

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Case No.: Crl.Appeal NO.792-DB OF 2002

Date of Decision: 20-4-2006

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1.Surjit Singh son of Amar Singh r/o village Sardarwala

2.Amar Singh son of Sohan Singh r/o village Sardarwala

.....Appellants

Versus

The State of Punjab

.....Respondent

Coram:Hon'ble Mr.Justice K.S.Garewal

Hon'ble Mr.Justice R.S.Madan

PRESENT:- Mr.SPS Sidhu, Advocate for the appellants.

Mr.AS Virk,Additional Advocate General, Punjab.

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R.S.MADAN,J.

This appeal is directed against the order of conviction and sentence dated 8-10-2002 passed by the Sessions Judge, Ferozepur vide which appellant-Surjit Singh was ordered to undergo sentence of life imprisonment and to pay a fine of Rs.2000/- under Section 302 of the Indian Penal Code and in default of payment of fine to further undergo rigorous imprisonment for a period of three months. Appellant-Amar Singh was convicted under Section 307 of the Indian Penal Code and was ordered to undergo rigorous imprisonment for a period of three years and to pay a fine

of Rs.500/-, in default of payment of fine to further undergo rigorous imprisonment for a period of two months.

The facts relating to this appeal are as under:

On 5-9-1999, PW-7, Addl.SHO at Police Station, Makhu received a Questy from SHO, Police Station Zira regarding the death of Daler Singh by fire arms. After taking Tarlok Singh and other police officials, he reached the Civil Hospital, Zira where Lakhwinder Singh made a statement before him wherein he stated that he is a resident of Village Sadrawala. They are two brothers. Younger to him is Daler Singh and both of them were living in front of the house of Surjit Singh, Ex.Sarpanch son of Amar Singh Jat. There is a street intervening the house. Surjit Singh-accused was member of the party of Jathedar-Inderjit Singh Zira and later they joined the party of Hari Singh Zira and used to tell the complainant to vote for Jora Singh Mann. It was a polling day. They were returning from the polling side after casting their votes in Village Marhana. It was at 8.30 P.M. The complainant along with his brother Daler Singh was present in their house when Surjit Singh-accused started abusing at the high pitch. He along with his brother Daler Singh went to the top of their Kotha and saw in the electric light that Amar Singh son of Sohan Singh and Surjit Singh were standing in the courtyard. Surjit Singh had a .12 bore gun in his hand whereas Amar Singh had a pistol in his hand. The complainant asked him as to why he was abusing them, upon which Surjit Singh stated that they had not cast votes in favour of Jora Singh Mann and they continued to abuse them. The complainant asked that he would see him how he abused them and he would give them proper reply upon which Surjit Singh and his father

Amar Singh came with their respective weapons towards them and fired. Daler Singh, who was in front of the complainant suffered gun shot on his face, cheeks and chest. He(complainant) raised raula 'Mar Dita Mar Dita' which attracted Mukhtiar Singh son of Darshan Singh, who was living in the neighbourhood and reached at the house of the complainant. Both Mukhtiar Singh and Lakhwinder Singh got down Daler Singh from the Kotha and after arranging a vehicle, the complainant along with Darshan Singh son of Surain Singh took Daler Singh to Civil Hospital, Zira where the doctor declared him dead. The motive for committing the crime was that the complainant party had not cast the vote in favour of Jora Singh Mann. The said statement was read over to the complainant on the basis of which the present FIR be registered against the accused. After collecting the cartridges of .12 bore gun from the house of the accused in the courtyard and preparing the rough site plan on the place of occurrence as pointed out by Lakhwinder Singh and doing other formalities, the dead body was sent for post mortem examination and according to the statement of eye witness, the doctors and others, challen was filed in the Court of the Sub Divisional Magistrate, Zira,District Ferozepur. It is pertinent to mention here that Amar Singh-accused, who is father of Surjit Singh was placed under Khana No.2, recorded under Section 173 of the Code of Criminal Procedure but later on, an application filed under Section 319 of the Code of Criminal Procedure, Amar Singh was also summoned to face trial under Section 307 read with Section 34 of the Indian Penal Code. On appearance, both the accused were charged under Sections 302/307 read with Section 34 of the Indian Penal Code to which they pleaded not guilty and claimed trial.

To substantiate the case of the prosecution, the prosecution in all examined 11 Pws. Dr.Hartirath Singh-PW1, who conducted the post mortem examination on the body of Daler Singh vide Ex.P1 opined that the cause of death was on account of bleeding from the wounds causing shock. The aspiration of stomach contents into the lungs also could be the cause of death due to asphyxia. PW2-Lakhwinder Singh gave an eye count of the occurrence accompanied by PW3-Mukhtiar Singh. PW7-SI Gurmit Singh proved the investigation of the case whereas Pws 4,5,6,8,9,10 and 11 were the formal witnesses of the affidavit in whose presence various recoveries were effected. Thereafter, learned Public Prosecutor tendered into evidence the report of the Chemical Examiner Ex.P21 and Forensic Science Laboratory,Ex.P22 and closed the case of the prosecution.

After the case of the prosecution was closed, the entire incriminating evidence appearing in the prosecution version was put to accused in the form of statements under Section 313 of the Code of Criminal Procedure to which they denied and pleaded innocent. Accused-Surjit Singh, however, stated that on the date of occurrence, the votes were cast for members of Parliament and almost everyone in the village was in drunken condition. Daler Singh threw brick bats from the roof top into his house. Mohinder Singh also fired from the roof top and a case under Section 336 of the Indian Penal Code had been registered against him. There was also firing in the village at night. Daler Singh might have died due to shot fired by Mohinder Singh and he has been falsely implicated in this case because of enmity with him in the village being Sarpanch and he

has been falsely implicated on suspicion. However, accused-Amar Singh stated that he had been found innocent by police during investigation and the witnesses have deposed falsely against him. The accused in defence examined Narinderpal Singh-DSP as DW-1, who conducted an inquiry in the case as S.P.(Headquarters) and after recording the statements of various persons, found Amar Singh as innocent and case was registered against Surjit Singh as doubtful. Karak Singh-DW2 proved the defence that he did not know Surjit Singh and had also not produced him before the police in this case. After going through the evidence of prosecution, accused-Surjit Singh was convicted under Section 302 of the Indian Penal Code whereas accused-Amar Singh was convicted under Section 307 of the Indian Penal Code.

It is pertinent to mention here that during the pendency of appeal, Surjit Singh-accused, who had fired a shot on aiming at Daler Singh, had expired 30-7-2005. His death was recorded in the register of Births and Deaths maintained by the Municipal Committee, Ferozepur on 9-8-2005. The death certificate 3109 was issued to this effect, photocopy of which has also been placed on file.

Learned State counsel has not disputed this fact. Therefore, the case of the prosecution against Surjit Singh abate.

On behalf of Amar Singh-accused, learned counsel for the appellants submitted that Dr.Hartirath-PW1, who conducted the post mortem examination on the body of Daler Singh son of Kirpal Singh stated that he had found multiple rounded punctured wounds almost of same dimensions of 0.5 cm x 0.5 cm in front of chest, forehead and front of root

of arm. The detail of injuries is as under:

- “1.Two 0.5 cm punctured wounds in front of root of right arm only soft tissue was involved.
- 2.Three 0.5 cm x 0.5 cm punctured wounds in front of right chest wall out of them two lower wards were going to the right. Plueral cavity injuring lung. Right side of chest was containing 150 Mls. dark colour blood. One small pellet was recovered from the blood.
3. Three similar punctured wounds on root of left arm. Only soft tissues were involved.
4. Two small punctured wounds on top of left shoulder.
5. Three similar wounds on root of neck on right side and two wounds on left side.
6. Five similar punctured wounds on right maxillary region. From one of the wound small pellet was recovered.
7. Two similar wounds on left Maxillary region. Only soft tissues were involved.
8. Three similar punctured wounds on right side of temporar region. From one of the wounds small pellets was recovered.”

According to the doctor, injuries No.1 to 8 had been caused by fire arms and were anti mortem in nature but all the injuries were caused by single shot by single fire arm. There is no proof of fire of any bullet on the person of deceased.

According to the prosecution, accused-Amar Singh was armed with a pistol on the date of occurrence. This pistol was not examined by any ballistic expert to establish that any shot was fired from this weapon. Therefore, holding Amar Singh guilty for the offence under Section 307 of

the Indian Penal Code is not sustainable. Moreover, this pistol belongs to Surjit Singh-accused (now expired during the appeal). He further submitted that Narinderpal Singh, DSP-DW1, who conducted an inquiry soon after the incident under the order of higher authority, found Amar Singh to be innocent and even case against Surjit Singh was also found as doubtful. Thus, according to the learned counsel, accused-Amar Singh has not participated in the commission of offence as alleged by the prosecution.

The motive as set up by the prosecution is that the complainant party has not voted for Jora Singh Mann which has resulted in the present occurrence by the accused. The motive does not appear to be based on sound footings for the reasons that secret ballots are cast during Parliament election and it would have taken some days to declare the result, therefore, there was no occasion for the accused to learn that complainant party has not voted for Jora Singh Mann's party. The motive set up by the prosecution against the accused having committed the crime, does not satisfy the conscience of the Court. So far as the recoveries of weapon and cartridges from the courtyard of the accused persons is concerned, it has come on record that the gun at the time of alleged occurrence was used by Surjit Singh, who is now dead. Therefore, the recoveries of weapon used in the commission of crime by Surjit Singh-accused cannot be taken into consideration against accused-Amar Singh.

In the light of our above discussion, the prosecution has failed to lead any evidence about the use of pistol in the commission of the crime because no ballistic expert has given the opinion that any bullet was fired from the pistol, which according to the prosecution

was used by Amar Singh in the present occurrence as well as no bullet was recovered from the body of Daler Singh-deceased during post mortem examination conducted by PW1-Dr.Hartirath Singh.

In view of the above, this appeal is accepted and order of conviction and sentence recorded against Amar Singh-accused/appellant is set aside and he is acquitted. He be set at liberty forthwith unless he is not involved in any other case. He is discharged from the bail bonds furnished by him.

**(R S MADAN)
JUDGE**

**(K S GAREWAL)
JUDGE**

**April 20, 2006
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