

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

**CRA-D-923-DB of 2013(O&M)
Date of decision:12.4.2016**

(1)

Anand and another

..... Appellants

VERSUS

State of Haryana

..... Respondent

(2)

CRA-D-766-DB of 2015(O&M)

Bhalu

....Appellant

Versus

State of Haryana

....Respondent

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
 HON'BLE MR. JUSTICE GURMIT RAM**

**Present: Mr. Atul Lakhanpal, Senior Advocate with
 Mr. R.S. Chahal, Advocate
 for appellants.**

Mr. R.K. Makkad, DAG, Haryana.

GURMIT RAM, J.

1. The above noted both the appeals have been preferred by

appellants Anand, Dharampal @ Malarh and Bhalu against the judgment dated 31.7.2013 and order of sentence dated 3.8.2013 passed by the Court of learned Additional Sessions Judge, Rohtak in criminal case bearing FIR No.264 dated 28.10.2008 u/Ss 147, 148, 216, 323, 307, 302, 449 read with Section 149, 120-B of the Indian Penal Code, 1860 (in short – the IPC) and 25/27/30 of the Arms Act, 1959, Police Station Sampla vide which they were held guilty for the offences punishable u/Ss 148, 302, 307, 449 read with Section 149 and 120-B of the IPC and further appellant Anand was also held guilty for the offence punishable u/S 25 of the Arms Act and awarded the sentences as detailed below:

Under Section	R.I. Imprisonment	Fine	In default of payment of fine
148, IPC	One year each	--	--
120-B, IPC.	Life imprisonment each	Rs.5,000/- each.	2 months each
302 read with Section 149, IPC.	Life imprisonment each	Rs.10,000/- each	4 months each
307 read with Section 149, IPC.	Five years each	Rs.5,000/- each	1 month each
449 read with Section 149, IPC.	Ten years each	Rs.3,000/- each	1 month each

Appellant/accused (Anand) was also sentenced to undergo rigorous imprisonment for three years and to pay a fine Rs.5,000/- u/S 25 of the Arms Act and in default of payment of fine to further undergo imprisonment for two months. All the substantive sentences were ordered to be run concurrently.

Whereas their co-accused namely Sonu, Sombir, Poonam, Kamlesh, Satpal, Anil @ Lilo, Rakesh, Naresh @ Pala, Mukesh, Jagbir and Sumer were acquitted of all the charges vide this judgment.

Herein it is also made clear that accused Shri Bhagwan, Dilbag and Phool Singh had expired during trial of the case and as such proceedings of this case qua them were dropped.

2. The case of the prosecution as put forth before the learned trial Court in brief was that on 28.10.2008, Vijender Singh, Inspector/SHO, Police Station Sampla alongwith Maha Singh, SI and other police officials was present in the premises of Police Post, Kharawar, in connection with law and order duty. There he received an information that some firing incident had taken place in village Karor. Upon this, Incharge Police Post Kharawar along with above said police officials reached in the house of Amar Partap @ Rambir son of Tale Ram, resident of village Karor. Complainant Rajesh Kumar son of Satbir resident of Karor presented an application Ex.PB before Vijender Singh, Inspector/SHO, Police Station Sampla, the contents of which in brief were as under:

“That he is an agriculturist. They are five brother and sisters. All his four sisters are married. His father expired about three years back due to shock regarding some land. Nafe son of Ram Sarup, Devender son of Inder Singh and Ram Karan son of Ram Narain got prepared a forged agreement in connivance with each other from his father by way of fraud in the year 2003 qua the land measuring eight killas situated across the railway line. Sons of Chhaju used to threaten him again and again to vacate this land by stating that he would have to vacate this land, otherwise its consequences would not be good. Regarding this land, a civil suit was also stated to be pending in the Court. Dilbag and Bhalu attacked upon him in the month of February,

2008. Hence he filed an assault case against them. In this matter, one Amar Partap used to help him, so due to this reason, family members of Chhaju had been nourishing a grudge against him (Amar Partap) also. Today his mother namely Hoshiari Devi and his wife Rani had gone to the house of Amar Partap @ Rambir at about 6:00 p.m. to celebrate Diwali festival. He and his brother Peshi Ram had gone to the fields on a tractor. On coming to know that his wife had gone to the house of Roshni wife of Amar Partap, he along with Peshi Ram also went to her house. On reaching there, they saw that Bhagwan, Dilbag, Malarh @ Dharampal, Phool Singh sons of Chhaju Ram and brother of Dharampal namely Anand along with Sonu, Bhalu and one or two more persons were beating his mother, his wife and aunt Roshni by giving them slap and fist blows. At that time, the said assailants were saying that tomorrow the sale deed of the land be got registered, otherwise they would kill them. His mother and his wife refused to give any land to them. On hearing this, accused Bhagwan and Dilbag who were armed with pistols started firing upon his wife Rani and his aunt Roshni with their pistols. When his mother Hoshiari Devi started running towards the street, then shot was fired upon her by accused Bhagwan. His wife Rani and his aunt Roshni died at the spot due to sustaining of firearm injuries. When they raised an alarm for their safety then the above-said assailants ran away from the spot along with their respective weapons. While fleeing away from the spot, accused Sonu and other persons also fired shots upon them. His mother who was palpitating in an injured condition was carried to the hospital. The aforesaid accused persons had fired shots for grabbing their above-said land. Prior to this, they had also killed many persons in the village and are intending to grab their land. They had also taken mobile

bearing No.9813063643 with them. Prayer was made to take legal action against the accused persons.”

On the above-said application of the complainant, Vijender Singh, Inspector/SHO made his endorsement Ex.PB/1 and sent ruqqa to the police station, on the basis of which the FIR Ex.PCC was recorded in Police Station Sampla. Special report in this regard was sent to Illaqa Magistrate as well as to the senior police officials. The inspection of the spot of occurrence was conducted. Its snaps were taken. Team of Forensic Science Laboratory also inspected the place of occurrence. Inquest proceedings under Section 174, Cr.P.C., were conducted in respect of the dead bodies of deceased Rani and Roshni. Blood lying at the spot was also lifted with the help of cotton swabs. *Chappels* of both the deceased from the spot of occurrence were also recovered and the same were taken into police possession after converting the same in two different parcels. Then six empty cartridges and one live cartridge were also recovered from the spot and the same were also taken into police possession after preparing their parcels. The ornaments worn by both the deceased were removed and the same were handed over to Kalawati daughter of Satbir and Peshi Ram vide different memos. During inspection of the house of Bhagwan Dass, Sarpanch, documents pertaining to land and a carbine along with 30 rounds of 9 mm (authorized) belonging to Gunman Constable Satpal were recovered and the same were also taken into police possession. One toy pistol was also recovered which was also taken into police possession. One Scorpio vehicle bearing registration No.HR46-B/5330 and one Maruti car

bearing registration No.HR12H/6849 used by accused Shri Bhagwan etc. in the commission of crime were also taken into police possession. Post mortem on the dead bodies of deceased was got conducted. Medico legal report of injured Hoshiari Devi was also obtained in which nature of injury was shown as firearm injuries. One parcel containing clothes of injured Hoshiari Devi was also taken into police possession. After obtaining the opinion of the doctor that injured Hoshiari Devi is fit to make the statement, her statement under Section 164, Cr.P.C., was got recorded. Cartridge ejected from the body of injured Hoshiari Devi during her treatment was taken into police possession on 29.10.2008. The clothes pertaining to deceased Roshni and Rani after the post-mortem were also taken into police possession.

Accused Sandeep and Sombir were arrested in this case on 30.10.2008. During interrogation, accused Sombir suffered a disclosure statement that *'on 28.10.2008, he was with Bhagwan, Sarpanch, Dharampal, Anand, Phool Singh, Dilbag and two other boys. Accused Bhagwan stated that Rajesh is not executing the sale deed qua some land. They consulted the matter with each other and then they went to the house of Amar Partap in two vehicles and fired shots upon three ladies, besides assaulting them with slap and fist blows.'*

Similar disclosure statement was also suffered by accused Sandeep. Thereafter, accused Sandeep got recovered one revolver .32 bore and six rounds of same bore and one licence No.651/IX/R and the same were taken into police possession. Accused Poonam wife of Dilbag and Kamlesh wife of Shri Bhagwan were arrested in this case u/S 120-B

of the IPC on the basis of statement of Kalawati daughter of Satbir on 31.10.2008. Accused Dharampal alias Malarh and Prem alias Bhalu were arrested in this case on 7.11.2008 and their disclosure statements were also recorded. Accused Shri Bhagwan, Dilbag and Anand were arrested in this case on 10.11.2008. Accused Shri Bhagwan got recovered one revolver .32 bore on the basis of his disclosure statement which was taken into police possession. Accused Dilbag also got recovered one pistol along with two live cartridges as per his disclosure statement and the same were also taken into police possession. Similarly accused Anand also got recovered one pistol and two live cartridges on the basis of his disclosure statement and the same were also taken into police possession. On 13.11.2008 offence under Section 216 of the IPC was added and accused Satpal and Anil were apprehended in this case under Section 216 of the IPC. Accused Phool Singh was apprehended in this case on 28.11.2008. He got recovered one pistol of .32 bore along with one live cartridge and one empty cartridge on the basis of his disclosure statement which were also taken into police possession. During investigation, statement of one Azad Singh was recorded on 10.12.2008. On the basis of this statement accused Devender, Narinder, Ram Karan, Jagbir Singh and Sumer Singh were found involved in this case under Section 120-B of the IPC. Statements of witnesses were recorded. The above-said parcels were sent to the office of Forensic Science Laboratory, Madhuban for their chemical analysis. On completion of investigation, challan against the accused as mentioned in column No.3 of the police report was presented before the learned Illaqa Magistrate.

On the arrest of accused mentioned in column No.2 of the challan, supplementary challan against them was presented.

3. The learned Illaqa Magistrate after making compliance of the provisions of Section 207 of the Cr.P.C. committed this case to the Court of learned Sessions Judge, Rohtak for its trial.

4. On finding a prima facie case against all the accused, the learned trial Court framed charge against them for the offences punishable under Sections 147, 148, 323, 307, 302, 120-B, 449 read with Section 149 of the IPC. Besides this, accused Anand and Sandeep @ Sonu were also charge-sheeted for the offence punishable under Section 25 of the Arms Act and accused Mukesh wife of Anand was also charge-sheeted for the offence punishable under Section 30 of the Indian Arms Act. Accused Satpal and Anil @ Lilo were also charge-sheeted for the offence punishable under Section 216 of the IPC. All the accused pleaded not guilty to the said charges and claimed trial.

5. During trial of the case, the prosecution examined twenty five witnesses in all, besides tendering the reports of FSL Ex.PA and Ex.PA/1, MLR of Hoshiari Devi Ex.PXXX and ruqqa Ex.PYYY, in order to prove its case against the accused.

6. Then the accused were duly examined as required under the provisions of Section 313, Cr.P.C. During their examination, the entire incriminating evidence, oral as well as documentary, brought on record against them by the prosecution during trial of the case was put to them which they denied entirely. The alleged recoveries of arms, ammunition etc. were also denied by them. Further they took the plea of their

innocence and false implication in this case at the instance of complainant in collusion with the police.

Further in their defence they (accused) also examined Jitender Malik, Headmaster, Government High School, Garhi Bohar as DW1.

7. The learned trial Court after hearing learned counsel for both the parties and going through the record as well held the present appellants (accused) guilty for the offences punishable under Sections 148, 307, 302, 449 read with Section 149 and 120-B of the IPC, besides, holding appellant (accused) Anand guilty for the offence punishable under Section 25 of the Arms Act also and awarded sentences to them as detailed in para No.1 of this judgment vide the impugned judgment.

As above-said, co-accused of the present appellants namely Sonu and ten others were acquitted in this case vide the impugned judgment. Then it is admitted that prosecution has not filed any appeal against these eleven co-accused of the present appellants qua their acquittal in this case. Then it also came on the record that three of the co-accused namely Shri Bhagwan, Dilbag and Phool Singh of the present appellants expired during trial of the case and as such proceedings against them were dropped.

8. The present appellants (accused) being dissatisfied with this judgment and order of sentence have come up in the instant appeals. Notice of appeals was given to the respondent-State. Record of the learned trial Court was also requisitioned and perused.

9. We have heard the learned counsel for both the parties and also scrutinized the record with their able assistance.

10. So the scope of the present appeals is only to the extent as to whether there is sufficient evidence on the record in order to uphold the conviction of the present appellants or not.

11. The learned counsel for the appellants has contended that the impugned judgment and order of sentence are against the facts on the record and well settled law. The learned trial Court while recording the impugned judgment has committed a grave error in relying upon the prosecution evidence which was most discrepant as well as untrustworthy. Then he has also pointed out about the delay in lodging of the FIR as well as in sending the special report to the Illaqa Magistrate and Senior Police Officers. This delay as per his contention has remained unexplained on the part of prosecution and as such, the prosecution version as alleged is nothing but a sheer concoction and fabricated one after due deliberation and consultation. Then it is also contended by learned counsel for the appellants that there was actually no motive of any kind against the present appellants and their co-accused in the commission of alleged crime. Herein he has also submitted that as per the case of prosecution, Nafe, Devinder and Ram Karan had got an agreement to sell executed from the father of complainant with regard to his land by way of fraud regarding which a civil suit was stated to be pending in the Court. The plea of the prosecution that the present appellants and their co-accused had been acting on behalf of aforesaid Nafe etc. is not substantiated on the record as there is no

reliable evidence on the file to support this plea. Then it is also contended by him that aforesaid Nafe and others were not made as an accused in the case in hand nor they had any nexus with the present appellants and their co-accused.

12. The learned counsel for the appellants has also submitted that as per the case of prosecution, the death of both the deceased namely Rani and Roshni was caused by the bullet injuries fired from the weapon of Phool Singh co-accused of the present appellants which was licensed one and the same was also recovered from his possession during investigation. Then it is also submitted that all the male and female members of the family of one Chhaju Ram were implicated in this case and out of the seventeen accused, who were put on trial before the learned trial Court, eleven of them were acquitted by granting them the benefit of doubt. The acquittal of these eleven accused in this case by the learned trial Court is enough to say that the present appellants were falsely involved in this case along with their said eleven accused (since acquitted). Then he has also submitted that presence of PW-2 Rajesh and one Peshi Ram at the spot at the time of alleged occurrence is also highly doubtful since their presence is not marked in the scaled site plan as well as in the rough site plan of the place of occurrence. Then it is also his submission that as per the prosecution version only three of the accused persons namely Bhagwan, Dilbag and Phool Singh had fired from their respective weapons and no overt act of any kind was attributed to the remaining accused. Lastly, he has prayed for the acceptance of the appeals and to acquit the appellants by setting aside the

impugned judgment and order of sentence by granting them benefit of doubt.

13. But on the other hand, the learned State counsel has vehemently denied the above entire contentions of learned counsel for the appellants and has submitted that there is sufficient evidence on the record on the basis of which appellants have rightly been held guilty in this case and awarded the sentences vide the impugned judgment by the learned trial Court. Then in support of his contention, he has referred to the testimonies of all the material witnesses examined by prosecution during trial of the case. Then it is also contended by him that there is no reliable material on the record which could warrant any kind of interference in the impugned judgment of conviction and has prayed for dismissal of the appeals.

14. Now let us have a glimpse of the evidence which came on record during trial of the case before the learned trial Court, which in its precise form is discussed as under:-

“Complainant-Rajesh appeared as PW-2 and deposed before the Court on the same lines as per his application Ex.PB which he moved before the Police with regard to the present occurrence with a prayer to take legal action against the culprits. In addition to this, he also deposed that he visited Police Station Sampla, to know about the progress of this case on 12.11.2008. In his presence, accused Anand (now appellant) was interrogated who suffered disclosure statement Ex.PC with regard to the concealment of a pistol of his wife in a Kotha in the fields of one Jagbir of village Lakaria of which he had the exclusive knowledge and offered

to get the same recovered. Then he led the police party to the place of concealment of the weapon and got recovered the same which was wrapped in a racksin cover, besides producing two live cartridges. Rough sketch Ex.PF of this pistol was prepared, which was subsequently along with two live cartridges converted into a duly sealed parcel and was taken into police possession vide memo Ex.PG. Then he also proved in his statement revolver as Ex.P1, racksin cover Ex.P2, mouser pistol Ex.P3 and racksin cover Ex.P4 and another mouser pistol Ex.P5 along with its racksin cover Ex.P6, which were previously in sealed parcels and opened in the Court.

Remaining part of his statement was pertaining to the disclosure statements suffered by accused Dilbagh and Shri Bhagwan and the recoveries got effected by them as per their respective disclosure statements. Since both of them had expired during trial of case, so as such there is no need to discuss this part of statement of this witness.

PW-1 Hoshiari as per the version of prosecution was one of the injured as well as the eye-witness to the alleged occurrence. It is in her statement that on 28.10.2008 she along with her daughter-in-law Rani went to the house of Amar Partap for Diwali worship in the evening at about 6:30 P.M. There came inside the house of Amarpartap, five sons of Chajju namely Phool Singh, Balwan Sarpanch, Dharampal, Dilbag and Anand along with Bhalu and Sonu and two more other persons who directed them to transfer the land in their favour. When they refused to do so, then the aforesaid persons started beating them. In the meanwhile, her son Rajesh and son of Amarpartap, namely Peshi Ram also reached

there. Accused Dilbagh and Bhagwan fired shots hitting Roshni and Rani who on receipt of the fire arm injuries fell down on the ground. When she started running towards her son Rajesh, then accused Bhalu and Sonu fired shots upon her and she fell down on the ground on account of receipt of fire arm injuries. She was taken to hospital where she re-gained her consciousness. Her statement Ex.PA was recorded by the Magistrate in the hospital. Then she also stated about one previous occurrence which took place on dated 29.02.2008.

The aforesaid Magistrate Mr. Sunil Chauhan appeared as PW-22 during trial of the case. His statement was to the effect that while posted as Judicial Magistrate Ist Class, Rohtak on 29.10.2008, police moved application Ex.PRR for recording statement of Hoshiari Devi injured under Section 164, Cr.P.C. Accordingly, he went to the PGIMS, Rohtak and recorded her statement Ex.PRR/3 after getting opinion of the Doctor that injured was fit to make her statement. Then he also obtained the certificate of the Doctor Ex.PRR/4 to the effect that injured remained conscious and fit while making her statement.

So far as statement of PW-6 Kalawati daughter of Satbir is concerned, it is not found to be of any relevancy in this case since it came in her statement that she reached at the spot, when the occurrence was over.

Statement of PW-7 Azad Singh was to the effect that on 05.10.2008 at about 2:00 p.m. he went to the Madras Cafe situated at Shila By-pass, Rohtak to have a cup of tea. When he was taking tea, four persons namely Ram Karan Advocate, Devender r/o Mungan along

with Shri Bhagwan and Dilbagh sons of Chhaju were also sitting on a bench. He heard said Ram Karan and Devender while conversing with Shri Bhagwan and Dilbagh that they (Shri Bhagwan and Dilbagh) had not got the land cleared though they (Ram Karan Advocate and Devender) had offered 1/4th land to them for getting possession of land of some agreement to sell. Herein it is not relevant to discuss his entire testimony because aforesaid Ram Karan Advocate and Devender were not arrayed as an accused in this case during trial, whereas remaining said two accused persons who were facing trial in this case had died during trial.

Regarding medical evidence, the prosecution examined PW-8 Dr. Sunita Dhanial and PW-9 Dr. Satbir Singh, who both were the members of the Board of Doctors constituted for conducting post-mortem examination on the dead bodies of Rani w/o Rajesh and Roshni w/o Amar Partap both residents of village Karor. PW-8 tendered in her statement her duly sworn affidavits Ex.PW8/A and Ex.PW8/B. She conducted post-mortem on dead body of Rani on police request Ex.PS and proved her post-mortem as Ex.PT and inquest report Ex.PU. Then it is also in her statement that post-mortem on the dead body of deceased Roshni was conducted on police request Ex.PV. She proved her post-mortem report as well as inquest report Ex.PX and Ex.PY respectively. Then she also proved the clothes of deceased Rani i.e. lady shirt Ex.P1, salwar Ex.P2 and brasier Ex.P3 and deposed that these are the same clothes which she handed over to the police in a sealed parcel after post-mortem of Rani (since deceased). Then further she also proved the

clothes of deceased Roshni i.e. lady shirt Ex.P4, salwar Ex.P5, chunni Ex.P6, brasier Ex.P7 and stated that these are also the same clothes which she handed over to the police in a sealed parcel after post-mortem of Roshni (since deceased). Then further she also proved fired two bullets Ex.P8/A and Ex.P9/A which were ejected from the dead body of Rani at the time of her post-mortem and deposed that these are the same which she removed from the dead body of Rani.

In the affidavit Ex.PW8/A, six injures are mentioned which were found on the dead body of Rani during her post-mortem. Then in the affidavit Ex.PW8/B, two injuries are mentioned which were found on the dead body of Roshni during her post-mortem. Her opinion with regard to cause of death of both the deceased in this case was due to injuries described in aforesaid both the affidavits Ex.PW8/A and Ex.PW8/B and their complications which were ante-mortem in nature and sufficient to cause death in the ordinary course of nature.

Statement of PW-9 Dr. Satbir Singh is to the effect that he conducted post-mortem on the dead bodies of aforesaid Rani and Roshni along with Dr. Sunita Dhania. He advised for their radiological examination vide investigation forms Ex.PZ and Ex.PAA respectively.

PW-24 Vijender Singh, Deputy Superintendent of Police was posted as Inspector / SHO of Police Station Sampla on the date of alleged occurrence. He was Investigating Officer in this case. It is in his statement that on receipt of information of murder of Rani and Roshni, he went to village Karor where complainant-Rajesh produced before him an application Ex.PB upon which he made an endorsement Ex.PB/1 and

sent ruqa to police station for the registration of the FIR. He lifted from the spot blood-stained earth and two pairs of *Chappal* plastic which were converted into two separate sealed parcels and took the same into police possession vide memo Ex.PEE. Then he also got recovered six empty cartridges, one live cartridge and one lead piece of bullet from the spot which were also converted into sealed parcel after putting them into a plastic container and took the same into police possession vide memo Ex. PDD. Then he also prepared rough site plan Ex.PW24/A after inspecting the spot of occurrence. Then he also prepared inquest proceedings Ex.PU and Ex.PY in respect of dead bodies of Rani and Roshni respectively. Then he visited the house of Bhagwan s/o Chajju Ram from where he got a Government carbine along with 30 live cartridges of 9 mm and other documents Sr. No.1 to 39 which were also taken into possession vide memo Ex.PFF. Then he also got recovered a toy pistol from the house of Bhagwan Dass, sketch of which Ex.PHH was prepared and took the same into the possession vide memo Ex.PJJ. Then he also got recovered a Scorpio-vehicle bearing registration No.HR46-B-5330 and Maruti car bearing registration No.HR-12H-6849 from outside the house of accused Shri Bhagwan which were also taken into possession vide recovery memo Ex.PGG . Further he also prepared the site plan Ex.PW24/B of the place of recovery of both these vehicles. Then he also sent the dead bodies of Rani and Roshni for the post-mortem vide his applications Ex.PS and Ex.PV through EASI Jagbir Singh. Then he also took MLR and ruqa of injured Hoshiari Devi. He recorded the statements of witnesses and on returning to the police

station deposited all the aforesaid parcels with Mohrar Malkhana.

On 29.10.2008, he went to Police Post, PGIMS Rohtak where Constable Naresh Kumar handed over to him one sealed parcel containing (bullet) recovered from the body of injured Hoshiari along with another sealed parcel containing her cloths and he took both these parcels into his possession vide memos Ex.PN and Ex.PO respectively. Then it is also found mentioned in his statement that after post-mortem of Rani and Roshni, EASI Jagbir Singh handed over to him sealed parcel containing clothes of both the deceased, post-mortem report, sample seal along with another sealed parcel containing blood which were taken into police possession vide memo Ex.P21.

Then on the same day, he moved application Ex.PW24/C and got the opinion of the Doctor Ex.P24/D that injured/patient Hoshiari is fit to make her statement. Thereafter, he moved application Ex.PW24/E before Illaqa Magistrate for recording statement of injured Hoshiari under Section 164, Cr.P.C. Then Sh. Sunil Chauhan, the then JMIC Rohtak recorded her statement Ex.PRR/3.

Then he interrogated accused Prem and Dharampal on 07.11.2008. During interrogation, accused Dharampal suffered disclosure statement Ex.PW24/M, whereas accused Prem suffered disclosure statement Ex.PW24/N.

Then on 10.11.2008, he arrested accused Shri Bhagwan and Anand in this case and interrogated them along with accused Dilbagh. During interrogation accused Shri Bhagwan suffered disclosure statement Ex.PW24/O, accused Dilbagh suffered disclosure statement

Ex.PW24/P, whereas accused Anand suffered disclosure statement Ex.PW24/Q.

Then accused Anand in pursuance of his aforesaid disclosure statement Ex.PW24/Q got recovered a licensed pistol along with two live cartridges of which he (PW24) prepared rough sketch Ex.PF and took the same into his possession vide memo Ex.PG after converting them into a sealed parcel. Then he also proved the pistol allegedly got recovered from accused Anand as Ex.PW24/6. Then he also proved six empty cartridges as Ex.PW24/9 to Ex.PW24/14, one lead Ex.PW24/15, besides, one toy pistol Ex.PW24/16. Then he also proved two pairs of chappals Ex.PW24/17-18 and Ex.PW24/19-20. Further he also proved the documents as Ex.PW24/21 to Ex.PW24/59 which were allegedly recovered from the house of accused Shri Bhagwan.

The remaining part of the testimony of this witness is pertaining to interrogation, the disclosure statements suffered and the recoveries got effected by the accused who either expired during trial of the case or were acquitted after the trial of the case vide the impugned judgment. Since as aforesaid, the prosecution has not preferred any appeal against the accused who were acquitted in this case vide the impugned judgment, so there is no need to discuss the remaining part of the testimony of this witness as the same is not required to be necessary for the adjudication of the instant appeals.

PW-13 Maha Singh (retired) was posted as SI in Police Station Sampla, on the relevant date. He joined the investigation of this case as a member of Police party headed by Vijender Singh, the then

SHO/Inspector of Police Station Sampla. He was one of the attesting witnesses of the recovery memos Ex.PDD, Ex.PEE, Ex.PFF, Ex.PGG and Ex.PJJ. He also proved the sketch of toy pistol Ex.PHH. He corroborated with the above discussed statement of PW-24 DSP Vijender Singh with regard to the recovery of incriminating articles, which were taken into police possession vide said memos.

PW-12 Rajinder Singh (retired) was also posted as Sub-Inspector, Police Station Sampla on the date of alleged occurrence. He recorded formal FIR Ex.PCC in this case on receipt of ruqa sent by Vijender Singh Inspector/SHO.

PW-14 Virender Kumar Medical Record Clerk, PGIMS Rohtak produced the file of Hoshiari who remained admitted in said hospital from 28.10.2008 to 31.10.2008.

PW-15 Prem Singh Rana, produced file of Civil Suit No.52/1 of 2005 titled as Devender vs. Satbir and others decided on 30.05.2012 by the Court of Civil Judge (Senior Division) Rohtak. Further he proved certified copy of the plaint and written statement of this civil suit as Ex.PKK and Ex.PLL respectively.

PW-16 HC Pardeep Kumar produced the record of FIR No.86 of 1996, 170 of 1998, 109 of 2000, 50 of 2002, 95 and 277 of 2003 and 187 of 2004 of Police Station Sampla and proved the photocopies thereof as Ex.PMM to Ex.PSS.

PW-17 Devinder Singh, Arms License Clerk of the office of District Magistrate Rohtak produced the record with regard to Arm Licence No.894/XI/R dated 15.11.2007 issued in the name of Smt.

Mukesh Rani w/o Anand Singh r/o VPO Karor which was valid till 14.11.2010 and thereafter renewed by the office of SDM Rohtak. Vide this license said Smt. Mukesh Rani was authorized to keep NPB revolver/pistol, who, however, purchased only pistol. The remaining part of the testimony of this witness is pertaining to accused Phool Singh, Smt. Kamlesh w/o Shri Bhagwan Singh, Smt. Poonam w/o Sh. Dilbagh Singh and Sandeep s/o Raj Singh. Since accused Phool Singh and Shri Bhagwan expired during trial of the case and accused Sandeep, Kamlesh and Poonam were acquitted in this case after the trial, so there is no need to discuss the remaining part of testimony of this witness.

PW-20 ASI Vijay Pal was posted as photographer in Police Line, Rohtak on the date of alleged occurrence. He visited the spot of occurrence at the instance of Vijender Singh Inspector/SHO Police Station, Sampla and took 10 photos (Ex.P7 to Ex.P16) of the dead bodies and of place of occurrence from different angles. Further he handed over these photos to Investigating Officer after developing the same.

PW-11 Sumit Kumar Head Constable prepared scaled site plan Ex.PBB after visiting the place of occurrence on 12.01.2009.

PW-23 Ved Pal, Head Constable, Police Station Sector 17, Chandigarh produced photocopy of record of Calendra Ex.PW23/A under Section (109) 41.2, Cr.P.C., against Bhagwan Singh, Dilbag and Anand Singh sons of Chajju Ram r/o village Karor.

Testimony of DW1 Jatinder Malik is pertaining to accused Sandeep son of Raj Singh resident of VPO Karor. Since accused

Sandeep was acquitted in this case by the learned trial Court and the prosecution has not come up in any appeal against his acquittal, so there is no need to discuss his statement.

15. In the light of above discussed entire evidence of prosecution, the evidence in brief which came on record against the present appellants as stated by PW-1 Hoshiari was that these appellants along with their co-accused (since acquitted) and Phool Singh, Shri Bhagwan and Dilbagh (all three since expired during trial of the case) trespassed into the house of Amar Partap on 28.10.2008 at about 6:30 p.m. When she ran towards her son Rajesh, then appellant-Bhalu and accused Sonu (since acquitted) fired shots upon her which hit her and as a result thereof, she fell down on the ground. In her statement Ex.PRR/5 which she made before the Magistrate it was found recorded that when she ran towards her sons, then Sonu and Bhalu fired shots. She sustained fire shots and fell down.

16. The testimony of PW-2 Rajesh was to the effect that on 28.10.2008 when he along with his cousin reached at the house of Amarpartap, there they found appellants Dharampal @ Malarh, Anand and Bhalu alongwith their aforesaid co-accused causing injures to his mother Hoshiari, wife Rani and aunt Roshni. All the accused were armed with weapons and when they raised hue and cry, then the present appellants along with their co-accused Sonu etc. fired upon them. Accused Dilbagh (since expired) had fired shots upon his mother and had caused fire arm injures to her. Then as per his statement, appellant (accused) Anand got recovered one pistol along with its racksin cover,

besides, producing two live cartridges as per his disclosure statement Ex.PC.

17. PW-24 Vijender Singh DSP who was posted as Inspector/SHO at Police Station Sampla on the date of alleged occurrence had conducted most of the investigation of this case pertaining to this occurrence. His statement was to the effect that he interrogated accused Dharampal (appellant) on 07.11.2008, who suffered disclosure statement Ex.PW24/M, but there is no evidence on record as to whether any incriminating article/weapon was got recovered by this accused (appellant) in pursuance of his said disclosure statement or not. Then as per the statement of this witness, accused (appellant) Anand got recovered one licensed pistol and two live cartridges in pursuance to his disclosure Ex.PW24/Q. Then as per the record, there is no convincing evidence on the file as to whether appellant (accused) Bhalu was armed with any weapon at the time of the alleged occurrence or as to whether he got recovered any arm / weapon allegedly used in the commission of the crime.

18. Now further material question which is to be seen in this case is that as to whether abovesaid pistol which was allegedly got recovered by appellant (accused) Anand was used in the alleged occurrence or not? For this purpose report Ex.PA/1 of Forensic Science Laboratory (in short "FSL") Madhuban, Karnal is found to be relevant.

In this report at item No.4 under the head description of article(s) and contained in parcel(s), it is recorded as under:-

"contained two 7.65 mm fired bullets stated to have been

taken out from the body of deceased Rani (Bullets marked BC/1 & BC/2).

Then at item No.7 of this report, it is recorded as under :-

“contained one 7.65 mm fired bullet stated to have been taken out of the body of injured Hoshiyari (Bullet marked BC/3).”

Then at item No.9 of this report, it is recorded as under :-

“Contained six 7.65mm fired cartridge cases and one 7.65mm fired bullet and one 7.65mm live cartridge stated to have been recovered from the place of occurrence. (Cartridge cases marked C/1 to C/6 and bullet as BC/4)”

Then at Item No.11 of this report, it is recorded as under:-

“Contained one 7.62 mm mauser pistol No.88277 alongwith two 7.62 mm live mauser pistol cartridges and one holster stated to have been recovered from accused Anand (pistol marked W/3)”

Then at Item No.13 of this report, it is recorded as under:-

“Contained one 7.65/.32 pistol No.RP-124312 alongwith one 7.65 mm fired cartridge case and one 7.65 mm live cartridge stated to have been recovered from accused Phool Singh (Pistol marked W/5 and cartridge case C/7)”

After the analysis of the arms and ammunitions contained in the abovesaid parcels mentioned at Sr. Nos. 4, 7, 9, 11 and 13, the FSL submitted the report (result). Item No.3 of the result is held to be material for the purpose abovementioned which is described as below:-

“7.65 mm fired cartridge cases marked C/1 to C/7 and 7.65 mm fired bullets marked BC/1 to BC/4 have been fired from 7.65 mm/.32” pistol marked W/5 and not from any other firearm even of the same make and colibne because every firearm has got its own individual characteristics marks.”

From the perusal of item No.3 of the result, it could be concluded that all the fired cartridge cases marked C/1 to mark C/7 and 7.65 mm fired bullets marked BC/1 to BC/4 were fired from 7.65 mm / .32” pistol marked W/5 and not from any other fire arm. Then as per above discussed item No.13 pistol marked W/5 was recovered from accused Phool Singh (since deceased). There is nothing in this report to suggest that the pistol which was allegedly got recovered by accused (appellant) Anand Marked W/3 was used in the commission of the alleged crime.

19. Herein we also deem it necessary to discuss the statement of PW-25 Jai Singh S.I. (retired). It is in his statement that he interrogated accused Phul Singh on 11.12.2008, who during interrogation suffered disclosure statement Ex.PW25/B and got recovered one licensed pistol 0.32 bore alongwith one live cartridge and one empty, as per his disclosure statement. After preparing its sketch Ex.PW25/C, the same was taken into police possession along with cartridges after converting the same into a sealed parcel vide memo Ex.PW25/D. From its perusal, it is found that number of the recovered pistol which was taken into police possession vide this memo was recorded as *“Indian Ordance Factories RP-124312-2006 Pistol 7.65 mm (0.32) RP-124312”*. The number of the

pistol which is mentioned at Item No.13 abovementioned of FSL Report Ex.PA/1 is also recorded as RP-124312 7.65 mm / 0.32. So if the recovery memo Ex.PW25/D, Item No.13 and Item No.3 of the result annexed with the FSL report Ex.PA/1 are to be considered conjointly, then there remains no other conclusion to draw, but to hold that pistol which was allegedly got recovered by accused Phul Singh (since expired) was used in the commission of the alleged occurrence.

Then the Medical Officer who medico legally examined and treated injured Hoshiari was not examined by prosecution during trial of the case. Her MLR Ex.PXXX, no doubt, was tendered in the evidence of prosecution but this MLR itself is not sufficient proof of the fact that the alleged injuries as described in this MLR were caused to her in the alleged occurrence at the hands of the accused.

20. Then as per prosecution version, the alleged occurrence took place at about 6 p.m. on 28.10.2008. The matter in this regard was reported to the police by complainant vide application Ex.PB. The time of sending ruqa to police station as mentioned below the endorsement Ex.PB/1 is 9:15 p.m. and FIR Ex.PCC on its basis was recorded at 10:15 p.m. on the same day. Special report with regard to the registration of this FIR was received by Duty Magistrate on next date at 10:00 a.m. No doubt there is a delay of about 12 hours in sending the special report to Duty Magistrate, but this delay alone itself is not enough to suspect prosecution version, when the information to the Police with regard to present occurrence was given promptly i.e. within about three hours from the alleged occurrence.

21. Then as per the prosecution version, the alleged agreement to sell was got executed by way of fraud from the father of the complainant qua their land by Nafe, Davinder and Ram Karan Advocate. So on the basis of this agreement to sell, the beneficiaries were said Nafe and his two colleagues and none-else. The motive attributed against the present appellants and their co-accused that they were harassing the complainant party at the instance of abovesaid Nafe and others in order to get the land vacated, which was subject matter of the said agreement to sell is held to be not plausible nor acceptable. Then there is no evidence on the file as to how the present appellants and their co-accused had any kind of intimacy / nexus with said Nafe and others. Then it also came on the record that civil suit for specific performance on the basis of this agreement to sell had been filed by said Davinder Singh, Nafe Singh and Ram Karan against the present complainant and his father Satbir Singh, as is evident from the copy of the plaint Ex.PKK of this suit.

22. Then certified copies of various FIRs Ex.PMM to Ex.PSS were also brought on record by prosecution in the statement of PW-16 HC Pardeep Kumar in order to establish the fact that the present appellants and their co-accused namely Phool Singh, Shri Bhagwan and Dilbagh (since expired) were persons of criminal nature. But mere recording of the FIR does not mean that the allegations contained in it stand proved on the file against the alleged accused. The prosecution did not bring on record the outcome of these FIRs i.e. as to whether the accused persons mentioned in these FIRs, were tried by the Court, if so, then what was the final verdict of the Court qua the same.

23. Then in the site plan Ex.PW24/A and scaled site plan Ex.PBB, the points from which Rajesh-complainant and injured Hoshiari had seen the alleged occurrence are not depicted. So the presence of Rajesh at the spot at the time of alleged occurrence is not free from suspicion. Then PW-1 Hoshiari though was having fire arm injuries, but her presence at the spot is also doubtful for the reason that the Doctor who had attended and treated her medically as abovesaid was not examined by prosecution.

24. Then during investigation of this case two vehicles i.e. one Scorpio and Maruti car were taken into police custody in order to establish the fact that these vehicles were owned by the accused persons and same were used in alleged occurrence. Prosecution examined PW-5 Sushil Kumar Clerk of the office of RTA, Rohtak. His statement was to the effect that as per the record brought by him vehicle bearing registration No.HR-46-B-5330 was initially registered in the name of Kaptan Singh, which was later on transferred in the name of Dharam Pal s/o Chajju Ram (appellant) on 30.06.2006. This vehicle was further transferred in the name of one Devinder on 15.02.2011, the true photocopy of the relevant entry of the record is Ex.PR. So on the date of alleged occurrence, this vehicle was in the name of appellant (accused) Dharampal. Then PW-4 Sandeep produced the record with regard to vehicle bearing registration No.HR-12-H-6849. As per the record, this vehicle was registered in the name of Phul Singh son of Chajju Ram accused (since deceased). The photocopy of its R.C. was produced as Ex.PQ.

25. But herein it is very interesting to note that registration numbers of above-said both the vehicles were not found recorded in the application Ex.PB which complainant produced before the police after the alleged occurrence nor in the statement Ex.PRR/3 which Hoshiari had made before the Magistrate on 29.10.2008 qua the alleged occurrence. Even there is no mention of any kind of vehicles in application Ex.PB. Then it is also to note that these vehicles were not recovered from the spot of alleged occurrence. In this connection PW-24, the I.O., stated that both these vehicles were found parked outside the house of accused Shri Bhagwan when he visited to his house and took the same into his possession. So the involvement of both these vehicles in the alleged occurrence is also not proved beyond the shadow of doubt. The matter would have been different, had these vehicle been recovered from the spot of occurrence and in that eventuality to some extent it could be said that these vehicles were used by the accused in the commission of alleged crime.

26. Then the learned counsel for the appellants has also pointed out some improvements in the statement of PW-2 Rajesh which he allegedly made in his statement before the Court. For instance he stated in his cross-examination that he had mentioned in his application Ex.PB that Ram Karan was threatening him. Then he also mentioned in his said application that Shri Bhagwan, Dilbagh, Phul and Anand used to threaten him. Then further it was also found in his cross-examination that he also got recorded in his said application that all other accused were having weapons in their hands. But when this

witness was confronted with the contents of his alleged application Ex.PB, then all the above-said facts were not found to be recorded in it. Then he also admitted that the alleged agreement to sell was appending the signatures of his father. Then it is also found mentioned in his cross-examination that accused Sandeep s/o Raj Singh was not present in the village on the date of the occurrence nor he fired upon any person. This fact was also found recorded in the cross-examination of PW-1 Hoshiari.

Then in her cross-examination, it is also found recorded that the accused present in dock with other co-accused is Sandeep s/o Raj Singh. He is not Sonu s/o Rajal nor he is named as Sonu. Then she also admitted that there are two persons by the name of Sonu s/o Rajal in their village, but none of them has been cited as an accused nor present in the Court.

Then it also came in the cross-examination of PW-1 that mobile phone which was lifted by the accused belonged to Peshi, but she could not tell who lifted this mobile. As per the case of prosecution, the said Peshi Ram was eye-witness to the alleged occurrence, but the prosecution did not examine him for the reasons best known to it nor any mobile phone allegedly lifted by the accused from the spot was ever recovered from any of the accused. Then it was also in her cross-examination that when she received fire shot injuries, her son Rajesh and Peshi Ram were at a distance of 5/6 paces. But it seems very strange that none of them had sustained any injury in the alleged occurrence in which Rani and Roshni were allegedly murdered.

27. In the light of above discussion, it is held that there are

merits in the appeals and as such, the same are liable to be accepted, accordingly these appeals are accepted. The impugned judgment and order of sentence as a result thereof stands set aside. The appellants-herein (accused) are acquitted of the charges under Sections 148, 307, 302, 449 read with Section 149 & 120-B, IPC, by granting them benefit of doubt. Appellant (accused) Anand is also acquitted of the charge under Section 25 of the Arms Act. Appellants who are in custody are ordered to be released forthwith, if they are not required in any other case.

Since the main appeals have been disposed of, the miscellaneous application, if any, also stands automatically disposed of having been rendered infructuous.

A copy of this judgment be sent to the quarter concerned immediately for strict compliance.

(S.S. SARON)
Judge

(GURMIT RAM)
Judge

12.04.2016.
Brij/Gaurav Sorot

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes