

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

**CRA S-415-SB of 2014.
Decided on : 6.10.2015.**

Ajit Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

**Present : Mr. Rahul Vats, Advocate,
for the appellant.**

Mr. Mehardeep Singh, DAG, Punjab.

JITENDRA CHAUHAN, J.

This appeal is directed against the judgement of conviction and order of sentence dated 10.12.2013, passed by the Sessions Judge, Ludhiana vide which the accused-appellant was convicted under Section 307 IPC and sentenced to undergo RI for 10 years and to pay a fine of Rs. 5000/- and in default of payment of fine to further undergo RI for 6 months.

In brief the case of the prosecution is that Amarjit Kaur is the wife and Mohinder Kaur is the daughter of the accused Ajit Singh. Amarjit Kaur and Mohinder Kaur had been residing in the house having two rooms, situated at New Dashmesh Nagar, Jagraon. Out of

the two rooms, one was occupied by the mother and daughter whereas, the other one was occupied by the accused. The accused has also a son, namely, Randhir Singh. Tamanjot Kaur, the daughter of Randhir Singh also resides with her grandmother. Since the relationship between the accused and his wife were strained, the parties had been living separately in the above said manner for several years. The house is in the name of the accused. A petition for divorce was also pending between the parties. The accused had entered into an agreement with somebody for selling the house in question. The wife and daughter of the accused opposed the proposal. They filed a suit for injunction before the Civil Court seeking to restrain the accused from alienating the house in question. Therefore, the accused was annoyed with his wife and daughter. It is further the case of the prosecution that on 14.1.2010 at about 6.00 pm, the electric bulb in the courtyard was on. Amarjit Kaur, Mohinder Kaur and Tamanjot Singh were standing in the courtyard. On seeing them, the accused started abusing them. He then declared that he would teach a lesson to them for having obtained an injunction order against him. Thereafter, he took his .12 bore gun from his room and came out in the courtyard. In order to kill the above said three persons, the accused aimed his gun at them and shot a fire. Due to the same, Mohinder Kaur daughter of the accused received a gunshot injury on her left buttock. She fell down. Tamanjot Kaur raised alarm. Thereafter Amarjit Kaur and Mohinder Kaur went inside the room and locked themselves. The accused then fled away along with the gun.

Thereafter Amarjit Kaur and Mohinder Kaur came out and with the help of the people, they reached a vehicle and removed the injured to Civil Hospital, Jagraon. Thereafter, the injured was taken to DMC, Hospital, Ludhiana. She was treated by Dr Harpal Singh and Dr. Saurabh Singla. On the statement made by Amarjit Kaur, the FIR was registered. After completion of investigation, challan against the accused was presented in the court.

After complying with the provisions of Section 207 Cr.P.C, the case was committed to the Court of Session. Charge under Section 307 IPC was framed against the accused to which he did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined as many as 13 witnesses.

PW-1, Amarjit Kaur has stated that she along with her children has been residing in one room of the house belonging to her husband. She had filed a suit for injunction and obtained an injunction order against her husband. On 14.1.2010 at about 6 PM, she along with her daughter Mohinder Kaur and her granddaughter Tamanjot Kaur was standing in the courtyard of her house. Her husband, the accused came from outside and on seeing them, hurled abuses upon them and shouted that he would teach a lesson to them for getting a stay order against him. Thereafter, the accused entered into the room and brought the .12 bore gun. The accused aimed the gun

towards them and fired a gun shot which struck on the left buttock of

Mohinder Kaur. She fell down on the ground and they raised a hue and cry. All of them entered into the room and bolted the door from inside. The accused fled away from the spot along with the weapon. The injured was removed to the Civil Hospital, Jagraon. The Medical Officer referred the injured to DMC Hospital, Ludhiana wherein, she was medico-legally examined by the doctor. The motive behind the occurrence was that she had obtained a stay order from the Civil Court due to which the accused was annoyed and caused injuries to his daughter. She also made a statement before the Police in this regard.

PW-2, Mohinder Kaur has stated that on 14.1.2010 at about 6.00 pm, she along with her mother Amarjit Kaur and her niece Tamanjot Kaur was present in the house. Her father had been residing in the same house separately as relations between her father and mother were not cordial. Her father without any reason often used to abuse her mother. Her father had been negotiating with someone to sell out the house under their occupation whereas, her mother had obtained a stay order from the Civil Court against her father. On the day of occurrence, her father started abusing her mother and also threatened her that he would teach a lesson for obtaining the stay order against him. Then her father went to his room and brought .12 bore gun from the room. Her father fired the gun with intention to kill them and he was also abusing them. The fire hit on her left hip and she fell down on receiving the shot. Her mother and niece raised a hue and cry. Her

mother locked her (Mohinder Kaur) and herself in the room to save

themselves and thereafter the accused fled away from the place of occurrence along with his gun. She was admitted in the Civil Hospital, Jagraon where the doctor provided her first aid treatment and referred her to DMC, Hospital, Ludhiana.

PW-3, Randhir Singh is the son of the accused. He got the accused arrested.

PW-4, HC Bhim Singh was a witness to the recovery memo Ex.PF. He took ten test cartridges for testing purpose to the office of FSL, Punjab Chandigarh on 16.2.2010.

PW-5, HC Ashok Kumar was a witness to the recovery memo Ex. PG.

PW-6, Tarsem Lal, the draftsman had prepared the scale site plan Ex.PH.

PW-7, Dr. Kishan Singh, Medical Officer, Civil Hospital, Jagraon medically examined the injured on 14.1.2010. He found a rounded wound of 5 cm x 4 cm over left buttock about 10 cm posterior to left anterior iliac spine. The edges were inverted over superior and interior aspect of wound, bleeding was also present. Corresponding hole was also present on underwear, salwar, shirt and jacket. The injury was kept under observation. He proved the copy of MLS as Ex.PK.

PW-8, Kamaljit Kaur, Copy Clerk in the Court of Sub-Divisional Judicial Magistrate, Jagraon proved the certified copy

of order dated 24.12.2009 wherein it was reflected that the petition

under Section 12 of Protection of Women From Domestic Violence Act was pending in the court.

PW-9, HC Gurcharan Singh, Additional MHC, Police Station Sadar, Jagraon, has stated that on 14.1.2010 he was posted at Police Station Jagraon. The case property was deposited with him. He kept the same in the Malkhana.

PW-10, SI Nirmal Singh was the investigating officer of this case. He has stated that he conducted the investigation of this case and recorded statements of witnesses. The accused led police party and got recorded a .12 Bore DBBL Gun and 13 live cartridges along with his arm licence from the almirah lying in his room. He converted the gun into parcels and sealed the same with his seals.

PW-11, Dr. Raghav Aggarwal, Medical Officer, DMC, Hospital, Ludhiana has stated that the patient was operated upon for the injury suffered on 15.1.2010 and 20.1.2010. He also attended the patient after operation. The patient was treated by the team of the doctors consisting of Dr Ankush, Dr. Shekhar, Dr. Aseem, Dr. Shikha Shahi and Dr. Harpal Singh.

PW-12, Dr. Saurabh Singla, a Junior Resident, DMC Hospital, Ludhiana has stated that he along with Dr. Harpal Singh, Dr. Shekhar Singhal, Dr. Raghav Aggarwal was a member of the team. The injured was operated on 15.1.2010 and debridement and exploration of wound was done. She was again operated on 20.1.2010 and a secondary suturing of wound was done. He proved on record the Bed-

Head Tickets of the injured as Ex. PEE and the CT scan report Ex.PFF.

The patient had suffered gunshot injuries on her left hip and thigh.

There was a comminuted fracture left Iliac blade extending to roof of acetabulum. The fracture was grievous in nature.

PW-13, Dr. Harpal Singh Selhi, a Consultant Orthopedics Surgeon at DMC Hospital, Ludhiana has deposed that the patient was admitted in emergency on 14.1.2010. She had suffered gunshot injury on left hip and thigh with comminuted fracture left iliac blade extending to roof of hip bone. She was operated for debridement.

The statement of accused under Section 313 Cr.P.C was recorded and all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which he denied and pleaded false implication.

No defence witness was examined by the accused.

After appraisal of the evidence, learned trial Court vide the impugned judgment of conviction and the order of sentence convicted and sentenced the accused-appellant as narrated above.

Feeling dis-satisfied with the impugned judgment and the order, the accused-appellant has filed the present appeal.

Learned counsel for the appellant contends that there was no intention on the part of the appellant to cause the death of injured Mohinder Kaur, his daughter. In fact, there was a quarrel between the husband and the wife and the injured suddenly intervened

and the shot was abruptly fired. The shot was not aimed at anybody. The accused is none else but the father of the injured herself and did not have any motive to cause any harm or injury to his daughter.

No other point has been raised.

On the other hand learned State Counsel has submitted that the accused intentionally fired a shot upon the injured to kill her. A civil litigation was pending between the parties, therefore, there was a strong motive with the accused to kill his own daughter. The trial Court has rightly convicted the accused for the offence under Section 307 IPC.

This is a case where the accused is none else but the father of the injured, who caused gun shot injury to kill the injured, Mohinder Kaur, his own daughter. The deposition of PW-1 and PW-2 go a long way to prove the case of prosecution that on 14.1.2010 at about 6.00 pm the accused fired a shot upon Mohinder Kaur PW-2. The statements of PW-1, and PW-2 are in consonance with each other. They were cross-examined at length but nothing could be elicited to shake the credibility of these witnesses. Their testimony goes un rebutted. Learned counsel for the appellants could not point out any infirmity in the statements of PW-1 and PW-2. Further, the ocular evidence stands corroborated by the medical evidence as PW-7, Dr. Kishan Singh, who medico-legally examined the injured, has deposed that he found gunshot injury on the person of the injured. The doctor had recovered pellet from the injury during the treatment of the injured.

He packed and sealed the same and handed it over to the police. The pellet was sent to the Chemical Examiner, who vide his report Ex. PNN, has opined that the pellet was a component of cartridge of .12 bore gun. PW-12, Dr. Saurabh Singla and PW-13, Dr. Harpal Singh Selhi who treated and operated upon the injured for the gunshot injury have also supported the case of the prosecution. They have stated that the gun shot had pierced the bone in the left buttock. The x-ray films and CT Scan films proved by PW-12, and PW-13, have proved the case of the prosecution that the injured had received injury on the fateful day at the hands of the accused-appellant. Not only that, the accused himself got recovered the .12 bore gun and its cartridges in the presence of PW-10, SI Nirmal Singh. The argument of the learned counsel for the appellant that it was a misfire, carries no weight because it was nowhere the case of the appellant throughout the trial that the shot was result of misfiring. Every person is presumed to do the actus reus which has produced those consequences. Otherwise also, had it been a misfire, the accused would not have fled away from the spot rather, he would have tried to save his daughter and at least, would have tried to get her admitted in the hospital, whereas, he fled away from the spot. The post firing conduct of the appellant negatives the stand of 'misfire'.

No other point was urged by learned counsel for the appellant.

In view of what has been stated above, the present appeal is dismissed. The impugned judgment of conviction and order of sentence stand upheld.

6.10.2015.
SN

(JITENDRA CHAUHAN)
JUDGE