

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-252-DBA-2004 (O&M)

Date of Reserve: 15.10.2025

Date of Pronouncement: 03.11.2025

State of Punjab

....Appellant.

Versus

Amarjit Kumar and others

...Respondents.

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Argued by: Mr. I.P.S. Sabharwal, DAG, Punjab.

Mr. Balram Singh, Advocate (Amicus Curiae)
for the respondents.

Sukhvinder Kaur, J.

1. The appellant-State has preferred the instant appeal against judgment dated 04.09.2003, passed by learned Additional Sessions Judge, Faridkot, vide which respondents-accused have been acquitted.

2. Factual Scenario, as per prosecution version is that on 09.06.1997 complainant Harpal Singh along with Dial Singh, Chamkaur Singh @ Kori, Gurjant Singh and Pappa Singh were going from village Nangal towards Chandigarh in gypsy bearing registration No.UP-80-0095 being driven by Chamkaur Singh. At around 8.30 A.M. when they reached near Nihal Singh Wala, turn at Ransih Kalan, gun shots suddenly started coming from the Chobara on the left side. They saw that Amarjit Kumar was standing in front of a shop, who exhorted that they not be spared that day.

Then Darshan Singh armed with a gun, who was standing in the Chobara fired at them with his rifle with intent to kill. The bullet hit Gurjant Singh on left side of his neck. Berant Singh armed with a .12 bore gun, Sukhdev Singh armed with a .315 bore rifle, Ajaib Singh armed with .12 bore gun and Pawan Kumar armed with a .315 bore rifle, who were also standing in the chobara also started firing at them. They sped away their gypsy towards village Dhoorkot. Injured Gurjant Singh was sent to the hospital. The matter was reported to the police and FIR was accordingly registered. The alleged motive behind the occurrence was that they had sold some land situated at Mandi Nihal Singh Wala to Gurcharan Singh and accused Amarjit Kumar and others wanted to take possession of said land. Empties of the cartridges were recovered from the place of occurrence and the accused except accused Pawan Kumar were arrested and weapons of offence were recovered. Accused Pawan Kumar managed to escape. Statements of witnesses were recorded, rough site plan was prepared and after completion of investigation, challan was presented before the Court.

4. After having found a prima facie case, charges for offences punishable under Sections 307, 148 and 149 of IPC Section 27 of the Arms Act were framed against the accused, to which they pleaded not guilty and claimed trial. Separate challan under Section 25 of the Arms Act was presented against accused Beant Singh, Sukhdev Singh and Pawan Kumar and during the course of trial vide order dated 05.06.2002, proceedings against accused Pawan Kumar were ordered to abate, on account of his death, whereas accused Darshan Singh was declared proclaimed offender vide order dated 05.09.2002 and trial proceeded against remaining accused Amarjit Kumar, Beant Singh, Sukhdev Singh and Ajaib Singh.

6. In order to prove its case, the prosecution has examined PW1- Dr.V.J.S. Dhillon, Medical Officer, Civil Hospital, Moga, PW2- Harpal Singh, complainant, PW3-Gurjant Singh, PW4-Dial Singh, PW5-Gursewak Singh, Draftsman, PW6-ASI Surjit Singh, PW7-HC Pal Singh, PW8-LC Jaswinder Singh, PW9-Jagir Singh and PW10-ASI Gursewak Singh.

7. Statement of accused under Section 313 Cr.P.C. were recorded in which, all incriminating evidence was put to them, which they denied and pleaded innocence.

8. After considering the evidence on record, learned trial Court acquitted the accused of the offences for which they had been charge-sheeted, vide judgment dated 04.09.2003.

9. Aggrieved of the said decision, present appeal has been filed by the appellant-State challenging acquittal of the accused/ respondents.

10. Learned counsel for the appellant-State has assailed the impugned judgment by vehemently contending that the trial Court has not taken into account the convincing and cogent prosecution evidence available on the file. The trial Court has wrongly held that gun shot from .12 bore gun could not have covered such a long distance of 165 yards between the assailant and the victim. It has been overlooked that as per the evidence on record, one empty cartridge of 315 bore gun was also recovered from the spot and as such possibility cannot be ruled out that the injury on the neck of injured Gurjant Singh might have been caused with fire shot of 315 bore rifle. The medical evidence produced on record has also not been properly appreciated as per which the distance between the assailants and victim had been roughly given and it is not based on adequate specification. The trial Court had also wrongly held that since there is blackening of the wound, the

fire shot must have been fired from a very close distance, which is against the ocular version that fire shots were fired from a distant place. He also urged that if the fire arms weapons had not been got examined from FSL, Punjab, Chandigarh, it was of no significance, when the accused persons had been arrested at the spot and there is eye version account of eye witnesses, who had seen accused persons while firing from their respective guns. Opinion of the Ballistic Expert would in any case be in the nature of an expert opinion and the same is not conclusive. He further argued that if the injured got himself treated from Civil Hospital, Moga and not from the nearby Civil Hospitals at Nihal Singh Wala, it is of no consequence, as conduct of the injured varies from person to person in a particular situation and has prayed that present appeal be allowed, impugned judgment dated 04.09.2003 be set aside and accused be convicted for the offences as charged with and be punished in accordance with law.

11. We have heard learned counsel for the appellant-State and have also perused the record.

12. The issue that arises for determination in the present case is that whether the finding of acquittal recorded by learned trial Court requires any interference by this Court.

13. In the instant case, the alleged occurrence had taken place on 09.06.1997 at about 8.30 AM., whereas the injured Gurjant Singh had arrived at Civil Hospital, Moga at about 5.00 P.M. and he was examined there at 6.30 P.M. As per testimony of PW9 Inspector Jagir Singh, there is Civil Hospital at Nihal Singh Wala which is near to the place of occurrence and at a little distance from over there, there is Civil Hospital at Baghapurana, where adequate medical facilities are available. It has

remained unexplained that why the injured Gurjant Singh, who allegedly suffered gun shot injury, took 10 hours to reach at Civil Hospital, Moga for taking treatment and did not go to the nearby hospitals at Nihal Singh Wala and Baghapurana, where also the adequate medical facilities were available. It also seems to be improbable that when the injured had reached at Civil Hospital at 5.00 P.M. with alleged gun shot injury, he was made to wait for 1 ½ hour and was only examined at 6.30 P.M.

14. Besides that no record of treatment provided to injured Gurjant Singh at Civil Hospital, Moga has been produced. Even no admission record of aforesaid injured has been produced. No bed head ticket and any OPD slip of the said hospital, to show admission and treatment of the injured in the said hospital, had been brought on record. Thus, it creates doubts that why the injured had preferred to go to Civil Hospital, Moga which was at a long distance and even no relevant record regarding admission and treatment of the injured of the said hospital had been produced.

15. There is an other circumstance, which has also adversely effected the case of the prosecution. PW3-Gurjant Singh has stated in his examination-in-chief that he became unconscious and during his cross-examination he categorically stated that he regained consciousness after his admission and treatment at Civil Hospital, Moga. Undertaking Ex.PA of aforesaid hospital has been produced on record which reveals that it has been signed by injured Gurjant Singh himself. Obviously it is quite in contradiction to his testimony that he regained consciousness after his admission and treatment at such hospital. When the undertaking Ex.PA had been signed by PW3-Gurjant Singh himself, it shows that he was in a perfect conscious state of mind when he arrived at the said hospital, which

does not rule out the possibility that the said hospital was specifically chosen by the injured to create fabricated medical evidence as per his own choice.

16. In the present case, the medical evidence is also not corroborative to the ocular version given by the prosecution witnesses. As per medico legal report Ex.PA, there were four small openings in the shirt of injured. PW1-Dr. V.J.S. Dhillon stated that there was only single injury on the left side of the neck of Gurjant Singh and a small pellet was handed over to the police by PW3-Gurjant Singh. Thus, the pellet was not found embedded in the injury suffered by the patient. If only single injury had been caused on the left side of the neck then it is quite improbable that it would cause four small openings in the shirt. If it had pierced through the collar then it would have caused two openings on the collar on each of the turn. As per testimony of the doctor there had been a blackening on the margins of the openings on the collar. PW1 admitted it to be correct during his testimony that blackening on the collar of the shirt of the injured could be if the shot was fired within 2-3 feet. This observation made by the doctor is again in contradiction to the ocular version given by the prosecution witnesses, as per which the fire shots were fired from a distant place and not from a close range of 2-3 feet. Moreover, as per opinion of doctor injury No.1 is simple in nature, which is again highly improbable that a gun shot injury given on the neck from close quarter would be simple in nature.

17. The pellet that was produced in the Court is also not connected with the present occurrence. As per PW8-LC Jaswinder Singh, she accompanied Inspector Jagir Singh to Civil Hospital, Moga and then to Police Station City-II, where MHC Baljit Singh handed over to Inspector

Jagir Singh one glass vial containing shot head of .315 bore which was taken into police possession and was converted into parcel and was sealed with seal 'JSB' of Inspector Jagir Singh. During his testimony one glass vial sealed with white tape was produced, which was identified by the aforesaid witness having being handed over by MHC Baljit Singh to Inspector Jagir Singh. But during his cross-examination PW8 categorically admitted that the said pellet was possibly of .12 bore gun cartridge and it was not in the sealed condition and was only secured by means of white tape. Thus, the possibility of tempering of the same cannot be ruled out.

18. PW9-Jagir Singh is again in contradiction with PW8-LC Jaswinder Singh when he stated that 5-6 pellets had been taken into police possession, while as per PW8 only one single pellet was taken into police possession.

19. The fire arms allegedly used during the occurrence were neither sent to the armourer to ascertain that whether the same were in working condition nor opinion of any expert or armourer has been produced on record in this context. PW9-Inspector Jagir Singh has admitted that none of the recovered weapons were sent to the FSL to seek expert opinion regarding their use, so these weapons cannot be connected with the alleged occurrence in the present case. Even no such evidence has been produced on record that from which fire arm weapon, the gun shot had been fired and which of these weapons had been used. The two used cartridges of 325 bore and .12 bore which were allegedly recovered from the spot were also not sent for testing to ascertain that from which fire arm weapon the same had been fired. Thus, the aforesaid vital evidence has been withheld in the present case.

20. PW2-Harpal Singh complainant the alleged eye witness to the occurrence stated that the fire shots were fired from the chobara. He further stated in his cross-examination that PW3-Gurjant Singh injured was sitting on his left side and both of them were sitting on one seat. Thus, as per his testimony he and injured Gurjant Singh were sitting on the same seat on rear of the driver, which means that they were sitting on the right side of the vehicle. PW2 also stated that he and Gurjant Singh were facing Amarjit Kamar and Darshan Singh. If they were sitting in that position then it is highly improbable that the fire shot had hit Gurjant Singh on left side of the neck. Moreover, about 5-6 persons were sitting on the rear side of the gypsy but surprisingly none of them had received any fire arm injury. It is again in the testimony of the eyewitness that fire shots had been fired from chobara, which was obviously at more height from the road, from where the vehicle was passing. It again seems improbable that from such a height, the fire shot would hit a person facing the assailants, on the left side of neck. In these circumstances, the trial Court has rightly observed that the analysis of the ocular as well as medical evidence on record renders this injury to Gurjant Singh highly improbable.

21. The alleged place of passing of the vehicle at the time of the occurrence, as shown in rough site plan Ex.PL and scaled site plan Ex.PF also differs. In scaled site plan Ex.PF the point 'C' has been shown on the eastern side of the turning, whereas in the rough site plan Ex.PL, the same has been shown on the western side of the turning, as such the correct place of occurrence has not been established.

22. In light of above discussion after analyzing the evidence on record it can safely be concluded that prosecution has failed to prove its

case against the accused beyond reasonable doubt. Evidence on record is indeed insufficient to convict the accused of the offences as charged and they have been rightly acquitted by learned trial Court.

23. It is a settled position that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where impugned findings are perverse, unreasonable and convincing material on record is ignored unjustifiably by the trial Court, which is not there in the present case. Reference in this regard can be made to judgment of Hon'ble Supreme Court in 'Mahamadkhan Nathekhan vs. State of Gujarat' 2014 (14) SCC 589.

24. Learned counsel for the appellant State has not been able to point out any illegality, infirmity or perversity in the impugned decision dated 04.09.2003 calling for any interference.

25. In view of the above, the appeal being bereft of any merit is dismissed and impugned judgment dated 04.09.2003 passed by learned trial Court is upheld.

26. Pending applications, if any, also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

03.11.2025

Komal

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