

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

1) **CRA-D-1418-DB-2015**
Date of Decision:-16.12.2019

Arun alias Rana and others

...Appellants

Versus

State of Haryana

...Respondent

2) **CRA-S-4049-SB-2015**

Shamsher alias Shera

...Appellants

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE VIVEK PURI

Present:- Mr. Vinod Ghai, Sr. Advocate with
Ms. Kanika Ahuja, Advocate
for the appellants in CRA-D-1418-DB-2015.

Ms. Kanika Ahuja, Advocate as Amicus Curiae
for the appellant in CRA-S-4049-SB-2015.

Ms. Palika Monga, DAG, Haryana.

Mr. Sunil Chaudhary, Advocate
for the complainant.

AJAY TEWARI J.(Oral)

1. By this judgment, we will decide both the aforementioned appeals, out of which criminal appeal bearing CRA-D-1418-DB-2015 has been filed by six appellants, who were convicted under Section 302 IPC read with Section 149 IPC and sentenced for life imprisonment, while the Criminal Appeal S-4049-SB-2015 has been filed by appellant-Shamsher @ Shera, who has been convicted under Section 216 IPC and sentenced to rigorous imprisonment for four years in case FIR No.448 dated 30.6.2013, under Sections 148, 149, 302, 120-B and 216 IPC and Section 25 of the Arms Act, registered at Police Station Sadar, Bhiwani.

2. As per the facts, on the fateful day i.e. on 30.6.2013, when the complainant-Karambir and his brother Ravinder alias Binder (deceased) were closing their shop, situated in the bazaar of village Haripur-Palwas, around 9:30/10:00 PM, then they noticed that appellants Arun @ Rana and Pardeep @ Basia were coming on a motor-cycle. Arun @ Rana alighted from the motor-cycle, while Pardeep @ Basia went to the shop of Gora s/o Timmi @ Rajpal. Thereafter, appellant Dharmender s/o Moghar @ Mahabir came and talked to Arun @ Rana and thereafter as per FIR, both of them went to the shop of Gora (aforementioned). Thereafter, both of them alongwith Pardeep @ Basia and Sonu @ Bhukha came to the spot and called the brother of complainant, namely, Ravinder (deceased). On their calling, the Ravinder (deceased) went out. There was some conversation going on in between them, but suddenly all of them became angry and three of appellants i.e. Dharmender, Pardeep @ Basia and Sonu @ Bhukha

caught hold of the deceased Ravinder and started abusing him. Then, appellant Arun @ Rana took out a pistol and shot the deceased Ravinder on his head.

3. After few days (as per defence on 25th July and as per the prosecution on 4th July), the complainant stated that actually at the time, when he got recorded the FIR, he was depressed and did not remember the full details of Sonu @ Chandi and Sandeep @ Bholu, who were also present at that time. Appellant Arun @ Rana was arrested on 10.9.2013 and pursuant to his two disclosure statements, one motor-cycle and two countrymade pistols alongwith live cartridges were recovered. (It may also be mentioned here that the pellets found from the body of the deceased matched with one of the weapons recovered on the disclosure statement of appellant Arun). Appellant Shamsher @ Shera was arrested on 10.09.2013 and he was accused of harbouring Arun.

4. The appellants were tried under Sections 148, 149, 302, 120-B and 216 IPC and Section 25 of the Arms Act and were convicted under Section 302 IPC read with Section 149 IPC and Section 25 of the Arms Act and hence the present appeal.

5. The prosecution examined 17 witnesses and the accused pleaded not guilty.

6. The important witnesses being Karambir (complainant) as PW1, Dr.Ankit, Medical Officer as PW2, EASI Anand Kumar as PW3, ASI Prem Kumar as PW5, Head Constable Sajjan Singh as PW6, Krishan Kumar, Deepak as PW10, Head Constable Satbir Singh as PW12, Sub-

Inspector Shamsheer Singh as PW14 and Leela Ram (retired Sub-Inspector) as PW16, their testimony would require a close scrutiny.

7. The appellants were sent up for trial and the base of the prosecution is the testimony of star witness i.e. complainant Karambir (PW1). In his testimony before the Court, he deposed that Ravinder alias Binder since deceased was his younger brother and they both were running a grocery (kiriyana) shop in village Haripur-Paluwas. On 29.06.2013 at about 9:30/10:00 PM, when they were closing their shop then suddenly accused Arun and Pardeep came on their motorcycle. Arun alighted from the motorcycle and Pardeep went to the shop of Gora @ Tinni @ Rajpal. After sometime, Dharmender son of Moggar @ Mahabir came there and started talking with Arun thereafter both went to the shop of Gora @ Tinni. After sometime, accused Arun, Pardeep, Dharmender, Sonu @ Bhukha @ Jogender, Sandeep @ Bholu, Vikky @ Lara, Sonu @ Chandi while hatching a conspiracy came there. Arun and Mahender came and they called his brother outside and both started talking with his brother and all became angry and started hurling abuses to his brother. Thereafter, Dharmender, Pardeep, and Sonu caught hold of his brother Ravinder and accused Sandeep, Sonu @ Chandi, Vicky @ Vikas @ Lara surrounded his brother. In the meantime, Arun took out a pistol and fired shot on the head of his brother and his brother fell down there. He raised alarm and all the accused threatened him and fled away with their respective weapons. On hearing his noise, Deepak son of Mahabir and other people were also attracted at the spot. Thereafter, he took his brother to General Hospital, Bhiwani, where

his brother was declared as dead. Thereafter, he moved complaint Ex.PA to the police for registration of the case. The cause of murder of his brother Ravinder @ Binder was that a quarrel had taken place between Ravinder @ Binder deceased and accused some days back and for that reason, the accused after hatching a criminal conspiracy committed the murder of his brother Ravinder @ Binder. He further deposed that on 04.07.2013, he moved another application to the police, thereafter, the accused were arrested. On 10.09.2013, one pistol alongwith two live cartridges was recovered from the pocket of accused Arun in his presence, which were taken into possession vide recovery memo Ex.PB. Sketch Ex.PC of the pistol was also prepared. He further deposed that during further interrogation, accused got recovered another pistol from his house. He further deposed that on 19.02.2014, during interrogation, accused Sonu @ Bhuka had made disclosure statement Ex.PD in his presence. He also identified all the accused present in the Court except accused Shamsher, who was not present in the Court on that day.

8. PW2 Dr.Ankit tendered into evidence affidavit Ex.PE which has been gone through by this Court. He has also proved application Ex.PF moved by the police for postmortem examination, which was accompanied with inquest report Ex.PG and carbon copy of postmortem report as Ex.PH. He has also identified and proved the clothes i.e. trousers, underwear, shirt of deceased Ravinder @ Binder collectively as Ex.OA, dismantle cartridge (fired bullet) as Ex.OB, which was taken out from the base of tongue of Ravinder @ Binder.

9. PW3 EASI Anand Kumar has deposed that on 03.06.2013, he alongwith HC Satbir, Constable Sandeep was present in village Haluwas for patrolling duty, where S.H.O. Leela Ram had received a telephonic message from PCR about committing murder in village Haripur. On that information, they had reached on the spot at village Haripur and they came to know that dead-body had been sent to General Hospital, Bhiwani, where the post-mortem of the deceased Ravinder was conducted in his presence. After post-mortem examination, a sealed parcel was handed over to him by the doctor and he delivered the same to S.H.O. Leela Ram, which was taken into possession vide memo Ex.PK.

10. PW5 ASI Prem Kumar has deposed that on 12.09.2013, he alongwith SI/SHO Leela Ram, Constable Sandeep was present at bus stand Bhiwani for the investigation of the case, where SI/SHO had received a secret information that Sonu @ Chandi, Dharmender, Pardeep Kumar and Sandeep were present at bus stand village Paluwas. On that information, they reached at bus stand of village Paluwas and on seeing the police, those accused started briskly and on suspicion, they had caught Sonu @ Chandi, Dharmender, Pardeep Kumar and Sandeep. SI/SHO Leela Ram joined them in the investigation and during interrogation, they suffered disclosure statements Ex.PM, Ex.PN, Ex.PO and Ex.PP respectively.

11. PW6 HC Sajjan Singh has deposed that on 10.09.2013, he alongwith ASI Shamsher, HC Anil, EASI Sahab Singh, Constable Ajbir and Constable Sanjay had gone to village Paluwas in connection with the investigation of this case, where complainant Karambir met them in village

Paluwas. They accompanied complainant Karambir and went to village Siwani side and when they were standing at T-point, Tosham road, Siwani, ASI Shamsheer had received a secret information that one person was living in the house of Shamsheer @ Shera, resident of village Bidhwan and on that information, when they reached near the house of Shamsheer @ Shera, on seeing them, one person tried to flee from the house but on suspicion, they caught hold of that person. During the search of that person, one pistol of .9 mm was recovered. Sketch of the pistol Ex.PC was prepared and the same was taken into police possession vide recovery memo Ex.PB. Accused Arun was arrested and joined in the investigation and during interrogation, he made disclosure statement Ex.PQ in his presence. In pursuance of disclosure statement, Shamsheer @ Shera was arrested and joined in the investigation. During interrogation, he made disclosure statement Ex.PR. In pursuance of the disclosure statement Ex.PQ, accused Arun got recovered one pistol of .315 bore alongwith two cartridges from his house. Rough sketch of the pistol Ex.PS was prepared and the same was taken into possession vide recovery memo Ex.PT in his presence. He further deposed that on 11.09.2013, motorcycle marka splendor was recovered from the house of accused Sanjay son of Mamchand of village Sanwar. Thereafter, accused Sanjay got demarcated the place of occurrence vide demarcation memo Ex.PU. He also identified and proved one pistol of .9 mm as Ex.OA, one pistol of .315 bore alongwith two cartridges as Ex.OB, which were taken into possession from the accused.

12. PW10 Deepak has deposed that Ravinder @ Binder since

deceased was running a kiriyana shop in village Haripur. On 29.06.2013 at about 9:30/10:00 PM, he and Karmabir were present there in that shop and when Ravinder was closing his shop then suddenly Arun son of Madan Singh and Pardeep @ Basia came on a bike. Arun alighted from the bike and Pardeep @ Basia went to the shop of Gora son of Rajpal. After sometime, Dharmender son of Moggar came there and said Dharmender and Arun had some conversation for sometime and thereafter both of them went to the shop of Gora. After sometime, Sonu @ Bhuka son of Rajender, Sandeep @ Bholu son of Pappu Singh, Chandi son of Janak Singh, Vikas @ Vicky son of Dr.Mahender Chauhan came and all of them called Ravinder (since deceased). There was conversation between them for sometime and it converted into heated arguments and thereafter Arun, Dharmender, Pardeep, Sonu @ Bholu, Vikas @ Vicky apprehended Ravinder. Sonu @ Bholu and Chandi had surrounded Ravinder deceased, Arun took out a pistol and fired upon the head of Ravinder. They raised alarm and then many persons were attracted at the spot. They took Ravinder injured to Civil Hospital, Bhiwani for treatment, where doctor declared Ravinder as brought dead. He further deposed that on the next day, police came in village Paluwas and they lifted blood stained earth and the same was converted into a parcel by putting in the plastic container. The parcel was sealed and taken into police possession vide recovery memo Ex.PY. He identified the accused present in the Court.

13. PW12 HC Satbir Singh has deposed that on 30.06.2013, he alongwith SI/SHO Leela Ram was on patrolling duty and he received an

information from Control Room that firing had taken place at village Paluwas and on that information, they reached at the spot. They came to know that injured had already been shifted to General Hospital, Bhiwani and thereafter they reached there and enquired from Police Post, General Hospital, Bhiwani that the same person had died due to injuries but none was present in the hospital. Thereafter, they reached at the house of deceased Ravinder where Karambir met them and he moved an application Ex.PA, on which SHO Leela Ram made his endorsement and handed over to him for registration of the case. After registration of the case, he went to General Hospital, Bhiwani and postmortem of the deceased was conducted. After postmortem examination, he reached on the place of occurrence. Leela Ram SHO had taken blood-stained earth and take it into possession vide recovery memo Ex.PY.

14. PW14 SI Shamsheer Singh has deposed that on 10.09.2013, he alongwith police officials and complainant Karambir went to village Bidhwan for the search of the accused in this case. They noticed that one young boy fled away from the house of Shamsheer @ Shera and complainant identified him as accused Arun @ Rana, who was apprehended by him with the help of other police officials. On enquiry, he disclosed his name as Arun @ Rana son of Madan Singh, resident of Bank Colony, Bhiwani. He was arrested and joined in the investigation and during investigation, he made disclosure statement Ex.PQ. During his personal search, one pistol of .9 mm alongwith two live cartridges was recorded. Sketch Ex.PC of the pistol was prepared and the same were taken into possession vide recovery memo

Ex.PB. In pursuance of disclosure statement Ex.PQ of accused Arun, accused Shamsher @ Shera son of Balbir Singh, resident of village Bidhan was arrested under section 216 I.P.C. Disclosure statement Ex.PR of the accused Shamsher was also recorded in the presence of Constable Sajjan Singh, complainant Karambir and HC Anil Kumar. In pursuance of disclosure statement, accused Arun got recovered one pistol alongwith two live cartridges from his house. Sketch of the pistol Ex.PS was prepared and the same was taken into possession vide recovery memo Ex.PT. The demarcation memo Ex.PU of the place of recovery was prepared. He further deposed that on the next day, a motorcycle, which was used in the crime, was recovered from village Sanwar, which was taken into police possession. Rough site plans Ex.PAI of the place of recovery of pistol and that of recovery of motorcycle Ex.PAJ were prepared. Accused Arun demarcated the place of occurrence vide memo Ex.PU.

15. PW16 Leela Ram (retired Sub Inspector) has deposed that on the intervening night of 29/30.06.2013, while posted as SI/SHO at Police Station Sadar, Bhiwani, he was present in village Haluwas for patrolling of the area. He received a telephonic message from the Control Room, Bhiwani about firing incident in village Haripur/Plauwas. On that information, he alongwith other police officials reached at the spot and found many villagers present there. He made enquiries from those villagers as to where firing had taken place then villagers pointed out towards a shop that firing had taken place in front of that shop. They also told him that injured Ravinder was taken to General Hospital, Bhiwani for treatment. He

left Constable Sandeep at the spot to guard the same and he reached General Hospital, Bhiwani. He went to Police Post General Hospital, Bhiwani where EASI Krishan Kumar handed over to him an intimation about the death of deceased Ravinder. Many villagers were present in the hospital, who told him that this occurrence was witnessed by Karamabir brother of deceased Ravinder. He was under stress due to death of his brother and they had sent him to his house. Thereafter, he reached in village Paluwas, where he found complainant Karambir brother of the deceased, who presented complaint Ex.PA to him. He made his endorsement Ex.P1 and sent the same to the Police through HC Satbir Singh for registration of the case. Thereafter, he went to General Hospital, Bhiwani and got photographed the dead-body through Kapoor Singh, Photographer. The scene of crime team reached at General Hospital, Bhiwani and inspected the dead-body. Thereafter, he conducted inquest proceeding Ex.PG. ASI Anand Kumar was deputed for getting postmortem examination through application Ex.PF. Thereafter, he reached at the spot. Photographer and scene of crime team had also reached and inspected the spot. He lifted blood stained earth from the spot and took into possession vide recovery memo Ex.PY. He also prepared rough site plan Ex.P2 of the place of occurrence. ASI Anand Kumar had handed-over him sealed parcel received from the Medical Officer and the same were taken into possession vide recovery memo Ex.PK. He further deposed that on 12.09.2013, he had arrested and interrogated accused Sonu @ Chandi, Dharmender, Pardeep and Sandeep and during interrogation, they made their disclosure statements

Ex.PM, Ex.PN, Ex.PO and Ex.PP respectively. Thereafter, accused Pardeep, Sandeep and Sonu @ Chandi pointed out the place of occurrence vide memo Ex.P3. He further deposed that on 10.10.2013, he arrested accused Sunil and during interrogation, he made disclosure statement Ex.PZ. He further deposed that on 19.02.2014, he had arrested and interrogated accused Yogender @ Sonu and during interrogation, he made his disclosure statement Ex.PD. Thereafter, accused Yogender @ Sonu got demarcated the place of occurrence vide memo Ex.P4. He further deposed that after completion of the investigation qua accused Yogender @ Sonu, he prepared supplementary challan against the accused and presented the same in the Court. He has also identified two parcels as Ex.OB and Ex.OC (which were already opened) and clothes of the deceased which were already exhibited as Ex.OA.

16. Learned senior counsel appearing for the appellants has argued that as regards the presence of Sandeep @ Bholu and Sonu @ Chandi at the scene is highly doubtful. As per him, both of them were co-villagers of the complainant and the deceased and rather the other assailants were from other places and in these circumstances it would be most natural for the eye witness to have remembered the presence of those whom he closely knew being his co-villagers, rather than those who were outsiders. As per him the facile explanation that at the time of death of his brother, the complainant was under depression, cannot wash away the fact that these two persons were not named initially and this chronology of events create a doubt about their presence at the spot. As regards the other three accused/appellants (of

the Division Bench appeal), his argument is that even there is no evidence that they knew that Arun @ Rana was carrying a weapon. Moreover, the sequence of events shows that first the deceased was called out and a conversation had taken place between him on the one hand and Arun and Dharmender on the other and during that conversation, something happened, which angered the appellants and then suddenly Arun @ Rana took out a pistol and shot the deceased. His argument is that if there had been a prior common intention/object, there was no occasion to first have a conversation and then for that conversation to have turned abusive, and this clearly shows that it was a spur of the moment incident and in the absence of any evidence being led that the other appellants even knew that Arun had a pistol with him, the story of their common intention/object cannot be believed. May be the remaining appellants only wanted to thrash the deceased but the sudden action by Arun @ Rana pre-empted anything else.

17. As regards appellant Shamsheer @ Shera, the contention of learned senior counsel for the appellant is that merely because Arun @ Rana was arrested while coming out of his house, would not prove that he had knowingly harboured Arun. Learned counsel has argued that as per the testimony of PW14-SI Shamsheer Singh, he had left for village Bidhwan at 11:30 AM on 10.09.2013 and at about 1:45 PM he came to know about the presence of Arun @ Rana at Village Baidhwan. When he reached there, the appellant Arun @ Rana skipped out of the house of Shamsheer @ Shera and tried to flee but was arrested. As per learned counsel there is no evidence as to whether Arun @ Rana had been in the house of Shera for five months or

five hours or five days or five weeks and in these circumstances, to convict him (Shamsher @ Shera) under Section 216 IPC would be illegal.

18. Countering these arguments, learned Deputy Advocate General, Haryana and learned counsel appearing for the complainant have urged that the prior discussion between the appellants, their concerted action in calling out the deceased Ravinder, the action of three of them in catching hold of the deceased and the action of remaining two in encircling the deceased clearly reveals that they were privy to the plan to kill the deceased. As regards Shamsher @ Shera, it is their contention that the police had travelled about 70 kilometers to village Bidhwan and this depicted that there was information that the appellant Arun @ Rana was hiding out at the house of Shamsher @ Shera in that village and his arrest while trying to escape from the house of Shamsher @ Shera clearly justified his conviction under Section 216 IPC.

19. In our considered opinion, the appeal(s) of all the appellants except Arun @ Rana have to be allowed. As regards the five co-appellants of Arun @ Rana (in the Division Bench appeal), suffice it to say that apart from the fact that the presence of Sonu @ Chandi and Sandeep @ Bholu is not established beyond reasonable doubt, even the sequence of the occurrence does not reveal that they had the common intention or even knowledge that Arun @ Rana would kill the deceased. Had there been such an intention, there would have been no need to talk to the deceased. Rather the moment the deceased came out, three of them would have caught him, two of them would have encircled him and the last one would have shot him

dead. The very fact that first there was a normal conversation, which became abusive, shows that something happened on that spur of moment. The five remaining appellants may have caught hold of the deceased or encircled him but was it for the purpose of thrashing him or was it for the purpose of facilitating his shooting by Arun? The answer to this being speculative, the circumstance has to go in favour of the five appellants apart from Arun @ Rana. It is also not the case that when they came and called the deceased out, Arun was carrying a pistol in his hand. Even as per the complainant, he took out the pistol and shot the deceased. From this, can it be inferred beyond reasonable doubt that remaining appellants knew that Arun was having a pistol? In our considered opinion the answer to this question cannot be easily given and there is a distinct possibility of both things; viz knowledge that he was carrying a pistol and lack of such knowledge. This doubt helps the appellants except Arun @ Rana.

20. Coming now to Shamsher @ Shera also, we are of the view that even if it is accepted that Arun @ Rana was apprehending while trying to escape from the house of Shera, it still does not constitute harbouring. Had one or two villagers been examined and said that they had seen Arun @ Rana in the village or in the house of Shera over the past few days, it could have been a different thing but the only circumstance, which appears in against Shera is that when the police reached in the village Baidhwan, the appellant Arun @ Rana tried to escape from the house of said Shera. Did Shera knew that he (Arun @ Rana) had committed the murder? No evidence is there to this effect. Was he there for even more than one hour?

No evidence is there to this effect also. Consequently, his conviction also cannot be upheld.

21. The last appellant, with whose case we have to deal with is Arun @ Rana. Learned senior counsel has argued that as per the testimony of the Investigating Officer (PW12), when he reached the hospital, the public persons, who were present there, refused to make any statement(s) and the FIR was lodged after due deliberations and this renders the presence of the eye witness at the spot doubtful. His alternative argument is that this was a sudden occurrence and there was no pre-existing thought in the mind of Arun @ Rana to kill the deceased and therefore, at the worst he can be convicted of an offence of culpable homicide not amounting to murder.

22. We have considered the arguments but they have no merit. Even if the other appellants are not proved to have knowledge that Arun @ Rana was carrying a weapon, yet the fact remains that Arun @ Rana was carrying a weapon. He first alighted near the shop and then went away and came back again. Moreover, he fired into the head of the deceased. In these circumstances, the mere fact that he had fired only one shot or that it was a conversation, which turned ugly cannot be held to be useful for the appellant Arun. He knew fully when he was doing the act and killed a young man. Additional credence is available as the firearm has been recovered in pursuance of the disclosure statement of Arun @ Rana. Furthermore pellets recovered from the body of the deceased were sent to the FSL and it has given a positive report that the bullet has been fired from the firearm recovered from Arun @ Rana. Even the presence of Arun at the

spot cannot be disputed in view of the categoric version of the eye witnesses. The case of prosecution qua Arun @ Rana is proved and established beyond the shadow of reasonable doubt. As such his conviction and sentence imposed upon him is upheld.

23. In these circumstances, the appeal filed by appellant Arun @ Rana is dismissed while the appeals filed by other appellants are allowed. Those who are in custody (in this case FIR), be released forthwith and if anyone is on bail (in this case FIR), let their bail bonds be discharged.

(AJAY TEWARI)
JUDGE

December 16, 2019
Vijay Asija

(VIVEK PURI)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No