

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-951-DB-2018 (O&M)
Reserved on: 23.03.2023
Date of Decision: 11.4.2023

Mander Singh and others.....Appellants

Versus

State of Punjab.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Manvinder Sidhu, Advocate
for the appellant.

Ms. Monika Jalota, DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 11.9.2018, upon case bearing CIS No. SC 74/2016, by the learned Additional Sessions Judge, Bathinda. Through the above said verdict, the learned trial Judge concerned, convicted the accused, for the commission of offences punishable, under Sections 148, 302, 323 read with Section 149 of the IPC. Moreover, through a separate sentencing order, drawn on 12.9.2018, the learned trial Judge concerned, sentenced the convicts in the hereinafter extracted manner:-

Name of the accused	Offence	Punishment awarded	Fine
Mander Singh, Nazam Singh, Suba Singh, Hardev Kaur and Sukhpal Singh	148 IPC	Sentenced to undergo rigorous imprisonment for three years.	Rs. 2,000 and in default to further undergo RI for three months.
Mander Singh	302 IPC	Sentenced to undergo rigorous imprisonment for life.	Rs. 20,000 and in default to further undergo RI for

			six months.
Nazam Singh, Suba Singh, Hardev Kaur and Sukhpal Singh	302 read with Section 149 IPC	Sentenced to undergo rigorous imprisonment for life.	Rs. 20,000 and in default to further undergo RI for six months.
Mander Singh, Nazam Singh, Suba Singh, Hardev Kaur and Sukhpal Singh	323 IPC read with Section 149 IPC	RI for six months	Rs. 1,000 each and in default of payment of fine to further undergo RI for 10 days each.

2. All the above imposed sentences of imprisonment, were ordered to run concurrently but the period of detention undergone by the convict, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed sentence(s) of imprisonment.

3. The accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent therewith sentences of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst the instant criminal appeal, before this Court.

Factual Background

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PW-7/F is assigned. The narrations carried in Ex. PW-7/F, are that 23.01.2016, one medical ruqa was received from Civil Hospital, Maur that Nazam Singh son of Mander Singh, Harbans Singh son of Sadhu Singh and Bhola Singh son of Bhag Singh r/o village Mari, were admitted in the hospital due to injuries, and, Harbans Singh and Bhola Singh were already referred to Civil Hospital Bathinda. At this, ASI Jaskaran Singh went to Civil Hospital Maur, and, sought the opinion of the doctor qua the fitness of injured. Doctor informed that injured Harbans Singh was referred to Civil Hospital Bathinda, and, Nazam Singh is unfit to make

statement. On 24.01.2016 again ASI along with other police officials went to Civil Hospital, Bathinda, and, sought the opinion of the doctor qua the fitness of injured persons. Doctor opined that Bhola Singh is fit to give the statement, and, Harbans Singh was referred for further medical treatment to higher institute. Thereafter the police sought the opinion from the doctor of Bharat Brain Hospital, Bathinda qua the fitness of Harbans Singh but the doctor declared him unfit to make the statement. Then ASI Jaskaran Singh went to Civil Hospital, Bathinda, and, received the MLRs of Harbans Singh and Bhola Singh. Injured Bhola Singh got recorded his statement with the investigating officer concerned, to the effect that he is the resident of Mari, and, is an agriculturist by profession. On 23.01.2016 at about 2.00 P.M., he and his nephew Harbans Singh and his daughter Jaspal Kaur were present in their house. His daughter went to throw the garbage over the ruri in the Nohra which adjoins to their house. Then they heard the voice of his daughter '*Marta-Marta*', and, then the complainant and his nephew went to Nohra. There Mander Singh son of Bhura Singh armed with stick, Suba Singh, who was having stick, Hardev Kaur armed with phora. Nazam Singh with stick, and nephew of Hardev Kaur, who was having stick, were abusing his daughter Jaspal Kaur, and, they were causing injuries to her. The complainant, and, Harbans Singh raised raula, and, tried to rescue Jaspal Kaur from the clutches of accused persons. Then Mander Singh gave a how of gadasa to Harbans Singh, which hit on his head, and, he fell on ground. Hardev Kaur gave a blow of stick to Harbans Singh. When the complainant tried to rescue him, then Mander Singh gave a gadasa blow to the complainant, and, back side of gadasa hit on his head. Nephew of Hardev Kaur gave a blow of stick to the complainant which hit on his left shoulder, and, the complainant party raised alarm. Thereafter, all the accused persons

fled away from the spot. Motive behind the occurrence was that accused Mander Singh wanted to take forcible possession over the land of Nohra, and, the complainant party restrained him. Due to this the accused persons inflicted injuries on their person. On the statement of the complainant, ruqa was sent to the police station, on the basis of which FIR in the present case was registered.

Investigation proceedings

5. On 30.01.2016 as per the CT Scan report, rapat No.22 was registered and Section 307 of IPC was added in the FIR. On 31.01.2016 injured Harbans Singh died in Bharat Brain Hospital, Bathinda. Thus, Section 302 of IPC was added in the FIR. Further investigation was carried out. Statements of witnesses were recorded. The place of occurrence was inspected by the Investigating Officer concerned. The accused were arrested and the weapons of offence were got recovered. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

6. Since the offence under Section 302 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 3.5.2016, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused, for the offences punishable under Sections

302, 323, 324 read with Section 34 of the IPC.

8. However, when the case was fixed for prosecution evidence, the learned Public Prosecutor moved an application under Section 319 of the Cr.P.C. for summoning of accused Hardev Kaur, which was allowed by the learned trial Judge vide order dated 7.9.2016. Thereafter the learned trial Judge concerned, proceeded to draw an amended charge sheet against all the accused for the offences punishable under Sections 148, 302, 323 read with Section 34 of the IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

9. In proof of its case, the prosecution examined 12 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. The defence reared by the accused concerned, in his statement drawn under Section 313 Cr.P.C., is extracted hereinafter.

“I am innocent and have been falsely implicated in the present case. On 23.1.2016, Sadhu Singh, Harbans Singh now deceased and Bhola Singh armed with respective weapons were forcibly possession of our plot which is in the name of my father and mother and Sadhu Singh hit blow of soti and Bhola Singh hit blow of soti carandi wali on my head and Harbans Singh also hit blow on my body part with soti blow and I smeared with blood stained and my father and mother brought to me in Civil Hospital, Maur where ruqa Ex. DE my statement Ex. DF was recorded by the police and DDR Ex. DG was also recorded firstly and my MLR is Ex. DH. I remained at Civil Hospital for many days but no action was taken by the police regarding the same.”

Therefore, the accused asked for, and, were permitted to lead

defence evidence. The accused led into the witness box three defence witnesses.

11. DW-1 Piara Singh, in his examination-in-chief, only makes speakings about his along with the father of Suba Singh, Kartar Singh Sarpanch and other persons visiting the police station concerned, and, requesting the SHO concerned, to release Suba Singh.

12. DW-2 Dr. Ravi Kant, Medical Officer, CHC, Maur Mandi, has produced, and, tendered in Court, MLR No. SS/106/16 dated 23.1.2016, as became drawn in respect of injured Nazam Singh.

13. DW-3 Head Constable Avtar Singh produced, and, tendered into evidence DDR register bearing No. 31 of 24.1.2016, to which Ex. DG became assigned.

14. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charge(s) (supra), as became drawn against them, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convict.

Submissions of the learned counsel for the appellants

15. The learned counsel for the aggrieved convicts-appellants, has argued before this Court, that the above reared defence by the convict(s) in their/his respectively drawn statement(s) under Section 313 of the Cr.P.C. , but makes loud bespeakings about a valid acceptable exculpatory plea. Moreover, he also submits that since the investigating officer concerned, while stepping into the witness box as PW-7, has in his cross-examination, rather spoken that on 23.1.2016, he did not record the statement of injured Nazam Singh, as he was declared unfit to make a statement. He further argues, that though, the statement of injured Nazam Singh, was not recorded

dated 23.1.2016, as became drawn by the doctor concerned, qua injured Nazam Singh. Moreover, when DW-3 has proved the daily diary entry qua the said injuries inflicted upon injured Nazam Singh, rather purportedly in the very same occurrence, which become testified by the ocular witnesses to the crime event. He also further submits, that since Ex. DH enunciates the relevant injuries, one amongst which, rather is a head injury entailed on the person of Nazam Singh. Therefore, he submits, that the accused were therethrough rather able to prove the above exculpatory plea, as raised in the apposite statement(s), as, became drawn under Section 313 of the Cr.P.C.

16. In other words, he submits that the accused had proven that the vital head injury, as became suffered by deceased Harbans Singh, and/or the other injuries, as became inflicted, upon the person of the injured victims, were but a consequence of the accused permissibly exercising the right of private defence of their property, and, of their respective bodies/persons. Therefore, he argues that in the wake of the above validly proven exculpatory plea, the verdict of conviction, is required to be reversed, and, consequently, the order of sentence is also required to be quashed, and, set aside.

Submissions of the learned State counsel

17. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent therewith sentence(s) (supra), as become imposed upon the convicts, is well merited, and, does not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, she has argued that the instant appeal, as preferred by the convicts, be dismissed.

Reasons for rejecting the exculpatory plea raised by the accused-appellants

18. Though the injuries suffered by accused Nazam Singh, may be

revealed, from a reading of the cross-examination of PW-1, who is an injured witness, to be suffered on the very day when the crime event occurred at the crime site. However, for the reasons to be assigned hereinafter, the above pleaded exculpatory plea by the accused, is liable to be rejected.

Analysis of the depositions of the eye witnesses of the occurrence, who stepped into the witness box as PW-1 and PW-2

19. PW-1 in his examination-in-chief, has made a narration qua the crime event, which is completely corroborative to the echoings made in the appeal FIR, to which Ex. PW-7/F is assigned. PW-1, who is an informant, has also during the course of his examination-in-chief, proven his earlier made statement in writing, to which EX. PA is assigned, and, in consequence whereof, the appeal FIR, to which Ex. PW-7/F is assigned, became recorded at the police station concerned. Moreover, during the course of his examination-in-chief, he proceeded to identify all the accused, who were present in Court. In addition, there is no dispute with respect to the identification in Court by PW-1 but on the ground, that they were previously unknown to him. Thus, prior thereto, there was no imperative necessity qua a valid identification parade, being conducted by the investigating officer concerned, wherein, the injured eye witness became enabled to identify the accused, so as to thereafter capacitate them to identify the accused in Court. Therefore, the identification of the accused in Court acquires probative sanctity. Moreover, though the deposition of PW-2 in her examination-in-chief, does corroborate, the echoings made by PW-1, in his examination-in-chief.

20. Nonetheless, merely on the strength of each of the ocular witness to the occurrence making consistent echoings qua the crime event,

besides for wants of any rife *inter se* or *intra se* contradictions, becoming carried in their respective testifications, thus would not per se lead this Court to assign credence to the depositions of PW-1 and PW-2.

21. Be that as it may, yet a reading of the cross-examination of PW-1, and, of PW-2, though discloses, that both have made minimal digressions, and, improvements from their previously made statements in writing. Nonetheless, the benefit thereof, cannot be assigned to the accused, as they are, as above stated, merely minimal, and, are not rife or blatant digressions or improvements from their respectively recorded previous statements in writing. Contrarily, the most important echoings, as made by PW-1 in his cross-examination, are extracted hereinafter.

“Occurrence has taken place with two to four minutes. After inflicting injuries accused ran away from the spot towards their house along with the weapons. After accused left the place I went to water works to call Sandhu Singh and even I had sent one two persons. On the way from the spot till water works nobody asked me regarding the injuries in the village.”

22. A keen reading of the above echoings, does constrain this Court to conclude, that *per se* thereupon when the defence evidently concedes to the incriminatory participation of all the accused in the crime event, thus obviously immense probative sanctity is to be assigned to the deposition of PW-1. A reading of the relevant portion of the cross-examination of PW-2, relevant portion whereof becomes extracted hereinafter, does also manifest, that thereby the accused evidently concede to their presence as well as qua their incriminatory participation at the crime site, and, in the crime event. Thus, thereby the accused obviously assign evidentiary vigour to the testifications, as, made in respect of the crime event by the ocular witnesses

thereto.

“This occurrence took place within 2-3 minutes. Accused persons slapped me but have not given any injury with gandasas etc. On hearing my noise my father and Harbans Singh came at the spot and Harbans Singh raised raula na maro na maro. At this Mander Singh inflicted gandasas blow on the head of Harbans Singh. When my father tried to rescue Harbans Singh, Mander Singh also inflicted gandasas blow on the person of my father from its reverse side. Firstly Harbans Singh came at the spot. As we i.e. my father, Harbans Singh and myself were empty handed so there was no question of inflicted any injuries on the person of accused. When Mander Singh inflicted gandasas blow on the head of Harbans Singh I do not know whether his turban was torn or not. Even blood scattered on the spot. Due to this injury Harbans Singh became unconscious. Other accused also inflicted injuries on the person of my father. Hardev Kaur inflicted fauda blow on the person of Harbans Singh deceased by using it as a dang. Hardev Kaur had not inflicted any injury on my father. When Harbans Singh fell down on the ground he was taken to CH Maur after arranging a vehicle.”

23. Though, in terms of the above exculpatory plea, raised by the accused, suggestions became put both to PW-1 and PW-2 but the said suggestions became denied by each of them.

Reasons for rejecting the exculpatory plea

24. Nonetheless the mere denial of the above suggestions, may not yet *per se*, tantamount to a conclusion, that thereby the exculpatory plea (supra), as became raised by the accused, rather ipso facto becoming negated. Though proof, in respect of the above exculpatory plea, is but marshable from the deposition (supra), as made by the investigating officer concerned, in his examination-in-chief. Moreover, also prima facie it can be mobilized from the MLR of Nazam Singh to which Ex. DH is assigned.

Importantly also, from the deposition of DW-3, who proved the apposite DDR, to which Ex. DG is assigned, and, which became entered in the police records, rather in respect of the assault injuries suffered by Nazam Singh. However, for the reasons to be assigned hereinafter, the above exculpatory plea is to be negated. Primarily for the reason, that though DW-2 tendered Ex. DH in Court. Moreover, also though he proved the signatures thereons of Dr. Satwinder Singh, who was the author of the above exhibit. However, yet there was an imperative necessity for the accused to ensure the stepping into the witness box of the author of Ex. DH. Nonetheless, Dr. Satwinder Singh, who authored Ex. DH, did not step into the witness box. In the absence of his not stepping into the witness box, obviously the contents of Ex. DH, remained not completely proven, nor also obviously any valid opportunity, as was available on his stepping into the witness box, rather was resultantly made not available to the accused. The effect of the above, is that, the defence not proving whether the said injuries were the result of an assault being made on the person of Nazam Singh, on the very day, when the above crime event occurred, nor it is possible to clinch a finding, that such assault injuries were a sequel of user on his person of any assault weapons. The further effect thereof, is that Ex. DH is inconsequential in promoting the above reared exculpatory plea by the accused.

25. Though a reading of Ex. DH reveals, that thereons exists the signatures of the injured accused Nazam Singh, but yet Nazam Singh did not step into the witness box to prove the existence thereons of his signatures. Therefore, it cannot be said that Ex. DH was drawn in respect of Nazam Singh, and, that it was not drawn in respect of some other person. In addition, even if a DDR was recorded, and, became proven by DW-3,

besides but was purportedly in respect of the assault injuries, as, became

purportedly received by accused Nazam Singh, and, purportedly in the very same crime incident, which resulted in the drawing of the appeal FIR, yet even the said DDR did not result in any investigations, being made thereinto. Moreover, if as a matter of fact, the injured accused Nazam Singh, did actually receive assault injuries on his person in the very crime incident, which resulted in lodging of the appeal FIR, thereupon, he could have well reared a private complaint before the learned Court concerned, and, could have well asked for its being tried with the appeal FIR. However, he did not do so. The result of the above omission when is construed along with his not proving his signatures on Ex. DH, is that, prima facie Ex. DH was fictitiously drawn, and/or, was drawn in respect of injuries entailed upon a person other than accused Nazam Singh. In consequence, especially when the ocular witnesses have denied the suggestions as became meted to them, that accused Nazam Singh made injuries on their respective persons but in pursuance to an assault being made, upon him, by the injured victims. Therefore, the said denials also do not promote the exculpatory plea (supra), as reared before this Court, by the accused.

26. Even otherwise assumingly if the above drawn conclusions, do not prima facie have any probative value, yet also there was an imperative requirement for the apposite exculpatory plea of right of private defence of property or of body, being efficaciously propagated, rather through (a) evidence becoming adduced suggesting qua the victims/injured rather being the initiators of the aggression, (b) evidence suggesting qua the crime site where the dispute occurred hence belonged to the accused, (c) evidence emerging and suggesting that the numerical strength of the accused and/or of the victims injured being co-equal, besides each of them being co-equally armed. However, in respect of the above requisite parameters, no evidence

exists on record. Contrarily given the evident fact, that the numerical strength of the accused was higher than the numerical strength of the victims injured, besides when the weaponization(s) of the accused was higher to the purported weaponization(s), if any, of the victims injured. Therefore, also the accused cannot at all within the relevant parameters, rather raise any able exculpatory plea, that in theirs inflicting injuries on the victims concerned, and/or in theirs causing the demise of deceased Harbans Singh, hence theirs committing the above penal act, but in theirs purportedly ably exercising the right of private defence of property, and/or of their respective bodies.

Recovery(ies) of the incriminatory weapons of offence

27. During the course of investigations, being made into the appeal FIR, convict Mander Singh produced a gandasa, before the investigating officer concerned, which was taken into police possession, through recovery memo Ex. PW11/C. Convict Nazam Singh @ Raju also produced a bamboo stick before the investigating officer concerned, which was taken into police possession through recovery memo Ex. PW11/D.

28. The recovery memos (supra), carry the signatures, in Punjabi, of convicts Mander Singh and Nazam Singh @ Raju. Since the recovery(ies) of the incriminatory items, as made through recovery memos (supra) have not been proven to be false or contrived recovery(ies). Moreover, when the signatures of the accused, as existing thereons, are neither ably denied nor when the said denial has been efficaciously proven. Thus, the above recovery(ies) but is/are not only to be concluded to be validly made recovery(ies), but are also to be concluded to be of the very same incriminatory weapons, which did become used by the convicts, rather in theirs inflicting injuries on the injured concerned, and, also in committing the murder of the deceased concerned.

Medico-legal reports of injured Bhola Singh and Harbans Singh

29. Dr. Amit Kamboj, who medico legally examined the victims concerned, has stepped into the witness box as PW-4, and, during the course of his examination-in-chief, he through his tendering his affidavit, to which Ex. PW-4/K is assigned, hence proved the MLRs of victims-injured, namely Harbans Singh (since deceased), and, Bhola Singh, to which respectively Ex. PW-4/E and Ex. PW-4/G are assigned. PW-4, while conducting medico legal examination, noticed the following injuries on the person of injured Harbans Singh (since deceased)-

- (1) *10 cm x 1 cm incised wound L shaped on the head bone deep with clean margins. Adv. X-ray and surgical opinion.*
- (2) *C/o blows on the back (as told by father Sadhu Singh).*

30. Injury No. 1 was kept under observation and injury No. 2 was opined to be simple in nature. Further, injury No. 1 was opined to be caused by a sharp weapon, whereas, injury No. 2 was opined to be caused by a blunt weapon.

31. PW-4 Dr. Amit Kamboj, while conducting medico legal examination on injured Bhola Singh, noticed the following injuries on his person-

- (1) *2.5 cm x 2 mm cm lacerated wound on the parietal region of head. Adv. X-ray and surgical opinion.*
- (2) *C/o pain on the left shoulder on back. Adv: x-ray and ortho opinion.*
- (3) *4 cm x 1 mm abrasion on the Rt. forearm near elbow, swelling underneath. Adv: X-ray & ortho opinion.*
- (4) *1 cm x 2 mm abrasion on the Rt. Wrist, swelling underneath. Adv: X-ray Rt. Hand and ortho opinion.*

32. All the injuries were kept under observation. Further, all the

injuries were opined to be caused by a blunt weapon.

Post-mortem report

33. The post-mortem report, to which Ex. PW-3/A is assigned, became proven by PW-3. PW-3 in his examination-in-chief, has deposed that on his making an autopsy on the body of the deceased, his noticing thereons the hereinafter injury-

“1. An L-shaped stitched wound about 9 cm with stitches in Situ present in the center of the skull 1.7 cm behind the hairline.”

34. Furthermore, he has pronounced therein, that the cause of demise of the deceased was head injury which is ante mortem in nature and sufficient to cause death in the normal course of life. The above made echoings by PW-3, in his examination-in-chief, became never challenged through an efficacious cross-examination, being made upon him, by the learned defence counsel. Therefore, the opinion, as made by PW-3 qua the demise of the deceased acquires formidable force. Consequently, the above echoings, as made by PW-3, in his examination-in-chief, do relate, the fatal ante-mortem injury to the time of the crime event hence taking place at the crime site.

35. Thus, a conjoint reading of the report of the doctor concerned, who proved the apposite MLRs Ex. PW-4/E and Ex. PW-4/G, and, of the post-mortem report of the deceased concerned, does foster an inference, that therethroughs corroboration, is acquired by the untainted testifications, of the victim as well as by the untainted testification of the ocular witnesses to the occurrence, who respectively stepped into the witness box as PW-1 and PW-2.

Final order

find any merit in the appeal, and, is constrained to dismiss it. Consequently, the appeal is dismissed. The impugned verdict of conviction, as becomes recorded upon the convicts-appellants, by the learned convicting Court, is maintained, and, affirmed. Moreover, the consequent therewith order of sentence is also affirmed. If the convicts are on bail, thereupon, the sentence(s) as imposed upon the convicts-appellants, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

37. Records be sent down forthwith.

38. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

April 11, 2023
Gurpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No