

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-180-DB-2018 (O&M)
Reserved on: 08.8.2023
Date of Decision: 17.8.2023

Balbir Appellant

Versus

State of Haryana Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Ish Puneet Singh, Advocate
Legal Aid Counsel for the appellant.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 11.1.2018, upon Sessions Case No. 38 of 2016, by the learned Sessions Judge, Bhiwani, wherethrough in respect of charges drawn against the accused qua offences punishable under Sections 452 and 302 of the IPC, and, under Section 27 of the Arms Act, 1959, thus the learned trial Judge concerned, proceeded to record a finding of conviction against accused-appellant. Moreover, through a separate sentencing order, drawn on 12.1.2018, the learned trial Judge concerned, sentenced the convict in the hereinafter extracted manner.

Sr. No.	Offence under Section	Punishment
1.	302 IPC	Imprisonment for life and to pay fine of Rs. 10,000/-. In default of payment of fine, he would further undergo rigorous imprisonment for one year.

2.	452 IPC	<i>Rigorous imprisonment for two years and to pay fine of Rs. 2,000/-. In default of payment of fine, he would further undergo rigorous imprisonment for two months.</i>
3.	27 of the Arms Act	<i>Rigorous imprisonment for two years and to pay fine of Rs. 2,000/-. In default of payment of fine, he would further undergo rigorous imprisonment for two months.</i>

2. All the above imposed sentences of imprisonment, were ordered to run concurrently but the period of detention undergone by the convict, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed sentence(s) of imprisonment. The revolver and live cartridges were ordered to be confiscated to the State.

3. The convict-appellant becomes aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal, before this Court.

Factual Background

4. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. PG is assigned. The narrations carried in Ex. PG are, that on 5.12.2015, while SI Shyam Sunder, ASI Rajbir Singh, and, HC Vijay Kumar were present near Primary School, Dhani Ramjas, Sanjeet son of deceased Prithvi Singh made the statement before SI Shyam Sunder. Complainant reported that he is an agriculturist and resident of village Dhani Ramjas. On 5.12.2015, he was at home. At about 12:30 pm, his father Prithvi Singh (since deceased), aged 64 years, was having meals in the drawing room. His cousin (complainant's cousin), namely, Vijaypal son of Surat Singh was also present in the drawing room. He (complainant)

entered the drawing room to carry the utensils. In the meantime, accused,

who is also a resident of that area, entered the drawing room of his house. Accused was drunk and armed with a revolver. On reaching his house, accused asked his father to give him one kanal of land near the canal to install a tube-well. His father replied that he (accused) should not come to his home drunk, and, he did not want to talk to him, and, that he should send his father to settle the matter. However, accused got infuriated and fired a shot at the parietal region of his father, who was sitting on the cot. Accused fled with his revolver. He and Vijaypal got busy in looking after his father. His father died on the spot. Complainant reported that accused Balbir had murdered his father. On the basis of this report, the present FIR was registered.

Investigation proceedings

5. During investigation, S.I. Shyam Sunder carried out the inquest proceedings and inspected the spot. He also took into possession the lead from the spot and lifted the blood. He also took into possession the cot. The autopsy on the dead body of the deceased was conducted on 6.12.2015. The police arrested the accused on 6.12.2015, and, recovered the licensed revolver used in the commission of crime, from his possession. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

6. Since the offence under Section 302 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 22.3.2016, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused, for offences punishable under Sections 452 and 302 of the IPC, and, under Section 27 of the Arms Act, 1959. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 13 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence but after tendering into evidence FSL reports, to which Ex. PB and PB/1, becomes assigned. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but thereins, the accused pleaded innocence, and, claimed false implication. He also chose to adduce defence evidence, and, led one witness into the witness box.

9. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charges (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convict.

Submissions of the learned counsel for the appellant

10. The learned counsel for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, consequent thereto order of sentence, thus require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

11. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convict, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict, be dismissed.

Prosecution case is rested upon the statement of two ocular witnesses, who respectively stepped into the witness box as PW-2 and PW-3.

Analysis of the deposition of PW-2

12. Sanjeet, while stepping into the witness box as PW-2, in his cross-examination, has made echoings which are in completest concurrence with his previously made statement in writing before the investigating officer concerned, and, to which Ex. PC, is assigned. However, merely on the said speakings made by PW-2, in his examination-in-chief, thus would not lead this Court to assign thereto the apt evidentiary vigour. This Court would become leaned to assign the gravest probative vigour to his testification, only when his testification, is read in a wholesome manner, inasmuch as, his statement, as carried in his cross-examination, thus is also incisively studied. An incisive reading of the speakings made by PW-2 in his cross-examination, is but imperative, thus to discern therefrom, whether he has grossly improved or embellished upon his previously made statement in writing to the police, and/or has contradicted the version spoken by him qua the crime event, thus in his examination-in-chief, whereupon this Court may not become leaned to assign any evidentiary vigour to his testification, as comprised in his examination-in-chief.

13. However, for the reasons to be assigned hereinafter, this Court on a reading of his cross-examination, thus became leaned to form an opinion, that he has neither grossly improved nor has, thus direly embellished upon his previously made statement in writing, nor has in his cross-examination, thus contradicted the versions spelt by him qua the crime event, hence in his examination-in-chief. Resultantly, this Court becomes leaned to assign solemn credence to his testification.

14. Be that as it may, the further reason, which galvanizes the above conclusion, stems from the factum, that during the phase of PW-2 becoming subjected to the ordeal of cross-examination, his then becoming meted a suggestion, that the accused had arrived at the relevant crime site, after the arrival there of PW-2. The meteing of the said affirmative suggestion to PW-2 during his cross-examination, whereto an affirmative answer also emanated from the said witness, thus exemplifies, that thereby the defence concedes to the presence, of PW-2 at the crime site. Resultantly, the defence is also to be construed to thereby concede to PW-2, being an ocular witness to the crime event. Furthermore, at the fag end of the cross-examination, as became conducted by the learned defence counsel, upon PW-2, though a rebutted suggestion, became meted to him, thus underlining, that after the accused leaving his revolver in their house, qua thereafter the deceased, who was mentally disturbed owing to prolonged ailment of Asthma, thus committing suicide with the revolver of the accused. Though, the above suggestion became denied by PW-2, but the sequel of the making thereof, is none other than, that thereby the defence conceding to the user of the revolver, owned by the accused.

Analysis of the deposition of PW-3

15. Vijaypal, while stepping into the witness box as PW-3, in his

cross-examination, has made echoings which are in completest concurrence with his previously made statement in writing before the investigating officer concerned, and, to which Ex. D1, is assigned. However, merely on the said speakings made by PW-3, in his examination-in-chief, thus would not lead this Court to assign thereto the apt evidentiary vigour. This Court would become leaned to assign the gravest probative vigour to his testification, only when his testification, is read in a wholesome manner, inasmuch as, his statement, as carried in his cross-examination, thus is also incisively studied. An incisive reading of the speakings made by PW-3 in his cross-examination, is but imperative, thus to discern therefrom, whether he has grossly improved or embellished upon his previously made statement in writing to the police, and/or has contradicted the version spoken by him qua the crime event, thus in his examination-in-chief, whereupon this Court may not become leaned to assign any evidentiary vigour to his testification, as comprised in his examination-in-chief.

16. However, for the reasons to be assigned hereinafter, this Court on a reading of his cross-examination, thus became leaned to form an opinion, that he has neither grossly improved nor has, thus direly embellished upon his previously made statement in writing, nor has he in his cross-examination, thus contradicted the versions spelt by him qua the crime event, hence in his examination-in-chief. Resultantly, this Court becomes leaned to assign solemn credence to his testification.

14. Be that as it may, the further reason, which galvanizes the above conclusion, stems from the factum, that during the phase of PW-3 becoming subjected to the ordeal of cross-examination, his then becoming meted a suggestion, that the accused had arrived at the relevant crime site, after the arrival there of PW-3. The meteing of the said affirmative

suggestion to PW-3 during his cross-examination, whereto an affirmative answer also emanated from the said witness, thus exemplifies, that thereby the defence concedes to the presence, of PW-3 at the crime site. Resultantly, the defence is also to be construed to thereby concede to PW-3, being an ocular witness to the crime event. Furthermore, at the fag end of the cross-examination, as became conducted by the learned defence counsel, upon PW-3, though a rebutted suggestion, became meted to him, thus underlining, that after the accused leaving his revolver in their house, qua thereafter the deceased, who was mentally disturbed owing to prolonged ailment of Asthma, thus committing suicide with the revolver of the accused. Though, the above suggestion became denied by PW-3, but the sequel of the making thereof, is none other than, that thereby the defence conceding to the user of the revolver, owned by the accused.

Report of Ballistic Expert

18. Resultantly, when for reasons stated hereinafter, the report of the FSL concerned, does pronounce that the recovered fire arm, as became sent for examination to the ballastic expert, thus in sealed cloth parcels, thus was the relevant fire-arm wherefrom the bullets, as became recovered through recovery memo Ex. PM/3, hence became fired. In sequitur, with this Court assigning credence to the testifications, of the ocular witness to the occurrence, and, when in tandem therewith, the ballistic expert, has made an opinion about the fired cartridge, becoming fired, from .32 revolver, as became recovered through recovery memo Ex. PM/3, at the instance of the accused. Consequently, the charge drawn against the accused is to be concluded to become invincibly proven.

19. What accentuates the gravity of the above made conclusion, is

but founded on the premise, that a closest analysis of the depositions of both

PW-2, and, PW-3, does underscore the factum, that both have deposed in complete unison in respect of the crime event. Moreover, their respectively made depositions are free from any taint or any inter se contradictions. Therefore, but obviously, the consistently made speakings by both the ocular witnesses to the crime occurrence, thus leads this Court to form an opinion, that thereby the charge drawn against the accused, becoming proven to the hilt.

Signed disclosure statement of convict Balbir Ex. PM

20. During the course of investigations, being made into the appeal FIR, convict-appellant Balbir made a signed disclosure statement, to which Ex. PM is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“x x x x x
on dated 5.12.15, at about 12.30 pm, I had gone to Prithvi Singh son of Chandgi Ram, caste Jat, resident of Dhani Ramjas for making conversation with regard to one kanal land for the installation of the tubewell armed with licensed revolver together 11 cartridges. At that time, Prithvi Singh was sitting in his baithak and his nephew Vijaypal son of Surat Singh and son Sanjeet were sitting with him. I raised the demand of one kanal land for the installation of the tubewell from Prithvi Singh. On this, Prithvi Singh flatly refused to give the land. Due to this, I became anger and immediately gave a shot fire with my licenced revolver upon Prithvi Singh, which hit on the temple of Prithvi Singh on his left side. Due to shot fire, Prithvi Singh fell down on the cot and I alongwith my revolver fled away and later on came to know that Prithvi Singh expired due to shot fire. Due to fear, I after keeping my revolver, 10 cartridges and one empty cartridge had gone to my in-laws house in village Narwasi, Tehsil Rajgarh (Rajasthan). I had hidden my revolver, 10 cartridges and one empty cartridge in the house of my mother-in-law Jiwani Devi. None has known about the same except me and I can get the same recovered after due identification. I can also get identified the place where on dated 5.12.15 I had murdered Prithvi Singh son of Chandgi Ram, caste Jat, resident of Dhani Ramjas after giving shot fire with my licenced revolver.”

21. On the same day i.e. 7.12.2015, convict-appellant Balbir made another signed disclosure statement regarding the concealment of

revolver and cartridges, to which Ex. PM/1 is assigned. The said signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“x x x x x

today in the morning I had suffered false disclosure statement regarding the factum of hiding of revolver, along with ten cartridge and one empty cartridge at the house of my mother-in-law Jiwani Devi in village Narwasi, Tehsil Rajgarh (Rajasthan) rather the true factum is that the revolver from which I had made shot fire upon Prithvi Singh son of Chandgi Ram, caste Jat, resident of Dhani Ramjas after keeping the same in revolver hostel together with two cartridges alive and one empty cartridge and eight other alive cartridges were hidden in an almirah of the room of my house situated in the field. None is known about the same except me. I can get the same recovered.”

22. Pursuant to the above signed disclosure statement, convict Balbir got recovered a revolver .32 bore containing two live cartridges, one empty cartridge, and, 8 live cartridges in the cover of the revolver, which were taken into police possession through recovery memo Ex. PM/3.

23. The disclosure statement (supra), carries the signature, in Hindi, of convict-appellant Balbir. In his signed disclosure statement (supra), convict-appellant confessed his guilt in committing the murder of the deceased, by inflicting fire-arm injury on his persons, hence with a .32 bore revolver. The further speaking therein is qua his keeping, and, concealing the incriminatory weapon of offence, in an almirah of the room of his house, situated in the field. Moreover, it also makes speakings about his alone being aware about the location of his hiding and keeping the same, and, also revealed his willingness to cause the recovery of the incriminatory item(s) to the investigating officer concerned, from the place of his hiding, and, keeping the same.

24. The above disclosure statement, does acquire utmost

evidentiary solemnity, as thereons exist the signatures, in Hindi, of the convict-appellant, which, however, he has neither ably denied nor proven the said denial. Moreover, the above confession of guilt is neither a bald or a simpliciter confession, nor is hit by the bar, encapsulated in Section 25 of the Indian Evidence Act. The reason for drawing the above inference, ensues from the factum, that in pursuance thereof, through a proven recovery memo, convict-appellant caused recovery of the incriminatory weapon of offence, to the investigating officer concerned.

25. Since the recovery of the incriminatory weapon of offence, as made through recovery memo Ex. PM/3, has not been proven to be a false or a contrived recovery, inasmuch as, it has not been cogently established, that prior to the making of the above recovery, rather the investigating officer concerned, had taken to plant the same at the apposite site of its recovery, nor when any cogent evidence becomes adduced rather vividly exemplifying, that the place of the apposite recovery rather was an open place, hence leaving scope for any person, other than the convict-appellant to place it there. Thus, the above recovery is not only to be concluded to be a validly made recovery, but is also to be concluded to be of the very same incriminatory weapon, which did become used by the convict-appellant, in causing the murder of the deceased.

Post-mortem report

26. The autopsy on the body of deceased Prithvi Singh was conducted by PW-13 Dr. Ravinder Verma, who has proven the post-mortem report, to which Ex. PU, is assigned. He has also proven the existence of the hereinafter extracted injuries on the person of deceased Hari Mohan.

“Point puncture wound of size 0.5 cm x 0.5 cm with inverted margins on left side of the ear directing towards

the occipital region of the scalp showing everted margins of size 2x2 cm. Fracture of skull on the left hemisphere of the skull, no blackening of the wound. Absence of bullet after x-ray of entire body.”

27. The cause of demise of the deceased, has been opined by PW-13 to be owing to the above injuries, and, their complications. All the injuries were opined to be ante-mortem in nature, and, the probable time which elapsed between the death and the autopsy, was opined to be between 6 to 12 hours. Thus, the disclosure statement, as made by the convict concerned, and, also consequent therewith recoveries, do also become fully supported by the above medical account/evidence.

Report of the ballistic expert Ex. PB.

28. The apposite recoveries, as became made through recovery memo Ex. PM/3, were sent in four sealed cloth parcels to the ballistic expert concerned. After the ballistic expert making an examination of the items, as became sent to him in the sealed cloth parcels, and, which became recovered through recovery memo Ex. PM/3, he made the hereinafter extracted opinion, to which Ex. PB, is assigned.

“X X X X

Description of parcel(s) and condition of seal(s)

The seals on the parcels were found intact and tallied with the specimen seals as per forwarding authority.

Description of article (s) contained in parcel(s)

Parcel No.	No. and seal impression	Description of parcel(s)
I.	5 of S.S.	Contained one badly deformed and mutilated .32” fired bullet, stated to have been lifted from the place of occurrence (Marked bullet as BC/1 by me).
II.	5 of S.S.	Stated to contain blood gauze lifted from the place of occurrence. (Sent to Serology Division in original packing).
III.	5 of Doctor (Mortuary GH BWN)	Stated to contain clothes of deceased Prithvi Singh in reference PMR No. RV/NL/BWN/08/15 dated 6.12.15. (Sent to

		Serology Division in original packing).
IV.	5 of R.S.	Contained one .32" revolver bearing Sr. No. A1058 M of S.A.F. KANPUR in 2014 along with one .32" fired cartridge case and ten .32" live cartridges, stated to have been recovered from accused Balbir. (Marked revolver as W/1 and cartridge case as C/1 by me).

Laboratory Examination

Products of combustion of smokeless powder were detected from the barrel of .32" revolver marked as W/1. Test firings were done in the laboratory from .32" revolver marked as W/1. Its firing mechanism was found in working order.

The class as well as individual characteristic marks present on .32" fired cartridge case marked as C/1, .32" fired bullet marked as BC/1 and those on test fired cartridge cases & test fired bullets fired from .32" revolver marked as W/1 were examined & compared under stereo and comparison microscope.

Based on the examinations carried out in the laboratory, the result of analysis is as under-

Result

- 1. The firing mechanism of .32" revolver marked as W/I was found in working order.*
- 2. The .32" fired cartridge case marked as C/1 has been fired from .32" revolver marked as W/1 (recovered from accused Balbir) and not from any other firearm even of the same make and bore/calibre because every firearm has got its own individual characteristic marks*
- 3. No definite opinion could be formed regarding the linkage of badly deformed & mutilated .32" fired bullet marked as BC/1 with .32" revolver marked as W/1 due to lack of sufficient comparable individual characteristic marks.*

Note:- (i) Exhibits examined in the Ballistic Division were resealed along with their original with the seal of R.S.S. SSO (Ball)/FSL(H)/MBN.

(ii) Two out of ten .32" live cartridges contained in parcel No. IV have been used in test firing in laboratory and remaining

live cartridges, test fired cartridge cases and test bullets have sent back in the same parcel.”

29. A reading of the hereinabove extracted opinion, thus vividly unveils, that the firing mechanism of .32 bore revolver marked as W/1 was found in working order. Furthermore, it also makes candid underlinings, that the fired cartridge case marked as C/1 becoming fired from .32 bore revolver marked as W/1, and, that the firing of the said cartridge, thus not occurring from any other fire-arm. In addition, though no definite opinion was formed regarding the linkage of badly deformed, and, mutilated .32” fired bullet marked as BC/1 hence with .32” revolver marked as W/1, but the same was on account of lack of sufficient comparable individual characteristic marks. Even, on the basis of the said indefiniteness of opinion of the said badly deformed and mutilated bullet, thus becoming fired from .32 bore revolver, rather no leverage can be drawn by the accused. The reason being that, the said indefiniteness of opinion about the lack of linkage between the badly deformed, and, mutilated bullet, thus with .32 bore revolver, rather was merely on account of lack of sufficient comparable individual characteristic marks. Therefore, but obviously when the badly deformed, and, mutilated bullet, was, thus unamenable, for its becoming linked to its becoming fired from .32 revolver, thereby obviously, when the said indefiniteness of the apposite linkage inter se the bullet fired, hence from the .32 bore revolver, did thus emanate from the ballistic expert concerned. If so, the said indefiniteness opinion about the apposite linkage, thus also cannot assign any exculpatory benefit to the convict-appellant.

30. Even otherwise, when this Court, for reasons (supra), has on the anchor of the rebutted suggestions, being purveyed to both PW-2 and PW-3, by the defence counsel, thus at the end of their respective cross-

examination(s), and, with echoings therein, that the accused had left behind his revolver in the house of the deceased, and, which led the latter to, given his being mentally perturbed owing to his prolonged ailment of asthma, thus commit suicide. Resultantly thereby but obviously the user of the said badly deformed, and, mutilated pallet becoming fired from .32 bore revolver, but is also pin-pointedly conceded by the defence counsel. Moreover, since the eye witness account, as rendered qua the crime event, rather for the reasons (supra), is concluded to be both credible, and, trustworthy. Consequently, when both the eye witnesses to the occurrence are but speaking with aplomb, besides with unison, about the user of the recovered fire-arm by the accused, besides when in respect of its user, corroborative opinion is also made by the ballistic expert. Thus, the prosecution has proven, that the accused had, through user of the apposite bullet becoming fired from .32 bore revolver, thus committed the murder of the deceased.

Final order

31. The result of the above discussion, is that, this Court does not find any merit in the appeal, and, is constrained to dismiss it. Consequently, the appeal is dismissed. The impugned verdict of conviction, as becomes imposed upon the convict-appellant, by the learned convicting Court, is maintained, and, affirmed, besides also the consequent thereto sentence(s), as became imposed upon the convict-appellant, by the learned convicting Court, is also maintained, and, affirmed. If the convict-appellant is on bail, thereupon, the sentence(s) as imposed upon the convict-appellant, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

32. Records be sent down forthwith.
33. The miscellaneous application(s), if any, is/are, also disposed
of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

August 17, 2023
Gurpreet

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