

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

CRA-D-858-DB-2003

Date of decision:15.03.2017

Sulesh Kumar

.....Appellant

Versus

State of Haryana

.....Respondent

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

Present: Mr. Gurinder Pal Singh, Advocate
for the appellant.

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

Mr. Zorawar Singh, Advocate for
Mr. Naresh Singh Shekhawat, Advocate
for the complainant.

H.S. MADAAN, J.

This appeal has been filed against the judgment dated
20.09.2003 passed by the Court of Additional Sessions Judge, Narnaul

vide which accused-Sulesh Kumar was convicted for offences under Section 302 of the Indian Penal Code ('IPC' for short) and Section 25 of the Arms Act as well as order dated 22.09.2003 passed by the said Court vide which the accused-convict was sentenced to undergo life imprisonment and to pay fine of ₹5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for six months for the former offence and to undergo rigorous imprisonment for three years and to pay fine of ₹2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for three months for the latter offence.

Both the substantive sentences were ordered to run concurrently.

Accused-convict/Sulesh Kumar, who is appellant before this Court prays that the appeal filed by him be accepted, the impugned judgment of his conviction and impugned order of his sentence be set aside and he be acquitted of the charge framed against him.

Briefly, stated the prosecution story as it came out during the trial is that on 25.02.2002 at about 5:00 p.m. complainant-Siri Chand son of Gugan Ram resident of Dalanwas, Police Station Satnali aged about 75 years, an agriculturist by avocation and an ex-serviceman alongwith his sons namely Vinod Kumar, Roop Chand as well as Smt. Savitri wife of Roop Chand had gone to his fields to bring fodder by a camel-cart. The sun was about to set. After loading the fodder in the camel-cart, the complainant asked his son Vinod Kumar to proceed alongwith the camel-cart. As such, Vinod Kumar proceeded alongwith the camel-cart whereas

complainant and his other son Roop Chand and his wife Smt. Savitri followed the camel-cart on foot. When the camel-cart alongwith Vinod Kumar reached near the pond known as Johar Birdala, then accused Sulesh son of Dharmpal resident of that very village suddenly appeared in front of camel-cart and he stated that he would teach a lesson to Vinod Kumar for quarreling regarding the *DOLL* (boundary) of their fields. At that time Sulesh Kumar-accused was armed with single barrel muzzle loading gun. The accused fired a shot from that gun hitting Vinod Kumar on his neck. Seeing that, the complainant, Roop Chand and Smt. Savitri rushed towards Vinod Kumar, however, Sulesh Kumar fled from the spot alongwith his weapon towards his tubewell. Vinod Kumar was found to have a projectile injury on his neck and he was bleeding profusely from that wound. He had become unconscious. Roop Chand arranged a jeep and removed injured-Vinod Kumar to hospital at Mahendergarh and got him admitted there. A telephonic message from Police Station, Mahendergarh was received at Police Station, Satnali regarding admission of Vinod Kumar injured in hospital at Mahendergarh. On receipt of that information, a police party led by SI/SHO Rameshwar Dayal (hereinafter referred to as Investigating Officer/I.O.), went to Police Station, Mahendergarh and collected intimation from the hospital as well as MLR of injured from there and then proceeded towards C.H.C., Mahendergarh. On reaching that hospital, the Investigating Officer moved a written application Ex.PJ inquiring from attending doctor regarding fitness of the injured to make statement. On the said application, the doctor informed that the injured had been referred to PGIMS, Rohtak vide his endorsement

Ex.PJ/1. Since no eye-witness of the incident was available there, as such, the police party proceeded towards house of the injured at village Dalanwas. On reaching there, the police party came across Siri Chand-complainant who got his statement Ex.PL recorded with the Investigating Officer. The statement was signed by the complainant in English, whose signatures were attested by SI-Rameshwar Dayal. The Investigating Officer put his endorsement Ex.PL/1 below such statement and sent ruqa to police station through C.Ram Phal, on the basis of which formal FIR Ex.PL/2 for offences under Section 307 IPC and Section 25 of the Arms Act was registered at Police Station, Satnali. After making endorsement Ex.PL/3 on the ruqa the same was returned to the Investigating Officer. The Investigating Officer recorded statement of Smt. Savitri also and searched for the accused, but they could not be nabbed.

On 26.02.2002, the Investigating Officer again went to house of Vinod Kumar-injured and found a number of persons gathered there. He summoned a photographer and got the photographs of camel-cart clicked. He found a plastic bottle Ex.P1, *CHADAR* (bed-sheet) Ex.P2, besides, one *PALLI* Ex.P3 all stained with blood in the camel-cart. The Investigating Officer converted all those articles into parcels sealing those with his seal having impression 'BS' and then said parcels were taken into possession vide recovery memo Ex.PN attested by Amar Singh and Ram Sarup (PWs).

Thereafter, the police party went to the spot and on being pointed out by Siri Chand-complainant, the Investigating Officer prepared rough site plan Ex.PS of the place of incident. At that time, Amar Singh

and Ram Sarup were also with the police party. The Investigating Officer came across five iron balls (Ex.P4 to Ex.P8) of bicycle at the spot. He picked up those balls, putting them in a plastic container. He also scraped blood stained earth from the spot placing it in a plastic container. Both the containers were converted into parcels and sealed with seal of the Investigating Officer having impression 'BS'. Those parcels were seized vide memo Ex.PO attested by Amar Singh and Ram Sarup (PWs). The Investigating Officer recorded statements of witnesses. On return to the police station, the Investigating Officer deposited the case property with MHC.

On 27.02.2002, the Investigating Officer along with other police officials went to PGIMS, Rohtak, in connection with the investigation of the case. He collected written intimation Ex.PT regarding death of Vinod Kumar, in terms of which Vinod Kumar had expired at that institute on 27.02.2002 at 10:20 a.m.. Thereafter, the police party went to mortuary of the medical institute. The Investigating Officer carried out inquest proceedings with regard to unnatural death of Vinod Kumar preparing a report Ex.PE in that regard. He recorded statement of Roop Chand-PW. He drafted application Ex.PD for getting post-mortem examination conducted on dead body of Vinod Kumar and got the needful done. After post-mortem examination, dead body of Vinod Kumar was handed over to his brother Roop Chand. Then the police party returned to police station. The Investigating Officer added Section 302 in the FIR and sent special report Ex.PU to the Illaqa Magistrate intimating him about death of Vinod Kumar.

On 01.03.2002 accused-Sulesh Kumar was produced before the Investigating officer by Kartar Singh, at bus stand of Surehti Jakhal. Accused was arrested in the presence of Kartar Singh and Banwari Lal (PWs). After arrest of the accused, he was interrogated by the Investigating Officer, during the course of which he suffered a disclosure statement Ex.PP to the effect that he had kept gun and some iron balls alongwith the gun powder in the heap of fodder lying in his fields and he could get the same recovered. The statement was signed by the accused and attested by Banwari Lal and Karan Singh (PWs). Accused was produced in the Court on 02.03.2002 and he was remanded to police custody upto 04.03.2002. However, on 03.03.2002 accused while in police custody led the police party to the specified place and got recovered gun Ex.P9, gun powder contained in a plastic container Ex.P11 and some iron balls of bicycle in a plastic container Ex.P10. The Investigating Officer prepared rough sketch of the recovered gun as Ex.PQ. He converted the gun into the parcel so were the container having gun powder and iron balls. Then all the three parcels were sealed with seal of the Investigating Officer having impression 'RD'. Then those were taken into possession vide Ex.PR attested by Banwari Lal and Karan Singh (PWs) who had witnessed the recovery. The Investigating Officer prepared rough site plan of place of recovery Ex.PV. He recorded statement of witnesses. On return to police station he deposited the case property with MHC and put the accused in lock up.

On 06.03.2002, the Investigating Officer moved an application Ex.PK addressed to Medical Officer requesting him to

intimate whether any bullet was taken into possession by him or not. The doctor vide his endorsement Ex.PK/1 informed that bullet was deep in the body as such it was not taken out. On 25.03.2002, the Investigating Officer moved an application Ex.PW before the Medical Officer, PGIMS, Rohtak, for being informed whether any bullet was taken out or not and doctor vide his endorsement Ex.PM/1 in the said application informed in negative. Further investigation in the case was carried out by SI-Baldev Singh.

Baldev Singh-SI, who on 30.03.2002 had recorded statements of C.Mahesh Kumar, Mainpal-Photographer and C. Kanwar Singh and after completion of investigation and other formalities, had prepared report under Section 173 Cr.P.C. on 03.04.2002.

Challan against the accused was filed in the Court of Judicial Magistrate Ist Class, Mahendergarh, who supplied copies of documents relied upon therein to the accused free of cost as provided under Section 207 Cr.P.C.. Thereafter, finding that offences under Sections 302 and 307 IPC are exclusively triable by the Court of Sessions, the learned Judicial Magistrate Ist Class, Mahendergarh vide his order dated 27.05.2002 committed the case to the Court of Sessions from where it was entrusted to the Court of Additional Sessions Judge, Narnaul.

On receipt of file in the Court of Additional Sessions Judge, Narnaul finding a prima facie case, charge for offences under Section 302 IPC and Section 25 of the Arms Act was framed against

the accused, to which he pleaded not guilty and claimed trial. The case was fixed for evidence of prosecution.

During the course of evidence of prosecution, it examined as many as seventeen witnesses as detailed below:-

PW-1 C. Mahesh Kumar, Draughtsman stated that on 08.03.2002, he had gone to village Dalanwas at asking of SHO, Police Station, Satnali and prepared site plan of place of occurrence on pointing of Siri Chand-Complainant. He stated that he had taken measurements and prepared rough notes at the spot. However, on the same day he had prepared scaled site plan Ex.PA in his office on the basis of rough notes using scale 1" = 20 feet.

PW-2 HC Nawal Kishore & PW-3 C. Bani Singh both formal witnesses, tendered their affidavits in evidence as Ex.PB and Ex.PC, respectively.

PW-4 Dr. Narender Singh, Medical Officer, TB Hospital, Rohtak stated that on 27.02.2002, he was posted as such. On that day on police request Ex.PD accompanied by inquest report Ex.PE, he had gone to Mortuary of PGI, Hospital Rohtak, where dead body of Vinod Kumar was kept and he had observed that rigor mortis and post-mortem staining were present. The injuries observed by him were as follows:-

i. *A stitched wound with 11 catgut stitches over left side of the neck. Blackening of the skin near the wound was present.*

ii. *There was tattooing of the left arm in the area of*

10cm x 7cm was present.

He further stated that on dissection, on removing stitches, the underlying structures were ecchymosed and blood was present and there was a tear of left common carotid vessel. Lacerations of the adjacent muscles and other muscles was present. Other organs were healthy.

He stated that in his opinion the cause of death was due to shock and heamorrhage as a result of bullet injury, which was ante-mortem in nature and was sufficient to cause death in the ordinary course of nature. He stated that time that elapsed within death and post-mortem was 12 hours however the time that elapsed within injury and death could not be ascertained. He proved copy of post-mortem report Ex.PF.

PW-5 Dr. Karan Singh, Medical Officer, C.H.C. Mahendergarh stated that on 25.02.2002, he had medico legally examined Vinod Kumar son of Siri Chand, aged about 28 years, resident of village Dalanwas at about 6:40 p.m.. On examination, the patient was brought with the history of bullet injury in the neck. At that time staining of the clothes was present with clothes and staining of gun powder over the neck was present. At that time, the patient was having altered sensorium, unconscious, coma grade-4, pupils bilaterally were normal and reacting to light. Pulse was 72 per minutes and his BP was 100/70.

He further stated that entry wound with staining of gun

power in the left side of neck was present. The wound size was 2 cm x 2 cm and the depth could not be assessed. Staining around the wound was present around it 10x7 cm in size and blackening was also present and wound was directed above downwards towards the chest.

He further stated that the nature of the injury was grievous and it was a bullet injury and probable duration was within 6 hours. For that injury, x-ray chest was advised and surgeon opinion was sought and the patient was referred to PGIMS, Rohtak, for further management. He proved the copy of medico legal report as Ex.PG stating that on the same day, he had sent ruqa Ex.PH at 6:40 p.m. regarding arrival of Vinod Kumar, who remained unfit for making statement during the period, he remained at CHC, Mahendergarh. He further stated that on 25.02.2002, on police request Ex.PJ, he had made endorsement Ex.PJ/1 to the effect that Vinod Kumar had been referred to PGIMS, Rohtak. He further stated that on 06.03.2002, the police had moved application Ex.PK for seeking opinion about taking into possession of any bullet, on which he had made endorsement Ex.PK/1 to the effect that bullet was deep in the wound and patient-Vinod Kumar had been referred to PGIMS, Rohtak so the requisite opinion could be sought from the surgeon of PGIMS, Rohtak regarding the bullet. The witness concluded his examination-in-chief by stating that since the blackening was present around the wound of the injured, hence it was the case of close contact injury.

PW-6 Siri Niwas Sharma, Medical Record Technician,

PGIMS, Rohtak had brought the summoned record relating to CR No.249879 in respect of Vinod Kumar (deceased) and produced the same.

PW-7 Havaladar Siri Chand-complainant provided eye-witness account of the incident deposing in consonance with the incident, so did PW-8 Roop Chand.

PW-9 Dr. Sushil Mangla, Senior Resident, Department of Surgery, PGIMS Rohtak stated that on 25.02.2002, he was posted at Department of Surgery PGIMS, Rohtak. After seeing the bed head ticket of patient Vinod Kumar, he stated that patient had come to their institute in Accident and Emergency Department on 25.02.2002 at about 12 midnight having been referred from C.H.C. Mahendergarh. The patient was admitted with hospital of gunshot injury on neck and he was in shock. This witness deposed regarding condition of the injured and treatment given to him at that time stating that the injured was operated upon on 26.02.2002 and there was a rent in the common carotid artery. He further stated that there were two rents in internal jugular vein and tattooing of skin was present. Repair of rent of both common carotid artery and internal jugular vein was done. However, the patient expired on 27.02.2002 at 10:20 a.m. due to cardio-pulmonary arrest.

PW-10 ASI Surender Singh stated that on 25.02.2002, while he was posted at Police Station, Satnali on that day at about 11:00 p.m. on receipt of ruqa Ex.PL and alongwith endorsement

Ex.PL/1 of Rameshwar Dayal-SI, he had recorded formal FIR Ex.PL/2 under his signatures and made endorsement Ex.PL/3 on the ruqa regarding recording of FIR.

PW-11 ASI Amar Singh & PW-12 Banwari Lal who were associated with the investigation of the case deposed regarding what had transpired in their presence.

PW-13 HC Kanwar Singh stated that on 27.02.2002, the special report of this case was handed over to him at 6:30 a.m. and on the same day he delivered it to the Illaqa Magistrate.

PW-14 Rameshwar Dayal-SI (retired), who had mostly carried out investigation of this case deposed regarding the investigation conducted by him proving various documents.

PW-15 Amar Singh, Reader to the Deputy Commissioner, Narnaul had brought the record regarding sanction of prosecution of accused under the Arms Act, and he proved copy of such order as Ex.PX.

PW-16 SI Baldev Singh, who had carried out investigation of the case subsequently and then filed challan in the Court deposed in that regard.

PW-17 Mainpal, photographer, running photo studio under the name and style of Ravi Photo Studio, Satnali, stated that on 26.02.2002, at the asking of the police officials, he had gone to village Dalanwas and had taken photographs of the camel-cart, which was parked outside the house of the complainant. He proved the enlarged

photographs, which according to him had been developed without any touching or re-touching Ex.PW12 to Ex.P14 and its negatives Ex.P15 to Ex.P17.

Learned Public Prosecutor tendered in evidence reports from Director, FSL, Madhuban Ex.PY, Ex.PY/1 and Ex.PY/2 and with that the evidence of prosecution was closed.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him was put to him, but he denied all the allegations containing therein by stating that he is innocent and has been falsely involved in this case.

The appellant-accused did not lead any evidence in defence despite availing opportunity.

After hearing arguments, learned trial Court convicted and sentenced accused-Sulesh Kumar as mentioned above.

We have heard learned counsel for the appellant-convict and learned Assistant Advocate General, for the State, besides, going through the record and we are of the view that there is no merit in the appeal.

The eye-witness account of the incident in this case was provided by PW-7 Havaladar Siri Chand, father of the deceased as well as by PW-8 Roop Chand a brother of the deceased. Both of them supported the prosecution story on material aspects categorically stating that it was accused-Sulesh Kumar, who had fired at Vinod Kumar hitting him on the neck, to which injury Vinod Kumar had succumbed.

Both the PWs were cross-examined at length on behalf of the defence but they stuck to their account, and could not be shattered on any material point. No reason has been suggested or proved prompted by which they might have deposed falsely against the accused. Both the PWs having lost a near relative, would have been the last persons to screen the actual culprit and substitute the accused in this case falsely without any rhyme or reason. We find presence at the spot of both the PWs at the relevant time to be natural and probable and account given by them to be worthy of reliance.

The ocular evidence is duly corroborated by medical evidence in the form of statement of PW-9 Dr. Sushil Mangla who had given treatment to Vinod Kumar while he was admitted in PGIMS, Rohtak in injured condition where Vinod Kumar had succumbed to the injury, PW-4 Dr. Narender Singh who had performed post-mortem examination on the dead body on 27.02.2002 and Dr. Karan Singh (PW-5) who had medico legally examined Vinod Kumar in injured condition at CHC Mahendergarh on 25.02.2002.

The investigation in this case has been carried out in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case falsely or to challan him wrongly or to depose against him to secure his conviction.

From statement of PW-14 Rameshwar Dayal-SI it comes out that the accused, while in police custody had suffered a disclosure statement on 01.03.2002 and in pursuance of that statement had got

recovered a single barrel muzzle loading (SBML) gun alongwith gun powder and iron balls from his possession on 03.03.2002. PW-12 Banwari Lal corroborated such version as regards the accused suffering disclosure statement and getting recovered the gun powder and iron balls from his possession. The result given in the report of the FSL, Madhuban, Karnal Ex.PY is as follows:-

1. *The SBML gun marked W/1 is a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was found in working order.*
2. *The SBML gun W/1 had been fired through. However, scientifically, the time of its last firing cannot be given.*
3. *Steel balls contained in parcel No.V were found to be fired steel balls. Such balls are usually loaded in muzzle loader types of guns like SBML gun W/1. However, no opinion could be formed regarding linkage of these steel balls in respect of SBML gun W/1 due to lack of sufficient individual characteristic marks.*
4. *Steel balls contained in parcel No.VIII are unfired steel balls.*
5. *Black powder contained in parcel No.VII is usually loaded in muzzle loader guns as propellant.*
6. *Reports in original from Serology Division & Chemistry Division are enclosed herewith.*

Thus from the report it comes out that gun had been used in the occurrence. The remaining evidence duly corroborates the prosecution story.

The motive in the incident was also proved on the file that the dispute regarding *DOLL* (common boundary) between fields of the complainant-party and the accused, as deposed by PW-7 Havaladar Siri Chand and PW-8 Roop Chand.

The prosecution had successfully proved its charge against the accused for offence under Section 302 IPC that the accused had fired at Vinod Kumar from a very close range hitting him on the neck with clear intention to commit his murder. The injury being on a very vital part of Vinod Kumar, he had succumbed to the same. Further, the prosecution has been able to bring home guilt to the accused for offence under Section 25 of the Arms Act as he had kept in his possession the single barrel muzzle loading gun without any permit or license thereby committing offence under Section 25 of the Arms Act.

The judgment passed by the trial Court is well reasoned one based on proper appraisal and appreciation of evidence and correct interpretation of the law. There is no illegality or infirmity in the impugned judgment of conviction and order of sentence, as such, the same are upheld. The appeal is found to be without any merit, as such, it is dismissed accordingly.

Sulesh Kumar appellant-accused is stated to be on bail granted to him by this Court vide order dated 16.11.2007 while

suspending his sentence, his bail is cancelled. Chief Judicial Magistrate, Narnaul is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

Necessary direction in that regard be issued to the quarter concerned.

15.03.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

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| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |