

**In the High Court of Judicature for the States of Punjab & Haryana, at
Chandigarh**

CRA-S-2010-SB-2003

Date of Decision : April 08, 2015

Babba and others ... Appellants
Versus
State of Punjab ... Respondent

CORAM : HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present : Mrs. Baljit Kaur Mann, Advocate, for the appellants.
Shri S.K. Bansal, Assistant Advocate General, Punjab, for the
respondent-State.

- 1. *Whether Reporters of local papers may be allowed to see the judgment? Yes/No*
- 2. *To be referred to the Reporter or not? Yes/No*
- 3. *Whether the judgment should be reported in the Digest? Yes/No*

MAHAVIR S. CHAUHAN, J.

Babba, Mukhtiar Singh and Sulakhan Singh (the appellants herein) were tried for commission of offences punishable under Sections 307, 324, 323, 506 and 34 of the Indian Penal Code, 1860 (here-in-after referred to as “IPC”) and vide judgment/order dated October 20, 2003 have been convicted and sentenced by learned Additional Sessions Judge (Adhoc), Fast Track Court, Gurdaspur (here-in-after referred to as “the trial court”) as under:

Sr. No.	Convict’s Name	Offence (IPC)	Sentence (RI)	Fine (Rs.)	In Default (RI)
1	Babba	307	07 years	5000/-	01 years
		324/34	02 years	1000/-	02 months
		323/34	06 months	--	--
02.	Mukhtiar Singh	307/34	05 years	5000/-	06 months
		324	02 years	1000/-	02 months
		323/34	06 months	--	--
03.	Sulakhan Singh	307/34	05 years	5000/-	06 months

		324/34	02 years	1000/-	02 months
		323	06 months	--	--

02. All the substantive sentences have been ordered to run concurrently and the period of detention during investigation and trial to be set off against the substantive sentences.

03. Appellants are in appeal to assail correctness of the impugned judgment/order and to seek their acquittal.

Fact situation:

04. As per prosecution story, complainant's son Jaspal Singh (since deceased), a mason by avocation, did not return home from his work on April 17, 1999. Searching for him, the complainant (PW2-Ajit Singh) accompanied by his brother Samund Singh (PW), when reached bus stand of the village at or around 08.00 p.m., saw Jaspal Singh coming at a distance of 15/20 'karam' from him. Electric bulbs were on. Babba armed with a 'kirpan', Mukhtiar Singh armed with a 'datar' and Sulakhan Singh carrying a 'danda' descended on the scene. On being exhorted by Sulakhan Singh, Babba inflicted a 'kirpan' blow which fell on left side of forehead of Jaspal Singh. Mukhtiar Singh administered a 'datar' blow which landed on Jaspal Singh's chin. Jaspal Singh fell on the ground. Thereafter Sulakhan Singh inflicted 'danda' blows on left leg, right knee, left arm and left side of chest of Jaspal Singh. When complainant and Samund Singh (PW) raised an alarm appellants threatened to kill them if they attempted to come near them and made good their escape carrying their respective weapons along. A few persons converged on the scene. Complainant took injured Jaspal Singh home and being afraid of the assailants did not come out throughout the night. At or around 07.00 a.m. on April 18, 1999 Jaspal Singh was taken to

Civil Hospital, Batala where Dr. Paramjit Singh (PW1) medico-legally examined him vide medico legal report ('MLR', for short), Exhibit PA. Later on Jaspal Singh was referred to and admitted in Guru Nanak Hospital, Amritsar and was treated there by Dr. Daljit Singh (PW4) vide Bed Head Ticket, Exhibit PW3/A, and was discharged on April 29, 1999. Jaspal Singh, unfortunately, died on June 06, 1999. However, prior to Jaspal Singh's death, complainant had filed a criminal complaint before the learned Area Magistrate, which was registered as Criminal Case No. 43 of June 09, 1999. In the complaint, in addition to description of the occurrence, it was also stated that Babba had a money dispute with Jaspal Singh and it was for that reason that the appellants, with a common intention to kill him, had inflicted injuries on the person of Jaspal Singh and that the police, though informed of the occurrence, did not proceed against the appellants.

Proceedings before the courts below:

05. Learned Area Magistrate, from the preliminary evidence adduced by the complainant, found sufficient grounds to proceed against the appellants and, accordingly, summoned them to face trial under afore-stated Sections of the IPC. The matter was ultimately committed to the Court of Session at Gurdaspur and the appellants were charged for commission of offences punishable under Sections 307, 307/34, 324, 324/34, 323 and 323/34, IPC.

06. Appellants put up a plea of not guilty and a claim to be tried. Prosecution, in its effort to prove the charge against the appellants, examined six witnesses. Complainant (PW2) re-asserted on oath all what was stated by him in the complaint. Complainant's wife, Gian Kaur (PW5) revealed before the learned trial court that when brought home

immediately after the occurrence Jaspal Singh had told her that he had received injuries at the hands of the appellants with a 'kirpan', 'datar' and 'danda'.

07. Dr. Paramjit Singh (PW1) disclosed that on medico-legal examination of the injured at 07.00 a.m. on April 18, 1999, he found on his person (1) a 12cms x 01 cm incised wound on forehead towards left side starting from midline and transversely placed with reddish clotted blood present. Left eye-lid was also incised. X-Ray and Eye Surgeon's opinion were advised; (2) a 02cms x 01.5cms lacerated wound on left leg; (3) a 02cms x 01cm lacerated wound on medial aspect of right knee joint. X-Ray was advised; (4) a 02 cms x 01cm incised wound on chin; (5) 04 cms x 01.5cms and 03cms x 01.5cms wounds on left arm; and (6) a 05cms x 02cms contusion on left side on front of the chest.

08. Dr. Paramjit Singh (PW1) also proved MLR, Exhibit PA, and his opinion, Exhibit PA/1, besides revealing that injury Nos. 1 and 4 were caused by a sharp-edged weapon and the rest by a blunt weapon; injury Nos. 1 and 3 were kept under observation; and as per X-Ray report, Exhibit PA/2, and clinical observation injury No. 1 was declared dangerous to life.

09. Darshan Singh (PW3) placed on record an attested/certified copy of Bed Head Ticket pertaining to Jaspal Singh as Exhibit PW3/A, while Dr. Daljit Singh (PW4) testified to say that after he was brought to Guru Nanak Hospital, Amritsar, Jaspal Singh was treated by him and though no surgery was needed but the injuries were serious and could lead to death if not given medical aid.

10. Village Chowkidar Chhinda (PW6) placed on the file a copy of relevant portion of the Death Register maintained by him showing entry of

factum of death of Jaspal Singh, as Exhibit PW6/A.

11. Based on the evidence referred to above, learned trial court reached a conclusion that the prosecution was able to fix appellants' guilt beyond reasonable doubt and, therefore, convicted and sentenced them as here-in-before stated.

In criticism and defence of the impugned judgment/order:

12. I have heard learned counsel for the parties besides appraising the record of the case.

13. Learned counsel representing the appellants has argued with vehemence that the impugned judgment/order cannot sustain. Elaborating, the learned counsel has pointed out that in respect of the occurrence which, as per prosecution story, took place on April 17, 1999, the complaint was filed on June 09, 1999 by father of the injured and without rendering any plausible and satisfactory explanation for the delay. It has come in the evidence of Gian Kaur (PW5) that the injured talked to her, and thus, presumably, was conscious when brought home and it is revealed by Dr. Daljit Singh (PW4) that the injured was discharged on April 29, 1999 in satisfactory condition. In spite of this all, neither the police is shown to have been approached nor the complaint was filed either immediately after the occurrence or immediately after discharge of the injured from the hospital. Secondly, no reliance could be placed on the evidence of Gian Kaur (PW5) as she, admittedly, did not witness the occurrence and her deposition is based on hearsay and on that of Ajit Singh (PW2), because he being father of the injured is an interested witness, his evidence has remained uncorroborated as no independent witness, including Samund Singh, has been examined and the fact that he did not attempt at saving the injured

renders his presence on the spot of occurrence highly doubtful, contends the learned counsel.

14. On the contrary, learned State counsel has argued, with no less vehemence, that presence of Ajit Singh (PW2) on the spot of occurrence was natural and in his evidence the entire prosecution story has been proved. His evidence having been corroborated by medical evidence and that of Gian Kaur (PW5), there was no necessity to examine Samund Singh or any other witness. According to him delay in filing the complaint has sufficiently been explained and it is not shown to have been misutilised either to give a twist to the story or to introduce false witnesses or to rope in innocent people.

15. No other or further point has been urged on either side.

The occurrence:

16. Ajit Singh (PW2) has given a vivid account of the occurrence saying that he saw Babba inflicting a 'kirpan' blow on left forehead, Mukhtiar Singh a 'datar' blow on chin, and Sukhpal Singh four 'dang' blows on left knee, right leg, left side of chest, and shoulders of Jaspal Singh. His statement finds corroboration not only in medical evidence brought on record by Dr. Paramjit Singh (PW1) and Dr. Daljit Singh (PW4) but also in the deposition of Gian Kaur (PW5), mother of the injured who has recounted on oath that when brought home immediately after the occurrence, her injured son Jaspal Singh had told her that he was injured by the appellants with a 'kirpan' 'datar' and 'danda'. Statement of Gian Kaur is admissible under Section 6 of the Indian Evidence Act, 1872 (for short 'Evidence Act') on account of its proximity of time to the act of causing injuries to her son, Jaspal Singh and no other event having

intervened the occurrence and revelation made by Jaspal Singh before her.

Section 6, Evidence Act reads as under:

“6.Relevancy of facts forming part of same transaction.- *Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.”*

17. *Black's Law Dictionary* defines *res gestae* as follows:

“(Latin: ‘things done’) The events at issue, or other events contemporaneous with them. In evidence law, words and statements about the res gestae are usually admissible under a hearsay exception (such as present sense impression or excited utterance).”

18. Sarkar on Evidence (Fifteenth Edition) summarises the law relating to applicability of Section 6 of the Evidence Act thus: “1. The declarations (oral or written must relate to the act which is in issue or relevant thereto; they are not admissible merely because they accompany an act. Moreover the declarations must relate to and explain the fact they accompany, and not independent facts previous or subsequent thereto unless such facts are part of a transaction which is continuous. 2. The declarations must be substantially contemporaneous with the fact and not merely the narrative of a past. 3. The declaration and the act may be by the same person, or they may be by different persons, e.g., the declarations of the victim, assailant and bystanders. In conspiracy, riot &c. the declarations of all concerned in the common object are admissible. 4. Though admissible to explain or corroborate, or to understand the significance of the act, declarations are not evidence of the truth of the matters stated.”

19. Section 6, Evidence Act, is an exception to the general rule whereunder hearsay evidence becomes admissible. For bringing such hearsay evidence within the ambit of Section 6, Evidence Act, it is required to be established that it must be almost contemporaneous with the act and

there could not be an interval which would allow fabrication. In other words, the statements said to be admitted as forming part of *res gestae* must have been made contemporaneously with the act or immediately thereafter.

20. Act of the assailants causing injuries to Jaspal Singh, immediately after the occurrence he being brought home in injured condition by Ajit Singh and Samund Singh and narration before her of the sequence of events resulting into injuries on his person by Jaspal Singh, are all circumstances so intertwined with each other by proximity of time and space that the statement of the injured before this witness became part of the same transaction (*res gestae*). Hence the narration of events leading to receipt of injuries by him at the hands of the appellants, made by Jaspal Singh (injured) before Gian Kaur (PW5), is admissible under Section 6, Evidence Act.

PW Ajit Singh's presence on the spot of occurrence:

21. It is not in dispute that Ajit Singh (PW2) is father of the injured. It has also remained unchallenged that the injured did not return home till 08.00 p.m. on April 17, 1999. In such a situation it was natural for PW Ajit Singh to get worried about well being of his son and to set out in search of him accompanied by his brother Samund Singh. His presence on the spot at the time of the occurrence, therefore, cannot be doubted. Effort of learned counsel for the appellants to make this Court believe that this witness was not present on the spot because no parent can afford to be a silent spectator to a scene involving his/her child's life, must fail. PW Ajit Singh, no doubt, has admitted that he did not intervene to save the injured from the assailants but merely because of his inaction his evidence cannot be disbelieved because every person cannot act or react in a particular or very same way

and it would depend upon the mental set up of the person concerned and the extent and nature of fear generated and consequently on the spot his reaction in a particular way has to be viewed on the totality of all such circumstances. Human behaviour varies from person to person. Different people behave and react differently even in similar situations. Human behaviour depends upon the facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the spot to the rescue of the victim, even going to the extent of counter-attacking the assailants. Some may remain tight-lipped over-awed either on account of the antecedents of the assailant(s) or threats given by him/them. Each one reacts in his peculiar way even in similar circumstances, leave alone the varying nature depending upon variety of circumstances. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in a particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way. PW Ajit Singh, on the day of occurrence, was more than eighty years of age. He deserves some premium for his old age and incapacity to counter sturdy assailants as also for his candid admission that he did not come forward to rescue his son from the appellants (but did raise an alarm) and did not dare to come out of his house throughout the night as he was afraid of the appellants.

PW Ajit Singh's interestedness:

22. Similarly, criticism of PW Ajit Singh as an interested witness being father of the injured, is also misdirected and, thus, unacceptable. Merely because Ajit Singh (PW2), is father of the deceased his evidence cannot *per se* be discarded. When there is allegation of interestedness, the same has to be established. A bare statement that being relative of the victim he is likely to falsely implicate the appellant cannot be a ground to discard his evidence which is otherwise cogent and credible and the witness has passed the acid test of cross examination successfully. Relationship, as such, is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person at the cost of allowing the real culprit to go scot free. Foundation has to be laid if plea of false implication is made. Therefore, the contention that PW2, Ajit Singh being a close relative of the victim and consequently being a partisan witness, should not be relied upon, has no substance and must fail. Such a plea was repelled by Hon'ble Supreme Court as early as in **Dalip Singh and Ors. v. The State of Punjab**, AIR 1953 SC 364 in which surprise was expressed over the impression that relatives were not independent witnesses and it was laid down as under:

“A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person.”

23. The above decision has since been followed in Guli Chand and Ors. Versus State of Rajasthan, (1974) 3 SCC 698 in which Vadivelu Thevar v. State of Madras, AIR 1957 SC 614 The above decision has since been followed in Guli Chand and Ors. v. State of Rajasthan, 1974(3) SCC 698 in which was also relied upon. In Masalti and Ors. v. State of U.P., AIR 1965 SC 202 Hon'ble Supreme Court observed as follows:

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

24. It may be added here that not only has PW2, Ajit Singh been able to stand the test of cross examination and his evidence has been corroborated by that of Gian Kaur (PW5) besides medical evidence, defence has also failed to bring on record any material to show that this witness by falsely implicating the appellants either has gained or is about to gain any benefit for himself or for any one else he may be interested in or has had a hostile animus towards them.

Non-examination of independent witness:

25. Another contention raised on behalf of the appellants is that only PW2, Ajit Singh, father of the deceased has been examined as a witness and the prosecution has not examined any independent witnesses and, therefore, has failed to establish its case beyond reasonable doubt. This argument also lacks substance. There is no bar in law in examining family members, or any other person, as witnesses. Besides, when the statement of a witness, who is relative or known to the affected party, is credible, reliable, trustworthy, admissible in accordance with the law, there would

hardly be any reason for the Court to reject such evidence merely on the ground that the witness was family member or interested witness or person known to the affected party. There may be cases where it would be but inevitable to examine such a witness because, as the events occurred, he was the natural or the only eye witness available to give the complete version of the incident. In this regard, a reference may be made to **Namdeo v. State of Maharashtra**, (2007) 14 SCC 150 wherein Hon'ble Supreme Court drew a clear distinction between a chance witness and a natural witness. Both these witnesses have to be relied upon subject to their evidence being trustworthy and admissible in accordance with the law. Hon'ble Supreme Court, in the said judgment, held as under:

“28. From the aforesaid discussion, it is clear that Indian legal system does not insist on plurality of witnesses. Neither the legislature (Section 134 of the Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eyewitness, therefore, has no force and must be negated.”

29. It was then contended that the only eyewitness, PW 6 Sopan was none other than the son of the deceased. He was, therefore, “highly interested” witness and his deposition should, therefore, be discarded as it has not been corroborated in material particulars by other witnesses. We are unable to uphold the contention. In our judgment, a witness who is a relative of the deceased or victim of a crime cannot be characterised as “interested”. The term “interested” postulates that the witness has some direct or indirect “interest” in having the accused somehow or the other convicted due to animus or for some other oblique motive.”

should hold the attention of this Court even for a moment for the simple reason that his examination as a witness would only have added to multiplication of the witnesses which would have been contrary to the dictum of Section 134 of the Evidence Act and the principle which says evidence has to be weighed and not counted. Be that as it may, it is not unknown that where serious offences like the present one are committed, attempts are made either to terrorize or win over prosecution witnesses, and if the prosecutor honestly and bona fide believes that some of his witnesses have been won over, it would be unreasonable to insist that he must tender such witnesses before the Court. No adverse inference can be drawn against the case of the prosecution only because PW Samund Singh has been given up as won over by the appellants because such witnesses being human beings are quite exposed and vulnerable to human feelings of yielding, browbeating, threats and inducements and, as such, giving up of such witnesses as won over, is fully justified. If the appellants were so sure that PW Samund Singh alone was aware of the “truth” and his evidence could demolish the case set up by the prosecution against them, he could be examined as a witness in defence but the appellants could not be audacious enough to bring him before the Court as a witness in defence.

Delay in filing the complaint:

27. No doubt in respect of the occurrence that took place on April 17, 1999 complaint was filed on June 09, 1999. However, delay in lodging the complaint by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are, one cannot expect rustic villagers, as PW Ajit Singh is, to act mechanically with all the promptitude and rush to the police station to lodge a report immediately after the

occurrence. His loving son was badly injured in front of his eyes. As per medical evidence, in the occurrence the injured had received as many as six injuries which included a 'dangerous to life' injury on his forehead, one incised wound on the chin, four lacerated wounds and a contusion on other parts of the body. It has also come in the deposition of Ajit Singh (PW2) that with the help of the persons who had converged on the scene he took his injured son to his home and did not come out throughout the night as he was afraid of the assailants. It was in the next morning, i.e. April 18, 1999 that the injured Jaspal Singh was taken to Civil Hospital, Batala and was medico-legally examined there at or around 07.00 a.m. The very fact that the injured was admitted in Civil Hospital, Batala on April 18, 1999 as a medico-legal case (MLC) (as recorded in Bed Head Ticket, Exhibit DA) should suffice to infer that police was duly informed about his admission in the hospital. Further, in Bed Head Ticket, Exhibit PW3/A, it is clearly mentioned that while admitting the injured in Guru Nanak Hospital, Amritsar on April 22, 1999, police was informed. This, however, failed to break slumber of the State agency responsible for maintenance of law and order in the society and for bringing to the book the ones who violate law. For inaction of the police, justice cannot be allowed to suffer.

28. Further, the scene, even otherwise, was so horrendous as to leave PW Ajit Singh, father of injured Jaspal Singh, dumb-founded. In the occurrence injured received six injuries. One of the injuries was on the forehead-a very vital part of the body, and was declared dangerous to life by the doctor. It is recorded in Exhibit DA-Bed Head Ticket, that when taken to Civil Hospital, Batala, the injured was unconscious and unfit to make a statement. In view of seriousness of the injuries he was referred to Guru

Nanak Hospital, Amritsar on April 21, 1999 and was admitted there on April 22, 1999. He remained admitted there till April 29, 1999 and ultimately succumbed to the injuries on June 12, 1999. On account of the shock because of the calamity it may not have immediately occurred to PW Ajit Singh that he should lodge a report with the police. After all it was but natural in the given circumstances for him to take some time to regain composure. Critical condition of health of their beloved son was bound to engage attention of PWs Ajit Singh and Gian Kaur and their illiteracy, rustic background, uncoversantness with legal technicalities of prompt reporting the matter to the police also seem to have contributed to their inability to report the matter to the police with promptitude. Though in cases arising out of acute factions there is a tendency to falsely implicate persons belonging to the opposite faction but in the case in hand there are no materials to indicate false implication of the appellants. Above this all, the witness of occurrence, PW Ajit Singh has stood the test of cross examination successfully and it is nobody's case that false witnesses have been introduced or the occurrence took place in a manner different from the one disclosed in the complaint and it has been given a colour by using the delay.

29. In view of all what has been said and discussed in the preceding paragraphs, finding of conviction recorded by the learned trial court against the appellants cannot be interfered with.

Quantum of Sentence:

30. Faced with the situation, learned counsel for the appellants has prayed for leniency in the matter of quantum of sentence and has submitted that on the day of the occurrence appellants were aged about 18, 41 and 44 years, respectively and have spent best parts of their youth in defending the

charges against them. Appellants Mukhtiar Singh and Sulakhan Singh are related to each other as brothers while appellant Babba is son of appellant Sulakhan Singh. There is no criminal history before or after the occurrence in question. The submission, in my view, deserves consideration. As per custody certificates produced by the learned State Counsel, appellant Babba has spent more than two years, and appellants Mukhtiar Singh and Sulakhan Singh more than one year, each, in custody. On behalf of the State no materials have been brought forth to show involvement of the appellants in any other criminal case. Custody certificates also support the contention of learned counsel for the appellants that they have never been involved in any criminal case except the one under adjudication.

Conclusion:

31. In the consequence, while maintaining the judgment of conviction, order on quantum of sentence is modified and substantive sentence awarded to the appellants is restricted to the periods already spent by them in custody. Sentence of fine and default clause, however, are maintained.

32. Appeal is disposed of in the terms aforesaid.

[Mahavir S. Chauhan]
Judge

April 08, 2015
adhikari