

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

**1. CRA-S No.2612-SB of 2013
Date of decision : May 25, 2016**

Shahzad Appellant

Versus

State of Haryana Respondent

**2. CRA-S No.3312-SB of 2013
Date of decision : May 25, 2016**

Abdul Rehman Appellant

Versus

State of Haryana Respondent

**2. CRA-S No.4939-SB of 2014
Date of decision : May 25, 2016**

Kurban Appellant

Versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.S. Mamli, Advocate for the appellant
in CRA-S No.2612-SB of 2013.

Mr. Mohan Singh Rana, Advocate for
Mr. S.K. Panwar, Advocate for the appellant
in CRA-S No.3312-SB of 2013.

Mr. Sanjay Verma, Advocate for the appellant
in CRA-S No.4939-SB of 2014.

Mr. S.S. Dinarpur, Advocate for the complainant.

Mr. Naveen Sheoran, DAG, Haryana.

- 1. Whether the Reporters of local newspaper may be allowed to see the judgment ?**
- 2. To be referred to the Reporter or not.**
- 3. Whether the judgment should be reported in the digest ?**

KULDIP SINGH J. (ORAL)

By this single judgment of mine, I shall dispose of three connected appeals bearing Nos. CRA-S Nos.2612, 3312-SB of 2013 and CRA-S No.4939-SB of 2014 filed against the common judgment dated 12.07.2013 passed by learned Addl. Sessions Judge, Yamuna Nagar at Jagadhri, vide which present appellants, namely, Shahzad, Abdul Rehman and Kurban were convicted for the commission of offences punishable under Sections 307, 392 and 397 read with Section 34 IPC and sentenced all the accused as under:

<i>Sr. No.</i>	<i>Offence u/s (IPC)</i>	<i>Imprisonment (R.I.)</i>	<i>Fine (₹)</i>	<i>In default of fine (R.I.)</i>
1	307 r/w 34	10 years each	10,000/- each	3 months each
2	392 r/w 34	7 years each	10,000/- each	3 months each
3	397 r/w 34	10 years each	10,000/- each	3 months each

The substantive sentences were directed to run concurrently. It was further ordered that the fine recovered from the accused-appellants shall be payable as compensation to both the injured i.e. 1/4th share to Abdul Hamid and 3/4th share to Musarat Begum, keeping in view the nature of injuries suffered by each of the injured.

The legal machinery was set into motion by the statement of Abdul Hamid (Ex.PW1/A) recorded by S.I. Fateh Singh on 01.03.2010. In the statement, Abdul Hamid stated that on 28.02.2010, it was Holi festival and the people used burn Holi in an open place in front of his old house. After leaving his wife at his new house, Abdul Hamid along with his children went to his old house to witness the burning of Holi. After the Holi function was over, he went to the house of his elder brother Shahid Ahmed

as the house of his brother was near to his old house and he sent children to his new house. At about 1 o' clock at midnight, he reached his new house from the house of his brother Shahid Ahmed. Sonu son of his brother-in-law aged about 18 years was also present at home. He along with his wife Musarat and four children, namely Noman, aged about 12 years, Sarfraz, aged about 10 years, Mohd. Usman, aged about 8 years and daughter Mariam, aged about 6 years was sleeping in a separate room. Complainant- Abdul Hamid was lying on the cot and his wife Musarat along with children was sleeping on the double bed. Sonu was sleeping in the separate room. At about 1.15 a.m., he heard the sound of footsteps of somebody in the *varanda*. He thought that it must be Sonu. Therefore, after five minutes, he again heard the sound of footsteps. He got suspicious and asked in loud voice as who is there? The door of his room was closed from inside. Then, Kurban, aged about 20 years, resident of Mukarmpur replied that he wants to meet him and requested him to open the door. Complainant Abdul Hamid then opened the door and after opening the door, he sat on the double bed. In the meantime, Kurban along with two other persons entered the room. The lights of the room and *varanda* were on. Kurban then threw complainant Abdul Hamid on the double bed and sat on his chest. Abdul Rehman S/o Fazlu Rehman, resident of village Budia sat on both the legs of complainant Abdul Hamid. The third person stood in front of the door opposite the double bed. Abdul Hamid asked Kurban as to what is the matter? On which Kurban and Abdul Rehman started beating the complainant and thereafter, started abusing him and told him that today he cannot escape and that they have come well prepared to kill him. One of the

assailants said that they have taken money for this purpose. Upon this, Kurban and Abdul Rehman took out country made pistols and pointed towards the complainant. In the meantime, Musarat wife of the complainant woke up. Immediately thereafter, she caught hold of the person, who was standing there and started raising hue and cry. Upon this, one of them exhorted to kill her. Thereafter, the person, who was caught hold by Musarat, gave a knife blow on her head. When the complainant tried to rescue his wife, then Kurban and Abdul Rehman, who were carrying country made pistols and the barrel of which were caught hold by complainant, fired from their country made pistols, which hit on both the hands of the complainant. One of the bullets pierced through the left hand of the complainant. Third person gave a blow with sharp edge weapon on the head of the complainant. Out of Kurban and Abdul Rehman, one of them fired at his wife Musarat and the shot hit the chest of Musarat. Thereafter, all the assailants stated that whatever is available in the house be picked up. Upon this, accused removed ₹75,000/- cash, two pairs of gold earrings, one pair of bangle and one pair of anklets, some unstitched clothes and mobile phone etc. and ran away. The complainant gathered some courage and ran after the accused. However, he fell down near the door. Accused ran away from the spot. On hearing hue and cry of the complainant, Yaseen, Ali Hassan, Sher Ali, Gurfar gathered at the spot and after arranging a vehicle removed Abdul Hamid and his wife Musarat to Sharma Hospital. According to the complainant Abdul Hamid, he could recognize the third accused, if brought before him, whereas he knew Kurban and Abdul Rehman.

On receiving the intimation from the doctor, SI Fateh Singh visited Sharma Hospital and after recording the opinion regarding the fitness of the complainant, recorded the statement of the complainant Ex.PW1/A. Upon which FIR was registered. Thereafter, SI Fateh Singh visited the spot and prepared the visual site plan Ex.PW 20/A. On the spot inspection, one bullet of .315 bore, blood stained pillow, shawl, chappal, mufler were taken into possession through recovery memo Ex.PW20/C.

During investigation, the accused were arrested. The police also arrested accused Aadil, Suffiann Shahzad and Farid in case FIR No.33, dated 01.03.2010, registered under Section 392 and 201 IPC and Section 25 of the Arms Act, 1959. In the said FIR, one country made pistol was recovered from Aadil. One country made pistol of .315 bore was recovered from Shehzad, which was taken into possession through recovery memo Ex.PT/2. In the said FIR No.33, dated 01.03.2010, accused Shehzad suffered disclosure statement Ex.PU and in pursuant to the statement, he got recovered one 'Nokia' mobile phone (Ex.PV). After completion of the investigation, the accused Kurban was found innocent and got discharged. However, the challan against the remaining accused was presented. The recovered articles were sent to the Forensic Science Laboratory. Vide Ex.PY, it was reported that the clothes i.e. T-shirt (mean), ladies shawl, maflar, takia etc. are stained with human blood.

The .315 misfired cartridge collected from the place of occurrence, .315 fired bullet taken out from the body of Musarat after operation along with one country made pistol of .315 bore along with one live cartridge along with country made pistol of .315 bore recovered from

Suffiann and Farid and one country made pistol recovered from accused Shahzad were sent to the Forensic Science Laboratory, Madhuban, Karnal for examination.

As per the report of Forensic Science Laboratory (Ex.PX, the country made pistol Ex.W2 to W4 i.e. recovered from Suffiann, Farid and Shahzad were used for firing. However, the time of firing was not given. It was further reported that .315 fired bullet marked as BC/1, recovered from the body of Musarat has been fired from the country made pistol, recovered from accused Aadil. No opinion can be given regarding .315 bore misfired cartridge marked as MC/1, in respect of country made pistols marked W/1 to W/4. It was further reported that hole in the lady's shirt was caused by a bullet projectile. Similarly, the hole in the shawl was also caused by a bullet projectile.

Later on, during trial in an application filed under Section 319 Cr.P.C., accused Kurban was also summoned to face trial vide order dated 15.11.2010 and amended charge-sheet was framed against all the accused including accused Kurban under Sections 395, 397, 307 and 412 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined Inspector Kanwaljeet Singh as PW1, Som Chand as PW2, EASI Bahadur Sing has PW3, ASI Sham Lal as PW4, complainant Abdul Hamid as PW5, Dr. Pardeep Tehlan as PW6, Dr. Kamal Sharma as PW7, Smt. Musarat as PW8, SI Phool Chand as PW9, ASI Surja Ram as PW10, H.C. Mulakh Raj as PW11, ASI Sumesh Pal as PW12, H.C. Mehroof Ali as PW13, ASI Ramji Lal as PW14, ASI Maya Ram as PW15, SI Bal Kishan as PW16, ASI

Ramesh Kumar as PW17, ASI Mohan Lal as PW18, ASI (Retd.) Subhash as PW19, SI Fateh Singh as PW20, ASI Vijay Kumar as PW21, EASI Nort Ram as PW22, C. Vinod Kumar as PW23, Inspector Pawan Kumar as PW24 and Parmod Kumar as PW25.

When examined under Section 313 Cr.P.C., accused Abdul Rehman claimed that the evidence led against him is incorrect and pleaded that he is innocent. Accused Shahzad and Kurban along with three accused Adil, Suffiann and Farid also took the similar plea. Accused did not lead any evidence in defence.

After hearing learned Public Prosecutor, learned counsel for the accused and going through the evidence, learned Addl. Sessions Judge, Yamuna Nagar at Jagadhri convicted and sentenced the accused as aforesaid, whereas accused Adil, Suffiann and Farid were acquitted of the charges framed against them.

First of all it is necessary to summarise the nature of injuries suffered by Abdul Hamid and his wife Musarat. As per statement of Dr. Kamal Sharma, PW7, when Abdul Hamid was examined by him on 01.03.2010 at about 2.40 a.m., the following injuries were found:

“ A- Right Frontal area forehead

i- small wound 1” long and 1/2” deep

ii- Another wound 2” long 1/2” deep with regular incised edges.

B- Alulcerations with burned carbon particles and soots on right palm and right ring finger swallow with haematoma.

C- Wound with irregular edged inverted lacerated burnt 1” and 1 1/2” long, 2” deep with carbon soot particles on left middle palm of the left hand. This is the wound of

entry “On the back of the left hand 1” long wound with everted edges lacerated in irregular edges. Bone pieces and muscle tissue lying exposed. This the wound of exit. X-ray shows fracture of the bones of hand.”

Injury No.1 was simple due to sharp weapon. Injuries Nos.2 and 3 were due to fire arm weapon. However, injury No.3 was grievous in nature.

From examination, following injuries were found on the person of Musarat Begum:

“ A- Small 1” long 1/4” deep on mid frontal area of the head and hametoma swelling on left ariteooccipatal of the head.

B- left lower arm ulceration with carbon soot and particles swallow with superficial eccheymoses with hametoma (due to fire arm).

C- 3 & 4 quarter inch long lacerated irregular edges inverted edges wound with burnt andcarbon soot particles on the left breast outer upper quadrant (wound of entry). The direction on the wound from lateral to medial side towards the Sterno cloviclar Joint.

D- The foreign body could be palpated on clinical examination. The depth of wound 7” in length. There is no wound of exit. The bullet is inside the body.”

Injury Nos.1 and 2 are simple in nature and injury No.3 was dangerous due to fire arm.

It is further reported that on X-ray, a bullet was found in the chest wall and the same was removed after operation and handed over to the police on 06.03.2010. The X-ray report was prepared by Dr. Pardeep Tehlan, PW6.

Now, coming to the statement of complainant Abdul Hamid, it comes out that Abdul Hamid as well as PW5 Musarat, wife of the complainant have fully supported the prosecution case. Abdul Hamid has clearly stated that when he returned to his house after burning Holi at about 1.00 a.m.(midnight), he heard the sound of footsteps outside in the *varanda* of his house and when he got suspicious, he asked as who is there? Upon which, Kurban replied and requested him to open the door. After opening the door, Abdul Hamid sat on the bed. Then first Kurban entered the room and thereafter Abdul Rehman and Shazad entered the room. Kurban threw the complainant on the bed and sat on his chest. Abdul Rehman sat on his legs. Shahzad was standing near the door, in the direction of his foot. Then Kurban started abusing the complainant and gave him slap and fist blows and also told him that he will not be spared today. He offered the accused to take away whatever they want but to spare him. Upon which, Kurban told that they have already taken the money to eliminate him. Then Kurban and Abdul Rehman took out country made pistols and aimed them towards him. He held both the pistols with his hand and then raised alarm. Upon which, his wife Musarat woke up and she caught hold of one of the persons standing near the door, namely Shahzad. Then, Kurban exhorted Shahzad to kill her. Upon which, Shahzad gave a knife blow on her head. Blood started oozing out from her head and she fell on the bed near the complainant. When, he made efforts to get himself free, both Kurban and Abdul Rehman opened fires with their respective pistols. The bullet which struck his left hand had pierced his left palm which led to amputation of one finger. His right palm was completely burnt. The bullet which pierced his right palm,

had pierced the left wrist of his wife and then struck in her chest. Shehzad then gave knife blow on the head of Abdul Hamid. Thereafter, they ransacked the room. They took away Rs.75,000/-, two pairs of ear rings, two silver bangle and two anklets (silver) and clothes in addition to one mobile phone. Abdul Hamid identified the accused present in the court.

Musarat, wife of the complainant fully supported the statement made by Abdul Hamid.

The Investigating Officer SI Fateh Singh, PW20 proved the recording of the statement of Abdul Hamid, complainant, taking into possession the articles from the spot as stated above. He stated that he had arrested accused Abdul Rehman and Kurban on 04.03.2010 and also recorded their disclosure statements. The statement of SI Fateh Singh was supported by ASI Surja Ram, PW10. EASI Bhadur, PW3 proved the disclosure statements of the accused Suffian, naming Aadil, Farid and Shehzad and also proved the recovery of country made pistols in a separate case.

Learned counsel for the appellant Shehzad has argued that Shehzad was not identified at the spot.

According to the statement of the complainant, Abdul Hamid, he identified accused Shehzad in CIA Staff after 10-12 days of the occurrence. The complainant previously knew Kurban and Abdul Rehman.

It is contended that at that time, only Shehzad was present in the CIA Statf and his identification in CIA Staff is not admissible in evidence. Further, his identification in the court also cannot be relied upon.

It is further stated that the recovery of the pistol was made in another FIR i.e. 33, dated 01.03.2010, under Sections 392 IPC and 25 of the Arms Act, 1959 registered at Police Station Budia and in the said case, accused have been acquitted, thus, the said recovery cannot be relied upon.

I am of the view that in the present case, the nature of the injuries coupled with the immediate spot inspection shows that the occurrence had in fact taken place. The nature of injuries shows that these can not self inflicted and in fact that injured were removed by the people of the locality to Sharma Hospital. Two of the accused, namely Abdul Rehman and Kurban were previously known to the complainant. It is on the asking of Kurban, who was previously known to the complainant that the complainant opened the door. The complainant was told that they have already taken money for eliminating him. The two shots were fired. One hit the left palm and other hit the right palm, as the complainant had held the pistols of Kurban and Abdul Rehman from the barrel. One finger of left hand of the complainant was amputated. One of the bullet after piercing the right palm of the complainant struck in the chest of Musarat on the left side. The said bullet was recovered by the doctor after operation.

In this case, the occurrence is fully proved by the ocular statement of Musarat wife of the complainant and the complainant himself. Both of the assailants were identified at the time of occurrence. The case was inquired by the Investigating Officer. The accused, namely Suffian, Farid and Adil were acquitted by the lower court. There is no enmity to falsely implicate and name the appellants in the crime. Since, the complainant visited the CIA Staff, on seeing Shahzad, he immediately

identified him. The complainant had sufficient time and opportunity to recognize Shehzad at the time of crime as the lights of the room and *varanda* were on and the occurrence took some time.

Moreover, Musarat wife of the complainant had grappled Shehzad and caught hold of him. Therefore, she had better opportunity to recognize Shehzad.

However, after committing the crime, the weapons might have changed hands with one or the other accused. On the next date of the crime, they were arrested in FIR No.33, dated 01.03.2010 at another place. The mere fact that during investigation, the police found Kurban innocent, is no ground to hold that the conclusion drawn by the police is correct. In fact, it was on the asking of Kurban that the complainant had opened the door at 1.00 a.m. (midnight).

From the foregoing discussion, I come to the conclusion that accused Shehzad, Kurban and Abdul Rehman were rightly convicted for the commission of offences punishable under Sections 307, 392 and 397 IPC.

Learned counsel for the appellants have requested to show some leniency on the point of quantum of sentence, stating that the accused-appellants are young men.

After considering the facts and circumstances of the case, rigorous imprisonment of 10 years awarded to all the accused-appellants under Section 307 and 397 IPC is reduced to 7 years. However, the remaining sentence awarded under the said sections and Section 392 IPC is maintained.

With the aforesaid modification, the aforesaid three appeals are dismissed.

Accused Kurban and Abdul Rehman are already in custody. Accused Shehzad is on bail. He be arrested forthwith to commit to jail to undergo remaining part of the sentence.

(KULDIP SINGH)
JUDGE

May 25, 2016
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