

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-122-DB of 2011

Date of Decision : April 10, 2015

Palwinder Singh @ Billa and another

.....Appellants

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present : Mr. D.S. Peruman, Advocate.

Mr. Rajesh Bhardwaj, Additional A.G., Punjab.

T.P.S. MANN, J.

The appellants were tried for committing offences punishable under Sections 302/34 IPC on the allegations that on 8.6.2005 at about 3.00 p.m. in the area of village Akarpura, they, in furtherance of common intention of each other, caused injuries to Amarjit Singh with *datars*, which resulted in his death. Vide impugned judgment and order dated 16.12.2010, the Additional Sessions Judge, Gurdaspur, after holding that the prosecution had fully proved its case against them beyond shadow of reasonable doubt, convicted the appellants for the aforementioned offences and sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs.4,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for three months. The period of custody of the appellants during the investigation as well as trial was ordered to be set off against sentence of imprisonment imposed upon them.

The case of the prosecution, in brief, is that complainant Jagtar Singh, brother of deceased Amarjit Singh, made statement Ex.PA before SI Malkiat Singh on 8.6.2005 at 5.30 p.m. at Adda Dalam Nangal in village Akarpura wherein he stated that he was resident of village Akarpura and an agriculturist by profession. He had set up a Dera at the tube-well in his land. His family had a land dispute with his uncle Amrik Singh. On that day, the complainant, alongwith his son Varinder Singh, nephew Charanjit Singh and niece Rupinder Kaur, was present at the Dera. His brother Amarjit Singh returned at about 2.00 p.m. after attending the hearing of the case at Dera Baba Nanak, while Amarjit Singh's wife Gurmit Kaur brought tea from the house. At about 3.00 p.m., Amrik Singh and Palwinder Singh @ Billa, the two appellants, alongwith Jaswinder Singh son of Amrik Singh and Sarabjit Singh, brother-in-law of Jaswinder Singh, while armed with *datars* came from the village to the Dera of the complainant. On reaching there, Amrik Singh raised an alarm asking Amarjit Singh to run to whatever distance he wanted and they would finish the land dispute forever. Upon this, Amarjit Singh started running towards fields while the aforementioned four accused followed him to the land of Manjit Singh where he was surrounded. The complainant and others raised an alarm asking the accused not to kill him. On this, Jaswinder Singh tried to inflict a blow with *datar* on the person of Amarjit Singh, who raised his right arm to save himself and the *datar* hit him on his right arm near the wrist. Palwinder Singh @ Billa also tried to inflict a blow with *datar*. Amarjit Singh again raised his left hand to ward off the same and the

blow hit him on his middle finger. Amrik Singh gave *datar* blow above right eye-brow. Sarabjit Singh, brother-in-law of Jaswinder Singh inflicted a *datar* blow on the forehead of Amarjit Singh. As a result, Amarjit Singh fell down. Jaswinder Singh gave a *datar* blow which hit in the middle of the head of Amarjit Singh. Amrik Singh gave a *datar* blow on the left cheek of Amarjit Singh. Jaswinder Singh gave a *datar* blow on the back of Amarjit Singh's neck and as a result, the neck was cut and so also the left ear. Palwinder Singh @ Billa gave a *datar* blow on the back of Amarjit Singh's head. Sarabjit Singh, brother-in-law of Jaswinder Singh gave another *datar* blow on the back of Amarjit Singh's head. Because of the injuries received by him Amarjit Singh died at the spot. The entire occurrence was witnessed by complainant Jagtar Singh, his son Varinder Singh, sister-in-law Gurmit Kaur, nephew Charanjit Singh and niece Rupinder Kaur. After inflicting the injuries the accused ran away. The complainant, after leaving his son and sister-in-law to guard the dead body, left for the Police Station to lodge a report. He came across SI Malkiat Singh before whom he made statement Ex.PA, as mentioned above. On the basis of the said statement, FIR Ex.PW6/B was registered at Police Station Qila Lal Singh on 8.6.2005 at 6.10 p.m. by ASI Baljit Raj.

Subsequent to registration of FIR, the dead body of Amarjit Singh was subjected to post-mortem. Site plan of the place of occurrence was prepared. Both the appellants, namely, Palwinder Singh @ Billa and Amrik Singh were arrested and the *datars* used by

them in the commission of crime were recovered. After completion of the investigation, challan was presented against the appellants. The case was, thereafter, committed to the Court of Sessions where the appellants were charged for committing the offences punishable under Sections 302/34 IPC.

In support of its case, the prosecution examined complainant Jagtar Singh as PW1, who testified that the two appellants, alongwith Jaswinder Singh and Sarabjit Singh, had taken active part in causing the death of Amarjit Singh. This was followed by the State moving an application under Section 319 Cr.P.C. for summoning Jaswinder Singh and Sarabjit Singh as additional accused. Vide order dated 26.10.2006, the Additional Sessions Judge, Gurdaspur accepted the application and summoned Jaswinder Singh and Sarabjit Singh as additional accused. However, both these accused could not be served through non-bailable warrants of arrest as well as through proclamation under Section 82 Cr.P.C. Ultimately, vide order dated 27.2.2007, the trial Court declared them as proclaimed offenders.

In order to prove its case, the prosecution examined complainant Jagtar Singh as PW1 and Gurmit Kaur wife of deceased Amarjit Singh as PW3, who deposed regarding the ocular account. PW2 Dr. Harbhajan Singh testified that he conducted post-mortem on the dead body of Amarjit Singh on 9.6.2005 at 10.20 a.m. and noticed that there were 12 injuries on the dead body. In his opinion the cause of

death was shock and haemorrhage as a result of multiple injuries, especially injuries No.3, 4, 5 and 9, which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. PW10 Ajit Singh, brother of Gurmit Kaur deposed that he identified the dead body of Amarjit Singh at the time of preparation of inquest. The investigation part of the occurrence was brought on the record through the testimonies of PW4 ASI Harpal Singh, PW5 HC Yunus Masih, PW6 HC Jagjit Singh, PW7 SI Malkiat Singh, PW8 HC Balkar Singh, PW9 SI Mohinder Pal Singh, PW11 ASI Sardool Singh, PW12 SI Kashmir Singh and PW13 HC Gurmit Singh. The prosecution also tendered in evidence scaled site plan Ex.PY and report Ex.PZ of the Forensic Science Laboratory.

When examined under Section 313 Cr.P.C., both the appellants denied the prosecution allegations and pleaded that they were innocent and falsely implicated in the case. According to them, some unidentified persons had committed the murder of Amarjit Singh but the appellants were roped in due to enmity. However, the two appellants did not produce any evidence in defence.

The trial Court, after hearing learned counsel for the parties and going through the evidence on record, came to the conclusion that the prosecution had been successful in proving its case. Accordingly, they were convicted and sentenced, as mentioned above. Hence, the present appeal.

The primary argument raised on behalf of the appellants is that though PW1 Jagtar Singh supported the prosecution case during his cross-examination yet when he was cross-examined by the defence, he testified that he had not seen any of the accused causing injuries to Amarjit Singh. He further stated that the accused had muffled their faces at that time and, therefore, he could not identify them. The names of the accused were given to the police only on suspicion at the instance of others. It is also submitted that PW3 Gurmit Kaur, the second eye-witness of the occurrence, had similarly not supported the case of the prosecution during her cross-examination though in her examination-in-chief she had named the appellants and two others as accused. Under these circumstances, it cannot be said that it were the appellants who caused injuries to the deceased during the occurrence.

In the FIR, the appellants, alongwith Jaswinder Singh and Sarabjit Singh, were named as accused and attributed causing of injuries with the *datars* which they were carrying at that time. The occurrence was witnessed by Jagtar Singh, brother of the deceased and Gurmit Kaur, wife of the deceased. During the investigation, Jaswinder Singh and Sarabjit Singh were found innocent and, accordingly, their names were placed in column No.2 of the challan. Only the appellants were challaned and after the commitment of the case and framing of charges against the appellants, the prosecution examined Jagtar Singh as PW1. He stated in clear terms that the

appellants as well as their two companions, namely, Jaswinder Singh and Sarabjit Singh had taken active part in the occurrence by inflicting injuries to Amarjit Singh. This witness made his statement before the trial Court on 31.1.2006. He was, thereafter, subjected to cross-examination by the defence. However, mid-way the State filed an application for summoning the two co-accused of the appellants, who were not challaned by the police. Accordingly, his remaining cross-examination was deferred. Similarly, Gurmit Kaur was examined as PW3 on 29.8.2006 and she also supported the prosecution case. She was also cross-examined to some an extent. However, further cross-examination was deferred so as to await the decision of the application under Section 319 Cr.P.C. The said application under Section 319 Cr.P.C. was allowed by the trial Court on 26.10.2006 and both Jaswinder Singh and Sarabjit Singh were summoned as additional accused. However, none of them could be served through non-bailable warrants of arrest as well as through proclamation under Section 82 Cr.P.C. and for that reason they were declared proclaimed offenders vide order dated 27.2.2007. The trial then proceeded with the prosecution, once again, examining complainant Jagtar Singh as PW1 on 31.7.2008. In his examination-in-chief he, once again, deposed on the lines of the prosecution case. However, his cross-examination was deferred on the prayer made by learned counsel for the accused for an adjournment on the ground that he was suffering from sore throat. Similar was the position when Gurmit Kaur, wife of deceased Amarjit Singh had stepped into the witness-box as PW3 on 31.7.2008. In her

examination-in-chief, she also supported the prosecution case. However, her cross-examination was also deferred in view of the prayer made by learned counsel for the accused. Both PW1 Jagtar Singh and PW3 Gurmit Kaur were, thereafter, cross-examined by the defence counsel on 15.12.2008. In their respective cross-examinations, both of them stuck to their earlier statements and denied the suggestion of the defence that they had not witnessed any occurrence or had made a false statement. The trial of the case proceeded on normal course and ultimately on 9.3.2010, learned Additional Public Prosecutor closed the prosecution evidence. The case was, thereafter, adjourned to 13.3.2010 for recording statements of the accused under Section 313 Cr.P.C. Those statements were recorded on 16.3.2010 and the case adjourned to 2.4.2010, for defence evidence, if any, and arguments. On 2.4.2010, no defence evidence was present. Adjournment, prayed for, was granted. The case was adjourned to 13.4.2010 for the above stated purpose. On 13.4.2010, the Presiding Officer was on leave. The accused were also not produced. Accordingly, the Additional Sessions Judge (Duty) issued production warrant of accused for 22.4.2010. On 22.4.2010, the accused were again not produced by the jail authorities. Production warrants were issued for 3.5.2010. On 3.5.2010, one DW, namely, Balkar Singh, Naib Court was present before the trial Court but as he stated that the summoned record was not in his possession, he was discharged. On the adjourned date, the accused were, once again, not produced by the jail authorities and accordingly, production warrants were issued for 24.5.2010. Similar was the position on

24.5.2010. On 1.6.2010, the accused were produced in custody and the trial Court adjourned the case to 1.7.2010 for defence and arguments. On 1.7.2010, 12.7.2010, 28.7.2010, 10.8.2010 and 19.8.2010, none of the accused produced any defence evidence. Same was the position on 7.9.2010. However, an application under Section 311 Cr.P.C. was filed by the defence counsel for re-summoning PW1 Jagtar Singh and PW3 Gurmit Kaur. The trial Court supplied the copy of the application to the Additional Public Prosecutor and adjourned the case to 13.9.2010 for filing its reply and consideration. No reply was filed on 13.9.2010. It came to be filed only on 20.9.2010. The consideration of the application was adjourned to 24.9.2010. On request made by learned defence counsel, the case was adjourned to 28.9.2010 for consideration of application under Section 311 Cr.P.C. On 28.9.2010, the accused were not produced by the jail authorities. However, finally, the arguments were heard on the application under Section 311 Cr.P.C. on 12.10.2010, when after referring to the sworn affidavits dated 18.8.2010 of Jagtar Singh and Gurmit Kaur, the two eye witnesses, that none of them had witnessed any such occurrence and that they had made statements under police pressure, the trial Court, while relying upon the judgment of this Court in the case of Baljit and others Vs. State of Haryana and another, 2009(2) RCR (Criminal) 178 and in Jeo Mirza Vs. State of Punjab, 1995(3) Recent Criminal Reports 26, allowed the application and recalled Jagtar Singh and Gurmit Kaur for their further cross-examination. Pursuant to the same, both Jagtar Singh and Gurmit Kaur, stepped into the witness box on 9.11.2010 and

were subjected to further cross-examination at the instance of the defence. During his further cross-examination PW1 Jagtar Singh testified that on 8.6.2005 he had not seen any of the accused causing injuries to Amarjit Singh. The accused were having faces muffled and for that reason he could not identify them. He also deposed that the names of the accused were given to the police only on suspicion at the instance of others. Noticing that there was some ambiguity in the statement of the witness, the Additional Public Prosecutor requested that he may be allowed to re-cross-examine him. The request was allowed but during such re-cross-examination PW1 Jagtar Singh stated that the police had not recorded his statement but obtained his signatures on certain blank papers. He also stated that his statement was recorded in the Court on 31.7.2008 but that statement was given under pressure of the police officials. He stated that the statement being made by him at that time be considered as his true statement. He also stated that the accused present in the Court had not caused any injury to Amarjit Singh. His attention was drawn to his statement Ex.PA made to the police, on the basis of which FIR was registered but he did not own it up. Similar was the position taken by PW3 Gurmit Kaur. During her further cross-examination she stated that her husband was attacked by certain persons who were having their faces muffled. She did not identify any of the accused at the time of the occurrence. She was similarly re-cross-examined by the Additional Public Prosecutor wherein also she did not own up the statement made by her earlier as well as her statement made to the police during the investigation of the

case.

From the above, it is apparent that PW1 Jagtar Singh and PW3 Gurmit Kaur, the two witnesses of the occurrence, had fully supported the case of the prosecution during their examination-in-chief in the year 2006 earlier to the filing of the application under Section 311 Cr.P.C. During their cross-examination on 31.7.2008, they stuck to the prosecution version. After their cross-examination, the trial went on and on 9.3.2010, the Additional Public Prosecutor closed the prosecution evidence. Subsequent to the examination of the accused under Section 313 Cr.P.C. the defence availed a number of opportunities for producing its evidence but did not do so. Even on 7.9.2010, no defence evidence was present. On the other hand an application under Section 311 Cr.P.C. was filed by the defence counsel for summoning Jagtar Singh and Gurmit Kaur for further cross-examination, which application came to be allowed on 12.10.2010. Pursuant to the same, both Jagtar Singh and Gurmit Kaur were further cross-examined by the defence wherein they changed their stand. They were re-cross-examined by the Additional Public Prosecutor but did not support the prosecution case. Apparently, some sort of settlement had been arrived at between the defence on the one hand and the complainant i.e. Jagtar Singh and Gurmit Kaur on the other. So much so that both Jagtar Singh and Gurmit Kaur executed their respective affidavits that the accused had not committed the murder of Amarjit Singh. Rather, the murder was committed by some unknown persons, who were having their faces

muffled at the time of the occurrence and for that reason they could not identify them. However, it may be noticed that both Jagtar Singh and Gurmit Kaur were initially examined and partly cross-examined in the year 2006 and in their respective depositions they supported the prosecution case in its entirety. Their remaining cross-examination was conducted in the year 2008. Even at the time they supported the prosecution case. It is another thing that they, later on, turned around to claim that the murder of Amarjit Singh was committed by some unknown persons and not by the accused. During their such depositions they stated that the statements made by them in the year 2008 were under police pressure. They did not say anything about their statements which they had made in the year 2006 wherein they had made statements in line with the prosecution case. In view of the same, this Court can rely upon the examination-in-chief of PW1 Jagtar Singh and PW3 Gurmit Kaur wherein they had stated that the appellants, alongwith Jaswinder Singh and Sarabjit Singh, had committed the murder of Amarjit Singh by inflicting *datar* blows to him. The testimonies of the prosecution witnesses during their further cross-examination and subsequent re-cross-examination during which they made an attempt to change the course of the trial can be safely ignored. Reliance in this regard can be placed on the judgment of the Hon'ble Supreme Court in the case of Israr Vs. State of UP, 2005 (2) RCR (Criminal) 40 and of this Court in the case of Amar Lal Vs. State of Punjab, 2009(2) RCR (Criminal) 735.

In view of the above, it can safely be held that the appellants, while in the company of their co-accused Jaswinder Singh and Sarbajit Singh, had committed the murder of Amarjit Singh by inflicting *datar* blows to him. As per the medical evidence, there were 12 injuries noticed on the dead body of Amarjit Singh. The death of Amarjit Singh was on account of shock and haemorrhage as a result of multiple injuries, especially injuries No.3, 4, 5 and 9 which had been caused by sharp edged weapons. All the injuries were ante-mortem in nature and sufficient to cause death in the ordinary course of nature. Thus, the appellants have been rightly convicted and sentenced by the trial Court for committing the offences under Sections 302/34 IPC.

Resultantly, there is no merit in the appeal, which is, accordingly, dismissed.

(T.P.S. MANN)
JUDGE

(SHEKHER DHAWAN)
JUDGE

April 10, 2015
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