

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl.Appeal No.S-730-SB-2003

Date of decision : 16.2.2015

Bhoop Singh

.....Appellant(s)

Versus

The State of Haryana

....Respondent(s)

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Simrandeep Singh, Advocate, learned counsel for the appellant.

Mr. Mukesh Kaushik, learned DAG, Haryana.

DARSHAN SINGH, J.

1. The present appeal has been preferred against the judgement of conviction dated 14.2.2003 passed by the then learned Additional Sessions Judge, Kaithal, vide which appellant-Bhoop Singh was held guilty and convicted for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code (hereinafter called 'the IPC') and the order of sentence dated 15.2.2003 vide which he was sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5000/-,

in default of payment of fine, to further undergo rigorous imprisonment for a period of three months.

2. The brief facts giving rise to this prosecution are that on 21.12.1994, Dhoop Singh, complainant (now deceased) along with his wife PW-8 Smt.Santosh and his brother Randhir Singh was going in his car bearing registration CH-01-D-4366 from Kaithal to his village Chandana. At about 3.30 PM when they reached near Dussehra ground, Kaithal, one motorcycle make Yamaha, red colour, occupied by co-accused Pohlu, appellant Bhoop Singh and another person, who could not be identified by the complainant, was standing on the road. The unnamed person was having the double barrel gun. The complainant stopped his car. Pohlu took out the country made pistol from his Dab and fired at complainant-Dhoop Singh which hit at his chest on the left side and the pellets also injured his right hand. Then appellant-Bhoop Singh fired at the complainant. The complainant sped away his car towards village Chandana. All the three, namely, appellant-Bhoop Singh, Pohlu and the unidentified person, chased the car of the complainant up to the railway crossing. The complainant narrated the incident to his brother Ved Prakash. The complainant was got admitted in the General Hospital, Kaithal. Complainant-Dhoop Singh was facing the trial regarding the murder of Bhalla, the father of Pohlu. On 19.12.1994 Santosh wife of Bhoop Singh was elected as Sarpanch by defeating Roshni wife of Ishwar. Due to this enmity, Pohlu, appellant-Bhoop Singh and another person fired at the complainant and injured him. On receiving information from the hospital, SI Chandi Ram came to the Civil Hospital, Kaithal

and recorded the aforesaid statement of complainant-Dhoop Singh Ex.PS/1 on the basis of which formal FIR Ex. PJ was registered. The Investigating Officer visited the spot and prepared the rough site plan of the place of occurrence Ex. PO. The clothes of the deceased were taken into possession vide memo Ex.PQ. The accused could not be arrested. Later on, complainant-Dhoop Singh was murdered and a case FIR No.328 dated 20.9.1995 under Sections 148, 302, 120-B/149 IPC, Police Station City Kaithal, was registered against appellant Bhoop Singh, Pohlu and others. Appellant-Bhoop Singh surrendered in the said case on 25.10.1995. He was also arrested in this case. On interrogation, appellant-Bhoop Singh suffered the disclosure statement Ex. PL disclosing about the concealment of the weapon of that murder case. In pursuance thereof, he got recovered double barrel gun from the shop of Sehgal Gun house, Karnal which was sold by him to the said gun house. The said gun was taken into possession vide memo Ex. PG. Co-accused Pohlu and Balvinder Singh was also arrested and the report under Section 173 Cr.P.C was filed.

3. During the trial of the case, the present appellant and Pohlu absconded and were declared proclaimed offender. Only co-accused Balvinder Singh faced the trial and was acquitted vide judgment dated 26.7.2001. Later on, the present appellant was arrested. He was charge-sheeted for the offence punishable under Section 307 read with Section 34 IPC to which he pleaded not guilty and claimed trial.

4. In order to substantiate its case, the prosecution

examined as many as 10 witnesses. The prosecution also tendered in evidence the reports of FSL Ex. PQ and Ex.PQ/1.

5. When examined under Section 313 Cr.P.C, the appellant refuted all the allegations of the prosecution levelled against him and pleaded innocence. He further pleaded that Dhoop Singh was facing the criminal cases for having committed various offences regarding the land grabbing of various persons. He also had enmity with so many political leaders. So, he got him involved in a false case. In the defence evidence, accused appellant tendered copy of the report under Section 173 Cr.P.C Ex. DB, copy of the list of the witnesses Ex. DC, copy of the complaint Ex. DD and copy of the judgement Ex. DE.

6. On appreciating the evidence on record and the contentions raised by the learned counsel for the parties, the learned trial Court held guilty and convicted the appellant for the offence punishable under Section 307 read with Section 34 IPC and was awarded the sentence as mentioned in the upper part of the judgement.

7. Aggrieved with the aforesaid judgement of conviction and order of sentence, the present appeal has been preferred.

8. I have heard Mr. Simrandeep Singh, Advocate, learned counsel for the appellant and Mr. Mukesh Kaushik, learned Deputy Advocate General for the State of Haryana and have gone through the file carefully.

9. Initiating the arguments, learned counsel for the appellant contended that injured Dhoop Singh has not been examined by the

prosecution, as such, the prosecution has not been able to prove his statement on the basis of which the FIR has been registered. The Investigating Officer has also not been examined which has resulted in serious prejudice to the appellant. He further contended that the complainant was a chronic litigant having enmity with number of persons as he was a land grabber. He was also having enmity with the political leaders of the area, as such, he had got the appellant falsely implicated.

10. He further contended that the prosecution has not been able to establish that the injuries on the person of complainant were caused with the firearm as alleged by the prosecution. Even otherwise the medical evidence does not support the ocular evidence. As per the prosecution story, two shots were fired at the complainant but in the Medico Legal Report, no such corresponding injuries have been mentioned. So, the story of the prosecution is highly improbable and doubtful. In these circumstances, the solitary statement of Santosh on the point of occurrence cannot be relied upon. Thus, he pleaded that the learned trial Court has wrongly recorded the conviction.

11. On the other hand, learned DAG contended that the complainant and the Investigating Officer could not be examined as they had died. The complainant was murdered by the present appellant-Bhoop Singh, Pohlu and others and a criminal case bearing FIR No.328 dated 20.9.1995 under Sections 148, 302, 120-B/149 IPC was registered. He further contended that PW-8 Smt.

Santosh, the widow of Dhoop Singh, is the eyewitness of the

occurrence and has fully supported the prosecution version. Her statement is fully corroborated by the medical evidence. He further contended that the appellant had fired the shots from the firearm at the complainant which clearly shows his intention to commit murder of complainant-Dhoop Singh. In order to determine the applicability of Section 307 IPC, the nature of injury is immaterial. To support his contentions, he relied upon cases **State of M.P versus Kashiram and others 2009(1) RCR (Criminal) 956**. Thus, he pleaded that there is no infirmity in the conviction of the appellant.

12. I have duly considered the aforesaid contentions.

13. It is not disputed that after the present occurrence, complainant Dhoop Singh was murdered on 20.9.1995. The criminal case for the murder of Dhoop Singh was registered against the present appellant and others vide FIR No.328 dated 20.9.1995 under Sections 148, 302, 120-B/149 IPC at P.S. City Kaithal.

14. As mentioned earlier, the appellant had absconded and was declared as proclaimed offender. He only surrendered after the murder of complainant-Dhoop Singh. So, obviously due to death of complainant Dhoop Singh, he could not be produced by the prosecution in the witness box. Similarly, Sub Inspector Chandi Ram, who had recorded the statement of the complainant on the basis of which the FIR was recorded, had also expired during the trial of the case and he also could not be examined by the prosecution due to this reason.

15. There is no substance in the plea raised by the learned counsel for the appellant that the prosecution has not been able to

establish that the complainant had suffered the firearm injury. On 21.12.1994, Dhoop Singh was medico legally examined by PW-2 Dr. O.P. Dabas and he found the following injuries on his person:

“1. Lacerated wound with irregular margin with 1.5 x 1.25 cm on edge of sternum on upper part of left side of chest, 6 cm below medial end of left clavicle. There was no cheering of hair, no singing of hair, no black colouration of margin of the wound and depth of the wound was not probed. There was bleeding from the wound and X-ray of chest was advised. The wound was shallow on the right side and deep on the left side.

2. There were multiple reddish brown colour abrasion of size from pin point to pin head with feeling of small nodules like structure on antero-medial surface of right upper arm and interior aspect of right elbow joint. X-rays were advised.

3. Multiple reddish brown coloured abrasions of size from pin point to pin head with feeling of small nodules on right side of face. X-rays were advised.”

16. He proved copy of the Medico Legal Report Ex. PA and diagram showing the location of the injuries Ex. PA/1. The nature of injury Nos. 1 to 3 were kept under observation subject to X-Ray . The

nature of the weapon was also kept under observation till the X-Ray report. From the statement of PW-2 Dr. O.P. Dabas, it further comes out that on his request vide letter Ex. PD, the Medical Board consisting Dr. S.K. Singhal, Dr. O.P. Dabas and Dr. R.K. Gupta was constituted to determine the weapon used in the commission of the offence but the Medical Board also could not decide the nature of the weapon used for causing the injuries. Dr. R.C. Mittal was also added as a member of the Board by the Senior Medical Officer vide order Ex.PE. Thereafter, the matter was referred to the Forensic Expert at Medical College, Hospital, Rohtak vide letter Ex. PE/2 addressed to the Professor and Head of Forensic Medical Department, Medical College, Rohtak and after receipt of the expert opinion from the Medical College, Dr. O.P. Dabas gave his opinion Ex. PF that the nature of the weapon used was firearm. However, injury Nos.1 to 3 suffered by the complainant were declared simple in nature.

17. Dr. S.K. Dhatarwal, Reader, Department of Forensic Medicines, PGIMS, Rohtak has appeared as PW-3. From his statement, it comes out that after the receipt of the request from Dr.O.P. Dabas with respect to the opinion about the nature of the weapon, injured Dhoop Singh was examined on 29.12.1994, he was admitted in the hospital and was discharged on 31.12.1994. Thereafter, he gave his opinion Ex. PE/3. PW-3 Dr. S.K. Dhatarwal before giving his opinion had also examined the clothes which the injured was wearing at the time of the occurrence. The said clothes were resealed by the doctor after examination. Dr.S.K.Dhatarwal, further deposed that vide his opinion Ex. PE/3, he opined that the

nature of the weapon used in causing the injuries was the firearm. This witness was cross-examined at length by the learned defence counsel but his testimony/opinion with respect to the nature of the weapon used in the occurrence could not be shattered.

18. The opinion given by PW-3 Dr. S.K.Dhattarwal is also corroborated from the scientific evidence i.e the report of the Forensic Science Laboratory Madhuban, Karnal Ex. PQ. The clothes of injured Dhoop Singh were sent to the FSL for examination. After examining the clothes of complainant Dhoop Singh, the FSL has given the opinion that the large size hole on jacket, shirt and baniyan of injured Dhoop Singh has been caused by a lead bullet projectile fired from a country made firearm and the small size holes on the jacket and shirt have been caused due to unburnt powder particles. So, the report of the FSL also establishes the use of the firearm in the present occurrence. PW-8 Santosh, the eye witness of the occurrence, has also categorically deposed that the injury to her husband complainant-Dhoop Singh was caused with firearm. So, there remains no doubt that the weapon of offence used to cause injuries to the complainant was firearm.

19. PW-8 Santosh, the witness of the occurrence, has deposed in detail about the occurrence. She deposed that she along with her brother-in-law Randhir Singh and her husband Dhoop Singh complainant had come to Kaithal from village Chandana and had reached Kaithal at 11.30 A.M. At about 3 P.M, they all the three left their house at Kaithal and proceeded for Chandana. At about 3.30 p.m when they reached at Chandana Gate, Kaithal, they were in

maruti car and on the way one motorcycle Yamaha, red in colour was parked on the road. Balvinder was sitting on the motorcycle and Pohlu and Bhoop Singh were standing near the motorcycle towards the west. Pohlu took out a country made pistol from his Dab and fired at her husband. The fire hit on the right side of neck and left side of chest of Dhoop Singh. They sped away their car. From the distance of about 100 yards, Bhoop Singh fired towards their car from back side. They were chased upto railway crossing and then they reached at Chandana. At chandana, they narrated the whole matter to Ved Parkash, her brother-in-law and then Dhoop Singh was brought to the Civil Hospital, Kaithal. There he was medico legally examined and his statement was recorded by the police.

20. The aforesaid statement of PW-8 Santosh, the witness of the occurrence, depicts that her husband was fired at by Pohlu from a country made pistol as a result of which he suffered the injuries. The present appellant-Bhoop Singh also fired the shot on the car. Statement of PW-8 Santosh is also corroborated from the medical as well as scientific evidence.

21. Learned counsel for the appellant has also pleaded that the presence of PW-8 is extremely doubtful as if shot would have been fired in this manner she should also have suffered the firearm injury as it is alleged that she was travelling in that very car along with one Randhir Singh. This plea raised by the learned counsel for the appellant is devoid of merit as the target was complainant-Dhoop Singh. Co-accused Pohlu had fired at Dhoop Singh and he suffered the firearm injury. The witnesses have not been questioned pointedly

about their sitting position in the car. It may be possible that injured Dhoop Singh might be exposed to the firing and other occupants may be behind him. Thus, from this fact that PW-8 Santosh has not suffered any injury in the incident is no ground to render her presence doubtful.

22. As per the prosecution version, it has been unfolded by PW-8 Santosh that co-accused Pohlu had fired the shot from the country made pistol which hit complainant-Dhoop Singh. The medical evidence shows that the injured had suffered the injury on the left side of his chest, right upper arm and interior aspect of right elbow joint and multiple reddish brown coloured abrasions on right side of face. The weapon used in the occurrence is a country made pistol. The firing pattern of the country made pistol is always unpredictable. So, it cannot be stated that the injury described in the Medico Legal Report could not have been the result of the fire shot at the complainant by co-accused Pohlu.

23. Co-accused Pohlu and the present appellant had fired at complainant-Dhoop Singh which clearly establishes their intention to kill him. It is not disputed that he was actually murdered on 20.9.1995 for which the case bearing FIR No.328 dated 20.9.1995 under Sections 302 ,148, 120-B/149 IPC and under Section 25 of the Arms Act, Police Station City Kaithal, was registered. The copy of judgement Ex. DB shows that appellant-Bhoop Singh was one of the accused in that case. The custody certificate filed by the respondent-State of Haryana also depicts that appellant was convicted in that case vide judgement dated 14.2.2003 which shows that at the time of

the present occurrence, complainant-Dhoop Singh managed to save his life by speeding away his car from the place of occurrence but later on, he was murdered. These facts clearly establish the intention of the appellant to commit the murder of complainant-Dhoop Singh and only to achieve that object, the shots were fired at him. Accused also had a strong motive for eliminating Dhoop Singh as he was facing the trial for the murder of the father of co-accused Pohlu.

24. The nature of injury is not the determinative factor to attract Section 307 IPC. The circumstance that injury suffered by the victim was simple or minor will not itself rule out the application of Section 307 IPC. The Hon'ble Supreme Court in case **State of M.P versus Kashiram and others** (supra), relied upon by the learned State counsel, has laid down as under:

“9. To justify a conviction under this Section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not necessary that the injury actually caused to

the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

10. *It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The Section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.*

11. *This position was highlighted in **State of Maharashtra v. Balram Bama Patil and Ors.** (1983 (2) SCC 28), **Girija Shanker v. State of Uttar Pradesh** (2004 (3) SCC 793), **R. Parkash v. State of Karnataka** (JT 2004 (2) SC 348) and **State of Madhya Pradesh v. Saleem @ Chamaru & Anr.** [2005 (5) SCC 554].”*

25. In view of the aforesaid observations of the Hon'ble Apex Court, this fact that complainant-Dhoop Singh had suffered the simple injuries, is no ground to rule out the applicability of Section 307 IPC. It is established that the accused had a strong motive for the commission of the offence. The fires were shot at the victim with the intention to kill him. He saved his life by speeding away his car from the place of occurrence. The intention of the accused to kill the complainant is further apparent from the fact that first co-accused Pohlu fired the shot injuring the complainant and then, the fire was shot by the present appellant to achieve that object of killing the complainant. The firing in this manner also clearly depicts the common intention of the appellant and his co-accused.

26. Thus, keeping in view my aforesaid discussion, I do not find any infirmity or impropriety in the conviction and sentence of the appellant recorded by the learned trial Court.

27. Consequently, the present appeal being devoid of merits is hereby dismissed.

February 16, 2015
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(DARSHAN SINGH)
JUDGE

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