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

CRA-D-490-DB of 2012 (O&M)

Date of decision: July 27, 2018

Major Snigh and another

.....Appellants

Versus

State of Haryana

....Respondent

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. G.S. Sandhu, Advocate for the appellants.

Ms. Tanisha Peshawaria, DAG Haryana.

A.B. CHAUDHARI, J

Being aggrieved by the judgment and order dated 10.03.2012 passed by the learned Additional Sessions Judge, Panipat, in RBT Sessions Case No.33 of 2011, by which the learned trial Judge convicted both the appellants for commission of offence punishable under Section 302/34 of Indian Penal Code, 1860 (for short 'IPC') and sentenced them to undergo Rigorous Imprisonment for life for commission of offence under Section 302/34 IPC and to pay fine in the sum of ₹5,000/- each; in default of payment of fine, to further undergo Rigorous Imprisonment for one year; and also convicted appellant No.1-Major Singh for commission of offence punishable under Section 25 of the Arms Act, 1954 (for short 'Arms Act') and sentenced to undergo Rigorous Imprisonment for one year for commission of offence under Section 25 of Arms Act and to pay fine in the sum of ₹1,000/-; in default of payment of fine, to further undergo Rigorous

Imprisonment for two months, the present appeal has been preferred by him.

FACTS

In brief, the prosecution case is that Ram Niwas, the complainant (PW1) lodged report with the police station officer, in which he stated that the appellants had committed the offence of murder of Dharambir son of Zile Singh. It was stated in the report that uncle of the complainant, Krishan Kumar and Tek Ram were the candidates for the post of Sarpanch in the Panchayat elections, while Major Singh and Bindra both accused were the election agents of Tek Ram. Tek Ram won the elections. Major Singh had grudge regarding election. Five-seven days before the date of incident, Major Singh came to his street and said his cycle has been broken and he also would be seen at some time. On 09.08.2010, at about 10:30 P.M, the complainant-Ram Niwas, his uncle, the deceased were sitting on the wooden cot kept in front of the *kiryana* shop of Naresh son of Sube Singh. Sonu son of Om Parkash was standing near him. At that time, both the accused came on motorcycle. Major Singh was driving the motorcycle. They passed them staring at them and went towards temple. After five minutes, they returned back on the same motorcycle. They stopped motorcycle near cot and exhorted Dharambir to teach a lesson for becoming agent of Krishan Kumar. Dharambir was the election agent of Krishan Kumar while Major Singh was the election agent of Tek Ram. Thereafter, Dharambir replied that victory and defeat are the part of election, when Major Singh stated that he was over-speaking and would be taught a lesson. Suddenly, Major Singh took out a pistol from his dub and fired shot on Dharambir, which hit on the left side of his chest and he fell down. The complainant shouted when the other

accused Bindra said that work has been done and they should flee. They fled away from the spot. Dhrambir died at the spot and his dead body was taken to General Hospital, Panipat. Investigation commenced and the investigating officer, upon completion of investigation, filed challan in the Court. Prosecution relied on the evidence of the complainant-Ram Niwas and Sonu, the two eye-witnesses. Finally, the learned trial Court heard the evidence and convicted the appellants. Hence, this appeal.

ARGUMENTS

In support of the appeal, learned Senior counsel for the appellant vehemently argued that both the eye-witnesses and PW1-Ram Niwas and PW2-Sonu were the interested witnesses being close relatives of the deceased and the trial Court ought not to have accepted their statements before the Court. The trial Court committed an error in accepting their evidence and convicting the appellants. According to the learned Senior counsel because of enmity, the appellants were falsely involved by both the witnesses, PW1 and PW2. The appellants had no motive for commission of murder as stated by the prosecution. The appellants were arrested on 11.08.2010. The motorcycle was said to be without registration number. In the absence of concrete evidence about the ownership or the registration number of the motorcycle, it was risky on the part of the trial Court to record the order of acquittal. In the alternative, learned Senior counsel submitted that the case at hand was one of the sudden provocation and therefore, in the absence of any particular determination or *mens rea*, the appellants could not have been convicted for commission of offence of murder, as the prosecution case itself disclose that the incident had allegedly taken at the

spur of the moment. It is in that context, the learned trial Court ought to have appreciated the entire evidence that the offence was not planned nor any conspiracy was proved by the prosecution. The appellants were, therefore, entitled to the benefit of doubt. Learned Senior counsel argued that at any rate, looking to the single injury and the single fire that was allegedly made, the appellants could not have been convicted for offence under Section 302 IPC and at the most, conviction for 304 Part-II IPC could have been recorded, in the alternative. He therefore, prayed for acquittal of appellants and allowing of appeal.

Per contra, learned State counsel vehemently opposed the appeal and submitted that the evidence of the two eye-witnesses PW1 and PW2 has been accepted by the learned trial Court as there was absolutely no reason to discard their testimony. Their evidence was consistent and without any reason, the trial Court could not have rejected the same. According to her, though, the witnesses were the interested witnesses, the trial Court did follow the parameters that the testimony of interested witnesses should be appreciated with caution and circumspection. Therefore, no fault can be found out with the impugned judgment and order. She prayed for dismissal of the appeal.

CONSIDERATION

We have heard the learned counsel for the rival parties at length. We have perused the entire evidence of the witnesses so also the cross-examination. We have also perused other documentary evidence tendered by the prosecution. At the outset, we find that the incident was reported immediately within two and a half hours and the investigation was also

undertaken forthwith. We have carefully perused the evidence of PW1 and PW2 also in juxtaposition. We have also carefully perused the cross-examination of both these witnesses. Upon reading of evidence of both these witnesses we find that they are truthful witnesses. Their statements were recorded immediately. Their evidence is most natural as both of them were along with the deceased at the time of offence. They have described the entire movement of the accused-appellants, namely that they had come on the motorcycle, stared at the deceased and gone away and thereafter, again returned after five minutes on the same motorcycle and by saying to the deceased Dharambir that he was talking too much on the date of election and appellant No.1 suddenly took out the weapon and fired at the chest of the deceased-Dharambir. In so far as appellant No.2 is concerned, he actively participated in the entire act and not only that, he stated that work was done and now there is no reason to stay there. It is thus, clear to us that both the appellants had well prepared themselves to commit the offence of murder of Dharambir and had even used motorcycle which did not have any registration number. The fact that they used the motorcycle having no registration number, denotes that they were well prepared to commit the murder of Dharambir. We do not find any discrepancy in the evidence of both these witnesses upon perusal of their cross-examination. On the contrary, we find that both these witnesses have fully corroborated the prosecution case. Both these witnesses are the eye-witnesses and deposed before the Court with full responsibility and honesty. From the evidence of these two witnesses, we are of the firm view that they shared clear-cut common intention and had in fact come on the motorcycle with pre-

planned determination to commit the murder of Dharambir. We therefore, reject the submission that both these witnesses were the interested witnesses and therefore, their evidence should not have been accepted by the trial Court. The law is trite that in cases of interested witnesses, the Court has only to examine the evidence of the witnesses with care and caution. That has been done by the trial Court and we have also taken care to make assessment of their evidence with care and caution. We do not find any reason to interfere with the impugned judgment of the trial Court.

Having thus, disposed of the main contention raised by the appellants, we find that the motive is as clear as it could, namely the appellants being aggrieved by the action of Dharambir in acting as polling agent, which the appellants did not like. Thus, the prosecution also proved the motive. The prosecution then relied on the scientific evidence and the evidence from the spot about empty cartridge etc. Instead of repeating the said evidence, it would be appropriate to quote Paragraphs 30 and 31 of the impugned judgment, which read thus:-

“30. In the present case, there is no reason to disbelieve the investigation. PW14-Inspector Raghuvir Singh, has testified that 'empty cartridge' was recovered. To the FSL authority-Madhuban, the empty cartridge along with country made pistol of .315 bore recovered from the possession of accused-Major Singh was sent for chemical analysis. The FSL report is very explicit and specific to the effect that the firing mechanism of pistol Marked W1 (by the examiner) was, in working order, and the fired bullet marked BC/1 (by the examiner) has been fired from this country made pistol. No doubt, PW5 E-SI-Raj Singh has testified affirmatively, that 'pallet' has been recovered from the place of occurrence and so also recovery memo Ex.PG

reveals that a 'pallet' was sent to FSL-Madhuban and similarly PW8-HC Rohtash in his duly sworn affidavit Ex.PJ has testified that a 'pallet' was sent to FSL-Madhuban in a sealed conditioned parcel, duly sealed with seal of monogram 'RS', along with sample seal, and a sealed parcel containing .315 bore country made pistol, yet, their testimonies regarding 'pallet or empty', would carry no meaning, because, the FSL report Ex.PX is very specific that parcel having seal of monogram 'RS' contained one .315 fired bullet stated to have been recovered from the place of occurrence. A separate parcel containing one country made pistol (chambered for .315 bore cartridge) stated to have been recovered from accused Major Singh was also received by FSL Madhuban in an intact sealed condition. The seals on these parcels were found intact, and tallied with the specimen seal as per forwarding authority. The variation in the testimonies of witnesses, regarding 'pallet or empty cartridge' have no literal meaning, so as to subserve the cause of both the accused.

31. The recovery of weapon (.315 bore) country made pistol, has been effected on 13.08.2010 from accused Major Singh, through his disclosure statement Ex.PQ dated 13.08.2010. It is so evident from recovery memo Ex.PM/1. Similarly, recovery of motor-cycle, has been effected through recovery memo Ex.PK/1 dated 14.08.2010 from accused-Satpal alias Bindra, pursuance to his disclosure statement Ex.PK. Baru Ram-PW13 has lend corroboration to the testimony of PW14 Inspector-Raghuvir Singh, in connection with both these recovery memos (Ex.PK/1 and Ex.PM/1). The oral evidence, concerning these recoveries is unblemished. Since the recoveries have been effected from both the accused only through their respective disclosure statement, therefore, the disclosure statements viz. Ex.PQ concerning accused-Major Singh and Ex.PK concerning accused-Satpal alias Bindra, become admissible in evidence.”

We agree with the trial Court in the matter of appreciation of aforesaid evidence of these two eye-witnesses. We accept the said evidence. The next submission made by the learned Senior counsel for the appellants that the incident had taken place on the spur of the moment will have to be rejected. The reason is that the appellants had first come on the motorcycle without any registration number. They had stopped motorcycle near the cot of the deceased and then gone away and within five minutes, again came back and stopped at the place of offence, had a threatful talk with the deceased and suddenly appellant No.1 took out the weapon and fired at the chest from the point blank range to ensure that Dharambir would die instantaneously. It is not the case of the defence that there was any accidental fire or that the aim was somewhere else. On the contrary, the fire was made from the point blank range and as a result, Dharambir fell down and died instantaneously. In so far as appellant No.2 is concerned, as discussed earlier, he had a clear-cut well planned common intention with appellant No.1 and both had come with same design to finish Dharambir once and for all. It is therefore, difficult to give any benefit to appellant No.2 who shared the common intention and had also made an overt act by his conduct along with appellant No.1. We, therefore, reject the submission regarding the offence allegedly taking place at a spur of the moment.

The next submission that only one shot was fired and therefore, the offence of murder could not be made out, will have to be rejected. The reason is that the appellants chose the vital part of the body, namely the chest to fire, in the first place, and secondly, the fire was made from the the point blank range to ensure the death of Dharambir. It is, therefore, not

possible to accept the submission that merely because one injury was given, the offence of murder was not proved. The submission is therefore, rejected.

The upshot of the above discussion is that the conviction of murder of Dharambir recorded against both the appellants will have to be upheld. In the result, we make the following order:-

ORDER

CRA-D-490-DB of 2012 is dismissed.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

July 27, 2018
mahavir

Whether speaking/ reasoned: **No**

Whether Reportable: **No**