

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

CRA-D-151-DB-2003

Date of decision:05.08.2016

Dalip Singh

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE GURMIT RAM**

Present: Mr. Rahul Vats, Advocate for
Mr. Vikram Singh, Advocate
for the appellant.

Mr. M.S. Sidhu, Addl. A.G., Haryana.

GURMIT RAM, J.

This appeal is preferred at the instance of aforementioned appellant against the judgment of conviction dated 21.01.2003 and order of sentence dated 23.01.2003 passed by the Court of learned Additional Sessions Judge (ad hoc), Karnal in criminal case bearing FIR No.380 dated 13.11.2000, under Section 302 read with Section 34 of the Indian Penal Code ("IPC" - for short), Police Station Gharaunda vide which appellant-herein (accused-Dalip Singh) was held guilty for the offence punishable under Section 302, IPC as well as under Section 25 of the Arms Act and was awarded sentences accordingly, whereas his co-accused Dalel Singh and Dalbir Singh were acquitted of the

charges framed against them by giving them the benefit of doubt.

2. The case of prosecution in precise as put forth before the learned trial Court was that on 13.11.2000, a telephonic message was received that a shot has been fired at bus stand, Gharaunda. On this Rattan Singh, ASI along with other police officials reached at railway road, Gharaunda via bus stand, Gharaunda where ward servant, Primary Health Centre, Gharaunda handed over to him one medical ruqa with regard to death of one Rakesh Kumar s/o Bal Kishan r/o Ganjbarh, Panipat due to gun shot injury. Then, the said police officer reached at Primary Health Centre, Gharaunda where he came across complainant Siri Dhar s/o Bal Kishan r/o Ganjbarh, Police Station Sadar, Panipat, who made his statement Ex.PC/Ex.PA before him to the following effect:-

“That they were four brothers namely Rakesh Kumar, Shankar Dayal, Vishnu Dutt and he himself. He along with his eldest brother Rakesh Kumar has been running a shop of auto spare parts at bus stand, Gharaunda. His both the younger brothers are still studying. About two months prior, they employed one Dalip Kumar s/o Lakhpat Ror r/o Dhingar Majra on their shop as mechanic (mistri). About one month prior to this date, one Prithvi Singh Sarpanch of village Dhingar Majra got his motorcycle make Hero Honda repaired from their shop. The total expenses for this repair was ₹5,800/- and this entire amount was received by abovesaid Dalip, mechanic. In this regard, Panchayat was

also convened once or twice, which anyhow did not prove fruitful. Ultimately, they turned out said Dalip Mechanic from their shop, who threatened to see them. Today in the morning at about 9:00 a.m. he along with his brother Rakesh Kumar and his uncle Dinesh Kumar came to his shop. His brother Rakesh Kumar was about to lit the 'dhoopbatti' after cleaning the shop. In the meanwhile, abovesaid Dalip Kumar along with his brother Dalbir who were armed with country-made pistols came there. His brother Dalel Singh who was empty handed also reached there. On arriving there, Dalip Kumar fired a shot from his country-made pistol which hit his brother (Rakesh Kumar) on his chest. Thereafter, all the three assailants ran away from the spot. He and his uncle Dinesh Kumar could not apprehend them despite the fact that they chased them. Thereafter, he and his uncle Dinesh Kumar took his brother Rakesh Kumar to Government Hospital, Gharaunda where the Doctor declared him dead. Request was made to take action against the abovesaid assailants.”

Complainant signed his abovesaid statement in Hindi after admitting it to be correct, upon which ASI Rattan Singh made his endorsement Ex.PA/3 and sent ruqa to police station on the basis of which the instant case was registered. Proceedings under Section 174 of the Code of Criminal Procedure Code (“Cr.P.C.”- for short) in respect of dead body of the deceased were conducted within the premises of Primary

Health Centre, Gharaunda. Thereafter ASI Rattan Singh visited the spot of occurrence and lifted bloodstained earth from the spot. Postmortem on the dead body of the deceased was got conducted from General Hospital Karnal.

3. Thereafter the investigation of the case was conducted by Gulzar Singh Inspector, CIA Staff, who also inspected the spot of occurrence. Statements of witnesses were recorded. After the postmortem of the deceased, parcels containing clothes of deceased and other documents relating thereto were taken into police possession. Accused Dalip Singh was apprehended in this case on 15.11.2000. During his interrogation on 16.11.2000, he suffered disclosure statement that he had kept concealed '*that pistol which was used by him in committing the murder of Rakesh Kumar on 13.11.2000 in the bushes adjoining to Patel Park, Gharaunda*'. Thereafter, he got recovered the said pistol of 12 bore as per his disclosure statement. On checking this pistol, its barrel was found containing one empty cartridge bearing impressions KF-12/98, which was taken out. Thereafter, rough sketch of the pistol was prepared. Then this pistol and the empty cartridge were taken into police possession vide different memos after preparing parcels thereof. During investigation, the alleged accused Dalel Singh and Dalbir Singh were not found involved in the alleged occurrence, whereas only accused Dalip Singh was found to be involved in it. Opinion of the Doctor with regard to the cause of death of the deceased was also obtained. Parcels containing clothes of the deceased, blood-stained earth lifted from the spot, the weapon used in the commission of alleged crime

etc. etc. were sent to the office of Director, Forensic Science Laboratory ("FSL" - for short), Madhuban. On the completion of investigation, challan against the accused Dalip Singh alone was presented in the Court of learned Illaqa Magistrate, who after making compliance of the provision of Section 207 of the Cr.P.C. committed this case to the Court of learned Sessions Judge, Karnal for the trial.

4. Initially, on finding a prima facie case punishable under Section 302, IPC and Section 25 of the Arms Act, against accused Dalip Singh, he was chargesheeted accordingly vide order dated 16.03.2001, to which he pleaded not guilty and claimed trial.

After recording statements of two witnesses, the prosecution moved an application under Section 319, Cr.P.C., for summoning of Dalel Singh and Dalbir Singh as additional accused to face trial in this case along with accused Dalip Singh, which was accepted vide order dated 21.05.2001.

On procuring their presence, all the three accused were chargesheeted for the offence punishable under Section 302 read with Section 34, IPC, whereas accused Dalip Singh was also chargesheeted for the offence punishable under Section 25 of the Arms Act vide order dated 14.06.2001 to which they pleaded not guilty and claimed trial.

5. The prosecution during trial of the case examined sixteen witnesses in all to bring home the guilt of the accused and to punish them according to law.

6. Thereafter they were duly examined as per the provisions of Section 313, Cr.P.C., in which the entire incriminating evidence as

brought on the file against them during trial of the case was put to them which they denied in toto. Further they pleaded their false implication in this case and claimed their innocence. It was further their plea that they had no concern at all with this case and that they had been involved in it on the basis of mere suspicion. It was also their plea that accused Dalbir Singh and Dalel Singh being found innocent during investigation, this case was dropped qua them by the police. However, they did not lead any evidence in their defence.

7. Learned trial Court after hearing learned counsel for both the parties and going through the record as well acquitted accused Dalbir Singh and Dalel Singh by giving them benefit of doubt whereas held their co-accused Dalip Singh guilty in this case for the offences punishable under Section 302, IPC and 25 of the Arms Act vide the impugned judgment dated 21.01.2003 and awarded him sentences as detailed below:-

Dalip Singh	302, IPC	Rigorous imprisonment for life and to pay a fine of ₹6,000/-.	In default of payment of fine, the convict shall undergo rigorous imprisonment for a further period of one year.
	25 of the Arms Act	Rigorous imprisonment for a period of three years and to pay a fine of ₹1,000/-.	In default of payment of fine, the convict shall undergo rigorous imprisonment for a further period of five months.

Both the sentences were ordered to run concurrently.

8. Appellant-herein (accused-Dalip Singh) being not satisfied with the impugned judgment of conviction and order of sentence has

come up with the instant appeal, notice of which was given to the respondent-State. Record of learned trial Court was also requisitioned.

9. Learned counsel for both the parties were heard. Record was also analyzed minutely with their able assistance.

10. Learned counsel for the appellant has contended that both the material eye-witnesses namely PW-1, Siri Dhar-complainant and PW-2 Dinesh Kumar cited by the prosecution to the alleged occurrence are thickly related to the deceased as PW-1 is the real brother, whereas PW-2 is the real uncle of the deceased. Herein he has submitted that both these witnesses being related to the deceased by blood, they might have their own axe to grind to depose against the accused and as such their depositions are not to be considered, being interested one. Admittedly, PW-1 and PW-2 are related to deceased by blood as above-stated. Now let us scrutinize their statements in order to hold as to whether their depositions are to be relied upon or discarded being interested witnesses as pointed above by the learned counsel for the appellant.

It came in the cross-examination of PW-1 that during days of alleged occurrence, he used to study in I.T.I. and after his classes were over, he used to sit on the shop. The timings of his I.T.I. classes were from 9:00 a.m. to 5:00 p.m. and in the same sequence he narrated that he appeared in his final year examination in July 2000, even the result of which was also declared in the month of November 2000. He was not the student at that point of time. Then it was also found recorded in his cross-examination that on the date of alleged occurrence he, his brother Rakesh Kumar (since deceased) and his uncle Dinesh Kumar proceeded from

their village at 08:45 a.m. on a motorcycle and the accused reached at their shop at about 9:10 a.m.. His village which is located on G.T. road is at distance of about 6 kilometers from Gharaunda. It took about 10 minutes in reaching to their shop from their village on a motorcycle.

So far as PW-2 Dinesh Kumar was concerned, it was found recorded in his cross-examination that police reached at PHC Gharaunda within 10/15 minutes, again said 20/25 minutes after their reaching in the said hospital. His statement was recorded by the police at about 10:45 a.m.. When his statement was recorded by the police, PW-I Siri Dhar was also present there. First of all, statement of Siri Dhar (PWI) was recorded by the police and thereafter, the police recorded his statement.....

At the first instance, Rakesh Kumar (since deceased) started this shop with Sunil, but after 15/20 days, the said Sunil left the shop and he (PW-2) was introduced in the business by said Rakesh Kumar, but the names of proprietors were not changed on the sign-board.....

He paid a sum of ₹40,000/- to his brother Bal Kishan to become a partner in spare parts shop. He joined this business in November 1999. He was knowing Sukhbir son of Deep Chand and Anil Kumar son of Piare Lal, both residents of village Panori, as they used to visit their shop as their customers.....

On an average, a sum of about ₹1,500/- or ₹2,000/- used to fall to his share every month out of the profit.....

Now they have closed the shop after the alleged occurrence and disposed of the entire spare parts. The record of profit and loss was

being maintained by Rakesh Kumar (since deceased) which is now lying with his brother Bal Kishan at home.

11. In the light of above discussed statements of PW-1 and PW-2, there is nothing on the record either to suspect about their presence at the spot at the time of alleged occurrence nor anything had come on record in order to dislodge their statements on the ground of interested witnesses being related to the deceased by blood. From their above discussed depositions, it was very much established on the record that both of them were present at the spot at the time of occurrence and as such they were very material witnesses to tell about the alleged occurrence as to how it happened. Then it is also to note that in small towns like Gharaunda, shopkeepers usually open their shops at about 9:00 a.m.. The above discussed statement of PW-2 also evinces that he was taking active role in running the business of spare parts in the shop, where the alleged occurrence took place, along with Rakesh Kumar (since deceased). As above discussed, he also told about the names of few customers of village Panori who had been visiting their shop being their customers as well as of the profits which used to fall to his share in respect of this business.

12. It is the settled law that testimonies of the interested witnesses cannot be rejected simply for the reason of their interestedness. In that situation, it is the duty of the Court concerned to scrutinize their depositions carefully and minutely. There is a Division Bench authority of this Court on this point as delivered in *Maghar Singh vs. State of Punjab*, 2007 (3) *Law Herald* 2385, wherein it was held that law is now

well settled that evidence of interested witnesses cannot be rejected on the sole ground that the witnesses are interested one, but the Court has to scrutinize their depositions with care and caution.

Then there is an authority on this point as delivered by Hon'ble Apex Court in *Upendra Pradhan vs. State of Orissa, 2015(2) R.C.R. (Criminal) 907*. In this case law, it was held that testimonies of interested witnesses are of great importance and weightage. No man would be willing to spare the real culprit and to frame an innocent person.

Then in a latest case law titled as *Sufian Ali vs. State of Assam, 2016(1) R.C.R. (Criminal) 81*, the Hon'ble Apex Court held that it is a well settled principle of law that the evidence of interested witnesses is not necessarily unreliable and it can form the basis of conviction even without corroboration by independent evidence as long as it is found to be consistent and reliable.

In the light of above discussion and the principles laid down in the case laws cited (supra), the above contention of learned counsel for the appellant is declined being not tenable and disposed of accordingly.

13. Learned counsel for the appellant has further argued that there is another inherent error in the case of prosecution for the reason that medical evidence available on the file is not in consonance with the ocular version as revealed by the alleged eye-witnesses of prosecution. Herein he has contended that both PW-1 and PW-2 had categorically stated in their respective cross-examination that accused had fired a shot upon Rakesh Kumar (since deceased) from a distance of about two feet i.e. from a close range, whereas PW-11 Dr. Dinesh Sharma, who

conducted postmortem on the dead body of deceased stated in his cross-examination that he did not notice any charring and burning so far as injury Nos.1 and 2 were concerned. Charring and burning would appear if the shot is fired from very close range. Such like characteristics do not appear if the shot is fired from more than 4/5 feet.

14. Then the accused did not file any application before the trial Court to cross-examine the Doctor of FSL who after examining the pistol and fired cartridge case in question submitted the report Ex.PG/1 in order to ascertain the fact as to whether keeping in view the nature of injuries found on the person of deceased, the alleged shot from the pistol Ex.PI (W/1) was fired from a very close range or beyond that.

15. Then herein it is also relevant to discuss the statement of PW-16 Inspector Gulzar Singh, the Investigating Officer, of this case. It came in his statement that accused was apprehended in this case on 15.11.2000 who during interrogation on 16.11.2000 suffered disclosure statement Ex.PR regarding concealment of a pistol in the bushes in Patel Park, Gharaunda, who thereafter got recovered the same from the disclosed place. Then this weapon on its checking was found containing an empty cartridge which was taken out. This pistol and empty cartridge were converted into two separate parcels and the same were taken into police possession vide recovery memo Ex.PS/1. The fact that empty cartridge remained in the chamber of pistol after the shot was fired coupled with the statement of PW-11 in his cross-examination that all the pellets as per his memory must be within diameter of 8 to 10 cms in the body suggests to record the finding that the alleged shot was fired by the

accused on the deceased from the distance of about 4/5 feet. As a consequent thereto, no charring or burning was found by PW-11 in respect of injury Nos.1 and 2 on the dead body of deceased during its postmortem.

16. Moreover, both the abovesaid eye-witnesses to the alleged occurrence had deposed on the basis of mere approximation etc. with regard to the distance from which the assailant had fired upon the deceased and not on the basis of any mathematical calculation/measurement. Then, it is also to note that every person falls in a fix when in his presence, the assailants armed with fire arm weapons are standing in front of the victim while fully prepared to fire a shot upon the victim. Hence, the above contention of learned counsel for the appellant does not hold good and resultantly falls to the ground.

17. Then the learned counsel for the appellant has also pointed out the failure of the prosecution to join any independent person in the investigation of this case at the time of the alleged recovery of weapon from the accused as well as with regard to the occurrence in question. Herein he has contended that the alleged occurrence took place at a public place i.e. in the area of bus stand Gharaunda and people from the public were available there in large number at the relevant time, but prosecution did not join any of them during the investigation qua this occurrence as well as at the time of the abovesaid recovery. But it is general tendency in our society that whenever any incident like murder takes place in any locality then the people of nearby vicinity generally close their doors, switch off their lights etc. etc. in order to claim that they did not see the

alleged occurrence nor did they have any knowledge about the same. Exception to this is that if any person from the locality has any concern with the victim, he only proceeds to the spot of occurrence to witness the same and further to support the version of prosecution, if required. If the prosecution version is to be disbelieved simply for the reason that no independent witness from the locality where the occurrence took place was joined in the investigation proceedings or not examined during trial of the case, then it will become an uphill task for the prosecution to secure the conviction of the accused. In that event, the assailant will go scot free and will remain always at large from the clutches of the law whereby imperilling the peace and prosperity of the society without having any fear of law in his mind.

18. Regarding medical evidence, PW-11 Dr.Dinesh Sharma who conducted postmortem on the dead body of deceased along with Dr. G.L. Dhull found the following injuries on the person of the deceased during postmortem:-

- i. There was a lacerated wound 5 cm X 4 cm oval 3 cm lateral to mid-line and 1.5 cm above right nipple. Inverted edges, irregular margins were present. On dissection 4th and 5th ribs were fractured. Lateral wall of left ventricle of heart was ruptured. Pellets were present.
- ii. 8 lacerated wounds 0.5 cm X 0.2 cm lateral and superiorly around the previous injuries.
- iii. 2.5 X 1 cm abrasion just below injury No.1.

In their opinion, the cause of death in this case was injuries to the vital organs i.e. heart, liver and lungs. All injuries were ante-mortem in nature and same were sufficient to cause death in the ordinary course of life. Further, this witness on police application Ex.PK gave his opinion Ex.PK/1 that all the injuries found on the person of the deceased can be possible by a single bullet (fire arm). Further, pistol Ex.P1 was also shown to him (this witness) in the Court and on seeing the same, he gave the opinion that injuries on the person of the deceased could be the result of the shot fired from the pistol Ex.P1. Further he also proved the clothes of deceased which were removed from the dead body of deceased at the time of post-mortem and converted into a sealed parcel i.e. jersey Ex.P12, pants Ex.P13, banian Ex.P14 and underwear Ex.P15. Then he also observed that there was a corresponding hole in the right side of jersey Ex.P12 which could be caused by lead projectiles. Then he also proved vial Ex.P16 containing pellets stated to be taken out from the dead body of the deceased at the time of postmortem.

19. Then herein it is also relevant to discuss the reports Ex.PF and Ex.PG as submitted by the Forensic Science Laboratory, Madhuban, Haryana after the necessary chemical analysis of the articles sent to this laboratory. As per report Ex.PF, after the necessary examination Ex.3a (Jersey), Ex.3b (pants), Ex.3c (banian) and Ex.3d (kachha) were found to be stained with bloodstains. Then after the serological analysis, the bloodstains on said jersey, pants and banian were found to be of human origin vide report Ex.PF/1.

Then as per case of prosecution, the countrymade pistol of 12

bore allegedly got recovered by accused Dalip Singh as per his disclosure statement was sent to the office of abovesaid Forensic Science Laboratory along with empty cartridge i.e. fired cartridge case which were marked as W/1 and C/1 respectively in this laboratory. After the chemical examination thereof, the laboratory submitted the report Ex.PG/1 that countrymade pistol mark W/1 is a fire arm and its firing mechanism was found in working order. Then it was also reported that 12 bore fired cartridge case Mark C/1 was fired from country made pistol W/1 and not from any other fire arm even of the same make and bore because every fire arm has its own individual characteristic marks. Then it was also reported that hole on the jersey contained in parcel No.III was caused by lead projectiles. So these reports are found totally conducive as well as apposite to prove the version of prosecution and to connect appellant-herein (accused) with the case in hand.

20. Then PW-1 Siri Dhar-complainant narrated the prosecution version before the Court during trial of the case as per his statement Ex.PA made by him before the police on 13.11.2000. Then PW-2 Dinesh Kumar who was present at the spot of occurrence and had witnessed the same also supported the prosecution version tooth and nail.

PW-3 Ashok Kumar, photographer proved the photographs Ex.P2 to Ex.P6 which he took of the scene of occurrence on 13.11.2000 and their negatives as Ex.P7 to Ex.P11.

PW-4 Ashok Kumar Ahlmad to Deputy Commissioner, Karnal proved the order Ex.PB dated 06.01.2001 vide which sanction was granted by District Magistrate, Karnal for the prosecution of the accused

under the Arms Act.

PW-5 Constable Davinder Singh delivered the special report in this case to Illaqa Magistrate, Karnal on 13.11.2000 at about 12:30 pm.

PW-7 SI Brahmnn Singh recorded the formal FIR Ex.PA/1 on receipt of ruqa Ex.PA.

PW-8 HC Babu Ram, PW-9 C. Dinesh Kumar, PW-10 C.Goverdhan Singh, PW-12 ASI Parkash Chand and PW-13 C. Dharamvir were the formal witnesses in this case and they tendered in their statements their duly sworn affidavits Ex.PC, Ex.PD, Ex.PE, Ex.PL and Ex.PM respectively.

PW-14 C.Prem Kumar, Draftsman, proved the scaled site plan Ex.PN of the place of occurrence prepared after visiting the same on 15.12.2000.

PW-15 ASI Rattan Singh on receipt of requisite information went to bus-stand Gharaunda and while going on railway road, Gharaunda he received the ruqa from the ward servant and then he went to PHC, Gharaunda wherein he recorded statement Ex.PA of complainant-Siri Dhar. He sent the ruqa to police station for the registration of the case. Further, he proved the inquest report Ex.PJ/2 which he prepared in respect of dead body of the deceased. Further, he sent dead body of the deceased for postmortem vide his request Ex.PJ. He also visited the spot of occurrence and prepared its rough site plan Ex.PD. Then he also proved the memo Ex.PP vide which a parcel containing bloodstained earth lifted from the spot was taken into police possession.

PW-16 Gulzar Singh, Inspector, conducted the further investigation of this case. He proved the memo Ex.PQ vide which duly sealed parcel containing clothes of the deceased and parcel of pellets were taken into police possession. So far as his statement pertaining to recovery of weapon of offence is concerned, the same has already been discussed above in para No.15 of this judgment. Further, he proved the recovered pistol as Ex.P1 and empty cartridge taken out from this pistol as Ex.P17.

21. No other point was raised by the learned counsel for the appellant.

In the light of above discussion, this appeal being devoid of any merit stands dismissed.

As per the record, appellant-herein (accused) is on bail in this case. His bail order as well as bail bonds stand cancelled. Let he be taken into custody and be sent behind the bars for undergoing the remaining sentence imposed upon him by the learned trial Court vide judgment and order of sentence impugned in this appeal.

Necessary directions be issued to the quarter concerned for the strict compliance.

05.08.2016
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(GURMIT RAM)
JUDGE

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|----|------------------------------|-----|
| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |