

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

1. **Crl. Appeal S-1362-SB of 2003**
Date of Decision : May 17, 2016

Daya Singh @ Sukha and another

.....Appellants

VERSUS

State of Punjab

.....Respondent

2. **Crl. Appeal S-1962-SB of 2003**

Sukhwinder Singh @ Sukhdev Singh and another

.....Appellants

VERSUS

State of Punjab

.....Respondent

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

Present : Mr. Himmat Singh Bajwa, Advocate for
Mr. D.S.Pheruman, Advocate
for the appellants.

Mr. Vikram Bishnoi, Asstt. A.G., Punjab.

T.P.S. MANN, J. (Oral)

The appellants, namely, Daya Singh @ Sukha, Chanchal Singh, Sukhwinder Singh @ Sukhdev Singh and Nazar Singh were tried for committing the offences punishable under Sections 304/323/34 IPC. Vide judgment and order dated 1.7.2003, learned Additional Sessions Judge, Amritsar convicted

Sukhwinder Singh @ Sukhdev Singh under Section 304 IPC whereas Daya Singh @ Sukha, Chanchal Singh and Nazar Singh were convicted under Sections 304/34 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 10,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for six months. Daya Singh @ Sukha and Chanchal Singh accused were also convicted under Section 323 IPC whereas Sukhwinder Singh @ Sukhdev Singh and Nazar Singh were convicted under Sections 323/34 IPC and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 500/- each and in default of payment of fine, to undergo further rigorous imprisonment for one month. All the substantive sentences were ordered to run concurrently and the period of detention, if any, undergone by them during investigation and trial was ordered to be set off against the substantive sentences awarded to them.

Aggrieved of their conviction and sentences, Daya Singh @ Sukha and Chanchal Singh have filed Criminal Appeal S-1362-SB of 2003 whereas Sukhwinder Singh @ Sukhdev Singh and Nazar Singh have filed Criminal Appeal S-1962-SB of 2003. As both the appeals arise out of the same judgment of conviction and order of sentence passed by the trial Court, they are being disposed of by a common judgment.

Briefly stated, the prosecution case is that on

26.8.2001 at around 7.00 p.m. when all the appellants were standing in the street, the bi-cycle of Jit Singh @ Kali, cousin of complainant Satpal Singh hit them which resulted into exchange of hot words followed by the appellants grappling with and thrashing Jit Singh @ Kali. When complainant Satpal Singh raised an alarm that he be not attacked, Udham Singh, Sukhdev Singh and Puran Singh were attracted to the spot. Nazar Singh accused raised a *lalkara* that members of the complainant party be caught and taught a lesson for hitting the cycle against them. All the accused picked up bricks lying in the street. Sukhwinder Singh accused attacked Udham Singh with one such brick which hit him on his forehead. As a result he fell down. Chanchal Singh accused gave two blows with the brick on the person of Puran Singh hitting him on his head and left arm. Daya Singh gave a brick blow on the left portion of the head of Sukhdev Singh. All the accused then made good their escape from the spot. The injured were taken to Civil Hospital, Tarn Taran where Udham Singh succumbed to the injury.

The investigation was taken up by SI Sucha Singh before whom complainant Satpal Singh had made statement Ex.PC on the basis of which FIR No. 113 dated 26.8.2001 (Ex.PC/2), came to be recorded at Police Station Sadar Tarn Taran under Section 304/34 IPC. Inquest report Ex. PJ on the dead body of Udham Singh was prepared. The dead body was

then sent for post-mortem. Statements of the witnesses were recorded. Rough site-plan Ex. PM of the place of occurrence was prepared. Bricks Exs. P4 to P8 were taken into possession vide memo. Ex. PN. Blood stained earth was also recovered from the spot vide memo. Ex. PO. On conclusion of the investigation followed by the presentation of the final report and commitment of the case, all the accused were charged for the offences under Sections 304/323/34 IPC to which they pleaded not guilty and claimed trial.

At the trial of the case, the prosecution examined complainant Satpal Singh as PW-3, injured eye witnesses Puran Singh and Sukhdev Singh as PW-4 and PW-5, respectively, Rishi Ram, Draftsman who prepared the scaled site-plan of the place of occurrence, as PW-2, Dr. Inder Mohan Gupta, who conducted autopsy on the dead body of Udham Singh as PW-1, Dr. Ajit Singh, who had medico-legally examined the two injured as PW-6, HC Balbir Singh as PW-8, SI Sucha Singh as PW7 and SI Balbir Singh as PW-9.

When examined under Section 313 Cr.P.C., the appellants pleaded their innocence and false implication. According to them, some alteration took place between Kulwinder Singh son of Nazar Singh accused and Jit Singh. Both of them were using filthy language against each other. Udham Singh went upstairs and started throwing bricks at the house of Nazar

Singh. In the process, he fell from the roof and landed on the bricks lying on the ground and received injuries while PWs Puran Singh and Sukhdev Singh self inflicted injuries on their persons so as to falsely implicate the appellants.

After hearing learned counsel for the parties and on going through the evidence brought on record, the trial Court believed the prosecution case and, accordingly, convicted and sentenced the appellants, as mentioned above.

Having heard learned counsel for the parties and on going through the evidence, this Court finds that complainant Satpal Singh PW3 had testified about the manner in which the occurrence had taken place. According to him, the cycle of Jit Singh @ Kali had hit the appellants which resulted in exchange of hot words followed by grappling. Thereafter, Nazar Singh had raised a *lalkara* to teach a lesson to the complainant party. This was followed by the accused picking up the bricks lying in the street. Sukhwinder Singh had given a blow with one such brick on the forehead of Udham Singh which ultimately proved to be fatal. Similarly, Chanchal Singh and Daya Singh @ Sukha had inflicted blows with the bricks held by them to Puran Singh and Sukhdev Singh, respectively. The testimony of PW3 Satpal Singh is duly corroborated by PW4 Puran Singh and PW5 Sukhdev Singh, who had received injuries in the occurrence. Their injuries have been brought on record by the prosecution by examining

PW6 Dr. Ajit Singh. Similarly, the injuries found on the dead body of Udham Singh have been brought on record by PW1 Dr. Inder Mohan Gupta, who deposed about conducting of autopsy on the dead body of Udham Singh. Under these circumstances, no case is made out for any interference in the impugned judgment passed by the trial Court while convicting the appellants.

On the question of sentence, learned counsel for the appellants has submitted that there was no previous enmity between the parties. The occurrence erupted when bi-cycle driven by Jit Singh @ Kali, cousin of complainant Satpal Singh hit the appellants, who were at that time standing in the village street. The things flared up on account of exchange of hot words followed by grappling and Jit Singh @ Kali being thrashed. At the relevant time, none of the appellants was armed with any weapon. On a *lalkara* being raised by Nazar Singh that the complainant party be caught hold and taught a lesson, Sukhwinder Singh @ Sukhdev Singh, Chanchal Singh and Daya Singh @ Sukha had picked up bricks lying in the street. Deceased Udham Singh was caused only one blow by Sukhwinder Singh. There was no repetition of blow. The injuries attributed to Chanchal Singh and Daya Singh given with the bricks, resulted into only simple injuries to Puran Singh and Sukhdev Singh. During their examination under Section 313 Cr.P.C. before the trial Court, the appellants had pleaded that they

were the only bread winners of their respective families. The appellants have been facing the agony of criminal prosecution for the last about fifteen years. Sukhwinder Singh @ Sukhdev Singh, who is the one substantially liable for the offence under Section 304 IPC and sentenced to undergo imprisonment for ten years, has already undergone an actual period of four years and fifteen days besides earning remissions of four years, four months and twenty six days. In all, his total custody comes to eight years, five months and eleven days as reflected in the custody certificate. As regards, Daya Singh @ Sukha and Chanchal Singh, the custody certificates indicate that they have undergone total custody of two years, eight months and seventeen days whereas Nazar Singh has undergone total custody of one year, ten months and seven days. None of these three appellants, namely, Daya Singh @ Sukha, Chanchal Singh and Nazar Singh had caused any injury to deceased Udham Singh. Prayer has, accordingly, been made for taking a lenient view in the matter of sentences of imprisonment of the appellants.

Learned State counsel has vehemently opposed the prayer by submitting that the appellants had acted in an abnormal and violent manner and, that too, on account of trivial matter i.e. of cycle of Jit Singh @ Kali, cousin of complainant Satpal Singh hitting them. This was followed by Nazar Singh appellant raising a *lalkara* and Sukhwinder Singh, Daya Singh and Chanchal Singh

picking up bricks and causing injuries to Udham Singh, Puran Singh and Sukhdev Singh. The injury received by Udham Singh proved fatal. Therefore, the sentences of imprisonment awarded are commensurate with the crime committed by them.

After hearing learned counsel for the parties, this Court is of the considered view that no useful purpose will be served by sending the appellants behind the bars, once again, for undergoing their remaining sentences of imprisonment imposed upon them. Ends of justice would be suitably met, if the substantive sentences of imprisonment of all the four appellants, on both the counts are reduced to the one already undergone by them. At the same time, the fine of Rs. 10,000/- imposed upon the appellants for the offences under Sections 304 and 304/34 IPC can be suitably enhanced.

Resultantly, the conviction of the appellants, as recorded by the trial Court is maintained. Their substantive sentences of imprisonment on both the counts shall stand reduced to the one already undergone by them. The sentence of fine of Rs. 500/- imposed upon the appellants under Sections 323 and 323/34 IPC alongwith its default clause is maintained. However, the fine of Rs. 10,000/- imposed upon appellant Sukhwinder Singh under Section 304 IPC and upon Daya Singh @ Sukha, Chanchal Singh and Nazar Singh under Sections 304/34 IPC is enhanced to Rs. 25,000/- each and in default of

payment of fine of Rs. 25,000/-, they shall undergo rigorous imprisonment for 1½ years. The entire amount of fine be deposited by all the appellants with the trial Court within three months from today.

But for the modification in the quantum of sentence of imprisonment and fine, as indicated above, both the appeals fail and are, therefore, dismissed.

May 17, 2016
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(T.P.S. MANN)
JUDGE