

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

**CRA-D-454-DB of 2003
Decided on : 02.03.2017**

Devender Kumar

....Appellant

Versus

State of Haryana

....Respondent

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr. B.S. Saroha, Advocate
for the appellant.

Mr. Ashok S. Chaudhary, Additional A.G., Haryana.

H.S. MADAAN, J.

This appeal has been preferred against the judgment dated 29.4.2003 passed by learned Additional Sessions Judge (*Ad hoc*), Fast Track Court, Sonapat vide which he had convicted accused Devender Kumar for the offences under Sections 302 IPC and 25 of the Arms Act and order dated 30.4.2003 vide which the accused-convict – Devender Kumar was sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- for the offence under Section 302 IPC. He was further sentenced to undergo rigorous imprisonment for a period of two years

and to pay a fine of Rs.2,000/- for the offence under Section 25 of the Arms Act.

The accused-convict, who is appellant before this Court prays that the appeal be accepted, the impugned judgment/order of his conviction and sentence be set aside and he be acquitted of the charges framed against him.

In nutshell, the prosecution story is that complainant Ram Singh son of Lala Paras Ram, aged 67 years, resident of House No.84, Ward No.13, Kharkhoda, District Sonapat had retired as a Patwari. His grandson namely Munish son of Ramesh Chander, aged 15/16 had passed his matriculation examination. Two-three days prior to the incident, Munish had an altercation with accused Devender Kumar, son of Rishi Parkash, resident of Ward No.5, Kharkhoda. However, the complainant had resolved the matter. On 28.6.2000 at about 2 O' Clock in the afternoon, accused Devender Kumar went to the house of complainant and took the deceased Munish with him. When Munish did not return home for quite some time, then complainant Ram Singh accompanied by his nephew in relation namely Sham Lal son of Jot Ram went in his search. When both of them reached near the house of accused Devender Kumar, they heard noise of gun shot and alarm being raised by Munish '*bachao – bachao*'. Accused Devender Kumar was seen rushing out of his house having a pistol in his hand and he fled towards the city. When complainant Ram Singh along with Sham Lal entered the house of accused Devender Kumar, they observed Munish lying on the floor. He was writhing and blood was oozing out from his

chest. On being inquired by complainant - Ram Singh, Munish told that Devender Kumar had fired shot at him. Complainant and Sham Lal moved Munish - injured to PGIMS, Rohtak in a private vehicle leaving the spot at 4:30 p.m. Munish was admitted in that hospital and medico-legally examined. However, he succumbed to the injury suffered by him in the incident. Intimation from PGIMS, Rohtak was sent to Police Station Kharkhoda regarding arrival of the injured - Munish at that institution. On receipt of that message, SI Ram Chander, Station House Officer, Police Station Kharkhoda (hereinafter referred to as Investigating Officer/IO), along with other police officials went to PGIMS, Rohtak where the Investigating Officer came across complainant - Ram Singh. The IO recorded statement of complainant - Ram Singh as Ex.PN. That statement was signed by complainant in English. His signatures were attested by SI/SHO Ram Chander. The investigating Officer appended his endorsement Ex.PN/1 below that statement and sent ruqa to police station through Constable Ram Parkash, on the basis of which formal FIR Ex.PN/2 was recorded at Police Station Kharkhoda by ASI Ram Kanwar. The Investigating Officer carried out inquest proceedings with regard to dead body of deceased preparing a report Ex.PH in that regard. He got the post-mortem examination conducted on the dead body. HC Giri Raj had handed over a sealed parcel to him, which was seized by the Investigating Officer vide memo Ex.PB. Thereafter, the police party went to the place of incident. The Investigating Officer carried out spot inspection. He prepared rough site-plan of place of incident as Ex.PP.

From the place of occurrence, the Investigating Officer picked up one pant (Ex.P3), one bed-sheet (Ex.P4), one chappal (Ex.P5), a piece of cloth (Ex.P6) and blood stained brick (Ex.P7). Those articles were seized vide recovery memo Ex.PC attested by witnesses. After getting post-mortem examination conducted, Constable Jai Parkash handed over a sealed parcel containing a vest and bullet. Said parcel was taken into possession vide memo Ex.PJ. On return to the police station, the Investigating Officer deposited the case property with MHC. On 30.6.2000, Inspector Ram Kala from CIA Staff, Sonapat along with other police officials went to Police Station Kharkhoda in connection with investigation of this case. Accused Devender Kumar was produced before Inspector Ram Kala by Mohan Lal and Devender Kumar was accordingly arrested in this case.

On 1.7.2000 accused Devender Kumar, while being in police custody on being interrogated in the presence of Sham Lal and HC Parkash Lal - PWs suffered a disclosure statement that he had kept concealed a pistol Ex.P8 and a jean pant in the heap of bricks in a school building along Bahadurgarh Road in the area of Kharkhoda about which nobody else except him had knowledge and he could get those articles recovered. Such disclosure statement Ex.PR was reduced into writing which was signed by the accused and attested by Sham Lal and HC Parkash Lal - PWs. Subsequently, accused Devender Kumar while in police custody led the police party to the disclosed place and got recovered pistol and a jean pant from the heap of bricks as stated by him in his statement. The Investigating Officer prepared the rough sketch of

the pistol as Ex.PS and thereafter converted it into a parcel sealing it with his seal having impression 'RK'. The parcel of pistol and pair of jeans was taken into possession vide recovery memo Ex.PS/1. The Investigating Officer prepared rough site-plan of place of recovery as Ex.PS/2. He recorded statements of witnesses. On return to police station, he deposited the case property with MHC and put the accused in lock-up. During the course of investigation, accused Indrawati was produced before the police by one Naraindutt and she was formally arrested in this case.

After completion of investigation and other formalities, challan against the accused Devender Kumar and Indrawati was prepared and filed in the Court of Judicial Magistrate Ist Class, Sonapat.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Sonapat, he supplied copies of documents relied upon in the challan to the accused free of cost as provided under Section 207 Cr.P.C. Then finding that offences under Sections 302/201 IPC are exclusively triable by Court of Sessions, learned Judicial Magistrate Ist Class, Sonapat vide his order dated 31.10.2000 committed the case to the Court of Sessions.

On commitment, case was entrusted to the Court of learned Additional Sessions Judge (*Ad hoc*), Fast Track Court, Sonapat. Observing that charge for the offences under Sections 302 IPC and 25 of the Arms Act is disclosed against accused Devender Kumar and under Section 201 IPC against accused Indrawati, both of them were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

The case was fixed for evidence of prosecution.

During the course of its evidence, the prosecution examined as many as fourteen witnesses.

PW1 Inderpal, Draughtsman who on 17.8.2000 after visiting the place of incident at village Kharkhoda had prepared scaled site-plan Ex.PA at the instance of Ram Singh deposited in that regard.

PW2 SI Rahul Dev deposited that on 10.9.2000, he was posted as SHO, Police Station Kharkhoda. On that day on completion of investigation in this case, he had prepared final report under Section 173 Cr.P.C.

PW3 HC Giri Raj stated that on 29.6.2000, he was posted at Police Station Kharkhoda. On that day, he along with SI/SHO Ram Chander had gone to PGIMS, Rohtak; that on that day Incharge of Police Post, PGIMS, Rohtak handed over to him a sealed parcel containing clothes of deceased Munish, which he produced before SI/SHO Ram Chander who had taken the same into possession vide memo Ex.PB. Going further, the witness stated that on the same day, he was member of the police party which had gone to place of occurrence and from where SI/SHO Ram Chander had lifted one pant, one *chaadar*, one cloth piece being used for cleaning floor (*pocha*), brick and a *chappal* taking those articles into possession vide memo Ex.PC attested by him and Sham Lal - PW.

PW4 HC Suraj Bhan a formal witness tendered in evidence his affidavit Ex.PD.

PW5 Sh.Silaq Ram, Reader to District Magistrate, Sonapat

proved the sanction order dated Ex.PE dated 23.10.2000 signed by Sh.Sudhir Rajpal, IAS, the then District Magistrate, Sonapat for the purpose of prosecution of accused under Arms Act.

PW6 Smt.Saroj, mother of Munish deceased stated that on 28.6.2000, she had gone to the house of Indrawati and when she reached there, she saw that Indrawati was washing floor where there were blood stains. The witness stated that Munish (since deceased) was her only son who was murdered by Sonu alias Devender in his house.

PW7 Constable Satbir Singh deposed that on 29.6.2000 while he was posted at Police Station Kharkhoda, MHC gave him copy of special report which he handed over to Illaqa Magistrate, SP and DSP without any delay.

PW8 Dr.G.N. Aggarwal, Medical Officer, L.N.J.P. Hospital Kurukshetra stated that on 29.6.2000 while posted as Medical Officer, G.H. Rohtak, he had conducted post-mortem examination on the dead body of Manish @ Munish son of Ramesh Chand, resident of Kharkhoda, aged about 16 years and he had observed as follows:

A mildly built dead body of a male wearing a blood soaked banian white. The banian was cut in the middle and multiple small aperture of 1 to 3 millimetre were seen. It was initialled by him and sealed.

Injury

1.An oval shaped lacerated wound over the sternal region at the level of nipple 1 cm on right side on mid line and 8 cms from the right nipple. Posterior margin was ragged and anterior margin was roof like. The direction of the wound was downward, backward and on left. There were multiple burnt partially tatooing over the chest

around the entry wound in the area of 10 cms x 8 cms. The penetrating wound travelled from the blacked entry wound crossing margins of right lung, diaphragm, liver tearing them, piercing omentum, small gut-loops reaching to posterior abdominal wall on left and a bullet was recovered from wall. There was collection of fluid blood, dirty secretion in the peritoneal cavity, blood in the right pleural cavity and fracture of sternal bone. The bullet had been sealed.

The cause of death in this case was haemorrhagic shock due to gun shot injury ante-mortem in nature which was sufficient to cause death in normal course of life.

The witness stated that the probable time that elapsed between injury and death was a few hours and between death and post-mortem was 12 to 24 hours. He proved copy of the post-mortem report as Ex.PF. He further proved the vest of the deceased as Ex.P1 and bullet which was taken out of the dead body as Ex.P2.

PW9 HC Ram Parkash stated that on 29.6.2000, he was posted as Constable at Police Station Kharkhoda and on that day after post-mortem examination, the doctor handed over to him four sealed parcels which he in turn submitted to SI/SHO Ram Chander who had taken those into possession vide recovery memo Ex.PJ.

Learned Public Prosecutor tendered in evidence affidavit of Constable Karan Singh as Ex.PK, report from FSL as Ex.PL and report of Serologist as Ex.PL/1.

PW10 Dr.Ashok Rathi, Senior Medical Officer, K.L. Jalan Eye Hospital, Bhiwani stated that on 28.6.2000, he was posted as Casualty Medical Officer at Pandit B.D. Sharma, PGIMS, Rohtak. On

that day at 6:05 p.m., he had medico-legally examined Manish @ Munish son of Ramesh Chand, aged 18 years male, resident of House No.1365, Ward No.13, Kharkhoda and found the following injuries on his person:

Patient came with alleged history of fire-arm injury at residence of Hari Ram, Ward No.5, Kharkhoda, Sonapat on 28.6.2000 at about 5:00 p.m.

Patient was conscious but disoriented, irritable, cynosis was present. Pulse and B.P. Was unrecordable. Pupil was normal shape size reacting to light bilaterally.

Injuries

- 1. A penetrating lacerated wound of size 3 cm x 1.5 cm bone deep was present over the sternum mid-line at the level of nipple. It was 8 cms. Below the sternal notch. Collar of abrasion was present supero right laterally to the wound. Black margins were present. Multiple pin head size penetrating wound were present over the anterior aspect of the chest and upper adjacent abdomen. Underlying sternal bone was fractured, on clinical examination.*
- 2. Any other finding might be including in that M.L.R. find during specialist examination.*

Advised surgeon's opinion and management for above injury and the patient was admitted under 5/III.

Nature of injury was kept under observation. Probable duration of injury was within 6 hours and kind of weapon used was fire-arm.

He proved copy of the medico-legal report as Ex.PM and intimation sent by him to Incharge, PGIMS, Rohtak as Ex.PM/1. He further proved intimation Ex.PM/2 to the effect that patient had expired

in the casualty.

PW11 Ram Singh deposed inconsonance with the prosecution case.

PW12 SI/SHO Ram Chander, who had carried out the investigation in this case earlier deposed in that regard.

PW13 HC Parkash Lal, who on 1.7.2000 was member of the police party headed by Inspector Ram Kala from CIA Staff, Sonapat deposed regarding accused Devender Kumar suffering a disclosure statement and getting recovered the pistol from his possession which had been seized by the Investigating Officer.

PW14 Inspector Ram Kala, who had carried out investigation of this case on 30.6.2000 deposed that on 1.7.2000, accused Devender Kumar while being interrogated by the police had suffered a disclosure statement and got recovered pistol which was taken into possession by the police. He further deposed regarding arrest of Indrawati on 2.7.2000.

With that the evidence of the prosecution was closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and have been falsely involved in this case.

During their defence, accused examined Pardeep Kumar as DW1, who stated that name of his grandfather was Pandit Hari Ram; that their house is situated on the back of house of Devender Kumar in Ward No.5 at Kharkhoda; that their houses are separated by a common

wall and no murder took place in the house of Devender Kumar on 28.6.2000. The witness further stated that no policeman or police officer had visited that house on 28.6.2000 and 29.6.2000. He concluded his examination-in-chief stating that Devender Kumar, his three sisters and both his parents have been living in that house in Ward No.5, Kharkhoda.

After hearing arguments, learned trial Court acquitted accused – Indrawati of the charge framed against her whereas accused Devender Kumar was convicted and sentenced as mentioned supra, which left him aggrieved and he has filed the present appeal.

We have heard Sh.B.S. Saroha, learned counsel for the appellant-accused-convict and Sh.Ashok S. Chaudhary, learned Additional Advocate General, Haryana besides going through the record and we find that there is absolutely no merit in the appeal.

The star witness for the prosecution in this case happens to be PW Ram Singh who deposed in a natural and convincing manner. The account given by him is creditworthy and we do not see any reason to discard the same. His presence at the spot is natural and probable. Though learned counsel for the appellant argued that the prosecution case is not trustworthy inasmuch as after the alleged altercation having taken place between accused Devender Kumar and Munish deceased, it is highly unlikely that Ram Singh would have allowed the deceased to go along with accused Devender Kumar whereas this contention is repelled by the State counsel, who argued that it is clear from the statement of PW11 Ram Singh that though an altercation had taken

place between the accused and deceased but later on he had got the matter compromised. That being so, there was nothing wrong in deceased and the accused coming to normal terms. We find this contention of learned State counsel to be plausible and satisfactory.

Learned counsel for the appellant further argued that accused having a family it does not appeal to reason that he would take the deceased to his house and murder him there. Again, this contention is not convincing. The accused could very well have committed the murder of deceased in his house and there is nothing strange about it.

Then according to counsel for the appellant, there was no motive for the accused to commit murder of Munish. We find ourselves to be in disagreement with learned counsel for the appellant. The prosecution has clearly asserted that a few days before the incident, an altercation had taken place between deceased and the accused, which matter was though later on compromised. The accused might have kept a grudge in his mind for the said reason. Even otherwise motive is hidden in the mind of a criminal and it is very difficult to dig it out. Sometimes a crime is committed without any justifiable reason. However, keeping in view the facts and circumstances of the case, it comes out that accused had a motive to attack Munish and cause his death as a result of an altercation between him and the deceased.

Another argument advanced by learned counsel for the appellant was that complainant - Ram Singh happened to be a chance witness and his testimony should be discarded, whereas we find that it is not so. When according to this witness, his grandson Munish who had

accompanied the accused to his house had not returned home then he along with his relative Sham Lal had gone to the house of accused where the accused was spotted coming out of his house with a pistol in his hand whereas alarm raised by deceased was also heard. On entering that house, complainant and Sham Lal found that Munish had been injured in the chest and he had told them that accused Devender Kumar had fired a shot at him. Thus the complainant and Sham Lal had removed injured to Rohtak at a distance of about 30 kms. from village Kharkhoda. This process must have taken considerable time. Statement of Ram Singh was completed and was got signed from him. In his statement, the complainant has given detailed version of the incident. If he had not seen the incident and had been introduced by the police later on, then he would not have been able to give such details of the incident. The very fact that it was he who had taken the injured to the hospital at a considerable distance and got him admitted there makes his presence at the spot at the relevant time to be natural and probable. Then though complainant does not claim that he had seen accused firing at the deceased but then complainant had seen accused rushing out of his house with a pistol and alarm being raised by deceased. On being inquired, Munish, who was in injured condition at that time disclosed that he had been shot at by the accused. Munish had subsequently succumbed to that injury at PGIMS, Rohtak. Therefore, his informing Ram Singh regarding accused having fired at him and hitting him in the chest constitute oral dying declaration which is admissible in law. Section 32 of the Indian Evidence Act deals with cases in which

statement of relevant fact by a person who is dead or cannot be found etc. is relevant. The provision applies when the statement is made by a person as to the cause of his death. In that way Munish injured having informed his grandfather Ram Singh of the accused firing a shot at him hitting him in the chest to which he had succumbed later on is taken as oral dying declaration, which is strong piece of evidence against the accused. Again in terms of Section 6 of the Indian Evidence Act, the facts which, though not in issue, are so connected with the fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places. In that way the complainant along with his relative Sham Lal going to the house of accused hearing noises; hearing the alarm being raised by Munish; accused rushing out of the house with a gun; thereafter on being asked by Ram Singh complainant, Munish disclosing that it was accused Devender Kumar who had shot him in the chest; thereafter Munish succumbing to that injury, the facts form part of same transaction and are relevant, therefore admissible under Section 6 of the Indian Evidence Act. The circumstantial evidence adduced by the prosecution does not leave any doubt in the mind that it was Devender Kumar – accused who had committed murder of Munish in his house. The intention to commit murder is obvious from the fact that the accused had fired a shot at deceased from very close range which had hit him on the vital part resulting in his death. Thus intention to commit murder of Munish by accused Devender Kumar clearly comes out to be there. The medical evidence in this case duly corroborates the ocular

evidence. The investigation has been carried out in a fair and impartial manner. The Investigating Officer had no motive to involve the accused in this case wrongly. Similarly complainant had no reason to implicate accused in this case falsely. Complainant having lost his young grandson it would have been his earnest endeavour to ensure that the person responsible for bringing end to life of his young grandson is brought to book and is punished suitably rather than trying to shield the actual culprit and involved the accused in this case falsely. The recovery of country-made .312 bore pistol from the possession of accused and the pellets recovered from the dead body of Munish during his post-mortem, of the country-made pistol got recovered by accused further corroborates the prosecution story that it was accused Devender Kumar who had committed murder of Munish.

Thus we do not find any illegality and irregularity in the judgment passed by the learned trial Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law. In the sentence order, the learned trial Court has not specified as to whether the two sentences imposed upon the accused are to run consecutively or concurrently. However, keeping in view the facts and circumstances of the case, we direct that both the substantive sentences of imprisonment shall run concurrently. Further, in lieu of the fine of Rs.5,000/- for the offence under Section 302 IPC, he shall undergo simple imprisonment for three months whereas in lieu of the fine of Rs.2,000/- for the offence under Section 25 of the Arms Act, he shall undergo simple imprisonment for two months. The said judgment of

conviction and sentence is upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

	(T.P.S. MANN)	(H.S.MADAAN)
	JUDGE	JUDGE
2.3.2017		
Brij		

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No