

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D No.175-DB of 2010

Date of decision: 02.09.2015

Kuldip Singh

....Appellant

Vs.

State of Punjab

....Respondent

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

Present: Mr. Amit Mehta, Advocate,
for the appellant.

Mrs. Manjari Nehru Kaul, Addl. AG, Punjab,
for the respondent.

HEMANT GUPTA, J.

Kuldip Singh is in appeal aggrieved against the judgment of conviction and order of sentence dated 12.02.2009 passed by the learned Additional Sessions Judge, Rupnagar, vide which he was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.5000/- under Section 302 IPC, to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.3000/- under Section 307 IPC and to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.2000/- under Section 27 of the Arms Act. However, all the substantive sentences were ordered to run concurrently.

On 10.04.1988, information to the effect that firing has taken place in Bhakra Beas Management Board (BBMB) Colony, Ganguwal was

received by SI/SHO Gurdial Singh, who along with HC Nirmal Singh, C. Mohinder Singh, C. Daler Singh & C. Kewal Singh, was present at the turn of Ganguwal in connection with patrolling. On receipt of such information, he along with said police officials reached the place of occurrence and came to know that Agya Singh and Ved Parkash, injured, had been removed to BBMB Hospital, Nangal. Thereafter, he went to BBMB Hospital, Nangal. After obtaining opinion of the Doctor to the effect that Agya Singh is fit to make statement, he got recorded the statement of Agya Singh (Ex.PB).

In his statement (Ex.PB), Agya Singh stated that today i.e. 10.04.1988 at about 1.15 PM, when he along with Ved Parkash, Udham Singh & Amrik Singh, who are officials of Bhakra Beas Management Board (BBMB), Ganguwal, were waiting for their companions for playing cards near Water Tank, Ganguwal Colony, Kuldeep Singh, who is working as ASI in Security of BBMB and residing along with his family at Quarter No.33C in this colony, came there. Kuldeep Singh confronted Ved Parkash as to why he has signed against him. On Ved Parkash's denial, Kuldeep Singh took out his service revolver and fired towards Ved Parkash. The bullet hit on the head of Ved Parkash as a result of which, he fell down on the ground. He further stated that when he tried to intervene, Kuldeep Singh fired upon him, which hit on the left side of his chest. Thereafter, while raising alarm, he ran towards his quarter and told his wife Maninder Kuar to lock the door from inside and that ASI Kuldeep Singh has fired at him and he is after him. After some time, his wife took him to BBMB Hospital, Nangal and got admitted there. ASI Kuldeep Singh went towards to his quarter. Later, he came to know that Ved Parkash is also admitted in the hospital. On the basis of such statement, ruqa Ex.PB/1 was sent to the Police Station for registration of an

FIR. On receipt of such ruqa, FIR Ex.PM was registered under Sections 307 IPC and 25/54/59 of the Arms Act. Later, on receipt of information that Ved Parkash had died, offence under Section 302 IPC was added. The post-mortem on the dead body of Ved Parkash was got conducted.

Since the accused was not arrested, he was declared proclaimed offender vide order dated 10.06.1988. On completion of necessary formalities, challan was presented against the accused. It was on 07.05.2007, Kuldeep Singh – accused/appellant was arrested vide memo of arrest Ex.PW-11/A. During interrogation, the accused suffered a disclosure statement (Ex.PW-11/C) regarding concealment of service revolver along with 15 live cartridges and five empties in front of his brother's house in Village Damunda under the chaff inside the earth in a plastic box. Pursuant to such disclosure statement, the accused led the police party to the disclosed place and got recovered a plastic box containing the concealed articles. All the articles were taken into possession vide recovery memo Ex.PW-11/D. On completion of necessary formalities, supplementary challan was presented against the accused.

To prove its case, apart from examining PW-7 Dr. R.S.Soni, PMO (Retd.) and other witnesses of formal nature, the prosecution examined PW-2 Agya Singh – author of FIR; PW-4 Sanjiv Kumar son of Ved Parkash (deceased); PW-5 Maninder Kaur wife of Agya Singh; PW-6 Rachpal Kaur wife of Ved Parkash (deceased); PW-11 SI Raminder Singh, who arrested the accused on 07.05.2007 as well as PW-8 ASI Nirmal Singh and PW-10 Kewal Singh, Hawaldar (Retd.). The prosecution has also tendered into evidence reports of the Forensic Science Laboratory, Punjab, Chandigarh as Exs.PP and PP/2.

PW-7 Dr. R.S.Soni while appearing in the witness-box has deposed that he conducted the post-mortem examination on the dead body of Ved Parkash on 11.04.1988 at about 11.00 AM. The dead body was brought by Constable Bhag Singh and identified by Sanjiv Kumar son of Ved Parkash (deceased). He found that there was laceration around the edges of orifice or right external auditory canal measuring 1.5 cm x 1 cm. There was fracture of right temporal bone at its base. The brain matter was lacerated and blood clot was present over the surface of the brain. A cylindrical metallic body was found embedded in the brain matter on its occipital part. There was fracture of right temporal bone. In his opinion, the cause of death was due to injury to the brain matter by metallic foreign body (bullet) causing immediate death. He also proved the post mortem report as Ex.PJ.

PW-2 Agya Singh has reiterated his initial version i.e. basis of FIR. However, when asked to identify the accused, PW-2 Agya Singh deposed that his description resembles, but he is not definite whether he is same person, who is present in the Court, as the matter is about 20 years old.

PW-4 Sanjiv Kumar, son of Ved Parkash (deceased) has deposed that on 10.04.1988, he was present at his house i.e. Quarter No.51-C, Ganguwal. At about 1.00/1.30 PM, he heard the fire shot. He came out and saw that Agya Singh in an injured condition was running towards his house and Kuldip Singh, who was armed with revolver, was running behind him. He further deposed that Kuldip Singh fired towards Agya Singh, but he did not know that such fire hit him or not. Thereafter, he went to the water tank, where his father Ved Parkash was lying in an injured condition. At that time, eyes of his father were closed and blood was oozing from his ear. He deposed that he removed his father to BBMB Hospital, Nangal and got

admitted in Emergency Ward. After some time, the Doctors informed him that his father has died. He identified the accused as Kuldip Singh.

PW-5 Maninder Kaur is the wife of Agya Singh, injured. She deposed that on 10.04.1988 at about 1.00/1.40 PM, when she was present in her quarter, her husband having blood on his body opened the door and asked her to bolt the door from inside. She deposed that the clothes of her husband were fully stained with blood. She deposed that her husband further stated that Kuldip Singh had fired shot upon him and also asked to bolt the door from inside, as Kuldip Singh is following him. She deposed that she knew Kuldip Singh, as he was residing in Quarter No.33-C and was a police officer. She also identified the accused in the Court.

PW-8 ASI Nirmal Singh was the member of the police party headed by SI/SHO Gurdial Singh. He deposed that on receipt of information that firing has taken place in Ganguwal colony, the police party reached at BBMB Hospital, Nanagal, where the SHO recorded the statement of Agya Singh and Constable Kewal Singh was sent for registration of the case. He deposed that the Doctor had handed over the blood stained clothes i.e. shirt and baniyan of deceased Ved Parkash having signs of bullets, which were taken into possession vide memo Ex.PD. One bullet was also handed over by the Doctor, which was taken into possession vide memo Ex.PK. He deposed that thereafter the police party reached at the place of occurrence and taken into possession blood stained earth, one piece of *Gurgabi* (shoe) of Ved Parkash and chappal of Agya Singh.

PW-9 Inspector Bakhshish Singh, who was posted as MHC, CID, BBMB Nangal, in the year 1988, deposed that Kuldip Singh had joined as ASI in BBMB Nangal on 03.05.1987 and that his service record was

handed over to the police by him during investigation vide memo Ex.PL. He deposed that vide order dated 01.10.1987, service revolver of .38 bore and 30 cartridges were allowed to the accused and also proved such order as Ex.PL/1.

PW-11 SI Raminder Singh – the Investigating Officer, has deposed that on 07.05.2007 pursuant to a information that Kuldip Singh – Proclaimed Offender is going to surrender before the Court, he alongwith other police officials reached the Court complex, Ropar and arrested the accused from the main road outside the Court complex vide memo of arrest Ex.PW-11/A. He also deposed with regard to the further investigations carried out by him.

On conclusion of the prosecution evidence, the accused was confronted with the incriminating circumstances appearing against him while recording his statement under Section 313 Cr.P.C. The accused denied the prosecution allegations and asserted that he has been falsely implicated in this case at the instance of Agya Singh. In his defence, the accused examined DW-1 SI Bihari Lal; DW-2 Neelam Kumar, Assistant, Record Keeper, Sessions Court, Hoshiarpur and DW-3 Mehar Chand Rana, DSP (Retd.).

After considering the entire evidence on record, the learned trial Court convicted and sentenced the present appellant, as mentioned above.

Before this Court, learned counsel for the appellant has vehemently argued that the prosecution has miserably failed to prove the charges against the appellant, as PW-2 Agya Singh – author of FIR has failed to identify the accused and that other prosecution witnesses such as PW-3 Amrik Singh and PW-13 Chet Singh have turned hostile. Therefore,

in the absence of complete chain of circumstances, the appellant cannot be convicted for the offence of culpable homicide.

We have heard learned counsel for the parties and with their assistance gone through the entire record carefully. Admittedly, the appellant was working as ASI in Punjab Police and posted at BBMB Nangal. No doubt, PW-2 Agya Singh has deposed that the accused present in Court resembles Kuldip Singh and that he was not sure, whether the accused was the same person or not, as he was being examined after 20 years of the occurrence. But this part of the statement of the witness does make the entire prosecution story doubtful, when PW-2 Agya Singh has supported the prosecution story in its entirety, though he has not identified the accused in Court. However, PW-4 Sanjiv Kumar, son of the deceased and PW-5 Maninder Kaur, wife of PW-2 Agya Singh have identified the accused. As per PW-4 Sanjiv Kumar, when he came out of his house upon hearing the fire shot, he saw Agya Singh running towards his house in an injured condition and that Kuldip Singh, who was armed with revolver, was running behind him. Such statement of PW-4 Sanjiv Kumar stands corroborated by PW-5 Maninder Kaur, wife of Agya Singh, when she deposed that on 10.04.1988 at about 1.00/1.40 PM, her husband opened the door and asked her to bolt the door from inside, as Kuldip Singh had given a fire shot upon him and that he is following him. The accused-appellant, the injured and the family of the deceased were all residing in the near vicinity. Therefore, identity of the accused was not unknown.

Though some of the prosecution witnesses have turned hostile and not supported the prosecution case, but the fact remains that the service revolver used in the commission of crime in the present case along with 15

live cartridges and five empties was recovered in pursuance of the disclosure statement (Ex.PW-11/C) suffered by the accused-appellant. All the articles were taken into possession vide recovery memo Ex.PW-11/D. As per the testimony of PW-9 Inspector Bakhshish Singh, it stands proved that vide order dated 01.10.1987, service revolver of .38 bore and 30 cartridges were allowed to appellant Kuldip Singh, who joined as ASI in BBMB Nangal on 03.05.1987. The report of the Forensic Science Laboratory is Ex.PP. As per the said report, the Forensic Science Laboratory received two sealed parcels i.e. Parcel 'A' containing (i) five .380 inch K.F. cartridges cases marked C/1 to C/5; (ii) fifteen .380 inch K.F. live cartridges marked L/1 to L/15; & (iii) one .380 inch Ruger Police Service revolver No.161-26743 marked W/1 and Parcel 'B' containing five .380 inch test cartridges. On examination, it was found that five .380 inch K.F. cartridges marked C/1 to C/5 had been fired from .380 inch Ruger Police Service Revolver and that firing mechanism of .380 inch Ruger Police Service Revolver is in the working condition. The allotment of service revolver of .38 bore and 30 cartridges corroborated by the recovery of service revolver alongwith 15 live cartridges and five empties at the instance of the appellant and subsequent report of the Forensic Science Laboratory that the bullets were fired from the service revolver so recovered, sufficiently prove the commission of crime by the appellant completing the chain of circumstances.

A perusal of the report of the Forensic Science Laboratory Ex.PP does not show that bullet Ex.PK recovered from the dead body of Ved Parkash was sent for examination. But even if the said bullet was not sent for examination, it does not create any dent on the prosecution story, as PW-2 Agya Singh and PW-4 Sanjiv Kumar have categorically stated that it is

Kuldip Singh, who fired from his service revolver. Recovery of a bullet from the dead body of Ved Parkash corroborates that part of the statement of both the witnesses, when they deposed regarding firing of a bullet from the service revolver. Since the accused was arrested after long lapse of time, it appears that the bullet recovered from the dead body of Ved Parkash was not sent for examination.

Thus, we find that the prosecution has proved the commission of offence by the appellant on the basis of testimonies of PW-2 Agya Singh; PW-4 Sanjiv Kumar and PW-5 Maninder Kaur. The judgment of conviction and order of sentence is based upon correct appreciation of evidence. It could not be pointed out that any evidence is misread or not taken into consideration. The view taken by the trial Court does not suffer from any illegality or irregularity warranting interference by this Court.

Dismissed.

(HEMANT GUPTA)
JUDGE

02.09.2015
Vimal

(RAJ RAHUL GARG)
JUDGE