

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

(1) CRA-D-917-DB of 2003 (O&M)

Jagjit Singh

.... Appellant

Versus

State of Punjab

..... Respondent

(2) CRA-D-461-DB of 2004

Sukhchain Singh

.... Appellant

Versus

State of Punjab

..... Respondent

Reserved on : 16.07.2019

Date of decision : 19.07.2019

**CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE B.S. WALIA**

Present: Mr. A.P.S. Deol, Senior Advocate, with
Mr. Vishal Rattan Lamba, Advocate,
for the appellant in CRA-D-917-DB of 2003.

Mr. P.K.S. Phoolka, Advocate,
for the appellant in CRA-D-461-DB of 2004.

Mr. Aayush Sharma Sarna, AAG, Punjab.

Mr. Tarun Sharma, Advocate, for
Mr. P.S. Jammu, Advocate,
for the complainant in CRA-D-461-DB of 2004.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in both these appeals, i.e. CRA-D-917-DB of 2003 and CRA-D-461-DB of 2004, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against judgment dated 16.10.2003 and order dated 17.10.2003, rendered by learned Additional Sessions Judge, Bathinda, in Sessions Case No. 3 dated 26.03.1999, whereby appellants Jagjit Singh and Sukhchain Singh along with co-accused Sukhmander Singh were charged with and tried for offences punishable under Sections 120-B and 302 read with Section 120-B IPC. Appellant Sukhchain Singh was also charged with and tried for the offence punishable under Section 25 of the Arms Act, 1959.

3. The appellants were convicted and sentenced to undergo imprisonment for life and to pay fine of ₹ 5,000/- each, under Section 302 IPC, and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months. Appellant Sukhchain Singh was also convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹ 1,000/- under Section 25 of the Arms Act, 1959, and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months. Both the sentences awarded to appellant Sukhchain Singh were ordered to run concurrently. The appellants were acquitted of the charge under Section 120-B IPC. However, co-accused Sukhmander Singh was acquitted of the charges framed against

him.

4. The case of the prosecution, in a nutshell, is that according to Jagsir Singh (PW.2), Sukhchain Singh alias Bittu had taken a tailoring shop on rent from one Raj Kumar at Focal Point, Mehma Sarja. He was refusing to vacate the shop. Bachittar Singh alias Bawa, his elder brother, intervened. The shop was got vacated and its possession was handed over to Raj Kumar. Tirath Singh was a candidate for the post of Sarpanch in the elections. He was defeated. Iqbal Singh was declared elected as Sarpanch of the village. Jagjit Singh and Tirath Singh were supporting the cause of Sukhchain Singh. In the evening of 17.11.1998, Jagsir Singh (PW.2) and Labh Singh (PW.3) were standing near their workshop at Focal Point, Mehma Sarja. Sukhchain Singh, Tirath Singh and Jagjit Singh came to the shop. Bachittar Singh alias Bawa was also present there. Hot words were exchanged between them. Jagsir Singh and Labh Singh intervened. They separated them. Thereafter, Jagjit Singh, Sukhchain Singh and Tirath Singh went to the village. After some time, Labh Singh also shut down his workshop. They both proceeded for their home on foot. When they reached near the Dharamshala, an electric bulb was on. It was about 7.00 PM. Jagjit Singh accused exhorted that Bachittar Singh alias Bawa should be taught a lesson for getting the shop vacated. When Jagsir Singh turned back, he saw that Tirath Singh was armed with *Khapra*. Jagjit Singh was armed with *Gandhali* and Sukhchain Singh was armed with a pistol. Sukhchain Singh fired shot hitting Bachittar Singh alias Bawa on his back. He fell down. Tirath Singh inflicted two *Khapra* blows on nose and mouth of Bachittar Singh alias Bawa. Jagjit Singh also gave two *Gandhali* blows on Bawa's

right hand and chest. They raised alarm. The assailants managed to escape. The dead body was sent for post mortem examination. The blood stained soil and simple soil were lifted from the spot. An empty cartridge was also found on the spot. It was taken into possession. The country made pistol was also got recovered by Sukhchain Singh. The investigation was completed and challan was put up after completing all the codal formalities. Tirath Singh was placed in column No.2 of the challan.

5. Supplementary challan was filed against Sukhmander Singh for the offence punishable under Section 120-B read with Section 302 IPC.

6. The prosecution examined a number of witnesses. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. They explained the manner in which they were falsely implicated. They also examined two witnesses in their defence.

7. The appellants were convicted and sentenced, as noticed herein-above. Hence, these appeals.

8. Learned counsel appearing on behalf of the appellants have vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State as well as learned counsel for the complainant have supported the judgment and order of the learned Court below.

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

10. PW.1 Dr. Sat Pal Garg conducted post mortem examination on the body of Bachittar Singh alias Bawa on 18.11.1998. He noticed following injuries on the person of the deceased :-

- (1) 13 cms x 1.5 cm incised wound running horizontally on the face, nose and other side of the face with tail of the wound present on the right side. Underlying bones were cut and clotted blood was present and infiltration of blood was present.
- (2) 8 cms x 1 cm incised wound present parallel and 2 cms below injury No.1. It was situated on the nose and right side of the face with tail of the wound on right side. Underlying bones were cut. Infiltration of blood was present in the tissues and clotted blood was present.
- (3) 4 cmx x 2.5 cms incised wound was present on the front of right elbow. Underlying soft tissue and vessels were cut. Infiltration of blood was present in the tissue.
- (4) 2.5 cms x 1 cm incised wound on the lateral side of right upper arm 3 cms above injury No.3. Infiltration of blood was present.
- (5) 10 cms x 1 cm reddish abrasion was present on the top of left shoulder joint.
- (6) 10 cms x 1 cm reddish abrasion was present on the front of left side of chest in the clavicle area, remaining horizontally.
- (7) 4 cms x 1 cm reddish abrasion was present at right angle to injury No.6 and at its outer end.
- (8) 2.5 cms x 1.25 cm incised wound with 7 cms x 1 cm reddish abrasion present at right angle to injury No.6 in its middle. Clotted blood present. Underlying clavicle bone was fractured.
- (9) 7 cms x 5 cms irregular lacerated wound present on the back of chest of right side in its middle. Partially the margins were inverted and partially the margins were everted. One round and one long piece rubber like was present in the soft tissue and four pallets were also present in the tissue which were removed. The margins

of the wound were contused, abraded and tatooing was present around the wound. On dissection underlying bone fractured and pleurae and the lung of right side were lacerated at multiple places. One round and one irregular piece was removed from the middle lobe of the lung and 14 pallets were removed from different places. The pleurae cavity was full of clotted and fluid blood. Infiltration of blood was also there.

The cause of death in his opinion was haemorrhage, shock and laceration of lung as a result of the injuries described, which were ante-mortem in nature and sufficient to cause death in an ordinary course of nature. The probable time that elapsed between injuries and death was within few minutes and between death and post-mortem was about 12 to 24 hours. According to him, injury No.9 was the result of fire-arm.

11. PW.2 Jagsir Singh testified that Labh Singh was his cousin. His cousin was running shop at Focal Point. Sukhchain Singh was running the shop of Tailor Master in the Focal Point. He was tenant of one Raj Kumar. Raj Kumar wanted to get his shop vacated from Sukhchain Singh. Sukhchain Singh refused to vacate the shop. His brother Bachittar Singh, who was member of the Panchayat, persuaded Sukhchain Singh to vacate the shop. Tirath Singh contested the election of Sarpanch in their village. He lost elections to Iqbal Singh. Bachittar Singh was supporting Iqbal Singh. On 17.11.1998, at about 6.30 PM, he along with his brother Bachittar Singh was standing near the shop of Labh Singh. At that time, Tirath Singh, Jagjit Singh and Sukhchain Singh came there. They entered into an altercation with his brother Bachittar Singh. He along with Labh Singh intervened. They were separated. They left the shop. After some time, Labh Singh

closed his shop. He along with his brother Bachittar Singh and Labh Singh was going to their house. When they reached near the village Dharamshala, one bulb was on. It was about 7.00 PM. Jagjit Singh exhorted that Bachittar Singh should not be spared. When he looked back, he saw that Tirath Singh was armed with a *Khapra*, Jagjit Singh was armed with a *Gandhali* and Sukhchain Singh was armed with pistol. Thereafter, Sukhchain Singh fired at his brother which hit at the back of his brother. His brother collapsed. Then Tirath Singh gave two *Khapra* blows on the nose and mouth of his brother. Jagjit Singh gave two blows with his *Gandhali* on the right arm and chest of his brother. Some other blows from the reverse side of the weapons were also given by the accused to his brother. He raised alarm. His brother had died. He went to the police. The police came on the spot. In his cross-examination, he admitted that he did not state to the police at the time of recording his statement that four more blows from the reverse side of the weapons were given to his brother. The Public Prosecutor moved an application under Section 319 Cr.P.C., on 16.08.1999, for summoning Tirath Singh as an accused. In view of that, on the request of learned defence counsel, remaining cross-examination of the witness was deferred. His further cross-examination started on 21.09.2001. In his further cross-examination, he deposed that his village was at a distance of 4-5 kilometers from Police Station Nahianwala. Sukhmander Singh and Jagjit Singh were not related to each other. Sukhchain Singh belonged to Arora caste. Sukhmander Singh and Jagjit Singh were Jat Sikhs. The dispute regarding shop was between Raj Kumar and Sukhchain Singh. Raj Kumar was not examined by the police during investigation. He further deposed in his

cross-examination that Sukhchain Singh alias Bittu accused fired at Bachittar Singh just placing the pistol with his body.

12. PW.3 Labh Singh corroborated the statement of PW.2 Jagsir Singh. According to him, Bachittar Singh was Member of the Gram Panchayat. His cousin Bachittar Singh forcibly ousted Sukhchain Singh from the rented shop. Jagjit Singh and Tirath Singh were helping Sukhchain Singh. About two years and 10 months back, he was present at Focal Point along with Bachittar Singh and Jagsir Singh. Accused Sukhchain Singh, Jagjit Singh and Tirath Singh came there. They had an altercation with Bachittar Singh. He and Jagsir Singh separated them. Accused went to the village. After about 15 minutes, he along with Bachittar Singh and Jagsir Singh was going to their houses. When they reached in the chowk near the Dharamshala at about 7.00 PM, where light was on, accused came on the spot. Jagjit Singh accused raised lalkara. Sukhchain Singh fired at Bachittar Singh hitting him on his back. Jagjit Singh and Tirath Singh inflicted injuries with their respective weapons, i.e. *Gandhali* and *Khapra*, respectively. Bachittar Singh collapsed. In his cross-examination, he deposed that owner of the shop was Raj Kumar. Raj Kumar got it vacated from Sukhchain Singh. He further deposed that the shot was fired at the distance of about 2 feet from the body of Bachittar Singh.

13. PW.8 HC Jagdev Singh deposed that during investigation, Sukhchain Singh made a disclosure statement, Ex.PM, in his presence, on the basis of which a country made pistol of 12 bore along with two live cartridges was recovered.

14. PW.10 Darshan Singh is the Investigating Officer. He testified

that he lifted the blood stained earth and simple earth from the spot. An empty cartridge, which was found from the spot, was also converted into parcel and was sealed by him. Sukhchain Singh was arrested on 28.11.1998. He made disclosure statement that he had kept concealed 12 bore country made pistol along with two live cartridges wrapped in a glazed paper in the area of village Sarja Mehma. His disclosure statement is Ex.PM. Accused Sukhchain Singh got recovered the country made pistol of 12 bore and two live cartridges of the same bore. In his cross-examination, he admitted that he had handed over investigation of this case to Madam V. Neerja, IPS, as per the directions of SSP, Bathinda. In the investigation conducted by Madam V. Neerja, IPC, except Sukhchain Singh accused, all were found innocent. He further deposed that he had not shown the recovery of empty cartridges from the spot either in column No. 23 of the inquest report Ex.PC or in any other column. No recovery of any incriminating article was effected from accused Jagjit Singh at the time of his arrest or thereafter.

15. PW.11 Major Singh did not support the case of the prosecution.

16. PW.12 Labh Singh testified that on 17.11.1998, he and Major Singh were taking tea at Metro Hotel. Sukhmander Singh, Tirath Singh, Jagjit Singh and Sukhchain Singh were already taking tea there. They heard the conversation between the accused. On the next day, they came to know that previous night, Bachittar Singh had been murdered by Tirath Singh, Jagjit Singh and Sukhchain Singh. In his cross-examination, he admitted that he had not informed the family members of Bachittar Singh about the conversation which had allegedly taken place between Sukhmander Singh and other accused besides Tirath Singh.

17. DW.1 Chhota Singh deposed that he was present in the Gurudwara Sahib of his village at about 6.30/7.00 PM, about 4 years and 6 months back. He heard the noise of some cracker. He came out of the Gurudwara Sahib. He enquired from Major Singh if Saint had come. He disclosed that Bachittar Singh had been shot dead by some one. Bachittar Singh had received fire arm injury on his back. There was no other injury on his body.

18. DW.2 V. Nirja testified that investigation of the case was entrusted to her by the Inspector General of Police Zonal. She received the case file. The statements of Jagsir Singh and Labh Singh were found inconsistent on material particulars by her. She reached at a conclusion that only one fire arm injury was present on the body of Bachittar Singh alias Bawa. The other injuries were fabricated later on. She recommended the discharge of accused Jagjit Singh. The challan was directed to be presented against Sukhchain Singh alias Bittu only. Sukhmander Singh and Tirath Singh were found innocent by her. She recommended disciplinary action against HC Jagjit Singh, who was found responsible for fabrication of injuries on the dead body of Bachittar Singh alias Bawa. She also recommended the departmental action against SHO Darshan Singh, as it was observed by her that he acted under the political pressure. She also recommended initiation of proceedings under Section 182 IPC against Jagsir Singh and Labh Singh. In her cross-examination, she deposed that she had only inquired from the witnesses whether there were injuries on the other part of body of Bachittar Singh. They told that there was only one fire arm injury which was at the back of Bachittar Singh.

19. According to PW.1 Dr. Sat Pal Garg, injury No.9 on the body of the deceased was the result of fire arm. The fire arm, i.e. country made pistol, was got recovered at the instance of appellant Sukhchain Singh. PW.2 Jagsir Singh and PW.3 Labh Singh had seen Sukhchain Singh firing at the back of Bachittar Singh. According to both of them, on the day of occurrence, they along with Bachittar Singh were standing near the shop of Labh Singh. Accused Sukhchain Singh, Jagjit Singh and Tirath Singh came on the spot. An altercation took place between these persons and Bachittar Singh. Both of them intervened and separated them. Thereafter, accused went away. After some time, when Jagsir Singh, Labh Singh and Bachittar Singh were going to their houses, accused came on the spot. According to them, Sukhchain Singh was armed with a pistol, Tirath Singh was armed with *Khapra* and Jagjit Singh was armed with *Gandhali*.

20. According to the FSL report, Ex.PR, one 12 bore K.P. special cartridge case, marked C/1 contained in parcel 'A' was fired from 12 bore country made pistol marked W/1. According to Chemical Examiner report, Ex.PQ, blood was found on exhibit No. I, i.e. earth etc. Stains were found on exhibits No. III (A) – underwear; III (B) – vest; III (C) - Kurta; and III (D) Pajama. No blood was detected on exhibit No. II, i.e. sample of earth.

21. According to the prosecution, appellant Sukhchain Singh was tenant of one Raj Kumar. Bachittar Singh had got it vacated from Sukhchain Singh. Raj Kumar was never examined by the police. Appellant Jagjit Singh was armed with *Gandhali* and appellant Sukhchain Singh was armed with a pistol. They along with co-accused Sukhmander Singh were charged for the offence under Section 120-B IPC. However, they have been acquitted of

this charge by the trial court. Thus, they had not hatched any conspiracy.

22. Jagjit Singh is not related to Sukhchain Singh. The dispute regarding tenancy of the shop was only between Raj Kumar and Sukhchain Singh, as per the cross-examination of PW.2 Jagsir Singh. According to PW.2 Jagsir Singh, appellant Sukhchain Singh fired at Bachittar Singh just placing the pistol with his body. However, PW.3 Labh Singh deposed that the shot was fired at the distance of about 2 feet from the body of Bachittar Singh. PW.10 Darshan Singh, in his cross-examination, admitted that no recovery of any incriminating article was effected from Jagjit Singh at the time of his arrest or thereafter. DW.2 V. Nirja took over investigation of the case at the instance of Inspector General of Police. She found inconsistencies in the statements of Jagsir Singh and Labh Singh. She reached at a conclusion that only one fire arm injury was present on the body of Bachittar Singh. Other injuries were fabricated. She recommended the discharge of accused Jagjit Singh. She also recommended departmental action against SHO Darshan Singh as well as HC Jagjit Singh.

23. Appellant Jagjit Singh was found innocent on the basis of investigation carried out by DW.2 V. Nirja. No recovery was effected from him. He had no connection or proximity with appellant Sukhchain Singh. The dispute was only between appellant Sukhchain Singh and Raj Kumar. DW.2 V. Nirja also came to the conclusion that there was only one fire arm injury on the body of Bachittar Singh and other injuries were fabricated. PW.11 Major Singh did not support the case of the prosecution. PW.12 Labh Singh, in his cross-examination, deposed that he had not disclosed the conversation of the accused, which he and Major Singh had heard on

17.11.1998, to the family members of Bachittar Singh.

24. Thus, the prosecution has failed to prove its case against appellant Jagjit Singh beyond reasonable doubt. As far as appellant Sukhchain Singh is concerned, he fired only one shot at the back of Bachittar Singh. In case, he wanted to commit murder of Bachittar Singh, he would have fired from the front. However, the fact of the matter is that appellant Sukhchain Singh had the intention to kill Bachittar Singh, knowing fully well that even if the shot is fired at his back, it would cause his death. Injury No.9 was from the fire arm, as per the post mortem report Ex.PA.

25. Accordingly, the appeal filed by Jagjit Singh (CRA-D-917-DB of 2003) is allowed. His conviction and sentence, as recorded by the trial court, for the offence under Section 302 IPC, are set aside.

26. The appeal filed by Sukhchain Singh (CRA-D-461-DB of 2004) is partly allowed. His conviction and sentence, as recorded by the trial court, for the offence under Section 302 is converted to Section 304 Part-I. However, his conviction and sentence for the offence under Section 25 of the Arms Act, 1959, as recorded by the trial court, are upheld. The State is directed to produce him before this Court on 02.08.2019 to be heard on quantum of sentence under Section 304 Part-I IPC.

(RAJIV SHARMA)
JUDGE

July 19, 2019
ndj

(B.S. WALIA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No