

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 10.03.2015

CRA No.950-DB of 2002

Harbhajan Singh & others

...Appellants

Versus

State of Punjab

...Respondent

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

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

Present: Mrs. Baljit Kaur Mann, Advocate &
Mr. Anmol Partap Singh, Advocate, for the appellants.

Ms. Manjri Nehru, Addl. AG, Punjab,
for the respondent.

HEMANT GUPTA, J.

The present appeal is preferred by Harbhajan Singh son of Ganga Singh, Dilbagh Singh & Rachhpal Singh, both sons of Harbhajan Singh and Manjinder Kaur @ Bholi daughter of Harbhajan Singh, against the judgment of conviction and order of sentence dated 15.11.2002 passed by the Additional Sessions Judge, Gurdaspur, whereby appellants namely Rachhpal Singh and Manjinder Kaur were convicted for the offences punishable under Sections 302 IPC for the murder of Mohinder Singh and Baljit Singh respectively, whereas Dilbagh Singh and Harbhajan Singh were convicted for an offence punishable under Section 302 IPC read with 34 IPC. Apart from that, appellant Manjinder Kaur @ Bholi was convicted for an offence punishable under Section 307 IPC, whereas other appellants were convicted

under Section 307 IPC read with Section 34 IPC. All the appellants were sentenced to undergo imprisonment as mentioned in the order of sentence.

The prosecution case was set in motion on the statement of Amrik Singh son of Charan Singh, made to ASI Sukhwinder Singh, P.S. Ghanie-Ke-Banger on 07.07.1995. In his statement (Ex.PA), Amrik Singh stated that he had two sons and one daughter namely Sukhwinder Kaur @ Sukhi. His daughter Sukhwinder Kaur was married to Avtar Singh son of Harbhajan Singh resident of Village Kothey about 1½ years ago. He stated that Rachhpal Singh @ Fauji and Dilbagh Singh, brothers of his son-in-law; Bholi, sister of his son-in-law as well as Harjinder Kaur and Harbhajan Singh, mother and father of his son-in-law, used to beat his daughter. His son-in-law Avtar Singh, who was employed in Health Department and his daughter Sukhwinder Kaur started residing at Batala in a rented house. They were not allowing his daughter to enter into their house at Village Kothey. On 07.07.1995, he alongwith his cousin Anup Singh son of Kartar Singh, his younger brother namely Mohinder Singh and his son Baljit Singh went to Village Kothey in order to prevail upon Harbhajan Singh and his family that they should not harass his daughter and if she had any fault then tell them. At about 6.00 PM, when they reached in front of the house of Harbhajan Singh, he alongwith his brother Mohinder Singh tried to enter in the house from the outer door, whereas his son Baljit Singh and his cousin Anup Singh were still outside. On seeing him and his brother Mohinder Singh entering in the house, Rachhpal Singh @ Fauji brought a double barrel rifle from inside the house and pointed it towards his brother Mohinder Singh. Due to fear, he ran away, whereas his brother Mohinder Singh tried to enter in a room of their house to save himself. He further stated that when Mohinder Singh has just reached near the door of the room, then Harbhajan Singh and his son Dilbagh Singh,

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who were present in the house, caught his brother from his hair and made him to fall on the ground. While his brother was lying on the ground, Rachhpal Singh fired a shot with his rifle, which hit his brother Mohinder Singh, as a result of which he died at the spot. Thereafter, Rachhpal Singh armed with rifle came out of the house towards them. His son Baljit Singh tried to run away on his motor-cycle, which was parked nearby. However, Harjinder Kaur, mother of Rachhpal Singh stood in front of the motor-cycle, whereas Bholi snatched the rifle from her brother Rachhpal Singh and fired a shot at his son Baljit Singh, which hit on the right side of his neck. When his son fell down on the ground, Bholi fired another shot, which hit him on the back side of his left shoulder as a result of which he died at the spot. Due to fear, he took shelter near a wall, whereas his brother Anup Singh remained near the dead body of his son Baljit Singh. On seeing him near the wall, Bholi fired two shots from the rifle towards Anup Singh, which did not hit him. Thereafter, he ran away and concealed himself in the house of Jagtar Singh, who is neighbourer of Harbhajan Singh. After some time, his cousin Anup Singh came to the house of Jagtar Singh and informed him that all the persons ran away from the spot alongwith rifle. He further stated that after leaving Anup Singh near the dead body, when he was going to police station to lodge a report, ASI Sukhwinder Singh met him at Aliwal Bye-pass and got recorded his statement. On the basis of such statement, ruqa (Ex.PA/1) was sent to the Police Station for registration of an FIR around 9.30 PM. On receipt of ruqa, FIR (Ex.PA/2) was recorded by SI Bakshish Singh.

Thereafter, ASI Sukhwinder Singh alongwith police party went to the spot i.e. Kothey, where dead bodies of Mohinder Singh and Baljit Singh were lying. After completing the inquest proceedings (Ex.PE), he sent the dead bodies of Mohinder Singh and Baljit Singh for post mortem

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examination. He also lifted blood stained earth and three empty cartridges i.e. two empty cartridges of 12 bore rifle from near the dead body of Baljit Singh and one empty cartridge from near the dead body of Mohinder Singh, and converted into separate sealed parcels. He also taken into possession one motor cycle make Suraj vide memo Ex.PL and prepared rough site plan Ex.PM.

The post-mortem examination on the dead bodies of Mohinder Singh and Baljit Singh was conducted by PW-2 Dr. Harbhajan Singh, Medical Officer, PHC, Bhulla on 08.07.1995 at about 12.30 PM and 2.00 PM respectively. He found the following injuries on the dead body of Mohinder Singh:

“1. Lacerated penetrating wound 10cm x 8cm size involving right cheek, right half of both upper and lower jaw and behind the angle of right mandible, part of the neck. Blackening was present. Margins were inverted and bleeding was present.

On dissection of the injuries.

On dissection, the muscle corresponding to injury No.1 were lacerated, molar and premolar teeth of upper and lower jaw of right half were missing from the sookets and right mandible near the angle was fractured. Bone of the cheek was also broken (i.e. fractured), Nerves, blood vessles and muscles off the part of neck involved were also lacerated. There was present blood in the mouth and in the area corresponding to injury No.1. On dissection pellets fifteen in numbers were recovered from the injury site and put into jaw to seal the contents.

2. Swelling 5 cm x 4 cm size involving the right shoulder with red abrasion. 2 x 1 cm size in its centre.

On dissection, the underlying right clavicle bone was fractured.

Stomach was healthy and contained about 100 CC of semi digested food mixed with gastric juices.”

Similarly, on the dead body of Baljit Singh, he found the following injuries:

“1. Lacerated penetrating wound 6 x 2½ cm size on the upper half of right side of neck, 1cm down the angle of mandible. Margins were inverted. Bleeding was present. Blackening was present.

On dissection, Bullet after entering injury No.1 lacerated the neck muscle and blood vessels corresponding to injury No.1 and crossed through the brain matter after fracturing the base of the skull. There was present laceration of the brain matter from base upto the level of left occipito parietallobes of the brain matter. The cranial nerve and blood vessels of the brain matter were damages. Pellets were embedded in the brain matter along the rouse of the injury. The pellets were taken out alongwith other parts of the bullets lying embedded in the occipital parietal lobe of the brain corresponding occipital parietal bone of the left side of the skull was fractured. Cranial cavity was full of blood.

2. A lacerated wound of 5 x 3 cm size on the posterior lateral aspect of the left shoulder joint. The wound was muscle deep upto 1 cm depth. Bleeding was present. Blackening was present. Margin inverted.

On dissection:

On dissection of the left shoulder joint on its back, there was present no fracture of the inderlying joint. Bleeding was present. Three pellets embedded in the wound were recovered.

3. A reddish abrasion 2 x ½ cm size in the middle of the forehead.”

In his opinion, the cause of death in the case of Mohinder Singh and Baljit Singh was hemorrhage and shock as a result of firearm injury and that all the injuries were ante mortem in nature and were sufficient to cause death in the ordinary course of nature.

On 16.07.1995, ASI Sukhwinder Singh arrested Dilbagh Singh, Harbhajan Singh and Harjinder Kaur. After interrogating Harbhajan Singh, he interrogated Dilbagh Singh, who suffered a disclosure statement Ex.PN to the effect that he had kept concealed 12 bore double barrel rifle duly loaded with two live cartridges and two live cartridges of the same underneath the earth in the kotha meant for his tubewell. Pursuant to such disclosure statement, he got recovered the same. The rifle and the cartridges were taken into possession vide memo Ex.PO. However, Rachhpal Singh and Bholi surrendered in the Court on 24.07.1995. On the basis of disclosure statement suffered by Rachhpal Singh during interrogation, arms license of his gun was taken into possession vide memo Ex.PS. Thereafter, on completion of necessary formalities, report under Section 173 Cr.P.C. was filed against the present appellants as well as Harjinder Kaur.

To prove its case, apart from examining PW-2 Dr. Harbhajan Singh; PW-7 ASI Sukhwinder Singh and PW-12 Inspector Harbans Singh, who deposed with regard to the investigations carried out by them as well as other witnesses of formal nature, the prosecution examined PW-1 Amrik Singh, brother of the deceased Mohinder Singh and father of the deceased Baljit Singh, who reiterated his earlier version i.e. basis of FIR.

All the incriminating circumstances appearing in the prosecution evidence were put to the accused in their statements recorded under Section 313 Cr.P.C. In his statement accused Rachhpal Singh stated that one day, Baljit Singh alongwith his friends Prithipal Singh and Balaka Singh had altercation with him at Batala on the ground that he was hinderance in giving of share to Avtar Singh, his brother. There was a exchange of abuses there. On the day of occurrence i.e. 07.07.1995, at about 6.45 PM, when he was working in the fields in front of his house, Mohinder Singh; Baljit Singh;

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Balaka Singh; Bir Singh, Sewadar of Gurdwara Tahil Sahib, Bhangoli Kalan as well as Prithipal Singh and Dilbagh Singh, both sons of Anup Singh had come on two motor-cycles and on one scooter towards him. He further stated that Balaka Singh was having a rifle, whereas others were holding iron rods and hockeys. They raised lalkara to kill him. Upon this, he ran and entered into his house. All the persons followed him and entered inside his house. His mother Harjinder Kaur tried to save him, but she was given injuries. Then he entered in his room and shut the door, but these persons broken the door and Balaka Singh armed with rifle fired at him and tried to kill him. He also fired from his doorstep to scare away the assailants with his licensed rifle as a result of which four of the assailants ran away, but two of them namely Mohinder Singh and Baljit Singh were hit at the spot. He stated that if he had not fired, both the deceased and their companions would have killed him and his mother. However, all other accused pleaded false implication and supported the stand taken by Rachppal Singh. In defence, they also examined DW-1 Dr. Rana Verma, DW-1 Harbhajan Singh, DW-3 Surinder Mohan Luthra, DW-4 Komal Sharma, DW-5 Inspector Ajaib Singh and DW-6 Hazara Singh.

After considering the entire evidence on record, the learned trial Court acquitted Harjinder Kaur by extending benefit of doubt, whereas convicted and sentenced the present appellants, as mentioned above.

Before this Court, learned counsel for the appellants has vehemently argued that PW-1 Amrik Singh is not the eye-witness, but he has been introduced by the prosecution later on. It is contended that the presence of Amrik Singh at the spot is doubtful inasmuch as there is no reason for Amrik Singh to visit the house of his daughter's in-laws, when his daughter and her husband were residing separately at Batala. The manner that out of a

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group of four persons, two persons were on motor-cycle and two were on feet, creates the entire prosecution as doubtful. It is the Amrik Singh and others, as per prosecution story, who were aggressors having come to the house of the accused. Still further, Bholi, a young unmarried daughter of Harbhajan Singh has been falsely implicated, as it is unbelievable that a young girl would snatch a double barrel rifle from her brother and attacked the alleged introducers, more so, when Rachhpal Singh was in Army and well trained in handling of fire arm. It is further argued that the Police is said to have recovered three empties from the place of occurrence, but who has loaded the live cartridges in the double barrel rifle has not come on record. Therefore, the prosecution has not completed the chain of events, which may point an accusing finger towards Bholi.

Similarly, Harbhajan Singh was aged about more than 75 years at the time of alleged occurrence and Dilbagh Singh has been implicated so as to involve all the family members. The role attributed to both of them is of pulling of the deceased Mohinder Singh with his hairs. The story propounded does not seem to be a plausible one. The recovery of rifle is attributed on the disclosure statement of Dilbagh Singh though it is a licensed weapon of Rachhpal Singh. Such recovery of a licensed rifle of Rachhpal Singh on the basis of disclosure statement of Dilbagh Singh is a false implication with a view to implicate all the near relations of the family.

It is also argued that the learned trial Court had drawn adverse inference on the basis of an application filed on behalf of Harjinder Kaur and others through Avtar Singh, the son-in-law of Amrik Singh. The averments made in the application are to implicate the accused even though such application was without any authority on the part of the accused. An application Ex.PU filed on behalf of Rachhpal Singh is though presented by

the same lawyer, who presented an application Ex.PV on behalf of Avtar Singh, but the averments made in such application cannot be pressed into service as a proof against the appellants. Still further, the stand of Rachhpal Singh in his statement under Section 313 Cr.P.C., was that one that Balaka Singh armed with rifle fired at him, therefore, to scare away the assailants, he fired with his licensed rifle. The defence has cross-examined the prosecution witnesses in respect of role of the armed assailants; therefore, the mere denial of incident in such a manner will not lead to the inference that the prosecution has proved the charges against the appellants.

Learned counsel for the appellants also referred to the statement of DW-1 Dr. Rana Verma in support of the argument that, in fact, the complainant party was the aggressors. It was argued that Harjinder Kaur, wife of Harbhajan Singh was inflicted multiple injuries on 07.07.1995.

On the other hand, the prosecution has referred to the findings recorded by the learned trial Court to support the order of conviction and judgment of sentence.

We have heard learned counsel for the parties and with their assistance gone through the records carefully. We do not find any merit in the argument raise that the presence of PW-1 Amrik Singh was doubtful at the time of occurrence. Amrik Singh's daughter was married to Avtar Singh son of Harbhajan Singh and brother of Dilbagh Singh and Rachhpal Singh. Though his son-in-law Avtar Singh and daughter have started residing separately at Batala, but the fact remains that they were excluded from enjoyment of the joint property was a cause of concern with PW-1 Amrik Singh. It is normal desire of the parent of a girl that his daughter should be comfortable and be equally participants of the holdings of the family. There is nothing unusual in the act of Amrik Singh to contact Harbhajan Singh,

father of his son-in-law Avtar Singh. The statement Ex.PA made by PW-1 Amrik Singh to ASI Sukhwinder Singh was recorded before 9.30 PM, when the ruqa was sent to the police station for registration of an FIR. The occurrence had taken place at about 6.00 PM. Therefore, the presence of Amrik Singh at the spot cannot be doubted for the reason that his statement (Ex.PA), the basis of FIR, has been recorded soon after the occurrence without giving any time to the complainants to maneuver falsehood. Consequently, we find that Amrik Singh is a truthful and reliable witness. In a lengthy cross-examination, no doubt could be created about his presence at the spot. Therefore, we have no reason not to rely upon his statement.

In respect of the argument that Manjinder Kaur @ Bholi, a young unmarried daughter of Harbhajan Singh, has been falsely implicated, we find that PW-1 Amrik Singh in his statement categorically deposed that after one shot by Rachppal Singh from his double barrel rifle, Manjinder Kaur @ Bholi snatched the said rifle from his brother and fired two shots on Baljit Singh. May be the prosecution has not led any evidence, as to who uploaded cartridges in the said double barrel rifle, but the fact remains that firing of one cartridge from the other barrel is attributed to Bholi is deposed by PW-1 Amrik Singh. Amrik Singh has deposed that the second cartridge hit the deceased Baljit Singh on the left side of the neck. As per PW-2, the injury on the neck is the cause of death. PW-2 Dr. Harbhajan Singh on dissection found that bullet after entering injury No.1 lacerated the neck muscle and blood vessels corresponding to injury No.1 and crossed through the brain matter after fracturing the base of the skull. The cranial nerve and blood vessels of the brain matter were damages. Pellets were embedded in the brain matter along the rouse of the injury. As opined by PW-2 Dr. Harbhajan Singh, the second injury is a lacerated wound of 5 x 3 cm size on the posterior

lateral aspect of the left shoulder joint, said to be caused by the third bullet cartridge fired from the double barrel rifle. Even if, the benefit of doubt of firing of 3rd cartridge from the double barrel rifle, is extended to Bholi, the fact remains that it is the second cartridge fired from the double barrel rifle of Rachhpal Singh, which is the cause of death of Baljit Singh. In view of the eye-witness account given by PW-1 Amrik Singh, corroborated by the medical evidence as deposed by PW-2 Dr. Harbhajan Singh, we find no error in the findings recorded by the trial Court in respect of role of Bholi in causing death of Baljit Singh son of Amrik Singh.

Similarly, the role of Rachhpal Singh has been clearly explained by Amrik Singh, while appearing in the witness-box as PW-1. He has deposed that Rachhpal Singh fired a shot from his double barrel rifle, which hit deceased Mohinder Singh. It is the said injury, which caused the death of Mohinder Singh, as deposed by PW-2 Dr. Harbhajan Singh. As per the statement of PW-2 Dr. Harbhajan Singh on dissection, pellets fifteen in numbers were recovered from the injury site, which corroborates the prosecution story of firing from double barrel rifle by Rachhpal Singh. The defence taken by Rachhpal Singh in his statement recorded under Section 313 Cr.P.C. is also to the effect that he fired on Balaka Singh, when he came to his house with a fire arm. The fact that Rachhpal Singh has admitted that he fired at Balaka Singh corroborates the prosecution story. Therefore, we do not find any error in the findings recorded by the learned trial Court convicting Rachhpal Singh for causing death of Mohinder Singh.

The argument on behalf of the appellants that Harjinder Kaur suffered injuries in the incident, which happened on 07.07.1995 is not tenable.

She was not examined immediately after the occurrence on 07.07.1995, but was examined on 21.07.1995 i.e. almost after two weeks by DW-1 Dr. Rana

Verma. All the six injuries found by the Medical Board consisting of Dr. Meena Mahajan, Dr. Neelima Sharad and DW-1 Dr. Rana Verma, on the person of Harjinder Kaur were simple in nature and probable duration of the injuries was within one to three weeks. In his cross-examination, DW-1 Dr. Rana Verma admitted that injury Nos.3 to 6 can be caused by a friendly hand and that possibility of injury Nos.1 & 2 being suffered by fall on a hard surface cannot be ruled out. The fact that Harjinder Kaur has not been medically examined soon after the occurrence shows that the injuries were not caused in the manner alleged. Though there is some cross-examination on the prosecution witnesses regarding such injuries, but there is no positive evidence of suffering injuries by Harjinder Kaur. Still further, there is no cross-examination to PW-7 ASI Sukhwinder Singh, the Investigating Officer, in respect of injuries suffered by Harjinder Kaur or that the police has failed to investigate the cause of injuries suffered by Harjinder Kaur. Therefore, the statement of DW-1 Dr. Rana Verma cannot be taken as an evidence of Harjinder Kaur having suffered injuries in the incident on 07.07.1995.

However, we find that the prosecution has failed to prove the charges leveled against Harbhajan Singh and Dilbagh Singh beyond any reasonable doubt. The only role placed by both of them is of pulling of Mohinder Singh with hairs. Not only there is a general tendency to implicate as many as relations as are possible, but also there is no evidence to corroborate their presence and the role attributed at the time of occurrence. The prosecution has not examined Anup Singh, said to be accompanying PW-1 Amrik Singh at the time of occurrence. Therefore, only corroboration of the role of Dilbagh Singh is of recovery of licensed double barrel rifle of Rachhpal Singh, on his disclosure statement. Since Rachhpal Singh and Dilbagh Singh are real brothers, Dilbagh Singh has been attributed recovery

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of licensed double barrel rifle so as to cast the net of prosecution wide there being any lack of substantial evidence in respect of involvement of Harbhajan Singh and Dilbagh Singh. In the absence of any tangible convincing evidence against appellants Harbhajan Singh and Dilbagh Singh, we deem it appropriate to extend benefit of doubt to both of them.

In view of the above discussion, while dismissing the appeal qua appellants Rachhpal Singh and Manjinder Kaur @ Bholi, we acquit appellants Harbhajan Singh and Dilbagh Singh of the charges leveled against them by granting benefit of doubt. They shall be set at liberty forthwith, if not required in any other case.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

10.03.2015
Vimal