

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-AD-50-2022 (O&M)
DECIDED ON: 21st JULY, 2022

SANDEEP AND ANOTHER

.....APPELLANTS

VERSUS

SANDEEP AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kanisth Ganeriwala, Advocate for
Mr. D.N. Ganeriwala, Advocate
for the appellants.

SANDEEP MOUDGIL, J

CRM-16510-2022

Prayer in this application is for condonation of delay of 8 days
in filing the present appeal.

In view of averments made in the application, which is duly
supported by an affidavit of applicant/Sandeep, delay of 8 days in filing the
present appeal is condoned.

Criminal misc. application stands disposed of.

CRA-D-50-2022

Instant appeal has been preferred against the judgment and
order dated 10.01.2020 and 14.01.2020 passed by learned Additional
Sessions Judge, Jhajjar, (for short 'trial Court') whereby, respondents No.1 to
3 have been acquitted by the trial Court of the charges for alleged
commissioning of offence under Sections 302, 307, 341, 506 read with 34

Briefly stated, an FIR was registered on a complaint made by appellant No.2-Ranbir who alleged that on 21.10.2014, at about 6.00 a.m., his nephew Rahul and Rohit were doing running exercise at Kosli Road and at that time Raman son of Ajit, Rakesh son of Jaipal, Vikas son of Khazan and Sonu son of Dalbir came there who started abusing Rahul and indulged in fist fighting.

In the meantime, other family members of assailants i.e. Ajit son of Ishwar, Raju son of Ishwar, Dalbir son of Rattan, Ajay and Vinod sons of Jugti Ram also reached and started giving threat of elimination. Vijaypal (since deceased) reached the place of occurrence, on hearing noises, which was near to police chowki and with his intervention, the complainant party returned home safely. It was at around 8.30 a.m. again Amit, Raman, Rakesh, Vikas and Sonu came in a vehicle and fired two bullet shots targeting Rajpal-brother of the complainant with an intention to kill him, but the fire shots fortunately missed and Rajpal was saved. The complainant and his brother Vijaypal alongwith his nephew Sandeep reached at the place of occurrence i.e. near the house of one Amarjeet son of Ram Kishan at Jhajjar-Kosli road. The accused respondents encircled Vijaypal-complainant and his nephew Sandeep and Amit fired bullets while all of them including Raju, Ajit, Khazwan, Amit, Raman, Rakesh, Vikas and Sonu shouted not to spare the complainant party. One of bullet so fired by Amit hit below the chest of Vijaypal and another bullet hit on the stomach of nephew of the complainant. The accused persons fled from spot in their vehicle after firing 3-4 shots, as a result of which Vijaypal died on the spot, Sandeep was rushed to PGIMS Rohtak who underwent treatment there. Accordingly, on the basis of these allegations as alleged by the complainant

Station Salhawas, District Jhajjar.

The accused persons Rajesh, Ajit sons of Ishwar, Khazan son of Meer Singh, Rajesh @ Raju, Rakesh, Dalbir, Ajay and Vinod were found to be innocent during investigation and challan under Section 173 Cr.P.C was presented against the accused-Amit, Sandeep, Raman and Vikas. A *prima-facie* case was made out and charges were accordingly framed under Section 302 IPC read with Section 34 IPC, Section 307 IPC read with Section 34 IPC, Section 341 IPC read with Section 34 IPC, Section 506 IPC read with Section 34 IPC was made out against the accused persons. Amit was also charged under Section 25 of the Arms alongwith other offences. All the accused persons claimed trial while pleading not guilty making a statement under Section 313 Cr.P.C.

In order to prove the charges against accused, prosecution had examined as many as 30 witnesses, produced documentary and other objective evidence.

Learned trial Court after hearing both the sides and appreciating the evidence led by the prosecution and records of the case, convicted accused Amit under Sections 302, 307 and 506 IPC. However, accused Sandeep, Raman and Vikas, respondents No.1 to 3, respectively herein, were acquitted of the charges framed against them, vide judgment dated 10.01.2020/14.01.2020.

Present appeal has been filed by the complainant and injured challenging the acquittal of respondents No.1 to 3.

It is note-worthy that against the judgment of conviction and order of sentence, accused Amit has filed an appeal bearing No. CRA-D-278-2020 which stands admitted.

Counsel for the appellants submit that qua respondents No.1 to 3, the trial Court erroneously passed the said judgment without appreciating

the cogent evidence and factual aspects. The trial Court has ignored the common intention and motive which was evident amongst the accused. All the accused were seen together and thus acted with common intention in connivance with each other, knowledge and motive. The criminal conspiracy by all the accused is duly proved from the record of the case. No finding has been recorded by the trial Court regarding Section 34 IPC.

It is asserted on behalf of the appellants that the entire case has a genesis of three separate incidents occurring on the same day, i.e., 21.10.2014. According to the appellants first incident took place at about 6.00 a.m. at Kosli road, where the accused persons Raman, Vikas and Sandeep @ Sonu indulged in fist fighting with Rahul and Rohit whereas the second occurrence is at about 8.30 a.m. near the house of Amarjeet at Jhajjar-Kosli road where accused Amit, Sandeep, Raman and Vikas were sitting in a car and fired two bullets on complainant's brother Rajpal with the intention to kill him. The counsel for the appellants further submits that the final occurrence also took place near the house of Amarjeet where complainant, complainant's brother Vijaypal and his nephew Sandeep were surrounded by accused persons namely Ajit, Raju, Khazwan, Amit, Raman, Vikas and Sandeep @ Sonu. It is during this altercation the accused Amit fired again two shots out of which one bullet hit Vijaypal below the chest and the another in the abdomen of Sandeep.

The appellants have put reliance in support of their submissions with the depositions made by Rohit-PW-26, Rahul PW-27, Rajpal-PW-16, Ranbir-PW-1 (Complainant) and Sandeep-PW-2 injured.

It is on this evidence the appellants stressed to argue that while acquitting respondents No.1 to 3, the trial Court has failed to consider that it could not have been possible without the active presence and morale support of respondents No.1 to 3 accused Amit managed to fire shots with intention

to kill three persons in two separate attempts.

The impugned judgment is thus, challenged urging that it is against very principles of Criminal jurisprudence as the learned trial Court while passing the judgment has not appreciated the legal and factual aspects in right perspective and went absolutely contrary to the evidence led on record.

Having heard learned counsel for the appellants and after perusal of record of the case file, at the first instance it would be worthwhile to refer to the scope of interference in appeals against the judgment of acquittal. It is well settled in catena of decisions that an Appellate Court has full power to review, re-appreciate and consider the evidence upon which the order of acquittal is founded. However, the Appellate Court must bear in mind that in case of acquittal, there is prejudice in favour of the accused, firstly, the presumption of innocence is available to him under the Fundamental Principle of Criminal Jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of Law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reaffirmed and strengthened by the trial Court.

As per the prosecution, the alleged second and third round of firing incidents took place near the house of Amarjeet on Jhajjar-Kosli road but in the site plan on record as Ex.PW-30/C, the house of Amarjeet has not been shown therein, it is only the house of Pushpender which has been shown.

Further there is categoric evidence in the form of PW-1 Ranbir and PW-2 Sandeep who deposed that they did not witness any firing as alleged on 21.10.2014 at about 8.30 a.m. as they reached at the place of occurrence after the incident. Meaning thereby they did not saw Amit firing any gun shot. It has also come on record in the statement of Rajpal PW-16

himself that on 21.10.2014 at about 8.30 a.m. Amit, Vikas, Raman and Sandeep @ Sonu were sitting in the car. The accused Amit fired two bullet shots on him from his countrymade pistol with the intention to kill him. To rescue himself, he ran towards the street and hide himself in a vacant plot in the street. Thereafter, he telephonically informed his brother Vijaypal that Amit, along-with other co-accused fired upon him with intention to kill him. Thereafter, he saw that his brother Ranbir, Vijaypal and nephew Sandeep who came at the place of occurrence were surrounded by the accused persons. Amit fired one bullet shot on the chest of Vijaypal. The second bullet shot fired by Amit hit on the stomach of Sandeep. The above occurrence was seen by him from the distance of 3-4 feet.

On concrete examination of the afore-said witnesses and particularly from the testimony of Rajpal PW-16 as well as Ranbir PW-1 no conclusive presumption can be drawn to the effect that neither the deceased Vijaypal nor injured Sandeep came in direct firing range of accused Amit. Accordingly the plea that accused Amit did not fire any bullet but the bullets on deceased Vijaypal and PW Sandeep were fired by some unknown persons has no merits.

The occurrence which took place on 21.10.2014 at about 6.00 a.m. at Kosli road has been duly proved by the prosecution with the help of testimonies of PW-26 Rohit and PW-27 Rahul. Their testimonies cannot be disbelieved merely on the ground that no such occurrence was reported or came to the notice of the police party present at the police barricade.

From the testimonies of complainant Ranbir PW-1, injured Sandeep PW-2 and eye witness PW-16 Rajpal it is duly proved that accused Amit on 21.10.2014 at about 8.30 a.m. fired two bullets, one of which hit Vijaypal-deceased and the other hit PW-2 Sandeep (injured).

duly proved the record of post-mortem report Ex.PW-10/B of Vijaypal which shows that the death of Vijaypal took place due to firearm injury and its complication. It has further come in his testimony in clear words that apart from the firearm injury no external injury could be found on the body of deceased Vijaypal.

As per the testimony of complainant PW-1 Ranbir, injured Sandeep PW-2 and PW-16 Rajpal, accused Amit from his countrymade pistol fired two bullets, one bullet so fired hit deceased Vijaypal and the second bullet hit PW-2 Sandeep in the abdomen. The afore-said pistol was got recovered by accused Amit from his house which was taken into possession vide recovery memo Ex.PW-11/D on the basis of disclosure statement (PW-11/B) suffered by him. Therefore, it is proved that accused Amit did fire bullets from the country made pistol recovered from him vide recovery memo Ex.PW-11/D, and the respondents No.1 to 3 have no role to play in the firing incidents.

The only allegation against respondents No.1 to 3 are that they surrounded complainant-Sandeep son of Jagpal, Ranbir son of Chand Ram, and Vijaypal and shouted that they should be eliminated. However no recovery has been recovered from them and admittedly no injury of any nature has been attributed to any of respondents No.1 to 3. In the absence of any material evidence either documentary or oral, serious doubts do arise on their participation in the entire occurrence particularly in the light of the fact that the alleged occurrence is being projected to have taken place at three different times and different sites which is not supported by any evidence.

We, having crystalized the circumstances and after analyzing the evidence on record minutely, have no hesitation to hold that the judgment of acquittal qua accused- respondents No.1 to 3 is based on well reasoned discussion and findings are just and legal.

Since the prosecution has failed to bring the guilt of respondents No.1 to 3 to home beyond reasonable doubt, the case has derailed qua these respondents and thus, there is no justifiable ground to interfere with the judgment of acquittal dated 14.01.2020 qua respondents No.1 to 3.

In view of the above, the present appeal is dismissed.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

21st JULY, 2022
sham

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>