

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

CRA-S-1043-SB of 2003

Date of Decision: July 09, 2018

Hira Singh and another

...Appellants

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. M.S. Sidhu, Advocate
for the appellants.

Mr. H.S. Sullar, DAG, Punjab.

FATEH DEEP SINGH, J.

A case by way of FIR No.122 dated 03.11.1997 was registered with Police Station, Ghall Khurd, under Sections 307/392/397/34 IPC on the statement of complainant-Jaswinder Singh @ Gogi, who worked as a Manager with a wine Contractor. The complainant alleged that on 2.11.1997 around 9.15 p.m. when he along with his two bodyguards went to liquor vend in Mudki for collecting cash, three persons bearing uniform of Commandos of Police came out of the liquor vend, out of whom one identified as Harjinder Singh, was carrying a gun with shortened barrel tried to know the identity of the complainant. When the complainant disclosed his identity, Harjinder Singh put the gun on the ear of the complainant and at that time bodyguards of the complainant rushed to his rescue, the other accused Jaswinder Singh fired shot from his weapon and all the three persons after firing shots from the weapons which were

retaliated by guards of the complainant ran away. It transpired that they have robbed the liquor salesman of Rs.7100/-. Police recorded statement of the complainant Ex.P2 upon which endorsement Ex.P2/A was made leading to registration of the FIR Ex.P3. The Investigating Officer ASI Narinder Paul Singh prepared the rough site plan Ex.4 and recovered one empty cartridge MO-1 of AK47 rifle and four empty cartridges MO2 to MO5 of .9mm bore which were taken into police possession through memo Ex.P13 and Ex.P5 respectively. The same were prepared into separate parcels and taken into police possession. It was during the course of events, on 22.7.1998 accused Jaswinder Singh, Harjinder Singh, Hira Singh and Harjit Singh were arrested in another case by Police Station, Sarhali. From the conscious possession of accused Hira Singh 12 bore DDBL along with four live cartridges of the same bore were recovered. From the possession of accused Jaswinder Singh @ Jassa one AK-47 rifle along with 12 live cartridges of the same bore and one magazine were recovered. From the accused Harjit Singh (since deceased) one country made pistol of 12 bore and from accused Harjinder Singh @ Jinda one Maruti car bearing registration No.DDV-469 were recovered. The accused were formally arrested on 18.9.1998 for holding their test identification parade and on the same very day, the accused refused to undergo the same. Upon completion of investigations, the accused were put to trial.

The prosecution at the trial examined PW1 Sukhdev Singh, an eye witness of the occurrence; PW2 Swaran Kumar, who identified the accused but subsequently was declared hostile; PW3 Chattar Singh, an employee of the liquor vend supported the prosecution story and identified the accused

as well as Harjinder Singh followed by testimony of PW4 Sardool Singh, who detailed the investigations; PW5 SI Davinder Singh SHO. Thereafter, complainant Jaswinder Singh @ Gogi, testified as PW6; another Investigating Officer ASI Narinder Paul Singh testified as PW7, whereas PW8 Hira Singh, Steno-typist of the Court of JMIC detailed the FIR. PW9 N.K. Gaur, JMIC detailed the application for holding test identification parade and his order Ex.P11 passed on the statement of the accused Ex.P12, whereby, they refused to undergo the test identification parade. PW 10 ASI Buta Singh, detailed the investigations, whereas, PW11 Kulwant Singh, Ahlmad of the Court proved copies of recovery memos followed by testimony of PW12 HC Kuldip Singh. The prosecution thereafter, closed its evidence. The entire incriminating evidence put to accused, who denied the same in their statements under Section 313 Cr.P.C but did not lead any evidence in defence. It is consequent thereupon, through impugned findings the Court of learned Additional Sessions Judge, Fast Track Court, Ferozepur held all the accused guilty for commission of offences under Sections 307/392 read with Section 34 IPC. The same is subject matter of challenge before this Court in the present appeal.

Heard learned counsel for the parties and perused the records of the case.

The first and the foremost argument that has been put forth by the learned counsel for the appellants revolves around the question of identity of the accused and has sought to create doubt over the veracity of the witnesses to that very effect. The same has been opposed by learned State counsel on the ground that it was the accused side who had refused to

undergo test identification parade and, thus, adverse presumption needs to be drawn. Appreciating the submissions, under the provisions of Section 9 of the Evidence Act and, is, thus to the mind of this Court on the basis of evidence which led material corroboration and substantive evidence to the case of the prosecution regarding question of identity of the accused. The recoveries of empty cartridges, weapon alleged to have been used at the time of commission of present offence and car from the place of occurrence, which was subsequently recovered in the case from the accused when they were arrested which are further corroborated by the testimony of Kulwant Singh, Ahlmad, PW11 through memos Ex.P7, Ex.P10 and Ex.P14 certainly lends corroboration that it was the accused who was instrumental in the commission of offence. The material witness PW3 Chattar Singh, an employee of the liquor vend has identified the accused Harjinder Singh and Jaswinder Singh and the fact that it was accused Jaswinder Singh, who had robbed him of Rs.7100/-. Complainant/Jaswinder Singh @ Gogi while proving his eye-witness account has identified accused Harjinder Singh, who has put weapon on his ear and threatened him as well as remaining accused which testimony of the witness has undergone the rigour of the cross-examination. Seeking support from **2010 AIR (SC) 2352 Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi) this Court** this Court holds the view that where accused refused to join the test identification parade, an adverse presumption needs to be drawn against them. Thus, it is a strong circumstance that goes against the appellants, as such, this argument of the appellants side certainly falls to the ground. The next contention put forth by the appellants side revolves around the non-applicability of Section

307 IPC. In the light of the contention of the appellants, it is no injury case, thus, no offence is made out under this provision of law which is opposed by learned State counsel on the ground that both the sides have exchanged fire shots and it is by providence that no injury has been caused. Going through the submissions, PW3 Chattar Singh has categorically stated that accused Jaswinder Singh was holding AK-47 rifle and fired from the same when this witness was sitting in the liquor vend and was robbed by the accused and it was at that juncture, when the complainant had arrived his bodyguards Sukhdev Singh and Swaran Kumar were also fired at by Jaswinder Singh, who was outside the liquor vend and which fact is very materially corroborated by PW6 complainant Jaswinder Singh @ Gogi, who had categorically stated that accused had fired towards Sukhdev Singh and Swaran Kumar bodyguards which is also corroborated by these two witnesses who have testified as PW1 and PW2. The same is further established from the recovery of the empties from the place of occurrence proved by ASI Narinder Paul Singh PW7 through site plan Ex.P4 and taking into possession one empty cartridge MO-1 of AK-47 rifle and four empty cartridges of other weapon .9mm bore which have been taken into police possession through memos Ex.P13 and Ex.P5 respectively. Thus, it is by mere providence the victim side has been saved from any such resultant injury. No other argument was addressed by the learned counsel for the appellants.

In the light of what has been discussed by the Court below in the impugned findings which has given a well reasoned judgment spelling out the evidence and the reasons for reaching at such a conclusion. Apparently,

there appears to be no illegality or perversity in the order of the Court below. The same needs to be upheld. Thus, the appeal being hopelessly without any merits stands dismissed.

(FATEH DEEP SINGH)
JUDGE

July 09, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No