

Criminal Revision No.1948 of 2006

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

Criminal Revision No.1948 of 2006(O&M)

Reserved on : February 25, 2020

Date of Decision: October 01, 2020

Kashmir Singh

...Petitioner

Versus

Jasbir Singh and others

...Respondents

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

Present: Mr. Jagjit Singh Bedi, Senior Advocate with
Mr.Sonpreet Singh Brar, Advocate for the petitioner.

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

HARINDER SINGH SIDHU, J.

1. Challenge in the present revision is to the judgment of acquittal dated 17.05.2006 of Additional Sessions Judge, Ferozepur, whereby, the respondents were acquitted in cross-case of FIR No.418 dated 07.10.2000 under Sections 307, 148, 149 IPC and Sections 25 and 27 of the Arms Act, registered at Police Station Sadar Ferozepur.

2. The brief facts of the case are that Jasbir Singh got recorded his statement before ASI Balkar Singh to the effect that he was Sarpanch of village Nawan Purna. On the day of occurrence i.e., 07.10.2000 at 4.00 PM Jasbir Singh complainant and his younger brothers Punjab Singh and Jasbir Singh, Sukhchain Singh (since deceased) and Malak Dev were sitting in his house and were engaged in conversation. Accused Kashmir Singh armed with .315 bore rifle, Jarnail Singh

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Ex. Sarpanch armed with .12 bore gun, Gurpreet Singh, Angrej Singh and Gurdev Singh all armed with sotas came on the road in front of the street near the house of complainant Jasbir Singh. Angrej Singh raised a lalkara that Jasbir Singh Sarpanch should be allowed to escape and he be done to death. The complainant party then came out of the house into the street. Kashmir Singh fired a shot with his .315 bore rifle with the intention to kill Jasbir Singh which hit Sukhchain Singh in the abdomen. Jarnail Singh also fired gun shot which hit chest of Sukhchain Singh. Sukhchain Singh fell down. Kashmir Singh fired yet another shot from his weapon on the chest of Sukhchain Singh. Then Malak Dev fired a shot with his .12 bore gun in self defence to save the complainant party and Sukhchain Singh. On raising of hue and cry the accused party fled away with their respective weapons. The motive for the crime was that a resolution was passed on 05.08.2000 by the Gram Panchayat of village Nawan Purba for having access to the house of Labha Ram. This resolution was passed under his signatures being Sarpanch. Jarnail Singh etc, the accused party was against carving out of this passage to the house of Labha Ram and resisted the same by closing the passage. Sukhchain Singh was admitted in the Frances Newton Hospital, Ferozepur Cantt.. Information was given to the SHO of P.S Saddar Ferozepur. Initially case u/s 307/148/149 IPC & 25/54/59 of Arms Act was registered against the accused party. Sukhchain Singh expired at 8 pm due to fire arm injuries and vide rapat No.50 dated 08.10.2000 the offence under Section 302 IPC was incorporated.

3. During investigation of the aforesaid case FIR No.418 dated 07.10.2000 under Section 302 IPC ASI Balkar Singh received medico-legal report of Kashmir Singh and Gurpreet Singh from Civil Hospital, Ferozepur whereupon he went to Civil Hospital to record their statements. But they were not

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found there. On 09.10.2000 he received message from Dayanand Medical College & Hospital, Ludhiana regarding their admission there. On 10.10.2000 he went to DMC & Hospital, Ludhiana where he recorded the statement Ex.P5 of Kashmir Singh. In his statement Kashmir Singh stated that on 07.10.2000 at 4.30 pm he alongwith his brother- in- law and Jarnail Singh Ex.Sarpanch were going to their house. When they reached near Kothi of Amar Singh retired Superintendent o/o DIG Ferozepur they stopped near the corner of mandir. Accused Jasbir Singh Sarpanch armed with kirpan, Punjab Singh armed with takua, Jagbir Singh armed with sota, Sukhchain Singh armed with dang, Malak Dev Singh armed with .12 bore gun, Nachhatar Singh armed with kirpan and Pritam Singh armed with gandasi were present there. Jasbir Singh Sarpanch raised a lalkara that Kashmir Singh always causes hurdles in their way and should not escape. Then they started throwing bricks bats at them. The noise/altercation attracted Gurpreet Singh, his son. Jasbir Singh then asked Malak Dev Singh who was armed with gun to fire from his gun. Malak Dev fired with his gun. The bullet hit Gurpreet Singh who fell down on ground. Thereafter he (Kashmir Singh) took out his .315 rifle from his house. Jasbir Singh then snatched the .12 bore gun from Malak Dev Singh and loudly cried out that Jaila and Kashmira should not go scot free and fired from the gun at him(Kashmir Singh). The shot hit below his right eye, above the left eye, left side shoulder and left side bicep . In defence he(Kashmir Singh) fired shots which hit Sukhchain Singh. Thereafter his brother-in-law Gurcharan Singh came to the spot and took him (Kashmir Singh) and his son Gurpreet Singh to Civil Hospital Ferozepur. On 08.10.2000 at 5 am some persons belonging to the other party came to the hospital threatened them with dire consequences for having murdered one of their associates. On account of fear both of them

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(Kashmir Singh and Gurpreet Singh) slipped away from the hospital and got admitted in DMC & Hospital for treatment. The motive as stated by him was that there was a dispute about the office of Sarpanch between Jasbir Singh and his brother -in-law Jarnail Singh and he (Kashmir Singh) was helping Jarnail Singh. Due to this the other party had caused injuries to them.

4. On the basis of this statement a DDR Ex. P 6 was recorded under Sections 307/148/149 IPC and 25/27/54/59 of Arms Act. The accused named in the DDR were arrested. During investigation accused Malak Dev suffered disclosure statement Ex. P 7 on 12.11.2000 pursuant where to he got recovered a .12 bore gun along with two live cartridges and arms licence (Ex. P 9). After completion of investigation this cross challan was filed for trial of the accused named in the DDR.

5. The prosecution examined four witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. They pleaded innocence and false implication. Accused Jasbir Singh stated that on the alleged day of incident he and his brother Malakdev Singh, Punjab Singh, Jagbir Singh and his uncle Sukhchain Singh were sitting in their house and talking to each other. From outside they heard lalkara that Jarnail Singh and Jasbir Singh Sarpanch be not spared alive. They came out and saw Jarnail Singh armed with .12 bore gun, Kashmir Singh armed with .315 bore rifle, Sukhdev Singh, Angrej Singh and Gurpreet Singh armed with sotas. Kashmir Singh fired at Sukhchain Singh hitting Sukhchain Singh below his navel. Jarnail Singh fired which hit Sukhchain Singh on left side of his chest. Kashmir Singh fired again hitting Sukhchain Singh on the left hip joint. In order to save himself and others Malakdev fired one shot from .12 bore gun which hit Kashmir Singh and Gurpreet

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Singh. Malakdev fired in his self defence. Malak Dev Singh, Jagbir Singh and Punjab Singh also took the same defence. In defence, they examined DW 1 Dr. R. K. Singal.

6. The respondents were acquitted as referred to above. Hence, this revision.

7. We have heard learned counsel for the parties and have gone through the judgment and record.

8. PW1 Dr. M.S. Teena ENT Specialist, Civil Hospital, Ferozepur deposed that on 07.10.2000 at 6.45 pm he medico- legally examined Kashmir Singh

9. Patient was conscious. BP was 130/80, Pulse was 86 pm Pupils were equal on both sides and reacting to light.

He found the following injuries :

“1. 0.25 cm x 0.25 cm lacerated puncutred wound on left side of face, 2 cm away from the outer angle of eye with fresh bleeding present, bone deep with inverted margins. X ray was advised.

2. 0.25 x 0.25 cm lacerated punctured wound on right cheek bone deep, fresh bleeding was present, bound was 1.5 cm below outer angle of right eye with inverted margins. X ray was advised.

3. 0.25 cm x 0.25 cm lacerated punctured wound on right lower boarder of mandible 5 cm in front of angle of mandible, inverted margins, fresh bleeding was present. X ray was advised.

4. Lacerated wound 1.5 cm x 0.25 cm on a superficial (not legible) deep only on right side of face, 3 cm below the right angle of mouth, fresh bleeding was present. Injury was kept under observation.

All the injuries were kept under observation. Probable duration of the

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injuries was within six hours. Kind of weapon was also kept under observation.”

He proved the correct carbon copy of MLR Ex.P1 and Ex.P2 the pictorial diagram showing the seats of injuries.

10. He further deposed that on the same day at 7.30 pm he medico- legally examined Gurprit Singh s/o Kashmir Singh. Patient was conscious. BP was 110/70 MM of Hgs, Pulse 90 PM, Pupils equal on both sides and were reacting to light.

He found following injuries on his person. :-

“1. Lacerated punctured wound 0.3 cm x 0.25 cm on outer front middle right forearm. Fresh bleeding was present. X ray was advised.

2. Lacerated punctured wound 0.25 cm x 0.25 cm on right side of forearm just below the right eye brow inverted margins, fresh bleeding was present. X ray was advised.

Probable duration of injuries was within six hours. Injuries were kept under observation and weapon was also kept under observation.”

He proved the carbon copy of the MLR Ex.P3 and the pictorial diagram showing seats of injuries Ex.P4.

11. In cross examination he stated that no X-ray regarding the injuries suffered by injured Kashmir Singh and Gurprit Singh was conducted. In the absence thereof he could not declare if the injuries suffered by them were grievous or simple. In the absence of the X-ray report he also could not declare the nature of the weapon which caused the injuries. Nor could he state if the injuries were the result of some fire arm or some other weapon. Both the patients left the hospital without permission.

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12. PW2 Kashmir Singh deposed that on 07.10.2000 at about 4.30 pm he alongwith Jarnail Singh was going to his house from the house of Jarnail Singh. When they reached near house of Amar Singh retired Superintendent o/o DIG they noticed that Jasbir Singh armed with a kirpan, Punjab Singh armed with a Takua, Jagbir Singh armed with a Daang, Sukhchain Singh armed with a Daang and Malakdev Singh armed with .12 bore gun were present there. Nachhattar Singh armed with a Kirpan, Pritam Singh armed with a Gandasa were also with those accused. On seeing them Jasbir Singh raised a lalkara that Jarnail Singh creates hurdle in every work and that he should be killed. Then the accused started throwing brickbats at them. On hearing the noise his son Gurpreet Singh also came to the spot. Malakdev Singh fired a shot from his gun. The pellets hit Gurpreet Singh on his right arm, right eye and chest as a result of which he fell down. He (Kashmir Singh) went running to his house and brought his rifle. Jasbir Singh snatched the gun from Malakdev Singh and fired a shot at him (Kashmir Singh) which hit his left eye below chin, left shoulder and left arm as a result of which he fell down. While lying on the ground he(Kashmir Singh) fired a shot from his rifle to save his son. People collected there. He and his son were taken to the hospital by Gurcharan Singh and admitted there.

13. On 08.10.2000 Nishan Singh, Mehal Singh Nambaradar, Ranjit Singh alias Rana, Rinku came to them in hospital at 5.15 am. They threatened them that they had come alive from spot and they would not be spared. Out of fear they left that hospital and went to DMC Ludhiana where they were treated.

14. He stated he had no grudge against accused. The dispute was between them and Jarnail Singh about the post of the Sarpanch. The police came to him in DMC Ludhiana and recorded his statement. Ex.P5.

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15. PW3 Gurpreet Singh son of Kashmir Singh deposed that on 07.10.2000 at 4.30 pm he was standing on the pucca road outside his house. He heard alarm being raised on the pucca road. When he went to that place he found that the accused along with Pritam Singh were quarreling with his father Kashmir Singh and his paternal uncle Jarnail Singh. At that time Jasbir Singh accused was armed with Kirpan, Malakdev Singh was armed with .12 bore tun, Punjab Singh was armed with takua, Jagbir Singh was armed with dang, Sukhchain Singh was also armed with dang, Nachhattar Singh was armed kirpan and Pritam Singh was armed with gandasi. Jasbir Singh exhorted his co accused Malakdev as to what he was looking for. On that Malakdev fired a shot from his gun towards them which hit him at his left eye brow, right shoulder and his chest as a result of that he became nervous and fell down. On account of nervousness and fear his father Kashmir Singh started running towards his house. He came to spot with his .315 rifle. Jasbir Singh raised a lalkara that Malakdev Singh you could do nothing and that he (Jasbir Singh) what could be done to Kashmira and Jailla. Then Jasbir Singh snatched the .12 bore gun from Malakdev and fired a shot from same towards his father which hit him on his left eye brow, left shoulder, muscle of upper arm and chest. As a result of receipt of those injuries his father fell down. While he was lying on ground he fired a shot from his rifle in his self defence. He did not know if that shot hit anyone or not. The husband of sister of his mother Gurcharan Singh took them to Civil Hospital, Ferozepur and got them admitted. He was medically examined in hospital. The members of the opposite party including Mahal Singh Nambardar, Rinku, Ranjit Singh Rana and Nishan Singh came to hospital to give threats to them. On account of fear they left that hospital and went to DMC Ludhiana.

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16. PW4 ASI Balkar Singh deposed that on 07.10.2000 he was posted in Police Station Sadar, Ferozepur. He was busy in connection with investigation of FIR No.418 when he received Medico- legal reports of Kashmir Singh and Gurpreet Singh. In the evening he went to Civil Hospital to record statements of these injured but they were not found on their beds. On 09.10.2000 a message was received from DMC Ludhiana regarding admission of these injured at that place. On 10.0.2000 he went to that hospital. He obtained opinion of doctor about fitness of those injured to make their statements. First he recorded statement of Kashmir Singh Ex.P5. He made his endorsement Ex.P5/A on that statement and sent the same to the police station. He also recorded statement of Gurpreet Singh. After coming back to police station he recorded a report in DDR Ex.P6. On 12.10.2000 he arrested Jasbir Singh accused. On 29.10.2000 he arrested Nachhatar Singh, Punjab Singh and Pritam Singh. He arrested Malakdev Singh on 12.11.2000. Malakdev got recorded his disclosure statement Ex.P7 pursuant where to he got recovered .12 bore gun which was of single barrel which was taken into possession vide memo Ex.PB. He also took into possession arm licence Ex.P9. He identified the gun Ex.MO-1.

17. On request of the Add. PP he was declared hostile and permitted to be cross examined. In cross examination by the Add. PP he admitted that he had recorded recorded the statement of Kashmir Singh on 09.10.2000 and made endorsement the same day. He made report in the DDR Ex. P 6 the same day.

18. DW1 Dr. R. K. Singal deposed that Medical Officer, Civil Hospital, Ferozepur deposed that on 08.10.2000, he conducted post-mortem examination on the dead body of Sukhchain Singh. The body was brought from Mission Hospital, Ferozepur. The post-mortem examination was conducted at 2.45 p.m on

08.10.2000. Rigor mortis was fully developed. P.M staining was present on the back and was fixed. There was no mark or ligature on the neck. Following injuries were present on the body:

“1. 22 cm long vertical stitched incised wound with 12 stitches in front and middle of anterior abdominal wall.

2. 1.5 cm x 0.5 cm lacerated punctured wound anteriorly on left side of chest in midclavicular line, 11 cm from left nipple. The margins of the wound were inverted. Blackening of the margins was present.

On dissection, there was small haematoma in subcutaneous tissues and the track led downwards and inwards into the abdominal cavity after perforating the stomach.

3. 1.5 cm x 0.5 cm lacerated punctured wound anteriorly on left side of chest, 0.5 cm below the second wound. The margins of the wound were inverted. Blackening of the margins was present. On Dissection, there was small haematoma in subcutaneous tissues and the track led downwards and inwards into abdominal after perforating the stomach.

4. 3.5 x 2 cm irregularly shaped a lacerated wound with everted margins present on the back at the level of L-1 vertebra, 3 cm from midline on the left side. The wound was indirect communication with abdominal cavity.

On dissection and probing, the track of the wound passed through posterior abdominal wall left kidney, abdominal cavity and extended towards injury No.1 in anterior abdominal wall.

5. 3.5 cm x 1 cm lacerated wound irregularly shaped wound in left sacral region, 2 cm from natal left. Blackening was present all around the wound. The margins of the wound were inverted.

On dissection- the track of the wound led to sacrum which was fractured and then downwards in gluteal muscles for short distance from where two metallic pieces were recovered. The metallic pieces scaled in a glass vial and were handed over to the police.”

19. On opening the abdominal cavity it was full of blood. Big perforations were present in stomach. Stitches were present at one side (site). Intestines were repaired and sutured at many places. Left kidney was extensively lacerated and ruptured. All other organs were healthy. Bladder was healthy and empty.

20. In his opinion the cause of death in this case was haemorrhage and shock due to fire-arm injuries. All the injuries were ante-mortem in nature.

21. He handed over to the police (1) well re-sutured body after conducting the post mortem examination (2). Carbon copy of post mortem report, (3) original police papers No.1 to 28 duly initiated by him (4) one glass vial containing two metallic pieces recovered from the body properly sealed with two seals.

22. The time between the death and post-mortem examination was within twenty four hours.

23. The Ld. Trial Court on evaluation of the evidence came to the conclusion that the case against the accused had not been proved beyond reasonable doubt.

24. Firstly, the prosecution case was based mainly on the testimonies of the complainant PW 2 Kashmir Singh and PW 3 his son Gurprit Singh. No independent witness had been examined despite them being present. In this context particular reference was made to Jarnail Singh Ex. Sarpanch who was allegedly with the complainant at the time of the accident.

25. The Trial Court also found that the ocular evidence was not supported by the medical evidence. PW1 Dr. M.S. Tinna had conducted the medico-legal

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examination of the complainant and his son Gurprit Singh at Civil Hospital, Ferozepur on 07.10.2000 at 6.45 pm and 7.30 PM respectively. In cross examination he stated that no X-ray regarding the injuries suffered by injured Kashmir Singh and Gurprit Singh was conducted. In the absence thereof he could not declare if the injuries suffered by them were grievous or simple. In the absence of the X-ray report he also could not declare the nature of the weapon which caused the injuries. Nor could he state if the injuries were the result of some fire arm or some other weapon. Both the patients left the hospital without permission.

26. The fact that they had left the hospital without information was also admitted by the complainant and his son. However, they explained it by saying that some persons of the accused party had come to the hospital and threatened them with liquidation and it was out of fear that they had to quietly leave the hospital without intimation to anyone. The Trial Court found this explanation to be not convincing because it would be difficult for any person to so threaten any patient in the hospital. They also did not report about this matter either to the hospital authorities or the police.

27. The Ld. Trial Court found that there was considerable unexplained delay in lodging the cross case by the complainant. The alleged occurrence had taken place at about 4.30 PM on 07.10.2000. But the report was lodged by them on 09.10.2000. The Trial Court felt that this delay was material and did not rule out the possibility of involvement of the accused after due deliberation. Before the cross version was given by the complainant herein FIR under Sections 302,148,149 IPC and Sections 25 and 27 of the Arms Act had already been registered against the complainant, his son and others. The Trial Court concluded

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that the case did not appear to be a case of cross version but more in the nature of a counter-blast after the case had had been registered by the accused herein against the complainant party.

28. The Court opined that even the alleged recovery of the .12 bore gun with two live cartridges on the disclosure statement of accused Malak Dev did not advance the prosecution case as the recovery was allegedly made from his residence and could very well have been made if the house had been searched during the course of investigation. Moreover the recovery did not advance the case of the prosecution as it was the defence case that Malak Dev at fired at the complainant party with his .12 bore gun in self defence.

29. For these and other reasons, the Ld. Trial Court concluded that the prosecution had not been able to prove the case against the accused beyond reasonable doubt and they were acquitted.

30. It is well settled the scope of interference with a judgment of acquittal is limited. If the view taken by the Trial Court is a possible view, it is not open to the higher Court to reverse the judgment just because another view is possible.

31. Accordingly, there is no merit in this revision and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

October 01, 2020

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No