

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

203

CRA-D-39-DB-2015

Date of Decision : 12.9.2023

Reserved on 26.7.2023

Gurmukh Singh

.....Appellant

VERSUS

State of Punjab

.....Respondent

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

Present : Mr. Vishal Khatri, Advocate for the appellant.
Ms. Monika Jalota, Sr. DAG, Punjab.

KULDEEP TIWARI. J.

1. The instant appeal has been preferred by the appellant against the judgment of conviction and order of sentence dated 27.10.2014 whereby he has been convicted for the offences punishable under Sections 302, 307 IPC and Section 27 of the Arms Act and sentenced as under:-

under Section	Conviction/sentence
302 IPC	To undergo life imprisonment and fine of Rs.2,000/- and in default of payment of fine to further undergo for one month RI.
307 IPC	To undergo RI for five years and fine of Rs.2,000/- and in default of payment of fine to further undergo for one month RI.
27 of Arms Act	To undergo RI for three years and fine of Rs.2,000/- and in default of payment of fine to further undergo for one month RI.

2. All the sentences were ordered to run concurrently.

3. Complainant-Lakhwinder Singh, who is the real brother

of the present appellant/accused has set the investigating agency into motion by getting recorded his statement on 28.10.2011 and accordingly on his given statement FIR No. 207 dated 28.10.2011 under Sections 302, 307 of IPC and Section 27 of Arms Act, was registered at Police Station Patti, District Tarn Taran. The statement of the complainant Ex.PW1/A reads as under:-

“Stated that I am resident of above said address. We are three brothers. The eldest brother is Balwinder Singh and I am younger to him & youngest one is Gurmukh Singh whose age is about 30 years and he is Nihang Singh. I have been running the business of commission agent in a shop jointly with my brother Balwinder Singh. One brother Gurmukh Singh is doing the agricultural work separately. I have been residing with Gurmukh Singh in joint residential house. Balwinder Singh has residential house at city Tarn Taran. Gurmukh Singh, my brother had borrowed an amount of Rs.1,75,000/- from me & Balwinder Singh for domestic purpose & for purchasing weapon about 5-6 months ago. Today, Balwinder Singh along with his wife, Satwant Kaur had come to village. Then, we demanded Rs. 1,75,000/- in the presence of Dilbagh Singh s/o Mangal Singh R/o Takher Chak. Gurmukh Singh became infuriated and stated that he would return the amount within a short period. Two ways lead to our house from the main road. I had started my motorcycle, going to get the milk from the milk dairy. Gurmukh Singh had come on my way after armed with licensed rifle 315 bore & had given fire

shots towards me with intention to kill me but I saved myself by entering into the house of my cousin, Dilbagh Singh. But Gurmukh Singh continued to give fireshots, those fireshots not hit upon me. After sometime I heard, the sound of fire shots and my sister-in-law, Satwant Kaur raised the alarm 'Maar Ditta Maar Ditta' and I unbolted the door from inside and ran towards my house. Dilbagh Singh & son of my uncle also arrived there. Then we saw that his brother Balwinder Singh was lying on the ground in a pool of blood. Gurmukh Singh had caused the death of Balwinder Singh by giving fire shots on him with his licensed rifle 315 bore and he had run away from the place of occurrence after being armed with rifle by his motorcycle. I, son of my uncle and my sister-in-law Satwant Kaur have seen the place of occurrence with their own eyes and that day, it was a time of 10:30 AM. After leaving the dead body in the care & custody of Dilbagh, I was going to police station to inform. You have met us and action be taken.”

POLICE PROCEEDINGS

4. On the basis of above statement, Inspector/SHO Gurjit Singh (PW6) recommended the registration of the FIR and thereafter he accompanied the complainant to the place of occurrence in village Takhu Chak. He prepared the inquest report Ex.PW6/C in the presence of one Dilbagh Singh and Gurjant Singh, who identified the dead body of deceased Balwinder Singh. During spot inspection, he took into possession two empty cartridges of .315 bore which were

lying near the dead body of Balwinder Singh, which were put into a plastic container and sealed the parcel with the seal impression of 'GS' and the same were taken into possession vide recovery memo Ex.PW4/B. Thereafter the blood stained earth was taken into possession after converting the same into a separate sealed parcel duly sealed with impression 'GS' vide separate seizure memo Ex.PW4/D. The sample of earth was also taken from the place of occurrence. Thereafter, the IO also took into possession 4 empty cartridges of .315 bore and made a separate parcel, the parcel was taken into possession vide seizure memo Ex.PW4/A. The rough site plan of the place of occurrence was also prepared which proved on record as Ex.PW6/G. On return to the Police Station, the IO deposited the parcels with the MHC. The post-mortem of the deceased was also got conducted. The clothes of the deceased were also taken into possession vide separate memo. Thereafter, on 31.10.2011, the present appellant/accused was arrested. He was joined in investigation and during the investigation on 2.11.2011, he suffered a disclosure statement that he has kept, weapon of offence i.e. the licenced rifle of .315 bore alongwith 10 live cartridges concealed in an iron box in his room, in his village Takhu Chak and only he has the exclusive knowledge of the same. In pursuance of the disclosure statement Ex.PW6/L, he got recovered the weapon of offence and 10 live cartridges which were taken into possession vide separate memo Ex.PW6/M and the licence was also got recovered by

the appellant-accused vide memo Ex.PW6/N. After recording the statements of the relevant witnesses under Section 161 Cr.P.C. and after completion of investigation, final report under Section 173 Cr.P.C. was presented before the concerned Ilaqa Magistrate by the concerned SHO.

PROCEEDINGS BEFORE THE TRIAL COURT

5. The learned Ilaqa Magistrate finding the case to be exclusively triable by the Court of Session, committed the same to the Court of Session vide committal order dated 17.2.2012. Thereafter the trial Court framed charges under Sections 302 and 307 of IPC and under Section 27 of the Arms Act against the appellant/accused to which he pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined as many as 11 witnesses and after completion of the trial, the learned trial Court recorded the verdict of conviction against the appellant/accused and sentenced him accordingly.

SUBMISSIONS BY THE COUNSEL FOR THE PARTIES

7. Learned counsel for the appellant/accused has submitted that both the alleged eye-witnesses i.e. PW1 Lakhwinder Singh and PW2 Satwant Kaur are interested witnesses and are closely related to the deceased i.e. the brother and the wife of the deceased(respectively). Therefore, being close relatives, their statements need to be scrutinized carefully and he has tried to impeach the credibility of these witnesses by pointing out minor

contradictions in their statements. Learned counsel for the appellant/accused while referring to the statement of Lakhwinder Singh (PW1) wherein, he has stated that he hid himself in the house of Dilbagh Singh out of fear of the appellant/accused and he only heard the gun shots and has not seen the appellant/accused causing injuries, cannot be considered an eye-witness and his statement is of no help to the prosecution to bring home the guilt of the appellant/accused. He further submitted that the prosecution has miserably failed to prove on record the motive. As per the case of the prosecution, the deceased demanded Rs.1,75,000/- from the appellant/accused which he had given as a loan to the appellant/accused but no document with regard to the loan has been placed on record by the prosecution. Learned counsel for the appellant/accused has also drawn the attention of this Court on the statement of Satwant Kaur (PW2) to submit that she admitted about the existence of a writing which was scribed at the time of lending money to accused by the deceased. However, no such document was ever produced on record by the prosecution nor any efforts were made by the investigating agency to collect the said evidence to prove motive. He has further submitted that as per the statement of HC Mangal Singh (PW9), he handed over the receipt to MHC Satnam Singh after depositing the recovered articles with the FSL. However, MHC Satnam Singh was not examined by the prosecution. Therefore, the prosecution has withheld the material witnesses which

goes to the root of the matter and cause dent to the prosecution story and created doubt about the authenticity of FSL report. He has further submitted that since HC Mangal Singh was declared hostile, therefore, his statement cannot be relied upon.

8. On the other hand, the learned State counsel has specifically argued that it is an open and shut case. The appellant/accused has killed his own real brother. She has further submitted that it is a case of direct evidence, where two eye-witnesses have proved the case of the prosecution and the defence was unable to impeach their credibility despite being put to a lengthy and incisive cross-examination. She also placed reliance upon the Post Mortem Report to submit that the ocular account of PW1 Lakhwinder Singh and PW2 Satwant Kaur is corroborated by the medical evidence. She also drew the attention of this Court to the FSL report to submit that the weapon of offence which was recovered from the appellant/accused is matching with the empty cartridges recovered from the place of occurrence. Therefore, the prosecution has proved its case beyond reasonable doubt.

ANALYSIS

9. With the able assistance of both the counsel for the parties, we have examined the entire record in detail.

10. Perusal of the record reveals that it is a case of direct evidence, where the complainant-Lakhwinder Singh, who has stepped into the witness box as PW1, has supported the case of the

prosecution and has categorically stated that on the fateful day i.e. 28.10.2011 the deceased Balwinder Singh and his wife Satwant Kaur had come to their village and had asked the appellant/accused to return the sum of Rs.1,75,000/- which was taken by the appellant/accused from the deceased, but the appellant/accused replied that he would return the money soon. He has further stated that the appellant/accused instead of returning the money to the deceased, came from the side of his house with a .315 bore rifle and gave one shot towards him (PW1), who out of fear entered in one of the rooms of the house of Dilbagh Singh and bolted the same from inside and the appellant/accused again gave three shots towards him. He has stated that after a few seconds, he has heard the noise of two gun shots and thereafter his sister-in-law Satwant Kaur(PW2) raised raula 'bachao bachao' and when he came out from the room, he saw the appellant/accused had given gun shot to his brother Balwinder Singh and had run away from the spot on his motor cycle alongwith his .315 bore rifle. He has further submitted that when he reached near his brother Balwinder Singh, he found that his brother had died on the spot. He was put to a lengthy cross-examination. Rather in the cross-examination, he further gave a strength to the case of the prosecution, wherein he has stated that writings occurred with regard to a loan of Rs.1,75,000/- being taken by the appellant/accused from the deceased-Balwinder Singh. He has further submitted that the amount was given in his presence. During cross-examination,

learned counsel for the accused put a suicidal suggestion to PW1 Lakhwinder Singh whereby admitting the presence of the accused at the place of occurrence. The relevant extract of the cross-examination reads as under:-

“When the accused fired towards me, I threw the motor cycle and ran away. It is wrong that firstly I went towards accused Gurmukh Singh and then entered the house of Dilbagh Singh through other way. I was inside the house when I heard the noise of fires. I heard the noise of two fires. The police took the photographs of the place of occurrence.”

11. By making above suggestion, the defence admitted the presence of accused at the spot. PW1 Lakhwinder Singh has also proved on record the motive. In the similar way, the prosecution examined Satwant Kaur wife of the deceased as PW2. Infact, she is the eye-witness and when she stepped into the witness box she stated that on the fateful day, she came out from the house after hearing the noise of fire shot and saw the accused coming on foot with a rifle in his hand and thereafter the accused fired shots towards her husband, out of which one shot hit on the chest of her husband and the second shot was hit near the genitals. Thereafter she raised cry 'maar ditta maar ditta' upon which the accused ran away with his weapon from the spot. She has stated that Lakhwinder Singh and Dilbagh Singh came at the spot and found Balwinder Singh had died on the spot. She was also put to a lengthy and incisive cross-examination.

However, nothing material was elicited which could help the defence, rather she successfully passed the test of cross-examination. Infact, she is the wife of the deceased and no motive whatsoever was attributed to her to falsely implicate the appellant/accused.

MEDICAL/FORENSIC EVIDENCE

12. As per the statement of PW2 Satwant Kaur, the appellant/accused has caused two gun shot injuries, which hit on the right side of the chest and the other on the genitals. The prosecution examined Dr. Gurpreet Singh, Medical Officer, Civil Hospital, Patti as PW5, who conducted the post-mortem on the dead body of the deceased on 28.10.2011 and the following injuries were found:-

- “1. A lacerated penetrating wound 1.5.X 1.5 cm on front of lower part of right side abdomen in inguinal area. Margins were inverted.
2. A lacerated penetrating wound 5.5 X 5 cm on gluteal region right side buttock. Margins were everted. Injury 1 and 2 are communicating with each other underlying muscles and iliac bone were fractured.
3. A lacerated penetrating wound 1.5 X 1.5 cm on front and right side upper part chest 4.5 cm above and medial to right nipple. Margins were inverted.
4. A lacerated penetrating wound 3.5 X 3 cm on lateral and back of left side abdomen. Margins were inverted.”

13. The ocular testimonies of PW1 Lakhwinder Singh and PW2 Satwant Kaur and the post mortem report (Ex. PW5/B) have

fully corroborated each other. The defence has not conducted any material cross-examination with regard to the post mortem report, therefore, the prosecution has proved its case beyond reasonable doubt and that the deceased has died because of the gun shot injuries and those gun shot injuries were suffered at the hands of the appellant/accused, as proved by PW1 Lakhwinder Singh and PW2 Satwant Kaur respectively. Further, the investigating officer, who stepped into the witness box as PW6 has proved on record the disclosure statement Ex.PW6/L suffered by the appellant/accused and in pursuance of the same, the appellant/accused has got recovered his licenced gun .315 bore and 10 live cartridges. Further the licenced gun of the appellant/accused and 10 live cartridges alongwith blood stained earth and sample of earth were sent to the Forensic Science Laboratory for their scientific examinations. The FSL report Ex. PA has clearly supported the case of the prosecution and as per the report, the empty cartridges which were found from the place of occurrence have been concluded to be fired from the .315 inch Bolt Action Rifle of the appellant/accused. The relevant extract of the FSL report reads as under:-

	“Parcel 'A' contained	Four 0.315 inch 'K.F' cartridge cases marked C/1 to C/4 in the laboratory.
	Parcel B contained	Two 0.315 inch 'K.F' cartridge cases marked C/5 and C/6 in the
laboratory.		
marked	Parcel 'C' contained	Ten 0.315 inch 'K.F' cartridges L/1 to L/10 in the laboratory.
bearing	Parcel 'D' contained	One 0.315 inch bolt action rifle No. 10-AB-01220 marked

W/1 in the laboratory.

Parcel 'E' contained Five test cartridges of 0.315 inch.

RESULT OF EXAMINATION

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

1. Four 0.315 inch cartridge cases marked C/1 to C/4 and two 0.315 inch cartridge cases marked C/5 and C/6 respectively contained in parcels 'A' and 'B' had been fired from 0.315 inch Bolt Action Rifle bearing No. 10-AB-01220 marked W/1 contained in parcel 'D' under reference.
2. Ten 0.315 inch cartridges marked L/1 to L/10 contained in parcel 'C' under reference are live cartridges.”

14. Both the post mortem report (Ex.PW5/B) and the FSL report (Ex.PA) have proved beyond the reasonable doubt that the weapon of offence which was got recovered by the appellant/accused in pursuance of the disclosure statement was used in the commission of offence.

DISCLOSURE STATEMENT OF THE CONVICT AND CONSEQUENT THEREWITH RECOVERIES

15. During the course of investigation, the investigating officer concerned, had put the appellant/accused to police remand. where he made a thumb marked disclosure statement, to which Ex.PW6/L is assigned. The contents of the Ex.PW6/L are ad verbatim extracted hereinafter.

“Disclosure statement U/s 27 E.V. Act

In the presence of following witnesses on my interrogation accused Gurmukh Singh has suffered a disclosure statement during investigation that the rifle 315 bore was kept concealed vide which, I had killed my brother, Balwinder Singh by firing shot upon him and opened fire upon my second brother, Lakhwinder Singh with the intention to kill him, in my residential in large steel box. Along with 10 live cartridges 315

bore. Only I know and I can get it recovered by pointing out the place. His disclosure statement was recorded. Witnesses put their evidence on the same & Gurmukh Singh made his left hand thumb impressions.

*Sd/- In (English)
Gurmukh Singh*

Witnesses:

- 1. ASI Dilraj Singh PS Patti.*
- 2. HC Sarup Singh 1941/17 PS Patti.*

*SHO PS Patti.
Dt. 02/11/11”*

16. A reading of the above extracted thumb marked disclosure statement as made by accused Gurmukh Singh, disclosed that he can ensure the recovery of rifle 315 bore Ex.PW6/M, to the investigating officer concerned, from the place of his hiding, and, concealing, the same being exclusively known to him. Since in pursuance thereof through a recovery memo Ex.PW6/M, he caused the recovery of rifle 315 bore. Thus, evidentiary vigor is to be assigned to the above memo, as he has not been able to either ably deny his signatures as occur on Ex.PW6/L, nor has been able to prove the apposite denial. Moreover, since he has also not been able to bring forth tangible evidence but suggestive that the recoveries are either contrived or invented. Thus, evidentiary sanctity is to be assigned to the above drawn memos. Resultantly, the above validly drawn disclosure statement, and, the consequent thereto validly prepared recovery memo, thus are meeting of corroborations to the credible eye-witness account rendered qua the genesis of the prosecution case.

17. The minor discrepancies which were pointed out by the learned counsel for the appellant/accused are insignificant, and, do not cause any dent to the case of the prosecution, therefore, the same cannot be taken into consideration. Further, insofar as, the non-examination of MHC Satnam Singh is concerned, we do not find the same is so material, that it could completely bely the direct eye-witnesses account and the other medical and forensic evidence as proved on record by the prosecution.

18. In view of the above discussion, this Court does not find any illegality or perversity in the impugned judgment of conviction and order of sentence dated 27.10.2014. The present appeal is, accordingly, dismissed being devoid of merit. Consequently, the impugned judgment of conviction and order of sentence dated 27.10.2014 are affirmed.

19. Ordered accordingly.

20. All the pending applications stand disposed of.

(SURESHWAR THAKUR)
JUDGE

12.9.2023
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No