

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

(i) Crl. Appeal No.D-620-DB of 2017

Sombir

...Appellant

VERSUS

State of Haryana

...Respondent

(ii) Crl. Appeal No.D-728-DB of 2017

Surjit

...Appellant

VERSUS

State of Haryana

...Respondent

Date of Decision: March 02, 2020

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
 HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.S.R.Hooda, Advocate
 for the appellant (in CRA No.D-620-DB-2017).

 Mr.Aman Pal, Advocate
 for the appellant (in CRA No.D-728-DB of 2017).

 Mr.Vikrant Pamboo, Deputy Advocate General, Haryana
 for the respondent-State.

 Mr.Vivek K. Thakur and Mr.Gulshan K. Moudgil, Advocates
 for the complainant (in CRA No.D-728-DB of 2017).

ARCHANA PURI, J.

Challenge in the twin appeals, is to the judgment of conviction

and order of sentence dated 30.05.2017 passed by learned Addl. Sessions

Judge, Sonipat, vide which the appellants were held guilty and convicted and sentenced as under:-

<i>Appellant</i>	<i>Under Sections</i>	<i>Sentence</i>	<i>In default</i>
Both appellants	Section 302 read with Section 34 PC	Life imprisonment along with fine of ₹10,000/- each.	One year
Surjit	Section 25 of the Arms Act	RI for two years along with fine of ₹2,000/-	Three months

The substantive sentences were ordered to run concurrently.

The background facts in nutshell are, as herein given:-

That, complainant Bimla is wife of Sushil. She stated that her husband Sushil was employed in Haryana Police at I.G. Office, Rohtak. Her father-in-law Balbir Singh had transferred 2.5 acres of land in favour of Sahil, who is son of her brother-in-law Anil sometime ago. Her husband had asked his brother Anil and nephew Sahil regarding partition of the land in equal shares about 10 days prior to the occurrence and in this regard, hot words were also exchanged between them. She further stated that on 23.07.2014, at about 7.30 a.m., her husband had gone to bus stand for going to his office and she found phone of her husband in the house. Thereafter, she alongwith her uncle Krishan, went to the village bus stand to hand over the phone to her husband and delivered the phone to her husband and in the meantime, three persons came riding on motorcycle bearing No.HR-10M-7588. Two of them, namely, Surjit s/o Jai Bhagwan and Sahil s/o Anil were having pistols in their hands and they fired at her husband. She also stated that Sahil given a gunshot fire at the chest of her husband, whereas, Surjit fired at the temple on his left side and thereafter, all the three boys fled

away from the spot towards Sonipat. Upon getting information qua the

occurrence, her brother-in-law Devender Kumar had reached the spot and he shifted complainant's husband to the hospital. The complainant further stated that Anil s/o Balbir, Anil's brother-in-law Manish, r/o Kathura and Deepak s/o Sunil had conspired with Surjit, Sahil and other accused to get her husband murdered.

The proceedings were initiated in the present case, on the basis of statement got recorded by Bimla, when in pursuance of receipt of telephonic information in Police Station from Control Room Sonipat, ASI Subhash along with other police officials, had gone to the house of Sushil. FIR was registered. During the course of investigation, the accused were apprehended.

On completion of investigation, report under Section 173 Cr.P.C. was presented against the accused.

After compliance of Section 207 Cr.P.C., the case was committed to the Court of Session.

In pursuance of the commitment proceedings, on the basis of material coming forth, charge was framed under Section 302 read with Section 34 IPC and Section 120-B IPC against accused Surjit, Sahil, Sombir and Anil and charge under Section 25 of the Arms was also framed against accused Sahil and Surjit, to which they pleaded not guilty and claimed trial.

In endeavour to establish its case, the prosecution examined as many as 15 witness, besides adducing documentary evidence. The witnesses so examined by the prosecution are namely **PW-1 ASI Ashok Kumar, PW-2 Devender Kumar Kumar, PW-3 Dilbagh, PW-4 Bimla, complainant, PW-5 Inderpal, Draftsman, PW-6 Constable Sachin, PW-**

7 Head Constable Veerpal, PW-8 Constable Rajesh Kumar, PW-9 Head

Constable Jasmer Singh, PW-10 Dr.Anup Singh, PW-11 ASI Subhash Chander, Investigating Officer, PW-12 Constable Bhupender Singh, PW-13 SI Dalvir Singh, PW-14 Satbir Singh and PW-15 SI Rajender Singh (Retd.).

On closure of the prosecution evidence, all the incriminating circumstances appearing in the prosecution evidence were put to the accused in their statements under Section 313 Cr.P.C. However, the accused denied those allegations and pleaded innocence.

In defence, accused examined **DW-1 Yudhvir Singh**, who has deposed that he is posted as Halqa Patwari at village Baiyanpur, District Sonipat. As per revenue record, Balbir s/o Mam Chand was having land measuring 61K-1M, as per mutation No.5101, and land measuring 20K-4M vide mutation No 5246 and total land, as per both the mutations, was 81K-5M and mutation is Ex.D1. He also deposed that as per revenue record, Balbir Singh transferred his land to his three sons, namely, Sushil, Anil and Devender Kumar and as per revenue record, the land transferred to Sushil is 31K-12M and as per share, Anil got land measuring 6K and Devender Kumar got land measuring 23K-9M. He further deposed that in this regard, mutation has been sanctioned. On 20.04.2005, Balbir got transferred land measuring 20K-4M vide release deed bearing No.664 to his grandson, namely, Sahil s/o Anil Kumar and copy of release deed is Mark-A. He also brought Mark-A from the office of Sub-Registrar, Sonipat, upon which, mutation was got sanctioned on 10.08.2005 by Tehsildar, Sonipat, which is Ex.D2. This witness also deposed that as per revenue record, Sushil was given more share than Anil and Devender Kumar by Balbir Singh.

accused and on appraisal of the evidence, brought on record, accused Sahil, Surjit and Sombir were convicted for the commission of offence punishable under Section 302 read with Section 34 IPC, whereas, accused Sahil and Surjit were also convicted under Section 25 of the Arms Act and accused Anil, was acquitted of the charges, levelled against him. Appellants Surjit and Sombir, were sentenced, as detailed in the earlier portion of the judgment.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, appellants have filed the respective appeals.

We have heard learned counsel for the appellants and learned State counsel and have perused the trial Court record.

At the very outset, learned counsel for the appellants, in unison, have submitted that the prosecution has failed to establish the guilt of the accused, as per demanding degree of proof. In fact, the sole eye witness to the occurrence, so claimed by the prosecution is Bimla, who has been examined as PW-4. However, it is pointed out that taking into consideration the entire testimony of the said material witness, it becomes evident that, she was not present at the spot, at the time of alleged occurrence and she has been later on padded in by the prosecution. Also, it is submitted that only on this account, there is mismatch of the injuries, as deposed by the said witness and the medical evidence, so coming on record. It is submitted that her presence, at the spot, is not free from doubt. In the light of the same, it is submitted that even though, Krishan is claimed to be another eye witness to the occurrence but however, he has not been examined by the prosecution. It is further submitted that there is mismatch of the ocular

version qua the injuries as well as medical evidence, so coming on record.

In this regard, reference has been made to the recitals of the FSL report, which has been proved as Ex.PX/1. Furthermore, it is submitted that at the instance of appellant Surjit, the making of the disclosure statement and recovery of weapon, as claimed by the prosecution, on the basis of the same, also raises a big question mark. Even though, the prosecution has claimed the motive for causing the occurrence but however, it is submitted that PW-2 Devender Kumar has countered the claim of the prosecution qua the question of motive for causing the occurrence. In the light of the same, it is submitted that prosecution has miserably failed to establish the guilt of the accused and learned trial Court has not appraised the evidence in correct perspective. Thus, summing up their arguments, learned counsel for the appellants, have made a prayer for acceptance of the appeals and to set aside the impugned judgment and to acquit both the appellants.

On the contrary, learned State counsel has refuted the claim of the appellants. In fact, he submits that there is clear and specific eye witness account, narrated by Bimla, who is wife of the deceased and who was present at the spot, at the relevant time of taking place of the occurrence. Her presence, as such, cannot be doubted, in any manner, as the same was most natural, as she in the company of her uncle Krishan, had gone to hand-over the mobile, which her husband had forgotten at home. Also, qua non-examination of Krishan, it is submitted that in the light of testimony of Bimla, the non-examination of said witness, also pales into insignificance. Further, it is also submitted that strength is gained by the prosecution, from the fact of the disclosure statement made by both the accused and the recovery of weapons, on the basis thereof. Even, the bullets so recovered

from the dead body of the deceased, stands connected to the weapons of

offence, so recovered, at the instance of accused. Motive is claimed to have been established for causing of the occurrence. Thus, in the light of the same, it is submitted that learned trial Court has rightly reached the conclusion of conviction of the accused and has adequately sentenced them. Thus, he made a prayer for dismissal of both the appeals.

In a criminal trial, however, intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures.

The fact of death of Sushil stands amply established from the testimony of Dr.Anup Singh, who has stepped into witness box as PW-10. He has tendered into evidence, his affidavit Ex.PW10/A, wherein, he has categorically deposed about conducting of the post-mortem examination on the dead body of Sushil on 23.07.2017. Furthermore, he has deposed, in the same, about the detail of injuries, so found on the corpse of Sushil, which are herein given:-

- “1. *Entry wound (1) Lacerated wound of .4x.4mma irregular over left cheek below zygomatic arch with tattooing of the near by area with inverted margins.
Track of the Bullet:- Piercing superficial tissue, Superficial muscles, fracturing the zygomatic bone it is going medially, then crossing midline, fracturing middle cranial fossa, fracturing the sella turcica, lacerating the brain tissue and crossing the midline. The bullet is recovered from s/c tissue below the right zygomatic bone with cranial cavity having a hemotoma and bullet is sealed in bottle no.1 and handed over to police.*
2. *A lacerated wound 2 x 1 cm oval over the anterior axillary line at the level of 3rd rib with inverted margin with tattooing of the skin near and abrasion collar supermomedially.
Track of the bullet:- Bullet is going piercing the skin, superficial tissue superficial muscles and fracturing the*

3rd rib, is going horizontally and medially toward the right side, penetrating the pleura, left lung then right lung, right pleura, fracturing 4th rib and the bullet is recovered from the s/c tissue in right axilla in front of the right scapula, in medial wall of right axilla and the recovered bullet is sealed in bottle no.2 and handed over to the police.

3. *Lacerated wound of 2x1cm left on the mid line at the level of T 10, with inverted margin over the left lower back, 3cm lateral to the mid line at the level of T 10 vertebra.”*

Also, he opined that the cause of death is shock and hemorrhage due to bullet injury, fire arm injury which is ante-mortem in nature and sufficient to cause death in normal course of nature. In the light of the same, the fact of death of Sushil, stands amply established.

Now, to establish the incriminating role of the appellants, the prosecution has examined PW-4 Bimla, wife of the deceased, who is claimed to be an eye witness to the occurrence in question. In her examination-in-chief, she has categorically deposed, in consonance with the prosecution version, about the manner, in which, she followed her husband on 23.07.2014, soon after his leaving for his duty, when he had left his mobile phone at home, inadvertently. She categorically deposed that she along with her uncle Krishan, had gone to bus stand to deliver his mobile phone. While her uncle, Krishan remained at bus stand for proceeding to his house and started waiting for the bus, in the meantime, a motorcycle bearing No.HR-10M-7588 came, upon which three persons were riding and one of them was driving the motorcycle and other two were Surjit s/o Jai Bhagwan and Sahil s/o Anil. Both were having pistols in their hands. She further identified by pointing towards other accused Sombir alias Kala, who

Sahil and Surjit fired upon her husband. Bullet fired by Sahil, hit upon the chest of her husband and bullet fired by Surjit, hit upon the left side of temporal region and thereafter, all the three persons had fled away from the spot. She further deposed that after receiving the information regarding the incident, her devar Devender Kumar had come at the spot and he shifted her husband to hospital. Furthermore, she had categorically stated that police came at the spot and recorded her statement Ex.PA, which bears her signatures. She also deposed that all the three persons, namely, Sahil, Surjit and Sombir committed the murder of her husband, after hatching conspiracy. On that very day, her supplementary statement was recorded, wherein she had mentioned the name of Sombir alias Kalu, who was driving the motorcycle and she also told the police that Sahil had also fired upon the waist of her husband. Her supplementary statement is Ex.PW4/A.

It is pertinent to mention that at first instance, the complainant had stated about the participation in the occurrence of Sahil and Surjit, as they both fired upon the person of her husband. The other person, is claimed to be driving the motorcycle but his name was not disclosed, at first instance. It was only in the subsequent statement, made on that very day, that she had improved upon the version and also mentioned participation of Sombir @ Kala in the occurrence in question and stated that he was driving the motorcycle and Sahil also fired upon the waist of her husband. However, her testimony is apt example of **'men may tell lies, but circumstances do not'**. It is pertinent to mention that when we go through the cross-examination of the said material witness, definitely, doubt is raised about said witness, to have witnessed the taking place of the occurrence, at the relevant time. It is pertinent to mention that categoric

claim of the said witness is that police came, at the spot and recorded her statement, which is Ex.PA. However, perusal of the police proceedings relating to the said statement Ex.PA, which has been proved as Ex.P11/A, states that soon after getting telephonic information from Control Room about Sushil s/o Balbir, having brought to the hospital in dead condition, then ASI Subhash Chander along with his police officials, had reached village Baiyanpur in the house of deceased Sushil, where Bimla wife of Sushil, got recorded her above statement. This is also so mentioned in the FIR Ex.PA/1. Not only this, even the Investigating Officer ASI Subhash Chander, while in the witness box as PW-11, had also so stated to have gone to the house of Bimla at village Baiyanpur and recorded her statement. Thus, there is material contradiction, coming forth qua the spot, from where the proceedings were initiated. However, in cross-examination, Bimla had further stated that police had met her at 11.00 a.m., at her house. She also further stated in her cross-examination that she remained at the spot for about 5-10 minutes and then after just five minutes, she left the spot. She also stated that Devender Kumar was not called by her. Then, the question arises, as to how, information was passed on to Devender Kumar. It is also highly improbable that the lady, whose husband has been shot at, would return from the spot of occurrence within five minutes and in these five minutes, it is highly improbable that information was received by Devender Kumar, to whom the complainant, had stated that she had not passed on the information and he facilitated taking of Sushil to the hospital. Also, further in the cross-examination, the said witness has stated that at the time of occurrence, she was known to the name of driver of the motorcycle.

Further, she stated that she does not know the person, who was driving the

motorcycle. After some time, she came to know from the villagers about his name. She also further stated that she cannot tell the name of person, who had told her the name of driver of the motorcycle. This is a very vague assertion, made by the said witness, to explain the improved version, about the involvement of Sombir, in occurrence in question, who was not firstly named by her in the FIR. Also, further it is pertinent to mention that the said witness has stated that police had reached her house at 11.00 a.m. and she also stated that her supplementary statement was recorded at about 12 noon. If it be so, then it is highly improbable that within half an hour, she came to know about the involvement of Sombir, in the occurrence in question. This is definitely an improved version, now coming forth. Not only this, it is pertinent to mention that at first instance, the complainant had stated about two fire shots having given to Sushil by Surjit and Sahil. However, in the subsequent statement PW4/A, she had also stated about Sahil to have fired upon waist of her husband. This role of Sahil, seems to be an improvement made to co-relate to the medical evidence, so coming on record. In view of the recitals of the post-mortem report, the detail of injuries which has been reproduced in the earlier portion of the judgment, there is mention of three entry wounds. In the light of the same, it is pertinent to mention that even PW-10 Dr.Anup Singh, while facing cross-examination, had stated that there were three injuries on the body of deceased. There were two entry wounds and there was no exit wound. Also, it is the version of the prosecution that two bullets were recovered from the corpse of the deceased. Thus, 3rd injury, does not stand sufficiently explained. In the light of the same, it is important to make reference to the

3 and 4, reveals about two bullets, to have been recovered from the dead body of Sushil and the Senior Scientific Officer, Forensic Science Laboratory, Haryana, Madhuban, has categorically stated therein that both the said bullets BC/1 and BC/2, which were taken out from the body of deceased Sushil, have been fired from country made pistol, marked as W/1 (recovered from accused Sahil) and not from any other fire-arm, even of the same make and bore/caliber because every firearm has got its own individual characteristic marks. Even, fired cartridge cases marked as C/2 and C/3, have been fired from country-made pistol marked as W-1 (recovered from accused Sahil) and not from any other firearm even of the same make and bore/caliber because every firearm has got its own individual characteristic marks. It was only one cartridge case marked as C/1, which is stated to have been fired from country-made pistol W/2, recovered from Surjit. Thus, both the bullets, which have been recovered from the dead body, have been concluded to have been fired by Sahil and there are only two entry wounds, as per PW-10 Dr.Anup Singh also. Two entry wounds, corroborate to two shots, fired from the pistol recovered from Sahil. In any case, the same do not point towards the incriminating role of Surjit. Thus, there is mismatch of the ocular version, so coming forth as well as the medical evidence, so coming on record.

Even though, during the course of arguments, much emphasis has been laid upon the recovery of weapons of offence, at the instance of both the appellants but however, this recovery, in the light of presence of Bimla, having concluded to be doubtful, has to be appraised with great care and caution. It is pertinent to mention that as per the version of the prosecution, soon after the arrest, having effected by ASI Subhash Chander

of Surjit on 01.08.2014, disclosure statement was made, which was reduced into writing, at the spot. PW-11 ASI Subhash Chander, while facing cross-examination, has admitted that it is correct that no such statement is available on the judicial file. It has also been so admitted in cross-examination by PW-9 Head Constable Jasmer Singh, who had associated the said Investigating Officer, at the relevant time. It was only, on the basis of the subsequent disclosure statement, claimed to have been made on 03.08.2014 that recovery was claimed to have been effected from the outside wall of poultry farm at Rathdana Road. This is an open space accessible to all, which also raises doubt about this manner of recovery having effected, more particularly, when the previous disclosure statement so recorded, has been suppressed by the prosecution. Definitely, it raises doubt about the prosecution version. When one recovery, as such, is rendered doubtful, in view of the manner of investigation, so conducted, this also is a pointer towards the tainted investigation qua role of Sombir, qua which, statement of Bimla, has also been held to be not above board.

In such circumstances, when the investigation of the case is not above board and presence of PW-4 Bimla, also does not inspire confidence, the very fact of Krishan, uncle of the complainant, as such, having not been examined, gains momentum. No doubt, as pointed by learned State counsel, conviction can be based upon the testimony of sole eye witness and it is not necessary to examine all the eye witnesses but however, the facts and circumstances of each case, have to be appraised individually. In the case in hand, since testimony of PW-4 Bimla, as such, does not inspire confidence, about her being the eye witness to the occurrence, in the light of the same,

non-examination of Krishan also gains momentum. There is total silence

about any step having taken by the said witness to facilitate shifting of Sushil to the hospital. This also raises doubt about the presence of said witness, more particularly, when he has been withheld by the prosecution.

Also, it is claim of the prosecution that motive is spelt out for causing of the occurrence by the accused but however, it is pertinent to mention that in the statement Ex.PA, though, the complainant had stated about motive as an altercation had taken place between her husband and his brother Anil and Sahil, to disburse the land in equal shares, but however, to counter this claim, **DW-1 Yudhvair Singh** has been examined in defence, who is the Patwari of the relevant area. He has categorically stated that as per revenue record, Sushil was given more share than Anil and Devender Kumar by Balbir Singh, who was father-in-law of the complainant. Even, in this regard, it is important to make reference to the testimony of PW-2 Devender Kumar, who is brother-in-law of the complainant. Though, said witness stated about involvement of Sahil and Surjit in the death of Sushil, but however, he has categorically stated that he does not know the reason behind the said death. This witness was cross-examined at length by the learned defence counsel, but however, nothing material elicited out, to establish the land dispute to be the motive, for causing of the occurrence. Even, Bimla while facing cross-examination, had stated that no dispute regarding land ever took place during the lifetime of her father-in-law. Furthermore, it is stated that total 12 killas came to the share of her father-in-law and the land was partitioned in equal share by her father-in-law. She also admitted a suggestion to be correct that three brothers were having equal shares along with possession. As such, plea of motive, does not stand

substantiated.

As such, we find merit in both the appeals filed by the appellants and the same are allowed. The impugned judgment of conviction and order of sentence dated 30.05.2017 passed by learned Addl. Sessions Judge, Sonipat, are set aside and appellant namely Sombir and Surjit, are acquitted of the charges framed against them. They be released forthwith, if not required in any other case.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

March 02, 2020
Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No