

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

CRA-S-867-SB of 2004.

Date of Decision: July 15, 2015.

BALBIR SINGH

....APPELLANT.

VERSUS

STATE OF PUNJAB

....RESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Kapil Aggarwal, Advocate for the appellant.

Mr. Ashish Sanghi, Deputy Advocate General, Punjab.

SNEH PRASHAR, J.

This appeal was preferred by appellant Balbir Singh, assailing the judgment of conviction and order of sentence dated 06.04.2004 recorded by learned Additional Sessions Judge, Amritsar, in case bearing First Information Report No.139 dated 12.07.2000 under Section 307/309/34 of the Indian Penal Code (for short "I.P.C.") and 25/27 of the Arms Act, 1959 registered at Police Station Mehta.

2. The facts relevant, in precise, are that two persons namely Buta Singh son of Mansha Singh, resident of village Sherpur, Tehsil

Pathankot, District Gurdaspur and Balbir Singh son of Shangara Singh (appellant) were prosecuted for commission of offence under Section 307/309/34 I.P.C. and Section 25/27 of the Arms Act, 1959 in the case, particulars of which have been mentioned above. Baljit Kaur was the lodger of the said First Information Report. She stated that she alongwith her daughter Sandeep Kaur, a student of 10+2 was living in village Bhalaipur. Balbir Kaur widow of Ishwar Singh was her neighbour and accused Buta Singh and Balbir Singh were residing in her house. On 12.07.2000 at about 7:15 a.m. when Sandeep Kaur was going to her school and she (complainant) was following her, near the house of Joginder Kaur wife of Gurdev Singh, she saw both Buta Singh and Balbir Singh coming from opposite side. Buta Singh was carrying a carbine and Balbir Singh was empty handed. Buta Singh uttered something to her daughter to which she strongly reacted. Feeling enraged, Buta Singh fired upon Sandeep Kaur from the carbine with an intention to kill her. The shot hit in the abdomen of Sandeep Kaur. She (complainant) raised shouts and moved forward to save her daughter Sandeep Kaur. Meantime, Buta Singh shot himself also from the carbine. He too fell on the spot and Balbir Singh fled away.

Complainant with the help of her relatives brought Sandeep Kaur to Government Hospital, Baba Bakala from where she was shifted to Guru Nanak Dev Hospital, Amritsar and was treated there.

On 12.07.2000, statement of complainant Baljit Kaur was recorded outside the hospital where the injured was admitted. On the basis

of her statement, First Information Report was recorded and investigation followed. After completion of necessary formalities, final report under Section 173(2) of the Code of Criminal Procedure (in short, "Cr.P.C.") was filed.

3. The appellant was charge-sheeted under Section 307/34 I.P.C. and sections 25 and 27 of the Arms Act, to which he pleaded not guilty and claimed trial. The prosecution examined PW1 Baljit Kaur, PW2 Sandeep Kaur, PW3 Rishi Ram, Draftsman, PW4 Dr. Niti Rajan, PW5 Dr. Ramesh Chander, PW6 ASI Tarlok Singh, PW7 SI Harpal Singh, PW8 HC Charanjit Singh, PW9 ASI Harnek Singh and PW10 Dr. Gur Iqbal Singh. After closure of evidence of the prosecution, statement of appellant under Section 313 Cr.P.C. was recorded by putting to him the incriminating evidence available on record. He pleaded innocence and contended that he was falsely implicated in this case. In defence, the accused-appellant examined Librarian Darshan Singh, Guru Nanak Dev Hospital, Amritsar as DW1.

4. Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the accused-appellant, learned trial Court came to the conclusion that the prosecution had been able to bring home guilt of accused Buta Singh under Section 307 and 309 I.P.C. and that of accused Balbir Singh under Section 307 read with Section 34 I.P.C. beyond reasonable doubt and thus convicted and sentenced them as under:-

"Convict Buta Singh was sentenced to undergo

rigorous imprisonment for five years and to pay a fine of Rs.5000/- and in default of payment of fine he shall further undergo rigorous imprisonment for six months under Section 307 I.P.C. He shall also undergo simple imprisonment for six months under Section 309 I.P.C.

Convict Balbir Singh was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5000/- and in default of payment of fine he shall undergo further rigorous imprisonment for six months under Section 307 read with Section 34 I.P.C.”

Finding that the prosecution had failed to prove the charge under Section 25 and 27 of the Arms Act, 1959 against Buta Singh he was acquitted of the said offence.

5. Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 06.04.2004 passed by learned trial court, the appellant preferred the instant appeal.

Before proceeding further, it is worthwhile to mention that Buta Singh did not prefer any appeal and had undergone the sentence awarded to him.

6. The submissions made by Mr. Kapil Aggarwal, learned counsel representing the appellant and Mr. Ashish Sanghi, Deputy Advocate General representing the State of Punjab have been heard and record has been perused.

7. At the very outset, learned counsel for the appellant argued

that in the story of the prosecution except for stating presence of the appellant at the spot where the occurrence took place, no other overt act was attributed to him. He neither spoke anything to Sandeep Kaur, daughter of the complainant, nor it was the allegation that he caused any injury to her. It was neither the allegation nor any evidence was produced by the prosecution to prove that while coming towards the spot the appellant knew that Buta Singh will speak to Sandeep Kaur or would fire at her from the carbine.

8. Elaborating his argument, learned counsel contended that the only eyewitness of the occurrence was Baljit Kaur, who was also the lodger of the First Information Report, but her deposition in the Court is in variation to her version incorporated in the First Information Report. In her initial statement, recorded in the First Information Report, she had stated that only Buta Singh uttered something to her daughter, reacting to which her daughter rebuked him and that led to the occurrence of firing. On the contrary, when she stepped into the witness box as PW1 she stated that both Buta Singh and Balbir Singh uttered some words to which her daughter answered angrily and then on the asking of Balbir Singh to fire a shot and kill Sandeep Kaur, Buta Singh who was armed with carbine fired at Sandeep Kaur which hit in her abdomen.

Learned counsel contended that the material improvement in her version made by PW1 Baljit Kaur proved her over anxiety to implicate the appellant falsely. The statement of PW2 injured Sandeep Kaur was still discrepant to the statement of her mother PW1 Baljit Kaur. She stated

that only Buta Singh passed bad remarks to her and she rebuffed him on which Balbir Singh exhorted Buta Singh to fire at her from his carbine. During cross-examination, she was confronted to her statement recorded under Section 161 Cr.P.C. and she admitted that at the instant of mother it was not so recorded in the same. In her further cross-examination, she admitted that she had stated before the police that Balbir Singh had run away from the spot with the carbine of Buta Singh. Learned counsel urged that statement of PW2 Sandeep Kaur to the said extent proves that she was tutored by her mother and had given the statement only to support her and therefore does not deserve to be believed.

9. The other argument raised by learned counsel for the appellant was that no motive was attributed to appellant Balbir Singh. Both Buta Singh and Balbir Singh were employed as Gunmen. There was no occasion for Buta Singh to carry the carbine of appellant Balbir Singh when he must be having his own weapon. For the said reason, the competent authority did not accord sanction for prosecution of the appellant for commission of offence under the Arms Act. The entire circumstances show that the appellant was implicated only because he was a companion of Buta Singh and was the person who had taken him to the hospital from the spot after he had shot himself.

10. Scrutiny of the evidence shows that PW8 Head Constable Charanjit Singh was examined by the prosecution to prove that a carbine bearing no.8136 plus two magazine and 35 cartridges were issued to S.P.O. Balbir Singh-appellant under the orders of Senior Superintendent

of Police, Fatehgarh Sahib vide serial No.365 dated 27.03.1999. It was the same carbine which was used for firing during the occurrence. There is no denial on the part of the appellant also that the said carbine having been allotted to him for performance of his official duties was in his possession. However, it was unequivocally stated by complainant PW1 Baljit Kaur and injured PW2 Sandeep Kaur that Buta Singh was carrying the carbine and appellant Balbir Singh was empty handed. Since both were walking together it is obvious that Buta Singh was carrying the carbine with the consent of appellant Balbir Singh. In the said situation, when Buta Singh illegally used the carbine, it can be said without hesitation that appellant Balbir Singh allowed him to do so.

11. Both PW1 complainant Baljit Kaur as well as PW2 Sandeep Kaur consistently stated that appellant Balbir Singh was accompanying Buta Singh when the occurrence took place. Minor discrepancies in the statement of the said witnesses are of no consequence when their statement on the material particulars is very much consistent and cogent. PW2 injured Sandeep Kaur deposed that Buta Singh passed some unhealthy remarks to her on which she rebuked him and thereupon being exhorted by appellant Balbir Singh to fire at her from the carbine Buta Singh fired and the shot hit in her abdomen. Only injured Sandeep Kaur, who was standing close to Buta Singh and Balbir Singh, could tell what had exactly transpired between her and the said two persons. As stated by PW1-complainant Baljit Kaur, she was following her daughter, which means she was at some distance from them. For that reason, while lodging

the First Information Report she stated that Buta Singh had uttered something to her daughter to which she had agitatedly reacted and thereupon Buta Singh had fired at her. There was no reason to discard the version of PW2 injured Sandeep Kaur that when she rebuked Buta Singh on his passing bad remarks to her, Balbir Singh exhorted Buta Singh to fire upon her and kill her and on his instigation Buta Singh fired on her with an intention to kill her.

12. In addition to the statement of PW1 and PW2, the presence of Balbir Singh at the time of occurrence is also proved from the Bed Head Ticket Ex.DA of Buta Singh. According to the said document, appellant Balbir Singh had taken Buta Singh to the hospital. Since he accompanied the patient the note of the doctor that he had been made to understand the seriousness of the patient, was signed by him. He had also signed the consent note for the operation performed on Buta Singh. It had come in the statement of PW9 ASI Harnek Singh that both Buta Singh and Balbir Singh were deputed on duty at the residence of S.S.P., Fatehgarh Sahib vide order dated 19.11.1998 Mark-PA. When it stands established that Balbir Singh had taken place because he had taken Buta Singh from the spot of occurrence to the hospital without any loss of time, there remains no doubt that Balbir Singh instead of being in Fatehgarh Sahib was present with Buta Singh at the spot of occurrence i.e. in village Bhalaipur. Subsequently, the carbine, from which the shot was fired, was also recovered from his possession.

13. From the ocular as well as documentary evidence, the

occurrence is almost undisputed. Buta Singh, who fired at PW2 Sandeep Kaur also fired at himself. Injured Sandeep Kaur was taken to the hospital by her mother etc. and Buta Singh was taken to the hospital by appellant Balbir Singh and that he did not deny either at the time of cross-examination of the witnesses or in his statement recorded under Section 313 Cr.P.C. As regards motive, it had come in the statement of PW1 Baljit Kaur that Buta Singh and Balbir Singh, who were living in the house of Balbir Kaur, her neighbour, used to tease Sandeep Kaur and on 2-3 occasions Sandeep Kaur had complained of their behaviour to her and in turn she had apprised Balbir Kaur of their conduct. On the day of occurrence also, it is the deposition of PW2 Sandeep Kaur as well as her mother PW1 Baljit Kaur that Buta Singh had passed some bad remarks to which Sandeep Kaur reacted offensively and thereupon appellant Balbir Singh instigated Buta Singh to fire at her. The said evidence left no doubt that both Buta Singh and Balbir Singh had common intention and motive which led to the occurrence.

14. As already indicated above, Buta Singh was convicted and sentenced for commission of offence under Section 307 and 309 I.P.C. and he filed no appeal against the same. Appellant Balbir Singh was convicted under Section 307 read with Section 34 I.P.C. and was sentenced as indicated above. Thus, finding no ground for intervention in the judgment of conviction dated 06.04.2004 recorded by learned trial court convicting the appellant, the appeal as against the judgment of conviction is devoid of merit.

Coming to the order of learned trial court passed on 06.04.2004 on quantum of sentence, considering the fact that the appellant was a young man employed in police and consequent to the occurrence is facing this litigation since the year 2000 and according to the custody certificate filed by the State counsel today had undergone 1 year, 2 months and 28 days sentence after conviction, I feel it shall be expedient and in the interest of justice that the sentence of imprisonment awarded to him is reduced from five years to four years. The order of sentence is accordingly modified.

(SNEH PRASHAR)
JUDGE

July 15, 2015.
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Note: Whether to be referred to the Reporter or not? Yes/No.