

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

CRA-AD-156-2022

Reserved on: 21.09.2022

Date of Decision : 28.09, 2022

Dhanna Singh

...Appellant

VERSUS

State of Punjab and others

...Respondents

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

Present : Mr. Ajeet Pal Singh Pakka, Advocate
for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab.

N.S.SHEKHAWAT, J.

Feeling aggrieved by the judgment dated 02.09.2021 passed by the Court of learned Additional Sessions Judge, Jalandhar, whereby respondents No. 2 to 7 were acquitted of the charges framed under Sections 307, 115, 506, 120-B, 148 and 149 of the Indian Penal Code, the victim, has preferred the instant appeal before this Court under Section 372 Cr.P.C.

The brief facts of the case are that 17.05.2016, Dhanna Singh, Sarpanch, appellant/victim/complainant alongwith Balihar Singh made a statement to ASI Labh Singh to the effect that at about 10.30 p.m., on 16.05.2016, a telephonic call was received by him

from Tarsem Singh, Member Panchayat that Ranjeet Singh @ Jeeta and Harjeet Singh @ Sonu accused were duly armed with weapons and were firing shots. Consequently, he should remain alert. On getting the call, Dhanna Singh stood up and the lights were on at that time. Harjeet Singh @ Sonu and Ranjeet Singh @ Jeeta reached there duly armed with pistols and in order to kill him, Ranjeet Singh @ Jeeta fired on the complainant, who in order to save himself, sat down, as a result thereto, fire passed over his head. Harjeet Singh @ Sonu also fired a shot which hit the gate of his 'kothi'. In the meantime, his gunman/policeman was attracted there and on seeing him, the assailants fled from the spot in their vehicle. Later, he came to know that the shots were also fired at the shutter of the shop of Balihar Singh and the assailants had hit the gate of Suba Singh with the handle of the spade (dasta). Even, they threatened them in case they stood with Dhanna Singh, they would also be killed. With these broad allegations, the FIR in the instant case was registered.

After completion of the investigation, the challan was presented in the competent Court of law and ultimately charge under Sections 307, 115, 506, 120-B, 148 and 149 of the Indian Penal Code was ordered to be framed against the accused, to which, they pleaded not guilty and claimed trial.

On trial, the trial Court held that the prosecution had not been able to bring home the guilt of the accused beyond any

reasonable shadow of doubt and, consequently, the benefit of doubt was extended to respondents No. 2 to 7 and they stood acquitted of the charges framed against them. While impugning the said judgment of acquittal, Dhanna Singh, Sarpanch, appellant/complainant/victim has preferred the instant appeal under Section 372 Cr.P.C., with a prayer to overturn the impugned judgment.

We have heard learned counsel for the parties and have meticulously examined the trial Court record with the able assistance of the learned counsel for both the parties.

The learned counsel for the appellant has vehemently contended that appellant Dhanna Singh PW1, Tarsem Singh PW2 and Balihar Singh PW3 were consistent on their statements made before the police and also made their depositions in support of the case of prosecution before the trial Court. Still further, very grave and serious charges had been leveled against the respondents that they had planned to murder the appellant by providing money to Harjeet Singh @ Sonu and Ranjeet Singh @ Jeeta. Even, the Investigating Officer had recovered two empty cartridges from the place of occurrence and he had admitted the same in his examination-in-chief and the same were exhibits Ex.PW4/C and PW4/D. It was *inter-alia* contended that the impugned judgment was based on misappreciation of evidence led by the prosecution and the same is liable to be set-aside by this Court.

We have also heard learned State counsel, who has also assisted us and have taken us through various testimonies of the prosecution witnesses as well as other evidence on record.

The entire prosecution case rests on the three star witnesses of the prosecution, i.e. PW1 Dhanna Singh, PW2 Tarsem Singh and PW3 Balihar Singh. As per the learned counsel for the appellant, the three said witnesses were consistent in their depositions before the trial Court. We have considered the said submissions made by the learned counsel for the appellant and find no substance in the same. In fact, the testimonies of PW1, PW2 and PW3 do not inspire confidence and it is apparent that all three of the said witnesses had not seen the occurrence at all. PW1 Dhanna Singh made an attempt to support the case of the prosecution in his examination-in-chief. However, his cross-examination during the trial had exposed the falsehood of his testimony. He admitted in his cross-examination that he had not seen the accused firing outside the house as he came to know about the said fact from Balihar Singh and Suba Singh and both of them were residents of his village. He also admitted that except him and Balihar Singh, statement of no other person was ever recorded by the police during the course of investigations.

Similarly, PW2 Tarsem Singh stated that he had made a telephonic call to Dhanna Singh Sarpanch to be vigilant. Then some persons of the village assembled and he saw two gunshots were fired

at the shop of Balihar Singh. The persons who had fired gun shots fled away from the spot prior to his arrival and he did not have any knowledge about the case except the said facts. The said witness did not support the case of the prosecution and was cross-examined by the learned public prosecutor. Consequently, his testimony also showed that he had not witnessed the occurrence.

Similarly PW3 Balihar Singh stated in his cross-examination that Ranjit Singh and Harjeet Singh came on a Verna car alongwith other persons and gave blows with handle of the spade (dasta) on the shutter of his shop. He went on the roof top and threw bucket on them. Then the accused fired on the shutter of his shop but he could not see who fired the gun-shots. Consequently, it is apparent that this witness had also not seen the occurrence at all

From the above, it is apparent that nobody has witnessed the occurrence and the prosecution story has been rendered doubtful. However, the complainant arrayed so may accused and initiated criminal prosecution. When nobody had witnessed the occurrence and in such a situation it is a rule of prudence that when the accused are not known to the complainant or the witnesses, it is necessary to held test identification parade. No doubt, holding of test identification parade is not a substantive piece of evidence, yet, it may be used for the purpose of corroboration; for believing that a person brought before the Court is the real person involved in the commission of the

crime. Since, the accused were not known to the witnesses, there was necessity for holding test identification parade to check the veracity of the witnesses. In the instant case, PW4 ASI Labh Singh, the Investigating Officer in his cross-examination has revealed that no test identification parade of any of the accused was ever got conducted by him before any Magistrate. Consequently, there was any evidence on record to establish the identity of the accused to prove the charge against them.

In the instant case, admittedly, there was enmity between the parties relating to the election for the post of Sarpanch. It has been stated by the witnesses that Ranjeet Singh @ Jeeta and Harjeet Singh @ Sonu had fired at PW1 Dhanna Singh with an intention to kill him. First of all, it is observed that Dhanna Singh admitted in his cross-examination that he had not seen the accused firing. Consequently, if the accused had intention to kill him, they would have certainly repeated the fires on the complainant. Still further, as per the complainant, his gunman was attracted at the place of occurrence, when the two accused were firing shots on him. Surprisingly, neither the said gunman retaliated by fire shots nor he tried to apprehend the accused nor he was cited as witness, the omission which clearly renders the prosecution case to be unbelievable. Even the parties were admittedly inimical towards each

other and the possibility of false implications in such a situation cannot be ruled out.

Still further, PW1 Dhanna Singh tried to set up a case that the accused had entered into a criminal conspiracy to eliminate him and also prove on record his statement dated 17.05.2016 as Ex.PA. As per him, Atma Singh and his brothers Gurdev Singh and Gurmail Singh @ Gila had hired the accused with an intention to kill him and the first installment of Rs. 20,000/- was paid to Ranjeet Singh through Hardeep Singh @ Kaka and the remaining amount was to be paid after finishing the job, which was to be paid by Gurdev. One person namely Depender Singh used to inform the accused and Nitin Kalra used to supply mobile phone and sims to Ranjit Singh. However, in his cross-examination, he admitted that in his statement dated 17.05.2016 Ex.PA, he had not stated that all the accused had entered into a criminal conspiracy to eliminate him and had paid Rs.20,000/- to Ranjeet Singh and remaining amount was to be paid after the work was accomplished. He did not state that accused Depender Singh used to give information regarding his presence to the contract killers on the mobile phones. He had also not stated in his statement that Nitin Kalra accused used to provide mobile phone and sims to Ranjeet Singh. He further stated that no facts regarding criminal conspiracy between the accused were stated by him in his statement Ex.PA and he had no personal knowledge

about the said facts. He came to know about this fact from the police and on the information provided by the police, he got these facts recorded in his supplementary statement and he also came to know from some persons of the village about this fact and he got the same also recorded in his supplementary statement. Even, the said witness was confronted with regard to his averment in examination-in-chief about the criminal conspiracy hatched by the accused and he admitted that he had not stated these facts in his earlier statement. Consequently, the entire story set up by the prosecution with regard to criminal conspiracy, hiring of accused, firing at the complainant by them in pursuance to that appears to be doubtful. Thus, it is apparent that the police has coined a false story just to help the complainant illegally.

Still further, it has been stated that Ranjeet Singh @ Jeeta and Harjeet Singh @ Sonu had not only fired at PW1 Dhanna Singh but at other persons also with an intention to eliminate them. However, surprisingly, no person in the instant case suffered any injury. No doubt, empty cartridges and led were recovered from the place of occurrence, which were taken into possession by the police vide memo Ex.PW4/C and PW4/D by PW4 ASI Labh Singh. However, no weapon of offence was ever recovered by the police during the course of investigation. Consequently, mere recovery of empty cartridges and led from the place of occurrence or any

other place cannot connect the accused with the alleged crime. This also assumes significance in the light of the fact that no witness of the prosecution even suffered injury.

The overjealousness of the police to falsely implicate the accused, in collusion with the complainant, is also apparent from the fact that PW4 ASI Labh Singh stated that he visited the place of occurrence and had taken blood stains from the place of occurrence and converted the same into parcel by sealing with his seal impression 'LS' and all memos were witnessed by ASI Tarlochan Singh and Constable Jagtar Singh. PW5 ASI Tarlochan Singh stated that he had also visited with ASI Labh Singh and blood stains from the place of occurrence were lifted and converted into parcels with the seal impression 'LS'. It is shocking to note that nobody had suffered any injury in the instant case at all and still the police had taken blood stains from the place of occurrence and the same were sealed also. This clearly shows that a crude attempt had been made by the police to falsely involve the accused in the instant case.

Consequently, we have considered the submissions made by the learned counsel and find no substance in the same. We find no reasons to accept the instant appeal and the same is ordered to be dismissed being merit-less. The impugned judgment dated 02.09.2021 passed by the learned Additional Sessions Judge, Jalandhar is upheld and affirmed.

Resultantly, the appeal is dismissed.

All pending applications, if any, are disposed off, accordingly.

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

The trial Court record be transmitted back.

(SURESHWAR THAKUR)
JUDGE

28.09, 2022
amit rana

(N.S.SHEKHAWAT)
JUDGE