

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.379

CRA-S-1618-SB-2004 (O&M)

Date of Decision:13.12.2022

Parmod Kumar @ Danny and others

...Appellants

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Nandan Jindal, Advocate,
for the applicants/appellants.

Mr.M.S. Bajwa, DAG, Punjab.

Mr. A.S. Sandhu, Advocate,
for respondent No.2.

N.S. SHEKHAWAT, J.

CRM-26065-2022

For the reasons mentioned in the application, the same is allowed, subject to all just exceptions. Compromise-deed is taken on record as Annexure A-1.

CRM-26066-2022

Prayer in the application is for fixing an actual date of hearing in the present appeal.

As the main appeal has taken up for hearing today itself, the present application is rendered infructuous.

Disposed of accordingly.

Main appeal

The instant appeal is directed against the judgment of conviction dated 31.07.2004 and order of sentence dated 02.08.2004 passed

by the learned Additional Sessions Judge, Fast Track Court, Ferozepur, whereby appellant No.1-Parmod Kumar had been convicted under Section 307 IPC and appellant No.2-Neeraj Kumar @ Kala and appellant No.3-Raju had been convicted under Sections 307/34 IPC. The accused-appellants have been sentenced to undergo rigorous imprisonment for 05 years and to pay a fine of Rs.2,000/- and in default thereof, to further undergo rigorous imprisonment for 01 year.

Brief facts of the case are that on 04.09.2002, Avtar Singh, complainant, appeared before the police and made a statement that he was residing at Kand Wala Road, Abohar. On 29.08.2002, he received a message from accused Parmod Kumar @Danny and Mahipal that the complainant should meet accused Parmod Kumar along with Bakshish Singh @ Sheesha and Sher Singh etc. in connection with a case under Section 307 IPC pending between them and Vijay Kumar. Sher Singh was not available at his home. Consequently, he along with Navjiwan Singh @Nahi, Gurprit Singh @Kala and Bakshish Singh went to his residence on scooter and motorcycles at Nai Abadi, Abohar. At about 09:00 PM, when they reached in the street in front of house of accused Parmod Kumar @Danny, he was sitting in the outer room of his house and they also sat with him and started conversing. Accused Parmod Kumar informed them that the complainant Avtar Singh was trying to effect a compromise between Vijay Kumar on one hand and Balkar Singh and Bakshish Singh @Sheesha on the other hand. He demanded a sum of Rs.50,000/- for getting the compromise effected as he had spent Rs.50,000/- for getting the bail orders. The complainant further told accused Parmod Kumar that he was not interested in getting the compromise effected. On this, accused Parmod

Kumar got infuriated and called his brother Manoj Kumar, who was armed with a .12 bore rifle and accused Raju and Kala were already sitting in the inner room of his house. Accused Raju and Kala exhorted that the complainant should not be spared and on this they came in the street. However, accused Manoj Kumar went upstairs armed with his rifle. Accused Raju took out the key of their motorcycles and accused Parmod Kumar took out a pistol and fired at the complainant hitting him at the right side of his back, as a result of which he fell down. Accused Parmod Kumar fired another shot, hitting in the center of his back. Accused Manoj Kumar fired a shot with his rifle, which hit at his right leg. On this, the complainant raised hue and cry and all the accused ran inside their house. He was shifted to Civil Hospital, Abohar by his companions, where he was provided the required medical treatment and was referred to DMC, Ludhiana, keeping in view his critical condition.

On the strength of the above-mentioned version by the complainant, the FIR in the instant case was registered. After registration of the case, necessary investigation as per the provisions of the Cr.P.C was conducted and the final report under Section-173 Cr.P.C was presented before the Area Magistrate under Sections 307, 323, 34 IPC as well as Sections 25/27 of the Arms Act.

After presentation of the challan, the mandatory provisions of Section 207 were complied with and since the offence under Section 307 IPC was exclusively triable by the Court of Sessions, the case was ordered to be committed for trial to the Court of learned Sessions Judge Ferozepur. A prima facie case for the offence punishable under Sections 307/34 IPC was found to have been committed and the appellants/accused were charge-

sheeted accordingly, to which they pleaded not guilty and claimed trial.

In support of the charge, the prosecution examined 10 witnesses and tendered into evidence the report of the FSL as Ex. P25. The prosecution examined PW1 Avtar Singh, who was the eye witness of the occurrence. He clearly stated that accused Raju and Kala had raised Lalkara to the effect that the complainant should be caught and not allowed to go and be also taught a lesson. Danny took out a pistol from his dub and fired shots on them and the pellets hit at him on the right pelvic region and lower part of the back, as a result of which, he fell down. Manoj Kumar also fired shots from .12 bore gun from the roof top and the pellets of the same hit him on the back side of his right knee and his back. When they raised the noise to save them, the accused went inside their house and the companions of PW1 Avtar Singh shifted him to the hospital at Abohar from where he was referred to DMC Ludhiana. The prosecution further examined PW2 Bakshish Singh, who supported PW1 Avtar Singh in totality and was present at the place of occurrence. The prosecution further examined PW3- Dr. Rahul Bansal, who brought the original bedhead ticket of Avtar Singh, injured. As per him, Avtar Singh was admitted to DMC Hospital, Ludhiana on 30.08.2002 and was discharged on 09.09.2002. PW-1 Avtar Singh was also operated upon by a team of doctors including him and he proved the operation notes as well. Further, Farangi Lal, J.E, Grid, Abohar, was examined as PW-4, who deposed the facts relating to night supply of power. Sukhwant Singh, Arms Clerk, was examined as PW5, who deposed the facts relating to the arms licenses and his evidence was formal in nature. PW6 Jaswant Singh, Draftsman, prepared the site plan after visiting the place of occurrence. Further, Dr. Krishan Dev Vashisht, Medical Officer, Civil

Hospital, Abohar was examined as PW-7 and as per him, PW-1 Avtar Singh, injured, suffered the following injuries:-

1. Lacerated punctured wound, circular in shape .5cm in diameter with inverted margin with blackening on upper and outer aspects of right thigh, 6cm from the **iliac** chest. Fresh bleeding was present. Advised X-Ray.
2. Lacerated punctured wound circular in shape .5cm in diameter with inverted margin with blackening, present in the right popliteal fossa. Fresh bleeding was present. Advised X-Ray.
3. Lacerated punctured wound circular in shape .4cm in diameter with inverted margins with blackening on back and middle right side of chest near midline. Fresh bleeding was present. Advised X-Ray.
4. Lacerated punctured wound circular in shape .5cm in diameter with inverted margins and blackening on back and middle of left side of abdomen near midline. Fresh bleeding was present. X-Ray was advised.
5. Lacerated punctured wound, circular in shape .25cm in diameter present on front of the left side of abdomen 4 cm from the umbilicus. Fresh bleeding was present. Advised X-Ray.

As per PW-7 Dr. Krishan Dev Vashisht, injured Avtar Singh was conscious and he proved the MLR Ex.P10. In cross-examination, he admitted that he also medico-legally examined accused/appellant No.1 Parmod Kumar and found the following injuries on his person:-

1. Lacerated wound 2.5 cm x .25 cm on the left occipital area, 7 cm from the left pinna. Fresh bleeding. Advised X-ray.
2. Lenier abrasion 3cm present on the left side of cheek.
3. Lenier abrasion 4cm present on the right side of chest near the right nipple.
4. Lenier abrasion 3 cm present on back on right side of abdomen, 2 cm from the midline.
5. Multiple lenier abrasion in the area of 4cm x 1 cm present on right side of right shoulder.

He also examined Poonam wife of Parmod Kumar and found the following injuries on her person.

1. Reddish contusion 6 cm x 1 cm present on left side of cheek just below the left lower eye lid sub-conjunctival hemorrhage present. Advised Eye Surgeon opinion.
2. Complain of pain in lower abdominal region in the back. No mark of external injury was present. Tenderness positive. Advised X-Ray.

The prosecution further examined PW-8 Constable Avtar Singh, who brought the original record of FIR No.193 dated 04.09.2001 under Sections 307,324,323,452,427,506,148 and 149 IPC and exhibited as Ex.P12 and also exhibited FIR register pertaining to the year 2002, consisting of FIR No.248 dated 29.08.2002 under Sections-307/452/148 and 149 IPC and Section 25 of the Arms Act as Ex.P13. ASI Amrik Singh was examined as PW-9, who visited DMC Hospital, Ludhiana and moved an application for the opinion of the doctor as to the fitness of the injured

Avtar Singh. The doctor declared him fit for statement and he recorded the statement of the injured Avtar Singh as Ex.P1 and on the basis of the same, the present FIR was registered and he conducted the initial investigation in the present case. Apart from that, ASI Raj Singh was examined as PW-10, who also conducted the investigation partly.

After closure of the prosecution evidence, the statements of the accused were recorded under Section 313 of Cr.PC. Accused/appellant No.1-Parmod Kumar stated that at about 09:15 PM on 29.08.2002, he along with his wife Poonam and his brother Manoj Kumar were sitting in the courtyard of their house. The outer door of the house was bolted from inside. Somebody knocked at the door of the house and he went to open the door and he was followed by his wife and brother. He found PW-1 Avtar Singh armed with a .12 bore gun, Bakshish Singh @Sheesha armed with a pistol, whereas Navi and Kala each armed with Kirpan were standing there along with three more unidentified persons. Sheesha told him that he had not given money for the bail, therefore he would teach him a lesson for that. Sheesha fired a shot on them with an intention to kill them, however, the fire shot hit the cooler which was lying there. PW-1 Avtar Singh also fired a shot on them straight with an intention to kill them. However, he saved himself by bowing down and he ran inside in his house and his wife Poonam and his brother Manoj Kumar tried to stop them, but they chased him. Navi gave a thrust blow from kirpan on the person of his wife which hit under her right eye. He also caused injury on her back with the handle of his kirpan. Accused Parmod caught hold of gun of .12 bore and revolver of .32 bore, which he had kept for his safety in the courtyard, but Navi intercepted him and gave a Kirpan blow from reverse side on his head. Kala

also caused injuries to him on his right shoulder, on left shoulder, right side of chest and on the right side of pelvic region. The accused climbed on the roof of his house with the aforesaid weapons and fired shots for his self-defence in the air. He along with his family members went to the police station and reported the matter to the police. Appellant No.2-Neeraj Kumar and appellant No.3 Raju had also taken similar defence.

The accused also examined DW-1 Sandeep Kumar, who was taken by the police and he had taken photographs at the spot.

The learned trial court after appreciation of the facts and evidence brought on record concluded that the prosecution has successfully proved its case, bringing home the guilt against the accused/appellants. Consequently, the appellants were convicted and sentenced as noted above.

Feeling aggrieved against the above-said impugned judgment of conviction and order sentence, the appellants have preferred the instant appeal.

At the very outset, learned counsel for the appellants states that the compromise has been effected between the parties and they have settled all the disputes pending between them with the intervention of the well wishers and the respectables.

The statement made by the learned counsel for the appellants has been supported by learned counsel appearing for the complainant, who does not dispute the factum of compromise arrived at between the parties and submits that appropriate orders may be passed, in view of the compromise between the parties.

I have heard the learned counsel for the parties in detail and with their able assistance have examined the case file minutely.

From a perusal of the statements of PW-1 Avtar Singh and PW-2 Bakshish Singh, it is apparent that both the above-said prosecution witnesses had proved the story of the prosecution. They had narrated the story of the prosecution vividly and were subjected to incisive cross-examination. However, their testimonies could not be shattered in any manner. Both these witnesses had explained the manner, in which the injuries were inflicted by the appellants. Apart from that, the testimonies of the said witnesses have been supported by the statements of various formal witnesses. PW-4 Farangi Lal had proved the log-sheet to show the supply of power in the area of Nai Abadi and duly exhibited the same. PW-5 Sukhwant Singh proved the arms licence qua .12 bore rifle and .32 bore revolver, whereas PW-6 Jaswant Singh, Draftsman, proved the scaled site plan of the place of occurrence as Ex.P9. Still further, the other witnesses of the prosecution proved the investigation conducted by the police and their story of the prosecution is further corroborated by the testimony of PW-5 Sukhwant Singh, Arms Clerk, PW-3 Dr. Rahul Bansal, who had prepared the operation notes as well as PW-7 Dr. Krishan Dev Vashisht, who had proved the injuries on the person on the injured. Consequently, the learned trial Court has rightly held the accused/appellants guilty under Section 307/34 IPC and the findings recorded by the learned trial Court are based on due appreciation of evidence and settled law.

At this stage, learned counsel for the appellants submits that the matter has been compromised between the parties and the said fact has not been disputed by the learned counsel appearing for the complainant. Learned counsel for the appellants further submits that a similarly placed co-accused Manoj Kumar also stood trial in the present case and the

prosecution witnesses had not supported the case of the prosecution and he was ordered to be acquitted vide judgment dated 06.08.2009 passed by the learned Additional Sessions Judge, Ferozpur. Similarly in the cross-version of the FIR in the instant case, Bakshish Singh @ Sheesha (PW2), Avtar Singh (PW-1), Navjivan Singh @ Navi and Gurprit Singh @ Kala were tried and held guilty under Section 323/34 of IPC vide judgment of conviction dated 31.07.2004 and were ordered to be released on probation vide order of even date passed by the learned Additional Sessions Judge, Fast Track Court, Ferozepur.

Still further the appellants are facing the agony of the trial/appeal since last more than 20 years and all the dispute pending between the parties have been amicably settled. Admittedly, the sentence of all the appellants were suspended by this Court in the year 2005 and they never misused the said concession. Apart from that, appellant No.1-Parmod Kumar has undergone for 01 year, 07 months and 07 days (including remissions), appellant No.2 -Neeraj Kumar @ Kala has undergone for 01 year, 09 months and 08 days (including remissions) and appellant No.3-Raju has undergone for 01 year, 09 months and 04 days. It is also stated that the appellants are the sole bread winners of the family and have to take care of their respective family and are also not involved in any other case. Furthermore, the matter has already been compromised between the parties and a compromise-deed has already been placed on the file as Annexure A-1.

Hon'ble the Supreme Court in **Gulab Das and others vs. State of M.P., 2011(10), SCC 765** upheld the order of conviction recorded by the learned trial Court, however, the sentence awarded to the appellants was

reduced to the period already undergone by them. The conviction in the said case was under Section 307 IPC and the Hon'ble Supreme Court had not allowed the parties to compound the offence under Section 307 IPC, but the sentence was reduced to the period already undergone by the appellants.

Thus, keeping in view of the above-said facts and circumstances of the case as well as in view of the ratio laid down by Hon'ble the Supreme Court in the above referred judgment, this Court is of the considered view that it is just and expedient to reduce the sentence of the appellants to the period already undergone by them, while upholding their conviction.

In view of the above, the present appeal is partly allowed. The impugned judgment of conviction dated 31.07.2004 passed by the learned Additional Sessions Judge, Fast Track Court, Ferozepur, is upheld, however their sentence is ordered to be reduced to the period already undergone by them.

With the above modification, the instant criminal appeal stands partly allowed, to the extent indicated above. Pending application(s), if any, shall also stand disposed of.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law. The trial Court record be sent back forthwith.

13.12.2022
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO