

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

(1) CRA-D-239-DB of 2005

Anil and another

.... Appellants

Versus

State of Haryana

..... Respondent

(2) CRA-D-380-DB of 2005

Jitender and another

.... Appellants

Versus

State of Haryana

..... Respondent

Reserved on : 05.02.2020

Date of decision : 07.02.2020

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE VIVEK PURI

Present: Ms. Anju Arora, Advocate,
for appellant No.1 Anil in CRA-D-239-DB-2005.

Mr. Bijender Dhankar, Advocate (Legal Aid Counsel),
for appellant No.2 Ishwar in CRA-D-239-DB-2005 and
for appellant No.1 Jitender in CRA-D-380-DB-2005.

Mr. Bijender Dhankar, Advocate,
for appellant No.2 Bhupender in CRA-D-380-DB-2005.

Mr. Vivek Saini, Deputy Advocate General, Haryana.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in these

appeals, i.e. CRA-D-239-DB and CRA-D-380-DB of 2005, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against the judgment dated 18.02.2005 and order dated 19.02.2005, rendered by learned Additional Sessions Judge, Sonapat, in Sessions Case No. 170 of 2002.

3. Appellants Anil, Ishwar, Jitender and Bhupender were charged with and tried for the offence punishable under Section 302/34 IPC. Appellants Anil and Jitender were also charged with and tried for the offence punishable under Section 25 of the Arms Act.

4. All the appellants were convicted and sentenced to undergo imprisonment for life and to pay a fine of ₹ 5,000/- (Rupees five thousand) each and in default of payment of fine to further undergo rigorous imprisonment for a period of six months under Section 302 read with Section 34 IPC. Appellants Anil and Jitender were also convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹ 1,000/- (Rupees one thousand) each and in default of payment of fine to further undergo rigorous imprisonment for a period of one month under Section 25 of the Arms Act. Both the sentences of appellants Anil and Jitender were ordered to run concurrently.

5. The case of the prosecution, in a nutshell, is that complainant Suresh Kumar (PW.3) lodged report Ex.PB with SI Ram Avtar to the effect that on 06.01.2002 at about 5.00 PM, he, his brother Randhir Singh and relative Daya Nand son of Baru Ram were going to their field. Randhir Singh was going ahead of them. When Randhir Singh reached near the house of Jai Bhagwan, the accused were found standing there with motor

cycle. Accused Ishwar gave a *lalkara* that the enemy had come, he should be finished. Accused Jitender, who was armed with a country made pistol, fired upon Randhir Singh. The bullet hit on his right palm. Thereafter, Randhir Singh tried to escape. Then accused Ishwar and Bhupender both caught hold of him from his arms. At that time, accused Anil, who was armed with a country made pistol, fired upon Randhir Singh on his face. Randhir Singh fell down. He (complainant) and Daya Nand tried to apprehend the accused. They ran away. On the basis of the statement Ex.PB made by the complainant, FIR Ex.PB/2 was recorded. Statements of the witnesses under Section 161 Cr.P.C. were recorded. Body was sent for post-mortem examination. The investigation was completed and challan was put up after completing all the codal formalities.

6. 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. According to them, they were falsely implicated due to enmity. They were convicted and sentenced, as noticed here-in-above. Hence, these appeals.

7. Learned counsel appearing on behalf of the appellants have vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State has supported the judgment of conviction and order of sentence passed by the learned trial court.

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

9. PW.10 Dr. A.S. Ahlawat along with Dr. Arun Garg and Dr. J.S. Punia had conducted the post-mortem examination on 07.01.2002. They

noticed following injuries on the body of the deceased :-

- “(1) A triangular lacerated wound on upper part of left side of the chest, situated 7 cms above left nipple, each side of the wound was measuring 2 cms with corresponding cut in jersy, shirt and baniyan (woolen). The clothes were blood stained. On dissection, the wound was directed medially and downwards towards right side ending at sixth inter coastal space in the posterior axillary line, where a bullet was found lodged in chest wall. Bullet was removed and sealed in a glass vial. There was blood all around the track in both the plural cavity and the peritoneal cavity around the liver. Right lung was lacerated on the posterio medial aspect with blood in the lung. There was a lacerated wound on the superior surface of right lobe of liver.
- (2) There was a lacerated wound with inverted margins present on the palmer aspect of right hand near the wrist joint with clotted blood around the wound.
- (3) A lacerated wound 2 cm x 1.5 cm was present over lateral side of right forearm, 3 cms above right wrist joint. A part of the bullet was found entangled in the sleeve of the warm baniyan. On dissection, the track of the wound of injury No.2 was going upwards and laterally and ending at injury No.3. There was blood all along the track. There was fracture of shaft of right radius at its lower end.”

The cause of death was shock and haemorrhage as a result of injuries described in post-mortem report, which were ante-mortem in nature and sufficient to cause death in normal course of nature. The probable time that elapsed between injuries and death was within a few minutes, between death and post-mortem was within 24 hours. The post mortem report is Ex.PG. In

his cross-examination, he deposed that the bullet travelled from the left side towards the right side and then downwards, as mentioned in the post mortem report. He could not narrate the distance from which the shot was fired at the deceased. The possibility of the assailants standing on the higher surface than the deceased could not be ruled out, because the bullet travelled downwards.

10. PW.3 Suresh Kumar deposed that the murder of Vinod had taken place. His nephew Yogesh and one Rakesh were named as accused in that murder. Thus, Ishwar etc. were having strained relations with them. On 06.01.2002 at about 5.00 PM, he along with his brother Randhir Singh and relative Daya Nand were going to the field. Randhir Singh was walking 50 paces ahead of them. When Randhir Singh reached near the house of Jai Bhagwan, then Ishwar, Bhupender, Jitender and Anil were standing there. Ishwar raised a *lalkara*. Then Jitender fired a shot with his country made pistol upon Randhir Singh. The bullet hit the palm of his right hand. When Randhir Singh started running, then Bhupender and Ishwar caught hold of him by his both hands. Then Anil fired a shot upon Randhir Singh with a country made pistol. The bullet hit left side of chest above the nipple of Randhir Singh. Randhir Singh collapsed. He along with Daya Nand tried to catch hold of the accused. The accused ran away from the spot. He went to the police station. In his cross-examination, he deposed that the distance between the house of Jai Bhagwan and Abadi of the village was about 125 feet. Jitender had fired the shot from a distance of 2-4 feet. Anil had fired the shot from a distance of 5-4 feet. He admitted that in his statement Ex.PB, he had told the police that Anil fired the shot at the face of Randhir.

However, in his supplementary statement Ex.PC, which was recorded by the police, he had stated that the shot fired by accused Anil had hit Randhir on the left side of his chest. He had gone to the police station on foot. He did not remember the registration number of the motor cycle, but according to him, it was Yamaha. A court question was put to him as to why he had disclosed in Ex.PB that Randhir received gun shot on his face at the hands of Anil and in Ex.PC, he had stated that the bullet had hit on the left side of the chest of the deceased. He answered that since there was bleeding from the mouth of Randhir, therefore, he narrated this fact to the police.

11. PW.4 Daya Nand corroborated the statement of PW.3 Suresh Kumar. He also deposed that Ishwar raised *lalkara*. Immediately, Jitender came in front of Randhir and fired a shot upon Randhir. The bullet hit right palm of Randhir. When Randhir tried to escape, he was caught hold by Bhupender and Ishwar from his arms. Anil fired a shot which hit on the left side of chest of Randhir. Randhir collapsed. They tried to catch hold of the accused. The accused ran away. In his cross-examination, he deposed that the village Abadi starts from a distance of about 100 yards from the house in front of which the occurrence had taken place. He denied the suggestion that the accused have been named due to enmity between the family of Randhir and the family of the accused on account of murder of Vinod.

12. PW.5 Suresh Kumar had prepared the scaled site plan Ex.PC.

13. PW.9 Jagdev Singh deposed that during the course of interrogation, accused Jitender made disclosure statement Ex.PD that he had kept concealed one pistol, one empty cartridge, one live cartridge and the motor cycle in the *kotha* of a tubewell. Anil accused also made disclosure

statement Ex.PE that he had kept concealed one pistol, one live cartridge and one missed cartridge behind the back wall of the *kotha* of a tubewell of Jitender. Thereafter, the accused got recovered the pistols along with cartridges as well as motor cycle, which were taken into possession vide memos Ex.PD/1 and Ex.PE/1. In his cross-examination, he admitted that Suresh complainant was his real brother. He deposed that the accused were not handcuffed when they were interrogated. Interrogation lasted for about 15 minutes.

14. PW.12 Randhir Singh, Inspector, testified that the accused were interrogated. Accused Jitender made disclosure statement Ex.PD. Jitender got recovered a motor cycle, .315 bore pistol along with one live cartridge and one empty. Accused Anil made disclosure statement Ex.PE and got recovered one pistol, one empty and one live bullet. These were taken into possession.

15. PW.13 SI Ram Avtar deposed that complainant Suresh met him on 06.01.2002. Suresh made statement Ex.PB, on the basis of which FIR Ex.PB/2 was recorded. He recorded statements of PWs, after visiting the spot. He completed the inquest proceedings. Body was sent to General Hospital, Sonapat, for post-mortem examination. In his cross-examination, he deposed that it took him about 45 minutes in recording the statement of Suresh. The contents mentioned in the inquest report were correct.

16. The cause of death, as per the statement of PW.10 Dr. A.S. Ahlawat, was shock and haemorrhage as a result of injuries described in the post-mortem report. The injuries were ante-mortem in nature and sufficient to cause death in normal course of nature. The probable time that elapsed

between injuries and death was within a few minutes, between death and post-mortem was within 24 hours.

17. Though PW.3 Suresh Kumar, in his initial statement Ex.PB, had deposed that appellant Anil fired on the face of the deceased, but in his supplementary statement Ex.PC, he had explained that the shot was fired at the chest of the deceased. A question was also put to him in this regard by the learned trial court, to which he answered that since there was bleeding from the mouth of the deceased, therefore, he thought that he had been hit on the face. PW.3 Suresh Kumar and PW.4 Daya Nand had seen appellants Jitender and Anil firing at the deceased with their country made pistols. Appellants Jitender and Anil made disclosure statements Ex.PD and Ex.PE, on the basis of which recoveries were effected, including that of motor cycle, country made pistols and cartridges. The country made pistols were sent to the Forensic Science Laboratory Haryana, Madhuban, for examination. According to the FSL report Ex.PF, the country made pistols marked W/1 and W/2 (each chambered for .315” cartridges) were fire arms as defined in the Arms Act. Their firing mechanism were found in working order. The .315” fired cartridge case marked C/2 and .315” fired bullet marked BC/1 had been fired from country made pistol W/1 and not from any other fire arm even of the same make and bore. Similarly, .315” fired cartridge case marked C/1 and .315” fired bullet marked BC/2 had been fired from country made pistol W/2 and not from any other fire arm even of the same make and bore. The .315” mis-fired cartridge marked MC/1 had missed fire from country made pistol W/1. Holes in Shirt, T-shirt, jersey, banian (vest) and lohi contained in parcel No. I had been caused by bullet

projectiles. Further, according to the FSL report, Chader, Shirt and T-shirt were stained with numerous large and small blood stains. Jersey was stained with a few medium and small blood stains. Pyjama and Topa were stained with several medium and small blood stains. Banian (vest) was stained with several large and small blood stains. Underwear was stained with a few small blood stains.

18. The prosecution has proved its case against the appellants beyond reasonable doubt. There is correct appraisal of the evidence by the learned trial court. There is no reason for us to interfere with the well reasoned judgment of the learned trial court.

19. Accordingly, both the appeals are dismissed. The conviction and sentence of the appellants are upheld. They are on bail. Their bail bonds and surety bonds are cancelled. They are directed to surrender before the concerned Chief Judicial Magistrate to undergo remaining part of their sentences.

(RAJIV SHARMA)
JUDGE

February 07, 2020
ndj

(VIVEK PURI)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes