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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of Decision: March 13, 2023

Surjit Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON’BLE MR. JUSTICE SANJAY VASHISTH

Present: Ms. Roja Agnihotri, Advocate,
(Legal Aid Counsel),
for the appellant.

Mr. J.S. Arora, Deputy Advocate General, Punjab.

SANJAY VASHISTH, J.

1. Present appeal has been filed by appellant – Surjit Singh, then aged 42 years, against the judgment of conviction and order of sentence dated 12.08.2004, passed by learned Additional Sessions Judge (Adhoc), Amritsar/learned Trial Court, in Sessions Case No. 47, dated 27.08.2003/18.09.2003, arising out of FIR No. 61, dated 22.09.2002, under Sections 307 / 34 IPC, registered at Police Station Khemkaran.
2. Appellant – Surjit Singh was convicted for the commission of offence punishable under Section 307 IPC and was ordered to undergo following sentence:-

Under Section	Sentence	Fine	In Default
307 IPC	7 years R.I.	Rs. 1,000/-	3 months R.I.

Other co-accused, namely, Titar Singh and Sardool Singh were acquitted.

3. Appeal was admitted and recovery of fine was stayed vide order dated 13.09.2004 passed by this Court. Subsequently, sentence of appellant – Surjit Singh was suspended and he was granted bail, vide order dated 05.12.2006. Since there was no representation on behalf of the appellant, Ms. Roja Agnihotri, Advocate, was appointed as Legal Aid Counsel to assist this Court, vide order dated 06.01.2023.

4. Facts arising from the case of the prosecution are that complainant – Mukhtiar Singh was resident of village Gajjal, Tehsil Patti, District Amritsar, an agriculturist by profession and belonged to Akali Party. On 21.09.2002, at about 07.30/08.00 pm, Mukhtiar Singh alongwith Bakhshish Singh @ Bansa, Puran Singh and Joginder Singh, was coming back from the house of one Roor Singh, after informing him that his trolley, which Mukhtiar Singh had borrowed for loading eucalyptus trees, was lying sunk/thrusted near the drain. When said persons were passing through the passage in front of Roor Singh's house, they saw in the light of electric bulbs that Surjit Singh @ Ghugi (appellant), armed with .12 Bore gun, Titar Singh, armed with *Takua*, and Sardool Singh @ Dula, empty handed, were standing in front of the house of Titar Singh. Upon seeing them (Mukhtiar Singh, Bakshish Singh, Puran Singh and Joginder Singh), Sardool Singh raised a *lalkara* that these Akalies would not be allowed to escape from there. After that Surjit Singh (appellant) fired a gunshot with his .12 Bore gun towards

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them with an intention to kill them, pellets of which hit Mukhtiar Singh on his forehead, chest and right shoulder on the front side and some of the pellets of the fire shot hit on left arm of Bakhshish Singh. When they raised hue and cry, all the accused ran away from the spot alongwith their respective weapons. The reason behind that incident was that during Assembly Election, Mukhtiar Singh had stopped Surjit Singh (appellant) from casting fake votes. Joginder Singh took injured to Civil Hospital, Khemkaran, but on account of their serious injuries, they were referred to Civil Hospital, Patti.

5. On 22.09.2002, SHO Hardeep Singh, who was posted at Police Station Khemkaran, went to the Civil Hospital, Patti, where injured Mukhtiar Singh was admitted, got recorded his statement (Ex. PA), regarding said incident and case FIR No. 61, dated 22.09.2002, under Sections 307/34 IPC and Sections 25 and 27 of the Arms Act, 1959 was registered at Police Station Khemkaran.

6. After registration of FIR, investigation was conducted and accused Titar Singh and Sardool Singh were challaned, while appellant – Surjit Singh was found innocent in an inquiry conducted by Deputy Superintendent of Police, Bhikhiwind, recorded vide Zimni No. 7, and thus, final report was submitted under Section 173 Cr.P.C.

Subsequently, on filing of an application by the prosecution, appellant – Surjit Singh was summoned, vide order dated 22.10.2003, to face trial. He was attributed with one gunshot injury, as per version of the FIR.

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7. After framing of charges against all the three accused, vide order dated 04.02.2004, trial was proceeded. There were two injured eye-witnesses, namely, Mukhtiar Singh (PW-1) and Bakhshish Singh (PW-2). To corroborate the injuries suffered by both the injured, Dr. Ashish Gupta, Medical Officer, Civil Hospital, Patti, District Amritsar, appeared as PW-3 and deposed qua injuries as under:-

“ I conducted medico legal examination of Mukhtiar Singh son of Inder Singh, 45 years of age resident of V. Gajal P.S. Khem Karan at 12.10 P.M. on 22.9.02 and found the following injuries:-

- 1. Lacerated penetrating wound 0.4 cm x 0.3 cm on front of chest, on left and upper part of sternum. Clotted blood was present, margins inverted. Advised x-ray examination and surgical opinion.*
- 2. Two lacerated penetrating wounds 0.5 cm x 0.4 cm first on upper part of right shoulder and second about 7 cms inferior to first one on the front of right shoulder. Clotted blood present, margins inverted, advised x-ray examination and surgical opinion.*
- 3. Lacerated penetrating wound 0.5 cm x 0.6 cm on right side of forehead about 2.5 cm above right eyebrow. Clotted blood present. Margins inverted, Advised x-ray and surgical specialist opinion.*
- 4. Lacerated penetrating wound 0.5 cm x 0.5 cm on right side of upper part of abdomen in right hypochondriun region. Clotted blood present and margins inverted, advised x-ray examination and surgical specialist opinion.*
- 5. Lacerated penetrating wound 0.5 cm x 0.4 cm on medial side of right clavicular region, clotted blood present, margins inverted, advised x-ray examination and surgical opinion.*
- 6. Lacerated wound 0.5 cm x 0.5 cm inferior to left side of lower lip, clotted blood present, margins inverted, advised x-ray examination and surgical specialist opinion.*

*Nature of injuries kept under observation, probable duration of injuries within 24 hours. Kind of weapon kept under observation. Ex. PB is correct carbon copy of original MLR brought by me today in the court. It is of my hand and bears my signatures. On receipt of report of x-ray examination from Dr. Harjit Kumar Bharti SMO, Civil Hospital Patti and surgical opinion from Dr. Palwinder Singh Medical Officer Civil Hospital Patti, I declared injury no. 1 to 6 were simple in nature and **caused by fire arm**. This report Ex PB is also of my hand and bears my signatures. Reports along with pellets were handed over to me by Dr. Palwinder Singh whose signatures and writing I identify as I have seeing him writing and signing and report of Dr. Palwinder Singh is Ex. PE/E. Then ASI Hardip Singh came to me for recording the statement of injured Mukhtiar Singh. I found Mukhtiar Singh fit to make a statement and my report to this effect is Ex PB/1 and it also bears my signatures.*

On 22.9.02 at 12.30 P.M. I conducted medico legal examination of Bhakhshish Singh alias Bira son of Bhan Singh aged 35 years male r/o V. Gajal P.S. Khem Karan and found the following injuries:-

- 1. Lacerated penetrating wound 0.5 cm x 0.5 cm on left upper arm, medial aspect 8 cm above elbow joint, clotted blood present, margins inverted, advised x-ray examination and surgical specialist opinion.*
- 2. 2 Lacerated penetrating wound 0.5 cm x 0.4 cm on back of left forearm 10 cm below elbow joint clotted blood present, margins inverted, advised x-ray examination and surgical specialist opinion.*

*Nature of injuries: Kept under observation, probable duration of injuries within 24 hours and kind of weapon kept under observation. On receipt of report of x-ray examination from Dr. Harjit Kumar Bharti SMO Civil Hospital Patti and surgical opinion and (from?) Dr. Palwinder Singh Medical Officer I declared injury no. 1 and 2 as simple in nature and were **caused by fire arm**. Ex. PF is my report which is of my hand and bears my signatures. The report submitted by Dr. Palwinder Singh is Ex. PF/1. Writing and signatures of Dr. Palwinder Singh however identify by me and I have been seeing him writing and signing in my presence. I also found Bhakhshish Singh fit to make a statement and my report to this effect is Ex. PC/1.*

Then both the injured were admitted in the hospital. I made a request to SHO P.S. Khem Karan regarding their admission in injured condition in the hospital at (and?) letter to this effect written by me to SHO is Ex. PD. Similarly the bed head ticket of the injured Mukhtiar Singh and Bhakhshish Singh are Ex. PH and Ex. PG. Both bed head tickets were attested by me and I also tendered the above said injured patient which bears my signatures and later on treatment was given by Dr. Palwinder Singh, whose writing and signatures I identify. Ex. PC is carbon copy of MLR.”

8. To avoid repetition of the version of injured witnesses/victims, statement in the form of Examination-in-Chief of complainant/injured Mukhtiar Singh (PW-1), is reproduced herebelow:-

“PW 1 on S.A.

Mukhtiar Singh son of Inder Singh son of Banta Singh aged 46 years, r/o Village Gazal Tehsil Patti, Distt. Asr. on S.A.

I am supporter of Akali party. About one year and five months back I alongwith Bakhshish Singh and Joginder Singh had taken tractor/trolley of Rur Singh but the trolley had sunk into the land and we have gone to inform Rur Singh that we would pull out the trolley on the next date and would return the same to him on the next date. It was about 7.30 P.M. An electric bulb was glowing out side the house of Titar Singh now present in court. Accused Titar Singh armed with takua, accused Surjit Singh armed with 12 bore double barrel gun, accused Sardul Singh was also present there. Accused Sardul Singh now present in court raised lalkara that I be not spare on account of being Akali worker. Accused Surjit Singh with an intention to kill me fired a shot from his .12 bore double barrel gun directly towards me with an intention to kill me and the pellets of the fire shot had hit me on my forehead, chest and right shoulder on the front side. The pellets also hit Bakhshish Singh on his left arm. We raised hue and cry upon which so many people gathered at the spot but the accused ran away from the spot with their respective weapons. Accused Surjit Singh @ Ghugi was casting wrong and factitious votes and I used to stop him from doing so and he being supporter of Congress party attacked me due to this grudge. Joginder Singh brought me and Bakhshish Singh to civil hospital Khemkaran but on account of our serious injuries we were referred to civil

hospital Patti. Then at about 11.30 P.M. we reached civil hospital Patti, where we were medically examined by the doctor and were admitted in civil hospital Patti. On the next day SI-Gurdip Singh came to meet about ½ P.M. and recorded my statement ExPA. My statement ExPA was recorded at my instance as per facts stated by me and I thumb marked the same in token of its correctness. Statement of Bakhshish Singh injured was also recorded on the same date.”

9. In the statement recorded under Section 313 Cr.P.C., appellant – Surjit Singh has simply pleaded his false implication.

In defence, accused examined SI Baldev Singh (DW-1), who proved inquiry conducted by Kewal Kumar, Superintendent of Police (Headquarters), Tarn Taran, wherein appellant – Surjit Singh was found innocent. The said inquiry report is available on record of the case as Ex.DA.

10. Assailing the findings recorded by learned Trial Court, learned Legal Aid Counsel appointed by this Court submits that initially, appellant-Surjit Singh was found innocent and, thus, his name was placed in Column-2, there being no evidence against him. Learned counsel further argues that it is not a case where appellant failed to prove the initial finding of the prosecution, whereby he was found innocent on the basis of inquiry conducted by the Superintendent of Police (Headquarters), Tarn Taran, and said report (Ex. DA) is very much available on record.

Another argument addressed by learned Legal Aid Counsel before this Court is that injuries suffered by both the victims are stated to be simple in nature and with authenticity, it cannot be termed as injuries

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suffered by firearm because there is no recovery of any .12 Bore gun from any of the accused and, therefore, there is no matching report of fired bullet with the weapon, with which it was fired.

Although learned Legal Aid Counsel could not point out any major discrepancy in the depositions of both the injured eye-witnesses, whose depositions are the same, right from the time of initial version recorded by the police in the FIR.

11. On the other hand, Mr. J.S. Arora, learned Deputy Advocate General, Punjab, has majorly relied upon the evidence/deposition of both the injured eye-witnesses, namely, Mukhtiar Singh (PW-1) and Bakhshish Singh (PW-2), and has, thus, submitted that deposition of both the injured witnesses stand corroborated with the medical evidence, which has come on record in the shape of deposition of Dr. Ashish Gupta (PW-3).

Learned State counsel also argued that use of firearm and suffering of injuries from firearm is the one material aspect in the case and said aspect stands proved from the deposition of Dr. Ashish Gupta (PW-3), who categorically stated that the injuries were simple in nature but 'caused by firearm'. Said opinion could not be shaken when there was opportunity with the appellant by cross-examining the said witness. Rather, there was another aspect which was got highlighted during cross-examination that ".....*The fire shot might have been fired from the front side as the pellets had hit the person of Mukhtiar Singh and Bhakhshish*

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Singh on the front side of their body.”. Thus, learned State counsel seeks dismissal of the appeal.

12. I have heard both the sides and examined the record by reading statements of injured eye-witnesses and the medical evidence.

13. It is undisputed that First Information Report was registered on the statement of injured Mukhtiar Singh, who suffered total six injuries of pellets with the use of .12 Bore gun. While appearing in the witness-box, verbatim same and similar allegation with categorised role of the appellant of firing a shot from .12 Bore gun has been explained. Said testimony of injured Mukhtiar Singh was well proved in the statement of another injured eye-witness, i.e. Bakhshish Singh (PW-2).

14. Not only this, deposition of both the said witnesses was also corroborated with medical evidence, in the shape of testimony of Dr. Ashish Gupta (PW-3). This Court has also noticed the statement of doctor, who made it clear in the cross-examination that injuries have been caused from the front side of the injured persons. Such opinion of the doctor gives a clear impression that once pellet injuries were suffered on the frontal part of the person of the injured, there cannot be any doubt in fixing identity of the person who fired upon injured from the front side.

15. There is another strong reason of fixing identity of the appellant that all the accused who faced trial including the appellant and both the injured (Mukhtiar Singh and Bakshish Singh) are said to be residents of village Gajjal, Police Station Khemkaran, Tehsil Patti, District Amritsar. Thus, motive attributed by prosecution of political

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rivalry also gets reasonable weight to make the allegations more believable.

16. The argument addressed by learned Legal Aid Counsel that the injuries suffered are opined to be simple in nature, thus, no offence punishable under Section 307 IPC is made out, is baseless. Once firearm, that too .12 Bore gun, is used for causing injuries on the frontal part of the person of the injured, no doubt can be raised with respect to the intention of the appellant, i.e. gunshot was fired to cause murder.

17. The other argument of learned Legal Aid Counsel is that there is no recovery of the weapon, i.e. .12 Bore gun in the case, therefore, there is no matching report of the pellets with the firearm used in the incident. It is settled proposition of law that where testimony of injured witness(s) is more believable and is consistent throughout, non-recovery of weapon, used in the crime would not be of much importance. Rather, use of the gun by the appellant – Surjit Singh stands proved beyond doubt, once doctor deposes all the injuries upon both the injured having been suffered from the firearm.

18. Thus, after hearing learned Legal Aid Counsel on behalf of the appellant, learned State Counsel and examining complete set of evidence led by the prosecution, **I find no infirmity in the impugned judgment of conviction, dated 12.08.2004, passed by learned Trial Court and the same stands affirmed. Consequently, present appeal qua conviction part stands dismissed.**

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19. However, while considering the total sentence period of the appellant, this Court has perused the custody certificate, dated 13.03.2023, which has been furnished today by learned State counsel and the same is taken on record. Registry is directed to tag the same at an appropriate place. As per said custody certificate, the appellant has actually undergone substantive sentence of 2 years, 1 month and 12 days and by adding earned remission, total sentence period comes to 5 years and 1 month and 12 days, out of total sentence of 7 years, which was awarded by the learned Trial Court. It is also noticed by this Court that as per impugned judgment of conviction, then age of the appellant was 42 years and thereafter a period of about more than 18/19 years has gone by. As per custody certificate, there is no other case registered against the appellant. Undoubtedly, by now the appellant would be in the age group of more than 60 years. Thus, to give another chance of rehabilitation in a civilized manner in the society, this Court is of the view that on the issue of sentence a lenient view can be taken in the matter.

Accordingly, impugned order of sentence, dated 12.08.2004, passed by learned Trial Court is modified and the period of substantive sentence of seven years is reduced to the extent of period already undergone by the appellant, as per custody certificate dated 13.03.2023. However, there shall be no change in the fine imposed by the learned Trial Court.

20. In the net result, conviction of the appellant under Section 307 IPC is maintained and his substantive sentence of imprisonment is

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reduced to the period already undergone by him as per custody certificate dated 13.03.2023. However, remaining part of sentence, i.e. payment of fine of Rs. 1,000/- shall remain intact.

21. With the above modification(s) in the order of sentence dated 12.08.2004, passed by learned Additional Sessions Judge (Adhoc), Amritsar, present **appeal stands disposed of.**

22. Registry is directed to send back original lower court record alongwith a copy of this judgment to learned Trial Court, for taking further steps with regard to the recovery of fine, in accordance with law, if State chooses to recover.

(SANJAY VASHISTH)
JUDGE

March 13, 2023
Pkapoor

Whether Speaking/Reasoned: YES/~~NO~~
Whether Reportable: YES/~~NO~~