

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

CRA-D No.1036-DB of 2009 (O&M)
Date of decision: 27.04.2016

Resham Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE S.S. SARON.
HON'BLE MR. JUSTICE GURMIT RAM.

Present: Mr. S.S. Swaitch, Advocate
for the appellant.

Ms. Amarjit Kaur Khurana, Addl. A.G., Punjab.

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?*

GURMIT RAM, J.

This criminal appeal has been preferred by the appellant – herein (accused) Resham Singh against the impugned judgment and order of sentence dated 20.08.2009 passed by the Court of learned Sessions Judge, Bathinda in criminal case bearing FIR No.34 dated 10.04.2008 under Section 302 read with Section 34 of the Indian Penal Code (for short 'IPC') vide which the appellant was held guilty of the offence under Section 302, IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- and in

default of payment of fine to further undergo rigorous imprisonment for a period of two years.

2. The case of the prosecution as presented before the learned trial Court in brief was that on 09.04.2008 at about 11:00 pm, an information was received at Police Station Rama from Police Station Talwandi Sabo regarding death of Dhanna Singh son of Harnek Singh Jat resident of Gatwali. ASI Kundan Lal along with other police officials visited Civil Hospital, Talwandi Sabo where nobody was found present who could give information regarding incident. On the next day i.e. 10.04.2008 at about 05:30 am Gurdas Singh son of Harnek Singh resident of village Gatwali was found present in Civil Hospital, Talwandi Sabo, who made his statement, the brief resume of which was as under:-

“That he is an agriculturist by profession. They are three brothers, namely, Dhanna Singh, Kaka Singh and he himself. That on 09.04.2008 at about 07:30 pm he accompanied by his brother Dhanna Singh and nephew Satnam Singh son of Dhanna Singh had gone to the locality of Harijans to hire labour for the purpose of harvesting wheat crop. When they reached near the house of Resham Singh – accused of his village, Dhanna Singh was little ahead of them whereas he and Satnam

Singh were following him. Resham Singh armed with 'gandasa', his son Bittu Singh armed with 'kulhari' and his wife Lovepreet Kaur @ Rani armed with soti came there. Resham Singh raised 'lalkara' that today Jatt Sikhs should not be allowed to go scot free. By saying so, 'Resham Singh gave a 'gandasa' blow on the head of Dhanna Singh. Bittu Singh gave a kulhari blow on the head of Dhanna Singh. Dhanna Singh fell down and Rani Kaur gave soti blows to Dhanna Singh.' The complainant-Gurdas Singh and Satnam Singh raised alarm 'Marta Marta'. At that time, the light from the houses was coming in street. The motive behind the said crime was that about four years ago, Resham Singh had trespassed the house of Dhanna Singh in order to commit theft. But, he was apprehended and handed-over to the police. On account of this, Resham Singh was nursing a grudge against Dhanna Singh. Gurdas Singh took Dhanna Singh to Civil Hospital, Talwandi Sabo where he breathed his last."

The complainant-Gurdas Singh affixed his thumb-impression on his abovesaid statement (Ex.PA) after admitting it to be correct upon which ASI Kundan Lal made an endorsement

Ex.PA/1, on the basis of which FIR Ex.PA/2 was registered.

The inquest proceedings in respect of the dead body of deceased were conducted. Postmortem of the dead body was also got conducted. On 11.04.2008, the abovesaid ASI Kundan Lal visited the spot of occurrence and prepared its site plan Ex.PJ after inspecting the same. Blood stained earth and simple earth was lifted from the spot and the same was taken into police possession after converting the same into duly sealed parcels.

Then on the same day, the accused were arrested. During interrogation, accused-Resham Singh suffered a disclosure statement regarding concealment of 'gandasa' whereas Rani Kaur suffered a statement regarding concealment of 'kulhari and soti' stated to be used in alleged occurrence. Later on, the abovesaid weapons i.e. 'gandasa and kulhari both blood stained along with soti' were got recovered by the said accused in pursuance of their disclosure statements which were taken into police possession. Site plans of the places of their recoveries were prepared. Parcels containing blood stained earth and simple earth lifted from the spot and the parcel containing clothes of deceased as handed over by the doctor after conducting postmortem on the dead body of deceased were sent to the office of Forensic Science Laboratory, Chandigarh. Statements of witnesses were recorded.

3. On completion of investigation, challan was presented in the Court of learned Illaqa Magistrate, Talwandi Sabo. After completing the formalities of Section 207, Cr.P.C., the learned Sub-Divisional Judicial Magistrate, Talwandi Sabo, committed the case to the Court of Sessions Judge, Bathinda for trial. The accused-Bittu Singh was found juvenile in this case and as such, he was tried separately by the Principal Magistrate, Juvenile Justice Board, Bathinda.

4. On finding a prima facie case under Section 302 read with Section 34, IPC, against the accused, they were charge-sheeted accordingly by learned trial Court vide order dated 30.08.2008 to which they pleaded not guilty and claimed trial.

5. The prosecution in order to establish its case against the accused examined as many as six witnesses, in all, besides tendering the report of Forensic Science Laboratory (Ex.PZ/1) and closed its evidence.

6. During the examination of the accused under Section 313, Cr.P.C., the entire evidence brought on the file against them during trial of the case was put to them which they denied entirely and claimed their innocence and false implication in the present case due to enmity with complainant party. It was further pleaded that the instant case was got registered against them on the basis of some

unfounded suspicion.

7. The learned trial Court after hearing the learned counsel for both the parties and appreciating the evidence on record found the accused (appellant-herein) guilty of the offence punishable under Section 302, IPC and awarded him sentence as detailed above in Para No.1 of the judgment, vide impugned judgment and order of sentence.

8. The appellant-herein (accused) being not satisfied with the impugned judgment of conviction and order of sentence, preferred the present appeal, notice of which was given to respondent-State.

9. Learned counsel for the appellant has contended that there was a delay of eleven hours in lodging the report with the police qua the alleged occurrence and as such, this delay is fatal to the case of prosecution having been remained unexplained on record by prosecution. In the case in hand, as per version of prosecution, the alleged incident took place on 09.04.2008 at about 07:30 pm and the matter was reported to the police in this regard on the next day i.e. 10.04.2008 by the complainant by making his statement Ex.PA with the police. In the endorsement (Ex.PA/1) the time of sending ruqa to the Police Station was recorded as 06:35 am.

It is correct that there was a delay of 11 hours in lodging the FIR. Then, in the FIR Ex.PA/2, the distance of the place of occurrence from police station concerned was recorded as 07 miles. As abovesaid, alleged incident took place on 09.04.2008 in the late evening time. The family members of the victim, generally, get frightened and terrified on seeing the scene of crime which creates a sense of fear in their mind not to go out of the house during night time. The information regarding the alleged occurrence was given to the police in the early morning on the next day i.e. at 06.35 am. So, this delay of 11 hours could not be construed as a factor to involve the appellant-herein (accused) in the case in hand falsely, after due consultation and deliberation. So, the above contention of learned counsel for the appellant stands rejected.

10. Then, it is also contended by learned counsel for the appellant that the ocular version of prosecution of causing injuries to the person of Dhanna Singh since deceased is not in conformity with the medical evidence and as such, this discrepancy in the case of prosecution is enough to disbelieve the entire prosecution story. In order to elaborate his contention, he has submitted that according to PW-1 Gurdas Singh-complainant and PW-2 Satnam Singh/eye-witness, the appellant-herein (accused-Resham Singh) gave a 'gandasa' blow on the head of said Dhanna Singh whereas his co-

accused Bittu Singh (Juvenile) also gave a 'kulhari' blow on the head of the deceased. It has further been contended that during postmortem on dead body of deceased-Dhanna Singh, no incised wound was found on his person having been caused by sharp edged weapon as recorded in his postmortem report Ex.PF. Then, it is also contended that both 'gandasa and kulhari' are the sharp edged weapon and missing of any incised wound/injury on the person of deceased is enough to show that deceased had sustained injuries from somewhere else and after concocting a cock and bull story, the present appellant and his alleged co-accused were involved in this case falsely. It is correct that in the postmortem report Ex.PF, no incised wound/injury is mentioned. Both PW-1 and PW-2 did not state specifically as to whether accused Resham Singh and Bittu Singh (since juvenile) had caused injuries to the deceased Dhanna Singh with their respective weapons either from sharp edged side or the blunt side. So due to this, a lacuna was certainly caused/left in the case of prosecution qua the fact whether both the abovesaid assailants had caused injuries to deceased with their respective weapons either from sharp edged side or from blunt side. But, interestingly, this lacuna in the case of prosecution was filled up by putting certain silly and unwanted questions to PW-1 Gurdas Singh in his cross-examination by learned defence counsel. For instance,

the relevant portion of his cross-examination for this purpose is recorded as under:-

*“The gandasas blow was given with reverse side.
Only one blow was given by gandasas by Resham Singh.
The kulhari blow was also given from the reverse side
and only one blow was given with the kulhari. Dhanna
Singh fell down after receipt of two injuries.”*

So, in the light of above cross-examination of PW-1, it was established on the record that appellant-herein (accused-Resham Singh) caused a 'gandasas' blow to the deceased on his head from its reverse side, whereas his co-accused Bittu Singh (since juvenile) also caused him a 'kulhari' blow from its reverse side. So, in this situation, if no incised wound/injury having been caused by sharp edged weapon is mentioned in the postmortem report Ex.PF of deceased, then that does not make out any ground either to disbelieve the abovesaid prosecution version or to upset the findings of the learned trial Court recorded on this point.

11. Then, the learned counsel for the appellant has contended that as per statement of PW-5 Dr. Parminder Singh Kular who conducted postmortem on dead body of the deceased, the probable time of injury and death was within few minutes whereas as per the information slip Ex.PX sent by doctor to the police, the

injured was moved to the hospital, who died at 10:15 pm. In the case in hand, there is no dispute regarding the death of the deceased. It hardly matters that he died at the spot within few minutes on receipt of alleged injuries on his person or in the hospital at 10:15 p.m. as mentioned in the slip Ex.PX. Generally, when any brutal incident takes place in any rural area, the family members of the injured take him to the nearly situated hospital for his survival by providing him requisite medical treatment. They believe him alive until the doctor concerned declared him dead after providing him all the best possible medical facilities available at that time in the hospital, if required as per the situation. So, this contention of learned counsel for the appellant is held to be devoid of any valid reasoning.

12. Then, the learned counsel for the appellant has pointed out about the site plan Ex.PJ in order to show that the Investigating Officer did not mention the place in the site plan wherein the alleged eye-witnesses were standing at the time of alleged occurrence and had seen the same. This lapse on the part of the Investigating Officer shows his either immaturity or ignorance qua this fact and as such, aggrieved party is not to suffer on this count.

13. Then, it is also contended by learned counsel for the appellant that no independent witness was joined in the investigation of this case from the locality/place of alleged occurrence of the

crime, which also creates serious doubt about correctness of prosecution version. But it is a known fact that in our society generally no other person except the near and dear of victim come forward to join the investigation as and when required either in order to avoid enmity with the accused being a co-villager or for any other reason whatsoever.

14. Then, the learned trial Court has correctly appreciated in Para No.18 of the impugned judgment that injury No.1 was given only by one person and not by two persons, as claimed by the complainant. Injury on the head was attributed to appellant-herein (Resham Singh) and his son Bittu Singh (since juvenile).

15. Regarding evidence of prosecution, the complainant Gurdas Singh-PW1 stated the prosecution version on the same line as per his statement Ex.PA made by him before the police on 10.04.2008 while giving information to the police qua the alleged incident. PW-2 Satnam Singh, the alleged eye-witness also supported the version of prosecution to the effect that accused Resham Singh gave a 'gandasa' blow on the head of his father Dhanna Singh whereas Bittu Singh (since juvenile) also gave 'kulhari' blow on the head of his father i.e. the deceased.

16. PW-3 and PW-4 were the formal witnesses in this case and they tendered in evidence their respective duly sworn affidavits

Ex.PC and Ex.PD as a part of their statements.

17. PW-5 Dr. Parminder Singh and Dr. Harjit Lal were the members of the Board of Doctors constituted to conduct the postmortem on the dead body of deceased Dhanna Singh. On police request Ex.PE, the postmortem on the dead body of deceased was conducted on 10.04.2008 at Civil Hospital, Bathinda and the following injuries were found on the dead body of deceased:-

- 1. Lacerated wound 3.0 cm behind the left ear, 8.0 cm x 3.0 cm bone deep, underlying bone was found fractured. On dissection, meninges were torn and clotted blood was present between the meninges, brain matter was contused.*
- 2. Abrasion 3.0 cm x 1.0 cm over the left shoulder.*
- 3. On opening the chest, 5th and 6th ribs of the left side were found fractured, underlying pleural cavity, lungs and heart were healthy.*
- 4. On opening the abdomen all the viscera was found to be normal and external genitalia was also found to be normal.*

Further he also proved the copy of the postmortem report Ex.PF and the pictorial diagram of human body Ex.PF/1 showing the

seats of injuries sustained by deceased as mentioned above.

Further, he also gave the opinion that all the injuries were ante-mortem in nature and cause of death in this case was due to the injuries as mentioned in the copy of postmortem report Ex.PF which were sufficient for causing death in the ordinary course of nature. He also proved the clothes of deceased i.e. 'Kurta and Pajama' Ex.P1 and Ex.P2 respectively.

17. PW-6 ASI Kundan Lal was the Investigating Officer in this case. He recorded the statement Ex.PA of complainant-Gurdas Singh on 10.04.2008 at about 05:30 a.m. and after making his endorsement Ex.PA/1 on it, he sent ruqa to the police station on the basis of which, the FIR Ex.PA/2 was recorded. Further he also stated about the inquest report Ex.PH prepared in respect of dead body of Dhanna Singh deceased and the postmortem on his dead body which was got conducted on the application Ex.PE of police. Further he also proved the site plan Ex.PJ of the place of occurrence and memo Ex.PB vide which the parcels containing blood stained earth and simple earth sealed with his seal of 'K.L.' were taken into police possession. Further he stated that he arrested all the accused on 11.04.2008. During interrogation, accused Resham Singh suffered the disclosure statement Ex.PL regarding enwomping of 'gandasa', whereas accused Rani Kaur suffered disclosure statement Ex.PN

regarding enwombing of 'kulhari' and stick which were later on got recovered by them as per their respective disclosure statements. The rough sketch of 'kulhari' Ex.PO was prepared and the 'kulhari' alongwith 'soti' was taken into police possession vide memo Ex.PQ after preparing its parcel. Rough site plan of the place of this recovery Ex.PR was prepared. Rough sketch of recovered 'gandasa' Ex.PS was also prepared at the spot and the same was also taken into police possession vide memo Ex.PT after preparing its parcel. Rough site plan of place of this recovery Ex.PU was also prepared.

18. Learned counsel for the appellant did not point out any other discrepancy in the case of prosecution nor raised any other contention qua the impugned judgment.

19. In the light of above, there is no merit in the appeal. The impugned judgment and order of sentence are hereby upheld. Consequently, this appeal stands dismissed.

20. Since the main appeal has been disposed of, the criminal miscellaneous application, if any pending, stands dismissed as having been rendered infructuous and disposed of accordingly.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

27.04.2016
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