

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2483-SB of 2009

DATE OF DECISION: DECEMBER 9, 2015

BALDEV SINGH & ANOTHER

...APPELLANTS

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. N.S.SHEKHAWAT, ADVOCATE FOR THE APPELLANTS.
MR. GAURAV JINDAL, ADDL.A.G., HARYANA.

M. JEYAPPAUL, J.

1. Accused Baldev Singh and Sukhdev Singh @ Paramjit Singh have challenged the conviction and sentence passed by the trial Court.

2. PW11 Gurbax Singh and PW12 Bhupinder Singh son of Gurbax Singh deposed that on 3.11.2006 at about 7.00 p.m., PW11 was lying on a cot in the field and PW12 also was there to organize fodder for the cattle. Accused Baldev Singh and Sukhdev Singh @ Paramjit Singh reached there on a motorcycle. Accused Sukhdev Singh @ Paramjit Singh was driving the motorcycle and accused Baldev Singh who was armed with a double barrel gun was the pillion rider. They raised lalkara that PW11 and PW12 should be taught a lesson for getting the measurement of water course and pathway conducted. Accused Sukhdev Singh asked accused Baldev Singh to open fire. Thereupon, accused Baldev Singh opened fire at a distance of about 10 feet and as a result of which, PW11 sustained firearm injury on his left arm. It is deposed by PW11 Gurbax Singh that accused

Baldev Singh opened fire with an intention to kill him. After receiving the firearm injury, PW11 fell down and became unconscious. PW12 who witnessed the occurrence took his father PW11 to the hospital for treatment.

3. PW8 Dr. Ranbir Singh deposed that injured Gurbax Singh was admitted in hospital on 3.11.2006 at about 9.05 p.m. with the history of firearm injury. He noticed that the wound was of the size measuring 7.5cms x 4 cms. on the left forearm. He referred Gurbax Singh to General Hospital, Sirsa for further treatment. He has given an opinion that the injury found on the person of Gurbax Singh was grievous in nature and the same was caused by a firearm.

4. PW4 Dr. S.L. Aggarwal who was serving as Radiologist in the General Hospital, Sirsa deposed that he radiologically examined Gurbax Singh. The X-ray disclosed that in the left forearm there were multiple radio opaque shadow metallic in density varying shape and size. He also noticed that there was fracture of left Ulna bone. One of the pellets was found above the bone and under the soft tissue. The pellets had scattered in an area of about 4/5 inches.

5. In the statement under Section 313 Cr.P.C., it was submitted by the accused that they were innocent, but were falsely implicated in this case. On the side of the defence, one Issar Singh was examined to speak to the fact that the accused did not possess any weapon at the time when they travelled ahead of him by a motorcycle.

6. Learned counsel appearing for the appellants submitted that no case was made out as against accused Sukhdev Singh @ Paramjit Singh. No overt-act was attributed to him. Instigation was attributed to him just to

rope him in the case as he had deposed in the connected criminal case lodged against the complainant party.

7. Learned State counsel referring to the evidence of PW11 and PW12, in the background of medical evidence submits that the prosecution has established beyond reasonable doubt that accused Sukhdev Singh @ Paramjit Singh in fact instigated the other accused to commit the crime and therefore, the trial Court has rightly convicted him as well.

8. PW11 who sustained injury has deposed that it was only accused Sukhdev Singh who raised lalkara, whereas, PW12 who is the son of PW11 deposed that both the accused, namely, Baldev Singh and Sukhdev Singh raised lalkara. Such a contradiction in the testimony of material witness PW11 and PW12 goes to the root of the case which culminated in conviction purely based on the alleged lalkara raised by accused Sukhdev Singh @ Paramjit Singh.

9. It is the case of the prosecution that both the accused came by motorcycle all the way from their village in order to eliminate PW11 Gurbax Singh. If that was so, they would have interacted and taken a decision before they descended on the scene of crime to open fire the moment one of the accused alighted from the motorcycle. It looks artificial that accused Sukhdev Singh having arrived at the scene of occurrence raised lalkara to shoot Gurbax Singh. Accused Baldev Singh would have simply opened fire as already planned with his brother. He would not have required any instigation from any quarters as he would have pre-planned with his brother. Therefore, in my considered view, it looks quite unnatural that accused

Baldev Singh opened fire only at the instigation of accused Sukhdev Singh @ Paramjit Singh at the spot.

10. It is further found that there had been an animosity between the parties. In fact, it was only accused Sukhdev Singh @ Paramjit Singh who had figured as a material witness in the other criminal case booked as against complainant party. Therefore, in my view, there is every reason to rope-in accused Sukhdev Singh @ Paramjit Singh despite his non-involvement in the crime.

11. Further, it is found that accused Sukhdev Singh @ Paramjit Singh was serving in Co-operative Bank at the time of occurrence. It is quite unfortunate that he has been involved in the crime allegedly committed by his brother accused Baldev Singh. For all these reasons, I find that the prosecution has miserably failed to establish that accused Sukhdev Singh @ Paramjit Singh raised lalkara and instigated accused Baldev Singh to open fire on Gurbax Singh. Therefore, I hold that accused Sukhdev Singh @ Paramjit Singh is entitled to acquittal.

12. Learned counsel appearing for appellant Baldev Singh submits that accused Baldev Singh has been implicated just because there was enmity between the parties. It is his further submission that the matter was compromised between the parties and, therefore, even if the conviction recorded by the trial Court against accused Baldev Singh is confirmed, he may be sentenced to the period already undergone by him.

13. Learned State counsel submits that the evidence of an injured witness and his son, in the background of the medical evidence, completely

establishes the case of the prosecution.

14. PW11 Gurbax Singh and PW12 Bhupinder Singh son of Gurbax Singh have categorically deposed that it was only accused Baldev Singh who opened fire with his double barrel gun and caused injury on the left forearm of Gurbax Singh. Though there is some enmity between PW11 Gurbax Singh and accused Baldev Singh, there was no reason for PW11 to implicate a wrong person, if somebody else had caused such firearm injury. Considering the nature of injury it is ruled out that such injury would have been self-inflicted.

15. PW11 and PW12 had every reason to be at the scene of occurrence which was their field. The occurrence had unfolded at 7.00 p.m. The presence of PW12 at the scene of crime cannot also be rejected. Further, the evidence of PW11, injured witness in this case, inspires complete confidence.

16. The medical evidence referred to above also would go establish that Gurbax Singh sustained firearm injury in his left forearm. Though the injury had been caused on the left forearm, as there was enmity between the accused and the complainant, accused Baldev Singh should have opened fire with an intention to cause the death. The weapon he used also speaks volumes of his intention to eliminate PW11. Therefore, in my considered view, the prosecution has established beyond reasonable doubt that accused Baldev Singh armed with double barrel gun opened fire with an intention to kill PW11 and thereby caused firearm injury on the left forearm.

17. The accused and the complainant party have produced

compromise deed which disclosed that they having buried the hatchet, have started living peacefully in the village.

18. Of course, the Court is conscious of the minimum sentence of 3 years prescribed under Section 27 of the Arms Act. The Hon'ble Supreme Court in Nasir vs. State of Uttar Pradesh, 2010 AIR (SC) 1926, and this Court in Major Singh vs. State of Haryana, 2013(1) RCR (Criminal) 141 and Jagdeep Singh @ Neetu vs. State of Punjab, 2013(3) Crimes 414 have taken a lenient view even in the face of minimum sentence prescribed under Section 25 of the Arms Act and reduced the sentence to the period already undergone in the special facts and circumstances of those cases.

19. Accused Baldev Singh has undergone 10 months and 26 days. Though he had intended to cause the death, he had caused injury on a non-vital part of the body. Further, he was just 26 years at the time when the occurrence took place. The occurrence had taken place in the year 2006. Sending accused Baldev Singh to jail again to undergo the unexpired portion of sentence imposed by the trial Court would definitely harm the peaceful life they had chosen to lead after burying their long enmity.

20. For all these reasons, the judgement of conviction passed by the trial Court as against accused Baldev Singh stands confirmed. But the sentence imposed on him is reduced to the period already undergone by him. The fine and the default sentence imposed by the trial Court for the offence under Section 307 IPC and Section 27 of Arms Act stand confirmed. If the fine amount is not paid within one month from the date of this judgement, accused Baldev Singh shall undergo the default sentence

imposed by the trial Court for the respective offences.

21. Accused Sukhdev Singh @ Paramjit Singh is acquitted of the charge under Section 307 read with Section 34 IPC.

22. Consequently, the appeal qua accused Baldev Singh stands dismissed in the aforesaid terms and the appeal qua accused Sukhdev Singh is allowed.

December 9, 2015
Gulati

(M. JEYAPPAUL)
JUDGE