

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-805-DB-2009

Pronounced on: 21st February, 2015

Gulshan Kumar @ Pappu
and another

..... Appellants

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Chanakya Pandit, Advocate, for the appellants.
Mr.Sandeep Vermani, Addl.A.G., Haryana.

RAJIVE BHALLA, J.

The appellants challenge judgment and order, both dated 25.08.2009, passed by the Additional Sessions Judge, Panipat, convicting and sentencing the appellants in the following terms: -

Name of convict	Offence(s)	Sentence
Bharat Bhushan	Under Section 307 read with Section 34 of IPC	To undergo imprisonment for life and to pay a fine of Rs.5,000/-. In default of payment of fine, he shall further undergo rigorous imprisonment for a period of two months
Gulshan Kumar @ Pappu	Under Section 307 read with Section 34 of IPC	To undergo imprisonment for life and to pay a fine of Rs.5,000/-. In default of payment of fine, he shall further undergo rigorous imprisonment for a period of two months
	Under Section 25 of Arms Act	To undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-. In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one month. However, both sentences shall run concurrently.

PW-15 SI Ashok Kumar, ASI Om Parkash and Constable Ashok Kumar were on patrol duty, on 30.04.2007 at Qalander Chowk, Panipat, where they received information that one Krishan @ Gandhi has received a gun shot injury and has been taken to Prem Hospital, Panipat. ASI Ashok Kumar and the police party proceeded to the hospital and vide application Ex.PR, sought the opinion of the attending doctor whether Krishan Lal is fit to make a statement. The doctor opined that Krishan Lal is not fit to make a statement but as they found PW-2 Ashok Kumar, father of Krishan Lal, recorded his signed statement Ex.PB to the effect that: - Ashok Kumar runs a shop of a junk dealer, near Veer Bhawan Chowk, Panipat and has two sons Raj Kumar and Krishan, who work at a meat shop. About 1 ½ years ago, there was a quarrel between Krishan Lal and Gulshan @ Pappu son of Dharam Chand, resident of Pathano Walla Mohalla, Panipat. Gulshan was challaned by the police and the case is pending in Court. Bharat Bhushan and his brother Gulshan were presurising Ashok Kumar and his son Krishan Lal to compromise the matter. Today, Ashok Kumar and his son Krishan Lal were standing near Veer Bhawan Chowk for hiring labour, Deepak son of Darshan Lal arrived and was talking to them. At about 8:30 AM, Bharat Bhushan and his brother Gulshan arrived and began abusing them. Gulshan fired two gun shots from his pistol directly at Krishan Lal with an intention to kill. Krishan Lal fell down after the bullets

hit him. Gulshan sped away on his motorcycle and Bharat Bhushan slipped away. Ashok Kumar and Raju transported Krishan Lal to civil hospital for treatment where an MLR was prepared. Krishan Lal was thereafter taken to Prem Hospital, Panipat, for treatment. Ashok Kumar also stated that Bharat Bhushan and Gulshan Kumar have in furtherance of their common intention fired gun shots in order to kill Krishan Lal.

The statement was forwarded to PS City, Panipat where it led to registration of FIR No.246 dated 30.04.2007 (Ex.PB/1). The investigating officer took the MLR into possession. Dr.Prem Kumar produced one fired bullet in a sealed parcel which was taken into possession, vide memo Ex.PC and attested by PW-2 Ashok Kumar and SI Om Parkash. The blood stained shirt was converted into a sealed parcel and taken into possession vide memo Ex.PD. A photographer was summoned to take photographs of the place of occurrence. A rough site plan of the place of occurrence is Ex.PE. The blood stained earth lifted from the spot was placed in a small tin container which was converted into a sealed parcel. One empty bullet was taken into possession vide memo Ex.PK. The investigating officer thereafter recorded the statements of PW-10 Deepak and others and a supplementary statement of PW-2 Ashok Kumar.

At about 8 PM one Surender son of Mittar Sain produced

Bharat Bhushan before the investigating officer. After interrogation, Bharat Bhushan was arrested on 01.05.2007. The investigation officer went to Prem Hospital, Panipat and filed an application Ex.PR before Dr.Prem Kumar, seeking his opinion whether Krishan Lal is fit to make a statement. Dr.Prem Kumar declared Krishan Lal fit to make a statement. The investigating officer thereafter recorded the statement of Krishan Lal, under Section 161 of the Cr.P.C.

Arjun Dass, photographer produced the negatives and the photographs on 03.05.2007 which were taken into possession after recording his statement. Gulshan Kumar was arrested on 17.05.2007, after he surrendered before the Illaqa Magistrate. After interrogation, Gulshan Kumar made a disclosure statement Ex.PL that he had concealed a pistol and two live bullets after wrapping them in a polythene paper in the dicky of an Activa Honda scooter and concealed the Activa Honda under bushes near the "Ganda Nala" in the area of village Chhajpur Khurd. On 20.05.2007, Gulshan Kumar led the police party to the place where he had concealed the Activa Honda, opened the dicky of the Activa Honda, took out the pistol and two live cartridges which were taken into possession, vide memo Ex.PN. The pistol is Ex.P2 and the live cartridges are Ex.P3 and P4.

After completion of investigation, a final report was filed but as the matter was exclusively triable by the Court of Sessions, the matter was placed before the Additional Sessions Judge-I, Panipat,

who framed charges under Sections 307/34 of the IPC and Section 25 of the Arms Act but as the appellants pleaded not guilty and claimed trial, the prosecution was directed to produce evidence.

The prosecution has examined PW-1 Dr. Alok Jain, Medical Officer, General Hospital, Panipat, PW-2 Ashok Kumar, PW-3 Krishan Lal, PW-4 Const. Jagbir Singh, PW-5 HC Satpal Singh, PW-6 ASI Maman Ram, PW-7 HC Jasmer Singh, PW-8 EHC Shamsheer Singh, PW-9 Const. Ramesh Kumar, PW-10 Deepak, PW-11 Jitender, PW-12 Const. Sanjiv Kumar, PW-13 Madan Lal, PW-14 Arjun Dass, PW-15 SI Ashok Kumar, PW-16 Dr. Vijayta, Medical Officer, and PW-17 Dr. Pankaj Mutneja. The prosecution has also produced documentary evidence in its endeavour to establish the appellant's guilt.

The appellants were examined under Section 313 of the Cr.P.C. after incriminating circumstances appearing in the prosecution evidence were put to them but denied their involvement and pleaded false implication.

In defence, the appellants examined DW-1 Harvinder Singh, Ahlmad.

After considering the evidence on record, the trial Court convicted the appellants under Sections 307/34 of the IPC and also convicted Gulshan Kumar under Section 25 of the Arms Act. As regards sentence, the trial Court sentenced both the appellants to life imprisonment primarily on the ground that Bharat Bhushan had

already served a prior sentence of life imprisonment for murder.

Counsel for the appellants submits that a perusal of the statement Ex.PB made by Ashok Kumar, that led to registration of the FIR, reveals that Bharat Bhushan was unarmed and it is not stated that Bharat Bhushan exhorted his brother Gulshan Kumar to fire the gun shots or inflict any injury on Krishan Lal. The only overt act attributed to Bharat Bhushan is abusing Krishan Lal and the first informant PW-2 Ashok Kumar while deposing in Court has once again not attributed any overt act to Bharat Bhushan apart from the abuses. However, PW-3 Krishan Lal, the injured has deposed that after the appellants began abusing him, Gulshan Kumar took out a pistol from his pocket and Bharat Bhushan asked him to shoot as he was not compromising the previous case. Gulshan Kumar thereafter fired two gun shots from the pistol which hit Krishan Lal. PW-3 Krishan Lal was confronted with his statement made before the police where it was not recorded that Bharat Bhushan instigated Gulshan Kumar to fire at Krishan Lal but could not proffer any explanation. Krishan Lal has made a clear departure from the statement made by Ashok Kumar, the first informant, before the police and in Court. It is further submitted that Krishan Lal has admitted that he was challaned by the police in another case which is pending trial and Gulshan Kumar was also challaned. It is further submitted that PW-10 Deepak son of Darshan Lal, another eye-witness has corroborated the statement made by PW-3 Krishan Lal

that Bharat Bhushan exhorted Gulshan Kumar to fire gun shots but as the initial version disclosed by Ashok Kumar made before the police does not record that Bharat Bhushan exhorted Gulshan Kumar to fire the gun shot, it is apparent that this part of their depositions has been added to falsely implicate Bharat Bhushan as he is a brother of Gulshan Kumar and Krishan Lal is facing trial pursuant to the complaint filed by Bharat Bhushan. It is further submitted that PW-2 Ashok Kumar has deposed that Gulshan Kumar was carrying a pistol in his hand and fired two gun shots but PW-10 Deepak has admitted in his cross examination that Bharat Bhushan exhorted Gulshan Kumar to kill Krishan Lal after Gulshan Kumar had already fired the gun shots. It is, therefore, apparent that prosecution witnesses are discrepant in their depositions as to whether Bharat Bhushan exhorted Gulshan Kumar, the exact moment at which Bharat Bhushan allegedly exhorted Gulshan Kumar to fire at Krishan Lal, whether Gulshan Kumar was carrying a pistol in his hand or took it out from his pocket etc. It is further submitted that no recovery has been affected from Bharat Bhushan, making it crystal clear that he has been falsely implicated on account of previous enmity and the fact that he is a brother of Gulshan Kumar. It is further argued that motive, if any, lay with Gulshan Kumar as Gulshan Kumar was challaned at the behest of Krishan Lal and Krishan Lal had been challaned at the behest of Gulshan Kumar. The prosecution witnesses have included the name of Bharat Bhushan with the sole

object of falsely implicating him as he is the brother of Gulshan Kumar. It is further submitted that it is rather surprising that Gulshan Kumar would fire gun shots at a busy place and that also in a broad day light. The contradictory statements made by prosecution witnesses as to the role of Bharat Bhushan, cannot be used to infer a common intention as neither any overt act has been proved nor has any weapon been recovered from Bharat Bhushan. It is further argued that disclosure statement Ex.PL, which led to the recovery of a pistol and two live cartridges, is inadmissible as it is recorded in the shape of a confession. A confession made before a police/police officer is inadmissible in evidence and, therefore, the disclosure statement and the consequent recovery of a pistol, two live cartridges and the Honda Activa have to be ruled out of consideration. The last argument is that offence under Section 307 of the IPC is not made out, particularly as injuries are on a non-vital part i.e. the arm of Krishan Lal and Krishan Lal has not suffered any permanent disability. The life sentence awarded to the appellants on the ground that Gulshan Kumar was convicted in an earlier case, is also not warranted. The appellants were 52 and 57 years old respectively at the time of offence. Bharat Bhushan is now more than 60 years old and Gulshan Kumar is nearing 60 years, a lenient view may be taken of the matter and their sentences may be reduced.

Counsel for the State of Haryana submits that the depositions of three eye witnesses, corroboration of their depositions

by medical evidence and recovery of weapons, the FSL report which proves that the bullet recovered from the wound was fired from the pistol recovered from Gulshan Kumar and the other evidence on record, prove the appellants' guilt. The impugned judgment of conviction and sentence, therefore, does not call for interference. It is contended that discrepancies in depositions of prosecution witnesses are natural when they depose after a period of time. It is prayed that as the appellants have not been able to point out any material discrepancies in the depositions of prosecution witnesses, the impugned judgment does not call for any interference.

We have heard counsel for the parties, appraised the entire evidence on record and considered the arguments advanced by counsel for the parties.

The appellants have been convicted under Sections 307/34 of the IPC. Gulshan Kumar has also been convicted under Section 25 of the Arms Act and both have been sentenced in terms recorded in the opening paragraph of the judgment.

Gulshan Kumar is alleged to have fired two gun shots, at Krishan Lal at about 08:30 AM on 30.04.2007 in the area of Veer Bhavan Chowk, Panipat. Bharat Bhushan is alleged to have accompanied him and exhorted him to fire the gun shot which hit Krishan Lal on his arm. The offence, so committed, is sought to be proved by adducing evidence of motive, set out in the depositions of PW-2 Ashok Kumar, PW-3 Krishan Lal, injured and PW-10 Deepak,

who have also deposed as eye-witnesses, the recovery of a country-made pistol pursuant to a disclosure statement made by Gulshan Kumar, the FSL report which proves that the bullet recovered from Krishan Lal's wound could have only been fired from the pistol recovered by and at the behest of Gulshan Kumar, the medical evidence proves gun shot injuries and the other formal evidence like blood stained earth, site plans, statements of formal witnesses etc.

At the outset, we would deal with evidence of motive. PW-2 Ashok Kumar and PW-3 Krishan Lal, the injured have deposed that there was a criminal case pending against Gulshan Kumar at the behest of Krishan Lal. A perusal of Ex.PF reveals that FIR No.506, dated 04.10.2005 was pending against Gulshan Kumar under Sections 325/506 of the IPC. The depositions of PWs 2 and 3 and Ex.PF prove that there was criminal litigation pending between Gulshan Kumar and Krishan Lal thereby proving that all was not well between Gulshan Kumar and Krishan Lal. Even otherwise, as the prosecution relies upon the depositions of eye-witnesses, proof of motive is not such a significant fact. We, therefore, proceed to examine the depositions of eye witnesses so as to determine whether their depositions prove the offence against the appellants.

PW-2 Ashok Kumar is the father of injured PW-3 Krishan Lal and is the first informant whose statement was recorded by the police at 10:30 AM on 31.07.2007. His deposition is in essence, faithful to his statement Ex.PB, made to the police namely

that the appellants arrived at the place where Ashok Kumar and Krishan Lal were standing to hire labour, began abusing them and then Gulshan Kumar fired two gun shots from a pistol which hit PW-3 Krishan Lal on his arm. PW-2 Ashok Kumar was subjected to cross examination but the defence was unable to elicit any contradiction between his statement made to the police and his deposition in Court.

PW-3, Krishan Lal is the injured eye witness and is the son of PW-2 Ashok Kumar. PW-3 has admitted in his cross examination that there was a case pending against him at the behest of Gulshan Kumar, but also stated that there was a case pending against Gulshan Kumar and that Gulshan Kumar and Bharat Bhushan were pressurising them to compromise the case. At about 8:30 AM on 30.04.2007 he and his father were standing at Veer Bhavan Chowk, Panipat, for hiring labour. PW-10 Deepak son of Darshan Lal was also standing with them. After some time, Gulshan Kumar @ Pappu came there. Bharat Bhushan exhorted Gulshan Kumar to fire his pistol whereupon Gulshan Kumar fired two gun shots which hit his left arm. After receiving the gun shots, he fell down. His father and Deepak chased the appellants but both the appellants taking advantage of the number of people, made good their escape.

PW-10, Deepak son of Dharshan Lal, is another eye witness, who has corroborated the depositions of PWs 2 and 3 and deposed that Bharat Bhushan exhorted Gulshan Kumar to fire the

gun shots.

The depositions by eye witnesses are consistent in all material particulars with respect to Gulshan Kumar firing gun shots at PW-3 Krishan Lal which hit Krishan Lal on his left arm. The discrepancy in their depositions relates to the role played by Bharat Bhushan. PW-3 Ashok Kumar did not state before the police nor while deposing in Court that Bharat Bhushan exhorted Gulshan Kumar to fire the gun shots whereas PWs 3 and 10 have deposed that Bharat Bhushan exhorted Gulshan Kumar to fire the gun shots. The departure in the depositions of PWs 3 and 10 from the statement by PW-2 as to the role played by Bharat Bhushan does assume a degree of significance as the first informant PW-2 Ashok Kumar, has not only while recording his statement before the police but also while deposing in Court not attributed any overt act to Bharat Bhushan other than abusing Ashok Kumar and Krishan Lal. The question that calls for an answer is whether this discrepancy in the deposition of PW-2 vis-a-vis the depositions by PWs 3 and 10 entitles Bharat Bhushan to any benefit that would take him out the mischief of Sections 34 of the IPC with the aid of which he has been convicted under Section 307 of the IPC. A considered appraisal of the depositions of three eye witnesses i.e. PWs 2, 3 and 10, in our considered opinion, does not enable us to record a conclusion that failure of PW-2, Ashok Kumar to narrate that Bharat Bhushan exhorted Gulshan Kumar to fire gun shots, is sufficient to cast any

doubt as to the role of Bharat Bhushan. To expect two persons to depose as to an incident with mathematical exactitude without any discrepancy or difference, would in essence, be asking prosecution witnesses to depose in a parrot like manner with each witness mouthing with exactitude the deposition of the other but as human memory is neither photographic nor do two individuals perceive an incident in an identical manner, the discrepancy in the statement by PW-2 Ashok Kumar vis-a-vis statements of PWs 3 and 10, as to the role played by Bharat Bhushan in exhorting Gulshan Kumar to fire the gun shots, in our considered opinion, does not cast any doubt on their depositions as eye witnesses much less does it reduce the role played by Bharat Bhushan in the attack upon PW-3 Krishan Lal. We, therefore, have no hesitation in holding that PW-2 Ashok Kumar, PW-3 Krishan Lal and PW-10 Deepak are eye witnesses to the occurrence and their depositions are entitled to credence and acceptance as to the role played by the appellants in the injuries inflicted upon PW-3 Krishan Lal.

The deposition by eye witnesses is corroborated by medical evidence firstly by the deposition of PW-1 Dr. Alok Jain, Medical Hospital, General Hospital, Panipat, who medico-legally examined PW-3 Krishan Lal and detected an injury on the left upper limb and the back of his chest. PW-1 Dr. Alok Jain proved the MLR Ex. PA, slip Ex. PA/1 referring Krishan Lal to PGIMS, Rohtak.

The MLR Ex.PA corroborates the deposition by eye witnesses who have deposed about the firing of two gun shots.

Krishan Lal was taken to a private hospital where he was operated upon. Dr. Prem Kumar who had prepared various documents had since passed away. The documents were proved by PW-17 Dr. Pankaj Mutneja, son of Dr. Prem Kumar, who proved endorsements Ex.PV/1, Ex.PU/1, recovery memo Ex.PT pertaining to recovery of a bullet extracted from the wound suffered by Krishan Lal, endorsement Ex.PR/1, Ex.PR/2 and discharge slip Ex.PAA. PW-17 Dr. Pankaj Mutneja identified the signatures of Dr. Shailej Gupta on the X-ray report Ex.PBB. A perusal of the discharge slip Ex.PAA reveals that Krishan Lal was admitted on 30.04.2007 with history of bullet injuries on the left upper arm and the lower part of his forearm with severe bleeding etc. The injuries described in Ex.PAA corroborate the depositions by the eye witnesses. The X-ray report Ex.PBB also corroborates the bullet injury on the left forearm and fracture of the left spectral and visibility of a metallic object which was taken out after operation and handed over to the police. The medical evidence, therefore, corroborates the depositions by eye witnesses.

The depositions by eye witnesses and the medical evidence is further corroborated by recovery of the pistol by and at the behest of Gulshan Kumar alongwith, two live bullets.

The pistol was forwarded to the Forensic Science Laboratory, Madhuban, Karnal, where after examining the bullet recovered from the arm, the bullets taken into possession and the pistol, it was opined that the bullet was fired from the pistol recovered from Gulshan Kumar and from no other weapon. It would also be appropriate to point out that Dr. R.K.Koshal, Assistant Director (Ballistics), Forensic Science Laboratory, Madhuban, Karnal, examined the pistol, the bullet case, fired bullet and clothes of the injured and only thereafter recorded his opinion. Thus, a perusal of the depositions by eye witnesses corroborated by medical evidence, recovery of the weapons as well as the FSL report, leaves no ambiguity as to the appellants' culpability.

In addition to the aforesaid evidence, PW-15 SI Ashok Kumar lifted blood from the spot, prepared site plan Ex.PY which has been proved in accordance with law.

The evidence on record, therefore, clearly proves that Gulshan Kumar came armed with a country-made pistol and Bharat Bhushan exhorted Gulshan Kumar to fire gun shots at Krishan Lal, with knowledge and intent that the gun shots are likely to cause death. The appellants have, therefore, been rightly convicted for commission of offences under Sections 307/34 of the IPC and Gulshan Kumar in addition, under Section 25 of the Arms Act.

Coming to the sentence, the trial Court has sentenced the

appellants to life imprisonment as Gulshan @ Pappu was a life convict in FIR No.1029, dated 27.11.1993 under Sections 302/506/34 of the IPC and Sections 24/54/59 of the Arms Act. We are not inclined to accept this severe punishment for the sole reason that Gulshan Kumar was a life convict in an earlier case. A perusal of the evidence on record reveals that an injury was inflicted on a non-vital part of the body namely left arm of Krishan Lal. Bharat Bhushan has not been attributed any injury. Gulshan Kumar is nearing 60 years of age whereas Bharat Bhushan is more than 60 years old. We are, therefore, satisfied that interest of justice would be met by reducing their sentence of imprisonment from life imprisonment to 10 years imprisonment while maintaining the remaining sentences.

Krishan Lal has suffered a gun hot injury to his left arm and though the injury may not have caused any permanent disability but taking into consideration the trauma that he has suffered and the expenses for treatment etc., we direct the appellants to pay a compensation of Rs.75,000/- to Krishan Lal within three months from today.

The appeal stands disposed of with the above modification and direction.

[RAJIVE BHALLA]
JUDGE

[AMOL RATTAN SINGH]
JUDGE

21st February, 2015

Shamsher S.Sabharwal