

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Appeal D-No. 665-DB of 2003
Date of decision : December 13, 2016

Satnam Singh and another

..... Appellants
Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE H.S.MADAAN

Present:- Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep S. Sandhu, Advocate
for the appellants.

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

H.S.MADAAN J.

This appeal is directed against the judgment dated 31.7.2003 passed by the Court of Additional Session Judge, Amristar vide which both accused were convicted and sentenced as follows:-

1	Kulwinder Singh	
	U/s 302 IPC	Imprisonment for life with a fine of Rs.2000/-. On failure of payment of fine, to further undergo rigorous imprisonment for a period of two months.

	U/s 27 of the Arms Act	To undergo rigorous imprisonment for a period of one year.
2	Satnam Singh	
	U/s 302/34 IPC	Imprisonment for life
	U/s 29 of the Arms Act	To undergo rigorous imprisonment for a period of one year.

The substantive sentences were to run concurrently.

The accused, who are appellants before this Court pray that the appeal be accepted, impugned judgment of their conviction and sentence be set aside and they be acquitted of the charges framed against them.

Briefly stated, facts of the case as per the prosecution story are that complainant Baldev Singh son of Dara Singh of Jat community, resident of Village Gandiwind, aged 43 years and an agriculturist by avocation has been residing in a house constructed in the fields on the outskirts of the Village. House of his cousin brother Kirpal Singh son of Chanan Singh was also situated nearby. The agricultural land of Kirpal Singh deceased also adjoins the land of Satnam Singh son of Mohinder Singh, Jat of that very Village (accused). Earlier Kirpal Singh had carved out a water course in his fields but the same was demolished by Satnam Singh and the dispute had gone to respectables of the Village for settlement.

On 29.10.2001 at about 8.30 A.M. the complainant Baldev Singh along with his Uncle Maan Singh son of Kishan Singh of Jat communiy was going to the house of deceased. They observed Satnam Singh cultivating his fields with a tractor. Kulwinder Singh @ Bittu son of Satnam Singh was sitting on the tractor. He was having a 12 bore licensed gun. Kirpal Singh deceased was digging water course in his fields. Satnam

Singh exhorted his son Kulwinder Singh to teach a lesson to Kirpal Singh for digging a water course in his field. Hearing that Kulwinder Singh @ Bittu fired two shots from his 12 bore DBBL gun at Kirpal Singh hitting him on left hip and left thigh. Baldev Singh and Maan Singh raised an alarm at which both the accused fled away from the spot along with the weapon leaving their tractor behind. As a result of being hit by the shots, Kirpal Singh had fallen on the ground. The complainant Baldev Singh and Maan Singh arranged a vehicle and were taking Kirpal Singh to Baba Budha Sahib Hospital for treatment but on the way he succumbed to the injuries.

After leaving Maan Singh near the dead body Baldev Singh himself was going to lodge a report with the police, however on the way at turn of pacca road of Gandiwind he met a police party headed by SI Mandeep Singh from the Police Station Sarai Amant Khan. The complainant Baldev Singh got recorded his statement Ex. PB with SI Mandeep Singh which was signed by the complainant in English. His signatures were attested by SI Mandeep Singh. SI Mandeep Singh put his endorsement Ex.PB/1 below the said statement and sent Ruka to police station through Constable Kishori Lal on the basis of which formal FIR Ex. PB/2 was recorded by MHC Davinder Singh. Thereafter the police party accompanied by the complainant went to the house of Kirpal Singh where his dead body was lying on a cot. The Investigating Officer carried out the inquest proceedings qua unnatural death of Kirpal Singh. The dead body was identified to him by Kewal Singh and Tarsem Singh PWs. He had prepared the inquest report. The Investigating Officer had handed over dead body of Kirpal Singh along with police application Ex.PF to HC Hardip Singh for getting the postmortem conducted thereon. He had deputed H.C

Hardip Singh for that purpose.

Thereafter the police party went to the place of incident. The Investigating Officer carried out the inspection of that place. He took into possession the blood stained earth after converting it into a parcel sealing it with his seal having inscription MS the said parcel was taken into possession vide recovery Memo Ex.PJ attested by ASI Deep Singh. The two 12 bore empty shells Ex.P-6 and P-7 found at the spot were converted into a parcel by the Investigating Officer and he sealed it with his seal having inscription 'MS' and took that parcel in possession vide memo Ex.PK attested by the witnesses aforesaid. The tractor make Ford having registration No. PUO 4794 along with its drill, which was standing at the spot was seized by the Investigating Officer vide Memo Ex. PL attested by those very witnesses. The Investigating Officer recorded the statements of witnesses and prepared a rough site plan of the place vide Ex.PM besides doing other formalities.

After postmortem examination, clothes of the deceased which were blood stained were produced by Head Constable Hardip Singh before the Investigating Officer who converted those clothes into a parcel and sealed that with his seal having inscription MS. The said parcel was taken into possession by the Investigating Officer vide recovery Memo Ex.PN attested by Head Constable Hardip Singh and ASI Deep Singh. On return to the Police station, the Investigating Officer deposited the case property with MHC Devinder Singh with seals intact.

On 5.11.2001 the police party headed by SI Mandeep Singh (hereinafter referred to as Investigating Officer) was present at bus stop Sarai Amanat Khan where the Investigating Officer received

information that both the accused named in this case were going from Gandiwind to Mianpur on the bank of dirty water drain and if a raid was conducted they could be apprehended. The police party proceeded towards the said place and when it was about about 1 K.M behind the Village Mianpur, both the accused were spotted and nabbed. Kulwinder Singh was holding a 12 bore gun in his right hand which was found loaded and when unloaded two live cartridges having mark 'KF' were recovered. It was a licensed gun. Kulwinder Singh also produced license regarding that gun which was in the name of his father and was valid upto 17.9.2004. The Investigating Officer prepared rough sketch of the recovered gun as Ex.PH/1 and converted it into a parcel. Two live cartridges Ex.P-2 and P3 were also converted into a parcel and sealed with the seal 'MS' of the Investigating Officer. The two parcels along with license Ex.P-4 were taken into police possession vide recovery Memo Ex.PH. The Investigating Officer had furnished grounds of arrest to Satnam Singh accused and information regarding his arrest was given to Kartar Singh vide Memo Ex.PD which was thumb marked by Satnam Singh and Partap Singh. Similarly grounds of arrest were furnished to Kulwinder Singh accused and information regarding his arrest was given to Partap Singh vide Memo Ex.PQ signed by Kulwinder Singh and thumb marked by Partap Singh. The Investigating Officer recorded the statements of witnesses and on return to the police station deposited the case property with MHC Devinder Singh with seals intact.

During the course of Investigation on 7.11.2001 Registration Certificate of the tractor No. PUO 4794 Ex. PR was produced before the Investigating Officer by Chain Singh son of Mohinder Singh

which was taken into possession vide recovery Memo Ex. PL attested by MHC Devinder Singh. During the course of investigation report from Forensic Science Laboratory, Punjab, Chandigarh was received.

After completion of investigation, challan against both the accused was prepared and filed in the Court by SI Mandeep Singh. On presentation of challan in the Court of Magistrate, the copies of the documents as envisaged under Section 207 Cr.P.C were furnished to the accused free of cost.

After the case was received by Commitment, it was entrusted to the Additional Sessions Judge, Amritsar where Kulwinder Singh was charged for offence under Section 302 IPC and Section 29 of the Arms Act whereas against Satnam Singh, accused charge under Section 302/34 IPC and Section 27 of the Arms Act was framed.

Both the accused pleaded not guilty and the case was fixed for evidence of prosecution.

During the course of trial, the prosecution examined witnesses as follows:-

PW-1 Rishi Ram who had prepared scaled site plan Ex. PA using the scale 1"= 20' deposed in that regard.

PW-2 Baldev Singh and PW3 Maan Singh, eye witnesses, provided the ocular account of the incident supporting the prosecution case on material aspects.

PW-4 HC Devinder Singh, a formal witness submitted his affidavit Ex. PC.

PW-5 HC Hardip Singh, another formal witness produced in evidence his affidavit Ex. PD.

PW-6 Dr. Ashok Chanana, Assistant Prof. Department of Forensic Medicine and Toxicology, Govt. Medical College, Amritsar had performed the postmortem examination on the dead body of deceased Kirpal Singh son of Chanan Singh. He conducted the postmortem examination on 29.10.2001 at 3.00 P.M. This witness found the following injuries on the dead body of the deceased:-

“1. Multiple (12) lacerated wounds circular to oval in shape varying in size from 0.4 x 0.3 cm to 0.3 x 0.2 cm were present on the postero medial aspect of left thigh in its upper 1/3rd. Clotted blood was present at the site. The margins of the wounds were inverted with abrasions collars.

2. A lacerated wound 15 x 13 cm with clotted blood everted margins was present on the antero medial aspect of left thigh in its lower 1/3rd. The lacerated muscles were protruding out from the wound.

On dissection, injury No.1 communicated with injury No.2 after lacerating the intervening soft tissue structures. Clotted blood was present at the site. The underlying large vessel was lacerated and lying open with clotted blood and dark colour infiltration of blood was present the surrounding structure. The track was of divergent type and was directed downward anterior and laterally 11 pellets were recovered from the track which were blood stained.

3. A lacerated wound 8 x 5 cm with multiple (16) satellite wounds varying in size from 0.4 x 0.3 cm to 0.3 x 0.2 cm with inverted margins and abrasions collar were present on the left buttock on its lateral half and in its centre. Clotted blood was present at the site.

On dissection 2 plastic wads and 10 pellets, all blood stained were recovered from the truck. Clotted blood was found present at the site and in the track. The

track was directed downward and forward and it was of divergent type.”

PW-7 ASI Swaran Singh on 5.11.2001 who was member of the police party headed by SI Mandeep Singh, which had apprehended both the accused and had recovered 12 bore loaded gun from possession of Kulwinder Singh deposed in that regard proving various documents.

PW-8 SI Mandeep Singh, the Investigating Officer in this case deposed regarding investigation carried out by him, proving various documents.

PW-9 Constable Joginder Singh, a formal witness submitted his affidavit Ex. PU.

PW-10 Ashnil Kumar, Clerk, Office of District Magistrate, Amritsar who had brought the summoned record proved the license for possession of 12 bore DBBL gun in the name of Satnam Singh son of Mohinder Singh r/o 106 Rani-Ka-Bagh, Amritsar as Ex. P4 which was valid upto 17.9.2004.

PW-11 Kulbir Singh, who had brought the summoned record relating to registration certificate of tractor bearing No. PUO 4494 make Ford 3600 in the name of Ajmer Singh son of Lachman Singh r/o Varpal on 2.9.1989 and then transferred in the name of Kulwinder Singh son of Satnam Singh, r/o Village Gandiwind. He proved the RC Ex.P1 stating that as per the RC the tractor was transferred in the name of Kulwinder Singh son of Satnam Singh, r/o Village Gandiwind though there is no corresponding entry in his register.

PW-12 Constable Lakhwinder Singh, a formal witness

submitted his affidavit Ex. PV.

With that the prosecution evidence got concluded.

Statements of accused under Section 313 Cr.P.C were recorded in which they were put all incriminating circumstances, appearing against them but they denied the allegations.

Accused Satnam Singh stated that he was not present at the spot at the relevant time and was away to Baba Budha Sahib since morning and that he has been falsely involved in this case whereas Kulwinder Singh had taken up a plea that he fired two shots from the gun in the right of his private defence of his person and property. The accused however did not lead any evidence in defence.

The trial court framed the following points for determination:-

- “1. Whether the accused committed the offence under Section 302 IPC for causing murder of Kirpal Singh son of Chanan Singh.
2. Whether accused Kulwinder Singh fired with gun in exercise of the right of private defence of his person and property.
3. Whether accused Kulwinder Singh committed an offence under Section 27 of the Arms Act and accused Satnam Singh committed an offence under Section 29 of the Arms Act, 1959.”

After hearing arguments the trial court convicted and sentenced the accused as mentioned above, which left them aggrieved and they have filed the present appeal and prayed that the same be accepted, the impugned judgment of the trial court be set aside and they be acquitted of the charges.

We have heard learned counsel for the appellants and the

Additional Advocate General, Punjab besides going through the record.

As far as involvement of accused Kulwinder Singh in the incident is concerned the same is not denied by the defence even, rather as per the defence version, on coming to know that deceased along with some other persons was digging a water channel in their fields destroying the standing crops there, Kulwinder Singh, accused carrying the licensed DBBL gun of his father went there on a tractor. On seeing him the deceased advanced towards him to assault him, as such he picked up gun from side of the tractor and fired exercising right of private defence of his person and property. Therefore, the evidence adduced by the prosecution as regards involvement of Kulwinder Singh in the incident need not be discussed here.

Now, the question arises whether Kulwinder Singh was accompanied by his father at that time who might have exhorted him to fire at the deceased and to kill him. After scanning the file carefully, we find that involvement of Satnam Singh in the incident comes out to be doubtful for various reasons. Firstly, no injury is attributed to Satnam Singh. Secondly, in the FIR which was recorded on the basis of statement made by the complainant Baldev Singh, it has been alleged that Satnam Singh was ploughing his fields with a tractor and his son Kulwinder Singh @ Billu was sitting on the tractor having a 12 bore DBBL gun and Satnam Singh had raised a lalkara (exhortation) that deceased should be taught a lesson for carving out water channel in their fields, at which Kulwinder Singh fired twice at Kirpal Singh causing injuries to deceased, to which he succumbed. However, during the trial, the eye witnesses tried to make improvements in that version and PW-2 Baldev Singh in his statement stated that Kulwinder Singh, accused was driving a tractor and Satnam Singh was having DBBL 12 bore gun and was sitting on mudguard of tractor. Kirpal Singh was

making a ridge of water channel. In the meanwhile, Satnam Singh raised a lalkara that Kirpal Singh be taught a lesson for re-making the water channel and Kulwinder Singh took gun from Satnam Singh and fired two shots which hit Kirpal Singh on left thigh and left hip. PW-3 Maan Singh had also testified in that regard. Both the witnesses were confronted with their previous statements where the factum of Kulwinder Singh firing from the DBBL 12 bore gun after taking it from Satnam Singh was not found to be recorded. The incident, in this case is said to have taken place on 29.10.2001 at about 8.30 A.M. whereas it was reported to the police on that very day at 11.30 A.M. i.e. after three hours of the incident. Although, it cannot be said to be a case of inordinate delay in reporting the matter to the police but then it comes out that the delay might have been utilized to rope in Satnam Singh in this case. The fact cannot be lost sight of that there is a tendency amongst people of this region that in case some incident takes place, then the net should be thrown wide and as many persons as possible of the opposite party be roped in to settle some earlier grudge. As per own case of the prosecution, dispute was between deceased and accused party regarding making a water channel in the fields inasmuch as the deceased had dug a water channel in his fields which had been demolished by Satnam Singh earlier given rise to the dispute and complainant party had requested the respectables of the Village to get the matter resolved. That could be a reason for the complainant to implicate Satnam Singh in this case. Furthermore, motive is a double edged weapon which cuts both way, though it provides the reason for happening of the incident, at the same time the reason for false implication.

As per human conduct, Kulwinder Singh a young man on

coming to know that some persons were destroying their crops in the fields by making a water channel therein would have rushed to the fields on a vehicle, in this case, a tractor, carrying a fire arm to meet any eventuality, rather than waiting for his father to come and then both of them going to the fields. The young man did not require exhortation from his father to fire at the trespasser. Furthermore, Satnam Singh, while exhorting his son Kulwinder Singh to fire at the deceased need not have passed on the DBBL gun to Kulwinder Singh and if present he himself could have fired from his licensed gun. That also minimizes the chance of Satnam Singh being present at the spot at relevant time.

Now coming to the point as to whether Kulwinder Singh is guilty of offence of murder or of some other offence it needs to be mentioned here that in the site plan prepared by the Investigating Officer at the spot, the tractor of the accused is shown to be parked in fields of accused. The point from where empty shells of 12 bore gun was found is also shown to be in the fields of accused. Similarly, blood stained earth was also picked from the place in the fields of the accused which goes to show that incident had infact taken place in fields of the accused.

Now, next question which arises is whether the right of private defence was available to the accused or not.

Kulwinder Singh accused has taken two fold defence saying that he had fired at the deceased to save himself from assault at his hands and to save his property. As far as right of private defence of his person is concerned it was not available to the accused because it is not a case of defence or otherwise proved on record that deceased was having any weapon with him, with which he might have caused injuries, that too serious

in nature to Kulwinder Singh and to save his life Kulwinder Singh had fired at the deceased but as far as right of defence of property is concerned, from the facts and circumstances of the case, it comes out that the same was available to accused. Section 103 IPC deals with the situation when right of private defence of property extends to causing death. It provides that right of private defence of property extends, under the restrictions mentioned in Section 99, to the voluntary causing of death or of any other harm to the wrong doer, if the offence, the committing of which, or the attempting of which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:-

- (i) Robbery;
- (ii) House-breaking by night;
- (iii) Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;
- (iv) Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

In the present case, deceased by trespassing in the fields of accused and trying to carve out a water channel there did cause annoyance to him. The accused was not expected to stand as a mute spectator and see a trespasser damaging his crops. Law does not expect a person to behave timidly in such an eventuality. Kulwinder Singh could have used force so as to stop the deceased from trespassing in his fields and damaging his crops but here since the wrongful act committed was not of that type and magnitude which could justify Kulwinder Singh committing

but obviously he used more force than necessary and exceeded right of self defence.

Now the question arises as to what offence has been committed by Kulwinder Singh. He along with his father have been convicted under Section 302 IPC for committing murder but in our considered view, essential ingredients of murder are not established against Kulwinder Singh and the offence which is made out against him falls within the ambit of Section 304 Part- I IPC i.e. culpable homicide not amounting to murder. The accused Kulwinder Singh by firing from double barrel gun twice at the deceased clearly had intention of causing his death or causing such bodily injury as was likely to cause death. The very fact that Kulwinder Singh had fired two shots establishes such intention. Therefore, he is guilty of offence under Section 304 Part-I IPC whereas presence at the spot of Satnam Singh at the relevant time is not established satisfactorily and a reasonable doubt arises in the mind of the Court about his participation in the incident. No offence either under Section 302 IPC or Section 304 Part-I IPC is disclosed against him.

However, as regards the offence under Section 27 of the Arms Act, Kulwinder Singh had used a licensed weapon of his father for committing a crime i.e. for an unlawful purpose. As observed earlier, though Kulwinder Singh had a right of private defence of his property but obviously, he exceeded that. His firing two shots from double barrel gun cannot be completely justified. Therefore he was rightly convicted under Section 27 of the Arms Act whereas Satnam Singh by allowing his licensed double barrel gun to be used by his son Kulwinder Singh who was not competent to do so committed an offence under Section 29 of the Arms Act.

As a result of the discussion above, conviction of Kulwinder Singh @ Bittu for offence under Section 302 IPC is set aside. Instead, Kulwinder Singh @ Bittu is convicted for offence under Section 304 Part-I IPC and sentenced to undergo rigorous imprisonment for ten years besides paying fine of ₹2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months. His conviction under Section 27 of the Arms Act is maintained. Substantive sentences of imprisonment shall run concurrently. As regards conviction of Satnam Singh under Section 302 read with Section 34 IPC, the same is set aside, though his conviction under Section 29 of the Arms Act is maintained.

The appeal stands partly allowed.

(T.P.S.MANN)
JUDGE

(H.S.MADAAN)
JUDGE

December 13, 2016
archana

Whether speaking/reasoned
Whether Reportable

Yes
No