

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-829-DB of 2003 (O&M)

Date of decision : 26.11.2019

...

Sita Ram

.....Appellant

vs.

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice Jitendra Chauhan
Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Amandeep Singh, Advocate for the appellant

. Mr. Vikrant Pamboo, Deputy Advocate General,
Haryana, for the respondent.

...

H. S. Madaan, J.

Briefly narrated, the prosecution story is that complainant Nawal Kishore, aged about 32 years, resident of Nagariya, Police Station Helana, District Bharatpur (Rajasthan), had come to see his cousin Bhim Singh s/o Giasi Ram Saini (deceased), working in I.B.P. Pawna Hotel at Hodal, on 3.10.2002. At about 8.00 p.m., there was a breakdown of the electricity supply. Therefore, complainant Nawal

Kishore alongwith Bhim Singh, Shiv Charan, Girraj- Sweeper, went near the generator room of the petrol pump, for the purpose of starting the generator. They came across Sita Ram s/o Ganga Sahai r/o village Banchari, (accused), working as Gunman at the petrol pump. He was having his licensed double barrel gun with him. Bhim Singh asked Sita Ram to start the generator. Sita Ram got offended and abused Bhim Singh and fired a shot at him from his licensed double barrel gun. Resultantly, Bhim Singh was hit on the left side of his abdomen and fell down. Thereafter, Sita Ram fired twice from his gun. Nawal Kishore and Shiv Charan were having a torch with them. After causing firearm injury to Bhim Singh, Sita Ram went towards petrol pump. On hearing the gun shots, employees of I.B.P., Pawna Hotel and those of petrol pump rushed to the spot. Complainant Nawal Kishore alongwith Shiv Charan, with the help of Prem Singh removed Bhim Singh to Diamond Hospital, Palwal, in a Maruti car. However, keeping in view his serious condition, he was referred to E.M.C. Faridabad and got admitted there.

On 3.10.2002, on getting information at Police Station Hodal, that a gunman had opened fire at I.B.P. a police party headed by ASI Ram Rattan, went to petrol pump I.B.P., from where the Incharge Police Officer came to know that injured Bhim Singh had been taken to Diamond Hospital, Palwal. Accordingly, the police party went there. From that hospital, it was informed that injured had been referred to E.M.C. Faridabad. The police party went there on 4.10.2002 and obtained opinion of the attending doctor regarding

fitness of injured Bhim Singh to make statement. The attending doctor however, declared him unfit to do so. However, Nawal Kishore, a cousin of the injured was found to be present nearby and his statement was recorded, which was signed by him. His signatures were attested by ASI Ram Rattan. ASI Ram Rattan appended his endorsement below such statement and sent *ruqa* to the Police Station through Constable Vinod Kumar, on the basis of which formal FIR No. 409 dated 4.10.2002, for the offences under Section 302 IPC and Section 27 of the Arms Act, was registered against accused – Sita Ram, at Police Station Hodal.

The police party had gone to the spot. The Investigating Officer prepared rough site plan of the place of the incident and recorded statements of the witnesses. He lifted bloodstained earth and two empty shells from the spot; prepared separate sealed parcels thereof, which were then taken into police possession. The spot was got photographed.

On receipt of V.T. Message from Police Station Kotwali, regarding death of Bhim Singh, SI Bharat Singh, SHO, Police Station Hodal, added the offence under Section 302 IPC in the FIR and sent special reports to the higher authorities. He went to Escorts Hospital, where dead body of Bhim Singh was lying. He conducted inquest proceedings with regard to unnatural death of Bhim Singh, and prepared report Exhibit PQ in that regard. He deputed HC Ram Kishan to get post mortem examination conducted on the dead body of Bhim Singh. Then he went to village Banchari and arrested

accused Sita Ram. A licensed gun alongwith four live cartridges was recovered from him, which were taken into possession vide memo Exhibit PN. Then SI Bharat Singh alongwith the accused went to Bus Stand Hodal, where he came across HC Ram Kishan, who handed over one sealed parcel containing pellets to SI Bharat Singh. The said parcel was taken into police possession.

After completion of investigation and other formalities, challan against accused – Sita Ram was prepared and filed in the Court of Judicial Magistrate First Class, Palwal. Learned Magistrate supplied copies of documents relied upon in the challan to the accused, free of cost as provided under Section 207 Cr.P.C. Then finding that the offence under Section 302 IPC was exclusively triable by the Court of Session, vide detailed commitment order dated 14.12.2002, committed the case to the Court of Sessions Judge, Faridabad. On receipt of the challan vide commitment order, finding a prima facie case, charge for the offences under Section 302 IPC and Section 27 of the Arms Act, was framed against the accused, to which he pleaded not guilty and claimed trial.

During the course of prosecution evidence, it examined Dr. Surjit Khurana as PW-1, Nawal Kishore, complainant as PW-2, Shiv Charan as PW-3, Girraj as PW-4, HC Ram Kishan as PW-5, SI Hukam Singh as PW-6, ASI Ram Rattan as PW-7, Prem Singh as PW-8, Dori Lal, photographer as PW-9, Anoj Kumar Draughtsman as PW-10, SI Bharat Singh as PW-11 and Dr. Satish Chaku as PW-12.

Thereafter, tendering certain documents, the prosecution evidence

was closed.

After closure of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to him, which he denied and pleaded innocence. The accused examined Bhup Singh, Clerk, SDM Office, Hodal as DW-1 and thereafter closed his evidence.

After hearing the arguments, learned Sessions Judge, Fariadbad, vide detailed judgment dated 17.9.2003, convicted the accused and vide order of dated 19.9.2003, sentenced him as follows :-

U/s 302 IPC	To undergo life imprisonment with a fine of Rs.250/- and in default of payment of fine to further undergo rigorous imprisonment for one month.
U/s 27 of Arms Act	To undergo rigorous imprisonment for a period of three years with a fine of Rs.250/- and in default of payment of fine to further undergo rigorous imprisonment for a period of one month.

Both the sentences were ordered to run concurrently.

The accused – convict felt aggrieved by the judgment of his conviction and sentence and has approached this Court by way of filing the present appeal, notice of which was given to the State, which has appeared through State counsel.

We have heard learned counsel for the parties, besides going through the record.

At the very outset, it may be mentioned here that the three witnesses, namely, Nawal Kishore, Shiv Charan and Girraj, cited by the prosecution as eyewitnesses did not toe its line and were declared hostile witnesses. PW-2 Nawal Kishore stated that on 3.10.2002, he had gone to see his cousin Bhim Singh deceased; at about 8.00 p.m., there was a power failure. Later on he came to know that Bhim Singh was killed by some one by firing a shot and he did not know as to who has murdered him. He was declared a hostile witness at the instance of Public Prosecutor and the latter was allowed to put questions to him in the form of cross examination. During the course of cross examination by the Public Prosecutor, he was confronted with his statement made to the Police, Exhibit PE, bearing his signatures. Though he admitted his signatures on the statement but denied having made such statement to the police. Rather he stated that his signatures had been obtained on blank papers. It was Nawal Kishore who had set the criminal machinery in motion by reporting the matter to the police, in which he had categorically stated that Sita Ram had fired shots at deceased Bhim Singh, causing him injuries. PW-7 ASI Ram Rattan, who had recorded such statement of complainant had categorically stated that on 4.10.2002, he had gone to Escorts Hospital, Faridabad, where Bhim Singh injured was admitted. Since the doctor had declared Bhim Singh injured, unfit to make the statement, he had recorded statement of complainant Nawal

Kishore, on which he had made endorsement and sent *ruqa* to the Police Station, on the basis of which formal FIR was recorded. Though a suggestion was put to him that he had obtained signatures of Nawal Kishore on blank papers, but that did not seem to be convincing. No motive is shown to be there with the Investigating Agency to involve the accused in this case wrongly and for ASI Ram Rattan and SI Bharat Singh, PWs to depose falsely against the accused. There is nothing on record to show that Nawal Kishore complainant had agitated the matter with the higher authorities that ASI Ram Rattan had obtained his signatures on blank papers and then had written his statement thereon, as per his own wishes. Rather it comes out that Nawal Kishore was won over by the accused and though his presence at the spot at the relevant time and he having seen the incident, comes out to be there, but it seems that he had feigned ignorance regarding the incident, to help the accused in getting acquittal.

Similarly, PW-3 Shiv Charan and PW-4 Girraj, had resiled from the statements made by them to the police, obviously under the influence of the accused. They too were declared hostile witnesses and the Public Prosecutor was allowed to put questions to them in the form of cross examination, during the course of which they were confronted to the statements made by them to the police, which they denied. Again at the cost of repetition, it may be stated that there was no reason for the Investigating Officer to fabricate false statements of the eyewitnesses and neither such witnesses nor any accused had

lodged any complaint against that to the higher police authorities in that regard.

PW-5 HC Ram Kishan, from Police Station Hodal, happens to be a formal witness, who had got the post mortem examination conducted on the dead body of Bhim Singh on 4.10.2002 and who had handed over the sealed parcel containing pellets given to him by the doctor, which he had produced before SHO, Bharat Singh, who had taken the same into possession.

PW-6 SI Hukam Singh, also happened to be a formal witness, who on 4.10.2002, on receipt of *ruqa* had recorded formal FIR under his signatures at Police Station, Hodal.

PW-7 ASI Ram Rattan, who had carried out the investigation in this case partly, corroborated the prosecution story. His testimony is quite incriminating against the accused.

Similarly, PW-8 Prem Singh, happened to be a crucial and important witness for the prosecution, who stated that on 3.10.2002 at about 8.15p.m., on receipt of a telephonic message that a person had been injured, he took the injured to the hospital in his car bearing registration No. HR-50-2300 and on the way injured Bhim Singh had told him that Sita Ram had caused injuries to him, by firing from his gun and Shiv Charan, Nawal Kishore and Girraj were also with him. He further stated that he had taken Bhim Singh to Diamond Hospital, Palwal and then to Escorts Hospital, Faridabad. The testimony of this witness is quite natural and convincing. Though he was cross examined at length on behalf of accused, but

his credibility could not be shattered on any material point. No reason was there with him to depose falsely against the accused. Though learned counsel for the appellant has tried to condemn his deposition for the reason that in his statement under Section 161 Cr.P.C. he had not made any mention of injured telling him that Sita Ram had caused injuries to him by firing a shot from his gun. But that by itself does not lessen the value of his testimony. As per normal human conduct, since he was taking the injured in his car, it would be but natural for him to enquire from the injured as to how he had received the injuries and who had caused the same and injured would definitely give appropriate replies. There is nothing unnatural about the whole thing. Simply because in his statement under Section 161 Cr.P.C. it is not mentioned, does not go to show that the witness had made a wrong statement in the Court in that regard. From his testimony, it also comes out that Shiv Charan, Nawal Kishore and Girraj, were there at the spot and they had accompanied the injured to the hospital, though they had made a complete somersault when they had appeared as witnesses of the prosecution in the Court during trial. This evidence is also admissible in view of the principle of *Res gestae*, being part of the same transaction. This statement so made by the injured before PW-8 Prem Singh can be taken as his oral dying declaration, which is admissible under Section 32 of the Indian Evidence Act. Though the eyewitnesses have not supported the case of the prosecution, but testimony of PW-8 Prem Singh, by itself is sufficient to prove the involvement of the

accused in this case. If we see cross examination of this witness, he comes out to be natural and a reliable person and there is nothing to doubt his deposition. He had stated that police had recorded statements of Nawal Kishore, Shiv Charan and Girraj, in Escorts Hospital, on the same date, though such witnesses denied having made such statements to the police. He stated that when he reached the petrol pump, Bhim Singh was conscious and he became unconscious on the way near about village Bamnikhera. He categorically denied the suggestion that Bhim Singh had not told him anything about who had caused him injuries.

PW-9 Dori Lal photographer has proved photographs of the place of incident alongwith negatives. PW-10 Anoj Kumar, Draughtsman SP Office, Faridabad, has proved the scaled site plan of the place of incident prepared by him. SI Bharat Singh appearing as PW-11 who had carried out the investigation in this case partly, deposed in that regard. PW-12 Dr. Satish Chaku, M.O. Escorts Hospital, Faridabad, who had carried out post mortem examination on the dead body of Bhim Singh, aged about 23 years, with alleged history of sustaining firearm injury at I.B.P. Petrol Pump, near Pawna Restaurant, Hodal, at about 8.00 p.m. on 3.10.2002, deposed regarding his observations. The relevant part of his testimony runs as under :-

“ There was wound of entry circular 5 x 5 cm in left iliac region about 1-1/2 cm above the left groin crease in lateral 1/3rd.

Black tattooing around the wound was

present. Margins directing inward.

The wound was packed with gauze from the Diamond Hospital, Palwal. Bleeding profuse from the wound was present. Wound was directed medially and backwards.

Patient was admitted in surgery and advised x-ray abdomen and x-ray pelvis. The injuries were caused within the probable duration of six hours, with fire arm.

Ex.PS is the copy of MLR. I sent rukka to the police Ex.PT regarding arrival of the injured. I also sent rukka Ex.PT/1 regarding the death of the injured. I have seen the medical certificate regarding the cause of death of Bhim Singh Ex. PT/2, issued by our hospital, according to which the cause of death was haemorrhagic shock with severe hypoxia, secondary to gun shot injury abdomen. (Ex.PT/2 objected to on the mode of proof).”

The black tattooing around the wound goes to show that the shot had been fired from a very close range. Thereafter, the accused was examined under Section 313 Cr.P.C. he had simply denied the incriminating circumstances appearing against him without giving any reason as to why he has been allegedly implicated in this case. Though admittedly the onus is heavy on the prosecution to prove its charge against the accused beyond a shadow of reasonable doubt and this onus to prove guilt of the accused conclusively and affirmatively remains stationary, the accused is not expected to prove his defence with same rigour and exactness. However, some reasonable and

plausible explanation for alleged false involvement in the case should be there. However, no such explanation from the side of accused is coming forth.

Another thing to be seen is that if the accused had been roped in wrongly, he would not have kept quiet with the Damocles sword of conviction hanging over his head. His silence and inaction in the matter goes to show that he has nothing to say and his plea of false implication, lacks merit.

He had examined Sh. Bhup Singh, Clerk, SDM Office, Hodal, as DW-1, who had produced record with regard to the renewal of the arms licence in the name of Sita Ram, that licence valid upto 31.3.2001 and that he had applied for renewal of licence on 30.3.2001.

The report from Forensic Science Laboratory, Madhuban, Karnal (Exhibit PD), is very vital in this case. On the first page, description of the articles containing in parcels is given, which is as under :-

<u>Description of article(s) contained in parcel(s)</u>		
Parcel No.	No. & Seal Impression	Description of parcel(s)
I	2 of R.R	Stated to contain blood stained earth lifted from the place of occurrence. (Sent to serology Division)
II	2 of R.R	Contained two 12 bore fired cartridge cases. (Marked C/1 and C/2 by me)
III	4 of S.B	Contained one 12 bore DBBL gun No.20378-99 alongwith four 12 bore

- live cartridges stated to have been recovered from accused Sita Ram. (Marked W/1 by me).
- | | | |
|----|------------------------|---|
| IV | 1 of MSBKH
(doctor) | Contained pellets and blood in a glass vial(Sent to Serology Division) |
| V | 3 of MSBKH
(doctor) | Stated to contain clothes of Bhim Singh Saini. (First examined in Ballistic division then sent to Serology Division.) |

LABORATORY EXAMINATION

Products of combustion of smokeless powder were detected from the barrel of 12 bore DBBL gun marked W/1. Test firings were done in the laboratory from 12 bore DBBL gun W/1. Its firing mechanism was found in working order.

The class as well as individual characteristic marks present on 12 bore fired cartridge cases marked C/1, C/2 and those on test cartridge cases fired from 12 bore DBBL gun W/1 were examined and compared under stereo and comparison microscope.

Clothes contained in Parcel No.V were examined for the presence of firearm discharge residue. Lead was detected in the margins of holes on the clothes contained in Parcel No.V. Blackening was also present around the hole on the T-shirt. Clothes were also examined under stereo microscope.

Pellets contained in parcel No. IV were washed, dried, weighed and examined under stereo microscope.

RESULT

1. The 12 bore DBBL gun marked W/1 is a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was found in working order.
2. 12 bore fired cartridge cases marked C/1 & C/2 have been fired from right and left barrels respectively of

12 bore DBBL gun W/1 and not from any other firearm even of the same make and bore because every firearm has got its own individual characteristic marks.

3. Hole in the clothes contained in parcel No. V has been caused by pellet projectiles.

4. Pellets contained in parcel No. IV are of size (1).

Such pellets are usually loaded in shotgun cartridges including 12 bore.

5. Report in original from Serology Division is enclosed herewith.

Note: 1) Four number of 12 bore live cartridges contained in parcel No. III have been used in test firing in the Laboratory.

2) After examination, the exhibits examined in the Ballistics Division were resealed alongwith their original wrappers with the seal of DD Balli./FSL(H).”

Thus it comes out that the shots had been fired from the licensed double barrel gun of the accused which was recovered from his possession and the pellets recovered from the body of deceased during the post mortem examination, are also connected with the cartridges so fired from the said gun. This report itself is sufficient to establish the involvement of the accused in the incident and to show that it was he who had fired shots at the deceased from his licensed double barrel gun, causing him serious injuries, to which he had succumbed. His intention to murder, obviously comes out to be there. The licensed gun was obviously used for wrong purpose of committing murder of a human being. Therefore, charge for the

offences punishable under Section 302 IPC and Section 27 of the Arms Act, stands established against the accused, conclusively and affirmatively and there is absolutely no doubt in the mind about the guilt of the accused.

It needs to be mentioned here that for the reason that the eyewitnesses have not chosen to support the prosecution case and have resiled, does not mean that it would warrant verdict of acquittal for a manipulating accused allowing him to succeed in derailing the path of justice. The Court is not to sit as a silent spectator and act in a mechanical manner. It is to ensure that the justice is done in every case, convicting the guilty person, whereas acquitting the innocent.

The judgment passed by the trial Court is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therewith, which might have called for interference by this Court on the point of conviction or sentence.

The appeal is absolutely without any merit and the same stands dismissed.

Accused – convict Sita Ram is stated to be on bail, granted to him by this Court, while suspending his sentence vide order dated 14.12.2007. His bail is cancelled. Learned Chief Judicial Magistrate, Faridabad, is directed to issue arrest warrants of such accused and to take him into custody and make him undergo the remaining part of his sentence.

Since the licensed gun had been used for an unlawful and

illegal act i.e. for committing murder of an innocent human being, it is ordered to be confiscated to the State.

A copy of this judgment be sent to Chief Judicial Magistrate, Faridabad, for compliance.

26.11.2019 chugh	(Jitendra Chauhan) Judge	(H.S. Madaan) Judge
	Whether speaking / reasoned	Yes / No
	Whether reportable	Yes / No