

**In a In the Court of Karun Kumar,
Judicial Magistrate 1st Class, Baba Bakala Sahib,
District Amritsar, UID No.PB0636.**

CNR No. PBASB10005672017



Case No. CHI/115/2017

Presented on : 29-08-2017

Registered on : 29-08-2017

Decided on : 19-12-2022

State	Versus	(1) HC Gurdeep Singh No.3014, Patiala s/o Ram Asra, r/o Dakasu Kalan, Distt. Patiala. (2) HC Gurjant Singh No.1916, Patiala s/o Ram Lal, r/o Sadho Hari, PS Sadar, Nabha. (3) Bhupinder Singh s/o Balkar Singh; (convicted vide judgment dated 06.11.2017) (4) Kuldeep Singh s/o Subegh Singh;(convicted vide judgment dated 06.11.2017) (5) Manav Singh s/o Baldev Singh;(convicted vide judgment dated 06.11.2017) all r/o Gali NO.4, Gilwali Gate, Amritsar. (6) Sajjan Singh s/o Baldev Singh, r/o Gujjarpura, Tehsil & Distt. Amritsar. (convicted vide judgment dated 20.11.2017) (7) Shamsheer Singh s/o Sawinder Singh, r/o Bhani Gillan.(convicted vide judgment dated 05.12.2018) (8) Jagdeep Singh s/o Sawinder Singh, r/o Bhagwanpur.(convicted vide judgment dated 05.12.2018) (9) Bobby Malhotra s/o Lala Chand @ Lala Kiddi, r/o Ganda Nala, Lal Quarter PS C Division, Amritsar.(convicted vide judgment dated 05.12.2018)
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..... Accused

FIR No.37, dated 08.06.2015

U/s 223, 224, 225, 148, 149, 120-B IPC &
25-27 Arms Act,
Police Station Khilchian

Present : – Sh. AS Kahlon, Ld. APP for the State.
Accused Gurdeep Singh and Gurjant Singh on bail with counsel
Sh. VKS Malhotra, Advocate.
Remaining accused already convicted.

(Karun Kumar)
Judicial Magistrate 1st Class
Baba Bakala Sahib
UID No.PB0636

JUDGMENT

1. The above named accused has been forwarded by Officer Incharge of Police Station Khilchian for facing trial in above noted case.

PROSECUTION STORY

2. Briefly the facts of the prosecution case are that the present FIR was registered against the accused persons on the basis of ruqa sent by IO-ASI Sarwan Singh to the police station to the effect that he alongwith HC Surjit Singh, HC Kulwant Singh, C.Paramjit Singh and driver HC Tarsem Singh was present at bus stand, Khalchian in connection with patrolling duty, where IO received a secret information that a police party had brought accused/under-trial Bhupinder Singh alias Sonu from Nabha jail for producing in various courts at Amritsar. After producing said Bhupinder Singh in various courts, said police party was taking said accused Bhupinder Singh towards Nabha Jail negligently in a private car arranged by accused. At about 05.10 p.m, when the police party reached in the area of village Buttari at G.T.Road, two cars make Swift one bearing No.PB02-CM-4251 and number of another car could not be known alongwith 8-9 persons duly armed came there and got Bhupinder Singh freed from police officials and then escaped on the said cars. The incident took place due to the negligence of police officials and per-planning of the accused Bhupinder Singh with his companions. Case was registered and investigated. Accused persons were arrested. Statements of the witnesses under Section 161 Cr.P.C were recorded. On completion of investigation and other necessary formalities, accused were challaned.

COMPLIANCE OF SECTION 207 Cr.P.C

3. On presentation of challan against the accused, copy of the challan was supplied to the accused free of cost as envisaged under Section 207 Cr.P.C.

CHARGE SHEET

4. After perusal of statements of witnesses and documents on file, prima facie case under Sections 223, 224, 225, 148, 149, 120-B IPC & 25-27 Arms Act, were made out against the accused and accordingly the charge against the accused was framed, to which they pleaded not guilty and claimed trial. However, **accused Bhupinder Singh, Kuldeep Singh and Manav Singh** were convicted vide Judgment and Order dated 06.11.2017, **accused Sajjan Singh** was convicted vide Judgment and Order dated 20.11.2017 and **accused Shamsher Singh, Jagdeep Singh and Bobby Malhotra** were convicted vide Judgment and Order dated 05.12.2018.

PROSECUTION EVIDENCE

5. In order to prove its case, prosecution examined Retd. Inspector Balwant Singh who appeared into witness box as PW1 and supported the case of prosecution by proving on record arrest-cum-intimation memo of accused Shamsher Singh Ex.PW1/A, his personal search memo Ex.PW1/B, arrest memo of accused Jagdeep Singh Ex.PW1/C, intimation memo Ex.PW1/D, his personal search memo Ex.PW1/E, copy of FIR mark A, copy of recovery memos mark B and BA, copy of recovery memo of car mark Desire mark BC.

6. Thereafter, prosecution examined ASI Jagjit Singh who appeared into witness box as PW2 and supported the case of prosecution by

proving on record arrest-cum-intimation memo of accused Manav Ex.PW2/A, his personal search memo Ex.PW2/B, arrest-cum-intimation memo of accused Kuldeep Singh Ex.PW2/C, his personal search memo Ex.PW2/D, arrest-cum-intimation memo of accused Sajjan Singh Ex.PW2/E, his personal search memo Ex.PW2/F.

7. Thereafter, prosecution examined Retd. SI Tirath Singh who appeared into witness box as PW3 and deposed that he was posted as Addl. SHO at PS Kathunangal and was present at Adda Waryam Nangal alongwith other police officials with the direction of SSP Amritsar and DSP Sohan Singh headed their party where they received information that Jagdeep Singh @ Jaggu gangster were going towards Jalandhar side. SHO was also called on the spot and as per informer's information they arrested Jagdeep Singh @ Jaggu(**already convicted**) and also recovered one 32 bore revolver from his right hand and on unloading it IO recovered six empty cartridges and also IO recovered pistol country made from his left pocket of wearing pant alongwith three cartridges and also recovered one swift desire car bearing No.PB02-CM-4246 and from the back seat IO also recovered two rifle 315 bore and unloading them IO recovered 10 live cartridges and same were convered into separate parcels and taken into possession by Inspector Rajbir Singh.

8. Thereafter, prosecution examined ASI Surjit Singh NO.704 who appeared into witness box as PW4 and supported the case of prosecution by proving on record arrest memos of accused HC Gurdeep Singh, HC Gurjant Singh and Ct. Jasjit Singh Ex.PW4/A to Ex.PW4/C, their personal search memos Ex.PW4/D to Ex.PW4/F.

9. Thereafter, prosecution examined Retd. ASI Kulwant Singh who appeared into witness box as PW5 and supported the case of prosecution by proving on record arrest-cum-intimation memo of accused Shamsher Singh Ex.PW1/A and his personal search memo Ex.PW1/B.

10. Thereafter, prosecution examined IO-ASI Sarwan Singh who appeared in witness box as PW6 and narrated the prosecution story and further proved on record ruqa Ex.PW6/A, FIR Ex.PW6/B, rough site plan Ex.PW6/C, arrest memos of accused HC Gurdeep Singh, HC Gurjant Singh and Ct. Jasjit Singh Ex.PW4/A to Ex.PW4/C, their personal search memos Ex.PW4/D to Ex.PW4/F, arrest-cum-intimation memo of accused Shamsher Singh Ex.PW1/A, arrest memo of accused Jagdeep Singh Ex.PW1/C, intimation memo Ex.PW1/D, arrest memo of accused Bhupinder Singh Ex.PW6/D, his personal search memo Ex.PW6/E, arrest memos of accused Manav Singh, Kuldeep Singh and Sajjan Singh Ex.PW2/A, Ex.PW6/E and Ex.PW2/C, their personal search memos Ex.PW6/E, Ex.PW2/B, Ex.PW2/D and Ex.PW2/F, posting orders of Jasjit Singh, Gurjant Singh and Gurdeep Singh Ex.PW6/F, Rojnamcha police line Patiala Ex.PW6/G.

11. Thereafter, prosecution examined SI Narinder Singh who appeared into witness box as PW7 and supported the case of prosecution by proving on record recovery memos pistol along with six live cartridges and Indian currency notes Ex.PW7/A to Ex.PW7/C.

12. Thereafter, prosecution evidence was closed by order vide order dated 15.07.2022 as prosecution had already availed numerous opportunities to conclude its evidence but failed to do so.

STATEMENT OF ACCUSED UNDER SECTION 313 CR.P.C

13. On conclusion of prosecution evidence, entire incriminating evidence as has come on record was confronted to accused during their statements under Section 313 Cr.P.C. Accused have replied the questions in negative. They stated that they are innocent and falsely implicated in the present case. False and frivolous case has been registered against them. Witnesses have deposed falsely and exhibited documents are false. They are serving in the department since 1992. They are serving the department for the last 30 years and till today there is no complaint against them. They served the department very honestly. Now they are going to retire shortly. They have been falsely implicated in the present FIR. In fact, they made scapegoat in the present case. The real person and responsible person were not involved in the present FIR, the third official constable Jasjit Singh No.1761 PTA who was with them and was having weapon with him was declared innocent by the police official. The rules & regulations were not followed by jail authorities. Prosecution made false story and saved the other police officials who were responsible for the same. There are specific rules & regulations to carry the dangerous and gangster accused from one station to another. As per rule no vehicle and security were provided to them to carry gangster from Nabha to Amritsar. A maximum security jail Nabha under which the hardcore gangster were kept. No bus ticket voucher were supplied to them for carrying the gangster to Amritsar Court. No weapon as security were given to them. For the first time they were given this order to carry gangster to Amritsar Court. They have not committed any offence at all. They further opted YES for defence evidence.

DEFENCE EVIDENCE

14. In order to rebut the case of prosecution, accused examined ASI Mashoor Singh who appeared into witness box as DW1 along with summoned record and he produced the attested copy of rapat No.39 which is duly signed by MHC Police Line, Patiala which is Ex.D1 and same is correct as per their record. He further produced the relevant part of the register which is Ex.D2 which is duly signed by Paramjit Singh, MHC, Police Line, Patiala and same is also correct as per their record. He further deposed that he is serving in the department since 1992. He does not know the rules framed by the Government to carry hardcore terrorist or gangster from one station to another. It is correct that the document Ex.D2 shows that Bhupinder Singh was a dangerous person. He further deposed that he cannot tell the competent person who can explain the rules regarding carrying dangerous accused from one station to another. He does not know the facts of the case, he simply brought the record which he produced in the court. He cannot tell more than this.

15. Thereafter, accused examined Head Warden Central Jail Goindwal Sahib who appeared into witness box as DW2 along with summoned record and deposed that maximum security Jail Nabha was transferred to Goindwal Sahib and the record was also transferred from Nabha to Goindwal Sahib, He further proved attested copies of the summoned record. He further deposed that Ex.D3 is the attested copy of the original containing four pages. Ex.D4 is the attested copy of the letter from maximum securing jail Nabha to the SSP Police Patiala. Ex.D5 is the letter of Punjab Govt. Home Affairs Jail Deptt. To DGB Police, Chandigarh.

Ex.D6 is the letter from SSP Patiala to Law and order director Punjab.

Ex.D7 is the register containing 5 page.

16. Thereafter, accused closed their defence evidence vide their separate joint statement dated 14.12.2022.

ARGUMENTS

17. During the course of arguments, Ld. APP for the State has submitted that the prosecution has examined as many as seven witnesses. It is argued that accused had negligently suffered the escape of accused Bhupinder Singh alias Sonu from custody. The witnesses have duly proved the case of prosecution. The oral testimony as well as the documentary evidence is sufficient to prove the guilt of the accused beyond reasonable doubt. He has prayed that the accused may be convicted in this case.

The Ld. Counsel for accused Sh. VKS Malhotra, Advocate has rebutted the arguments of prosecution and submitted that there are specific rules and regulation to carry dangerous and gangster accused from one station to another and no rule and regulation were followed by jail authorities in present case. It is further argued that as per rules no vehicle or security was provided to carry gangster Bhupinder Singh from Nabha Jail to Amritsar Court. It is further argued that no bus ticket voucher were supplied for carrying the gangster to Amritsar Court. It was averred by Ld. counsel for accused that the mandatory sanction as per section 197 Cr.P.C. has not been taken to prosecute the present accused in this case. It is argued that the prosecution failed to prove its case beyond reasonable doubt, as such, the accused may be acquitted from the charges framed against him.

APPRECIATION AND ADJUDICATION

18. The rival contentions so raised on either side are heard in the light of police report and the evidence as has come on record. In order to decide this case, this Court would frame following point of determination as under:-

Q. I. Whether on 08.06.2015 at about 05.10pm in the area of GT road near marriage Palace Buttar accused being public servant negligently suffered escape of accused Bhupinder Singh from custody?

Discussion

19. The allegations against the accused facing trial are that they being a public servant legally bound to keep in confinement accused Bhupinder Singh alias Sonu, however accused negligently suffered escape of said Bhupinder Singh from custody.

The prosecution has to prove in this case that accused are public servant and they are legally bound to keep accused Bhupinder in confinement and they negligently suffered escape of accused Bhupinder Singh from custody.

In order to prove its case, the prosecution examined Pw 6 ASI Sarwan Singh who proved on file the posting order of accused HC Gurjant Singh and HC Gurdeep Singh as Ex. PW6/F and DDR No. 39 dated 08.06.2015 police line Patiala Ex. PW6/G which shows that duty of accused HC Gurjant Singh and HC Gurdeep Singh was fixed to produced accused Bhupinder Singh (already convicted) in judicial court complex Amritsar. Even accused did not dispute this fact. Accused themselves admitted that

they were on duty to produce accused Bhupinder Singh in district court complex Amritsar.

Further, it is story of prosecution that accused negligently suffered the escape of accused Bhupinder Singh from the custody. It is the contentions of Ld. APP for the state that DDR No. 39 dated 08.06.2015 police line Patiala Ex. PW6/G shows that accused HC Gurjant Singh and HC Gurdeep Singh carried accused Bhupinder Singh to District Court, Amritsar, however, on returning from Amritsar they board in a private I 20 car arranged by accused Bhupinder Singh.

The perusal of file and evidence of prosecution witnesses shows that accused Bhupinder Singh was carried to Amritsar Court by HC Gurjant Singh and HC Gurdeep Singh. However, when they were coming back to Nabha Jail from Amritsar they were on private I 20 car arranged by accused Bhupinder Singh. This shows the negligent conduct of HC Gurjant Singh and HC Gurdeep Singh that why they board a car arranged by accused Bhupinder Singh. Moreover, this fact was neither denied by accused during cross-examination of prosecution witnesses nor during their statement under section 313 Cr.P.C. Both the accused admitted that no vehicle and security were provided to them and no bus ticket voucher were supplied for carrying the accused Bhupinder Singh to Amritsar Court. But, the non providing of official vehicle or ticket voucher did not give accused HC Gurjant Singh and HC Gurdeep Singh authority to sit in a car arranged by accused himself. Being a public servant they should be prudent enough to know the consequences of carrying an accused in a private car arranged by him. In this regard, the reliance can be placed on **Bansidhar vs State of Orissa 1987Cr.LJ**

1819, where it was held that before a man can be convicted under his the section of having negligently suffered a prisoner to escape, it must be shown, not only that he was guilty of negligence, but that the escape was at least the natural and probable consequences of his negligence. It must be shown that the escape was directly due to the negligence. Further it was held that negligence can be proved by conduct an absence of due care and caution expected of public servant in discharge of his duties is sufficient to prove negligence. In the present case, there is sufficient evidence on file to show the negligent conduct of accused HC Gurjant Singh and HC Gurdeep Singh. The accused being a public officer should have taken due care and caution in discharge of their duties.

In their defence evidence, accused examined DW1 ASI Mashoor Singh and DW2 head Warden central jail Goindwal Sahib and proved on record document Ex. D2 which shows Bhupinder Singh is a dangerous gangster and Ex. D3 to D7 rules and regulations regarding production of dangerous gangsters in the courts. The perusal of these documents shows that although there are some rules and regulations for the production of dangerous category of accused in the courts, however, the failure on the part of administration did not give any authority or right to accused HC Gurjant Singh and HC Gurdeep Singh to board a car arranged by dangerous category of accused.

Further it is the contentions of Ld. counsel for accused that accused HC Gurjant Singh and HC Gurdeep Singh are public servant and prosecution has not obtained sanction from government to prosecute HC Gurjant Singh and HC Gurdeep Singh. It is further contended that no

cognizance can be taken as mentioned in section 197 without the sanction of government to prosecute public servant. The perusal of document Ex. PW6/F shows that both accused were serving at the time of occurrence as head constables in Punjab police.

The bare perusal of section 197 Cr.P.C. provided that when any person who is a **public servant not removable from his office save by or with the sanction of government** is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction.

In this regard reliance can be placed on **Nagraj vs state of Mysore AIR 1964SC269** where it was held that to prosecute a police officer up to the rank of sub inspector sanction of state government is not necessary as they are removable from the office by the Inspector General of police and not by state government. Same view was taken by Hon'ble Himachal Pradesh High Court in **Gulzar Mohd. Vs State of HP 2008 Cr.LJ 1305 (DB)**.

However, as the post of head constable is not come under the purview of section 197 Cr.P.C. therefore there is no necessity to obtain sanction of state government to prosecute the public officer at the rank of head constable.

20. Keeping in view the discussion made above this court is of the opinion that prosecution has successfully prove its case beyond reasonable doubt. It was specifically proved by prosecution that accused HC Gurjant Singh and HC Gurdeep Singh a public servant and they negligently suffered

the escape of accused Bhupinder Singh from the custody. Hence, the sole point of determination is decided in favour of prosecution and against accused. The accused are hereby held guilty.

FINAL ORDER

21. To sum up, this court has no hesitation to conclude here that the prosecution has proved the allegations levelled against the accused persons beyond reasonable doubts. This Court ordered the conviction of accused persons under Section 223 IPC. As accused did not furnish bail bonds U/s 437-A of CrPC, therefore, the bail/surety bonds of accused earlier furnished stands intact for further proceedings. Accused be taken into custody. Let they be heard on quantum of sentence.

Pronounced in open Court: --

Dated: 19.12.2022

P.S. Rawat, Steno Grade-III

(Karun Kumar)

Judicial Magistrate 1st Class

Baba Bakala Sahib

UID No.PB0636

QUANTUM OF SENTENCE.

On question of sentence, Ld. APP for the state Sh. A.S. Kahlon has argued that the convicts are public servant and they have negligently discharge their duty and suffered escape of accused Bhupinder Singh from their custody. Therefore, they may be punished with severe punishment. On the other hand, Ld. Counsel for the accused prayed that the convicts are first time offenders. A benevolent view may kindly be taken against the convict persons. Heard, record perused. It is clear from the facts and circumstances on record that the accused are a first time offender. They do not have any past criminal record. But, in offences like committing official duty negligently, this Court does not deem it appropriate to take a lenient view. Thus, the convicts are sentenced as follows:-

(Karun Kumar)
Judicial Magistrate 1st Class
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NAME	OFFENCE	PUNISHMENT
HC Gurjant Singh	223 IPC	1. Simple imprisonment of two years with fine of Rs.2,000/-. In default of Fine six months simple imprisonment.
HC Gurdeep Singh	223 IPC	1. Simple imprisonment of two years with fine of Rs.2,000/-. In default of Fine six months simple imprisonment.

2. All the sentences shall run concurrently. It is ordered that the period of detention, if any, already undergone by the convicts during investigation or trial, is ordered to be set off against the substantive sentence awarded to him by the Court as per provisions of Section 428 Cr.PC.

Case property, if any, be dealt with as per rules. File be consigned to the record room after due compliance.

Pronounced in open Court: --

Dated: 19.12.2022

P.S. Rawat, Steno Grade-III

(Karun Kumar)

Judicial Magistrate 1st Class

Baba Bakala Sahib

UID No.PB0636