

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

CRA-D-19-DB of 2004

Reserved on : 01.05.2019

Date of decision : 07.05.2019

Jugraj Singh

.... APPELLANT

Versus

State of Punjab

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. J.S. Bhatia, Advocate,
for the appellant.

Mr. S.P.S. Tinna, Addl. A.G., Punjab.

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RAJIV SHARMA, J.

1. This appeal is instituted against judgment and order dated 18.10.2003, rendered by learned Sessions Judge, Ferozepur, in Sessions Trial No. 44 of 2003. Appellant Jugraj Singh along with co-accused Mangal Singh was charged with and tried for the offence punishable under Section 302 read with Section 34 IPC. The appellant was convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of ₹ 2,000/- under Section 302 IPC. In default of payment of fine, he was ordered to further undergo rigorous imprisonment for a period of six months. Co-accused

Mangal Singh was acquitted of the charge framed against him.

2. The case of the prosecution, in a nutshell, is that Malkiat Singh (PW.3) made statement, Ex.P5, before ASI Harpal Singh (PW.7) on 10.11.2000, to the effect that he was resident of village Valtoha. He along with Nirmal Singh son of Sadhu Singh resident of village Rupalan and Karnail Singh son of Kesar Singh resident of village Valtoha was staying in the house of Baljinder Singh for the last 9-10 months. In the morning of 10.11.2000, at 7.00 AM, Karnail Singh had gone to answer the call of nature. Mangal Singh son of Karnail Singh, who was their neighbour, entered into an altercation with Karnail Singh. Karnail Singh picked up a brick bat and hit Mangal Singh. They grappled with each other. The complainant was standing in front of his house on the pavement of the canal minor. He called Nirmal Singh from his house. Meanwhile, Jugraj Singh son of Mangal Singh came from his house with a gun and told his father Mangal Singh that he should get aside. Jugraj Singh fired with his gun at Karnail Singh. The shot hit Karnail Singh on his chest on the right side. Karnail Singh collapsed. Mangal Singh and Jugraj Singh escaped from the spot along with their weapon. The motive for the fight was that Karnail Singh had got a compromise effected between Baljinder Singh and Lakhbir Singh resident of village Badhni Gulab Singh, regarding land dispute. Mangal Singh was opposing the compromise. The land dispute was between Mangal Singh and Baljinder Singh on one side and Lakhbir Singh on the other side. The body was sent for post mortem examination. The accused were arrested. The investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely implicated. They also examined two witnesses in their defence.

4. The appellant was convicted and sentenced, as noticed here-in-above. Hence, this appeal.

5. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State has supported the judgment and order of the learned Court below.

6. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

7. PW.1 Dr. Baldev Raj Arora conducted the post-mortem examination on the dead body of Karnail Singh on 10.11.2000 at 3.30 PM.

He noticed following injuries on his body :-

- (1) An oval wound 1.75 cm x 0.75 cm with inverted and lacerated margin on the back of the chest, in its right side on middle of scapula 14 cm below upper margin of right shoulder and 12 cm from the mid line of the back covered with clotted blood.

On dissection, underlying subcutaneous tissues, muscles lacerated with underlying fourth rib fractured. The track was followed and traced to injury No.3. This injury was wound of entrance of the bullet. There was no blackening of this wound.

- (2) There was swelling 2 cm x 1 cm on the back of right side of chest, 8 cm below injury No.1. There was no wound over the swelling.

On dissection, a metallic piece of the bullet was removed and handed over to the police in a sealed container with one seal. Underlying rib No.8 was fractured. Muscle was lacerated. Track was traced and it joined with injury No.3.

- (3) An oval wound 4 cm x 3 cm on the right side of the chest on anterior aspect, 14 cm from the supra sternal notch 6 cm from the mid line of the chest, 24 cm above the umbilicus. Margins of the wound were lacerated and everted. Part of lung tissue was protruding out of the wound. Clotted blood all around the wound was present.

On dissection, subcutaneous tissues and muscle was lacerated. Ribs fourth, fifth and sixth were fractured with many pieces. Right pleurae, right lung were lacerated. Right thoracic cavity was full of blood. The right half of heart, pericardium, auricle and ventricle were ruptured and lacerated. Heart was empty. The left lung and left pleura were not injured.

Injury No.3 was wound of entry point of the bullet. The cause of death, in his opinion, was bullet injuries to the vital organs, right lung, heart, haemorrhage and shock, which was sufficient to cause death in the ordinary course of nature. He proved the post mortem report Ex.P1.

8. PW.3 Malkiat Singh is the material witness. He testified that on 10.11.2000 at about 7.00 AM, Karnail Singh had gone to answer the call of nature. Mangal Singh had an altercation with Karnail Singh. Mangal Singh

was his neighbour. Mangal Singh and Karnail Singh grappled with each other. Karnail Singh gave a brick bat blow on the person of Mangal Singh. He called Nirmal Singh. He was standing in front of his house. Mangal Singh called Jugraj Singh. Jugraj Singh came with a gun from his house. Karnail Singh tried to escape. Jugraj Singh fired at Karnail Singh. Karnail Singh collapsed and died on the spot. The accused ran away from the spot. The motive for the crime was that Mangal Singh and Baljinder had a land dispute. Karnail Singh got the matter compromised between Baljinder Singh and Lakhbir Singh. Apprehending that his land would be grabbed, Karnail Singh was killed. He went to the police station. His statement, Ex.P5, was recorded. In his cross-examination, he deposed that his village was at a distance of 5-6 Kms. from the place of occurrence. He denied the suggestion that Mangal Singh and Jugraj Singh were taken away by the SHO of Police Station Ghall Khurd along with other persons one day prior to the occurrence. The shot was fired from the distance of 15 feet.

9. PW.4 Nirmal Singh has corroborated the statement of PW.3 Malkiat Singh, regarding the manner in which the incident had taken place. According to him, Jugraj Singh fired at Karnail Singh. The bullet hit on right shoulder of Karnail Singh from back side, piercing through chest from front side. Karnail Singh collapsed and died at the spot. In his cross-examination, he deposed that the incident took place at a place, about 35-40 karams away from the place, where Malkiat Singh was standing.

10. PW.7 ASI Harpal Singh testified that on 10.11.2000, he recorded statement, Ex.P5, made by Malkiat Singh. Formal FIR Ex.P5/B was recorded by ASI Chamkaur Singh. He inspected the place of

occurrence. He prepared the site plan Ex.P9. The body was sent for post mortem examination. In cross-examination, he admitted that in the original statement, Malkiat Singh had stated that the gun shot hit the deceased from the front side on the chest. However, his supplementary statement was recorded.

11. According to the FSL report, Ex.P15, the piece of lead marked P/1 contained in parcel 'A' was a part of single ball slug loaded in 12 bore cartridge. As per the FSL report, Ex.P16, the exhibit, i.e. soil alleged to be stained with blood, was stained with human blood. No demonstrable blood could be detected on another exhibit, i.e. ice soil.

12. DW.2 Sukhwinderjit Singh deposed that on 09.11.2000, he had come to village Ratta Khera Baja Kotwala. On that day, at about 11.00/12.00 PM, SHO Harpal Singh along with Lakhbir Singh and Baltej Singh of village Badhni Gulab Singh came to the house of Jugraj Singh. They took Jugraj Singh and Mangal Singh to the police station.

13. Though according to the FIR, the appellant had fired at Karnail Singh on his chest, but as per the medical evidence, the bullet had hit the deceased from back side. There was entry and exit wound, duly proved by PW.1 Dr. Baldev Raj Arora. PW.3 Malkiat Singh and PW.4 Nirmal Singh have categorically deposed in the court that they had seen Jugraj Singh firing at Karnail Singh from back side, when he was trying to escape.

14. There is no material to establish that on 10.11.2000 at 7.00 AM, Mangal Singh and Jugraj Singh were in custody of the police. It has come in the statement of Jugraj Singh recorded under Section 313 Cr.P.C., that the police had released him in the night on 09.11.2000. It cannot be

believed that after his release, instead of coming to his village, he would go to his adjoining village. The appellant has failed to prove the plea of alibi.

15. The genesis of the case is that Karnail Singh had gone to answer the call of nature. Mangal Singh and Karnail Singh took up a quarrel. Mangal Singh was hit on the head with a brick bat by Karnail Singh. Jugraj Singh son of Mangal Singh reached the spot with a gun. Jugraj Singh fired at Karnail Singh, while he was trying to flee. The act was not pre meditated. There was sudden fight in the heat of passion. Jugraj Singh had seen his father Mangal Singh being hit on the head and bleeding. The preceding incident was also a sudden quarrel, in which Karnail Singh had hit Mangal Singh with a brick bat on his head. Appellant Jugraj Singh neither took undue advantage of the situation nor acted in cruel or unusual manner. If he wanted to kill Karnail Singh, he would have fired gun shot from the front. The provocation was the inflicting of brick bat blow upon the head of Mangal Singh by Karnail Singh. The act was done in a heat of passion. There was only one injury on the body of the deceased. The provocation was grave, since the appellant had seen his father bleeding from head. However, the fact of the matter is that the appellant knew that if the gun shot is fired, it could cause the death. Since he had fired at Karnail Singh, he had the intention to cause his death.

16. Accordingly, the appeal is partly allowed. Conviction of appellant Jugraj Singh recorded by the trial court under Section 302 IPC is converted to Section 304 Part-I IPC.

17. The State is directed to produce appellant Jugraj Singh before

this Court on 15.05.2019 to be heard on quantum of sentence under Section 304 Part-I IPC.

(RAJIV SHARMA)
JUDGE

May 07, 2019
ndj

(AVNEESH JHINGAN)
JUDGE

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