

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

**Criminal Appeal D-80-DB of 2003
Date of Decision: July 25, 2016**

Jagjit Singh		Appellant
	Versus	
State of Punjab		 Respondent

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

Present : Mr. P.S.Brar, Advocate
for the appellant.

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

Mr. R.K.Dhiman, Advocate
for the complainant.

T.P.S.MANN, J.

The instant appeal has been filed by convict Jagjit Singh, son of Gurbachan Singh, resident of village Khai, District Moga, for challenging the judgment and order dated 2.12.2002 passed by the learned Additional Sessions Judge, Moga.

Vide aforesaid judgment and order, learned trial Court convicted the appellant under Section 302 IPC on two counts, i.e. one for the murder of Nachhattar Singh and the other of Malkiat Singh whereas his co-accused Gurjit Singh was convicted under Sections 302/34 IPC on the said counts and both were sentenced

to undergo imprisonment for life and to pay a fine of Rs.5,000/- on each of the two counts and in default of payment of fine, to further undergo rigorous imprisonment for one year. The appellant 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.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months. All the sentences were ordered to run concurrently.

Aggrieved of his conviction and sentence, the appellant filed the present appeal. His co-convict Gurjit Singh also challenged his conviction and sentence by filing a separate appeal, i.e. Criminal Appeal D-51-DB of 2003. However, the said appeal already stood disposed of as having abated vide order dated 29.1.2016 on account of death of Gurjit Singh, appellant therein. Complainant Ranjit Singh @ Jit has also preferred Criminal Revision 389 of 2003, wherein, he challenges the acquittal of Avtar Singh and Amarjit Singh, co-accused of the appellant besides seeking grant of compensation to the legal heirs of the two deceased. As the present appeal and the revision preferred by complainant Ranjit Singh @ Jit arise from the same judgment of conviction and sentence passed by the trial Court, they are being disposed of by a common judgment.

According to the prosecution, complainant Ranjit

Singh @ Jit, son of Rajinder Singh, resident of village Khai, District Moga, aged about 34/35 years got recorded his statement Ex.PH before Sub-Inspector Malkiat Singh, Station House Officer, Police Station Nihal Singh Wala on 17.6.1999 at 4.30 p.m. at Civil Hospital, Nihal Singh Wala, which is reproduced hereinbelow:-

“It is stated that we are five brothers. The eldest is Nachhattar Singh and I am younger to him. Jagtar Singh, Malkiat Singh and Mukhtiar Singh are younger to me. My elder brother Nachhattar Singh and Jagtar Singh are employed in the P.S.E.B. at Patto Hira Singh. We were sanctioned a connection of 5 Horsepower Motor in the name of my father Rajinder Singh. Today, at about 1.30 noon, I, my brothers Nachhattar Singh, Malkiat Singh, Jagtar Singh and father Rajinder Singh were getting the poles fixed up of the line for our sanctioned motor from the employees of Electricity Department, i.e. Jagtar Singh son of Mohinder Singh, Lineman. Uma Shankar son of Shiv Sangat, Assistant Lineman of the office of P.S.E.B. Patto Hira Singh, alongwith other officials. The line was to go to our field through the field of Jagjit Singh and Gurjit Singh sons of Gurbachan Singh belonging to our village. Jagjit Singh and Gurjit Singh restrained us from taking the line. The employees of the P.S.E.B. made them to understand, but both brothers went from the field to the village by murmuring some words. After sometime thereafter, both brothers alongwith their maternal uncle Avtar Singh son of Pritam Singh and

their cousin brother Amarjit Singh son of Bhajan Singh came to us on a tractor, mark Eicher, which was of red colour. Amarjit Singh was driving the tractor whereas Jagjit Singh was holding his licenced gun. All of them raised lalkara, "Today, you will be taught a lesson for digging poles in our land". As soon as Jagjit Singh alighted from the tractor, no later that he fired with the .12 bore DBBL gun at my brother Nachhattar Singh, hitting him in his chest and fired another shot at my brother Malkiat Singh in his stomach. On receipt of fire shots, my both brothers fell down on the ground and they succumbed to the injuries at the same time in our presence. However, both of them were taken by us to Civil Hospital, Nihal Singh Wala. My brothers Nachhattar Singh and Malkiat Singh have been murdered by firing shots on a trifle matter by Jagjit Singh, Gurjit Singh, Amarjit Singh of our village and Avtar Singh resident of Kangar with their common intention. You have recorded my statement which I have heard and is correct. All these persons had left for the village on the same tractor alongwith their gun".

It is further the prosecution case that as the statement Ex.PH of the complainant revealed commission of offences under Sections 302/34 IPC and Sections 25/27 of the Arms Act, Sub-Inspector Malkiat Singh made an endorsement Ex.PH/1 thereon and sent the same through L.C. Jasvir Singh to Police Station Nihal Singh Wala where on its basis FIR Ex.PH/2 for the

aforementioned offences was registered by Assistant Sub-Inspector Balwinder Singh on the same day at 4.40 p.m., and concluded at 5.40 p.m. Special report was sent through Constable Charanjit Singh, which was received by the Ilaqa Magistrate on the same day at 8.00 p.m. During the investigation of the case, Sub-Inspector Malkiat Singh prepared inquest reports on the dead bodies of Nachhattar Singh and Malkiat Singh before sending the dead bodies to the Civil Hospital, Moga for postmortem. Then, he went to the spot and inspected the same. He lifted blood stained earth and simple earth from the places from where the dead bodies of the two deceased had fallen. He also prepared rough site plan of the place of occurrence, recorded the statements of the witnesses and arrested the accused. Upon completion of investigation and other codal formalities, final report was submitted. The case was, thereafter, committed to the Court of Sessions where Jagjit Singh was charged for committing offence under Section 302 IPC whereas Gurjit Singh, Avtar Singh and Amarjit Singh accused were charged for committing offence punishable under Section 302 read with Section 34 IPC. The appellant was also charged for committing offence punishable under Section 27 of the Arms Act. All of them pleaded not guilty and claimed trial.

In support of its case, the prosecution examined

fifteen witnesses.

PW1 Dr. Surinder Kumar, Medical Officer, Civil Hospital, Moga deposed that he conducted the postmortem on the dead body of Nachhattar Singh on 18.6.1999 at 9.00 a.m. and found the following injuries:-

- “1. A lacerated punctured wound with inverted margins 4½ cm horizontally ½ cm vertically oval in shape, 11 cm above the right nipple, collar of abrasion was present. Blackening present on medial side of wound 05 cm in width.

On dissection right clavicle was fractured in middle third. 1St, 2nd and 3rd ribs on right side fractured. Pleura and lung on right side lacerated. Right pleural cavity was full of blood. A card board of cartridge and metallic pellets were recovered from the wound and pleural cavity and sealed.

The directions of the wound was slightly upwards, slightly backwards and medially towards root of neck.”

In his opinion, the cause of death was due to shock and haemorrhage from damaged vessels due to firearm injury, which was ante-mortem in nature and sufficient to cause death in ordinary course of nature.

PW1 Dr. Surinder Kumar further deposed that on the same day at 10.00 a.m., he had conducted postmortem on the

dead body of Malkiat Singh and found following injuries:-

- “1. There was circular lacerated punctured wound with inverted margins 2 cm X 2 cm in midline -5 cm above the umbilicus. Collar of abrasion was present. Blackening was present. Liquid blood was oozing out.

On dissection.

The wound was directed backwards and upwards slightly and to the right of the deceased. A card board piece and metallic pellets were recovered from the wound and the peritoneal cavity was sealed.

The peritoneal cavity was full of blood. The liver was lacerated on lower part of the anterior and inferior surface. Gall bladder was lacerated beyond recognition. Right kidney was lacerated. Pleural cavity on right side was full of blood.

Pleura and right lung was lacerated in lower half. 9th rib on right side was fractured. Diaphragm was lacerated on right side.

2. There was circular print of 2 cm x 2 cm on left to injury No.1, 0-2 cm from injury No. 1.”

In the opinion of the doctor, the cause of death was due to shock and haemorrhage due to firearm injury to vital organs, which was ante-mortem in nature and sufficient to cause death in ordinary course of nature.

PW2 Dr. Chaman Lal, Medical Officer, C.H.C. Nihal

Singh Wala, deposed that on 17.6.1999 at about 2.25 p.m., the dead bodies of Nachhattar Singh and Malkiat Singh were brought to the hospital. Accordingly, he sent ruqa Ex.PG to Station House Officer, Police Station Nihal Singh Wala for taking necessary action.

PW3 Ranjit Singh @ Jit and PW4 Jagtar Singh deposed about the ocular account.

PW5 Avtar Singh, Junior Engineer, P.S.E.B. Smadh Bhai testified that he remained posted as Junior Engineer at Patto Hira Singh from 7/97 to 26.6.2000. The electricity supply to village Khai was supplied through Dina Feeder, which was under his supervision. As per the summoned record, Rajinder Singh submitted application on 21.12.1984 to the Electricity Department, Patto Hira Singh for connection of electric motor. Estimate was prepared on 23.4.1999 and sent to X.E.N. Baghapurana. The estimate was sanctioned on 28.4.1999. Thereafter, installation order was issued on 11.5.1999 by Sub-Divisional Officer, P.S.E.B., Patto Hira Singh and marked to him for compliance. Demand notice was given to Rajinder Singh, who deposited a sum of Rs.15,000/- on 13.5.1999. On 3.6.1999, eight poles and other material were withdrawn at Kotakpura. On 10.6.1999 the eight poles and other material were withdrawn from the store and sent at the site for giving supply to Rajinder Singh.

On 17.6.1999, Nachhattar Singh ALM and others, who were employees of P.S.E.B. were sent for the installation of the poles. In the evening, he came to know that Nachhattar Singh ALM and Malkiat Singh had been murdered at the site. He produced the photocopy of the installation order Ex.PL before the police on 14.9.1999.

PW6 MHC Tara Singh tendered in evidence his affidavit Ex.PM.

PW7 LC Gurdev Singh, who was posted as Naib Court tendered in evidence his affidavit Ex.PN.

PW8 Head Constable Baljit Singh also tendered in evidence his affidavit Ex. PO.

PW10 Head Constable Parveen Kumar Clerk, Office of Deputy Commissioner, Moga proved the arms licence of .12 bore gun, which stood issued to Jagjit Singh appellant and was valid upto 8.4.2002.

PW11 Gursewak Singh, Draftsman, proved the scaled site plan Ex.PT, which he had made of the place of occurrence on 13.7.1999 at the instance of Jit Singh @ Ranjit Singh.

PW12 Constable Charanjit Singh tendered in evidence his affidavit Ex.PU whereas PW13 Constable Jaswinder Singh tendered in evidence his affidavit Ex.PV.

PW14 Head Constable Gursewak Singh also tendered

in evidence his affidavit Ex.PX.

The investigation aspect of the case was brought on record by the prosecution by examining PW9 Sub-Inspector Malkiat Singh and PW15 Inspector Sandeep Kumar.

Before closing its evidence, the prosecution also tendered reports Ex.PEE, PFF and PGG of the Chemical Examiner.

When examined under Section 313 Cr.P.C., Gurjit Singh, Avtar Singh and Amarjit Singh accused claimed that they were not present at the time of the occurrence and falsely implicated in the case. On the other hand, Jagjit Singh accused took the plea of self-defence. He stated that at the time of the occurrence, Malkiat Singh and Nachhattar Singh deceased, Jagtar Singh Line Assistant and Uma Shankar ALM came to his village to install electric poles forcibly in his land without any permission or sanction for installing the same. He stopped them from doing so, on which, Nachhattar Singh and Malkiat Singh attacked him with kahis (spades) and caused injuries on his face and right forearm. In his self-defence and to save his property, he picked up his licenced gun from the watt (ridge) of the field and fired at them. He used to take gun with him to save his crops from wild animals and stray cattle, who had been causing damage to his crops. PW3 Ranjit Singh @ Jit and PW4 Jagtar Singh were

not present there. His co-accused Gurjit Singh and Avtar Singh were also not present at the time of the occurrence. He was medico-legally examined by the doctor at Civil Hospital, Moga.

In support of its case, only the appellant examined three witnesses.

DW1 Dr. Vijay Kumar Goyal, Medical Officer, Civil Hospital Moga testified that on 19.6.1999 at 1.00 p.m., he medico-legally examined Jagjit Singh appellant, who was brought from sub-jail by Constable Nachhattar Singh. He observed the following injuries on his person:-

- “1. Incised wound present on the right side of face margin well defined and brownish scab present at lower margin, yellow serous was present at the upper margin. Size of the wound was 3.7 cms x 0.5 cms, 3 cms below the lateral angle of right eye.
2. Incised wound 1.5 cms x 0.25 cms on lateral side of right forearm. 3 cms below the wrist scab present”.

According to him, nature of injuries was simple and caused by sharp edged weapon. The probable duration of injuries was two to three days.

DW2 Inspector Joginder Singh, Intelligence Wing,

Chandigarh, testified that he had conducted inquiry in the case and found Amarjit Singh accused as innocent.

DW3 Constable Parshotam Lal stated that no record pertaining to inquiry in this case was available in the office of Senior Superintendent of Police.

After hearing learned counsel for the parties and on going through the evidence brought on record, the trial Court acquitted Avtar Singh and Amarjit Singh of the charges against them whereas Jagjit Singh appellant and Gurjit Singh were convicted and sentenced, as mentioned above.

This Court has heard learned counsel for the parties and scanned the evidence with their able assistance.

The star argument raised by learned counsel for the appellant is that the prosecution had failed to explain the injuries sustained by the appellant and, therefore, the conviction of the appellant stands vitiated.

It is true that the prosecution is required to explain the injuries on the accused but only if they are of serious nature and caused at the time of the occurrence in question. DW1 Dr. Vijay Kumar Goyal, who had medico-legally examined the appellant on 19.6.1999 at 1.00 p.m. testified during his cross-examination that both the injuries on the person of the appellant were on non vital parts. He also deposed that injury No. 2 could be self suffered but

he could not give any definite opinion about injury No. 1 as to whether it could be self suffered or not. Thus, when the injuries are on non vital parts of the appellant and also declared to be simple in nature, the prosecution is not put under a duty to explain such type of injuries. On the other hand, going by the stand taken by the appellant as well as the injuries, which were noticed on his person, one thing stands established that his presence at the spot at the time of occurrence stood established. Even if, it is taken that the appellant had suffered injuries at the hand of the complainant party, it was well nigh impossible for the complainant party to have resorted to violence against the appellant and causing injuries to him. He was armed with a firearm and no one would have dared to go near him and inflict injuries upon him. On the other hand, after the appellant had fired two shots from the double barrel gun, which he was carrying at the time of the occurrence, it would have taken him some time before he could have re-loaded the weapon and used it, once again, for causing any further damage to the complainant party and in the time which had become available or sufficient for the complainant party to cause the injuries on the person of the appellant. Thus, no benefit of non-explanation of the injuries on the accused could be extended to the appellant.

Learned counsel for the appellant has submitted that

no electric connection stood issued in the name of Rajinder Singh, father of the two deceased. On the other hand, deceased Nachhattar Singh, who himself was an Assistant Lineman was unauthorizedly trying to take electric wires with the help of poles through the fields of the appellant upto his own fields. However, on close scrutiny of testimony of PW5 Avtar Singh, Junior Engineer, it stood established that Rajinder Singh, father of PW3 Ranjit Singh and PW4 Jagtar Singh had applied for the connection of electric motor way back on 21.12.1984. The estimate was prepared on 23.4.1999 and the connection was, thereafter, sanctioned on 28.4.1999. Pursuant thereto, installation order was issued on 11.5.1999 and marked to PW5 Avtar Singh, Junior Engineer for compliance. Demand notice was issued and on 13.5.1999 necessary funds were deposited. Further, on 3.6.1999 eight poles and other material were withdrawn and on 10.6.1999 those poles and other material were withdrawn from the store and sent at the site for giving supply to Rajinder Singh. He also deposed that on 17.6.1999 a number of ALM's were sent to the site for installing the electric poles. From the above evidence, it is clearly established that the complainant party was trying to get the electric poles installed for carrying the electric supply for a tubewell in its fields. Merely because, some of the aforementioned documents did not bear any date on it or under

the signatures of PW5 Avtar Singh is no ground to hold that no electric connection stood issued in favour of Rajinder Singh, father of the deceased.

It is a big thing in the village when an electric supply is sanctioned and made available for running a tubewell by the farming community. At such a time, practically all the members of the family join the celebrations, which go on during the process of installing poles and wires fixed on those poles upto the tubewell. If Nachhattar Singh and Malkiat Singh, the two deceased could be present at the spot, there was every possibility of even PW3 Ranjit Singh @ Jit and PW4 Jagtar Singh being present at the spot, as they were brothers of two deceased.

The occurrence in question had taken place on 17.6.1999 at 1.30 p.m. Soon thereafter, the complainant party arranged a tractor trolley for carrying both the injured to the hospital at Nihal Singh Wala. However, on the way, the two injured died. PW2 Dr. Chaman Lal, Medical Officer, C.H.C. Nihal Singh Wala had testified that the dead bodies of Nachhattar Singh and Malkiat Singh were brought to the hospital on 17.6.1999 at 2.25 p.m. Accordingly, he had sent ruqa Ex.PG and on receipt of the same, Sub-Inspector Malkiat Singh reached Nihal Singh Wala hospital, where he recorded the statement of complainant Ranjit Singh @ Jit at 4.35 p.m. On its basis, FIR

Ex.PH/2 was registered by ASI Balwinder Singh at Police Station, Nihal Singh Wala at 4.40 p.m. and concluded at 5.10 a.m. The special report was, thereafter, sent through PW12 Constable Charanjit Singh, who delivered the same to the Ilaqa Magistrate on the same day even at 8.00 p.m., which was within 6 ½ hours of the occurrence. The appellant stood nominated for committing the murder of Nachhattar Singh and Malkiat Singh and the special report was in the hands of the Ilaqa Magistrate at 8 p.m. No delay whatsoever had occurred in the recording of the statement by Sub-Inspector Malkiat Singh, registration of the FIR on its basis and receipt of the special report by the Ilaqa Magistrate. This lends independent corroboration to the truthfulness of the prosecution case.

PW1 Dr. Surender Kumar, who had subjected the dead bodies of Nachhattar Singh and Malkiat Singh to postmortem had testified that the cause of death was firearm injuries. Even otherwise, the defence had admitted firing of shots by the appellant, as a result of which, Nachhattar Singh and Malkiat Singh had lost their lives.

It is the prosecution case that apart from the appellant and Gurjit Singh, the other two accused, namely, Avtar Singh and Amarjit Singh were empty handed. They happened to be the maternal uncle and cousin, respectively, of Jagjit Singh appellant.

Amarjit Singh was found innocent during the investigation of the case. Under these circumstances, no case is made out for any interference in the acquittal of Avtar Singh and Amarjit Singh of the charges against them. At the same time, the conviction of Jagjit Singh appellant under Section 302 IPC on two counts and Section 27 of the Arms Act is well merited and, accordingly, his sentences liable to be upheld.

Resultantly, the conviction and sentence of Jagjit Singh appellant, as recorded by the learned trial Court is upheld. The acquittal of Avtar Singh and Amarjit Singh accused is also upheld.

Criminal Appeal D-80-DB of 2003 filed by Jagjit Singh appellant and Criminal Revision 389 of 2003 filed by complainant Ranjit Singh @ Jit are, accordingly, dismissed.

(T.P.S. MANN)
JUDGE

July 25, 2016
amit rana

(GURMIT RAM)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No