

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) CRA-S-210-SB of 2002 (O&M)

Rajinder Kumar and others

...Appellants

Versus

State of Punjab

...Respondent

(2) CRA-S-444-SB of 2002 (O&M)

Wazir Chand and others

...Appellants

Versus

State of Punjab

...Respondent

(3) CRR No. 1287 of 2002 (O&M)

Narinder Singh

...Petitioner

Versus

Rajinder Kumar and others

...Respondent

Date of decision: 19.08.2015

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. K.S. Sodhi, Advocate for the appellants
(in CRA-S-210-SB-2002).

Ms. G.K. Dulat, Advocate/amicus curiae
for the appellants (in CRA-S-444-SB-2002).

Mr. Mehardeep Singh, DAG, Punjab.

Jitendra Chauhan, J.

The aforementioned two appeals and one revision are being decided by way of this common order, as the same have been arisen out of the same case/FIR. However, the facts are being derived from CRA-S-210-SB-2002.

2. The appellants/accused have filed this criminal appeal assailing their conviction and sentence passed by the learned Sessions Judge, Ludhiana vide judgment dated 19.01.2002. The appellants were convicted under Sections 148, 149, 304 Part II, 324, and 323 of the Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment under above mentioned Sections.

3. The case of the prosecution as culled out from the judgment of the Trial Court is as under:-

“The case of the prosecution is that Pritam Singh deceased while admitted in Civil Hospital, Ludhiana, with injuries on his person, made statement before SI Ram Ji on 03.05.1998 at about 11.45 A.M that he had three sons of whom Narinder Singh was eldest and Kuldip Singh was younger to him. Both Narinder Singh and Kuldip Singh were living in separate house in street No. 12-1/2, Janta Nagar, Ludhiana. The youngest son of complaint Jasbir Singh was living in Dugri. Allegedly on 02.05.1998, at about 8.30 pm, complainant Pritam Singh was present in the street outside his house, when accused Gian Chand, who resided in the same street accompanied with his sons Rajinder Kumar accused armed with an irod rod, the other son of Gian Chand named Jaspal @

Babu armed with hockey and accused Madan Lal also armed with an iron rod came there. Gian Chand raised lalkara that Pritam Singh be not allowed to go alive as he was to be taught a lesson for raising wall in the street. Upon this accused Rajinder Kumar opened the attack and gave an iron rod blow to Pritam Singh, which hit him on the right side of his head. Madan Lal accused also gave an iron rod blow to Pritam Singh, which hit him on the back side of his right hand. As a result of the same, Pritam Singh fell down in the street and while he was lying on the ground, accused Jaspal Singh @ Babu gave a hockey blow to Pritam Singh, which hit him above his right eye. The complainant further stated that he raised raula Mar Dita Mar Dita and on hearing the same Jaswinder Singh and Jaswant Singh neighbours of the complainant reached there and attempted to rescue Pritam Singh from the accused. In the meantime Mohan Lal Kuram of Gian Chand accused and his son along with Wazir Chand also reached there. They were holding in their hands a jug and silver mugs containing acid. They threw acid on the face and other parts of the bodies of Jaswinder Singh and Jaswant Singh. As a result of the same even holes appeared on the clothes which Jaswinder Singh and Jaswant Singh were wearing and acid burn injuries were also suffered by them. Pritam Singh and others raised raula upon which Narinder Singh son of Pritam Singh also reached along with Manjit Singh and rescued Pritam Singh from the accused. Thereafter all the accused ran away from the spot along with their weapons and articles.

According to the complainant the reason for the accused having inflicted injuries on the person of Pritam

Singh and having caused acid burn injuries to Jaswinder Singh and Jaswant Singh was that the Municipal Corporation street No. 13-1/2 as per the site plan closes in front of the house of Gian Chand. Gian Chand wanted a passage from there regarding which earlier also there was a dispute between the parties and respectables had got the matter compromised between them. But Gian Chand insisted for passage and on this account all the accused who were relatives of Gian Chand had inflicted injuries on the persons of Pritam Singh, Jaswinder Singh and Jaswant Singh. The injured were removed to Civil Hospital, Ludhiana, where statement of the complainant was recorded after the doctor declared him fit to make statement. The same was read over to the complainant, who signed the same in token of its correctness. S.I. Ram Ji made his endorsement on the same and send it to police station. Formal FIR under Sections 307, 323, 148 read with Section 149 of the Indian Penal Code was registered at police station Division No.6, Ludhiana regarding this occurrence. S.I. Ram Ji the investigating Officer then reached at the place of occurrence, inspected the same and prepared its rough site plan. The accused were arrested in this case. On 06.05.1998, accused Rajinder Kumar suffered a disclosure statement on interrogation and in pursuance of the same, he got recovered an iron rod from the disclosed place, which was taken into police possession. Accused Madan Lal also suffered a disclosure statement and in pursuance thereof got recovered another iron rod from the disclosed place. Accused Mohan Lal on the basis of his disclosure statement got recovered one plastic container and an iron rod, which were also taken into police possession.

Accused Rakesh Kumar in pursuance of his disclosure statement got recovered a hockey and a mug from the disclosed place, which were taken into police possession. On 19.05.1998, Pritam Singh died while he was admitted in DMC & Hospital, Ludhiana, upon which information, SI Ram Ji reached the said hospital and prepared inquest report in respect of the dead body in presence of the witnesses. The same was despatched for post mortem examination and after that the clothes removed from the dead body were produced before him and the same were taken into police possession. The acid affected clothes of Jaswant Singh were also produced before police during investigation and the same were taken into police possession. On completion of the investigation, the accused were challaned by SHO police station Division No.6, Ludhiana.”

4. On presentation of challan, the trial Court finding prima facie evidence against accused-appellants, framed charge for the offences under Sections 148, 149, 302, 325, 323 IPC. The accused persons pleaded 'not guilty' to the above charges and claimed trial.

5. In support of its case, the prosecution examined the following witnesses:-

PW-1, Jaswinder Singh, an eye witness who proved and corroborated the statement of Pritam Singh made before the police;

PW-2, Narinder Singh corroborated the statement of PW-1 in toto about the manner in which the occurrence had taken place;

PW-3, Dr. Harjap Singh conducted the post mortem

examination on the dead body of Pritam Singh at DMC Ludhiana;

PW-4, Harminder Singh, Draftsman had prepared the scaled site plan Ex.PO of the place of occurrence;

PW-5, ASI Prem Nath, the formal witness, had recorded the formal FIR Ex.PP/2 after receipt of the statement of Pritam Singh;

PW-6, Constable Narain Singh had proved his affidavit Ex.PQ on record;

PW-7, C-I Naresh Kumar had stated that the statement Ex.PP of Pritam Singh was taken by him to the police station for the registration of case;

PW-8, S.I. Ram Ji, Investigating Officer, testified the whole prosecution story;

PW-9, HC Swaran Singh had proved his affidavit Ex.PW9/A on record;

PW-10, Gurdev Ram had stated that special reports of the case were handed over to him on 03.05.1998 but as the Illaqa Magistrate was not available at his residence on that day, the same was delivered by him on 04.05.1998;

PW-11, Dr. Satish Chander, conducted the medico-legal examination on the person of Pritam Singh and stated about the injuries suffered by him;

PW-12, Sukhvir Singh, Draftsman, proved the copy of

survey plan of Janta Nagar, Ludhiana prepared by Municipal Corporation as Ex.PW12/A.

6. The statements of the accused under Section 313 Cr.P.C., were recorded. They pleaded innocence and alleged false implication. In defence, the accused had examined DW-1 Dr. M.K. Sobti of DMC and Hospital, Ludhiana; DW-2 Dr. Ashok Raswant; DW-3 HC Gurbhej Singh and DW-4 Dr. Kushaljit Singh and thereafter, closed their defence evidence

7. After hearing the Public Prosecutor for the State, the counsel for the accused, and after going through the evidence on record, the trial Court convicted and sentenced the accused/appellants, as stated hereinbefore.

8. Feeling aggrieved, against the judgment of conviction and sentence delivered by the trial Court, the instant appeal was filed by the accused/appellants which was admitted on 05.02.2002. Criminal Appeal No.S-444-SB of 2002, filed by Wazir Chand, Mohan Lal Kapoor and Rakesh Kumar appellants/accused, was admitted by this Court on 07.05.2002. Criminal Revision No. 1287 of 2002 filed by the complainant Narinder Singh is also being heard and disposed of by this judgment along with two appeals.

9. Learned counsel for the appellants/accused has contended that the appellants/accused have been falsely implicated in the present case. The learned trial Court has grossly erred on the

facts as well as in law while convicting the appellants/accused. The star witness of the occurrence, Jaswant Singh was not examined by the prosecution for the reasons best known to it. The whole prosecution story was based on incredible evidence. The learned counsel further refers to the testimony of DW-1, Dr. M.K. Sobti, wherein he had specifically stated that Pritam Singh was admitted on 18.05.1998 at 9.25 am in casualty of DMC and Hospital, Ludhiana with the history of having received injuries in fight with neighbourers. According to DW-1, as per record, the patient had first been taken to Civil Hospital, Ludhiana from where he was shifted to Pahwa Hospital, Ludhiana and finally he was taken to DMC Hospital, Ludhiana on 18.05.1998. At that time, according to DW-1, the patient was having blood pressure and was in irregular treatment. He was unconscious and was in shock. CT scan was normal and showed no fracture of the skull bone, temporal bone and parietal bones.

10. It is further contended that the injuries found on the person of Pritam Singh at the time of post mortem examination did not show any fracture as stated above by DW-1, Dr. M.K. Sobti. The deceased had hostility against the appellants, In fact, two incidents had taken place on the same day, one in which Pritam Singh suffered injuries and the other was of acid attack related to accused Mohan Lal Kapoor, Rakesh Kumar and Wazir Chand, in which they poured

acid on Jaswinder Singh and Jaswant Singh, therefore, it is asserted that in such circumstances, the false implication of the appellants cannot be ruled out. On the quantum of sentence, he contended that the punishment is on the higher side.

11. On the other hand, the learned State counsel has submitted that from the evidence, it is amply proved that the deceased Pritam Singh died due to the injuries caused to him by the appellants. He refers to the statement of deceased Pritam Singh Ex.PC, in which he had specifically named the accused/appellants and narrated the sequence of the occurrence. Further the statement Ex.PC is duly testified by the statement of PW-1 Jaswinder Singh, who had also corroborated the entire prosecution story. PW-8, SI Ram Ji, the Investigating Officer also testified the statement Ex.PC given by Pritam Singh before him. The link evidence is complete. The learned State counsel also refers to the testimony of PW-3, Dr. Harjap Singh, who conducted the post mortem, wherein he had specifically stated that the injuries found on the dead body were ante-mortem in nature and probable duration of time between injuries and death was about 20 days and between death and post mortem, it was around 12 hours. He opined that the cause of death was because of head injury leading to shock, which was sufficient to cause death in the ordinary course of nature. He argued that the accused/appellants were rightly convicted by the trial Court and the

present appeal deserves to be dismissed.

12. This Court has heard the rival contentions of learned counsel for the parties and has carefully gone through the record of the case.

13. The submission of the counsel for the appellant that the star witness Jaswant Singh was not examined by the prosecution is of no consequence as the entire prosecution story rests upon the statement of the deceased, Pritam Singh, recorded after the doctor declared him fit to make a statement. Furthermore, PW-1, Jaswinder Singh had also corroborated the entire prosecution version with regard to manner of occurrence, this witness and deceased Pritam Singh had suffered injuries at the hands of accused/appellants. The occurrence had taken place on 02.05.1998 and the deceased Pritam Singh was medico-legally examined on the same day by PW-11, Dr. Satish Chander, who found the following injuries on his person:-

- 1. Lacerated wound 2 X 1.2 on the top of the scalp towards the right side having elipical in shape deep to bone. Fresh bleeding was present. Advised X-ray AP and lateral view.*
- 2. Lacerated wound ¼' X ¼' on the right fore head. It was skin deep. Fresh bleeding was present.*
- 3. Diffuse swelling 2' X 1-1/2' on the dorsum of the right had advised X-ray A.P and lateral view.*

14. As per the opinion of PW-11, the injury No.3 on the person of deceased was declared grievous in nature. Furthermore, PW-3, Dr. Harjap, who had conducted the post mortem examination

on the dead body of Pritam Singh, opined that the cause of death in this case was because of head injury leading to shock, which was sufficient to cause death in the ordinary course of nature.

15. PW-1, Jaswinder Singh, the star/eye witness of the occurrence had stated in his examination that on 02.05.1998, when he along with Jaswant Singh were present at home, they heard noise from the street and they had seen Pritam Singh, deceased lying on the ground with blood oozing from the injury on his head. This witness had witnessed the entire occurrence and identified the accused Rajinder Kumar and Madan Lal who were having iron rods in their hands and accused Jaspal @ Babu was having a hockey stick in his hand. He also stated that when he insisted the accused persons not to thrash Pritam Singh, Mohan Lal Kapoor and his son Rakesh Kumar along with Wazir Chand threw acid upon him, due to which he also suffered acid burn injuries. The presence of accused/appellants at the place of occurrence, thus, is duly established on record.

16. The weapon of offence i.e. Iron rods and hockey stick were also recovered by the police on the basis of the disclosure statement of accused/appellants, therefore, the link evidence is complete. The prosecution story has been duly testified by Ex.PC, the statement of deceased Pritam Singh, the statements of PW-1, Jaswinder Singh and PW-2 Narinder Singh, who have categorically

stated that when they were present at home, they heard raula mar dita mar dita from the street and they had seen Pritam Singh lying on the ground with blood oozing from his injury on his head. The witnesses had also seen the accused Gian Chand accompanied with his three sons present there along with their respective weapons. As per the opinion of PW-3, Dr. Harjap Singh, the cause of death in this case was because of head injury leading to shock, which was sufficient to cause death in the ordinary course of nature, therefore, it can be safely presumed that the injuries on the person of deceased Pritam Singh were so grievous due to which he succumbed to his injuries. The mere non examination of an eye witness Jaswant Singh does not affect the veracity of the case of the prosecution, therefore the same is not fatal in this context. There is no delay in lodging the FIR. The view taken on the appreciation of oral as well as documentary evidence is sustainable and no other view is possible.

17. Otherwise also, the Court feels that the learned trial Court has already taken a lenient view in sentencing the accused/appellants in the present case.

18. From the oral as well as documentary evidence, this Court comes to the conclusion that the prosecution has fully proved its case beyond reasonable doubt against the accused/appellants.

19. There is, thus, no illegality or impropriety in the impugned judgment of conviction and order of sentence dated

19.01.2002 and the same, is, hereby upheld and affirmed. There is no merit in the appeals CRA-S-210-SB of 2002 and CRA-S-444-SB of 2002 and CRR No. 1287 of 2002 which are hereby dismissed.

20. The accused/appellants shall surrender before the Chief Judicial Magistrate, Ludhiana, to undergo the remaining part of their sentences. The record of trial Court be sent back.

19.08.2015

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(JITENDRA CHAUHAN)
JUDGE

Whether to be referred to reporter– Yes / No