
(2013) 08 P&H CK 0932

In the Punjab And Haryana At Chandigarh

Case No : C.R.A. No. 1059-SB of 2001 and C.R.R. No. 133 of 2002

Dalbir Singh and Another

APPELLANT

Vs

State of Punjab
 Gurdial Singh Vs Dalbir Singh and
Others

RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2014) 2 Crimes 601

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Advocate : S.S. Sandhu, for Mr. S.P.S. Sidhu in C.R.A. No. 1059-SB of 2001 and Mr. S.S. Brar, for Mr. Vikram K. Chaudhri in C.R.R. No. 133 of 2002, for the Appellant; S.S. Sandhu, Advocate for Mr. S.P.S. Sidhu, Advocate for Respondents No. 1 and 2 in C.R.R. No. 133 of 2002 and Mr. K.S. Aulakh, A.A.G. Punjab for State, for the Respondent

Judgement

Mehinder Singh Sullar, J.—As identical questions of law and facts are involved, therefore, I propose to decide CRA No. 1059-SB of 2001 filed by appellants-convicts Dalbir & Anr. (for brevity "the appellants") and CRR No. 133 of 2002 filed by petitioner-complainant Gurdial Singh (for short "the complainant"), arising out of the same impugned judgment of conviction & order of sentence of trial Judge, by virtue of this common decision, in order to avoid the repetition. The crux of the facts & evidence, unfolded during the course of trial, which needs a necessary mention for the limited purpose of deciding the core controversy, involved in the instant appeal & revision petition and emanating from the record, as claimed by the prosecution, is that on 26.11.1997, complainant Gurdial Singh (PW1), Chairman of Block Smiti, Bhikhiwind along with his brother Naunihal Singh (PW2), Baljit Singh and Deva Singh had gone to village Amarkot in his jeep, bearing registration No. PB-02-H-2866 in connection with canvassing for the panchayat election. PW2 Naunihal Singh was driving the jeep and the complainant was sitting on the front seat near the driver, whereas Baljit Singh and Deva Singh were sitting on its rear seat. At about 7 P.M., when they were

returning to their village and reached near the BSF Headquarter of the village on Amritsar Khemkaran road, then, a Maruti car, bearing registration No. PB-38-2858 came from the opposite direction at a high speed and crossed their jeep. The Maruti car took a back turn and chased their jeep. As soon as, they reached near village Dibipur, in the meantime, the Maruti car overtook them and came at their right side. Appellant Surjit Singh was driving the Maruti car, whereas appellant Dalbir Singh alias Bira was sitting on the front seat. The complainant was having his licensed .12 bore DBBL gun and his brother Naunihal Singh was having his licensed .38 bore revolver. In the process of overtaking, appellant Dalbir Singh took out his revolver and fired four shots with the intention to kill them. The 1st shot hit the right side view mirror, the 2nd shot hit the wind screen, 3rd shot hit the number plate, whereas the 4th shot passed through the broken wind screen of the jeep. The shots did not hit any body. According to the complainant that he has also fired two rounds from his licensed .12 bore double barrel gun and his brother Naunihal Singh fired from his licensed revolver towards the appellants in their self defence. It was alleged that Major Singh, father of appellant Surjit Singh was Sarpanch, he embezzled the amount of grant of development of the village and a criminal case was registered against him. The motive alleged was that the appellants suspected that the inquiry was initiated against Major Singh at the instance of the complainant.

2. Leveling a variety of allegations and narrating the sequence of events, in all, the prosecution claimed that appellant Dalbir Singh fired four shots and attempted to murder the complainant with their common intention. In the background of these allegations and in the wake of statement (Ex.PE) (Ex.PA) of the complainant, the present criminal case was registered against the appellants, by means of FIR No. 195 dated 26.11.1997 (Ex.PF), on accusation of having committed the offences punishable u/s 307 read with section 34 IPC and section 25 of the Arms Act by the police of Police Station Valtaha, District Amritsar in the manner depicted here-in-above.

3. After completion of the investigation, the final police report (challan) was submitted by the police against the appellants to face the trial for the pointed offences.

4. Having completed all the codal formalities, appellant Dalbir Singh was substantively charge-sheeted for the commission of an offence punishable u/s 307 IPC, whereas appellant Surjit Singh was vicariously charge sheeted u/ss 307/34 IPC. As they did not plead guilty and claimed trial, therefore, the case was slated for evidence of the prosecution by the trial Judge.

5. The prosecution, in order to substantiate the charges framed against the appellants, examined PW1 complainant Gurdial Singh, who has deposed in the following terms:

On 26.11.1997, I along with my brother Naunihal Singh, Baljit Singh and Deva Singh riding our jeep No. PB02-H-2866 went to village Amarkot in connection

with panchayat election. Around 7 p.m. we were coming back on the same jeep to our village and when we reached little away from village Amarkot near BSF Headquarter on Amritsar-Khemkaran road and reached near a bridge, a Maruti car coming from opposite direction crossed us at very high speed. I was sitting on the front seat adjoining the driver. Baljit Singh and Deva Singh were sitting on the rear seat of the jeep. The Maruti car took a back turn near BSF Headquarter. Baljit Singh told me that the Maruti car had taken a turn and is following us. When we reached the pond of village Di-bipur the Maruti car was overtaking us and when came by at our right side I saw that Dalbir Singh @ Bira was sitting on the front seat and Surjit Singh accused was driving it. Both the accused are present in the court. The car then over took us and Dalbir Singh accused took out a revolver and with the intention to kill us fired four rounds on us. The first fire hit the side view mirror of the car, the second fire hit the wind screen of the jeep. The first fire had also hit the side view mirror of the jeep. The third fire hit the frame of the wind screen of the jeep. The fourth fire passed through the broken wind screen. My brother Naunihal Singh was carrying a licensed revolver. He fired at the accused in self defence. I was also carrying an licensed .12 bore DBBL gun and I also fired two rounds from the broken wind screen in self defence. Thereafter, the accused ran away in their car.

The motive of the crime is that Major Singh father of accused Surjit Singh was the Sarpanch of the village Algon. He had received some grant from the Govt. for development of the village. An enquiry was held against him in which it was found that he has embezzled Rs. 7 lacks 27 thousand from the said grant. A criminal case was registered against Major Singh and he remained in jail. Accused suspected that the enquiry was done on my complaint as I was the Chairman of the Panchayat Samity. I immediately went to Amarkot where SI Narinder Singh met me and recorded my statement Ex.PA which bears my signature. I identify my signature on Ex.PA. The statement was read over to me and I signed the same after admitting it as correct.

I accompanied to the police party to the spot. The police took into possession the broken pieces of the glass of the jeep vide memo Ex.PB which was attested by me and ASI Suba Singh. Police also took out a bullet of .38 bore from the frame of the wind screen and took into possession through recovery memo Ex.PC which was attested by me and ASI Suba Singh. The jeep was also taken into possession in a damaged condition vide recovery memo Ex.PD which was signed by me and ASI Suba Singh. My statement was recorded.

6. Sequelly, Naunihal Singh has also appeared as PW2. Instead of reproducing his entire statement in toto and in order to avoid repetition suffice it to say that he has attempted to corroborate the statement of his brother complainant Gurdial Singh.

7. Coming to the evidence of PW3 SI/SHO Narinder Singh Investigating Officer, who has maintained that on 26.11.1997 at about 7.30 P.M., the complainant came and got recorded his statement (Ex.PA), which was read over and

explained to him. He signed the same in token of its correctness. He made his endorsement (Ex.PE/1) and sent the same to police station for recording the formal FIR (Ex.PF), which was recorded by SI Karam Singh, whose signatures he identified. Thereafter, he inspected, prepared the site plan (Ex.PG) of place of occurrence and "took into possession the broken window panes of the jeep, .38 bore caliber bullet and the jeep, vide recovery memos (Ex.PB to Ex.PD) respectively attested by the PWs. He recorded the statements of witnesses and deposited the case property in police station intact. On the next day, he again went to the spot, recorded the statements of witnesses and got the place of occurrence snapped from the photographer. He arrested the appellants on 7.12.1997. He has also taken into possession the car No. PB-38-2858, vide recovery memo (Ex.PJ) attested by the PWs. He prepared the site plan (Ex.PK) of place of recovery. He on 2.12.1997 took into possession the photographs & negatives of jeep, vide recovery memo (Ex.PL) attested by the witnesses. He has duly testified his remaining investigation. PW4 Rishi Ram Draftsman has prepared the scaled site plan (Ex.PM) of place of occurrence with its correct marginal notes.

8. After the close of the prosecution evidence, the statements of the appellants were recorded. The entire incriminating material/evidence was put to enable them to explain any circumstance appearing against them therein, as contemplated u/s 313 Cr.PC. However, appellant Dalbir Singh has denied the prosecution evidence in its entirety and pleaded false implication in the following manner:

Surjit Singh was gunman of Sukhwinder Singh Ex.MLA. A case u/s 307 IPC was registered against Naunihal Singh PW at the instance of Ex.MLA. We were opposing the complainant in the then Panchayat election. A false story has been made out and a false case has been registered against us to deter us from opposing the complainant in the election. We are Congress worker, whereas the complainant is a Akali worker so at the instance of the complainant a false case has been registered against us.

9. Similarly, appellant Surjit Singh has also adopted the same line of defence. They (appellants) in order to prove their plea of defence, have examined DW1 Jagir Singh son of Sardool Singh, who has deposed that on 26.11.1997, he was Sarpanch of village Daulatpura. He remained present in his house on that day. He did not hear any fire shot in the village on that day. The next day, SI Malli contacted and asked him if he had heard any gun fire on the previous day, he told him in the negative. The statement of DW2 Sukhwinder Singh Butter, Ex.MLA is to the effect that appellant Surjit Singh is police official and was posted as his gunman. On the fateful day, he returned from Chandigarh in his car and reached his village Fatehpur at about 8 p.m. His gunman appellant Surjit Singh was also with him. He was released by him from his duty at about 8.40 P.M. Thereafter, he went to his village Algon by bus, which was at a distance of 20 Kms from his village. According to DW2 that on the next day, appellant Surjit

Singh came and informed him that he has been falsely implicated in the present case. He contacted the SHO of Police Station N.S. Malli, who told him that accused Surjit Singh was not involved in any case. He remained with him on that day. His statement was recorded by the SHO. This is the entire evidence brought on record by the parties.

10. Taking into consideration the indicated evidence on record, appellant Dalbir Singh was substantively convicted for the commission of an offence punishable u/s 307 IPC, whereas appellant Surjit Singh was vicariously convicted u/s 307/34 IPC. They were accordingly sentenced to undergo rigorous imprisonment (for short "RI") for a period of four years, to pay a fine of Rs. 1000/- each and in default of thereof, to further undergo RI for a period of three months each, by means of impugned judgment of conviction and order of sentence dated 13.9.2001 by the trial Court of Addl. Sessions Judge.

11. Aggrieved thereby, the appellants have preferred the instant appeal (CRA No. 1059-SB of 2001) to challenge the impugned judgment of conviction & order of sentence, whereas the complainant has filed CRR No. 133 of 2002 for enhancement of their sentence. That is how I am seized of the matter.

12. Having heard the learned counsel for the parties, having gone through the evidence on record with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, the present appeal deserves to be accepted and revision petition is liable to be dismissed in this context.

13. As indicated here-in-above, the prosecution claimed, in nutshell, that on 26.11.1997, the complainant (PW1), his brother Naunihal Singh (PW2), Baljit Singh & Deva Singh were returning to their village. As soon as their jeep reached near the BSF headquarter near village Dibipur, in the meantime, the Maruti car of the appellants overtook them and ultimately came at their right side. In that process, appellant Dalbir Singh took out his revolver and fired four shots with the intention to kill them. The 1st shot hit the right side view mirror, the 2nd shot hit the wind screen, 3rd shot hit the number plate, whereas the 4th shot passed through the broken wind screen of the jeep. The shots did not hit any body. The complainant alleged that he has also fired two rounds from his licensed .12 bore double barrel gun and his brother Naunihal Singh fired from his licensed revolver towards the appellants in their self defence. Consequently, appellant Dalbir Singh was substantively charged and convicted for the commission of an offence punishable u/s 307 IPC, whereas appellant Surjit Singh was vicariously charged & convicted u/ss 307/34 IPC.

14. Apparently, section 307 IPC postulates that whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished therein. Section 300 IPC posits that except in the cases hereinafter expected, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or if it is done with the intention of causing such bodily injury as

the offender knows to be likely to cause the death of the person to whom the harm is caused, or if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

15. The conjoint and meaningful reading of these provisions would reveal that in order to invoke the penal provisions of section 307 IPC, the intention or the requisite knowledge to cause death are the essential ingredients of this section. An attempt for purpose of Section 307 IPC should stem from a specific intention to commit murder. That means, an act though sufficient in the ordinary course of nature to cause death, would not always constitute an offence under this Section, if the necessary intention or knowledge on the part of the accused is lacking. Thus, for the purpose of this offence, what is material, is the intention or knowledge and not the consequence of the actual act done for the purpose of carrying out that intention. Intention and knowledge being a man's state of mind, cannot possibly be proved by direct evidence thereof except through his own confession. In the absence of such a confession, intention and knowledge can only be inferred and proved by the surrounding circumstances oozing out of the evidence on record.

16. Sequelly, as strange as it may seem but strictly speaking, the tendency and frequency of the people, in this Northern part of the country, to falsely implicate the opposite side in criminal cases, in order to wreak vengeance on account of previous enmity, have been tremendously increasing day by day. Thus, leaving the Courts in lurch to appreciate the evidence very cautiously and to sift the grain (truth) from the chaff (evidence) with care in order to decide the real controversy between the parties. Likewise, the possibility of false implication of persons in cases of political group rivalries and enmities cannot be ruled out. In such cases of party faction and group rivalries, there is a tendency on the part of the prosecution witnesses to falsely implicate the accused and they are prone to exaggerating their culpability as well. It is now well settled principle of law that in such cases of political groupism and previous enmity, where after a close scrutiny of the evidence, a reasonable doubt arises in the mind of the Court with regard to the participation of the accused, the Court has no option but to extend the benefit of doubt and to acquit them. Howsoever painful the same may be.

17. Such thus being the legal position & evidence on record, now the short & significant question, though important, that arises for determination in this appeal is, as to whether the prosecution has been successful to bring guilt home to the appellants beyond reasonable doubt or not?

18. Having regard to the rival contentions of learned counsel for the parties, to me, the answer must obviously be in the negative as the prosecution has miserably failed to prove the charges and the appellants deserve the concession

of reasonable doubt and acquittal for the reasons mentioned here-in-below.

19. As is evident from the record that the complainant was a Chairman of Block Smiti, Bhikhiwind and was the supporter of Akali Dal Party, whereas the appellants were the supporters of Congress Party. The appellants are real cousin brothers. It has come in the evidence that the complainant and father of appellant Dalbir Singh contested the panchayat election against each other. Similarly, in the year 1983, Major Singh, father of appellant Surjit Singh and one Harpal Singh had contested the panchayat election. The complainant had supported Harpal Singh, who was defeated and Major Singh, father of appellant Surjit Singh, was declared successful. That means, the previous enmity and political groupism between the parties is well established on the record.

20. Not only that, according to prosecution that appellant Dalbir Singh had fired shots aiming towards the complainant, but the shots did not hit any person traveling in his jeep. It is a case of no injury. PW1 and PW2 maintained that appellant Dalbir Singh fired four shots. The 1st shot hit the right side view mirror, the 2nd shot hit the wind screen, 3rd shot hit the number plate, whereas the 4th shot passed through the broken wind screen of the jeep of complainant. The empty cartridges of bullets fired by appellant Dalbir Singh were not recovered from the place of occurrence by PW3 SI Narinder Singh. He has categorically admitted in his cross-examination that no empty cartridge allegedly fired by appellant Dalbir Singh was found by him at the place. In other words, neither revolver allegedly used by the appellant nor its empty cartridge was recovered by the police from the place of occurrence. On the contrary, it is not a matter of dispute that the complainant and his brother had also fired shots from their respective weapons. The empty cartridges of bullets fired by them were taken into possession vide recovery memo (Ex.PC) by PW3 SI Narinder Singh. This fact alone is sufficient and is a strong circumstance to disbelieve the prosecution version and to indicate that no such occurrence had ever taken place at the relevant time, as projected by the prosecution. The complainant appears to, have himself fired the shots to falsely implicate the appellants on account of previous pointed animus.

21. There is yet another aspect of the matter, which can be viewed entirely from a different angle. The prosecution story is highly improbable, the manner of appearance of appellants and the complainant party at the spot at the same time by chance in their respective vehicles, appears to be unnatural. According to the complainant that at the first instance, the appellants crossed his jeep, then returned back, followed them and in the process of overtaking, they fired the pointed shots towards them. It is difficult to consume that the four rounds of shots fired by appellant Dalbir Singh did not hit any body. If he had the requisite intention to kill the complainant or his brother, then, he would have straightway fired shots aiming towards and directly hitting them. It is impossible to inculcate that all the four shots fired by him did not hit any occupants of the jeep of complainant. Furthermore, it is improbable to believe that the complainant would

leave the jeep and its key at the spot in other village without making any arrangement to guard it and would go on the tractor to report the matter to the police. Even PW1 and PW2 feigned their ignorance about the number, make and ownership of the tractor, which creates a serious doubt on the prosecution story. Moreover, PW3 SI Narinder Singh has categorically admitted in his cross-examination that on the next day of the occurrence, he recorded the statements of Sukhchain Singh son of Darbara Singh, Kashmir Singh son of Bara Singh, Bohar Singh son of Bhan Singh and Balwant Singh son of Pritam Singh in the case diary and they have not corroborated the story put forth by the complainant. It is also so stated by DW1.

22. This is not the end of the matter. According to the complainant that Baljit Singh and Deva Singh were also traveling in his jeep at the relevant time. But the prosecution did not examine them in the Court. That means, the prosecution has withheld the best possible evidence, which could throw the bright light on the aforesaid episode, for the reasons best known to it. In that eventuality, an adverse inference against it in this regard is inevitable. Moreover, there are inherent contradictions in the initial statement (Ex.PE) (Ex.PA) and in the statements of complainant and his brother as regards the manner of arrival of the parties at the spot at the same time, the manner of occurrence and different parts of the jeep, which were affected/hit by the shots, allegedly fired by appellant Dalbir Singh. Since no other cogent evidence is forth coming on record to prove the occurrence, so, to me, no implicit reliance can be placed on the self serving statements and interested evidence of PW1 and PW2, who are real brothers and inimical towards the appellants. In fact, no such incident is proved on record to have been taken place as projected by the prosecution and they (appellants) were falsely implicated by the complainant party on account of previous political enmity, as described here-in-above.

23. Therefore, if the facts of, improbable story of prosecution, lack of essential ingredients of indicated offences, contradictory, insufficiency of prosecution evidence, non-examination of material/independent witnesses and totality of the circumstances oozing out of the record as discussed here-in-above, are put together, then, to my mind, the conclusion is inescapable and irresistible that the evidence brought on record by the prosecution falls short as is required to prove the criminal charges against the appellants, which entails the benefit of doubt and their acquittal as well.

24. No other point, worth consideration has either been urged or pressed by the counsel for the parties. In the light of aforesaid reasons, the instant appeal is accepted. Consequently, the impugned judgment of conviction and order of sentence are hereby set aside. Having extended the benefit of doubt, the appellants are acquitted of the charges framed against them. At the same time, in pursuance thereof, the criminal revision petition filed by the complainant is dismissed as well in the obtaining circumstances of the case.

Needless to mention that the necessary compliance and procedural consequences

would naturally follow.