

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Crl. Appeal No.D-793-DB of 2003
Date of Decision: December 11, 2019

Baldev Singh and another
...Appellants

VERSUS

State of Punjab
...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vinod Ghai, Senior Advocate with
Ms.Kanika Ahuja, Advocate
for the appellants.

Mr.Bhupinder Beniwal, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Arvind Thakur, Advocate
for the complainant.

ARCHANA PURI, J.

Challenge in the present appeal, is to the judgment of conviction dated 07.10.2003 and order of sentence dated 09.10.2003 passed by learned Sessions Judge, Sangrur, vide which the appellants Baldev Singh and Malkiat Singh were held guilty and convicted for the commission of offences and sentenced as under:-

<i>Under Section</i>	<i>Baldev Singh</i>	<i>Malkiat Singh</i>	<i>In default</i>
302 IPC		Imprisonment for life along with fine of ₹5000/-	RI for one year

302 read with 34 IPC	Imprisonment for life along with fine of ₹5000/-		RI for one year
307 IPC		RI for ten years along with fine of ₹3000/-	RI for six months
307 read with 34 IPC	RI for ten years along with fine of ₹3000/-		RI for six months
30 of the Arms Act	RI for six months along with fine of ₹1000/-		RI for three months

All the sentences were ordered to run concurrently.

The background facts in nutshell are as follows:-

That complainant Labh Singh s/o Amar Singh is resident of village Bakshiwala and is working as an agriculturist. They are four brothers. The complainant, his brothers Gurcharan Singh and Laal Singh are residing in village Bakshiwala, whereas, their fourth brother Ajaib Singh is residing in village Khiwa Khurd at his in-laws' house. On 18.11.2002, Ajaib Singh had come to village Bakshiwala to meet them. For the last 3-4 days (prior to the occurrence), the employees of Water Supply Department had been checking the illegal water connections in the village. They had also checked water connection of Baldev Singh s/o Surjit Singh (one of the accused). When Teja Singh and Ranjit Singh, employees of the Water Supply Department, were passing in front of house of the complainant, then Gurcharan Singh, brother of the complainant, had asked them, to make a halt, to have tea. Labh Singh also had gone there. When they were consuming tea, in the meanwhile, Malkiat Singh and his father Baldev Singh had come there and started abusing the employees of the Water Supply Department. Thereupon, Gurcharan Singh had strictly asked them, not to abuse the said persons, as they were their guests. Upon this, both

Singh, to teach him also a lesson. After some time, employees of Water Supply Department had gone away. The complainant Labh Singh along with his brother Ajaib Singh had also returned back to his house, whereas, Gurcharan Singh remained in his house. At about 7.00 p.m., when complainant Labh Singh had gone to the street, to switch on the street-light, a scooter had stopped there, of which, Malkiat Singh, while armed with .12 bore double barrel gun and Baldev Singh, while empty handed, were occupants. The complainant, on seeing them, had come inside his house. The aforesaid persons had raised *lalkara* in front of house of the complainant, thereby exhorting them to come out, as they have come prepared. Then, Gurcharan Singh had come out of the house. Even Labh Singh and Ajaib Sindh had come out of their house. Accused Malkiat Singh had fired a shot from .12 bore double barrel gun, striking in the chest of Gurcharan Singh, upon which, he fell down. Even Baldev Singh accused had raised *lalkara*, not to spare others, upon which, Malkiat Singh had fired another shot, which passed by the side of Labh Singh. When Malkiat Singh started reloading the gun, Labh Singh and Ajaib Singh raised alarm, upon which, both the accused, while leaving their scooter, had fled away, on foot. Gurcharan Singh had died at the spot. Labh Singh and Sahib Khan had proceeded to the police station to lodge the report, while leaving Ajaib Singh to guard the dead body.

Enroute, the complainant met Inspector Sukhdev Singh and got recorded his statement, whereupon, the FIR was got registered.

During the course of investigation, SHO had inspected the spot and prepared site plan. He also prepared the inquest report of the dead body

from the spot. They were converted into parcel and taken into possession. Even, he facilitated the conducting of the post-mortem examination on the dead body of Gurcharan Singh. Even, the scooter bearing registration No.PB-44-1750 was taken into possession from the spot.

The accused were arrested on 23.11.2002. Copy of the registration certificate of the scooter bearing No.PB-44-1750 was recovered from the pocket of Malkiat Singh, whereas, an arms licence was recovered from the possession of Baldev Singh accused.

During the course of interrogation, Malkiat Singh had made a statement, thereby disclosing about having concealed the .12 bore double barrel gun loaded with two cartridges and two more live cartridges, in the wooden box lying in his house, upon which, disclosure statement was recorded and thereupon, from the disclosed spot, Malkiat Singh had got recovered two cartridges and the gun, which was loaded with two cartridges. The gun and cartridges were converted into parcel and taken into possession vide separate memo. Various other proceedings, relating to the recovery were also conducted. The application moved by Gurcharan Singh, an employee of the Water Supply Department, to the police, was also taken into possession. Statements of various witnesses were recorded. Even the cartridges and gun were sent to the FSL.

On completion of investigation, both accused Baldev Singh and Malkiat Singh were sent up to face trial for commission of offences under Sections 302, 307, 34 IPC and Section 30 of the Arms Act.

On presentation of challan, compliance of Section 207 Cr.P.C. was made and thereupon, case was committed to the Court of Sessions.

In pursuance of the commitment proceedings, on the basis of

material coming forth, charge was framed against both the accused under Sections 302, 307, 34 IPC and charge under Section 30 of the Arms Act was also framed against accused Baldev Singh, to which they pleaded not guilty and claimed trial.

In an endeavour to establish its case, the prosecution examined as many as 12 witness, besides adducing documentary evidence.

PW-1 Dr.Baldev Singh Sahota, Medical Officer, Civil Hospital has deposed about conducting of the post-mortem examination on the dead body of Gurcharan Singh on 19.11.2002. He has deposed that there was no ligature mark around the neck. Clotted blood was present on the clothes and piercing on the clothes corresponding to injury. Clotted blood present on the body and clothes. Rigor mortis was fully developed. He also deposed about the details of the injuries, found on the dead body, which are as herein given:-

“Multiple lacerated punctured wound 1/4th cm in diameter on the fronto lateral part of left side of chest 18 in number. On dissection pellets were found present in the skin and muscles and lung tissue lacerated and clapped with huge amount of blood in the left pleural cavity, partially clotted. Clotted blood present in and around the wound.”

The said witness opined the cause of death to be shock and haemorrhage, as a result of chest injury due to firearm. The injury described was ante-mortem in nature and sufficient to cause death, under ordinary course of nature. The probable time that elapsed between injury and death was immediate and between death and post-mortem was within 24 hours.

He also deposed that he had removed pellets from the dead body and those

were put in a container, which was then handed over to the police. This witness also proved various other formal documents. The doctor proved the vial Ex.P6, which contains pellets Ex.P7 to Ex.P11. He also deposed that vial bears his seal and they are the same, which he had removed from the dead body.

PW-2 Labh Singh, is the complainant, at whose instance, the proceedings were initiated. He has deposed about his relationship with the deceased and further, deposed about the manner of causing of occurrence by Malkiat Singh and Baldev Singh on 18.11.2002. His statement is in verbatim with the prosecution version. He proved his statement Ex.PG.

PW-3 Ajaib Singh, is brother of the complainant. He has also witnessed the occurrence and he has deposed in verbatim with the testimony of the complainant and also deposed about recording of his statement.

PW-4 Jagroop Singh, Patwari, has deposed about preparation of scaled site plan of the spot of occurrence, which is Ex.PL.

PW-5 Head Constable Jarnail Singh and PW-6 Head Constable Teja Singh, have tendered into evidence their affidavits Ex.PM and PN respectively, which is formal evidence.

PW-7 ASI Swaran Singh was associated with Inspector Sukhdev Singh and has deposed about the details of the investigation, so conducted by Investigating Officer.

PW-8 Inspector Sukhdev Singh, is the Investigating Officer of the present case. He deposed about having recorded the statement of complainant Labh Singh Ex.PG on 18.11.2002 and his endorsement, upon the same is Ex.PG/1, on the basis whereof, FIR Ex.PG/2 was got recorded.

He also deposed about having visited the spot along with complainant,

Sahib Khan and other police officials. He further deposed about preparing inquest report Ex.PC and recording of statements of various witnesses. He also deposed about having facilitated the conducting of the post-mortem examination on the dead body of Gurcharan Singh through Head Constable Teja Singh. This witness also deposed about having lifted blood-stained earth from the spot of occurrence. He further deposed about taking into possession of the scooter bearing registration No.PB-44-1750 from the spot and also about preparation of various documents vis-a-vis aforesaid proceedings and also deposed about the preparation of site plan of the spot of occurrence. The Investigating Officer deposed about parcel of clothes of the deceased, after conducting his post-mortem as well as vial containing pellets, having been produced before him by Head Constable Teja Singh, which was taken into possession vide memo ExPU.

This witness further deposed about having arrested accused on 23.11.2002 and various memos relating to arrest have been prepared. Further, he also deposed about Malkiat Singh, during the course of interrogation, having made disclosure statement, on the basis whereof, recovery of 12 bore loaded gun along with two cartridges having recovered from the disclosed spot and also deposed about recovery of two live cartridges from the gun. He also deposed about preparation of various memos, relating to the aforesaid recoveries and preparation of site plan of the spot of recovery. He also deposed about having recovered arms licence from accused Baldev Singh and registration certificate of the scooter from accused Malkiat Singh.

PW-9 Teja Singh, is employee of Water Supply Department,

who had gone to the house of Gurcharan Singh, on the day of occurrence.

He deposed about the manner in which Baldev Singh and Malkiat Singh had entered into altercation with them, while they were present at the house of Gurcharan Singh and the manner, in which, they had gone away, while having threatened Gurcharan Singh.

PW-10 Manjit Singh, Clerk, SDM Office, Sunam, brought the record of registration of vehicle PB-44-1750 and deposed about the same to be registered in the name of Gurmeet Singh, resident of village Bakshiwala and proved copy of the same, which is Ex.PX.

PW-11 Avtar Singh, Arms Licence Clerk, Office of Deputy Commissioner, Sangrur, has proved, on the basis of record, about issuance of arms licence to Baldev Singh s/o Surjit Singh, relating to one double barrel .12 bore gun No.7653 C 6Y-99 and the same was issued on 19.04.2002 and was valid upto 19.04.2002. He proved the copy of arms licence Ex.PY.

PW-12 Head Constable Subash Kumar, has tendered into evidence, his affidavit Ex.PZ and also tendered into evidence, certified copy of DDR entry No.23 dated 18.11.2002, which is Ex.PAA.

Thereafter, learned Public Prosecutor, tendered into evidence, report of FSL Ex.PBB and closed the the evidence on behalf of the prosecution.

On closure of the prosecution evidence, all the incriminating circumstances appearing in the prosecution evidence were put to the accused in their statements under Section 313 Cr.P.C. However, both the accused denied the occurrence and pleaded innocence.

For the convenience of discussion, the plea so taken by Baldev

Singh, as such, is reproduced in verbatim, as herein given:-

“I am innocent. I have no illegal water connection at my house. The officials of water supply department threatened to disconnect the water connection of my house. I have been falsely implicated in this case. In fact, I was not even present in the village when the officials of water supply department came to our village. I reached my house at 10.00 p.m. There was no gun at my house at that time and police has implicated me falsely in this case.”

Even, the specific plea, so taken by accused Malkiat Singh is reproduced, as herein given:-

“I am innocent. I have no illegal water connection at my house. We have a regular water supply connection at our house. The officials of water supply department namely Teja Singh, Gurcharan Singh had come to our village to disconnect the illegal water connections. On 18.11.2002 the date on which alleged occurrence took place, I was going to the fields of my uncle when the officials of water supply department met me and told me that they would disconnect the water supply to our house. I objected to the same telling them that we have a sanctioned connection. I went to the house of my uncle in fields and came back from there at 11.00 p.m. Police came to our village and took me to police station at 11.00 p.m. I have been implicated falsely in this case.”

In defence, accused examined DW-1 Kapoor Chand, Jr. Assistant, who deposed about the sanction of water connection in favour of Surjit Singh (father of Baldev Singh) and also deposed about connection to have been sanctioned vide No.1642 dated 06.03.1991 and proved copy of entry of the register, which is Ex.DA.

DW-2 Amarjit Singh, is Lambardar of village Bakshiwala. He has deposed about the relationship of both the accused with Surjit Singh, who is alive and that both the accused reside in the house, which was earlier constructed by Surjit Singh. He also deposed about Surjit Singh having obtained water connection in the house. He further deposed about the location of the house of the accused and the complainant party, in the vicinity of his village.

Thereafter, accused Malkiat Singh tendered into evidence, copy of zimini order Ex.D1 and certified copy of FIR Ex.D2 and then, evidence of the accused was closed.

After hearing learned Public Prosecutor for the State, learned defence counsel and on appraisal of the evidence brought on record, vide judgment dated 07.10.2003 and order of sentence dated 09.10.2003, convicted and sentenced the accused-appellants, as already detailed aforesaid.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, appellants-convicts have filed the present appeal.

In pursuance of notice issued by the Court, learned State counsel made appearance on behalf of the State. Learned counsel for the complainant also put in appearance. Even the lower Court record was requisitioned.

At this juncture, it is pertinent to mention that during the pendency of appeal, appellant Baldev Singh had died on 26.12.2012 and this fact was got duly verified. Thus, on account of death, the present appeal qua appellant Baldev Singh stands abated.

We have heard learned counsel for the parties and have perused

the record.

At the very outset, learned counsel for the appellant Malkiat Singh has submitted that there is delay in initiation of action and dispatch of the special report to the Illaqa Magistrate. It is submitted that deliberations and consultations, coming through, cannot be ruled out and thus, the same makes the version of the prosecution, doubtful, the benefit whereof, ought to be given to the appellant. However, the aforesaid submission is not tenable. It is settled position of law that delay *ipso facto*, does not prove fatal. It is only unexplained delay, which proves fatal, as on the basis thereof, deliberations and consultations, cannot be ruled out. In the case in hand, the occurrence had taken place at about 7.00 p.m. on 18.11.2002. The FIR, in the present case, which is Ex.PG/2, was got recorded at 9.25 p.m. and it reached to Duty Magistrate at 11.40 p.m. It is pertinent to mention that Labh Singh complainant, at whose instance, the proceeding were initiated as well as Ajaib Singh PW-3, have categorically deposed about the occurrence to have taken place after 7.00 p.m. and even Labh Singh had also stated about having proceeded from the village at about 7.25 p.m. The police met them at 8.30 p.m. He also deposed about *thanedar* to have recorded his statement, which took about 45 minutes and as per the version of the complainant, his statement was concluded at 9.15 p.m. His statement is Ex.PG. Even, the endorsement made by the SHO upon the said statement, corroborates the version of the complainant and he had categorically stated about the statement to have completed at 9.15 p.m. The proceedings to record the FIR was started at 9.25 p.m. and FIR Ex.PG/2 concluded at 10.40 p.m., as per DDR entry No.30. Thereupon, immediately it was sent to the

seriatim of facts, as stated aforesaid, it cannot be, in any manner, said that there was any unexplained delay, in initiation of action, soon after the occurrence. One should keep in mind that soon after the taking place of the occurrence, the victim party concerned, feels aghast also and the human behaviour does not expect, the complainant, who is brother of the victim, to instantly proceed on, for initiation of action, more particularly, when they have a rustic background. However, in the case in hand, without further loss of time, the complainant had proceeded to the police station to inform about the taking place of the occurrence, and enroute, he had met the police party and got recorded his statement, which, in any manner, does not show any manner of there being unexplained time consumed in the entire process. Thus, there was, in fact no delay in initiation of action, on the basis whereof, deliberations and consultations had taken place and no doubt is raised about the prosecution version.

Furthermore, much emphasis has been laid, upon there being no independent witness, examined in the present case. Rather, it is submitted by the counsel that only interested witnesses have been examined in the present case. However, I do not find any substance in the aforesaid contention. No doubt, proceedings in the present case, were initiated on the basis of statement got recorded by Labh Singh, who is brother of the deceased but however, it is pertinent to mention that he had witnessed the occurrence. Even, their other brother Ajai Singh, who has stepped into witness box as PW-3, has also witnessed the occurrence. It was in the evening time that occurrence had taken place, outside the house of the complainant party. Malkiat Singh and Baldev Singh had come on the scooter with weapon and caused the occurrence and thereupon, when alarm

was raised by the complainant party, they had ran away after leaving the scooter. Looking at the time of taking place of the occurrence and also the duration of occurrence as well as spot of taking place of the occurrence, it is pertinent to mention that no other person, from the vicinity, had witnessed the occurrence. In fact, it is coming in the testimonies of the eye witnesses that people were subsequently attracted to the spot. Keeping in view the aforesaid factual position, when none from the vicinity, as such, had witnessed the occurrence, it is quiet obvious that the persons, who had witnessed the occurrence, had to come forth and brothers of the deceased, who had witnessed the occurrence, have categorically deposed about the taking place of occurrence, at the instance of the accused. In the light of the same, when the witnesses, who had witnessed the occurrence, have been examined, it cannot be said that only interested witnesses have been examined. Also, it has to be kept in mind that there is no reason for the complainant party to suppress the actual wrong doer and depose against the accused. The said witnesses were also subjected to lengthy cross-examination but nothing material elicited out to dislodge the version of the prosecution. Therefore, on this count also, the submission so made, is hereby rejected.

Even, the presence of PW-3 Ajaib Singh, brother of the complainant, who resides in a different village, is stated to be doubtful and it is claimed that he was not present at the time of present occurrence. However, it is pertinent to mention that the defence counsel, while conducting cross-examination of the complainant as PW-1 and Ajaib Singh as PW-3, has given suggestions relating to the aforesaid version but

however, they have been categorically denied. It is specific claim of the

complainant that Ajaib Singh PW-3, their fourth brother, who lives in village Khiwa Khurd had come on the day of occurrence to meet them and in view of the same, more particularly, while taking into consideration relationship of the deceased as well as the complainant with Ajaib Singh, his presence, as such, cannot be doubted and it cannot be said that Ajaib Singh was introduced later on. Otherwise also, what was the necessity to introduce Ajaib Singh later on, when, more particularly, even Labh Singh, who had witnessed the occurrence, has categorically deposed about having witnessed the occurrence. In the light of the same, the testimony of Ajaib Singh, as such, being an eye witness, is most natural and his presence, at the relevant time, as such, cannot be doubted.

Also, learned counsel for the appellant has stated that there was no motive with the accused to commit the crime and this raises doubt about the truthfulness of the prosecution version. However, the aforesaid contention is not tenable, as, in the present case, there is direct evidence coming forth. The proof of motive gains momentum, when the case hinges upon the circumstantial evidence but such is not the position in the present case, as there is direct evidence in the form of testimonies of complainant Labh Singh and PW-3 Ajaib Singh, coming forth. Otherwise also, it is pertinent to mention that both complainant Labh Singh and PW-3 Ajaib Singh, while in the witness box, have categorically deposed about the manner in which, employees of the Water Supply Department, were made to have tea by Gurcharan Singh (deceased) and then both the accused had gone there and started abusing employees of the Water Supply Department. However, when Gurcharan Singh objected to this conduct, both the accused had gone back while threatening to teach a lesson also to Gurcharan Singh.

In the light of the same, it is pertinent to mention that after some time, again both the accused had come to the house of the complainant party and had threatened to come out of their house, as they have come prepared. This, in itself shows that both the accused had gone away when they were refrained by Gurcharan Singh from hurling abuses on the employees of Water Supplies Department and thereafter, while armed with gun, they had come again and shot at Gurcharan Singh. In the light of the same, it cannot be said that there was no such clear motive, established. Otherwise also, even if it be not, then also, there is direct evidence coming forth, to prove the occurrence, in question and in the light of the same, the submission relating to absence of motive, does not carry weight and pales into insignificance.

Further, learned counsel for the appellant has submitted that the scooter, which was allegedly taken into possession from the spot, was not the ownership of accused Malkiat Singh or his father Baldev Singh, who has since died and they also never had driving licence. In the light of the same, the scooter, as such, has been wrongly introduced by the prosecution. However, the submission, so made, does not carry any weight. What was the necessity to introduce scooter, as such, by the prosecution, as the version, so put forth by the prosecution, has not improved, on the basis of introduction of scooter (if so). No doubt, the scooter belongs to one Gurmeet Singh of village Bakshiwala but however, it is pertinent to mention that the scooter bearing registration No.PB-44-1750 was found at the spot of occurrence. Many a times, it happens that people do borrow vehicle of each other, even if, they do not have driving licence. In the light of the same, it cannot be said that the scooter was introduced later on, to improve upon the

made, fails.

In view of the above discussion, we find that prosecution has duly proved its case, beyond shadow of reasonable doubt. As such, learned trial Court has rightly convicted and sentenced appellant Malkiat Singh. Thus, the impugned judgment, calls for no interference.

As such, appeal sans merit and is hereby dismissed.

Accused-appellant namely Malkiat Singh, is stated to be on bail. A copy of the judgment be sent to concerned Chief Judicial Magistrate, to get the accused-appellant arrested, so as to serve the remaining part of the sentence.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

December 11, 2019

Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No