

CRA-S-1048-SB of 2003

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

CRA-S-1048-SB of 2003
Date of decision: 25.03.2015

Shamsher Singh @ Laddi

....Appellant

Versus

State of Punjab

....Respondent

CRA-S-1179-SB of 2003

Munish Kumar @ Mani

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the 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: - Mr. Yogesh Goel, Advocate, for the appellant
in CRA-S-1048-SB of 2003.
Mr. Ramandeep Singh, Advocate, for
Mr. R.S. Bajaj, Advocate, for the appellant
in CRA-S-1179-SB of 2003.
Mr. K.S. Sidhu, DAG, Punjab.

PARAMJEET SINGH, J.

This order shall dispose of CRA-S-1048-SB of 2003 titled
'Shamsher Singh v. State of Punjab' and CRA-S-1179-SB of 2003 titled
'Munish Kumar v. State of Punjab' as challenge in both the appeals is to
the judgment of conviction and order of sentence dated 08.04.2003

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passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana, whereby appellants have been convicted under Sections 307/34 IPC. Shamsheer Singh has been sentenced to undergo rigorous imprisonment for seven years and fine Rs.1000/- under Section 307 IPC, in default of payment of fine to further undergo rigorous imprisonment for three months. Munish Kumar has been sentenced to undergo rigorous imprisonment for seven years and fine Rs.1000/- under Section 307/34 IPC, in default of payment of fine to further undergo rigorous imprisonment for three months.

The factual matrix on which the prosecution version is founded is to the effect that complainant Sandeep Singh made a statement to the police on 22.03.2000 that on 21.03.2000, he along with his friend Jagtar Singh had gone to pay obeisance at Shiv Temple, Doraha on scooter bearing No.PB-55-7902. After paying obeisance, they were going towards Bazar. Complainant Sandeep Singh was driving the scooter whereas Jagtar Singh was pillion rider. When they reached just ahead of the temple at about 7.45 p.m. both the appellant/convicts waylaid them. Munish Kumar raised lalkara that complainant party should not be spared upon which Shamsheer Singh gave a gandasi blow on the left side of head of Jagtar Singh with an intention to kill him. Jagtar Singh and complainant raised alarm which attracted Gursharan Singh and in the meantime, appellants ran away from the spot along with gandasi. Injured was taken to Sidhu Hospital,

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Doraha, from where he was referred to DMC & Hospital, Ludhiana. Motive for the occurrence is alleged to be previous altercation between the complainant party and the appellants which had taken place on the day of Holi, however, compromise was effected with the intervention of the respectables. After the completion of investigation, challan against the appellants was presented in the Court and charges under Sections 307/34 IPC were framed to which the appellants pleaded not guilty and claimed trial.

To prove its case, prosecution examined complainant Sandeep Singh as PW-1, Jagtar Singh as PW-2, Gursharan Singh as PW-3, Dr. Ravinder Pal Singh, Registrar, DMC & Hospital as PW-4, Dr. Manoj Kumar, Registrar, DMC & Hospital as PW-5, C. Raghbir Singh as PW-6, ASI Jaswant Singh as PW-7, Satnam Singh as PW-8, Dr. Ashwani Kumar as PW-9 and Ashwani Kumar Draftsman as PW-10 and thereafter prosecution closed its evidence.

Statements of the appellant/convicts were recorded under Section 313 of the Code of Criminal Procedure. The accused denied all the incriminating circumstances appearing against him in prosecution evidence and claimed to be innocent. In defence Lali was examined as DW-1, an employee of the flour mill, who deposed that on 21.03.2000 no occurrence took place in front of the said flour mill.

The trial Court after conclusion of trial convicted and sentenced the appellants as aforesaid. Hence, this appeal.

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It is expedient to have a bird's eye view of the relevant prosecution witnesses hereunder: -

- (i) PW-1 Sandeep Singh has deposed that On 21.03.2000 he and Jagtar Singh after paying obeisance in the temple were going to the bazar. He was driving the scooter and Jagtar Singh was pillion rider. Appellants stopped their scooter. Munish Kumar raised lalkara that they should not be spared today. Shamsher Singh gave a gandasi blow to Jagtar Singh which hit him on the head above the left ear. On their raising hue and cry Gursharan Singh came there and witnessed the occurrence. Both the appellants ran away from the spot with their gandasi on a scooter. Jagtar Singh was taken to Sidhu Hospital, Doraha wherefrom he was referred to DMC and Hospital, Ludhiana, where he was medically examined. In his cross-examination, Sandeep Singh has stated that there is one chowk at a distance of 3 or 4 karms from the spot. No police official was present at the chowk. The police post is also in the chowk. He did not visit the police post before going to hospital. He has further stated that he did not visit the police on 23.03.2000. He visited the police station but could not tell the date. He further stated that in his statement he did not state the parentage and address of Munish but only stated that Munish is resident of Doraha Mandi. He, however, clarified that there are so many Munish in Doraha Mandi. No identification of the accused was done in his presence after the arrest of the appellants.
- (ii) Jagtar Singh PW-2 has deposed that after visiting the temple he along with Sandeep Singh were going to

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bazar on the scooter. Sandeep Singh was driving the scooter and he was pillion rider. Appellants stopped them. Munish raised lalkara that they should not be spared. Shamsher Singh alias Laddi gave a gandasi blow on the left side of his head with his left hand. On raising their hue and cry, Gursharan Singh came there and appellants ran away from the spot. Sandeep Singh and Gursharan Singh brought him to Civil Hospital, Doraha, wherefrom he was referred to DMC and Hospital, Ludhiana where he was medically examined.

- (iii) Gursharan Singh PW-3 has stated that he knew both the appellants. He has also deposed in terms of PW-1 Sandeep Singh and PW-2 Jagtar Singh.
- (iv) Dr. Ravinder Pal Singh, Registrar, DMC and Hospital, Ludhiana, stepped into witness box as PW-4. He has deposed that Jagtar Singh son of Bachittar Singh was brought to the hospital on 21.03.2000 by Sandeep Singh. He medico-legally examined injured Jagtar Singh. He has deposed that the injury over the left ear of the injured is possible with the gandasi shown in the Court.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the appellants vehemently contended that trial Court has erred in law in convicting appellants although prosecution has miserably failed to prove the case against the appellants. The statements made by the prosecution witnesses are not reliable. Learned counsel further contended that there was a delay of 16 hours in lodging

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the FIR, which is not properly explained and the same is fatal to the prosecution case. This delay was fully utilized by the prosecution for framing a false case against the appellants. The appellants have been falsely implicated in the present case. Prosecution has failed to prove the motive for causing injuries, which makes the prosecution case highly doubtful. The FIR was registered on the basis of statement of Sandeep Singh, who had not received any injury.

On the other hand, learned counsel for the State has vehemently contended that case stands fully proved. Learned counsel for the appellants has failed to point out any discrepancy in the impugned judgment. Learned counsel for the State has supported the judgment of the trial Court and submitted that present appeals deserve to be dismissed.

I have considered the contentions raised by learned counsel for the parties.

So far as appellant – Munish Kumar is concerned, except lalkara no role has been attributed to him. Allegation of lalkara is a very weak type of evidence.

This Court in the case of ***State of Punjab v. Tehal Singh and another, (1992) 102 PLR 190*** has held as under: -

“Tehal Singh accused is attributed only Lalkara. In terms of the observations made in Fatta v. Emperor, A.I.R. 1931 Lah. 63, Garib Singh and Ors. v. State of Punjab, A.I.R. 1973 S.C. 460, Amar Singh v. State of Haryana, A.I.R. 1973 S.C. 2221

and Jainul Hague v. State of Bihar, A.I.R. 1974 S.C. 45, it was difficult, well nigh impossible for the learned trial court to convict him of the constructive liability for murder on the basis of Lalkara allegedly raised by him. The relevant observations read: --

“Allegations of participation by giving lalkara are sometimes made only to show additional overt acts so as to take in at least five persons and make out the ingredients of an offence under Section 149 IPC against all of them. If the appellant had shouted Lalkara, it would be difficult to sustain the conviction. The evidence of exhortation is, in the nature of things a weal piece of evidence. There is quite often tendency to implicate some person, in addition to the actual assailant by attributing to that person an exhortation to the assailant to assault the victim. Unless the evidence in this respect be clear, cogent and reliable no conviction for abetment can be recorded against the person alleged to have exhorted the actual assailant. The evidence adduced at the trial in respect of the part alleged to have been played by the appellant is contributory and far from convincing. The appeal was accepted and the conviction was set aside. When the prosecution are unable to prove satisfactorily the intention or knowledge of an accused person they generally ascribe to him certain words which he is supposed to have spoken in order to supply the missing proof. This method is more often adopted in cases in which a certain person is sought to be punished for the constructive liability as regards the

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commission of crime of violence. It is highly unlikely that the accused would be so foolish as to proclaim his intentions before committing the attack as by doing so he was sure to be thwarted by the person present.”

Perusal of above observations in ***Tehal Singh's*** case (supra) shows that this type of evidence is led only to implicate other persons with the main accused. This fact is further clear from the fact that there is delay of 16 hours in lodging the FIR which is fully utilized by the prosecution for framing a false case against Munish Kumar. Complainant in his statement before the Court has stated that he did not state the parentage and address of Munish but only stated that Munish is resident of Doraha Mandi. He further stated that there are so many Munish in Doraha Mandi. No identification of the accused was done in his presence after the arrest of the appellants, which makes the case of prosecution weak. Thus, prosecution has failed to prove the case against Munish Kumar beyond reasonable doubt.

In view of above, appeal of Munish Kumar (CRA-S-1179-SB of 2003) is allowed and he is acquitted of the charge. It goes without saying that the amount of fine, if any, deposited by appellant Munish Kumar shall be refunded to him. Bail bonds and surety bonds of Munish Kumar stand discharged.

So far as appellant-Shamsher Singh (CRA-S-1048-SB of 2003) is concerned, it is fully proved that he has given gandasi blow on

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the left side of head of Jagtar Singh with an intention to kill Jagtar Singh, which is fully corroborated by the medical evidence. No argument worth consideration has been raised. So far as delay in lodging the FIR is concerned, same stands fully explained. The occurrence took place at 7.00 p.m. on 21.03.2000. Injured reached at hospital at 8.45 p.m. on the same date. Doctor has informed the police immediately. Motive for causing injury has also been explained, as there was altercation between the complainant party and the accused party on the day of Holi. Therefore, he has been rightly convicted and sentenced by the trial Court. Hence, appeal of Shamsher Singh is dismissed. However, taking a lenient view sentence of Shamsher Singh is reduced to five years instead of seven years. Appellant Shamsher Singh is stated to be on bail. His bail bonds stand cancelled. He is directed to surrender forthwith before the CJM/trial Court, Ludhiana, who will send him to judicial custody to serve the remaining sentence. In case appellant Shamsher Singh does not surrender, the CJM/trial Court, Ludhiana shall issue his warrants of arrest. He shall be released on completion of five years of sentence, if not required in any other case.

March 25, 2015
R.S.

(Paramjeet Singh)
Judge