

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA No.676-DB of 2003

DATE OF DECISION: SEPTEMBER 8, 2017

JOGINGER SINGH AND OTHERS

...APPELLANTS

VERSUS

STATE OF PUNJAB

...RESPONDENT

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

**PRESENT: MR. M.S. KHAIRA, SENIOR ADVOCATE
WITH MR. D.S. RANDHAWA, ADVOCATE
FOR THE APPELLANTS.**

MR. JAGMOHAN GHUMMAN, DEPUTY A.G., PUNJAB.

MAHABIR SINGH SINDHU, J.

1. Accused Joginder Singh, Hardip Singh and Nazar Singh have challenged the impugned judgement passed by the trial Court vide which they were convicted under Section 302/34 IPC as well as other ancillary offences and sentenced to undergo life imprisonment and to pay a fine of ₹4000/- each with default clause.

2. At the outset it is stated by learned senior counsel appearing for the appellants that accused-appellant Nazar Singh had died during the pendency of the appeal. Therefore, the appeal qua appellant Nazar Singh stands abated.

3. The case of the prosecution in brief is that on 28.10.1994 at about 8.00 p.m. Mehal Singh made a statement that "*I am resident of village Kachar Bhan and do the labour work. Today at about 8 p.m., I, my son*

Gurdip Singh @ Gitten, my nephew Mewa Singh s/o Tota Singh, my brother Tota Singh s/o Saudagar Singh and my wife Jito were standing near our cattle by the side of the village pond and talking with each other. The electric bulb outside the house of Mohinder Singh son of Darshan Singh was on. In the meanwhile, Gurnam Singh s/o Ujagar Singh armed with pucca gun, Joginder Singh s/o Thana Singh armed with .12 bore gun, Nazar Singh, Numberdar, armed with .12 bore gun and Hardip Singh @ Deepa s/o Thana Singh armed with barchhi came towards us from the side of the village. Immediately, on reaching there, Gurmam Singh raised a lalkara and said that today they would teach a lesson to us for giving secret information regarding liquor. Saying so, he fired a shot from his pucca gun directly at my nephew Mewa Singh s/o Tota Sing which hit on his head and he fell down. In the meanwhile, Nazar Singh, Numberdar, fired a shot from his gun towards my son Gurdip Singh which hit on the front side of his thigh. Joginder Singh fired a shot from his gun towards us directly which hit near the left arm-pit of my wife Jeeto and on my left upper arm (between shoulder and elbow). Hardip Singh @ Deepa gave a blow from his barchhi from the sharp side on my brother Tota Singh which hit on the front side of his left shoulder. We raised raula of 'Marta, Marta' then these all persons fled away from the spot with their respective weapons. I saw and found that my nephew Mewa Singh has died at the spot due to receiving of gun shot in the head. After leaving my son Joginder Singh and Sukhdev Singh s/o Karnail Singh near the dead body at the spot, I asked my son Gurdip Singh, my wife Jito and my brother Tota Singh, who were injured, to

go to the hospital. After arranging the bicycle, I alongwith Kalu s/o Tota Singh was going to the police station to lodge the report that you have met. Action be taken. The cause of grudge is that Hardip Singh @ Deepa etc. are habitual of distilling illicit liquor and the police has been conducting raids on their houses. They have doubt on us that we give secret information. Today after arming themselves with guns and barchhi and after due consultation and deliberation, they have injured us and have murdered my nephew Mewa Singh. I have heard the statement which is correct. Action be taken.”

4. On the basis of aforesaid complaint, FIR No.163 dated 28.10.1994 under Sections 302/307/324/34 IPC and Sections 25/27 of Arms Act (Ex.P10/A) was registered at Police Station Zira.

5. SI SHO Jagdev Singh visited the spot and collected blood stained earth and simple earth from the spot vide recovery memo (Ex.P11) and two empty cartridges of .315 bore as well as two empty cartridges of .12 bore were also recovered from the spot and were taken into possession vide memo Ex.P12. Two bed sheets, one turban and one comb were also recovered from the spot and were taken into possession vide memo Ex.P13. Inquest report (Ex.P18) was prepared and the dead body was sent to Civil Hospital, Zira for post mortem examination on 29.10.1994 at 4.00 a.m.

6. PW15 Dr. Rajesh Kumar Sharma, Medical Officer, CHC Dabwala Kalan conducted post mortem examination on the dead body of Mewa Singh S/o Tota Singh on 29.10.1994 at 8.30 a.m. and found the following injuries:-

“1. There was a lacerated punctured wound 1.5 cm x 1.5 cm with inverted margins on left side of the face 5 cm in front of left tragus, 4 cm lateral to lateral canthus of left eye. Blackening was present around the wound. Clotted blood was present. Underlying bone was fractured.

2. There was a big lacerated wound with everted margins in an area of 20 cm x 15 cm on right side of face, forehead and skull extending from medial canthus of right eye backward upto the right parietal eminence and laterally upto right tragus involving the tragus underlying bone was fractured. Major portion of the brain was missing. Lacerated dura, points of brain and blood vessels were visible through the wound. Bone pieces were missing. Clotted blood was present. This wound communicated with wound No.1.”

In the opinion of Dr. Rajesh Kumar Sharma (PW15) the cause of death was due to haemorrhage and shock as a result of fire arm injury to the vital organ, i.e. Brain which was sufficient to cause death in the ordinary course of nature.

7. On 29.10.1994 at 8.15 p.m. PW1 Dr. Nirmal Dass, Medical Officer, Civil Hospital, Zira medico-legally examined Injured-complainant Mehal Singh and found following injuries on his person:-

“1. A punctured lacerated wound 0.75 x 0.74 cm in size was present on the posterior aspect of left upper arm 12 cms above the elbow joint, margins were inverted. Clotted blood was

present. A tear was present in the shirt corresponding to injury which was also blood stained. Advised X-ray.

2. A punctured and lacerated wound 0.5 cm in diameter was present on the back of left upper arm 3 cm above injury No.1, margins were inverted, clotted blood was present. A hole in the shirt corresponding to the injury was present which was blood stained and was advised x-ray.

3. A punctured lacerated wound 0.75 x 0.75 cm in size was present on the back of left knee. Margins were inverted. Clotted blood was present and was advised X-ray.”

The Medical Officer (PW1) declared injuries No.1 to 3 suffered by Mehal Singh as simple in nature caused by fire arm and probable duration was within 24 hours.

8. On 29.10.1994 at 2.30 a.m., Dr. Rajesh Kumar Sharma (PW15) also medico-legally examined Surjeet Kaur wife of Mehal Singh and found the following injury on her person:-

“1. A lacerated punctured wound 1 cm x 0.25 cm on medial aspect of left arm in the upper third. 5 cm below axilla. Clotted blood present. Corresponding hole present in the shirt and shirt blood stained and it was duly signed and sent to the police. General condition of the patient was satisfactory.”

In the opinion of Dr. Rajesh Kumar Sharma (PW15) the probable duration of injury suffered was within 12 hours and had been caused by a fire arm and was simple in nature.

9. Again on 29.10.1994 at 2.45 a.m., PW15 Dr. R.K.Sharma also medico-legally examined Gurdeep Singh son of Mehal Singh and found the following injuries on his person:-

“1. A lacerated punctured wound 2.25 cm x 0.75 cm on anteromedial aspect of left thigh, in the upper third, 20 cm above the knee joint. Clotted blood present. Corresponding hole present in the Chadra. Chadra blood stained, duly signed & sent to police.

2. A lacerated punctured wound 0.5 cm x 0.25 cm on front of Left thigh, parallel & 4.5 cm lateral to injury No.1. Clotted blood present. Corresponding hole present in the Chadra.

3. A lacerated punctured wound 0.5 cm x 0.25 cm on medial side of right thigh in its upper third. Clotted blood present. Corresponding hole present in the Chadra.

4. A lacerated wound 0.25 cm x 0.25 cm on medial side of right thigh, 2 cm below injury No.2 Clotted blood present. Corresponding hole present in the Chadra.”

PW15 opined that the probable duration of injuries suffered by Gurdeep Singh was within 12 hours and had been caused by a fire arm and were simple in nature.

10. PW15 Dr. R.K.Sharma also medico-legally examined Tota Singh on 29.10.1994 at 3.15 a.m. and found the following injury on his person:-

“1. A lacerated puncutred wound 0.25 cm x 0.25 cm on the

top of left shoulder. Clotted blood was present.”

PW15 opined that the probable duration of injury suffered by Tota Singh was within 12 hours and had been caused with blunt pointed weapon and was simple in nature.

11. On 18.11.1994, the SHO arrested appellant Hardip Singh and on his disclosure statement a Barchhi was recovered from the chaff of the room of his residence meant for storing chaff. On 21.11.1994, the SHO arrested accused-appellants Nazar Singh and Joginder Singh. .12 bore guns were produced by them alongwith licence which were taken into possession vide recovery memo Exs.P17 to P20. During investigation Gurnam Singh was found to be innocent and one Jagtar Singh was arrested to be responsible for the death of Mewa Singh who fired a shot from his .315 bore gun at the deceased. But at trial, an application was filed under Section 319 Cr.P.C. to summon Gurnam Singh as accused which was allowed. The blood stained earth was sent for chemical examination and it was reported that the same contained blood. Two empty cartridges of .315 bore and two empty cartridges of .12 bore which were recovered from the spot were also sent for forensic science examination, which revealed that those were fired from .315 bore rifle and cartridges from .12 bore each were fired from each of .12 bore guns.

12. After completion of investigation, the accused were sent for up for trial for the charges under Sections 302, 307, 324/34 IPC, to which they pleaded not guilty and claimed trial. Accused Gurnam Singh died during the pendency of the trial.

13. To prove their case, the prosecution examined as many as 15 witnesses.

14. In their statement under Section 313 Cr.P.C., the accused pleaded that as accused Nazar Singh appeared as witness in case under Section 307 IPC filed against Tarsem Singh, sister's son of Mehal Singh and that accused Nazar Singh being Lambardar of village blackened the face of Shamsher Singh son of Mehal Singh on account of misbehaviour with one Jagir Kaur, a false case had been foisted against all the accused-appellants. It was also stated that it was the complainant party who used to deal in illicit liquor. The accused also examined DW1 Constable Bajinder Singh to this effect in their defence.

15. The learned trial Court after considering the entire evidence on record convicted and sentenced the appellants and acquitted Jagtar Singh of the charges levelled against him.

16. Heard the present appeal.

17. PW6 Mehal Singh, who was the complainant and uncle of deceased Mewa Singh, PW7 Tota Singh, father of deceased Mewa Singh and PW9 Gurdip Singh, cousin of deceased Mewa Singh are the star/eye witnesses in this case.

18. PW6, PW7 and PW9 who witnessed the whole incident had categorically stated that it was the accused-appellants who attacked them with fire arms and barchhi, as a result of which Mewa Singh died and they sustained injuries. PW1 Dr. Nirmal Dass medico-legally examined PW6 Mehal Singh (complainant) and declared that all injuries No.1 to 3 were

caused with fire arm. PW15 Dr.Rajesh Kumar Sharma who conducted post mortem examination on the dead body of Mewa Singh also declared the injuries on his dead body to be caused with fire arm. The fact remains that PW6 Mehal Singh, PW7 Tota Singh and PW9 Gurdip Singh had sustained multiple injuries and the same were certified by PW1 on medico-legal examination. Therefore, the testimony of PW6 Mehal Singh, PW7 Tota Singh and PW9 Gurdip Singh being the injured witnesses at the scene of crime are most crucial. The very fact that they had sustained injuries in the occurrence and were hospitalized for treatment would go to establish that they were very much present at the scene of crime and witnessed the occurrence. Even otherwise, it is well settled that testimony of an injured witness will have to be placed on a higher pedestal.

19. PW6, PW7 and PW9 are consistent in their deposition before the trial Court that all the accused were armed with lethal weapons and accused Joginder Singh who was armed with .12 bore gun caused a gun shot injury on the left armpit of Surjit Kaur and on the back of left shoulder and left leg of Mehal Singh. Accused Hardip Singh who was armed with barchhi gave a blow on the left shoulder of PW7 Tota Singh.

20. Learned counsel appearing for the appellants vehemently submitted that the prosecution has come out with the evidence of interested witnesses. No independent witness was examined to corroborate the testimony of PW6, PW7 and PW9, who were close relations.

21. It is true that PW6, PW7 and PW9 are close relations. Their testimony cannot be thrown away on the sole basis that they are related to

each other. As the incident occurred on 28.10.1994 at about 8.00 p.m., in a village setting, it was quite natural for deceased Mewa Singh, PW6 Mehal Singh, PW7 Tota Singh and PW9 Gurdip Singh to be present at the spot where the incident took place, being close relations.

22. It is not the number of witnesses, but the quality of evidence adduced by the prosecution that will have to be weighed by the Court of law. No independent corroboration is required in the instant case as the injured witnesses have come up with reliable and trustworthy testimony.

23. Learned counsel appearing for the appellants vehemently submitted that there was no motive for the appellants to do such a crime. It was further contended that except the deposition of the complainant party, there was no proof that the appellants were present at the scene of occurrence and committed the crime.

24. It has come in evidence of PW6, PW7 and PW9, as well as admitted by the appellants in their statement under Section 313 Cr.P.C. that appellants and the complainant party were very much known to each other and were having strained relations and the appellants apprehended complainant party responsible for the raids being conducted at their homes with regard to distillation of illicit liquor. Therefore, it can be safely presumed the appellants have premeditated the occurrence and had every reason to attack the complainant party.

25. PW6, PW7 and PW9 have categorically stated in their statements that an electric bulb was on outside the house of Mohinder Singh, near to which the incident happened. To prove the said fact, the

prosecution examined Prem Pal, Sub Station Assistant of PSEB as PW11 who deposed to the effect that on 28.10.1994 there was no interruption in supply of electricity to the village from 4.00 p.m. to 12.00 a.m. Therefore, there exists every possibility of the electric bulb of the house of Mohinder Singh to be on. However, said Mohinder Singh was not examined, as he was won over by the defence.

26. In these circumstances, the identification of the appellants by the complainant party was not a Herculean task and as such they were duly identified.

27. As per FSL report, the empties of .12 bore gun recovered from the spot were fired from .12 bore SBBL gun, possessed by the accused-appellants. The report of Chemical Examiner, Punjab also further discloses that the sample earth collected from the spot contained human blood. The reports of FSL and Chemical Examiner further corroborate the testimony of PW6, PW7 and PW9 that it were only the accused-appellants who, in furtherance of their common intention, attacked the complainant party with fire arm and caused the death of Mewa Singh besides causing injuries to them and Surjeet Kaur.

28. Even assuming for the sake of arguments that motive for the occurrence was not established by the prosecution, it has been held by the Hon'ble Supreme Court in **Gosu Jairami Reddy vs. State of A.P., AIR 2011 SC 3147** that motive for the occurrence pales into insignificance in a case based on eye witness account. The existence or otherwise of a motive plays a significant role only in cases based on circumstantial evidence.

29. In view of the above, we are of the considered view that the trial Court has rightly held that the appellants in furtherance of their common intention and armed with lethal weapons committed the murder of Mewa Singh and caused injuries to PW6, PW7 and PW9. We do not find any merit in the appeal. Therefore, sustaining the conviction and sentence passed by the trial Court as against the accused-appellants Joginder Singh and Hardip Singh, the appeal stands dismissed whereas the appeal of Nazar Singh appellant is disposed of as having abated.

30. Accused-appellants Joginder Singh and Hardip Singh are on bail. Their bail bonds stand cancelled. They shall surrender forthwith before the Chief Judicial Magistrate, Ferozepur who shall send them to jail to undergo the remaining part of the sentence. If they fail to surrender, the learned Chief Judicial Magistrate, Ferozepur shall take coercive steps to secure their presence and send them to jail to undergo the remaining part of the sentence.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

September 8, 2017
Gulati

Whether Reportable : Yes

Whether Speaking/Reasoned : Yes