

2025.PHHC.065586



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-16.05.2025

CRA-S-420-SB-2004(O&M)

Malkiat Singh.

.....Appellant.

Vs.

State of Punjab.

.....Respondent.

**CORAM:- HONB'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Narinder Singh, Advocate for the Appellant.

Mr. Siddharth Attri, AAG Punjab.

JASJIT SINGH BEDI, J.

The present appeal has been filed impugning the judgment dated 05.02.2004 passed by Additional Sessions Judge, Moga whereby the accused/appellant was convicted/sentenced of the charges framed against him.

2. The FIR in the present case came to be registered on 11.10.2000. The judgment of conviction/sentence was passed on 05.02.2004 by the Additional Sessions Judge, Moga. The instant appeal was filed on 23.02.2004 and have come up for final hearing now i.e. after a period of more than 25 years from the date of registration of the FIR.

3. Briefly stated, on 10.10.2000 at about 7.30 p.m. Jaswinder Singh PW alongwith his cousin Inderjit Singh (now deceased) was going on

a scooter and when they reached 1 kilometer ahead on the link road from the main road Moga-Dharamkot, a Maruti car white in colour came from their behind. Two shots were fired from the car towards them. Inderjit singh raised an alarm that he had received a gunshot. By turning his face, he saw the car, which had come parallel to their scooter. One person was driving the car while the other was sitting adjacent to the driver seat. He identified the assailant sitting adjacent to the driver seat as Preet Inder Pal Singh alias sonu son of Surjit Singh, shimba by caste, resident of village Lohgarh, who was having a gun in his hand. The driver of the car was aged 20/25 years, medium height and average built whom he could identify if produced before him. Due to the receipt of a gun shot by Inderjit singh, their scooter became unstable and both of them fell down. Inderjit Singh received the gunshot injury on the left side of his back. Then the assailants went away in their car. Thereafter, he went to village Lohgarh and brought a conveyance. At that time, Inderjit Singh was struggling for life. Then he took Inderjit singh to Civil hospital, Moga but on reaching there he succumbed to his injuries. The motive for crime was that in the year 1997, Inderjit Singh and others had given injuries to Preet Inder Pal Singh alias sonu for which a case was registered against them which was pending in the court. Due to this reason, Preet Inder Pal Singh alias Sonu had murdered Inderjit Singh by firing a shot at him.

4. During investigation of said case, on 17.10.2000 Surjan Singh resident of village Lohgarh produced Preet Inder Pal Singh allas Sonu before S.I. Rachhpal Singh, who formally arrested him. On interrogation, he suffered a disclosure statement and got recovered one 12 bore DBBL gun No: 19008, which he had kept concealed under the grass near the electric motor in his fields. It was the licenced gun of his uncle Makiat singh accused

in this case. On 14.12.2000. Inspector Kewal Singh arrested Malkiat Singh accused under the Arms Act, 1959, who produced before him the licence of 12 bore DBBL gun and the same was taken into possession vide memo, copy Ex. PE attested by ASI Jagroop Singh and Piara Singh PW. After completion of necessary Investigation formalities, challan against the accused was presented.

5. Charge under Section 29 of the Arms Act, 1959 was framed against the accused, to which he pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined Jaswinder Singh PW 1. Inspector Kewal Singh, PW 2. ASI Jagroop Singh PW 3 and closed its evidence.

7. After the closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. by putting to him all the incriminating material, which he denied. He stated that he was innocent. On the day of the occurrence he was employed as an Electrical Engineer with World Wide Shipping Company, Singapore and was on the ship of the said company from 6.7.2000 to 11.11.2000. He was not in India. He had kept his gun under lock and he had spoken to his son on phone about 10 days prior to the alleged occurrence to clean the gun and place the same under lock but when he came to his village on 12.11.2000, he was told that his son after cleaning the gun, had kept the same under the mattress of the bed lying in a room. He was further told by his wife Ranjit Kaur that on 10.10.2000, Preet Inder Pal Singh had come to their house and she doubted that he had taken away something. On search she came to know that he had taken away his gun. Then she immediately ran after Preet Inder Pal Singh but could not trace him. Lateron she came to know about the incident of the murder. Then S.P.(D) Moga conducted the enquiry and found the aforesaid version to be

true and creditworthy. He himself surrendered before the police in police station, Dharamkot.

8. In defence, the accused has examined his wife Ranjit Kaur DW-1 and Harbhajan Singh DW-2. He tendered photostat copy of passport Ex.DA and produced copy of Indian Service Book mark A and Foreign Service Book mark B.

9. Based on the evidence led, the accused came to be convicted and sentenced by the Additional Sessions Judge, Moga vide judgment and order of sentence dated 05.02.2004 as under:-

Offence Section	under	Sentence RI/SI	Fine	RI/SI in default of payment of fine
29 Arms Act		RI for 02 Years	Rs.5000/-	RI for 01 Year

10. The aforementioned judgment is under challenge in the present appeal.

11. During the pendency of the instant appeal, the sentence of the accused/appellant was suspended vide order dated 23.02.2004.

12. The Counsel for the appellant contends that no offence under Section 29 of the Arms Act, 1959 is made out. In fact, the appellant was an engineer in the Merchant Navy and was on the ship between 6.7.2000 and 11.11.2000. As per Section 29 of the Arms Act, the prosecution was required to prove that the appellant had delivered the weapon to Preet Inder Pal Singh who thereafter committed the murder. In the instant case there is no such evidence of delivery of the weapon. On the other hand the defence of the accused that the weapon had been taken away surreptitiously by his nephew Preet Inder Pal Singh who subsequently committed the offence of murder, stands established. He thus contends that the judgment of conviction is liable to be set aside and the accused be acquitted of the charges framed against him. Reliance is placed on *Tarlochan Singh @*

Rana Vs. State of Punjab 2022(2) RCR (Criminal) 881.

13. The Counsel for the State on the other hand contends that though the defence of the accused is that he was travelling on the ship and the weapon had been stolen from his house, no complaint was lodged by the family members of the appellant regarding the theft of the weapon and therefore, it can be presumed that the weapon was delivered to the main accused. He, therefore, contends that the appeal was liable to be dismissed.

12. We have heard Counsel for the parties and gone through the record.

13. Before proceeding further it would be apposite to refer to Section 29 of the Arms Act, 1959. The same is reproduced as below:-

“29. Punishment for knowingly purchasing arms, etc., from unlicensed person or for delivering arms, etc., to person not entitled to possess the same. Whoever-

(a) purchases any firearms or any other arms of such class or description as may be prescribed or any ammunition from any other person knowing that such other person is not licensed or authorised under section 5; or

(b) delivers any arms or ammunition into the possession of another person without previously ascertaining that such other person is entitled by virtue of this Act or any other law for the time being in force to have, and is not prohibited by this Act or such other law from having, in his possession the same,

shall be punishable with imprisonment for a term which may extend to [three years, or with fine, or with both].

14. In **Tarlochan Singh @ Rana's case(supra)** the Hon'ble Supreme Court held as under:-

“ 15. Having gone through the record of the case and having considered the entire facts and circumstances, we are of the view that the prosecution has failed to prove that the appellant had willingly handed over the fire arm to the co-accused Gurpreet Singh @ Titu in connivance with him to murder the deceased, so as to convict him under Section 29 of the Arms Act. Even though the High Court has acquitted the appellant from the offence punishable under Section 120B IPC, upheld the appellant's conviction and sentence under Sections 29 and 30 of the Arms Act.

16. Section 29 of the Arms Act reads as under :-

"Section 29- Punishment for knowingly purchasing arms, etc., from unlicensed person or for delivering arms, etc., to person not entitled to possess the same.-Whoever-

- (a) purchases any firearms or any other arms of such class or description as may be prescribed or any ammunition from any other person knowing that such other person is not licensed or authorised under section 5; or
- (b) delivers any arms or ammunition into the possession of another person without previously ascertaining that such other person is entitled by virtue of this Act or any other law for the time being in force to have, and is not prohibited by this Act or such other law from having, in his possession the same; shall be punishable with imprisonment for a term which may extend to 3 [three years, or with fine, or with both].

17. In the light of the prosecution story, the appellant could have been charged with Section 29 (b) but only after it was established by the prosecution that he delivered the fire arm to the co-accused Gurpreet Singh @ Titu, knowingly and deliberately. There is not even an iota of evidence to establish that the fire arm was handed over to the co-accused Gurpreet Singh by the appellant. On the contrary, it appears that the co-accused Gurpreet Singh @ Titu illegally took the licensed fire arm of the appellant without his permission and knowledge and used the said weapon to murder the deceased. Admittedly, the fire arm in question was kept in the farm house which was co-owned by the appellant and co-accused Gurpreet Singh and was taken away from there by co-accused Gurpreet Singh illegally and without permission of the appellant.

18. This being the factual position, the appellant cannot be charged with Section 29 of the Arms Act and his conviction by the High Court under the said Section is not liable to be sustained and the impugned judgment of the High Court to that extent is hereby set aside.

19. Once the appellant stands exonerated from offence under Section 120 B IPC by the High Court and Section 29 of the Arms Act by us on the ground that the prosecution failed to establish that the fire arm was parted by him knowingly and willingly and that it was taken away without his knowledge by the co-accused and used in the commission of an offence, there appears to be no justification to convict and punish the appellant even under Section 30 of the Arms Act. Section 30 of the Arms Act reads as under :-

"Section 30- Punishment for contravention of licence or rule. –

Whoever contravenes any condition of a licence or any provision of this Act or any rule made thereunder, for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to [six months], or with fine which may extend to [two thousand] rupees, or with both."

20. Since there is no evidence to establish any willful violation by the appellant of any of the conditions of the Act or conditions of a licence or any provision of the Act or any rule, he is liable to be exonerated from the offence of Section 30 as well."

15. Coming back to the facts of the instant case, the prosecution was required to establish that the appellant had delivered the weapon into the possession of another without ascertaining whether such other person was entitled to the said weapon. In the instant case, there is absolutely no evidence of any delivery by the appellant. It is his case that the murder took place on 10.10.2000 whereas he was travelling on the ship between 6.7.2000 to 11.11.2000 being an engineer of the Merchant Navy. Therefore, the question of delivery of the weapon does not arise. Though the defence has not been able to establish that a complaint regarding the theft of the weapon

was lodged by the family members of the appellant, that by itself is not sufficient to affix guilt of the appellant which the prosecution has to establish beyond reasonable doubt.

16. In view of the above, we find considerable merit in the present appeal and, therefore, the judgment of conviction is set aside. The appellant is acquitted of the charges framed against him.

(JASJIT SINGH BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

May 16, 2025

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>