

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-951-DB-2004
Reserved on : 31.01.2020
Date of decision : 03.02.2020

Shishu Pal @ Shish Pal and others

... Appellants

Versus

State of Haryana

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU***

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

Mr. Vivek Saini, DAG, Haryana.

Mr. Ravi Malik, Advocate for
Mr. Mohan Singh Rana, Advocate
for the complainant.

RAJIV SHARMA, J.

This appeal has been instituted against the judgment dated 27.10.2004 and order dated 30.10.2004 rendered by the Additional Sessions Judge, Ambala, in Sessions case no.11 of 05.03.2003/25.10.2001 whereby all the appellants were charged with and tried for the offences punishable under Section 302/34 and 120-B of the Indian Penal Code (in short 'IPC') and appellant Harpal Singh was charged with and tried for the offence punishable under Section 25 of the Arms Act also. All the appellants were convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months each for the

offence punishable under Section 302/34 read with Section 120-B IPC. Appellant Harpal Singh was also convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month for the offence punishable under Section 25 of the Arms Act. Both the sentences of appellant Harpal Singh were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that on 06.07.2001 PW Inspector Jai Singh (then Sub Inspector) accompanied by PW ASI Ishwar Singh besides other police officials were patrolling the area. PW Rajeev Mohan Rai met him. He got his statement Ex.PH recorded to the effect that he was resident of Model Town, Ambala City. He was working as Medical Representative. He along with his brother, parents and children resided together. At the time of partition of the country, his father was a freedom fighter. Since 1947, Mehtab Singh was friend of his father. He used to reside at village Dukheri. He was also a freedom fighter. His uncle Mehtab Singh was unmarried. He owned about 11 acres of land besides other property at village Dukheri. He was fed up from his family members. He was residing with them since 1995. He used to offer prayers in the morning as well as in the evening. A few days back, Mehtab Singh had won a civil suit. He had gone to effect *munadi* in village Dukheri on 04.07.2001. On the previous evening, i.e. on 05.07.2001 at about 8.45/9.00 P.M., there was a lunar eclipse. The family members were performing pooja. There was a knock at the door. Two young boys enquired about Mehtab Singh. Mehtab Singh came out. He did not know those boys. The boys told that they were

sent by Mukesh. Mehtab Singh asked them to see him on the next day. On the date of occurrence at about 9.00 A.M. those two boys again came to their house. They enquired about Mehtab Singh. Their father M.M.Rai was also present. His father enquired as to from where they had come. They told that they had come from Paniala (U.P.). Mehtab Singh did not meet them. Mehtab Singh left the place by stating that he had some work in the Court and thereafter he had to meet someone in the jail and thereafter he was free. At about 3.00 P.M. an information was received that somebody had shot dead Mehtab Singh near house of A.L.Malik situated in Model Town. Rajeev Mohan Rai accompanied by his brother Sanjeev and other family members reached the spot. Many people gathered at the spot. PW SI Jai Singh made endorsement Ex.PH/2 on the basis of which formal FIR Ex.PH/1 was recorded by ASI Suraj Bhan. Police party reached the spot. Inquest report was prepared. Blood stained earth and pellets found near dead body were lifted and converted into parcels and sealed with seal 'JS'. These were taken into possession vide memo Ex.PM. The body was sent for post-mortem examination. The post-mortem was conducted. The articles recovered from the spot were deposited with MHC. Accused were arrested. They made disclosure statements. Investigation was completed. Challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statements of the appellants were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The appellants examined three witnesses in their defence. The appellants were convicted and sentenced, as noticed hereinabove. Hence, this appeal.

vehemently argued that the prosecution has failed to prove the case against the appellants.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

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

7. PW-1 Bhim Singh deposed that on 16.07.2001 Jai Singh SI, SHO Police Station Baldev Nagar handed over to him a parcel containing country made pistol to check the said pistol whether it was in working condition. He checked the same. It was in working condition. He prepared his report Ex.PA. In his cross-examination, he categorically admitted that the pistol examined by him was of .315 bore and only a cartridge of .315 can be fired from this pistol.

8. PW-3 Manohar Lal prepared the site plan Ex.PB.

9. PW-4 ASI Ishwar Singh deposed that he took the dead body for post-mortem examination. The dead body was handed over by him to legal heirs / relations of the deceased. SHO also handed over the inquest report to him. In cross-examination, he deposed that he was sent for some other work. He could not tell exactly the duty for which he was deputed by the SHO.

10. PW-6 Raj Pal deposed that Jai Singh, SI/SHO interrogated accused Harpal Singh and Jal Singh. Harpal Singh made disclosure statement Ex.PF.

11. PW-6A Dr.S.K.Mahipal conducted the post-mortem examination. He noticed the following injuries on the person of the deceased:-

“There was a lacerated wound of 11.5 x 9 cm and bone deep (cervical vertebral column) were present on the left antero-lateral aspect of neck extending from lower border of left angle of mandible up to supra clavicular area adjoining skin showed blackening, burning charred and singeing of beard hair. In the adjoining wound subcutaneous tissue, muscles, vessels were markedly lacerated and showed blackening. Large vessels in the area of wound bed were ruptured. On dissection trachea upper part of left lung left side showed laceration. No bullet or pellet could be isolated.

A lacerated wound of size 2 x 1.8 cm with impacted piece of brick was present on the left upper scapular area.”

The cause of death was opined to be due to injury to major vessels and vital organs resulting from the fire arm injury which was sufficient to cause death in normal course of nature. All the injuries were ante mortem in nature. In his cross-examination, he deposed that there was no exit wound in this case. He admitted that no bullet or pallet was detected while conducting the post mortem examination. He could not admit or deny whether the injury was caused with a cartridge of .12 bore.

12. PW-11 Mukesh Kumar testified that he was earlier residing in village Paniala near Rurki near Uttaranchal. Now he was residing in village Dukheri. He was residing in village Dukheri for the last 17/18 years. He was residing with his real sister's husband namely Jagdish. He was working in Ambala Cantt and having his own shop of Scientific Instruments. He knew

all the four accused. Shish Pal and Karam Singh were residents of village Dukheri and rest two Harpal Singh and Jal Singh accused were their relatives and they used to visit village Dukheri. On 06.07.2001 at about 2.00/2.30 PM, Karam Singh, Jal Singh and Harpal Singh were talking to Mehtab Singh deceased near Police Chowki, Model Town. He came to know in the evening that Mehtab Singh was murdered and later in the night police came and recorded his statement. In his cross-examination, he deposed that he was ten years old when he shifted to village Dukheri. After shifting to village Dukheri, he had seen only one more brother of Mehtab Singh. Mehtab Singh was unmarried. The land of Mehtab Singh was now in the possession of Jagdish. He further deposed that police had visited their village at 5 o'clock on 06.07.2001. He had reached his village at about 5.30 P.M. on 06.07.2001. His statement was recorded by SHO Jai Singh. He was carrying on the business of scientific goods in Katcha Bazar in a rented premises. The rent of premises was earlier Rs.400/- and now Rs.550/-. He had not taken any receipt for payment of rent. There was no name and style of his firm. He did not maintain any account of his shop. He did not have any bill or invoice for the work done by him. He knew only Karam Singh. He did not know Jal Singh and Harpal Singh. He did not tell anybody that Karam Singh was also there with Harpal Singh and Jal Singh when they were talking with Mehtab Singh. He came to know about the murder of Mehtab Singh when he reached village Dukheri. But he could not tell the name of the person from whom he came to know about the murder. When he came in the village, Jagdish used to reside in the house of Mehtab Singh. Jagdish resided with Mehtab Singh till the death of Mehtab Singh.

13. PW-12 Rajeev Mohan Rai deposed that Mehtab Singh was

resident of village Dukheri. He was unmarried. He owned 10/12 acres of land in village Dukheri. Mehtab Singh had a property dispute with his family members. On 05.07.2001 they were performing pooja. Two boys came to their house. He was also present. Two boys asked about his uncle Mehtab Singh. The boys were Jal Singh and Harpal Singh. His uncle asked them who had sent them. Accused told that they had been sent by Mukesh. His uncle knew Mukesh. Accused asked his uncle to accompany them. His uncle refused to accompany them and asked them to come in the next morning. On the next morning, both the accused at about 9.00 A.M. came to their house. At about 3.00 P.M., when they were taking their lunch, someone told them that his uncle Mehtab Singh was murdered in firing. They all went there immediately. They found his uncle dead. Many persons had assembled there. His statement Ex.PH was recorded. In his cross-examination, he deposed that he did not know how many brothers Mehtab Singh had. Mehtab Singh used to discuss that he had litigation with some persons and he had also a list in his pocket of the persons who had enmity with him. He had two lists, one of the persons with whom he had litigation and the other of persons who had enmity with him. Name of Jagdish did not figure in that list. Mehtab Singh had about 10/12 acres of land. He did not know who was cultivating his land but most of his land was in possession of Jagdish. Some of his land was in the cultivation of Shish Pal also. He also admitted that Jal Singh and Harpal Singh had come on 05.07.2001, but he did not know them at that time. He was disclosed the names of Jal Singh and Harpal Singh by Jagdish and other police officials. He did not know the name of police officials who told the name of Jal Singh and Harpal Singh. He further deposed that police told him about Jal Singh and Harpal Singh in

the Court.

14. PW-13 Sanjeev Mohan Rai deposed that on 06.07.2001, at about 2.30 P.M., he came to know that Mehtab Singh was murdered by someone. Police reached the spot. Recovery memo Ex.PM was prepared. It was attested by him. On the previous day of the occurrence, two boys came to meet his uncle at their residence. He pointed out towards accused Jal Singh and Harpal Singh present in the Court. On the next morning, he left his house early in the morning so he could not say whether these accused came to his uncle or not at their residence. He was declared hostile and was cross-examined by the learned Public Prosecutor. He admitted that he made the statement Ex.PN before the police. He denied the suggestion that both the accused came to their residence on the next morning at about 09.00 A.M. or that his father who was present outside their house also saw these two boys. He categorically admitted in his cross-examination that Mehtab Singh was not related to them. He did not know about the family of Mehtab Singh. No list was brought out from the dead body of Mehtab Singh containing name of any person. He did not know whether Jagdish Singh met him on 06.07.2001. Jagdish Singh met him after 15 days of occurrence, i.e. the day of kirya ceremony.

15. PW-14 Jagdish Singh testified that two accused were his nephew namely Shish Pal and Karam Singh. His father had three brothers namely Trilok Singh, Bir Singh and Mehtab Singh. His father Punjab Singh was elder to Mehtab Singh. All the four brothers had 45 bighas of land each. His uncle was unmarried. After the death of his uncle Bir Singh, there was a land dispute regarding partition with accused Shish Pal, Karam Singh and his two brothers. He was also one of the party to the suit. Mehtab Singh, his

uncle, had won the civil suit 10/12 days before his death. On 06.07.2001 when he was going on duty in the morning, all the four accused including two brothers Jagpal and Bhopal had collected in their house and were talking there. Thereafter, he left for his duty and at about 05.30 P.M. when he reached at his village, police had already arrived in the village. Police asked him if he had any dispute with accused present in Court and with their two brothers. In his cross-examination, he deposed that he was adopted by Mehtab Singh. He did not know whether any document was prepared at the time of adoption. He had no proof regarding his adoption by Mehtab Singh. He was in possession of share of his father and of Mehtab Singh. He had received a bag after his death in which he found a Will in his favour and certain documents and did not get anything else. He had seen Shish Pal, Jagpal, Bhopal and Karam Singh sitting together at 8.30 A.M. on 06.07.2001. He had visited the residence of Rajeev Mohan and Sanjeev Mohan at 11.00 P.M. again said at 10.00 P.M. on 06.07.2001. He discussed the entire contents with Rajeev Mohan and Sanjeev Mohan and with their father. He did not disclose to Rajeev Mohan, Sanjeev Mohan or their father regarding meeting of Bhopal, Jagpal, Shish Pal and Karam Singh at 8.30 A.M. on 06.07.2001. He even did not disclose the fact of meeting of Mukesh with Mehtab Singh in the company of Karam Singh and Harpal Singh. He did not discuss anything with Rai family on 07.07.2001 or thereafter till date regarding the incident.

16. PW-16 ASI Badlu Ram deposed that accused Harpal Singh was interrogated. He made disclosure statement Ex.PQ to the effect that he had committed murder of Mehtab Singh on 06.07.2001 with a country made . 315 bore pistol and he had kept concealed the same in the house of Shish

Pal, his brother-in-law at village Dukheri in the kotha of turi. He could get it recovered. Thereafter, the accused led the police party to the disclosed place in pursuance of disclosure statement Ex.PQ and got recovered .315 bore country made pistol alongwith two live cartridges.

17. PW-17 is the investigating officer. He recorded statement Ex.PH of Rajeev Mohan Rai on the basis of which FIR Ex.PH/1 was registered. He visited the spot. He lifted one black umbrella, blood stained earth, bunch of hairs, smeared with blood and pellets of 12 bore. All these articles were converted into parcels and sealed with seal 'JS'. Accused Harpal Singh made disclosure statement Ex.PQ on the basis of which a country made pistol of .315 bore was recovered. Sketch of the pistol Ex.PR/1 was prepared. It was taken into possession vide memo Ex.PR. He arrested accused Jal Singh on 14.07.2001. The pistol of 12 bore was recovered from him. Separate case was registered against him in this regard. On 14.07.2001 a pistol, which was got recovered by accused Harpal Singh, was got mechanically tested from Armourer. The report of Armourer is Ex.PA. In his cross-examination, he admitted that no list from the dead body of deceased Mehtab Singh was recovered. He did not visit village Dukheri on 06.07.2001. He could not say whether Badlu Ram had visited village Dukheri. He had visited village Dukheri firstly on 07.07.2001 and thereafter on 08.07.2001. He did not investigate on the aspect as to with whom Mehtab Singh was having litigation. He found in investigation that the murder of Mehtab Singh had taken place from the revolver of .315 bore. He did not gather any evidence regarding effecting of munadi. He had called many people at the time of interrogation of Harpal but nobody joined the investigation.

18. DW-1 Devinder Sharma testified that Karam Singh was employed as helper in their factory. As per card punching record on 06.07.2001, he punched the card in the factory at 9.02 AM. He also punched the card in the evening.

19. DW-2 Rajesh Singh testified that the entry was made regarding arrival of Shish Pal in the unit on 03.07.2001 at 8.15 A.M. and leaving the unit on 08.07.2001 at 7.50 A.M.

20. DW-3 Randhir Singh deposed that his unit was located at Kota. His brother-in-law Shishu Pal and his mother-in-law had come to his unit on 03.07.2001.

21. The FSL report is Ex.PU. According to the report, the country made pistol marked W/1 (Chambered for .315” cartridges) was a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was found in working order. Lead could not be detected on the chips contained in parcel no.IV. Live .315” cartridge recovered in parcel no.VII was used in test firings from pistol W/1. According to FSL report Ex.PU/1, exhibit-1 (umbrella) was stained with numerous small blood stains. Blood was detected on exhibit-2 (blood stained earth). Exhibit-5a (Pyjama) and exhibit-5c (kachha) were stained with numerous large and small blood stains. Exhibit-5b(kurta) and exhibit-5d (Fatuhi) were extensively stained with blood. Blood could not be detected on exhibit-6 (hair).

22. The case of the prosecution is that Mehtab Singh was resident of village Dukheri. However, as per the case of prosecution, he had started living with family of PW-12 Rajeev Mohan Rai. He had litigation. Two boys had come in the evening on 05.07.2001. In the morning on 06.07.2001 also, two boys came. At about 3.00 P.M. PW-12 Rajeev Mohan Rai and his

family members were informed about the murder of Mehtab Singh. Statement of PW-12 Rajeev Mohan Rai was recorded vide Ex.PH which led the registration of the FIR.

23. According to PW-12 Rajeev Mohan Rai, Mehtab Singh was resident of village Dukheri. He was unmarried. He had started living with them at Ambala. However, in the cross-examination he deposed that he did not know how many brothers Mehtab Singh had. He also admitted that Jal Singh and Harpal Singh had come on 05.07.2001 but he did not know them at that time. He was told their names by the police. He also admitted that land owned by Mehtab Singh was in possession of Jagdish. However, he did not know the names of police officials who told him the names of Jal Singh and Harpal Singh. The names of accused were not mentioned in the FIR.

24. PW-11 Mukesh Kumar deposed that earlier he was residing in village Paniala near Rurki. However, thereafter he started to reside with his brother-in-law namely Jagdish. On 06.07.2001 at about 2.00/2.30 P.M. Karam Singh, Jal Singh and Harpal Singh were talking to Mehtab Singh deceased near police chowki Model Town. He came to know in the evening that Mehtab Singh has been murdered. Police recorded his statement at night. He is the witness of "last seen". In his cross-examination, he has categorically deposed that police had visited at their village at 5 o'clock on 06.07.2001. His statement was recorded by SHO Jai Singh. The statement made by Mukesh is Ex.DA. It was not recorded at Dukheri but at Baldev Nagar. PW-17 Jai Singh has categorically stated that he did not visit village Dukheri on 06.07.2001. According to PW-11 Mukesh Kumar, he was carrying on business of scientific goods. However, he could not produce any record to establish that he was a businessman. He has categorically admitted

that he was not maintaining account of his shop. He had not produced any bill or invoice that he was running a shop. He was real brother-in-law of PW-14 Jagdish Singh. PW-14 Jagdish Singh deposed that Mehtab Singh had adopted him but no adoption deed was placed on record. Neither anybody from the village nor Panch/Sarpanch was present at the time of adoption. He admitted that he was in possession of share of his father and of Mehtab Singh. He had seen the accused along with Jagpal and Bhopal on 06.07.2001 when he was going on duty in the morning. Thereafter, he left for his duty and returned from duty at about 05.30 P.M. When he reached at his village, police had already arrived in the village. Police asked him that if he had any dispute with accused present in the Court and with their two brothers namely Jagpal and Bhopal. In his cross-examination, he categorically admitted that he had visited the residence of Rajeev Mohan and Sanjeev Mohan at 10.00 P.M. on 06.07.2001 but he did not disclose to Rajeev Mohan, Sanjeev Mohan or their father regarding meeting of Bhopal, Jagpal, Shish Pal and Karam Singh at 8.30 A.M. on 06.07.2001. He even did not disclose the fact of meeting of Mukesh with Mehtab Singh in company of Karam Singh and Harpal Singh. It was unusual conduct of PW-14 Jagdish Singh. If he had seen the accused talking with Mehtab Singh, he would have definitely apprised PW-12 Rajeev Mohan Rai and PW-13 Sanjeev Mohan Rai about it. He is also the witness of "last seen". PW-13 Sanjeev Mohan Rai has though admitted that boys had come in the evening but he denied in his examination-in-chief that same boys came in the morning. He was declared hostile and cross-examined by the learned Public Prosecutor. In his cross-examination by the learned Public Prosecutor, he denied the suggestion that accused came to their residence in the morning at

9.00 A.M. He also admitted that Mehtab Singh was not related to them. No list was brought out from the dead body of Mehtab Singh. According to recovery memo Ex.PM, one parcel of pellets of 12 bore was recovered from the spot. Recovery from Harpal is gun of .315 bore. According to Ex.PR, one desi katta .315 bore and two live cartridges of .315 bore were recovered. It has come in the FSL report that lead could not be detected on the chips contained in parcel no.IV. PW-6A Dr.S.K.Mahipal admitted in his cross-examination that there was no exit wound in this case. No bullet or pallet was detected while conducting the post-mortem examination. Neither he could admit nor deny whether the injury was caused with a cartridge of .12 bore. It is doubtful that injuries were caused by .315 bore pistol but as per Ex.PM, recovered pellets were of 12 bore. Though 12 bore gun was recovered from Jal Singh and separate case was registered against him in that regard. Though motive attributed to the accused is that there was a land dispute, however, PW-17 Jai Singh had not investigated as per his statement whether there was any litigation going on between the parties. PW-17 Jai Singh deposed that he had recorded statement of Mukesh on the same day at the spot but PW-11 Mukesh deposed that his statement was recorded in the evening at village Dukheri. PW-14 Jagdish Singh admitted that he received a bag of Mehtab Singh. A Will was recovered from the bag. He was the beneficiary of the Will. He also admitted that he was in possession of the land of Mehtab Singh. PW-11 Mukesh Kumar is his brother-in-law. PW-11 Mukesh even did not know about the number of brothers Mehtab Singh had. The prosecution could not prove that PW-11 Mukesh Kumar was doing the business in Ambala Cantt. or was living in village Dukheri. He is none other than the brother-in-law of PW-14 Jagdish Singh, who is beneficiary of the

Will allegedly made by Mehtab Singh, in his favour. If pellets of 12 bore gun were found from the spot, these cannot be used in .315 bore pistol. The weapon used in the crime is not connected in any manner with the weapon recovered from the accused. The pellets were not connected with the pistol. Though PW-12 Rajeev Mohan Rai and PW-13 Sanjeev Mohan Rai deposed that Mehtab Singh was living in their house but the fact of the matter is that PW-14 Jagdish Singh in his cross-examination deposed that Mehtab Singh was having his own house and barra in village Dukheri and that house was also in his possession. Thus, there was no occasion for Mehtab Singh to stay in the house of PW-12 Rajeev Mohan at Ambala. PW-11 Mukesh Kumar has stated in clear words that Jagdish used to reside in the house of Mehtab Singh and he stayed with Mehtab Singh till the death of Mehtab Singh. PW-17 Jai Singh admitted in his cross-examination that he had not gone to the house of PW-12 Rajeev Mohan Rai to verify that Mehtab Singh was residing in their house. Surprisingly PW-12 Rajeev Mohan Rai as well as PW-13 Sanjeev Mohan Rai have testified that the boys have told Mehtab Singh that they were sent by Mukesh Kumar. However, Mukesh Kumar has been cited as PW-11 and he is brother-in-law of PW-14 Jagdish Singh. PW-12 Rajeev Mohan Rai and PW-13 Sanjeev Mohan Rai deposed in their chief-examination and cross-examination that the boys were sent by Mukesh Kumar.

25. The accused have also examined witnesses in their defence to prove the plea of *alibi*. Their Lordships of the Hon'ble Supreme Court in **(2005) 12 Supreme Court Cases 267 "Gayadin vs. State of M.P."** have held that merely because accused had set up a false plea of alibi, it cannot be held that he was positively responsible for the murder. Their Lordships have

held as under:-

“6. Apart from the evidence of PW 10 and PW 12, there is no other evidence to show the bad relationship between the appellant and the deceased. Of course, the evidence adduced by the appellant to prove his alibi was not very convincing and merely because he had set up a false alibi, it cannot be held that he was positively responsible for the murder. Apart from the accused, there were 5 other inmates in the house. The prosecution evidence is not able to throw any light on the complicity or otherwise of any one of the inmates of the house in this case. There is no evidence to point out that the appellant alone was responsible for causing death of the deceased Kasturi Bai.”

26. Thus, the prosecution has failed to prove the case against the appellants beyond reasonable doubt.

27. Accordingly, the appeal is allowed. The judgment dated 27.10.2004 and order dated 30.10.2004 are set aside. The appellants are acquitted of the charges. The appellants are on bail. Their bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

February 03, 2020.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No