

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

CRA-D No. 65-DB of 2010 (O&M)

Reserved on : 6.3.2020

Date of decision : 17.3.2020

Pawan and others

.... Appellants

versus

State of Haryana

... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mrs. Justice Harinder Singh Sidhu**

Present Mr. Vikram Punia, Advocate, for the appellants.
Mr. Vivek Saini, Deputy Advocate General, Haryana.

Rajiv Sharma, J.

1. The aforesaid appeal is instituted against the judgment dated 8.12.2009 and order dated 14.12.2009, rendered by learned Additional Sessions Judge, Sonapat, in Session Case Nos. 38 and 39 of 2007. Appellants Pawan, Mukesh @ Kera and Pardeep were charged with and tried for the offence punishable under Section 302 read with Section 34 IPC and Section 25/27 of the Arms Act. The appellants were convicted and sentenced to undergo imprisonment for life and to pay a fine of ₹ 5,000/- each under Section 302 read with Section 34 IPC and in default of payment of fine, to further undergo imprisonment for a period of three months. Appellants Pardeep and Mukesh were further convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹ 500/- each under Section 25 of the Arms Act and in default of payment of fine, to further undergo imprisonment for fifteen days. Both the substantive sentences were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that PW2 Hawa Singh lodged the report, Ex.PB, to the effect that he had three sons. The name of eldest son was Suresh. Suresh was followed by Ramesh and Naresh. They were residing separately. The complainant and his wife were residing with Naresh. On the night prior to 18.8.2006, the complainant was present at the house of Naresh at about 10.45 P.M. when Suresh and his son Rajesh came there. Suresh informed the complainant that at around 9.30/10.00 P.M., accused Pardeep son of Ran Singh along with two other young boys had come to his house on motorcycle. When Rajesh asked him, who were they, accused Pardeep told that they were his *Khasams*. Accused Pardeep along with two other boys sat on a cot lying in open place behind the house. Suresh also sat with them. He talked with accused Pardeep about his sister Rimpdy. Suresh saw a pistol in the hands of accused Pardeep due to which Suresh and his son on the excuse of drinking water went away from there. He reached to the complainant. The complainant made a telephonic call to the police but it could not be connected. The complainant along with his son Suresh, grandson Rajesh and son Naresh started together for leaving Suresh and Rajesh to their house. He was carrying a torch in his hands. Suresh was ahead of all of them. When they reached near the turning point of *Phirni*, one motorcycle came from the front side. The motorcycle was being driven by accused Pardeep and two persons were sitting as pillion riders. Accused Pardeep exhorted that Suresh had come and take care of him. Suresh turned back and started running and while running, his shoe was left at the place. Accused Pardeep was carrying a pistol. He got down from the motorcycle. He started chasing Suresh. The complainant and his son Naresh and grandson Rajesh also started running behind them. When

Suresh reached near the house of Ran Singh son of Chandgi, accused Pardeep fired two shots from his pistol. The bullets hit son of the complainant, Suresh. He fell down. Pistol of accused Pardeep fell down at the spot. He along with other two accused managed to flee on the motorcycle. Suresh died at the spot. Police reached the spot. The rough site plan was prepared. Post-mortem examination was got conducted. The cause of death was haemorrhage and shock as a result of fire arm injury. The injury was ante-mortem in nature and was sufficient to cause death in the normal course of life. Blood stained earth was lifted from the place of occurrence. One country made pistol of .315" bore was taken into possession, which was lying near the dead-body of Suresh. The accused were arrested. They made disclosure statements, Ex.PM, Ex.PJ and Ex.PN. Investigation was completed and challan was put up after completion of all the codal formalities.

3. The prosecution examined as many as 25 witnesses in support of its case. The statements of the accused were also recorded under Section 313 Cr.P.C. According to them, they were innocent and have been falsely implicated in the case. They examined two witnesses in their defence. They were convicted and sentenced, as noticed above. Hence, the present appeal.

4. 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 beyond reasonable doubt and supported the judgment and order of the learned trial Court.

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

6. PW9 Dr. Sukhbeer Singh had conducted the post-mortem examination on the dead-body of Suresh. He noticed the following injuries on the person of deceased:-

- “1. A punctured lacerated wound of size 1.5 x 1 cm. present on left side of chest in the 6th inter costal space at the anterior axillary line. Margins were inverted. Collar of abrasion present around the wound margins. There were multiple pin head size gun powder marks, reddish black in colour present around the wound in area of 13 cm. in diameter.
2. There was a punctured lacerated wound of the size of 2.5 x 1 cm. present on the left side of the chest posteriorly in the 10th inter costal space, 5cm. above from the mid line. Margins were everted and irregular. On the exploration of the chest injury No.1 was penetrating into the chest wall through the muscles of chest wall fracturing the 6th rib on the left side, corresponding to injury No.1 and then injuring left lung and plura and coming out by penetrating posterior chest wall of the left side through 10th space (inter costal space). Fracturing 10th rib (left side) corresponding to injury No.2. Massive left sided haemmothrax was present. A plastic wad was recovered from left thoracic cavity which was sealed in a bottle bearing two seals and was handed over to Police. Rest of the organs were pale and healthy. Large intestine was containing feecal matter and foul smelling gases. Bladder was empty.”

According to PW9 Dr. Sukhbeer Singh, the cause of death was haemorrhage and shock as a result of fire arm injury. The injury, which was ante-mortem in nature, was sufficient to cause death in the normal course of life. He proved post-mortem report, Ex. PF. In his cross-examination, he deposed

that he could not opine whether injury nos. 1 and 2 were caused by single shot or more than one shot.

7. PW2 Hawa Singh deposed that on 17.8.2006 at about 10.30 P.M., his son Suresh along with his son Rajesh had come to him in the house of Naresh. Suresh told him that Pardeep along with two more young boys had come to his house. Accused Pardeep was carrying a pistol. They all come on a motorcycle. Suresh discussed with regard to an incident with accused Pardeep. He made a telephonic call to the police station. He along with Suresh (since deceased), Naresh and grandson Rajesh went to the house of Suresh to drop him at his house. He was carrying a torch with him. Suresh was ahead of all of them. When they reached near the crossing of the *Phirni* of the village, a motorcycle was seen coming from the opposite direction. It was being driven by accused Pardeep. Two pillion riders were also on the motorcycle. On seeing Suresh, accused Pardeep exhorted '*dekh Suresh aagaya*'. On this, Suresh started running. Accused Pardeep got down from the motorcycle and started chasing him. He was carrying a pistol. One shoe of Suresh had fallen on the ground. They also started running in that direction. The other accused also started chasing him on the motorcycle. When Suresh reached in front of the house of Ran Singh son of Chandgi, accused Pardeep and Mukesh fired shot upon Suresh. The shot hitting him on his back was fired by accused Pardeep. However, the fire shot by Mukesh did not hit Suresh. Suresh fell down on the ground. The accused ran away on the motorcycle. Accused Mukesh threw his pistol at the spot. Accused fled away along with his pistol. Two bullet marks were on the body of Suresh. One entry mark on the back and the other one of exit from the chest. Suresh died at the spot. The police reached the spot. His

statement, Ex.PB, was recorded. His grandson had told him the names of Mukesh and Pawan. In his cross-examination, he admitted that the night was dark. He also admitted that some untoward incident had taken place with the sister of accused Pardeep. He admitted that because of that incident, accused Pardeep had left the village and had started living at Gohana. The police had recorded his supplementary statement at 6.00 P.M. on 18.8.2006. He did not chase the accused persons while they were running. In his statement, Ex.PB, he had stated that Mukesh and Pardeep had fired one shot each (confronted with statement, Ex.PB, wherein it was so recorded). They remained at the spot till the arrival of the police.

8. PW3 Jagwanti is the wife of the deceased. According to her, when three accused came to their house, her husband and her son were present there. Her son had asked accused Pardeep why they had come. Accused Pardeep exhorted that they are their '*Khasams*'. Thereafter, accused Pardeep, Mukesh and Pawan sat on the vacant land of their house with her husband. They started taking with each other. She was standing near the wall. Sister of accused Pardeep, Rimpay fled away from the house. Her son Rajesh was serving water to them. Accused Pawan and Mukesh belonged to village Jauli. She had seen a pistol with Pardeep. Her husband and son Rajesh had seen pistol with Pardeep. The accused left their house. Later on she came to know that accused Pardeep had fired shot upon her husband Suresh in the presence of her son Rajesh, father-in-law Hawa Singh and brother-in-law Naresh with the help of Pawan and Mukesh.

9. PW10 Rajesh deposed that on 17.8.2006 at about 9.30 P.M., he along with her mother Jagwanti and father Suresh was present in his house. Accused Pardeep along with his two companions came their house on a

motorcycle. When he asked as to why they had come. Accused Pardeep retaliated that they are their *Khasams*. Thereafter, they sat on the cot lying on the vacant land situated on the back of their house. They were talking to each other. He served water to all of them. Pardeep narrated about elopement of his sister Rimpdy. His father had seen a pistol in the hands of Pardeep. They left the place. He along with his father reached the house of his grand-father Hawa Singh. They narrated the incident to Hawa Singh. He tried to make a telephonic call to the police. His grand-father Hawa Singh and uncle Naresh accompanied them to their house. Hawa Singh was carrying a torch in his hands. On reaching of turn of the village *phirni*, a motorcycle came from the opposite side. It was being driven by accused Pardeep. Pawan and Mukesh were sitting as pillion riders on the motorcycle. Accused Pardeep raised *lalkara* that Suresh had come. On hearing *lalkara*, his father Suresh started running. Pardeep got down from the motorcycle and started chasing his father. Pawan and Mukesh were following his father. They also started following his father. On reaching near the house of Ran Singh son of Chandgi, accused Mukesh fired a shot from his pistol towards his father. But this shot did not hit him. Then accused Pardeep from the close range fired a shot from his pistol hitting on the back of his father Suresh. They tried to catch hold of accused Pardeep but accused Mukesh and Pawan rescued him on the motorcycle. They escaped. Mukesh left his pistol on the spot. His father Suresh died. Police reached the spot. In his cross-examination, he admitted that distance between their house and house of his grand-father was approximately 3 to 4 acres. He had told the police in his statement that initially shot was fired by accused Mukesh on his father, which did not hit him. Thereafter, accused Pardeep

fired shot (confronted with statement, Ex.DB, where accused Pardeep is shown to have fired shot firstly and then accused Mukesh).

10. PW12 HC Pardeep Kumar deposed that accused Mukesh @ Kaira was interrogated. He made disclosure statement, Ex.PJ, on 17.8.2006. According to the disclosure statement, an altercation had taken place between Suresh and Pardeep over the absconding of sister of Pardeep. He and accused Pardeep fired shots upon Suresh. He could identify the place where he had thrown the pistol. In his cross-examination, he admitted that accused Mukesh did not get any recovery effected.

11. PW15 SI Daya Kishan deposed that SHO/SI Laxmi Narain of Police Station, Mohana, had interrogated accused Pawan. He made disclosure statement, Ex.PM. He further disclosed that pistol of Mukesh had fallen down at the spot. He had kept concealed the motorcycle, on which they had gone to Guhana, in his village Jauli. He got recovered Bajaj motorcycle. It was taken into possession.

12. PW16 HC Ramesh Kumar deposed that accused Pardeep made disclosure statement, Ex.PN. He further disclosed that pistol of Mukesh had fallen down at the spot. He further disclosed that he had kept concealed the pistol in a room situated in the fields lying in between the Kari. He could get it recovered. On 23.12.2016 accused got the place of occurrence identified. He got recovered pistol, which was sealed in a parcel.

13. PW17 Shamsheer Singh deposed that he had joined the investigation. The police took into possession blood stained earth. He identified the pistol and cartridge. However, he could not say whether these were the same articles which were recovered from the spot, vide recovery memo Ex.PO/1.

14. PW21 Ramesh Kumar deposed that accused Mukesh had got the place of occurrence identified on 12.10.2006.

15. PW24 SI Laxmi Narain deposed that on 17.8.2006, he along with ASI Ram Kumar, ESI Daya Kishan, HC Dinesh Kumar and other police officials was present at Tihar turning Gohana Road. Sunil Kumar Sarpanch of village Gohana gave information to the effect that Suresh has been killed. He along with other police officials reached the spot. He recorded the statement, Ex.PB, of the father of deceased Suresh, namely, PW2 Hawa Singh. Thereafter, he sent Rajender Kumar for registration of the case. Blood stained earth was lifted from the spot. Dead-body was sent for post-mortem examination. He prepared the rough site plan, Ex.PZ. He arrested accused Pawan. His disclosure statement was recorded on 23.8.2006 but no recovery was effected on the basis of disclosure statement. He made another disclosure statement, Ex.PM, on 24.8.2006, in pursuance of which a motorcycle of make Bajaj was recovered. On 21.12.2006, ASI Ram Kumar arrested accused Pardeep. He made disclosure statement, Ex.PN, in pursuance of which a country made pistol .12 bore was recovered vide Ex.PN/3. It was taken into possession. In his cross-examination, he admitted that a case of rape had been registered with his police station regarding rape of sister of accused Pardeep. He also admitted that after the rape incident, father of accused Pardeep had shifted his family to Gohana Town.

16. One of the accused Pardeep has moved an application under Section 311 Cr.P.C. for recalling of PW2 Hawa Singh. The application was rejected by the learned trial Court on 7.7.2008.

17. DW1 Smt. Surender Kaur deposed that on 11.2.2007 a panchayat was convened at the instance of Ran Singh.

18. DW2 Ran Singh is the father of accused Pardeep. He deposed that he had left the village two months prior to the murder because of bad incident with his daughter.

19. According to FSL Report, Ex.PX, the country made pistol marked W/1 (chambered for .315" cartridges) was found in working order. The .315" fired cartridge case marked C/1 has been fired from country made pistol marked W/1 and not from any other firearm even on the same make and bore, because every firearm has got its own individual characteristic marks. Wad piece contained in the parcel No. IV was found to be plastic air cushion wad piece of 12 bore cartridge.

20. As per FSL Report, Ex.PY, the country made pistol marked W/1 (chambered for 12 bore cartridges) was found in working order. According to the result of report dated 6.3.2007, the country made pistol marked W/1 had been fired through. However, it was opined that scientifically the time of its last firing could not be given.

21. According to FSL Report dated 6.2.2007, the blood was detected in exhibit-1 (blood stained earth), exhibit-3a (kurta), exhibit-3b (Pyjama), exhibit-3c (Baniyan), and exhibit 3d (underwear).

22. FIR was registered on the basis of statement of PW2 Hawa Singh. It was recorded on 18.8.2006. According to the contents of statement, Ex.PB, he was present at the house of his son Naresh. His son Suresh (since deceased) and grand son Rajesh (PW10) came to the house of his another son Naresh. They narrated him about the accused. Thereafter, he along with his son Naresh started together for leaving Suresh and Rajesh to

their house. He was carrying a torch in his hands. Suresh was ahead of all of them. When they reached near the *Phirni* of village, one motorcycle came from their front side. It was being driven by accused Pardeep. There were two pillion riders. Accused Pardeep exhorted that Suresh had come. On this, Suresh turned back and started running. Accused Pardeep was carrying a pistol. He got down from the motorcycle. He started chasing Suresh. PW2 Hawa Singh, his son Naresh and grandson PW10 Rajesh also started following him. When Suresh reached near the house of Ran Singh son of Chandgi, accused Pardeep fired two shots from his pistol. The bullets hit Suresh. He fell down. Pistol of accused Pardeep fell down at the spot. The accused fled away from the spot on the motorcycle.

23. However, when he appeared in the Court as PW2, he deposed that when Suresh reached in front of the house of Ran Singh son of Chandgi, accused Pardeep and Mukesh fired shot upon Suresh. The shot hitting him on his back was fired by accused Pardeep. However, the fire shot by Mukesh did not hit Suresh. He fell down on the ground. The accused ran away on the motorcycle. Accused Mukesh threw his pistol at the spot. Accused Pardeep fled away along with his pistol.

24. There is variation in the statements of PW2 Hawa Singh, one which was recorded by the police vide Ex.PB and the other which was recorded in the Court. In his statement, Ex.PB, he only stated that Pardeep fired two shots at Suresh. His pistol fell down at the spot. On the other hand, when he appeared as PW2 in the Court, he stated that Pardeep and Mukesh fired two shots and pistol of Mukesh fell down at the spot.

25. Statement of PW10 Rajesh grandson of PW2 Hawa Singh was also recorded. In his statement recorded vide Ex.DB, by the police, he stated

that when they reached near *phirni*, one motorcycle being driven by Pardeep and boarded by Mukesh and Pawan as pillion riders came there. Pardeep raised *lalkara* that Suresh had come. On hearing this, Suresh turned back and started running. Pardeep, who was having a pistol in his hands, got down from the motorcycle and chased his father Suresh. Pardeep fired shot from his pistol and Mukesh also fired shot on his father. The bullet of Pardeep hit his father. He fell down. The bullet of Mukesh did not hit Suresh. They tried to catch the accused. Mukesh threw his pistol. They all fled away from the spot on the motorcycle. In his cross-examination, PW10 Rajesh deposed that accused Mukesh fired first shot on his father, which did not hit him. Thereafter, accused Pardeep fired shot. According to his statement, Ex.DB, accused Pardeep had fired shot firstly and then accused Mukesh. According to his statement, Ex.DB, accused Mukesh threw his pistol at the spot. As per statement of PW10 Rajesh, accused Pardeep had taken away his pistol and accused Mukesh left his pistol at the spot. As per statement of PW2 Hawa Singh in the Court, Pardeep fled away with his pistol and Mukesh threw his pistol at the spot.

26. The fact of the matter is that though as per Ex.PB, pistol was left at the spot by accused Pardeep, but the same was got recovered on the basis of disclosure statement made by Pardeep vide Ex.PN, after his arrest on 21.12.2006. Pistol is Ex.PN/3. The prosecution has tried to cover up this lapse by recording the supplementary statement, Ex.DA, of complainant Hawa Singh on 18.8.2006, wherein he has stated that in fact the pistol was left by Mukesh, which fell from his hand while he was running.

27. In his statement, Ex.PB, complainant Hawa Singh has deposed that accused Pardeep fired twice at Suresh, however, when he appeared in

the Court as PW2, he deposed that accused Pardeep and Mukesh had fired shot upon his son Suresh.

28. Thus, the prosecution has failed to prove the case against the appellants beyond reasonable doubt. Accordingly, the appeal is allowed. The judgment and order of the learned trial Court are set aside. The appellants are acquitted of the charges framed against them.

29. Sentence of appellants Pawan and Pardeep was suspended vide order dated 13.9.2018 and 28.5.2013, respectively. Their bail/ surety bonds are discharged. Appellant Mukesh is in custody. He is ordered to be released forthwith.

(Rajiv Sharma)
Judge

17.3.2020
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No