

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

CRA-S-801-SB of 2004
Date of Decision: 29.07.2015

Kashmira Singh and another

....Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Atul Lakhanpal, Sr. Advocate with
Mr. R.S. Chahal, Advocate
for the appellant.

Mr. Ashish Sanghi, DAG, Punjab.

SNEH PRASHAR, J. (Oral)

1. This was an appeal preferred by appellants namely, Kashmira Singh and Sarmukh Singh, assailing the judgment of conviction dated 26.03.2004 and order of sentence dated 26.03.2004 recorded by learned Additional Sessions Judge (Adhoc), Ludhiana in case bearing First Information Report No.77 of 2001 under Section 307, 324 and 34 of the Indian Penal Code (for short "I.P.C.") and Sections 29 and 30 of the Arms Act, 1959 (for short 'the Arms Act') registered at Police Station, Samrala .

2. As per the story of the prosecution on 26.6.2001 at about 5.30 PM Darshan Singh son of Sunder Singh resident of village Dialpura, alongwith his son Hargurmukh Singh was making water channel with the help of a tractor since the matter regarding the water channel had been decided in his favour by the Court and the Panchayat.

In the meantime, Sarmukh Singh armed with riffle alongwith his father Kashmira Singh armed with a spade reached the spot. Raising a lalkara Sarmukh Singh fired a shot from his riffle aiming at Hargurmukh Singh with an intention to kill him but the bullet whistle passed his ear. He fired again but missed the shot. When he was in the process of loading the riffle again with bullet/cartridge, Hargurmukh Singh jumped down from the tractor and caught him. Kashmira Singh then gave a spade blow aiming on the head of Darshan Singh but as Darshan Singh withdrew backward the blow hit on the toe and fingers of his left foot. Hearing the shouts Baljinder Singh s/o Sher Singh and Kesar Singh s/o Waryam Singh reached the spot. During the scuffle, the riffle of Sarmukh Singh, got broken. The wooden handle (Butt) came in the hands of Hargurmukh Singh and the remaining portion i.e. Barrel of the riffle remained in the hands of Sarmukh Singh. The assailants then fled away from the spot.

Darshan Singh came to know that Kashmira Singh had got himself admitted in Civil Hospital Samrala by chopping off his finger himself. He also then went to the Civil Hospital Samrala for treatment. On receipt of information regarding admission of injured in the hospital ASI Ajmer Singh was deputed for recording the statement of injured. On 27.06.2001 in the morning Darshan Singh was declared unfit for making statement but in the night when the doctor opined that he was fit for making statement, his statement was recorded. On the basis of his statement formal first information report was recorded and a case

under Section 307, 324, 323 and 34 IPC and under Sections 25 and 27 of Arms Act was registered. Investigation commenced, the wooden handle (Butt) of the rifle and the missed cartridge 12-bore were produced by Hargurmukh Singh and were taken in possession by the Investigating Officer. On 28.06.2001 Kashmira Singh and his son Sarmukh Singh were arrested. The spade and the barrel of the rifle alongwith empty cartridge used during commission of offence were produced by Kashmira Singh before the Investigating officer

3. The appellants were charge-sheeted under Section 307, 324/34 I.P.C., and under Section 29, 30 of the Arms Act, to which they pleaded not guilty and claimed trial. The prosecution examined PW1 Hargurmukh Singh, PW2 Kesar Singh, PW3 ASI Ajmer Singh, PW4 HC Jaswinder Singh, PW5 Constable Lakhbir Chand, PW6 Dr. Sanjay Kapoor, PW7 Ranjit Singh, PW8 S.P Ram Singh, PW9 Ranjit Singh Dhillon, PW10 SI Arvind Puri and PW11 Inspector Malkiat Singh. After closure of evidence of the prosecution, statements of appellants under Section 313 of the Code of Criminal Procedure (for short "Cr.P.C.") were recorded by putting to them the incriminating evidence available on record. They maintained that they are innocent and had been falsely implicated.

4. Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the appellants, learned trial Court finding the charges successfully proved against the appellants beyond the shadow of reasonable doubt, convicted and sentenced them as under:

Sarmukh Singh U/s 307 IPC To undergo R.I. for seven years and to a fine of Rs. 2000/-, or in default to suffer further RI for one month;

<i>U/S 324 IPC</i>	<i>To undergo RI for two years and to pay a fine of Rs. 1000/-, or in default to suffer further RI for one month.</i>
<i>U/S 27 Arms Act</i>	<i>To undergo RI for three years and to pay a fine of Rs.1000/- or in default to suffer further RI for one month.</i>
<i>Kashmira Singh U/s 307/34 IPC</i>	<i>To undergo R.I. for seven years and to pay a fine of Rs. 2000/-, or in default to suffer further R.I. for one month;</i>
<i>U/s 324 IPC</i>	<i>To undergo R.I. for two years and to pay a fine of Rs.1000/-, or in default to suffer further R.I. for one month;</i>
<i>U/s 29 Arms Act</i>	<i>To undergo R.I. for three months and to pay a fine of Rs. 200/-, or in default to suffer further R.I for 15 days.</i>
<i>U/s 30 Arms Act</i>	<i>To undergo R.I. for three months and to pay a fine of Rs.200/-, or in default to suffer further R.I. for 15 days.</i>

The substantive sentences of imprisonment were ordered to run concurrently

5. Feeling aggrieved by the impugned judgment of conviction dated 26.03.2004 and order of sentence dated 26.03.2004 passed by learned trial court, the appellants preferred the instant appeal.

6. The submissions made by Mr. Atul Lakhanpal, Sr. Advocate with Mr. R.S. Chahal, Advocate representing the appellant and Mr. Ashish Sanghi, Deputy Advocate General representing the State of Punjab have been heard and record has been perused.

7. Appellant No.1-Kashmira Singh was reported to have expired on 01.01.2010. After him, Sarmukh Singh is the only appellant left.

8. To begin with learned counsel for the appellant argued that it was a case where the appellant-accused party (Kashmira Singh and his son Sarmukh Singh) were the actual victims but the police by distorting the story implicated them as the accused. Referring to the statement of PW-6 Doctor Sanjay Kapoor, learned counsel pointed out that he proved the bed head ticket Ex.PW6/1 and the medico legal report Ex.Dx of appellant-Kashmira

Singh, according to which Kashmira Singh had arrived in the hospital on

26.06.2001 at 6:30 p.m. and was examined at 6:45 p.m. He had an incised wound 1cm x 0.5 cm on the little finger of his left hand which was bleeding at that time and was later declared grievous by doctor(PW6) vide his report Ex. PW6/C. On the contrary as stated by PW-6 and also proved by medico legal report Ex.PW6/A, complainant-Darshan Singh arrived in the hospital at 8:55 p.m. and was examined at 9:00 p.m. He had three injuries on his person, one of which had been inflicted with a blunt weapon and the other two with a sharp edged weapon. All the said injuries were declared simple by the doctor vide his report Ex.PW6/C.

9. Elaborating his argument learned counsel asserted that the occurrence had taken place on 26.06.2001 at 5:30 p.m. whereas the first information report on the statement of complainant-Darshan Singh was recorded on 28.06.2001. There was an apparent delay of 48 hours in recording the first information report. The delay proves fatal to the prosecution case because appellant-Kashmira Singh was the first one to reach the hospital with injury on his person. His statement was not recorded by the police and if recorded was not proved in evidence by the prosecution. Infact, the injury suffered by him remained unexplained by the complainant. Moreso, as mentioned in the medico legal report Ex.PW6/A Darshan Singh had arrived in the hospital on 26.06.2001 at 8:55 p.m. It does not find reason why his statement was recorded after more than 24 hours i.e, on 28.06.2001. In the medico legal report Ex.PW6/A it is mentioned that the information regarding admission of Darshan Singh had been given to the police on 27.06.2001 at 9:30 a.m., yet PW3-ASI Ajmer Singh stated that he went to hospital at 8:00 p.m. on 27.06.2001 and after obtaining opinion regarding the fitness of injured Darshan Singh, he started recording his statement in

the night at 11:00 p.m and completed the same at 12:10 a.m and by that time it was 28.06.2001. Apparently the delay was result of due deliberation and consultation on the part of complainant-Darshan Singh in connivance with the police.

10. Learned counsel further argued that the prosecution failed to prove any order of the Court or resolution of the Panchayat pursuant to which complainant-Darshan Singh deposed that he and his son Hargurmukh Singh were making a water channel and aggrieved by their action appellants attacked on them. According to the site plan Ex.PW10/1 prepared by the police, the point C where Hargurmukh Singh was preparing the edge (Vatt) was shown in the field of Kashmira Singh. Also falsifying the statement of Hargurmukh Singh PW2-Kesar Singh stated that occurrence had taken place in his field. The variation in the statement of the witnesses and the site plan prepared by the police neither proved the place of occurrence nor the motive alleged by the complainant was established.

11. Another argument raised by learned counsel was that the wooden handle (Butt) of the . riffle allegedly held by appellant Sarmukh Singh which got broken during the occurrence and came in the hands of Hargurmukh Singh was not produced in the Court during the examination of porsecution witnesses and that supports the version of the appellants that the police intentionally took the licenced riffle of Kashmira Singh and after firing from the same, its handle was detached and the Barrel was taken in possession in order to create evidence in favour of the complainant. There was also discrepancy in the statement of the witnesses with regard to the shots fired from the riffle. PW-1 Hargurmukh Singh stated that first shot fired towards him by Sarmukh Singh whistle passed his right ear and when

the second shot was fired the bullet did not come out of the rifle. On the other hand PW2- Kesar Singh did not state that a second shot was fired by Sarmukh Singh, which missed. According to him, only one shot was fired which whistle passed the right ear of Hargurmukh Singh. Learned counsel contended that the said discrepancy in the statement of the witnesses proved that the story presented by the prosecution was false and concocted.

12. The arguments of learned counsel for the appellants may appear to be attractive but are devoid of merit. Medico Legal Report Ex.Dx tendered by PW6-Dr. Sanjay Kapoor was objected to by the prosecution being only a photostat copy. No effort was made to bring the original document on record. In any case, the question that arises in the light of the document Ex.DX is when, where and how Kashmira Singh suffered injury which was on the little finger of his left hand and was actively bleeding even at the time of examination. PW3-ASI Ajmer Singh stated that on 26.06.2001 he had received an information from Civil Hospital Samrala regarding the admission of injured Kashmira Singh but when he went to the hospital and obtained opinion of the doctor regarding fitness of injured Kashmira Singh he was declared unfit for making statement and on the next day when he went to the hospital injured Darshan Singh was found admitted whereas Kashmira Singh was no longer available in the hospital. The stand taken by Kashmira Singh was that he was forcibly removed from the hospital by PW-10 SI Arvind Puri who at the relevant time was posted as Station House Officer, Samrala.

The accused produced no medical document to prove that after he was forcibly asked to leave the Civil hospital where did he go for taking the treatment. He also did not produce copy of his statement, if any, recorded

by any police official or copy of the complaint which he had allegedly filed against the complainant party. In absence of said evidence there is no version of the appellant explaining the injury he had suffered.

13. On the other hand, it is not the case that the injury suffered by accused Kashmira Singh had not been explained by the prosecution. PW1-Hargurmukh Singh as well as PW2 Kesar Singh specifically stated that no injury was suffered by Kashmira Singh during the occurrence. As already observed above nothing has been produced by the appellants to prove where and how Kashmira Singh suffered the injury. PW-10 SI Arvind Puri stated in his cross-examination that the injury suffered by Kashmira Singh was self inflicted. The prosecution examined PW-9 Ranjit Singh Dhillon SP Crime Punjab who at the relevant time was posted as Deputy Superintendent of Police (crime) Patiala. He testified that the complaint given by Hargurmukh Singh was entrusted to him by ADGP Crime for inquiry into the case bearing first information report No.77 of 2001 registered at police station Samrala. After conducting the inquiry he gave his report Ex.PW9/1 which revealed that injury on the person of Kashmira Singh was either self inflicted or had been caused by some friendly hand. The injury had been manipulated in order to create defence and to put pressure on the complainant party for compromise.

Importantly, on an application Ex.PW6/D given by the police PW6-Dr. Sanjay Kapoor gave his opinion Ex.PW6/A that the possibility of injury on the person of Kashmira Singh being self inflicted or by a friendly hand cannot be ruled out. The opinion of the doctor substantiated the inquiry report Ex.P9/1 of PW9-Ranjit Singh Dhillon. In the light of said evidence, it cannot be said that the factum regarding injury on the person of

Kashmira Singh was concealed or ignored by the prosecution, rather it was thoroughly inquired into and when it was found to be false his cross-version was cancelled and the action being taken against the complainant party was dropped.

14. In the above set of facts, if the version of the appellants were genuine, it was still open to them to initiate appropriate legal action against the complainant party. The appellants alleged that they filed a complaint against the complainant and his companions who were the aggressors. However, no such complaint was tendered or proved in evidence by them during the trial of the present case.

15. It is further important to note that during cross examination of PW1-Hargurmukh Singh the appellants suggested to him that on 26.06.2001 at about 4:00 pm when Kashmira Singh was ploughing his land he (PW1) armed with a Kirpan and accompanied by Darshan Singh, Kesar Singh, Mehar Singh and Gurdit Singh went there and threatened to kill him on the pretext that he was not allowing them to enter in his fields. It was also suggested that he (PW1) caused injury to Kashmira Singh on his little finger with a Kirpan. The suggestions were denied by PW1-Hargurmukh Singh. The witness expressed ignorance to the suggestion that Sarmukh Singh had filed a private complaint against him and his companions, which was pending in the Court of Judicial Magistrate First Class, Samrala. In the next breadth it was suggested that Kashmira Singh had filed the complaint. However, as observed above no such complaint was brought in evidence by the appellants.

16. The matter does not end here. It is noteworthy that PW1-Hargurmukh Singh it was suggested by the appellants that when he

trespassed into the land of Kashmira Singh he was accompanied by his father -Darshan Singh , Kesar Singh, Mehar Singh and Gurdit Singh. Out of the said persons Kesar Singh stepped into the witness box as PW2. He gave a crystal clear account of the occurrence as it took place on 26.06.2001 at 5:30 pm. During cross-examination he outrightly clarified that he had no relationship with Hargurmukh Singh. According to the version of the appellants as put to PW1 he had accompanied Hargurmukh Singh and was one of the assailant when Kashmira Singh was ploughing his land and was threatened of being killed and PW1 had inflicted injury with a Kirpan on the little finger of his left hand. Surprisingly, no such suggestion/cross-version of the occurrence was put to PW-2 during his cross-examination by the appellants. PW-2 was an independent public witness of the occurrence. As stated by him the scuffle had taken place almost in his field. He specifically stated that Kashmira Singh suffered no injury during the occurrence, yet the appellants did not dare to put to him the alleged injury suffered by Kashmira Singh and their cross-version about the same. This is another factor that supports the story of the prosecution that the injury suffered on the little finger of Kashmira Singh was self inflicted or had been caused by some friendly hand in order to create evidence against Darshan Singh-complainant and his son.

During the statement of the appellants recorded under Section 313 Cr.P.C although Kashmira Singh stated that the complainant party was the aggressor and that they had caused injuries to him when he resisted their illegal activities but he did not name the assailants and also did not state at whose hands and with what weapon he suffered those injuries. Appellant-Sarmukh Singh in his statement did not even state to be an eye witness of

the occurrence during which his father-Kashmira Singh suffered injury on the little finger of his left hand. He stated that he was away to market and when he returned he found his father injured and took him to the hospital. In that manner by no means the appellants could prove that Kashmira Singh suffered injury on his person during the occurrence or at the hands of the complainant or his son.

17. As far as delay in lodging of the first information report is concerned it is a settled proposition of law that delay in itself in lodging the first information report is not fatal to the prosecution case. As mentioned in the medico legal report-Ex.PW6/A, complainant Darshan Singh reached civil hospital Samrala at 8:55 p.m on 26.06.2001 i.e. the day of occurrence. The police was given intimation with regard to his admission on 27.06.2001 at 9:30 a.m. PW3-ASI Ajmer Singh stated that he went to the hospital at 8:00 p.m and after obtaining opinion of the doctor regarding the fitness of the complainant, started recording his statement at 11:00 p.m and completed the same at 12:10 a.m mid-night. There was hardly any delay in lodging the first information report on part of the complainant. The moment the police approached him for recording his statement he gave the same and narrated the entire occurrence. The delay, if any, was on part of the investigating agency in reaching the hospital for recording his statement. For the lapse on their part, the complainant could not be blamed.

18. Indeed the prosecution did not prove any order of the Court or decision of the Panchayat in favour of the complainant party regarding the water channel over which they had a dispute with the appellants. The water channel was made between the edges of the fields. In his statement recorded under Section 313 Cr.P.C Kashmira Singh himself stated that there was a

dispute between him and the complainant party who were trying to lay a new Khal in his field. According to PW2 Kesar Singh, the complainant party was making water channel with a tractor in their own land. He corroborated the version of PW1-Hargurmukh Singh that the decision of the Court regarding the water channel was in favour of complainant-Darshan Singh. He also stated that Darshan Singh and Kashmira Singh were real brothers. In the site plan Ex.PW 10/1, the existence of water channel was shown between the fields of Kashmira Singh and Kesar Singh. At the point where the complainant was making the edge of the water channel was point C which was between the fields and point D was the place that was in the field of Kesar Singh, where Kashmira Singh caused injury to Darshan Singh with a spade. As such, PW-2 Kesar Singh corroborated the site plan stating that the scuffle had taken place in his fields.

19. It has already been observed above that Kesar Singh-PW2 was an independent public witness and nothing could be produced by the appellants to prove that Kesar Singh had any reason to be hostile towards them. As such there is no reason why he should not be believed. He proved the place of occurrence, the motive as well as the injuries suffered by complainant-Darshan Singh. Minor discrepancies are bound to occur in the statements of witnesses when they are examined after lapse of long time. Infact, parrot like statement of the witnesses can hardly be appreciated.

20. According to PW1 two shots were fired by appellant-Sarmukh Singh; one whistle passed his right ear and the other did not come out of the riffle although the trigger was pressed by Sarmukh Singh. In his cross-examination he stated that Sarmukh Singh fired from his DBBL riffle aiming towards his chest from front side. PW-2 stated about the shot that

was fired and its whistle passed the ear of Hargurmukh Singh. Apparently only that shot created the sound of firing which PW-2 Kesar Singh was able to see. Since the other shot missed and the bullet did not come out of the Barrel, it was not noticed by PW2 and therefore he did not state about the same. PW-2 also categorically stated that Hargurmukh Singh attacked Darshan Singh with his spade but as Darshan Singh stepped away the blow from the sharp side hit on his left foot.

The injury on the left foot of Darshan Singh was proved by PW6-Dr. Sanjay Kapoor. Though he stated that injury No.1 was caused by blunt weapon and injuries No. 2 and 3 were caused by sharp weapon but he stated that all three injuries were possible at the same time with one blow.

21. According to the prosecution story during the scuffle the rifle in the hands of Sarmukh Singh got broken. While the wooden handle (Butt) came in the hands of Hargurmukh Singh, the barrel portion was left in the hands of Sarmukh Singh. During investigation Hargurmukh Singh produced the broken wooden handle of the 12 bore rifle alongwith the missed cartridge of the same bore before PW10- SI Arvind Puri which were taken in possession vide memo Ex.PA. After his arrest accused-Kashmira Singh being the licensee of the rifle produced the broken 12 bore rifle alongwith cartridge which was taken into possession vide memo Ex.PD. He also produced the spade used by him during commission of crime. Non production of the wooden handle (Butt) by the prosecution during trial is of no consequence when it is established from the recovery memo Ex.PA that it was taken in possession by PW-10 SI Arvind Puri from Hargurmukh Singh whereas the barrel portion of the rifle was produced by Kashmira Singh.

Deposition of PW1 and PW2 on all material aspects stands corroborated by

medical evidence as well as the facts discovered during investigation. Lapse if any on party of the police could have no adverse bearing on the prosecution case.

In the above premises, it is held that the evidence of the prosecution was very much consistent, cogent and truth inspiring and learned trial Court rightly convicted the appellant-Sarmukh Singh for commission of offence under Section 307, 324 I.P.C. and Section 27 of the Arms Act. Accordingly the judgment of conviction dated 26.03.2004 is upheld and the appeal being devoid of merit is dismissed.

Coming to the order of learned trial court passed on 26.03.2004 on the quantum of sentence and considering all aspects of the case, the substantive sentence of seven years awarded to the appellant is reduced to four years. However, the imposition of fine of Rs.2000/- and in default of payment of the same the direction to further undergo Rigorous Imprisonment for one month is upheld. The appellant is on bail, his bail bond, shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convict arrested and commit him to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The District and Sessions Judge, Ludhiana shall ensure that the directions are complied with, within the time frame, and the compliance report is submitted immediately thereafter.

The Registry shall keep track of the submission of compliance

report, and will put up the papers whether the report is received or not within the time frame, immediately after the expiry thereof.

29.07.2015
rashmi

(SNEH PRASHAR)
JUDGE