

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-996-DB-2018 (O&M)

Reserved on: 24.4.2023

Date of Decision: 02.5.2023

Vikramjit Singh @ Vicky

.....Appellant

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Dr. Anmol Rattan Singh Sidhu, Sr. Advocate with
Mr. Raghav Gulati, Advocate
for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 20.10.2018, upon Sessions Case No. 182 of 27.7.2011, by the learned Additional Sessions Judge, Amritsar, whereby in respect of charges drawn against the accused qua offences punishable under Sections 302, 307 of the IPC, and, under Section 27 of the Arms Act, 1959, the learned trial Judge concerned, proceeded to record a finding of conviction against accused-appellant Vikramjit Singh @ Vicky. However, the other co-accused, namely, Gurpreet Singh, was ordered to be acquitted of the charges framed against him qua the offences (supra). Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the convict to undergo rigorous imprisonment for life, for an offence punishable under Section 302 IPC, besides also imposed, upon the convict sentence of fine, as comprised in a sum of Rs. 20,000/-, and, in default of payment of fine amount, he sentenced the convict to undergo rigorous

imprisonment for a period of one year. Moreover, the learned convicting Court also sentenced the convict to undergo rigorous imprisonment for a period of ten years, for an offence punishable under Section 307 of the IPC, and, also imposed, upon him the sentence of fine, as comprised in a sum of Rs. 20,000/-, besides in default of payment of fine amount, it sentenced the convict to undergo rigorous imprisonment for a period of one year. Further, the learned trial Judge concerned, also sentenced the convict to undergo rigorous imprisonment for a period of three years, for an offence punishable under Section 27 of the Arms Act, 1959, and, also imposed, upon him the sentence of fine, as comprised in a sum of Rs. 10,000/-, besides in default of payment of fine amount, he sentenced the convict to undergo rigorous imprisonment for a period of six months.

2. All the above imposed sentences of imprisonment, were ordered to run concurrently but the period of detention undergone by the convict, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed sentence(s) of imprisonment. Further, as per the provisions of Section 357 of the Cr.P.C., the injured and the LRs of the deceased were granted compensation of Rs. 10,000/- each, and, the same amount was ordered to be paid out of the fine imposed upon the convict.

3. The accused-convict becomes aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent therewith sentence(s) of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal, before this Court.

Factual Background

appeal FIR, to which Ex. PW-15/C is assigned. The narrations carried in Ex. PW-15/C are, that 03.03.2011. SI/SHO was present at Police Station, where he received call from Escort Hospital, that Kanwardeep Singh son of Ranjit Singh and Jiwanjot Singh were under treatment due to fire shots. Then SI/SHO, along with other police officials reached at the Escort Hospital, where brother and uncle of Kanwardeep Singh were present. Complainant Gurbinder Singh, who got recorded his statement to the effect that he is an agriculturist by profession and they were two brothers. He had his younger brother aged about 20 years and he was studying in B. Com Ist Year, Guru Arjan Dev Khalsa College, Amritsar. On 03.03.2011, Bhog of Akhand Path, was to be performed in his college, and, at about 10:30 AM, his brother Kanwardeep Singh and his friends Amritpal Singh and Manpreet Singh proceeded from their home. At about 03:30 PM Manpreet Singh called him on his mobile that his brother was going to face fight at adda (Bus Stand) Bundala. He along with his paternal uncle Sukhwinder Singh reached at bridge canal, slightly ahead of Bundala Adda, he saw that one Gopi resident of Ganowal Havellian, Karni r/o Nande Bundala and Vicky of Mahabali Club, Tarn Taran and his brother but he does not know his name and 4-5 unknown persons to whom, he can identify on being produced, were fighting with his brother. His uncle tried to intervene to prevent them from fighting. But in the meanwhile, Vicky of Mahabali Club took out the pistol from under his belt, and, opened fire upon them, and, one bullet hit on the chest of his brother Kanwardeep Singh, and, two bullets were hit on Jiwanjot Singh. He and his father started looking after his brother Kanwardeep Singh. Due to open fire, all the people ran away from the spot. After arranging vehicle, Kanwardeep Singh was taken to Escort Hospital, where, they came to know that his brother Kanwardeep Singh had died. The reason behind the

enmity was that Amritpal Singh resident of Bandala had an affair with one Gurpreet Kaur, for which Gopi and Vicky had grudge, so, they killed his brother Kanwardeep Singh and severely injured Jiwanjot Singh by firing. On the basis of this statement of complainant, the present FIR was registered. Investigation of the case was rolled into motion.

Investigation proceedings

5. During investigation, Form No. 25.35, and, site plan were prepared. For getting conducted the postmortem of the dead body, necessary papers were handed over to official and the dead body was kept in mortuary. D.S.P. has also reached the spot, who also conducted the investigation and two officials were deputed at the place of occurrence. One sword (Kirpan), which was left by persons during fight, was recovered from the place of occurrence. Statements of witnesses were recorded. Statement of injured Jiwanjot Singh was not recorded as he was unconscious. On 04.03.2011, postmortem of deceased Kanwardeep Singh was got conducted and then came back to Medical College, Amritsar, where one parcel of clothes along with one plastic box containing one bullet bearing seal of doctor, was handed over to him, which was taken into police possession vide recovery memo. Accused Vikramjit Singh @ Vicky son of Joginder Singh was arrested on 05.03.2011 and from his possession one .32 bore revolver along with three cartridges and two empties were recovered. On 06.03.2011, one application was moved to doctor for getting recorded the statement of injured Jiwanjot Singh but the doctor gave opinion regarding unfitness of injured to give any statement. Thereafter, Vikramjit Singh as per his disclosure statement got recovered the license of .32 bore revolver from his house. On 09.03.2011, accused Gurpreet Singh @ Gopi was arrested. On 10.03.2011, as per disclosure statement made by accused Vikramjit Singh,

he got recovered motorcycle, which was used during occurrence. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

6. Since the offences under Sections 302/307 of the IPC, were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 13.7.2011, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for trial, subsequent to its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused, for offences punishable under Sections 302, 307 read with Section 34 of the IPC, and, under Section 27 of the Arms Act, 1959. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 17 witnesses, and, thereafter the prosecution evidence was closed by an apposite order. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. They also chose to adduce defence evidence, and, led one witness into the witness box.

9. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charges (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose

the sentence(s) of imprisonment, as well as of fine, upon the convict.

Submissions of the learned counsel for the appellant

10. The learned counsel for the aggrieved convict-appellant has argued before this Court, that the impugned verdict of conviction, and, consequent therewith order of sentence, require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

11. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent therewith sentence(s) (supra), as become imposed upon the convict, is well merited, and, does not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict, be dismissed.

Post-mortem report

12. PW-9, Dr. Kuldip Kumar, on his stepping into the witness box, has deposed that he made an autopsy on the body of deceased Kanwardeep Singh, on 4.3.2013, at 12.10 P.M. The ante mortem injuries, as found on the body of the deceased, are testified by him to become carried in the post-mortem report Ex. PW-9/A and Ex. PW-9/B, and, the said ante mortem injuries are extracted hereinafter.

“Lacerated wound 1.1 x 0.8 cm, almost circular was present on the front of chest on left side, 6.5 cms above left nipple at 11’O clock position and its margins were inverted and clotted blood was present. Black ring was present around the wound.”

13. He has also deposed that a metallic object of bullet shape was lodged in the posterior thoracic wall. Furthermore, he has, in his examination-in-chief, made articulations that all the injuries were ante mortem in nature, and, the cause of demise was haemorrhage and shock, as a

result of fire arm injury, which was sufficient to cause death in the ordinary course of nature.

14. Be that as it may, merely on the basis of the deposition of PW-9, who proved the post-mortem report, as was prepared after his conducting an autopsy on the body of the deceased, is not sufficient to coax this Court to uphold the verdict of conviction, and, consequent therewith sentence(s) of imprisonment, as became imposed upon the convict, by the learned trial Judge concerned.

Reasons for setting aside the impugned verdict of conviction and consequent therewith sentence(s) of imprisonment as well as of fine, as became imposed upon the convict by the learned trial Judge concerned.

15. The prosecution for proving the charge, drawn against the accused, has relied upon the deposition of two purported ocular witnesses to the occurrence, who respectively stepped into the witness box as PW-1, and, PW-2. However, in their respective examinations-in-chief, they did not support the prosecution case, rather they turned hostile, leaving the Public Prosecutor concerned, to ask for leave being granted to him to make cross-examination(s), upon, the above purported ocular witnesses to the occurrence. Since the above leave became granted, by the learned trial Judge concerned, to the Public Prosecutor concerned, resultantly, the Public Prosecutor concerned, made a grilling cross-examination, upon both PW-1, and, PW-2. However, even in the process of theirs becoming subjected to a grilling cross-examination, rather both PW-1, and, PW-2 completely denied theirs making their respective previous statements in writing to the police officer concerned, nor did they make any affirmative answer to any incriminatory affirmative suggestion, as became put to each of them, by the Public Prosecutor concerned. Consequently, no capital was amenable to be

drawn by the prosecution, thus on the statements of the purported ocular

witnesses to the occurrence, who respectively stepped into the witness box as PW-1, and, PW-2. Contrarily, given the purported ocular witnesses to the occurrence rather completely resiling from their respectively made previous statements in writing to the police officer concerned, thus stems an inference, that thereby the prosecution has been unable to invincibly substantiate, the charge(s) drawn against the accused.

16. Be that as it may, an injured ocular witness to the occurrence, was also cited as a prosecution witness by the prosecution. The said injured-eye witness stepped into the witness box as PW-15. The factum of the injuries becoming entailed, on the person of the said injured eye witness, is though, supported by the deposition of PW-14, who upon his stepping into the witness box, has proven the bed head ticket prepared in respect of the said witness, and, to which Ex. P-13/A became assigned. However, merely upon proof of injuries becoming entailed, upon the said injured eye witness, thus no immense evidentiary vigour can be assigned to his deposition. The reason for discarding the testification of the injured eye witness, who stepped into the witness box as PW-15, becomes planked, upon the hereinafter made reasons.

17. The injured eye witness, during the course of investigations, being made into the crime FIR, had made a previous statement to the police officer concerned, and, to which Ex. PW-14/A, is assigned. The said previously made statement by PW-15 to the police officer concerned, is ad verbatim extracted hereinafter.

“Stated that I am the resident of the above mentioned address and preparing for IELTS in a private center at Rani Ka Bagh, Amritsar. On every Masya, I, used to go to pay obeisance at Tarn Taran Sahib Gurudwara. Due to being busy on this Masya, I on 03.03.11 on 14" day, I was coming back to Jandiala after taking bath from Gurudwara, Tarn Taran Sahib. On the way, on the bridge of village None, some boys were

fighting. Due to humanity, I stopped my motorcycle and was trying to pacifying them from fighting. At about 03:30-04:00 PM, I listened voice of someone and I concentrated to that voice. That person was with muffled face and he said to shoot me because I am the person of that party. In between the person who having gun, shoot me. I can identify that voice and face thoroughly if he was produced before me, because that person was faced me prior somewhere. The person, who shoot me, I can identify him. if he was produced before me because his face was uncovered. After hitting of bullet shot, I became unconscious. I did not know who got me admitted in the hospital. After gaining consciousness, I came to know that I was in hospital. Till now, my treatment was going on. Due to this, I was mental distress and bullet was inflicted in my chest, Today, on 23.03.11, I am getting record my statement with you with full consciousness. Statement has been got recorded, heard and found correct and got understand. Action be taken against the accused persons.”

18. A perusal of the above statement, discloses that one Jiwanjot Singh, did not therein name the accused, rather revealed his capacity to identify one accused, (his face being muffled at the relevant time), rather on the basis of his identifying his voice, and/or, that he therein stated that he could identify the accused concerned, who fired at him, as his face was uncovered. Therefore, unless the investigating officer concerned, during the course of his carrying investigations into the crime FIR, had held a valid identification parade with the participation therein of PW-15, thus to enable the latter to then identify the accused concerned, especially from the respective voice(s), and, face(s), thereupon the identification of the accused by PW-15, in Court was but a frail, and, uncreditworthy identification of the accused, by the said witness.

19. A reading of the records reveals, that the said test identification parade never became carried by the investigating officer concerned, but which participation therein of PW-15. Therefore, PW-15 was legally incapacitated to identify for the first time, the accused in Court which yet he rather did. The identification of the accused for the first time by PW-15,

before the trial Court, thus without prior thereto a valid test identification, being held by the investigating officer concerned, with participation therein of PW-15, and, with his therein identifying the accused concerned respectively from his/their respective voice(s), and, face(s), is but a legally frail or legally uncreditworthy identification of the accused by PW-15. Therefore, no evidentiary vigour can be assigned thereto.

20. The effect of the above inference, is that, the prosecution case which becomes rested, upon the deposition of PW-15, thus cannot succeed, nor can on anvil of the deposition of PW-15, the charge against the accused, can be construed to become cogently established.

Signatures disclosure statements of convict Vikramjit Singh @ Vicky and pursuant thereto recovery memos

21. During the course of investigations, being made into the appeal FIR, convict Vikramjit Singh @ Vicky made a signed disclosure statement, to which Ex. PW6/B is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“x x x x
That on 03.3.11, upon which Pulsar motorcycle I came from Tarn Taran, that motorcycle has been kept conceal by me in my house at Tarn Taran, about whom I know only and I can get that recovered on identification. On this, disclosure memo of accused was prepared and accused Vikramjit Singh put his signatures.”

22. During the course of investigations, convict Vikramjit Singh @ Vicky made another signed disclosure statement, to which Ex. PW11/H is assigned. The signed disclosure statement, as made by the accused, is ad verbatim extracted hereinafter.

“x x x x
That the revolver 32 bore which I have given you is mine and was used by me in an incident which is a licensee revolver. Its license was got prepared from DC office, Tarn Taran. I have kept conceal the said licence in the bedroom of my house and about it I know only. I can get it recovered on identification. On this, the statement of accused Vikramjit Singh was recorded and he signed under his memo”

23. Pursuant to his above signed disclosure statements, convict

Vikramjit Singh @ Vicky got recovered one Pulsar motor cycle bearing registration No. PB-06-D-0338 of blue colour, and, licence of one .32 bore revolver, which were taken into police possession, thus respectively through recovery memos Ex. PW6/C and Ex. PW11/I.

24. During the personal search of appellant Vikramjit Singh @ Vicky, one .32 bore revolver was recovered, and, after unloading the said revolver, three live cartridges were recovered. The said revolver was taken into police possession through recovery memo Ex. PW11/D.

No credence to the disclosure statements of the accused concerned in Ex.PW6/B and in Ex.PW11/H, and, also to the consequent therewith recoveries, as made through the apposite recovery memos

25. Since the above disclosure statements are uncontrovertedly signed by the convict, as such, when he has obviously neither ably denied his signatures, as carried thereons, nor has proven the relevant denial, thus, sanctity is to be assigned to the disclosure statements of the accused, to which respectively Ex. PW6/B, and, Ex. PW11/H, becomes assigned. Moreover, though in pursuance to the said disclosure statements, the accused caused the recoveries, to the police officer concerned, respectively of a motor cycle, and, of the licence of .32 bore revolver, thus respectively through recovery memo Ex. PW6/C, and, through recovery memo Ex. PW11/I. However, for the reasons to be assigned hereinafter, no credence can be yet assigned to the above disclosure statements, and, also to the consequent therewith recoveries, as became respectively made through recovery memos Ex. PW6/C, and Ex. PW11/I.

26. The prime reason for making the above inference, becomes rested upon the factum, that the ante mortem injuries, which become pronounced in the post-mortem report, relate to a fire arm injury. Moreover

9/B), has, in his examination-in-chief, deposed that a metallic alike object was found in the body of the deceased. Therefore, the weapon of offence is the fire arm concerned, which became recovered through recovery memo Ex. PW11/I, but in pursuance to the disclosure statement Ex. PW11/H, as became made by the accused to the police officer concerned. Resultantly, the report of the ballistic expert is of grave importance, as only, upon, the ballistic expert opining, that the said recovered fire arm was used in the commission of the offence. Therefore, thereupon alone, irrespective of the purported ocular witnesses to the occurrence, resiling from their previously made statements in writing, to the police officer concerned, and, also irrespective of this Court thus assigning no probative vigour to the deposition of PW-15, yet rather the report of the ballistic expert, thus making candid echoings, about the recovered fire arm thus, as a matter of fact, being the weapon wherefrom, the fatal bullet became fired, rather would comprise the most potent incriminatory evidence against the accused. However, a reading of the report of the ballistic expert, as carried in page No. 271 of the lower Court records, reveals that no conclusive opinion was made by the ballistic expert concerned, with respect to lead bullet mark CB/1 contained in parcel 'D' becoming fired from 0.32 inch revolver bearing No. N-5387.

27. Therefore, the above inconclusivity of opinion about the lead bullet mark CB/1 becoming fired from the recovered fire arm, leads to an inference, that the recovery of 0.32 inch revolver, bearing No. N-5387, as made through recovery memo Ex. PW11/I, thus, in pursuance to the disclosure statement Ex. PW11/H, was but a recovery which is not related, to the crime event, nor also the accused can be conclusively said to make

deceased Kanwardeep Singh. Thus, there is a gross misappreciation, and, non-appreciation of evidence germane to the charge. Therefore, the impugned verdict of conviction, and, also consequent therewith order imposing sentence(s) of imprisonment as well as of fine, upon, the appellant, both are required to be quashed and set aside.

Final order

28. The result of the above discussion, is that, this Court finds merit in the appeal, and, is constrained to allow it. Consequently, the appeal is allowed. The impugned judgment convicting, and, also the sentencing order imposed upon the accused, thus by the learned trial Judge concerned, are quashed, and, set aside. Appellant Vikramjit Singh @ Vicky is acquitted of the charges framed against him. The fine amount, if any, deposited by him, be, in accordance with law, refunded to him. The personal, and, surety bonds of the accused shall stand forthwith cancelled, and, discharged. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. The appellant, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly by the Registry of this Court, and, be forthwith sent to the Superintendent of Jail concerned, where the convict is undergoing detention.

29. Records be sent down forthwith.

30. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 02, 2023

Gurpreet/Ithlesh

Whether speaking/reasoned

Whether reportable

:

Yes/No

:

Yes/No