

202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-219-SB-2004
Date of Reserve:22.03.2024
Date of Decision:30.04.2024

Darshan Singh and others ...Petitioners

Vs.

State of Punjab ...Respondent

Coram : Hon’ble Mr. Justice N.S.Shekhawat

Present: Mr. Balram Singh, Advocate
for the appellants.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.Shekhawat J.

1. Feeling aggrieved and dissatisfied with the impugned judgment of conviction and order of sentence dated 23.12.2003, passed by the Court of Additional Sessions Judge, Fast Track Court, Ferozepur, whereby the respondents No.2 to 5 were convicted for the offences punishable under Sections 307/379/34 of IPC and were sentenced to undergo RI for a period of 07 years each for an offence punishable under Section 307 of IPC and to pay a fine of Rs.1000/- each, along with default stipulation and were sentenced to undergo RI for a period of 02 years each for an offence punishable under Section 379/34 of IPC and to pay a fine of Rs.500/- each, along with default stipulation, whereby the appellants have preferred the present appeal before this Court.

2. During the pendency of the present appeal, Darshan Singh, appellant No.1 had expired. Since the learned counsel for the appellants were not appearing, Mr.Balram Singh, Advocate was appointed as Amicus Curiae

to argue the appeal on behalf of the appellants.

3. As per the case of the prosecution, on receipt of the information regarding the admission of Paramdeep Singh son of Gurjit Singh, SI Harpal Singh and other police officials reached CMC, Ludhiana and obtained the opinion with regard to the fitness of the Paramdeep Singh. Since he was declared unfit to make the statement, the statement of Gurjit Singh, his father was recorded. As per Gurjit Singh, complainant, on 07.08.2001 he along with Baldev Singh son of Nazir Singh, Mohinder Singh son of Bachan Singh were present at Water Works, Ward No.12 and waiting for their partner Ranjit Singh son of Gurbachan Singh for taking accounts of their Mini Bus. At that time the complainant was having his .12 bore single barrel gun with him. In the meantime, Paramdeep Singh @ Mammu, the son of the complainant came on his scooter to call him back to the house. At that time, a big mercury bulb was on in the street and electric tube was also on, on the room of Water Works. At about 08:00 PM when the complainant along with his son Paramdeep Singh was to leave for his home on the scooter of his son, Darshan Singh @ Badal son of Sudagar Singh armed with .12 bore gun with his son Lakhbir Singh came there on a motorcycle along with his real brother Amarjit Singh @ Tholu with Jaswant Singh@ Jassa sitting behind him on pillion of different scooter which was driven by Amarjit Singh. Darshan Singh @ Badal raised *lalkara* that the complainant should not be spared and lesson be taught to him for getting a case registered against them by giving secret information. In the meantime said Darshan Singh @ Badal fired a shot from his .12 bore gun towards Paramdeep Singh which hit him on the upper part of his left arm besides his chest near the armpit. As a result of it, Paramdeep Singh fell down from his scooter. Darshan

Singh and his son Lakhbir Singh started giving slaps and fist blows to the complainant. Lakhbir Singh snatched the licensed gun of the complainant. Jaswant Singh @ Jassa picked up a chair lying on the spot and hit the same on Baldev Singh. As a result of which Baldev Singh sustained injury on his head and fell down on the ground. Amarjit Singh @ Tholu picked up another chair and hit the same on the head of Mohinder Singh, who was on Government duty at that time. He(complainant) raised hue and cry and all the accused escaped from the place on their scooters. While leaving, the accused persons took away his .12 bore single barrel gun. In the meantime, a large number of people collected at the spot. The wound of Paramdeep Singh was bleeding profusely so he took off his blood stained shirt and tied the same on the wound. The blood stained shirt was later on handed over to the police. Master Baldev Singh admitted the injured persons in Guru Gobind Singh Medical College and Hospital, Faridkot for treatment after arranging vehicle for the purpose from where his son was referred to CNC Ludhiana.

4. After the registration of the FIR, the investigation was conducted by the police and challan was presented before the Area Magistrate. Since the offence under Section 307 IPC was triable by the Court of sessions, the case was committed to the Court of Sessions Judge, Ferozepur. Ultimately, the charge under Sections 307/382/353/34 of IPC was framed against the appellants, to which they pleaded not guilty and claimed trial. In support of the prosecution case, the prosecution examined Dr.A.K Aggarwal, Assistant Professor Forensic Medicines, GGS College and Hospital as PW-1, E. Rai Singh, Medical Record Officer, CMC Ludhiana as PW-2, Gurjit Singh as PW-3, Paramdeep Singh-PW-4, Jagjit Singh Accountant, Municipal

Committee, Ferozepur as PW-5, Vidya Sagar JR Assistant as PW-6, Parveen Kumar, Arms Clerk as PW-7, ASI Harpal Singh as PW-8, Dr. Manish Ahuja, Lec. Dept. of Surgery, CMC Ludhiana as PW-9, ASI Sukhmindir Singh as PW-10, MHC Satnam Singh as PW-11 and Kishan Lal, Draftsman as PW-12.

5. To elaborate the evidence of the prosecution, further the prosecution examined PW-1 Dr.A.K Aggarwal, who medico legally examined Paramdeep Singh, at about 09:45 PM on 07.08.2001 and found the following injuries:-

1. *Lacerated wound 2.5 cm x 2.5 cm present on lateral aspect of left upper arm in upper half. Margins were inverted. Fresh bleeding was present.*
2. *Lacerated wound 9 cm x 8 cm present on the medial aspect left upper arm near Axilla. Margins were everted. Fresh bleeding was present.*
3. Lacerated wound 3 cm x 2.5 cm present on left side of chest, 6 cm above left nipple. Margins were inverted. 3 small lacerated wounds .75 cm in diameters present near inferior border of wound. Margins were inverted.

6. He also exhibited the MLR as Ex.P-1 and pictorial diagram showing the seats of injuries as Ex.P-2. PW-1 Dr.A.K Aggarwal also found the following injuries on the person of Mohinder Singh:-

1. *Lacerated wound 3 cm x .5 cm present left side of head 7 cm above lateral end of left eye brow. Fresh bleeding and swelling was present.*

7. Injury No.1 was subjected to X-ray report and was result of blunt weapon. He proved the MLR as Ex.P-3 and pictorial diagram showing the seats of injuries as Ex.P-4. PW-1 Dr.A.K Aggarwal also examined Baldev

Singh and found the following injuries:-

1. *Lacerated wound 3 cm x 1 cm present on the right side of forehead 3 cm above the right eye brow. Bleeding was coming out of wound and swelling was present.*
2. *Lacerated wound 5 cm x .5 cm present on back of head on left side. It was obliquely placed. Swelling was present.*

8. He proved the MLR of Baldev Singh as Ex.PW-5 and pictorial diagram as Ex. P-6. He declared the injuries suffered by Baldev Singh and Mohinder Singh as simple.

9. The prosecution further examined PW-9 Dr. Danish Ahuja, who had admitted Parminder Singh in CMC, Ludhiana and found the following injuries. Injury No.1 was stated to be grievous, injury No.2 as “dangerous to life” and injury No.3 as simple and weapon used in causing all the injuries was stated to be gun. He proved the MLR as Ex.P-21, whereas pictorial diagram showing the seats of injuries as Ex.P21/A. He also proved the findings of operation note qua operation performed on Paramdeep Singh by a team of doctors, in which he was one of the members. The prosecution also examined Gurjit Singh, complainant as PW-3, who had supported the case of the prosecution. Apart from that, Paramdeep Singh, injured also corroborated the statement of PW-3, Gurjeet Singh, complainant. Apart from that, the prosecution also examined PW-8 ASI, Harpal Singh, who had proved several documents and had made recoveries during the course of investigation. PW-10, ASI Sukhmindir Singh was examined to prove the recovery of .12 bore gun belonging to Gurjit Singh, complainant from accused Lakhbir Singh, pursuant to his disclosure statement Ex.P-22. He also proved the

recovery memo as Ex.P-23, whereas the site plan of the place of recovery was proved as Ex.PW-24.

10. After the closure of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr. P.C and the entire prosecution evidence was put to the accused. They pleaded their innocence and false implication. The appellants pleaded that they were not present at the spot. Accused Darshan Singh further stated that SHO of Police Station Ghall Khurd, Harpal Singh Grewal was inimical towards him and had planted 10 Kgs of poppy husk. He was acquitted of the charge vide judgment Ex.DX. He has been falsely implicated in this case due to his friction with aforesaid SHO. Accused Lakhbir Singh put up specific defence that there is a school ground by the side of Water Works. He along with others was playing Volley Ball in the ground. Gurjit Singh along with Baldev Singh and Mohinder Singh was taking liquor. Their Volley Ball fell in the compound of Water Works. When he went to fetch the ball after scaling the wall he was caused injuries by Gurjit Singh. He also loaded his gun. Other players also came there and there was fight with chairs. He caught hold of gun of Gurjit Singh and during the process of snatching gun from him. Gun went off and hit Paramdeep Singh, who in the meantime came in the street on scooter. According to him, other accused were not present there and they have been falsely implicated by SHO Ghall Khurd, Harpal Singh Garewal who was inimical towards his father accused Darshan Singh. In defence Darshan Singh also examined Dr. Ramesh Kumar as D.W.-1 and Baldev Singh as D.W.2 and tendered into evidence attested copy of the judgment Ex.DX.

11. Learned counsel for the appellants submit that the impugned

judgment and order are based on mis-appreciation of evidence on record and the settled law. Learned counsel further contends that the prosecution had failed to prove the motive for causing the injuries in the present case. As per the case of the prosecution, appellant No.1 had a grouse against Gurjit Singh, complainant as he suspected that he was a secret informer and had given information to the police in a case under the NDPS Act registered against Darshan Singh. However, the prosecution failed to prove that Gurjit Singh was a police informer. Even Gurjit Singh had clearly stated that he had never given any information of the case registered against Darshan Singh under the NDPS Act. Learned counsel further contends that even the version of the prosecution was highly improbable and unbelievable. Even the complainant was also carrying a gun and the injury to Paramdeep Singh was caused due to the gun shot fired from the gun of the complainant and not from the gun of the accused. However, the appellants were falsely involved by twisting the version.

12. On the other hand, learned State counsel assisted by learned counsel for the complainant have vehemently opposed the submissions made by learned counsel for the appellants. Learned counsel stated that in the present case, the matter was reported by the complainant promptly and there were no chances of false implication in the present case. Even the version of the all the prosecution witnesses was found to be highly consistent and the impugned judgment was legally sustainable.

13. I have heard learned counsel for the parties and perused the record.

14. In the present case, the FIR (Ex.P-16) was registered without any

delay, after the medical treatment was provided to Paramdeep Singh, injured of the present case. Even, the prosecution witnesses were searchingly cross examined by the accused in the present case, but it was found that immediately after suffering the injuries, the main focus of the complainant was to provide the best possible treatment to the injured and thereafter, the matter was reported to the police without any delay on the part of the complainant.

15. This Court also finds no merit in the submissions made by learned counsel for the appellants that there was no motive with the accused to cause injuries to Paramdeep Singh and other injured. In fact, Darshan Singh suspected that the complainant had acted as a secret informer against him and had reported the matter to the police. So Darshan Singh exhorted all the other accused to cause injuries to the complainant and to teach a lesson for getting a case registered against them by giving a secret information. Still further, the prosecution examined Gurjit Singh, complainant as PW-3, who had mentioned the other details regarding causing of injuries to all the injured by the accused side. He clearly stated that Darshan Singh had raised a *Lalkara* and they should not be allowed to escape on that day and taught a lesson for getting registered a case of poppy husk by giving secret information. Still further, the statement of PW-3, Gurjit Singh, complainant was duly corroborated by Paramdeep Singh, one of the injured, who examined as PW-4. Even he supported the testimony of PW-3, Gurjit Singh and the presence of the Gurjit Singh and Paramdeep Singh was at the place of occurrence. Apart from that, in the present case, the eye witness account is available in the shape of testimonies of PW-3, Gurjit Singh and PW-4, Paramdeep Singh, injured and when the direct evidence is available,

the existence of motive in the said case pales into insignificance. In the present case, the injuries suffered by three injured namely Paramdeep Singh, Mohinder Singh and Baldev Singh, which have been duly proved by PW-1, Dr. A.K Aggarwal and PW-9 Dr. Manish Ahuja. Apart from that, PW-9 Dr. Manish Ahuja not only proved on record the operation notes regarding the operation performed on Paramdeep Singh, but also exhibited the record, whereby injury No. 2 suffered by Paramdeep Singh was declared to be dangerous to life. Apart from that, I have also perused the detailed findings recorded by the Trial Court and it can be safely concluded that the Trial Court has correctly appreciated the evidence on record in the light of the various pronouncements made by this Court as well as the Hon'ble Supreme Court of India. Apart from that, the judgment of conviction passed by the Trial Court does not suffer from any material irregularity, illegality or perversity and the said judgment is ordered to be upheld.

16. Now, advertent to the order of sentence, this Court cannot lose sight of the fact that the occurrence in the present case had taken place on 08.08.2001 i.e. almost 23 years ago. Even, the injury, which attributed the offence under Section 307 of IPC was attributed to Darshan Singh, appellant No.1, who has already died and it has been alleged by the prosecution, the injuries caused by other persons i.e. appellants No.2 to 4 were either grievous or simple and none of them was caused any injury, which was declared to be dangerous to life. As per the custody certificate filed in the appeal, Lakhvir Singh @ Sonu had undergone 04 years, 01 month and 04 days of sentence (including remission), appellant No.3 Jaswant Singh @ Jassa had undergone 04 years and 20 days of sentence (including remission), whereas, Amarjit

Singh @ Tholu, appellant No.4 has already undergone 04 years and 20 days of sentence (including remission). Even Darshan Singh @ Badal, appellant No.1 had undergone, 05 years,06 months and 04 days of sentence (including remission) out of total sentence of seven years. Thus, it is apparent that the appellants had undergone the substantial period of sentence, out of total sentence as seven years awarded by the Trial Court. Still further, as per the custody certificate filed by the State, the appellants are first offender and were involved in any other criminal activity. Moreover, the appellants had also faced the agony of trial/appeal for the last 21 years. Consequently, the sentence imposed on the present appellants is reduced to the period already undergone by them.

17. In view of the above, the appeal is partly allowed and the impugned judgment of conviction is upheld and order of sentence is modified to the extent that the sentence imposed on the present appellants is reduced to the period already undergone by them and the order of sentence is modified to that extent. Amount of fine will remain the same.

18. With these directions, the appeal stands disposed off.

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

20. Case property, if any, be dealt with, and destroyed after the expiry of period of limitation for filing the appeal, in accordance with law.

21. The trial court record be sent back.

(N.S.SHEKHAWAT)
JUDGE

30.04.2024
hitesh

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