

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-902-SB-2003

Date of decision: 28.01.2015

Kamaljit Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. J.S. Virk, Advocate
for the appellant.

Mr. Luvinder Sofat, Deputy Advocate General,
Punjab.

Jitendra Chauhan, J.

The present appeal has been filed against the judgment and order of sentence dated 03.04.2003, whereby the appellant was ordered to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year under Section 304 Part II of the Indian Penal Code (for short 'IPC').

The brief facts which are necessary for adjudication of the case are taken from Para No. 1 to 6 of the judgment,

which is reproduced as under:-

“That on 07.06.1995 Inspector Mehnga Singh of Police Station, Dera Baba Nanak was going on a patrol and Gurpal Singh complainant met him on the turn of a road of village Mehta where his statement Ex.PA was recorded. Gurpal Singh has stated in his statement that he resides in village Shampur and his elder brother is employed in Police Department. That his father runs a Karyana shop at village Mehta. That his father Bachan Singh and accused Kamaljit Singh alias Kamba doing the business of wheat. They purchased wheat of Baba Singh of village Rampura. Accused Kamaljit Singh obtained the sale price from the Commission Agent. They purchased other wheat also. After settling the accounts, Rs.4,500/- of Bachan Singh were due towards Kamaljit Singh. They purchased the wheat of Shangara Singh of village Mehta and Bachan Singh was to pay the price after obtaining the money from Kamaljit Singh, accused. On 07.06.1995, at about 6.15 p.m., when Gurpal Singh complainant was present at their shop, accused Kamaljit Singh and accused Bawa Singh come there. Ajit Singh and Shangara Singh of village Mehta were also called. All of them started settling accounts of wheat.

Accused Kamaljit Singh assaulted Bachan Singh and beaten him and the occurrence took place in front of the shop. Accused Bawa Singh asked the persons not to come forward to save Bachan Singh. Bachan Singh was saved by Gurpal Singh and Ajit Singh. Feeling humiliated, Bachan Singh started for the Police Station in order to lodge a report on a bicycle. Accused Kamaljit Singh also followed him on bicycle. Gurpal Singh, complainant, locked the shop and followed them. When Bachan Singh covered a distance of about 40 yards from Mehta, accused Kamaljit Singh made Bachan Singh to fall from his bicycle and it was about 6.30 P.M. Kamaljit Singh again started giving fist and kick blows to Bachan Singh. Kulwant Singh and Joginder Singh came there, who raised a lalkara and accused Kamaljit Singh ran away. Bachan Singh died at the spot. After recording the statement, Inspector Mehnga Singh made his endorsement Ex.PA/1 and sent the same to the police station on its basis, the case registered vide FIR Ex.PA/2. He went at the spot and prepared inquest report Ex.PB. He sent the dead body for post mortem examination along with his request Ex.PD. A shoe and a cycle lying at the spot were taken into police possession vide recovery memo

*Ex.PL. He prepared the rough site plan
Ex.PM. On completion of the investigation,
accused Kamaljit Singh was challaned and
accused Bawa Singh was found innocent and
his name was shown in column No.2 of the
report submitted under Section 173 Cr.P.C.”*

On commitment, the accused was charge sheeted under Section 302 read with Section 34 IPC to which the accused/appellant pleaded not guilty and claimed trial.

In support of the case of the prosecution, it examined PW-1 Gurpal Singh; PW-2 Kulwant Singh; PW-3 Satish Chander; PW-4 Dr. Hardeep Singh; PW-5 Inspector Mehnga Singh; PW-6 Amarjit Singh; PW-7 C. Nirmal Singh and PW-8 MHC Sohan Lal.

PW-1 Gurpal Singh and PW-2 Kulwant Singh were the eye witnesses.

PW-3 Satish Chander-Draftsman, who prepared the scaled site plan Ex.PC.

PW-4 Dr. Hardeep Singh conducted post mortem examination on the dead body of Bachan Singh.

PW-5 Inspector Mehnga Singh, the Investigating Officer, proved the whole investigation carried out by him.

PW-6 Dr. Amarjit Singh proved the Histopathological Report Ex.PJ and stated that changes in the heart were natural.

PW-7 C. Nirmal Singh filed his affidavit Ex.PK stating therein that he took a parcel to the Pathological Department, Amritsar.

PW-8 MHC Sohan Lal filed his affidavit Ex.PL and stating therein that he handed over the case property to C. Nirmal Singh for sending it to the respective Departments.

The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication. He, however, did not lead any evidence in his defence.

After hearing the learned counsel for the parties and after going through the evidence on record, the trial Court convicted and sentenced the accused-appellant, as stated hereinbefore.

Feeling aggrieved, against the judgment of conviction and order of sentence passed by the trial Court, the instant appeal was filed by the accused-appellant, which was admitted on 31.07.2003.

The challenge laid by the learned counsel for the appellant is on the ground that no offence under Section 304 Part

II IPC is made out and the sentence awarded by the learned trial Court is on the higher side. Keeping in view the Histopathological Report Ex.PJ, wherein PW-6 Dr. Amarjit Singh has categorically recorded that the changes in the heart of the deceased were natural, whereas the FIR was registered at 6.00 P.M. on 08.06.1995. The delay in lodging of the First Information Report is not explained. The occurrence took place on 07.06.1995 at 06.15 P.M. The presence of PW-1 Gurpal Singh and PW-2 Kulwant Singh at the time and place of occurrence is highly improbable. As per the postmortem report, there was no external injury on the person of deceased was noticed, whereas, the internal injury i.e. fracture of ribs could be the result of accident. He further contended that even if the prosecution story is believed, it is not proved that the accused-appellant had an intention to cause death of the deceased and at the most it can be levelled against him that the appellant intentionally gave injury on the person of the deceased.

On the other hand the learned State counsel states that injuries being on the chest of the deceased, clearly go to prove that the appellant had the knowledge and intention that the injury would result in death.

I have heard learned counsel for the appellant and

learned counsel for the State and carefully gone through the record.

So far as the point of presence of eye witness at the spot, it is well established on record that they were present at the spot, at the time of occurrence and they saw the occurrence. There is no delay in lodging the report.

The occurrence took place on 07.06.1995 at 06.15 P.M. The FIR was recorded at 6.00 P.M. on 08.06.1995. PW-1 Gurpal Singh and PW-2 Kulwant Singh have been mentioned in the FIR. These two witnesses fully supported the case of the prosecution. There being no delay in the FIR, the argument that these two witnesses were not present on the spot cannot be accepted. PW-4 Dr. Hardeep Singh conducted the post-mortem examination on the dead body of deceased Bachan Singh recorded that the cause of death in this case was shock and haemorrhage as a result of specific injury and asphyxia. The doctor has opined that possibility of heart attack cannot be ruled out. According to PW-1 Gurpal Singh and PW-2 Kulwant Singh, accused-appellant gave kick and fist blows to deceased Bachan Singh. Though there were no external visible injury on the body of the deceased, but the fracture of ribs No.11 and 12 on the left side of back bony cage was noticed in the postmortem

report. The doctor opined that these injuries could be possible by kick and fist blows. Thus the medical evidence corroborates the ocular version of PW-1 Gural Singh and PW-2 Kulwant Singh on the matériel point of giving injuries by accused-appellant Kamaljit Singh to deceased Bachan Singh.

It is well settled law that to invoke exception into Section 300 the following four requirements must be satisfied, namely:-

- (i) It was a sudden fight;
- (ii) There was no pre meditation;
- (iii) The act was done in a heat of passion and
- (iv) the assailant had not taken any undue advantage or acted in a cruel manner.

As per the prosecution version, it was a sudden fight. The accused-appellant and the deceased had business dealing with each other. They had cordial relations with each other. When the verbal altercation turned into scuffle, they were in the process of the settling of the accounts of pertaining to wheat sale. Deceased, Bachan Singh was more than 60 years while accused Kamaljit Singh was 45 years. Kamaljit Singh in a heat of anger first opened the attack and started giving fist and kick blows to the deceased. When deceased proceeded towards

police station to lodge report, accused-appellant followed him and again gave kick blows at a distance of 40 yards. Deceased, Bachan Singh died on the spot. From the testimonies of eye witnesses, it is proved that it was a sudden fight, there was no pre-meditation assault, and that the act was done in a heat of passion. Though the accused-appellant denied the incident, but it is proved on record that the deceased and the appellant had an altercation. In this case, the accused-appellant being young man assaulted the deceased-Bachan Singh, who was 60 years old and had fragile health. When PW-1 Gurpal Singh and PW-2 Kulwant Singh tried to come nearby, the accused-appellant ran away from the spot. The accused-appellant did not have any weapon or instrument. Neither he took any undue advantage nor acted in a cruel manner. As suggested, the injury of fracture of ribs could not be the result of the fall from bicycle as the deceased was lying in the fields of Ex-Sarpanch Amrik Singh as is shown in rough site plan Ex.PM. Such like injuries may be received if someone give kicks and blows by force. PW-1 Gurpal Singh, complainant in his examination has stated that on 07.06.1995 at about 6.15 P.M., he was present at their shop. Accused Kamaljit Singh and Bawa Singh came there. Ajit Singh and Shingara Singh of village Mehta were also called. All of them started

settling accounts of wheat. Accused Kamaljit Singh assaulted Bachan Singh and beaten him and the occurrence took place in from the shop. Accused Bawa Singh asked the persons not to come forward to save Bachan Singh. Bachan Singh was saved by him and Ajit Singh. He also proved the entire prosecution version. PW-2 Kulwant Singh in his examination has stated that Bachan Singh and accused Kamaljit Singh were dealing in wheat. The dispute took place and he came to know about it in his village. He and Joginder Singh came towards village Mehta and saw accused Kamaljit Singh giving kick and fist blows to Bachan Singh. When they raised lalkara, accused Kamaljit Singh ran away. From the evidence, it is apparent that the incident happened in the manner, as alleged by the eye-witness, which corroborates the medical evidence. Thus, this Court concur with the observation of the trial Court that the offence falls under Section 304, Part II of the IPC. The contention of the counsel for the appellant that the offence would fall under Section 325 IPC is repelled.

Coming to the point of quantum of punishment, no leniency could be shown to the accused-appellant as the trial Court has already awarded just and reasonable sentence the accused-appellant. The fact that the accused-appellant had

chased the deceased, after first quarrel upto 40 yards and gave repeated injuries to the deceased within short span of time, it is not a case where the accused deserves any leniency. The sentence awarded is proportionate to the gravity of the offence.

Keeping in view the above facts and circumstances, the conviction and sentence are maintained. Appeal of accused-appellant Kamaljit Singh is dismissed on merits.

The accused-appellant Kamaljit Singh was ordered to be released on bail vide order dated 17.01.2005 of this Court. His bonds are cancelled. He be taken into custody to undergo the remaining part of the sentence.

28.01.2015

Naveen

(JITENDRA CHAUHAN)
JUDGE

Whether referred to the reporters. Yes.