

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-600-DB-2012
Reserved on : 18.09.2019
Date of decision : 23.09.2019

Parhlad Singh and another

... Appellants

Versus

State of Haryana

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU***

Present: Mr.Hitesh Verma, Advocate
for the appellants.

Mr.Vivek Saini, DAG, Haryana.

Mr. R.S.Mamli, Advocate
for the complainant.

RAJIV SHARMA, ACTING CHIEF JUSTICE

This appeal is instituted against the judgment dated 18.03.2011 and order dated 23.03.2011 rendered by the learned Sessions Judge, Fatehabad, in Sessions Trial no.32 dated 03.09.2009 whereby the appellants were charged with and tried for offences punishable under Sections 450, 302, 307 read with Section 34 of the Indian Penal Code (in short 'IPC') and under Sections 27 and 25 of the Arms Act. They have been convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months each, for offence punishable under Section 302 read with Section 34 IPC. They have also been convicted

and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months each, for offence punishable under Section 307 read with Section 34 IPC. They have been further convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months each, for offence punishable under Section 450 read with Section 34 IPC. They have been further convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.3000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month, for offence punishable under Section 25 of the Arms Act. They have been further convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months, for offence punishable under Section 27 of the Arms Act. All the sentences were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that Sub Inspector Manoj Kumar along with other officials were present in a government vehicle at village Dingsara on 10.03.2009. He received a wireless message that one Chhotu Ram of village Bodiwali was murdered while Raj Kumar son of Ram Sarup was admitted in Pahawa Hospital, Fatehabad, with fire arm injuries. Sub Inspector Manoj Kumar reached at the house of Chhotu Ram. Complainant Sudhir Kumar son of Chhotu Ram got recorded his statement to the police to the effect that at about 1.00 P.M. he, his father

Chhotu Ram and Raj Kumar son of Ram Sarup were sitting in their house. In the meantime, accused Parhlad armed with a pistol, Pardeep alias Dholu armed with pistol and Sandeep alias Poppiya entered their room. Parhlad exhorted that murderer of his brother has been found today and saying so, he fired a shot towards his father with the pistol. Pardeep also fired a shot towards Raj Kumar. He ran away from the spot. When he came back, he found the dead body of his father lying in the street in front of their house with fire arm injuries on his stomach, chest and head. Thereafter, he raised alarm. The motive behind the incident was that murder of Bansi, brother of accused Prahlad had taken place for which he and his father were challaned. Sub Inspector Manoj Kumar inspected the spot. Inquest proceedings were completed. He lifted one cartridge of 8 mm and one fired cartridge from *Chabutra*, one fired cartridge from near the dead body, one broken *sulfi* made of mud and bead string from nearby the dead body. One fired bullet was also recovered from below the dead body and blood stained earth was also lifted from near the head of deceased Chhotu Ram. All these articles were converted into parcels. The dead body was sent for post-mortem examination. Sub Inspector Manoj Kumar reached Pahwa Hospital, Fatehabad. He sought opinion of the doctor regarding fitness of injured Raj Kumar on which the doctor declared Raj Kumar unfit to make the statement. Dr.Manmohan Pahwa had handed over to him two sealed parcels containing shirt and fired cartridges which were also taken into possession. Accused were arrested. Accused got recovered the pistols. During investigation, Sandeep was found innocent. Investigation was completed. Challan was put up after completing all the codal formalities.

3. The prosecution examined as many as 14 witnesses. Statements

of accused were recorded under Section 313 Cr.P.C. They denied the case of prosecution. They had examined two witnesses in support of their case. The appellants were convicted and sentenced, as noticed hereinabove. Hence the appeal.

4. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove its case against the appellants.

5. Learned counsel appearing on behalf of the State and counsel appearing on behalf of the complainant have supported the prosecution case.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. PW-1 Dr.Manmohan Pahwa deposed that on 10.03.2009 at 2.00 P.M. Raj Kumar son of Ram Sarup was admitted in the hospital. He medico legally examined him. He noticed the following injuries on his person:-

“1. A small lacerated wound present over posterior aspect right shoulder size was 2 cm x 2 cm, bone deep. Gush of blood was coming out. Margins of wound were ragged. Corresponding hole was present in shirt. X-ray was advised.

2. Gross swelling was present over right supra clavicular area of shoulder. It was associated with red bruise and tenderness. X-ray was advised.”

He advised X-rays for injuries no.1 and 2. Both injuries were fresh within four hours duration by fire arm. According to X-ray report, injury no.1 was fracture of right greater tuberosity of humerus without callus formation. X-ray of injury no.2 disclosed a cylindrical metallic object was present in supra right clavicular area. In his cross-examination, he deposed that

according to his opinion, injury no.2 was not an independent injury, rather it was part of injury no.1. Blackening was not present on the margins of injury no.1. He could not tell the range of fire arm. He extracted metallic object from right supra clavicular area. He did not ask from the injured who had caused him injuries. He was recalled for further examination. He deposed that fired bullet was the same which was taken out from the body of injured Raj Kumar. The same was Ex.MO/11. He also identified the shirt which was worn by Raj Kumar at the time of incident. In his cross-examination after his further examination, he deposed that in case of fire injuries, the bullet or pellet entered in the body, then it would cause lacerated wound. There was no external injury mark over injury no.2.

8. PW-2 Dr.Dalip Singh along with Dr.Kuldeep Saini conducted the post-mortem examination on the dead body of Chhotu Ram. He noticed the following injuries on the dead body:-

“1. A lacerated wound of size 18 cms x 10 cms with clotted blood on the right temporo-parietal bone area with brain matter comes out and margins were burnt with blackening.

2. A lacerated wound of size 25 cms x 10 cms with matter come out from the brain on the left temporo-occipital bone including the left frontal bone and part of nose. The margins were burnt and blackened. The skull bone was fractured.

3. An oval entry wound of size 3 cm x 2.5 cm with inverted margins and burning and blackening were present in the right mammary area at mid clavicular area and depth was 8 cms.

4. An oval entry wound of size 2.5 cm x 2 cm with inverted margin with burning and blackening on the right hypochondrium region 4 cm right lateral at mid

clavicular region and depth was 12 cms.

5. *An everted margin wound of size 3 cms x 3 cms on the right middle back and 2 cm lateral to the middle line of body.”*

In their opinion, the cause of death was due to hemorrhage and shock and due to injury to the vital organ by fire arm injury, which was ante mortem in nature and sufficient to cause death in ordinary course of nature. He was also called for further examination. According to him, the pellets shown to him were the same which were removed from the dead body of Chhotu Ram at the time of post-mortem examination.

9. PW-4 HC Bhim Singh deposed that he joined investigation with SI Manoj Kumar on 10.03.2009. The post-mortem was conducted on the dead body of Chhotu Ram. In his cross-examination, he deposed that first of all, SHO recorded the statement of Sudhir. Then he prepared the scaled site plan. The house of Chhotu Ram was situated towards the Western side of village Bodiwali. The dead body of Chhotu Ram was lying outside the door under the Chabutra in street. The street was about 20' wide. There were several houses near the house of Chhotu Ram.

10. PW-5 SI Hans Raj deposed that doctor declared Raj Kumar unfit to make statement on the application of the investigating officer. The doctor handed over him one sealed parcel containing blood stained clothes of injured Raj Kumar and one vial containing bullet which were handed over to SHO Manoj Kumar. Accused Parhlad made a disclosure statement Ex.P13 that he had concealed a 12 bore country made pistol along with one live cartridge and two empty cartridges of the same bore which were wrapped in a polythene in the heap of wood in village Nagrana (Rajasthan) in shamlat land. Accused Pardeep was also interrogated. He made disclosure

statement Ex.P14 to the effect that he had kept concealed one pistol of 315 bore and one live cartridge under the heap of woods in the field of his Mousi Salochna. Thereafter, both the accused were produced in the Court. Pardeep alias Dholu led the police party in pursuance of his disclosure statement and got recovered one pistol 315 bore along with live cartridge. Thereafter, pistol and cartridge were converted into parcel. Parhlad got recovered 12 bore pistol along with one live cartridge and two empties. These were taken into possession. He categorically admitted that place of recovery was accessible to all the persons. No person was called to ascertain the ownership of the place of occurrence. The place of recovery of pistol by accused Parhlad was about 120 kms from the police station. They did not record any entry in the police station regarding their arrival and departure nor they took any help of local police.

11. PW-8 Balwant Singh had prepared the site plan Ex.P20.

12. PW-12 Raj Kumar deposed that on 10.03.2009 on the day of *Holi*, he along with Chhotu Ram son of Har Lal was going in the street. 2/3 unknown persons who were hiding themselves, fired at him and and Chhotu Ram. He received injuries on the back of his shoulder. Thereafter, he ran away from the spot. He did not know what happened thereafter. The accused present in the Court were not the assailants who had fired upon him. He was declared hostile and cross-examined by the learned Public Prosecutor. He denied the contents of statement Ex.P25. He admitted that he was medico legally examined at Pahwa Hospital, Fatehabad. The doctor did not take into possession his clothes.

13. PW-13 Sudhir is the material witness. According to him, on 10.03.2009 at about 1.00 P.M. he, his father Chhotu Ram and Raj Kumar

son of Ram Sarup were present in a room of their house. In the meanwhile, accused Parhlad along with Pardeep alias Dholu and Sandeep alias Popia came there. They were carrying pistols in their hands. Parhlad raised *lalkara*. Then accused Parhlad fired a shot from his pistol upon his father. Accused Pardeep alias Dholu fired a shot from his pistol on Raj Kumar. He witnessed the occurrence. He was standing by the side of gate of room. He was frightened and ran away in the courtyard and then scaled over from the wall. He came back at the spot and saw the dead body of his father lying in the street in front of their house. His father was having fire shot injuries on his head, chest and stomach. He raised alarm. When he came back, he did not find Raj Kumar on the spot. Some villagers had gathered at the spot. The motive of the crime was that brother of accused Parhlad was murdered and he and his father were charged in that case. He and his father were later on acquitted. Police inspected the spot. Police lifted blood from the room. Police also lifted one live cartridge and blood from *Chabutra* of their house. One empty cartridge was also lifted by the police. The blood stained earth and one bullet beneath the dead body of his father were also lifted by the police. Police also lifted one broken *sulfi*. In his cross-examination, he categorically admitted that murder of Bansi Lal took place in the year 2001. He was tried by Juvenile Board, whereas his father was tried by Sessions Court. The case against his father was decided in the year 2004 whereas the case against him was decided in the year 2009. Parhlad was residing in the village even after the murder of Bansi Lal. No altercation or quarrel took place between them and Parhlad from 2001 to 2009. He along with his father was sitting in the Baithak. The shot was fired by Parhlad from the distance of 5'. Pardeep had fired the shot from the distance of 6'. The

boundary wall of the courtyard which he scaled to run away was of the height of about 6½' / 7'. He did not receive any mark of injury while scaling the wall. He ran away towards the abadi of the village and covered the distance of about 7-8 acres and sat under a Jal tree. He remained there for about 7-8 minutes. He was continuously raising the alarm. He had not seen any person going towards their house after raising alarm by him. He had not contacted Sarpanch, member panchayat or any respectable of the village to accompany him to their house. When he came back to his house after about 7-8 minutes of the occurrence, he found about 50 persons gathered at his house. Dalip, Inderjeet, Om Parkash and Hanuman etc. were also present. The dead body of his father was lying in the street at that time. He did not touch the dead body of his father to see whether his father was alive or not. Police arrived at the spot at 4.30 P.M.

14. PW-14 Sub Inspector Manoj Kumar deposed that he along with SI Hans Raj and other police officials were present in government vehicle with driver EHC Gurbachan Singh in Dingsra. He received information that Chhotu Ram was murdered. Raj Kumar had received injuries. He was admitted in Pahwa Hospital, Fatehabad. He reached the spot. Sudhir Kumar got recorded his statement Ex.P11. FIR was registered. DSP was called at the spot. He prepared inquest report Ex.P25. He lifted blood stained cup lying in the room of the house of Chhotu Ram with the help of cotton swab. He also lifted the blood from the *Chabutra* on the cotton bandage. One live cartridge on which 8 mm was written on its tail and one fired cartridge were also lifted from the *Chabutra*. One fired cartridge was lifted from near the dead body. One broken *sulfi* made of mud and bead string were also lifted from near the dead body of Chhotu Ram. One fired bullet was also

recovered below the dead body. One mobile phone was also lifted from the spot. These were taken into possession. Body was sent for post-mortem examination. The case property was deposited with MHC. Accused Parhlad made disclosure statement Ex.P13. On 15.03.2009 accused Parhlad led the police party to village Nagrana, District Hanumangarh (Rajasthan). He got recovered one pistol 12 bore, one live cartridge and two empty cartridges. Accued Pardeep got recovered .315 bore along with one live cartridge from village Khyonwali, in pursuance of his disclosure statement. In his cross-examination, he deposed that information was received at 1.15 P.M. He reached the spot at 1.30 P.M. He did not notice any blood stains on the clothes of Sudhir. He recorded the statement of Sudhir. There was no mark of pellet or bullet on the surrounding walls at the spot. No trail of blood was found at the spot. There was no mark of pellet or bullet on the doors or walls of the Baithak. Village Kheowala was at a distance of about 70-80 kms. from village Bhattu Kalan. He took into possession Ex.P4 from Pahwa Hospital, Fatehabad. At point mark A on Ex.P4, it was written that patient received injury accidentally.

15. DW-1 HC Radhe Shyam deposed that FIR no.59 dated 01.04.1996 was registered against Chhotu Ram under Sections 279/337/304-A IPC. FIR no.229 dated 05.11.2000 was also registered against Chhotu under Sections 452/324 IPC. FIR no.256 dated 24.12.2006 was registered against Chhotu Ram under Section 323, 452, 506 IPC. FIR no.5 dated 05.01.2007 was registered against Chhotu Ram under Sections 25/54/59 of Arms Act. FIR no.101 dated 26.04.2007 was registered against Chhotu Ram and Om Parkash under Sections 324, 285, 506 IPC and 25 of Arms Act. FIR no.109 dated 07.05.2007 was registered against Chhotu Ram

under Sections 25/54/59 of Arms Act. FIR no.3 dated 04.01.2007 was registered against Chhotu Ram under Section 25/54/59 of Arms Act.

16. DW-2 Constable Surinder Pal brought the record of FIR no.349 dated 07.08.1984 registered against Chhotu Ram under Section 25/54/59 of Arms Act.

17. The FSL report is Ex.P36. The result reads as under:-

“1. The Countrymade pistols marked W/1 (Chambered for .315” cartridges) and W/2 (Chambered for 12-bore cartridges) are firearms as defined in Arm Act 54 of 1959. Their firing mechanism were found in working order.

2. The .315” fired cartridge cases marked C/1, C/2 and .315” fired bullets marked BC/1, BC/2 have been fired from Countrymade pistol marked W/1 and not from any other firearm even of same make bore/ caliber, because every firearm has got its own individual characteristic marks.

3. .315” misfired cartridge marked MC/1 has missed-fire from Countrymade pistol W/1.

4. The 12-bore fired cartridge cases marked C/3, C/4 have been fired from Countrymade pistol marked W/2 and not from any other firearm even of same make and bore/caliber, because every firearm has its own individual characteristic marks.

5. The burst tear/hole on the shirt contained in parcel No.VIII has been caused by shot-gun projectiles fired from close distance.

6. The hole on the shirt contained in parcel No.X has been caused by a bullet projectile.

7. The pellets contained in Parcel No.IX were found to be fired lead pellets of size (B). Such type of pellets are normally loaded in shot-gun cartridges such as 12

bore.

8. The metallic rings contained in parcel No.IX are not the projectiles of firearm ammunition and could be the pieces of metallic chain.

9. Report in original from Serology division is enclosed herewith.”

18. According to FSL report Ex.P35, blood was found on exhibit-1 (Chinese cup), exhibit-2, exhibit-7 (pieces of bones), exhibit-8a (kurta), exhibit-8b (pyjama), exhibit-8c (underwear), exhibit-8d (shoes) and exhibit-10 (kurta). Blood was also detected on exhibit-6 (blood stained earth) and exhibit-8e (mala, Rudraksh).

19. The cause of death, according to PW-2 Dr. Dalip Singh, was due to hemorrhage and shock and due to injury to vital organ by fire arm injury. The injuries were ante mortem in nature which were sufficient to cause death in ordinary course of nature. PW-1 Dr. Manmohan Pahwa had noticed two injuries on the person of Raj Kumar at the time of examination on 10.03.2009.

20. The motive attributed to the appellants is that Bansilal, brother of accused Parhlad, was murdered by PW-13 Sudhir and his father Chhotu Ram (deceased). The fact of the matter is that as per cross-examination of PW-13 Sudhir, the murder of Bansilal took place in 2001. His father Chhotu Ram was acquitted in 2004. PW-13 Sudhir was acquitted in 2009. PW-13 Sudhir, in his cross-examination, had categorically admitted that no altercation took place between them and Parhlad since 2001 to 2009. According to PW-13 Sudhir, the incident had happened in the room. He ran away from the spot by scaling the wall. The height of the wall was 6 ½' to

7'. He ran away towards abadi of the village. He went upto distance of 7-8 acres and sat under the Jal tree. He remained there for about 7-8 minutes. The conduct of PW-13 Sudhir is unusual. The first instinct of PW-13 Sudhir was to look after his father, who, according to him, was shot at by accused Parhlad. He came back after 7-8 minutes. Even he did not touch the body of his father to see whether his father was alive or not. When he came back after 7-8 minutes of occurrence, 50 persons had gathered at the spot. The dead body of his father was lying in the street at that time. According to PW-13 Sudhir, police reached at the spot at 4.30 P.M., though PW-14 investigating officer Manoj Kumar deposed that he reached the spot at 1.30 P.M. He had not noticed any marks of pellet or bullet on the surrounding walls at the spot. No trail of blood was found at the spot but only blood spots were there. There was no mark of pellet or bullet on the doors or walls of the Baithak. According to PW-13 Sudhir, his father was shot in the room along with Raj Kumar and his father received injuries on head, chest and stomach. Thus he could not come to the street from the room in seriously wounded condition. No trail of blood was found at the spot by PW-14 Manoj Kumar. PW-12 Raj Kumar had not supported the case of prosecution. He had only deposed that he along with Chhotu Ram was going in the street. 2-3 unknown persons, who were hiding themselves, fired at him and Chhotu Ram. He received injuries on the back of his shoulder. Thereafter, he ran away from the spot. He was declared hostile. According to him, the accused present in the Court were not the assailants who had fired upon him. It was impossible for Chhotu Ram to come out in the street from room with a lacerated wound of size 18 cms x 10 cms on the right temporo-parietal bone area when brain matter had also come out. A

lacerated wound of size 25 cms x 10 cms was also present on the left temporo-occipital bone including the left frontal bone and part of nose and the matter has also come out from the brain. There was also injury on right mammary area at mid clavicular area with depth of 8 cms. PW-13 Sudhir has also deposed that he had seen the dead body in the street. The presence of PW-13 Sudhir on the spot is doubtful. Firstly, he ran away from the spot and came back on the spot after 7-8 minutes. According to him, his father along with PW-12 Raj Kumar was shot in the room but body was found in the street. According to inquest report, body was found at point A in the street as per column no.24. The pieces of flesh were found at point F and chillam with tobacco was found at point B. We have seen the original site plan Ex.P20 prepared by PW-8 Balwant Singh. In this also, body of Chhotu Ram has been shown at place A towards the extreme end of road. The width of the road is 20' close to the water channel.

21. PW-4 HC Bhim Singh has also deposed that dead body of Chhotu Ram was lying outside the door under the Chabutra in the street. The street was about 20' wide. According to PW-5 SI Hans Raj, accused Parhlad was interrogated in the police station on 14.03.2009. No person was called during interrogation. No person from the village was called to enquire regarding the ownership of the place of occurrence. The place of recovery was accessible to all the persons. PW-14 Sub Inspector Manoj Kumar has also admitted that he recorded the statement of Sudhir during inquest proceedings. He admitted that during the inquest proceedings, Sudhir did not state in his statement that he was present at the spot at the time of occurrence. He prepared rough site plan on the pointing out of Sudhir. He also admitted that in the rough site plan, he had not shown any

point from where Sudhir had witnessed the occurrence. He also admitted that in the statement of Raj Kumar recorded under Section 161 Cr.P.C., he had not mentioned that Sudhir was also present at the house at the time of occurrence. Raj Kumar had stated that they were taking liquor at the time of occurrence. He and Chhotu Ram were present in the Baithak at that time. He further deposed that he reached the spot at 1.30 P.M. Only Sudhir was present at that time. Sudhir while appearing as PW-13 deposed that about 50 persons were gathered when he came at his house and the police reached at 4.30 P.M. PW-14 Manoj Kumar had not recorded the statement of any neighbours under Section 161 Cr.P.C. The body, as per site plan prepared in inquest report Ex.P25, was found near the boundary wall which was 20' wide. The distance between the dead body and Chabutra would be about 25'. As per PW-14 Manoj Kumar, Raj Kumar had stated that they were taking liquor in the Baithak at the time of occurrence. However, it has not been mentioned in the statement of Raj Kumar recorded under Section 161 Cr.P.C.

22. The presence of PW-13 Sudhir on the spot, in view of observation made above, is doubtful. The case of the prosecution has not been supported by PW-12 Raj Kumar, injured witness. He had not identified the accused in the Court. The incident, according to PW-13 Sudhir, had happened in the room but body was found in the street. The motive attributed to the appellant was that Bansi Lal, brother of Parhlad, was murdered by deceased Chhotu Ram and Sudhir. However, the same incident had happened in year 2001. Chhotu Ram was acquitted in the year 2004 and Sudhir was acquitted in the year 2009. The relations between them and Parhlad after the incident of year 2001 were cordial. The prosecution has

failed to prove the charges against the appellants beyond reasonable doubt.

23. Accordingly, the appeal is allowed. The judgment dated 18.03.2011 and order dated 23.03.2011 are set aside. The appellants are acquitted by giving them benefit of doubt. Appellants are in custody. They be released forthwith if not wanted in any other case. Their release warrants be prepared.

(RAJIV SHARMA)
ACTING CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

September 23, 2019.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No