

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

**CRA-D-547-DBA-2002 (O&M)
Date of decision : 27.09.2019**

U.T. Chandigarh

...Appellant

Versus

Manoj Pal Singh @ Manoj Lal

...Respondent

**CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MR. JUSTICE H.S. MADAAN**

Present: Mr. Rajiv Vij, Addl.P.P., for U.T. Chandigarh.

Mr. Vinod Ghai, Sr. Advocate,
with Ms. Kanika Ahuja, Advocate,
for the respondent.

JITENDRA CHAUHAN, J.

The State (U.T. Chandigarh) has preferred this appeal assailing the judgment dated 25.07.2001, passed by learned Additional Sessions Judge, Chandigarh, thereby, acquitting the accused-respondent of the charges framed against him in FIR No.47 dated 08.06.1998, registered under Sections 302 and 307 read with Section 34 of the Indian Penal Code and Sections 25 and 27 of the Arms Act, at P.S. North, Chandigarh.

Brief facts of the present case as noticed in the judgment passed by the trial Court are as under:-

“2. *Story of the prosecution as emanates from the*

report under Section 173 Cr.P.C. and the documents appended with it may be stated as under:-

On 8.6.1998, Ram Dyal, Sub Inspector of Police Station North, Chandigarh along with other police officials was present in the market of Sector 9, Chandigarh in connection with patrolling and prevention of crimes. He received wireless message that fires with Arms were being shot in Sector 10, Chandigarh and that police force should reach there. On the basis of this information, Ram Dyal, alongwith other police officials went in Sector 10 in Govt. vehicle in front of Vijay Confectionery, where Shyam Lal No.2295 and Constable Lalan Singh No.2655 were present. They told Ram Dayal, Sub Inspector that Manjit Singh was taken to PGI, Chandigarh by his friend Jagtinder Pal Singh in Car No.CH01-M-1010. On the basis of this information, Ram Dyal alongwith police officials went to the Emergency Ward of PGI, Chandigarh, where Jatgtinder Pal Singh, son of Parkash Singh, resident of village Shukla Farm, Police Station Sitar Ganj, District Udham Singh Nagar met him and made statement (ExPE) to the effect that on 8.6.1998 at about 8 PM, he alongwith his friend Manjit Singh, son of Harwinder Singh, resident of House No.493, Phase-IV, Mohali came in Maruti Car No.1010 to the market of Sector 10, Chandigarh. Car was taken by him from his relative Harpreet Singh. It was parked along the pavement of the road in front of the shop of Vijay Confectionery in Sector 10, Chandigarh. He and his friend Manjit Singh were sitting in the car. Manjit Singh brought the car to that place by driving it and was sitting on the driver seat. He (Jaginder Pal Singh)

purchased one bottle of Bisleri and again sat on the seat beside driver seat. Light in market were on. They were holding conversation while sitting in the car. In the meantime Vicky and Manoj Lal Vass Balram came near Vijay Confectionery shop. They were known to him as about 6-7 months ago they (accused) were teasing the girls in a cultural show in Chandigarh Club and that he had forbade them from doing so and they (accused) had scuffle with him. They were got separated by the persons present there. While going from the club, accused had extended threats to kill him. On seeing him, Jagtinder Pal Singh and Manjit Singh sitting in the car, accused Manoj Lal Vass raised a Lalkara that they both should not be spared. Upon this Vicky took out a pistol from his dub and fired shots towards them. One of the shots hit Manjit Singh above his right eyebrow. He was badly injured. He (Jagtinder Pal Singh) saved himself from the fire. He fired in the air with his point 12 bore double barrel gun in order to save themselves. Upon this, both these accused decamped from the scene of occurrence. In the meantime, Head Constable Satguru No.1640, Chandigarh Police, Constable Sham Lal and Constable Lallan Singh came there. Head Constable Satguru chased the accused. Constables Sham Lal and Lallan Singh snatched gun from him (Jagtinder Pal Singh). Manjit Singh injured was brought to PGI, Chandigarh by him, where he was declared dead. After recording the statement (ExPE) of Jagtinder Pal Singh, Ram Dyal made endorsement (ExPE/2) on it and sent the same to the police Station for registration of the case, on the basis of which, this case was registered. Dead body was taken by the staff

of the hospital to the mortuary. Constable Parminder Singh was deputed to look after the dead body. The wearing apparels of Manjit Singh, which were taken of by the doctor in emergency from his body were handed over to Jagtinder Pal Singh. Ram Dyal took them into possession vide recovery memo (Ex.PF) attested by Uttam Chand and Jagtinder Pal Singh. Ram Dayal came near the car, which was parked outside the emergency building in PGI Complex. Two turbans, one empty Bisleri bottle, one towel and one underwear were lying in the Maruti Car. In between both the seats of the car, 8 live cartridges were lying. They were taken into police possession vide recovery memo (ExPH). Other articles lying in the car were taken into police possession vide recovery memo (ExPG). One hold in the right pillar of the car near the front window on the right side was detected which was covered with adhesive tape. Car was taken into police possession vide recovery memo (ExPJ). Blood was lifted from inside the car. Clothes of Jagtinder Pal Singh were also taken into possession vide recovery memo (ExPI). Blood which was lifted from the car was made into a parcel which was sealed. Cartridges recovered were also converted into a parcel, which was sealed. Clothes of Jagtinder Pal Singh were also made into a parcel and that was sealed. Parmod Kumar, Inspector, SHO, Police Station North alongwith other officials, came to the market of Sector 10. Lallan Singh Constable handed over one double barrel gun to him. Two empty cartridges were found in the chamber of the gun. (They (ExP17 and ExP18) were brought out of the gun (ExP16). Parmod Kumar prepared rough sketch

(Ex.PI) of the Gun. Gun was sealed after preparing its parcel, with seal bearing letters "NS". Empty cartridges were put in plastic box, which were also sealed. They were taken into police possession vide recovery memo (ExPK). Photographs were arranged. There was a sign board at the shot of Vijay confectionery at the height of about 12 ½ feet. They more pellets marks. That board was brought down. After taking out the pellets and broken pieces of tubes as well as dust from the frame of the board they were kept in a plastic box. The sheet was again put in the frame. The board along with the frame was converted into parcel which was sealed. Pellets, broken material of the tubes and dust were put in a plastic Jar which was sealed with the seal bearing letters "NS". It (ExP40/A) was taken into police possession vide recovery memo (ExPM). Parmod Kumar Inspector prepared site plan (ExPZ). One empty cartridge (ExP41/1) of the Pistol was found in front of Vijay Confectionery at a distance of about 4/4 ½ feet in front of the verandah of the shop. It was put in a match box and was sealed with the seal bearing letter "NS". The same was taken into police possession vide recovery memo (ExPL). This case property was deposited by the Investigating Officer in the Malkhana. Head Constable Satguru also came at the spot and joined the investigation. Investigating Officer recorded his statement at the spot and the statements of the other witnesses. Investigating Officer alongwith Satguru Head Constable and Jagtinder Pal Singh went in search of the accused. When they reached on the road dividing Sectors 10&11, accused Majoj Pal was found present there. He was identified

by Jagtinder Pal Singh as well as Head Constable Satguru. He was arrested on 9.6.1998 in the morning at about 4:30 / 5 AM. On his personal search, Rs-1200/- were recovered. They were taken into possession. Investigating Officer went to the PGI, Chandigarh and prepared inquest report (Ex.PAA). Thereafter, he moved application ExPU for Post Mortem Examination on the dead body of Manjit Singh. Dead body was sent to General Hospital, Sector 16, Chandigarh for post mortem examination on the basis of the opinion (ExPU/1) given by the doctor. Puran Chand, Sub Inspector was left by the Investigating Officer for getting the Post Mortem Examination conducted and he himself went in search of other accused. On the basis of (ExPE/1), FIR (ExPBB) was recorded. On 24.6.1998, investigation was taken up by Karam Singh, SHO, Police Station North, Chandigarh. On 27.6.1998, accused Harvinder Singh surrendered before Shri A.K. Bishnoi, Judicial Magistrate First Class, Chandigarh. On receipt of telephonic message, Karam Singh came in the Court and moved application for judicial remand. Judicial remand of Harvinder Singh was obtained as he was to be got identified from the witnesses. Magistrate desired that identification parade be got conducted upto 3.7.1998. Accused Harvinder Singh refused to participate in the identification parade. This accused was taken out from the jail and Jagtinder Pal Singh identified him as Harvinder Singh. Head Constable Satguru also identified him as one of the assailants. Harvinder Singh was formally arrested on 3.7.1998. Police remand of accused Harvinder Singh was obtained. After completion of the investigation, report

under Section 173 Cr.P.C. was submitted in the Court.”

The accused were charged with the offences under Sections 302 and 307 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution has examined PW-1 Dr. Bal Murali; PW-2 Shri R.D. Sharma, the then DIG, Model Jail, Burail, U.T. Chandigarh; PW-3 Shri P.S. Gill, SDM, Central; PW-4 Jatinder Pal Singh, complainant; PW-5 Head Constable Satguru; PW-6 Dr. N.S. Pandey, Senior Scientific Officer, CFSL; PW-7 Constable Yash Pal; PW-8 Constable Narinder Kumar; PW-9 Head Constable Jaspal Singh; PW-10 Constable Sanjiv Kumar; PW-11 Dr. Krishan Vij; PW-12 Inspector Karam Singh; PW-13 Sub Inspector Ram Dayal; PW-14 Shri A.K. Bishnoi the the Judicial Magistrate, Chandigarh; PW-15 Prem Chand, Clerk, Registering Authority, Chandigarh; and PW-16, Parmod Kumar, SHO, Police Station North, Chandigarh.

The testimonies, in brief, of the material witnesses, is discussed as under:-

- (i) PW-2 Shri R.D. Sharma, who was posted as DIG, Model Jail, Burail, U.T. Chandigarh, deposed that accused Harvinder Singh was admitted in the said jail on 27.06.1998 in this case. He had received order from learned JMIC on 30.6.1998 at 11.30 p.m. for identification parade of accused Harvinder Singh, who

had already been sent to the Court of Shri A.K. Bishnoi at 9.45 a.m. on the same day. The accused was brought back to jail at 12.40 p.m. and was directed to keep his face muffled as his identification parade was to be conducted. On 03.07.1998, Shri P.S. Gill, Sub Divisional Magistrate, Central came for identification at 2.10 p.m., but accused Harvinder Singh submitted an application stating that he had already been shown to the witnesses in the Court and as such, he did not want to participate in the identification parade.

(ii) PW-5 Head Constable Satguru deposed that he along with Sham Lal and Lallan Singh was patrolling in the market of Sector 10 when they heard about shots being fired from a firearm. Thereafter, one Maruti Car bearing No.CH-01-M-1010 was found being taken in reverse gear and the same dashed against a three-wheeler parked there. Two boys were found running in the verandah of the booths of Sector 10 market. Some public persons told him that two boys who were running there had fired shots. This witness chased them but they vanished in the dark. He further stated that the man who was wearing black pants and was ahead of the other was exhorting the latter "Vicky let us run police is following." On 09.06.1998 at about 4.30 or 4.45 a.m.,

this witness was with Inspector Parmod Kumar. He was called in the police station for identification parade of the accused, who was wearing black pants. He identified the accused as the assailant who was wearing black pants and running with the second assailant on that day. This witness also made the statement regarding arrest of Manoj Pal and concerning the recovery from his personal search.

(iii) PW-11 Dr. Krishan Vij conducted the Post Mortem Examination of the corpse of Manjit Singh and proved post-mortem report as Ex.PD. He further stated that cause of death was coma due to head injury caused by fire arm which was ante mortem and sufficient to cause death in the ordinary course of nature. He also proved Metallic piece Ex.P/1 recovered from the dead body.

(iv) PW-14 Shri A.K. Bishnoi was the Judicial Magistrate, Chandigarh. On 27.06.1998, one application Ex.PV was presented before him. Accused Harvinder Singh surrendered before him. He also allowed the application of accused Harvinder Singh for identification parade.

(v) PW-16, Parmod Kumar, SHO, Police Station North, Chandigarh deposed that on receipt of wireless

message, he reached the market of Sector 10. As per information supplied by Constables Lallan Singh and Sham Lal, he went to PGI Chandigarh and contacted SI Ram Dayal. Thereafter, he took up the investigation of this case.

When examined under Section 313 Cr.P.C., the accused denied all the incriminating circumstances which appeared against them and pleaded false implication. Harvinder Singh stated that he was shown to the witnesses by the police. He was not known by Vicky. He was resident in village Barkandi and was falsely implicated in this case. Whereas, accused-respondent Manoj Pal pleaded that he was arrested from Panchkula and in order to justify his illegal detention, a false case was planted upon him. In support of their case, accused examined Gurpreet Kaur Dhillon, Principal, Saint Soldier Convent School, Muktsar as DW1; Head Constable Harish Kumar, who brought the summoned record and proved copy of FIR No.98 of 1996 as Ex.DK, as DW2. As per the FIR, the name of the accused are Harvinder Singh, Tarsem Singh and Jagtinder Pal Singh; Head Constable Vijay Kumar as DW3, who proved copy of FIR No.20 dated 19.01.1993 of Police Station East, Chandigarh as Ex.DX; B.B. Gupta, Secretary, Chandigarh Club; as DW4; and Khushbaj Singh as DW5.

Meanwhile, accused Harvinder Singh became absent from the Court and thus, he was declared a proclaimed offender.

After hearing learned counsel for the accused-respondent and

learned Public Prosecutor, learned trial Court vide the impugned judgment acquitted the appellant from the charges framed against him.

Hence, the instant appeal by the U.T. Chandigarh.

Learned Addl.P.P. contends that from the testimony of the witnesses, it is fully established that accused-respondent Manoj Pal Singh @ Manoj Lal Vass Balram actively participated in the crime. He refers to the statement of PW5-Head Constable Satguru to the effect that he had seen the appellant along with co-accused Harvinder Singh running from the spot. This witness also identified the appellant at the time of his arrest as well as in the police station. There is nothing on record to show as to why this witness would falsely implicate the appellant. Similarly, SHO Parmod Kumar who appeared in the witness box as PW16 has stated in his evidence that he took Jatinder Pal Singh as well as HC Satgur with him in search of the accused and when they reached the road dividing Sectors 10 and 11, accused-respondent was found present there near the Police Station of Sector 11. The appellant was identified by him as well as by HC Satguru. Therefore, the finding recorded by the trial Court that the prosecution has failed to prove its case beyond reasonable doubt is based on incorrect appreciation of evidence on record.

On the other hand, learned Senior counsel representing the accused-respondent that the prosecution has failed to establish the identity of the accused-respondent as one of the perpetrators of the crime. Learned trial Court has returned the findings acquitting the appellant on correct appreciation of the material placed on record. Even if two views are

possible, the view favouring the accused shall prevail.

Heard learned counsel for the parties and carefully perused the record with their able assistance.

In the instant case, the story of the prosecution is that there were two persons and one of them had fired gunshots causing death of Manjit Singh. PW-4 Jagtinder Pal Singh was present with the deceased at the time of the occurrence. He has specifically named Harvinder Singh as the assailant. However, as regards the appellant, he has stated that he was told about the second person to be Manoj Kumar at the PGI, Chandigarh. Thus, he has failed to clearly identify the appellant as one of the perpetrators of the crime. It has also not come on record as to who had disclosed the identity of the appellant in the PGI. He also could not identify the appellant present in the Court as the same person who was accompanying the accused-Harvinder Singh.

During his cross-examination by learned Public Prosecutor with the permission of the Court, Jagtinder Pal Singh, PW4, deposed that he did not stated before the police that he knew Manoj Lal Vass or that he had a fight with him in the Chandigarh Club about six months prior to the occurrence and that he was known to the appellant earlier. Similarly, HC Satguru, PW5 stated that while patrolling in the market, they saw two boys running in the verandah of the booths in Sector 10 market. He admitted that the accused were not previously known to him. Since he was chasing them, the faces of those two culprits could not be towards him. It was around 8.00 p.m. and hence, dark. Therefore, from his version, it cannot be conclusively

said that the appellant was one of the culprits.

Similarly, there is glaring contradiction in the version of PW-16, SHO Parmod Kumar and PW-5 HC Satguru with regard to the arrest of the appellant. According to PW-16, Parmod Kumar, SHO, he along with complainant, Jagtinder Pal Singh and HC Satguru had launched search of the accused and when they reached on the dividing road of Sectors 10 and 11, accused-respondent was found present on that road and that he was identified by the complainant as well as HC Satguru and was arrested. Whereas, the version of PW-5, HC Satguru is that he was called to Police Station regarding identification of the accused appellant. Even otherwise, it has come on record that the appellant was shown to HC Satguru during the investigation. Therefore, his statement with regard to identification of the accused-respondent is inconsequential.

Another important aspect of the matter is that the proprietor of M/s Vijay Confectionery, Constables Sham Lal and Lallan Singh were not examined by the prosecution for the reasons best known to it. Their examination would have been material in completing the chain of events. Therefore, an adverse inference has rightly been drawn against the prosecution by learned trial Court.

The sum and substance of the above discussion is that the prosecution has failed to prove its case against the accused-respondent beyond shadow of reasonable doubt. The findings returned by learned trial Court are based on correct appreciation of the facts and circumstances pleaded and the material placed before it in support thereof. Hence, this

Court is not inclined to interfere in the well-reasoned judgment of acquittal recorded by learned trial Court, which is, hereby, affirmed. As a result, the instant appeal fails and is thus, dismissed.

Dismissed.

(JITENDRA CHAUHAN)

JUDGE

(H.S. MADAAN)

JUDGE

27.09.2019

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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No