

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Appeal No.D-127-DB of 2011

.....

Date of decision:27.3.2018

Sarup Singh and others

...Appellants

v.

State of Punjab

...Respondent

....

(2) Criminal Appeal No.D-105-DB of 2011

.....

Manjit Singh

...Appellant

v.

State of Punjab

...Respondent

....

**Coram: Hon'ble Mr. Justice A.B. Chaudhari
Hon'ble Mr. Justice Inderjit Singh**

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Present: Mr. Sanjeev Sharma, Advocate for the appellants in Cr. Appeal No.D-127-DB of 2011.

Mr. Rajesh Gupta, Advocate for the appellant in Cr. Appeal No.D-105-DB of 2011.

Mr. H.S. Grewal, Additional Advocate General, Punjab for the respondent-State.

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Inderjit Singh, J.

This judgment will dispose of the above mentioned two criminal appeals i.e. Criminal Appeal No.D-127-DB of 2011 filed by Sarup

Singh, Swaran Singh, Lakhwinder Singh alias Lakhbir Singh and Sohan Singh and Criminal Appeal No.D-105-DB of 2011 filed by Manjit Singh against the impugned judgment of conviction and order of sentence dated 7.12.2010 passed by learned Additional Sessions Judge, Ferozepur, vide which the accused-appellants have been convicted for the offences under Sections 148, 302, 302 read with Section 149 IPC and Section 27 of the Arms Act. Accused-appellants Sarup Singh, Swaran Singh and Manjit Singh have been sentenced to undergo rigorous imprisonment for two years each for the offence under Section 148 IPC; to undergo life imprisonment each and to pay a fine of ₹10,000/- each and in default of payment of fine to further undergo rigorous imprisonment for one year each for the offence under Section 302 IPC. They have also been sentenced to undergo rigorous imprisonment for three years each and to pay a fine of ₹3,000/- each and in default of payment of fine to further undergo rigorous imprisonment for six months each for the offence under Section 27 of the Arms Act. Accused-appellants Lakhwinder Singh alias Lakhbir Singh and Sohan Singh have been further sentenced to undergo rigorous imprisonment for two years each for the offence under Section 148 IPC; to undergo life imprisonment each and to pay a fine of ₹10,000/- each and in default of payment of fine to further undergo rigorous imprisonment for one year each for the offence under Section 302 read with Section 149 IPC. All the substantive sentences of imprisonment have been ordered to run concurrently.

The brief facts of the prosecution case as noted down by the learned trial Court in the impugned judgment dated 7.12.2010 are as under:-

“In nutshell, the case of the prosecution is that the present case was registered on the statement of complainant Kulbir Singh. In his statement, he disclosed that they are two brothers and five sisters. All of them are married. Jagsir Singh aged about 36 years was his elder brother. About 9/10 years back, Beant Singh son of Gajjan Singh of village Mohkam Bhatti was murdered. The complainant along with Jagsir Singh (deceased), Joginder Singh, his brother-in-law, Darbara Singh Chairman and Gurdev Singh were falsely involved in that case. They were convicted for 20 years each by the Sessions Court, Ferozepur. They had filed appeal before the Hon'ble High Court. They had come on bail. Therefore, Saroop Singh and his brothers and nephews kept enmity with the complainant. On 17.9.2007, the complainant party had taken paddy crop for sale at Commission Agency of Sukhchain Singh, Grain Market of village Sande Hasham. Auction of paddy had not taken place on that day. During that night, the complainant and his brother Jagsir Singh after taking their meals had gone to guard of the paddy crop lying at Grain Market, Sande Hasham. Jagsir Singh put his cot on the heap of paddy in the Grain Market and slept there. The complainant also laid on the paddy bags nearby. The complainant had not slept as yet. At that time search lights were on. At about 1/1.30 a.m. in the midnight, Saroop Singh accused armed with 12 bore rifle, Swaran Singh

armed with 315 bore rifle, Manjit Singh armed with 12 bore rifle, Lakhbir Singh armed with Gandasa and Sohan Singh accused armed with Kapa came there. Accused encircled Jagsir Singh who was lying asleep. Accused Swaran Singh raised Lalkara for teaching lesson to Jagsir Singh for causing murder of Beant Singh. Then accused Saroop Singh fired a gun shot from his 12 bore rifle on the left side of the chest of Jagsir Singh. Accused Manjit Singh fired a gun shot from his 12 bore rifle and accused Swaran Singh also fired from his 315 bore rifle. All the accused after raising Lalkara left the place of occurrence with their respective weapons on the Jeep on which they had come. The complainant came near his brother Jagsir Singh. Blood was oozing out of his chest. Then the complainant rang up his commission agent Sukhchain Singh on mobile phone. Sukhchain Singh came there on his car. They took Jagsir Singh to Hospital but Jagsir Singh succumbed to the injuries on the way. The complainant gave information to his relatives on telephone. His relatives also came there. Joginder Singh and other relatives were left near the dead body. When the complainant along with Inderjit Singh Sarpanch were going to inform the police, SI/SHO Surinder Singh met them outside the police station on the road where complainant got recorded his statement. SI/SHO made his endorsement on the same and sent it to the police station, on the basis of which formal FIR

was registered under Sections 302/148/149 IPC and 25/27 of Arms Act.

The investigation of this case was conducted by SI Surinder Singh, who reached Civil Hospital Ferozepur, prepared inquest report on the dead body of Jagsir Singh and sent dead body for post mortem examination through HC Gurdial Singh and HC Balbir Singh and the post mortem examination on the dead body of Jagsir Singh was conducted. Then SI Surinder Singh, the Investigating Officer inspected the spot and prepared rough site plan. He lifted the blood stained earth from the spot and put into separate dabbi plastic and was converted into separate parcel which was sealed by him with his seal bearing impression SS. After use, the seal was handed over to ASI Bhupinder Singh and took the above said parcel into police possession vide recovery memo. One pair of chappal which was blood stained and one Khes Checkdar which was also blood stained were taken into police possession by converting both the items in one parcel which was sealed by SI Surinder Singh with his seal bearing impression SS. One other Khes which was having a gun shot was also taken into police possession by preparing a parcel and was taken into possession vide recovery memo. The parcel was sealed with the seal bearing impression SS. Accused Sarup Singh, Sohan Singh and Lakhbir Singh alias Lakhwinder Singh were

arrested. During the course of interrogation, the accused suffered disclosure statements which were reduced into writing and in pursuance of their disclosure statements, they got recovered the weapons of offence and the same were taken into police possession. After completion of necessary investigation formalities, challan was presented against accused Saroop Singh, Lakhwinder Singh and Sohan Singh in the Court of Illaqa Magistrate by placing the names of accused Swaran Singh and Manjit Singh in column No.2 of the report under Section 173 Cr.P.C. and ultimately, it was received by way of entrustment after its commitment.”

On presentation of challan, the trial Court finding prima facie case against the accused-appellants Saroop Singh, Lakhwinder Singh and Sohan framed charges for the offences punishable under Sections 302, 302 read with Section 34 IPC and Section 25 of the Arms Act, to which they pleaded not guilty and claimed trial. Later on an application filed under Section 319 Cr.P.C., accused-appellants Swaran Singh and Manjit were also summoned vide order dated 8.4.2009 by the trial Court and all the five accused were charge-sheeted for the offences under Sections 148, 302 read with Section 149 IPC and Section 27 of the Arms Act on 20.5.2010, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Sukhdev Singh Patwari, who mainly deposed regarding preparing of scaled site plan Ex.P.1. PW-2 HC Rajesh Kumar deposed that he visited the spot and

clicked seven photographs Exs.P2 to P.8, which were taken into police possession. PW-3 Suresh Kumar Garg, SDO, Punjab State Electricity Board mainly proved regarding supply of electricity to Grain Market Sande Hasham on the intervening night of 17/18.9.2007. He brought the record regarding the supply of electricity to Grain market. PW-4 Dr. Rajinder Manchanda, Medical Officer, Civil Hospital, Ferozepur conducted the post-mortem examination on the dead body of Jagsir Singh and found the following injuries:-

“i) Lacerated wound measuring 3.5 cm x 3 cm on the left of upper part of abdomen, just inside the left central margin in epigetric region. 11 cm below left nipple and 12 cm above umbilicus. The margins of the wound were abraded were inverted and were blackened. Though the wound abdominal contents were seen coming out and clotted blood was present over there. On dissection, the underlying tissues were found congested and infiltrated with blood. On probing of the wound, the track of the wound was communicating with abdominal cavity. On further dissection of the abdomen, the abdominal cavity was found full of clotted and liquid blood. On mopping of the peritoneal cavity, the left lobe of liver was found badly lacerated and torn and the stomach was also found lacerated and torn. Wad, a big plastic body and 10 pieces of matellic bodies were found and a number of metallic pieces were found embedded in the different viscera of the abdomen and the

vertebral column which could not be taken out. All the foreign bodies taken out from peritoneal cavity were sealed in container and handed over to Police. Both small and large intestine had got multiple perforations. Rest organs were healthy.”

As per the opinion of the doctor, the cause of death in this case was due to haemorrhage and shock as a result of injury to the vital organs liver and stomach, due to fire arm injury which were ante-mortem in nature and were sufficient to cause death in an ordinary course of nature. Probable duration between death and post-mortem was within 12 to 24 hours.

PW-5 Kulbir Singh-complainant mainly deposed the same facts as were given by him in the brief facts of the prosecution case. He supported the prosecution version. PW-6 Inderjit Singh mainly deposed regarding identifying the dead body and also deposed regarding the inquest report which was prepared in his presence and signed by him and one Joginder Singh. PW-7 HC Gurdial Singh deposed firstly regarding handing over the dead body of Jagsir Singh to him by ASI Surinder Singh for getting post-mortem examination conducted from Civil hospital, Ferozepur and regarding handing over the parcel given to him by the doctor etc. He further deposed that on 22.9.2007, accused Sarup Singh, Lakhwinder Singh and Sohan Singh were interrogated by ASI Bhupinder Singh in his presence. Accused Sarup Singh got recovered one double barrel gun along with one empty and one live cartridge of the same bore. One Gandasa and one Kapa were got recovered by accused Lakhwinder Singh alias Lakhbir Singh and Sohan Singh respectively as per their disclosure statements. He deposed

regarding the disclosure statements. PW-8 Constable Pal Singh mainly deposed regarding handing over the special reports to him which were delivered by him to the Illaqa Magistrate and other officers. PW-9 ASI Jaswant Singh is a formal witness, who tendered in evidence his affidavit Ex.P.28. PW-10 Sukhchain Singh deposed that his commission agency is at Mandi Sande Hasham and Jagsir Singh and Kulbir Singh were selling their crops. On the intervening night of 17/18th September, 2007 at about 2.00 a.m., he was informed on his mobile phone by Kulbir Singh that his brother Jagsir Singh had been murdered by accused Sarup Singh, Swaran Singh, Manjit Singh, Lakha Singh and Sohan Singh, who all were armed with weapons. He further deposed that he took out his car and rushed to the place of occurrence. When he reached at the spot, he talked to Jagsir Singh. He told him that accused Swarani, Sarupi, Manjit, Lakha and Sohan Singh had come there and had given him a shot from 12 bore gun. Then he took him to C.H. Ferozepur City, but he died on the way when they had passed Grain Market. On the way, he was talking also that he should be saved no matter what amount was to be spent. PW-11 SI Surinder Singh is the Investigating Officer of this case, who also conducted the investigation in this case partly and deposed regarding the investigation conducted by him. PW-12 HC Kikkar Singh is a formal witness, who tendered in evidence his affidavit Ex.P.41. PW-13 ASI Bhupinder Singh also made the similar statement as deposed by PW-11. He deposed that he conducted investigation in this case partly. He deposed regarding the arrest of accused Sarup Singh, Lakhwinder Singh and Sohan Singh by ASI Surinder Singh.

He interrogated the above accused. He also proved the recovery of 12 bore gun on the disclosure statement of Sarup Singh with one empty and one live cartridge of 12 bore gun as per the disclosure statement. The other accused got recovered Gandasa by Lakhwinder Singh alias Lakha and Kapa by Sohan Singh. On 22.9.2007, one Scooter Chetak Bajaj No.PB-05G-9082 was taken into possession from the possession of Lakhbir Singh alias Lakhwinder Singh vide recovery memo Ex.P.17.

At the close of prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C. and confronted with the evidence of the prosecution. The accused denied the correctness of the evidence and pleaded themselves as innocent. They also stated that they had been falsely implicated in this case due to previous enmity with the complainant party as they had committed the murder of Beant Singh-brother of Sarup Singh. The accused in defence produced DW-1 Dr. Baldev Raj Arora, S.M.O., C.H., Ferozepur, who mainly deposed that the dead body of Jagsir Singh was brought to the mortuary for post-mortem at 2.10 p.m. Apart from this fact, the dead body was received in mortuary at 2.10 p.m., there is no record regarding the arrival of the dead body of Jagsir Singh.

The learned trial Court convicted and sentenced the accused-appellants as stated above.

We have heard learned counsel for the appellants and learned State counsel for the respondent-State and have gone through the record.

At the time of arguments, learned counsel for the appellants argued that in the present case the occurrence took place on the intervening

night of 17/18.9.2007 at about 1.30 a.m. and the FIR was registered after the delay of 8 hours after concocting the version. They argued that the accused-appellants have been falsely implicated in the present case. The version of the complainant that the accused ran away in the jeep and had come in jeep etc. is not supported and corroborated by any evidence and there is no evidence regarding any number of the jeep, owner of the jeep nor any jeep had been taken into police possession. Rather, as per PW-13 a Scooter had been taken into Police possession being connected with the crime. They further argued that there is only one injury as per the prosecution version suffered by deceased Jagsir Singh and the licensed 12 bore gun had been got recovered by Sarup Singh but there is no recovery from Manjit Singh and Swaran Singh regarding any armed weapon nor there is any evidence that these accused possessed any armed weapon. Learned counsel for the appellants further argued that no injury had been attributed to Lakhwinder Singh and Sohan Singh with Gandasa and Kapa. Rather, the complainant had tried to implicate all these accused falsely in the present case. Learned counsel for the appellants further argued that the version is improbable as five persons cannot come on one scooter. They further argued that accused Manjit Singh and Swaran Singh were found innocent during investigation and they had been summoned on an application filed under Section 319 Cr.P.C. Learned counsel for the appellants argued that the prosecution has failed to prove the case against the accused beyond a reasonable doubt, hence these appeals are liable to be allowed and all the accused are entitled to acquittal.

On the other hand, learned State counsel appearing for the respondent-State has argued that the case of the prosecution has been duly proved by the prosecution beyond doubt. No material contradictions or improvements have been pointed out in the statements of the witnesses. The oral statements of the PWs have been duly supported by medical evidence and investigation of the case. He further argued that the licensed gun was recovered from Sarup Singh and as per FSL report the shot was fired from it which further supports the version that the accused-appellants have committed the offence. He argued that there being no merit in the appeals, these should be dismissed.

After going through the evidence on record minutely and carefully and after hearing learned counsel for the appellants as well as the learned State counsel we find that though there is delay of about 8 hours in recording the FIR but the delay in recording the FIR itself cannot be held as fatal to the prosecution case. In the case of delay, the Court is to scrutinise the evidence more cautiously and carefully to know whether there is any chance of false implication of other accused. A perusal of the evidence on record shows that Jagsir Singh had received one fire arm injury which proved fatal. The licensed gun of Sarup Singh had been recovered as per his disclosure statement. The empty etc. had matched and found fired from the gun as per FSL report and this fact was not contested by the learned counsel for the appellants.

From Manjit Singh and Swaran Singh no weapon had been recovered nor there is any cogent evidence that they were having licensed

weapons. Manjit Singh and Swaran Singh were also found innocent during investigation and later on they had been summoned under Section 319 Cr.P.C. There being only one fire arm injury, which was attributed to Sarup Singh main accused, no injury had been attributed to Manjit Singh and Swaran Singh-appellants. Similarly Lakhwinder Singh and Sohan Singh are stated to have been armed with Gandasa and Kapa and they had got recovered Gandasa and Kapa respectively but they had also not caused any injury to the deceased. A reasonable doubt exists regarding the involvement of Manjit Singh, Swaran Singh, Lakhwinder Singh and Sohan Singh-appellants in the present case specially in view of the fact that no jeep was taken into police possession nor there is any particulars regarding the ownership of the jeep. There is neither any registration number of the jeep nor description has been given of the jeep. As per the Investigating Officer only a scooter had been recovered. It also looks improbable that five persons would come on the scooter.

Keeping in view all these facts and the fact that there is delay of 8 hours in recording the FIR, a reasonable doubt exists regarding the involvement of Manjit Singh, Swaran Singh, Lakhwinder Singh and Sohan Singh-appellants/accused in this case in the commission of the offences. Therefore, by giving the benefit of doubt to appellants-Manjit Singh, Swaran Singh, Lakhwinder Singh and Sohan Singh, they are acquitted of the charges as framed against them and the judgment and order of the learned trial Court qua them are set aside.

As regards appellant-Sarup Singh, he had fired from his

licensed 12 bore gun upon Jagsir Singh. Gun had been recovered as per his disclosure statement and FSL report also connects him with the crime. Kulbir Singh, who is the eye witness and the complainant had supported the prosecution version. There are no material contradictions or improbabilities in the version of the PWs which may go to the root of the case. PW Kulbir Singh has consistently deposed regarding the prosecution version.

As regards the statement of PW-10 Sukhchain Singh, who had deposed regarding the dying declaration of Jagsir Singh, wherein he had stated that Jagsir Singh was talking and told him that accused Sohan Singh, Swaran Singh, Manjit Singh, Lakha Singh alias Lakhwinder Singh and Sarup Singh had come on the spot cannot be relied upon as in view of the FIR, which is the first version given by Kulbir Singh, who stated that he rang up Sukhchain Singh-commission agent, then Sukhchain Singh came at the spot by his car and he and Sukhchain Singh took his brother Jagsir Singh to Civil Hospital, Ferozepur and Jagsir Singh died in the way. In the FIR, there is nothing that Jagsir Singh was conscious or that he stated that all the accused had come on the spot etc.

There is also motive to cause the occurrence as Jagsir Singh (deceased) was convicted in murder case relating to Beant Singh-brother of Sarup Singh-appellant and Jagsir Singh was on bail. Therefore, from the above discussion, we find that judgment of conviction and order of sentence passed by the trial Court qua Sarup Singh-appellant is correct as per evidence and law and the same are upheld qua him.

Therefore, from the above discussion, the Criminal Appeal

No.D-127-DB of 2011 qua appellant No.1-Sarup Singh is dismissed. His conviction and sentence for the offence of murder under Section 302 IPC is maintained. This appeal qua appellants No.2 to 4 i.e. Swaran Singh son of Gajjan Singh, Lakhwinder Singh alias Lakhbir Singh son of Swaran Singh and Sohan Singh son of Manat, stands allowed. This appeal qua them is allowed and the impugned judgment and order dated 7.12.2010 are set aside qua them. The appellants No.2 to 4 are acquitted of the charges framed against them.

The sentence of appellants No.2 to 4 has already been suspended vide separate orders passed by this Court.

The Criminal appeal No.D-105-DB of 2011 is allowed. The impugned judgment and order dated 7.12.2011 in Sessions Trial No.196 of 2010 passed by Additional Sessions Judge, Ferozepur, convicting and sentencing appellant-Manjit Singh, are set aside. The appellant is acquitted of the charges levelled against him. He be released forthwith, if not required in any other case.

(A.B. Chaudhari)
Judge

(Inderjit Singh)
Judge

March 27, 2018.

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No