

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-1476-MA-2015

Date of decision: 19.01.2016

Harpreet Kaur

..... Applicant

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Ms. GK Mann, Advocate for the applicant.

RAMENDRA JAIN, J.

Applicant-complainant by way of present application filed under Section 378 (4) Cr.P.C. has sought permission to file the accompanying appeal against acquittal of respondents No. 2 to 4 vide judgment dated 21.05.2015, passed by the learned Additional Sessions Judge, Amritsar.

2. As per prosecution story, around 10.45 P.M. on 14.03.2007, the applicant-complainant along with her husband Kanwaljit Singh and other family members was present in the house. The lights of her house were switched on. On hearing some noise on the main gate of her house as some persons were abusing in the name of her husband, the applicant-complainant along with her husband-Kanwaljit Singh came out from their

room. They found Jagjit Singh, entering their house by scaling the wall and opened the main gate. Respondent No. 2-Swaran Singh @ Sona armed with .12 bore rifle along with respondent No. 3-Amarjit Kaur and 5-6 unknown assailants forcibly entered the house of applicant-complainant. On raising *lalkara* by respondent No. 3 to teach a lesson to the husband of applicant-complainant for taking possession of the land, respondent No. 2 fired shot from his rifle towards Kanwaljit Singh with an intention to kill him. Co-accused Jagjit Singh @ Jita, caught the applicant-complainant from her plait and threw her on the ground and dragged her. Jagjit Singh, also snatched the gold chain weighing two tolas from the neck of the applicant-complainant. Her raising alarm attracted her sister-in-law Jaswant Kaur on the spot. Thereafter, all the accused ran away with their respective weapons. Due to fear, husband of the applicant-complainant also ran away from the house.

3. The aforesaid facts were reduced into writing by ASI Tarlochan Singh, who met the complainant near G.T. Road Ajnala turn, Miran Kot Adda and after obtaining the signatures of applicant-complainant on the same, sent HC Ranjit Singh to the police station for recording the formal FIR. Thereafter, ASI Tarlochan Singh, Investigating Officer, recorded the statements of witnesses, inspected the spot, took the empty cartridges in possession and prepared rough site plan of the place of occurrence. After taking necessary steps during investigation, he filed the final report under Section 173(2) Cr.P.C. before the Area Magistrate, against Jagjit Singh @ Jita and respondents No. 2 to 4 under Sections 452/336/34 IPC and Sections 25/27/29 of the Arms Act.

4. The applicant-complainant simultaneously filed a private complaint in the Court against the accused persons under Sections 307/452/382 read with Section 34 IPC and under Sections 25/27 of the Arms Act. The learned Area Magistrate, after complying with the provisions of Section 208 Cr.P.C., committed the case for trial vide order dated 20.04.2012. Vide order dated 24.09.2012, the learned Additional Sessions Judge, Amritsar, ordered for clubbing and trial of private complaint filed by the applicant-complainant with the State case.

5. Upon finding a *prima facie* case, the learned Additional Sessions Judge, Amritsar, framed charges under Sections 452/307/382 read with Section 149 IPC and Section 25 of the Arms Act against respondents No. 2 to 4, to which they pleaded not guilty and claimed trial. Co-accused, namely; Jagjit Singh @ Jita, who was also summoned in the private complaint under Section 307/452/382 read with Section 34 IPC and Sections 25/27 of the Arms Act was declared as proclaimed offender.

6. The prosecution in support of its case examined as many as 10 witnesses.

7. PW-1 Harpreet Kaur applicant-complainant, deposed that a case regarding partition of land was pending adjudication between respondent No. 3-Amarjit Kaur and them before the Court of Sub Divisional Magistrate, Amritsar. For that reason, respondent No. 3 used to keep grudge against them. Further she fully supported the prosecution story in toto by stating that around 10.45 P.M. on 14.03.2007, respondents No. 2 to 4 and co-accused Jagjit Singh @ Jita (Proclaimed

Offender) have entered their house and respondent No. 2 fired a shot upon her husband. Co-accused Jagjit Singh @ Jita by catching hold her plait threw her on the ground and dragged her. He also snatched a gold chain weighing two tolas from her neck. On their raising alarm, her sister-in-law Jaswant Kaur, came at the spot. Thereafter, all the accused ran away from the spot.

8. PW-2 Kanwaljit Singh and PW-3 Jaswant Kaur, husband and sister-in-law respectively of the applicant-complainant, also corroborated her statement on all material aspects.

9. PW-4 HC Dilbagh Singh, deposed about depositing of two sealed parcels with him by ASI Tarlochan Singh, Investigating Officer which he along with sample seal handed over to HC Ranjit Singh on 16.03.2007, for onward depositing the same with Forensic Science Laboratory (FSL), Chandigarh, who after doing the needful handed over the receipt on the next day.

10. PW-5 HC Satish Chander, stated that on 08.05.2007, MHC Paramjit Singh, had handed over to him four sealed parcels, sealed with seal bearing impressions 'PS' and 'AS' and on unsealed parcel of test cartridge for onward depositing the same to the FSL, Chandigarh and after doing the needful, he handed over the receipt to MHC Paramjit Singh.

11. PW-6 Rakesh Kumar, proved the Arms Licence of respondent No. 4 as Ex. PW-6/A and his endorsement thereon as Ex PW-6/B.

12. PW-7 ASI Tarlochan Singh (retd.), Investigating Officer

deposed about the chain of investigation conducted by him.

13. PW-8 ASI Ajit Singh (retd.), stated about the arrest of respondent No. 2-Swaran Singh @ Sona on 06.04.2007 along with one DBBL Gun .12 bore and four live cartridges which he took into possession vide memo Ex. PW-5/F, after converting the same into sealed parcel. He further deposed about arrest of accused Jagjit Singh vide arrest-cum-intimation memo Ex. PW-5/E and Iqbal Singh vide arrest memo Ex. PW-8/A. He further testified that as per verification report, the Arms Licence of respondent No. 4 was valid up to 20.11.2009.

14. PW-9 HC Ranjit Singh, deposed about handing over of two sealed parcels to him by MHC Dilbagh Singh on 16.03.2007 and also about depositing the same with FSL, Chandigarh, in intact condition and after doing the needful, he handed over the receipt in this regard to MHC.

15. PW-10 ASI Paramjit Singh, stated that on 06.04.2007, ASI Ajit Singh, had deposited with him one parcel of .12 DBBL rifle and one parcel of four live cartridges. On 08.05.2007, he handed over both the parcels to HC Satish Kumar for onward depositing the same with FSL, Chandigarh, who after doing the needful, handed over the receipt to him.

16. After closure of the prosecution evidence, the statements of respondents No. 2 to 4 under Section 313 Cr.P.C. were recorded, putting entire incriminating evidence brought on record against them to which, they denied and pleaded their false implication. They also stated that complainant party had a dispute and litigation with respondent No. 3 regarding share in joint property and assets of her husband Dalbir Singh. Due to this reason, they were falsely implicated.

17. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court acquitted respondents No. 2 to 4 of the charges framed against them by giving them the benefit of doubt vide the impugned judgment.

18. Learned counsel for the applicant-complainant argued that the impugned judgment passed by the trial Court is based on surmises and conjectures. The learned trial Court has failed to appreciate that respondents No. 2 to 4 in furtherance of their common intention committed house trespass of the applicant-complainant and after having made preparation fired shot upon her husband with a DBBL .12 bore gun with an intentional knowledge to cause his death. PW-1 applicant-complainant, PW-2 Kanwaljit Singh her husband and PW-3 Jaswant Kaur, sister-in-law of applicant-complainant have fully supported the prosecution story and, thus, the learned trial Court has erred in not believing their version despite the fact that a DBBL .12 bore gun along with 4 live cartridges owned by respondent No. 4-Iqbal Singh was recovered from respondent No. 2-Swaran Singh @ Sona. Non-recovery of gold chain from any accused does not *ipso facto* falsifies the prosecution story. The motive behind the occurrence was well proved on record that there was a land dispute between the applicant-complainant and the accused party and, thus, to put pressure upon the complainant party, the accused party attacked upon them. There was no delay in lodging the FIR. Hence, finding of the learned trial Court regarding delay in lodging the FIR is cryptic.

19. We have given our thoughtful consideration to the

submissions made by learned counsel for the applicant-complainant and find that the present application is completely devoid of any merit for the reasons to follow:-

- (i) As per prosecution story, the occurrence took place at about 10.45 P.M. on 14.03.2007. However, the FIR was lodged at 4.30 P.M. on the next day on 15.03.2007 i.e. after 18 hours (approximately). There is no explanation on record that why the FIR was not promptly lodged, more particularly, when nobody from the complainant side suffered any injury in the occurrence. As per applicant-complainant, firing was also done by the accused person in her house. In such a panic situation any person of ordinary prudence would try to approach the police without any delay. The applicant-complainant in her cross-examination has categorically admitted that during the night of occurrence, they did not inform the police. Even they did not make any call to police. In the next morning, they went to the Court to attend their case without giving any information of occurrence to the police. PW-3 Jaswant Kaur, sister-in-law of the applicant-complainant had also admitted this fact. Even the complainant party did not inform the Panchayat about the alleged occurrence. The above conduct of the complainant party is highly doubtful. The learned trial

- Court has, thus, rightly observed that the prosecution story was not natural rather was completely doubtful.
- (ii) The occurrence took place around 10.45 P.M. In ordinary course, by that time nobody goes to sleep. Even otherwise by hearing the sound of firing many villagers might have gathered at the spot, but no co-villager or any independent witness was joined in the investigation. Even the complainant party did not ask any of the co-villager or neighbourer to report the matter to the police. The above all factors create suspicion about the prosecution story and, thus, we are of the considered opinion that respondents No. 2 to 4 have rightly been acquitted by the learned trial Court.
- (iii) As per the applicant-complainant, the occurrence took place in her house. Jagjit Sing @ Jita (Proclaimed Offender) by scaling the wall of the house of applicant-complainant entered into her house and then opened the main gate. Thereafter, respondents No. 2 to 4 have entered in the house. Firing was done by respondent No. 2. However, the Investigating Officer/ASI Tarlochan Singh (PW-7), did not find any empty cartridge lying there. Rather PW-7 ASI Tarlochan Singh stated that the three points A, B, and C from where he lifted the empties from the spot were located in the street outside the house of the

complainant. Rough site plan of the place of occurrence was correctly prepared by him. The above deposition of PW-7 ASI Tarlochan Singh, clarifies that the alleged occurrence did not take place in the house of the applicant-complainant rather, if any, took place in the street outside her house. The above discrepancy in the statement of applicant-complainant and PW-7 ASI Tarlochan Singh proves that the things did not happen in the manner as narrated by the prosecution. There were improvements and deliberations in the applicant-complainant's version before the police and her deposition in the Court.

- (iv) The learned trial Court has rightly observed that no corresponding injury was found on the person of applicant-complainant when her gold chain was forcibly taken away by Jagjit Singh. In these circumstances, the prosecution story renders doubtful, more particularly, when recovery of gold chain was not effected from any of the respondents.
- (v) As per FSL report Ex. PX, none of the empties recovered from the spot were found fired from the recovered DBBL Gun which also renders the prosecution story doubtful. Contrary to it, the defence plea taken by respondents No. 2 to 4 seems to be quite genuine and probable that there was a land dispute

between Kanwaljit Singh, husband of the applicant-complainant with respondent No. 3 and for that reason they were falsely implicated in the instant case. Respondent No. 3 in her defence had tendered the certified copies of complaint and judgments Ex. DB to Ex. DJ, in support of her above assertion, therefore, possibility of false implication cannot be ruled out. There was no independent corroboration to the statements of applicant-complainant, her husband and sister-in-law which is fatal to the prosecution case.

20. No other point was urged before us.

21. From the above discussion, it can safely be said that the prosecution has failed to prove its case beyond any shadow of doubt against respondents No. 2 to 4 and they have been rightly acquitted by the learned trial Court. The instant application is completely devoid of any merit and, therefore, dismissed. Special leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

January 19, 2016
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