

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I. Criminal Appeal D-28-DB of 2010
Date of Decision : February 20, 2015

Pardeep @ MonuAppellant
Vs.
State of HaryanaRespondent

II. Criminal Appeal D-628-DB of 2010

Bhoni @ NasibAppellant
Vs.
State of HaryanaRespondent

III. Criminal Appeal D-252-DB of 2010

Bablu @ ParveenAppellant
Vs.
State of HaryanaRespondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE DR. JUSTICE SHEKHER DHAWAN

Present : Mr. N.S. Shekhawat, Advocate
for appellant Pardeep @ Monu

Ms. Neha Gupta, Advocate for
Ms. Ritam Aggarwal, Advocate
for appellant Bhoni @ Nasib

Mr. Aman Pal, Advocate
for appellant Bablu @ Parveen

Mr. Randhir Singh, Additional Advocate General, Haryana.

T.P.S. MANN, J.

The aforementioned appellants, namely, Pardeep @ Monu,
Bhoni @ Nasib and Bablu @ Parveen, alongwith three others, namely, Raj

Kumar @ Raju, Safia and Lalu @ Fizu Khan were tried for committing offences punishable under Sections 302/34, 120-B and 216 IPC. Besides, Pardeep @ Monu and Bablu @ Parveen appellants were tried for committing offences punishable under Section 25 of the Arms Act. Vide judgment and order dated 4/7.12.2009 passed by Sessions Judge, Jhajjar, Pardeep @ Monu and Bhoni @ Nasib were convicted under Sections 302/34 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for six months. Pardeep @ Monu was also convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default of payment of fine, to undergo rigorous imprisonment for one month. Subsequently, vide judgment dated 9.2.2010, Sessions Judge, Jhajjar convicted Bablu @ Parveen under Sections 302/34 IPC and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for six months. He was also convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default of payment of fine, to undergo further rigorous imprisonment for one month. Substantive sentences of imprisonment awarded under Sections 302/34 IPC and Section 25 of the Arms Act to Pardeep @ Monu and Parveen @ Bablu were ordered to run concurrently.

As all the three appeals arise out of the same incident and the same FIR, they are being disposed of by a common judgment.

The facts leading to the present case are that Ashok Kumar son of Fateh Singh, resident of village Suhra had made statement before ASI Umed Singh, Incharge, Police Post, Industrial Area, Jhajjar at Badro Bridge on Gurgaon-Jhajjar Road on 6.4.2006 at 12.05 p.m. to the effect that about 7/8 months ago when he was serving as cleaner with Maruti Tralla in Gurgaon he had met one Bablu and they became friends. Bablu had opened a small cinema hall with the name of 'Dalal Theatre' in the area of Gurgaon City, which was managed by Bhoni @ Nasib, who belonged to his village. Another boy of village Dighal, reference is to Pardeep @ Monu accused, also worked with him as a helper. He further stated that he and his co-villager Sandeep had taken two killas of land for harvesting on contract basis. On that day, i.e. 6.4.2006 at about 6.30 a.m., he and Sandeep Singh were harvesting crops. At about 8.30 a.m. Bhoni @ Nasib, alongwith Bablu @ Parveen and their friend belonging to village Dighal, came there from the village on a scooter and parked the same on the road. Bhoni @ Nasib stated that Bablu and the boy belonging to village Dighal had come to the house of Pokhar in the evening and had taken meals on the shop of Sampuran Bania. As Bablu used to work as driver on the van of Sampuran for a long time and, therefore, he was friendly with Raju @ Raj Kumar. While talking, all of them were sitting on the dol (ridge). In the meantime, all those three persons became angry. Bhoni @ Nasib took out pistol from his dub and fired a shot hitting Sandeep in his waist. The complainant rushed to save Sandeep. Bhoni @ Nasib and Bablu caught hold of him while the boy belonging to village Dighal fired a shot on the forehead of Sandeep. After firing, all the three persons fled away towards the road where the scooter was lying parked and escaped on that scooter

towards Gurgaon-Jhajjar road. According to the complainant, the accused had been nursing grudge as some days ago, Sandeep had seen Raj Kumar @ Raju indulging in illicit relations with his sister. Upon which Sandeep had caused an injury on the head of Raj Kumar @ Raju. Accordingly, Raj Kumar @ Raju after calling Bablu and the boy of village Dighal had committed the murder. He further stated that Prem Devi wife of Gulab Singh, resident of the village had also reached the spot and witnessed the entire incident.

As statement made by complainant Ashok Kumar disclosed commission of cognizable offences, ASI Umed Singh prepared a ruqa and forwarded the statement of the complainant to Police Station, Jhajjar where on its basis, FIR No.110 dated 6.4.2006 under Sections 302, 120-B and 34 IPC and Section 25 of the Arms Act was registered at 1.15 p.m. Special report was, thereafter, handed over to a special messenger, who delivered the same to the Chief Judicial Magistrate, Jhajjar on the same day at 3.00 p.m.

During the investigation of the case, ASI Umed Singh alongwith the complainant went to the place of occurrence. He prepared rough site plan of the place of occurrence and lifted blood stained earth and two bullets. Inquest proceedings were conducted on the dead body of Sandeep. The dead body was, thereafter, sent to General Hospital Jhajjar for post-mortem. Thereafter, the investigation was taken over by SI Kaptan Singh, who took into possession the blood stained clothes of the deceased alongwith the post-mortem report. Accused Raj Kumar @ Raju was arrested in the case under Section 120-B IPC on 7.4.2006, whereas

accused Safia and Lalu were arrested on 8.4.2006 and 17.5.2006, respectively under Section 216 IPC. Police could not, however, arrest Bhoni @ Nasib, Pardeep @ Monu and Bablu @ Parveen. Accordingly, final report under Section 173 Cr.P.C. was submitted against Raj Kumar, Safia and Lalu. Accused Bhoni @ Nasib was arrested on 5.7.2006 and after completing the investigation against him, supplementary challan was also presented. Accused Pardeep @ Monu was arrested by ASI Raj Singh on 23.4.2007. Upon being interrogated, he suffered disclosure statement to the effect that he had kept concealed countrymade pistol in a rented room at Kolhapur (Maharashtra) and could get the same recovered. He also stated that he could point out the place of murder of Sandeep. Accordingly, he led the police party to the place of occurrence and pointed out the same. Accused Pardeep, however, retracted from his disclosure statement qua the place of concealment of the pistol and suffered another disclosure statement on 27.4.2007 to the effect that he had kept concealed the countrymade pistol in the bushes near the Government School, Dighal and could get the same recovered. Thereafter, he led the police party to the place of concealment and got recovered countrymade pistol of .315 bore alongwith one live cartridge from the designated place. The pistol and the cartridge were converted into a parcel and taken into possession by the police. Accused Bablu @ Parveen was arrested on 10.5.2007 by SI Jai Singh of CIA, Jhajjar and country made pistol of .315 bore in loaded condition was recovered from his possession. Rough sketch of the pistol was prepared. Ruqa was, thereafter, prepared by SI Jai Singh for registration of case under Section 25 of the Arms Act against accused Parveen @ Bablu. Accordingly, FIR No.190 dated 10.5.2007 under Section

25 of the Arms Act was registered at Police Station, Jhajjar. Accused Parveen @ Bablu was also arrested in the present case, i.e. FIR No.110 dated 6.4.2006, registered at Police Station, Jhajjar. During interrogation, Parveen @ Bablu suffered disclosure statement on 11.5.2007 to the effect that the pistol and the scooter used by him in the crime were kept concealed in Mudra (Gurjarat) and he could get the same recovered. He also disclosed that he could point out the place of occurrence. However, he retracted from his earlier disclosure statement and suffered another disclosure statement on 13.5.2007 to the effect that the pistol had already been recovered from him. Accused Parveen @ Bablu then led the police party to the place of occurrence on 14.5.2007 and demarcated the place of occurrence. After completion of investigation against accused Pardeep @ Monu and Parveen @ Bablu, second supplementary challan dated 8.7.2007 in the FIR No.110 was filed against them. Separate challan of FIR No.190 dated 10.5.2007 was also filed against accused Parveen @ Bablu in the Court of Chief Judicial Magistrate, Jhajjar where formal charge under Section 25 of the Arms Act was framed against him on 21.1.2008. Subsequently, the case was committed to the Court of Sessions to be tried with the main case.

The trial Court had framed charges under Sections 302/34 IPC against accused Bhoni @ Nasib, Pardeep @ Monu and Bablu @ Parveen. Charge under Section 120-B IPC was also framed against accused Raj Kumar, Nasib @ Bhoni, Pardeep and Parveen @ Bablu. Against accused Safia and Lalu, charge under Section 216 IPC only was framed. All the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as 22 witnesses.

PW1 Satbir Singh, uncle of deceased Sandeep deposed that he had identified the dead body of Sandeep in General Hospital, Jhajjar.

PW2 Dr. Kumud Sharma testified that she conducted post-mortem on the dead body of Sandeep on 6.4.2006. Dr. Aruna Sangwan was also with her at the time of post-mortem. She deposed that she noticed the following injuries on the dead body :-

- "1. Lacerated wound of 5 cm x 5 cm and 2.2 cms. Irregular situated on right frontal and temporal region, blackening was present. Margins were inverted. Singeing of hair was present around the wound. Underlying bone was fractured into multiple pieces. Brain matter was coming out. Bullet track was going backward and medially.
2. Exit wound large irregular, lacerated wound of 16 cms. x 6.5 cms. with everted margins and multiple pieces of bone and brain matter were present involving parietal and occipital regions.
3. Entry wound of 2 cms. x 1.5 cms. With inverted margins with irregular black spots in surrounding area of 7 cms. x 7 cms. Overlying clothes showed blackening, beginning with large irregular whole in baniyan and shirt and were blood stained situated in right side of back. In mid-scapular region, 2 cms. lateral to spine. On dissection, ribs were found fractured. 4th and 5th ribs with fracture of corresponding spines process fractured. Track was

going downwards, forward and medially passing through right pleura, right lung coming anteriorly through 5th and 6th rib fractured.

4. Exit wound 1.8 cms. x 1 cm. lacerated with everted margins situated 2 cms. lateral to mid line, and 5 cms. below and medial to right nipple."

Dr. Kumud Sharma also testified that the time that had elapsed between death and post-mortem was 12 hours whereas between injury and death was within minutes. She further opined that the cause of death of Sandeep was head injury and haemorrhage and shock. Injuries were ante-mortem and sufficient to cause death in ordinary course of nature.

PW3 Constable Satyawan testified that he had carried the special report of FIR No.110 dated 6.4.2006 to the Ilqa Magistrate.

PW4 Satish Chander, Patwari deposed that he had prepared scaled site plan of the place of occurrence at the instance of ASI Umed Singh and on the demarcation of Prem Devi.

PW5 EHC Dhan Singh deposed that he alongwith ASI Umed Singh had taken the dead body of Sandeep to General Hospital, Jhajjar for post-mortem.

PW6 EASI Suresh Kumar deposed that he had taken two sealed parcels on 25.4.2006 for depositing the same in the Forensic Science Laboratory.

PW7 SI Kaptan Singh has deposed that on 6.4.2006, he investigated the case. He had taken into possession the clothes of the

deceased, the post-mortem report and sample seal. He also stated that he had prepared report under Section 173 Cr.P.C. after completion of investigation against accused Raj Kumar, Safia and Lalu.

PW8 Rakesh Kumar testified that accused Safia, who was father of accused Lalu and Bhoni @ Nasib, used to give shelter to the criminals.

PW9 Prem Devi deposed that she was Bhabhi (sister-in-law) of deceased Sandeep. She also stated that Sandeep and Ashok Kumar took two acres of wheat crop of Siri Bhagwan for harvesting. On 6.4.2006, both of them were harvesting the wheat crop. She went to the fields at 8.30 a.m. to provide meals to Sandeep. She further stated that accused Bhoni @ Nasib and two others were present there in the fields and were talking with her Devar Sandeep and Ashok Kumar. In the meantime, they started quarreling. Accused Bhoni @ Nasib took out a pistol from his dub and fired a shot on the back of Sandeep. Thereafter, Bablu r/o village Khuddan and Bhoni caught hold of Ashok Kumar. She further stated that the third companion of accused Bhoni @ Nasib and Bablu, whose name was later on revealed as Pardeep, fired a shot upon Sandeep which hit on the right side of his head. Thereafter, all the three accused persons fled away with their respective weapons on their scooter which was lying parked on the road. She also stated that Sandeep died at the spot. Police came at the spot at about 1.30 p.m., lifted two bullets and blood stained earth from the spot after putting the same in separate sealed parcels, sealed with seal with 'US' vide memo Ex.P11 which was signed by her and Ashok Kumar and the seal was handed over to her. She identified all the three accused in the Court.

PW10 ASI Dharambir Singh deposed that on receipt of ruqa from ASI Jai Singh, he had registered formal FIR No.190 dated 10.5.2007 under Section 25 of the Arms Act and dispatched the special report to the Ilaqa Magistrate immediately.

PW11 Kanwar Singh, Reader to the District Magistrate, Jhajjar proved the sanction order for prosecuting Bablu @ Parveen and Pardeep @ Monu under Section 25 of the Arms Act.

PW12 EHC Naresh Kumar deposed that he had carried parcel of pistol, allegedly recovered from accused Bablu @ Parveen to the Forensic Science Laboratory on 5.7.2007 and deposited it on the same day.

PW13 EHC Kuldip Singh testified that since 3.3.2007, he was the MHC of Police Station, Jhajjar. On 10.5.2007, ASI Jai Singh handed over the parcel containing pistol allegedly recovered from accused Parveen @ Bablu, which he had kept in the Malkhana. He further stated that he handed over the parcel of the aforementioned pistol to PW12 EHC Naresh Kumar on 5.7.2007 to be deposited in the Forensic Science Laboratory.

PW14 SI Hari Singh testified that on 23.6.2007 when he was posted as Station House Officer, he had prepared report under Section 173 Cr.P.C. in the case related to FIR No.190 dated 10.5.2007 against accused Parveen @ Bablu.

PW15 ASI Braham Parkash testified about accused Pardeep @ Monu suffering disclosure statement and, thereafter, getting a pistol pursuant to the same recovered from the place of concealment. He also

deposed about the arrest of Parveen @ Bablu and recovery of countrymade pistol of .315 bore from his personal search.

Pw16 ASI Raj Kumar was the Investigating Officer of the present case. He fully supported the version of PW15 ASI Braham Parkash qua the investigating of the case on 27.4.2007.

PW17 ASI Vijay Singh, who was Moharrir Malkhana in Police Station Jhajjar on 6.4.2006 deposed about keeping the case property in the Malkhana upto 24.4.2006 and, thereafter, handing over the same to Constable Suraj to be taken to the Forensic Science Laboratory.

PW18 SI Jai Singh, who is the Investigating Officer of FIR No.190 dated 10.5.2007 against accused Parveen @ Bablu, fully supported the version of PW15 ASI Braham Parkash qua the arrest of accused Parveen @ Bablu and recovery of pistol from him. He also added that he had sent ruqa on the basis of which FIR No.190 dated 10.5.2007 under Section 25 of the Arms Act was registered against accused Parveen @ Bablu. He further deposed about obtaining sanction for launching prosecution against accused Parveen @ Bablu. He also deposed that on 5.7.2006 accused Bhoni @ Nasib was arrested by Inspector Swanter Kumar. He also deposed that on 23.4.2007 accused Pardeep was arrested and suffered disclosure statement, pursuant to which he pointed out the place of occurrence.

PW 19 ASI Umed Singh, who was the Investigating Officer of FIR No.110 dated 6.4.2006 testified about complainant Ashok Kumar meeting him and making his statement on the basis of which the FIR was

registered. He also deposed about preparing rough site plan of the place of occurrence and lifting of blood stained earth and bullets from the place of occurrence. He also stated that he prepared inquest report on the dead body of Sandeep and sent it thereafter for post-mortem. He further stated that accused Raj Kumar, Safia and Lalu were arrested by him on 7.4.2006, 8.4.2006 and 17.5.2006, respectively.

PW20 Gulab Singh, who is brother of deceased Sandeep and husband of PW9 Prem Devi testified that he was serving in BSF and on 6.4.2006, he received telephonic message regarding the murder of his brother Sandeep. He came to his village after 5 days. At that time, no member of the family of accused Safia was present in the village. Lateron, he came to know that the persons who committed the murder of his brother used to visit the house of Safia.

PW21 ASI Vijender Pal had registered formal FIR No.110 dated 6.4.2006 on receipt of ruqa from ASI Umed Singh.

PW22 Constable Neeraj Kumar deposed about taking the case property to the Forensic Science Laboratory.

Having heard learned counsel for the appellants and on going through the record with their able assistance, this Court finds that the occurrence in question had taken place on 6.4.2006 at about 8.30 a.m. In the said occurrence Sandeep had received fire arm injuries at the hands of Bhoni @ Nasib. When complainant Ashok Kumar tried to rescue Sandeep, he was caught hold of by Bhoni @ Nasib and Bablu @ Parveen. In the meantime, Pardeep @ Monu, fired a shot from his countrymade pistol

which hit Sandeep on the right side of his forehead. The occurrence was witnessed by complainant Ashok Kumar as well as by PW9 Prem Devi, Bhabhi (sister-in-law) of deceased Sandeep. Complainant Ashok Kumar died during the trial and, therefore, could not be examined by the prosecution in support of its case. Therefore, we are left with the testimony of PW9 Prem Devi in support of the prosecution case. While in the witness box, she stated that deceased Sandeep was her devar (brother-in-law). The deceased and Ashok Kumar had taken two acres of land for the purpose of harvesting. On 6.4.2006, the deceased as well as Sandeep were harvesting the wheat crop. She had gone on that day at about 8.30 a.m. to the field carrying meals for them. Accused Bhoni @ Nasib alongwith two others was talking with the deceased when she reached there. Meanwhile, they started quarrelling and she saw that accused Bhoni @ Nasib had taken pistol from his dub and fired at Sandeep at his back. Bablu and Bhoni, thereafter, caught hold of Ashok Kumar. This was followed by Pardeep firing upon Sandeep, hitting on the right side of his forehead. All the three accused, thereafter, ran away with their respective weapons on a scooter which was already parked on the road. She identified all the three accused in the Court. She also deposed that Sandeep had died at the spot. The police reached the spot at 1.30 p.m. and lifted two bullets and blood stained earth from the spot. In her cross-examination, she stated that the occurrence had taken place after 10 minutes of her arrival at the spot. She further deposed that Sandeep had not taken his meals by that time. She further deposed that the bullets had hit Sandeep from a short distance. She had heard the firing of three shots but she was not sure about the actual number. She finally deposed that she

had not named accused Pardeep @ Monu in her statement before the police nor had given his physical description to the police. She went on to add that after his arrest, he was shown to her by the police and she identified him. She further stated that she had not gone to the Police Station, rather she had identified and seen him in the field.

It is true that though she did not support the prosecution case regarding the motive about Raj Kumar @ Raju having illicit relations with the sister of Sandeep or that Sandeep had inflicted injury on the person of Raju yet the fact remains that the presence of PW9 Prem Devi at the time of the occurrence stands fully established. Her testimony is corroborated by the medical evidence in the shape of testimony of PW2 Dr. Kumud Sharma, who had conducted post-mortem on the dead body of Sandeep and found as many as four injuries. Two of those injuries were entry wounds while the other two were exit wounds. Both the entry wounds were from a close range as is clear from the blackening which was found around those wounds. Even otherwise, the defence has not been able to shatter her testimony or brought on record any material from which it could be suggested that she was not present at the time of the occurrence.

During investigation of the case, two fired bullets were found present at the spot. They were taken into possession by the police. Further, Parveen Kumar had got recovered a countrymade pistol which was marked as W/1 in the Forensic Science Laboratory, whereas another countrymade pistol marked W/2 was recovered from Pardeep @ Monu. From a perusal of report Ex.P10 of the Forensic Science Laboratory it is made out that fired bullet marked BC/2 had been fired from countrymade

pistol mark W/1. However, no definite opinion could be formed regarding the other fired bullet marked BC/1 in respect of countrymade pistols W/1 and W/2 due to lack of sufficient comparable individual characteristic marks. However, both the countrymade pistols mark W/1 and W/2 were found chambered for .315" cartridges and were fire arms and firing mechanisms found in working order. Thus, scientific evidence in the shape of the aforesaid report Ex.P10 of Forensic Science Laboratory further strengthens the prosecution case.

In view of the above, no case is made out for any interference in the impugned judgment of conviction and sentence passed by the trial Court. All the appeals, i.e. Criminal Appeal D-28-DB of 2010, Criminal Appeal D-628-DB of 2010 and Criminal Appeal D-252-DB of 2010 are without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

February 20, 2015
satish

(SHEKHER DHAWAN)
JUDGE