

In the High Court of Punjab & Haryana at Chandigarh.

Date of decision: 30.08.2017

CRA-D-315-DB-2013

Surender

..... Appellant.

vs.

State of Haryana

..... Respondent.

(2)

CRA-D-611-DB-2013

Naveen @ Kalu

..... Appellant.

vs.

State of Haryana

..... Respondent.

(3)

CRA-D-1390-DB-2013

Himanshu

..... Appellant.

vs.

Sandeep and others

..... Respondents.

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

HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Deepinder Brar, Advocate
for the appellant in CRA-D-315-DB-2013.

Mr. Kamal Mor, Advocate
for the appellant in CRA-D-611-DB-2013.

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

Mr. Surender Saini, Advocate
for the complainant/appellant in CRA-D-1390-DB-2013.

Mr. Ashwani Kumar Antil, Advocate
for respondents No.1 to 4 in CRA-D-1390-DB-2013.

Mr. Ashwani Bhardwaj, Advocate
as legal aid counsel for respondent No.5 in
CRA-D-1390-DB-2013.

MAHABIR SINGH SINDHU, J.

This judgment shall dispose of above-mentioned three appeals.

2. CRA-D-315-DB-2013 & CRA-D-611-DB-2013 have been filed
by convicts-Surender and Naveen @ Kalu, respectively against the

judgment of the learned trial Court vide which they were convicted and sentenced in the following terms :-

Name of accused	Offence (s) U/S	R.I.	Fine	In default
Surender	302 r/w 34 IPC & 120-B IPC	Life imprisonment	₹7,000/-	Six months
	307 r/w 34 IPC	Seven years	₹5,000/-	Four months
	25 of Arms Act	One year	₹1,000/-	Two months
Naveen @ Kalu	302 r/w 34 IPC & 120-B IPC	Life imprisonment	₹7,000/-	Six months
	307 r/w 34 IPC	Seven years	₹5,000/-	Four months
All the sentences awarded to the convicts were ordered to run concurrently.				

3. The third appeal i.e. CRA-D-1390-DB-2013 has been filed by the complainant against the same judgment of trial Court vide which respondents No. 1 to 5 therein were acquitted of the charges levelled against them.

4. In brief, the case of the prosecution is that on the basis of statement (Ex. PH) dated 31.07.2009, made by Himanshu, S/o Sh. Anup Singh, an FIR No. 312 dated 31.07.2009 under Sections 307/302/356/412 of Indian Penal Code (for short 'IPC') and Section 25 of the Arms Act was registered at Police Station City Gohana against Sandeep Master, r/o village Puthar, District Panipat and one unknown person and the translated version of the statement reads as under:-

“Stated that I am resident of above-mentioned address and a student of 10+2 class in Satyanand School, Gohana. Today, on 30.7.09 at about 8:15 PM in the evening after closing our shop I had moved to go to our house on our bike TVS Flame registration No. HR-11C-4191. My father was driving the bike and I was a pillion

rider. At about 8:30 PM when we turned towards our house from Panipat road on our bike, a motorcycle which was following us, came suddenly in front of us which was driven by a young boy and Sandeep Master was sitting behind him who is a resident of village Puthar. Sandeep Master took out his pistol and fired shot straightway which hit on the neck of my father. He fired the second shot on me, but I leaned down and the bike fell down. At the same time Sandeep Master got down from his bike and snatched the bag from my hand which was containing fifty thousand rupees . I raised hue and cry and at that time Ved Singh S/o Hari Kishan and Rajesh S/o Devi Singh, residents of Garhi Ujale Khan came running and tried to overpower Sandeep Master and his accomplice, but they fled away on their bike towards Panipat by brandishing their pistol. We lifted my father and took him to C.H.C. Gohana for treatment where the doctor referred my father to PGIMS Rohtak. After reaching PGIMS, my father succumbed to his injury during treatment. Today at about, 4 O'Clock Sandeep Master and his accomplice had come to our shop and demanded rupees two lakhs from my father, but my father refused to give. Sandeep Master and his accomplice had gone back after extending threat of dire consequences. Now, you have come to PGIMS Rohtak. I have got recorded my statement. Heard. Legal action be taken against Sandeep Master and his accomplice.”

5. The investigation was conducted by the police and after completion thereof, report under Section 173 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") was submitted and case was committed to the Court of learned Sessions Judge on 09.02.2010. Initially charges were framed against six accused on 10.03.2010 and seven PWs were examined uptill 27.11.2010. Later on, one more accused, namely,

Kalpesh was also added and fresh charges were framed against total seven accused vide order dated 05.05.2011 under Section 120-B IPC, Section 302 read with Section 120-B IPC, Section 302 read with Section 34 IPC, Section 307 read with Section 120-B IPC and Section 307 read with Section 34 IPC and accused Surender was charge-sheeted for recovery of countrymade .315 bore pistol and one live cartridge under Section 25 of the Arms Act as well and, thereafter, prosecution witnesses were examined afresh.

6. The prosecution examined as many as 28 witnesses and placed on record documentary evidence in support of the case to prove the charges against the accused.

7. Statements of all the accused were recorded under Section 313 Cr.P.C. and they claimed innocence being falsely implicated. Accused produced documents i.e. Ex. D1 to D4 in support of their defence.

8. The learned trial Court after considering the material available on record, convicted and sentenced both the convicts/appellants i.e. Surender and Naveen @ Kalu, but acquitted accused Dharambir, Sandeep, Sunil, Neetu and Kalpesh of the charges by giving them benefit of doubt.

Hence, the two separate appeals have been filed by the convicts/appellants against their conviction and sentence whereas third appeal has been filed by complainant against the acquittal of remaining accused.

9. It is argued by learned counsel for the convicts/appellants that as per the initial version of prosecution itself, it was Sandeep Master, who is alleged to be the assailant who had fired a gun shot on the deceased and second shot on the complainant Himanshu. But while deposing before the learned trial Court, they have altogether created a new story and tried to

implicate the present appellants. It is also argued that the alleged assailant-Sandeep Master has been given clean-chit by the police and he was discharged for the reasons best known to the prosecution. It is further argued that motive in the initial version was that Sandeep Master and his accomplice had come to the shop of the deceased on the day of occurrence at about 4 O'clock and they demanded ₹2 lakhs from the deceased and on his refusal, a threat was given by Sandeep Master and his accomplice and in the evening at about 8:15 P.M. on the same day, the offence is alleged to have been committed by Sandeep Master. But while deposing before the learned trial Court, the motive is attributed on account of some dispute regarding JCB Machine which was neither here nor there and the prosecution case is given altogether a new twist just to implicate the present convicts/appellants. It has also been argued that there is no material available on record to connect the appellants with the commission of the offence as alleged in the present case and it is also argued that five of the co-accused have already been acquitted by the learned trial Court on the same set of evidence and, therefore, the present appellants also deserve the same treatment of acquittal.

On the other hand, it has been argued by learned State counsel that there was overwhelming evidence available on record to prove the guilt of the present appellants beyond reasonable doubt and as such, they have rightly been convicted and sentenced by learned trial Court and the same does not require any interference by this Court and thus, both the appeals deserve to be dismissed. He has also argued that identity of the real assailant was established later on and due to that reason, Sandeep Master was found to be innocent and later on rightly discharged.

10. So far as the death of Anoop Singh by gunshot injury is concerned, the same is duly proved by the prosecution and reference in this regard can be made to the deposition made by Dr. Vinay Kumar (PW20) who alongwith Dr. B.K.Rai, conducted the post-mortem examination of the dead body and prepared the post-mortem report Ex. PW20/B. PW20 has duly sworn his affidavit (Ex. PW20/A) according to which, the following injuries were found:-

“A single slit like entry wound placed at left lateral aspect of neck of size 1.5 cm x .3 cm, placed parallel to clavicle 7 cm below and 2 cm posterior to left external acoustic meatus and 4 cm behind the left angle of mandible and 6 cm below it. Wound was surrounded by a blackened colour collar in an area of 7 X 4 cm. Collar is oval in shape, narrow rim on posterior side and spraying on anterior side as depicted below in diagram in my post-mortem report. Liquid blood was oozing from wound. On deeper dissection-surrounding tissue were ecchymosed, blood clots were present under skin surrounding muscles of neck. Left side major blood vessels were intact, larynx is pierced from left to right and right side common carotid is lacerated surrounded by large blood clots. Bullet recovered from right side of neck by the side of second cervical vertebra. No other injury was noted on any body parts.”

11. Dr. Vinay Kumar (PW20), has further stated that the cause of death in this case was on account of firearm injuries and the injuries were stated to be ante-mortem in nature and sufficient to cause death in due course of life. He has further stated that the time between injury and death was “immediate” and between death and post-mortem examination was “12 to 24 hours”

12. Himanshu (PW12) is the eye witness of the occurrence. Initial version of his was that at about 8:15 P.M., he alongwith his father was going to their house on their bike after closing their shop and his father was driving the motorcycle and he was the pillion rider. At about 8:30 p.m. when they turned towards their house from Panipat Road, a motorcycle which was following them, came suddenly in front of them which was being driven by a young boy and Sandeep Master, r/o village Puthar, District Panipat, was a pillion rider. It is further stated by this witness that Sandeep Master took out his pistol and fired a shot straightway which hit on the neck of his father and, thereafter, he fired another shot on him (Himanshu); but he escaped by leaning, but their bike fell down. It has further been stated that Sandeep Master got down from his bike and snatched the bag from his hands which was containing ₹50,000/- upon which he raised hue and cry. In the meantime, Ved Singh (PW7) S/o Hari Kishan and Rajesh S/o Devi Singh reached there and they tried to overpower Sandeep Master as well as his accomplice; but they fled away from the place of occurrence on their bike towards Panipat by brandishing their pistol. It is further stated that on 30.07.2009 at about 4 O'clock, in the evening, Sandeep Master and his accomplice had come to their shop and demanded an amount of ₹2 lakhs from his father and upon his refusal, they threatened with dire consequences. Thus, in the initial version, Himanshu (PW12) has spoken only about the presence of Sandeep Master r/o village Puthar, District Panipat and his unknown accomplice was driving the motorcycle. However, while deposing before the learned trial Court, PW12 Himanshu stated that on the fateful day, i.e. 30.7.2009, three boys on a motorcycle intercepted them on the way. Sunil was driving the

motorcycle, Surender was in the centre whereas Sandeep Master was sitting at the end and he fired shots on him and his father. PW12 while making his statement before the police on 30.7.2009 which led to registration of FIR had specifically spoken about only 2 persons and naming only one who intercepted him and his father and fired shots. Very surprisingly, PW-12 Himanshu chose to remain mum from 30.07.2009 to 30.09.2009, i.e. for two months and it was only on 01.10.2009 and that too on the basis of a call from police, he disclosed about the third accused i.e. Surender and name of accused riding the motorcycle.

13. It has also been stated by PW12 that police had disclosed the real name of Sandeep Master as Naveen @ Kalu s/o Rajbir, r/o village Farmana. He has further stated in his cross-examination that *“it is correct that names and father's names of accused which I had identified at the place of occurrence as well as in police station of the three accused were disclosed by police”*. He has further stated that Naveen was identified by him on 11.10.2009 in police station and he did not know as to who visited their shop alongwith Sandeep Master on 30.07.2009 and introduced Naveen as Sandeep Master on the day of occurrence. He has admitted during cross-examination that in his statement (Ex.PH), he had given the name of assailant as Sandeep Master and he also admitted that it was disclosed by him to the police that Sandeep Master had snatched the bag from him which was containing ₹50,000/-.

14. PW7-Ved Singh also projected himself to be an eye witness and corroborated the version made by PW12-Himanshu. But in the statement

(Ex.PH.) made by PW12 Himanshu on 31.9.2007, it was categorically stated that when he alongwith his father was intercepted on the way to home and gun shots were fired and bag was snatched, on raising hue and cry, PW7 Ved Singh alongwith Rajesh reached there and tried to overpower the assailants.

15. Statement (Ex.DA) of PW7-Ved Singh was recorded by SI Dharampal under Section 161 Cr. P.C. on 31.07.2009 in which he clearly stated that motorcycle was driven by a young boy and Sandeep Master, r/o village Puthar, was the pillion rider and in their presence Sandeep Master took out his pistol and fired a shot which hit on the neck of his brother-Anup (since deceased) and then he fired a second shot upon his nephew PW12-Himanshu, but he leaned down and escaped unhurt. It is further stated that Anup and Himanshu fell down from their motorcycle and then Sandeep Master got down from their motorcycle and snatched the bag from the hands of PW12-Himanshu. In the end of the statement, he has specifically stated that Anup has died during treatment at PGI, Rohtak, on account of shot fired by Sandeep Master and he has clearly stated that there were only two assailants i.e. Sandeep Master and one young boy and there is no narration about any third person.

16. There is one sale deed (Ex.D1) dated 11.10.2005, registered in the office of Sub Registrar, Gohana. It shows that the sale deed was executed by Bhup Singh through his real brother Anup (since deceased) as GPA holder in favour of Sandeep s/o Randhir Singh, s/o Tek Chand r/o village Puthar, District Panipat, regarding a shop situated at Gohana, for the sale consideration of ₹1,26,000/-. Thus, this document clearly proves that Sandeep, r/o village Puthar was known to the deceased since 2005.

17. Sandeep s/o Randhir Singh. r/o Puthar, was arrested by SI Dharampal on 03.08.2009.

18. Statement of Rajesh s/o Devi Singh was recorded by SI Dharampal on 31.07.2009 and he also stated in the same terms as of Ved Singh that it was Sandeep Master, r/o village Puthar, who fired a shot upon the deceased as well as on Himanshu.

19. Rakesh (PW2) has stated before the learned trial Court that on 29.07.2009, he had gone to answer the call of nature. When he reached near the pond, he saw accused Sandeep r/o Khandrai and three other boys and they were talking about the deceased. He has further stated that he heard accused Sandeep, pertaining to the dispute and problem created by deceased in the matter of JCB machine between the deceased and Sandeep r/o Khandrai. But from the very beginning, the issue of JCB machine was neither here nor there and the motive alleged was regarding demand of ₹2 lakhs by Sandeep Master r/o village Puthar and refusal by the deceased at 4 O'clock on 30.07.2009 and consequent firing of gunshot by said Sandeep Master on the same day i.e. 30.07.2009 at 8:30 p.m. Thus, the prosecution has not only improved, rather twisted the entire case in a different direction, as the eye witnesses PW7 and PW12 have not stated about the dispute of JCB machine. Moreover, this witness came into picture first time only on 28.09.2009, i.e. after a period of two months after the date of occurrence and prior thereto he did not utter even a single word regarding the alleged conversation heard by him on 29.07.2009. This witness has specifically admitted in his cross-examination that he came to know about the murder of deceased on 30.07.2009 and met Himanshu, Ved Singh and Rajesh at that time and he has even further admitted that he had seen the police visiting

their village regarding the murder of deceased, but despite that this witness never disclosed about the alleged conversation of the accused to anyone till 28.09.2009. Even learned trial Court in para 47 of the impugned judgment came to the conclusion to the effect that “ *I am in agreement with the learned counsel for defence that the evidence of PW2 is not reliable to accept the alleged talks about conspiracy*”

20. Another eye witness Rajesh s/o Devi Singh Saini has been given up by the prosecution itself on 15.05.2012.

21. Consequently, testimony of Ved Singh (PW7), regarding involvement of accused Naveen becomes doubtful and prosecution cannot take any help from the same.

22. The learned trial Court has wrongly come to the conclusion that deceased had given his JCB machine on rent to accused Sandeep, but he did not pay rent for the same and that led to the dispute between accused-Sandeep and the deceased. In this regard, the prosecution is trying to place reliance upon photocopy of complaint dated 29.04.2009 (Mark “A”) but there was no such motive attributed in the statement of Himanshu and as such altogether a new story is being build up by the prosecution. The reference of FIR No. 341 dated 23.08.2009 (Ex. PZ) and charge-sheet dated 24.11.2009 (Ex. PY) are also wrongly relied upon as the same pertain to one Sandeep s/o Chand Ram r/o Khandrai and not to Sandeep Master r/o village Puthar or convict Naveen @ Kalu.

23. Pistol (Ex. P6) and live cartridge (Ex. P7) are alleged to have been recovered from accused Surender in pursuance of his disclosure statement (Ex. PW9/B) and the recoveries were alleged to have been made in the presence of Beer Singh (PW9) and Rajender Singh (PW22) on

02.10.2009 and the place of recovery is an open place being accessible to all and sundry. But it is not the case of the prosecution that accused Surender had fired any gunshot and thus, the alleged recovery is of no relevance to fasten the liability on accused Surender for committing the murder of Anup-deceased.

24. Similarly, the evidence of Hawa Singh (PW8) regarding extra-judicial confession was also rightly not found reliable by learned trial Court as is clear from the observation made in para 54 of the impugned judgment as no independent witness was joined on the spot by the Investigating Officer.

25. The statement of Ved Singh (PW7) was recorded by police on 31.07.2009 at PGIMS, Rohtak and in the statement, it was clearly alleged that there were only two persons on the motorcycle and out of them one Sandeep Master r/o village Puthar had fired a gunshot. Undisputedly, Sandeep s/o Randhir Singh, r/o village Puthar is altogether a different person and he was arrested by the police on 03.08.2009 and thereafter on 01.10.2009 Ved Singh (PW-7) and Himanshu (PW-12) visited the police station and stated that Sunil and Surender in custody were the assailants and not Sandeep Master r/o village Puthar and consequently, he was discharged on 01.10.2009 under the provisions of Section 169 Cr.P.C. by learned Sub-Divisional Judicial Magistrate, Gohana on an application moved by Inspector/SHO Lakhwinder Singh on the ground that there is no sufficient evidence found during investigation against Sandeep, s/o Randhir Singh, caste Jat, r/o village Puthar, P.S.Israna, District Panipat and as such, the prosecution itself has created a new story and demolished its case.

26. Thus, the shifting of the names of accused by Ved Singh(PW-7)

and Himanshu (PW-12) goes to the root of the case and irresistible conclusion is that both the witnesses cannot be termed as reliable witnesses and no reliance can be placed on their testimonies which is not only an improvement but contradictory to the initial case of the prosecution and thus evidence of both the witnesses has wrongly been relied upon by the learned trial Court.

27. There is one important aspect in this case. At one stage, the investigation was conducted by Randhir Singh, DSP, Panipat but he has neither been cited as a witness; nor examined by the prosecution, for the reasons best known to it which casts a doubt upon the manner of investigation in this case and shifting the names of accused. Even, at no point of time, Ved Singh (PW-7) or Himanshu (PW-12) have any complaint that assailants were three and not two, as claimed by them, to the effect that they had given the number of assailants as three to the police, but the police recorded the number as two only.

28. So far as, the recovery of motorcycle is concerned that also becomes doubtful in view of the fact that both Ved Singh (PW-7) and Himanshu (PW-12) have not disclosed the number or make of the motorcycle.

29. This is not the case of the prosecution that the convicts/appellants were earlier known to Ved Singh (PW-7) and Himanshu (PW-12) rather, it is their case that they were not known to them till the date of occurrence.

30. In view of the above, this Court is fully convinced that the statements of Ved Singh (PW-7) and Himanshu (PW-12) are not sufficient to connect the present convicts i.e. Surender and Naveen @ Kalu with the

commission of offence charged against them, as by shifting the names of accused on three stages, their deposition lacks credibility and creates a doubt in the mind of this Court and shakes the whole prosecution case and cannot be relied upon. Consequently, the appeals filed by Surender and Naveen @ Kalu against their conviction and sentence are accepted and they are acquitted of the charges against them. Surender-convict is already on bail pursuant to the order passed by this Court on 15.01.2015. Naveen @ Kalu convict be released from custody forthwith unless wanted in some other case.

31. Since the main accused i.e. Surender and Naveen @ Kalu have been acquitted and there is no material evidence available on record to prove the complicity of respondents No. 1 to 5 (CRA-D-1390-DB-2013) in the commission of alleged offence and moreover all these accused were acquitted by the learned trial Court after due consideration on the entire material evidence available and during the course of hearing before this Court, nothing has been pointed out which got ignored by the learned trial Court while acquitting respondents No. 1 to 5, consequently, the view taken by the learned trial Court while acquitting those respondents is possible view and cannot be faulted with by this Court. Hence, the appeal filed by Himanshu-complainant challenging the acquittal of Sandeep, Sunil, Dharambir, Neetu and Kalpesh is, hereby, dismissed.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

30.08.2017.

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