

SURESH @ HAKLA

v.

STATE OF HARYANA

(Criminal Appeal No. 1295 of 2006)

APRIL 7, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

*Penal Code, 1860 – ss 302, 307 r/w s. 149 and s. 148 – Murder – Fatal gun shot injuries on account of enmity – Conviction under sections, by courts below – Challenge to, by three of the accused – On appeal held: Conviction of two of the accused justified since they were named in FIR – Prosecution witnesses clearly described the role played by them – However, conviction of the other accused set aside since he was not named in FIR and in the original statement – Role ascribed to him was differently described – There was no evidence to show his participation – He was also not known to the witnesses – No Test Identification Parade was carried out.*

**According to the prosecution case, on the fateful day, on account of enmity, accused SS, LR, BS and SC fired gun shots at M-Sarpach. M was accompanied by PW-14 and 15-father of M, DR and RP. Accused PP threatened the witnesses at gun point. Accused took out important documents, cheque and cash from M's pocket and also the licensed gun of PW-14 from the car and fled away. M was taken to the Hospital and was declared dead. PW-15 also suffered injuries in the firing. On basis of the statement of PW 14, FIR was registered. Investigation was carried out. The post-mortem examination was conducted and five gun shot injuries on the dead body of M were found. Accused SC, PP and SS were arrested. On their disclosure statement weapons were recovered. The trial court convicted and sentenced all the accused under**

A section 302, section 307 r/w section 149 and under section  
148 IPC, including accused BS and LR since they had  
been named in the FIR. Accused S was also convicted  
though he was not named in FIR but had figured in the  
supplementary statements of the witnesses and his  
B involvement was also clear from the statement of PW-15-  
injured witness, and was also the driver of the car in which  
accused came. The High Court upheld the order. Hence  
the present appeal by accused BS, LR and S.

C Allowing Criminal Appeal No. 1295 of 2006 and  
dismissing Criminal Appeal No. 1296 of 2006, the Court

D HELD: 1. Accused BS and LR were named in the FIR,  
the role played by each one of them has been clearly  
described by PWs. 14 and 15. Their presence at the spot  
cannot be doubted. PW 15 is an injured witness. As a  
matter of fact there has been recovery of the pellet. The  
stand that the evidence of Doctor-PW 2 shows fire arm  
injuries is not possible, is also not correct. He does not  
say so. On the contrary, he said that the possibility of  
E injuries by fire arm cannot be ruled out. In that view of the  
matter, the appeal of accused BS and LR is without merit  
and is dismissed. [Para 7] [1214-E-G]

F 2.1 Appellant S was not named in the FIR and in the  
original statement. His role in the incident has been  
described in different manners by PWs 14 and 15. S was  
not known to the witnesses. In fact it has been  
categorically noted by the High Court that PW-15 has  
accepted that he did not know him earlier. There was no  
Test Identification Parade. There is also major variance  
G as to whether S participated in pulling out the deceased,  
while one witness says he did and other says that he was  
driving car. [Paras 6 and 8] [1214-G-H; 1215-A; 1214-C-D]

H 2.2 The High Court drew an inference that because  
S was a driver in pre-planned murder, the role of such  
driver is crucial. Such an inferential conclusion is without

any evidence to show participation of accused S. While PW 15 stated that S was threatening the witnesses who were present, PW 14 gave a different version. He did not speak a word about the participation of accused S. Thus, the conviction of accused S cannot be maintained and is set aside. [Para 9] [1215-B-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1295 of 2006.

From the final Judgment and Order dated 5.10.2004 of the High Court of Punjab and Haryana at Chandigarh in Crl. A. No. 118-DB/2002

WITH

Criminal Appeal No. 1296 of 2006.

Nagindra Rai, Rishi Malhotra and Prem Malhotra for the Appellant.

Naresh Bakshi and T.V. George for the Respondent.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. These Appeals have a common nexus and are disposed of by a common judgment. Two appeals were filed before the Punjab and Haryana High Court i.e. Criminal Appeal No. 118 -DB of 2002 and Criminal Appeal No. 119 -DB of 2002. One Appeal was filed by Suresh alias Hakla (appellant in Criminal Appeal No. 1295 of 2006) and another appeal was filed by Balwant and Ladh Ram (appellants in Criminal Appeal No. 1296 of 2006). The High Court dismissed the Criminal Appeal No. 670- DB of 2001 filed by Balwant and Ladh Ram. The High Court dealt with the factual and the legal position in detail in Criminal Appeal No. 670-DB of 2001 and dismissed the same. Another Criminal Appeal i.e. No. 560 DB of 2002 was filed by accused Shamsheer Singh. In the connected two appeals the decision was followed.

A 2. Background facts in a nutshell are as follows:

At about 9.30 A.M. on 15.7.1996 Ramesh (PW-14) accompanied by Mahender Sarpanch (hereinafter referred to as the 'deceased'), Duli Chand (PW-15), Dev Raj and Richh Pal were going in a Gypsy being driven by the deceased. As they had covered a distance of 2 ½ kms. and reached near the Chitang canal situated in between villages Salemgarh and Mingnikhera, a Maruti Car having No. DL-4C/8434 came from the opposite direction. As the car stopped close to the jeep, accused Shamsher Singh came out and fired a shot from a country made pistol which hit the wind screen of the Gypsy, due to which deceased Mahender lost control with the result that the Gypsy skidded and stopped on the road side. Thereupon, Shamsher Singh, Ladh Ram, Balwant, Pirthi Punic and 3/4 other persons came out of the car and pulled Mahender out from the Gypsy. Shamsher Singh fired another shot hitting Mahender on the left side of the abdomen, whereas Ladh Ram fired a shot from his gun hitting Mahender below his armpit on the left side and Balwant fired a shot from the country made pistol hitting Mahender on his right flank, while Siri Chand fired a shot from his gun hitting him on his anus. Siri Chand also shouted that Mahender should not be spared because he had committed the murder of his son Bhoop Singh. Pirthi Punic kept standing close-by pointing his gun at the witnesses and threatened that he would shoot them if they intervened. The accused thereafter went through the pockets of Mahender and took out the license for his revolver, a driving license, an identity card and a cheque for Rs.50,000/- and some cash and also picked up the licensed gun of Ramesh, which was lying in the Gypsy, and then drove away to village Kabrel. In the meantime, a Tata-407 truck came from the side of village Kabrel in which Subhash son of Tara Chand and Shishpal son of Dariya Singh were travelling and Mahender was brought to the Civil Hospital, Hisar, where he was declared dead. In the firing, Duli Chand, father of Mahender (PW-15) also suffered pellet injuries on his face, forehead and

right arm. A wireless message was sent to the police station, on which SI Dharam Chand (P-17) reached the Civil Hospital and recorded the statement of Ramesh (PW-14) at about 1.00 PM and on its basis a formal FIR Ex-FN was registered at police station Sadar, Hisar at 1.40 PM, within the special report being delivered to the Ilaqa Magistrate locally at 3.55 PM. The investigating Officer also took into possession the medico legal report of Duli Chand and after the post-mortem examination, some pellets recovered from the dead body. Siri Chand, Prithvi and Shamsher Singh were arrested on 29.07.1996 and on Shamsher's interrogation, a .12 bore pistol and five empty and two live cartridges were recovered. Likewise, on the disclosure statement made by accused Prithvi, a .16 bore licensed gun belonging to Siri Chand and two empty and two live cartridges were recovered. Shamsher Singh also made a disclosure statement and on its basis, a .12 bore pistol, which had allegedly been used in another murder committed by him on the same day, was recovered. A case under Section 25 of the Arms Act was registered against accused Shamsher Singh as well. Accused- Makhan Singh who though not named in the FIR but found to be involved in the incident, was arrested on 7.4.1998. On the completion of the investigation, the accused were charged for offences punishable under Sections 148, 302 read with Sections 149, 307 read with Sections 149 and 395 of the Indian Penal Code, 1860 (in short 'IPC') and as they pleaded not guilty, were brought to trial.

The prosecution in support of its case placed reliance, inter-alia on the evidence of Dr. Arun (PW-1) reported that no fracture had been seen in the X-ray conducted by him, Dr. B.L. Bagri (PW-2) of the General Hospital, Hisar, who had examined Duli Chand at 12.25 PM on 15.7.1996 and had found three injuries PW-3 Dr. J.S. Bhatia, the Senior Medical Officer, Government Hospital, Hisar, who had conducted the post-mortem examination and had found five gun shot injuries on the dead

A body, the two eye witnesses Ramesh (PW14) and Duli Chand (PW-15), the last named being injured, SI Dharam Chand (PW-17), the Investigating Officer, and Inspector Avtar Singh (PW-21). The statements of the accused were thereafter recorded under Section 313 Cr.P.C. and they denied the allegations

B leveled against them and claimed to be innocent. They also produced two witnesses in defence, Charanjit Singh DSP (DW-1), who stated Balwant had not been present at the time of the incident and the first named was entirely innocent, whereas Balwant was a part of the conspiracy which had led to the murder;

C and Sumer Singh (DW-2), who produced the records to depose that Shamsher accused had been held guilty vide judgment dated 9.4.2001 in another murder committed on the same day.

D The trial Court held that on the facts as brought on the record there was no delay in the lodging of the FIR; that there was no need to subject the accused to an identification parade as they had already been identified at the time of the registration of the FIR; that the medical evidence supported the ocular version;

E that the minor discrepancies in the evidence of the, eye witnesses could be ignored and the statements accepted as being true and that the metallic pieces, Exh.P14 and P15 recovered from, the dead body had been matched with the weapon recovered from Shamsher accused. The Court then

F went to the involvement of each of the accused and opined that Balwant and Ladh Ram had been named in the FIR, whereas Prithvi and Suresh though not named therein had figured in the supplementary statements of the witnesses and their involvement and also clear from the statement of Duli Chand,

G the injured witness, and that Suresh aforesaid was also the driver of the Maruti Car in question. The Court also held that Shamsher Singh was the main accused in the case. The Trial Court accordingly convicted and sentenced the accused as under:

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| All the accused under Section 302 of the Indian Penal Code                       | To undergo rigorous imprisonment for life and to pay a fine of Rs,5,000/- and in default of payment thereof to further undergo rigorous imprisonment months.             |
| All the accused under Section 307 read with Section 149 of the Indian Penal Code | to undergo rigorous imprisonment for five years and to pay a fine of Rs.1000/- and in default of payment thereof to further undergo rigorous imprisonment for one month. |
| All the accused under Section 148 of the Indian Penal Code                       | To undergo rigorous imprisonment for one year.   |

All the sentences were, however, ordered to run concurrently.

All appeals were dismissed by the High Court.

3. It is to be noted that the trial court primarily relied on the evidence of PWs. 14 & 15 i.e. Ramesh and Duli Chand. Duli Chand was the father of the deceased who also suffered injuries on the face, forehead and right arm.

4. In support of the appeal, learned counsel for the appellants submitted that the evidence of PWs. 14 & 15 does not inspire confidence. The defence version that occurrence had not taken place around 9.30 A.M. but at 6.30 A.M. prima facie gets established because of the presence of partial undigested food and faecal materials. The appellant Balwant and Ladh Ram

A belong to different villages and could not have been parties to  
the alleged animosity to have any motive. The evidence of PW  
15 should not have been relied upon as he cannot see beyond  
ten feet. The evidence of Doctor – PW 2 established five injuries.  
There were five injuries noticed; none of which has been  
B specifically attributed to Balwant and Ladh Ram.

5. In support of the appeal filed by accused Suresh it is  
submitted that he was not named in the FIR and/or in the original  
statement. Subsequently in the so called supplementary  
statement, his name surfaced. The role ascribed to him is  
C differently described. The High Court noticed that he was the  
driver of the car.

6. There is also major variance as to whether Suresh  
participated in pulling out the deceased, while one witness says  
D he did and other says that he was driving car.

7. Learned counsel for the respondent-State on the other  
hand supported the judgment and submitted that because of  
concurrent findings recorded, there was no scope for  
interference. So far as the appeal filed by Balwant Singh and  
E Ladh Ram is concerned they were named in the FIR, the role  
played by each one of them has been clearly described by PWs.  
14 & 15. Their presence at the spot cannot be doubted. PW 15  
is an injured witness. As a matter of fact there has been recovery  
of the pellet. The stand that the evidence of Doctor (PW 2) shows  
F fire arm injuries is not possible is also not correct. He does not  
say so. On the contrary, he said that the possibility of injuries by  
fire arm cannot be ruled out. In that view of the matter, the appeal  
so far as Balwant Singh and Ladh Ram is concerned is without  
merit, deserves dismissal. Criminal Appeal No.1296 of 2006  
G is dismissed.

8. So far as the appeal filed by the accused Suresh is  
concerned as noted above he was not named in the FIR and in  
the original statement. His role in the incident has been  
described in different manners by PWs 14 & 15. It is to be noted  
H that Suresh was not known to the witnesses. In fact it has been



categorically noted by the High Court that PW-15 has accepted that he did not know him earlier. There was no Test Identification Parade.

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9. The High Court has drawn an inference that because he was a driver in pre-planned murder, the role of such driver is crucial. Such an inferential conclusion is without any evidence to show participation of accused Suresh. While PW 15 stated that Suresh was threatening the witnesses who were present, PW 14 gave a different version. He did not speak a word about the participation of accused Suresh. Looked at from any angle the conviction of accused Suresh cannot be maintained and deserves to be set aside.

B

C

10. The appeal bearing No. 1295 of 2006 is allowed. The accused be set at liberty forthwith unless his custody is required in any other case..

D

N.J. Criminal Appeal No. 1295/2006 allowed &  
Criminal Appeal No. 1296/2006 dismissed