

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

Criminal Appeal No.D-882-DB of 2002

Date of Decision : July 06, 2015

Gurbachan Singh @ Toti and another

.....Appellants

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. P.S. Ahluwalia, Advocate
for the appellants.

Mr. S.S. Dhaliwal, Additional Advocate General, Punjab.

Mr. Gurcharan Singh, Advocate
for the complainant.

T.P.S. MANN, J.

The appellants, namely, Gurbachan Singh @ Toti and Thana Singh @ Chharra were tried for committing an offence punishable under Section 302 IPC, whereas their brother Bhajan Singh was tried under Section 302 read with Section 34 IPC on the allegations that on 30.8.2000 at about 6.00 p.m. and in furtherance of common intention, Gurbachan Singh @ Toti and Thana Singh @ Chharra intentionally committed the murder of Jagsir Singh @ Samri. Vide judgment and order dated 23.11.2002, learned Additional Sessions Judge, Moga acquitted accused Bhajan Singh of the charge against him. However, appellant Gurbachan Singh @ Toti was convicted under Section 302 IPC, while appellant Thana Singh @ Chharra was convicted under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment

for one year. The period of detention, if any, already undergone by the two appellants was ordered to be set off under Section 428 Cr.P.C. against the substantive sentence of imprisonment awarded to them.

Aggrieved of their conviction and sentences, appellants Gurbachan Singh @ Toti and Thana Singh @ Chharra filed the present appeal wherein they prayed for setting aside the impugned judgment of conviction and order of sentence and for their acquittal of the charges against them. At the same time, complainant Gurdeep Singh filed Criminal Revision No.598 of 2003 in order to challenge the acquittal of accused Bhajan Singh of the charge against him. The said revision stands admitted and ordered to be heard with the aforementioned appeal. Hence, both the appeal and the revision are being disposed of by a common judgment.

The case of the prosecution, in brief, is that on 30.8.2000, complainant Gurdeep Singh got recorded FIR Ex.PF at Police Station, Mehna that he had one son, namely, Jagsir Singh @ Samri, deceased in the case, and five daughters. All of them were married. On 30.8.2000 at about 6.00 p.m., he, alongwith his son Jagsir Singh @ Samri, was returning to their house from the fields. When they reached in front of old mosque in the village, appellant Gurbachan Singh @ Toti armed with handle of hand pump, appellant Thana Singh @ Chharra armed with an iron rod and their brother Bhajan Singh, who was empty handed came from the opposite side. On reaching near the complainant and his deceased son, accused Bhajan Singh raised a *lalkara* that Jagsir Singh @ Samri be caught hold of and taught a lesson for having illicit relations with Chhinder Kaur wife of Gurbachan Singh @ Toti.

Upon this, Gurbachan Singh @ Toti gave two blows with the handle of the hand pump, hitting the deceased on his head. The deceased fell down. While he lay fallen, Thana Singh @ Chharra gave an iron rod blow on the backside of his right ear. The complainant and his son Jagsir Singh @ Samri raised an alarm, which attracted Sarabjit Kaur wife of Jagsir Singh @ Samri to the spot. She had also seen the entire occurrence. Jagsir Singh @ Samri succumbed to his injuries at the spot. All the assailants ran away from the spot while carrying their weapons and telling the complainant that his son had been taught a lesson for having illicit relations with Chhinder Kaur. According to the complainant, all the accused had suspicion that his son Jagsir Singh @ Samri was having illicit relations with Chhinder Kaur. Accordingly, the complainant, after leaving his daughter-in-law Sarabjit Kaur at the spot to look after the dead body, went to Police Station Mehna where he made statement. On its basis, FIR No.78 dated 30.8.2000 under Sections 302/34 IPC was registered at Police Station Mehna at 7.00 p.m., which was concluded at 8.00 p.m.

During investigation of the case, SI Satnam Singh went to the spot and after inspection, lifted and took into possession the blood stained earth. He prepared inquest on the dead body of Jagsir Singh @ Samri and rough site plan of the place of occurrence. He also recorded the statement Ex.PG of Sarabjit Kaur, besides other formal witnesses, namely, Ajaib Singh and ASI Harjit Singh. Thereafter, the dead body was sent to Civil Hospital for post-mortem. On return to the Police Station, SI Satnam Singh deposited the case property with MHC Naginder Singh. On 31.8.2000, HC Ranjit Singh produced the post-

mortem report and belongings of the deceased, which were made into parcel and taken into possession. The parcel was also deposited with MHC Naginder Singh.

Further case of the prosecution is that on 3.9.2000, SI Satnam Singh and other members of police party raided the house of appellant Gurbachan Singh @ Toti and arrested him. On interrogation, Gurbachan Singh @ Toti suffered disclosure statement that he had kept concealed handle of hand pump under the dry fodder in his house about which only he knew and could get the same recovered. The disclosure statement Ex.PO was thumb-marked by Gurbachan Singh @ Toti and attested by Hakam Singh and ASI Harjit Singh. In pursuance of the same, Gurbachan Singh @ Toti got recovered the handle of hand pump Ex.P4 from the place already disclosed by him. The said handle was taken into possession after preparing its sketch. Rough site plan of the place of recovery Ex.PP/2 was also prepared. On 10.9.2000, SI Satnam Singh also arrested appellant Thana Singh @ Chharra and interrogated him. Said Thana Singh @ Chharra suffered disclosure statement that he had kept concealed iron rod under the dry fodder lying in the veranda of his house about which only he knew and could get the same recovered. The disclosure statement Ex.PQ was thumb-marked by Thana Singh @ Chharra and attested by HC Nirmal Singh and ASI Harjit Singh. Pursuant to the disclosure statement, Thana Singh @ Chharra got recovered iron rod Ex.P5 from the place already disclosed by him. The rod was taken into possession. Rough site plan of the place of recovery Ex.PR/2 was also prepared. SI Satnam Singh also got prepared scaled site plan Ex.PK of the spot from Gursewak

Singh, Draftsman. After completion of the investigation, challan was presented against the appellants. Upon commitment of the case, the appellants were charged under Section 302 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined complainant Gurdeep Singh as PW1. In his testimony Gurdeep Singh reiterated the prosecution case and deposed that accused Bhajan Singh was also present at the time of the occurrence and on his instigation, both the appellants had caused injuries to deceased Jagsir Singh @ Samri. As Bhajan Singh had not been challaned, the learned Additional Public Prosecutor moved an application under Section 319 Cr.P.C. for summoning Bhajan Singh as additional accused. Vide order dated 27.9.2001, learned trial Court allowed the aforementioned application and summoned Bhajan Singh as an accused. After securing his presence, the appellants and said Bhajan Singh were charged, as mentioned above, to which they pleaded not guilty and claimed trial.

During the trial which proceeded thereafter, the prosecution examined PW1 Dr. Rajesh Kumar Puri. He testified that on 31.8.2000, he conducted post-mortem on the dead body of Jagsir Singh @ Samri and found the following injuries :-

- "1. Lacerated wound 7 cm. X 1.5 cm. into bone deep on right side of back of head. 10 c.m. from mid-line. 5 cm. from posterior hair line extending to mastoid region obliquely placed. On dissection scalp tissue was lacerated and underlying bone was fractured and bony pieces was depressed into brain. On further dissection

brain membranes were lacerated and brain matter was lacerated with diffuse haemorrhage was present. Clotted blood was present in the wound. Clotted blood was also present in the right ear.

2. Lacerated wound 6 cm. X 1.5 cm. into bone deep on top of head on right side. 1.5 cm. from mid-line. 17 cm. from anterior hair line obliquely placed. On dissection scalp tissue was lacerated and underlying bone was healthy. Clotted blood was present in the wound.
3. Lacerated wound 3 cm. x 1 cm. into bone deep on top of head starting from mid-line going towards left side obliquely placed. 4.5 c.m. posterior to injury No.2. On dissection scalp tissue was lacerated and underlying bone was healthy. Clotted blood was present in the wound."

Dr. Rajesh Kumar Puri opined that the death was due to injuries to the brain, which were ante-mortem and sufficient to cause death in normal course of nature. In cross-examination, he testified that injury No.1 on the person of the deceased was fatal, whereas injuries No. 2 and 3 were simple. The possibility of injuries No.2 and 3 with one blow could not be ruled out. On re-examination by the Public Prosecutor, Dr. Rajesh Kumar Puri testified that he had not given positive finding in the post-mortem that injuries No.2 and 3 could cause any injury to the brain matter or not. However, in his opinion, he had mentioned that death was due to injury to the brain as a result of injuries. He further stated that he had not excluded injuries No.2 and 3,

which did not cause injury to the brain.

PW2 HC Ranjit Singh and PW3 Constable Mukhtiar Singh tendered in evidence their respective affidavits Ex.PD and Ex.PE.

PW4 Gurdeep Singh, the complainant and father of deceased Jagsir Singh @ Samri, reiterated the prosecution version and stated that on the exhortation of Bhajan Singh, Gurbachan Singh @ Toti had caused two blows with the handle of the hand pump on the head of Jagsir Singh @ Samri as a result of which he fell down. While Jagsir Singh @ Samri lay fallen Thana Singh @ Chharra gave iron rod blow near his right ear. He also deposed that his daughter-in-law Sarabjit Kaur was attracted to the spot, who witnessed the occurrence. All the accused, thereafter, ran away from the spot with their respective weapons.

Sarabjit Kaur, widow of Jagsir Singh @ Samri stepped into the witness box as PW5. She testified that about two years back at about 6.00 p.m. when she was going to throw cow-dung on the heap of manure and was present near the said heap, she saw her husband Jagsir Singh @ Samri lying on the ground. He had received injuries on his head. Her father-in-law Gurdeep Singh was present there. She further stated that Gurbachan Singh @ Toti, Thana Singh @ Chharra and Bhajan Singh accused were also present there. At that time Gurbachan Singh was armed with handle of hand pump, Thana Singh @ Chharra with an iron rod while Bhajan Singh was empty handed. They did not cause injuries to Jagsir Singh @ Samri in her presence. However, she had seen them while they were going back after causing

injuries. The accused, thereafter, ran away towards their house with their respective weapons. Her husband died at the spot due to the receipt of injuries. However, she could not say as to who had murdered her husband Jagsir Singh @ Samri.

As Sarabjit Kaur did not testify about the manner in which the occurrence had taken place, she was got declared hostile and was cross-examined by the Additional Public Prosecutor. In her said cross-examination, she denied making of any statement to the police. She also denied that when her husband Jagsir Singh @ Samri and father-in-law Gurdeep Singh had reached near the mosque, Bhajan Singh raised *lalkara* that Jagsir Singh @ Samri be caught hold of and taught a lesson for keeping illicit relations with Chhinder Kaur wife of Gurbachan Singh @ Toti followed by Gurbachan Singh @ Toti giving two blows with the handle of hand pump to Jagsir Singh @ Samri on his head and Thana Singh @ Chharra giving rod blow near his right ear on its backside.

PW6 HC Hardy Singh tendered in evidence his affidavit Ex.PH wherein he had stated that he had handed over the special report of the case to the Ilqa Magistrate and then to other officers in time.

PW7 HC Naginder Singh, who was another formal witness of the case tendered in evidence his affidavit Ex.PJ.

PW8 Gursewak Singh, Draftsman proved the scaled site plan Ex.PK prepared by him at the instance of complainant Gurdeep Singh.

PW9 Inspector Satnam Singh, who on the date of the occurrence stood posted as Sub Inspector, Police Station Mehna testified about the various steps taken by him during the investigation of the case.

The prosecution also tendered in evidence report Ex.PS of Forensic Science Laboratory.

When examined under Section 313 Cr.P.C., both the appellants pleaded false implication due to enmity. According to them, on the day of the occurrence, there was Akhara in connection with marriage of grand son of Jit Singh Gill of the village and a lady singer was performing there. A large number of people had gathered there. The deceased, in a drunken condition, came to the Akhara and quarrelled with certain outsiders and received injuries at their hands. After receiving injuries, he ran away from the spot and fell down on the pucca drain near the house of Zora Singh. The injuries were received by the deceased in the Akhara and the occurrence was witnessed by Naib Singh, Zora Singh and others, who had also come to attend the Akhara in the village which lasted upto 6.30 p.m.

Accused Bhajan Singh also pleaded innocence and false implication due to enmity and suspicion. According to him, he was not present at the spot. A false case had been registered against him and his brothers. He also stated that he was declared innocent by the police during investigation.

In support of their pleas, the appellants produced DW1 Naib Singh, who deposed in line with the stand taken by the two

appellants during their examination under Section 313 Cr.P.C. The appellants also produced DW2 Constable Swaran Singh, who proved copy of DDR No.21 dated 30.8.2000 as Ex.DB.

After going through the evidence available on the record and hearing learned counsel for the parties, the learned trial Court did not rely upon the testimony of PW5 Sarabjit Kaur and discarded the same as she testified before the trial Court that the appellants did not cause injuries to Jagsir Singh @ Samri in her presence. However, the testimony of PW4 Gurdeep Singh was found to be reliable and trustworthy and, accordingly, the two appellants were held guilty and sentenced, as mentioned above. At the same time accused Bhajan Singh was acquitted of the charge against him by giving him the benefit of doubt as he was shown to be empty handed at the time of the occurrence and the only role attributed to him was of exhorting his co-accused to catch hold of Jagsir Singh @ Samri and teach him a lesson for having illicit relations with Chhinder Kaur wife of Gurbachan Singh @ Toti. Further, he had been falsely implicated being the real brother of his co-accused, he was residing separately from main accused Gurbachan Singh @ Toti and had no motive to cause injuries to the deceased. Apart from the same, he was found innocent during the enquiry conducted by the DSP.

Learned counsel for the parties have been heard and the evidence brought on the record minutely scanned with their able assistance.

According to learned counsel for the appellants, the trial Court has already excluded the testimony of PW5 Sarabjit Kaur in

regard to the ocular account of the incident. Under these circumstances, the sole testimony of PW4 Gurdeep Singh, cannot be made the basis for maintaining the conviction of the appellants. It is further submitted that the conduct of PW4 Gurdeep Singh in not intervening in the occurrence to rescue his son or not being assaulted by the accused goes to show that he was not present at the time of the occurrence. Further, said Gurdeep Singh was unable to explain his presence at the spot at the time of the occurrence. It has come in the evidence that the passage via Takhanwadh road was shorter than the passage which Gurdeep Singh was shown to have followed on the day of the alleged occurrence for coming to his house from his fields and, thus, there was no occasion for him to adopt the passage which he was using on the day of the occurrence. It is further submitted that the alleged occurrence was shown to have taken place in a residential area and, that too, at 6.00 p.m. on 30.8.2000 when there would be no dearth of villagers moving around in the said area. Despite the same, no independent witness has been produced by the prosecution in support of its case and the testimony of Gudeep Singh was liable to be rejected being near relative of Jagsir Singh @ Samri. Further, it has come in the evidence that Surjit Singh, brother of Gurdeep Singh had come to the spot and, therefore, he could have been examined by the prosecution. Instead, said Surjit Singh was given up. It is further submitted that the trial Court has already disbelieved the presence of Bhajan Singh accused at the time of the occurrence. The case of Thana Singh @ Chharra appellant is also of false implication as he did not have any motive to commit the crime. Rather, the motive was attributed to

appellant Gurbachan Singh @ Toti with whose wife deceased Jagsir Singh @ Samri was said to be maintaining illicit relations. It is further submitted that Gurbachan Singh @ Toti was said to have given two blows with the handle of hand pump to Jagsir Singh @ Samri on his head yet PW1 Dr. Rajesh Kumar Puri did not rule out the possibility of injuries No.2 and 3 being caused with one blow.

Learned State counsel as well as learned counsel for the complainant have argued in unison that the prosecution had led sufficient evidence, which can be relied upon to sustain the conviction of the two appellants. Learned counsel for the complainant has also submitted that the trial Court was not justified in acquitting Bhajan Singh of the charge against him as it was he, who had raised a *lalkara* asking his two brothers to catch hold of Jagsir Singh @ Samri and teach him a lesson for having illicit relations with Chhinder Kaur, wife of appellant Gurbachan Singh @ Toti.

While lodging the FIR, PW4 Gurdeep Singh had stated that he alongwith his daughter-in-law Sarabjit Kaur was present at the place of occurrence and had seen the occurrence in which the two appellants had caused injuries to Jagsir Singh @ Samri on the exhortation of Bhajan Singh. At the trial of the case, Sarabjit Kaur, who stepped into the witness-box as PW5, did not support the prosecution case in its entirety, especially regarding the infliction of injuries. She only stated that when she was going to throw cow-dung on the heap of manure, she saw her husband Jagsir Singh @ Samri lying on the ground and there were injuries on his head. She

mentioned about the presence of her father-in-law Gurdeep Singh as also of the three accused, including the appellants at the spot. She even mentioned the weapons carried by the two appellants. However, according to her, the appellants did not cause injuries to her husband in her presence but she had seen them leaving from the place of occurrence. For the reason that PW5 Sarabjit Kaur did not support the prosecution case in its entirety, the trial Court held that she was not a truthful witness and no part of her statement could be used by either side. Accordingly, her testimony was discarded. Despite the same, the prosecution case cannot be thrown out as regards ocular account of the occurrence, which is duly supported by PW4 Gurdeep Singh, father of deceased Jagsir Singh @ Samri. He categorically deposed that about one year back at about 6.00 p.m., he, alongwith his son, was returning home after visiting the fields. His son was following him by 4/5 *karams*. The appellants, who were armed with handle of hand pump and iron rod and their co-accused Bhajan Singh, who was empty handed, came from the opposite side while he, alongwith his son Jagsir Singh @ Samri. had reached near the old mosque. On the exhortation of accused Bhajan Singh, both the appellants caused injuries to Jagsir Singh @ Samri. Even the reason as to why attack was launched upon Jagsir Singh @ Samri was narrated by PW4 Gurdeep Singh as according to him, his son Jagsir Singh @ Samri was suspected to be having illicit relations with Chhinder Kaur wife of appellant Gurbachan Singh @ Toti. Soon after the occurrence, PW4 Gurdeep Singh went to Police Station

Mehna which was situated at a distance of eight kilometers from the place of occurrence. His statement Ex.PF/1 was recorded by PW9 SI Satnam Singh which formed the basis of FIR Ex.PF, which came to be registered at 7.00 p.m. and concluded at 8.00 p.m. Even the special report sent through PW6 HC Hardy Singh was received by the Ilaqa Magistrate soon thereafter. The dead body of Jagsir Singh @ Samri was subjected to post-mortem by PW1 Dr. Rajesh Kumar Puri, who found as many as three injuries on the dead body. A perusal of post-mortem report Ex.PA reveals that the post-mortem was conducted on 31.8.2000 at 10.25 a.m. According to PW1 Dr. Rajesh Kumar Puri, probable time between injury and death was instantaneous and death and post-mortem, it was three to twenty four hours. Going by the nature of injuries as noticed in the post-mortem report Ex.PA, it is apparent that those had been caused by handle of a hand pump and iron rod. Merely because only injury No.1 was fatal whereas injuries No.2 and 3 were simple is not sufficient to hold that the author of injuries No.2 and 3 can be exonerated of the charge against him as said two injuries were also caused by the accused, who shared common intention with the other to commit the murder of Jagsir Singh @ Samri .

The statement made by PW4 Gurdeep Singh regarding the occurrence inspires confidence. His version cannot be ruled out of consideration only on the ground that he was near relative of Jagsir Singh @ Samri, being his father. The presence of PW4 Gurdeep Singh at the time of occurrence was natural and probable,

as he alongwith his son was returning home from their fields and when they had reached near the old mosque, they were confronted by the accused who came from opposite side. Though PW4 Gurdeep Singh admitted that passage to his fields via Takahnwadh road was shorter than the passage followed by him and his son on the date of the occurrence yet he explained about not using the Takhanwadh road by stating that he used to go through both the passages to the fields. Further, the appellants had grouse against Jagsir Singh @ Samri as they suspected him to be having illicit relations with Chhinder Kaur wife of appellant Gurbachan Singh @ Toti and for that reason Jagsir Singh @ Samri was made the target of attack. Thus, PW4 Gurdeep Singh not being assaulted by the appellants stands duly explained. Moreover, the two appellants were armed with weapons whereas no material has been brought on record by the defence that PW4 Gurdeep Singh or his son Jagsir Singh @ Samri were carrying any weapon with them and, thus, PW4 Gurdeep Singh could not have intervened to rescue his son from the assault.

The defence has also pleaded that Surjit Singh and others, brothers of PW4 Gurdeep Singh had reached the spot but none of them was produced as an eye-witness of the occurrence. In this regard, the attention of the Court had been drawn to the cross-examination of PW4 Gurdeep Singh. However, on closer scrutiny, it is made out that Surjit Singh and others had come to the spot when the police arrived there. Thus, Surjit Singh and others were neither present at the spot at the time of the occurrence nor they had

witnessed the same. It was only PW4 Gurdeep Singh, who alongwith his daughter Sarabjit Kaur had witnessed the occurrence. It is another thing that the testimony of Sarabjit Kaur has been discarded by the trial Court.

According to the defence only Gurbachan Singh @ Toti could be said to be having the grouse against Jagsir Singh @ Samri and, therefore, the involvement of Thana Singh @ Chharra in the occurrence doubtful. However, as Thanna Singh @ Chharra was also armed with an iron rod at the time of the occurrence and he being brother of appellant Gurbachan Singh @ Toti, had caused injuries to Jagsir Singh @ Samri, he is equally liable for committing the offence.

The testimony of DW1 Naib Singh that Jagsir Singh @ Samri, while in a drunken condition was present at the Akhara where a lady singer was singing and Jagsir Singh @ Samri was caused hockey stick blow on his head by one of the persons gathered there is of no benefit to the appellants as he admitted in his cross-examination that he had not told about the incident to anyone prior to that day, though he remained in the village from the day of incident till the investigation. According to him, police had been visiting the village during the investigation of the case. He admitted that the accused were from his brotherhood. He even went a step further by stating that the accused were his collaterals. Though in his examination-in-chief he stated that none of the accused was present at the Akhara yet during cross-examination he stated that all the

accused had not gone to see the programme, meaning thereby that some of the accused were present at the programme. Under these circumstances, this Court has no other option but to discard his testimony.

In view of the above, no case is made out for any interference in the impugned judgment to the extent of convicting and sentencing the two appellants. As regards the involvement of accused Bhajan Singh in the occurrence is concerned, suffice it to say that he was empty handed at the time of the occurrence. The only role attributed to him was of exhorting his co-accused to catch hold of the deceased and teach him a lesson for having illicit relations with Chhinder Kaur. He was also found innocent during the enquiry conducted by the Deputy Superintendent of Police and was, later on, summoned under Section 319 Cr.P.C. as additional accused. Under these circumstances, no case is made out for setting aside the impugned judgment to the extent of acquitting accused Bhajan Singh of the charge against him.

Resultantly, Criminal Appeal No.D-882-DB of 2002 and Criminal Revision No.598 of 2003 are without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

July 06, 2015
satish