

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-1068-DB-2010 (O&M)
DATE OF DECISION:09.12.2015

Sardul Singh and others

..... Appellants

Vs.

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

PRESENT: Mr. Parminder Singh-I, Advocate
for the appellants.

Mrs. Manjari Nehru Kaul, Additional Advocate General, Punjab.

- (1) Whether Reporters of local papers may be allowed to see the judgment?
- (2) To be referred to the Reporters or not?
- (3) Whether the judgment should be reported in the Digest?

RAJ RAHUL GARG, J.

This appeal is directed against the impugned judgment dated 03.09.2010 rendered by learned Additional Sessions Judge, Bhatinda, whereby appellants were held guilty for committing offence punishable under Section 302/34 IPC. Appellant-accused Mahla was also convicted under Section 27 of the Arms Act whereas appellant-accused Labh Singh was, in addition convicted under Section 30 of the Arms Act. Vide order of sentence dated 18.09.2010, each one of the appellants-accused was sentenced to undergo imprisonment for life and a fine of Rs.10,000/-. In default of

payment of fine, to undergo rigorous imprisonment for 6 months for committing offence punishable under Section 302/34 IPC, whereas accused Mahla was also sentenced to imprisonment for three year and to pay a fine of Rs. 5,000/-. In default of payment of fine, to undergo further rigorous imprisonment for 1 month for the offence under Section 27 of the Arms Act. Likewise, accused Labh Singh was also sentenced to imprisonment for 6 months and to pay a fine of Rs. 2,000/-. In default of payment of fine, to undergo RI for one month for the offence under Section 30 of the Arms Act.

Brief facts of the prosecution case are like this; that on 12.05.2008 complainant and his brother Gurjant Singh were present in their house where Sardul Singh armed with *gandasa*, Ranjit Singh armed with 'Ghop', Harbans Singh armed with 'Khapra', Kuldip Kaur, Chhinder Kaur both armed with iron rods. Labh Singh armed with .12 bore licenced gun, Mahla Singh empty handed, Dalaur Singh armed with *gandasa* came there. At that time, it was 5:30 P.M. They started abusing complainant party. Complainant and his brother Gurjant Singh asked them the reason for abusing them. Then Labh Singh raised a *lalkara* to teach a lesson to complainant party for not giving them share in the tubewell. He fired three shots in the air from his gun. Other accused started hurling filthy abuses to the complainant and his brother. Mahla Singh took gun from Labh Singh and fired at Gurjant Singh which hit the left side of his chest, as a result, Gurjant Singh fell down on the ground. Complainant raised *alarm* upon which his relative Baldev Singh came there. Mahla Singh shot another fire at Baldev Singh which hit the left side of his stomach. Mahla Singh shot another fire at the complainant, however, he could save himself by taking shelter of toilet wall. All the

accused then fled away from the spot alongwith their respective weapons while raising *lalkara*. Gurjant Singh and Baldev Singh were taken to Adesh Hosptial Bhucho, Bathinda, where Gurjant Singh succumbed to the injuries. This statement was given by complainant to the police, whereupon, case was registered against the accused.

As per complainant Gamdur Singh, he alongwith his brother Gurjant Singh has been residing in the fields at their house. His cousins Sardul Singh and Harbans Singh were also residing nearby their house. There was a tube well near the house of complainant. Tubewell connection was in the name of his father. Sardul Singh, his cousin, used to claim half share in the aforesaid tubewell. Gurjant Singh told Sardul Singh that electric motor was owned by them. It is they who had deposited the security and other charges etc. in connection with the aforesaid motor. An application moved by Sadrul Singh regarding this dispute to the police station Balianwali. A compromise was got effected with the help of Panchayat but Sardul Singh backed out from the compromise and also abused Panchayat.

During the course of investigations, SI Gulzar Singh, Investigating Officer of the case prepared the inquest report Ex. PW8/E. The dead body was identified by Saggar Singh and Gamdur Singh. SI Roop Singh handed over the clothes of injured Baldev Singh alongwith MLR which were taken into police possession vide memo Ex.PF. Parcel containing clothes of Baldev Singh is Ex.P5. After post-mortem examination of dead body, SI Roop Singh produced before Investigating Officer one parcel containing belongings of deceased which were taken into possession. He also produced

plastic bottle in the form of parcel Ex.P2 containing one bullet and wad, duly sealed with the seal of 'MSD' and the same was taken into police possession vide memo Ex.PH. Thereafter, on going to the spot, Investigating Officer lifted four cartridges and one mis-cartridge and the same were taken into police custody vide memo Ex. PJ. This parcel is Ex.P6. Blood stained and simple earth were lifted from the spot and made into separate parcels Ex.P3 and Ex.P4. The same were sealed with the seal of 'GS' and taken into police custody vide memo. Ex.PK. Rough site plan of the spot with correct marginal notes were prepared as Ex.PW8/G. Statements of witnesses were recorded.

On 16.05.2008, investigations of this case were handed over to SI Roop Singh. SI Ajaib Singh produced accused Sardul Singh, Harbans Singh, Labh Singh and Dalaur Singh before Sub Inspector Roop Singh. They were interrogated turn by turn. Sardul Singh produced before SI Roop Singh, *gandasa* which was taken into police possession vide memo. Ex.PW9/B. Sketch of *gandasa* was prepared. *Gandasa* is Ex.P7. Harbans Singh accused produced 'Khapra' Ex.P8 before SI Roop Singh and the same was taken into possession vide memo Ex.PW9/D. Rough sketch of 'Khapra' was prepared as Ex.PW9/C. Dalaur Singh, thereafter, produced *gandasa* Ex.P9 before SI Roop Singh and the same was taken into possession vide memo Ex.PW9/F. Sketch of *gandasa* was prepared as Ex.PW9/E. Case property was deposited with the MHC of the police station. Statements of witnesses were recorded.

On 24.05.2008, SI Roop Singh and HC Dula Singh came to Adesh Hospital and sought opinion of the doctor by making request Ex.PW9/I to the effect as to if Baldev Singh injured was fit to give statement

or not, whereupon, doctor opined as Ex.PW9/J. Then the statement of Baldev Singh was recorded which is Ex.PW9/K. After admitting the same as correct, Baldev Singh signed the statement. SI Roop Singh attested it and also put his endorsement Ex.PW9/M. Doctor produced before SI Roop Singh a vial containing pallet in a sealed parcel Ex.P9 bearing the seal of IM which was taken into possession vide memo Ex.PW9/N. Dula Singh signed this memo as witness. Case property was deposited with the MHC of the police station.

On 25.05.2008, accused Mahla Singh was arrested. On interrogation, he suffered disclosure statement Ex.PM to the effect that he had kept concealed one gun and licence in the iron box underneath the clothes in his house. In pursuance with this disclosure statement, accused Mahla Singh took the police party to the specified place and got gun and licence recovered from his house. Gun was sealed with the seal of 'RS'. Gun alongwith licence were taken into possession vide memo. Ex.PN. Gumdur Singh and Dula Singh signed this memo as witnesses . Parcel containing gun is Ex.P9. Site plan of the place of recovery of gun was prepared as Ex.PW9/P. Statements of witnesses were recorded and the case property was deposited with the MHC of the police station. After completion of necessary investigations, the challan was presented in the Court against the accused.

Finding a prima facie case against the accused, they were charge sheeted for committing offence punishable under Section 302/34 IPC whereas accused Mahla Singh has also been charged for offence under Section 307 IPC and the co-accused were charged for the offence under Section 307/34 IPC. Accused Labh Singh was also charge-sheeted for the

offence under Section 30 of the Indian Arms Act and accused Mahla Singh was also charge sheeted for the offence under Section 27 of the Indian Arms Act. To the charge, they did not plead guilty.

After taking entire prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded wherein they denied each prosecution allegation and pleaded their innocence. Accused Sardul Singh took the defence, which is as under:-

“ That he is innocent and has been falsely implicated in this case by making totally false and baseless allegations. My father Baldev Singh and Mall Singh father of complainant Gamdoor Singh, were real brothers. Land in question is joint in Khata and was partitioned between the co sharers. Both the parties were residing in their respective houses built in the fields known as ‘Singhewala’ and joint passage was left for houses of both the parties. Baldev Singh and Mal Singh when alive, were irrigating the fields jointly and land was being irrigated from the common well with the help of Peter engine by both the parties. Thereafter, in the same common well an electricity motor connection was installed in the fields jointly in the name of Mall Singh being elder brother and the expenditure used to be incurred jointly and the electricity bill was also being paid jointly by both the parties. After the death of Baldev Singh and Mall Singh, the complainant party, out of greed, in order to grab the electric motor connection, started claiming the electric motor connection to be their exclusively and in order to avoid any unhealthy event in this regard, we filed a Civil Suit for seeking injunction against the complainant party and in the said suit temporary injunction was granted in our favour and the same was confirmed in the suit on

22.08.2008. Against the said order of the Court, the complainant party went in appeal and in appeal also, the injunction was confirmed in our favour on 26.03.2009. In the matter from time to time, compromise was got affected between the parties by the respectables, but the complainant party was adamant to grab the electric motor connection.

The complainant party felt annoyed due to aforesaid decision. On the day of occurrence the complainant party collected various persons including persons brought from outside armed with arms and ammunition, in order to attack us. They also threw brick bats towards our house and some persons from the village also came there to pacify the matter. Some supporters of the complainant party were also coming towards the spot in the shape of a crowd and on seeing a large gathering at the place of occurrence, some one from the crowd coming towards the spot, fired shots from close range and the fire shots might have hit Gurjant Singh and Baldev Singh.

Thereafter, the complainant party after due deliberations, and consultations, got registered the case in question and falsely involved us in the case. The police kept us in illegal custody for number of days and obtained the gun of my relative Labh Singh from his house and after firing shots from the gun in police Station”

Harbans and Mahla Singh adopted the aforesaid plea taken by Sardul Singh. However, accused Labh Singh took the plea of false implication in this case. In defence accused also tendered in evidence copies of earlier Civil Litigation regarding tubewell and its motor, which are Ex.D4

and Ex.D10, DDR No. 26 Ex.D11 and copy of Panchayatnama Mark B1 also tendered in evidence.

After hearing counsel for the parties and appraising the entire evidence and material on record, the learned trial Court recorded the impugned judgment of conviction dated 03.09.2010 and order of sentence dated 18.09.2010, as set out in the earlier part of this judgment.

We have heard learned counsel for the parties besides going through the record of this case.

First of all, it was argued by learned counsel for the appellants-accused that there is delay of about 17/18 hours in recording the FIR. This delay remained unexplained. As per prosecution case, the alleged occurrence had taken place at about 5:30 P.M. on 12.05.2008, whereas FIR of this case was got recorded on 13.05.2008 at about 11:00 A.M. This time has been utilized by the complainant party in deliberations, which resulted into false implication of them, 4 accused as well were found innocent by DSP in his inquiry report Ex.D1.

It is well settled that FIR in respect of cognizable offences should be lodged as soon as possible. Where lodging of report is delayed, it not only gets bereft its spontaneity, danger also creeps in of the introduction of coloured version, thoughtout stories and twisting of facts. Thus, some innocent person can be roped in and named as culprits, as a result of much thought, consultations and discussion. In this case, Gamdur Singh made his statement before the police on 13.05.2008 at about 11:00 A.M. Gurjant Singh, brother of complainant had died in this occurrence. As such, it was

first priority of complainant to take his brother to the Hospital and get him treated. Complainant cannot be expected to first rush to the police station for lodging the report instead of taking the injured to the hospital. Just after the occurrence, Gurjant was taken to hospital from where information was also sent to the police. There is nothing on record to show that complainant ever avoided getting his statement recorded to the police. On the other hand, time taken by the complainant in getting his statement recorded to the police can be termed as sufficient time and not unreasonable in any manner. As such, explanation furnished by the complainant, can be said to be satisfactory. Thus, it is not the case of delayed FIR.

It was next contended by learned counsel for the appellants-accused that the only independent witness Baldev Singh has not supported the prosecution case in any manner. Gamdur Singh (PW2) is the real brother of deceased Gurjant Singh. As such, he is interested witness. Thus, on the basis of complainant Gumdur Singh, accused cannot be convicted and no reliance can be placed on the statement of complainant.

Of course, complainant Gumdur Singh, is the real brother of deceased but simply because he is a relation witness, his evidence cannot be discarded. The witness being relation of deceased, by itself, does not make his evidence unreliable. It only puts the Court on guard to scrutinize their evidence with more than ordinary care, but where such witnesses tried to conceal and suppress their relationship, their evidence will have to be viewed with doubt. So has been held in **Bhupinder Singh Vs. State of Punjab, AIR 1968 SC 1438**. The present case is not the one in which complainant Gamdur

Singh ever tried to conceal his relationship with the deceased. It is also the settled proposition of law that word 'related' is not equivalent to interested'.

The witness may be called interested only when he or she derives some benefits from the result of litigation; in the decree in a civil case, or in seeing the accused persons punished. A witness is the natural one and is the only possible eye witness. In the circumstance of a case, he cannot be said to be interested. So has been held in *State of Rajasthan Vs. Smt. Kalki and another, 1981 CIJ 1012*. In the case in hand, complainant and deceased Gurjant Singh used to reside in the fields in their house. At the time of occurrence, both were present there. He has deposed in detail the manner in which occurrence had taken place. He deposed that Mahla Singh also fired shot at him. However, he could save himself by taking shelter of toilet wall. As such, complainant is the most natural witness whose presence cannot be doubted in any manner. Also, there is nothing on record to show that he was to in any way derive some benefits in seeing the accused punished. Of course, Baldev Singh (PW3) did not support the prosecution case yet only on that ground, it cannot be said that in fact no occurrence had even taken place. On the other hand, Sardul Singh and Harbans and Mehla have admitted the occurrence in which Gurjant Singh, received fire arm injury and died. Thus, death of Gurjant Singh, resulted in a fire arm injury, stands admitted by the accused themselves. In fact, there is nothing on the file to show that accused have ever made any complaint or application before senior police officers or authorities regarding their false implication. As such, this contention of learned counsel for the appellants-accused is devoid of any force.

Next argument raised by learned counsel for the appellants-accused that there is inconsistency between ocular and medical evidence on record, is again not sustainable, as nowhere Gumdur (PW2) specified the distance from which Mahla Singh accused fired a shot at Gurjant Singh. Of course, Dr. Manmohan Singh deol (PW10) reported blackening of margins in injury No.2 on the person of deceased and also categorically stated during the course of his cross-examination that since there was blackening so the shot was fired from a close range i.e. 3'-4', yet it cannot be said that there is inconsistency in the ocular evidence and medical evidence.

The next argument of Shri Parminder Singh-I, Advocate, counsel for the appellant is this; that the fatal injury has been attributed only to accused Mahla Singh, whereas the other accused simply raised *lalkara*, as per prosecution case, therefore, evidence of *lalkara* being weak type of evidence, accused cannot be convicted for the offence under Section 302 IPC. It was also contended that civil litigation is pending between the parties as is evident from the copy of the plaint Ex. D4, copy of written statement Ex. D5, an application under Order 39 Rule 1 and 2 CPC Ex.D6 and judgment dated 26.03.2009 Ex.D10. It is also the admitted case of the parties that said dispute was pending between the parties with regard to the electric connection. Thus, on account of tubewell connection regarding which civil litigation is pending, the accused have been implicated falsely in this case.

Complainant in the FIR itself made a mention about the motive part. PW Gumdur Singh deposed that he and his brother Gurjant Singh have been residing in their house in the fields. Sardul Singh and Harbans Singh

accused are his cousin. Their house is also nearby their house. There was a tubewell connection near their house which is in the name of his father. Accused party was claiming share in that motor. Gurjant Singh had told them that security for the motor was paid by his father and the motor connection was also in the name of his father. As such, they have got nothing to do with the motor. Sardul Singh reported the matter to the police station. It was also agreed that Panchayat was to get the matter compromised on 12.05.2008. Panchayat was convened but the accused resiled from their commitment and used derogatory remarks against the Panchayat. Under these circumstance, the present occurrence had taken place. As such, it cannot be said that since there was dispute on the tubewell connection between the parties, therefore, accused have been implicated falsely in this case.

Of course motive is a relevant factor in all criminal cases when based on testimony of eye witnesses or circumstantial evidence. It is generally difficult area for any prosecution to bring on record what was the mind of accused. It is almost impossible for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended. Thus, motive is a double edged weapon. On account of aforesaid dispute there was a cause for the accused to commit this crime as well. Gumdur Singh (PW2) categorically stated that on 12.05.2008 at about 5:30 P.M., he along with his brother Gurjant Singh were present in their house. Then Labh Singh armed with SBBL gun, Sardul Singh armed with *gandasa*, Harbans Singh armed with a *khapra*, Dalaur Singh armed with *gandasa* along with others, came in front of their house. Labh Singh accused fired 3 shots from his gun. When Gurjant Singh came out of the house,

Sardul Singh asked Mahla Singh to open fire on Gurjant Singh, then Mahla Singh took gun from Labh Singh and fired a shot upon Gurjant Singh which hit the left side of his chest and, thereafter, he fell down on the ground. PW2 further stated that, then he raised alaram of '*marta marta*' which attracted their relative Baldev Singh. Mahla Singh then fired another shot which hit Baldev Singh in his abdomen and, thereafter, Baldev Singh went inside the house. When he raised alarm, accused Mahla Singh fired another shot at him, however, he could save himself by taking shelter of toilet wall. Mahla Singh then again fired a shot and then all the accused had run away towards the fields. Under these circumstances, all the accused with common intention came in front of the house of complainant party and fired shots at them. May be shots were fired at Gurjant Singh, Baldev Singh and even on the complainant by accused Mahla Singh yet co-accused were also present there and participated in the commission of crime by hurling abuses, raising *lalkaras* inciting Mehla Singh to open fire at the complainant party. All of them were armed with deadly weapons. Labh Singh was armed with gun by taking gun of Labh Singh. Mahla Singh accused fired shot at the complainant party. Under these circumstances, it cannot be said that co-accused were in no way involved in this case or they are entitled to benefit of doubt in any manner.

The learned trial Court written the impugned judgment of conviction after appraising the evidence available on record, minutely. The impugned judgment is well reasoned judgment. We find no illegality in the impugned judgment so as to warrant interference of this Court.

For the reasons recorded above, finding no merit in this appeal.
Impugned judgment of conviction dated 03.09.2010 and order of sentence dated
18.09.2010 are maintained.

Dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

09.12.2015
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