

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

1. Crl. Appeal-D No. 1113-DB of 2009
Date of Decision: July 22 , 2015.

Gurnam Singh and others APPELLANT(s)

Versus

State of Punjab RESPONDENT (s)

2. Crl. Appeal-D No. 88-DB of 2010.

Meharban Singh APPELLANT(s)

Versus

State of Punjab RESPONDENT (s)

3. Crl. Appeal-D No. 90-DB of 2010.

Narinder Singh APPELLANT(s)

Versus

State of Punjab RESPONDENT (s)

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

Present: Mr. Vipul Aggarwal, Advocate
for appellant No.1 in CRA-D No.1113-DB of 2009
Mr. D.S.Pheruman, Advocate
for appellant No.2 in CRA-D No.1113-DB of 2009
Mr. Hemant Saini, Advocate
for the appellants in CRA-D No.88-DB and 90-DB of 2010.

Ms. Manjari Nehru Kaul, Addl.AG, Punjab.

- 1. Whether reporters of local papers may be allowed to see the judgment?
- 2. To be referred to the reporters or not?
- 3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This judgment shall dispose of CRA-D No.1113-DB of 2009 (Gurnam Singh and others v. State of Punjab), CRA-D No.88-DB of 2010 (Meharban Singh v. State of Punjab) and CRA-D No.90-DB of 2010 (Narinder Singh v. State of Punjab). Above said three appeals have been filed by the accused challenging their conviction and sentence imposed by the learned Additional Sessions Judge, Gurdaspur vide judgment dated 22.10.2009.

Criminal Appeal D-No. 1113-DB of 2009 has been filed by Gurnam Singh, Sukhdev Singh alias Sukha and Harpreet Singh alias Happy. Criminal Appeal D-No.88-DB of 2010 has been filed by Meharban Singh. Criminal Appeal D-No.90-DB of 2010 has been filed by Narinder Singh. Said appellants have been convicted and sentenced as under:-

<i>Sr. No.</i>	<i>Name of convict</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
1.	Meharban Singh	302 IPC	To undergo rigorous imprisonment for life, besides pay a fine of ₹5,000/- and in default thereof, to further undergo rigorous imprisonment for two months
2.	Gurnam Singh, Sukhdev Singh, Harpreet Singh @ Happy and Narinder Singh	302 IPC read with Section 149 IPC	To undergo rigorous imprisonment for life, besides pay a fine of ₹5,000/- each and in default thereof, to further undergo rigorous imprisonment for two months

3.	Gurnam Singh, Sukhdev Singh, Harpreet Singh @ Happy, Meharban Singh and Narinder Singh	148 IPC	To undergo rigorous imprisonment for two years, besides pay a fine of ₹2,000/- each and in default thereof, to further undergo rigorous imprisonment for two months
4.	Gurnam Singh, Sukhdev Singh, Harpreet Singh @ Happy, Meharban Singh and Narinder Singh,	452 IPC	To undergo rigorous imprisonment for three years, besides pay a fine of ₹2,000/- each and in default thereof, to further undergo rigorous imprisonment for two months
5.	Meharban Singh, Gurnam Singh, Sukhdev Singh @ Sukha and Narinder Singh	324 IPC	To undergo rigorous imprisonment for two years, besides pay a fine of ₹2,000/- each and in default thereof, to further undergo rigorous imprisonment for two months
6.	Harpreet Singh @ Happy	324 IPC read with Section 149 IPC	To undergo rigorous imprisonment for two years, besides pay a fine of ₹2,000/- and in default thereof, to further undergo rigorous imprisonment for two months
7.	Narinder Singh	324 IPC read with Section 149 IPC	To undergo rigorous imprisonment for two years, besides pay a fine of ₹2,000/- and in default thereof, to further undergo rigorous imprisonment for two months
8.	Meharban Singh and Gurnam Singh	324 IPC read with Section 149 IPC	To undergo rigorous imprisonment for two years, besides pay a fine of ₹2,000/- each and in default thereof, to further undergo rigorous imprisonment for two months

FIR No. 40 dated 01.04.2007 Ex. PL was registered on the basis of statement Ex. PA by the complainant Faqir Singh PW1, elder brother of the deceased – Kashmir Singh, recorded on 01.04.2007. PW 1 Faqir Singh revealed that he along with his brother were unmarried and lived together in their house at village Naushera Majja Singh. He ran a vegetable shop and his younger brother Kashmir Singh aged about 50/55 years used to recite Gurbani being a Granthi. He alongwith his brother was present in his house at about 7.30 p.m. on 31.03.2007 when

the accused Meharban Singh alias Pappa armed with datar, Narinder Singh alias Rinku armed with gandasi, Gurnam Singh armed with datar, Sukhdev Singh alias Sukha armed with kirpan, Harpreet Singh alias Happy and Kabul Singh empty handed entered their house. Kabul Singh and Harpreet Singh alias Happy exhorted others to catch hold of him and his brother to teach them a lesson for quarreling with them. Accused Meharban Singh alias Pappa inflicted datar blow on the complainant. As he tried to ward it off by raising his right arm, the datar hit him on the wrist of his right hand. Gurnam Singh inflicted a datar blow which hit the complainant near his left eye brow. He fell down and while he was on the ground Sukhdev Singh alias Sukha inflicted kirpan blow on the complainant's left shoulder. On this his younger brother Kashmir Singh came forward to rescue him. Accused Meharban Singh alias Pappa inflicted a datar blow on the head of his brother Kashmir Singh. Narinder Singh alias Rinku inflicted gandasi blow on the left side of the head of Kashmir Singh. Sukhdev Singh alias Sukha inflicted kirpan blow on the upper portion of left hand of Kashmir Singh. Both the brothers raised alarm on which all the accused fled from the spot with their respective weapons.

They were taken for medical aid to Civil Hospital, Naushera Majja. Kashmir Singh was referred to Guru Nanak Dev Hospital, Amritsar on the same night, his condition being serious. Faqir Singh, complainant accompanied his brother to Guru Nanak Dev Hospital, Amritsar. Medico legal examination of the complainant and his brother was conducted at Naushera Majja Singh. He prayed for legal action to be taken and

explained that respectables of the village had been trying to effect the compromise between them, which had not fructified. Motive behind the occurrence was revealed to be a dispute between two brothers and the accused, due to which the said accused with common intention inflicted injuries upon Faqir Singh and his brother.

Initially, FIR under Sections 452, 324, 323, 148, 149 IPC was registered. Kashmir Singh however succumbed to his injuries on 02.04.2007, therefore offence punishable under Section 302 IPC was added. Statement of PW 1 Faqir Singh was recorded before SI Jaswant Singh, PW5. SI Jaswant Singh visited the place of occurrence and prepared a rough site plan Ex. PM. Inquest report Ex.PT was prepared. Dead body was sent for post mortem alongwith written request Ex.PN and Ex.PQ. Post Mortem Report Ex.PT was received wherein it was opined that cause of death was compression of the brain, which was sufficient to cause death in ordinary course of nature. All injuries were ante mortem in nature. Period which elapsed between injury and death was about 24 hours.

PW4 Dr. Kamaljit Singh, Medical Officer, CHC Naushera Majja Singh proved the injuries on the person of the deceased Kashmir Singh when he was examined by him on 31.03.2007 at 8.30 p.m. Injuries as described hereunder were detected.

1. Incised wound measuring 10x1.5 cm into bone deep on middle of parital region of scalp. Bleeding profusely from margins cloths soaked with blood advised x-ray.
2. Incised wound 6.0x1.5 cm on left side of temporo parital region of scalp. Bleeding profusely from margin advised x-

ray.

3. Incised wound tangential on posterior side of lateral side of left hand below and above fourth MP joint. Bleeding profusely from margin. Tendons of index finger are cut. Advised x-ray.

All injuries were kept under observation subject to radiological opinion and further management. Kind of weapon used was sharp for all injuries. He proved that the patient's condition being serious, he was referred to Government Medical College, Amritsar after few hours.

PW4 Dr. Kamaljit Singh also proved injuries on the complainant Faqir Singh. Injuries found on the person of Faqir Singh are as under:-

1. Incised wound 3.4x2.0 tangential on lateral side of left side fore head and eyebrow. Bleeding profusely from margin. Advised x-ray.
2. Lacerato-contusion mark 6.0x4.0 on profusely side of fore arm at lower 1/3 swelling of adjoining arm is there. Bleeding from margins advised x-ray tenderness positive.
3. Lacerato-contusion mark 8x6 cm on superior surface of left shoulder joint. Bleeding from margin tenderness positive advised x-ray.

All injuries were kept under observation subject to radiological opinion and further management. Kind of weapon used was sharp for injury No. 4 and blunt for No. 2 and 3.

PW3 SI Yash Pal posted at P.S. Dhariwal and a member of the police party headed by SI Baldev Singh visited the spot of occurrence on 03.04.2007. Blood stained earth was lifted from the house

of the deceased Kashmir Singh, which was taken in possession vide memo Ex. PJ. Blood stained clothes of the complainant were taken in possession vide Ex. PK. Blood stained clothes of Kashmir Singh were taken in possession vide Ex. PR.

On completion of investigation, report under Section 173 Cr.P.C. was presented. One of the accused Kabul Singh was found to be juvenile at the time of alleged occurrence. Hence, he was proceeded against separately.

Charge against the accused was framed on 06.10.2007 to which the accused pleaded not guilty and claimed trial. Prosecution examined six witnesses to prove its case. All the accused while recording their statements under Section 313 Cr.P.C. denied incriminating evidence put to them and pleaded innocence and false implication. It was alleged that some unknown persons had caused injuries but they were being made a scapegoat.

Learned trial Court on appreciating evidence on record found that the prosecution had proved its case beyond reasonable doubt. Hence, all the accused were convicted for the offences as charged and sentenced as detailed above. Aggrieved therefrom, the present appeals have been preferred.

Learned counsel for the appellants vehemently argue that the prosecution case qua the appellants is not sustainable for the reason that the complainant himself i.e. PW 1 Faqir Singh has been declared hostile. Once he is not supporting the prosecution case, there is no question of convicting the accused persons. It is further argued that a

number of persons have been unnecessarily roped in, even when they have no role to play in occurrence. Delay in lodging the FIR is urged to be fatal to the prosecution case. Furthermore, medical evidence does not corroborate the ocular version and lastly there is no motive whatsoever to have caused the death of Kashmir Singh or to inflict injuries upon the complainant. In these circumstances, conviction of the accused should be set aside.

On behalf of Harpreet Singh alias Happy, learned counsel for the appellant specifically submits that he has been falsely implicated only because he is a son of Gurnam Singh co-accused in this case. He was unarmed and is not attributed with any injury whatsoever. His presence on the spot is not proved. No recovery was effected from him. It is thus prayed that all the appellants be acquitted of the charges against them.

Per contra learned counsel for the State while negating the arguments on behalf of the appellants submits that there is overwhelming and convincing evidence on record to prove culpability of the accused. There is no reason for setting aside the well reasoned judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Gurdaspur.

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

Much stress has been laid on the fact that PW1 Faqir Singh has been declared hostile by the prosecution, therefore, reliance on his testimony is misplaced. However attractive the said argument may seem at first flush, perusal of the record reveals that PW 1 Faqir Singh has

actually stood up by his initial statement Ex. PA. In his testimony before Court, he has specifically narrated the sequence of events as they unfolded. He has given graphic details of the injuries caused upon him and his brother by all the accused. There is no inconsistency whatsoever in the version given before the Court and statement Ex. PA recorded by him. It is, thus, clear that he stood by his statement Ex. PA and has proved the occurrence which took place on 31.03.2007 due to which Kashmir Singh lost his life. He being declared hostile on account of his saying that he did not participate in the investigation subsequent to the death of his brother is of no consequence in the facts and circumstances of the case. This fact can be of no avail to the accused.

Learned counsel for the appellants have attempted to attack the veracity of Ex. PA on the ground that Faqir Singh in his cross examination, on behalf of some of the accused has stated that he and his brother became unconscious so he could not tell whether other people had come to the spot at the time of occurrence. He has also stated that he regained consciousness on the next day. Therefore, it is urged that he could not have revealed any details in respect to the incident which allegedly took place on 31.03.2007 neither given details about injuries if any caused by the accused. This argument is misconceived and untenable. Apart from the fact that PW4 Dr. Kamaljit Singh in his cross examination has stated that Faqir Singh was fully conscious and in his senses when he conducted his medico legal examination, it is certified that Faqir Singh had not been medically examined earlier by any other doctor. Thus Faqir Singh was clearly

conscious when admitted in the hospital. He was admitted as an indoor patient for x-ray purpose. Furthermore, Faqir Singh accompanied his brother to Guru Nanak Dev Hospital, Amritsar.

Furthermore, PW5 Jaswant Singh stated that he received intimation and medico legal reports of two injured on 01.04.2007 on which he proceeded to Civil Hospital, Naushera Majja Singh and made written request Ex. PN and Ex. PQ. Vide endorsement Ex. PQ/1 Faqir Singh injured was declared fit to make a statement but he was not available in the hospital as he had accompanied Kashmir Singh to Guru Nanak Dev Hospital, Amritsar.

Narration of sequence and events including detailed account of injuries caused by the accused as revealed by Faqir Singh, cannot be disbelieved because at that time, he was indeed conscious and very well aware of his surroundings. He did not become unconscious immediately on seeing the accused. He duly witnessed the occurrence. Therefore, his statement to this extent has been rightly relied upon.

Contention that undue delay in lodging the FIR reflects concoction and false implication of the accused, is equally unacceptable. Incident in question took place on 31.03.2007 at about 7.30 p.m. Both the unmarried brothers were given medical aid at CHC, Naushera Majja Singh. It is a matter of record that none else was living with them. Intimation thereof was sent to Police Post, Naushera Majja Singh on 01.04.2007. In the meantime, due to deterioration in the condition of Kashmir Singh he was referred to Guru Nanak Dev Hospital, Amritsar for treatment. Kashmir Singh was, thus, taken to Amritsar and complainant

Faqir Singh accompanied him. When PW5 Jaswant Singh proceeded to the Civil Hospital, Naushera Majja on 01.04.2007 statement could not be recorded as Faqir Singh was not available having proceeded to Amritsar.

PW2 Dr. Dushyant Thaman, Associate Professor of Surgery and Incharge, Neruosurgeon at Amritsar has proved that Kashmir Singh was indeed brought there in comatose position. He was not responding to any painful stimulus. His pupils were fixed, dilated and non-reactive to light. His CT scan revealed a left parietal bone fracture and underlying extradural haematoma. Surgery was not offered considering his clinical status.

Statement of Faqir Singh complainant was recorded later during the day on 01.04.2007 itself. Initially FIR was registered under Sections 452, 324, 323, 148, 149 IPC only. Fact that Faqir Singh recorded that efforts were being made to effect a compromise reflects genuineness of the statement. Kashmir Singh succumbed to his injuries on 02.04.2007. Sequence of events reveal that there is no delay in lodging of the FIR. It is fallacious to contend that Faqir Singh should have rushed to the police station immediately for recording his statement. It is not expected that when his younger brother was in such a serious condition, his anxiety would be to first lodge FIR and not concentrate on obtaining the best available medical aid. It is also a matter of record that both the brothers were unmarried and living together. There was no other family member residing with them, who could be expected to immediately lodge a complaint. Hence, it cannot be

said that so-called delay in lodging of the FIR is fatal to the prosecution case.

Learned counsel for the appellants would also urge that medical evidence on record does not corroborate the ocular version set forth. While referring to the statement of PW 1 Faqir Singh it is submitted that he attributes a kirpan blow on his right knee by the accused Sukhdev Singh alias Sukha whereas as per the medico legal report and evidence of PW4 Dr. Kamaljit Singh there is no such injury on the right knee of Faqir Singh.

We have perused the statement of PW 1 Faqir Singh in vernacular. It is mentioned that when he was lying on the ground Sukha inflicted a kirpan blow on his right shoulder (modda). It appears that it is wrongly mentioned as knee instead of shoulder keeping in view the similarity between the word shoulder (modda) and knee (godda) in vernacular. Faqir Singh has suffered one injury on left shoulder joint. Even otherwise such a discrepancy is not material in any manner. Further, argument that even if injury is on the shoulder it is mentioned as right shoulder whereas the injury is on the left shoulder is an argument which cannot be countenanced. A witness is not expected to give a blow by blow account of the entire occurrence with minute precision. It cannot be said that there is any discrepancy between ocular version and the medical evidence on this account. Medical evidence on record duly corroborates the ocular version as unfolded by Faqir Singh.

Likewise, contention that there is no motive with the accused persons for having done Kashmir Singh to death is unacceptable.

Complainant deposed that accused used to ask him and his brother to vacate the premises where they were residing. Dispute was there between them on this account and it is due to this reason that the accused attacked them. It is a settled position that even in the absence of motive, accused can be convicted in case there is sufficient evidence on record dehors the motive. In the present case, there is convincing evidence on record to prove culpability of the accused. An eye witness account has been rendered by PW 1 Faqir Singh who though declared hostile has stood by his initial statement Ex. PA .

In the present case, prosecution has successfully proved its case beyond reasonable doubt against accused – Gurnam Singh, Sukhdev Singh alias Sukha, Meharban Singh and Narinder Singh. However, in respect to Harpreet Singh @ Happy we feel that he is entitled to the benefit of doubt. Allegation against Harpreet Singh @ Happy, admittedly empty handed, is that he exhorted others to catch hold of Faqir Singh and deceased Kashmir Singh and teach them a lesson. No overt act is attributed to him. It is not disputed that Harpreet Singh @ Happy is son of co-accused Gurnam Singh who is attributed Datar blows to the complainant. Prosecution has not been able to prove his presence on the spot at the time of occurrence beyond reasonable doubt. Possibility of false implication cannot be ruled out. Thus appellant – Harpreet Singh @ Happy is entitled to benefit of doubt.

Consequently in view of the above, CRA-D No. 88-DB of 2009 and CRA-D No.90-DB of 2010 preferred by Meharban Singh and Narinder Singh are dismissed. CRA-D No. 1113-DB of 2009 is dismissed

qua appellants – Gurnam Singh and Sukhdev Singh alias Sukha and
allowed qua Harpreet Singh alias Happy.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

July 22 , 2015.
rts/om