

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

**(1)                      Crl. Appeal No.D-272-DB of 2011 (O&M)**

Abhey Kumar and another

...Appellants

VERSUS

State of Punjab

...Respondent

**(2)                      Crl. Appeal No.D-511-DB of 2011 (O&M)**

Simrjeet Kaur and another

...Appellants

VERSUS

State of Punjab and others

...Respondents

**Date of Decision: January 25, 2018**

**CORAM:   HON'BLE MR. JUSTICE A.B.CHAUDHARI  
              HON'BLE MR. JUSTICE INDERJIT SINGH**

Present:     Mr.Vinod Ghai, Senior Advocate with  
                  Mr.Harmandeep Singh Brar, Advocate  
                  for the appellants (in CRA No.D-272-DB of 2011).

                  Mr.H.S.Sullar, Deputy Advocate General, Punjab  
                  for the respondent-State.

                  Mr.Anmol Partap Singh Mann, Advocate  
                  for the appellants (in CRA No.D-511-DB of 2011).

**INDERJIT SINGH, J.**

This judgment shall dispose of two connected criminal appeals  
i.e. CRA No.D-272-DB of 2011 and CRA No.D-511-DB of 2011 arising  
out of the same judgment.

**CRA No.D-272-DB of 2011**

CRA No.D-272-DB of 2011 has been filed by the accused-appellants against judgment of conviction and order of sentence dated 14.01.2011 passed by learned Addl. Sessions Judge, Barnala, whereby appellant Abhey Kumar was convicted under Sections 302, 307 IPC and 27 of the Arms Act, whereas appellant Arun Kumar was convicted under Section 302/34 IPC and they were sentenced to undergo imprisonment for life under Section 302/34 IPC along with other sentences and fine. All the sentences were ordered to run concurrently.

The brief facts of the case are that the FIR in the present case has been registered on the statement of Harmail Singh, who got recorded his statement to SI Kulwant Singh on 15.07.2008. Complainant Harmail Singh stated that they are two brothers and name of his elder brother is Jasmail Singh, who used to help his father along with him in agriculture. Abhey Kumar is running a commission agency and money exchange business. They were in possession of some land at Bajakhana road, Bhadaur and they used to cultivate that land. Abhey Kumar had purchased some adjoining land at Bajakhana road, which was also in their possession and they did not give up the possession. There was dispute with Abhey Kumar regarding possession. It is further stated that Abhey Kumar was running illegal business under the garb of Western Union and he had purchased the said plot with black money. When the dispute was pending between them, Abhey Kumar was given slaps by complainant's brother Jasmail Singh and his father Mukhtiar Singh in a marriage party which took place in Khaira Palace, Bhadaur, about 3-4 months back, due to which, Abhey Kumar was keeping the grudge. Complainant also stated that his brother Jasmail Singh,

during the said dispute, moved application against Abhey Kumar to Income Tax Department etc. with regard to Income Tax and deficiency of stamps. Thereafter, the matter was compromised with the intervention of the panchayat and respectables and as per the compromise, the back portion of the land was registered in favour of complainant side. It is further stated that due to the incident of slapping, Abhey Kumar was keeping the grudge. On 16.07.2008, there was ring ceremony of the complainant and betrothal ceremony was to be held on 18.07.2008, whereas marriage was to be solemnized on 19.07.2008. In connection with the marriage, he, Gurpal Singh, Jaspreet Singh and his brother Jasmail Singh, had gone to the shop of Parshotam Electronics situated in Jaid Market, Bhadaur for purchasing electric goods. On 15.07.2008 at 8.00 p.m., one another person was also sitting with Parshotam in his shop. They were busy in talking with each other. In the meantime, Abhey Kumar and his son Prince Kumar came at the shop on motorcycle bearing registration No.PB-13M-8399. They alighted from the motorcycle. On seeing Jasmail Singh, Prince Kumar asked his father that his enemy is sitting inside the shop and he should take revenge of his insult. Thereafter, Abhey Kumar fired two shots from his pistol which hit on the chest of Jasmail Singh, two shots were fired by him on the back of shoulder of Jasmail Singh and one shot was fired by him on his back and when Prince tried to snatch the pistol from Abhey Kumar, one shot hit on the person, who was sitting in the shop and thereafter, Jasmail Singh fell on the ground. Then Prince gave one shot on his back and thereafter, both of them ran away from the spot on their motorcycle. Complainant further stated that they took Jasmail Singh in their car to Civil Hospital, Bhadaur, where he was declared brought dead by the doctor.

Other person, who was injured at the spot, was taken to Civil Hospital, Barnala. On the basis of this statement, ruqa was sent to the police station, whereupon, FIR was registered. Accused Abhey Kumar was arrested. .32 bore pistol was recovered from him. During investigation, Arun Kumar was found innocent. After necessary investigation, challan was presented against the accused-appellant Abhey Kumar.

On presentation of challan, copies of challan and other documents were supplied to the accused-appellant Abhey Kumar under Section 207 Cr.P.C. Finding prima facie case, appellant Abhey Kumar was charge-sheeted under Sections 302/307 IPC and Section 27 of the Arms Act, to which he pleaded not guilty and claimed trial.

Thereafter, on the application under Section 319 Cr.P.C., accused-appellant Arun Kumar @ Prince was summoned to face trial along with accused Abhey Kumar and both the accused were charge-sheeted under Sections 302/307/34 IPC and Section 27 of the Arms Act, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Harmail Singh, who is complainant in this case. He consistently deposed regarding prosecution version as he has given in the FIR. PW-2 Gurpal Singh also deposed same facts and corroborated the statement of the complainant. PW-3 Dr.Raj Kumar, Medical Officer, mainly deposed regarding information Ex.PA sent to the police. PW-4 Dr.Jaswinder Pal, Medical Officer, deposed that he conducted post-mortem examination on the dead body of Jasmail Singh on 16.07.2008 and found following injuries:-

- 1. A wound measuring 1 x1 cm on left side of chest, 5 cm lateral to sternum the level of sixth rib. Edges are inverted,*

*margins blacked.*

2. *A wound measuring 1.55 x 1 cm on right side of chest ,5 cm lateral to the sternum. Edges are everted and underlying tissue sprouting out of wound margin.*

3. *A wound measuring 1 x 1.5 cm on left side of chest at the level of 3<sup>rd</sup> rib. 6 cm lateral to the sternum. Edges were everted. Underlying tissues were sprouting out.*

4. *A wound measuring 1 x 1 cm on posterio medial aspect of right arm, 6 cm from the shoulder top. Edges inverted. Blacking of the margins.*

5. *A wound measuring 1 x 1.5 cm on left side of back, 6 cm from the vertebral column at the level of T-11 vertebra. Edges were everted. Underlying tissue sprouting out through wound.*

6. *A wound measuring 1 x 1 cm on the right side of back. 5 cm from the vertebral column at the level of T-12 vertebra. Blacking of marginal.*

7. *Wound measuring 1 x1 cm on the back of chest on right side. 2 cm downwards from anterior angle of scapula and 12 cm from midline at the level of T-8 vertebra. Edges were inverted and blacking of margins.*

8. *A wound measuring 1 x 1 cm 5 cm lateral to injury No.7. Margins are blackened. Edges are inverted.*

*All other organs of body were healthy, except the organs within the thoracic cavity. Plural cavities full of blood.*

PW-4 further deposed that there were two bullets lodged in the subcutaneous tissue on left side of chest. One was 5 cm above the left nipple and second was 6 cm below the left nipple. Both the bullets were removed and handed over to the police. In the opinion of the doctor, the cause of death in this case, was due to haemorrhage and shock due to injuries to vital organs, including heart and major blood vessels, as a result of multiple gun shots, which were sufficient to cause death in the ordinary course of nature. All the injuries were ante-mortem in nature. The doctor

further deposed that time between injuries and death was instant and

between death and post-mortem was about 24 hours. In cross-examination, the doctor stated that out of eight injuries described by him, five were entry wounds and three exit wounds. PW-5 Dr.Subhash Singla, Medical Officer, mainly tendered into evidence his affidavit Ex.PW5/A, in which he stated that he medico legally examined Rajiv Kumar on 15.07.2008 and found following injury:-

*“Lacerated wound rounded measuring 0.8 cm x 0.8 cm on the superior lateral aspect of right shoulder, with inverted margins and adjacent skin shows abraded collar. Fresh bleeding was present from the wound, X-ray and ortho opinion was advised. There was corresponding tear/rent present in the shirt which was signed marked and sealed and handed over to police. Sample of seal used to seal bearing impression was also handed over to police.*

*Nature of injury was declared after x-ray, ortho opinion, and surgical opinion. Probable duration of injury was within six hours and kind of weapons used was fire arm.”*

PW-6 Rakesh Bansal, Draftsman, mainly deposed regarding preparing of scaled site plan. PW-7 Head Constable Sarabjit Singh, formal witness, tendered into evidence his affidavit Ex.PV. PW-8 Rajiv Kumar, injured witness deposed that on 15.07.2008, he had gone to shop of Parshotam Dass to purchase electronic goods situated in Jaid Market, Bhadaur. He was sitting near the counter in the aforesaid shop. Parshotam Lal was sitting in front of him. After 2-3 minutes, Jasmail Singh and his companions came and Jasmail Singh sat besides him. At about 7.45-8.00 p.m., there were 3-4 fire shots from his back side, which struck Jasmail Singh on his front side on the chest and one shot struck on his (Rajiv Kumar) shoulder. This witness further deposed that he does not know as to who had fired the shots. People who had gathered at the spot, got him admitted in the hospital. Firstly, he was taken to Civil Hospital, Bhadaur

from where he was referred to Civil Hospital, Barnala. In cross-examination, this witness stated that he got recorded his statement Ex.PX as heard from the people. He got recorded the statement as having come to know about the manner of the same from the people while he was present in the hospital. He also deposed that at that time, his back was facing towards backside of the market and Jasmail Singh was facing towards market side. He was sitting at distance of 3-4 feet from Jasmail Singh. He also stated that shots were fired one after another continuously. Again said, they were simultaneously fired. Shot struck him as well as Jasmail Singh simultaneously. PW-9 Jugraj Singh @ Raju mainly deposed that he is owner of motorcycle bearing registration no.PB-13M-8399. He further deposed that he sold the above-said motorcycle to accused Abhey Kumar about 2¾ years ago and original affidavit Mark-A was given by him to Abhey Kumar accused. He also stated that he handed over the RC of motorcycle to the police which was recovered by the police. PW-10 Smt.Manjit Kaur, Senior Assistant, D.M. Office, mainly brought the record pertaining to arms licence of Abhey Kumar. PW-11 Head Constable Tara Singh, formal witness, tendered into evidence his affidavit Ex.PW11/A. PW-12 SI Satwinder Singh deposed regarding preparing of scaled site plan. He also deposed that Ajay Kumar brother of Abhey Kumar had produced arm licence of Abhey Kumar which was taken into police possession. He also deposed regarding taking RC of the motorcycle from Jugraj Singh, which was taken into police possession. PW-13 SI Kulwant Singh mainly deposed regarding investigation of this case. He also deposed that he lifted four empty cartridges of.32 bore and sealed parcels were prepared. On

interrogated accused Abhey Kumar, who disclosed that he had kept concealed his licenced pistol .32 bore along with two magazines and cartridges underneath a cloth spread on a platform raised in his shop and only he knew about the same and he got recovered the same as per disclosure statement. SI Kulwant Singh further deposed that on 22.07.2008, he arrested Arun Kumar @ Prince and interrogated him. Learned Public Prosecutor tendered into evidence reports of FSL Ex.PXX, PYY and PZZ and closed the prosecution evidence.

At the close of the prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent. They further deposed that they have not committed murder as alleged. PWs have deposed falsely. The complainant party is police informer and as such, police has fabricated present false case in connivance with complainant party. In defence, accused-appellants examined DW-1 DSP Baljit Singh, Vigilance Bureau, Amritsar, who mainly deposed that he investigated the matter and sent ASI Ashok Kumar, CIA Staff and his reader HC Hardeep Singh to Delhi to verify the documents and both of them submitted the report along with copies of documents. He submitted enquiry report Ex.D1, which is signed by him. He found accused Arun Kumar @ Prince to be innocent and recommended his discharge in this case. He also deposed that mother of Arun Kumar @ Prince filed application for enquiry of this case as her son was not present on the spot but was present in Delhi in Rajan Hotel. DW-2 Shiv Shanker Shah brought the original entry register dated 15.07.2008 of

taken at 1.30 p.m. and the purpose mentioned is business. This room was vacated by the visitor at 8.50 p.m. on the same day. DW-3 SP Harbhajan Singh deposed regarding enquiry marked to him by the then SSP. He deposed that he collected reservation form during this enquiry from New Delhi Railway Station which was filled by Arun Kumar on 15.07.2008 and ticket was also collected from Railway Station. He recorded the statement of Sh.M.S.Meena, Chief Enquiry and Reservation Supervisor in this connection, which was written by his Reader on 02.04.2009 as per his direction and one memo was prepared which was signed by Sh.M.S.Meena. He also deposed that handwriting of Arun Kumar @ Prince on the reservation form was got compared and report of Assistant Director, FSL, Punjab is Ex.DW3/M.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants as stated above.

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellant Abhey Kumar contended that he wanted to withdraw appeal qua Abhey Kumar as his case for premature release is ready and is to be considered only if no appeal etc. is pending. Learned counsel for appellant Arun Kumar @ Prince argued that prosecution has failed to prove the guilt of accused Arun Kumar beyond reasonable doubt and he has been wrongly convicted and sentenced by the trial Court. He next argued that first of all, Arun Kumar, as per prosecution version, was stated to be empty handed.

PW complainant, even in chief-examination and in the FIR has stated that

Abhey Kumar had fired five shots and as per the statement of doctor PW-4

Dr.Jaswinder Pal, there were five entry wounds on the person of Jasmail Singh besides three exit wounds, which means that all the shots were fired by Abhey Kumar and the version that Arun Kumar after snatching the pistol fired shot on the deceased is not supported and corroborated by the medical evidence. Even PW-1 Harmail Singh, complainant, in chief-examination has again deposed regarding five shots fired by Abhey Kumar. Learned counsel for the appellant Arun Kumar further argued that revolver was got recovered by Abhey Kumar from which the shots were fired. It is also argued that injured PW-8 Rajiv Kumar has nowhere stated that Arun Kumar has fired upon him. He has stated in his chief-examination that he has not seen the person who fired upon him because his back was towards the market side and this witness has not supported the prosecution version qua Arun Kumar. Learned counsel for the appellant Arun Kumar contended that DWs have duly proved through enquiries and by bringing the hotel record that Arun Kumar was at Delhi and that he filled the railway reservation form, which was got compared in the FSL and in both the enquiries, he was found innocent and even during investigation also, he was found innocent. Learned counsel for the appellant Arun Kumar, therefore, argued that there being merit in the present appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that PWs have also deposed against accused Arun Kumar that he has fired upon the deceased after snatching the pistol. He further argued that Arun Kumar @ Prince had come with accused Abhey Kumar, which shows that his intention was to commit the crime. Learned State counsel, therefore, argued

that both the accused have been rightly convicted and sentenced by the trial

Court and there being no merit in the appeal, the same should be dismissed.

After hearing learned counsel for the appellants as well as learned State counsel and after going through the record, we find that, as regarding appellant Abhey Kumar, learned counsel has not argued anything. The perusal of the statements of the eye witnesses PW-1 Harmail Singh and PW-2 Gurpal Singh shows that Abhey Kumar fired shots upon the deceased from .32 bore pistol. PW-1 Harmail Singh has deposed regarding five shots fired upon the deceased by Abhey Kumar, which is supported and corroborated by medical evidence as five wounds were found as entry wounds and three were exit wounds. The pistol was also got recovered from Abhey Kumar. The ocular evidence has been duly supported by medical evidence as well as recovery of pistol and as per FSL report, shots were fired with the recovered pistol. Furthermore, learned counsel for the appellant Abhey Kumar has not pointed out anything against the conviction of Abhey Kumar and rather, prayed for withdrawal of the appeal qua him.

Vide separate order of even date, the application filed by appellant Abhey Kumar praying for withdrawal of the appeal qua him, has already been disposed of and appeal qua him has been dismissed as withdrawn.

As regarding accused-appellant Arun Kumar, we find that firstly, as per prosecution version, he was empty handed. The version of eye witness-complainant Harmail Singh that Arun Kumar snatched the pistol and fired upon the deceased, is not supported and corroborated by medical evidence. As per his version in the FIR as well as in the chief-examination, five shots were fired upon the deceased and as per post-

mortem examination report and statement of PW-5 Dr.Jaswinder Pal, there

were five entry wounds and three exit wounds, which means that all the shots were fired by accused Abhey Kumar and not by Arun Kumar. Secondly, as per prosecution version, PW-8 Rajiv Kumar was injured by Arun Kumar but perusal of statement of PW-8 shows that he has nowhere deposed anything against Arun Kumar. Rather, he stated that he has not seen the person who fired upon him as he was sitting having his back towards the market side and has not seen the person who has fired upon him. Therefore, injured has also not deposed against accused-appellant Arun Kumar.

Further, we find that DW-2 Shiv Shanker has brought the register of the hotel showing entry in the hand of Arun Kumar and he was at Delhi on that day. Further, DW-1 DSP Baljit Singh and DW-3 SP Harbhajan Singh have conducted enquiries and found that Arun Kumar filled the railway reservation form and collected the railway ticket from Delhi, which also creates doubt regarding the presence of Arun Kumar at the place of occurrence. During investigation also, the police found him innocent and he was later on summoned under Section 319 Cr.P.C. The perusal of the evidence on record shows reasonable doubt regarding involvement of Arun Kumar and prosecution has failed to lead cogent evidence to prove the guilt of accused Arun Kumar beyond reasonable doubt.

In view of the above discussion, we find that the impugned judgment of conviction and order of sentence dated 14.01.2011 passed by learned Addl. Sessions Judge, Barnala, qua appellant Arun Kumar are not as per evidence and law and the same are set aside qua appellant Arun Kumar

and he is acquitted of the charges framed against him.

At the time of arguments, learned counsel for the victims/legal representatives Simrjeet Kaur and Jasmine Kaur wife and daughter of the deceased respectively also argued that no compensation has been awarded in this case. We have considered the request of LRs of deceased Jasmail Singh. It is also stated that Abhey Kumar is the person of means as per evidence and he was doing business of money exchange and running a commission agency. The main appeal qua Abhey Kumar has already been dismissed as withdrawn and he has been found guilty for murder of Jasmail Singh.

Keeping in view the above facts, we award ₹5 lakhs as compensation payable to Simrjeet Kaur and Jasmine Kaur, wife and daughter of deceased Jasmail singh, which they will receive in equal share. Accused Abhey Kumar is directed to deposit the compensation amount with the trial Court within three months for disbursement to above L.Rs, as per law.

CRA No.D-272-DB of 2011 stands allowed qua appellant Arun Kumar and the same stands dismissed qua appellant Abhey Kumar.

**CRA No.D-511-DB of 2011**

CRA No.D-511-DB of 2011 has been filed by appellants for enhancing the sentence imposed upon the accused and for grant of compensation.

We have heard learned counsel for the appellant and have gone through the proviso attached to Section 372 Cr.P.C., which provides as under:-

*“Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing*

*inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”*

As per this proviso, appeal under Section 372 Cr.P.C. cannot be filed for enhancing of the sentence, rather appeal can be filed under the provisions of Section 372 Cr.P.C. where trial Court convicted the accused for a lesser offence. Therefore, appeal regarding enhancing the sentence is not maintainable. Similarly, as the trial Court has not awarded any compensation, therefore, appeal is also not maintainable for awarding compensation. It can only be filed if inadequate compensation has been imposed.

In view of the above discussion, we find that the present appeal i.e. CRA No.D-511-DB of 2011 filed for enhancing the sentence imposed upon the accused and for awarding compensation, is not maintainable, therefore, the same is dismissed.

However, the fact remains that L.Rs of deceased have already been awarded compensation in the main appeal filed by convicts/appellants.

**(A.B.CHAUDHARI)**  
**JUDGE**

**(INDERJIT SINGH)**  
**JUDGE**

**January 25, 2018**  
Vgulati

Whether speaking/reasoned  
Whether reportable

**Yes**  
**No**