

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

CRA-D-837-DB of 2010

Date of decision :- 30.5.2017

Sumit Kumar @ Bholu

....Appellant

Versus

The State of Haryana

....Respondent

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

Present : Mr.Gurpreet Singh, Advocate with
Ms.Ginnireet Malhotra, Advocate
for the appellant.

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

H.S. MADAAN, J.

This appeal has been preferred against the judgment dated 2.8.2010 passed by the Court of learned Sessions Judge, Sonipat vide which accused Sumit Kumar alias Bholu was convicted for offences under Section 302 of Indian Penal Code (hereinafter referred to as *IPC*) and Section 25 of the Arms Act and order dated 3.8.2010 vide which he was sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- for the offence under Section 302 IPC and to undergo rigorous imprisonment for a period of three years and to pay a fine of

Rs.5,000/- for the offence under Section 25 of the Arms Act. In default of payment of fine or a part thereof, he was sentenced to further undergo rigorous imprisonment for a period of one year.

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.

The prosecution story in nutshell is that on 31.12.2008, a telephonic message was received at Police Station Sadar, Sonipat that dead body of Sandeep son of Ishwar Singh, Kashyap Rajput, resident of village Hulla Heri had been brought to Civil Hospital, Sonipat and some Investigating Officer be sent there. Accordingly, SI Om Parkash, No.111-RR along with other police officials including a photographer went to Civil Hospital, Sonipat. There the police party came across complainant Pawan Kumar son of Lal Chand, Kashyap Rajput, resident of village Hulla Heri, aged about 40 years, who got his statement Ex.PE/1 recorded therein stating that he has been working as a plumber at Sonipat; that his elder brother Attar Singh and nephew Sandeep son of Ishwar Singh had also been engaged in that avocation; that in the year 1997, Suresh son of Ishwar Singh, caste Jaat, resident of their village had been murdered for which elder brother of complainant namely Ishwar, Ishwar's wife Nirmala, their sons Karanpal and Krishan had been found guilty and convicted and such accused – convicts had been on bail granted by High Court for last about 7-8 years; that Nirmala had

expired 6-7 years prior to the present incident; that appeal filed by the convicts had been dismissed by the High Court and as such Ishwar, Karanpal and Krishan surrendered before the appropriate authority on 24.12.2008 and were sent to District Jail, Sonipat though they had filed an appeal against order of High Court in the Hon'ble Apex Court.

According to the complainant, on that day i.e. 31.12.2008 in the morning, the complainant along with his elder brother Attar Singh and Sandeep son of Ishwar was going from their village to Sonipat in connection with their work on their respective bicycles; that Sandeep was going ahead by 15-20 paces; that at about 9:15 a.m., when three of them had reached 15-20 short of the tempo stand of village Hulla Heri then Sumit @ Bholu son of Suresh sat on carrier of bicycle being plied by Sandeep; that when the said bicycle carrying Sandeep and Sumit @ Bholu reached near house of Satish son of Surta located near vicinity of tempo stand, then Sumit @ Bholu fired a shot from his pistol hitting Sandeep on the right side of the back below the shoulder. The complainant along with his elder brother Attar Singh rushed to manage Sandeep, then Sumit @ Bholu fled away towards the village along with his weapon; that while Sandeep was being shifted to Civil Hospital, Sonipat, he breathed his last and was declared brought dead by the doctor at Civil Hospital, Sonipat. According to the complainant, the motive for the incident was the enmity between accused and deceased due to murder of father of the accused.

The statement was signed by complainant Pawan Kumar in Hindi and his signatures were attested by SI Om Parkash, No.111-RR, who appended his endorsement Ex.PE/2 below such statement and sent

ruqa to police station from Civil Hospital, Sonipat through Constable Rajesh Kumar at 12:15 a.m., on the basis of which formal FIR Ex.PH was recorded by ESI Bhagwan Swaroop, who appended his endorsement Ex.PH/1 on the original ruqa and sent it back to the Investigating Officer along with copy of the FIR. Special reports were also sent to the Illaqa Magistrate and other higher police officers. The FSL team was directed to reach at the spot. SI/SHO Om Parkash, No.119 was informed telephonically.

SI Om Parkash, No.111-RR carried out inquest proceedings with regard to dead body of Sandeep, preparing report Ex.PG/1 in that regard. He got the dead body photographed from official photographer. The Investigating Officer got post-mortem examination conducted on the dead body of Sandeep from Civil Hospital, Sonipat by deputing Constable Rajesh Kumar for that purpose. After post-mortem examination, Constable Rajesh Kumar produced before the Investigating Officer a sealed parcel of the belongings of the deceased besides another sealed parcel of the bullet recovered from the dead body. The Investigating Officer took into possession both the parcels vide recovery memo Ex.PB. In the meanwhile, SI/SHO Om Parkash, No.119 reached at Civil Hospital, Sonipat and took over the investigation from SI Om Parkash, No.111-RR.

The police party led by SI/SHO Om Parkash, No.119 had gone to the spot and took into possession the bicycle from village Hulla Heri Tempo stand vide recovery memo Ex.PF. He prepared rough site-plan of the place of occurrence as Ex.PO The photographer accompanying the police party took the snaps of place of occurrence as

well as that of bicycle. The Investigating Officer recorded statements of witnesses and thereafter the police party returned to the police station. Accused Sumit Kumar @ Bholu was arrested in this case on 5.1.2009. Necessary documents in that regard were prepared. Thereafter, the investigation of this case was handed over to SI Om Parkash, No.111-RR.

Accused Sumit Kumar @ Bholu, who was in police custody was interrogated by SI Om Parkash, No.111-RR, during the course of which, he suffered a disclosure statement admitting his involvement in the case stating that .315 bore pistol used by him in the incident along with empty shell had been kept concealed by him under the earth in a plastic bag near *kikar* tree on the backside of his house and he could get the same recovered. That statement was reduced into writing as Ex.PD which led to recovery of pistol and empty shell from the specified place at the instance of such accused. The Investigating Officer prepared rough sketch of the recovered pistol as Ex.PD/2 and then took such pistol Ex.P1 and empty shell Ex.P2 into possession vide recovery memo Ex.PD/1. The Investigating Officer had prepared rough site plan of the place of recovery as Ex.PN. On return to the police station, the Investigating Officer deposited the case property with MHC and put the accused in the lock-up. During the course of investigation, he (IO) got prepared scaled site-plan of the place of incident, obtained sanction order from District Magistrate, Sonipat for prosecution of the accused for offence under Section 25 of the Arms Act. He sent the recovered pistol along with empty shell as well as belongings of the deceased etc. to FSL, Madhuban, Karnal and reports therefrom were received. After

completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Sonipat.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Sonipat, he supplied copies of documents relied upon in the challan to 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 Judicial Magistrate Ist Class, Sonipat vide his order dated 10.4.2009 committed the case to the Court of learned Sessions Judge, Sonipat.

Learned Sessions Judge, Sonipat, observing that charge for offences under Section 302 IPC and Section 25 of the Arms Act was disclosed against the accused, he was charge-sheeted accordingly, to which, he 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 sixteen witnesses as per details below:

PW1 HC Krishan Kumar stated that on 31.12.2008, while posted at Police Station Sadar, Sonipat, Bhagwan Sarup, EASI handed over special reports of this case to him and he had delivered the same to Illaqa Magistrate and other police officers without any loss of time.

PW2 Constable Sunder Lal stated that on 31.12.2008, while being deputed by the Investigating Officer to get the post-mortem examination conducted on the dead body of Sandeep, he got the needful done and thereafter the doctor had handed over to him a sealed parcel affixed with the seal of 'GL', which he produced before SI Om Parkash

No.111-RR, who had taken it into possession vide recovery memo Ex.PB. This witness further tendered in evidence his duly sworn affidavit Ex.PC praying that it be read as a part of his statement.

PW3 HC Kuldeep Singh, who on 6.1.2009 had witnessed accused Sumit Kumar @ Bholu making disclosure statement regarding his having concealed .315 bore pistol along with an empty shell within his specific knowledge Ex.PD and thereafter had got the pistol and empty shell recovered from his possession which had been seized by the Investigating Officer as per rules and procedure deposed in that regard.

PW4 HC Inderpal, who on 9.3.2009 had gone to the spot and prepared scaled site-plan Ex.PE on demarcation of Pawan Kumar – complainant, deposed about that.

PW5 Pawan Kumar – complainant eye-witness provided the ocular version of the incident supporting the prosecution story on material aspects, so did PW6 Attar Singh, the other eye-witness of the incident.

PW7 Dr.Ginni Lamba, Medical Officer, Civil Hospital, Sonipat, who on 31.12.2008 at 3:40 p.m. along with Dr.S.P. Sharma had conducted post-mortem examination on the dead body of Sandeep son of Ishwar, Jhinwar, resident of village Hulla Heri, 20 years male stated that as per information furnished by the police he had been shot dead. She deposed that her observations were as follows:

External appearance:

Length of body was 5'7" with no mark of ligature on neck.

It was a dead body of a young male, moderately built and nourished, wearing grey check shirt, orange and blue T-

shirt, light green pants, blue underwear with yellow stripes, blue socks and black sports shoes and black belt, clothes were blood stained with corresponding holes of gunshot. Rigor mortis present, post-mortem staining present on dependent parts. Eyes, mouth semi open with following injuries:

1. An oval shape lacerated wound with inverted margins 1.5 cm x 1 cm right back infra scapular region 12 cm from midline 16 cms below root of the neck with abraded collar inferiorly. On dissection, track going through posterior chest wall pleura right lung, posterior to sternum. Bullet recovered from anterior aspect of neck on spinal processes, transfer processes of lower cervical vertebrae. Bullet 3 cm x 0.75 cm.

Scalp, skull, vertebrae, membranes, brain, spinal cord, larynx and trachea, left lung all were healthy and pale. Ventricles are empty, right pleura lacerated, right pleural cavity full of blood, right lung was lacerated.

Abdominal Wall, peritoneum, mouth, pharynx and oesophagus were healthy and pale, stomach was healthy containing semi digested food material, small intestines healthy with chyme, liver, spleen and kidneys were healthy, large intestines healthy with gases and faecal matter, bladder was empty, organs of generations were healthy.

The witness stated that in their opinion, the cause of death was haemorrhage and shock due to gunshot injuries which were ante-

mortem in nature and sufficient to cause death in normal course of nature. Time between injuries and death was variable, time between death and post-mortem examination was 6 to 24 hours. She proved copy of the post-mortem report as Ex.PG. She stated that they had conducted the post-mortem examination on police request Ex.PG/2. A sealed parcel had been opened and a bullet was taken out. The witness stated that bullet Ex.P3 was the same which was recovered from the body of the deceased at the time of post-mortem examination. Another sealed parcel was opened and clothes were taken out. The witness stated that shirt Ex.P4, pants Ex.P5, T-shirt Ex.P6, jacket Ex.P7 and underwear Ex.P8 were the same which she had handed over to the police.

PW8 SI Bhagwan Swaroop deposed that on 31.12.2008, he was posted at Police Station Sadar, Sonipat; that on that day on receipt of writing Ex.PE/1 through Constable Rajesh No.872, he had registered formal FIR Ex.PH and made his endorsement Ex.PH/1. He had also sent special reports through EHC Krishan Kumar to the Illaqa Magistrate and other higher police officers.

PW9 HC Rajinder and PW11 HC Joginder Singh tendered in their evidence their duly sworn affidavits Ex.PJ and Ex.PL, respectively.

PW10 Om Parkash Mirg, Reader to District Magistrate, Sonipat had brought sanction order No.1132/R dated 26.3.2009 vide which Sh.Ajit Bala Ji Joshi had accorded sanction to prosecute accused Sumit Kumar alias Bholu under Section 25 of Arms Act and proved the same as Ex.PK.

PW12 EHC Rajbir Singh had brought the original FIR

No.284 dated 4.7.1997 proving its copy as Ex.PM.

PW13 Constable Rajesh Kumar stated that on 31.12.2008, while he was posted at Police Station Sadar, Sonipat, he was deputed by SI Om Parkash, No.111-RR to get the post-mortem examination conducted on the dead body of Sandeep. He accordingly got the needful done and produced a sealed parcel given to him by the doctor before SI Om Parkash, who took the same into possession vide recovery memo Ex.PB.

PW14 SI Om Parkash, No.111 – RR, who had carried out investigation in this case initially and then after some gap, to a major extent testified in that regard proving various documents.

PW15 Constable Narender Kumar, photographer stated that on 31.12.2008, he had visited Civil Hospital, Sonipat, where he took five snaps of the dead body which was lying in the mortuary. Thereafter, he had visited the place of occurrence and took two snaps of that place as well as of the cycle using digital camera. He proved such photographs as Ex.P9 to Ex.P15.

PW16 SI Om Parkash, No.119, who was posted as SHO at Police Station Sadar, Sonipat at the relevant time and had carried out the investigation of this case to a limited extent deposed about the same.

Learned Public Prosecutor tendered in evidence copy of reports of FSL as Ex.PA and Ex.PA/1 and closed the evidence of the prosecution.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to him but he denied the allegations contending

that he was innocent and had been falsely implicated in this case by the complainant party with the active help of Sadar Police Sonipat; that his father Suresh was murdered by Ishwar, father of deceased Sandeep, his mother Nirmala and sons Karanpal and Krishan and they were convicted and sentenced to life imprisonment and also with fine; that Nirmala died during the pendency of the appeal and even the appeal was dismissed by the High Court of Punjab and Haryana and now they were serving sentence; that since the complainant party was inimical and was nursing grudge against his family, this case was planted upon him and that it was a blind murder.

Accused did not lead any evidence in defence.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned supra, which left him 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.

As per the prosecution story, the incident had taken place on 31.12.2008 at 9:15 a.m. After the incident, the injured was taken to Civil Hospital, Sonapat, which is stated to be at a distance of about 11 kms. from the spot. Injured was declared brought dead at that hospital. Information from the hospital had been given at Police Station Sadar, Sonapat stated to be at a distance of about 3 kms. from the hospital. A police party led by SI Om Parkash, No.111-RR had come from there. Then SI Om Parkash had recorded statement of complainant. The

Investigating Officer had put his endorsement below that statement and then ruqa was sent from Civil Hospital, Sonapat at about 12:15 a.m. In that way, there is no delay in reporting the matter to the police, which rules out possibility of any concoction or fabrication of version after due deliberations and consultations as well as of false implication. The accused is specifically named in the FIR and the necessary details of the incident have been given. If complainant Pawan Kumar was not present at the spot, he could not have possibly been called by the police and then introduced as a witness within such a short period. In the statement made by Pawan Kumar to the police, he had specifically mentioned that his brother Attar Singh was also going with them. Both the witnesses have appeared in the Court and got their statements recorded. Though they were subjected to lengthy cross-examination but they could not be shattered on any material point. The account of the incident given by them is quite natural and plausible and we do not find any reason to discard the same. Though previous enmity was there between the two sides inasmuch as father of accused had been killed by parents and brothers' of the deceased for which they were tried and convicted but that also provides motive for the accused to murder the deceased.

It needs to be mentioned here that complainant Pawan Kumar and Attar Singh having lost a near relative would have been the last persons to try 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 one 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.

The eye-witness account is duly corroborated by the medical evidence. A bullet had been found from the dead body of the deceased during post-mortem examination, which was sent to FSL, Madhuban, Karnal for analysis along with the country-made pistol and empty shell recovered from the possession of the accused in pursuance of the disclosure statement made by the accused while in police custody. As per report of FSL Ex.PA, the result was that the country-made pistol marked W/1 (Chambered for .315” cartridges) was a firearm defined in Arms Act 54 of 1959, its firing mechanism was found in working order, that .315” fired cartridge case marked C/1 and .315” fired bullet marked BC/1 had been fired from country-made pistol marked W/1 and not from any other firearm even of the same make and bore/calibre because every firearm has its own individual characteristic marks. As per report/opinion Ex.PA/1, the blood stained clothes of deceased were found to be stained with human blood, though as regards blood stains on shoes and socks, the material was found to be disintegrated. Thus the report from FSL clinches the matter clearly showing that the accused had fired from the country-made pistol of .315 bore and the bullet fired from that pistol while causing firearm injuries to the deceased had entered his body which was found during the post-mortem examination. Thus it stands established that it was the accused who had caused that injury by firing a shot from his country-made .315 bore pistol, which proved fatal leading to death of the deceased.

The investigation in this case had 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 without any rhyme or reason. The other evidence adduced by the prosecution supports the prosecution case.

Learned counsel for the appellant – accused – convict has raised certain contentions, first being that as there had been enmity between the deceased and the accused, the story of accused sitting on the carrier of the bicycle being plied by deceased does not seem probable. However, learned Assistant Advocate General, Haryana argued that as per prosecution story, while the three cyclists were going, the deceased being in front with his two uncles following him on their respective bicycles; the accused had made himself comfortable on the carrier of bicycle being plied by the deceased and not by taking his permission. Furthermore, accused was a child when his father was killed, thereafter, the parents and brothers of deceased who were accused in that case had come out on bail and remained as such for a considerable time. The deceased and the accused had been residing in the same village. Under such circumstances, the accused sitting on carrier of the bicycle being plied by the deceased cannot be taken to be improbable.

After hearing the rival contentions, we find the explanation by Assistant Advocate General, Haryana to be plausible. Nevertheless, even if it is taken that the accused had not sat on the carrier of bicycle of deceased then enough cogent and convincing evidence is available to show that he had fired a shot from his country-made pistol hitting the deceased on back resulting in his death. Therefore, this argument of learned counsel for the appellant does not cut much ice.

Another contention of learned counsel for the appellant was that no empty shell was recovered from the spot. But then this contention is devoid of merit. As per prosecution story only one shot had been fired from the country-made pistol. In such eventuality, the empty shell remains inside the pistol and it is only when the pistol is reloaded with a cartridge, then the empty shell is required to be taken out. It is not case of the prosecution that it was so done by the accused. Therefore, there was no occasion for the accused opening the pistol, taking out the shell and dropping it on the ground, as such the same could not possibly be recovered by the police from the spot.

One more argument put forward by learned counsel for the appellant was that no blood stain was found to be on bicycle or on clothes of the witnesses, which is a suspicious circumstance. However, we are not in agreement with learned counsel on that point. Firstly, there is nothing to show that clothes of the witnesses had become blood stained in the process of managing the injured – deceased and that they had informed the Investigating Officer in that regard or Investigating Officer had asked them to take off those clothes and produce such clothes before him. Furthermore, there is nothing to show that the Investigating Officer had found blood stains on the bicycle though it has come on record that at the time of spot inspection, bicycle of deceased was found to be there which was taken into possession. Furthermore, the police of the region is not known for very professional and scientific investigation, therefore too much cannot be read into such acts/omissions. Thus, this contention does not have any merit.

One more argument advanced by learned counsel for the

appellant was that no independent witness was joined during the investigation. Again this argument lacks force. There is nothing on record to show that any other independent witness had seen the incident, who could be joined by the police during investigation and then cited as a witness. 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.

Another argument put forward by learned counsel for the appellant was that as per prosecution story, the shot had been fired from a very close range, which should have left tattooing marks and blackening around the wound. However, learned Assistant Advocate General, Haryana countered the argument stating that it was a winter season and deceased was wearing heavy woolen clothes at that time including a Jean jacket which is very difficult to pierce. Therefore, there could not be any question of blackening or tattooing marks being left near the entry point of the wound. We find such explanation to be quite convincing and contention to be unable to cause any dent in the prosecution story.

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.

30.5.2017	(T.P.S. MANN)	(H.S.MADAAN)
Brij	JUDGE	JUDGE

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