

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.23270 of 2017 in/and
CRA No.D-764-DB of 2010 (O & M)
Date of decision: 04.08.2017

Kuldeep Singh @ LaliApplicant/Appellant.

Vs.

State of Punjab
.....Respondent.

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. J. S. Dadwal, Advocate
for the appellant.

Mr. Luvinder Sofat, AAG, Punjab for the State.

S.S.SARON,J.

Kuldeep Singh @ Lali (applicant/appellant) has been convicted by the learned Additional Sessions Judge (Ad hoc) Fast Track Court, Ludhiana on 05.04.2010 for committing the offences punishable under Sections 302 and 307 of the Indian Penal Code ('IPC' - for short); besides, Section 30 of the Arms Act, 1959. By a separate order passed on the same day, he has been sentenced to undergo life imprisonment; imprisonment for ten years and imprisonment for six months respectively for the offences under Sections 302 and 307 IPC; besides, Section 30 of the Arms Act. He has also been ordered to pay a fine of Rs.2000/- for each of the said offences and in default thereof to undergo rigorous imprisonment for one year. All the sentences have been ordered to run concurrently.

The applicant/appellant aggrieved against his afore mentioned conviction and sentence, has filed the present appeal, which was admitted on 11.08.2010.

During pendency of the appeal, a letter was received from the applicant/appellant for withdrawing the appeal so as to enable him to avail the benefits of premature release in accordance with the Government Policy. The said letter was treated has been treated as Criminal Miscellaneous No.23270 of 2017 and listed for hearing. Notice was issued to the State.

Learned Counsel for the State has filed a short affidavit of Shri Surinder Pal Khanna, PPS, Superintendent, Central Jail, Ludhaina, mentioning the period of imprisonment undergone by the applicant/appellant; regarding his escape from custody on 22.10.2005, when he was sent for his hearing during trial; regarding his over stay after release on parole for four weeks on 08.06.2011 and surrendering back after seven months and twenty one days from the date he was to return and his entitlement for premature release.

The affidavit of the Superintendent Jail is taken on record.

In terms of the reply that has been submitted by the Superintendent of Jail, it is stated that the appellant - Kuldeep Singh escaped from custody on 22.10.2005, when he was sent for his hearing during trial. Later he was arrested and readmitted in the jail on 23.10.2006. Case FIR No.310 of 2005 was registered at Police Station Division No.5, Ludhiana for the

offences punishable under Sections 223 and 224 IPC. He was convicted in the said case by the Court of learned Chief Judicial Magistrate, Ludhiana on 23.01.2008 and sentenced to the period already undergone by him.

The appellant was released on parole on 08.06.2011 for four weeks with a direction to surrender back on 07.07.2011 but he did not surrender back on the date fixed for his return i.e. 07.07.2011 and he absconded from parole. Later he was readmitted in the jail on 22.02.2012 i.e. after seven months and twenty one days from the date he was to return. A complaint case for committing offence under Sections 8 and 9 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 was registered against him. He was convicted in the said case and sentenced to rigorous imprisonment for seven months; besides, pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for fifteen days by the learned Court of Chief Judicial Magistrate, Ludhiana on 04.09.2012. The sentence in the said case is pending.

It is further submitted that case FIR No.118 dated 18.06.2008 for the offences under Sections 224 and 120-B IPC was registered at Police Station, Division No.7, Ludhiana. In the said case, he was discharged by the learned Court of Judicial Magistrate Ist Class, Ludhiana on 23.08.2008.

Another case FIR No.84 of 2006 was registered against him at Police Station Sarabha Nagar, Ludhiana for the offences punishable under Sections 379 and 411 IPC. In the said case, he

was convicted by the Court of learned Chief Judicial Magistrate, Ludhiana on 12.08.2010 and sentenced to rigorous imprisonment for one year; besides, pay a fine of Rs.300/- and in default of payment of fine to undergo further rigorous imprisonment for fifteen days.

It is submitted that the premature release case of the appellant falls under Clause 'A' of Para 1 (1) of Government Policy dated 08.07.1991. In terms of the said clause, the premature release case of the convict is to be initiated with the concerned authorities after completion of ten years of actual sentence and fourteen years of sentence after deduction of parole and giving the benefits of remissions. The appellant has undergone actual imprisonment for eleven years, two months and twenty five days as on 03.08.2017. With remissions, he has undergone fourteen years, six months and thirteen days of imprisonment. It is stated that the appellant failed to keep good and satisfactory conduct and committed a jail offence by absconding from parole. Therefore, he was to maintain good conduct for the next five years from 22.02.2012, which he has completed on 22.02.2017. According to Clause 'A' of Para 1 (1) of the Government Policy, the appellant has completed the desired period of imprisonment i.e. ten years of actual sentence and fourteen years of sentence after deduction of parole and by giving him the benefits of remissions, he is now eligible for initiation of his case for premature of his release. However, the case cannot be initiated because of the pending appeal.

It is to be noticed that FIR (Ex.PA/2) in the case has been registered on the statement of Darshan Singh son of late Kehar Singh resident of Bachhitar Nagar, Police Station Sadar Ludhiana. According to the complainant-Darshan Singh, he along with his family was residing at the above said address. He had an Indian passport, the date of which had expired. He was running his own factory in the name and style of Anand Enterprises, which was adjoining his residence. In the said factory, they were manufacturing concrete mixture machines. He had three sons namely Harinder alias Bittu (injured), who was elder to all of them. Resham Singh (deceased in the case) was younger to him. Tarsem Singh was the youngest to all. All his sons were working in the factory.

The complainant was sitting in his chair in the factory on 31.03.2004 at about 4.00 pm. His three sons were working in the factory. Resham Singh was working in front of the gate of the factory nearby electric meter and Harinder Singh was sitting near the telephone. His younger son Tarsem Singh was working at the machine. At that time, Kuldeep Singh alias Lali (appellant) son of Lachhman Singh also a resident of Bachhitar Nagar, who was residing four houses away from the house of the complainant came with a 12 bore double barrel gun carrying it like hockey stick. He entered in their factory and raised a 'lalkara' by calling out the names of Resham Singh and Harinder Singh alias Bittu. He asked them to get strong and on the said day they would not be spared.

He fired directly at Resham Singh which hit on the left side of his chest near the underarms. On being hit with the fire arm, he fell down at the spot. When the complainant along with his son Harinder Singh alias Bittu raised an alarm of 'Mar Ditta Mar Ditta', then Kuldeep Singh alias Lali (appellant) fired another shot with his double barrel gun on the person of Harinder Singh alias Bittu, which hit on the left side of his shoulder at the back. The complainant along with his son raised an alarm then Kuldeep Singh alias Lali (appellant) along with his gun ran away from the spot towards his house.

The grand son of the complainant namely Harmanpreet Singh saw Kuldeep Singh alias Lali (appellant) while he was running. The complainant then took Resham Singh and Harinder Singh alias Bittu in a car to the CMC Hospital, Ludhaina. The doctor there declared Resham Singh as dead.

The reason for the incident was that in the year 1990-91, the complainant had taken a shop situated at the water channel opposite GNE College on rent basis. With regard to the said shop, a dispute was pending with Sukhdev Singh son of Harbans Singh resident of Bachhitar Nagar, Ludhiana. Kuldeep Singh alias Lali (appellant) helped said Sukhdev Singh and he wanted to get possession of the said shop. Due to the said reason, he killed the son of the complainant namely Resham Singh with a gun shot. His second son namely Harinder Singh alias Bittu was injured due to the fire arm that he suffered. He got his statement recorded before Inspector/SHO Rajinder Singh

at CMC Hospital, Ludhiana. He heard the same and accepted it as correct. The statement was attested by Rajinder Singh Inspector/SHO.

The police proceedings were recorded to the effect that SHO Rajinder Singh along with other police officials in a Government vehicle whose driver was Constable Sukhwinder Singh were moving towards Phoolanwal in connection with special check post that had been set up. A telephone message was received that gun shots had been fired at Bachhitar Nagar. The injured had been taken to CMC Hospital. On getting this information, Inspector Rajinder Singh along with his other officials proceeded to CMC Hospital. Gurmeet Singh ASI Incharge Police Post Marado along with other police officials was joined with the police party at Jagraon Bridge. They reached CMC Hospital, where Darshan Singh-complainant joined them and he got his statement recorded. The statement was read over to him and after admitting it as correct, he signed it in English.

From the statement that was recorded, offences punishable under Sections 302/307 IPC; besides, Section 27 of the Arms Act were found to be made out. The statement was sent through Constable Pavittar Singh to the Police Station for registration of an FIR. Investigation was then conducted by Inspector/SHO Rajinder Singh.

He went to the mortuary where the dead body of Resham Singh was lying. The complainant Darshan Singh and Tarsem Singh son of Darshan Singh accompanied him. Inquest

report (Ex.PE) was prepared; besides, statements of the witnesses in terms of Section 175 of the Code of Criminal Procedure (Cr.P.C. - for short) were recorded. SI Balwant Singh (PW-4) filed an application before the doctor for getting opinion regarding fitness of Harinder Singh to make a statement. The doctor on the said application opined that Harinder Singh was fit to make a statement. Accordingly, the statement of Harinder Singh under Section 161 Cr.P.C. was recorded. Constable Pavittar Singh in the meanwhile returned with the FIR and Inspector/SHO Rajinder Singh recorded his statement.

Inspector/SHO Rajinder Singh then proceeded to the spot along with Tarsem Singh. A rough site plan (Ex.PW-8/B) of the place where the incident had occurred was prepared. Blood stained earth was lifted from the spot where Resham Singh was shot. Its parcel was prepared and sealed with his seal 'RS' and the parcel was taken in police possession vide memo Ex.PF. He also lifted blood stained earth from the place where Harinder Singh was shot. Thereafter a raid was conducted and Kuldeep Singh (appellant) was arrested from his in-laws house at Guru Nanak Colony. Further investigation was carried out and police report (challan) in terms of Section 173 Cr.P.C. was filed in the Court of learned Judicial Magistrate Ist Class, Ludhiana on 14.06.2004.

The learned Magistrate observed that as per police report under Section 173 Cr.P.C. offences under Sections 302 and 307 IPC were committed, which were exclusively triable by

the Court of Sessions. Accordingly the case was committed to the Court of learned Sessions Judge, Ludhiana vide order dated 31.08.2004.

The learned Additional Sessions Judge, Ludhiana to whom the case was assigned on perusal of the police report and the accompanying documents, besides, hearing learned counsel for the parties found a prima facie case for the offence under Section 302 and 307 IPC; besides, Section 30 of the Arms Act ought to have been committed. Kuldeep Singh (appellant) was charge-sheeted accordingly.

The prosecution in order to establish its case examined as many as fifteen witnesses; besides, tendered documents in evidence and closed its evidence. The substance of the evidence appearing against the appellant was put to him and his statement in terms of Section 313 Cr.P.C. was recorded. The appellant in his defence stated that he was innocent. Resham Singh (deceased) along with Darshan Singh (PW) and Harinder Singh alias Bittu, it is stated forged an amount to their creditors. The creditors used to make their respective demands from the above said persons. He (appellant) was supporting the creditors. They used to quarrel between the creditors and above said persons. Litigation between them was also pending. It is stated that on the day of occurrence some unknown persons had fired at Harinder Singh alias Bittu and Resham Singh (deceased) and they ran away from the spot. He was falsely named as an accused. The local police had wrongly arrested him in this case.

His licensed gun was illegally taken from his house and it was fired by the police and was planted upon him neither had he suffered any disclosure statement nor had he got any gun or cartridges recovered.

The learned Additional Sessions Judge, Ludhiana vide her order, as already noticed, has convicted the appellant for the offences under Sections 302 and 307 IPC; besides, Section 30 of the Arms Act. He has been sentenced to undergo life imprisonment; imprisonment for ten years and imprisonment for six months respectively for the offences under Sections 302 and 307 IPC; besides, Section 30 of the Arms Act.

Aggrieved against the same, the appellant filed the present appeal.

The prosecution in its evidence has examined Darshan Singh (complainant) as PW-1, who reiterated the version as given by him before the Police on the basis of which FIR was registered. According to the complainant, on the fateful day i.e. 31.03.2004 at about 4.00 pm, Kuldeep Singh (appellant) raised a 'lalkara' and addressed his sons Resham Singh and Harinder Singh alias Bittu that they should be strong enough and that they be not allowed to go scot-free. At this Kuldeep Singh (appellant) having aimed the gun towards Resham Singh had fired. The fire arm hit near the arm pit on the left side of the chest. As a result of the fire shot, Resham Singh fell down. His other son namely Harinder Singh alias Bittu raised an alarm of 'Mar Ditta Mar Ditta'. Kuldeep Singh (appellant) fired the second shot at him,

which hit him on the back near his left shoulder. The complainant and his other son Tarsem Singh raised an alarm. At this, Kuldeep Singh (appellant) ran away along with the gun. The appellant was seen running away by the grand-son of the complainant namely Harmanpreet Singh son of Harinder Singh. The complainant and his son Tarsem Singh took the injured Resham Singh and Harinder Singh in his car to CMC Hospital, Ludhiana. The doctors declared Resham Singh as dead. While Harinder Singh alias Bittu was admitted in the Hospital.

Darshan Singh (PW-1) was cross-examined at length but nothing substantial in favour of the defence could be got out.

It may also to be noticed that Harinder Singh (PW-2), who is an injured and a stamped witness deposed in the case and supported the prosecution case.

Dr. Sanjeev Hans, Medical Officer, Civil Hospital, Ludhiana (PW-3) conducted the postmortem examination on the dead body of Resham Singh. He noticed the following injuries:-

- "1. A lacerated wound 2" x 1" x ? deep with well defined inverted margins present horizontally 3" above and lateral to left nipple in front of the left side of upper chest, just inner to anterior auxiliary line mild blackening at the margins.
2. A reddish abrasion 1" x 1/4" present in front of right thigh at its lower 1/3 rd.
3. A reddish abrasion 1" x 1" present in front of right knee.

4. A reddish abrasion 1/2" x in diameter present in front of left leg at its upper 1/3 rd.

5. Multiple reddish abrasion of variable sizes present on back of right elbow."

The cause of death in the opinion of the Board of Doctors that was constituted was due to shock and hemorrhage as a result of gun shot injuries to the vital i.e. left lung which was ante mortem and was sufficient to cause death in the ordinary course of nature. In cross examination it is stated by Dr. Hans (PW-3) that injuries No.2, 3, 4 and 5 could be the result of a fall on hard surface.

Dr. Vivek Kumar David, Department of Cardio Thoracic Surgery, CMC Hospital, Ludhiana (PW-13) brought the concerned record of the patient Harinder Singh who was treated by Dr. Rakesh Kumar. Dr. Rakesh Kumar had informed the SHO, Division No.3, Ludhiana regarding the gun shot injury on the left upper back of Harinder Singh. He (PW-13) brought the injury report of Harinder Singh which was prepared by Dr. Shabeeh Nasar. The copy of injury report Ex.PW-13/D was tendered in evidence. Dr. Shabeeh Nasar had already left the hospital and his whereabouts were not known by the hospital.

Dr. Benedict Paul Samuel, Emergency Department, CMC and H Ludhiana (PW-12) tendered in evidence the copy of police information Ex.PW 12/A given by Dr.Rakesh Kumar who had left the hospital and the Municipal Death Notification Ex.PW 12/B issued by Dr.Rakesh Kumar.

From the direct eye witnesses account of Darshan Singh (PW-1) and the injured and stamped witness account of Harinder Singh (PW-2), it is established that the fire arm injuries were caused by Kuldeep Singh (appellant) on the person of Resham Singh, who died after receiving the gun shot injuries and Harinder Singh alias Bittu (PW-2), suffered injuries which are corroborated by the medical evidence on record. Therefore, it is quite evident that the case against the appellant stands proved and established. However, the appellant himself has filed an application for withdrawing his appeal so as to pursue his case for premature release.

Accordingly, the criminal miscellaneous application for withdrawing the appeal is allowed and the appeal filed by the appellant-Kuldeep Singh alias Lalli is dismissed.

(S. S. Saron)
Judge

(Avneesh Jhingan)
Judge

04.08.2017
A.Kaundal

Note:

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : No