
(2015) 03 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. D-1046-DB of 2010 and Criminal Misc. No. M-33614 of 2010

Subhash Chand and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 482
Penal Code, 1860 (IPC) — Section 302

Citation : (2015) 03 P&H CK 0091

Hon'ble Judges : Amol Rattan Singh, J.; Rajive Bhalla, J.

Bench : Division Bench

Advocate : R.S. Rai, Senior Advocate and D.S. Brar, for the Appellant; Sandeep Vermani, A.A.G, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajive Bhalla, J.—Crl. Appeal No.D-1046-DB of 2010, has been filed by Subhash Chand, to challenge judgment of conviction, dated 08.10.2010 and order of sentence dated 15.10.2010, recorded by the Sessions Judge, Faridabad, sentencing him in the following terms:-

Under Section 302 IPC - The accused is sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.50,000/-. In default of payment of fine further rigorous imprisonment for a period of one year.

2. Criminal Misc. No.M-33614 of 2010 has been filed by Smt. Umang Jain wife of Rajiv Jain, under Section 482 of the Code of Criminal Procedure, (daughter-in-law of the appellant), challenging orders dismissing her private complaint and revision.

3. PW11 ASI Sohan Pal, Incharge, Police Post Sector 7, Faridabad, received a telephone message, on 15.06.09, from B.K.Hospital, Faridabad, that one Sunil, resident of House No.419, Sector 7-B, Faridabad, has died due to a gun shot

injury. ASI Sohan Pal, Constable Jagdish and Constable Asfak No.600, reached B.K.Hospital, Faridabad, and recorded Ex.PA, statement made by PW1 Manjeet Kumar (complainant), to the effect that he resides in House No.490, Sector 10, Faridabad, as a tenant. Ajay Sodhi and Sunil son of Rai Singh (deceased) are his friends, who reside as tenants, on the second floor, of House No.419, Sector 7B, Faridabad. Ajay Sodhi, a student of B.Tech final year at YMCA, was to take his examination, at 2.30 P.M. Sunil, is a student of BE. final year at ITM, Faridabad. Subhash Chand, resides as a tenant on the first floor of this house, with his family. The landlord and his family reside on the ground floor. Manjeet Kumar further stated that he came to visit Sunil, at about 3.00 PM. and asked Sunil for water but Sunil told him that there is no water as a little while ago he had gone to start the electric motor but Subhash did not allow him to start the motor. Sunil, thereafter, requested Manjeet Kumar to accompany him to discuss the matter with Subhash. Manjeet Kumar and Sunil went down to the first floor, where the electric switch of the motor is installed. Sunil was walking ahead of Manjeet Kumar. While they were discussing the matter with Subhash Chand's wife, he came out of his room, holding a double barrel gun and fired a shot at Sunil. Sunil clutched his chest, with his hand. Manjeet Kumar also stated that before his arrival, there had already been an altercation on the issue of water. Manjeet Kumar immediately carried Sunil into the street and removed Sunil to B.K.Hospital, in the Maruti Zen car belonging to and driven by the son of the landlord. After examining Sunil, the doctor declared him dead. A lot of blood had flown out from the wound etc.

4. ASI Sohan Pal, appended endorsement, Ex.PA/1 and forwarded the statement to Police Station, Sector 7, Faridabad, where FIR No.217, dated 15.06.2009, was registered under Section 302 IPC, against the appellant, at 5.40 P.M.

5. ASI Sohan Pal, proceeded to House No.419, Sector 7-B, Faridabad, inspected the place of occurrence, prepared a rough site plan, Ex.PB and arrested the appellant, who suffered a disclosure statement, Ex.PB/1, that eventually led to recovery of a double barrel gun, belonging to the appellant, along with its licence and one empty cartridge lodged in the barrel of the gun, vide recovery memo, Ex.PC. A rough sketch of the gun is Ex.PC/1. The Investigating Officer took into possession, the jeans, worn by Manjeet Kumar, alleged to be stained with Sunil's blood, vide recovery memo Ex.PD. A post mortem examination was conducted on 16.06.2009. After post mortem examination, the doctor handed over a pant and a shirt in a parcel, a sample seal and a bottle containing pellets recovered from the dead body of Sunil Kumar, which were taken into possession, vide recovery memo, Ex.PH. The Investigating Officer, collected blood stains from the main gate of the house, vide recovery memo, Ex.PI, conducted inquest proceedings, Ex.PN and upon completion of investigation, filed a final report, which was placed for consideration on the question of charge before the Sessions Court, Faridabad. A charge was framed under Section 302 of the Indian Penal Code, but as the appellant pleaded not guilty and claimed trial, the prosecution was directed to adduce evidence. The prosecution has adduced the following witnesses:-

6. PW1-Manjeet Kumar, is the complainant, who has deposed in consonance with his statement made before the police. PW2-Rai Singh, is father of the deceased, who could not shed any light on the prosecution case, as he has deposed only with respect to identification of the dead body. PW3 is Dr. Sanjeev Bhagat, Medical Officer, General Hospital, Kaithal, who tendered his duly sworn affidavit, Ex.PF, into evidence, proved post mortem report, Ex.PF/1 and opined as to the cause of death etc.

7. PW4 is Sunil Khanduja, son of the landlord, who has deposed about hearing a gun shot at 3.00 P.M., he saw Manjeet and Sunil at the main gate of the house, and deposed that Sunil was bleeding profusely from the chest. Manjeet Kumar requested him to take Sunil to the hospital and he removed Sunil in his Zen car to B.K.Hospital, Faridabad. PW4 has also deposed that Subhash Chand, appellant is a tenant on the first floor, whereas Sunil was a tenant on the second floor. During cross-examination, he admitted that he had not witnessed the firing of the gun shot.

8. PW5 is HC Satbir Singh, who tendered affidavit, Ex.PG, into evidence. PW6 is ASI Nawab Khan, who was deputed to get the post mortem conducted. PW7 is Ajay Sodhi, who was a tenant on the second floor of House No.419, Sector 7-B, Faridabad, along with Sunil but is not an eye witness of the occurrence, as he had gone to take his examination. Ajay Sodhi, however, deposed that the motor for pumping water was installed on the first floor. Subhash Chand, used to object that they are using excessive water and has deposed about threats etc., on 08.06.2009 and on earlier occasions.

9. PW8 is HC Sarwan Kumar, who deposed that on the direction of the Investigating Officer, he visited the spot and on demarcation by Ajay Sodhi, prepared sketch site plan, Ex.PJ. PW9 is Constable Sandeep Kumar, who tendered affidavit Ex.PK, into evidence, and also deposed about delivery of special report, Ex.PL. PW10 is Inspector Ratan Deep, Special Staff, Faridabad, who filed the final report after completion of investigation. PW11 is ASI Sohan Pal, Investigating Officer, who has deposed with respect to investigation of the case. PW12 is Suresh Kumar son of Ram Avtar, a photographer, who clicked photograph, Ex.PW12/A, at about 3.45 PM, at House No.419, Sector 7-B, Faridabad. The public prosecutor gave up certain witnesses as unnecessary and tendered into evidence, the FSL report, Ex.PE.

10. Upon completion of prosecution evidence, incriminating circumstances appearing in the prosecution case were put to the appellant, who denied his involvement, alleged that the case is false, witnesses have deposed falsely but also made a statement, which reads as follows:-

"I am innocent and I have been falsely implicated in this case. I have been living in the first floor of my house with my family. I am a senior citizen and suffers from partial paralysis of the limbs of left side of the body because of which I remained confined to my bed. On the second floor of the house a room had been

rented to some students. Those students used to create lots of noise and used to misbehave often with me and my family. The water supply was from the ground floor but they used to repeatedly bother me and my family for water. I had complained to the landlord about the conduct and behaviour of the boys. This resulted in that the landlord told them to vacate the room. On the fateful day when I was present in room deceased and Manjeet came to my house and started misbehaving my daughter in law using filthy and foul language and also using obscene language. As our complaint to landlord had resulted in their being asked to leave the room. They started pulling the clothes of my daughter in law when we resisted, they abused us and Manjeet caused injuries to Smt. Umang my daughter in law. Her clothes were pulled off. Manjit and Sunil entered my room and tried to take away my licence gun which they knew was lying in my room. In this commotion, the gun which was in the hand of Manjeet and the bullet hit Sunil. But taking advantage of incident, a false case was registered against me. Under the influence of police official who is related to Manjeet, I was implicated only because the gun belongs to me. I will lead defence evidence."

11. The appellant, thereafter, led evidence, in defence, namely:-

12.DW1-Dr. Ram Bhagat, Medical Officer, B.K.Hospital, Faridabad, who tendered affidavit, Ex.D1, along with a copy of MLR Ex.D2, pertaining to Umang Jain, daughter-in-law of the appellant . Dr. Bhagat deposed that he examined Umang Jain, on 21.06.2009 and, though, she complained of chest pain and difficulty in breathing, no external injury was detected but she was advised X- Ray. Umang Jain also complained of pain in her abdomen, but no mark of external injury was visible. Dr. Bhagat detected a minor abrasion with a dry scab on the left shoulder and also deposed that movement of the shoulder was normal. During cross-examination, the doctor opined that the injury could be self suffered.

13. DW2 is Umang Jain wife of Rajiv Jain, daughter-in-law of the appellant, who also filed a private complaint, which was dismissed by the learned Magistrate, filed revision which was also dismissed but has filed Criminal Misc. No.M-33614 of 2010, challenging these orders. Umang Jain has deposed that Sunil and Ajay Sodhi were tenants on the second floor and brought call girls to their room, on numerous occasions. Her mother-in-law objected but Sunil and Ajay Sodhi did not mend their ways, used filthy language and sang obscene songs compelling them to complain to the landlord. The landlord ultimately directed Sunil and Ajay Sodhi to vacate the room. On 15.06.2009, when she was throwing garbage into the dustbin, Sunil and Manjeet Kumar confronted her and started singing obscene songs and teasing her. She protested but they did not bother and caught hold of her breast. She raised an alarm, which attracted a passer bye who tried to intervene in the matter. Ultimately, she managed to escape into her room, where they followed her and inflicted fist and kick blows on her stomach. Sunil inflicted a blow on her left shoulder with some pointed weapon. Upon hearing this noise, her father-in-law Subhash Chand, who is a heart patient came out of his room. Sunil and Manjeet dragged her and tried to take off her saree. Sunil

and Manjeet began beating her father-in-law. Sunil picked up the licenced gun, which Manjeet tried to snatch. A scuffle ensued between Sunil, Manjeet and her father- in-law. Manjeet fired a gun shot, which hit Sunil.

14. DW3 is Dharambir, Senior Scientific Officer, Ballistics, FSL, Madhuban, who has deposed with respect to the weapon recovered, the nature of the gun shot and other matters pertaining to ballistics, causing of injuries by a gun shot, blackening and tattooing pursuant to the gun shot etc.

15. After considering the evidence on record, the trial court convicted and sentenced the appellant for the murder of Sunil, in terms referred to in the opening paragraph of the judgment.

16. Counsel for the appellant submits that the prosecution story, though, supported by deposition, of an eye witnesses, is a complete perversion of the true facts as deposition by DW2, Umang Jain, daughter-in-law of the appellant and statement made by appellant under Section 313 of the Code of Criminal Procedure relate the true account of the facts but unfortunately have been completely ignored by the trial court. The trial court has also ignored that the appellant is paralyzed and is bed ridden and, therefore, could not possibly have lifted, loaded or fired a heavy double barrel 12 bore gun. The deposition by PW3, Dr. Sanjeev Bhagat, a prosecution witness, proves that the appellant could not have picked up the gun, loaded it and fired a gun shot, as alleged by the prosecution. It is further submitted that as the basis of the prosecution case is an allegation that the appellant and his family members did not allow the deceased and his co-tenant, to operate an electric switch for lifting water to the second floor, the prosecution was required to point out the location of the electric switch or the electric meter. A perusal of the evidence on record reveals that prosecution has failed to point out the location of electric switch or the electric motor. This apart, the prosecution has not lifted any blood stains from the room, where Sunil, deceased, allegedly received the fatal gun shot. The prosecution has also failed to lift any blood stains from the stair case, by which the deceased was taken to the ground floor and thereafter to the hospital. The lifting of blood stains from the gate of the house is meaningless as it does not establish the alleged site of the occurrence, namely, a room in the house of the appellant. It is further submitted that the entire occurrence is said to have taken place in the appellant's drawing room but the police, surprisingly did not conduct a forensic examination of the room. The site plan, Ex.PB, when compared with the scaled site plan, Ex.PJ, reveals that the eye witness is not shown in the site plan and if the eye witness was indeed standing with the deceased, it is surprising that he did not receive any pellet injury from the alleged 12 bore gun shot that led to the death of Sunil. It is also pointed out that the site plan does not show the place where the initial altercation took place or where the wife of the appellant was standing. It is further submitted that the dispute with respect to water was too trivial a matter, for the appellant to have fired a gun shot and, therefore, depositions by defence witnesses and statement made by the appellant under

Section 313 of the Code of Criminal Procedure that the deceased and Manjeet, attacked the appellant's daughter-in-law, snatched the gun and in the ensuing melee Manjeet Kumar fired a gun shot, which hit Sunil leading to his unfortunate death is the correct version of the incident that led to the death of Sunil. It is also argued that deposition by PW1 Manjeet Kumar, alleged eye witness, is contradictory, discrepant in material particulars and surprisingly as he did not receive any pellet injury proves that the prosecution story is false. Counsel for the appellant also submits that deposition by a expert in forensics clearly proves that the gun shot could not have been fired in the room and in the manner deposed to by the eye witnesses Manjeet Kumar.

17. Counsel for the State of Haryana, however, submits that the prosecution has established, by deposition of an eye witness and medical evidence, the report received from the FSL and other evidence, its case in its entirety. The arguments advanced by counsel for the appellant are neither tenable nor do they raise any doubt as to the deposition by an eye witness, duly corroborated by the injury detected during post mortem, further corroborated by recovery of the gun from the appellant, and proof of the firing of the gun, proved by the FSL report. The story set up by the appellant particularly the deposition by his daughter-in-law, is but an attempt to save the appellant at any cost. The doctor, who examined the appellant's daughter-in-law did not find any injury except for a small old scratch on her shoulder, thereby, proving not only the falsity of the defence set up by the appellant but also the truth of the case set up by the prosecution.

18. We have heard counsel for the parties, appraised the record and considered the judgment and the order recorded by the trial court.

19. The appellant has been convicted and sentenced for the murder of one Sunil. The prosecution, in order to prove the appellant's culpability, relies upon the deposition of an eye witness, recovery of the gun used to inflict the fatal injury, medical evidence to prove the fatal injuries, scientific evidence to prove that the gun shot was fired from the 12 bore gun belonging to the appellant and other formal link evidence.

20. The prosecution, in order to establish that the fatal gun shot was fired by the appellant, relies upon the ocular testimony of PW1 Manjeet Kumar.

21. PW1 Manjeet Kumar, the eye witness and the complainant, stepped into the witness box and deposed in consonance with his statement Ex.PA, made before PW11, ASI Sohan Pal. PW1 has deposed that he was a friend of the deceased and resided in another house. He had come to visit the deceased and asked for a glass of water. The deceased told him that the appellant and his family members were not allowing them to take water as they allege that we are using too much water. The deceased then requested PW1 to accompany him to discuss the matter with the appellant. PW1, thereafter, deposed that they went to the first floor and while they were discussing the matter with the appellant's wife and as apparently there had already been an altercation between the deceased, his

room mate and the appellant, a heated exchange ensued. Subhash Chand, the appellant came out of his room, carrying his double barrel gun and fired a gun shot directly at Sunil, who immediately clasped his chest. Manjeet Kumar carried him down the stairs from where Sunil was taken to a hospital, in a Zen Car, driven by the landlord's son. Sunil was declared dead on arrival. PW1 Manjeet Kumar was subjected to a detailed cross-examination and denied various suggestions particularly with respect to the nature of heated exchange, snatching of the rifle and that he had fired a gun shot, which hit Sunil. PW1 also denied that he and Sunil misbehaved with the daughter-in-law of the appellant and it was this misbehaviour, which eventually led to the altercation and the firing of a gun shot by Manjeet that hit Sunil.

22. Manjeet Kumar, having deposed as an eye witness and withstood a hostile cross-examination, the question that requires an answer is whether any fact has emerged from his deposition that would enable us to doubt his presence in the room when the fatal gun shot was fired at Sunil or his deposition as an eye witness. A suggestion put by the defence, during cross examination, that Manjeet Kumar fired the gun shot after snatching the gun from Subhash Chand, is in essence, an admission of the fact that Manjeet Kumar, Sunil and Subhash Chand (appellant) were present in the room, where the gun shot was fired and, therefore, in our considered opinion, proves that Sunil received the gun shot injury in a room, in the flat occupied by Subhash Chand and his family. This apart, Umang Jain, daughter-in-law of the appellant has also deposed as DW2 that Sunil received the gun shot in the room, though, she has deposed that the gun shot was fired by Manjeet Kumar. The presence of Manjeet Kumar in the house, at the relevant time, is also proved by the deposition by PW4 Sunil Khanduja, son of the landlord, who has deposed that about 3.00 PM, he heard a gun shot and when he came out of the house, he saw Sunil and Manjeet Kumar at the main gate of the house. As Sunil was bleeding profusely from his chest, Manjeet Kumar requested him to take Sunil to a hospital and he transported Sunil, to B.K.Hospital in his Zen car. The deposition by PW4 proves that Manjeet Kumar was present in the house. In addition, the blood stained jean worn by Manjeet Kumar was taken into possession by the police and after a thorough forensic examination was found to be blood stained, thereby further proving that Manjeet Kumar was with the deceased at the time when the gun shot was fired. We are unable to discern any fact, whether from the examination or cross-examination of Manjeet Kumar or from the evidence produced in defence, that would persuade us to disbelieve the presence of Manjeet Kumar in the room, of the flat rented out by the appellant, where the fatal gun shot was fired at Sunil or that he did not witness the appellant firing the gun shot. Manjeet Kumar had no prior enmity with the appellant and none has been suggested or argued. An attempt to discredit his testimony by alleging that the gun shot was fired by Manjeet Kumar does not pass muster and, therefore, must be rejected as a desperate attempt to save the appellant.

23. Counsel for the appellant has strenuously argued that as the appellant is

paralysed from the left side, it was not possible for him to have lifted a heavy 12 bore double barrel gun, loaded it and fired the gun, based upon the statement by PW1 Dr. Sanjeev Bhagat that if a person is paralysed, it would be difficult for him to lift a double barrel gun. It is also argued that as the police did not lift blood stains from the room, the site plans are discrepant and do not show the place where Manjeet Kumar or the appellant's wife were standing, the deposition by Manjeet Kumar is false. The submissions, in our considered opinion are but a desperate attempt to punch holes in the prosecution story particularly in the deposition by PW1 Manjeet Kumar, by referring to errors committed by the investigating agency. It is true that the police should have scanned the room and lifted blood stains but this error on their part does not detract from the clear and cogent deposition by PW1 and disregards the fact that the appellant and his witnesses produced in defence do not deny that Sunil received the gun shot in a room in the flat in their possession, as tenants. The fact that the site plan may be slightly discrepant or that the wife of the appellant and PW1 Manjeet Kumar are not shown in the site plan is but an error by the Investigating Officer that does not entitle the appellant to any benefit much less raise a doubt as to the deposition by PW1, particularly when DW2 Umang Jain has also deposed that Sunil received the gun shot injury in a room in their house. The statement by PW3 Dr. Sanjeev Bhagat, regarding the inability of a person with paralysis, to lift a 12 bore double barrel gun is entirely irrelevant as PW3 has deposed without physically examining the appellant. The appellant has not produced any medical evidence in the shape of deposition of a doctor that would even remotely suggest that his paralysis prevented him from lifting, loading and firing the gun. The evidence on record does not even prove any paralyses but even though the appellant may be paralysed, there is no evidence on record that he was in such a state of paralysis as to render him incapable of lifting his double barrel gun and firing it. We, therefore, have no hesitation in placing reliance upon the deposition by PW1 Manjeet Kumar and holding that Manjeet Kumar witnessed the appellant firing the gun shot that hit Sunil, in the chest.

24. An argument that the prosecution has not been able to point out the place where electric switch/electric motor, for lifting water to the second floor was installed, renders the entire story set up by the prosecution doubtful and adds to the credibility of depositions by defence witnesses does not merit acceptance as it is a mere error committed by the prosecution that does not detract from the deposition of an eye witnesses and other evidence adduced by the prosecution that unerringly points to the appellant as the person who fired the fatal gun shot. This apart the defence admits that the fatal gun shot was fired in the room.

25. The prosecution, in order to corroborate the deposition by PW1 Manjeet Kumar, that the fatal gun shot fired by Subhash was the cause of death, has examined PW3 Dr. Sanjeev Bhagat, who filed his affidavit, Ex.PF. A relevant extract from the affidavit setting out the injury and the cause of death, reads as follows:-

"Rigor mortis was present wound of entry round regular inverted wound size 4x3

cm in fourth fifth intercostals space with fracture ribs, there was wound of exit of regular inverted margin with tattooing of the skin penetrating the right lobe of the lung and the diaphragm pellets in round shape seen and sealed handed over to police on examination of the chest, there was rupture of the both lungs with hemothorax right heart full of blood and the left heart was empty on examination of the abdomen there was hemoperitonium with palness of the organ.

In my opinion the cause of death was "shock and hemorrhage as the result of gun shot injury to the vital organs and sufficient to cause death in the ordinary course of nature....."

26. A perusal of the affidavit leaves no manner of doubt that Sunil died of a gun shot injury, fired from a 12 bore gun, which was sufficient in the ordinary course of nature to cause death, thereby corroborating the ocular testimony of PW1 Manjeet Kumar.

27. The prosecution has proved that the cause of death was a gun shot injury, fired from a 12 bore double barreled gun. It would also be appropriate to point out that after post mortem, the doctor handed over a vial containing pellets extracted from the dead body of Sunil, which were taken into possession vide recovery memo, Ex.PH.

28. The prosecution in order to further prove culpability, places reliance upon the recovery of a double barrel gun, belonging to the appellant and the report received from the Forensic Science Laboratory, prepared after a scientific examination, of the gun. After his arrest, the appellant suffered a disclosure statement, Ex.PB/1, on 15.06.2009, and while confessing to the firing of the fatal gun shot (which is inadmissible in evidence), stated that he could get the gun recovered. The disclosure statement is duly signed by the appellant, witnessed by PW1 Manjeet Kumar, Constable Jagdish and attested by the Investigating Officer. The disclosure statement led to the appellant affecting recovery of a double barreled gun and a licence from the upper rack of a cupboard in his room. An empty cartridge, loaded in a barrel of the gun was also recovered. The licence of the gun is in the name of the appellant and it is not denied that the gun belongs to the appellant, thereby proving that a double barrel gun, its licence and an empty cartridge lodged in the barrel of the gun were recovered from the appellant. A sketch of the double barrel gun is Ex.PC/1, witnessed by the same witnesses and attested by the Investigating Officer. The aforesaid evidence proves that the appellant got his double barreled gun recovered and that an empty cartridge was recovered from a barrel of the gun.

29. The question that remains is whether this double barrel gun was fired and whether the fatal shot fired at Sunil, deceased was fired from the double barrel gun recovered by and at the behest of the appellant. The double barrel gun and the cartridge was sent for forensic examination. The result of the FSL report reads as follows:-

"1. The firing mechanism of 12 bore DBBL gun marked W/I was found in working

order.

2. The 12 bore fired cartridge case marked C/I has been fired from the right barrel of 12 bore DBBL gun marked W/I and not from any other firearm even of the same make and bore because every firearm has got its own individual characteristic marks.

3. The pellets contained in parcel No.IV were found to be fired lead pellets. Such type of pellets are usually loaded in shotgun cartridges including 12 bore.

4. The piece of wad contained in parcel No.IV was found to be piece of plastic air cushion wad of 12 bore cartridge.

5. The hole on the shirt contained in parcel in III has been caused by shot gun projectiles.

6. Report in original from Serology division is enclosed herewith.

Note:- i) Exhibits after examination in Ballistics division were resealed along with their original wrappers with the seal of AD(BALL)/FSL(II)."

30. A perusal of the FSL report reveals that the gun recovered was in working order, the empty cartridge recovered was fired from the right barrel of the double barrel gun and not from any other gun. The report also states that pellets and a wad recovered from the dead body are usually loaded in a 12 bore cartridge. The report also records that the hole in the shirt, worn by the deceased, was caused by shotgun projectiles, i.e., pellets. The report proves that the fatal gun shot, received by Sunil was fired from the 12 bore double barreled gun belonging to the appellant, recovered by and at the behest of the appellant.

31. At this stage, it would be appropriate to deal with the deposition by DW3 Dharambir, Senior Scientific Officer (Ballistics) Forensic Science Laboratory, Madhuban, who prepared report, Ex.PE. DW3 was produced in defence to prove that the gun shot could not have been fired in the manner alleged by PW1, and if the gun shot had been fired, as alleged, PW1 Manjeet Singh would have also received pellet injuries as he was standing nearby. DW3 has deposed that in case of a standard shot gun fire arm (12 bore), spreading usually begins after a distance of 2 meters, i.e., more than six feet and if fired within a distance of 2 meters, the entire shot enters enmass, by creating a single hole. It would be necessary to reproduce an extract from the deposition by DW3:-

"The shot gun pellet spreads after emerging from the barrel of the gun. The spread of the area would be depend upon the shot being fired i.e. the nature of the cartridge. In case of standard shot gun fire arm, spreading usually in shot gun fire arm starts after a distance of 2 meters. Within the distance of 2 meters the total shot will enter in the single hole enmass. The postmortem report of MLR if any of the victim was not shown to me."

32. On cross-examination DW3 deposed that on seeing the PMR he could say that the gun shot was fired from a distance between 3 to 4½ feet.

33. A perusal of the injury on the Sunil reveals that it is a single hole and when read along with the deposition by Manjeet Kumar, proves that the gun shot was fired from a distance of less than two meters. The pellets and the wad entered enmass, without spreading and created a single hole, in the shirt worn by the deceased and then in his chest. The close range of the shot is the reason, why the pellets did not spread and PW1 Manjeet Kumar, who was standing nearby did not receive any pellet injury.

34. The prosecution having proved with certainty all relevant facts relating to the death of Sunil, we find no reason to differ with the judgment and order recorded by the trial court convicting and sentencing the appellant for the murder of Sunil and consequently dismiss the appeal.

Crl. Misc. No.M-33614 of 2010

35. A petition has been filed by Smt. Umang Jain wife of Shri Rajiv Jain, (daughter-in-law of the appellant in Crl. Appeal No.D-1046-DB of 2010), under Section 482 of the Code of Criminal Procedure, challenging order dated 19.11.2009, dismissing her complaint No.1189/09.07.2009 and order dated 08.10.2010 dismissing her revision.

36. Counsel for the petitioner submits that the complaint has been dismissed summarily without considering depositions by Umang Jain and the doctor, which when read together clearly prove that Umang Jain was attacked by the respondent and suffered serious injuries.

37. We have heard counsel for the parties, perused the impugned orders and find no reason, to exercise power under Section 482 of the Code of Criminal Procedure, to quash the impugned orders.

38. A perusal of the evidence on record, particularly in the background of the petitioner's father-in-law being accused of the murder of Sunil, raises a credible inference that these allegations were levelled, in a desperate attempt to save Subhash, her father-in-law. The deposition by the petitioner before the learned Magistrate, if read in isolation may lead to a conclusion that she was attacked and she received injuries in an attempt to outrage her modesty. The deposition, however, is not believable for the following reasons:- (a) the incident occurred on 15.06.2009, but Umang Jain got herself medically examined on 21.06.2009; (b) Umang Jain did not file any application before the police or before any court, narrating facts set out in the complaint; (c) while the police were investigating the charge of murder, against her father-in-law, Umang Jain did not come forward to make any statement before the police; (d) The doctor could not detect any injury whether on her abdomen or any other part of her body except for a small scratch on her shoulder; (e) the doctor, was unable to detect any external or internal injury and though he suggested an X-ray, the petitioner apparently did not go for an X-ray as no X-ray report was produced before the learned Magistrate; (f) the doctor only recorded that the petitioner complained of serious pain, but he could not detect any injury.

39. The learned Magistrate rightly requisitioned a report from the police station and after recording his opinion as to the deposition by prosecution witnesses, held that no case is made out and dismissed the complaint. The revisional court, alike, has recorded clear and cogent reasons for rejecting challenge to the order passed by the Magistrate. In the absence of tenable argument or evidence on record that would inspire confidence, we are unable to hold that the impugned orders are in any manner, illegal, void or suffer from any error of jurisdiction or of law. The petition, filed under Section 482 of the Code of Criminal Procedure is dismissed.