

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

CRA-D-1204-DB of 2010

Date of decision :- 22.5.2017

Subhash

....Appellant

Versus

State of Haryana

....Respondent

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

**Present : Mr.Amit Aggarwal, Advocate
as Legal Aid Counsel for the appellant.**

Mr.Praveen Bhadu, Assistant A.G., Haryana.

H.S. MADAAN, J.

This appeal has been preferred against the judgment dated 22.9.2010 passed by the Court of learned Additional Sessions Judge, Hisar vide which accused Subhash was convicted for offences under Section 302 IPC read with Section 34 IPC and 27 of the Arms Act and order dated 25.9.2010 vide which he was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.20,000/- and in default thereof, to further undergo rigorous imprisonment for a period of two years for the former offence and to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/- and in default

thereof, to further undergo rigorous imprisonment for a period of six months for the latter offence.

Both the substantive sentences were ordered to run concurrently.

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

Briefly stated, the prosecution story is that on 22.7.2008, a written intimation from General Hospital, Hansi was received at Police Station City, Hansi regarding admission of injured Sushil Jain son of Chhabil Dass Jain, resident of Gali Pansariyan, Hansi in the said hospital and that written intimation was accompanied by a copy of MLR of injured Sushil Jain. On receipt of the said intimation, a police party from Police Station City, Hansi headed by Inspector Kapoor Singh, SHO of the police station went to CMC Hospital, Hisar since Inspector had received telephonic information that injured had been referred to that medical institution from General Hospital, Hansi. On reaching CMC Hospital, Hisar, the doctor gave a written intimation to the police officer in respect of Sushil Jain – injured having been declared dead at 2:45 p.m. The police party came across Arun Jain son of Sushil Jain – deceased, aged 31 years, who got his statement Ex.P1 recorded with Inspector/SHO Kapoor Singh.

Inter alia in the statement, he had contended that they had a jewellery and cloth shop under the name and style of 'Kala Vaster Niketan' at Bajaria Chowk, Hansi; that the shop was managed by his

father Sushil Jain besides younger brother Amit and Prem Kumar @ Kooki son of Gian Chand Arora, resident of Dhani Ghati, Hansi, a worker; that on the said day in the morning at about 9:00 a.m., when the shop was opened in routine and Sushil Jain, Amit and Prem Kumar @ Kooki were present at the shop, the complainant was also proceeding to the shop in connection with some work at about 11:30 a.m.; that when complainant reached near the shop, then he heard sound of firing of shot from inside their shop; that when he reached near the shop, he observed two young boys coming out of the said shop and going towards side of Char Kutab Gate, Hansi; that one of the boys was wearing a yellow T-shirt and he was having a pistol while the other boy was wearing a blue T-shirt and was empty handed; that both of them were of medium height, aged about 20-22 years. According to the complainant, when he went inside the shop, he found his father Sushil Jain lying on the *gaddi* (cushion) with an injury on the right side of his neck and blood was oozing out of that injury; that Amit and Prem Kumar @ Kooki were inside the shop upstairs; that on hearing the sound of gun fire Amit and Prem Kumar @ Kooki had came down whereas the neighbouring shopkeepers had also arrived there; that a conveyance was arranged and the injured was removed to General Hospital, Hansi therein. From the said hospital, after giving first aid, the injured was referred to General Hospital, Hisar keeping in view his serious condition. The Injured was accordingly taken to CMC Hospital, Hisar and got admitted there. However, during treatment Sushil Jain breathed his last at about 2:45 p.m. In the statement, the complainant stated that he could identify both the boys if they were brought before him.

The statement was signed by Arun Jain – complainant. His signatures were attested by Inspector Kapoor Singh. Inspector Kapoor Singh while observing that from the contents of the statement, offences under Sections 302/34 IPC and 25 of the Arms Act was disclosed against the accused, sent ruqa to police station through Constable Azad Singh for registration of the FIR and formal FIR Ex.P11 was accordingly recorded at Police Station City, Hansi by ASI Surat Singh. ASI Surat Singh put his endorsement on the original ruqa and sent it back to Inspector/SHO Kapoor Singh along with a copy of the FIR. The Investigating Officer conducted inquest proceedings with regard to dead body of Sushil Jain, preparing report Ex.P16 in that regard. He deputed ASI Sher Singh and HC Karamvir Singh to get post-mortem examination conducted on the dead body of Sushil Jain handing over a written request in that regard Ex.P13 to them. He called scene of crime team at the spot. He himself carried out spot inspection and took into possession a piece of seat(cushion), one lead piece and broken pieces of wall clock from the spot, converting those into separate parcels sealing those parcels with seal having impressions 'SS'. The parcels were taken into possession vide recovery memo Ex.P2. The Investigating Officer prepared a rough site-plan of the place of incident as Ex.P37. He recorded statements of the witnesses. After post-mortem examination, clothes of the deceased along with a copy of post-mortem report were produced by ASI Sher Singh before the Investigating Officer. The clothes were taken into possession vide recovery memo Ex.P21.

On 25.7.2008, SI Krishan Lal was posted as SHO, Police Station Sadar, Hansi. On that day while he was on official duty, he

received a secret information that Subhash @ Bhasha, Meenu @ Surender and Kalu, residents of village Sisai were involved in murder of Sushil Jain and Meenu @ Surender along with Subhash @ Bhasha had been seen on the link road leading from Sisai to Masoodpur on a motorcycle make Victor bearing registration No.DL-8S-AB-5991 and if a raid was conducted, they could be apprehended. The police party had travelled a distance of about 1 km from Sisai towards Masoodpur, where two young boys were found standing there with motorcycle No.DL-8S-AB-5991. Both the boys were apprehended on the basis of suspicion. One of them immediately fired upon the police party with intention to kill, however, the police officials had a narrow escaped. Thereafter, both the young persons while leaving the motorcycle fled towards fields. The police party of SI/SHO Krishan Lal also fired at those persons to nab them. Both the accused were apprehended. On inquiry, one of them disclosed his name as Subhash @ Bhasha and other as Meenu @ Surender. The Investigating Officer sent ruqa through Constable Karambir for registration of FIR and for sending of Investigating Officer at the spot, as such SI Surender Kumar from CIA Staff, Hisar along with ASI Ramesh Kumar and other police officials reached there and took over the investigation. SI Krishan Lal produced both the accused along with country-made pistol before SI Surender Kumar, who checked the country-made pistol and found an empty shell in it. Rough sketch of the pistol Ex.P27 was prepared. Thereafter, pistol along with empty cases of the cartridges were converted into separate sealed parcels, sealing those with seal having inscription 'SK' and were taken into possession vide recovery memo Ex.P28. The motorcycle was also taken into possession

under Section 102 Cr.P.C. vide separate memo Ex.P29. Accused were arrested by SI Surender Kumar and during personal search of Subhash @ Bhasha, threatening letter Ex.P30 was found, which was also taken into possession vide recovery memo Ex.P31. Both the accused were interrogated. During the course of interrogation, both the accused made statements under Section 27 of the Evidence Act.

On 26.7.2008, accused Subhash @ Bhasha and Meenu @ Surender while under arrest in FIR No.245, under Section 307 IPC, Police Station Sadar, Hansi, confessed about their involvement in the present occurrence. As such after getting permission from the Court, Subhash @ Bhasha and Meenu @ Surender were made to join the investigation. They were formally arrested in this case. Accused Subhash @ Bhasha during interrogation suffered a disclosure statement Ex.P22 to the effect that a pistol had already been got recovered from him and he could point out the place from where it had been purchased as well as he could get those persons arrested. Accused Meenu @ Surender also made a statement under Section 27 of the Evidence Act Ex.P23 that he had kept concealed a pistol which he could get recovered. Accused were produced in the Court and their remand was taken.

During the course of investigation, the Investigating Officer recorded statements of witnesses, sent the recovered pistol, empty shell and mutilated bullet-head to FSL, Madhuban, Karnal and report therefrom was received. After completion of investigation and other formalities, challan against all the accused was prepared and filed in the Court of Sub Divisional Judicial Magistrate, Hansi.

On presentation of challan in the Court of Sub Divisional Judicial Magistrate, Hansi, he supplied copies of documents relied upon in the challan to all accused free of costs as provided under Section 207 Cr.P.C. Then finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, learned Sub Divisional Judicial Magistrate, Hansi vide his order dated 11.12.2008 committed the case to the Court of learned Sessions Judge, Hisar from where it was entrusted to the Court of learned Additional Sessions Judge, Hisar.

It is pertinent to mention here that accused Surender was found to be juvenile. His case was separated and proceedings against him were ordered to be initiated before Juvenile Justice Board, Hisar vide order dated 6.7.2009 passed by learned Additional Sessions Judge, Hisar.

Learned Additional Sessions Judge, Hisar, observing that charge for offences under Section 302 read with Section 34 IPC and 120-B IPC against accused Pardeep @ Kalu and Subhash @ Bhasha, whereas in addition to that charge for the offence under Section 27 of the Arms Act was disclosed against accused Subhash @ Bhasha, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

During the course of its evidence, the prosecution examined as many as nineteen witnesses as per details below:

PW1 Arun Jain – complainant supported the prosecution story on material aspects so did his brother PW2 Amit Jain.

PW3 Dr.Ved Pal, Medical Officer, General Hospital, Hansi deposed that on 22.7.2008, while posted as such, he had medico-legally

examined Sushil Jain son of Chhabil Dass Jain, resident of Pansari Wali Gali, City Hansi having been brought by his worker Prem Kumar @ Kooki. The details of the medical examination are mentioned in his duly sworn affidavit Ex.P6, which are as under:

Patient was unconscious. It was a case of gunshot injury and he found following injury:

1. Incised wound of size 1 x 1 cm present on right side of neck. Fresh bleeding was seen. Charring of skin was present. Advised Surgeon's opinion.

The injury was KUO. The kind of weapon used was gunshot.

The probable duration of injury was within six hours.

The patient was accompanied by Prem Kumar his worker.

Patient was referred to G.H. Hisar for Surgeon's opinion.

He proved copy of MLR as Ex.P7 and written intimation sent by him to SHO, Police Station City, Hansi as Ex.P8. He concluded examination-in-chief stating that injury noticed in the MLR was possible at 11:30 a.m. on 22.7.2008.

PW4 ASI Sis Ram and PW5 ASI Jodha Ram, formal witnesses tendered in evidence their affidavits Ex.P9 and Ex.P10, respectively.

PW6 Constable Tejpal deposed that on 22.7.2008, while he was posted at Police Station City, Hansi, special report Ex.P11 of the case was handed over to him for being delivered to Illaqa Magistrate and higher police officers. He firstly handed over the special report to Illaqa Magistrate and thereafter to DSP, Hansi and then SP, Hisar without any

delay.

PW7 Subhash, Draughtsman deposed that on 14.8.2008, he had gone to the place of occurrence at Bajaria Chowk Bazar in Hansi and prepared scaled site-plan Ex.P12 with correct marginal notes on pointing out of PW Amit Jain using scale 1" = 8 feet.

PW8 SI Raj Mal deposed that on 17.8.2008, while he was posted as ASI at Police Station City, Hansi, he was entrusted with the investigation of the case and he had arrested accused Sonu, who had suffered a disclosure statement during the course of his interrogation.

PW9 Dr.Y.P. Singhmar deposed that on 22.7.2008, he was posted as Medical Officer at General Hospital, Hisar. On that day on police application Ex.P13, a Board of doctors comprising him and Dr.Veenu Dhanda was constituted for conducting autopsy on the dead body of Sushil Jain son of Chhabil Dass Jain, aged 52 years, resident of Gali Pansarian, Hansi. He further deposed that details of post-mortem findings were mentioned in his duly sworn affidavit Ex.P14 wherein details of the injury are as under:

An oval shaped wound with inverted edges with collar of abrasion present on right side neck above medial part of right clavicle of size 2.0 x 1.0 cm. On dissection medial part of clavicle was found fractured, a track was found piercing upper lobe of right lung, pleura with fracture right fourth rib and right scapula going up to exit wound with everted and irregular edge of size 1.25 x 0.75 cm, track contained blood, right pleural cavity was full of blood. Underlying structures were crushed and blood vessels were

torn, corresponding cut was present on back of shirt and baniyan (exit wound).

The probable duration between injury and death was variable and between death and post-mortem examination was within six hours. He proved copy of post-mortem report as Ex.P15 and police application accompanied by inquest report as Ex.P16. He further stated that clothes of deceased were removed and were converted into a sealed parcel, which was handed over to police along with dead body and other papers.

PW10 ASI Sher Singh, who was associated with investigation of the case from 22.7.2008 onwards deposed regarding the proceedings, which had taken place in his presence.

PW11 EHC Rattan Singh had brought the *malkhana* register No.19 of 2008 and R.C. for the year 2008 and tendered in evidence his affidavit as Ex.P25.

PW12 Inspector Mahinder Singh, deposed that on 28.7.2008, he was posted at Police Station City, Hansi and instant case was marked to him for investigation during the course of which he had arrested accused Deepak @ Deepu, who had suffered a disclosure statement Ex.P26 and thereafter Section 120-B IPC was added.

PW13 ASI Surat Singh, testified that on 22.7.2008, while he was posted as ASI at Police Station Hansi, on receipt of ruqa Ex.P1 endorsed by SI/SHO Kapoor Singh, he recorded formal FIR, copy of which being Ex.P11 and special reports of this case were sent through Constable Tej Pal.

PW14 SI Ramesh Kumar, who had carried out the

investigation of this case partly from 26.7.2008 testified in that regard.

PW15 Dr.Ajay Kumar, Senior Scientific Officer, Incharge Scene of Crime, IGP Office, Hisar Range Hisar deposed that on 22.7.2008 on a telephonic message from SHO, Police Station City, Hansi, he with his team rushed the spot at Bajaria Chowk, Hansi in connection with FIR No.287 dated 22.7.2008 and after inspecting the spot had prepared crime scene visit report as Ex.P34.

PW16 SI/SHO Krishan Lal, who had conducted the investigation in this case on 25.7.2008 and had apprehended accused Subhash @ Bhasha and Meenu @ Surender after a brief exchange of fire deposed in that regard so also regarding recovery of country-made pistol along with one empty shell from the possession of accused Subhash @ Bhasha and accused suffering disclosure statements during interrogation.

PW17 Inspector (Retd.) Kapoor Singh, who had investigated the case from 22.7.2008 onwards up to a considerable extent testified in that respect.

PW18 Dr.H.C. Popli, CMC Hospital, Hisar had brought bed head ticket of Suishil Kumar Jain, deceased and stated that in terms of that bed head ticket, Dr.N.C. Verma and Dr.Ramesh Bhukkal had provided treatment to Sushil Jain. He stated that Dr.N.C. Verma has since expired. He proved photocopies of bed head tickets as Ex.P35 to Ex.P39 stating that the bed head ticket Ex.P39 contains his notings also.

PW19 SI Surender Kumar, who had conducted investigation of this case from 26.7.2008 onwards deposed in that respect proving various documents.

Learned Public Prosecutor tendered in evidence copy of report of FSL as Ex.P44 pertaining to FIR No.245/2008, Police Station Sadar, Hansi and closed the evidence of the prosecution.

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

Further, in addition to pleading false implication, accused Subhash @ Bhasha took up a plea that CIA Staff, Hisar had falsely implicated him in this case after picking him from his house on 24.7.2008 and involved him in a case pertaining to FIR No.245/2008 of Police Station Sadar, Hansi, after fabricating recovery of .315 bore pistol and an empty of the same bore which were already lying with CIA Staff, Hisar.

Accused did not lead any evidence in defence.

After hearing arguments, learned trial Court convicted accused Subhash @ Bhasha for the offences under Section 302 read with Section 34 IPC and Section 27 of the Arms Act, whereas co-accused Pardeep @ Kalu was acquitted of the charge framed against him. As a matter of fact, accused Subhash @ Bhasha had also been acquitted of the charge under Section 120-B IPC.

The judgment of conviction and order of sentence left accused Subhash @ Bhasha aggrieved and he has filed the present appeal.

We have heard learned counsel for the appellant-accused-convict and learned Assistant Advocate General for the State of Haryana

besides going through the record and we find that there is no merit in the appeal.

Though in the instant case no eye-witness account of the incident is there but the evidence available in the form of statements of complainant Arun Jain (PW1) and Amit Jain (PW2), both sons of deceased Sushil Jain is sufficient to reach a firm conclusion that it was Subhash accused, who had fired a shot from country-made .315 bore pistol hitting deceased Sushil Jain in the neck causing him a serious injury to which he had succumbed. Though none of the witnesses stated that they had seen Subhash firing a shot at their father Sushil Jain but then Amit Jain was on the first floor of the shop whereas the shot was fired at deceased on the ground floor. After hearing the sound of the shot as claimed by Arun Jain, he saw Subhash and Pardeep @ Kalu coming out of the shop with Subhash @ Bhasha carrying a gun in his right hand and on going inside the shop, he found his father lying on *GADDI* (cushion) with a firearm injury on right side of neck with blood gushing out of the same whereas Amit and Prem had come down and they had noticed two boys going out of shop, who had turned their faces towards shop, then fled away towards Char Kutub Gate, Hansi. They had also found Sushil Jain in injured condition. Injured had been firstly taken to Civil Hospital, Hansi from where keeping in view his serious condition, he had been shifted to CMC Hospital, Hisar, however, Sushil Jain had succumbed to the injury there. Both these witnesses while getting their statements recorded in the Court had specifically identified Subhash, who was carrying a gun in his hand. In the FIR, the complainant has given the salient features of the assailants including their age, height and

such description matches with that of accused – convict.

Section 6 of the Evidence Act deals with relevancy of facts forming part of same transaction. It provides that facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occur at the same time and place or at different times and places. That is what the principle of *res gestae* is. In that way, the depositions of Arun Jain (PW1) and Amit Jain (PW2) are very important to prove involvement of accused – convict Subhash in the incident. They having observed Subhash running from the place of incident with a pistol in his hand along with accomplice soon after their father Sushil Jain had suffered firearm injury in his neck clearly points out that it was Subhash, who had fired and injured Sushil Jain. We find presence at the spot of both Arun Jain (PW1) and Amit Jain (PW2) to be natural and probable and account given by them to be worthy of reliance. Both of them were subjected to lengthy cross-examination but they could not be shattered on any material point. No previous enmity between them and the accused – convict has been alleged or proved prompted by which they might have involved the accused in this case wrongly and deposed against him to secure his conviction. They having lost their father would have been the last persons to screen the actual culprit and involve the accused in this case falsely since it is always the earnest endeavour of a close relative to ensure that the person responsible for death of his near and dear ones is brought to book and is punished suitably rather than attempting to shield the actual culprit and involve some innocent person in his place without any rhyme or reason.

Although, learned counsel for the appellant – convict tried to attack the prosecution story by saying that no test identification parade was organized by the Investigating Officer so as to get accused – convict identified from the witnesses, but we do not find any merit in this argument. Firstly, the Investigating Officer was not cross-examined on this point, secondly there was hardly any necessity of any identification parade to be held in this case since as is clear from the depositions of PW1 - Arun Jain and PW2- Amit Jain, they had adequate opportunity to observe the assailant while he was running away from the spot and the salient features of such a criminal do get imprinted in the mind of the witnesses. The complainant in his statement to the police has given the age, height etc. of the assailant besides colour and type of clothes worn by him along with his co-accused. Therefore, identification of accused – convict by such witnesses in the Court cannot be said to be for the first time since as it is borne out from the record that they had adequate opportunity to observe him at the place of occurrence for a sufficient long time and to recollect his face and salient features from which they could easily identify him.

One more argument advanced by learned counsel for the appellant was that no independent witness was joined by the police as regards the incident, apprehension of accused and effecting recovery from him. Again this argument does not cut any ice. As already observed PW1 - Arun Jain and PW2 Amit Jain, sons of deceased are not shown to have any previous enmity with the accused which might have prompted them to involve him in this case falsely. They have faced lengthy cross-examination but have come out unscathed. Their statements are to be

taken at par with independent witnesses. Nevertheless, the investigating agency had joined Mahinder Singh and Prem Kumar, however, they were given up by Public Prosecutor as having been won over by the accused by making statement in the Court on 3.9.2009. It is a matter of common knowledge that now-a-days people generally hesitate to come forward to appear as a witness for the prosecution against the criminals apprehending that such criminals may not turn towards them and cause harm to them or their near relatives. Then there are hassles of going to the police station in connection with investigation and to attend hearings in the Court, therefore, people mostly avoid joining the investigation and offering themselves as witnesses. Therefore, this contention does not affect the prosecution story.

Another very important piece of incriminating evidence against the accused is the recovery of country-made pistol and empty shell from his possession. That country-made pistol along with empty shell recovered and mutilated bullet-head, which had caused injury on the person of Sushil Jain to which he had succumbed were analyzed in FSL and as per report received from there Ex.P40, .315” fired bullet marked BC/1 had been fired from country-made pistol marked W1 (chambered for .315” cartridges) recovered in case FIR No.245 dated 26.7.2008, under Sections 307/186/386/511/341/332/353 IPC and 25/54/59 Arms Act, P.S. Sadar Hansi and not from any other firearm even of same make and bore/calibre, because every firearm has got its own individual characteristic marks. Thus the matter is clinched that the bullet which had caused injury to Sushil Jain had been fired from the country-made pistol recovered from the possession of accused – convict

Subhash clearly indicating that Subhash had fired the shot from country-made pistol at Sushil Jain causing him injury in the neck, a very vital part of the body showing his intention to commit murder of Sushil Jain and Sushil Jain had in fact succumbed to that injury. The medical evidence corroborates the ocular evidence. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan him falsely or to depose against him to secure his conviction. The remaining evidence also lend support to the prosecution version. The prosecution had successfully proved its charge against the accused that on 22.7.2008 at 11:30 a.m. in the area of Bajaria Chowk, Hansi, he had fired a shot at Sushil Jain causing him a serious injury on neck to which he had succumbed, in that way committing his murder and he had used an illicit country-made pistol of .315 bore making him liable for committing the offence under Section 27 of the Arms Act.

The judgment of conviction passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein as well as order of sentence. The said judgment of conviction and order of sentence are upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

Necessary intimation be sent to the quarter concerned.

22.5.2017 Brij	(T.P.S. MANN) JUDGE	(H.S.MADAAN) JUDGE
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No