

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

**CRA-D-740-DB of 2012 (O&M)
Date of Decision: 19.03.2018**

Balwinder Singh @ Minkal Bajaj

...Appellant

VERSUS

Union Territory, Chandigarh

...Respondent

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

Present: Ms. Baljit Mann, Advocate
for the appellant.

Ms. Ashima Mor, APP
for the respondent-U.T. Chandigarh.

Mr. Ramdeep Partap Singh, Advocate
for the complainant.

INDERJIT SINGH, J.

The present appeal has been filed by appellant-Balwinder Singh @ Minkal Bajaj challenging the judgment of conviction dated 14.07.2012 and order of sentence dated 17.07.2012, passed by learned Additional Sessions Judge, Chandigarh, whereby he was convicted and sentenced to undergo imprisonment for life and to pay a fine of ₹25,000/- under Section 302 IPC and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years.

The brief facts of the case are that FIR, in the present case, was registered on the basis of statement got recorded by Kiran Harpreet Kaur Cheema to Inspector Mahabir Singh, on 13.07.2010. In her statement, she stated that she had two brothers, the elder one lives in Canada and the

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younger one Tripatdeep Singh @ Tippa was living in Muktsar. Tripatdeep Singh Sekhon was visiting her in Zirakpur for the last several days in connection with his work. On 13.07.2010, Tripatdeep Singh took her daughter Abir, aged about 4½ years and Kinetic bearing No.PB-58-F-2457 to visit a family friend Paramjit Kaur daughter of Gurjant Singh, r/o House No.1610, Sector 7-C, Chandigarh, who also belonged to Muktsar. The complainant received telephonic information that Tripatdeep Singh was admitted in Sector-16 Hospital in an injured condition. Thereafter, she rushed to emergency Ward, General Hospital, Sector-16, Chandigarh where Paramjit Kaur was also present. She asked Tripatdeep Singh how the incident occurred and in the presence of Paramjit Kaur and the police, he told her that he had been shot by Balwinder Singh @ Minkal Bajaj and his companions. Thereafter, his condition deteriorated and he was referred by the doctors to PGI. She reached PGI in government ambulance where the doctors in emergency declared him dead. Minkal Bajaj and his accomplices had murdered her brother with gun shot on account of previous enmity. On this statement, ruqa was sent to the police station, upon which, FIR was registered. Site plan was prepared and statements of witnesses were recorded. Inquest proceedings were conducted. Post-mortem was also got conducted on the dead body. On 28.07.2010, accused-Balwinder Singh @ Minkal Bajaj was arrested. Car Santro bearing No.PB-30-F-5935, revolver . 32 bore B-3480 and 4 live cartridges .32 bore were recovered from his possession. After necessary investigation, challan was presented against the accused-appellant.

On presentation of challan against appellant-accused, copies of

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challan and other documents were supplied to him under Section 207 Cr.P.C. Finding *prima facie* case, the appellant was charge-sheeted under Section 302 IPC and Section 25 of the Arms Act, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW 1 SI Inder Singh, who deposed regarding recording of formal FIR Ex.PB on receiving ruqa Ex.PA.

PW 2 Sub Inspector Dharampal was the incharge of PCR gypsy No.CH01G1-6271. He stated that on 13.07.2010, at around 4.15 P.M., he received wireless message from Control Room that one person is lying in injured condition near Grewal Eye Institute, Sector 9, Chandigarh. He visited the spot and on the backside of the said institute, he found one person lying in injured condition who disclosed his name as Tripatdeep Singh. He alongwith other police officials lifted the injured and shifted him to the General Hospital, Sector 16 Chandigarh for treatment. When he reached General Hospital, Sector 16, Chandigarh, Harkiranjeet Kaur, who disclosed herself to be sister of injured also reached there and he also met Paramjit Kaur. He further stated that in the presence of Paramjit Kaur and Harkiranjeet Kaur, the injured disclosed him that he has been gunshot by Minkal Bajaj. When they approached the doctor in the emergency, the injured became serious and was treated and referred to PGI and the injured was shifted to PGI. He also deposed that thereafter, he came to the spot of occurrence and Inspector Mahavir Singh inspected the spot at his instance and prepared the rough site plan. From the spot, one scooter kinetic bearing NO.PB58F-2457 was taken in police custody vide memo Ex.PD.

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Thereafter, he came to know that the injured had expired in PGI.

PW 3 Constable Daljit mainly deposed in respect of delivering Special Reports to Illaqa Magistrate and senior officers. PW 4 Constable Robin mainly deposed that during the period the sealed parcels remained with him, neither he tampered with the same nor allowed anybody to tamper with the same. PW 5 Gursewak Mann deposed that he identified the dead body of Tripatdeep Singh @ Tippa. PW 6 Kiran Harpreet Kaur, complainant mainly deposed as per the prosecution version. She also deposed regarding the oral dying declaration made by her brother (now deceased) in the presence of Paramjit Kaur and Sub Inspector Dharampal that he had been shot by Minkal Bajaj alias Balwinder. This witness also identified the accused present in the Court. PW 7 Constable Ramesh mainly deposed in respect of depositing the sealed parcels in intact condition. PW 8 Head Constable Yash Pal mainly proved the scaled site plan Ex.PJ. PW 9 Ramesh Kumar Gandhi did not support the prosecution version and turned hostile.

PW 10 Paramjit Kaur also deposed as per the prosecution version. She stated that she is working in a private company and living with her father and younger sister. They hailed from Mukatsar. Tripatjit Singh Sekhon alias Tippa was also native of Mukatsar and was known to them being a family friend. His sister namely Kiran Harpreet Kaur used to live in Silver City Zirakpur. Whensoever, Tripatjit Singh alias Tippa used to visit her sister, he occasionally also visited them. On 13.07.2010, at about 3.45 P.M., Tripatjit Singh alias Tippa alongwith his niece Abir Sekhon had come to the residence of this witness on Kinetic Scooter belonging to his sister.

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When he visited her (witness), he was receiving phone calls. Once he had disconnected a mobile call and thereafter, his mobile again rang and he received a call and then left her house. His niece Abir Sekhon remained at her residence. While going, he disclosed to her that he had some work in Sector 9, thus he was going there. After about 10-15 minutes of his departure, she received his call on her mobile No.9988303899 from Tippa's mobile No.9988400021. This mobile number was used by the deceased. Vide that call, he disclosed to her "*Mainu Minkal Bajaj Ne Goli Mar Ditti Hai*" and "*Tusi Sector 9 Grewal Institute Di Backside Te Aa Jai Te Police Nu Ve inform kar do*". She further deposed that she disclosed the above facts to her family friend Manpreet Singh on his mobile and also told him to inform the police. She hired an auto and reached the area backside of Grewal Hospital, Sector 9, Chandigarh. On reaching there, she had seen Tripatjit Singh being removed in a police gypsy. She told that automan to follow the said gypsy of police. Then the said gypsy as well as her auto reached General Hospital, Sector 16, Chandigarh. In the meantime, she had also called upon one Goldy alias Lakhvinder. Kiran Harpreet Kaur, sister of Tippa also reached General Hospital and at that time, Tripatjit Singh alias Tippa was being taken to the Emergency after putting in stretcher after taking from PCR gypsy. They followed Tripatjit Singh alias Tippa on stretcher towards emergency. SI Dharam Pal of PCR was also accompanying them at that time. During that process, Kiran Harpreet, sister of Tippa had asked Tippa what had happened, to which he had disclosed that he had been shot by Minkal Bajaj. After checking Tripatjit Singh, the doctor referred him to PGI. She alongwith Kiran Preet had taken Tippa to

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PGI in an ambulance. In PGI emergency, the doctor after checking Tripatjit Singh had declared him brought dead. Accused Minkal Bajaj was having rivalry with Tripatjit Singh on the pretext of one MMS pertaining to his sister as well as political rivalry. An FIR regarding the said occurrence of MMS stood registered against Tippa and he was finally found innocent and released. Due to the said reason, Minkal Bajaj was inimical towards Tippa due to which the accused shot Tippa. She also stated that her mobile No.9988303899 is in the name of Bhupinder Singh, who resides in USA.

PW11 MMHC Mahe Singh mainly deposed regarding sending the sealed parcels to CFSL. PW 12 Sh.B.P.Singh, Senior Scientific Officer deposed regarding examination of sealed parcels. PW 13 Dr.Amritanshu Sharma mainly deposed regarding preparing of death summary of Tripatdeep Singh @ Tippa. PW 14 Dr.Amandeep Singh deposed that he along with Dr.Rajwinder and Dr. A.Joshi, conducted post-mortem examination on the dead body of Tripatdeep Singh and found following injuries:-

1. *Punctured wound .5.x.5 cm with surrounding abrasion 1.5 x 1 cm (Radish brown). Surrounding area of the punctured wound is blackened.*

Wound was present on the front of left side of abdomen 10 cm from the mid-line 6 cm inner and below anterior superior iliac spine. On dissection the track of wound was passing through sub-cutaneous tissue, muscles of anterior abdomen wall, pelvir colon through and through after piercing left iliac branch of abdomen aorta and pierced the sacrum. Sacrum fractured and having metallic bullet embedded into it, which was extracted initiated (RS) on the base, sealed and handed over to the police.

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shock and haemorrhage due to gun-shot injuries as described which was sufficient to cause death in ordinary course of nature. The probable time that elapsed between injury and death was recent and between death and post-mortem was 12 to 24 hours. PW 15 Constable Harpal Singh mainly brought the duty roster record of PCR vehicles. PW 16 SDE-CM-CCN Rajinder Singh, BSNL brought the mobile connection record along with tower location and call details. PW-17 Manpreet Singh also deposed as per the prosecution version. PW 18 Amit Kumar, Nodal Officer mainly brought the summoned record i.e. call details. PW 19 Dr. Sanjeev deposed that seals were intact with specimen seals when the sealed parcels were received by him. PW 20 Lakhwinder Singh deposed that on 13.07.2010, he received telephonic call from his neighbour Paramjit Kaur that Tippa had been removed to hospital in injured condition and he was told to give telephonic call to his sister Kirandeep Kaur. He made a call to Kirandeep Kaur and told her that Tippa had been removed to the hospital and she should reach there. Thereafter, he came to know that Minkal Bajaj had shot down Tippa.

PW 21 Head Constable Gurdev Singh brought the summoned record of case FIR No.42 dated 18.02.2010 and deposed that as per the record, no allegation was found against the accused therein. PW 22 Neeraj Kumar, Clerk mainly brought the record pertaining to vehicle No.PB-30F-5935, which stands registered in the name of Surjit Singh. PW 23 Rajinder Singh, Licensing Passport Assistant proved the Arm Licence in the name Balwinder Singh. PW 24 Raj Kumar proved the sanction order under Section 39 of Arms Act to prosecute accused-Balwinder Singh alias Minkle Bajaj. PW 25 Saurabh Girdhar, did not support the prosecution version and

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turned hostile. PW 26 SI Mohan Lal, who accompanied Investigating Officer, deposed regarding investigation of the case. PW 27 Inspector Mahabir (Retd.), Investigating Officer, mainly deposed regarding investigation conducted by him in the present case. PW 28 Debo Chakravartty, Nodal Officer, Bharti Airtel Limited mainly brought the summoned record i.e. call details.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent. He further pleaded that he did not have any enmity with injured. On the day of occurrence, he was at Muktsar. The police tried to introduce many persons as eye witnesses, allegedly accompanying him but none has supported the prosecution case. He also pleaded that police tried to fix revolver upon him and the weapon has not been connected with the crime and also the police has tried to put forward oral dying declaration of injured/deceased.

In defence, accused-appellant examined DW 1 Head Constable Paramjit Singh, who mainly brought the summoned record i.e. DDR Register from 17.07.2010 to 07.08.2010 and it contains entry DDR No.20 dated 18.07.2010.

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

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

We have heard learned counsel for the appellant, learned State

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counsel as well as learned counsel for the complainant and have gone through the record.

At the time of arguments, learned counsel for the appellant argued that in the present case, the prosecution has failed to prove its case against the appellant-accused beyond reasonable doubt and, therefore, judgment of conviction and order of sentence passed by the trial Court are liable to be set aside and the accused is entitled to acquittal. She further argued that as per the CFSL report, no definite opinion has been given whether the bullet was fired from the pistol recovered from the accused. She further argued that even as per the case of prosecution, Tripatdeep Singh @ Tippa (now deceased) fell unconscious after 2-3 minutes after giving the oral declaration. There is no cogent evidence on record especially medical evidence that Tripatdeep Singh @ Tippa was in conscious condition after receiving the injuries. She further argued that conduct of Paramjit Kaur not calling the police or Kiran Harpreet Kaur, sister of the deceased also creates a reasonable doubt in the prosecution version. She further argued that blood was not lifted from the spot by the Investigating Officer. The eye-witness has turned hostile. The call details are not proved and motive is a double edged weapon and the accused has been falsely implicated in this case.

On the other hand, learned State counsel as well as learned counsel for complainant argued that case of the prosecution has been duly proved by the witnesses, who have deposed regarding the oral dying declaration given by Tripatdeep Singh @ Tippa. The oral dying declaration has been duly proved by complainant-Kiran Harpreet Kaur (PW 6), Sub Inspector Dharampal (PW 2) and Paramjit Kaur (PW 10). The presence of

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Sub Inspector Dharampal cannot be disputed as he got the injured (now deceased) shifted in the PCR and was present on the spot. Similarly, as per the evidence, injured-Tripatdeep Singh @ Tippa telephoned Paramjit Kaur and made the statement and she was also present in the hospital where this oral dying declaration was made by injured-Tripatdeep Singh @ Tippa (now deceased). Similarly as per the evidence, sister of the deceased also reached on receiving the telephonic message. They further argued that in view of the oral dying declaration which is duly corroborated and supported by the statements of material prosecution witnesses, the guilt of the accused has been duly proved beyond doubt. Learned State counsel also argued that there is nothing unnatural in the conduct of the prosecution witnesses. The motive is also there and the witness has also proved the call details and, therefore, case of the prosecution is duly proved beyond doubt and the impugned judgment and order of sentence passed by the trial Court are correct one.

After hearing learned counsel for the appellant, learned State counsel as well as learned counsel for the complainant and perusing the evidence, we find that case of the prosecution has been duly proved by the prosecution witnesses. No material contradictions or improvements have been pointed out in the statements of the witnesses which may go to the root of the case. The prosecution witnesses especially complainant-Kiran Harpreet Kaur (PW 6), Sub Inspector Dharampal (PW 2) and Paramjit Kaur (PW 10) have consistently deposed regarding the oral dying declaration. Perusal of statements of these witnesses especially the cross-examinations does not show anything from which their statements can be held as

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unreliable. In no way, the version of prosecution can be held as unnatural or improbable one. As per evidence, Tripatdeep Singh @ Tippa (now deceased) alongwith minor daughter of his sister came to the house of Paramjeet Kaur (PW 10) on a scooter where he left the minor daughter. On receiving a telephonic call, he left the house of Paramjeet Kaur. After receiving the fire-arm injury, he rang up Paramjeet Kaur and asked her to reach immediately at the place of occurrence and he also stated that accused-Minkal Bajaj had injured him by firing. As per Paramjit Kaur (PW 10), she immediately reached on the spot, but in the meantime, the PCR lifted the injured and took him to the General Hospital, Sector 16 Chandigarh. In the meantime, Paramjit Kaur informed other persons and one of them informed the complainant, who also reached in the hospital. This version given by the prosecution witnesses is consistent. There is nothing to disbelieve the version of the prosecution especially the oral dying declaration given by Tripatdeep Singh @ Tippa (now deceased). The material witnesses have deposed that when they were shifting Tripatdeep Singh @ Tippa (now deceased) to the emergency in the hospital, at that time he fell unconscious. Sub Inspector Dharampal is an official/independent witness. There is no reason or ground why he will depose falsely against the accused. He has no enmity with the appellant-accused to depose falsely against him. The weapon was recovered from the accused, though as per CFSL report, no definite opinion could have been given but this fact itself will not be fatal to the case of prosecution. The motive is also proved by the prosecution witnesses that the deceased had sent some MMS to the sister of the accused and FIR, itself was already got registered against Tripatdeep

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Singh @ Tippa (now deceased). The mere fact that the Investigating Officer has not collected the blood from the spot or it was not found at the spot, also does not affect the case of the prosecution.

It is the case that when the deceased was brought to the general hospital, he was conscious and gave the oral dying declaration. Admittedly, there is no evidence on record that at that time, any doctor was present. However, when he was shifted to the emergency, then he fell unconscious. As the doctor was not present at the time of oral dying declaration, therefore, no doctor was examined to show that the injured (now deceased) was fit or not fit to make the statement. It is the case of the prosecution that Tripatdeep Singh @ Tippa (now deceased) received fire-arm injuries and he was bleeding profusely and was alive when he was shifted from the spot. Even if the eye-witness has turned hostile, it will not create any doubt in the prosecution case in the fact and circumstances of this case. The oral evidence is also supported by the medical evidence and investigation of this case. The material prosecution witnesses are natural and reliable and by relying upon their statements, we find that the prosecution has duly proved its case beyond reasonable doubt.

Therefore, from the evidence on record, we find that prosecution has duly proved its case by leading cogent evidence and no reasonable doubt exists in the prosecution version. The findings have been given by learned trial Court while appreciating the evidence in right perspective.

In view of the above discussion, we find that the impugned judgment of conviction dated 14.07.2012 and order of sentence dated

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17.07.2012 passed by the learned Addl. Sessions Judge, Chandigarh, are correct, as per evidence and law; do not require any interference from this Court and the same are upheld.

Therefore, finding no merit in the present appeal, the same is dismissed.

19.03.2018
parveen kumar

(A.B. CHAUDHARI) (INDERJIT SINGH)
JUDGE JUDGE

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