

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

1. CRA-S-2902-SB-2018 (O&M)
Date of decision : 19.11.2019

Gurpreet Singh @ Goldy

...Appellant

Versus

State of Punjab

...Respondent

2. CRA-S-3276-SB-2018 (O&M)
Date of decision : 19.11.2019

Sandeep Singh @ Sonu

...Appellant

Versus

State of Punjab

...Respondent

3. CRA-S-2828-SB-2018 (O&M)
Date of decision : 19.11.2019

Jagjiwan Singh @ Jiwan

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. D.S. Gurna, Advocate for the appellant.
(In CRA-S-2902-SB-2018)

Mr. H.S. Thiara, Advocate for the appellant.

(In CRA-S-2828-SB-2018)

Mr. Surinder Pal Singh Tinna, Additional A.G. Punjab.

ANIL KSHETARPAL, J.

This judgment shall dispose of appeals bearing CRA-S-2902-SB-2018, CRA-S-3276-SB-2018 and CRA-S-2828-SB-2018 arising from a common judgment passed by the Court of Sessions in Sessions Case No.8 of 12.05.2011/12.05.2017 decided on 08.05.2018 convicting the appellants- Gurpreet Singh @ Goldy, Jagjiwan Singh @ Jiwan and Sandeep Singh @ Sonu under Sections 307, 353 read with Section 34 of IPC. Jagjiwan Singh was also convicted under Section 25 of the Arms Act. The sentenced awarded by the learned Court of Sessions is extracted as under:-

<i>Convicts Tejinder Chander Sheikhar and Jagjiwan Singh are sentenced as under:</i>	
Under Section 307/34 of IPC	Rigorous imprisonment for five years and fine of ₹5000/-, in default of fine to further undergo rigorous imprisonment for one month.
Under Section 353/34 of IPC	Rigorous imprisonment for one year and fine of ₹1000/-, in default of fine to further undergo rigorous imprisonment for 15 days.
Under Section 25 of Arms Act	Rigorous imprisonment for one year and fine of ₹2000/-, in default of fine to further undergo rigorous imprisonment for 15 days.

<i>Convicts Gurpreet Singh and Sandeep Singh @ Sonu are sentenced as under:</i>	
Under Section 307/34 of IPC	Rigorous imprisonment for five years and fine of ₹5000/-, in default of fine to further undergo rigorous imprisonment for one month.
Under Section 353/34 of IPC	Rigorous imprisonment for one year and fine of ₹1000/-, in default of fine to further undergo rigorous imprisonment for 15 days.

FACTS OF THE CASE:-

In nutshell, the facts of the case as noticed by the learned Court of Sessions, correctness whereof is not disputed are extracted as under:-

“2. The brief facts of the case of the prosecution are that on 11.8.2010 Inspector Sukhwinder Singh, In-charge CIA, Hoshiarpur along with other police officials was present in the area of Garhdiwala on government vehicle Trax No.PB-12-G-7539 which was driven by PRHC Gurdial Singh in connection with patrolling. Then he received secret information that Sheikhar son of Master Jai Pal, resident of Garhdiwala, against whom many cases of dacoity and snatching are registered and who has made a group with boys of bad character and they have illegal weapons with them. His full name is Chander Sheikhar. He along with his friend Sonu resident of Kapoor Pind, Jalandhar along with 3-4 unknown persons are roaming in the nearby villages on a white colour Verna Car. The companions of Sheikhar had committed murder of under-trial Bobby in the court complex, Ambala by using the same car Chander Sheikhar and his companions were intending to commit some incident in the area. Inspector Sukhwinder Singh gave the information to SHO Balkar Singh and asked him to lay check post on the electricity house road and other police parties be constituted to trace said Verna Car. He himself went towards village Bahtiwala Kalra. The SHO laid check post at the turn on the road leading from Bahtiwala to Kalra. Inspector Sukhwinder Singh laid check post on the turn towards village Kalra on Garhdiwala side. Then at about 12.30/12.45 P.M a white colour car came from Village Bahtiwala side at a very high speed. The police party gave

indication to stop the car then the driver of the car tried to run over the police official HC Ramesh Pal, HC Ravinder and PRHC Vikram Singh with intention to kill them but they saved themselves. Five persons were sitting in the car. They turned the car towards village Keshopur. Inspector Sukhwinder Singh along with other police party followed the car. In the meanwhile police party headed by SHO also came there. They contacted with each other and followed the car of the accused. The SHO told SI Sukhwinder Singh that this was the same suspicious car and Chander Sheikhar was driving the same and the person sitting on the adjoining seat was Sonu who usually roam around in the area with Sheikhar. ASI Rakesh Kumar and other police official identified them. When the police party reached near the Verna car then Chander Sheikhar and other persons sitting in the car started firing upon the police party. Then as per instructions, police party also fired in retaliation. PRHC Parmod Kumar fired towards the left side tyres of car from his AK 47 rifle. Due to which both the tyres of Verna car burst but the driver still pulled the car inside the abadi of village Keshopu and then managed to run away from the fields after leaving the car in the village.

The Verna car was taken into possession which was bearing No.PB-10-CC-0840. On search of the car two kirpans, one datar, two rods and one baseball bat was recovered which were taken into possession vide separate memo. A plastic bottle upon which 'ethanol alisolute was written, was recovered. Later on it was discovered that this chemical is used to make the person unconscious. No RC or other document of ownership was however, recovered. While following the car inspector Sukhwinder Singh had fired 9 rounds from his 9 mm revolver and ASI Satwinder Singh has fired 7 rounds from his 38 bore revolver. PRHC

Parmod Kumar had fired 19 rounds from his AK 47 rifle. However, no injury was caused to any person. The ruqa was sent to police station Garhdiwala and FIR was got registered. The police party tried to search the accused but they could not be traced. The sketches of weapons recovered from the car was prepared. On further inquiry it was found that Verna car was snatched by the group members of Sheikhar from Ambala (Haryana) and FIR No.43 dated 13.2.2010 under Section 392, 285, 34 IPC was registered at PS Baldev Nagar, District Ambala. The correct number of the car was HR01-X-4920 and accused had affixed forged number plate. Accordingly, offence U/S 482, 411 IPC was added. The raids were conducted to arrest the accused. On 14.8.2010 one of the accused Gurpreet Singh @ Goldy was arrested who was identified by HC Parminder Singh and HC Jagjit Singh. During investigation, accused Jagjiwan Singh @ Jiwan was arrested on 20.8.2010 by Inspector Sukhwinder Singh. He made confessional statement and got recovered country made pistol of 303 bore with 3 live cartridges. Sketch was prepared and these articles were taken into possession. On 29.8.2010 main accused Tejinder Chander Sheikhar @ Sheikhar was arrested. During investigation, he made confessional statement and got recovered 32 bore pistol and 3 live cartridges and 3 empty cartridges as per his disclosure statement. The pistols were got examined from armor. Investigation was done. Site plan of the place of occurrence was prepared. Statements of the witnesses were recorded. On completion of the investigation, prosecution filed the challan against accused Gurpreet Singh, Jagjiwan Singh and Tejinder Chander Sheikhar before the learned Committing Court.

It is pertinent to mention here that later on accused Sandeep Singh @ Sonu who was confined in Model Jail,

Kapurthala in some other case was arrested in this case on 29.9.2012. However, nothing was recovered from him and supplementary challan against him was presented. However, the fifth accused could not be traced.”

ORAL EVIDENCE:-

Prosecution in order to prove its case examined Surjit Singh, Head Constable Range Armourer as PW1. He has been examined as an Expert who had checked the firearms recovered. He admits that he did not check the pistol and the revolver by test firing.

Assistant Sub Inspector, Satwinder Singh has appeared as PW2. He was member of the police party headed by Inspector Sukhwinder Singh. He has deposed in line with the case of the prosecution. He has identified the convicts present in the Court. In cross-examination, he has stated that the police party came within the distance of 10 feet from the verna car in which the appellants alongwith other convict were travelling. He admitted that the lock of the pistol allegedly recovered from Jagjiwan Singh is broken and presently it is incapable to fire from the aforesaid pistol. The place of recovery of pistol on the disclosure statement of Jagjiwan Singh is at a distance of 60/65 Kms from his residence and the appellant (Jagjiwan Singh) had no control over the place from where the alleged recovery was made. He states that there is no 90 degree turn after the place where signal was given to the convicts to stop the vehicle. The bullet fired by him hit on the tyre of verna car, however, it did not stuck any part of the body of the car. He fired 7 shots (times) from his service revolver .38 bore.

Deputy Superintendent of Police, Sukhwinder Singh has been

examined as PW3, who at the time of incident, was posted as Incharge CIA Head Quarter, Hoshiarpur. He claims that he alongwith other police officials were present in the area of Garhdiwala when secret information was received that Tejinder Chander Shekhar (convicted but, not the appellant herein) is habitual in indulging in committing the offences of robbery, dacoity and is having illegal weapon. He alongwith Sonu @ Sandeep (appellant) alongwith three unknown persons are present in the area of Garhdiwala and are roaming in villages in Verna car which has been snatched from Ambala. They have also committed the murder of one boy namely Bobby in the Court complex at Ambala in State of Haryana. Two police parties were formed and Nakka/barrier was laid at two different places. When accused persons were seen coming in the car, signalled to stop, but driver (Tejinder Chander Shekhar) did not stop and rather tried to run over their vehicle over the officials of the police party consisting of Head Constable-Vikram Singh, Head Constable-Ravinder Nath and Head Constable-Ramesh Pal who saved themselves by running towards other side and the car sped away towards village Keshopur. Convicts started using their firearms and in retaliation, three police officials namely Sukhwinder Singh, Satwinder Singh and PRHC Parmod Kumar used their firearms. It has been stated that Parmod Kumar who was armed with AK47 riffle fired on the tyres of the said car due to which both the tyres on the left side of the car were deflated. The car was at that time bearing registration number plate as PB-10-CC-0840. He also fired 9 times with his service pistol. In cross-examination, he admits that burst tyres of the car were not individually taken into possession and the bullets which hit the tyres were not taken into

police custody as the same might have slipped away after hitting the tyres. He goes on to admits that none of the present convict was named in the FIR regarding theft of verna car and no evidence came in his investigation that any of the convict was involved in firing incident which took place in the Court complex at Ambala (Haryana) involving the same car. He admits that during his investigation, identity of 5th accused was not established. No Test Identification of the convicts was carried out as Head Constable Parminder Singh previously was known to them. The efforts to pick the finger prints from the weapon recovered. The alleged recovery of the weapon on demarcation of Jagjiwan Singh was at distance from 70 Kms from the place of his residence. Jagjiwan Singh was neither the owner nor in possession of place from where the alleged arm (countrymade pistol) was recovered.

Naresh Kumar, Sub Inspector has been examined as PW4. He was the member of police party constituted under SHO Balkar Singh.

Parvinder Singh, Assistant Sub Inspector has been examined as PW5 who was the member of police party headed by Sukhwinder Singh. In cross-examination, he has stated that his statement under Section 161 Cr.P.C. was never recorded before 20.08.2010. He never disclosed the fact to the Investigating Officer that he was previously known to the accused- Tejinder Chander Shekhar, Gurpreet Singh and Jagjiwan Singh. He admitted that in his statement Mark D1, he did not say that he was the member of police party on 11.08.2010. He further goes on to say that police party fired on the car from distance of 100 yards and both the tyres of the car got burst. He admits that the bullets fired by the police party did not hit any of the accused but it hit the car. He goes on to say that the accused drove the car

with burst tyres for about distance of 1 KM.

Raman Gosain, owner of the car bearing registration No.HR-01-X-4920 was examined as PW6. He claimed that the car had been snatched from him on 13.02.2010. However, he admitted that the convict-Tejinder Chander Shekhar was not one of the person who had snatched his car. He does not know that what happened to the trial for snatching of the vehicle.

All the convicts were examined under Section 313 Cr.P.C. Incriminating evidence/material brought on record by the prosecution was put to them to which they denied and claimed trial. In defence, statement of Sohan Singh-Lambardar of Village Kalra was recorded as DW1 and has stated that his agricultural land and residential house is on the main road in Village Kalra (near the place of occurrence) and no such incident took place and there was no firing.

DOCUMENTARY EVIDENCE:-

Documents as relied upon by the prosecution are as under:-

<i>Sr. No.</i>	<i>Title</i>	<i>Subject</i>
1	Ex.PA/PA1	Test Report Arms
2	Ex.PB	Layout of Kirpan 1
3	Ex.PB1	Layout of Kirpan 2
4	Ex.PB2	Layout of Datar
5	Ex.PB3	Layout of Baseball bat
6	Ex.PC	Recovery memo - 2 Kirpans, 1 Datar, 1 baseball, 2 rods (iron), 1 bottle Ethanol Alisolute.
7	Ex.PD	Recovery memo of car PB-10-CC-0840 White Verna
8	Ex.PD1	Map of place of occurrence
9	Ex.PE	Recovery memo of 38 bore cartridge
10	Ex.PF	Search memo of Gurpreet Singh
11	Ex.PG	Daily Diary Entry by Inspector Sukhwinder Singh.

12	Ex.PH1	Report by Inspector Sukhwinder Singh
13	Ex.PH	FIR dated 11.08.2010
14	Ex.PH2	Map of place of occurrence
15	Ex.PJ	FIR dated 13.02.2010
16	Ex.PW3/A	Disclosure statement on which recovery of 32 bore pistol on identification of Gurpreet Singh
17	Ex.PW3/B	Search memo of Jagjiwan Singh
18	Ex.PW3/C	Disclosure statement of Jagjiwan Singh (regarding incident, hiding of pistol)
19	Ex.PW3/D	Recovery memo of seizure of 303 bore pistol
20	Ex.PW3/E	Layout of pistol 303 bore
21	Ex.PW3/F	Map of place of occurrence (where pistol is recovered)
22	Ex.PF1	Intimation to Gurpreet Singh's father
23	Ex.PW3/G	Intimation to Tejinder Chander Shekhar's father
24	Ex.PW3/H	Search memo of Chander Shekhar (Tajinder)
25	Ex.PW3/J	Disclosure memo by Tejinder Chander Shekhar regarding acceptance of hiding 32 bore pistol in transparent polythene.
26	Ex.PW3/K	Search/memo-32 bore pistol seizure.
27	Ex.PW3/L	Map of place of occurrence layout of 32 bore guns + 6 cartridges
28	Ex.PW7/A	Approval to prosecute
29	Ex.PW7/B	Approval to prosecute
30	Ex.P1	Proclamation order by Addl. Session Judge (Hoshiarpur)
	Ex.P2	Statement of Avtar Singh (proclamation order pasted outside house)
	Ex.P1	Statement of Chowkidar (Hazara Singh)
	Ex.P2	Statement of HC Gurbant Singh
	Ex.P1	Statement of Ajaib Singh (Village resident)
	Ex.P2	Statement of Satpal Singh (resident)
31	Ex.PX	Map of the place where car was stuck, abandoned & recovered.
32	Ex.PY	Map where nakabandi was there, car was told to stop, firing done
33	Ex.PZ	Map of place where jaamun tree was there from which revolver was recovered

Documents as relied upon by the defence are as under:-

Sr. No.	Title	Subject
1	Ex.D7/A	Approval to prosecute (regarding vetting of draft)

ARGUMENTS:-

On the one hand, learned counsels for the appellants have submitted that the learned Court of Sessions has erred in convicting the

appellants even in absence of sufficient evidence. They further submitted that there are material contradictions which have been ignored by the Court of Sessions and the evidence led by the prosecution is not sufficient to prove the case against the appellants beyond the shadow of reasonable doubt.

On the other hand, learned counsel for the State has submitted that judgment passed by the learned Court of Sessions is correct as the offence stands proved by examining police officials and in view of recovery of countrymade pistol on the demarcation of appellant-Jagjiwan Singh as per Section 27 of the Evidence Act.

This Court with able assistance of learned counsel for the parties has gone through the record and the impugned judgment.

As per case of the prosecution, Tejinder Chander Shekhar and his co-accused Sonu @ Sandeep had snatched the vehicle in question from Raman Gosain and thereafter involved in killing of one boy namely Bobby in the Court Complex at Ambala. Raman Gosain has specifically stated that Tejinder Chander Shekhar is not the person who has snatched his vehicle-Verna car. This witness has not stated that any of the convict snatched the vehicle in question. Investigating Officer-Sukhwinder Singh admits that during his investigation, no evidence has come on record to prove that any of the convict was involved in the alleged murder of boy namely Bobby in Court complex at Ambala. Thus, the basis of secret information and correctness thereof, is not established on the file.

Further only alleged recovery from appellant is alleged to be the countrymade pistol, recovered more than 60 Kms from the place of residence of Jagjiwan Singh allegedly on his disclosure statement. It is

admitted that place from where recovery was allegedly made, is neither owned by Jagjiwan Singh nor it is in his possession. Evidence to link Jagjiwan Singh with the countrymade pistol in question is also missing. No evidence has been produced to prove that the aforesaid pistol was used for firing on the police party. In fact, arms allegedly recovered from the convicts were never sent to the Forensic Science Laboratory. Surjit Singh, Head Armourer has admitted that he did not test fire. When Sukhwinder Singh was examined, he admitted that the pistol recovered from the possession of Chander Shekhar cannot fire because its lock is broken.

Further after amendment of the charge, car in question, alleged stolen vehicle, was never produced by the prosecution.

As per the prosecution, police party fired as many as 35 rounds {9 by Sukhwinder Singh from his service revolver, 7 by Satwinder Singh from his service revolver and 19 rounds were fired by Parmod Kumar with his AK47 (Assault Rifle)}. Sukhwinder Singh admits that one bullet had hit the mudguard of the car in question. However, no evidence has been produced to prove that any bullet had hit the body of the car. It is claimed that two bullets had hit tyres on account whereof two tyres on left side of the car got deflated/gone burst. It is being claimed that thereafter convicts were able to travel in the car upto distance of 1 Km which is highly unlikely.

There is contradiction with regard to place where convicts were given signal to stop the vehicle as Sukhwinder Singh claims that there was 90 degree turn in the road immediately after the place whereas Satwinder Singh claims that there was no 90 degree turn after the place on the road

where signal to stop was given.

Now with regard to identification of the accused as occupants of the Verna car, there is contradiction. PW2-ASI Satwinder Singh has stated that none of the accused except Tejinder Chander Shekhar was known to the police party. However, when Sukhwinder Singh appeared as PW3, he stated that ASI Naresh Kumar identified Chander Shekhar and Sonu. When Parvinder Singh appeared as PW5, he admitted that he did not disclose the fact that he was previously known to Tejinder Chander Shekhar, Gurpreet Singh and Jagjiwan Singh to the Investigating Officer.

Further, it is really surprising that no independent witness was associated by the Prosecuting Agency/police party either when the barrier was laid or on different dates when the convicts were arrested or on the different dates when recovery of alleged arms were made on the basis of alleged disclosure statement of the convicts. There is no recovery from Gurpreet Singh.

It has been seen that the learned Court of Sessions has failed to examine the evidence in threadbare and has passed the judgment of conviction by broadly discussing the evidence produced. The Court is expected to go deep into the matter and critically analyse the entire evidence and thereafter reach at a conclusion. Learned Court of Sessions has passed the judgment in a casual manner while dealing with the evidence with superficially.

For proving offence under Section 307 IPC, there is no evidence of attempt to kill. The police officials who were standing at the barrier and convicts tried to be run over as alleged, have not appeared in

evidence to depose. Names of police officials are Head Constable Ramesh Pal, Head Constable Ravinder and PRHC Vikram Singh. Still further, there is no injury to anyone i.e. convicts or police official. 35 bullets were fired by the police party. However, there is neither any injury to any of the accused nor the prosecution has proved that there is any bullet mark on the alleged car. The alleged incident is of day time at 12 PM. Place of occurrence is near the village. The defence has examined Lambardar of Village Kalra who has informed that no incident took place. As regards recovery of countrymade pistol on the place disclosed by Jagjiwan Singh, it may be noted that aforesaid recovery is not witnessed by any independent witness. In the facts of this case, this Court is of the view that solely on the basis of such evidence, appellant Jagjiwan Singh cannot be convicted. Hence, appellants are given benefit of doubt and, therefore, acquitted.

In view of the aforesaid, all the three appeals are accepted. Judgment of conviction and order of sentence are set aside.

19.11.2019
Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**