

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

**CRA-S No.962-SB of 2012
Date of Decision-16.12.2017**

Jai Kishan

... Appellant

Versus

State of Haryana

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashwani Bhardwaj, Advocate for the petitioner.
Mr. Siddharth Sanwaria, DAG, Haryana.

RAJ MOHAN SINGH, J.

[1]. Appellant has preferred this appeal against the judgment of conviction dated 24.01.2012 and order of sentence dated 25.01.2012 passed by Sessions Judge, Panipat vide which appellant was convicted and sentenced for the offences under Section 307 IPC and Section 25 of the Arms Act.

[2]. Prosecution story started with the allegations that on 06.12.2009 at about 1:11 AM, a verbal transmission message was received by Police Post Assandh Road, Panipat from Control Room that a firearm injury was caused to Laxmi (PW 8). On receipt of information, Sub Inspector, Nahar Singh (PW 10) along with

other police officials went to the village Sodapur where the complainant Tej Pal (PW7) was found present and he stated before the police that his father and uncle had taken Laxmi for treatment. Complainant Tej Pal got his statement Ex.PL recorded to the effect that he was a student of 10+2 class. His father used to run tea stall in Panipat. His sister Laxmi was married to accused Jai Kishan about 1 ½ /2 years ago. Jai Kishan used to harass her sister and he raised demand of dowry. About 8 months ago, Laxmi gave birth to a daughter namely Tamanna. Due to repeated beatings and harassment of Laxmi, Panchyat was convened and both of them decided for separation about two months ago. Daughter Tamanna was handed over to Jai Kishan. Since then, Laxmi was living with her parental house.

[3]. Complainant further narrated that marriage of his cousin Sunder was fixed on the next day. After taking dinner at the house of his uncle, he along with his family members returned to the house at about 11:30 PM. His parents slept in the inner room. Complainant and his sister Laxmi slept in the front room. Complainant saw some movie on television upto 12 midnight and then after closing the main gate, he closed the door of the main gate, but did not bolt from inside. The light was on in the room, whereas light in the courtyard was off. At about 12:50 AM, he heard the noise and he along with his parents woke up. He saw his sister Laxmi was weeping. Initially, he thought that she was weeping due to some bad dream, but after moving her neck, he

found a hole in her jersey, out of which blood was oozing out. Complainant found that someone had fired a shot on her. When the complainant and his father lifted Laxmi from the cot for taking her for treatment, one fired bullet fell from her clothes on the cot. Father of the complainant lifted the fired bullet. Father of the complainant and uncle Ram Saran took Laxmi to the hospital for treatment. Complainant further submitted that his mobile phone which was put on charging was also found missing. Complainant suspected involvement of Jai Kishan for firing a shot at Laxmi on account of grudge of getting divorce.

[4]. FIR Ex.PA was registered by ASI Naresh Kumar (PW1). Investigation was done by Sub Inspector, Nahar Singh and after investigation, report under Section 173 Cr.P.C was presented to the Court by Inspector Subhash Chander (PW11). The accused was arrested on 06.12.2009 and from his personal search, a country made pistol .315 bore was recovered. A rough sketch of the pistol Ex.PN/1 was prepared and the same was taken in police possession vide memo Ex.PN. The blood stained bed sheet was taken into possession by the police vide memo Ex.PM. The police after seeking the opinion of the doctor, recorded the statement of injured Laxmi. Blood stained pieces of quilt, khes, jersey and other clothes of the injured were taken into possession vide memo Ex.PQ. Satbir Singh (PW 9) father of the injured handed over blood stained led cartridge to the police which was also taken into possession vide memo Ex.PO. The place of occurrence was

photographed and site plan Ex.PR was prepared. Forensic Science Laboratory team also inspected the site. The site plan of the place of recovery Ex.PS was also prepared and all these documents were made part of the challan under Section 173 Cr.P.C. Charges under Section 307 IPC and Section 25 of the Arms Act were framed to which the accused pleaded not guilty and claimed trial.

[5]. The prosecution examined ASI Naresh Kumar as PW 1, Jagbir Singh Exemptee, Head Constable as PW 2, Sushil Kumar, Head Constable as PW 3, Dr. Pardeep Kumar as PW 4, Satbir Singh as PW 5, Dr. Nitin Singhal as PW 6, Tej Pal (complainant) as PW 7, Laxmi (injured) as PW 8, Satbir son of Sadhu Ram as PW 9, Nahar Singh, Sub Inspector as PW 10, Subhash Chander, Inspector as PW 11 and EHC Vijender Kumar as PW 12.

[6]. Thereafter, statement of accused was recorded under Section 313 Cr.P.C wherein he denied the allegations and pleaded false implication. In his defence, accused examined Partap as DW 1, Maha Singh as DW 2, Ishwar Singh Exemptee, Head Constable as DW 3, Mahabir Singh, Retired Assistant Sub Inspector as DW 4, Dharampal Singh as DW 5 and Rakesh as DW 6.

[7]. Trial Court vide judgment of conviction dated 24.01.2012 and order of sentence dated 25.01.2012 convicted the accused/appellant for the offences under Section 307 IPC and

Section 25 of the Arms Act and sentenced him to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.5000/- under Section 307 IPC along with default clause and to undergo rigorous imprisonment for a period of 1 year and to pay a fine of Rs.2000/- under Section 25 of the Arms Act along with default clause. Both the sentences were ordered to run concurrently.

[8]. ASI Naresh Kumar (PW 1) was posted in Police Station Model Town, Panipat on 06.12.2009. He received a ruqa written by SI Nahar Singh in the police station on the basis of which he recorded formal FIR Ex.PA. He proved the FIR in question. He was not the Investigating Officer of the case. EHC Jagbir Singh, Draftsman was examined as PW 2. On 16.12.2009, he was posted as EHC in the office of Superintendent of Police, Panipat. On that day, he had gone to the place of occurrence. On the demarcation of complainant Tej Pal, he prepared the scaled site plan Ex.PB of the place of occurrence with marginal notes. The site plan was prepared on the instruction of the complainant. Except preparation of the site plan, the witness did not elaborate about the facts of the case. HC Sushil Kumar PW 3 took photographs of the place of occurrence on the asking of ASI Mahabir Singh. He was a trained photographer and took the photographs Exs.P1 to P4 with Digital Camera. He had no personal knowledge about the case.

[9]. Dr. Pardeep Kumar, Medical Officer was examined as PW 4 who tendered his affidavit Ex.PE in examination-in-chief. The

witness conducted MLR of Laxmi on 06.12.2009. She was brought by her father with alleged history of firearm injury. After examination, she was referred to PGIMS, Rohtak. Lacerated wound of size 3 x 5 cms over chest lower and anterior side, midline sternal area was found. She was advised X-ray chest- paviw and surgeon opinion was recommended for injury No.1 which was kept under observation. The witness was cross examined and it was stated in the cross examination that the victim was in conscious state of mind at the time of her medical examination and she did not disclose the name of the assailant.

[10]. Satbir Singh, Reader to District Magistrate, Panipat was examined as PW 5 who proved the sanction order Ex.PH issued by the District Magistrate for prosecution of the accused under the Arms Act. Dr. Nitin Singhal was examined as PW 6. He was present in PGIMS, Rohtak on 06.12.2009. He gave the opinion Ex.PK on the application filed by the police and declared the patient to be fit for making statement. The witness had no personal knowledge about the case.

[11]. Complainant Tej Pal was examined as PW 7 who after narrating the prosecution story stated that Jai Kishan present in the Court fired a shot at Laxmi and police recorded his statement Ex.PL in the hospital. The accused was not seen by the witness at the time of firing. When he woke up, the door was opened and nobody was present in the room including the accused. His parents

were in their room and were coming towards his room. No other person was present in the house on the fateful night. The light was on at that time in the room and there was no door between two rooms. The witness pleaded ignorance about the person who had taken his mobile phone. The witness made a statement to the police that he had not seen the accused while firing and later on, while fleeing from there. The police met the complainant again in the afternoon and he along with the police party proceeded for village Farmana via Gohana by bus. When they reached at bus stand, Gohana, the accused met them. At that time, only one police official was with the complainant. Complainant had purchased two tickets for going to Gohana. They boarded the bus from bus stand, Panipat for Gohana. The witness could not tell whether police of Gohana was present or not at the bus stand, Gohana. The witness also pleaded ignorance about the availability of cell phone with him or with the police official who was with him. The witness further stated that the name of the accused was mentioned in his statement on suspicion. He denied suggestion that the accused had not fired at his sister and some other person had fired at his sister.

[12]. Laxmi (injured) was examined as PW 8. She stated that marriage of her cousin was fixed for 05.12.2009 and all the family members returned from the house of her uncle after dinner at about 11:30 PM. She along with her brother slept in the outer room and her parents slept in the inner room. They bolted the main gate

of the house, but inadvertently the door of their room was not bolted from inside. Her brother watched movie on the television upto 12 midnight and thereafter they slept. At about 12:30 AM, the accused/appellant fired upon her which hit on her chest and he also took away mobile phone of her brother. The light of the room was on, but the outer light was off. Immediately her parents came there and they lifted her from the cot and shifted her to the hospital. The witness was married to the accused on 12.03.2008. A daughter was born. The witness pleaded ignorance about filing of any application against the accused for harassment before the police. No application regarding harassment of the accused was moved by the injured witness. She stated that she moved an application after birth of her daughter in the police post, Panipat, but pleaded ignorance about the date when the same was moved. No copy of the said application or FIR was kept by the witness. She also pleaded ignorance with regard to registration of any case under dowry etc against the accused or his family members. No divorce petition was filed by the witness and no divorce was obtained from the Court. When the fire hit upon her, she immediately woke up. Her brother also woke up at the same moment. Her parents also came from the adjoining room. The witness suspected that the mobile phone of her brother was stolen. She identified the accused at the time of firing, but did not raise alarm. The witness further admitted in her cross examination that she was covering herself with quilt and chadder (khes) as it was a

winter season. Later on, she told her brother and father that accused Jai Kishan had fired upon her and she told the name of the accused to her brother and father before she was shifted to the hospital. She never told the name of the accused to the doctor. The witness was conscious when she made the statement to the police. She pleaded ignorance as to whether police has taken her clothes in possession or not. The suggestions put to her were denied in pith and substance.

[13]. Father of the injured namely Satbir was examined as PW 9. He stated that they were watching television till 12:30 AM. The light of the room was on, but outer light was off. At about 12:30/12:45 AM, Jai Kishan entered in the house and after entering the room of his daughter, fired shot upon her daughter Laxmi, suddenly after opening the door. On seeing the scene, the witness struck off and he along with his wife immediately rushed towards their daughter and the accused ran away from the spot. The accused also took away mobile phone of his son which was lying near the cot of injured Laxmi. The accused ran away in darkness. The witness found a fired bullet lying on the cot. The witness also handed over one quilt, khesh (chadder), sweater, jumper and bra of the injured to the police. The police also cut pieces from the clothes where the bullet was passed and the same were taken in police possession vide memo Ex.PQ. The witness had seen the accused while opening the door of the room, but had no opportunity to raise alarm as the accused fired upon his daughter

immediately after opening the door. The witness along with his wife was sleeping in the inner room, whereas injured Laxmi and his son were sleeping in the front room. Prior to this occurrence, the witness had not seen the accused in the village. There was no decree of divorce between the accused and his daughter. The witness had told his son Tej Pal immediately after the occurrence that the accused had fired upon Laxmi.

[14]. SI Nahar Singh was examined as PW 10 who has narrated the prosecution story as per record. In his cross examination, the witness has stated that the clothes were handed over by Laxmi in the presence of her father Satbir. Lead of fired bullet was handed over by Satibir in PGIMS, Rothak. He recorded the statement of Satbir in the hospital. Inspector Subhash Chander was examined as PW 11 who had prepared the challan. Since the witness had not conducted the investigation, therefore, he had no personal knowledge about the case. EHC Vijender Kumar was examined as PW 12 who tendered his affidavit in the context of link evidence. The parcels were sent to FSL through EHC Ishwar Singh who had deposited the same in FSL, Madhuban and had deposited the receipt with the witness. The witness further stated that the case property was deposited by the Investigating Officer Nahar Singh with him on 06.12.2009. The articles were in sealed parcels and were not visible. The sealed parcels were given to EHC Ishwar Singh through road certificate. The witness had not accompanied

EHC Ishwar Singh to FSL, Madhuban who had deposited the case property with the FSL.

[15]. The accused had denied the incriminating material put to him in his statement under Section 313 Cr.P.C and preferred to lead evidence in defence.

[16]. Father of the accused i.e. Partap was examined as DW 1 who had stated that his son Jai Kishan was apprehended from the house of Dharampal by saying that the wife of Jai Kishan was admitted in the hospital due to fire-arm injury and for that purpose, the inquiry was to be conducted. DW 2 Maha Singh, Duty Clerk, Haryana Roadways Depot, Panipat brought the time table of buses of all depots for the route from Panipat to Rohtak of dated 05.12.2009 to 06.12.2009. EHC Ishwar Singh was examined as DW 3 who had brought Rojnamcha regarding departure and arrival of SI Nahar Singh, EASI Mahavir Singh and Constable Rajesh Kumar. The witness was not accompanied by the police party. Mahabir Singh, Retired ASI was examined as DW 4. Dharampal Singh resident of village farmana was examined as DW 5. The witness knew the accused and his family members being a co-villager. Rakesh was examined as DW 6.

[17]. After hearing learned counsel for the parties, it can be noticed that in the MLR Ex.PF prepared by Dr. Pardeep Kumar, Medical Officer (PW 4), the injury was shown to be lacerated wound of size 3 x 5 cms. over chest lower and anterior side,

midline sternal area. The same was advised for X-ray chest-paview, surgeon opinion and nature of injury was kept under observation, depending on X-ray and surgeon opinion. No surgeon has been examined, nor any opinion came on record. No X-ray report has been exhibited. As per nomenclature of the injury in the MLR, no punctured wound having entry or exit in the body of the injured was shown. No blackening or charring of the wound was depicted. The presence of the accused in the room was on doubtful note. Complainant who is real brother of the injured did not hear any sound of fire. He only woke up on the noise of his sister and saw that his sister was weeping and blood was oozing out from the hole of her sweater. He admitted in his cross examination that at the time of firing, the accused was not seen by him and door was already opened and none was present in the room including the accused. He had stated before the police that he did not saw the accused while firing and also when he was fleeing from the spot. The statement of the complainant in the context of meeting the accused at bus stand, Gohana, was something which cannot be connected inasmuch as that when the police met the complainant again at noon hours, he along with police party straightaway proceeded for village Farmana via Gohana by bus and when they reached at bus stand, the accused met them. The statement of the complainant is silent about the action taken by the police at that time. If the culpability of the accused was already known to the complainant, then why the

accused was not arrested at that particular moment remained unexplained. The witness further admitted that he mentioned the name of the accused on suspicion. Injured Laxmi has admitted that she was sleeping by covering quilt and chadder due to winter season. She immediately woke up at the time of firing and had indentified the accused, but did not raise alarm. Later on, she told her brother and father about the accused who had fired upon her. If she had disclosed about the accused to her brother just after the occurrence, then, there was no occasion for the complainant to name the accused on suspicion. Father of the injured even went on to introduce eye-witness count while sleeping in the inner room. He gave a version that the accused entered in the outer room and fired shot upon his daughter suddenly after opening the door and the witness immediately rushed to his daughter and the accused ran away.

[18]. Perusal of the site plan Ex.PB would show that both the rooms were distinctly marked. Mark A was shown in respect of the place where the injured was sleeping on the cot, whereas there is no such mark shown viz-a-viz the second room where the father of the injured was sleeping who had seen the accused entering in the outer room. Even in the site plan maukanajri Ex.PS, the place where father of the injured was sleeping in the inner room was not shown. Since both the rooms were distinctly placed, therefore, it was highly doubtful as to how the witness would see the accused entering in the outer room. In the testimony of Dr. Pardeep Kumar,

Medical Officer PW 4, no entry and exit wound of bullet was shown and the injury was only described as lacerated wound of size 3 x 5 cms over chest lower and anterior side, midline sternal area, therefore, the presence of the blood stained led cartridge of the shot underneath the injured was doubtful inasmuch as that the same would not correspond to the injury. The injury was subjected to X-ray chest and surgeon opinion, but no X-ray report has come on record, nor any surgeon opinion has come forth to prove the injury in question by gun shot.

[19]. The statement of PW 9 Satbir is on the improved version in the context of culpability of the accused, whereas no such statement of fact was made by the injured as well as her brother i.e. complainant. The case property was sent to the FSL through EHC Ishwar Singh. As per testimony of EHC Vijender Kumar PW 12, the parcels of the case property sent to FSL were deposited by EHC Ishwar Singh and after depositing the same, EHC Ishwar Singh had deposited the receipt with him. EHC Ishwar Singh was not examined to prove the link evidence as to whether the case property remained intact from the date of its taking into possession till delivery of the same to the FSL. Since the blood stained led cartridge was recovered by the father of the injured underneath the body of the injured, therefore, it became more suspicious as to how the blood stained lead cartridge was found, particularly when there was no entry and exit wound of bullet was shown in the body of the injured. The injury was simply a lacerated

wound shown by the doctor without any blackening and charring of the skin.

[20]. It appears from the record that the injured was not pulling well with her husband i.e. the accused. The accused/appellant was not seen at the spot by the complainant as well as by the injured at the first instance as the injured was sleeping by covering quilt and chadder. Even despite her telling about the accused to her brother, no such statement of fact was made by the complainant and even the complainant admitted in his cross examination that the name of the accused was given in his statement on suspicion.

[21]. Taking into consideration totality of facts and circumstances of the case, I deem it appropriate to give benefit of doubt to the appellant.

[22]. In view of above, the present appeal is accepted. Judgment of conviction dated 24.01.2012 and order of sentence dated 25.01.2012 passed by Sessions Judge, Panipat against the appellant are hereby set aside. The appellant is acquitted from the charges framed against him.

(RAJ MOHAN SINGH)
JUDGE

16.12.2017
Prince

Whether Reasoned/Speaking **Yes/No**

Whether Reportable **Yes/No**