

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-674-DB-2012
Reserved on: 31.10.2022
Date of decision: 03.11.2022

MANJIT SINGH ...Appellant

Versus

STATE OF PUNJAB ...Respondent

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

Present: Mr. Nikhil Chopra, Advocate for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict recorded on 02.06.2012, upon Sessions Case No.20 of 29.07.2009/17.12.10, by the learned Additional Sessions Judge, Hoshiarpur, wherethrough in respect of charges drawn under Sections 302/34/120 of IPC, and, under Sections 25/27 of the Arms Act, he proceeded to record a verdict of conviction against accused Manjit Singh. Moreover, through a separate sentencing order drawn on 02.06.2012, he proceeded to impose upon the appellant-convict, the hereinafter extracted sentence(s) of imprisonment, as also of fine.

<i>Name of Convict</i>	<i>Under Section</i>	<i>Sentence</i>
Manjit Singh	120B read with Section 302 IPC	To undergo imprisonment for life and to pay fine of Rs.50,000/- (Rupees Fifty thousand only). In case of default of payment of fine the convict shall undergo further rigorous imprisonment for one year .
Manjit Singh	25 of Arms Act	To undergo rigorous imprisonment for three years and to pay fine of Rs.5,000/- (Rupees Five thousand only). In case of default of payment of fine the convict shall undergo further rigorous imprisonment for three months .

2. However, the learned Additional Sessions Judge, Hoshiarpur through the above referred verdict, made a finding of acquittal in respect of co-accused Charanjit Singh, Satinder Singh, and, Iqbal Singh. Though, the aggrieved victim preferred thereagainst CRM-A-729-MA-2012, before this Court, but the above CRM-A-729-MA-2012 was dismissed on 29.01.2013. Since there is no material on record suggestive qua the order of dismissal, as made, upon CRM-A-729-MA-2012 becoming appealed against before the Hon'ble Apex Court nor when any verdict of the Hon'ble Apex Court rather accepting the apposite SLP, has been placed on record by the learned counsels' concerned. Resultantly the verdict of dismissal as made by this Court, upon, CRM-A-729-MA-2012 acquires finality, and, conclusivity. Furthermore, since the learned State counsel submits, that the verdict of acquittal drawn in respect of co-accused (supra), became never appealed by the State of Punjab before this Court. In sequel, the verdict of acquittal (supra), as drawn against the co-accused (supra), by the learned Additional Sessions Judge, Hoshiarpur hence acquires apt conclusivity.

3. Nonetheless, the convict-Manjit Singh is aggrieved from the verdict of conviction (supra), besides also becomes aggrieved from the consequent thereto sentence(s) (supra), as became imposed upon him, by the learned Convicting Court. Resultantly, he is led to cast a challenge thereto through his instituting the instant appeal before this Court.

FACTUAL BACKGROUND

4. The genesis of the prosecution case is embodied in the FIR, to which Ex.PD/1 is assigned, therein, it is narrated that on 05.03.2009, when SI Sukhminder Singh along with other police officials, were present near Chabbewal, then there he received information from the police station, that

Kuldeep Kaur wife of Manjit Singh had been murdered by some unknown persons, and, she has been shifted to Civil hospital Hoshiaprur. On receiving this information, SI Sukhminder Singh reached there and on 05.03.2009, he recorded the statement of Sandeep Singh son of Nihal Singh, resident of village Kukkar Pind, Police Station Sadar, Jalandhar to the effect that he is resident of above mentioned address and he is an agriculturist. They are two brothers and deceased Kuldeep Kaur daughter of Piara Singh, his maternal uncle resident of village Satiala, District Amritsar used to live with them since childhood and they treated her as their sister. They performed her marriage with Manjit Singh son of Malkit Singh resident of village Lehli Khurd about 12/13 years ago. Out of this wedlock two sons namely Jaspreet aged 9 years and Gurpreet aged 5 years had born. Kuldeep Kaur used to live in Canada. On 9.1.2009, Kuldeep Kaur, after returning from Canada visited village Kukkar Pind along with her husband and children. She had visited village Kukkar Pind twice in the last two months when she i.e. Kuldeep Kaur told him, that her husband Manjit Singh is having illicit relations with some girl in Canada, and, that Manjit Singh wants a divorce from her, as he wanted to marry that girl. His uncle Gurmit Singh son of Bikkar Singh who is settled at Vancouver (Canada) also told him about the illicit relations of Manjit Singh. On 05.03.2009, at about 7.00 AM, his brother-in-law Manjit Singh informed him telephonically, that some unknown persons had made a fire shot on Kuldeep Kaur owing to which she had died. He has a firm belief that his sister had been got murdered by his brother-in-law Manjit Singh because Manjit Singh wanted to get married to another girl.

INVESTIGATION

5. On the basis of the statement of the complainant Ex.PA, a case under Section 302/34/120 of the Indian Penal Code, and, under Sections 25/27

of the Arms Act was registered against the accused. During investigations, the Investigating Officer visited the spot and prepared the inquest report of the dead body. The dead body was sent for post mortem examination and after post mortem, it was handed over to the relatives of deceased. Investigating Officer prepared site plan of the place of occurrence. Accused were arrested and weapons of offence were recovered. Investigating Officer recorded statements of witnesses under Section 161 Cr.P.C. On completion of investigations, challan against the above said accused for offences constituted under Sections 302/34/120 of Indian Penal Code, and, under Section 25/27 of Arms Act, was presented in the learned Committal Court concerned.

COMMITTAL PROCEEDINGS

6. Since the afore offences were exclusively triable by the Court of Session, thus vide committal order dated 08.07.2009, the learned Addl. Chief Judicial Magistrate, Hoshiarpur, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

7. The prosecution examined as many as 17 witnesses and, subsequently, the public prosecutor closed prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, he did not choose to lead any defence evidence.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

8. The learned counsel appearing for the victim-appellant, has made a vigorous submission before this Court that since PW-1, and, PW-2 who though during the course of the investigations, had in a purported test identification parade, rather purportedly identified besides had attributed an incriminatory role

to the present appellant. However, he submits that since both the above, upon, stepping into the witness box respectively as PW-1, and, PW-2 rather failed to then identify the accused in Court. Therefore, he submits that no valid incrimination was drawable against the convict-appellant.

9. He further submits that the incriminatory opinion as made by the Ballistic Expert in respect of user of the seized crime weapon, as made through recovery memo Ex.PM/1, hence subsequent to the making of a disclosure statement by the present appellant, to which Ex.PM is assigned, also cannot sustain the charge drawn against the accused. The reason which he assigns for making the above submission, becomes embedded in the factum, that preponderance, is to be assigned to oral evidence depended, upon by the prosecution, and, as becomes comprised in the statements of PW-1, and, PW-2, than to the report of the Ballistic Expert, as, comprised in Ex.PT.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

10. The learned State counsel has argued that the impugned verdict of conviction, and, consequent therewith sentence (supra), as became imposed upon the convict by the learned trial Judge concerned, is merit worthy, and, that it does not require any interference.

TESTIFICATIONS OF PW-1 AND PW-2

11. PW-1 and PW-2, upon, stepping into the witness box, though in their respectively recorded examinations-in-chief, failed to identify in Court, the present appellant rather as the incriminatory participant in the relevant assault. Moreover, even though the learned Public Prosecutor concerned, after obtaining the leave of the learned trial Court concerned, to declare them hostile, also during their respective cross-examinations, rather failed to draw any elicitations from them, for belying their failure to identify in Court, the present appellant, as

the incriminatory participant in the relevant occurrence. Nonetheless, the above failure of PW-1 and PW-2, to identify the present appellant in Court, as the incriminatory participant, in the relevant occurrence, to the considered mind of this Court, does not at all, either erode nor does it underwhelm the probative sanctity of the Ballistic Experts' report, as becomes comprised in Ex.PT.

REASONS FOR CONCLUDING THAT EX.PT UNDERMINES THE PROBATIVE SANCTITY OF THE STATEMENTS OF PW-1 AND PW-2, WHO RESILED FROM THEIR RESPECTIVELY RECORDED PREVIOUS STATEMENTS IN WRITING

12. A reading of the post mortem report to which Ex.PB/1, is assigned and which has been proven by Dr. Jaswinder Singh, Medical Officer, Civil Hospital Hoshiarpur, reveals that during the course of his making an autopsy, on the body of the deceased rather his extracting therefrom one metallic bullet.

13. The above metallic bullet was taken into possession through memo Ex.CB/1. Moreover, on a reading of Ex.PT, it is also revealed that four sealed parcels Mark A to D became received in the Laboratory concerned. Mark A to C were sealed with seal bearing impressions 'SS', whereas, parcel D was sealed with seal impression 'CHH'. A reading of Ex.PT further reveals, that one unsealed parcel mark E also became received in the laboratory. All the afore parcels were transmitted through Head Constable Hans Raj No.1790, to the FSL concerned. Moreover, a perusal of Ex.PT also makes it clear, that at the time of receipt of the above sealed parcels at the laboratory, the seals' as made thereons were found to be intact, and, a further deep reading of exhibit(s) (supra) also reveals that the English alphabets as existing on the respectively made seal impressions', rather completely tallying with the ones, as, were made on the specimen seals' concerned.

14. The above echoings found in Ex.PT, do bolster an inference, that the above sent incriminatory items to the laboratory concerned, were received

there, in an untampered and unspoiled condition. Resultantly, the makings of recoveries thereof, through the relevant memos obviously cannot be said to be legally infirm, especially when no evidence has been adduced suggestive, that the relevant memos wherethrough the above items became recovered, were either drawn fictitiously or were forged.

15. Therefore, the learned counsel for the appellant cannot at this stage argue, that the result of the examinations as made respectively, upon, one .315 inch/8MM K.F., upon Cartridge case marked C/1, upon Four .315 inch/8MM K.F. Cartridges marked L/1 to L/4, upon one country made pistol marked W/1, upon one jacketed bullet marked CB/1, and upon, five .315 inch test cartridges, does not appertain to those incriminatory items, as became validly recovered nor can the counsel for the appellant argue, that the items other than the incriminatory items, as became recovered through the relevant memos, rather became sent to the laboratory concerned. If so, the result of the examinations as made by the Expert concerned, on the relevant incriminatory items, is to be construed to be made only in respect of those incriminatory items, as became validly recovered, through validly drawn memos, besides, as became thereafter sent to the laboratory concerned. Thus, the opinion of the Ballistic Expert has immense probative vigor, and, does nail the charge drawn against the convict.

16. The result of the examinations qua the relevant incriminatory items becomes extracted hereinafter.

“RESULT OF EXAMINATION

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

- 1. The calibre of bullet marked CB/1 contained in parcel 'D' under reference is 0.315 1 inch.*
- 2. The calibre of the crime cartridge marked C/1 contained in parcel 'A' is 0.315 inch.*

3. *The country made pistol contained in parcel 'C' under reference is in working condition.*
4. *The 0.315 inch cartridge case marked C/1 contained in parcel 'A' had been fired from country made pistol contained in parcel 'C' referred above.*
5. *No definite opinion can be given with respect to the .315 inch bullet marked CB/1 contained in parcel 'D' fired from country made pistol under reference due to lack of sufficient individual characteristic marks.*
6. *On the basis of evidence available on crime bullet marked CB/1, it has been concluded that it could have been fired from country made firearm.”*

CONCLUSIONS DRAWN FROM RESULTS OF EXAMINATION(S)

17. A reading of the above extracted result(s) of the examinations, as made on the apposite incriminatory items, reveals that the recovered firearm hence through recovery memo Ex.PM/1, was infact the firearm wherethrough a single metallic bullet marked CB/1, rather became fired, and, which as stated above became extracted from the body of the deceased by the doctor, during the course of his making an autopsy thereons. If so, the above extracted result(s) of the apposite examination(s), does lead to the making of a firm inference, that therethroughs not only corroborative vigor, is lent to the recovery memo(s), but also that utmost corroboration, is also lent to the prosecution case, qua bullet Ex.CB/1 becoming fired from the firearm, to which Ex.W-1 is assigned, in report of the Ballistic Expert, qua which Ex.PT is assigned.

18. Thus, the above best ballistic evidence, does completely underwhelm the vigor, if any, of any exculpatory echoings, if any, emerging in the statements of PW-1 and PW-2, who though during the course of investigations, did purportedly, in a test identification parade, purportedly identify the present appellant, to be having an incriminatory participation in the relevant occurrence, yet during the course of their respectively stepping into the

witness box, they rather failed to then, identify the present appellant to hold any incriminatory participation in the relevant occurrence.

19. Fortified strength to the above made inference, becomes galvanized from the factum, that no evidence has been adduced suggestive, that the echoings made in the post mortem report, to which Ex.PB/1 is assigned, rather revealing qua one metallic bullet becoming extracted from the body of the deceased by the doctor, who conducted an autopsy on his person, rather not being found therein. Further also when no evidence has been adduced suggestive that the bullet, if any, as became extracted from the body of the deceased, rather was not the one which reached the laboratory, for its examination. Resultantly, utmost probative vigor is to be assigned, to the above extracted results of the examination, as made on all the relevant items, as became sent to the Ballistic Expert concerned.

MEDICAL EVIDENCE (POST MORTEM REPORT)

20. The medical evidence becomes comprised in the post mortem report, to which Ex.PB/1 is assigned. PB/1 has been proven by its co-author Dr. Jawinder Singh. Dr. Jaswinder Singh stepped into the witness box as PW-6. The relevant observations as made by him, on his making an autopsy on the body of the deceased Kuldip Kaur, become *ad-verbatim* extracted hereinafter.

“Xxx

1. A lacerated wound 4 X 2cm with irregular and inverted margins was present posteriorly on left side of the abdomen just below the lower costal margin. Corresponding tear was present on the shirt and salwar (upper part). Blackening (greasy mark) around the wound was present. A red abraded contusion present on the lateral aspect of the wound. On probing, it extends medially and downwards to the vertebral column and striking the left side of L1 & L2 vertebrae, after fracturing the vertebrae, the wound changes its direction and enters the peritoneal cavity, after striking/tearing

the small intestine with mesentry, the wound extends upwards and to the right side of abdomen, then tearing the right lobe of the liver on its inferior surface tearing the liver, a metallic bullet was present in right hypochondrium laterally. The peritoneal cavity contains about 3 1/3 litres of blood.”

In our opinion, the cause of death in this case was haemorrhage and shock due to the injury to the abdominal structures which were sufficient to cause death in the ordinary course of nature. The injury was ante-mortem in nature.

As desired by police in inquest papers:-

- 1. A single metallic bullet was recovered from the body.*
- 2. The distance of firing will be given by the ballistic expert only.*
- 3. The probable duration of death and post mortem examination was within 12 hours.*
- 4. The cause of death was haemorrhage and shock due to injury to the abdominal structures which was caused by a bullet injury.”*

21. He has also proven that the cause of demise of the deceased was hemorrhage and shock owing to ante mortem injuries to the abdominal structures, and, were sufficient to cause death in the ordinary course of nature. The above opinion links the cause of demise of the deceased to the user(s) of the incriminatory weapon of offence, on the relevant portion(s) of the deceased's body.

SUMMARIZATION OF PRINCIPLES

- I. If the prosecution witnesses turn hostile, yet, a verdict of conviction can be recorded against the accused, but subject to the best forensic evidence candidly suggesting about user of the incriminatory weapon by the accused on the person of the deceased/victim concerned.
- II. If the above event the best scientific/forensic evidence assumes preponderance over oral evidence.

III The above rule will hold vigor only if the apposite recovery memo(s) are cogently provenly to be validly drawn, besides when the relevant incriminatory items are received in an untampered or unspoiled condition in the laboratory concerned.

IV The forensic evidence remains unrebutted through adduction of clinching evidence.

FINAL ORDER

22. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the convict by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of any gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the appeal, and, the same is dismissed. If the accused is on bail, thereupon the sentence(s), as imposed upon him, be ensured to be forthwith executed by the learned trial Judge concerned, through his forthwith drawing committal warrants qua him. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

23. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

03.11.2022

Ithlesh

(N.S. SHEKHAWAT)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No