

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Criminal Appeal No. 2079-SB of 2003

Date of Decision: September 2, 2015

Irfan and another

...Appellants

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.K.S.Malik, Advocate,
for the appellants.

Mr.Pritam Saini, Addl.AG, Haryana

Amol Rattan Singh, J.

The appellants seek setting aside of the judgment of the learned Additional Sessions Judge, Panipat, dated 08.10.2003 and order dated 10.10.2003, holding them guilty of the offence punishable under Section 25 of Arms Act and thereafter, sentencing them to rigorous imprisonment for a period of 4 years each, as also imposing a fine of Rs.5,000/- each, in default of payment of which, the defaulter shall undergo further rigorous imprisonment of three months.

2. Criminal proceedings were initiated on a complaint filed by one Amjad. On 03.03.1998, SI/SHO Krishan Pal, alongwith other police officials, was present at Shiv Mandir Chowk, Madlauda, where complainant Amjad met him and got recorded his statement to the effect that Disha son of Shunda @ Mangta and Anish son of Majid, belong to his village Tanda,

and were dealing in sale and purchase of cattle.

On 2.03.1998 at about 6:00 AM, Disha had told him (complainant), Sheokat Ali and Anish to go to village Atawala, where Sanshis' were living and to purchase cattle from them and then Disha would meet them at Bus-Stand Adiyana.

The complainant further stated that he alongwith Sheokat Ali and Anish, started in the morning at 7:00 AM and reached village Atawala at about 1:00 PM and purchased 12 buffalo calves from there and brought the said calves to village Adiyana, where Disha and Shahzad met them and both of them purchased a buffalo and two buffalo calves from village Adiyana. All of them tied their cattle in a vacant place. The complaint further stated that after taking meals, they all slept there at about 11:00 PM.

As per the complainant, at about 2:00 AM, he heard the noise of two fire shots which awakened him. They noticed that two persons were running away, but on account of darkness, they could not identify them, or see what they were wearing. In the meantime, they noticed that blood was oozing out from the left side of the neck of Disha due to a fire shot, and that he had died at the spot. Anish had also sustained a fire shot injury on his head. They raised a hue and cry after about five minutes and thereafter, 5-7 people from the village came there and they told them that the murder had been committed by some unknown persons. Thereafter, Hanish was shifted to the Civil Hospital, Panipat, in a vehicle arranged by the villagers.

As per the complaint, they enquired from Hanish (as to who had shot him), but he was unable to speak.

Thereupon, leaving Sheokat Ali and the watchman of the village near the dead body of Disha, they proceeded towards the Police

Station, and on the way, they were met by the police party.

As per the complaint, as also recorded by the police, the murder was committed by some unknown persons.

The complainant therefore sought that action be taken by the police on his statement Ex.PE/4, which was sent to the police station.

Thereupon, FIR no.65 was lodged at Police Station Madlauda, dated 03.03.1998, Ex.PE/1, making out offences punishable under Sections 307/302/34 IPC and 25/54/59 of Arms Act.

3. The first appellant was arrested on 28.05.1999 in connection with the aforesaid FIR, when he already stood arrested with Police Station Samalkha (also District Panipat) in connection with another FIR registered against him for an offence punishable under Section 460 IPC. During investigation, he is stated to have got recovered a pistol of .12 bore calibre, alongwith one live cartridge. After investigation, a report under Section 173 Cr.P.C. was filed against him and the case was committed to the Court of Sessions with the following charge framed on 12.02.2000, against appellant no.1:-

“That on 3.3.98, in the area of village Adiyana, P.S. Matlauda, you Irphan alongwith your co-accused Nafish acting in furtherance of your common intention did commit murder by intentionally causing the death of Disha and Anish and thereby committed an offence punishable under section 302 IPC read with section 34 IPC.

Secondly, on 30.5.99, in the area of village Khozkipur, P.S. Samalkha, you Irphan was found in possession of one country made pistol, 12 Bore with one live cartridge without any licence or permit and thereby committed an offence punishable under section 25 of Arms Act and within the cognizance of this court.”

Thus, with Hanish also having died, he was charged with the offences of having committed the murders, alongwith his co-accused, of both the deceased.

Subsequently, appellant no.2 was arrested on 17.10.1999 in connection with the above numbered FIR, in the present case, after seeking permission from the Court of the learned JMIC, Panipat. He was interrogated and he is stated to have got recovered another pistol and a live cartridge. A supplementary report under Section 173 (8) Cr.P.C. was filed and the case committed to the Court of Sessions on 10.12.1999. However, on 12.02.2000, the charge reproduced hereinabove, was only framed against appellant no.1, though no reason for the same is available on the record. A perusal of the trial Court record shows that appellant no.2, Nafis, was released on bail on 03.03.2001, consequent upon an order passed by this Court on 18.10.2000. However, he seems to have been in judicial custody thereafter, in connection with other case in District Muzaffar Nagar (UP).

Eventually, appellant no.2 was formally charged for an offence punishable under Section 25 of the Arms Act, by the trial Court, on 30.09.2003. The said charge is as follows:-

“That on 19.10.1999, in the area of village Bilaspur, you were found in possession of one country made pistol .12 bore and a live cartridge of the same bore, without any licence, which is within the cognizance of this court.”

4. On conclusion of the trial, the learned Additional Sessions Judge, Panipat, not having found the charge under Section 302 IPC to have been proved, had acquitted the appellants of the said charge, but had found them guilty of the charge framed under the Arms Act and had sentenced them, as shown earlier. (No order could be found, though, charging appellant

no.2 of having committed an offence under Section 302. However, nothing is being said on that, because there is no challenge to the acquittal, or any order, relating to that offence).

This appeal is, thus, only in respect of the conviction and sentencing under the Arms Act.

5. Therefore, the relevant evidence that is to be seen by this Court, is only as is relatable to the recovery of the .12 bore calibre pistols from the appellants.

Hence, that part of the testimony of the PWs, as is not in any manner relatable to the alleged recovery of the .12 bore pistols alleged to have been recovered from the appellants, would not be referred to in detail by this Court, while considering this appeal.

6. PW1 was the complainant, Hargian Singh son of Girvar, aged 59 years, resident of village Adiyana, who deposed as per his complaint, including the hearing of fire shots and thereafter, seeing Disha dead and Hanish injured.

However, he did not testify to having seen anybody fleeing from the spot, or with regard to any weapon, either found at the spot or in the hands of anybody.

7. PW2 Dr.V.K.Govila, deposed that on 05.03.1998 he was posted as Medical Officer at General Hospital, Rohtak and that he conducted the post mortem examination of Hanish.

His testimony is obviously only with regard to the wounds on the body of Hanish and the kind of weapon and projectile with which they were made (fire arm, with the wounds containing pellets). Again, with the appellants having been acquitted of the charge under Section 302, the testimony is not in any manner relatable to the recovery of any fire arm from

the appellants.

The same would apply to PW3, Dr. Arun Sehgal, who deposed that on 03.03.1998, at 4:00 AM, he medically examined Hanish and found a wound on his scalp and further testified that Hanish was unfit to make a statement.

Again, PW4 was Dr. S.K.Gupta, who conducted the post mortem examination on the body of deceased Disha, with punctured wounds found on his body too, with metallic pieces inside.

8. PW5 was Sheokat Ali son of Sharif, aged 18 years and a labourer by profession, resident of village Tanda, falling in Police Station Chhaproli, District Bagpat (U.P.). He testified to the occurrence (including the hearing of gun shots) and also stated that he saw two persons running away from the spot but was unable to identify them. This witness also did not make any reference to any fire arm in the hands of either of those who were seen running away, nor of any fire arm recovered, from the spot or from the appellants.

9. PW6 HC Jai Bhagwan, was a formal witness of the receipt of the "ruqa", Ex.PE, from SI Krishan Pal, through Constable Mohinder Singh, and the recording of the FIR, Ex.PE/1.

10. HC Jai Singh was PW7, who testified that on 28.05.1999 he was posted with CIA Staff at Panipat and, on that day, he was joined by Inspector Ramesh Kumar in the investigation of this case.

This witness stated that appellant no.1, Irfan, was arrested by Inspector Ramesh Kumar after he (Irfan) was initially arrested by the SHO, Police Station, Samalkha in a case registered for the commission of an offence under Section 460 of the IPC.

On the day that Inspector Ramesh Kumar arrested him (appellant no.1), he was interrogated and made a disclosure statement, as per PW7, that he had kept the pistol used in the present case, in village Balla Majra, at the house of his in-laws. He also offered to get the same recovered; however, though the statement was reduced into writing (Ex.PF), attested by PW7 and one Constable Satyawan, as also the accused, no recovery was effected.

Thereafter, the witness further testified that on 30.05.1999, Irfan was again interrogated by Inspector Ramesh Kumar, in the presence of one Rishipal and this witness (PW7-HC Jai Singh), when he again, allegedly, made a disclosure statement that on the night of 2/3.03.1998, he alongwith Nafis (appellant no.2), had murdered Disha and Hanish in village Adiyana, while they were sleeping.

Appellant no.1 is stated to have further disclosed during his interrogation, that he had kept concealed one pistol and one cartridge in the Jungle near village Khojkipur and could get it recovered. His statement, Ex.PG, was recorded, again attested to by the aforesaid Rishipal and PW7 and also signed by the accused. Thereafter, appellant no.1 is stated to have led the police party to the place and got recovered one .12 bore pistol, alongwith one live cartridge, wrapped in a polythene, lying buried under the earth. The witness further testified that appellant no.1 did not possess any licence for the pistol.

A sketch of the pistol, Ex.PG/1, is stated to have been made and the pistol and cartridge taken into possession, vide memo, Ex.PG/2. PW7 testified to having attested both the said documents, alongwith Rishipal.

Thereafter, the testimony further reads, that the accused also led

the police party to village Adiyana in the “Ghair” of Randhir Singh and pointed to the place where the murders of Hanish and Disha were committed. A memo, Ex.PG/3, is stated to have been prepared to that effect, also attested to by PW7 and Rishipal.

On cross-examination, PW7 stated that they had gone to the place of recovery on 30.05.1999 in a private vehicle, which was a jeep but the registration number of which he did not remember. He further stated that Rishipal (Sarpanch) and two constables also accompanied them and that the time was about 10:00 AM.

On further cross-examination, PW7 stated that the place of recovery was on the Eastern side of village Khojkipur, at a distance of about 2 kms from the village.

He further stated that he had not taken the Sarpanch of the village or any other person from there as witnesses, as they already had Rishipal with them. He then stated that there were “Kikar” trees around the place of recovery and that further ahead, the road went to village Tanda.

He next stated that the pistol and cartridge were got recovered by the accused “from by the side of the path” leading to village Tanda but no other public person was present except the persons accompanying the police party.

PW7 further stated that one Phurkan was not arrested by him in this case and he did not know if he was ever arrested by any other police official (Phurkan is stated to be a brother of Irfan-appellant no.1, by PW11, Inspector Ramesh Kumar). PW7 also did not remember the FIR number of the case registered against appellant no.1 at Police Station, Samalkha, pursuant to which the said appellant was arrested, but he stated that it was a

case registered under section 460 IPC.

The witness stated that the accused had himself dug out the pistol and the cartridge from beneath the earth, about 1 ft. deep.

Thereafter, they went to village Adiyana, reaching there about 12:00 noon at the “Ghair” of Randhir Singh which had a boundary wall of 2 to 2½ ft., which was in a dilapidated condition. He stated that it was an open “Ghair” with no construction or any tree. The “Ghair” was stated to be on the Western side of the village.

Of course, the witness denied that no recovery was effected in his presence.

11. The next witness, PW8, was ASI Ashok Kumar who deposed that in March, 1998, he was posted at Police Station Madlauda. This witness testified with regard to seeking the opinion of the doctor about the condition of Hanish for making a statement and with regard to Hanish having died, the post mortem examination etc.

The cross-examination was also with regard to the post mortem examination and the recovery of pellets from the body.

12. PW9 was the Reader to the District Magistrate, Panipat, who identified the signatures of the District Magistrate on the sanction order passed under Section 39 of the Arms Act, to prosecute appellant no.1, under Section 25 of the said Act. Later, this witness also subsequently appeared as PW22, in his capacity as Deputy Superintendent in the office of District Magistrate, Panipat, and identified the signatures of the District magistrate on the sanction order, Ex.PBB, to prosecute appellant no.2 under Section 25 of the Arms Act .

13. PW10 was Constable Rajesh Kumar, who deposed that on

07.08.1999 he was posted as Draftsman in the office of Superintendent of Police, Panipat and that he had prepared the site plan, Ex.PK, of the “Ghair” of Randhir Singh.

14. PW11 was Inspector Ramesh Kumar (retired on the date when he testified). He stated that on 28.05.1999, he was posted as Inspector CIA Staff, Panipat. Appellant no.1 was arrested in case FIR No.408 of 1992, by the police of Police Station Samalkha, for an offence punishable under Section 460 IPC and that, after receiving that information, he (PW4) went to the said police station and arrested appellant no.1 in connection with the case registered at Police Station Madlauda (for the offences punishable under Sections 302 IPC and Section 25 of the Arms Act).

He further testified that during interrogation, Irfan made a disclosure statement Ex.PF, “*inter-alia* stating” that after he had committed the crime, he concealed the country made pistol at his in-laws' house in Utter Pradesh and had offered to get it recovered. Thereafter, the accused was produced before the Illaqa Magistrate and police remand obtained up to 30.05.1999 and on that date, he made another disclosure statement, Ex.PG, to the effect that he had kept the country made pistol concealed in the jungle of village Khojkipur. Thereafter, this witness also testified to the recovery of the weapon and cartridge having been made from the spot after digging out the earth, wrapped in the polythene.

He also testified with regard to the attestation of the recovery memo, Ex.PG/1 by Rishipal and HC Jai Singh. He identified the pistol and the cartridge (removed from a sealed parcel, in the trial Court), to be the same as were got recovered by appellant no.1.

The last part of the examination-in-chief of this witness is with

regard to identification of the place of alleged murders by the appellant, as also testified by HC Jai Singh (PW7).

During cross-examination, this witness stated that the cartridge, Ex.P14, was not sealed by him; that he received a VT message from Police Station Samalkha about appellant no.1 being in custody there. He denied having investigated the case on the basis of the statement of appellant no.1 implicating his brother Phurkan. He then said that he came to know on 30.05.1999 that the said statement of appellant no.1 was false.

The witness further stated that he did not go to the house of the in-laws of appellant no.1, where he had earlier disclosed that he had kept concealed the country made pistol.

He next described Rishipal to be an independent witness who came alongwith him (PW11) and HC Jai Singh, on 30.05.1999, to the place of recovery of the weapon.

This witness then testified that the vehicle that was taken by him "might be a jeep". He stated that they had parked the jeep at a distance of about one furlong from the place of recovery, which, he stated to be towards the river Yamuna, east of the village, at a distance of about 1 to 1½ km. He denied that the recovery was made across River Yamuna, though the river bed was visible at some distance from the said place.

PW11 thus gave the distance of the place of recovery from the road/"Rasta" where he had parked the jeep, to be about one furlong (as opposed to PW7 who had said that the place was along the road). However, he also stated, like PW7, that the pistol was hidden about one ft. under the earth. PW11 further stated that proceedings were conducted on the spot and that he had a measuring tape with him, but no other person from the public

was summoned as a witness. While affirming that the pistol was found wrapped in a polythene, he denied the suggestion that it was, in fact, recovered from under the Yamuna bed and that the place falls under the Yamuna river in the rainy season.

15. PW12 was one Amjad son of Mehardeen, aged about 25 years, stated to be an agriculturist of village Pathargarh, District Panipat. This witness having denied knowing anything about the case, in his examination-in-chief and having come to Court only because of the summons issued to him, he was declared hostile and cross-examined by the Public Prosecutor.

In his cross-examination, he testified to the deceased having asked Sheokat and Hanish to go and buy cattle etc. and also with regard to him being at the place where the murder took place at night and having heard the sound of two gun shots at about 2:00 AM.

Again, this witness said nothing about any weapon or of anyone running away from the spot.

16. PW13 was Rishipal, the alleged witness to the recovery of the weapon, aged about 37 years and stated to be an agriculturist, resident of village Sanauli Kalan of District Panipat. He, again, denied ever having seen anything. He stated that police officials had obtained his signatures on 2-3 papers about 6 years ago (from the date of his deposition on 17.05.2002).

He too was declared hostile and cross-examined by the learned Public Prosecutor. He, however, denied having made the statement, Ex.PG, or having stated before the police that the appellants, Irfan and Nafis, had committed the murder of Disha and Hanish, (though he was confronted with the said statement, Ex.PQ). He also denied any disclosure statement having

been made in his presence, leading to the recovery of the pistol, upon which he was again confronted with the statement. However, he again stated during cross-examination that these signatures were obtained by the police on blank papers.

17. PW14 was Constable Satyawar of the CIA Staff, Panipat, who testified to having joined the investigation, alongwith HC Jai Singh, who he stated had interrogated appellant no.1 in his presence and further stated that the said appellant had disclosed that they had old enmity. However, the witness did not give the name of the person with whom, allegedly, Irfan had stated that he had enmity.

PW14 further stated that Irfan had disclosed that he, alongwith his brother Phurkan, had shot someone. Again, the witness did not disclose the name, upon which he was declared to be hostile and cross-examined by the Public Prosecutor.

In cross-examination, he admitted to be correct that the appellant no.1 was interrogated by Inspector Ramesh Kumar (PW11) in his presence, alongwith HC Jai Singh and that appellant no.1 had disclosed that he alongwith his brother Phurkan had committed the murder of Hanish and Disha, inside a "Ghair" of village Adiyana.

During cross-examination, he then stated with regard to the disclosure made by the first appellant, of the weapon, and reduction of the disclosure statement into writing, Ex.PF, which the witness attested to with his signatures, alongwith those of the other witnesses.

On cross-examination by the defence counsel, PW14 stated that the interrogation was conducted on 28.05.1999 and that Irfan had disclosed about having murdered one Sunda and another victim, whose name he

(PW14) could not recall. He also did not recall the name of the owner of the “Ghair”.

18. SI Krishan Pal appeared as PW15 and deposed that on 03.03.1998 he was posted as SHO, Police Station Madlauda and, alongwith HC Rambir, Constable Suresh etc., was present at Shiv Mandir Chowk, Madlauda, where Amjad son of Mehardeen, resident of Tanda and Hargian Singh, “Up-sarpanch”, resident of village Adiyana met him and that Amjad made a statement, Ex.PE, which, after endorsing (vide Ex.PE/4), he sent to the Police Station, through Constable Mahinder Singh, for recording the FIR.

Thereafter, the testimony of this witness is to the effect that he went to the place of occurrence in the company of the aforesaid two persons, made a site plan, lifted blood stained earth, recorded the statements of people present there etc.

The next part of the testimony is with regard to searching for the accused, being handing over a vial of pellets by a Constable, who had been handed over the said vial by the doctor who conducted the post mortem examination, etc.

The cross-examination of PW15 is also, naturally, with regard to his actions at the time of recording of the complaint and subsequent immediate investigation, at the scene of crime.

He also, is not seen to be concerned with the recovery of the weapons.

19. PW16 was SI Jai Parkash, who testified that he was posted as SHO, Police Station Madlauda on 19.08.1999 and had taken up the investigation of the case, recorded the statements of the 'Moharrar' Head

Constable and a Constable, under Section 161 Cr.P.C., on 20.08.1999 and that he had prepared the report under Section 173 Cr.P.C.

20. PW17 HC Bhudev Singh, deposed that on 19.10.1999, he was posted at Police Station Madlauda and on that day, appellant no.2, Nafis, was arrested by ASI Mahinder Singh and that Nafis had led the police party to the place in village Adiyana, where the offence had been committed. A memo, Ex.PQ, was prepared, as per this witness, at the spot.

He further testified that on the same day, i.e. on 19.10.1999, appellant no.2 led the police party to the place that he had disclosed and got recovered a country made pistol of .12 bore, alongwith a live cartridge, from some bushes near the Yamuna Bandh, in the area of village Bilaspur. ASI Mahinder Singh is stated, by this witness, to have prepared a rough sketch of the pistol, Ex.PR, which was put in a parcel and sealed with the seal impression "MS". He then took the pistol and cartridge into possession vide recovery memo, Ex.PS. Both these memos are stated to have been attested by this witness, i.e. PW17 and one Mangta.

In his cross-examination, the witness did not remember whether any public person was present at the time of recovery or not, but stated that they were in a private vehicle, i.e. a Jeep, the number of which he did not remember. However, he stated that the Jeep had been taken from Madlauda and that the recovery was effected at about 5:00 PM and further, that the recovery proceedings took about 20-25 minutes.

He could not give the distance between the Yamuna river and the place of recovery but stated that it was made from a jungle and that the Jeep was parked at the Yamuna Ghat, from where they had gone on foot for five minutes, to the place where the pistol was recovered.

He next stated in his cross-examination, that ASI Mahinder Singh tried to join some persons from village Bilaspur in the investigation, but none was ready; however, he could not give their names. He further stated that no action was taken against them.

The pistol is stated to have been buried about 1 ft. deep and is also stated to have been wrapped in a polythene, though the witness could not give the colour of the polythene.

PW17 further stated that there was no mark of identification on the pistol and that they had returned to the Police Station at about 8:00 PM, directly from the spot.

21. Constable Virender Singh testified as PW18, that on 17.10.1999, he was posted at Police Station Madlauda and that ASI Mahinder Singh arrested appellant no.2 on that day and interrogated him in his presence, as also that of Constable Sanjay.

This witness stated that appellant no.2, Nafis, made a disclosure statement, Ex.PT, with regard to having concealed a pistol and a cartridge in “Kikar” bushes near village Bilaspur on the Yamuna embankment, after wrapping the same in a polythene.

The witness further stated that the statement was thumb marked by the accused and signed by him (PW18) and Constable Sanjay. The statement of this witness is also stated to have been recorded by the ASI.

In cross-examination, he stated that the disclosure statement was recorded in the Court of Shri N.K. Singhal, JMIC, Panipat, and that “we were outside the Court room”.

He gave the names of persons present there as ASI Mahinder Singh, Constable Sanjay and himself (PW18), alongwith the accused. He

further stated in cross-examination that he had come alongwith ASI Mahinder Singh to the Court Complex but was not told about the purpose of going there.

22. PW19 was SI Mahinder Singh who deposed that on 17.10.1999 he was posted as an ASI at Police Station Madlauda and on that day, he alongwith Constables Virender and Sanjay, had gone to the Court of Shri N.K.Singhal, JMIC, Panipat and that police officials of Utter Pradesh had produced appellant no.2, Nafis, in the Court and that after taking permission of the Court, he (PW19) had made the arrest of appellant no.2 and had interrogated him, after which he suffered a disclosure statement that he had kept concealed a pistol of .12 bore and a live cartridge in the “Kikar” bushes near village Bilaspur and had offered to get the same recovered.

This witness also stated that the said disclosure statement was Ex.PT and thumb marked by the accused and signed by Constables Virender and Sanjay.

He further testified that on 19.10.1999, he was taking the accused (appellant no.2-Nafis) alongwith the Constable Bhudev Singh, in a private Jeep and on the gate of the Police Station, Mangta “PW” met them and was taken alongwith them to the place of occurrence, where he (PW19) prepared a site plan, Ex.PQ, thumb marked by the accused and attested to by Mangta and Constable Bhudev Singh.

Thereafter, as per this witness also, appellant no.2 led them to the place where the pistol and live cartridge were recovered from “Kikar” bushes, wrapped in a polythene. A rough sketch of the pistol, Ex.PR, was prepared, also attested to by Mangta and Constable Bhudev Singh. PW19 stated that he packed the same in a parcel and sealed it with his seal, “MS”,

and took the same into possession vide, memo Ex.PS, also attested to by the same two witnesses. A rough site plan of the place of recovery, Ex.PU, is stated to have been prepared and the statements of the witnesses recorded. On return to the Police Station, PW19 deposed that he deposited the sealed parcel with the “Moharrar” Head Constable, and on 11.11.1999 he got prepared a supplementary 'challan' (under section 173(8) Cr.P.C.), against appellant no.2.

As recorded as part of the testimony, the sealed parcel bearing the seal, “MS”, was opened and the pistol Ex.P15 taken out, which this witness identified to be the same as was got recovered by Nafis.

On cross-examination, PW19 stated that Mangta had not been called earlier but had come of his own and was not known to this witness earlier. On enquiry, Mangta had told him that he had come to the Police Station to know about accused, Nafis, who had been arrested by the Uttar Pradesh Police.

PW19 further stated in cross-examination, that it took about an hour in effecting the recovery of the pistol from the disclosed place and that they had started from the Police Station at 9:15 AM, in a private Jeep which had already been arranged by them. He could not disclose the name of the driver or owner of the Jeep but stated that they had gone to Bilaspur via Samalkha and that the place of recovery fell in the area of village Bilaspur, though no person from village Bilaspur was called, “as it was not felt necessary”.

This witness also stated that the Jeep was left at a distance of 20 paces from the place of recovery and that there were four people in all at the time when recovery was made. The Yamuna was not flowing at the place of

recovery.

PW19 thereafter stated that they returned to the Police Station at about 5:30 PM.

He stated that after sealing the pistol etc., he kept the seal with himself and further testified that there was no identification mark on the pistol. This witness further stated in cross-examination that the pistol was not got tested from the 'Armourer'. He stated that though the cartridge was with the pistol, however, the cartridge was not in Court that day. He further stated that there is no seal impression of the Forensic Science Laboratory, on the pistol.

Lastly, PW19 denied that accused Nafis had not suffered any disclosure statement or that no recovery was effected.

23. PW20 was HC Joginder Singh, who, as a formal witness, tendered his affidavit, Ex.PZ, in evidence, which is to the effect that from December 1998 to September 2000, he was posted at Police Station Madlauda as 'Moharrar' Head Constable and that two parcels containing two pistols (one pistol each), one bearing the seal "RK" and the other bearing the seal "MS", were deposited through him in the "Malkhana" of the Police Station.

The affidavit further states that the parcel bearing seal "RK" was sent for a test report on 10.08.1999, through Constable Partap singh and that the parcel bearing the seal "MS" was sent on 14.12.1999 through Constable Randhir Singh, to FSL, Madhuban.

Further, the affidavit states that both the above named Constables, on the said dates itself, i.e. 10.08.1999 and 14.12.1999 respectively, had deposited the receipt issued by the FSL, Madhuban, with

this witness (PW20).

24. PW21 was HC Randhir Singh, who tendered his affidavit, Ex.PAA, in evidence, which is to the effect that on 14.12.1999, MHC Joginder Singh had handed over a parcel to him, with the seal “MS” on it, which this witness had deposited, alongwith the seal intact, on 14.12.1999 itself, at the FSL, Madhuban and had thereafter had deposited the receipt thereof with MHC Joginder Singh.

25. The last prosecution witness, PW22, was Madan Lal Sethi, Deputy Superintendent in the office of Deputy Commissioner/District Magistrate, Panipat who, as already noticed earlier, testified that on 28.04.2003 he was posted in the same capacity and had been working under Shri M.R.Anand, District Magistrate, since 20.04.2000 and could identify his signatures, which he then so identified, on the sanction order, Ex.PBB.

In cross-examination, this witness stated that no copy of the sanction order was kept in the office and the original order was prepared and dispatch number given by the Ahlmad. However, he had not carried the said record that day and further, that the sanction order was given with the police record, to which he stated that he also could not testify, as to what record was produced before the District Magistrate.

26. The Public Prosecutor gave up PWs Jogi Ram and Constable Jagbir Singh, as unnecessary witnesses. He also gave up PWs Saheed and Mangta who were otherwise present in Court, as having been won over, upon such application being moved by the police. Similarly, he also gave up PW Sahanwaj as having been won over.

With the prosecution evidence closed, both the appellants, in their statements recorded under Section 313 Cr.P.C., simply stated that they

are innocent and had been falsely implicated in the case. They both stated that they wished to lead defence evidence and subsequently, two witnesses appeared in their defence.

27. DW1 was Shaheed son of Salamat-Ullah, aged 45 years, a labourer by profession and resident of village Tanda, District Bagpat (UP).

This witness stated that he knew both the accused present in Court and that Irfan belonged to his village, whereas Nafis is a resident of village Kairana. He further stated that he also knew deceased Disha and Hanish, as they were his nephews and that Sunda @ Mangta, is the father of Disha deceased.

DW1 further testified that when Disha and Hanish were murdered, he (this witness) and Mangta had moved an application before the police and had also made a statement before the police. He further stated that the accused persons had no grudge against his family and that the statements made by him and Mangta were not against the accused. He also stated that, in fact, Nafis-appellant no.2 was his nephew, being his sisters' son and that both the accused, i.e. the present appellants, had been falsely implicated in the case after the police had obtained his thumb impression on blank papers.

On cross-examination by the Public Prosecutor, DW1 stated that he had given his application correctly to the police and further, denied the suggestion that he had been won over by the accused, being a relative.

28. Rashidan widow of Majid, aged 65 years, also resident of village Tanda, District Bagpat, appeared as DW2 and stated that 'Anees' was her son and that the accused present in Court were known to her. She further stated that there was no dispute between them, nor “we had moved any

application against the accused regarding the death of Anees”. She further testified that “we have no doubt upon the accused about the death of Anees”.

In cross-examination, DW2 stated that she was not present when Anees was shot dead, nor did she make any statement to the police that they were innocent. She next stated in cross-examination, that she had been brought today by the accused persons but denied that due to a compromise effected with the accused, she had deposed in their favour.

(It is to be noted, just for the record, that at most places, one of the deceased is referred to as Hanish. However, this witness, DW2, as per the recording, both in Hindi and its English translation, has referred to him as “Anees”).

29. Mr. K.S.Malik, learned counsel appearing for the appellants, submitted that once the learned trial Court had come to a conclusion that the offence under Section 302 IPC was not proved against the appellants, then the question of sentencing them under the Arms Act did not arise, because the entire transaction of the alleged murder by the appellants, of the two deceased, their running away from the spot, hiding pistols and thereafter being untraceable for more than one year in the case of appellant no.1 and more than one and half years in the case of appellant no.2, was an intricately related chain of events. Therefore, the learned trial Court wholly erred in convicting the appellants for the alleged recovery of fire arms, allegedly in the presence of two different non-official witnesses, the first of whom, Rishipal, was declared to be hostile and the second, Mangta, was not put in the witness box, allegedly because of his having been won over. Hence, if the alleged eye witnesses to the recovery, themselves resiled

having ever seen the recovery, stating that police officials obtained their signatures on blank papers, the recoveries cannot be believed only because the Investigating Officer and other police officials signed the same.

He further submitted that this would be so, especially as no finger printing was done, on the weapons, to match with the appellants, and with no conclusive report as to when the two pistols were last fired from. In this regard, learned counsel pointed to the report of the Forensic Science Laboratory, Ex.PY.

Mr. Malik submitted that it has come in the testimony of DW1, Shaheed, that the alleged independent witness of the recovery, Mangta @ Sunda, is actually the father of deceased Disha. As such, when such a witness had himself not supported the case of the prosecution, then there was obviously no doubt about the fact that the alleged recoveries of the fire arms were false.

Also, he submitted that the testimony of SI Mahinder Singh, stating that Mangta had simply met them co-incidentally, at the gate of Police Station and enquired about the accused, was too much of a co-incidence.

He next pointed to the fact that whereas PW7, HC Jai Singh, stated in cross-examination (with regard to the recovery of the pistol at the instance of appellant no.1, from the area of village Khojkipur), that the recovery was made by the side of the path leading to village Tanda, PW11, Inspector Ramesh Kumar, on the other hand, stated that the place of recovery was at a distance of about one furlong from the place where they had parked the Jeep.

Thus, according to learned counsel, this single discrepancy, between the testimonies of the two eye witnesses other than Rishipal, who,

in any case, completely denied the recovery in his presence, shows that the recovery of pistol and a live cartridge was actually not effected from appellant no.1 in the manner that the two official witnesses had deposed, but was simply a case of the weapon being foisted upon him.

30. Learned counsel for the appellants next pointed to the testimony of PW17, HC Bhudev Singh, who stated that the recovery of the pistol that was effected at the instance of appellant no.2, Nafis, was at about 5:00 PM and that they took 20-25 minutes to do the same, in the area of village Bilaspur. On the other hand, SI Mahinder Singh, PW19, stated in his cross-examination that the police party had left the Police Station at 9:15 AM and that the recovery was effected within one hour.

Further, whereas HC Bhudev Singh stated that they returned to the Police Station at about 8:00 PM, SI Mahinder Singh had stated that they returned at about 5:30 PM.

Thus, learned counsel submitted that there are glaring discrepancies in the statements of the police officials themselves in the cases of both the accused, regarding the alleged recovery made at the instance of both the accused. Therefore, it was very obvious that the alleged recoveries of the fire arms were not genuine.

31. Lastly, learned counsel pointed to the fact that the site plan of the place of alleged recovery of the fire arm, at the instance of appellant no.1, Ex.PL, showed it to be from the jungle of village Sanjoli, whereas the alleged eye witnesses to the recovery, i.e. PW7, HC Jai Singh and Inspector Ramesh Kumar, both had testified, that in the disclosure statement and thereafter with regard to the recovery pursuant to it, at the hands of Irfan, the reference was to the jungle of village Khojkipur.

In any case, the fact that first one disclosure statement, Ex.PF, was recorded, to the effect that Irfan had hidden the pistol at the house of his in-laws at village Balla Majra, District Saharnpur and two days later on 30.05.1999, disclosure statement Ex.PG was recorded, that he had hidden the pistol at village Khojkipur, further shows that the police was only interested in ensuring that the appellants were shown to be guilty, one way or the other.

32. Mr.Pritam Saini, learned Additional Advocate General, Haryana, submitted that the recoveries having been attested to by the police officials, as also by two independent witnesses who later were won over, did not negate the fact that the recoveries were actually made and that the FSL report, Ex.PY, specifically stated that the pellets recovered from the bodies of both the deceased, Disha and Hanish, were from a .12 bore pistol. Further, the fact that both the pistols recovered, were actually country made pistols of .12 bore calibre, proved the fact that, as a matter of fact, the pellets as were recovered from the bodies, were the same as those had been fired from cartridges loaded into the pistols recovered at the instance of the appellants.

He referred to the discrepancies in the testimonies of the official witnesses, to be minor ones.

Learned State counsel, therefore, prayed that the appeal deserves to be dismissed.

33. Having considered the arguments addressed on both sides and having seen the evidence on record in detail, in my opinion, the conviction of the appellants for the offence punishable under Section 25 of the Arms Act, 1959, by the trial Court, is not sustainable.

Though, undoubtedly, the signatures of PW13, Rishipal, are present on Ex.PG, which is the recovery memo of the pistol allegedly recovered at the instance of appellant no.1, Irfan, and the thumb impression of the aforesaid Mangta is shown to be taken on Ex.PS, i.e. the recovery memo of the weapon allegedly recovered at the instance of appellant no.2- Nafis, the fact that PW13 stated that his signatures were obtained on a blank paper and Mangta was not made to stand in the witness box, on the ground that he had been won over, would be the first ground for this Court to look at the recoveries skeptically.

Even if it is taken that these witnesses were both won over, with the first one, Rishipal turning hostile in Court and Mangta not having been put on the witness stand at all, even though he is stated to be the father of one of the deceased, this Court would not discount the fact that possible compromises could have taken place between the families, as was put to DW2, Rashidan, mother of deceased Hanish, which she, of course, denied.

However, even if the above possibility is to be accepted and the retraction of the non-official eye witnesses, to the recoveries, is to be discarded, in view of their signatures/thumb impressions present on the recovery memos, the discrepancies between the statements of even the official witnesses to the recovery, cannot be ignored.

34. In the testimony of HC Jai Singh, PW7, he stated that the recovery party, alongwith appellant no.1-Irfan, and Rishipal, Sarpanch (PW13), reached the recovery spot, which is at a distance of 2 kms from the village Khojkipur. He specifically stated that “we had gone to the spot by Jeep. The way by which we had gone further goes to village Tanda. The pistol and cartridge were got recovered by the accused from by the side of

the path leading to village Tanda”.

On the other hand, Inspector Ramesh Kumar, PW11, stated in his cross-examination, as follows:-

“We had stopped said Jeep at a distance of one phorlong from the disclosed place. The said place was towards Yamuna river i.e. towards East of the village at a distance of about 1, ½ miles. It was not acrossed Yamuna River. Yamuna bed was at some distance and was visible. The said place was at a distance of one phorlong from the Rasta where we had parked the Jeep.”

Thus, the discrepancy, in the opinion of this Court, as to even the spot from where the pistol was allegedly recovered, in the testimonies of the two alleged eye witnesses, with one of them saying that it was from by the side of the path and the other saying that it was at a distance of one furlong therefrom, definitely puts the recovery in doubt.

Secondly, site plan Ex.PL, shown to be signed by Inspector Ramesh Kumar on 30.05.1999, showing the recovery from the jungle of Sanjoli, whereas the entire evidence, of PW11 and PW7, is to the effect that the recovery was from the jungle of village Khojkipur, is also something which is not possible to be ignored.

35. Coming next to the discrepancies in the statement of PW17, HC Bhudev Singh and Sub-Inspector Mahinder Singh (PW19), the difference of timing given by both these official witnesses is so disparate, that it is difficult to believe. Whereas PW17 stated that the recovery was effected at 5:00 PM and it took about 20-25 minutes to do the same, and further that they returned to the Police Station at about 8:00 PM, PW19 gave the time of recovery to be between 9:15 AM to 10:15 AM, because he stated that they started from the Police Station at 9:15 AM, immediately before which he had stated, that it took one hour in effecting the recovery of

the pistol from the disclosed place. He then gave the time of returning to the Police Station to be about 5:30 PM.

In my opinion, the said statements are not reconcilable with each other.

36. Lastly, the contention of learned Additional Advocate General, that the pellets recovered from the body of the deceased are also shown in the report of FSL, Madhuban, to have been released from a .12 bore cartridge and since the recovery is also of .12 bore pistols, which even in the said report are stated to have been fired from, is an argument which has to be discarded; because that argument would be relatable to the murders themselves, as the learned State counsel has tried to relate the recovery of pellets from the bodies, to the pistols allegedly recovered at the instance of the appellants. However, the trial Court having specifically acquitted the appellants of the charge framed under Section 302 IPC, that argument can not be looked into, with no appeal filed by anyone, against the acquittal.

Other than that, simply because the FSL report confirms that the pistols recovered were of .12 bore calibre and had been fired through, does not make them relatable to the appellants. The time of their last firing also could not be given, even as per the report. However, that does not prove or disprove the recoveries, unless that issue was related to the murders.

The issue of finger printing, of course, becomes meaningless with the alleged recoveries having been shown to be at the instance of the appellants themselves who, as per the police officials, are stated to have taken out the pistols from the earth with their own hands. Yet, since they were wrapped in polythenes, had finger printing being conducted, and

finger prints found on the pistols shown to be those of appellants, the matter may have been different.

However, with that not having been done, seen with the discrepancies in the statements of even the official witnesses, and the non-production/hostile statement of the allegedly independent eye witnesses, it does not favour the case of the prosecution.

37. Consequently, the finding of the trial Court, holding both the appellants guilty of having committed an offence punishable under Section 25 of the Arms Act, is set aside and the appellants are given the benefit of doubt and are acquitted of the said charge.

The appeal is allowed. The bail/surety bonds furnished by the appellants, upon suspension of their sentence, during the pendency of this appeal, are ordered to be discharged.

2nd September, 2015
dinesh

(AMOL RATTAN SINGH)
JUDGE