

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

(I) **Criminal Appeal No.D-57-DB of 2012**
Date of Decision : October 17, 2016

Gurpreet Singh @ GopiAppellant
VERSUS
State of PunjabRespondent

(II) **Criminal Appeal No.D-60-DB of 2012**

Navjiwan Kumar @ NaveenAppellant
VERSUS
State of Punjab ...Respondent

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

Present : Mr. R.S. Athwal, Advocate for the appellant
(in Criminal Appeal No.D-57-DB of 2012)

Mr. Vikram K. Chaudhary, Senior Advocate with
Mr. Manish Verma, Advocate for the appellant
(in Criminal Appeal No.D-60-DB of 2012)

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

T.P.S. MANN, J.

Gurpreet Singh @ Gopi, resident of village Thandian and Navjiwan Kumar @ Naveen, resident of village Mahil Gehlan, alongwith Jatinder Kaushal @ Vicky were tried for committing offences under Sections 302/482/452/34 IPC. Gurpreet Singh @ Gopi and Navjiwan Kumar @ Naveen were also tried for committing offences punishable under Sections 398 and 201 IPC. Vide judgment and order dated 29.11.2011, learned Additional Sessions Judge, Hoshiarpur acquitted

Jatinder Kaushal @ Vicky accused of all the charges against him. The appellants, namely, Gurpreet Singh @ Gopi and Navjiwan Kumar @ Naveen were, however, convicted and sentenced as follows :-

- (i) Gurpreet Singh @ Gopi convicted under Section 302 IPC and Navjiwan Kumar @ Naveen convicted under Sections 302/34 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year;
- (ii) Both the appellants convicted under Section 398 IPC and sentenced to undergo rigorous imprisonment for seven years each;
- (iii) Both the appellants convicted under Section 482 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for one month;
- (iv) Both the appellants convicted under Section 452 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for one month; and
- (v) Both the appellants convicted under Section 201 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/- each and in default thereof, to further undergo rigorous imprisonment for one month.

All the sentences were ordered to run concurrently. The period of detention suffered by them during the investigation and trial of

the case was ordered to be set off against the period of sentence awarded to them.

Aggrieved of their conviction and sentence, Gurpreet Singh @ Gopi filed Criminal Appeal No.D-57-DB of 2012, whereas Navjiwan Kumar @ Naveen filed Criminal Appeal No.D-60-DB of 2012. As both the appeals arise out of the same judgment of conviction and sentence, they are being disposed of by a common judgement.

According to the prosecution, on 19.5.2009 a police party headed by SI Kulwant Singh, Station House Officer, Police Station Mahilpur was present at Bus Stand of Mahilpur. On receiving information regarding the occurrence, he reached the spot where complainant Lal Chand made statement Ex.PA before him that he was working at the shop of Nasib Chand, situated at Adda Kot Fatuhi under the name and style of 'M/s S. Kumar Jewellers and Money Changer'. On that day at about 4.30 p.m., he and his employer Nasib Chand, were present at the shop. Meanwhile, two clean shaven young persons, aged about 29/30 years came to the shop and asked for exchanging pounds. Nasib Chand replied that currency of pounds could not be exchanged. Both of them left the shop but after 15 minutes, they again came inside the shop and caught hold of them from their necks. The two accused tried to open the showcase. The complainant and Nasib Chand raised an alarm. The accused took out pistols and dragged the complainant and his employer towards the door, where one of the accused pushed the complainant inside the shop and then fired a bullet at Nasib Chand, who fell down outside the shop. Both the accused boarded car bearing No.PB-08-BP-3561, which was white in colour and parked on the road. The accused

fired another shot towards the shop while fleeing towards Mahilpur. A number of persons gathered at the spot and Nasib Chand was taken to the hospital of Dr. Sharma at Kot Fatuhi in an injured condition after making an arrangement for the vehicle but he died on the way. The complainant, accordingly, sought taking of action against the two unidentified assailants.

It is further the case of the prosecution that as the statement Ex.PA made by complainant Lal Chand disclosed commission of cognizable offences, SI Kulwant Singh, while making an endorsement Ex.PA/1 on the same on 19.5.2009 at 7.30 p.m., sent a ruqa to Police Station Mahilpur where on its basis, FIR No.74 dated 9.5.2009 (Ex. PA/2) was registered at Police Station Mahilpur under Sections 452, 398, 302, 34 IPC and Section 25 of the Arms Act at 7.55 p.m., which was concluded on the same day at 8.50 p.m. Special report was handed over to HC Surjit Singh which he delivered to the Ilaqa Magistrate on 20.5.2009 at 10.05 a.m. at Hoshiarpur.

During the investigation of the case, SI Kulwant Singh and others inspected the spot and prepared rough site plan of the place of occurrence. He called the Fingerprints Expert at the spot and recorded the statements of witnesses. Inquest report of the dead body of Nasib Chand was prepared and the dead body, thereafter, sent for post mortem.

On 6.6.2009, complainant Lal Chand and one Som Dutt apprised SI Kulwant Singh that some persons involved in a robbery had been apprehended by the police of Police Station Banga and they were produced in the Court at Nawanshahr. Out of the said persons, three

were identified by them who had participated in the occurrence in question in which Nasib Chand was shot dead. On 8.6.2009, ASI Dilbagh moved an application for production warrants. On 9.6.2009, SI Kulwant Singh alongwith Lal Chand and Som Dutt went to Police Station Banga where a car was lying parked and complainant Lal Chand and Som Dutt identified the said car to be the same, which was used by the accused at the time of commission of the crime. On 10.6.2009, the three accused were formally arrested in the present case after taking production warrants from the Court. After completion of investigation and other necessary formalities, final report under Section 173 Cr.P.C. was submitted by the police against the accused. The case was, thereafter, committed to the Court of Sessions where the two appellants and Jatinder Kumar @ Vicky were charged for the various offences, as mentioned above, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined ten witnesses.

PW1 Lal Chand is the complainant, who resiled from his statement Ex.PA. He testified that he was working in the shop of Nasib Chand situated at Adda Kot Fatuhi under the name and style of "M/s S. Kumar Jewellers". On 19.05.2009 at about 4.00 p.m., when he alongwith Nasib Chand was present in the shop, a Maruti car stopped in front of their shop. Two young men entered the shop and caught hold of them from their necks. They were armed with pistols and placed their pistols on their neck. Thereafter, he fell down and came to know that Nasib Chand had been hit with a bullet by the accused. He further stated that as he became unconscious, he could not tell whether the accused

present in the Court were the same persons, who had assaulted them. His statement Ex.PA was recorded by the police. He was then attended to by Gora, a nearby shopkeeper, who ran a tailoring shop and gave him water. When he regained consciousness, he came to know that Nasib Chand had died. He further deposed that since he did not see the registration number of the car used by the accused, he could not tell the number of the same. This witness did not support the prosecution case and was declared hostile.

To the same effect is the testimony of PW2 Sukhwinder Kumar. He also did not support the prosecution version and was declared hostile.

PW3 Som Dutt, eye-witness testified that he was running a dhaba at Adda Kot Fatuhi, Police Station Mahilpur, District Hoshiarpur. On 19.05.2009 at about 4.30 p.m., he heard noise from the shop of SK Jewellers, which was adjoining to his dhaba. He saw that one person with muffled face was coming out of the said shop. That person was armed with revolver whereas another person behind that person, dragged Lal Chand, servant of aforesaid shop of Nasib Chand. The person who was armed with pistol fired a shot towards the shop and due to that fire, Nasib Chand fell down in an injured condition. Out of the assailants, he could identify only one accused but he did not know his name. He further stated that accused Gurpreet Singh had fired a shot towards the shop, which hit on the wall. Nasib Chand was taken to hospital, but he succumbed to his injuries on the way. Thereafter he came to know that Banga police had arrested some persons and also nabbed car bearing registration No.PB-08-BP-3561. Then, he visited Police Station Banga, where he could not recognize his car to be the

one, which was used by the assailants as it was covered with mud. The number plate of the car had also been changed. This witness also identified accused Gurpreet Singh @ Gopi. Identification memo of car Ex.PB was signed by him.

PW4 Sandeep Kumar stated that he was running the shop after the death of his brother Nasib Chand. On 14.06.2009, when he was present at the shop, ASI Dilbag Singh alongwith other police officials and two of the accused, namely, Gurpreet Singh and Navjiwan Kumar came there. Thereafter they visited Village Binjon where from the deserted residential quarters, accused Gurpreet Singh got recovered one mobile phone make N93, which was taken into possession vide memo Ex.PC by the police. The said mobile phone belonged to his brother Nasib Chand, but it did not contain sim card.

PW5 ASI Surinder Kumar testified that on 05.06.2009 he alongwith other police officials was present at Naura bridge in connection with Nakabandi and checking of the vehicles. In the meantime, one Zen car bearing registration No.DL-3-CN-4726 came from the side of Garshankar and it was signalled to stop. Three persons were sitting in the car. While accused Gurpreet Singh was driving the car, Jatinder Kaushal was sitting on the front seat adjoining to the driver and other accused was sitting on the rear seat. On seeing the police party, they tried to turn back the car. He alongwith HC Pargat Singh stopped them. From their personal search, .12 bore countrymade pistol alongwith two cartridges was recovered from accused Gurpreet Singh, a knife was recovered from accused Jatinder Kaushal and a kirpan was recovered from the accused sitting on the rear seat of the car. The vehicle in question was taken into possession vide memo Ex.PD. This witness

further stated that a separate FIR was registered regarding recovery of countrymade pistol. Accused were formally arrested in FIR No.141 dated 02.06.2009,

PW6 Dr. G.S.Kapoor, Medical Officer, Civil Hospital, Garshankar, District Hoshiarpur mainly deposed that he alongwith Dr. Arshdeep and Dr. Vipin Sharma conducted post mortem on the dead body of Nasib Chand. As per his opinion, the cause of death in this case was due to shock and hemorrhage on account of gunshot injury with was sufficient to cause death in the ordinary course of nature. The probable time elapsed between injury and death was within few minutes and between death and post mortem it was within 24 hours. Then he proved on record carbon copy of post mortem and pictorial diagram as Ex.PF and Ex.PF/1.

PW7 Hardeep Singh Draftsman deposed regarding preparing of scaled site plan Ex.PG at the demarcation of SHO Harjit Singh.

PW8 Inspector Kulwant Singh, SHO, Police Station Mahilpur, District Hoshiarpur, had partly investigated the case. He stated that on 19.05.2009 at about 4.00 p.m., on receiving intimation regarding shooting of Nasib Chand Jeweller in his shop, he alongwith other police officials reached the spot, where ASI Dlibagh Singh alongwith other police officials was present. He recorded statement Ex.PA of Lal Chand, servant of Nasib Chand, which was endorsed by him vide Ex.PA/1 to Police Station Mahilpur, District Hoshiarpur, where it led to registration of FIR Ex.PA/2 by ASI Mohinder Singh. Then, he visited the house of Nasib Chand where the dead body was lying. After preparing inquest report Ex.PH, he recorded statements of Charanjit Singh and Harpal Singh,

who identified the dead body of Nasib Chand. He handed over the dead body alongwith application Ex.PE to HC Nirmal Singh for conducting post mortem and prepared site plan Ex.PJ. He further stated that on 06.06.2009 Lal Chand complainant and Som Dutt, eye-witness came to him at PS Mahilpur and disclosed that some persons had been apprehended by the Police of Police Station Banga, who were produced in the Court at Nawanshahar and they went there and identified the three assailants of the incident dated 19.05.2009 in which Nasib Chand was shot. He recorded the statements of Lal Chand and Som Dutt in this regard. On 09.06.2009 an application for obtaining production warrants was moved by ASI Dilbagh Singh. On 09.06.2009 he alongwith Lal Chand and Som Dutt went to Police Station Banga, where they identified the car which was used by the assailants at the time of occurrence. Identification memo Ex.PB was prepared by him. The accused were formally arrested after taking production warrants from the Court. He also deposed that on 20.05.2009 HC Nirmal Singh produced clothes of deceased after post mortem examination, prepared parcel of the same and took into possession vide memo Ex.PM.

PW9 ASI Dilbagh Singh deposed that on 14.6.2009 accused Gurpreet Singh @ Gopi, Navjiwan and Vicky got recorded their confessional statements before SI Rajan Parminder Singh Ex.PD, Ex.PE and Ex.PF, respectively. Thereafter, accused Gurpreet Singh @ Gopi as per his disclosure statement, got recovered one mobile phone Nokia N93 (Ex.P1) from the Verandah of Government Hospital. Accused Navjiwan, as per his disclosure statement, got recorded the forged number plate of a car (Ex.P3) and mobile phone Nokia (Ex.P2) from the disclosed place. These articles were taken in police possession vide recovery memos

Ex.PC and Ex.PG. Thereafter, Gurpreet Singh @ Gopi disclosed that after the incident, he had thrown the weapon of assault in the river Satluj. His statement was recorded by the investigating Officer.

PW10 Rajan Parminder Singh had also investigated the case. He reiterated the version as stated by PW9 ASI Dilbagh Singh. He deposed about the disclosure/confessional statements Ex.PD to Ex.PF made by the accused; recovery of mobile phones Ex.P1 & Ex.P2; preparing of rough site plans of place of recoveries Exs.PN and PP and number plate of a car Ex.P3. Statements of the witnesses were also recorded by him.

When examined under Section 313 Cr.P.C., all the accused denied the incriminating evidence appearing against them and pleaded their innocence. According to them, they had been falsely implicated in the case.

In his defence, accused Gurpreet Singh @ Gopi examined DW1 Malkit Singh @ Mika.

After hearing learned counsel for the parties and on going through the record, learned trial Court, while acquitting Jatinder Kumar @ Vicky accused of the charges against him, convicted and sentenced the two appellants, as mentioned above.

This Court has heard learned counsel for the appellants and the learned Additional Advocate General, Punjab and with their able assistance scanned the evidence minutely.

In support of the ocular account, the prosecution had examined complainant Lal Chand as PW1, Sukhwinder Kumar as PW2 and Som Dutt as PW3. Though PW1 Lal Chand testified about two

youths entering the shop after alighting from a car and had caught hold of him and Nasib Chand from their neck, followed by Nasib Chand being fired at, yet he could not state as to whether the accused, who were present in the dock, were the same persons who had come to the shop and fired at Nasib Chand. He also deposed that when Nasib Chand was fired at, he had become unconscious and only when he was attended to by one Gora, who had a shop nearby by giving him water that he had regained consciousness. He also deposed that he had not seen the registration number plate of the car. However, as he did not support the prosecution case, learned Additional Public Prosecutor got him declared hostile and cross-examined him but he refused to toe the line of the prosecution. In his cross-examination by the defence, he testified that the accused persons in the dock were not the same persons who had launched the attack on 9.5.2009 and murdered Nasib Chand. He also admitted that no test identification parade was held after joining him. Similarly, PW2 Sukhwinder Kumar, who ran a tailoring shop at Adda Kot Fatuhi testified that on 9.5.2009 at about 4.30 p.m., when he was cutting clothes on the counter, he heard an alarm but paid no attention to the same as the boys in the adjacent shops used to raise such noises while watching match on the TV. When there was a noise, once again, he came out of the shop and found Nasib Chand lying in an injured condition. On seeing Nasib Chand in an injured condition, the wife of this witness became unconscious and, therefore, instead of going towards the place where Nasib Chand was lying, he started looking after his wife. He had become perplexed and could not decide as to what to do. He also deposed that he did not know the registration number and make of the car. He also did not see the assailants at the spot as they were in

muffled faces. He went on to state that the accused in the dock were not the assailants as the persons, who had attacked were having their faces muffled. This witness was also got declared hostile and, thereafter, cross-examined by the Additional Public Prosecutor but he declined to support the prosecution case. The third witnesses, i.e. Som Dutt, who was examined by the prosecution as PW3 testified that he ran a Dhaba at Adda Kot Fatuhi, whereas the shop of his brother adjoined to his shop. On 9.5.2009 at about 9.30 p.m., when he was washing utensils outside his shop, he heard a noise from the shop of 'S. Kumar Jewellers' which was situated near his shop. Hearing the noise he thought that children were watching TV. Then, he saw one man coming out of the shop of jewellers with a muffled face and armed with a revolver. There was another man behind that man who was dragging Lal Chand. He saw one car parked in front of the shop of Nasib Chand. The person who was armed with pistol fired towards the shop. As a result Nasib Chand fell down in an injured condition. He further deposed that out of the assailants he could identify only one person in the Court but could not state his name. Said accused had not covered his face during the time of occurrence. He identified Gurpreet Singh @ Gopi to be the one whom he had seen at the time of the occurrence. Said Gurpreet Singh @ Gopi had fired a shot towards the shop which hit on the wall. The said accused alongwith other assailants then boarded the vehicle bearing registration No.PB-08-BP-3561 and went towards Mahilpur Adda. Lateron, he came to know that Banga police had arrested some persons with the car whose number was not known to him. They went to Police Station Banga where a car was shown to them but he could not identify the same as it was covered with mud and the number plate had already

been changed. He was then taken inside the police station where the accused was shown to him and he identified him as Gurpreet Singh @ Gopi. In his cross-examination, he stated that he was convicted in a case of fake currency. He also deposed that none of the assailants of the present occurrence were known to him nor he knew their names and addresses. He could also not identify those assailants. He denied telling the police that the assailants had not covered their faces and he could identify them. He also denied telling the police that he could identify the assailants if they were brought before him. Further, the police never called him to identify the assailants after their arrest. He went on to add that during his examination-in-chief he had identified one of the accused in the Court but this was done at the instance of the police.

From the testimonies of PW1 Lal Chand, PW2 Sukhwinder Kumar and PW3 Som Dutt it stands established that the appellants were not the ones who had committed the crime. Both PW1 Lal Chand and PW2 Sukhwinder Kumar in their examination-in-chief did not support the prosecution case and despite being cross-examined by the learned Additional Public Prosecutor, no material could be elicited by the prosecution to establish that the assailants were the one who had committed the crime.

PW3 Som Dutt during his examination-in-chief testified that he could identify one of the accused who were in the dock as he had not covered his face during the time of occurrence. He then pointed out towards Gurpreet Singh @ Gopi-appellant, who according to him, had fired a shot towards the shop and he had identified him as he had not covered his face at the time of occurrence. In cross-examination by the

defence, he turned around to state that he could not identify any of the assailants. He also deposed that he had identified Gurpreet Singh @ Gopi-appellant at the instance of the police. Therefore, it cannot be said that Gurpreet Singh @ Gopi-appellant stood identified as one of the assailants.

PW4 Sandeep Kumar, brother of deceased Nasib Chand testified that on 14.6.2009 he was present at the shop of his brother when ASI Dilbagh Singh came there alongwith other police officials. The two accused, namely, Gurpreet Singh @ Gopi and Navjiwan Kumar @ Naveen were with the police party. Gurpreet Singh then got recovered one mobile make N93 wrapped in a polythene and after removing the earth. The said phone, according to him, belonged to his brother Nasib Chand. However, during his cross-examination he stated that he did not remember IMEI number of the said mobile. Further, the bill of the mobile was available with him at England but he did not tell the police that he could produce the same. He denied mentioning in his statement to the police under Section 161 Cr.P.C. about the IMEI number of the mobile, which fact stood recorded in his statement Mark 'A'. He also stated that he had not seen the mobile in the Court. Thus, it is difficult to hold that the mobile, in question, which was got recovered by one of the accused belonged to deceased Nasib Chand or his brother PW4 Sandeep Kumar. The prosecution also made no attempt to produce the recovered mobile in the Court so that PW4 Sandeep Kumar could identify the same.

PW5 ASI Surinder Kumar had testified that on 5.6.2009 he alongwith Sarwan Singh, SHO Police Station Sadar Banga was present at Naura bridge in connection with nakabandi and checking of the

vehicles and, in the meantime, a Zen car came from the side of Garhshankar to which the SHO signalled it to stop. There were three persons present in the car. Gurpreet Singh @ Gopi was driving the car whereas Jatinder Kaushal was sitting on the front seat next to the driver, whereas the third accused was sitting on the rear seat. From the personal search of Gurpreet Singh @ Gopi-appellant a .12 bore country made pistol alongwith two cartridges was recovered, whereas a knife was recovered from Jatinder Kaushal accused. From third accused sitting on the rear seat, a kirpan was recovered. In his cross-examination, he deposed that no checking memo or register was maintained at the time of naka. Further, 10/15 vehicles were checked prior to the vehicle of the accused but none of the occupants of the earlier checked vehicles were subjected to personal search. If that be the situation, there was no occasion for the police party to have subjected the accused to personal search.

During the investigation of the case, PW8 SI Kulwant Singh, who by that time stood promoted as Inspector, had recovered an open bullet which had struck the signboard of the shop and another bullet which was lying inside the shop. From the perusal of report Ex.PR of the Forensic Science Laboratory, Punjab, Chandigarh it is made out that two jacketed bullets were received in the laboratory. One of them had the calibre of 7.65 mm, whereas the other bullet was a spurious bullet. Despite alleged recovery of .12 bore country made pistol from the person of Gurpreet Singh @ Gopi- appellant, the said weapon was not sent to the laboratory and as such it is difficult to conclude that the two recovered bullets had been fired from the firearm recovered from Gurpreet Singh @ Gopi-appellant. Therefore, even the scientific

evidence brought on the record by the prosecution does not support the prosecution case.

PW8 SI Kulwant Singh had testified during his cross-examination that he did not remember the name of the owner of car. The actual registration number of the car pertained to Delhi State. He admitted it be correct that the number plates of the car were easily available in the market and could be changed at any time by anyone.

In view of the above, it can safely be concluded that the prosecution has miserably failed to prove its case against the appellants beyond reasonable doubt.

Resultantly, Criminal Appeal No.D-57-DB of 2012 filed by Gurpreet Singh @ Gopi-appellant and Criminal Appeal No.D-60-DB of 2012 filed by Navjiwan Kumar @ Naveen-appellant are accepted. Judgment of conviction and order of sentence dated 29.11.2011 passed by Additional Sessions Judge, Hoshiarpur are set aside and both the appellants are acquitted of the charges against them.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

October 17, 2016
satish

Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO