



(1)

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRA-D-272-DB-2005 (O&M)

Date of Decision:- 21.02.2025

Shanku & another ... Appellants
Versus
State of Punjab ... Respondent

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

Present: Mr. Sukhcharan Singh Gill, Advocate, (Amicus Curiae)
for the appellants

Mr. Harkanwar Jeet Singh, AAG, Punjab.

GURVINDER SINGH GILL, J.

1. Appellants - Shanku and Balbir Singh have preferred this appeal assailing judgment dated 24.03.2005 passed by learned Sessions Judge, Ferozepur vide which they were held guilty for offence punishable under Section 302/34 IPC and have been sentenced to undergo imprisonment for life apart from payment of fine amounting to Rs.5000/- each. However, since appellant No.2 - Balbir Singh has expired during the pendency of this appeal, the proceedings qua him stand abated vide order dated 17.02.2025. As such, the instant appeal survives only qua appellant No.1 - Shanku.
2. The matter arises out of FIR No.21 dated 08.02.2001 registered at Police Station Sadar Fazilka, under Sections 302/34 IPC (Ex.P10/B) on the basis



(2)

of statement (Ex.P10) of Bhajan Singh, wherein he stated that he is a labourer by profession and works for Food Corporation of India (FCI), Fazilka and that they are 5 brothers. He stated that his eldest brother Khushal Singh had died and his wife Jeeto Bai was now residing with Bhagwan Singh, who used to reside in his in-laws village Kotha Thagni. Bhagwan Singh was also a labourer working for FCI. The complainant stated that he as well as his brothers Mangal Singh and Baggu Singh reside in separate houses in Village Nawan Hasta. He further stated that on 08.02.2001 at about 2.30 PM, when he (complainant), Bhagwan Singh, Mangal Singh and Baggu Singh were present in his house, then Mangal Singh disclosed that at about 10.00 AM, Chhinder Singh and his son Bittu were playing with marbles (small round glass balls) by digging a pit in the house of Baggu Singh and when he (Baggu Singh) objected to the same, Chhinder Singh hurled abuses to him and consequently he had slapped Chhinder Singh upon which Chhinder Singh went back home and after some time came back alongwith other members of his family armed with sticks, but the respectable of the village settled the matter. The complainant further stated that while Mangal Singh was narrating about the said incident, they heard noise commotion and when the complainant climbed to the roof of *kotha*, he saw that Jagir Singh armed with .12 bore gun, his son Shanku Singh armed with stick, Makhan Singh armed with *kirpan*, Karnail Singh armed with stick as well as Sham Singh @ Shama and his brother Balbir Singh armed with *gandassis* were standing in front of small gate of his house leading to the house of Mangal Singh and that



(3)

they were raising *lalkaras* challenging them to come out and that they would teach them a lesson for slapping Chhinder Singh. The complainant further stated that his brother Bhagwan Singh went out of the small gate and apologized to the aforesaid persons with folded hands. At that time, complainant's brothers Mangal Singh and Baggu Singh were standing in the courtyard of their house. The complainant alleged that Balbir Singh and Chanku Singh exhorted their companions to fire shot and not to spare, upon which Jagir Singh fired a shot from his gun aiming it towards Bhagwan Singh and as a result of the shot, Bhagwan Singh fell down. When the complainant and his brothers raised alarm, the assailants ran away from the spot with their respective weapons. Bhagwan Singh had been hit on the right side of his chest and died on account of firearm shot.

3. Pursuant to lodging of FIR, the police conducted requisite investigation during the course of which inquest proceedings in respect of death of Bhagwan Singh were conducted. The dead body of Bhagwan Singh was got subjected to post-mortem examination. The police visited the place of occurrence and prepared a rough site plan. Statements of witnesses were recorded in terms of Section 161 Cr.P.C.
4. Upon conclusion of investigation, Makhan Singh, Karnail Singh, Chanku and Balbir Singh were found innocent and consequently, challan was presented only against Jagir Singh and Sham Singh on 30.03.2001 in the Court of Sub Divisional Judicial Magistrate, Fazilka, who upon finding that the facts *prima facie* disclosed commission of offences punishable under Section 302 read with Section 34 IPC and Section 25 of the Arms



(4)

Act committed the case to the Court of Sessions vide order dated 07.04.2001. Learned Sessions Judge, Ferozepur, finding sufficient grounds to presume that accused Jagir Singh and Sham Singh had committed the offence in question accordingly framed charges against them on 24.04.2001.

5. Subsequently, after the statement of the complainant was recorded by the trial Court, the prosecution moved an application under Section 319 Cr.P.C. for summoning four more co-accused namely Makhan Singh, Karnail Singh, Shanku Singh and Balbir Singh, which was partly allowed on 23.10.2001 and two co-accused namely Shanku Singh and Balbir Singh were ordered to be summoned to face trial. Consequently, upon securing their presence, fresh charges were framed against all the accused on 06.03.2002.

6. The prosecution in order to establish its case examined as many as 11 PWs. The gist of their statements is briefly referred to herein under:-

PW-1 Dr. I.M.Challana, SMO, Civil Hospital, Fazilka, who had conducted post-mortem examination on the dead body of Bhagwan Singh on 09.02.2001, proved the post-mortem report as Ex.P1, wherein he described the injuries found on the dead body of Bhagwan Singh and opined that the cause of death was due to shock and haemorrhage as a result of injury No.1 to the lungs and the heart caused by firearm and was sufficient to cause death in the ordinary course of nature.

PW-2 Jang Sher Bahadar Singh, who prepared the scaled site plan of the place of occurrence, proved the same as Ex.P4.



(5)

PW-3 HC Parminder Singh, who is a formal witness, tendered into evidence his affidavit Ex.P5, wherein he deposed that on 08.02.2001, Inspector Karamjit Singh handed over to him the dead body of Bhagwan Singh for getting the post-mortem examination conducted and that after the same was conducted on 09.02.2001, the hospital authorities handed over the dead body apart from clothes and post mortem report. He deposed that after handing over the dead body of Bhagwan Singh to his heirs against a receipt, he handed over the clothes, receipt and the post mortem report to Inspector Karamjit Singh.

PW-4 HC Jasbir Singh, who is a formal witness, has tendered into evidence his affidavit Ex.P6, wherein he deposed that on 08.02.2001 and on 10.02.2001, he was posted as MHC at Police Station Sadar Fazilka and that Inspector Karamjit Singh had deposited with him parcels containing blood stained soil and plain soil on 08.02.2001 and also a .12 bore double barrel gun and three .12 live cartridges on 10.02.2001. He further stated that on 12.03.2001, all the parcels were sent through Constable Nand Lal for depositing the same in the office of FSL, Punjab, Chandigarh, which were deposited on 13.03.2001 and that as long as the parcels remained in his possession, the same were not tampered with.

PW-5 Constable Nand Lal, who is a formal witness, has tendered into evidence his affidavit Ex.P7, wherein he deposed that on 12.03.2001, MHC Jasbir Singh had handed over to him the case property for depositing the same in the office of FSL, Punjab, Chandigarh, which he accordingly deposited the next day and that as long as the parcels remained in his possession, the same were not tampered with.



(6)

- PW-6** Rajinder Kumar, Clerk, DC Office, Ferozepur, proved the arms license issued to Jagir Singh as Ex.P8.
- PW-7** HC Randhir Singh, who is a formal witness, tendered his affidavit Ex.P9 in evidence, wherein he deposed that on 08.02.2001, he had delivered special reports to the Illaqa Magistrate and to other officers.
- PW-8** Bhajan Singh (complainant) at whose instance the FIR in question had been lodged stated broadly in tune with the version recorded in the FIR, which has already been referred to above.
- PW-9** Mangal Singh, brother of the complainant, who had witnessed the occurrence, stated in support of the case of prosecution and described the occurrence broadly in tune with the allegations recorded in the FIR.
- PW-10** Inspector Karamjit Singh is the Investigating Officer in the instant case stated in detail in respect of the proceedings of investigation conducted by him and proved various documents prepared during the course of investigation. He also stated that he arrested accused Jagir Singh, who was produced by Kundan Singh, Sarpanch, on 10.02.2001 and that the accused had produced .12 bore gun with valid arms license alongwith three cartridges, which were taken into possession. He stated that accused Shanku was arrested on 11.02.2001.
- PW-11** ASI Harcharan Singh stated that on 08.02.2001, he remained associated with the investigation of the case and that in his presence, blood stained soil and plain soil was lifted from the place of occurrence by Inspector Karamjit Singh, which was converted into separate parcels and that on 09.02.2001, HC Parminder Singh handed over the clothes of the deceased to Inspector Karamjit Singh.



(7)

7. Upon closure of the prosecution evidence, statements of accused were recorded in terms of Section 313 Cr.P.C., wherein they pleaded innocence and stated that they have been falsely implicated.
8. The accused, in their defence, examined **DW-1** Dr. Hans Raj, Medical Officer, Civil Hospital, Fazilka, who stated that on 10.02.2001 at 7.20 PM, he medico legally examined Jagir Singh, who was brought by ASI Harcharan Singh and had found one lacerated wound on parietal region. He proved the MLR as Ex.D2/A. During cross-examination, he stated that the injury could be a result of fall. **DW-2** Maninder Singh, SP, Pathankot, stated that he had partly investigated the case and had found Shanku Singh, Makhan Singh, Balbir Singh and Karnail Singh to be innocent.
9. The learned trial Court, upon marshalling the evidence on record, acquitted Sham Singh @ Shama of all the charges framed against him, but held the charges against Shanku and Balbir Singh to be fully proved and accordingly held them guilty vide impugned judgment. It may here be mentioned that during trial, accused Jagir Singh died and proceedings qua him stand abated vide order dated 31.01.2004.
10. Learned counsel representing appellant – Shanku, while assailing the findings of trial Court as regards his guilt, made the following submissions:
 - (i) that the appellant has falsely been implicated and in fact had been found innocent by the police during the course of investigation and came to be summoned subsequently with the aid of Section 319



(8)

Cr.P.C. on account of the exaggerations made by the prosecution witnesses;

- (ii) that the appellant admittedly did not inflict any injury either the deceased or to anybody else and in fact it is a case of a single shot fired by a firearm by co-accused Jagir Singh (since expired);
- (iii) that the complainant in an attempt to spread the net wider has implicated all the members of the family of Jagir Singh and that the role attributed to the appellant is that he had raised a *lalkara* exhorting his companions to fire and that since the firearm shot in question was fired by Jagir Singh, who was aged about 60 years, it is not believable that a man of that age would go merely by a *lalkara* made by a young man in his twenties, as the appellant admittedly at the time of occurrence was aged barely about 27 years; and
- (iv) that the appellant had no motive whatsoever to have nursed any intention to kill the deceased as the motive, if any, lay with Chhinder Singh, who had been slapped by Mangal Singh, brother of the complainant.

11. On the other hand, learned State counsel submitted that it is a case of eye-witness account wherein not only the complainant stated absolutely in tune with the allegations leveled in the FIR, but the version also stands fully corroborated from the testimony of eye-witness PW-9 Mangal Singh. Learned State counsel submitted that the medical evidence led by the prosecution is absolutely in tune with the prosecution version and there being no evidence to the contrary, there is no ground to disbelieve the consistent testimonies of the eye-witnesses particularly when the PWs had no motive whatsoever to falsely implicate them.



(9)

12. We have considered rival submissions addressed before this Court and with the assistance of learned counsel have also perused the record of the case.

13. Since it is a case of homicidal death, wherein allegations are to the effect that the deceased had been fired at with a .12 bore gun, it is apposite to refer to the medical evidence led by the prosecution in this regard. Post-mortem examination on the dead body of Bhagwan Singh was got conducted by Dr. I.M.Challana, who has been examined by the prosecution as PW-1. He described the injuries found on the dead body of Bhagwan Singh as under:

“1. A lacerated punctured wound with inverted margins and collar abrasion present around measuring 1.75 x 1 cm on right side of the chest 1 cm from the sternum at the level of 3rd and 4th intercostals space.

2. A lacerated punctured wound with everted margins measuring 2.25 cm x 1.25 cm on the back of the left side of the chest 1 cm from the vertebral column at the level of T-6 and 7 vertebrae.

XX XX XX

3. An abrasion 1.25 cm x .5 cm on right elbow joint posteriorally. The subcutaneous tissues underneath all injuries were found to be congested.”

14. PW-1 Dr. I.M.Challana, while proving the post-mortem report as Ex.P1, opined as regards the cause of death as under:

“In my opinion, the death in this case was due to shock and haemorrhage as a result of injury No.1 to the lungs and the heart caused by firearms and was sufficient to cause death in ordinary course of nature.”



(10)

15. PW-1 Dr. I.M.Challana was briefly cross-examined on behalf of the accused, but nothing substantial could be elicited during the course of his cross-examination so as to either doubt the veracity or his opinion. A perusal of the injuries would show that while injury No.1 is in the nature of a lacerated wound with 'inverted margins' on right side of the chest, injury No.2 again a lacerated punctured wound with 'everted margins' on the back of the left side of the chest, which apparently are a result of a firearm injury being 'entry' and 'exit' wound. Under these circumstances, this Court does not find any ground to doubt the opinion of the expert i.e. PW-1 Dr. I.M.Challana a regards the cause of death. Consequently, the findings of the trial Court in this regard are affirmed.
16. The case of the prosecution is that all the accused had come together and that only one of them i.e. Jagir Singh (since expired) was carrying .12 bore gun, which he produced before the police alongwith his arms license. It is the specific case of the prosecution that it is co-accused Jagir Singh, who had fired one shot only. As per the report of the FSL, the blood stained soil lifted from the spot was found to be stained with human blood. Further, as per the FSL report, the gun recovered from Jagir Singh (since expired) had been used for firing. The trial Court held that the shot in question leading to the death of Bhagwan Singh had been fired by Jagir Singh co-accused who had already expired during trial and consequently held appellant Shanku and appellant Balbir Singh (since expired) vicariously liable for having committed offence punishable under Section 302 read with Section 34 IPC.



17. While examining the role attributed to the present appellant Shanku, we find that although allegations are there in the FIR to the effect that he was accompanying the other accused and was also carrying a stick, but admittedly no injury whatsoever was caused by appellant Shanku. In the FIR, the appellant is alleged to have raised a *lalkara* exhorting his companions to fire a shot. PW-8 Bhajan Singh (complainant) and PW-9 Mangal Singh have also stated to an identical effect. However, apart from the said allegation of raising a *lalkara*, there is nothing on record to suggest that the appellant Shanku nursed any kind of intention to eliminate the deceased. It will also be debatable as to whether Jagir Singh aged about 60 years, who was carrying his licensed gun and who had fired the fatal shot actually fired the shot pursuant to exhortation by the appellant only. As a matter of fact, it is Chhinder Singh, who would have a motive inasmuch as it is Chhinder Singh who had been slapped by brother of the complainant, when he was playing marbles in the house belonging to Baggu Singh. The Courts while weighing the evidence in a case where a large number of persons are arrayed as accused has to extra cautious to rule out possibility of false implication particularly when it is a case of a single injury only. It is not unknown that the aggrieved person/party, at times, would make exaggerations and attempt to rope in the entire family of the assailant so as to settle scores or to teach them a lesson. Since it is a case of firing of a single shot only by a co-accused Jagir Singh from his licensed gun and no attempt whatsoever was made by the appellant, who was alleged to be carrying a stick, to inflict any



(12)

injury, the appellant would be entitled to be extended the benefit of doubt having regard to his role and the fact that he is not even stated to be a previous convict.

18. Consequently, the instant appeal merits acceptance and is hereby accepted. The conviction of appellant Shanku is set aside and he is acquitted of all the charges framed against him. Necessary intimation be sent to the quarters concerned.

(GURVINDER SINGH GILL)
JUDGE

21.02.2025
Vimal

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No