

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

(1) CRA-D-147-DB of 2004
Paramjit Singh Appellant

Versus

State of Punjab Respondent

(2) CRR-585 of 2004
Niranjan Singh
..... Petitioner

Versus

Paramjit Singh
..... Respondent

**Reserved on : 08.01.2020
Date of decision : 27.01.2020**

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. R.S. Cheema, Senior Advocate, with
Mr. Vijay Kumar Goyal, Advocate,
for the appellant in CRA-147-DB of 2004.

Mr. H.S. Grewal, Addl. A.G., Punjab.

None for the petitioner – complainant in CRR-585 of 2004.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in CRA-D-147-DB of 2004 and CRR-585 of 2004, therefore, these are taken up together and being disposed of by a common judgment.

2. CRA-D-147-DB of 2004 is instituted against judgment and order dated 13.01.2004, rendered by learned Additional Sessions Judge,

Sangrur, in Sessions Case No. 29 dated 07.11.2001. Appellant Paramjit

Singh was charged with and tried for the offence punishable under Section 302 IPC. He was convicted thereunder and sentenced to undergo imprisonment for life and to pay a fine of ₹ 20,000/- and in default of payment of fine to further undergo rigorous imprisonment for three years.

3. CRR-585 of 2004 has been filed by complainant Niranjan Singh seeking enhancement of sentence of imprisonment for life awarded to Paramjit Singh to capital sentence and for grant of compensation to the legal heirs of deceased Jaswant Singh.

4. The case of the prosecution, in a nutshell, is that on 18.07.2001, police party headed by SI Jaswinder Singh, SHO Police Station Lehra, was present at T-Point of Lehra Gate in connection with routine patrolling duty. Complainant Niranjan Singh – PW.5 came there. He was accompanied by Sarpanch Major Singh and one Gurtej Singh. He got recorded his statement with SHO to the effect that he was resident of village Dhola, Police Station Tapa. About 11 years back, his nephew Jaswant Singh was married to Sarabjit Kaur of village Khokhar Kalan. Jaswant Singh and his wife Sarabjit Kaur used to quarrel, since Jaswant Singh used to demand share of his wife Sarabjit Kaur in the land at village Khokhar Kalan. Sarabjit Kaur came back to her parents village. The Panchayats of both the villages got the matter compromised. Sarabjit Kaur started residing with her husband Jaswant Singh at Barnala. About ten days before the occurrence, quarrel took place between Jaswant Singh and Sarabjit Kaur. Sarabjit Kaur once again came back to her parents house. At about 10.00 AM on the day of occurrence, Jaswant Singh accompanied by Jaswinder Singh of village Gill Kalan went to the house of Sarabjit Kaur to convince her and to bring her back. Paramjit Singh accused was present in the house. Altercation took place between

Jaswant Singh and his brother-in-law Paramjit Singh. Paramjit Singh in a fit of fury went inside his house, brought a .12 bore gun from his house and fired a shot at Jaswant Singh. Paramjit Singh fired at Jaswant Singh thrice. Jaswant Singh collapsed. The complainant went near his nephew. He was dead. Leaving Jaswinder Singh near the dead body to guard it, the complainant himself went to inform his relatives. Thereafter, FIR was got registered. Police party went to the spot. Inquest proceedings were completed. Body was sent for post mortem examination. The site plan was prepared. The accused was arrested. The investigation was completed and challan was put up after completing all the codal formalities.

5. The prosecution examined a number of witnesses in support of its case. The accused was also examined under Section 313 Cr.P.C. He denied the case of the prosecution. According to him, he was falsely implicated. He also examined two witnesses in his defence.

6. The appellant was convicted and sentenced, as noticed above. Hence, this appeal and revision petition.

7. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State has supported the judgment and order of the learned trial court. There is no representation on behalf of the complainant in the revision petition with regard to enhancement of sentence and grant of compensation to the family members of the deceased.

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

9. PW.2 Dharminder Singh prepared the site plan Ex.PC.

10. PW.4 Sukhbir Singh, Arms Clerk, deposed that according to

the record, arms licence of 12 bore DBBL gun bearing No. 46374 stood in the name of Harbans Singh son of Harnam Singh.

11. PW.5 Niranjn Singh is the material witness. According to him, about 12 years back, his nephew Jaswant Singh son of Mukand Singh was married to Sarabjit Kaur daughter of Harbans Singh. Some dispute ensued between Jaswant Singh and Sarabjit Kaur over the land. The matter was compromised in the Panchayat. Thereafter, Jaswant Singh and Sarabjit Kaur started residing at Barnala. About 10 days before the occurrence, Sarabjit Kaur came to village Khokhar. He along with Jaswant Singh and Jaswinder Singh had gone to village Khokhar to bring back Sarabjit Kaur. Accused Paramjit Singh was present there. Paramjit Singh and Jaswant Singh started quarreling. Paramjit Singh fired at Jaswant Singh by bringing gun from his house. The bullet hit on his left shoulder. Paramjit Singh fired another shot, which hit Jaswant Singh on right shoulder. Some pellets also hit on the left shoulder of Jaswant Singh. Jaswant Singh got up and tried to run away. He fell down in the gate. Then Paramjit Singh fired another gun shot upon the left side of the neck of Jaswant Singh. They did nothing and remained silent. Paramjit Singh ran away along with gun. Jaswant Singh was found dead. He first went to Sunam by bus and then informed his family members on telephone. Thereafter, he went to Police Station. In the way, his statement was recorded by the police. In his cross-examination, he deposed that Jaswant Singh deceased used to reside at Barnala. He was resident of Dhoula. He reached Barnala on the day of occurrence at about 9.00 AM. Jaswinder Singh came thereafter. From Barnala, they boarded a bus for Sunam. They reached Sunam at about 9.30 AM. The distance between the place where Jaswant Singh was fired for the first time and where he fell

down was around 15 feet. The blood fell on the spot. First two fires were shot by Paramjit Singh from one place and the third from close range. He did not try to lodge the report anywhere before the arrival of his relatives from the village. On receipt of information, his son did not come to Sunam but Sarpanch Major Singh and Jathedar Gurtej Singh came there along with his nephew Jaswinder Singh.

12. PW.6 Jaswinder Singh corroborated the statement of PW.5 Niranjn Singh with regard to the manner in which the incident had taken place on 18.07.2001. He also deposed that some dispute took place between Paramjit Singh accused and Jaswant Singh after 10/15 minutes of their arrival. Paramjit Singh accused brought a rifle from the house and fired at Jaswant Singh. It hit Jaswant Singh on his left arm. Paramjit Singh fired another gun shot which hit right shoulder of Jaswant Singh. Jaswant Singh tried to run away. He fell at some distance. Paramjit Singh fired another shot, which hit on the left side of neck of Jaswant Singh. In his cross-examination, he deposed that the dispute between Jaswant Singh and Sarabjit Kaur might have taken place over the land. He had not tried to catch hold of Paramjit Singh after he fired shots from his gun.

13. PW.7 ASI Surjit Singh testified that on 18.07.2001, he was posted at Police Station Lehra. He was with the police party headed by Inspector Jaswinder Singh at T point in the area of Gaga. Niranjn Singh PW.5 met them. Statement of Niranjn Singh was recorded. Police visited the spot. Blood stained earth was collected from the spot. Paramjit Singh was produced on 22.07.2001 by Ex-Sarpanch Subeg Singh. On 24.07.2001, accused Paramjit Singh made disclosure statement Ex.PJ. Accused Paramjit Singh got recovered 12 bore DBBL gun along with three empty cartridges

of the same bore from underground inside the motor Kotha of Tibe Wala Khet. In his cross-examination, he admitted that no pellets or wads were found in the courtyard. The gun used in the occurrence was a licensed gun of Harbans Singh.

14. PW.9 Dr. R.S. Singla identified the signatures of Dr. M.L. Khipla on the post mortem report of Jaswant Singh. The post mortem report is Ex.PM. According to the post mortem report, the cause of death was shock and haemorrhage, as a result of fire arm injuries, particularly injury No.1. In the post mortem report, the following injuries were noticed :-

1. Lacerated and charred oval shaped wound on the left side of neck, size 3" x 3" and 3 ½" deep with blood clots. The underlying tissues are lacerated-carotid vessels and jugular vein found ruptured. Pilotts (pellets) 19 in number removed from the wound.
2. Left elbow joint fractured deformed with swelling of lower 1/3rd of arm. 12 pilotts (pellets) charred spots on the lower 1/3rd of arm and 4 pellets are removed from it. Blood clots present.
3. 12 bluish charred spots are present on the lateral side of left chest and 1 pilott (pellet) removed from it. Blood clots present.
4. Lacerated charred wound on the top of the right shoulder joint size ½" x ½" and wound on axilla on front side of the shoulder-joint, size 2" x 2" lacerated and internal tissues lacerated and 3 pilotts (pellets) removed from the wound.

All the injuries were ante-mortem in nature.

15. PW.10 Inspector Jaswinder Singh recorded statement of Niranjn Singh vide Ex.PB/2. FIR Ex.PB was recorded. He inspected the dead body of Jaswant Singh, prepared inquest report Ex.PO. Blood stained

earth was collected. Accused was produced before him by Ex-Sarpanch Subeg Singh on 22.07.2001. Accused was interrogated. Accused made disclosure statement Ex.PJ, on the basis of which he got recovered one 12 bore DBBL gun made in Belgium. In his cross-examination, he deposed that he had not noticed pellets around the dead body nor wads were noticed at the place of occurrence. No trail of blood was found as the people were already moving thereon. None from village Khokhar was joined at the time of investigation of the case. They reached the spot. He never joined or recorded statement of Sarabjit Kaur and her children.

16. DW.1 Sarabjit Kaur is the wife of deceased Jaswant Singh. According to her, she was married to Jaswant Singh in the year 1990. On 18.07.2001, her husband left house without informing her. Then she received a telephonic message from her father from village Khokhar Kalan. Her father informed her that her husband had come to his village and threatened that he would not spare him. Her father scared and fired with his licensed gun at her husband. She along with her minor son went to village Khokhar and reached there at about 9.30 AM. When she reached there, her father again told her the above facts. He told that as her husband had already once tried to kill him by firing a shot from his country made pistol, so out of fear he fired upon her husband with his licensed gun. The police reached the spot. Police did not listen to her and falsely implicated her brother Paramjit Singh. In her cross-examination, she admitted that she had narrated her version to the police.

17. DW.2 Harbans Singh deposed that the marriage of his daughter Sarabjit Kaur was solemnized with Jaswant Singh in the year 1990. On 17.07.2001, he received telephone call from Jaswant Singh. Jaswant Singh

threatened him on telephone demanding share in the land. He did not take the matter seriously. On the next morning, Jaswant Singh came to his village. He threatened him. He got frightened as Jaswant Singh had earlier fired at him. He fired on Jaswant Singh with his licensed gun out of fear. Then he informed on telephone to his daughter Sarabjit Kaur at Barnala. She reached his village at about 9.00/9.30 AM. Police also reached on the spot. He and his son Paramjit Singh were taken into custody. He met the DSP and narrated the whole occurrence to him. However, in cross-examination, he deposed that he had not brought copy of the application which was filed before the DSP. His daughter was not present at the time of occurrence. He denied the suggestion that he had not fired any shot upon Jaswant Singh.

18. What emerges from the facts enumerated here-in-above is that on the day of occurrence, Jaswant Singh visited village Khokhar with PW.5 Niranjan Singh. A quarrel ensued. The appellant fired three shots upon Jaswant Singh. Jaswant Singh collapsed and died on the spot. Police was informed. Post mortem was conducted. The weapon was recovered on the basis of disclosure statement made by the appellant vide Ex.PJ. It was sent for FSL examination. According to the FSL report Ex.PT, two 12 bore KF special cartridge cases marked C/1 and C/3 contained in parcel A were fired from left barrel of 12 bore DBBL gun No. 46374. One 12 bore KF special cartridge case marked C/2 contained in parcel A was fired from right barrel of 12 bore DBBL gun No. 46374. Small lead pellets contained in parcel B were components of 12 bore cartridge. The exhibits i.e. turban, kameez, banian, pant, kachha (underwear), pair of socks and pair of boots were stained with human blood as per the FSL report sEx.PU.

19. According to PW.5 Niranjan Singh, they reached village Khokhar at 9.30 AM. Paramjit Singh and Jaswant Singh started quarreling. Paramjit Singh fired at Jaswant Singh. Though PW.5 Niranjan Singh has deposed that Jaswant Singh had accompanied him to village Khokhar but in his cross-examination, he deposed that after Jaswant Singh was fired at by appellant Paramjit Singh, he went to Sunam and informed the family members of Jaswant Singh. His nephew Jaswinder Singh came to Sunam. Thus, the presence of PW.6 Jaswinder Singh on the spot is doubtful. No dispute had taken place ever between Harbans Singh and Paramjit Singh, before the date of incident, i.e., 18.07.2001. PW.5 Niranjan Singh neither tried to dissuade nor tried to catch hold of appellant Paramjit Singh at the time of incident. The appellant has used the licensed gun. The offence was committed by him in a sudden fight in the heat of passion upon a sudden quarrel. The appellant did not take any undue advantage. He did not act in a cruel or unusual manner. It was not a pre-meditated act. According to the prosecution, Jaswant Singh had gone to get the land from the share of his wife from his father-in-law. The issue flared up which led to firing by the appellant. The cause of death is fire arm injury.

20. Learned counsel appearing on behalf of the appellant has also argued that it was not the appellant but it was DW.2 Harbans Singh who had fired at Jaswant Singh. He has relied upon the statements of DW.1 Sarabjit Kaur and DW.2 Harbans Singh. The fact of the matter is that this version was never disclosed to any police officer, though DW.2 Harbans Singh stated that he had moved an application before DSP, but its copy was not produced before the court. The fact of the matter is that appellant Paramjit Singh fired at Jaswant Singh leading to his death.

21. Learned counsel for the appellant submits that this case would fall within the ambit of Section 304 Part II IPC, but we are of the opinion that this case would fall within the ambit of Section 304 Part I IPC, since the gun was used. The appellant had the intention to kill Jaswant Singh, as he had fired at him thrice.

22. Accordingly, the appeal is partly allowed. The conviction of the appellant, as recorded by the trial court, for the offence under Section 302, is converted to Section 304 Part-I. The appellant is on bail. The State is directed to produce him before this Court on 14.02.2020 to be heard on quantum of sentence under Section 304 Part-I IPC.

23. The prayer of the petitioner – complainant in revision petition with regard to enhancement of sentence of Paramjit Singh does not survive. The petitioner – complainant has not made out any case for grant of compensation to the legal heirs of the deceased. Hence, there is no merit in the revision and the same is, accordingly, dismissed.

(RAJIV SHARMA)
JUDGE

January 27, 2020
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No