

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-328-DB of 2003

Date of Decision : September 23, 2016

Kaka Singh

.....Appellant

Versus

State of Punjab

....Respondent

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

Present : Mr. A.D.S. Sukhija, Advocate
for the appellant.

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

T.P.S. MANN, J.

This appeal has been filed by Kaka Singh Nihang son of Jaggar Singh, resident of village Bishnandi, Tehsil Jaitu, District Faridkot for challenging the judgment and order dated 18.2.2003 passed by learned Sessions Judge, Faridkot.

Vide impugnement judgment and order, learned trial Court convicted the appellant under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year. He was further convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for

three years and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for one month. He was also convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for one month. All the substantive sentences were ordered to run concurrently. The period undergone by him during investigation or trial was ordered to be deducted from the period of substantive sentences.

The case of the prosecution is that on 26.10.2001 at 10.35 p.m. complainant Joginder Singh made statement Ex.PA before SI Darshan Singh at Gol Market, Jaitu that he was resident of village Bishnandi and doing cultivation. He had three sons, eldest was Chamkaur Singh, who was serving in the Agriculture Department, younger to him was Labh Singh, whereas Rajpal Singh @ Pappu was his youngest son and doing cultivation. On that day in the evening, he, alongwith his sons Chamkaur Singh and Rajpal Singh went to have a round of their fields situated on Chaina link road. While returning home, both Chamkaur Singh and Rajpal Singh were going ahead of him by 5/7 karms and he himself was holding torch with its light on. At about 8.30 p.m. when his sons reached in front of the door of Master Harnek Singh, which was located on the phirni of the village, the accused came from the side of bus stand. He abused Rajpal Singh by calling his name and proclaimed that let him run if he could and he would tell him how to play with the honour of others. Simultaneously, the accused pointed .12 bore country made pistol carried by him in his right hand at Rajpal Singh,

who turned backward in order to run away. Within the sight of Joginder Singh and his son Chamkaur Singh, the accused fired at Rajpal Singh which hit on his back below the scapula. As a result, he fell down. The accused fled away from the spot alongwith the pistol. Rajpal Singh died there and then. The cause of the occurrence was that the accused had a suspicion against Rajpal Singh of having illicit relations with his niece and for that reason he had murdered Rajpal Singh by firing at him. After leaving his son Chamkaur Singh at the spot to guard the dead body, the complainant alongwith his brother Ajmer Singh started for the Police Station to lodge the report, who came across SI Darshan Singh and made statement before him.

It is also the case of the prosecution that SI Darshan Singh after making endorsement Ex.PA/1 on the statement Ex.PA, forwarded the same to Police Station Jaitu, where on its basis, FIR Ex.PA/2 dated 26.10.2001, under Section 302 IPC and Section 25 of the Arms Act was registered against Kaka Singh Nihang accused at 10.45 p.m. by ASI Jaswinder Pal, which was completed at 11.45 p.m. Special report sent through Constable Mukhtiar Singh was received by the ACJM (D), Faridkot on 27.10.2001 at 9.10 a.m.

It is also the case of the prosecution that during investigation SI Darshan Singh reached the spot and prepared rough site plan Ex.PU. He also lifted blood stained earth from near the dead body of Rajpal Singh and took the same into possession vide memo. Ex.PC. He then prepared inquest report Ex.PB of the dead body of Rajpal Singh; recorded the statements of complainant Joginder Singh

and Chamkaur Singh under Section 175 Cr.P.C. and sent the dead body alongwith the papers and request Ex.PE for post-mortem through ASI Harpreet Singh. He also recorded the statements of Joginder Singh and Chamkaur Singh under Section 161 Cr.P.C. He searched for the accused and also raided his place but he was not found available. Rather, his house was found locked during raid. When he returned to the Police Station, ASI Harpreet Singh handed over the belonging of the deceased and a vial containing pellets, duly sealed by the doctor. He took both the parcels alongwith the Jutti into possession vide memo Ex.PL. Subsequently, the investigation was entrusted to ASI Harpreet Singh, who on 2.11.2001 was present in the Police Station where Darshan Singh, ex-Sarpanch of village Bishnandi produced Kaka Singh Nihang accused before him. He arrested the accused and prepared memo of grounds of arrest Ex.PR. On 4.11.2001, he interrogated the accused in the presence of HC Gurpreet Singh and Constable Nirmal Singh. The accused made disclosure statement Ex.PK that he had kept concealed one pistol in the room in his fields under the earth about which only he knew and could get the same recovered. Then the accused led the police party to the disclosed place. One Geja Singh was joined with the police party on the way. The accused got recovered .12 bore country made loaded pistol from the disclosed place. The pistol was unloaded by taking out the live cartridge and rough sketch Ex.PM of the pistol was prepared. Parcel of the pistol and of the loaded live cartridge was prepared and taken into police possession vide memo Ex.PN. One empty cartridge was also recovered from outside the room of the accused which was also converted into a sealed

parcel and taken into police possession vide memo Ex.PQ. The accused, however, did not produce any license for keeping the pistol in his possession. After the completion of the investigation, the accused was challaned by SI Darshan Singh, Station House Officer, Police Station Jaitu. Upon commitment of the case to the Court of Sessions, the accused was charged for committing the offences under Section 302 IPC and Sections 25 and 27 of the Arms Act, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as 12 witnesses.

PW1 Joginder Singh, father of the deceased and PW2 Chamkaur Singh, brother of the deceased deposed before the trial Court regarding the ocular account of the occurrence.

PW3 Dr. Sarabjit Singh Sandhu, testified about conducting post-mortem on the dead body of Rajpal Singh on 27.10.2001 at 9.20 a.m., during which he found the following injuries :-

"Lacerated wound measuring 3 x 2.5 cms. was present on the left side of the back of the chest, 5.5 cms. below the inferior angle of left scapula and 6 cms. lateral to vertical column (left). On dissection of the chest, there was laceration of the left lung, spleen and heart.

Two wads, one card board and one plastic, and card board covering alongwith 16 pellets were found on dissection. There were two

pellet marks on the lateral (right lateral) side and found on the inferior side measuring 0.5 x 0.5 cms. in size, in an area of 1 cm. around the main wound. There was burning of shirt alongwith blackening. Tatooing and blackening present around the main wound alongwith its margins."

The cause of death, in his opinion, was due to laceration of heart, left lung and spleen (shock and haemorrhage and vital organs) which was sufficient to cause death in the ordinary course of nature. The probable time that elapsed between injury and death was immediate and that between death and postmortem within 24 hours. He also deposed that the injury could be due to fire arm shot.

PW4 Gursewak Singh, Draftsman proved the scaled site plan Ex.PF of the place of occurrence.

PW12 Amir Singh, Ahlmad to Deputy Commissioner, Faridkot proved sanction order Ex.PV for prosecuting the appellant for the charge under Section 25 of the Arms Act. The investigation part of the occurrence was brought on the record by the prosecution by examining PW5 MHC Balwant Singh. PW6 HC Swaran Singh, PW7 Constable Kulwant Singh, PW8 HC Mukhtiar Singh, PW9 HC Gurpreet Singh, PW10 ASI Harpreet Singh and PW11 SI Darshan Singh.

The prosecution also tendered in evidence the reports Ex.PX and Ex.PY of the Forensic Science Laboratory.

When examined under Section 313 Cr.P.C., the accused pleaded his innocence. He stated that the deceased was a

womaniser, who used to tease girls. He was also habitual of taking liquor and due to his said conduct, some unknown person had killed him on the fateful night. The persons from the surrounding area where his dead body was lying informed his father. Both father and brother of the deceased, were aware of the fact that the deceased used to tease his niece and due to that reason and on account of suspicion, they falsely implicated him in the case. Neither he had suffered disclosure statement nor got recovered the weapon of offence. Rather, the recovery had been foisted upon him.

In his defence, the accused examined three witnesses. DW1 Harnek Singh deposed that on the day of the occurrence, which was a Dussehra day and time was about 8.30 p.m., he heard the sound of fire while sitting in his room. After 8/10 minutes, he came out of the house and when he opened the main gate, he saw the dead body of Rajpal Singh lying in the street. He did not notice the brother or father of the deceased there at that time.

DW2 Ghukkar Singh, Sarpanch of village Bishnandi testified that on the Dussehra day of the year 2001, Mangal Singh and Master Harnek Singh had come to his house and told him that Rajpal Singh was lying dead in front of their house. He rang up the police and the police after coming to his house, took him to the place of occurrence.

DW3 Darshan Singh, ex-Sarpanch of village Bishnandi deposed that he knew complainant Joginder Singh and deceased Rajpal Singh. Said Rajpal Singh was addicted to various vices and was

characterless. There was a fight in the village with the deceased in connection with some lady. Accordingly, the deceased was booked in a case under Section 326 IPC. He also deposed that at that time he was Sarpanch of the village and used to receive complaints against the deceased about his character and about taking intoxicants.

After hearing learned counsel for the parties and on going through the record, the learned trial Court after holding that the prosecution had been successful in establishing the commission of offences under Section 302 IPC and Sections 25 and 27 of the Arms Act, convicted and sentenced the accused, as mentioned above.

This Court has heard Mr. A.D.S. Sukhija, Advocate, 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 it was a case of blind murder where Rajpal Singh, since deceased was shot dead by some unknown person. Neither PW1 Joginder Singh nor PW2 Chamkaur Singh were present at the spot at the time of occurrence. They were, later on, summoned from their house and set up as eye-witnesses of the occurrence. It is also submitted that Ajmer Singh, who, according to PW1 Joginder Singh had accompanied him to the Police Station, was neither cited by the prosecution as its witness nor examined. It is also submitted that though the statement Ex.PA was said to have been made by complainant Joginder Singh on 26.10.2001 at

10.30 p.m. and the FIR Ex.PA/1 on its basis came to be registered at 10.45 p.m. during the same night but the statement and the FIR were recorded in the morning of 27.10.2001 and then ante-timed so as to bring it in line with prosecution case. It is also submitted that the medical evidence is not in conformity with the ocular account. Prayer has, accordingly, been made for acceptance of the appeal and for setting aside of the impugned judgment of conviction and sentence passed by the learned trial Court.

Learned State counsel has vehemently opposed the appeal by submitting that the presence of PW1 Joginder Singh and PW2 Chamkaur Singh at the time of the occurrence was natural and probable as they were accompanying Rajpal Singh while returning home from their fields. It is also submitted that Ajmer Singh, who had accompanied PW1 Joginder Singh to the Police Station was none else but the brother of PW1 Joginder Singh and, therefore, his non-examination by the prosecution in support of its case is of no consequence. It is further submitted that the statement Ex.PA was made by PW1 Joginder Singh and FIR Ex.PA/1 came to be registered on its basis with due promptitude. Merely because there was some delay in handing over the special report to the Ilaqa Magistrate is no ground to reject the prosecution case, especially when the FIR came to be concluded on 26.10.2001 at 11.55 p.m., whereas the special report was received by the Ilaqa Magistrate at Faridkot on 27.10.2001 at 9.10 a.m. and the distance between Police Station Jaitu and Faridkot is 30 kms. It is also submitted that the medical evidence fully corroborates the testimonies

of PW1 Joginder Singh and PW2 Chamkaur Singh, who had witnessed the occurrence.

Having heard learned counsel for the parties, this Court finds that on the fateful day, i.e. 26.10.2001 in the evening, complainant Joginder Singh, alongwith his sons Chamkaur Singh and deceased Rajpal Singh went to have a round of their fields situated on the Chaina road. When they were returning home, Chamkaur Singh and Rajpal Singh were going ahead of Joginder Singh, who was following them and flashing torch light. At about 8.30 p.m., when they reached in front of the door of Master Harnek Singh on the phirni of the village, the appellant came from the side of bus stand and started abusing Rajpal Singh by calling his name and asked him to run where he wished and he would teach him a lesson for playing with the honour of others. The appellant at that time was holding .12 bore country made pistol in his right hand. He aimed the same at the deceased, who turned backward in order to escape. However, within the sight of Joginder Singh and Chamkaur Singh, the appellant fired a shot which hit Rajpal Singh on his back below the scapula. As a result Rajpal Singh fell down. The appellant escaped from the spot alongwith the pistol. Within no time Rajpal Singh died at the spot. Both PW1 Joginder Singh and PW2 Chamkaur Singh have explained their presence at the spot and also of witnessing the firing of a shot by the appellant which struck on the backside of his chest as a result of which he fell down. They had also deposed that when Rajpal Singh came face to face with the appellant, the latter proclaimed that he would teach a lesson to him and finding no other way out Rajpal Singh took a turn but immediately thereafter, the

appellant had fired a shot at him, which, as mentioned above, hit him on his backside of his chest. In his cross-examination PW1 Joginder Singh stated that he was at a distance of 5/7 karams when the appellant had fired at his son, whereas the appellant was quite near the deceased when he fired at him. According to him, the appellant was 4/5 karams from the deceased when the former fired a shot at the latter. These distances were being given by him by approximation. Further, the witness was carrying a torch with which he had seen the occurrence. However, his merely stating that the deceased was at a distance to 4/5 karams from the appellant when he was fired at cannot be accepted as such. Going by the medical evidence by way of testimony of PW3 Dr. Sarabjit Singh Sandhu, who while conducting post-mortem had recovered two wads, one of cardboard and one of plastic, besides cardboard covering alongwith 16 pellets. On dissection, he had also noticed burning of shirt, including tatooing and blackening of the main wound alongwith its margins. As such, it was practically firing of a shot from a very close distance and, thus, there was no chance of PW 1 Joginder Singh and PW2 Chamkaur Singh failing to identify the appellant. It is true that the appellant did not make any attempt to fire at PW1 Joginder Singh or PW2 Chamkaur Singh. However, it was the prosecution case that the appellant was suspecting deceased Rajpal Singh to be having illicit relations with his niece and in such a situation he would have only targeted Rajpal Singh and not his father Joginder Singh or brother Chamkaur Singh. Moreover, the appellant was carrying .12 bore pistol with him and there is no material on the record which could indicate that the appellant had tried to re-load the country made

pistol. At the same time, once his mission stood completed, the appellant made good his escape from the spot and while doing so carried the weapon with him as well.

According to the prosecution PW2 Chamkaur Singh, brother of deceased Rajpal Singh was posted in the Agriculture Department at Bathinda. However, he explained his presence at the spot by testifying that he had given station leave application for the day on which the occurrence had taken place. The defence did not bring on record any material which might indicate that PW2 Chamkaur Singh was not present in the village on the day of the occurrence and on the other hand, he was present at Bathinda. Even otherwise, despite subjecting PW1 Joginder Singh and PW2 Chamkaur Singh to lengthy cross-examination, the defence could not establish that they were not present at the spot at the time of the occurrence or were subsequently setup as eye-witnesses.

While making statement Ex.PA, complainant Joginder Singh stated that after his son Rajpal Singh died at the spot as a result of firing of shot by the appellant and after leaving Chamkaur Singh at the spot to guard his dead body, he alongwith Ajmer Singh proceeded for the Police Station. Said Ajmer Singh is none-else but the brother of complainant Joginder Singh. As Ajmer Singh had not witnessed the occurrence, he was not examined by the prosecution as its witness. He had simply accompanied complainant Joginder Singh for lodging the report at the Police Station and, thus, his non-examination as a witness is of no significance.

The occurrence in question had taken place on 26.10.2001 at 8.30 p.m. Immediately, after the occurrence complainant Joginder Singh alongwith his brother Ajmer Singh left for Police Station to lodge the report. When they reached Gol Market, Jaitu they came across SI Darshan Singh before whom complainant Joginder Singh made statement Ex.PA on 26.10.2001 at 10.35 p.m. The said statement of the complainant revealed commission of offences under Section 302 IPC and Section 25 of the Arms Act. Accordingly, it was forwarded through LC Gour Singh to Police Station Jaitu for registration of the case. On 26.10.2001 at 10.45 p.m., ASI Jaswinder Pal, Officer Incharge, Police Station Jaitu started recording FIR Ex.PA/1 which came to be completed at 11.55 p.m. The special report was, thereafter, handed over to Constable Mukhtiar Singh who delivered the same to the Ilqa Magistrate at Jaitu on 27.10.2001 at 9.10 a.m. Apparently, there was no delay in the making of statement Ex.PA by complainant Joginder Singh and registration of FIR Ex.PA/1 on its basis at Police Station Jaitu. However, there was some delay in the handing over of the special report to the Ilqa Magistrate. It may be noticed that the distance between Jaitu and Faridkot, as has come on the record, is 30 kms and the FIR having been completed at 11.55 p.m., ought to have been received much earlier to 9.10 a.m. It appears that instead of delivering the special report to the Ilqa Magistrate at his residence, Constable Mukhtiar Singh, whom the prosecution examined as PW8, opted to deliver the same in the Court itself. Meaning thereby, that instead of disturbing the Ilqa Magistrate at his house during the night, he opted to wait for opening of the Courts and when the Courts opened, he

delivered the special report at 9.10 a.m. Thus, the delay in delivering the special report to the Ilqa Magistrate stood duly explained and it cannot be said that the statement Ex.PA and the FIR Ex.PA/1 were ante-timed.

As is clear from the statement of PW3 Dr. Sarabjit Singh Sandhu, two wads and one cardboard covering alongwith 16 pellets were found on dissection of dead body. Besides, there were two pellet marks on the lateral side and inferior side measuring 0.5 x 0.5 cm. in an area of 1 cm around the main wound. Tatooing and blackening were noticed around the margins of the main wound. There was burning and blackening of the shirt of the deceased. From the medical evidence it is made out that the firing was resorted to by the appellant almost from a point blank range. Further, at the time of the occurrence Rajpal Singh was going ahead of his father Joginder Singh and brother Chamkaur Singh and when the appellant came face to face with him and also proclaimed to teach him a lesson for playing with the honour of others, Rajpal Singh turned around in order to escape but the appellant did not wait even for a second and fired one shot at him. The two eye-witnesses of the occurrence had given *inter se* distance between the appellant and the deceased as 4/5 karams. In the scaled site plan Ex.PF prepared by PW4 Gursewak Singh, Draftsman, the distance between the deceased and the appellant was described as 1 $\frac{3}{4}$ karams and in order to fire, the appellant would have stretched his arm. Meaning thereby, that when the actual firing took place the distance between the appellant and the deceased was not 4/5 karams or even 1 $\frac{3}{4}$ karams, as mentioned in the scaled site plan but the muzzle/barrel of the country made pistol was

very close to the target i.e. Rajpal Singh, to whom the appellant wanted to teach a lesson for playing with the honour of others. Therefore, it cannot be said that the medical evidence is not in conformity with the ocular account.

Coming to the defence evidence, though DW1 Harnek Singh whose house was close to the place of occurrence, had testified that when he came out and saw the dead body of Rajpal Singh lying in the street he did not notice the brother or father of Rajpal Singh there at that time yet in his cross-examination he deposed that when the police had come to the spot and joined him in the investigation, he had told the police that he knew nothing about the case as the door was shut at that time. He also did not inform the police about Joginder Singh and Chamkaur Singh being not present at the spot.

DW2 Ghukkar Singh, who was the Sarpanch of the village on the day of the occurrence, deposed about Mangal Singh and Harnek Singh informing him about Rajpal Singh lying dead in front of their houses and, accordingly, he rang up the police. In his cross-examination, he admitted that when he reached the place of occurrence at 10.00 p.m., both Joginder Singh and Chamkaur Singh were there.

DW3 Darshan Singh who was ex-Sarpanch of the village testified that Rajpal Singh was admitted to bad vices and was characterless. Even a case was registered against him under Section 326 IPC. However, in his cross-examination, he admitted that he himself alongwith the appellant was involved in a case of theft of cars. Though

both of them were acquitted but another case with regard to the theft of car was still pending in Moga Court. He further stated that there was another case against him and Kaka Singh with regard to the theft of car at Sangharian. If DW3 Darshan Singh was well connected with the appellant, both of them, being together involved in car theft cases, no reliance can be placed upon his testimony to give a certificate of bad character of the deceased.

In view of the above discussion, this Court is of the view that the conviction and sentence of the appellant, as recorded by the trial Court, is based upon proper appreciation of the evidence available on the record. Therefore, no case is made out for any interference in the impugned judgment of conviction and sentence.

The appeal is without any merit and, therefore, dismissed.

**(T.P.S. MANN)
JUDGE**

**(GURMIT RAM)
JUDGE**

September 23, 2016
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Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO