

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D-19-DB of 2011 (O&M)

Date of decision:14.10.2015

Sukhwinder Singh

....Appellant

VERSUS

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. L.S. Sidhu, Advocate for the appellant.

Ms. Manjari Nehru Kaul, Additional A.G. Punjab.

HEMANT GUPTA, J.

The present appeal is directed against an order passed by learned Sessions Judge, Sangrur on 07.10.2010 convicting the appellant for an offence under Section 302 of Indian Penal Code (for short 'IPC') and sentencing him to undergo life imprisonment and to pay a fine of Rs.10,000/-. The appellant was also sentenced to undergo rigorous imprisonment for a period of three years for an offence under Section 27 of the Arms Act, 1959.

The prosecution case was set in motion on the statement of Sukhdeep Singh @ Happy made to Sub Inspector (for short 'SI') Bharpur Singh at about 10 AM on 24.06.2008. He has stated that his father Harminder Singh (since deceased) is President of Gurdwara 1st, 6th and 9th 'Patshahi'. His father had called Amar Nath son of Bir Chand to go to

Bathinda to purchase a Generator for Gurdwara Sahib. Amar Nath came to their house. Around 6:45 AM Amar Nath was enquiring about his father, when he was standing at the gate. He told him that his father had gone to outer house to call their servant Sambhu Bhayia. When his father while returning home reached near the gate, then Sukhwinder Singh son of Balwant Singh, the present appellant, came out of the adjoining vacant plot of Pandit Roop Chand with a .12 bore gun in his hand. He fired .12 bore gun which hit on the left side in the chest of his father. His father fell down. He and Amar Nath raised alarm but Sukhwinder Singh ran away from the spot with his .12 bore gun. He and Amar Nath removed his father to Civil Hospital, Sangrur where his father was declared dead. The cause of grudge was said to be that there was altercation between his father and Jaswinder Singh @ Jassi in the Panchayat Election and Sukhwinder Singh was encouraged by Jaswinder Singh to take life of his father. On the basis of such statement, ruqa Ex.PA/1 was sent to Police Station City, Sangrur and on the basis of such ruqa, First Information Report (for short 'FIR') Ex.PA/2 was lodged.

SI Bharpur Singh after lodging the FIR went to the Civil Hospital and noticed fire-arm injury on the left side of the chest. The photographs were taken and the inquest report Ex.PK was prepared. The dead body was handed over to Head Constable Pavittar Singh for postmortem examination. Thereafter, he went to the place of occurrence. From the spot he took into possession three round shape wad cards of cartridge, which were taken in possession vide memo Ex.PC and sealed with seal 'BS'. The Arm Licence was also taken in possession vide memo Ex.PD found in the enclosure i.e place of Pandit Roop Chand. One plastic

bottle of Maaza was also lying in the said enclosure. Finger prints from the bottle were preserved and taken in possession vide memo Ex.PE. Near the place of occurrence where the Arm Licence and bottle were lying, two moulds of naked feet were lifted by him with the help of plaster of paris (POP) and were taken in possession vide memo Ex.PF and handed over to ASI Harbans Singh.

Thereafter, other formalities relating to investigation was completed. It was on 27.06.2008, Paramjit Singh produced the accused before the Investigating Officer and was arrested. The accused produced a .12 bore double barrel gun, an empty cartridge and 8 live cartridges which were taken in possession. During the investigation, the samples of feet of accused was also taken after the order of Sub Divisional Magistrate, Sangrur in the presence of Executive Magistrate on 28.06.2008.

After completion of the necessary investigations, the prosecution submitted its report under Section 173 of the Code of Criminal Procedure (for short 'Cr.P.C.') and made the accused to stand trial. During the trial, the prosecution examined PW7 Dr. Parbhat Kumar who sent ruqa Ex.PG and PW8 Dr. Makhan Singh who had conducted the postmortem examination. During the postmortem examination, the doctor handed over a plastic box containing wad and bullet to HC Pavittar Singh. The postmortem report is Ex.PH. He has also deposed that there is hole in the shirt Ex.P1 which corresponds to the injury. In cross-examination, he opined that the deceased would have suffered the shot while he was still standing. There was no exit wound of the fire shot and the shot was caused on person of deceased from close range. The bullet was recovered

from the body along with the wad but the pellets were not found having scattered in the body.

The prosecution examined the author of FIR and the son of the deceased Sukhdeep Singh as PW1. He reiterated the version, the basis of FIR (Ex.PA/2), in his examination in chief. In cross-examination, he stated that there is distance of about less than half a kilometer between the house of Amar Nath and his father. The road where he and Amar Nath were talking was metalled one but nobody was present at that time. His mother has just come from Gurudwara Sahib. He deposed that his wife and sister were present in the house. His mother came before his father was murdered and his mother came out of the house after he raised alarm. The fire shot was caused by accused being at the distance of 3-4 karams away from his father. The fire shot was caused by accused having put the gun towards his father. At that time his father was wearing only Kachhehra (long underwear) and a shirt and was not having any turban on his head. He and Amar Nath were standing by the side of each other and there was no gap between him and Amar Nath. After firing, Sukhwinder Singh ran towards the flour mill which is situated near the school. He further deposed that they removed his father in a car owned by him within 3-4 minutes and when he was breathing. The doctor who checked him found his father has breathed his last.

PW4 Amar Nath has supported the prosecution story as given by PW1 Sukhdeep Singh. He deposed that Sukhwinder Singh had come from the enclosure of Roop Chand holding a .12 bore gun and caused a fire shot towards Harminder Singh from distance of 3-4 karams. Harminder Singh was removed to Civil Hospital, Sangrur in his own vehicle by

Sukhdeep Singh. In cross-examination, he gave the distance between his house and that house of accused is 60 karams. They talked for 2 or 2½ minutes with each other before his father had come. There was a gap of 2 or 2½ feet between him and Sukhdeep Singh, when shot was fired. He heard the fire shot when he was at a distance of 4 karams from the deceased and the accused caused a fire shot after coming in front of deceased while standing. He deposed that no blood had fallen on his cloth nor the car in which the deceased was removed.

The prosecution also examined Nachhattar Kaur wife of deceased as PW5 who came out of the house after hearing the fire shot. She noticed Sukhwinder Singh and Jaswinder Singh @ Jassi running away.

The prosecution examined PW2 Jaswant Singh and PW6 Sarwan Singh in respect of disputes regarding elections. PW3 Paramjit Singh is a witness before whom the accused has made extra-judicial confession on 27.06.2008. In cross-examination, he stated that he has dealing up to the level of Police Station and he is not acquainted with any senior police officer like DSP or SSP and that he has no special intimacy with the deceased.

PW9 is Nirmal Singh Sandhu, Naib Tehsildar, Gobindgarh, in whose presence the moulds of feet of the accused were taken. He is the person before whom, feet moulds were also lifted from the place of occurrence and was also put up before him.

PW15 SI Bharpur Singh in his cross-examination, stated that he did not inquire as to in which vehicle the dead body was brought or about the driver of the said vehicle and there was no blood on the clothes of Amar Nath but there was blood on the hands of Sukhdeep Singh. He

does not remember whether the clothes of Sukhdeep Singh were stained with blood or not.

The report of Forensic Science Laboratory in respect of feet moulds recovered from the spot and the sample foot mould is Ex.PZ. The result of examination is that the impression of left and right naked feet lifted from the scene of crime could be from the left and right feet of suspect Sukhwinder Singh. In Ex.PY relating to firing from .12 bore double barrel gun recovered from the appellant, it was found that plastic cushion wad and spherical lead ball recovered from the dead body are the components of .12 bore cartridge but no definite opinion can be offered with respect to .12 bore cartridge fired from .12 bore double barrel gun recovered from accused due to lack of sufficient individual characteristic marks.

On completion of formal and other witnesses, the statement of accused under Section 313 Cr.P.C. was recorded. He stated that he has been falsely implicated but alleged that the deceased has taken Rs.13 lakhs from him and that when demanded, the said money was not returned and therefore, he has been falsely implicated. However, the accused did not lead any defence evidence.

Learned counsel for the appellant has vehemently argued that the motive of commission of crime was said to be dispute relating to election at the instance of Jaswinder Singh @ Jassi. Such is the statement of PW2 Jaswant Singh and PW6 Sarwan Singh and that of son (PW1 Sukhdeep Singh) and wife (PW5 Nachhattar Kaur) of the deceased. Therefore, the appellant has been implicated falsely. It is also contended that the prosecution has not produced the Forensic Science Laboratory

result of the fingerprint impression lifted from the Maaza bottle from the enclosure from where the arm licence was also said to have been recovered. This important piece of evidence has been withheld by the prosecution. It is also argued that the prosecution witnesses are interested witnesses and their testimony cannot be made basis of convicting the appellant.

We have heard learned counsel for the parties and find no merit in the present appeal. The houses of PW4 Amar Nath and that of PW1 Sukhdeep Singh are not very far away as deposed by PW4 Amar Nath and PW1 Sukhdeep Singh. The presence of Amar Nath at the place of occurrence is natural as he is stated to have been called for going to Bathinda for purchase of generator. Both PW1 Sukhdeep Singh and PW4 Amar Nath are consistent that they were standing near to each other when the accused fired from a distance of 3-4 karams upon the deceased. Though as per the doctor, the double barrel gun was fired from a close range but the said discrepancy in respect of the distance from where the shot was fired, is not material as both the witnesses are categorical that it was the accused who fired upon the deceased.

The accused had come from the enclosure of Roop Chand adjoining the house of the deceased. The arm licence and Maaza bottle has been recovered from such enclosure of Roop Chand. Whether the accused was drinking Maaza before coming to the place of occurrence is matter of guess. Therefore, mere fact that the Forensic Science Laboratory report in respect of fingerprints has not been produced may not be really material in as much as the categorical stand of PW1 Sukhdeep Singh and PW4 Amar Nath is that the accused came from the enclosure of Roop Chand and fired

upon the deceased Harminder Singh with his .12 bore gun. After the occurrence, PW5 Nachhattar Kaur, wife of the deceased, had witnessed Sukhwinder Singh running away from the spot.

In view of the testimony of PW1 Sukhdeep Singh, the son of the deceased corroborated by independent witness PW4 Amar Nath and also by the foot mould impressions lifted from the place of occurrence with the samples, we find that the prosecution has proved the charges against the accused conclusively. Apart from the said evidence, FSL report Ex.PY also corroborates the prosecution story when the wad and lead ball recovered from the dead body are said to be part of components of .12 bore gun.

Therefore, keeping in view the testimony of the eye-witnesses corroborated by the recovery of the moulds, the cartridge, the wad and lead ball recovered from the dead body, proves the commission of crime by the appellant and the appellant alone. The statements of the witnesses are that of trustworthy and reliable witnesses and cannot be said to be tainted in any manner.

Consequently, we do not find any merit in the present appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

OCTOBER 14, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE