

(2011) 11 P&H CK 0263

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 110 SB of 2001 and Criminal Revision No. 1813 of 2002

ASI Hardev Singh

APPELLANT

Vs

State of Punjab
 Karamjit Kaur Vs State of Punjab and
Another

RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 313, 357
Penal Code, 1860 (IPC) — Section 307, 325

Citation : (2011) 11 P&H CK 0263

Hon'ble Judges : K.C. Puri, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.C. Puri, J.—By this common judgment, I intend to dispose of Criminal Appeal No.110 SB of 2001 filed by accused-appellant Hardev Singh and Criminal Revision No.1813 of 2002 filed by complainant-Karamjit Kaur as both the cases have arisen out of the same judgment and incident, therefore, these have been taken up together to avoid any repetition. For convenience facts are being taken from Criminal Appeal No.110 SB of 2001.

2. ASI Hardev Singh has directed the present appeal against the judgment and order dated 16.12.2000 passed by Shri A.N.Jindal, the then learned Additional Sessions Judge, Fatehgarh Sahib vide which the accused-appellant was convicted u/s 307 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5000/-and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year.

3. The brief facts of the present case are that Satpal injured is running a Mini Hotel ie Dhabba near Bus Stand Ucha Pind Sanghol in order to provide the meals to the bus passengers, which stopped in front of his Dhabba. Rakesh Kumar alias

Kala (complainant) has also been working alongwith his father on the said Dhabba. The buses which used to ply between Chandigarh and Ludhiana in either direction were halting at Dhabba and their passengers were taking meals or refreshment at their Dhabba.

4. On 10.3.1991, ASI Hardev Singh accused was on duty there and was preventing the buses from halting at the Dhabba of Sat Pal injured. At about 1.45 p.m when Sat Pal and Rakesh Kumar were at their Dhabba, ASI Hardev Singh accused while patrolling again came there. He has been preventing the buses to stop there as they were poor persons and were earning their livelihood by providing meals to the passengers and he should have mercy upon them and allow them to earn their livelihood. At this, Hardev Singh accused flue into rage and grappled with Sat Pal. Then Sat Pal, Rakesh Kumar and other employees of the Dhabba beseeched and entreated the accused but the accused brought out his service revolver and with it fired three rounds at Sat Pal. The shots hit in the right thigh, buttock and abdomen of Sat Pal, who fell on the ground. Then an employee of the police department caught hold of ASI Hardev Singh accused. Thereafter, the accused took the injured in a private truck to a hospital for treatment. After the injured was taken to the hospital, complainant Rakesh Kumar went to lodge the report and when he came across Inspector Joginder Singh met at bus stand Sanghol, where he made his above referred statement before him, thereupon Inspector Joginder Singh made his endorsement, which was completed at 2.25 p.m and sent the same to the police station through Constable Jasbir Singh and on the basis of which FIR was registered at police station Khamano. A special report was also sent to the Illaqua Magistrate, which was received by him at 11.00 p.m on the same day.

5. After sending ruqa to the police station, Inspector Joginder Singh proceeded to the place of occurrence, inspected the spot, prepared the rough site plan of the place of occurrence Ex.P8, took into possession the blood stained earth which was put into a Dibbi Tin and was converted into a parcel and the same was taken into possession by him vide memo Ex.P3. He also directed ASI Ram Parkash to record the statement of Sat Pal injured. ASI Ram Parkash went to civil hospital, Samrala, from where he came to know that Sat Pal injured has been admitted in Mohan Dai Oswal Memorial Hospital, Ludhiana. Then he went to the said hospital and moved an application for seeking opinion of the doctor with regard to the fitness of the injured to make the statement. But the doctor opined that the injured was not fit to make the statement. Then he returned to police station Khamano. When he was on bus stand Samrala, Inspector Joginder Singh and ASI Pirthipal Singh along with other police officials met him there to whom he handed over the report made by the doctor of Mohan Dai Oswal Memorial Hospital, Ludhiana. ASI Joginder Singh (now Inspector) also recorded his statement there. On the same day, Inspector Joginder Singh searched for the accused and arrested him at Bus Stand Samrala, when he was coming back from the hospital and effected his personal search. On the search of the accused, he was found in possession of a 38 bore revolver bearing No. 677276, which was unloaded by the

Inspector. On unloading the revolver, three empty cartridges and two live cartridges were recovered from the pistol. Four live cartridges were recovered from the belt. These articles were taken into possession. On 11.3.91, Inspector Joginder Singh went to Mohan Dai Oswal Memorial Hospital, Ludhiana and moved an application for seeking opinion with regard to fitness of Sat Pal injured to make the statement. The doctor opined that the injured was fit to make the statement. Then Inspector Joginder Singh recorded his statement. He also collected injury report of Sat Pal bearing CR No. 0893 Ex.P2. The doctor while operating the injured Sat Pal took out three bullet led pieces which were also handed over to him and he took the same into possession. He also recorded the statements of witnesses and on completion of the investigation, challan against the accused was presented in the Court of Illaqua Magistrate, from where the same was committed to the Sessions Court for trial.

6. Finding a prima facie case against the accused u/s 307 IPC read with section 27 of the Arms Act, he was charged accordingly to which he pleaded not guilty and claimed trial.

7. In support of its case, prosecution examined Dr.Satish Jain, (PW-1), Rakesh Kumar (PW-2), Sat Pal (PW-3), Rattan Singh Retd. Patwari (PW-4), ASI Ram Parkash (PW-5), Joginder Singh (Retd.) Inspector (PW-6), Dr.Pawan Miglani (PW-7), and closed its evidence.

8. In his statement recorded u/s 313 Cr.P.C all the incriminating circumstances appearing in evidence were put to the accused, to which he admitted that Sat Pal injured was running a Dhabha at Chandigarh road at Ucha Pind between Khamano and Morinda. Rakesh Kumar and Dharam Pal Pws used to work with him. On 10.3.1991 at 1.45p.m. Rakesh Kumar his father Sat Pal and his servant Dharam Pal were present at the Dhabha. At that time the accused had gone to the Dhaba in uniform and was armed with service revolver and loaded with ammunitions. He further admitted that on 11.3.1991, the police had moved an application to Dr.Satish Jain, Chief of the Surgery, Mohan Dai Oswal Memorial Hospital, Ludhiana for seeking opinion with regard to the fitness of the injured Sat Pal to make statement. On the said application the doctor opined that Sat Pal was fit to make the statement. He also produced medical report of Sat Pal and according to the doctor Sat Pal was brought to hospital at 3.45p.m. on 10.3.1991 with bullet injuries having been caused by the accused in the abdomen and perineum of sat Pal. He also found that intra abdominal condition of the patient showed that there was no collection of blood. The artery were damaged which were removed and repaired. Blood was removed from the damaged segment. The cause of injury was fire arm. The accused further admitted that SI Joginder Singh and he carried the blood stained earth from the place of occurrence and took the same into his possession. He prepared the rough site plan and also recorded the statements of Sat Pal injured and other witnesses. SI Joginder Singh arrested the accused on 10.3.1991 and took into possession his service revolver 38 bore. He also took into possession six live cartridges of the same

bore along with holster alongwith belt and also took into possession the three empties from the accused which was attested by ASI Ram Parkash and ASI Pirthi Pal Singh. He further admitted that ASI Ram Parkash had gone to Mohan Dai Hospital, Ludhiana on 10.3.1991 and had obtained the opinion of the doctor, regarding the fitness of Sat Pal to make statement and the doctor had opined that Sat Pal injured unfit to make the statement. He further admitted that on 11.3.1991 SI Joginder Singh had again visited Mohan Dai Hospital, Ludhiana and moved an application before the doctor for seeking opinion with regard to fitness of the injured to make the statement, who vide his endorsement opined that injured was fit to make the statement. He also took into possession three bullet pieces removed from the abdomen of injured Sat Pal. He also took into possession the Bed Head Ticket of the injured and SI Joginder Singh deposited the recovered articles with MHC in an intact position. The accused further stated that on 10.3.1991 there was a pass out parade at police Training School, Phillaur. The DGP and ADGP and other higher police officers had to pass from the aforesaid G.T.Road in front of the shop and for that reason i.e. security reasons the police and the BSF personnel had been deputed. The buses were stopped from being parked there to avoid any untoward incident of explosion. Sat Pal and his servants felt offended as to why the accused was stopping the buses to park there. Sat Pal assaulted him by untying his turban and asked his servants to teach him lesson for stopping the buses in order to further secure him with a view to disarm him. They started removing his revolver and he resisted the snatching of the revolver by them and in that process he grappled with them and the same went off and that Sat Pal suffered injuries in that process. He took him to the hospital got him admitted and donated the blood to save his life. Ramesh Kumar was not there. He has been falsely introduced as a witness in the case. He told Sat Pal complainant that he would get registered a case against them for assaulting him while on duty. In order to save their skin, Sat Pal in connivance with the police has falsely implicated him in this case. He is innocent. The accused did not lead any evidence in defence.

9. The trial Court, after hearing the learned counsel for the parties, convicted the accused vide judgment and order dated 16.12.2000 to undergo rigorous imprisonment for a period of three years.

10. Feeling dissatisfied with the aforesaid judgment and order, the accused-appellant has preferred the present appeal.

11. In Criminal Revision No.1813 of 2002 Karamjit Kaur petitioner prayed for enhancement of the sentence imposed upon the accused-appellant by the trial Court vide judgment and order dated 16.12.2000 and also prayed for grant of compensation amounting to Rs.10 lacs.

12. I have heard learned counsel for the parties and have gone through the records of the case with their able assistance.

13. Learned counsel for the appellant has submitted that medical evidence

contradicts the ocular evidence. According to the case of the prosecution, three shots were fired by the accused/appellant from his service revolver. However, there were seven punctured wounds. The doctor has stated that all the seven wounds can be the result of one shot. So, the prosecution story is doubtful.

14. I have carefully considered the said submission but do not find any force in that submission.

15. The case of the appellant is that injured and his servants have encircled the appellant. His turban has fallen and in that process accidental fire was made from his service revolver. The learned trial Court has observed that appellant has taken different stand at different stages of trial. The trial Court has observed that suggestion to PW-6 Joginder Singh retired Inspector has been given that appellant objected the stopping of buses at Dhabba of complainant and the accused/appellant fired the shot in self-defence. The trial Court has also observed that in statement u/s 313 Cr.P.C., the stand taken by the appellant was accidental fire from the service Revolver. So, the fact that injured received injury due to service revolver of the appellant is not disputed during the course of trial. The trial Court has rightly observed that appellant has failed to prove the factum of self-defence or accidental firing from the service revolver. There were about 20 police personnel at the time of occurrence. The injured and his sons were only present. The terrorism was at peak at that time. So, in these circumstances, the injured and his son could not even think for confrontation with police officials. According to the case of the appellant, the gun was in the holster. There was no corresponding cat in the holster, which ruled out the story of accidental fire. By taking two different stands at different stages of the trial, the appellant has demolished his case regarding self-defence or accidental firing. Three bullets were taken out from the injuries of the injured. The service revolver along with three empty cartridges were taken into possession. Mere fact that gun and the empty cartridges were sent for the report of FSL does not create doubt in the prosecution story, more so, when the factum of firing from the service gun has been admitted by the accused.

16. The next attack by the counsel for the appellant is regarding delay in sending the special report. So, it is submitted that occurrence has taken place at 1.45p.m. but the special report reached at Illqua Magistrate only at 11.00p.m. although the statement of the complainant is stated to have been recorded at 2.25p.m. and DDR No.19 was recorded at 2.45p.m. but there were chances of manipulation at the hands of police.

17. I have carefully considered the said submission but do not find any force in that submission.

18. The occurrence has taken place at 1.45p.m., and statement of Rakesh Kumar complainant was recorded at 2.25p.m. and DDR No.19 in the Police Station Khamano was recorded at 2.45p.m. So, there is absolutely no delay in lodging of the FIR. The prosecution cannot be penalized for delay in sending the special

report more so when the accused himself was a police official.

19. Learned counsel for the appellant has further submitted that Rakesh Kumar was not present at the spot. He has not accompanied his father to the hospital. Had he been present at the spot the normal conduct of Rakesh Kumar was to accompany his father to hospital. Admittedly, the injured was removed to hospital by the appellant.

20. It is further submitted that the investigating officer has further admitted that appellant has donated his blood to save the life of the injured. There was no enmity on the part of the accused with the injured. There were 8 to 10 shops near the place of occurrence. About 20 police personnel were stated to be present at the spot but none of the shopkeeper or police official has been examined. The terrorism was at peak. The appellant has simply requested the injured not to stop the buses due to security reasons. Injured and his servants encircled the appellant and in that process accidental fire arm injury has been caused to Sat Pal injured.

21. I have carefully considered the said submission but do not find any force in that submission.

22. The story of the appellant of accidental fire arm injury from the service revolver of the appellant, did not find favour by the trial Court. On account of the discussion made above, the said theory is not acceptable being self-contradictory and improbable. The shopkeepers would not have dared to come forward as they fully knew that they cannot afford enmity with the police officials. The other police officials were away from the spot and otherwise also they would have supported the appellant being police official. PW Rakesh Kumar has given the reasoning for not accompanying the injured. According to Rakesh Kumar he had informed the matter to the Sarpanch and also to the police. From the evidence on the file, it is revealed that appellant along with other police officials have taken Sat Pal to the hospital. It was not possible for Rakesh Kumar to insist that he would also accompany his father. The fact of accused accompanying injured to hospital has been considered by the trial Court by taking lenient view while awarding the sentence.

23. Learned counsel for the appellant has further submitted that injuries are on non-vital part on the body of Sat Pal and Doctor has wrongly declared injuries as dangerous to life of Sat Pal. The injuries are simple in nature. So, at the most offence punishable u/s 325 IPC is made out against the appellant. The appellant has already undergone incarceration for a period of one month and twelve days during the course of trial as per conviction slip. So, prayer has been made for grant of concession of probation.

24. I have carefully considered the said submission but do not find any force in that submission.

25. It is the consistent case of the prosecution that three fires were shot by the

appellant. Corresponding bullets were found in the body of Sat Pal which was taken out and handed over to the police. The doctor has categorically given opinion that injuries are dangerous to the life of Sat Pal. Although the injuries are in abdomen and lower part of the body of Sat Pal but by itself it cannot be said that there was no intention on the part of the appellant to cause the death of the injured. The fire arm injury more so from 38 bore pistol would normally cause the death and the appellant being police official knew this fact. So, it cannot be said that offence u/s 325 IPC only is made out and no offence u/s 307 IPC is made out. Sometime even aiming pistol attracts the provision of Section 307 IPC. In the present case, there are corresponding injuries. So, the above said contentions are meritless.

26. Lastly, learned counsel for the appellant has submitted that the occurrence relates to the year 1991 i.e. more than 20 years back. Appellant has undergone incarceration for a period of one month and twelve days during the course of trial. As per order of the trial Court, the appellant was 58 years of age at the time of trial. By adding another eleven years, now the appellant is 69 years old and is at the fag end of his life. He even donated his blood for Sat Pal injured. So, the prayer has been made for reduction in sentence.

27. In reply to the above noted submissions, learned counsel for the revisionist has submitted that appellant has used fire arms. Sat Pal has died later on. The sentence of three years is on lower side and prayer has been made for enhancement of sentence. It is further contended that the legal heirs of Sat Pal are entitled to compensation on account of injuries sustained by Sat Pal.

28. I have carefully considered the said submission but do not find any force in that submission.

29. As per judgment of the trial court accused has exhausted his age and was 58 years at the time of awarding the sentence i.e. on 16.12.2000 about eleven years have passed thereafter and meaning thereby that the appellant would have been at the age of 69 years. Admittedly, he removed injured Sat Pal to the hospital and there was no animosity with the appellant and injured. As per conviction slip the appellant has undergone incarceration for a period of one month and twelve days out of the substantive sentence of three years awarded by the trial Court u/s 307 of the IPC. As per conviction slip the appellant is on bail since 23.4.1991 i.e. for the last more than 20 1/2 years. The appellant is at the fag end of his life.

30. So, keeping in view all the circumstances, the ends of justice would be met in case the sentence is reduced to the period already undergone. However, the appellant is directed to make the payment of Rs.25,000/- as fine and that amount on realization shall be paid to the legal representatives of Sat Pal as compensation as provided u/s 357 Cr.P.C. The appellant shall deposit the said amount with the trial Court within two months from today, failing which the appeal shall be deemed to have been dismissed.

31. So, in these circumstances, the appeal as well as revision petition stand disposed of in terms of the discussion made above.

32. A copy of this judgment be sent to the trial Court for strict compliance.