1 on which firing pin marks appear due to firing was found missing. Moreover, the firing mechanism of pistol W/1 was not found in working order. Therefore, no opinion could be formed regarding the linkage of C/1 in respect of pistol W/1. C
- (4) One wooden piece and two metallic strips contained in parcel No. III could form part of countrymade pistol contained in parcel No. VIII. D

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(Emphasis supplied) E

In view of the conclusions given by Forensic Science Laboratory on points (1), (2) and (3), quoted above, we are of the view that the prosecution story, as narrated by PW-4 Pappu and PW-5 Surender Singh, is highly doubtful.

10. Apart from this, though the motive of crime is not necessarily required to be proved, but in the case like the present one where the appellants are named on suspicion by informant PW-6 Amit Kumar in the First Information Report (which does not contain names of PW-4 Pappu and PW-5 Surender Singh as witnesses who had seen the occurrence), the motive appears to be relevant fact. PW-6 Amit Kumar has simply mentioned that the deceased had asked the two accused to waive of the remaining amount of ₹ 250/- from the loan of ₹ 10,000/- taken by Gola but the same does not appear to be a convincing motive to commit the crime by the appellants. Prosecution has not examined Gola if he had taken loan of ₹ 10,000/- and paid off the same minus the amount ₹ 250/-.

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A 11. Even otherwise, in the First Information Report it is nowhere mentioned why actually Deepak (deceased) had gone in his separate scooter with the two appellants from his house.

B 12. For the reasons, as discussed above, we find that the trial court as well as the High Court has erred in law in holding that the charge against the two accused stood proved.

C 13. In the light of appreciation of evidence, as above, we are of the opinion that the prosecution has failed to prove the charge of offence punishable under Section 302/34 IPC against the two accused. We further hold that the charge of offence punishable under Section 25 of the Arms Act, 1959 against accused Ajit @ Dara Singh is also not proved beyond reasonable doubt. Accordingly, the appeal deserves to be allowed.

D 14. The appeal is allowed. Both the accused, namely Pawan @ Rajinder Singh and Ajit @ Dara Singh, are acquitted of the charges. The appellants shall be set at liberty forthwith if not required in connection with any other case.

Devika Gujral

Appeal allowed.