

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA-D-1173-DB of 2010**

DATE OF DECISION: FEBRUARY 26, 2015

AKASH @ DABLU ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

2. **CRA-S-2758-SB OF 2010**

SANDEEP @ MONU ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

3. **CRA-S-2844-SB OF 2010**

SITI @ SEETE ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

4. **CRA-D-466-DB OF 2011**

HUKAM CHAND ...APPELLANT

VERSUS

STATE OF HARYANA & OTHERS ...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. VINOD GHAI, SR. ADVOCATE
WITH MR. VINEET KAUSHAL, ADVOCATE
FOR THE APPELLANT IN CRA-D-1173-DB-2010,
& CRA-S-2844-SB-2010 AND
FOR RESPONDENTS NO.2 & 3 IN CRA-D-466-DB-2011.

MR. SANJAY VASHISTH, ADVOCATE
FOR THE APPELLANT IN CRA-S-2758-SB-2010.

MR. ASHIT MALIK, ADVOCATE
FOR THE APPELLANT IN CRA-D-466-DB-2011.

MS. TANISHA PESHAWARIA, DAG, HARYANA.

M. JEYAPPAUL, J.

1. Accused Akash @ Dablu, Sandeep @ Monu, Siti @ Seete and Sagar faced trial under Section 302, 201, 216, 176, 499, 506 IPC and Section 25 of the Arms Act. Accused Sagar died during the course of trial. Therefore, the charges framed against him abated. Aggrieved by the judgement of conviction and order of sentence passed by the trial Court for the offence under Section 302, 449, 406, 201 IPC and Section 25 of the Arms Act, accused Akash @ Dablu has preferred CRA-D-1173-DB of 2010 and accused Sandeep @ Monu and Siti @ Seete who were convicted and sentence under Section 201 read with Section 34 IPC have preferred individual appeals in CRA-S-2758-SB-2010 and CRA-S-2844-SB-2010. The complainant has preferred CRA-D-466-DB of 2011 challenging the acquittal of accused Sandeep @ Monu and Sita @ Seeti for the major offence under Section 302 IPC. The complainant has also sought for compensation for the death of his son Ashish.
2. It is the case of the prosecution that accused harboured motive against deceased Ashish and committed murder of Ashish by shooting him to death.
3. PW8 Hukam Chand was the father of deceased Ashish. He has deposed that on 17.8.2007 at about 10.00 p.m., his son Ashish went to sleep

in the Gher. The next day, around 6.00 a.m., he proceeded to the Gher and found blood on the right shoulder and arm of Ashish. Having got perplexed, he alerted his brother PW10 Nanak Chand. He also informed his brother Gian Chand and his nephew PW9 Pankaj Gaur. Injured Ashish was taken to Raja Harish Chander Hospital, Narela for treatment. The Doctor having examined Ashish, declared that he was brought dead. The Doctor also informed PW8 that Ashish had got a bullet injury. PW8 suffered statement Ex.PM before the police. The first information report was registered based thereupon. He also deposed that on 19.8.2007 at about 5.30 a.m., he informed PW26 ASI Hawa Singh that a quarrel took place between his son Ashish and accused Akash @ Dablu who brought some girls with him. There was also some dispute regarding construction of a wall. In culmination of the quarrel, Ashish had slapped the accused Akash. Ashish also informed PW8 that Akash @ Dablu had threatened to kill him.

4. PW22 Dr.Avdesh medico-legally examined Ashish on 18.8.2007. On examination of Ashish, he found that the pulse rate was not palpable and blood pressure was not recordable. He found a punctured wound measuring .5 x .5 cm over right side of his chest. There was another punctured wound measuring 1 x .5 cm over vertex. He noted down the blood on the right ear. A thumb impression of the deceased was also taken in the MLR Ex.PW.

5. PW19 Dr.Upender Kishore conducted post mortem examination on the dead body of Ashish on 18.8.2007 and found the following external ante mortem injuries:-

“1. Firearm entry wound of size 0.5 x 0.5 with abrasion collar present over the middle of the vertex (head), the projectile enters the cranial cavity after piercing the scalp, skull, enters into the right side parenchyma of brain, middle cranial fossa of base of skull enters the neck into the right solidus at the back found embedded in the muscle and scapula, the direction of the projectile inwards downwards and outwards. Haematoma and contusion of the muscles and soft tissues present along the tract of projectile.

2. Firearm entry wound of size 0.5cm x 0.3 cms. Present over the right side of the chest, 12 cms outer and above the right nipple and 16cms. Outer to mid line with abrasion collar the projectile enters the cavity of right side chest through skin, subcutaneous tissues, muscles of chest, 3rd & 4th intercostal space into the parenchyma of lung, in the right dome of diaphragm into the liver pierces it and found embedded in the 11th and 12th intercostal space, the direction of the projectile is inwards downwards from right to left extravasations of blood and haematoma and haematoma found around the tract of projectile.”

6. In his opinion, Ashish had died due to cranio cerebral damage as a result of ante mortem injury produced by the projectile of fire arm on the head. Both the injuries were found to be fire arm injuries. They could cause death in the ordinary course of nature, independently and collectively.

7. PW17 SI Mohinder Singh, Narela, Delhi, took up the case for investigation. PW19 handed over to him two parcels containing the underwear of the deceased and two blood samples extracted from the dead body of deceased Ashish. He handed over the case property to MHC after completing the formalities.

8. PW10 Nanak Chand is the brother of complainant Hukam Chand. He deposed that about 5 days prior to the occurrence that took place on 17/18.8.2007, when he was walking in the street worried about the death of the son of his another brother, he saw accused Akash @ Dablu jumping from the gate of house of his brother Hukam Chand. Two boys on a motorcycle gave lift to accused Akash @ Dablu. Accused slipped away from the site on a motorcycle. He identified accused Akash @ Dablu, Sandeep and Siti as persons who were found near the gate of his brother. He also deposed that on 6.9.2007, during cleaning of courtyard of the house of his brother, an empty cartridge was recovered. He met PW26 ASI Hawa Singh who earlier investigated the matter and handed over the empty cartridge to him.

9. PW2 Santra is the neighbour of the deceased. She partly supported the case of the prosecution. She deposed that on 16.8.2007 at about 4.15 p.m., when she was standing in front of her house, accused Akash @ Dablu and Siti were standing in the street. Ashish proceeded towards her and informed her that accused Akash @ Dablu was telling him that he would insert a bullet in his body. She advised Ashish not to talk like that. There was also some dispute between Ashish and accused Akash @

Dablu as regards a wall.

10. PW3 Rajiv was the friend of the deceased Ashish. He has deposed that on 17.8.2007 at about 11.05 p.m., Ashish rang him up and informed that he was quite perturbed as he had an altercation with a boy named Khati who was living in his neighbourhood. The deceased also informed him that there was a dispute regarding a wall with the said boy. The said boy also brought some girls. Ashish warned him not to spoil the atmosphere, but the said boy threatened him with dire consequences.

11. PW9 Pankaj Gaur is the nephew of PW8. He testified that on seeing blood on the chest of Ashish on 18.8.2007 at about 6.00 a.m., he took Ashish in a vehicle to Raj Harish Chander Hospital, Narela. The Doctor disclosed that Ashish had received gun shot injuries and was brought dead. Two days prior to the occurrence, Ashish informed him that he had a dispute with accused Akash @ Dablu, Siti, Monu and Sagar in connection with some wall. Ashish also warned Akash and Siti who brought some girls. Ashish slapped to accused Akash. While accused Akash threatened to kill Ashish.

12. PW1 Sumer Chand Gaur was a witness to the disclosure statement suffered by accused Aakash @ Dablu and the recovery of fire arm at his instance. PW4 ASI Subhash Chander was a witness to the disclosure statement suffered by Sandeep @ Monu. PW5 ASI Jagdish Rai spoke about the recovery of mobile phone and SIM card from accused Akash on the basis of disclosure statement suffered by him. PW21 M.N.Vijayan Nodal Officer, Tata Teleservices, Delhi, spoke about the recovery of mobile Sim

Card issued in the name of accused Sandeep Kumar. PW23 ASI Satyawar testified the call details of the mobile phone in the name of deceased Ashish and in the name of accused Akash. PW24 Manish Jain, Nodal Officer, Vodafone, Karnal, also spoke about the call details of the mobile in the name of accused Akash and deceased Ashish. PW26 ASI Hawa Singh spoke about the recovery of an empty cartridge from PW10.

13. Accused have set up a plea in their statements under Section 313 Cr.P.C. that they were innocent, but a false case was foisted on them.

14. DW2 N.K.Jain, Handwriting Expert, deposed that the thumb impression found on the MLR did not tally with the thumb impression of the deceased.

15. The trial Court having adverted to the motive spoken to by the witnesses, the last seen theory projected by the prosecution, the recovery of weapon of offence and the FSL report which would go to establish that the bullets found on the dead body of Ashish had been fired from the fire arm recovered from accused Akash, recorded conviction as against him as stated supra.

16. Let us now take up the appeals preferred by accused Sandeep @ Monu and Siti @ Seete in CRA-S-2758-SB of 2010 and CRA-S-2844-SB of 2010 aggrieved by the conviction under Section 201 read with Section 34 IPC and the appeal filed by the complainant aggrieved by the acquittal of aforesaid two accused for the major charge of murder.

17. Learned counsel appearing for the appellants Sandeep @ Monu and Siti @ Seete would vehemently submit that there was virtually no

evidence to connect these accused to the crime. The evidence of PW2 Santra that she found accused Siti @ Seete in the company of accused Akash and deceased Ashish a day prior to the occurrence in front of her house is found to be a very weak piece of evidence. She also did not speak about the presence of accused Sandeep @ Monu at the time when some commotion was allegedly created by accused Akash. The call details spoken to by PW21, PW23 and PW24 had not been authenticated by the officials from the service provider. Even otherwise, the call details cannot establish the crime alleged as against those accused.

18. Learned counsel appearing for complainant Hukam Chand would submit that there had been motive for the murder. They were found present not only by PW2, but also by PW9 Pankaj Gaur at the scene of crime. Further, the fire arm used in the occurrence was recovered from the house of accused Sandeep @ Monu. Therefore, accused Sandeep @ Monu and Siti @ Seete should be convicted for the murder under Section 302 IPC as well.

19. Learned DAG, Haryana would submit that the trial Court has rightly convicted accused Sandeep @ Monu, Siti @ Seete under Section 201 read with Section 34 IPC.

20. We find that PW2 Santra had half-heartedly deposed about the presence of accused Akash and Siti alongwith deceased Ashish a day earlier to the occurrence in front of her house. Mere presence of accused Akash alongwith deceased Ashish in the street a day earlier to the occurrence would not implicate accused Siti in the crime. Even as per her evidence, the

deceased informed him that accused Akash proclaimed that he would insert a bullet in his body. She had not whispered anything about the presence of the other accused Sandeep @ Monu even on the previous day of occurrence. Thus, the above evidence of PW2 does not clinchingly implicate accused Sandeep @ Monu and Siti @ Seete.

21. Of course, PW1 Sumer Chand Gaur has spoken about the recovery of fire arm from the house of accused Sandeep @ Monu based on the disclosure statement suffered by accused Akash. The intention on the part of accused Sandeep @ Monu to screen the evidence by hiding the fire arm used by accused Aakash @ Dablu will have to be established by the prosecution. There is no evidence to establish the intention on the part of accused Sandeep @ Monu in hiding the weapon used in the crime. It cannot be ruled out that accused Sandeep being the friend of accused Akash would have received the fire arm given by his friend and kept it in his house.

22. Coming to the Sim card issued in the name of accused Sandeep Kumar and the call details spoken to by PW21, PW23 and PW24, we are of the considered view that the call details produced by PW21, PW23 and PW24 had not been authenticated by the authorized officer attached to the service provider concerned. Even otherwise, the evidence of PW21, PW23 and PW24 does not provide any incriminating circumstance to implicate accused Sandeep @ Monu and Siti @ Seete in the crime alleged against them.

23. In view of the above facts and circumstances, we are of the

considered view that there is virtually no evidence as against accused Sandeep @ Monu and Siti @ Seete not only for the major charge under Section 302 IPC, but also for the charge under Section 201 read with Section 34 IPC. Therefore, in our considered view, accused Sandeep @ Monu and Siti @ Seete are entitled to acquittal under Section 201 read with Section 34 IPC as well.

24. Though compensation was claimed by complainant Hukam Chand for the death of his son Ashish, there is no evidence adduced to establish the financial capacity of the accused to pay any compensation. Accused Akash was just 20 years old when the occurrence took place. When the financial position of the accused at this young age was not properly highlighted by the complainant, it would be a travesty of justice to award compensation as claimed by complainant Hukam Chand.

25. Let us now take up the appeal preferred by the main accused Akash who allegedly opened fire having accessed to the house of the deceased, in the aftermath of the threat he wielded, to cause the death of Ashish.

26. PW22 Dr. Avdesh had medico-legally examined injured Ashish. He had noted down two punctured wounds, one on the right side of the chest and another one on the vertex. There was also bleeding in the right ear of Ashish. PW22 had declared him as brought dead. PW19 Dr. Upender Kishore had conducted post mortem examination and noted down those two fire arm entry wounds. He had handed over two bullets extricated from the dead body of the deceased to PW17 SI Mohinder Singh, Police Station

Narela. In the opinion of PW19 those two fire arm injuries on vital part of the body of Ashish had caused cranio cerebral damage which culminated in his death. Therefore, we have no difficulty in concluding that Ashish had died due to homicidal violence.

27. The case is not based on ocular testimony. The prosecution has largely depended on the motive for the crime, the last seen theory, the recovery of fire arm from accused and the FSL report. Let us first take up the motive spoken to by PW2 Santra, PW3 Rajiv and PW9 Pankaj.

28. PW2 Santra had not fully supported the case of the prosecution. She had chosen to support partly the case of the prosecution. It is a well settled position of law that the evidence of a witness who turned hostile need not be discarded in toto. That portion of evidence which corroborates his or her original version before the police can very well be relied upon by the Court of Law.

29. PW3 Rajiv was a close friend of deceased Ashish. He had been to the hospital where injured Ashish was admitted for treatment. He had also accompanied PW8 and his relatives to the hospital where the dead body of Ashish was subjected to post mortem examination. He had also participated in the death ceremony of Ashish performed by PW8. In the above background, the evidence of PW3 who spoke about the motive, will have to be carefully analyzed.

30. Learned Sr.counsel appearing for the appellant would vehemently submit that PW3 Rajiv would not have received any telephonic message, as deposed by him, a day prior to the occurrence informing him of

the altercation the deceased had with accused Akash and the threat wielded by the accused.

31. We find that there is sufficient force in the submission made by learned Sr.counsel for the appellant. PW3 being the close chum of Ashish, would have definitely shared the apprehension in the mind of Ashish at the instance of accused to PW8 and his relatives at the earliest point of time. It is found that he had been interrogated only on 2.9.2007 by the investigating official. Had he been privy to such a threat message sent by accused to the deceased, he would have been virtually paraded by PW8 to the investigating official in order to strengthen the case as against the accused. In our view, the evidence of PW3 Rajiv is totally unworthy of acceptance.

32. Let us now take up the testimony of PW9 Pankaj who is the nephew of PW8. He had deposed that about 2 days prior to the occurrence, Ashish informed him that he had a dispute with accused Akash in connection with a wall. He also slapped accused for bringing a girl. Accused threatened him with dire consequences.

33. Learned Sr.counsel appearing for the appellant would vehemently attack the testimony of PW9 Pankaj on the ground that he was the most interested witness in this case. He would further submit that it is quite unbelievable that PW9 Pankaj had not shared about the information passed on by deceased Ashish to PW8 when PW8 suffered a statement before the police.

34. We find that the above submission made by learned Sr.counsel appearing for the appellant requires serious consideration. PW8 has

categorically deposed that PW9 Pankaj was alerted the moment PW8 saw his son with blood stains on his chest and ears. PW9 Pankaj had been to the hospital taking injured Ashish for treatment. He had been with PW8 throughout the initial proceedings conducted by the investigating official. Surprisingly, PW9 Pankaj had not shared any such information passed on by the deceased to PW8. The conduct of PW9 Pankaj is found quite abnormal. Therefore, it is totally unsafe to place any reliance upon his testimony, as rightly contended by learned Sr.counsel for the appellant. Therefore, we have no hesitation to reject the testimony of PW9 Pankaj as well.

35. PW2 Santra has deposed categorically that a day prior to the occurrence of murder, deceased Ashish informed her after parting company with accused Akash @ Dablu that Dablu was proclaiming that he would insert a bullet in his body. She had advised accused Akash not to utter such language. PW2 Santra had a propensity to support the case partly, taking departure from her original version before the investigating officer. That portion of the statement suffered by her originally before the police cannot be relied upon by the Court, as she had not chosen to support such a version during the course of trial. But, we find that there is no embargo for accepting the testimony of PW2 Santra as regards the threat extended by accused Aakash to deceased Ashish. In our view, she had withstood the pressure from the accused and come out with the truth, at least partly, that on the previous day deceased Ashish came out with a complaint to her as regards the threat wielded by accused Akash which culminated in her counselling to the accused. The above evidence of PW2 Santra clinchingly

establishes that accused Akash had infact disclosed his criminal mind openly. That apart, PW2 also has spoken about the dispute between Ashish and accused Akash as regards the wall. Therefore, in our considered view, the motive attributed to accused Akash stands established by the prosecution through PW2 Santra.

36. Let us now move on to the last seen theory projected by the prosecution through PW10 Nanak Chand. PW10 Nanak Chand has deposed that at the time of occurrence, he heard a sound similar to the sound of a cracker. He spotted accused Akash scaling the gate of the house of his brother Hukam Chand. The other two accused, namely, Sandeep and Siti who were waiting on a motorcycle gave a lift to accused Akash to disappear from the scene.

37. Learned Sr.counsel appearing for the appellant vehemently attacked the testimony of PW10 Nanak Chand on the ground that he would not have kept quiet till the evening of 19.8.2007 to share such a vital information with the investigating official, if at all he had witnessed such an occurrence in the house of PW8.

38. We find that PW10 Nanak Chand is none other than the brother of PW8. Had he heard such a sound during midnight, he would have exhibited his anxiety to probe into the impact of such a sound emanated from the house of PW8. Further, PW10 has a house nearer to the house of PW8. PW10 would have been immediately informed of the death of Ashish. A vital information kept close to the chest by PW10 for about 1½ days raises a doubt as to the veracity of the evidence of PW10. Therefore, we

find that the conduct of PW10 in not sharing the information with his brother is found to be imprudent. Therefore, it is unsafe to rely upon his testimony.

39. In the presence of PW1 Sumer Chand Gaur, the fire arm had been recovered on the basis of the disclosure statement suffered by accused. Learned Sr.counsel appearing for the appellant attacked the testimony of PW1 on the ground that he was closely related to the deceased. It is true that PW1 is the brother of PW8. If his testimony is found to be truthful, it is totally unjust to reject his testimony.

40. Only on the basis of the disclosure statement suffered by the accused, the fire arm was recovered in the presence of PW1. We do not doubt the case of the prosecution as regards the recovery of fire arm made by the investigating official in the presence of PW1.

41. An empty cartridge was recovered by the investigating official from the scene of occurrence. Yet another empty cartridge was collected by PW26 ASI Hawa Singh from PW10 who happened to find such an empty on 6.9.2007.

42. The recovery of empty by PW6 long after PW6 disassociated from the course of investigation was attacked by the defence. In our view, there is nothing wrong for PW26 ASI Hawa Singh who investigated the case earlier to recover an empty bullet from PW10 who handed it over to him.

43. As stated earlier, PW17 SI Mohinder Singh had collected two bullets from PW19 Dr.Upender Kishore who extricated the same from the dead body during the course of post mortem examination.

44. The clothes of the accused also had been recovered by the investigating official on the basis of the disclosure statement suffered by accused Akash.

45. The FSL report would go to establish that the bullets found on the dead body of Ashish had been fired from the fire arm recovered from accused and sent for examination. Blood stains also had been found on the dress recovered from the accused.

46. In our considered view, the above forensic evidence clinchingly establishes that the fire arm recovered at the instance of the accused based on his disclosure statement was used to murder deceased Ashish.

47. It was submitted by learned Sr.counsel appearing for the appellant that the prosecution failed to examine the investigating official or the Moharar Constable concerned to establish that the bullets recovered by PW17 were taken in custody for the purpose of sending the same to the FSL.

48. Of course, the prosecution failed to examine the Moharar Constable, who despatched the bullets recovered from the deceased to the FSL for examination. But the FSL report would disclose that the parcel containing bullets had been received intact with seal. The above lapse on the part of the prosecution, therefore, does not throw any doubt on the receipt of bullets recovered from the dead body for examination by FSL.

49. We find that the prosecution has established the motive harboured by accused Akash to murder Ashish through the testimony of PW2 Santra. In our considered view, The recovery of fire arm on the basis

of the disclosure statement suffered by accused Akash, the recovery of the blood stained clothes and the damning report of the FSL which connects squarely the fire arm recovered from accused Akash to the bullets unearthed from the dead body of Ashish establish beyond reasonable doubt that accused Akash having trespassed upon the house of PW8, pursuant to the threat wielded by him, committed the murder using the fire arm and made an attempt to screen the evidence by hiding the fire arm in the house of accused Sandeep @ Monu. The trial Court has rightly evaluated the evidence on record and come to a conclusion that accused Akash committed the above offences charged against the accused. We do not find any reason to interfere with the well considered judgement of the trial Court convicting the accused as stated supra.

50. Therefore, confirming the judgement of conviction and sentence passed by the trial Court against accused Akash, CRA-D-1173-DB of 2010 stands dismissed. CRA-D-466-DB of 2011 filed by complainant Hukam Chand also nstands dismissed. Accused Sandeep @ Monu and accused Siti @ Seete are acquitted of the charge under Section 201 read with Section 34 IPC. They are on bail. Their bail bonds/surety bonds stand discharged. Consequently, CRA-S-2758-SB of 2010 and CRA-S-2844-SB of 2010 are allowed.

(M. JEYAPPAUL)
JUDGE

February 26, 2015
Gulati

(DARSHAN SINGH)
JUDGE