

PBBT010075632016



Presented on : 01-12-2016
 Registered on : 02-12-2016
 Decided on : 07-12-2018
 Duration : 2 years, 0 months, 6 days

**IN THE COURT OF PARMIDNER PAL SINGH,
 ADDL. SESSIONS JUDGE, BATHINDA.
 (UID NO.PB-0043).**

CNR No. PBBT-0100-7563-2016

CIS No. SC 232 of 2016.
 File No. 21 of 2.12.2016.
 Decided on : 7.12.2018.

FIR No. 154 of 29.7.2016.
 P S Maur, Distt. Bathinda
 U/S 304 of IPC & Sec.25/54/59 Arms Act

Case committed by Sh.Gurdarshan Singh,
 PCS, Learned Judicial Magistrate Ist
 Class, Talwandi Sabo, vide commitment
 order dated 18.11.2016.

State	Versus	1. Bhupinder Singh son of Rajwinder Singh son of Jora Singh, aged 57 years, r/o Burj, District Bathinda. 2. Kanwarpreet Singh @ Rubbal son of Bhupinder Singh, aged 32 years , r/o Burj, District Bathinda.
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..... Accused.

Charge: Under Sections 304 of IPC & U/s 30 of Arms Act.

Present: Mr. Harvinder Singh, learned Addl. PP for the State assisted by
 Mr. H P S Sidhu, counsel for complainant
 Accused Bhupinder Singh in custody
 Accused Kanwarpreet Singh on bail
 Mr. R S Romana & Mr. Rajesh Sharma, Advocates, learned
 counsel for the accused

JUDGMENT.

1. This case has been committed to the court of Sessions, Bathinda, by the court of Sh. Gurdarshan Singh, learned Judicial Magistrate Ist Class, Talwandi Sabo, Bathinda, vide order dated 18.11.2016, as the offence under Section 304 of IPC, was exclusively triable by the Court of Sessions.

2. The brief facts of the prosecution case, are that the present case was registered on the basis of statement of Balwinder Singh complainant, wherein he alleged that he has 52-53 acres of land. They are two brothers and the name of his younger brother is Bhupinder Singh. He had two sons. His elder son namely Amandeep Singh had already died in road accident about 7-8 years ago. His second son namely Gaganpreet Singh was also cultivating the fields with him. On the day of occurrence at about 1.30 p.m. , the complainant was going to his house on foot. Then his son brought his grand daughter from school. He told the complainant that his uncle Bhupinder Singh has beaten the driver of the school van as well as he also threatened the staff of school of Sharanpreet Kaur. In this regard the school staff complained Gaganpreet Singh. At this, they went to the house of Bhupinder Singh. His daughter in law was also with them. When Gaganpreet Singh going to enter in the house of Bhupinder Singh, then Bhupinder Singh, by seeing Gaganpreet Singh went inside his house. Then, the son of the complainant asked him that Chacha you have got insulted for them and the school staff had strongly complained to him. When the complainant an his daughter in law were in front of the main gate of the house of Bhupinder Singh and Gaganpreet Singh was going

towards the residential room of Bhupinder Singh, they had heard a voice of fire from the room having black glasses. When the complainant and his daughter in law were making noise, then Gaganpreet Singh went behind the bushes and made a fire from his licensee revolver, in the air. When, Gaganpreet Singh tried to change his place, then, they saw that Bhupinder Singh made another fire from his 315 bore rifle through the grill of room and the same directly hit in the chest of Gaganpreet Singh and he fell down on the earth and blood was oozing. They raised noise and all the servants came there. Then, they took Gaganpreet Singh to the hospital but, on the way Gaganpreet Singh died. Bhupinder Singh along with his son Kanwarpreet Singh openly committed murder of his son Gaganpreet Singh. After recording the above said statement of complainant Balwinder Singh, the police machinery swung into action. The IO visited the spot and prepared rough site plan and also recorded statements of witnesses. After completion of investigation by all means and respects, the challan was furnished in the court.

3. On appearance of accused in the court, copies of the final report U/s 173 Cr.P.C., along with other documents as relied upon by the prosecution, as required under Section 207 Cr.P.C., were supplied to the accused free of costs and their statement was recorded in this regard.

4. The learned Area Magistrate, after finding the offence U/S 304 of IPC, to be exclusively triable by the Court of Sessions, committed the same before the learned Sessions Judge, Bathinda and the same was entrusted to this court.

5. From the perusal of final report under Section 173 of the Code of Criminal Procedure and the documents annexed therewith, a *prima facie*

offence punishable under Section 304 of IPC & U/S 30 of Arms Act, was found to be made out, against the accused and charge was framed against the accused accordingly, to which they pleaded not guilty and claimed trial.

6. In order to substantiate the charge against the accused, the prosecution has examined PW1 Balwinder Singh, PW2 Veerpal Kaur, , PW-3 Punjab Singh, PW-4 Biri. Thereafter, the learned Addl. PP for the State closed the prosecution evidence by stating that complainant Balwinder Singh and eye witness Virpal Kaur and private witnesses Punjab Singh and Biri have resiled from their previous statement, no useful purpose will be served by examining the remaining formal witnesses.

7. Since there was no incriminating evidence appearing against the accused, in the prosecution evidence, so recording of statement of accused under Section 313 Cr.PC was dispensed with.

8. Mr. Harvinder Singh, learned Addl. PP for the State assisted by Mr. HPS Sidhu, counsel for the complainant has asserted that although, key witnesses of the prosecution, have turned hostile, but, it was complainant Balwinder Singh, on whose statement the police machinery swung into action and instant case was registered against the accused, facing this trial. It is a different matter that the complainant as well as Veerpal Kaur, Punjab Singh and Biri have diverted from their earlier stand, for the reasons best known to them, thus, he has prayed for passing appropriate order.

9. Per contra, Mr. Rajesh Sharma and Mr. R S Romana, advocates, learned defence counsel have argued in an eloquent manner that as the star witnesses of the prosecution namely PW1 Balwinder

Singh complainant, eye witness PW2 Virpal Kaur, and private witnesses PW3 Punjab Singh and PW4 Biri have not supported the case of the prosecution and have turned hostile to the basic version of the prosecution and have specifically stated that the accused facing this trial were not involved in this case, at their behest. They further argued that there is no other evidence on record, which could connect the accused with the commission of alleged offence. Thus, ultimately, nothing has come on record in regard to the guilt of the accused and as such, a prayer has been made for acquittal of the accused.

10. It is cardinal principal of criminal law that it is the prosecution, who is to prove, its case against the accused beyond shadow of reasonable doubt. In the instant case, PW1 Balwinder Singh, PW2 Veerpal Kaur, PW3 Punjab Singh and PW-4 Biri have not brought any incriminating material against the accused, facing this trial. PW-1 Balwinder Singh, who is author of the present FIR has categorically stated on oath that Bhupinder Singh is his younger brother and they have constructed their houses in the fields, where they are residing with their family separately. He had two sons and his elder son Amandeep Singh died in an accident about 10 years back. He has further stated, that Gaganpreet was his younger son and was married at village Jandwala with Veerpal Kaur and a girl was born out of their wedlock, who was aged about 3-4 years in the year 2016, who used to study in a play way school at Maur. He has further stated that he is suffering from paralysis for the last 14-15 years and he is unable to walk without the help of stick. On 29.7.2016, he was present at his house. He came to know that his son Gaganpreet Singh has been killed by some unidentified person and his

dead body was lying in the fields, near the mettled road. He has specifically deposed that he do not know, who has committed the murder of Gaganpreet Singh. He did not suffer any statement before the police. He has categorically stated that his thumb impressions and signatures of Veerpal Kaur were obtained on blank papers by the police. Similarly, PW2 Veerpal Kaur has categorically deposed that nothing had happened in her presence. He do not know if Bhupinder Singh had fired a shot at her husband Gaganpreet Singh. He also do not know if her husband Gaganpreet Singh had died due to gun shot injuries received at the hand of Bhupinder Singh. She has categorically stated that he was not present at the spot. She did not suffer any statement before the police. She has specifically stated that accused present in the Court did not cause any gun shot injuries to her husband Gaganpreet Singh. PW3 Punjab Singh has categorically stated that on 29.7.2016 he was not present in the house of Bhupinder Singh as he had gone to the fields to take a round of it. Nothing had happened in his presence. His statement was not recorded by the police. He has specifically deposed that he has seen accused Bhupinder Singh and Kanwarpreet Singh @ Rubal in the court, but they have not caused any injury to Gaganpreet Singh in his presence. Similarly, PW4 Biri has categorically stated that she is a maid servant in the house of Bhupinder Singh. Nothing had happened in her presence. Her statement was not recorded by the police. She has seen accused in the court. They had not caused any injury to Gaganpreet Singh, in her presence. In this way, all the key prosecution witnesses, have resiled from their previous statements, given to the police under section 161 Cr.P.C. So much so, even the complainant has stated that he had never

suffered any statement to the police and police had obtained his thumb impressions on blank papers. Despite exhaustive cross examination of all these star witnesses of the case, conducted by the learned Addl. PP for the state, nothing could be elicited, which could have put, even a scintilla of strength, in the case of the prosecution. All this shows that the prosecution has miserably failed to prove its case, against the accused, what to talk of proving the same, beyond shadow of reasonable doubt. As such, this court has got no other option, except to acquit the accused, of the charge framed against them. Accordingly, the accused, facing this trial, are ordered to be acquitted of the charge, framed against them, by way of extending them benefit of doubt. Let bail bonds/surety bonds to the tune of Rs. 50,000/-each be furnished by the accused within 2 days from today under section 437-A of Cr.P.C., with an undertaking to appear before the Hon 'ble High Court in case an appeal/revision, is filed against this judgment. Case property be dealt with as per rules, after the expiry of period of appeal or revision, if any, is filed. File be consigned to the record room.

Pronounced.

Dated: 7.12. 2018.

(Parminder Pal Singh),
Additional Sessions Judge,
Bathinda. (UID No. PB-0043).

Balwinder Singh,
Stenographer-I.

CNR No.PBBT01007563-2016

SC No. 232/2016

State Vs. Bhupinder Singh & Anr.

7.12.2018:Present: Mr. Harvinder Singh, learned Addl. PP for the State assisted by Mr. H P S Sidhu, counsel for complainant
Accused Bhupinder Singh in custody
Accused Kanwarpreet Singh on bail
Mr. R S Romana & Mr. Rajesh Sharma, Advocates,
learned counsel for the accused

Two Pws are present and examined. The learned Addl. PP for the State closed the prosecution evidence. Since there is nothing incriminating against the accused in the statements of witnesses, as such recording of statement of the accused U/S 313 Cr.PC stands dispensed with.

Arguments heard. Vide my separate detailed judgment of even date, forming part of the record, the accused, facing trial, are acquitted of the charge, framed against them. Let bail bonds/surety bonds to the tune of Rs. 50,000/-each be furnished by the accused within 2 days from today under section 437-A of Cr.P.C., with an undertaking to appear before the Hon 'ble High Court in case an appeal/revision, is filed against this judgment. Case property, be dealt with and disposed of, in accordance with relevant rules. File be consigned to the record room.

Pronounced in open court.

Dated : 7.12.2018.

(Parminder Pal Singh),
Addl. Sessions Judge,
Bathinda.
(UID No. PB-0043)

Balwinder Singh,
Stenographer-I.