

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-27-2022

Date of Decision: 29.03.2023

SUKHJIT SINGH
Versus

..... Appellant(s)

STATE OF PUNJAB AND OTHERS

..... Respondent(s)

with

CRM-A-559-2022

STATE OF PUNJAB
Versus

..... Appellant(s)

KAKA ALIAS RAVI KAND AND ANOTHER

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Jagdip Singh Bajwa, Advocate for
Mr. G.B.S. Dhillon, Advocate
for the appellant in CRM-A-27-2022.

Mr. M.S. Tiwana, AAG, Punjab for
respondent no.1 in CRM-A-27-2022 and
for the appellant in CRM-A-559-2022.

LISA GILL, J.

This judgment shall dispose of CRM-A-27-2022, titled 'Sukhjit Singh Vs. State of Punjab and others' and CRM-A-559-2022, titled 'State of Punjab vs. Kaka alias Ravi Kant and another' as both the appeals arise out of the same judgment dated 03.06.2021, passed by learned Sessions Judge Tarn Taran.

Prayer in both these appeals is for setting aside judgment dated 03.06.2021, passed by the learned Sessions Judge, Tarn Taran to the extent that respondents no.2 and 3 (in CRM-A-27-2022) i.e. accused in FIR No.76 dated 09.03.2015, registered under Sections 302, 307, 323, 34 IPC and 27 of the Arms Act at Police Station City Tarn Taran have been acquitted of the

charges against them. CRM-A-559-2022 has been filed by the State of Punjab and CRM-A-27-2022 has been filed by the complainant in the above said FIR.

Brief facts necessary for adjudication of the matter are that FIR No.76 dated 09.03.2015, was registered on the statement of complainant - Sukhjot Singh to the effect that on 09.03.2015 at about 8:30 P.M., he was sitting in his shuttering shop. Barinder Singh alias Kala son of Gurdeep Singh, was standing near the iron grill shop of Harwinder Singh son of Balwant Singh. It is further stated that Swaran Singh son of Ajit Singh (convicted for the offence punishable under Section 302/308 IPC and 27 of the Arms Act and sentenced to undergo imprisonment for life besides pay fine as is detailed in order dated 04.06.2021, passed by learned Sessions Judge Tarn Taran), Amrik Singh alias Sonu – respondent no.2 and Kaka alias Ravi Kant – respondent no.3, came to Barinder Singh @ Kala and started exchanging hot words with him on some matter. Complainant, on hearing their voices went towards them. Elder brother of the complainant Amandeep Singh alias Bittu also reached the spot and confronted Swaran Singh for abusing Barinder Singh. Swaran Singh is then stated to have fired a shot at Amandeep Singh alias Bittu from his licensed revolver with intention to kill Amandeep Singh alias Bittu. Amandeep Singh alias Bittu, in order to save himself, pushed barrel of revolver and bullet passed over the head of Amandeep Singh alias Bittu. It is further stated that Swaran Singh fired a second shot towards Amandeep Singh alias Bittu, which hit him on right side of chest. Amandeep Singh alias Bittu is stated to have fallen down. Swaran Singh is then alleged to have fired two more shots, one

of which hit Harmandeep Singh son of Shamsher Singh. It is stated that Swaran Singh was accompanied by his son Amrik Singh alias Sonu and Kaka alias Ravi Kant, who raised Lalkara (exhortation) at that time that victims should be taught a lesson for raising issues with them. It is further stated that accused gave beatings to Barinder Singh. Amandeep Singh alias Bittu died at the spot. It is narrated that reason for attack was that Swaran Singh had abused Barinder Singh few days ago while under the influence of liquor. Barinder Singh alongwith Amandeep Singh alias Bittu, then had gone to house of Swaran Singh to complain about the same. Being angry over the same, accused, it is stated, entered into altercation with Barinder Singh and shot at Amandeep Singh alias Bittu and killed him.

Formal FIR under Sections 302, 307, 323, 34 IPC and 27 of the Arms Act was registered at Police Station City Tarn Taran against Swaran Singh, Kaka alias Ravi Kant and Amrik Singh alias Sonu. Investigation was initiated with the place of occurrence being visited. Rough site plan Ex.PW9/A was prepared at the spot. Blood stained earth was taken in possession and converted into separate parcel and taken into custody vide recovery memo Ex.P-2. Statements under Section 161 Cr.P.C. of the witnesses were recorded and inquest proceedings were conducted. Postmortem of the dead body was conducted at Civil Hospital, Tarn Taran. Postmortem report is Ex.PW13/A. Clothes of the deceased and parcel containing plastic box were handed over to the Investigating Officer, who took the same in possession vide separate recovery memos Ex. PW6/C and PW6/D. Medical opinion in respect to injured Harmandeep Singh was obtained from the doctor of Guru Nanak Dev Super Specialty Hospital, Tarn

Taran but he was declared unfit to record his statement.

Subsequently, on 12.03.2015 accused Swaran Singh surrendered before the Court of Chief Judicial Magistrate, Tarn Taran and was formally arrested in the present case. Accused Swaran Singh, pursuant to his disclosure statement dated 15.03.2015 (Ex. PW8/A) enabled recovery of a revolver, four empty cartridges and two live cartridges vide recovery memo Ex.PW8/B. Arms license of 32 bore revolver issued in favour of Swaran Singh was also taken in possession vide recovery memo Ex.PW8/B. Kaka alias Ravi Kant surrendered on 16.03.2015 and was formally arrested in the present case. Statement of injured Harmandeep Singh was recorded on 20.03.2015, after he was certified to be fit for recording of statement by the concerned doctor at Guru Nanak Dev Super Specialty Hospital, Tarn Taran. Blood stained earth, clothes of the deceased and the parcel containing the blood stained clothes were sent to FSL, Mohali, for chemical examination.

During course of investigation, accused Amrik Singh alias Sonu was found innocent and upon completion of investigation, challan against accused Swaran Singh and Kaka alias Ravi Kant was presented. There was compliance of Section 207 Cr.P.C. and case was committed to the Court of Sessions vide order dated 22.06.2015. Charge under Sections 302, 307, 323, 34 IPC and Section 27 of the Arms Act was framed against the accused Swaran Singh and Kaka alias Ravi Kant.

Complainant Sukhjit Singh was examined as PW1, who at the outset stated that Amrik Singh alias Sonu was present at the time of occurrence. Application under Section 319 Cr.P.C. was filed by the

prosecution for summoning Amrik Singh alias Sonu as additional accused. Said application was allowed on 04.04.2016 with Amrik Singh alias Sonu being summoned to face trial. Fresh charges were framed under Sections 302, 307, 323, 34 IPC and Section 27 of the Arms Act, qua all the accused.

Prosecution examined as many as 17 witnesses and produced documentary evidence as well. PWs Dr. Bimalpreet Kaur, Dr. Maninder Singh, HC Satnam Singh, Jagjit Singh No.205/TT, Harjinder Singh son of Balwant Singh and Tejbir Singh son of Sukhwinder Singh were given up by the prosecution being unnecessary.

Statements of the accused were recorded under Section 313 Cr.P.C., wherein entire incriminating evidence put to them was denied with the accused pleading innocence, false implication and claiming trial. Accused Kaka alias Ravi Kant specifically stated that he was not present at the spot on the day of occurrence and that he used to run a tea shop in Sahib Market, Jandiala Road, which is near the place of occurrence and on the fateful day he had closed his shop at about 7:00 P.M. and had returned home as was his routine. He further stated that he had no role to play in the entire occurrence and he had been falsely implicated due to previous enmity and local political grudge. In the inquiry conducted by the police, all nearby shopkeepers, it is stated had given their statements in favour of his innocence. Tejinderpal Singh, who took Harmandeep Singh to hospital was honored by the hospital for saving his life and Tejinderpal Singh had stated during inquiry that Kaka alias Ravi Kant was not at the place of occurrence.

Accused Amrik Singh alias Sonu claimed to be innocent and was so declared during inquiry conducted by Sukhwinder Singh, DSP, Tarn

Taran. Evidence was led by the defence. Six witnesses were examined in defence namely Sulakhan Singh Riar, Administrator at Guru Nanak Dev Super Specialty Hospital, Tarn Taran DW-1, Jagmohan Singh, DCP Operation DW-2, Tejinderpal Singh DW-3, Naveen Nagpal DW-4, Asha Rani DW-5 and Raj Kumar DW-6. Due to technical error in the charge, amended charge was framed against all the accused with the parties opting not to lead any fresh evidence.

Learned trial Court on considering the evidence on record, facts and circumstances concluded that prosecution had succeeded in proving its case beyond reasonable doubt against accused Swaran Singh. However, the prosecution, it is held, miserably failed to prove guilt of the accused beyond reasonable doubt qua the other two accused namely Amrik Singh alias Sonu and Kaka alias Ravi Kant. It is held that evidence on record does not categorically indicate presence of the accused Kaka alias Ravi Kant at the time of occurrence. Moreover, common intention to cause the death of Amandeep Singh alias Bittu has not been proved on record. Swaran Singh was convicted for the offence punishable under Sections 302, 308 IPC and Section 27 of the Arms Act and was sentenced as has been described in order dated 04.06.2021, passed by learned Sessions Judge, Tarn Taran.

Aggrieved therefrom present appeals have been filed against acquittal of Kaka alias Ravi Kant and Amrik Singh alias Sonu, by the State as well as the complainant.

Learned counsel for the appellants/complainant vehemently argued that presence of the accused - respondents no.2 and 3, is duly proved

by the evidence on record. Complainant, it is submitted has attributed specific role to the accused persons. It is submitted that injured eyewitness has provided direct evidence in respect to the role of all the accused besides the motive for the fatal attack on the person of Amandeep Singh alias Bittu. It is contended that FIR in the present case was registered without any delay, which indicates that there is no possibility of deliberation and concoction. It is submitted that plea of the accused Kaka alias Ravi Kant in respect to the *alibi* raised by him, cannot be of any avail to him for the reason that Kaka alias Ravi Kant is living at the place which is in close proximity to the place of occurrence. Therefore, possibility of Kaka alias Ravi Kant returning to the place of occurrence after spending some time with his wife and DW6 – Raj Kumar in his house, cannot be ruled out. Furthermore, raising of Lalkara by Kaka alias Ravi Kant and Amrik Singh alias Sonu is duly proved on record by positive, consistent and direct evidence. It is submitted that fact of all the three persons coming together and engaging in a quarrel with Barinder Singh is clearly reflective of common intention held by all the three accused for causing death of Amandeep Singh and injuries to Harmandeep Singh. It is, thus, prayed that leave to appeal be afforded to the appellants and impugned judgment dated 03.06.2021, passed by learned Sessions Judge, Tarn Taran, be set aside to the extent respondents no.2 and 3 are acquitted of the charges framed against them. Consequently, said accused, it is submitted, be convicted for the offence punishable under Sections 302, 308 IPC and Section 27 of the Arms Act and punished in accordance with law.

We have heard learned counsel for the applicant/appellant and have perused the record, which was requisitioned.

It is a matter of record that FIR in question was registered on the statement of Sukhjit Singh. Allegations raised therein are that all three accused came to the spot where Barinder Singh alias Kala was standing and there was exchange of hot words with Barinder Singh alias Kala on some matter. It is on hearing raised voices that the complainant proceeded towards said persons and elder brother of the complainant, namely Amandeep Singh alias Bittu (deceased) also reached at the spot. Amandeep Singh alias Bittu is stated to have confronted Swaran Singh for abusing Barinder Singh. Immediately thereon Swaran Singh is alleged to have fired a shot at Amandeep Singh alias Bittu from his licensed revolver with intent to kill him. The first bullet passed over head of Amandeep Singh alias Bittu on which a second shot was fired by Swaran Singh at Amandeep Singh alias Bittu. Amandeep Singh alias Bittu was hit on right side of his chest. Swaran Singh is alleged to have fired two more shots, one of which injured Harmandeep Singh son of Shamsher Singh. Allegations against present respondent no.2 and 3 are that they accompanied Swaran Singh and after the shot had been fired, both of them raised a Lalkara i.e. exhorted that victims will be taught a lesson for raising issues with them. Accused are also alleged to have injured Barinder Singh. In so far as question of fatal gun shot fired by Swaran Singh causing death of Amandeep Singh alias Bittu is concerned, it is a matter of record that Swaran Singh has been convicted for the offence of murder of Amandeep Singh alias Bittu. Swaran Singh has also been convicted for the offence punishable under Section 308 IPC for attempt to kill Harmandeep Singh.

Question which arises in the present appeals is whether respondents no.2 and 3, apart from question of their presence on the spot,

can be attributed the common intention to have caused death of Amandeep Singh alias Bittu and causing injuries on the person of Harmandeep Singh and as to whether any active role is proved qua them. Allegations against respondents no.2 and 3 are that they were present at the spot of occurrence alongwith Swaran Singh. Hot words were exchanged between the accused and Barinder Singh and that they had raised Lalkara after Swaran Singh shot at Amandeep Singh alias Bittu and Harmandeep Singh. It is to be noted at this stage that in the statement under Section 161 Cr.P.C., including the statement of PW-4 Barinder Singh @ Kala, there is no mention of Amrik Singh alias Sonu or Kaka alias Ravi Kant raising a Lalkara. PW-4 Barinder Singh @ Kala in his cross-examination has admitted that this is not so stated in his statement under Section 161 Cr.P.C. Presence of accused Kaka alias Ravi Kant at the place of occurrence has been found to be doubtful by the learned trial Court on the basis of evidence on record. It is proved on record that deceased Amandeep Singh alias Bittu was taken to the hospital by DW3 Tejinderpal Singh.

PW2 - Harmandeep Singh, the injured witness has stated that it was Swaran Singh who fired the fatal shot towards Amandeep Singh alias Bittu and also gun shot injury to Harmandeep Singh. It is stated that accused Amrik Singh alias Sonu and Kaka alias Ravi Kant thereupon raised a Lalkara that the victims will be taught a lesson. No shot has been fired after their exhortion. PW-4 Barinder Singh has claimed that he was beaten by respondents no.2 and 3 thereafter, though, admittedly, there is no evidence on record to prove the said injuries. It is pertinent to note at this stage that as per examination-in-chief of Harmandeep Singh, someone

arranged a vehicle and took Harmandeep Singh to Guru Nanak Dev Super Specialty Hospital, Tarn Taran. However, in his cross-examination he states that it is Sukhjit Singh – complainant who brought him to the hospital in a car. Discrepancies in his statement Ex.DA in this respect were put to him. PW2 Harmandeep Singh admitted that Tejinderpal Singh had been given an award by the hospital authorities/management for saving his (Harmandeep Singh) life. PW2 Harmandeep Singh injured further stated in his cross-examination that Tejinderpal Singh met him in the emergency of the hospital and also informed his parents.

It is pertinent to note at this stage that Swaran Singh accused is claimed to have abused Barinder Singh alias Kala about one month prior to the occurrence. Barinder Singh alias Kala had deposed as PW4 and has deposed about Swaran Singh abusing him a month prior to the occurrence after which Barinder Singh alias Kala and Amandeep Singh alias Bittu had gone to the house of Swaran Singh for complaining. Surprisingly, PW-4 Barinder Singh alias Kala in his cross-examination stated that he did not know the reason as to why Swaran Singh had abused him earlier. He further states that he as well as Amandeep Singh alias Bittu had gone to the shop of Swaran Singh, which is in contradiction to his examination-in-chief where it is stated that he alongwith the deceased had gone to the house of Swaran Singh.

The Investigating Officer PW-15 Inspector Gurbhinder Singh (retired) admitted in his cross-examination that he did not personally check the record of the hospital in regard to the person who had brought the injured Harmandeep Singh to the hospital. Above circumstances coupled

with the specific and categoric testimony of DW-3 Tejinderpal Singh too creates a definite doubt regarding the prosecution version. DW3 Tejinderpal Singh categorically stated that at about 8:30/9:30 P.M. on 09.03.2015, he was coming from the side of Gold Health Gym alongwith his friend Gopi, who was coming to drop him on his Tata Indica car. He saw 4 - 5 persons exchanging hot words with each other near R.K. Juice Bar. They parked their vehicle on one side of the road and while parking the vehicle Tejinderpal Singh heard the noise of two gun shots. One person was stated to be lying on the ground and another who was a passer-by, seemed to have suffered a gun shot injury. DW3 stated that the person lying on the ground was Amandeep Singh alias Bittu resident of his Mohalla (locality). The other injured person, who was a passer-by asked him to take them to the hospital. Accordingly, DW3 alongwith his friend Gopi, took the injured/deceased to Guru Nanak Dev Super Specialty Hospital, Tarn Taran. It is further stated by Tejinderpal Singh that the injured revealed himself to be an advocate and asked him to call his family. DW3 accordingly called on the given number. The call was received by brother of the injured, who was informed about the incident and asked to come to the hospital of Baba Ji in Tarn Taran i.e. Guru Nanak Dev Super Specialty Hospital, Tarn Taran. He further stated that when family of Harmandeep Singh reached the hospital, he left and after a few days received a phone call from one Parduman Singh from the hospital stating that he was being offered a reward by the hospital administration for saving the life of Harmandeep Singh. DW3 has identified the original certificate Ex.D1 given to him by the hospital, award and the photographs Mark A and Mark B showing DW3 receiving the

award from Baba Jagtar Singh. DW3 Tejinderpal Singh further stated that as he was to go abroad, he submitted an affidavit, duly attested by the Executive Magistrate, Tarn Taran on 23.09.2015 to the wife of Kaka alias Ravi Kant (Ex.DW3/A). DW3 Tejinderpal Singh stated that he saw Swaran Singh, Barjinder Singh and deceased Amandeep Singh alias Bittu and one Raju Lohewala at the place of occurrence. In his cross-examination, DW3 Tejinderpal Singh stated that he had not witnessed the occurrence as such and that Harmandeep Singh, who was conscious at that time never disclosed the name of the accused. Name of the accused came to his knowledge later from residents of the Mohalla. It is to be reiterated at this juncture that PW2 Harmandeep Singh, injured witness has admitted that Tejinderpal Singh met him at the emergency wing of the hospital on the fateful day and also informed his parents.

It is relevant to note that the house of Tejinderpal Singh is at a short distance from the place of occurrence. This is so revealed in the statement of DW-4 Naveen Nagpal. Nothing on record has been pointed out to show that Tejinderpal Singh, DW3, had any axe to grind qua the complainant/injured/deceased or that he had any reason to depose incorrectly.

In our considered opinion, evidence on record does not prove beyond reasonable doubt that all the accused in furtherance of common intention carried out the murder of Amandeep Singh and caused gun shot injuries to Harmandeep Singh.

Section 34 of Indian Penal Code reads as under:-

“Acts done by several persons in furtherance of common intention. —

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone”.

It is a settled position of law that to attract the rigours of Section 34 IPC, meeting of minds has to be proved. In a given set of circumstances, it may not be necessary to prove pre-arranged plan or prior concert between all accused as admittedly common intention can be formed at the spot and on the spur of the moment. In so far as the present case is concerned, there is admittedly no evidence to prove that there was a pre-arranged plan or prior concert or even immediate meeting of minds between all the accused to carry out the offence as charged. Co-accused Swaran Singh was carrying his licensed gun, which is stated to have been used by him at the time of exchange of hot words, thus, causing the death of Amandeep Singh alias Bittu and injuries to Harmandeep Singh. Even if presence of respondents Amrik Singh alias Sonu and Kaka alias Ravi Kant is accepted to be proved, there is indeed no evidence to show that there was meeting of minds to the extent that said accused also had the intention to murder Amandeep Singh alias Bittu and cause injuries to Harmandeep Singh with the intention to kill him. It is to be reiterated that as per prosecution version, it was Swaran Singh who was nursing a grudge qua Barinder Singh and Amandeep. Both respondents/accused were admittedly empty-handed at the relevant time and from the evidence on record cannot be attributed with knowledge of Swaran Singh carrying his licensed weapon. Moreover, even the lalkara (exhortation) by said accused is stated to be after firing of shorts by Swaran Singh. Injuries to Barinder Singh are not proved.

Learned counsel for the appellants are unable to point out any evidence on record, which calls for interference in the impugned judgment dated 03.06.2021, acquitting respondents no.2 and 3.

It is a settled position that there have to be strong, compelling and substantial reasons to set aside acquittal of the accused. Simply because another view may be possible, cannot be a ground for reversing a judgment of acquittal. Hon'ble Supreme Court in *Arulvelu v. State represented by the Public Prosecutor, 2009(10) SCC 206* held that :-

“ Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court.”

Reference in this regard can also be made to judgment of Hon'ble Supreme Court in *State of Rajasthan versus Kistoora Ram, 2022(4) RCR (Criminal) 324*, wherein it is held that it is not permissible to interfere with finding of acquittal unless it is found that the view taken by Court is impossible or perverse. It is settled position of law that acquittal of an accused is not to be set aside only if another view may be possible under the given facts and circumstances.

No other argument has been raised.

We do not find any merit in the argument raised by learned counsel for the appellant/s that present appeals should be admitted to be heard alongwith the criminal appeal - CRA-D-309-2021, filed by the convict Swaran Singh. Both the appeals are accordingly dismissed.

Needless to say, any observations in the present decision would have no effect whatsoever in the adjudication of the appeal filed by convict Swaran Singh, challenging his conviction vide impugned judgment dated 03.06.2021, passed by learned Sessions Judge, Tarn Taran. Observations made herein are confined for decision of the present matter only.

A photocopy of this order be placed on the file of above mentioned connected case.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

29.03.2023
Sunil

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