

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

**CRM-A-1267-MA-2017
Decided on: 29.11.2017**

Harpal Singh

.... Applicant

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present: Mr. G.B.S. Dhillon, Advocate
for the applicant.

MAHABIR SINGH SINDHU, J.

The applicant-Harpal Singh has filed the present application under Section 378(4) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C') seeking leave to appeal against the impugned judgment dated 15.03.2017 passed by learned Addl. Sessions Judge, Amritsar, for short 'Trial Court' acquitting present respondents No. 2 to 7 of the charges framed against them whereas Manpreet Singh co-accused was held guilty for committing the offence punishable under Section 302, 326 read with Section 34 of IPC, 324 read with Section 34 of IPC and Section 25 of the Arms Act, accused-Gurpal Singh was convicted under Section 302 read with Section 34 of IPC, 326 of IPC and 324 read with Section 34 of IPC and accused-Sukhdeep Singh was convicted under Section 302 read with Section 34 of IPC, 326 read with

Section 34 of IPC and 324 of IPC.

2. The prosecution story in brief is that on 05.07.2014 complainant-Harpal Singh got recorded his statement (Ex. PA) by alleging that on 04.07.2014 at about 9.15 p.m., Prabhdeep Singh alias Ricky son of Sahib Singh, who is his cousin brother was going in his Indica Car towards his fields and when he reached on Fatehgarh Churian Road near house of Sethi Bhupinder Singh, Gurpal Singh along with his brother Sukhdeep Singh, both sons of Nirvail Singh came on a bicycle and were going towards the village Chamari. Then both of them intentionally brought their cycle in front of car of Prabhdeep Singh and thereafter starting abusing him. But he came back to village to save himself as both of them were having datars. On that moment, Gurpal Singh gave telephonic call to his companions who came there along with their weapons and then Karamjit Singh son of Buta Singh armed with revolver, Pargat Singh son of Buta Singh armed with .12 bore gun, Manpreet Singh son of Buta Singh armed with .315 bore gun, Gurpal Singh son of Nirvail Singh armed with datar, Sukhdeep Singh son of Nirvail Singh armed with datar, Baldev Singh who is nephew of Nirvail Singh with dang, Gurmej Singh alias Geja son of Karaj Singh armed with dang, Amarjit Singh son of Karaj Singh armed with baseball bat, Sulakhan Singh son of Naranjan Singh empty handed, all residents of village Chamari came in the chowk of village Chamari and raised lalkara. Simranjit Singh son of Davinder Singh and Prabhdeep Singh alias Ricky were standing in the chowk and the accused started abusing them. Upon hearing the noise, Harpal Singh along with his brother Karanjaspal Singh, Jagdeep Singh son of Gurjit Singh, Gurpreet Singh son of Baljit Singh, all empty handed came in the chowk and they tried to pacify the accused but the accused party started abusing them also. Accused

Pargat Singh and Sulakhan Singh raised lalkara on seeing them that their real enemies have come and they would not be spared. Accused Pargat Singh fired at Harpal Singh but he laid down on the ground. Karamjit Singh fired at Jagdeep Singh but he took shelter of wall and Manpreet Singh fired at Karanjaspal Singh from his .315 bore rifle, which hit in his chest due to which he fell down on the ground. Pargat Singh, Karamjit Singh and Manpreet Singh fired at Harpal Singh and Gurpeeet Singh with intention to kill them but they were not hit by those fires. Gurmej Singh, Baldev Singh and Amarjit Singh raised lalkara that they should not be spared. Then Gural Singh gave a blow of datar on the left wrist of Prabhdeep Singh alias Ricky and accused Sukhdeep Singh gave a blow of datar on the ankle of Simranjit Singh, due to which he fell down. Electric bulbs were glowing on the shops in the chowk at the place of occurrence and complainant raised hue and cry and all the accused ran away from the place of occurrence along with their weapons and the occurrence was witnessed by Jagdeep Singh and Gurpreet Singh. Thereafter vehicles were arranged and Karanjaspal Singh, Prabhdeep Singh alias Ricky and Simranjit Singh alias Lali were taken to Guru Nanak Dev Hospital, Amritsar for treatment, but the brother of the complainant namely Karanjaspal Singh was declared dead by the Doctor in the hospital and Prabhdeep Singh and Simranjit Singh were admitted for treatment. All the above mentioned accused have murdered his brother Karanjaspal Singh and injured the others.

3. The motive behind the occurrence is that the complainant party has supported one Santokh Singh in the elections of Panchayat of their village and their candidate lost to Pala Singh, who was supported by the party of Pargat Singh due to which the accused were having the grudge with them.

Jagdeep Singh son of Balkar Singh and George Masih were left to take care of

the dead body of his brother Karanjaspal Singh and he went to report the matter to the police. On the basis of the above statement an FIR No.154 dated 05.07.2014 under Sections 302, 307, 326, 324, 323, 506, 201, 148, 149 IPC and Sections 25 and 27 of the Arms Act was registered at P.S. Ajnala District Amritsar and after usual investigation, report under Section 173 Cr.P.C was submitted by the Police against Gurpal Singh, Gurmej Singh, Amarjit Singh, Sukhdeep Singh and Manpreet Singh but accused-Karamjit Singh, Pargat Singh, Baldev Singh & Sulakhan Singh (respondent No. 2, 3, 6 & 7) were found to be innocent by the Police. Thereafter, the case was committed to learned Sessions Court as offences under Sections 302 & 307 are exclusively triable by Sessions Court. During trial an application under Section 319 Cr.P.C. for summoning Karamjit Singh, Pargat Singh, Baldev Singh & Sulakhan Singh was allowed on 10.03.2015 to face trial along with other accused. Learned trial Court framed charges for the offences punishable under Sections 148, 302, 307, 326, 324 read with Sections 149 and 506 of IPC along with Section 25 of Arms Act but all the accused pleaded not guilty and claimed trial.

4. In order to prove its case the prosecution examined 17 witnesses and brought on record various documents to prove the charges against the accused. When examined under Section 313 Cr.P.C., all the incriminating documents, circumstances appearing against the accused were put to them which were denied by them and claimed false implications due to party friction. In their defence the accused examined eight witnesses in addition to the written statement made by Sulakhan Singh. After hearing both the sides and taking into consideration the entire material available on record, learned trial Court convicted Manpreet Singh, Gurpal Singh, Sukhdeep Singh, but

acquitted respondent Nos. 2 to 7 of the charges. Hence the present application for seeking leave to appeal against the acquittal of the private-respondents. It is contended by learned counsel for the applicant that learned trial Court has committed a grave error of law while acquitting the private respondents of the charges framed against them as there is sufficient material available on record to prove their guilt but learned trial Court has passed the impugned judgment by ignoring the material aspect of the law that every member of unlawful assembly is liable along with the other co-accused for the offences charged. Thus the acquittal of private-respondents No.2 to 7 is a result of perversity as all the accused participated with their common intention. As per the testimony of PW-1 Harpal Singh and PW-2 Prabhdeep Singh the injuries have been attributed to convict-Manpreet Singh, who fired a shot on the chest of deceased-Karanjaspal Singh, and Gurpal Singh and Sukhdeep Singh who caused injuries with their datars to Simranjit Singh and Prabhdeep Singh.

5. As per the prosecution case itself, respondent No.7 Sulakhan Singh was empty handed. Learned trial Court came to the conclusion that except three convicts i.e. Manpreet Singh, Gurpal Singh, and Sukhdeep Singh, the presence of remaining accused at the place of occurrence was found to be doubtful and the relevant observations of the learned trial Court were recorded in paragraph-42 which read as under:-

“Here at this juncture, again a question arises, as per prosecution version when PW1 Harpal Singh came at the spot and accused party exhorted each other by saying that their real enemies have come and they should be killed as they were opposing them in village and when PW1 Harpal Singh was near to Prabhdeep Singh and Simranjit Singh, on whom accused

Gurpal Singh and Sukhdeep Singh caused injuries with datar and if the other remaining accused besides accused Gurpal, Sukhdeep and Manpreet were present and also having with them the weapons and their intention was to kill Harpal Singh, then whey they did not make any attack upon them. So this circumstances also creates doubt regarding their presence at the spot, because when they were armed with weapons and were having time and opportunity also to make attack and when opposite side was unarmed, then they might have caused injuries on them. This fact has come in cross-examination of PW-2 Prabhdeep Singh that the accused had come close to them later on. So when the accused had come close to them, then whey the remaining accused Karamjit Singh, Pargat Singh, Baldev Singh, Gurmej Singh, Amarjit Singh and Sulakhan Singh had not caused injuries on Harpal Singh, Jagdeep Singh and Gurpreet Singh. So after appreciation of the evidence on the file, the Court is of the opinion that the prosecution is successful only in proving the presence of accused Manpreet Singh, Gurpal Singh and Sukhdeep Singh at the spot, because it is only these three accused, to whom the specific role and injuries have been attributed, whereas the presence of remaining accused is found to be doubtful one”.

6. As per the post-mortem report Ex.PW3/A and FSL report Ex.PX, deceased Karanjaspal Singh died on account of fire arm injury and the weapon along with the cartridges were recovered from the convict Manpreet Singh although, the rifle is licensed one and issued in the name of Buta Singh i.e. father of convict-Manpreet Singh. It has also been duly proved that Gurpal

Singh and Sukhdeep Singh caused injuries with their datars to Prabhdeep Singh and Simranjit Singh and it is duly proved by way of medical evidence as well as ocular version that they fall within the parameters of Section 326 and 324 IPC respectively. As per the testimony of PW-3 Dr. Neha Sharma, the postmortem examination of the dead body of Karanjaspal Singh was conducted on 05.07.2014 and the following injuries were noticed on his body.

1. Lacerated wound 0.8 X 1.3 cm with inverted margins present on left side of front of chest 4 cm from left nipple at 8 O'clock position. Blood was present.
2. Lacerated wound 2 X 1 cm with inverted margins present on right side of back of chest. Blood was present at the wound. Wound was 29 cm below tip of right shoulder joint. A bluish bruised area 9 X 3 cm present along with lateral margins of lacerated wound No.2.

Similarly on the same day she medico legally examined injured Prabhdeep Singh and Simranjit Singh and found the following injuries respectively:-

Injuries inflicted to Prabhdeep Singh:-

1. An incised wound 4.2 x 0.5 cm placed obliquely on medial aspect of right forearm 4 cm above medial aspect of wrist crease. Fresh blood was present, depth was not probed.
2. Reddish abrasion 3.7 x 1.5 cm on front of right knee joint, placed obliquely.
3. In an area 10 x 4 cm, reddish abrasion 3 in number of size vary 2 x 1.2 cm to 1 x 1 cm on left knee joint and upper 1/3rd of left leg.

Injuries inflicted to Simranjit Singh:-

1. A lacerated wound 3.5 x 0.6 cm placed obliquely on right foot over medial malleolus and lower 1/3rd of right leg on medial aspect. Fresh blood was oozing, depth was not probed.
7. As per the allegations of the prosecution, Karanjaspal Singh had fired with a revolver and Pargat Singh is alleged to be armed with .12 bore gun and Pargat Singh fired at Karanjaspal Singh but he escaped unhurt and on the other hand accused Karamjit Singh who fired at Jagdeep Singh but he took a shelter of a wall and saved himself. As per the testimony of PW-16 Gora Singh, Reader to Naib Tehsildar, Amritsar-II one 12 bore DBBL gun No. 10924 duly licensed is found to be entered in the name of Buta Singh as per their record. As per the testimony of PW-7 Jasbir Singh six empty as well as five live cartridges of .315 bore gun were recovered. As per the testimony of PW-14 Inspector Gurbhinder Singh who was the Investigating Officer of this case only six empty and four live cartridges of .315 bore gun were recovered and there is neither any empty or bullet of revolver or 12 bore gun attributed to Karamjit Singh and Pargat Singh were recovered from them. Even there is no evidence on record to prove that the alleged fired shots had hit any wall or shutter of any shop as the occurrence has taken place in the chowk of the village itself surrounded by shops as narrated and depicted by the prosecution.

Even as per the site-plan Ex.PW14/5, the I.O. of the case has mentioned the place where convict-Manpreet Singh was standing and he fired at the deceased Karanjaspal Singh but it is nowhere disclosed in the site-plan that respondents Karamjit Singh and Pargat Singh were also present on the spot while allegedly firing upon Jagdeep Singh and Harpal Singh respectively.

Still worse, no recovery of the alleged weapon was affected from both respondents. Even otherwise there is common tendency to rope each and every member of the family by attributing lalkara/exhortation. Thus in the present case the learned trial Court after minute scrutiny of the evidence available on record rightly came to the conclusion that presence of respondent No.2 to 7 was doubtful at the time of occurrence in the present case and rightly acquitted them by giving benefit of doubt. The view adopted by the trial Court is plausible and this Court does not find any merit and the presence of the private respondents Nos. 2 to 7 has been found to be doubtful. Thus there is no occasion to attract the provisions of Section 34 of IPC to fasten their liability with guilt.

The application is devoid of any merit and, therefore, dismissed.

Leave to appeal is, accordingly, declined.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

29.11.2017

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No