

(2008) 03 P&amp;H CK 0186

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Appeal No. 136-DB of 1999

Om Parkash

APPELLANT

Vs

The State of Haryana

RESPONDENT

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**Date of Decision:** March 25, 2008**Acts Referred:**

- Arms Act, 1959 - Section 27
- Criminal Procedure Code, 1973 (CrPC) - Section 475
- Penal Code, 1860 (IPC) - Section 302

**Citation:** (2008) 3 RCR(Criminal) 415**Hon'ble Judges:** S.D. Anand, J; A.K. Goel, J**Bench:** Division Bench**Advocate:** Vinod Ghai, for the Appellant; P.S. Sullar, DAG, Haryana, for the Respondent**Final Decision:** Dismissed

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**Judgement**

Adarsh Kumar Goel, J.

The appellant challenges his conviction u/s 302 IPC, for which he has been sentenced to undergo life imprisonment and to pay fine of Rs. 500/-, in default, to undergo further RI for three months. He has also been convicted u/s 27 of the Arms Act, for which he has been awarded lesser sentence to run concurrently with the life imprisonment.

2. Case of the prosecution is that the appellant was employed in the CRPF. He alongwith Surinder Pal PW-6 and others left Kohima for Amritsar on 19.7.1996 by train. The train reached Ambala Cantt Railway Station on 24.7.1996 at 8-30 P.M. and halted at platform No. 6 and 7. Armoury of all the members was deposited in the cloak room. Some armoury was issued on temporary basis to the persons on duty from 10-00 P.M. to 12-00 midnight, which included the appellant Om Parkash. They were to guard the huge weapons of armoury kept in the cloak room and luggage at the platform. Hiramani Tiwari, CHM was the Incharge. The appellant wanted off

from the duty on the ground that he was not feeling well, but the same was not allowed. He aimed his gun, SLR-762 M.M. IAI, towards Hiramani Tiwari and said the he will teach him a lesson for giving him the duty. He then fired the rifle and shot him. He fired 3/4 shots. Hiramani Tiwari fell on the platform and blood came out in large quantity. He was lifted by K.B. Chander Shekhar and 2/3 other recruits and was taken to Civil Hospital, Ambala Cantt. PW-4 Pishori Lal, ASI, GRPS, Ambala Cantt. who happened to be at the platform, recorded the statement of PW-6 Surinder Pal Singh and sent the same to the police station. PW-9 Sub Inspector Ajmer Singh recorded FIR on the basis of the said statement and proceeded to the spot for investigation. On the way, he received a message from the hospital and went to the hospital where he came to know that the deceased Hiramani Tiwari had expired. He prepared inquest report. He took into possession rifle Ex.P5, which was snatched by PW-6 Surinder Pal Singh from the accused after the occurrence alongwith 14 live cartridges, 4 empty-cartridges and one magazine. He also took into possession a part of stone Ex.P6 from the place of occurrence. He got the spot of occurrence photographed. After completing investigation, he sent up the accused for trial.

3. Dr. S.K. Gupta, PW-3 conducted post-mortem examination on the dead of the deceased on 25.7.1996 at 11-00 A.M. The time of death was 11-00 P.M. on 24.7.1996. He found following injuries:-

"1. There was a lacerated wound around 11 c.m. x 7 c.m. present over left side of trunk near sub-costal area anteriorly. It was 9 c.m. above and lateral to umbilicus 17 c.m. below left nipple. The muscles were avulsed. The omentum and gut was protruding from the wound.

2. Lacerated wound of size 4 c.m. x 2.5 c.m. oval shape was present, 4 c.m. below and lateral to injury No. 1, above a transverseline from the umbilicus. It was muscle deep.

3. A lacerated wound of size 3 c.m. x 2 c.m. was present over the left gluteal region over the lateral aspect, 12 c.m. behind left anterior superior iliac spine over a transverse line. A loop of gut was protruding from it.

4. A rounded laceration with a black ring around the margin. 1 c.m. in diameter was present over left side of the trunk. 5 c.m. below and lateral to the injury No. 2.

5. A circular laceration of 1 c.m. in diameter with black ring around the margin was present 3 c.m. below and behind injury No. 4, behind the left iliac crest.

6. A circular laceration of size 1 c.m. in diameter was present 10 c.m. below right nipple in the seventh right intercostal space in the anterior axillary line on right side of the chest."

4. In the opinion of the doctor, the cause of death was haemorrhage and shock as a result of injuries to the vital organs of the abdomen.

5. The prosecution examined PW-1 Inspector Satish Kumar Mehta, PW-2 Sanjay Pal, Constable, PW-3 Dr. S.K. Gupta, PW-4 ASI Pishori Lal, PW-5 ASI Harmesh Singh, PW-6 Surinder Pal Singh, PW-7 Lance Naik K.B. Chander Shekhar, PW-8 Inspector Sham Lal Rathi and PW-9 Sub Inspector Ajmer Singh.

6. The accused denied the prosecution allegations and stated that he had started from Kohima as a part of Company No. 86 B.N. headed by Inspector Sham Lal Rathi PW-8, which reached Ambala Cantt on 24.7.1996 at 8-30 P.M. He was a Constable. He denied that arms and ammunition were collected and stored in temporary armoury at platform No. 6 & 7 and that the deceased Hiramani was Company Havildar Major (CHM). He denied that any arms or ammunition was allotted to him. He asserted that SLR and ammunition was allotted to him at Kohima, which was different from SLR shown to have been recovered from him. He examined DW-1 Lance Naik R. Shekhar, who produced the record of allotment of rifle Butt No. 391 and three magazines to the accused while the disputed rifle was Butt No. 344 issued to Swaran Singh.

7. After considering the evidence on record, the trial Court convicted and sentenced the appellant.

8. We have heard learned counsel for the parties and perused the record.

9. Learned counsel for the appellant submitted that there was material contradiction in the version given in the FIR by PW-6 Surinder Pal Singh and his version given in Court. In the FIR, he stated that the occurrence took place as the accused objected to his having given duty when he was unwell, but in Court, this version has not been given. He further submitted that there was no evidence that he had deposited the arms. The arms used in the crime did not belong to him but to one Swaran Singh. It was further submitted that in the evidence, it has been mentioned that the accused fired a shot in the tin shed, which was an improved version. He referred to the evidence of PW-6 Surinder Pal Singh, PW-7 Lance Naik K.B. Chander Shekhar, who claim to be an eyewitness and PW-8 Sham Lal Rathi, Inspector, who was Incharge of the Company, who stated that arms and ammunition remained throughout in the custody of jawans to whom the same was allotted. He also referred to the evidence of Investigating Officer who stated that he did not notice any damage to the iron sheet of the tin shed. He also admitted that he did not take into possession the rifle from the accused which was issued to him. He then referred to evidence of DW-1 Lance Naik R. Shekhar who stated that if a member of service went on leave, he has to deposit his arms and ammunition. He further submitted that conviction of the appellant was in violation of Section 475 Cr.P.C.

10. We do not find any merit in the submissions made.

11. The evidence of PW-6 Surinder Pal Singh and PW-7 Lance Naik K.B. Chander Shekhar is categorical and reliable. They are the eyewitnesses and they knew the accused and the deceased. They have no axe to grind. FIR was lodged immediately

after the occurrence at the same place and the version given at the earliest is fully corroborated by the version given in Court in all material particulars. Mere fact that the accused resisting being given duty, was not mentioned in the statement given in Court, is of no consequence. Minor discrepancy or contradiction does not affect veracity of version of a witness, if in all material particulars the evidence is reliable. The weapon used was recovered from the accused on the spot by PW-6 Surinder Pal Singh. Mere fact that the same was allotted to another Constable and was supposed to be with the said Constable, was not enough to falsify the version of the prosecution irrespective of the rules requiring a Constable to keep the weapon allotted to him. PW-6 Surinder Pal and PW-7 LN K.B. Chander Shekhar have categorically named the appellant as the person who caused fire on the deceased. There is no dispute of identity of the accused. Dispute raised is only about identity of the weapon or use of a weapon, which may not have been allotted to the appellant. No doubt, Swaran Singh, to whom the weapon is said to have been allotted as per record, was not examined but since identity of the accused was clearly fixed by the eyewitnesses and the said version was recorded on the spot, no dent is caused in the case of the prosecution by non-examination of Swaran Singh. PW-8 Inspector Sham Lal Rathi who was Company Commander also learnt about the identity of the appellant on the spot. Thus, the doubt sought to be raised on account of use of weapon not allotted to the accused stands fully removed by the fact that the identity of the accused was established on the spot by the witnesses who knew the accused and who were independent.

12. The other contention about the firing in the air not having been investigated and not having been mentioned in the FIR, is of no significance and on material particulars, prosecution case was mentioned in the FIR and was consistent throughout. There is no dispute that the accused using the firearm to cause the death of Hiramani Tripathi. The evidence of two independent eyewitnesses PW-6 Surinder Pal Singh and PW-7 Lance Naik K.B. Chander Shekhar is fully reliable. PW-8 Sham Lal Rathi who was also on the platform, though not an eyewitness, also learnt about the occurrence and all particulars of the occurrence immediately. All the said three witnesses had no animus against the appellant and will not screen the real culprit and substitute the appellant for the real culprit falsely. Their testimony being forthright and categorical, there is no reason to reject the version of the prosecution.

As regards applicability of Section 475 Cr.P.C., the accused has not been prejudiced in any manner. No objection was taken during the trial and it has not been shown that the Commanding Officer sought the custody of the accused for trial during Court Martial. In [Balbir Singh and Another Vs. State of Punjab](#), Paras 18 and 19, it has been held that if no such plea is taken during the trial, the same could not be raised subsequently. Accused did not have a right to a particular forum and if a Military Authority does not exercise option, trial by Court will not be vitiated.

In view of above, we do not find any merit in the appeal. Conviction and sentence of the appellant is affirmed.

The appeal is dismissed.