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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-612-DB OF 2011

Date of Decision: September 09,2015

Bhagwant Singh and others

.....Appellants

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE SHEKHER DHAWAN**

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?

Present:- Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep Singh and Mr. Joban Singh, Advocate,
for appellants.

Mr. P.P.S.Thethi, Additional Advocate General, Punjab
for respondent-State.

SHEKHER DHAWAN, J

Present appeal has been filed by appellants – Bhagwant Singh, Chamkaur Singh and Balwinder Singh against the judgment of conviction dated 15.6.2011 and order of sentence of even date passed by the learned Additional Sessions Judge, Ludhiana, whereby all the said three appellants were held guilty, and convicted and sentenced for commission of offences as under:-

Name of the Appellant	Offence	Sentence	Fine	In default
Bhagwant Singh	U/S 302 IPC	R.I. for Life	Rs.5,000/-	RI for 3 months.
	U/S 27 Arms Act	R.I.for 3 years	Rs.1000/-	RI for 1 month.
Chamkaur Singh	U/S 302 IPC read with Section 34 IPC	R.I. for Life	Rs.5,000/-	RI for 3 months

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Name of the Appellant	Offence	Sentence	Fine	In default
Balwinder Singh	U/S 302 IPC read with Section 34 IPC	R.I. for Life	Rs.5,000/-	RI for 3 months

2. Relevant facts of the case are that the complainant Sher Singh reported to the police that they were three brothers namely, Gurmail Singh, Sohan Singh and Nirmal Singh. His brother, Gurmail Singh had three sons namely, Kulbir Singh (injured), Dalbir Singh and deceased in the case namely, Lakhbir Singh. Kulbir Singh was carrying on the business of plying of trucks and was attached with the Truck Union, Machhiwara. The complainant Sher Singh and his nephew Kulbir Singh were looking after those vehicles. Kulbir Singh was working as a Cashier with the Truck Union Committee. Apart from him, there were 10 other members in the Committee including the appellant-Bhagwant Singh. He used to ply trucks which were attached with the Truck Union, Machhiwara. There was a dispute between Kulbir Singh and Bhagwant Singh regarding Kulbir Singh working as a Cashier of the Truck Union. Bhagwant Singh had been threatening Kulbir Singh for his removal as a Cashier.

3. On 10.02.2008, Bhagwant Singh alongwith other persons gave a beating to Kulbir Singh at about 2.00 p.m. The incident had occurred near the bridge on the drain of village Garhi. Kulbir Singh was admitted in Civil Hospital, Machhiwara. On 11.2.2008 at about 10.00 p.m., Sher Singh-complainant alongwith Lakhbir Singh [deceased] had gone to Civil Hospital, Machhiwara to serve meal to Kulbir Singh. Krishan Lal, a resident of Machhiwara also accompanied them. At that time, Sher Singh, Lakhbir Singh and Krishan Lal were coming out of Civil Hospital, Machhiwara at about 10.45 p.m. The street lights were on at that time. When all of them

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reached near the main gate of Civil Hospital, Machhiwara, the appellants Bhagwant Singh, Chamkaur Singh and Balwinder Singh reached there in a car bearing registration No.PB-43B-8837. They stopped their car in front of Sher Singh-complainant and others. Bhagwant Singh (appellant No.1) was armed with a pistol. All the three accused alighted from the car and started abusing Sher Singh, Krishan Lal and Lakhbir Singh. The accused persons threatened that Lakhbir Singh was brother of Kulbir Singh and one of the persons of their family was to be eliminated. Thereafter, Bhagwant Singh (appellant No.1) fired a shot from his pistol, which hit on the left side of chest of Lakhbir Singh and he fell down. All the accused persons managed to run away from the spot in the car. Lakhbir Singh was shifted to Christian Medical College and Hospital, Ludhiana where he was declared brought dead. On the basis of the said statement of Sher Singh – complainant, FIR was registered.

4. During investigation, the appellants were arrested. The weapon used for commission of the offence was recovered from Bhagwant Singh. After completion of investigation, 'challan' was presented in the Court.

5. Charge for commission of offence under Section 302 IPC read with Section 27 of Arms Act was framed against Bhagwant Singh and charge was also framed under Section 302 read with Section 34 IPC against Chamkaur Singh and Balwinder Singh, to which they pleaded not guilty and claimed trial.

6. The prosecution in order to establish its case, examined all the material witnesses including Sher Singh, Complainant as PW-1, Krishan Lal, an eye-witness to the alleged occurrence as PW-3. Apart from

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them, statement of PW-2, Dr. Amita Arora, who had conducted post-mortem examination on the dead body of Lakhbir Singh, was also recorded. Prosecution also examined PW-4 – Shashi Sharma, who proved record of Arms licence; PW-5, Dr. Sanjay Kapoor had medico legally examined Kulbir Singh on 10.2.2008; PW-6 Satnam Singh proved Registration Certificate of car bearing No.PB-43B-8837; PW-7 Gurmail Ram, Photographer. PW-8 SI Kuldeep Singh, PW-9 HC Sanjiv Kumar, PW-12 Constable Amarjit Singh and PW-14 HC Manjit Singh were examined who were associated at the time of investigation proceedings. PW-10 HC Baldev Raj was examined to prove that three sealed parcels containing empty cartridge case, blood stained earth and clothes of the deceased respectively and another sealed parcel containing .32 bore pistol were deposited with him. PW-11 Dr. Rachna Paul deposed that Lakhbir Singh was brought dead to Christian Medical College and Hospital on 12.2.2008 at 12.52 a.m. PW-13 – SI Bhupinder Singh, Investigating Officer, who had completed formal investigation proceedings. Apart from that, prosecution also relied upon documentary evidence duly proved as per statement of the above mentioned witnesses.

7. The appellants were examined under Section 313 Cr.P.C. and the incriminating evidence appearing against them was put to them. The appellants pleaded innocence and claimed their false implication in the case. Plea of defence was taken that Lakhbir Singh was killed by some unknown person. Earlier also, they were implicated in another case with regard to occurrence dated 10.02.2008 and they were illegally made to sit in the Police Station. Jang Singh was examined as DW-1.

8. The learned trial Judge after considering the material and

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evidence produced by the prosecution and the defence held all the three appellants guilty and convicted them vide judgment of conviction and sentenced them vide order of sentence dated 15.6.2011.

9. Being aggrieved of passing of said Judgment of conviction and order of sentence dated 15.6.2011, all the appellants are before this Court by way of the present appeal.

10. We have considered the submissions made by learned counsel for the parties, besides, gone through the evidence and material on the file.

11. Mr. Vinod Ghai, learned Senior Advocate representing the appellants submitted that the appellants are innocent. He mainly took the plea that Lakhbir Singh - the deceased was not taken to the nearest hospital at Machhiwara itself by the witnesses. As per statement of PW-11, Dr. Rachna Paul, the deceased was brought to C.M.C., Ludhiana by Dalbir Singh son of Gurmail Singh although according to the prosecution case, the occurrence had taken place in the presence of eye-witnesses. Thereafter, they ought to have taken the deceased to the Hospital at Machhiwara itself for treatment. More so, the alleged occurrence had taken place quite close to Civil Hospital, Machhiwara. As per prosecution case, Lakhbir Singh had sustained fire arm injury and hence, his condition was critical. In all probabilities and as per normal course, the eye-witnesses and the persons present there were expected to take him to Civil Hospital, Machhiwara and on reference, he could have been taken to Christian Medical College and Hospital or any other hospital. But that was not the case before the Court and this fact certainly makes the prosecution story and presence of the eye-witnesses at the time of occurrence highly

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doubtful.

12. Learned senior counsel submitted that the appellants-accused are innocent. He contended that as per medical evidence and as per eye-witness account, Bhagwant Singh, appellant was armed with a loaded pistol and he had aimed at Lakhbir Singh from a close range then the person who made the assault must be taller, but that is not the case. More so, if Bhagwant Singh, appellant was armed with a deadly weapon, there was no reason for him to spare the persons accompanying Lakhbir Singh, so as to wipe out the eye-witnesses of the occurrence. Prosecution has not been able to establish that there was any light available at the time of occurrence as the alleged occurrence had taken place at 10.35 p.m. No blood stained clothes of any of the witnesses were taken in possession by the police.

13. Learned senior counsel for the appellants also took the plea that there is nothing against appellants, Chamkaur Singh and Balwinder Singh, but the learned trial Judge has convicted and sentenced them also for the commission of offence under Section 302 read with Section 34 IPC. The prosecution case was not proved against either of the accused muchless against Chamkaur Singh and Balwinder Singh. So, the present appeal be accepted and the judgment of conviction and order of sentence be set-aside.

14. While arguing on these points, Sh. P.P.S.Thethi, Advocate, learned State counsel urged that the present case is based on eye-witnesses account. There was no reason for the complainant and eye-witnesses to depose falsely against the appellants. The prosecution has been able to bring home the guilt of the appellants beyond any shadow of

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doubt. Strained relations and enmity between the parties and earlier occurrence having taken place, just a day before the present occurrence clearly establishes malice on the part of the accused persons to commit the present crime. PW-1, Sher Singh and PW-3 Krishan Lal have stated in so many words that the alleged occurrence had taken place in their presence and Bhagwant Singh had fired from his pistol from close range and Lakhbir Singh sustained fire-arm injury and he was declared 'brought dead' at Christian Medical College and Hospital, Ludhiana. Thereafter, the weapon used for commission of the offence was recovered from the possession of appellant Bhagwant Singh. The said pistol was registered in the name of Bhagwant Singh. The remaining accused were also present at the spot and they had entered into a conspiracy to commit the alleged offence and that is why appellants, Chamkaur Singh and Balwinder Singh were convicted and sentenced for commission of offence under Section 302 read with Section 34 IPC. They had come to the spot to commit the alleged offence after making preparation and for that purpose, they were duly armed with a pistol and committed the crime for which they have been convicted and sentenced.

15. After considering the submissions made by learned counsel for the parties, we are of the view that prosecution case is based upon eye-witnesses account i.e., statements of PW-1 Sher Singh [complainant] and PW-3 Krishan Lal [an eye witness]. Both these witnesses have stated in so many words that the appellants – Bhagwant Singh, Chamkaur Singh and Balwinder Singh were duly armed with pistol and they came to the spot i.e., near Civil Hospital, Machhiwara. Thereafter Bhagwant Singh fired upon Lakhbir Singh from a close range on his chest and committed his murder.

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PW-1 Sher Singh and PW-3 Krishan Lal were subjected to lengthy cross-examination by learned defence counsel, but their testimony remained unshaken. Learned trial Judge has relied upon the testimony of these two witnesses while convicting Bhagwant Singh.

16. Apart from that, ocular testimony consisting in the statement of PW-1 Sher Singh and PW-3 Krishan Lal is duly supported and corroborated by medical evidence by way of statement of PW-2, Dr. Amita Arora who conducted the post-mortem examination on the dead body of Lakhbir Singh [deceased] and observed as under:-

“ The deceased was moderately nourished and moderately built wearing black striped pant, yellow colour with white strip blood sustained underwear, one pair of greyish brown socks, red colour full selves sweater with grayish borders and wearing white identification strip. There is a hole with teared threads 1 cm x 1 cm on the anterior aspect of the sweater just left of midline and there is 7 cm x 6 cm blackened area around this whole. There is another blackened area. That there is another hole .6 cm x .6 cm on the back side of the sweater in the lower half. The left lower portion of the sweater is blood stained. Yellow white striped shirt there is a hole .6 cm x .6cm on the anterior aspect of the shirt at the lower medial corner of the pocket with adjacent blackened area of size 2.5 cm x 2 cm. There is another hole .6 cm x .6cm on the back side of the shirt in the lower half and shirt is blood stained. Blue Banyan having a hole .5 cm x .5 cm on the anterior aspect on the left side with tearing of the fibers. Adjacent area is blood stained. There is another hole at the back on the left side of the Banyan .7 cm x .5 cm Banyan is blood

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stained. Black belt Rigor mortis is present. Post mortem staining is present and is fixed. There is wound with inverted margins present on the left side of the chest is .5 cm x .6 cm. It is situated in the space between 5th and 6th rib. 4.5 cm from the mid line and 4 cm from the xiphisternum and 8.5 cm from the left nipple. There is an oval blackened collar .3 cm x .2 cm around this wound. There is an exit wound on the lower part of the back side the chest 1 cm x .8 cm with everted margins. It is situated in the space between 8th and 9th rib. 13 cm from the posterior mid line. Blood is trickling from this wound. Left side of the back of the chest is blood stained. On dissection the muscles under line the entry wound are contused and lacerated. This track is passing through the inter coastal space between 5th and 6th rib inter coastal muscles and torn. On further dissection, the hole is present on the anterior surface of the heart in the inter ventricular groove of size .7 cm x .7cm just 3.5 cm from the apex. There is another hole in the posterior surface of the heart .8 cm x .8 cm located 2 cm from the apex. Heart muscles are contused and lacerated. Further the tract is going posterolaterally injuring left lung and then further an opening is present in the posterolateral wall of the chest which correspond to the exist wound. Left pleural cavity is full of blood.”

17. As per statement of Dr. Amita Arora [PW-2], the cause of death in the case was due to hemorrhage and shock due to injury on vital organs i.e., heart and lung as a result of fire arm injury which in ordinary course of nature was sufficient to cause death. Injuries were ante-mortem in nature.

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18. Apart from that, learned trial Judge has placed reliance upon the testimony of PW-8 SI Kuldeep Singh before whom SI Bhupinder Singh had lifted one empty cartridge case and blood stained earth from the spot and the same were converted into separate parcels and sealed by SI Bhupinder Singh. Thereafter, the parcels were taken in police custody vide recovery memo Ex.PW/3B and PW-3/C respectively. On 13.2.2008, SI Bhupinder Singh arrested all the accused in his presence and car bearing No. PB-43B-8837 was taken in police custody vide recovery memo Ex. PW-8/A. SI Bhupinder Singh also deposed accordingly before the trial Judge.

19. As per PW-13, SI Bhupinder Singh, he had completed the investigation proceedings. On 14.2.2008, accused Bhagwant Singh while in police custody suffered a disclosure statement [Ex. PW-8/E] that he had kept concealed the pistol alongwith four live cartridges in his house and he could get the same recovered. His disclosure statement was recorded. Thereafter, Bhagwant Singh got recovered these articles from his house which were taken in possession vide recovery memo Ex. PW-8/F.

20. The plea taken by learned senior counsel for the appellants that the place of occurrence was quite close to Christian Medical College and Hospital and Lakhbir Singh was required to be taken to Civil Hospital, Machhiwara rather than Christian Medical College and Hospital, Ludhiana is not of much consequence because Lakhbir Singh had sustained fire arm injury and he was profusely bleeding. His condition was critical and later on, he was declared brought dead at Christian Medical College and Hospital. Probably, the attendants/eye-witnesses of the occurrence had taken a right decision not to take him at a smaller hospital situated at

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Machhiwara and decided to take Lakhbir Singh to a specialized hospital, i.e., Christian Medical College and Hospital, Ludhiana.

21. As regards to the plea taken by learned counsel for the appellants that the prosecution has not been able to explain any source of light at the place of occurrence, it may be noticed that the present case is based upon testimony of eye-witnesses account and it was not a case of blind murder or based on circumstantial evidence. When the parties to litigation are known to each other, as is the present case, then the parties can identify each other by their voice and even in complete darkness.

22. As regards to mentioning of name of the eye-witness, who had taken Lakhbir Singh to Christian Medical College and Hospital, Ludhiana, the doctor was required to mention the name of some of the attendants/relatives who had taken Lakhbir Singh to Christian Medical College and Hospital, and not to mention the names of all other attendants. So, it cannot be said that the complainant and the eye-witness had not accompanied Lakhbir Singh to the hospital and nothing can be read in between the lines in this regard. Besides, merely because the names of the eye-witnesses are not mentioned in the hospital records as the persons who had brought the injured/deceased to the hospital would not make their presence doubtful at the time of occurrence.

23. Otherwise, the prosecution case is based on eye-witnesses account who have duly proved the prosecution case. Their ocular testimony is in complete agreement with the medical evidence. The offence was committed by Bhagwant Singh – appellant due to previous inimical relation and he had the motive to commit such an offence. Bhagwant Singh was duly armed with a pistol. He used the said pistol for

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commission of the offence and later on the same was recovered from his possession as per his disclosure statement. The matter was immediately reported to the police. There was no reason for the complainant and the eye-witness to depose falsely against Bhagwant Singh, accused-appellant. The appeal filed by Bhagwant Singh, appellant No.1 is dismissed and the impugned judgment of conviction dated 15.6.2011 is absolutely without merit. As regards the order of sentence, learned trial Judge has already taken most reasonable view and has awarded Life Imprisonment which is the minimum sentence provided as per provisions of Section 302 IPC. Learned trial Judge has not awarded any amount of compensation to the victim as required under Section 357 Cr.P.C. We are of the view that appellant – Bhagwant Singh is liable to make a payment of Rs.2.00 lakhs as compensation to the father of the deceased and we order accordingly.

24. As regards the appeal filed by Chamkaur Singh and Balwinder Singh, appellants No.2 and 3 respectively, no role has been attributed to both these appellants. There is no allegation that these two appellants even exhorted or instigated Bhagwant Singh to fire upon Lakhbir Singh. There is even no allegation in the statements of PW-1 Sher Singh and PW-3 Krishan Lal that these two appellants even caught hold of Lakhbir Singh so as to commit the offence. There was only one fire arm injury which has been attributed to Bhagwant Singh. It is quite a normal practice on the part of complainant/victim to add some more names of relatives or friends of the main accused also as accused and it appears that same thing has happened in the present case. Hence, the prosecution case against Chamkaur Singh and Balwinder Singh is highly doubtful and as such appeal filed by Chamkaur Singh and Balwinder Singh is liable to be

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accepted and same stands accordingly accepted. The learned trial Judge has completely ignored these facts while recording judgment of conviction and sentencing them for commission of offence under Section 302 read with Section 34 IPC as well. So appeal filed by both the appellants, namely, Chamkaur Singh and Balwinder Singh is accepted and judgment of conviction and order of sentence dated 15.6.2011 are set-aside qua these two appellants.

25 Resultantly, upholding judgment of conviction and order of sentence dated 15.6.2011 passed by Additional Sessions Judge, Ludhiana, appeal filed on behalf of Bhagwant Singh, appellant No.1 is dismissed. It is ordered that Bhagwant singh shall also pay compensation of ₹ 2,00,000/- to the father of Lakhbir Singh, deceased.

26. Appeal filed by Chamkaur Singh and Balwinder Singh, appellants No. 2 and 3 respectively is accepted and the judgment of conviction and order of sentence dated 15.6.2011 qua them is set-aside. They are acquitted of the charges framed against them. They are in custody and they be released forthwith, if not wanted in any other case.

**(S.S.SARON)
JUDGE**

**(SHEKHER DHAWAN)
JUDGE**

September 09, 2015
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