

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-1096-DB-2011 (O&M)

Reserved on: 08.12.2022

Date of Decision: 13.12.2022

Mukesh and another

.....Appellants

Versus

State of Haryana

.....Respondent

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

Present: Mr. Rajesh Lamba, Advocate and
Ms. Sukhpreet Kaur, Advocate
amicus curiae for the appellant.

Mr. Pradeep Prakash Chahar, DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 20.8.2011, upon Sessions Case No. 38 of 9.4.2010, by the learned Additional Sessions Judge, Faridabad. Through the above said verdict, the learned trial Judge concerned, convicted all the accused, for the commission of offences punishable, under Sections 302 read with Section 34 of the IPC, and, also for an offence punishable under Section 25/54/59 of the Arms Act. Moreover, through a separate sentencing order, drawn on 24.8.2011, the learned trial Judge concerned, sentenced the convicts to undergo rigorous imprisonment for life, for an offence punishable under Section 302 read with Section 34 of the IPC, besides also imposed, upon the convicts

sentence of fine, comprised in a sum of Rs. 10,000/- each. Moreover, the

learned convicting Court also sentenced the convicts to undergo rigorous imprisonment, for a period of one year for an offence punishable under Section 25 of the Arms Act, and, also imposed, upon them the sentence of fine, comprised in a sum of Rs. 5,000/- each. In default of payment of fine amount or part thereof, the learned convicting Court sentenced the convicts to undergo rigorous imprisonment for a period of one year each for every default. However, both the above imposed sentences of imprisonment, were ordered to run concurrently. In addition, the period spent in custody by the accused, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed substantive sentence(s) of imprisonment.

2. The accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent therewith sentence(s) of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst the instant criminal appeal, before this Court.

Factual Background

3. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. PI/2 is assigned. The narrations carried in Ex. PI/2 are that, the complainant Prem Palgot recorded his statement to SI Ramesh Chand, that he was a resident of Hirola, P.S.Khair, District Aligargh, and, was presently plying an auto-rickshaw between Ballabgarh to Badarpur Border. He was the youngest amongst four brothers. His elder brother Hari Mohan was plying an auto-rickshaw on the same route and was residing with them at their house in Hari Vihar, Ballabgarh near Lal Kothi. Hari Mohan

had gone to sleep at about 7-8 P.M. on the previous night. On the following morning, the complainant received information that his brother Hari Mohan had been murdered. The complainant suspected the hand of Mukesh, Bunti, Raj Kumar all sons of Mahender, Mahender and his brother-in-law in the occurrence. He further disclosed that in the previous year his brother Narender Kumar and his associates had murdered Prem Pal, another brother of accused Mukesh, for which Narender was in custody.

Investigation proceedings

4. On the basis of above information, investigations were carried out, and, during course whereof, all the four accused were arrested. They suffered separate disclosure statements wherein they admitted their role in the murder of Hari Mohan. Recovery of a knife and two pistols, as, used in the crime occurrence also became respectively effected from them.

5. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

6. Since the offence under Section 302 read with Section 34 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through committal orders made on 26.9.2009, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to

draw charges against the accused, for an offence punishable under Section

302 read with Section 34 of the IPC, and, also qua the one punishable under Section 25 of the Arms Act, 1959. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 14 witnesses. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. They also chose to adduce defence evidence, but did not lead any defence witness into the witness box.

9. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charges (supra), as became drawn against them, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convicts.

Submissions of the learned counsels for the appellants

10. The learned counsels for the aggrieved convicts-appellants herein, have vigorously argued before this Court, that the impugned verdict of conviction, and, consequent therewith sentences (supra), as imposed, upon the convict-appellants, is legally infirm. The above submission is hinged, upon the factum, that there is a gross misappreciation, and, non-appreciations of evidence germane to the charge.

Submissions of the learned State counsel

11. On the other hand, the learned State counsel has argued before this Court, that the judgment, as challenged before this Court, is well merited, and, does not warrant any interference.

**Circumstantial evidence based case dependant upon the
signed disclosure statements of the convicts, and, consequent
therewith recoveries**

**Signed disclosure statements of convicts Mukesh and Bunty and
pursuant thereto recoveries**

12. During the course of investigations, being made into the appeal FIR, convict Mukesh made a signed disclosure statement, to which Ex. PM is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“In the presence of the following witnesses, accused Mukesh aforesaid, while in police custody, without any fear made disclosure statement that On 30.4.09 in the night at about 11 p.m. I alongwith my brother Bunty, Ram Kumar @ Lala and my brother-in-law Ajay son of Mohan Singh had committed the murder of Hari Mohan son of Khajan Singh I was having Chhurri type knife, Bunty was having pistol, Ram Kumar @ Lala was having magazine of pistol and three cartridges 9 mm and Ajay was having a country made pistol of 315 bore and two cartridges of 315 bore Bunti had caused bullet injury from pistol to Hari Mohan, which hit on his waist, Hari Mohan fell down. Then we all the four put Hari Mohan straight and I gave four blows with Chhuri type knife held by me in my hand on the left side chest of Hari Mohan and Bunti fired shot which hit behind his ears. Thereafter, we went to our houses alongwith weapons and then went separately. The Chhurri type knife which I had used in the murder of Hari Mohan I had kept concealed the same in the Bonga installed on the tubewell of Kundan Yadav, regarding which nobody has knowledge except me which I can get recovered after making demarcation.”

13. Pursuant to the above signed disclosure statement, convict Mukesh caused the recovery of the incriminatory weapon of offence from the place, as disclosed by him, in the signed disclosure statement (supra), to the investigating officer concerned. The same was taken into

police possession through recovery memo Ex. PM/1.

14. During the course of investigations, being made into the appeal FIR, convict Buntty also made a signed disclosure statement, to which Ex. PN is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“In the presence of the following witnesses, accused Buntty aforesaid, while in police custody, without any fear made disclosure statement that On 30.4.09 in the night at about 11 p.m. I alongwith my brother Mukesh, Ram Kumar @ Lala and brother-in-law of Mukesh, namely, Ajay son of Mohan Singh had committed the murder of Hari Mohan son of Khajan Singh I was having a pistol and Mukesh was having Chhurri type knife, Ram Kumar @ Lala was having magazine of pistol and three cartridges 9 mm and Ajay was having a country made pistol of 315 bore and two cartridges of 315 bore. I had caused bullet injury from pistol to Hari Mohan, which hit on his waist, Hari Mohan fell down. Then we all the four put Hari Mohan straight and Mukesh gave four blows with Chhuri type knife held by him in his hand on the left side chest of Hari Mohan and I fired shot which hit behind his ears. Thereafter, we went to our houses alongwith weapons and then went separately. The pistol which I had used in the murder of Hari Mohan I had kept concealed the same in the iron box kept in the corner of the room of my house in which I live, regarding which nobody has knowledge except me, which I can get recovered after making demarcation.”

15. Pursuant to the above signed disclosure statement, convict Buntty caused the recovery of the incriminatory pistol 99 mm, from the place, as disclosed by him, in the signed disclosure statement (supra), to the investigating officer concerned. The same was taken into police possession through recovery memo Ex. PN/1.

Consequences of the above

16. In the signed disclosure statements (supra), both the convicts confessed their guilt in committing the murder of the deceased concerned, by inflicting injuries on his person, hence with theirs' respectively using the apposite weapons of offence. There are further speakings therein qua theirs keeping, and, concealing the incriminatory weapons of offence, at the location, as became disclosed by them, in their respectively made signed disclosure statements. Moreover, they also made speaking therein about theirs alone being aware about the location of theirs hiding and keeping the same, and, also revealed their willingness to cause the recovery of the incriminatory weapons of offence, to the investigating officer concerned, from the place of theirs hiding, and, keeping the same.

17. The above signed disclosure statements, do acquire utmost evidentiary solemnity, as both the convicts neither ably denied their signatures thereon, nor did prove the said denial. Moreover, hence the above confession(s) of guilt is neither a bald or a simpliciter confession, nor is hit by the bar, encapsulated in Section 25 of the Indian Evidence Act. The reason for drawing the above inference ensues from the factum, that in pursuance thereof, through the proven recovery memos, both the convicts caused recoveries of the incriminatory weapons of offence, to the investigating officer concerned.

18. Since the recoveries of the incriminatory weapons of offence, as made through recovery memos Ex. PM/1, and, Ex. PN/1, have not been proven to be false or contrived recoveries, inasmuch as, it has not been cogently established, that prior to the making of the above recoveries, rather

the investigating officer concerned, had planted the same there, nor when any cogent evidence becomes adduced, rather vividly exemplifying, that the place of the apposite recoveries, was an open place, hence leaving scope for any person, other than the convict to place them there. Thus, the above recoveries are not only to be concluded to be validly made recoveries, but they are also to be concluded to be of those incriminatory weapons, which did become used by the convicts, in causing the murder of the deceased concerned.

Post-mortem report

19. The autopsy on the body of deceased Hari Mohan was conducted by PW-3 Dr. Sanjeev Arya, who has proven the post-mortem report, to which Ex. PB, is assigned. He has also proven the existence of the hereinafter extracted injuries on the person of deceased Hari Mohan.

- 1. Entry wound of size 1 cm round with black collar of 5 cm around inverted margins of wound.*
- 2. Contusion with effusion of blood in surrounding tissues present in the parital region.*
- 3. Entry wound made a hole in occipital left bone and exit wound was irregular wound present two fingers breadth posterior to right ear with wound been bone deep and 1 cm hole found in right temporal bone. Brain matter oozed through exit wound. Direction of the blood was left to right.*
- 4. Entry wound of bullet was present in lumboscral spine in midline with blackning collar at margins. It was round shape wound a bullet was recovered after X-rays sealed and handed over to police. The direction of the wound was towards right side.*
- 5. There were found incised wounds present/obliquely over chest wall on left side with one at the level of nipple of size 4 cm obliquely placed directed medially towards*

pleural cavity with corresponding incision was present in pleura. Second wound present 3 cm below nipple at the level of 8 intercostal space up to pleural with fracture of 7th rib. Third wound presently 3 cm above nipple at the level of 4th inter costal space with wound exposed to the rib level and cutting the wound. Fourth wound was present 6 cm above the nipple level and the wound is pleural deep. Blood was present in surrounding tissues. Left lung was shurken and congested with blood with pleural cavity 2 cm incised would was present in left ventricle.

20. The cause of demise of the deceased concerned, has been opined by PW-3 to ensue from hemorrhage, and, shock due to injury on the vital organs, i.e. lungs, heart, and, spleen, which in natural course, are spelt by him, to be sufficient to cause death in the ordinary course of nature. During his making his testification in Court, the said witness was also shown the incriminatory knife, and, on being queried, about the relevant injuries being causable through user of the crime weapon, he proceeded to explicitly state, that the possibility of the said injuries, being caused on the relevant parts of the body of the examined deceased, through user thereon of the incriminatory knife, rather cannot be ruled out. Thus, the disclosure statements, as made respectively by the convicts, and, also consequent therewith recoveries, do also become fully supported by the above medical account/evidence.

Forensic evidence, as comprised in the report of the FSL, to which Ex. PH is assigned.

21. Through memo No. 100-DR, drawn on 6.5.2009, two sealed parcels, became sent, through EHC Suresh Kumar, to the FSL concerned.

On the relevant items, as became sent to the FSL concerned, the ballistic

expert concerned, did make examinations thereof. The result of his examination, as made upon the relevant incriminatory items/incriminatory weapons of offence, is extracted hereinafter.

“ **Result**

1. *The country made pistol marked W/1 (Chambered for 9 mm cartridges) is a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was found in working order.*
2. *The 9mm fired bullet marked BC/1 has been fired from the countrymade pistol marked W/1 and not from any other firearm even of the same make and bore/calibre because every firearm has got its own individual characteristic marks.*
3. *The hole on the shirt and T-shirt contained in parcel No. II has been caused by a bullet projectile.”*

22. A perusal of the result of the examination(s), as made by the ballistic expert concerned, upon the relevant incriminatory weapon of offence, and, also upon the incriminatory items, makes forthright bespeakings qua the relevant fatal firearm shots, becoming fired from the examined weapons' of offence. Moreover, the result of the relevant examination also makes clear echoings, that the fired cartridge case, marked as BC/1 became fired from the country made pistol Mark W/1, and, not from any other weapon.

23. The FSL concerned, through report No. FSL(H) 09/S-2487 of 30.12.2009, has also made an opinion, upon an examination, being made on the other relevant items, as became sent to it. The result of the FSL concerned, is ad verbatim extracted hereinafter.

“**Laboratory Examination**

Cut marks marked Q1 to Q10 on shirt exhibit-2(a) and Q11 to Q13 on T-shirt exhibit-2(c) were examined physically and under optial microscope. Trial cuts T1 and T2 were made on shirt exhibit-2(a) by knife exhibit-4. On comparison of

crime cut marks with trial cut marks, the following opinion is given:

Opinion

Cut marks marked Q1 to Q10 on shirt exhibit-2(a) and Q11 to Q13 on T-shirt exhibit-2(c) could have been caused by knife/churra marked exhibit-4.

24. Therefore, it emerges from the above extracted result of the relevant examinations, that not only the above disclosure statements, as respectively made by the convicts concerned, do acquire corroboration therefrom, but also the recoveries, as respectively made through recovery memos Ex. PM/1, and, Ex. PN/1, become proven to be both valid, and, truthful. In summa, this Court finds no gross perversity or absurdity in the appreciation of the relevant evidence, as consequently made by the learned trial Judge concerned.

Final order

25. The result of the above discussion, is that, this Court does not find any merit in the appeal, and, is constrained to dismiss it. Consequently, the appeal is dismissed. The impugned verdict of conviction, as becomes recorded upon the convicts-appellants, by the learned convicting Court, is maintained, and, affirmed. If the convicts are on bail, thereupon, the substantive sentence of imprisonment, as imposed upon the convicts-appellants, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

26. It is clarified that though, the sentence of rigorous imprisonment of life, as imposed by the learned convicting Court

concerned, upon the convicts is affirmed, and, maintained, but yet it is also

clarified, that the default sentence(s), as imposed upon the convicts, inasmuch as, the sentence(s) being ordered to run for a period of one year each for each default, is extremely harsh, and, oppressive. Thus, on default of payment of fine, as comprised in a sum of Rs. 5,000/-, each, the convicts shall undergo rigorous imprisonment for a period of six months each. Further, on default of payment of fine, as comprised in a sum of Rs. 10,000/-, each, the convicts shall undergo rigorous imprisonment for a period of six months each. The said default sentences shall also run concurrently.

27. Records be sent down forthwith.

28. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

December 13, 2022
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes