

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

355 + 204

CRA-D-1038-DB-2010 (O&M)

Reserved on: 23.11.2022

Date of Decision: 21.12.2022

MUKESH KUMAR & ANR.

-Appellants

Versus

STATE OF HARYANA

-Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. Shivek Thakur, Advocate for
Mr. Sanjeev Majra, Advocate
for the appellant No.1.

Mr. Deepinder Brar, Advocate
Amicus Curiae for the appellants.

Mr. Anmol Malik, DAG, Haryana.

KULDEEP TIWARI, J.

1. The present appeal has been directed at the instance of appellants/accused, being aggrieved with the verdict of conviction dated 29.09.2010, and, order of sentence dated 30.09.2010, rendered by the learned Additional Sessions Judge, Panipat, in case FIR No.156 dated 08.07.2009, registered under Sections 302/307/394/397/34 of IPC, and, Sections 25/54/59 of Arms Act, at Police Station Sadar, Panipat, District Panipat, whereby they have been convicted for the offence punishable under Section 302 read with Section 34 of IPC, and, have been sentenced to undergo R.I. for life, and, to pay a fine of Rs.10,000/- each, and, in default of payment of fine, to undergo R.I. for 1 year each.

PROSECUTION STORY

2. On 08.07.2009, a medical ruqa (information), Ex.PC, was sent regarding death of Ajay son of Prem Chand, resident of Sannot, and, admission of one injured Shakuntla wife of Zile Singh, resident of Sannot, who suffered gunshot injuries. Along with the medical ruqa, one referral slip was there, vide which injured Shakuntla was referred to PGIMS, Rohtak. Upon receipt of such information, S.I. Bijenderpal (PW3) made enquiry and came to know that injured Shakuntla was admitted at Prem Hospital, Panipat, whereupon, he reached Prem Hospital, Panipat, for recording her statement. There, he moved an application, Ex.PC/2, to the doctor seeking opinion regarding fitness of injured Shakuntla to make statement, upon which, the doctor, vide Ex.PC/3, declared her fit to make statement. Thereafter, he recorded the statement of injured Shakuntla, Ex.PD, the contents of which reads as under:-

“Stated that I am resident of aforesaid address and am a household lady. I am having acquaintance with Ajay son of Prem Chand, Caste Jat, resident of Sannot. Yesterday, I along with Ajay had gone from our Village, in a Skoda car bearing No. CH-23-3313, and, in the night, we stayed at a Hotel near Rai, but I do not know the name of that Hotel. Today morning, I and Ajay left the hotel in our car to meet Mukesh son of Raghbir, Caste Jat, resident of Babail, now residing at Dera Daroga Lala Gharaunda, because today morning, Ajay had told me that he has to collect money from Mukesh, as he is having financial transactions with

him. At about 11:30/12:00 p.m., we reached at the Bus Stand of Village Khotpura, and, two boys were found standing on the road, out of whom, one was Mukesh and the other boy was around 20-22 years of age. Ajay stopped the car on seeing Mukesh and then both Mukesh and his companion seated themselves at the rear seats of our car. Thereafter, Ajay turned the car towards Panipat. We had just started travelling towards Panipat and in the meantime, Mukesh and his companion, sitting at the rear seats of the car, fired gunshots on both of us from their respective revolvers and consequently, the car came to a halt all of a sudden. Mukesh and his companion pulled out both of us from the car and threw us on the road. Ajay had died at the spot. Mukesh and his companion fled from the spot in Ajay's car. Thereafter, I fell unconscious. I can identify the assailants on seeing them. Today, I am in my full senses. Legal action be taken against Mukesh and his companion. I have got recorded my statement and heard it, which is correct.”

On the basis of above statement, Ex.PD, the present FIR was registered against the appellant/accused Mukesh and one unknown person.

INVESTIGATION PROCEEDINGS

3. After registration of the FIR, proceedings under Section 174 Cr.P.C. were conducted with regard to the dead body of Ajay. Thereafter, S.I. Bijenderpal (PW3) inspected the place of occurrence and seized broken bangles and blood stained earth, vide memo Ex.PE, which was duly attested by A.S.I. Azad Singh, and, the same were converted into a

parcel, sealed with seal 'BP'. After use, the seal was handed over to A.S.I. Azad Singh. Thereafter, the Investigation Officer moved an application, Ex.PG/2, to the Duty Magistrate, Panipat, for recording the statement of injured Shakuntla, under Section 164 Cr.P.C., whereupon, Sh. Rohit Watts, J.M.I.C., Panipat (PW6), recorded the statement, Ex.PG/3, of injured Shakuntla.

4. During investigation, H.C. Kuldeep Singh, Incharge, Computer Cell, S.P. Office, Panipat (PW9), handed over call details of Mobile Nos.9212606525 and 9996006627 along with ID w.e.f. 01.06.2009 to 06.10.2009 to the Investigation Officer. The location of these mobile numbers was found to be connected through tower at Siwah at 11:22 a.m. and 11:35 a.m. and 11:43 a.m. from the tower situated at Cheema Enclave, Barsat Road, Panipat. The call details were proved on record as Ex.PK.

5. On 13.07.2009, A.S.I. Devender Kumar, C.I.A. Staff, Panipat (PW14), along with Inspector Vijay Singh and H.C. Rajbir (PW22), was present at Sanoli Road, Panipat, and had put barricades there and while being present there, a Skoda car came from Kurar's side, which was signaled to stop, however, its driver tried to turn around the car. Upon suspicion, both the persons sitting in the aforesaid car were apprehended, who disclosed their names as Mukesh son of Raghbir Singh, and, Jai Parkash son of Shiv Narain (present appellants/accused). From the possession of both the appellants/accused, one pistol was recovered, and, therefore, FIR No.163 dated 13.07.2009 was registered against

appellant/accused Mukesh and FIR No.164 dated 13.07.2009 was registered against appellant/accused Jai Parkash, at P.S. Sadar Panipat. During investigation, the appellants/accused suffered disclosure statements regarding commission of offence in the present case also. Thereafter, they were arrested in the present case. During investigation, the appellants/accused suffered another disclosure statements, which led to recovery of incriminating articles. The case property was sent to the FSL for forensic examination. After completion of investigation, the Station House Officer filed the Final Report under Section 173 Cr.P.C. before the concerned Illaqa Magistrate. Finding the case exclusively triable by the court of Sessions, the learned Illaqa Magistrate, committed the case to the court of Sessions vide committal order dated 04.12.2009.

PROCEEDINGS OF TRIAL COURT

6. Finding a prima facie case, the appellants/accused were charge-sheeted for commission of offence punishable under Sections 302, 307, read with Section 34, and 397 of IPC, and, apart from this, accused/appellant Mukesh was also charge-sheeted for offence punishable under Section 25 of Arms Act, to which they pleaded not guilty and claimed trial.

7. The prosecution, in order to prove its case, examined as many as 24 witnesses. The statements of the appellants/accused, under Section 313 Cr.P.C., were recorded, wherein, they pleaded innocence and false implication while denying all the allegations levelled against them.

8. The learned trial Court, after completion of trial, recorded

the impugned verdict of conviction and order of sentence, whereby, both the appellants/accused have been convicted for offence punishable under Section 302 read with Section 34 of IPC.

9. Let us examine the documentary as well as oral evidence led by the prosecution threadbare, to test the legality of the impugned verdict of conviction, as recorded by the learned trial Court.

DYING DECLARATION

10. As already discussed above, upon receipt of medical ruqa, S.I. Bijenderpal (PW3), reached the hospital and after obtaining opinion of doctor regarding fitness of injured Shakuntla to make statement, he recorded her statement, Ex.PD, on the basis whereof the current FIR has been registered. Thereafter, the Investigation Officer moved an application, Ex.PG/2, to the Duty Magistrate, Panipat, for recording the statement of injured Shakuntla, under Section 164 Cr.P.C., whereupon, Sh. Rohit Watts, J.M.I.C., Panipat (PW6), sought opinion of Dr. Pankaj Mutneja (PW4) regarding fitness of the injured to make statement. Thereupon, Dr. Pankaj Mutneja (PW4), vide Ex.PG, declared her fit to make statement and accordingly, the Magistrate (PW6), recorded the statement, Ex.PG/3, of injured Shakuntla. After recording statement, the Magistrate, vide Ex.PG/4, certified that the injured remained in fit condition while making statement and further certified that she made the statement without any pulls and pressure from anybody. After the statement of injured Shakuntla was recorded, Dr. Pankaj Mutneja (PW4) again certified that the injured remained in fit condition during the course

of recording her statement.

11. Perusal of the statement (dying declaration), Ex.PG/3, made by Shakuntla clearly shows that she had gone to Village Barsat with her neighbourer Ajay, as Ajay had to collect some payment from appellant/accused Mukesh. When they were travelling in their car, two boys gave them indication for stopping the car because they were known to Ajay. Accordingly, Ajay stopped the car and both the boys sat at the rear seats of the car and when Ajay demanded payment from them, they fired gunshot at Ajay and then they fired gunshot at her also. She specifically stated that one of the assailants was Mukesh. The statement (supra) is reproduced as under:-

“I had gone to Village Barsat along with my neighbourer Ajay. Ajay had to collect some payment. I and Ajay were in a car. Two boys gave us indication to stop our car, as they were known to Ajay. We stopped our car and both the boys sat at the rear seats of the car. We stopped our car. Ajay demanded money from them. Upon demand of money by Ajay, they fired gunshot. Then they fired gunshot at me. The name of one of these boys was Mukesh.”

12. The prosecution examined Sh. Rohit Watts, J.M.I.C., Panipat, as PW6, who stepped into the witness box and proved on record the statement of Shakuntla, Ex.PG/3, and also proved his certification of fitness, Ex.PG/4. In his cross-examination, he specifically stated that he recorded the statement of injured Shakuntla between 09:45 p.m. to 10:30 p.m.

13. The prosecution also examined Dr. Pankaj Mutneja as PW4, who deposed that on 08.07.2009, he was posted at Prem Hospital, Panipat. He further deposed that before recording statement of injured Shakuntla by the Magistrate, he certified her to be fit to make statement, and, after recording her statement, he again certified that she remained in fit condition during the course of recording her statement. He proved on record his opinion/certificate as Ex.PG and Ex.PG/1 respectively. During cross-examination, he stated that the statement of injured Shakuntla was recorded in ICU, and, after recording her statement, she was referred to higher centre.

14. SI Bijenderpal also stepped into the witness box as PW3, who stated that he obtained the opinion of doctor before recording the statement of injured Shakuntla, Ex.PD, and he further narrated the entire incidents regarding recording statement, under Section 164 Cr.P.C., by the learned Magistrate, Panipat. He was also put to pointed and incisive cross-examination, however, nothing material could be extracted by the defence. Therefore, we can safely conclude that the dying declaration was true and voluntary, which has been duly proved on record by prosecution beyond any reasonable doubt.

MEDICAL EVIDENCE

15. In order to prove its case, the prosecution also examined Dr. Rahul Diwan as PW1, who proved on record the MLR of Shakuntla (since deceased) wife of Zile Singh and found the following injuries on her body:-

“1. A lacerated wound of size 1.4cm X 0.4cm with inverted margins present over upper dorsal spine with surrounding blackened & abraded skin along with fresh bleeding. X-Ray of the part, surgeon opinion & ortho opinion was advised & injury was kept under observation.

2. Patient complaint of inability to move all four limbs. X-Ray cervical spine was advised & injury was kept under observation.”

16. Further, Dr. Harbans Singh, Medical Officer, LNJP Hospital, Kurukshetra (PW5), proved on record his duly sworn affidavit as Ex.PI and carbon copy of the post-mortem report of Shakuntla as Ex.PI/1. As per his affidavit, he conducted the post-mortem of Shakuntla and found the following injuries:-

“There was a wound 1 1/2 Cm. in to 1/2 cm. at level of C4 to C5 level. On further dissection, a bullet with shell about two cm. long recovered in S/C at C4 level damaging it.”

He handed over a sealed jar containing two sealed containing a bullet extracted from the body of deceased Shakuntla. In his opinion, the cause of death was gunshot injury, which was declared as ante-mortem in nature.

17. The prosecution further examined Dr. Shashi Garg, Medical Officer, General Hospital, Panipat, as PW7, who also proved on record his affidavit as Ex.PH, copy of post-mortem report of Ajay as Ex.PH/1, police paper as Ex.PH/2, two x-ray films Ex.P1 and P2, and, one parcel containing mutilated bullet as Ex.P2 (inadvertently again marked as

Ex.P2). As per the post-mortem report, the following injuries were noticed over the body of Ajay:-

“1. Lacerated wound of size 5.0cm x 5.0cm with inverted margins over lt. mandibular area 4.0cm in front of tragus of lt. pinna. Blackening around margins of wound, over chin & below the wound on lt. side. Skin, muscles & bones underlying avulsed, on tracing the path, mandible & maxilla fractured on lt. side, path going downwards, obliquely & medially injuring carotid vs. carotid sheath, vagus nerve, sternocleidomastoid muscle. On lt. side, third cervical vertebrae fractured & bullet found embedded in c3. Spinal cord injured.”

The cause of death in this case was opined as hemorrhage and shock due to injury to the spinal cord and greater vs. of neck due to gunshot injury, which is sufficient to cause death in normal course of life. All the injuries were declared ante-mortem in nature.

18. From the MLR and PMR of deceased Shakuntla as well as PMR of deceased Ajay, the prosecution has proved that both the deceased suffered gunshot injuries and they succumbed to the injuries so suffered. Therefore, the medical evidence produced and proved on record by the prosecution fully supports the dying declaration suffered by deceased Shakuntla and it stands proved, beyond any shadow of doubt, that both the deceased died because of gunshot injuries.

DISCLOSURE STATEMENTS AND RECOVERIES THEREUPON

19. In order to prove the disclosure statements made by the appellants/accused and the recoveries effected pursuant thereto, the

prosecution examined Inspector Bali Singh, Investigation Officer, as PW24, who stated that on 13.07.2009, he took into custody appellants/accused Mukesh and Jai Parkash from Police Station Sadar, Panipat, who were already in custody in cases FIR Nos.163/2009 and 164/2009 respectively. During investigation, appellant/accused Mukesh suffered disclosure statement, Ex.PQ, and in pursuance of his disclosure statement, on 16.07.2009, he took the investigation agency to his Village Dera Daroga. On the way, near Khotpura liquor vend, he got demarcated the place of occurrence, vide memo Ex.PM/1, and thereafter, he got recovered two mobiles, one photocopy of agreement in respect of Skoda car belonging to deceased Ajay, one slip of dry-cleaner, lock and key, and the ATM card of deceased Ajay. All the above articles were seized by the Investigation Officer vide memo, Ex.PM/2, in the presence of ASI Mohinder Singh (PW19) and Gajender (PW16/brother of deceased Ajay). The relevant extract of disclosure statement of appellant/accused Mukesh, Ex.PQ, reads as under:-

“On 08.07.2009, at about 11.30/12.00 o'clock in the day, I told Jai Parkash son of Shiv Narain Pandit, resident of Barana, who is my friend, that today we have to commit murder of Ajay. Thereafter, at my instance, Jai Parkash called Ajay, resident of Sannot, on his mobile number and asked him to come at Khotpura Bus Stand. After some time, Ajay came at Khotpura Bus Stand in his Skoda car bearing No.CH-23-A-3313 and he was accompanied by Shakuntla, resident of Sannot, whom we already knew. Ajay stopped his car at Khotpura Bus Stand on seeing us

and then, I and my companion Jai Parkash sat at the rear seats of the car and we got the car turned towards Panipat. Thereafter, when we reached near a liquor vend, I fired a gunshot from my .315 bore country-made pistol at the jaw of Ajay while sitting in the car, and, Jai Parkash also fired gunshot at Shakuntla from his pistol. Thereafter, we opened the doors of the car and I threw Ajay and Jai Parkash threw Shakuntla out of the car. Jai Parkash sat on Shakuntla's seat and I sat on Ajay's seat and I drove away his car. At that time, two mobiles, one ATM card, photocopy of DL of Ajay and a photocopy of agreement of car was present on the dashboard of the car. I picked both the mobiles, ATM card and photocopy of agreement of car and kept the same in my pocket. Jai Parkash also picked the photocopy of DL of Ajay, and Rs.600/- and one mobile from the bag of Shakuntla and kept the same in his possession. On 11.07.2009, in the evening, I and Jai Parkash went to my brother's in-laws house at Village Budpur (U.P.) in the car. While going there, I gave my shirt, stained with blood, pant and two white coloured Parnas (head scarfs), at the shop of Prince Drycleaners, Delhi Road, Shamli, for dry-cleaning and received a receipt of the same. I have kept concealed the receipt of dry-cleaner, both mobiles of Ajay, ATM card and photocopy of agreement of car, in the cupboard constructed on north eastern corner near the constructed lantern on northern wall of Baithak in my residential house at Dera Darogawala. Nobody has any knowledge about it except me. I have fastened a lock on the cupboard and hid the key under a brick placed over the cupboard. I can get recovered all these

articles and the key on demarcation and I can also get demarcated the place where I had fired gunshot at Ajay in the car and threw him down from the car.”

20. In the same manner, appellant/accused Jai Parkash also suffered disclosure statement, Ex.PQ/1, and in pursuance of his disclosure statement, on 14.07.2009, he handed over one jeans pant, which he wore on the date of occurrence, and the same was taken into possession vide memo, Ex.PM/4. He further got recovered one country-made pistol .315 bore along with one empty and one live cartridge, which were taken into possession vide memo, Ex.PM/6, and also got recovered one mobile from the pocket of his aforesaid jeans and one driving licence of deceased Ajay, which were also taken into possession vide memo, Ex.PM/7. The relevant extract of disclosure statement of appellant/accused Jai Parkash, Ex.PQ/1, reads as under:-

“On 08.07.2009, at about 11.30/12.00 o'clock in the day, Mukesh Kumar son of Raghbir, Caste Jat, resident of Baibal, asked me to call Ajay, resident of Sannot, at Khotpura Bus Stand. At the instance of Mukesh Kumar, I made phone call to Ajay, resident of Sannot, from my Mobile No.9996006627 and called him at Khotpura Bus Stand. Thereafter, I and Mukesh Kumar waited for Ajay at Khotpura Bus Stand. After some time, Ajay came at Khotpura Bus Stand in his Skoda car bearing No.CH-23-A-3313 and he was accompanied by Shakuntla, resident of Sannot, whom we already knew. However, Shakuntla, sitting on the front seat of the car, did not know me. Ajay stopped his car on seeing us and then, I and Mukesh Kumar sat

in the car and we got the car turned towards Panipat. Thereafter, when we reached near a liquor vend, I fired a gunshot from my .315 bore pistol at the neck of Shakuntla and Mukesh also fired gunshot at Ajay from his pistol. After opening the doors of car, I threw Shakuntla and Mukesh Kumar threw Ajay out of the car. I sat on Shakuntla's seat and Mukesh Kumar sat on Ajay's seat and we drove away his car. At that time, two mobiles, one ATM card, photocopy of DL of Ajay and a photocopy of agreement of car was present on the dashboard of the car. Mukesh Kumar picked both the mobiles, ATM card and photocopy of agreement and kept the same with him. I also picked the photocopy of DL of Ajay, and currency notes of Rs.600/- and one mobile from the purse of Shakuntla and kept the same in my pocket. After fleeing from the spot in the car, on 11.07.2009, we reached the in-laws house of Mukesh Kumar's brother at Village Budpur (U.P.). Before going to sleep, I washed my jeans paint, which got stained with blood of Shakuntla from the seat of car, and thereafter, I hung the pant on the knot affixed on the wall behind the wheat drum lying in the Baithak. The mobile and photocopy of DL of Ajay are present in right pocket of this pant. I wrapped the country-made pistol, from which I fired gunshot at Shankuntla in Ajay's car, along with one live cartridge and one empty cartridge of .315 bore, in a polythene and put the same into the wheat drum. Nobody has any knowledge except me about the pant as well as mobile and photocopy of DL present in its pocket, and, the .315 bore country-made pistol along with one live cartridge and one empty cartridge hid in the wheat

drum. I can get these articles recovered on demarcation and I can also get demarcated the place where I had fired gunshot at Shakuntla in the car and threw her down from the car.”

21. To prove the aforesaid recovery, prosecution examined Gajender son of Prem Chand (brother of deceased Ajay), as PW16, who was joined during investigation. Inspector Bali Singh, Investigation Officer, also stepped into the witness box as PW24. ASI Mohinder Singh, one of the witnesses of the recovery, was also examined as PW19 by the prosecution. All these witnesses proved the recovery of aforesaid incriminating articles from the appellants/accused in pursuance of their respective disclosure statements, beyond any shadow of doubt. The car of deceased Ajay, which was taken away by the appellants/accused after committing the crime, was recovered from the possession of the appellants/accused at the time of their arrest. Moreover, the articles, which were recovered from the appellants/accused, were present in the Skoda car of deceased Ajay, which was taken away by them, and therefore, it establishes the guilt of the appellants/accused beyond any reasonable doubt.

SCENE OF CRIME

22. As find recorded in the statement of Shakuntla, Ex.PD, recorded by S.I. Bijenderpal (PW3), when she along with Ajay reached at Bus Stand of Village Khotpura, the appellants/accused stopped their car and sat at the rear seats of their car. Thereafter, Ajay turned the car towards Panipat side and when they were going towards Panipat, the

appellants/accused fired gunshots from their respective pistols on Ajay and Shakuntla and threw them out of the car. Therefore, the place of occurrence, as duly find mention in the statement (supra), was near Village Khotpura, Barsat Road, Panipat.

23. After recording the statement of Shakuntla, S.I. Bijenderpal (PW3) visited the spot of occurrence, from where he seized broken bangles and blood stained earth vide memo, Ex.PE. During the course of investigation carried out by Inspector Bali Singh (PW24), the scene of crime was got examined from Experts of Forensic Science Laboratory, Madhuban, Karnal, Haryana. Dr. Neelam Arya (PW17), visited the spot of crime and prepared a Scene of Crime Visit Report, which was proved on record as Ex.PN. The relevant extract of this report reads as under:-

- “1. The affected spot was Panipat – Barsat Road, Khotpura and one person Ajay s/o Prem Chand, aged approx. 35-40 years, Caste Jat, r/o Sannot, P.S. Narela (Delhi) got died and one female named Shakuntla w/o Zile Singh, Caste Dhanak, aged approx. 40 years, r/o Sannot, P.S. Narela (Delhi) got injured.
2. Blood pool was present on the road at two places. One place was where the dead body of Ajay and another place was where the injured was lying, as stated by the police officials.
3. Tyre marks with blood stains was present on the spot.
4. Skid marks of vehicle directed towards Panipat side were observed on the spot.
5. No bullet/pellet could be found on the spot.”

The team of Forensic Science Laboratory also examined the

Skoda car bearing No.CH-23-A-3313, belonging to deceased Ajay, which was recovered from the appellants/accused. Upon examination of the aforesaid car, the following observations were recorded by the Forensic Science Laboratory:-

“14. Blood stains were detected on the driver seat (seat cover).

15. Blood stains were detected on the footmat lying behind the driver seat (Brown coloured footmat).

16. Blood stains were detected on the conductor seat also.

17. Blood stains were also detected on the footmats of the conductor side, that was appearing to be washed off.

18. No any other physical evidence could be found in the car.”

24. By proving the aforesaid Scene of Crime Visit Report on record, the prosecution has clearly established the place of occurrence and it also fully corroborates the statement, Ex.PD, made by Shakuntla, who stated that she and deceased Ajay suffered gunshot injuries in the Skoda car. Moreover, the blood stains which were found in the Skoda car clearly depict the involvement of the appellants/accused in the instant crime.

25. Further, the prosecution also proved on record the FSL reports dated 30.11.2009 and 28.01.2010 as Ex.PX and Ex.PX/1 respectively, according to which, upon examination of the seat cover and the car mat to detect presence of blood, blood was detected on both these articles. Upon serological examination, the blood on both these articles

was found to be of human origin. Further, the blood stained cotton swab and earth, recovered from the place of occurrence, were also got examined from Forensic Science Laboratory and upon examination, the blood on both these articles was also found to be of human origin.

26. Not only this, during investigation, H.C. Kuldeep Singh (PW9), proved on record the call details of appellant/accused Jai Parkash and deceased Ajay. As per the call details record, the location of their mobiles was found to be connected through tower at Siwah at 11:22 a.m. and 11:35 a.m. and 11:43 a.m. from the tower situated at Cheema Enclave, Barsat Road, Panipat. Even, appellant/accused Jai Parkash also stated in his disclosure statement that he had called deceased Ajay at Khotpura, at the instance of appellant/accused Mukesh, by sending him a message from his Mobile No.9996006627. Therefore, the call detail record, proved on record as Ex.PK, also establishes the presence of appellants/accused, at the spot of crime, at the time of occurrence.

27. A conjoint reading of the Scene of Crime Visit Report, the FSL reports and the call detail record, leaves no room for any doubt and clearly establishes that the place of occurrence was near Village Khotpura, as disclosed by Shakuntla in her statement, Ex.PD.

FORENSIC EXPERT EVIDENCE

28. In order to establish the culpability of the appellants/accused in commission of the present crime, the prosecution has proved on record the report of FSL, dated 28.01.2010, as Ex.PX/1. Perusal of this report depicts that one .315” fired bullet, taken out from the body of deceased

Ajay, was sent to Ballistic as well as Serological Division for its examination. It further reveals that one country-made pistol (Chambered for .315” cartridges) along with one .315” fired cartridge case and four .315” live cartridges, recovered from appellant/accused Mukesh, and, one country-made pistol (Chambered for .303” cartridges) along with one country-made fired cartridge case (Chambered for .303” & .315” caliber firearms) and one country-made live cartridge (Chambered for .303” & .315” caliber firearms), recovered from appellant/accused Jai Parkash, and, one .315” fired bullet taken out from the body of deceased Shakuntla, were sent for examination. After examination of the aforesaid parcel(s), the Forensic Science Laboratory submitted a detailed report, the relevant extract of report (supra), is reproduced as under:-

“ RESULT

1. The countrymade pistols marked W/1 (Chambered for .315” cartridges) & W/2 (Chambered for .303” cartridges) are firearms as defined in Arms Act 54 of 1959. Their firing mechanism were found in working order.
2. The .315” fired cartridge case marked C/1, .315” fired bullet marked BC/2 have been fired from countrymade pistol marked W/1 and not from any other firearm even of the same make and bore because every firearm has got its own individual characteristic marks.
3. Countrymade fired cartridge case marked C/2 has been fired from countrymade pistol marked W/2 and not from any other firearm even of the same make and bore because every firearm has got its own

individual characteristic marks.

4. No definite opinion could be formed regarding linkage of .315” fired bullet marked BC/1 in respect of countrymade pistol marked W/1 due to lack of sufficient comparable individual characteristic marks.”

Perusal of the report (supra), establishes that the firing mechanism of country-made pistol, recovered from the appellants/accused, was found to be in working order. The bullet, which was extracted from the body of deceased Ajay, marked as BC/2, during forensic examination, was found to be fired from country-made pistol, marked W/1, recovered from the appellant/accused Mukesh. This report also reveals that the fired cartridge case, recovered from appellant/accused Jai Parkash, marked as C/2, was fired from country-made pistol, marked W/2, recovered from appellant/accused Jai Parkash.

29. From the report of FSL, coupled with the statement of Shakuntla (Ex.PD) made before S.I. Bijenderpal (PW3), dying declaration (Ex.PG/3) recorded by J.M.I.C., Panipat, recovery of Skoda car and other incriminating articles recovered from the possession of the appellants/accused, sufficiently establishes that they had committed the murder of Ajay and Shakuntla by firing gunshots upon them from their respective weapons.

SUBMISSIONS BY COUNSELS FOR THE PARTIES

30. The learned counsels for the appellants/accused argued that the dying declaration of Shakuntla, proved on record as Ex.PG/3 by the prosecution, is result of padding and fabrication on the part of the

Investigation Officer. Reliance was also placed upon the post-mortem report of Shakuntla, proved on record as Ex.PI/1, to argue that as per the report (supra), the post-mortem of Shakuntla was conducted on 08.07.2009, at 05:00 p.m., whereas, her dying declaration was shown to have been recorded on 08.07.2009, at 10:00 p.m., therefore, it clearly establishes that the case of the prosecution doubtful. It was further argued that no motive has either been assigned or proved by the prosecution against the appellants/accused for committing such a crime. Reference was next made to the statement, Ex.PD, made by Shakuntla, to contend that it stands recorded in the statement (supra) that Ajay had stopped the car on seeing appellant/accused Mukesh standing on the road and thereafter, appellant/accused Mukesh and his companion sat at the rear seats of the car, therefore, it cannot be said that appellants/accused committed the murder of Ajay and Shakuntla, whereas, from the aforesaid instance, it becomes clear that there were cordial relations between Ajay and appellant/accused Mukesh. Furthermore, it was argued that the disclosure statement, Ex.PL/2, allegedly made by appellant/accused Jai Parkash, is not admissible in evidence, the same being hit by Section 26 of the Indian Evidence Act. Moreover, the disclosure statements of appellants/accused Mukesh and Jai Parkash, Ex.PQ and Ex.PQ/1 respectively, recovery memo, Ex.PM/2, in pursuance of disclosure statement of appellant/accused Mukesh, are not proved against them as no independent witness was joined in the investigation either at the time of recording the disclosure statements of appellants/accused or at the time

of effecting recovery of the articles.

31. On the other hand, learned counsel for the State placed reliance upon the dying declaration made by deceased Shakuntla, recovery effected from the appellants/accused during investigation, call detail records and medical as well as forensic evidence, led by the prosecution to contend that complete chain of circumstances has been proved on record by the prosecution, which clearly brings home the guilt of appellants/accused beyond any reasonable doubt. Reliance was also placed on the post-mortem reports, which clearly established that both the deceased died because of gunshot injuries. While relying upon all these documents, he stated that the present is an open and shut case since the prosecution has proved its case beyond reasonable doubt. Concluding his arguments, a prayer was made to uphold and maintain the verdict of conviction and order of sentence on the averments that the learned trial Court has appreciated the entire evidence available on record, in its right perspective, and as such, there is no perversity or infirmity in the verdict of conviction recorded by it.

**FINDINGS ON THE SUBMISSIONS OF COUNSELS FOR THE
APPELLANTS/ACCUSED**

32. So far as the argument of the learned counsels for the appellants/accused concerning the discrepancy with regard to the date and time of conducting the post-mortem of Shakuntla and recording her dying declaration is concerned, which thus renders it doubtful, we have examined the record and have arrived at the conclusion that, in fact, Shakuntla had died on 18.07.2009 at 07:30 a.m. It stands indisputably

established from the statements of SI Bijenderpal (PW3), Dr. Pankaj Mutneja (PW4) and Sh. Rohit Watts, J.M.I.C., Panipat, that the statement of injured Shakuntla was recorded on 08.07.2009 at about 10:00 p.m. in the ICU of Prem Hospital, Panipat. The clerical mistake appearing in the post-mortem report of Shakuntla, showing her date of death as 08.07.2009, would not be of any help to the appellants/accused. In our opinion, it is merely a clerical mistake, whereas, the other documents available on record clearly depict that Shakuntla had died on 18.07.2009. Moreover, PW12, A.S.I. Om Parkash, also categorically stated in his examination-in-chief that, on 18.07.2009, he got conducted the PMR proceedings. Although, he was put to pointed cross-examination by defence counsel, however, not even a single suggestion was offered to him to the extent that the post-mortem of Shakuntla was conducted on 08.07.2009. Therefore, it appears that the appellants/accused want to take benefit of a clerical mistake, which seems to be purely an outcome of inadvertence. As such, this contention of the learned counsels for the appellants/accused stands rejected.

33. The other contention of the learned counsels for the appellants/accused is that no motive has either been assigned or proved by the prosecution. However, this contention appears to be without any force because it stands categorically recorded in the statement of Shakuntla, Ex.PD, that deceased Ajay had to collect some payment from appellant/accused Mukesh, which fact has also been substantiated by Shakuntla in her dying declaration, made before the learned Magistrate,

wherein she has stated that when Ajay demanded his money, the appellants/accused fired gunshots upon them. Therefore, these contentions are bereft of any merit and same are accordingly, rejected.

34. As far as the next contention of learned counsels for the appellants/accused viz-a-viz cordial relations between Ajay and appellant/accused Mukesh is concerned, this contention also lacks merit, as it amply stands proved from the statement of Shakuntla that she along with deceased Ajay went to Khotpura because Ajay had to collect some payment from appellant/accused Mukesh. Therefore, upon seeing appellant/accused Mukesh standing on the road, it was obvious for deceased Ajay to stop the car because it was the sole purpose of their visit to appellant/accused Mukesh. Mere stopping of car by deceased Ajay on seeing appellant/accused Mukesh, in no way, establishes existence of cordial relations between them.

35. The next contention raised by learned counsels for the appellants/accused is regarding non-joining of independent witness during investigation, which makes the recovery doubtful. This contention gets sufficiently combated from the statement of ASI Mohinder Singh (PW19), who specifically deposed that the Investigation officer had made efforts to join public persons present at the spot but everyone expressed inability to join the investigation. It is well settled law that joining of independent witness is merely a rule of caution and not a rule of law. Therefore, merely because no independent witness was joined, the evidence of an official witness cannot be discarded.

CONCLUSION

36. In view of the aforesaid discussion, this Court does not find any merit in the instant appeal and accordingly, the same is hereby **dismissed**.

37. The verdict of conviction dated 29.09.2010, and, order of sentence dated 30.09.2010, rendered by the learned Additional Sessions Judge, Panipat, does not call for any interference by this Court and the same is affirmed and maintained.

38. The appellants/accused, if not in custody, shall forthwith be taken into custody to honour rest of the sentence imposed.

39. The case property, if any, be dealt with in accordance with law after expiry of the period of limitation for filing an appeal. The record be forthwith sent down.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

21.12.2022
devinder

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