

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

(1) **CRA-D-457-DB of 2003(O&M)**

Sunder

...Appellant

Versus

The State of Haryana

...Respondent

(2) **CRA-D-609-DB of 2003(O&M)**

Raj Singh @ Pappey

...Appellant

Versus

The State of Haryana

...Respondent

Date of decision:-19.11.2019

**CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr. Rivayat Hayer, Advocate
for the appellant in CRA-D-457-DB of 2003.

Mr.Hemant Bassi, Advocate as
Amicus Curiae with
Mr.Harmanjeet Singh, Advocate
for the appellant in CRA-D-609-DB of 2003

Mr.Vikrant Pamboo, DAG, Haryana.

H.S. MADAAN, J.

Vide this judgment, we propose to dispose of two appeals i.e. **CRA-D-457-DB of 2003** filed by appellant - Sunder and **CRA-D-609-DB of 2003** filed by appellant - Raj Singh @ Pappey.

Briefly stated, facts of the case, as per the prosecution version are that criminal machinery in this case was set into motion by complainant Babu Lal by making a statement to the police in which he stated that his niece Kamlesh was married with Mahesh and they used to reside in a rented accommodation near his house at Ashok Vihar, Gurgaon; accused Dinesh son of Subhash Gupta and Sunder also used to reside in the neighbourhood of the complainant; on 1.9.1996 at about 6:00 p.m., Kamlesh along with her husband Mahesh and complainant Babu Lal went to the market; he (complainant) left Kamlesh and her husband Mahesh in the market and was himself returning to his house; when he reached near Atta Chakki (flour mill) situated in the street, then he came across accused Dinesh and Sunder, who inquired from him where he had left the MAAL (meaning thereby Kamlesh), however, the complainant returned home and informed her sister-in-law (BHABHI) – Radha in that regard, who told about the same to Mahesh when he returned from the market; Mahesh and the complainant went to the house of Dinesh and came across father of

Dinesh there; they lodged a complaint against Dinesh to his father and thereafter returned home; on the next day i.e. on 2.9.1996 at the instance of accused Dinesh, accused Raj Singh @ Pappey came to the house of complainant at about 6:30 p.m. and threatened him with dire consequences if he said anything to Dinesh in future; at that time Multan Singh (brother of the complainant) was also present with the complainant; accused Raj Singh @ Pappey had abused the complainant and his brother Multan Singh; when the latter wanted to know as to how and why he had come to their house and was hurling abuses to them, a scuffle took place between Multan Singh and Raj Singh @ Pappey; Mahender another brother of the complainant was also present there in the house; he was having a cup of tea in his hand, which he poured on Raj Singh @ Pappey, then Raj Singh @ Pappey left that place; on the same day i.e. on 2.9.1996 in the evening, a Panchayat of respectables of the Mohalla was convened as per request of the complainant Babu Lal; Subhash – father of accused Dinesh tendered an apology before the Panchayat for conduct of his son Dinesh and gave an assurance that Dinesh would not indulge in such activities in future.

The complainant further stated that on 5.9.1996 at about 5:30 p.m., when he, his brother Subhash and Multan Singh were sitting in his house, then accused Raj Singh @ Pappey accompanied by four other young boys, whose identity was later on found to be that of Ajay, Naveen, Avinash and a brother of Raj

Singh @ Pappey, entered the house of complainant and attacked the complainant and his brothers Subhash and Multan Singh by giving them fist blows; on seeing the assailants, Multan Singh tried to run away from his house out of fear, however, accused Sunder fired a shot at him from his pistol, resultantly Multan Singh suffered a firearm injury on his waist and fell down at the spot; the assailants went towards the house of Dinesh; injured Multan Singh was taken to hospital by the complainant and his brother, but he died on the way and on reaching the hospital, he was declared dead by the doctor.

The doctor informed the police of Police Station Sadar, Gurgaon and ASI Randhir Singh (hereinafter referred to as the Investigating Officer/I.O.), went to the General Hospital, Gurgaon and came across complainant Babu Lal and recorded his statement Ex.PJ, on which he (ASI Randhir Singh) made his endorsement Ex.PJ/1, sending ruqa to the police station and on the basis of such ruqa, formal FIR Ex.PJ/2 was registered with Police Station Sadar, Gurgaon. After registration of the FIR, investigation in the case started. The police party led by I.O. ASI Randhir Singh went to the spot. The I.O. carried out inquest proceedings with regard to unnatural death of Multan Singh, preparing report Ex.PD/2 in that regard. He deputed police officials for getting postmortem examination conducted on the dead body of Multan Singh. The Investigating Officer carried out spot inspection

preparing rough site plan of the place of incident as Ex.PA/4. He took into possession blood stained earth and goggles from the place of incident, converting those into parcels, sealing those parcels with his seal having impressions "RS", which were taken into police possession vide recovery memo Ex.PA/5 attested by the witnesses. The parcels of goggles and blood stained earth were sent to police station and were deposited with MHC. After postmortem examination, postmortem report Ex.PD showing seats of injuries Ex.PD/1 was issued. The attending doctor had given the cause of death of Multan Singh to be acute shock and haemorrhage because of the injury on vital organs i.e. lungs and heart; the injuries were opined to have been caused with a firearm. The doctor had handed over a sealed packet containing underwear of the deceased, a small jar containing bullet and bearing two seals of mortuary. A small jar containing the sample of blood of Multan Singh was also given to Constable Dharambir Singh. Constable Dharambir Singh produced all those articles before the Investigating Officer, who took the same into possession vide a seizure memo. During the course of investigation, accused Sunder was arrested. His personal search was conducted, which resulted in recovery of pistol Ex.P1 and cartridges Ex.P2 to Ex.P6. The pistol and recovered cartridges were converted into a parcel, which was duly sealed. The site plan was prepared in that regard. Ruqa was sent for registration of the case against accused Sunder under Section 25 of the Arms Act. Formal

FIR was registered.

On 13.9.1996, accused Sunder, Rajender @ Raju, Mukesh, Raj Kumar had applied for holding of test identification parade. However, subsequently they declined to participate in the same stating that their faces had been shown by the police to the witnesses. During the course of interrogation, various articles were recovered from the possession of accused. Statements of various witnesses were recorded. Parcels of pistol, cartridges, blood stained earth, bullet and clothes of deceased were sent to Director FSL, Madhuban, and report therefrom Ex.PK was received to the effect that country-made pistol Ex.P1 and cartridges Ex.P2 to Ex.P6 were firearm and ammunition, respectively and bullet Ex.P8 had been fired from pistol Ex.P1 and blood contained in the jar was human blood and blood stained earth also contained human blood.

After completion of the investigation, SHO Police Station Sadar, Gurgaon submitted three challans, first with regard to FIR No.1000 dated 5.9.1996 with regard to murder of Multan Singh against accused Sunder, Rajender @ Raju, Dinesh, Pappey @ Raj Singh, Mukesh, Raj Kumar and Kala; second was the supplementary challan arising out of the same FIR against accused Ravinder regarding murder of Multan Singh and third against accused Sunder in FIR No.1030 dated 12.9.1996 under Section 25 of the Indian Arms Act.

Accused Dinesh was found to be a juvenile, as such he

was sent to Juvenile Justice Board, Gurgaon for trial. Accused Kala had died before framing of charge. Accused Mukesh had also died and proceedings against those two accused stood abated. Resultantly, only five accused persons, namely, Sunder, Rajender @ Raju, Raj Singh @ Pappey, Raj Kumar @ Raju and Ravinder were tried.

Learned Additional Sessions Judge, Gurgaon, observing that charge for the offences under Sections 147, 148, 449, 302 read with Section 149 IPC against all the accused and the offence under Section 25 of the Arms Act against only accused Sunder was disclosed, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

During the course of its evidence, the prosecution examined as many as twelve witnesses.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case. They further stated that murder of Multan Singh was a blind murder and they had been involved in this case due to enmity.

Accused did not lead any evidence in their defence.

After hearing arguments, learned trial Court vide

judgment dated 29.4.2003 found that the prosecution had been unable to connect accused Rajender @ Raju, Raj Kumar @ Raju and Ravinder with murder of Multan Singh in any manner, as such they were acquitted of the charge framed against them. Whereas accused Sunder and Raj Singh @ Pappey were convicted under Sections 147, 148, 449, 302 read with Section 149 IPC. In addition to that accused Sunder was also convicted under Section 25 of the Arms Act. Both these accused were sentenced as under:

Offence under Section	Sentence Awarded
Section 147 IPC.	Rigorous imprisonment for one year and to pay a fine of Rs.200/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month each
Section 148 IPC.	Rigorous imprisonment for two years and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months each.
Section 449 IPC.	Rigorous imprisonment for three years and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months each.
Section 302/149 IPC.	Rigorous imprisonment for life and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year each

In addition to that convict Sunder was sentenced to undergo rigorous imprisonment for three years and to pay a fine of

Rs.200/- and in default of payment of fine to undergo further rigorous imprisonment for one month for the offence under Section 25 of the Arms Act.

All the sentences were ordered to run concurrently.

The judgment of conviction and order of sentence left accused/convicts Sunder and Raj Singh @ Pappey aggrieved and they have filed separate appeals before this Court praying that the same be accepted, the impugned judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them.

We have heard learned counsel for the appellants-accused- convicts and learned Deputy Advocate General for the State of Haryana besides going through the record.

As far as conviction and sentence of accused Sunder is concerned, the same is fully justified. As per the prosecution story the firearm injury is attributed to accused Sunder. When accused Sunder was arrested, he was found to be in possession of country-made pistol and live cartridges. The bullet-head was found from the dead body by the doctor, which was sent to Forensic Science Laboratory, Madhuban and as per opinion received from the said laboratory, it had been fired from the pistol recovered from the possession of Sunder. The eye-witnesses examined by the prosecution i.e. PW6 Babu Lal and PW7 Subhash are unanimous in saying that Sunder had fired a shot at Multan Singh from his pistol

and he had died due to the said injury. Although according to the prosecution version, Sunder was accompanied by several other persons i.e. Raj Singh @ Pappey and few other boys and they had given slap and fist blows to complainant and others but then there is no supporting documentary evidence in that regard. In terms of the postmortem report of the deceased Multan Singh, only one firearm injury was noticed and no other injury was found on his person. None of the other accused had got any weapon recovered from their possession. Thus, the presence at the spot of other accused except Sunder is not proved conclusively and affirmatively and there is not enough cogent, convincing and reliable evidence to show that some other accused was also involved in murder of Multan Singh. Therefore, participation of Raj Singh @ Pappey in the incident comes out to be doubtful and his conviction and sentence under Sections 147, 148, 449 and 302/149 IPC cannot stand.

Thus, CRA-D-609-DB-2003 filed by accused Raj Singh @ Pappey is accepted. The judgment of conviction and order of sentence qua him is set aside and he is acquitted of the charges framed against him.

Whereas with regard to accused Sunder, we do not see any reason to interfere with the judgment of his conviction and sentence, which as a matter of fact does not suffer from any illegality and infirmity or defect. Therefore, CRA-D-457-DB of 2003 filed by appellant/convict Sunder stands dismissed.

Appellant/accused Sunder is stated to be on bail granted to him by this Court. His bonds are cancelled. Chief Judicial Magistrate, Gurgaon (now Gurugram) is directed to issue arrest warrant to get him arrested immediately so as to make him undergo the remaining sentence.

19.11.2019
Brij
(JITENDRA CHAUHAN)
JUDGE

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No