

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

**CRA-D-1026-DB of 2013
Date of decision :- 8.5.2017**

Jangi @ Jangbir and another

....Appellants

Versus

State of Haryana

....Respondent

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

Present : Mr.Keshav Pratap Singh, Advocate
for the appellant - Jangi @ Jangbir.

Mr.L.S. Sidhu, Advocate
for the appellant - Sonu.

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

H.S. MADAAN, J.

This appeal has been preferred against the judgment and order dated 30.5.2013 passed by the Court of learned Additional Sessions Judge (I), Bhiwani vide which he had convicted accused Jangi @ Jangbir and Sonu for offence under Section 302 read with Section 34 IPC sentencing them to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each and in default thereof, to undergo further rigorous imprisonment for a period of one year.

The accused-convicts, who are appellants before this Court pray that the appeal be accepted, the impugned judgment of their conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the prosecution story as it came out during the trial is that complainant Dinesh son of Hoshiar Singh of Jaat community, aged 24 years had been residing with his maternal cousin brother Surender son of Ishwar Singh at village Talu since his childhood. Vijay Kumar, brother of Surender had married Monika daughter of Jorawar Singh, Jaat of that very village against wishes of her family, as such Jorawar Singh and his family nursed a grudge against Vijay Kumar and his family. On 28.3.2010 at about 7:00 a.m., when complainant Dinesh along with Surender had gone to pond known as 'Panawala Johar' in the village to answer the call of nature, then from the side of village Talu a MAX Mahindra vehicle besides a motorcycle came there from the other side. Sandeep along with his father Sumer Singh son of Om Singh, Jaat of that very village had come on motorcycle whereas Jangi @ Jangbir son of Munshi Ram, Jaat, resident of Prem Nagar, Jora Singh son of Om Singh, Jaat, resident of village Talu and nephew of Jangi @ Jangbir, resident of village Mundhal Bandaheri got down from the MAX vehicle. Jora Singh exhorted his companions to finish off Surender. Hearing that Sandeep having a pistol fired a shot hitting Surender on the right side of his abdomen whereas Jorawar Singh @ Jora Singh armed with a pistol fired a shot hitting Surender on head whereas shot fired by Jangi @ Jangbir hit Surender on his private parts. The complainant got terrified and hid himself behind the bushes to save himself. Then Jangi @ Jangbir fired a shot hitting Surender on right thigh. Thereafter, all the assailants ran away from the spot along with their weapons using the vehicles on which they had come. Earlier, on 25.3.2010 in the evening, Jangi @ Jangbir etc. had

fired at Surrender in the field of village Pur and in that regard an FIR under Section 307 IPC was registered at Police Station Bawani Khera. A police party led by SI Zile Singh, Incharge, Police Post Mundhal, Police Station Sadar, Bhiwani was present at Mundhal Chowk in connection with patrolling where SI Zile Singh received information regarding the present incident on his mobile phone, as such he along with other members of the police party proceeded towards the spot. There he came across complainant Dinesh near the dead body. Complainant Dinesh got his statement Ex.PY recorded with SI Zile Singh. That statement was signed by Dinesh in Hindi. SI Zile Singh appended his endorsement Ex.PY/1 below that statement and sent ruqa to the police station through Constable Surrender Singh on the basis of which formal FIR Ex.PH for offences under Sections 302/148/149 IPC and 25 of the Arms Act was recorded by HC Jagbir Singh. The original ruqa along with endorsement and copy of FIR regarding registration of the FIR were sent back to the Investigating Officer. SI Zile Singh had summoned photographer and crime team to the spot. In the meanwhile, Inspector/SHO Prem Chand along with other police officials arrived at the spot. He took over the investigation. Inspector Prem Chand carried out spot inspection and prepared rough site-plan of the place of occurrence as Ex.PX. He lifted four empty shells, one live cartridge, one brick having blood stains and blood stained earth from near the spot, converting those into parcels, sealing with his seal having inscription 'PC' and those parcels were taken into possession vide recovery memo Ex.PX/1. Inspector Prem Chand carried out inquest proceedings with regard to unnatural death of Surrender preparing report Ex.PX/2. Thereafter, he deputed Constable

Dalbir Singh to get the post-mortem examination conducted on the dead body of Surrender. After post-mortem examination, the doctor had handed over sealed parcels to Constable Dalbir Singh who produced the same before Inspector Prem Chand. Those were taken into possession vide recovery memo Ex.PA. On reaching the police station, the Investigating Officer deposited the case property with Moharrir Malkhana and had recorded statements of witnesses.

Further investigation in the case was carried out by Inspector Sanjay Kumar of CIA – I, Bhiwani. On 5.4.2010, he moved an application before Additional Chief Judicial Magistrate, Bhiwani seeking issuance of production warrants of accused Sandeep alias Poto. His request was allowed and such accused was produced in the Court on 6.4.2010. Inspector Sanjay Kumar interrogated him with permission of the Court. During the course of interrogation, he suffered disclosure statement Ex.PF regarding his involvement in the case along with his co-accused stating that he could demarcate the place of occurrence.

On 20.4.2010, accused Jangi alias Jangbir, Sandeep, Sonu alias Balvinder, Manjit alias Kalia and Kulbir were arrested in case arising out of FIR No.169 dated 20.4.2010 for commission of offences punishable under Sections 399 and 402 IPC and Section 25 of the Arms Act of Police Station Sadar, Bhiwani. Accused Jangi alias Jangbir had got recovered pistol of .32 bore along with one live cartridge. The Investigating Officer prepared rough sketch of the pistol as Ex.PG. Accused Sandeep son of Raj Kumar had got recovered one pistol of .9 mm along with two live cartridges. The Investigating Officer had prepared rough sketch of such pistol as Ex.PH, whereas Sonu alias

Balvinder had got recovered pistol of .9 mm along with two live cartridges, rough sketch of that recovered pistol Ex.PJ was prepared. All the weapons and cartridges were converted into sealed parcels and then taken into possession vide recovery memo Ex.PK.

On 21.4.2010, accused Sonu @ Balvinder, Sandeep son of Raj Kumar and Jangi alias Jangbir were interrogated, during the course of which they had suffered disclosure statements Ex.PN, Ex.PQ and Ex.PR, respectively.

On 22.4.2010, in pursuance of their disclosure statements, accused Sonu alias Balvinder, Sandeep son of Raj Kumar and Jangi alias Jangbir pointed out the place of occurrence vide memos Ex.PS, Ex.PT and Ex.PU, respectively. This witness stated that the case property i.e. pistol of .32 bore along with cartridge which was recovered from accused Jangbir @ Jangi in case FIR No.169 of 2010, under Sections 399/402 IPC and Section 25 of the Arms Act, Police Station Sadar, Bhiwani used in commission of crime of the present case had been destroyed.

After completion of investigation and other formalities, challan against accused Jangi @ Jangbir, Sandeep son of Raj Kumar, Sonu son of Ramesh and Sandeep @ Poto son of Jaibir was prepared and filed in the Court of Additional Chief Judicial Magistrate, Bhiwani.

On presentation of challan in the Court of Additional Chief Judicial Magistrate, Bhiwani, she 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 offence under Section 302 IPC is exclusively triable by Court of Sessions, learned Additional Chief

Judicial Magistrate, Bhiwani vide her order dated 17.7.2010 committed the case to the Court of learned Sessions Judge, Bhiwani, from where it was entrusted to the Court of learned Additional Sessions Judge, Bhiwani.

Learned Additional Sessions Judge, Bhiwani finding that charge for offence under Section 302/34 IPC was disclosed against the accused, charge-sheeted the accused for the said offence, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

The prosecution examined witness Dinesh Kumar as PW1 and then moved an application under Section 319 Cr.P.C. for summoning Jora Singh alias Jorawar, Sumer Singh and Sandeep as additional accused. Such application was allowed vide order dated 13.10.2010. Resultantly, Jora Singh alias Jorawar, Sumer Singh and Sandeep were summoned as additional accused. They put in appearance and then amended charge was framed for offences under Sections 148, 302 read with Section 149 IPC against accused Jangi @ Jangbir, Sandeep son of Raj Kumar, Sonu, Sandeep alias Poto, Jora Singh alias Jorawar, Sumer Singh and Sandeep son of Sumer, 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 fifteen witnesses as per details below:

PW1 Constable Parveen Kumar, Photographer, who on 28.3.2010 had gone to the spot and taken photographs Ex.P1 to Ex.P13 with digital camera deposed in that regard.

PW2 Constable Dalbir Singh, who was deputed by the Investigating Officer to get the post-mortem examination conducted on the dead body of Surender deposed in that regard.

PW3 SI Amarjeet Singh happened to be a witness of disclosure statements made by accused Jangi @ Jangbir, Sandeep and Sonu @ Balvinder before Inspector Sanjay Kumar on 21.4.2010 and he proved such disclosure statements as Ex.PB, Ex.PC and Ex.PD stating that they could demarcate the place of occurrence.

PW4 Bhalle Ram, Patwari stated that on 16.6.2010, he had gone to the spot and prepared site-plan Ex.PE on pointing out of SHO of Police Station Sadar, Bhiwani.

PW5 SI (Retd.) Subhash Chander stated that accused Sandeep @ Poto on 6.4.2010 had made disclosure statement Ex.PF before him stating that he could demarcate the place of occurrence. He also stated that on 20.4.2010, he had joined investigation of case arising out of FIR No.169 dated 20.4.2010, under Sections 399 and 402 IPC and 25 of the Arms Act and accused Jangi @ Jangbir had got recovered pistol of .32 bore along with one live cartridge, accused Sandeep got recovered one country-made pistol of .9 mm along with two live cartridges and accused Sonu had got recovered one country-made pistol of .9 mm along with two live cartridges which were converted into separate sealed parcels and taken into possession vide recovery memo, copy of which being Ex.PK.

PW6 ESI Prem Singh, a formal witness tendered in evidence his affidavit Ex.PL.

PW7 Inspector Sanjay Kumar, who on 5.4.2010 was posted

as Inspector, CIA-I, Bhiwani and carried out investigation in this case deposed in that regard. This witness further deposed regarding destruction of case property recovered from accused Jangbir @ Jangi in case arising out of FIR No.169 dated 20.4.2010, under Sections 399/402 IPC and Section 25 of the Arms Act, Police Station Sadar, Bhiwani. Constable Radhey Sham had brought the record regarding the destruction of case properties of different cases including FIR No.169 dated 20.4.2010, under Sections 399 and 402 IPC and 25 of the Arms Act and placed on record various documents in that regard.

PW8 ASI Ram Avtar, who on 6.4.2010 was posted as such at CIA, Bhiwani and had joined investigation conducted by Inspector Sanjay Kumar on that day as well as on 22.4.2010 deposed in that respect.

PW8 (wrongly recorded) Dr.Inderjit Goyal, Medical Officer, PHC Kalawali, District Sirsa stated that on 28.3.2010, he was posted as such in General Hospital, Bhiwani. On that day, on police request, he had conducted post-mortem examination on the dead body of Surrender. He proved copy of post-mortem report as Ex.PX/3 and tendered in evidence his affidavit Ex.PX/4 in that regard.

PW9 EASI Jai Bhagwan, again a formal witness tendered in evidence his affidavit Ex.PV.

PW10 Inspector (Retd.) Prem Chand, who on 28.3.2010 was posted as Inspector/SHO at Police Station Sadar, Bhiwani and who on coming to know about the incident had gone to the spot carrying out various proceedings and then had finally prepared and filed challan against accused Jangi @ Jangbir, Sandeep, Surrender and Sandeep,

testified in that regard.

PW11 SI Zile Singh, who on coming to know about the incident had initially gone to the spot and started investigation, deposed about the same.

PW12 ESI Satbir Singh, a witness of the disclosure statements Ex.PN, Ex.PQ and Ex.PR made by accused Sonu @ Balvinder, Sandeep and Jangi alias Jangbir on 21.4.2010 before Inspector Sanjay Kumar regarding their involvement in the case, deposed about the same.

PW13 HC Jagbir Singh, who on 22.3.2010 was posted as MHC at Police Station Sadar, Bhiwani and who on receipt of ruqa sent by SI Zile Singh through Constable Surender Singh had recorded formal FIR, copy of which being Ex.PY/2 deposed that he had made endorsement Ex.PY/3 on Ex.PY and then sent special reports to Illaqa Magistrate and higher police officers through Constable Dharam Singh.

PW14 Dinesh – complainant provided the eye-witness account of the incident deposed on the lines of prosecution story.

PW15 Dharam Singh stated that on 28.3.2010, he was posted at Police Station Sadar, Bhiwani. On that day as directed by MHC Jagbir Singh, he had taken special report Ex.PY/2 and delivered the same to Illaqa Magistrate and other higher police officers without any delay.

The prosecution placed on file reports from FSL, Madhuban, Karnal as Ex.PX, Ex.PX/1 and Ex.PX/2.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313

Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

Further, in addition to pleading false implication, accused Jangi @ Jangbir took up a plea that he was helping Jora Singh regarding the dispute of marriage of Monika with Vijay Singh, a cousin of Dinesh and due to that reason, family of Vijay was annoyed with him and after the death of Surender, Dinesh in connivance with the family members of Vijay and police implicated him in the present case.

During their defence, accused examined Chattar Singh, Duty Inspector, Haryana Roadways, Delhi Depot as DW1, Balwan Singh, Yard Inspector, Haryana Roadways, Delhi Depot as DW2, Chandan Singh, Booking Incharge, Haryana Roadways, Delhi Depot as DW3, Satyawar, Driver, Haryana Roadways, Delhi Depot as DW4 and Surender aged about 33 years, Agriculturist, resident of village Dadam, District Bhiwani as DW5.

DW1 to DW4 were examined to show that accused Jorawar Singh working as Conductor with Haryana Roadways, Delhi Depot was on duty from 27.3.2010 up to 29.3.2010. That evidence was adduced to show that he could not possibly be present at the spot at the time of incident. Whereas DW5 Surender was examined to show that Sandeep used to reside at village Dadam and work there as tractor driver and on 27.3.2010, he was present at village Dadam.

Accused tendered in evidence order as Ex.DX and judgment as Ex.DY.

With that defence evidence was closed.

After hearing arguments, learned trial Court acquitted accused Sandeep son of Raj Kumar, Sandeep @ Poto son of Jaibir, Jora Singh @ Jorawar, Sumer Singh and Sandeep son of Sumer Singh of the charge framed against them whereas accused Jangi @ Jangbir and Sonu son of Ramesh Kumar were convicted for offence under Section 302 read with Section 34 IPC and sentenced, as detailed above, which left them aggrieved and they have filed the present appeal.

We have heard learned counsel for the appellants-accused-convicts and learned Assistant Advocate General for the State of Haryana besides going through the record and we find that the impugned judgment of conviction and sentence does not call for any interference as far as accused Jangi @ Jangbir is concerned whereas it is liable to be set aside as relating to appellant – accused – convict Sonu.

The star witness for the prosecution happened to be complainant – Dinesh who appearing as PW14 had provided the eye-witness account of the incident. Though he had named several persons as assailants i.e. Jangi @ Jangbir, Jora son of Hom Singh, Poppy resident of village Bandaheri (son of sister of Jangbir), Sonu, Sandeep, Sandeep son of Sumer and Sumer son of Hom Singh but during the course of investigation involvement of accused Jora Singh @ Jorawar, Sumer Singh and Sandeep was not found, as such they were not sent up to face trial. The SHO of the concerned police station had forwarded only accused Jangi @ Jangbir, Sandeep son of Raj Kumar, Sonu son of Ramesh and Sandeep @ Poto son of Jaibir to face trial. Although on an application under Section 319 Cr.P.C. having been filed, accused Jora

Singh @ Jorawar, Sumer Singh and Sandeep son of Sumer Singh were also summoned to face trial yet the trial ended in conviction of accused Jangi @ Jangbir and Sonu only whereas remaining five accused earned acquittal. In that way, the majority of the assailants named by Dinesh complainant were not held guilty for murder of Surrender deceased. However, the maxim *falsus in uno falsus in omnibus* i.e. false in part, false in whole is not made applicable by the Courts in India, rather the Courts are required to separate grain from the chaff i.e. truth from the falsehood. Merely because Dinesh has deposed wrongly regarding certain aspects of the case does not mean that his statement is to be discarded outrightly, if his deposition comes out to be convincing and inspiring confidence regarding other aspects. We find his testimony regarding involvement of Jangi @ Jangbir in the incident to be consistent and convincing. In his lengthy cross-examination, he remained unshaken as regards his deposition with respect to participation of Jangi @ Jangbir in the incident resulting in causing of injuries to Surrender to which he had succumbed. We find his presence at the spot to be natural and probable. Keeping in view the totality of circumstances, we are not inclined to believe that he had not seen the incident and was imported to the scene of crime later on and then introduced as a false witness. Merely because the blood stained clothes of Dinesh had not been taken into possession by the Investigating Officer during investigation does not make his presence at the spot to be doubtful. It may be some lapse on the part of Investigating Officer but then that does not affect the prosecution story much and accused cannot gain any benefit by default. As deposed by PW7 – Inspector Sanjay

Kumar, on 20.4.2010 accused Jangi @ Jangbir along with Sandeep, Sonu @ Balvinder, Manjit @ Kalia and Kulbir had been arrested in case FIR No.169 dated 20.4.2010, under Sections 399 and 402 IPC and 25 of Arms Act. Accused Jangi @ Jangbir had got recovered pistol of .32 bore along with one live cartridge, sketch of the recovered pistol had been prepared as Ex.PG. It was converted into a sealed parcel and then taken into possession vide recovery memo Ex.PK. This witness stated that the case property relating to Jangi @ Jangbir has been destroyed. Constable Radhey Sham had made statement in that regard from the record brought by him stating that the case property i.e. pistol of .32 bore along with cartridge had been destroyed as per order No.2223 dated 17.10.2011 by District Magistrate, Bhiwani and it has been so done on 18.10.2011. He had proved copies of relevant entries in the register as Ex.PZ, Ex.PZ/1, Ex.PZ/2, Ex.PZ/3 and Ex.PZ/4. As deposed by PW8 ASI Ram Avtar on 22.4.2010, accused Jangi @ Jangbir had pointed out the place of occurrence and a memo in that respect was prepared as Ex.PU. Thus, it stands established that accused Jangi @ Jangbir had got recovered a pistol and live cartridge from his possession and had pointed out the place of occurrence also, which fortify the case of prosecution regarding his involvement in the present incident. The fact remains that Surrender had died an unnatural death and from the evidence on record it stands established that his murder was committed by Jangi @ Jangbir by firing shots from pistol. The impugned judgment of conviction and sentence as regards appellant – accused – convict Jangi @ Jangbir is based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no reason to interfere with the same.

Whereas position is just the opposite as far as appellant – accused – convict Sonu is concerned. Accused Sonu has neither been named in the FIR nor any role attributed to him. While appearing as PW14, complainant Dinesh has not attributed any injury to Sonu, rather he had just stated that Sonu along with others had alighted from MAX vehicle. It is clearly an improvement from the version given by him in the FIR, though he was not confronted with the statement made by him to the police in that regard but the fact remains that it is clearly an improvement. Nevertheless even if it is taken that Sonu was there and had alighted from the MAX vehicle but then even as per PW Dinesh, he was not holding any weapon and no injury is attributed to him. There are allegations of his having raised *lalkara* (exhortation) or catching hold of deceased in his grasp. As already observed, Dinesh – complainant eye-witness has been disbelieved as regards participation of majority of the persons named by him as assailants in the incident. Under the circumstances, the trial Court had based conviction of the accused Sonu for the reason that bullets fired from his pistol match with the bullets used in the incident but then unless the evidence is there that it was accused Sonu who had fired the shots at the deceased causing him injuries, conviction of Sonu cannot be based merely on guesswork and presumptions. The prosecution has failed to prove its charge against appellant – accused – convict Sonu conclusively and affirmatively beyond shadow of reasonable doubt.

Resultantly the conviction and sentence of appellant – Sonu is set aside and he is acquitted of the charge against him. The conviction of appellant – Jangi @ Jangbir under Section 302/34 IPC is altered to

one under Section 302 IPC for which offence he shall undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default thereof, he shall undergo rigorous imprisonment for one year.

The appeal is, accordingly, disposed of in the above terms.

Necessary intimation be sent to the quarter concerned.

8.5.2017
Brij

(T.P.S. MANN)
JUDGE

(H.S.MADAAN)
JUDGE

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