

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-221-DB-2014 (O&M)

Pronounced on:02.09.2022

Date of decision:30 .09.2022

Jitendar @ Jeeta

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWATPresent: Mr. Nikhil Chopra, Advocate,
for the appellant.

Mr. P.P. Chahar, DAG, Haryana.

Ms. Komal Chauhan, Advocate for
Mr. Ajay Ghangas, Advocate,
for the complainant.**N.S. SHEKHAWAT, J.**

The present appeal is directed against the judgment of conviction dated 07.11.2013 and order of sentence dated 08.11.2013 passed by the learned Additional Sessions Judge (Exclusive Court), Jhajjar, whereby the co-accused Pardeep and Maya were acquitted of charge framed against them and accused-appellant Jitender @ Jeeta was held guilty for the offence punishable under Section 302 IPC and Section 25 of the Arms Act and was sentenced to undergo as under:-

Offence	Sentence
302 IPC	To undergo rigorous imprisonment for life along with fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year

25 of the Arms Act	To undergo rigorous imprisonment for three years along with a fine of Rs.1,000/-, in default of payment of fine, to further undergo rigorous imprisonment for six months.
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Both the sentences were ordered to run concurrently.

Adumbrated facts of the instant case are that on 14.10.2010, a message was received in Police Station Sadar, Bahadurgarh to the effect that Dharmender resident of village Chhara had sustained fire arm injuries and he had succumbed to the fire armed injuries in Post Graduate Institute of Medical Science, Rohtak (for short `PGIMS, Rohtak). On receipt of this message, Satpal Singh, In charge/SI, Police Post Mandauthi along with other police officials reached PGIMS, Rohtak and collected ruqa from there. When he was going to the Accidents and Emergency Ward of PGIMS, Rohtak, Dhana Ram, father of the deceased, met him on the way and made a statement Ex.P1, on which, he made his endorsement Ex.P1/B and forwarded the same to the Police Station through EHC Ramesh Kumar for registration of the case. Complainant-Dhana Ram stated that at about 07.00-07.30 PM on 14.10.2010, he, alongwith his son Dharmender, was returning back home after harvesting the crops from Jatiawala fields. His son Dharmender was ahead of him at a distance of about half acre and was also returning home. The complainant and his nephew Surrender were returning home along with him. When Dharmender reached in front of the house of Jitender @ Jeeta son of Rajender resident of village Chhara, then Jitender @ Jeeta called his son Dharmender and said that he would teach him a lesson for demanding money on that day. There was a money transaction between Jitender @ Jeeta and Dharmender. On saying so, Jitender fired a shot on the left side of the temple of Dharmender from a

pistol and on this, Dharmender fell down on the ground. After following, Jitender @ Jeeta fired 3/4 more shots on him. While his son Dharmender was lying on the ground, he and Surrender rushed towards Dharmender to save him and raised alarm. On this, Jitender @ Jeeta alongwith another boy namely Monu @ Manoj, who was residing at village Badli, fled away from there in a Scorpio vehicle of white colour towards Jhajjar side. The complainant and Surrender took care of his son and blood was oozing from his mouth, hand and temple. After arranging the vehicle, the complainant and Surrender took Dharmender to reached PGIMS, Rohtak, where the doctor declared Dharmender to be brought dead. On his statement, which was recorded at 11.30 PM on 14.10.2010, FIR, Ex.P10, was registered against Jitender @ Jeeta (appellant herein) and others.

After the registration of the FIR, the investigation formally commenced. On 15.10.2010, the inquest report, Ex.P6, was prepared and the dead body was sent to the mortuary of PGIMS, Rohtak for conducting the post-mortem examination. The complainant along with Satpal, SI/Investigating Officer, reached at the place of occurrence. On demarcation by the complainant, he prepared rough site plan, Ex.P12 of the place of occurrence with correct marginal notes and also got the place photographed from Dara Singh, Photographer. The empty cartridges cases, led pieces and blood-stained earth were taken into possession by the police and were converted into parcels, which were duly sealed. The statements of various witnesses were recorded under Section 161 Cr.P.C. and in the meantime HC Yogesh Kumar returned from PGIMS, Rohtak and handed over a copy of post-mortem report and two sealed parcels containing clothes

of the deceased and bullet taken out from the dead body of Dharmender to him. The articles were taken into possession by him. Finally, a report under Section 173 Cr.P.C. was prepared and presented in the Court of learned Area Magistrate by the local police.

During the course of trial, the prosecution examined 20 witnesses and reports of FSL Ex.PX and Ex.PY were tendered in evidence and the prosecution evidence was closed. The statements of the all the three accused namely Jitender @ Jeeta, Pardeep and Maya Ram were recorded under Section 313 Cr.P.C., in which they stated that they had been falsely implicated in the instant case and had not committed the murder of Dharmender. The accused Jitender @ Jeeta had taken a specific stand that even no recovery of pistol and Scorpio was made at their instance and there was no money transaction between him and the accused. He had become a better wrestler than Dharmender and due to this reason, the complainant was having jealousy with him. Some altercation had taken place between him and Dhana Ram in a Panchayat, which was held in relation to a dowry matter. Consequently, the complainant got him falsely implicated in the present case to settle his personal scores. In defence, the accused examined Tanmey Rastogi as DW-1 to prove the *alibi* of the co-accused Pardeep. The other co-accused Pardeep and Maya Ram have been acquitted by the learned trial Court. It, was, however, submitted that the present accused namely Jitender @ Jeeta led no evidence to prove his innocence.

Learned counsel for the appellant has vehemently contended that the learned trial Court had come to the conclusion that the version of the complainant (PW-1) and PW-2 Surender has major contradictions, but still the appellant was convicted under Section 302 IPC and 25 of the Arms

Act wrongly. In spite of major discrepancies and contradictions, the learned trial Court relied upon the said witnesses to convict the present appellant. Even the said witnesses had improved their version with regard to the monetary transactions of Rs.2 lacs and there was no evidence to show that there was any money transaction between the deceased and the accused/appellant. Still further, the presence of PW-1 and PW-2 at the place of occurrence was highly doubtful. As per both the witnesses, the accused/appellant fled from the spot in a Scorpio Car bearing Registration No.HR-26-0080, whereas, the site plan prepared by PW-15 SI Satpal, it is apparent that the accused had fled away in a Indica Car. This clearly suggests that the investigating agency had not investigated the matter rightly and later on the two alleged eye witnesses, i.e. PW-1/complainant and PW-2/Surender were introduced to falsely implicate the present appellant. Still further, it has been urged that the appellant is a professional wrestler and participated in various national championships. He was a better wrestler than Dharmder (since deceased) and due to this, the complainant, PW-1, was nursing a grudge against him and he ensured the false implication of the present appellant. Moreover, there was no motive at all to commit the crime and the prosecution had utterly failed in proving the same. Still further, the place of occurrence was shown to be near the place of residence of the appellant, whereas the deceased had no reason or occasion to visit the said place. Moreover, the investigating agency did not bother to take into account the tower locations of various witnesses. Further, the recovery of weapon of offence was quite doubtful and there was a delay in sending the samples to FSL and no explanation was forthcoming. Thus, the learned trial

Court committed a grave error in placing the reliance on the forensic evidence. It has further been argued that there were major contradictions in the statements of different witnesses and the learned trial Court had rightly acquitted the co-accused and wrongly convicted the appellant on the same set of evidence.

The above-said contentions raised by the learned counsel for the appellants have been strongly opposed by the learned counsel for the State of Haryana. He has contended that the learned trial Court had duly appreciated the evidence in the light of settled canons of law and the impugned judgment did not warrant for any interference by this Court. The learned trial Court has recorded reasons, based on due appreciation of evidence and are liable to be upheld by this Court.

After hearing the learned counsel for the parties and perusing the learned trial court record carefully, we feel that the arguments raised by both the sides revolve around the following points, which emerge for discussion and recording of findings by this Court:-

- (i) Medical evidence and F.S.L. Reports
- (ii) Recoveries;
- (iii) Eye witnesses;
- (iv) Delay in lodging the FIR;
- (v) Contradictions in the statements of the witnesses;
- (vi) Motive;
- (vii) Section 25 of the Arms Act; and
- (viii) Investigation.

Medical evidence & F.S.L. Reports

To prove the charge against the appellant-accused, the

prosecution examined PW-4 Dr. Dharampal, who alongwith a panel of Doctors, had conducted the post-mortem examination on the dead body of Dharmender on 15.10.2010 at PGIMS, Rohtak. After postmortem, the following injuries were found:-

- i. An fire arm entry wound of size 1.5 x 1 cm. situated over lower lateral aspect of the left arm 34 cm. below shoulder joint and 130 cm. above left heel. The margins of the wound were irregular and inverted. The collar of abrasion seen around the entry wound for 5 mm. The wound was directed downward backward and medially two piercing the muscle lower and of humerus and head to the ulna to emerge as wound no.2.
- ii. A fire arm exit wound over back of left elbow joint of size 1 x .5 cm. The margins of the wound were irregular and everted.
- iii. A fire arm entry wound of size 2 x 1 cm. situated 11 cm below shoulder blade and 13 cm. away from mid line over back of left side of chest. It was 160 cm. above left heel. The margins of the wound were irregular and inverted. The collar of abrasion all around the entry wound. The wound was directed laterally backward and upward piercing the muscular muscles to emerge out as wound no.4;
- iv. The fire arm exit wound of size 1 x 1 cm over lateral aspect of left shoulder 10 cm. below of the left acromion and 152 cm. above left heel. The margins of the wound

were irregular and everted.

- v. A fire arm entry wound of size 1.5 x 1 cm. over lateral wall of left side of chest 13 cm. below shoulder and 154 cm. above the left heel. The margins of wound were irregular and inverted and collar o abrasion seen for 5 millimeter all around the entry wound. The wound was directed medially and downward from left to right piercing the second inter costal space, left lung heart, right lung. A yellow metallic bullet of 1.2 cm of length found lodged in 6th and 7th intercostals space of lateral wall of right side of the chest. The track of wound was ecomyoised along all its length. Both plural cavity and pericardial cavity was full of dark red fluid blood. All the other organs were pale and healthy. Stomach contained 30 cc of mucoid material with pale mucosa. Small intestine contained semi digested food and large intestine contained faecal matter.

In their opinion, the cause of death was fire arm injury and duration between injury and death was immediate; between death and autopsy was 12 to 24 hours. After the post-mortem examination, the clothes of the deceased, a packet containing one bullet and other articles, duly sealed were handed over to the police and the post-mortem report was exhibited as Ex.P5 before the learned trial Court. The prosecution further examined PW-5 Dr.B.K. Rai, Forensic Expert, who along with PW-4 Dr. Dharampal, had conducted the autopsy. He also deposed on almost similar

lines.

Apart from that, the prosecution examined PW-17 Dr. Sunil Kumar Lamba, Radiologist, PGIMS, Rohtak, who conducted radiological examination on the dead body of Dharmender on 15.10.2010 and also exhibited the x-ray films as Ex.P15 to Ex.P20.

From a perusal of the testimonies of all the three witnesses, it is apparent that the cause of death in this case was fire arm injury and the death was immediate after suffering the fire shots. All the doctors were cross-examined at great length by the learned defence counsel, but nothing favourable could be elicited from their respective testimonies.

In fact, the weapon of the offence i.e. a pistol recovered from the appellant was sent to the FSL and the prosecution has duly exhibited the FSL reports Ex.PX and Ex.PY, which were tendered in evidence. As per the FSL report, a parcel containing 7.65 mm fired bullet, stated to have been taken out from the body of the deceased –Dharminder was sent. Apart from that, a parcel containing 7.65 mm fired cartridge cases, 17.65 mm fired bullet stated to have been recovered from the place of occurrence and one country made pistol (chambered for 7.65 mm cartridges), along with magazine stated to have been recovered from the appellant were also sent to the FSL. As per the FSL report, the country-made pistol recovered from the appellant, was found to be in working order. Even the fired bullets, which were recovered from the place of occurrence as well as the bullets which were taken out from the dead body of Jitender @ Jeeta were found to have been fired from the pistol recovered from the present appellant.

Consequently, the medical record was duly corroborated by the Forensic Evidence and was sufficient to convict the present appellant and we uphold

the findings recorded by the learned trial Court in this regard.

Recoveries

After arrest of the accused/appellant in the instant case, on 06.12.2010, he was interrogated by PW-20 Inspector Vijay Singh. During interrogation, he made disclosure statement, Ex.P-21, to the effect that he was having some monetary dealings with Dharmender (since deceased) and he was insisting for returning the borrowed money. He conspired with his co-accused to commit the murder of Dharmender. He further disclosed that he along with his co-accused Monu @ Jaimeet reached the house of Narender, maternal uncle of wife of Monu @ Jaimeet and he had parked the Scropio vehicle in the **gher** of Narender and had concealed his pistol, wrapped in a poly bag, in the heap of firewood, which was lying there in the above-said gher and had exclusive knowledge about the place of concealment and offered to get the pistol recovered from there. The said disclosure statement, Ex.P-21, was signed by the accused/appellant and was attested by PW-18 Ishwar. During the police remand, accused-appellant Jitender @ Jeeta led the police party to the **gher** of Narender and got the Scropio vehicle recovered from there. Accused-appellant Jitender @ Jeeta took out the pistol from the heap of firewood and produced the same before PW-20 Inspector Vijay Singh and the rough sketch of the pistol Ex. P-13 was prepared. It was packed into a seal parcel, which was sealed with the seal Ex.VS. The Scropio vehicle and parcel of the pistol were taken into possession vide memo Ex.P14 and the sketch and the memos were attested by SI Attar Singh and PW-16 Jagdish. The recoveries have been duly proved during the course of trial by PW-20 Vijay Singh, Inspector, PW-16

Jagdish and PW-18 Ishwar and it stood proved that the pistol, which was used in the commission of crime was recovered from the present appellant.

The learned counsel for the appellant could not point out any defect in the process of recovery of the vehicle and the weapon of the offence from the present appellant. We have also gone through the testimonies of PW-16 Jagdish, PW-18 Ishwar and PW-20 Vijay Singh, Inspector and their testimonies inspire evidence, so far as the recoveries of the incriminating evidence from accused/appellant Jitender is concerned.

Eye-witnesses

Learned counsel for the appellant vehemently argued that PW-1 Dhana Ram complainant and PW-2 Surender were not at all present at the place of occurrence and their presence at the spot was doubtful. Still further, both the said witnesses were closely related to the deceased and had been falsely introduced by the prosecution to implicate the appellant in a false case. Apart from that, the co-accused were acquitted after placing reliance on the testimonies of the same witnesses and even the appellant is liable to be acquitted, because the testimonies of the said witnesses do not inspire any confidence. We have heard learned counsel for the parties and perused the testimonies of PW-1 Dhana Ram and PW-2 Surender. PW-1 Dhana Ram was with the deceased and they were coming to their house after harvesting the **bajra** crop in their fields. The deceased Dharminder was 10/15 paces ahead of him and Surender. In the meantime, appellant-Jitender @ Jeeta emerged and threatened the deceased that he would teach him a lesson for asking to repay the debt amount and on saying so, he fired directly at Dharmender, due to which, Dharmender suffered gun-shot injuries and

ultimately succumbed to the said injuries. Even PW-2 Surender had deposed on similar lines. The said two witnesses were cross-examined searchingly by the learned defence counsel, but their testimonies could not be shattered in any manner and the trial Court had correctly placed reliance on the testimonies of said two witnesses.

No doubt PW-1 Dhana Ram and PW-2 Surender were related to the deceased, but the same is no ground to reject their testimonies as the same inspire confidence. A perusal of the testimonies of the said two witnesses would clearly show that both the witnesses stood the rigours of cross-examination and supported the prosecution version. They not only supported the case of prosecution with regard to the manner in which injuries were caused, but also explained the motive for committing the offence. Apart from that, the testimonies of the said two witnesses were duly supported by other evidence. Both the witnesses had given the vivid descriptions of the sequence of events and it stood established that the present appellant had fired shots on deceased and the said weapon of offence was recovered from the present appellant and there was enough evidence against the present appellant to convict him for the offences charged. We are of the affirmed opinion after closely scrutinizing the evidence of PW-1, Dhana Ram, complainant and PW-2 Surinder that the appellant was involved in the crime and have come to the irresistible conclusion that he had committed the offence and none-else.

Delay in FIR

Learned counsel for the appellant has vehemently contended that there was delay in registration of the FIR and this time was utilized by

the prosecution in introducing two witnesses, namely, PW-1 Dhana Ram and PW-2 Surender. We have carefully perused the evidence in this regard. The incident had occurred at 7.30 P.M. on 14.10.2010, which was witnessed by PW-1 Dhana Ram and PW-2 Surender, as per the case of the prosecution. The police swung into action at about 9.00 P.M. and the police proceedings/rupa Ex.P1/B established that the statement of PW-1 Dhana Ram, complainant was recorded by PW-15 SI Satpal Singh at about 11.30 p.m. Even the special report was received by the Magistrate at 1.00 a.m. on the night intervening 14/15.10.2010. In fact the above chronology of events clearly establishes that there was no delay in lodging the FIR and it had been properly explained by the prosecution. Rather, we find that the FIR was got registered by PW-1 Dhana Ram complainant with promptitude and it was impossible for the prosecution to concoct any story in such a short duration. Rather, the presence of PW-1 Dhana Ram, complainant (father of the deceased) was natural as he along with the deceased was returning from their fields and was going home. Thus the contention of the learned defence counsel with regard to delay in lodging of the FIR is meritless.

Contradictions in the statements of prosecution witnesses

Learned counsel for the appellant has vehemently contended that there are serious contradictions in the testimonies of various prosecution witnesses, however, no serious infirmity was pointed out except minor variations appearing in the testimonies of various prosecution witnesses. At the outset, it is observed that such minor variations in the testimonies of truthful witnesses are bound to appear and such testimonies cannot be discarded on this minor ground, if the same otherwise inspire

confidence of the Court. Even certain submissions have been made with regard to the offending vehicle. It has been stated that as per the initial version, the appellant and Monu, co-accused, are shown to have fled from the spot in Indica car bearing Registration No.HR 26 AB 0080, whereas according to PW-1 Dhana Ram (complainant) and PW-2 Surrender, they had run away from the spot in a Scorpio vehicle. Even in pursuance of disclosure statement Ex.P-21, the Scorpio vehicle bearing registration No. HR 26 AB 0080 had been recovered by the Investigating Agency from village Nigana, which was taken vide recovery memo Ex.P-14. In fact, such minor contradictions cannot be any ground to discard the testimonies of the witnesses, who are otherwise found to be truthful by us. The witnesses of recovery as well as PW-1 and PW-2 have been cross-examined at length, but nothing favourable to the accused could come on record. Still further, the witnesses had been examined after a considerable lapse of time and it is neither unnatural nor unexpected that there could be some minor variations in the statements of the witnesses and there was nothing on record, on the basis of which, there testimonies could be disbelieved.

Motive

It is a case based on direct evidence, where PW-1 and PW-2 had proved the motive for commission of the crime. There was sufficient evidence to show that there was monetary transaction between the deceased and the accused and on account of the same, the appellant fired at the deceased and the deceased succumbed to the injuries. Even otherwise, when there is sufficient direct evidence regarding the commission of the offence, the question of motive will not loom large in the mind of the

Court. The prosecution had convincingly and satisfactorily established the guilt of the appellant beyond reasonable doubt by letting in reliable and cogent evidence. In such a situation, it is not necessary for us to look for a strong motive. However, the evidence led by the prosecution still suggests that there were financial transactions between the appellant and Dharmender (since deceased) and the defence could not lead any evidence to the contrary. In his statement under Section 313 Cr.P.C., the accused/appellant stated that there were no money transactions between him and Dharmender (since deceased). He also stated that he would lead evidence in his defence. However, the accused failed to lead any evidence to prove the absence of motive and the contentions raised by the learned defence counsel in this regard are untenable.

Section 25 of the Arms Act

The appellant was arrested and after his arrest, he suffered the disclosure statement, Ex. P21, to the effect that he had concealed one pistol in village Nigana under the heap of firewood and stated that he could demarcate the place and could get the same recovered. In pursuance to the said disclosure statement, PW-20 Vijay Singh, Inspector accompanied by PW-16 Jagdish went to the place and got the offending weapon recovered i.e. pistol 7.65 mm. PW-20 Vijay Singh, Inspector also identified the pistol, when the sealed parcel was produced in the Court during his deposition and identified the same to be the same weapon, which was recovered from the appellant in pursuance of his disclosure statement Ex.P21. Even though, PW-16 Jagdish was related to the deceased but it was no ground to reject his testimony as he had no enmity with the accused. Still further, the

weapon was recovered from the place, which was in exclusive knowledge of the present appellant. Apart from that, the prosecution examined PW-14 Ajay kumar, Reader to the District Magistrate, Jhajjar. He placed on record the sanction order accorded by the then District Magistrate, Jhajjar, for launching the prosecution against the present appellant under the provisions of the Arms Act and also exhibited the sanction order Ex.P-11 in this regard. He identified the signatures of the then District Magistrate in this regard. The testimonies of the said witnesses are found reliable and we uphold the conviction of the appellant under Section 25 of the Arms Act.

Investigation

The prosecution examined PW-15 SI Satpal, who had initially conducted the investigation and lodged the FIR. He recorded various statements under Section 161 Cr.P.C. and interrogated the accused. Apart from that, the prosecution examined PW-20 Inspector Vijay Singh, SHO Police Station Sadar Bahadurgarh, who interrogated the accused/appellant and made recoveries in pursuance of the disclosure statements. The entire process of investigation, disclosure statements, recoveries were duly proved by him before the learned trial Court. Moreover, several other formal witnesses were also examined, who substantiated the case of the prosecution and we find the testimonies of the said witnesses are reliable.

The prosecution case is premised on direct evidence, based on the testimonies of two eye-witnesses, the depositions of prosecution witnesses who have stood the rigours of cross-examination clearly supported the prosecution version and established the enmity between the appellant and the deceased. This fact is also supported by the medical and forensic evidence, prompt complaint to the police and a fair investigation,

which co-related the recovered weapon to the injuries suffered on the body of the deceased and the prosecution case was proved beyond reasonable doubt.

In view of the above, we find no illegality or impropriety in the findings recorded by the learned trial Court, warranting interference by this Court. Consequently, the present appeal is hereby dismissed, being devoid of any merit. Resultantly, the impugned judgment of conviction dated 07.11.2013 and order of sentence dated 08.11.2013 passed by the learned Additional Sessions Judge (Exclusive Court, Jhajjar are upheld. The appellant be taken in custody forthwith, if he is on bail, to serve the remaining part of his sentence.

Pending application, if any, is also disposed off, accordingly.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation. The trial Court record be sent back forthwith.

(SURESHWAR THAKUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

30.09.2022
mks

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO