

CRA-D-1172-DB- 2018
CRA-D-1971- 2018

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1172-DB- 2018
Date of decision: 12.2.2020

Narinder

...Appellant

Versus

State of Haryana

...Respondent

CRA-D-1971- 2018
Date of decision: 12.2.2020

Satyawan @ Satta

...Appellant

Versus

State of Haryana

...Respondent

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

Present: Mr.Abhayjeet Singh, Advocate
for the appellant in CRA-D-1172-DB-2018
and as Amicus Curiae for the appellant in CRA-D-1971-2018

Mr.Vikrant Pamboo, DAG, Haryana

JITENDRA CHAUHAN, J.

This judgment shall dispose of both the aforementioned appeals, which have arisen out of a common judgment and order dated 13/16.7.2018 passed by Sessions Judge, Karnal vide which co-accused Pawan Kumar was acquitted by giving benefit of doubt, whereas accused-appellants were convicted and sentenced as under :-

Accused Narender

Sections	Sentence	Fine	In default
449 IPC	Rigorous imprisonment for seven years	Rs.5,000/-	Simple imprisonment for six months
302 IPC	imprisonment for life	Rs.20,000/-	Simple imprisonment for six months
304-II	Rigorous imprisonment for seven years	Rs.5,000/-	Simple imprisonment for six months
307 IPC	Rigorous imprisonment for seven years	Rs.10,000/-	Simple imprisonment for six months
30 Arms Act	Rigorous imprisonment for six months	Rs.5,00/-	Simple imprisonment for one month

Accused Satyawan alias Satta

Sections	Sentence	Fine	In default
449 IPC	Rigorous imprisonment for seven years	Rs.5,000/-	Simple imprisonment for six months
302 IPC r/w 34 IPC	imprisonment for life	Rs.20,000/-	Simple imprisonment for six months
304-II r/w 34 IPC	Rigorous imprisonment for seven years	Rs.5,000/-	Simple imprisonment for six months
307 r/w 34 IPC	Rigorous imprisonment for seven years	Rs.10,000/-	Simple imprisonment for six months

All the substantive sentences were ordered to run concurrently.

In brief the case of the prosecution as mentioned in para Nos. 1 & 2 of the impugned judgment passed by learned trial Court is as under:-

“The case of the prosecution is that complainant Sonia was married to accused Narender who was working as gunman at a tower, having licensed weapon. He had been maltreating the complainant. In October, 2013, an alternation took place between complainant's father and her sister-in-law (brother's wife) Manju. Accused Narender had come to mediate between them. While

doing so, he had engaged in verbal altercation with Manju who had slapped him. The same day he after reaching home at Panipat had told the complainant that he was feeling humiliated that he will avenge it by eliminating her family. Thereafter on account of summer vacations, he had left the complainant and their daughter at her parental home at Kohand. On 5.7.2014 at about 11.00 p.m. he and complainant's brother Rishi Pal had an verbal altercation over mobile. The complainant slept in a room with her mother Ram Pyari. Rishi Pal slept in the verandah as his wife Manju had gone to her parental home at village Koda. At about 1.30 a.m. after hearing noise, the complainant and her mother came out of the room and found Narender accused and Satta present around the cot of Rishi Pal. In her sight, accused Narender fired at Rishi Pal. When Ram Pyari tried to catch hold of accused Narender, he fired at her as well. Thereafter, he left declaring that he will kill complainant's father who was in the fields and in this way he will have his revenge for humiliation. Thereafter he and Satta went towards G.T. Road on motorcycle. The complainant immediately took Rishi Pal's mobile and informed her father that accused Narender and Satta had fired at Rishi Pal and Ram Pyari and that he had left declaring that he will kill him as well. After a while, Suresh, a cousin of the complainant, who was present in the fields with her father Prem Chand informed her that Prem Chand had been shot dead by accused Narender and that in the firing another person from Uttar Pradesh who was present there by chance had also been killed. While Rishi Pal died on the spot, Ram Pyari was removed to Karnal hospital.

2. Receiving information, police party reached the

parental home of the complainant where she made statement on which a case under Sections 449, 452, 302, 307, 120B read with Section 34 of IPC and 25 of Arms Act was registered. The Investigating Officer took in possession blood stained bed sheet, pillow cover and *khes* lying near the cot on which dead body of Rishi Pal lied. He also lifted two bullets from near the cot. Thereafter, he lifted blood from the floor of the room where Ram Pyari was fired at. He also lifted bullet lying near sofa in the room. Sofa cover was found stained with blood. It was taken in possession. Broken pieces of bangles lying on the floor were also taken in possession. Every article was converted in sealed parcel with impression 'G.S.'. Rough site plan was prepared. Dead body of Rishi Pal was sent to Government Hospital, Karnal, for postmortem. Supplementary statement of the complainant was recorded wherein she stated that after shooting when Narender and Satta ran out, she also came out and found that one person was already there with motorcycle and then all of them went away on that motorcycle. Police party proceeded to the fields of Prem Chand situated at Alipur Road. Blood stained earth lying near dead bodies of Prem Chand and Bijender was lifted. Twenty seven pellets, one bullet and one plastic wad were also lifted from the spot along with six pieces of broken mobile phones. The articles were converted in sealed parcels. The dead bodies were sent to Government Hospital, Kanal, for postmortem. Statement of Suresh, who was present in the fields with Prem Chand, was recorded wherein he stated that Narender had come to the fields with Satyawar and Pawan and that after killing Prem Chand and Bijender they (Narender, Satyawar and Pawan) had fled riding motorcycle bearing registration

No.HR-06U-1406. After conducting postmortem, the doctors handed over to police the clothes of deceased Bijender, Rishi Pal and Prem Chand, bullets extracted from the dead bodies of Bijender and Rishi Pal and the pellets taken out from the body of Prem Chand duly sealed along with sample seal. The sealed parcels were deposited with Mohrrir Head Constable concerned. The accused were arrested from toll plaza Barsat District Karnal. They suffered disclosure statements pursuant to which accused Narender got recovered double barrel gun .12 bore and revolver .32 bore along with arms licence Ex.P57 from the almirah lying in the room of his house in Arjun Nagar, Panipat. The same were converted into separate parcels with impression 'GS'. Accused Satyawar got recovered motorcycle bearing registration No.HR-06U-1406 which was taken in possession. Accused Pawan Kumar got recovered his licensed revolver .32 bore from the almirah kept in the store of his residential house in Arjun Nagar, Panipat. It was converted into sealed parcel with impression 'GS'. Accused Narender then proceeded to get recovered six empty shells of bullet lying underneath the stone near railway crossing, Kohand, which were converted into sealed parcel with impression 'GS'. This was followed by demarcation of both the places by the accused persons. On completion of investigation, charge sheet against the accused was filed.

Both the appellants alongwith co-accused Pawan Kumar were charge sheeted for the offences punishable under Sections 120-B, 449, 447, 302, 307 read with Section 34 IPC and Section 25 of the Arms Act, to which they pleaded not guilty and claimed trial.

To support its version, the prosecution had examined EHC Vir Shakti Singh, draftsman as PW1, Davinder as PW2, Raj Kumar as PW3, Sonia, complainant as PW4, Ram Piari, injured as PW5, Constable Kulvinder Singh as PW6, Mohan Lal, photographer as PW7, ASI Jai Narain as PW8, Suresh Kumar as PW9, EASI Vijay Kumar as PW10, Dr.K.A. Moin Beig, JR, PGIMER, Chandigarh as PW11, Bijender Singh, clerk as PW12, Dr.Nidhi Sharma, Medical Officer, KCGMC and Hospital, Karnal as PW13, Dr.Kamal Beniwal as PW14, SI Ishwar Singh as PW15, Inspector Gurwinder Singh, Investigating Officer as PW16, Dharmbir Singh as PW17 and Inspector Yogesh as PW18.

The statements of accused were recorded under Section 313 Cr.P.C, in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused, which they denied and pleaded innocence and false implication. In defence, the accused examined Rajesh Kumar as DW1 and Deepak Kumar Sandhu as DW2.

After hearing learned counsel for both the parties and on perusal of evidence, learned trial Court convicted and sentenced accused-appellants Narender and Satyawar @ Satta as narrated above, whereas, Pawan Kumar was acquitted of the charge levelled against him as the prosecution had failed to prove its case beyond reasonable shadow of doubt against him.

Feeling aggrieved against the judgment/ order passed by the trial Court, appellant Narender and Satyawar @ Satta have filed their appeals separately.

Learned counsel for the appellants contends that the learned

trial Court had committed a grave error in convicting the appellants. The alleged prosecution witnesses being close family members, the wife and daughter of the deceased, therefore, their testimonies are not trustworthy and deserved to be ignored. It is further contended that there was no motive for accused Narender to commit the murder of his father-in-law, brother-in-law and one Bijender. If at all, the relations between the husband and wife were strained, the husband would have killed the wife and not her relatives. It is further contended that the alleged eye witnesses of the second occurrence had turned hostile, which creates a dent in the story propounded by the prosecution.

Further with regard to accused Satyawar it is contended that there is no evidence with regard to sharing of common intention between accused Narender and accused Satyawar. It is further contended that Satyawar had no motive to kill the deceased. The case of the prosecution stands belied from the factum that on the spot, Satyawar has been shown to have in possession of a gun but no such recovery was effected from him. So this part of the story of the prosecution pales into insignificance.

We have heard the learned counsel for the parties and have perused the record with their able assistance.

As per the prosecution case, Narender alongwith Satyawar and Pawan had committed murder of his brother-in-law Rishi Pal, father-in-law Prem Chand and one Bijender. The role attributed to accused Pawan is that he had accompanied main accused Narender, who had shot dead Rishi Pal, Prem Chand and Bijender and also fired on Ram Piari, mother-in-law.

However, finding his presence doubtful at the place of occurrence, learned

trial Court has acquitted him. Neither the State nor the complainant has filed any appeal against the acquittal of accused Pawan.

As far as the role of appellant Narender is concerned, he is the main accused. In pursuance of the disclosure statement of accused Narender, a double barrel gun .12 bore and a revolver .32 bore alongwith arms licence Ex.P57 from the Almirah of his house in Arjun Nagar, Panipat were recovered vide recovery memo Ex.P88. PW 13 Dr.Nidhi Sharma deposed that while conducting postmortem on the dead body of Rishi Pal, she had extracted bullet Ex.MO/3 out of the dead body; pellets Ex.MO/7 to Ex.MO/12 were taken out from wound No.1, pellets Ex.MO/13 to Ex.MO/18 were taken out from wound No.4 from the dead body of Prem Chand, while one .32 bore bullet Ex.MO/22 was extracted from the dead body of Bijender. The investigating officer recovered two .32 bore fired bullet Ex.MO/35 and Ex.MO/36 near from the dead body of Rishi Pal, two lead pieces of bullets Ex.MO/37 and Ex.MO/38 from the first place of occurrence, one .32 bore bullet Ex.MO/41 and Ex.MO/42 and 27 pellets Ex.MO/43 around the dead body of Prem Chand and Bijender in the fields. The same were sent to FSL for examination.

As per FSL report Ex.P-4, the bullets extracted from the bodies of deceased Rishi Pal and Bijender were fired from .32 revolver whereas bullets extracted from the body of Prem Raj were fired from .12 bore double barrel gun. Whereas the bullets recovered from the first place of occurrence i.e. house of Ram Piari, on whom the accused fired shots and also fired shot on deceased Rishi Pal, were also fired from .32 revolver, recovered from appellant Narender and not from any other firearm.

PW14 Dr.Kamal Beniwal, Medical Officer, PHC Mehmra, District Fatehabad, who conducted the medical examination of injured Ram Piari proved the MLR Ex.P78. He opined that injury no. 1 was caused by firearm and injury no.2 was blunt in nature.

From the above evidence, it is established that .32 bore revolver and a .12 bore double barrel gun used in the commission of the crime were recovered from accused Narender, who was the licence holder of these weapons. As per the report of FSL Ex.P4, the bullets extracted from the body of the deceased were fired from the said weapons.

Admittedly, the relations between the husband and wife were not cordial and a few days before the occurrence, a quarrel had occurred in the family of in-laws of accused Narender and at that time the wife of his brother-in-law had slapped him. Therefore, accused Narender nursed a grudge against his in-laws and due to this reason, he left his wife and children at the residence of in-laws. It is also proved from the call record and also deposed by PW3 Sonia, wife of accused Narender regarding exchange of hot words between accused Narender and his brother-in-law Rishi Pal during the day of occurrence. Thereafter, in order to take the revenge, he murdered his father-in-law, brother-in-law and one Bijender. Further, the testimony of mother-in-law of accused Narender, namely, Ram Piari, cannot be disbelieved because she herself is an injured witness and the injury on her body proves her presence on the spot, which occurred when she tried to save her son from accused Narender. Even otherwise, the family of the deceased would not let the real culprit go scot free and implicate innocent person for the murder of their relative, particularly when

accused Narender is none else but the son-in-law of Ram Piari. The another witness of the occurrence is nobody else but the wife of accused Narender. In normal circumstances, a wife would do all the efforts to save her husband even in the fact of most adverse circumstances. In this case, father and brother of Sonia were killed by accused Narender and she has given a vivid and detailed account of the manner, in which, appellant Narender committed the crime. PW5 Ram Piari and PW4 Sonia were cross examined at length but they stood their ground. The evidence of both these witnesses inspire full confidence of the Court qua appellant Narender. Though, motive takes the backstage where there is direct eyewitness account but in the instant case, appellant Narender had a strong motive to commit the offence.

The evidence of PW5 Ram Piari and PW4 Sonia cannot be brushed aside merely on account of the fact that they are the related. In **Waman v. State of Maharashtra 2011 AIR (SC) 3327**, Hon'ble the Supreme Court dealt with the case of a related witness (though not a witness inimical to the assailant) and held as under:

"20. It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence

meticulously with a little care."

In the instant case, as discussed above, PW5 Ram Piari injured and PW3 Sonia, the complainant are the most natural witnesses and have clearly withstood the test of cross examination. The findings of the learned trial Court qua appellant Narender cannot be found fault with.

With regard to the role of accused Satyawar is concerned, he was reportedly armed with a gun. The presence of Satyawar is doubtful. No overt act has been attributed to appellant Satyawar. Learned trial Court has rightly held that the prosecution has not been able to prove the criminal conspiracy between appellant Narender and Satyawar. However, learned trial Court fell in grave error while convicting appellant Satyawar with the aid of Section 34 IPC. The deposition of PW4 Sonia and PW5 Ram Piari that appellant Satyawar was present on the place of occurrence armed with a gun fails to inspire confidence of this Court. Even the gun allegedly wielded by appellant Satyawar was not recovered from him. Only a motorcycle allegedly used in the crime has been shown to be recovered at the instance of accused Satyawar. The story of participation of accused Pawan has been rightly disbelieved by learned trial Court, which also goes a long way to show that witnesses have given an exaggerated account of the occurrence.

It is well settled that the principle of '*falsus in uno, falsus in omnibus*' has no application in India and it is the duty of the Court to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted. The evidence may be closely scrutinized to assess whether an innocent person is falsely implicated. It is also a matter

of common knowledge that to settle the scores some times, the prosecution witness tend to implicate the friends and relatives of the main accused. In the backdrop of the above discussion, it can be safely concluded that the prosecution has failed to prove its case against appellant Satyawar and by extending the benefit of doubt, he is hereby acquitted of the charge framed against him.

In view of the above, CRA-D-1172-DB-2018 filed by accused-appellant Narender is dismissed whereas CRA-D-1971-2018 filed by accused-appellant Satyawar @ Satta is allowed. The impugned judgment and order dated 13/17.7.2018 passed by learned trial Court are set aside qua accused/ appellant Satyawar @ Satta, whereas the same are affirmed qua accused-appellant Narender. Satyawar @ Satta is hereby acquitted of the charges framed against him. His bail bonds shall stand discharged.

[JITENDRA CHAUHAN]
JUDGE

[ARCHANA PURI]
JUDGE

12.2.2020
gsv

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No