

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA-D-187-DB-2013**

DATE OF DECISION: MAY 17, 2016

AMIT ARORA @ AMIT

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

2. **CRA-D-211-DB-2013**

ROHIT MISHRA

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

3. **CRA-D-746-DB-2013**

SANJAY DASS

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

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

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

PRESENT: MR. MANDEEP KAUSHIK, ADVOCATE
FOR THE APPELLANT IN CRA-D-187-DB-2013 &
CRA-D-211-DB-2013.

MS. PUNEET SETHI, ADVOCATE
FOR THE APPELLANT IN CRA-D-746-DB-2013.

MS. MANJRI NEHRU KAUL , ADDL.A.G., PUNJAB.

M. JEYAPPAUL, J.

1. These accused-appellants have challenged the conviction and

sentence passed by the trial Court in case FIR No.159 dated 14.10.2009 registered under Sections 302 read with Section 34 IPC and Section 398 IPC. Accused Sanjay Dass also has challenged the conviction and sentence passed against him under Section 25 of the Arms Act. The main accused Saurabh Dubey has absconded.

2. The brief case of the prosecution is that on 17.7.2009 at about 2.15 p.m., PW1 Jaswinder Singh who was working as Operational Manager in M/s Cash Management Service Securities Ltd., Model Town Extension, Ludhiana was proceeding on a Hero Honda Splendor motorcycle taking his junior Rakesh Kumar as pillion rider. On the street of Gagan photostat, two Hindu young men on black Pulsar motorcycle came from behind and one of them opened fire at Rajesh Kumar as a result of which the bullet hit Rajesh Kumar. Those two young men tried to snatch the bag containing cash from Rajesh Kumar who was injured. PW1 got down from his motorcycle and grappled with those two young men who were wearing helmets. Their helmets fell on the ground. He also raised an alarm. Yet another Hero Honda motorcycle found parked near the place of occurrence. On the said motorcycle, two young men were also found sitting. Thereafter, all the four young men fled away on those two motorcycles. PW1 took injured Rajesh Kumar to DMC Hospital, Ludhiana which declared Rajesh Kumar dead. He suffered statements Ex.PA on the basis of which an FIR was registered. The police took into possession the bag containing cash worth ₹3,52,670/- under Ex.PB from PW1 in DMC Hospital, Ludhiana. On 18.7.2009, he saw accused Saurabh Dubey, Sanjay Dass, Rohit Mishra and Amit Arora @ Amit

standing on a pan shop. They were talking to each other. They appeared to be persons who shot dead Rajesh Kumar on 17.7.2009. PW1 proceeded to the pan shop on the pretext of seeing their faces. He identified those four persons to be the same persons who killed Rajesh Kumar on 17.7.2009. He enquired the names and addresses of the four accused from other persons with whom they were talking while standing at the pan shop. The said persons disclosed the names of the aforesaid four persons. Thereafter, he suffered supplementary statement before the police.

3. PW13 SI Gurpreet Singh who was the investigating officer recovered a pistol, two live cartridges and Pulsar motorcycle on the basis of disclosure statement suffered by accused Sanjay Dass, two mobile sets on the basis of the disclosure statement suffered by accused Amit Arora, one Hero Honda motorcycle at the instance of the disclosure statement suffered by accused Rohit Mishra.

4. The trial Court having adverted to the evidence on record returned a finding that the prosecution established beyond reasonable doubt the charges framed as against the accused.

5. Learned counsel appearing for the appellants vehemently submitted that no test identification parade was conducted. PW1 identified these three accused after 1 year and 2 months during the course of trial. There was no evidence adduced to demonstrate the meeting of mind to prove the common intention. Supplementary statement suffered by PW1 looks very artificial. The pan shop episode is completely stage-managed.

The recovery of mobile phones possessed and owned by accused Amit

Arora and Pulsar motorcycle possessed and owned by accused Sanjay Dass does not, in any way, connect the accused to the crime. The pistol, live cartridges and the empties had not been sent to ballistic missiles expert to connect the weapon to the crime. He also contended that PW1 could not be construed as an eye witness inasmuch as he was not the one who took the deceased to the hospital. Non-examination of any independent witness to speak about the crime which took place in the market area during broad day light creates a doubt in the case of the prosecution, it was submitted.

6. Ms. Manjri Nehru Kaul, learned Addl.A.G., Punjab vehemently submitted that the evidence of PW1 categorically establishes the case of the prosecution. As PW1 was under shock, he had not come out with the details of the participants in the crime. The supplementary statement suffered by him is found to be natural. There was no explanation from the accused for the recovery made from them. They very fact that PW1 suffered statement before the police at the hospital would go to show that he was very much present alongwith the deceased at the hospital. The lapse on the part of the investigating official in not despatching the weapon to the ballistic expert does not create a dent in the case of the prosecution more especially, when an eye witness has established the case of the prosecution.

7. The main accused Saurabh Dubey is still absconding. In the event of his apprehension, he will have to face trial. Any observation made by us on the alleged role played by him in causing the death of Rajesh Kumar would adversely affect the future trial that may be embarked upon by the prosecution as against the said star accused. Therefore, we have

exercised due caution in discussing the evidence adduced by the prosecution in connection with the role played by these accused.

8. PW1 is the star witness in this case. He has been projected as an eye witness to the occurrence. It has been alleged by PW1 that the occurrence was unfolded when he was actually driving the motorcycle taking the victim Rajesh Kumar as pillion rider. He suffered a statement just before 4.00 p.m. on 17.7.2009 as regards the occurrence which took place at 12.15 p.m. on the said day. He had sufficient time to reconcile himself with the violent and outrageous occurrence that took place in his very presence. A normal prudent man would not have omitted to refer to the presence of two other accused on another motorcycle which was found parked near the scene of crime. The very omission of the role of two accused who allegedly sat on another motorcycle parked near the scene of crime in the first information report suffered by him in fact throws a doubt on the version of PW1 as regards the role played by those two persons.

9. As rightly pointed out by the counsel appearing for the appellants, PW1 has come out with a totally artificial version that on the next day, he spotted all the four accused in front of a pan shop and on approaching the pan shop in the guise of purchasing pan from the said shop, he identified all the four accused as the perpetrators of the crime and therefore, he collected all relevant particulars of all the four accused from some persons with whom those four accused were talking in front of the pan shop. Neither the pan shopkeeper nor some of the persons from whom PW1 collected very vital information were examined by the prosecution to

establish the pan shop theory projected very weakly by it. It is not as if the persons who shared the information were absolutely strangers to PW1. PW1 has in fact categorically admitted that one of the persons who shared the information was already known to him. It is really surprising that even such a known person was not associated by PW13 during the course of investigation to buttress the version of PW1. In our considered view, the supplementary statement suffered by PW1 is completely an afterthought and therefore, it does not inspire confidence.

10. Let us now take up the recovery of the material objects put forth by the prosecution. Two mobile sets had been recovered from accused Amit Arora. It is the admitted case that those two mobile sets were owned and possessed by accused Amit Arora. It is the further case of the prosecution that Pulsar motorcycle was recovered from accused Sanjay Dass. It is not in dispute that the said motorcycle was owned and possessed by Sanjay Dass. Under these circumstances, such recovery from the above accused projected by the prosecution does not, in any way, connect them to the crime.

11. There was no reason for the main accused Saurabh Dubey who allegedly opened fire on the deceased change hands the pistol he used. At any rate, it has been submitted by the prosecution that the pistol and two live cartridges were recovered from accused Sanjay Dass. Unless the prosecution establishes that the said pistol and two live cartridges had some connection with the crime, accused Sanjay Dass cannot be charged with the offence under Section 302 read with Section 34 IPC. The fact remains that

the pistol, two live cartridges and the empties allegedly recovered at the instance of accused Sanjay Dass were not sent to the ballistic expert for connecting the same to the crime. In fact, we entertain a doubt as to the possession of pistol attributed to accused Sanjay Dass inasmuch as the said weapon was allegedly used by the main accused who is absconding.

12. The occurrence had taken place in broad daylight at a market place. None of the persons from the public was associated to speak either about the occurrence or about the alleged recovery. In the said facts and circumstances of this case, non-association of any independent witness as an eye witness and also as a witness to the disclosure statement and recovery of the material objects really casts a cloud on the case of the prosecution. Further the prosecution, in all fairness, should have conducted test identification parade to facilitate PW1 to recall the identification of the accused. But the prosecution has come out with an unbelievable story that PW1 had an occasion identified all the accused in front of a pan shop.

13. It is true that PW1 was not shown in the medico-legal report as the person who brought the injured Rajesh Kumar to the hospital. It was only Rahul who had in fact brought the injured to the hospital as per the above record. So many persons connected with the injured would have gathered at the hospital and someone very close to the deceased would have furnished his name to the hospital. At any rate, we do not doubt the presence of PW1 at the hospital on the sole ground that his name did not figure in the medico-legal report inasmuch as it is found that he had suffered the statement at the earliest point of time before the police and set the law in

motion.

14. As rightly pointed out by the learned counsel for the appellants, there is virtually no evidence to demonstrate that there was meeting of mind to prove the common intention allegedly shared by the three accused with the main accused Saurabh Dubey. Thus, the prosecution has miserably failed to establish the charges framed as against the accused-appellants.

15. Accordingly, all the three appeals are allowed and the appellants are acquitted of the charges framed as against them. The judgement of conviction and order of sentence recorded by the trial Court is set aside. They be set at liberty forthwith, if their custody is not required in connection with any other case.

(M. JEYAPPAUL)
JUDGE

May 17, 2016
Gulati

(RAJ MOHAN SINGH)
JUDGE