

(2012) 08 P&H CK 0137

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. D-609-DB of 2010

Resham Singh and another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Arms Act, 1959 — Section 25

Criminal Procedure Code, 1973 (CrPC) — Section 175, 313

Penal Code, 1860 (IPC) — Section 302, 307, 34, 364

Citation : (2012) 08 P&H CK 0137

Hon'ble Judges : Satish Kumar Mittal, J; Inderjit Singh, J

Bench : Division Bench

Advocate : T.S. Sangha, with Mr. J.S. Lalli and Mr. Narinder Singh, for the Appellant; Ritu Punj, Additional Advocate General, Punjab for the respondent-State, for the Respondent

Final Decision : Dismissed

Judgement

Inderjit Singh, J.—Appellants-Resham Singh and Gurjant Singh alias Janta have filed this appeal against the judgment and order dated 27.4.2010/28.4.2010 passed by the learned Additional Sessions Judge, Bathinda whereby the appellants have been held guilty for the commission of offence punishable u/s 302 of the Indian Penal Code ("IPC" -for short) and sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/- each and in default of payment of fine to further undergo rigorous imprisonment for six months each for the offence u/s 302 IPC. They have also been held guilty for the offence u/s 364 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 5,000/- each and [2] in default of payment of fine to further undergo rigorous imprisonment for six months each for the offence u/s 364 IPC. Appellant No.1 Resham Singh has also been held guilty for the offence u/s 307 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 2,000/- and in default of payment of fine to further undergo rigorous imprisonment for three months for the offence u/s 307 IPC. Appellant No.2

Gurjant Singh has also been held guilty for the offence u/s 307 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 2,000/- and in default of payment of fine to further undergo rigorous imprisonment for three months for the offence u/s 307 read with Section 34 IPC. Both the appellants have also been held guilty for the offence u/s 25 of the Arms Act and sentenced to undergo rigorous imprisonment for one and a half year and to pay a fine of Rs. 500/- each and in default of payment of fine to further undergo rigorous imprisonment for one month each for the offence u/s 25 of the Arms Act. However, all the sentences have been ordered to run concurrently. The brief facts of the prosecution case are that Mander Singh son of Gurjeet Singh was a driver of LP Truck No.HR-46-4825 owned by Kulwant Singh alias Kunda. Gurpreet Singh complainant was a cleaner on the said vehicle. On 27.9.2006 at about 9.00 p.m., both of them went from Bhadaur to Birla Plus Cement factory, Lehra Mohabbat for loading of the goods. Due to non-availability of goods after taking meals they went to sleep in the truck. On the next day upto 2.00 O'clock they could not receive the goods, then Janta Singh son of Roop Singh and Resham Singh son of [3] Diddar Singh came there. Janta Singh asked Mander Singh to go to home since he could not receive the goods. The complainant and Mander Singh on their vehicle and Janta Singh and Resham Singh on their LP vehicle reached the house of Janta Singh. There all took liquor and had meal. At about 12.00 midnight Janta Singh told them to visit Myserkhana fair and he took .12 bore country made pistol from the box. They all boarded in truck No.HR-46-4825. Janta Singh was driving the truck and at 1.00 O'clock in the intervening night of 28/29.9.2006, they reached at Jhandu Ke drain. Then Janta Singh stopped the truck and he asked Gurpreet Singh-complainant to bring "Datun" and when he returned after bringing the same and was behind 4 Karams from the vehicle, Janta Singh fired a shot from his .12 bore country made pistol towards him with an intention to kill him, which hit on his right hand chest and upper part of shoulder. Then Resham Singh pulled out from his "Dab".12 bore double barrel gun, which was cut and "Butt" was in the shape of hockey, fired a shot towards him with an intention to kill him but he sat down and ran backward. Resham Singh again fired which hit on the backside of his head and on backside of shoulder. After concealing himself in the cotton fields Gurpreet Singh saw that Janta Singh asked Resham Singh to teach a lesson to Mander Singh to cheat and to keep bad eyes on their dignity. Then both of them forcibly took Mander Singh in the inner cabin of the LP vehicle and kidnapped him. They took the vehicle towards Bhucho with an intention to kill him. The complainant concealed himself there for the whole night and in the morning he came to Bhucho Chowk where Puran met him and got him admitted in Civil Hospital, Bathinda for treatment.

2. PW-1 Dr. Inderdeep Singh Sra, Medical Officer, Civil Hospital, Bathinda on 29.9.2006 conducted medico-legal examination of Gurpreet Singh son of Sukhdev Singh aged about 13 years and found the following injuries:-

History of alleged assault of firearm.

1. In the centre of chest between two nipples in area of 6 cm x 5 cm multiple small lacerated wound present. Clotted blood was present. Margins inverted and three lacerated wounds above right nipple spread in an area of 6 cm x 5 cm., and 3 lacerated wounds in lower part of chest on left side, 6 cm from left nipple. The lacerated wounds measured 4 mm x 3 mm. Advised X-ray, chest, lateral anterior posterior view.

2. A lacerated wound with size 10 cm x 8 cm. on upper part of left arm on lateral and back side with skin loss. Clotted blood was present. Muscle injuries. Advised X-ray A.P. lateral.

3. A lacerated wound at the back of head on left side measuring 1 cm x 1 cm. Advised X-ray skull A.P. lateral.

4. A lacerated wound measuring 15 cm x 6 cm., on dorsal side of left hand and lacerated wound on lateral side bone deep muscle torn, vessels torn tendons were seen and lacerated wound on Palmer side of right hand measuring 6 cm x 7 cm., skin torn muscles injured 3 cm., deep. Advised X-ray A.P. lateral.

5. A bruise present on left side, lateral side of chest measuring [5] 3 cm x 2 cm., advised X-ray A.P. lateral.

3. The doctor sent the information regarding admission of the said injured to SHO, Police Post, Civil Lines, Bathinda at 11.30 a.m. vide Ex. PC. On receiving the information from Police Post, Civil Lines, Bathinda, SI/SHO Jaswinder Pal Singh, Police Station, Ballianwali along with other Police officials reached Civil Hospital, Bathinda, where the doctor declared the injured as unfit to make statement. Again on 30.9.2006, SI/SHO along with other Police officials reached Civil Hospital, Bathinda and after obtaining the opinion of the doctor regarding the fitness of the injured, statement of the complainant-Gurpreet Singh was recorded at about 6.00 p.m., on the basis of which FIR No.47 dated 30.9.2006 (Ex.22/H) was registered.

4. In the meantime, on 29.9.2006 at about 11.00 a.m. Mansukhjith Singh along with Bikkar Singh went to his fields, which were at a distance of 2 kms. from village on Lehra Bega road and they saw a dead body of an unknown person lying in the "Kacha Khal" adjoining to the metalled road near to the "Narma" (quality cotton) fields. There were injuries on face, chin, lower lip and head and was murdered by some unknown person/persons. Mansukhjith Singh got recorded his statement to Inspector/SHO, Police Station, Nathana, on the basis of which FIR No.110 dated 29.9.2006 (Ex.PW.5/B) was also registered at Police Station, Nathana. Inspector Harvinder Singh Virk (PW-17) visited the spot of occurrence along with complainant-Mansukhjith Singh. He inspected the spot of occurrence and searched the surrounding area of the place of occurrence. Efforts were made for the identification of the dead body, which was lying [6] on the road side, in a water channel. Dog squad and Fingerprint Expert were summoned on the place of recovery of dead body. He prepared two sealed parcels of plain earth as well as blood stained earth on the spot, with his seal impression "HS".

These were taken into police possession vide a memo. Begh Raj, Photographer was also summoned on the spot of recovery of dead body and he took the photographs at the spot. He held inquest report on the dead body. He sent the dead body for post-mortem examination to Civil Hospital, Bathinda through HC Inderjit Singh. He then recorded the statements of the witnesses and prepared rough site plan of the place of occurrence. He then took the Police party towards Lehra Bega for ascertaining the identity of the deceased and the accused of the case. Photographer Beg Raj handed over the photographs of the place of recovery of dead body to him at Bhucho Mandi, which were taken into possession. Next day, one Gamdoor Singh and Jarnail Singh met him in Civil Hospital, Bathinda and made their statements and identified the dead body as of Mander Singh son of Surjit Singh resident of Village Draj, Police Station Tapa. He recorded their statements u/s 175 Cr.P.C. One Kulwant Singh alias Kunda made statement before him at Lehra Mohabbat Bus Stop and disclosed that Mander Singh deceased was a driver on his truck and the conductor of his truck Gurpreet Singh was lying admitted in Civil Hospital, Bathinda as he had received injuries as well as gun shot injuries. He again reached Civil Hospital, Bathinda on the same day on 30.9.2006 and recorded the statement of Gurpreet Singh son of Sukhdev Singh. The appellants were nominated as accused in his statement. He reached Police Station Nathana and lodged a report to this effect and copy thereof was sent [7] to the Illaqa Magistrate. He also recorded joint statements of the persons, who were present in the hospital on 30.9.2006 at Civil Hospital, Bathinda. From the statement of Gurpreet Singh-injured, the case of his kidnapping and causing injuries to him along with Mander Singh deceased fell in the area of Police Station Ballianwali and FIR regarding his kidnapping was already registered at Police Station, Ballianwali and he sent cancellation report as the offence u/s 302 IPC was added at Police Station Ballianwali.

5. Dr. L.R. Jain (PW-9) conducted post-mortem examination on the dead body of Mander Singh in Civil Hospital, Bathinda on 30.9.2006 and found the following injuries:

1. Lacerated wound 10 cm x 4 x 2 cm., in occipital area of the scalp with clotted blood present.
2. Lacerated wound 10 cm x 2 cm x 2 cm about three cm below injury No.1 in occipital area with clotted blood present. On dissection multiple fracture of skull wound in occipital area. Multiple lacerated of brain matter. Pieces of bone embedded in brain matter with liquid blood in brain matter.
3. Lacerated wound ccm x 1 cm on the chin on right side, underline bone fracture.
4. Lacerated wound 2 cm x 1 cm below upper lip with clotted blood present.
5. Lacerated wound 2 cm x 1 cm x 1 cm on flexor aspect of right shoulder with clotted blood present.
6. As per opinion of the doctor, after receiving report from the [8] Chemical

Examiner, Patiala, he declared that the cause of death in this case was due to haemorrhage and shock caused by injuries mentioned in post-mortem report. The injuries were ante-mortem in nature and were sufficient to cause death in the ordinary course of nature.

7. On 30.9.2006, after recording the statement of Gurpreet Singh-injured, SI/SHO Jaswinder Pal Singh, Police Station, Ballianwali took Gurpreet Singh-injured with him with the permission of the doctor to the place of occurrence. He inspected the place of occurrence and recovered three empties of .12 bore gun on the spot and made them into sealed parcel and taken into police possession. He prepared the rough site plan of the place of occurrence and recorded the statements of the witnesses on the spot and thereafter brought Gurpreet Singh-injured for treatment to civil Hospital, Bathinda. On the next day, when the Police party reached at the bus stand of Sema, one private car Maruti was spotted coming there. Car was intercepted by him. When the Police party was busy with Resham Singh, the driver of the car ran away. On interrogation, accused Resham Singh made disclosure statement that he had kept concealed one .12 bore gun with cut barrel in the cabin of truck bearing No.HR-46-4825 in the area of Jhiri of Baba Kalu Nath and he could get the same recovered. His disclosure statement was recorded and in pursuance of his disclosure statement, he led the Police party to truck bearing No.HR-46-4825. The accused opened the cabin of the above truck and got recovered one .12 bore double barrel gun with cut over it. The handle of the gun was appearing like hockey type. The number 43392/A-9/94 was written on a wooden piece (Phatti). After preparing sketch of the gun and after preparing sealed parcel it was taken into Police possession vide memo. From the inspection of the truck, blood was smeared on aluminium plank on conductor side outside the truck. The piece of plank of aluminium stained with blood was detached therefrom and was made into sealed parcel and taken into Police possession. The Investigating Officer also obtained copy of the FIR from Police Station, Nathana where the case u/s 302 IPC was already registered. Accused/appellant Gurjant Singh was arrested later on. He was also interrogated. He also made disclosure statement regarding concealing of four tyres and one blood stained iron rod in the locked room of his house and then he got recovered four tyres along with rims of truck and one iron rod in pursuance of his disclosure statement. Blood stained iron rod was taken into Police possession after preparing sealed parcel. The tyres along with rims were also taken into Police possession. Site plan of the place of recovery was prepared. The statements of witnesses were recorded.

8. After completion of necessary investigation, challan was presented against the appellants. After presentation of challan, the trial Court finding prima facie charges against the accused for the offences as stated above framed charges to which the accused pleaded not guilty and claimed trial.

9. In support of its case, the prosecution examined PW-1 Dr. Inderdeep Singh Sra, who mainly deposed regarding conducting of medico-legal examination of

Gurpreet Singh. PW-2 ASI Jai Singh, Police Station, Ballianwali mainly deposed regarding the arrest of appellant Gurjant Singh on 11.10.2006 and regarding recovery of country made pistol from his personal search etc. PW-3 Gurpreet Singh is injured in the present case. He [10] has deposed same facts as per prosecution version but has not deposed anything against the accused and resiled from his statement on material facts. He was confronted with his statement which was recorded by the Police but he denied the fact that he has given any statement to the Police. PW-4 Sukhdev Singh father of Gurpreet Singh also did not support the prosecution version and was declared hostile. PW-5 Mansukhjit Singh mainly deposed regarding the information given to the Police regarding the dead body found, on the basis of which another FIR (Ex.PW.5/B) was registered. PW-6 ASI Sadhu Singh, Police Station Nathana deposed regarding lifting of blood stained earth from the place where the dead body was found. PW-7 HC Baljeet Singh is a formal witness, who tendered in evidence his affidavit (Ex.PW7/A). PW-8 HC Resham Singh was with the Police party on 30.9.2006 when three empties were lifted from the bushes and taken into Police possession etc. He also deposed regarding the interrogation of Resham Singh and recovery of truck, .12 bore double barrel gun and also deposed regarding the arrest of accused Gurjant Singh on 11.10.2006 and the recovery of four tyres along with rims and one blood stained iron rod in pursuance of disclosure statement of Gurjant Singh. PW-9 is Dr. L.R. Jain who deposed regarding conducting of post-mortem on the dead body of Mander Singh. PW-10 Tirath Ram is the Photographer, who mainly deposed regarding photographs. PW-11 Bikkar Singh mainly deposed regarding finding of dead body. PW-12 Sheetal Singh, Clerk, DTO Office, Ferozepur brought the record and as per his evidence Maruti car bearing registration No.HR-51-8810 was transferred in the name of Dawinder Singh son of Karnail Singh. PW-13 HC Baljinder Singh also [11] deposed regarding the recovery of four tyres along with four rims in pursuance of disclosure statement of Gurjant Singh. PW-14 HC Jalandhar Singh is a formal witness, who tendered in evidence his affidavit (Ex.PW.14/A). PW-15 Jarnail Singh mainly deposed regarding identification of the dead body. PW-16 Joginder Singh, Clerk, RTO Office, Kaithal mainly deposed that truck No.HR-46-4825 was in the name of Kulwant Singh son of Hakam Singh. PW-17 Harwinder Singh Virk, SHO, Police Station, Nathana mainly deposed regarding the FIR registered at Police Station, Nathana after the recovery of dead body and deposed regarding the inquest report etc. and investigation of this case. PW-18 Gamdoor Singh also deposed regarding identifying the dead body. PW-19 Beg Raj, Photographer mainly deposed regarding the photographs. PW-20 Prem Gupta deposed that Kulwant Singh purchased two truck tyres No.M-0517280901 and M-0107180904 for truck No.HR-46-4825 for Rs. 19,800/- and he proved the bill. PW-21 Surinder Singh also proved the bill regarding other two tyres purchased by Kulwant Singh bearing No.V-055152RE and V-0368490E for Rs. 19,700/- vide bill No.121 dated 9.12.2005. PW-22 SI Jaswinder Pal mainly deposed regarding the investigation of the case. At the close of evidence, FSL reports were tendered in evidence.

10. At the close of the prosecution evidence, the accused were examined u/s 313 Cr.P.C. and were confronted with the evidence of the prosecution. Accused denied the correctness of the evidence. Accused-Resham Singh stated that he is not in any way connected with the commission of crime in the present case. He is innocent. He was in custody of police of P.S. Nathana since 27.9.2006 and was detained on the suspicion [12] of a robbery case. He was also involved by the police of Police Station, Nathana, in a case of attempt of robbery. Accused-Gurjant Singh stated that he is innocent. He had been falsely implicated in this case and he was produced by his maternal uncle Gurmail Singh before the police after eight/nine days from the date of this occurrence. In defence the appellants examined DW-1 ASI Paramjit Singh, who mainly deposed regarding entry in DDR regarding the registration of FIR. DW-2 Saggar Singh, Member Panchayat mainly deposed regarding the search of place all around the bridge and nothing was recovered by the Police on the spot. At that time, accused-Resham Singh was also in the custody of the Police.

11. From the evidence on record, the learned trial Court convicted and sentenced the accused-appellants for the offences as mentioned above.

12. We have heard Learned Counsel for the parties and with their assistance have gone through the record.

13. At the time of arguments, learned senior counsel for the appellants contended that the empty allegedly recovered from the place of occurrence of the pistol could not be matched with the country made pistol as the pistol was not working at that time properly. He next contended that Gurpreet Singh in the present case has not supported the prosecution version and there remains only circumstantial evidence and the circumstantial evidence could not complete the chain and there are missing links, hence benefit of doubt should go to the accused-appellants. He next contended that there is nothing in the evidence that when the truck was recovered, the tyres were missing. He further argued that these recoveries were falsely planted upon the appellants and with the evidence produced on [13] record, the prosecution failed to prove guilt of the appellants. He also argued that the appellants have been falsely implicated in this case and no empties were recovered from the place as deposed by DW-2 Saggar Singh, Member Panchayat, who was admittedly present at the spot as per the cross-examination of the Investigating Officer.

14. On the other hand, learned Additional Advocate General, Punjab appearing for the State of Punjab argued that in the present case the prosecution has produced cogent evidence to connect the accused with the crime though PW-3 Gurpreet Singh and PW-4 Sukhdev Singh have not supported the prosecution version but even then the case has been duly proved from the ocular as well as medical evidence and investigation of this case i.e. FSL reports, recoveries etc.

15. As regards the first contention of the learned senior counsel for the appellants, we find that there is cogent evidence on the record that the empties

were recovered from the place of occurrence to show that Gurpreet Singh was fired by Gurjant Singh and Resham Singh accused from country made pistol and from .12 bore double barrel gun. As per FSL report, one small lead pellet, which was contained in parcel-E is a component of .12 bore cartridge. Two empties C-1 and C-3 had been found fired from the right barrel and left barrel of .12 bore DBBL gun No.43392-A/9,Y-94 which means that the empties are connected with the gun recovered from accused Resham Singh. The FSL report also shows that on chemical examination of barrel wash of .12 bore DBBL gun No.43392-A/9,Y-94 indicates that it has been used in firing. Similarly, the chemical examination of barrel wash of .12 bore country made pistol Mark-W/1 indicates that it has been used in [14] firing. As regards third empty C-2, which was stated to be fired from country made pistol, no definite opinion could be given as test cartridges could not be fired properly from this pistol. From this FSL report it cannot be held that the country made pistol was not in working condition. As per the report of FSL on chemical examination of barrel wash of .12 bore country made pistol, it indicated that it has been used in fire which itself shows that the pistol was in working condition. The small lead pellet which was recovered from the body of Gurpreet Singh by the doctor at the time of medico-legal examination is a component of .12 bore cartridge. This report shows that though empty cartridge C-2 could not be connected with the country made pistol as its cartridges could not be fired properly but there is no evidence that the country made pistol was not in working condition, rather it has been used in firing. Therefore, on this ground appellant-Gurjant Singh cannot be held innocent. The pistol was recovered from him and the empties were lifted from the spot. Again as per this FSL report, two other empties Marks.C-1 and C-3 have been fired from the .12 bore gun which was recovered from appellant Resham Singh. Therefore, it is a strong circumstance of connecting the accused with the crime. There is also report of the FSL that the gun was used in firing. As per the statement of PW-3 Gurpreet Singh, he supported the facts that he went for loading cement in the truck of Kulwant Singh. He also supported the version that the number of truck was 4825 and they went to Lehra Mohabbat Thermal Plant for loading cement in the above truck. He also supported the prosecution version that the cement was not available there. Though, he did not give the name of the driver in examination-in-chief but he stated that the driver [15] belonged to Village Draj. He also supported the prosecution version to this extent that they started for visiting the fair at Village Myserkhana. In the cross-examination, he stated that some four persons in Tata Sumo vehicle intercepted them. They fired at him and took away Mander Singh in truck No.4825 towards Myserkhana. From the chief-examination and cross-examination, it is clear that Mander Singh was driving that truck and he was taken away along with truck No.4825. It is also clear from the statement of PW-3 Gurpreet Singh that he received injuries of fire arm. Now the question arises as to whether some unknown persons had caused the injuries, as stated by Gurpreet Singh PW-3, or the accused-appellants had caused the injuries. Though, Gurpreet Singh has resiled from his statement and tried to support the accused but the FSL reports connect them i.e. accused Gurjant Singh and

Resham Singh that they fired from country made pistol and gun. Further from the evidence on record, we find that as per the disclosure statement Resham Singh appellant got recovered the truck which was driven by Mander Singh and owned by Kulwant Singh. The recovery of the truck has been in pursuance of the disclosure statement and the PWs have deposed regarding the recovery. There is nothing in the cross-examination of the PWs to show that the recovery is doubtful or the witnesses are not reliable. Similarly, as per disclosure statement appellant Resham Singh got recovered the gun. There were blood stains on the truck and one blood stained piece from the truck was taken in to possession. There is nothing in the evidence on record to show any motive of the PWs, specially the Police officials to falsely implicate the accused in the present case. The statements of the Police officials are as good as of any other [16] witness unless some enmity or motive is alleged or proved against the Police officials. Again appellant Gurjant Singh got recovered one blood stained iron rod and four tyres along with rims of the truck in pursuance of his disclosure statement. The PW have duly proved that these tyres have been purchased by Kulwant Singh and the bills regarding the same were proved in the Court.

16. As regards the contention that at the time of recovery of truck, there is no mention that four tyres were missing, we find that first of all there is no cross-examination on this point to the witnesses who may have explained regarding the same. Secondly, there is nothing on the record as to how many extra tyres were in the truck and how many tyres are of LP truck i.e. the truck in question. The version of Gurpreet Singh that some unknown persons fired at them and took Mander Singh along with the truck cannot be believed. Appellants Resham Singh and Gurjant Singh are duly connected with the crime, especially from the recoveries of the gun, pistol, from the iron rod and tyres of the truck etc., therefore, in no way it can be held that there are missing links in the chain of circumstances. Further we find that defence version given by DW-2 Saggur Singh cannot be believed though the Investigating Officer states in cross-examination that many persons including DW-2 were present on the spot but his statement was not recorded nor he was witness to the recoveries. The defence version looks after thought. There is nothing on the record to support and corroborate his version. Again there is no document on record to support DW-2 Saggur Singh, therefore, no reliance can be placed on his statement.

17. From the above discussed evidence on record, we find that the [17] injuries on the person of Gurpreet Singh are duly supported by the doctor in view of the medico-legal examination of Gurpreet Singh. Similarly, from the post-mortem report of Mander Singh, it is clear that the injuries were given with blunt weapon and appellant Gurjant Singh got recovered blood stained iron rod. As already discussed, there is no enmity or motive to falsely implicate the appellants in the present case. There is nothing on record to show that the appellants have been falsely implicated in the present case. Therefore, from the evidence on record, we find no merit in this appeal and the same is dismissed.