

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

CRA-D No. 634-DB of 2012 (O&M)

Reserved on : 11.1.2019

Date of decision : 17.1.2019

Rajesh @ Sarkari and others

.... Appellants

versus

State of Haryana

... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep S. Sandhu, Advocate, for the appellants.

Mr. Vishal Garg, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. This appeal is instituted against the common judgment dated 12.6.2012 and order dated 14.6.2012 rendered by learned Additional Sessions Judge, Rohtak, in Sessions Case No. 35 of 2007/2010 and Sessions Case No. 36 of 2008/2010, whereby accused Rajesh @ Sarkari, Ajay Hooda and Pehlad Singh @ Harpal were charged with and tried for the offence punishable under Sections 302/34 IPC and Section 25 of the Arms Act. They were convicted and sentenced under Section 302 read with Section 34 IPC to undergo rigorous imprisonment for life and to pay fine of ₹ 10,000/- each and in default of payment of fine, they were directed to further undergo rigorous imprisonment for one year.

2. The case of the prosecution in a nutshell is that PW4 Azad Singh had lodged the report, Ex.PB, to the effect that his elder son Sandeep was a student of LLB (Final Year), in M. D. University, Rohtak. He had to

appear in the examination. He had gone to the Law Department to prepare for the examination. His son-in-law Naresh came to their house and he was in hurry to leave after meeting Sandeep. He tried to contact him on his mobile phone but his call did not mature. Thereafter, he and his younger son Sunil went to the University on the motorcycle. They reached near the parking sheds near Law Department. They saw 5-6 boys standing under the tin-sheds. They started firing at his son Sandeep. He was standing near them. Sandeep collapsed. He and his son Sunil rushed towards the spot. His son Sunil could identify the three assailants. Three boys fled away towards Delhi road on the silver colour Pulsar motorcycle. They could not notice the registration number of the motorcycle. Blood was oozing out from the abdomen, left arm, left temple and right thigh of Sandeep. Thereafter, Parveen son of Zile Singh and another boy brought Sandeep to PGIMS, Rohtak, in Santro car of Sandeep. However, Sandeep succumbed to the fire arm injuries. Statement was forwarded to the police station. Formal FIR was registered. On completion of necessary investigation, initially challan was put up against two accused, namely, Rajesh @ Sarkari and Ajay Hooda. Subsequently, accused Pehlad @ Harpal was also challaned. Vide order dated 12.4.2008, the learned Additional Sessions Judge directed for consolidation of the supplementary challan with the main challan.

3. The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. The accused examined five witnesses in defence. They were convicted and sentenced, as noticed hereinabove. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment of the learned Court below.

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

6. PW1 Karan Singh deposed that he was posted at Police Post, PGIMS, Rohtak on 26.12.2006. He, EHC Suresh Kumar and Ajit Singh were joined in investigation by ASI Maha Singh. The recovered articles were taken into possession by ASI Maha Singh vide seizure memo. Ex.PA.

7. PW3 Ajit Singh deposed that he went to PGIMS, Rohtak, in Emergency Ward where the police met him. From the spot, the police lifted blood with the help of cotton and put into a small plastic tin. Police also lifted seven empty cartridges and one lead of bullet.

8. PW4 Azad Singh is the eye witness. He deposed that he had one daughter, who is married. He had two sons. The name of the elder son was Sandeep and younger Sunil. Sandeep was a student of LL.B. Final Year in M. D. University, Rohtak. He had to appear in final examination. On 26.12.2006, his son Sandeep had gone to M. D. University for preparing for his examination. On that day, his son-in-law, who had come from Varanasi, wanted to meet Sandeep. He tried to contact Sandeep on telephone but could not contact him. Thereafter, he and his son Sunil went to University on motorcycle for searching Sandeep. When they reached cycle stand of Law Department, they saw car of Sandeep. It was 2.30 P.M. at that time. His son Sandeep along with three boys was seen standing under the cycle-shed.

When they were at a distance of hundred feet away from Sandeep, they saw three boys firing on his son Sandeep. They ran towards Sandeep to save him. All the accused ran away on their motorcycle towards Delhi side. In his cross-examination, he admitted that deceased Sandeep was facing trial in 2-3 cases. In some of the cases, he was acquitted. He denied the suggestion that no examination of final year of LL.B was scheduled to be held in December, 2006. Volunteered that Sandeep was to appear for supplementary examination of LL.B. Final year. The distance between the cycle-shed and crossing might be about 2½ killas. He denied the suggestion that his son Sandeep was not removed by him and his son to PGIMS, Rohtak. He denied the suggestion that he and his son were not present at the time of occurrence.

9. PW5 Sunil has corroborated the statement of PW4 Azad Singh and the manner in which his brother Sandeep was killed. He has also admitted that there was no dispute of any kind between Sandeep and the accused present in the Court before that occurrence. They reached PGIMS, Rohtak, at 2.30 P.M.

10. PW6 Wazir Singh, PW7 Jagram and PW9 Constable Sumit Kumar are the formal witnesses.

11. PW8 Sat Narain deposed that on 8.1.2007 ASI Jag Ram, Moherrir Malkhana, Civil Lines, Rohtak, handed over to him two sealed parcel of clothes with seal RA and doctor, one sealed parcel of blood stained earth, one sealed parcel of seven *khol* cartridges and one *sikka* sealed, one sealed parcel of *kartoos*. The same were delivered at FSL, Madhuban and got the receipt, which was handed over to Jagram Moherrir Malkhana.

12. PW10 SI Mahender Singh, deposed that on 27.6.2007, Rajesh @ Sarkari was interrogated in his and in the presence of SI Rambhaj. He made disclosure statement, Ex.PK, that he along with Ajay and Pehlad Singh came in Law Department on Pulsar Motorcycle bearing HR-10H/2241 silver colour and fired at Sandeep alias Bhandar and committed his murder. He handed over the pistol to Pehlad Singh and motorcycle had already been recovered by the police. Disclosure statement was signed by accused Rajesh as well, by him and SI Rambhaj. On 28.6.2007, accused Ajay Hooda also suffered his disclosure statement, Ex.PN, regarding the occurrence. Accused Rajesh and Ajay Hooda refused test identification parade.

13. PW11 ASI Dharambir deposed that accused Rajesh @ Sarkari and Ajay Hooda were apprehended by SI Manjeet Singh. He arrested both of them. He interrogated the accused. They made disclosure statements, vide Exs. PQ and PR, respectively.

14. PW12 Constable Rajiv Godara deposed that accused Rajesh @ Sarkari and Ajay Hooda made disclosure statements, Ex.PQ and Ex.PR, regarding the occurrence before him.

15. Post-mortem examination of the body of deceased Sandeep Hooda was conducted by PW14 Dr. Sushma Jain along with her colleague Dr. S. P. S. Bhatia. She led her evidence by filing affidavit, Ex.PW14/A. The cause of death was shock and haemorrhage, which was due to fire arm injuries. The injuries were ante-mortem in nature and were sufficient to cause death in natural course. The time elapsed between death and post-mortem examination was within 6 hours to 36 hours. She has described the injuries and also the track of the same in the affidavit. The post-mortem

report is Ex.PS.

16. PW15 Ram Mehar Singh deposed that on 28.5.2007, he was posted in State Crime Branch, Rohtak. He recorded the statement of ASI Jagram Moherrir Malkhana, Police Station, Civil Lines, Rohtak, and EHC Satnarain under Section 161 Cr.P.C. On 25.6.2007, he received telephonic message from SI Ram Kishan, Special Staff, Rohtak, regarding confession made by Rajesh @ Sarkari and Ajay Hooda in FIR No. 311 dated 19.5.2006, registered under Sections 307/34 IPC, Police Station, Civil Lines, Rohtak. He reached Police Station, Civil Lines, Rohtak. He arrested accused Rajesh @ Sarkari and Ajay Hooda. He asked for their test identification parade, however, they refused the same. On 27.6.2007 Rajesh @ Sarkari made disclosure statement, Ex.PK. On 28.6.2007, accused Ajay Hooda made disclosure statement, Ex.PN.

17. PW19 SI Ram Kishan deposed that on 24.6.2007 he was posted as Incharge Special Staff, Rohtak. On that day, he arrested accused Rajesh @ Sarkari and Ajay Hooda in FIR No. 311 dated 19.5.2016, Police Station, Civil Lines, Rohtak. Both of them confessed about their involvement in the crime. They further stated that they as well as Pehlad had fired upon the deceased with their respective weapons and had gone on a motorcycle bearing No. HR-10H/2241, make Discover of *Slaty* colour. The statement of Rajesh @ Sarkari is Ex.PY and statement of Ajay Hooda is Ex.PZ. The motorcycle was recovered. On 25.6.2007, accused Rajesh @ Sarkari was taken to his rented house in Palam Vihar, Gurgaon. He took out the pistol from the bed and the pistol is Ex.P28. Sketch of the pistol is Ex.PCC. It was taken into possession after sealing, vide Ex.PDD. Accused Ajay Hooda had already made statement on 24.6.2007 regarding concealment of his pistol in

his rented house in village Carterpuri, Gurgaon. Copy of statement is Ex.PEE. Thereafter, police went to his house in village Carterpuri, from where he got recovered pistol from the bag. The pistol is Ex.P29. Sketch was prepared, Ex.PFF.

18. PW21 Maha Singh SI (Retd.) deposed that he was posted as Incharge, Police Post, PGIMS, Rohtak, on 26.12.2006. He received a medical ruqqa from PGIMS, Rohtak, regarding admission of Sandeep. He reached the Emergency Ward of PGIMS, Rohtak, where Azad Singh made statement, Ex.PB. He conducted inquest proceedings. He moved application Ex.PU, for post-mortem examination of the dead body of Sandeep. He also lifted one bottle of Old Smuggler brand of whisky.

19. PW22 Balwan Singh, retired ASI, deposed that accused Pehlad @ Harpal was interrogated in his presence. He made disclosure statement, Ex.PKK.

20. The appellants have also examined witnesses in defence. DW1 Jile Singh deposed that he had never given on rent his house, as per site plan, Ex.PHH, to any Ajay Hooda. The rooms of the house were rented out to their labourers. He had not shown any documentary evidence regarding ownership of the house in question.

21. DW2 Rajesh Jogpal brought the summoned record of case bearing FIR No. 341 dated 23.6.2001, registered under Section 454, 380 IPC, Police Station, Civil Lines, Rohtak.

22. DW3 Shamsheer Singh had brought the newspaper '*Hari Bhumi*' dated 23.2.2007, regarding the murder of Sandeep.

23. DW4 Parveen has deposed that Sandeep alias Bhandar (deceased) was his friend. On 26.12.2006, he along with Sandeep and

Sikander were present at the Cycle Stand of Law Faculty, MD University, Rohtak. Sandeep was taking liquor while sitting in his car. After some time, 5-6 persons, aged about 35 to 40 years, came on two motorcycles and started firing indiscriminately upon Sandeep. Sandeep collapsed. He and Sikandar took Sandeep (deceased) to PGIMS, Rohtak, in his own Santro Car and got him admitted there, where he was declared brought dead by the doctors.

24. DW5 Sikander corroborated the statement of DW4 Parveen.

25. What emerges from the appraisal of the evidence discussed hereinabove is that Sandeep was a student of Law. He had to appear in final year examination in M. D. University, Rohtak. PW4 Azad Singh had tried to contact him, however, could not make contact with him. PW4 Azad Singh and PW5 Sunil went to M. D. University. They reached near the parking shed. They saw three boys standing under the tin-sheds. They started firing at Sandeep. He and his son Sunil rushed towards the spot. Sandeep collapsed. His son Sunil identified the assailants. The assailants went towards Delhi road on the Pulsar motorcycle. Registration number of the motorcycle could not be noticed. Blood was oozing out from the abdomen, left arm, left temple and right thigh of Sandeep. He was removed to hospital, where he was declared brought dead.

26. The date of incident is 26.12.2006. Appellants Rajesh @ Sarkari and Ajay Hooda were arrested in FIR No. 311 dated 19.5.2017, registered at Police Station, Civil Lines, Rohtak. They made disclosure statements, Ex.PK and Ex.PN, respectively. On the basis of disclosure statements, pistols were recovered and taken into possession. The sketches were prepared.

27. According to PW15 Ram Mehar Singh on 25.6.2007, he received telephonic message from SI Ram Kishan, Special Staff, Rohtak, about the confession made by Rajesh @ Sarkari and Ajay Hooda. He recorded the statements of the accused. The test identification parade was refused by them. Rajesh @ Sarkari made disclosure statement, Ex.PK on 27.6.2007 and accused Ajay Hooda made disclosure statement, Ex.PN, on 28.6.2007. The weapons were recovered on the basis of disclosure statements made by them. These were sent for FSL examination. FSL report, Ex.PD, in FIR No. 781 dated 26.12.2006, is dated 29.11.2007 and FSL reports (Ex.DY and Ex.DY/1), in FIR No. 311 dated 19.5.2006, is dated 12.3.2007 and 25.9.2007. According to FSL report, Ex. DY, in FIR No. 311, 7.65 mm fired cartridge marked C/1 to C/4 were fired from one and the same firearm and 7.65 mm fired bullet marked BC/1 had been fired from a countrymade firearm. In part report dated 25.9.2007, it has come on record that 7.65 mm fired cartridge case marked C/5 had been fired from pistol, marked W/1, stated to have been recovered from accused Rajesh (chambered for 7.65 mm cartridges) and not from any other firearm. Another pistol marked W/2 (chambered for 7.62/30" cartridges) along with magazine and one 7.62 mm misfired cartridge, marked MC/1, stated to have been recovered from accused Ajay, were tested in the laboratory. 7.62 mm fired cartridge marked MC/1 had missed fire from pistol marked W/2 (chambered for 7.62/30" cartridges). According to laboratory examination, pistols, marked W/1 and W/2 were found in working order.

28. As per FSL report, Ex.PD, the 7.62 mm fired cartridge cases marked C/1 to C/7 and 7.62 mm fired bullets marked BC/1 to BC/3 have been fired from a countrymade pistol marked W/2 (chambered for 7.62 mm

cartridges) (Received in case FSL No. 07/F-3937, FIR No. 311 dated 19.5.2006, registered under Sections 307/34 IPC and Section 25/54/59 of the Arms Act, at Police Station, Civil Lines, Rohtak) and not from any other firearm even of same mark and bore, because every firearm has got its own individual characteristic marks. Pistol marked W/2 stated to have been recovered from accused Rajesh @ Sarkari on 25.6.2007. It is clear from the extra-judicial confession made by accused Rajesh @ Sarkari and Ajay Hooda, vide Ex.PK, and Ex.PN, respectively, that pistol chambered with 7.65 mm cartridge was recovered from accused Rajesh @ Sarkari and pistol chambered with 7.62 mm cartridge was recovered from accused Ajay Hooda. Recovery memos were separately prepared and the sketches were prepared. The learned Court below has correctly given the findings after correct appraisal of the reports, Ex.PD, Ex.DY and Ex.DY/1.

29. Now as far as appellant Pehlad Singh @ Harpal is concerned, he was identified by PW5 Sunil. According to him, Pehlad Singh @ Harpal, was one of the assailants who fired at his brother Sandeep. Accused Pehlad Singh @ Harpal also got the demarcation conducted. Though there is delay in lodging the FIR, but the same is not inordinate. PW4 Azad Singh has also identified accused Pehlad Singh @ Harpal to be one of the assailants.

30. Learned counsel for the appellants vehemently argued that in the present case PW4 Azad Singh and PW5 Sunil had not taken the deceased to the hospital, rather he was taken by DW4 Parveen and DW5 Sikander to the hospital, where the doctors had declared him brought dead. It will not make any difference in the present case, who had taken the deceased to the hospital. The fact of the matter is that Sandeep was removed to the hospital, where he was declared brought dead.

31. Learned counsel for the appellants argued that there are discrepancies in the statements of PW4 Azad Singh and PW5 Sunil. It is stated by PW4 Azad Singh in the ruqqa, Ex.PB, that six boys were standing under the tin-sheds, whereas in his statement, PW5 Sunil, has deposed that there were three boys standing under the shed. The statements of PW4 Azad Singh and PW5 Sunil are duly supported by the medical evidence and other ocular evidence. The appellants have also made extra-judicial confession, Ex. PY, Ex. PZ and Ex. PKK, about their involvement in the present case. It has also come in the evidence that clothes of the deceased i.e. track suit, pant, etc. were stained with blood.

32. The prosecution has proved the case against the appellants beyond reasonable doubt. There is no merit in the appeal. Accordingly, the same is dismissed.

(Rajiv Sharma)
Judge

17.1.2019
vs

(Harinder Singh Sidhu)
Judge

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