

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

**Criminal Appeal S-553-SB of 2010
Date of Decision: May 4, 2018**

Labh Singh

.....Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. G.S. Punia, Senior Advocate with
Ms. Jagriti Kalia, Advocate
for the appellant.

Mr. Davinder Bir Singh, Deputy A.G., Punjab.

Mr. P.S. Ahluwalia, Advocate
for the complainant.

T.P.S.MANN, J.

Labh Singh and Karamjit Singh, the two accused, were tried for committing the offences punishable under Sections 307, 506 and 34 IPC and Section 27 of the Arms Act. Vide judgment and order dated 13.2.2010, learned Additional Sessions Judge, Patiala convicted Labh Singh accused under Section 336 IPC and Karamjit Singh accused under Section 336 read with Section 34 IPC and sentenced them to undergo imprisonment for

three months each. Both of them were also convicted under Section 506 IPC and sentenced to undergo imprisonment for two years each. Labh Singh accused was also convicted under Section 27 of the Arms Act and sentenced to undergo imprisonment for three years and to pay a fine of Rs.500/- and in default of payment of fine, to undergo rigorous imprisonment for one month. All the substantive sentences were ordered to run concurrently.

Aggrieved of their conviction and sentence, Labh Singh accused filed present Criminal Appeal S-553-SB of 2010 whereas Karamjit Singh accused filed Criminal Appeal S-561-SB of 2010 wherein they prayed for setting-aside their conviction and sentence. Kesar Singh complainant also filed Criminal Revision 1694 of 2010 praying therein that the acquittal of Labh Singh and Kesar Singh under Section 307 IPC be set-aside and they be convicted and sentenced for the said offence. He also sought enhancement of sentences of both the accused for the offences under Sections 336, 506 read with Section 34 IPC and Section 27 of the Arms Act with a further prayer that both the convicts be directed to compensate him and his family members.

As both the appeals and the revision arise out of one and the same judgment of conviction and sentence passed by the learned trial Court, they are being disposed of by a common

judgment.

According to the prosecution on 4.2.2007 at about 5.30 p.m., complainant Kesar Singh alongwith family members was going to the Police Station to lodge the report and when they reached the bus stand of village Ganda Kheri, they met ASI Mohan Lal, before whom the complainant made a statement that he was resident of village Lakhomajra, Police Station Sadar Rajpura, District Patiala and an agriculturist by profession. Behind his house was the house of Karamjit Singh accused, who had raised the plinth by putting earth and sown vegetables. About a week before Karamjit Singh watered the vegetables with the help of submersible tubewell and the water seeped into complainant's house through the foundation of his house. The complainant summoned Karamjit Singh and showed him the water, which had seeped into his house, who stated that the land belonged to him and he could do whatever he wanted. On 3.2.2017, the complainant's mother went on to the roof of her house and told Karamjit Singh that the wall of her house was getting wet. On this, Karamjit Singh used filthy language to the complainant's mother by proclaiming that he would also see her. During the night at about 9.00 p.m., the complainant was putting fodder to his buffalo in the cattle shed and at that time his wife Paramjit Kaur and son Satnam Singh was also there. Karamjit Singh came out of his

house, followed by Labh Singh, who was posted as a gunman with some officer. Labh Singh brought his motor-cycle in the street and after starting the same, Karamjit Singh and others saw the complainant and his son with the headlight of the motor-cycle. Karamjit Singh started abusing the complainant and asked Labh Singh that he had been showing pistol to him and then it was time to fire at the complainant party, who was present there. Labh Singh fired four shots from his service revolver towards the complainant but in the air and also stated that the complainant and others be done to the death. The complainant and his son saved their lives by running into their house. Before leaving Labh Singh told Karamjit Singh that he would see the complainant and others later on. During the night, the complainant did not inform about the incident to anyone due to fear. On 4.2.2007, the complainant after discussing with his co-villagers left for the police station for lodging the report.

It is also the case of the prosecution that ASI Mohan Lal after recording the statement Ex.PA of the complainant on 4.2.2007 at 5.35 p.m., forwarded it to Police Sadar Rajpura where on its basis FIR No. 26 (Ex.PA/2) under Sections 336, 506 and 34 IPC by ASI Jaspreet Singh was registered on the same day at 5.55 p.m.

During the investigation of the case, ASI Mohan Lal

went to the spot and took into possession three empties and one live cartridge vide memo Ex.PB and also prepared site plan Ex. PW10/A. Labh Singh accused was arrested on 5.2.2007, who produced one pistol 9MM alongwith twenty six live cartridges vide memo Ex.PW10/D. On 5.2.2007, Karamjit Singh accused was also arrested. Supplementary statement of complainant Kesar Singh was recorded 28.3.2007 and, accordingly, offence was enhanced to Section 307 IPC. The empties and the pistol were sent to the Forensic Science Laboratory and as per the report Ex.PX, the pistol was found to be in working condition whereas the empty cartridges were fired from the same. Upon completion of investigation and presentation of challan, both the accused were charged for the aforementioned offences, to which, they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined complainant Kesar Singh as PW1 and his wife Paramjit Kaur as PW2, who deposed about the ocular account and fully supported the prosecution case.

PW3 Gurjinder Singh, Clerk, DTO Office, Patiala, proved registration certificate Ex.P1 pertaining to the motor-cycle, which stood registered in the name of Labh Singh accused.

PW4 Paramjit Singh, Draftsman, deposed that on 12.4.2007, he had prepared scaled site plan Ex. PW4/A at the

instance of complainant Kesar Singh.

PW5 Head Constable Amarjit Singh deposed that vide DDR No. 6 dated 24.2.2005 Ex.PW5/A, Labh Singh accused was deputed as a gunman with Shri Mandeep Singh Dhillon and he was given a pistol 9 MM alongwith 30 cartridges.

PW6 ASI Rachhpal Singh testified that Labh Singh accused was appointed as a constable on 19.10.1992 and was given No. 233 of 1st Commando Battalion, Bahadurgarh. He proved copy of appointment letter Ex.PW6/A.

PW7 ASI Darbara Singh testified about recording statement of the complainant and enhancing the offence to Section 307 IPC. He also testified that on 30.3.2007, he re-arrested accused Labh Singh and Karamjit Singh and prepared grounds of arrest memo Ex.PW7/A. Further, from personal search of the accused, nothing was recovered. He also proved sanction order Ex.PW7/C for prosecution of accused Labh Singh accused.

PW8 Head Constable Harjinder Singh and PW9 Head Constable Nahar Singh tendered into evidence their respective affidavits Ex.PW8/A and Ex.PW9/A.

PW10 ASI Mohan Lal testified about the various steps taken by him during the investigation of the case after he had recorded statement of complainant Kesar Singh and registration of FIR on its basis.

PW11 Baghail Singh, who was Cot-Incharge of Police Lines, Patiala produced the register pertaining to the disbursement of arms and ammunition. As per entry No. 1181, 9 MM pistol and 30 cartridges of the same bore had been disbursed to Labh Singh accused for official use. He proved the entry Ex.PW11/A.

When examined under Section 313 Cr.P.C., both the accused stated that they had been falsely implicated in the case by the complainant party because of their enmity with Karamjit Singh accused and on account of party faction in the police party because ASI Jagdish Kumar and ASI Balbir Singh had been inimical towards Labh Singh. No shot was fired by him with the revolver nor any such occurrence had ever taken place. The police had called Labh Singh accused to the Police Station, where he was made to sit and his service revolver and cartridges taken into possession. Karamjit Singh accused also stated that earlier the complainant and his family members had inflicted injuries upon him and in that regard, FIR No. 213 dated 29.6.1979 under Sections 323/324/325 IPC was registered at Police Station Rajpura. Vide judgment dated 18.12.1982 (Ex.D1), Judicial Magistrate 1st Class, Rajpura had held complainant Kesar Singh and his companions guilty and convicted them. Further, there was a dispute between his father and the complainant's father

regarding the common wall between the two houses, which was resolved amicably vide compromise deed Mark D2. The wall in dispute was common wall between the houses of the parties. No vegetables were sown near that wall in the house of Karamjit Singh accused. Rather, the level of earth near the wall was higher than the remaining courtyard. Neither there was a submersible pump nor there was any seepage in the wall on the day of the alleged occurrence. Karamjit Singh accused and his family members were not home and were away to village Bhanri, Tehsil and District Patiala where they stood invited for dinner by his daughter Narinder Kaur to honour his newly wedded son and daughter-in-law.

After hearing learned counsel for the parties and on going through the record, the learned trial Court acquitted the accused under Section 307 IPC. However, they were convicted and sentenced for the offences under Sections 336, 506 IPC besides Section 27 of the Arms Act, as mentioned above.

This Court has heard learned counsel for the two convicts, namely, Labh Singh and Karamjit Singh, learned State counsel and learned counsel for the complainant and with their able assistance minutely scanned the evidence.

The occurrence in question is said to have taken place on 3.2.2007 at about 9.00 p.m. in village Lakhomajra.

Though in the occurrence neither the complainant nor his wife Paramjit Kaur nor also their son Satnam Singh had been caused any injury yet no attempt was made by them to lodge the report with the police at the earliest. The police Station under which the place of occurrence was situated was at a distance of 12 kilometers. The statement Ex.PA came to be made by complainant Kesar Singh with the police on 4.2.2007 at 5.35 p.m. at Bus Stand of village Ganda Kheri whereas formal FIR Ex.PA/2 came to be registered at Police Station Sadar Rajpura on 4.2.2007 at 5.55 p.m. The explanation given by PW1 Kesar Singh about not lodging the report about the occurrence with the police at the earliest was the fear of the accused and for that reason, he did not come out of his house during the night. Only on the next day, that he talked to the villagers and relatives and then informed the police. He admitted in his cross-examination that he had two sons, namely, Satnam Singh and Harvinder Singh, aged 23 and 21 years, respectively, and also, having a motor-cycle and a truck. He also stated that he had not informed the Sarpanch, Member Panchayat, Numberdar of the village, police of the area, police of Sadar, DSP of the area or SSP Patiala regarding the occurrence on the day of the occurrence itself. He also stated that none of his sons approached the Sarpanch, Member Panchayat or police on 3.2.2007 regarding

the occurrence. He went on to add that he reported the matter with the police at bus stand of village Ganda Kheri on 4.2.2007 at about 3/4 p.m. There is thus no satisfactory explanation about the delay in lodging of report with the police. This assumes significance as the alleged firing from the service revolver resorted to by Labh Singh accused did not result in causing of any injury either to PW1 Kesar Singh, PW2 Paramjit Kaur or their son Satnam Singh. Position would have been different if the firing by the accused had hit the complainant party and then in that situation the complainant and others could be more interested in rushing the injured to the hospital. Possibility therefore of due deliberations or consultations being made by the complainant party so as to come up with a false version cannot be ruled out.

In his statement Ex.PA, complainant Kesar Singh stated that Labh Singh accused after aiming his service revolver towards the complainant party, fired four shots in the air and proclaiming that Kesar Singh and others would be done to death. At the trial PW1 Kesar Singh testified that Labh Singh accused fired four shots upon the complainant party with intention to kill them with his service revolver. It has come in the evidence that no injury on account of alleged firing from the service revolver by Labh Singh accused was caused to the complainant, his wife Paramjit Kaur or their son Satnam Singh. It has also come in

evidence that there was no sign of any bullet hitting the walls of the surrounding houses or the wall of the cattle shed of the complainant.

It is the case of the prosecution that three empty cartridges and one live cartridge of 9 MM were recovered by ASI Mohan Lal from in front of the door of the house of the complainant. However, no empty or live cartridge was recovered either from inside the cattle shed or adjoining to the cattle shed of the complainant. Thus, from the site plan Ex.PW4/A prepared by PW4 Paramjit Singh, Draftsman and PW10 ASI Mohan Lal, it stands established that none of the shots were fired towards the complainant, his wife or their son.

Even the recovery of the three empty cartridges and one live cartridge from the spot is doubtful. It has come in the evidence that the firing was resorted to from the common passage, i.e. street. The empties and the live cartridge were recovered during the investigation, which started some time after 4.2.2007 at 5.35 p.m., i.e., after the completion of the statement Ex.PA of complainant Kesar Singh. PW10 ASI Mohan Lal admitted it as correct that on 4.2.2007 at about 6.15 p.m., there was total darkness at the spot due to winter season and due to night. Also, there was no electric light at the spot. In such like situation, it would have been well nigh impossible for PW10 ASI

Mohan Lal to recover the empties or the live cartridge lying at the spot. Even, if it is taken that the empty and live cartridges had fallen at the spot at the time of the occurrence and, that too, in a street, these objects would have been removed by the passers by. This further probablizes the version of the defence that Labh Singh accused, who was a gunman attached to an officer, was summoned to Police Station from whom his service revolver was taken into possession and, thereafter, the evidence of recovery of the empties and live cartridges was created.

As regards the motive that Karamjit Singh accused used to water the vegetables with a water pump and the water seeping through the wall and entering the building of the complainant resulting in damage, it may be worthwhile to mention about PW1 Kesar Singh stated during his cross-examination that the house of Karamjit Singh accused was about 40 feet from the common wall and the place between common wall was lying plain and vacant. He also stated that he had not made any complaint regarding the incident, which had taken place a week before regarding watering of vegetables, to the police or to the Panchayat. He also stated that he had not made any complaint to the police or to the Panchayat regarding the threats given by Karamjit Singh accused to his mother during the day. Even his mother had also not made any complaint to the police or the

Panchayat. PW2 Paramjit Kaur during her cross-examination testified that she did not make any complaint against Karamjit Singh accused about the water coming from his house. They did not file any civil suit against Karamjit Singh accused regarding seepage of water. They also did not obtain any report from any building expert about the alleged seepage.

According to Karamjit Singh accused, on the day of the alleged occurrence, he alongwith entire family was away to village Bhanri where his daughter lived, who had invited them for honouring his newly wedded son and daughter-in-law. PW1 Kesar Singh admitted in his cross-examination about Narinder Kaur, daughter of Karamjit Singh accused being married at village Bhanri. He also could not deny that accused Karamjit Singh's son, Taranjit Singh got married on 10.12.2006 or Narinder Kaur inviting Karamjit Singh, his wife Paramjit Kaur and son Taranjit Singh and daughter-in-law at a dinner on 3.2.2007 at village Bhanri or all of them going to village Bhanri on that day.

Karamjit Singh accused also stated during his examination under Section 313 Cr.P.C. that an occurrence had taken place in the year 1979, wherein, the complainant and his family members had inflicted injuries upon him and FIR being registered under Sections 323/324/325 IPC. He further stated that the complainant party was convicted and sentenced by Judicial

Magistrate 1st Class, Rajpura. PW1 Kesar Singh during his cross-examination admitted about registration of FIR 213 dated 29.6.1979 against him and others by Karamjit Singh accused and the complainant party being convicted in the said case on 18.12.1982. With this background, possibility cannot be ruled out of the complainant party coming up with an imaginary plea of being firing upon by the accused though in the said firing no one from the complainant side had received any injury. Therefore, it would be apt to set-aside the conviction and sentence of Labh Singh and Karamjit Singh accused.

Once, this Court is not satisfied about the truthfulness of the prosecution case, no case is made out for upsetting the finding arrived by the learned trial Court about the offence under Section 307 IPC or for enhancement of sentence or grant of compensation, as claimed by complainant Kesar Singh in the revision filed by him.

Resultantly, Criminal Appeal S-553-SB of 2010 titled as “Labh Singh Vs. State of Punjab” and Criminal Appeal S-561-SB of 2010 titled as “ Karamjit Singh Vs. State of Punjab” are accepted, conviction and sentence of the appellants, as recorded by the learned trial Court is set-aside and they are hereby acquitted of the charges against them. At the same time, there is no merit in Criminal Revision 1694 of 2010

titled as “Kesar Singh Vs. The State of Punjab and others” and
the same is, accordingly, dismissed.

May 4, 2018
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No