

**(2006) 04 P&H CK 0131**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 588-DB of 1996

Suraj Bhan and Sunil

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** April 17, 2006

**Acts Referred:**

- Arms Act, 1959 - Section 27
- Penal Code, 1860 (IPC) - Section 302, 450

**Hon'ble Judges:** Tej Pratap Singh Mann, J; Mehtab S. Gill, J

**Bench:** Division Bench

**Advocate:** Baldev Singh, with Mr. Sudhir Kumar, for the Appellant; Ravi Dutt Sharma, D.A.G., for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Mehtab Singh Gill, J.

This is an appeal against the judgment dated 1.10.1996/9.10.1996 of Sessions Judge, Bhiwani whereby he convicted Suraj Bhan under Sections 302, 307/34 and 450 IPC and u/s 27 of the Arms Act. Appellant Sunil was found guilty under Sections 302/34, 307 and 450 IPC. Appellants Suraj Bhan and Sunil were sentenced to undergo various terms under Sections 302/307/450/34 IPC.

2. The case of the prosecution is unfolded by the statement Ex.PD of Satbir Singh given to Amrik Singh SI/SHO Police Station Sadar Dadri on 2.2.1993 at 8.40 P.M at the turning point of village Chiriya. Satbir Singh stated that he is employed in the Post Office of village Chiriya. He has six brothers. Eldest is Suraj Bhan, younger to him is Kartar. Younger to Kartar is Satbir Singh himself, younger to him is Ran Singh and younger to Ran Singh is Ram Phal. His brother Suraj Bhan lived separately. He had come on five days leave from the army. All the other brothers lived jointly. About 15 days prior to the occurrence, Azad wife of Suraj Bhan and Satbir Singh's wife Jantar had quarreled on the water tap for taking the turn of water. On 2.2.1993

at about 5 P.M. Suraj Bhan his brother, Sunil son of Suraj Bhan and Azad wife of Suraj Bhan came inside their house Satbir Singh, Ram Phal, Saroj wife of Ram Phal and Zile Singh his brother were sitting together. Suraj Bhan was armed with a double barrel gun of .12 bore. Sunil had a bandolier. Azads asked them to teach them a lesson for not allowing her to take water. Suraj Bhan then aimed his gun towards the complainant. Ram Phal ran away towards the roof. Suraj Bhan fired two shots at him. Satbir Singh along with Zile Singh and Saroj went on to the roof and saw that Ram Phal was lying on the roof due to gun shot injuries. They tried to lift him. Sunil thereafter took the gun from Suraj Bhan and fired two shots towards them with the intention to kill them. Satbir Singh along with others took shelter behind a parapet. Thereafter Suraj Bhan took the gun from Sunil and said loudly, that if any one came outside, he will be killed. Complainant hid themselves out of fear. Suraj Bhan, his wife Azad and Sunil went away after sometime. Ram Phal had fire arm injuries on his mouth, lips, left and right side of neck. Ram Phal became unconscious due to these injuries. After arranging a vehicle, he was taken to Civil Hospital, Dadri for treatment, but he died on the way due to multiple injuries. Satbir Singh, Suraj Shan and Zile Singh witnessed the occurrence. On the basis of this statement, FIR Ex.PD/2 was recorded on 2.2.1993 at 9.05 P.M. Special report reached the J.M.I.C. Charkhi Dadri on the same day at 10.40 P.M.

3. Prosecution to prove its case brought into the witness-box Rajpal Draftsman as PW1, Dr. S.N.Sharma as PW2, Dr.S.C. Gupta as PW3, Satbir Singh complainant as PW4, Zile Singh as PW5, SI Amrik Singh Investigating Officer as PW6, Ran Singh as PW7, HC Mahavir Singh as PW8 and H.C.Ram Kumar as PW9.

4. Learned counsel for the appellants has argued that appellant Suraj Bhan as per statements of Satbir Singh complainant PW4 and Zile Singh PW5 fired two shots at deceased Ram Phal. As per Post-Mortem Report Ex.PL and statement of Dr.S.C. Gupta PW3, there was only one gun shot injury on the person of the deceased. The alleged eyewitnesses did not see the occurrence. Further it has come in the statements of these witnesses that there was no step going up to the roof of the house, but there was only a wooden ladder. The recovery of the gun from Suraj Bhan was not a DBBL gun, but a single barrel gun, though of .12 bore. Since there was no step going up to the roof, it was not possible for the deceased to have covered that distance without the help of a steps. Appellant Sunil at the time of the alleged occurrence was aged about 16/17 years. There was no need for him to accompany his father. Suraj Bhan was serving in the army and it is presumed that he was a good marks man. The role attributed to appellant Sunil is most improbable. The empties had allegedly been recovered on the next day i.e. on 3.2.1993, though Amrik Singh SI the Investigating Officer PW6 visited the place of occurrence, as per his own statement on 2.2.1993. The empties were planted, to falsely implicate appellant Sunil. Amrik Singh SI PW6 has stated in his testimony before the Court, that he recorded the statements of the eyewitnesses in the night on 2.2.1993, when he visited the place of occurrence, but it is strange that he did not

take the empties into his possession. Empties were allegedly recovered on 3.2.1993. Gun Ex.P1 was recovered from Suraj Bhan on 6.2.1993. As per FSL report Ex.PK, the empties and the gun were sent to the FSL on 15.2.1993. If the empties were recovered on 3.2.1993, there was no need for the Investigating Officer to keep them in his custody for 12 days. He should have sent the empties to the FSL as early as possible.

5. Learned counsel for the State has argued that appellant Sunil had the bandolier in his hand. The gun had to be reloaded. Appellant Sunil instead of handing over the cartridges to Suraj Bhan took the gun and fired two shots. Complainants were saved, as they were hiding behind the parapet. Though there was no brick steps going up to the roof, but it has come in evidence, that a ladder was used and there were brick steps though put in a very haphazard manner. FIR Ex.PD/2 is very prompt and that itself goes a long way in proving the case of the prosecution. Complainant party and the appellants are closely related. Complainant Satbir Singh PW-4 would not have implicated his own brother and nephew falsely for the murder of his younger brother and let the actual culprits go scot free. Empties could not be recovered in the night by the Investigating Officer as darkness has fallen. It was the month of February. On the next day i.e. on 3.2.1993 when the Investigating officer Amrik Singh SI PW6 went to the spot, that he recovered the empties from the place of occurrence.

6. We have heard learned counsel for the parties and perused the record with their assistance.

7. Testimony of the eyewitnesses Satbir Singh PW4 and Zile Singh PW5 inspires confidence. At 5 P.M. in the evening in the month of February, it was natural for both these witnesses to be present in their house. It has come in the statement of Satbir Singh PW4 that he along with his brothers were sitting together in their house. Ram Phal was living separately from them. He has then stated that 15 days before the occurrence, Azad wife of Suraj Bhan and Jantar (wife of Satbir Singh PW4) had quarrelled on the taking of turn of water from the water tap. At 5 P.M. his brother Suraj Bhan along with his son Sunil and his wife Azad (since acquitted by the trial Court) came inside their house. Zile Singh along with Ram Phal and Saroj were sitting there. Appellant Suraj Bhan was armed with a DBBL gun and appellant Sunil had a bandolier in his hand. Suraj Bhan aimed his gun towards them. Deceased Ram Phal ran on to the roof. Suraj Bhan fired two shots at him. Thereafter Sunil took the gun from his father and fired two shots towards the complainant and others. They saved themselves by hiding behind the parapet. Both deceased Ram Phal and appellant Suraj Bhan were in the army and had come on leave. When the appellants had gone away after some time, they noticed that Ram Phal had injuries on his mouth, chin, face and neck. Satbir Singh PW4 left for the hospital. He met Amrik Singh SI PW6 the Investigating Officer at the turning point of village Chiriya. Police came to the spot. Two empties Ex.P 1 and Ex.P2 were lifted from the street in front

of their house. Three pieces of plastic wads Ex.P5, Ex.P6 and Ex.P7 were also lifted. Two empties Ex.P9 and Ex.P10 were lifted from the Courtyard of his house. Blood stained earth was taken from his house. Satbir Singh PW4 has stood the test of cross-examination. Learned counsel for the appellants has argued that in FIR Ex.PD/2 it has been mentioned that appellant Suraj Bhan was carrying a double barrel gun. This witness has clarified in his statement, that in his supplementary statement, he had rectified this mistake, appellant Suraj Bhan was not carrying a double barrel gun but a single barrel gun. In the first week of February at about 5 P.M. it becomes a little dark. It was not possible for this witness, at that moment of time, to recognize whether appellant Suraj Bhan was carrying a double barrel gun or a single barrel gun. Satbir Singh PW4 ran up to the roof and was saving himself from being shot at, as the appellants were threatening that he would also be taken care of. It has come in evidence that when appellant Suraj Bhan fired at Ram Phal, Satbir Singh PW4 himself, Zile Singh PW5 and Saroj were in the process of going on to the roof of the house. Similarly the other eyewitness Zile Singh, PW5 has reiterated the version given in FIR Ex.PD/2. In fact these two witnesses Satbir Singh PW4 and Zile Singh PW5 have corroborated each other on all the material aspects of the case and have also corroborated the FIR Ex.PD/2.

8. Dr. S.N. Sharma PW2 has in his testimony stated that he observed multiple radio opaque shadows in the skull, neck, right arm and chest of deceased Ram Phal. Dr. S.C. Gupta PW3 who performed the post-mortem examination on the body of deceased Ram Phal, has observed that there were multiple lacerated wounds on the left shoulder joint and left upper side of chest on the front to lateral aspect. The other injuries were on the right shoulder, mid stern, lateral side of the neck on both sides, over the chin and lateral side of mandible both sides and forehead and eyebrows in the front. There was no burning of the skin or blackening or tattooing of the skin. In his opinion, the cause of death was due to massive haemothorax act which was ante mortem and injury No.1 was sufficient to cause death in the ordinary course of nature. Since the pellets were not traceable he advised that x-ray of the body be done. The medical evidence also corroborates the ocular account.

9. Occurrence had taken place on 2.2.1993 at 5 P.M. Statement Ex.PD of Satbir Singh was recorded at 8 40 P.M. on the same day at the turning point of village Chiriyा. FIR Ex.PD/2 came into existence on the same day at 9.05 P.M. and the special report reached the JMIC Charkhi Dadri on the same day at 10.40 P.M.

There is no delay in the lodging of the FIR or in the special report reaching the JMIC Charkhi Dadri. This itself has gone a long way in proving the case of the prosecution. Satbir Singh PW4 and Zile Singh PW5 are no other persons than the real brothers of appellant Suraj Bhan. Deceased Ram Phal was their younger brother. Both these witnesses Satbir Singh PW4 and Zile Singh PW5 would not have let the actual culprits go scot free and falsely implicate the appellants for the murder of their real brother. Occurrence had taken place in the house of the complainant. It was natural

for them to be present in their own house in the evening when night was about to fall.

10. We do not find any infirmity in the impugned judgment of the learned trial Court. Appeal is dismissed.

11. If the appellants are on bail, they are directed to surrender before the C.J.M, Bhiwani, to undergo the remaining part of the sentence.