

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRA-D-188-DB of 2004

Date of decision: 22.11.2019

Sucha Singh

... Appellant

Vs.

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MRS. JUSTICE ALKA SARIN**

Present:- Mr. Sukhbir Singh, Advocate, for the appellant.

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

AJAY TEWARI, J.

This appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 14.01.2004 in case FIR No. 42 dated 07.05.2002, registered under Sections 302/307/34 IPC and 27 of the Arms Act, 1959.

2. As per the allegations, on the fateful day the deceased was going towards the haveli being followed by her son. On the way she saw appellant – Sucha Singh alongwith his minor son having an altercation with PW-6 – Harpal Singh and his father Gurdial Singh PW-3. When Surjit Kaur tried to intervene, appellant's wife-Kashmir Kaur also came there and started abusing her saying that Gurdial Singh should be taught a lesson for raising a land dispute. Instigated by Kashmir Kaur, the appellant asked his minor son to bring his licensed .12 bore gun from inside. His son went inside and brought the gun whereupon appellant's minor son - Ghudhu first fired two shots, which hit PW-6 - Harpal Singh as a result of which he fell down, thereafter, the gun was taken by the appellant, who shot Surjit Kaur in her stomach resulting into her death. All the parties are related

to each other and as per the FIR altercation was about a piece of land to which both the parties were staking claim. The appellant, his wife and his minor son were arrested. Appellant as well as his wife were sent for trial before the Special Judge and minor son was sent for trial before the Juvenile Justice Board.

3. During the trial, prosecution examined Dr. Arvinder Singh, Radiologist as PW-1, Amarjit Singh complainant as PW-2, Gurdial Singh as PW-3, Dr. Jagdev Singh as PW-4, Dr. Kuljit Singh as PW-5, Harpal Singh injured as PW-6, Manbir Singh MHC No. 1804 as PW-7, Partap Singh HC No. 1761 as PW-8, Pargat Singh C. No. 2762 as PW-9, Rishi Ram draftsman as PW-10, Insp. Paramjit Singh I.O as PW-11, Anil Pawar MHC No.3026 as PW-12, Insp. Harbhajan Singh I.O as PW-13. The important witnesses are PW-2, 3, 4 and 6, whose brief testimonies are as under:-

“PW-2 had stated that he knew accused Sucha Singh and his wife Kashmir Kaur present in the Court. Sucha Singh had land dispute with Dayal Singh. He had good relations with Dayala Singh. On 07.05.2002, at about 8.00 PM, he along with Sucha Singh accused and Ghuddu were working in their fields. They heard sound of fires from the village. They rusehd to the village and saw their mother Surjit Kaur lying dead near their haveli. He took Sarpanch Gurdip Singh and went to the Police Station and the Police met them near Adda Achal Sahib where his signatures were obtained by the Police on two blank papers and directed him to reach to the police.

PW-3 Gurdial Singh had stated that he knew accused Sucha Singh and his wife Kashmir Kaur present in the Court. Surjit Kaur deceased was his aunt. His land adjoins the land of Surjit Kaur. She died in May, 2002. When he had come back from the city and was sitting with his wife in the kitchen, they heard noise outside. He saw the dead body of his aunt Surjit Kaur lying

in the street near their house. His son Harpal Singh had gun shot injuries. He had not seen accused Sucha Singh and Kashmir Kaur at the spot nor Gurpal Singh.

PW-4 Dr. Jagdev Singh, Medical Officer, Civil Hospital, Batala had stated that on 08.05.2002 he conducted the post mortem examination on the head body of Surjit Kaur. He found eight injuries on her person. The cause of death was due to hemorrhage and shock caused by multiple injuries due to fire arm.

PW-6 Harpal Singh had stated that on 07.05.2002 at about 7.30 p.m, Sucha Singh and his son Ghudhu were quarrelling with him and his father over a piece of land. His aunt Surjit Kaur came there. She separated them. Kashmir Kaur another aunt came out of the house and exhorted the accused to finish the dispute for all times to come and Sucha Singh asked Ghudhu to bring the rifle and he took out the rifle from his house and fired a shot towards him hitting on his chest and also the elbow. Thereafter, Sucha Singh took the rifle from Ghudhu and fired at Surjit Kaur hitting on her stomach, who died on the spot. He and Amarjit Singh raised hue and cry 'mar ditta, maar ditta.' when the assailants fled away from the spot with the weapon. He identified Kashmir Kaur and Sucha Singh accused present in the Court.”

4. All the incriminating circumstances available on record were put to the appellant and his wife – Kashmir Kaur in terms of Section 313 of the Code of Criminal Procedure, 1973 ('Cr.P.C'—for short). They denied all these circumstances and reiterated the plea of innocence and their false implication. However, they examined Bachan Singh as DW-1 in their defence.

5. Learned trial Court, on appraisal of the evidence available on record and on hearing the parties came to the conclusion that the prosecution was able to prove its case beyond reasonable doubt and, accordingly, vide judgment/order

dated 14.01.2004, convicted and sentenced the appellant to undergo imprisonment for life with a fine amounting to `5,000/- and in default of payment of fine, to further rigorous imprisonment for one year under Section 302 IPC. He was further sentenced to undergo rigorous imprisonment for two years with a fine of Rs.500/- under Section 27 of the Arms Act and in default of payment of fine, to further undergo rigorous imprisonment of six months. Both sentences run concurrently. However, wife of the appellant was acquitted by the trial Court.

6. The appellant is in appeal to challenge his conviction and sentence awarded by the learned trial Court, vide judgment/order dated 14.01.2004

7. Learned counsel for the appellant has argued that the son of the deceased PW-2 Amarjit not only exculpated the appellant and his son, but also provided an *alibi* for them because he stated both of them were working in the fields with him when the incident took place and that there were nowhere near the scene of occurrence. PW-3 Gurdail Singh father of the injured stated that he had not witnessed the occurrence, thereby also exculpating the appellant, wife and his son. The solitary witness who deposed against the appellant and his wife and son was injured PW-6 Harpal Singh, who had suffered superficial pellet injuries. It is the contention of learned counsel for the appellant that in these circumstances it would be most unsafe to record the finding that crime has been proved beyond reasonable doubt. Learned Deputy Advocate General has argued that PW-2 and PW-3 having resiled from their statements under Section 161 Cr.P.C have lost their credibility and moreover the FSL report indicated that the firing was from the licensed gun of the appellant, which was recovered on the basis of his disclosure from the *Turi Wala Mussal* in his Kotha of his tubewell. He has further argued that the testimony of PW-6 rings true and he has not been shaken to his

8. Countering the arguments of the learned Deputy Advocate General, learned counsel for the appellant has urged that the link evidence, which may validate the FSL report is not present. There were two witnesses to the disclosure and recovery of gun but one did not appear in the witness box and the second omitted to say that the gun was recovered on the disclosure of the appellant. Moreover, it is nowhere shown that the spent cartridges were recovered (either from the site or from the appellant) and in the absence thereof it could not be established as to with which cartridges the gun in question was matched and this fact completely discredits the FSL report. He has further argued that the fact that the son of the deceased not only exculpated the appellants and his family members but rather provided an *alibi* for them could not have been swept under the carpet in the cavalier manner in which it has been done by the trial Court. He argues that no son would like the killers of his mother go unpunished. Likewise, as per him PW-3 is the father of the injured witness and he would be also vitally interested that the assailants of his son should not go unpunished.

9. We have heard learned counsel for the parties.

10. Learned Deputy Advocate General has not been able to show from where the spent cartridges (which were statedly matched by the FSL) were recovered.

11. In our considered opinion the appeal must succeed. No doubt the testimony of the injured witness has to be placed on a very high pedestal but on the contrary the testimony of the son of the deceased and the father of the injured also cannot be disregarded summarily. In conclusion, we are unable to hold that the prosecution has been able to prove the crime of the appellant beyond reasonable doubt.

bonds/surety bonds shall discharge.

13. Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

November 22, 2019
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(ALKA SARIN)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No