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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRA-D-31-DB-2004
Date of Decision: 29.04.2025****JOGINDER SINGH****... Appellant****Versus****STATE OF PUNJAB****...Respondent****CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI****Present:** Ms. Sheenu Sura, Amicus Curiae
for the appellant.

Mr. Siddhart Attri, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 23.10.2003 passed by the Sessions Judge, Gurdaspur.

2. The FIR was registered on 27.10.2000, the judgment of conviction and order of sentence passed by the Session Judge, Gurdaspur is dated 23.10.2023, the appeal was filed on 03.01.2004 and the matter is being taken up for hearing now i.e. after a period of more than 24 years from the date of registration of the FIR.

3. The prosecution allegations as disclosed by PW-6 Ajit Pal Singh are that he and his brother Harinder Singh were employed as constables in the Police department. On 26.10.2000 he and his brother Harinder Singh had come on leave to their village Gill Manj on Diwali occasion. On the night of

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26.10.2000 at about 8:30 p.m. he, his brother Harinder Singh, mother Harbhajan Kaur, his brother's wife Manjit Kaur and his father Sukhjit Singh were lighting the lamps on the roof. In the meanwhile his neighbours Joginder Singh, Kulwinder Singh, Sukhram Singh and Hardip Singh sons of Mewa Singh were standing in the courtyard of their house in a drunken condition. They started hurling abuses at them and all of them came up stairs on the roof and started pelting stones towards them. They (complainant side) too threw stones towards them (accused side) in defence. Kulwinder Singh threw a stone on the temple of his brother Harinder Singh whereas Sukhram Singh struck Harinder Singh with a stone. His father Sukhjit Singh also threw stones in self defence which hit on the forehead of Hardip Singh. Thereupon, Hardip Singh exhorted Joginder Singh to shoot them dead with the gun and that they should not escape. Thereafter, Joginder Singh fired a shot with his single barrel 12 bore gun, pellets of which struck his brother Harinder Singh on his back and his father Sukhjit Singh sustained firearm injuries on his chest and stomach. His father being of old age fell down. They raised a hue and cry after which all the assailants fled away from the spot after abusing them. His brother Harinder Singh went away for his medical treatment whereas he started making arrangements for a conveyance for the medical treatment of his father in the hospital. However, he succumbed to the injuries at the spot at about 01:00 a.m. (mid night). He, his mother Harbhajan Kaur, his brother's wife Manjit Kaur and Harinder Singh witnessed this occurrence in the light of an electric bulb. The motive behind the alleged occurrence was that they had been tethering cattle on the vacant panchayat land which was

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objected to by the accused for the last about one and half years on account of which there used to be verbal altercation and proceedings U/s 107/151 Cr.P.C. between accused Sukhram Singh and his father Sukhjit Singh had also been initiated. He along with his brother and uncle went to lodge the report vide statement Ex.PK recorded by SI Skattar Singh on 27.10.2000.

4. On 27.10.2000 PW-12 SI Skattar Singh took up the investigation and recorded the statement Ex.PK of Ajit Pal Singh which was duly signed by him in token of its correctness after it was read over to him. He made his endorsement Ex.PL/1 on it, on the basis of which the special report was sent through Constable Joginder Singh. Thereafter, he along with other police officials went to the spot at village Gill Manj and prepared the inquest report Ex.PJ on the dead body of Sukhjit Singh in the presence of Charan Singh and Jagdish Pal Singh. He sent the dead body for postmortem examination with police request Ex.PH.

5. On 27.10.2000 PW-4 Dr. Harjinder Pal Singh along with members of the Board of Doctors conducted the post-mortem examination on the dead body of Sukhjit Singh aged 60 years vide post-mortem report Ex.PG and found the following injuries:-

1. .5X.5cm lacerated wound, inverted margins, burning of margin present on anterior aspect of left shoulder.
2. .5x.5cm lacerated wound with inverted and burnt margins, 4 cms medial and 1cm above the left nipple.
3. .6x.5cm lacerated wound were present in third inter costal space left side, 3 cms lateral to mid line.

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4. .6x.5cm lacerated wound, 15cms lateral to mid line and 22 cms below the left nipple on abdomen. Margin burnt inverted.
5. Lacerated wound .5x.5cm, 4 cms above the left elbow joint on on posterio lateral aspect with margin burnt and inverted.
6. Lacerated wound .5x.5cm below injury no. 5, similar nature on the lateral aspect of left forearm.
7. .5x.5cm lacerated wound burn margin inverted on left wrist joint and medial side.
8. An abrasion 2x1mm on the left iliac region .6cm inside the superior iliac spine.

In the medical opinion of the Doctors the cause of death was due to injury to vital organs i.e. heart and lung left side which was sufficient to cause death in the ordinary course of nature. All the injuries were ante mortem in nature. Probable time that had elapsed between injuries and death was not mentioned and between death and post-mortem was within 12 to 24 hours. Possibility of injuries other than firearm injuries could be possibly caused with brick bats. There were only firearm injuries on the body of the deceased. Further, two pellets were removed from the body.

6. The Investigating Officer SI Skattar Singh took into possession stones lying at the spot and pieces of glass after making them into parcel vide memo Ex.PP attested by ASI Joginder Singh and Harbhajan Singh. He also prepared the rough site plan Ex.PQ with correct marginal notes. He then took into possession the MLR of Harinder Singh from MHC Iqbal Singh. He also produced before him one undershirt Ex.P.1, pant Ex.P.2, underwear Ex.P.3

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and shirt Ex.P.4. These clothes were having marks of bullets. He took the same into possession after making a parcel vide memo Ex.PR attested by MHC Iqbal Singh and ASI Joginder Singh. A second parcel containing pieces of stones Ex.P.5 and small pieces of broken glass Ex.P.6 were also taken into possession. He also recorded the statement of injured Harinder Singh. HC Vijay Kumar produced before him clothes of the deceased i.e. shirt Ex.P.7, pajama Ex.P.8, under shirt Ex.P.9 and underwear Ex.P.10 which were all bloodstained and having spots of pellets with the receipt of the dead body. One parcel containing two pellets of .12 bore gun were sealed in a parcel with seal impression 'VS' which were taken into possession vide memo Ex.PS attested by witnesses.

7. On 26.10.2000 PW-2 Dr. Sudhir Kumar conducted the medical examination of Harinder Singh vide MLR Ex.PB and found the following injuries on his person:-

1. A lacerated wound 2x0.5 cm on right side and at its mid level of the nose. The margins were inverted and black.
2. A lacerated wound 2.5x0.5 cm on the right side of the face, just below the right eye. The margins were inverted and black.
3. A lacerated wound 2.5x0.5cm on the right side of the head, 4 cms above the right pinna. The margins were inverted and black.
4. A lacerated wound of 0.5cm diameter on the back and upper half of right forearm. The margins were inverted and black.
5. A lacerated wound of 0.5 cm diameter on the mid line and mid of back of chest. The margins were inverted and black.



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6. A lacerated wound of 0.5 cm diameter on the left side of back of chest, 6 cms above the outer side from injury no. 5. The margins were inverted and black.

7. A lacerated wound of 0.5cm diameter on the back and right side of chest, 11 cms from injury no. 5. The margins were inverted and black.

8. A lacerated wound 0.5cm diameter on the back and right side of the chest, 12 cms from injury no. 5. The margins were inverted and black.

9. A lacerated wound 0.5cm diameter on right side of the chest, 12 cms from injury no. 8. This margins were inverted and black.

10. A lacerated wound of 0.5 cm diameter on the right side and back of the chest, 8 cms from injury no. 8. The margins were inverted and black.

11. A lacerated wound of 0.5 cm diameter on the back and left side of the chest, 14 cms below the outer side of injury no. 5, margins were inverted and black.

12. A lacerated wound 0.5 cm diameter, 13 cms below injury no. 11 on the back. The margins were inverted and black.

13. A lacerated wound 0.5cm diameter on the back and mid of left buttock. The margins were inverted and black.

14. A lacerated wound 0.5 cm diameter on the back and outer side side of left buttock. The margins were inverted and black.



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15. A lacerated wound 0.5 cm diameter on the back of the head.

The margins were inverted and black.

16. A contusion of 2.0x1.5 cm on the left side of the nose.

17. A contusion 2x2cms on the left side of the head. Just above the left pinna.

All the injuries were kept for x-ray examination. Injuries no. 16 and 17 were opined to have been caused by a blunt weapon and the rest of the injuries were opined to have been caused by a firearm. After getting the report of the radiologist, all the injuries were declared simple but the firearm injuries were declared to be dangerous to life. Four firearm pellets were sent to the Police Station on 08.11.2000 after receiving the same from the Surgical Specialist.

8. A single barrel gun of .12 bore Ex.P.13 was taken into possession from Joginder Singh vide recovery memo Ex.PL attested by ASI Joginder Singh and Ajit Pal Singh. He also prepared the rough sketch of the gun Ex.PL/1 and also prepared the site plan Ex.PL/2 of the place of recovery of the gun. On 03.11.2000 accused Kulwinder Singh was arrested. After recording statements of PWs and on completion of the investigation, the accused were challaned.

9. On committal a prima facie case under Sections 302, 307, 323, 34 IPC was found to have been made out against the accused. Charges were framed accordingly to which they pleaded not guilty and claimed trial.

10. The prosecution examined PW-1 Janak Singh Dhanjal Draftsman, PW-2 Dr. Sudhir Kumar, PW-3 Balbir Singh Armourer, PW-4 Dr.

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Harjinder Pal Singh, PW-5 Mulakh Raj Licence Clerk, PW-6 Ajit Pal Singh complainant, PW-7 Dr. Iqbal Singh, PW-8 Harinder Singh, an injured eye witness, PW-9 Joginder Singh Constable No. 1733, PW-10 Iqbal Singh HC No.380, PW-11 Malkiat Singh HC No. 599/ASR, PW-12 Investigating Officer SI Skattar Sigh, PW-13 Vijay Kumar HC No. 398, PW-14 Sarabjit Singh HC No. 271, PW-15 Ram Chander HC No. 359, PW-16 Baljinder Singh HC No. 125. Thereafter the incriminating circumstances appearing in the prosecution evidence were put to the accused in their statements under Section 313 Cr.IP.C. in which they denied the prosecution allegations and pleaded false implication. They also examined DW-1 Sucha Singh, BDPO, DW-2 Hardev Singh, Panchayat Secretary, DW-3 Kultar Singh Sarpanch in defence.

11. Based on the evidence led, while accused Hardeep Singh was acquitted the other accused came to be convicted and sentenced by the Court of Sessions Judge, Gurdaspur vide judgment and order of sentence dated 23.10.2003 as under:-

Convicts	Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
Joginder Singh	302 IPC	Imprisonment for life	Rs.2000/-	RI for 01 year
	307 IPC	RI for 06 years	Rs.1000/-	RI for 01 year
Kulwinder Singh	323 IPC	RI for 06 months	Rs.1000/-	RI for 01 month
Sukhram Singh	323 IPC	RI for 06 months	Rs.1000/-	RI for 01 month



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12. The instant appeal has been filed by accused/appellant-Joginder Singh challenging his conviction.

13. The learned Amicus Curiae for the accused/appellant contends that there is a considerable delay in the registration of the FIR. The occurrence took place at 8:30 p.m on 26.10.2000. The statement leading to the registration of the FIR was recorded on the night intervening 27.10.2000 at 02.00 AM. However, the Special Report reached the Illaqa Magistrate at 05.00 AM. This delay is fatal to the prosecution case. No independent eye-witness was examined as a prosecution witness and the conviction has been based only on the statement of the complainant-Ajit Pal Singh (PW6) and his brother Harinder Singh (PW-8). No ballistic report is available to substantiate the prosecution allegations that the weapon of offence recovered from Joginder Singh was used in the occurrence. Reliance is placed on the judgments of the Hon'ble Supreme Court in **Pritinder Singh @ Lovely Versus The State of Punjab, 2023 LiveLaw (SC) 516** and **Ram Singh Versus The State of U.P., Criminal Appeal No.206 of 2024**. She, thus, contends that the impugned judgment is liable to be set aside and the appellant be acquitted of the charges framed against him.

14. The learned counsel for the State, on the other hand, contends that there was no delay in the registration of the FIR. The complainant is the son of the deceased and a most natural eye-witness. The other eye-witness injured Harinder Singh (PW8) is another son of the deceased. The question of these two witnesses falsely implicating the accused and letting go of the actual assailant does not arise. The medical evidence is totally in consonance

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with the ocular account. As regards the ballistic report, he contends that the statement of PW3-Balbir Singh Armourer was recorded as per which the weapon in question was in a workable condition and fit for firing a shot. Even otherwise, in a case based on eye-witnesses the report of the ballistic expert would only be corroborative in nature unless the deposition of the eye-witnesses does not inspire confidence. In the instant case, the witnesses are completely believable. Therefore he, contends that the present appeal was liable to be dismissed.

15. We have heard the learned counsel for the parties and gone through the record.

16. As regards the purportedly delay in lodging the FIR Ex.PK dated 27.10.2000 at 2:00 a.m., undoubtedly, the occurrence had taken place on the night of 26.10.2000 at 8:30 p.m. As per PW-6 Ajit Pal Singh, he had gone to call a doctor from village Chhina whereas Harinder Singh had gone to Civil Hospital immediately after the occurrence but he had not asked his brother to inform the police. He admits that he along with his maternal uncle from village Kala Bala had gone to Kahnuwan to lodge the report with SHO, PS Kahnuwan and the police visited the spot and stayed there for about 3-4 hours. PW-8 Harinder Singh injured also admits that after sustaining injuries he went to Civil Hospital, Kahnuwan and then to Civil Hospital, Gurdaspur. He admits that PS Kahnuwan is at a distance of half kilometer from Civil Hospital, Kahnuwan but he had not gone to Police Station nor had he informed the police officials at the police Naka at Sathiali bridge. He admitted that he had not informed the police officials even at Gurdaspur and

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his statement was recorded by the police in Civil Hospital at about 1/2 a.m. on 27.10.2000. It is, therefore, evident from the testimonies of these two witnesses that some time was consumed by the complainant in lodging the report. Therefore, the testimony of their two most relevant witnesses is required to be examined with care and caution along with the evidence of the other PWs.

17. Coming to the evidence of these two witnesses namely PW-6 Ajit Pal Singh and PW-8 Harinder Singh, it is not disputed that accused Joginder Singh, Kulwinder Singh, Sukhram Singh and Hardip Singh were real brothers and on the complainant side deceased Sukhjit Singh was the father of PW-6 Ajit Pal Singh and PW-8 Harinder Singh. Accused Hardip Singh, complainant Ajit Pal Singh and injured Harinder Singh were posted as constables in the Police Department at their respective stations. PW-11 Malkiat Singh Head Constable proved from the record vide entry no. 411 dated 26.10.2000 Ex. PO that Harinder Singh absented from duty in Police Lines, Amritsar whereas PW-14 HC Sarabjit Singh further proves from the official record of Service training at Kapurthala that Ajit Pal Singh was on a two days casual leave for 25.10.2000 and 26.10.2000 and came back on duty on 31.10.2000 marking his absence vide Ex.PW.14/C. PW-16 C. Baljinder Singh further proves the absence of accused Hardip Singh vide DDR No. 7 dated 26.10.2000 vide Ex.PW. 16/A at 4 p.m. while posted in 2nd Commando Bn. Bahadurgarh. Therefore, the presence of injured Harinder Singh PW-8, Ajit Pal Singh PW-6 and presence of accused Hardip Singh at the time of alleged occurrence cannot be ruled out. The medical evidence of PW-2 Dr.

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Sudhir Kumar proves as many as 15 wounds with a firearm on the person of Harinder Singh vide MLR Ex. PB dated 26.10.2000 at 10.45 p.m. Besides these there is a contusion on the nose and also on the left pinna. The consistent evidence of PW-6 Ajit Pal Singh and PW-8 Harinder Singh further proves that Kulwinder Singh also caused injury on the temple side of Harinder Singh with a brick bat whereas Sukhram Singh caused an injury on the nose of Harinder Singh and these injuries were quite consistent with the medical evidence. Even otherwise the presence of the accused on the Diwali festival in their house was obvious and further injuries on the person of Hardip Singh proved by PW-7 Dr. Iqbal Singh established his presence. However, no injury had been attributed to accused Hardip Singh because of which he was rightly acquitted. Accused Kulwinder Singh and Sukhram Singh were convicted for lesser offences.

18. PW-4 Dr. Harjinder Pal Singh has clearly deposed that a pellet was removed from the chamber of the left ventricle of Sukhjot Singh and another pellet was removed from another peritoneal cavity of abdomen, just below the peritoneum corresponding to injury no.4. He opined that even if the firearm injury is caused at a distance of more than 50 ft. it will still cause burning but admitted that he was not a ballistic expert so he was unable to say if the burning or blackening could occur within a distance of 2/3 feet. Likewise PW-2 Dr. Sudhir Kumar also opined that firearm injuries numbering 15 on the person of Harinder Singh were dangerous to life for the patient and the four firearm pellets were sent to Police Station after receipt from the Surgical Specialist, Civil Hospital, Gurdaspur. He also observed

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blackening around the margin of the wound in all the firearm injuries but deposed that he was not certain if blackening could only be possible if the firearm injury was given from a distance of 2/3 feet only. It may be noted here that doctors cannot give an opinion of a ballistic expert. However, the fact remains that all 15 lacerated wounds with inverted margins on the person of Harinder Singh and 7 injuries with inverted margins to deceased Sukhjit Singh were caused with pellets as a result of the gunshot fired by Joginder Singh accused and the trustworthy, reliable and credible evidence of Harinder Singh and eye witness Ajit Pal Singh cannot be doubted. It further does not stand to reason that the victim would substitute the real assailant with an innocent person for such a heinous crime. Thus, the testimonies of these two witnesses cannot be disbelieved and is in consonance with the medical evidence.

19. The Investigating Officer PW-12 SI Skattar Singh had also taken into possession pellets Ex.P.11 and P.12 of the .12 bore gun and clothes of the injured Harinder Singh Ex.P.1 to P.4 having marks of bullets. He had also recovered a single barrel gun of 12 bore Ex.P.13 from the possession of accused Joginder Singh vide recovery memo Ex.PL and further received the parcel containing four pellets recovered from Harinder Singh with report Ex.PU. PW-3 Balbir Singh armourer having experience of testing firearms for 17 years examined the single barrel .12 bore gun checked its action hammer and trigger and found the same in working condition. Therefore, his act of not firing a shot from the said gun or the default of the investigating agency to send the pellets and the gun to the ballistic expert does not

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adversely affect the merits of the prosecution case. We may also add that in the case of an eye version account the report of a ballistic expert would be primarily corroborative in nature. PW-5 Mulakh Raj license Clerk proved that licence No. L-18/Ladakh/81 in respect of 12 bore single barrel rifle no. 4931 was issued in the name of Joginder Singh son of Mewa Singh by Baljit Singh Sandhu G.A to D.C. Gurdaspur. Therefore, the description of the occurrence as given by PW-6 Ajit Pal Singh and PW-8 Harinder Singh about receiving gun shot injuries by Sukhjit Singh and also by PW8-Harinder Singh himself cannot be disbelieved and the evidence of these PWs is clear, cogent and consistent as to the manner in which the occurrence took place and the role played by each accused.

20. In **Pritinder Singh @ Lovely** (supra) the Hon'ble Supreme Court in a case of circumstantial evidence held that where there was a serious doubt with regard to the credibility of the witnesses the failure to examine a ballistic expert would be a defect in the prosecution case. In the instant case, as has been already mentioned above, it is an eye version account which is clear and consistent and therefore, the absence of a ballistic report would not create a doubt in the prosecution case.

21. In **Ram Singh** (supra) the Hon'ble Supreme Court held that where there was a direct eye-witness account which was credible then the omission to obtain a ballistic report and the non-examination of a ballistic expert would not be fatal to the prosecution case. However, if the evidence of the eye-witnesses did not inspire confidence or was suffering from inconsistencies, the omission to seek ballistic opinion and the examination of

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an expert may prove to be fatal to the prosecution case. In the instant case, as has already been mentioned hereinabove, the deposition of PW6-Ajit Pal (complainant) and the injured witness PW8-Harinder Singh are clear and consistent and cannot be disbelieved.

22. The upshot of the aforementioned discussion is that the prosecution has established its case against the appellant beyond reasonable doubt. Therefore, we find no merit in the present appeal and the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

29.04.2025

JITESH

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