

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

CRA-S-2977-SB-2013

DATE OF DECISION :- February 02, 2016

Samir Nain alias Vicky

...Appellant

Versus

State of Haryana

...Respondent

CRA-S-957-SB-2014

Amit Yadav

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

Present:- Mr. Atul Lakhanpal, Senior Advocate
with Mr. R.S.Chahal, Advocate
for the appellant in CRA-S-2977-SB-2013.

Mr. Surinder Saini, Advocate
and Mr. Rishav Jain, Advocate
for the appellant in CRA-S-957-SB-2014.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? **Yes**

M.JEYAPPAUL, J.

1. Accused Amit Yadav, Samir Nain and Raghbir Singh
faced trial before the learned Additional Sessions Judge,

Yamunanagar at Jagadhri. Accused Raghbir Singh was acquitted whereas Amit Yadav and Samir Nain were convicted under Sections 307/34,452/34 and 427/34 IPC. Amit Yadav also was convicted under Section 25 of the Arms Act, 1959. Accused Amit Yadav and Samir Nain aggrieved by the above conviction and sentence thereunder passed by the trial Court have preferred these individual appeals.

2. PW3 Satinder Kaur was the wife of Charanjeet Singh Walia. She has categorically deposed that on 31.12.2008, she along with her husband participated in the celebration of New Year festival at the house of PW5 Narender Garg. At about 11.30 P.M., when she and her husband after taking dinner were standing in porch of the house of PW5 to proceed to their house, Amit Yadav armed with a pistol and Samir Nain armed with an iron rod entered into the house of PW5. Amit Yadav fired two shots aiming at her husband. One shot hit the flower pot in the house of PW5 and the other went in the air. He again fired two more shots in the air. Samir Nain broke the panes of Safari car of PW5 which was parked in the porch. Amit Yadav also broke one of the panes of the car. He also fired one more shot which hit the pane of the Safari Car. PW1 Amit Khetan also was present in the house of PW5. Amit Yadav attacked Charanjeet Singh Walia with an intention to kill him.

3. PW1 Anil Khetan supported the version of PW3, whereas PW5 Narender Garg in whose house New Year celebration was

conducted and the occurrence took place did not support the case of the prosecution.

4. Charanjeet Singh Walia in fact lodged the First Information report and set the law in motion. But unfortunately he passed away and as a result of which he could not be examined before the trial Court.

5. The point that arises for determination is whether the prosecution has established beyond reasonable doubt the charges under Sections 307/34 IPC, 452/34 IPC and 427/34 IPC against Samir Nain and charges under Sections 307/34 IPC, 452/34 IPC, 427/34 and 25 of the Arms Act, 1959 against Amit Yadav.

6. Learned Senior Counsel appearing for the accused Samir Nain and learned counsel appearing for accused Amit Yadav vehemently submitted that there was no possibility for PW3 who was allegedly inside the house of PW5 to witness the occurrence. If at all the accused had intended to cause the death of Charanjeet Singh Walia, they would have caused some injury either to him or to the persons who gathered in the house of PW5. CCTV footage was not recovered and produced before the Court. The evidence of PW1 could not be relied upon as his name did not figure in the First Information Report. The evidence of PW3 cannot be safely relied upon as she has been examined after two months by the Investigating Officer. As Charanjeet Singh Walia had died, the First Information Report lodged by him was not corroborated. No test

identification parade was conducted by the Investigating Official. There was no mark found on the walls of the house of PW5. It was lastly submitted that the FSL report discloses that the weapon sent for examination was a country made pistol, whereas PW13, Investigating Official in this case has deposed that it was an Italy made pistol supplied only to the Army personnel. Therefore, it is their submission that the case of the prosecution was not established beyond reasonable doubt.

7. Learned State counsel vehemently submitted that there was no reason to reject the evidence of PW1 and PW3 in the background of the recovery effected at the instance of the accused. Different description of the weapons does not falsify the recovery made by Investigating Officer. At any rate, in the face of ocular testimony, the varied version as regards the weapons recovered does not go to the root of the case, it was submitted.

8. I thoroughly scanned the entire evidence of PW1 Anil Khetan and PW3 Satinder Kaur. On the eve of New Year day, it appears, they had gathered at the house of PW5 Narender Garg who turned hostile to the case of the prosecution for the reasons best known to him. At any rate, they had made an attempt to hide an elephant in a snuff box, forgetting the proved version that his car was attacked and glass panes were completely damaged.

9. There was every reason for PW3 Satinder Kaur to be along with her husband at the house of PW5. The version of PW1

that he also participated in the New Year celebration at the house of Narender Garg cannot also be doubted. Though PW3 was examined after two months, her testimony is found reliable and trustworthy. She might have been in the grip of fear on account of the attack launched by the accused against her husband. In fact, her husband was subsequently murdered and in the said murder case, the very same accused were charged and found guilty by the trial Court as evidenced by the custody certificate produced by the learned State counsel.

10. PW3 has categorically deposed that both the accused had entered into the house of PW5 when she was with her husband at the porch of PW5 for the purpose of proceeding to their house after the New Year celebration was over. As per her testimony, accused Amit Yadav had aimed at her husband. PW1 Anil Khetan has completely corroborated the testimony of PW3. Though PW5 did not support the case of the prosecution, in my considered view, the testimony of PW1 and PW3 completely establishes the case of the prosecution.

11. Of course PW13, the 1st Investigating Officer has stated that the weapons recovered from Amit Yadav was a .32 bore automatic pistol of Italy make supplied only to Army but the Forensic Science report would disclose that the weapon was a country made pistol. The above difference in description, in my considered view, does not go to the root of the case, inasmuch as the ocular

testimony has passed the test of credibility and trustworthiness. Even in a case where the weapon was not recovered, the guilt of the accused is not washed away, more especially when voluminous testimony is there to convince the Court that the accused did commit the offence.

12. Absence of bullet mark on the house of PW5 does not throw doubt on the case of the prosecution. Accused had aimed at Charanjeet Singh Walia and made an attempt to cause his death. Even if the First Information Report was not corroborated on account of the death of Charanjeet Singh Walia the ocular testimony has completely established the case of the prosecution.

13. For all these reasons, I find that the prosecution has established beyond reasonable doubt the charges framed as against the accused.

14. Of course, no one had sustained injury in the occurrence as contended by the learned Senior Counsel appearing for accused Samir Nain and learned counsel appearing for Amit Yadav., Therefore, I have proposed to reduce the sentence of 10 years imposed for the offence under Section 307 of the Indian Penal code to 7 years imprisonment.

15. In the above facts and circumstances, the judgment of conviction and sentence passed by the trial Court for offences under Sections 452/34 IPC, 427/34 IPC as against both the accused and 25 of the Arms Act against accused Amit Yadav stand confirmed. The

conviction against both the accused under Section 307/34 IPC is also confirmed but the sentence of imprisonment imposed thereunder by the trial Court is reduced to 7 years rigorous imprisonment. The fine and default sentence imposed thereunder is sustained.

16. With the above modification in the matter of sentence, both the appeals stand dismissed.

**(M. JEYAPPAUL)
JUDGE**

February 02, 2016

p.singh