

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

Crl. Appeal No.S-2143-SB of 2003

Pawandeep Singh

...Appellant

VERSUS

State of Punjab

...Respondent

(2)

Crl. Appeal No.S-254-SB of 2004

Lakhbir Singh

...Appellant

VERSUS

State of Punjab

...Respondent

Date of Decision: January 28, 2015

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.P.S.Mann, Advocate
for the appellant (in CRA No.S-2143-SB of 2003).

Mr.Naresh Prabhakar, Advocate
for the appellant (in CRA No.S-254-SB of 2004)

Mr.A.S.Klar, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Above two appeals have been filed by the appellants against the judgment of conviction dated 31.10.2003 and order of sentence dated 05.11.2003, passed by learned Addl. Sessions Judge (Fast Track Court), Kapurthala whereby the accused-appellant Pawandeep Singh was convicted under Section 307 IPC whereas accused-appellant Lakhbir Singh was convicted under Section 307/34

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IPC and sentenced both of them to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹1000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months. Both the appellants were also held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of ₹500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months under Section 25 of the Arms Act.

The brief facts of the prosecution case are that on 03.07.2001, SHO Kuljinder Singh, Police Station Subhanpur received a wireless message that after committing robbery at Bharat Gas Agency, Kanjli Road, Kapurthala, some sikh and clean shaven boys have fled away. They have one bullet motorcycle and one Bajaj Chetak scooter. On receiving the message, SI/SHO Kuljinder Singh after joining Ura Singh, Member Panchayat, laid the naka. At about, 1.20 P.M., one scooter without number came from the side of Subhanpur, on which two persons were travelling. On seeing the police party, they turned their scooter towards Kapurthala and accelerated the scooter at high speed. The police party also chased them. When the police reached near them, both the accused started running towards the bushes after throwing away their scooter. Thereafter, sikh youth took out the revolver from his dub and fired at the police party with intention to murder them. In defence, ASI Balwinder Singh also fired from his service revolver. Again, the sikh youth fired upon police party with same intention. The police party

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also fired from S.L.R. in their defence. Sikh youth received a shot on his left leg and fell down on the ground and was apprehended by the police. That sikh youth disclosed his name as Pawandeep Singh. On search, .32 bore loaded revolver and four live cartridges were recovered from his possession and the same was taken into police possession. The sketch of the revolver was also prepared. The second clean shaven youth hid himself in the bushes. On further search of accused Pawandeep Singh, ₹10,000/- were recovered and the same were taken into possession. The second clean shaven youth was arrested by ASI Balwinder Singh and he disclosed his identity as Lakhbir Singh. On his personal search, one spring actuated knife was recovered and the same was taken into police possession. After necessary investigation, challan was presented against accused-appellants.

On presentation of challan against accused-appellants, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellants were charge-sheeted under Sections 307 read with Section 34 IPC and Section 25 of the Arms Act, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Dinesh Kumar, who was working as Manager in Dada Motor, Jalandhar. He deposed that he sold the scooter Bajaj Chetak bearing Engine No.CDEBHC75901 and Chasis No.06CBHC04095 and proved the sale letter. PW-2 SI Kuljinder Singh deposed as per prosecution

version. PW-3 ASI Balwinder Singh, who arrested accused Lakhbir Singh and was with the police party, also deposed as per prosecution version. PW-4 Parveen Kumar, Reader to SDM mainly deposed regarding sanction to prosecute the accused Pawandeep. PW-5 Constable Harjinder Singh mainly deposed regarding delivering of Special report to Illaqa Magistrate. PW-6 Dr.Narinder Singh, Medical Officer medico legally examined Pawandeep Singh on 03.07.2001 and found following injuries:-

- “1. A lacerated wound 1 cm x 3/4 cm present on left buttock in its upper part. A collar of abrasion contusion was present. The wound was oval in shape with Inverted margin.*
- 2. Lacerated wound with irregular margin oblique in direction measuring 3 cm x 1 cm present 5 cm below anterior, superior iliac spine in front of thigh upper part.”*

PW-7 Dr.Gurbachan Singh, Surgical Specialist brought the bed head ticket of Pawandeep Singh and he referred the patient to higher institution. PW-8 Jaswant Singh, who was working as Godown Incharge deposed regarding first occurrence as well as arresting of the accused. PW-9 Head Constable Varinder Singh mainly deposed regarding recording of FIR Ex.PC/1.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. and they denied the correctness of the evidence and pleaded themselves as innocent.

In defence, accused-appellants examined DW-1 Urra Singh, who mainly deposed that he was present at Police Station Subhanpur in connection with some dispute in their village. At that

time, accused present in the Court were present in the police station. He did not know whether they were having injuries on their person or not. The police got his signatures on two-three papers. He further deposed that neither he had joined the police party on 03.07.2001 nor he had seen the accused running from bus stop Subhanpur. He had not witnessed any encounter with the police involving the accused present in the Court. DW-2 Jagir Singh mainly deposed that Pawandeep Singh was taken by the police on 02.02.2001 at about 6.00 A.M. When he intervened, the police told that Pawandeep is being taken for enquiry and will be let off in the evening. DW-3 Paramjit Singh also stated that on 30.06.2001, police of Police Station Subhanpur had taken away Lakhbir Singh from the village and when they went to the Police Station, police told them that he would be released after enquiry and later on, a false case was planted on Lakhbir Singh.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants, as stated above.

At the time of arguments, learned counsel for the appellants argued that first of all, there is no injury caused to any of the police official. No blood stained earth was taken into police possession. No empties were recovered from the spot. He further argued that witnesses have not supported the prosecution version. Rather, DW-1 Urra Singh appeared in defence and stated that he has not joined the police party and has not seen any occurrence. He further argued that as per prosecution version, the robbery was of

₹25,300/- but the recovery has been shown only of ₹10,000/- and this amount, in no way, has been connected with the first occurrence of robbery. Learned counsel for the appellants also argued that knife has been recovered from Lakhbir Singh as per prosecution version but the knife which is stated to have been recovered from Lakhbir Singh, has not been sealed in sealed parcel nor the same has been produced in the Court. Empties of police cartridges have also not been recovered. He next contended that as per prosecution version itself, Lakhbir Singh was not armed with any fire arm weapon nor he fired upon police officials. After leaving the scooter, Pawandeep Singh ran towards one side and Lakhbir Singh hide himself in the bushes. Even if it is taken that Pawandeep Singh fired on the police party, even then Lakhbir Singh cannot be held guilty with the help of Section 34 IPC because at that time, there was no common intention between the accused to commit the offence. Learned counsel for the appellants further contended that in robbery case, these appellants have already been acquitted. He further argued that prosecution version itself shows that the present appellants wanted to save themselves and not to kill others. When appellant Pawandeep Singh, as per prosecution version, is running away, it is not possible for him to fire upon police party, rather, the medical evidence shows that Pawandeep Singh has been fired upon from the backside as the inverted wound is on the backside and everted wound is on the front side of Pawandeep Singh, which shows that police fired upon Pawandeep Singh while he was running away. Learned counsel for

the appellants next argued that as per the FSL report, the pistol can be used with improvised means. He next contended that appellants have been falsely implicated in this case and rather a false encounter has been shown and the injury has been caused to Pawandeep Singh by the police. It is also argued that the distance between the police party and appellant Pawandeep Singh is stated to be more than 40 feet and everybody knows that range of the country made pistol cannot be 40 feet. Learned counsel for the appellants, therefore, argued that there being merit in both the appeals, the same should be allowed.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved. There are no material contradictions or improvements in the statements of the PWs. He further argued the police officials have consistently deposed regarding prosecution version. The empties have been recovered. He next argued that prosecution has duly proved its case against the appellants by leading cogent evidence beyond reasonable doubt. Learned State counsel, therefore, argued that there being no merit in both the appeals, the same should be dismissed.

I have heard learned counsel for the appellants as well as learned State counsel and have gone through the record minutely and carefully.

From the record, I find that in the present case, firstly there is no corroboration by the independent witness. The only independent witness Ura Singh, who was joined by the police party has appeared

in defence as DW-1 and has specifically deposed that neither he joined the police party nor any occurrence has taken place in his presence. Rather, his signatures were obtained on blank papers in the police station as he used to go to the police station being Member Panchayat. Secondly, I find that no police official has received any injury of any type. It is a case of no injury on the complainant side. Thirdly, I find that it looks doubtful that one of the two persons, who were chased by the police party, while they were running away in the fields after throwing scooter, fired on the police party, especially when the distance between the police party and the accused was more than 40 feet. Further, the fact that police fired on the leg of one of the accused Pawandeep Singh, shows that accused has been fired upon from the back side. The inverted wound is from the back side of the leg and everted wound is on the front side of Pawandeep Singh, which rather creates doubt in the prosecution version as to whether occurrence has taken place as stated by the prosecution.

Further, I find that in the robbery case, as argued at the time of arguments, present appellants have already been acquitted. Only ₹10,000/- has been recovered as stated by the prosecution version but the robbery was of ₹25,300/- and as per prosecution version, after the robbery case, accused ran away immediately and on receiving wireless message, naka was put and this occurrence took place. There is no explanation as to why the blood stained earth was not taken into police possession in the present case to prove place of occurrence. Even, no empties were recovered from the spot. The

FSL report also shows that country made pistol .32 bore, can be used with improvised means. No sealed parcel of the knife has been prepared nor it has been produced in the Court. Even, the empty cartridges which are fired by the police, have also not been taken into police possession. As per prosecution version Constable Jagdev Singh had fired on Pawandeep Singh but he has not been examined by the prosecution. It looks that accused persons wanted to save themselves that is why Lakhbir Singh hid himself in the bushes and Pawandeep Singh ran away in the fields. It also looks doubtful that a person who is running away with a distance of 40 feet, will turn back and fire upon the police party when the police officials were armed with SLR and other weapons.

Further, I find that prosecution has examined PW-8 Jaswant Singh, who was working in the godown of the gas agency and the witness of first occurrence regarding robbery, has stated that he also followed accused on scooter and reached at the spot. He has not deposed regarding the present occurrence nor he has stated that when he reached on the spot, he had seen Pawandeep Singh in injured condition. He simply stated that he also followed the accused on scooter. He further deposed that both the accused present in the Court were captured by the police of police station Subhanpur at about 1 km. short of Subhanpur. He nowhere stated that any independent witness Ura Singh was present with the police party at that time. In cross-examination, he stated that recovery was not effected in his presence but was already effected by the police prior to

his reaching there. The police has told him that weapon was recovered from the accused. The statement of this witness further creates doubt in the prosecution version.

It is settled law that the prosecution is to prove its case by leading cogent evidence beyond reasonable doubt. However, from the evidence on record, I find that a reasonable doubt exist in the prosecution version and benefit of doubt is to go to the accused. Therefore, giving benefit of doubt, both the appellants are acquitted of the offence under which they have been convicted.

Keeping in view the above discussion, I find that the judgment of conviction dated 31.10.2003 and order of sentence dated 05.11.2003 passed by learned Addl. Sessions Judge (Fast Track Court), Kapurthala are perverse and not as per evidence and the same are set aside.

Finding merit in both the appeals, the same are allowed.

As the accused are on bail, their bail bonds stand discharged.

January 28, 2015
Vgulati

(INDERJIT SINGH)
JUDGE