

327 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-801-DB of 2003 (O&M)
Date of Decision: 12.12.2019

Yogesh Suri
VS.
State of Punjab

.....Appellant
.....Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mrs.Justice Archana Puri.

Present : Mr. Vinod Ghai, Sr. Advocate with
Ms. Kanika Ahuja, Advocate,
for the appellant.

Mr. Bhupinder Beniwal, AAG Punjab.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment dated
12.09.2003 and order dated 13.09.2003 passed by Sessions Judge,
Jalandhar vide which the accused/appellant was convicted and
sentenced as under:-

Offence	Sentence	Fine	In default
302 IPC	Imprisonment for life	Rs.10,000/-	RI for 1 year
27(1) of Arms Act	RI for six years	Rs.1000/-	RI for two months

Both the substantive sentences were ordered to run
concurrently.

The brief facts of the case as noticed in the judgment
passed by the trial Court in paragraph No. 4 are reproduced as under:-

“4. According to the prosecution case, one section of personnel guard from 46 Battalion C.R.P.F was posted in the building of Punjab Technical College, where electronic machines were placed in connection with the election for security reasons. HC Bir Singh was the in-charge of the security guard. Besides that Constable Raghbir Singh, Constable R.B. Tiwari, Constable Abdulla, Constable Narinder Singh, Constable Sanjev Dev and Constable Abhi Manu were also posted. Duty of Constable Raghbir Singh started from 6.30 p.m. to 8.30 p.m. On 03.02.2002 at about 8.10 p.m. Constable Raghbir Singh was on duty. There he saw two persons coming on a scooterie (moped) from the main gate. These persons were moving in suspicious circumstances and they stopped at a distance of 20-25 yards from the security post. They started talking to each other and talked for five minutes and Constable Raghbir Singh continued to keep watch on their activities. Thereafter, both these persons tilted the scooterie (moped) on the land and again started proceeding towards Constable Raghbir Singh. When they were at a distance of 10 yards, Constable Raghbir Singh challenged them to stop. One of those persons fired at Constable Raghbir Singh and in all he had fired twice. Constable Raghbir Singh also fired in self defence six times. Constable Raghbir Singh was not in a position to see clearly as it had grown dark. One of those persons fell down after suffering injuries while other person raised his hands and stood on a side. Other Constables and guard In charge H.C. Bir Singh also reached there and they caught hold of that person. He was interrogated and he disclosed his name as Yogesh Suri (present accused). Name of other person was Pappi son of Balwant Rai, who had suffered shot and who had died. One revolver was also lying near the dead body. These two persons had attacked the police at night time and he prayed that action be taken against them.”

After completion of investigation, challan/report under

Section 173 Cr.P.C was presented in the Court. As the offence under Section 302 IPC is triable by Court of Session, the case was committed to the said Court.

Charges under Sections 302 and 307 IPC and Section 25 of Arms Act were framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1 Dr. Balbir Singh, PW-2 Raghbir Singh, PW-3 Bir Singh, PW-4 Paramjit Singh, PW-5 Ram Lal, PW-6 Kashmir Singh, PW-7 Harjinder Singh, PW-8 Mohan Lal, PW-9 Dalip Singh, PW-10 Balwant Rai, PW-11 Baldev Raj, PW-12 Darshan Kumar, PW-13 Dr. Sudesh Kumar, PW-14 Sukhdev Singh, PW-15 Ranju Sharma, PW-16 Nirmal Singh and closed the evidence.

The statement of the accused under Section 313 Cr.P.C was recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to him to which he denied and pleaded false implication. It was further stated by him that the investigation was biased to help the C.R.P.F personnels. No Almirah was provided in his house to his security guard to keep their weapons there. The security guards used to take the weapons with them whenever they were off duty. The investigating agency did not take into possession the SLR used by Constable Raghbir Singh PW which was used by him nor the empties of the cartridges fired through said rifle were taken into possession. The local administration as well as

CRPF authorities started the investigation with a view to exculpate Constable Raghbir Singh and to fasten the liability on him (accused). The revolver alleged to have been taken into possession from the spot from near the right hand of the deceased was not sent to the Finger Print Bureau for comparison of finger impression on the said revolver. The *malafide* of the investigation agency was writ large as a second case on the same facts under Section 302 IPC was registered which is not permissible under the law.

No evidence was led in defence.

After appraisal of evidence, the learned trial court vide impugned judgment dated 12.09.2003 and order dated 13.09.2003, convicted and sentenced the accused/appellant as narrated in the first paragraph of the judgment.

Thus, the present appeal has been filed by accused/appellant Yogesh Suri.

It is contended by the learned senior counsel that the FIR was registered at 9.00 p.m on 03.02.2002 and the special report reached the Illaqa Magistrate at 3.00 a.m on 04.02.2002. No explanation for delay has been given by the prosecution. It is further contended that the weapon recovered from the spot was bearing No.34740 and it was made in England. The weapon was never allotted to PW-12 Darshan Kumar. The weapon allotted to him was bearing No.3440 made in Japan. This material aspect of the case belies the entire prosecution version.

It is further contended that two separate FIRs were registered for the same occurrence giving different versions. Once FIR under Section 307 IPC had already been registered at the instance of Constable, Raghubir Singh then there was no necessity of registering second FIR under Section 302 IPC. The offence under Section 302 IPC could be added in the first FIR. The second FIR was recorded with a view to save Constable Raghubir Singh so that no investigation is carried in that FIR. This fact shows *malafide* on the part of the Police.

It is further contended that the deceased was found having five injuries showing two weapons had been used. The SLR of Constable Raghubir Singh was not taken into possession. It is apparent that the deceased had died due to SLR injuries and with a view to save him, the injuries were caused with revolver as well to implicate the appellant in the false case.

It is further contended that the first version had come in FIR No.31 dated 03.02.2002 got registered by Constable, Raghubir Singh. He had mentioned that two persons in suspicious circumstances were seen coming in darkness and on being challenged, they fired at Raghubir Singh and in return, he fired. It was never said that the appellant had fired at the deceased rather it was said that those two persons had fired shots towards Raghubir Singh but subsequently, the entire version was changed but still Raghubir Singh stuck to his version given in FIR No.31 inspite of direct questions having been put by Public Prosecutor, he refused to name the appellant as having fired

at the deceased. It has been specifically stated by him that it was dark at that time and he could not see anything and it was only after one person fell on receipt of injury, the other person raised hands and was arrested by the C.R.P.F personnels on duty. No witness has been examined by the prosecution to say that the appellant had fired at the deceased, therefore, the appellant could not be held liable for the murder of Rajneesh @ Pappu.

It is further contended that the revolver taken into possession was not sent to Finger Print Expert to know as to who had fired from the revolver. This clinching evidence has been destroyed by the investigating officer to save the real culprits and to implicate the appellant.

On the other hand, on behalf of the State, it is contended the learned trial Court has rightly convicted and sentenced the accused/appellant under Section 302 IPC and Section 27(1) of the Arms Act. The prosecution has successfully proved its case beyond shadow of a reasonable doubt.

We have heard the learned counsel for the parties and have gone through the case file.

It emanates from the record that the occurrence had allegedly taken place on 03.02.2002 near the security picket at Punjab Technical College. The FIR Ex.PD/2 was got registered at the first instance on the statement of PW-2, Constable Raghbir Singh under Section 307 IPC with the allegations that when he was present on duty,

two men came in suspicious condition near his security post. They kept talking with each other for about five minutes. Thereafter, they proceeded towards him and on the challenge by him, one of them fired two shots towards the complainant. The complainant fired six shots immediately in self defence. One man out of them fell down due to gun shot and the other raised his hands. He disclosed his identity as Yogesh Suri (appellant) and the name of the deceased was disclosed as Pappi son of Balwant Rai. One revolver was found lying near the dead body. It was further mentioned by the complainant that both the persons had come to the complex with arms during night and attacked him. The inquest proceedings were conducted vide Ex.PC which were witnessed by PW-10 Balwant Rai father and Ashish Kumar, brother of the deceased respectively. In his statement Ex.DB, under Section 175 Cr.P.C., PW-10 Balwant Rai neither suspected anybody nor did he give any other detail. Similar was the statement of Ashok Kumar Ex.DB. However, another statement of Balwant Rai, father of the deceased, was recorded on 04.02.2002 in which he stated that the appellant came on a scooty and had forcibly taken deceased with him informing him that they will return in 10 minutes. He further stated that the appellant had shot his son with his service revolver. The appellant was under the fear that the deceased being conversant with the secrets of the appellant may not disclose any secret. This Court feels that it is highly improbable that PW-10, Balwant Rai, father of the deceased would not disclose these facts to the Police at the very

first instance when his statement Ex.DB was recorded on 03.02.2002. It is also highly unbelievable that he will allow the deceased to be taken forcibly without raising any hue and cry and he will not search for the deceased when he did not come back after 10 minutes. Thus, the belated version introduced by PW-10, Balwant Rai in connivance with the investigating agency cannot be relied upon for conviction of the appellant.

Further, the initial FIR under Section 307 IPC was neither investigated into nor any weapon allegedly used by PW-2, Constable Raghubir was ever taken into possession nor any empty was recovered by the Police. Further, PW-15 Ranju Sharma, sister of the deceased, had stated that the appellant had gone to the house of deceased and told her that the deceased will have to face the consequences if she did not stop the deceased from speaking against him. However, PW-15 Ranju Sharma had admitted in the cross-examination that she had not told this fact to the father, which is not believable. Further, PW-15 Ranju Sharma had stated that she came to know about the murder of deceased on the same day but conveniently did not depose this fact in the Court. The reason is apparent as it is highly improbable that even after coming to know about the murder she would remain silent and would not make statement before the Police.

The evidence of PW-10, Balwant Rai cannot be relied upon as he deposed in the Court that he did not make allegation against the appellant on 03.02.2002 as the appellant had not been arrested till

then and he feared that he may not cause harm to him and his family but this is against the record which shows that the appellant was arrested there and then soon after the occurrence. Hence, the explanation given by the complainant being an afterthought makes his credibility doubtful. He appeared as PW-10 and improved upon his belated version Ex.PB/2, which formed the basis of the second FIR No.32 dated 04.02.2002 registered under Section 302 IPC. He also admitted the fact that he did not make any statement before the Police regarding these facts stated by him till cremation of the dead body.

Even, PW-2, Constable Raghubir Singh while deposing in the Court did not make any allegation against the appellant having fired at the deceased. He was the most important witness who had actually seen the occurrence and the factum of his non attributing any part to the appellant demolishes the entire case of the prosecution.

Viewed from another angle, the case of the prosecution is that a revolver .38 bore was found near the dead body. The case further is that the weapon was issued to PW-12, Constable Darshan Kumar, who was gunman of the appellant. The FSL report Ex.PT proved that the jacketed bullet found from body of the deceased had been fired from .38 bore revolver. Hence, the prosecution has tried to prove that the appellant had fired from the weapon of his gunman. However, the prosecution has failed to prove as to how the weapon of PW-12, Constable Darshan Kumar was used by the appellant. A belated statement of Constable, Darshan Kumar was recorded on 07.03.2002

although the weapon had been found on 03.02.2002 and the ownership was known to Police immediately. Even nine live cartridges were deposited by Constable, Darshan Kumar on 06.02.2002. The recording of belated statement Ex.DC shows that it was manipulated. Although, he came to know on the same night at 11 PM, still no statement was made that he had left the revolver in the almirah of the appellant. Otherwise also, the weapon ought to have been deposited at the Police Station and not left in almirah as he tried to explain.

Not only that, the weapon allegedly used was .38 bore webley revolver and it is highly unlikely that a shot fired from this weapon will not exit. The deceased had three firearm injuries as per PMR conducted by PW-1 Dr. Balbir Singh. Injuries No.1 & 2 were entry and exit wound, similarly, injuries No.4 and 5 were entry and exit wounds, the jacketed bullet was found from injury No.3 which was an entry wound only. The prosecution has failed to explain as to how other two injuries were caused and who had caused them particularly when PW-2, Constable, Raghbubir Singh had himself admitted that he had fired at the deceased and he died thereafter. The investigating agency did not investigate the first FIR under Section 307 IPC and who had caused those two injuries. The injury No.3 in which jacketed bullet was found is apparently fired when the deceased was lying. The SLR of PW-2, Constable Raghbur was not taken into possession. Even the finger prints on the revolver found near the dead body were not deliberately taken by the investigating agency. All these

factors when considered cumulatively, take us to the conclusion that the prosecution has failed to prove its case against the accused/appellant beyond shadow of a reasonable doubt. Thus, the present appeal is accepted. The accused is acquitted of the charges framed against him. The bail-bonds and surety bonds stand discharged.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

12.12.2019
SN

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