

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-379-DB of 2012

Date of Decision : November 18, 2016

Pavittar Singh @ Gurvinder Singh

....Appellant

VERSUS

State of Punjab

...Respondent

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM**

Present : Mr. Vivek Thakur, Advocate
for the appellant.

Mr. S.S. Dhaliwal, Additional Advocate General, Punjab.

T.P.S. MANN, J.

The appellant was charged for committing the offence punishable under Section 302 IPC for causing the murder of Raghbir Singh, Jail Warder in furtherance of common intention of his co-accused by running him over under a Scorpio vehicle, whereas his three co-accused, namely, Ravinder Singh @ Chhanga, Jatinder Singh @ Chhota and Gurjeet Singh @ Gogi, were tried under Sections 302/34 IPC. His co-accused Ravinder Singh @ Chhanga accused was also charged for committing the offence punishable under Section 224 IPC on the allegations that while being lawfully detained in the custody of the Jail Warder, he escaped therefrom and also offered resistance to his lawful apprehension. The appellant and his co-accused Jatinder Singh @ Chhota and Gurjeet Singh @ Gogi were also

tried for the offence punishable under Section 225 IPC for intentionally offering resistance to the lawful apprehension of Ravinder Singh and rescuing him from the custody of the Jail Warder. Vide judgment and order dated 4.2.2012, learned Sessions Judge, Patiala convicted the appellant under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months. His co-accused Ravinder Singh @ Chhanga was convicted under Section 224 IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for two months, whereas the appellant and his co-accused Jatinder Singh @ Chhota and Gurjeet Singh @ Gogi were convicted under Section 225 IPC and sentenced to undergo imprisonment for three years and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two months. Both the substantive sentences awarded to the appellant were ordered to run concurrently.

Aggrieved of his conviction and sentence, only the appellant preferred the present appeal, whereas Ravinder Singh @ Chhanga, Jatinder Singh @ Chhota and Gurjeet Singh @ Gogi accused did not challenge the judgment of conviction and sentence passed by the learned trial Court. The appeal filed by the appellant was admitted

and notice issued to the State. Trial Court record also stood requisitioned.

According to the prosecution, Bhupinder Singh, Jail Warder, No.211, Central Jail, Patiala made statement Ex.PE before Inspector Pritpal Singh that on 6.12.2008 at 5.45 a.m. at Rajindra Hospital, Patiala wherein he stated that he was posted as Jail Warder in Central Jail, Patiala. Undertrial Ravinder Singh @ Chhanga was admitted in Ward No.8, Rajindera Hospital, Patiala for treatment. For his guard, he, alongwith Raghbir Singh No.252 and Rajwinder Singh No.4493, Jail Warders were deputed. On that very night, Raghbir Singh, Jail Warder was on duty for guard supervision of undertrial Ravinder Singh. From the ward, he went to take tea from the tea shop after intimating Raghbir Singh, Jail Warder to take care of undertrial Ravinder Singh. At about 3.00 a.m., when he was coming back and reached near the cycle-stand, two Sikh gentlemen and one clean shaven man were coming out with Ravinder Singh undertrial. Raghbir Singh, Jail Warder was trying to apprehend him. He also made an attempt to apprehend them. They made Ravinder Singh to board the Scorpio vehicle of cherry colour, which was parked near the Emergency. He and Raghbir Singh, Jail Warders tried to stop the vehicle. Raghbir Singh even stood in front of the vehicle in order to stop them but they ran their vehicle upon him. Raghbir Singh was dragged in the process. They took Ravinder Singh undertrial with them and fled from the spot. The complainant took Raghbir Singh,

Jail Warder and got him admitted in Emergency of Rajindera Hospital, Patiala for treatment, where he succumbed to his injuries. In order to get Ravinder Singh undertrial released, the assailants had caused the death of Raghbir Singh, Jail Warder by running their vehicle upon him.

It is also the case of the prosecution that as the statement of complainant Bhupinder Singh, Jail Warder revealed commission of offence under Sections 302/223/34 IPC, Inspector Pritpal Singh, after making an endorsement (Ex.PE/1), forwarded the statement so recorded through Constable Gurbaz Singh to Police Station Civil Lines, Patiala where, on its basis, FIR No.268 dated 6.12.2008 (Ex.PE/2) was registered by SI Vinod Kumar at 6.05 a.m. and concluded at 7.10 a.m. Special report sent through HC Gurcharan Singh was received by the Ilaqa Magistrate on 6.12.2008 at 10.15 a.m.

It is further the case of the prosecution that during investigation, Inspector Pritpal Singh prepared inquest report Ex.PC after receiving the dead body and sent the same for post mortem. Statements of Harjinder Singh and Balwinder Singh under Section 175 Cr.P.C. were recorded. Inspector Pritpal Singh then went to the spot and recorded the statements of witnesses. He prepared rough site plan Ex.PN of the place of occurrence. After the post mortem, the dead body was handed over to Balwinder Singh. HC Ashok Kumar handed over parcel containing clothes of the deceased to Inspector Pritpal Singh, who took the same into possession vide memo Ex.PF.

He also took into possession handcuffs which were tied with the bed in Ward No.8, Rajindera Hospital, Patiala vide recovery memo Ex.PG. The case property was deposited with MHC Gurtej Singh.

It is also the case of the prosecution that Inspector Pritpal Singh received phone call from Incharge, CIA, Kharar that the accused required in this case had been arrested in different cases of those Police Stations. Accordingly, on 22.12.2008, he got production warrants of Ravinder Singh @ Chhanga and Pavittar Singh accused and both of them were arrested after taking permission from the Court. On 24.12.2008 he also arrested Joginder Singh and Gurjeet Singh. The Scorpio vehicle used in the crime was recovered by Incharge, CIA Staff, Police Station Phase-I, S.A.S. Nagar, Mohali in case FIR No.482/2008 and on 27.12.2008, he prepared memo Ex.PR regarding the said vehicle. After completion of investigation, challan against the four accused was presented in the Court. The case was, thereafter, committed to the Court of Sessions where charge under Sections 302/224/225/34 IPC were framed against them, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as 16 witnesses.

PW1 Dr. Rakesh Kumar, Medical Officer, Department of Forensic Medicines, Rajindera Hospital, Patiala deposed that he had

conducted post mortem on the dead body of Raghbir Singh on 6.12.2008 and found the following injuries :-

- "1. Lacerated wound 10 cms. x 7.5 cms. was present on left side of head just above and behind left ear. Clotted blood was present on wound and scalp. Soft tissue was missing from wound and skull was exposed. On dissection of scalp, huge clotted blood was present in area of 30 cms. x 4 cms. present on centre of top of head. There was fissured fracture whole of skull in centre at top, bleeding coming out of fracture ends. On removing of skull, subarachnoid haemorrhage involved both cerebral hemisphere, about 200 cc of fluid and clotted blood was present at base of cranial cavity.
2. Grazed reddish abrasion 40 cms. x 20 cms. on back of chest and shoulder joint of left side below axilla, also reddish abrasion 7 cms. x 6 cms. was present on outer aspect of right shoulder. Whole of the chest was compressed antero posteriorly. On dissection, haematoma was present on both side of chest cavity with fracture of 1-7 ribs of both sides, on its lateral aspects. Sternum was also fractured. There was laceration of both lungs at multiple sites, about 500 cc of fluid and clotted blood was present in each pleural cavity.
3. Reddish abrasion 20 cms. x 10 cms. was present on right side of abdomen and midline at the level of umbilicus.

4. Reddish abrasion 7.5 cms. x 5 cms. was present on right side of lateral and above umbilical level.
5. Reddish abrasion 10 cms. x 4 cms. was present on front and medial aspect of right knee.
6. Reddish abrasion 5 cms. x 5 cms. was present on anterior aspect of left knee with lacerated wound 2.5 cms. x 1.5 cms. in its middle.
7. Reddish abrasion 20 cms. x 7.5 cms. was present on anterior aspect of left leg in its upper half.
8. Reddish abrasion 2 cms. x 2 cms. on the palmer aspect of left big toe.
9. Two reddish abrasions 1 cm. x 1 cm. and 1 cm x. 1.5 cms. were present on medial aspect of left foot.
10. Reddish abrasion 3 cms. x 2 cms. was present on palmer aspect of right big toe.
11. Two reddish abrasions 2 cms. x 1 cm and 1 cm. x 1 cm. were present on medial aspect of right foot.
12. Reddish abrasion 15 cms. x 4 cms. was present on antero medial aspect of right hand and forearm.
13. Lacerated wound 1 cm. x 1 cm. was present on back of distal phalanx middle finger right."

The doctor opined that the cause of death was due to shock and haemorrhage as a result of head and chest injuries, which

were sufficient to cause death in ordinary course of nature. All the injuries were ante-mortem in nature and probable time that elapsed between injuries and death was within few minutes and between death and post mortem it was within 12 hours.

PW2 Constable Raj Kumar proved copy of FIR No. 441 dated 18.12.2008 under Section 25 of the Arms Act registered against Jatinder Singh @ Chhota.

PW3 Bhupinder Singh, PW4 Rajwinder Singh and PW11 Baljit Singh @ Billu testified regarding the ocular account of the occurrence.

PW5 HC Ashok Kumar testified about handing over of the dead body to him for post mortem and after receiving the parcel containing the wearing clothes of the deceased and other papers he handed over them to Inspector Pritpal Singh.

PW6 Sardool Singh, Assistant Superintendent, Central Jail, Patiala testified about referring accused Ravinder Singh @ Chhanga, who was lodged in the jail, to Rajindera Hospital, Patiala for medical treatment on request of Dr. Ashok Kumar. He placed on record the extract Ex.PW6/A and duty roster Ex.PW6/B of Raghbir Singh, Rajwinder Singh and Bhupinder Singh who were deployed on duty in the hospital to guard the aforementioned undertrial.

PW7 Ramandeep Singh, Assistant Superintendent also produced the record of FIR No.203 dated 25.11.2008 and FIR No.204

dated 25.11.2008 of Police Station Zirakpur and placed on record the judicial custody warrants of Ravinder Singh @ Chhanga and OPD slips of the hospital.

PW8 HC Mehmood Khan testified that after reaching the spot he had taken photographs Ex.PW8/1 to Ex.PW8/10 and prepared CD Ex.PW8/11 which were handed over to the police on 27.12.2008.

PW9 HC Gurcharan Singh deposed about handing over of the special report to the Area Magistrate.

PW10 HC Lakhbir Singh produced the copy of FIR No.482 dated 16.12.2008 under Section 25 of the Arms Act, Police Station Phase-I, Mohali, copy of FIR No.483 dated 16.12.2008 under Section 25 of the Arms Act and copy of FIR No.484 dated 16.12.2008 under Section 25 of the Arms Act of the same Police Station.

PW12 Jatinder Kumar, Record Clerk produced file of the police challan No.206 dated 12.6.2009 titled as State Vs. Gurjit Singh and file of police challan No.243 dated 23.9.2009 titled as State Vs. Gurinder Singh placed on record copies of disclosure statements Ex.PJ and Ex.PK.

PW13 SI Tarlochan Singh deposed about registration of FIR No.483 dated 16.12.2008 under Section 25 of the Arms Act at Police Station Phase-I, Mohali against the appellant and others.

PW14 Inspector Paramjit Singh testified that he had recovered one pistol with cartridges from accused Gurjit Singh in case FIR No.484 under Section 25 of the Arms Act, Police Station Phase-1, Mohali.

PW15 Inspector Pritpal Singh, who was the Investigating Officer in the case, deposed about the various steps taken by him during the investigation of the case.

PW16 SI Sarabjit Singh testified that he arrested accused Ravinder Singh @ Chhanga in case FIR No.482 dated 16.12.2008 under Section 25 of the Arms Act, Police Station, Phase-1, Mohali.

When examined under Section 313 Cr.P.C., all the accused denied the incriminating circumstances appearing against them. Accused Ravinder Singh @ Chhanga took the plea that he was innocent and the witnesses were deposing falsely against him. He had no concern or connection with the occurrence or with the Scorpio in question. According to him, on 20.6.2005, his brother Jatinder Singh, who was also his co-accused in the present case had solemnized marriage with Simarjit Kaur, daughter of Gurnam Singh against wishes of her parents. Her brother Harvinder Singh @ Rajan and uncle Baljit Singh were posted in Punjab Police Headquarters at Chandigarh and being police officials, they, in connivance with the Investigating Officer of the present case, falsely implicated them and other co-accused simply to teach a lesson to his brother and family

members. His brother Jatinder Singh and his wife, while apprehending danger to their life and liberty, had filed petition against Gurnam Singh, Baljit Singh and her family members in the High Court and vide order dated 16.7.2005, the State was directed to provide necessary protection to them from the family members of Simarjit Kaur. The remaining accused also took the similar pleas.

In defence, the accused examined DW1 Bhagwant Singh, Restorer, Record Room (Judicial), Punjab and Haryana High Court, Chandigarh, who proved on record copy of the petition filed by Simarjit Kaur and Jatinder Singh and copy of order dated 16.7.2005.

DW2 Simarjit Kaur, wife of Jatinder Singh accused testified that she married with Jatinder Singh accused against the wishes of her parents and relatives. Her real brother Harvinder Singh @ Rajan was in Punjab Police and posted at Chandigarh. Jaswinder Kaur was real sister of her mother, who was also in Punjab Police and posted at Chandigarh. All of them had falsely implicated her husband in the case.

After hearing learned counsel for the parties and on going through the evidence, the trial Court accepted the prosecution case against the appellant and his co-accused and convicted and sentenced them, as mentioned above.

This Court has heard Mr. Vivek Thakur, learned counsel for the appellant and Mr. S.S. Dhaliwal, learned Additional Advocate General, Punjab and scanned the evidence with their able assistance.

Learned counsel for the appellant has submitted that at the time of the alleged occurrence neither PW3 Bhupinder Singh nor PW4 Rajwinder Singh, who were the Jail Warders nor also PW11 Baljit Singh @ Billu, who claimed to have witnessed the occurrence was present. Even PW11 Baljit Singh @ Billu had made statement before the police after one month of the occurrence. PW3 Bhupinder Singh and PW4 Rajwinder Singh were jail officials and in order to hush up their negligence, they concocted a false story and implicated the appellant in the case.

The appellant was also not named as an accused in the FIR. He was also not subjected to test identification parade and, thus, his identity as an accused does not stand established. It is also submitted that the marriage of accused Jatinder Singh was solemnized with DW2 Simarjit Kaur against the wishes of her parents which led to enmity between the two families. Both Simarjit Kaur and Jatinder Singh, while apprehending danger to their life and liberty, had moved the High Court and an order directing them to file an application before the DSP concerned for seeking protection was passed. Due to the said enmity the accused, including the appellant had been falsely implicated in the case.

From a perusal of the FIR Ex.PE/2 which was registered on the basis of statement made by PW3 Bhupinder Singh, Jail Warder it is made out that undertrial Ravinder Singh was admitted in Rajindera

Hospital for treatment pursuant to the recommendation of the jail doctor. For his guard supervision, Bhupinder Singh, Raghbir Singh and Rajwinder Singh, Jail Warders were deputed. From the ward, PW3 Bhupinder Singh went to take tea from a tea stall after intimating Raghbir Singh to keep guard of the undertrial. When Bhupinder Singh was coming back from the tea stall and reached near the cycle stand, he saw two Sikh gentlemen and one clean shaven man were coming out with the undertrial and Raghbir Singh, Jail Warder, was trying to apprehend them. Bhupinder Singh also tried to apprehend them. However, they alongwith Ravinder Singh undertrial, boarded the Scorpio vehicle of cherry colour parked near the Emergency and when they tried to leave, Bhupinder Singh and Raghbir Singh deceased tried to stop them. The deceased even stood in front of their vehicle but they ran their vehicle over him and in the process Raghbir Singh was also dragged. Thereafter, they fled away from the spot while taking Ravinder Singh undertrial with them. Due to the injuries received, Raghbir Singh breathed his last. The testimony of PW3 Bhupinder Singh was duly corroborated by PW4 Rajwinder Singh, Jail Warder. In his cross-examination, PW3 Bhupinder Singh testified that he had left deceased Raghbir Singh with Ravinder Singh @ Chhanga, which fact was not mentioned by him in his statement Ex.PE. It was his stand that Raghbir Singh was raising alarm to prevent the assailants but he was confronted with his statement Ex.PE where this fact was not specifically recorded. According to him he rushed towards the vehicle

but in the meantime, the assailants succeeded in making Ravinder Singh sit in the vehicle. He was again confronted with his statement Ex.PE where this fact was not specifically recorded. He also stated that Raghbir Singh was dragged for about 30/35 feet towards the main gate whereas in statement Ex.PE, the distance of 30/35 feet towards main gate was not recorded. He also claimed that he alongwith two others had removed the deceased to the hospital where he was declared dead but this fact was also not stated by him in his statement Ex.PE. He also claimed to have informed the police post at the hospital but this fact was also not mentioned by him in his statement Ex.PE. He further deposed that after 6.12.2008, he never remained associated with the investigation of the case nor he was ever called thereafter. He also stated that the accused, except undertrial Ravinder Singh @ Chhanga, were not known to him previously nor he had any occasion to see them at any point of time. He also claimed to have stated to the police about physical features of the accused, who allegedly took undertrial Ravinder Singh @ Chhanga, with regard to age, height, complexion, physical characters and clothes worn by them as well as other details but was confronted with statement Ex.PE where no such details were mentioned. He also stated that none of the accused was ever produced before him by the investigating agency in order to get the test identification parade conducted to corroborate the factum as to if they were the same persons who allegedly took Ravinder Singh @ Chhanga with them. He

also could not tell the registration number of the Scorpio vehicle and also whether it bore number of Punjab, Haryana, Himachal Pradesh or any other State. He could not tell the name of the person where he had gone to take tea. He also did not disclose to the police about the location of the tea shop during the investigation of the case. He also admitted that during investigation of the case he had not shown the place to the police where he went to take tea nor he disclosed the name of the tea vendor. He also stated that apart from him and Rajwinder Singh, one Billu, relative of Raghbir Singh deceased was also cited as witness. Though he did not know full name of said Billu but he was resident of Rajpura Colony. This Billu is none-else but PW11 Baljit Singh @ Billu, who deposed about visiting Rajindera Hospital, Patiala on 5.12.2008 to see his friend Devinder Singh @ Kali who was admitted in Ward No.2 on account of receiving injuries in an accident. At about 10.00 p.m. when he came outside the hospital to have a cup of tea at a Dhaba, a Scorpio vehicle came there and then four persons alighted from the same and started taking meals. Those persons were the accused who came in Scorpio vehicle and he could identify them. According to him they were calling each other with their names, i.e. Jatinder, Pavittar Singh, Daljit Singh and Avtar Singh. He also deposed that after taking tea he went to his friend Devinder Singh @ Kali and at about 3.00 a.m. when he was going to his house and reached near the emergency ward of Rajindra Hospital, Patiala then all the accused, present in the Court were seen carrying a patient

in hurry and Scorpio vehicle was seen parked outside the Emergency Ward and the accused persons making one patient board that vehicle. Two persons came in front of it to stop the vehicle. The accused ran over one of them under the Scorpio vehicle and dragged upto the Red Cross Canteen and as a result the said person received injuries, who was taken to Emergency Ward. On the next day, he learnt that it was Jail Warder Raghbir Singh who had suffered the injury. On the next day, he disclosed all the facts to the police and his statement was recorded. Though he denied the suggestion that deceased Raghbir Singh was his close relative or that he had coined false story with regard to Devinder Singh @ Kali being admitted in Rajindera Hospital, Patiala and PW15 Inspector Pritpal Singh also deposed that as per his knowledge Baljit Singh was not related to deceased Raghbir Singh but PW3 Bhupinder Singh has let the cat out of the bag when he deposed that Billu was none-else but a relative of Raghbir Singh. PW11 Baljit Singh @ Billu claimed to have met the police in connection with investigation of the case twice i.e. on 6.12.2008 and then a month later. At the same time, he admitted that he got his statement recorded when called in the Police Station after one month and excepting his statement, no other proceedings were conducted on that day. Had Baljit Singh @ Billu, who was close relative of Raghbir Singh, present at the spot, he ought to have appeared before the Investigating Officer immediately after recording of the statement Ex.PE. PW11 Baljit Singh @ Billu could have also made statement

about the accused calling each other by their names or that he had witnessed the actual occurrence. Instead, his statement for the first time was recorded after a month of the occurrence. All this shows that he was not present at the time of the occurrence and was later on projected as an eye-witness being a relative of the deceased.

Presence of PW3 Bhupinder Singh at the time and place of the occurrence and witnessing the same is also doubtful as, according to him, he had rushed towards Raghbir Singh and taken him in his lap to save him and at that time a few drops of blood fell on the ground but his clothes were not stained with blood. He also could not state the name of the doctor or any other official of the hospital who had attended upon Raghbir Singh or declared him dead. He went on to add that no treatment was given to Raghbir Singh.

According to the prosecution, PW3 Bhupinder Singh and PW4 Rajwinder Singh, alongwith Raghbir Singh, since deceased, were deputed to guard the undertrial, who was receiving treatment at Rajindera Hospital, Patiala. According to PW3 Bhupinder Singh, after leaving PW4 Rajwinder Singh and Raghbir Singh, Jail Warders to keep guard on the undertrial, he left for taking tea and when he was returning he saw the occurrence. The occurrence had taken place on 6.12.2008 at 3.00 a.m. PW3 Bhupinder Singh testified that PW4 Rajwinder Singh reached the spot at about 3.10 a.m. and from 3.10 a.m. till 3.30 a.m. Rajwinder Singh remained with him. At

3.30 a.m. PW4 Rajwinder Singh went to jail premises on a bicycle and returned at about 4.15 a.m. and when the police came at the spot at about 4.00 a.m. proceedings in connection with the case were conducted. Though PW4 Rajwinder Singh remained with the police party, yet, his signatures were not obtained during police proceedings. Therefore, possibility of PW4 Rajwinder Singh being not present at the spot at the time of the occurrence cannot be ruled out as it is the prosecution case itself that he left on a bicycle to the jail and had come present after the occurrence was already over.

In view of the above discussion, this Court finds that the prosecution has not been able to prove its case beyond reasonable doubt. Thus, it would not be safe to sustain the impugned judgment and sentence passed by the learned trial Court.

Resultantly, the appeal is accepted, impugned judgment of conviction and sentence is set aside and the appellant is acquitted of the charge against him.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

November 18, 2016
satish

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO