

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

CRA-D-523-DB-2012 (O&M)

Date of decision: 29.10.2018

RAKESH KUMAR AND ANR.**.....Appellants****versus****STATE OF HARYANA****.....Respondent**

**CORAM: Hon'ble Mr.Justice A.B.Chaudhari
Hon'ble Mr.Justice Kuldip Singh**

Present: Ms. Loveleen Dhaliwal, Advocate
for the appellants
Mr. Vivek Saini, DAG, Haryana

- 1. Whether Reporters of Local newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

Both the appellants-accused Rakesh Kumar son of Satbir Singh and Joginder Singh son of Baru Ram have preferred this appeal against judgement of conviction dated 29.3.2012, passed by learned Additional Sessions Judge, Jind and order of sentence dated 31.3.2012, vide which, the appellants/accused were convicted under Section 302 IPC read with Section 34 IPC and Section 25 of Arms Act and sentenced as under:-

<i>Offence</i>	<i>Rigorous Imprisonment (each)</i>	<i>Fine(each)</i>	<i>In default of payment of fine</i>
302/34 of Indian Penal Code	Life	Rs.5,000/-	(2) Two months SI
25 of Arms Act	One year	Rs.5000/-	(1) One month SI

At the same time, co-accused Sanjay, Surat Singh @ Surita and

Karambir @ Goli were acquitted.

Facts of the case are that on 1.10.2010, SI Tek Chand along with other police officials, while on patrolling duty, received an information that one Hoshiara son of Dalip, resident of Nagura had died of bullet injuries and has been brought to Civil Hospital, Jind. Therefore, he reached said hospital, where Ram Sarup (PW-3) son of Dalip brother of the deceased met the police party and made a statement, wherein he stated that on 1.10.2010 Dharambir Singh son of Gopal Singh resident of Naguran had died in accident. Therefore, he along with Hoshiara @ Kukki deceased and other villagers had gone to attend his funeral. While they were returning home, Hoshiara stopped at the shop of Sumera son of Chandan, resident of Naguran, as there was pain in his legs. At about 12.35 noon he came to know that two unknown young boys came there on motorcycle and shot Hoshiara and escaped towards Uchana. He rushed to the spot, where Hoshiara @ Kukki was lying dead. Therefore, he shifted him to Civil Hospital, Jind.

During the course of investigation, accused Rakesh @ Midda and Joginder Singh son of Baru Ram along with Baljit Singh son of Bhim Singh and Ravinder son of Ranbir Singh were arrested in FIR No.616 dated 29.11.2010 under Sections 398/401 IPC Police Station Assandh, District Karnal. In the said FIR, Rakesh made a disclosure statement that on 1.10.2010, he along with Joginder Singh had shot Hoshiara @ Kukki at about 12.00/1.00 p.m. outside the shop. He disclosed that he had used 12 bore country made pistol in the crime, whereas Joginder Singh had used 315 bore pistol. He further disclosed that Surtia son of Prabhu resident of Naguran had given them Rs.2,50,000/- to execute the killing of Hoshiara @ Kukki as Hoshiara had murdered Surtia's son. He further disclosed that

Surtia was introduced to him by Sanjay son of Ram Singh, resident of Naguran. He handed over his 12 bore pistol used in the crime to Baljit son of Shahpur. Joginder Singh also made a disclosure statement that he had handed over 315 bore pistol to Ravinder son of Ranbir resident of Ahirka from whom it was recovered in the said case. Rakesh also suffered another disclosure statement and got recovered motorcycle used in the crime.

After presentation of challan and commitment of the case to the Court of Sessions, accused were charge sheeted under Section 302, 120-B read with Section 34 IPC and Section 25 of Arms Act, to which, accused pleaded not guilty.

In support of its case, the prosecution examined as many as 21 witnesses. When examined under Section 313 Cr.P.C., accused Rakesh while, denying the evidence led against him, stated that he is innocent and has been falsely implicated. Similar plea was taken by accused Joginder Singh.

We have heard learned counsel for the parties and have also carefully gone through the file.

It is to be seen that the complainant Ram Sarup is not the eye witness of the occurrence. Occurrence took place outside the shop of Sumer son of Chandan. Sumer when examined as PW4 turned hostile. He stated that on 1.10.2010, Hoshiara was sitting at his shop on a Takhat. At about 12.30 p.m. he received gun shot injury. But he has not seen the person who fired upon Hoshiara as they had fired from outside. He could not see the assailants. He further stated that accused Rakesh and Joginder present in the Court, were not seen by him on that day as he was present inside the shop. He was declared hostile and nothing favourable could be extracted

from him. Ram Sarup appearing as PW3 has merely repeated his statement, stating that he had come to know that his brother had shot at the shop of Sumer and he reached thereafter.

The pistol allegedly used in the crime and recovered in FIR No.616 dated 29.11.2010 under Section 398/401 IPC and Section 25 of Arms Act Police Station Assandh along with two cartridges and 315 bore pistol with three cartridges allegedly recovered from Baljit Singh and Ravinder were taken into possession in the present case.

Statement of Dr.Satish Sulekh, Dy.Civil Surgeon Jind shows that four injuries were found on the person of the deceased which are described below:-

- 1. There was an L W with blackened margins of size 2 cm x 1.5 cm present on the lateral wall of left side of thorax at the level of 31 cm lateral to umbilicus and 7 cm above it i.e. umbilicus. Clotted blood present and dark colored liquid blood was oozing from the injury. On dissection the bullet was recovered from the right lung and the course of the bullet from the injury causing laceration of the left pleura, left lung parenchyma the pericardium, the heart, the right pleura and the right lung parenchyma causing a hemathorax of approximately 2 ltr.*
- 2. There was a L W of size 2.4 x 2.2 cm was present 7 cm below the tip of left shoulder on the anterior lateral aspect of left arm, margins of L W were blackened. Clotted blood present the dark colored liquid blood oozing from injury. On dissection the underline soft tissues were lacerated and the*

under bone was found fractured with a surrounding hematoma.

3. A patterned abrasion 2 cm x 2 cm in size, circular in shape was present 2 cm anterior to injury no.2, clotted blood was present, dark colored liquid blood was oozing from the injury.

4. There was an L W of size 1 cm x 0.9 cm x muscle deep present 11 cm below the tip of right shoulder on the right arm over the anterior aspect. Clotted blood present the dark colored liquid blood oozing from injury.

There were blackening on injury no.1 showing that shot was from close range. Injury nos.1, 2 and 4 were having inverted wounds, showing that there was entry wound, showing that three shots were fired on the deceased. One cartridge was recovered from the clothes of the deceased and one bullet was recovered from the right lung of the deceased. These were handed over to the police. On the spot inspection, police had recovered one empty of 315 bore and one empty of 12 bore, two V shape chappals, one blood stained plastic pipe and one piece of wooden Takhat smeared with blood. Same were taken into possession through recovery memo Ex.PJ. As per FSL report (Ex.PF), country made pistol of 315 bore and of 12 bore were found to be in working order. 315 bore fired cartridge case (C/1) has been fired from the country made pistol W/1. Fired lead slug of 12 bore cartridge marked BC/1 has been fired from country made pistol marked W/2.

Trial Court has recorded the conviction of the accused on the ground that the recovered bullet lead slug recovered from the right lung of the deceased were recovered from the Baljit Singh and Ravinder and that

both of them had disclosed that these arms were handed over to them by Joginder and Rakesh.

We are of the considered view that the disclosure statement of Baljit and Ravinder in FIR no.616 dated 29.11.2010 to the effect that these weapons of 12 bore and 315 bore pistol were handed over by Joginder and Rakesh accused cannot be read into evidence. Said statements are made by them under Section 27 of the Arms Act and no recovery in consequence thereof was effected. Therefore, statement of Baljit Singh and Ravinder to the effect that these weapons were handed over to them by Joginder and Rakesh cannot be read into evidence. No need to say that Baljit Singh and Ravinder were not cited as witness in this case nor they were examined. Therefore, merely from the disclosure statement of Baljit and Ravinder made in another case that the weapons recovered from them were handed over to them by Joginder and Rakesh, it cannot be presumed that these weapons were used by Baljit and Rakesh in the crime. Eye witness has turned hostile. There is no other evidence to connect the accused with the crime.

It being so, we are of the view that the prosecution case against the accused is not proved beyond all reasonable doubts.

Consequently, we pass the following order:-

ORDER

- (i) **CRA-D-523-DB-2012** is allowed.
- (ii) Impugned judgement of conviction dated 29.03.2012 and order of sentence dated 31.03.2012, passed by learned Additional Sessions Judge, Jind convicting the appellants-Rakesh Kumar and Joginder Singh for the offence under Section 302/34 of Indian Penal Code sentencing them to

undergo rigorous imprisonment for life and in default simple imprisonment for two months; and under Section 25 of Arms Act to undergo rigorous imprisonment for one year in default simple imprisonment for one month in Sessions Case No.50 dated 29.04.2011, is set aside.

(iii) Both the appellants- Rakesh Kumar and Joginder Singh are acquitted of the charge for which they were convicted. Fine, if paid, be returned to them.

(iv) Appellant No.2-Joginder Singh s/o Baru Ram, be released from custody forthwith, if not required in any other criminal case.

(v) Appellant No.1-Rakesh Kumar s/o Satbir Singh is already on bail and his bail bonds are discharged.

(A.B.Chaudhari)
Judge

(Kuldip Singh)
Judge

29.10.2018

gk

Whether speaking/ reasoned:	Yes
Whether Reportable:	No