

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

(1) CRA-D-1008-DB of 2013 (O&M)

Samir Nain APPELLANT

Versus

State of Haryana RESPONDENT

(2) CRA-D-1424-DB of 2013

Amit alias Chhuri APPELLANT

Versus

State of Haryana RESPONDENT

(3) CRA-D-20-DB of 2014

Amit Kumar Yadav APPELLANT

Versus

State of Haryana RESPONDENT

Reserved on : 19.03.2019
Date of decision : 20.03.2019

**CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. Prateek Rathee, Advocate,
for the appellant in CRA-D-1008-DB-2013.

Mr. Bijender Dhankar, Advocate,
for the appellant in CRA-D-1424-DB-2013.

Mr. Surinder Saini, Advocate,
for the appellant in CRA-D-20-DB-2014.

Mr. Vishal Garg, Addl. A.G., Haryana.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in CRA-D-1008-DB of 2013, CRA-D-1424-DB of 2013 and CRA-D-20-DB of 2014, therefore, these are taken up together and being disposed of by a common judgment.
2. These appeals are instituted against judgment dated 07.08.2013 and order dated 19.08.2013, rendered by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, in Sessions Case No. 17 of 2009. Appellants Samir Nain, Amit Kumar Yadav and Amit alias Chhuri were charged with and tried for the offences punishable under Sections 302/307/452 read with Section 34 of the Indian Penal Code and Section 25 of the Arms Act. They were convicted and sentenced as under :

Name of appellant	Offence under which sentenced	Period of imprisonment	Amount of fine imposed	Sentence in default of payment of fine
Samir Nain, Amit Yadav and Amit alias Chhuri	302/34 IPC	Life imprisonment		
Samir Nain, Amit Yadav and Amit alias Chhuri	307/34 IPC	Ten years rigorous imprisonment	₹ 10,000/- each.	Six months rigorous imprisonment
Samir Nain, Amit Yadav and Amit alias Chhuri	452/34 IPC	Five years rigorous imprisonment	₹ 5,000/- each.	Three months rigorous imprisonment
Samir Nain, Amit Yadav and Amit alias Chhuri	25 of the Arms Act	Three years rigorous imprisonment	₹ 3,000/- each.	Two months rigorous imprisonment

All the substantive sentences were ordered to run concurrently.

3. The case of the prosecution, in a nutshell, is that on 27.02.2009,

when Raj Pal, Sub Inspector, was present in Police Post HUDA, Jagadhri, he received a VT message from Control Room. He reached House No. 993, Sector 17, HUDA, Jagadhri, where dead body of Charanjit Singh was lying. Satinder Kaur widow of Charanjit Singh got her statement recorded. According to the averments made in the statement, her husband was having his own stone crusher. She had three daughters. Her daughter Shyneer Singh had obtained degree of MBA from Swami Devi Dayal College, Barwala in the year 2007. She told her that from that time, Amit Yadav used to put pressure upon her to marry him. He used to threaten her daughter with dire consequences. Amit Yadav also threatened them on telephone. On 23.03.2008 at about 11.00 PM, Amit Yadav and his father entered her house with intention to kill them. They also fired gun shots. A case under Section 307 of the Indian Penal Code was got registered against them. They did not mend their ways and threatened them to withdraw the case. On 12.10.2008, Amit Yadav also tried to enter their house forcibly. Many persons gathered there. Amit Yadav fled away from the spot. On 31.12.2008, they went to the house of Narender Garg, i.e. House No. 1017, HUDA, Jagadhri, on the eve of New Year. When they were ready to go back to their house, Amit Yadav along with his other companion carrying pistol and iron rod in their hands came there. They fired gun shots upon the complainant party. They saved themselves. Another case under Section 307 of the Indian Penal Code was got registered by her husband against the assailants. The Superintendent of Police appointed guards for their security. On 25.02.2009, Amit Yadav made a telephone call to her husband to withdraw the case, failing which to face the consequences. During night time, her brother Virender Pal Singh,

her sister-in-law and her nephew were at her house. At about 9.40 PM, her family and the family of her brother were taking dinner. The guards were not present. Amit Yadav and his two other companions came and pressed the door bell. Her husband opened the door. Amit Yadav fired 3-4 gun shots on her husband. Her husband fell down. When her brother and nephew tried to catch them, they fired gun shots upon them. However, they saved themselves. When they raised alarm, the accused persons fled away from the spot after leaving their motor cycle. She took her husband to Gaba Hospital, Yamuna Nagar with the help of her brother and nephew. He was declared dead. FIR was registered. Post-mortem was conducted. The investigation was completed and challan was put up after completing all the codal formalities.

4. The prosecution examined a number of witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. They examined one witness in their defence.

5. The appellants were convicted and sentenced, as noticed above. Hence, this appeal.

6. 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 against the appellants beyond reasonable doubt. He supported the judgment and order of the learned Court below.

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

8. PW.5 Smt. Satinder Kaur deposed that she had three daughters. The eldest daughter is Miss Simran and younger to her is Miss Shynee Singh. Her daughter Shynee Singh had obtained degree of MBA in the year 2007. She was residing with them. She had told them that during her studies in Swami Devi Dayal College, Barwala, one boy, namely Amit Yadav, also used to study there. She identified Amit Yadav in the court. She further deposed that Amit Yadav used to pressurise her daughter Shynee Singh to marry him. He used to advance threats to Shynee Singh. Her daughter Shynee Singh was not interested to marry Amit Yadav. Amit Yadav used to threat her husband telephonically. On 23.03.2008 at about 11.00 PM, Amit Yadav and his father R.S. Yadav forcibly entered their house. Amit Yadav declared that either they should marry Shynee Singh to him or he would kill all the family members. He fired shots upon them. A case under Section 307 of the Indian Penal Code was registered against Amit Yadav and his father. On 12.10.2008, Amit Yadav again tried to forcibly enter their house. Neighbourers gathered. He fled away from the spot. On 31.12.2008, she and her husband were present in the house of Narender Pal Garg. After taking dinner, when they came in the porch of the house, Amit Yadav accompanied by another boy came there. Amit Yadav was armed with a revolver and the other boy was armed with an iron rod. Amit Yadav started firing shots upon them. The other boy had broken all the window panes. They saved their lives. Her husband reported the matter to the police and a case under Section 307 of the Indian Penal Code was registered. On 25.02.2009, Amit Yadav extended threat to her husband on telephone to withdraw pending cases. The case was fixed for 26.02.2009. Accused Amit Yadav had

declared that if the cases were not withdrawn, then her husband would be killed. On 27.02.2009, she along with her mother-in-law Jaswant Kaur, husband Charanjit Singh Walia, brother Virender Pal, sister-in-law and nephew Ravi Deep Singh was present in their house along with her daughters. They were taking meals at about 9.40 PM. Both the guards were absent. Amit Yadav along with his two companions entered their house through the gate and pressed the call bell. Her husband opened the door. Amit Yadav said to her husband that he had not obeyed his directions to withdraw the cases, now he should face the consequences. Amit Yadav fired 3-4 shots at her husband. Her brother Virender Pal Singh and her nephew Ravi Deep Sing came towards the lobby. Her husband fell down. When her brother and nephew tried to catch hold of the accused, they ran away from the spot. Amit Yadav and his two companions fired shots at the main gate of the house. She identified all the three accused in the court. The accused left behind the motor cycle. She was summoned to Sub Jail, Jagadhri, on 08.03.2009. Naib Tehsildar was also present there. In his presence, she had identified assailant Samir Nain, who was present in the court on the day of her deposition. The father of accused Amit Yadav also advanced threats to her on 22.03.2010. In her cross-examination, she deposed that she was not aware about the qualification of accused Amit Yadav. She admitted that Police Post in Sector 17, HUDA, Jagadhri, was situated at a distance of one kilometer from their residence. Her husband was running the business of stone crusher. She admitted that CC TV cameras were installed at her residence. Volunteered that these were got installed after the murder of her husband. On 23.03.2008, accused Amit Yadav came within the boundary

wall of their house. The place where he was standing was clearly visible from the window of their kitchen. Amit Yadav had fired three shots while advancing threats. They had employed two servants in their house. She had seen accused Amit alias Chhuri at the time of occurrence, and thereafter in the court. The occurrence had taken place for only 2-3 minutes. The statement of her daughter was not recorded. She denied the suggestion that her daughter Shyneer Singh had love affair with accused Amit Yadav.

9. PW.6 Randhir Singh deposed that he was posted as Naib Tehsildar, Jagadhri, on 08.03.2009. On that day, a direction was issued to him by the District Magistrate, Yamuna Nagar, to conduct test identification parade. The order is Ex.PF. He had gone to Sub Jail, Jagadhri, for conducting test identification parade. The Deputy Superintendent Jail, Jagadhri, arranged nine persons besides the person whose identification was to be held. They were lined up. Smt. Satinder Kaur was called inside the jail. She was asked to identify the person. She pointed out a person, who was standing at serial No. 5 in the list. The person disclosed his name as 'Samir Nain'.

10. PW.10 ASI Balwan Singh deposed that on 28.02.2009, in his presence, one empty cartridge, one lead of bullet (sikka), one motor cycle and blood were lifted with the help of cotton swab. These were taken into possession vide recovery memo Ex.PN.

11. PW.11 Virender Pal Singh is the brother-in-law of the deceased. He deposed that his brother-in-law Charanjit Singh was running a stone crusher. Shyneer Singh did her MBA from Swami Devi Dayal College, Ramgarh. His sister Satinder Kaur and brother-in-law Charanjit Singh had

told him twice or thrice that a boy, namely Amit Yadav, wanted to forcibly marry their daughter Shynnee Singh. However, they were not agreed for the marriage. On 27.02.2009, he along with his wife and son had gone to the house of his sister Satinder Kaur at about 6.30 PM. They started taking their dinner at about 9.00 PM and finished the same at about 9.30/9.40 PM. At about 9.40 PM, some body pressed the door bell. His brother-in-law Charanjit Singh got up from the chair. The moment he opened the door, two persons were there at the door of the lobby. He heard the sound which was like the sound of bursting of crackers. He saw Charanjit Singh falling after sustaining two fire shots near the door of the lobby. Two more shots were fired after Charanjit Singh had fallen. Two persons who had fired shots on Charanjit Singh were present in the court. The witness pointed out towards accused, who had disclosed their name as Amit Yadav and Samir Nain. The third shot was fired by Amit alias Chhuri. In his cross-examination, he deposed that Charanjit Singh was taken to hospital. His statement was recorded after 12.00 mid night.

12. PW.13 EHC Mulakh Raj had prepared scaled site plan Ex.PO.

13. PW.20 SI Hari Ram deposed that he was posted as I.O in CIA Staff, Yamuna Nagar. Accused Amit alias Chhuri made a disclosure statement Ex.PW.20/A. Amit alias Chhuri got recovered one revolver .32 bore and one live cartridge from behind plot No.32, Anaj Mandi, Jagadhri. These were taken into possession vide recovery memo Ex.PW.20/B. The revolver is Ex.P17.

14. PW.22 SI Ran Singh testified that Samir Nain made a disclosure statement Ex.PW.22/A. Amit Yadav also made a disclosure

statement Ex.PW.22/B. He disclosed that he along with Samir Nain and Amit alias Chhuri planned to commit murder of Charanjit Singh. He had given a revolver of .32 bore to Samir Nain, which was looted by him from P.C. Jewellers, Panchkula. Amit alias Chhuri had another revolver of .32 bore, whereas he (Amit Yadav) had another revolver of .455 bore. They committed murder of Charanjit Singh. He (Amit Yadav) fired shot at Charanjit Singh from his .455 bore revolver. Many people came on the spot.

15. PW.23 SI Radhey Sham deposed that Samir Nain made a disclosure statement Ex.PW.23/A. He disclosed that all three accused had planned to commit murder of Charanjit Singh. Accused Samir Nain also got recovered .32 bore revolver along with three live cartridges and one empty cartridge from suitcase lying in the room of his hostel of Swami Devi Dayal College, near Barwala. The weapon was taken into possession vide recovery memo Ex.PW.23/B. Accused Amit alias Chhuri also made disclosure statement Ex.PW.20/A. A revolver of .32 bore and one live cartridge were got recovered from near Anaj Mandi, Yamuna Nagar, buried underground.

16. PW.24 SI Jai Pal Singh deposed that Samir Nain made a disclosure statement Ex.PW.23/A, on the basis of which one revolver of .32 bore along with three live cartridges and one empty cartridge was recovered from hostel of Swami Devi Dayal College, Barwala. Amit Yadav had also got recovered Innova car from Inderparsath Colony, Rohtak. He also got recovered .455 bore revolver from under the seat of the driver.

17. PW.25 ASI Krishan Dutt deposed that Amit Yadav got recovered a revolver of .455 bore and Innova car.

18. PW.30 Pawan Kumar, Vigilance Inspector, deposed that on

08.03.2009, he arrested accused Samir Nain. He submitted an application for getting the test identification parade of the accused conducted from Ilaga Magistrate. The court granted permission. On the same day, test identification parade of the accused was conducted in the jail premises by the Executive Magistrate, Naib Tehsildar. Accused Amit Yadav was arrested on 14.03.2009.

19. PW.7 Dr. Deepika deposed that she along with Dr. Vineet Gupta conducted post-mortem examination. They found the following injuries on the body of the deceased :-

1. There was an irregular punctured lacerated wound, lateral to right eye brow about 3 x 1.5 cm. The margins were blackened and inverted. On dissection meninges were punctured. Cerebral haemorrhage was present in the right cerebral hemisphere. Small yellow metallic piece 1 x .2 cm wide was removed on the margins of the wound. On further dissection another metallic yellow piece about 1.5 cm x .4 cm was removed from the right cerebral hemisphere.
2. There was an irregular punctured lacerated wound oval shape 1 x 1.5 cm on the right side 6 cm below the nipple. Area extending from the wound i.e. 3 x 1 cm was charred and blackened. On dissection punctured wound of the 5th intercostal space piercing right lung and liver right lobe. A bullet of size 2.2 x 1.1 cm and circumference 3.5 cm was removed from the peritoneal cavity. 4 circular markings were present.
3. There was an irregular lacerated wound 1 x 1 cm on the right forearm. 2.5 cm above the wrist joint on the lateral aspect.
4. There was an irregular oval punctured wound 1 x 1 cm

on the left side of abdomen. 8 cm from the Umblicus.
The area was blackened.

The cause of death in their opinion was haemorrhage and shock due to vital organ injuries by fire arms, which were sufficient to cause death in normal course of events. All the injuries were ante-mortem in nature. The probable time that elapsed between injuries and death was within minutes and between death and post-mortem was within 24 hours. The post-mortem report is Ex.PJ.

20. According to the Forensic Science Laboratory report, Ex.PAA, .32 bore revolver marked W/1, .455 bore revolver marked W/2 and country made pistol marked W/3 (Chambered for 7.65 mm cartridges) were fire arm as defined in the Arms Act. Their firing mechanism was found in working order. The .455 fired bullet marked BC/1 was fired from .455 bore revolver marked W/2 and not from any other firearm even of the same make and calibre. The fire cartridge of .32 bore marked C/1 was fired from .32 bore revolver marked W/1 and not from any other firearm even of the same make and calibre. 7.65 mm fired cartridge case marked C/2 was fired from .32 bore revolver W/1 and country made pistol marked W/3. 7.65 mm fired bullet marked BC/1 was fired from a country made fire arm. However, no definite opinion could be formed regarding linkage of BC/2 in respect of country made pistol W/3 due to lack of sufficient comparable individual characteristic marks. The holes of banian were caused by bullet projectiles.

21. The appellants examined DW.1 Gian Singh in their defence. He testified that he was employed as Security Guard, in Indraprastha Colony, Rohtak, in the year 2009. According to him, the said colony was having 52

houses. The colony had only one gate for ingress and outgress. On 15.03.2009, no police vehicle came in the colony between 4.00 PM to 8.00 PM on 16.03.2009. In his cross-examination, he admitted that no entry was made of the vehicles of residents of Society. He had not brought any orders for his duty from 12.00 midnight to 8.00 AM.

22. There are two eye witnesses, who had witnessed the incident, namely PW.5 Smt. Satinder Kaur and PW.11 Virender Pal Singh. PW.5 Smt. Satinder Kaur deposed that Amit Yadav fired 3-4 shots on her husband. His two companions also fired shots on the main gate of the house. PW.11 Virender Pal Singh deposed that two persons, namely Amit Yadav and Samir Nain, had fired shots on Charanjit Singh. They tried to chase the assailants. The third assailant fired at them. The accused were identified by both the witnesses in the court. The post-mortem was conducted by a team of the doctors. There were four injuries on the body of the deceased. The cause of death was haemorrhage and shock due to vital organ injuries by fire arms, which were sufficient to cause death in normal course of events. All the injuries were ante-mortem in nature. The probable time between injuries and death was within minutes and between death and post-mortem was within 24 hours. All the appellants had hatched conspiracy. They were armed with fire arm weapons. They had entered the house of Charanjit Singh. The motive attributed to them was that Amit Yadav wanted to marry daughter of Charanjit Singh. The daughter of Charanjit Singh was not interested to marry him. Amit Yadav had also earlier come to their house. Two FIRs were registered against him. He had advanced threats to the family of the deceased on 25.02.2009. The next date fixed in the earlier

FIRs was 26.02.2009. The weapons were recovered at the instance of the appellants. The Forensic Science Laboratory report Ex.PAA also goes against them. The statement of DW.1 Gian Singh does not inspire any confidence.

23. Accordingly, the prosecution has proved its case against the appellants beyond reasonable doubt. There is no reason for us to interfere with the well reasoned judgment and order of the learned trial court. The appeal is, accordingly, dismissed. Appellant Amit alias Chhuri is on bail. His bail bond and surety bond are cancelled. He is directed to surrender before the concerned Chief Judicial Magistrate within a period of seven days to undergo remaining part of his sentence.

(**RAJIV SHARMA**)
JUDGE

March 20, 2019
ndj

(**KULDIP SINGH**)
JUDGE

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