

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-922-DB of 2011

DATE OF DECISION: FEBRUARY 19, 2015

KARAM SINGH & OTHERS

...APPELLANTS

VERSUS

STATE OF PUNJAB

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. ASHOK SAINI, ADVOCATE FOR APPELLANT NO.1.
MR. S.P.S.SIDHU, ADVOCATE FOR APPELLANT NO.2.

MR. M.S.BEDI, SR.ADVOCATE WITH
MR. ARNAV SOOD, ADVOCATE FOR APPELLANT NO.3.
MR. P.P.S.THETHI, ADDL.A.G., PUNJAB.

M. JEYAPPAUL, J.

1. Accused Kirpal Singh was convicted under Section 302 IPC while other accused, namely, Karam Singh and Wasakha Singh were convicted under Section 302 with the aid of Section 34 IPC. All of them have jointly challenged the conviction and sentence passed by the trial Court in the present appeal.

2. It is the case of the prosecution that due to the grudge the accused bore against the prosecution party due to the unauthorized entry of the cattle of the prosecution party into the sugarcane field of the accused, all the three accused stood on the road and stopped the scooter of deceased Balkar Singh who was carrying his father PW1 Bakshish Singh as a pillion.

Thereafter, accused Wasakha Singh and accused Karam Singh caught hold

of deceased Balkar Singh, whereas accused Kirpal Singh delivered kirch blow on the neck of Balkar Singh who died on the way to the hospital.

3. PW1 Bakshish Singh had lodged the first information report being an eye witness to the occurrence. PW2 Joga Singh son of Amar Singh was also present on his scooter with Joga Singh son of Sadhu Singh at the time when the occurrence took place. He also witnessed the occurrence.

4. PW1 Bakshish Singh and PW2 Joga Singh son of Amar Singh have spoken in one voice that on 6.6.2007 at about 9.00 p.m. deceased Balkar Singh was taking his father PW1 Bakshish Singh on his scooter. Accused Wasakha Singh, Kirpal Singh and Karam Singh who were standing on the main road stopped the scooter of deceased Balkar Singh. PW2 Joga Singh son of Amar Singh was coming on a scooter behind Balkar Singh. He also stopped the scooter. Accused Wasakha Singh caught hold of the right arm of Balkar Singh, whereas accused Karam Singh caught hold of the left arm of Balkar Singh. Accused Kirpal Singh gave a kirch blow which hit on the neck of Balkar Singh and as a result of which his respiratory pipe was cut. PW2 Joga Singh also witnessed the occurrence. The accused thereafter ran away from the spot. The occurrence was witnessed by PW1 and PW2 in the light of the scooters of deceased Balkar Singh and PW2 Joga Singh. Joga Singh arranged a conveyance and took Balkar Singh to the hospital for treatment, but unfortunately, at the front gate of the hospital, Balkar Singh died. A day earlier thereto, the cattle of PW1 entered into the field of the accused. Therefore, they nursed a grudge as against the deceased. PW1 lodged a complaint and on the basis of which, first information report was

registered.

5. PW2 Dr. Manoj Gupta conducted post mortem examination on the dead body of Balkar Singh on 7.6.2007 at about 9.10 a.m. and found the following injuries on his dead body:-

“Incised wound 1½ inch x ½ cm in the centre of lower part of neck. Wound is slightly obliquely placed. Right end of wound is slightly upwards, whereas left end of the wound is slightly downward. On dissection of neck, neck muscle was cut corresponding to wound. Trachea upper end cut through and through and was full of blood. Cervical oesophagus cut through and through and contain blood. Great vessel of neck cut near their origin causing haemotoma on left side of neck. Apical pleura of left lung is punctured with collection of blood and air in left pleural cavity.”

6. In his opinion, Balkar Singh had died due to haemorrhagic shock and respiratory obstruction due to the ante mortem injuries caused by a sharp edged weapon as described above.

7. Accused Wasakha Singh and Karam Singh set up a plea in their statement under Section 313 Cr.P.C. that the witnesses examined on the side of the prosecution have deposed on account of previous ill-will. They have contended that they were innocent. Accused Kirpal Singh set up a plea in his statement under Section 313 Cr.P.C. that he was innocent, but he was falsely implicated in the present case.

8. The trial Court having adverted to the evidence on record

completely relied upon the evidence of PW1 and PW2, in the background of the medical evidence and the FSL report available on record, convicted and sentenced the accused as stated supra.

9. Learned counsel appearing for appellant Kirpal Singh would submit that the presence of PW1 and PW2 at the scene of crime at 9.00 p.m. is doubtful as they had not chosen to intervene and disrupt the on-slaught of accused Kirpal Singh. A weak motive alleged was also not established. At any rate, it is his submission that accused Kirpal Singh had allegedly used a small knife and delivered only one blow on Balkar Singh and therefore, the offence under Section 302 IPC was not made out.

10. Learned counsel appearing for Wasakha Singh would submit that accused Wasakha Singh was admittedly a Teacher by profession. He would not have joined hands with the other accused. Further, had he accompanied the main accused Kirpal Singh with an intention to cause the death of Balkar Singh, he would also have been armed with a lethal weapon. Further, it is his submission that the alleged exhortation made by accused Wasakha Singh is found to be self-contradictory. Therefore, it is his submission that the presence of accused Wasakha Singh at the scene of crime is doubtful. PW2 Joga Singh son of Amar Singh had made substantial improvement during the course of trial. There had been a delay of 3 hours and 15 minutes in lodging the first information report. It had paved way for introduction of accused and witnesses to the crime. Lastly, it was submitted by learned counsel appearing for accused Wasakha Singh that he was shown in column No.2 by the investigating official as there was no material to

show *prima facie* that he also joined other accused in committing the crime.

11. Learned counsel appearing for accused Karam Singh would submit that accused Karam Singh had no connection with the other accused. There was no motive for accused Karam Singh to attack the deceased. The scooter allegedly used by deceased Balkar Singh was in the name of some other person. The scooter of Joga Singh was not recovered in this case. Accused Karam Singh was also not armed with any weapon. Therefore, no intention can be attributed to him. It is, therefore, submitted that the accused Karam Singh is entitled to acquittal.

12. We also heard the submissions made by learned Addl.A.G., Punjab supporting the verdict of conviction and sentence passed by the trial Court as against the accused-appellants.

13. The entire evidence on record was thoroughly scanned by us in the background of the above rival submissions made by the respective counsel. PW1 Bakshish Singh was the father of deceased Balkar Singh. Even at 9.00 p.m., there was every reason for him to accompany his son on a scooter driven by his son. PW2 Joga Singh was the person who had taken injured Balkar Singh to the hospital for treatment. As Balkar Singh had died at the entrance of the hospital, there was no admission of the injured at the hospital. It is the consistent version of PW1 and PW2 that it was only PW2 who having made an arrangement of a conveyance, took Balkar Singh to the hospital for treatment. The scooter driven by PW2 Joga Singh was not recovered by the investigating official. The scooter driven by Balkar Singh was recovered. Of course, the said scooter driven by Balkar Singh

stood in the name of a third party. It may be a case where the deceased would have borrowed the vehicle. Sometimes, the vehicle purchased stands in the name of erstwhile owner. There was no reason for the investigating official to recover a vehicle of a third party if at all it was not used by the accused at the time of occurrence. The investigating official had thought it fit not to recover the scooter used by PW2 Joga Singh as it was not used to accused the offence. Therefore, non-recovery of the scooter used by PW2 Joga Singh does not throw any doubt on the version of PW2.

14. The occurrence had taken place on 6.6.2007 at 9.00 p.m. There was an attempt on the part of PW1 and PW2 who witnessed the occurrence to save the life of Balkar Singh by arranging a vehicle to transport the injured to the hospital. Further, the occurrence had taken place during the night hours. Therefore, delay of about 3 hours and 15 minutes in lodging the first information report cannot be termed as an inordinate delay. The FIR was registered at 1.20 a.m. on 7.6.2007 itself and the special report had reached the learned Judicial Magistrate at 4.00 a.m. on the said day itself. Firstly, we find that there was no inordinate delay in lodging the first information report. Secondly, the delay also is quite understandable. Therefore, the case of the prosecution cannot be thrown overboard on the ground that there was a delay of 3 hours and 15 minutes in lodging the first information report.

15. PW1 and PW2 have categorically deposed that accused Kirpal Singh who was armed with a kirch delivered a lethal blow on the neck of Balkar Singh when the other accused, namely, Karam Singh and Wasakha

Singh tightly caught hold of the deceased. PW2 also has come out with the motive for the crime. On the previous day of the occurrence, it appears, there was some quarrel between the accused and the deceased on account of straying of cattle in the field of the accused. Such a quarrel that took place between the accused and the deceased cannot be simply ignored. In a village setting even a petty quarrel provides a motive for commission of murder.

16. The FSL report Ex.PX would go to establish that kirch recovered at the instance of accused Kirpal Singh was found with human blood of A group and the FSL report Ex.PY would also reveal that clothes of the deceased were also found with human blood of A group. In other words, the blood stains found on the kirch recovered from accused Kirpal Singh matched with the blood group found on the clothes of the deceased. The above clinching evidence also corroborates the case of the prosecution.

17. The medical evidence establishes that the blow delivered on the neck was so deep that it caused the death of the deceased. Of course, the weapon used was a small one, but the vehemence with which the attack was launched and the seat of injury would go to establish the intention the accused while delivering the fatal blow. Further, the accused had not encountered the deceased when the deceased was all-alone. PW1 and PW2 also were present at the scene of crime. Therefore, the accused had decided to deliver a fatal blow with all vehemence at his command and flee away from the scene of crime. Just because there was only one blow, the case of the prosecution does not slip into lesser gravity of offence under Section

304 IPC.

18. It is true that PW2 Joga Singh has stated before the Court that he proceeded to the field of Bakshish Singh to engage a labourer and infact paid a sum of ₹100/- as advance to a labourer. The above version was not found in his statement under Section 161 Cr.P.C. PW2 had not come out with the purpose of his visit in his statement under Section 161 Cr.P.C. as he had not been thoroughly elicited by the investigating official. Even otherwise, the question was whether he was present at the time when the occurrence took place. Being an agriculturist, he would have visited the field of Bakshish Singh to engage a labourer for him. Even otherwise, his coherent testimony does not create a doubt as regards his presence at the scene of crime.

19. Coming to the exhortation raised by accused Wasakha Singh, there is a slight variation in the evidence of PW1. In the first information report, PW1 has stated that accused Wasakha Singh exhorted “*today you are to teach a lesson for lodging protest against cattle heads*”. But in evidence, PW1 has deposed that accused Wasakha Singh exhorted “*you have saved yourself yesterday, but you cannot be saved today*”. We do not find any material contradiction in the content of exhortation. Cattle trespass which was the bone of contention between the accused and the prosecution party was the cause for murder. The exhortation attributed to accused Wasakha Singh both in the first information report and the testimony of PW1, indicates only the consequences of exhortation made by accused Wasakha Singh.

20. We do not find any material contradiction in the evidence of PW2 Joga Singh. Of course, there is some mild improvement in his testimony which does not go to the root of the case.

21. Accused Wasakha Singh was shown in column No.2. That does not mean that accused Wasakha Singh had no role in the crime of murder committed. Finding *prima facie* material as against accused Wasakha Singh through the evidence adduced, the trial Court had thought it fit to summon him under Section 319 Cr.P.C. Therefore, accused Wasakha Singh cannot be given a clean chit in the face of credible evidence available as against him just because he was shown in column No.2 in the report filed under Section 173 Cr.P.C.

22. Coming to the role of accused Karam Singh, it is true that he was not related to the other accused. He also was not armed with any weapon. But the trustworthy testimony of PW1 and PW2 would go to establish that accused Karam Singh also was present and associated the other accused by tightly catching hold of the victim. There was no reason for the prosecution party to include accused Karam Singh if at all he had no connection with the crime. Therefore, accused Karam Singh also cannot escape from the criminal liability just because he was not the family member of the other accused.

23. Further, we find that the motive for the murder pales into insignificance in a case where the case of the prosecution is based on the ocular testimony. Therefore, the weak motive or no motive for the crime does not go to the root of the matter.

24. In our considered view, the trial Court has rightly evaluated the evidence on record and come to the correct conclusion that accused Kirpal Singh committed the murder of Balkar Singh while the other two accused shared the common intention to cause the death of Balkar Singh by catching hold of the hands of the victim thereby facilitating the murder of Balkar Singh.

25. We do not find any merit in the appeal. Therefore, confirming the judgement of conviction and sentence passed by the trial Court, the appeal stands dismissed.

26. Accused-appellants Karam Singh and Wasakha Singh are on bail. Their bail bonds stand cancelled. They shall surrender within 15 days from the date of this judgement before the Chief Judicial Magistrate, Gurdaspur. If they fail to surrender, the learned Chief Judicial Magistrate, Gurdaspur shall take coercive steps to secure their presence and send them to jail to undergo the remaining part of their sentence.

(M. JEYAPPAUL)
JUDGE

February 19, 2015
Gulati

(DARSHAN SINGH)
JUDGE