

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-894-DB of 2002 (O&M)

Date of Decision : January 30, 2015

Palwinder Singh

..... Appellant

Vs.

State of Punjab

..... Respondent

**CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

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: Ms. Aditi Girdhar, Legal Aid counsel for the appellant.

Mr. S.P.S.Sidhu, Advocate, for the appellant.

Mr. Amit Chaudhary, Addl. A.G.Punjab.

RAJ RAHUL GARG, J

Present appeal is directed against the judgment and order dated 11.10.2002 passed by Sh. Chanan Singh, the then learned Additional Sessions Judge, Ferozepur whereby accused appellant namely Palwinder Singh has been convicted and sentenced to undergo imprisonment for life and to pay a fine of ₹ 2,000/- in default of payment of fine, to further undergo RI for six months while acquitting the co-accused namely Sahib Singh alias Ladi, Balkar Singh and Jaswinder Singh alias Bhola Singh.

Put shortly, the case of the prosecution which is based on the statement (Ex.P-11) of the complainant, Jagtar Singh recorded on 24.10.1998 at about 10 a.m. is that he (complainant) had been residing in a house constructed in his fields at village Chhian Pari and carried on his business as an agriculturist. On 23.10.1998 in the evening, complainant's son Jagjit Singh went to his fields situated across the canal to irrigate 'barseen' crop but did not reach back home uptill about 8 p.m. Upon this,

complainant, Jagtar Singh went to see his son Jagjit Singh in the fields and noticed that his son Jagjit Singh came to the canal along the passage leading to his house. In the meanwhile, co-accused Bhola and Balkar Singh also reached there on their International Tractor and an altercation took place with his son Jagjit Singh on which he also reached the spot. Thereafter, co-accused Balkar Singh raised a lalkara that said Jagjit Singh be caught hold of and be taught a lesson for protesting for nothing on which, co-accused Balkar Singh and Bhola (Jaswinder Singh) caught hold of Jagjit Singh while accused appellant Palwinder Singh inflicted a 'GANDASI' blow which hit Jagjit Singh in his head. Co-accused Ladi (Sahib Singh) also gave a 'DANG' blow which hit in the back of said Jagjit Singh. Then, complainant raised an alaram 'na maro-na maro' which attracted Mukhtiar Singh son of Narain Singh and his son Kashmir Singh to the spot whereupon all the accused fled away along with their weapons on the tractor. Thereafter, complainant and Amrik Singh son of Mukhtiar Singh took his injured son Jagjit Singh to Civil Hospital Makhu where he was medically attended by Dr. Sanjeet Gupta (PW-2) the motive for commission of the crime was stated to be that the accused persons had plugged the butt between the fields of the complainant and the accused and encroached upon the aforesaid area on which complainant lodged a protest with the accused. Nursing a grudge against the complainant, all the accused with premeditated mind came to the spot and caused the present occurrence.

The matter was reported to the police of Police Station Makhu upon which Tarlok Singh ASI reached civil hospital Makhu and tried to record the statement of injured Jagjit Singh but the concerned doctor declared him unfit to make a statement. Then, he recorded the statement

(Ex.P11) of the complainant Jagtar Singh on 24.10.1998 at about 10:00 A.M. on the basis of which formal FIR (Ex.P-16) was recorded against all the accused persons on the same day originally for offence punishable under Section 324, 323 read with Section 34 IPC. However, condition of injured Jagjit Singh being serious, he was referred to Gurunanak Dev Hospital, Amritsar, where he was operated upon on 26.10.1998 but subsequently died on 27.10.1998 at about 3:30 P.M. leading into conversion of offence from Section 324 to Section 302 IPC and the machinery of law was set in motion.

The investigation was conducted by ASI Tarlok Singh who seized the dead body of deceased Jagjit Singh and after filing an inquest report (Ex.P10) got an autopsy conducted thereon from doctor Gurmanjit Rai (PW-4) who furnished his post-mortem report (Ex.P8) as well as pictorial diagram (Ex.P8/A) showing the seats of injury and opined that the cause of death was “compression of brain (vital organ) as a result of head injury which was sufficient to cause death in the ordinary course of nature”. The statements of witnesses were recorded, all the accused were arrested, and on the basis of the disclosure statement the recovery of 'GANDASI', the weapon of offence from the accused-appellant Palwinder Singh was also effected which was taken into police possession vide recovery memo Ex.P19. After completion of necessary investigation challan was presented.

A prima-facie case for the offence under Section 302 read with Section 34 IPC was found out against all the accused including the present appellant and they were accordingly charge sheeted to which they did not plead guilty but claimed trial.

After taking prosecution evidence, all the incriminating circumstances appearing in the prosecution evidence were put to accused-

appellant for eliciting their explanation as provided under Section 313 Cr.P.C. to which they pleaded innocence and alleged false implication.

However, since this appeal pertains to Palwinder-accused, therefore, it would be relevant to mention herein the defence taken by accused-Palwinder. Appellant stated that he resides in his fields which is at a distance of about 1 km from village. On 23.10.1998 at about 8:00 P.M. he was coming by a tractor after leaving truck belonging to his relatives, at Mallanwala. When he reached on the pavement of old canal minor, Jagjit Singh son of Jagtar armed with 'KIRPAN', Mukhtiar Singh son of Narain Singh armed with 'TAKUA', his sons Kashmir Singh, Harnam Singh and Amrik Singh armed with 'GANDASI', 'DANG' and 'DBBL' gun respectively. Jagtar Singh son of Fauja Singh, resident of Chhinan Pari came there. He raised lalkara that he be taught a lesson for damaging the common dol (ridge). Amrik Singh fired in the air. He came out from the tractor. Harnam Singh gave a 'DANG' blow which hit his left hand. Kashmir Singh gave a 'GANDASI' blow which hit his right leg. Mukhtiar Singh gave a 'TAKUA' blow to him which hit his head. When Jagjit Singh tried to give 'KIRPAN' blow to him, he took out a small 'GANDASI' which he used to keep in the truck and hit Jagjit Singh on his head in his self defence. Jagjit Singh fell down. He ran away to his house and informed the occurrence to his brothers Harjinder Singh and Baj Singh son of Sunder Singh who happened to be there. As per accused Palwinder, he was taken to hospital at Zira where he was medico legally examined by the doctor. He however pleaded that he is innocent and further that none of his co-accused were present there.

We have heard Ms. Aditi Girdhar, Legal Aid counsel assisted

by Sh. S.P.S.Sidhu, Advocate for the appellant and Sh. Amit Chaudhary, Addl. A.G.Punjab and have gone through the file with their assistance.

In this case, appellant Palwinder had taken a plea of self defence in his statement recorded under Section 313 Cr.P.C. While taking self defence, he has admitted the presence of Jagdish Singh as well his father Jagtar Singh besides Amrik Singh, Harnam Singh, Kashmir Singh and Mukhtiar Singh. He attributed injuries suffered by him to them, deposing that when Jagtar Singh tried to give 'KIRPAN' blow to him, he took out a small 'GANDASI' which he used to keep in the tractor and hit Jagtar Singh on his head, in his self defence. The plea of self defence has to be proved by the appellant but in this regard there is not even an iota of evidence on the file. Had Harnaam Singh gave 'DANG' blow on the left hand of accused Palwinder; Kashmir Singh gave 'GANDASI' blow on his right leg, Mukhtiar Singh gave a 'TAKUA' blow on his head. Appellant himself stated that he was taken to hospital at Zira where he was medico legally examined by the doctor but there is no medical evidence available on record in this regard. What to speak of leading of evidence oral as well medical but no suggestion regarding giving of 'DANG', 'GANDASI' or 'TAKUA' blow by Harnaam Singh, Kashmir Singh and Mukhtiar Singh was given to complainant Jagtar Singh (PW-5) as well the eye witness Mukhtiar Singh, who appeared as PW-6. Even counsel for the appellant did not advance any argument on the point of self defence. Arguments of learned counsel for the appellant are only on the point that in fact no such occurrence had taken place and further that on account of enmity, accused have been falsely implicated in this case. It was also argued that while acquitting the remaining accused, learned trial Court did not believe the

prosecution story but only on the basis of admission of appellant-Palwinder in the statement recorded under Section 313 Cr.P.C, he has been convicted, which is wrong and not sustainable. In support of her contention, she has cited judgment titled as **State of Haryana Vs. Rajbir, 2011 (1) RCR (Criminal), 758**. In this judgment, law under Section 313 Cr.P.C summed up as follows:-

“(1). Purpose of the Court for recording a statement of the accused under Section 313 Cr.P.C. is to acquaint him with all incriminating circumstances, which had emerged against him, so that he is not condemned unheard-But the statement recorded under Section 313 Cr.P.C. being without oath, cannot be made the sole basis for conviction of the accused, as it is not a substantive piece of evidence.

(2). Statement of the accused recorded under Section 313 Cr.P.C is not a substantive piece of evidence or a substantive for the evidence of prosecution-2002 (4) RCR (Crl.) 842 relied.

(3). Statement of accused recorded under Section 313 (Section 342 in old Cr.P.C) is to be taken as a whole and the Court cannot rely upon a part of the statement, which is incriminative in nature and exclude the exculpatory part of the statement-(1963) 65 PLR (SC) relied.

(4). If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under Section 313 Cr.P.C. cannot be made the sole basis of his conviction”-2005 (1) RCR (Criminal) 3 relied.”

The proposition expounded in the aforecited judgment is not disputed. In this very judgment, it was held that if the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the

inculpatory part of statement of accused under Section 313 cannot be made the sole basis of his conviction. In the present case so is not the position. In this case PW-5 and PW-6 categorically deposed against the appellant. Presence of PW-5 and PW-6 at the spot stand admitted by the appellant himself. It is a case in which there is an eye witness which is corroborated by medical evidence.

To the same effect is the authority cited as Mohan Singh Vs. Prem Singh and Another, 2002 (4) RCR (Criminal), 842. In fact in this very judgment, it has been held that statement of accused under Section 313 Cr.P.C can be relied in whole or in part. It may also be possible to rely on the inculpatory part of his statement if the exculpatory part is found to be false on the basis of the evidence led by the prosecution.

Another judgment cited is **Bhalinder Singh @ Raju Vs. State of Punjab, (1994) 1 SCC,726**. That was a murder case. Accused told the father of deceased that deceased might have gone somewhere and would shortly return to the house. Under those circumstances, it was held, assuming that such statement was given by the accused, it cannot be used against him.

The facts of aforecited judgment are not applicable to this case. That was a case of circumstantial evidence whereas the present case is based on eye witness account and even the situation as mentioned in that case is not the one as is in this case. As such, the above contention raised by counsel for the appellant is devoid of any force.

With the statements of Jagtar Singh-complainant (PW-5), Mukhtiar Singh, eye witness (PW-6) coupled with the medical evidence, prosecution case stands proved against the accused beyond reasonable

doubt. Jagtar Singh (PW-5) categorically stated that he is residing in the farm house. Accused also resides in the farm house. His land adjoins the land of accused. On 23.10.1998, he was present in his house but when uptill 8:00 P.M his son Jagjit Singh did not return, he went to electric motor side. He was present on the bank of the canal and saw Balkar Singh, Bhola Singh @ Jaswinder Singh, Palwinder Singh and Ladi @ Sahab coming on international tractor from the village side. Jagjit Singh was on the bank of canal and had taken a turn towards the farm house. Accused stopped their tractor and started quarreling with Jagjit Singh. On hearing raula, he had gone to the spot. PW-6 Mukhtiar Singh son of Narain and Kashmir Singh son of Mukhtiar Singh also reached there. On hearing raula, Balkar Singh raised a lalkara to catch hold of Jagjit Singh and to teach him a lesson for causing protest unnecessarily. Balkar Singh and Bhola Singh caught hold of Jagjit Singh, Palwinder Singh accused-appellant gave a 'GANDASI' blow from its sharp side to Jagjit Singh. Ladi gave a 'DANG' blow on the back of Jagjit. They raised raula '*na maro na maro*' and, thereafter, accused had fled away from the spot along with their weapons. Mukhtiar Singh (PW-6) fully corroborated the statement of PW-5, clearly deposing that Palwinder Singh-appellant gave 'GANDASI' blow from its sharp side on the head of Jagjit Singh. Sahib Singh gave 'DANG' blow on the back of Jagjit Singh whereas Balkar Singh and Bhola Singh caught hold of Jagjit Singh. Presence of Jagtar Singh as well Mukhtiar Singh is admitted by accused-appellant in his statement under Section 313 Cr.P.C. Even while giving suggestion to PW-5, it stands admitted on the part of accused that appellant-Palwinder was present at the spot at the relevant time. To Jagtar Singh (PW-5) suggestion was given to the effect that Palwinder alone was present at the

time of occurrence and further that he gave injuries to Jagjit Singh, in self defence. Suggestion regarding registration of criminal case against the complainant party by the accused was also admitted by Jagtar Singh (PW-5). He admitted that a criminal case has been registered against him, Amrik Singh, Harnam Singh, Kashmir Singh and Mukhtiar Singh on the statement of Palwinder Singh-accused for causing injuries to him. Thus from this evidence on the file, it is proved that the occurrence in question has taken place. Accused-appellant caused injuries to Jagjit Singh and there was previous enmity between the parties. The plea of self defence as taken by the appellant is not probable nor proved on the file. Enmity is doubled edged weapon. Criminal cases are already going on between the parties. The motive to commit the crime was alleged as dispute between the parties on the point of ploughing of common dol (ridge) and also using the land of complainant party by the accused in order to go to their land. Dr. Sanjeet Gupta (PW-2) proved the MLR of Jagjit Singh by deposing about the injuries on his person Dr. Vikas Arora (PW-11) who conducted the CT Scan examination of Jagdish Singh observed as follows:-

“ There was a fracture of the left squamous temporal bone extending superiorly. There was a large well defined hyper dense epidural Haematoma involving the left front parietal region. The hametoma was seen to have mass effect which was seen in the form of ipeilateral ventricular compression, white matter buckling and midline shift. Haematoma measures about 5 cm (craniocaudal) X 10.08 cm (AP) X 3.1 cm (Trans) ”

Dr. Sanjeet Gupta (PW-2), gave X-ray report Ex.P4, as per CT scan, to the effect that injury number No.1 is dangerous to life. Dr.

Gurmanjit Pal (PW-4) proved the post mortem report of Jagjit Singh as Ex.P8. He deposed that all the injuries were ante-mortem in nature. He further gave the cause of death as compression of brain (vital organ) as a result of head injury which was sufficient to cause death in the ordinary course of nature. Tirlok Singh (PW-7), Investigating Officer, proved the recovery of 'GANDASI' from the possession of appellant. He deposed that on interrogation of appellant-Palwinder, he made disclosure statement Ex.P16 that he has kept concealed 'GANDASI' under the heap of paddy straw on kacha path about which he alone knew and could get the same recovered and, thereafter, in pursuance with the same, he led the police party to the appointed place and got recovered 'GANDASI' Ex.P18 which was taken into police possession vide recovery memo Ex.P19. Thus the recovery of weapon of offence at the instance of accused-appellant also connect him with this crime. As a result, with the above discussed medical evidence and recovery of 'GANDASI' on the file, it stands proved beyond reasonable doubt that Jagjit Singh had died on account of injury inflicted on his head with 'GANDASI' by using its sharp side, by the appellant. As such the case under Section 302 IPC stands proved against the appellant.

However, on the other side, it was argued by learned counsel for the appellant that PW-5 and PW-6 being relation witnesses deposed falsely against the appellant. Mukhtiar Singh (PW-6) is the uncle of Jagtar Singh. In fact, they were not present at the spot. Jagtar Singh (PW-5) categorically stated that he did not try to intervene when the alleged occurrence was going on. This act of Jagtar Singh as well of Mukhtiar Singh is unnatural. The close relation like father would always try to save his son even by putting himself in trouble. This argument of learned counsel

for the appellant is not sustainable. On the basis of supposition, case cannot be decided. In this case, appellant admitted his presence at the spot. When he stated in his statement under Section 313 Cr.P.C as well when he gave suggestion to PW-5 that he inflicted injuries on the person of Jagjit Singh in self defence. Not only this, in his statement under Section 313 Cr.P.C, he had narrated the incident in his own way. He averred that Jagjit Singh son of Jagtar armed with 'KIRPAN', Mukhtiar Singh son of Narain armed with 'TAKUA', Kashmir Singh, Harnam Singh and Amrik Singh armed with 'GANDASI', 'DANG' and DBBL gun respectively and Jagtar Singh son of Fauja Singh came there, when he reached pavement of old canal minor Jagtar Singh gave Lalkara to teach him a lesson for damaging the common dol (ridge) whereas Amrik Singh fired in the air. He then came down from the tractor. Harnam Singh gave a 'DANG' blow on his left hand whereas Kashmir Singh gave a 'GANDASI' blow on his right leg and Mukhtiar Singh gave a 'TAKUA' blow on his head. When Jagjit Singh tried to give 'KIRPAN' blow to him only then he took out a small 'GANDASI' which he used to keep in his tractor and gave injuries to Jagjit Singh on his head, in self defence. Thus with this statement, the presence of Jagjit Singh, Jagtar Singh, Mukhtiar Singh, Kashmir Singh and Amrik Singh stand admitted at the spot.

The next argument raised by learned counsel for the appellant was that, as per Dr. Sanjeet Gupta (PW-2), deceased was medico legally examined on the day of occurrence itself at about 11:00 P.M. in the Civil Hospital Makhu. Civil Hospital is quite near to the police Station, yet report regarding occurrence was made to the police, the following day at about 10:00 A.M. Thus there was delay of 14 hours in lodging the FIR. There is

no explanation coming forth to account for the delay in lodging the FIR. Though, the prosecution has tried to explain the delay on the ground that Jagjit Singh remained unfit to give statement yet it is not plausible so far as recording of FIR is concerned. Complainant Jagtar Singh and Mukhtiar Singh alleged eye witnesses could well get the FIR registered in this case but they did not do that. As such possibility of false implication, clouded version and thought out stories cannot be ruled out. As such complainant was having enough time to rope in accused in this false case.

As per prosecution case, occurrence took place at about 8:00 P.M. Dr. Sanjeet Gupta (PW-2), medico legally examined Jagjit Singh at about 11:00 P.M. Police moved an application Ex.P5 before the doctor at about 8:00 A.M. on 24.10.1998 on which Dr. Sanjeet Gupta (PW-2) reported that Jagjit Singh was unfit to make statement, thereafter, police sought opinion of the doctor by moving application Ex.P6 at 12:50 P.M, whereupon doctor reported vide Ex.P6/A that Jagjit Singh was unfit to make the statement. It is quite natural conduct of relations of the deceased to take injured to hospital in the first instance. So has been done in this case. When injured reaches the hospital, doctor immediately sends Ruqa to the police station then it becomes the duty of the police to record the statement of injured or eye witnesses. In this case, Jagjit Singh suffered head injury which was dangerous to his life. Dr. Bholla Singh (PW-3) deposed that Jagjit Singh was admitted in Government Hospital College and GND Hospital, Amritsar as an emergency case referred from PHC Makhu on 25.10.1998. He was operated upon on 26.10.1998 at 12:10 P.M. by doctor Lalan Mishra and doctor H.S.Sidhu, residents in surgery. He was called to supervise and assist them. He further proved the bed head ticket of Jagjit

Singh as Ex.P7 and stated that Jagjit Singh expired on 27.10.1998 at 2:30 P.M. Under these circumstances, when Jagjit Singh was reported as unfit to make the statement, the FIR of this case was recorded by the police on the statement of Jagtar Singh father of the deceased at 10:10 A.M on 24.10.1998. As such by no stretch of imagination, it can be said that lodging of FIR was delayed or that prosecution has failed to explain the delay in lodging the FIR. In fact there was no such delay which could be said as giving room to the prosecution to give a coloured version, thought out stories after much consultation. Thus this contention of learned counsel for the appellant is not sustainable.

It was next argued by learned counsel for the appellant that Jagtar Singh (PW-5) and Mukhtiar Singh (PW-6) have materially improved their statements on the point of motive, recorded by the police as Ex.P11 and Ex.D1 respectively. In statement Ex.P11, PW-5 stated that as the accused ploughed and amalgamated by encroaching upon the common dol regarding which he lodged the protest, as such by nursing a grudge on that account accused caused injuries to Jagjit Singh. However, when PW-5 appeared as witness he changed his stand by deposing that as accused used to pass through their fields so his son Jagjit Singh used to forbid them from doing so and lodged protest. Therefore, this occurrence had taken place. Likewise Mukhtiar Singh (PW-6) in his statement Ex.D1 did not depose that Balkar Singh accused raised Lalkara to teach a lesson to Jagjit Singh but when he appeared in the witness box he had stated about raising of Lalkara by Mukhtiar Singh. Under these circumstances, since both the witnesses have improved their statements, therefore, their testimonies cannot be made the basis of conviction.

Above contention of learned counsel for the appellant is not sustainable as the statement of complainant Jagtar Singh Ex.P11 on the point of motive stands corroborated by the statement of accused recorded under Section 313 Cr.P.C itself. Even otherwise there is no material difference in the statement of PW-5 recorded as Ex.P11 and the one made in the Court. The dispute between the parties could be regarding amalgamation of common dol (ridge) and also regarding passing through the land of complainant by the accused are interconnected. It is established on the file that there was enmity between the parties as I have already discussed above. Even on the point of aforementioned improvement, PW-5 was not confronted. Likewise, the alleged improvement made by Mukhtiar Singh (PW-6), is not fatal for the case of the prosecution as appellant himself admitted the presence of Mukhtiar Singh at the spot as already discussed above.

It was next contended by learned counsel for the appellant that the prosecution case becomes doubtful as ASI Tirlok Singh (PW-7) deposed that he did not find any blood etc. on the spot. He also deposed that there was no electric motor (tubewell) belonging to the complainant or anybody else at or near the place of occurrence. As such prosecution case is proved to be false and the appellant is entitled to acquittal.

Appellant himself admitted the place of occurrence in his statement under Section 313 Cr.P.C. The medical evidence as discussed above clearly shows that deceased suffered compression of brain (vital organ) as a result of head injury which was sufficient to cause death in the ordinary course of nature. Even the appellant deposed in his statement under Section 313 Cr.P.C that when Jagjit Singh tried to give him 'KIRPAN' blow

he took a small 'GANDASI' which he used to keep in the tractor and hit Jagjit Singh on his head, in his self defence. With this evidence on the file, if the investigation is defective, no benefit can be given to the appellant. This Court can also not lose sight of the fact that the accused appellant was known to the complainant and even when the appellant himself admitted the presence of witnesses as well the deceased at the spot, the above argument of counsel for the appellant carries no force.

For the aforesaid reason, finding no merit in this appeal, maintaining the judgment of conviction and order of sentence against the appellant, this appeal is dismissed. If the appellant is on bail, his bail bonds, shall stand cancelled and he be taken in custody for serving the remaining period of sentence. The concerned Chief Judicial Magistrate, shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Criminal Procedure Code, and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The District & Sessions Judge, Ferozepur, shall ensure that the directions are complied with, within the time frame, and the compliance report is submitted immediately thereafter.

The Registry shall keep track of the submission of compliance reports, and put up the papers whether the reports are received or not, within the time frame, immediately after the expiry thereof.

(ASHUTOSH MOHUNTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

January 30, 2015

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