

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA No.D-221-DB of 2004

DATE OF DECISION: NOVEMBER 7, 2017

TARA CHAND ...APPELLANT

VERSUS

STATE OF PUNJAB ...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN.
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.**

PRESENT: MR. ASHWANI BHARDWAJ, ADVOCATE
FOR THE APPELLANT.

MR. AMIT MEHTA, SR. DAG, PUNJAB.

MAHABIR SINGH SINDHU, J.

1. Appellant Tara Chand has filed the present appeal against the judgement passed by learned Sessions Judge, Ferozepur dated 20.2.2004 vide which he was convicted under Section 302 IPC for committing the murder of Manoj Kumar and sentenced to undergo rigorous imprisonment for life and to pay a fine of ₹2000/- and in default thereof, to undergo further R.I for one year.

2. Briefly, the case of the prosecution unfolded on the statement dated 22.11.2000 (Ex.P9) made by Ashwani Kumar is as under:-

“Stated that I am resident of village Bodiwala Peetha and do the agricultural work. We are two brothers, I am the elder and younger to me was Manoj Kumar. Tonight I alongwith my brother Manoj Kumar @ Dara and Bhim Sain son of Brij Lal, brother-in-law (Sala) of my brother Manoj Kumar

resident of Ram Sira were present to attend the marriage of the son of Hari Krishan Sharma, Clerk of advocate of Fazilka at Kanshi Ram Place. Ranbir Singh son of Jagmal Ram, caste Jat Baghri resident of village Bogan wali and Tara Chand son of Girdhari Lal caste Jat Baghri resident of Bodiwala Peetha had also come present to attend the marriage. It was about 10.30 p.m. when I alongwith my brother Manoj Kumar and his brother-in-law Bhim Sain and Ranbir Singh after getting free from the marriage were going out of the tent. When we reached near the main gate then Tara Chand son of Girdhari Lal raised a lalkara from behind, that he would not leave Manoj Kumar to go today. Then Manoj Kumar and others turned back to see that Tara Chand fired with his country made Pistol/Revolver hitting him on his chest, flank and other parts of body. Manoj Kumar fell down and Tara Chand fled away on his scooter parked nearby alongwith his weapon. The occurrence had been seen by me, Bhim Sain and Ranbir Singh above said in the electric light. The motive behind this occurrence is that Tara Chand and his brother Om Parkash had been convicted by the Sessions Judge, Ferozepur and sentenced to undergo rigorous imprisonment for three years each for inflicting injuries on the person of Manoj Kumar. Tara Chand as well as his brother are on bail. On account of said grudge, Tara

Chand had fired at Manoj Kumar. We had taken Manoj Kumar in injured condition, with above persons in a jeep to Civil Hospital, Fazilka, where the doctor declared Manoj Kumar dead. Tara Chand killed my brother Manoj Kumar by firing at him. I have heard the statement which is correct. I am complainant. Action be taken.”

3. On the basis of the above statement, a formal FIR (Ex.P9/B) dated 22.11.2000 under Section 302 IPC and Section 25/54/59 of Arms Act was registered at P.S. City Fazilka, District Ferozepur. PW12 SI Gamdoor Singh on receipt of ruqa from Civil Hospital, Fazilka reached there and prepared the inquest report Ex.P4 on the dead body of Manoj Kumar. He submitted a written request Ex.P5 to SMO, Civil Hospital, Fazilka for post mortem examination of the dead body which was conducted on 22.11.2000 at 10.30 a.m. (Ex.P3) PW12 visited the place of occurrence and rough site plan (Ex.P-17) was prepared. Blood stained earth was collected from the place of occurrence and taken into police possession vide memo Ex.P11. Clothes of the deceased were taken into possession vide memo Ex.P18. A vial Ex.MO-9 containing one bullet was produced by C-I Balkishan to Gamdoor Singh which was also taken into possession vide memo Ex.P19. PW12 arrested the accused on 30.11.2000. The accused was interrogated by PW12 and he made a disclosure statement (Ex.P21), on the basis of which accused Tara Chand got recovered one revolver and six cartridges alongwith the licence and the same were taken into possession vide memo Ex.P22. On 3.12.2000,

Dharampal produced the scooter which was taken into possession vide memo Ex.P24.

4. After completion of investigation, report under Section 173 Cr.P.C. was submitted. Learned SDJM, Fazilka committed the case to the Court of Sessions Judge, Ferozepur. Accused was charge-sheeted for the offence under Section 302 IPC by learned trial Court to which he pleaded not guilty and claimed trial.

5. The prosecution, in support of its case, examined 14 witnesses.

6. The accused set up a plea in his statement and supplementary statement under Section 313 Cr.P.C. that he was innocent, but a false case has been foisted upon him. He also examined DW1 and DW2 in support of his defence.

7. The trial Court after relying upon the eye witness account of PW5 and PW6, medical evidence and other material on record, recorded conviction against the accused.

8. Hence the present appeal.

9. Learned counsel for the appellant contended that the accused has been falsely implicated taking shelter of previous enmity with the deceased. Rather, the deceased had strained relations with Mangal Singh, as his wife had lodged FIR against him under Section 376 IPC. It was further contended that the prosecution has failed to examine Hari Kishan the eye witness who was the best witness to reveal the truth. Further, that the medical evidence does not support the ocular testimony allegedly

given by PW5 and PW6. Lastly, it was contended that the bullets recovered did not tally with the revolver.

10. Learned counsel for the State submitted that it is a fit case for dismissal of the appeal as the case of the prosecution is based on ocular testimony of the witnesses corroborated by the medical evidence on record, thus, does not require any interference.

11. The case of the prosecution was unfolded on the basis of statement of PW5 who has given a graphic account of the occurrence. He was very much consistent with the date and time in his statement while deposing before the trial Court as stated in the complaint. He deposed that on 21.11.2000 at about 10.30 p.m. when he alongwith his brother Manoj (deceased), Bhim Sain and Ranbir had come out of the tent after attending the marriage ceremony and reached the main gate, then convict-accused raised a lalkara from behind that Manoj Kumar be not left alive. When Manoj Kumar (deceased) turned around, the convict-appellant fired 4 shots at him with his revolver, on receipt of which, Manoj Kumar (deceased) fell down and the convict-appellant escaped from the spot with his revolver on his scooter. An electric light was also there on the place of occurrence. Manoj Kumar was taken to hospital, but was declared brought dead by the Doctor. He further deposed that as on an earlier occasion the appellant was convicted for inflicting injuries to Manoj Kumar and sentenced to undergo imprisonment for three years alongwith his brother Om Parkash, therefore, the convict-appellant was having a grudge against deceased Manoj Kumar and took revenge. Although a case

under Section 376 IPC was registered at the instance of one Samitra Devi wife of Mangal Singh, but the same was quashed by the High Court. Otherwise also, if such was the issue, there was every possibility for PW5 and PW6 to rope in Mangal Singh, but they chose not to do so, which testifies the fact there was no false implication by the prosecution.

12. PW6 Ranbir also corroborated the version as deposed by PW5 Ashwani Kumar. He also specifically deposed to the effect that on 21.11.2000 when he alongwith deceased Manoj Kumar, PW5 Ashwani Kumar and Bhim Sain came out of the tent, the convict-appellant exhorted a lalkara on his back that he will not spare Manoj Kumar (deceased) and when deceased Manoj Kumar turned around, the convict-appellant fired shots at him and Manoj Kumar fell down on the ground and the convict-appellant escaped from the scene of occurrence. He deposed that electric light was on at the place of occurrence. He took Manoj Kumar (deceased) to Civil Hospital, Fazilka in his jeep, but he was declared brought dead.

13. PW2 Dr. I.M. Challana, SMO, Civil Hospital, Fazilka deposed that on 22.11.2000 at 10.30 a.m., he conducted the post mortem examination on the dead body of Manoj Kumar and found the following injuries:-

1. *A lacerated wound 2 cm x .5 cm into bone deep on left parietal bone 2 cm from hairline and 2 cm from mid scalp line. Horizontal. Underneath blood clots were present and the bone was found to be intact.*

2. *A lacerated punctured wound with inverted margins 1.5 cm x .75 cm on right side of chest anteriorly 5 cm above and medial to right nipple. A collar of abrasion was present around the wound. Corresponding injury mark was present on the pull over, shirt and banian.*
3. *A lacerated wound with everted margins 2 cm x 1 cm on posterior axillary line left side 12 cm below axilla corresponding mark of injury was present on the pull over, shirt and banian. On passing probe from injury No.2, it came out of injury No.3 going slightly in downward and forward direction.*
4. *A lacerated punctured wound with inverted margins on left shoulder joint at the top with collar of abrasion present around measuring 1.25 cm x .75 cm corresponding mark was present on the pull over and the shirt.*
5. *A lacerated punctured wound with everted margins 1.75 cm x 1 cm posteriorly over left shoulder joint. On passing probe from injury No.4, it came out of injury No.5 after going downward direction and forward.*
6. *A lacerated punctured wound with inverted margins 1.5 cm x .75 cm with collar of abrasion present around on right side of abdomen 4 cm below right lower costal margin. On passing probe it went*

forward and downward reaching upto the level of L-5-SI vertebrae. Corresponding mark was present on the clothes.

7. *A lacerated punctured wound with inverted margin 1 cm x .75 cm on right knee joint laterally with collar of abrasion present around corresponding mark of injury was present on the pants.”*

This witness opined that injuries No.2 and 3 contained holes. There was chip fracture of rib underneath injury No.2. Underneath injuries No.4 and 5 there were fracture at the top of shoulder joint and of left scapula. The large intestine and the omentum were found to be injured and lacerated with blood clots present. A part of small intestine was found to be injured. While the bullet was found in X-ray in the space between L-5 and S-I vertebrae, but the same could not be recovered in spite of hard labour for about 2 hours. He deposed that the stomach contained about 300 cc of fluid with few undigested food particles. He opined that the death was caused due to shock and haemorrhage as a result of injuries to the lungs and chest which were sufficient to cause death in the ordinary course of nature. He further opined that all the injuries were ante mortem in nature and injuries No.2 to 7 were caused by fire arm. According to him, the probable time elapsed between injuries and death was immediate and between death and post mortem was about 12 to 24 hours. This witness handed over a sealed vial containing metallic body recovered from injury No.7.

14. PW1 Om Parkash, Arms Clerk, Office of Deputy Commissioner, Ferozepur brought the record vide which as per entry at Sr. No.503/December/1998/Fazilka dated 10.12.1998, the convict-appellant was issued an arms licence for a revolver/pistol and the same was valid upto 9.12.2001.

15. PW9 H.C. Gurdeep Singh brought the FIR register of P.S. Khuian Sarwar and as per registered FIR No.50 dated 7.6.1996, a case under Sections 324/323/506/34 IPC was registered against the convict-appellant and Om Parkash on the statement of deceased Manoj Kumar and later on, Sections 325/307 IPC were added. Thereafter, they were convicted under Sections 326/325/34 IPC and sentenced to undergo R.I. for a period of 3 years.

16. PW12 SI Gamdoor Singh deposed that on 21.11.2000, he was posted as SHO, Police Station City Fazilka. On that day, a ruqa from Civil Hospital, Fazilka was received regarding death of Manoj Kumar. He alongwith other police officials reached the hospital, recorded the statement of PW5 Ashwani Kumar on the basis of which a formal FIR was registered. Post mortem of the dead body of Manoj Kumar was got conducted from Civil Hospital, Fazilka. He went to the place of occurrence and prepared rough site plan. He arrested the accused on 30.11.2000. On interrogation, the convict-appellant made a disclosure statement on the basis of which revolver and six cartridges alongwith arms licence were recovered and taken into police possession vide memo Ex.P22. Clothes were sent for chemical examination through Constable

Suraj Parkash. Revolver and bullet were sent for chemical examination through HC. Ashok Kumar.

17. PW13 SI Hari Chand corroborated the deposition made by PW12 SI Gamdoor Singh. He further deposed that on 2.12.2000, the investigation was handed over to him and on 3.12.2000, one Dharam Pal produced the scooter of the convict-appellant which was taken into possession vide memo Ex.P24

18. PW14 Amarjit Singh, Clerk, District Transport Officer, Ferozepur brought the registration register of the vehicles vide which he proved that the scooter bearing Registration No.PB-05A-4393 was registered in the name of the convict-appellant.

19. The FIR in the present case was registered on the statement of PW5 Ashwani Kumar, who was the brother of the deceased and witnessed the occurrence with his own eyes. He had specifically deposed that on 21.11.2000, while he alongwith the deceased, Bhim Sain and Ranbir had gone to attend a marriage ceremony and on returning back, the convict-appellant raised a lalkara and fired 4 shots on the person of Manoj Kumar (deceased), on receipt of which Manoj Kumar (deceased) fell down and was rushed to hospital, where he was declared brought dead. PW6 Ranbir also corroborated the statement made by PW5. Both the witnesses have deposed that electric light was on at the time of occurrence. Both PW5 and PW6 have given a graphic account of the sequence of events which happened on the fateful night. It were PW5 and PW6 who took Manoj Kumar (deceased) to the hospital. PW5 Ashwani

Kumar was put to severe cross-examination, but he was consistent in his deposition. The defence failed to shake the credibility of PW5 Ashwani Kumar.

20. As far as motive is concerned, it has come in the deposition of PW5 that as the convict-appellant had attacked Manoj Kumar on an earlier occasion on 6.6.1996 wherein FIR No.50 dated 7.6.1996, Police Station Khuian Sarwar was registered against him and one Om Parkash under Sections 307/326/325/324/34 IPC and the convict-appellant was convicted under Sections 326/325/34 IPC and sentenced for 3 years R.I., and, therefore, the convict-appellant was nursing a grudge against the deceased and murdered him. PW5 in his cross-examination and PW6 in his examination have deposed that there was also a verbal altercation between the deceased and the convict-appellant inside the tent during marriage ceremony. Therefore, it can be safely concluded that there was pre-meditation and the convict-appellant had every reason to commit the crime in order to take revenge.

21. The medical evidence also corroborates the prosecution story that bullets were shot from a fire arm and Manoj Kumar died due to fire arm injuries received on lungs and heart. Vide FSL report Ex.P25, the blood stained earth, the koti, kameez and banyan of the deceased were found stained with human blood. As per report Ex.P28 received from FSL, Punjab, it was opined that .32 inch IOF Revolver was used for firing. Although the last date of firing could not be ascertained, but that doesn't make any difference in view of the eye witness account and

medical evidence. As per FSL report Ex.P27, it has been opined that due to lack of individual characteristics, no definite opinion with regard to .32 inch mutilated lead bullet from the weapon of offence, i.e. Revolver could be given.

22. It has also come in evidence of PW2 Dr. I.M. Challana that the stomach of the deceased contained 300cc of fluid and few undigested food particles which further testifies the fact that the deceased alongwith PW5 Ashwani Kumar had attended the marriage ceremony on the fateful night.

23. The occurrence in the present case took place on 21.11.2000 at 10.30 p.m. Intimation with regard to death of Manoj Kumar was sent to Police Station City Fazilka by Senior Medical Officer, Civil Hospital at 10.45 p.m. Within no time, the police swung into action and initiated its proceedings at 12.30 a.m. and the special report was received by the Judicial Magistrate Ist Class at 3.00 a.m. The prosecution was prompt in its actions.

24. Keeping in view the ocular testimony of PW5 and PW6 corroborated by the medical evidence, we are of the view that the trial Court has rightly convicted and sentenced the convict-appellant for the offence under Section 302 IPC. We find no merit in the appeal, and therefore, the same stands dismissed.

25. The accused-appellant Tara Chand is on bail. His bail bonds stand cancelled. He shall surrender forthwith before the Chief Judicial Magistrate, Ferozepur, who shall send him to jail to undergo the

remaining part of the sentence. If he fails to surrender, the learned Chief Judicial Magistrate, Ferozepur shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

November 7, 2017
Gulati/Dinesh

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No