

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRA-D-159-DB of 2013 (O&M)

Date of Decision: December 2, 2017

Satpal

.....Appellant

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.

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Present: Mr. A.K. Bakshi, Advocate for the appellant.

Mr. Ashok Singh Chaudhary, Addl.A.G., Haryana.

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M.M.S. BEDI, J.

The appellant having been tried for committing the murder of Adesh Kumar Pandey, father of PW5 Swati and PW8 Ashutosh, has been convicted for the charge under Section 302 IPC to undergo life imprisonment and to pay a fine of Rs.10000/- and in default of payment of fine to further undergo RI for one year and for charge under Section 25 of the Arms Act to undergo RI for one year and to pay a fine of Rs.2000/- and in default of payment of fine to further undergo RI for 4 months. Both the sentences have been ordered to run concurrently vide judgment dated November 7, 2012 and order dated November 10, 2012.

The machinery of prosecution was set into motion when on March 27, 2010 an information had been received through telephone by the police that fire had been shot in front of Tarana Cinema Hall in the house of Siri Chand Vats, in Khanna Colony and ASI Sombir, PW16 along with ASI Wazir Singh and C. Jatinder No.258 reached the spot where statement Ex.PE made by Swati was recorded, which when translated, reads as follows:-

“Stated that my father was an employee in Osram factory at Sonipat for the last 17-18 years. I am studying in 12th class in GVM School, Sonipat. A Divya Jyoti Jagran was held on the ground of Tarana Cinema Hall in the month of June 2009, where a boy namely Satpal @ Suraj R/o UP or Bihar met me. He asked me to have relationship with me. I refused, but Satpal kept following me. I disclosed this matter to my father. Satpal came to know through his friends that I have disclosed the matter at my house. Satpal reached to our house and apologized before my father and assured not to repeat such type of activity. He used to make call from his mobile number 9017120079 to our phone No. 9813310380. Thereafter we had changed our telephone. Now my exams started from 10th of March. On 10th March Satpal met me at Bus stand Sonipat while I was returning on a rickshaw after appearing in the examination and tried to converse with me. But I refused to talk him. Due to this he nourished a grudge. He threatened me through my friend Ankita, a

resident of Village Bhigan who is studying with me to ask Savita to have friendship with him otherwise he will eliminate me family. My friend Monika daughter of Subhash resident of Janta Colony, Sonipat also knows the whole facts. Due to this grudge, today at about 8.00 a.m. Satpal came to our house. My father was standing near bath room. My brother Ashu @ Ashish Pandey ha also come after morning walk. His friend Kuldeep resident of Khanna Colony was along with my brother. My father asked them to catch hold of Satpal and to call the police. Saying so, Satpal took out a pistol which was hidden inside the pant, underneath the shirt and fired a shot on the below portion of the neck of my father and Satpal pointed out pistol towards my brother and Kuldeep and fled away along with pistol after threatening them of killing. My father was shifted to G.H. Sonipat for treatment by my brother and his friend Kuldeep. I along with my brother Ashish and his friend Kuldeep have seen this occurrence. Stern legal action may be taken against Satpal.”

The above said statement was read over to Swati. She signed the same after admitting the contents to be correct. The investigating officer made endorsement Ex.PE/3 and sent the same to Police Station, Civil Lines, Sonipat through Constable Jatinder for registration of the case. The investigating officer inspected the spot and took into possession blood with

the help of cotton lying at the spot i.e. house of Adesh Pandey which was sealed in a parcel with the seal of 'SS'. He took into possession one empty bullet which was also sealed in a parcel with the seal 'SS'. He took both the parcels in possession vide recovery memo. Ex.PA which was signed by Ashutosh and ASI Wazir. He prepared rough site plan Ex.PN of the place of occurrence under his signatures, recorded the statement of Ashutosh and Kuldeep. The investigation was later on taken over by Inspector Ram Kumar, PW18 on March 27, 2010 who had held inquest proceedings Ex.PO/2 on the body of Adesh Kumar Pandey in Government Hospital, Sonipat and dispatched the dead body for post mortem examination vide application Ex.PO/3. On the same day, ASI Wazir Singh produced sealed parcels containing clothes of the deceased and bullet bearing seals of the Doctors along with specimen seal impression which he took into possession vide memo Ex.PB signed by ASI Wazir Singh. He recorded the statements of PWs and started search of the accused. On April 6, 2010, the investigating officer arrested accused Satpal from G.T. Road, Murthal and made inquiries from him and lodged him in the police lock up. On April 7, 2010, he interrogated Satpal-accused in presence of ASI Hawa Singh and Ashish Pandey. During the course of interrogation, the appellant suffered disclosure statement Ex.PF and told that he fell in love with Swati, the daughter of the deceased and also used to make calls through mobile phone and that he shared this fact with accused Ajay and Ajay took him to the house of Swati but the family members of Swati did not agree with their relations. He further disclosed that Ajay had provided him a pistol and in pursuance thereto he brought the pistol from Ajay and fired shot at Adesh

Kumar Pandey and fled away from the spot. He also told that he had kept concealed the pistol and clothes underneath the Kabli killers near Mimarapur Road regarding which he exclusively had the knowledge and offered to get the same recovered. Ex.PF was thumb marked by the accused and also signed by ASI Hawa Singh and Ashish Pandey. He got the pistol and his trouser and T-shirt recovered which were separately sealed in parcels and were taken into possession vide recovery memo. Ex.PG which was signed by ASI Hawa Singh and Ashish Pandey. He prepared sketch Ex.PG/1 of the pistol which was signed by above said witnesses. Pistol Ex.P6, trouser Ex.P7 and T-shirt Ex.P8 were actually got recovered by the appellant. The investigating officer also prepared rough site plan Ex.PQ of the place of recovery and on the same day arrested accused Ajay who on interrogation in presence of EHC Sanjay Kumar disclosed vide his statement Ex.PM that he used to deal in illicit liquor with appellant and told that the appellant had fallen in love with Swati and that he had taken Satpal to the house of Swati but her family members did not approve the relation and he asked Satpal to eliminate the parents of Swati in case they raised the objection. He admitted to have provided pistol to Satpal on March 24, 2010 and that on March 27, 2010 appellant had committed murder of father of Swati. He admitted to have remained in touch with Satpal through mobile Phone. He disclosed that sim bearing No. 9729964720 was of Idea Company issued in the name of his father Ram Kumar. He signed his statement Ex.PM in presence of EHC Sanjay Kumar. On April 8, 2010 he took into possession mobile phone Ex.P-9 Samsung with sim card bearing aforesaid number which was produced by Ram Kumar, father of accused Ajay. It was sealed in a parcel

and was taken in possession vide memo Ex.PM/1 which was signed by EHC Sanjay and Ram Kumar. On May 10, 2010 he took into possession call details of said mobile phone and the other mobile phone numbers 9017120079 and ID of 9813310380 produced by ASI Satyawar vide memo Ex.PL. The call details of first phone were produced as Ex.PL/1 and Ex.PL/2. The phone which had number 9017120079 issued in the name of Pardeep Sahni was also being used by Satpal. The phone number 9729964720 was found being used by accused Ajay Kumar. The case property was deposited by the investigating officer with seals intact with HHC. Statements of the witnesses were recorded and after completion of investigation, the report under Section 173 Cr.P.C. was presented by Inspector Ram Kumar in the Court of Illaqa Magistrate.

Copies of the report were supplied to the appellant and the case was committed to the Court of Sessions for trial under Sections 302, 506, 120-B IPC read with Section 25 of the Arms Act, 1959. Charges were framed against Satpal under Sections 302, 506 IPC and Section 25 of the Arms Act. The prosecution agency in order to substantiate the charges against the appellant produced PW1 ASI Wazir Singh, to prove the initial investigation; PW2 Kuldeep Kumar, an eye-witness who did not support the prosecution version; PW3 Constable Anil proved the photographs, Ex.P1 to P-5; PW4 Lachhman, the witness of extra-judicial confession turned hostile; PW5 Swati Pandey proved the occurrence being an eye-witness; PW6 Ashish Pandey is an eye-witness who proved the occurrence, and proved the recovery of the pistol pursuant to the disclosure statement of the appellant; PW7 Sita Ram had only identified the dead body of Adesh Kumar in

Government Hospital. PW8 Ashutosh proved that Satpal had fired shot hitting his father in his presence; PW9 proved the sanction Ex.PH; PW10 prepared the site plan Ex.PJ, SI Dharam Singh; PW11 recorded the formal FIR Ex.PE/1 on the basis of the ruqa received by him as Ex.PE; PW12 Constable Yudhvir Singh delivered the special report of the case to the Illaqa Magistrate at 12:30; PW13 Constable Vikram proved his affidavit Ex.PK. PW14 ASI Satyawar proved the call details; PW15 HC Sanjay Kumar is a witness to the disclosures made by accused in custody voluntarily; PW16 ASI Sombir established the investigation PW18 Inspector Ram Kumar proved the investigation conducted by him, when the charge of investigation was given to him on March 27, 2010. He had held the inquest proceedings Ex.PO/2 of the dead body of Adesh Kumar Pandey and dispatched the dead body for post mortem examination. He recorded statement of PW1 and arrested the accused/ appellant on April 6, 2010 from G.T. Road, Murthal and made inquiry from him. He had also interrogated Satpal, appellant who got recovered pistol and his clothes which were taken into possession vide recovery memo. Ex.PG which was signed by ASI Hawa Singh and Ashish Pandey. He prepared sketch Ex.PG/1 of the pistol and got it signed from the PWs. He had also arrested Ajay. He also had taken into possession mobile phone Samsung with sim card and sealed the same and took into possession vide memo Ex.PM/1 signed by EHC Sanjay Kumar and Ram Kumar. He collected the call details of different mobile numbers. He deposited the case property with seals intact with MHC and also recorded the statements of the witnesses. PW19 proved his affidavit Ex.PR. PW20 ASI Satpal Singh produced his affidavit Ex.PS. Ms. Monika PW21, had turned hostile as such

she was cross-examined in context to her statement under Section 161 Cr.P.C.

The appellant was given an opportunity to explain the circumstances in his statement under Section 313 Cr.P.C. and he was put all the incriminating material against him. He denied all the allegations and stated that he was innocent and was not dealing with the illicit liquor trade and stated that he was a registered liquor vend allottee and did not know Swati and her family. He stated that he had never gone to the house of the deceased at any time and had been falsely implicated by the family only on the basis of misguided suspicion. He denied to have made any disclosure statement. He was given an opportunity to produce evidence but he opted not to produce any defence evidence.

The entire evidence produced by the prosecution agency can be classified as follows:-

- i) **Direct evidence** of eye-witness Swati Pandey PW5; Adesh Pandey PW6 and Ashutosh PW8;
 - ii) **Medical Evidence** of Dr. Sushil PW7 who had conducted the post mortem examination Ex.PO/1; and evidence of recovery;
 - iii) **Circumstantial evidence and the evidence of investigation;**
 - iv) **Evidence of recovery;**
- i) The direct evidence of PW5 Swati Pandey is most important and crucial evidence regarding motive as well as regarding the occurrence. She has stated on oath that she was studying in 10+2 standard in GVM School,

Sonipat and knew accused Satpal and Ajay. Both of them had met her in front of Tarana Cinema Hall in Divya Jyoti Jagran in June 2009. The appellant Satpal had asked her to have friendship with him failing which he would finish her family. She had told this fact to her family members. Satpal along with Ajay had come to her house and on asking of Ajay, Satpal appellant had felt sorry and assured that he would not repeat the same in future. Before tendering apology he used to call from his mobile on her telephone. On March 10, 2010 when she was returning from her school after appearing in the examination on a rickshaw, Satpal accused met her and asked for friendship otherwise he would finish her family. On March 27, 2010 at 7.45 a.m. Satpal appellant came to her house. At that time, her father was standing near the bathroom. Her brother Ashish along with his friend Kuldeep were also present there. Her second brother Ashutosh and mother were also present in the house. In her presence, appellant had taken out a pistol from underneath his pants and fired a shot hitting her father below his neck. The appellant pointed the pistol toward her brother Ashish and Kuldeep as they had started chasing him. Thereafter the appellant escaped. Her father was shifted to Government Hospital by her brother, mother and his friend Kuldeep where he succumbed to his injuries. She made her statement as Ex.PE and the same was read over to her and she signed the same. PW6 Ashish Pandey also stated that on March 27, 2010 when he returned to his house at about 7.30/8.00 a.m. along with his friend Kuldeep, appellant Satpal went to their house, took out a pistol from underneath his clothes and fired a shot hitting his father below his neck. Thereafter the appellant had pointed towards him and his friend and fled away from the

spot with pistol. He and his friend Kuldeep and mother took her father to Civil Hospital, Sonipat where he died. He also proved the motive that appellant used to tease his sister and used to harass her on account of which the appellant killed his father. He also proved that few months prior to the occurrence, the appellant had come to apologies at their house. PW8 Ashutosh is the brother of PW5. He was present at home on the date of occurrence i.e. March 27, 2010.

Counsel for the appellant has submitted that the appellant has been convicted on the basis of misguided suspicion after he had been called by some unknown persons.

We have heard counsel for the appellant but we are of the opinion that no reason for false implication has been suggested to the witnesses. Three eye-witnesses would not have left the actual culprit and involve the appellant. There is no doubt regarding his identification. All the three eye-witnesses have been cross-examined at length but their credibility could not be impeached.

Counsel for the appellant has argued vehemently that the material witnesses have turned hostile and have not supported the case of prosecution as such the benefit of doubt should have been given to the appellant. He referred to the statement of PW2 Kuldeep Kumar. He had denied to have made any statement Ex.PC to the police wherein he had stated that the occurrence had been witnessed by him. A reference was also made to the statement of Monika PW21 whose statement Ex.PQ had been recorded under Section 161 Cr.P.C. to the effect that the appellant used to harass Swati and used to talk to her on mobile.

The testimony of above two witnesses who turned hostile, is apparently the result of the fear and terror created by the appellant but the occurrence has been established by cogent evidence which is in the shape of statement of three eye-witnesses who have been cross-examined at length and nothing could be brought to the notice of the Court indicating that those witnesses had any oblique motive for false implication of the appellant. The sequence of events has been clearly established. The minor discrepancies pointed out are not sufficient enough to create a doubt regarding the occurrence having taken place as disclosed by the eye-witnesses. The appellant has got a strong motive to kill the deceased as he was father of a girl who had rejected his offer of friendship and the instance of appellant having earlier sought pardon for his wrong conduct in the month of June 2009. He had been threatening PW5 Swati on different occasions i.e. in March 2009, March 10, 2010 before the appellant killed Adesh Pandey on March 27, 2010 with a pistol which was later on got recovered by him on the basis of his confessional statement.

ii) **MEDICAL EVIDENCE:**

In order to establish that the deceased had died on account of gunshot and cause of death was the injury received by the deceased with the pistol Ex.P9, there is statement of PW17 Dr.Sushil, who appeared in the witness box and filed his affidavit as his examination-in-chief and established that he along with Dr.S.P. Shama and Dr. Ashwani had conducted the post mortem examination of Adesh Kumar Pandey. The post mortem report was produced on the record as Ex.PO/1. The post mortem report established the recovery of metallic bullet, yellowish coloured blood stained from the

posterior wall of the chest near rib. The postmortem report Ex.PO/1 is as follows:-

- “1. A 0.75 cm oval lacerated wound with inverted margins present over the anterior part of neck just above the manubrium sterni in the midline with collar of abrasion present on the lateral aspect of left margin of the wound. On dissection the track going slightly upwards, backwards and laterally to the right side of the neck and chest lacerating the underline muscles, vessels and right lateral wall of trachea pleura, upper lobe of right lung and fracture in the second rib posteriorly on the right side with massive haemothorax and big clot in the neck. A metallic bullet yellowish coloured blood stained recovered from the posterior wall of the chest just posterior to the second rib from the overlying muscles 5 cms lateral to the midline. It was opined that the deceased died of shock and hemorrhage due to bullet injury, which was ante mortem in nature and sufficient to cause death in normal course of life.”

Counsel for the appellant had tried to project that there is glaring contradiction in the ocular as well as medical evidence for which the benefit of doubt deserves to be granted. He stated that as per the version of

the eye-witnesses the fire shot was hit on the neck whereas the bullet has been recovered from the chest.

We have considered the said contention and are of the opinion that the medical evidence is in the shape of corroborative evidence and where the prosecution version has been established by the testimony of three eye witnesses the minor discrepancy in the medical evidence will not be sufficient enough to create doubt regarding the occurrence. Even otherwise, a careful perusal of the post mortem report indicates that the inverted margins were found on the anterior part of the neck just above the manubrium sterni in the midline and on dissection the track going slightly upwards, backwards and laterally to the right side of the neck and chest lacerating the underline muscles and vessels. The recovery of bullet from the wall of the chest just posterior to the second rib from the over-line muscle 5 cm to the midline indicates the path of the bullet from neck to the posterior wall of the chest. The entry wound being frond of the neck and the path of bullet having been traced till the posterior side of the thericik region, corresponding to the level of second rib, is sufficient enough to corroborate the testimony of the eye-witnesses with the medical evidence. Hence we hold that the ocular version clearly corroborates the medical evidence produced by the prosecution.

iii) EVIDENCE OF INVESTIGATION:

The investigation has been conducted without any debatable flaw. The circumstance of recovery of weapon is a corroborative piece of evidence. The statement made by the accused in police custody and the recovery having been effected on his directions, it can be safely presumed

that the statement made by him in police custody is admissible under Section 27 of the Evidence Act.

We have no hesitation to hold that despite the two witnesses having turned hostile, there is an overwhelming evidence in the shape of oral and circumstantial evidence to establish that the appellant had a motive and on account of said motive he had mercilessly fired shot at Adesh Kumar Pandey and killed him. The charge under Section 25 of the Arms Act has also been established.

Mr.Bakshi has vehemently argued that the appellant has been wrongly convicted for offence under Section 25 of the Arms Act but he has not been able to create any doubt regarding the evidence under Section 25 of the Arms Act having been committed especially when the weapon used in the crime having been found to have been recovered.

In view of the above discussion, the appeal is dismissed. The judgment of conviction and order of sentence passed by the trial Court are hereby affirmed.

(M.M.S. BEDI)
JUDGE

December 2, 2017
sanjay

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.