



CRA-D-887-DB-2002 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-887-DB-2002 (O&M)

Date of Reserve:16.05.2024

Date of Pronouncement:22.05.2024

Om Parkash

...Appellant

Vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice Gurvinder Singh Gill
Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Vaibhav Sharma, Advocate as
Amicus Curiae, for the appellant.

Ms. Sheenu Sura, Deputy Advocate General, Haryana.

N.S.Shekhawat J.

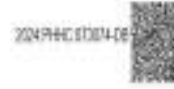
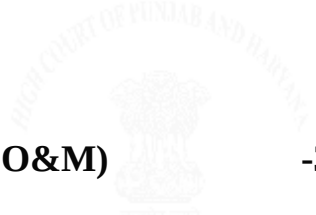
1. Feeling aggrieved from the impugned judgment of conviction dated 25.10.2022 and order of sentence dated 29.10.2002, passed by the Court of Additional Sessions Judge, Hisar, whereby the present appellant has been convicted for the offence punishable under Section 302 of IPC and under Section 25 of Arms Act and was sentenced to undergo imprisonment for life and Rs.500 as fine, along with default stipulation under Section 302 of IPC and Rigorous Imprisonment for one year under Section 25 of Arms Act, the appellant has filed the present appeal before this Court.

2. The F.I.R in the present case was registered on the basis of the statement made by Karan Singh to ASI Rattan Lal of Police Station, Sadar, Hisar. The true english translation of the statement of Karan Singh, complainant

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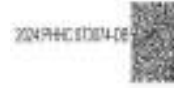
(Ex.P-19), which forms the basis of registration of the FIR in the present case and the same has been reproduced below:-

“Statement of Karan Singh son of Bhopal Singh, caste Rajput, aged 25/26 years, resident of village, Talwandi Badshahpur and stated that I am the resident of above noted and carry on agricultural pursuit; our field adjoins the field of Bhup Singh son of Rama Bishnoi, resident of the village, and he has encroached upon our land, Parkash son of Thakur, caste Bishnoi, resident of the village is on friendly terms with Bhup Singh and his sons. Some days ago, when Parkash had called my brother Ramesh, and had taken him away along with himself, to the house of Bhup Singh and at that place Parkash had given beating to Ramesh, where both of them had a quarrel, and had come to exchange slap and fist blows; Today at about 11-30 A.M.. I and my brother Ramesh and our mother Sajjna Devi, were present at the bus stand of the village and alongwith other passengers, while boarding the four-wheeler, were going to Bhiwani for purchasing house-hold articles. In that Four-wheeler, Parkash son of Thakar, was also sitting and going in that four-wheeler, when the four-wheeler reached near the Canal of bridge, Bhiwani -minor, then all of a sudden Parkash took out illicit pistol, then fired the bullet, on the right-side arm-pit of my brother Ramesh, and as soon as my brother Ramesh sustained bullet-shot and my brother Ramesh fell down in the four-wheeler, while galloping. On hearing the bullet-shot noise, the four-wheeler driver, who was driving the four- wheeler at a speed, after covering some distance stopped the same ahead. As soon as four-wheeler stopped, then all the passengers of the four-wheeler and Parkash, alighted from the same and Parkash, while alighting from the four- wheeler, decamped, while armed with the pistol, the Driver and Conductor of the four-wheeler, also fled away. I and my mother checked, my brother Ramesh by that time, he had already breathed his last. After some time, my brother Mohinder

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Singh, who lives in the field by constructing a Dhani (Farm-House) reached at the spot. I left my mother Sajna Devi and my brother Mohinder Singh with the dead body of my brother Ramesh which is lying in the four-wheeler. While leaving the same at the spot, I was on my way to lodge the report at the Police Station that on Kalwas Maur (Turning) on the road leading to Muklan, you met us; and I have got my statement recorded with you, which I have heard and the same is correct. Legal action may be taken. Attested:-SD, ASI, P.S, Sadar, Hisar, dated 05.10.1997.

3. After the registration of the statement (Ex.P-19) by ASI Rattan Lal, a endorsement Ex.P-19/A was made on the said statement and the FIR (Ex.P-20) was registered against Om Parkash, the present appellant. Thereafter, the initial investigation was conducted by ASI Rattan Lal and the post mortem on the body of Ramesh Kumar was got conducted by PW-6, Dr. Gopal Bhardwaj. Thereafter, certain recoveries were made from the spot and the bullet/pallets were also taken into possession by the police vide the separate memos. Om Parkash, appellant was arrested by the police on 10.10.1997 and he suffered his disclosure statement Ex.P-22 and stated that he had kept concealed one country made pistol of .12 bore along with two cartridges, wrapped in a glazed paper in the heap of wheat crops inside his *Kotha*. In pursuance of the disclosure statement, the appellant got recovered one country made pistol of .12 bore along with two cartridges and the same were taken into possession by the police vide the recovery memo Ex.P-24. The rough sketch of the pistol was prepared. The .12 bore fired cartridge case and the pallets were recovered from the dead body of Ramesh Kumar as well as the country made pistol of .12 bore recovered from the appellant were sent to the FSL, Madhuban and as per the

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FSL, report, Ex.P-32, it was found that the country made pistol, recovered from the appellant was a fire arm and its firing mechanism was in working order. It was found that the .12 bore fired cartridge case had been fired from the country made pistol recovered from the present appellant. Even the pellets which were found in the dead body could also form part of .12 bore cartridge. After usual investigation, the final report under Section 173 Cr.P.C was presented against the present appellant.

4. After the compliance of the provisions of Section 207 Cr.P.C , the case was committed to the Court of Sessions for trial by the Area Magistrate.

5. Findings prima facie case, the Court of Additional Sessions Judge, Hisar ordered framing of charge under Section 302 of IPC and under Section 25 of Arms Act, against the present appellant.

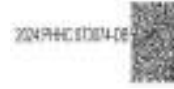
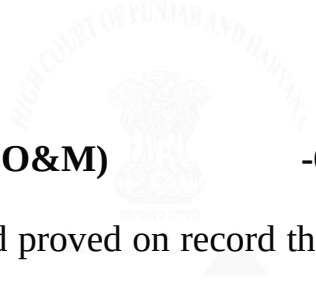
6. In support of the prosecution case, Mahender Singh, Photographer appeared as PW-1, who clicked the photographs of the dead body of Ramesh Kumar, lying in the four-wheeler and exhibited the same as Ex.P-1 to P-5. PW-2, Radhey Shyam, Draftsman, prepared the scaled site plan as Ex.P-11. The statement of PW-3, Mukat Ram, MHC, PW-4, C.Satyawan and PW-5, Attar Singh, Guard were formal in nature. Dr. Gopal Bhardwaj, who had conducted the post mortem examination on the dead body of Ramesh Kumar on 06.10.1997 was examined as PW-6. In his deposition, he stated as under:-

“A Lacerated wound measuring 2 cm x 1.5 cm oval present on right side of chest with inverted margins, 6 inches below right axilla in anterior axillary line. 50 inches above right heel 11 inches below right shoulder with abrasion collar and blackening effect. Corresponding hole is present in shirt with partially burnt threads sized in size. Clotted blood was present. On dissection sub

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cutaneous tissue and muscle sinzed with fracture of right forth to eight ribs with clotted blood in heamotoma, with track was obliqually ruturing right pleura and lung, lugdand liver and adjoining paricardium with repturing of aorta, Later left lung. Thoracie cavity was full of blood with abdominal cavity. Part of bullet was recovered from Thoracic cavity-All other organs Ex. were healthy and pale except the described organs. In my opinion cause of death was haemorrhage and shock as a result of described injuries. All injuries are due to fire arm and ante-mortem in nature. Probable time between death and post mortem within 24 hours and time between injury and death would be within few minutes. I handed over the police well stitched dead body, copy of PMR, sealed packet containing clothing and shoes of deceased bearing five seals and a vial containing part of bullet recovered from the dead body of the deceased and a sample of seal. Carbon copy of the PMR is EX.P15. which of the original I have brought today in the court. I conducted the post mortem examination on the request of police Ex. P.16 which was accompanied by inquest report. Ex.P.17. I initiated police papers running from page one to page twelve. (At this stage one sealed vial bearing the seal of FSL has been opened and one part of bullet is taken put from it and shown to the witness). It is the same part of bullet which was removed from the dead body of deceased Ramesh Kumar and the same is Ex.P.18.

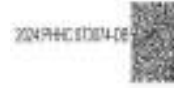
In his cross-examination, he stated that he did not notice any exit wound on the dead body of the deceased. He did not found any metallic pallet or bullet in the dead body of Ramesh Kumar, deceased, while manually exploring the dead body. PW-7 ASI, Bani Singh, had recorded the formal FIR, Ex.P-20 on receipt of Ruqa Ex.P-19. The prosecution further examined H.C Rajender Singh as PW-8, who was part of the initial investigation. PW-9, C.Hans Raj was a witness to the recoveries made in the present case. PW-10, Sukhchain, Reader

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to D.M., Hisar, who had proved on record the sanction order, Ex.P-26 issued by D.M., Hisar with regard to the offence under Section 25 of the Arms Act. Karan Singh, complainant was examined as PW-11, who reiterated the version mentioned in the FIR, Ex.P-20. In his cross-examination, he admitted that regarding the killing of Ramesh Kumar, he had also filed a complaint Ex.D-1. However, he had filed the complaint on the asking of someone in the village. He was confronted with various averments made by him in the present complaint Ex.D-1. The statement of PW-11, Karan Singh was supported by PW-12, Sajni Devi @ Sajna and she was also an eye witness of the occurrence. The prosecution further examined PW-13, ASI Rattan Lal, who had initially conducted the investigation in the present case. After the examination of the witnesses, the FSL reports Ex.P-32 to Ex.P-34 tendered and the prosecution evidence was closed.

7. After the prosecution concluded its evidence, the statement of appellant was recorded under Section 313 Cr.P.C and he stated that he had no enmity with the complainant party. In reality, Bhoop Singh had forcibly occupied the land belonging to the complainant party. They had compromised the matter and he had been falsely implicated in the present case. Even his arrest was wrongly made and the weapon was planted on him. The appellant opted not to lead any evidence in the present case.

8. Learned counsel for the appellant vehemently argued that the entire version of the prosecution was highly unbelievable. With regard to the same occurrence, PW-11, Karan Singh had filed a criminal complaint Ex.D-1, by levelling altogether different allegations in the present case. As per the said complaint, Om Parkash, appellant was accompanying Prem Singh and two

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more accused and Prem Singh had fired at Ramesh Kumar, since deceased. He further contends that in view of the discrepancy between the version of the FIR and the complaint case, the appellant was liable to be acquitted by this Court. Learned counsel further submitted that the recovery of country made pistol was planted on the present appellant, as he was actually arrested on 06.05.1997 and arrest was wrongly shown on 10.05.1997. Still further, there were material inconsistencies in the statements of PW-11, Karan Singh and PW-12, Sajni Devi @ Sajna and the inconsistent statements made by the witnesses make their entire testimony un-reliable. Thus, it was prayed that impugned judgment is legally unsustainable.

9. On the other hand, learned State counsel vehemently argued that in the present case, the prosecution had relied upon the testimony of PW-11, Karan Singh and PW-12, Sajni Devi @ Sajna, who had witnessed the entire occurrence and had supported the case of the prosecution. She further contends that the appellant was arrested on 10.10.1997 and the .12 bore country made pistol was recovered from him. Even as per the FSL report, Ex.P-32, the pellets recovered from the dead body of Ramesh Kumar, had been fired from the country made pistol, which was recovered from the present appellant. Thus, the testimonies of PW-11, Karan Singh and PW-12, Sajni Devi @ Sajna were duly supported by the medical evidence as well as the forensic evidence in the present case. Learned State counsel further submitted that the impugned judgment of conviction and order of sentence passed by the Trial Court are well reasoned and the appeal is liable to be dismissed by this Court.

10. We have elaborate the arguments made by learned counsel for the parties and have pondered over the evidence led by the prosecution in support

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of the charge against the present appellant.

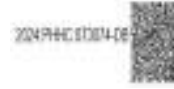
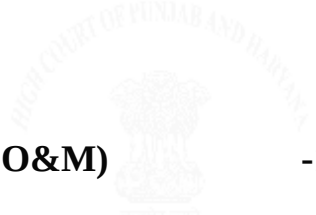
11. In the present case, the law was set into motion by PW-11, Karan Singh, who made the statement Ex.P-19 to ASI Rattan Lal, PW-13. In his initial version, the complainant had levelled specific allegations against the present appellant. The defence had assailed the testimony of PW-11, Karan Singh with regard to the same occurrence, he had filed a criminal complaint Ex.D-1 and in the said complaint it was shown that the appellant was accompanying Prem Singh and two more co-accused. It was further mentioned in the complaint Ex.D-1 that it was Prem Singh, who actually fired at Ramesh Kumar, since deceased. However, we find no substance in the arguments raised by learned defence counsel in this regard. It is a matter of common knowledge that in this part of country, there is an unfortunate tendency to involve number of persons, by exaggerating the version of the prosecution. Secondly, PW-11, Karan Singh also stated that after the registration of the present FIR, he had filed a complaint Ex.D-1, on the asking of someone in the village. In fact, such an afterthought version, which was submitted before the Court in the shape of Ex.D-1, after several days of the occurrence is liable to be rejected by this Court. In fact, it appears that the complainant wanted to involve several other persons also in the occurrence after several days of murder, however, the statement of PW-11, Karan Singh, which was immediately recorded after the occurrence in the present case, cannot be thrown away only on this ground. Moreover, PW-11, Karan Singh had also clearly stated that in his cross-examination that he had filed the complaint Ex.D-1 at the instigation of some co-villagers. Moreover, the testimony of PW-11, Karan Singh has been corroborated by the statement of PW-12, Sajni Devi @ Sajna in all material particulars. Both PW-11, Karan

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Singh and PW-12, Sajni Devi @ Sajna were subjected to incisive cross-examination and nothing material could be elicited by the defence counsel, which could shetter the testimony of these two witnesses in any manner.

12. Apart from that, the occurrence in the present case had taken place on 05.10.1997 and immediately thereafter, a parcel containing pallets, which had been extracted by the doctor from the dead body of Ramesh Kumar, at the time of his post mortem examination, were taken into possession by the police on 06.10.1997. The .12 bore fired cartridge case and such pallets were sent to FSL, Madhuban on 08.10.1997. After the arrest of the accused on 10.10.1997, .12 bore country made pistol along with two cartridges were recovered from the present appellant, which were also sent to FSL, Madhuban on 28.10.1997. As per the FSL report, .12 bore fired cartridge case had been fired from the country made pistol recovered from the present appellant. Even the bullets, which were found in the dead body of Ramesh Kumar, could form part of the same .12 bore cartridge case, which was fired from the country made pistol recovered from the present appellant. Thus, even the FSL report also conclusively proved the involvement of the present appellant in the crime. Apart from that, the prosecution examined Dr. Gopal Bhardwaj, Medical Officer, General Hospital, Hisar as PW-6, who had conducted the post mortem on the dead body of Ramesh Kumar, since deceased and found the following injuries:-

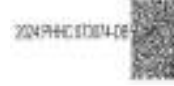
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Even as per PW-6, Dr. Gopal Bhardwaj, the cause of death in the present case was haemorrhage and shock as a result of the injuries described in the post mortem. All the injuries were caused due to fire arm and were ante-mortem in nature. He also took out the pallets from the dead body and handed over the same to the police for forensic examination. Apart from that, the prosecution had placed reliance on PW-8, H.C Rajender Singh and PW-9, C. Hans Raj, who remained associated during the course of investigation in the present case. Even, there was nothing on record to suggest that the said witnesses had deposed falsely against the present appellants. The prosecution had further examined Sukhchain as PW-10, who had proved on record the sanction order Ex.P-26 issued by D.M., Hisar, granting sanction for prosecuting the appellant under Section 25 of the Arms Act. Thus, it has been established that the appellant was arrested on 10.10.1997 by the police and there was no ground to disbelieve the version of the prosecution in the present case.

13. Apart from that learned defence counsel, has referred to various inconsistencies appearing in the testimonies of PW-11, Karan Singh and PW-12, Sajni Devi @ Sajna. In fact, both the witnesses are rustic villagers and had got a chance to appear before the Trial Court after several months of the occurrence. In fact, when the witnesses were deposing after such a long period,

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certain inconsistencies would appear in the statements of truthful witnesses also and the witnesses could not be expected to present a parrot like version before the Trial Court. In the present case, the prosecution had led sufficient evidence, which could establish the charge against the appellant beyond the shadow of reasonable doubt. Even otherwise, we have carefully gone through the detailed findings recorded by the Trial Court and the impugned judgment does not suffer from any irregularity or perversity. The Trial Court has recorded detailed reasons, based on correct appreciation of evidence and law and the impugned judgment of conviction and order of sentence are liable to be upheld by this Court.

14. In view of the above discussion, the present appeal fails and the same is ordered to be dismissed. As a consequence, impugned judgment of conviction dated 25.10.2022 and order of sentence dated 29.10.2002, passed by the Court of Additional Sessions Judge, Hisar are liable to be upheld by this Court.

15. All pending application(s), if any, are also disposed off, accordingly.

(GURVINDER SINGH GILL)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

22.05.2024*hitesh*

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No