

NON- REPORTABLE**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.1237 OF 2008****GURJINDER SINGH****.....APPELLANT.****VERSUS****STATE OF PUNJAB****.....RESPONDENT****J U D G M E N T****ANIL R. DAVE, J.**

1) Being aggrieved by the Judgment of conviction rendered by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 253-DB of 2006 dated 1st February, 2008, this appeal has been filed by the convict. By virtue of impugned order, the appellant has been convicted for the offence under Section 302 of IPC and has been awarded sentence of imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo further rigorous imprisonment for six months. The order of conviction dated 3rd March, 2006, passed by the Sessions Judge, Ferozepur, in Sessions Case No.33 of 2001 has been confirmed.

2. The case of the prosecution in a nut-shell before the trial court was as under:

Sandeep Singh (who has been referred to hereinafter as 'the deceased') was a resident of village Chhibian Wali. He had lent a sum of Rs.5 lacs to Gurjinder Singh-the appellant and the said amount was not being returned by Gurninder Singh (hereinafter referred to as 'the accused'). On the night of 9th June, 2001, the deceased and the accused, along with Jasbir Singh (PW-4) were going to village Chhibian Wali in Maruti Car No. PB-4-E 6699 from Muktsar. The deceased was driving the car and the accused was sitting next to him, whereas PW-4 was sitting on the rear seat. Around 10.30 p.m., when they were about one kilometer away from Canal Bridge, Ladhuwala, the accused asked the deceased to stop the car as he wanted to ease himself. When the car was stopped, the accused stepped out of the car and went to the back side of the car and thereafter came near the driver's seat with his pistol and fired one shot on the right temple of the deceased and another shot on the neck of the deceased. Upon seeing the said firing, PW-4 raised an alarm and thereupon the accused warned him that he would kill him also if he would not keep quiet and, thereafter, the accused fired on his own left arm and another shot below his own knee of the right leg. PW-4 was afraid of the incident and thereafter he ran away from the place. He, thereafter, telephoned his sister and his sister's husband but he was advised to keep mum to save himself. Thereafter, his sister and her husband, who were abroad, came to India and cremated the deceased.

Thereafter, PW-4 went to police station along with his sister and her husband and narrated the incident to S.H.O. Harbans Singh (PW-13). An FIR was lodged by him on 1st July, 2001 at 5 a.m. whereas the incident had taken place on 9th June, 2001.

3. It may incidentally be noted that before the aforesaid FIR was lodged, the accused had lodged an FIR being FIR No.118 on 10th June, 2001 at PS Sadar, Jalalabad.

4. On 10th June, 2001, the accused had filed the FIR before Harbans Singh (PW-13) to the effect that when the accused and the deceased were returning to village Chhibian Wali from Muktsar in Maruti car along with PW-4, who was sitting on the back seat of the car, around 10.30 p.m. when they reached near Canal Bridge, Ladhuwala, he saw a white gypsy belonging to Harcharan Singh parked on the road. Harcharan Singh and two other unknown persons, whom he did not know but he could identify if produced before him, stopped the car of the deceased and, thereafter, Harcharan Singh came near the driver's window and fired at the deceased. The bullets injured him on his neck and temple. Those two unknown persons also fired at him and the bullets hit him on the upper side of the arm between shoulder and his elbow, then the accused and PW-4 tried to run away. Thereafter, Harcharan Singh went away in his gypsy. The accused and PW-4 had seen Sandeep Singh dead in the car. Leaving PW-4 near the dead body of the

deceased, he went to police station and lodged the FIR. The aforesaid version of the accused was recorded as FIR No.118 on 10th June, 2001.

5. After the aforesaid FIR was filed, Harbans Singh (PW-13), the S.H.O. went to the place of offence and prepared inquest report Ex.P.2 and took possession of three empty cartridges and blood stained handkerchiefs, blood stained glasses and one empty cartridge below the driver's seat and one bullet of .32 bore weapon. He also recorded statement of PW-4 on 1st July, 2001.

6. As per the report of Forensic Science Laboratory (FSL) Ex. P.51, the cartridges which had been received from the spot of the offence were fired from 7.65 mm pistol and the blood which was found from the pieces of glass was human blood of Group 'B'.

7. On 2nd July, 2001, investigation of the offence had been taken over by sub-Inspector Kuldeep Singh (PW-12) and he had arrested the accused on the same day. On 3rd July, 2001, the accused was interrogated and at his instance (statement Ex.P-46), the pistol from which the bullets were fired was recovered from a place half a kilometer away from the culvert of a canal near village Ladhuwala.

8. Post mortem of the body of the deceased was conducted by Dr. Rajesh

Kumar Sharma (PW-1) on 10th June, 2001, and it was found that there was a lacerated punctured wound on the right temporal region and there was a lacerated punctured wound on the right side of the middle of the neck. There was a dark black area around both the wounds. A lacerated unpunctured wound on the left side of his neck and behind the left ear lobe was also found. The fourth injury on the deceased was on the back of the neck at the level of C6 Vertebra and 3 cm. away from the middle of the left side of the neck. The cause of death was shock and hemorrhage due to injuries to brain and neck. The injuries were sufficient to cause death in the ordinary course of nature.

9. At the time of trial, the accused denied the allegations levelled against him. It was his case that PW-4 had planned the murder and he had conspired with Harcharan Singh, with whom the accused had animosity.

10. After examining the witnesses and upon perusal of the evidence, the trial court passed an order of conviction dated 3rd March, 2006.

11. Being aggrieved by the order of conviction, the aforestated appeal was filed before the High Court by the accused which has been dismissed and, therefore, the present appeal has been filed.

12 The High Court confirmed the conviction believing the story of the prosecution. The High Court agreed with the reasons assigned by the trial court for convicting the accused and the High Court also came to the

conclusion that there was sufficient evidence to show that the accused had committed the offence. Recovery of the pistol, self inflicted injury, presence of the accused at the place of the offence and other evidence convinced the High Court that the order of conviction passed by the trial court was just and proper and it dismissed the appeal.

13. Mr. Jaspal Singh, learned senior counsel, appearing on behalf of the accused-appellant, submitted that the order of conviction recorded by the trial court and confirmed by the High Court is not sustainable. His main submission was to the effect that there was delay in filing the FIR on the part of the prosecution witness (PW-4). Had the story narrated by PW-4 been correct, he would have immediately rushed to the police station to file the FIR but he waited for around 20 days for filing the FIR and the said delay has not been sufficiently explained by PW-4.

14. The learned counsel also submitted that the pistol had been recovered from a public place. It was found from a place which was about half a kilometer away from a bridge of Ladhuwala Uttar and on a katcha path. Moreover, the pistol belonged to Jagtar Singh (PW-9) and not to the accused. There was sufficient evidence to show that the owner of the pistol was PW-9 as established from the record and, therefore, the recovery of the pistol could not have been a ground for conviction of the accused. He further added that it was not established that the accused had purchased the pistol because no receipt for Rs. 90,000/- had been produced in evidence.

Moreover, according to him, there was no identification of the pistol. He further submitted that the parents of the deceased had not been examined by the prosecution, though, as per version of PW-4, he had talked to the parents of the deceased after the offence had been committed. According to him, the FIR filed by PW-4 contained a story which was not correct. There was no reason for PW-4 to be afraid of anyone and yet he did not lodge the FIR for a long period of about 21 days. By not examining the parents of the deceased, according to the learned counsel, there was suppression of material witnesses by the prosecution.

15. He further submitted that the statement made by the accused leading to the recovery of the pistol had not been produced in the evidence. According to him, only memo, which is in the nature of the secondary evidence, was produced and, therefore, recovery of pistol could not have been believed by the trial court. According to him, even the memo, which revealed that in presence of 'witnesses' the pistol was recovered, was not correct because, in fact there was only one witness when the pistol was recovered. According to him, at the time of making a recovery memo, there were policemen who were not examined and there was no justifiable reason for not examining those policemen. He further submitted that recovery of certain cartridges-bullets from the car have not been explained though only two bullets had been fired at the deceased, more number of bullets-cartridges had been found and there was no explanation with regard to those bullets-cartridges. He further submitted that there were certain

discrepancies with regard to number of parcels containing bullets-cartridges sent to the Forensic Science Laboratory (FSL).

16. For the aforesaid reasons, according to the learned counsel, there were defects in the investigation and there was no conclusive evidence that the accused had committed the offence. He also cited several judgments so as to substantiate his submissions. He, therefore, submitted that the order of conviction be quashed and set aside.

17. On the other hand, the learned public prosecutor appearing for the State submitted that there was proper investigation and upon appreciation of evidence adduced before the trial court, the trial court rightly convicted the accused. According to the learned counsel appearing for the State, the discrepancy, if any, with regard to identification of the pistol or the memo of recovery were so insignificant that it would not lead to any serious consequences. According to him, the prosecution had established the case against the accused and there was no reason to set aside the order of conviction. He had replied to all the submissions made by the learned counsel appearing for the accused.

18. We have heard the learned counsel at length and have also gone through the relevant evidence. We have also carefully gone through the judgments cited by the learned counsel appearing for the accused and we do find that the said judgments support the legal submissions made by him.

Upon perusal of the impugned judgment and judgment of the trial court along with evidence, we are of the view that the order of conviction passed by the trial court and confirmed by the High Court is just and proper for the reasons set out hereafter. In our opinion, the trial court has rightly appreciated the evidence and the High Court has also confirmed the order of conviction for justifiable reasons, duly incorporated in the judgment and order confirming the conviction.

19. So far as the delay in filing the FIR is concerned, there appears to be substance in what has been stated by PW-4. Every human being would not react in the same manner when he sees commission of an offence. A person might be bold enough to catch the offender or he might run away and someone might never inform the police. Looking to the behaviour of PW-4, we think that though there was delay in filing the FIR of about 20 days, there is truth in the version given by him in the FIR. The version given by him in the FIR is correct and his behaviour also appears to be quite possible. Possibly PW-4 was afraid as he was threatened by the appellant as stated by him and also because he had seen the offence being committed before him and for that reason he did not dare to go to the police station immediately but he talked to the parents of the deceased on telephone. It has come in evidence that the parents of the deceased asked him to await till their arrival and thereafter he gathered courage to file an FIR only after having discussion with them. The parents of the deceased came to his

place and gave him necessary courage and strength to tell the truth before the police authorities. Though there was delay in filing of the FIR, the contents of the FIR are not incorrect.

20. The story put forward by the accused in his FIR does not appear to be correct. On the contrary, we find truth in the FIR filed by PW-4, because the injuries inflicted upon the accused prima facie appear to be self inflicted. Looking to the nature of bullet injuries suffered by the accused, it is very clear that he was shot from a very close range. The said fact can be revealed from the presence of burn injuries - black area around the wound of the bullet. Had it been fired from a distance, the presence of burn injuries or dark marks around the wound would not have been there. When a weapon is fired from a close range, normally gun powder which comes along with the bullet makes dark burn marks around the wound. Both wounds on the accused are having such black marks which would not have been there if, in fact, he had been shot from a distance as the burnt gun powder does not go much far from the muzzle of the weapon. Presence of dark burn marks around the wound shows that the bullet injury had been inflicted from a very close distance. Such burn marks would not have been there if in fact he had been running away from the car. Thus, the story put forward by the accused in his FIR about his being shot by another person does not appear to be correct.

21. With regard to recovery of the pistol, the learned counsel is right that the pistol was recovered from a public place but it was recovered from the place which could not have been easily located by anyone and, therefore, the accused cannot get benefit which the learned counsel wanted him to get. From the memo of recovery, it is clear that the pistol had been hidden by digging earth under a plant of Sarkanda about half a kilometer away from bridge of Ladhuwala Uttar. Thus, it is very clear that the pistol had been hidden by digging earth under the plant of Sarkanda about half a kilometer away on the eastern katcha path from bridge of Ladhuwala Uttar and, therefore, in our opinion, the recovery cannot be said to be from a place which could have been easily accessible to anyone.

22. With regard to recovery memo, the mistake committed in writing the word 'witness' or 'witnesses' can not be said to be so material so as to adversely affect the case of the prosecution. In our opinion, such trivial mistakes should not give any benefit of doubt or any sort of benefit to the accused. In fact, the recovery was made in presence of Ajaib Singh, Assistant Sub Inspector and Balbir Singh, Head Constable. It is also not correct that the memo of recovery was not produced before the Court. Exhibit P.46, which reveals the fact about the statement made by the accused in relation to pistol incorporates the entire statement made by the accused. Therefore, the said document itself incorporates the statement made by the accused. Moreover, simply because the recovery was in the

presence of policemen would not adversely affect the prosecution case. A police officer can be a reliable witness if the court finds him to be a truthful person and in that event there is no harm in relying upon his statement. In the circumstances, we do not find anything objectionable if the pistol had been recovered in the presence of policemen.

23. With regard to ownership of the pistol, it has been established by the prosecution that for a sum of Rs.90,000/- the accused had purchased the pistol on 29-5-2001 whereas the offence had been committed on the night of 9th June, 2001. Thus, the pistol had already been purchased by the accused. It is also pertinent to note that intimation with regard to the sale of the pistol had also been given by the seller of the pistol Jagtar Singh (PW-9) to the licensing authority and the said fact was established by P.W.8 who is working in the office of the D.C., the Licensing authority. Moreover, a sum of Rs.90,000/- was paid by the accused for purchase of the pistol which had been used in the offence. Thus, with regard to ownership and possession of the pistol, the prosecution has proved beyond any doubt that the accused was not only owner of the pistol in question but was also having possession thereof. It is also in evidence that the bullets which had caused injury to the deceased were fired from the said pistol. Mere non-production of a receipt issued by Jagtar Singh (PW-9) would not make case of the prosecution weak as it has been duly established that the pistol was sold to the accused.

24. From the aforestated discussion and upon perusal of the evidence, we

are satisfied that the trial court as well as the High Court, while confirming the order of conviction, are not in error and the order of conviction deserves to be confirmed. The appeal is, therefore, dismissed.

J

SHARMA)

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(Dr. MUKUNDAKAM

.....J.

New Delhi
February 18, 2011

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(ANIL R. DAVE)



JUDGMENT