

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. D-1032-DB of 2009 (O&M)

Date of decision : 22.04.2015

Gurnam Singh and others

.....Appellants

Versus

State of Punjab

....Respondent

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. A.P.S. Deol, Senior Advocate with
Mr. Vishal Rattan Lamba, Advocate
for the appellants.

Ms. Manjari Nehru Kaul, Additional AG, Punjab.

Mr. A.K. Walia, Advocate
for the complainant.

LISA GILL, J.

FIR No. 23 dated 07.06.2007 was registered against Gurnam Singh his sons Mohinder Singh and Bhola Singh alias Jagroop Singh and grandson Harbans Singh son of Jagroop Singh under Sections 304 read with Section 34 IPC in respect to an incident which occurred on 07.06.2007 in which Paramjit Singh lost his life.

Complaint dated 20.08.2007 was filed by Amarjit Kaur wife of Bhola Singh @ Jagroop Singh (accused in the above said FIR) under Sections 307, 323, 324, 326, 452, 148, 149 IPC against Hakam Singh, Jaswant Singh, Jagdev Singh, Jora Singh, Sangat

Singh, Sham Singh and Gurjinder Singh @ Kala in respect to the same incident.

All the accused in FIR No. 23 dated 7.06.2007 have been convicted for the offence punishable under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life besides a fine of ₹5000/- each and in default of payment of fine to undergo further rigorous imprisonment for one year vide judgment and order dated 15.10.2009 passed by learned Additional Sessions Judge, Mansa. Aggrieved therefrom they have preferred CRA No. D-1032-DB of 2009 impugning the said judgment and order dated 15.10.2009.

Complaint dated 20.08.2007 filed by Amarjit Kaur was dismissed vide separate judgment of even date i.e. 15.10.2009. She has preferred CRA No. 192-MA of 2010 impugning the acquittal of the accused therein and dismissal of her complaint. This appeal filed by Amarjit Kaur was directed to be heard alongwith CRA D-1032-DB of 2009.

As both the appeals arise out of the same incident, they are being taken up together for hearing.

Brief facts taken from CRA No. D-1032-DB of 2009 are that FIR No. 23 dated 07.06.2007 was registered against the above said persons on the statement (Ex.PE) of complainant Karamjit Singh (PW2). It is averred by Karamjit Singh that they are two brothers and Paramjit Singh (deceased) was his younger brother working at Water Works of village Dhaula. Deceased Paramjit Singh was an Amritdhari Sikh. He alongwith his brother Paramjit Singh

were going towards the canal minor on 07.06.2007 at about 5.20 a.m. for attending the call of nature. Paramjit Singh was a little ahead of him and when he was parallel to the house of accused Gurnam Singh, Gurnam Singh raised lalkara that he should not be spared. Thereafter, Gurnam Singh, Mohinder Singh, Bhola Singh and Harbans Singh son of Bhola Singh @ Jagroop Singh caught hold of his brother Paramjit Singh. Gurjinder Singh alias Kala son of Nachatar Singh also arrived at the spot and within their sight the accused took his brother Paramjit Singh to the courtyard of the house and all the four accused inflicted injuries upon his brother on his legs, back, arms, face and forehead with sticks, dangs and gandhali. Gurnam Singh was armed with gandhali. Thereafter all the four accused dragged and threw Paramjit Singh in the drain adjoining Gurdwara and while raising lalkara that if anybody came near them, that person would also meet the same fate. Therefore, out of fear he and Gurjinder Singh @ Kaka did not intervene. Other people of the village arrived at the spot, Paramjit Singh was taken out of drain but he had died by that time. Motive of crime is alleged to be the illegal possession of accused Gurnam Singh over some panchayat land in front of Gurdwara to which Paramjit Singh deceased had been objected.

On the basis of this statement (Ex.PE), FIR No. 23 dated 07.06.2007 (Ex. PE/2) was registered. Inquest report (Ex. PC) was prepared and dead body was sent for post mortem examination through Head Constable Kewal Singh and Constable Jagsir Singh.

Rough site plan of the place of occurrence (Ex. PN) was prepared.

Statements of the witnesses were recorded. Accused Mohinder Singh and Jagroop Singh @ Bhola were arrested on 08.06.2007. Pursuant to disclosure statement (Ex. PJ) by Mohinder Singh, one stick (sota) was recovered, which was taken in possession by SI Amirtpal, the Investigation officer vide (Ex. PL). Accused Bhola Singh @ Jagroop Singh suffered disclosure statement (Ex. PK) and one stick (soti) was recovered pursuant thereof. Accused Gurnam Singh, who was arrested on 12.06.2007, also got recovered one gandhali pursuant to his disclosure statement Ex. PR. Accused Harbans Singh was found innocent during investigation by the police and he was placed in column No. 2 in the challan/report under Section 173 Cr.P.C. presented in the Court. Harbans Singh @ Kala was summoned under Section 319 Cr.P.C. vide order dated 27.02.2008.

As per Post Mortem Report (EX. PA) as many as 21 injuries were found present at the body of deceased Paramjit Singh. Cause of death was shock and hemorrhage as a result of injuries, which was sufficient to cause death in the ordinary course of nature. All injuries were ante mortem in nature. Probable time that elapsed between injury and death was immediate and between death and post mortem examination within 12 hours.

Charge was framed against the accused for the offence punishable under Section 302 read with Section 34 IPC. Prosecution examined five witnesses to prove its case. Accused persons while denying incriminating circumstances and evidence against them pleaded innocence and false implication in their statements under Section 313 Cr.P.C. Accused Gurnam Singh pleaded that he was

proceeding to the Gurdwara and was opening the door of his house when deceased Paramjit Singh alongwith Hakam Singh, Jagdev Singh, Jora Singh, Sangat Singh, Sham Singh and Gurjinder Singh forcibly entered his house. Paramjit Singh was empty handed while Jora Singh was armed with gandhali and other persons were armed with dangs. Paramjit Singh (deceased) grappled with him on which they fell inside his house. Injuries were caused to him by all the above said persons. Some injuries were suffered by Paramjit Singh. Due to injuries received by Paramjit Singh at the hands of the above said persons, he died. Jaswant Singh and Hakam Singh, who were accompanying Paramjit Singh, deceased dragged his dead body out of his house and threw it in the drain near Gurdwara. His sons and grandsons were not present at the spot. They have all been falsely implicated. He was taken to hospital by Sandhura Singh and he was arrested from Civil Hospital, Mansa itself.

Trial Court found all the accused to be guilty of the offences as charged, thus convicted and sentenced them as above vide impugned judgment and order dated 15.10.2009.

Learned senior counsel for the appellants vehemently argues that in the face of illegal house trespass by Paramjit Singh and others coupled with a real and actual apprehension of grievous injury, accused Gurnam Singh was entitled to act in exercise of his right to private defence. In this process if Paramjit Singh has unfortunately passed away, the appellants cannot be held guilty for the offence punishable under Section 302 read with 34 IPC.

It is urged on behalf of the appellants that conduct of the

complainant Karamjit Singh and Gurjinder Singh is highly improbable and unnatural. It is not possible that they would have remained mute spectators when Paramjit Singh was being inflicted with injuries by the accused persons as sought to be projected. They have not raised any hue and cry neither made any attempt to intervene and save Paramjit Singh, who is real brother of complainant Karamjit Singh. Furthermore, material improvements have been made by the witnesses Karamjit Singh and Gurjinder Singh which shatter the veracity of the prosecution version. PW2 Karamjit Singh has sought to attribute specific injuries to each of the accused while deposing before the Court whereas such details are missing in the FIR. This is a clear attempt of improvement denting their credibility.

Furthermore, Dr. Nishan Singh, PW3, has proved that six injuries were present on the person of accused Gurnam Singh who was medico legally examined by him on 07.06.2007. There is no explanation for the said injuries by the prosecution thereby displaying falsity of its version.

Great stress is laid by learned counsel for the appellants on the improbability of the sequence of events inasmuch as the allegation of deceased Paramjit Singh first being dragged into the house of accused Gurnam Singh, being beaten over there and then being thrown out into the drain, does not ring true. It is submitted that there was no need for first dragging Paramjit Singh into their house and then throwing him out in the drain again. This fact in itself creates a dent on the prosecution version. It is further argued that it is specific defence of the appellants that it is deceased Paramjit

Singh along with others who were the aggressors. They had trespassed in the house of accused Gurnam Singh. It is submitted that the prosecution has not been able to prove the commission of offence under Section 302 read with Section 34 IPC qua the appellants, in view of the fact that it was the deceased and others who were aggressors and accused Gurnam Singh has acted while exercising his right of private defence.

Reference is made to complaint Ex. DW2/A dated 20.08.2007 filed by Amarjit Kaur wife of Jagroop Singh @ Bhola Singh under Sections 307, 323, 324, 326, 452, 148, 149 IPC in respect to the same incident. It is submitted that Criminal Appeal No. 192-MA of 2010 has been filed by Amarjit Kaur challenging acquittal of the accused in this complaint and the evidence on record does not connect the accused with commission of crime. They, thus, deserve to be acquitted.

Learned counsel for the State on the other hand prays for upholding the conviction and sentence imposed upon the appellants by urging that there is sufficient, cogent and overwhelming evidence on record to prove the guilt of the accused beyond reasonable doubt. Eye witness account as well as the medical evidence on record proves that the appellants have caused death of Paramjit Singh. She, therefore, prays for upholding the impugned judgment and order dated 15.10.2009.

We have heard learned counsel for the parties and gone through the record with their able assistance.

Events, as unfolded, have been clearly revealed by the

complainant Karamjit Singh (PW2). He has given a clear, crisp and graphic eyewitness account of the incident in which Paramjit Singh lost his life at the hands of accused persons. He has specifically stated that he and his brother had gone to attend the call of nature on 07.06.2007 at about 5.30 a.m., Gurnam Singh raised lalkara (exhorted) when they reached near his house that Paramjit Singh should not be spared. Upon this, Gurnam Singh, Mohinder Singh, Bhola Singh and Harbans Singh appellants duly armed with sticks (sotis) and ghandali dragged him into Gurnam Singh's house where he was inflicted numerous injuries. This incident was witnessed by Gurjinder Singh (PW4) who had also arrived at the spot. All accused thereafter dragged Paramjit Singh out of their house and threw him in the drain near Gurdwara. Gurjinder Singh (PW4) has duly supported this version. Testimonies of these witnesses could not be shattered despite lengthy cross examination.

As many as 21 injuries were found on the person of deceased Paramjit Singh. Injuries are described as under:-

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1. Reddish contusion 5x3 cm on top of head anteriorly 15 cm above route of nose. On dissection infiltration of blood was present in the underlying tissues. Underlying bone was fractured into pieces. Brain, membranes and vessels were lacerated. Massive dark coloured blood was present in and on the brain matter and membranes.
 2. 3x2 cm reddish contusion on the left side of forehead, 6 cm above left eyebrow. On dissection, infiltration of blood was present in the underlying tissue.

3. 3x1.5 cm reddish contusion just above left eyebrows on outer half on dissection infiltration of blood was present in the underlying tissue.
4. 4x2cm reddish contusion on the left side of face just outer to lateral angel of left eye. On dissection, infiltration of blood was present in the underlying tissue.
5. 2x0.5 cm reddish contusion on top of right shoulder. On dissection, infiltration of blood was present in the underlying tissue.
6. 2x1 cm reddish contusion on top of left shoulder. On dissection, infiltration of blood was present in the underlying tissue.
7. Lacerated wounds 2x1cm and 1x0.5cm on each inner aspect of both lips.
8. Multiple red abrasion of different sizes and shapes on back of right thorax and lumber region.
9. Reddish contusion 5x2 cm on right side of chest below right nipple. On dissection, infiltration of blood was present in the underlying tissue.
10. 3x2cm reddish contusion on right side of chest, 8cm below clavicle. On dissection, infiltration of blood was present in the underlying tissue.
11. 4x2cm reddish contusion on posterior aspect of right arm in middle. On dissection, infiltration of blood was present in the underlying tissue.
12. 4.5x2 cm reddish contusion 2cm lateral to injury No. 11. On dissection, infiltration of blood was present in the underlying tissue.
13. 5x2cm reddish contusion on back of left forearm, 7 cm below elbow. On dissection, infiltration of blood was present in the underlying tissue.
14. 1.5x0.5cm reddish contusion on postireo lateral

- aspect of left forearm just below elbow.
15. 4x2cm reddish contusion on posterior aspect of left forearm just above wrist joint. On dissection, infiltration of blood was present in the underlying tissue.
16. Four reddish contusion of sizes 3x2cm on left buttock and five reddish contusions of sizes 4x2 cm on right buttock. On dissection, infiltration of blood was present in the underlying tissue.
17. 15x8cm reddish contusion on back of right leg. On dissection, infiltration of blood was present in the underlying tissue.
18. 16x7cm reddish contusion on back of left leg. On dissection, infiltration of blood was present in the underlying tissue.
19. Lacerated wound 3x1 cm on lateral aspect of right leg, 4cm above lateral malleolus of right leg. On dissection, infiltration of blood was present in the underlying tissue.
20. 3x1 cm reddish contusion on inner aspect of left leg, just above middle malleolus. On dissection, infiltration of blood was present in the underlying tissue.
21. Reddish contusion 20x12 cm on front of left leg. On dissection, infiltration of blood was present in the underlying tissue.

Dead body alongwith clothes were found to be covered with dirty mud. Dr. Dapinder Kumar, PW1, who conducted post mortem examination of Paramjit Singh alongwith Dr. Sohan Lal Jain has opined that death was due to shock and hemorrhage as a result of injuries which were sufficient to cause death in ordinary course of

nature. Accused has not been able to elicit anything in their favour on cross examination of the doctor.

Argument of learned counsel for the appellants that it was infact deceased Paramjit Singh alongwith other persons, who were the aggressors is not borne out from the record. Such a hypothesis is not in consonance with the evidence on record.

Reliance upon complaint dated 20.08.2007 (Ex.DW2/A) is misplaced and of no avail to the appellants. It is a matter of record that the complainant in the said case Amarjit Kaur wife of appellant No. 3 Jagroop Singh @ Bhola Singh has not been examined in this case. Said complaint in respect to the incident occurring on 07.06.2007 was filed after about two months. This complaint was dismissed vide judgment dated 15.10.2009 by learned Additional Sessions Judge, Mansa holding that this complaint is a counterblast to the FIR and only an attempt to create evidence. As per the said complaint, Paramjit Singh alongwith four other persons armed with sticks (sotis) and ghandali trespassed into the accused Gurnam Singh's house. Paramjit Singh was admittedly empty handed. He grappled with Gurnam Singh and both of them fell down while grappling. Other persons accompanying Paramjit Singh inflicted injuries on Gurnam Singh. Gurjinder Singh @ Kala (PW4) was also one of the accused alleged to have caused injuries to Gurnam Singh. In an extremely far fetched manner, it is stated that injuries were caused to Paramjit Singh by his companions themselves and it is due to these injuries caused by his companions he passed away. Still further it is Paramjit's companion who then dragged him out and

threw him in the drain. Such a version is clearly bereft of any credibility, not borne out from the evidence and, hence, unacceptable.

Complainant has not examined the doctor, who conducted medical examination of Gurnam Singh, though doctor's statement in the complaint case is placed on record as Ex. DW2/B. Perusal of this statement reveals that six simple injuries were detected on the person of Gurnam Singh, three of them being abrasions on his arms and three contusions on his back. As per statement of Dr. Nishan Singh (PW3) in the complaint case, Gurnam Singh did not disclose the names of his assailants at the time of his medical examination. He further opined that possibility of injuries having been suffered by friendly hand could not be ruled out. In such a situation, defence of the accused is highly improbable inasmuch as it is not possible for a person to escape with six simple injuries if he is being beaten by 7 persons, 6 of them duly armed with sticks (sotis) and gandhali. As opposed to this, Paramjit Singh received as many as 21 injuries to which he succumbed. Possibility of Paramjit Singh having received injuries at the hands of any of his companions as alleged is far fetched and suspect.

Similarly, argument that conduct of Karamjit Singh and Gurjinder Singh is improbable and unnatural because they did not try to intervene and save Paramjit Singh is not tenable. It is a settled position that different witnesses would have varied reactions in a given situation. There can be no uniformity in human reaction. It has to be determined as to whether the conduct of a witness is so

unnatural that it is not in accord with acceptable human behaviour, it is only then the credibility of such a witness would become suspect. In the instant case, Paramjit Singh who was walking a little ahead of Karamjit Singh was attacked by four persons duly armed. Karamjit Singh and Gurjinder Singh both were unarmed. It is not unnatural that they might have tried to save their own lives in such a situation. It would indeed be an intimidating and life threatening situation wherein duly armed persons suddenly attack when somebody is going to answer the call of nature. Therefore, the fact that Karamjit Singh and Gurjinder Singh did not intervene to try and save Paramjit Singh in this situation does not impinge on their credibility.

Submission that material improvements have been made by the complainant - Karamjit Singh in their statements, therefore, rendering their testimonies untrustworthy is not made out. It is sought to be urged that Karamjit Singh in his initial version has not ascribed a specific role to each of the accused whereas in his testimony before the Court he has attributed specific injuries to each of the accused persons. It is a settled position that FIR is not a complete compendium or encyclopedia of facts. What is required is that material facts should be revealed therein. Karamjit Singh in his statement (Ex. PE) has clearly stated the incident as it occurred. He has specifically mentioned that all the four accused duly armed caused injuries to his brother Paramjit Singh on his legs, back, arms, face and forehead with sticks (sotis), dangs and gandhali, gandhali being carried by Gurnam Singh. All four accused thereafter dragged Paramjit Singh and threw him in the drain adjoining Gurdwara.

Therefore, it cannot be said that any material improvement has been made by this witness, which would render his testimony untrustworthy. FIR in this case was lodged promptly. Incident took place at about 5.30 a.m. in the morning. Statement of Karamjit Singh had been recorded by SI Amrit Pal at 7.50 a.m. Report was received by the Illaqa Magistrate at 10.35 a.m. on the same day. Therefore, possibility of any concoction or embellishment is ruled out.

Another contention that the police acted in a mala fide manner, did not deliberately record the version of the accused and falsely implicated them because accused Gurnam Singh had got registered an FIR under the Prevention of Corruption Act against one Inspector Budh Singh in which he was convicted (Ex. DW1/A), lacks credence, hence, rejected. Though it is sought to be projected that Inspector Budh Singh was friendly with SI Amrit Pal i.e. investigating officer in this case, there is no such evidence on record. Said Budh Singh was not connected with this case in any manner.

Keeping in view the entire conspectus of facts, it is crystal clear that prosecution has succeeded in proving its case against the accused beyond any reasonable doubt.

Learned counsel for the appellants seeks to carve out an exception on behalf of Harbans Singh while submitting that he was infact found innocent by DSP Balwinder Singh, DW4. No reliance can be placed on the said inquiry report Ex. DW4/A, which has admittedly been rendered on an inquiry conducted without even associating the complainant Karamjit Singh and other eyewitness Gurjinder Singh.

Appellant Harbans was duly summoned by the trial Court on an

application under Section 319 Cr.P.C. on the basis of evidence on record. He has been rightly convicted for the offence as charged. Appeal by all the said four accused is devoid of any merit. They have been rightly convicted and sentenced vide the impugned judgment and order.

Keeping in view the discussion and conclusion above, there is no ground for interference in the impugned judgment dated 15.10.2009 challenged by Amarjit Kaur in CRA No. 192-MA of 2010. Consequently, both CRA No. 192-MA of 2010 and CRA No. D-1032-DB of 2009 are dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

April 22, 2015
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