

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA-D-107-DB of 2007**

DATE OF DECISION: JANUARY 14, 2015

HARI SINGH @ BABBI & OTHERS ...APPELLANTS

VERSUS

THE STATE OF PUNJAB ...RESPONDENT

2. **CRA-D-715-DB of 2007**

THE STATE OF PUNJAB ...APPELLANT

VERSUS

PIARA SINGH & ORS. ...RESPONDENTS

3. **CRL.R. NO.844 of 2007**

KARAMJIT SINGH ...PETITIONER

VERSUS

PIARA SINGH & ORS. ...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. VINOD GHAI, SR.ADVOCATE
WITH MR. SIMRANDEEP SINGH, ADVOCATE
FOR THE APPELLANTS IN CRL.A. NO.107-DB OF 2007
AND FOR RESPONDENTS NO.2 & 3 IN CRA-D-715 OF 2007.

MR. P.P.S.THETHI, ADDL.A.G., PUNJAB.

MR. A.P.S. MANN, ADVOCATE FOR THE COMPLAINANT
IN CRL.R. NO.844 OF 2007.

MR. H.S.SANGHA, ADVOCATE FOR RESPONDENT NO.4
IN CRA.D-715-DB OF 2007 & CRL.R. NO.844 OF 2007.

M. JEYAPPAUL, J.

1. Accused Piara Singh, Hari Singh @ Babbi, Harjit Singh @ Hare

Ram and Naveen Kumar @ Bunty faced the trial before the Sessions Court,

Sangrur. Accused Harjit Singh @ Hare Ram and Hari Singh @ Babbi were convicted under Section 302 read with Section 34 IPC.

2. Aggrieved by the acquittal of accused Piara Singh and Naveen Kumar @ Bunty and the sentence of life imprisonment instead of capital punishment awarded to Hari Singh @ Babbi and Harjit Singh @ Hare Ram, the State preferred Crl.A. No.715-DB of 2007 while the complainant Karamjit Singh filed Crl.R. No.844 of 2007. By virtue of the order dated 21.8.2007, the appeal qua Hari Singh and Harjit Singh praying for enhancement of sentence was dismissed. The appeal qua accused Piara Singh and Naveen Kumar @ Bunty alone was admitted. Since Crl.R. No.844 of 2007 was found connected with the other appeal, it was ordered to be posted alongwith the other appeal. During the pendency of the appeal/revision petition, accused Piara Singh has died as per the death certificate produced by learned Addl.A.G., Punjab.

3. Inasmuch this Court by virtue of order dated 21.8.2007 declined to entertain the appeal as against accused Hari Singh @ Hare Ram and Harjit Singh @ Babbi praying for enhancement of sentence, no different decision can be arrived at as regards the very same prayer made as against them in Crl.R. No.844 of 2007.

4. Accused Piara Singh having died, Crl.A. No.715-DB of 2007 and Crl.R. No.844 of 2007 qua him abate.

5. Now, the challenge made in Crl.A. No.715-DB of 2007 survives only as against accused Naveen Kumar @ Bunty.

6. The brief case of the prosecution is that in connection with sale of agricultural produce to a commission agency run by accused Piara Singh

and Naveen Kumar @ Bunty, accused Piara Singh and Naveen Kumar owed some money to deceased Gurmel Singh. Deceased Gurmel Singh and deceased Bhagwant Singh, therefore, demanded money time and again from accused Piara Singh and Naveen Kumar @ Bunty who ran the commission agency business. On 3.10.2004 at about 5.30 p.m., when deceased Gurmel Singh, deceased Bhagwant Singh, Karamjit Singh and Hari Singh were present in their newly started commission agent shop in the grain market, accused Piara Singh armed with a revolver, accused Hari Singh @ Babbi armed with .12 bore gun and accused Harjit Singh @ Hare Ram armed with a revolver came to the shop of Gurmel Singh in white Gypsy driven by Harjit Singh and opened fire through their respective fire arms and committed murder of Gurmel Singh and Bhagwant Singh.

7. PW4 Karamjit Singh son of deceased Gurmel Singh had set the law in motion by lodging a complaint to the police. He was examined as an eye witness to the occurrence. PW5 Sukhwinder Singh was also cited as an eye witness and examined before the trial Court. Both of them have deposed before the trial Court that deceased Gurmel Singh used to sell his agricultural produce at the commission agency shop of accused Piara Singh and Naveen Kumar. In connection with the sale of agricultural produce, accused Piara Singh and Naveen Kumar owed money to Gurmel Singh. Gurmel Singh started his own commission agency business striking a partnership deal with Subhash and Bimal Kumar in the year 2003. Deceased Gurmel Singh and Bhagwan Singh demanded money from Piara Singh and Naveen Kumar. On 3.10.2004 at about 5.30 p.m. when deceased Gurmel Singh and Bhagwant Singh were standing near a heap of paddy, accused Piara Singh and his two

sons Hari Singh @ Babbi and Harjit Singh @ Hare Ram came in a white Gypsy. Accused Piara Singh alighted from the Gypsy armed with a pistol. He first raised lalkara. Hari Singh @ Babbi was found armed with a gun while Harjit Singh @ Hare Ram was found armed with a revolver. Piara Singh having proclaimed that the demand of money by the deceased had brought disrepute to him, alongwith his sons opened fire. Accused Harjit Singh @ Hare Ram fired a shot which hit on the head of Bhagwant Singh; Piara Singh fired a shot not only at Gurmel Singh, but also at Bhagwant Singh. Gurmel Singh and Bhagwant Singh died on the spot.

8. PW1 Dr.Hardeep Sharma alongwith Dr. Rakesh Jain and Dr.Sanjay Bansal conducted post mortem examination on the dead body of Gurmel Singh on 4.10.2004 at about 11.30 a.m. and found the following injuries:-

- “1. A lacerated wound 2cm x 2cm with inverted margins present over the supra clavicular fossa on the right side. Clotted blood was present.*
- 2. A lacerated wound 5cm x 4cm with everted margins present on the left side of neck in the supra clavicular fossa. There was blood present. The tract was right side. On exploration, there was clotted blood blackening of margins on the right side. On exploration there was clotted blood present. The tract was running posterior by involving the lower vertebra of the cervical spine, C6-7 and the upper vertebra of the dorsal spine D1-2. Multiple bony chops present and the*

tract was leading to the wound on the left side. Wound no.1 is wound of entry and wound no.2 is wound of exit. Pellets two in number were taken out and sealed in a bottle with seal HS and handed over to the police. One x-ray film was handed over to the police.”

9. They opined that the deceased had died due to shock and haemorrhage on account of injuries No.1 and 2 caused by a firearm which was sufficient to cause death in the ordinary course of nature. The injuries were also found to be ante mortem in nature.

10. They also conducted post mortem examination on the dead body of Bhagwant Singh on the same day at about 12.00 noon and found the following injuries:-

“1. *A lacerated wound 1cm x 1cm with inverted margins with blackening of the margins present over the lateral surface of the chest wall at the level of 7-8 intercostal space left. On exploration, clotted blood was present. There was laceration of the left lower base of the lung and pleural cavity contained blood and blood clots, black in colour.*

2. *A lacerated wound 1cm x 1cm with inverted margins with blackening of the margins present over the lateral surface of the chest wall on right side of C7-8 intercostal space. On exploration – clotted blood was present. There was lacerated of the liver and lower lobe of lung. Clotted blood was present.*

3. *A lacerated wound 3cm x 3cm with inverted margins with*

blackening of the margins we with omentum coming out of it, was present on the anterior abdominal wall on the left side, 2cm from the umbilicus.

On exploration – there was clotted blood present. There was laceration of mesentry and small gut loops. Abdominal cavity contained huge amount of blood and blood clothes. Pellets five in number were recovered from the body and handed over to the police. Three x-ray films were also handed over to the police.

4. *A lacerated wound 2cm x 1cm present over the left temporal area was present.”*

11. The Medical Board had opined that Bhagwant Singh had died due to shock and haemorrhage as a result of injuries No.1, 2 and 3 which were caused by a fire arm and sufficient to cause the death in the ordinary course of nature. All the above injuries were found to be ante mortem in nature.

12. Accused were arrested and on the basis of the disclosure statements suffered by them, the Investigating official recovered, .455 revolver Ex.P96 at the instance of Piara Singh, .12 bore SBBL (Ex.P64) gun at the instance of accused Hari Singh and .32 Revolver (Ex.P74) at the instance of Harjit Singh.

13. The accused have come out with a plea in their statements suffered by them individually under Section 313 Cr.P.C. that they were innocent, but a false case was foisted upon them.

14. On the side of defence, DW1 to DW6 were examined.

15. The trial Court having relied upon the ocular testimony of PW4 Karamjit Singh and PW5 Sukhwinder Singh recorded conviction as against accused Hari Singh @ Babbi and Harjit Singh @ Hare Ram. Accused Piara Singh and Naveen Kumar @ Bunty were acquitted by the trial Court.

16. Mr. Vinod Ghai, learned Sr.counsel appearing for the appellants would vehemently submit that PW4 Karamjit Singh is an interested witness, inasmuch as he was the son of one of the deceased Gurmel Singh. There is material contradiction in the evidence of PW4 as regards the exact scene of crime. Referring to the evidence of PW1 Dr. Hardeep Sharma and the evidence of PW4 Karamjit Singh, he would submit that the injury found on the forehead of deceased Bhagwant Singh would not have been caused by a fire arm. He would submit that there was no suggestion made to PW1 that such an injury could have been caused by a fire arm. Rather, he has deposed during the course of cross-examination that the injury on the forehead of Bhagwant Singh could have been caused by a fall on the rough surface. It is his submission that such an opinion of PW1 was not challenged by the prosecution.

17. Learned counsel appearing for the respondent Naveen Kumar @ Bunty in Crl.R. No.844 of 2007 would submit that Naveen Kumar @ Bunty was admittedly not present at the scene of crime. As there was virtually no evidence proving the charge against Naveen Kumar @ Bunty, the trial Court has rightly acquitted him, he would submit.

18. Learned counsel appearing for complainant Karamjit Singh who filed Crl.R. No.844 of 2007 would submit that the evidence of PW4 and PW5 would go to establish the presence of accused Hari Singh @ Babbi and Harjit

Singh @ Hare Ram at the scene of crime. The recovery of weapon would also go to establish the charge framed as against them. As Naveen Kumar was the business associate of accused Piara Singh, he had abetted the commission of double murder. Therefore, it is his submission that the criminal appeal preferred by the accused may be dismissed and the CrI.A. No.715-DB of 2007 and CrI.Revision No.855 of 2007 qua accused Naveen Kumar @ Bunty be allowed.

19. We also heard the elaborate submissions made by learned Addl.A.G., Punjab, supporting the conviction recorded by the trial Court.

20. Let us take up the charge as against Naveen Kumar @ Bunty that he abetted the crime of double murder. The entire evidence on record was thoroughly scanned by us. Except the vague evidence to the effect that Naveen Kumar @ Bunty was the business associate of accused Piara Singh, there is no evidence on record that he intentionally abetted the crime of murder. It is an undisputed fact that Naveen Kumar @ Bunty had not at all participated in the crime of murder. There is no evidence that he directed the other accused to commit the murder. In our considered view, Naveen Kumar @ Bunty had been implicated just because he had a business association with accused Piara Singh in the commission agency. As there is no material evidence to implicate accused Naveen Kumar @ Bunty, in our considered view, the trial Court has rightly acquitted him.

21. Though separate order was not passed in CrI.R. No.844 of 2007 that no case for enhancement of punishment was made out against accused Hari Singh @ Babbi and Harjit Singh @ Hare Ram who were convicted under Section 302 read with Section 34 IPC and were sentenced to undergo

life imprisonment, we cannot take a different view from the one already taken by us in Crl.A. No.715-DB of 2007 qua accused Hari Singh @ Babbi and Harjit Singh @ Hare Ram on the plea for enhancement of sentence. Even otherwise, the facts and circumstances of this case would go to show that the case does not fall under the parameters laid down to classify a case under 'rarest of rare category'.

22. The above two cases, namely, Crl.A.No.715-DB of 2007 and Crl.R. No.844 of 2007 have been preferred as against Hari Singh @ Babbi and Harjit Singh @ Hare Ram praying for enhancement of sentence only on the ground that they had committed double murder. The number of murders committed by an accused cannot be the sole ground to treat the case as a rarest of rare category. Further, the murder was not committed in a diabolic manner. No material was also produced to show that they would not be reformed if they undergo the sentence in prison. In view of the above, Crl.A. NBo.715-DB of 2007 and Crl.R. No.844 of 2007 are liable to be dismissed.

23. Harjit Singh @ Hare Ram was convicted under Section 302 read with Section 34 IPC. The material witnesses who spoke about the role of accused Harjit Singh @ Hare Ram were PW4 Karamjit Singh and PW5 Sukhwinder Singh. Let us straight away refer to the foundation made by the investigating agency on the basis of the statement suffered by PW4 Karamjit Singh. Accused Piara Singh, Hari Singh and Harjit Singh who were armed with respective revolvers and gun had allegedly opened fire and shot at both deceased Gurmel Singh and Bhagwant Singh and caused their death. In other words, specific overt-act in connection with the respective injuries caused to the deceased concerned had not been described in the first information report.

24. We have to closely scrutinize the evidence of PW4 and PW5 as regards the specific role attributed to the accused. During the course of evidence, both of them have stated that accused Harjit Singh @ Hare Ram opened fire with a licenced .32 bore revolver (Ex.P74) and caused injury on the forehead of deceased Bhagwant Singh. In the face of medical evidence available on record, we are of the considered view that the above ocular testimony as regards the role of accused Harjit Singh @ Hare Ram creates a doubt in our mind.

25. PW1 Dr.Hardeep Sharma noted down 4 injuries found on the dead body of Bhagwant Singh. PW4 and PW5 attributed the 1st and 2nd injury to accused Hari Singh @ Babbi. The 3rd injury was attributed to accused Piara Singh and the 4th injury was attributed to accused Harjit Singh @ Hare Ram.

26. PW1 Dr.Hardeep Sharma specifically deposed that injuries No.1 to 3 found on the dead body of Bhagwant Singh had been caused by a firearm. But as regards the 4th injury, namely, lacerated wound measuring 2cm x 1 cm over the left temporal area on the dead body of Bhagwant Singh, he had maintained stoic silence. During the course of cross-examination, he categorically admitted that injury No.4 could have been caused by a fall. The entire evidence of PW1 was completely evaluated by us. No wonder, he has stated that injury No.4 could have been caused by a fire arm.

27. Accused Harjit Singh @ Hare Ram had allegedly used .32 revolver to cause injury on the forehead of Bhagwant Singh. In our considered view, such an insignificant injury could not have been caused by a

weapon like .32 revolver. The inner portion of the head of the person would have been completely shattered if the forehead of a person faced the fire arm injury from .32 revolver.

28. Learned counsel appearing for the complainant would make an endeavour to convince the Court that such an injury would have been caused when the bullet crashed the temporal portion of the head of the deceased Bhagwant Singh. But on a perusal of Ex.P7/A, the outlines of human body drawn by PW1 while issuing post mortem certificate, it is found that the injury on the forehead was located just above the left eyebrow. There was no indication in the post mortem certificate that the injury found on the forehead had been caused as a result of a bullet crashing left temporal portion of the head. It is to be noted that that no empty of bullet was recovered from the vicinity of the crime.

29. The medical evidence would establish that injury No.4 which was found on the forehead of deceased Bhagwant Singh would have been caused by a fall. The prosecution failed to establish through medical testimony that injury No.4 was caused by a fire arm.

30. Of course, it was contended by learned counsel appearing for the complainant as well as learned Addl.A.G., Punjab that there is evidence to show that Harjit Singh @ Hare Ram was present. In addition to that, licenced .32 revolver (Ex.P74) was recovered on the basis of the disclosure statement suffered by Harjit Singh @ Hare Ram.

31. The definite case of the prosecution through the ocular witnesses PW4 and PW5 that accused Harjit Singh @ Hare Ram caused fire arm injury on the forehead of the deceased Bhagwant Singh stood not established.

Therefore, we are of the considered view that the evidence of PW4 and PW5 that accused Harjit Singh @ Hare Ram was also present at the scene of occurrence and caused the fire arm injury is found doubtful.

32. Ex.P74 .32 revolver alongwith the empties allegedly recovered from Harjit Singh @ Hare Ram had been sent for forensic science examination. The weapon and the empties found in the revolver alone had been subjected to examination. In other words, no empties or bullets were recovered from the scene of crime and matched with the weapon allegedly recovered from Harjit Singh @ Hare Ram. Therefore, the FSL report also does not clinchingly establish the role of Harjit Singh @ Hare Ram. Therefore, we are of the firm view that Harjit Singh @ Hare Ram is entitled to acquittal.

33. PW4 Karamjit Singh and PW5 Sukhwinder Singh have categorically deposed before the trial Court that accused Piara Singh caused fire arm injuries found on the person of the dead body of Gurmel Singh and 3rd fire arm injury found on the dead body of Bhagwant Singh. According to PW4 and PW5, accused Hari Singh @ Babbi caused 1st and 2nd injuries found on the dead body of Bhagwant Singh. That apart, they have established that deceased Bhagwant Singh and Gurmel Singh insisted for payment of amount due from accused Piara Singh and therefore, he had an enmity with deceased Gurmel Singh and Bhagwant Singh. Further, it is found that accused Bhagwant Singh also had opened competitive commission agency just by the side of the shop of accused of Piara Singh. The motive for the murder has also been established as against accused Hari Singh @ Babbi, the son of accused Piara Singh.

34. The evidence of PW1 Dr.Hardeep Sharma who performed autopsy on the dead body of Bhagwant Singh matches with the ocular testimony of PW4 and PW5.

35. PW2 Sukhwinder Singh is found to be an independent witness. He corroborates the ocular testimony of Karamjit Singh who happened to be the son of deceased Gurmel Singh. The occurrence had taken place near the commission agency office of deceased Bhagwant Singh. No wonder, PW4 was very much present over there and witnessed the occurrence. We have no hesitation to rely upon the evidence of PW4 Karamjit Singh and PW5 Sukhwinder Singh as regards the role of accused Hari Singh @ Babbi who opened two shots and committed the murder of Bhagwant Singh. As accused Piara Singh had died and the appeal abated on account thereof, we are not supposed to discuss the role of Piara Singh in the double murder of Gurmel Singh and Bhagwant Singh. At any rate, the above evidence on record would go to establish that accused Hari Singh @ Babbi opened fire and caused the death of Bhagwant Singh.

36. In view of the above, confirming the judgement of conviction and sentence passed by the trial Court qua accused appellant Hari Singh @ Babbi for the offence punishable under Section 302 IPC, the conviction and sentence passed by the trial Court qua accused-appellant Harjit Singh @ Hare Ram for the offence under Section 302 read with Section 34 IPC stands set aside. Accused Harjit Singh @ Hare Ram be set at liberty, if his custody is not required in connection with any other case.

37. Accused Hari Singh @ Babbi is on bail. He shall surrender before the learned Chief Judicial Magistrate, Sangrur, within 15 days from

the date of judgement, failing which the learned Chief Judicial Magistrate, Sangrur shall issue warrant of arrest and send him to prison to undergo the remaining part of the sentence. Crl.A. No.107-DB of 2007 stands disposed of accordingly.

38. The appeal in Crl.A. No.715-DB of 2007 preferred against Piara Singh abates as he had died. The above appeal preferred against accused Hari Singh @ Babbi and Harjit Singh @ Hare Ram and Naveen Kumar @ Bunty stands dismissed.

39. Criminal revision No.844 of 2007 preferred against Piara Singh abates as he had died. The criminal revision preferred against other accused Hari Singh @ Babbi, Harjit Singh @ Hare Ram and Naveen Kumar @ Bunty also stands dismissed.

(M. JEYAPPAUL)
JUDGE

January 14, 2015
Gulati

(DARSHAN SINGH)
JUDGE