

CRA-D-293-DB-2004

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(101)

Reserved on 13.01.2025
Date of Pronouncement: 16.01.2025

(1) CRA-D-293-DB-2004 (O & M)

Gurdev Singh and ors.	 Appellants
V/s	
The State of Punjab	...Respondent

(2) CRA-D-730-DBA-2005 (O & M)

Joginder Singh	 Appellant
V/s	
State of Punjab and ors.	...Respondents

CORAM: HON’BLE MR. JUSTICE GURVINDER SINGH GILL
HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sant Pal Singh Sidhu, Advocate
for the appellant(s) in both the appeals.

Mr. Siddharth Attri, AAG, Punjab.

Mr. B.S. Saroha, Advocate,
for the complainant (in CRA-D-293-DB-2004).

JASJIT SINGH BEDI, J.

This order shall dispose of two criminal appeals i.e. **CRA-D-293-DB-2004** preferred by the accused-appellants, namely, Gurdev Singh,

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Jagsir Singh, Kulbir Singh and Joginder Singh against the judgment of conviction and order of sentence dated 26.02.2004 passed by the Additional Sessions Judge, Ferozepur and the other appeal bearing No. **CRA-D-730-DBA-2005** preferred by the complainant-Joginder Singh against the judgment of acquittal dated 26.02.2004 passed by the Additional Sessions Judge, Ferozepur.

2. The FIR in the present case (CRA-D-293-2004) came to be registered on 04.11.1998. The judgment of conviction and order of sentence was passed on 26.02.2004 by the Additional Sessions Judge, Ferozepur. The Appeal dated 25.03.2004 preferred against the aforesaid judgment of conviction and order of sentence has come up for final hearing now i.e. after a period of 26 years from the date of registration of the FIR.

3. For the sake of convenience, the facts being are taken from CRA-D-293-DB-2004.

4. The prosecution story, in brief, is that in the year 1980, Joginder Singh, father of Gurdev Singh accused, was murdered and a criminal case for that murder was registered against the present complainant party. On that account the accused were nourishing a grudge against the complainant party. On 04.11.998 at about 5/5.15 P.M., Swaran Singh complainant PW-7, alongwith his younger brother Sarup Singh PW-4, was making ridges in the fields for sowing the potatoes. At that time, Beant Singh-deceased was coming on the footpath of the canal after grazing the cattle. Suddenly,

Gurdev Singh came out from the house of Jagsir Singh accused holding a



double barrel 12 bore gun in his hand. He raised a *lalkara* that he was to take revenge for the murder of his father and fired a shot from his gun towards Beant Singh which hit him on the front side of his chest as a result of which he fell down. Joginder Singh accused came out of the house while armed with a .315 bore rifle and fired from the same at Beant Singh. Simultaneously, Darbara Singh accused also came out from the house with a .315 bore rifle and fired a shot from the same upon Beant Singh. Jagsir Singh and Kulbir Singh accused also came out of the house while armed with a *Kasia* and *takuwa*, respectively. Jagsir Singh gave a blow with his *Kasia* on the left eyebrow of Beant Singh whereas Kulbir Singh accused gave a blow with his *takuwa* from the blunt side on his forehead. The complainant and Sarup Singh raised an alarm upon which Gurdev Singh, Joginder Singh and Darbara Singh ran away from the spot while firing from their gun/rifles whereas the other two accused advanced towards them. Jagsir Singh gave a blow with his *kasia* from the blunt side of the right shoulder of Sarup Singh. Kulbir Singh hurled a blow with his *takuwa* towards the complainant as a result of which, he received an injury on the index and adjoining fingers. Thereafter, both those accused also ran away from the spot. The complainant and Sarup Singh were removing Beant Singh to Civil Hospital, Ferozepur in the tractor trolley but he succumbed to his injuries outside the hospital. After leaving Sarup Singh by the side of the dead body, the complainant was proceeding to the Police Station when

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him in front of Raja Takies. At that place, he made his statement Ex.P-15 about this occurrence before the SHO, who after making his endorsement upon the same sent it to the police Station on the basis of which a formal F.I.R. Ex.P-27 was recorded against the accused. The SHO accompanied by the other police officials and the complainant came to the Civil Hospital. He prepared the inquest report Ex.P-28 in respect of the dead body of Beant Singh and sent the same for post mortem examination, alongwith his application Ex..P-7/13, under the supervision of Ashok Kumar ASI PW-9 and Mohinder Singh Constable. On 05.11.1998, he went to the place of occurrence and after inspecting the same prepared the rough site plan of the place of occurrence EX.P-29 with correct marginal notes. He collected the blood-stained earth and the ordinary earth from the spot and put the same in two separate tin boxes which were converted into parcels and were sealed by him with his seal 'HS'. The sealed parcels MO-11 and MO-12 were taken into possession vide memo EX.P-17. The autopsy on the dead body was performed by Dr. Sandeep Gupta PW-2, who found ante-mortem injuries on the same. He opined that the cause of death was injures to vital organs brain, heart and lunge, leading to shock and haemorrhage which were sufficient to cause the death in the ordinary course of nature. After post-mortem examination, the wearing apparels found on the dead body of the deceased in a parcel sealed with the seal of 'SKG' and the pellets recovered from the dead body and which were sealed in a parcel were produced by Ashok Kumar A.S.I. before the SHO and those were taken into possession vide



memo EX.P-24. The case property was deposited by the SHO with Amarjit Singh MHC PW-5 in the same condition with seals intact.

5. On 14.11.1998, when the SHO, alongwith Ashok Kumar ASI, other police officials and Sarup Singh was going towards village Moham Bhatti, Gurdev Singh and Jagsir Singh accused were seen coming from the opposite side and on seeing the police gypsy, they tried to turn back but were apprehended on the ground of suspicion. On interrogation by the SHO, Gurdev Singh made a disclosure statement Ex.P-8 that he had kept concealed one 12 bore double barrel gun in the heap of chaff lying in his field about which he had the knowledge and could get the same recovered. In pursuance of that disclosure statement, this accused got recovered a double barrel 12 bore gun MO-4 which was in broken condition. The same was converted into a parcel and was sealed by the SHO with his seal 'HS'. The sealed parcel was taken into possession vide memo Ex.P-9. The SHO prepared the rough site plan of the place of recovery ExP-30 with correct marginal notes. When Jagsir Singh accused was interrogated, he made a disclosure statement Ex.P-10 that he had kept concealed a *kasia* in the heap of "parali" by the side of his tubewell about which he had the knowledge and could get the same recovered. In pursuance of that disclosure statement, Jagsir Singh accused got recovered a blood stained *kasia* MO-5 from the said place. The SHO prepared the rough sketch Ex.P-11 thereof and converted that into a parcel which was sealed by him with his seal 'HS'. The sealed parcel was taken into possession vide memo EX.P-12. The SHO

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prepared a rough site plan of the place of recovery Ex.P-31 with correct marginal notes and on coming back to the police station deposited the case property with the MHC. On 15.11.1998, Gurdev Singh S.I. PW-10 alongwith Niranjan Singh A.S.I. PW-8 and other police officials conducted a raid at the house of the accused in village Mohkam Bhatti. Kulbir Singh-accused was found present and was arrested in this case. When he was interrogated by the S.I., he made a disclosure statement Ex.P-18 that he had kept concealed a *takuwa* in the heap of chaff lying in his field by the side of the tubewell about which he only had the knowledge and could get the same recovered from the place. In pursuance of that disclosure statement, he got recovered a *takuwa* MO-11 from the said place. The S.I. prepared the rough sketch EX.P-20 thereof and took the same into possession vide memo Ex.P-19 after the same was converted into a parcel and was sealed by him with his seal 'GS'. He prepared the rough site plan EX.P-25 of the place of recovery with correct marginal notes and on coming back to the police station deposited the sealed parcel with the MHC. On 16.11.1998, Darbara Singh accused was produced before the SHO by Gurbachan Singh Ex-Sarpanch and was arrested in this case. On 19.11.1998, the investigation of this case was entrusted to Niranjan Singh ASI PW-8. On that day, he along with Ashok Kumar ASI and Tara Singh H.C. conducted a raid at the house of Joginder Singh accused. That accused was found present in his house and was taken into custody. When he was interrogated by the ASI, he made a disclosure statement Ex.P-20 that he had kept concealed one .315 rifle in his shop



situated inside Bagdadi Gate, Ferozepur about which he had only the knowledge and could get the same recovered from that place. In pursuance of that statement, he got recovered one .315 rifle MO-4, five live cartridges of .315 MO-6 to MO-10 and his arms licence MO-3 from the said place. The ASI prepared the parcel of that rifle and sealed the same with his seal 'NS'. That sealed parcel, cartridges and the licence were taken into possession vide memo Ex.P-22. The ASI prepared the rough site plan of the place of recovery EX.P-23 and on coming back to the police station deposited all these articles with Amarjit Singh MHC. On 19.11.1998, Shri D.R. Arora, Addl.CJM, Ferozepur handed over to Buta Singh, posted as Constable-cum-Naib Court, one sealed parcel containing the rifle and arms licence of Darbara Singh. On 20.11.1998, Buta Singh Naib Court of the court of Addl. C.J.M., Ferozepur produced that sealed parcel, and arms licence MO-12 of Darbara Singh alongwith letter No. 2082 before Hardev Singh Inspector which were taken into possession vide memo Ex. P-32. In the course of investigation, statements of the witnesses were recorded and after the completion thereof the challan was put in before the Addl. C.J.M., Ferozepur who committed the same to the Court of Sessions.

6. To bring home the guilt of the accused, the prosecution examined Dr. Parvesh Bhagat PW-1, Dr, Sandeep Gupta PW-2, Avtar Singh Arms Clerk PW-3, Sarup Singh PW-4, Amarjit Singh ASI, PW-5, Gurnam Singh Constable PW-6, Swaran Singh PW-7, Niranjana Singh ASI PW-8, Ashok Kumar ASI PW-9, Gurdev Singh Inspector PW-10, Tara Singh H.C.



PW-11, Hardev Singh D.S.P. PW-12, Buta Singh PW-13 and tendered in evidence report of the Forensic Science Laboratory Ex.P-33.

7. After the closure of the prosecution evidence, the accused were examined and their statements were recorded u/s 313 Cr.P.C. All the incriminating circumstances appearing against them in the prosecution evidence were put to them in order to enable them to explain the same. They denied all those circumstances and pleaded their innocence. It was stated by Jagsir Singh accused that on 04.11.1998 at about 5.30/5.45 P.M., he himself and Gurdev Singh were coming from the fields and when they were at a distance of about four kanals from his house, Swaran Singh armed with a gun, Sarup Singh armed with a *kirpan*, Sukhdev Singh armed with an iron pipe, Anup Singh armed with a *dang* and Beant Singh armed with a *kirpan* chased them to cause injuries. They entered his house where his brother-in-law Joginder Singh was already present in the courtyard, who had come to see his father Gopal Singh, who was a patient of paralysis. At that time, his wife Jasbir Kaur was also present in the house. Swaran Singh and others entered the courtyard and started causing injuries to Joginder Singh and when his wife Jasbir Kaur tried to save him, she was also caused injuries. Thereafter, he took out the gun from his room and fired a shot in self-defence to save himself and others and that shot hit Beant Singh. Swaran Singh and others moved towards him to cause injuries and in order to save himself, he raised his gun when a blow with an iron pipe was given by Sukhdev Singh which hit the gun and the same broke down. The



complainant party involved them in this false case in connivance with the police. Similar stands were taken by Gurdev Singh and Joginder Singh accused. It was stated by Kulbir Singh that he has been falsely involved in this case being the brother of Jagsir Singh. It was stated by Darbara Singh that he was a witness in the earlier murder case against the complainant party i.e. Gajjan Singh, Swaran Singh, Sarup Singh, Malook Singh and Anup Singh who were convicted in that case. Gajjan Singh father of Swaran Singh and Sarup Singh was the Lambardar of the village. He by initiating the proceedings before the authorities got him removed from that office and become Lambardar. He was a staunch Congress worker and was a member of the Block Samiti Ghall Khurd. The complainant party were the members of the Akali party and at the time of occurrence, that party was in power in Punjab Government. He had been falsely implicated in this case being a Congress worker at the instance of one Akali Minister. Apprehending that the police under the influence of local Akali Minister would give rifle and create evidence by using the empty bullets and lead pieces, he had directed his son Nishan Singh to produce his .315 rifle and the licence before the Court and those were produced by his son before Shri D.R.Arora, Addl.C.J.M, Ferozepur with the prayer that the same be sealed and handed over alongwith the arms licence to the police of Police Station Sadar Ferozepur.

8. The accused were called upon to enter on their defence. They examined Gurdial Singh DW-1, Balbir Singh DW-2, Ranjit Singh DW-3,



Buta Singh-Constable DW-4, Harkirat Singh-Superintendent DW-5, Dr. Sukhchain Singh DW-6, Hardial Singh DW-7, Jugraj Singh-S.I. DW-8 and Dr.Jaideep Rayapudi DW-9 in their deefence evidence. Darbara Singh accused tendered in his defence evidence certified copy of the statement of Darbara Singh dated 16.01.1991 Ex. D-7, judgment dated 21.02.1981 EX. D-8 and order dated 13.10.1995 Ex.D-9.

9. Based on the evidence led, the accused, namely, Gurdev Singh, Darbara Singh, Joginder Singh, Jagsir Singh and Kulbir Singh, came to be convicted and sentenced by the Court of the Additional Sessions Judge, Ferozepur vide judgment dated 26.02.2004 as under:-

Name of the accused	Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
Gurdev Singh	302 IPC	Life Imprisonment	Rs.10,000/-	RI 02 years
	323/149 IPC	RI 06 months	--	--
	148 IPC	RI 02 years	--	--
	27 of the Arms Act	RI 03 years	Rs.2000/-	RI 06 months
Darbara Singh	302/149 IPC	Life Imprisonment	Rs.5,000/-	RI 02 years
	323/149 IPC	RI 06 months	--	--
	148 IPC	RI 02 years	--	--
Joginder Singh	302/149 IPC	Life Imprisonment	Rs.5,000/-	RI 02 years
	323/149 IPC	RI 06 months	--	--
	148 IPC	RI 02 years	--	--
Jagsir Singh	302/149 IPC	Life Imprisonment	Rs.5,000/-	RI 02 years
	323 IPC	RI 06 months	--	--
	148 IPC	RI 02 years	--	--
	30 Arms Act	RI 03 months	--	--
Kulbir Singh	302/149 IPC	Life Imprisonment	Rs.5,000/-	RI 02 years



	323 IPC	RI 06 months	--	--
	148 IPC	RI 02 years	--	--

10. The accused-Darbara Singh preferred an appeal bearing No.CRA-D-273-DB-2004 which came to be admitted on 18.03.2004. As he passed away on 10.05.2023, his appeal stood abated vide order dated 12.12.2024.

11. Four accused-appellants No.1 to 4, namely, Gurdev Singh, Jagsir Singh, Kulbir Singh and Joginder Singh filed a Criminal Appeal bearing No.CRA-D-293-DB-2004. During the pendency of the said appeal, two of the accused-appellants No.2 and 3, namely, Jagsir Singh and Kulbir Singh have expired and the appeal stands abated qua the said accused-appellants No.2 and 3.

12. Meanwhile, pursuant to the registration of the FIR, a cross-case bearing Criminal Complaint bearing Sessions Trial No.14 of 2004 under Sections 452, 307, 326, 325, 324, 148, 149, 506 and 34 IPC and Sections 25 & 27 of the Arms Act, 1959 had been instituted at the instance of Joginder Singh. Four accused, namely, Swaran Singh, Saroop Singh @ Sarup Singh, Sukhdev Singh and Anoop Singh faced trial and came to be acquitted vide judgment dated 26.02.2004 passed by the Additional Sessions Judge, Ferozepur.

13. A Criminal Appeal bearing No.CRA-D-730-DBA-2005 came to be filed before this Court challenging the judgment of acquittal dated 26.02.2004.



14. The aforementioned judgments of conviction as well as judgment of acquittal dated 26.02.2004 passed by the Additional Sessions Judge, Ferozepur are under challenge before this Court and both the above appeals i.e. CRA-D-293-DB-2004 and CRA-D-730-DBA-2005 came up for hearing today.

15. The learned counsel for the appellants in both the appeals i.e. CRA-D-293-DB-2004 and CRA-D-730-DBA-2005 contends that as per the case of the prosecution, a gun-shot injury had been attributed to Gurdev Singh alone. Qua Joginder Singh and Darbara Singh (deceased), the allegations are only of having shot at the deceased-Beant Singh without causing any corresponding injury. Even as per the post-mortem of the deceased-Beant Singh, there is only one gun-shot injury suffered by him. The PMR would show multiple lacerated punctured wounds alongwith pellets embedded in the body of Gurdev Singh which is a DBBL shot-gun. The other two injuries on the person of the deceased had been attributed to Jagsir Singh and Kulbir Singh, both of whom have expired. The allegations of Joginder Singh also having fired at the deceased is not borne out from the record inasmuch as no corresponding empty cartridge was recovered from the spot. PW-8 ASI Niranjan Singh admits that no recovery of any cartridge was effected from the place of occurrence purportedly fired from the weapon used by Joginder Singh. PW-12 Hardev Singh had also admitted that the weapon recovered from Joginder Singh provided for automatic ejection of a spent cartridge after firing. If the weapon had been fired, one empty



cartridge would have been ejected at the spot but none was found which falsifies the prosecution version of Joginder Singh having fired at the deceased. He further contends that as per PW-8/Niranjan Singh and PW-12/Hardev Singh, the rifle was not sent for forensic analysis. He, thus, contends that the liability, if any, lay with Gurdev Singh alone.

16. He further submits that the prosecution case is otherwise completely doubtful. Joginder Singh (appellant in CRA-D-730-DBA-2005) had filed a criminal complaint under Sections 452, 307, 326, 325, 324, 148, 149, 506 and 34 IPC and Sections 25 & 27 of the Arms Act, 1959 against Swaran Singh, Saroop Singh @ Sarup Singh, Sukhdev Singh and Anoop Singh with the allegations that it was the present complainant-party which was the aggressor side. As per DW-9/Dr. Jaideep Rayapudi, Joginder Singh himself had received two grievous injuries and Jasbir Kaur wife of Jagsir Singh had received a grievous injury. The said injuries had not been explained by the complainant-party and therefore, the defence version emanating from the criminal complaint ought to be believed and the conviction of the accused-appellants No.1 and 4, (in CRA-D-293-DB-2004) namely, Gurdev Singh and Joginder Singh was liable to be set aside and the accused-respondents No.2 to 4 (in CRA-D-730-DBA-2005), namely, Swaran Singh, Saroop Singh and Sukhdev Singh ought to be convicted for having committed the offence in question.

17. The learned counsel for the State alongwith the learned counsel for the complainant (in CRA-293-DB-2004), on the other hand, contend that



the case of the prosecution stands established beyond reasonable doubt. Gurdev Singh used the double barrel weapon belonging to Jagsir Singh and fired at the chest of the deceased-Beant Singh which injury stands corroborated from the post-mortem report. Similarly, Jagsir Singh and Kulbir Singh also gave injuries on the person of the deceased which injuries also find mention in the PMR. Joginder Singh and Darbara Singh (deceased) also fired at the deceased-Beant Singh and weapons were recovered at their instance. Their liability, therefore, stands established with the aid of Section 149 IPC. They contend that the cross-version did not find favour with the Trial Court leading to the acquittal of Swaran Singh son of Gajjan Singh, Saroop Singh @ Sarup Singh son of Gajjan Singh, Sukhdev Singh son of Swaran Singh and Anoop Singh son of Gajjan Singh in a complaint case registered at the instance of Joginder Singh when the Court came to a categorical finding that the occurrence had taken place in the street and not inside the house of Jagsir Singh as was sought to be canvassed by Joginder Singh-complainant in the cross-case. They, therefore, contend that both the appeals were liable to be dismissed.

18. We have heard the learned counsel for the parties.

19. Before proceeding further, it would be relevant to examine the injuries on the person of the deceased-Beant Singh as found during the course of his post-mortem examination and the same are as under:-

1. Contusion 4cm x 3cm on the forehead in the midline just close to anterior hairline. On dissection underlying tissue was congested. On further dissection there was fracture of right



fronto parietal bone. On further exploration there was congestion and laceration of meninges and underlying brain matter.

2. Incised wound 4cm x 1cm just below the left eye brow. On dissection there was congestion of surrounding tissue and underlying orbital bone was also cut. on further exploration, there was congestion and laceration of maninges and brain matter.

3. Multiple Small lacerated punctured wounds with inverted margins and pariferal blackening on left side of front of chest, left shoulder and left upper arm. On dissection, underlying tissue was congested and at some place pellets were present.

There was fracture of fifth left rib. On exploration, multiple holes were present in the left lung which was congested and having pellets. Some of wounds are through and through and blood was present in left plueral cavity and two pellets found on posterior wall of left pleural cavity. There were holes in anterior and posterior wall of heart. One pellet found in left ventricle of heart. Left biceps muscle of arm was congested and pellets were impected in it.

20. A perusal of the injuries No.1 and 2 would show that they have been caused by weapons wielded by Jagsir Singh and Kulbir Singh (accused-appellants No.2 and 3 respectively), both of whom have expired.

21. As regards injury No.3, apparently, the same is a gun-shot injury caused by pellets of a cartridge fired from a DBBL gun. The said injury has been attributed to Gurdev Singh (accused-appellant No.1) and none else. Joginder Singh (accused-appellant No.4) and Darbara Singh



(deceased) are stated to have only fired at the deceased-Beant Singh without causing any corresponding injury. As per PW-8/ASI Nirranjan Singh and PW-12/Hardev Singh, though, the rifles were to automatically eject a spent cartridge after firing, no empty cartridge was found at the spot which would mean that the allegations of firing at the instance of these two accused does not appear to be correct. Further, the weapons of offence were not sent for forensic analysis to examine whether they were in a working condition or not. In this situation, the false implication of Joginder Singh (accused-appellant No.4) and Darbara Singh (deceased) cannot be ruled out.

22. As regards the defence version emanating from the complaint instituted by Joginder Singh under Sections 452, 307, 326, 325, 324, 148, 149, 506 and 34 IPC and Sections 25 & 27 of the Arms Act, 1959 where the case of the complainant is that the occurrence had taken place inside the house of Jagsir Singh, the said version had rightly been disbelieved inasmuch as from the evidence produced on record, it has been established beyond doubt that the occurrence had taken place in the street and not inside the house of Jagsir Singh. PW-10/SI Gurdev Singh has categorically admitted in his cross-examination that the dead body was lying in the brick-lined street. Therefore, the defence version cannot be believed.

23. In view of the aforementioned discussion, in criminal appeal bearing No.**CRA-D-293-DB-2004** Joginder Singh (accused-appellant No.4) son of Jagir Singh is given the benefit of doubt and is, thus, acquitted of the

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charges framed against him and the appeal qua Gurdev Singh (accused-appellant No.1) son of Joginder Singh, however, stands dismissed.

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In view of the aforementioned discussion, we find no merit in the present appeal and the same stands dismissed.

(GURVINDER SINGH GILL)
JUDGE

16.01.2025
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(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No