

(2011) 03 P&H CK 0404

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 93-SB of 2003

Hira Mal alias Hira Lal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: March 3, 2011**Acts Referred:**

- Arms Act, 1959 - Section 25
- Penal Code, 1860 (IPC) - Section 307

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.

The present appeal has been filed by Hira Mal alias Hira Lal who, along with his co-accused Sham Lal alias Same Singh and Krishan, was named as an accused in case FIR No. 45 dated 15.2.2001, registered at Police Station Civil Lines, Karnal, u/s 307 read with Section 34 IPC.

2. The Court of Additional Sessions Judge (Ad hoc), Karnal, vide its judgment dated 30.11.2002, had acquitted Sham Lal alias Same Singh and Krishan, co-accused of the Appellant but held the Appellant guilty for the offence u/s 307 IPC and vide a separate order dated 3.12.2002, sentenced him to undergo rigorous imprisonment for a period of 3♦ years and to pay a fine of `5,000, in default whereof to further undergo rigorous imprisonment for a period of nine months.

3. In the present case FIR Ex.PK/2 was registered on the basis of a statement Ex. PK made by PW.8 Karambir, wherein he stated that he was engaged in the agricultural work. His brother Ram Kiran was married on 11.3.1996 with Basto alias Rani Devi daughter of Rattan Singh in village Bhalsi. On 15.5.1999, Basto Devi had left her matrimonial home along with her daughter as she was suspecting her husband of infidelity. It was alleged by Basto Devi that her husband was having an illicit

relations with her Jethani, wife of elder brother of husband. On 18.5.1999, Hira Mal, brother of Basto Devi, got registered a case bearing FIR No. 256 at Police Station Sadar, Karnal, under Sections 498-A, 364 and 304-B IPC against complainant Karambir, his father Samey Singh, brother Ram Kiran, mother Sona Devi and wife Bala Devi. On the day of occurrence i.e. 15.2.2001, hearing of the case was fixed in the Court of Additional Sessions Judge, Karnal and they were standing in the Court compound. Jagmal Singh son of Nafe Singh was also standing near the complainant party. At about 10.40 A.M., Appellant Hira Mal alias Hira Lal accompanied by Krishan son of Chandgi and Sham Lal alias Same Singh, came on a Yamaha motorcycle and after parking the same, they proceeded towards the complainant party. Krishan and Sham Lal alias Same Singh exhorted to take revenge for death of Basto Devi. Thereafter, Appellant Hira Mal took out his country made pistol, which he had wrapped around his body, from below the chaddar and had fired a shot. The shot had hit Ram Kiran, husband of his sister Basto Devi, on the right side of his chest. After causing the fire arm injury, the accused decamped from the spot.

4. The above said FIR was investigated and the report u/s 173 Code of Criminal Procedure was submitted.

5. The Court of Sessions Judge, Karnal, had charged the Appellant for the offence u/s 307 IPC and Section 25 of the Arms Act, 1959. The charge stated that on 15.2.2001 at about 10.40 A.M., in the area of Sessions Court, Karnal, the Appellant had committed a murderous assault upon Ram Kiran by firing a shot with his country made pistol of .315 bore and thus committed an offence punishable u/s 307 IPC. The Appellant pleaded not guilty and claimed trial.

6. PW.6 Dr. Rakesh Mittal had medicolegally examined Ram Kiran on 15.2.2001 and found the following injury on his person:

There was a lacerated wound measuring 1.5 x 0.5 cm on the right side of the chest, 6 cms below and medial to the right nipple. The margins were inverted. Collar of abrasion was present. The wound was elliptical in shape. No blackening and no tattooing was present. Hair around the wound were normal. There were corresponding holes in the baniyan, shirt and two sweaters. Fresh bleeding was present. For depth, Surgeon's opinion was advised. The exit wound could not be located. X-rays of the chest and of the abdomen were advised.

7. The above said injury was declared as grievous. PW.7 Dr. Deepak Parkash, on 15.2.2001 at about 5.15 P.M., had medicolegally examined Hira Lal and found abrasion on the left parietal region of his scalp. There was also a complaint of pain in the right foot. PW.16 Dr. Rudra Prashad Doley stated that an operation was performed upon injured Ram Kiran at Post Graduate Institute of Medical Education and Research, at Chandigarh. PW.15 Dr. L.A. Kumar, Deputy Director, Forensic Science Laboratory, Madhuban, Karnal, proved reports Ex.PE and Ex.PE/1. As per the report, .315 bore cartridge tallied with the country made pistol recovered from the

Appellant. Injured Ram Kiran appeared as PW.9. He stated that he was married with Basto Devi, sister of Appellant Hira Lal about seven years ago. Basto Devi was suspecting that he was having an illicit relations with the wife of his elder brother Karambir. She left her matrimonial home along with her daughter. However, she did not reach the house of her parents. Therefore, at the instance of accused, a case was registered against him and his family members u/s 304-B IPC. They were facing trial in the said case. On 15.2.2001, hearing of the case was fixed in the Court of Additional Sessions Judge, Karnal. They were standing in the courtyard of Sessions Court Complex when the Appellant accompanied with his co-accused Sham Lal and Krishan came and at their instigation, had fired a shot which hit on the right side of his chest. The testimony of PW.9 Ram Kiran was duly corroborated by PW.8 Karambir. This Court need not notice the evidence of other witnesses who had advanced the investigation.

8. After the prosecution concluded its evidence, the statements of accused, u/s 313 Cr.P.C., were recorded. They denied all the incriminating circumstances put to them. The Appellant gave the following version:

...I had got registered FIR against the complainant party for being responsible for unnatural death of my real sister Basto Devi at P.S. Sadar, Karnal. She was married with Ram Kiran on 18.5.99. The case was pending in the Court of Sh.J.S. Jangra, learned Addl. Sessions Judge. I was a witness in that case. The complainant party was putting pressure on me to compromise the case. They did not know the real assailant. So they named me to pressurize me to compromise the said case. I did not agree to compromise. I was given beatings by police when they arrested me from my village so that they could pressurize me to become an accused. This case is a counter-blast of the case which I had got registered against the complainant party u/s 304-B IPC. Even my relatives who had helped me in that case were not spared. They were also not ready for the compromise and are innocent. This case is a result of consultations with lawyers who was present at the spot. The police helped the complainant so that a blind case could be solved. The recoveries have been planted upon me. I was not present at the spot....

9. Mr. Ashit Malik, Advocate, appearing for the Appellant, has submitted that due to registration of a case u/s 304-B IPC against PW.9 Ram Kiran, injured, and his family, the Appellant has been falsely implicated in the present case. He has further submitted that it is a case of hit and run. Therefore, somebody came in the Court, fired a shot and ran away. The family of complainant had falsely lodged the FIR against the Appellant in order to pressurize him. I am not convinced with this argument.

10. Admittedly, Basto Devi, sister of the Appellant, was married with PW.9 Ram Kiran. There was a matrimonial dispute between them. Deceased Basto Devi along with her daughter was missing. At the instance of Appellant, the case u/s 304-B, 364 and 498-A IPC has been registered against PW.9 Ram Kiran and his family members.

The trial of the case was going on. The complainant party was appearing in the Court. Therefore, the Appellant had the motive to commit a crime. PW.9 Ram Kiran had received a fire arm injury in his chest. He was admitted in the Post Graduate Institute of Medical Education and Research, Chandigarh, where an operation was carried out and the injury was declared as grievous. PW.9 Ram Kiran will be the last person to substitute the real assailant. The occurrence, in the present case, had taken place, in the day time. The accused was known to the witnesses. Therefore, no argument to determine the identity of the accused can be raised. In these circumstances, the trial Court has rightly relied upon the witnesses to convict the Appellant. The trial Court has already extended benefit of doubt to the two co-accused of the Appellant. Their acquittal is not under challenge.

11. At this stage, Mr. Malik has submitted that since the sister of the Appellant and her daughter have been done to death by the complainant party, therefore, the Appellant having lost his cool may have acted out of natural human reaction. Therefore, the sentence of 3♦ years, awarded by the trial Court, is excessive. This Court cannot become oblivious of the fact that the Appellant had fired a shot in the Sessions Court Complex, Karnal. At the same time, occurrence in this case is ten years old. The Appellant is in the corridors of the Court for the last ten years and is suffering mental pain and agony of protracted trial. Therefore, after balancing the aggravating and mitigating circumstances, this Court is of the view that ends of justice will be fully met in case sentence of 3♦ years rigorous imprisonment, awarded upon the Appellant, is reduced to that of three years. However, sentence of fine and default clause shall remain intact.

12. With the modifications in the sentence, awarded upon the Appellant, the present appeal is dismissed.