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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-1-

Date of decision: January 10, 2018
CRA-D-98-DB of 2008

Surinder Singh Pehalwan

.....Appellant

State of Haryana

Versus

.....Respondent

-2-

CRA-S-149-SB of 2008

Umesh

.....Appellant

State of Haryana

Versus

.....Respondent

-3-

CRR No.1321 of 2008

Naveen Goel

.....Petitioner

Surinder Singh Pehalwan & others

Versus

.....Respondents

-4-

CRA-D-238-DB of 2011

Naveen Goel

.....Appellant

Baljeet Singh @ Jeeta & another

Versus

.....Respondents

-5-

CRA-D-39-DB of 2012 (O&M)

Baljeet Singh @ Jeeta

.....Appellant

State of Haryana

Versus

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Kanwar Satbir Singh, Advocate
for the appellant (in CRA-D-98-DB of 2008) and
with Ms. Mehak Sawhney, Advocate for
Dr. Deipa Singh for the appellant
in CRA-D-39-DB of 2012).

Mr. J.S. Saneta, Advocate
for the appellant (in CRA-S-149-SB of 2008).

Mr. A.S. Virk, Advocate
for the petitioner (in CRR No.1321 of 2008) and
for appellant (in CRA-D-238-DB of 2011) AND
for the complainant (in CRA-D-98-DB of 2008,
CRA-D-39-DB of 2012 and CRA-S-149-SB of 2008).

Mr. Vivek Saini, DAG Haryana.

A.B. CHAUDHARI

By this common order, the abovementioned all the appeals as well as revision petition are being disposed of.

Following are the relief(s) prayed for by the abovementioned appellants/petitioner:-

- (i) Appellant-Surinder Singh Pehalwan filed appeal (**CRA-D-98-DB-2008**) against the judgment and order dated 15.01.2008/19.01.2008 passed by the Additional Sessions Judge, Kaithal, by which he was convicted for commission of offence punishable under Section 302 of Indian Penal Code, 1860 (for short 'IPC') and sentenced to undergo Rigorous Imprisonment for Life and to pay fine of ₹1 lakh and in default to further undergo Rigorous Imprisonment for one year;
- (ii) Appellant-Umesh filed appeal (**CRA-S-149-SB-2008**) against the judgment and order dated 15.01.2008/19.01.2008 passed by the Additional Sessions Judge, Kaithal, by which he was convicted for commission of offence punishable under Section 212 of IPC and sentenced to undergo Rigorous Imprisonment for four years and to pay a fine of ₹5,000/- and in default, to further undergo imprisonment for six months;
- (iii) Appellant-Baljit Singh alias Jita was declared P.O. and as such, he could not be tried along with Surinder Singh Pehalwan and Umesh. After the arrest of Baljit Singh alias Jita,

his trial was separately held. He filed appeal (**CRA-D-39-DB-2012**) against the judgment and order dated 17.03.2010/19.03.2010, passed by the Additional Sessions Judge, Kaithal, by which he was convicted for commission of offence punishable under Section 302 of IPC read with Section 34 IPC and sentenced to undergo Rigorous Imprisonment for Life and to pay fine of ₹5,000/- and in default to further undergo Rigorous Imprisonment for one year;

- (iv) Petitioner-Naveen Goel filed revision petition (**CRR-1321-2008**) for awarding capital sentence to respondents No.1 and 3 (in CRR-1321-2008) and severe sentence to respondent No.2 (in CRR-1321-2008) and filed appeal (**CRA-D-238-DB-2011**) for awarding capital sentence to respondent No.1 (in CRA-D-238-DB-2011) and set aside the judgment and order dated 17.03.2010/19.03.2010 vide which respondent No.1-Baljit Singh alias Jita was acquitted of the charge under Section 25 of the Arms Act, 1959 (for short 'Arms Act').

FACTS

In brief, the prosecution case was that on 18.09.2003, Police Station City Kaithal, received a medical *ruqa* from General Hospital, Kaithal to the effect that Parmanand Goyal was brought dead in the Hospital. Acting on that information, the police party reached the Hospital and found Parmanand Goyal lying in emergency ward. They carried out the inspection of the dead body and found a bullet injury on the lower portion of his chest. They came to know that three young boys of 20-25 years of age had come on a motorcycle and asked Parmanand to come out of the house and when he came out, they fired gun-shot and ran away. On the basis of the said information, offence under Section 302 read with Section 34 IPC and Section 25 of the Arms Act was registered and the investigation

was launched.

During the course of investigation, Naveen Goyal alias Rinku son of Parmanand Goyal made a statement that he was resident of New Grain Market, Kaithal. On 18.09.2003, at about 7:00 AM while he was present in his house and his father Parmanand Goyal was sleeping in his room, somebody knocked the door of his house. When he enquired who was knocking the door, the person standing out told him that he was Jita and was sent by Surinder Kala from Panipat and wanted to meet his father. Naveen opened the door and allowed accused to enter the house. Thereafter, he placed chairs in the courtyard of his house and asked the said persons to sit on the chairs. He went to the room of his father, woke him up and told him that one Surinder Kala had sent some persons to meet him. Parmanand Goyal came out of his room and met both the persons, who disclosed to him that they had come from Panipat and were sent by Surinder Kala and they also disclosed name of other person as Surinder Pehalwan. In the meanwhile, one more person entered the house and on seeing him, Parmanand Goyal addressed the said person as Surinder Geong and asked him as to why he had come to his house in the morning. He also sat on the chair and thereafter, Surinder Geong disclosed that one of the person amongst them was Baljit Singh alias Jita Badsikri, while another was Surinder Pehalwan of Bishanpura (Gharaunda), District Jind. Thereafter, Surinder Geong rebuked Parmanand Goyal that he had got him beaten at the time of marriage of his sister. Then Parmanad Goyal asked him to forget the past and pleaded for pardon, but Surinder Geong said that he would not forget the incident and had a grudge against him. Parmanand

Goyal again pleaded to forgive him, but Surinder Geong said that he would not forgive him and asked him to pay ransom in the sum of ₹30 lakhs, failing which he would teach him a lesson. Thereafter, an altercation took place between Surinder Geong and his father. Parmanand Goyal pleaded for mercy but Surinder Pehalwan gave him push and thereafter, Parmanand started running towards the street, but he was caught hold of by Surinder Pehalwan and Baljit Singh alias Jita. Baljit Singh alias Jita gave *butt* blow of the pistol on the head of Parmanand Goyal and Surinder Geong fired shot from his pistol at him, which struck at right side of his chest; as a result of which, Parmanand Goya fell down. Thereafter, immediately all the said three persons Surinder Geong, Baljit Singh alias Jita and Surinder Singh Pehalwan ran towards eastern side. Naveen tried to chase them and also raised alarm. Surinder Geong put helmet on his head, started the motorcycle and all of them fled towards telephone exchange. In the process, the helmet of Surinder Geong fell on the road, several persons had gathered. Parmanand Goyal died because of bullet injury. He was taken to Hospital in a car belonging to his neighbor Raj Kumar. The doctor declared him dead. Several people reached the Hospital and there was a big protest. Thereafter, investigation was transferred to Sher Singh, Inspector CIA Staff, Kaithal and on 20.09.2003, statement of witnesses were recorded and photographs of the accused shown to Naveen Goyal-complainant, who identified Baljit Singh alias Jita, Surinder Geong and Surinder Pehalwan. A supplementary statement was recorded and during investigation, Baljit Singh alias Jita and Surinder Singh Pehalwan, were arrested by Pala Ram, DSP, on 24.09.2003. On 25.09.2003, Surinder Singh Pehalwan and Baljit

Singh alias Jita suffered a disclosure statement, as a result of which, motorcycle bearing registration No.DL7SV-5094 was recovered. A country-made pistol of .315 bore, pursuant to the disclosure statement by Baljit Singh alias Jita, was recovered. Baljit Singh also demarcated the place of occurrence. The police also arrested Umesh son of Om Parkash, resident of village Geong, who suffered the statement, pursuant to which, recovery of .315 bore country-made pistol along with 6 cartridges and clothes belonging to Surinder Geong was affected. After filing of the final report in the trial Court, the case was sent for trial to the Court of Sessions. Accused-Baljit Singh alias Jita, Surinder Geong and Surinder Singh Pehalwan were charge-sheeted for commission of offence punishable under Section 302 IPC read with Section 34 IPC while Umesh was charge-sheeted for offence punishable under Section 25 of the Arms Act and Section 212 IPC for harbouring the offender. Umesh was acquitted for the charge under Section 25 of the Arms Act.

In order to prove its case, the prosecution examined total 29 witnesses and also produced documents from Exhibit PA to PW22/A, which were duly proved. The accused persons denied the charge leveled against them. The accused persons produced exhibit D1 the certified copy of Civil Writ Petition, in defence. The trial Court, thereafter, heard the parties and convicted the accused persons as stated above. Hence, these appeals and revision petition.

ARGUMENTS

In support of the appeals against conviction, Mr. Vinod Ghai, learned Senior Advocate for appellant-Surinder Singh Pehalwan and Baljit

Singh alias Jita and another Advocate Mr. J.S. Saneta for appellant-Umesh made the following submissions:-

- (i) The prosecution story is highly improbable, unbelievable and an afterthought inasmuch as when the police party reached the emergency ward of the Hospital, the police official himself stated that near the dead-body of Parmanand Goyal, not even a single person or any eye-witness or any family member of the deceased was present. If Naveen Goyal was really an eye-witness as claimed, he would have certainly been present near the body as he was knowing that the police was informed and were likely to arrive at any point of time. There is no explanation from Naveen as to why he did not remain near the dead body to narrate the story about he having an eye-witness and the manner in which the murder had taken place;

The conduct of the star witness Naveen Goyal claiming to be an eye-witness is thus, unnatural and his entire testimony is liable to be viewed with suspicion;

- (ii) The testimony of Naveen Goyal is of a interested witness and in the wake of several inconsistencies and contradictions in his version, his evidence is liable to be rejected. There is no corroboration to his evidence from any other evidence and thereafter, the trial Court ought to have rejected his oral evidence;
- (iii) The Trial Court ignored the fact that the Test Identification Parade was not held and at any rate, Naveen Goyal never knew the accused person and on the contrary, the photographs of the accused persons were shown to him before nominating them as accused persons, which would certainly vitiate the identification of the accused persons as the persons allegedly involved in the crime. The prosecution case on the question of identification was thus, liable to be rejected;
- (iv) The actual assault by means of fire-arm was said to have been made by Surinder Geong and that shot is said to have landed

on the chest of the deceased Parmanand Goyal and there is no overt act attributed to Surinder Singh Pehalwan and Baljit Singh alias Jita. The trial Court committed an error in convicting them and at any rate, they could not have been convicted with the aid of Section 34 of IPC as the prosecution failed to prove meeting of their minds by the common intention for commission of offence in question. Learned Senior Advocate for the appellant(s), thus, claimed acquittal;

- (v) Mr. J. S. Saneta, learned counsel appearing for Umesh in CRA-D-149-DB-2008 contended that except for recovery of arms, namely country-made pistol and 6 cartridges, there is no evidence or allegation against Umesh that any criminal was harboured by him. He prayed for his acquittal;
- (vi) Mr. A.S. Virk, learned counsel appearing for Naveen Goel in CRR-1321-2008 and CRA-D-238-DB-2011) prayed for the relief(s) as made in the said revision petition and appeal.

Per contra, learned State counsel opposed the appeals preferred by the convicts, so also the counsel for the complainant. Counsel for the respondents contended that the trial Court has given cogent reasons for recording of finding of conviction and there is no perversity shown in the matter of appreciation of evidence by the trial Court. The testimony of Naveen Goyal the star witness of the prosecution who was an eye-witness is most natural, trustworthy and has not been shattered in the cross-examination. The testimony has also been corroborated by the identification of the accused persons particularly when the accused persons themselves had introduced when they came to the house of the deceased or Naveen Goyal and were identified also in the Court. There is no reason why testimony of Naveen Goyal should be rejected. They prayed for dismissal of the appeals against conviction.

CONSIDERATION

Heard learned counsel for the rival parties at length. Perused the entire record as well as evidence. Seen the reasons recorded by the learned trial Court and the manner of appreciation and marshalling of evidence that was placed before it by the prosecution.

It appears that the deceased Parmanand Goyal was also related to the activities of Press reporting and had a large following also. That is the reason why record shows hundreds of persons had marched towards the Hospital and Police Station and there was lot of anger after the commission of murder of Parmanand Goyal and this agitation was required to be controlled by the police by taking the required measures.

Now coming to the evidence of PW12-Naveen Goyal, we have carefully scanned his testimony and we find that he is the witness of the truth. His evidence is most natural. The time of incident was at about 7:00 AM, on 18.09.2003 that too at the house of PW12-Naveen Goyal. He deposed that he and his family members were at his house and his father was sleeping in his room. Since his door was knocked by somebody, he opened the door and found a person standing who introduced himself as Jita and wanted to meet his father Parmanand Goyal. Naveen Goyal opened the door and also told his father who woke up and thereafter, the chairs were put in the courtyard and the persons who came had sat on the chairs. Other person disclosed name as Surinder Singh Pehalwan. In the meanwhile, one more person entered the house and his father addressed him as Surinder Geong and asked him as to why he had come to his house in the morning. He also sat on the chair. All these three persons occupied

the chairs brought for them. The evidence, *inter alia*, was that there was a talk between them and that Surinder Geong told his father that he had grudge against him and would not forgive him and threatened his father to pay ransom in the sum of ₹30 lakhs or otherwise he would teach him a lesson. Altercation took place between Surinder Geong and his father. His father prayed for mercy. But Surinder Singh Pehalwan pushed his father and thereafter, his father ran away towards street. However, Surinder Singh Pehalwan and Baljit Singh alias Jita caught hold of him and gave a *butt* blow on the head of his father. Thereafter, Surinder Geong fired a shot from his pistol which struck at the right side of the chest of Parmanand Goyal and he fell down. All these three accused persons ran towards eastern side. Naveen Goyal raised alarm but then three accused persons hurriedly ran away. His father then died due to the bullet injury and was taken to Civil Hospital, Kaithal where doctor declared him dead. We have gone through the cross-examination of these witnesses and we find that his evidence in material particularly that has come on record in relation to the incident is proper as well as not at all been shattered. He immediately reported the matter to the police by getting his statement recorded and it could not be said that there was any delay on his part. His evidence has been corroborated by medical evidence as well as the post-mortem report giving at the time of his death. His evidence is most natural as he was found to be at his house at 7:00 AM, on 18.09.2003 along with his family members and his father. The accused persons came to his house armed with pistol in such an odd time at 7:00 AM and committed the murder. The following injuries found on his person which clearly corroborates the testimony of PW12-

Naveen Goyal:-

- “1. *Lacerated wound 2.5 cm x 1 cm was present over the left temporal region bone deep.*
2. *There was lacerated wound 2 cm X 1 cm on the left parietal occipital region, bone deep. On further dissection of both the wounds there was evisceration of blood in a surrounding tissues and underlying bones were intact.*
3. *Lacerated wound 3.5 cm x 2.5 cm on the right side of chest wall on the lateral side in the mid axillary line at the level of 9th and 10th rib with inverted margins, margins were blackened. There were multiple and red coloured haemorrhage spots. The wound was going obliquely upward and medially. On further dissection, the wound involved and was going towards medially lacerating the liver then piercing the diaphragm, involving the upper part of right ventricle injury the superior Vena Cava and arch of aorta, lacerating the left lung and a foreign body (bullet) was found in the soft tissues of left axillary region.”*

The accused Baljit Singh alias Jita had caused injury on the head of Parmanand Goyal by means of *butt* of the pistol while Surinder Geong had fired at Parmanand which hit his chest; as a result of which, injury No.3 as above was caused, which was injury to heart. The accused Surinder Singh Pehalwan had caught hold of the deceased Parmanand Goyal when he tried to run away. It is thus, clear from the above evidence that Surinder Singh Pehalwan, Baljit Singh alias Jita and Surinder Geong had come to the house of Naveen Goyal at 7:00 AM with arms with a clear intention to commit this murder. That is why when Parmanand Goyal started running away towards the street, it was Surinder Singh Pehalwan who caught hold of Parmanand Goyal and Baljit Singh alias Jita gave *butt* blow of pistol on his head while Surinder Geong fired a shot on his person

which struck on the right side of his chest. Thus, the attribution and intention on the part of Surinder as well as Baljit Singh alias Jita is as clear as it could be and therefore, the submission that with the aid of Section 34 IPC, Surinder Singh Pehalwan and Baljit Singh alias Jita could not have been convicted, will have to be rejected. The accused persons armed with pistol went at 7:00 AM, on 18.09.2003 and not only that when Parmanand Goyal tried to ran away, they chased him and committed the murder, which shows that they had full determination to commit murder of Parmanand which they did.

In so far as the submission regarding identification is concerned, the evidence that accused persons themselves had introduced to PW12-Naveen Goyal with their names has not been shattered. Apart from that it is seen that PW12-Naveen Goyal had opportunity to see all these accused persons in his house for more than sufficient time to remember their faces, personality and body built-up etc., we have no doubt that he had full opportunity to remember the faces and names of the assailants. That is coupled with the introduction made by the assailants themselves. Further fact that deceased had taken the name of Surinder Geong and asked him as to why he had come to his house at such an early hours, leaves no doubt about the identification. We are, therefore, not impressed with the submission that the identification was not legal and proper. We therefore, hold that the accused persons were correctly identified as the persons who had committed assault.

In so far as showing of photographs by the police is concerned, we do not think that same would make any difference as sole testimony of

PW12-Naveen Goyal about the identification as discussed by us above is completely believable and trustworthy as to the identification. The submission as to why PW12-Naveen Goyal was not present near the dead-body when the police had come also does not impress us since after the commission of murder, hundreds of persons had gathered and whether or not Naveen Goyal should have remained present near the dead-body would make no difference particularly because his statement was recorded at the earliest point of time. The submission that no independent witness was brought by the prosecution from the area also does not impress us. What is required is the quality of evidence of the prosecution and not the quantity. Investigating officer collected the evidence of the most natural witness who would have been present at the time of commission of murder and PW12-Naveen Goyal being the son who was at the house and opened the door, it could not be said that additional witnesses should have been examined by the prosecution before the Court. Apart from that, the police have made recovery of the weapons upon the disclosure statement made by the accused persons and there is corroboration with the medical evidence. The FSL report also corroborates the prosecution case in entirety. Instead of repeating the evidence to that effect, it would be appropriate for us to quote the following portion from Paragraph-30 of the trial Court's judgment, which we quote hereunder:-

“The prosecution by producing PW4 Dr. Piyush Kumar has duly proved the injuries on the person of deceased Parmanand as contained in post mortem report Ex.PH. He has also proved the inquest report Ex.PJ and opinion Ex.PK/1, wherein, it has been specifically mentioned that injury No.3 was caused by fire arm. PW4 has also proved the bullet which was taken out

by the doctor during post mortem examination on the dead body of Parmanand as Ex.P5 and the said fire arm bullet was sent for examination to FSL Madhuban and FSL Madhuban vide Ex.PAA has categorically reported that the said fire arm bullet has been fired from country made pistol. Vide Ex.PAA/1, the FSL authorities also reported that the clothes i.e. Baniyan, Pajama, Underwear which were taken out from the dead body of Parmanand were also having the stains of human blood.”

We are, therefore, fully convicted that the appellants Surinder Singh Pehalwna and Baljit Singh alias Jita have been rightly convicted by the trial Court for the commission of murder of Parmanand Goyal. We must therefore, uphold their conviction and sentence awarded to them.

Now coming to the case of the appellant-Umesh, we find that the trial Court has convicted him only for the offence punishable under Section 212 of IPC.

Section 212 of IPC reads thus:-

“212. Harboursing offender.—*Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment,*

.....

2[“Offence” in this section includes any act committed at any place out of 3 [India], which, if committed in 3 [India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in 3 [India].]”

It is thus, clear from the reading of the above provision that

what is required to be proved by the prosecution with evidence is that appellant-Umesh had given shelter to any of the accused persons after the commission of murder. The prosecution ought to have examined the neighbours of Umesh or those police who personally paid visit his house or as the case may be. The prosecution did nothing of that sort. The prosecution chose to rely only on the recovery of the weapons used in the crime as told by Umesh. In so far as the charge under Section 25 of the Arms Act is concerned, he has been acquitted and there is no appeal against the same. We, therefore, find that in the absence of any evidence, the conviction of Umesh under Section 212 of IPC cannot be upheld and the same will have to be set aside. There is no evidence for convicting him in the aforesaid offence punishable under Section 212 of IPC. We, therefore, allow the appeal preferred by Umesh and acquit him of the charge under Section 212 of IPC by setting aside his conviction.

In so far as the appeal and revision petition preferred by Naveen Goyal is concerned, we find, after hearing the learned counsel for the rival parties, no substance in CRA-D-238-DB-2011 and CRR-1321-2008. The trial Court has given reasons for not imposing the capital punishment. Having gone through those reasons, we are satisfied that the appeal as well as revision preferred by Naveen Goyal will have to be dismissed.

Having thus, discussed the evidence and findings above, we make the following order:-

ORDER

- (i) CRA-D-98-DB of 2008, CRR No.1321 of 2008, CRA-D-238-DB of 2011 and CRA-D-39-DB of 2012 stand dismissed;

- (ii) CRA-S-149-SB of 2008 stands allowed. Impugned judgment and order dated 15.01.2008/19.01.2008 passed by the Additional Sessions Judge, Kaithal, is quashed and set aside, qua appellant-Umesh. Appellant-Umesh is acquitted of the charge framed against him.

**(A.B. CHAUDHARI)
JUDGE**

**(ANIL KSHETARPAL)
JUDGE**

January 10, 2018
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No