

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

CRA-D-97-DB-2016 (O&M)

Reserved on : September 06, 2019

Date of Decision: January 20, 2020

Ravinder Singh alias Gorkha

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Ms.Gursharan Kaur Mann, Advocate
for the appellant.

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

Mr.Deepak Gupta, Advocate
for the complainant.

HARINDER SINGH SIDHU, J.

1. This appeal is instituted against the judgment and order dated 04.12.2015 rendered by the Additional Sessions Judge, Moga in Sessions Case No.20 of 2011 whereby the appellant, who was charged with and tried for offences punishable under Sections 302 and 364 of the Indian Penal Code and Section 27 of the Arms Act, has been convicted and sentenced to undergo imprisonment for life and to pay fine of Rs.20,000/- under Section 302 IPC.

2. The case of the prosecution in a nutshell is that on 18.10.2010 at about 12.00 am SI Joginder Pal along with police party was present at Bus Stand of Village Rauke Kalan, where complainant Paramjit Singh came along with Jaswant

Singh Member Panchayat village Rauke Kalan and got recorded his statement

Ex.P1. He stated that he had two sons. The elder son named Jaswant @ Sonu was aged about 21 years and the younger Kulwinder was aged about 18 years. His elder son Jaswant Singh had been working at Milk Plant Ludhiana as a private worker for the last one year. He had come to the village on leave on 17.10.2010 as it was a holiday due to Dushhera festival. Complainant along with Jaswant Singh and his cousin Nirmal Singh was going to the house of Sarwan Singh, former Member Panchayat for requesting the latter to get Jaswant Singh transferred from Ludhiana to Moga. When they reached near Dharamshala of the village, Sarwan Singh met them. They started talking. There were electric bulbs affixed outside the houses because of which the street was lit. It was about 10.15 pm. Meanwhile, Ravinder Singh @ Gorkha son of Fateh Singh passed by them on tractor-trolley. After parking the tractor-trolley in his house, he came out with two-three persons. Ravinder Singh was armed with .32 bore revolver. The other persons were armed with baseball bats and lathis. Ravinder Singh raised *Lalkara* as to why the complainant and others were standing there. He then fired 3-4 shots from his revolver directly towards them. The complainant, Nirmal Singh and Sarwan Singh saved themselves by hiding on one side. One shot hit his son Jaswant Singh and he fell down. Ravinder Singh and his companions started beating his son Jaswant Singh and took him to the house of Ravinder Singh. Later on, it was found that Jaswant Singh was beaten to death by the accused. Motive for the occurrence was that Baljinder Singh s/o Sarwan Singh had a dispute with Gurdeep Singh s/o Fauja Singh. They had quarrelled regarding which a case was pending in the Court. Ravinder Singh used to support the party of Gurdeep Singh, whereas, the complainant supported Sarwan Singh. Because of this Ravinder Singh nurtured a grudge against them. Complainant left Nirmal Singh and Sarwan Singh near the

dead body, which was lying in the house of of Ravinder Singh near the gate. Complainant along with Jaswant Singh, Member Panchayat went and got recorded his statement. On the basis of this statement, formal FIR was registered. Investigating Officer visited the spot and prepared a rough site plan showing the place of occurrence., Postmortem examination on the dead body of Jaswant Singh was got conducted from Civil Hospital, Moga, Inquest report was prepared. On 29.12.2010 accused Ravinder @ Gorkha was arrested. On his disclosure statement, a .32 bore revolver along with six live cartridges of the same bore and licence were recovered from an almirah in his house. On completion of investigation challan was presented against the accused. Sukhdev Singh @ Sunny was found to be juvenile and his trial was conducted by the Juvenile Justice Board.

3. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. He denied the allegations levelled against him. He stated that on 17.10.2010 it was Dusshera festival. He along with his servant Sunny had gone to grain market, Rauke Kalan to sell paddy. In the evening when they were present in grain market, they saw Navjot Singh alias Jyoti son of Sukhdev Singh alias Seb, Jaswant Singh son of Paramjit Singh of their village, Kulwinder Singh alias Kinda son of Nirmal Singh resident of village Aughar, who was also residing in their village at that time and 3-4 other unknown boys roaming in grain market on motorcycles armed with revolver, pistol and other deadly weapons. After finishing their work in the grain market, he and his servant Sunny started back on his tractor-trailor. When they reached near his house, they had noticed that above mentioned boys, who were roaming in grain market were following his tractor-trailor on their motorcycles carrying their deadly weapons. Sensing that those boys had some evil intent, he

drove his tractor-trailor rashly and entered his house. Jaswant Singh and his companions Kinda, etc. tried to enter into his house. Sunny got off from tractor-trailor and tried to shut the outer door of his house. Just then Jaswant Singh gave a dang blow to Sunny, which hit his left hand. Sunny and Jaswant Singh grappled with each other in his courtyard. When they were grappling one of the companions of Jaswant Singh, armed with revolver, tried to shoot Sunny by aiming his revolver towards him, but accidentally that shot hit Jaswant Singh. Jaswant Singh fell down in the court yard. He and his family members climbed the roof of his house and raised alarm. Their neighbours also joined them from their houses. The assailants ran away leaving Jaswant Singh lying in the courtyard. They also left a motorcycle in front of his house. Police was informed. His servant Sunny was got admitted in Civil Hospital and his statement was recorded regarding the incident. A DDR was recorded. Later he and Sunny were falsely implicated in the case. Explaining the motive for the assailants, he stated that his wife was Sarpanch of the village. On her behalf, he used to complete development work in the village. He also used to advise the youths of the village not to consume liquor and other intoxicants. The above mentioned boys did not like this advice and tried to attack him by entering in his house. Luckily, he escaped. His servant Sunny was also challaned along with him, but being a juvenile he was tried by the Principal Magistrate, Juvenile Justice Board, Moga and was acquitted. In defence, he examined DW1 Sukhdev Singh, DW2 Dr.Sanjay Dogra Radiologist and DW3 HC Ramesh Kumar.

4. The appellant was convicted and sentenced as referred to above.

Hence, this appeal.

the judgment and record.

6. PW-1 Paramjit Singh -complainant stated that he had two sons; Jaswant Singh aged about 21 years and younger son Kulwinder Singh aged about 18 years. His son Jaswant Singh was working in the Verka Plant at Ludhiana. 17.10.2010 was a holiday on account of Dushera festival and Jaswant Singh had come in the village. Complainant along with Jaswant Singh and his cousin Nirmal Singh was going to meet Sarwan Singh Ex.Sarpanch of their village to request him to get Jaswant Singh transferred from Ludhiana to Moga. When they reached near the Dharamshala, Sarwan Singh met them. They started talking to Sarwan Singh. It was time of 10-15 p.m. and electric bulbs were on outside the houses in the street. Accused- Ravinder Singh crossed them on his tractor trolley. He parked the tractor trolley in his house. Then he along with Karamjit Singh, Jagmohan Singh and Surinder Kaur came out from his house. Ravinder Singh was armed with a revolver, Karamjit Singh was armed with Soti, Jagmohan Singh was armed with base ball bat and Surinder Kaur was empty handed. On reaching near them Ravinder Singh raised a lalkara as to why they were standing there. He fired shots from his revolver towards them with intention to kill them. Complainant, Sarwan Singh and Nirmal Singh saved themselves by hiding on one side. One shot hit his son Jaswant Singh and he fell down. Then Ravinder Singh, Karamjit Singh, Jagmohan Singh and Surinder Kaur took his son Jaswant Singh to their house. They killed his son by beating him. Complainant left Nirmal Singh and Sarwan Singh near the dead body of his son Jaswant Singh, which was lying inside the main gate of house of Ravinder Singh. He went to member Panchayat Jaswant Singh and then he along with Jaswant Singh went to report the matter to the police.

When they reached bus stand Rau Ke Kalan the police met them where he got

recorded his statement Ex.P-1. The motive behind the occurrence was that Gurdip Singh had criminal litigation with son of Sarwan Singh. Cases were pending between them. Ravinder Singh accused was helping Gurdip Singh whereas complainant party had cordial relations with Sarwan Singh. He deposed that due to this reason the accused party killed his son. The police reached the place of occurrence and inspected the same. Inquest report Ex.P-2 was prepared in his presence. The dead body of his son Jaswant Singh was identified by him and Jagsir Singh.

7. In cross-examination he stated that he had not stated in his statement Ex.P1 that Karamjit Singh, Jagmohan Singh and Surinder Kaur came out of the house of Ravinder Singh along with him when he raised *lalkara*. He had also not stated in Ex.P1 that Karamjit Singh was armed with *soti*, Jagmohan Singh was armed with baseball bat and Surinder Kaur was empty-handed. He had also not stated that Jagmohan Singh, Karamjit Singh, Surinder Kaur and Ravinder Singh had given beatings to his son and dragged him to the house of Ravinder Singh. He explained the omissions stating that at that time he was perplexed. He stated that he was Numberdar of Gurdas Patti of his village. He did not know all the villagers as it was a big village. His house was situated at a distance of about 1-1/2 kilometer from the house of Ravinder Singh accused. If one were to go from his house to the house of the accused from inside the village the house of Sarwan Singh does not fall on the way. If one goes from outside the village, then the house of Sarwan Singh comes first. They had gone to the house of Sarwan Singh from inside the village. House of Ravinder Singh accused is situated inside the *abadi* of the village. No efforts were made by him, Nirmal Singh and Sarwan Singh to intervene in the alleged incident to save his son. He voluntarily stated that they did

not intervene as there was firing. The occurrence finished within 15-20 minutes. The dead body of his son was not taken to Hospital at Moga in the gypsy of accused Ravinder Singh. It was taken to the hospital in a Mahindra Pickup. The dead body was placed in that vehicle without spreading any cloth under it. He did not know as to whether Sunny son of Tota Singh was working with Ravinder Singh for the last seven years. No injury was received by Sunny s/o Tota Singh in this occurrence.

8. PW-2 Nirmal Singh stated that Paramjit Singh is his cousin brother. Jaswant Singh was employed in Verka Dairy at Ludhiana. On 17.10.2010 at 10/10.15 p.m. he along with Paramjit Singh and his son Jaswant Singh had gone to see Ex.Member Panchayat Sarwan Singh in regard to the transfer of Jaswant Singh from Verka Dairy Ludhiana to Moga Dairy. Sarwan Singh met them near Dharamshala on the way to his house. They started talking with each other. Ravinder Singh accused passed across them with his tractor trolley and went to his house. Thereafter, he came out of his house armed with revolver along with Karamjit Singh who was armed with dang and Jagmohan Singh armed with baseball bat. Wife of Ravinder Singh was standing near the gate of their house. Ravinder Singh raised a lalkara as to why they were standing there. He fired 3-4 shots straight towards them. One shot hit Jaswant Singh and he fell down. They (PW-2 Nirmal Singh, complainant-Paramjit Singh and Sarwan Singh) took shelter by hiding behind the wall of Dharamshala. Then the accused and others accompanying him started beating Jaswant Singh and dragged him to their house. The complainant and those with him then went to see Jaswant Singh, who was lying inside the house of accused near the gate. He was found dead. He and

went to inform the police. He also gave the same motive as stated by PW-1.

9. In cross-examination by Ld. Counsel for the accused, he stated that in his statement to the Police Ex.D1 he had stated that Karamjit Singh s/o Nirmal Singh was armed with dang, Jagmohan Singh s/o Gurcharan Singh was armed with baseball bat and wife of Ravinder Singh was also standing near the gate. His attention was drawn to statement Ex.D1 wherein, it was not so recorded. He admitted that Sarwan Singh himself was not a Panch, or member of Club or Society or a Numberdar. His wife was a member of the Gram Panchayat during the previous term. He also stated that the occurrence in question finished within 15 minutes. He stated that no person by the name of Sunny was seen by him at the spot nor did he receive any injury in their presence.

10. PW-3 Dr. Jasdeep Singh stated on 18.10.2010 he was posted as Medical Officer at Civil Hospital, Moga. He conducted postmortem examination on the dead body of Jaswant Singh alias Sonu son of Paramjit Singh, aged 21 years R/o V.Rauke Kalan. The body was identified by Paramjit Singh son of Harnek Singh and Jagsir Singh son of Darshan Singh. The body was brought from V. Rauke Kalan and received in the mortuary at 1.25 a.m. on 18.10.2010. Date and time of information of death to the police was 12.10 a.m. on 18.10.2010. The postmortem was conducted at 12.10 p.m. on 18.10.2010. As per information given by the police cause of death was due to fire arm injuries and beating.

Rigor mortis were present all over the body and postmortem staining was present on dependent part as mottled patches. He noted the following injuries:-

- “1. Small multiple abrasions over right cheek and left cheek.*
- 2. 1.5 cm x 1 cm lacerated punctured wound over left side of chest 3 cm above and 5 cm lateral to left nipple. Depth was ascertained by*

putting a soft rubber probe. On dissection: The track of the wound was going through left pectoral area muscle mass then left pleura and then entering left lung injuring it. Further it exit out through left lung and injuries right lung and right pleura.

On further probing the track goes to right pectoral area where a metallic piece was found which was taken out and handed over to the police. There was area of blackening present around the injury No.2.

- 3. 2 cm x 2 cm abrasion over back of left wrist.*
- 4. 2 cm x 2 cm abrasion over back of left elbow.*
- 5. Small multiple abrasions over the back.*

Other organs which include scalp, skull, brain, heart, peritoneum, small and large intestines, liver, spleen, kidney, bladder and genitalia were found healthy.”

The cause of death in his opinion was given due to shock and haemorrhage caused due to injury to vital organs i.e., lung which was as a result of fire arm injuries and was sufficient to cause death in normal course of life and was ante-mortem in nature.

Probable time between injuries and death was within few minutes and between death and postmortem examination was within 6 to 36 hours.

He handed over following to the police:-

- “1. Dead body and its belongings.*
- 2. Copy of PMR. Police inquest papers 1 to 20 duly initiated by him and five sealed Jars containing Metalling piece removed from the body along with sample seal.”*

Ex.P-3 is the correct carbon copy of Post Mortem Report. Copy of pictorial diagram showing the seats of injuries is Ex.P-4. He deposed that at the time of postmortem examination X-rays of the deceased were conducted by Dr. Sanjay

Dogra on his request.

11. In cross examination, he stated that he could not comment on the distance of firearm as he was not a Ballistic Expert. He could not comment as to whether according to Medical Jurisprudence blackening occurs around the wound when the shot is fired from a distance of 3-4 feet. The possibility of injury no.1 on the dead body of deceased due to scuffle cannot be ruled out. Possibility of injuries no.3, 4, and 5 on the dead body of the deceased due to loading of dead body in a vehicle without spreading any cloth etc. under the dead body cannot be ruled out.

12. PW-4 ASI Pargat Singh stated that on 29.12.2010 he was posted at P.S. Badhni Kalan. On that day, accused Ravinder Singh was produced by Gurdev Singh Ex. Sarpanch of V. Rauke Kalan before SI Jagtar Singh SHO PS Badhni Kalan. On 31.12.2010 during interrogation accused suffered disclosure statement Ex.P-8 that he had kept concealed one revolver of .32 bore and 6 cartridges of the same bore in an Almirah in a room of his residential house in V. Rauke Kalan. Pursuant thereto he got recovered the .32 bore revolver along with 6 cartridges of same bore and his arms licence, which were taken into possession vide memo Ex.P9. On 31.12.2010 accused Sunny (since juvenile) was produced by Paramjit Singh. He was arrested vide memo Ex.P10.

13. In his cross-examination, he stated that the revolver in question was the licensed revolver of the accused. The house of the accused was situated in the thickly populated area of the village. No person from the neighbourhood of the accused was joined at the time of effecting recovery from his house. He had not seen the revolver or the cartridges in the Court.

14. PW-5 HC Bhupinder Singh tendered in evidence his affidavit Ex.P14

Wherein, he stated that on 03.01.2011, MHC Pritam Singh handed over to him a

parcel of plastic container containing lead of bullet taken out from the dead body of deceased Jaswant Singh, a parcel containing .32 bore revolver bearing No.911657 alongwith 6 live cartridges of .32 bore, both duly sealed to deposit in the office of FSL Chandigarh. He deposited the same on next day and handed over receipt to MHC Pritam Singh.

15. PW-6 ASI Pritam Singh tendered in evidence his affidavit Ex.P-9 deposing that on 18.10.2010, he was posted as MHC at Police Station Badhni Kalan. SI Joginder Pal, SHO handed over to him case property, i.e., one parcel containing clothes of deceased Jaswant Singh duly sealed, a parcel containing lead of cartridge duly sealed, a parcel containing .32 bore revolver alongwith 6 live cartridges duly sealed which he deposited in the Malkhana. On 03.01.2011, he handed over the parcel containing lead of cartridge, parcel containing .32 bore revolver alongwith 6 live cartridges duly sealed to HC Bhupinder Singh with the direction to get the docket despatched and forwarded from office of SSP Moga and then to deposit them in the office of Forensic Science Laboratory, Chandigarh. Accordingly, after getting the docket issued from the office of SSP Moga, HC Bhupinder Singh deposited the parcels in the office of FSL, Chandigarh on 05.01.2011 and handed over the receipt.

16. PW-7 HC Kuldeep Kumar stated that on 18.10.2010 he was posted at P.S.Badhni Kalan. On that day, he joined investigation of this case along with SI Joginder Pal. The doctor of Civil Hospital Moga had handed over to him clothes of deceased, one parcel containing pellets/Bullets sealed with the seal of doctor 'JD' along with sample seal which he handed over to SI Joginder Pal who took into possession the above said articles vide memo Ex.P-10. He also deposed

regarding the disclosure statement of accused Ravinder Singh .

17. In cross examination by learned counsel for accused, he stated that the dead body of Jaswant Singh was lying in the courtyard of Ravinder Singh accused when its inquest report was prepared by the I.O. The dead body was brought to Moga in a private vehicle. Village Rao Ke Kalan is at a distance of 35 kilometer from Civil Hospital, Moga. The roads leading from village Rao Ke Kalan to Civil Hospital, Moga were badly damaged. The vehicle had to suffer jolts and jerks for reaching Civil Hospital, Moga due to bad condition of road.

18. PW-8 SI Jagtar Singh stated on 29.12.2010 he was posted at P.S.Badhni Kalan and investigation of this case was entrusted to him. On that day he arrested accused Ravinder Singh. He was produced in the Court and he remanded to police custody. He deposed regarding the disclosure statement Ex.P8 of accused Ravinder Singh and the recovery of .32 bore revolver and six cartridges of same bore along with arms licence which he took into possession vide memo Ex.P9. He identified the revolver and 6 cartridges MO.2 to MO.7.

19. In cross examination by learned counsel for accused, he stated that the wife of Ravinder Singh accused was Sarpanch of village at the time when the alleged occurrence took place. It had come to his notice that Ravinder Singh accused used to help his wife in the development works of village. He also admitted that Jaswant Singh Pappi Member Panchayat of the village was inimical to the accused Ravinder Singh as he was also Panch of the village on those days. During investigation, it had come to his notice that on the day of occurrence, accused Ravinder Singh and his servant Sunny had gone to Grain Market for selling their paddy crop. It was Dashhera festival on that date. He deposed that during investigation one or two persons had made statements that in the Grain

Kulwinder Singh alias Kinda son of Nirmal Singh and 3 to 4 other boys were roaming on motorcycles in the Grain Market where Ravinder Singh was present for selling his paddy crop. It also transpired from those statements that those motorcyclists had an evil eye on Ravinder Singh accused and due to that reason, he alongwith his servant Sunny left for his house on his tractor. He, however, denied that it had come to his notice that when Ravinder Singh was going to his house on his tractor-trolley alongwith his servant, he was followed by Jota son of Sukhdev Singh, Jaswant Singh deceased, Kulwinder Singh alias Kinda and others on their motorcycles. He also denied that when Ravinder Singh alongwith his servant entered his house on the tractor, those boys tried to forcibly enter the house of Ravinder Singh and that his servant immediately tried to shut the outer door of the house but despite this, they entered the courtyard of Ravinder Singh, beaten up Sunny and when Sunny was grappling with Jaswant Singh, one of boys shot with a revolver which accidentally hit Jaswant Singh.

20. PW-9 Varinderpal Singh brought the Arms Register relating to issuing of Arms Licence to Ravinder Singh son of Fateh Singh R/o Rauke Kalan. As per entry, licence No.5068 dated 29.12.1999 of .12 bore gun along with 25 cartridges of same bore was issued to Ravinder Singh aforesaid. He proved the copy of arms licence Ex.P-17.

21. PW-10 Inspector Joginderpal deposed that on 17.10.2010 he was posted as an SHO P.S. Badhni Kalan. He deposed regarding recording the statement Ex.P-1 of Paramjit Singh on the night intervening 17/18.10.2010. Then he sent ruqa to the police station through HC Jarnail Singh and on that basis FIR Ex.P19 was registered by ASI Balram. Then he inspected the place of occurrence

and prepared inquest report Ex.P-2 of deceased Jaswant Singh. The dead body was

identified by Paramjit Singh and Jagsir Singh. He sent the dead body for postmortem examination under the supervision of HC Baldev Singh and Kuldeep Kumar along with application Ex.P-5. One motorcycle bearing No.PB66-6056 make Discover which was in broken condition was taken into police possession along with RC from the spot vide memo Ex.P-20. Rough site plan Ex.P-21 was also prepared at the spot with correct marginal notes which bears his signatures. On the same day, HC Kuldeep Kumar after getting conducted the postmortem examination produced before him, the clothes worn by the deceased, one parcel containing projectile (Shika) of cartridge which was sealed by the doctor Jasdeep Singh of Civil Hospital Moga along with specimen seal which he took into possession vide recovery memo Ex.P-10. On return to the police station he deposited the case property with MHC Pritam Singh. Thereafter he was transferred from the police station.

22. In cross examination by learned counsel for accused, he stated that on the day of occurrence there was Dashehra festival. The dead body was lying in the courtyard of Ravinder Singh near the outer gate of the house. He admitted that point 1 was not shown by him in the rough site plan Ex-P21. He also admitted that the distance between the point A and I was not shown by him in the marginal notes of rough site plan Ex.P21. He admitted that the house of Ravinder Singh accused was situated in the thickly populated area of village. No neighbour was examined by him under Section 161 Cr.P.C. except PW Sarwan Singh. He admitted that on 18.10.2010, he received information from Civil Hospital Moga regarding admission of Sunny son of Tota Singh in an injured condition. On receipt of information, he visited Civil Hospital Moga and collected MLR of Sunny from the hospital. After obtaining fitness certificate from the doctor, he

recorded statement Ex. D2 of Sunny. On the basis of statement, an entry was made in the Daily Diary Register of Police Station, Badhni Kalan at Serial No.11. He denied the suggestion that material points mentioned by Sunny were concealed by him while recording his statement. He admitted that when the occurrence took place, the wife of Ravinder Singh accused was Sarpanch of village and Jaswant Singh Pappi was Member Panchayat of the village. He denied that Jaswant Singh Pappi was opposing Ravinder Singh in each and every affair of the Gram Panchayat and was inimical towards Ravinder Singh accused. He denied the suggestion that on 17.10.2010, Ravinder Singh accused and Sunny son of Tota Singh had gone to Grain Market, Rao Ke Kalan to sell paddy.

23. PW-11 Dr. Sanjay Dogra deposed that on 18.10.2010 he was posted in Civil Hospital, Moga. On that day, he conducted postmortem X-rays of Jaswant Singh son of Paramjit Singh and his report is as follows:-

“X-ray chest, neck, right shoulder – Radio Opaque foreign body Simulating bullet was seen in soft tissue on right side. No body injury was seen. Right hemithorax was opaque partially.”

He proved his report Ex.P-22 which bears his signatures.

24. In cross examination by learned counsel for accused, he stated that X-ray was conducted by him only to locate the pellets in the dead body.

25. PWs Sarwan Singh, Jagsir Singh, HC Jarnail Singh, ASI Balram Singh and Manjit Singh Numberdar were given up as unnecessary. PW Mandeep Singh son of Darshan Singh was given up as won over by accused.

26. The learned PP tendered in evidence report of FSL Ex.P-23. The relevant parts whereof are as under:

“Article received - Two Sealed parcels marked 'A' and 'B', parcel 'A' sealed with the seals of 'JD', parcel 'B' sealed with the seal of 'JS' and

one unsealed parcel marked 'C' in the laboratory. Seals were found intact and tallied with specimen seal. Parcel 'A' contained one lead bullet marked CB/1 in the laboratory. Parcel 'B' contained i) Five 0.32 inch 'K.F.S and WL' cartridges marked L/1 to L/5 in the laboratory ii) One 0.32 inch 'K.F.S. and WL' cartridge marked M/1 in the laboratory c) One, 0.32 inch IOF revolver bearing no. FG-11657 marked W/1 in the laboratory. Parcel 'B' contained Five test cartridges of 0.32 inch.

Result of examination

On the basis of careful scientific examination it has been concluded that:

- 1. 0.32 inch I.O.F. Revolver bearing no. FG-11657 marked W/1 contained in parcel 'B' under reference is in working condition.*
- 2. Five 0.32 inch cartridges marked L/1 to L5 contained in parcel 'B' under reference are live cartridges. However, one 0.32 inch cartridge M/1 contained in parcel 'B' referred above is a misfired cartridge.*
- 3. No definite opinion can be given with respect to 0.32 inch lead bullet marked CB/1 contained in parcel 'A' as to whether it had been fired from 0.32 inch revolver bearing no. FG-11657 contained in parcel 'B' under reference or not due to lack of sufficient individual characteristic mark."*

27. DW-1 Sukhdev Singh alias Sunny stated that in the year 2010, he was working as servant with Ravinder Singh accused. He was being paid Rs.1500/- per month. About five years on the day of Dushhera festival, he along with Ravinder Singh accused had gone to Grain Market of Village Rauke Kalan for selling their paddy crop. In the Grain Market they had seen Navjot Singh alias Jyoti son of Sev Singh of their village, Tinder Singh alias Kulwinder Singh resident of Village

Paramjit Singh of their village and 3-4 other unidentified persons, who were armed with deadly weapons and were riding on motorcycles roaming in grain market. After finishing their work in the Grain Market at about 9.30 p.m, he and Ravinder Singh accused had started towards their house on tractor-trailor. Ravinder Singh was driving the tractor and he was sitting by side on mud guard of tractor. On the way Navjot Sintgh alias Jyoti, Kulwinder Singh alias Tinder Singh, Jaswant Singh son of Paramjit Singh and 3-4 others unidentified persons were following them. Ravinder Singh told him that the motorcyclists had some bad intention. Accordingly, he drove the tractor-trailor at fast speed. The motorcyclists tried to overtake them but could not as Ravinder Singh drove his tractor- trolley at fast speed and entered into the Court yard of his house. When they had entered in the courtyard, Ravinder Singh asked him to shut the outer gate of the house. He tried to shut the gate but the motorcyclists entered into their courtyard. Jaswant Singh gave him (DW-1) Sunny a dang blow which hit on his left wrist. Then he and Jaswant Singh grappled with each other. Then one unidentified person who was accompanying Jaswant Singh threatened him saying that in case he do not let go Jaswant Singh, he will shoot him. But he (DW 1) did not leave Jaswant Singh. That unidentified person fired a shot at him but Jaswant Singh had turned and in that process the shot hit him. Jaswant Singh fell in the court yard. Then Ravinder Singh and his family members climbed on the roof and raised hue and cry. People from the neighbourhood gathered there. The assailants left Jaswant Singh lying there. They also left motor cycle near the gate. He was taken to Civil Hospital, Moga by Paramjit Singh, where he was medico- legally examined. Police recorded his statement Ex.D2 on the next day. No action was taken by the police against the

assailants rather he along with Ravinder Singh was involved in his case. He was

acquitted by the Principal Magistrate Juvenile Justice Board, Moga.

28. In cross examination by learned PP, he stated that they had started from Grain Market at 9.30 pm. The house of Ravinder Singh was approximately 2 kilometer from the Grain Market. They reached the house of Ravinder Singh within half an hour. He could not tell the number of motorcycles. He had not filed any complaint against police officials or any assailants.

29. DW-2 Dr. Sanjay Dogra stated that on 18.10.2010 he had conducted medico- legal x-ray of Sunny son of Tota Singh resident of Village Rauke Kalan, vide MLR No.GSG256/10 and report is as follow:-

“X-ray left hand with wrist-fracture proximal phalanx of index finger and third metacarpal was seen.”

He proved the x-ray report Ex.D-3 and Ex.D-4 the x-ray film on the basis of which he had given his report.

He deposed that Sunny was medico legally examined by Dr.Gurbir Singh, Medical Officer of Civil Hospital Moga on 18.10.2010. He identified hand writing and signatures of Dr.Gurbir Singh on MLR Ex.D-5. Ex.D-5/1 is pictorial diagram showing seats of injuries on person of Sunny. After receipt of x-ray report Dr.Gurbir Singh had declared injury No.1 on person of Sunny as grievous in nature, vide his report Ex.D6. He identified hand writing and signatures of Dr.Gurbir Singh on report Ex.D6. He deposed that Dr. Gurbir Singh was now residing abroad. He deposed that he was well conversant with his hand writing and signatures as they had worked together during his service.

30. DW-3 HC Ramesh Kumar brought FIR register of P.S. Mehna for the year 2011. He has brought original FIR No.68 dated 20.06.2011, under

Sections 452, 380, 506, 427 read with Section 34 of Indian Penal Code, P.S.

Mehna. Attested photocopy of the same is Ex.DW-3/A.

31. The case was registered on the statement of PW1 Paramjit Singh r/o village Rauke Kalan, who stated that his elder son Jaswant Singh had been serving in the Milk Plant at Ludhiana for the last one year as a private worker. He had come home on leave on 17.10.2010 as it was a holiday on account of Dusshera festival. At about 10.15 pm on 17.10.2010 he along with his son- Jaswant Singh and his cousin Nirmal Singh was going to the house of Sarwan Singh Ex.Member Panchayat to request him to get Jaswant Singh transferred from Ludhiana to Moga. When they reached near the Dharamshala of the village, Sarwan Singh met them. They started talking to each other. Meanwhile, Ravinder Singh accused passed by them on tractor-trolley. After parking the tractor-trolley in his house, he came out with 2-3 persons. He was armed with .32 bore revolver. The other persons were armed with base-ball bats and lathis. Ravinder Singh raised *lalkara* as to why they were standing there. He fired 3-4 shots from his revolver directly at them. Complainant, Nirmal Singh and Sarwan Singh saved themselves by hiding on one side. His son Jaswant Singh was hit. He fell down. Ravinder Singh and his companions took away Jaswant Singh to the house of Ravinder Singh. Later, it was found that his son Jaswant Singh had been beaten to death by those persons. After leaving Nirmal Singh and Sarwan Singh near the dead body lying near the gate of the house of Ravinder Singh, he along with Jaswant Singh Member Panchayat went to Police Station to lodge report. The motive for the occurrence as disclosed by him was that Baljinder Singh s/o Sarwan Singh had a dispute with Gurdeep Singh s/o Fauja Singh. They had quarrelled and a case was pending in Court. Ravinder Singh accused used to support the party of Gurdeep Singh,

Whereas, the complainant supported Sarwan Singh. On account of that Ravinder

Singh bore a grudge against the complainant.

32. While deposing before the Court as PW1 the complainant reiterated the incident as per his statement Ex.P1. The only improvement was that he named the persons accompanying Ravinder Singh as being Karamjit Singh, Jagmohan Singh and Surinder Kaur.

33. PW2 Nirmal Singh also deposed on the same lines as PW1 Paramjit Singh. He stated that after raising *lalkara* Ravinder Singh fired three to four shots straight at them. They took shelter by hiding behind the wall of the Dharamshala. Jaswant Singh received a fire arm shot and fell down. The assailants dragged Jaswant Singh to the house of Ravinder Singh and beaten him to death. He and Sarwan Singh remained near the dead body of Jaswant Singh, while Paramjit Singh went to inform the Police.

34. The case of the accused in his statement under Section 313 CrPC was that he had been falsely implicated in this case. He stated that on 17.10.2010 it was Dusshera festival. He along with his servant Sunny had gone to the grain market, Rauke Kalan to sell paddy. In the evening when they were present in grain market, they saw Navjot Singh alias Jyoti son of Sukhdev Singh alias Seb, Jaswant Singh son of Paramjit Singh of their village, Kulwinder Singh alias Kinda son of Nirmal Singh resident of village Aughar, who was also residing in their village at that time and 3-4 other unknown boys roaming in grain market on motorcycles armed with revolver, pistol and other deadly weapons. After finishing their work in the grain market, he and his servant Sunny started back on his tractor-trailor. When they reached near his house, they had noticed that above mentioned boys, who were roaming in grain market were following his tractor-trailor on their motorcycles carrying their deadly weapons. Sensing that those boys had some

evil intent, he drove his tractor-trailor rashly and entered his house. Jaswant Singh and his companions Kinda, etc. tried to enter into the house. Sunny got off from tractor-trailor and tried to shut the outer door of his house. Just then Jaswant Singh gave a dang blow to Sunny, which hit his left hand. Sunny and Jaswant Singh grappled with each other in his courtyard. When they were grappling one of the companions of Jaswant Singh, armed with revolver, tried to shoot Sunny by aiming his revolver towards him, but accidentally that shot hit Jaswant Singh. Jaswant Singh fell down in the court yard. He and his family members climbed the roof of his house and raised alarm. Their neighbours also joined them from their houses. The assailants ran away leaving Jaswant Singh lying in the courtyard. They also left a motorcycle in front of his house. Police was informed. His servant Sunny was got admitted in Civil Hospital and his statement was recorded regarding the incident. A DDR was also recorded, but later on he and Sunny were falsely implicated in the case. Though, his servant Sunny was also challaned along with him, but being under-age he was tried by the Principal Magistrate, Juvenile Justice Board, Moga and was acquitted.

35. Sukhdev Singh @ Sunny appeared as DW1 and supported the version of the accused Ravinder Singh. He stated that he was working as a servant with Ravinder Singh accused. On the day of the incident, he along with Ravinder Singh had gone to the grain market of village Rauke Kalan for selling the paddy crop. In the market, they had seen Navjot Singh @ Jyoti, Tinder Singh @ Kulwinder Singh, Jaswant Singh – deceased and 3-4 other unidentified persons armed with deadly weapons riding on motorcycles roaming in the grain market. After finishing their work in the grain market, accused Ravinder Singh and DW1 Sukhdev Singh started towards their house on tractor-trolley. Ravinder Singh was driving the tractor. He

was sitting on the mudguard of the same. Persons, above named, followed them. Ravinder Singh told him that motorcyclists had some bad intention. He drove the tractor-trolley at fast speed. The motorcyclists tried to over-take them but were not successful. Ultimately, they entered with the tractor-trolley in the courtyard of the house of Ravinder Singh. The motorcyclists continuously followed them. After they had entered the courtyard, Ravinder Singh asked him to shut the outer door of the house. When he was shutting the house, the motorcyclists entered the house of Ravinder Singh. Jaswant Singh gave a dang blow to DW1 which hit him on his left wrist. Then he and Jaswant Singh grappled with each other. One unidentified person accompanying Jaswant Singh threatened DW1 that in case he did not release Jaswant Singh, he would shoot DW1. DW1 did not leave Jaswant Singh. That person fired a shot at DW1, but Jaswant Singh had suddenly turned and the shot accidentally hit Jaswant Singh. Jaswant Singh fell in the courtyard. Accused Ravinder and his family members climbed the roof. People from the neighbourhood collected there. The assailants left Jaswant Singh lying there. They also left a motorcycle near the gate. DW1 was taken to Civil Hospital, Moga, where he was medico- legally examined.

36. There is no dispute between the version of the prosecution and the defence that the dead body of Jaswant Singh was lying in the house of accused Ravinder Singh near the gate. The prosecution version is that accused Ravinder Singh had fired 3-4 shots at PW1 Paramjit Singh, PW2 Nirmal Singh, Jaswant Singh and Sarwan Singh when they were standing outside his house near the Dharamshala. While the others managed to escape by hiding behind the Dharamshala, one shot hit Jaswant Singh. He fell down. He was dragged by the

accused and the persons accompanying him, taken to the house of accused

Ravinder Singh. Both while being dragged and inside the house, he was given beatings and he died.

37. The statement Ex.P1 of PW1 Paramjit Singh was recorded by PW10 Inspector Joginder Pal on the night intervening 17/18.10.2010 at about 12.00 a.m. He also inspected the place of occurrence and prepared inquest report Ex.P2 of deceased Jaswant Singh. He stated that one motorcycle bearing No.PB-66-6056 make Discover which was in a broken condition, was taken into police possession along with its RC from the spot. He proved the rough Site Plan Ex.P21 which was prepared at the spot with correct marginal notes. PW10 has not made any mention of taking into possession blood-stained earth either from the spot where Jaswant Singh was alleged to be shot or from the passage from that spot to near the gate inside the house of accused Ravinder Singh where his dead body was found. In the site plan Ex.P21, 'Mark-A' is the place where the deceased had fallen after being hit by the fire shot. 'Mark-E' is the place inside the house of Ravinder Singh near his gate where the dead body of Jaswant Singh was found. The distance between Mark-A to Mark-E is about 18 karams. If the deceased had suffered a bullet injury at 'Mark-A' and was taken to the place 'Mark-E' there is no reason why he would not leave a trail of blood in between. The absence of any trail of blood puts a question mark on the version of the prosecution.

38. As per the site plan, Ex.P21, 'Mark-B' is the place from where Ravinder Singh fired the shot which hit the deceased who was at the place 'Mark-A'. The distance between Mark-A and Mark-B is about four karams.

39. PW3 Dr.Jasdeep Singh, Medical Officer, Civil Hospital Lohian Khas, who conducted the postmortem on the dead body of Jaswant Singh noticed the

- “1. *Small multiple abrasions over right cheek and left cheek.*
2. *1.5 cm x 1 cm lacerated punctured wound over left side of chest 3 cm above and 5 cm lateral to left nipple. Depth was ascertained by putting a soft rubber probe. On dissection: The track of the wound was going through left pectoral area muscle mass then left pleura and then entering left lung injuring it. Further it exit out through left lung and injuries right lung and right pleura.*
On further probing the track goes to right pectoral area where a metallic piece was found which was taken out and handed over to the police. There was area of blackening present around the injury No.2.
3. *2 cm x 2 cm abrasion over back of left wrist.*
4. *2 cm x 2 cm abrasion over back of left elbow.*
5. *Small multiple abrasions over the back.”*

There was blackening present around injury No.2. In cross-examination by Ld. counsel for the accused, PW3 stated that he could not comment upon the distance of the fire-arm as he was not a ballistic expert. He also could not comment as to whether according to Medical Jurisprudence blackening occurs around the wound when the shot is fired from 3-4 feet.

40. In Modi's Textbook of '**Medical Jurisprudence and Toxicology**' 25th Edition-2016 in Chapter-25 'Injuries by Mechanical Violence' pg. 636, it has been stated thus:

“.....If a firearm is discharged very close to the body or in actual contract, subcutaneous tissues over an area of two or three inches around the wound of entrance are lacerated and the surrounding skin is usually scorched and blackened by smoke and tattooed with unburnt/ partially burnt grains of gunpowder or smokeless propellant powder. The adjacent hairs are singed, and the clothes covering the part are burnt by the flame. If the powder is smokeless, there may be

a greyish or white deposit on the skin around the wound. If the area is photographed by infrared light, a smoke halo round the wound may be clearly noticed. Blackening is found, if a firearm like a shotgun is discharged from a distance of not more than three feet and a revolver or pistol discharged within about two feet. In the absence of powder residue, no distinction can be made between one distant shot and another, as far as distance is concerned. Scorching in the case of the latter firearms is observed within a few inches, while some evidence of scorching in the case of shotguns may be found even at one to three feet. Wetting of the skin or clothes by rain reduces the scorching range. Blackening is not affected by wet surface although it can easily be removed by a wet cloth. Blackening with a high power rifle can occur up to about one feet.”

41. The case of the accused is that Jaswant Singh had been accidentally shot by one of his own companions who had aimed the shot at Sandeep @ Sunny, who was grappling with Jaswant Singh. The blackening around the wound also suggests that the shot was fired from a close distance. As per the site plan Ex P21 the shot was fired from a distance of about four karams (about 22 ft.). A shot fired from this distance would not lead to blackening. Thus, the presence of blackening does not appear to support the prosecution case, but is more consistent with the version of the defence.

42. Apart from injury No.2 which was a bullet injury, the other injuries on the deceased as noticed above were only small abrasions on his cheek, left wrist, elbow and back. If the deceased had been dragged over a distance of about 18 karams as suggested by the Site Plan Ex.P21 he would have suffered more drag marks. To the contrary the abrasions etc. found on the body during post mortem are

examination stated that the dead body of Jaswant Singh was taken to Civil Hospital Moga in Mahindra pick up and that the dead body had been placed in the vehicle without spreading any cloth under it. PW7 HC Kuldeep Kumar in his cross examination stated that the dead body was brought to Moga in a private vehicle. Village Rao Ke Kalan is at a distance of 35 kilometer from Civil Hospital, Moga. The roads leading from village Rao Ke Kalan to Civil Hospital, Moga were badly damaged. The vehicle had to suffer jolts and jerks for reaching Civil Hospital, Moga due to bad condition of road. PW -3 Dr. Jasdeep Singh who as Medical Officer, Civil Hospital, Moga had conducted the post mortem of the dead body of Jaswant Singh in cross examination stated that the possibility of injuries no. 3, 4 and 5 on the dead body of deceased being caused due to loading of dead body in a vehicle without spreading cloth cannot be ruled out.

43. In the Inquest Report the following injuries were noticed: “ *Marks of scratches on left cheek, Marks of wound on left side near nipple where fire arm shot was hit, Marks of scratches on chin.*” Injuries No. 3 i.e, 2 cm x 2 cm abrasion over back of left wrist, injury No. 2 i.e., 2 cm x 2 cm abrasion over back of left elbow and injury No. 5 i.e., small multiple abrasions over the back which were noticed in the post mortem report were not noticed in the Inquest Report. Evidently, they occurred later. This is consistent with the evidence that these may have been suffered during the loading of the body in the Mahindra Pick up truck for taking it to the Civil Hospital, Moga for post mortem examination.

44. As per the version of accused Ravinder in his statement under Section 313 Cr.P.C. and as per the testimony of DW1, Sandeep @ Sunny, after the firearm shot had accidentally hit Jaswant Singh, the assailants fled away leaving behind

one motorcycle. In his deposition PW10 Inspector Joginder Pal stated that when he

reached the spot, one motorcycle make Discover was taken into possession along with RC from the spot. In the site plan Ex.P21 the place from where the motorcycle is taken into possession is shown at Mark-D, which is just outside the gate of the house of accused Ravinder Singh. This is also consistent with the defence version. None of the PWs have deposed about the presence of a motorcycle in front of the house of accused Ravinder Singh when the alleged incident occurred.

45. As per PW8 SI Jagtar Singh accused Ravinder Singh was arrested on 29.12.2010. On his disclosure statement Ex.P8, one .32 bore revolver and six cartridges along with Arms License in the name of Ravinder Singh, were recovered from an almirah lying in a room of his residential house. The same were taken into Police possession vide memo Ex.P9. The same were sent to FSL. As per FSL report, *“no definite opinion could be given with respect to 0.32 inch lead bullet marked CB/1 contained in parcel 'A' as to whether it had been fired from 0.32 inch revolver bearing No.FG-11657 contained in parcel 'B' under reference or not due to lack of sufficient individual characteristic mark.”* Thus, there was no definite opinion that the shot which hit the deceased was fired from the .32 bore revolver recovered from the house of accused Ravinder Singh pursuant to his disclosure statement.

46. In his cross-examination by Ld. counsel for the accused, PW1 Paramjit Singh stated that the occurrence was finished within 15-20 minutes. PW2 Nirmal Singh in his cross examination has stated that the occurrence took 15-20 minutes. No efforts were made by PW 1 -the complainant, Nirmal Singh and Sarwan Singh to intervene to save Jaswant Singh. In his cross examination PW 1

stated that he did not intervene as there was firing. This explanation does not

appear to be convincing. If the occurrence continued for 15-20 minutes and after the shot having been fired at Jaswant Singh the accused beat him and forcibly dragged him inside the house of the accused, it is inexplicable as to why the complainant who was accompanied by two others did not intervene and attempt to save the life of his son. This conduct is unnatural and casts a doubt on the version of the prosecution. It is not that the complainant and the others were so terrified of the accused that they did not dare enter the house of the accused. They did enter the house after Jaswant Singh had died. Nirmal Singh and Sarwan Singh even remained near the dead body of Jaswant Singh, while PW1 Paramjit Singh went to report the matter to the police.

47. DW1 Sunny the servant of accused- Ravinder in his deposition stated that when the motorcyclists had entered the courtyard of Ravinder Singh, deceased Jaswant Singh had given him a dang blow which hit him on his left wrist. Thereafter, he and Jaswant Singh grappled with each other. DW 1 was taken to Civil Hospital, Moga by Ravinder Singh, where he was medico legally examined. DW2 Dr.Sanjay Dogra, Radiologist, Civil Hospital, Moga stated that on 18.10.2010 he had conducted medico-legal X-ray of Sunny r/o Village Rauke Kalan. In the X-ray of left hand "*wrist-fracture proximal phalanx of index finger and third metacarpal was seen*". He deposed that Sunny was medico- legally examined by Dr. Gurbir Singh, Medical Officer of Civil Hospital Moga on 18.10.2010. After receipt of X-ray report, Dr.Gurbir Singh had declared the injury on the person of Sunny as grievous in nature.

48. There is no explanation by the prosecution about the grievous injury sustained by Sunny. To the contrary, both the eye-witnesses i.e. PW1 Paramjit

Singh and PW2 Nirmal Singh have categorically deposed that no injury was

sustained by Sunny in the occurrence. The injury sustained by him is consistent with the version of the defence that Sunny was inflicted a *dang* blow by Jaswant Singh – deceased. This is another infirmity in the case of the prosecution.

49. As per PW1 and PW2, 3-4 shots were fired by accused Ravinder Singh. Apart from the lead piece recovered from the body of the deceased there is no recovery of other fired bullet from the spot.

50. The alleged motive also appears to be far-fetched. There is no direct dispute between the complainant party and the accused. Merely, because there was litigation between Gurdeep Singh and the son of Sarwan Singh, regarding which criminal cases were pending and accused Ravinder Singh was helping Gurdeep Singh, whereas, the complainant party had cordial relations with Sarwan Singh, does appear to be a strong motive to kill the son of the complainant. Moreover, Sarwan Singh with whom Gurdeep Singh allegedly had a dispute was not examined though he was present when the incident occurred.

51. In the light of this, it has to be held that the prosecution has not proved case against the accused – appellant beyond shadow of doubt.

52. Accordingly, this appeal is allowed. The appellant is acquitted of all the charges framed against him by giving him benefit of doubt. He be released forthwith, if not required in any other case.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 20, 2020

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No