

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

1. **CRA-D-721-DB-2003**
Date of decision:28.04.2017

Sucha Singh and another

.....Appellants

Versus

State of Punjab

.....Respondent

2. **CRR-2272-2003**

Nishan Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

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

Present: Mr. S. S. Sarwara, Advocate
for the appellants.

Mr. S. S. Dhaliwal, Addl. A.G., Punjab.

Mr. Vinod Kumar, Advocate for
Mr. Ashit Malik, Advocate for
the complainant in **CRR-2272-2003**.

H.S. MADAAN, J.

Vide this judgment we propose to dispose of **CRA-D-721-DB-2003** filed by accused/appellants-Sucha Singh and Roor Singh against their conviction and sentence and **CRR-2272-2003** filed by the complainant/petitioner-Nishan Singh for enhancement of fine imposed upon the accused and its payment to the wife and son of the deceased.

CRA-D-721-DB-2003

This appeal has been preferred against judgment and order dated 28.07.2003 passed by the Court of learned Additional Sessions Judge, (Ad hoc) Fast Track Court, Patiala vide which he had convicted accused-Sucha Singh and Roor Singh for offences under Sections 302 and 307 read with Section 34 of the Indian Penal Code. In addition to that Sucha Singh was sentenced for offences under Sections 25 and 27 of the Arms Act and accused Roor Singh for offence under Section 30 of the Arms Act and sentenced them as follows:-

Name of Convict	Offence	Sentence Awarded
Sucha Singh	Under Section 302 IPC	Imprisonment for life and to pay fine of ₹1,000/- in default of payment of fine, to undergo further rigorous imprisonment for a period of one year.

	Under Section 307 IPC Under Section 27 Arms Act Under Section 25 Arms Act	Rigorous imprisonment for five years and to pay fine of ₹500/- in default of payment of fine, to undergo further rigorous imprisonment for a period of six months. Rigorous imprisonment for one year and to pay fine of ₹500/- in default of payment of fine, to undergo further rigorous imprisonment for a period of three months. Rigorous imprisonment for two years and to pay fine of ₹500/- in default of payment of fine, to undergo further rigorous imprisonment for a period of two months.
Roor Singh	Under Section 302 read with Section 34 IPC Under Section 307 read with Section 34 IPC	Imprisonment for life and to pay fine of ₹1,000/- in default of payment of fine, to undergo further rigorous imprisonment for a period of one year. Rigorous imprisonment for five years and to pay fine of ₹500/- in default of payment of fine, to undergo further rigorous imprisonment for a period of six months.

	Under Section 30 Arms Act	Rigorous imprisonment for one year and to pay fine of ₹500/- in default of payment of fine, to undergo further rigorous imprisonment for a period of two months.
--	----------------------------------	--

The substantive sentences were ordered to run concurrently.

The accused-convicts, who are appellants before this Court by way of filing the present appeal submit that their appeal be accepted and the impugned judgment of their conviction and order of their sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the prosecution story as it emanated during the trial is that Nishan Singh son of Jagir Singh, resident of Palondia, Police Station, Sadar Patiala, complainant in this case had taken about one acre of land situated at village Ditupur on lease from Roor Singh-accused about 4/5 years earlier to the incident. His name was entered in the *khasra girdwari*. Sucha Singh, a brother of Roor Singh used to quarrel with him, for that reason Sucha Singh and Roor Singh had asked the complainant to return their land by accepting the money paid by him, but the complainant was not agreeable, as such, both of them started nursing a grudge against the complainant. About 15/16 days prior to the incident both the accused had ploughed the wheat crop sown in the land in question. The complainant had expressed his resentment to the accused for that reason. On 03.01.2002 the complainant along with his son Amarjit and his

brother-in-law (wife's sister's husband) Kulwant Singh son of Balbir Singh and his father Balbir Singh son of Jhanda Singh r/o Kalwa was returning to village after ploughing the land. Kulwant Singh was driving the tractor whereas Amarjit Singh was sitting alongwith him. The complainant and Balbir Singh were on a scooter ahead of the tractor. At about 1/1.30 p.m. when they had reached near the field of Gurdip Singh son of Bhagwan Singh of Palondia, then they heard firing of shots of guns from behind, the complainant and Balbir Singh stopped the scooter and when they saw behind they found that Sucha Singh was having 12 bore single barrel gun and Roor Singh was with him. Sucha Singh fired a shot on Kulwant Singh whereas accused Roor Singh raised a lalkara (exhortation) that Amarjit Singh be also liquidated. Sucha Singh-accused fired two shots on Amarjit Singh, complainant. Balbir Singh raised an alarm. Roor Singh-accused started his scooter and made Sucha Singh sit on the pillion of the scooter and sped away along with the gun. The complainant and Balbir Singh reached near the tractor and found Kulwant Singh and Amarjit Singh besmeared with blood. Kulwant Singh died at the spot, however, Amarjit Singh was shifted to Rajindra Hospital, Patiala in a tempo. Amarjit Singh was admitted in Rajindra Hospital, Patiala and sent to ward No.2, whereas dead body of Kulwant Singh was sent to mortuary. The motive for the incident was the previous quarrel as Sucha Singh and Roor Singh wanted to take back the land given on lease to the complainant.

Through Rajindra Hospital, Patiala intimation was sent

regarding arrival of injured there to Police Station, Saddar, Patiala, as such, Inspector/SHO Shamsheer Singh (hereinafter referred to as Investigating Officer/I.O.) alongwith other police officials went to Rajindra Hospital, Patiala. The police party came across Nishan Singh and Balbir Singh. Nishan Singh got his statement Ex.PM recorded with the Investigating Officer, who put his endorsement Ex.PM/1 below that statement and sent ruqa to police station through C. Sanjeev Kumar on the basis of which formal FIR Ex.PM/2 was recorded at Police Station, Sadar, Patiala by SI-Darshan Singh. Special reports were sent to Illaqa Magistrate and other Police Officers. Then the police party proceeded towards mortuary where dead body of Kulwant Singh was lying. The Investigating Officer carried out inquest proceedings preparing report in that regard. He got post-mortem examination on dead body of Kulwant Singh conducted by leaving HC Daljit Singh and other officials near the dead body. The Investigating Officer alongwith Nishan Singh reached place of occurrence and lifted three empty shells from there, those were converted into sealed parcel. The Investigating Officer lifted blood stained earth from the spot, placed it in plastic container which was converted into sealed parcel. Both the parcels were taken into possession vide recovery memo Ex.PO. Rough site plan of place of recovery was prepared, statements of witnesses were recorded and on return to the police station, the Investigating Officer deposited the case property with MHC.

On 04.01.2002, the Investigating Officer conducted raid on

residential house of accused but they were not available. Then he went to Rajindra Hospital, Patiala and moved application Ex.PR to find out as to whether Amarjit Singh was in a fit state to make statement and attending doctor gave opinion in affirmative, therefore, Investigating Officer recorded his statement under Section 161 Cr.P.C.. The blood stained clothes were taken into possession after converting those into a parcel sealed with seal having impression 'SS' and that parcel Ex.P3 was taken into police possession vide memo Ex.PS. Thereafter police party went to Rajindra Hospital, Patiala where HC Daljit Singh produced one parcel containing the clothes of Kulwant Singh Ex.P4, besides, one parcel containing the pellets Ex.P5. Statements of PWs were recorded. On return to the police station the Investigating Office deposited case property with MHC.

On 10.01.2002 while the Investigating Officer was present near Truck Union, Patiala, there Gurdip Singh met him and informed that both the accused were present near Gurdawara Sahib, Bahadurgarh. The Investigating Officer arranged a team and raided that place, where Sucha Singh and Roor Singh-accused were found to be present and they were formally arrested in this case. On interrogation, Roor Singh-accused suffered a disclosure statement Ex.PT, that he had kept concealed his licensed gun in iron Peti (big iron box) in his residential house and he could get the same recovered, that statement led to recovery of .12 bore single barrel gun besides one empty shell. The recovered gun and empty shell were converted into separate parcels which were sealed with seal

‘SS’ and both the parcel Ex.P6 and Ex.P7, respectively were taken into possession vide memo Ex.PU. Five live cartridges were also got recovered from iron *PETI* by Roor Singh-accused besides licence of the gun Ex.P2. Those were also taken into police possession . One scooter which was standing in the Courtyard was seized vide memo Ex.PV. Rough site plan Ex.PW of the place of recovery was prepared. Statements of the witnesses were recorded. On return to the police station case property was deposited with MHC-Sohan Singh.

After completion of investigation and other formalities challan against the accused was prepared and filed in the Court of learned Additional Chief Judicial Magistrate, Patiala.

On presentation of *challan* in the Court of learned Additional Chief Judicial Magistrate, Patiala, copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C.. Thereafter finding that offence under Sections 302 and 307 IPC are exclusively triable by the Court of Sessions, the learned Additional Chief Judicial Magistrate, Patiala vide his order dated 10.05.2002 committed the case to the Court of learned Sessions Judge, Patiala from where it was entrusted to the Court of learned Additional Sessions Judge, Patiala.

When the case was received in the Court of learned Addl. Sessions Judge, Patiala, after consideration, accused were charge-sheeted as follows:-

Name of accused	Charge
Sucha Singh	Under Sections 302, 307 IPC. Under Sections 25, 27 of the Arms Act.
Roor Singh	Under Section 302 read with Section 34 IPC. Under Section 307 read with Section 34 IPC. Under Section 30 of the Arms Act

Accused pleaded not guilty and claimed trial. The case was fixed for evidence of prosecution.

During the course of evidence of prosecution it examined as many as sixteen witnesses as detailed below:-

PW-1 Amar Nath, Assistant Librarian, C.R. Office, Rajindra Hospital, Patiala had brought the patient file of injured Amarjit Singh son of Nishan Singh resident of village Palondian and he had produced the same.

PW-2 Dr. Gian Singh, Emergency Medical Officer, Rajindra Hospital, Patiala deposed that on 03.01.2002 on 02:45 p.m. he medico legally examined Amarjit Singh son of Nishan Singh resident of village Palondian brought by Balwant Singh. He had found the following injuries on the person of Amarjit Singh:-

1. *Y-shaped lacerated wound on left forehead. Fresh bleeding. Advised X-ray.*
2. *.5 x .5 cm multiple punctured wounds with blackish*

margins on dorsal aspect of right hand and fingers. Fresh bleeding. Advised X-ray.

3. *.5 x .5 cm. multiple punctured wound with blackish margins on posterior aspect of right forearm. Fresh bleeding. Advised X-ray.*

4. *Diffuse swelling with multiple punctured wounds with blackish margins on anterior aspect of right forearm. Advised X-ray.*

5. *.5 x .5 cm multiple punctured wounds on whole of the right pelvis. Advised X-ray.*

6. *Multiple punctured wounds with blackish margins on both the lumbar areas. Fresh bleeding. Advised X-ray.*

7. *Multiple punctured wounds on medial aspect of left thigh. Advised X-ray.*

8. *4 x 1 cm. lacerated wound on lateral aspect of left thigh with its lower part. Probing not done. Fresh bleeding. Advised X-ray.*

9. *Multiple abrasions on anterior aspect of left lower leg. Advised X-ray.*

10. *Multiple abrasions on anterior aspect on right lower leg. Advised X-ray.*

Injuries No.1 to 10 subject to X-ray. The probable time

duration was within 6 hours. The weapon used for injury No.1, 8, 9 and

10 was blunt and for injury Nos.2, 3, 4, 5, 6 and 7 was firearm. He proved carbon copy of the MLR as Ex.PA and pictorial diagram showing the seats of injuries as Ex.PA/1. The witness stated that injuries No.1 to 10 were advised for X-ray, but no bony injury was seen as per X-ray report.

PW-3 Rajinder Kumar, Patwari Halqa, Ablowal stated that on 24.01.2002 as directed he had gone to place of occurrence which fell under his jurisdiction and had demarcated the land pointed out by Nishan Singh; that he had prepared scaled map Ex.PC.

PW-4 Sukhbir Singh, Arms Licence Clerk, DC Office, Patiala had brought the Arms Licence Register pertaining to licence of Roor Singh son of Dan Singh of village Palondian, Police Station, Sadar, Patiala stating that same is entered at Sr. No.848/DM/P/95/P.S. Sadar, Patiala for 12 bore single barrel gun and valid upto 26.04.2002. He proved the licence as Ex.P2.

PW-5 HC Daljeet Singh, who on 03.01.2002 was deputed by the Investigating Officer to get post-mortem examination conducted on the dead body of Kulwant Singh stated that he had got the needful done from Rajindra Hospital, Patiala on 04.01.2002 since it could not be got done on 03.01.2002 and after post-mortem examination the doctor had handed over to him a copy of post-mortem report, two parcels, one containing clothes of deceased and pellets and he handed over the aforesaid parcels and papers to Inspector Shamsheer Singh, who

took the parcels into police possession vide recovery memo Ex.PD and that case property remained intact during the period it was in his custody.

PW-6 Nasib Chand, Junior Assistant, Office of District Transport Office, Patiala had brought the RC register regarding tractor No.PB-11Q-6731 standing in the name of Amarjit Singh and Kamaljit Singh sons of Nishan Singh and Surinder Kaur wife of Nishan Singh, residents of village Palondian. He stated that the registration relates to tractor Mohindra and Mohindra. He proved copy of bill as Ex.PE and RC as Ex.PE/1.

PW-7 Dr. S.S.Oberoi, Assistant Professor, Department of Forensic Medicine, Rajindra, Hospital, Patiala stated that on 04.01.2002 at 10.30 a.m. he conducted the post-mortem on the dead body of Kulwant Singh son of Balbir Singh resident of village Kalwa, Police Station, Sadar, Patiala. The body was brought by HC Daljeet Singh and was identified by Balbir Singh and Raj Singh. The information furnished by the police was alleged death due to firearm injuries. He had found the following injuries on the body:-

- 1. Lacerated wound 2.5 x 0.5 cm. with abraded margins with smudging present horizontally on the right cheek.*
 - 2. Lacerated wound 2 x 0.5 cm. with abraded margins and smudging present 1 cm. below the medial part of injury*
- No.1.*

3. *Lacerated wound 0.3 x 0.3 cm. with smudging present below the lateral end of injury No.1.*
4. *Lacerated wound 0.3 x 0.3 cm. with smudging present in the lateral part of left lower eyelid. On exploration it was seen perforating the left eye ball, meninges of the brain and was found embedded in the left frontal lobe of brain. Extradural and subdural and intracerebral haemorrhage was present in the corresponding part of brain. The pellet was taken out and was kept in a sealed vial with one seal.*
5. *Five lacerated wounds each 0.3 x 0.3 cm. with smudging present on the top and posterior aspect of left shoulder joint. On exploration one of the pellets was seen entering the thoracic cavity lacerating the intervening structures i.e. muscles, pleura and left lung. Left pleural cavity contained about 300 ml. of liquid blood.*
6. *Abrasion 0.5 x 0.5 cm. vertically placed in the lower part of right side of back 6 cm. from midline.*
7. *Abrasion 2 x 0.7 cm. on the anterior aspect of right leg, 7 cm. below the knee joint.*
8. *Abrasion 3 x 2.5 cm. on the lateral aspect of right thigh just above its middle.*

9. *Abrasion 1 x 1 cm. on the right iliac region of abdomen.*
10. *Two abrasions each 2.5 x 0.2 cm., 2 cm. apart present on the lateral aspect of right flank of abdomen.*
11. *Abrasion 2 x 0.3 cm. present on the anterior medial aspect of left leg in its middle.*

In his opinion the cause of death was shock and haemorrhage as a result of firearm injuries described, which were sufficient to cause death in ordinary course of nature. All the injuries were ante-mortem in nature. The time that elapsed between injuries and death was immediate and between death and post-mortem it was about 18 to 24 hours. He stated that he had handed over to police dead body after post-mortem with its belongings in a sealed packet with one seal, a copy of the PMR, all the police papers duly signed, a sealed vial with one seal containing one pellet and a sample seal. He proved carbon copy of post-mortem report as Ex.PF, police request for the conduct of the post-mortem examination Ex.PF/1 and his endorsement Ex.PF/2.

PW-8 Jaspal Singh, Ahalmad, Additional Deputy Commissioner, Patiala had brought the file regarding grant of sanction for prosecution in respect of Sucha Singh-accused in case FIR No.7 dated 03.01.2002 under Sections 302, 307/34 IPC, 25/27 of Arms Act, 1959 Police Station, Sadar, Patiala. He proved sanction order Ex.PG.

PW-9 Dilbagh Singh, Clerk in the office of District

Transport Office, Ropar had brought the original registration register in terms of which scooter bearing NO.PB-12-B-7174 was registered in the name of Jagdish Chand son of Piara Lal resident of H. No.603, Ward No.1, Morinda, District Ropar. He proved copy of the relevant entry as Ex.PH.

PW-10 Devinder Singh, Patwari Halqa Rajinder Nagar, District Fatehgarh Sahib had brought the summoned record proving photocopy of Khasra Girdawri pertaining to Kharif 2001 as Ex.PI.

PW-11 HC Sohan Singh, PW-12 HC Faquir Chand and PW-13 C-I Harjinder Singh, formal witnesses, tendered in evidence their affidavits Ex.PJ, Ex.PK and ex.PL, respectively.

PW-14 Nishan Singh son of Jangir Singh son of Gurdial Singh, aged 51 years, agriculturist, resident of Palauandian while providing the eye-witness account of the incident toed the prosecution line.

PW-15 Amarjit Singh s/o Nishan Singh s/o Jangir Singh, aged 26 years, agriculturist, resident of village Palauandian, injured provided ocular account of the incident, deposing as per prosecution case.

PW-16 Inspector Shamsheer Singh, who had carried out investigation in this case deposed regarding his part, proving various documents.

Learned Addl. Public Prosecutor for the State tendered into

evidence reports of Forensic Science Laboratory Ex.PX, Ex.PY and Ex.PZ and closed the prosecution evidence.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them, but they denied all the allegations submitting that they are innocent and have been falsely involved in this case on suspicion and on account of old enmity and party factionalism.

Learned defence counsel tendered into defence evidence a photocopy of *CALENDER* under Section 110 Cr.P.C., report No.14 dated 01.02.2002 as Ex.DC and closed defence evidence.

After hearing arguments, learned trial Court convicted and sentenced accused-convicts as mentioned above.

We have heard learned counsel for the appellant-convicts and learned Assistant Advocate General for the State of Punjab, besides, going through the record and we find that the impugned judgment of conviction and sentence as regards accused-Sucha Singh does not suffer from any illegality and infirmity and deserves to be upheld. There is cogent, convincing reliable eye-witness account available in the form of depositions of PW-14 Nishan Singh and PW-15 Amarjit Singh to show that he had fired at Kulwant Singh and Amarjit Singh with intention to kill them. Unfortunately Kulwant Singh succumbed to the firearm injuries, whereas Amarjit Singh could survive the assault. Ingredients of offences under Section 302 and 307 IPC are

completely fulfilled; so are for offences under Sections 25/27 of the Arms Act i.e. he being in unauthorized possession of .12 bore single barrel gun and its ammunition and his use of such gun and cartridges. Whereas it is not so as regards Roor Singh-accused completely since only charge for offence under Section 30 of the Arms Act is proved against him whereas charge for remaining offences i.e. under Section 302 read with Section 34 IPC and Section 307 read with Section 34 IPC against him is not sustainable in accordance with law and is liable to be set aside. The reason for our saying so are that as per the prosecution story Roor Singh-accused was not carrying any weapon, no injury has been attributed to him. He is said to have raised a Lalkara exhorting his co-accused Sucha Singh to liquidate Amarjit Singh. As a matter of fact presence at the spot of Roor Singh-accused at the relevant time comes out to be highly doubtful. As already observed, he is not alleged to have been carrying any weapon at the time of incident and it is not case of prosecution that he had participated in the assault or caused injury to Kulwant Singh or Amarjit Singh or for that matter complainant and Balbir Singh. As per prosecution story he had raised a *LALKARA* asking his co-accused Sucha Singh to finish off Amarjit Singh. It is unlikely that Sucha Singh-accused would have brought Roor Singh-accused along with him just to provide him company and exhort him on seeing the victims. Single barrel gun admittedly belongs to Roor Singh-accused and so were cartridges fired therefrom. It is not the case

of prosecution that Roor Singh-accused was holding that gun and on seeing the victims he handed over the gun and cartridges to Sucha Singh exhorting him to fire shots therefrom on the victims. We are aware of the fact that tendency does exist amongst our people in this region to involve as many as persons of the opposite party in the case in which such types of incident take place. Roor Singh-accused appears to have been added under those very circumstances. But the fact remains that Roor Singh-accused has contravened the conditions of the licence granted to him for holding .12 bore single barrel gun and cartridges by unauthorizedly and in violation of terms and conditions handing over his 12 bore single barrel gun, besides cartridges to Sucha Singh. As such he is guilty of offence under Section 30 of the Arms Act. Whereas, as regards accused-Sucha Singh, the evidence brought by the prosecution against him is cogent, convincing, creditworthy and deserves to be accepted. It comes out that Sucha Singh had taken licensed gun of Roor Singh-accused alongwith cartridges in contravention of provisions of Arms Act and he misused that gun inasmuch as he had fired therefrom at Amarjit Singh and Kulwant Singh as a result thereof committed offences under Sections 25 and 27 of the Arms Act being guilty of murder of Kulwant Singh and trying to commit murder of Amarjit Singh. The deposition of PWs against Sucha Singh does not leave any doubt in mind about his guilt. Therefore, the appeal is allowed partly, inasmuch as conviction and

sentence of Roor Singh-accused for offences under Sections 302, 307 read with Section 34 IPC is hereby set aside and he is acquitted of the charge for said offences, though his conviction and sentence for offence under Section 30 of the Arms Act is ordered to be maintained. Whereas we do not see any infirmity and illegality in respect of conviction and order of sentence of appellant-Sucha Singh under Sections 302 and 307 and Section 25 and 27 of the Arms Act. Therefore, the appeal in that way is allowed partly.

Appellant/accused-convicts Sucha Singh is stated to be on bail granted to him vide order dated 17.07.2007 while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Patiala is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

Necessary direction in that regard be issued to the quarter concerned.

CRR-2272-2003

It may be mentioned here that the revision petition when filed and came up for hearing was not admitted and rather it was directed that it be taken up alongwith the main appeal.

As regards the revision petition preferred by the complainant-Nishan Singh for enhancement of amount of fine of convicts-respondents and payment of same to the widow and minor son of deceased, vide detailed judgment, accused-Roor Singh has been ordered to be acquitted of the offence under Section 302/34 & 307/34 IPC since his participation

in the incident has been found to be doubtful. Considering all the facts and circumstances of the case including financial condition of the accused, we do not find any reason to accept the revision-petition and we do not find it appropriate to enhance the sentence of fine and to direct that the amount of fine be paid to the widow and son of the deceased. Therefore, the revision petition stands dismissed accordingly.

28.04.2017 Gaurav Sorot	(T.P.S.MANN) JUDGE	(H.S. MADAAN) JUDGE
-----------------------------------	---------------------------------------	---------------------------------------

- | | | |
|----|------------------------------|-----|
| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |