

CRA-D-215-DB-2004 (O & M)

2025:PHHC:039727-DB



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(102)

CRA-D-215-DB-2004 (O & M)

Reserved on: 19.03.2025

Date of Pronouncement: 24.03.2025

Amar Singh

... Appellant

V/s

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Parminder Singh Sekhon, Advocate, as Amicus Curiae
for the appellant.

Mr. Ranvir Singh Arya, Additional Advocate General, Haryana.

JASJIT SINGH BEDI, J.

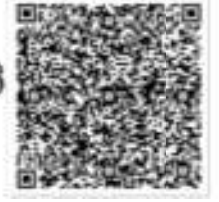
The present appeal has been filed against the judgment of conviction and order of sentence dated 21/24.01.2004 passed by the Additional Sessions Judge, Fatehabad.

2. The instant FIR came to be registered on 02.03.2000. The accused-appellant came to be convicted vide judgment of conviction and order of sentence dated 21/24.01.2004. The present appeal against the judgment of conviction and order of sentence was filed on 01.03.2004. The matter has come up for final hearing now after 25 years of the registration of the FIR.



3. The brief facts of the case, according to the prosecution, are that the accused were residents of village Bhuna. Deceased Surender Kumar was the brother-in-law (wife's brother) of PW-10 Ram Pal-complainant. He was employed in Sugar Mill Bhuna. PW-10/Ram Pal was married with Nirmla Devi daughter of Dolat Ram of village Dholu, whereas his sister-in-law (wife's sister) was married with Ram Partap son of Surja Ram, resident of Abohar. In the year 1997, Ram Partap purchased land in village Bosti and started residing in village Bosti. Om Parkash was the brother of accused Amar Singh and Hanuman. Om Parkash used to go to the house of Ram Partap at village Bosti with Surender. Om Parkash developed illicit relations with Monika, the daughter of Ram Partap. Om Parkash was murdered by Ram Partap due to this relationship in the year 1997. Jagdish, brother of deceased Om Parkash got registered the case against Ram Partap, Guddi, Monika, Surender and Geeta Devi, mother-in-law of PW-10 Ram Pal. Ram Partap was convicted and the others were acquitted. Amar Singh and his brothers were nursing a grudge with the complainant party due to this reason.

4. On 01.03.2000, PW-10 Ram Pal alongwith his wife Nirmla had come to village Dholu to his in-laws. On 02.03.2000 at about 7:45 AM, he and his brother-in-law Surender started from village Dholu to Bhuna on a cycle. Surender was to go to his duty at Sugar Mill, Bhuna and he (Ram Pal) was to go to Hisar via Bhuna. At about 8:45 AM they reached near the gate



of the residential colony of the Bhuna Sugar Mill. Accused Amar Singh, Hanuman and Sunil were found hiding themselves behind the wall of the gate of the colony. They were previously known to PW-10 Ram Pal. On seeing them, Hanuman raised a *lalkara* and exhorted to Amar Singh that Surrender enemy had come and he (Amar Singh) should fire a shot upon him. Hanuman and Sunil caught hold of Ram Pal (PW-10) and Amar Singh took out a country made pistol from the dub of his pant and fired two shots aiming at Surrender Kumar with an intention to kill him which hit on the right side of his neck and right side of his temple. On receiving the fire arm injuries, Surrender fell on the road. Amar Singh armed with a pistol and Hanuman and Sunil empty handed went away from the spot by saying that they had eliminated their enemy Surrender. After some time, Sultan resident of Dholu came from the side of Bhuna in a jeep. He was got stopped and Surrender has taken in the jeep to Govt. Hospital, Bhuna where after 5/7 minutes Surrender took his last breath.

5. Dr.R.C Goyal, Medical Officer, Community Health Centre, Bhuna sent information in writing Ex.PB to the police station about the arrival of Surrender and his death. PW-14/Mihal Singh SI/SHO, Police Station, Bhuna reached at the hospital alongwith other police officials where PW-10 Ram Pal met him and he recorded his statement Ex.PI which was signed by him in token of its correctness. The Investigating Officer sent this statement to the police station vide his endorsement Ex.PI/1 for the

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registration of the case to the police station. Then he inspected the dead body and conducted inquest proceedings and prepared the inquest report Ex. PF. He also recorded the statements of Hawa Singh and Ami Lal during investigation proceedings. He handed over the dead body to Constable Satish and Prem Singh alongwith Police request Ex.PE for getting the post-mortem examination. Then he came to the place of occurrence alongwith Ram Pal-complainant and got the place of occurrence photographed through Sanjeev Kumar Photographer (PW-2). SI Mihal Singh also took into possession blood stained earth, cycle roori, one empty cartridge, wads. chadar, two pieces of lead into his possession after converting the same into separate parcels vide recovery memos Ex.PM and Ex.PN which were attested by Ram Pal and HC Chhellu Ram (PW-11). SI Mihal Singh also prepared the rough site plan of the place of occurrence Ex.PR. On 02.03.2000, Dr. Vinod Sharma, Medical Officer, General Hospital, Fatehabad conducted the post-mortem examination of the dead body of Surender and in his opinion, the cause of death was haemorrhage and shock due to fire arm injuries which were ante-mortem in nature and gave post-mortem report Ex.PG. He handed over shirt Ex.P1, Sweater Ex.P2, underwear Ex.P4, Banian Ex.P5 and bullet Ex.P6 to the police which were sealed in separate parcel. These articles were taken of from the dead body of Surender. Dr. Vinod Sharma (PW-6) has also put his initials on inquest report Ex.PF.



6. Constables Satish and Prem Singh met SI Mihal Singh (PW-14) at bus-stand Bhuna and handed over to him all the sealed parcels which were taken into possession by SI Mihal Singh vide seizure memo Ex.PJ. On returning to the police station, he deposited the case property with the MHC in intact condition and further handed over investigation of this case of Shingara Singh Inspector.

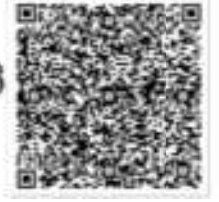
7. On 04.03.2000, Inspector Singara Singh (PW-12) went to Sugar Mill, Bhuna where Krishan Lal Head Time Officer of Sugar Mill handed over to him two photo copies showing the attendance of accused Amar Singh and Hanuman in the attendance register of the Sugar Mill which were taken into possession vide seizure memo Ex.PO.

8. On 05.03.2000, Inspector Singara Singh (PW-12) alongwith SI Sher Singh and other police officials raided the house of accused Sunil but he was not found there. When Inspector Singara Singh was returning from the Sugar Mill to the police station and reached at T-point Bhuna, PW Jai Chand (PW-15) met him who made inquiry from the police about this case. Meanwhile Raja Ram produced accused Sunil, Amar Singh and Hanuman and they all were arrested.

9. On interrogation of accused Amar Singh, he suffered a disclosure statement Ex. PP and in pursuance of the same he got recovered a country made .12 bore pistol from the disclosed place. Shingara Singh Inspector prepared the sketch of the pistol and thereafter, converted it into a

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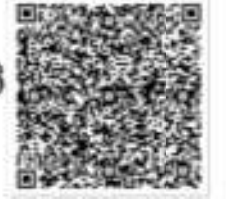
sealed parcel and was taken into possession vide seizure memo Ex. PQ. Inspector Shingara Singh also prepared site plan Ex.PQ/2 of the place of recovery and on returning to the police station, the case property was deposited with the MHC and accused were put in police lock up. The parcels were sent to FSL Madhuban for analysis and the Director, F.S.L. vide his report Ex.PL found human blood on all the clothes of the deceased. He further vide report Ex.PL/1 found the country made pistol in working condition. On completion of the investigation, challan was filed against the accused in the Court.

10. On the basis of evidence collected by the police during the course of investigation, the accused were charge-sheeted for the offence punishable under section 302 read with section 34 Indian Penal Code by the Court of the Addl. Sessions Judge, Fatehabad vide order dated 07.06.2000 to which the accused pleaded not guilty and claimed trial. Accused Amar Singh was also charge-sheeted for an offence punishable under section 25 of the Arms Act vide order dated 19.12.2003 to which he pleaded not guilty and claimed trial.

11. In order to prove their case, the prosecution examined as many as fifteen witnesses. Subhash Chand Patwari Halqa, Bhuna who had visited the spot and prepared the scaled site plan of the place of occurrence Ex.PA appeared as PW-1. Sanjeev Kumar, photographer a formal witness who proved negatives Ex.P1 to Ex.P5 and developed prints Ex.P6 to Ex.P10

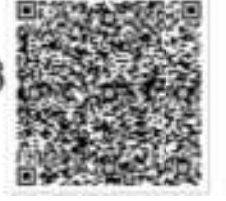
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appeared as PW-2. Dr.R.C.Goyal who sent information in writing Ex.PB to the police appeared as PW-3, Ram Mehar HC, a formal witness who tendered in evidence his affidavit Ex.PC appeared as PW-4, Constable Harbans Lal, a formal witness who tendered his affidavit Ex.PD appeared as PW-5, Dr. Vinod Sharma who conducted the autopsy on the dead body of Surender Kumar appeared as PW-6 and proved copy of PMR Ex.PG. Constable Lila Ram, another formal witness who had delivered the copy of the special report to the Illaqa Magistrate, S.P. and D.S.P. appeared as PW-7. Prem Kumar Constable who carried statement Ex.P1 to the police station appeared as PW-8. This witness has also deposed about the fact that he alongwith Satish Kumar had taken the dead body to General Hospital, Fatehabad and had got the post-mortem done, received parcels and handed them over to SI Mihal Singh. Balbir Singh HC who had brought the FIR register of the year 1997 and proved copy of FIR No.400 dated 19.12.1998 registered on the statement of Jagdish Chander son of Kanshi Ram appeared as PW-9, Ram Pal complainant of the case appeared as PW-10. Chhelu Ram HC, the then Moharrir Head Constable of Police station, Bhuna appeared as PW-11 and proved formal FIR Ex.PH. He also proved the fact that all the parcels handed over by the Investigating Officer remained intact as long as far they remained in his custody. Singara Singh, Retired Inspector who had partly investigated this case appeared as PW-12, Sultan Singh who took the injured Surender Singh on his jeep to General Hospital appeared as PW-13.



Mihal Singh, Sub Inspector, the main Investigating Officer of the case appeared as PW-14 and deposed about the various steps taken by him during investigation of the case. Jai Chand in whose presence the accused were produced by Raja Ram and Amar Singh made a disclosure statement appeared as PW-15. Thereafter, the prosecution evidence was closed.

12. When examined u/s 313 Cr.P.C. accused Amar Singh pleaded his innocence and stated that it was blind murder and he had been falsely implicated in this case due to previous enmity. A similar stand was taken by accused Hanuman and Sunil when they were examined under section 313 Cr.P.C.

13. In their defence evidence, the accused examined Balbir Singh, Fire Station Officer as DW-1. He stated that on 03.03.2000 he was posted at Fire Station Officer, Hisar and Ram Pal was working as a driver with the Fire Brigade. He moved an application for 3rd and 4th March, 2000 and photo copy of the same was Ex.D1. Thereafter, the accused closed their defence evidence.

14. Based on the evidence led, while Hanuman and Sunil were acquitted whereby the accused-appellant/Amar Singh came to be convicted and sentenced by the Court of the Additional Sessions Judge, Fatehabad vide judgment of conviction and order of sentence dated 21/24.01.2004 as under:-

Offence U/S	Sentence	Fine	In default of payment of fine
302 IPC	RI Imprisonment for Life	Rs.5,000/-	RI 06 months



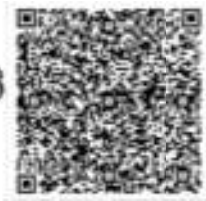
25 of the Arms Act	RI 03 years	Rs.1,000/-	RI 01 month
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Both the sentences were ordered to run concurrently.

15. The aforementioned judgment of conviction and order of sentence dated 21/24.01.2004 passed by the Additional Sessions Judge, Fatehabad is under challenge before this Court.

16. During the pendency of this appeal, the sentence of the accused-appellant, namely, Amar Singh was suspended by this Court vide order dated 08.12.2005.

17. The learned Amicus Curiae for the accused-appellant contends that the complainant-Ram Pal (PW-10) is an interested witness being a brother-in-law of the deceased and his testimony cannot be accepted. There is a significant delay in the registration of the FIR. The occurrence took place between 8:15 a.m. and 8:45 a.m. on 02.03.2000. The statement was made to the police at about 11:00 A.M. but the Special Report reached the Illaqa Magistrate at 4.00 P.M. This delay is fatal to the prosecution case. The presence of the complainant at the spot is doubtful. As per his version, he had taken the deceased to the hospital. He, however, has admitted during his cross-examination that his clothes were smeared with blood but the same were not taken into possession by the police which belies his presence at the spot. Further, there is a considerable variations between the medical



evidence and the ocular evidence. He, thus, contends that the impugned judgment was liable to be set aside.

18. The learned counsel for the State, on the other hand, contends that the medical evidence was totally in consonance with the ocular account. Merely because the complainant-Ram Pal (PW-10) was a relative of the deceased does not make the prosecution case doubtful. It does not stand to reason that the complainant would let go off the actual assailants and inculcate the accused. Further, the report of the FSL establishes beyond doubt that the country-made pistol Mark W-1 recovered from the accused had been used to fire at the deceased and the fired cartridge case and lead slug Marked C1 and BC/3 respectively have been fired from the said weapon. He, thus, contends that the present appeal was liable to be dismissed.

19. We have heard the learned counsel for the parties.

20. PW-10/Ram Pal and other accused were known to each other and occurrence took place in the morning hours. Therefore, there was no difficulty for Ram Pal to identify the assailants. The statement of PW-10/Ram Pal cannot be discarded merely on account of the fact that he was the brother-in-law (sister's husband) of the deceased. He has deposed consistently as to how the occurrence took place. His presence at the spot is quite natural and believable.



21. As regards the purported delay in the registration of the FIR and the delivery of the Special Report to the Illaqa Magistrate, it would be pertinent to mention here that the occurrence took place at between 8:15 a.m. and 8:45 a.m. in the morning. The statement of the complainant was recorded at 11:00 a.m. at Fatehabad. The Special Report reached the Illaqa Magistrate at 4:00 P.M. Therefore, there is no delay in the registration of the FIR. Moreover, this sole ground will not falsify the entire prosecution case which is otherwise proved from the statements of the prosecution witnesses.

22. As regards the presence of PW-10/Ram Pal being doubtful at the time of alleged occurrence, apparently he was an employee at Fire Brigade Hisar and was on emergency duty. An employee had to take station leave prior to leaving the station of his place of posting. However prosecution has not led any evidence to prove this fact that Ram Pal was on Station leave on the date of occurrence. Be that as it may, merely because this prosecution witness did not take station leave does not create any doubt about his presence at the spot in view of the overwhelming evidence on record. Even otherwise, this prosecution witness stated in his cross-examination that he was on rest on 01.03.2000 and 02.03.2000.

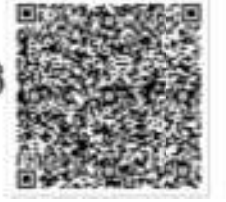
23. The submission of the amicus curiae that PW-10/Ram Pal had admitted in his cross-examination that his clothes were smeared with blood, but the same were not taken into possession by the police which shows that he was actually not present at the time of alleged occurrence cannot be



accepted. Any deficiency or irregularity in the investigation need not necessarily lead to the rejection of the entire case of prosecution when it is otherwise proved from the evidence on record.

24. As regards the argument that there is variation between the medical evidence and ocular evidence. The Hon'ble Supreme Court in case titled as *Rachpal Singh Vs State of Punjab, 2002 Cri. L.J.3540* has held that the discrepancy regarding the nature of injury on the deceased as to whether edges of the wound were averted or inverted is not fatal when there is sufficient medical evidence to prove that the deceased died of gun shot injuries. In the case in hand, Dr. Vinod Sharma/PW-6 has given details of the injuries and he found a lacerated wound with inverted margins in front of the right ear and another lacerated wound with inverted margins just above injury No. 1. He also found injury No.3 as a lacerated wound oval in shape with inverted margins and color of abrasion posterively placed on the lateral side of the right side of neck and abrasion on the right knee and left knee and opined that the cause of death was haemorrhage and shock due to fire injuries which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. So, the ocular testimony of Ram Pal is fully corroborated with the medical evidence. Therefore, minor variations do not effect the prosecution version.

25. Further, in the case in hand, there is motive for the murder which stands proved from the testimony of PW-10/Ram Pal. The same has



been corroborated by Balbir Singh/PW-9 who has produced the conviction register which shows that Ram Partap was convicted under Section 302 IPC for committing the murder of Om Parkash who was the real brother of accused Amar Singh and Hanuman. The presence of PW-10/Ram Pal is not doubtful as he was on weekly rest on dated 01.03.2000 and 02.03.2000. His leaving the station with or without permission will not falsify the story of the prosecution and he cannot be branded as unworthy of credence only because of his relationship with the deceased.

26. Further Ex. PL/1 report of the F.S.L. establishes that country made pistol mark W1 is a fire-arm as defined in the Arms Act 54 of 1959 and its firing mechanism was found in working order. The .12 bore fired cartridge case and lead slug marked C1 and BC/3 respectively have been fired from country made pistol W-1 and not from any other fire-arm even of the same make. Similarly, wads spilt and slug contained in parcels could form part of a .12 bore cartridge. The recovery of weapon is also well proved from the testimony of the witnesses. The attendance register Ex.DC also proves the presence of accused Amar Singh for the 1st meeting and his absence in the second meeting. Even PW-12 Singara Singh has stated that the M.D. Sugar Mill admitted the presence of Amar Singh in the morning and his absence after that.

27. In view of the aforementioned discussion, we find that the offence stands established beyond doubt. Therefore, finding no merit in the

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present appeal, the same stands dismissed. The accused-appellant is directed to surrender before the Jail Authorities concerned forthwith to serve out his remaining sentence.

28. The pending applications, if any, stands disposed of accordingly.

**(GURVINDER SINGH GILL)
JUDGE**

**(JASJIT SINGH BEDI)
JUDGE**

24.03.2025
sukhpreet

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