

In the High Court of Punjab and Haryana at Chandigarh

1. CRA-D-69-2023 (O&M)
Reserved on: 10.04.2024
Date of Decision: 29.4.2024

Guriqbal Singh @ Vicky Sekhon Appellant

Versus

State of Punjab Respondent

2. CRA-D-1125-2022 (O&M)

Baljinder Singh Appellant

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. R.S.Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate
for the appellant (in CRA-D-69-2023).

Mr. Bipan Ghai, Senior Advocate with
Mr. Nikhil Ghai, Advocate
for the appellant (in CRA-D-1125-202).

Mr. Eklavya Darshi, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. Since both the appeals (supra) arise from a common verdict, made by the learned trial Judge concerned, hence both are amenable for a common verdict being made thereons.

2. Both the appeals (supra) are directed against the impugned verdict, as made on 28.10.2022, upon case bearing CIS No. SC/36119/2013, by the learned Additional Sessions Judge, Ludhiana wherethrough in respect

of charges respectively drawn against the accused qua offences punishable

under Sections 148, 302 read with Section 149 IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against the appellants-convicts. However, appellant Baljinder Singh @ Gogi was acquitted of the charges framed against him under Sections 307, 427, 506, 420, 467, 468, 471 read with Section 149 IPC. Furthermore, appellant Guriqbal Singh @ Vicky Sekhon was also acquitted of the charges framed against him under Sections 427, 506 read with Section 149 IPC. The remaining accused were also ordered to be acquitted from all the charges framed against them.

3. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the convicts-appellants to undergo rigorous imprisonment for a period of one year for an offence punishable under Section 148 IPC. The learned convicting Court also sentenced the convicts-appellants to undergo rigorous imprisonment for life for an offence punishable under Section 302/149 IPC, besides also imposed, upon the convicts sentence of fine, as comprised in a sum of Rs. 50,000/- each, besides in default of payment of fine amount, it sentenced the convicts-appellants to undergo rigorous imprisonment for a period of six months.

4. All the above imposed sentences of imprisonment, were ordered to run concurrently but the period of detention undergone by the appellants-convicts, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed sentence(s) of imprisonment.

5. The accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent therewith sentences of imprisonment, and, of fine as became imposed, upon

them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst the instant criminal appeals, before this Court.

Factual Background

6. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex.PW-4/A is assigned. The narrations carried in Ex. PW-4/A, are that on 10.6.2012 Inspector Gurbans Singh and other police officials were present on a Govt. vehicle bearing No. PB-10DM-3067 at Jalandhar Bye-pass, Ludhiana. There complainant Jaspal Singh son of Mukhtiar Singh resident of Village Bahadurke came, and, got recorded his statement to the effect, that Gurbinder Singh @ Bunty is related to him being son of his uncle and around 1.30 P.M, on that day he alongwith Gurbinder Singh @ Bunty and their relative Balkar Singh son of Kehar Singh, resident of Village Bahadurke Road, Ludhiana were going on Bolero car No PB-10-DL-9798. When they reached near Karabara Bazigar Basti, two cars came from the front side one was Endeavour No PB-49-0001 white in colour and other was Pajero. In Endeavour Car Karanveer Singh son of Gurdev Singh (now Proclaimed Offender), Gurdev Singh @Debu (expired), Baljinder Singh @ Gogi, Davinder Singh @ Gogi (expired) and Vicky Sekhon were sitting. They alighted from the car. Accused Karanveer Singh was having Pistol/Revolver and accused Vicky was having Baseball bat in his hand. Accused Davinder Singh and Baljinder Singh were also carrying pistols/revolvers in their hands. Due to narrow road their vehicle was lying parked there. Accused persons came out of the car and accused Vicky Sekhon gave blow of Baseball on the wind screen of their car and Gurdev Singh raised Lalkara that Bunty should not be spared. Accused Vicky Sekhon again gave baseball bat blow on the front mirror of the car. The

complainant, and, Balkar Singh came out of the car and tried to pacify them but accused Devinder Singh @ Gogi fired a shot from his pistol in his hand and raised lalkara that Bunty would not be left alive. Accused Karanveer Singh and Baljinder Singh pulled Bunty out of the car and accused Karanveer Singh fired a shot from his gun in the chest of Bunty. Bunty fell on the ground and complainant started raising alarm Mar Ditta Mar Ditta. There were few polling booths near the place of the incident. Many people started gathering at the spot. Seeing gathering of people, accused persons started firing in the air and other accused persons started hitting cars standing on the side of the road with sticks and fled away from the spot with their respective weapons. The motive behind the occurrence was that one year prior to the occurrence, Karanveer Singh had fired in the house of Devinder Singh and due to this reason, FIR under section 307/450/148/149 IPC was registered against accused Karanveer Singh and others and in that case Gurwinder Singh @ Bunty was helping Devinder Singh. However, Devinder Singh @ Gogi with the help of respectables had compromised the matter with Karanveer Singh but Gurwinder Singh @ Bunty was against that compromise, and, due to this reason Devinder Singh @ Gogi was also having grudge against Bunty, and, due to this reason the accused persons had attempted to murder Bunty with fire arm. Gurwinder Singh @ Bunty was removed to Hospital. On the basis of the said statement, initially FIR under section 307,148,149,427,506 IPC read with section 25/27/59 Arms Act was registered against all the six persons namely Karanveer Singh, Gurdev Singh @ Debu, Baljinder Singh @ Gogi, Devinder Singh (@ Gogi and Vicky Sekhon.

Investigation proceedings

7. During the course of investigations, the investigating officer inspected the spot. Site plan was prepared. The spot was got clicked. The damaged vehicle Bolero bearing No. PB-10DL (T) 9798 was taken into police possession, two empty shell of cartridges of KF 7.65 bore were recovered the parcel of which was prepared and was taken into police possession. In due course, intimation with regard to death of Bunty was received and therefore, addition of offence under section 302 IPC was made. Supplementary statement of Jaspal Singh was recorded. On 11.6.2012, Form No. 25.35 (1) was filled. Statements under section 175 Cr.P.C. were recorded. The blood stained clothes of deceased were taken into police possession. Postmortem examination of deceased was got done from Civil Hospital. On secret information, accused Gagandeep Singh @ Gagan, Jaspreet Singh @ Jassi, Bikramjit Singh, Jaswant Singh, Navjit Singh were arrested. The vehicle bearing No PB-49-0001 used in the commission of offence was recovered. The offence under Section 201 IPC was added. On 15.6.2012 accused Karanveer Singh was arrested. On 18.6.2012, accused Karanveer Singh on the basis of his disclosure statement, got recovered pistol 7.5 used in the commission of offence. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

8. Since the offences under Sections 302 and 307 of the IPC were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 20.7.2013, hence

proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

9. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against accused namely, Karanveer Singh, Gagandeep Singh, Jaspreet Singh, Bikramjit Singh, Jaswant Singh, Navjit Singh, Amardeep Singh, Baljinder Singh and Davinder Singh, for the offences punishable under Sections 148, 307, 302, 427, 506, 201, 467, 468, 471, 420 read with Section 149 IPC, and, under Section 25 of the Arms Act, 1959.

10. Later on the remaining accused were arrested, supplementary challan became presented before the learned Court concerned. Subsequently, on 14.9.2015, the learned trial Court concerned, proceeded to frame amended charge sheet against all the accused for the offences punishable under Sections 148, 307, 302, 427, 506, 201, 467, 468, 471, 420 read with Section 149 IPC, and, under Section 25 of the Arms Act, 1959. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

11. In proof of its case, the prosecution examined 20 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

12. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication.

They also chose to adduce defence evidence, and, led six witnesses into the

witness box.

13. As above stated, the learned trial Judge concerned, proceeded to convict both the accused-appellants for the charge(s) (supra), as became drawn against them, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon both the accused-appellants.

Submissions of the learned senior counsel for the appellants

14. The learned senior counsels for the aggrieved convicts-appellants have argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. They support the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge. They further submit, that as per allegations, accused Karanveer Singh and Gurdev Singh had fired at the house of Devinder Singh, and, thereafter with the help of respectables, the matter was compromised between one Davinder Singh and accused Karanveer Singh. Therefore, this is no motive on the part of appellants to commit the murder of the deceased concerned. They further submit that as per PW-2 and PW-3, there was no previous enmity between the deceased and the accused, and, that it was a case of sudden fight. They further submit, that no specific role has been attributed to appellant Guriqbal Singh @ Vicky.

Submissions of the learned State counsel

15. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent therewith sentence(s) (supra), as become imposed upon the convict, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the

instant appeals, as preferred by the convicts be dismissed.

Reasons for dismissing the instant appeals

16. For the reasons to be assigned hereinafter the contentions (supra), as become raised before this Court, by the learned senior counsels for the appellants rather are unworthy of acceptance, and, thereby they are rejected. Consequently, finding no merit in both the appeals, the same are hereby dismissed, and, the verdict of conviction, and, consequent thereto sentence of imprisonment, and of fine, as imposed upon the convicts-appellants are maintained, and, affirmed.

Analysis of the depositions of the eye witnesses to the occurrence, who respectively stepped into the witness box as PW-1 and PW-2

17. Complainant Jaspal Singh, stepped into the witness box as PW-1, and, in his examination-in-chief, he thus made an articulation, that on 10.6.2012 he along with deceased Gurwinder Singh @ Bunty and one Balkar Singh were going in their vehicle. At about 1.30 P.M. when they reached near Bajigarh Basti Karabara, they noticed two vehicles of make Pajero and Endeavour, were hence coming from the front side. However, as the passage was narrow, therefore, the accused concerned brought Endeavour vehicle in front of their vehicle and stopped them. He further testifies, that thereafter the appellants along with other persons alighted from the said vehicle. Appellant Baljinder Singh was armed with a pistol, whereas, appellant Vicky Sekhon was armed with a baseball bat. Accused-appellant Vicky Sekhon gave a blow with baseball bat on the wind screen of their vehicle. Gurdev Singh @ Debu raised lalkara that Bunty (deceased) should not be spared. Thereafter again appellant Vicky Sekhon hit the baseball bat on their vehicle. In the meantime, the complainant along with

Balkar Singh alighted from their vehicle. Thereafter Devinder Singh @ Gogi fired from his weapon and raised a lalkara. Appellant Baljider Singh and accused Karanveer Singh pulled out Bunti (deceased) from the vehicle and then accused Karanveer Singh gave a fire shot which hit him on his left flank. The said witness later on deposed, that the said fire shot hit in the right flank of the deceased and came out from the left side. In his examination-in-chief, the said witness has voiced a narrative, qua the genesis of the prosecution case, which is in complete tandem with his previously made statement, in writing, and, to which Ex.PA becomes assigned. Though, he was subjected to the ordeal of a grilling cross-examination by the learned counsel for the accused, but he remained unscathed in the said ordeal.

18. Since a wholesome reading of his testification, as carried in his examination-in-chief, and, in his cross-examination, does not unfold, qua therein rather becoming carried any rife improvements or embellishments viz-a-viz his previously recorded statement, in writing, nor when his testification suffers from any further taint of its being ridden with any *intra se* contradiction, thus *intra se* his examination-in-chief, and, his cross-examination, therefore, utmost sanctity is to be assigned to his testification.

19. The depositions of PW-1 are supported by the deposition of the other eye witness to the occurrence, namely Balkar Singh, who stepped into the witness box as PW-2. The echoings occurring in the examination-in-chief of PW-2 are in complete harmony with the echoings, as became rendered in respect of the crime event by PW-1. Therefore, when there is inter se harmony inter se the testification(s) rendered by PW-1 and by PW-2.

witnesses, to a rigorous cross-examination, did not attempt to, through putting suggestions to the said witnesses, thus rid the efficacy of the speakings made by the said witnesses in their respective examinations-in-chief, whereby they had made a formidable attribution of guilt to the present appellants. Therefore, the said omission also tantamounts to the defence acquiescing, that the attributions of guilt made by PW-1 and PW-2, in their respective examination(s)-in-chief rather, being a truthful attribution of guilt vis-a-vis the present appellants. In sequel, the testifications rendered by PW-1, and, PW-2 vis-a-vis the crime event, when rather are in complete inter se alignment, as such, their respectively made testifications were amenable to become relied, upon, as aptly done by the learned trial Court concerned.

20. The further reason for this Court to assign credence to the eye witness account rendered with respect to the crime event, by the eye witnesses (supra), is comprised in the factum, that though the fatal fire arm shot was fired by co-accused Karanveer Singh, who however, has been declared as a proclaimed offender. However, when during the course of investigations, he made an incriminatory disclosure statement, besides caused to the investigating officer concerned, the recovery of the said used firearm by him. Nonetheless, able proof in respect of the drawing of the said memos, is yet to be rendered by the prosecution, but as and when the said proclaimed offender surrenders, before the learned trial Judge concerned.

21. Be that as it may, the attribution of guilt, as made by the eye witnesses (supra), to the present convicts-appellants, is that, the convicts-appellants joining the said proclaimed offender at the crime site, besides

bat blow on the windscreen of the car bearing No. PB-10-DL-9798 resulting in damage being caused thereto, and, that co-convict Baljinder Singh though not firing at the deceased but yet after the proclaimed offender Karanveer Singh, firing the fatal firearm shot at the deceased, rather the convict-appellant Baljinder Singh subsequently firing in the air.

22. Significantly, thereby besides since the learned defence counsel, while subjecting the eye witnesses (supra) to the crime event, choosing rather to attribute a motive to the convicts, and, the said attribution of motive, if any, to the considered mind of this Court, when does not have any exculpatory effect. Resultantly when apart from the learned defence counsel in his making cross-examinations, upon, the ocular witnesses to the crime event, whereby he attempted to prove the motive, his also making suggestions to the eye witnesses (supra), whereby he only intended to create a defence, that it was a sudden quarrel which emerged at the crime site, and, that whereby the crime event was not an offence punishable under Section 302 IPC but was an offence of culpable homicide not amounting to murder, which was thus punishable under Section 304 Part II of the IPC.

23. In sequel, the trend of the above defence reared before the learned Court concerned, by the learned defence counsel, does also thereby result in the defence acquiescing to the participations in the above manner in the crime event rather by the present convicts-appellants. Therefore, even if no recovery(ies) became effected by the convicts-appellants, rather at their respective instances to the investigating officer concerned, but thus in pursuance to their respectively recorded disclosure statements. Nonetheless, the non drawings of the memo (supra), does not denude the incriminatory effect of credible evidence rendered by the ocular witnesses (supra) to the

occurrence, wherein they attribute a specific incriminatory role to the convicts-appellants. Strikingly when apart from the rearing of the above defence by the defence counsel while making cross-examinations, upon the ocular witnesses (supra), neither any suggestion became meted to them, nor any exculpatory answers became meted to such suggestions by the ocular witnesses, for thereby the above assigned incriminatory role to the present convicts-appellants rather becoming negated. Resultantly, when thereby neither the presence nor the participations in the above manner of the present convicts-appellants along with the proclaimed offender in the crime event, thus becomes effectively negated. Consequently, thereby, the non-makings of disclosure statements by the appellants or the non-makings of recovery memos in pursuance to such drawn disclosure statements, are but neither significant nor relevant. The reason for drawing the above inference arises from the trite factum, that the non-makings thereof, becoming underwhelmed, through the above trend of defence adopted by the learned defence counsel while making cross-examinations upon the ocular witnesses (supra).

24. Now assuming that there was a purported sudden fight arising from a purported dire and sudden provocation meted to the present convicts-appellants, by the deceased/complainant party, thereby it became incumbent, upon the defence, to project a defence to the extent, that the initiator of the provocation, but was the complainant/deceased party, and, that such a provocation was so dire or was of such grave propensity, that the convicts-appellants were either led to, in the exercise of right to private defence, thus make an assault, upon the deceased/complainant party, and/or were led to launch an assault, upon the deceased/complainant party. However, a reading

of the cross-examination, as made upon the ocular witnesses (supra) does unfold, that neither any suggestion became meted to them, thus devolving upon, qua there being a dire provocation, but of such grave propensity, thus becoming meted by the deceased/complainant party, to the convicts-appellants, nor any suggestion became meted to the ocular witnesses, rather relating to therebys the convicts-appellants ably propagating the right to private defence of body. Moreover, nor the propagation of the said right of private defence of body became rested on the well premise, that on account of the superior numerical strength of the deceased/complainant party, and, on account of theirs wielding deadly weapons, therebys to stave off the imminent endangerment to their respective persons, they were led to cause an assault, upon the deceased/complainant party. Resultantly, thereby the offence committed was punishable under Section 302 IPC, and, was not an offence of culpable homicide not amounting to murder, as punishable under Section 304 Part II of the IPC.

25. In sequel, for wants (supra), besides when the convicts-appellants acquiesce vis-a-vis their respective presence at the crime site. Moreover, with theirs also not efficaciously negating their incriminatory participation in the manner (supra) along with the proclaimed offender/principal accused Karanveer Singh, who also during the course of investigations, but during his custodial interrogation, made an incriminatory disclosure statement Ex. PW-3/R, and, whereafter he caused recovery of a pistol Ex. PW-3/T. Resultantly, the non-makings of the disclosure statements at the instance of the present appellants, besides non-effectuation of recoveries at their respective instance, does also therebys, becomes completely inconsequential. Precisely also, when the fatal fire-arm shot was

fired by the proclaimed offender Karanveer Singh, but not by appellant Baljinder Singh, who however, only after commission of the lethal murder of the deceased, at the instance of the proclaimed offender, thus fired only in the air, but not at the deceased.

Post-mortem report

26. The post-mortem report, to which Ex. PW-9/A is assigned, became proven by PW-9. PW-9 in his examination-in-chief, has deposed that on his making an autopsy on the body of the deceased, thus his noticing thereons the hereinafter injuries-

- “1. Oval shaped wound with inverted margins measuring 1 cm x 1 cm on the right side of the abdomen. Approximately 26 cm away from umbilicus almost at the same level with blackening of wound margins (entry wound).*
- 2. Oval shaped wound with averted margins measuring 1 cm x 0.5 cm. On the left side of the abdomen 15 cm away from umbilicus. 3’O clock position compared to the umbilicus (exit wound).*
- 3. Reddish brown abrasion measuring 3 inch x 1` inch present on the external aspect of the right elbow.”*

27. Furthermore, PW-9 also made a speaking in his examination-in-chief, that the cause of demise of the deceased was shock, and, haemorrhage owing to the injuries to vital organs, as a result of fire arm injury(ies), which were stated to be ante mortem in nature, and, also sufficient to cause death in the ordinary course of nature.

28. The said witness was subjected to the ordeal of a rigorous cross-examination by the learned defence counsel, and, therein he stated, that the fatal ante mortem injury was one shot injury case i.e. one entry and other exit wound. The shot fired at the deceased was fired from the right side of the body.

29. Thus, the statements of the eye witnesses, do also thereby

become fully supported by the above credible medical account(s).

30. The effects of an ablest inter se corroboration, thus palpably emerging inter se credible ocular account rendered qua the prosecution version by the eye witnesses thereto, thus with the medical evidence, and, importantly with echoings occurring in the post-mortem report, when are but obviously suggestive qua even a single fatal fire-arm shot, thus did cause the demise of deceased Gurbinder Singh @ Bunty. Nonetheless, since for the reasons (supra), the defence concedes to the other co-convicts along with the proclaimed offender Karanveer Singh also being available at the crime site, thus with theirs being armed with the respective incriminatory weapons of offence. Consequently, even if the fatal assault was delivered solitarily by accused Karanveer Singh, hence on the person of the deceased, yet since both the convicts-appellants, thus were evidently also members of a purported unlawful assembly, and, had evidently joined the said purported unlawful assembly, rather with a common object/intention to commit a fatal assault on the deceased. Therefore, when both of them were evidently not mere mute spectators of the ill fated event, but each of them were armed with the incriminatory weapons of offence, thereby irrespective of the fatal assault being solitarily delivered on the person of the deceased, thus by accused Karanveer Singh, yet when the other members of the purported unlawful assembly, who are the convicts-appellants also did join the principal accused, thus with the common object/intention to thereby commit a fatal assault on the person of the deceased concerned. Consequently, with both the convicts-appellants being the members of the purported unlawful assembly, therebys they are deemed to be through theirs joining the unlawful assembly, thus prosecute the avowed common object/intention to commit a

fatal assault on the deceased. Resultantly, both of them are vicariously liable along with the principal accused in theirs committing the murder of the deceased. Therefore, both of them became aptly convicted, and, also became aptly sentenced to undergo the sentences (supra), as became imposed upon each of them.

Final order

31. The result of the above discussion, is that, this Court does not find any merit in both the appeals, and, is constrained to dismiss them. Consequently, both the appeals are dismissed. The impugned verdict of conviction, as becomes recorded upon the convicts-appellants, by the learned convicting Court, is maintained, and, affirmed. Moreover, the consequent thereto order of sentence is also affirmed. If the convicts are on bail, thereupon, the sentence(s) as imposed upon the convicts-appellants, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

32. Records be sent down forthwith.

33. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

April 29, 2024
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No