

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

**Criminal Appeal No.S-370-SB of 2015 (O&M)
Date of Decision: 07.05.2015**

Jaswant Singh

..... Appellant

Versus

State of Punjab and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN**

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Present: Mr. Simrandeep Singh Sandhu, Advocate,
for the appellant.

S.S. SARON, J.

Heard learned counsel for the appellant.

The appeal has been filed by the appellant Jaswant Singh against the acquittal of respondent No.2 Kishan Singh by the learned Additional Sessions Judge, Moga vide his judgment dated 07.10.2013.

Along with the appeal, Criminal Misc. No.2678 of 2015 has been filed seeking condonation of 456 days' delay in filing the appeal. In the said application seeking condonation of delay, it is stated that the delay in filing the appeal has occurred due to the fact that the applicant-appellant was under the impression that the State would file an appeal against the acquittal of respondent No.2. Therefore, he could not file the appeal. Later on, he was advised by his counsel that he could also file an appeal. In this process, a delay of 456 days'

occurred in filing the appeal, which, it is stated, is neither intentional nor willful but due to the fact as mentioned.

Learned counsel for the appellant submits that the necessity of filing the appeal has arisen as it is a case of version and cross version as Gurdev Singh and others, who are from the side of the appellant in the present appeal have been convicted and sentenced for the offences punishable under Sections 450, 302, 307, 325, 323, 324 and 148 read with Section 149 Indian Penal Code (I.P.C.-for short). Criminal Appeal No.D-1431-DB of 2013 has been filed by them, which is pending; besides, Criminal Appeal No.D-1428-DB of 2013 has been filed by Kulwinder Singh, which is also pending. It is submitted that acquittal of Kishan Singh (respondent No.2) would prejudice the said criminal appeals of the side of the appellant in the present appeal.

The case was initially registered on the statement of Baldev Singh, who had come from Moga after his duty on 03.11.2001 at about 8.30 am. At that time, Gurdev Singh armed with a .12 bore licensed gun, Ajmer Singh son of Jit Singh, Jaswinder Singh, Kulwinder Singh and Rajwinder Singh armed with 'gandasas' and Darshan Singh armed with a 'takua', had come out of the house of Ajmer Singh raising 'lalkaras' that they would teach them a lesson for having illicit relations. Baldev Singh-complainant had gone in his house. The above named accused forcibly entered his house. Gurdev Singh caught hold of Jagsir Singh (deceased in the case) son of the complainant Baldev Singh and fired a gun shot due to which he (Jagsir Singh) died at the spot. Another shot was fired by Gurdev Singh, which hit on the feet of Sadhu Singh. The other accused also caused injuries to the complainant Baldev Singh and also to Kishan Singh (respondent No.2

herein). Gurdev Singh had broken the gun of Baldev Singh. When there was a hue and cry, the accused ran away from the spot with their respective weapons.

After conducting investigations, an enquiry was got conducted by Gurdev Singh in this case. According to the enquiry, it transpired that actually Kishan Singh (respondent No.2) had aimed a gun shot towards Gurdev Singh but incidentally Jagsir Singh (deceased) had come in front of him and in the meantime, the accused Kishan Singh (respondent No.2) had pulled the trigger of the gun and the shot hit on the chest of Jagsir Singh (deceased), which proved fatal. Kishan Singh (respondent No.2) was to fire a second shot from the gun of his brother Baldev Singh but Sadhu Singh moved the barrel of the gun towards the ground and in this process, the shot hit on the feet of Sadhu Singh. Accordingly, Kishan Singh (respondent No.2) was booked for the offence punishable under Section 304-A I.P.C. The investigation in the case were completed and the police report ('challan') was filed.

The case was committed by the learned Illaqa Magistrate to the Court of Session for trial along with the other Sessions trial titled "State versus Gurdev Singh etc." and the complaint case titled "Baldev Singh versus Gurdev Singh etc." The learned trial Court framed charge for the offence under Section 304-A I.P.C. against Kishan Singh (respondent No.2), who pleaded not guilty to the same and claimed trial.

The learned trial Court after considering the evidence and material on record inter alia held that in this case, Kulwinder Singh and Gurdev Singh were the material witnesses of the prosecution but

they were not examined. They were the only persons, who could have claimed that Jagsir Singh had died due to the gun shot fired by Kishan Singh (respondent No.2) through the rifle of his brother Baldev Singh. The first and second round fired by Kishan Singh (respondent No.2) had caused injuries on the feet of Sadhu Singh. In the absence of their depositions, it was held that it would be totally unsafe to rely on the enquiry report for holding that Jagsir Singh was killed by accused Kishan Singh (respondent No.2) as alleged. Accordingly, he was acquitted.

According to learned counsel for the appellant, the learned trial Court has not referred to the deposition of Amandeep Singh (PW-3) regarding injuries caused to the deceased. The evidence of the witness is categoric to the effect that he had seen Kishan Singh (respondent No.2) aiming his gun towards Gurdev Singh and further Gurdev Singh was having a scuffle with Jagsir Singh (deceased). He further stated that the deceased had received fire arm injuries on his chest during the scuffle. It is stated that the findings of the learned trial Court that there is no specific reference of fire arm injury attributed to Kishan Singh (respondent No.2), is against facts.

After giving our thoughtful consideration to the matter, it is to be noticed that the appeal has been filed primarily because this defence is sought to be taken in the above referred two connected appeals filed by Gurdev Singh and others i.e. Criminal Appeal No.D-1431-DB of 2013 and Kulwinder Singh i.e. Criminal Appeal No.D-1428-DB of 2013. The appellants in the said case may take whatever defence, that is raised by them in their said connected appeals, however, this cannot be a ground for recording a finding of guilt against Kishan

Singh (respondent No.2). The name of Amandeep Singh (PW-3) even otherwise does not find a mention in the initial version of Baldev Singh on whose statement FIR in the case was registered. Therefore, the question whether he was actually present at the time of occurrence or was introduced subsequently would be debateable. In a criminal case the guilt of an accused is to be established by evidence which inculcates him beyond shadow of reasonable doubt and not by mere preponderance of probabilities. The learned trial Court having taken a reasonable view in acquitting Kishan Singh (respondent No.2), the same is not to be interfered with merely because another view may be possible. Besides, the death of Jagsir Singh had occurred and it is not shown as to how Jaswant Singh (appellant) is a 'victim' within the meaning of Section 2 (wa) of the Code of Criminal Procedure ('Cr.P.C.'-for short) so as to be entitled to file an appeal in terms of the proviso to Section 372 Cr.P.C. Moreover, the appeal is time barred by 456 days and there is no specific reason or cause shown to condone the delay in filing the appeal except that the applicant-appellant was under the impression that the State would file an appeal.

For the foregoing reasons, we find no merit in the application seeking condonation of delay in filing the appeal as well as in the appeal and the same are accordingly dismissed.

(S. S. SARON)
JUDGE

(RAMENDRA JAIN)
JUDGE

07.05.2015
G. Bhardwaj