

REPORTABLE**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 2079 OF 2008****Santokh Singh & Anr.****... Appellants**

VERSUS

State of Punjab**...Respondent****J U D G M E N T****SURINDER SINGH NIJJAR, J.**

1. The two appellants in this Criminal Appeal have challenged the judgment of the Punjab and Haryana High Court in Criminal Appeal No. 885-DB of 2003, whereby the High Court upheld the conviction of the appellants for the offence under Section 302 read with Section 34 IPC sentencing them each to undergo imprisonment for life with a fine of Rs. 1,000/- with a direction to further undergo RI for six months in case of default of payment fine.

2. The prosecution case is that Inspector Harvinder Singh, Station House Officer, Police Station, Civil Lines, Amritsar, alongwith other officials including Balwinder Singh, ASI, Tarsem Singh, Constable, Bikram Singh, Constable, happened to be present at Chowk Ciivil Lines, Amritsar, in connection with patrolling during the night of 14.7.2002. At about 10.45 p.m., Rajiv Kumar son of Prem Nath Sharma resident of House No. 75/5, Gulati Road, Amritsar Cantt, met them. He gave them a written application dated 14.7.2002 (Ex. PE) giving the details about the death of Sanjay Kumar @ Shammi. On the basis of the complaint, FIR (Ex. PD) was registered at the Police Station, Civil Lines, Amritsar at 11:30 p.m. The deceased, cousin of the complainant, was working in Air Force MES as FGM and was residing in MES Quarter No. 23/4. He was Secretary of an Employees' Union. He, however, left the aforesaid Employees' Union. Two days later, he became the President of INTUC Union.

Accused (1) Santokh Singh, President of Employees' Union, (2) Sawarn Kumar (President of Employees' Union), GE Amritsar (3) Jagsher Singh Bhola, General Secretary, (4) Gurdev Singh, FMGHS II came to the quarter of the deceased in the presence of the complainant. They said that they wanted to discuss something about the disputes of the Union. They, therefore, took Sanjay alongwith them. Thereafter, Arjinder Pal Singh @ Prince, owner of a Hotel came to their house and told them that Sanjay has been shot dead. In the complaint, it is stated that the complainant had full confidence that all the four persons who had called Shammi from his house had made Shammi drink liquor and while he was under the influence of liquor, they had shot him dead after snatching his pistol. Endorsement Ex.P/1, was made on this statement by the Inspector and sent to the police station through Constable Bikram Singh. FIR (Ex. PE/3) was recorded on the basis thereof by Balbir Singh, SI. His signature

on the same was identified by Inspector Harvinder Singh when he appeared as PW-12 in the case.

3. The place of the incident, Hotel Genesis in the Cantonment area of Amritsar, was then visited by the Inspector alongwith other officials. The complainant Rajiv Kumar was also taken alongwith the police party. Santokh Singh and Sawarn Kumar were arrested from the spot. Licensed pistol of Sanjay Kumar was found lying near the dead body. One empty, one missed cartridge and three live cartridges were also recovered therefrom. Prithipal Singh, Sub Inspector (Finger Prints Expert) was called at that place and the pistol was got examined from him. It was opined by him that no decipherable finger print impressions were found. Santokh Singh and Sawarn Kumar (hereinafter referred to as "the appellants") were got medically examined and it was found that they had not consumed any drug or alcohol. The post mortem on the dead body of

Sanjay Kumar was duly performed and the dead body was handed over to his relatives. The other two accused Gurdev Singh and Jagsher Singh @ Bhola had, thereafter, surrendered in the Court. They were formally arrested in this case on 25.7.2002. During the investigation, no witness came forward to give an eye witness account as to how the weapon was snatched from Sanjay and how he was shot with the same weapon. The investigation, however, concluded that the four accused had called Sanjay Kumar from his house. It appears that extra judicial confession was made by Jagsher Singh @ Bhola and Gurdev Singh before one Vipin Kumar son of Mulakh Raj, resident of Ram Tirath Road, Amritsar to the effect that they had killed Sanjay Kumar. It was also stated that on 13.7.2002 in the presence of Prince Masih, son of Buta Masih, all the four accused persons, had condemned Sanjay Kumar for leaving the Union and joining INTUC. They had also said that they will have to do something in that connection.

The report of the Forensic Science Laboratory indicated that the pistol recovered from the site of incident was found to be in working condition. It also indicated that shots had been fired from the very same pistol. They were duly put on trial for the offence under Section 302/34 IPC and Section 25 of the Arms Act. At the trial, it was stated by Dr. Gurmanjit Rai (PW-1) that he had conducted the post mortem examination on the dead body of Sanjay Kumar @ Shammi on 15.7.2002 at 11.50 a.m. He had proved the post mortem report (Ex. PA). The report mentions that the following injuries were noticed on the deceased:-

- “1. Lacerated wound 1.5 x 1 cm with inverted margins was present on right side of head, 4 cms. lateral to out end of eyebrow. Abrasion color was present at the lower margin of wound. Clotted blood was present.
2. Lacerated wound of 1.8 x 0.8 cm was present on left side of head in the temporal region, 5 cms above pinna of ear. Margins of wound were found everted Clotted blood was present.”

The cause of death, in the opinion of the doctor, was laceration of brain, vital organ, as a result of communicating injuries no. 1 and 2, which was sufficient to cause death in the ordinary course of nature. The time that had elapsed between the injuries and death was opined to be few minutes and between death and post mortem was 24 hours.

4. A number of witnesses were examined by the prosecution in support of its case. Upon closure of the prosecution evidence, the statement of the appellants were recorded under Section 313 Cr.P.C. All the allegations were denied by them. Jagsher Singh @ Bhola and Gurdev Singh stated that they were innocent and had been falsely implicated. Appellant No. 1, Santokh Singh stated thus:-

“The allegations against us are totally false. Deceased was of aggressive nature and also living under depression. He used to have unpredictable swings of behaviour. He was drug addict and was facing criminal cases. He remained in hospital for treatment also. The allegations of my alongwith other going to his house and to bring him are

incorrect. He met us in restaurant. All of a sudden, he fired on his head may be to show false valour. It all is so sudden and sad, which feelings in him culminated in this act are difficult to tell. But he was depressed and aggressive and possible drug influence. Police on site inspection also agreed with it, but scenario of place of occurrence was changed. We got totally perplexed. I am innocent.”

Appellant No. 2 gives the same version as appellant no. 1.

5. Upon examination of the entire evidence, the trial court convicted all the four accused under Section 302 read with Section 34 IPC and they were sent to undergo imprisonment for life and to pay a fine of Rs. 1,000/- each under Section 302 read with Section 34 IPC. In default of payment of fine, the defaulter accused would further undergo RI for a period of 6 months. The aforesaid judgment of the trial court was taken in appeal by the four convicts.

6. The High Court upon re-examination of the entire evidence has confirmed the findings recorded in the impugned judgment qua appellant No. 1, Santokh Singh and appellant No. 2 Sawarn Kumar. However the co-accused Jagsher Singh @ Bhola and Gurdev Singh were acquitted of the charge under 302 read with Section 34 IPC. It is in these circumstances, that the two appellants have challenged the aforesaid judgment in this appeal.

7. We have heard the learned counsel for the parties. Mr. K.T.S. Tulsi, learned senior counsel for the appellants submitted that this is undoubtedly a case of suicide which has been deliberately twisted by the prosecution into a case of murder. Learned counsel submitted that deceased was suffering from chronic Schizophrenia. He had been regularly receiving treatment for mental illness at the Bhatia Neuro Psychiatric Hospital, Amritsar. Deceased was also a drug

addict. Learned counsel has placed strong reliance on the statement made by Dr. J.P.S. Bhatia (DW-1). It is submitted by the learned senior counsel that due to his illness, behaviour of the deceased was wholly erratic and unpredictable. It is not possible to know the reason as to why he may have shot himself. According to the learned counsel, the medical evidence would tend to suggest that he had suicidal tendencies. Mr. Tulsi further submitted that in this case, the prosecution has gone out of the way to fabricate the case against the appellants. The appellants had no motive whatsoever to kill the deceased. Even if there was slight disagreement with regard to the Union activities, the same would not provide a motive strong enough to commit the murder of the deceased. He submitted that the appellants had very cordial relations with the deceased. They had, in fact gone to his house to resolve any outstanding issues. He has pointed to a number of circumstances which would show that the police has acted in a partisan manner. According to

Mr. Tulsi, the entire sequence of events given by the prosecution is unbelievable. First and foremost, there is no eye-witness. The FIR has been ante timed. It was in fact not recorded at 11.35 as stated in the record. The inquest was conducted on 15.7.2002 that would mean that it was conducted sometime after midnight of the night of 14/15.7.2002. In the inquest report, the names of the accused appellants are not mentioned. It is submitted that the arrival of the police is ante timed. This is evident from the general diary which records that the police left for the scene of the crime at 11.30 p.m. The position of the body has been shifted. The empty cartridge of the missed shot was not recovered till the following day. This had been planted to justify the plea that two shots were fired. There is no evidence that the appellants had removed the finger prints. Therefore, the prosecution is suppressing the genesis of the incident. According to the learned senior counsel, the evidence of the witnesses is wholly unreliable. The witness tend to

change the stand to suit the circumstances. Counsel further submitted that this being a case of circumstantial evidence, the prosecution has to prove that the circumstances on the record would be inconsistent with the innocence of the appellants. Learned counsel submitted that there has been definite tempering with the evidence. Even according to the prosecution witnesses, the deceased was first seen sitting on a chair with his head on the table. The pistol was said to be lying at the feet of the deceased. Thereafter, it is sought to be projected that the deceased was lying on the floor. According to the learned senior counsel, the cumulative effect of the inherent weaknesses in the investigation and tampering of evidence would lead to the clear conclusion that the appellants had been falsely implicated. Learned senior counsel further submitted that the prosecution cannot be permitted to take advantage of the fact that the pistol recovered did not have any fingerprints on it. It cannot lead to the conclusion that the appellants had

deliberately removed the fingerprints. Learned senior counsel also submitted that merely because more than one shot was fired would not lead to the conclusion that the firing was not done by the deceased himself. Learned senior counsel also submitted that the recovery of the empty shells on the following day is itself suspect. The possibility of the same having been planted by the investigating agency cannot be ruled out.

8. On the other hand, Mr. Kuldip Singh, appearing for the State of Punjab submitted that the prosecution has proved the case beyond reasonable doubt. Learned counsel submitted that there is no break in the sequence of events. It has been proved on the record that there was Union rivalry. The appellants were resentful for the fact that the deceased had joined INTUC after leaving their Union. They had gone to his house and brought him to the hotel. They had got the deceased drunk. Thereafter, they committed the murder. According to the

learned counsel, if the deceased had shot himself, there was no question of two shots being fired. Learned counsel further pointed out that the evidence of the illness of the deceased is non-existent. The record produced by Dr. J.P.S. Bhatia (DW-1) is a clear fabrication. It has been prepared just to help the appellants. Undoubtedly, the deceased was taking drugs for which he had received some treatment but he was not a psychiatric case as projected by the appellant.

9. We have considered the submissions made by the learned counsel for the parties. The trial court examined the entire evidence threadbare. From the evidence of the witnesses, it has been established that Shammi had been shot dead with his own licensed pistol. The incident had taken place at Genesis Hotel. Accused persons including the appellants herein were present in the dining hall on the same table as Shammi. The divergence between the version given by the prosecution and the version of the

appellants was duly noticed by the trial court. According to the prosecution, the shots were fired by someone amongst the accused persons in furtherance of common intention of all of them to murder Shammi. The defence version on the other hand is that Shammi being a person of unstable temperament due to his mental illness had committed suicide. The trial court, in order to, rule out the possibility that the appellants have not been falsely implicated meticulously noticed the facts which were proved by the prosecution.

10. On a careful appreciation of the evidence, it was found by the trial court, and confirmed by the High Court that Shammi was an active participant in the Union activities. He had been the Secretary of the Employees' Union. Rajiv Kumar reiterated the facts about the Union activities of the deceased, Shammi, in his evidence. He stated that he was present in the house of the deceased when the accused reached there at about 8.45 p.m. He

was still at the house when Prince, the hotel owner, came and told them that Shammi had been shot dead, in his hotel. Both Rajiv Kumar and the widow of the deceased Indira Rani (PW-5) had stated that Shammi had taken the pistol alongwith him. He was in the habit of keeping the pistol in the dub of his pants. She also stated that after hearing the news about the murder of her husband, she became unconscious. Vipin Kumar, PW-6 had narrated about the extra judicial confession made by Jagsher Singh @ Bhola about having committed the murder of Shammi. All these witnesses were cross-examined at length, but nothing was brought on the record, which would tend to show that their evidence cannot be believed or trusted. The trial court also noticed that in the statements made under Section 313, at least two of the accused had admitted that Shammi had met them in the restaurant. They had also stated that all of a sudden, he had shot himself in the head, may be to show false valour. It was stated that Shammi

was depressed and aggressive and was possibly under the influence of drugs. The trial court noticed that all the accused persons were present in the hotel. They sat on one table. Shammi, as usual had his licensed pistol in the dub of his pants. Even though, there is no direct evidence of the shooting, it has been established by the statement made by the owner of the Hotel, i.e., Prince. He had clearly stated that he was sitting in his cabin while the deceased and the accused were being attended by a waiter of his Hotel, Ram Singh. Then all of a sudden, he heard a sound, he thought as if some part of the cooler had broken down but immediately thereafter the accused persons tried to run away. However, the waiter Ram Singh and two others managed to capture two of them. Soon, it was found that someone among the four persons had fired at Shammi, who was found dead on his seat.

11. Noticing the absence of fingerprints on the pistol the trial court concluded that the fatal shot had not been fired by the deceased. His fingerprints were bound to be present on the pistol in case the shot had been fired by him. The fingerprint expert in his report has clearly stated that the pistol had been wiped clean. The trial court, in our opinion, rightly concluded that the fingerprints were in all probability wiped away by the assailant to remove the evidence of his fingerprints. There is no reason for any other person to remove the finger prints. We are unable to accept the far fetched suggestion of Mr. Tulsi that the fingerprints have been removed to rule out the possibility of the deceased having shot himself. There is no evidence on the record to show that any other person had handled the pistol, in the interval between the shooting and the arrival of the police. Furthermore, there is no reason as to why the police would wipe away the incriminating finger prints.

12. The trial court also noticed that the post mortem report nowhere mentions that there was any blackening or tattooing of any area surrounding the fatal wound. The trial court, therefore, concluded that the possibility of suicide stands completely ruled out. The only inference is that it was a case of homicide. The shot was fired by someone, from amongst the accused appellants. It has also come in evidence that in fact two shots were fired. The empty shell of the first one which missed was recovered some distance away from the body of the deceased. Taking stock of the entire evidence, the trial court has concluded that the circumstantial evidence adduced by the prosecution formed a complete chain which leads to the conclusion, consistent only with the guilt of the accused and inconsistent with their innocence.

13. The conclusions arrived at by the trial court have been confirmed by the Division Bench of the High Court.

The High Court noticed *in extenso* the evidence of Indira Rani, PW-5, wife of the deceased. She had categorically stated about the manner in which the four accused had come to their house and had requested her husband to accompany them. They had said something about having discussions about the functioning of the Union. She had also stated that when her husband left with the appellants, he was carrying his licensed pistol with him. She had admitted that in her statement under Section 161 Cr.P.C., she had not mentioned that Rajiv Kumar was present when the accused persons had come to the house and she had also not given information that her husband was also the Secretary of the Employees' Union and later on he had joined as a President of INTUC. She also admitted that she had not mentioned to the police that the owner of the hotel, Prince, had told her that her husband had been shot dead by the four persons with whom he had gone. She had, however, stated that after Prince had informed her

about the death of her husband, she had become unconscious. She recovered only during the night. She denied the defence version that the accused had never visited the house. The High Court also noticed the evidence of Vipin Kumar, PW-6, before whom, the accused Jagsher Singh @ Bhola and Gurdev Singh had made the extra judicial confession at about 11.00 p.m. on 18.7.2002. The High Court then recounted in detail the testimony of the owner of the hotel Arjinder Pal Singh @ Prince (PW-7). In essence, he has stated that the four appellants had come with the deceased and had sat on one table in the dining hall. All of a sudden, he heard the sound of a gun shot. At first, he thought may be the cooler in the dining hall had broken down. He saw the accused persons starting to run away from the restaurant. Two of them were over-powered by the waiters, while the other two ran away. He, confidently, gave the names of the accused, who had come to the hotel. He went to the house of the deceased and

informed his wife about the murder. He categorically states about the arrival of the police at about 11.00 / 11.15 p.m. His statement was recorded and he narrated the incident to the police. He also stated that the father of the deceased had reached the hotel before the arrival of the police. However, the wife reached a little later. According to this witness, the police had sent the dead body for post mortem. They interrogated the staff and recorded the statement. In his cross-examination, he has stated that his restaurant was licensed for serving liquor. He had himself gone to the area where the dead body of Shammi was lying on the floor. He had noticed the glasses and other crockery lying on the table. However, he did not notice whether those glasses contained any liquor. The police did not take the crockery, which was lying on the table into possession. He stated that the deceased was bleeding from the mouth. However, he did not see any blood stains lying on the table or on the clothes. The

Photographer, PW-8 stated that in the Photograph (Ex. P16) alongwith the other utensils, only one glass appears to be visible and no other glass was seen on the floor. He, however, admitted that in (Ex. P14), it can be seen that one carton of Bag Piper whiskey and one bucket of ice are lying on the floor near the dead body. According to him, the pistol and other ice bucket were seen lying on the table. Therefore, there were two ice buckets on the site of the incident. He has denied that any bottle can be seen lying on the site near the dead body in the photograph (Ex. P13). This witness stated that he had reached the site at about 12.15 to 12.13 a.m. at night, i.e., after midnight.

14. In our opinion, the conclusions of the trial court and the High Court cannot be said to be manifestly erroneous. There is clear evidence that the appellants had gone to the house of the deceased to bring him out of the house for the purpose of committing his murder. The

reason given, of an effort to sort out the Union disputes, was merely a ruse to bring the deceased out of his house. Mr. Tulsi has submitted that the appellants were on good terms with the deceased otherwise they would not have gone to his house. Therefore, this motive of Union rivalry is a concoction of the prosecution. Learned counsel submitted that the wife of the deceased mentioned Union rivalry for the first time in the Court. We do not see much substance in the submission. It appears that there was serious rivalry between the two Unions. Only two days prior to the shooting, the deceased had left the Union of the appellants and become the President of INTUC. Had the deceased not apprehended any danger from the accused persons, he would certainly not have taken the pistol with him. His wife, who appeared as PW-5 has clearly stated that he had specifically asked to take the pistol with him.

15. Mr. Tulsi has also submitted that the prosecution had miserably failed to collect any material evidence from the scene of the crime. Rather, they have tried to help the prosecution by literally shifting the body of the deceased. According to him, even the prosecution witnesses themselves, have said that the deceased was sitting on the table with the head on the table. However, according to the police, the body was lying on the floor and the pistol was lying some distance away.

16. We are unable to agree with Mr. Tulsi. There is no reason why the police as well as the prosecution would go out of the way to falsely implicate or prosecute the appellants. Both the trial court and the High Court upon appreciation of the evidence have concluded that there is evidence to show that the accused and the deceased were carrying liquor with them. The glasses and the chicken curry were served to them at the hotel. The High Court also concluded that the presence of the carton of

Bag Piper whiskey would clearly show that the deceased had consumed alcohol. Thereafter, the deceased was shot in the head with his own pistol. Whether the pistol was snatched away by one of the accused persons or was handed over by the deceased, is neither here nor there. The fact of the matter is that the deceased was shot with his own pistol. There was no blackening or tattooing of the skin surrounding the wound.

17. Mr. Tulsi laid considerable amount of emphasis on the fact that the deceased was a psychiatric patient. He was stated to be suffering from schizophrenia. He had placed reliance on the evidence given by Dr. J.P.S. Bhatia. We are of the considered opinion that both the Courts have rightly rejected the evidence given by DW-1. The patient admission and treatment register produced seems to be a most unreliable document. It has been maintained in a slip shod manner. There are no systematically maintained entries, either about the

particulars of the patient, the disease or the treatment. This witness admitted that there is some overlapping in the entries. The document does not inspire any confidence. By no stretch of imagination can it be said to be reliable document. This apart there is no evidence indicating the particular expertise of Dr. Bhatia. Even according to his evidence there was only preliminary diagnosis of the medical condition of the deceased. There was no proof of any expert clinical examination of the deceased. From the above it cannot be said that the deceased was suffering from chronic schizophrenia. This plea has been rightly rejected by both the courts below.

18. We may notice the scenario which emerge from the proven facts, on record:-

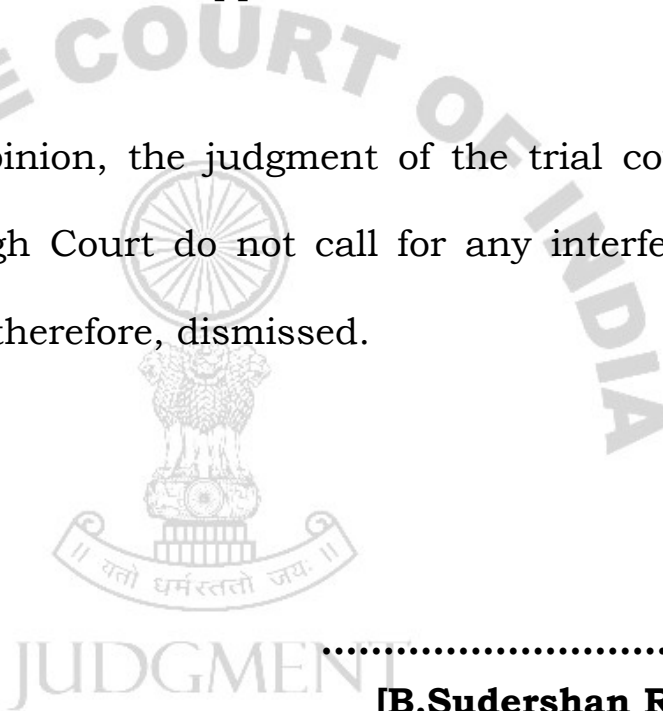
The deceased and the accused were working in the same organization. They were office bearers of the same Union. Two days before the incident, the deceased alongwith the

Union of the appellants and become the President of the rival union. They, therefore, resented the action of the deceased. They formed a common intention to eliminate the deceased. They went to the house of the deceased and invited him to accompany them to resolve the Union disputes. They took him to Hotel Genesis where they consumed liquor; they were also served food by the hotel staff. At some point of time the pistol of the deceased was taken by one of the appellants. It is wholly irrelevant whether it was voluntarily given by the deceased or taken by the assailant. Thereafter, one of the accused persons shot the deceased in the head with his own pistol. They then wiped the fingerprints on the pistol and threw the pistol down next to the body of the deceased. They tried to escape. This would tend to indicate towards the guilt rather the innocence of the appellants. Two of them were captured just outside the hotel, the other two managed to escape. The injury on the deceased does not indicate that he had shot himself. The injuries show that the shot

has not been fired at point blank range. There is no tattooing or blackening of the skin surrounding the entire wound. The consumption of liquor cannot be doubted in view of the evidence given by the waiter, who served the food. This waiter had clearly stated that the visitors had brought the liquor with them. They were only given the glasses and the buckets of ice. They had also ordered chicken curry, which was duly given to them. To ensure that the waiter does not become an eye witness to the murder, he was conveniently removed from the dining hall. They told him to go and get two more chapattis. He, therefore, went into the kitchen of the hotel. While, he was coming out of the kitchen, he heard the sound of gunfire. Although, this witness was declared hostile, it is consistent with the prosecution version. Even otherwise, the carton of Bag Piper whiskey is quite visible in one of the photographs.

19. All these circumstances taken together clearly form such a continuous and unbroken chain as to leave no manner of doubt that the deceased was shot dead by one of the appellants. The cleaning of the pistol to remove the fingerprints is a circumstance which is a strong pointer to the guilt of the appellants.

20. In our opinion, the judgment of the trial court as also of the High Court do not call for any interference. The appeal is, therefore, dismissed.



.....J.
[B.Sudershan Reddy]

.....J.
[Surinder Singh Nijjar]

**NEW DELHI,
SEPTEMBER 1, 2010.**