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

**Date of decision: May 15, 2018
CRA-D-537-DB of 2014 (O&M)**

Attender @ Chunu

.....Appellant

Versus

State of Haryana

....Respondent

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE B.S. WALIA**

Present: Mr. Bijender Dhankar, Advocate for the appellant.

Mr. Vivek Saini, DAG Haryana.

A.B. CHAUDHARI, J

Being aggrieved by the judgment/order dated 24.02.2014/26.02.2014 passed by the learned Additional Sessions Judge, Sonipat, in Sessions Case No.116 of 03.06.2011, by which the appellant, namely Attender @ Chunu, was convicted for commission of offence punishable under 302 of Indian Penal Code, 1860 (for short 'IPC') and Section 27 of Arms Act, 1959 (for short 'Arms Act') and was sentenced to undergo Rigorous Imprisonment for life and to pay fine in the sum of ₹10,000/-; in default of payment of fine, to further undergo Rigorous Imprisonment for nine months, for commission of offence punishable under Section 302 IPC; and was sentenced to undergo Rigorous Imprisonment for three years and to pay fine in the sum of ₹5,000/-; in default of payment of fine, to further undergo Rigorous Imprisonment for three months, for commission of offence punishable under Section 27 of Arms Act, the present appeal has been preferred by him.

FACTS

In all, there were 5 accused persons before the trial Court in the Sessions trial that was conducted before the trial Court and the appellant-Attender @ Chunu was accused No.1. FIR No.369 dated 26.12.2010 was registered under Sections 302 of Indian Penal Code, 1860 (for short 'IPC') read with Section 34 IPC and Section 25 of Arms Act, 1959 with Police Station Sadar Sonapat, that was lodged by Jai Bhagwan-PW1 and his statement is Exhibit PA. He stated, in his complaint that on 25.12.2010 at about 7:30 p.m., he and his nephew Pardeep son of Rampal and his uncle's son Sandeep son of Raj Singh were talking to each other while standing in street in front of their house. Their neighbour, namely Sudhir son of Sham was also standing there, when, on two motorcycles, five boys out of them one was Attender son of Shamsher, resident of Kilorad, came. They started quarrelling and beating Sudhir. Sandeep brother of the complainant started saving Sudhir, upon which other four boys asserted Attender to fire at him. Upon this, Attender fired shot upon Sandeep who fell down on the ground. All the accused persons ran away on their motorcycles. Complainant could not note down the number of motorcycles due to darkness. He took Sandeep to G.D. Sharma Hospital, however, due to non-availability of doctors, he took Sandeep to Jaipur Golden Hosiptal, where he was declared brought dead. Thereafter, FIR was registered. Investigation was made, arrests were made, disclosure statements were recorded. In support of the prosecution case, it examined eye-witness, PW1-Jai Bhagwan, the complainant, eye-witness, PW2-Pardeep and then official witnesses, namely PW3-ASI Subhash Chander, PW4-EASI Rajender Singh, PW5-Raj Singh (father of deceased), PW6-ASI Rajender Singh, PW7-Constable Ramdhan, PW8-Inderpal Draftsman, PW9-ASI Ashok Kumar,

PW10-EHC Om Parkash, PW11-Mool Chand (Retired Inspector), PW12-Sanjeev, PW13-HC Chain Singh, PW14-Dr. Pardeep Dua, CMO, PW15-EHC Prem Veer, PW16-HC Naresh, PW17-Ram Parkash, PW18-Constable Mohd. Akil, PW19-SI Kanwal Singh, PW20-SI Balraj, PW21-Dr. Manoj DHINGA, PW22-SI Ranbir Singh and PW23-Constable Vinod Kumar. The prosecution closed its case thereafter, and ultimately, the trial Court, after hearing the evidence, convicted the appellant-Attender @ Chunu alone, but acquitted all other four persons. Hence, this appeal.

ARGUMENTS

In support of the appeal, learned counsel for the appellant submitted that the prosecution did not have any evidence except that was tendered before the trial Court that there were two eye witnesses, namely PW1-Jai Bhagwan and PW2-Pardeep. Both these witnesses who were the star witnesses of the prosecution had completely turned hostile and did not support the prosecution case at all. There was thus, no evidence left thereafter, and that is why the trial Court recorded the acquittal of remaining four accused persons. The trial Court convicted the appellant. According to the learned counsel for the appellant, the conviction is totally bad as there is no ocular evidence in the first place and conviction has been recorded only because pistol was recovered on the alleged disclosure statement made by the appellant and the FSL report shows that the bullet was fired from the said pistol that was recovered. He, therefore, submitted that in the absence of any evidence saying that the appellant had fired, the trial Court could not have convicted the appellant and therefore, the impugned judgment and order is illegal. He therefore, prayed for acquittal of the appellant-Attender @ Chunu.

Per contra, learned State counsel opposed the appeal and

supported the impugned judgment and order of conviction. He submitted that evidence regarding matching of pistol and the bullet fire is good enough to convict the appellant and therefore, no interference can be made with the impugned judgment and order. He prayed for dismissal of the appeal.

CONSIDERATION

We have heard learned counsel for the parties. We have also perused the entire record so also the evidence. We have also perused the impugned judgment and the reasons recorded therein by the trial Court.

As stated in the facts, it was PW1-Jai Bhagwan who had lodged the report with the police station as he was the eye witness to the incident in question along with PW2-Pardeep. Prosecution case itself is that in the night of 25.12.2010 at about 7:30 p.m., he and his nephew were standing and talking to each other when deceased Sudhir was also standing near his house. At that time, on two motorcycles, five boys came and one of them was Attender. Attender fired on the instigation of one of the accused persons and they ran away from the spot.

Had these eye-witnesses supported the prosecution before the trial Court by way of substantive evidence, obviously, all the accused persons including Attender could have been convicted. However, as stated by us earlier and it is an admitted fact that the complainant PW1-Jai Bhagwan and eye witness PW2-Pardeep have refused to support the prosecution and have turned hostile. Therefore, their evidence is worthless. Consequently, there is no evidence to show that it was Attender who had fired at Sandeep and except for imagination that Attender must have fired because the discovery/ recovery of pistol was made and there is matching of the firing from the pistol with bullet that was fired. In our considered opinion, mere recovery of pistol and the

matching of bullet cannot be enough to convict the person for offence of murder, when there is absolutely no evidence to show as to who fired the bullet from the pistol and at whom it was fired. The best witnesses who could have said so were PW1-Jai Bhagwan and PW2-Pardeep. But then both of them have not supported the prosecution and have turned hostile. We therefore, find that the finding of the trial Court that the accused had got recovered the pistol and the FSL report shows that the bullet fired from the pistol matched, cannot be countenanced for recording conviction. The disclosure by appellant-Attender that he had fired at the deceased is not admissible in evidence. We, therefore, find that the prosecution has not been able to complete the chain of circumstances or the link about the actual firing done by appellant-Attender @ Chunu. The benefit of doubt has to go to the accused in such circumstances and to record conviction on such infirm evidence would be wholly risky. In the result, we find that the benefit of doubt would go to the appellant-Attender @ Chunu and therefore, the appeal will have to be allowed. Hence, we make the following order:-

ORDER

- (i) **CRA-D-537-DB of 2014** filed by the appellant-Attender @ Chunu, is allowed;
- (ii) The impugned judgment/order dated 24.02.2014/26.02.2014 passed by the learned Additional Sessions Judge, Sonipat, in Sessions Case No.116 of 03.06.2011, by which the appellant, namely Attender @ Chunu, was convicted for commission of offence punishable under 302 of IPC and Section 27 of Arms Act and was sentenced to undergo Rigorous Imprisonment for life and to pay fine in the sum of ₹10,000/-; in default of payment of fine, to further undergo Rigorous Imprisonment for nine months, for commission of offence punishable under Section 302 IPC; and was sentenced to undergo Rigorous Imprisonment for three years and

to pay fine in the sum of ₹5,000/-; in default of payment of fine, to further undergo Rigorous Imprisonment for three months, for commission of offence punishable under Section 27 of Arms Act, is set aside;

- (iii) He is acquitted of the charge framed against him;
- (iv) Fine, if paid, be refunded to him.

(A.B. CHAUDHARI)
JUDGE

(B.S. WALIA)
JUDGE

May 15, 2018
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No