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

**CRA-D-32-DB-2003 (O & M)
Date of decision: 23.03.2018**

Suresh Kumar
.....Appellant

Versus

State of Haryana
....Respondent

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

Present: Mr. Ashwani Talwar, Advocate,
for the appellant.

Mr. Raj Kumar Makkad, Sr. DAG, Haryana.

INDERJIT SINGH , J

The present appeal has been filed by appellant-Suresh Kumar challenging the judgment of conviction dated 14.11.2002 and order of sentence dated 16.11.2002, passed by learned Additional Sessions Judge (*Ad hoc*), Karnal whereby he was convicted and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>	<i>In default of payment of Fine</i>
302 IPC	Rigorous imprisonment for life and to pay a fine of ₹1,000/-.	To undergo further rigorous imprisonment for three months.
25 of the Arms Act	Rigorous imprisonment for three years and to pay a fine of ₹500/-.	To undergo further rigorous imprisonment for one month.

Both the sentences have been ordered to run concurrently.

The facts of the case, as noted down in the impugned judgment dated 14.11.2002/16.11.2002 passed by learned trial Court are as under:

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“2. In this case F.I.R. was lodged by the accused himself by making his statement (Ex.PJ) dated 22.9.01 alleging therein as follows: His marriage with Anita (since deceased) took place in the year 1999. His wife Anita was serving as Lady Constable upto 1995. For last one month prior to the occurrence he along with his wife had been residing in the house, constructed by his father-in-law which he had purchased, situated in Vasant Vihar Karnal. A dispute of his wife Anita with Sanjay Sharma Constable belonging to district Kurukshetra who is posted in Panchkula district took place about two years prior to the occurrence when he met her in Kurukshetra fair when they were on duty. A departmental enquiry against said Sanjay Sharma was going on in which his wife Anita was a witness against him and so on that account he had already threatened her on telephone. In the last night i.e. night between 21.9.2001 and 22.9.2001 the accused alongwith wife Anita was sleeping in their said house. At about 2.30 a.m., in that night two persons one armed with pistol and other armed with single barrel gun came there and fired a shot which hit the waist of his wife Anita. He i.e. accused immediately got up and tried to catch hold of them. The pistol of one of them fell there and at that time one of them uttered, “Sanjay make fast” and then both went out. He immediately took his wife who was smeared with blood to Civil Hospital Karnal where she was referred to P.G.I. Chandigarh. When they reached Jhirakpur on the way to Chandigarh she stopped speaking and she was declared dead by the doctor at P.G.I. Thus said Sanjay Sharma in connivance with his companion has killed his wife Anita and so action be taken against him.

3. Thereafter deceased Anita's sister Raj wife of Subhash i.e. complainant made statement on 22.9.2001

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interalia to the following effect: On the occasion of 'SHARADH' of her father on 17.9.01, a tiff took place between the accused and his wife Anita when her mother was being taken by deceased's other sister Vijay on the asking of the accused and when the deceased started weeping the accused asked her that she (Anita) could also go with her mother because he does not need her as the house has been transferred in his name. On 18.9.01 when said Subhash came to his house his wife (Raj) told him that condition of her mother was very bad and she is admitted in Ajmani Hospital and several relatives came, but Suresh (accused) and Anita (deceased) did not come to see. Her husband Subhash continued going to see his mother-in-law for 3-4 days but even in those days, the accused and deceased did not come. On 22.9.01, at about 6.00 a.m. while she (Raj) and Subhash were present at their house her sister Vijay and her neighbour Pardeep resident of Vasant Vihar Karnal came to the house of Raj and told them that somebody had killed Anita by firing a shot at her. So She (Raj), her husband Subhash, said Pardeep and one Krishna friend of Anita left for the house of the deceased. On the way they learnt from Govt. Hospital Karnal that Anita has been taken to P.G.I. Chandigarh. Before Smt. Raj etc. reached the house of deceased police had already reached there. It took into possession one unlicensed pistol .315 bore, one double barrel gun from beneath the bed and six used cartridges, one live cartridge of .12 bore, one licence, one gaddi of cloth for child and blood stained cotton from that room of the accused in her presence. She i.e. complainant at her level tried to ascertain the position and learnt that in the night of occurrence accused and Anita had slept on one bed alongwith their daughter and only Anita sustained fire-arm injury on her back whereas neither

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accused nor his daughter sustained any injury; that Suresh already had double barrel gun with him; that since the day sale-deed was registered of the said house in the name of the accused there had been differences between the accused and his wife and he used to talk to her only outwardly and it is possible that on that account he turned out her mother from his house with the intention of selling that house and to construct house at Bhiwani and to live there. The accused has introduced the name of Sanjay Sharma in his defence. The latter had no concern with the deceased or her mother nor the deceased ever told the complainant etc. about the threat of Sanjay Sharma on phone. If any person other than the accused would have fired a shot Suresh and his daughter also would have sustained some injury. These things create serious suspicion in her (Raj's) mind that Suresh has killed Anita by firing shot because earlier he got the said house transferred by sale deed in his name and secondly Anita's service has been terminated and it seems that due to greed of house the accused Suresh has killed Anita.

4. *Balbir Singh S.I.-S.H.O. Police Station Sadar had also reached the spot on receipt of information about the firing at Anita (since deceased) in Vasant Vihar Karnal on 22.9.01 with the dogs squad from Madhuban and also the F.S.L. team which inspected the spot with the help of dogs and thereafter the F.S.L. team went away. Then the S.I.-S.H.O. inspected the spot in the presence of witnesses and thereafter took into possession one pillow of baby, one pistol .315 bore, one double barrel gun, five used cartridges and one live cartridge and one licence from the spot as aforementioned. He also prepared rough site plan of the place of occurrence. He also recorded statements of witnesses. On 23.9.01, he went to G.H.Karnal and took the photographs of the dead body of Anita there. After post-*

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mortem of the dead body A.S.I. Satpal handed over to the S.I.S.H.O sealed parcels of clothes of Anita and one small bottle containing bullets etc. which were also taken into possession by the S.I-S.H.O. He also recorded the statements of other witnesses later on. He arrested the accused on 4.11.2001 and recorded the statement of PW Karambir on the same day. On completion of investigation he also prepared police report under Section 173 Cr.P.C. and put up the same in Court for the trial of the accused.”

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding *prima facie* case, the accused-appellant was charge-sheeted under Sections 302 IPC and 25 of the Arms Act, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Raj (complainant), who did not support the prosecution version and was got declared hostile by learned Public Prosecutor. During her cross-examination conducted by learned Public Prosecutor, she admitted that the police had taken into possession blood stained cover, .315 bore countrymade pistol and one licensed gun alongwith licence. Besides them, live and empty cartridges were also taken into possession by the police on the spot in her presence vide memo Ex.PB, which bears her signatures.

PW 2 Karan Singh also did not support the prosecution version and was declared hostile.

PW 3 Dharam Pal mainly deposed that in September, 2001, he was residing as a tenant in the house of accused-Suresh Kumar. At about

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Bahadur was also sleeping there on another cot. He heard the noise of a fire-arm in his house. His wife awoke him and told that a gun shot had been fired in the room where the accused and his wife were residing. When door of the room was opened by the accused on his inquiry, he (accused) and his wife told him (Dharampal) that two persons having entered into their room had fired a shot and fled away from there. Anita who was injured in the incident, was handled by him and the accused. He also stated that they made her sit in the rickshaw of Ram Bahadur for taking her to the General Hospital. He again inquired from Anita regarding the incident. Upon this, she stated that she could not identify those assailants who had fired shot at her after entering into her house. The witness was declared hostile as he did not support the prosecution version.

PW 4 Head Constable Hukam Chand is a formal witness, who mainly tendered his affidavit Ex.PE.

PW 5 Prem Kumar, draftsman mainly deposed regarding preparing scaled site plan Ex.PA.

PW 6 Head Constable Ram Lal mainly deposed regarding delivery of special reports to the higher police officials.

PW 7 L.S.Yadav, Senior Scientific Officer deposed that in this case, on receiving the request of Police Station Sadar Karnal, he visited the scene of crime on 22.9.01 and also examined the dead body in the Mortuary, G.H.Karnal on 23.09.2001. He further stated that he prepared his examination report dated 25.10.01 consisting of two pages including rough sketch of the spot, photographs etc. He also deposed that in this case, eight

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and after the examination, the result of analysis has been mentioned on page No.2 under the head result of his report Ex.PH, which bears his signatures. He also deposed regarding the pistol, Ex.P-11 and .12 double barrel gun, Ex.P-12 etc.

PW 8 Head Constable Inderjit Singh mainly deposed in respect of recording of formal FIR Ex.PK.

PW 9 Ram Bahadur and PW 10 Ram Jas did not support the prosecution version and turned hostile.

PW 11 ASI Sat Pal mainly deposed that on 23.09.2001, after the post-mortem of deceased Anita, the doctor handed over to him one PMR and two sealed parcels, one packet of clothes of the deceased and other vial of bullet, which were handed over by him to SHO Balbir Singh.

PW 12 Sub Inspector Bhoop Singh mainly deposed in respect of recording the statement of Suresh Kumar, which was read over and explained to him. He made endorsement Ex.PJ/1 over the same and sent it to the police station. He also deposed regarding preparing inquest report and got conducted the post-mortem on the dead body of Anita. Then, the investigation was taken over by SHO/Inspector Balbir Singh.

PW 13 Dr. Bhagwan Singh, Medical Officer mainly deposed that he medico-legally examined Anita on 22.09.2001 at 2.55 a.m. and found following injuries on her person:

1. 2 cm x 2 cm rounded lacerated wound with inverted margins on the left side of back on lower aspect. Fresh blood was present. There was blackening of the skin around the wound. X-ray and surgeon opinion was advised.

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2. There were two swellings on the anterior abdominal wall in the middle. They were palpable. X-ray and surgeon opinion advised.

During his cross-examination, this witness stated that Anita was brought in the hospital by her husband Suresh Kataria. He further stated that when she was brought in the hospital, she was conscious and fit to make the statement. She was critical in condition. Her statement could not be got recorded because her husband did not allow it and he insisted on the treatment and reference to PGI, Chandigarh.

PW 14 Dr. Rakesh Girdhar deposed that he alongwith Dr. S.P.Singhal conducted the post-mortem examination on the dead body of Anita and found following injuries on her body:

1. 4½ inches x 3½ inches red well defined contusion was present in the epigstric region of abdomen extending one inch to the left of mid line and 3½ inches to the right of mid line. There was 5 x 5 cm broad hypodense area centred in the contusion and there was bluish red discolouration in the central part of the contusion.
2. 22 m.m. X 20 m.m. Lacerated wound in the left lumber region at L1 Vertebra level 3 cm to left of midline. 4 mm area of the margins of the wound was charred. Margins of wound were inverted. There was superficial burn of 4 cm x 2 cm on the lower and middle side of the wound with 3 cm x 1 cm superficial burns just medial to it. On exploration of the abdomen left kidney was shattered with clotted blood in it. There was 5 cm x 5 cm ragged margined lacerated wound on the posterior and anterior walls of stomach. There was 3 cm x 3 cm ragged laceration of wall of small intestine with reddish discolouration around it. There was 4 x 4 cm rest in the

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deep layer of fascia of anterior abdominal wall with tearing of rectus abdominal muscle. Eight card board pieces of size 18 mm x 18 mm x 5 mm to 18 mm x 18 mm x 2 mm, one plastic piece of 14 mm x 17 mm x 17 mm and one silver metal piece of 17 mm x 17 mm x 8 mm was recovered in the subcutaneous tissue of abdominal wall uterus was empty.

He further stated that in their opinion, cause of death was due to shock and haemorrhage as a result of fire-arm injuries causing injuries to the kidney, stomach and intestine etc. The injuries were anti-mortem in nature and sufficient to cause death in normal course of life.

PW 15 Inspector/Investigating Officer Balbir Singh mainly deposed regarding the investigation of the case. He also deposed that he took into possession one little pillow of a baby and blood which was lying on the floor, one pistol .315 bore, one double barrel gun, five empty cartridges, one live cartridge and one arm licence from the spot. They were put in separate sealed parcels and sealed with seal 'RK' and took into possession vide recovery memo Ex.PB. He also prepared rough sketch of pistol, double barrel gun which are Ex.PT and PU, respectively. He also deposed regarding arresting of accused Suresh in this case.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent. He also pleaded that he has been falsely involved in this case. He himself got recorded the FIR and told the police that two unidentified persons had caused the death of his wife with fire-arm and he

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suspected Sanjay Kumar, one of the accused, but the police had not investigated the matter properly and had not challaned the actual culprit Sanjay being a policeman.

However, no witness was examined in defence.

Learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

Aggrieved from the abovesaid judgment of conviction and order of sentence, the present appeal has been filed.

We have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

At the time of arguments, learned counsel for the appellant argued that so many private witnesses have turned hostile and have not supported the prosecution version, which creates a reasonable doubt in the prosecution version. He further argued that there is no cogent evidence on record to connect the accused with the crime and the appellant is entitled to be acquitted of the charges framed against him. He further argued that when the team of forensic experts reached on the spot, .12 bore gun was not found there, which also creates a doubt in the prosecution version. He further argued that neither suspect-Sanjay Sharma was interrogated in the present case, nor arrested by the police and the appellant has been falsely implicated. He further contended that the prosecution has failed to prove guilt of accused and, therefore, this appeal should be accepted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved. .12 bore gun, recovered from the spot,

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from this .12 bore double barrel licensed gun of the appellant. The pellets removed from the dead body stood matched which connect the present accused-appellant with the crime. He further argued that the occurrence took place at night time in the room of the present appellant where he and the deceased were sleeping. The version given by the appellant is found false as there is no version that the unidentified persons had fired from the licensed gun of the appellant. These facts were especially within the knowledge of the present appellant and burden of proof lies upon him under Section 106 of the Indian Evidence Act, 1872, but he has not produced any cogent evidence to prove his version that the unidentified persons fired on Anita. He further argued that case of the prosecution has been duly proved beyond doubt and the appellant has been rightly convicted and sentenced.

After hearing learned counsel for the parties and perusing the evidence on record minutely and carefully, we find that in the present case, though the private witnesses have not supported the prosecution version and have turned hostile, but the factum of not supporting the prosecution version in no way will create a reasonable doubt in the prosecution version. They are not the eye-witnesses to the occurrence, rather as per the evidence, accused-Suresh Kumar was present in the room and door of the room was opened by the accused himself as stated by PW 3, who was the tenant in the house and sleeping outside the house alongwith Ram Bahadur on another cot. None of the persons had seen anybody coming to the room or going out therefrom after the occurrence. Otherwise also, the fire was shot from the licensed .12 bore gun of the appellant and at the time of arguments, learned

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pellets and empty cartridges were found connecting with the .12 bore licensed gun of the accused from which the shot was fired.

As argued by learned State counsel, the onus was upon the appellant under Section 106 of the Indian Evidence Act, 1872 to tell how the murder of Anita took place. The version given by appellant-accused is found false and is not supported and corroborated by any cogent evidence. The statements of hostile witnesses are having material improvements. They have not given the version of two unidentified persons before the police in their statements under Section 161 Cr.P.C. These are the facts which were especially within the knowledge of the accused-appellant Suresh Kumar, but he has not led any cogent evidence to explain how the murder took place in night time at 2.15 a.m. in the room of his house and whatever explanation he has given by way of FIR, was found false. No defence evidence has been produced by the accused nor he himself has come to the witness box to depose how the occurrence took place. The prosecution has duly proved its case beyond doubt. We have also gone through the findings given by learned trial Court. These are correct, as per evidence and law. The trial court has appreciated the evidence in right perspective.

In view of the above discussion, we find that the impugned judgment of conviction dated 14.11.2002 and order of sentence dated 16.11.2002 passed by learned Additional Sessions Judge (*Ad hoc*), Karnal do not require any interference from this Court and the same are upheld.

Therefore, finding no merit in the present appeal, the same is

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As appellant-Suresh Kumar is on bail, his bail bonds stand cancelled and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

23.03.2018
parveen kumar

(A.B. CHAUDHARI) (INDERJIT SINGH)
JUDGE JUDGE

Note:	Whether speaking/reasoned	:	Yes
	Whether reportable	:	No