

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

1. CRA-D-357-DB-2004
- Sahib Singh and another
... Appellants
- Versus
- State of Haryana
... Respondent
2. CRR-1926-2004
- Chet Ram
... Petitioner
- Versus
- State of Haryana and others
... Respondents

Reserved on : 10.07.2019
Date of decision : 15.07.2019

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.R.S.Cheema, Senior Advocate with
Mr.Satish Kumar, Advocate
for the appellants in CRA-D-357-DB-2004
and for respondents no.3 & 4 in CRR-1926-2004.

Mr.P.S.Sullar, Advocate
for the petitioner in CRR-1926-2004.

Mrs. Shubhra Singh, Addl.A.G. Haryana.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the
aforesaid appeal and revision petition, therefore, these are taken up together
and disposed of by a common judgment.

2. The appeal (CRA-D-357-DB-2004) was instituted against the
judgment dated 15.03.2004 and order dated 17.03.2004 rendered by the

Additional Sessions Judge, Ambala, in Sessions Case no.5 of 05.03.2003/27.07.1999 whereby the appellants along with co-accused Lakhmir Singh were charged with and tried for offences under Sections 120-B, 302 of the Indian Penal Code (in short 'IPC') and under Section 27 of the Arms Act.

3. Appellants Sahib Singh and Darshan Singh were convicted for offence under Sections 302/120-B IPC. They were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of six months. Appellant Sahib Singh was also convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of three months, for offence punishable under Section 27(1) of the Arms Act. The sentences awarded to appellant Sahib Singh were ordered to run concurrently. However, co-accused Lakhmir Singh was acquitted of the charges levelled against him.

4. The case of the prosecution, in a nutshell, is that complainant Chet Ram lodged a report vide Ex.PS to the effect that on 30.03.1999 at about 08.30 P.M., accused Darshan Singh came to his house. He had two sons namely Bhag Singh and Ram Karan (now deceased). Ram Karan was friend of Gurmeet Singh son of Sahib Singh (accused) from their childhood. They used to visit each other's house. Sahib Singh did not like friendship of Ram Karan and Gurmeet Singh for the reason that Ram Karan had been offering drinks to Gurmeet Singh. On the day of occurrence, accused Darshan Singh came to his house and stated that accused Sahib Singh had

called Ram Karan at his house. Ram Karan was taking bath at that time. He finished his bath. Ram Karan accompanied Darshan Singh to the house of accused Sahib Singh. At about 10.30 P.M., the complainant heard sound of gun shot from the side of *dera* of Sahib Singh. He went to the house of his brother PW Ram Sarup and narrated him that his son Ram Karan was called by Darshan Singh. He along with Ram Sarup proceeded towards house of Sahib Singh. On the way, they noticed a motor cycle coming from the side of *dera* of Sahib Singh. They both stopped. Motor cycle was stopped. Accused Darshan Singh was driving the motor cycle. Accused Lakhmir Singh and Sahib Singh were pillion riders. Sahib Singh was holding a gun. He shouted that Chet Ram could lift dead body of his son from the *dera*. They left on their motor cycle. The complainant and Ram Sarup proceeded towards *dera* of Sahib Singh. They reached *dera*. They found dead bodies of Ram Karan and Baljinder Kaur wife of Gurmeet Singh lying in the rear court yard of *dera* of Sahib Singh. There was pool of blood near the dead bodies. They came back to their house. They narrated the incident to the family members. FIR Ex.PS was recorded. Police reached the spot. Police took photographs. Inquest proceedings were completed. Dead bodies were sent through HC Ram Jwari to the Civil Hospital, Ambala City. Post-mortem was conducted. Accused were arrested. Investigation was completed. Challan was put up in Court after completing all the codal formalities.

5. Prosecution examined a number of witnesses in support of its case. The statements of appellants along with co-accused Lakhmir Singh were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. The appellants were convicted and sentenced as noticed

hereinabove. Hence this appeal.

6. CRR-1926-2004 has been filed by complainant Chet Ram for seeking compensation.

7. Learned counsel appearing for the appellants has vehemently argued that the prosecution has failed to prove the case against the appellants.

8. Learned counsel appearing on behalf of the petitioner has argued that the appellants were rightly convicted and sentenced and his client be paid compensation.

9. Learned counsel appearing on behalf of the State has supported the prosecution case.

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

11. PW-1 Constable Ram Saran had prepared site plan Ex.PA.

12. PW-3 HC Raj Pal deposed that on 31.03.1999 he was posted at Police Station Naggal. He had accompanied SHO Mange Ram to the spot. Mange Ram had handed over the dead body of Baljinder Kaur to him for being taken to the Civil Hospital for post-mortem examination. Inquest proceedings qua Baljinder Kaur were prepared. He had taken the dead body to the Civil Hospital.

13. PW-7 Joginder Singh deposed that he was present at his hosue at village Mehlan about a year back. In the morning at about 9.00 A.M. he was informed about the death of Ram Karan. He was his cousin. He went to the *dera*. He found dead bodies of Ram Karan and Baljinder Kaur lying there. Police arrived there. He went to the Civil Hospital along with police

officials to get post-mortem examination conducted on the dead body of Ram Karan. He identified the dead body of Ram Karan.

14. PW-8 Ram Diya deposed that Baljinder Kaur was married to Gurmeet Singh. They received information regarding murder of Baljinder Kaur. About 20 persons including him went to the farm house of Sahib Singh. They found that dead bodies of Baljinder Kaur and one boy were lying there.

15. PW-9 ASI Sushil Kumar deposed that he was posted as the Incharge Police Post Nanyoula on 31.03.1999. He received telephonic call regarding murder at village Mehlan. He went to *dera* of Sahib Singh. SHO Mange Ram was already there. SHO picked up blood with the help of cotton. The cotton smeared with blood was put in plastic containers. Two pairs of shoes were also taken into possession. Four empty cartridges of . 315 bore were also found in the court yard of house. "KF92 WWB" was engraved on these cartridges. These were taken into possession.

16. PW-10 Dr.Awan Chaudhary along with Dr.R.C. Jindal conducted post-mortem examination on the dead body of Ram Karan. He noticed following injuries on the dead body of Ram Karan:-

"1. Two centimeters rounded wound on the left side of the chest over 7 intercostal space. 8 cm lateral to midline and 8 cm below the left nipple. Margins were irregular, inverted, contused and there was no tattooing present.

2. 2 cm rounded wound on the left side of the chest below and lateral to the injury no.2 over the eight intercostal space 10 cm to the midline and 9 cm below the left nipple. Margins are irregular, inverted, contused and there was no tattooing.

3. There was irregular 3.5 cm x 3 cm size wound on

the back of the left chest 1 cm away from the midline at the level of D-9 vertebra. Margins were inverted and were irregular. On probing injury no.1 it was found to be communicating injury no.3. The probe was going posteriorly midly and downwards. On dissection there was infiltration of blood in the margins of the tract of the wound. The tract was passing through the left lung and heart and intervening structures.

4. There was 4 cm x 3.5 cm wound on the back of the left chest. 5 cm lateral to the midline and 4 cm below the injury no.3. Margins were inverted, irregular. On probing the wound no.2 it was found to be communicating with injury no.4. The probe was going posteriorly, midly and downwards. There was infiltration of the blood in the tract. The tract was passing through the lungs, heart and intervening structures. Holes in the clothes of the deceased were found to be corresponding injury no.1, 2 and 3 on the body of the deceased. There was a foreign body in the tract.

5. There was lacerated wound 2.5 cm x 1 cm size on the middle of the forehead transversally placed. It was a skin disease. On dissection there was infiltration of the blood in the surrounding tissues.

6. There was lacerated wound 1 cm x .5 cm on the left side of the lower limb, on dissection there was infiltration of blood.

7. The left index finger on its distal phalanx was partially missing. There was infiltration of blood in the soft tissue. There was no tattooing. Margins were irregular and contused.”

According to their opinion, the cause of death was haemorrhage and shock

due to the injury to the heart as a result of injury nos. 1, 2 & 4 which were

ante mortem in nature and sufficient to cause death in normal course of

nature. The kind of weapon used was firearm. Probable time elapsed between injuries and death was immediate and between death and post-mortem was within 24 hours.

He along with Dr.R.C.Jindal also conducted post-mortem on the body of Baljinder Kaur. He noticed following injuries on the body of Baljinder Kaur:-

- “1. There was 2 cm size rounded wound margins were inverted, contused and tattooing were present. 13 cm lateral to the right of the midline just below the clavicle. The hole of the shirt in front correspond to this injury and also bears burn marks. Tattooing was present in interior margin of the wound measuring 2 cm. Blackening was present in its inferior part.*
- 2. 5 cm x 4 cm size irregular wound inverteo margins 5 cm left the midline over the 9th and 10th rib and intercostal space. On probing injury no.1 it was found to be communicating with injury no.2. On dissection there was infiltration of blood in the tract, which was going obliquely down wards middle and posteriorly towards left side passing through the lungs and heart and intervening tissues. There was no foreign body.”*

Both the injuries were caused by firearm. Injury no.1 was the wound of entry and injury no.2 was the wound of exit. Injuries could be caused by a shot of rifle Ex.P11. The cause of death was haemorrhage and shock due to injury nos.1 and 2 which were ante mortem in nature and sufficient to cause death.

17. PW-11 Baldev Singh deposed that accused Sahib Singh was interrogated by the police in his presence. Sahib Singh disclosed the police that he had kept concealed his rifle in the paddy straw store of his farm

house. He could get the same recovered. His disclosure statement is Ex.PM.

18. PW-13 Rajbir deposed that his sister Baljinder Kaur was married with Gurmeet Singh of village Mehlan. She was having two children. She was married with Gurmeet Singh in the year 1987. She was not subjected to cruelty by the accused. He was declared hostile and cross-examined by the learned Public Prosecutor.

19. PW-14 HC Ram Jawari deposed that on the intervening night of 30/31.03.1999 at about 2.30 A.M., Chet Ram lodged the report on the basis of which FIR was registered. They went to the spot. SHO completed all the formalities on the spot including preparation of inquest report. The dead body was sent for post-mortem examination. Sahib Singh got recovered a rifle of .315 bore from the heap of paddy.

20. PW-15 Chet Ram deposed that about 4 years back, accused Darshan Singh came to him at about 8.30 P.M. He identified him. He had two sons, elder was Bagh Singh, younger to him was Ram Karan deceased. His son Ram Karan and Gurmeet Singh were friends from their childhood. They used to visit each other's house. Sahib Singh accused did not like him and he had grudge against Ram Karan deceased. Ram Karan deceased used to take drinks with Gurmeet Singh. At about 8.30 P.M. accused Darshan Singh came to his house. He told him that his uncle Sahib Singh had called Ram Karan at his house. Ram Karan accompanied Darshan Singh. At about 10.30 P.M. he heard noise of firing from the side of *dera* of the accused. He went to his brother Ram Sarup. He along with his brother went to enquire about Ram Karan. When they were proceeding towards the *dera* of Sahib Singh, they noticed a motorcycle coming from the side of *dera* of Sahib

Singh. He and his brother stood. Motor cycle came near them. Darshan Singh was driving the motor cycle. Accused Lakhmir Singh was sitting in between Darshan Singh and Sahib Singh. Sahib Singh was armed with gun. Sahib Singh shouted that his son had been killed and his body should be lifted from the *dera*. Accused fled away from the spot. He and his brother reached the *dera* of Sahib Singh. They found dead body of Ram Karan and Baljinder Kaur lying in the court yard of Sahib Singh accused. They came back to their house and informed the family members. Thereafter he met SHO Mange Ram. FIR was registered. In his cross-examination, he admitted that case was registered against his son under Section 376 IPC. His son was acquitted. No other villager had reached at the *dera* before them. He came back to his house at 11.00 P.M. Police accompanied him to the *dera*. He did not see any of the accused in the village. He mentioned in his statement Ex.PS before the police that Sahib Singh did not like taking liquor by Gurmeet Singh in the company of his son Ram Karan. He was confronted with the statement Ex.PS where it was not so recorded. The door of *dera* was towards the kacha path which led to dera of Sahib Singh from metalled road. There was a compound in front of the residential area. The distance between the boundary wall and the living rooms of Gurmeet was about 20 feet. There was a separate door which opened in that back court yard and in that portion Gurmeet lived. He also admitted that door of the room of Sahib Singh also opened in that back courtyard of Gurmeet Singh. The dead bodies were lying at a distance of about three four feet from each other and in the middle of the courtyard.

21. PW-17 Ram Sarup corroborated the statement of PW-15 Chet

Ram. According to him, his brother Chet Ram had told him at 10/10.30 P.M. that one Darshan had come to call Ram Karan at about 8/8.30 P.M. Ram Karan accompanied him. His brother heard the sound of gun fire. He also heard the same. Chet Ram told him that let them see what had happened. They started going towards the *dera* of Sahib Singh. They saw motor cycle coming from opposite side. They stopped. The motor cycle was driven by Darshan Singh. Lakhmir Singh and Sahib Singh were pillion riders. They proclaimed that they had murdered Ram Karan and asked them to lift his body. They reached the *dera* of Sahib Singh. They saw dead bodies of Ram Karan and wife of Gurmeet Singh. The dead bodies were lying on the ground. In his cross-examination, he admitted that there was no enmity till 30.03.1999 between their family and family of Sahib Singh. He also admitted that Ram Karan was involved in a rape case. It was a case of rape of lady doctor. Gurmeet and Ram Karan were close friends since their childhood. Both the dead bodies were lying at the distance of about six seven feet from each other.

22. PW-18 Vajinder Singh deposed that as per record, Sahib Singh purchased rifle from Haryana Gun House, Arms and Ammunition dealer, Ambala Cantt on 22.02.1994. The arm licence of Sahib Singh was valid up to 30.05.2000.

23. PW-21 Mange Ram is the Investigating Officer. He went to the spot. He saw the dead bodies of Ram Karan and Baljinder Kaur lying behind the house of Sahib Singh. Photographs were taken. Dead bodies were sent for post-mortem examination. He took into possession blood stained earth, shoes, chappal and empty cartridges vide memo Ex.PH.

Accused Sahib Singh was interrogated on 01.04.1999. He made disclosure statement. He disclosed during interrogation that he had kept concealed rifle near *dera* of Darshan Singh under the paddy straw. The rifle was got recovered on 02.04.1999. In his cross-examination, he deposed that the boundary wall was about 4 to 5 feet in height. The dead bodies of both deceased were lying closely to each other. Gurmeet used to live in the rear portion where the dead bodies were lying. The deceased was involved in a rape case. During investigation, it came to his notice that Baljinder Kaur deceased was not of good character and was having relations with others including Ram Karan deceased also. It also came to his notice during investigation that due to this illicit relations between the deceased, Sahib Singh was not happy with Ram Karan.

24. The FSL report is Ex.PY. The motive attributed to Sahib Singh is that he did not like his son taking liquor with Ram Karan. According to PW-15 Chet Ram, Darshan Singh came to his house and took Ram Karan along with him. He heard sound of gun fire at 10.30 P.M. He went to the house of his brother. They were going towards *dera* of Sahib Singh. A motor cycle was coming from opposite direction. They stopped. Accused Sahib Singh proclaimed that his son Ram Karan was killed and his dead body should be collected. Thereafter FIR was registered. The cause of death was haemorrhage and shock due to firearm as per statement of PW-10 Dr.Awan Chaudhary. The rifle was got recovered at the instance of Sahib Singh on the basis of his disclosure statement.

25. As per statement of PW-21 Mange Ram, Investigating Officer, it has come during investigation that Baljinder Kaur was not carrying good

reputation. She had illicit relations with others including Ram Karan. It had also transpired that Sahib Singh did not like illicit relations between Ram Karan and Baljinder Kaur. The dead bodies were found in the court yard. These were lying proximity to each other.

26. What emerges from the facts enumerated hereinabove is that Ram Karan had visited the house of Sahib Singh. He was found in the company of Baljinder Kaur. Sahib Singh had seen them and killed Ram Karan and Baljinder Kaur in a sudden and grave provocation. Sahib Singh was the father-in-law of Baljinder Kaur. He could not tolerate by seeing his daughter-in-law in the company of Ram Karan during night that too in his house. The only role assigned to appellant Darshan Singh is that he had come to the house of PW-15 Chet Ram and asked Ram Karan to accompany him to the house of Sahib Singh. He was seen sitting on motor cycle by PW-15 Chet Ram and PW-17 Ram Sarup. The case of Sahib Singh would fall in Exception 1 of Section 300 IPC. However, the fact of the matter is that appellant Sahib Singh had knowledge that firing would cause death of Ram Karan and Baljinder Kaur. There is no evidence against appellant Darshan Singh.

27. Now as far as Section 120-B IPC is concerned, the prosecution has not led any evidence about criminal conspiracy hatched between the appellants. Their Lordships of the Supreme Court in **State (Delhi Admn.) vs V. C.Shukla and another AIR 1980 SC 1382**, have held that in order to prove a criminal conspiracy which is punishable under Section 120- B IPC, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. Their

Lordships have held as under:-

“8. Before we proceed further, we might indicate that it is well settled that in order to prove a criminal conspiracy which is punishable under Section 120-B of the Indian Penal Code, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. This clearly envisages that there must be a meeting of minds resulting in an ultimate decision taken by the conspirators regarding the commission of an offence. It is true that in most cases it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. After having gone through the entire evidence, with the able assistance of Mr. Rajinder Singh, learned counsel for A-1 and of learned counsel for the State, we are unable to find any acceptable evidence connecting either of the appellants with the existence of any conspiracy. We are further of the opinion that even taking the main parts of the prosecution case at their face value, no connection has been proved with the destruction of the film and the two appellants. The prosecution has, of course, produced some witnesses to show the existence of the alleged conspiracy or some sort of connection of the appellants with the destruction, of the film but that evidence, as we shall show, falls short of the standard of proof required in a criminal case. We realise that the prosecution was seriously handicapped because the investigation started only after the Janata Government came into power in March 1977, that is to say, about a year and a half after the offences in question were allegedly committed, by when naturally much of the evidence would have been lost and even some of the important witnesses examined by the

prosecution had turned hostile and refused to support its case. Despite these difficulties, the prosecution has to discharge its onus of providing the case against the accused beyond reasonable doubt. We, therefore, propose to deal only with that part of the evidence led by the prosecution which has been relied upon to prove some sort of a connection of the appellants with the alleged destruction of the film.”

28. Accordingly the appeal is partly allowed. The conviction of appellant Sahib Singh is altered from Section 302 IPC to Section 304 Part II IPC. The sentence imposed upon appellant Sahib Singh under Section 27(1) of the Arms Act is upheld. Appellant Sahib Singh is acquitted of the charge framed under Section 120-B IPC. He is on bail. He be produced in Court on 24.07.2019 to hear him on quantum of sentence under Section 304 Part II IPC.

Appellant Darshan Singh is acquitted of the charges framed against him. He is on bail. His bail bonds and surety bonds are discharged.

29. Learned counsel for the petitioner in the revision petition has vehemently argued that compensation be awarded to the petitioner. However, we see no reason for awarding compensation. Accordingly the petition (CRR-1946-2004) filed by the petitioner (complainant) is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 15, 2019.
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No