

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-380-DB of 2003

Date of Decision : March 17, 2016

Kuldip Singh

.....Appellant

Versus

State of Punjab

....Respondent

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

Present : Mr. Vikram K. Chaudhri, Senior Advocate with
Ms. Isha Goel, Advocate
for the appellant.

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

T.P.S. MANN, J.

The appellant, namely, Kuldip Singh was tried for committing the offence punishable under Section 302 IPC for having inflicted injury on the head of Gurmej Singh on 19.2.2000 at 9.00 p.m., in the area of Mishra Singh Colony, Tarn Taran Road as a result of which, he died on 22.2.2000, whereas his co-accused Tilku, Nihal Singh and Ashok Kumar were tried for committing offence punishable under Section 302 read with Section 34 IPC. Vide judgment and order dated 6.2.2003, learned Additional Sessions Judge (Ad hoc), Amritsar acquitted Tilku, Nihal Singh and Ashok Kumar of the charges against them. However, the appellant was convicted under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo rigorous imprisonment for two months.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, in which he is currently on bail.

According to the prosecution, complainant Balwinder Singh @ Billa s/o Kashmir Singh, r/o Chatiwind got recorded his statement Ex.PB with ASI Satnam Singh that his eldest brother Gurmej Singh was married to Raj Kaur d/o Joginder Singh about 13/14 years ago. Appellant Kuldeep Singh was also married with another daughter of said Joginder Singh. Gurmej Singh deceased and his another brother Lakhwinder Singh were hawkers, whereas complainant himself was dealing in household. Gurmej Singh had three daughters and two sons. Kuldeep Singh appellant was also a hawker by profession and selling rice. Tilku and Ashok Kumar, brothers-in-law of Kuldeep Singh, being his sister's husband also dealt in rice with Kuldeep Singh. Kuldeep Singh appellant and Gurmej Singh deceased had a petty dispute over domestic affairs. On 19.2.2000, complainant Balwinder Singh @ Billa and his maternal cousin Lakhwinder Singh @ Lakha s/o Joginder Singh had assembled in the evening at the house of Joginder Singh, father-in-law of Gurmej Singh in order to try re-conciliation. When the complainant and his cousin Lakhwinder Singh @ Lakha were sitting in the house of Joginder Singh, Kuldeep Singh appellant, alongwith Tilku and Ashok Kumar, came there from outside. When the complainant initiated the matter of re-conciliation, Kuldeep Singh appellant kept on talking harshly and in a loud pitch with Gurmej Singh. The complainant tried to make them understand. In the meantime, Nihal Singh, father

of Kuldeep Singh also came there. Tilku raised lalkara that they were not ready to enter into any compromise with Gurmejit Singh and they would teach him a lesson on that day. In order to avoid quarrel with them, complainant Balwinder Singh, his brother Gurmejit Singh and their cousin Lakhwinder Singh @ Lakha started towards the house of one Maddi s/o Kartar Singh, who was their maternal aunt's son and resident of Mishra Singh Colony. Appellant Kuldeep Singh, Tilku, Ashok Kumar and Nihal Singh followed them while raising lalkaras in a loud voice. Kuldeep Singh appellant was holding an iron-axe (kulhara) in his hands, Tilku had a kirpan and Ashok Kumar had a bamboo stick (sota). Within no time after coming there, Kuldeep Singh appellant gave a blow with the kulhara upon Gurmejit Singh, which struck him on his head and he fell down. When the complainant raised an alarm, the aforementioned accused ran away from the spot while carrying their respective weapons. The occurrence had taken place at about 9.00 p.m. and at that time, electric bulb installed outside the houses of Amar Singh and Jugraj Singh, residents of Mishra Singh Colony were emitting light. After arranging conveyance, Lakhwinder Singh @ Lakha and others removed Gurmejit Singh to the hospital for treatment whereas complainant Balwinder Singh @ Billa proceeded for the Police Station in order to lodge the report and in the area of Kot Mit Singh, Tarn Taran Road, he came across ASI Satnam Singh and made his statement Ex.PB.

Further case of the prosecution is that as the statement of complainant Balwinder Singh disclosed commission of offences under

Sections 307/326 and 120-B IPC, ASI Satnam Singh made his endorsement Ex.PB/2 on the same and sent it through SPO Harbhajan Singh for registration of the case. Accordingly, FIR No.39 (Ex.PB/3) was recorded by ASI Jasbir Singh at Police Station Sultanwind, District Amritsar on 19.2.2000 at 10.35 p.m. for the aforementioned offences. Special report sent through Constable Sarabjit Singh was received by the Ilaqa Magistrate on 20.2.2000 at 6.00 a.m.

Further case of the prosecution is that ASI Satnam Singh went to the place of occurrence and collected blood stained earth, which was sealed in a parcel and taken into possession vide memo Ex.PR in the presence of Jaswinder Singh @ Maddi and HC Harjit Singh. ASI Satnam Singh went to the hospital and presented application Ex.PK to the doctor concerned to enquire about the condition of Gurmejit Singh, who was not found fit for giving the statement. On the next day, the condition of Gurmejit Singh remained the same. Statement of Lakhwinder Singh @ Lakha was recorded. Gurmejit Singh was then moved from Guru Nanak Dev Hospital to Madaan Hospital where he was operated upon for his head injury, but he could not survive and breathed his last on 22.2.2000. On receipt of information, regarding the death of Gurmejit Singh, SI Narinder Singh went to Madaan Hospital and conducted inquest proceedings and prepared report Ex.PD in that regard. The dead body was entrusted to HC Harjit Singh and SPO Harbhajan Singh, who took the same to the mortuary for the purpose of postmortem. The accused were arrested on 24.2.2000. On

interrogation, Kuldeep Singh appellant suffered disclosure statement Ex.PU that he had kept concealed one kulhara in the bushes near the canal in the area of Kot Mit Singh and offered to get the same recovered. After getting his disclosure statement Ex.PU recorded, he got recovered kulhara Ex.P3, which was taken into possession vide memo. Ex.PX. Offence under Section 302 IPC was also added. Parcels of blood stained earth and kulhara were sent for chemical examination and as per report Ex.PZ/1 of the Chemical Examiner, Punjab found it to be stained with blood. After completion of the investigation and presentation of challan followed by commitment of the case to the Court of Sessions, the appellant and his co-accused were charged, as mentioned above, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as twelve witnesses.

PW1 Dr. Ashok Chanana deposed that on the basis of application Ex.PA dated 22.2.2000, postmortem on the dead body of Gurmej Singh was conducted by him and by Dr. Gurmanjit Rai which was brought to the mortuary by HC Harjit Singh and SPO Harbhajan Singh and was identified by Joginder Singh and Sukhdev Singh. As many as four ante-mortem injuries were found. In his opinion cause of death was the laceration of brain, as a result of injury No.4, which was sufficient to cause death in the ordinary course of nature. Ex.PF is the carbon copy of postmortem report. Opinion Ex.PG/1 was given by him later on that possibility of injuries No.1, 2 and 3 having been suffered

by fall could not be ruled out.

PW2 Dr. Karamjit Singh had stated that Gurmejit Singh deceased was admitted in Guru Nanak Dev Hospital, Amritsar, on 19.2.2000 at 8.55 p.m. and he left the hospital on 20.2.2000 at 12.15 p.m. against medical advice. Ex.PK/1 is his opinion, which was given by him on the application Ex.PK of police, that on 19.2.2000 at 10.30 p.m., Gurmejit Singh was not fit to make statement. The same was the opinion Ex.PK/2 given by Dr. Vikrant Pathank on the next day.

PW3 Constable Satwant Singh tendered in evidence his affidavit Ex.PL.

PW4 HC Harjit Singh also tendered in evidence his affidavit Ex.PM.

PW5 Constable Sarabjit Singh also tendered in evidence his affidavit Ex.PN.

PW6 Balwinder Singh reiterated his version as mentioned in his statement Ex.PB on the basis of which, FIR Ex.PB/3 was registered.

PW7 Lakhwinder Singh supported the version of the occurrence as given by PW6 Balwinder Singh.

PW8 HC Palwinder Singh, PW9 ASI Satnam Singh, and PW10 SI Narinder Singh testified about the various steps taken by them during the investigation of the case.

PW11 Dr. Ajit Singh Randhawa testified that on 20.2.2000

while working as Head Neuro Surgeon at Madaan Hospital, Majitha Road, Amritsar, he had operated upon Guemej Sigh, who was unconscious and had sutured CLW on the right side of his head. He found the fracture underneath, besides serious injuries to the brain and Gurmej Singh ultimately died on 22.2.2000.

PW12 Constable Lakhbir Singh tendered in evidence his affidavit Ex.PZ.

Besides, the prosecution tendered in evidence report Ex.PZ/1 of the Chemical Examiner and ,thereafter, closed its evidence.

When examined under Section 313 Cr.P.C., all the accused denied the circumstances put to them and pleaded that they were innocent and falsely involved.

In their defence, the accused did not lead any evidence.

After hearing learned counsel for the parties and on going through the record, the trial Court acquitted the co-accused of the appellant of the charges against them. The appellant was, however, convicted under Section 302 IPC and sentenced, as mentioned above.

Learned counsel for the appellant has submitted that no such occurrence, as alleged by the prosecution, had taken place. Rather, the deceased had suffered injuries in a road side accident. According to the prosecution, though the deceased had received only one injury on his head at the hands of the appellant with a kulhara yet

the medical evidence indicates that apart from one injury on the head of the deceased, there were three other injuries which were caused by blunt force. The prosecution has not explained as to how the deceased came to receive the said injuries. PW1 Dr. Ashok Chanana in his cross-examination had also not ruled out the possibility of the injuries to have been received by the deceased in a road side accident. It is also submitted that though the occurrence had taken place on a thoroughfare yet no independent witness had been joined by the prosecution in support of the ocular account. It is also submitted that the FIR was registered after a long delay and this delay had been used by the prosecution to make deliberations and consultations and thereafter, the appellant falsely implicated in the case. It is also submitted that even if the prosecution case is accepted, no offence under Section 302 IPC is made out. It may, at the most, be a case under Section 304 IPC.

Learned State counsel has vehemently opposed the appeal by submitting that the deceased had received injuries on his person at the hands of the accused. The medical evidence duly corroborates the ocular account. Merely because the two eye-witnesses were close relatives of the deceased is not sufficient to reject their testimonies. It is also submitted that the FIR was lodged with due promptitude and, thus, there was no question of any false implication of the appellant. It is further submitted that the appellant cannot be absolved of the charge under Section 302 IPC.

Having heard learned counsel for the parties and on going through the evidence with their able assistance, this Court finds that in his statement Ex.PB, complainant Balwinder Singh @ Billa had stated that it was the appellant, who was armed with an iron axe (kulhara) at the time of the occurrence, which he had wielded in giving an injury on the head of Gurmej Singh. As a result, Gurmej Singh had fallen down at the spot. To the same effect was his testimony before the trial Court when he appeared as PW6. Similarly, PW7 Lakhwinder Singh had deposed that the appellant had given a kulhara blow to Gurmej Singh which hit on his head and after receiving the blow he fell down on the ground. After the death of Gurmej Singh on 22.2.2000, his dead body was subjected to postmortem by PW1 Dr. Ashok Chanana, who found the following injuries on the dead body :-

- “1. A reddish brown abrasion 6 x 2 cms. was present on the front and left side of chest, in the supra clavicular region, in its centre.
2. A bluish black contusion 4 x 3 cms. was present on the posterolateral aspect of left fore-arm in its centre.
3. A bluish black bruise, 8 x 5 cms. was present on the outer aspect of left thigh, in its upper one third.
4. A sutured wound 18 cms. long with 17 stitches intact was present over the right side of head on the frontal parietal and occipital region.

On dissection : subgaleal haematoma of 100 c.c. was

present underlying bones were fractured into multiple pieces. A dark coloured extradural and subdural haematoma measuring 150 c.c. was present. The portion of right cerebral hemisphere was not present (as it was sucked out due to contusion, as per operation notes). The cranial cavity contained 200 c.c. of fluid and clotted blood.”

PW1 Dr. Ashok Chanana also testified that in his opinion, the cause of death was laceration of brain as a result of injury No.4 which was sufficient to cause death in the ordinary course of nature. He further testified that on police application Ex.PG dated 14.3.2000, he had opined vide his endorsement Ex.PG/1 that possibility of injuries No.1, 2 and 3 on the dead body of Gurmej Singh having been caused by a fall could not be ruled out, even then, the circumstantial evidence should be taken into consideration. During his cross-examination, he reiterated that injuries No.1 to 3 were caused by blunt force, whereas injury No.4 was sutured. Possibility of these injuries to be caused in road side accident could not be ruled out.

Merely because PW1 Dr. Ashok Chanana did not rule out the possibility of the injuries to have been caused to Gurmej Singh deceased in a road side accident is not sufficient to hold that the deceased had not received any injury at the hands of the appellant or that all the injuries had been caused in a road side accident. Injuries No.1, 2 and 3 were abrasion, contusion and bruise which were present on the chest, left fore-arm and left thigh, respectively of the deceased. Dr. Ashok Chanana had not ruled out the possibility of injuries No.1, 2

and 3 having been caused by a fall. Even otherwise it has come in the evidence that after being struck with kulhara on his head at the hands of the appellant, Gurmej Singh had fallen down at the spot. In that process he, in all, probability would have received injuries No.1 to 3 on various parts of his body. Under these circumstances, this Court is of the view that the deceased had not received any injury in a road side accident, rather, he had received injury No.4 on his head with a kulhara wielded by the appellant, whereas injuries No.1, 2 and 3 were caused when he had fallen down at the spot after receiving the injury on his head.

It is the case of the prosecution that there used to remain some differences between the appellant and the deceased over petty issues. Both of them happened to be the sons-in-law of Joginder Singh and in order to patch up their difference, the relatives of the parties had assembled at the house of Joginder Singh. From the side of the deceased, complainant Balwinder Singh @ Billa and his maternal cousin Lakhwinder Singh @ Lakha had attended the sitting, whereas on the other side the appellant was accompanied by his father Nihal Singh and two brothers-in-law Tilku and Ashok Kumar. Even in that sitting, the appellant kept on talking to the deceased by using harsh language and in a loud pitch. At that time, Tilku raised lalkara that they were not going to make any compromise with Gurmej Singh deceased and, accordingly, would teach him a lesson that day. The complainant party, however, wanted to avoid the issue and started for the house of one

Maddi, who happened to be their cousin. However, all the accused followed them while raising lalkaras. This was followed by the appellant giving a blow with the kulhara on the head of Gurmej Singh, who fell down at the spot. Going by the background of the case, the presence of PW6 Balwinder Singh @ Billa and PW7 Lakhwinder Singh @ Lakha at the time of the occurrence was highly natural. Merely because they happened to be the close relatives of the deceased and thus, interested in him, is not sufficient to reject their testimonies as their testimonies are duly corroborated by the medical evidence. In case, they had not witnessed the occurrence and after noticing the presence of four injuries on the person of Gurmej Singh, they could have at least doled out three of them to the co-accused of the appellant. Despite the same, they attributed causing of only one injury by the appellant with a kulhara on the head of Gurmej Singh and from the tone and tenor of their testimonies, it stands established that the remaining three injuries were received by Gurmej Singh on account of falling down at the spot after receipt of the injury on his head.

As regards non-examination of independent witness, suffice it to say that the occurrence in question had taken place on 19.2.2000 at 9.00 p.m. Though the occurrence had taken place on a thoroughfare yet in the month of February weather continues to be very cold and by about 9.00 p.m. people generally retire to their bed, instead of roaming around in the area. Even otherwise, the defence has not suggested as to whether any independent witness was available at the place of the

occurrence. Thus, the prosecution case cannot be discarded merely on account of non-examination of any independent witness.

On the question of delayed recording of the FIR, it may be noticed that the occurrence in question had taken place on 19.2.2000 at 9.00 p.m. Immediately after the occurrence, Lakhwinder Singh @ Lakha, alongwith other persons took Gurmej Singh to the Civil Hospital for his treatment whereas complainant Balwinder Singh @ Billa started for the Police Station to lodge his report. On reaching in the area of Kot Mit Singh, he came across ASI Satnam Singh, who, alongwith his fellow officials was present there in connection with patrolling. Statement Ex.PB of complainant Balwinder Singh @ Billa was recorded by ASI Satnam Singh on 19.2.2000 at 10.00 p.m. The said statement was forwarded to Police Station Sultanwind where on it basis, FIR Ex.PB/3 came to be recorded at 10.35 p.m., and completed on 11.35 p.m. Special report was, thereafter, entrusted to Constable Sarabjit Singh, who handed over the same to the Ilaqa Magistrate on 20.2.2000 at 6.00 a.m. From the chronology of events, it is made out that there was no delay, whatsoever, in lodging of the FIR, rather the same had been lodged with due promptitude. Merely because the special report came to be received by the Ilaqa Magistrate on 20.2.2000 at 6.00 a.m., is not sufficient to hold that the statement Ex.PB and the FIR Ex.PB/3 were recorded after a delay and, this delay had been used for falsely implicating the appellant. Even otherwise, there was no legal requirement of the special report to be sent immediately after the

registration of the FIR as by that time, only offences under Sections 307, 326 and 120-B IPC were made out. Thus, no benefit on account of some delay occurring in the receipt of the special report by the Ilqa Magistrate can be extended to the appellant.

As regards the nature of offence, it may be noticed that the appellant and the deceased were co-brothers, being married to two sisters. On account of the petty dispute between them, the relatives from the side of the appellant on the one hand and of the deceased on the other had tried to patch up their differences by calling meeting at the house of their father-in-law Joginder Singh. However, the meeting was not fruitful as the appellant kept on talking to the deceased by using harsh language and in a loud pitch. The complainant party, in order to avoid escalation of the matter, left for the house of their maternal cousin Maddi but the appellant and his co-accused started following them. It appears that as the talks broke down, both the parties left the house of Joginder Singh. However, on account of surcharged atmosphere, the appellant who was armed with a kulhara had wielded the same in causing an injury on the head of Gurmej Singh. Admittedly, there was no repetition of blow by the appellant. So much so that the appellant even made no attempt to give another blow to the deceased. On account of receipt of injury on his head, Gurmej Singh fell down and in the process received three other injuries which the doctor had opined to have been caused by a fall. Taking into consideration the totality of the circumstances, this Court is of the view

that the appellant while causing the solitary blow on the head of the deceased, did not intend to cause his death nor he knew that the injury caused by him would cause death. Under these circumstances, the conviction of the appellant under Section 302 IPC cannot be upheld. Instead, as he intended to cause an injury which was likely to cause death, therefore, the appellant was liable for committing the offence under Section 304 Part I IPC.

Resultantly, the conviction of the appellant under Section 302 IPC and his sentence of imprisonment of fine are set aside. Instead, he is convicted under Section 304 Part I IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/-. In default of payment of fine, he shall undergo further rigorous imprisonment for a period of one year.

The appeal is, accordingly, disposed of.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

March 17, 2016
satish