

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **CRA-D-478-DB-2013 (O&M)**
Date of decision : 30.10.2019
- Narender @ Jhabhu and others Appellants
- versus
- Sate of Haryana and others Respondents
2. **CRA-S-3275-SB-2013 (O&M)**
- Manjit @ Mohal Appellant
- versus
- Sate of Haryana Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MRS.JUSTICE ALKA SARIN

Present : Mr. Vinod Ghai, Sr. Advocate with
Ms. Kanika Ahuja, Advocate for the appellants.

Ms. Palika Monga, DAG, Haryana.

AJAY TEWARI, J. (Oral)

1. This order shall dispose of above mentioned two appeals since common questions of law and facts are involved therein, the same are being decided by the instant common order. For the sake of convenience the facts are being taken from CRA-D-478-DB-2013.
2. These appeals are directed against the judgment dated 22.04.2013 and order of sentence dated 29.04.2013, passed by Addl. Sessions Judge, Jhajjar in Sessions Case No.47 of 2008/2013 by which the accused-appellants were convicted. Eight convicts, who have been convicted under Section 148, 302, read with Section 120-B/149 of the Indian Penal Code, 1860 (for short "IPC"), have filed CRA-D-478-DB-

2013 and 9th person of the group, who was convicted only under section 25 of the Arms Act, 1959, has filed CRA-S-3275-SB-2013. The appellants were convicted as under:-

SN	Name of the accused	Offence Under Section	Sentence
1	Narender @ Jhabhu	U/s 148	Three years rigorous imprisonment
		120-B read with section 302 IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.
		25 of Arms Act	Five years rigorous imprisonment & fine of Rs. 5000/-. In default of fine, five months R.I.
2	Manjit @ Mahal	U/s 25 of Arms Act.	Five years rigorous imprisonment & fine of Rs. 5000/-. In default of fine, five months R.I
3	Anil @ Chhote	U/s 148 IPC	Three years rigorous imprisonment
		U/s 120-B read with section 302 IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.
		U/s 149 read with Section 302 IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.
		U/s 302 IPC read with Section 149 IPC and also read with Section 120-B IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.
4	Vikrant @ Kala	U/s 120-B read with section 302 IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.
		U/s 25 of Arms Act	Five years rigorous imprisonment & fine of Rs. 5000/-. In default of fine, five months R.I.
5	Balwan	U/s 148 IPC	Three years rigorous imprisonment
		U/s 120-B read with section 302 IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.
		U/s 149 read with Section 302 IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.
		U/s 302 IPC read with Section 149 IPC and also read with Section 120-B IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.

SN	Name of the accused	Offence Under Section	Sentence
6	Manipal	U/s 148 IPC	Three years rigorous imprisonment
		U/s 120-B read with section 302 IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.
		U/s 149 read with Section 302 IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.
		U/s 302 IPC read with Section 149 IPC and also read with Section 120-B IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.
7	Parveen @ Jadugar	U/s 148 IPC	Three years rigorous imprisonment
		U/s 120-B read with section 302 IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.
		U/s 149 read with Section 302 IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.
		U/s 302 IPC read with Section 149 IPC and also read with Section 120-B IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.
8	Rajesh @ Chhote	U/s 148 IPC	Three years rigorous imprisonment
		U/s 120-B read with section 302 IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.
		U/s 149 read with Section 302 IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.
9	Vikram	U/s 148 IPC	Three years rigorous imprisonment
		U/s 120-B read with section 302 IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.
		U/s 149 read with Section 302 IPC	Imprisonment for life and fine of Rs. 20,000/-. In default of fine, six months R.I.

3. As per the case of the prosecution on the fateful day, the complainant had gone to the shop of one Sunder, which was situated next to the Shiv Mandir of Village Badli. Over there his brother Raj Singh (deceased) was present in connection with the work of Shiv Mandir since he was incharge of the Shiv Mandir Committee. Suddenly, a black Santro

Car and a black Pulser motor cycle appeared and Balwan and Anil @ Chhota Dabha, came out of the car and Manipal @ Dhilla and Parveen @ Jadugar alighted from the motor cycle. Two persons who remained in the car exhorted the others to make sure that Raj Singh was killed and simultaneously Balwan and Anil @ Chhota Dabha, Manipal @ Dhilla and Parveen @ Jadugar (four persons) fired indiscriminately at Raj Singh leading to his death. The complainant who is also from the same village remained seated out of fear. After commission of this ghastly crime, the assailants escaped after issuing a general threat that no body should appear as witness. On the next day, he made a supplementary statement wherein he said that on the previous date, he had omitted to name certain persons and after learned on inquiries were also part of the group of the persons, who had attacked Raj Singh. He name them as Narender @ Jhabhu, Vikrant @ Kala and Manjeet @ Mahal. It may be mentioned here that A-1 Narender @ Jhabhu and A-4 Vikrant @ Kala were arrested in another case in Delhi and on their disclosure statement two country made .38 bore revolvers were recovered from them. It deserves to be mention here that there was only one eye witness namely complainant Wazir Singh, apart from that there was scientific evidence which showed that all the five bullets five bullets (four from the body one and from the ground) which were recovered were fired from the revolvers on the basis of the disclosure statement of Narender @ Jhabhu and Vikrant @ Kala. It also deserves to be mentioned here that after Wazir Singh, PW-1 had given his testimony, an application was made under Section 311 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to recall him but the same was declined by the trial Court and in the revision filed before

the Court, the same was allowed.

4. When Wazir Singh appeared for the second time, he turned hostile and exculpated all the persons he had named in the FIR. The Trial Court, however, did not believe his statement exculpating those named as assailants in the FIR but instead chose to rely upon his earlier deposition and, alongwith the evidence of the FSL report, convicted the persons, as mentioned above.

5. In the course of the trial, as many as 21 prosecution witnesses were examined. The accused-appellant(s) were examined under Section 313 Cr.P.C. In the course of which they took the plea of being falsely implicated and in the offence alleged and made a statement that they were innocent. No defence evidence was led. Thereafter, at the conclusion of the trial the learned trial Court, on consideration of the evidence and material on record, passed the impugned judgment and order convicting and sentence the person, as mentioned above. Hence, the present appeal.

6. We have gone through and considered the judgment and order under challenge and the evidence of the prosecution witness apart from hearing the learned Senior counsel and other counsel for the appellants and learned Deputy Advocate General, Punjab. The most important witness is PW-1 and his testimony would require a close scrutiny.

7. PW-1-Wazir Singh has deposed that his brother Raj Singh was member of the Shiv Mandir Committee and use to look after the Mandir and one of the shop of Mandir was on rent with his brother Raj Singh. On 27.10.07 he went to meet Sunder when he reached there he

found his brother Raj Singh was there in Mandir. After some time a black coloured Santro car and black coloured Pulser motorcycle came their. Three persons were on the motor cycle Manipal, Parveen @ Jadugar and Jija of Anil @ Chhota Dabha. Two persons Balwan and Anil @ Chhota Dabha came out from the car and Manipal @ Dilla and Parveen @ Jadugar alighted from motorcycle and fired indiscriminately on his brother Raj Singh in his presence. After firing they fled towards Jhajjar in that car and motor cycle and while leaving threatened if anyone became witness he would have to face consequences. The above said accused had grudge against his brother Raj Singh as they doubted that his brother was involved in the murder of Jaipal @ Sarpanch. He further stated that the occurrence was witnessed by him and Om Kar. He met police at bus stand and lodge statement to the police. The witness has properly identified all the accused persons. He further deposed that accused Kuldeep informed accused Narender @ Jabhu regarding the presence of his brother at the place of occurrence. On 3.10.2012 Wazir Singh deposed that his brother was member of Shiv Mandir Committee and being member he look after the Mandir and deposed that after shooting at his brother, accused persons left there two country made pistols and a .12 bore gun. He further deposed that the accused present in the Court are not the persons who fired shots at his brother Raj Singh and they are from his village. He was declared hostile and thoroughly cross examined by the Public Prosecutor, but nothing material emerged by way of cross -examination. In his cross-examination, the witness admitted that he made a statement on oath on 11.06.2009 before Judge, Jhajjar. Thereafter, he volunteered that the same was deposed by him under threat and pressure of the police, as the police

was pressuring him to depose as per their wishes and today his statement is voluntarily and without any threat and pressure. He denied the suggestion that on 11.06.2009, he deposed before the court without any fear or any pressure. He further denied that he is deposing falsely as having been won over the accused persons and due to compromise outside the court.

8. Learned Senior Advocate appearing on behalf of the appellants has argued that Wazir Singh cannot be termed to be a credible witness by any standard and his flip flop, raised a doubt, the benefit of which, has go to the appellants. As regards Narender @ Jhabhu and Vikrant @ Kala, it is argued that both these persons are residents of the same village as that of the deceased and complainant i.e. Village- Badli and these persons were not named by the complainant either in the FIR as being present at the spot even in his first deposition while appearing as PW-1. The only allegation against them was of being co-conspirators and once his testimony of PW-1 is doubtful in respect of the persons he had named as being assailants, the conviction of these two appellants with the aid of section 120-B is un-sustainable. Likewise the conviction of the solitary convict under Section 25 of the Arms Act, 1959 is also un-sustainable for the same reasons.

9. On the other hand, the learned Deputy Advocate General, has argued that the second explanatory deposition was made as a result of compromise and since section 302 IPC is not a compoundable offence that compromise is also illegal and consequently his second, explanatory statement is also worthless. She has emphasized the fact that the weapons which were got recovered on the disclosure statements of Narender @

Jhabhu and Vikrant @ Kala, were proved to have been used in the murder and, therefore, their protestation of innocence have to be ignored. She has further pointed out that when they were asked about these weapons in their statements under Section 313 Cr.P.C., they gave no explanation as to how the same came to be in their possession. To this, the learned senior counsel appearing on behalf of the appellants has argued that these two persons were named as assailants even by the complainant even in his first deposition and were convicted only under Section 120-B I.P.C. read with section 302 IPC and if the main assailants role is doubted their conviction under Section 120-B IPC will have to go.

10. In our opinion, the appeal has to be succeed. Whatever may be reason, the diametrically opposite testimony of the sole eye witness would completely erode his credibility. Who knows when he was telling the truth, whether on the first occasion or on the second occasion?

11. In these circumstances, it would be very unsafe and conjectural to conclude that either the first or the second deposition, is true and the other false. Once the testimony of sole eye witness has to be discarded it would have to result in the acquittal of convict- Manjit @ Mahal, Anil @ Chotte, Balwan, Mainpal @ Dheela, Parveen @ Jadugar, Rajesh @ Chhote, Vikram because they were directly named by him as being present at the spot and of having fired shots/ exhorted/ driving and having fled away in the vehicles. Once they are acquitted, Narender @ Jhabhu and Vikrant @ Kala, who were convicted on having conspired with them would also have to be acquitted, since, the only evidence against them now would be the recovery of the weapon(s) of offence on their disclosure statements. In our opinion the mere recovery of the

weapon(s) of offense on the basis of their disclosure statements would not justify the conviction under charge of Section 302 read with Section 120-B IPC.

12. Resultantly, the appeals are allowed. The impugned judgment of conviction and order of sentence are set aside and the appellants are acquitted of the charges so framed against them. They are ordered to be released (if is in custody), if not required in any other case. Those who are on bail, their surety/bail bonds shall stands discharged.

13. Since the main case has been decided, pending applications, if any, stands disposed of.

(AJAY TEWARI)
JUDGE

(ALKA SARIN)
JUDGE

30.10.2019
raman

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No