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

**1. CRA-S-1067-SB-2003
Date of Decision : April 07, 2017**

Sham Singh and others

.... Appellants

Versus

State of Punjab

.... Respondent

2 CRR-1715-2003

Pal Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE [DR.] SHEKHER DHAWAN

Present Mr. Gautam Dutt, Advocate,
for the appellants in CRA-S-1067-SB-2003
and for respondents No. 1 to 4 in CRR-1715-2003.

Mr. V. Ramswaroop, Advocate,
for the revisionist.

Mr. A.S.Kler, AAG, Punjab,
for the respondent-State.

SHEKHER DHAWAN, J.

Present appeal is directed against the judgment of conviction and
order of sentence dated 12.05.2003 passed by learned Additional Sessions

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Judge [A], Fast Track Court, Ludhiana, whereby the appellants were convicted under Sections 307 read with Section 34 IPC and were sentenced as under:-

Under Section	Sentence	In default
<u>Appellant No. 1 – Sham Singh</u>		
307 IPC	to undergo Rigorous Imprisonment for a period of Seven years and to pay a fine of Rs.1,000/-.	to undergo Rigorous Imprisonment for a period of three months .
<u>Appellants No. 2 to 4 – Surjit Singh, Harnam Singh & Gurnam Singh</u>		
307 read with Section 34 IPC	to undergo Rigorous Imprisonment for a period of Seven years and to pay a fine of Rs.1,000/-.	to undergo Rigorous Imprisonment for a period of three months .

Pal Singh, complainant of this case has filed CRR-1715 of 2003 for enhancement of sentence awarded to the appellants. Hence, both, the appeal and the revision petition are being disposed of by this common judgment.

2. Facts relevant for the purpose of decision of the appeal and the revision; that on 12.07.1997, Avtar Singh [PW-1] alongwith his father Pal Singh [PW-2] were going on a scooter. When they were at a distance of about 100 yards from the Bus Stand of village Jainpur, all the accused-appellants were standing there. Accused-appellant, Sham Singh was armed with .12 bore double barrel gun, accused Gurnam Singh and Harnam Singh were armed with swords and accused Surjit Singh was armed with hockey stick. One motor-cycle and a scooter belonging to the accused party were also lying parked there. On seeing Avtar Singh and Pal Singh, accused –

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Gurnam Singh raised a *lalkara* that they should not be spared and killed. On this, Sham Singh with an intention to kill Avtar Singh fired a shot from his gun and the pellets of the gun-shot hit on the chest and right arm of Avtar Singh. Thereafter, Avtar Singh and Pal Singh ran away on the scooter. Accused persons followed them and further raised *lalkaras*. Avtar Singh and Pal Singh went to the house of Paramjit Singh, Sarpanch from where the injured was taken to D.M.C. and Hospital, Ludhiana from where he was referred to CMC and Hospital, Ludhiana for treatment. As per the complainant, the motive for causing injuries to Avtar Singh was civil litigation pending between the parties. On this statement, FIR Ex. PA/2 was registered. Investigation was started. Accused-persons were arrested and after completion of investigation proceedings, challan was presented in the Court for trial.

4. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused under Section 307 read with Section 34 IPC, recording of evidence of the 12 prosecution witnesses and examination of accused under Section 313 Cr.P.C. In their defence, the accused also examined four defence witnesses. After considering the prosecution evidence and the defence version on record, learned trial Judge held the appellant guilty and convicted and sentenced them on 12.05.2003.

5. Aggrieved of passing of judgment of conviction and order of sentence, the appellants are before this Court by way of present appeal bearing No.CRA-S-1067-SB-2003. Dissatisfied with the quantum of

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sentence awarded by learned trial Judge, Pal Singh, complainant has also filed revision bearing No. CRR-1715 of 2003 for enhancement of sentence.

6. At the time of arguments, learned counsel for the appellants contended that the prosecution case is not proved at all. First of all, the main prosecution version is that Sham Singh was armed with .12 bore double barrel gun and he had fired gun-shot on the chest of Avtar Singh and that pellet penetrated through his chest and there was exit wound of said injury as well. According to learned counsel for the appellants, firstly, no weapon used for commission of offence was recovered from the possession of the accused. Secondly, if the case of prosecution, as set-up by the complainant, is taken into consideration, Sham Singh was armed with .12 bore double barrel gun and if any shot is fired from .12 bore double barrel gun, pellets would not come out and in all likelihood, those pellets cannot have exit wound, whereas, in fact, in this case, there was only one entry point and one exit point, meaning thereby that the weapon if any, used by assailants was not a .12 bore double barrel gun, rather the appellants have been falsely implicated because of inimical relations on account long drawn civil litigation between the parties. To this effect, an application was also moved by the Investigating Officer before the Medical Officer so as to seek his opinion vide Ex. DA as to whether the said injuries on the chest of Avtar Singh could be inflicted with .315 bore rifle also. But at any rate, there is nothing by way of legal evidence available on the file that injuries were caused with .12 bore double barrel gun as there was no recovery of such gun and injury on the person of Avtar Singh could not be caused with .12

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bore double barrel gun.

7. Learned counsel for the appellants also submitted that the prosecution case is based upon the sole testimony of Avtar Singh, which is supported by the testimony of his father, Pal Singh. There is no other eye-witness. There was every reason for Avtar Singh and Pal Singh to make distorted version so as to falsely implicate the appellants in this offence because of previous inimical relations.

8. Learned counsel for the appellants also contended that the ocular testimony by way of statement of PW-1, Avtar Singh and PW-2, Pal Singh is contrary to the statement of PW-12, Dr. Gurinder Singh of Christian Medical College and Brown Memorial Hospital, Ludhiana. The defence witnesses, i.e., DW-1 Rakesh Rani, Ahlmad and DW-4, Joginder Pal, Ahlmad have proved on the file that there was long drawn litigation pending between the parties and as per DW-2 MHC Balwinder Singh and DW-3, Sher Singh, the complainant had every reason to falsely implicate the appellants in this case and in fact, that thing had happened and that is why, the prosecution has not been able to prove the alleged offence against the appellants.

9. Learned State counsel and learned counsel for the revisionist while arguing on these points, contended that the prosecution has been able to prove its case on the basis of statement of injured Avtar Singh as well as eye-witness, Pal Singh, who have well-stood by the test of cross-examination. There was no reason for Avtar Singh and Pal Singh to falsely implicate the appellants in such a heinous crime, while allowing the real

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culprits to go scot-free. Learned State counsel also contended that the motive is a double-edged weapon. Civil litigation pending between the parties, as come on the file, was the reason and the motive for commission of crime by the appellants and not for their false implication. Learned trial Judge has rightly ignored this contention and held the accused-appellants guilty and the present appeal is without any merit and the same be dismissed. Learned counsel for the revisionist added that the trial Court has not awarded adequate sentence to the accused-appellants and the same be enhanced.

10. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that there is no dispute about basic facts of this case. The alleged occurrence had taken place on 12.10.1997 at village Jainpur. Avtar Singh was injured and treated at C.M.C. Ludhiana and he was having two gun-shot injuries on his chest with one entry point wound and other exit point wound, as detailed in the statement of Dr. Gurinder Singh, examined as PW-12, who found the following injuries on the person of Avtar Singh:-

1. Wound of entry, over left side of chest about 3 cm x 2.5 cm. Centre at the placed 6 cm below the nipple and 13 cm from the mid-line. Ragged edges. No tototoing effect seen.
2. Would of ext: Over left side of chest 7 cm x 6 cm. Centre 6 cm below the nipple and 6 cm from mid-line. With tagged edges in communicating with the wound of entry. No clinical evidence of vilation of rib cage of pleura.

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3. Multiple small lacerations over right forearm over the interior and lateral aspect. Approximately six in numbers. Biggest measuring 1.5 cm x 0.5 cm.
4. Old laceration approximately 2 cm x 0.5 cm obliquely placed over interior aspect of right lower leg.

11. It was observed by the Medical Officer that all the injuries were found to be simple in nature. Injuries No.1, 2 and 3 were found to have been caused probably with gun shot whereas injury No. 4 was found to have been caused with blunt weapon. Injuries No. 1 to 3 were fresh, whereas, injury No. 4 was old. He has further proved on record Medico-Legal Report Ex. PW-12/A and pictorial diagram showing the seat of injuries, Ex. PW-12/B. Both the prosecution witnesses, namely, Avtar Singh and Pal Singh have well-stood by the test of cross-examination. Learned trial Judge has rightly ignored the contention having been raised before him that there was no reason to disbelieve the testimony of injured and his father because in such like cases of firing, it is the normal tendency that independent witness remains away from the incident and try to avoid litigation. The real test is to see, whether the witnesses deposing before the Court are giving the correct version or telling a lie. On the basis of examination-in-chief and cross-examination of PW-1 and PW-2, they have not been proved to be liars. No material contradictions have been pointed out by learned counsel for the appellants so as to disbelieve their testimony. The remaining prosecution witnesses, including PW-3, Lehmer Ram, Clerk of office of District Transport Officer, Jalandhar; PW-4, Const. Mohd. Yusuf; PW-5 HC Varinder Pal Singh; PW-6 Const. Surinder Singh; PW-7 SI Sadhu Singh;

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PW-8 SI Niranjana Dass; PW-9 HC Davinder Singh; PW-10 HC Rajinder Singh and PW-11, Balwinder Singh, Ahlmad have proved on the file that investigation was carried out in pursuance of FIR [Ex. PA/2] having been registered on 12.7.1997.

12. The defence version by way of statements of DW-1, Rakesh Rani, Ahlmad and DW-4, Joginder Pal, Ahlmad proved civil litigation pending between the parties and DW-2, MHC Balwinder Singh and DW-3, Sher Singh does not prove the innocence of the accused in any way and as such, their testimony was rightly disbelieved by the Court below. It is a matter of common knowledge that pendency of civil litigation between the parties is a double edged weapon, which may give reason for one party to falsely implicate the other party in such like crime and at the same time, it gives reason for accused persons to commit such a heinous crime. The Court is to see how the motive was actually relevant. In this case, the long-drawn pendency of civil litigation had given motive and made the appellants to commit such a heinous crime and they had come prepared and armed with deadly weapons, like gun, swords, dandas and after raising *lalkaras*, they had given gun-shot injury to Avtar Singh on his chest just with an intention to kill him. Learned trial Judge has rightly decided this controversy that motive was there with the accused-appellants to commit the crime and that motive was not for their false implication.

13. As regards to injury having been caused with .12 bore double barrel gun or .315 pistol, application Ex. DA was moved before the Medical Officer, CMC, Ludhiana on 28.8.1997 and Dr. Gurinder had given the

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following opinion vide Ex. DB on 29.8.1997 :-

“ This is in continuation to the injury report of Avtar Singh, Unit No.C-248047 dated 12.7.1997. It is further stated over here that the injury No. 1, 2 & 3 were probably caused by gun-shot splinters.”

14. As per above report, injuries No. 1, 2 and 3 could probably be given by gun-shot splinters, meaning thereby the version put forward by the complainant cannot be thrown away on this score alone and the appellants do not deserve acquittal on this point.

15. Now, coming to the next point involved in this case, that the main weapon used for commission of offence i.e. .12 bore double barrel gun was not recovered and the Court is to see what is the effect of non-recovery of weapon of offence in such like cases. Similar matter was before Hon`ble Apex Court in **Yogesh Singh Vs. Mahabeer Singh & Ors, 2016 (4) RCR (Civil) 753**, wherein Hon`ble Apex Court observed that it is established proposition of law that mere non-recovery of weapon does not falsify the prosecution case where there is ample unimpeachable ocular evidence. Such a view was also taken in **Lakahan Sao Vs. State of Bihar and Anr. (2000) 9 SCC 82**, **State of Rajasthan V. Arjun Singh & Ors, (2011) R.C.R. (Criminal) 270** and **Manjit Singh and Anr. Vs. State of Punjab, (2013) 12 SCC 746**.

16. This aspect of non-recovery of weapon of offence indicates some defects in the investigation proceedings. However, the law on the point is settled that the accused should not get the benefit of defective investigation. The Court is duty bound to consider the interest of the victim/injured as

well. Such a view as taken by Hon`ble Apex Court in **Abu Thakir & Ors Vs. State Rep. by Inspector of Police, Tamil Nadhu, 2010 (4) JT 86.**

17. Identical view was taken by Hon`ble Apex Court in **State of Karnataka Vs. K. Yarappa Reddy, 1999(4) R.C.R. [Criminal] 508** and it was held therein as under:-

“even if the investigation is illegal or even suspicious, the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost.... Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true, the Court is free to act on it *albeit* the investigating officer's suspicious role in the case”.

18. In view of the above, this Court is of the considered view that as per testimony of Avtar Singh [PW-1] and Pal Singh [PW-2], the prosecution has been able to prove that appellant, Sham Singh had caused gun-shot injury on the person of Avtar Singh and the medical evidence by way of statement of Dr.Gurinder Singh [PW-12] is in complete agreement on this point. The seat of injury, the weapon used for commission of offence and the medical opinion given by the doctor, that the injury was dangerous to life, establish that appellant, Sham Singh had committed the offence punishable under Section 307 IPC and he has been rightly convicted and sentenced for the same. Accordingly, appeal filed by Sham Singh against the judgment of conviction and order of sentence has no merit and stands dismissed.

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19. As regards to the other accused-appellants, namely, Surjit Singh, Harnam Singh and Gurnam Singh, learned counsel for the appellants has contended that their names have been falsely implicated. More so, initially, appellants, namely, Harnam Singh and Gurnam Singh were found innocent and they were summoned to face trial under Section 319 Cr. P.C. The prosecution case against accused-appellants, namely, Surjit Singh, Harnam Singh and Gurnam Singh is highly doubtful and the Court below has completely ignored this fact.

20. There is force in the contention of learned counsel for appellants No. 2 to 4. In view of the above, the appeal qua appellants, namely, Surjit Singh, Harnam Singh and Gurnam Singh stands allowed and they are acquitted of the charge in this case. The bail/surety bonds shall stand discharged.

21. Resultantly, the appeal filed qua appellant No1. Sham Singh is dismissed and qua remaining appellants, namely, urjit Singh, Harnam Singh and Gurnam Singh stands allowed.

22. In view of the above findings, the revision petition filed by the complainant for enhancement of sentence imposed upon the accused-appellants has no merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

April 07, 2017
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Whether speaking/reasoned : Yes .
Whether Reportable : Yes