

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

Reserved on : 21.1.2019

Date of decision : 25.1.2019

1. CRA-D No. 562-DB of 2003 (O&M)

Harinder Pal Singh @ Pappu	 Appellant
versus	
State of Punjab	... Respondent

2. CRA-D No. 685-DB of 2003 (O&M)

Harjinder Singh @ Shunti	 Appellant
versus	
State of Punjab	... Respondent

3. CRR No. 1402 of 2004 (O&M)

Jaswinderpal Singh	 Petitioner
versus	
Harjinder Singh @ Shunti and others	... Respondents

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. Sanjeev Manhas, Advocate, for the appellant
in CRA-D No. 562-DB of 2003,
Mr. Sudhir Sharma and Mr. Ram Krishan Rana, Advocates,
for the appellant in CRA-D No. 685-DB of 2003.

Mr. Vivek Sharma Vashisht, Advocate, for the petitioner
in CRR No. 1402 of 2004.

Mr. S. P. S. Tinna, Additional Advocate General, Punjab.

Rajiv Sharma, J.

1. Since common questions of law and facts are involved in these cases bearing CRA-D No. 562-DB of 2003, CRA-D No. 685-DB of 2003 and CRR No. 1402 of 2004, the same are being disposed of by a common judgment.

2. The present appeals and criminal revision are instituted against the judgment and order dated 10.6.2003, rendered by Additional Sessions Judge, Fast Track Court, Ludhiana, in Sessions Case No. 21 dated 4.5.2000, vide which accused Harjinder Singh @ Shunti and Harminder Pal Singh alias Pappu, who were charged with and tried for the offence punishable under Section 302/ 34 IPC and Section 27 of the Arms Act, were convicted and sentenced under Section 302/34 IPC to undergo imprisonment for life and to pay fine of ₹ 10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two years. Appellant Harjinder Singh @ Shunti was also convicted and sentenced to undergo rigorous imprisonment for two years under Section 27 of the Arms Act for misusing his licensed revolver and also to pay a fine of ₹ 1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.

3. The case of the prosecution in a nutshell is that on 3.2.2000 PW1 Jaswinderpal Singh got recorded his statement to the effect that his brother Mohinderpal Singh @ Bhanu, and one Navtej Singh son of Jagjit Singh, resident of village Agwal Lopo (Jagraon,) were present in the house of Mohinderpal Singh situated in Mohalla, near Hargobind Nagar. Ravinder Singh @ Bunti son of Atar Singh of Shop No. 35, New Sabzi Mandi, Ludhiana, came to them and told that he had got some altercation with Harjinder Singh @ Shunti son of Harbhajan Singh, Pappu son of Gulab Singh, shop keepers, Sabzi Mandi. These persons humiliated him and removed his turban. He requested Jaswinderpal Singh complainant, his brother Mohinderpal Singh and Navtej Singh to accompany him to Sabzi Mandi to get the dispute settled. They went to Sabzi Mandi in the car of

Ravinder Singh. It was about 8.30 P.M. at that time. They stopped in front of shop no. 35, which belonged to Ravinder Singh @ Bunti. Harjinder Singh @ Shunti and Pappu son of Gulab Singh along with 2/3 persons, who were unidentified, came and confronted them. Jaswinderpal Singh got down from the car and went to Harjinder Singh. Jaswinderpal Singh tried to settle the matter. Pappu son of Gulab Singh and other persons standing there raised *lalkara* that the complainant party should not be spared and they should be taught a lesson for helping Ravinder Singh. In the meantime, Harjinder Singh @ Shunti took revolver from his pocket. He fired shot towards Mohinderpal Singh. Mohinderpal Singh fell down on the ground. Alarm was raised. The accused fled away from the spot. Mohinderpal Singh died after some time. It was also stated in the complaint that on earlier occasion Ravinder Singh @ Bunti and Harjinder Singh @ Shunti had a dispute. The dead-body was sent for post-mortem examination. Recoveries were effected. Investigation was completed and challan was put up after completion of all the codal formalities.

4. The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. The accused examined nine witnesses in defence. The accused were convicted and sentenced, as noticed above. Separate appeals have been filed by the appellants against the judgment and order of the learned trial Court. Petitioner Jaswinderpal Singh, brother of deceased Mohinderpal Singh filed the aforesaid criminal revision for enhancement of sentence and grant of compensation to the family members of the deceased.

5. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below, whereas learned counsel for the petitioner submitted that sentence may kindly be enhanced and compensation be awarded to the family members of the deceased.

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

7. PW7 Dr. Ashok Raswant Singh testified that on 6.2.2000 at about 12.15 P.M., he along with Dr. Anil Verma and Dr. Gagandeep conducted the post-mortem examination on the body of Mohinderpal Singh alias Bhanu. They noticed the following injuries:-

1. Lacerated wound 4 mm in diameter with inverted margins and surrounding skin was bruised present on the left clavicle region 5" from mid line, corresponding holes were seen in the clothes.
2. Lacerated wound 4 mm in diameter with inverted margins with bruse skin on the back of neck on left side 2" from mid line.
3. Lacerated wound 4 mm in diameter with inverted margins with bruised skin about 1" above and medial to injury no. 2.
4. Lacerated wound 4 mm in diameter with inverted margins present on medial can thus of right eye.
5. Lacerated wound 6 mm in diameter on the back of chest of left side infra scapular region with corresponding hole on the clothes.
6. Diffused swelling over the left parietal region.

3 Xrays of the dead body were taken, showing three

bullets. One in the skull, one in left dome of diaphragm and one in left supra clavicular region.

8. The cause of death was due to haemorrhage and shock as a result of injuries to vital organs, which were sufficient to cause death in ordinary course of nature. All the injuries were ante mortem in nature. He proved post-mortem report, Ex.PA. The probable time that elapsed between the injuries and death was immediate and between the death and post-mortem examination was about 18 hours. He clarified that injuries could be due to fire arm.

9. PW1 Jaswinderpal Singh is the eye-witness. He along with Navtej Singh was sitting in the house of his brother Mohinderpal Singh alias Bhanu in New Hargobind Nagar, when Ravinder Singh alias Bunty son of Attar Singh, came there. He told that he had some dispute with Harjinder Singh alias Shunti and one Harminder Pal Singh alias Pappu. They had removed his turban. He asked them to accompany him to Sabzi Mandi, Ludhiana, to settle the dispute between them. Thereafter, he accompanied his brother Mohinderpal Singh alias Bhanu and Navtej Singh in the car along with Ravinder Singh alias Bunty. They reached New Sabzi Mandi, Ludhiana, at about 8.30 P.M. The lights were on in the Sabzi Mandi locality. They parked their car in front of Shop No. 35. The appellants along with 2/3 other persons were present at the spot. He asked the accused to settle the matter. However, Harminder Pal Singh alias Pappu and his unidentified companions raised *lalkara* (exhorted) that they should be taught a lesson and they be not spared. Accused Harjinder Singh fired shot at his brother Mohinderpal Singh. He fell down. Accused continued raising slogans that the complainant should be taught a lesson. Mohinderpal Singh

collapsed. They continued raising alarm. The accused ran away from the spot. He went to the police to lodge the report. Harjinder Singh @ Shunti was interrogated in his presence. He made disclosure statement that he had kept concealed one revolver along with five empties of that bore in the Gordrej almirah lying in his house. The disclosure statement is Ex.PD. Revolver was recovered vide seizure memo, Ex.PE. The arm licence was also taken into possession. In his cross-examination, he admitted that his brother Paramjit Singh also reached at the spot. His house was at a distance of 2½ kilometers from the house of Mohinderpal Singh deceased. House of Mohinderpal Singh was at a distance of 2 kilometers from the place of occurrence. Mohinderpal Singh deceased was living separately for the last about 18/19 years (since 1982). The car, in which they travelled, was not taken into possession.

10. PW2 Navtej Singh has corroborated the statement of PW1 Jaswinderpal Singh and the manner in which Mohinderpal Singh was murdered. He deposed that he was sitting in the house of Mohinderpal Singh. Ravinder Singh alias Bunti came there and told PW1 Jaswinderpal Singh and Mohinderpal Singh (deceased) about the dispute. They went to Sabzi Mandi. Accused Harjinder Singh alias Shunti and accused Harminder Pal Singh alias Pappu along with 2/3 other persons were already present there. They were confronted by the appellants. Accused Harminder Pal Singh alias Pappu raised *lalkara* (instigated). Thereafter, Harjinder Singh alias Shunti fired shot at Mohinderpal. Mohinderpal Singh collapsed at the spot. He deposed that when they were travelling in the car, Ravinder Singh told them that there was a dispute between him and the accused party regarding money matter. Dispute was earlier got settled by Mohinderpal

Singh. Out of the settled amount of ₹ 41,000/-, accused Harjinder Singh alias Shunti had paid ₹ 21,000/- and the dispute was regarding remaining amount of ₹ 20,000/-. In his cross-examination, he admitted that he had not told the police that while travelling in the car Ravinder Singh had told them about the money dispute between him and the accused as the police had not asked him. He had also not told the police that out of the said amount of ₹ 41,000/-, ₹ 21,000/- had already been paid to Ravinder Singh and the dispute was regarding the remaining amount of ₹ 20,000/-. Ravinder Singh had also not told that the alleged dispute had taken place on the previous day in the morning.

11. PW9 Inspector Angrez Singh lodged the report on basis of the statement made by Jaswinderpal Singh. He recorded the statement, Ex.PA. Thereafter, FIR, Ex.PA/1, was registered. He prepared inquest report, Ex.PB. He had sent the body for post-mortem examination. He arrested both the accused on 14.2.2000. He interrogated accused Harjinder Singh. He made disclosure statement, Ex.PD, and got recovered revolver of 32 bore. The revolver was taken into possession along with five empty cartridges. These were taken into possession. Accused Harjinder Singh also produced his licenced revolver, Ex.P7.

12. The case of the prosecution precisely is that there was some money dispute between Ravinder Singh and accused Harjinder Singh @ Shunti. The matter was got settled by Mohinderpal Singh (deceased). Jaswinderpal Singh had paid a sum of 21,000/-, out of settled amount of ₹ 41,000/-. The dispute was regarding payment of balance amount. Ravinder Singh went to the house of Mohinderpal Singh, where PW1 Jaswinderpal Singh and PW2 Navtej Singh were present. PW1 Jaswinderpal Singh, PW2

Navtej Singh, Ravinder Singh and Mohinderpal Singh went to Shop No. 35. Mohinderpal Singh was killed by Harjinder Singh with his licensed revolver. According to the doctors, the cause of death was due to haemorrhage and shock as a result of injuries to vital organs, which were sufficient to cause death in ordinary course of nature. The injuries were ante mortem in nature. The probable time that elapsed between the injuries and death was immediate and the time between the death and post-mortem examination was about 18 hours.

13. The role of appellant Harminder Pal Singh alias Pappu was that he gave *lalkara* (exhorted), thereafter Harjinder Singh alias Shunti fired shot at Mohinderpal Singh. No recoveries were effected from Harminder Pal Singh alias Pappu.

14. According to the contents of the FIR, the appellants had removed the turban of Ravinder Singh. It is not mentioned in the FIR that there was dispute regarding money, which was got resolved earlier by Mohinderpal Singh deceased. PW2 Navtej Singh has also admitted in his cross-examination that he had not told the police that on the way to Sabzi Mandi, Ravinder Singh had told them about the money dispute. PW1 Jaswinderpal Singh has also admitted that the house of Mohinderpal Singh was at a distance of 2 kilometers from the place of occurrence. He was living separately since 1982. Ravinder Singh had not lodged any complaint against the appellants with the police when his turban was removed. PW2 Navtej Singh in his cross-examination has admitted that prior to the occurrence, the dispute between Ravinder Singh and the accused party was got resolved by deceased Mohinderpal Singh. There was no enmity between Mohinderpal Singh and Harminder Pal Singh @ Pappu. There is no

evidence against him but the assertion is that he had raised *lalkara*. The dispute, if any, was between Ravinder Singh and Harjinder Singh @ Shunti.

15. It was not a premeditated act. The complainant party had reached the spot. There was no dispute between Mohinderpal Singh and the accused party. However, the fact of the matter is that Harjinder Singh @ Shunti fired at Mohinderpal Singh, which resulted in his death. Since he has used the licensed revolver to fire at Mohinderpal Singh, he had the intention to kill Mohinderpal Singh, though he had no enmity with Mohinderpal Singh. The cause of death was due to haemorrhage and shock as a result of injuries to vital organs. The injuries could be due to fire arm as per the statement of the doctor, who conducted the post-mortem examination.

16. In this case, the prosecution has also not examined Ravinder Singh who, according to the prosecution, had a dispute with Harjinder Singh @ Shunti. The prosecution has also not placed on record any document with regard to financial transaction between Ravinder Singh and Harjinder Singh @ Shunti.

17. In view of the aforesaid discussed evidence, CRA-D No. 562-DB of 2003 Har minder Pal Singh @ Pappu vs State of Punjab, is allowed. Accused Harminder Pal Singh @ Pappu is acquitted of the charges framed against him. He is on bail. His bail bonds are discharged.

18. CRA-D No. 685-DB of 2003 – Harjinder Singh @ Shunti vs State of Punjab, is partly allowed. The conviction and sentence of appellant – Harjinder Singh @ Shunti under Section 302 IPC is converted to Section 304 Part-I IPC. The State is directed to produce him in Court on 11.2.2019 to be heard on quantum of sentence under Section 304 Part-I IPC.

19. The prayer of the petitioner in Criminal Revision No. 1402 of 2004 Jaswinderpal Singh vs Harjinder Singh @ Shunti and others, with regard to enhancement of sentence does not survive. Accordingly, the same stands dismissed.

(Rajiv Sharma)
Judge

25.1.2019
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No