

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Appeal D-510-DB of 2003

Date of decision : February 1, 2017

Vishnu

..... Appellant

Versus

State of Punjab

..... Respondent

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

**Present:- Mr. P. S. Ahluwalia, Advocate
for the appellant.**

**Mr. S. S. Dhaliwal, Additional Advocate
General, Punjab.**

H.S. MADAAN J.

This appeal, by Vishnu-appellant is directed against the judgment of conviction and order of sentence dated 2.5.2003, passed by Additional Sessions Judge, Fast Track Court, Sangrur. Vide that judgment the said Court had convicted accused Rajesh Kumar @ Raju and Vishnu for offences under Section 302, 307 read with Section 34 IPC and in addition to that convicting Vishnu for offence under Section 27 of the Arms Act and sentencing them as follows:-

Vishnu	
Section 302 IPC	Imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for three years.
Section 307 IPC	Rigorous Imprisonment for five years and to pay a fine of Rs.2,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of two years.
Section 27 of the Arms Act	Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of six months.
Rajesh Kumar @ Raju	
Section 302/34 IPC	Imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for three years.
Section 307/34 IPC	Rigorous Imprisonment for five years and to pay a fine of Rs.2,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of two years.

All the substantive sentences were ordered to run concurrently.

Feeling aggrieved by the said judgment of their conviction and sentence both the convicts had brought separate appeals praying that the impugned judgment be set aside by way of acceptance of their appeals and they be acquitted of the charges framed against them. However, since convict Rajesh Kumar @ Raju expired during the pendency of the appeal, therefore the same stood abated vide order dated 20.10.2015 and now the appeal preferred by Vishnu is to be disposed of.

Briefly stated, facts of the case, as per prosecution story, as borne out from the report under Section 173 Cr.P.C and documents attached therewith and as unfolded during the trial are that complainant Bahadur Chand son of Ram Lal, resident of Mohalla Kalidas, Sunam,

merchandise) shop opposite Octroi post, adjacent to bus stand, Sunam. Earlier, his son Som Nath was working with accused Vishnu son of Santosh Chand, resident of Indira Basti, Sunam dealing in repair of watches and tape recorders as a trainee. Som Nath had obtained training from Vishnu for about two years and thereafter he started his own business of similar type near shop of Vishnu. As business of Som Nath was flourishing, Vishnu started nursing a grudge against him. Complainant Bahadur Chand tried to resolve the matter but to no effect.

On 28.10.2001 at about 4.30 P.M. when complainant Bahadur Chand along with his son Satish Kumar was present at their Karyana shop then Vishnu along with Rajesh Kumar @ Raju son of Chander Bhan, resident of Indira Basti, Sunam came in front of shop of Som Nath, Vishnu declared that Som Nath had adversely affected his business which led to exchange of hot words between the two and complainant along with his son Satish Kumar was attracted to the said place. However, Rajesh Kumar @ Raju grappled with Som Nath. In the meanwhile, Vishnu took out revolver from the right pocket of his trouser and fired a shot under the chin of Som Nath injuring him in the process. The second shot fired by Vishnu hit Som Nath on left side of his neck and upper side of chest. While Som Nath was in the process of defending himself, the shot pierced through the fingers of his left hand. Som Nath fell down on the ground. Vishnu then fired at Satish Kumar who was a little ahead of complainant and the shot hit him on left arm. The complainant and Satish Kumar raised an alarm "Marta Marta", thereupon Vishnu and Rajesh Kumar @ Raju fled from the spot and while doing so Vishnu took away his revolver also.

shop of watches and tape recorders adjacent to the shop of Vishnu the business of latter had been affected, for that reason Vishnu had been feeling aggrieved against Som Nath.

After the incident, complainant arranged a vehicle and took Som Nath and Satish Kumar injured to the Civil Hospital, Sunam. Som Nath expired at that hospital whereas Satish Kumar was referred to Civil Hospital, Sangrur and an intimation was sent from Civil Hospital, Sunam to Police Station, Sadar, Sunam. On receipt of such intimation, a police party headed by ASI Harwinder Singh (hereinafter referred to as 'the Investigating Office/I.O.') went to Civil Hospital, Sunam. Dead body of Som Nath was lying in the mortuary. ASI deputed two police officials namely Om Parkash and Suresh Kumar to take care of the dead body and then he along with other members of the police party went to Civil Hospital, Sangrur where the Investigating Officer moved a written application Ex. PK/1 for seeking opinion of the attending doctor regarding fitness of injured Satish Kumar to make statement. However, the attending doctor gave opinion in negative, as such the police party returned to Civil Hospital, Sunam where it came across Bahadur Chand, who got his statement Ex. PB recorded with the Investigating Officer. That statement was signed by Bahadur Chand in Punjabi and signatures were attested by ASI Harwinder Singh. ASI Harwinder Singh put his endorsement Ex. PB/1 below that statement and sent ruka to the police station through Constable Manjinder Singh on the basis of which a formal FIR Ex. PB/2 was recorded at Police Station, Sadar Sunam. The Investigating Officer carried out inquest proceedings in that regard and prepared inquest report Ex. PF. He got the postmortem examination conducted on the dead body of Som Nath by

moving an application Ex. PE/1. Thereafter he along with other members of police party went to the spot and carried out spot inspection. He prepared rough site plan of place of incident with correct margin notes as Ex. PZ. He picked up blood stained earth, which was converted into a parcel sealed with his seal having inscription 'HS'. The said parcel was taken into possession vide recovery Memo Ex. PO attested by Bawan Kumar, PW and Darshan Singh. The Investigating Officer found three empty shells of .32 bore cartridge at the place of incident. He prepared a parcel of such empty shells sealing that with his seal having inscription ' HS' and the said parcel was also taken into police possession vide Memo Ex. PQ attested by the witnesses aforesaid. A live cartridge was also recovered from the spot which was also converted into a parcel and sealed with seal of the Investigating Officer having inscription 'HS' and was sealed vide the same memo.

On 29.10.2001 Constable Suresh Kumar produced clothes of the deceased before the Investigating Officer. The same were taken into possession vide Memo Ex. PR. He also produced a sealed parcel containing a bullet which was taken into possession vide memo Ex. PS. On return to the police station, the Investigating Officer deposited the case property with MHC.

On 31.10.2001, ASI Harwinder Singh was heading a police party which was present at Mata Modi Chowk, Sunam where he received a secret information that accused were standing at drain bridge near Sitasar Mandir. The police party rushed there and both the accused were arrested in this case, after verifying their identity. Their personal

Memo, Ex. PT and PU were prepared. On return to the police station, the accused were put in lock up. On the next day, they were produced before Illaqa Magistrate who remanded them to police custody.

On 2.11.2001, the Investigating Officer interrogated accused Vishnu, who was in police custody, during the course of which he suffered a disclosure statement. Vide the disclosure statement, the accused had stated that he had kept concealed his licensed revolver and five live cartridges in the bed lying in his residential house and could get the same recovered. His statement in that regard Ex. PV was recorded, which was signed by the said accused and attested by ASI Darshan Singh and HC Saroop Singh. Thereafter the accused Vishnu, while in police custody led the police party to his residential house and got recovered the revolver Ex. P-10 and Cartridges Ex. P-11 to P-15 from the specified place. Those were converted into two separate parcels which were sealed with seal of the Investigating Officer having impression 'HS' and those were taken into possession along with license of the accused vide memo Ex. PV/1.

The Investigating Officer recorded statements of Pws. On 26.11.2001, ASI Darshan Singh produced a parcel containing bullet which was seized vide Memo Ex. PX.

After completion of investigation and other formalities challan against the accused was prepared and filed in the Court.

On presentation of challan in the Court of Illaqa Magistrate, Sunam, copies of the documents, relied upon therein as envisaged under Section 207 Cr.P.C were furnished to the accused free of cost.

Then observing that the challan had been filed for

offences under Sections 307, 302/34 IPC and such offences being exclusively triable by the Court of Sessions, the Magistrate committed the case to the Court of Sessions. When the case was received by way of commitment and after consideration, formal charge for offences under Sections 302 and 307 read with Section 34 IPC was framed against the accused Vishnu and Rajesh Kumar @ Raju. In addition to that charge for offence under Section 27 of the Arms Act was framed against Vishnu to which the accused pleaded not guilty and the case was fixed for evidence of prosecution.

During the course of evidence of prosecution, the prosecution examined as many as eleven PWs.

PW-1 Major Singh Draughtsman stated that he had gone to the spot and prepared a site plan Ex. PA at the instance of Baban Kumar using scale 1" equal to 20'.

PW-2 Bahadur Chand, complainant provided the eye witness account of the incident deposing in consonance with the prosecution story.

PW-3 Dr. R. S. Singla, Senior Medical Officer, Civil Hospital, Sunam, who had conducted the postmortem on the dead body of Som Nath son of Bahadur Chand, aged about 30 years, resident of Sunam, while giving the necessary details stated that Rigor mortis was present in all the four limbs, eyes and mouth were semi open and that he had noted the following injuries:-

1. Punctured wound 0.5 cm x 0.5 cm with inverted margins, regular present below the chin in the midline.

Tattooing of the margins was present.

On dissection there was laceration of under lying tissues including lateral margin of tongue right side, on the anterior 1/3rd portion with fracture maxillary bone right side with fracture of temporal mandibular right side. Bullet present was taken out, clotted blood was present, Blackening of entire tract was present.

2. Punctured wound 0.5 c 0.5 cm regular with inverted margins, present on left side of chest just above the nipple. Tattooing of the margin was present.

On dissection there was laceration of under lying tissues. There was large quantity of blood of about two litres with blood clots in the left pleural cavity. There was laceration of left lung. Second bullet could not be traced despite best efforts but radiological examination showed the nature of the projectile was the same as found in the neck.

3. Lacerated wound 1 cm x 1 cm with fracture of phalanx left ring finger at the level first interphalangeal joint. Clotted blood was present.

He further stated that both the lungs were pale. Heart was empty. Pharynx and Oesophagus were NAD. (Clotted blood was present). Stomach contained about 100 ml of gastric juices. Small intestines contained chyme and gases and large intestine contained feacal matter and gases. Liver, spleen, kidney were pale. Bladder contained about 110 mls of

He further stated that in his opinion, the cause of death in this case was due to shock and haemorrhage due to injuries Nos. 1 and 2 which had been caused with the fire arm and those injuries were sufficient to cause death in ordinary course of nature. He stated that all the three injuries were ante mortem in nature and probable time that elapsed between injury and death was immediate and between death and post mortem was within 24 hours.

He further deposed that postmortem examination was conducted by a board of four doctors, of which he was the Chairman and other members are Dr. Hardeep Sharma, Surgeon, Dr. Rakesh Jain and Dr. Sanjay Bansal. He proved copy of postmortem report as Ex. PC and pictorial diagram Ex. PD.

PW-4 Dr. Sanjay Bansal, Medical Officer, Civil Hospital, Sunam deposed that on 28.1.2001 when he was posted at Civil Hospital, Sunam, he had medico legally examined Satish Kumar son of Bahadur Chand aged 30 years, male and had found following injuries:-

Injury No.1: A lacerated wound 0.7 x 0.5 cm on the posterior aspect of left forearm 8 cm distal to the olecranon process of left ulna. Margins inverted. Fresh blood was present. Advice X-ray examination.

Injury No.2: A lacerated wound 1 x 0.5 cm on the posterolateral aspect of left arm 4 cm proximal to olecranon process of left ulna. Margins everted. Fresh blood was present. Advice X-ray examination.

He proved copies of MLR Ex. PJ and pictorial diagram depicting the seat of injuries as Ex. PJ/1.

The witness further stated that on 5.1.2002, on police application, he had declared injury No.1 on the person of Satish Kumar to be grievous in nature while injury No.2 was declared simple after persuing X-ray report from DMC, Ludhiana. He stated that kind of weapon used was firearm and the possibility of injuries being dangerous to life, was not ruled out. He proved his opinion in that regard as Ex. PK.

The witness further deposed that on 28.10.2001 he had sent information to the police regarding the arrival and reference of patient Satish Kumar to Civil Hospital, Sangrur, after giving first aid and the said information is Ex. PL. He added that he was one of the members of team constituted to conduct postmortem of Som Nath son of Bahadur Chand.

PW-5 Satish Kumar provided the eye witness account of the incident supporting the prosecution story on material aspects.

PW-6 MHC Jaswinder Singh, a formal witness, had submitted his affidavit Ex. PM.

PW-7 Sadhu Mashih, another formal witness submitted his affidavit Ex. PM.

PW-8 ASI Darshan Singh was member of police party headed by ASI Harwinder Singh on 28.10.2001, 29.10.2001, 31.10.2001, 2.11.2001, 26.11.2001 and 4.1.2002.

PW-9 Dr. Seerat Sandhu, PG, Resident, DMC, Ludhiana stated that on 28.10.2002 she had X-rayed Satish Kumar injured and found fracture of upper end shaft of left radius. Multiple radio-opaque density, were seen in the soft tissue of the left end. She added that opaque shadows were likely to be of pellets. She proved her X-ray as Ex. PY/1 to Ex. PY/4.

PW-10 SI Harwinder Singh, the Investigating Officer

deposed regarding the investigation conducted by him proving various documents.

PW-11 Dr. Sanjeev Sabharwal, Lecturer, Orthopedic, DMC Ludhiana stated that according to record, patient Satish Kumar 36 years, male was admitted in DMC on 28.10.2001 at 11.47 P.M. vide admission No. 17095 and Central record No. 24097. The witness further added that Satish Kumar was admitted in their hospital with gun shot injury on left upper limb and on the same day he was operated for removal of wound, debridement and fixation of fracture and it was sealed sent to the security officer. He produced bed head ticket containing operation notes as Ex. PAA. The patient was discharged on 31.10.2001.

Learned Additional Public Prosecutor tendered in evidence report of FSL as Ex. PAB and closed the evidence of prosecution.

Statements of accused under Section 313 Cr.P.C were recorded in which they were put all incriminating circumstances, appearing against them but they denied the allegations and stated that they are innocent and have been falsely implicated in this case. Accused Vishnu took up the plea that he was arrested from his house on 29.10.2001. The police party had taken him along with his revolver and cartridges and later on falsely involved him in this case.

On the other hand, Rajesh Kumar @ Raju had taken up a plea that he is innocent and he had never worked with Vishnu at his shop and had got no joint business with him; that he had got no grudge with the deceased; that he had worked with his father in the barber shop; that Bahadur Chand and his family used to get their hair cut from them; that on

the day of occurrence, his father was not present at the shop; Bahadur

Chand came to their shop and due to some reasons, quarrel took place on which he slapped him who felt insulted and in that grudge he involved him falsely in this case.

During the defence evidence the accused examined Ashwani Kumar, Manager, Cremation Ground as DW-1, who stated that Shamshan Bhumi Committee Ali Patti, Sunam is a registered body. He is its Manager since 1990; that his society owns shops in bus stand Sunam and when these shops were given on rent to somebody a rent note is executed. On the basis of record, he stated that the shop is on rent with Som Nath son of Bahadur Chand, resident of Sunam who had executed rent note in favour of the committee in his presence. The monthly rent was fixed as Rs. 350/-. He proved rent note Ex. DX.

With that the defence evidence was closed.

After hearing arguments, learned Additional Sessions Judge, convicted and sentenced both the accused as mentioned above, which left them aggrieved and they had filed the appeals.

We have heard learned counsel for the appellant and the Additional Advocate General, Punjab besides going through the record and we find that there is no merit in the appeal.

Here both the eye witnesses of the incident examined by the prosecution namely PW-2 Bahadur Chand and PW-5 Satish Kumar supported the prosecution story on material aspects. Although, both the PWs were subjected to lengthy cross-examination on behalf of the accused, but they stuck to their guns and could not be shattered on any important point. Both of them deposed in a natural and convincing manner and the

natural, plausible and probable. Bahadur Chand having a karyana shop near the place of incident, the incident having taken place at about 4.30 P.M., and 28.10.2001 being a working day, we do not see any reason to suspect the presence at the spot of Bahadur Chand. As regards Satish Kumar, PW-5 who has deposed in his examination-in-chief that he works with his father in the shop, his presence at the time of incident also comes out to be natural. He having suffered injuries in the incident is a stamped witness and his presence at the spot cannot be doubted.

Learned counsel for the appellant has tried to condemn the deposition of both these eye witnesses stating that no such incident had taken place and for the said reason the FIR was recorded quite belatedly at 11.30 P.M. i.e. after about seven hours of the incident, as such delay having not been explained is fatal to the prosecution story.

Learned counsel for the appellant has further argued that statement of Satish Kumar, injured was recorded by the police on 3.11.2001 i.e. after six days. In that way, Satish Kumar was a reluctant witness who was looking about to concoct a version and then get his statement recorded with the police.

However, we do not find any merit in those contentions.

Two sons of Bahadur Chand having suffered gun shots injuries and in serious condition, his natural instinct would have been to rush them to the hospital in order to save their lives, rather than leaving them un-attended and then going to the police station to lodge report regarding the matter. Both the injured had been taken to Civil Hospital, Sunam where Som Nath was declared dead and Satish Kumar was referred to Civil Hospital, Sangrur. Complainant had accompanied the injured to the hospital. He must have been in a great shock over the turn of events and if he could not inform the police at the earliest soon after the incident that

does not prove to show that he was not present at the spot or that he is an introduced witness, the conduct of Bahadur Chand is natural.

The contention of the learned counsel for the appellant that accused have been wrongly roped in this case is least convincing. Bahadur Chand having lost his one son in the firing incident whereas another son suffering serious gun shot injuries, his natural concern would have been to ensure that the person(s) responsible for such condition of his sons should be brought to book and punished suitably, rather than involving innocent persons in the case without any rhyme or reason. No convincing material has been brought on file to show that there was any motive for Bahadur Chand and his son Satish Kumar to involve the accused in this case falsely. The delay which is not abnormal has been explained satisfactorily and prosecution story cannot be doubted for that reason. As regards delay in recording statement of Satish Kumar during the investigation, at best that could be termed as a lapse on the part of Investigating Agency but the accused cannot take advantage of that fact by default. Since Bahadur Chand had given version of the incident on the fateful day itself and the version later on given by Satish Kumar is commensurate with the said version, while appearing in the Court, Satish Kumar also deposed on those very lines as his father, the other eye witness, he cannot be termed as a reluctant witness by any stretch of imagination and there is no reason to come to the conclusion that since he was in search of making up a story as regards the incident for the said reason, he did not get his statement recorded at the earliest.

Another argument advanced by learned counsel for the appellant was that as per statement of PW-10 SI Harwinder Singh he had

collected three empty shells of .32 bore from the spot but none of the eye witnesses stated that the chamber of the revolver had been opened and empty shells were thrown out. Further more, it is not the case of the eye witnesses that the cartridges were re-loaded in the revolver, therefore, there could not be any question of empty shells coming out of chamber of the revolver allegedly used in the incident, therefore the prosecution story stands falsified. We are not in agreement with the learned counsel for the appellant on this point. When shots had been fired from a dangerous fire arm hitting that person/his near and dear, it cannot be expected from him to note down minute details as to whether the chamber of the revolver having empty shells was cleared of those shells or it was re-loaded. Even otherwise, it could be termed as a little flaw in the investigation but that is not of such type and magnitude that the accused can be given clean chit for the said reason.

Learned counsel for the appellant also argued that medical evidence, in this case, does not support the ocular evidence inasmuch as PW-9 Dr. Seerat Sandhu, who had conducted X-ray examination on person of Satish Kumar stated that she observed multiple radio-opaque, densities in the soft tissue, which were likely to be of pellets. As per prosecution story the shots had been fired from .32 bore revolver which throws out bullets and not pellets, as such this deposition adversely affects the prosecution story. Again, we are not in agreement with learned counsel for the appellant on this point.

A careful perusal of statement of doctor goes to show that she had nowhere stated that the shadows were of pellets, rather she stated that they were likely to be of pellets, those could be pieces of bones

also which might have got split as a result of being hit by a bullet. In that way, no ambiguity remains to be there.

Learned counsel for the appellant further argued that there has been a delay of about 1 ½ months in sending the revolver along with empty shells and live cartridges to Forensic Science Labortary., Punjab which is a doubtful circumstance. However, we do not find ourselves in agreement with the learned counsel on this point. The revolver, empty shells and live cartridges are not something the condition of which gets deteriorated with passage of time. If some delay took place in sending arms and ammunition including empty shells to Forensic Science Labortary for analysis, that cannot be taken to be a circumstance going against the prosecution case. It has to be taken note of that the medical evidence duly corroborates the ocular evidence on material aspects.

As per report of the Forensic Science Labortary the bullet recovered from body of the deceased could have been fired from .32 inch IOF Revolver No. F.G.6807 i.e. licensed revolver belonging to accused Vishnu whereas the empty shells were opined to have been fired from that very revolver. The report Ex. PAB further lends credence to the prosecution story. Accused Vishnu on 2.11.2001 while being interrogated by SI Harwinder Singh in presence of ASI Darshan Singh had suffered a disclosure statement Ex. PV and thereafter got recovered his licensed revolver Ex.P-10 and cartridges Ex.P-11 to P-15 along with license which had been taken into possession. Therefore, from the eye witness account as provided by PW-2 Bahadur Chand and PW-5 Satish Kumar supported by medical evidence and reports from FSL, the prosecution has successfully

in the area of Sunam in furtherance of common intention of accused Vishnu with Rajesh Kumar @ Raju(since dead) which was to commit murder of Som Nath, Vishnu fired shots from his licensed revolver upon Som Nath hitting him on vital parts resulting in his death, thus, intention of accused to cause death of Som Nath becomes abundantly clear. Furthermore, it also stands proved on record that sharing such common intention Vishnu had fired shots on Satish Kumar with the intention to commit murder of Satish Kumar and he had full knowledge that he was likely to commit murder of Satish Kumar by firing shot at him in such a manner, in the process he suffered injuries which were dangerous to life and he obviously misused his licensed revolver which comes within the domain of Section 27 of the Arms Act. The judgment of conviction and sentence passed by the trial court is well reasoned one based upon proper appreciation of evidence and correct interpretation of law. There is no illegality or infirmity in the same. The appeal is found to be without merit. The judgment of conviction and sentence passed against the accused Vishnu is upheld and the appeal filed by him stands dismissed. The accused who is stated to be on bail granted to him vide order dated 30.5.2007 be taken into custody forthwith to undergo the remaining sentence. Necessary direction be issued to the trial Court/CJM., Sangrur to comply with this direction at the earliest.

(T.P.S.MANN)
JUDGE

(H.S.MADAAN)
JUDGE

February 1, 2017
archana

Whether speaking/reasoned
Whether Reportable

Yes
No