

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

1) **Criminal Appeal No.D-832-DB of 2009**
Date of Decision: March 13th, 2015

Baldev Singh

...Appellant

Versus

State of Punjab

...Respondent

2) **Criminal Appeal No.D-911-DB of 2009**

Sukhdev Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM:HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Ms. G. K. Mann, Advocate,
for the appellant (in Criminal Appeal No.D-832-DB of 2009).

Ms. Monika Jalota, Advocate,
for the appellant (in Criminal Appeal No.D-911-DB of 2009)

Ms. Manjari Nehru Kaul, Addl. A.G. , Punjab.

Amol Rattan Singh, J.

The two appellants in these two separate appeals have come against their conviction by the learned Sessions Judge, Amritsar, for the commission of an offence punishable under Section 302 read with Section 34 of the IPC, vide his judgment dated 08.09.2009, consequent upon which they were both imposed a sentence of life imprisonment and ordered to pay a fine of Rs.5000/- each, in default of which they were ordered to further

undergo rigorous imprisonment for a period of six months.

2. The facts leading up to the registration of FIR (No.132 dated 02.08.2008) against them, at Police Station Chheharta, District Amritsar, are detailed by us hereinnext.

3. Harwinder Singh @ Manga son of Gurdial Singh, resident of Baba Jiwan Singh Colony, Ghanupur, aged about 65 years, approached the police party headed SI Sukhwinder Singh, SHO, Police Station Chheharta, at Chheharta Chowk on 02.08.2008, at about 10:25 PM, to lodge a complaint with regard to the death of his sister, Paramjit Kaur, at the hands of the appellants.

The events narrated by Harwinder Singh, as contained in his statement, Ex.PR before the trial Court, are that on 01.08.2008 he had organised a function at the “Janjghar” (Community Centre) of their area, in connection with the birth of his daughter about 40 days earlier. His deceased sister, Paramjit Kuar, had also come from her village for the function and had continued to stay with them the next day also.

At about 9:00 PM (on 02.08.2008), appellants Sukhdev Singh @ Shanty and Baldev Singh @ Bittu, both belonging to the same caste as the complainant, came outside his (complainant Harwinder Singhs') house and started uttering filthy abuses, upon which he, his sister and mother, Manjit Kaur, came out of the house to enquire about the reason for the same. Appellant Baldev Singh is stated to have told them that they had not cleaned the “Janjghar” after the programme. The complainant and his mother are stated to have told them that they had actually done so, but in case of any deficiency, they would again do it the next morning, upon which Baldev Singh is stated to have exhorted Sukhdev Singh to catch hold

of them and to teach them a lesson for not cleaning the “Janjghar”.

Sukhdev Singh is stated to have been armed with a “Kirtch” (sword) though Baldev Singh was empty handed. Both are stated to have grappled with Harwinder Singh and started beating him, upon which his sister stepped forward to rescue him, when Sukhdev Singh allegedly gave a “Kirtch” blow to her on her back, after which she fell down on the ground.

The complainant having shouted “Mar Ditta-Mar Ditta” (“they have killed/hit”), the accused ran away from the spot with their weapon.

4. The complainant and his mother arranged for a vehicle and brought Paramjit Kaur to Guru Nanak Dev Hospital, Amritsar, for treatment but Paramjit Kaur succumbed to her injury. Therefore, leaving his mother to be with the dead body, the complainant was on his way to the Police Station to lodge the report when he is stated to have met the police party on the way there.

The complaint having been recorded and signed by the complainant, a “ruqa” was sent to the Police Station through Constable Paramjit Singh, for registration of the FIR and for sending of special reports, upon which the FIR came to be registered at 11:55 PM on 02.08.2008, at Police Station, Chheharta.

5. “Inquest” proceedings having been conducted at the hospital itself, by the SHO, SI Sukhwinder Singh, the dead body is stated to have been sent for autopsy, upon an application having been made by the SHO and thereafter, he is stated to have proceeded to the spot for investigation, where a rough site plan is stated to have been prepared by him and statements of witnesses recorded under Section 161 Cr. P.C.

6. Thereafter, on 03.08.2008, the SHO is stated to have received

secret information with regard to the presence of both the accused at the turning of Ghanupur Kala near the Gurudwara of Nihangs and as such, he and the police party went there and arrested them and recorded arrest memos in respect of the arrests.

Though at that point, nothing other than a negligible amount of currency is stated to have been recovered on their personal search, however, during interrogation, appellant Sukhdev Singh is stated to have made a disclosure statement with regard to his having hidden the “Kirtch” used by him for the commission of the offence, which is then stated to have been recovered from his house, with Sukhdev Singh taking the police party to the spot, consequent upon which a recovery memo was also prepared (Ex.PB).

7. In the meanwhile, as per the post mortem report, it was found that the deceased Paramjit Kaur had a single injury, an incised wound, on her back, towards the left side, in the scapular region, measuring 5 x 1 cm, which communicated with the left pleural cavity, after injuring the intervening structures. The wound was stated to be directed down-wards, causing the lung to collapse and was given to be the cause of death, in the report.

8. The matter having been put to Court, and committed to the Court of Sessions, the appellants were both charged with having committed an offence punishable under Section 302 read with Section 34 of the IPC and put to trial, upon them having pleaded that they were not guilty.

9. In the course of the trial, the prosecution examined eight witnesses and placed on record the following documents, other than exhibiting the weapon of offence:-

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| a) Statement of Harwinder Singh (ruqa) | : Ex.PA |
| b) Site Plan | : Ex.PB |

c) Post Mortem Report	: Ex.PD
d) Inquest report	: Ex.PF
e) Arrest memo of accused	: Ex.PH
f) Arrest memo of accused	: Ex.PI
g) Memo of personal search	: Ex.PJ
h) Memo of personal search	: Ex.PK
i) Memo regarding information of arrest	: Ex.PL
j) Memo regarding information of arrest	: Ex.PM
k) Disclosure statement	: Ex.PN
l) Recovery memo of Kirtch	: Ex.PO
m) Sketch of Kirtch	: Ex.PP
n) Rough site plan of recovery	: Ex.PQ
o) FIR No.132 dated 2.0.8.2008	: Ex.PR
p) Rough site plan	: Ex.PS
q) Receipt of the dead body	: Ex.PT
r) Application for conducting Post Mortem	: Ex.PE

The defence did not produce any witnesses but exhibited Ex.DA and relied upon the statement of the complainants' mother, Manjit Kaur, recorded under Section 161 Cr.P.C., by the police.

10. The complainant, Harwinder Singh, appeared as PW1 and essentially deposed in tune with his complaint which formed the basis of the FIR and though he was put to cross-examination, nothing of significance dented his testimony, with minor alterations on his original statement, to the extent that he mentioned the vehicle in which his sister was taken to be a three-wheeler and further stated that both appellants had raised a “Lalkara” (exhorted) to teach him, his mother and sister, a lesson for not cleaning the “Janjghar”.

Significantly, in the cross-examination, he also stated that the “Kirtch” was kept by Sukhdev Singh, under his garments.

11. The next two witnesses were formal witnesses, i.e. the Draftsman who prepared the sketch plan of the site and a police official who filed his affidavit with regard to having the body taken for post mortem examination

and the clothes etc. of the deceased being handed over to him.

12. Dr. Ashok Chanana appeared as PW4 and deposed as per the contents of post mortem report.

13. PW5 was the mother of the complainant, Manjit Kaur, who also testified to the same effect, as her son, PW1, though in her statement, she stated that at the time of occurrence, when the accused caught hold of her son, appellant Sukhdev Singh was holding the “Kirtch” in his hand.

It is to be noted that both these witnesses, PWs1 and 5, stated that though there were other people present at the time of the occurrence, none came to stop the accused and none of them accompanied them to the hospital.

14. PW7 was ASI Shiv Nath, who testified with regard to the arrest of the appellants on 03.08.2008, when he was a member of the police party headed by SI Sukhwinder Singh. He also testified to the interrogation of the accused and the disclosure statement made by Sukhdev Singh, upon which the recovery of a “Kirtch” was made from his house, in the presence of this witness alongwith Sub-Inspector Sukhwinder Singh and other members of the police party.

In cross-examination, he stated that though the house of the accused was open at the time when the recovery was made, nobody was present in the house and that SI Sukhwinder Singh made efforts to join independent witnesses. He, of course, denied the suggestion that the “Kirtch” was planted by the police.

15. The last witness was PW8, SI Sukhwinder Singh, who was the Investigating Officer, who also testified as per the sequence of events given hereinabove.

In cross-examination also, nothing specific to dent the prosecution case could be elicited from this witness, though he admitted that he had not recorded the statements of any of the people present from nearby houses, when he visited the spot, nor did he record the statement of any member of the Committee, in whose charge the “Janjghar” was.

It is, however, of some significance that when the “Kirtch”, which is recorded as having been produced in the trial Court when this witness testified, he stated that it was not in a sealed parcel at that point and that the slip of particulars on the “Kirtch” did not bear his signatures and did not give the name of the accused and his parentage. He, however, stated that such a “Kirtch” is not easily available in the market and further stated that on the “Kirtch” produced in the Court, there were no blood stains.

16. The prosecution having closed its evidence, the statements of both the appellants were recorded by the trial Court under Section 313 Cr. P.C., in which nothing significant was stated by either of them, other than that they were innocent and had been falsely implicated.

17. As regards the statement of Manjit Kaur (mother of the complainant and the deceased), recorded under Section 161 Cr. P.C. and exhibited as Ex.DA in the trial Court, nothing to the contrary can be seen from a perusal of the same, to what she testified to in Court, other than the fact that she gave a more detailed narrative of the sequence of events, during her testimony in the trial Court, as PW5.

18. Ms. Monika Jalota, learned counsel for appellant Sukhdev Singh (in Criminal Appeal No.911 of 2009), first submitted in his defence, that there were no blood stains taken from the “Kirtch”, and examined; in fact there is no FSL report to show that, in fact, the “Kirtch” had been used to

kill deceased Paramjit Kaur. As such, with no forensic evidence whatsoever, and in fact no evidence at all to actually link any “Kirtch” to the appellants, or even to one of them, the murder charge itself was wholly unsustainable and the “ Kirtch” itself had also been planted upon the appellant, to strengthen the prosecution case.

Counsel for the appellant next submitted that even as per a narration of the sequence of events, by both the eye witnesses, it was obvious that there was no intention to kill the deceased and as such, neither of the appellants, including Sukhdev Singh, who is stated to have given the “Kirtch” blow, could be held guilty of murder.

Learned counsel thus submitted, that even if this Court were come to a conclusion, despite the non-linkage of any weapon to the appellants, that the death of Paramjit Kaur had occurred in the manner that is projected by the prosecution, it still did not make out a case of murder but only of culpable homicide not amounting to murder and thereby, at the most, punishable under Section 304 Part-II.

In fact this was the main line of the argument of both learned counsel who appeared before us, for each appellant, other than that there was no direct linkage of the appellants to the crime, but for the testimonies of PWs1 and 5.

19. Ms. G. K. Mann, learned counsel who appeared for appellant Baldev Singh (in Criminal Appeal No.832 of 2009), first, also reiterated the argument of Ms. Jalota, on the issue of non-connection of the appellants to the crime, and no proper evidence of their linkage to the sword.

She further submitted that in the case of Baldev Singh, even if the first argument is to be accepted by us, no intention to kill can be inferred in

any case, because firstly, he was, admittedly, without any weapon and other than fist blows attributed to him on the person of the complainant, not even a hand blow to the deceased is attributable to him.

Ms. Mann further drew attention to the fact that even as per the statement of Harwinder Singh, the “Kirtch” was concealed by Sukhdev Singh under his garments and was only taken out during the course of the fight.

Thus, she submitted that in the light of the entire circumstances, even as per the prosecution case, no offence at all is made out against Baldev Singh, as even in regard to any grappling/beating of the complainant, no charge was framed against either of the two appellants.

20. Both learned counsel placed reliance on two judgments of the Supreme Court in **Litta Singh and another vs. State of Rajasthan, 2013 (2) RCR (Criminal) 978** and **Gudu Ram vs. State of Himachal Pradesh (2013) (1) RCR (Criminal) 354**, to submit that even if this Court was not inclined to accept the first argument, then, at best, a case of an offence punishable under Section 304 Part-II of the IPC was made out and that too only against Sukhdev Singh, and as such, they both deserve acquittal on the charge framed under Section 302 read with Section 34 of the IPC, against them.

21. Opposing the appeals, Ms. Manjari Nehru Kaul, Addl. A. G., Punjab, submitted that both the eye witnesses have stood testimony wholly in consonance with the statements made by them at the stage of registration of the FIR itself and even in cross-examination, nothing could be elicited from PWs1 and 5 so as to detract from the truth of their statements and testimonies.

Learned State counsel further submitted that no motive whatsoever, has been attributed even by the appellants in the statement recorded under Section 313 Cr. P.C., as to why the complainant and his mother would want to falsely implicate them. Therefore, she submitted that the obvious truth of their allegations, cannot be discarded for any reason.

As regards the contention of both learned counsel for the appellants, on the culpability of the appellants only for an offence punishable under Section 304 Part-II of the IPC, Ms. Kaul submitted that once Sukhdev Singh had drawn the sword with the intention to inflict a dangerous injury, either on the complainant or on his sister, obviously, the intention to cause death or at least knowledge that the injury so inflicted can easily caused death, reveals the intention in the mind of the said appellant and as such, having come armed with his sword, along with the other co-accused, i.e. appellant Baldev Singh, the latter also cannot escape culpability for an offence of murder, when Section 302 is read with Section 34 of the IPC. Thus, she submitted that neither appellant deserves acquittal and that the appeals, therefore, should be dismissed.

22. Having heard learned counsel for the parties and having gone through the record of the case, we are not inclined to interfere with the conviction and sentence of Sukhdev Singh appellant in (Criminal Appeal No.911 of 2009).

He is shown to have come armed with a sword, along with his companion, and both of them are stated to have uttered abuses, drawn out the complainant and his mother, as a consequence of which the complainant, his mother and sister were drawn out of the house. Therefore, in the ensuing scuffle with the complainant, Sukhdev Singh drew his sword

and inflicted an injury which, even if it was intended for the complainant, hit his sister, Paramjit Kaur, as a result of which she died. Thus, the intention of causing either death or an injury which the person causing such injury knows could lead to death, clearly points to the culpability of the appellant, Sukhdev Singh, whether the intention was to kill or grievously injure the complainant, or his sister, knowing that such injury could lead to death.

Section 301 of the IPC stipulates that when culpable homicide is committed by a person, who intends to cause the death of one person but actually causes the death of another person who receives the injury instead, the culpable homicide committed, would be of the same description as it would be if the person intended to be killed is so killed. Therefore, once the intention is inherent in the action of the person wielding a weapon against another person, which he knows is likely to cause the death of such person, then whether the death caused is of that person or of another person, would make no difference and the act would still be one of murder, punishable under Section 302 of the IPC.

23. In the present case, if we see the statements of the witnesses, at one point, the complainant, in his cross-examination, stated that when “the accused took out his Kirtch and aimed the same to me, my sister came to my rescue, and the blow, therefore, hit my sister”. His statement in his examination-in-chief, was that when Paramjit Kaur came forward to rescue him, Sukhdev Singh gave a “Kirtch” blow which hit her on her back. Thus, in essence, there is no difference between the two statements.

Manjit Kaur, in her statement, factually said the same thing, i.e. when Paramjit Kaur came forward to rescue her son, Sukhdev Singh gave a

“Kirtch” blow on the back of her daughter.

Thus, whether the blow with the sword was intended for the complainant or for his sister, the intention was definitely to cause such harm as appellant Sukhdev Singh knew could, in the natural course of things, lead to the death of the person on whom the blow was inflicted.

In view of the above, we find no reason to interfere with the judgment of the learned trial Court in the case of Sukhdev Singh and as such, Criminal Appeal No.911-DB-2009, filed by him, is dismissed.

24. Now coming to the case of Baldev Singh, we are faced with the situation here, that on the one hand PW1 stated in his testimony that Sukhdev Singh had kept his “Kirtch” under his garments, the implication being that it was taken out only after the scuffle had taken place. On the other hand, his mother, PW5, stated that when both the accused caught hold of her son, at that time, Sukhdev Singh was holding the 'Kirtch” in his hand, thereby showing that Baldev Singh accused was aware that Sukhdev Singh was carrying a sword, but still accompanied him, abused the complainant side and then entered into a scuffle with Harwinder Singh.

Thus, if Baldev Singh was unaware that Sukhdev Singh was carrying a “Kirtch” under his garments, obviously, no intention at all can be attributed to him (Baldev Singh) of causing any body harm, beyond possibly fist blows etc., to the complainant, his mother and sister. Further, even presuming that he knew that Sukhdev Singh was carrying a sword, we do not discern from any of the statements of the two eye witnesses, that Baldev Singh either exhorted or aided Sukhdev Singh in inflicting a sword blow to either Harwinder Singh or his sister Paramjit Kaur. Hence, an element of doubt does come to our mind, with regard to any intention of

Baldev Singh in causing the death of either Harwinder Singh or Paramjit Kaur. Even a perusal of the initial statement of the complainant, Ex.PA, shows that Baldev Singh @ Bittu exhorted Sukhdev Singh to catch hold of the complainant and his family and to teach them a lesson for not cleaning the “Janjghar”. Thus, it cannot be strictly inferred, as to whether, by using the term “teaching them a lesson”, (in Punjabi stated as “Maja Dus Dey”), it was meant that somebody be done to death. Such words would normally extend to beating up somebody; unless, of course, there is knowledge of lethal arms being carried by other members of the attacking party. Such knowledge being possessed by Baldev Singh not being determinable the present case, we grant him the benefit of doubt and allow his appeal (Criminal Appeal No.832 of 2009) and set-aside the judgment of the learned Sessions Judge, Amritsar, by which he was held guilty of the charge punishable under Section 302 IPC read with Section 34 thereof. He shall, consequently, be released from custody immediately. His bail and surety bonds stand discharged.

25. In the case of Sukhdev Singh, whose appeal we have dismissed, if he is enjoying the concession of bail/suspension of sentence, he shall be immediately taken into custody to serve out the remaining part of his sentence.

March 13, 2015
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(AMOL RATTAN SINGH)
JUDGE

(RAJIVE BHALLA)
JUDGE