

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

CRA-D No. 896-DB of 2011(O&M)

Date of Decision: May 13 , 2015.

Baljit Singh and others

..... APPELLANT (s)

Versus

State of Punjab

..... RESPONDENT (s)

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

Present: Mr. T.S.Sangha, Senior Advocate with
Mr. H.S.Sangha, Advocate
for the appellants.

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

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

LISA GILL, J.

This appeal has been preferred by Baljit Singh, Gurwinder Singh @ Ginda and Satwinder Singh @ Satti impugning judgment of conviction dated 11.08.2011 and order of sentence dated 12.08.2011 passed by learned Additional Sessions Judge, Ludhiana. Appellant Baljit Singh has been convicted for the offences punishable under Section 302 IPC and Section 25 of the Arms Act, 1959 and sentenced to undergo life imprisonment, besides, pay a fine of ₹10,000/- and in default thereof, to further undergo rigorous imprisonment for six months. He is sentenced to undergo rigorous imprisonment for one year,

besides, pay a fine of ₹2,000/- and in default thereof, to further undergo rigorous imprisonment for one month for offence punishable under Section 25 of the Arms Act. Gurwinder Singh @ Ginda and Satwinder Singh @ Satti are convicted for the offence punishable under Section 302 read with Section 34 IPC and sentenced to undergo life imprisonment, besides, pay a fine of ₹10,000/- each and in default thereof, to further undergo rigorous imprisonment for six months.

Appellant No.2 – Gurwinder Singh @ Ginda is informed to have passed away on 10.04.2014. His death certificate has been produced by the learned Additional Advocate General, Punjab. This appeal, therefore, survives qua appellants Baljit Singh and Satwinder Singh @ Satti and abates qua appellant No.2 – Gurwinder Singh @ Ginda.

Complainant Gurdev Singh, PW1 revealed in his statement Ex.PA recorded on 02.06.2006 that a fight took place between Narvinderjit Singh son of Netar Singh and Hardeep Singh (accused, acquitted by trial court) son of Lal Singh residents of village Mutteyon on which both of them were admitted in Civil Hospital, Samrala. Complainant alongwith his son Harpreet Singh @ Happy (deceased) and Mandeep Singh (deceased) son of Gurdeep Singh, Baljinder Singh son of Gurdev Singh, Avtar Singh son of Gurcharan Singh all residents of village Mutteyon proceeded to Civil Hospital, Samrala to make peace between the parties. They reached the hospital at about 11.00 p.m. and tried to make peace. Hardeep Singh at that time was admitted in Male Ward No.2 where they had all assembled and were talking. Accused Baljit Singh, younger brother of Hardeep Singh, was sitting on the bed of his brother.

Harpreet Singh @ Happy (deceased) who was Sarpanch of the village tried to make both the brothers Hardeep Singh and Baljit Singh understand but they did not come to any agreeable point. Appellants Gurwinder Singh @ Ginda, Satwinder Singh @ Satti and Deepa (found innocent during investigation) son of Paramjit Singh were also sitting there. At about 12.30 a.m. midnight, both the brothers Baljit Singh and Hardeep Singh became aggressive and argued with Harpreet Singh that he was pressurizing them alone whereas, he did not say anything to Narvinderjit Singh's party. On this Hardeep Singh pushed Harpreet Singh. In the meantime, Baljit Singh took out a Kirch from his *Dub* (waist/side) and inflicted a blow on the chest of Harpreet Singh @ Happy. Baljit Singh gave another Kirch blow hitting on the left flank of Harpreet Singh. When Mandeep Singh tried to intervene, accused Gurwinder Singh @ Ginda and Satwinder Singh @ Satti caught hold of him and Baljit Singh inflicted Kirch blow hitting on the left flank of Mandeep Singh. Accused Baljit Singh inflicted another Kirch blow hitting on the right arm pit of Mandeep Singh. Both Harpreet Singh @ Happy and Mandeep Singh tried to escape but they fell on the door of the ward. Complainant raised alarm upon which all the accused ran away from the spot alongwith the weapon i.e., Kirch. Injured Harpreet Singh and Mandeep Singh were taken to Emergency Ward by the complainant with the help of Baljinder Singh and Avtar Singh. They were referred to Civil Hospital, Ludhiana. Complainant alongwith Baljinder Singh and Avtar Singh transported the injured to CMC Hospital Ludhiana but on reaching the hospital both the injured were declared brought dead by the concerned doctor. Dead-bodies of Harpreet Singh and Mandeep Singh were brought back to Samrala in the same

Ambulance. It is also recorded that Hardeep Singh, Baljit Singh, Gurwinder Singh @ Ginda, Satwinder Singh @ Satti and Deepa were causing hurdles in the working of the complainant's son Harpreet Singh @ Happy who was Sarpanch of the village. He had completed the construction of drains in the village and had earned a good name and fame. Accused had argued with him many a times and they had done this act due to rivalry. Ruqa (Ex.PU) was sent and formal FIR No.102 dated 02.06.2006 (Ex.PV) was registered. Special report was received by the Judicial Magistrate First Class on 02.06.2008 at 10.00 a.m. Inquest reports (Ex.PW and Ex.PX) were prepared. Dead-bodies were sent for post-mortem examination, which was conducted by a board of doctors consisting of Dr. Jaswinder Singh (PW7), Dr. Shashi Kant and Dr. Manjit Singh. Post-mortem report of Mandeep Singh is Ex.PK and that of Harpreet Singh @ Happy is Ex.PQ. As per post-mortem report Ex.PK, duly proved by PW7 Dr. Jaswinder Singh following two injuries were found on the person of Mandeep Singh:-

- “1. An elliptical wound of the size 1 cm x 0.5 cm, 1 cm below the left sterno clavical joint. It was deep up to underline muscle (3cm deep). On dissection contusion of the underline muscle haemtoma present, margins of the wound well defined.
2. An elliptical wound of 2.5cm x 0.5cm with sharp well defined margins present on the left upper chest, 10 cm from the left nipple postero superiorly about 11cm deep. It was directed left to right postero to anterior oblique track, track perforated the chest wall passing through space between third and fourth ribs perforated left lung upper lobe, pericardial space, penetrating heart wall, perforating left ventricular, blood was present in the wound track, left chest cavity filled with blood.”

Cause of death was opined to be due to injury No.2 leading to haemorrhage and shock. Injuries were ante-mortem in nature and sufficient to cause death in the ordinary course of nature. Time that elapsed between injuries and death was within half an hour and that between death and post-mortem was about eight to nine hours.

As per post-mortem report, Ex.PQ, duly proved by PW7 Dr. Jaswinder Singh, following injuries were found on the person of Harpreet Singh @ Happy:-

- “1. An elliptical wound size 2.5cm x 0.5cm, 20cm above the umbilicus in the paramedian region 9cm from right nipple, medial and inferior to the nipple, longitudinally placed margins of the wound well defined deep up to muscle. On dissection contusion of underlying muscle haematoma present (from lower chest).
2. An elliptical wound with well defined margins 2.5cm x 0.5cm present in the left axillary region 19cm lateral to the nipple about 14cm deep directed left to right postero to anterior oblique track, track perforated chest wall passing through space between third and fourth rib piercing pleurae perforating left lung upper postero part of the lob piercing pericardial cavity perforated heart up to left ventricle, track filled with blood, blood present in the left chest cavity, walls, ribs and cartilages healthy, ribs with penetrating wound, piercing left pleurae, larynx and tracheae healthy, right lung healthy, left lung already described, pericardium, heart, large vessels already described.”

Cause of death in this case was also due to injury No.2 leading to shock and haemorrhage. Injuries were ante-mortem in nature and sufficient to cause death in the ordinary course of nature. Time that elapsed between injuries

and death was within half an hour and that between death and post-mortem was about eight to nine hours.

Site plans of the place of occurrence were prepared (Ex.PBB and Ex.PG). Cover of the Kirch was recovered underneath bed No.6 and was taken in possession by the police vide memo Ex.PA. Blood stained bed sheets were also taken in possession vide memo Ex.PB. Appellant-accused Baljit Singh was arrested on 06.06.2006 while travelling on his scooter bearing registration No. PB-43A-5901 in the presence of Balwinder Singh @ Binder. In pursuance to disclosure statement (Ex.PC) suffered by accused Baljit Singh on 07.06.2006, Kirch used in the commission of the crime was got recovered on his pointing out from the roots of a Tahli tree growing on the embankment of canal minor bridge leading to village Bhagwanpura near ITI Samrala.

During the course of investigation Hardeep Singh (since acquitted), Gurwinder Singh @ Ginda, Satwinder Singh @ Satti and Deepa were declared innocent. Challan/report under Section 173 Cr.P.C. was presented against appellant-accused Baljit Singh.

Pursuant to examination-in-chief and part cross-examination of PW1 Gurdev Singh, an application under Section 319 Cr.P.C. was moved by the prosecution for summoning Hardeep Singh, Gurvinder Singh @ Ginda and Satwinder Singh @ Satti as additional accused. On the application being allowed by the court, said accused were summoned and charge under Sections 302/120B IPC and under Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 was framed against the accused. Charge under Section 25 of the Arms Act, 1959 was also framed against

appellant-accused Baljit Singh. All the accused pleaded innocence and claimed trial.

Prosecution examined as many as fourteen (14) witnesses to prove its case.

While denying the incriminating material put to them, all the accused in their statements under Section 313 Cr.P.C. pleaded innocence and false implication. Accused Hardeep Singh took a specific stand that he was lying admitted in the Civil Hospital, Samrala in an unconscious condition at the time of the alleged occurrence. Gurwinder Singh @ Ginda stated that he was present at his dairy farm in his village Mutteyon alongwith his father, one Harjit Singh and Harpal Singh at the relevant time. Appellant-accused Satwinder Singh @ Satti pleaded that he was working at Rajwant Hospital, Doraha on 01.06.2006. Grandmother of Padamdeep Singh @ Deepa was admitted at Sidhu Hospital due to kidney problem and she had to be operated on that day. Padamdeep Singh called him as blood was required. He remained there from evening of 01.06.2006 till the morning of 02.06.2006 alongwith Balbir Singh, Navjit Singh and Gurwinder Singh. In defence six witnesses were examined.

Learned trial court on appreciation of the evidence on record held Hardeep Singh to be innocent as he was proved to be admitted in the hospital on 01.06.2006 at about 8.00 p.m. with head injury. No appeal has been preferred against his acquittal. Further on concluding that the prosecution has proved its case beyond reasonable doubt qua the other accused i.e. the present appellants, they were convicted and sentenced as mentioned above. They were acquitted of charges under the Scheduled Castes & Scheduled Tribes (Prevention of

Atrocities) Act, 1989. Hence aggrieved, present appeal has been filed.

It is argued by learned senior counsel for the appellants that there is an unexplained delay in the lodging of FIR. Complainant Gurdev Singh did not appear in the witness box to support the prosecution case and neither anyone was examined from CMC hospital Ludhiana. Discrepancies are alleged in the statements of witnesses which statedly affect the credibility of the witnesses. It is also submitted that deceased Harpreet Singh was involved in a number of criminal cases and did not have good antecedents.

Sh.T.S.Sangha, learned senior counsel for the appellants vehemently argues that conviction of appellant Satwinder Singh @ Satti under Section 302 read with Section 34 IPC is unsustainable and illegal. He argues that common intention on the part of Satwinder Singh @ Satti with co-accused Baljit Singh and others cannot be imputed. There is nothing on record to show that there was participation of all the accused for the commission of the offence in furtherance of their common intention with a prior concert. It is submitted that after the fight took place on 01.06.2006, all the accused persons were, in fact, sitting at the hospital alongwith injured Hardeep Singh. Deceased Harpreet Singh @ Happy and Mandeep Singh alongwith others had come to the hospital at 11.00 p.m. to negotiate peace between the parties. It was in the heat of the moment that the altercation took place leading to the unfortunate death of Mandeep Singh and Harpreet Singh. However meeting of minds between Satwinder Singh @ Satti and Baljit Singh is not proved on record. There is no premeditation between the accused for the commission of the offence which might attract the rigors of Section 34 IPC. Accused Baljit Singh alone should be held responsible for his

acts and it is strongly contended that other accused who have not been alleged with any injuries to the deceased cannot be held responsible.

Shri Sangha further contends that Satwinder Singh @ Satti alongwith others had been found to be innocent during investigation. Denial of his presence at the spot is not in derogation of his plea that he never shared common intention with Baljit Singh to cause the death of Mandeep Singh and Harpreet Singh for the reason that it is for the prosecution to prove its case. Furthermore, no effort had been made by the prosecution to summon Deepa as an additional accused under Section 319 Cr.P.C. even though complainant Gurdev Singh has attributed a specific role of Deepa having caught hold of Harpreet Singh (deceased). Intention of the complainant party to involve as many people as possible is evident as they tried to inculcate Hardeep Singh, who was lying injured, admittedly, under the effect of heavy medication. He had been acquitted by the learned trial court. No appeal has been filed against his acquittal.

In respect to appellant-accused Baljit Singh, Shri Sangha submits that the events as they unfold point to a sudden altercation taking place at the spot which led to the unfortunate death of Harpreet Singh and Mandeep Singh. Therefore, conviction of Baljit Singh under Section 302 IPC deserves to be set aside. It is further contended that recovery of the Kirch from the possession of Baljit Singh is disputed as it is alleged to have been effected in the presence of PW10 Balwinder Singh @ Binder who is an interested witness having good relations with the deceased Sarpanch Harpreet Singh. It is thus submitted that conviction and sentence imposed upon the appellants be set aside being illegal

and unjustified.

Learned counsel for the State, on the contrary, submits that the appellants deserve no sympathy having murdered two young men in cold-blood. Leave alone sufficient, there is overwhelming evidence on record to show the commission of offence by the appellants as alleged. While refuting the argument on behalf of the appellants, she prays for upholding the conviction and sentence imposed upon them vide the impugned judgment and order.

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

In respect to appellant-accused Baljit Singh, it is duly proved on record that he was present beside his brother Hardeep Singh in Civil Hospital, Samrala on 01.06.2006 at midnight. When deceased Harpreet Singh @ Happy and Mandeep Singh alongwith others wanted to settle the matter in respect to a fight which had taken place earlier between Hardeep Singh etc. and Narvinderjit Singh, accused Baljit Singh attacked Hapreet Singh @ Happy, Sarpanch of the village as well as Mandeep Singh with a Kirch and inflicted fatal injuries on both of them. Complainant Gurdev Singh had been examined as PW1 when the prosecution had submitted its case only qua Baljit Singh at the first instance. Gurdev Singh has given graphic details of the events as they unfolded leading to the murder of his son Harpreet Singh who was Sarpanch of the village as well as Mandeep Singh. He has specifically stated that during the talks for settlement of dispute between Hardeep Singh and Narvinderjit Singh's party, Hardeep Singh as well as Baljit Singh, who are real brothers, became angry and retaliated by saying that deceased Harpreet Singh was pressurizing them alone without trying

to influence Narvinderjit Singh's party. Hardeep Singh pushed Harpreet Singh. When Mandeep Singh came forward to intervene, he was caught hold by Gurwinder Singh @ Ginda and Satwinder Singh @ Satti. Hardeep Singh caught hold of Harpreet Singh. Appellant-accused Baljit Singh took out a Kirch and inflicted Kirch blows on the left flank of Harpreet Singh (deceased) with its sharp side. Baljit Singh also inflicted Kirch blows on the left flank of Mandeep Singh (deceased) as well as on his right arm pit. PW1 Gurdev Singh was subjected to cross-examination. His cross-examination was deferred as an application under Section 319 Cr.P.C. was moved for summoning the additional accused. A perusal of record shows that complainant PW1 Gurdev Singh could not be examined after summoning of the additional accused. An application had been moved on his behalf that he is bedridden and mentally unfit. However, learned trial court had directed his presence on 09.11.2010. In view of his condition, he was given up by the Public Prosecutor.

Medical evidence corroborates the ocular version given by the complainant as well as the eye-witnesses PW1 Baljinder Singh and PW2 Avtar Singh. PW1 Baljinder Singh and PW2 Avtar Singh had accompanied the deceased to the hospital. PW7 Dr. Jaswinder Singh has duly proved the injuries on both the deceased which are in consonance with the account given by these witnesses.

Presence of the deceased at the place of occurrence is also duly proved. It is natural and probable for the deceased Harpreet Singh being Sarpanch of the village, though suspended at that time to try and make peace between two warring parties of the village.

Furthermore, pursuant to disclosure statement (Ex.PC) suffered by accused Baljit Singh on 07.06.2006, weapon of offence i.e., a Kirch was recovered. Recovery of the Kirch is not suspect as is sought to be projected by the learned counsel for the appellants. Firstly, PW4 ASI Darshan Singh and PW8 SI Dilbag Singh have duly proved the recovery of the Kirch. PW10 Balwinder Singh has also proved this recovery. Lengthy cross-examination could not shake his testimony. There is no evidence to show that the official witnesses had an axe to grind against the accused. There is no reason as to why they would give an untruthful version or try to implicate the accused. Factum of the place of recovery being accessible to all, cannot itself make the recovery suspect. Therefore, evidence on record duly proves that.

Similarly, antecedents of deceased Harpreet Singh being suspect as is vehemently argued cannot improve the appellants' case. Even if it is accepted that there are criminal proceedings pending against Harpreet Singh, the same cannot absolve all the accused of the commission of murder of Harpreet Singh and Mandeep Singh.

In respect to appellant-accused Satwinder @ Satti question to be determined is whether from the facts, circumstances and evidence on record, common intention to commit the offence as envisaged under Section 34 IPC can be gathered. It is a settled position that Section 34 IPC lays down a principle of joint criminal liability. It is only a rule of evidence and does not create a distinct offence. Ordinarily no man can be held responsible for an independent act and wrong committed by another. The principle of criminal liability is that the person who commits an offence is responsible for that and he alone can be held

guilty for the same. However, Section 34 IPC makes an exception to this principle. Essence of this liability is to be found in the existence of common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. It has been held by Hon'ble Supreme Court in

Goudappa and others v. State of Karnataka, 2013 SCC (Cri) 8 that:-

“..... The common intention is gathered from the manner in which the crime has been committed, the conduct of the accused soon before and after the occurrence, the determination and concern with which the crime was committed, the weapon carried by the accused and from the nature and injury caused by one or some of them. Therefore, for arriving at a conclusion whether the accused had the common intention to commit an offence of which they could be convicted, the totality of circumstances must be taken into consideration.”

Learned counsel for the appellants in this backdrop has argued that after a fight which had taken place between Hardeep Singh and Narvinderjit Singh etc., appellant Satwinder Singh @ Satti was sitting in the hospital alongwith Hardeep Singh and Baljit Singh sons of Lal Singh alongwith others. There is nothing on record to suggest that the accused were aware of the deceased Harpreet Singh and others coming to the hospital for negotiations. It is argued that there is no evidence to show that Satwinder Singh @ Satti had the knowledge of Baljit Singh, brother of Hardeep Singh who is lying injured in the hospital, to be carrying a Kirch on his person. As per prosecution version, appellant Baljit Singh took out the Kirch from his side/waist (*Dub*) therefore, Satwinder Singh @ Satti could not be attributed with the knowledge or common

intention with Baljit Singh to cause the death of Harpreet Singh or Mandeep Singh.

Though at first flush, argument raised by Shri Sangha, learned senior counsel appears attractive but taking into consideration the entire facts and circumstances of the case it cannot be said that appellant Satwinder Singh @ Satti did not share a common intention with the other accused persons for the commission of the offence. It is a settled position that common intention to commit an offence can be determined from the conduct of the offenders unfolding itself during the course of action. Common intention can be developed at the spur of the moment. It is not necessary that for attracting the rigors of Section 34 IPC, all the accused must have first decided among themselves to commit the offence. Common concert can arise at the spur of the moment. It is from the facts of each case that the factum of common intention has to be gathered. Hon'ble Supreme Court in Goudappa's case (supra) quoted an earlier judgment in **Pandurang v. State of Hyderabad, AIR 1955 SC 216** that in each case question of prior concert would have to be determined in a given fact situation:-

“..... All that is necessary is either to have direct proof of prior concert, or proof of circumstances which necessarily lead to that inference, or, as we prefer to put it in the time-honoured way, 'the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis'. (Sarkar's Evidence, 8th Edn., p.30)”

It is a matter of record that all the said accused persons were already sitting together at the Civil Hospital, Samrala. A dispute/fight had admittedly

taken place between Hardeep Singh and Narvinderjit Singh prior thereto. It is apparent that the accused party was aggrieved of the deceased Harpreet Singh making efforts to settle the matter by trying to prevail upon them. They carried a definite impression that Harpreet Singh while trying to influence them was not exerting any pressure on Narvinderjit Singh's party. Acrimony is clearly revealed.

It is the specific case of the prosecution that when Harpreet Singh was being assaulted, Mandeep Singh had come forward to intervene. Appellant-accused Satwinder @ Satti alongwith Gurwinder Singh @ Ginda then caught hold of Mandeep Singh upon which appellant-accused Baljit Singh inflicted Kirch blows upon Harpreet Singh. Once again when Mandeep Singh tried to intervene, Baljit Singh inflicted Kirch blows upon Mandeep Singh. Common concert between the accused is, thus, easily gathered upon unfolding of events. Both the said accused facilitated the assault by Baljit Singh. It cannot be said that appellant Satwinder Singh @ Satti did not share any common intention to commit the offence. The fact that no injury has been inflicted by appellant Satwinder Singh @ Satti upon the deceased cannot be of any avail to him in the facts and circumstances of the case.

Another argument of the learned senior counsel for the appellants that Hardeep Singh had been found innocent alongwith the accused Satwinder Singh @ Satti and they had not been proceeded against initially. No action had been taken to summon Hardeep Singh as an additional accused. Accused Hardeep Singh has been acquitted of the charges against him. Therefore, on the basis of common evidence on record accused Satwinder Singh @ Satti cannot be

convicted as such such evidence has not been relied upon to convict Hardeep.

Hon'ble Supreme Court in Israr v. State of U.P., 2005(2) RCR (Criminal) 40 has authoritatively held that even if evidence has been found to be deficient to prove the guilt of other persons, in case the residue is found sufficient to prove the guilt of an accused notwithstanding the fact of acquittal of number of other co-accused, his conviction can be maintained. It was observed that even where evidence of some of the witnesses is found to be deficient to prove the guilt of some accused, it is open to the court to convict co-accused on the same evidence. The maxim 'falsus in uno falsus in omnibus' has no application in India. Falsity of a particular material witness or material particular would not ruin it from the beginning to the end. Evidence on record is found trustworthy and reliable and clearly points to no other hypothesis but the guilt of the appellants.

No other point has been argued.

In view of the discussion here-in-above, we find that the appellants-accused Baljit Singh and Satwinder Singh @ Satti have been rightly convicted and sentenced by the learned Additional Sessions Judge, Ludhiana vide impugned judgment of conviction dated 11.02.2011 and order of sentence dated 12.02.2011.

Consequently, finding no merit in this appeal, same is dismissed.

(**HEMANT GUPTA**)
JUDGE

(**LISA GILL**)
JUDGE

May 13, 2015.
'om'