

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

CRA-D-No.356-DB of 2013
DATE OF DECISION : 15 / 02 / 2019

Sunil alias Naniya & another

.... Appellants

Versus

State of Haryana

.... Respondent

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

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Present : Mr. Jatinder Dhanda, Advocate
for appellant No.1-Sunil alias Naniya.

Mr. Sunny Bhardwaj, Advocate
for appellant No.2-Sonu alias Satish.

Mrs. Tanisha Peshawaria, DAG Haryana.

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A. B. CHAUDHARI, J.

1. Feeling aggrieved by judgment and order dated 23.03.2013 passed by Additional Sessions Judge, Gurgaon in Sessions Case No.105 of 2010/2011, by which the appellants-Sunil alias Naniya and Sonu alias Satish were convicted for offences punishable under Section 302 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for life and fine, the appellants have filed this appeal.

FACTS:

2. Briefly stated, the prosecution case is that on the intervening night of 02/03.04.2010, Devender Kumar Inspector/SHO, Police Station Civil Lines, received a wireless message in the Police Station, Civil Lines about some shootout in front of Mamta Hospital, Mata Mandir Road, Gurgaon. The police rushed to the Lotus Hospital where PW-3 Karan Saini complainant presented a complaint Exhibit PB to the police. It was

stated in the complaint by Karan Saini that his niece Manju was married to Mohinder Singh son of Banwari Lal Saini at Gurgaon. Mohinder Singh was running a medical store under the name and style of Kritka Medical Store opposite Mamta Hospital. On 02.04.2010 at 9.30/10.00pm when he was at his village Jharsa, he received intimation that Mohinder Singh was shot dead in his medical store and he died on the way to hospital. Hearing the message he rushed to the Lotus Hospital. The case was registered with the Police Station, Civil Lines, Gurgaon. The dead body was sent for post-mortem examination. The Inspector/SHO made the investigation. The disclosure statements of the accused persons were recorded and the challan was filed. The learned trial Court held the appellants guilty of the offence of murder and convicted and sentenced them accordingly. Hence this appeal.

ARGUMENTS:

3. The learned counsel for the appellants vehemently argued that Karan Saini-complainant was an interested witness in getting the conviction of the appellants, since he was related to the deceased. It is then submitted by learned counsel for the appellants that even otherwise his evidence is unreliable and will have to be discarded. According to the learned counsel for the appellants the discovery of the pistols is also false and baseless and is planted one. The FIR was also ante-dated. The witness PW-3 Har Narain Saini, was got up witness, was unreliable. Still the appellants were convicted. PW-4 Ashraf, salesman in the medical shop, said to have been present, was not at all named by PW-3 Har Narain Singh the alleged eye witness. That apart, in case from FIR

No.485 of 2010 which resulted in to acquittal of the accused in that case, the recovery in that case is sought to be connected with the present case. That is obviously false in view of the acquittal in that FIR. In view of judgment of acquittal of these accused persons, it is clear that the discovery/recovery is false. The disclosure statement of the appellants was not admissible. Apart from that, no cash was taken and therefore, there is no motive of robbery which can be stated to have been proved. PW-3 Har Narain Saini was clearly a 'Chance witness' and his evidence was liable to be rejected. The appellants, therefore, claimed acquittal.

4. Per contra, learned counsel for the respondent-State vehemently opposed the appeal and submitted that there is ample evidence on record through witnesses PW-3 Har Narain Saini and PW-4 Ashraf, apart from the recovery of pistols and in the wake of said direct evidence of the witnesses, no fault can be found with impugned judgment and order of conviction. She then submitted that the evidence clearly indicated that the appellants had intention to extract money and, therefore, they fired at deceased resulting into his death. She, therefore, prayed for dismissal of the appeal.

CONSIDERATION:

5. We have heard learned counsel for the rival parties at length and perused the entire record so also the oral as well as the documentary evidence.

6. The evidence of PW-3 Har Narain Saini, who was the eye witness, need not be repeated by us since the trial Court has stated

about his deposition. We, therefore, quote the relevant portion of the trial Court judgment wherein the evidence of PW-3 is discussed:

“PW-3 Har Narain Saini, the alleged eye witness, currently an Advocate practicing at District Court Gurgaon and a former Superintendent in Sessions Court Faridabad, tried to support the prosecution version by stating that on 1.4.2010 his younger brother Om Parkash Saini was admitted in Kalyani Hospital Gurgaon and on 2.4.2010 at about 9.00/9.15p.m. he visited Chemist’s shop of deceased to inquire about some medicines to be administered to his said ailing brother. This witness sat in the shop for a while and after some time, one of the accused came, armed with a pistol. The said accused was identified by him by pointing out towards him to be Sunil son of Abhey Ram. This witness further stated that said accused demanded cash from deceased but latter resisted to hand over money, upon which the said accused opened two round of fire with his pistol at deceased and both fire hit the deceased, which resulted his fall at that very place and accused Sonu alias Satish was also found present on the gate of the Medical Store. This witness further identified the said accused as well. This witness further stated that when main accused Sunil

son of Abhey tried to flee away, then he (PW3) caught him from his collar from back side but after giving a push to him (PW3), accused Sunil alias Nania son of Abhey Ram fled away. He further stated that for some time, he became unconscious and after regaining his consciousness and upon inquiry about the deceased, he came to know (sic) that he (deceased) was rushed to nearby hospital known as Lotus Hospital. He further deposed that he reached in the said hospital where police arrived and took the dead body to General Hospital, Gurgaon. He further testified about the recovery of blood stained earth spectacle smeared with blood, two empty cartridges and one lead of bullet, which were taken into possession of the police vide recovery memo Ex.PC on 3.4.2010 which were converted into sealed parcel and said memo was signed by him and Pawan Kumar as attesting witness. He further deposed about the preparation of rough site plan prepared by police.”

7. Similar is the case with the evidence of PW-4 Ashraf, who was the salesman at the medical store of the deceased. The relevant portion of which reads thus:

“PW4 Ashraf states that on 2.4.2010 at about 9.00/9.15 p.m., he was present at the medical store of

deceased as he was employed there as a salesman and at that time a relative of deceased came there to see the deceased and there deceased asked him to bring tea but when he returned back with tea, he found deceased in a pool of blood and that relative was lying unconscious and cry for help was given, then two neighbourers came and he removed the deceased to Lotus hospital, where he was declared brought dead. This witness further deposed that he saw two youths coming out of shop and running and he could see them from back side but could not identify them. xxx.... xxx.... xxx.... ”

8. PW-4 Ashraf was declared hostile by the prosecution but then he also deposed about the incident that took place in the medical store. He however, refused to identify the accused persons. Insofar as the evidence of PW-3 Har Narain Saini, is concerned, the submission that he was not medically examined when he claimed to have been given push by accused Sunil alias Naniya, will have to be rejected. The trial Court has rightly given the reason about the circumstances which must have led to PW-3 Har Narain Saini getting shaken. We do not find anything wrong with the said finding of the trial Court and therefore, we accept the evidence of PW-3 Har Narain Saini.

9. The fact that acquittal was recorded by the Sessions Judge, Hisar in respect of other FIR No.485 of 2010 and that the recovery of weapons was disbelieved in that case, in our opinion cannot be taken

advantage of in the present case. Recovery of two pistols and live cartridges from the appellants is clearly believable and, therefore, we reject the submission to that effect.

10. Insofar as the evidence of PW-3 Har Narain Saini, is concerned, we have examined the said evidence with caution because he is related to the deceased. But then we do not find any discrepancy or reason to ignore his evidence. His evidence is completely believable and there is no reason for us to disbelieve him merely because he is related to the deceased.

11. It is significant to note and rather a matter of adverse inference against the appellants that when they were asked to give consent for test identification parade they had straightaway refused to undergo the said parade. We are of the view that denial on the part of the appellants to undergo the parade, is certainly a circumstance which could be utilized against the appellants by drawing adverse inference against them. There is a further discussion in the trial Court's judgment in para 22 relating to the evidence of PW-3 Har Narain Saini, who was the eye witness. We quote Paras 22 and 23 from the imputed judgment, which read thus:

“22. Now reverting back to the role of PW3 Har Narain Saini at the scene of crime, it may be mentioned here that his presence at the medical store of deceased is quite natural and probable. He categorically explained the reasons to visit the shop of deceased as he wanted to consult from the deceased

regarding some medicines to be given to his younger ailing brother Om Parkash, who was lying admitted in Kalyani Hospital at Gurgaon. He fainted after the shootout and obviously it was natural out come of the reaction of this attack on the deceased. He unerringly pointed out towards the accused Sunil alias Naniya to be the person holding a pistol, with which he fired twice on deceased, when deceased refused to hand over money to him (accused Sunil alias Naniya). This witness further categorically deposed identifying accused Sonu alias Satish, to be the companion of accused Sunil alias Naniya as he was standing on the gate of medical store. As if it was not enough, this witness bolstered the prosecution case stating that when accused Sunil alias Naniya tried to run away, then this witness caught him from his collar from the back side but he managed to flee away after giving a push and for some time PW3 Har Narain Saini fall unconscious.

23. Merely if PW3 Har Narain was not medically examined for his said medical state of affairs, then no eye brow should be raised. In fact this witness has given a cogent explanation of his not having accompanied the deceased immediately after the assault, to Lotus hospital, Gurgaon. He has

categorically stated that subsequently he went to the said hospital and inquired about the well being of deceased. His cross examination clearly shows that he stuck to his guns and his credibility could not be wilted under the pressure of cross examination. He categorically stated the distance of firing and the location of the deceased and the posture of accused Sunil alias Naniya, who opened fire, while in a standing posture. Merely if nearby shopkeepers or neighbours could not see the occurrence, then it can not be treated as an end of road for the prosecution case because the occurrence took place inside four walls of a small medical store of deceased. PW3 Har Narain categorically stated that after regaining his composure, he found Ashraf (PW4) and 2-3 other persons. The failure on his part not to record his statement in the Lotus hospital can not be blown out of proportions because the theory of prosecution on the day of assault as well as on the next day, was substantially the same.”

12. Thus we accept the direct ocular evidence of PW-3 Har Narain Saini, which is trustworthy. That apart FSL report Exhibit PA produced by the prosecution clearly corroborates the prosecution evidence about the firing from the pistols.

13. The upshot of the above discussion is that the appellants committed murder of Mohinder Singh by means of the pistol fired at him and there is no reason to extend any benefit of doubt as claimed by the counsel for the appellants. We are, therefore, fully convinced with the finding of conviction in the judgment and order impugned which is legal, correct and proper and there is no need to interfere with the same. The present appeal is bereft of any merit and the same is required to be dismissed. Hence, we make the following order:

ORDER

- (i) CRA-D-No.356-DB of 2013 is dismissed.

(A. B. CHAUDHARI)
JUDGE

15 - 02 - 2019
'raj'

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned:

No

Whether Reportable:

No