(2009) 07 P&H CK 0254

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 131-SB of 1996

Jagtar Singh		APPELLANT
	Vs	
State of Punjab		RESPONDENT

Date of Decision: July 13, 2009

Acts Referred:

- Arms Act, 1959 - Section 27
- Penal Code, 1860 (IPC) - Section 307

Citation: (2010) 2 RCR(Criminal) 1

Hon'ble Judges: Sham Sunder, J

Bench: Single Bench

Advocate: H.S. Bath, for the Appellant; Manjari Nehru Kaul, D.A.G., Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Sham Sunder, J.

This appeal, is directed against the judgement of conviction, and the order of sentence dated 25.01.1996, rendered by the Court of Additional Sessions Judge, Amritsar, vide which, it convicted the accused/appellant, and sentenced him, as under :-

Name of the accused (now appellant)	Offence for which convicted	Sentence awarded
1	2	3

Jagtar Singh	(a) u/s 307 of the Indian Penal Code.	To undergo rigorous imprisonment for a period of three years## and to pay a fine of Rs. 1,000/-## and## in default thereof## to further undergo rigorous imprisonment for a period of two months.
	(b) u/s 27 of the Arms Act.	To undergo rigorous imprisonment for a period of one year## and to pay a fine of Rs. 200/-## and## in default thereof## to further undergo rigorous imprisonment for a period of one month.

Both the substantive sentences, were however, ordered to run concurrently.

2. The case of the prosecution proceeded, in the manner, that on 28.08.1989, at about 3.30 P.M., Jagtar Singh, accused, was on security duty, as an S.P.O. alongwith other Police Officials, on the chubara of the house of Savinder Singh, Sarpanch, r/o village Dargapur, as there was apprehension of danger, to his life, at the hands of terrorists. The complainant alongwith his family, being the brother of Savinder Singh, was also residing in that house. Jagtar Singh, started playing a cassette of obscene and vulgar songs, on the tape- recorder, as a result whereof, Satnam Singh, complainant, and his brother Savinder Singh, objected to it. The accused, was, however, obstinate, in doing so. When Satnam Singh, went up-stairs, to prevent the accused from playing obscene and vulgar songs, on the tape-recorder, Jagtar Singh, accused, fired two shots, from his service rifle. The first shot missed, but the second one hit Satnam Singh, on the knee joint of his left leg, as a result whereof, his left leg, from the knee joint, had to be amputated. The accused then ran away after getting down from the stair-case. Surinder Singh, Sarpanch, real brother of Satnam Singh, then carried him to Military Hospital, where, he was medically examined by Dr. Tak, on 28.08.1989. Dr. Tak, mentioned, in the medico-legal report, that Satnam Singh, injured, had suffered gun shot wound, on the left left leg. He found the following injuries, on his person :-

i) Gun shot wound left leg upper 1/3rd width loss of upper.

ii) 1/3rd of tibia and fibula just below the femoral condyle.

3. After receiving intimation, regarding the aforesaid incident, in the Police Station, Shamir Singh, Assistant Sub Inspector, went to the Military Hospital, and moved an application PB, whereupon, the doctor, declared Satnam Singh, to be fit, to make a statement. Accordingly, Shamir Singh, Assistant Sub Inspector, recorded the statement exhibit PA of Satnam Singh, containing the aforesaid facts, and after making endorsement exhibit PA/1, he sent it, to the Police Station, where formal first information report, was recorded, by Bikramjit Singh, Head Constable. Thereafter, the Investigating Officer, went to the spot, and prepared rough site plan PC. Birja Singh, S.P.O., produced rifle exhibit P1, two empty cartridges exhibits P2 and P3, and 48 live cartridges exhibits P4 to P51, which were sealed with the seal bearing impression `SS'', and taken into possession, vide recovery memo exhibit PD. After recording the statement of witnesses, the accused, was arrested. After the completion of investigation, the accused, was challaned.

4. On his appearance, in the Court of the Committing Magistrate, the accused was supplied the copies of documents, relied upon by the prosecution. After the case was received by commitment, in the Court of Sessions, charge under Sections 307 of the Indian Penal Code, and 27 of the Arms Act, was framed against the accused, which was read-over and explained to him, to which he pleaded not guilty, and claimed judicial trial.

5. The prosecution, in support of its case, examined Satnam Singh (PW1), Amrik Kaur (PW2), Shamir Singh, Assistant Sub Inspector (PW3), and Rishi Ram, draftsman (PW4). Thereafter, the evidence of the prosecution was closed.

6. The statement of the accused, u/s 313 of the Code of Criminal Procedure, was recorded. He was put all the incriminating circumstances, appearing against him, in the prosecution evidence. He pleaded false implication. He, however, examined Mohan Singh (DW1), and Iqbal Singh, Head Constable (DW2), in his defence.

7. After hearing the Counsel for the parties, and, on going through the evidence, on record, the trial Court, convicted and sentenced the accused, as stated above.

8. Feeling aggrieved, the instant appeal, was filed by the appellant.

9. I have heard the Counsel for the parties, and have gone through the evidence, and record of the case, carefully.

10. The Counsel for the appellant, at the very outset, submitted that there was 24 hours unexplained delay, in lodging the first information report, which was utilized, for false implication of the accused, concoction of story, and introduction of false witnesses. The occurrence, in this case, took place, on 28.08.1989, at 3.30 PM. The first information report, was lodged, at 2.45 PM, on 29.08.1989. Satnam Singh, prosecution witness, during the course of his statement stated that the Police, had come to his house, on the

date of occurrence. If the statement of Satnam Singh, PW1, is admitted to be correct, and there is no reason, to do otherwise, then it passes one"s comprehension, as to what prevented the Police, from recording his statement immediately after the occurrence. Satnam Singh, injured, PW1, also in clear-cut terms, stated that the Police directed him (Satnam Singh), on 28.08.1989, at the time of its visit, to his house, that he be removed to the hospital for treatment. It was also stated by him, that the Police visited the hospital, on 29.08.1989, and recorded his statement PA. This clearly shows that there was slackness, on the part of the investigating agency. It was, on account of such slackness, or negligence, on the part of the investigating agency, that the first information report, could not be recorded immediately after the occurrence, especially when the Police Officials, visited the house of the injured, on the date of occurrence itself. From the evidence of Satnam Singh, PW1, it was proved, that his brother Savinder Singh, Sarpanch of village Durgapur, had been provided security, at his house. Jagtar Singh, accused, was also deputed, for security duty. He was an S.P.O., in the Police. Since the accused, fired two shots, from his service rifle, one of which hit Satnam Singh, the investigating agency, somehow or the other, apparently wanted to save its official i.e. Jagtar Singh, accused, who was posted, as an S.P.O., and was deputed, for security duty, alongwith other Police Officials, at the house of his brother. The investigating agency, must have made efforts, to win over Satnam Singh, and his brother Savinder Singh, Sarpanch, with a view to save Jagtar Singh, accused, not to lodge the first information report. When ultimately, their efforts failed, in that regard, left with no other alternative, the first information report, had to be recorded, as the offence was serious, in nature. Even otherwise, it could not be imagined, that Satnam Singh, would falsely implicate the accused, especially when, he was on security duty, at the house of his brother Savinder Singh, who was having threat, to his life, from the terrorists. In those circumstances, no normal person, could think of falsely implicating the accused, especially on security duty, and a part and parcel of the Police Department. The aforesaid circumstances, therefore, clearly explained the delay, in lodging the first information report. Even otherwise, mere delay, in lodging the first information report, in itself, is not sufficient, to throw away the case of the prosecution over-board. In case of delay, in lodging the first information report, the Court is put on guard, to carefully and cautiously scrutinize the evidence of the prosecution witnesses. If after careful and cautious scrutiny, the Court comes to the conclusion, that the evidence of the prosecution witnesses, does not suffer from any serious infirmity, then the delay pales into insignificance. The evidence of Satnam Singh, PW1, and Amrik Kaur, PW2, his wife, whose presence was most natural and probable, in the house, at the time of occurrence, could be said to be cogent, and convincing. Under these circumstances, the delay, if any, paled into insignificance. The delay, in this case, was not utilized, for the concoction of story, false implication of the accused, and introduction of false witnesses. The submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

11. It was next submitted by the Counsel for the appellant, that the ocular version, was not supported, by the medical evidence, as the doctor, who medico-legally examined

Satnam Singh, was not produced, by the prosecution. It is, no doubt, true that, Dr. G.S. Tuck, who medico-legally examined the injured, was not examined. It is evident, from the trial Court record, that Dr. G.S. Tuck, was summoned, again and again, but his whereabouts, were not available. It was, under these circumstances, that his service, could not be effected, and, ultimately, the Court, closed the evidence of the prosecution. It is not that the prosecution, did not intentionally, and deliberately examine this witness. Had the prosecution, withheld this witness intentionally, and deliberately, the matter, would have been different. Since the whereabouts of Dr. G.S. Tuck, were not available, despite strenuous efforts, the prosecution, could not be blamed, for not examining him. Now the question, that arises, for consideration is, as to whether, in the absence of the statement of Dr. G.S. Tuck, in the circumstances, explained above, the other evidence, produced by the prosecution, could be taken into consideration, to bring home the guilt to the accused, or not. It may stated here, that the medical evidence, is only a corroborative piece of evidence. The ocular version, given by Satnam Singh, PW1, clearly proved, that he alongwith his brother Savinder Singh, was residing, in the same house. He also deposed, that he was posted in the army, but had come on leave. As stated above, brother of Satnam Singh, had been provided security, as he was having threat, to his life, at the hands of the terrorists. Jagtar Singh, accused, security personnel, alongwith other Police Officials, was sitting, in the chaubara of the house. He was playing obscene records, on the tape-recorder, to which Satnam Singh, objected. When he was going upstairs, through the wooden stair case, in order to prevent Jagtar Singh, accused, from playing the vulgar songs, on the tape-recorder, at about 3.30 PM, he (Jagtar Singh, accused), fired two shorts, at him, with his service rifle. He further stated that the first fire, did not hit him, but the second hit him, on his life leg near the knee joint, as a result whereof, his left leg was badly injured and fractured. He also stated that Amrik Kaur, his wife, was present,at that time. The statement of Satnam Singh, PW1, was duly corroborated by Amrik Kaur, PW2, his wife, whose presence, as stated above, was most probable and natural, at the time of occurrence, in the house. There was, no reason, on the part of Amrik Kaur, and Satnam Singh, to depose falsely, against the accused. They had no grudge, or enmity, against him, to falsely involve him, in this case. The statements of both these witnesses, were duly corroborated, by the recovery of rifle P1, which was issued, to the accused, and two empty cartridges P2 and P3. The trial Court, was, thus, right in coming to the conclusion, that the ocular evidence, of Satnam Singh, injured, and his wife Amrik Kaur, an eye- witness, was found to be cogent, convincing, and reliable. The trial Court, thus, rightly acted upon the statements of the witnesses, to come to the conclusion, that the prosecution, had proved its case, beyond a reasonable doubt. Nonexamination of Dr. G.S. Tuck, in the facts and circumstances explained above, therefore, did not cause any dent, in the prosecution story. The submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

12. It was next submitted by the Counsel for the appellant, that Satnam Singh, was an army personnel, and he was to report, for duty, on 28.08.1989, at Jammu. He further submitted that, under these circumstances, his presence, at his house, on 28.08.1989, at

about 3.30 PM, was unnatural and improbable. Satnam Singh, PW1, in his statement, stated that, at about 3.30 PM, he was present, at his house, as he was to go back, after availing of leave, when the occurrence, took place. Village Durgapur, where the occurrence took place, falls within the jurisdiction of Police Station Sarhali, District Amritsar. Jammu, where Satnam Singh, was to report for duty, on 28.08.1989, was not far away, from the place of occurrence. It was, under these circumstances, that at about 3.30 PM, Satnam Singh,PW1, was present, in his house, to leave for Jammu. After arriving at Amritsar, Satnam Singh, could easily reach Jammu, on 28.08.1989, by travelling, in a bus, or in a train. Under these circumstances, it could not be said, that the presence of Satnam Singh, at the time of occurrence, in his house, at village Durgapur, was unnatural, and improbable. The submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

13. The next submission of the Counsel for the appellant, was to the effect, that neither the gun, nor the live cartridges, nor the empty cartridges, were sent by the Police, to the Laboratory, to find out, as to whether, the same were fired, from the gun P1. It may be stated here, that the Police, wanted to save Jagtar Singh, S.P.O., deputed on security duty, at the house of Savinder Singh, as he was having threat to his life, at the hands of the terrorists. Since the Police, wanted to save its fellow being, it tried its level best, to leave lacunae, in the prosecution story. The investigation, was not in the hands, and under the control of the complainant. It was for the Police, to send the gun, empty cartridges, and the live cartridges, to the Laboratory, to find out, as to whether, the same were fired, from the said gun. If the Investigating Officer, was either negligent, or dishonest, in the performance of his duties, then the benefit thereof, could not be given to the accused. If the benefit of such faulty investigation, is given to the accused, then every negligent, or dishonest Police official, shall leave lacunae, in the prosecution case, so as to create an escape route, for the accused. Under these circumstances, non-sending of the gun, empty cartridges, and the live cartridges, to the Laboratory, did not at all affect the merits of the case, especially when, the ocular evidence, was found to be cogent, convincing, and reliable. The submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

14. The Counsel for the appellant, last of all, submitted that, the appellant, has been undergoing the agony of long trial, for the last 20 years, and lenient view, be taken, in the matter of sentence. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. The appellant, who was a security guard, deputed to save the life of Savinder Singh, himself became the law breaker, by causing dangerous to life injuries, on the person of his brother (Satnam Singh), with his service rifle, which had been issued, to him, by the Police. The mere fact, that the first information report, was registered, in the month of August, 1989, and about 20 years, have passed, in itself, could not be said to be a sufficient ground, to reduce the sentence, awarded to the accused, by the trial Court. Even otherwise, in my opinion, the trial Court has already taken a very lenient view, in the matter of award of sentence to the accused. If further

lenient view, in such like cases, is taken, by reducing the sentence, awarded to the accused, by the trial Court, then it would send wrong signals, to the society, that a culprit, even after committing a very serious offence, may be let off, with a very meagre sentence. Undue sympathy to impose inadequate sentence, would do more harm to the justice system, to undermine the public confidence, in the efficacy of law, and the society could no longer endure under such serious threats. It is, therefore, the duty of every Court, to award proper sentence, having regard to the nature of offence, and the manner, in which, it was executed or committed. In case, in such like heinous offences, inadequate sentence is awarded or the sentence awarded by the trial Court, is reduced, that would amount to the mockery of justice system. No ground, whatsoever, therefore, is made out, to reduce the sentence, awarded to the accused, by the trial Court. The submission of the Counsel for the appellant, being devoid of merit, is rejected.

15. No other point, was urged, by the Counsel for the parties.

16. For the reasons recorded above, the appeal, being devoid of merit, must fail, and the same stands dismissed. The judgement of conviction, and the the order of sentence, are upheld. If the appellant, is on bail, his bail bonds, shall stand cancelled.

17. The Chief Judicial Magistrate, shall take necessary steps to comply with the judgment with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Code of Criminal Procedure, and submit compliance report, within 02 months.

18. The District & Sessions Judge, is also directed to ensure that the directions, referred to above, are complied with, and the compliance report is sent within the time frame, to this Court.

19. The Registry is directed to keep track that the directions are complied with, within the stipulated time. The papers be put up within 10 days, of the expiry of the time frame, whether the report is received or not, for further action.