

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

CRA No.D-339-DB-2011.

Date of decision: 22.01.2015.

Harpreet Singh

.....Appellant

Versus

State of Punjab

.....Respondent

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

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

Present: Mr.Vinod Ghai, Senior Advocate with
Mr.Vikramjit Singh, Advocate for the appellant.

Mr.P.P.S. Thethi, Additional, A.G. for
the respondent-State of Punjab.

DARSHAN SINGH J.

Present appeal has been preferred against the judgment of conviction dated 26.11.2010, vide which appellant Harpreet Singh has been held guilty and convicted for the offences punishable under Sections 392 and 460 of the Indian Penal Code 1860 (in short 'IPC') and the order on quantum of sentence dated 27.11.2010, vide which the appellant has been sentenced to undergo rigorous imprisonment for a period of 10 years and a fine of Rs.5000/-, in default of payment of fine, to further undergo rigorous imprisonment for a period of six months for the offence

punishable under Section 392 IPC. He has been further sentenced to undergo rigorous imprisonment for life and fine of Rs.5000/-, in default of payment of fine, to further undergo rigorous imprisonment for a period of six months for the offence punishable under Section 460 IPC.

2. The brief facts, giving rise to this prosecution, are that on 20.09.2007, PW1 complainant Pal Singh made the statement Ex.PA to PW9 SI Jagbir Singh, alleging therein that he had sold some of his land to one Prem Aggarwal, resident of Panchkula about four years ago, wherein he had installed Kohinoor IBP Filling Station. On 20.09.2007, he came to know that an occurrence had taken place at the petrol pump. At this, he along with PW5 Sewa Singh rushed to the petrol pump and found that salesman PW12 Vikram Singh was locked inside in an injured condition, whereas, dead body of Amar Singh, the security guard, was lying outside the room. Salesman Vikram Singh narrated that three Sikh young boys came on foot at about 02:30 a.m. in the morning i.e. night intervening 19/20.09.2007, armed with two rifles. They opened fire and killed Amar Singh. They fired the second shot at him (Vikram Singh), who got injured. While leaving the spot, the culprits had taken away a cash amount of Rs.26,000/-, 12 bore rifle of security guard Amar Singh and Tata Indicom make mobile phone of Vikram Singh. They locked Vikram Singh in an injured condition inside the room. Vikram Singh was immediately shifted to the hospital. PW9 SI Jagbir Singh made his endorsement on the statement Ex.PA and sent the same to the Police Station. On the basis of which, formal FIR Ex.PA/2 was registered. SI

Jagbir Singh inspected the spot and lifted the blood stained earth as well as the simple earth from the spot, which were converted into sealed parcels and were taken into possession vide memo Ex.PF and Ex.PG, respectively. He also lifted from the spot two empty cartridges of 12 bore by converting into the sealed parcel vide memo Ex.PH. The dead body of Amar Singh was lying at the spot. He inspected the dead body and recovered two live cartridges of 12 bore each from the left pocket of deceased and two cartridges from the cloth bag tied with the cycle of the deceased. All the four live cartridges were taken into possession vide memo Ex.PJ, after converting into sealed parcels. He also prepared the rough site plan of the place of occurrence Ex.PK and the inquest report Ex.PE. The dead body of Amar Singh was sent to the A.P. Jain Hospital, Rajpura for the post-mortem examination. The services of the photographer were also requisitioned and the spot was photographed. After the post-mortem examination, HC Gurdeep produced the parcel containing the belongings of the deceased and other sealed parcels containing the pellets removed during post-mortem examination by the doctor, which were taken into possession vide memo Ex.PL and Ex.PM, respectively. One Nagar Singh, the complainant of case FIR No.113 dated 30.07.2007, Police Station Lalru produced one empty cartridges of 12 bore before the Investigating Officer, which was also taken into possession vide memo Ex.PN. The case property was deposited with the Moharir Head Constable.

3. On 14.01.2008, injured Vikram Singh went to the Rajpura

Courts after reading the news item in Punjabi Tribune dated 12.01.2008 where four persons were produced by the Lalru police. He identified two of them as the persons, who had committed this occurrence at their petrol pump, causing death of Amar Singh. The names of those persons were disclosed to be appellant Harpreet Singh and his co-accused Baljit Singh. They were arrested in this case with the permission of the Court. During the course of investigation, they confessed the commission of the offence. These accused were arrested by PW14 SI Sukhwinder Singh, the then SHO, Police Station Lalru on 10.01.2008. One 12 bore rifle and six live cartridges of the same bore were recovered from the possession of the present appellant. One 12 bore rifle along with six live cartridges were also recovered from the possession of accused Baljit Singh for which, the separate cases under Section 25 of the Arms Act were registered against them. During the interrogation, accused Baljit Singh disclosed about the present occurrence, vide disclosure statement Ex.PW14/B. Appellant Harpreet Singh had also suffered the disclosure statement and got recovered Rs.27,400/- and the 12 bore rifle snatched from deceased Amar Singh and four live cartridges from his field at Gulabgarh. These articles were kept in sealed parcels and were taken into possession vide memo Ex.PW14/D. After completion of the investigation, the present report under Section 173 Cr.P.C. was presented in the Court.

4. Appellant Harpreet Singh along with his co-accused Baljit Singh were charge sheeted under Sections 392 and 460 IPC, to which they pleaded not guilty and claimed trial.

5. In order to substantiate its case, prosecution examined as many as 14 witnesses. The learned Public Prosecutor also tendered in evidence the reports of the Forensic Science Laboratory Ex.PX and Ex.PY.

6. When examined under Section 313 Cr.P.C., appellant Harpreet Singh pleaded that he is innocent and has been falsely implicated in this case. The police has implicated him in a blind case in order to make it successful. He did not commit any offence. No evidence was led by accused in their defence.

7. On appreciating the evidence on record and contentions raised by learned counsel for the parties, the learned trial Court held guilty and convicted appellant Harpreet Singh for the offences punishable under Sections 392 and 460 IPC, whereas accused Baljit Singh was acquitted of the charges. Appellant was awarded the sentence as mentioned in the upper part of the judgment.

8. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

9. We have heard Mr.Vinod Ghai, learned Senior Advocate, assisted by Mr.Vikramjit Singh, Advocate, learned counsel for the appellant, Mr. P.P.S. Thethi, learned Additional, Advocate General for the respondent-State of Punjab and have meticulously examined the record of the case.

10. Initiating the arguments, learned Senior Counsel for the appellant contended that there is no incriminating evidence against the

appellant to connect him with the commission of the offence. The name of the appellant does not figure in the statement of PW1 Pal Singh Ex.PA, on the basis of which this case has been registered. The most material witness of the prosecution injured Vikram Singh has not supported the prosecution version at all and was declared hostile. He did not identify the accused during his statement. Both the accused were not earlier known to the witnesses. No test identification parade has been held after their arrest. The sole witness of the occurrence Vikram Singh has not supported the prosecution case. The entire case of the prosecution is based on the recovery of Rs.27,400/-, one 12 bore rifle and some cartridges. The currency notes, allegedly recovered from the appellant, are not at all connected with the present occurrence. It is also not believable that a person will keep concealed the currency notes in such a manner for about four months. The recovery of the rifle from the possession of the appellant is also not established. There is only the solitary statement of PW14 SI Sukhwinder Singh on that point, which is not corroborated from any other source. The other witnesses of recovery have not been examined and were rather given up as unnecessary. The gun, allegedly recovered from the appellant, was not taken into possession by the Investigating Officer of this case.

11. He further contended that it is alleged that another gun was recovered from the possession of the appellant, for which a separate case under Section 25 of the Arms Act was registered. No firearm recovered from the appellant, has been sent to the Forensic Science

Laboratory, to connect it with the pellets recovered from the dead body of Amar Singh. Thus, he contended that there is no incriminating evidence on record against the appellant to establish the charges.

12. On the other hand, learned Additional Advocate General for the State of Punjab contended that unfortunately PW12 injured witness Vikram Singh has not supported the prosecution case but the circumstantial evidence available on record against the appellant is sufficient to establish the charges against him. Appellant along with his co-accused Baljit Singh was apprehended by the Lalru police on 10.01.2008. Appellant has suffered the disclosure statement before Lalru police. In pursuance of that disclosure statement, he has got recovered the cash amount stolen from the petrol pump and the rifle of deceased Amar Singh. Thus, he contended that the rifle belonging to the deceased and money looted from the petrol pump have been recovered from the possession of the appellant, which are sufficient to establish the charges against the appellant.

13. We have duly considered the aforesaid contentions.

14. As per the prosecution case, on the night intervening 19/20.9.2007, three Sikh young boys came on foot at about 02:30 a.m. to the Kohinoor Filling Station village Basma. They opened fire and killed Amar Singh, security guard. They also caused firearm injury to PW12 Vikram Singh and he was confined in a room. They committed robbery and stolen Rs.26,000/- in cash. They also carried away a 12 bore rifle of security guard Amar Singh and mobile phone of Vikram Singh. In the

subsequent supplementary statement dated 30.10.2007, it was mentioned that two young persons were involving in the occurrence. As per the aforesaid version, the case of the prosecution was based on the direct evidence i.e. the statement of injured witness Vikram Singh, though the names of the culprits are not mentioned in the FIR.

15. Except PW12 Vikram Singh, there is no witness of occurrence in this case. PW1 Pal Singh complainant has only reached at the spot on receiving the information about this occurrence and has categorically stated in the cross examination that incident did not take place in his presence. PW5 Sewa Singh has also accompanied the complainant to the spot. He has also categorically deposed in the cross examination that he has not witnessed the occurrence nor any occurrence took place in his presence. He further deposed that the articles were also not robbed from the petrol pump in his presence. He could not identify the accused present in the Court. PW2 Harvinder Singh, the son of deceased Amar Singh has simply produced the photocopy of arms licence of his father and identified his dead body. PW3 Gurcharan Singh was the witness of last seen. As per the prosecution version, he has seen the accused near the place of occurrence while he was returning to the village after supplying food to deceased Amar Singh but he has not supported the prosecution version on this aspect and had turned hostile. The remaining witnesses examined by the prosecution are either the formal witnesses or the police officials, who remained associated in the investigation of the case. Thus, so far as the direct evidence with respect to the commission

of the offence and identity of the culprits, was entirely based on the sole statement of PW12 Vikram Singh.

16. PW12 Vikram Singh is the star witness of the prosecution. This witness though has deposed about the occurrence having taken place but he did not identify the accused. He has deposed that on 19.07.2009, he was present at the Filling Station. At about 01:30 a.m., three person came there on motorcycle with muffled faces. Amar Singh Chowkidar was sitting on the cot. His rifle was lying on a separate cot. One person out of those three, fired a shot at Amar Singh, who died on the spot. Then one person fired a shot upon him and he received the injuries. Those persons demanded key from him and entered the office room and collected cash from the Almirah. They dragged him to the office room and confined him there and bolted the room from outside and went away. They took cash amount of Rs.26,000/- and the rifle of Amar Singh. In the morning time, one person came to the petrol pump for getting petrol. He got him freed from the room. Pal Singh and police also came there and thereafter, he deposed that he cannot identify those persons who came at the petrol pump and fired shot upon them and stolen the cash and rifle. He further categorically stated that the accused present in the Court are not the same persons who had come at the petrol pump. This witness was declared hostile and was cross examined at length by the learned Public Prosecutor but he failed to extract anything from the cross examination of the witness with respect to the identity of the culprit. The evidence regarding the identity of the culprit is very essential to connect the

appellant with the commission of crime. This fact is not disputed that the unfortunate incident had taken place at the petrol pump but in order to held the appellant liable for the commission of the offence, it was incumbent upon the prosecution to establish that the appellant was the person who was involved in this occurrence, for that the evidence qua the identification of the appellant was very essential. But PW12 injured witness Vikram Singh, the star witness of the prosecution, has not supported the prosecution case on the point of the identity of the appellant, rather he has categorically stated that the accused present in the court are not the same persons, who had come to the petrol pump. So, the statement of PW12 Vikram Singh is of no help to the prosecution in order to fix the identity of the appellant.

17. Except PW12 Vikram Singh, there was no witness of the occurrence. He was the sole witness to the occurrence, who also received the injuries but he has not supported the prosecution version with respect to the identity of the appellant. The other witnesses examined by the prosecution are not the witnesses to the occurrence. They have reached at the spot on receiving the information about the occurrence. So, their testimonies have absolutely no bearing about the identity of the culprit.

18. No doubt when the direct evidence is not coming forward, it becomes the duty of the Court to take into consideration the circumstantial evidence, if any, available on record to establish the charges.

19. In **Sharad Birdhi Chand Sarda Vs. State of**

Maharashtra 1984 Supreme Court Cases (Criminal) 487 the Hon'ble Supreme Court has laid down the principles of law to prove the cases based on circumstantial evidence as under:

- 1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;
- 2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- 3) the circumstances should be of a conclusive nature and tendency;
- 4) they should exclude every possible hypothesis except the one to be proved; and
- 5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

20. It is settled principle of law that the crime may be heinous, morally repulsive and extremely shocking, but moral considerations cannot be a substitute for legal evidence and the accused cannot be convicted on moral considerations. The conviction can only be based on the basis of legal evidence. To support of this view, reference can be made to case **K. Venkateshwarlu Vs. State of Andhra Pradesh 2012(3) RCR (Criminal) 990.**

21. In the instant case, the learned trial Court has relied upon

the five circumstances to record the conviction of the appellant. The first circumstance referred by the trial Court is only with respect to the occurrence having been taken place at Kohinoor Filling Station of IBP situated in village Basma. The second circumstance relied upon by the learned trial Court is with respect to the medical evidence. In the third circumstance, the learned trial Court has referred the police statement of PW3 Gurcharan Singh but he has not supported the prosecution case. The trial Court has mentioned that, however, it is established that deceased Amar Singh was lastly seen at the petrol pump on the night of occurrence, which is not a disputed fact. The fourth and fifth circumstances, relied upon by learned trial Court, relate to the disclosure statement of the appellant and recovery of the 12 bore rifle belonging to deceased Amar Singh from his possession. The first three circumstances discussed by the learned trial Court do not connect the appellant at all with the present occurrence because it is not disputed that the occurrence has, in fact, taken place at the Kohinoor petrol pump on the night intervening 19/20.9.2007, in which Amar Singh security guard had died and PW12 Vikram Singh had received the firearm injuries. The culprits have also committed robbery and taken away Rs.26000/- in cash, the rifle of the security guard Amar Singh and the mobile phone of Vikram Singh. In order to succeed, the prosecution was required to establish that it was the appellant who was involved in the commission of the aforesaid occurrence, which is totally lacking in this case.

22. Learned trial Court has held guilty and convicted the

appellant believing the recovery of 12 bore rifle of the deceased from the possession of the appellant. So, now we have to consider as to whether the prosecution has been able to establish the recovery of the rifle of the deceased along with other articles from the possession of appellant Harpreet Singh or not.

23. As per the testimony of PW14 SI Sukhwinder Singh, on 10.01.2008 he arrested appellant Harpreet Singh alias Preet and his co-accused Baljit Singh alias Bhola. At the time of their arrest, a 12 bore rifle along with six live cartridges of the same bore were recovered from the possession of the present appellant. Similarly, his co-accused Baljit was also found in possession of a 12 bore rifle and six live cartridges. For these recoveries, case FIR No.2 dated 10.01.2008 under Section 25 of Arms Act was registered at Police Station Lalru. These recoveries were effected in the presence of SI Santokh Singh and ASI Shinderpal Singh. It further comes out from the statement of PW14 SI Sukhwinder Singh that on interrogation, appellant Harpreet Singh suffered the disclosure statement Ex.PW14/C and in pursuance of that disclosure statement, he got recovered a sum of Rs.27,400/-, point 12 bore rifle belonging to deceased Amar Singh and four live cartridges from his field, situated at village Gulabgarh. This disclosure statement and recoveries have taken place in the presence of SI Santokh Singh and Shinderpal Singh.

24. On the point of the recovery of the aforesaid articles from the possession of the appellant, the prosecution has only examined SI Sukhwinder Singh. The other recovery witnesses namely SI Santokh

Singh and ASI Shinderpal Singh have been given up as unnecessary by the learned Public Prosecutor, vide statement dated 07.07.2010. So, on the point of recovery of the aforesaid articles from the possession of the appellant, there is the sole statement of PW14 SI Sukhwinder Singh. SI Sukhwinder Singh has admitted in the cross examination that the place of interrogation of the appellant was a thoroughfare. One or two passer's by were tried to be joined in the investigation but they refused to join but he does not remember the names of those persons and their names were also not incorporated in the case diary. He did not remember even the residential addresses and villages of those persons. He further deposed that no Namberdar was called to join the investigation. From the aforesaid admissions of SI Sukhwinder Singh, it comes out that the place of interrogation of the appellant was a thoroughfare and even the independent witnesses were available but they have not been associated. There is no dispute with the proposition of law that simply due to non-joining of the independent witness, the testimonies of the official witnesses cannot be discarded but at the time same time when the Investigating Officer had an opportunity to associate the independent witnesses but they have not been joined nor any plausible explanation is coming forward, the Court is required to scrutinize the prosecution evidence minutely, carefully and consciously. In that eventuality there must be some other corroboration to the statement of the Investigating Officer. But in the instant case, the prosecution has examined only SI Sukhwinder Singh in order to prove the disclosure statement and

recovery from the possession of appellant Harpreet Singh. Surprisingly the witnesses of the disclosure statement and recovery namely SI Santokh Singh and ASI Shinderpal Singh have been given up as unnecessary, that amounts to withholding of the material witnesses from the Court and raises the adverse inference against the prosecution. At least one of those witnesses should have been examined in order to corroborate the testimony of SI Sukhwinder Singh. Thus, due to non-examination of these witnesses, the testimony of SI Sukhwinder Singh is not corroborated from any other source.

25. It is not safe to rely upon the uncorroborated testimony of the Investigating Officer, as in the cases, where there is the sole statement of the Investigating Officer, a serious prejudice is caused to the accused as he is unable to demonstrate the falsity in the in the prosecution version by comparing the cross examination of the witnesses. The story of the prosecution with respect to the recovery is also improbable. As per the disclosure statement of appellant Ex.PW14/C, he had kept concealed the rifle robbed from the security guard of the petrol pump, four live cartridges and Rs.27,4000/- robbed in the occurrence. As per the prosecution story the cash amount of Rs.26,000/- was robbed whereas recovery of Rs.27,400/- has been shown. There is no evidence to connect the recovered currency notes with the looted amount from the Kohinoor Filling Station. The present occurrence has taken place on the night intervening 19/20.9.2007 and the recovery has been effected on 10.01.2008 i.e. after about four months. It is not believable that the

accused would have kept the same currency notes for such a long period. Moreover, it is highly improbable that the cash amount will be kept concealed in the heap of 'Parali' (fodder). The purpose of committing the robbery and to looted the cash amount is to get money to satisfy the needs. It is highly improbable that a person will commit robbery only to keep the robbed amount safe that too in the heap of 'Parali' in the field. So, the improbable and unreliable version put forward by the prosecution with respect to the recovery of cash amount also renders the recovery of other articles doubtful, particularly in the circumstances when there is absolutely no corroboration to the statement of PW14 SI Sukhwinder Singh the Investigating Officer on this aspect. There is another material circumstance, which renders the disclosure statement as well as the recovery doubtful. PW9 SI Jagbir Singh the Investigating Officer of this case has given a very funny statement. He stated that on 11.01.2008 from the press conference of the Director General of Police, Punjab, he came to know about the apprehension of the accused. The appellant is alleged to have been arrested and suffered the disclosure statement leading to the recovery on 10.01.2008. In the disclosure statement Ex.P14/C, he has categorically disclosed about the robbery committed by them on the petrol pump situated in village Basma and killing the security guard. It is not believable that after coming to know about this occurrence from the disclosure statement of the appellant, no information would have been sent by the Lalru police to PW9 SI Jagbir Singh, who was the SHO of Police Station Banaur. The version of SI Jagbir Singh that he only came

to know about the apprehension of the appellant from the news item published in the newspaper on the basis of the press conference of the Director General of Police, does not inspire confidence at all. This version of PW9 SI Jagbir Singh renders the disclosure statement as well as recovery alleged to have been effected on 10.01.2008 itself doubtful.

26. It is further highly surprising that the weapons recovered by the Lalru police were not got transferred in the present case. As per the prosecution version two empty cartridges were lifted from the spot. The pellets were also taken out from the body of deceased Amar Singh at the time of post-mortem examination and these articles were sent to the Forensic Science Laboratory for examination. But the weapons recovered from the appellant in case FIR No.2 dated 10.01.2008 under Section 25 of the Arms Act P.S. Lalru have not been sent to the Forensic Science Laboratory for examination to connect with the said recovered empty and pellets. The prosecution has also not rendered any explanation for this lapse. It shows that the investigation has been conducted in very casual manner and no effort has been made to collect the scientific evidence. Learned counsel for the appellant has contended that the appellant has been falsely implicated in this case only to solve the case of blind murder and robbery, as the appellant was implicated in various other cases. In these circumstances the recovery of the rifle from the possession of the appellant is extremely doubtful and this sole circumstance cannot be made a ground for the conviction of the appellant for the charges.

27. Thus, keeping in view our aforesaid discussion, the

prosecution has not been able to establish its case beyond shadow of reasonable doubt against the present appellant. He deserves the benefit of doubt. Consequently, the present appeal is hereby allowed. The conviction of the appellant recorded by the learned trial Court and the sentence awarded to him are hereby set aside. The accused-appellant stands acquitted of the charges. He be released from custody, if not detained in any other case.

(M. JEYAPPAUL)
JUDGE

22.01.2015
sunil yadav

(DARSHAN SINGH)
JUDGE